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NO. 55055-1-1

**COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I**

EDWIN HERRING, for himself and as Personal Representative of the
Estate of ROGER HERRING,

Appellant,

v.

TODD SHIPYARDS CORPORATION,

Respondent.

APPELLANT'S REPLY BRIEF

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COURT OF APPEALS
DIVISION I

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I. INTRODUCTION

Plaintiff-Appellant's argument was based on the due process right to adequate notice in the bankruptcy context and Todd's failure, under the facts of the record, to prove adequate notice. Respondent's (Todd) Brief in this case suffers from two general significant flaws:

1. it misreads plaintiff's evidence and either ignores or misstates favorable inferences from that evidence; and
2. it ignores the significance of Todd's failure to carry out its plan to notify plaintiff's union Local and relies on cases in which there was no issue of the bankruptcy or the bankruptcy trustee's failure to notify persons whom they had planned to notify.

II. ARGUMENT

A. Todd's Reading Of The Record Evidence Is Narrow And Incorrect.

1. Todd Reads Roger Herring's Declaration And Interrogatory Answer Separately Rather Than Together.

In his opening brief, plaintiff cited and relied on Roger Herring's declaration submitted, which stated:

3. I worked for Owens-Corning Fiberglas in 1958 and again during the years 1962 to 1966. I recall doing insulation

work onboard ships at Todd and Lockheed shipyards in Seattle from time-to-time while employed with Owens-Corning Fiberglas during the 1960s. I recall that my brother, Ed Herring, entered the union as a helper in 1965 and sometimes worked with me as my helper at Todd and Lockheed shipyards. I left Owens-Corning Fiberglas in or around August of 1966.

4. In late 1966 I began working for the Brower Company, where I worked steadily until 1979. I recall doing insulation work onboard ships at Todd and Lockheed shipyards in Seattle from time-to-time during 1960s through the early 1970s while employed with Brower.

5. I had never been notified of the Todd Shipyard's bankruptcy by anyone from Todd, through the union or anyone else, until I heard about it through my attorneys today.

CP 348 (emphasis added). He also cited and relied on portions of Roger Herring's interrogatory answers in 1992, which stated in relevant part:

Between 1958 and the early 1970's, with the exception of my time in the Navy, I was exposed almost constantly to various types of asbestos products that I applied, ripped out or assisted others with. During this time period I worked for Armstrong Contracting and Supply, Owens-Corning Fiberglas, J.T. Thorpe Company and the Brower Company. . . . Some of the places where I recall having significant exposure to asbestos products included work on the Shell refinery in 1962 while working for the J.T. Thorpe Co., working at the Texaco refinery in Anacortes about 1958, employment at the Intalco Aluminum plant in about 1965, insulation work at the Georgia Pacific plant at Bellingham about 1964, and some work at Seattle area shipyards in the 1960's.

CP 239 (emphasis added). Put together, those two documents – both signed by Roger Herring – show that:

a. Roger Herring worked for Owens-Corning Fiberglas doing insulation work at Todd Shipyards in Seattle during the 1960's (CP 348), and also during the 1960's and 1970's while employed by Brower (id.), and

b. He was exposed to asbestos in all of his insulation jobs between 1958 and the early 1970's, including his work at the "Seattle area shipyards" in the 1960's. CP 389.

Todd's first argument is that "Todd is not mentioned at CP 339." Def. Brief, p. 2, n. 2. While the word "Todd" is not contained at CP 339, the words "Seattle area shipyards" are there. Any question about whether Todd is one of those Seattle area shipyards referenced in CP 339 is eliminated by CP 348 which specifically identifies Todd as one of the Seattle area shipyards at which Mr. Herring worked. Todd then argues that "Mr. Herring's declaration at CP 348-349 never mentions the words 'asbestos' or 'exposure' or any of its root forms." Id. at n. 2. That is true but irrelevant since Mr. Herring explains he was "doing insulation work on board ships at Todd . . . in Seattle . . . during the 1960's" (CP 348-349),

and, at CP 339, he states that he was exposed to asbestos while working “in Seattle area shipyards” which, as discussed above, include Todd.

