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THE COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON
SEATTLE

MUTUAL OF ENUMCLAW
INSURANCE COMPANY,

No. 57820-1-I

Appellant / Cross-Respondent

v.

MacPHERSON CONSTRUCTION &
DESIGN, LLC.,

Respondent / Cross-Appellant.

BRIEF OF APPELLANT

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FILED
COURT OF APPEALS DIV. #1
STATE OF WASHINGTON
2006 JUN 29 PM 4:27

ORIGINAL

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I. ASSIGNMENTS OF ERROR

The Trial Court Erred When it:

A. Denied partially Mutual of Enumclaw's Motion for Summary Judgment that there was no coverage in favor of MacPherson Construction & Design, LLC for liability to the Hedges under its Mutual of Enumclaw policy. Order of February 15, 2005. CP 851.

B. Granted Summary Judgment and Final Judgment in favor of MacPherson Construction & Design, LLC that its liability to the Hedges was covered under its Mutual of Enumclaw policy. Order of August 9, 2005. CP 1267. Judgment of October 28, 2005. CP 1587.

II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

A. The judgment in favor of MacPherson Construction & Design, LLC is based on the trial court's erroneous interpretation of the Liberalization Clause contained in MacPherson's Mutual of Enumclaw policy. The Liberalization Clause was not triggered, and there is no coverage under the policy.

B. Even if the Court were to rule that the Liberalization Clause had been triggered, policy exclusions still apply to limit the amount of coverage available to MacPherson Construction & Design, LLC. The trial court erred when it ruled that the entire arbitration award was covered by the policy.

III. STATEMENT OF THE CASE

This case is a declaratory judgment action brought by Mutual of Enumclaw for a determination that no coverage exists for its insured, MacPherson Construction & Design, for claims asserted against the insured by Thomas and Anne Marie Hedges. CP 3. The facts that pertain to the Hedges' claim, and MacPherson's insurance coverage, are presented below.

A. MacPherson Construction & Design's Business and Insurance Policies.

MacPherson Construction & Design, Inc. was a builder in the business of developing and constructing homes. CP 228. In 2000, MacPherson Construction & Design, Inc. changed its legal structure to become a Washington Limited Liability Company; it is now known as MacPherson Construction and Design, LLC. CP 229. Aside from the technical form of entity, there was no change to the ownership or business of the company. CP 15. For purposes of this appeal, the corporation and the LLC may be referred to collectively as "MacPherson." Mutual of Enumclaw sold commercial liability insurance to MacPherson Construction & Design, Inc. under policy PK 63751. CP 1031. MacPherson's policy consisted of a commercial general liability (CGL) coverage, and an umbrella policy. CP 1138. The policy was updated on

January 1, 2000 to reflect the new name of the insured, MacPherson Construction & Design, LLC. CP 1137.

A detailed rendition of the facts as they relate to the Hedges' claim against MacPherson is presented in the Arbitration Award at CP 279 *et seq.* A summary of the relevant facts follows. MacPherson acted as general contractor in the construction of a home for Thomas and Anne Marie Hedges. MacPherson, and subcontractors acting under MacPherson's direction and control, obtained the materials and component parts of the construction and built the entire project finishing the home in 1999. *Id.*

In approximately March of 2001, the Hedges notified MacPherson that their home had been defectively constructed and that resulting leaks were causing continuing damage. *Id.* This damage was alleged to be the result of incorrectly applied EIFS siding, installed by a siding subcontractor by the name of Nelson Evergreen. *Id.* and CP 229. The Hedges argued that the siding allowed water to be trapped inside the house's envelope, which caused damage within the building. *Id.* The Hedges then sued MacPherson (both the corporation and the LLC) in arbitration for the construction defects. Both the corporation and the LLC tendered their defenses in the Hedges' action to Mutual of Enumclaw which agreed to defend subject to a reservation of its rights to later deny

coverage and withdraw its defense if it determined that there was no coverage under the policies. CP 548.

In the action brought by the Hedges, the arbitrator held that both the corporation and the LLC were liable in the amount of \$399,088.32. CP 419, 423. Of that amount, \$251,737.38 was awarded as consequential damages because the condition of the EIFS siding scuttled the Hedges' pending sale of their house, and forced them to lose a favorable market opportunity. CP 423. Mutual of Enumclaw filed this action against MacPherson and the Hedges for a declaration of the rights, duties and obligations of the parties.

B. Relevant Procedural History in the Declaratory Judgment Action.

This case was resolved below after a series of summary judgments. The first of these was the result of cross motions on the issue of coverage. CP 315, 343, 360. Mutual of Enumclaw argued that there was no coverage under either the CGL policy or the Umbrella for either the corporation or the LLC, based on policy exclusions. CP 360. The CGL policy contains a "products" exclusion, that excludes liability for property damage to the insured's "product." MacPherson conceded that under Washington law, the Hedges' house was the corporation's product, and there was no coverage for the corporation under the CGL. CP 321. The

Umbrella policy contains an exclusion for the insured's "work." CP 531. Mutual of Enumclaw argued that the Hedges' house was also MacPherson's "work", and therefore the arbitration award was excluded from coverage. MacPherson agreed that the Umbrella policy excluded liability arising from MacPherson's work, but argued that the Umbrella's work exclusion did not exclude liability arising from the work of MacPherson's subcontractors (such as EIFS subcontractor, Nelson Evergreen). CP 334-335. MacPherson also argued that even if the Hedges' house was the "work" and "product" of MacPherson Construction & Design, Inc., it was *not* the "work" or "product" of MacPherson Construction & Design, LLC, and that the LLC was entitled to coverage even if the corporation was not. CP 351-357.

