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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

Washington State Court of Appeals
Division III

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Docket No. 324401

Appeal from the Spokane County Superior Court
Case No. 13-2-02987-6 – The Honorable Linda Tompkins

FIRE CONTROL RESOURCES, LLC,

Appellant,

-v-

STATE OF WASHINGTON ex rel., DEPARTMENT OF
LABOR AND INDUSTRIES, et. al.,

Respondent.

APPELLANT'S BRIEF

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I. INTRODUCTION

This matter involves the claim of Respondent, Department of Labor of Industries of the State of Washington (DLI hereinafter), that Appellant, Fire Control Resources, LLC should be burdened with Successorship Liability for the unpaid taxes, premiums, penalties and interest purportedly owed by a defunct corporation named FCR Enterprises, Inc. (CABR 17-30, CABR Ex-1)¹.

The case is on appeal from a Spokane County Superior Court Order dated March 21, 2014, dismissing Appellant's Superior Court Review of Administrative Action, when Appellant failed to post a fully collateralized bond, in the amount of \$20,000. (CP 191-92).

The Superior Court did not exercise its Inherent Authority to review administrative action and thus would not hear argument or rule upon Appellant's prior-in-time² Motion (CP 134-171) based upon constitutional and jurisdictional arguments, including failure of Service of Process at multiple times throughout the history of the

¹ The Board's Proposed Decision and Order repeatedly and throughout the document referred to a non-existent entity called "Fire Control Resources, Inc." with no basis in the record whatsoever, as the alleged predecessor to Fire Control Resources, LLC. (CABR 17-30)

case, Due Process violations, and a failure of evidence to support jurisdictionally required Element(s) for Successorship Liability³.

The Dismissal Order's language at paragraph 1.5 states:

"(1) Lack of jurisdiction is not only procedural, but also substantive since the court lacks substantive jurisdiction, (2) the court is precluded from hearing any constitutional challenges." (CP 192)

Appellant's right to access of the courts to argue for reversal and dismissal, based upon fundamental constitutional and jurisdictional defenses, were never heard for the reason that Respondent, DLI, asserted the statutory bar to an appeal found in RCW 51.52.110, because Appellant did not post a fully collateralized appeal bond in the amount of \$20,000. (CP 192). It is of special note, that the Superior Court was of the mistaken understanding that the required cost to Appellant for the bond was based upon a percentage⁴, and thus could have easily changed the decision upon denial of a hardship waiver. (CP 120-122, CP 192

² It is noted that Respondent did initially file a Motion to Dismiss, but withdrew said Motion, and then later filed a similar Motion to Dismiss after Appellant filed its' Motion. (CP 60-62, 178-179)

³ The Superior Court likewise failed to consider dispositive case-ending and easily calculated arguments, including Statute of Limitations and Laches (CP 192), which the Appellant raised in detail and the BIIA Orders failed to consider or rule upon (CABR 3-8, 17-30, 1)

⁴ As in a criminal matter – bond for pre-trial release..

incorp. Court's Oral Rulings, Transcript of 03/21/2014 at pg.1 In.25 to pg.2 In.15).

Fire Control Resources, LLC main theories for relief are summarized as follows:

1. The Courts have inherent authority to review administrative actions regardless of statutory prohibitions.
2. Mistake on the part of the Superior Court in the Hardship Waiver hearing to appreciate that the Appellant would have to provide the total amount of Assessment in the amount of \$20,000, in posting a fully collateralized bond.
3. Failure of Service of Process, lack of Due Process, lack of Personal Jurisdiction, Statute of Limitations and Laches in the Notice and Order for Successorship Liability, dated 02/13/2009 and Reconsideration of Notice and Order of Assessment for 10/24/2011.
4. Jurisdictional failure in establishing essential element(s) of Successorship liability – what is the calculated dollar value of any of the assets claimed, including the person, Paul Fuchs, that was allegedly transferred to the alleged Successor company, Fire Control Resources, LLC, so a mathematical calculation can be

made to verify if the alleged asset(s) transferred are more than 50% of the value of the alleged predecessor entity.

II. ASSIGNMENTS OF ERROR

1. Appellant, Fire Control Resources, LLC assigns error to the Superior Court Dismissal Order Finding of Fact 1.4, which reads as follows:

“Dismissal of this appeal is appropriate where Plaintiff has failed to meet the requirements of RCW 51.52.110”

2. Appellant, Fire Control Resources, LLC assigns error to the Superior Court Dismissal Order Finding of Fact 1.5, which reads as follows:

“(1) Lack of jurisdiction is not only procedural, but also substantive since the court lacks substantive jurisdiction, (2) the court is precluded from hearing any constitutional challenges.

3. Appellant, Fire Control Resources, LLC assigns error to the Superior Court Dismissal Order Conclusion of Law 2.2, which reads as follows:

“The Board of Industrial Appeals Order dated June 26, 2013 which denied the Plaintiff’s Petition for Review and thereby affirming the April 8, 2013 Board’s Proposed Decision and Order is affirmed.”

4. Appellant, Fire Control Resources, LLC assigns error to the Board of Industrial Insurance Appeals Order affirming the Board’s

Proposed Decision and Order, at Finding of Facts 3, 4, 5, 6, 7 and Conclusion of Law 4 [CABR 29-30], which was affirmed by the Superior Court Dismissal Order Conclusion of Law 2.2, which Board Decision and Order extensively uses the unknown entity named "**Fire Control Resources, Inc.**", but perhaps in repeated confusion meant, "**FCR Enterprises, Inc.**"

5. Appellant, Fire Control Resources, LLC assigns error to the Board of Industrial Appeals Order affirming the Board's Proposed Decision and Order, at Finding of Fact 2, [CABR 29] which was affirmed by the Superior Court Dismissal Order Conclusion of Law 2.2, which reads as follows with emphasis in bold:

"2. Notice and Order of Assessment No. 0841171 was personally served on Mr. Fuchs on February 17, 2009. The Department of Labor and Industries **mailed** its October 24, 2011 Notice and Order [R]econsidering and [A]ffirming the prior order and notice to Mr. Fuchs according to a procedure approved under industrial insurance law. Mr. Fuchs received the October 24, 2011 document and within 30 days filed his Notice of Appeal with the Board of Industrial Appeals."

6. Appellant, Fire Control Resources, LLC assigns error to the Board of Industrial Appeals Order affirming the Board's Proposed Decision and Order, at Finding of Fact 3, which was affirmed by the Superior Court Dismissal Order Conclusion of Law 2.2, which reads as follows:

"3. Notice and Order of Assessment No. 0481171 contained amounts due and owing the Department of Labor and Industries as established in prior Notices and Orders of Assessments. The Department established each of those amounts owing in legal proceedings. During those legal proceedings, Mr. Fuchs for Fire Control Resources, Inc [sic] did not raise and prove improper service, and he had the opportunity to do so. Each of those prior notices and orders of assessment became final."

7. Appellant, Fire Control Resources, LLC assigns error to the Board of Industrial Appeals Order affirming the Board's Proposed Decision and Order, at Finding of Fact 4, which was affirmed by the Superior Court Dismissal Order Conclusion of Law 2.2, which reads as follows:

"4. Fire Control Resources, LLC and Fire Control Resources, Inc. [sic]: Perform essentially the same work activities: fighting wildfires during the fire season and thinning and clearing brush earlier in the summer. Deal with the same representatives of the same federal and state agencies in drafting, filing, offering, adjusting, and performing contracts. Have no full-time personnel except for Mr. Fuchs. Hire the same type of temporary employees-firefighters-and hire many of those same individual firefighters. Did not hold themselves out to the state and federal agencies as separate corporations, so the governmental agencies dealt with the two corporations as if they were the same business entity. Always dealt with governmental agencies requiring services either corporation offered by having Mr. Fuchs contact the agencies.

8. Appellant, Fire Control Resources, LLC assigns error to the Board of Industrial Appeals Order affirming the Board's Proposed Decision and Order, at Finding of Fact 5, which was affirmed by the

Superior Court Dismissal Order Conclusion of Law 2.2, which reads as follows:

“5. The only major asset Fire Control Resources, LLC did not take over from Fire Control Resources, Inc. [sic], was a 1959 International Harvester pumper truck. The truck became too old to be a usable asset. Fire Control Resources LLC replaced that pumper truck with a newer pumper truck, which ultimately was leased. Fire Control Resources LLC uses the newer pumper truck in the same manner as Fire Control Resources, Inc. [sic], used the predecessor truck. The two major assets of Fire Control Resources, Inc. [sic], were intangible assets: (1) the name “Fire Control Resources” and (2) Mr. Fuchs’ skills and expertise. Fire Control Resources LLC assumed each of those assets and did not pay Fire Control Resources, Inc. [sic], the value of either asset. These two assets were essential for Fire Control Resources, Inc. [sic], to function and essential for Fire Control Resources LLC to function.”

9. Appellant, Fire Control Resources, LLC assigns error to the Board of Industrial Appeals Order affirming the Board’s Proposed Decision and Order, at Finding of Fact 6, which was affirmed by the Superior Court Dismissal Order Conclusion of Law 2.2, which reads as follows:

“6. Fire Control Resources LLC is a successor to Fire Control Resources, Inc. [sic]”

10. Appellant, Fire Control Resources, LLC assigns error to the Board of Industrial Appeals Order affirming the Board’s Proposed Decision and Order, at Finding of Fact 7, which was affirmed by the

Superior Court Dismissal Order Conclusion of Law 2.2, which reads as follows:

“7. Fire Control Resources LLC, as successor to Fire Control Resources, Inc. [sic], owes taxes due and owing the State Fund in the amount of \$19,364.19.”

11. Appellant, Fire Control Resources, LLC assigns error to the Board of Industrial Appeals Order affirming the Board’s Proposed Decision and Order, at Conclusion of Law 2, which was affirmed by the Superior Court Dismissal Order Conclusion of Law 2.2, which reads as follows:

“2. Within the meaning of RCW 51.48.120, Fire Control Resources LLC received proper notice of the Department’s order in which it affirmed Notice and Order of Assessment No. 0481171.”

12. Appellant, Fire Control Resources, LLC assigns error to the Board of Industrial Appeals Order affirming the Board’s Proposed Decision and Order, at Conclusion of Law 3, which was affirmed by the Superior Court Dismissal Order Conclusion of Law 2.2, which reads as follows:

“3. Assessments due and owing under Notice and Order of Assessment No. 0481171 from prior notices and orders of assessment had become final within the meaning of RCW 51.48.131.”

13. Appellant, Fire Control Resources, LLC assigns error to the Board of Industrial Appeals Order affirming the Board’s Proposed

Decision and Order, at Conclusion of Law 4, which was affirmed by the Superior Court Dismissal Order Conclusion of Law 2.2, which reads as follows:

“4. Within the meaning of RCW 51.16.200 and RCW 51.08.177, Fire Control Resources LLC is a successor corporation to Fire Control Resources, Inc. [sic], and as such, is liable for taxes due and owing the State Fund by the prior business in the amount of \$19,364.19 as assessed under Notice and Order of Assessment No. 0481171.”

III. STATEMENT OF THE ISSUES

- A. Did the Superior Court err in refusing to use its inherent jurisdiction to review the administrative decision and order for jurisdictional, constitutional and dispositive issues?
- B. Did the Superior Court’s failure to consider Fire Control Resources, LLC motion to reverse and dismiss result in a Denial to Access to the Courts?
- C. Did the Superior Court err in its understanding of the bonding requirements for review?

IV. STATEMENT OF THE CASE

FCR Enterprises, Inc.⁵ was a Washington Corporation that existed from 03/25/2002 to 07/01/2005 with a Registered Agent address in Spokane, Washington (**Appendix E**, CABR Ex-1, Ex-14, Ex-21). The unrefuted testimony of its Sole Officer, Shareholder and Registered Agent, Paul Fuchs, (CABR Ex-14) is that FCR Enterprises, Inc. was a general building contractor, that did some Wildland Firefighting. The unrefuted documentary evidence (CABR Ex-13, Ex-40) also demonstrates that FCR Enterprises, Inc. was primarily a general building contractor, in that unpaid Labor & Industries premium payments were not made for 16 employees during the second quarter of 2002 to the second quarter of 2003; and it is common knowledge that Wildland Fire Season is normally only 2.5 to 3 months in length in the summer only (i.e., from July through September). It is also common knowledge that a single cab 1.5 ton truck cannot hold more than 3 persons who wear wildland fire gear; and a Tender Agreement listed only 3 persons for said truck (CABR Ex-16).

⁵ The Administrative Law Judge repeatedly used the name "Fire Control Resources, Inc." without any basis in the record.

FCR Enterprises, Inc. used a 1959 International 1.5 ton 4x4 truck fitted with a bed that contained a 225 gallon water tank, old fire pump and other equipment (CABR Ex-2, Ex-12 and Ex-16). The Forest Service implemented new rules about 2005 and required newer trucks and equipment be used in fighting Wildland fires. There was no wearing out of the 1959 4x4 truck.

FCR Enterprises Inc., by its' sole officer, Paul Fuchs, failed to make Washington Industrial Insurance premium payments, seriously impacting any value the company might have. In December, 2003, the Department of Labor and Industries ("DLI"), brought legal action through its' statutory attorney in King County Superior Court against the Contractor bond (CABR Ex-17, Ex-50). DLI also seized one of the valuable assets (i.e., a work trailer) of FCR Enterprises, Inc. On April 5, 2005, DLI revoked FCR Enterprise, Inc.'s certification to have employees. The legal entity was doomed with assessments and went out of business in 2005, with the Secretary of State noting the cessation of existence on 07/01/2005 (**Appendix E**, CABR Ex-1).

Fire Control Resources, LLC, is\was a Washington Limited Liability Company that started its legal existence on 03/22/2006 and had a address in Tekoa, Washington for its Registered Agent

(**Appendix F**, CABR Ex-4, Ex-20). Fire Control Resources, LLC had member\managers including Paul Fuchs, Connie Fuchs and Ted Eagle (CABR Ex-11). Fire Control Resources, LLC had a sole business purpose of Wildland Firefighting (CABR Ex-11, Ex-35). Fire Control Resources, LLC used a brand new (at that time) and nearly 100% financed 2006 Chevrolet Kodiak 1.5 ton 4x4 truck with new equipment including a 750 gallon water tank and a higher performance pump and fire hose. (CABR Ex-22, Ex-23).