Anyone reading CP 339 and CP 348-349 together is likely to reject Todd’s arguments. That is particularly true if one is viewing the evidence in the light most favorable to plaintiff as non-moving party. That is the relevant standard under a number of cases, including Vasquez v. Hawthorne, 145 Wn.2d 103, 106, 33 P.2d 735 (2001), although it is ignored by Todd in its “Standard of Review” section at pages 8-9 of its Brief to this Court (“Def. Brief”). Since Todd’s factual premise is faulty, there is no force to its argument that:

In short, there is noting *factual* in the record establishing that Mr. Herring was exposed to asbestos at Todd and, thus, no facts in the record to support Appellant’s assertion that Mr. Herring had an asbestos-related claim of which Todd should have been aware in 1988.

Def. Brief, p. 2, n. 2 (emphasis in original).

2. Todd’s Argument That “Appellant’s Theory Is Based On A Hypothetical Construct, Not Facts In The Record” (Def. Brief, pp. 9-14), Also Misconstrues The Record And The Reasonable Inferences That Flow From The Record.

The record in this case contains two different versions of what Todd did to search for and discover possible claimants in connection with

its bankruptcy. The earlier versions include a sworn statement by its counsel, Michael Marsh, that:

12. Todd made diligent efforts to identify and notify potential creditors of its bankruptcy. Such efforts included notifying individuals on its accounts receivable and accounts payable registers, notifying everyone who conducted business with Todd, and notifying all unions whose members had worked at Todd Shipyards.

CP 456 (emphasis added). Local No. 7 of the Asbestos Workers union was Mr. Herring's union and thus was one of the unions whose members worked at Todd. See CP 341 ("I have been a member of the Asbestos Workers Union, Local No. 7, since 1958."). Thus, according to Mr. Marsh's sworn statement in 1996, Todd as part of its "diligent efforts to identify and notify potential creditors of its bankruptcy", notified Local No. 7 because it was a union "whose members had worked at Todd Shipyards." CP 456.

Furthermore, Mr. Marsh told the same thing to a federal court in Williams v. Todd Shipyards, an opinion which Todd submitted into the record. In the Court's Memorandum and Order in Williams, it specifically referenced an affidavit by Michael Marsh swearing that Todd "notified everyone with whom Todd had done business and notified all unions

whose members had worked at Todd.” CP 199. The court later relied on that affidavit:

Under the standard set out in *Mullane* and applied in *Chemetron*, by notifying individuals on its accounts receivable and accounts payable registers, everyone with whom it had done business, and all unions whose members had worked at Todd, and by providing publication notice in national and local newspapers,⁹ Todd made reasonably diligent efforts to identify claimants of its bankruptcy and provided constitutionally sufficient notice, reasonably calculated, under the circumstances, to apprise interested parties of the pendency of its bankruptcy action and administration thereof. *Mullane*, 70 S. Ct. at 658-59.

CP 201-202 (footnote omitted).

However, plaintiff in this case, also provided substantial evidence (drawn from other litigation with Todd) that Todd never notified Local No. 7 in 1988 or 1989 of its bankruptcy. For example, Mr. Larson, a business manager of Local No. 7 submitted a sworn statement that:

2. I became a member of the Asbestos Workers Local #7 when I began in the insulation trade in 1958, and am still a member.

3. I was the business manager for the Asbestos Workers Local #7 for approximately 15 months until early 1989.

4. Prior to June 3, 1999, I had never been notified of the Todd Shipyards bankruptcy through the union or anyone else.

5. I was not aware that Todd Shipyards had ever filed for bankruptcy until a legal assistant with Schroeter, Goldmark & Bender told me on June 3, 1999.

6. It is my belief that had the union been notified of the Todd Shipyards bankruptcy, it would have notified its members by publication and/or during union meetings, which to my knowledge, was never done.

CP 589-590 (emphasis added). This evidence in the Thornbrue for Clowes case¹ helped persuade Judge Agid, who was then on the Superior Court, that there were disputed issues of material fact that called for denying Todd's Motion for Summary Judgment on the same issue as in this case. CP 274-275, CP 263-264.

The record in this case also shows that the substance of Mr. Marsh's sworn statements has suddenly changed on this issue. In this case, he no longer swears that Todd notified all unions representing those who worked at Todd Shipyards. He now asserts that the notification was limited to "unions representing Todd's employees":

13. Todd made diligent efforts to identify and notify potential creditors of its bankruptcy. Such efforts included notifying individuals on its accounts receivable and accounts payable registers, notifying everyone who documented business with Todd, and notifying all unions representing Todd's employees. In addition, I recall that Todd Shipyards identified its subcontractors as entities to whom it would send actual notice.

