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COURT OF APPEALS  
DIVISION II  
CASE NO. 52404-0-II

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ESTATE OF HUNG NGUYEN  
By & through PHUOC NHU, PR,  
Plaintiff/Appellant

v.

FRANCISCAN HEALTH SYSTEM,  
GILBERT JOHNSTON, MD dba ST. JOSEPH  
CARDIOTHORACIC SURGEONS;  
FRANISCAN CARDIOTHORACIC  
SURGERY ASSOCIATES  
AT ST. JOSEPH; FRANCISCAN MEDICAL GROUP,  
Defendants/Respondents

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**APPELLANT'S OPENING BRIEF**

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## I. PERSONAL INJURY CASE FACTS

The husband of the plaintiff, known as Nguyen hereafter, went in to see the defendant's hospital for a stress check-up in November 2008 to his doctor. He referred to a cardiologist. After that he was referred to the heart surgeon, the defendant, Gilbert Johnston in December 2008. Lab results came back with extremely high liver abnormalities. Even with these liver issues, Dr. Johnson performed triple bypass surgery on 12/15/2008. As is common, Nguyen was put on life supports and was weaned off support six days later. Subsequent testing showed a large mass or something on his right lung and he was initially told he had emphysema. About six weeks later, after Nguyen was released from the hospital, Dr. Johnson took a biopsy of this lump. Nguyen had already been in the intensive care unit (ICU) from 12/15 thru 12/27/2008, then he was transferred to PCU. On December 28, 2008 Nguyen had a blood transfusion. The hospital found he had a very large infection in his back apparently from his surgery; this infection had grown to cover his entire back. On December 29<sup>th</sup>, 2008, the hospital called in an infectious disease specialist and put Nguyen back on life supports, but he died the next day in the hospital.

Nguyen was a very prominent attorney in Washington, and when he passed he was the vice president of Ticor Title Insurance Company in downtown Tacoma, WA. He had been employed there over 30 years. Nguyen was very well known in real property law since he had created all the title insurance

policy manuals for statewide use. He was also former legal counsel to the president of South Vietnam during Vietnam War era. His income helped his family live comfortably and his loss was divesting not only to his loved ones, but to his widow.

As in all medical malpractice cases the standard of care is the question. In this case, the Plaintiff's withdrawing counsel was ready to present experts that would say that it was unreasonable to perform by-pass surgery without investigating elevated liver function tests result. The plaintiff's experts, including an expert nurse on coordination of services said it was not reasonable, and the plaintiff's expert physician concurred that there was malpractice that led to Nguyen's death.

After preparing for trial, and knowing its ins and outs, the Plaintiff's counsel was in a terrible accident so he had to withdraw from the case about a month and one-half before trial. After the trial judge allowed their original attorney to withdraw, the judge gave the Plaintiff's 30 days to find a new attorney. They eventually found Attorney William Budigan who said he would only represent the Plaintiff estate if the court would grant a trial continuance.

The Plaintiff and her new prospective attorney, Mr. Budigan came to the pretrial on May 14, 2018. At that pretrial Mr. Budigan stated: "Your Honor, I'm not formally the attorney for plaintiff's yet. It depends on some rulings that I'm hoping the court will make today. I was contacted just last week. I've done my best to try to read and understand this whole case and figure out who's been asked as experts and witnesses and all of those things, and it's impossible to get

up to speed to the extent I need in this short time, but there was a hearing set for today in the family asked me to come today." RP-5 5/14/18 hrg. Despite Mr. Budigan's expressed reservations about joining in this case because he was not prepared to handle it properly, and did not want to do so without obtaining a continuance, the trial judge denied the new attorney's request, but at the same time rhetorically forced Mr. Budigan to remain on the case to get it done.

Because of the judge's denial of a continuance, the Plaintiff's new counsel was completely and totally unprepared to deal with all the facts and history of the case, and could not present the case properly. By not giving the Plaintiff's new counsel even a small continuance, the trial judge might as well have dismissed the case then and there. There was no way the Plaintiff's new counsel could prosecute their case effectively without even a few weeks to become somewhat familiar with the first attorney's strategies and preparation for trial. The Plaintiff and Mr. Budigan, to no one's surprise subsequently lost the case by a jury verdict in favor of the Defendant. This appeal was filed to address the judge's failure to grant a continuance, given the Plaintiff's first attorney's untimely accident and the importance of giving their new attorney even 30 days to get ready for this complicated case.

Besides the denial of a continuance, the judge also excluded testimony from the Plaintiff's expert administrative nurse who was hired to show what medical reporting steps the hospital staff should have done to avoid such late discovery of Nguyen's life threatening infection which eventually took his life.

The following is a more specific timeline of the case and what occurred that made a continuance so important:

On April 20, 2018 the plaintiff's first counsel, Mr. Messina filed and noted a hearing for an order allowing him to withdraw. This motion was so important to him that he did not argue his withdrawal himself, rather asked an attorney from his office to argue it for him. At that hearing Mr. Messina indicates that it was impossible for him to continue due to his bad accident and medical reasons, along with personal reasons. RP 9-16. Ironically, his allegations about the complications of the as being one of the reasons for his withdrawal was in fact one of the main reasons why a new attorney for the Plaintiff's new attorney should have a continuance of the trial to become familiar with the case.

Not having an attorney represent the estate was also an impossibility since their trial judge had already ruled that the estate must use an attorney to help them with the case, since the court had ordered that they could not represent the estate "pro-se". This complication, along with the position of the trial judge that the trial date "will be kept", virtually made this unfortunate scenario a clear path to a defense verdict.

At the hearing on the status of the case and Mr. Messina's motion to withdraw, the judge did give a small continuance of the conference, and although she did not promise to continue the trial she did give the Plaintiff a glimmer of hope for a continuance when she told the Plaintiff that if she did not find a replacement attorney she could not use that as a reason for a continuance request. To the Plaintiff this seemed to imply that if the Plaintiff did obtain new counsel,

ipso facto, she could ask for a continuance. However, this hope was soon dashed when in the same conference the judge showed her preference regarding the trial date by adding the following statement about the trial date, "Oh, it will be kept," showing her attitude about any attempt to change the current trial date seemed rigidly opposed. RP 18 (4/20/18). The court adjourned that April conference and waited to see what the Plaintiff could do regarding a legal representative in the case.

As indicated earlier in this writing, 30 days later, at the pretrial on May 14, 2018 attorney William Budigan carefully introduced himself as the "possible attorney for the plaintiff estate". He stated, "I'm not formally the attorney for the plaintiff yet." RP 5 (5/14/18 transcript). He asked for a 90-day continuance of trial so he could get prepared. RP11(Id.) Defense counsel argued that their client Dr. Johnson would be severely prejudiced by a continuance a 90-day continuance could move the ruling beyond the year 2018 and it might then affect his medical malpractice insurance for another year and that there had already been many continuances, without explaining that they had asked for the most continuances - at least 5 of them, which again, would have been something the new attorney would not have been familiar with. And although it was argued that discovery had not been completed, and no ADR had been done, the judge summarily denied the continuance request and told Mr. Budigan that he was going to have to be ready for trial in "9 days". The request for a continuance was obviously denied, and the Plaintiff's attorney was in the case for its "duration",

without knowing strategies, witnesses, complicated medical issues of the case, etc.

In discussing the denial of the Plaintiff's new attorneys request for a continuance, the judge did not spend much time dealing with the problems associated with forcing Mr. Budigan to immediately get ready for this June 4, 2018 trial. Just that he was required to remain in the case.

After the judge denied the request for a new trial 90 days later, the first sign of the difficulties in having this new attorney represent the Plaintiff became very clear. The first matter to deal with after the denial of the continuance request, was an evidentiary motion by the defense to exclude the Plaintiff's expert nurse, who was hired to testify about the administrative problems that the hospital had in dealing with Nguyen's infection after the heart operation, that was for all intents and purposes the reason for his death.

The Plaintiff's former attorney had hired the nurse expert to show how the hospital contributed to Nguyen's death because of how the hospital's staff failed to properly coordinate Nguyen's care, thus exacerbating the likelihood that he would have post-operative problems, like the infection that killed him, especially with his elevated liver function problems. Because Mr. Budigan was not part of hiring this expert, he did not have a good handle on the purpose for this expert's testimony; this led to an exclusion of this witness and a detrimental loss of the theory Mr. Messina had formulated to show the milieu problems that plagued Nguyen's recovery from heart surgery. See RP 5-60 from the 6-4-18 trial date.

## **II. PERSONAL AND SOCIAL FACTS RE: NGUYEN & HIS WIFE**

The Appellant is the widow of Nugyen, a well-known Vietnam community leader in the Seattle-Tacoma area. Ms. Nguyen, although the matriarch of the same community, she was culturally and socially very dependent on her husband and when he died she became lost. This was obvious on the date of trial when she was repeatedly assured by the court that she would have a proper translator to help her with this process. However, even then she became disadvantaged because the translator who was there was not familiar with the Plaintiff's Vietnamese dialect that she spoke and so the court had to use the interpreter that the Plaintiff brought who was not actually certified, and the Plaintiff had to even obtain her own interpreter. RP 1-12 from 6/4/18 transcript.

