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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
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No. 344436
COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

CONSOLIDATED CASES

MARY ALICE CARLSON, Respondent, Cross-Appellant

v.

HUGH DAVID CARLSON, Appellant, Cross-Respondent

_____ AND _____

HMD LIMITED PARTNERSHIP, (a Washington limited Partnership) Appellant

v.

MARY ALICE CARLSON and SOUTH 80 LIMITED PARTNERSHIP, Respondents

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BRIEF OF APPELLANT HUGH DAVID CARLSON

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I. INTRODUCTION

This is the Opening Brief of Appellant Hugh David Carlson ("Mr. Carlson," or "David Carlson"), who was the respondent below in *In re the Marriage of: Mary A. Carlson and Hugh David Carlson*, Cause #13-3-00578-9 in the Yakima County Superior Court (the "Domestic Case"), and co-Defendant in the consolidated civil action, *South 80 Orchards, L.P. v. H. David Carlson, et al.*, Cause #13-3-00578-9 (the "Commercial Case").

The Carlsons' assets, except for their respective interests in HMD Limited Partnership ("HMD") and a parcel referred to as the "Scenic Lot," were held to be community property. The net assets of their marital community (the "Community"), excluding its debt to HMD, exceeded $4 million.[1] The assets consisted primarily of a family farming operation, which included multiple business entities holding rights to several different orchards.

In the Domestic Case, David Carlson sought an equal distribution of community property, but the trial court awarded 55 percent to Mary Carlson and 45 percent to David Carlson. While the Superior Court has considerable discretion in domestic matters, *see, e.g.*, *In re Marriage of Kim*, 179 Wn. App. 232, 253 (2014), this disproportionate distribution was

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[1] HMD has separate issues on appeal from the consolidated cases below. It filed a separate notice of appeal and has filed a separate Opening Brief.

not well supported in view of the factors set forth in RCW 26.09.080. Quite to the contrary the court found that the Carlsons' relationship: "became less of a marital couple and more of business partners. Each has presented themselves as being a skilled, competent, qualified orchardist or farmer."

Moreover, even if a disproportionate 55-45 distribution were just and equitable, the trial court made several plain errors in allocating the Carlsons' real and personal property and income streams. The net effect was to shift the ***actual*** distribution hundreds of thousands of dollars off of the 55-45 ratio, in Mrs. Carlson's favor. Specifically, the trial court: failed to provide Mr. Carlson with even minimum wage compensation for diligently managing the Community's farming business during the two-year run-up to trial; incorrectly denominated certain community property as separate property of Mrs. Carlson; made distributions from Mr. Carlson's post-separation earnings to Mrs. Carlson without properly accounting for interim maintenance payments already made from those same earnings; and required David Carlson to assume the Community's large debt to HMD. The actual award to Mrs. Carlson was substantially more than the 55 percent of community property found by the trial court to be a just and equitable distribution to her, and was not at all consistent with the requirements of RCW 26.09.080.

II. ASSIGNMENTS OF ERROR

Appellant David Carlson assigns the following errors:

A. ***The trial court erred by assigning David Carlson a salary of only $13,750 per year for managing Mrs. Carlson's share of the Community farming business.***

Issue: Was the amount, and manner of calculation, of the compensation allowed to Mr. Carlson for managing the Community farming business for three years so inadequate as to constitute an abuse of discretion? *Yes.*

B. ***The trial court erred by finding that the "Scenic Loop Lot" at 5820 Scenic Ridge Place, Parcel No. 181316-34493, was the separate property of Mary Carlson.***

Issue: Was the evidence at trial sufficient, as a matter of law, to overcome the presumption and direct evidence that the Scenic Loop Lot was community property? *No.*

C. ***The trial court erred in awarding Mary Carlson $3,000 per month maintenance in addition to 55 percent of the community property, and in failing to consider the temporary maintenance***

paid out when calculating Mrs. Carlson's 55 percent share of Mr. Carlson's post-separation income.

Issue: Was the substantial award of maintenance, under all the circumstances, excessive and an abuse of discretion? *Yes.*

D. ***The trial court erred by awarding Mary Carlson 55 percent of funds held in bank accounts containing David Carlson's post-separation (separate property) earnings which had already been subjected to interim maintenance.***

Issue: Was the award by the trial court of 55 percent of the contents of bank accounts other than the Community's farm-business operating account an abuse of discretion and/or founded on clear misapprehension of the evidence? *Yes.*

E. ***The trial court erred by awarding attorney's fees to Petitioner, disproportionately to any supposed intransigence, and while disproportionately distributing assets to Petitioner.***

Issue: Was the award of attorney fees in the amount of $50,000 to the party receiving a disproportionate award of more than $400,000, based on a finding of intransigence on a minor matter that caused little if any added fees, an abuse of discretion? *Yes.*

F. ***The trial court erred by failing to allow payment of the Community farming business's full debt to HMD from the Community's liquid assets, or to properly recognize the assignment of that community debt to David Carlson.***

Issues: 1. Were debts of the Community to HMD barred by the three-year statute of limitations? *No.*

2. Should the whole debt have been factored into the trial court's 55-45 distribution of net assets? *Yes.*

G. ***The trial court erred by making a disproportionate distribution of assets without adequate basis required by RCW 26.09.080, and without adequate findings and conclusions required by CR 52, which was excessive when combined with other distributions and awards made.***[2]

Issue: Were the findings of fact and conclusions of law of the trial court sufficient to support a disproportionate distribution? *No.*

III. STATEMENT OF THE CASE

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[2] Due to the need to resolve disputes about distribution of farm equipment after the trial court had divided the farms, and before the turn of the season, the equipment was divided by binding arbitration at Mr. Carlson's suggestion, and that division is not within the scope of the appeal.

A. *The Carlsons Worked Together as Equal Partners to Operate Their Farming Business.*

Although Mr. Carlson takes issue with certain of the trial court's findings, the underlying facts are clear. The parties were married on May 6, 1989, when Mr. Carlson was 55 and Ms. Carlson was 39. They separated in July 2012. The Domestic Case commenced on June 7, 2013, just shy of a year later. CP1. Mary Carlson caused the Commercial Case to be commenced on December 30, 2013. CP 1601. The Domestic Case and the Commercial Case were consolidated on April 10, 2014. CP 1716. The trial court later observed that the consolidation was a mistake, which had confused issues and made the proceedings unnecessarily "complicated and convoluted." CP 286:7-287:5.

The Community farming business was conducted through various entities; the trial court found that although assets "migrated" from one entity to the other, those entities and their assets were all properly viewed as (and distributed as) community property. CP 288:21-290:15. The trial court described the parties' relationship as follows:

> Overall, I felt, obviously these are two people who were married but, at some point in their lives, became less of a marital couple and more of business partners. Each has presented themselves as being a skilled, competent, qualified orchardist or farmer. That was a little bit ambiguous from Mrs. Carlson's perspective. She certainly has a history and has demonstrated certain behaviors that would

> suggest that this was going to be more of a spousal maintenance case, but she has asserted that she is fully competent to be an orchardist, and I'm, I'm not going to dispute that or take a position against it.[3]

The trial court ultimately pierced the corporate veil of the entities wholly owned by the Carlson's, holding, among other things, that South 80 was "an empty shell," and that all of its assets were commingled with, and a part of, the community's farming business. CP 310:13–22; *and see* CP 289:5–290:15.[4]

B. *The Trial Court Nevertheless Distributed Assets Disproportionately.*

The trial court's finding that the Carlsons had been equal business partners in operating their farms, and the court's acceptance of Mary Carlson's testimony that she was a proficient orchardist and farm manager, would seem to auger in favor of a straight 50-50 allocation of assets and debts. The trial court instead announced a disproportionate distribution of 55 percent for Ms. Carlson and 45 percent for Mr. Carlson. CP 296:1-3. From an approximately $4 million net asset distribution, that is approximately $400,000 in favor or Ms. Carlson. See CP 342. The trial court failed to discuss the factors set out in RCW 26.09.080. In particular,

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[3] CP 295:11-23.
[4] Carlson Agribusiness was not specifically discussed there, but it was treated in the ruling and written decree as community property.

the trial court did not appear to consider the parties' economic circumstances.

C. *The Trial Court Ordered an Equalizing Payment to Reach the 55-45 Split.*

The trial court began by dividing up non-fungible property—the real estate, the house, the boat, other large, tangible assets, [5] and insurance policies based on various pragmatic considerations. This division is not contested by Appellant. CP 300:22-301:3. The trial court set aside for later and did not yet factor in the Community's bank accounts and working capital (which consists at different parts of the year of growing crops, harvested inventory, receivables from processors, and cash), which were the largest part of its assets.

The trial court then assigned values to the allocated non-fungible assets, deducted the allocated community debts and unpaid salary (discussed below) from the calculated value of the property, and found the net value of the distribution so far was "$655,483 to Mr. Carlson and $399,500 to Mrs. Carlson." CP 302:20-22. Applying kitchen arithmetic, the court concluded that Mr. Carlson would have to make a $180,740 equalizing payment to Mrs. Carlson to achieve a 55-45 percent ratio. CP

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[5] Farm equipment was divided later, as discussed above.

302:20-303:1. "With a 55/45 transfer, that would generate a $180,740.00 transfer to equalize that division equitably."

D. ***The Trial Court Awarded Miniscule Compensation for Three Years' Management of the Community Farming Business.***

During the Carlsons' separation, David Carlson had continued to manage the farms, and during what stretched into a two-year dissolution action, the trial court decided to maintain the status quo in that regard . And so, David Carlson had to keep managing the whole Community farming business for 3 years, even though he knew that approximately half of it would go to his angry and bitter ex-spouse, who spent the time criticizing and second-guessing nearly every decision, invoice, and transaction, arguing that she should be put in charge, and stretching out the time with unnecessary litigation.[6] Mr. Carlson thus found himself spending his sunset years—age 72 by the time the case finally came to trial, CP 304:8—in an odd form of involuntary servitude.

Nevertheless, Mr. Carlson managed the enterprise as ordered and preserved the working capital for distribution. He brought in the crops well under the budget set by the court. For example, from March 2014 through January 2015, the outside accountant, a Mr. Halsey, testified that

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[6] A glance at the case dockets shows a frankly offensive number of case events below, more than 400, mostly to do with motions brought by Mrs. Carlson, few of which were granted.

Mr. Carlson had operated $371,445 under budget, a 17 percent savings for the Community. RP 491:3–8. The accountant also testified that there was nothing out of the ordinary in Mr. Carlson's reports of expenses. RP 497:25–498:5. Not only did Mr. Carlson come in under budget, the final distributions were larger than anticipated, due to his good management.[7] As the trial court found, "I don't think he [Mr. Carlson] knows the meaning of not working." CP 304:10-12.

The question naturally arose at trial, how to compensate Mr. Carlson at long last for his three years of unpaid service to Mrs. Carlson. The only testimony on the reasonable value of his services was as follows:

> Q Now, Mr. Carlson, I just want to ask you a couple of other things. One, you've indicated that you had not been paid for your work from September 1, 2012 to date, is that correct?
>
> A Correct.
>
> Q If you had become disabled or were unable and had to hire somebody to do your job, you would understand a range of costs that it would cost to hire such a person.
>
> A For salary -- salary range for comparable in the industry is between 70 and 140,000 according to the Yakima Valley Growers list of salaries.

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[7] *See, e.g.*, CP 342 ("As such, subject to the qualification of the estimate above, [Mary Carlson's] 55% of working capital will equal $1,549,925.40. … substantially more than was forecasted based upon the serious drought in 2015.") (This turned out to be an underestimate.)

> Q And is that based upon experience and quality, I mean, you pay -- pay for what you get, 70,000 isn't going to be as qualified and as the hundred and (inaudible) --
>
> A Qualifications, yes.
>
> Q And where do you feel that your skill and whatnot rests in that particular range?
>
> A Definitely in the upper end.
>
> Q And so if -- what would be an appropriate salary for you, according to you?
>
> A Well, 140,000, but in the interest of getting things resolved, I'm willing to take 85,000.
>
> Q And that's just to avoid controversy and get through this?
>
> A Correct.

RP 652:13–653:5. Mr. Carlson's testimony was further confirmed by the undisputed evidence that in 2008, while Mrs. Carlson was managing the Community farming business, Mr. Carlson worked elsewhere (for the Washington Apple Commission and/or Borton Fruit) for a salary nearly twice what he asked the court to award, $155,000. RP 541:3–4.

The trial court made the following findings on this issue:

> Mr. Carlson had asked for a wage in the sum of, I believe, $80,000.00 or $85,000.00, rather, for the last three years, and it's been almost exactly three years. I looked at that. Part of what he's, what he's really done is he's managed his own property, for which he should not receive a salary, but he's also managed Mrs. Carlson's property, and what I've

> done is given it an allocation of $25,000.00 a year, for a total of $75,000.00.

CP 302:10–18.

That is, the trial court found that a reasonable salary for managing the multi-million dollar Community farming business was in the neighborhood of $50,000, allocated approximately one half, or $25,000, of that to Mr. Carlson for managing his share of the farms, and concluded that $25,000 would be the fair salary for managing Mrs. Carlson's share.[8]

There is no evidence in the record to support a reduction of the fair salary of $140,000 per year, or even the $85,000 per year volunteered by Mr. Carlson in the interest of closure, down to $50,000 per year.

Even if $50,000 for highly skilled managerial services worth $140,000 could be deemed just and equitable, the court then committed what appears to be an arithmetic error in deducting the unpaid salary from the value of Mr. Carlson's property allocation. Specifically, the trial court subtracted the $75,000 before multiplying the total property value by 55 percent, instead of after. The mistake reduced his actual salary award for managing Mrs. Carlson's farms to $13,750 per year, for a total for three years of only $41,252—**not** $75,000. That is just over $1000 a month,

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[8] In contrast to the wages, the court's calculation included the full value of life insurance cash values awarded to Mr. Carlson ($62,137 at CP 299:19) and the full value of the improvements to the New Sno Valley Ranch ($300,000 at CP 297:3 and CP 310:4).

and based on a normal 2000 hour year,[9] it is far below minimum wage; it equals $6.88/hour.[10]

The effect of the error can be seen by re-doing the calculation in the right sequence:

The trial court found the net value of the property assigned to David Carlson, after deducting the salary and debt, to be $655,483. CP 302:20–21. Adding the $75,000 salary back yields $730,483.

Net Property to David Carlson	= $ 730,486.
Net Property to Mary Carlson	= $ 399,500.[11]
TOTAL	= $1,129,986
55% of Total	= $ 621,492
Transfer Payment = $621,492 - $399,500	= $ 221,992
Credit for unpaid salary	= $ 75,000
Net Transfer Payment	= $ 141,992

Instead, the trial court calculated the Transfer Payment to be $180,740. To get a net Transfer Payment of $180,740, one would have to subtract only $41,252 in salary from $221,992. The mathematical reality is that the court, inadvertently, awarded not $25,000 per year, but rather

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[9] Mr. Carlson did not punch a time clock, but if he worked only 2,000 hours, he may be the first commercial farmer in history to do so.
[10] The minimum wage in Washington was $9.04 in 2012; $9.19 in 2013; $9.32 in 2014; and $9.47 in 2015.
[11] *Id* at line 22.

55% of $25,000 per year which, with a small rounding error is more easily expressed as follows $25,000 * .55 = $13,750.[12]

Had the court used an overall wage of $50,000 per year, Mary Carlson's share would have been $50,000 * .55 = $27,500/yr. Therefore, she received $13,750, each year, more than she should have -- and David Carlson received that much less.

But if the court had used the lowest number in the evidence, 85,000 per year, instead of completely arbitrarily reducing it to $50,000, Mary Carlson's share would have been $85,000 * .55 = $46,750.

This error had a significant impact on the effective distribution of community property, as follows:

Mary Carlson's 55% of $4 million Estate	= $2,200,000
David Carlson's 45% of $4 million estate	= $1,800,000
Preference to Mary Carlson	= $ 400,000
Mary Carlson w/ error @ $50k salary [13]	= $2,241,250
David Carlson paying Maintenance and fees	= $1,758,750
Actual Preference to Mary Carlson	**= $ 482,500**
Actual Percentage to Mary Carlson	**= 56%**
actual Percentage to David Carlson	**= 44%**

[12] Be it noted, when Mrs. Carlson hired their son Nicholas Carlson as a farm laborer, he received between $2,475 and $2,900 per month, for an annualized rate between $29,700 and $34,800, plus benefits. RP 391:21–392:7.

[13] Mary's portion should have been 55% of 150,000, or 82,500, and was actually $41,250, a difference of $41,250.

Applying the same formula, if the trial court had used the lowest amount in the evidence, $85,000, the Actual Preference to Mary Carlson would have been $598,000 rather than $400,000 and the Actual Percentage to Mary Carlson would have been 57.475%, and the Actual Percentage to David Carlson would have been 42.525%.

As noted below, the percentage divergence increases from the 55:45 disproportionate distribution, with each successive award by the court.

E. ***The Scenic Lot.***

Counsel for Mr. Carlson raised the issue of the "Scenic Lot" at the September 25, 2015 hearing:

> MR. JOHNSTON: Your Honor, one, the Scenic lot, I think, was also $75,000.00 to Ms. Carlson.
>
> THE COURT: I understood that was to be separate property.
>
> MR. JOHNSTON: Okay. I, I just
>
> THE COURT: Is that, if I mis-, if I'm wrong, I guess this would be a perfect time to say so.
>
> MR. JOHNSTON: We believe that it was part of the community because of the inputs that had gone into it, so .
>
> THE COURT: That was at $75,000.00 as well.
>
> MR. MAXWELL: Well, we put forth the evidence that it was separate property purchased with the life

> insurance proceeds and I think you have the documents that trace that, so . .
>
> THE COURT: Okay. Urn, let, let's come back to that.[14]
>
> * * * * *
>
> THE COURT: All right, and I'm, we've left the Scenic Ridge property off. I'm glad to, we can take that as a separate item. I don't think it's over. I want to look at it again. I've, my note was treat it as separate property, but if there's an argument that needs to be heard on it, I'm glad ...
>
> MR. JOHNSTON: And we can hear that on the 23rd also.[15]

Eventually, the trial court held that the Scenic Lot was Mary Carlson's separate property. CP 1308:22. And it was awarded to Mary Carlson in the property distribution. CP 1321, ¶ 3.e.

Mrs. Carlson claimed she bought the Scenic Lot with life insurance proceeds, and it was purchased in a company called RMT in 2006. RP 222:12-17; PE 29 and RP 326:11-12. However, RMT was a company in which Mary Carlson co-mingled funds in and out from the Community farming operation. 573:19-574:13, CP 341¶7 and CP 1130 and PE 156. As important, Mr. Carlson's salary was deposited into the account for RMT. *Id.* From that account, expenses, such as taxes, for the Scenic Lot

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[14] CP 303:2–18.
[15] CP 332:16-23.

were paid. *Id.* Simply stated, the Scenic Lot was enhanced by, and commingled with, community funds.

The impact of omitting the Scenic Lot from the community property calculation, in isolation, is approximately as follows:

Approximate assets w/Scenic Lot	=$4,075,000
David Carlson distribution w/o Scenic Lot	=$1,800,000
Percentage to David Carlson[16]	= **44.17%**
Percentage to Mary Carlson	= **55.83%**

F. ***Mary Carlson Awarded Maintenance and Insurance in Addition to Disproportionate Distribution of Assets.***

Between the filing of the Domestic Case and entry of the Decree, Mrs. Carlson received maintenance of $3000 a month for 25 months, or $75,000. CP 55-56. She also received $10,000 in professional fees up front in the case. CP 57. In addition, she received health insurance, and had her car and personal property. She also received substantial payments from the farming working after the courts oral decision of September 25, 2015. CP 342.

David Carlson does not object to the maintenance and fees allowed in the Temporary Order. However, he does object that its economic impact was not considered in connection with the Disproportionate Distribution.

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[16] As a function of $4,075,000.

The parties had been separated for over a year, and while they had very substantial assets, the assets were not liquid and required to continued farming through the 2013, 2014 and 2015 crop years. Had this $85,000 been treated as part of a disproportionate distribution, it would have been paid as Mrs. Carlson's 55% of a community distribution of $154,545.45.[17]

The trial court continued maintenance to Mary Carlson at $3000 per month for three years, and $1000 a month thereafter.[18] Even ignoring the continuation beyond three years of the life insurance payments, this is an additional $90,000 coming from Mr. Carlson, and not the community property, but in addition to it. If it were allowed from the community funds, it would have been paid to Mrs. Carlson as 55% of the property distribution of $163,636.36.

The mathematical result of requiring this $175,000 to be treated separately from the disproportionate distribution had the effect, essentially, as follows:

Mary Carlson's 55% of $4 million Estate	= $2,200,000
David Carlson's 45% of $4 million estate	= $1,800,000
Preference to Mary Carlson	= $ 400,000

[17] The math is $85,000/.55 = $154,545.45.
[18] The $1000 per month was for life insurance premiums, and Mrs. Carlson's one-half (1/2) interest therein; which was given, apparently, in lieu of a division of the life insurance policies. (CP 299:15-300:12). It was an obligation for the term of the life of the first to pass away. CP 323:8-10.

Mary Carlson w/ Maintenance and fees[19]	= $2,375,000
David Carlson paying Maintenance and fees	= $1,625,000
Actual Preference to Mary Carlson	**= $ 750,000**
Actual Percentage to Mary Carlson	= 59.375%
actual Percentage to David Carlson	= 40.625%

G. ***The Solarity Bank Accounts.***

From the time of separation in July 2012, Mr. Carlson primarily used the Solarity Bank Accounts 8426,[20] for deposit of his salary, Social Security and other post separation income.[21] It was also primarily the account from which he paid support for Mrs. Carlson before the Domestic Case was filed in June 2013, and paid the court ordered temporary maintenance thereafter.[22] Mary Carlson testified concerning these accounts as follows:

> Q And there were at least in sometimes several accounts or sub accounts at Yakima Valley, later Solarity, that were used by you and Mr. Carlson, correct?
>
> A No.
>
> Q There was only one money market? Some of the statements we looked at, it looked to me like there were three or four separate money market accounts.

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[19] This analysis includes only the $10,000 upfront attorney fees allowed under the temporary order.
[20] These were originally Yakima Federal and changed to Solarity in later years.
[21] See, Schedules C through C-5, Dec'l. of Peterson, CP 250-255; See, also CP 341 ¶6 and CP 1127.
[22] *Id.*

> A No, that's not what I meant. It was -- this was his, no, not mine. We never mixed anything, any funds in the banks.[23]
>
> * * * * *
>
> Q By the way, the other -- the other money market accounts and so forth at Solarity were those just Mr. Carlson's according to your testimony or were those used by you as well?
>
> A No, these are just his. I have my own account there.[24]

From the time of separation in July 2012, and for more than three years thereafter, the Solarity accounts of David Carlson were used as his post-separation accounts and contained his post-separation earnings. He paid substantial portions of support to Mary Carlson support from these accounts, both before and after temporary maintenance is ordered by the court. It was simply error of the court to not treat these accounts as David Carlson's post-separation separate property.[25] All of the farming working capital had been directed by the court to be confined to an account at the

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[23] CP 277:5-11.
[24] CP 279:15-17.
[25] Under the farming orders, all proceeds of the farming operations (and their expenses) were paid to and from the court ordered accounts, with the exception of checks which were made specifically payable to a Carlson Agribusiness account and then transferred to the court ordered account. Proceeds of the farming operations did not go into these accounts, nor did any salary to David Carlson from the farming operations – he was not paid a salary. RP 616:19-617-17.

Central Valley Bank;[26] sometimes referred to as the 4610 or court ordered account.

The total of the accounts at Solarity included in community property by the trial court was: $108,762.82.[27] The corresponding distribution called for to Mary Carlson was 55% thereof, or: $59,819.55. However, the specific evidence submitted by Mary Carlson on this issue does not, at all, support even that finding. The trial court reserved the issue of bank accounts in its ruling of September 25, 2015, and took up the matter just before entering the Decree on March 3, 2016. In regard to these accounts, Mary Carlson submitted Schedules C through C-5 to the Declaration of Mr. Peterson. CP 250-255. Each of these schedules purportedly shows activity in the Solarity accounts, by number. They calculate 55% thereof for Mary Carlson as of the end of May, 2015, the month ending immediately before trial. Those schedules establish that the accounts listed totaled $23,065.78 and that 55% thereof equals $12,686.18. *Id.*

Thus, even if these accounts were properly deemed community property, which they were not,the evidence submitted to the court, and the

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[26] Later Heritage Bank.
[27] $25 (8426-00) +$5923.79 (8426-09) + $89,450.37 (8426-10) + $3995.83 (8426-17) + $9359.83 (8426-71 & 72) equals $108,762.82. *See* CP 1322 ¶¶12-16.

form of Decree submitted on behalf of Mary Carlson, simply had the wrong numbers in it. The evidence only supports accounts in the amount of $23,065.78 and 55% thereof payable to Mary Carlson should have been $12,686.18, even if the accounts are not treated as post-separation separate property of David Carlson.