CP 48 (emphasis added).

Mr. Marsh thus went from “yes” to “no” on the issue of whether, as part of Todd’s “diligent” efforts, it attempted to notify Local No. 7, which was Mr. Herring’s union. Todd attempts to characterize this latest declaration as one that “clarifies this statement.” Def. Brief., p. 6, n. 4. Going from “yes” to “no” on a material fact is a material change even if it could also be characterized as a “clarification.”²

Todd also argues that:

Mr. Marsh’s July 8, 1996 declaration and a statement by the Texas court regarding another prior declaration by Mr. Marsh simply are not relevant evidence in this case.

Def. Brief., p. 6, n. 4. That argument is inconsistent with cases making relevant unexplained changes in material facts in the context of summary judgment, e.g., Marshall v. AC&S, 56 Wn. App. 181, 185, 782 P.2d 1107 (1989); Safeco Ins. Co. v. McGrath, 63 Wn. App. 170, 175, 817 P.2d 861 (1991); and State Farm Mut. Auto. Ins. V. Treциak, 117 Wn. App. 402, 408-409, 71 P.3d 703 (2003). This change also is relevant given the requirement that this Court “must view the facts and the reasonable

¹ Mr. Clowes was an insulator and member of Local No. 7. CP 267.

² It was also not a clarification. Mr. Marsh’s prior declaration was clear as was his most recent declaration; they were just different. Nor did Mr. Marsh explain the change in his latest declaration.

inferences from them in the light most favorable to the nonmoving party.”
State Farm, 117 Wn. App. at 407.

Here, the first sworn statements by Mr. Marsh answered “yes” to the issue of whether Todd attempted to notify Local No. 7 and it was the later sworn statement that answered that question “no”. Plaintiff sees no attempt in the later sworn statement to explain why “yes” changed to “no” on that issue. However, even if, pursuant to McGrath and State Farm, one looked at both the “yes” and “no” statements together, the statement more favorable to plaintiff’s (the non-moving party) position, is that Todd did attempt to notify Local No. 7, as Mr. Marsh originally swore but the notification never happened. Compare CP 456 with CP 589-590. For summary judgment purposes, those are the facts which this Court must accept.

3. Plaintiff’s Position As To What Would Have Happened If Todd Had Actually Notified Local No. 7 Is Supported By The Evidence In The Record And Reasonable Inferences From That Evidence.

Todd mischaracterizes plaintiff’s evidence and inferences as simply a “hypothetical”. Def. Brief., pp. 11-12. That is incorrect because plaintiff’s position is supported by facts in the record. The facts in the

record include statements by Mr. Larson, the business manager for Local No. 7 for approximately 15 months until 1989, that he was never notified by Todd or anyone else of Todd's bankruptcy in 1988 or 1989 but that "[i]t is my belief that had the union been notified of the Todd Shipyard's bankruptcy, it would have notified its members by publication and/or during union meetings, which to my knowledge, was never done." CP 590. It is proper for a witness to say what would have been done if additional information, which was in fact not provided, had been provided. See Ayers v. Johnson & Johnson, 117 Wn.2d 747, 754, 818 P.2d 1337 (1991) (mother testified as to what she would have done if she had been warned of product's danger). Thus, Mr. Larson's testimony is not based wholly on "speculation and conjecture" as Todd argues. Def. Brief, p. 11. Mr. Larson's testimony shows that the local "would have notified its members" of the Todd bankruptcy. Given this testimony showing that, in an effort to help its members, Local No. 7 would have cooperated with Todd's requests, it follows as a reasonable inference that,

if Todd had asked the Local to provide it with the names and addresses of its members who had worked at Todd or if Todd had asked the Local to ask its members who had worked at Todd to notify Todd of their names and

addresses, the Local would have done so. Todd thus would have had Mr. Herring's name and address.

Plaintiff's Brief, p. 10; Def. Brief, p. 12.