The trial court resolved each of these issues in favor of Mutual of Enumclaw. The court found that: 1) there was no coverage under the CGL because of the products exclusion; 2) the subcontractors' work was part of MacPherson's work, which was all excluded by the Umbrella's work exclusion; and 3) that MacPherson, LLC was not entitled to additional insurance coverage in virtue of the corporation's change of legal entity. CP 851-854.

Not satisfied with the coverage it had purchased, MacPherson also argued that it was entitled to coverage under a policy it did not purchase.

The additional argument made by the LLC in order to avoid losing the coverage dispute was based on the CGL's Liberalization Clause:

Liberalization Clause. In the event any filing is submitted to the insurance supervisory authorities on behalf of the Company, and:

(a) the filing is approved or accepted by the insurance authorities to be effective while this policy is in force or within 45 days prior to its inception; and

(b) the filing includes insurance forms or other provisions that would extend or broaden this insurance by endorsement or substitution of form, without additional premium;

the benefit of such extended or broadened insurance shall inure to the benefit of the insured as though the endorsement or substitution of form had been made.

CP 455.

During MacPherson, LLC's last policy period, Mutual of Enumclaw was in the process of transitioning its commercial lines from one program of insurance, known as the pre-simplified program, to the newer simplified program. Mutual of Enumclaw sought approval from the insurance commissioner to implement a rating program to establish premiums under the proposed simplified program. CP 850. MacPherson argued that this rate filing was sufficient to trigger the Liberalization Clause, and give it the benefit of coverage provided by form CG 00 01 - one of the many forms and endorsements that were components of the simplified program. Mutual of Enumclaw strongly denies that the

Liberalization Clause was triggered. The machinations of that argument are the core of this appeal, and will be addressed in detail below.

MacPherson's actual CGL coverage form, L6394a, was a part of the pre-simplified program. CP 442. As noted above, that CGL policy excludes liability arising from damage to the insured's "product," in this case, the Hedges' house. CP 443. The product exclusion in the newer CGL form does not apply to real estate, and thus would have no application to this claim. The newer CGL does contain a "work" exclusion, but that exclusion makes a specific exception for liability arising from the work of subcontractors. CP 1495. In this case, MacPherson argues, the newer CGL would provide coverage for liability arising out of its subcontractor's installation of the EIFS siding that MacPherson's CGL would not.

The trial court ruled that there were questions of fact as to whether the Liberalization Clause could ultimately provide coverage for the Hedges' claim, and denied that part of Mutual of Enumclaw's Motion for Summary Judgment. CP 851-854.

MacPherson subsequently brought its own Motion for Summary Judgment on the Liberalization Clause. CP 1144. Mutual of Enumclaw responded, and requested that judgment be entered in the insurer's favor on the issue of liberalization. CP 1233. Mutual of Enumclaw also argued

that even if MacPherson was entitled to coverage under the CG 00 01 CGL coverage part, policy exclusions in *that* form excluded the majority of the damages awarded to the Hedges by the arbitrator. The trial court granted MacPherson's motion, and ultimately entered judgment in favor of MacPherson, LLC for the entire amount of the arbitrator's award, plus interest and attorney fees. CP 1267. Mutual of Enumclaw appeals the judgment in favor of MacPherson.

C. MacPherson's Policy was Not Liberalized - The Factual Background of Mutual of Enumclaw's Rates Filing.

When an insurer in Washington wants to introduce new policy forms or new premium rates, it must obtain permission from our Insurance Commissioner. The process begins when an insurer submits a proposal to the Commissioner, and often involves substantial communication between the Commissioner and the insurer, clarifying and refining the company's position and what the Commissioner is willing to agree to. The filing relevant to this case is filing # GL-WA-00638-01-R1 ("the filing"), a proposal by Mutual of Enumclaw to establish a new method of determining how various risks would be rated, and transitioning is customers to the newer, simplified program of insurance. CP 880. The filing contains not a single page of policy forms. Notably absent is the CG 00 01. Unfortunately, this was an unusually complex rates filing, but

because it is the only document allegedly supporting MacPherson's judgment against Mutual of Enumclaw, it is important to recognize exactly what it means. Some aspects of the filing, however, are not directly relevant to the liberalization arguments. A more complete description of these aspects issues is presented in an Appendix to this Brief.

In this filing, Mutual of Enumclaw describes the financial effect on the company of the transition to the simplified program and rating bases. Mutual of Enumclaw states that the "premium" received by the company in its commercial lines will likely decrease somewhat as the transitional rules are implemented. *See eg.* CP 881. It is important to note that this is a reference to the general aggregate premium received from all insureds at the company level, not the premium paid by an individual insured at the individual policy level. CP 787. This point is made explicit in the Transition Plan premium caps that were a part of this particular filing, and approved by the Commissioner. CP 1221. Mutual of Enumclaw used a methodology similar to ISO's in order to prevent large fluctuations (up or down) in premium to an individual insured. *Id.* Mutual of Enumclaw's Transition Plan capped both increases and decreases at twenty five percent of the expiring premium. *Id.* Therefore, regardless of any changes to the total projected aggregate premium receipts, rate increases to some

individual policy holders was expressly contemplated by both Mutual of Enumclaw and the OIC.

The rate filing also described the timeline for transitioning customers from the pre-simplified to the simplified program. “All Mutual of Enumclaw policies . . . that are renewed or rewritten during the period that starts with the implementation date of this rule and ends two years after this date, are subject to the Transition Plan.” *Id.* The Commissioner approved the rates transition filing with effective date of September 15, 2001 for new business, and December 15, 2001 for renewals. CP 1223. MacPherson’s policy was a renewal. The Transition Plan applied to all policies that were renewed or rewritten during the period beginning on the implementation date (December 15, 2001) and ending two years later (December 15, 2003). MacPherson’s policy was therefore scheduled to be re-rated for a new premium, and transitioned to the simplified program on its first renewal *after* December 15, 2001. In MacPherson’s case, this would have occurred in October, 2002, but MacPherson elected not to renew its Mutual of Enumclaw policy, and its coverage was never transitioned to the simplified program.