Historically, the Appellant was originally represented by a very experienced attorney named John L. Messina. Mr. Messina had been on the case for a long time and knew the case very well. The case was set for trial on the date of June 4, 2018, however, he apparently got into a bad car accident just before the pretrial and trial date and indicated that he could not continue in the case and asked to be allowed to withdraw immediately putting the Plaintiff at a disadvantage in the case. Because of this the Plaintiff did the best she could and hired attorney Budigan, with the stipulation that they should get a continuance of trial so that he could be ready and become familiar with the case.

At a "pretrial hearing" on the date of May 4, 2018, the Appellant's new counsel indicated that he could try and get ready for trial but needed more time.

See transcript for 6/4/18. Unfortunately, the judge would not allow the Appellant more time and forced him into the case, knowing he was both unfamiliar with the case and was not prepared. However, like all attorneys would be he was both apologetic to the judge and indicated that he would try and be ready for trial over the “weekend” but did not know that could be done. RP 31 from 6/4/18 transcript. There was really no time for him to become familiar with the Vietnam community, their sociology, and how they dealt with the death of one of their leaders, let along the complicated medical issues and Mr. Messina’s strategy involved presenting all the facts in this case.

Just before trial, as indicated, the Appellant was basically blind sided with Mr. Messina’s withdrawal and the fact that the court told her that she would have to go to trial pro se if she did not find an attorney, when it was not even her fault that her long-time attorney in the case unilaterally withdrew. It was so obvious that their new attorney was not going to be prepared as well with how to properly try this case. Everyone even the judge knew that there were highly complicated matters of evidence that she could not provide input to her new attorney about since she was not the one that developed the strategy in the case, it was Mr. Messina and he did nothing to help Mr. Budigan prepare for this case. Had Mr. Messina or her new attorney had more time to talk and get a better handle on the case theories and defense counsel’s positions, there may have been a different outcome. Additionally, had the new attorney more time with his client, an entirely different presentation of the evidence would have likely been the provided. As it was we are talking days not weeks here, for presentation.

There is another issue of importance in this case as it related to the need and appropriateness of a continuance, and that was the use of the Appellant's paralegal daughter was helping the Plaintiff with understanding and dealing with the case. As indicated, her daughter was and is an expert paralegal in personal injury cases, with many years of experience and no-how in trial work and preparation of these type of cases. And her daughter, herein after known as Nhu, knew the intricacies of the case in every detail for her mother and her very new attorney. She, by court order, could not be involved in the actual trial in anyway, as the order precluding the Plaintiff from doing anything in the case without a licensed attorney. The judge even precluded Nhu from even sitting at the table with her mother to help her. The importance of this was that it would have greatly helped the Plaintiff's understanding of this legal process, and would have helped her new counsel with his ability to be ready. A continuance was desperately needed if the Plaintiff and her attorney could not work with her paralegal daughter. It was almost as if the judge intentionally tied the Plaintiff's hands at every turn, leaving her with an attorney who knew little about the case, and no trusted family member to help her with this legal process, again, especially when all this was not her fault.

This "required representation" order was so all encompassing and restrictive that it even became germane to this appeal as defense counsel tried to say that since the Notice of Appeal was not signed or filed by a licensed attorney, that it was void under that order, and they filed a motion to dismiss the appeal because of it. The importance of that restriction order shows how the trial judge wanted

to control the Plaintiff's every move in this case, even though she was handicapped because of the language barrier and the untimely withdrawal of her primary attorney. The judge simply did not care. The trial judge in this case was going to force the Plaintiff into presenting and dealing with this case in a manner she felt was appropriate, even if it meant that she would have ineffective counsel, it did not matter.

What is germane regarding the failure of the court to grant a continuance was that the Plaintiff thereafter could do nothing (pre-appeal) with her daughter's help, and could not do anything without an attorney doing it, even at trial. The Plaintiff could not do the trial herself without Nhu's help even though that had been the norm. Therefore, no matter if she obtained the help of the very best personal injury attorney in Washington, they would not know the intricacies of this case to properly fight the Defendant's presentation without the help of someone to help with the communication between the person of interest, and her new court representative.

The case was then handicapped further because the judge precluded the Plaintiff's nurse administrative standard of care from testifying. RP 31-33 6/4/18. This was a substantial handicap for the new attorney since the case was not just about what the doctor did but also about what the hospital did, Nguyen's death. Somehow in excluding the nursing expert the judge seemed to forget who the defendants were in the case, and that the case was also about a health care system or group. If the new attorney had been more prepared he could have

headed this office with a proper argument; as it was he did not know how to deal with this motion in limine. RP 5-56 6/4/18 transcript.

In addition to the above, the following is a “procedural time line” of the case against the Respondent/Defendants that is germane to the failure to approve a continuance. See Appendix 1 the Superior Court list of clerk’s papers.

- December 15, 2016: attorney John Messina came on in this medical malpractice case;
- In the year 2017, there were multiple continuance requests by the Defendants;
- 2017: Discovery was provided between parties;
- October 20, 2017: Deposition of our medical expert, Carl Adams;
- March 2018: Hearing held, and attorney Jeff Sadler appeared for John Messina;
- April 3, 2018: attorney John Messina filed his Notice to Withdraw without Plaintiff’s permission or a substitution from any partners or associate attorneys for or with Mr. Messina;
- April 17, 2018: The Appellant filed letters objecting to Messina’s withdrawal.
- April 20, 2018: Hearing held and court allowed Messina to withdraw then set a possible sanction hearing against Plaintiff on May 14. Jeff Sadler appeared with Messina. Sadler spoke on the record that he is not The Estate’s attorney yet he filed some paperwork and signed his name on our case. Messina did not seek a 90-day continuance for the Estate to find new counsel (see RP 7-18 5/20/18 transcript);
- May 14, 2018: Court “offered” to consider 90-day continuance but Judge Whitener denied stating she didn’t hear a good argument from attorney William Budigan. Mr. Budigan conveyed on the Record, he is not plaintiff’s attorney and would consider taking the case only if the court allows more time for him to catch up. Judge Whitener didn’t think that was a good argument and denied 90-day continuance. The judge also ordered Interrogatories to be Answered and submitted by May 23, 2018. Essentially the judge said too bad get ready for trial with or without counsel (see RP 5-26 5/14/18 transcript);
- June 4, 2019: Trial begins; attorney Budigan asked for a continuance and it was denied. Motion hearings heard all regarding Motion in Limine and other Motions to exclude witnesses/experts/Trial Exhibits. The trial judge precluded an important witness which could have been attributed to the new attorney’s inexperience in the case. (RP 5-59 6/4/18 transcript);
- June 5, 2018: Jury selection begins; more Motions heard in the morning (see court Transcripts RP 6/4/18 transcript);
- June 19, 2019: Jury deliberated for 1.5 hours;

- June 20, 2018: Attorney William Budigan officially filed his Notice of Appearance after Trial ended;
- July 10, 2018: Judgment cost hearing; Attorney William Budigan appeared by telephone (see RP 7/10/18 transcript);
- July 25, 2018: Ex Parte granted motion to waive filing fees and court transcripts (see RP 7/25/18 transcript);
- Aug 6, 2018: The Estate, pro se filed the Notice of Appeal in the interest of justice (See Motion to Dismiss Appeal filed by the Defendants in this appeal matter – which was denied by Court of Appeals);

### **III. THE TRIAL JUDGE COMMITTED THE FOLLOWING JUDICIAL**

#### **ERROR.**

1. By not granting the Plaintiff's a trial continuance for even a short period time like 60 days so that their new attorney, who had no experience with the facts of this case, given the fact that the Plaintiff's original counsel withdrew due through no fault of the Plaintiff but because he was in a car accident just before trial;

### **IV. LAW & ARGUMENT**

#### **A. The Trial Judge should have granted a continuance for the Plaintiff in this case given the complexity and facts of this matter.**

As indicated previously, this was a very complicated medical malpractice case involving both the hospital's negligence, and the doctor's negligence. Just weeks before trial the Plaintiff's original counsel was injured in an automobile accident and asked the court to allow him to withdraw, since the Plaintiff's did not authorize his withdrawal. At the withdrawal hearing Mr. Messina did not ask for a continuance of the trial even though he must have known that it would have prejudiced the Plaintiff if no continuance was granted. This again, was not the Appellant's fault. See RP 4/20/18 transcript.

To complicate this process and problem, the plaintiff is a former citizen of Vietnam, with difficulties understanding the American judicial system, the English language, as well as its nuances, and only spoke a certain Vietnamese dialect. RP 5-9 6/4/18 transcript. To add even more complications, the trial judge had ordered that nothing could be done in the case except through a licensed Washington attorney, eliminating her paralegal daughter from her court support group. She depended on Nhu to help her understand the case and the judicial system. This ruling became so restrictive and personal that the trial judge, without proper authority, even entered an order attempting to strike the Plaintiff's Notice of Appeal from this verdict, because the Notice was filed pro se. See again, Respondent/Defendant's motion to dismiss this appeal.

After the Plaintiff's original attorney withdrew due to injuries from an auto accident, at the pretrial the Plaintiff, was basically treated as if she caused this "attorney problem", and was told to hire an attorney in 30 days, or she would go to trial pro se, which would have obviously meant that the case would have been summarily dismissed. RP 5-26 5/14/18 transcript.

The Plaintiff found an attorney who came to the pretrial conference and told the judge that he could not continue in the case unless a continuance was granted for him to become familiar with the case. Instead the judge ordered the new attorney to remain in the case, since he had ostensibly appeared for the Plaintiff, and did not continue trial, so he had to come up to speed with this complicated matter in an unreasonable amount of time. Id.

