

**FILED**

OCT 10 2018

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

Court of Appeals Case No. 359263  
Spokane County Superior Court Case No. 17-2-01864-8

STATE OF WASHINGTON, COURT OF APPEALS  
DIVISION III

---

In re: BATES DRUG STORES, INC., dba BATES PHARMACY &  
MEDICAL SUPPLY

CARDINAL HEALTH,

Appellant/Petitioner/Creditor

vs.

BANNER BANK, a Washington corporation,

Respondent/Secured Creditor

---

BRIEF OF APPELLANT CARDINAL HEALTH 110, LLC

---

FELTMAN EWING, P.S.

J Patrick Diener, WSBA 36630  
David E. Eash, WSBA 6684  
Attorneys Cardinal Health  
421 W. Riverside Avenue, Suite 1600  
Spokane, WA 99201-0495  
(509) 838-6800

TABLE OF CONTENTS

	<u>Page</u>
I. APPELLANT’S ASSIGNMENTS OF ERROR AND AND ISSUES PRESENTED FOR REVIEW .....	1
II. INTRODUCTION AND STATEMENT OF THE CASE .....	2
III. STATEMENT OF RELEVANT FACTS .....	5
IV. STANDARD OF REVIEW .....	9
V. ARGUMENT .....	10
A. The Trial Court Erred In Its Finding That The Security Interest Of Banner Bank Is Senior To That Of Cardinal Health.....	10
1. The Sale Did Not Involve “Accounts” Only.....	12
2. The Bank Does Not Have a Secured Interest in General Intangibles or the Proceeds Thereof.....	13
3. Even if the Bank Has a Security Interest Per Their Security Agreement, the Bank’s Security Interest is Not Perfected in General Intangibles.....	14
4. The Subordination Agreement Does Not subordinate the Security Interest of Cardinal Health in the Cash Proceeds from the Sale of General Intangibles .....	17
VI. CONCLUSION .....	19

TABLE OF AUTHORITIES

TABLE OF CASES

	<u>Page</u>
<i>Brinkerhoff v. Campbell</i> 99 Wn.App. 692, 695-696, 994 P.2d 911 (2000).....	9
<i>Castro v. Stanwood School Dist. No. 401</i> 151 Wn.2d 221, 86 P.3d 1166 (2004).....	9
<i>City of Spokane v. County of Spokane</i> 158 Wn.2d 661, 673, 146 P.3d 893, 899 (2006).....	15
<i>Del Guzzi Constr. Co. v. Global Northwest Ltd.</i> 105 Wn.2d 878, 719 P.2d 120 (1986).....	9
<i>In re Blankinship-Cooper, Inc.</i> 43 B.R. 231, 235 (1984).....	12
<i>In re Levitiz Ins. Agency, Inc.</i> 152 B.R. 693, 697-98 (1992) .....	12
<i>MLQ Investors, L.P. v. Pacific Quadracasting, Inc.</i> 146 F.3d 746,748 (9th Cir. 1998) .....	12
<i>Universal/Land Const. Co. v. City of Spokane,</i> 49 Wn. App. 634, 638, 745 P.2d 53, 55 (1987).....	18

REGULATIONS AND RULES

RCW 62A.9A.102.....	11
RCW 62A.9A-102(2)(A) .....	11
RCW 62A.9A-102(42).....	11
RCW 62A.9A.108.....	10
RCW 62A.9A.203(f).....	11
RCW 62A.9A.310(a) .....	10
RCW 62A.9A.315(a)(2).....	11
RCW 62A.9A-322(a)(1) .....	10,17
RCW 62A.9A-322(a)(2) .....	10
RCW 62A.9A-502(a).....	10

**I. APPELLANT’S ASSIGNMENTS OF ERROR  
AND ISSUES PRESENTED FOR REVIEW**

**Assignment of Error 1: Order on motion to determine lien priority and other matters.**

1. The trial court erred in its finding that “Cardinal Health... subordinated all its rights and interests in the assets of Bates Drugs Stores, Inc. in favor of Banner Bank.”

