

**FILED**

**AUG 15 2011**

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

No. 293793

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION III

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DONALD J. ROKKAN, individually; and DONALD J. ROKKAN, personal representative for  
the Estate of Marsalle F. McHale, deceased, Appellants

v.

GESA CREDIT UNION, a corporation; and PAULA MILLER and JOHN DOE MILLER,  
Respondents

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APPELLANTS' REPLY TO RESPONDENTS' SUPPLEMENTAL BRIEF

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## **I. INCORPORATION BY REFERENCE OF MR. ROKKAN'S PREVIOUS APPELLATE BRIEFING**

Mr. Rokkan hereby incorporates by reference his Brief of Appellants (filed 3/1/2011) and his Appellants' Reply Brief (filed 4/28/2011), and will endeavor in this supplemental reply brief not to cover old ground unnecessarily. However, insofar as Gesa has reiterated arguments in the Supplemental Brief of Respondents ("Gesa's Supplemental Brief") that were also made in Gesa's Brief of Respondents, Mr. Rokkan believes it necessary to respond in at least summary fashion.

## **II. THIS APPEAL WAS TIMELY FILED.**

Gesa devotes considerable argument once again that Mr. Rokkan did not timely file this appeal or file timely post-trial motions. See, Gesa's Supplemental Brief at pp. 6-7 and pp. 41-48.

As to the Order (CP 637-640) from which this appeal was taken, Gesa asserts that it "provided a copy to Rokkan's counsel, and presented it for entry." See, Gesa's Supplemental Brief at p. 6. In fact, the Order was submitted to the trial court without proper notice and was signed and entered without a hearing, outside the presence of Mr. Rokkan's counsel. See, CP 643-645. Proper notice would have afforded Mr. Rokkan's counsel the opportunity to point out to the trial court some of the poor wording of the Order, and perhaps defuse certain arguments now being

made on appeal. Be that as it may, after-the-fact Mr. Rokkan's counsel waived objection to such entry so that this appeal may proceed. See, CP 643-645. It is manifest that the Order was intended by the trial court as its final order as contemplated by CR 54, CR 58, and RAP 5.2. It is the only such order that was entered. This appeal was filed within 30 days of its entry. CP 646-651.

Gesa also argues that Mr. Rokkan's post-trial motions were untimely. However, Mr. Rokkan's motion for a new trial was filed within ten days after the end of the trial. See, CP 507-509 and CP 530-532. The latest time for filing of such a motion is not triggered by entry of the verdict; it is triggered by entry of the trial court's "judgment, order, or other decision." CR 59(b). Since no "judgment, order or other decision" was entered until September 8, 2010, the plaintiff's motion for new trial did not have to be filed until ten days after September 8, 2010. But the trial court's order precluded the plaintiff from filing another motion for a new trial. See, CP 639 at paragraphs 3.1 and 3.2.

Timeliness of this appeal was also addressed in Mr. Rokkan's Brief of Appellant at pp. 19-20 and Appellants' Reply Brief at pp. 1-3. Timeliness of Mr. Rokkan's post-trial motions was addressed in Appellant's Reply Brief at pp. 4-5.

### **III. REPLY TO GESA'S STATEMENT OF THE CASE.**

#### **A. Substantial Evidence in the Record Would Have Supported a Jury Verdict on Claims Dismissed by the Trial Court.**

Gesa claims that Mr. Rokkan does not fairly or accurately set forth the facts and procedures relevant for review. See, Gesa's Supplemental Brief at p. 3. However, Gesa fails to point out any instance where an assertion of fact or procedure by Mr. Rokkan was not properly supported by an accurate reference to the supporting record.

In its Supplemental Brief, Gesa submits its favored version of events as though those facts were not disputed. As one example, Gesa claims that respondent Paula Miller left the desk of Cindy Cook, Gesa's customer service representative, before Mrs. McHale could conduct a transaction. See, Gesa's Supplemental Brief at pp. 8-9. However, Oneta Denson testified that Ms. Miller was present with Mrs. McHale throughout the whole transaction and was influencing her. See, RP 47-48; RP 53-54.<sup>1</sup> Similarly, Gesa asserts that Mrs. McHale was a sharp, college-educated woman who kept a meticulous check register. See, Gesa's Supplemental Brief at p. 7. However, there was other substantial evidence that Mrs. McHale was unsophisticated in matters of business and banking, was

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<sup>1</sup> Unless otherwise indicated all references herein to the Report of Proceedings (RP) are to the verbatim report of proceedings consisting of pages 1-543, filed on December 17, 2010, by court reporter John McLaughlin.

suffering from depression and age-related cognitive impairments, and was confused about what she was doing when making beneficiary designations. See, Brief of Appellants at pp 6-7 and citations to record therein. Gesa protests that respondent Paula Miller did not know she had been named as a beneficiary on one of the certificates. See, Gesa's Supplemental Brief at p. 11 and p. 33. Again, this self-serving testimony was at odds with that of Oneta Denson. See, RP 48. Many other examples of disputed evidence exist in the record, as shown by the stark differences within the parties' respective briefings and their citations to the record.