The impact of including these separate property accounts in the Decree gave Mary Carlson an excess distribution of $59,819.55 and gave David Carlson a reduced the distribution of $48,943.27. Separated from all other impacts, this had the effect of giving Mary Carlson a disproportionate distribution of 56.54%. [28] It thus gave David Carlson only 43.46%.

If the decree is adjusted to the actual evidence, that the accounts included $23,065.78 rather than $108,762.82, a difference of $85,697.04, the impact of that error upon the percentage distribution gave Mary Carlson a disproportionate distribution of 56.2%.[29] Thus, under that calculation David Carlson received only 43.8%.

H. ***Award of Attorney Fees.***

---

[28] $4,000, 000 - 108,762.82 = $3,891,237.18. Mary Carlson's 55% of the $4 million = 2.2 million. $2,200,000/$3,891,237.18 = 56.54%.
[29] $4,000, 000 - $85,697.04 = $3,914,302.06. Mary Carlson's 55% of the $4 million = 2.2 million. $2,200,000/$3,914,302.06 = 56.52%.

Over objection of David Carlson, Mary Carlson was awarded $50,000 as attorney fees in addition to the 55%/45% disproportionate award of committee property, and the other awards of property to Mary Carlson discussed above. As with the other one-sided awards to Mary Carlson, this increased the disproportionate nature of the overall Decree by $$90,909.09 -- $50,000 more to Mary Carlson and $40,909.09 less to David Carlson.[30]

I. ***Loans from HMD to Community for Farming Working Capital***

From 2003 to 2009, HMD made loans to the Community farming business in the principal amount of $318,400.00.[31] Those funds were badly needed to avoid a complete loss of the family farming operations of the Community. RP 554:6-24. The checks were written by Mary Carlson. RP 296:21-297:17; RE 137; RP 290:11-14; and RP 294:12-17. Those funds were never repaid to HMD. RP 566:14-16; RP 563:16-19.[32]

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[30] If each party had paid his own attorney fees from distributions of community property, $90,909.09 of community property would've been implicated – 55% of that amount equals $50,000.

[31] These loans are detailed in the Opening Brief of HMD filed in these consolidated appeals. Because these loans are detailed in that Opening Brief, the Statement of the Case in that brief is here incorporated. The loans, however, are documented at Trial Exhibits (RE) 137, admitted RP 552:17, and testimony of David Carlson, RP 553:14-554:5; RP 296:21-297:18; RP 290:11-14; and RP 294:12-17.

[32] Ms. Carlson provided an unintelligible argument regarding these payments, but admitted no documents supporting it were ever produced. RP 299:10-11. Further her position was impeached by her deposition testimony (RP 296:6-14) and inconsistent with later testimony, see, e.g.

The court found that those loans were not payable by the Community farming business, solely based on the application of a three-year statute of limitations. CP 1314 ¶¶ 4–5; CP 1315 ¶¶ 4–5.

In contrast, HMD also made loans to the Community farming business in 2012. RP 565:3–25. The trial court found those loans to be valid and not barred by statute of limitations. CP 293:14-21. Mrs. Carlson expressed no objection to the partial repayment of those loans, the repayment of which was approved and ratified by the trial court. *Id.* and RP 302:9-10.

Money was transferred by HMD to the Community farming business, by Mary Carlson,[33] a general partner and fiduciary to HMD, as a matter of law, and there is no credible evidence those amounts were ever repaid – and there is direct evidence they were not. RP 563:16-19; RP 566:14-16. It was admitted in open court by David Carlson that these loans remained due and owing to HMD. RP 566:6-16.

The trial court recognized these debts, and their specific amounts, but held them to be barred by a three-year statute of limitations. CP 292:3-5; CP 292:11-12; CP 292:15-16 and CP 292:20-21.

---

court's clarification at RP 371:14-17. Further, even under her argument, there was to be a continuing open account. RP 296:5 and RP 372:7-10.

[33] RP 296–98; RP 290:11–14; *and see* RP 294:12–17.

The impact of not treating the principal amount of these Community farming business debts to HMD as due and owing was to overstate the community assets by $318,400.00. If that is treated as an obligation of David Carlson rather than the Community on the 55-45 basis, the result would be as follows:

Net Estate w/ HMD Charge[34]	= $3,681,600
Mary Carlson's Distribution	= $2,200,000
David Carlson's Distribution[35]	= $1,481,600
Actual Preference to Mary Carlson	= $ 718,400
Actual Percentage to Mary Carlson[36]	= **59.76%**
Actual Percentage to David Carlson	= **40.24%**

Because the principle amount of the indebtedness is subject to interest at the 12% statutory rate, the divergence from a 55-45 distribution becomes yet again more extreme. Interest has accrued as of the date of this brief, in the amount of: $398,760.13 and the combined interest and principal of $717,160.13.

Accounting for both principal and interest, the calculation above yields the following result:

Net Estate w/ HMD Charge[37]	= $3,282,839.87
Mary Carlson's Distribution	= $2,200,000.00

---

[34] $4,000,000 - $318,400 = $3,681,600.
[35] $1,800,000 - $318,400 = $1,481,600.
[36] $2,200,000/$3,681,600 = 59.76%
[37] $4,000,000 - $717,160.13 = $3,282,839.87.

David Carlson's Distribution[38]	= $1,082,839.87
Actual Preference to Mary Carlson	= $1,117,160.13
Actual Percentage to Mary Carlson[39]	= **67 %**
Actual Percentage to David Carlson	= **33 %**

J. ***Cumulative Effect of Trial Court's Decree.***

As the foregoing suggests, the cumulative effect of the trial court's rulings was to greatly exceed the intended 55-45 ratio in Mrs. Carlson's favor and to Mr. Carlson's detriment. The starting point is the 55-45 ratio, which gave approximately a $400,000 preference to Mary Carlson—$200,000 more than she would have received by an equal distribution. Then the salary preference received by Mary Carlson is either $41,250[40] or $99,000.[41] Then, the Scenic Lot preference given to Mary Carlson was $33,750.[42] Then, by receiving $175,000 as maintenance (and $10,000 in fees) commencing more than a year after separation, Mary Carlson received an additional preference in the amount of $175,000. Then, by receiving 55% of Mr. Carlson's post-separation bank accounts, from which she had already received maintenance, she received an additional

---

[38] $1,800,000 - $717,160.13 = $1,082,839.87.
[39] $2,200,000/$3,681,600 = 59.76%
[40] Based on aggregate salary of $50,000 per year, with 55% thereof allocated to Mary Carlson.
[41] Based on aggregate salary of $85,000 per year, with 55% thereof allocated to Mary Carlson.
[42] Mary Carlson should have received $41,250 as 55% of $75,000, but received the whole $75,000 – a difference of $33,750.

preference of $59,819.55, the majority of which was not even supported by the evidence she submitted.[43] Then, on top of the foregoing, the court awarded Mary Carlson an additional $50,000 in attorney fees, and additional asymmetric, disproportional distribution.

These preferences to Mary Carlson aggregated between $559,819.55[44] and $617,569.55. With some minor rounding errors, those preferences correlate to a disproportionate distribution in favor of Mary Carlson of 64% to 65.4% and a disproportionate distribution to David Carlson of 36% to 34.6%, effectively more than a 2/3 to 1/3 distribution in favor of Mary Carlson. This disproportionate allocation is nearly three times the difference found by the court to be just and equitable. The trial court ordered a 10% differential; but the actual differential, even without reference to the HMD loans, is 28% to 30.8%.

If the HMD debt is not allocated as a community debt, borne 55-45 the disproportionate distribution becomes egregious. If just the principal is considered, the 28% differential indicated above would become 38.8%

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[43] *See* CP 250–55.
[44] $200,000 + $41,250 + $33,750 + $175,000 + $59,819.55 + $50,000 = $559,819.55 – the approximate amount Mary would receive in excess of the strait $2 million in a 50-50 split of a $4 million community property estate.

(69.4% - 30.6%) with only 30.6% going to David Carlson.[45] If the principal and interest are considered, the 28% differential indicated above would become 56%, with only 22% going to David Carlson.[46]

IV. ARGUMENT

A. *Standard of Review.*

The trial judge's determination of what is fair and equitable in marital distributions will not be reversed absent a showing of manifest abuse of discretion. *In re Marriage of Wright,* 78 Wn.App. 230, 234, 896 P.2d 735 (1995). The trial court is not required to achieve perfect mathematical precision in pursuit of a fair and equitable distribution. *Id.* at 234. An appellate court will, however, correct or remand for correction of mathematical errors. *Wilson v. Wilson*, 165 Wn. App. 333, 345, 267 P.3d 485, 491 (2011); *Clausing v. Virginia Lee Homes, Inc.*, 62 Wn.2d 771, 776, 384 P.2d 644, 648 (1963).

B. *Required Factor was Not Considered.*

The marital property distribution statute sets forth certain (non-exclusive) factors which must be considered. RCW 26.09.080. Among

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[45] This is calculated by subtracting the HMD debt principal of $318,400 from the presumed estate amount of $4 million and dividing that into Mrs. Carlson's distribution share of $2,559,819.55.

[46] This is calculated by subtracting the HMD debt principal and interest amount of $717,160.13 from the presumed estate amount of $4 million and dividing that into Mrs. Carlson's distribution share of $2,559,819.55.

these are "[t]he economic circumstances of each spouse or domestic partner at the time the division of property is to become effective." RCW 26.09.080(4). That factor, while not necessarily of heaviest weight, is of "'paramount concern.'" *Matter of Marriage of Olivares*, 69 Wn. App. 324, 330, 848 P.2d 1281, 1285 (1993) (quoting *DeRuwe v. DeRuwe,* 72 Wn.2d at 408, 433 P.2d 209.) Indeed, at least in a long-term marriage of 25 years or more, the court's objective "is to place the parties in roughly equal financial positions for the rest of their lives," and "[i]f the decree results in a patent disparity in the parties' economic circumstances, a manifest abuse of discretion has occurred." *In re Marriage of Kim*, 179 Wn. App. 232, 253, 317 P.3d 555, 566 (2014) (quoting *In re Marriage of Rockwell*, 141 Wn. App. 235, 243, 170 P.3d 572, 576 (2007)). The Carlsons were married from 1989 to 2015, and considering Mr. Carlson's advanced years at the time of the decree, his need for a fair provision for his remaining years is acute.

The trial court's oral ruling of September 25, 2015, and its subsequent written decree and findings of fact, however, do not seem to take into account the parties' respective economic circumstances.[47]

---

[47] *Cf. In re Marriage of Steadman*, 63 Wn. App. 523, 526, 821 P.2d 59, 61 (1991) (formal finding of fact on each separate factor not needed where oral ruling makes it clear the court considered them.)

Instead, as discussed above, the trial court first compelled Mr. Carlson to work for nothing for three years, while paying maintenance and attorney's fees to Mrs. Carlson, and then gave him below-minimum wage compensation (as offset only, not cash), and set him up to try to get a living income out of approximately 45 percent of the Community's productive assets (the farms) with considerably less than 45 percent of the Community's net working capital (the net proceeds from the prior year's crops). This was a recipe for bankruptcy. It is to prevent this sort of inadvertent disaster that the statute requires the trial court at least to openly consider the issue on the record.

C. *The Trial Court's Mischaracterization of Property was Reversible Error.*

The statute also requires the trial court to consider which assets or income streams are community property and which are separate property. RCW 26.09.080(1)–(2). As discussed above, the trial court made significant errors in this regard, which in turn led to an erroneous calculation of the total community assets to be divided 55-45. As a result, Mr. Carlson lost 55 percent of the scant savings he had managed to accumulate during the dissolution proceedings, and saddled with 100 percent of the Community's largest debt.

All assets are fairly before the court, so mischaracterization of separate property as community property is sometimes harmless, but "[r]emand is required where," as here, "(1) the trial court's reasoning indicates that its division was significantly influenced by its characterization of the property, and (2) it is not clear that had the court properly characterized the property, it would have divided it in the same way." *In re Marriage of Shannon*, 55 Wn. App. 137, 142, 777 P.2d 8, 11 (1989). Remand in such a case "enables the trial court to exercise its discretion in making a fair, just and equitable division on tenable grounds, that is, with the correct character of the property in mind." *Id.*

The Scenic Lot was presumed, as a matter of law, to be community property. The evidence submitted established that the accounts which paid its expenses were commingled with community funds. There was insufficient evidence to overcome the presumption that it was community property, and it should have been included in the court's distribution of community property.

The opposite was true of the Solarity bank accounts. The court ordered all of the proceeds of the community farming business to be deposited and accounted for in a separate account. That was done. Even Mrs. Carlson testified those accounts had historically been Mr. Carlson's accounts, and there was no evidence submitted to the contrary. It is clear

from Mrs. Carlson's expert's testimony that Mr. Carlson's Social Security and pension, post-separation, were deposited into the Solarity Account. *See, e.g.*, CP 251. It was therefore plain error to distribute those funds: "social security benefits themselves are not subject to division in a marital property distribution case." *In re Marriage of Zahm*, 138 Wn.2d 213, 219, 978 P.2d 498, 501 (1999).

D. ***Maintenance was Excessive in Addition to Disproportionate Division of Property.***

According to the trial court's primary findings, the marital community was primarily a family farming operation, and it had over $4 million of net assets, and with the exception of the HMD debt, very little debt. Accordingly, an even division of the property, in theory, would have met the requirements of a just and equitable division. The unique character of a family farming operation, however, required a long-term continuation of the business until the property division could be accomplished. During that time, Mr. Carlson was required to subsidize Mrs. Carlson—but he received no income from the farming operation, even though it was accruing, and bore all of the expenses of both he and Mrs. Carlson for over three years. Those circumstances, standing alone, would justify a disproportionate award in favor of Mr. Carlson, not Mrs. Carlson. The fact that the trial court did not: (i) make findings regarding

the one-sided efforts to maintain the family farming business for over three years, (ii) did not a knowledge the pre-Decree financial burdens upon Mr. Carlson, and (iii) did not provide even minimum wage compensation for the three years of labor on Mrs. Carlson's portion of the assets, justify remand for want of adequate findings and conclusions pursuant to CR 52. Additionally, the court's failure to consider, and explain why, the findings of fact and conclusions of law proposed by David Carlson were rejected is a further indication of abuse of discretion. *See* APP. 58-78.

E. ***The HMD Loans Require Reversal.***

The HMD loans constitute a significant Community debt, as to which, unless this court grants judgment to HMD as requested in its appeal, there are insufficient findings and conclusions, and the amounts involved are so material, that the matter should be remanded based on the authority above cited. As with assets, debts which benefit the community are presumed to be community debts. There is no evidence to establish that the HMD loans were not community debts. Indeed, the evidence is virtually undisputed that the HMD funds came into the Community farming business, and were used thereafter continuously to the date of the Decree. *See* Brief of HMD, filed herewith. Based on that substantial evidence, it is axiomatic that the trial court, in distributing the working

capital of the Community farming business distributed 55 percent of the proceeds and profits from the HMD loans to Mrs. Carlson. Having received those community assets, she should be equally responsible, on the same basis, for the community debts. Any other result would require at least some specific findings and conclusions, which are simply not present in the record, most likely because the HMD claims were wrongly dismissed based on the statute of limitations.

F. ***Attorney Fee Award was Excessive in the Presence of the Disproportionate Distribution of Community Property.***

Washington courts may award attorney fees in dissolution proceedings on an equitable basis where the intransigence of one party has unnecessarily increased litigation costs. *In re Marriage of Crosetto*, 82 Wn. App. 545, 564, 918 P.2d 954 (1996). Because intransigence is the **sole** recognized equitable basis for a family court to award fees to a party who could well afford to pay them herself, fees incurred by the moving party "should be segregated, separating those fees incurred because of intransigence from those incurred by other reasons." *Crosetto*, 82 Wn. App. at 565 (trial court did not err in refusing to award fees, but on remand for other reasons, appellant could make a properly segregated showing of fees incurred); *cf. In re: Marriage of Burrill*, 113 Wn. App. 863, 873, 56 P.3d 993 (2002) (segregation unnecessary only where the

intransigent conduct has "permeated the entire proceedings" so that segregation was impossible). Here, there was no such segregation of Mrs. Carlson's fees, which is plain error by itself.

Even apart from that error, the trial court found intransigence on an improper ground and without basis in the record. Fees were high—for both parties—for other reasons entirely. The court stated in its oral ruling that the matter was inherently complex, and that Mrs. Carlson had also engaged in conduct that could "easily" be characterized as intransigent. CP 286:10-13; CP 309:10-11. The court expressly stated that what tipped the balance in the court's view, was that it believed Mr. Carlson had concealed assets and forged a document. CP 306-309. As stated above, even if this were a proper basis to award fees, Mrs. Carlson could at most have been awarded only such fees as were attributable only to those "intransigent" acts, and there was no such showing or finding in the record.

Furthermore, Mrs. Carlson's fees were largely due to her own unreasonable and vexatious multiplication of proceedings. CP 138-43 (listing the most noteworthy of these incidents, such as Mrs. Carlson's unnecessary and unsuccessful contempt motions, the restraining order imposed on her after she stole money from HMD, and so forth). A court-may award only reasonable attorney's fees. *Berryman v. Metcalf*, 312 P.3d

745, 753 (Wn. Ct. App. 2013) (quoting *Mahler v. Szucs*, 135 Wn.2d 398, 434-435, 957 P.2d 632 (1998)).

More importantly in this regard, the basis for the trial judge's finding of intransigence by Mr. Carlson was plain error. Parties are intransigent, in this sense, where they are motivated by their desire to delay proceedings or run up costs. *In re Marriage of Wallace*, 111 Wn. App. 697, 710, 45 P.3d 1131 (2002) (citing *Gamache v. Gamache*, 66 Wn.2d 822, 829-30, 409 P.2d 859 (1965); *Eide v. Eide*, 1 Wn. App. 440, 445-46, 462 P.2d 562 (1969)). No such intent or conduct by Mr. Carlson is shown or found in the record.

Instead, the trial court looked to Mr. Carlson's alleged misconduct of a more general kind, which is simply not within the definition of intransigence. Fee awards in dissolutions are meant to compensate the receiving spouse for having to incur unnecessary legal expenses, *Crosetto, supra*, not to punish perceived misconduct in general. Other penalties were available to control such misconduct if it in fact occurred, but dishonest spouse cannot be required to pay attorney's fees whether or not he increased the litigation expense. That ruling was error and should be reversed.

V. CONCLUSION

For the reasons and upon the authorities set forth above, David Carlson respectfully asks for the decision of the trial court to be vacated and the matter remanded for further proceedings in accordance with the principles of law and the facts set forth above.

DATED this 8th day of May 2017.

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PROOF OF SERVICE

The undersigned declares under penalty of perjury that the following facts are true and correct:

I am a citizen of the United States, over the age of 18 years, and not a party to or interested in the above-entitled action.

On May 8, 2017, I served or caused to be served a copy of the foregoing document upon counsel for Respondents by hand and email at

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Counsel for Mary Carlson and South 80

SIGNED this 8th day of May, 2017,

_____

No. 344436
COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

CONSOLIDATED CASES

MARY ALICE CARLSON, Respondent, Cross-Appellant

v.

HUGH DAVID CARLSON, Appellant, Cross-Respondent

_____ AND _____

HMD LIMITED PARTNERSHIP, Appellant

v.

MARY ALICE CARLSON and SOUTH 80 ORCHARDS LP,

Respondents

APPENDIX TO
BRIEFS OF APPELLANTS
HMD LIMITED PARTNERSHIP
AND
HUGH DAVID CARLSON

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INTRODUCTION

In drafting the Opening Briefs of HMD Limited Partnership and of Hugh David Carlson, counsel for those Appellants determined that additional documents were required from the Clerk's Papers or as mathematical computations for the benefit of the court. Time did not allow filing a supplement to the Designation of Clerks Papers before filing of the Opening Briefs, and therefore this Appendix is supplied. A Supplement to the Clerk's Papers will be filed, as contemplated by the Court Rules, prior to the filing of these Appellants, responsive briefs or replies.

DATED this eighth day of May, 2017.

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PROOF OF SERVICE

The undersigned declares under penalty of perjury that the following facts are true and correct:

I am a citizen of the United States, over the age of 18 years, and not a party to or interested in the above-entitled action.

On May 8, 2017, I served or caused to be served a copy of the foregoing document upon counsel for Respondents by regular U.S. mail, postage prepaid, at:

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SIGNED this 8th day of May, 2017,

/s/ Emanuel Jacobowitz
Emanuel Jacobowitz, WSBA #39991

APPENDIX -- 1

APPENDIX -- 1

HMD Loans
Principal And Interest to
May 8, 2017

Date of Loan	Interest Rate	Principal of Loan	Interest to 5/8/2017	Total of Interest and Principal HMD loans
7/14/2009	0.12	$100,000.00	$93,863.01	$193,863.01
8/5/2009	0.12	$55,000.00	$51,226.85	$106,226.85
9/2/2009	0.12	$10,000.00	$9,221.92	$19,221.92
Total 2009		$165,000.00	$154,311.78	$319,311.78
6/3/2003	0.12	$60,000.00	$100,366.03	$160,366.03
6/18/2003	0.12	$45,000.00	$75,052.60	$120,052.60
7/22/2003	0.12	$10,000.00	$16,566.58	$26,566.58
7/30/2003	0.12	$1,400.00	$2,315.64	$3,715.64
10/8/2003	0.12	$12,000.00	$19,572.16	$31,572.16
3/2/2007	0.12	$25,000.00	$30,575.34	$55,575.34
Total '03-'07		$153,400.00	$244,448.35	$397,848.35
TOTAL		$318,400.00	$398,760.13	$717,160.13

APPENDIX -- 2

APPENDIX -- 2

HMD Sequestered Funds
Interest Calculation
January 8, 2014 to September 25, 2015

Dates	Interest Rate	Principal	Accrued Interest	Total
Interest paid to: 1/8/2014 Paid: 9/25/2015	0.12	$226,485.05	$46,538.02	$273,023.07

APPENDIX -- 3

APPENDIX -- 3

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF YAKIMA

In Re the Marriage of	)	
	)	
MARY ALICE CARLSON,	)	
	)	
Petitioner,	)	
	)	
and	)	NO. 13-3-00578-9
	)	
HUGH DAVID CARLSON,	)	
	)	
Respondent.	)	

DEPOSITION UPON ORAL EXAMINATION OF
MARY ALICE CARLSON

April 4, 2014

Yakima, Washington

TAKEN AT THE INSTANCE OF THE RESPONDENT

REPORTED BY:
DORENE BOYLE

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11 ALSO PRESENT:

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13

14

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36f4b4c1-ee1f-45e8-8cb1-4de22fbb6b6

4-4-14 Mary Carlson, (Page 5:14 to 5:22)

5

14 EXAMINATION
15 BY MS. REMY:
16 Q. My name is Amy Remy, and I represent David Carlson.
17 And you are Mary Carlson; is that correct?
18 A. Yes.
19 Q. Can you please state and spell your full name for the
20 record.
21 A. Mary Carlson -- Mary Alice Carlson, M-A-R-Y,
22 A-L-I-C-E, C-A-R-L-S-O-N.
* * * * *

4-4-14 Mary Carlson, (Page 13:18 to 13:23)

13

18 Q. And where do you currently live?
19 MR. MAXWELL: Did you say 1996?
20 THE DEPONENT: In '86 I moved to Yakima.
21 A. I live at 1214 Lila Place in Yakima.
22 Q. And do you own or do you rent?
23 A. I rent.
* * * * *

4-4-14 Mary Carlson, (Page 44:19 to 44:21)

44

19 Q. Okay. So let's talk about that. How did you acquire
20 500,000 in savings?
21 A. Out of my wages.
* * * * *

4-4-14 Mary Carlson, (Pages 48:24 to 49:5)

48

24 Q. Let's move forward in time to about 2012, 2013. Per
25 your petition, you are saying that the date of

49

1 separation -- Let me refer to it here so we've got it
2 exactly. Okay. You're saying that the date of
3 separation was August, 2012. Is that still your
4 position today?
5 A. It was the end of August, yes.
* * * * *

4-4-14 Mary Carlson, (Page 66:1 to 66:5)

66

1 Q. Mary, before we went on break for lunch you said
2 something into the record that you didn't want either
3 a divorce or a legal separation. Is that your
4 position today?
5 A. Yes.
* * * * *

- -1 Mary Carlson, Pages 68:21 to 69:1)

68

21 Q. Okay. Getting back to your testimony earlier, it was
22 unclear to me when you moved out of the house. Can
23 you tell me when that was?
24 A. The end of August or the first of September.
25 Q. And this was in 2000 and --?

69

1 A. '12.

* * * * *

4-4-14 Mary Carlson, (Page 71:16 to 71:24)

71

16 Q. Can you review this document and tell me what it is,
17 Mary.
18 A. It's a Financial Declaration.
19 Q. Okay. And is that your signature there on the sixth
20 page?
21 A. Yes.
22 Q. Okay. If you go to page No. 2 under 3.1, 3.1 "b" says
23 your wages and salaries are $435.
24 A. That's incorrect. It should have been a week.