2. The trial erred in holding “Banner Bank holds a properly-perfected, first position lien and security interest, superior to that of Cardinal Health and other creditors, in the proceeds from the Geneva Woods and Sixth Avenue transactions....”

**Assignment of Error 2: Order granting Banner Bank’s motion to disburse funds**

1. The trial court erred in its finding that “Banner Bank is entitled to priority disbursement of the funds from the sale of its collateral...and all objections to the Motion are overruled.”

2. The trial court erred in holding that “Banner Bank’s properly-perfected, first position lien and security interest entitles it to disbursement of the proceeds from the sale of its collateral....”

## **ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

**Issue 1:** Whether the subordination agreement entered between Cardinal Health and Banner Bank's predecessor in interest, American West Bank, subordinated **all** of Cardinal Health's rights and interests in the assets of Bates Drugs Stores.

**Issue 2:** Whether Banner Bank held a properly perfected, first position lien in all of the proceeds of the sale of Bates Drugs Stores assets.

**Issue 3:** Whether the trial court disbursed the funds to Banner Bank on the basis of an incorrect presumption and contrary to the best interests of all parties.

## **II. INTRODUCTION AND STATEMENT OF CASE**

On May 18, 2017, a Petition for General Receivership was filed for Bated Drug Stores, Inc., d/b/a Bates Pharmacy and Medical Supply, a Washington corporation ("Bates Drug"). (CP 1-21) On this same day, an order was entered appointing Barry W. Davidson as the General Receiver. (CP 22-23)

On June 8, 2017, a contested hearing was held to authorize the sale of the assets of Bates Drug. An order was issued authorizing the sale of assets to Geneva Woods Pharmacy ("Geneva Woods"). Subsequent to that

order, a separate order was issued authorizing the sale of Bates Drug's assets to Sixth Avenue Medical Building Pharmacy ("Sixth Avenue").

On June 20, 2017, Mr. Davidson reported on the status of the Geneva Woods and Sixth Avenue asset sales. The assets sold were described as follows: (1) the sale to Geneva Woods proceeded smoothly through the valuation of inventory and payment for the LTC accounts (\$202,500) and the LTC inventory (\$42,352.05, less credit of \$30,000); (2) Sixth Ave paid the \$75,000 for the retail accounts, but there are lingering inventory issues. (See CP 118-123)

On August 1, 2017, Mr. Davidson filed a report on the sale of assets to Geneva Woods. The assets and proceeds were described as (1) \$202,500 for the customer records and the Tamarack license; (2) \$12,252.05 for the LTC Business Inventory, representing payment of \$42,252.05, less a \$30,000 credit for the Cardinal Health Inventory funded by Geneva Woods prior to closing; and (3) \$7,549 for the first installment payment of deferred consideration. On this same date, Mr. Davidson filed a report on the sale to Sixth Avenue. He described the assets and proceeds as \$75,000 for retail accounts and \$38,918.57 for inventory for a total of \$113,918.57. Mr. Davidson filed his Receivership Report as of July 31,

2017, on August 7, 2017, and the proceeds from the two sales described therein matched his earlier August 1, 2017, reports. (CP 24-38)

On August 8, 2017, Banner Bank filed a motion to determine priority in the proceeds of the Geneva Woods and Sixth Avenue sales. (CP 39-62) Banner and its predecessor American West Bank had made loans to Bates that enabled Bates to operate its business. In return, Banner Bank received a security interest and security agreement and filed UCC-1 Financing Statements.

Cardinal Health objected to Banner Bank's motion on or about August 18, 2017. (CP 124-125) Cardinal Health's objection sought priority in the proceeds of the Geneva Woods sale, as Cardinal Health also had a security agreement with Bates Drug and filed UCC-1 Financing Statements.