Mr. Rokkan's evidence, if believed, would have supported a jury verdict in his favor. Gesa invites this appellate court to accept only its evidence, disregard Mr. Rokkan's evidence, and uphold the trial court's CR 50 dismissal of claims. But where issues of disputed fact exist, claims should be decided by the jury. See, *Litho Color, Inc. v. Pacific Employers Ins. Co.*, 98 Wn.App. 286, 298, 991 P.2d 638 (1999).

**B. Oneta Denson's Credibility Was for the Jury to Decide.**

The testimony by Oneta Denson, the sole independent witness as to what happened between Mrs. McHale and the Gesa employees, was clear, unequivocal and, if believed, decisive. See, RP 43-54. Her competency as a witness was unchallenged. With Gesa now realizing that

the trial court's dismissal of Mr. Rokkan's claims must be reversed if there is substantial evidence to support them, Gesa attacks the credibility of Ms. Denson for the final time. In substance, Gesa argues that she was not a credible witness because respondent Paula Miller claimed to have once had "unpleasant" telephone conversations with her about an unrelated matter. See, Gesa's Supplemental Brief at p. 11 and pp. 27-28. Ms. Denson, who had testified at trial prior to Ms. Miller, was not asked whether any such "unpleasant" telephone conversation had really taken place, or if she bore any sort of ill-will toward Ms. Miller.

In essence, Gesa begs this appellate court to disregard entirely the testimony of Oneta Denson, an independent witness, where it conflicts with the self-serving testimony of Gesa's own witnesses, respondent Paula Miller and former employee Cindy Cook. However, witness credibility is particularly a matter for a jury to decide: "Juries decide credibility, not appellate courts." *Morse v. Antonellis*, 149 Wn.2d 572, 575, 70 P.3d 125 (2003); See also, Tegland, 4 *Washington Practice*, CR 50 at Section 10 (5<sup>th</sup> ed. 2006): "Credibility is a matter for the jury alone to determine, and thus the credibility of the evidence is not taken into account when ruling on a motion for judgment as a matter of law. . . . The court does not weigh the evidence when ruling on the motion."

**C. Gesa Is Liable as Employer for the Acts of Its Employees, Cindy Cook and Paula Miller.**

Gesa argues that it would not be liable as the employer of Cindy Cook and Paula Miller for any of their acts that could be construed as “illegal” or self-dealing. See, Gesa’s Supplemental Brief at pp. 14-15 and p. 37. However, Gesa provides no citation to case law or other legal authority in support of such an assumption. The facts and law regarding agency and scope of employment were addressed by Mr. Rokkan in his Brief of Appellants at pp. 13-14 and pp. 36-39. The general rule is that an employer is liable for the unlawful acts of its employees that were performed in furtherance of the employer’s business and in the scope of employment. See, *Titus v. Tacoma Smeltermen’s Union*, 62 Wn.2d 461, 469, 383 P.2d 504 (1963).

James McKinney, Gesa’s own expert, testified that its customer service representatives were trained to advise depositors that if beneficiary designations were made, the assets might not go through their wills. RP 204. The fact that poorly-trained, low-level bank clerks routinely give out estate planning advice when opening accounts was the title and subject of a recent Washington State Bar News article, *Should Bank Tellers Engage in Estate Planning?* CP 553-555.

Todd Hanson, Gesa's vice president at the time of the transactions in question, was in charge of Cindy Cook's department. RP 118-120. Mr. Hanson testified that there was no training at Gesa that would prohibit its employees from engaging in conflicts of interest with customers. RP 120-121. Mr. Hanson testified that in 2000 there was nothing to prohibit Gesa's customer service representatives from suggesting themselves as beneficiaries to customers who were opening new accounts. See, RP 121. Consistent with Mr. Hanson's testimony, both Paula Miller and Cindy Cook denied receiving any training from Gesa that they should avoid conflicts of interest. RP 78 and RP 238; see also, RP 84.