To illustrate the types of inferences that this Court has made in the context of summary judgment, plaintiff quotes from Grimsrud v. State, 63 Wn. App. 546, 552, 821 P.2d 513 (1991), where this court stated:

Although the evidence and all reasonable inferences must be viewed in a light most favorable to Grimsrud, here we can find no reasonable inference that the abrupt lane edge signs were not in place at 8:55 p.m. when there is no evidence to controvert respondents' evidence that they were in place at 7 p.m. and 9 p.m. But that Grimsrud failed to see the signs does give rise to reasonable inferences that they may have been obscured by other traffic, that they were not in the most visible locations, that they were placed too low to be readily visible, and that there were not enough of them to reasonably assure that a motorist whose visibility is temporarily hampered by oncoming headlights, or whose attention is momentarily diverted, would see at least one of them. Furthermore, a reasonable person could conclude that the pass with care sign, which Grimsrud indicates he saw, could mislead a motorist into believing that it would not be hazardous for him to pass a slow-moving vehicle, even if he had seen the abrupt lane edge sign. Thus it is a reasonable inference that the abrupt lane edge sign before the site of the accident failed to provide motorists adequate warning of the hazardous condition of the roadway. (Emphasis added.)

The inferences at issue here are not materially different from the kinds of inferences made in Grimsrud.

Todd's specific arguments at pages 12-13 of its brief that notification would not have been effective are also not persuasive. Mr. Marsh in the past swore that Todd notified unions as part of its "diligent effort to identify and notify potential creditors." CP 456. Todd, therefore, must have believed that notifying unions would lead to the identification and notification of potential creditors. Thus, Todd's own action provides additional evidence that the union local would have acted to identify and notify potential creditors such as Mr. Herring. Moreover, since in 1989, Mr. Herring was a current member of Local No. 7, it would not have required the union to search "decades of records for thousands of members". Def. Brief, p. 12. Furthermore, there is no evidence in the record that there "are "thousands of members" of this union local. Todd's argument that the union's records would not have reflected that Mr. Herring had ever worked at Todd (Def. Brief, p. 12) is a "red herring" (no pun intended). To notify Mr. Herring, it would not have been necessary for the union to determine whether he had worked at Todd. The local simply had to pass on to its members the information that Todd was involved in bankruptcy proceedings and that its members who wished to

file claims should contact Todd. The local could have communicated this information either at union meetings or by publication of a letter or flier.

Todd also argues that Mr. Larson's declaration,

does not say is that the union, in fact, did not provide such notice or that it would have provided such notice to its members or that all members, particularly Mr. Herring, would have received it or would have responded to it. It is interesting that Appellant apparently asserts that publication notice through the union would have been more constitutionally effective than the publication notice ordered by the Bankruptcy Court.

Def. Brief, p. 13. The first sentence is a decidedly crabbed reading of Mr. Larson's statement and certainly not the most favorable way to interpret it. The second sentence assumes that Mr. Larson was only referring to putting a notice in a newspaper when he used the term "publication" at CP 589-590. The dictionary definition of "publication" is not so limited. See Webster's New International Dictionary (2d Ed.), p. 2005. Todd also argues directly contrary to the facts in the record from Mr. Larson and Mr. Boskovich (CP 587-588), that the union really "knew about Todd's bankruptcy, but did not bother to inform its membership." Def. Brief, pp. 13-14. That is an unsupported reading of the evidence that is about as unfavorable a view of the evidence as can be imagined. Unlike Todd, this

Court should not view the evidence in the light least favorable to the plaintiff, the non-moving party. The fact that Todd makes this argument show the weakness of its position.³

Finally, Todd argues:

Further, in order to accept Appellant's hypothetical construct and reverse the trial court, this Court also would have to accept as true an additional, unstated hypothetical premise: That, even had Todd located and contacted Mr. Herring, Mr. Herring would have notified Todd of his claim, thereby rendering him a "known" creditor.

Def. Brief, p. 14. That, of course, stands due process on its head by arguing that it is okay not to give legally required notice unless that person who never got the legally required notice proves that he would have responded to the notice had it been given. That reading of the law is inconsistent with numerous cases including Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 310, 94 L. Ed. 865, 70 S. Ct. 652 (1950) and Tulsa Professional Collection Services, Inc. v. Pope, 485 U.S. 478 (1990).

³ At page 15 of its Brief, Todd criticizes plaintiff for quoting a portion of Todd's brief in the lower court, apparently taking the position that Todd's own quote was an incomplete summary of applicable law. However, the quote is accurate and presumably reflected Todd's understanding of the law at the time it was made.