D. The Actual Implementation of the Simplified Program.

After it received approval from the OIC, Mutual of Enumclaw implemented the transition to the simplified program exactly as was described in the filing. Per the approved filing, Mutual of Enumclaw was required to re-rate all of its commercial insureds' businesses, based on different exposure bases, before it could transition them from the pre-simplified coverage to simplified coverage and set a new premium. To this end, Mutual of Enumclaw sent a letter to the agents selling its policies, announcing and describing the transition to the simplified program. CP 1225. This letter confirmed that the transition would take place in exactly the manner the OIC had authorized - the effective date the transition for existing policies would *begin* was December 15, 2001¹, and the transition would take place *at renewal*. *Id.* The letter also made explicit the requirement that each insured would be required to resubmit an application for insurance because the bases for rating the risk posed by each insured (exposure bases) had changed. The letter stated:

With conversion comes the need for not only current information, but in many cases different information. If we are to provide our insureds with correct coverage and limits, we must obtain new or updated information regarding the first named insured, property valuations,

¹ In a separate letter to the agents, Mutual of Enumclaw described the Transition Plan, noting that it would take *a year* for all applicable policies to be transitioned. CP 1232.

the activities of each insured, policy limits, general liability classifications, and new exposure bases. We are therefore requiring a new Acord application (or Farm Conversion Questionnaire for the farm policy) be submitted for each policy. Please refer to the Commercial Lines Policy Conversion Procedures for more detailed information.

CP 1227.

Construction contractors were a special class of risk that required even further supplementation along with resubmitting an application before Mutual of Enumclaw would consider issuing them a policy on the simplified forms, at *any* premium level. CP 1230. This “Contractor’s Supplemental Questionnaire” is located at CP 1228-1229. MacPherson’s first renewal after the effective date of the Transition Plan (December 15, 2001) would have been on October 18, 2002. Because MacPherson never reapplied for coverage under the simplified program, nor submitted the Contractor’s Supplemental Questionnaire, its policy never transitioned to the simplified program.

IV. LEGAL AUTHORITY

A. Standard of Review - *De Novo*.

An appellate court reviewing an order on summary judgment engages in the same inquiry as the trial court. *Marincovich v. Tarabochia*, 114 Wn.2d 271, 274, 787 P.2d 562 (1990). A trial court’s resolution of questions of law is reviewed *de novo*. *Huff v. Budbill*, 141 Wn.2d 1, 7,

1 P.3d 1138 (2000).

B. The Burden of Proof in Insurance Cases

The traditional formulation of the burden of proof in insurance cases is that the insured must start by proving that the loss falls within the grant of coverage. If the insured is successful in meeting this burden, then the burden shifts to the insurer, which must prove the applicability of a policy exclusion in order to avoid coverage. *Diamaco, Inc. v. Aetna Casualty and Surety Co.*, 97 Wn. App. 335, 337, 983 P.2d 707 (1999). This burden shifting analysis is nothing more than a specialized application of the universal rules of contracts law for burdens of proof on conditions precedent and subsequent.

1. Conditions Precedent

A condition precedent is a mechanism by which certain contractual rights mature upon the happening of some condition. *See Walter Implement, Inc. v. Focht*, 107 Wn.2d 553 (1987), The burden of proving a liability under a contract that is subject to a condition precedent is on the party seeking to prove such liability. *Id.* In the context of liability insurance policies, a primary condition precedent to coverage is that the insured is liable to a third party as described in the grant of coverage:

The company will pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of

- A. bodily injury or
- B. property damage to which this insurance applies, caused by an occurrence. . .

Because there is no obligation to pay *until* the insured becomes legally obligated to pay damages because of property damage, this is a condition precedent to coverage, and the insured has the burden of proving that this condition has been met.

2. *Conditions Subsequent*

A condition subsequent is a mechanism by which certain, otherwise mature, contractual obligations are extinguished because of the occurrence of some condition. *See Fleming v. August*, 48 Wn.2d 131 (1955), and *Foutch v. Foutch*, 2 Wn. App. 407 (1970). The burden of proving *non*-liability under the contract is on the party seeking to avoid such liability. *Id.* Policy exclusions are an example of conditions subsequent. Even though a duty to pay may have arisen under the grant of coverage, that duty is extinguished if the claim is excluded by an exclusion. The insurer, therefore, has the burden of proof in showing the applicability of this condition subsequent. *Diamaco, Inc. v. Aetna Casualty and Surety Co.*, 97 Wn. App. 335.

3. *The Liberalization Clause is a Condition Precedent; the Burden of Proof is on MacPherson.*

The Liberalization Clause contained in MacPherson's policy can only be understood as a condition precedent to coverage under the new endorsement or substituted form. As the trial court correctly ruled, there was no coverage for the Hedges' claim under MacPherson's *actual* policy. MacPherson then argued that the Liberalization Clause caused a contractual duty to mature (the duty to indemnify), because the factual pre-requisites to trigger that clause allegedly had been met. Because the Liberalization Clause is a condition precedent to coverage, the burden of proving that the Liberalization Clause had been triggered was on MacPherson. MacPherson did not meet its burden, and the trial court erred when it ruled that the Liberalization Clause had been triggered.