* * * * *

4-4-14 Mary Carlson, (Page 72:11 to 72:23)

72

11 Q. Topp Creek, okay. Then it says other income is $1,210
12 there under letter "g."
13 A. That was L & I.
14 Q. And that amount, is that per month or is that per
15 week?
16 A. That was every two weeks.
17 Q. Okay, per two weeks. Okay.
18 A. No, it wasn't. I don't -- It should be 1,600. I was
19 getting $1,600 a month from L & I until the end of
20 July.
21 Q. Okay. So that amount there in your declaration of
22 $1,210 is incorrect?
23 A. Yeah. It should be 1,600.

* * * * *

4-4-14 Mary Carlson, (Pages 73:19 to 74:10)

73

19 Q. And the insurance of $500 per month. is that still
20 accurate?
21 A. No.
22 Q. How much insurance do you pay?
23 A. I don't pay vehicle insurance. The licenses are
24 about -- between the three vehicles at that time, one

25 was 57 and one was 87 and the motor home was I'm going

74

1 to guess 175, but that was licenses. And it's not per
2 month, it's per year.
3 Q. So $500 per month is incorrect. Do you pay any
4 insurance, vehicle insurance right now?
5 A. Vehicle, no.
6 Q. Who pays your car insurance?
7 A. The company.
8 Q. Which company?
9 A. Well, it's now Carlson Agribusiness. It was South 80
10 Orchards, and before that it was Carlson Orchards.

* * * * *

4-4-14 Mary Carlson, (Page 77:9 to 77:22)

77

9 Q. So is there a balance on that American Express?
10 A. There might be a little bit on there now, but I always
11 pay it at the end of the month. So I don't keep a
12 balance on it, no.
13 Q. And the Discover card, when did you open that?
14 A. Mid '80s.
15 Q. Was there a balance on that last year?
16 A. No.
17 Q. So you said you had two Bank of America cards. Under
18 5.11, does that Bank of America credit card balance of
19 8,000 list one card or both cards?
20 A. Both.
21 Q. Okay. So you said now there's $20,000.
22 A. Between 20 and 21.

* * * *

4-4-14 Mary Carlson, (Page 80:18 to 80:25)

80

18 Q. Okay. So none of your son's stuff had been hauled off
19 at that point; is that right?
20 A. No. I thought it had when I opened the garage and it
21 was gone, but then apparently they had moved it back
22 in the back.
23 Q. Okay. So all of your son's stuff was still there; is
24 that right?
25 A. It still is.

* * * *

4-4-14 Mary Carlson, (Pages 89:10 to 90:1)

89

10 Q. Do you currently have a key for the marital residence?
11 A. No.
12 Q. Do you have any garage door openers?

13 A. No.
14 Q. How about keys for any of the filing cabinets?
15 A. No.
16 Q. Keys for any of the safes in the house?
17 A. There isn't any safes that I know of.
18 Q. Why don't you have keys or garage door openers right
19 now?
20 A. I lost my keys clear back in 2010. And I was going to
21 pick him up and somewhere between the house and Parker
22 Heights I lost my keys and I've never -- just never
23 had any since.
24 And the house key, because on the 16th of
25 December, when he told me I couldn't be there, then he

90

1 changed the locks that same day.

* * * * *

4-4-14 Mary Carlson, (Page 92:10 to 92:14)

92

10 Q. What about a motor home?
11 A. I don't have a motor home anymore.
12 Q. Okay. When was that sold?
13 A. Last summer. May, June. I don't remember. May or
14 June.

* * * * *

4-4-14 Mary Carlson, (Pages 93:7 to 94:2)

93

7 Q. Okay. How many secondary residences did you
8 accumulate while you were married?
9 A. I bought a house up at Seven Bays up in Davenport,
10 Lake Roosevelt.
11 Q. Is that in Idaho or is that in Washington?
12 A. It's in Washington.
13 Q. And how much was the house? How much did you pay for
14 it?
15 A. I think I paid $49,000, maybe 59. I don't remember.
16 Q. 59,000?
17 A. Somewhere between 49 and 59. I do not remember.
18 Q. How many square feet is it?
19 A. I don't know. It's a 14 by 60 mobile home that they
20 took one side out of and doubled the size. They
21 built -- stick built on the other side of it.
22 Q. And did you buy it outright?
23 A. No. I pay payments on it.
24 Q. And where did that money come from?
25 A. Out of my wages.

94

1 Q. From your wages?
2 A. Yes.
* * * * *

4-4-14 Mary Carlson, (Page 95:8 to 95:25)

95
8 Q. And where did the rest of the money go from your son's
9 life insurance?
10 A. Well, I bought Dave a car for his birthday, Cadillac
11 Escalade, one year.
12 Q. Okay.
13 A. That was 37,000 plus the tax and license.
14 I took everybody, paid for everybody to go to
15 Disneyland in 2006, all the kids. We all went. And
16 that was an expensive trip.
17 Q. Okay.
18 A. I paid for my sister, $5,000 for her plane ticket and
19 hotels and stuff, when she came out for Joe's funeral.
20 And I went on vacation three years. And I bought
21 that lot, a lot up on 58th Avenue.
22 Q. How much was the lot, did the lot cost?
23 A. 70,000.
24 Q. Did you finance that or pay for it outright?
25 A. I paid for it.
* ** 4-4-14 Mary Carlson, (Page 95:8 to 95:25)
95
8 Q. And where did the rest of the money go from your son's
9 life insurance?
10 A. Well, I bought Dave a car for his birthday, Cadillac
11 Escalade, one year.
12 Q. Okay.
13 A. That was 37,000 plus the tax and license.
14 I took everybody, paid for everybody to go to
15 Disneyland in 2006, all the kids. We all went. And
16 that was an expensive trip.
17 Q. Okay.
18 A. I paid for my sister, $5,000 for her plane ticket and
19 hotels and stuff, when she came out for Joe's funeral.
20 And I went on vacation three years. And I bought
21 that lot, a lot up on 58th Avenue.
22 Q. How much was the lot, did the lot cost?
23 A. 70,000.
24 Q. Did you finance that or pay for it outright?
25 A. I paid for it. 4-4-14 Mary Carlson, (Page 95:8 to 95:25)
95
8 Q. And where did the rest of the money go from your son's
9 life insurance?

10 A. Well, I ought Dave a car for his birthday, Cadillac
11 Escalade, one year.
12 Q. Okay.
13 A. That was 37,000 plus the tax and license.
14 I took everybody, paid for everybody to go to
15 Disneyland in 2006, all the kids. We all went. And
16 that was an expensive trip.
17 Q. Okay.
18 A. I paid for my sister, $5,000 for her plane ticket and
19 hotels and stuff, when she came out for Joe's funeral.
20 And I went on vacation three years. And I bought
21 that lot, a lot up on 58th Avenue.
22 Q. How much was the lot, did the lot cost?
23 A. 70,000.
24 Q. Did you finance that or pay for it outright?
25 A. I paid for it.

* * * * *

4-4-14 Mary Carlson, (Pages 96:22 to 97:5)

96

22 Q. Why would you want something together when you were
23 aware of the situation and the fact he wanted
24 everything separate? Why would you want something
25 together with him, then?

97

1 A. I thought it would make him happy. And it did, I
2 thought. For the next year everything was perfect.
3 Q. Which year is that you're talking about?
4 A. From 2009 until September of 2010. Or at least I
5 thought it was perfect.

* * * * *

4-4-14 Mary Carlson, (Pages 100:9 to 102:1)

100

9 Q. Now, when you went to the house at any point last
10 year, did you ever take any documents of any kind?
11 A. After the restraining order or before?
12 Q. At any point last year.
13 A. Yes, at one time I did.
14 Q. Okay. What kind of documents did you take?
15 A. All of my L & I documents and the folders that were my
16 personal bills, and my legal folder and my car folder
17 and -- or files, excuse me, that were in the drawer.
18 And I put them in a box. And Dave went through the
19 box before I left. He said, What are you taking? And
20 I told him and I said, Look through it if you have a
21 problem with it, and he went through the box.
22 Q. Did you go on the computer and take any information

23 off of the computer?
24 A. No.
25 Q. Did you touch the computer?

101

1 A. Not after he told me to -- Not after June, no.
2 Q. You never printed anything, any documents out from
3 that?
4 A. No.
5 Q. Did you put any information from the computer onto any
6 sort of a removable drive like a thumb drive or
7 something?
8 A. No.
9 Q. Did you at any time damage the computer?
10 A. No.
11 Q. Did you try and move it or pick it up or anything like
12 that?
13 A. No.
14 Q. Okay. Did you take those checks that you were talking
15 about right there on the desk?
16 A. My checks?
17 Q. What checks were your checks?
18 A. Are you talking about my personal checks that were in
19 the filing cabinet drawer last May when I wanted in
20 there?
21 Q. Tell me about those.
22 A. I used the last check in my checkbook and I needed
23 another check and that's where they were kept.
24 Q. Okay. So we're talking about blank checks that you
25 can write out?

102

1 A. Yes.
* * * * *

4-4-14 Mary Carlson, (Pages 102:10 to 103:19)

102

10 Q. Is there as a safe deposit box or was there some sort
11 of a safe place?
12 A. Well, there was a safety deposit box. As a matter of
13 fact, I cleaned it out last week. I had forgotten
14 about it and Solarity called and reminded me, but ours
15 was left.
16 Q. There was a safe deposit box at a bank?
17 A. There was one at Solarity.
18 Q. Okay.
19 A. I'd forgotten it was there, nobody has touched it in
20 so long.
21 Q. And you went there last week?

22 A. Yes.
23 Q. And what was in it?
24 A. They wanted the boxes cleaned out because they don't
25 want them -- they're not -- they don't want them. At

103

1 the branch on Fifth they're not handling them anymore.
2 Q. Okay. What was in there?
3 A. I'm not sure what all was in there. I just threw it
4 all in a bag and haven't gone through it all, but
5 there's -- his dad had some old coins, and they're in
6 there. They're not all there, but there's a few in
7 there. The notes for when I loaned the money to the
8 company are in there, which I was glad to see. His
9 dad's wallet was in there. And there was some papers
10 in there. I didn't look at them yet.
11 Q. When last week did you go in?
12 A. I don't remember. It must have been Monday or
13 Wednesday last week. I'm not sure.
14 Q. And in whose name was the safety deposit box in?
15 A. Mine.
16 Q. Yours alone?
17 A. Yeah. But Dave was -- Dave could get in there. He's
18 got a key and he could get in there too. He was
19 authorized on there.
* * * * *

4-4-14 Mary Carlson, (Page 105:7 to 105:12)

105

7 Q. Is it pretty safe to say Dave doesn't like to deal
8 with technology or the banks, when it comes to money?
9 A. He uses his credit card sometimes.
10 Q. What about a debit card?
11 A. I don't think he's ever had a debit card. Not that I
12 know of.
* * * * *

4-4-14 Mary Carlson, (Pages 109:21 to 110:15)

109

21 Q. Did you get any time loss from L & I?
22 A. Yes.
23 Q. How much was your time loss?
24 A. It was 65 percent of my wages. And then they
25 increased it as the cost of living went up, I guess.

110

1 Q. Okay. And so how much was that, 65 percent of your
2 wages in 2003?
3 A. I don't remember what I was getting to start with, but
4 I know it ended up I was getting 3,600.

5 Q. O ay. When was it you were getting 3,600?
6 A. A couple years ago, anyway.
7 Q. Did you ever get permanent disability or a pension?
8 A. No.
9 Q. And why not?
10 A. Because I appealed their decision to close the claim.
11 Q. Okay. When was that appeal?
12 A. They closed it July 31st in 2013, and I think I got
13 the appeal done in September.
14 Q. So is the appeal pending?
15 A. Yes. I have an attorney working on it.
* * * * *

4-4-14 Mary Carlson, (Pages 117:16 to 119:8)

117

16 Q. Okay. Let's talk about the savings that you
17 accumulated during the marriage that you spoke of
18 earlier. Where was the savings account?
19 A. I can't remember where I had them. I don't remember
20 where I had a bank account first. But we switched to
21 Yakima Valley Credit Union when they started, and I've
22 had it there ever since.
23 Q. Okay.
24 A. There and Yakima Federal.
25 Q. And where did the money come from that you put in that

118

1 account?
2 A. Out of my wages.
3 Q. Anywhere else?
4 A. A little bit of L & I.
5 Q. And how much money is in that account today?
6 A. None.
7 Q. Where did it go?
8 A. I used it to finance the farm so we could keep
9 farming. When I took over -- Actually I started using
10 it before I took over down there.
11 Q. Okay. Which farm?
12 A. South 80 Orchards. It's the only farm we have.
13 Q. When did you loan South 80 Orchards this money?
14 A. Off and on over the course of four years there.
15 Q. When did you start giving South 80 this money?
16 A. I should have looked at those notes. It was late
17 2004, early 2005. It was when we were pruning that
18 crop, so it was either the end of the one year or the
19 first of the following year.
20 Q. So in 2004 to 2005, how much of your savings did you
21 put into South 80?

22 A. I don't know how to answer that because if money came
23 in and there was extra money, I would pay the loan
24 down. And if there wasn't any money to use to farm
25 with, then I'd end up putting more in. So I put it

119

1 back and forth. But there's a note for every one.
2 And there's notes on it when it was paid back and what
3 wasn't.
4 Q. Okay.
5 A. I don't know. I guess all I can do is copy the notes.
6 Q. Let's start from this way: Did you make any -- Did
7 you pay South 80 any money from your savings account
8 before 2004?

* * * * *

4-4-14 Mary Carlson, (Pages 119:17 to 120:14)

119

17 Q. Let's back up, then. When was South 80 formed?
18 A. Around '98. It could be '97, could be '99.
19 Q. Is it a corporation, a partnership, limited liability
20 company?
21 A. It's a limited partnership.
22 Q. And who were the partners the date of formation?
23 A. Myself, Nicholas Carlson, and Sandra Bennetti. And
24 Dave put the money and gave Nick $1,000 to put in.
25 Sandra Bennetti put her own money in, and I put my own

120

1 money in.
2 And Paul Larson was actually the one that set it
3 up, and he was -- it started out with him on it until
4 we agreed what was going to be what.
5 Q. Mary, how much money did you put in?
6 A. $6,000.
7 Q. How much money did Ms. Bennetti put in?
8 A. There's an argument on that. I think that she put in
9 $3,000, and so does Dave, but her kids keep saying
10 that she put in $6,000, so I'm not positive on that.
11 So either three or six.
12 Q. So South 80 was formed with 10 to 13 thousand dollars
13 back in 1998?
14 A. That was the initial start-up money.

* * * * *

4-4-14 Mary Carlson, (Page 122:11 to 122:13)

122

11 Q. Okay. Are you a limited or a general partner of South
12 80?
13 A. General.

* * * * *

4-4-14 Mary Carlson, (Page 123:3 to 123:6)

123

3 Q. So what land does South 80 currently own or lease?
4 A. It no longer owns any land.
5 Q. Okay.
6 A. But it still leases the four 80-acre apple orchards.

* * * * *

4-4-14 Mary Carlson, (Page 128:3 to 128:8)

128

3 Q. Who was Carlson Orchards, if it was not Dave?
4 A. Carlson Orchards, Incorporated was his company.
5 Q. It was Dave's company.
6 A. Yes, it was.
7 Q. Okay.
8 A. One hundred percent.

* * * * *

4-4-14 Mary Carlson, (Pages 139:22 to 140:8)

139

22 Q. Okay. So did you do the tax returns for South 80 in
23 2011?
24 A. No.
25 Q. Who that did the tax returns then?

140

1 A. Bill Halsey.
2 Q. And who signed the tax returns?
3 A. I don't know.
4 Q. Okay. Let's go to Exhibit No. 11.
5 A. It's not signed. I already looked. But I can tell
6 you I didn't sign them in 2012.
7 Q. Okay.
8 A. So how he got them signed, I'm not sure.

* * * * *

4-4-14 Mary Carlson, (Page 142:6 to 142:7)

142

6 Q. Did you sign the 2012 tax returns for South 80?
7 A. No, I didn't.

* * * * *

4-4-14 Mary Carlson, (Page 145:8 to 145:17)

145

8 Q. You couldn't deal with who "him" in 2008?
9 A. With Dave.
10 Q. Okay. And what do you mean you backed off?
11 A. He wanted me out of the orchards and I stayed out.
12 Q. Okay. So who was then running the orchards after
13 2008?

14 A. Nick and Dave.
15 Q. Nick and Dave, okay. So when was the last time that
16 you, Mary, was running the orchards?
17 A. 2008.
* * * * *

4-4-14 Mary Carlson, (Page 146:3 to 146:6)

146
3 Q. And how was your pain level then, in 2008?
4 A. Pretty similar to what it is these days.
5 Q. Okay. So were you on narcotic pain relievers?
6 A. Yes, I was.
* * * * *

4-4-14 Mary Carlson, (Pages 148:24 to 149:5)

148
24 Q. So do the Campbells still have an interest in C & C?
25 A. No.

149
1 Q. And when did they stop having an interest in it?
2 A. I bought their interest in 2001. Late 2001 I think it
3 was.
4 Q. With what money?
5 A. Out of my savings.
* * * * *

4-4-14 Mary Carlson, (Pages 149:25 to 150:18)

149
25 Q. Okay. So how much does it cost to moor the boat?

150
1 A. About $600 a month.
2 Q. And where is the boat moored?
3 A. At Elliott Bay. Elliott Bay Marina, Seattle.
4 Q. And how much does it cost to insure the boat?
5 A. I think it's about 1,400 a year, but I don't remember.
6 I don't know.
7 Q. When was the last time you paid the moorage fees on
8 the boat?
9 A. I paid them the majority of the time when he was gone,
10 and then -- I don't know when the last time I paid a
11 payment was.
12 Q. Okay. What about --
13 A. But I know it was prior to 2010.
14 Q. What about the boat insurance, when was the last time
15 you paid that?
16 A. I paid it in 2000 -- up to 2008. And then 2009 it was
17 paid through the company. 2010 it was paid through
18 the company. And after that, I don't know.
* * * * *

4-4-14 Mary Carlson, (Pages 151:2 to 152:6)

151

2 Q. Is there still a loan out? Are there still payments
3 made on the boat?
4 A. Yes.
5 Q. And who's the loan through?
6 A. Key Bank.
7 Q. Who's paying the loan now?
8 A. He is now.
9 Q. When did that change?
10 A. 2012.
11 Q. Why did that change?
12 A. Because of his accusations.
13 Q. What accusations?
14 A. Because he accused me of taking money out of the one
15 of the companies to buy that place out there. And
16 after that, I quit doing anything.
17 Q. Okay. So when did he accuse you of buying that place
18 out there?
19 A. What?
20 Q. When did he accuse you of buying that place out there?
21 You said he accused you of buying that place.
22 A. I told you he accused me of stealing money out of one
23 of the companies to buy that place, $200,000.
24 Q. Okay. So when did he accuse you of stealing $200,000?
25 A. In December of 2011.

152

1 Q. So what did he say that you used that money for?
2 A. To buy that house out there.
3 Q. Which house?
4 A. On Lateral B.
5 Q. Oh, the marital residence.
6 A. My house.

* * * * *

4-4-14 Mary Carlson, (Pages 155:15 to 156:5)

155

15 Q. Okay. Let's talk about HMD. Go to Exhibit No. 7
16 here. Now, did you help prepare this tax return for
17 HMD?
18 A. No.
19 Q. Okay. Who did?
20 A. Bill Halsey.
21 Q. Did you give Halsey any information?
22 A. No. Dave and Kathy Nickoloff are the only ones that
23 are up there.
24 Q. All right. What share is the Estate of Hugh Carlson

25 in HMD?

156

1 A. Hugh A. Carlson or Hugh D. Carlson?
2 Q. Hugh A. Carlson. The Estate of Hugh A. Carlson.
3 A. Oh, you said estate.
4 Q. Yeah.
5 A. Eighty percent.

* * * * *

4-4-14 Mary Carlson, (Pages 157:5 to 158:2)

157

5 Q. But at any point, did you do any business for HMD?
6 A. Yeah.
7 Q. What did you do?
8 A. Well, I did all the books for several years. That's
9 about all I ever did.
10 Q. What years did you do the books for HMD?
11 A. I kept them up until -- All I did really was enter the
12 stuff into the general ledger.
13 Q. And what years did you do that?
14 A. I did that clear through 2011. Actually I did it
15 through May of 2000 -- No, I didn't. I only did it
16 through 2011.
17 Q. Okay. So what else did you do outside of enter
18 numbers into a general ledger for HMD?
19 A. That's about all.
20 Q. Okay.
21 A. I paid their bills if they had bills.
22 Q. What sort of bills are we talking about?
23 A. Property tax. That's it. There was nothing there to
24 do.
25 Q. Nothing to do.

158

1 A. Except when he sold property. Then that money went in
2 and out.

* * * * *

4-4-14 Mary Carlson, (Page 161:2 to 161:5)

161

2 Q. Under what authority did you take the money out and
3 close the account?
4 A. I was one-half of the general partnership. Marla was
5 the other.

* * * * *

4-4-14 Mary Carlson, (Pages 161:16 to 162:19)

161

16 Q. When did it sell?
17 A. He sold that in early 2010, spring of 2010. He did

18 give t em some.
19 Q. Okay. What did he give them?
20 A. I don't know exactly how much he gave them. But he
21 did not give them all of their share. And he had
22 already put more than half of it into his own -- into
23 Carlson Agribusiness by the end of 2012. Maybe it was
24 2012 when this whole thing --.
25 Q. So you weren't going to take this money to repay

162

1 yourself the loan that you said the company owes you?
2 A. No.
3 Q. It was never your intention to keep this money?
4 A. No. It belongs to the partners. And Dave has already
5 had more than his share. Part of it does belong to
6 me.
7 Q. What about the estate of Hugh A. Carlson?
8 A. What about it?
9 Q. Doesn't that partner, the 80 percent limited partner
10 there, have any share of that money, that estate?
11 A. And who's the estate?
12 Q. Who is the estate?
13 A. Who is it?
14 Q. Who is it? I'm asking the questions today.
15 A. It's Marla and I.
16 Q. Oh, it is?
17 A. We're the general partners still taking care of it.
18 Q. But who's the personal representative of the estate?
19 A. Dave was.
* * * * *

4-4-14 Mary Carlson, (Page 164:16 to 164:20)

164

16 Q. Okay. When did you learn that he definitely had a
17 girlfriend?
18 A. In October.
19 Q. October of 2013?
20 A. Yes.
* * * * *

4-4-14 Mary Carlson, (Pages 164:21 to 165:7)

164

21 MS. REMY: All right. I don't have any
22 other questions at this moment.
23 MR. MAXWELL: Okay. I don't have any
24 questions. She'll review.
25

165

1 (PETITIONER'S EXHIBIT NOS. 1-14.