While there was conflicting testimony at trial as to what exactly took place when Mrs. McHale met with Ms. Cook and Ms. Miller, there was no conflicting testimony as to whether those Gesa employees were acting within their scope of their employment and in furtherance of the business of Gesa. No matter whose testimony was believed, construing all evidence and inferences in favor of Gesa, it was liable for any acts and omissions of Ms. Miller and Ms. Cook. Mr. Rokkan was entitled to judgment as a matter of law. Permitting the issue of scope of employment to go to the jury as to these Gesa employees deprived Mr. Rokkan of a fair trial.

**D. The Trial Court Dismissed Gesa's Affirmative Defense of Contributory Fault against Mr. Rokkan.**

Gesa argues that because Mr. Rokkan had a power of attorney for Mrs. McHale, he should have found out about the beneficiary designations before Mrs. McHale passed away. See, Gesa's Supplemental Brief at pp. 33-35. Gesa had alleged contributory negligence against Mr. Rokkan in its Amended Answer. CP 439. However, the trial court held at the conclusion of testimony that Mr. Rokkan had no duty under the power of attorney to discover the beneficiary designations and dismissed Gesa's affirmative defense of contributory negligence. See, RP 493-494. No error has been assigned to the trial court's dismissal of the contributory fault defense, and the issue is therefore not properly the subject of this appeal. See, RAP 2.4(a).

**IV. THE STANDARD OF REVIEW IS DE NOVO FOR DENIAL OF JUDGMENT AS A MATTER OF LAW.**

The appellate court reviews de novo the denial of a party's motion for judgment as a matter of law under CR 50. See, Brief of Appellant, pp. 17-18. This issue on appeal involves the trial court's refusal to hold that Gesa was liable for the acts of its employees, Paula Miller and Cindy Cook. Since Gesa was the nonmoving party on this issue, all evidence and inferences must be construed in its favor. See, *Faust v. Albertson*, 167

Wn.2d 531, 538, 222 P.3d 1208 (2009); *Litho Color, Inc. v. Pacific Employers Ins. Co.*, 98 Wn.App. 286, 298, 991 P.2d 638 (1999).

Gesa concedes that the appellate court must engage in the same inquiry as the trial court, but then asserts that the appellate court must also “defer” to the trial court. Gesa’s Supplemental Brief at p. 14. This is an incorrect statement of the law. You can’t have it both ways. Gesa mistakenly attributes a quotation to *Faust v. Albertson*, supra, 167 Wn.2d at 538, that does not appear anywhere in *Faust*. Gesa’s Supplemental Brief at p. 14. The quotation comes instead from *State v. Hernandez*, 85 Wn.App. 672, 675, 935 P.2d 623 (1997). Gesa misconstrues the thrust of *Hernandez* language, which has to do with credibility of testimony and persuasiveness of evidence. As discussed in *Faust*, 167 Wn.2d at 537, and in the preceding paragraph, the appellate court engages in the same inquiry as the trial court when reviewing denial of a CR 50 motion.

## **V. THE TRIAL COURT ERRED IN DISMISSING CPA CLAIMS**

### **A. Gesa’s Supplemental Brief Arguments.**

Gesa argues that the CPA should not be applied in this case for two reasons: 1) Mr. Rokkan’s proof failed to establish that Gesa’s business practices had a capacity to deceive a substantial portion of the public; and 2) Gesa is preempted from the reach of the CPA.

**B. Standard of Review – Element No. 1 of the CPA.**

The trial court's dismissal of CPA claims was based on its assessment that the evidence failed to show that Gesa's acts or practices were part of a pattern or general course of conduct of business. RP 411. The trial court also concluded that the evidence failed to show there was any capacity to deceive substantial portions of the public. RP 411-412. Although the trial court did not cite to any specific case law when making its oral ruling, these criteria appear to fall under the first of the five elements<sup>2</sup> of a private CPA violation, namely, whether there was "an unfair or deceptive act or practice." Cf., *Brown v. Brown*, 157 Wn.App. 803, 815, 239 P.3d 602 (2010). Whether an act gives rise to a CPA violation is reviewed as a question of law. See, *Leingang v. Pierce County Med. Bureau, Inc.*, 131 Wn.2d 133, 150, 930 P.2d 288 (1997); *Sing v. John L. Scott, Inc.*, 134 Wn.2d 24, 29-30, 948 P.2d 816 (1997). As to element No. 1 of the CPA, the appellate court engages in the same inquiry as the trial court, and where material facts are disputed, they must be viewed in the light most favorable to the nonmoving party. See, *Columbia Physical Therapy v. Orthopedic Associates*, 168 Wn.2d 421, 442, 228 P.3d 1269 (2010).