C. MacPherson's Policy was Not Liberalized.

MacPherson's legal position is centered on the following provision contained in its general liability policy:

Liberalization Clause. In the event any filing is submitted to the insurance supervisory authorities on behalf of the Company, and:

- (a) the filing is approved or accepted by the insurance authorities to be effective while this policy is in force or within 45 days prior to its inception; and
- (b) the filing includes insurance forms or other provisions that would extend or broaden this insurance

by endorsement or substitution of form, without additional premium;

the benefit of such extended or broadened insurance shall inure to the benefit of the insured as though the endorsement or substitution of form had been made.

CP 455,

The Liberalization Clause is intended to allow insurers to add new forms or endorsements to its customers' policies mid-period when the new form or endorsement is meant for universal application, and involves no new underwriting or rating decisions to generate the appropriate premium. In order to trigger the Liberalization Clause as it envisions, MacPherson must show that *all* of the following are true:

1. A Mutual of Enumclaw filing was approved or accepted by the insurance commissioner to be effective while MacPherson's policy was in force or within 45 days prior to its inception;
2. The filing includes insurance forms or other provisions that would extend or broaden MacPherson's insurance by endorsement or substitution of form; and
3. MacPherson would not be required to pay any additional premium for the extended or broadened coverage.

Far from proving all three of these requirements, MacPherson cannot meet *any* of them. Each will be addressed consecutively.

1. *No Mutual of Enumclaw filing was approved or accepted by the insurance commissioner to be effective while MacPherson's policy was in force or within 45 days prior to its inception;*

The first of the three required elements that MacPherson must prove in order to apply the Liberalization Clause is that the OIC approved a Mutual of Enumclaw filing to be effective during MacPherson's policy period. MacPherson argued below that the rates filing was approved or accepted by the commissioner to be effective on August 1, 2001. CP 1153. This particular filing involved frequent communications between Mutual of Enumclaw and the OIC aimed at resolving a number of OIC questions about the transition. By letter dated May 24, 2001, Mutual of Enumclaw answered the last of the OIC's questions, and the OIC shortly thereafter stamped that letter "Approved Effective 8-1-01." CP 881, 880. However, the day before the filing became effective, on July 31, 2001, Mutual of Enumclaw advised the OIC by letter that due to systems constraints, it needed to postpone the implementation date of the Transition Plan to September 15, 2001 for new policies, and December 15, 2001 for renewals. The OIC stamped that letter "Approved Effective 9-15-01." CP 1223. What the Commissioner "approved" was that Mutual of Enumclaw was allowed to begin the implementation of its Transition Plan for new business on September 15, 2001, and for existing customers on December 15, 2001. The "effective date" of the approval was thus not the date on which the Transition Plan became "effective" for renewal business. If Mutual of Enumclaw had begun transitioning existing

customers (such as MacPherson) to the simplified program on August 2, or on September 16, it would have been acting *illegally*. “Where a filing is required no insurer shall make or issue an insurance contract or policy except in accordance with its filing then in effect . . .” RCW 48.19.040(6). The date that the rate transition filing was “to be effective” for MacPherson’s renewal policy was, therefore December 15, 2001.

It is crucial to remember what exactly became “effective” on December 15, 2001. It was *not* an approval to use the CG 00 01 CGL form - Mutual of Enumclaw had approval to use that form since 1994 in its Emerald Program. What became “effective” was a rate Transition Plan; the Plan was to transition existing customers to the simplified program *as they renewed*, at premiums that were determined according to mandatory supplemental applications for insurance. The Transition Plan, approved by the OIC as part of the filing, was explicit as to how it was to be applied to particular insureds:

RULE 2. TRANSITION PLAN

A. Application

1. All Mutual of Enumclaw commercial policies . . . that are renewed or rewritten during the period that starts with the implementation date of this rule and ends two years after this date, are subject to the Transition Plan.

CP 1221.

The Transition Plan applied *only to policies that were renewed or rewritten* during the period that starts with the “implementation date of this rule” (for renewal policies, December 15, 2001.) This means that every commercial policy renewed by Mutual of Enumclaw after December 15, 2001 was eligible to be transitioned to the simplified program *at renewal*. MacPherson renewed its pre-simplified policy on October 18, 2001: before the “implementation date of this rule.” CP 1110. The first time MacPherson’s policy was up for renewal *after* December 15, 2001 was on October 18, 2002. Even if every other requirement of the Liberalization Clause had been met, the “benefit” of the filing which would have accrued to MacPherson would have been its eligibility to transition its policy at renewal, subject to re-application. Regardless of liberalization, MacPherson was entitled to *that* benefit. In order to apply for coverage under the simplified program, MacPherson would have had to fill out and submit the Contractor’s Supplemental Questionnaire to Mutual of Enumclaw prior to its October 18, 2002 renewal. The Liberalization Clause is a mechanism to add new, free, broadening endorsements to existing policies without the expense of delivering the endorsement to each insured individually. It is not a mechanism to short-circuit the regular implementation of a new program of insurance, consisting of numerous forms and endorsements, and eliminate the

insurer's underwriting discretion by skipping the re-application requirement.