2 MARKED FOR IDENTIFICATION).
3
4 (DEPOSITION CONCLUDED AT
5 4:18 P.M.)
6
7 (SIGNATURE RESERVED.)

APPENDIX -- 4

APPENDIX -- 4

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF YAKIMA

SOUTH 80 ORCHARDS LIMITED PARTNERSHIP, a Washington limited partnership,	)	
Plaintiff,	)	
vs.	)	NO. 13-2-04263-0
H. DAVID CARLSON and CARLSON AGRIBUSINESS, LLC, a Washington limited liability company,	)	
Defendants,	)	
vs.	)	
MARY A. CARLSON and SOUTH 80 ORCHARDS LIMITED PARTNERSHIP,	)	
Third-Party Defendants.	)	
HMD LIMITED PARTNERSHIP, a Washington limited partnership,	)	
Intervenor Plaintiff,	)	
MARY A. CARLSON and SOUTH 80 ORCHARDS LIMITED PARTNERSHIP,	)	
Third-Party Defendants.	)	

DEPOSITION UPON ORAL EXAMINATION OF
MARY ALICE CARLSON

April 9, 2014

Yakima, Washington

TAKEN AT THE INSTANCE OF THE DEFENDANTS AND
INTERVENOR PLAINTIFF

REPORTED BY:
DORENE BOYLE

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4-9-14 Mary Carlson, (Page 5:14 to 5:18)

5

14 EXAMINATION
15 BY MR. JOHNSTON:
16 Q. Good morning. Would you please tell us your name and
17 spell the last name for the reporter.
18 A. Mary A. Carlson, C-A-R-L-S-O-N.
* * * * *

4-9-14 Mary Carlson, (Pages 10:25 to 12:16)

10

25 Q. You said there was a lease in regard to the Sno Valley

11

1 property with HMD partnership. Is that lease a lease,
2 to the best of your recollection, between South 80 and
3 HMD?
4 A. Yes.
5 Q. And having not seen it for over 11 years, do you have
6 a clear recollection of what that lease provided?
7 A. Yes.
8 Q. And would you tell us, please, what it provided.
9 A. Well, I won't say I have a clear one. But it was a
10 35-year lease from HMD to South 80 Orchards where
11 South 80 Orchards would farm the property.
12 Q. And what was the basis of the lease payment? Was it a
13 percentage of gross, a percentage of net, or was it a
14 fixed per acre rental?
15 A. It was none of the above. South 80 Orchards was to
16 farm the lease, pay the expenses, everyday farming
17 expenses, and it would retain the returns.
18 Q. South 80 would retain the returns; is that right?
19 A. Yes.
20 Q. So that, although the property was owned by HMD, and
21 which at that time -- Was Mr. Hugh Carlson, that is,
22 Dave's father, alive at the time this lease was
23 entered into?
24 A. No, he wasn't. He passed away in '99.
25 Q. And so who was it that signed the lease on behalf of

12

1 HMD?
2 A. David Carlson.
3 Q. Do you recall whether or not the signatures on that
4 lease were notarized?
5 A. No.
6 Q. And --
7 A. I mean, no, I don't believe they were.
8 Q. Okay. And do you know whether or not there was ever

9 an amendment to that lease?
10 A. No.
11 Q. Are you aware of whether or not the existence of that
12 lease has ever been discussed at a meeting of the
13 general partners of HMD?
14 A. No.
15 Q. You're not aware one way or the other?
16 A. No.
* * * * *

4-9-14 Mary Carlson, (Page 13:20 to 13:22)

13
20 Q. Okay. And how much was paid, to the best of your
21 recollection, for that property? [Sno-Valley]
22 A. I have no idea. I can't remember.
* * * * *

4-9-14 Mary Carlson, (Page 15:5 to 15:8)

15
5 Q. Do you have any question that Mr. David Carlson was
6 the executor and therefore in control of HMD, which
7 was majority owned by the Estate of Hugh Carlson?
8 A. Yes, he was in control of it.
* * * * *

4-9-14 Mary Carlson, (Pages 18:5 to 20:17)

18
5 Q. And attached to that is as Exhibit D a document
6 entitled Second Addendum to Partnership Agreement of
7 HMD Limited Partnership, dated December 22nd, 2000.
8 Is that the addendum that you have indicated that
9 Mr. Beyer prepared and that was signed around that
10 time?
11 A. Yes.
12 Q. And if we look at the second page of that, it provides
13 that the general partners are the Estate of Hugh A.
14 Carlson, at two and a half percent, Mary Carlson, as
15 her separate estate, for two and a half percent, and
16 Marla R. Contini for two and a half percent, correct?
17 A. Correct.
18 Q. So in terms of the general partnership interest, you
19 didn't have 50 percent of the general partnership
20 interest; you had 33 and a third percent, correct? Of
21 the general partnership.
22 A. I don't know. I think you're confusing me.
23 Q. It says --
24 A. Well, yeah, because the estate would still have some.
25 Q. Well, doesn't it say specifically in the document that
19

1 you signed that the Estate of High A. Carlson had a
2 general partnership interest of 2.5 percent?
3 A. Yes.
4 Q. And David Carlson was then the executor of the Estate
5 of High A. Carlson, correct?
6 A. Yes.
7 Q. So he had the power to act as a general partner of HMD
8 at that time, correct? Yes or no.
9 A. When he transferred it to me and Marla, yes.
10 Q. When he transferred what? I thought you said this was
11 the document by which he transferred two and a half
12 percent of the general interest to you.
13 A. He wanted his name off of it.
14 Q. Is there another document besides this addendum that
15 further changed the general partnership array in HMD
16 that you are aware of?
17 A. No.
18 Q. Okay. As far as you're concerned and you've
19 testified, this is the document which you believe sets
20 forth the general partnership control of HMD, correct?
21 A. Correct.
22 Q. Okay.
23 A. This is the last one that I signed.
24 Q. And do you know whether or not today Mr. Dave Carlson
25 is and remains the executor of an open estate in the

20

1 Superior Court for Yakima County for the Estate of
2 Hugh Carlson?
3 A. It was my understanding that he and Marla were both
4 there, but I don't know about that.
5 Q. Have you ever checked into that?
6 A. No.
7 Q. Have you at any time in the last year discussed with
8 anyone who the general partnerships of HMD are?
9 A. Yes.
10 Q. And who have you discussed that with?
11 A. My attorneys.
12 Q. Anyone else?
13 A. Not to my knowledge.
14 Q. You haven't discussed it with Marla Contini, correct?
15 A. No.
16 Q. And you haven't discussed it with Dave Carlson?
17 A. No.
* * * * *

4-9-14 Mary Carlson, (Pages 25:16 to 26:8)

25

16 Q. Let's go to "d," 1601 Lateral B, what is that?
17 A. One of them is -- That one and the other one both
18 are -- and the next one are property on Lateral B
19 which I bought with my son's life insurance in 2009.
20 Q. And so if we talk about "d" and "e" together, they're
21 treated literally as one parcel or one type of parcel?
22 A. Yes. The house is on the three acres and 17 acres has
23 the rest.
24 Q. And what's on the 17 acres for agricultural purposes?
25 A. Apples.

26

1 Q. And who holds title to that? Who has the deed?
2 A. I do. And I added Dave's name on it the last minute
3 before I walked out the door.
4 Q. So the answer to my question is you and David Carlson
5 are both on title; is that correct?
6 A. Yup.
7 Q. And when was that property acquired under that title?
8 A. August 29th or 30th, 2009.
* * * * *

4-9-14 Mary Carlson, (Pages 32:3 to 33:16)

32

3 Q. Now, let's go back to item "h," the West 50.
4 A. Yes.
5 Q. Who is the lessee on that BIA lease?
6 A. H. David Carlson.
7 Q. And would you describe that property in terms of its
8 size and production.
9 A. It's roughly 35 acres. It had six acres of cherries
10 on it and nectarines. The rest was in nectarines.
11 Q. And that's its current condition?
12 A. Right now, no. Dave has pulled out a lot of the -- He
13 took out all the nectarines, and he now has all
14 cherries and apples there.
15 Q. And is there any lease or document between South 80
16 and H. David Carlson in regard to that property?
17 A. Yes, there is.
18 Q. And would you describe that. Is that a written lease?
19 A. Yes, it is. It's the same as the one with Sno Valley,
20 it's a 35-year lease, done at the same time.
21 Q. And who is the lawyer who did that?
22 A. There was not a lawyer that did it, I don't think.
23 Q. Who did draft that lease?
24 A. I'm not positive. I think Greg Ames did. He was the
25 accountant then.

33

1 Q. Okay. And when is the last time you saw the original
2 or a copy of that lease?
3 A. When they moved out of the office in 2003. End of
4 2002, first of 2003.
5 Q. And do you recall, was that lease notarized?
6 A. I don't remember.
7 Q. And what did that lease provide in terms of the
8 compensation to the landowner by South 80? Was that a
9 fixed per acre rent or percentage or something else?
10 A. Something else.
11 Q. And what was that?
12 A. South 80 Orchards would farm it and retain the returns
13 off of it.
14 Q. And so, in effect, it was a lease where no money was
15 going to be paid to the owner; is that right?
16 A. Correct.
* * * * *

4-9-14 Mary Carlson, (Pages 34:22 to 35:18)

34
22 Q. Okay. And then for how long did you manage the
23 business of and growing of South 80 Orchards after
24 2006?
25 A. I ran it from June of 2005 to September, October,

35
1 November, whenever harvest was finished, of 2008.
2 Q. And what times in 2005 did you take that role? Was
3 that in the fall?
4 A. June.
5 Q. June.
6 A. The middle of June of 2005 is when I took over by
7 myself.
8 Q. So you had most of the 2005 crop, and then you had the
9 2006, '7 and '8 crop, correct?
10 A. Yes.
11 Q. And during that time, I've seen an indication that you
12 indicated that you put money that you had saved during
13 your marriage into South 80 Orchards. Do I understand
14 that generally correctly?
15 A. Yes, I did. All of my savings.
16 Q. And that was about 440 to 475 thousand, somewhere in
17 that range?
18 A. That's what's left that hasn't been repaid.
* * * * *

4-9-14 Mary Carlson, (Pages 38:11 to 40:24)

38
11 Q. And isn't it true that South 80 also had years where

12 it had losses --
13 A. Yes.
14 Q. -- during that same time period?
15 Okay. Now, where --
16 A. During what time period?
17 Q. That 2000 to 2005.
18 A. It shouldn't have, but it did.
19 Q. Okay. And where did South 80 have any source of
20 credit 2000 to 2005?
21 A. We had credit with all the vendors.
22 Q. Did you have any bank credit?
23 A. No. That's why I used my sayings. I didn't want a
24 bank because of what happened to him.
25 Q. So you chose, despite the need for capital or for

39

1 working capital to farm, you chose not to borrow the
2 funds from a bank and chose to put in your savings; is
3 that right?
4 A. Yes.
5 Q. And the reason that there -- Prior to 2005, when is
6 the last year that the South 80 was able to farm on
7 its own funds without contribution?
8 A. Prior to 2005?
9 Q. Yeah.
10 A. 2003 it did, but 2004 it did not.
11 Q. Okay. And how about 2002, did it?
12 A. 2002's crop paid for all of the 2003. It had all of
13 that crop money to pay for that.
14 Q. So 2003, the 2003 crop year; that is, from planting in
15 2003 through the sale in mid 2004 -- we'll talk crop
16 year -- that was a loss.
17 A. Well, actually the crop year is -- The crop is picked
18 in 2002, in September and October, and that should pay
19 for the next year.
20 Q. Okay. Well, my question is, was the crop which was
21 harvested in 2003, on a crop year basis, was that a
22 profit or a loss, according to your recollection?
23 A. A profit.
24 Q. And then 2003 was a loss; is that correct? The 2003
25 crop was a loss year; is that right?

40

1 A. No. 2003 had a profit.
2 Q. The 2003 calendar year or the 2003 crop year?
3 A. The 2003 crop year was profitable.
4 Q. And the 2002 crop year was profitable too, right?
5 A. Yes.

6 Q. How about 2004?
7 A. No.
8 Q. And I take it, then, it was the first year that was
9 not profitable when you put in the money, started
10 putting in the money. Is that correct?
11 A. Yes.
12 Q. So that would be some time during the 2004 crop year,
13 correct?
14 A. Yes.
15 Q. Okay. And then did you put in money -- Let me ask
16 this: What's your recollection of the profitability
17 of the 2005 crop year?
18 A. 2005 didn't quite break even. When I took over --
19 Q. Okay, you've answered my question.
20 Now, did you put additional money in because of
21 the shortfall on 2005?
22 A. Yes.
23 Q. Okay. How about 2006, was it profitable or a loss?
24 A. 2006 I believe is where it broke even.
* * * * *

4-9-14 Mary Carlson, (Pages 41:21 to 42:7)

41
21 Q. Okay. I take it your farming duties then diminished
22 in September or October of 2008. What duties
23 continued after that time?
24 A. The accounting.
25 Q. Accounting. And does that mean sitting at the
42
1 computer and inputting the figures?
2 A. All the bookkeeping and --
3 Q. Listen to my questions and answer them.
4 A. Yes.
5 Q. It included inputting information into the computer
6 system.
7 A. Yes.
* * * * *

4-9-14 Mary Carlson, (Pages 57:12 to 58:16)

57
12 Q. And who is William Halsey?
13 A. The accountant.
14 Q. When you say the accountant, is he the accountant for
15 South 80 Orchards partnership?
16 A. Yes.
17 Q. And when did he first become the accountant for South
18 80 Orchards partnership?
19 A. Was when Greg Ames passed away. I think it was 2008

20 maybe.
21 Q. Okay.
22 A. It could have been '9.
23 Q. And have you ever met Mr. Halsey?
24 A. Yes.
25 Q. Have you ever provided information to him in

58

1 connection with the preparation of any tax return for
2 South 80 Orchards partnership?
3 A. Yes.
4 Q. In what years?
5 A. 2010 and prior.
6 Q. Okay. And is it your testimony that as to the 2011
7 tax return for South 80 Orchards' partnership, you
8 never saw it until last fall?
9 A. Yes.
10 Q. And did you ever ask Mr. Halsey for a copy of it?
11 A. No.
12 Q. Do you have any reason to believe that if you had
13 asked him for copy, that he would not have given you
14 one?
15 A. No. When I asked him for them last fall, he gave me
16 all of them.
* * * * *

4-9-14 Mary Carlson, (Pages 65:25 to 66:2)

65

25 Q. And isn't it true that you failed also to pay trust

66

1 fund 943 taxes?
2 A. I did not pay all the 943 taxes. I was out of money.
* * * * *

4-9-14 Mary Carlson, (Page 67:12 to 67:21)

67

12 Q. The timing on that was that the negotiations, if
13 you'll call them that, with the IRS took place at
14 about the time you stopped working in September or
15 October of 2009; isn't that correct?
16 A. No.
17 Q. Was it is before that or after?
18 A. It was 2008. We didn't get it settled until 2009.
19 Q. That's what I'm asking.
20 A. Because they assigned me Dennis Rencher, the IRS
21 officer. It was during harvest of 2008.
* * * * *

4-9-14 Mary Carlson, (Pages 84:21 to 85:8)

84

21 Q. Let me ask this: You didn't go back and look at the
22 historical information that was available to you from
23 Mr. Halsey, for example, that would show how expenses
24 were --
25 A. No. But I did get the general ledger from him.

85

1 Q. Okay. And did you examine that general ledger as to
2 whether or not it was consistent with what your
3 testimony was?
4 A. I don't know if it is or not because I didn't have
5 anything to do with making that statement there. I
6 know the one in 2012 was the accurate one, December
7 31st of 2012, but I don't know anything about 2011,
8 I'm sorry.

* * * * *

4-9-14 Mary Carlson, (Pages 92:18 to 93:3)

92

18 Q. And in the spring of 2009, I take it you gave that
19 same type of information to Mr. Halsey, correct?
20 A. Yeah.
21 Q. And in 2010.
22 A. Yes. Wait a minute. Can we back up to that?
23 Q. 2010 you want to correct something?
24 A. You said 2010?
25 Q. Spring of 2010.

93

1 A. Okay. The spring of 2010 I gave him 2009's, yes.
2 Q. That's what I'm saying.
3 A. Okay.

* * * * *

4-9-14 Mary Carlson, (Pages 97:16 to 98:6)

97

16 Q. Now, in paragraph 2 of this letter it says, "Starting
17 in approximately 2010, however, Zirkle Fruit began
18 sending the returns for the fruit produced and
19 delivered by South 80 Orchards to Mr. David Carlson
20 and/or Carlson Agribusiness, L.L.C." Do you see that?
21 A. Yes.
22 Q. Now, how did you learn that that had started in
23 approximately 2010?
24 A. It actually started in September of 2009, but --
25 Q. Okay.

98

1 A. Because I saw a check stub from Borton Fruit laying
2 there. It was laying on the counter and it was made
3 out to David Carlson.

4 Q. And that was when, the first time you saw a check
5 stub?
6 A. Last fall sometime.
* * * * *

4-9-14 Mary Carlson, (Pages 97:16 to 98:24)

97

16 Q. Now, in paragraph 2 of this letter it says, "Starting
17 in approximately 2010, however, Zirkle Fruit began
18 sending the returns for the fruit produced and
19 delivered by South 80 Orchards to Mr. David Carlson
20 and/or Carlson Agribusiness, L.L.C." Do you see that?
21 A. Yes.
22 Q. Now, how did you learn that that had started in
23 approximately 2010?
24 A. It actually started in September of 2009, but --
25 Q. Okay.

98

1 A. Because I saw a check stub from Borton Fruit laying
2 there. It was laying on the counter and it was made
3 out to David Carlson.
4 Q. And that was when, the first time you saw a check
5 stub?
6 A. Last fall sometime.
7 Q. Okay. Now, you had the personal tax returns which
8 indicate that all of the farm income was being
9 reported not on South 80, but on the Schedule F of
10 your personal returns at least two years prior to
11 this; isn't that right?
12 A. It's always been done that way.
13 Q. Okay. And did you ever make an attempt at any time
14 between September of 2009 and the date of this letter
15 to determine how the flow of funds from Zirkle or Tree
16 Top had been done?
17 A. Yes, I have.
18 Q. And when did you first do that?
19 A. Last fall I started trying to do that.
20 Q. Did you ever do that in 2010 or 2009 or 2011 or 2012?
21 A. No.
22 Q. Okay.
23 A. I didn't know the checks were not in South 80
24 Orchards' name.
* * * * *

4-9-14 Mary Carlson, (Page 102:18 to 102:20)

102

18 Q. Okay. So you were aware there was not a Commission
19 Merchant Agreement with South 80; isn't that right?

20 A. We have never had one.
* * * * *

4-9-14 Mary Carlson, (Pages 106:9 to 107:19)

106

9 Q. Okay. And that is the 2012 HMD Limited Partnership
10 tax return. It's dated the same day, March 6, 2013,
11 that your personal return and that the South 80 return
12 that we looked at earlier was dated. Have you ever
13 seen a copy of this return before?
14 A. Not before last fall.
15 Q. Okay. If you would look at the -- I think it's the
16 fifth page. It's Form 8949, Part II, which has to do
17 with long-term capital gains. Do you see that?
18 A. I'm not on the right page yet.
19 Q. It looks like this (indicating).
20 A. Okay. I saw it just a minute ago. Okay, page 2.
21 Q. Now, this has a land in Grandview sale occurring on
22 June 29th, 201, where the proceeds were $801,500. Are
23 you familiar with that transaction?
24 A. Vaguely.
25 Q. When you say vaguely, what do you know about it?

107

1 A. I just know that he sold the property.
2 Q. When you say "he," you mean Dave Carlson?
3 A. Dave. Dave sold some property.
4 Q. Well, wasn't it in fact HMD that sold the property?
5 A. It should have been. Yes, I -- Yes, it was.
6 Q. Okay.
7 A. Through Dave.
8 Q. And David Carlson was a general partner, according to
9 our discussion earlier, at that time, correct?
10 A. No, he was not.
11 Q. The Estate of Hugh Carlson was, and he was the
12 executor and had the authority of a general partner;
13 isn't that correct?
14 A. I don't believe that to be the case, but I'm not going
15 to argue with it.
16 Q. Is it your position that you controlled HMD at that
17 time and had the power to control it and David had no
18 role or control in HMD?
19 A. Yes.
* * * * *

4-9-14 Mary Carlson, (Pages 111:25 to 113:1)

111

25 Q. Now let's look at Exhibit 18. If you would look at

112

1 No. 18, please. First of all, beginning on the second
2 page, is that a declaration under oath that you signed
3 in regard to the dissolution proceeding on or about
4 February 4th of 2013?
5 A. Yes.
6 Q. Would you look at the page number in the lower
7 left-hand corner as page 3. In this you say beginning
8 at line 5, "No money from Respondent's father's estate
9 went into South 80 Orchards." Then you say, "HMD
10 Limited Partnership did loan money to South 80, which
11 was repaid with the exception of two loans that were
12 made in 2009 and are still carried on the books of
13 South 80 Orchards."
14 Now, I take it -- which testimony is accurate?
15 The testimony that you gave in the declaration or that
16 you just gave a little bit ago that there had never
17 been a loan from South 80?
18 MR. RUSSEL: Is that accurate, Bruce? I
19 think --
20 MR. JOHNSTON: It is. And I don't want any
21 speaking objections. I want an answer.
22 A. HMD did not loan money to South 80 Orchards.
23 Q. So when you said under oath HMD Limited Partnership
24 did loan money to South 80, that was a false
25 statement; is that right?

113

1 A. I did do that. That's not correct, no.
* * * * *

4-9-14 Mary Carlson, (Pages 116:23 to 117:2)

116

23 Q. So are you testifying that a certified public
24 accountant, Mr. Halsey, filed a tax return on your
25 behalf without authority to do so?

117

1 A. I signed a paper the way that -- years ago to where he
2 could e-file everything.
* * * * *

4-9-14 Mary Carlson, (Page 117:11 to 117:14)

117

11 Q. Are you telling me that Mr. Halsey, a certified public
12 accountant, did not provide you with copies of your
13 own K-1 from HMD?
14 A. No, he did not provide them to me.
* * * * *

4-9-14 Mary Carlson, (Pages 119:22 to 120:6)

119

22 Q. Isn't it true that Marla and Dave are the only two
23 beneficiaries of the Estate of Hugh Carlson?
24 A. I assume so.
25 Q. And isn't it true that we just looked at a document

120

1 that says that that estate has an 80 percent interest
2 in HMD?
3 A. Yeah.
4 Q. And doesn't that mean that Marla has an interest in
5 over 40 percent of HMD?
6 A. Probably.
* * * * *

4-9-14 Mary Carlson, (Page 122:2 to 122:6)

122

2 Q. Now, isn't it true -- I mean, let me ask it this way:
3 If Dave had simply given that 226 to Marla as part of
4 her 40 percent, you would have no objection to that;
5 is that right?
6 A. No.
* * * * *

4-9-14 Mary Carlson, (Page 124:13 to 124:17)

124

13 Q. Now, we've seen that it was Carlson Agribusiness that
14 was paying the expenses for the farming on the
15 property, among others, that is leased to South 80,
16 correct?
17 A. Correct.
* * * * *

4-9-14 Mary Carlson, (Page 125:3 to 125:6)

125

3 Q. And if HMD put money into Carlson Agribusiness for the
4 benefit of those farms, that has to be repaid back to
5 HMD, doesn't it?
6 A. I would hope that it does.
* * * * *

4-9-14 Mary Carlson, (Pages 125:13 to 127:10)

125

13 Q. Now, when you withdrew in two withdrawals this
14 $226,000 from the HMD account, why was it that you
15 closed the account?
16 A. Because I thought that I would -- Marla would answer
17 my phone call and I was going to tell her what was
18 going on and ask her to take care of it.
19 Q. Just a second. When an account doesn't have any money
20 in it, why do you close it?
21 Weren't you just trying to get obstructive?

22 A. No, I wasn't.
23 Q. Well, you left a business without a bank account;
24 isn't that right?
25 A. HMD did no business.

126

1 Q. You left a company without a bank account. You closed
2 its bank account. Isn't that right?
3 A. Yes, I did. It was my account.
4 Q. Well, you were one of three general partners; isn't
5 that correct? Isn't that correct?
6 A. I say I'm one of two, but whatever.
7 Q. And on what basis do you say you're one of two?
8 A. Never mind.
9 Q. Isn't it true that you have said under oath that the
10 agreement that we looked at attached to your sworn
11 statement was the agreement, and it has three general
12 partners listed in it? Isn't that right?
13 A. I guess. Whatever you say.
14 Q. And so to the extent that you have acted as if you
15 were one of two general partners, you have done so
16 based upon an erroneous assumption; isn't that
17 correct?
18 A. I don't believe so.
19 Q. So you believe you're still a 50 percent general
20 partner?
21 A. That was the way that it was told to me, so.
22 Q. Who told you that?
23 A. That's the way it was explained to me; that Marla and
24 I in conjunction with each other would take care of
25 it.

127

1 Q. By whom?
2 A. By Dave.
3 Q. And the document that you've sworn says that it is the
4 Estate of Hugh Carlson, Marla and yourself; isn't that
5 right?
6 A. I see where you're coming from, yeah.
7 Q. And isn't it true that you never discussed with either
8 general partner the withdrawal of the funds and the
9 closing of the bank account?
10 A. No, I didn't.
* * * * *

4-9-14 Mary Carlson, (Pages 129:12 to 130:24)

129

12 Q. Now, isn't it true that you testified in a written
13 document that you had deposited or redeposited those

14 funds into another ank account?
15 A. I started to. I never did it.
16 Q. But isn't it true that you testified you did it
17 once --
18 A. Yeah, I did. I think I did. I went to do it, but I
19 never did it.
20 Q. But you testified that you did it once. And now
21 you've testified you didn't do it. Isn't that right?
22 A. I don't know. I went to do it, but I did not do it.
23 Q. And how long after you got the funds out did you go to
24 open a different account?
25 A. I didn't.

130

1 Q. Well, I mean -- When were you going to do it?
2 A. Right when the attorney told me to.
3 Q. And when you say the attorney, who do you mean?
4 A. Mr. Maxwell. Because I told him I took the money out.
5 Q. And he told you to put it back into a new account?
6 A. He said that probably would be better if you just put
7 it back into a new account.
8 Q. Okay. Did you ever try and get a written
9 authorization from the other general partners to open
10 another bank account?
11 A. No, I didn't.
12 Q. Aren't you familiar that a resolution or signature by
13 all general partners of a partnership are required to
14 open a bank account?
15 A. It wasn't done before.
16 Q. Are you sure of that?
17 A. Yes. I opened the account myself.
18 Q. And who were the signers besides yourself on that
19 account?
20 A. I was the only signer until December of 2012, and then
21 I added Dave on.
22 Q. So you had another signer on the account, and it was
23 Dave Carlson, correct?
24 A. December of 2012.
* * * * *

4-9-14 Mary Carlson, (Page 137:19 to 137:25)

137

19 Q. Is there any document that you're aware of that says
20 that HMD is going to repay any amounts that were
21 invested in the -- What's it called, that 35-acre
22 parcel?
23 A. Sno Valley.
24 Q. Sno Valley. Any written document that says --

25 A. No, there isn't.
* * * * *

4-9-14 Mary Carlson, (Page 139:16 to 139:22)

139

16 Q. Now, at the time that you hired your current lawyers
17 in this case, were you aware that they were also
18 counsel for Zirkle Fruit?
19 A. No.
20 Q. When did you learn that?
21 A. Right after I called, they said that they had to check
22 into it to see if there was any conflict.
* * * * *

4-9-14 Mary Carlson, (Page 142:2 to 142:14)

142

2 Q. And how about Borton, did you have any discussions
3 with Borton about the status of their contracts as it
4 may relate to South 80 or Carlson Agribusiness?
5 A. They have no contracts.
6 Q. And that's based upon an inquiry that you made of
7 them?
8 A. Yes. I specifically asked Dave Reed if there was any
9 Commission Merchant Agreements because South 80
10 Orchards had never had one.
11 Q. And when did you ask Mr. Reed that?
12 A. In December.
13 Q. 2013?
14 A. Yes.
* * * * *

4-9-14 Mary Carlson, (Page 145:9 to 145:17)

145

9 Q. Thank you very much, Ms. Carlson. That's all the
10 questions I have.
11 MR. RUSSEL: I have no questions. We'll
12 reserve signature.
13
14 (DEPOSITION CONCLUDED AT
15 3:36 P.M.)
16
17 (SIGNATURE RESERVED.)