The commonalties between FCR Enterprises, Inc. and Fire Control are only that each legal entity had Paul Fuchs in position of authority (e.g., officer, manager) and each sought to obtain wildland firefighting contracts from the limited sources for Wildland Firefighting – U.S. Forest Service Region 6 and the Washington Department of Natural Resources. Each entity used differing trucks, differing equipment, differing people, etc.

After more than 3 years⁶ since the legal cessation date of FCR Enterprises, Inc. of 07/01/2005 (**Appendix E**, CABR Ex-1)

⁶ The Statute of Limitation in Washington for initiating actions under Labor & Industries laws is 3 years per RCW 51.16.190. DLI is also limited by RCW 51.16.200, in that DLI had notice of the new entity (CABR 23 In 5-7) and failed to make any assessment against the alleged successor within 180 days and the formation of the new entity was more than 180 days from the alleged predecessor.

and with all the resources the State of Washington possesses, the DLI finally decided to pursue Fire Control Resources, LLC. Under the legal theory of Successorship Liability, the DLI on 02/13/2009, filed a Notice & Order of Assessment for \$19,364.19, under file number 0481171 (**Appendix D**, CABR 36-37, 45-47) that was served on 02/17/2009. The decision to pursue Successorship Liability legal action against Fire Control Resources, LLC after more than 3 years in violation of the Statute of Limitations was and is contrary to Washington law and contrary to the rules and regulations for DLI.

A timely Request for Reconsideration (Protest) of the Notice & Order of Assessment under file number 0481171 was filed by Appellant, Fire Control Resources, LLC (CABR 59, Ex-15).

After the expiration of 31 months, on 11/24/2011, the DLI decided to file a Order and Notice Reconsidering the Notice and Order of Assessment under number 0481171 (**Appendix C**, CABR 52-53).

The Order and Notice Reconsidering the Notice and Order of Assessment (**Appendix C**, CABR 54-55) was never served as required by established service of process principles recognizing Due Process under Washington law. The Declaration of Service on

its face is egregious (**Appendix A**, CABR 55). For instance, the Whitman County Sheriff's Records & Information Officer, Kay Auvil, certifies that she is certifying for Sheriff Brett J. Myers, that Sheriff Myers is certifying that Deputy Tim Cox served Neil Fuchs with some Order and Notice but identified with the number 0481171 (**Appendix A**, CABR 55). At a minimum, the declaration suffers from lack of personal knowledge; contains multiple hearsay; and lacks the required swearing language of Washington Supreme Court General Rule 13 and/or RCW 9A.72.085 (i.e., "under penalty of perjury"). The 14 year experienced DLI Revenue Agent accepted the purported Declaration of Service as good and legal, and thus violated Washington law, as the document is contrary to Washington law.⁷

⁷ The use of hopelessly defective Declarations of Service by DLI in this case is not a isolated instance (CABR Ex-32, Ex-52, Ex-53). Appellant challenged at hearing and still challenges the underlying Assessments to FCR Enterprises, Inc. and at the first opportunity for the new legal entity, Fire Control Resources, LLC , in a collateral attack (no res judicata, as differing legal parties under Washington law). Appellant also challenged and challenges lack of Due Process in that there is no proof whatsoever that that any Assessment resulting in a Warrant (i.e., Judgment) has ever been served or attempted service, contrary to Washington law in RCW 51.48.140. Appellant also challenged at hearing at the first opportunity that one of the included Assessments had not been served (CABR 44) and no arguable notice of the Assessment; the ALJ agreed (CABR Transcript 11/05/2012, pg.89, lines 1-18).

At the first opportunity to challenge the defective Service of Process of the Order and Notice Reconsidering the Notice and Order, dated 10/24/2011, Appellant through Manager, Paul Fuchs, timely filed a Notice of Appeal of the Order and Notice for Assessment and Denial of Reconsideration, dated 11/02/2011 (**Appendix B**, CABR 42). The Notice of Appeal specifically “objects, disputes and challenges” the Order and Notice Reconsidering Notice and Order of 10/24/2011, including its “timely notice and service”, at point number one.

At the time of hearing, it was Respondent DLI’s legal burden, to prove proper service of the Order and Notice Reconsidering the Notice and Order, dated 10/24/2011, to establish personal jurisdiction, before proceeding any further. Respondent, DLI, failed to produce any evidence at time of the several day hearing over several weeks, to prove proper service of process to attempt to meet its required burden. Regardless of the fact that a Declaration of Service purported to assert personal service (CABR 55), the ALJ made a finding that Appellant was served by certified mail without any proof in the record. (**Appendix G** at pgs 9&10, CABR 25 In 15-17, CABR 26 In 5-8,).

One of the jurisdictional elements for Successorship Liability is that a monetary value is placed on the alleged assets of the purported predecessor company as a total monetary figure, as well as a value on the alleged assets transferred to the alleged successor company. The need to assess monetary values is so a mathematical calculation can be made to verify if more than 50% of the assets have been transferred from one company to another.

In this instance, Respondent, DLI, with all its resources and over 31 months of additional assessment failed in its' burden, as no monetary values were provided by DLI with its 2 testifying Revenue Agents and 1 Litigation Specialist, who was formally a Auditor for DLI. Indeed, after 31 months of special investigation, Paul Fuchs was never identified as an "asset" (CABR 61-68). It was only after Paul Fuchs testified at hearing and provided proof of the new truck, equipment, etc. purchased after 2006, that Respondent DLI changed its' strategy to allege Paul Fuchs was an asset.

Appellant through Paul Fuchs testified and made argument in the Post-Hearing Brief that FCR Enterprises, Inc. transferred no assets to Fire Control Resources, Inc. (CABR 131-140). Within that same Post Hearing Brief, Appellant argued that a corporation cannot own a human being, as it is a prohibition of the 13th

Amendment to the U.S. Constitution (CABR 132). It is true that a corporation may contract for exclusive services and sell or transfer that asset (e.g., a NFL football player), however no contract ever existed making Paul Fuchs a asset of FCR Enterprises, Inc.

The ALJ found, "FCR [Enterprises, Inc.] had one major asset: Mr. Fuchs." (**Appendix G** pg 11 ln. 25, CABR 11 ln. 25), and ignored the 1959 International Fire truck and its equipment, as well as the 1999 Utility Trailer that the DLI had seized including jobsite construction equipment. Yet, the ALJ in Finding of Fact number 5, stated, "The only major asset Fire Control Resources, LLC, did not take over from Fire Control Resources, Inc. [sic], was a 1959 International pumper truck...." (**Appendix G** pg 13, CABR 29).

Appellant, Fire Control Resources, LLC filed a timely appeal with specific argument as to lack of jurisdiction due to lack of Service of Process, Due Process issues, Statute of Limitation issues, Laches, and other jurisdictional failures of proof including the monetary mathematical calculation of value. (**Appendix H**, CABR 3-8).

The Bureau of Industrial Appeals (BIIA) ALJ Proposed Decision & Order dated 04/08/2013 (**Appendix G**, CABR 17-30),

became the decision of the BIIA in a one-page Order Denying Petition for Review on 06/26/2013 (CABR 1).

Appellant, Fire Control Resources, LLC filed a timely request for Review to the Superior Court (CP 1-3), including some interesting language contained within the Notice of Appeal, that was similar to argument contained in the Petition for Review at the BIIA level (CP 1-3).

Respondent, DLI, moved for dismissal on two basis: no attorney and failure to post a fully collateralized bond for the unpaid premium assessments (CP 14-15) and then withdrew its Motion by striking the Motion to Dismiss, as a Reply to Appellant's Response (CP 60-62).

Appellant moved for a hardship waiver of the bond (CP 42). A hearing was held for the hardship waiver of the bond (CP 114) and the Superior Court denied the waiver in full and in part. (CP 120-122). Within its Order on Motion for Undue Hardship, the Superior Court retained jurisdiction and ruled that Appellant had until 01/31/2014 to post a bond and that the failure to post the bond may result in dismissal. (CP 120-122).

On 01/31/2014, Appellant timely filed a Motion to Dismiss alleging lack of jurisdiction, lack of service of process, due process

violations, constitutional issues, violation of the statute of limitations, laches (CP 134-171) with supporting Memorandum (CP 1265-133) and supporting Declaration (CP 123-125. Respondent DLI then filed its Motion to Dismiss for failure to post a bond (CP 178-179).

On 03/21/2014, the Superior Court failed to exercise its inherent authority to hear and decide issues of personal jurisdiction, due process, constitutional issues of access to the courts, actions of agency contrary to law, and actions by agency that are arbitrary and/or capricious. (CP 193).

The Superior Court heard argument on the failure to post the bond and was surprised that the bonding requirement required a fully collateralized (100%) bond. (CP 191-192 incorp. Court's Oral Rulings, Transcript of 03/21/2014 at pg.1 ln.25 to pg.2 ln.15).

The Superior Court dismissed the case on the statutory basis of RCW 51.52.110 for Appellant failing to post a fully collateralized bond. (CP 191-192).

Appellant, Fire Control Resources, LLC timely filed a Notice of Appeal to this appellate Court.

V. STANDARDS FOR REVIEW

The courts' inherent power of review extends to administrative action which is contrary to law as well as that which is arbitrary and capricious. Williams v. Seattle Sch. Dist.1, 97 Wn.2d 215, 221-22, 643 P.2d 426 (1982); Pierce County Sheriff v. Civil Serv. Comm'n, 98 Wn.2d 690, 694 (1983).

Basic to litigation is jurisdiction, and first to jurisdiction is service of process. Rodriguez v. James-Jackson, 127 Wn.App. 139, 143, 111 P.3d 271 (2005). Plaintiff (i.e., party requesting relief) carries the burden of proving that service was proper. Witt v. Port of Olympia, 126 Wn.App. 752, 757 (2005). Whether proper service of process occurred is a legal, not a factual, determination. Sheldon v. Fetting, 77 Wn.App. 775, 779, 893 P.2d 1136 (1995), *affd*, 129 Wn.2d 601, 919 P.2d 1209 (1996).

Whether a proceeding satisfies constitutional due process of law is reviewed *de novo*. State v. Nelson, 158 Wn.2d 699 (2006).

In a workers' compensation matter involving an appeal from a Superior Court's decision to this Court, the ordinary civil standard of review applies. RCW 51.52.140; Malang v. Dep't of Labor & Indus., 139 Wn.App. 677, 683, 162 P.3d 450 (2007). This appeal presents questions of law and statutory construction that should be

reviewed *de novo*. See, City of Pasco v. Pub. Emp't Relations Comm'n, 119 Wn.2d 504, 507, 833 P.2d 381 (1992).

Industrial Insurance Assessment Appeals to Superior Court are governed by the Administrative Procedure Act (APA), RCW 34.50 et. seq., RCW 51.48.131. Nothing in the APA may be held to diminish the constitutional rights of any person or to limit or repeal additional requirements imposed by statute or otherwise recognized by law. RCW 34.05.020. The Courts may grant relief under the APA for action that is unconstitutional or arbitrary or capricious. RCW 34.05.570. The APA allows a court to grant relief to a party who has been aggrieved by an agency order that is "in violation of constitutional provisions on its face or as applied." RCW 34.05.570. Under the APA, the legislature intends that the courts should interpret provisions of the APA consistently with decisions of other courts interpreting similar provisions of other states, the federal government, and model acts. RCW 34.05.001.

IV. ARGUMENT

A. The failure to exercise the inherent power of the Courts to review certain administrative actions is a violation of Access to the Courts.

The Superior Court failed to exercise its' inherent jurisdiction to address required issues of Jurisdiction over the Parties, Due Process, Constitutional issues and dispositive case-ending issues for which Respondent, DLI knew or should have known that it should not have brought a Successorship Liability claim more than 3 years after the cessation of the alleged predecessor company, contrary to Washington law, RCW 51.16.190 "Limitations on collection actions"⁸ and as a arbitrary and capricious decision and act. Indeed, compare the dissolution of FCR Enterprises, Inc, on 07/01/2005⁹ (CABR Ex-01); noting that Appellant, Fire Control Resources, LLC, Washington legal birth of 03/22/2006 (CABR Ex 02 & 20), and that the DLI did finally start Successorship Liability action against Appellant until 02/13/2009 (CABR 45-47, CABR Ex-37) after the 3 year statute of limitation expired.¹⁰

⁸ See also, Dolman v. Dept. of L&I, 105 Wn.2d 560, 565-66, 716 P.2d 852 (1986); Floor Decorators v. Dept. of L&I, 44 Wn.App 503, 510, fn.5, 722 P.2d 884 (1986).

⁹ The dissolution date of 07/01/2005, plus 3 years = 07/01/2008

¹⁰ DLI's dilatory failure to pursue Successorship Liability also gives rise to the doctrine of Laches. Buell v. City of Bremerton, 80 Wn.2d 518, 522, 495 P.2d 1358 (1972) and see CABR 4-5, CP 167-168.

The power of judicial review including the authority to review administrative actions is inherent in the courts. Williams v. Seattle Sch. Dist. No.1, 97 Wn.2d 215, 643 P.2d 426 (1982) (in spite of statutory provision prohibiting review, the courts have inherent power to review administrative action). Indeed, "The courts possess inherent power, whatever the proceedings may be labeled, to protect individual citizens from arbitrary action..." Williams, at 222

In more recent years, the high Court in Saldin Sec., Inc. v. Snohomish County, 134 Wn.2d 288, 949 P.2d 370 (1998), states: "The superior court has inherent power provided in article IV, section 6 of the Washington State Constitution to review administrative decisions for illegal or manifestly arbitrary actions." *Id.* at 292. See also, Devine v. Wash. Dept. of Licensing, 126 Wn.App. 941, 110 P.3d 237 (2005) ("However, all courts have inherent power to review agency action to ensure that it is not arbitrary and capricious, or contrary to law.")