Below, MacPherson cited *Gerrish Corp. v. Aetna Cas. & Sur. Co.*, 949 F. Supp. 236 (D. Vt. 1996) for the proposition that courts enforce the Liberalization Clause. Mutual of Enumclaw is not arguing that the Liberalization Clause is a nullity or otherwise ineffective; indeed Mutual of Enumclaw agrees that endorsements can be added to the insured's coverage through the Liberalization Clause. In *Gerrish*, the insurer filed for permission to issue an endorsement to be included in all policies without an additional premium. The Vermont insurance authorities approved the filing effective July 1, 1984. The court held that a Liberalization Clause contained in a policy issued in May brought the July endorsement into the insured's policy automatically. *Id.* This holding is as unsurprising as it is irrelevant. *Gerrish* is a straight-forward application of the Liberalization Clause where the insurer petitioned the authorities to issue an endorsement to automatically become a part of every general liability policy issued by the insurer as of the effective date. The *Gerrish* application of the Liberalization Clause represents its intended use - the endorsement was universally applicable, and involved no underwriting decisions or discretion. The paucity of authority interpreting the Liberalization Clause notwithstanding, the Mutual of Enumclaw filing, in

the case at bar, is dramatically different. Instead of seeking approval to include an endorsement with all policies as of an effective date, Mutual of Enumclaw sought approval for a transition of rates for coverage forms for pre-existing policy holders *as their policies came up for renewal* after the effective date of the filing. Premiums for the simplified policies would be set according to new bases for exposure, *as they existed at renewal*. Because the filing approved by the OIC was not effective to transition MacPherson's coverage during MacPherson's policy period, the Liberalization Clause was not triggered, and MacPherson is not entitled to coverage under the CG 00 01 form.

2. *The filing does not include insurance forms or other provisions that would extend or broaden this insurance by endorsement or substitution of form;*

In addition to the fact that the rates and rules filing on which MacPherson relies was not effective during the relevant policy period, that filing also does not contain any endorsement or substitution form at all, much less one that could have broadened MacPherson's coverage. The substitute form of which MacPherson wants the benefit is the CG 00 01 Commercial General Liability form. CP 1483. That form has been offered by Mutual of Enumclaw since 1994 as part of the Emerald Series. CP 1219 (*under "coverages" appears Commercial General Liability Form CG 00 01.*) The fact that MacPherson never applied for the Emerald

Series program does not change the fact the form it claims was approved for use in 2001 was actually approved for use in 1994. The Liberalization Clause does not incorporate forms that were available prior to the inception of the policy period. *See eg. State Securities Co. v. Federated Mut. Implement and Hardware Ins. Co.*, 204 F. Supp. 207, 223 (D. Neb. 1960). The rates and rules filing on which MacPherson relies was the last piece of the regulatory puzzle in Mutual of Enumclaw's attempts to transition its entire book of commercial business from the pre-simplified program to the simplified program, but the simplified forms were in use years before the 2001 OIC rates and rules approval. Because no endorsement or substitute form was approved for the first time by the OIC during the relevant policy period, Mutual of Enumclaw was entitled to judgment as a matter of law that the policy was not liberalized.

Furthermore, the "work" exclusion, contained in the CG 00 01 CGL form, is but a tiny piece of the simplified program. The Transition Plan filing applied to *eight* separate form filings, each one of which can represent the adoption of multiple forms. CP 1223. MacPherson argues that the filing "extended or broadened coverage" because the work exclusion is narrower in the CG 00 01 coverage part. But MacPherson should not be allowed to chose an individual paragraph from an individual form, when many forms were part of the simplified program. In creating a

policy for MacPherson under the simplified program, Mutual of Enumclaw would have been entitled to add simplified endorsements, and alter the renewal premium accordingly. For example, what of an endorsement excluding coverage for liability for property damage arising out of the use of EIFS (the product caused the damage to the Hedges' house)²? That endorsement would have dramatically *restricted* MacPherson's coverage for the claim in this case.

Even within the CG 00 01 form itself, not all of the changes "broaden or extend" coverage relative to the policy MacPherson actually purchased. For example, the pre-simplified policy's aggregate policy limit could be applied *separately* to each project on which the insured worked. CP 1046. That is to say, if the insured had aggregate policy limits of \$1 million, and worked at twenty five projects over the course of a year, the policy could provide up to \$25 million of coverage. In the Limits of Liability section of the CG 00 01, the policy establishes that the general aggregate is the most the insurer will pay for the sum of all coverages available under the policy. CP 1490. To use the same example, the insured with a general aggregate limit of \$1 million could work at twenty five projects, but the maximum the policy would cover would be \$1

² See, eg., *Great Am. Ins. Co. v. Calli Homes*, 236 F. Supp. 2d 693 (D. Tex. 2002), discussing this endorsement.

million. Everything else being equal, the CG 00 01 policy could cover \$24 million *less* than the pre-simplified CGL issued to MacPherson. It is misleading to suggest that coverage under the simplified program was “broader” or “more extensive” than under the pre-simplified program; it is simply different. In contrast, the endorsement in *Gerrish Corp. v. Aetna Cas. & Sur. Co.*, 949 F. Supp. 236 entirely removed a pollution exclusion from the policy, unquestionably broadening coverage. Such is the proper application of the Liberalization Clause. The simplified program was entirely *different* coverage, in some respects broader and in some respects narrower.

A similar situation was before the court in *Donoho & Sons, Inc. v. Aetna Ins. Co.*, 598 S.W.2d 11 (Tex. App. 1980). In *Donoho*, the insured argued that the Liberalization Clause replaced the endorsement Form 148 with Form 223. In affirming the trial court’s rejection of the liberalization argument, the court compared the coverage available under the two Forms:

Donoho asserts that the Form 223 provides for more liberal coverage than Form [148]³. This comparison is somewhat difficult under the record we have before us. The only witness to testify as to this matter, an actuary with the State Board of Insurance, when asked if Form

³ No doubt due to clerical error, the original quotation starts, “Donoho asserts that the Form 223 provides for more liberal coverage than Form 18.” The court intended to write “148,” as is clear from the context.