APPENDIX -- 5

APPENDIX -- 5

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'14 FEB 12 P3:05

SUPERIOR COURT
YAKIMA CO. WA

CERTIFICATE OF TRANSMITTAL
On this day, the undersigned sent to the attorneys of record for all Parties a copy of this document by US Mail, post prepaid / E-Mail / Hand Delivery Attorney Messenger Service / Process Service / Fax. I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true & correct.

Dated_____
Yakima, WA

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

In re the Marriage of: MARY ALICE CARLSON, Petitioner, and HUGH DAVID CARLSON, Respondent.	NO. 13-3-00578-9 ORDER ON PETITIONER'S MOTION FOR CONTEMPT

THIS MATTER HAVING come on regularly for hearing by the Petitioner's Motion, the court having heard the argument of counsel and reviewing the file and being otherwise fully informed in the premises, IT IS HEREBY

ORDERED that Petitioner's Motion for Contempt is granted and Respondent is held in contempt for violating the July 22, 2013, order by failing to pay January 2014 spousal maintenance on the 1st of the month, only. Petitioner's additional motions for contempt are denied.

Respondent has the opportunity to purge the contempt by paying $500 to Mrs. Carlson's attorney under this cause number within 30 days of the entry of this order. The obligation is cancelled by the order on Respondent's motion for contempt.

IT IS FURTHER ORDERED that, from the date of the entry of this order forward, Mr. Carlson shall pay Mrs. Carlson the previously court-ordered sum of $3,000 exactly, no more or no less, for maintenance by the 1st day of each month, to be transferred to Mrs. Carlson through their respective attorneys, until further order of this court.

DATED this 12th day of February 2014.

DAVID A. ELOFSON, JUDGE

Presented by:
Finney, Falk, Naught & Remy, PLLP

AMY L. REMY, #37526
Attorneys for Respondent

Approved as to Form:
Notice of Presentation Waived:
Meyer, Fluegge & Tenney, PS

JOHN A. MAXWELL, # 17431
Attorneys for Petitioner

FILED
COUNTY CLERK

'14 FEB 12 P3:05

SUPERIOR ...
YE...

CERTIFICATE OF TRANSMITTAL
On this day, the undersigned sent to the attorneys of record for all Parties a copy of this document by US Mail, post prepaid / E-Mail / Hand Delivery Attorney Messenger Service / Process Service / Fax. I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true & correct.

Dated_____
Yakima, WA

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

In re the Marriage of: MARY ALICE CARLSON, Petitioner, and HUGH DAVID CARLSON, Respondent.	NO. 13-3-00578-9 ORDER ON RESPONDENT'S MOTION FOR CONTEMPT

THIS MATTER HAVING come on regularly for hearing by the Respondent's Motion, the court having heard the argument of counsel and reviewing the file and being otherwise fully informed in the premises, IT IS HEREBY

ORDERED that Respondent's Motion for Contempt is granted and Petitioner is held in contempt for violating the June 7, 2013, restraining order by taking $226,485.05 from HMD Limited Partnership's bank account and closing that account. Respondent's additional motions for contempt are denied. Petitioner has the opportunity to purge the contempt by paying $500 to Mr. Carlson's attorney under this cause number within 30 days of the entry of this order. This obligation is cancelled by the order on Respondent's motion for contempt.

DATED this 12th day of February 2014.

DAVID A. ELOFSON, JUDGE

Presented by:
Finney, Falk, Naught & Remy, PLLP

AMY L. REMY, #37525
Attorneys for Respondent

Approved as to Form:
Notice of Presentation Waived:
Meyer, Fluegge & Tenney, PS

JOHN A. MAXWELL, # 17431
Attorneys for Petitioner

APPENDIX -- 6

APPENDIX -- 6

(9)

FILED

'15 JUN 19 AM 8:08

Honorable David A. Elofson

IN THE SUPERIOR COURT OF WASHINGTON FOR YAKIMA COUNTY

In re: the Marriage of MARY ALICE CARLSON, Petitioner, and HUGH DAVID CARLSON, Respondent.	**No. 13-3-00578-9 (Lead Number)** **Consolidated With** **No. 13-2-04263-0** OPPOSITION OF HMD LIMITED PARTNERSHIP TO MOTION OF SOUTH 80 ORCHARDS LIMITED PARTNERSHIP TO DISMISS CLAIMS RE: LOANS.
SOUTH 80 ORCHARDS LIMITED PARTNERSHIP, a Washington limited partnership, Plaintiff, v. H. DAVID CARLSON and CARLSON AGRIBUSINESS, LLC, a Washington limited liability company, Defendants, v. MARY A. CARLSON and SOUTH 80 ORCHARDS LIMITED PARTNERSHIP,	

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THIRD PARTY DEFENDANTS.)

HMD LIMITED PARTNERSHIP, a Washington limited Partnership;)

Intervenor Plaintiff,)

v.)

MARY A. CARLSON and SOUTH 80 ORCHARDS LIMITED PARTNERSHIP,)

Third Party Defendants.)

I. INTRODUCTION AND RELIEF REQUESTED

Intervenor Plaintiff HMD Limited Partnership ("HMD") respectfully requests that the motion of Plaintiff South 80 Orchards Limited Partnership ("South 80") to dismiss HMD's loan claims be denied. Under the facts shown at trial, South 80's position amounts to the grotesque notion that a fiduciary may secretly take his or her principal's money, call it a loan, let the loan lapse, and then hide behind the statute of limitations. Fundamental trust principles, not to mention common decency, prevent such a result.

II. COUNTER-STATEMENT OF FACTS

The Court has observed that the Carlsons, during their marriage, blurred the lines between the entities South 80, the marital community, RMT Holdings, and Carlson Agribusiness, which were effectively run as a single entity or at least as a tightly-intertwined enterprise. Both David Carlson and Mary Carlson claim rights to the family farming working capital sometimes used by South 80 and later used by Carlson Agribusiness. HMD, however, has partners who are outside the marital community, Marla Contini, Nicholas Carlson, Anthony Contini, and Tanya Contini (collectively for purposes of this motion, the "Continis"). And both David Carlson and Mary Carlson have fiduciary roles with respect to HMD and thus with respect to the Continis—David is the manager of HMD and Mary was at all material times its general partner.

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Large sums of money were transferred from HMD to Carlson Agribusiness/South 80 in 2003-2009 under the supervision and with the knowledge of David Carlson and Mary Carlson. David Carlson, speaking as the CEO of Carlson Agribusiness, which was and is the manager of South 80, testified that the intent was to treat those transfers as a loan from HMD to the family farming businesses. Mary Carlson denies this, but she failed to come up with any coherent explanation of how else she could have had any right to take the money out of HMD and give it to her marital enterprise.

David Carlson will testify, now that the subject has come up, that he and Mary Carlson never disclosed to the limited partners of HMD, the Continis, that the Carlsons had transferred funds out of HMD to their enterprise. That testimony is consistent with the testimony Mary Carlson gave under oath at her deposition. Like most limited partners, the Continis had no active role in the operations, management, and bookkeeping of HMD, but simply trusted the Carlsons to handle their assets with integrity and competence.

III. EVIDENCE RELIED UPON

The parties' testimony at trial and exhibits introduced at trial.

IV. STATEMENT OF ISSUES

A. Does the statute of limitations accrue when a fiduciary takes or borrows trust money without full disclosure?

B. Even if the statute of limitations could have accrued while the loans were undisclosed , did the judicial admission of the debt at trial obviate or revive the limitations period?

C. Alternatively, if the fiduciary, Mary Carlson, arranged or took the benefit of 'loans' from her principal to her enterprise, allowed them to 'lapse' and refused to revive them by acknowledgement, is she liable for breach of fiduciary duty, fraud, or constructive trust in the amount of the forfeited loans?

V. ARGUMENT

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A. The Statute of Limitations Does Not Bar a Limited Partnership from Pursuing Funds Transferred in an Undisclosed Transaction by a General Partner

Mary Carlson/South 80's motion sharply illustrates the rule that "[t]he acts of partners serving in dual relationships where their private motives may color their actions in their partnership capacity, must be closely scrutinized for possible breach of the fiduciary duty of partners." *In re Wilson's Estate*, 50 Wn. 2d 840, 847, 315 P.2d 287 (1957). The general partner of a partnership is a fiduciary to the limited partners. RCW 25.10.441.

The specific fiduciary duty of loyalty of a general partner is: "To account to the limited partnership and hold **as trustee for it** any property, profit, or benefit derived by the general partner in the conduct...of the limited partnership's activities or derived from a use by the general partner of limited partnership property." RCW 25.10.441(2) (emphasis added).

It is blackletter law that "statutes of limitations do not begin to run as between trustees and cestuis so long as the trust relationship continues." *Robbins v. Wilson Creek State Bank*, 5 Wn. 2d 584, 596-97, 105 P.2d 1107 (1940). The discovery rule also applies, starting the limitations period only when the cestui que receives disclosure of the betrayal of trust. *Ackerson v. Elliott*, 97 Wash. 31, 39-40, 165 P. 899 (1917).

That rule applies equally to South 80, as to Mary Carlson individually, because "[o]ne who takes or purchases trust property with knowledge of the trust stands in the place of his grantor and is himself chargeable with the trust or, as sometimes expressed, is accountable as a trustee *ex maleficio*." *Goodwin v. Am. Sur. Co. of New York*, 190 Wash. 457, 478, 68 P.2d 619 (1937). The Supreme Court eloquently explained why the cestui que trust is not time-barred as to such a transferee:

> This is upon the principle that the title of the cestui que trust has not been affected by the transfer. [citations omitted] If the exception to the general rule were not effectual, then a trustee, **by his failure to bring suit to set aside his own wrongful act, participated in by a third party, could wreck an estate** and prevent a minor, or one suffering under some legal disability, from ever recovering, no matter how strong the justification. This would not be equity and, we think, should not be the law.

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Id. at 478-79.

For essentially the same reasons even if Mary Carlson had not been directly responsible as a fiduciary and trustee, which she was, she would be responsible as the spouse, and therefore the principal at all material times, of David Carlson. David Carlson's failure, as manager of HMD, to diligently pursue the loans to the community farming entities, prevents the statute from running as to him—and therefore as to his then-principal, his wife, and therefore as to the transferee entities owned and controlled by either or both of them, Carlson Agribusiness and South 80.

Mary Carlson/South 80 may perhaps argue that Marla Contini, as a general partner, ought to have known that funds had drained out of HMD to South 80 on Mary Carlson's watch. Marla Contini personally is not a party to this case, however. Moreover, the other Continis were only limited partners, and HMD may and indeed must represent their interests whether Marla Contini lapsed or not. Moreover, Mary Carlson is estopped from such an argument, because:

> **Each general partner** and the limited partnership **shall** furnish to a general partner:
>
> (a) **Without demand**, any information concerning the limited partnership's activities and activities reasonably required for the proper exercise of the general partner's rights and duties under the partnership agreement or this chapter.

RCW 25.10.431(2) (emphasis added). Mary Carlson had an absolute duty to keep Marla Contini informed of material information such as HMD's transfer of several hundred thousand dollars to South 80/Carlson Agribusiness. She did not do so, and she cannot take advantage of her own failure to try to spread the blame to Mrs. Contini.

Equity abhors a trustee's evasion of her duties and grants her no shelter beneath the statute of limitations. South 80's motion should be denied.

B. Alternatively, David Carlson's Testimony Revived The Statutory Period.

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If for any reason the Court were to find that the statute of limitations could have run on the loans from HMD to South 80 the period has now re-started. Washington recognizes the equitable principle that: "if, after a wrongful withholding of property, the holder recognizes the equity of the wronged person and in substance asserts that he holds legal title in trust for the injured person, the statute of limitation does not operate against the beneficiary." *Arneman v. Arneman*, 43 Wn. 2d 787, 799-800, 264 P.2d 256 (1953). Mary Carlson admits (indeed, she insists) that she is a general partner of HMD. Hence, as discussed above, she admits she is a trustee for all of its property and for any profits or property she gained from the conduct of the business of HMD. And David Carlson, who was her husband and hence her agent while the money was transferred, admitted on the stand, speaking as the CEO of Carlson Agribusiness, which now holds the working capital formally held by South 80, that the money was rightfully owed to HMD. As transferee from South 80, the working capital derived from HMD is held in trust for HMD. Therefore, the statute of limitations does not apply.

Indeed, even had there not been a trust relationship, which there is, David Carlson's testimony should be considered as an acknowledgement of the debt sufficient to satisfy RCW 4.16.280. That statute requires a written and signed reaffirmation, but in the very similar context of the statute of frauds, the Court of Appeals held that "the testimony of [the defendant] in open court as to the details of the oral lease with option to purchase constitutes sufficient "memoranda" or "writings" to satisfy the statute of frauds, for we view recorded court testimony as equivalent to signed depositions." *Powers v. Hastings*, 20 Wn. App. 837, 846, 582 P.2d 897 (1978) *aff'd*, 93 Wn. 2d 709, 612 P.2d 371 (1980).

C. If the Debt Lapsed Due to Mary Carlson's Refusal to Act, She is Personally Liable.

Again, Mary Carlson as general partner had a duty of loyalty and care at all material times. RCW 25.10.441. She had a duty not to deal with HMD in the conduct of its activities as or on behalf of a party with adverse interests, and a duty to avoid gross negligence or intentional misconduct. *Id.*

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If the Court were to find, which it should not, that the statute of limitations ran on the loans from HMD on her watch, it would be clear that she violated those duties. The interests of a debtor and its creditor are adverse by definition. If the statute of limitations ran, it was because Mary Carlson (and perhaps her agent David Carlson) took advantage of HMD in the conduct of its business on behalf of its debtor, South 80. And even after that, Mary Carlson could have easily saved HMD's interests by simply acknowledging or reaffirming the debt, which would have re-started the statutory period. RCW 4.16.280. Instead, she and her entity South 80, under her direction, did the exact opposite: they asserted the statute of limitations defense under which they now move to dismiss HMD's loan claims. Thus, if South 80 were to succeed in this defense, Mary Carlson would be personally liable. Every final judgment "shall grant the relief to which the party in whose favor it is rendered is entitled," based on the facts brought out at trial, "even if the party has not demanded such relief in his pleadings." CR 54(c). HMD's claim against Mary Carlson, arising from her blocking of recovery from South 80, could be framed as constructive trust or unjust enrichment, as breach of fiduciary duty, or, in view of her failure to disclose material information to the Continis which she was duty-bound to disclose without being asked, *see* RCW 25.10.431(2), *supra*, as fraud. Under any theory, the damages are the full amount that her failure cost HMD.

VI. CONCLUSION

Because the statute of limitations has not run, or is revived, or because any lost claims against South 80 must be recoverable against Mary Carlson personally in this action, the motion to dismiss HMD's loan claims should be denied.

DATED this 19th day of June, 2015.

JOHNSTON LAWYERS, PS

R. Bruce Johnston, WSBA #4646
Nathan J. Arnold, WSBA #45356

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Nathan@RBruceJohnston.com
Counsel for HMD Limited Partnership

CERTIFICATE OF SERVICE

The undersigned declares under penalty of perjury that the following facts are true and correct:

I am a citizen of the United States, over the age of 18 years, and not a party to or interested in the above-entitled action.

On June 19, 2015, I served or caused to be served by hand a copy of the foregoing document upon all interested parties at the following addresses:

Amy Remy
Finney, Falk, Naught & Remy, PLLP
117 N. 3rd St., Ste. 201
Yakima, WA 98901
Counsel for H. David Carlson

Sean Russel
Stokes Lawrence Velikanje Moore & Shore
120 N. Naches Ave
Yakima, WA 98901
Counsel for Mary Carlson and South 80

John A. Maxwell
230 S 2nd St
Yakima, WA 98901
Counsel for Mary Carlson

DATED at Yakima, Washington, this 19th day of June, 2015.

Nathan J. Arnold

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APPENDIX -- 7

APPENDIX -- 7

(20)

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'15 JUN 19 P3:12

SUPERIOR COURT
YAKIMA CO WA

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

In re the Marriage of:	NO. 13-3-00578-9
MARY ALICE CARLSON, *et al* Petitioner, and HUGH DAVID CARLSON, *et al* Respondent.	PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

1) **FINDINGS OF FACTS**

a) **Background**

i) David Carlson was born on March 8, 1943 – he is 72 years old.

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ii) Mary Carlson was born on November 21, 1954 – she is 60 years old.

iii) Mary Carlson and David Carlson were married on May 6, 1989, in Yakima, Washington.

iv) The best evidence is, and the court finds, that Mary Carlson and David Carlson were separated on or about September 1, 2012.

v) The parties were married for 23 years prior to the date of legal separation.

vi) Mary Carlson filed the petition for legal separation, on or around June 7, 2013.

vii) Immediately prior to trial, the parties stipulated to and the court ordered that the petition be converted to one for dissolution.

viii) The marriage is irretrievably broken and at least 90 days have elapsed since the date the petition was filed and since the date the summons was served on H. David Carlson.

b) Residency and Jurisdiction

i) David Carlson resides in the marital residence located at 1601 Lateral B Road, Wapato, WA 98939. He has lived in the residence since 2009.

ii) Mary Carlson resides at _____. Prior to that, she lived at 1216 Lila Place from September 2012 to ____ 2015. Prior to that, she lived at the marital residence.

c) Notice and Claims

i) David Carlson was served with the petition for legal separation and summons on or around June 10, 2013.

ii) He appeared through his attorney on or around June 27, 2013.

iii) He filed his response to the petition on or around July 11, 2013.

iv) South 80 Orchards filed its Complaint on or about December 30, 2013.

v) Carlson Agribusiness, LLC and David Carlson filed its Answer and Counterclaims on or about. The Reply thereto was filed on or about February 12, 2014.

vi) HMD Limited Partnership filed its Complaint in Intervention on or about March 13, 2014.

vii) South 80 Orchards filed its Answer and Counterclaims on April 10, 2014 The Reply thereto was filed on or about April 29, 2014.

d) Children

i) The parties do not have any children together.

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ii) H. David Carlson has two adult sons from a prior marriage.

iii) Mary Carlson has two adult living sons.

iv) Mary Carlson had a third son who passed away.

e) **Community Property**

i) The parties have certain real and personal community property

f) **Life Insurance**

i) Life insurance is community property.

ii) At the time of trial the parties have four (4) life insurance policies on the life of David Carlson, summaries of which are contained in Exhibit __.

iii) The Face Value Death Benefits of the policies are: Pacific Life $650,000, New York Life ***553 $75,000; New York Life ***120 $150,000, New York Life ***061 $25,000.

iv) The premiums to maintain these insurance police are approximately $24,000 per year or $2,000 per month. In the past, the best evidence is, and the court finds, that the premiums have been paid from community property, generally from the working capital of the family's farming operations.

v) Mary Carlson is the beneficiary of one half of the death benefits of each policy.

vi) The death benefits of the policies are approximately as follows:

(1) Pacific Life: $650,000

(2) New York Life 553: $69,350.89

(3) New York Life 120: $170,949.53

(4) New York Life 061: $38,668.28

vii) The court finds that continuation of the life insurance with Mary Carlson as beneficiary of one half of the death benefits is appropriate, as it provides appropriate security for her in the event of David Carlson's death while obligations under the orders of the court are outstanding.

viii) Accordingly, the court finds that it is appropriate for the ownership of the policies to be awarded to David Carlson, subject to the absolute requirement that they be maintained in force so long as Mary Carlson shall be alive, and that she remain the beneficiary of one half of the death benefits of all four policies until the earlier of the payment of the death benefits or Mary Carlson's death.

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ix) It is further found by the court that in the event Mary Carlson shall predecease David Carlson, full ownership and rights in the insurance policies shall vest, unencumbered, in David Carlson and he shall be free to act in regard to the policies as he sees fit, including designation of beneficiaries, alteration of policies, caching and policies, and the like.

x) The life insurance policies are subject to policy loans in the approximate amounts as follows:

(1) New York Life 553: $38,324.75

(2) New York Life 120: $46,121.78

(3) New York Life 061: $20,822.18

The total policy loans equal approximately $105,268.71.

xi) The proceeds of the policy loans were used for working capital in the family farming operations, and are found to be a community obligation payable one-half ($52,634.35) by each spouse.

xii) Because ownership of the insurance policies is awarded to David Carlson, he shall accept them subject to one half of the policy loans: Mary Carlson's one half of the policy loans shall be included in the equalization of distribution section of these findings below.

g) Mary Carlson's Employment, Employability and Health

i) Mary Carlson is currently unemployed.

ii) Mary Carlson suffered a serious injury after an auto accident in 2002.

iii) From 2002 – 2013 or later, Mary Carlson received lost time and other benefits from the Department of Labor and Industries. The precise amount of such benefits has not been adequately disclosed in the evidence, although requested by counsel for David Carlson. The best evidence is, and the court finds, that at the time of entry of these Findings and Conclusions, such benefits have been terminated.

iv) Mary Carlson's testimony was, and the court so finds, that she is able to work full time, including as a manager of such of the family farm as are awarded to her.

v) Documents from L&I, based on an IME in the summer of 2013, indicate that Mary Carlson is able to work full time without restrictions, and no contrary evidence was introduced, and the court accepts and finds that she is so able to work full-time with

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the limitations of the residual effects of her injuries in 2002, and surgeries and physical therapy thereafter.

vi) The Court therefore finds that Mary Carlson is capable of maintaining full time employment either with such portion of the family farming operations as are awarded to her, or independent thereof.

h) Carlson's Employment, Employability and Health

(1) David Carlson currently works as an independent contractor as a consultant to Borton Fruit, and receives Form 1099 compensation in the amount of $6,500 per month. That employment is not denominated as full-time, but requires 30 to 40 hours per week. A substantial portion of this work is engaging with overseas customers, and is performed in the late evenings or very early mornings.

(2) David Carlson is also engaged, virtually full-time, as measured by a 40 hour week, in the family farming operation conducted by Carlson Agribusiness, LLC.

(3) Mr. Carlson has received no compensation for his work in managing the family farm after separation on September 1, 2012. The testimony presented a broad range of reasonability of salaries for farm manager of farms of about the size of the Carlson family farm. Based thereon, the court finds a salary of approximately $85,000 per year is reasonable, and a total of $255,000 should be awarded to David Carlson, payable from Community Property. Because ½ of that amount is payable by David Carlson, an amount of $127,500 should be charged to Mary Carlson's share of Community Porperty in the Equalization section of these Findings below.

(4) Mr. Carlson's employability is reflected by his long history of employment, however, at his age it is doubtful that he can, or reasonably should be required to, continue dual employment.

(5) The testimony reflected, and the court finds, that it is likely that Mr. Carlson will discontinue his secondary work as a consultant for Borton Fruit within approximately three years, i.e. by June 30, 2018.

(6) The court further finds that Mr. Carlson's working essentially two full-time jobs is a matter of choice, which has been pursued to provide and/or supplement

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working capital for family farming operations, and should not be considered in the calculation of relative income for the purpose of computing maintenance.

(7) The testimony supports, and the court finds that Mr. Carlson's health is average for his age of 72 years old; he has Type II diabetes, with some peripheral neuropathy associated therewith, had a mild heart attack and stint placed in the late 1990s, a condition currently under control, and that he has some progressive back problems.

(8) Mr. Carlson receives Social Security of approximately $2,400 a month.

(9) Mr. Carlson receives a pension from the Washington Apple Commission in the approximate amount of $1,200 per month.

i) **Spousal Maintenance**

i) The Court finds that, based upon her testimony, that Mary Carlson is able to, and there is no legitimate reason for her not to, work full time.

ii) The Court finds that one half David Carlson's monthly payment of $2000 (i.e. $1000) toward the life insurance premiums he is required to maintain are for the benefit of Mary Carlson and are appropriately considered and accounted for as a required spousal maintenance payment of $1000 per month.

iii) The Court finds that given David Carlson's age, health and history of working two jobs (one without salary since September 1, 2012) to support the family farms, spousal maintenance shall be paid by David Carlson to Mary Carlson in the amount of $1,500 per month or 50% of his monthly income from sources other than family farming, whichever is less, for a period of Three (3) years.

iv) The Court finds that, in light of David and Mary Carlson's significant difference in age, the lack of children involved in this divorce, the term of this second marriage, and that maintenance after retirement age is inappropriate (see *In re Marriage of Mathews*, 70 Wn. App. 116 (1993), spousal maintenance shall be paid by David Carlson to Mary Carlson up to and including, but not after, June 30, 2018.

j) **Interest of Mary Carlson in HMD Ltd. Partnership**

i) Under the Second Amendment to the Partnership Agreement of HMD dated_____, 2000 (Exhibit __), Mary Carlson held a 2.5% General Partner Interest, and a 4% Limited Partner Interest in that entity.