Given the complexities of this case, and the things that occurred just before trial, a continuance should have been granted to allow the plaintiff's new attorney time to get up to speed, since virtually everything that happened was not the plaintiff's fault. Because the trial judge unreasonably denied even a short continuance of say 30-60 days the Plaintiff's presentation of the case was severely compromised. Case law supports a remand for a new trial under these circumstances.

In the unreported case of *Munoz v. Bean*, 72794-0-I (2016), Division I of the court of appeals concisely outlined the law as it relates to a denial of a request for continuance, in a case where it was the attorneys fault and not the parties fault. They said,

"Whether a motion for continuance should be granted or denied is a matter of discretion with the trial court, reviewable on appeal for manifest abuse of discretion." *Trummel v. Mitchell*, 156 Wn.2d 653, 670, 131 P.3d 305 (2006) (citing *Balandzich v. Demeroto*, 10 Wn.App. 718, 720, 519 P.2d 994 (1974)); see also *Turner v. Kohler*, 54 Wn.App. 688, 693, 775 P.2d 474 (1989) (reviewing CR 56 motion for continuance for abuse of discretion); *Davies v. Holy Family Hosp.*, 144 Wn.App. 483, 500, 183 P.3d 283 (2008) (reviewing CR 6 motion for continuance for abuse of discretion). "Abuse of discretion is not shown unless the discretion has been exercised upon a ground, or to an extent, clearly untenable or manifestly unreasonable." *Friedlander v. Friedlander*, 80 Wn.2d 293, 298, 494 P.2d 208 (1972)." See also *State v. Downing*, 151 Wn.2d 265, 272, 87 P.3d 1169 (2004)

In *Balandzich v. Demeroto*, 10 Wn.App. 718, 519 P.2d 994, (1974) the court indicated that in determining whether granting a continuance is appropriate "the court may properly consider - (1) *The necessity of reasonably*

*prompt disposition of the litigation; (2) The needs of the moving party; (3) The possible prejudice to the adverse party; (4) The prior history of the litigation, including prior continuances granted the moving party; (5) Any conditions imposed in the continuances previously granted; and (6) Any other matters that have a material bearing upon the exercise of the discretion vested in the court.”*  
**(Emphasis added).**

The analysis seems clear, we must take the nature of the case, the necessity to have the case over, the reason for the requested continuance, the prejudice it may cause for the other party, the time requests, the continuance history of the case, along with any other facts that are relevant to the request. The court then must test these factors against the prejudice to the party seeking the continuance, if it is not granted. *Id.* The law favors due process and fairness to both parties, especially when what ever happened to make a continuance seem proper, did not occur because of the one asking for a continuance. *Id.* The Plaintiff's request for a continuance is analyzed as follows, using the six (6) *Demeroto* factors:

1. **The necessity for a reasonably prompt disposition of the matter.** This is a medical malpractice case for the alleged death of a very prominent citizen of a minority population in the Tacoma, the family wanted it to be resolved quickly and the doctor and hospital also wanted it to be done quickly. The case had already gone through the Court of Appeals which remanded it back for trial. That litigation was initially caused by the objections of the defense counsel. They, not the Plaintiff caused that delay. Additionally, during this

remand, the defendant had asked for the most continuances versus the plaintiff to a 5 to 1 comparison. See CP's generally. Therefore, although everyone needed a prompt resolution, and the Plaintiffs had lost the most in the matter, several millions of dollars from the loss of their patriarch's \$200,000.00 plus annual income stream, there was nothing other than "getting the case over for insurance purposes" as Dr. Johnson's attorneys noted. Which was an arrogant implication that they would win, so that his insurance would not go up. RP 7-8 5/14/18 transcript.

**2. The comparative needs of the moving party in this matter** in obtaining a continuance seemed much higher than the Defendant's need to get the case over. Imagine if the Defense counsel were all injured in a group auto accident going to a legal conference and could not go on to trial. Defense counsel would have been clamoring to get a continuance to obtain substitute competent counsel, and some appropriate time for them to get up to speed in this complex medical malpractice case. Finally, the loss of their original counsel also caused them to lose their primary strategist in the case, the one who knew the case the best from its inception. The need for the plaintiff to allow their new attorney a sufficient continuance to properly prepare and understand the case was just as great or greater in this writer's estimation than the technical demands of the defense to save the Defendant insurance money. Which again was just an opinion based reason.

**3. The comparative prejudice to the Defendant as compared to the Plaintiff** is that the case was not over, and they would have to rearrange their

expert's testimony. Like any Defendant, they wanted this matter finalized. However, the Plaintiff's wanted that as well, but not at the expense of having their new attorney present their case basically without any knowledge of the proper strategy, and how the Plaintiff's evidence fit to prove their case. This was especially significant when you balance what the Plaintiff's new attorney asked for was only 60-90 days, versus little or no preparation. RP11-23 Id. The Defendants also argued that they had their witnesses lined up, and to postpone the trial would mean that they had to make new arrangements. At the same time, the plaintiff's expert and lay witnesses would also have had to re-arrange their schedule. Therefore, this would have affected everyone. In comparison, the plaintiffs were substantially more prejudiced because they had to go forward with an attorney who knew very little about the case, other than what he was told by the plaintiff's family. Their new "almost" counsel had not even gone through the exhibits, or met with any of the experts to know what they would say at the time of the pretrial so it was obvious he needed more time. Id. Finally, the Defendants clearly would benefit, and did benefit from having a new attorney on the case for the Plaintiff, which in turn is a prejudice for the Plaintiff, in that (for example) the Defendant was able to convince the trial judge to strike one of their witnesses because the new attorney did not know the entire reasons for that expert's involvement in the case. RP41-49 6/4/18. A look at the transcript of the argument on their Motion in Limine regarding the nurse expert on hospital administration issues, shows that the new attorney for the Plaintiff did not have a good understanding of why she was necessary, and

could not articulate that to the judge. The Plaintiff's new attorney also knew very little about the case, which obviously meant that he would have difficulty telling the Plaintiff's story to the jury, making the jury naturally surmise that the Plaintiff's case was weak and unfounded. The Defendant would benefit by making Plaintiff's unschooled counsel go forward in this case without understanding it or being prepared not only helped the Defendant's case, it also prejudiced the Plaintiff's case.

**4. There had been other continuances regardless of the reason.** During the pendency of the case the Defendants had at least 5 continuances and the Plaintiff had just two. Any delay in the proceeding clearly rests with both parties and primarily the Defendants, not the Plaintiff. Not to mention the fact that the Defendants forced the matter to the court of appeals in the beginning, causing a very long delay.

**5. There were no material restrictions on asking for a continuance** by the Plaintiff in previous orders, at least due to their counsel being unable to continue in the case.

**6. Any material facts that would mitigate in favor of the Plaintiff's obtaining a continuance** have already been articulated in this brief, however, the key factor is that this need for a continuance was not the Plaintiff's fault. There attorney and his accident caused this. Therefore, it seems confusing why the judge would not even allow a short continuance to help their new attorney get up to speed in the case, other than she wanted the case to go away personally and/or did not like the Plaintiff's for some reason.

As for specific cases and examples, our courts have continued cases for many reasons, however, the main thrust of the reasoning to grant a continuance dovetails with this case perfectly. For example, in the case of *State v. Chichester*, 141 Wn.App. 446, 170 P.3d 583 (2007), they said that in the face of a request for a continuance, the court should look at, "if a party shows good cause [the court] may consider many factors, including whether there is prejudice to the defendant's presentation of his case" as a primary factor in granting or denying a continuance. *id* (Emphasis added).

Because of the failure of the court to grant a continuance in this matter it significantly affected the Plaintiff's presentation of her case and the court should have granted even a small continuance. The new attorney they hired did not know how complicated the matter was; he had only a short time to try and digest all the facts and theories of the case. No attorney can get ready for a complicated litigation case, which is highly contested at every corner, in just a week or weekend. Additionally, the new attorney could not speak with the Plaintiff effectively since her native language was not English and he knew that the court frowned on using her experiences paralegal for assistance in the case. Therefore, their new attorney was left with little or no help in his preparation of the case, and no evidence that the former attorney would help with anything.

In deciding if a denial of a request for a continuance is proper under the factors outlined above, the reviewing court must determine if the denial was arbitrary and unreasonable, or capricious. An arbitrary and capricious decision

has been defined as "willful and unreasoning action, without consideration and in disregard of facts or circumstances." *Lillions v. Gibbs*, 47 Wash.2d 629, 633, 289 P.2d 203 (1955). In this case, the judge totally disregarded the complexity of the case, and that the Plaintiff did not do anything to be placed in a situation, that she had to hire a new attorney unfamiliar with the case, that the case needed to be carefully and technically presented, and the Plaintiff's small request to allow a few months to get their new attorney familiar with the case was not unreasonable when comparing the effect of not allowing such a window to become more familiar with the theories in the case.

It clearly appears that the trial judge totally disregarded the *Demeroto* six factors when analyzing whether to grant a small continuance and did not make any comments about whether such a request was unreasonable, given the surprise withdrawal of the Plaintiff's first attorney. In fact, the judge seemed to have decided that there would be no continuance whatsoever even before it was discussed, given that she said that if the Plaintiff was unsuccessful in hiring an attorney that she could not use that to ask for a continuance. The judge clearly did not care about the Plaintiff's presentation of her case when she told the Plaintiff and her attorney that the trial date was not going to be moved before she even heard the Plaintiff's argument. The Plaintiff's attorney seemed as if he was begging for even a small continuance, which she virtually ignored and seemed to totally disregard the pleas for fairness, and forced the new attorney to go forward with very little preparation.