On or about October 9, 2017, the trial court issued a Letter Decision in which it found that Banner Bank has priority over Cardinal Health in the proceeds from the Geneva Woods and Sixth Avenue Medical sales. (CP 224-228). An Order incorporating the findings and conclusion of the Letter Decision was entered on October 31, 2017. (CP 346-348).

On December 19, 2017, Banner Bank filed a Motion to Disburse Funds. (CP 317-325). Cardinal Health objected to that motion on February 6, 2018. (CP 340-342). On March 2, 2018, the trial court entered an Order Granting Banner Bank's Motion to Disburse Funds. Such funds were indeed disbursed by the Receiver to Banner Bank, and the Receivership has since been terminated.

### **III. STATEMENT OF RELEVANT FACTS**

The General Receivership was commenced for the purpose of facilitating an expedited sale of the assets of the insolvent business of Bates Drug Stores, Inc. Barry Davidson, the court-appointed General Receiver for Bates Drug Stores, Inc., conducted a sale free and clear of liens of all assets in Bates Drug Stores, Inc. pursuant to authority of the Receivership statute.

The Sixth Avenue Medical Asset Sale yielded proceeds of \$113,918.57, including \$75,000 for retail accounts and \$38,918.57 for inventory. (CP 24-38) The Geneva Woods Sale yielded \$202,500 for customer records and the Tamarack license. *Id.* The Asset Purchase Agreement between Geneva Woods and Bates Drug Store specifically listed the following as an asset being purchased:

All general intangible assets, rights, and claims of the LTC Business, including, without limitation, customer lists, customer records, contact information, telephone numbers and website addresses, Seller's internally-created report generation software, files, charts, scripts, provider lists, patient and referral sources, referral relationships, and business information currently used by Seller in connection with the operation of the LTC Business, and associated goodwill.

*Id.* Schedule 1.8 to the Asset Purchase Agreement states that, "Contracts, Books and records, and Intangibles was sold for \$202,500." *Id.*

Bates Drug Stores had two secured creditors, Cardinal Health and American West Bank. See *Id.* Cardinal Health provides pharmaceutical product on a wholesale basis nationwide to businesses such as Bates Drug Stores. (CP 155-188) As of the commencement date of this receivership, Bates Drug Stores owed Cardinal Health the sum of \$2,520,049.35. *Id.*

The collateral description in the Security Agreement between Bates and Cardinal Health is expansive and includes:

All Debtor's fixtures, goods, machinery, equipment, vehicles, inventory, leasehold improvements, accounts, accounts receivable, deposit accounts, including without limitation, those maintained with a bank or other financial institution, and all money, letter of credit rights and letter of credit proceeds and assignments thereof, chattel paper, including electronic chattel paper, documents, notes receivable, instruments, investment property, contract rights, general intangibles (including without limitation, all intellectual property, trade names, trademarks, trade secrets, service marks, patents, patent applications, copyrights, literary rights, royalties, data bases, software and software systems, licenses, franchises, customer

lists, goodwill, and tax refunds), books and records, prescription files, patient lists, computer programs and records, and all other personal property, tangible or intangible (including, without limitation, all signs, appliances, cash registers, computers, computer software, shelving, check-out counters, compressors, freezers, coolers, display cases, customer records, sundries, tobacco products, prescription and over-the-counter pharmaceutical products, health and beauty aids, home healthcare products and general merchandise and supplies); all accessions and additions to, substitutions for, and replacements of any of the foregoing; all proceeds or products of any of the foregoing; and all rights to payments under any insurance or warranty, guaranty, or indemnity payable with respect to any of the foregoing (collectively, the "Collateral").

*Id.*

Cardinal Health was the first to file a UCC Financing Statement. Its statement was filed on January 26, 2012. The Financing Statement described the collateral as follows:

All Debtor's fixtures, goods, machinery, equipment, vehicles, inventory, leasehold improvements, accounts, accounts receivable, deposit accounts, including without limitation, those maintained with a bank or other financial institution, and all money, letter of credit rights and letter of credit proceeds and assignments thereof, chattel paper, including electronic chattel paper, documents, notes receivable, instructions, investment property, contract rights, general intangibles (including without limitation, all intellectual property, trade names, trademarks, trade secrets, service marks, patents, patent applications, copyrights).