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<sup>2</sup> See, Brief of Appellants at pp. 21-22 for a listing of the five elements.

**C. Gesa's Acts and Practices Had a Capacity to Deceive a Substantial Portion of the Public.**

**1. Facts and Inferences in the Light Most Favorable to Mr. Rokkan as to a CPA Claim.**

As to the CPA, the facts and inferences in the light most favorable to Mr. Rokkan, with references to the record, have been set forth in the Brief of Appellant, Section VI, at pp. 5-11.

**2. Gesa's Acts and Practices Had the Capacity to Deceive a Substantial Portion of the Public.**

In his Brief of Appellant, Mr. Rokkan had focused his argument primarily on element No. 3 of the five CPA elements, arguing that it is a jury question whether the public interest element has been met. In its response Gesa has focused on element No. 1, relying on *Brown v. Brown*, supra, and *Burns v. McClinton*, 135 Wn.App. 285, 143 P.3d 630 (2006). See, Gesa's Supplemental Brief at pp. 16-19. Those two cases involve dismissal as a matter of law for failure to meet CPA element No. 1.

Without question, a single act against a single consumer, depending on its nature, may support element No. 1 of the CPA, "the capacity to deceive a substantial portion of the public." See, *Columbia Physical Therapy v. Orthopedic Associates*, supra, 168 Wn.2d at 442-443. See also, *Henery v. Robinson*, 67 Wn.App. 277, 291, 834 P.2d 1091 (1992):

To be unfair or deceptive, conduct must have a tendency to deceive a substantial portion of the public. *Blake v. Federal Way Cycle Ctr*, 40 Wn.App. 302, 309, 698 P.2d 578, review denied, 104 Wn.2d 1005 (1985). *In some situations, a misrepresentation made to only one person has the capacity to deceive many, such as a statement made in a standard form contract or to a sales representative which subsequently will be communicated to many individual buyers.* (Emphasis added.)

The failure of a salesman in one instance to disclose information may give rise to a CPA claim even when no other members of the public have been positively identified as having been harmed:

It is the likelihood that additional buyers will be injured in exactly the same fashion that changes a factual pattern from a private dispute to one that affects the public interest.

*McRae v. Bolstad*, 101 Wn.2d 161, 166, 676 P.2d 496 (1984).

*Burns v. McClinton*, supra, does not stand for the proposition, as argued by Gesa, that a plaintiff must produce other persons who have been similarly harmed. To the contrary, *Burns* cites as authority *Travis v. Washington Horse Breeders Ass'n*, 111 Wn.2d 396, 759 P.2d 418 (1988), where a CPA claim was allowed in the absence of proof that any persons other than the plaintiff had been harmed. *Burns*, 135 Wn.App. at 303.

In *Columbia Physical Therapy*, supra, the court held that the capacity to deceive element may be established by proof of a single act. The plaintiff in that case had alleged two separate acts, either of which the court found had the *capacity* to deceive substantial portions of the public.

Id., 168 Wn.2d at 443. One act consisted of one patient who had requested a referral to the plaintiff's clinic for physical therapy being told by one physician that he must receive the treatment at the defendant's clinic. Id. at 442. There was no proof that the physician had made the same statement to any other patient. Nonetheless, the appellate court held:

The act of informing patients that they could receive physical therapy only from PFOA physical therapists, if proved, would constitute an unfair or deceptive practice.

168 Wn.2d at 443.

The other act discussed in *Columbia Physical Therapy* consisted of another physician pointing out the defendant's location when asked by a patient where he could take his physical therapy prescription. Id. at 443. The court found that that single act, which was different but which had similar implications as the other act, "would also, *absent more*, constitute an unfair and deceptive practice." Id. at 443 (emphasis added).

The touchstone for a viable claim under element No. 1 of the CPA is not proof of multiple acts against multiple consumers, but rather it is the nature of the act – whether it "*had the capacity to deceive a substantial portion of the public.*" *Westview Investment, Ltd v. U.S. Bank*, 133 Wn.App. 835, 854, 138 P.3d 638 (2006) (emphasis added). In *Westview*, there was a failure of proof that the alleged act had the capacity to deceive the plaintiff, much less a substantial portion of the public. Id. at 854-855.