223 would be a more liberal type of coverage than Form 148, stated that it could be in some instances and could be more restrictive in other instances; that there are different types of forms. For example Form 148 which is a part of the policy before us has no deductible clause. The Form 148 which is a part of the policy before us applies only to dwellings designed for occupancy by not more than two families. The only Form 223 contained in the records before us, which may or may not be here applicable, states that all classes of buildings or structures under construction are eligible, except certain listed exceptions, such as grain elevators, mining properties, mineral properties, amusement parks, certain nuclear types of buildings and other structures of this nature. Such form contains a deductible clause provision with deductibles which seem to range from \$ 200 to \$ 500. It is somewhat like comparing apples with oranges. The provisions vary in many respects.

As in *Donoho*, the comparing the coverages available under the pre-simplified program and the simplified program is somewhat like comparing apples to oranges. It is not possible to say that there is "more coverage" under the simplified program, because the "amount of coverage" is necessarily dependant on the nature of the loss. Because the simplified program does not broaden or extend the coverage available under the pre-simplified program, MacPherson's policy was not liberalized.

3. *An additional premium would have been charged for the coverage MacPherson seeks under the Transition Plan.*

Even if MacPherson were allowed to consider only the scope of the work exclusion in its assertion that the simplified program “extended or broadened” its coverage, MacPherson would have had to pay a much higher premium for coverage for liability arising out of the work of subcontractors than under its pre-simplified policy. Liability policies under both the pre-simplified and simplified programs provide a certain amount of coverage for the work of independent (sub) contractors. Under the pre-simplified policy, there would have been coverage for a general contractor, where its subcontractor’s work caused property damage to other property. *See, eg. Mut. of Enumclaw Ins. Co. v. Patrick Archer Constr., Inc.*, 123 Wn. App. 728, 743 (2004). Under the simplified policy form, the coverage can potentially be broad enough to cover property damage to the insured’s subcontractor’s work itself. Under both the pre-simplified and simplified programs, the risk posed by the insured’s subcontractors was a separate risk, with a separate premium. *See, eg. Travelers Ins. Co. v. C.J. Gayfers & Co.*, 366 So. 2d 1199 (Fla. App. 1979).

Despite the fact that the burden of proof was on MacPherson to prove the applicability of the Liberalization Clause, MacPherson presented

absolutely no evidence of what effect the Transition Plan would have had on its premium. Mutual of Enumclaw, however, did present such evidence. MacPherson's expiring premium under the pre-simplified program for the subcontractor risk was \$473.00. CP 1269. Had MacPherson been rated under the simplified program, MacPherson's premium for subcontractor coverage would have been \$6,294.00. CP 1270. The Liberalization Clause provides that the insured is entitled to the benefit of a new endorsement or substitution of form *only* if that coverage is available without additional premium. The coverage sought by MacPherson is for liability arising out of its subcontractor's work, and the premium for that coverage would have increased dramatically under the simplified program.

Despite the fact that the coverage desired by MacPherson would have been considerably more expensive under the simplified program, MacPherson argued below the premium under the simplified program would *decrease*. MacPherson argued at length that Mutual of Enumclaw represented to the OIC that no insured could experience a premium increase as a result of the transition from ISO rates to loss costs under the simplified program. MacPherson misreads the filing. Again and again, Mutual of Enumclaw reported to the OIC that the transition from basing its premiums on pre-simplified ISO rates to modern ISO loss costs would

not result in increased revenue for Mutual of Enumclaw with respect to its commercial line of business *as a whole*. Because the exposure bases were changing in addition to the implementation of a new rating structure (loss costs), there was statistically no chance that any renewal premium would be *exactly* the same as the expiring premium - every premium would have to be re-set according to the information contained in the mandatory new application submitted by the insureds at renewal. Nothing, anywhere in the filing, suggests that every policy holder's premium would go down. MacPherson's position is exactly analogous to saying that because the United States receives less tax revenue as a result of a change in the tax code, that *every single taxpayer will pay less taxes*. Both propositions are false.

Both Mutual of Enumclaw and the OIC understood completely that the overall decrease in the total premium that Mutual of Enumclaw would receive on its commercial lines did not translate into a decrease in every single policy holder's premium. For example, in the May 24, 2001 letter to the OIC, Mutual of Enumclaw states,

The results of our analysis indicated that utilizing an IRPM factor of 1.000, with our filed loss cost multiplier of 1.563, with our loss cost modification factors, **in conjunction with our Rule 2** and the ISO Transition factors, the overall premium change related to our transition to the simplified ISO GL program would range from -8.82% at the Capped Minimum Transition to -7.36% at the Maximum Transition with -7.95% at the Capped Mean Transition.

CP 882.

This paragraph refers to both a negative overall premium change, and Rule 2 (CP 1221), which provides for a cap of premium *increases* for a two year period to be limited to a maximum of 25% per year. This rule was intended to prevent large fluctuations, both down and up, in premiums for renewing policy holders. Premium increases at the individual policyholder level were thus specifically contemplated by both Mutual of Enumclaw and the OIC. CP 787.

Because Mutual of Enumclaw was fully entitled to increase a policy holder's premium under the Transition Plan, and the "endorsement or substitution of form" was not available for no additional premium, the Court should rule that MacPherson's policy was not liberalized.

D. Coverage Under the CG 00 01 Form is Subject to that Form's Exclusions.

Even if the Court were to determine that MacPherson's policy had been liberalized, and it should not, the parties and the Court must then apply the CG 00 01 policy's exclusions to determine what elements of the arbitration award might be covered. MacPherson argued below that the court need not trouble itself by actually applying the provisions of the policy, because Mutual of Enumclaw had "admitted" that there would have been coverage under the CG 00 01 CGL form. MacPherson asserted

that Mutual of Enumclaw's "corporate designee" testified that "the property damage which was the subject of the arbitration award would have been covered by the broader 1986 CGL form." CP 1157. As will be demonstrated, neither Mutual of Enumclaw nor its "corporate designee" made any such admission. Furthermore, the Withdrawal from Use exclusion in the CG 00 01 policy eliminates coverage for a large portion of the arbitration award against MacPherson. Each of these issues will be addressed below.