In Jones v. Pers. Res. Bd., 134 Wn.App. 560, 566, 140 P.3d 636 (2006) the court stated as follows:

... The opportunity for a court of law to review administrative determinations provides "security against administrative injustice."

The theory underlying inherent review is that freedom from arbitrary government action is a fundamental right that justifies the intervention of the courts. *Washington Administrative Law Practice Manual*, Ch. 14 § 14.02.

The Washington Supreme Court's definition of arbitrary and capricious, as well as contrary to law, within the context of fundamental rights is more fully defined in Pierce County Sheriff v. Civil Serv. Comm'n, 98 Wn.2d 690, 694 (1983) as follow:

[1] The Sheriff does contend that review was proper here under the courts' inherent power of review. While some of our prior cases have indicated that this inherent power may be invoked to review arbitrary and capricious administrative action only when certain fundamental rights are violated (See, e.g., Hood, at 402), we recently made clear that this does not limit the situations in which arbitrary and capricious action may be reviewed. **The right to be free from such action is itself a fundamental right and hence ANY arbitrary and capricious action is subject to review.** Williams v. Seattle Sch. Dist. 1, 97 Wn.2d 215, 221-22, 643 P.2d 426 (1982).

Under this standard, the courts always have inherent power to review agency action to the extent of assuring that it is not arbitrary and capricious. The Sheriff thus had a right to take the appeal which is challenged in the present case. The Superior Court also had jurisdiction on the Sheriff's first appeal to review the propriety of the standard of proof applied by the Commission. **The courts' inherent power of review extends to administrative action which is contrary to law as well as that which is arbitrary and capricious.** Williams, at 221. **An agency's violation of the rules which govern its exercise of discretion is certainly contrary to law and, just as the right to be free from arbitrary and capricious action, the right to have the**

agency abide by the rules to which it is subject is also fundamental. Leonard v. Civil Serv. Comm'n, 25 Wn.App. 699, 701-02, 611 P.2d 1290 (1980); Wilson v. Nord, 23 Wn.App. 366, 373, 597 P.2d 914 (1979), *cited with approval* in Williams, at 222; Tacoma v. Civil Serv. Bd., 10 Wn.App. 249, 250-51, 518 P.2d 249 (1973). The courts thus have inherent power to review agency action to assure its compliance with applicable rules. (emphasis)

Applying Pierce, *supra.*, the Court of Appeals in WPEA v. Personnel Resources Bd., 91 Wn.App. 640, 657-58, 959 P.2d 143 (1998) stated:

Article 4, section 6 of the Washington State Constitution gives superior courts an inherent power to review administrative decisions. Bridle Trails, 45 Wn.App. at 251. This review, however, is limited to determining whether the decision or act below was **illegal or arbitrary and capricious**. Bridle Trails, 45 Wn.App. at 251. (emphasis)

The Superior Court failed to hear and decide critical issues of constitutional magnitude, jurisdiction and case-ending\dispositive significance, action by the DLI (agency) contrary to the law, and action by the DLI (agency) that was arbitrary and capricious.

The Superior Court's Order of Dismissal resulted in the Appellant being denied Access to the Courts. The Washington Supreme Court in Hough v. Stockbridge, 113 Wn.App. 532, 54 P.3d 192 fn. 8 (2002), stated as follows:

The Supreme Court has grounded the right to access to the courts in several provisions of the Constitution,

including the Petitions Clause of the First Amendment, the Privileges Clause of Article IV, the Due Process Clause of the 5th Amendment, and the Equal Protection Clause.

The Courts in Washington have found the need for reasonable Access to the Courts as a constitutional concern in matters involving service of process and statute of limitations. Indeed, the Washington Supreme Court stated in John Doe v. Puget Sound Blood Ctr., 117 Wn.2d 772, 780-82, 819 P.2d 370 (1991) with emphasis:

The right of access is necessarily accompanied by those rights accorded litigants by statute, court rule or the inherent powers of the court, for example, **service of process**, RCW 4.28, or **statutes of limitation**. RCW 4.16 may be in aid of or limitation of a particular cause of action. The merits of a particular action may depend upon statute. *E.g.*, RCW 4.24. The recognition of a particular cause of action may depend upon judicial decisions. *E.g.*, Merrick v. Sutterlin, 93 Wn.2d 411, 610 P.2d 891 (1980) (no parental immunity when child injured as result of negligent driving by parent); Jenkins v. Snohomish Cy. PUD 1, 105 Wn.2d 99, 713 P.2d 79 (1986) (parental immunity applies where injury results from negligent parental supervision of child).

The Spokane County Superior Court should have heard at least the special challenges to service of process and statute of limitations.

B. The Superior Court was confused as to the nature of bonding requirements in deciding whether to grant a hardship waiver pursuant to RCW 51.52.112.

The record of the Superior Court's dismissal hearing on 03/21/2014 reflects the Court's misunderstanding as to the necessity of Appellant to have posted a fully collateralized (i.e., 100%) bond for the unpaid industrial insurance premium assessments in the amount of \$20,000.

Judge Tompkin's is quoted in a exchange with Appellant's attorney as follows:

MR. BEYER: ... And for the Court's edification, I can simply tell you the situation is this, interestingly so: You set the bond at, well, whatever it was, \$20,000 or something like that, and the bonding companies insist that the entire bond plus \$400 gets paid. So, you know, if you don't have the full amount, which you would have tendered to the Clerk of the Court in the first place, you wouldn't need the bond and save yourself 400 bucks.

THE COURT: They didn't just require ten percent?

MR. BEYER: Ten percent? No.

THE COURT: Or 25 percent?

MR. BEYER: In appeal situations, apparently they require the full amount up front....

(CP 191-192 incorp. Court's Oral Rulings, Transcript of 03/21/2014 at pg.1 ln.25 to pg.2 ln.15).

Had the Superior Court understood the need to post all \$20,000, it might have went along with the suggestion of the Respondent, DLI and granted a partial waiver of the bond. (CP 64 In 18-23).

C. The Department of Labor & Industries failed to serve Fire Control Resources, LLC, through one of its' agents, the critical Order and Notice Reconsidering the Notice and Order of Assessment dated 10/24/2011, that is the basis for hearing and appeal, and where the failure was raised at the first opportunity.

Despite the fact that a Declaration of Service purported to assert personal service (CABR 55) of the critical Order and Notice Reconsidering Notice and Order of Assessment, dated 10/24/2011, the ALJ made a finding that Appellant was served by certified mail without any support in the record and contrary to the documentary record (**Appendix G** at pgs 9&10, CABR 25 In 15-17, CABR 26 In 5-8).

The alleged Declaration is far from being a Declaration and is nothing more than statements, in that it fails to contain essential required language, including "swearing under penalty of perjury" (**Appendix A**, CABR 55). Washington Supreme Court General Rule 13 and/or RCW 9A.72.085.

The person signing the certification was Whitman County Sheriff's Records & Information Officer, Kay Auvil, who certified that she is certifying for Sheriff Brett J. Myers, that Sheriff Myers is certifying that Deputy Tim Cox served Neil Fuchs (**Appendix A**, CABR 55). The declarant suffers from lack of personal knowledge and asserts multiple levels of hearsay. The 14 year experienced DLI Revenue Agent accepted the purported Declaration of Service as good and legal, and thus violated Washington law, as the document is contrary to Washington law.

Appellant objected in writing to the critical Order and Notice Reconsidering Notice and Order of Assessment, dated 10/24/2011 at the first opportunity (**Appendix B**, CABR 42). Respondent, DLI, at all times failed to provide evidence to prove proper service of process according to established Due Process principles.

"Basic to litigation is jurisdiction, and first to jurisdiction is service of process." Rodriguez v. James-Jackson, 127 Wn.App. 139, 143, 111 P.3d 271 (2005). Service must be both constitutionally adequate **and** in compliance with statutory requirements. Woodruff v. Spence, 88 Wn.App. 565, 571, 945 P.2d 745 (1997), *rev. denied*, 135 Wn.2d 1010 (1998). Constitutional due process requires that a plaintiff use a method of service "reasonably calculated to

inform the defendant of the lawsuit." Gerean v. Martin-Joven, 108 Wn.App. 963, 971, 33 P.3d 427 (2001), *rev denied*, 146 Wn.2d 1013 (2002). However, the fact that the defendant received actual notice of the suit is not sufficient. See, Lepeska v. Farley, 67 Wn.App. 548, 552, 833 P.2d 437 (1992). "[A]ctual knowledge of pending litigation ... standing alone is insufficient to impart the statutory notice required to invoke the court's in personam jurisdiction." Thayer v. Edmonds, 8 Wn.App. 36, 40, 503 P.2d 1110 (1972), *rev. denied*, 82 Wn.2d 1001 (1973). Washington statutes mandate that a copy of the summons either be delivered to the defendant personally or by substitute service. Gerean, 108 Wn.App. at 969.

An affidavit of service is presumed valid, but may be rebutted by clear and convincing evidence of irregular service. Vukich v. Anderson, 97 Wn.App. 684, 985 P.2d 952 (1999); Woodruff v. Spence, 88 Wn.App. 565, 945 P.2d 745 (1997); Leen v. Demopolis, 62 Wn.App. 473, 815 P.2d 269 (1991).

When service of process is challenged, the plaintiff has the initial burden of proof to establish a prima facie case of sufficient service. Gross v. Sunding, 139 Wn.App. 54, 60, 161 P.3d 180 (2007). While an affidavit of service of process is presumptively valid on its face, a party challenging service of process can show

the service was improper and irregular by clear and convincing evidence. Woodruff v. Spence, 76 Wn.App. 207, 209-10, 883 P.2d 936 (1994). Plaintiff carries the burden of proving that service was proper. Witt v. Port of Olympia, 126 Wn.App. 752, 757, 109 P.3d 489 (2005).

"[T]hose who are to be served with process are under no obligation to arrange a time and place for service or to otherwise accommodate the process server." Weiss v. Glemp, 127 Wn.2d 726, 734, 903 P.2d 455 (1995) (*quoting* Thayer v. Edmonds, 8 Wn.App. 36, 42, 503 P.2d 1110 (1972)).

"A judgment is not void merely because it is erroneous. It is void only if the court that rendered judgment **lacked jurisdiction of the subject matter, or of the parties, or if the court acted in a manner inconsistent with due process of law.**" See, 11 C. *Wright & A. Miller, Federal Practice and Procedure* § 2862 at 198-200 (1973) and cases cited therein. In re Center Wholesale Inc., 759 F.2d 1440 (9th Cir. 1985). A void order is a "legal nullity." Watts v. Pinckney, 752 F.2d 406, 410 (9th Cir. 1985).

In this instance, not only is the purported Declaration defective on its face, but the document contains an obvious lack of personal knowledge on its face with obvious multiple layers of

hearsay. Even the attempt at substitute service was futile, as the person identified as “Neil Fuchs” (father of Paul Fuchs) had no authority to receive papers, if they were served upon him.

D. The Department of Labor & Industries failed to provide any critical evidence for the Successorship Liability jurisdictional elements, as to dollar value of alleged assets, so that a mathematical calculation could be made whether more than 50% of the alleged assets had been transferred from one business to another, pursuant to RCW 51.16.200 and 51.08.177.

If there was some asset allegedly transferred from FCR Enterprises, Inc. to Appellant, Fire Control Resources, LLC, the DLI failed at all times in the DLI case file history and the record to assess what the monetary value of such Asset. See, Gall Landau Young v. Hedreen, 63 Wn.App. 91, 98, 816 P.2d 762 (1991) (discussing successor liability generally and the need for Transferred Assets to be determined by Fair Market Value).

There was no monetary value in the alleged predecessor FCR Enterprises, Inc., as it was insolvent, had no contracts, and had no good Reputation or Goodwill. See, Experience Hendrix, LLC v. Hendrix Licensing.Com, Ltd, No. C09-285Z (D.C.W.D. Wash. 09-21-2011) discussing Reputation and Goodwill as Value under Washington law and citing Orca v Dept. L&I, infra).

It defies sound logic to claim a valuable asset was transferred from one entity to another and yet not even mention anywhere what its' monetary value was. A fair market value analysis is required, so that a simple math calculation can be made as to whether more than 50% of the assets of one company were transferred to another. Orca Logistics, Inc. v. Dept. of L&I, 152 Wn.App. 457, ¶ 7 and fn.12, 216 P.3d 412, 414-15 (2009) (“**a major portion of its assets**”; which means, “**more than fifty percent of the fair market value of either the (i) tangible assets or (ii) intangible assets of the taxpayer.**”) The law requires a high degree of mathematical certainty as appellate review is impossible, if the appellate court cannot determine the accounting method for calculating “a major portion of its assets”, which is more than 50% of the fair market value of tangible or intangible assets.

The Asset claimed as transferred, one Paul Fuchs, was and is a natural human being and not the property of any entity (i.e., 13th Amendment to the U.S. Constitution Prohibition of Involuntary Servitude), and was not under any contractual obligation to FCR Enterprises, Inc., thus not a asset of defunct FCR Enterprises, Inc.

Moreover, said natural human being did not have any “value” as it is more than obvious from the record that the reason

there is even any claim of successorship liability, is because of Paul Fuchs' terrible mishandling of the prior business (defunct predecessor FCR Enterprises, Inc.). It is illogical to legally state that Paul Fuchs as the manager of the predecessor screwed up on taxes and poor business practices causing liability, then claim Paul Fuchs is a valuable person to the second company (alleged successor – Fire Control Resources, LLC). Indeed, Paul Fuchs could not even secure wildland fire fighting contracts with all his alleged knowledge, until Paul Fuchs filed for Bankruptcy, which caused the DLI and the Forest Service to change their ways. (CABR Testimony of Paul Fuchs 11-05-2012, page 46, ln 9-17).

E. Rap 18.1 Request for Fees & Costs

Appellant, Fire Control Resources, LLC, requests attorney's fees and costs under RAP 18.1 for the following reasons:

First, attorney fees should be awarded pursuant to RCW 51.52.130 – Attorney and witness fees in court appeal.