Finally, in previous cases in Washington, when a party's attorney or a significant witness is unavailable for trial due to illness a continuance was granted if the illness created a situation where it affected the presentation of a parties case. In the case of *State v. Hale*, 146 Wn.App. 299, 189 P.3d 829, (2008) one of the key witness' child became gravely ill and the parent was unavailable for trial, and the court indicated that because this was not a "routine or avoidable" problem a continuance would be appropriate. (Neither was Mr. Messina's untimely withdrawal routine or avoidable.

In a dissolution of marriage case a judge's denial of a continuance was overturned and the case was remanded back to the trial court to retry the case where one of the parties was seriously ill and was out of state. This Supreme Court *Chamberlin* decision was decided based on the following analysis surrounding the "meaning of the term 'abuse of judicial discretion'. As that term was applied it is when the judge decides a case by whim, caprice, or arbitrary conduct, through ulterior motives or in willful disregard of a litigant's rights, but it also includes a discretion exercised upon grounds or to an extent clearly untenable or manifestly unreasonable." Citing the cases of *Holm v. Holm*, 27 Wash.2d 456, 178 P.2d 725 (1947); *Gordon v. Gordon*, 44 Wash.2d 222, 266 P.2d 786 (1954). *At Chamberlin v. Chamberlin*, 44 Wn.2d 689, 270 P.2d 464 (1954); (Emphasis added). They further said that denying a litigant, who is ill the right to be at the trial despite a serious illness was considered arbitrary and an abuse of discretion. So, it would seem clear that denying a short continuance simply to "get the case over", no matter how it affected the

Plaintiff's ability to present their case effectively, would be arbitrary and would deny that party a fair trial, especially when the continuance was needed because of nothing that party did.

In cases where an attorney has just come on the case, the courts have allowed an appropriate continuance to allow the new attorney time to prepare properly for the case, so that their client is not prejudiced by an unprepared new attorney, much like we have in this case. In the case of *Coggle v. Snow*, 56 Wn.App. 499, 507, 784 P.2d 554 (1990) the court stated that where the previous attorney was very experienced in the matter and leaves before an adjudication on the merits, and a new inexperienced attorney comes on for the defending party; that a continuance should be granted to ensure that the innocent plaintiff does not suffer a loss because of the inexperience of the new counsel. The *Coggle* court said, "There, the plaintiff's original counsel, who was retiring, asked another attorney to take over the case shortly after the defendant filed for summary judgment. *Coggle*, 56 Wn.App. at 501-02. Within a few days, the plaintiff's [sic] new attorney filed a motion to continue the summary judgment hearing accompanied by his declaration that he had prepared a declaration for the plaintiff and that an expert had examined the plaintiff but needed more time to complete his affidavit. *Coggle*, 56 Wn.App. at 502. The trial court denied his motion [for a continuance]. *Coggle*, 56 Wn.App. at 503. The Court of Appeals reversed, holding that the short time between the new attorney's appearance and the motion for summary judgment was a good reason for the plaintiff's inability to obtain affidavits from the

plaintiff and expert. *Cogle*, 56 Wn.App. at 508. The court also noted that the trial court should not penalize the plaintiff "for the apparently dilatory conduct of his first attorney. *Cogle*, 56 Wn.App. at 508."

In another case, *Butler v. Joy*, 116 Wn.App. 291, 300, 65 P.3d 671 (2003), the Appellate Court overturned the denial of a continuance request by the trial court that was filed by the party opposing a summary judgment motion, because the Plaintiff's new counsel needed time to become acquainted with the case. In the *Butler* case, the plaintiff retained a new attorney one day before a summary judgment hearing noted by the Defendant. Plaintiff's new attorney moved orally for a continuance at the summary judgment hearing and the trial court denied the motion. The Court of Appeals reversed. *Butler*. 116 Wn.App. at 299-300. It indicated that although the new attorney's motion did not satisfy court rule requirements, that the trial court should have granted the continuance because the plaintiff's new attorney "deserved an opportunity to prepare a response." *Butler*. 116 Wn.App. at 299-300. The appeals court did not want the plaintiff to be "hobbled by legal representation that has had no time." *Butler*. 116 Wn.App. at 300.

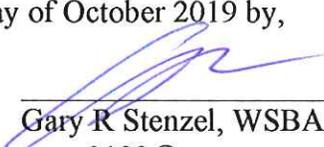
In this case, the trial court clearly had good reason to assist the Plaintiff in maintaining her right to a fair trial in this case. The judge could have allowed for a small 30-60-day continuance to let the new attorney get up to speed on this complicated case. The decision to not allow a continuance after their first attorney withdrew just before trial, was an abuse of discretion since it put the Plaintiff at a clear disadvantage compared to the Defendants, who had been on

the case for a long time and had months, if not years to prepare for this legal battle. The Plaintiff requests that this court grant this appeal and remand the matter for a new trial.

## V. CONCLUSION

This case is a complicated medical malpractice case. Just before trial the original attorney for the Plaintiff, withdrew from representation, due to an auto accident injury and other reasons not articulated. The Plaintiffs had to find a new attorney to do a high level medical malpractice case, who would be obviously unprepared to try the case no matter how good an attorney he was. Case law supports a continuance for the Plaintiff if the delay was not caused by them. The Plaintiffs did not cause this delay. The judge did not give their new attorney a continuance and the Plaintiff's lost the medical malpractice case. The judge erred by not even granting a short continuance of 60-90 days to help the new attorney get prepared. This case should be remanded for a new trial.

Respectfully submitted this 21<sup>st</sup> day of October 2019 by,



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**APPENDIX 1**  
**PIERCE COUNTY SUPERIOR COURT CLERK'S PAPERS HISTORY**

**Pierce County Superior Court Civil Case 12-2-15257-3**

Case Title: ESTATE OF HUNG NGUYEN VS. FRANCISCAN HEALTH SYSTEM  
 Case Type: Medical Malpractice  
 Access: Public  
 Track Assignment: Complex  
 Jury Size: 12  
 Estimated Trial Length: 8 day s  
 Dept Judge: **11 G. HELEN WHITENER**  
 Resolution: 06/19/2018 Jury Verdict after Trial  
 Completion: 07/10/2018 Judgment/Order/Decree Filed

**Litigants**

Name	Type	Status
NGUYEN, HUNG	Plaintiff	
NGUYEN-ALUSKAR, GABRIELLE	Plaintiff	
NHU, PHUOC	Plaintiff	
FRANCISCAN HEALTH SYSTEM	Defendant	DISMISSED
<b>Attorneys for FRANCISCAN HEALTH SYSTEM</b>	<b>Type</b>	<b>Bar Number</b>
<u>Scott Matthew O'Halloran</u>	Atty for Defendant	25236
<u>Michelle M Garzon</u>	Atty for Defendant	31558
<u>Amanda Kathleen Thorsvig</u>	Atty for Defendant	45354
JOHNSTON, GILBERT MD	Defendant	
<b>Attorneys for JOHNSTON, GILBERT MD</b>	<b>Type</b>	<b>Bar Number</b>
<u>Bertha Baranko Fitzer</u>	Atty for Defendant	12184
<u>Steven Frederick Fitzer</u>	Atty for Defendant	6792
<u>Jennifer Marie Merringer Veal</u>	Atty for Defendant	41942
FRANCISCAN CARDIOTHORACIC SURGERY ASSOCIATES AT ST JOSEPH	Defendant	DISMISSED
<b>Attorneys for FRANCISCAN CARDIOTHORACIC SURGERY ASSOCIATES AT ST JOSEPH</b>	<b>Type</b>	<b>Bar Number</b>
<u>Scott Matthew O'Halloran</u>	Atty for Defendant	25236
<u>Michelle M Garzon</u>	Atty for Defendant	31558
<u>Amanda Kathleen Thorsvig</u>	Atty for Defendant	45354
FRANCISCAN NORTHWEST PHYSICANS HEALTH NETWORK	Defendant	DISMISSED
FRANCISCAN MEDICAL GROUP	Defendant	DISMISSED
<b>Attorneys for FRANCISCAN MEDICAL GROUP</b>	<b>Type</b>	<b>Bar Number</b>
<u>Scott Matthew O'Halloran</u>	Atty for Defendant	25236
<u>Michelle M Garzon</u>	Atty for Defendant	31558
<u>Amanda Kathleen Thorsvig</u>	Atty for Defendant	45354

**Filings**

Filing Date	Filing	Access	Pages	Microfilm
12/03/2012	FILING FEE RECEIVED \$240.00	Public	0	
12/03/2012	CASE INFORMATION COVER SHEET	Public	1	
12/03/2012	ORDER SETTING ORIGINAL CASE SCHEDULE	Public	1	
12/03/2012	SUMMONS	Public	2	
12/03/2012	COMPLAINT	Public	3	
01/18/2013	LETTER FROM DEPARTMENT 22	Public	1	
01/25/2013	CONFIRMATION OF SERVICE PARTIES TO BE SERVED	Public	1	
02/04/2013	REASSIGNMENT LETTER	Public	1	
02/27/2013	SUMMONS	Public	2	
02/27/2013	COMPLAINT	Public	3	
02/28/2013	AFFIDAVIT/DECLARATION OF SERVICE	Public	1	
02/28/2013	AFFIDAVIT/DECLARATION OF SERVICE	Public	1	
03/04/2013	AFFIDAVIT/DECLARATION OF SERVICE	Public	1	
03/04/2013	NOTICE OF APPEARANCE FOR FHS AND FMG	Public	3	