(CP 144-154)

On November 10, 2012, American West Bank ("Bank") filed a UCC Financing Statement with the following collateral description:

All Inventory, Accounts and Equipment; whether any of the foregoing is owed now or acquired later; all accessions, additions, replacements, and substitutions relating to any of the foregoing; all records of any kind relating to any of the foregoing; all proceeds relating to any of the foregoing (including insurance, general intangibles and other accounts proceeds).

See *Id.*

On or around July 2014, the Bank requested Cardinal Health to execute a Subordination Agreement wherein Cardinal Health agreed to subordinate its security interest in certain assets of Bates Pharmacy. The Subordination Agreement recited the following, limiting the subordination only to assets set forth in the Bank's UCC filing statement:

WHEREAS, to induce Bank to continue to extend credit to Borrower, Subordinated Creditor is willing to subordinate its security interest in the Borrower's assets, as set forth in the UCC Filing, to the security interest of Bank in the same assets, on the terms and conditions set forth herein.

(emphasis added). This agreement was drafted by the Bank. (CP 155-188)

It is critical to note that the Bank's UCC Financing Statement described its Collateral as "Inventory, Accounts and Equipment." **General intangibles are not listed in the Bank's Financing Statement except as proceeds of Inventory, Accounts and Equipment.**

#### **IV. STANDARD OF REVIEW**

Where an order of a trial court is based entirely on documentary evidence and affidavits, the correct standard of review is de novo. See *Brinkerhoff v. Campbell*, 99 Wn.App. 692, 695-696, 994 P.2d 911 (2000). The standard of review on an appeal of a summary judgment order is de novo. See *Castro v. Stanwood School Dist. No. 401*, 151 Wn.2d 221, 86 P.3d 1166 (2004). An appellate court reviewing a summary judgment places itself in the position of the trial court and considers the facts in a light most favorable to the nonmoving party. See e.g. *Del Guzzi Constr. Co. v. Global Northwest Ltd.*, 105 Wn.2d 878, 719 P.2d 120 (1986).

The orders on appeal in this matter are most like orders on summary judgment, as they made findings of fact and conclusions of law which were determinative of the legal issues in the case. As a result, review of these orders should be treated the same as a summary judgment and examined de novo.

## **V. ARGUMENT**

### **A. The Trial Court Erred in Its Finding That the Security Interest of Banner Bank Is Senior to That of Cardinal Health**

In this case, there is no dispute that the Bank and Cardinal Health are secured creditors. Rather, the dispute is which party has priority over certain collateral sold by the Receiver.

A perfected security interest prevails over an unperfected secured creditor. RCW 62A.9A-322(a)(2). As a general rule, and for the asset categories in play in this case, perfection occurs when a financing statement is filed. RCW 62A.9A-310(a). Conflicting perfected security interests rank according to the time of filing or perfection. The first to file takes first priority. RCW 62A.9A-322(a)(1). Further, for perfection to occur, the financing statement must be “sufficient.” That includes: (1) the debtor’s name, (2) the secured party’s name, and (3) an indication of collateral. RCW 62A.9A-502(a). A financing statement sufficiently describes the collateral that it covers if the financing statement describes the collateral pursuant to RCW 62A.9A-108. A collateral description by category is sufficient.

When the security interest attaches to the original collateral, it also attaches to supporting obligations and gives the creditor rights to proceeds

of the collateral. RCW 62A.9A-203(f). This interest attaches to identifiable proceeds when proceeds come into existence. RCW 62A.9A-315(a)(2). The term “proceeds” includes “[w]hatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral.” RCW 62A.9A.102.

Key to the issue at hand is that the Uniform Commercial Code expressly defines “General Intangibles” and “Accounts” as two distinctly different Categories of Collateral. The code definition of Accounts is found at RCW 62A.9A-102(2)(A):

“Account,” except as used in “account for,” means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes health-care-insurance receivables.