Second, attorney fees should be awarded according to the Equal Access to Justice statute, RCW 4.84.350¹¹, as there should

¹¹ Appellant recognizes that under the Equal Access to Justice statute he is limited to \$25,000 in attorney fees, at each level of court proceedings.

be no doubt that Appellant was compelled to seek justice in this Division III Court of Appeals after being denied the opportunity to argue that its constitutional claims should prevail over a statutory based bar to the Superior Court, because the Respondent, DLI should have dismissed the Successorship claim in the face of a failure of service of process and the ominous presence that the Successorship Liability claim should have never been brought in the first place as the Statute of Limitations had long before run; and further Respondent should have dismissed the matter after learning it failed to present jurisdictional statutory elements by evidence to meet value and percentage of value for alleged transfer of assets.

Third, attorney's fees should also be awarded under the equitable basis that Appellant is conferring a substantial benefit to a ascertainable class (i.e., the State of Washington and the public exposed to the Industrial Insurance laws under RCW Title 51 et seq.), as a private attorney general, protecting constitutional principles, ignored by the Washington Attorney General's Office as the advising attorney for the Washington Department of Labor & Industries, using public funds, that adversely impact and harm the public. Dempere v. Nelson, 76 Wn.App. 403, 407 (1994); Weiss v. Bruno, 83 Wn.2d 911 (1974).

Finally, attorney's fees should be awarded pursuant to 42 U.S.C. 1988(a) & (b) - *Proceeding in vindication of civil rights*, as Appellant has been forced to litigate this matter to this appellate level and the Declaration of Service (Appendix A) for the critical Order and Notice of Assessment reconsidering Notice and Order of Assessment (Appendix C) which Declaration contains obvious language (i.e., on its face) that can in no way meet constitutional standards of due process (i.e., no personal knowledge - the Sheriff's clerk swears under oath that the Sheriff swears, that the Deputy swears he served a non-authorized member of Fire Control Resources, LLC); and Respondent DLI learned at least post-Administrative Hearing through Appellant's BIIA Briefing (Appendix H) that there was no statutory jurisdictional evidence as to value of the total assets and value of allegedly transferred assets in the record to make a mathematical calculation whether more than 50% of the assets had been transferred; and a clear violation of the Statute of Limitations was present at all times for purposes of bringing the Successorship Liability claim, when Respondent DLI could have just withdrew its Successor Liability proceeding before the matter was filed in Superior Court.

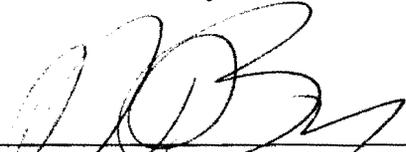
Appellant, Fire Control Resources, LLC also requests that this Court either grant the attorney fees & costs that should have been awarded at the Superior Court or remand for the Superior Court to make a determination as to the amount of costs & fees that should have been awarded at that level.

CONCLUSION

For the reasons stated herein, the Successorship Liability decision should be reversed and dismissed. This Court has the authority to grant the dismissal and Appellant requests this Court to reverse and dismiss the Successorship Liability claim, to avoid further delay and cost.

Appellant requests reasonable attorney fees, as it has done all that it could to get the attention of the Department of Labor & Industries, and its statutory counsel, the Attorney General's Office, by providing Notice of due process defects in its' service at the first opportunity (and before great amounts of time were expended), within Appellant's Notice of Appeal (Appendix B). The DLI's lack of recognition in the face of clear statutory language and case law demands attorney fees to be awarded to one that must go through this arduous process to be able to get back to work.

RESPECTFULLY SUBMITTED this 19th day of November, 2014.



MICHAEL J. BEYER, WSBA#9109
Attorney for Appellant
810 S. Cannon St
Spokane, WA 99204-4353
(509) 499-1877

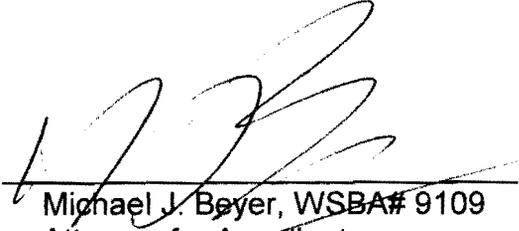
CERTIFICATE OF SERVICE

I certify that on the 19th day of November, 2014, I caused a true and correct copy of this document to be served on the following in the manner indicated below:

Copy Receive to Spokane Attorney General Office

E-mail

Steve Vinyard, WSBA# 29737
Counsel for State of WA (Department of L&I)
Washington Attorney General's Office
P.O. Box 40121
Olympia, WA 98504-0121
(360) 586-7715*voice
(360) 586-7717*fax

By: 

Michael J. Beyer, WSBA# 9109
Attorney for Appellant
810 S. Cannon St.
Spokane, WA 99204-4353
(509) 499-1877

577,608-04

F

RECEIVED

OCT 28 2011

DEPT OF LM
SPOKANE, WA

State of Washington
Whitman County Sheriff
Civil Division
Colfax, WA 99111

Process Number: 11W0296

Court Number: 0481171

I, Brett J. Myers, Sheriff of Whitman County Sheriff do hereby certify that I received the within and foregoing Order, Notice on 26th day of October, 2011, and that I served the same on:

PAUL MICHAEL FUCHS	(Defendant)
902 Cove Rd		
TEKOA, WA 99033		
Served on: 26th day of October, 2011 at 17:50:00	by Tim Cox	
Served to: NEIL FUCHS	Father	
902 Cove Rd		
TEKOA, WA 99033		

Returned on the 27th day of October, 2011

I also certify that I endorsed on the said copy the date of service, signed my name, and added my official title thereto.

Dated the 27th day of October, 2011

Fees:

Service:	20.00
Mileage:	36.00
Other :	10.00
Total :	66.00

Brett J. Myers, Sheriff
Whitman County Sheriff, Washington

BY: Kay Curriel
Authorized Representative
Civil Division

My commission expires:

Notary Public

Appendix
A

STATE OF WASHINGTON
BOARD OF INDUSTRIAL INSURANCE APPEALS
FOR THE DEPARTMENT OF LABOR & INDUSTRIES

RECEIVED
NOV 02 2011
DEPT. OF L&I
SPOKANE, WA

STATE OF WASHINGTON-
DEPARTMENT OF LABOR &
INDUSTRIES,

Plaintiff,

vs.

FIRE CONTROL RESOURCES, LLC
dba FIRE CONTROL RESOURCES
902 COVE ROAD
TEKOA, WA 99033
Account ID # 577, 608-04
UBI # 602529442

Defendant(s).

No.

NOTICE OF APPEAL OF NOTICE &
ORDER FOR ASSESSMENT AND
DENIAL OF RECONSIDERATION

RE: Assessment of Worker's
Compensation Taxes

Original Tax # 0481171

Steven Beaty – Litigation Specialist
Judy Cook – Revenue Agent

**NOTICE OF APPEAL TO NOTICE & ORDER OF ASSESSMENT
AND DENIAL OF RECONSIDERATION**

- TO: Board of Industrial Appeals, P.O. Box 42401, Olympia, WA 98504-2401 (certified mail)
TO: State of WA, Dept. of Labor & Industries, Olympia, WA 98504-4170 (certified mail)
TO: State of WA, Dept. of Labor & Industries, 901 N. Monroe, Ste. 100 (copy filed & conform)

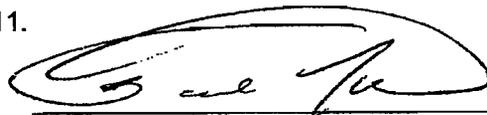
YOU AND EACH OF YOU are hereby notified that the Defendant, feeling itself/himself aggrieved, does hereby appeal/contest the determinations/orders on or about 02-13-2009 and 10-24-2011.

Defendant(s), further objects, disputes and challenges:

- 1) timely notice and service;
- 2) the form/contents of the Notice;
- 3) factual basis for the assessment; and
- 4) the amount of assessment.

Defendant(s) further demands preservation of all statutory and/or common law rights, pursuant to RCW 34.05.020, as well as his Washington State and United States Constitutional rights as recognized pursuant to RCW 34.05.020.

DATED this 2nd day of November, 2011.



FIRE CONTROL RESOURCES, LLC
by PAUL FUCHS, Manager/Member
and PAUL FUCHS individually

BOARD OF
INDUSTRIAL INSURANCE APPEALS
OLYMPIA, WASHINGTON
RECEIVED
NOV 08 2011

NOTICE OF APPEAL: 1 of 2

Appendix
2

Notice of Appeal/Contest pursuant to:

RCW 34.05.010(1) "Adjudicative proceeding" means a proceeding before an agency in which an opportunity for hearing before that agency is required by statute or constitutional right before or after the entry of an order by the agency. Adjudicative proceedings also include all cases of licensing and rate making in which an application for a license or rate change is denied except as limited by RCW 66.08.150, or a license is revoked, suspended, or modified, or in which the granting of an application is contested by a person having standing to contest under the law.

RCW 34.05.020 Nothing in this chapter may be held to diminish the constitutional rights of any person or to limit or repeal additional requirements imposed by statute or otherwise recognized by law. Except as otherwise required by law, all requirements or privileges relating to evidence or procedure shall apply equally to agencies and persons. Every agency is granted all authority necessary to comply with the requirements of this chapter through the issuance of rules or otherwise. No subsequent legislation shall be held to supersede or modify the provisions of this chapter or its applicability to any agency except to the extent that such legislation shall do so expressly.



**ORDER AND NOTICE
RECONSIDERING NOTICE AND ORDER OF ASSESSMENT
Department of Labor & Industries.**

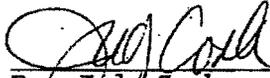
No. 0481171

An Employer, Account ID 577,608-04
UBI: 602529442

You are further notified that any appeal of this ORDER must be made within thirty days of the date of service by filing an appeal with the the Board of Industrial Insurance Appeals, PO Box 42401, Olympia, WA 98504-2401, and sending a copy of said appeal to the Director of the Department of Labor & Industries, by mail or personal delivery, pursuant to RCW 51.48.131.

If said APPEAL is not made this ORDER shall be deemed FINAL and the Director without further notice may file a WARRANT with the Clerk of County for the unpaid balance of the above assessed amount, plus costs, which will become a LIEN upon the title to all real and personal property of the employer, the same as a JUDGMENT.

Dated this 24th day of October 2011
For the Director of the
DEPARTMENT OF LABOR & INDUSTRIES



By: Judy Cook
Revenue Agent
Phone: (509) 324-2533
Dept. of Labor & Industries
901 N Monroe, Ste 100
Spokane WA 99201-2149

STATUTORY REFERENCES ATTACHED
577,608-04 1067747

Page: 2

NOTICE AND ORDER OF ASSESSMENT

Department of Labor and Industries
COLLECTIONS
 Olympia, Washington 98504-4170

) Notice and Order of
) Assessment of Industrial
) Insurance Taxes

IN THE MATTER OF THE ASSESSMENT OF
 INDUSTRIAL INSURANCE TAXES AGAINST:

) No. 0481171

FIRE CONTROL RESOURCES LLC
 A LIMITED LIABILITY COMPANY,
 DBA FIRE CONTROL RESOURCES
 902 COVE RD
 TEKOA WA 99033

SUCCESSOR ACCOUNT ID 577,608-04
 SUCCESSOR UNIFIED BUSINESS ID 602529442

RE: FCR ENTERPRISES INCORPORATES
 904 COVE RD
 TEKOA WA 99033

PREDECESSOR ACCOUNT ID 577,608-03
 PREDECESSOR UNIFIED BUSINESS ID 602192105

THE DIRECTOR OF THE DEPARTMENT OF LABOR AND INDUSTRIES OF THE STATE
 OF WASHINGTON TO:

FIRE CONTROL RESOURCES LLC
 PAUL W FUCHS, MEMBER
 902 COVE RD
 TEKOA WA 99033

IT IS ORDERED by the Director, pursuant to RCW 51.16.200, that taxes
 due and owing by you to the STATE FUND are hereby determined to be
 the sum of Nineteen Thousand, Three Hundred Sixty Four and 19/100
 Dollars, (\$19,364.19), and that said taxes are hereby assessed.

NOTICE AND ORDER OF ASSESSMENT #	PERIOD (QTR)	PREMIUM	PAYMENTS	TOTAL ASSESSMENT
387072	044	1,563.33	0.00	1,563.33
385857	043	1,864.04	0.00	1,864.04
377058	042	645.02	0.00	645.02
360720	033	4,681.76	0.00	4,681.76
357165	032	118.79	0.00	118.79
357165	031	120.77	0.00	120.77
357165	024	1,793.14	0.00	1,793.14
357165	023	3,998.04	0.00	3,998.04
357165	022	4,579.30	0.00	4,579.30
				\$ 19,364.19

577,608-04 0891345

*Appendix
D*

NOTICE AND ORDER OF ASSESSMENT
Department of Labor and Industries

No. 0481171

An Employer, Account ID 577,608-04
UBI: 602529442

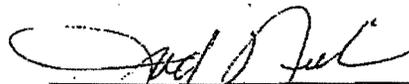
You are hereby notified that this NOTICE AND ORDER OF ASSESSMENT is a demand for payment and the Director may issue a Notice and Order to Withhold and Deliver to satisfy this NOTICE AND ORDER OF ASSESSMENT; provided that, in any proceeding under Title 11 of the United States Code, the Department will observe the terms of 11 USC Sec. 362.

Request for reconsideration of this order must be made in writing to the DEPT OF LABOR AND INDUSTRIES 901 N MONROE, STE 100 SPOKANE WA 99201-2149 within thirty (30) days. A further appealable order will follow such a request.

You are further notified that any appeal of this NOTICE AND ORDER OF ASSESSMENT must be made within thirty days of the date of service by filing an appeal with the Board of Industrial Insurance Appeals, PO Box 42401, Olympia WA 98504-2401, and sending a copy of said appeal to the Director of the Department of Labor and Industries, by mail or personal delivery, pursuant to RCW 51.48.131.