03/21/2013	ORDER OF DISMISSAL *PARTIAL* /CHANGING CAPTION	Public	3
05/28/2013	ANSWER	Public	6
06/03/2013	JURY DEMAND - 12	Public	1
06/03/2013	CONFIRMATION OF JOINDER, STATUS CONFERENCE REQUIRED	Public	3
06/17/2013	NOTE FOR JUDGES MOTION CALENDAR	Public	1
06/17/2013	DEFENDANTS' MOTION FOR SUMMARY JUDGMENT	Public	8
07/15/2013	MEMORANDUM IN OPPOSITION	Public	4
07/15/2013	AFFIDAVIT/DECLARATION OF SERVICE	Public	4
07/15/2013	CERTIFICATE OF SERVICE	Public	2
07/22/2013	REPLY IN SUPPORT OF DEFENDANT'S MSJ	Public	9
07/22/2013	DECLARATION OF LORI GRAY	Public	4
07/22/2013	DECLARATION OF MICHELLE GARZON	Public	11
07/24/2013	DECLARATION OF JOHN R. CONNELLY, JR.	Public	6
07/24/2013	SUPPLEMENTAL DECLARATION OF ALYSSA GRISHAM	Public	3
07/26/2013	ORDER SETTING ORIGINAL CASE SCHEDULE	Public	2
07/26/2013	CLERK'S MINUTE ENTRY	Public	2
08/05/2013	REPLY TO LATE-FILED DECLARATIONS	Public	11
08/09/2013	ORDER DENYING MOTION	Public	3
08/26/2013	DISCLOSURE OF WITNESSES	Public	4
09/11/2013	NOTE FOR JUDGES MOTION CALENDAR	Public	1
09/20/2013	DISCLOSURE OF WITNESSES	Public	8
09/27/2013	MOTION FOR SUMMARY JUDGMENT	Public	15
09/27/2013	DECLARATION OF CURTIS VEAL MD	Public	7
09/27/2013	DECLARATION OF MICHELLE GARZON	Public	8
10/14/2013	NOTE FOR JUDGES MOTION CALENDAR	Public	1
10/14/2013	MOTION TO CONTINUE	Public	1
10/14/2013	DECLARATION OF CARL A TAYLOR	Public	10
10/14/2013	CERTIFICATE OF SERVICE	Public	2
10/21/2013	REPLY IN SUPPORT	Public	3
10/21/2013	OBJECTIONS/OPPOSITION	Public	12
10/21/2013	DECLARATION OF MICHELLE GARZON	Public	4
10/23/2013	DECLARATION OF CARL A TAYLOR LOPEZ	Public	10
10/23/2013	CERTIFICATE OF SERVICE	Public	2
10/25/2013	CLERK'S MINUTE ENTRY	Public	2
10/25/2013	DECLARATION OF MICHELLE GARZON IN OPPOSITION	Public	28
10/31/2013	NOTE FOR JUDGES MOTION CALENDAR	Public	1
10/31/2013	NOTICE OF APPEARANCE	Public	3
12/09/2013	FHS'S REPLY ON MOTION FOR SUMMARY JUDGMENT	Public	4
12/09/2013	DECLARATION OF MICHELLE GARZON	Public	8
12/10/2013	NOTE FOR JUDGES MOTION CALENDAR	Public	2
12/10/2013	MOTION TO PERMIT LATE FILING	Public	3
12/10/2013	MEMORANDUM IN SUPPORT	Public	2
12/10/2013	DECLARATION OF CARL A TAYLOR	Public	2
12/10/2013	DECLARATION OF CARL WARREN ADAMS	Public	14
12/10/2013	CERTIFICATE OF SERVICE	Public	2
12/12/2013	NOTE FOR JUDGES MOTION CALENDAR	Public	2
12/12/2013	MOTION TO STRIKE DECLARATION OF CARL WARREN ADAM	Public	8
12/12/2013	DECLARATION OF GARZON RE MOTION TO STRIKE	Public	11
12/13/2013	FHS REPLY RE LACK OF SUPPORT	Public	8
12/18/2013	RESPONSE	Public	2

12/18/2013	DECLARATION OF CARL TAYLOR LOPEZ	Public	8
12/18/2013	CERTIFICATE OF SERVICE	Public	2
12/19/2013	DECLARATION - CARL WARREN ADAMS	Public	2
12/19/2013	CERTIFICATE OF SERVICE - OHALLORAN & FITZER	Public	2
12/19/2013	REASSIGNMENT LETTER	Public	1
12/20/2013	CLERK'S MINUTE ENTRY	Public	2
12/20/2013	ORDER DENYING MOTION	Public	3
01/06/2014	DISCLOSURE OF WITNESSES	Public	4
01/15/2014	NOTE FOR JUDGES MOTION CALENDAR	Public	2
01/15/2014	MOTION TO CHANGE TRIAL DATE	Public	7
01/15/2014	DECLARATION IN SUPPORT - MICHELLE M GARZON	Public	3
01/15/2014	REASSIGNMENT LETTER	Public	1
01/22/2014	DECLARATION OF CARL LOPEZ RE TRIAL CONTINUANCE	Public	3
01/23/2014	REPLY IN SUPPORT OF MOTION TO CHANGE TRIAL DATE	Public	3
01/23/2014	DECLARATION OF GARZON IN SUPPORT OF REPLY	Public	3
01/24/2014	ORDER SETTING ORIGINAL CASE SCHEDULE	Public	2
01/24/2014	CLERK'S MINUTE ENTRY	Public	2
01/24/2014	ORDER FOR CONTINUANCE OF TRIAL DATE	Public	2
01/28/2014	NOTICE OF ATTORNEY CHANGE OF ADDRESS	Public	3
03/25/2014	DISCLOSURE OF WITNESSES	Public	3
04/18/2014	REASSIGNMENT LETTER	Public	1
04/23/2014	ORDER SETTING ORIGINAL CASE SCHEDULE	Public	2
04/23/2014	LETTER FROM DEPARTMENT 7	Public	1
04/23/2014	REASSIGNED TO DEPT 7	Public	1
05/09/2014	ORDER FOR CONTINUANCE OF TRIAL DATE	Public	3
05/09/2014	ORDER AMENDING CASE SCHEDULE	Public	2
05/27/2014	NOTE FOR JUDGES MOTION CALENDAR	Public	1
05/27/2014	MOTION TO DISMISS	Public	12
05/27/2014	DECLARATION OF GARZON RE MOTION TO DISMISS	Public	40
05/29/2014	JOINDER IN MOTION	Public	3
06/16/2014	NOTE FOR JUDGES MOTION CALENDAR	Public	2
06/16/2014	CROSS MOTION TO SUBSTITUTE PERSONAL REPRESENTATIVE	Public	3
06/16/2014	DECLARATION OF CARL TAYLOR LOPEZ	Public	8
06/16/2014	MEMORANDUM IN OPPOSITION	Public	1
06/16/2014	CERTIFICATE OF SERVICE	Public	2
06/23/2014	COMBINED REPLY AND RESPONSE TO CROSS MOTION	Public	13
06/23/2014	DECLARATION OF GARZON RE COMBINED REPLY & RESPONSE	Public	22
06/27/2014	CLERK'S MINUTE ENTRY	Public	2
06/27/2014	NOTE FOR JUDGES MOTION CALENDAR	Public	1
07/09/2014	NOTE FOR JUDGES MOTION CALENDAR	Public	2
07/09/2014	CERTIFICATE OF SERVICE	Public	2
07/11/2014	BRIEF IN SUPPORT	Public	5
07/11/2014	DECLARATION IN SUP OF BRIEF RE MOTION TO DISMISS	Public	59
07/11/2014	MEMORANDUM IN OPPOSITION	Public	4
07/11/2014	DECLARATION OF GABRIELLE NGUYEN-ALUSKAR	Public	2
07/11/2014	CERTIFICATE OF SERVICE	Public	2
07/16/2014	RESPONSE	Public	10
07/16/2014	DECLARATION OF MICHELLE M GARZON	Public	26
07/18/2014	CLERK'S MINUTE ENTRY	Public	2
07/18/2014	ORDER OF DISMISSAL WITH PREJUDICE	Public	2

