

0108 19-5

~~56879-5~~

80450-8

No. 56879-5-I (56970-8-I), 58825-7-I **58796-0-I**

COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION I

ROOSEVELT, LLC., and STEINVALL CONSTRUCTION, INC.,  
Third-Party Plaintiff and Third-Party Defendant/Appellants,

v.

GRATEFUL SIDING, INC., et al.,  
Third-Party Defendant/Respondents.

COLONIAL DEVELOPMENT LLC,  
Defendant/Appellant,

v.

EMILY LANE TOWNHOMES CONDOMINIUM OWNERS' ASS'N,  
Plaintiff/Respondent/Cross-Appellant.

CHADWICK FARMS HOMEOWNERS ASS'N,  
Plaintiff/Appellant,

v.

F.H.C., LLC,  
Defendant/Third-Party Plaintiff/Respondent/Cross-Appellant,

v.

AMERICA 1<sup>st</sup> ROOFING & BUILDERS, INC., et al.  
Third-Party Defendants/Cross-Respondents.

RECEIVED  
COURT OF APPEALS  
DIVISION ONE  
FEB 14 2007

BRIEF OF *AMICUS CURIAE*  
WASHINGTON STATE BAR ASSOCIATION

Paul H. Beattie  
WSBA No. 30277  
Darby & Darby, P.C.  
1191 Second Avenue, 20<sup>th</sup> Floor  
Seattle, WA 98101-3404

Ellen Conedera Dial  
WSBA No. 9522  
Washington State Bar Association  
1325 Fourth Avenue, Suite 600  
Seattle, WA 98101-2539

Attorneys for *Amicus Curiae* WSBA

Original

TABLE OF CONTENTS

I. INTRODUCTION ..... 1

II. IDENTITY AND INTEREST OF *AMICUS* WSBA ..... 3

III. QUESTIONS PRESENTED BY THE COURT ..... 4

IV. ARGUMENT ..... 6

1. The Term “Certificate of Cancellation” Unquestionably Means Something More Than “Dissolution” In the Context of RCW 25.15.295(2).

2. The Unambiguous Language and Legislative History of RCW 25.15.303 Confirm that It Does Not Alter RCW 25.15.295(2).

3. Since RCW 25.15.303 is Remedial, It Should Be Applied Retroactively, Despite the Legislature’s Silence.

4. The *Ballard* Case and the Common Law Both Confirm WSBA’s Interpretation of RCW 25.15.295(2).

V. CONCLUSION ..... 23

VI. APPENDIX ..... 26

**TABLE OF AUTHORITIES**

<b>Cases</b>	<b>Page Number</b>
<i>1000 Virginia Ltd. v. Vertecs Corp.</i> , 158 Wash.2d 566 (2006) .....	19
<i>Ballard Square Condo. Owners Ass'n v. Dynasty Constr. Co.</i> , 158 Wash.2d 603, 146 P.3d 914 (Wash. 2006) .....	<i>passim</i>
<i>Ballard Square Condo. Owners Ass'n v. Dynasty Constr. Co.</i> , 126 Wash. App. 285 (Div. I 2005) .....	<i>passim</i>
<i>Berrocal v. Fernandez</i> , 155 Wash.2d 585 (2005) .....	8
<i>In re Parentage of C.A.M.A.</i> , 154 Wash.2d 52 (2005) .....	15
<i>In re Sherwood's Estate</i> , 122 Wash. 648 (1922) .....	14
<i>State v. Grays Harbor County</i> , 98 Wash.2d 606 (1983) .....	13
<i>Washington Waste Sys., Inc. v. Clark County</i> , 115 Wash.2d 74 (1990) ..	20

<b>Statutes</b>	<b>Page Number</b>
RCW 23B.14.050 .....	20-22
RCW 23B.14.340 .....	12, 17-18, 20-22
RCW 25.15.070 .....	8, 11, 13, 15
RCW 25.15.080 .....	5, 9-10
RCW 25.15.270 .....	9, 11, 17

RCW 25.15.285 .....	9, 10
RCW 25.15.290 .....	10, 12, 15
RCW 25.15.295 .....	<i>passim</i>
RCW 25.15.303 .....	<i>passim</i>
RCW 25.15.330 .....	13
RCW 25.15.900 .....	6

Other Authorities	Page Number
William M. Fletcher, FLETCHER CYCLOPEDIA OF THE LAW OF CORPORATIONS, § 70.50 (2006 Update) .....	6
David M. Hastings, Annotation, <i>Construction and Application of Limited Liability Company Acts</i> , 79 A.L.R.5th 689 (2000) .....	6
William A. Sabin, THE GREGG REFERENCE MANUAL, 252-53 (7th ed. 1994) .....	8
Washington House of Representatives, House Bill Report for SB 6531 (2006) .....	<i>passim</i>

## I. INTRODUCTION

This Court has solicited *amicus curiae* briefs on several issues concerning the proper interpretation of certain provisions of the Washington Limited Liability Company Act (“the Act”), specifically RCW 25.15.295(2) and RCW 25.15.303. Paraphrased slightly, those questions, along with the Washington State Bar Association’s (WSBA’s) brief responses, are as follows:

1. **In the context of RCW 25.15.295(2), is there a difference between “dissolution” and “cancellation?”**

**WSBA Response:** Yes. When a Washington Limited Liability Company (“LLC”) “suffers” dissolution, it enters a “winding up” period. During this time, it can still “prosecute and defend” lawsuits. Once the LLC’s certificate of formation is “canceled,” however, the LLC ceases to exist as a legal person; it can no longer sue or be sued. Under the Act, there is therefore a significant difference between “dissolution” and “cancellation.”

2. **What remedies are available after dissolution under RCW 25.15.303?**

**WSBA Response:** By its terms, RCW 25.15.303 applies only to actions *against* an LLC; it has no effect on actions *by* an LLC. RCW 25.15.303 allows an LLC to be sued on claims accruing either before or after

the LLC's dissolution, so long as that suit is brought within three years of the effective date of that *dissolution*.

RCW 25.15.303 does not explicitly address whether an LLC can be sued after the LLC's certificate of formation is canceled. Neither does it purport to change RCW 25.15.295(2), which allows an LLC to "prosecute and defend" lawsuits during a wind up period *after* dissolution, but *before* the LLC's certificate of formation is canceled. Given that both provisions remain in effect, and that both are unambiguous, both provisions must be read together and harmonized, so far as possible. Attempting such a harmonization, a person may sue an LLC so long as he or she brings the lawsuit within three years of the LLC's effective date of dissolution, and the LLC's certificate of formation has not yet been canceled. If either prong is not met, the LLC cannot be sued. RCW 25.15.303 thus does not alter RCW 25.15.295(2).