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ii) There was a significant dispute concerning whether or not an amendment to the HMD Partnership Agreement dated in 2008, was valid.

iii) At the outset of the trial, Mr. Carlson and HMD stipulated that, despite the dispute, the 2000 Second Amendment would govern, and the court accepted and accepts that stipulation.

iv) Substantial attorney time and effort was expended regarding whether or not the 2008 Amendment was genuine or effective, and the issue was raised as to who as between the Mary Carlson and David Carlson prepared the said 2008 Amendment. Because the issue has been mooted by the stipulation, the court refrains from making a finding on that issue .

v) The court finds it would have been helpful if the stipulation had been offered earlier, or if the issue had been pursued for resolution by Ms. Carlson earlier. Accordingly, the court finds that each party should bear their own attorney fees in connection with that issue.

vi) Under the said Second Amendment Mary Carlson held the position of a fiduciary, and was one of three General Partners. As a minority General Partner, and as a fiduciary to HMD, Mary Carlson's authority to act was limited by the terms of the Partnership Agreement (Exhibit __).

vii) On or about June 8, 2015, during the trial, a meeting was held in the evening of the HMD. At that time, HMD purported to remove Mary Carlson as a General Partner, and, under the terms of the Partnership Agreement, to relegate that interest to that of a Limited Partner.

viii) Under the said Second Amendment, David Carlson, as the duly acting and appointed Personal Representative of the estate of Hugh Carlson, an open estate in the above entitled court, had the voting power at all times from 2000 to June 8, 2015 to remove Mary Carlson as a General Partner, cause not being a requirement of the Partnership Agreement.

ix) The stated reason for holding the meeting during the course of trial was to make any action of HMD at the meeting subject to veto or change by the court. The court finds that such actions are subject to the plenary jurisdiction of the Court in the above entitled dissolution case.

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x) The court, however, finds that the removal of Mary Carlson as a General Partner was within the power of HMD and its Partners, and was not inappropriate, and therefore ratifies that action as of June 8, 2015.

xi) The court further finds that grounds for disassociation of Mary Carlson from the HMD exist, and that Mary Carlson should be disassociated from the HMD – subject to payment for the fair value of her 6 ½% limited partnership interest.

xii) The court finds that the net or salable value of HMD is problematic, and insufficient evidence thereof was submitted by Mary Carlson. David Carlson indicated the value could be as high as $1 million, and the court accepts that value. Therefore Mary Carlson's interest in HMD is determined to be $65,000, subject to set off for the interest charge ordered in favor of HMD, below.

xiii) Because the court finds below that Mary Carlson and David Carlson (through a community debt) is indebted to HMD, the amount of Mary Carlson's 6 ½ % interest in HMD shall be set off against Her ½ of the debt to HMD.

k) The $226,485.05 taken by Mary Carlson from HMD Ltd. Partnership

i) The evidence is undisputed and the Court finds that on or about November 19, 2013, Mary Carlson removed the sum of $226,485.05 from the bank account of HMD, that sum being all of the remaining funds in the only bank account of HMD at the time.

ii) The evidence supports, and the court finds, that said $226,485.05 was directly traceable to a property sale by HMD and that the funds belong solely to HMD.

iii) The evidence is also undisputed, and the court finds, that Mary Carlson upon removal of said funds caused the closure of the only bank account of HMD.

iv) The evidence supports, and the court finds, that the removal of said funds from the HMD Bank Account and the closure of that Bank Account were contrary to the Partnership Agreement, and were contrary to Mary Carlson's Fiduciary Duties to HMD, and was wrongful.

v) The evidence is, and the court finds, that counsel for Mary Carlson initially recommended the funds be returned to a bank account of HMD – and the court commends counsel for that advice. However, that was not done, and throughout the case, Mary Carlson has insisted upon the funds, clearly the property of HMD, remain in the registry of the court. Throughout the term of the case, it has been within the

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power of Mary Carlson to cause the turnover of the funds in the registry of the court to HMD, but she has not done so.

vi) In the initial pleadings, Mary Carlson has admitted that the removal of said funds and the placement of those funds in the Registry of the Court have deprived HMD of the use of those funds. The court accordingly finds that there was a forced forbearance from the use of its funds by HMD.

vii) The Court finds that the $226,485.05 should be returned to HMD.

viii) The Court finds that the amount in issue was liquidated at $226,485.05.

ix) The Court finds that due to this deprivation HMD, is entitled to recover from Mary Carlson interest on the liquidated amount at the statutory rate of 12% annum totaling $ 16,604.77, pursuant to RCW 4.56.110.

l) **HMD Loans to the Family Farm entities**

i) From 2003-2009 a series of payments was made by HMD to South 80 orchards to supplement working capital of the family farming operations.

ii) Despite the absence of adequate documentation, the fiduciary status of both David Carlson and Mary Carlson to HMD throughout that period of time, would require that, and the court finds as fact that, those payments are properly treated as loans to be repaid to HMD.

iii) Those loans were in the amount of $153,400 and $165.00 (HMD originally claimed the first series of payments was 160,400, but the testimony of David Carlson identified one $7000 payment as crop proceeds which should not be included in the calculation). The Principal of those loans, and appropriate interest, which the court finds, for the reasons set forth below, to be 3% per annum, not compounded, is owing from the community and/or Carlson Agribusiness and/or South 80. Those amounts are respectively $153,400 plus interest of $144,226.98 to June 19, 2015 for a total of $297,626.98, and $165,000 plus interest of $29,084.79 to June 19, 2015 for a total of $194,084.79. The total due is $297,626.98 + $194,084.79 = $491,711.78. There was no credible evidence or documents introduced to support any payment of the principle of those loans. Therefore, the amount of $491,711.78, remains outstanding, as of June 19, 2015.

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iv) Because those loans became part of the working capital of the family farm, and were transferred in the 2011 transition of working capital from South 80 Orchards to Carlson Agribusiness, LLC, the working capital of the family farms is properly liable for repayment of the $491,711.78. Carlson Agribusiness as the transferee of the working capital is liable for that amount. Because it is a community debt, the court finds it is appropriate for each of David Carlson and Mary Carlson to repay ½ of that amount, i.e. $245,855.89, each.

v) Because the working capital is community property, and because each was a general partner of HMD, each of David Carlson and Mary Carlson are liable for one half of said $491,711.78, i.e. $245,855.89 is chargeable to David Carlson and $245,855.89 is chargeable to Mary Carlson.

vi) In 2012, payments were made by HMD to David Carlson which in turn went to the working capital of the family farm, then in Carlson Agribusiness in the amount of $400,000. Of that amount, in 2015 the sum of $221,350 was repaid. The evidence is, and the court finds, that repayment was proper. Accordingly, after accrued interest at 3% per annum, the balance owing is $207,162.05, or $103,581.02 each.

vii) As to the said $400,000, promissory notes in that amount were made, and while done by a layperson, are properly deemed notes made by David Carlson, on behalf of the marital community, the funds trace into the working capital of Carlson Agribusines.

viii) The majority of those notes call for an interest rate of 3%. Based thereon, and the fullness of the testimony, the court finds that a reasonable interest rate for all loans of HMD for the working capital of the community farms is 3% per annum, not compounded

ix) Because it is doubtful that sufficient working capital exists to farm the family farms as allocated by the court, through the end of the 2015 crop year, if funds owing to HMD are immediately deducted therefrom, and because HMD is willing to extend repayment of the these amounts, each party may elect to: (a) pay the full amount of $349,436.91 immediately, or (b) sign a note in substantially the form of the notes used in 2012 as discussed above, in the principal amount of $349,436.91, payable in monthly installments of $3,000 per month, to be first applied to accrued interest and

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the balance to principle, for five (5) years commencing July 1, 2015, with the balance of principal and accrued interest all payable on June 1, 2020.

m) The Carlson Family Farming Business (including working capital), and Division and Allocation thereof.

i) By far (several orders of magnitude) the Carlson Family Farming Business is the largest asset of the parties and the marital community. With the exception of the Home Place (treated elsewhere) the farming business is conducted upon land owned by others, including primarily leased land. By far the largest asset of the farming business is its working capital. While the precise dollar amount of that working capital cannot be accurately determined, because a large portion thereof is in growing crops and unsold inventory, the court finds that it exceeds, at least, $2 million.

ii) The court finds that based on the expedient prior transactions, and co-mingling, that all farming equipment should be treated as owned by Carlson Agribusiness, LLC, and equipment approximating one half of the utility of the overall equipment, and one half of the value of the overall equipment, shall be distributed to or at the direction of Mary Carlson, the other approximately ½ shall go to David Carlson. Before the Effective Date (defined below) the court will approve an allocation of the equipment. The equipment to be divided shall be done irrespective of whether it is titled in South 80 Orchards, Carlson Agribusiness, LLC, RMT, David Carlson or Mary Carlson, or is not titled. The only equipment excluded from the distribution shall be that titled in a third party, including HMD Limited Partnership.

iii) Based on the fullness of the evidence, including the testimony of both Mary Carlson and David Carlson that they wish to continue farming their share of the community farming business, the court finds that the farming business should be divided; the rights to farm on an approximately equal basis measured by planted acreage, the working capital on an equal basis, and the equipment on an approximately equal basis as set forth above.

iv) At the time of marriage the overall farming business of the parties consisted of Carlson Orchards, Inc., the separate property of David Carlson, and other farming interests which survived the receivership and liquidation of Carlson Orchards, Inc. between 2001 and 2005. Carlson's family farms which survived the collapse of

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Carlson Orchards, Inc. consisted of various properties growing apples, cherries and various other fruit varieties; among the land farmed were and are four leases denominated 901, 902, 903 and 1941, from Native American allottees and administered by the Bureau of Indian Affairs, title to which was (and is) held in the name of South 80 Orchards Limited Partnership. They also included the property known as West 50. Starting in 2003, the farmed properties also included the HMD Orchard owned orchard known as Sno Valley, and Parker Heights discussed below.

v) The land subject to those BIA leases was bare when initially leased in the name of South 80.

vi) The BIA leased property was developed and farmed by Carlson Orchards, Inc. until the receivership of that company in January 2003.

vii) Through negotiation and settlement of the claims against Carlson Orchards, Inc. David Carlson was able to preserve to the marital community the working capital used on the surviving family farms, including the BIA leases. The best evidence is, and the court finds, the origination of the working capital used by the family farm was from that settlement, negotiated by David Carlson, and that the settlement was negotiated for the benefit of the marital community, and that the working capital thus obtained is community property.

viii) During the period approximately from September 2009 through early 2011, the farming working capital, the equipment and the farming operations were transferred from being nominally conducted by South 80 Orchards to Carlson Agribusiness, LLC, a Limited Liability Company which formally began business on or about January 1, 2011. The court specifically finds that Carlson Agribusiness, LLC is community property.

ix) There was significant dispute as to the propriety of the transition of working capital and farming operations from the name of South 80 Orchards to Carlson Agribusiness, LLC, but on the fullness of the evidence, the court finds that such transition was known to both parties, consented to by conduct, was not for any improper purpose, and was done in the exercise of the reasonable business judgment of David Carlson. The many arguments of wrongdoing, mismanagement, problems with the Internal

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Revenue Service, etc. during the period 2008 through 2011, are subsumed in this finding and mooted by it.

x) Further in this connection. the court finds that David Carlson and Mary Carlson did not observe the indices of separateness between the marital community and its property and funds on the one hand, and South 80 Orchards or RMT Holdings on the other, and the court finds on the fullness of the evidence that South 80 Orchards holds only bare title to the BIA leases. and has no rights separate from the community (or the admittedly community owned Carlson Agribusiness, LLC) in the working capital or equipment, all of which was expediently co-mingled by, or with the knowledge of, the parties, to a degree preventing any meaningful segregation.

xi) The court finds that South 80 Orchards permitted others to farm the BIA leases, first Carlson Orchards, Inc. and later Carlson Agribusiness, LLC. Because the behavior of the parties is the best evidence of their agreement, absent an integrated written agreement, the court finds that the proper designation is that South 80 Orchards licensed a "right to farm" the BIA leases, and may continue to do so.

xii) Mary Carlson is the majority holder of South 80 Orchards, and that majority interest is within the plenary jurisdiction of this court. The court finds that, as between and among the parties to this action, it may direct the granting of a license or licenses to farm the BIA leases in this proceeding.

xiii) The evidence presented at trial makes it more likely than not that the BIA leasehold upon the parcel commonly referred by the parties as 901 may be terminated by the lessor in the event that it is awarded to Mary Carlson.

xiv) In approximately September, 2009, the Home Place, consisting of a residence and 20 acres was purchased and introduced into the Carlson family farming operation. The majority of the Orchard was established using the community working capital during 2009 through 2011. The improvements thereon included the construction of the main equipment shop used by the family farm.

xv) Beginning in 2011, David Carlson began planning for expansion of the family farming operation by obtaining an additional BIA lease on property now referred to as the New Sno Valley. As an appropriate step in that direction, in 2012, he contracted to purchase trees to be available in 2014. Carlson Agribusiness, LLC then

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obtained a lease in its name on the New Sno Valley Orchard in early 2014. Approximately $250,000 of community working capital has been invested in the development of that new Orchard.

xvi) The New Sno Valley Orchard is titled in Carlson Agribusiness, LLC, was funded by community working capital, and is community property subject to division in the dissolution action.

xvii) In addition to those mentioned above, the family farm also farmed property known as Parker Heights. The parties have stipulated that title to Parker Heights has always been intended for, and should be immediately transferred to, Nick Carlson, the son of David Carlson. The court finds that is appropriate and accepts the stipulation.

xviii) Family farm working capital has been invested in Parker Heights for the 2015 crop. The evidence supports an investment therein of between $60,000 and $70,000. Based on the evidence, the court finds that the investment is $65,000. The court further finds, based on the evidence, that the landowner, Nick Carlson, should receive one half of any net profit above set $65,000 and that the community should receive one half of any such net profits. In the division of the working capital, the return of said $65,000, or such portion thereof as is obtained, together with one half of any net profit, shall be included in the working capital divided by the court.

xix) The evidence supports, and the court finds that the approximate gross acreage of the farming rights to be allocated by the court is 500 acres and that the planted acreage is approximately 435 acres.

xx) The evidence supports, and the court finds that the following rights to farm the following properties (identified by their common names) consisting of the indicated approximate acreages should be allocated to Mary Carlson:

(1) The 902 BIA lease – 75 acres.

(2) The 903 BIA lease – 75 acres

(3) The 1941 BIA lease – 75 acres.

Total acreage allocated to Mary Carlson, 225 acres.

xxi) The evidence supports, and the court finds that the following rights to farm the following properties (identified by their common names) consisting of the indicated approximate acreages should be allocated to David Carlson:

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(1) The Home Place – 17 acres

(2) The New Sno Valley – 28 acres

(3) The Sno Valley – 45 acres

(4) The West 50 – 45 acres

(5) The 901 BIA lease – 75 acres

Total acreage allocated to David Carlson, 210 acres.

xxii) The working capital of the family farm is composed of the following elements: cash, accounts receivable, inventory (unsold fruit in storage) and growing crops. On the Effective Date (hereinafter defined) those are to be allocated and distributed as follows:

(1) Growing Crops on the properties allocated to Mary Carlson go to Mary Carlson. All harvested crops, inventory, receivables or cash resulting from the 2015 crops on those properties are also allocated to Mary Carlson.

(2) Growing Crops on the properties allocated to David Carlson go to David Carlson. All harvested crops, inventory, receivables or cash resulting from the 2015 crops on those properties are also allocated to David Carlson.

(3) Cash on hand (except any required to pay farming obligations incurred on or before the Effective Date, or resulting from more traceable to 2015 crop) will be divided equally and paid one half to Mary Carlson and one half to David Carlson.

(4) Accounts Receivable (except any resulting from more traceable to 2015 or later crop) will be collected by Carlson Agribusiness, LLC and upon receipt will be distributed one half to Mary Carlson and one half to David Carlson within five days of receipt. The said Accounts Receivable shall be deposited in the ***610 account which has heretofore been referred to as the Court Ordered Account. No other funds shall be deposited in that account after the Effective Date, and no amounts (except checks written and delivered prior to the Effective Date for farming obligations incurred in the ordinary course before the Effective Date) shall be paid from such account except one half to David Carlson and one half to Mary Carlson, except as otherwise specifically ordered by the court.

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(5) Inventory (except inventory resulting from more traceable to the 2015 or later crop) as it is sold will become Accounts Receivable and will be treated identically when collected as existing Accounts Receivable, as provided immediately above.

xxiii) The Effective Date shall be as soon as possible as agreed to by the parties, but no later than June 30, 2015. If the parties do not agree on an earlier date, the Effective Date is hereby directed to be June 30, 2015.

xxiv) On and after the Effective Date, Carlson Agribusiness, LLC shall become the sole and separate property of David Carlson, subject only to its obligations to collect and pay out funds and distribute equipment pursuant to the Court's Orders. Carlson Agribusiness, LLC may farm those properties allocated to David Carlson, but shall have no responsibility whatsoever to farm or be involved in any respect with the properties allocated to Mary Carlson.

n) **South 80's Claims Against Carlson Agribusiness**

i) The Court has heretofore dismissed South 80's claims against Carlson Agribusiness, LLC for tortious interference, with prejudice.

ii) Based on the findings above, the claim of South 80 for conversion should be and hereby is dismissed, with prejudice.

o) **Distribution of Non-Farm Real Property**

i) The Cabin on Lake Roosevelt, is properly valued at $75,000 and is awarded to Mary Carlson.

ii) The vacant lot in Yakima, is properly valued at $75,000 and is awarded to Mary Carlson

iii) The Home Place, is properly valued at $377,000 and is awarded to David Carlson.

p) **Distribution of Non-Farm Personal Property**

i) By stipulation of the parties, non-farming personal property shall be distributed as set forth below. The said personal property allocation, with the exception of the Bayliner Boat, are deemed to be of equivalent value.

ii) **To Mary Carlson**:

(1) Her separate property including her deceased son's property

(2) 20__ Toyota Highlander, VIN # _____

(3) Former community property in her possession.

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iii) **To David Carlson:**

(1) Old Corvette

(2) His personal truck, VIN #_____

(3) Former community property in his possession.

(4) The approximately 39 foot Bayliner Boat, is properly valued at a net value of $75,000 and is allocated to David Carlson.

q) **Equalization of Non-Farm Property Allocations and of Allocated Debts.**

i) The family farm rights to farm, working capital and equipment, and the personal property (except the boat) have been distributed on an equal basis.

ii) The Home Place and Boat, having respective values of $377,000 and $75,000 for a total of $452,000 have been allocated to David Carlson.

iii) The Cabin and the Vacant Lot each valued at $75,000 for a total of $150,000 have been allocated to Mary Carlson.

iv) The difference in allocated value in favor of David Carlson is $227,000.

v) Mary Carlson is liable for one half of the Life Insurance Policy Loans in the amount of $$52,634.35, and the allocated one half of David Carlson's salary in the amount of $127,500, for a total of $180,134.35. That amount should be subtracted from the difference allocated in favor of David Carlson, which leaves $46,865.65 owing from David Carlson to Mary Carlson.

vi) To equalize the overall distribution, upon the Effective Date, David Carlson shall pay the difference, i.e. $_____, in cash to Mary Carlson.

r) **Attorney's Fees**

i) Each party has received from assets otherwise distributable from the Community Estate funds for payment of attorney fees in the approximate amount of $50,000, an approximately equal distribution.

ii) Upon the fullness of the evidence, the size of the distribution, the conduct of the parties in litigation, and all other relevant factors, the Court finds that each party shall bear their own attorney fees to be paid from their post-dissolution separate estates.

s) **Unknown or Omitted Property, Gifts or Inheritances.**

i) Any unknown or omitted assets related to farming, not identifiable to a particular property, shall go one-half to Dave Carlson and one-half to Mary Carlson.

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ii) Any unknown or omitted assets related to the properties which go to Mary Carlson shall go to Mary Carlson.

iii) Any unknown or omitted assets related to the properties which go to David Carlson shall go to David Carlson.

iv) Fully unknown or unexpected assets will be divided equally.

v) Any inheritances or gifts will go separately to the party to whom they are or were directed

2) **CONCLUSIONS OF LAW**

a) At its core, this is a dissolution action, subject to the plenary jurisdiction of this court, and the court finds it has jurisdiction over not just community assets, but to the extent necessary to reach a fair and equitable distribution of property between the parties, the court has jurisdiction over the separate property of the dissolution parties.

b) The court has jurisdiction over South 80 Orchards, property held for the benefit of Mary Carlson and/or David Carlson by RMT Holdings, LLC, and Carlson agribusiness, LLC.

c) In addition to the plenary jurisdiction over the assets of the dissolution parties as noted above, this court has the power to reach proper and equitable decisions regarding the parties before it, and their assets and liabilities, pursuant to CR 54(c) to enter a full and complete final order regarding all matters addressed during the course of the trial. That rule states: "... Every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings."

d) David and Mary Carlson are fiduciaries to one another.

e) David Carlson in his capacity as personal representative of the Estate of Hugh A. Carlson is a General Partner of HMD is a fiduciary to HMD.

f) As a general partner of HMD, Mary Carlson was fiduciary to HMD and its limited partners until the Special Meeting, June 8, 2015, including when she withdrew $226,485.05, from the HMD bank account on or about November 19, 2013 and closed the account, and thus breached her fiduciary duty to HMD and the limited partners by those acts. Accordingly, said $226,485.05 should be immediately paid to HMD Limited Partnership.

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g) Because Mary Carlson wrongfully took the HMD funds from the HMD bank account and caused the HMD funds to be sequestered in the court registry, she is liable for interest upon the liquidated amount at the statutory interest rate of 12% per annum.

h) David Carlson is indebted to HMD Limited Partnership in the amount of $349,436.91.

i) Mary Carlson is indebted to HMD Limited Partnership in the amount of $349,436.91.

j) David Carlson is entitled to a retroactive salary in the amount of $85,000 per year from and after September 1, 2012 to the Effective Date is defined above.

k) The assets and liabilities of RMT have been sufficiently comingled to constitute community property, and Mary Carlson should be, and is, awarded the vacant lot held in the name of RMT, at a value of $75,000.

l) Mary Carlson is awarded the community vacant lot at a value of $75,000.

m) David Carlson is awarded the community Home Place at a value of $377,000.

n) David Carlson is awarded the Bayliner Boat at a value of $75,000.

o) The Rights to Farm are allocated on approximately equal basis as set forth in the Findings of Fact above.

p) The farming equipment is allocated on an approximately equal basis as set forth in the Findings of Fact above.

q) The working capital of the family farm, currently held by Carlson Agribusiness, LLC will be divided equally as set forth in the Findings of Fact above.

r) Except for its duties to pay working capital, collect and distribute working capital, and distribute equipment as set forth in the Findings of Fact above, Carlson Agribusiness, LLC shall be the sole and separate property of David Carlson as of the Effective Date.

s) The distribution of assets shall be equalized by the payment of David Carlson to Mary Carlson in the amount of $$46,865.65.

t) The community life insurance policy ownership becomes the separate property of David Carlson, subject to his duty to maintain the policies by paying the premiums thereof, and to maintain Mary Carlson as a beneficiary of one half of the death benefits thereof, up to the earlier of payment of the death benefits, or the death of Mary Carlson.

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k) Mary Carlson is not entitled to a disproportionate award of the community property. With the equalizing payment, the property of the parties has been, and should be, divided equally.

l) Mary and David Carlson are each entitled to an equitable division of all community and separate property.

m) Mary Carlson is entitled to spousal maintenance in the amount of $1500 per month commencing July 1, 2015 and terminating on June 1, 2018. Mary Carlson is not entitled to spousal maintenance, beyond that and the requirement that David Carlson make all payments necessary to keep the Life Insurance in force, a requirement of approximately $1000 per month to maintain Mary Carlson's one half beneficiary status.

--END OF ORDER--

Presented By:

Finney, Falk & Remy, PLLP

Amy L. Remy, WSBA #37523

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APPENDIX -- 8

APPENDIX -- 8

p1 of 3

FILED
JAN 20 2016
YAKIMA COUNTY CLERK

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

Mary Alice Carlson, et al

vs.

Hugh David Carlson, et al

13-2-04263-0
NO. 13-3-00578-9

ORDER scheduling

THIS MATTER HAVING COME ON for hearing before the undersigned judge/commissioner of the above-entitled court, it is hereby ORDERED THAT:

1) Equipment - the parties agree to have Sco Lowry serve as arbitrator/mediator/special master to divide & allocate & determine the method & timing of distribution of farm equipment, defined here as wind machines, tangible personal property, farm equipment and vehicles, limited to that equipment listed by Mary Carlson in her 12/18/15 filing & Mr. Carlson in his 1/19/16 filing. The parties further agree that Mr. Lowry's decision shall be final & not subject to appeal.