4. Plaintiff Asks This Court To Disregard Todd's Argument Based On Information Outside Of The Record.

The flip side to Todd's misreading of plaintiff's evidence that is in the record is its effort to rely on facts and documents that appear nowhere in the record. At page 36, Todd extensively relies on information with no "CP" cites because they are not in the record:

Todd has been in business since 1916 and has had shipyard operations in Seattle, Tacoma, Portland, Los Angeles, San Francisco, Houston, Galveston, New Orleans, New Jersey, Alabama, South Carolina and Maine. See C. Bradford Mitchell, *Every Kind of Shipwork: A History of Todd Shipyards Corporation, 1916-1981* at 289 (1981). Todd built and repaired hundreds of combat vessels during and after World War I, World War II, the Korean War and the Vietnam War, and commercial vessels when the country was not at war.

Def. Brief, p. 36. Plaintiff obviously was given no chance to challenge or rebut those "facts" in the trial court since Todd never provided them in the record. It is inappropriate to refer to and rely on extra-record information. State v. Young, 62 Wn. App. 895, 899-900, 817 P.2d 414 (1991). Plaintiff asks that the Court strike Todd's argument based on this extra-record information.

B. The Requirements Of “Reasonable Diligence” Are Based On The Facts Of The Case, Including Whether Defendant Properly Implemented Its Own Plans For Diligent Notification; Defendant Presents No Cases Where A Bankrupt Was Found To Have Exercised Reasonable Diligence When It Did Not Properly Implement Its Own Plans.

Defendant quotes a portion of Fogel v. Zell, 221 F.3d 955 (7th Cir. 2000) (Def. Brief, p. 38 *citing* Fogel, 221 F.3d at 963), which makes clear that, in the bankruptcy context, if a claimant’s

... name and address are reasonably ascertainable, he is entitled to have that information sent directly to him, but, if not, then publication of the information in the newspaper or other periodical that he’s most likely to see is permitted. In re Chicago, Milwaukee, St. Paul & Pacific R.R., supra, 974 F.2d at 788; *In re Crystal Oil Co.*, 158 F.3d 291, 297 (5th Cir. 1998); *Chemetron Corp. v. Jones*, 72 F.3d 341, 345-47 (3d Cir. 1995); *In re Savage Industries, supra*, 43 F.3d at 721-22. (Emphasis added.)

This requirement is imposed by due process under the United States Constitution. There is no dispute that the issue here is whether Mr. Herring’s name and address were reasonably ascertainable to Todd. There is also no dispute that a creditor’s identity is “reasonably ascertainable” if that creditor can be identified through “reasonably diligent efforts”. Mennonite Bd. of Missions v. Adams, 462 U.S. 791, 798 n.4, 77 L. Ed. 2d

180, 103 S. Ct. 2706 (1983); Chemetron Corp. v. Jones, 72 F.3d 341, 346 (3d Cir. 1995).

The determination of reasonable diligence cannot be decided abstractly; rather it is fact-dependent. Black's Law Dictionary (6th Ed), page 457, defines "reasonable diligence" as:

A fair, proper and due degree of care and activity, measured with reference to the particular circumstances; such diligence, care, or attention as might be expected from a man of ordinary prudence and activity. (Emphasis added.)

In Wright v. B&L Props., 113 Wn. App. 450, 458, 53 P.3d 1041 (2002), the court explained that a party's efforts must be both honest and reasonable in order to constitute reasonable diligence:

Reasonable diligence requires the plaintiff to make honest and reasonable efforts to locate the defendant. *Crystal, China and Gold, Ltd. v. Factoria Ctr. Invests., Inc.*, 93 Wn. App. 606, 611, 969 P.2d 1093 (1999) (interpreting reasonable diligence under the corporation substitute service statute, RCW 23B.05.040(2)(b)). (Emphasis added.)

See also United States v. La France, 879 F.2d 1, 8 (1st Cir. 1989).

The record of the facts and circumstances here includes (a) Local No. 7's expressed willingness to notify its members had the Local been notified; (b) Todd's sworn statements that it planned to notify Local No. 7,

and (c) the evidence that Todd, in fact, provided no such notification to Local No. 7. Those facts are inconsistent with a conclusion that, as a matter of undisputed fact, Todd's efforts were "honest and reasonable" or reasonably diligent. Those facts preclude the granting of summary judgment in Todd's favor and call for reversing the trial court's dismissal.