**3. Does RCW 25.15.303 apply retroactively?**

**WSBA Response:** Yes. RCW 25.15.303 is remedial in nature, and does not impair a constitutional or vested right. Consequently, although the legislature did not explicitly make RCW 25.15.303 retroactive, RCW 25.15.303 should be applied retroactively.

4. Do the *Ballard* case and the common law relate to LLCs, and if so, how?

WSBA Response: While the Act does not specify which body of law the Court should turn to in construing it, both the *Ballard* case and the common law reaffirm the reasonableness and appropriateness of the WSBA's interpretation of RCW 25.15.295(2) and RCW 25.15.303; they therefore apply by compelling legal analogy. They are instructive if not mandatory precedent.

II. IDENTITY AND INTEREST OF AMICUS WSBA

The WSBA is an administrative arm of the Washington State Supreme Court. "The mission of the [WSBA] is to promote justice and to serve its members and the public."<sup>1</sup> Under the WSBA Bylaws, the Board of Governors authorizes standing committees to investigate and participate in matters relating to the general purposes of the WSBA.<sup>2</sup> One such standing committee is the WSBA Amicus Committee, which reviews "all requests for *amicus curiae* participation."<sup>3</sup>

On November 22, 2006, the WSBA received a letter from this Court requesting *amicus curiae* briefs addressing several thorny issues pertaining to

---

<sup>1</sup> See WSBA website at <http://www.wsba.org> ("WSBA Info" Tab).

<sup>2</sup> WSBA Amicus Curiae Brief Policy at 2 (available at the WSBA website under the Committees" link).

<sup>3</sup> *Id.* at 1.

Limited Liability Companies (“LLCs”).<sup>4</sup> The Court specifically requested input from the WSBA Business Law Section and Corporation Law Department Section. Attentive as the WSBA is to promoting justice, “[t]he WSBA will honor a request from an appellate court barring exceptional circumstances.”<sup>5</sup> This brief represents the WSBA’s efforts to meet that commitment.

The WSBA takes no position as to which parties should prevail or whether any lower court committed errors of fact or law. The WSBA has no interest in the specific outcome of the three subject cases, other than its general interest in seeing justice done and assisting this Court and the public. In the truest sense of the words, then, WSBA acts solely as *amicus curiae*.<sup>6</sup>

### III. QUESTIONS PRESENTED BY THE COURT

In its letter of November 22, 2006, and pursuant to RAP 10:6, this Court requested *amicus curiae* briefs addressing the following issues, slightly reordered to make them easier to address *seriatim*:

---

<sup>4</sup> See Letter of November 22, 2006 from Court Commissioner W. Ellis, submitted as **Exhibit A** of Appendix).

<sup>5</sup> WSBA Amicus Curiae Brief Policy at 2.

<sup>6</sup> Because the WSBA does not align itself with any party before this Court, it does not include Assignments of Error or a Statement of the Case; the former is not required and the latter would be redundant with numerous other briefs before this Court, written by persons with a better grasp of the factual context of these disputes. See RAP 10.3(e).

1. Whether a certificate of cancellation means something more than a dissolution, and, in particular, the effect of the following language in RCW 25.15.295(2):

Upon dissolution of a limited liability company and **until the filing of a certificate of cancellation** as provided in RCW 25.15.080, the persons winding up the limited liability company's affairs may, in the name of, and for and on behalf of, the limited liability company, **prosecute and defend suits, whether civil, criminal, or administrative,** gradually settle and close the limited liability company's business, dispose of and convey the limited liability company's property, discharge or make reasonable provision for the limited liability company's liabilities, and distribute to the members any remaining assets of the limited liability company.<sup>7</sup>

2. What remedies are available after dissolution under RCW 25.15.303, and does this section apply only to actions *against* a limited liability company, rather than actions *by* a limited liability company?
3. What is the retroactive effect, if any, of the 2006 amendments to RCW 25.15.303, and what do the amendments mean in the context of a certificate of cancellation?
4. What is the applicability, if any, of *Ballard Square Condo. Owners Ass'n v. Dynasty Constr. Co.*, 158 Wash.2d 603, 146 P.3d 914 (Wash. 2006), to limited liability companies?
5. Whether the common law has any application to limited liability companies, and, if so, how the common law applies?<sup>8</sup>

---

<sup>7</sup> RCW 25.15.295(2) (emphasis added).

<sup>8</sup> See Exhibit A to Appendix for Court's Letter of November 22, 2007, posing these questions.

The WSBA addresses these questions in the order presented here. Questions four and five are addressed together under the fourth heading of the Argument section, since those two questions are closely related.

#### IV. ARGUMENT

1. **The Term “Certificate of Cancellation” Unquestionably Means Something More than “Dissolution” In the Context of RCW 25.15.295(2).**

LLCs are recent legal constructs, with a majority of states having only enacted LLC legislation in the 1990s.<sup>9</sup> Washington’s Act took effect on October 1, 1994,<sup>10</sup> and Washington case law construing the Act is sparse.<sup>11</sup> “Since limited liability companies have only recently become popular, the law is still evolving.”<sup>12</sup> Unhelpfully, courts and scholars routinely comment that LLCs share some qualities of corporations and other qualities of partnerships; they cite by analogy to state corporation acts, to state partnership acts, or to the common law, often without meaningful explanation.<sup>13</sup> From the WSBA’s perspective, the only *relatively* sure footing here is the language of the Act itself. The LLC is a creature of statute, not of common law, and our courts of

---

<sup>9</sup> William M. Fletcher, FLETCHER CYCLOPEDIA OF THE LAW OF CORPORATIONS, § 70.50 (2006 Update).

<sup>10</sup> RCW 25.15.900.

<sup>11</sup> Counsel’s search for “helpful” Washington case law on how to construe LLCs turned up a total of six cases, some unpublished and none helpful.

<sup>12</sup> Fletcher at § 70.50.

<sup>13</sup> *See, e.g.*, David M. Hastings, Annotation, *Construction and Application of Limited Liability Company Acts*, 79 A.L.R.5th 689 (2000).

appeals are expert at construing statutes. That is the only way to unravel this puzzle, even if the solution is not fully satisfying.