If said APPEAL is not made this NOTICE AND ORDER OF ASSESSMENT shall be deemed FINAL and the Director without further notice may file a WARRANT with the Superior Court Clerk for the unpaid balance of the above assessed amount, plus costs, which will become a LIEN upon the title to and interest in all real and personal property of the employer, the same as a JUDGMENT.

Dated this 13th day of February 2009
For the Director of the
DEPARTMENT OF LABOR AND INDUSTRIES



By: Judy Nielsen
Revenue Agent
Phone: (509) 324-2533
Dept of Labor and Industries
901 N Monroe, Ste 100
Spokane WA 99201-2149

STATUTORY REFERENCES ATTACHED
577,608-04 0891345

Page: 2

DEPARTMENT OF LABOR AND INDUSTRIES

RETURN OF SERVICE

STATE OF WASHINGTON)
) ss
COUNTY OF SPOKANE)

FIRE CONTROL RESOURCES
ACCOUNT ID: 577,608-04
UBI NUMBER: 602 529 442

I, Dahynga Larsen, make the following statement of my own volition and upon my personal knowledge: I am an employee of the State of Washington, Department of Labor and Industries; I am over the age of eighteen years, not a party to the within action and competent to be a witness in any action that may be brought thereon; that I personally served Notice and Order of Assessment of Industrial Insurance Taxes

No. 0481171 on Fire Control Resources LLC

(an individual, a partnership, a corporation, a limited liability company) on the 17 day of February, 2009, IN

Spokane County, Washington, by delivering to and leaving with

(1) said Paul Fuchs personally at 901 N. Monroe #100 Spokane WA 99201;

(2) _____ at the house of the usual abode of said _____ located at _____ said _____ being a person of suitable age and discretion then resident therein;

(3) _____ personally, he/she then and there being the _____ of said corporation, a full, true, and correct copy at _____

DATED THIS 17 DAY OF February, 2009

Dahynga Larsen



AND SWORN TO BEFORE ME This 17th day of Feb., 2009
Cynthia K. Anderson
Notary Public in and for the State of Washington

Residing at Spokane, WA

My commission expires on Sept 14 2011

577,608-04 0891345

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SEARCH

Corporations and Charities Division

Corporations Home	Nonprofit Home	Charities Home	Awards	Public Notices	Contact Info
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Search Results

Viewing 1 - 12 of 12 results for "fcr"

- [FCR DEVELOPMENT CORPORATION](#)
- [FCR ENTERPRISES INC](#)
- [FCR HOTELIERS LLC](#)
- [FCR INC](#)
- [FCR2 INC](#)
- [FCRHEE CORPORATION](#)
- [GOLFCROSS LLC](#)
- [SURFCREST BEACH ASSOCIATION](#)
- [SURFCREST CONDOMINIUM OWNERS ASSOCIATION](#)
- [SURFCREST LLC](#)
- [SURFCREST WATER CORPORATION](#)
- [WOLFCREEK PARTNERS LLC](#)

FCR ENTERPRISES, INC.

UBI Number 602192105
Category REG
Profit/Nonprofit Profit
Active/Inactive Inactive
State of WA
Incorporation
WA Filing Date 03/25/2002
Expiration Date 03/31/2005
Inactive Date 07/01/2005
Duration Perpetual

Registered Agent Information

Agent Name PAUL M FUCHS
Address 910 CAROLINA WAY
City SPOKANE
State WA
ZIP 99208

Special Address Information

Address
City
State
Zip

[View Additional Information »](#)

[Purchase Documents for this Corporation »](#)

» Close «

Board of Industrial Insurance Appeals
 In re: Fire Control Response
 Docket No. 1123186
 Exhibit No. 2
 ADM. 11/1/12 REJ.
 Date

[« Search Again](#)

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 Washington Secretary of State - Corporations Division
 801 Capitol Way South

Appendix E

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SEARCH

Corporations and Charities Division

Corporations Home	Nonprofit Home	Charities Home	Awards	Public Notices	Contact Info
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Search Results

Viewing 1 - 10 of 10 results for "fire control"

- [A1 FIRE CONTROL LLC](#)
- [ABC FIRE CONTROL INC](#)
- [AMERICAN FIRE CONTROL INC](#)
- [APEX FIRE CONTROL INC](#)
- [CONTROL FIRE SYSTEMS INC](#)
- [FIRE CONTROL COMPANY INC](#)
- [FIRE CONTROL RESOURCES LLC](#)
- [FIRE CONTROL SPRINKLER SYSTEMS COMPANY](#)
- [OLYMPIC FIRE CONTROL LLC](#)
- [RESTAURANT FIRE CONTROL INC](#)

FIRE CONTROL RESOURCES L.L.C.

UBI Number	602529442
Category	LLC
Active/Inactive	Inactive
State of Incorporation	WA
WA Filing Date	03/22/2006
Expiration Date	03/31/2009
Inactive Date	07/01/2009
Duration	Perpetual

Registered Agent Information

Agent Name	PAUL FUCHS
Address	902 COVE ROAD
City	TEKOA
State	WA
ZIP	99033

Special Address Information

Address	
City	
State	
Zip	

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Appendix F

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BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

1 IN RE: FIRE CONTROL RESOURCES LLC) DOCKET NO. 11 23186
2)
3 FIRM NO. 577,608-04) PROPOSED DECISION AND ORDER

4 INDUSTRIAL APPEALS JUDGE: Bruce E. Ridley

5 APPEARANCES:

6 Firm, Fire Control Resources, LLC, by
7 Paul Fuchs, Corporate Officer

8 Department of Labor and Industries, per
9 Steve Beaty, Litigation Specialist, and by
10 The Office of the Attorney General, per
11 Pamela V. Reuland, Assistant

12 The firm, Fire Control Resources, LLC, filed an appeal with the Board of Industrial Insurance
13 Appeals on November 7, 2011, from an order of the Department of Labor and Industries dated
14 October 24, 2011. In this order, the Department affirmed its Notice and Order of Assessment
(NOA) dated February 13, 2009. In that Notice and Order, the Director assessed taxes due and
owing to the State Fund in the amount of \$19,364.19, for:

- The last three quarters of 2002 and first two quarters of 2003, under NOA No. 357165;
- The third quarter of 2003, under NOA No. 360720;
- The second quarter of 2004, under NOA No. 377058;
- The third quarter of 2004, Under NOA No. 385857; and,
- The fourth quarter of 2004, under NOA No. 387072.

22 The Department order is **AFFIRMED**.

23 **PROCEDURAL AND EVIDENTIARY MATTERS**

24 On January 3, 2013, the parties agreed to include the Jurisdictional History in the Board's
25 record. That history establishes the Board's jurisdiction in this appeal.

26 **I. ALL TESTIMONY CONCERNING SERVICE TAKEN OUT OF COLLOQUY**

27 Throughout the hearings in this case, Fire Control Resources, LLC, attempted to argue that
28 the Department had not properly served the corporation. Corporate Officer Paul Fuchs testified he
29 had authorized service only on himself and that the Department had served some of the documents
30 on his wife. I placed all of that testimony in colloquy, because Mr. Fuchs had knowledge of the
service, knew of the Department's earlier Notices and Orders of Assessments, and took no action.

*Appendix
6*

1 He did not bring any action to force the Department to serve the earlier Notices and Orders of
2 Assessments personally on him.

3 The Department had the opportunity to respond to Fire Control's argument concerning lack
4 of proper service, and I placed that responsive evidence in colloquy.

5 All testimony concerning service of process is taken from colloquy and placed into the
6 record. It will be addressed as a preliminary issue in this case.

7 **II. EXHIBITS NOT OFFERED**

8 On the first day of the hearing, Mr. Fuchs moved to admit the entire file the Department had
9 sent him upon his request for discovery. I explained to Mr. Fuchs that ER 402 only allows relevant
10 evidence to be admitted and that discovery of inadmissible evidence is allowed if that evidence is
11 reasonably calculated to lead to the discovery of admissible evidence. CR 26(b)(1). I continued
12 the hearing for two hours to allow the parties to confer about which documents should be
13 numbered. Many exhibits were listed and numbered on the Supplemental Exhibit Sheet, including
14 some which a party: (1) knew existed, (2) alleged would be provided, but (3) did not currently have
15 available. I listed those expected documents as "Never Offered" on the Supplemental Exhibit
16 Sheet, page 1, in locations the parties deemed would be most easily understood in relation to
17 nearby exhibits if the expected documents were provided and admitted. Either party could offer
18 such exhibits once they had been provided and properly marked and numbered, and I would rule
19 on the admissibility of each document after the document had been marked and offered. A party
20 was entitled to offer such a document as the hearings progressed. Exhibit Nos. 3, 5, 6, and 7 never
21 were presented to be marked and never were offered. Those documents never were part of the
22 record and do not exist for purposes of this appeal. Supplemental Exhibit Sheet, Page 1, is
23 amended to reflect these as "Never Offered" exhibits.

24 I marked Exhibit No. 55, a letter to Paul Fuchs from Litigation Specialist Steven Beaty, during
25 the hearings, but I did not rule on its admissibility. That exhibit is deemed to have been offered and
26 is admitted.

27 **III. PRIMA FACIE CASE**

28 Mr. Fuchs presented a prima facie case that FCR and the LLC were separate business
29 entities. The Department moved to dismiss for failure to present a prima facie case. 11/26/12 Tr.
30 at 83. I denied that motion.

32

1 **IV. ACRONYMS**

2 This decision includes businesses with similar names and a number of state agencies. For
3 purposes of clarification, I will refer to the following businesses using acronyms as follows: for Fire
4 Control Resources, Inc., (FCR); for Fire Control Resources, LLC, (LLC); for Washington
5 Department of Natural Resources, (DNR); for United States Department of Agriculture, United
6 States Forest Service, (USDA); and, for The Department of Labor and Industries, (L&I).

7 **ISSUES**

- 8 1. Was the LLC properly served with Notice and Order of Assessment
9 No. 0481171?
- 10 2. Is the service of the prior Notices and Orders of Assessment res judicata or
11 otherwise sufficient for the Board to have jurisdiction in this appeal?
- 12 3. Within the meaning of RCW 51.16.200 and RCW 51.08.177, was the LLC a
13 successor to FCR, so that the LLC was liable for the taxes owing by the prior
14 business?
- 15 4. Does the LLC owe the taxes assessed under Notice and Order of Assessment
16 No. 0481171?
- 17 5. Does the Board have jurisdiction to consider whether L&I conspired to keep
18 the LLC from operating as a business in the state of Washington?

19 **EVIDENCE PRESENTED**

20 Mr. Fuchs operated a business known as FCR General Contractors into the year of 2002.
21 That company mostly did fire suppression work, and its main physical asset was a 1959
22 International Harvester pumper truck. In 2002, after incurring debts, Mr. Fuchs founded FCR.
23 Mr. Fuchs testified that he was the lead corporate officer for FCR and the LLC. He testified that he
24 managed both FCR and the LLC. He concluded they were separate entities, did not use the same
25 equipment, and were engaged in different types of business. He admitted the LLC was created
26 after FCR had to close due to the actions L&I took to enforce the liens it had established for unpaid
27 industrial insurance taxes. Mr. Fuchs testified that the two entities had different corporate officers.
28 He admitted he was the lead officer for both entities and that his wife had been a corporate officer
29 of the LLC. He testified she had never been authorized to receive service. He could not recall
30 some of L&I's legal papers having been served on him at that agency's Monroe Street office in
31 Spokane.

32 Mr. Fuchs was aware of each service of process. He had access to all L&I assessments and
was aware of each L&I action.

1 FCR and the LLC had primarily the same functions. The basic business of each corporation
2 was to fight wildfires, and, in early summer and middle summer, sometimes to clear brush and thin
3 woodlands to prevent forest and range fires. Mr. Fuchs, for FCR or the LLC, would file bids with
4 state and federal agencies, including DNR and the federal USDA, which agencies hired contractors
5 to provide firefighters and pumper trucks. For FCR or the LLC, Mr. Fuchs was expected to provide
6 firefighters, suitably equipped and trained, and a pumper truck. If an agency accepted a bid, it
7 would pay Mr. Fuchs, who would pay the workers he had hired; he was expected to pay the
8 Department of Labor and Industries assessments for the employees of either FCR or the LLC. The
9 equipment FCR or the LLC was to provide included the individual tools each firefighter would be
10 expected to use.

11 Mr. Fuchs testified the equipment used by FCR and the LLC differed. FCR had used an old
12 International Harvester pumper truck. However, tools wear out, and the truck had to be replaced.
13 Mr. Fuchs, as a corporate officer, leased two new Chevrolet pumper trucks, one in 2006 and the
14 second in 2007. The leasing company ultimately took back the 2007 truck for failure to make
15 payments. Mr. Fuchs had the title to the lease for the second truck transferred to another person,
16 Ted Eagle, under the business name of "Aegis Engines." 11/5/12 Tr. at 52, 98. Aegis Engines paid
17 off the lease, and the LLC then leased the truck from Aegis Engines.

18 Mr. Fuchs testified that not all of the employees FCR hired to fight wildfires were hired by the
19 LLC, although some were. For both companies, Mr. Fuchs primarily was responsible for operating
20 the truck. Mr. Fuchs prepared all of the contract proposals and submitted them to the federal and
21 state land agencies. He knew how to contact the appropriate DNR and USDA contract agents. His
22 expertise caused FCR and the LLC to gain contracts to fight wildfires. Mr. Fuchs knew which
23 firefighters to contact to agree to be firefighters for FCR and the LLC and hired those firefighters.
24 Mr. Fuchs stated no money from FCR was transferred to the LLC. He testified the LLC was not a
25 successor corporation.

26 Mr. Fuchs did not specifically contest the hours assessed for employee work during the
27 quarters covered by NOA No. 0481171. Mr. Fuchs testified L&I had conspired to cause FCR and
28 the LLC legal difficulties.