1. Mutual of Enumclaw has not "admitted" that there is coverage under the liberalized policy.

Again and again, MacPherson represented to the trial court, as it will undoubtedly represent to this Court, that "MoE's CR 30(b)(6) designee admitted that a 1986 policy would cover property damage that resulted from subcontract work and resulting property damage." This misleading assertion, which was contested by Mutual of Enumclaw every time MacPherson made it, is meant to short-circuit any analysis of what the policy *actually* covers. But there are at *least* three problems with this grossly oversimplified analysis. First, "MoE's CR 30(b)(6) designee" (Debbi Sellers) was NOT a company designee on what coverage is available under what forms. She was a CR 30(b)(6) designee only with respect to Mutual of Enumclaw's investigation of MacPherson's claim,

and Mutual of Enumclaw compliance with the WAC. Second, “MoE’s CR 30(b)(6) designee” did NOT testify that the liberalized policy would cover the entire arbitration award. Third, even if Ms. Sellers were a 30(b)(6) witness on coverage issues, and she had testified that the simplified form would cover the alleged property damage, such testimony would be a mere legal conclusion; it is the charge of the Court, not a Mutual of Enumclaw employee, to decide the legal effect of an insurance contract. Each will be separately addressed.

First, a CR 30(b)(6) corporate designee testifies for the company *only* with respect to the subjects described in the Notice of Deposition.

The Court Rule recites:

A party may in his notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and designate with reasonable particularity the matters on which examination is requested. In that event the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters known on which he will testify. A subpoena shall advise a nonparty organization of its duty to make such a designation. . .

MacPherson was very clear on the “matters on which examination is requested” in its Notice of Deposition:

1. The investigation Mutual of Enumclaw conducted under WAC 284-30 et seq. and WAC 284-30-370 concerning the claims of *Hedges v. MacPherson Construction & Design, Inc. and MacPherson Construction & Design, LLC*;

2. Mutual of Enumclaw's efforts to comply with the enhanced obligations applicable to a reservation of rights case as described in *Tank v. State Farm*; and;

3. Mutual of Enumclaw's efforts to comply with the Washington fair claim practice regulations, WAC 284-30 et seq., in connection with defense, settlement, and indemnity for the claims of *Hedges v. MacPherson Construction & Design, Inc. and MacPherson Construction & Design, LLC*.

CP 687.

Depositions taken under CR 30(b)(6) are subject to the issues set out in the notice for which the corporation is required to designate a witness or witnesses. CR 30(b)(6). The designees are required to speak for the corporation on those issues, but are not speaking for the corporation on issues not set out in the notice. Although the witnesses may have knowledge of other matters they are only charged with the task of preparing for and speaking to the issues in the notice. The corporation may prefer to designate more knowledgeable persons to address other issues not yet the subject of a 30(b)(6) notice. As a result the corporation

is not bound to the testimony on a topic outside the notice given for the deposition because a witness is not designated to speak for the company and as a result is not authorized to answer for the corporation. *See* Schwarzer, Tasjo, and Wagstaffe. FEDERAL CIVIL PROCEDURE BEFORE TRIAL, Ch 11 at 11-78.5 (2001). While Ms. Sellers was testifying, counsel for Mutual of Enumclaw objected repeatedly when MacPherson's attorney strayed beyond the subjects identified in the Notice of Deposition. CP 1014-1018. Mutual of Enumclaw's lawyer objected *specifically* that the questions regarding what coverage might be available under the simplified policy forms was outside the scope of the Notice of Deposition, and that Ms. Sellers' testimony on those issues was not that of Mutual of Enumclaw⁴. *Id.* CR 30(b)(6) is a powerful tool available to litigants that prevents corporate buck-passing. But MacPherson should not be allowed to abuse that discovery procedure by requesting a person with knowledge on one subject, asking questions on another subject (over objection) and then demanding that the company be bound by the legal conclusions of the representative on that very issue.

⁴ When MacPherson quoted Ms. Seller's deposition testimony in its briefing to the trial court, it deleted this exact objection made several times during the quoted portion of the deposition, filling the spot where the objection had been with a generic "objection posed" notation. There should be no doubt that Mutual of Enumclaw persevered its objection, MacPherson's deletion of it notwithstanding.

Mutual of Enumclaw does not admit, and has not admitted, that there is coverage for the entire arbitration award under the simplified “as-liberalized” policy.

The second problem with the alleged “MoE admission” is that it was *not* an admission that the entire award would be covered. There are many components of the arbitration award, and there are many exclusions in the simplified policy. Ms. Sellers expressed her opinion that one exclusion (the “your work” exclusion) would not exclude the work of a siding subcontractor, because of the subcontractor exception to that exclusion. *Id.* She was not asked, nor did she express her opinion on, whether the policy would cover the entire arbitration award.

The third problem with MacPherson’s inappropriate use of Ms. Sellers’ testimony is that Ms. Sellers was expressing nothing more than a legal conclusion of what is covered under the simplified form. That “evidence” is inadmissible, and should not be relied upon by the Court for any purpose. Ms. Sellers offered, at most, a legal opinion relating to an insurance coverage position. She is not a lawyer qualified to state such an opinion; Mutual of Enumclaw makes substantial use of coverage lawyers to clarify coverage issues. Opinion evidence is not admissible from unqualified lay witnesses. ER 701. Their opinions on specialized areas of endeavor are no more informed than those of the average juror and, in

fact, are often likely to create misunderstanding or confusion. "No witness is permitted to express an opinion that is a conclusion of law, or merely tells the jury what result to reach." Tegland, 5B Washington Practice, 237 (1999). Her testimony on this issue should not be considered.