RCW 25.15.295(2) both preexisted and survived the 2006 amendments to the Act. That provision, which this Court has asked *amicus curiae* to interpret, reads as follows:

Upon dissolution of a limited liability company and **until the filing of a certificate of cancellation** as provided in RCW 25.15.080, the persons winding up the limited liability company's affairs may, in the name of, and for and on behalf of, the limited liability company, **prosecute and defend suits, whether civil, criminal, or administrative**, gradually settle and close the limited liability company's business, dispose of and convey the limited liability company's property, discharge or make reasonable provision for the limited liability company's liabilities, and distribute to the members any remaining assets of the limited liability company.<sup>14</sup>

The general meaning of this provision is clear. There is a period of time, which the Act styles the "winding up" period, that exists *after* the time the LLC is **dissolved**, but *before* its certificate of formation is **cancelled**. During this winding up period, a manager or other representative, as defined in RCW 25.15.295(1), may prosecute and defend suits in the name of the LLC.

The clear implication is that such representative persons may *no longer* "prosecute and defend suits" after the certificate of formation is canceled. RCW 25.15.295(2) is unambiguous as written and must be given

---

<sup>14</sup> RCW 25.15.295(2) (emphasis added) (enacted in 1994).

effect. "Where statutory language is plain, free from ambiguity, and devoid of uncertainty, there is no room for construction because the legislative intention derives solely from the language of the statute."<sup>15</sup> Such is the case with RCW 25.15.295(2).

Under the Act, an LLC is born through the execution of a certificate of formation.<sup>16</sup> This is explained in RCW 25.15.070, which states as follows:

In order to form a limited liability company, one or more persons must execute a certificate of formation. The certificate of formation shall be filed in the office of the secretary of state and set forth [specified information].

\* \* \* \* \*

Unless a delayed effective date is specified, a limited liability company is formed when its certificate of formation is filed by the secretary of state.<sup>17</sup>

An LLC thus springs into existence when its "certificate of formation is filed."

It then becomes a new legal person.

Importantly, the Act also specifies how and when an LLC dies:

A limited liability company formed under this chapter shall be a separate legal entity, the existence of which as a separate legal entity shall continue **until cancellation**

---

<sup>15</sup> *Berrocal v. Fernandez*, 155 Wash.2d 585, 590 (2005); accord *Ballard Square Condo. Owners Ass'n v. Dynasty Constr. Co.*, 146 P.3d 914, 919 (Wash. 2006).

<sup>16</sup> "An LLC" rather than "a LLC" is the correct English usage, since the rule is that one considers the *sound* not the *spelling* of the word following the indefinite article. See William A. Sabin, *THE GREGG REFERENCE MANUAL*, 252-53 (7th ed. 1994).

<sup>17</sup> RCW 25.15.070.

of the limited liability company's certificate of formation.<sup>18</sup>

The Act thus makes it clear, beyond peradventure, that an LLC ceases to exist *when its certificate of formation is canceled*. At that point, it is no longer a "separate legal entity." RCW 25.15.080, in turn, clarifies *how* a certificate of formation is canceled.

RCW 25.15.080 states as follows:

**A certificate of formation shall be canceled upon the effective date of the certificate of cancellation, or as provided in RCW 25.15.290 [relating to administrative dissolution and cancellation], or upon the filing of articles of merger if the limited liability company is not the surviving or resulting entity in a merger. A certificate of cancellation shall be filed in the office of the secretary of state to accomplish the cancellation of a certificate of formation upon dissolution and the completion of winding up of a limited liability company . . . .**<sup>19</sup>

The Act thus unambiguously describes the lifecycle of a Washington LLC. It is born through the filing of a certificate of formation. It then conducts its business until it hits a dissolution event under RCW 25.15.270, such as (1) a specified dissolution date in the certificate of formation, (2) a dissolution event delineated in the LLC agreement, or (3) a unanimous agreement to

---

<sup>18</sup> *Id.* (emphasis added).

<sup>19</sup> RCW 25.15.080 (emphasis added). Even in the event of an administrative dissolution under RCW 25.15.285, the LLC continues in existence until the secretary of state cancels the LLC's certificate of formation in two years under RCW 25.15.290.

dissolve.<sup>20</sup> At that point, the LLC is in the process of dissolving; it is dying but not yet dead.

During that post-dissolution process, the LLC continues to exist. However, as discussed above, the LLC is limited to the winding up activities set forth in RCW 25.15.295(2), one of which is to “prosecute and defend” lawsuits.<sup>21</sup> RCW 25.15.080 indicates that a certificate of cancellation should be filed only after “the dissolution and completion of winding up” of an LLC. Once the certificate of cancellation is filed, the LLC is dead.<sup>22</sup> As RCW 25.15.070 puts it, the LLC exists “as a separate legal entity” *until* its certificate of formation is cancelled; then it dies.

Under RCW 25.15.295(2), the LLC can thus sue or be sued during its normal life or following dissolution during its winding up period.<sup>23</sup> But once the certificate of formation is canceled, whether by filing a certificate of cancellation or otherwise, the LLC cannot sue or be sued.

A similar result is reached in the case of an administrative dissolution under RCW 25.15.285. In such a dissolution, the LLC may apply for reinstatement within two years of the effective date of dissolution.<sup>24</sup> If the

---

<sup>20</sup> See RCW 25.15.270.

<sup>21</sup> RCW 25.15.295.

<sup>22</sup> RCW 25.15.070.

<sup>23</sup> A post-dissolution LLC could also presumably be reinstated or continued during the winding up period prior to the filing of a certificate of cancellation.

<sup>24</sup> RCW 25.15.290(1) & (4).

LLC fails to do so, or if the application to reinstate is denied, the “secretary of state shall cancel the limited liability company’s certificate of formation.”<sup>25</sup> At this point, the LLC, again, ceases to exist under RCW 25.15.070(2)(c), and it cannot sue or be sued. This is indicated by RCW 25.15.295(2), which authorizes winding up activities after dissolution of the LLC but only “*until the filing of a certificate of cancellation.*” After the certificate of cancellation is filed, the LLC is a nullity.

In sum, a “certificate of cancellation” absolutely means something more than “dissolution” under the Act. An event of dissolution begins the process of an LLC’s dying, but the LLC can still sue or be sued under RCW 25.15.295(2) *until* the cancellation of its certificate of formation, which ends the LLC’s existence.