29 Brett White is a manager of the truck division of McCurley Chevrolet in Kennewick,
30 Washington. He testified Mr. Fuchs leased the first Chevrolet truck in 2006 and the second in
31 2007. The 2006 truck was licensed to Mr. Fuchs' personal address, 902 Cove Road, in
32

1 Tekoa, Washington. Mr. White testified GMAC Finance had named Fire Control Resources LLC as
2 the owner.

3 Ted Eagle has been a firefighter for the City of Spokane for over 9 years. He testified he is a
4 corporate officer of the LLC and one of two partners who own Aegis Engines. Mr. Eagle testified
5 that Aegis Engines also is a company which contracts to fight forest fires. Mr. Eagle met Mr. Fuchs
6 in 2007. In 2008, Mr. Eagle agreed to invest \$25,000 in the LLC and become a corporate officer.
7 He took out a personal loan from the Firefighters Credit Union in the amount of \$25,000, and he
8 paid that and an additional \$7,000 to GMAC Finance to pay off the loan on the 2006 Chevrolet
9 truck. Aegis Engines leases the truck back to Mr. Fuchs, for the LLC. Mr. Fuchs, for the LLC,
10 makes monthly payments to Aegis of \$605.

11 Mr. Eagle explained that Aegis and the LLC each bid on individual offers from DNR and the
12 Forest Service to provide firefighters. Demand for such firefighters generally is seasonal, with the
13 peak of the fire season usually spanning late summer into the middle of the fall. Agency contracts
14 are offered on an as-needed basis, and need for firefighters may be spotty throughout most of the
15 early and middle summer. These early-season contracts mostly would consist of clearing brush,
16 sometimes for private parties. Mr. Eagle's agreement to become a corporate officer of the LLC
17 gave it and Aegis Engines more opportunity to hire young firefighters. This opportunity to keep
18 such employees busy was more likely to keep them from looking for work elsewhere with
19 competing wildfire-fighting companies, so Aegis Engines and the LLC would be more likely to have
20 employees available on short notice. Mr. Eagle testified he did not know FCR had existed, only the
21 later LLC.

22 Jeff Martin initially was called as an adverse witness by the LLC. For over 11 years, he has
23 been a revenue agent for L&I. Mr. Martin works at that agency's Monroe Street office in Spokane.
24 In 2003, he assumed the duties of overseeing collection of industrial insurance taxes on the FCR
25 account. Mr. Martin testified he received one payment of about \$6,000 from the company on some
26 back industrial insurance taxes. Mr. Martin described his attempts to collect the premiums due. He
27 testified that Judy Cook took over the FCR account for L&I in 2004. Mr. Martin recalled working
28 with Paul Fuchs and his wife, Connie. He testified L&I seized FCR's bond around April 16, 2004.

29 Mr. Martin also was called directly by the Department. He testified it is a revenue agent's job
30 to determine whether a new company is a successor to an earlier company and to determine
31 whether the new company is liable for the employment taxes still owed by the earlier company.

32

1 Mr. Martin concluded Mr. Fuchs' financial behavior showed significant employer misconduct,
2 including pyramiding businesses, rising debts, and accounts being opened and closed.

3 Mr. Martin is familiar with the concept of successor companies. He testified one business
4 did not have to be exactly the same type of business as an earlier one to be a successor. He
5 concluded only parts of a business had to be the same. Mr. Martin testified that he, for L&I, entered
6 into five separate voluntary payment agreements with Mr. Fuchs for FCR. Mr. Fuchs made a few
7 payments and ultimately did pay two quarterly reports late, but generally he did not complete the
8 payment plans. Mr. Martin testified Mr. Fuchs continued to bid on firefighting contracts when
9 neither FCR nor the LLC was a valid corporation registered with the Washington Secretary of State.

10 Mr. Martin testified Mr. Fuchs had come into the Monroe Street office to submit the actual
11 quarterly hours of FCR for the third quarter of 2003. Mr. Martin testified he printed out Order and
12 Notice Reconsidering Notice and Order of Assessment of Industrial Insurance Taxes No.
13 0360720—Exhibit No. 42—and personally handed that document to Mr. Fuchs. Mr. Martin also
14 testified that he had reviewed L&I's records. He concluded Mr. Fuchs had been wholly aware of the
15 Department's notices and orders of assessments.

16 Due to Mr. Fuchs' failure to follow through with any payment agreements, Mr. Martin testified
17 that in 2004, L&I began the procedure to revoke Mr. Fuchs' contractor's license. Mr. Martin testified
18 that this was the last step L&I would take:

19 It's a last, final option that we have, when all other collection remedies have been
20 exhausted. Then we do a revocation of certificate, which is basically the certificate
21 of coverage to have workers and to have them covered. So when we revoke a
22 certificate of coverage, then that is saying that no employees are covered and
therefore is unable to have any employees.

23 11/26/12 Tr. at 118. Mr. Martin explained the taxes due and owing under NOA No. 0481171.

24 Judy Cook first was called as an adverse witness by the LLC. She has been an L&I revenue
25 agent for 14 years and works in the Monroe Street office in Spokane. She testified the service of
26 Exhibit No. 43, Notice and Order of Assessment of Industrial Insurance Taxes No. 0377058, had
27 been served on Connie Fuchs. Ms. Cook confirmed that Exhibit No. 44, Order and Notice
28 Reconsidering Notice and Order of Assessment No. 0377058, as modified, had been served on
29 Mr. Fuchs, as had Exhibit No. 32. Ms. Cook testified that in many cases the premiums had been
30 estimated because FCR had not filed its required quarterly reports. She testified that in some cases
31 Mr. Fuchs did not file responses to L&I's estimated premiums. Ms. Cook testified, when Mr. Fuchs
32 did respond to estimated premiums she took him at his word and amended the premiums due.

1 Ms. Cook testified that FCR was incorporated around May 1, 2002, the date L&I opened its
2 Industrial Insurance Taxes account on that company. She confirmed L&I had revoked FCR's
3 certification to have employees on April 5, 2005. She testified that on August 12, 2005, she first
4 began dealing with Mr. Fuchs concerning a company called just "Fire Control Resources." 11/26/12
5 Tr. at 150. This apparently occurred when the LLC was in the process of being formed, but
6 Ms. Cook noted the date the Secretary of State processed the incorporation application for the LLC
7 was March 22, 2006. Ms. Cook testified that L&I had no record that Connie Fuchs was a corporate
8 officer of FCR and that Mr. Fuchs was the only listed officer. Ms. Cook testified, Mr. and Mrs. Fuchs
9 and Ted Eagle were listed as corporate officers of the LLC. Ms. Cook testified that Steve Haxton
10 had been listed as a corporate officer in the LLC's corporate filing, but he had filed a protest
11 asserting he had nothing to do with the business and was not an officer, and L&I did not consider
12 him to be an officer.

13 Ms. Cook also testified directly for L&I. She caused Exhibit No. 37, Notice and Order of
14 Assessment of Industrial Insurance Taxes No. 0481171, to be issued. She explained that
15 document was L&I's determination that the LLC was a successor corporation responsible for the
16 unpaid premiums of FCR. She testified, "it's the same person, it's the same [business] location, the
17 same equipment, he has just opened up, partially, another business, and with just firefighting as, . . .
18 the only part of his business." 11/26/12 Tr. at 155 -156. She noted the Department had seized a
19 Charmac utility trailer. Ms. Cook testified it had been used to carry tools on LLC contracts and FCR
20 contracts, and she concluded the trailer would have to have been pulled by a truck. She concluded,
21 "the major part [of the transferred assets] is Paul [Fuchs], himself, doing, it's the nontangible [sic]
22 asset is his name, and, so it's Paul Fuchs doing business as Fire Control Resources." 11/26/12 Tr.
23 at 168. Ms. Cook concluded the new Chevrolet truck the LLC purchased would not change her
24 opinion about the LLC being a successor because, "He would just be replacing equipment . . . that
25 wore out." 11/26/12 Tr. at 169.

26 Ms. Cook explained how she arrived at the figures in Exhibit No. 37.

27 Ms. Cook concluded Mr. Fuchs never made a concerted effort to pay his industrial insurance
28 taxes and had not been current in paying the LLC's taxes. She concluded Mr. Fuchs' pattern of not
29 paying was the same pattern with the LLC as it had been with FRC.

30 Steven Beaty worked for L&I for 20 years as an auditor before taking the position of Litigation
31 Specialist, at which position he has worked for 8 years. The LLC case was referred to him in 2009.

32

1 For a month in 2010, the LLC case was assigned to someone else, and then it was reassigned back
2 to Mr. Beaty. Mr. Beaty concluded the assessments against FCR had become final against that
3 predecessor account. He informed Mr. Fuchs that the only issue was whether the LLC was a
4 successor corporation to FCR. Mr. Fuchs responded that no assets had been transferred and the
5 Chevrolet trucks were new. Mr. Beaty concluded:

6 I felt . . . that there may not have been so much tangible assets that were transferred
7 over, although there was an old vehicle and the trailer . . . but . . . really, the
8 intangible piece was the fact that the fire fighting was done previously by Paul Fuchs
9 and his entity. Now there is a new entity with Paul Fuchs involved and it is fire
10 fighting. Really, it seemed to be another series of transferring from one entity to
11 another.

12
13 The real major part of what was remaining from that entity [FCR] was the business
14 name, the vehicles and Mr. Fuchs' expertise and history in that business. . . fire
15 fighting for the wildland [*sic*] fires [and] . . . other things related to the wild land, brush
16 cutting, trimming, etcetera, thinning.

17 11/26/12 Tr. at 187 & 191-192. Mr. Beaty testified FCR and the LLC have the same business
18 address and the same telephone number, do the same type of work, and have Mr. Fuchs as their
19 primary active member.

20 DECISION

21 The LLC was properly served with Notice and Order of Assessment No. 0481171.

22 Proper service of prior Notices and Orders of Assessments is not now before the Board.
23 Those orders became final; any defects in service of those orders cannot now be raised.

24 The LLC is the successor to FCR. The LLC owes the Department of Labor and Industries
25 the taxes owed by FCR.

26 The LLC owes taxes due L&I in the amount of \$19,364.19 under Notice and Order of
27 Assessment No. 0481171.

28 The Board does not have jurisdiction to determine whether the Department conspired to
29 keep the LLC from operating as a business in the state of Washington.

30 ANALYSIS

31 I. JURISDICTION

32 Mr. Fuchs alleges that as the head of a corporation he had the right personally to be served
pursuant to RCW 4.28.080.

1 **A. PAST NOTICES AND ORDERS OF ASSESSMENT**

2 Since two years after he founded FCR, Mr. Fuchs has been receiving process from L&I.
3 Some actions were served on his wife, Connie, during the course of FCR's work activity, and some
4 were served on him. The preponderance of the evidence demonstrates that Mr. Fuchs became
5 aware of all of the actions. It does not appear Ms. Fuchs was a corporate officer of FCR.
6 Mr. Fuchs did not appear at any proceedings on any of the prior Notices and Orders of
7 Assessments to contest service or L&I's jurisdiction. L&I obtained judgments in Spokane County
8 Superior Court, seized an asset, and seized FCR's corporate bond. Mr. Fuchs did not raise
9 jurisdictional objections to any of those proceedings. He now contends he should be able to raise
10 service issues on any of L&I's prior actions. The Department asserts the results of the prior actions
11 are res judicata and Mr. Fuchs cannot litigate them in this current appeal.

12 **B. NOTICE AND ORDER OF ASSESSMENT NO. 0481171**

13 Exhibit No. 37 is a copy of the above Notice and Order of Assessment. It was served
14 personally on Mr. Fuchs, as noted in the attached affidavit, on February 17, 2009. Mr. Fuchs
15 protested the Notice and Order. L&I affirmed its Notice and Order on October 24, 2011, and
16 directed that any appeal had to be filed with the Board within 30 days, and on that same day,
17 Mr. Fuchs filed his Notice of Appeal with the Board from the Notice and Order of Assessment.

18 **C. SERVICE OF PRIOR DOCUMENTS IS NOT BEFORE THE BOARD**

19 Mr. Fuchs alleges: during the period he was operating under FCR he sometimes did not
20 receive proper notice; L&I had notice he was the person to whom service should be made, so
21 service on Ms. Fuchs did not constitute proper notice; and, even though he did not raise this
22 defense at any time from 2004 through 2009, he now is entitled to go back and do so.

23 L&I alleges: Mr. Fuchs was aware of each prior notice and order of assessment; he actually
24 received them, albeit some perhaps indirectly through his wife Connie; he never appealed them;
25 and, they became res judicata.

26 L&I is correct. A notice and order of assessment becomes final 30 days from the date the
27 notice of assessment was served on the employer, unless a request for reconsideration is made to
28 L&I or a notice of appeal to the Board. RCW 51.48.131. *Marley v. Department of Labor & Indus.*,
29 125 Wn.2d 533 (1994), stands for the proposition that a party who fails to appeal an order does so
30 at his or her peril. Even if the order contains a clear error of law, the order becomes final. The
31 issue of the jurisdiction of the prior orders and notices of assessments is not before the Board.

1 Mr. Fuchs, for FCR, did not appeal those notices and orders of assessment, and they became final.
2 He may not appeal them now.

3 D. BOARD HAS JURISDICTION OVER CURRENT NOTICE AND ORDER

4 The preponderance of the evidence proves Notice and Order of Assessment No. 0481171
5 was personally served on Mr. Fuchs on February 17, 2009. Thereafter, pursuant to
6 RCW 51.48.120, L&I mailed the October 24, 2011 Notice and Order reconsidering and affirming the
7 prior notice and order to Mr. Fuchs. Mr. Fuchs filed his Notice of Appeal with the Board. The
8 Department followed the proper procedures, and the Board has jurisdiction to hear this appeal.

9 II. BURDEN OF PROOF

10 A. AMOUNT OF TAXES AND PENALTIES

11 In an appeal of an assessment of industrial insurance taxes and penalties assessed by L&I
12 upon an employer, the burden of proof rests upon the employer to prove the amounts assessed
13 were incorrect. RCW 51.48.131. The LLC had the burden of proving the amounts were incorrect.

14 Again, since Mr. Fuchs for FCR did not file appeals from the prior notices and orders of
15 assessment, he cannot now be heard to contest the amounts then determined. *Marley*. The
16 preponderance of the evidence shows L&I correctly noted those amounts in Notice and Order of
17 Assessment No. 0481171.