General intangibles are defined at RCW 62A.9A-102(42) as:

“General intangible” means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments,

investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.

As a category of collateral under the UCC, General intangibles had been deemed to include licenses, customer lists, and general business goodwill. See e.g., *MLQ Investors, L.P. v. Pacific Quadracasting, Inc.*, 146 F.3d 746,748 (9th Cir. 1998) (general intangibles include licenses and proceeds from the sale of a license); *In re Levitiz Ins. Agency, Inc.*, 152 B.R. 693, 697-98 (1992) (customer list are not accounts, but general intangibles); *In re Blankinship-Cooper, Inc.*, 43 B.R. 231, 235 (1984) (customer lists, books and records are general intangibles).

**1. The Sale Did Not Involve “Accounts” Only**

The trial court, in order to reach its decision that Cardinal Health was subordinated to Banner Bank in all assets, had to conclude that the license, customer lists, and goodwill, are “accounts.” This is simply wrong. As noted above, general intangibles include licenses and customer lists. See e.g., *MLQ Investors, L.P. v. Pacific Quadracasting, Inc.*, 146 F.3d 746,748 (9th Cir, 1998); *In re Levitiz Ins. Agency, Inc.*, 152 B.R. 693, 697-98 (1992) (customer list are not accounts, but general intangibles). Furthermore, the Asset Purchase Agreement defined general intangibles as

customer lists and licenses. Therefore, the \$202,500 in funds from the sale of licenses and customer lists are general intangibles, not accounts.

**2. The Bank Does Not Have a Secured Interest in General Intangibles or the Proceeds Thereof**

The Bank's security agreement with Bates Drug Stores does not include general intangibles. The agreement specifically states that it is taking a secured interest in "All Inventory, Accounts and Equipment." (CP 75-113) General intangibles is only mentioned a few lines later where it states that the Bank also has a security interest in "All accounts, general intangibles, instructions, rents... **arising out of a sale, lease, consignment or other disposition of any of the property described in this Collateral section.**" *Id.* (emphasis added). The collateral section only included "Inventory, Accounts and Equipment." Only if the disposition of inventory, equipment, or account results in a general intangible as a proceed would the Bank's Security Agreement extend to the collateral category of general intangibles. *Id.*

Therefore, the Bank never had a security interest in general intangibles or the subsequent proceeds of the general intangibles. The subordination agreement was clearly designed to subordinate one security interest to another security interest. The subordination agreement cannot

be said to have created a new security interest in Banner Bank where it never had one before. But the trial court's decision treats the subordination agreement as having done precisely that. Even though Banner Bank never had a security interest in general intangibles through its security agreement with Bates Drug Stores, the trial court nevertheless found that such an interest existed by virtue of the subordination agreement. There is no statute or Washington case that supports the concept that a security interest can be created in a debtor's property by way of a subordination agreement between two creditors. The trial court clearly erred in deciding otherwise.

**3. Even if the Bank Has a Security Interest Per Their Security Agreement, the Bank's Security Interest is Not Perfected in General Intangibles**

The Bank failed to perfect its security interest because the collateral categories listed in its UCC Financing Statement did not include General intangibles or the proceeds of general intangibles. As noted above, the Bank's UCC Financing Statement reads:

All Inventory, Accounts and Equipment; whether any of the foregoing is owed now or acquired later; all accessions, additions, replacements, and substitutions relating to any of the foregoing; all records of any kind relating to any of the foregoing; all proceeds relating to any of the foregoing (including insurance, general intangibles and other accounts proceeds).