There is substantial precedent for the proposition that an entity's breach of its rules or requirements is evidence that the entity did not act reasonably.⁴ For example in Pederson v. Dumouchel, 72 Wn.2d 73, 80 (1967), a case dealing with a hospital's liability for negligence (e.g., not acting as would a reasonable person under similar circumstance which is a similar standard to reasonable diligence as defined in Black's Law Dictionary), the Court stated:

Our conclusion is fortified by the fact that the hospital permitted the breach of one of its own rules.

Patients requiring dental service may be coadmitted by a member of the medical staff and a local dentist who is qualified, legally, professionally and ethically to practice here. The former shall perform an adequate medical examination prior to dental surgery, and be responsible for the patient's medical care. Rule and Regulation No. 5 of St. Joseph Hospital, p. 16.

⁴ See also pp. 12-13 of Plaintiff's Opening Brief citing Wallin v. CIR, 744 F.2d 674 (9th Cir. 1984); Powell v. CIR, 958 F.2d 53, 55 (4th Cir. 1992).

See also Pedroza v. Bryant, 101 Wn.2d 226, 234, 677 P.2d 166 (1984),

where the court held:

Also relevant to a hospital's standard of care are the hospital's own bylaws. *See, e.g., Purcell v. Zimbelman*, 18 Ariz. App. 75, 81, 500 P.2d 335 (1972).

Federal cases come to the same conclusion. For example in Thropp v. Bache Halsey Stuart Shields, Inc., 650 F.2d 817, 820 (6th Cir. 1981), the court stated:

We reject Bache's argument that the District Court erred as a matter of law in concluding that Bache was negligent in handling Mrs. Thropp's security account. Bache challenges the District Court's reliance on Bache's internal rules, codified in its Standard Practice Instruction manual, ("SPI") as evidence of the proper standard of care. Bache also suggests that Mrs. Thropp failed to prove that Bache deviated from any minimum standard of conduct.

This argument fails for two reasons. When a defendant has disregarded rules that it has established to govern the conduct of its own employees, evidence of those rules may be used against the defendant to establish the correct standard of care. The content of such rules may also indicate knowledge of the risks involved and the precautions that may be necessary to prevent the risks. *Montgomery v. Balt. & Ohio R.R.*, 22 F.2d 359 (6th Cir. 1927). *See also Prosser, The Law of Torts* § 33 (4th ed. 1971). The District Court correctly measured Bache's conduct by the standard of prudence it has established for its own employees. *See Henricksen v. Henricksen, supra.*

In Henricksen v. Henricksen, 640 F.2d 880, 885 (7th Cir. 1981), which specifically dealt with the issue of “reasonable diligence”, the court stated:

We cannot agree, however, that Smith Barney was reasonably diligent in its supervision of the trading in Wendee's account, and we further conclude that this lack of reasonable diligence in combination with the generally casual supervision of George's activities contributed not only to the trading losses and commission and margin expenses but to the conversions as well. (Emphasis added.)

The court based its decision in large part on Smith Barney's failure to comply with its own internal rule. Id.

In contrast, none of the cases cited by Todd at pages 23-32 of its Brief involved facts like those here in which the bankrupt or the bankruptcy trustee asserted that notice was given to an entity as part of reasonable diligence, but the evidence showed that such notice was not given. That is a critical distinction between those cases and the present case and those cases do not support Todd under the facts present here.

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III. CONCLUSION

For the foregoing reasons and the reasons set for in plaintiff's original brief, the trial court's grant of summary judgment should be reversed and this matter should be remanded back to the trial court.

DATED this 29th day of April, 2005.

Respectfully submitted,

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NO. 55055-1-I

DECLARATION OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on the 29th day of April, 2005, a true and correct copy of Appellant's Reply Brief was served on William Beaver/Eugene Barton, Karr Tuttle Campbell, 1201 Third Avenue, Suite 2900, Seattle, Washington, via ABC Legal Messengers.

DATED at Seattle, Washington, this 29th day of April, 2005.

SCHROETER, GOLDMARK & BENDER



Sarah Hupf

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