18 III. SUCCESSOR COMPANY

19 The LLC had the burden of proving it was not a successor to FRC within the meaning of
20 RCW 51.16.200 and RCW 51.08.177. Mr. Fuchs argued the LLC received no monetary assets
21 from FRC and very few if any physical assets. He argued that non-tangible assets have little actual
22 value and that L&I did not prove he had a specific monetary value to either FCR or the LLC.

23 L&I argued that Mr. Fuchs was FCR's key asset and is the LLC's key asset. As to physical
24 assets, a pumper truck and firefighters are the two main ones. DNR and USDA require contractors
25 to provide both. But contracting to clear brush, thin foliage, and fight wildfires does not seem to
26 involve long-time, permanent employees. As Mr. Fuchs and Mr. Eagle explained their companies,
27 the work is akin to hiring for a temporary work agency. A worker is hired to work for the day or days
28 on a specific contract. Each firefighter may choose to be employed by any contractor at any time.
29 Too, the burden of proof was on the LLC, and it did not prove it hired wholly different firefighters
30 than FCR had. The preponderance of the evidence supports the firefighters having been hired from
31 the same pool of available firefighters by FRC and the LLC.

32

1 As to the truck, L&I employees correctly concluded that the 1959 truck just became too old
2 and worn and had to be replaced, so its lack of use by the LLC does not affect the calculations of
3 the transfer of assets from the first company to the second when considering whether the second
4 company is a successor. The LLC used a truck of the same type, but new. Too, Mr. Fuchs
5 transferred the lease for that new truck to Aegis Engines to avoid its seizure as an LLC asset, and
6 the LLC continued to use that new truck after the lease transfer. Just as he used a pumper truck as
7 a required contract element for FCR, Mr. Fuchs used a pumper truck for the LLC. Even if the 2006
8 truck differs in age and manufacture from the 1959 model, the use of such a truck shows how the
9 LLC was performing the same work activities as FCR.

10 The work activities of the companies are the same. For FCR and for the LLC, Mr. Fuchs had
11 contacts with DNR and USDA. Those agencies did not differentiate between the work done by
12 FCR and that done by the LLC. For each company, Mr. Fuchs: received or sought out notices of
13 potential contracts; drafted and bid on the contracts; did all of the appropriate paperwork; and,
14 performed the contracts.

15 Almost the total worth of FCR and the LLC was the same: Mr. Fuchs' knowledge of finding,
16 bidding on, and winning government and other contracts to clear brush, thin foliage, and fight
17 wildfires. He knew how to write bids, whom to contact about bids, which potential employees to
18 hire, and how to complete each job to the satisfaction of the hiring agency or private employer.
19 Mr. Eagle considered Mr. Fuchs' knowledge, skill, and expertise at gaining such contracts a major
20 asset of the LLC. Mr. Fuchs' skills were the major asset of FCR, and when he began the LLC those
21 same exact skills became its major asset. His skills constitute the major intangible asset of FCR
22 within the meaning of RCW 51.08.177, RCW 82.04.180, and WAC 296-17-31030(3), and those
23 skills constitute a major part of the assets of FCR within the meaning of WAC 296-17-31030(1).
24 *Orca Logistics, Inc. v. Dept. of Labor & Indus.*, 152 Wn. App. 457, 464, 216 P.3d 412 (2009).

25 FCR had one major asset: Mr. Fuchs. It had a secondary important asset: the name Fire
26 Control Resources. That name was recognized in the firefighting trade by those who bid on
27 services and those who sought temporary employment as firefighters. This, too, is an intangible
28 asset, and the LLC adopted and used this intangible asset. Mr. Fuchs' skills and the name Fire
29 Control Resources constituted almost all of the assets of FCR, real and intangible. The continuing
30 worth of those two assets became the same very valuable, central asset of the LLC.

1 The LLC is a successor to FCR within the meaning of RCW 51.16.200 and RCW 51.08.177.

1 **IV. CONSPIRACY**

2 L&I is a governmental entity. It cannot conspire by itself to take an action. Also, the Board is
3 a creature of statute, and the Legislature never has given the Board the judicial authority to address
4 any such Departmental conspiracies. A court of general jurisdiction would have to address any
5 claim for damage springing from any such conspiracy to damage business affairs.

6 **V. DUTIES**

7 The Industrial Insurance Act, Chapter 51 RCW, was created as a compromise between
8 business and labor. RCW 51.04.010. Injuries are a cost of doing business. Employers are
9 assessed industrial insurance taxes calculated by actuarial analysis as to the projected number of
10 injuries and cost of the injuries that occur in each type of employment. Industrial Insurance is
11 self-supporting: the amount of industrial insurance taxes is calculated to cover the cost of all such
12 injuries and the governmental agencies—including the Department of Labor and industries and the
13 Board of Industrial Insurance Appeals—necessary to oversee and adjudicate all issues pertaining
14 to this compromise.

15 The employer has the duty to pay those taxes. It is a cost of doing business. An employer
16 must calculate those costs along with other such costs, such as vehicles, business supplies,
17 furniture, rent, and advertising. If employers do not pay their assessed taxes, the industrial
18 insurance system fails.

19 L&I has the duty to set and collect industrial insurance taxes. It is required to do so. It is
20 part of that agency's duty to protect the industrial insurance funds, to make certain monies are
21 available to cover workers' on-the-job injuries. L&I also has a duty to protect the industrial
22 insurance funds against those who would weaken those funds, to keep the funds solvent. This
23 includes injured workers and medical providers who would defraud the funds. And, this includes
24 employers who do not pay their industrial insurance taxes and thereby weaken the funds.

25 Mr. Fuchs is not a bad man. He is a hard worker. His decade of work as a firefighter
26 contractor proves he performed his contracts well for his companies' agency and private clients.
27 Whatever company he represented seemed to have little difficulty finding contracts. But he is not a
28 good businessman. He does not seem to understand his duties as an employer in the state of
29 Washington. He does not seem to include the cost of industrial insurance taxes for employees into
30 his cost estimates in his bids for jobs. He does not understand that to be an ongoing, functioning
31 business in the state of Washington that business has to make payment of industrial insurance
32

1 taxes a very high priority. Ultimately, as the managing head of FCR he decided to keep enough
2 money for his family to survive rather than paying the taxes due L&I. He has followed this same
3 priority through at least three business entities.

4 The Department's order is affirmed.

5 FINDINGS OF FACT

- 6 1. On January 3, 2013, an industrial appeals judge certified that the parties
7 agreed to include the Jurisdictional History in the Board record solely for
8 jurisdictional purposes.
- 9 2. Notice and Order of Assessment No. 0481171 was personally served on
10 Mr. Fuchs on February 17, 2009. The Department of Labor and Industries
11 mailed its October 24, 2011 Notice and Order reconsidering and affirming the
12 prior order and notice to Mr. Fuchs according to a procedure approved under
13 industrial insurance law. Mr. Fuchs received the October 24, 2011 document
14 and within 30 days filed his Notice of Appeal with the Board of Industrial
15 Insurance Appeals.
- 16 3. Notice and Order of Assessment No. 0481171 contained amounts due and
17 owing the Department of Labor and Industries as established in prior Notices
18 and Orders of Assessments. The Department established each of those
19 amounts owing in legal proceedings. During those legal proceedings,
20 Mr. Fuchs for Fire Control Resources, Inc., did not raise and prove improper
21 service, and he had the opportunity to do so. Each of those prior notices and
22 orders of assessment became final.
- 23 4. Fire Control Resources, LLC and Fire Control Resources, Inc.:
- 24 • Perform essentially the same work activities: fighting wildfires during fire
25 season and thinning and clearing brush earlier in the summer.
 - 26 • Deal with the same representatives of the same federal and state
27 agencies in drafting, filing, offering, adjusting, and performing contracts.
 - 28 • Have no full-time personnel except for Mr. Fuchs.
 - 29 • Hire the same type of temporary employees—firefighters—and hire
30 many of those same individual firefighters.
 - 31 • Did not hold themselves out to the state and federal agencies as
32 separate corporations, so the governmental agencies dealt with the two
corporations as if they were the same business entity.
 - Always dealt with governmental agencies requiring the services either
corporation offered by having Mr. Fuchs contact the agencies.
- 33 5. The only major asset Fire Control Resources, LLC, did not take over from Fire
Control Resources, Inc., was a 1959 International Harvester pumper truck.
The truck became too old to be a usable asset. Fire Control Resources LLC
replaced that pumper truck with a newer pumper truck, which ultimately was

1 leased. Fire Control Resources LLC uses the newer pumper truck in the same
2 manner as Fire Control Resources, Inc., used the predecessor truck.

3 The two major assets of Fire Control Resources, Inc., were intangible assets:
4 (1) the name "Fire Control Resources" and (2) Mr. Fuchs' skill and expertise.
5 Fire Control Resources LLC assumed each of those assets and did not pay
6 Fire Control Resources, Inc., the value of either asset. These two assets were
7 essential for Fire Control Resources, Inc., to function and are essential for Fire
8 Control Resources LLC to function.

- 9
6. Fire Control Resources LLC is a successor to Fire Control Resources, Inc.
 7. Fire Control Resources LLC, as the successor to Fire Control Resources, Inc.,
owes taxes due and owing the State Fund in the amount of \$19,364.19.

10 **CONCLUSIONS OF LAW**

- 11 1. The Board of Industrial Insurance Appeals has jurisdiction over the parties and
12 subject matter in this appeal.
- 13 2. Within the meaning of RCW 51.48.120, Fire Control Resources LLC received
14 proper notice of the Department's order in which it affirmed Notice and Order
15 of Assessment No. 0481171.
- 16 3. Assessments due and owing under Notice and Order of Assessment
17 No. 0481171 from prior notices and orders of assessment had become final
18 within the meaning of RCW 51.48.131.
- 19 4. Within the meaning of RCW 51.16.200 and RCW 51.08.177, Fire Control
20 Resources LLC is a successor corporation to Fire Control Resources, Inc., and
21 as such, is liable for taxes due and owing the State Fund by the prior business
22 in the amount of \$19,364.19 as assessed under Notice and Order of
23 Assessment No. 0481171.

24 DATED: APR 08 2013

25 

26 _____
27 Bruce E. Ridley
28 Industrial Appeals Judge
29 Board of Industrial Insurance Appeals
30
31
32

Handwritten initials

**BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON**

In re: FIRE CONTROL RESOURCES, LLC

Docket No. 11 23186

Firm No. 577,608-04

**FIRM'S FINALIZED PETITION FOR
REVIEW AND REQUEST MOTION FOR
BRIEFING SCHEDULE**

INDUSTRIAL APPEALS JUDGE: Honorable Bruce E. Ridley

APPEARANCES:

FIRM: Fire Control Resources, LLC, by
Paul Fuchs, Manager/Member

Department of Labor & Industries, by
Steve Beaty, Litigation Specialist
Office of Attorney General by
Pamela V. Reuland, Assistant Attorney General

Comes Now, FIRE CONTROL RESOURCES, LLC (the FIRM) by and through its
manager and member, PAUL FUCHS, and submits the following **FINALIZED PETITION
FOR REVIEW** and **REQUEST MOTION FOR BRIEFING SCHEDULE**.

I. CAVEAT – POINTS FOR APPEAL LIMITED BY RECORD

The Firm was granted a continuance so it could acquire a more complete record
and obtain answers to questions. Examples of troubles include: (1) Was there a hearing
on 11-16-2012, as indicated by Exhibit 48 and if so please provide the transcript for that
hearing? An e-mail response was provided by the BIIA that the Firm was provided
everything. (2) There are questionable pages in the Exhibits, some pages have a word or
two, some pages are blank and the hard copy Exhibits provided (no PDF) have blank
pages on the back of pages even though copies were made back-to-back – see Exhibits:
3 (missing or rejected?); 4 (blank page on back); 5 through 9 (no such exhibits – missing
or rejected?); 10 (back of page blank); 16 (back of page blank); 17 (no exhibit – missing
or rejected?); 20 (blank back of page); 25 (blank back of page); 26 (no exhibit –
missing); 30 (probable chronological problems); 32 (partial copies on two pages); 36
(partial copy on one page); 37 (blank page on one page); 40 (blank page on one page);
42 (probable chronological problems); 48 (partial copy on one page); 50 & 51 (missing or
rejected?).

BOARD OF
INDUSTRIAL INSURANCE APPEALS
OLYMPIA, WASHINGTON

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*Appendix
H*

II. PETITION POINTS FOR REVIEW

The Firm incorporates its Post Hearing Brief as a part of the reasons for Review, but also includes the following points and law, with the first four probably being most dispositive:

1. **STATUTE OF LIMITATIONS (07-01-2005 + 3 years = 07-01-2008):** Failure on the part of the Judge to rule on Statute of Limitations that is dispositive of this matter. The Department failed under the most generous of time constructions to timely file its action for successorship liability and is procedurally barred. RCW 51.16.190. See also, Dolman v. Dept. of L&I, 105 Wn.2d 560, 565-66, 716 P.2d 852 (1986); Floor Decorators v. Dept. of L&I, 44 Wn.App 503, 510, fn.5, 722 P.2d 884 (1986).

There has been a failure to timely bring action against Fire Control Resources, LLC, as Successor until 02-13-2009 [EXHIBIT 37] with service on 02-17-2009 for successorship liability. Indeed, using the most generous of indisputable time-laced evidence (documents) in favor of the Department, including if the Department, with all its resources wanted to pursue action against Fire Control Resources, LLC, it could have and would have done so much earlier and within three years of the outside possible latest critical date – the dissolution of FCR Enterprises, Inc. on 07-01-2005 [EXHIBIT 01] (i.e., 07-01-2005 plus 3 years = 07-01-2008); noting that Fire Control Resources, LLC was in existence, from its Washington legal birth of 03-22-2006 [EXHIBIT 20 & 02] until its dissolution on 07-01-2009 [EXHIBIT 33, 02] and that the Department finally did start action before Fire Control Resources, LLC did legally dissolve, but after the 3 year statute of limitation expired.