The Financing Statement indicates that it has a security interest in “All Inventory, Accounts and Equipment.” The description continues in that it includes “proceeds from the foregoing,” which means proceeds from “inventory, accounts, and equipment.” It is only in parenthesis that the Bank’s Financing Statement references general intangibles, and then only as a form of proceeds: proceeds of Inventory, Accounts, and Equipment. Utilizing *expressio unius est exclusio alterius*, the Bank’s constant usage of the term “foregoing,” restricts everything to only “inventory, accounts, and equipment.”<sup>1</sup> The term “including” does not modify “foregoing,” but rather, the term “including” modifies the term “proceeds” See *City of Spokane v. County of Spokane*, 158 Wn.2d 661, 673, 146 P.3d 893, 899 (2006) (unless a contrary intention appears, qualifying words and phrases refer to the last antecedent).

As noted above, Banner Bank never took a security interest in general intangibles. But if such a security interest exists, the Bank’s UCC Financing Statement does not perfect any such security interest the bank

---

<sup>1</sup> The term “Ejusden generis” means: General terms appearing in connection with specific terms are given meaning and effect only to the extent that the general terms suggest similar items to those designated by the specific terms. *Washington Fed. v. Gentry*, 179 Wn.App. 470, 489, 319 P.3d 823 (2014). Additionally, if the same word is used in different parts of the contract, it is presumed that the word means the same

may have in cash proceeds from the sale of general intangibles. At best the Financing Statement provides perfection for the Bank's security interest in general intangibles that are *proceeds from the sale or distribution of inventory, accounts, and equipment*. Indeed, the comment sections under 62A.9A-315 (titled "Secured party's rights on disposition of collateral and in proceeds") clearly recognizes that proceeds can include more than cash proceeds. If a debtor disposes of a piece of equipment in exchange for "inventory," then the inventory is a "proceed" of the equipment. In the present case, however, the issue of priority is with respect to cash proceeds of general intangibles. The security interest of Cardinal Health in proceeds of general intangibles is perfected. Any security interest of the Bank's in general intangibles and proceeds thereof, if the Bank has a security interest at all, is unperfected. Thus, Cardinal Health has priority in Bates' general intangibles and proceeds from said general intangibles; specifically, \$202,500 of proceeds from the sale to Geneva Woods.

---

throughout the contract. *City of Tacoma v. City of Bonney Lake*, 173 Wn.2d 584, 269 P.3d 1017 (2012).

**4. The Subordination Agreement Does Not subordinate the Security Interest of Cardinal Health in the Cash Proceeds from the Sale of General Intangibles**

Cardinal Health has priority to all proceeds from the sale of general intangibles because the Subordination Agreement should not be interpreted to subordinate the security interest of Cardinal Health in general intangibles and proceeds to any security interest of the Bank in the same collateral.

It is undisputed that Cardinal Health filed its UCC Financing Statement prior in time to the Bank filing its UCC Financing Statement giving it priority. See RCW 62A.9A-322(a)(1).

The Subordination Agreement does not specifically list out any collateral. Instead, it incorporated the Bank's UCC Financing Statement as the collateral that was at issue between the two parties.

WHEREAS, to induce Bank to continue to extend credit to Borrower, Subordinated Creditor is willing to subordinate its security interest in the Borrower's assets, *as set forth in the UCC Filing, to the security interest of Bank in the same assets,* on the terms and conditions set forth herein. (emphasis added)

(CP 155-188) The italicized language clearly states that the collateral at issue with respect to subordination is only collateral identified in the Bank's UCC Financing Statement. Further, the Subordination Agreement

only applies to items identified in the UCC Financing Statement that were shared between both Cardinal Health's Financing Statement and the Bank's Financing Statement.

As has already been noted, and it is critical to the priority issue, the Bank's UCC Financing Statement does not list general intangibles or the proceeds of general intangibles. The Bank's UCC Financing Statement does not speak to the cash proceeds from the sale of general intangibles. Rather, it speaks only to collateral categories of inventory, accounts, and equipment and proceeds thereof. Other operative language of the Subordination Agreement may create an ambiguity in the scope of the agreement; however, the law provides that to the extent there is an ambiguity in the agreement, the contract language must be interpreted most strongly against the drafter, in this case the Bank. *Universal/Land Const. Co. v. City of Spokane*, 49 Wn. App. 634, 638, 745 P.2d 53, 55 (1987).

