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DIVISION II

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STATE OF WASHINGTON
BY
DEPUTY

No. 34729-6-II

DIVISION II OF THE COURT OF APPEALS

FOR THE STATE OF WASHINGTON

RANGER INSURANCE COMPANY,

Appellant,

vs.

PIERCE COUNTY, PIERCE COUNTY SUPERIOR COURT CLERK, "JOHN DOE" and "JANE DOE", and the STATE OF WASHINGTON,

Respondents.

APPEAL FROM THE SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

Cause No. 02-2-04147-2

REPLY BRIEF

Brett A. Purtzer
WSB #17283

LAW OFFICES OF MONTE E. HESTER, INC., P.S.
Attorneys for Appellant
1008 South Yakima Avenue
Suite 302
Tacoma, Washington 98405
(253) 272-2157

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STATEMENT OF THE CASE

Appellant adopts the statement of the case as set forth in its opening brief.

ARGUMENT

Pierce County's assertion that expert testimony is required to explain the appropriate actions to be taken with respect to the allocation of bail monies is incorrect as the directives for such actions are clearly set forth in Ranger's bail bonds and related powers of attorney filed with the court.

The McAllister declaration suggests that such directives are immaterial as to how the clerk's office operates when he opines as follows:

> As is shown by the chart on page 2 of the opinion, the $15,000 bond in the Rogers case was Ranger's; the other three were Granite State's. The clerk's office would not have known that, however, *without pulling the court files and reviewing the bond documents themselves. Even if for some reason a clerk noticed that there were two different sureties involved, I would expect the clerk's reaction to be, in effect, "So what?"*. . . .

CP 76.

> If clerks are required to second-guess the relationship between insurance companies and the authority of bond agents, this would increase our work load, our service lines would be longer

> than they are, and we would likely have to build in a buffer to give us time for such reviews.

CP 77.

What Mr. McAllister suggests is that regardless of what a filed bail bond or power of attorney states, a clerk will act as the clerk deems fit and ignore proper, here Ranger's, directives. Mr. McAllister suggests that in some fashion, following the directives on a power of attorney would cause them to "second guess" a relationship.

As stated previously, such suggestion lacks credulity and ignores the reason why powers of attorney are filed with the court, to wit: to place specific guidelines on how bail bonds are to be applied. The reason Ranger filed the power of attorney was to avoid the "second guessing." All Ranger expected in return was that the Clerk would follow its directives after being put on notice, not that it would be indifferent.

Further, Pierce County's "expert testimony" of Joel McAllister is unnecessary. As this court is well aware, ER 702 sets forth when expert testimony might be needed:

> If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

WPI 2.10 sets forth the jury instruction regarding expert testimony.

> A witness who has special training, education, or experience may be allowed to express an opinion in addition to giving testimony as to facts.
>
> You are not, however, required to accept his or her opinion. To determine the credibility and weight to be given to this type of evidence, you may consider, among other things, the education, training, experience, knowledge, and ability of the witness. You may also consider the reasons given for the opinion and the sources of his or her information, as well as considering the factors already given to you for evaluating the testimony of any other witness.

WPI 2.10. As this court is also aware, it is for the trier of fact to determine what weight, if any, should be given expert opinion testimony. Gerberg v. Crosby, 52 Wn.2d 792, 329 P.2d 184 (1958), as there are circumstances, such as in this case, when expert testimony is not necessary. See Queen City Farms v. Central National Ins., 126 Wn.2d 50, 102, 882 P.2d 703 (1994) ("the

admissibility of expert testimony under Rule 702 will depend upon whether the witness qualifies as an expert and upon whether an expert opinion would be helpful to the trier of fact.")

There is nothing in this case that is beyond the common understanding of the trier of fact that would necessitate the testimony of Mr. McAllister. Accordingly, there is no need for expert testimony as the directives, as set forth previously, are contained within those documents filed with the court.

Here, the clerk's office ignored the dictates of Ranger's bail bond and power of attorney as related to the Rogers 1998 case. Simply ignoring a directive cannot equate to following the standard of care of a reasonably prudent clerk, regardless of Mr. McAllister's opinion.

Accordingly, the trial court erred when it granted Pierce County's summary judgment motion.

CONCLUSION

Based upon the arguments filed herein, Ranger Insurance respectfully requests that this court reverse the trial court's summary judgment order and remand this case for trial.

RESPECTFULLY SUBMITTED this 6th day of November, 2006.

LAW OFFICES OF MONTE E. HESTER, INC. P.S.
Attorneys for Appellant

By: _____
Brett A. Purtzer
WSB #17283

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CERTIFICATE OF SERVICE

Kathy Herbstler, hereby certifies under penalty of perjury under the laws of the State of Washington, that on the day set out below, I delivered true and correct copies of reply brief to which this certificate is attached, by United States Mail or ABC-Legal Messengers, Inc., to the following:

Douglas W. Vanscoy
Deputy Prosecuting Attorney
955 Tacoma Ave. S. Suite 301
Tacoma, WA 98402-2160

Ray Perez
Ranger Insurance
10777 Westheimer Road, #500
Houston, TX 77042

Signed at Tacoma, Washington this 6th day of November, 2006.

Kathy Herbstler