2. **LACHES (KNOWLEDGE + DELAY + DAMAGE):** Failure on the part of the Department to timely pursue this matter against a alleged Successor (the Firm). See the elements for laches in, Chapparral Reforestation, Inc. v. Dept. of L&I, No. 35245-1-11 (Houghton, C.J., 2nd Div, 06-26-2007) and with emphasis in bold:

Chapparral contends that either the doctrine of laches or the statute of limitations on industrial insurance collection actions barred L&I from issuing its 2004 revised assessment of industrial insurance taxes. We agree.

"Laches is an implied waiver arising from knowledge of existing conditions and acquiescence in them." Buell v. City of Bremerton, 80 Wn.2d 518, 522, 495 P.2d 1358 (1972). A party establishes laches where the plaintiff^[4] (1) knows or reasonably should know about the cause of action, (2) unreasonably delays commencing the action, and (3) causes resulting damage to the defendant. Buell, 80 Wn.2d at 522.

Element (1) is satisfied because L&I knew about the 1995 order that we affirmed in 1999. Element (2) is satisfied because L&I failed to pursue any action until 2004, and because it offers no reason, let alone a proper reason, for its delay. And element (3) is satisfied because Chapparral could not renew its farm labor contractor license in 2003, because of its outstanding debt to L&I. But until L&I revised its assessment as ordered, Chapparral could not pay an, as yet, undetermined assessment. Chapparral suffered a loss as a result of not being able to renew its license. As the three elements of laches are satisfied, we reverse and remand.^[5]

[4] Here, L&I is the plaintiff because it would have brought the action against Chapparral.

[5] Because we hold that the doctrine of laches applies, we do not address Chapparral's statute of limitations argument.

In this matter, LACHES is most applicable as the elements are met as follows:

(1) The Department knew of the existence of its claims for payments for unpaid premiums, since approximately 02-2002 – see multiple exhibits, including but not limited to [EXHIBITS 13, 18, 19, 21, 30, 31, 32, 36, 40, 41, 42, 43, 44, 45, 46, 47, 52, 53]. (2) The Department failed to pursue any action until 02-13-2009 against Fire Control Resources, LLC as a potential successor [EXHIBIT 37] and there has been offered no reason for the delay and there is no reason with all the State Government's Resources (e.g., could have checked Washington state databases to see that Fire Control Resources, LLC was in existence in on 03-22-2006) [EXHIBITS 20 & 02] -AND- (3) The Firm could not get wildland fire-fighting contracts from the Federal Government, because of the Department's interference [Testimony of Paul Fuchs on Direct & Cross-Exam on 11-05-2012, page 46, lines 9-17; Page 64, lines 2-8 and 18-26 to Page 65 lines 01-26]. In other words, specifically as to element three, before the Department took formal Successorship Liability action by filing a Notice & Order of Assessment against Fire Control Resources, LLC on 02-13-2009 [EXHIBIT 37] it had already made the determination that the Firm was a Successor and hung-up several years of wildland fire fighting contracts with the Forest Service to the detriment of Fire Control Resources, LLC and the people who depended on making money from them, including Paul Fuchs and more importantly, his family consisting of three young grade school aged children.

3. **ASSET TRANSFER >50% = VALUE = FAIR MARKET VALUE (MATH).** The testimony and exhibits reflect that NO ASSETTS were sold, purchased or transferred from one entity to another (e.g., no equipment, no money, no fire trucks, nothing). It is very difficult to prove a negative (that which does not exist and never did). If there was some asset allegedly transferred, the Department failed at all times in the Department's case file history and the record to assess what was the VALUE (monetarily) of such Asset. See, Gall Landau Young v. Hedreen, 63 Wn.App. 91, 98, 816 P.2d 762 (1991)(discussing successor liability generally and the need for Transferred Assets to be determined by Fair Market Value).

There was no value as to alleged predecessor FCR Enterprises, Inc. as it was insolvent and the reason for Successorship Liability Action by the Department; FCR Enterprises, Inc, had no contracts, had no good Reputation or Goodwill. See, Experience Hendrix, LLC v. HendrixLicensing.Com, Ltd, No. C09-285Z (D.C.W.D. Wash. 09-21-2011) discussing Reputation and Goodwill as Value under Washington law and citing Orca v Dept. L&I.

How can the Department logically claim a valuable asset was transferred from one entity to another and yet not even mention anywhere what its monetary value was/is, so that a monetary calculation can be made as to whether a significant portion or substantial portion of the assets of one company were transferred to another. Orca Logistics, Inc. v. Dept. of L&I, 152 Wn.App. 457, ¶ 7 and fn.12, 216 P.3d 412, 414-15 (2009) ("a major portion of its assets"; which means, "more than fifty percent of the fair market value of either the (i) tangible assets or (ii) intangible assets of the taxpayer more than half of the assets"). There must be some MATHEMATICAL CERTAINTY to successorship liability – what is the FAIR MARKET VALUE of an Asset; it isn't just a belief or a hunch.

4. **PAUL FUCHS IS NOT A TANGIBLE OR INTANGIBLE ASSET:** The testimony and exhibits reflect that the Asset claimed, one PAUL FUCHS, was and is a natural human being and not property of any entity (i.e., 13th Amendment to the U.S. Constitution Prohibition of Involuntary Servitude), and thus not a ownable asset. Moreover, said natural human being did not have any “value” as it is more than obvious from the record that the reason there is even any claim of successorship liability, is because of Paul Fuchs’ terrible mishandling and mismanagement of the prior business (Predecessor FCR Enterprises, Inc.). It is illogical to legally state that Paul Fuchs as the manager of the predecessor screwed up on taxes and poor business practices causing liability, then turn around and claim Paul Fuchs is a valuable person to the second company (alleged successor – Fire Control Resources, LLC). In other words, who would place such a manager (Paul Fuchs) who screwed up in the first entity into a Fortune 500 company as a manager; so there is no value flowing from Paul Fuchs and none was calculated and certainly nothing to say greater than 50%. See, Orca Logistics, Inc. v. Dept. of L&I, 152 Wn.App. 457, ¶ 7 and fn.12, 216 P.3d 412, 414-15 (2009) (“a major portion of its assets”; which means, “more than fifty percent of the fair market value of either the (i) tangible assets or (ii) intangible assets of the taxpayer more than half of the assets”). Indeed, Paul Fuchs could not even secure wildland fire fighting contracts with all his alleged knowledge (according to Judge Ridley), until Paul Fuchs filed for Bankruptcy, which caused the Department to stop its abuse. [Testimony of Paul Fuchs on Direct & Cross-Exam on 11-05-2012, page 46, lines 9-17; Page 64, lines 2-8 and 18-26 to Page 65 lines 01-26]

5. **NO RES JUDICATA**, in that the very first element of a claim of Res Judicata requires identity of parties. Bordeaux v. Ingersoll-Rand Co., 71 Wn.2d 392, 395-97, 429 P.2d 207 (1967); Marley v. Dept. L&I, 125 Wn.2d 533, 886 P.2d 189 (1994). The Department and the Proposed Decision & Order each fail to recognize that there are TWO separate legal entities as recognized by the Washington Secretary of State and other government agencies – FCR Enterprises, Inc. (General Building Contractor) [EXHIBITS 01, 21, 29] and Fire Control Resources, LLC (Wildland Fire-fighting Company) [EXHIBITS 04, 11, 20, 33, 34, 35]. The Proposed Decision & Order blurs the line; essentially claims that since Paul Fuchs was the primary person in each separate legal entity, that they must be one and the same.

6. **FAILURE OF SERVICE OF PROCESS – PERSONAL JURISDICTION:** Failure of Process and challenges to underlying judgments (warrants). It is obvious the Department on several occasions failed to provide Due Process to the first legal entity (FCR Enterprises, Inc.); and since the Department is trying to impose liability upon the second legal entity as alleged Successor (Fire Control Resources, LLC); and it is the first opportunity for the second legal entity (the Firm) to challenge (collaterally attack) the legal process due under Washington statutes and case law; there are judgments without Due Process. Fire Control Resources, LLC made its challenge at its first opportunity to attack the defective Judgments and Warrants [EXHIBITS 39, 15] even though not required.

A prime example of a service of process issues, includes a clerk of the Whitman County Sheriff’s Office swearing under oath that the Whitman County Sheriff served the Department’s documents by way of a Whitman County Deputy [EXHIBITS 52, 53, probable 32 with blank page; Transcript of 11-05-2012 at Page 31].

Another example of a lack of jurisdiction includes the repeated failure by the Department to ever provide a copy of any Judgment to the first legal entity {FCR Enterprises, Inc.}, contrary to the Due Process codified in Washington statutes at RCW 51.48.140. The Department never notified FCR Enterprises, Inc. of any Warrant (i.e., Judgment) as required by Washington law – if you don't get notice on the front end of the Warrant to attack it, a party needs timely notice on the back end to be able to try and attack it (reconsideration or appeal) – the reason for mandatory 3 day notice requirement. RCW 51.48.140 [EXHIBITS 18, 19].

Another example of the lack of Personal Jurisdiction over FCR Enterprises, Inc. is the Department even went so far as to submit Declaration(s) and Affidavit(s) of Service in support of its case, after the appeal was filed to attempt to cover its failure at basic due process. [EXHIBIT 42 – this number was used in the Hearing Brief and the Firm still has this Affidavit/Declaration of Service document in its records for this Order & Notice Reconsidering that has a signature date of 12-14-2012 and the same notarization date; Transcript of 11-05-2012, Page 29, lines 1-13].

Another example of the lack of personal jurisdiction over FCR Enterprises, Inc. is a Department employee swore under oath SEVEN years after the fact and in preparation for the appeal hearing that she “directed” a document to be placed into a envelope and caused the envelope to be served by the Sheriff's Department – no actual swearing that anyone was served) [EXHIBIT 44; Transcript of 11-05-2012, Page 89, lines 1-18 – Judge Ridley found the document not served at the Department's strike].

Yet another example of a lack of due process in the personal jurisdiction over FCR Enterprises, Inc., is that the Department allowed service upon a non-corporate officer or person associated with the corporation and non-authorized representative to receive FCR Enterprises, Inc. business mail or service of process – i.e., Connie Fuchs. [EXHIBITS 41, 43, 45; Transcript of 11-05-2012, Page 85, lines 1-24; Page 87, lines 14-26 through Page 88, lines 1-13; Transcript of 11-26-2012, Page 65, lines 16-26] and see the requirements for proper service upon a corporation are spelled out in detail in RCW 4.28.080(9), as recognized by several L&I statutes, including RCW 51.04.082 & 51.48.120, yet personal service is made upon a spouse or parent whom has nothing to do with the corporation. It is acknowledged that the mail appears to be addressed only to Paul Fuchs of FCR Enterprises, Inc. but the Department could have used Restricted mail to make sure that ONLY Paul Fuchs would have got the mail on behalf of FCR Enterprises, Inc.

Even though there is no identity of parties in this matter, if there were there can be no Res Judicata for alleged identical parties when the Judgments are void. Marley v. Dept. L&I, 125 Wn.2d 533, 537-44, 886 P.2d 189 (1994)(failure to acquire personal jurisdiction over the party results in a void judgment that can be attacked, even collaterally, at any time).

7. **CONFUSION** on the part of the Judge as is demonstrated by the Judge's Proposed Decision and Order, in that the Judge makes numerous mistakes as to the names of the entities. The Firm does not criticize the Judge for the mistakes, but only states that such usage is very concerning. Such confusion leads the Firm and a reasonable person to believe that the Judge did not have a good handle on the matter or that the Judge was hurried in his findings and rulings (as we probably all are).

8. The first legal entity and second legal entity had **DIFFERING BUSINESS PURPOSES AND PRACTICES**. The confusion exhibited in the Proposed Decision & Order reflect that the mix-up of the names also mixes the business practices. FCR Enterprises, Inc is the alleged Predecessor, that was primarily (vast majority) a General Building Contractor [EXHIBIT 46] and Fire Control Resources, LLC the alleged Successor was a Wildland Fire-fighting Company [EXHIBITS 11, 35; Transcript of 11-19-2012, Pages 6-7, lines 22-26]. Even though the previous entity did own a 1958 firetruck [EXHIBITS 02, 12, 16, 41, 54], and did a little fire fighting, it was never transferred to the subsequent entity, as USDA Forest Service contracts had strict requirements for Wildland fire-fighting and the 1958 truck could not meet the specifications, so a 2006 fire-fighting truck (after the date of the birth of the new entity) completely financed and heavily liened for lack of payments (fire fighting) was attempted to be used [EXHIBITS 22, 23, 24, 25, 27, 28; Transcript of 11-19-2012, Page 5-6, lines 15-17; Pages 9-10, lines 23-6]. Indeed, if the successorship liability were to be allowed, then Fire Control Resources and the use of the 2006 fire-fighting truck would cease [Transcript of 11-19-2012, Page 12, lines 8-25].

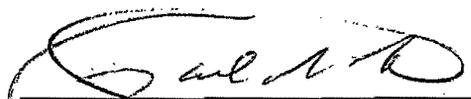
III. REQUEST FOR BRIEFING SCHEDULE

The Firm having made its Notice of Appeal based upon what of the record it could acquire does now hereby request a BRIEFING SCHEDULE, so that the tie between PETITION FOR REVIEW with REASONS can be more fully made to the law and to the record as it now exists. The Firm proposes 2 weeks for its Opening Memo\Brief, followed by 2 weeks for the Department's Reply, and then the Firm having 1 additional week for its Response to the Department's Reply.

IV. DECLARATIONS FOR MAILING OF FINALIZED PETITION FOR REVIEW AND REQUEST FOR BRIEFING SCHEDULE

I certify & declare under penalty of perjury under the laws of Washington State that on June 11th, 2013, I mailed this document by depositing it into the U.S. Postal Service mail system with proper postage and addressed as follows:

Executive Secretary
Board of Industrial Appeals
2430 Chandler Ct. SW
P.O. Box 42401
Olympia, WA 98504-2401


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