In *Brown v. Brown*, supra, 157 Wn.App. at 816, the plaintiff was unable to explain how the alleged acts of the defendant had any capacity to deceive a substantial portion of the public. In and of itself, the fact that the plaintiff in *Brown* was unable to produce any other wronged persons did not defeat her CPA claim. However, such absence of proof of other injured parties, together with evidence that the defendant's procedures in general appeared to meet acceptable business standards, ultimately defeated the CPA claim. Cf., id at 816-817.

In this case, there is abundant evidence of the *capacity* to deceive not found in other cases where CPA claims have been dismissed for failure to comply with element No. 1. First and foremost is that Mrs. McHale was told by the Gesa employees that it would be "wise" for her to name beneficiaries, and that she should do so. RP 45-46; RP 73. Such a statement would have been inappropriate. See, RP 201; RP 203-204. The term share certificate forms contained blank lines for making beneficiary designations. See, Ex. P-6, Ex. P-7, and Ex. P-8. Most of the persons who obtained term share certificates at Gesa were over age 70. RP 443. Cindy Cook testified that she used the same process every time she opened an account. RP 107-108. Gloria Campbell testified that she and Ms. Cook were probably opening at least one new account each day. RP 441-442; RP 453.

Another deceptive act or practice as to Mrs. McHale, as it relates to proof of Gesa's *capacity* to deceive a substantial portion of the public, was the sales practice of allowing tellers to redirect elderly depositors from making simple deposits and over to Gesa's customer service representatives for the purpose of opening term share accounts (RP 44; RP 197-199; and RP 139). The evidence shows that Gesa's customer service representatives had inadequate training (RP 79), knew nothing about the effect of beneficiary designations (RP 79 and RP 453), and were allowed to fill out beneficiary forms for depositors to sign on the spot (RP 112-113).

**D. Because the Acts and Practices Complained of by Mr. Rokkan Were Not Subject to Specific Regulation or Exemption, Gesa Was Not Preempted from the CPA.**

The trial court declined to hold that the CPA claims were preempted by laws that govern financial institutions. RP 411.

Just because a company within an industry is generally subject to administrative regulation by a State or federal agency does not make it exempt from CPA claims. Reversals of trial court judgments to dismiss on this overbroad misconception illustrate the point in *Vogt v. Seattle-First National Bank*, 117 Wn.2d 541, 817 P.2d 1364 (1991); *McCurry v. Chevy Chase Bank, FSB*, 169 Wn.2d 96, 233 P.3d 861 (2010); and *Singleton v. Naegeli Reporting*, 142 Wn.App. 598, 175 P.3d 594 (2008).

Gesa has cited several generalized statutes and administrative rules to support its exemption arguments, and has also relied heavily upon *Miller v. U.S. Bank*, 72 Wn.App. 416, 865 P.2d 536 (1994). However, Gesa has omitted entirely from its discussion a seminal case cited in the Brief of Appellant that held that banking laws in general do not exempt financial institutions from CPA claims. See, *Vogt v. Seattle-First National Bank*, supra. In the *Miller* case, the appellate court did in fact find there was a CPA exemption under the particular facts, but in so doing *Miller* carefully distinguished its holding from the controlling precedent of *Vogt*. See, *Miller v. U.S. Bank*, supra, 72 Wn.App. at 420-22. *Vogt* had held that the CPA applied to certain banking transactions and practices, even though banks were heavily regulated at both the state and federal levels. *Vogt* held that RCW 19.86.170 (the provisional CPA exemption grant) “does not exempt actions or transactions merely because they are regulated generally.” *Vogt*, supra at 552. To the contrary, for exemption to apply in the banking industry, the court must find that there is a conflict between the CPA and the banking laws, and that applying the CPA would threaten or destroy or otherwise jeopardize the conflicting banking laws. *Vogt*, supra at 553.

Gesa has cited several provisions of 12 CFR Ch. VII, the Trust in Savings Act of 1991 (TISA), for the proposition that defendant Gesa is

exempt from the CPA because it is regulated by federal law. However, TISA does not provide a blanket exemption from state laws. To the contrary, its provisions are to be construed together with state laws, and exemption may be found only where there is a specific inconsistency:

(d) *Effect on state laws.* State law requirements that are inconsistent with the requirements of TISA and this part are preempted to the extent of the inconsistency.

12 CFR Section 707(d).

The *Vogt* court recognized the following factors that a court must balance in determining whether preemption exists as to specific acts and practices in question:

1. The administrative agency has the authority to resolve issues that would be referred to it by the court;
2. The agency must have special competence over all or some part of the controversy which renders the agency better able than the court to resolve the issues; and
3. The claim before the court must resolve issues that fall within the scope of the pervasive regulatory scheme so that the danger exists that judicial action would conflict with the regulatory scheme.