07/28/2014	NOTE FOR JUDGES MOTION CALENDAR	Public	2
07/28/2014	APPEARANCE PRO SE	Public	1
07/28/2014	AFFIDAVIT/DECLARATION OF SERVICE	Public	2
07/28/2014	MOTION FOR RECONSIDERATION	Public	68
07/28/2014	NOTICE OF INTENT TO WITHDRAW	Public	5
08/05/2014	AFFIDAVIT/DECLARATION IN SUPPORT	Public	4
08/05/2014	AFFIDAVIT/DECLARATION OF SERVICE	Public	2
08/08/2014	OBJECTIONS/OPPOSITION	Public	10
08/08/2014	DECLARATION OF MICHELLE M GARZON	Public	18
08/11/2014	ORDER DENYING MOTION FOR RECONSIDERATION	Public	1
08/13/2014	COPIES OF EMAILS	Public	3
08/15/2014	NOTICE OF APPEAL WITH FEE	Public	5
08/19/2014	TRANSMITTAL LETTER COPY FILED	Public	1
09/17/2014	NOTICE OF ASSOCIATION OF COUNSEL	Public	3
09/24/2014	NOTICE OF APPEARANCE	Public	2
10/01/2014	AMENDED ORDER OF DISMISSAL	Public	3
10/07/2014	PERFECTION NOTICE FROM COURT OF APPEALS	Public	2
10/13/2014	NOTICE OF APPEAL TO COURT OF APPEALS AMENDED	Public	6
10/14/2014	TRANSMITTAL LETTER COPY FILED	Public	1
10/28/2014	DESIGNATION OF CLERK'S PAPERS	Public	5
11/03/2014	CLERK'S PAPERS PREPARED	Public	5
11/26/2014	CLERK'S PAPERS SENT	Public	1
11/13/2015	REASSIGNED TO DEPT 13	Public	1
01/15/2016	MANDATE	Public	16
01/22/2016	NOTICE OF APPEARANCE	Public	2
03/07/2016	ORDER AMENDING CASE SCHEDULE	Public	2
03/23/2016	NOTICE OF WITHDRAWAL OF ATTORNEY	Public	3
04/05/2016	ORDER AMENDING CASE SCHEDULE	Public	1
04/14/2016	NOTICE OF LITIGANT CHANGE OF ADDRESS	Public	1
04/21/2016	NOTE FOR JUDGES MOTION CALENDAR	Public	1
04/21/2016	MOTION FOR PROTECTIVE ORDER	Public	16
04/21/2016	AFFIDAVIT/DECLARATION IN SUPPORT	Public	114
04/27/2016	RESPONSE TO DEFENSE MOTION	Public	5
04/27/2016	AFFIDAVIT/DECLARATION OF COUNSEL IN OPPOS.	Public	6
04/28/2016	REPLY IN SUPPORT	Public	4
04/28/2016	DECLARATION OF ASHCRAFT RE REPLY	Public	8
04/29/2016	CLERK'S MINUTE ENTRY	Public	2
04/29/2016	PROTECTIVE ORDER (RE: CONFIDENTIAL DISCOVERY DOCUMENTS, NOT RELATED)	Public	2
05/27/2016	ORDER AMENDING CASE SCHEDULE	Public	2
08/19/2016	ORDER AMENDING CASE SCHEDULE	Public	1
09/22/2016	ACCEPTANCE OF SERVICE	Public	2
09/22/2016	ORDER AMENDING CASE SCHEDULE	Public	2
09/30/2016	ORDER AMENDING CASE SCHEDULE	Public	1
10/10/2016	LETTER FROM DEPARTMENT 6	Public	1
10/10/2016	REASSIGNED TO DEPT 6	Public	1
10/10/2016	ORDER AMENDING CASE SCHEDULE	Public	2
12/15/2016	NOTICE OF WITHDRAWAL OF ATTORNEY - ASHCRAFT	Public	3
01/03/2017	ANSWER AND AFFIRMATIVE DEFENSE	Public	4
04/05/2017	DISCLOSURE OF WITNESSES	Public	4
05/02/2017	DISCLOSURE OF WITNESSES	Public	9

05/02/2017	DEFENDANT'S LIST OF WITNESSES	Public	14
06/08/2017	NOTICE OF ASSOCIATION OF COUNSEL	Public	2
06/16/2017	NOTICE OF ABSENCE/UNAVAILABILITY	Public	3
08/14/2017	DISCLOSURE OF WITNESSES	Public	4
08/14/2017	NOTICE OF APPEARANCE	Public	1
08/14/2017	DISCLOSURE OF REBUTTAL WITNESSES	Public	3
08/14/2017	DISCLOSURE OF REBUTTAL WITNESSES	Public	2
09/05/2017	NOTE FOR JUDGES MOTION CALENDAR	Public	2
09/05/2017	MOTION TO CHANGE TRIAL DATE	Public	9
09/05/2017	DECLARATION OF GARZON IN SUPPORT OF TRIAL ADJUST	Public	8
09/13/2017	RESPONSE	Public	5
09/13/2017	AFFIDAVIT/DECLARATION IN SUPPORT	Public	2
09/14/2017	REPLY IN SUPPORT OF MOTION TO ADJUST TRIAL DATE	Public	5
09/15/2017	CLERK'S MINUTE ENTRY	Public	3
09/15/2017	ORDER FOR CONTINUANCE OF TRIAL DATE	Public	3
09/15/2017	ORDER AMENDING CASE SCHEDULE	Public	2
11/14/2017	DEFTS' 2ND DISCLOSURE OF REUTTAL WITNESSES	Public	3
01/09/2018	REASSIGNMENT LETTER	Public	1
01/12/2018	EX PARTE PRESENTATION FEE \$40.00	Public	0
01/12/2018	ORDER OF DISMISSAL *PARTIAL*	Public	4
01/19/2018	MAIL RETURNED - UNCLAIMED	Public	3
01/29/2018	CERTIFICATE OF MAILING	Public	2
01/29/2018	NOTICE OF INTENT TO WITHDRAW	Public	3
02/01/2018	MOTION TO CHANGE TRIAL DATE	Public	7
02/01/2018	AFFIDAVIT/DECLARATION IN SUPPORT	Public	66
02/06/2018	NOTE FOR JUDGES MOTION CALENDAR	Public	2
02/06/2018	DECLARATION IN SUPPORT OF MOTION TO CONTINUE	Public	3
02/06/2018	MOTION TO CHANGE TRIAL DATE	Public	7
02/06/2018	DECLARATION OF JUSTIN DALE IN SUPPORT	Public	66
02/06/2018	AFFIDAVIT OF PREJUDICE	Public	3
02/07/2018	LETTER FROM DEPARTMENT 11	Public	1
02/08/2018	DECLARATION OF JEFFREY H SADLER	Public	3
02/08/2018	REASSIGNED TO DEPT 11	Public	1
02/12/2018	DEFENDANTS' JOINT LIST OF WITNESSES AND EXHIBITS	Public	6
03/08/2018	NOTE FOR JUDGES MOTION CALENDAR	Public	1
03/08/2018	MOTION TO SET FIRM TRIAL DATE	Public	3
03/08/2018	AFFIDAVIT/DECLARATION IN SUPPORT	Public	12
03/09/2018	LETTER FROM DEPARTMENT 11	Public	1
03/19/2018	ORDER AMENDING CASE SCHEDULE	Public	2
03/19/2018	ORDER FOR CONTINUANCE OF TRIAL DATE	Public	2
03/20/2018	MAIL RETURNED - UNCLAIMED	Public	3
04/02/2018	FHS 2ND DISCLOSURE OF PRIMARY WITNESSES	Public	9
04/03/2018	NOTICE OF INTENT TO WITHDRAW	Public	3
04/09/2018	COPIES OF EMAIL(S)	Public	5
04/12/2018	NOTE FOR JUDGES MOTION CALENDAR	Public	1
04/12/2018	DECLARATION OF FITZER	Public	16
04/12/2018	MOTION TO WITHDRAW OBJECTION	Public	7
04/12/2018	JOINDER IN MOTION FOR PRETRIAL CONFERENCE	Public	2
04/12/2018	FHS 3RD DISCLOSURE OF REBUTTAL WITNESSES	Public	3
04/16/2018	JOINDER IN MOTION	Public	6

04/16/2018	DECLARATION OF GARZON IN SUPPORT OF JOINDER	Public	17
04/17/2018	COPIES OF EMAIL(S)	Public	5
04/17/2018	COPIES OF EMAIL(S)	Public	5
04/18/2018	COPIES OF EMAIL(S)	Public	9
04/19/2018	REPLY	Public	4
04/19/2018	DECLARATION OF BERTHA FITZER	Public	35
04/19/2018	REPLY IN SUPPORT OF FHS JOINDER	Public	5
04/19/2018	DECLARATION OF MICHELLE GARZON IN SUPPORT OF REPLY	Public	160
04/19/2018	ANSWER TO WRIT OF GARNISHMENT	Public	1
04/20/2018	CLERK'S MINUTE ENTRY	Public	2
04/20/2018	LETTER FROM PHUOC NHU	Public	1
04/20/2018	ORDER GRANTING MOTION FOR PRETRIAL STATUS CONFERENCE	Public	2
04/27/2018	COPIES OF EMAIL(S)	Public	5
05/02/2018	LETTER FROM DEPARTMENT 11	Public	1
05/14/2018	CLERK'S MINUTE ENTRY	Public	2
05/15/2018	MAIL RETURNED - UNCLAIMED	Public	3
05/16/2018	PRETRIAL ORDER	Public	5
05/23/2018	MAIL RETURNED - UNCLAIMED	Public	7
05/24/2018	NOTICE OF ISSUE "DAY OF TRIAL"	Public	3
05/24/2018	MOTION IN LIMINE	Public	44
05/24/2018	DECLARATION OF GARZON IN SUPPORT OF MIL	Public	106
05/29/2018	NOTICE OF ISSUE "SPECIAL SET"	Public	3
05/29/2018	NOTICE OF ISSUE "SPECIAL SET"	Public	3
05/29/2018	NOTICE OF ISSUE "SPECIAL SET"	Public	3
05/29/2018	MOTION TO EXCLUDE WILKINSON	Public	15
05/29/2018	DECLARATION OF MICHELLE GARZON	Public	72
05/29/2018	MOTION TO EXCLUDE BERG	Public	14
05/29/2018	DECLARATION OF MICHELLE GARZON RE BERG	Public	63
05/29/2018	MOTION TO SHORTEN TIME	Public	8
05/29/2018	DECLARATION OF GARZON RE MTN TO SHORTEN TIME	Public	23
05/31/2018	DEFENDANTS' TRIAL BRIEF	Public	17
06/01/2018	NOTICE OF ISSUE "DAY OF TRIAL"	Public	3
06/01/2018	MOTION TO EXCLUDE MCMENAMIN	Public	13
06/01/2018	DECLARATION OF MICHELLE GARZON RE MCMENAMIN	Public	21
06/04/2018	JOINT NEUTRAL STATEMENT OF THE CASE	Public	3
06/04/2018	NOTICE OF APPEARANCE	Public	2
06/04/2018	ORDER SHORTENING TIME	Public	3
06/04/2018	ORDER ON MOTION TO IMPOSE SANCTIONS	Public	3
06/06/2018	ORDER ON MOTION IN LIMINE	Public	12
06/07/2018	JOINT STATEMENT OF EVIDENCE	Public	28
06/14/2018	MOTION FOR JUDGMENT	Public	6
06/15/2018	ORDER OF DISMISSAL *PARTIAL*	Public	4
06/19/2018	COURT'S INSTRUCTIONS TO JURY	Public	26
06/19/2018	SPECIAL VERDICT	Public	2
06/19/2018	EXHIBITS RECEIVED IN VAULT	Public	1
06/19/2018	EXHIBITS RECEIVED IN VAULT	Public	7
06/20/2018	JURY NOTE	Public	1
06/20/2018	JURY NOTE	Public	1
06/20/2018	JURY NOTE	Public	1
06/20/2018	JURY NOTE	Public	1