DONE IN OPEN COURT this _____ day of _____, 20____.

JUDGE/COURT COMMISSIONER

Presented by:
(Copy received)

34915
Attorney for ~~[illegible]~~ South 80/petitioner

17431
Attorney for Mary Carlson,

Approved as to form:
(Copy received)

#37525
Attorney for Mr Carlson

#4646

p2.A3

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

Mary Alice Carlson, et al

vs.

Hugh David Carlson, et al

13-2-04263-0
NO. 13-3-00578-9

ORDER on scheduling

THIS MATTER HAVING COME ON for hearing before the undersigned judge/commissioner of the above-entitled court, it is hereby ORDERED THAT:

1) (continued) Mr. Lowry shall not address division of personal furnishing as the Court retains that issue. The meeting shall occur on either 1/28/16 at 1:30 or 2/1/16 at 1:30 as the parties shall agree & subject to Mr. Lowry's availability. Rules of procedure shall be determined by Mr. Lowry. Location shall be at Stokes.

2) Accounting - Mr. Peterson's report is due to Mr. Carlson's counsel on 1/27/16. His deposition shall be on 2/5/16 at 10:00 am at Emery Falk & Yarger

DONE IN OPEN COURT this _____ day of _____, 20____.

JUDGE/COURT COMMISSIONER

Presented by:
(Copy received)

34915
Attorney for petitioner

17431

Approved as to form:
(Copy received)

#4646
Attorney for H. D. Carlson

#37525

p 3 of 3

FILED
JAN 20 2016
YAKIMA COUNTY CLERK

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

Mary Alice Carlson, et al

vs.

Hugh David Carlson, et al

13-2-04263-0

NO. 13-3-00578-9

ORDER on scheduling

THIS MATTER HAVING COME ON for hearing before the undersigned judge/commissioner of the above-entitled court, it is hereby ORDERED THAT:

3) Proposed FOF COL - The parties shall each submit their Proposed FOF COL, and any related briefing, shall be filed with the court on 2/8/16 & provide a bench copy

DONE IN OPEN COURT this 20th day of JANUARY, 2016.

JUDGE/COURT COMMISSIONER

Presented by:
(Copy received)

34915
Attorney for

17431

Approved as to form:
(Copy received)

#37525
Attorney for MA Carlson

#4646

APPENDIX -- 9

APPENDIX -- 9

PARTNERSHIP AGREEMENT
OF
HMD LIMITED PARTNERSHIP

A Washington Limited Partnership

THIS AGREEMENT is made and entered into as of May 4, 1999, between HUGH A. CARLSON and H. DAVID CARLSON who, together with each other party admitted as a general partner, are hereafter referred to as "general partners," and HUGH A. CARLSON and MARLA R. CONTINI, who, together with each other party admitted as a limited partner, are hereafter referred to as "limited partners."

WITNESSETH:

WHEREAS, the parties hereto desire to engage in business, consider it to be to their mutual advantage to enter into a partnership agreement in furtherance of that objective, and desire to form a limited partnership under the laws of the State of Washington, NOW, THEREFORE, it is hereby agreed as follows:

I.
NAME, PLACE OF BUSINESS, AGENT, AND OFFICE

1.1 Name. The name of the partnership shall be *HMD LIMITED PARTNERSHIP*, and the principal place of business shall be *4502 Scenic Drive, Yakima, WA 98908 (mailing: P.O. Box 9034, Yakima, WA 98909).*

1.2 Agent and Office. *H. DAVID CARLSON* shall be the initial agent of the partnership for service of process, and the address of the office of the partnership shall be *4502 Scenic Drive, Yakima, WA 98908 (mailing: P.O. Box 9034, Yakima, WA 98909).* The general partners may from time to time appoint a new agent and change the location of the office of the partnership.

1.3 Tax Matter Partner. The partnership shall designate a general partner as a "tax matter partner" as provided in the IRC.

II.
PURPOSE

2.1 The partnership shall be engaged in the business of farming and acquiring, leasing, selling, and developing real estate and personal property, including farm, ranch, and

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commercial properties, and such other business activities permitted to a limited partnership as the general partners may from time to time determine, subject to the provisions of Section 7.6.

III.
DURATION

3.1 The partnership shall commence on the date the Certificate of Limited Partnership is filed and shall continue until the occurrence of any one of the following events:

3.1.1 The expiration of fifty (50) years from the date the partnership commences;

3.1.2 The occurrence of any of the events described in Section 11.2 involving the sole remaining general partner if, within ninety (90) days after the occurrence of any such event, the limited partners have not appointed one or more persons or entities as a general partner or partners or the estate of the deceased general partner does not become a general partner pursuant to Section 12.1.2;

3.1.3 The entry of a decree of judicial dissolution;

3.1.4 The affirmative vote of the partners as provided in Section 7.6 to dissolve the partnership; or

3.1.5 All partners, both general and limited, consenting in writing to dissolution of the partnership.

IV.
CAPITAL CONTRIBUTIONS

4.1 Initial Contributions. The individuals named below shall be the initial general and limited partners. HUGH A. CARLSON shall initially contribute to the capital of the partnership the cash and property listed in "Exhibit A" attached hereto, and the parties named below shall receive in exchange the interests in the partnership capital set forth below. The partners, other than HUGH A. CARLSON, acknowledge that the interests received by them constitute gifts of partnership interests from their father, HUGH A. CARLSON. The property is accepted by the partnership and the partners at the values set forth in "Exhibit A."

General Partners	*Percentage Interest*
Hugh A. Carlson	4
H. David Carlson	1

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Limited Partners	*Percentage Interest*
Hugh A. Carlson	94
Marla R. Contini	1

4.2 Interest. No interest shall be paid on the initial or any subsequent capital contribution, and no partner shall be required to contribute additional capital.

V.
CAPITAL ACCOUNTS

5.1 Individual Account. An individual capital account shall be maintained for each general partner and for each limited partner in accordance with IRC § 704. A person may be both a general partner and a limited partner; and if so, separate capital accounts shall be maintained to reflect such person's general partnership interest and such person's limited partnership interest. The capital account of a partner shall consist of that partner's original contribution of capital (1) increased by additional contributions, the share of any partnership liabilities assumed by that partner, and the amount of profits and gains allocated to that partner hereunder and (2) decreased by distributions to that partner, the share of partnership losses and deductions allocated to that partner, and the amount of any liabilities of that partner assumed by the partnership.

(a) "Contribution" means the amount of money and fair market value of property transferred to the partnership in exchange for a partnership interest, less the amount of any liability secured by that property and the amount of any liability of the transferor assumed by the partnership.

(b) "Distribution" means the amount of money and fair market value of property distributed to a partner, less the amount of any liability secured by such property.

A partner's capital account shall also be increased or decreased to reflect that partner's share of any adjustment to the adjusted basis of the partnership's assets pursuant to IRC § 734(b) or 735(b) to the extent permitted by IRC § 704, and to reflect transfers of partnership interests made in compliance with this Agreement.

5.2 Withdrawal of Capital. No partner may withdraw any portion of the partnership capital or be entitled to partnership capital except with the consent of a majority of the general partners.

5.3 Separate Property. Capital accounts and partnership interests of each partner, except those married to each other, and of all partners hereafter admitted to the partnership, shall be and remain the partner's separate property.

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VI.
PROFITS, GAINS, AND LOSSES

6.1 Profits, Gains, and Losses. Subject to the terms of Sections 6.2 and 6.3, the net profits, gains, or losses of the partnership shall be allocated without priority among the partners in proportion to their respective capital accounts on the last day of each calendar year. The terms "net profits," "net gains," and "net losses" as used in this Section 6.1 shall mean the amount of partnership net ordinary income, net gains from the disposition of property, and net losses as determined from time to time by the partnership's accountant in accordance with accepted accounting principles.

6.2 Gains and Losses on Contributed Property. If property contributed to the partnership is disposed of:

6.2.1 That portion of any gain subject to depreciation recapture shall be allocated:

(a) First, to all partners in proportion to their shares of profits to the extent of depreciation taken by the partnership after the date of contribution, and

(b) Second, to the contributing partners in the proportions they owned the contributed property at the time of its contribution to the partnership.

6.2.2 That portion of the remaining gain or loss equal to the difference between the property's value on the contribution date and its adjusted basis on that date shall be allocated among the contributing partners in the proportions in which they owned the contributed property at the time of its contribution to the partnership. If the property contributed is exchanged for other like-kind property, such replacement property shall be deemed to be contributed property for purposes of the foregoing allocation of gains or losses.

6.2.3 Any remaining gain or loss shall be allocated among the partners in proportion to their capital accounts on the last day of the calendar year.

The terms "net gains" and "net losses" as used in this Section 6.2 shall mean the amount of any partnership gain or loss resulting from the sale or other disposition of contributed property, including depreciation recapture, as determined by the partnership's accountant.

6.3 Transfer of Interest. In the event of any transfer of the interest of any partner, or any portion thereof in compliance with this Agreement, the share of the income, gains, losses, deductions, or credits of the partnership allocable to the interest or interests transferred shall be allocated between the transferor and the transferee on the basis of the number of days during such calendar year that the interest or interests transferred were held by each, calculated as of the

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end of the month during which the transfer takes place. A partner acquiring an interest from another partner who received the same in exchange for property contributed shall be deemed a contributing partner for purposes of Section 6.2 to the extent of the interest acquired, subject to any adjustment made pursuant to Section 16.1.

6.4 Cash Contributions. The net cash flow of the partnership shall be distributed annually or more frequently, except that net cash flow may be retained by the partnership as required for the reasonable needs of the partnership business as determined by the general partners.

VII.
MANAGEMENT AND DUTIES

7.1 General Partners. Subject to the restrictions contained herein and the terms of Section 7.6, the management and control of the partnership business shall rest exclusively with the general partners, who shall have all rights, powers, and duties of a general partner under the laws of the State of Washington. The scope of the general partners' power and authority shall encompass all matters connected with or incident to the business of the partnership, including but not limited to the power and authority:

7.1.1 To spend the capital and revenues of the partnership;

7.1.2 To manage, sell, develop, improve, operate, and dispose of any partnership properties, including to act on behalf of the partnership with respect to any partnership or joint venture in which the partnership participates;

7.1.3 To employ persons, firms, and/or corporations for the sale, operation, management, and development of the property of the partnership, including but not limited to sales agents, management agents, architects, engineers, contractors, attorneys, and accountants;

7.1.4 To employ agents, attorneys, accountants, engineers, and other consultants or contractors who may be affiliates of the general partners; however, any employment of persons employed by the general partners or their affiliates must be on terms not less favorable to the partnership than those offered by unaffiliated persons for comparable services in the same area;

7.1.5 To acquire, lease, and sell personal and/or real property, hire and fire employees, and to do all other acts necessary, appropriate, or helpful for the operation of the partnership business;

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7.1.6 To appoint representatives to manage the day-to-day operations o the partnership;

7.1.7 To enter into agreements of partnership, joint venture, co-ownership, or similar arrangements with other persons, firms, partnerships, or corporations as necessary or appropriate to accomplish the purposes of the partnership;

7.1.8 To execute, acknowledge, and deliver any and all instruments to effectuate any of the foregoing powers and any other powers granted the general partners under the laws of the State of Washington or other provisions of this Agreement;

7.1.9 To enter into and to execute agreements for employment or services, as well as any other agreements and all other instruments the general partners deem necessary or appropriate to own, sell, improve, operate, and dispose of partnership properties or to effectively and properly perform their duties or exercise their powers hereunder;

7.1.10 To borrow money on a secured or unsecured basis from individuals, banks, and other lending institutions to finance or refinance partnership assets, to meet other partnership obligations, provide partnership working capital, and for any other partnership purpose, and to execute promissory notes, mortgages, deeds of trust, assignments of partnership property, and such other security instruments as a lender of funds may require to secure repayment of such borrowings; provided, that no individual, bank, or other lending institution to which the general partners apply for a loan shall be required to inquire as to the purpose for which such loan is sought; and as between the partnership and such individual, bank, or other lending institution, it shall be conclusively presumed that the proceeds of such loan are to be, and will be, used for purposes authorized under the terms of this agreement;

7.1.11 To lease, sell, dispose of, exchange, or hypothecate any or all partnership assets;

7.1.12 To enter into such agreements and contracts with parties and to give such receipts, releases, and discharges, with respect to the business of the partnership as the general partners, in their sole discretion, deem advisable or appropriate;

7.1.13 To sell, dispose of, trade, exchange, quitclaim, release, or abandon, with or without consideration, any or all partnership assets upon such terms and conditions as the general partners, in their sole discretion, deem appropriate;

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7.1.14 To purchase, at the expense of the partnership, such liability and other insurance as the general partners, in their sole discretion, deem advisable to protect the partnership's assets and business; however, the general partners shall not be liable to the partnership or the other partners for failure to purchase any insurance; and

7.1.15 To sue and be sued, complain, defend, settle, and/or compromise, with respect to any claim in favor of or against the partnership, in the name and on behalf of the partnership.

7.2 Restrictions on General Partners. Without the consent of a majority of the other general partners, no general partner shall: (1) lend any of the monies of the partnership; (2) enter into any bond or become bail, endorser or surety for any person, or knowingly cause or suffer to be done anything whereby the partnership property may be attached or taken on execution or endangered; (3) compromise or compound, or accept as payment in full, release, or discharge any debt due the partnership; (4) give any promise for the payment of money on account of the partnership unless in the ordinary course of business; (5) give any security for the payment of money on account of the partnership or borrow money in the partnership name; (6) draw or endorse any bill of exchange or promissory note on account of the partnership; or (7) sell or lease any partnership property or any interest therein or enter into any contract for any such purposes unless in the ordinary course of business.

7.3 Further Restrictions on General Partners. Without the written consent or ratification of the specific act by all partners, both general and limited, no general partner shall:

7.3.1 Do any act in contravention of this Partnership Agreement.

7.3.2 Do any act which would make it impossible to carry on the ordinary business of the partnership.

7.3.3 Assign the partnership property in trust for creditors.

7.3.4 Bind the partnership as guarantor or surety for a third person.

7.4 Salaries. Any general partner performing services for the partnership shall receive reasonable compensation for such services. Such compensation shall be determined by a majority of the general partners from time to time, shall be determined in good faith, and shall be treated as an expense in determining partnership profits and losses.

7.5 Limited Partners. Subject to the terms of Section 7.6, the limited partners shall not take part in the management of the partnership or transact any business on behalf of the partnership and shall have no power to execute any documents or written instruments on behalf

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of the partnership; provided, that the foregoing shall not limit any rights or powers a general partner shall possess, as such, who is also a limited partner.

7.6 General and Limited Partners. All partners, both general and limited, shall be entitled to vote upon (1) matters affecting the removal, admission or substitution of a general partner; (2) admission of a limited partner; (3) the dissolution and winding up of the partnership; (4) amendment of this Partnership Agreement; and (5) the sale of all or substantially all of the assets of the partnership. A majority of the percentage interests in the partnership capital, whether general or limited, shall be required for determination of each of the foregoing.

7.7 Voting. Each partner, whether general or limited or both, shall be entitled to one vote for each full one percent (1%) interest in the partnership capital owned or held by that partner. Unless otherwise provided herein, a majority of the votes cast at any meeting shall be required for any motion to pass. If a partnership interest is owned or held by a partnership, corporation, trust, or fiduciary, that entity's votes shall be cast by one or more persons authorized by the partnership or corporation and by one or more trustees or fiduciaries. Documents satisfactory to the general partner shall be provided, evidencing authority to vote a partnership interest owned or held by any such entity.

A partner may cast the partner's votes in person or by proxy. Any such proxy shall be in writing, designating the person to cast that partner's votes and the number of votes to be cast pursuant to the proxy, and signed and dated by the partner granting the proxy.

7.8 Meetings.

7.8.1 *Annual Meeting*. Not less than once a year, and as soon as practical after completion of the financial statements or partnership income tax return, a meeting shall be held of all general partners at a date, time and place determined by the general partners. The following matters shall be reviewed at that meeting, in addition to others determined by the general partners:

(1) The financial report or income tax return prepared by the partnership's accountant.

(2) The determination of the amount of partnership net cash flow, if any, to be retained for the reasonable business needs of the partnership.

7.8.2 *Special Meetings*. Any partner or partners owning twenty percent (20%) or more of the voting rights in the partnership may call a special meeting of the partners by submitting a written request therefor to a general partner. The general partners shall call a meeting to be held within thirty (30) days after the date of such request, to be held at such time and place as the general partners determine.

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7.8.3 *Notice - Waiver*. Notice of the annual and any special meeting shall be given in writing, not less than five (5) days prior to the meeting, and shall be deemed given when deposited in the U.S. mail, postage prepaid, addressed to the partner at the address contained in the partnership records. Notice of a special meeting shall include a statement of the specific matters to be acted upon. Attendance at or participation in the meeting shall be deemed a waiver of notice.

7.8.4 *Telephone Meetings*. Any annual or special meeting may be held by telephone conference call wherein all partners participating in the meeting can confer with each other.

7.8.5 *Consent Without Meeting*. Any matter requiring a vote of partners may be determined without a meeting by all partners either (1) voting by written ballot or (2) consenting to the action in writing.

7.8.6 *Facsimile Signatures*. Any consents or signatures required hereunder may be made by facsimile and shall be as effective for all purposes as if original.

7.9 Indemnification. A general partner shall not be liable, responsible, or accountable in damages or otherwise to any of the partners for any act or omission performed or omitted by the general partner in good faith and in a manner reasonably believed by the general partner to be within the scope of the authority granted to the general partner. The partnership shall indemnify and save harmless each general partner from any and all loss or damage, judgment, fine, interest, cost, and expense, including attorneys' fees, incurred by reason of any such act or omission or incurred in any civil, criminal, or administrative proceeding in which the general partner is involved by reason of being a general partner; provided, that the indemnification provision of this section shall not apply if a general partner knowingly breaches this Agreement or acts in bad faith with respect to the act or omission involved. In the event of a settlement, such indemnification and saving harmless shall apply only upon the approval of the partners upon submission to a vote of all partners, both general and limited, notwithstanding anything herein to the contrary, the liability of the limited partners as such hereunder shall not exceed their interest in the capital of the partnership.

7.10 Expenses. Expenses of the partnership paid by any partner shall be reimbursed by the partnership upon receipt of such evidence as the partnership may require. To the extent that these expenditures are not fully reimbursed by the partnership, they are to be borne by the partner incurring them. The fact that such expenses are not reimbursed by the partnership shall not be construed as a conclusion by the partnership that the expenses were not incurred on its behalf.

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7.11 Time Devoted to Partnership; Other Ventures. The general partners shall devote so much of their time to the business of the partnership as in their judgment the conduct of the partnership's business reasonably requires. The general partners may engage in business ventures and activities of any nature and description independently or with others, whether or not in competition with the business of the partnership; and neither the partnership nor any of the other partners shall have any rights in and to such independent ventures and activities or the income or profits derived therefrom by reason of their acquisition of interest in the partnership.

VIII.
BOOKS OF ACCOUNT - BANKING

8.1 Books and Records. The general partners shall maintain adequate accounts and records in accordance with IRC Section 704. All books, records and accounts of the partnership shall be open at all reasonable times to inspection and copying by all of the partners. The books of account shall be kept on a cash and calendar-year basis and shall be closed and balanced at the end of each calendar year.

8.2 Records at Partnership Office. The general partners shall maintain at the office of the partnership:

8.2.1 A current list of the partners, containing the full name and last known address of each partner.

8.2.2 A copy of the Certificate of Limited Partnership, all certificates of amendment thereto, and copies of all powers of attorney executed with respect to the certificate. A copy of the certificate marked "Filed" need only be furnished a limited partner on request.

8.2.3 A copy of the partnership's income tax returns and of any financial statements for not less than the three (3) most recent years.

8.2.4 A copy of the Partnership Agreement and each amendment thereto.

Copies of each of the foregoing shall be furnished a partner upon receipt of a written request therefor.

8.3 Banking. All funds of the partnership shall be deposited in its name in such checking account or accounts as shall be designated by the general partners. Checks shall be drawn on the partnership bank account for partnership purposes only and may be signed by any one or more of the general partners or their designees.

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IX.
RIGHTS OF TRANSFEREE

9.1 Transfer to General Partner. If a partner transfers by gift, bequest, assignment, or otherwise a general or limited partner's interest to a general partner, such general partner shall take such interest in the class and to the extent of the transfer.

9.2 Transfer to Limited Partner and Certain Inheritors. If a partner transfers by gift, bequest, assignment, or otherwise a general or limited partner's interest to a limited partner or to a party who is not also a general partner, but who is eligible to inherit the same under Section 12.1.2 or 12.2.1, such limited partner or inheritor shall take all of the interest so transferred as a limited partner, and the inheritor shall be admitted to the partnership as a limited partner unless otherwise admitted upon the vote of the partners as provided in Section 7.6, or otherwise entitled pursuant to RCW 25.10.430.

9.3 Other Admission of Partners. Other general and limited partners may be admitted to the partnership, but only upon the vote of partners as provided in Section 7.6.

9.4 Transfer in Compliance With Agreement. Transfer of a partnership interest made in compliance with the terms of this Agreement shall entitle a transferee to receive, to the extent transferred, the distributions to which the transferor would be entitled, but shall not entitle a transferee to become or exercise any rights of a partner except as provided in Sections 9.1, 9.2, or 9.3. A transferee who has become a general or limited partner shall have all rights and powers and be subject to all terms, restrictions, and liabilities provided under this Agreement with respect to and to the extent of the partnership interest acquired.

9.5 Transfer Not in Compliance With Agreement. Any transfer of a partnership interest, or attempt thereof, contrary to any provision of this Agreement shall be void and of no effect, and the transferee shall acquire no right or interest in the partnership or its assets.

X.
DISSOLUTION

10.1 Dissolution Events. The partnership shall dissolve upon the occurrence of any of the events causing its termination as provided in Article III.

10.2 Payment of Debts and Distribution of Property. In the event of a dissolution which results in winding up the partnership's affairs, its liabilities shall be paid and assets distributed in the following order:

10.2.1 First, all of the partnership's debts and liabilities shall be paid, in the order of priority as provided by law.

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10.2.2 Second, all debts to partners who are creditors s all be paid. Partners s all not be deemed to be creditors on account of their contributions or capital accounts.

10.2.3 Third, the partners shall be paid in respect to their share of the profits and gains.

10.2.4 Fourth, there shall be distributed to each general and limited partner, either in cash or property, as the general partners shall deem appropriate, the remaining assets of the partnership in proportion to the partner's capital accounts. All assets in kind shall be valued at fair market value at the date of distribution, less the amount of any liability secured by the property distributed to the extent assumed by the distributee partner. Any partner who has a negative balance in such partner's capital account shall contribute to the assets to be distributed an amount of cash sufficient to raise such balance to zero.

10.3 Gain or Loss. Subject to the terms of Section 6.2, any gain or loss on disposition of partnership properties in the process of liquidation shall be credited or charged to the partners in the proportions of their respective capital accounts, determined as of the last day of the month preceding the month in which the first distribution of property occurs. Any property distributed in kind in the liquidation shall be valued and treated as though the property were sold and the cash proceeds were distributed. The difference between the value of property distributed in kind and its adjusted basis shall be treated as a gain or loss on the sale of the property and shall be credited or charged to the partners in the proportions of their respective capital accounts.

10.4 Deficiency. A limited partner shall look solely to the assets of the partnership for the return of that partner's capital contribution; and if the partnership property remaining after the payment or discharge of the debts and liabilities of the partnership is insufficient to return the capital contribution, a limited partner shall have no recourse against the general partners or any other limited partner for that purpose.

10.5 Conduct. The winding up of the partnership affairs and the liquidation and distribution of its assets shall be conducted exclusively by the general partners, who are hereby authorized to do any and all acts and things authorized by law for those purposes.

10.6 Release. No dissolution or termination of the partnership shall relieve any partner of his obligations to the others or to the partnership under this Agreement prior to completion of the dissolution proceedings.

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XI.
WITHDRAWAL OF A PARTNER

11.1 No Right of Withdrawal. No general or limited partner shall have the right to withdraw from the partnership.

11.2 Termination of General Partner Status. Except as approved by the specific written consent of all partners at the time, a partner shall cease to be a general partner upon the occurrence of any one or more of the following events:

11.2.1 The transfer of all of the partner's general partner interest.

11.2.2 The partner's removal as a general partner as provided in Section 13.1.

11.2.3 Assigning an interest in the partnership for the benefit of creditors; filing a voluntary petition in bankruptcy; being adjudicated a bankrupt or insolvent; filing a pleading in any proceeding seeking for such general partner any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief or admitting, consenting to, or otherwise failing to contest any proceeding seeking such relief, or the commencement of any such proceeding against the general partner and the same not having been dismissed within ninety (90) days thereafter; or seeking, consenting to, acquiescing in, or failing to contest a proceeding for the appointment of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of the general partner's properties, or the appointment of a trustee, receiver, or liquidator and such appointment not having been vacated within sixty (60) days thereafter.