**2. The Unambiguous Language and Legislative History of RCW 25.15.303 Confirm that It Does Not Alter RCW 25.15.295(2).**

In 2006, the Washington Legislature passed an amendment to the Act, which became RCW 25.15.303. That provision reads as follows:

The **dissolution** of a limited liability company does not take away or impair any remedy available against that limited liability company, its managers, or its members for any liability incurred at any time, whether prior to or after dissolution, unless an action or other proceeding thereon is not commenced **within three years after the effective date of the dissolution.** Such an action or

---

<sup>25</sup> RCW 25.15.290(4).

proceeding against the limited liability company may be defended by the limited liability company in its own name.<sup>26</sup>

The legislative history surrounding this survival statute suggests that it was passed in response to the court of appeals' decision in *Ballard Square Condo. Owners Ass'n v. Dynasty Constr. Co.*, 126 Wash. App. 285 (Div. I 2005), *aff'd*, 146 P.3d 914 (2006).<sup>27</sup>

In *Ballard*, the court of appeals held that the Washington Business Corporation Act survival statute, RCW 23B.14.340, applies only to claims existing or liability incurred *prior* to a corporation's dissolution.<sup>28</sup> The court went on to hold, in light of the legislature's decision not to adopt section 14.07 of the 1984 Revised Model Business Corporation Act, which would have allowed post-dissolution claims, that the plaintiff's claims were barred by the common law rule that claims against corporations terminate when the corporation dissolves.<sup>29</sup> RCW 25.15.303 appears to have been a response to *Ballard*.

But the intent of the legislature is probably irrelevant here, since courts do not look at legislative history if the statutory language is clear and

---

<sup>26</sup> RCW 25.15.303 (emphasis added). The *Ballard* case is discussed in more detail below.

<sup>27</sup> House Bill Report, SB 6531 at 3 (2006) (a true and correct copy of which is attached as **Exhibit B** in the Appendix).

<sup>28</sup> *Ballard*, 126 Wash. App. at 290.

<sup>29</sup> *Id.* at 295.

unambiguous.<sup>30</sup> Nevertheless, the legislative history supports the WSBA's position that an LLC cannot be sued after cancellation of its certificate of formation, even under RCW 25.15.330. Here, the legislature chose to create a survival statute based on the *dissolution* of an LLC, instead of on its *cancellation*, even though referring to the latter might have created a more coherent legislative scheme. And the legislative history makes it crystal clear that the legislature knew what it was doing. The House Bill Report for SB 6531, which became RCW 25.15.303, specifically acknowledges the following:

After dissolution of an LLC, but before cancellation of the certificate of formation, members of the LLC or a court appointed receiver may wind up the business of the LLC. A person winding up the affairs of an LLC may prosecute or defend legal actions in the name of the LLC.<sup>31</sup>

The House Bill Report likewise acknowledges that the Act has “no provision regarding the preservation of claims following cancellation of the certificate of formation.”<sup>32</sup> Knowing this, the legislature created RCW 25.15.303 without changing RCW 25.15.070, RCW 25.15.295(2), or any other provision relating to the cancellation of the certificate of formation. Had the legislature wanted, it could have drafted RCW 25.15.303 to directly address how the

---

<sup>30</sup> *State v. Grays Harbor County*, 98 Wash.2d 606, 607-08 (1983).

<sup>31</sup> House Bill Report, SB 6531 at 2 (2006).

<sup>32</sup> *Id.* at 3.

provision interlaces with RCW 25.15.295(2). Apparently, the legislature intended that both RCW 26.16.303 and RCW 25.15.295(2) would coexist, and that the latter provision would do so without modification. Such a decision has consequences.

By its terms, RCW 25.15.303 creates rights only in persons who might sue an LLC; it does not create a cause of action for LLCs. The statute states that “dissolution of a limited liability company does not take away or impair any remedy **available against that limited liability company**, its managers, or its members . . . .”<sup>33</sup> RCW 25.15.303 thus plainly applies only to actions *against* an LLC, and not to actions *by* an LLC, as the provision itself indicates. Persons who have claims against an LLC may bring those claims, regardless of when the claim arose, against an LLC so long as they sue the LLC within three years after the effective date of the LLC’s dissolution. The difficult question is how to harmonize RCW 25.15.303 with RCW 25.15.295(2).

All provisions in a statute must, so far as possible, be construed so as not to contradict each other.<sup>34</sup> The legislature is presumed to know its own laws. Moreover, a “court may not construe a statute in a way that renders

---

<sup>33</sup> RCW 25.15.303 (emphasis added).

<sup>34</sup> See *In re Sherwood's Estate*, 122 Wash. 648, 655-56 (1922).

statutory language meaningless or superfluous.”<sup>35</sup> Neither may a court rewrite a statute, merely because it could have been drafted more clearly.<sup>36</sup> Here, giving effect to both RCW 25.15.303 with RCW 25.15.295(2) necessarily leads to the following conclusions:

1. Under the Act, as it currently exists, an LLC can initiate a lawsuit at any time during, before or after its dissolution, so long as its certificate of formation has not been canceled.<sup>37</sup> Once the certificate of formation has been canceled, the LLC no longer exists, and it may not “prosecute and defend suits.”

2. Under the Act, as it currently exists, a person may sue an LLC at any time before its dissolution, or for three years following its effective date of dissolution.<sup>38</sup> However, once the LLC’s certificate of formation is canceled, the LLC ceases to exist under the Act, and it can no longer sue or be sued.<sup>39</sup> Similarly, if an LLC is administratively dissolved, and not reinstated within two years under RCW 25.15.290, the LLC no longer exists and cannot sue or be sued. In essence, then, a potential plaintiff gets the shorter of (1)

---

<sup>35</sup> *Ballard Square Condo. Owners Ass’n v. Dynasty Constr. Co.*, 146 P.3d 914, 918 (Wash. 2006).

<sup>36</sup> *See, e.g., In re Parentage of C.A.M.A.*, 154 Wash.2d 52, 69 (2005).

<sup>37</sup> *See* RCW 25.15.295(2).

<sup>38</sup> RCW 25.15.303.

<sup>39</sup> *See* RCW 25.15.070(2)(c); RCW 25.15.295.

three years from the effective date of an LLC's dissolution, or (2) up to the date of the cancellation of the LLC's formation.

This may not have been what the drafters of RCW 25.15.303 *intended*, but it is a clear and direct consequence of what RCW 25.15.303 *says*. In amending the Act to include RCW 25.15.303, the legislature elected not to change or clarify RCW 25.15.295(2), RCW 25.15.295(2), or any other provision of the Act confirming that an LLC ceases to exist after the certificate of cancellation is filed. The legislature could have easily drafted RCW 25.15.303 to allow suits to be brought even after the filing of a certificate of cancellation, but it chose not to do so. If the legislature now wishes, in retrospect, that RCW 25.15.303 had been drafted differently, the remedy lies with the legislature and not with this Court.

**3. Since RCW 25.15.303 is Remedial, It Should be Applied Retroactively, Despite the Legislature's Silence.**

The Court requested *amicus curiae* to address whether RCW 25.15.303 should be applied retroactively. Because it is remedial in nature and does not impair a constitutional or vested right, RCW 25.15.303 should be applied retroactively.