06/20/2018	JURY NOTE	Public	1
06/20/2018	JURY NOTE	Public	1
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06/20/2018	JURY NOTE	Public	1
06/20/2018	JURY NOTE	Public	1
06/20/2018	JURY NOTE	Public	1
06/20/2018	JURY NOTE	Public	1
06/20/2018	JURY NOTE	Public	1
06/20/2018	NOTICE OF ATTORNEY'S CLAIM OF LIEN	Public	3
06/20/2018	PLAINTIFF'S LIST OF WITNESSES	Public	5
06/20/2018	RESPONSE OF PLAINTIFF FOR STMT OF DAMAGES	Public	4
06/20/2018	TRIAL BRIEF OF PLAINTIFF	Public	5
06/20/2018	TRIAL BRIEF SUPPLEMENTAL OF PLAINTIFF	Public	12
06/20/2018	MOTION IN LIMINE	Public	12
06/20/2018	PLAINTIFF'S PROPOSED INSTRUCTIONS	Public	26
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06/20/2018	PLAINTIFF'S PROPOSED INSTRUCTIONS	Public	16
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06/20/2018	PLAINTIFF'S PROPOSED INSTRUCTIONS	Public	2
06/20/2018	PEREMPTORY CHALLENGE SHEET	Public	1
06/20/2018	DEFENSE CLOSING POWER POINT IN VAULT	Public	
06/20/2018	DEFENSE CLOSING STATEMENTS POWERPOINT	Public	18
06/20/2018	COPY(S) OF DOCUMENT(S) USED DURING CLOSING	Public	11
06/20/2018	INSTRUCTIONS	Public	2
06/20/2018	DEPOSITION OF PHUOC NHU	Public	28
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06/20/2018	DEPOSITION OF GABRIELLE NGUYEN-ALUSKAR	Public	295
06/20/2018	DEPOSITION OF GABRIELLE NGUYEN-ALUSKAR	Public	54
06/22/2018	COST BILL	Public	3
06/22/2018	COST BILL	Public	3
06/22/2018	COST BILL	Public	3
06/25/2018	DEPOSITION OF OF CARL ADAMS	Public	44
06/25/2018	LETTER FROM PLAINTIFF	Public	1
06/26/2018	NOTICE OF ISSUE "SPECIAL SET"	Public	2
06/26/2018	NOTICE OF ISSUE "SPECIAL SET"	Public	3
06/29/2018	CLERK'S MINUTE ENTRY	Public	10
06/29/2018	WITNESS RECORD	Public	1
07/05/2018	REPLY ON DEFENDANTS COST BILL	Public	16
07/09/2018	REPLY	Public	12
07/09/2018	NOTICE OF WITHDRAWAL AND SUB OF COUNSEL	Public	2
07/09/2018	REPLY	Public	3
07/10/2018	CLERK'S MINUTE ENTRY	Public	2
07/10/2018	JUDGMENT ON VERDICT	Public	3

07/10/2018	AMENDED JUDGMENT ON VERDICT	Public 3
07/25/2018	MOTION TO PROCEED IN FORMA PAUPERIS	Public 4
07/25/2018	ORDER TO PROCEED IN FORMA PAUPERIS ** VACATED **	Public 2
08/02/2018	LETTER FROM DEPARTMENT 16	Public 4
08/02/2018	ORDER VACATING RE: OR TO PROCEED INFORMA PAUPERIS 07-25-18	Public 1
08/06/2018	NOTICE OF APPEAL	Public 4
08/09/2018	TRANSMITTAL LETTER COPY FILED	Public 1
08/10/2018	LETTER TO COURT FROM PHUOC NHU	Public 2
08/13/2018	MOTION FOR RECONSIDERATION	Public 11
08/14/2018	NOTICE OF LITIGANT CHANGE OF ADDRESS	Public 1
08/14/2018	MAIL RETURNED - UNCLAIMED	Public 2
08/14/2018	RESPONSE	Public 4
08/17/2018	ORDER ON MOTION FOR RECONSIDERATION	Public 1
08/20/2018	MOTION FOR RECONSIDERATION *ADDENDUM*	Public 5
08/21/2018	NOTICE OF APPEARANCE APPEAL PURPOSES ONLY	Public 3
08/22/2018	LETTER FROM COURT OF APPEALS	Public 1
08/23/2018	NOTE FOR JUDGES MOTION CALENDAR	Public 2
08/23/2018	MOTION TO STRIKE	Public 8
08/23/2018	DECLARATION OF BERTHA FITZER	Public 57
08/27/2018	RECEIPT(S) FOR APPEAL FILING FEE	Public 1
08/27/2018	REPLY TO DEF. MOTION TO STRIKE APPEAL	Public 4
08/30/2018	REPLY	Public 5
08/30/2018	AFFIDAVIT/DECLARATION IN SUPPORT	Public 4
08/31/2018	CLERK'S MINUTE ENTRY	Public 2
08/31/2018	PERFECTION NOTICE FROM COURT OF APPEALS	Public 2
08/31/2018	REPLY	Public 2
09/04/2018	COPIES OF EMAIL(S)	Public 2
09/04/2018	ORDER ON DEF'S MOTION TO STRIKE NOA & FOR SANCTIONS	Public 5
09/04/2018	MOTION FOR FINDINGS OF INDIGENCY	Public 2
09/04/2018	ORDER OF INDIGENCY - UNSIGNED	Public 2
09/04/2018	AFFIDAVIT OF INDIGENCY	Public 3
09/05/2018	DESIGNATION OF CLERK'S PAPERS	Public 7
09/07/2018	DECLARATION OF PHUOC NHU	Public 2
09/07/2018	FINDINGS OF INDIGENCY & ORDER TO TRANSMIT FINDINGS	Public 2
09/19/2018	LETTER FROM SUPREME COURT	Public 2
10/03/2018	CLERK'S PAPERS PREPARED	Public 8
10/08/2018	CLERK'S PAPERS PREPARED *CORRECTED*	Public 8
11/05/2018	COPY OF RULING FROM SUPREME COURT DENYING INDIGENCY	Public 2
11/26/2018	CLERK'S PAPERS SENT	Public 1
12/28/2018	REQUEST FOR COPIES OF CLERK'S PAPERS	Public 1
04/04/2019	STATEMENT OF ARRANGEMENTS	Public 4
04/25/2019	DESIGNATION OF SUPPLEMENTAL CLERK'S PAPERS	Public 3
05/09/2019	CLERK'S PAPERS PREPARED	Public 4
05/23/2019	CLERK'S PAPERS SENT	Public 1



#### Proceedings

Date	Calendar	Outcome
03/21/2013	DEPT 06 - JUDGE NEVIN (Rm. 2-C )	Ex-Parte w/ Order Held
	Confirmed 3:30 Exparte Action	