11.2.4 The general partner's death.

11.2.5 The entry of an order, decree, or otherwise by a court of competent jurisdiction adjudicating the general partner incompetent to manage his person or estate. In such event, the attorney-in-fact, guardian, conservator, or other legal representative of the incompetent partner's estate or person shall be deemed to be an assignee of such partner's interest, subject to the terms of Section 9.1.

11.2.6 If the general partner is the trustee of a trust, the termination of the trust, or, if earlier, the distribution of the general partner's interest.

11.2.7 If the general partner is a partnership or corporation, the dissolution and commencement of winding up such partnership or filing of Articles of Dissolution or revocation of its authority to conduct business.

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11.2.8 If the general partner is an estate, the distribution of t e estate's general partner interest.

11.3 Termination of Limited Partner Status. A partner shall cease to be a limited partner upon the occurrence of any one or more of the following events:

11.3.1 The transfer of all of his limited partner interest.

11.3.2 The limited partner's death.

11.3.3 If the limited partner is the trustee of a trust, the termination of the trust, or, if earlier, the distribution of the limited partner's interest.

11.3.4 If the limited partner is a partnership or corporation, the dissolution and commencement of winding up such partnership or filing of Articles of Dissolution or revocation of its authority to conduct business.

11.3.5 If the limited partner is an estate, the distribution of the estate's limited partner interest.

11.4 Continuing Liability. Termination of a general partner's status shall not release the general partner from liabilities incurred during the general partner's tenure.

XII.
DEATH OF A PARTNER

12.1 General Partner.

12.1.1 If there is more than one general partner, the death of a general partner shall not dissolve the partnership. If a sole general partner dies, the partnership shall not dissolve if, within ninety (90) days after the date of death, the limited partners appoint one or more persons or entities as a general partner or partners.

12.1.2 The interest of a general partner may be inherited or otherwise received by such general partner's lineal descendants, any other partner or other partner's lineal descendants (subject to the provisions of Section IX), or by a trust for the benefit of any of the foregoing or for the benefit of the spouse of any of the foregoing, provided that any such trustee shall be subject to the restrictions contained herein and the partnership interest held by the trustee shall be distributable only to a lineal descendant of HUGH A. CARLSON or to a general partner.

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12.1.3 If the general partner's interest of a deceased general partner is to be received by a party who is not described in Section 12.1.2, whether under the terms of the deceased partner's Will, by the terms of a trust, under applicable laws of intestacy, or otherwise, the partnership shall have the option to purchase all of the general partner's interest of that partner at the price and terms agreed upon, or, if agreement is not reached, then at the price and terms determined pursuant to Section 12.3. Such option shall be exercised by giving notice in writing to the personal representative of the deceased partner's estate or trustee of such trust at any time after the date of death and before the expiration of five (5) months after the estate or trust attempts to transfer such interest. If the partnership does not exercise its option, such estate's or trust's distributees shall become transferees of such interest, subject to the terms of Section 9.4.

12.2 Limited Partner.

12.2.1 The death of a limited partner shall not terminate the partnership business. The interest of a limited partner may be inherited or otherwise received by such limited partner's lineal descendants, any other partner or other partner's lineal descendants, or a trust for the benefit of any of the foregoing or for the benefit of the spouse of any of the foregoing, provided that any such trustee shall be subject to the restrictions contained herein and upon termination of said trust the partnership interest held by the trustee shall be distributable only to a lineal descendant of HUGH A. CARLSON or to a general or limited partner.

12.2.2 If the limited partner's interest of a deceased limited partner is to be received by a party who is not described in Section 12.2.1, whether under the terms of the deceased partner's Will, by the terms of a trust, under applicable laws of intestacy, or otherwise, the partnership shall have the option to purchase all of the limited partner's interest of that partner at the price and terms agreed upon, or, if agreement is not reached, then at the price and terms determined pursuant to Section 12.3. Such option may be exercised by the partnership at any time after the date of death and before the expiration of five (5) months after the estate or trust attempts to transfer such interest. If the partnership does not exercise its option, such estate's or trust's distributees shall become transferees of such interest, subject to the terms of Section 9.4.

12.3 Price and Terms on Exercise of Option. If, upon exercise by the partnership of an option under Section 12.1 or 12.2, the parties fail to agree within forty-five (45) days upon the price and terms for the purchase of the interest subject to the option, the price of the interest shall be its fair market value at the date of the exercise of the option as determined by an appraiser or appraisers appointed by agreement of the parties or, failing agreement, by an arbitrator or arbitrators under the laws of the State of Washington. Any appraiser so appointed shall be

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qualified to appraise interests in limited partnerships. The fair market value o the interest shall be determined with application of appropriate discounts. The decision of the appraiser or appraisers shall be binding upon the parties. Unless otherwise agreed, the purchase price shall be paid twenty percent (20%) down in cash and the balance in ten (10) equal annual installments of principal and interest, with the first payment due on the first annual anniversary date of the date of closing. The date of closing shall not be later than the first day of the second month after the fair market value is agreed upon or determined by appraisal as herein provided. Each successive payment shall be made on or before each succeeding annual anniversary date. The unpaid balance of the purchase price shall bear interest at a rate one percentage point above the minimum interest rate which on the date of closing would avoid the unstated interest rules of IRC § 483 and/or 1274. The interest rate shall be fixed through the entire term of payment. All payments shall be applied first to accrued interest and then to principal. Notwithstanding the above, the partnership shall have the right to prepay all or any part of the purchase price and interest on such prepaid amount shall cease.

XIII.
REMOVAL OF GENERAL PARTNER

13.1 Votes. A general partner may be removed from the partnership at any time upon vote and consent pursuant to Section 7.6. The removal shall be effective immediately upon delivery to the removed partner of a written notice of his removal. The remaining partners shall have the right to continue the partnership under its present name. In the event of removal, the general partner shall be deemed to be a limited partner and shall have no rights, power, or authority as a general partner, but shall be entitled to vote upon those matters a limited partner is entitled to vote upon pursuant to the terms of Section 7.6.

XIV.
TRANSFER OF INTEREST

14.1 Transfer Restrictions. No partner may, directly or indirectly, voluntarily or involuntarily, transfer by any means, encumber, or otherwise dispose of all or any portion of the partner's partnership interest without complying with the terms of this Agreement, including, without limitation, Sections 12.1, 12.2, 14.1, 14.2, and 14.3. This prohibition includes any attachment, levy, seizure, garnishment, or charging order by or on behalf of any kind of creditor other than another partner.

14.2 Unrestricted Transfer of Interest. A general or limited partner may transfer without restriction by gift, assignment, sale, or otherwise all or any part of that partner's general or limited partner interest to any party to whom transfer by inheritance is permitted under Sections 12.1 and 12.2, and the transferee thereof shall take such interest as provided in Sections 9.1 and 9.2.

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14.3 Sale to Others. A general or limited partner shall also have the right to sell all or any part of the partner's interest in the partnership in a bona fide sale to any party other than a party to whom transfer is permitted under Sections 12.1 and 12.2, but only on the following conditions:

14.3.1 The partner shall give written notice to all the other partners that the partner desires to sell such interest in the partnership. The partner shall attach to the notice the cash price and terms of payment which the partner is asking for the interest.

14.3.2 The partnership or the other partners shall have the option for sixty (60) days from the receipt of the written notice from the partner to give notice that it intends to purchase such interest of the partner at the price and on the terms contained in the written notice given by the partner. Within the sixty (60) days, the partnership shall have the first right to exercise the option; then the remaining partners shall have the second right to buy a share proportionate to the remaining partner's capital accounts; and, finally, any partner, within the sixty-day period, shall have the right to exercise the option for the remaining available partnership interest being offered for sale. The partnership or exercising partners shall have sixty (60) days after the sixty-day period to purchase the partner's interest.

14.3.3 If the partnership and the other partners do not exercise the option to purchase such interest or do not purchase all of such interest, the partner may sell such interest in the partnership, or the remaining portion thereof, for such price or proportional price and on such terms; provided, however, that such interest, or any remaining portion thereof, shall not be sold to any person at any other price or on any other terms without again giving in writing to the partnership and the other partners the option and refusal rights (for the periods of time and on the conditions set forth in Section 14.3.2) to purchase such interest, or any remaining portion thereof, at the same price and at the same terms as offered by such other person.

14.3.4 If a bona fide sale is not completed within six (6) months from the date the partner last offered the partnership interest to the partnership, then any attempted transfer thereafter will be deemed pursuant to a new bona fide offer and this section shall again apply.

14.4 Other Restriction on Transfer. No transfer of any partnership interest, or any portion thereof, may be made if such transfer sought to be made, when added to the total of all other interests transferred within the period of twelve (12) consecutive months prior thereto, would, in the opinion of counsel for the partnership, result in the partnership's being considered

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to have been terminated within the meaning of IRC § 708. No purchase of partnership interests by the partnership shall be made to the extent that, after giving effect to the distribution, all liabilities of the partnership, other than liabilities to partners on account of their partnership interests, exceed the fair market value of the partnership assets.

XV.
BREACH OF PARTNERSHIP AGREEMENT

15.1 Continuation of Partnership Business. If any provision of this Agreement, including any restriction on transfer, is breached by any partner, the partnership business shall be continued by the nonbreaching partners, the partner in breach shall be considered to be a transferee who is not a general or limited partner, and the partnership shall have the right to withhold all or any part of the distributions otherwise payable to the breaching partner.

15.2 Purchase Option. Upon a partner's becoming a breaching partner, the partnership has the option to purchase all or any part of the interest of the breaching partner in the partnership unless prior to the time of exercise thereof all breaches have been cured. The partnership shall exercise the option by giving written notice of the exercise to the breaching party and to any person or entity claiming to have an interest in the partnership by reason of any prohibited transfer which led to the partner's becoming a breaching partner. The notice shall be given by certified mail, return receipt requested, at any time before the end of three (3) years after a partner last became a breaching partner. The proof of such mailing shall be sufficient notice, even if the addressee fails or refuses to accept or pick up the mailing. The purchase price for the interest to be purchased shall be seventy percent (70%) of the amount of the capital account of the breaching partner (or at the election of the partnership seventy percent[70%] of the fair market value of the breaching partner's interest determined as provided in Section 12.3) as of the end of the month prior to the giving of the notice provided in this paragraph. The purchase price shall be paid in ten (10) equal annual installments of principal and interest, with the first payment due on the second annual anniversary date of the date of closing. The date of closing shall be the first day of the third month after the notice is given. Each successive payment shall be made on or before the anniversary date of each succeeding year. The unpaid balance of the purchase price shall bear interest at the minimum interest rate which on the date of closing would avoid application of the unstated interest rules of IRC § 483 and/or 1274. The interest rate shall be fixed through the entire term of payment. All payments shall be applied first to accrued interest and then to principal. Notwithstanding the above, the partnership shall have the right at its election to prepay all or any part of the purchase price, and interest on any such prepaid amount shall cease.

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XVI.
ADJUSTMENT TO BASIS

16.1 In the event a partner transfers an interest in the partnership, or upon the death of a partner, or in the event of a distribution of partnership property to any partner, the partnership may file an election, in accordance with applicable Treasury Regulations, to cause the basis of the partnership's property to be adjusted for federal income tax purposes as provided in IRC §§ 734 and 743.

XVII.
RIGHT OF PARTITION WAIVED

17.1 The partners agree that irreparable damage would be done the partnership if any partner should bring an action in court to dissolve this partnership. Accordingly, each of the partners accepts the provisions of this Agreement as the partner's sole entitlement on termination of the partner's partnership relation. Each partner hereby expressly waives any statutory or other rights which the partner may have to seek dissolution of this partnership or partition of real estate owned by the partnership. Each further partner, by acquiring an interest in the partnership, whether by gift, bequest, devise, purchase, or otherwise, expressly waives such rights simultaneously with such partner's acquisition.

XVIII.
AMENDMENT

18.1 This Agreement may be amended as provided in Section 7.6.

XIX.
AGREEMENT BINDING ON HEIRS AND ASSIGNS

19.1 Binding Effect. This Agreement shall be binding upon the partnership and the partners, including all partners hereafter admitted, their legal representatives, legatees, successors in interest, and assigns.

19.2 Binding on Transferee. If requested by a general partner, each transferee of a partnership interest shall, in writing, acknowledge being bound by all of the terms and provisions of this Agreement as the same may be amended from time to time. The request for or execution of such a writing shall not be a condition to such transferees' being bound by all terms and conditions of this Agreement, but a refusal to do so shall be deemed a breach of this Agreement.

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XX.
MISCELLANEOUS

20.1 Terms. Wherever in this Agreement the feminine or masculine gender is used, it shall be deemed to include both and any corporation, partnership, trust, estate, or other entity. The term, "IRC" means the Internal Revenue Code of 1986, amendments thereto, and regulations issued thereunder. The term "descendants" as used herein shall include and be limited to lineal descendants by birth and adoption, whether now living or hereafter born or adopted, except that no person over the age of eleven (11) years at the time of adoption shall be included. Paragraph titles are for descriptive purposes only and shall not control or alter the meaning of this Agreement or any provision thereof as set forth in the text.

20.2 Specific Enforcement. If a partner fails to perform any obligation of such partner to be performed hereunder, any of the other partners or the partnership may, in addition to any other right, option, or remedy provided for in this Agreement, institute and maintain a proceeding to compel the specific performance of this Agreement by the partner in breach, it being agreed that the partners not in breach and the partnership do not have an adequate remedy at law. In any such proceeding, the prevailing party shall receive from the other party reasonable attorneys' fees in addition to costs allowed by law. A failure to seek redress for a violation or to insist upon strict performance of any provision hereof shall not be deemed a waiver of any right or obligation contained herein.

20.3 Arbitration. Except as otherwise provided herein, if any controversy or claim arising out of this Agreement or concerning partnership matters cannot be resolved by the partners, it shall be settled by arbitration. The parties shall appoint such arbitrator as they may agree upon; but in the absence of agreement, each party to the disagreement shall, within thirty (30) days, select an arbitrator, and the two arbitrators so chosen shall select a third within one (1) week of their selection. The three (3) arbitrators, by majority vote, or the single arbitrator agreed upon by the parties, shall render a decision within thirty (30) days, which decision shall be binding on the parties and which decision may be confirmed in a court of law if necessary, in accordance with the provisions of RCW 7.04.

20.4 Applicable Law - Venue. This Agreement is made in accordance with and shall be interpreted in accordance with the laws of the State of Washington. The venue of any proceeding with respect to this Agreement shall be Yakima County, Washington.

20.5 Execution of Certificate. Each partner required to do so under applicable law shall immediately execute a Certificate of Limited Partnership, and the general partners shall cause the same to be filed with the Secretary of State of the State of Washington.

20.6 Notices. Any notices required to be given or which may be given under this Agreement shall be delivered to a partner personally or mailed by first class mail, postage

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prepaid, to that partner's address shown on the books and records of the partnership and, unless otherwise provided herein, shall be deemed given on the earlier of date of delivery or on the third day following the date of mailing. A partner may change his or her address by written notice given a general partner. Notice given the partnership shall be given or mailed to a general partner.

20.7 Complete Agreement. As to the subjects contained herein, this Agreement shall be the complete and final Agreement among the parties hereto and incorporates, supersedes all prior and contemporaneous negotiations and agreements, and may not be modified or supplemented in any manner or form whatsoever either by oral or written evidence of such matters or by course of dealing, except as specifically provided herein. Each provision of this Agreement is severable. If any term or provision is declared illegal or invalid for any reason, the remainder of this Agreement shall nevertheless remain valid.

20.8 Execution in Counterpart. This Agreement may be executed in counterparts, each of which shall be deemed an original. The general partners are authorized to affix all of the signature pages to one Agreement, which shall then be deemed to be the original.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

GENERAL PARTNERS:	*LIMITED PARTNERS*:
HUGH A. CARLSON	HUGH A. CARLSON
H. DAVID CARLSON	MARLA R. CONTINI

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EXHIBIT A

INITIAL CONTRIBUTIONS

Partnership Agreement of HMD Limited Partnership

An undivided one-half (1/2) interest in the following described parcels:

	Fair Market Value of 1/2 Interest (w/o discounts)
1. Assessor's Parcel No. 230915-13412 – Lot 2 of Short Plat 7011532, records of Yakima County, Washington (1.00 acre)	$54,950
2. Assessor's Parcel No. 230915-13413 – Lot 3 of Short Plat 7011532, records of Yakima County, Washington (.92 acre)	50,000
3. Assessor's Parcel No. 230915-13407 – Lot 2 of Short Plat 94-90 recorded under Auditor's File No. 3069317, records of Yakima County, Washington; AND that part of the North 20.59 feet of Lot 3 of said Short Plat lying Easterly of the West line of said Lot 2, extended Southerly (5.31 acres)	37,425
4. Assessor's Parcel No. 230915-13408 – Lot 3 of Short Plat 94-90 recorded under Auditor's File No. 3069317, records of Yakima County, Washington; EXCEPT that portion of the North 20.59 feet of said Lot 3 lying Easterly of the West line of Lot 2 of said Short Plat, extended Southerly; AND EXCEPT that portion of said Lot 3 lying Easterly of the West line of Lot 4 of said Short Plat, extended Northerly (4.06 acres)	40,350
5. Assessor's Parcel No. 230915-12013 – That portion of the South half of the Northwest 1/4 of the Northeast 1/4 AND the North half of the Southwest 1/4 of the Northeast 1/4 of Section 15, Township 9 North, Range 23, E.W.M., lying Westerly of the Westerly right-of-way line of the Northern Pacific Railroad Co.; EXCEPT that portion lying Northerly of the North line of Stover Road and lying Easterly of the East line of Wallace Way; AND EXCEPT that	

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portion thereof condemned for state highway by Yakima County Superior Court Cause No. 77-2-01242-7 (18.4 acres)	83,200
6. 1976 Peerless mobile home, 60' x 12'; Assessor's Parcel No. 300000-04342	5,000
7. 1975 Kirkwood mobile home, 51' x 12'; Assessor's Parcel No. 300000-13106	5,000
Total Market Value (without discounts)	$275,925
Less 45% Discount	-124,166
NET FAIR MARKET VALUE OF ASSETS	**$151,759**

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APPENDIX -- 10

APPENDIX -- 10

ADDENDUM TO
PARTNERSHIP AGREEMENT
OF
HMD LIMITED PARTNERSHIP
A Washington Limited Partnership

THIS ADDENDUM TO PARTNERSHIP AGREEMENT is made and entered into as of May 4, 1999, between HUGH A. CARLSON and H. DAVID CARLSON who, together with each other party admitted as a general partner, are hereafter referred to as "general partners," and HUGH A. CARLSON, H. DAVID CARLSON, MARLA R. CONTINI, ANTHONY D. CONTINI, TANYA S. CONTINI, and NICHOLAS JOE CARLSON, who, together with each other party admitted as a limited partner, are hereafter referred to as "limited partners."

WITNESSETH:

WHEREAS, the initial general partners and limited partners of HMD Limited Partnership entered into a Partnership Agreement on May 4, 1999; and

WHEREAS, HUGH A. CARLSON, general and limited partner, desires to transfer by gift general and limited partnership interests in the partnership;

Now, therefore, it is hereby agreed as follows:

1. Partnership interests. As a result of gifts by HUGH A. CARLSON, the general and partnership interests as of the date of this Addendum shall be as follows:

General Partners	*Percentage Interest*
Hugh A. Carlson	2.5
H. David Carlson	2.5
Limited Partners	*Percentage Interest*
Hugh A. Carlson	80.0
H. David Carlson	4.0
Marla R. Contini	6.5
Anthony D. Contini	1.5
Tanya S. Contini	1.5
Nicholas Joe Carlson	1.5

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2. Acceptance of partnership interests. The undersigned hereby accept the transfer of partnership interests in the class and to the extent of the transfer by gift as evidenced herein and agree that their interests in the partnership as described above shall be subject to all the terms, restrictions, and liabilities provided in the original Partnership Agreement dated May 4, 1999.

IN WITNESS WHEREOF, the parties hereto have executed this Addendum on the day and year first above written.

GENERAL PARTNERS:

HUGH A. CARLSON

H. DAVID CARLSON

LIMITED PARTNERS:

HUGH A. CARLSON

H. DAVID CARLSON

MARLA R. CONTINI

ANTHONY D. CONTINI

TANYA S. CONTINI

NICHOLAS JOE CARLSON

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2. Acceptance of partnership interests. The undersigned hereby accept the transfer of partnership interests in the class and to the extent of the transfer by gift as evidenced herein and agree that their interests in the partnership as described above shall be subject to all the terms, restrictions, and liabilities provided in the original Partnership Agreement dated May 4, 1999.

IN WITNESS WHEREOF, the parties hereto have executed this Addendum on the day and year first above written.

GENERAL PARTNERS:

HUGH A. CARLSON

H. DAVID CARLSON

LIMITED PARTNERS:

HUGH A. CARLSON

H. DAVID CARLSON

MARLA R. CONTINI

ANTHONY D. CONTINI

TANYA S. CONTINI

NICHOLAS JOE CARLSON

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APPENDIX -- 11

APPENDIX -- 11

SECOND
ADDENDUM TO
PARTNERSHIP AGREEMENT
OF
HMD LIMITED PARTNERSHIP
A Washington Limited Partnership

THIS SECOND ADDENDUM TO PARTNERSHIP AGREEMENT is made and entered into as of December 22, 2000, between H. DAVID CARLSON as a general partner and as personal representative of the Estate of HUGH A. CARLSON, deceased, and MARY CARLSON (as her separate estate), and MARLA R. CONTINI, as new admitted general partners, who, together with each other party admitted as a general partner, are hereafter referred to as "general partners," and H. DAVID CARLSON, MARY CARLSON (as her separate estate), MARLA R. CONTINI, ANTHONY D. CONTINI, TANYA S. CONTINI, and NICHOLAS JOE CARLSON, who, together with each other party admitted as a limited partner, are hereafter referred to as "limited partners."

WITNESSETH:

WHEREAS, the initial general partners and limited partners of HMD Limited Partnership entered into a Partnership Agreement on May 4, 1999; and

WHEREAS, the general partners and limited partners of HMD Limited Partnership entered into an Addendum to Partnership Agreement on May 4, 1999; and

WHEREAS, HUGH A. CARLSON, general and limited partner, is deceased, and H. DAVID CARLSON is now the sole general partner;

WHEREAS, the general and limited partners desire to admit MARLA R. CONTINI as a general partner;

WHEREAS, H. DAVID CARLSON desires to gift his general and limited partnership interest to his spouse, MARY CARLSON (as her separate estate);

WHEREAS, the general and limited partners, approve of the transfer of H. DAVID CARLSON's general and limited partnership interest to MARY CARLSON (as her separate estate);

Now, therefore, it is hereby agreed as follows:

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1. Partnership interests. As a result of the admission of MARLA R. CONTINI as a general partner, and the gifts by H. DAVID CARLSON to MARY CARLSON, the general and partnership interests as of the date of this Second Addendum shall be as follows:

General Partners	*Percentage Interest*
Estate of Hugh A. Carlson, *deceased*	2.5
Mary Carlson *(as her separate estate)*	2.5
Marla R. Contini	2.5

Limited Partners	*Percentage Interest*
Estate of Hugh A. Carlson, *deceased*	80.0
Mary Carlson *(as her separate estate)*	4.0
Marla R. Contini	4.0
Anthony D. Contini	1.5
Tanya S. Contini	1.5
Nicholas Joe Carlson	1.5

2. Acceptance of partnership interests. The undersigned hereby accept the transfer of partnership interests in the class and to the extent of the admission of the new general partners and the transfers by gift as evidenced herein and agree that their interests in the partnership as described above shall be subject to all terms, restrictions, and liabilities provided in the original Partnership Agreement dated May 4, 1999, and as amended by the Addendum dated May 4, 1999.

IN WITNESS WHEREOF, the parties hereto have executed this Second Addendum on the day and year first above written.

GENERAL PARTNERS:

ESTATE OF HUGH A. CARLSON,
deceased

By _____
H. DAVID CARLSON,
Personal Representative

LIMITED PARTNERS:

ESTATE OF HUGH A. CARLSON,
deceased

By _____
H. DAVID CARLSON
Personal Representative

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H. DAVID CARLSON, *transferring general partner*

MARY CARLSON, *newly admitted general Partner (as her separate estate)*

MARLA R. CONTINI, *newly admitted general partner*

H. DAVID CARLSON, *transferring limited partner*

MARY CARLSON, *newly admitted limited partner (as her separate estate)*

MARLA R. CONTINI

ANTHONY D. CONTINI

TANYA S. CONTINI

NICHOLAS JOE CARLSON

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H. DAVID CARLSON, *transferring general partner*

MARY CARLSON, *newly admitted general Partner (as her separate estate)*

MARLA R. CONTINI, *newly admitted general partner*

H. DAVID CARLSON, *transferring limited partner*

MARY CARLSON, *newly admitted limited partner (as her separate estate)*

MARLA R. CONTINI

ANTHONY D. CONTINI

TANYA S. CONTINI

NICHOLAS JOE CARLSON

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