Statutes may be applied retroactively, where the legislature *intended* the statute to apply retroactively, the statute is *curative*, or where the statute is

*remedial*.<sup>40</sup> Regardless, a statute cannot be applied retroactively if doing so would “impair[] a constitutional or vested right.”<sup>41</sup> As RCW 25.15.303 is a survival provision, preserving remedies available on dissolution of an LLC, no constitutional rights are implicated. Neither are any vested rights, since “a cause of action that exists only by virtue of a statute is not a vested right.”<sup>42</sup> Even more than the right to sue dissolved *corporations*, the right to sue dissolved *LLCs* exists solely as a matter of “legislative grace,”<sup>43</sup> since LLCs did not exist at common law.

Legislative intent may be discerned from the face of the statute,<sup>44</sup> or “from the legislature’s enactment of new legislation soon after a controversy arose about interpretation of the statute said to be clarified.”<sup>45</sup> Unlike RCW 23B.14.340, which provides for survivorship actions in the corporate context, RCW 25.15.303 contains no explicit direction concerning its retrospective or prospective application. The House and Senate reports on the bill that became RCW 25.15.303 are similarly silent.<sup>46</sup> And while adoption of RCW 25.15.303 and the amendments to RCW 23B.14.340 both came on the heels of the Court

---

<sup>40</sup> *1000 Virginia Ltd. v. Vertecs Corp.*, 158 Wash.2d 566, 584 (2006).

<sup>41</sup> *Ballard Square Condo. Owners Ass’n v. Dynasty Constr. Co.*, 146 P.3d 914, 922 (Wash. 2006).

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at 923.

<sup>44</sup> *See, e.g., id.* at 922.

<sup>45</sup> *1000 Virginia Ltd.*, 158 Wash.2d at 584.

<sup>46</sup> *See* House Bill Report, SB 6531 (2006); Senate Bill Report, SB 6531 (2006).

of Appeals' *Ballard* decision, neither provision clarified the interpretation of specific aspects of the applicable statutes: with the adoption of RCW 23B.14.340, the legislature expanded the remedies available against corporations to those arising after dissolution; with the adoption of RCW 25.15.303, the legislature created a new cause of action entirely. Thus, RCW 25.15.303 is not curative in nature, as a curative statute is one that "clarif[ies] ambiguities in older legislation without changing prior case law."<sup>47</sup>

But the Court need not evaluate whether RCW 25.15.303 is curative or was intended by the legislature to be retroactive, because RCW 25.15.303 is remedial. "A statute is remedial when it relates to practice, procedure, or remedies and does not affect a substantive or vested right."<sup>48</sup> By affording parties an opportunity to seek remedies against an LLC, its managers, or its members at any time within three years of the LLC's dissolution, RCW 25.15.303 relates to remedies. For this reason, the WSBA believes that RCW 25.15.303 should be applied retroactively.

**4. The *Ballard* Case and the Common Law Both Confirm WSBA's Interpretation of RCW 25.15.295(2).**

In its Letter of November 22, 2006, the Court also asked whether (1) *Ballard Square Condo. Owners Ass'n v. Dynasty Constr. Co.*, 146 P.3d 914

---

<sup>47</sup> *Washington Waste Sys., Inc. v. Clark County*, 115 Wash.2d 74, 78 (1990).

<sup>48</sup> *1000 Virginia Ltd.*, 158 Wash.2d at 586.

(Wash. 2006), or (2) the “common law” applies to LLCs, and – if so – how?<sup>49</sup> WSBA’s answer is that the Act does not specify whether one should look to the corporations law, partnership law, or the common law in construing the Act. However, the *Ballard* case and the common law reaffirm the reasonableness and appropriateness of WSBA’s interpretation of RCW 25.15.295(2) and RCW 25.15.303; they therefore apply by compelling legal analogy.

In *Ballard*, plaintiff condominium association sued defendant condo developer corporation for breach of contract after the condos began to spring leaks as a result of “defects in the exterior walls and stucco system.”<sup>50</sup> Although work on the development ended in 1992, and the condo developer dissolved in 1995, the association did not bring suit until 2002. The developer defended on the grounds of untimeliness, as well as on the grounds that, under the Washington Business Corporation Act (“Business Corporation Act”) and at common law, a corporation could not be sued once it ceased to exist.<sup>51</sup> Accepting defendant’s argument, the trial court dismissed the association’s case on summary judgment.

---

<sup>49</sup> The WSBA combines two of the Court’s questions here, because they share the same answer. (See **Exhibit A** to Appendix).

<sup>50</sup> *Ballard*, 146 P.3d at 916.

<sup>51</sup> *Id.* at 917.

The court of appeals affirmed. In so doing, the court considered both (1) a winding up provision (RCW 23B.14.050), and (2) a survival provision (RCW 23B.14.340) from the Business Corporation Act.<sup>52</sup> The winding up provision, RCW 23B.14.050, “states that a dissolved corporation carries on its existence but may not carry on any business except that appropriate to wind up and liquidate its business affairs.”<sup>53</sup> By its terms, the winding up provision applies only during the winding up period; it provides no authority for suing the corporation after articles of dissolution are filed and *it ceases to exist*.<sup>54</sup> The court’s reasoning is precisely analogous to the WSBA’s view of RCW 25.15.295(2), which allows an LLC to “prosecute and defend” lawsuits during the winding up period, but not after. Since the defendant corporation in *Ballard* had ceased to exist long before plaintiff association brought suit, RCW 23B.14.050 offered the association no refuge.

The court of appeals next considered RCW 23B.14.340, as it existed before the 2006 amendments. At the time, the provision stated that a corporation’s dissolution “shall not take away or impair any remedy available against such corporation . . . for any right or claim *existing*, or any liability *incurred, prior to* such dissolution if action or other proceeding thereon is

---

<sup>52</sup> *Ballard*, 126 Wash. App. at 289-91.

<sup>53</sup> *Id.* at 289 (citing RCW 23B.14.050).

<sup>54</sup> *Id.* at 295-96.

commenced within two years after the date of such dissolution.”<sup>55</sup> Since the association’s cause of action in *Ballard* accrued *after*, not *before* the corporation’s dissolution, RCW 23B.14.340, the survival statute, was likewise inapplicable.<sup>56</sup> With no statute applying to the post-wind up fact pattern in *Ballard*, the court of appeals devolved to the common law, under which a lawsuit cannot be brought against an entity that no longer exists.