07/15/2013 DEPT 06 - JUDGE NEVIN (Rm. 2-C ) Unconfirmed 12:00 Status Conference	Cancelled/Stricken
07/26/2013 DEPT 06 - JUDGE NEVIN (Rm. 2-C ) Confirmed 9:00 Motion - Summary Judgment Scheduled By: Deidre Turnbull	Continued
08/09/2013 DEPT 06 - JUDGE NEVIN (Rm. 2-C ) Confirmed 9:00 Motion - Summary Judgment	Summary Judgment Held
10/25/2013 DEPT 06 - JUDGE NEVIN (Rm. 2-C ) Confirmed 9:00 Motion - Summary Judgment Scheduled By: Karen Becker	Cancelled/Stricken
10/25/2013 DEPT 06 - JUDGE NEVIN (Rm. 2-C ) Unconfirmed 9:00 Motion(Other: CONTINUANCE OF DEF SUMMARY JUDGMENT HEARING) Scheduled By: CARL LOPEZ	Motion Held
12/13/2013 DEPT 06 - JUDGE NEVIN (Rm. 2-C ) Unconfirmed 9:00 Motion - Summary Judgment	Cancel via Web-Rescheduled
12/20/2013 DEPT 06 - JUDGE NEVIN (Rm. 2-C ) Confirmed 9:00 Motion - Summary Judgment Scheduled By: Deidre Turnbull	Summary Judgment Held
12/20/2013 DEPT 06 - JUDGE NEVIN (Rm. 2-C ) Unconfirmed 9:00 Motion(Other: PERMIT LATE FILING OF SUMMARY JUDGMENT OPPOSITION) Scheduled By: CARL LOPEZ	Motion Held
12/20/2013 DEPT 06 - JUDGE NEVIN (Rm. 2-C ) Confirmed 9:00 Motion(Other: STRIKE WARREN DEC AND IN OPP TO MOTION TO PERMIT LATE FILING) Scheduled By: Deidre Turnbull	Motion Held
01/24/2014 JUDGE MCCARTHY (Rm. 323 ) Confirmed 9:00 Motion(Adjust Trial Date) Scheduled By: Deidre Turnbull	Motion Held
05/09/2014 DEPT 07 - JUDGE COSTELLO (Rm. 822 ) Unconfirmed 2:00 Exparte Action	Ex-Parte w/ Order Held
05/12/2014 JUDGE MCCARTHY (Rm. 323 ) Unconfirmed 12:00 Pretrial Conference	Cancelled/Stricken
06/02/2014 JUDGE MCCARTHY (Rm. 323 ) Confirmed 9:00 Trial	Cancelled/Stricken
06/27/2014 DEPT 07 - JUDGE COSTELLO (Rm. 822 ) Confirmed 9:00 Motion(Discard) Scheduled By: Deidre Turnbull	Continued
06/27/2014 DEPT 07 - JUDGE COSTELLO (Rm. 822 ) Unconfirmed 9:00 Motion(Other: SUBSTITUTE PERSONAL REPRESENTATIVE) Scheduled By: CARL LOPEZ	Cancelled - Not Confirmed
07/18/2014 DEPT 07 - JUDGE COSTELLO (Rm. 217A) Confirmed 9:00 Motion(Discard) Scheduled By: Deidre Turnbull	Motion Held
07/18/2014 DEPT 07 - JUDGE COSTELLO (Rm. 217A)	Motion Held

Confirmed 9:00 Motion(Other: SUBSTITUTE PERSONAL REPRESENTATIVE) Scheduled By: CARL LOPEZ	
08/15/2014 DEPT 07 - JUDGE COSTELLO (Rm. 533 ) Unconfirmed 9:00 Motion	Cancelled/Stricken
08/20/2014 DEPT 07 - JUDGE COSTELLO (Rm. 533 ) Confirmed 9:00 Trial	Continued
10/01/2014 DEPT 07 - JUDGE COSTELLO (Rm. 533 ) Unconfirmed 8:00 Exparte Action	Ex-Parte w/ Order Held
10/01/2014 DEPT 07 - JUDGE COSTELLO (Rm. 533 ) Confirmed 9:00 Trial	Cancelled/Amend Case Sched
02/23/2015 DEPT 07 - JUDGE COSTELLO (Rm. 260 ) Confirmed 9:00 Trial	Cancelled/Stricken
04/29/2016 DEPT 13 - JUDGE NELSON (Rm. 315 ) Confirmed 9:00 Motion(Other: PROTECTIVE ORDER TO PRECLUDE DEPOSITION ATTENDANCE) Scheduled By: Deidre Turnbull	Motion Held
05/13/2016 DEPT 13 - JUDGE NELSON (Rm. 315 ) Confirmed 9:00 Mandatory - Court Review Hrg	Continued
05/27/2016 DEPT 13 - JUDGE NELSON (Rm. 315 ) Confirmed 9:00 Mandatory - Court Review Hrg	Continued
08/19/2016 DEPT 13 - JUDGE NELSON (Rm. 315 ) Confirmed 9:00 Mandatory - Court Review Hrg	Continued
09/23/2016 DEPT 13 - JUDGE NELSON (Rm. 315 ) Confirmed 9:00 Mandatory - Court Review Hrg	Continued
09/30/2016 DEPT 13 - JUDGE NELSON (Rm. 315 ) Confirmed 9:00 Mandatory - Court Review Hrg	Held
10/14/2016 DEPT 06 - JUDGE NEVIN (Rm. 411 ) Confirmed 9:00 Assignment to Set Trial Date	Held
09/15/2017 DEPT 06 - JUDGE NEVIN (Rm. 411 ) Confirmed 9:00 Motion(Adjust Trial Date) Scheduled By: Deidre Turnbull	Motion Held
12/18/2017 DEPT 06 - JUDGE NEVIN (Rm. 411 ) Unconfirmed 12:00 Pretrial Conference	Cancelled/Amend Case Sched
01/08/2018 DEPT 06 - JUDGE NEVIN (Rm. 411 ) Confirmed 9:00 Trial	Cancelled/Amend Case Sched
01/12/2018 C4 - EXPARTE CALENDAR (Rm. 105 ) Unconfirmed 11:58 Exparte Action Mail Scheduled By: Deidre Turnbull	Ex-Parte w/ Order Held
02/16/2018 DEPT 11 - JUDGE WHITENER (Rm. 202A) Unconfirmed 9:00 Motion(Adjust Trial Date) Scheduled By: Jonathan Nolley	Cancel via Web-Issue resolved

03/19/2018 DEPT 08 - JUDGE BLINN (Rm. 214A) Unconfirmed 12:00 Pretrial Conference	Cancelled/Stricken
03/30/2018 DEPT 11 - JUDGE WHITENER (Rm. 202A) Unconfirmed 9:00 Motion(Adjust Trial Date) Scheduled By: Karen Becker	Cancelled/Stricken
04/09/2018 DEPT 11 - JUDGE WHITENER (Rm. 202A) Confirmed 9:00 Trial	Cancelled/Stricken
04/20/2018 DEPT 11 - JUDGE WHITENER (Rm. 202A) Confirmed 9:00 Motion(Other: PRETRIAL CONFERENCE, CONFIRMATION OF WD, POTENTIAL SANCTIONS) Scheduled By: Karen Becker	Motion Held
05/14/2018 DEPT 11 - JUDGE WHITENER (Rm. 202A) Confirmed 11:00 Motion	Motion Held
06/04/2018 DEPT 11 - JUDGE WHITENER (Rm. 202A) Confirmed 9:00 Trial	Jury Trial Held
07/10/2018 DEPT 11 - JUDGE WHITENER (Rm. 202A) Confirmed 9:00 Presentation/Trial	Motion Held
07/25/2018 C4 - EXPARTE CALENDAR (Rm. 105 ) Confirmed 11:22 Exparte Action	Held
08/13/2018 DEPT 16 - JUDGE MARTIN (Rm. 833 ) Unconfirmed 9:00 Motion - Reconsideration	Motion Held
08/31/2018 DEPT 11 - JUDGE WHITENER (Rm. 202A) Confirmed 9:00 Motion(Other: STRIKE NOTICE OF APPEAL AND FOR SANCTIONS) Scheduled By: Karen Becker	Motion Held

**Pending Case Schedule Items**

Event	Schedule Date
Plaintiff's/Petitioner's Disclosure of Primary Witnesses	03/26/2018
Defendant's/Respondent's Disclosure of Primary Witnesses	04/02/2018
Deadline for Filing Motion to Adjust Trial Date	04/09/2018
Exchange of Witness and Exhibit Lists and Documentary Exhibits	04/09/2018
Disclosure of Rebuttal Witnesses	04/12/2018
Discovery Cutoff	04/19/2018
Deadline to file Certificate or Declaration re: Alternative Dispute Resolution	04/23/2018
Deadline for Hearing Dispositive Pretrial Motions	04/23/2018

**Judgments**

Cause #	Status	Signed	Effective	Filed
<u>18-9-05539-4</u>	OPEN as of 07/10/2018	G. HELEN WHITENER on 07/10/2018	07/10/2018	07/10/2018

This calendar lists Confirmed and Unconfirmed Proceedings. Attorneys may **obtain access rights** to confirm/strike selected proceedings. Currently, any proceedings for the Commissioners' calendars can be stricken, but only Show Cause proceedings for the Commissioners' calendars can be confirmed.

Unconfirmed Proceedings will not be heard unless confirmed as required by **the Local Rules of the Superior Court for Pierce County**.

- Hearing and location information displayed in this calendar is subject to change without notice. Any changes to this information after the creation date and time may not display in current version.
- Confidential cases and Juvenile Offender proceeding information is not displayed on this calendar. Confidential case types are: Adoption, Paternity, Involuntary Commitment, Dependency, and

Truancy.

- The names provided in this calendar cannot be associated with any particular individuals without individual case research.
- Neither the court nor clerk makes any representation as to the accuracy and completeness of the data except for court purposes.

Created: Monday October 21, 2019 5:06PM

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**STENZEL LAW OFFICE**

**October 30, 2019 - 4:51 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 52404-0  
**Appellate Court Case Title:** Estate of Hung Nguyen, Appellant v. Franciscan Health System, Respondent  
**Superior Court Case Number:** 12-2-15257-3

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**Comments:**

I ran this same filing without the reconsideration motion on the 21st of October. It even told me it was filed. But now I see SCOMIS did not show it filed. I am at a loss to know why it was not filed accordingly.

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