*Vogt*, supra at 554.

The *Vogt* court then applied each of the three criteria to the case before it concluded that there was no inconsistency between the CPA and other applicable banking law, and that the other banking laws would not be able to accord the plaintiff the relief she requested. Id. at 555. Specifically, in addressing each element, the *Vogt* court found (1) that the

CPA's attorney fee and treble damages provisions were not available to a claimant under other banking law, and that such a factor strongly favored application of the CPA to the facts of that case. *Id.* at 555; (2) the issues in *Vogt* were not complicated, and that the agency in question had no greater competence than a court in determining whether an unfair or deceptive practice had occurred. *Id.* at 556; and (3) the structure of the federal laws was to recognize and encourage the states to establish their own local laws to supplement federal laws where appropriate. *Id.* at 556-557. This last point is exactly the grant of power authorized by 12 CFR Section 707(d).

All of these factors explained in *Vogt* are equally applicable in the present case, and it is the controlling precedent rather than *Miller*. In *Miller*, the defendant bank was sued for acts pertaining to its lending and collection practices and for management decisions pertaining to a revolving line of credit. *Miller*, 72 Wn.App. at 419. The *Miller* court discussed a complicated fact pattern that obviously went to the core of the regulatory scheme:

The bank allowed use of its cash collateral for continued operations to work out of the indebtedness, despite the default status of the loan. The bank reviewed and approved certain expenditures, transferred funds from its collateral accounts to AFV-83's general account, and disallowed other transfer payments as not being necessary to maintain continued fishing operations. On several occasions, AFV-83's requests for disbursements

detailed amounts due to the IRS for fourth quarter 1986 payroll taxes. In May 1987 U.S. Bank dishonored a check written by AFT-83 to the IRS. The IRS had previously placed a levy on all of AFT-83's accounts, and U.S. Bank placed the funds in a segregated holding account pending resolution of the dispute between it and the IRS as to ownership of those funds.

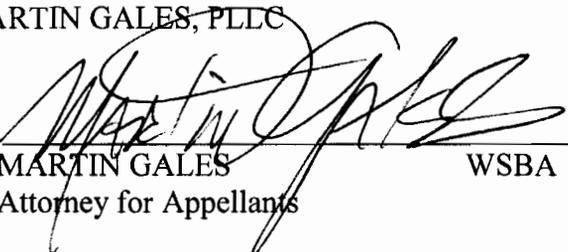
*Miller*, 72 Wn.App. at 420-421. The *Miller* court held that given this fact pattern, application of the CPA would seriously conflict with the “essential monetary and payment systems policies” of the Federal Reserve System. *Miller*, 72 Wn.App. at 422, footnote 4 (quoting 15 U.S.C. Section 57(a)(f)(1)). Gesa has not shown any such potential for systemic conflict. Nor has Gesa shown that there is any specific conflict between the CPA and any statute or regulation applicable to the claims asserted herein.

## VI. CONCLUSION

Mr. Rokkan incorporates by reference the Conclusions set forth at the end of the Brief of Appellant and the Appellant's Reply Brief.

RESPECTFULLY SUBMITTED this 15<sup>th</sup> of August, 2011.

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**AUG 15 2011**

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

	)	
DONALD J. ROKKAN, individually; and	)	
DONALD J. ROKKAN, personal	)	No. 293793
representative of the Estate of Marsaelle F.	)	
McHale, deceased,	)	PROOF OF SERVICE BY MAIL OF
	)	APPELLANTS' REPLY TO
Appellants,	)	RESPONDENTS' SUPPLEMENTAL
vs.	)	BRIEF
	)	
Gesa Credit Union, a corporation; and Paula	)	
Miller and John Doe Miller, wife and husband,	)	
	)	
Respondents.	)	
_____	)	

Pursuant to RCW 9A.72.085, the undersigned hereby certifies under penalty of perjury under the laws of the State of Washington that on the day and year set forth below, he delivered a copy of the Appellants' Reply to Respondents' Supplemental Brief by mailing the same by first class postage prepaid to:

Lucinda Luke, Esq.  
Attorney for Respondents  
Cowan, Moore, et al.  
503 Knight Street, Ste A  
Richland WA 99352

8/15/2011  
Date Spokane, WA

  
MARTIN GALES WSBA 14611