The Subordination Agreement did not, and could not, change the priorities of the secured creditors with respect to cash proceeds in the general intangibles, because the Subordination Agreement only applies to security interests the Bank had in accounts, equipment, and inventory.

## **VI. CONCLUSION**

The trial court committed clear and obvious error by granting the proceeds of general intangibles to Banner Bank. Banner Bank never had a security interest in general intangibles, except as proceeds of accounts, inventory and equipment. Even if a security interest was somehow created in Banner Bank for general intangibles, Banner Bank never properly perfected that interest. And the Subordination Agreement cannot in any way be read to subordinate Cardinal Health's perfected security interest in general intangibles. As a result, the proceeds from sale of general intangibles should have been distributed to Cardinal Health.

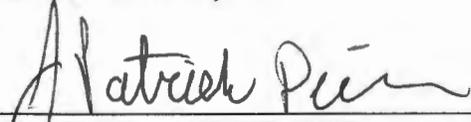
If the trial court had properly applied the rules of priority, it would have distributed \$202,500 to Cardinal Health. The remainder of the proceeds, approximately \$125,000, would have been distributed to Banner Bank. This would not only have been correct under the law, but also would have been equitable under the circumstances.

The trial court erred in distributing the entirety of those proceeds to Banner Bank, and this Court should reverse and remand this matter back to the trial court with instructions to have Banner Bank turn over

\$202,5000 of the proceeds to Cardinal Health. Cardinal Health also seeks its reasonable attorney fees and costs incurred in bringing this appeal.

DATED this 9 day of October 2018.

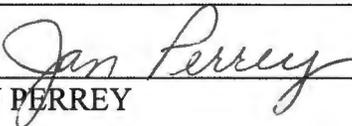
FELTMAN EWING, P.S.

By:   
\_\_\_\_\_  
J. PATRICK DIENER, WSBA 36630  
DAVID E. EASH, WSBA 6684  
Attorneys for Cardinal Health

CERTIFICATE OF SERVICE

I hereby certify that on this 10 day of October 2018, a true and correct copy of the foregoing document was served on the following in the manner set forth herein:

Jeremy S. Davidson Davidson Backman Medeiros, PLLC Bank of America Building, #1550 601 W Riverside Ave. Spokane, WA 99201	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Certified Mail <input type="checkbox"/> Hand Delivery/Messenger <input type="checkbox"/> Overnight Courier <input type="checkbox"/> Fax: <input type="checkbox"/> Email:
Arnold M. Willig Elizabeth H. Shea Charles L. Butler, III Hacker & Willig, Inc. PS 520 Pike Street, Suite 2500 Seattle, WA 98101	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Certified Mail <input type="checkbox"/> Hand Delivery/Messenger <input type="checkbox"/> Overnight Courier <input type="checkbox"/> Fax: <input type="checkbox"/> Email:
Christine M. Tobin-Presser Bush Kornfeld, LLP 601 Union St., Suite 5000 Seattle, WA 98101-2373	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Certified Mail <input type="checkbox"/> Hand Delivery/Messenger <input type="checkbox"/> Overnight Courier <input type="checkbox"/> Fax: <input type="checkbox"/> Email:
Douglas Siddoway Randall Danskin 601 W Riverside Ave., Suite 1500 Spokane, WA 99201	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Certified Mail <input type="checkbox"/> Hand Delivery/Messenger <input type="checkbox"/> Overnight Courier <input type="checkbox"/> Fax: <input type="checkbox"/> Email:
Michael A. Maurer Laura J. Black Lukins & Annis PS 717 W. Sprague Ave., Suite 1600 Spokane, WA 99201	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Certified Mail <input type="checkbox"/> Hand Delivery/Messenger <input type="checkbox"/> Overnight Courier <input type="checkbox"/> Fax: <input type="checkbox"/> Email:

  
 \_\_\_\_\_  
 JAN PERREY