Following the court of appeals’ decision, the Washington State Legislature enacted SB 6531 to provide a three-year survival period for claims against LLCs. This law became codified as RCW 25.15.303, discussed above. While the cases at issue here were still pending, the supreme court issued its decision in *Ballard Square Condo. Owners Ass’n v. Dynasty Constr. Co.*, 158 Wash.2d 603, 146 P.3d 914 (2006). Apparently believing it was disagreeing with the court of appeals, the supreme court found that the Business Corporation Act winding up provision, RCW 23B.14.050, allowed post-dissolution suits.<sup>57</sup>

In fact, the court of appeals in *Ballard* never disagreed with that assertion; its holding was that RCW 23B.14.050 did not allow suits *after the*

---

<sup>55</sup> *Id.* at 290 (emphases added).

<sup>56</sup> *Id.*

<sup>57</sup> *Ballard*, 146 P.3d at 920-21.

*corporation had ceased to exist*, as opposed to after dissolution.<sup>58</sup> Consonant with the WSBA's analysis of the Act, the court of appeals (and the concurrence in the supreme court) concluded that a suit could be maintained against a dying corporation, but not against a dead one. Put another way, RCW 23B.14.050 simply does not address "claims arising after a corporation has completed the winding up process."<sup>59</sup> Regardless, the issue became *obiter dictum* when the supreme court applied the 2006 amendments to the survival provision (RCW 23B.14.340) and concluded that the association's lawsuit was untimely, since it was not brought within three years of the developer's dissolution.<sup>60</sup>

In summary, the WSBA cannot say that *Ballard* is mandatory precedent in these cases, since the WSBA is unaware of any cases clearly stating that where the Act is silent, courts look to the common law. LLCs are creatures of statute; they did not exist at common law. What can be said, however, is that the *Ballard* decisions, particularly the court of appeals and concurring supreme court decisions, demonstrate legally analogous reasoning to that arrived at by the WSBA in this matter. For example, the *Ballard* cases, like the common law, faithfully reaffirm the notion that a defunct entity

---

<sup>58</sup> *Ballard*, 126 Wash. App. at 295-96; see also *Ballard*, 146 P.3d at 923-24 (Sanders, J. concurring)(majority incorrectly assumes that, prior to 2006 amendments, plaintiff could have maintained a suit against a defunct corporation).

<sup>59</sup> *Id.*

<sup>60</sup> *Ballard*, 146 P.3d at 921.

cannot sue or be sued. Both *Ballard* and the common law are thus persuasive and worthy of consideration, even though the unambiguous language of the Act dictates the outcome in these cases, far more than references to case law governing other types of legal entities.

## V. CONCLUSION

A Washington LLC is born through filing of a certificate of formation. During its natural life, it can sue or be sued. After dissolution, the LLC is not dead but dying. Under RCW 25.15.295(2), it can still “prosecute or defend” lawsuits. Once its certificate of formation is canceled, however, whether through (1) filing of a certificate of cancellation, or (2) failure to apply for reinstatement within two years of an administrative dissolution, the LLC is dead. It can no longer sue or be sued. It does not exist. As at common law, the “dead know not the law.”

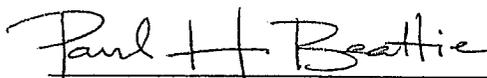
The 2006 amendment to the Act, codified in RCW 25.15.303, does little to mitigate the effects of RCW 25.15.295(2). RCW 25.15.303 creates a three-year survival statute, measured from the effective date of dissolution. Although legislative history confirms that the legislature understood that an LLC ceases to exist when its certificate of formation is cancelled, RCW 25.15.303 is silent about whether a suit can be initiated after an LLC ceases to exist. Neither do the 2006 amendments alter the signal implications of RCW

25.15.295(2), namely that an LLC cannot continue activities such as “prosecuting or defending” a suit, once its certificate of formation is canceled.

RCW 25.15.303 should, however, be applied retroactively. Since it is remedial in nature and does not impair constitutional or vested rights, RCW 25.15.303 is retroactive, even though the legislature did not favor the public or this Court with explicit guidance in that regard.

Respectfully submitted,

**Dated: February 9, 2007**

 (by Elizabeth A. Richardson)

Paul H. Beattie, WSBA No. 30277

Elizabeth A. Richardson, WSBA No. 38375

**Darby & Darby, P.C.**

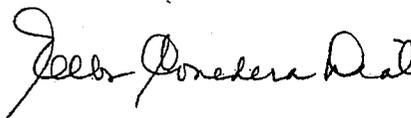
1191 Second Avenue, 20<sup>th</sup> Floor

Seattle, WA 98101-3404

Phone: (206) 262-8922

Fax: (206) 262-8901

Email: [pbeattie@darbylaw.com](mailto:pbeattie@darbylaw.com)



Ellen Conedera Dial, WSBA No. 9522

**Washington State Bar Association**

1325 Fourth Avenue, Suite 600

Seattle, WA 98101-2539

Phone: (206) 727-8232

Chris Brown, WSBA No. 28526

**Garvey Schubert Barer**

1191 Second Avenue

Seattle, WA 98101

Attorneys for *Amicus Curiae*

Washington State Bar Association

**APPENDIX A**  
[Optional. See rule 10.3(a)(7).]

**APPENDIX B**  
[Optional. See rule 10.3(a)(7).]

**EXHIBIT A**

Letter of November 22, 2006 from Court Commissioner W. Ellis

WILLIAM H. ELLIS, Court Commissioner  
Division One  
One Union Square  
600 University Street  
Seattle, Washington 98101

*The Court of Appeals*  
of the  
*State of Washington*

464-7619  
AREA CODE 206

November 22, 2006

Washington State Trial  
Lawyers Assoc.  
1809 7<sup>th</sup> Avenue, Ste 1500  
Seattle, WA 98101-1328

✓ Washington State Bar Assoc.  
Amicus Brief Committee  
2101 Fourth Avenue, 4<sup>th</sup> Floor  
Seattle, WA 98121

John Phillip Evans  
Mary H. Spillane  
Margaret A. Sundberg  
Williams Kastner & Gibbs PLLC  
601 Union Street, Ste 4100  
Two Union Square Bldg.  
Seattle, WA 98101-2380

Richard Scott Fallon  
Attorney at Law  
1111 Third Avenue, Ste 2400  
Seattle, WA 98101-3238

Martin T. Crowder  
Michaelanne Ehrenberg  
Karr Tuttle Campbell  
1201 Third Avenue, Ste 2900  
Seattle, WA 98101-3028

Robert Kendall Goff  
Daniel J. De Walt LLP  
Goff & DeWalt  
3226 Rosedale Street, Ste 100  
Gig Harbor, WA 98335-1806

Eileen I. McKillop  
Oles Morrison Rinker & Baker LLP  
701 Pike Street, Ste 1700  
Seattle, WA 98101-3930

Building Industry Assoc. of  
Washington  
P.O. Box 1909  
111 West 21<sup>st</sup> Avenue  
Olympia, WA 98507

Washington Defense Trial Lawyers  
Two Union Square  
601 Union Street, Ste 4100  
Seattle, WA 98101

John Patrick Hayes  
Viivi Vanderslice  
Forsberg & Umlauf  
900 4<sup>th</sup> Avenue, Ste 1700  
Seattle, WA 98164-1050

James Benjamin Meade, II  
Forsberg & Umlauf  
950 Pacific Avenue, Ste 400  
Tacoma, WA 98402-4441

Jonathan Dirk Holt  
Anthony Robert Scisciani, III  
Scheer & Zehnder LLP  
701 Pike Street, Ste 2200  
Seattle, WA 98101-2358

William Scott Clement  
John E. Drotz  
Clement & Drotz  
2801 Alaskan Way, Ste 300  
Pier 70  
Seattle, WA 98121-1128

Mark Edward Mills  
Susan Kate Fuller  
Law Offices of William D. Garcia  
1801 Fifth Avenue, Ste 1210  
Seattle, WA 98101-3602

Nos. 56879-5-I, 58825-7-I, and 58796-0-I

Mark Gregory Honeywell  
David B. Jensen  
Michelle Menely  
Gordon Thomas Honeywell  
600 University Street, Ste 2100  
One Union Square Bldg.  
Seattle, WA 98101-4161

Leonard D. Flanagan  
Justin D. Sudweeks  
Levin & Stein  
201 Queen Anne Avenue North  
Ste 400  
Seattle, WA 98109-4824

RE: No. 56879-5-I, Grateful Siding, Inc. v. Roosevelt, LLC & Steinvall, Inc.  
No. 58825-7-I, Colonial Dev. LLC v. Emily Lane Homeowners  
No. 58796-0-I, Chadwick Farms v. F.H.C.

Dear Counsel:

The Court has before it three cases dealing with Limited Liability Companies and their capacity to sue or be sued under chapter 25.15 RCW. The cases are Grateful Siding v. Roosevelt, LLC, number 56879-5 (consolidated with number 56970-8); Chadwick Farms v. F.H.C., number 58796-0; and Colonial Dev. LLC v. Emily Lane, number 58825-7.

Pursuant to RAP 10.6(c), the Court requests amicus curiae briefs addressing the following issues:

1. The applicability, if any, of Ballard Square Condo. Owners Ass'n v. Dynasty Constr. Co., 2006 Wash. LEXIS 875 (Number 76938-9, filed November 9, 2006) to limited liability companies;
2. What remedies are available after dissolution under RCW 25.15.303 and whether the section applies only to actions against a limited liability company, rather than actions by a limited liability company;
3. Whether a certificate of cancellation means something more than a dissolution, and, in particular, the effect of the following language in RCW 25.15.295(2):  
Upon dissolution of a limited liability company and until the filing of a certificate of cancellation as provided in RCW 25.15.080, the persons winding up the limited liability company's affairs may, in the name of, and for and on behalf of, the limited liability company, prosecute and defend suits, whether civil, criminal, or administrative, gradually settle and close the limited liability company's business, dispose of and convey the limited liability company's property, discharge or make reasonable provision for the limited liability company's liabilities, and distribute to the members any remaining assets of the limited liability company.  
(Emphasis added);
4. What is the retroactive effect, if any, of the 2006 amendments to RCW 25.15.303, and what the amendments mean in the context of a certificate of cancellation;

Nos. 56879-5-1, 58825-7-1, and 58796-0-1

5. Whether the common law has any application to limited liability companies, and, if so, how the common law applies.

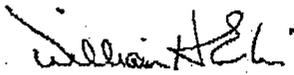
The Court invites amicus curiae briefs from the following organizations:

1. Washington State Bar Association Corporate/Business Law Sections;
2. Building Industry Association of Washington;
3. Washington State Trial Lawyers' Association; and
4. Washington Defense Trial Lawyers

Any amicus curiae briefs should be filed no later than December 22, 2006 and served on the counsel of record for each of the parties in the three cases listed above. Any response should be filed and served no later than January 22, 2007. The amicus curiae briefs and the responses should not exceed 25 pages in length.

Chadwick Farms v. F.H.C., number 58796-0; and Colonial Devl. LLC v. Emily Lane, number 58825-7, which are presently set for consideration on January 23, 2007, shall be re-scheduled for argument on February 13, 2007, at 1:30 p.m. The present briefing schedule for Colonial Devl. LLC v. Emily Lane, number 58825-7, shall remain in place.

Sincerely,



William H. Ellis  
Court Commissioner

Faint, illegible text from bleed-through of the reverse side of the page, appearing as ghosting of a document.

**EXHIBIT B**

**Washington House of Representatives,  
House Bill Report for SB 6531 (2006)**

# HOUSE BILL REPORT

## SB 6531

---

**As Passed House:**  
February 28, 2006

**Title:** An act relating to preserving remedies when limited liability companies dissolve.

**Brief Description:** Preserving remedies when limited liability companies dissolve.

**Sponsors:** By Senators Weinstein, Fraser and Kline.

**Brief History:**

**Committee Activity:**

Judiciary: 2/20/06 [DP].

**Floor Activity:**

Passed House: 2/28/06, 97-0.

**Brief Summary of Bill**

- Provides a three year period following dissolution of a limited liability company during which the dissolution of the company does not extinguish any cause of action against the company.

---

### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass. Signed by 9 members: Representatives Lantz, Chair; Flannigan, Vice Chair; Williams, Vice Chair; Priest, Ranking Minority Member; Rodne, Assistant Ranking Minority Member; Campbell, Kirby, Springer and Wood.

**Staff:** Bill Perry (786-7123).

**Background:**

A limited liability company (LLC) is a business entity that possesses some of the attributes of a corporation and some of the attributes of a partnership.

**Attributes of Corporations and LLCs**

Corporations are creatures of statutory law and are created only by compliance with prescribed formal procedures. A corporation is managed by directors and officers, but is owned by shareholders who may have very little direct role in management. Generally, ownership shares are transferable, and each shareholder is liable for corporate debts only to the extent of his or her own investment in the corporation. A corporation is treated as a taxable entity.

General partnerships, on the other hand, are business entities recognized as common law that require no formal creation, and are owned and managed by the same individuals who are each liable for the debts of the partnership. A general partnership is not a taxable entity.

The LLCs were authorized by the Legislature in 1994. An LLC is a noncorporate entity that allows the owners to participate actively in management, but at the same time provides them with limited liability. The Internal Revenue Service has ruled that an LLC with attributes that make it more like a partnership than a corporation may be treated as a non-taxable entity.

A properly constructed LLC, then, can be a business entity in which the ownership enjoys the limited liability of a corporation's shareholders, but the entity itself is not taxed as a corporation.

### **Dissolution of an LLC**

An LLCs may be dissolved in a number of ways, including:

- reaching a dissolution date set at the time the LLC was created;
- the occurrence of events specified in the LLC agreement as causing dissolution;
- by mutual consent of all members of the LLC;
- the dissociation of all members through death, removal or other event;
- judicial action to dissolve the LLC; or
- administrative action by the Secretary of State for failure of the LLC to pay fees or to complete required reports.

### **Certificate of Cancellation**

After an LLC is dissolved, or if an LLC has been merged with another entity and the new entity is not the LLC, the certificate of formation that created the LLC is cancelled.

Cancellation may occur in a number of ways:

- The certificate of formation may authorize a member or members to file the certificate of cancellation upon dissolution, or after a period of winding up the business of the LLC.
- A court may order the filing of a certificate of cancellation.
- In the case of a merger that results in a new entity that is not the LLC, the filing of merger documents must include the filing of a certificate of cancellation.
- In the case of an administrative dissolution of an LLC, there is a two year period during which the LLC may be reinstated before the secretary of state files the certificate of cancellation.

After dissolution of an LLC, but before cancellation of the certificate of formation, members of the LLC or a court appointed receiver may wind up the business of the LLC. A person winding up the affairs of an LLC may prosecute or defend legal actions in the name of the LLC.

### **Preservation of Remedies**

The law governing LLCs has no express provision regarding the preservation of remedies or causes of actions following dissolution of the business entity. There is an implicit recognition of the preservation of at least an already filed claim during the wind up period following dissolution, since the person winding up the affairs is authorized to defend suits against the

LLC. However, there is no provision regarding the preservation of claims following cancellation of the certificate of formation.

The current Business Corporation Act provides that dissolution of a corporation does not eliminate any claim against the corporation that was incurred prior to dissolution if an action on the claim is filed within two years after dissolution. There is no "certificate of cancellation" necessary to end a corporation. *(Note: Another currently pending bill, SSB 6596, would increase this two year period to three years, and would make the provision apply to claims incurred before or after dissolution.)*

---

**Summary of Bill:**

Dissolution of a limited liability company will not eliminate any cause of action against the company that was incurred prior to or after the dissolution if an action on the claim is filed within three years after the effective date of the dissolution.

---

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Testimony For:** A recent court decision has left many homeowners without a remedy for claims against a dissolved corporation. The same problem exists with respect to claims against LLCs. The Bar Association is working on a comprehensive review of the LLC law, but it is not done yet. This bill addresses only the problem of survival of claims following dissolution.

The bill is a step in the right direction. It affirmatively states that claims, such as homeowners' warranty claims, will survive the dissolution of an LLC. Whether or not there are any assets left to satisfy a claim is a separate problem that will have to be addressed later.

**Testimony Against:** None.

**Persons Testifying:** Senator Weinstein, prime sponsor; Alfred Donohue, Forsberg Umlauf, P.S.; and Sandi Swarthout and Michelle Ein, Washington Homeowners Coalition.

**Persons Signed In To Testify But Not Testifying:** None.

**CERTIFICATE OF SERVICE**

I, Marlon Muñoz, hereby certify that on February 12, 2007, I served the attached **BRIEF OF AMICUS CURIAE WASHINGTON STATE BAR ASSOCIATION**, by U.S. First-Class Mail on the following parties/persons below:

Washington State Bar Association Amicus Brief Committee 2101 fourth Avenue, 4 <sup>th</sup> Floor Seattle, WA 98121	Building Industry Assoc. of Washington 111 West 21 <sup>st</sup> Avenue PO Box 1909 Olympia, WA 98507
Washington State Trial Lawyers Assoc. 1809 Seventh Avenue, Ste. 1500 Seattle, WA 98101-1328	Washington Defense Trial Lawyers Two Union Square, Ste. 4100 601 Union Street Seattle, WA 98101
John Phillip Evans Mary H. Spillane Margaret A. Sundberg Williams Kastner & Gibbs PLLC Two Union Square, Ste. 4100 601 Union Street Seattle, WA 98101-2380	John Patrick Hayes Viivi Vanderslice Forsberg & Umlauf 900 Fourth Avenue, Ste. 1700 Seattle, WA 98164-1050
Richard Scott Fallon Attorney at Law 1111 Third Avenue, Ste. 2400 Seattle, WA 98101-3238	James Benjamin Meade, II Forsberg & Umlauf 950 Pacific Avenue, Ste. 400 Tacoma, WA 98402-4441
Martin T. Crowder Michaelanne Ehrenberg Karr Tuttle Campbell 1201 Third Avenue, Ste. 2900 Seattle, WA 98101-3028	Jonathan Dirk Holt Anthony Robert Scisciani, III Scheer & Zehnder LLP 701 Pike Street, Ste. 2200 Seattle, WA 98101-2358

COURT OF  
DIVISION ONE  
FEB 12 2007

<p>Robert Kendall Goff  Daniel J. DeWalt LLP  Goff &amp; DeWalt  3226 Rosedale Street, Ste. 100  Gig Harbor, WA 98335-1806</p>	<p>William Scott Clement  John E. Drotz  Clement &amp; Drotz  2801 Alaskan Way, Ste. 300  Pier 70  Seattle, WA 98121-1128</p>
<p>Eileen I. McKillop  Oles Morrison Rinker &amp; Baker LLP  701 Pike Street, Ste. 1700  Seattle, WA 98101-3930</p>	<p>Mark Edward Mills  Susan Kate Fuller  Law Offices of William D. Garcia  1601 Fifth Avenue, Ste. 1210  Seattle, WA 98101-3602</p>
<p>Mark Gregory Honeywell  David B. Jensen  Michelle Menely  Gordon Thomas Honeywell  600 University Street, Ste 2100  One Union Square Bldg.  Seattle, WA 98101-4161</p>	<p>Leonard D. Flanagan  Justin D. Sudweeks  Levin &amp; Stein  201 Queen Anne Avenue North,  Ste 400  Seattle, WA 98109-4824</p>

DATED: February 12, 2007

  
\_\_\_\_\_  
Marlon Muñoz  
for Paul H. Beattie, WSBA No.30277  
DARBY & DARBY P.C.  
1191 Second Avenue  
Seattle, WA 98101  
Phone: 206.262.8900  
Fax: 206.262.8901