2. *The Withdrawal from Use Exclusion bars coverage for significant elements of the arbitration award.*

An exclusion in the CG 00 01 coverage form prevents coverage for some or all of MacPherson's liability to the Hedges under the arbitration award: The Withdrawal from Use Exclusion. Even if the Court rules that the policy was liberalized, and it should not, the Court must apply the policy exclusions in order to determine the scope of coverage that would have been available to MacPherson under the CG 00 01 CGL. In this case, the Withdrawal from Use exclusion is applicable to the Hedge's claim. There is no coverage for:

n. Recall of Products, Work or Impaired Property

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or or

dangerous condition in it.

CP 1486.

The requirements of the first part of this exclusion are easily satisfied by MacPherson's claim: Damages claimed for any loss, cost or expense incurred by the Hedges or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of MacPherson's work⁵. The exclusion prevents coverage for the cost of replacing the siding itself, and the Hedges' economic losses associated with the withdrawal of the house from the market.

The language in the CG 00 01 CGL form was applied in *Federated Service Ins. Co. v. R.E.W., Inc.*, 53 Wn. App. 730, 770 P.2d 654 (1989). In *REW*, the insured was a general contractor that built a fruit cold-storage warehouse in Yakima. The insured installed a product known as "isoboard" as the inner panel liner for the facility. The isoboard warped, and broke the air seal necessary for proper refrigeration. The general contractor funded the removal and replacement of the isoboard, which cost approximately \$500,000, and tendered the claim to its insurer. One of the exclusions relied upon by the insurer was very similar to the Withdrawal from Use exclusion. The court in *REW* ruled that there was no coverage

⁵ The siding subcontractor's work is part of MacPherson's "work" as defined by the policy. CP 1495.

for the withdrawal and replacement of the insured's defective product as a result of that exclusion. *Id.* at 736.

Just as the removal and replacement of the defective isoboard was excluded by the Withdrawal from Use exclusion in *REW*, so too is the cost of removal and replacement of the allegedly defective siding in this case, and the ensuing economic loss from the house's failure to sell. Because the trial court ruled on summary judgment that the Withdrawal from Use exclusion did not apply, there has been no determination of which part of the arbitration award is based strictly on the cost of repairing or replacing the defective EIFS siding, as opposed to repairing rot damage to the structure beneath the siding⁶. The arbitration award, however, specifically recited that \$251,737.38 in damages were awarded to the Hedges because of the failure of that sale. CP 287. *At the very least*, these damages, which are directly the result of the excluded event of the house being withdrawn from the market, are not covered by the policy. The trial court erred when it entered Final Judgment that the entire arbitration award was covered by the policy.

⁶ The arbitration award states that the cost of removing and replacing the EIFS siding, and repairing rot damage underneath the siding, summed to \$114,406.00. CP 283. The portion of that figure that represents strictly the cost to repair and replace the siding is not broken out. The value of that cost would be a question of fact for the trial court to resolve on remand, should the Court rule that the Liberalization Clause was triggered.

V. CONCLUSION

For the reasons given above, the trial court erred when it determined that the Liberalization Clause in MacPherson's policy was triggered by Mutual of Enumclaw's rates Transition Plan. Even if the Liberalization Clause had been triggered, however, exclusions in the allegedly liberalized policy prevent coverage for the entire arbitration award against MacPherson. Appellant Mutual of Enumclaw respectfully requests that this Court reverse the trial court's judgment in favor of MacPherson, and direct the trial court to enter judgment in favor of Mutual of Enumclaw that there is no coverage for the arbitration award. Alternatively, Mutual of Enumclaw respectfully requests that the Court reverse the judgment in favor of MacPherson that the allegedly liberalized policy covers the entire award, and remand this case to the trial court for a determination of which elements of that award come within the grant of coverage and what elements are excluded by that policy's exclusions.

Respectfully submitted this 9th day of June, 2006.

HACKETT, BEECHER & HART

A handwritten signature in black ink, appearing to be "Brent W. Beecher", written over a horizontal line.

Brent W. Beecher, WSBA #31095
James M. Beecher, WSBA #468
Attorneys for Mutual of Enumclaw

APPENDIX

In order to understand the full significance of the filing, it is necessary to apprehend a certain amount of insurance history. The forms on which MacPherson's general liability policy was issued entered circulation in 1973, as part of a program of insurance that included the commercial general liability coverage part form (L6394a) and a panoply of endorsements applicable to that program. From 1973 to 1986, that program was widely used throughout the insurance industry.

In 1986, the Insurance Services Organization (ISO)⁷, introduced a dramatically different program, made up of forms and endorsements in all lines of insurance, known as the "simplified program." CP 930. Mutual of Enumclaw elected not to convert to the simplified program for a number of years, and continued writing policies on the "pre-simplified" 1973 forms. *Id.* In 1994, however, Mutual of Enumclaw obtained the approval of the insurance commissioner to offer a type of commercial line coverage, known as the "Emerald Series." CP 1216. The Emerald Series was composed entirely of forms in ISO's simplified program, including the CG 00 01 form of which MacPherson currently claims the benefit. *Id.*

⁷ The ISO is a private company that drafts insurance forms, issues rate plans, and obtains authorization of the various Insurance Commissioners to use those forms and rate plans. Insurers that pay the ISO for this service can then "adopt" the ISO's filing without further scrutiny by the Commissioner.

The Emerald Series policy was available primarily to artisans and subcontractors, and generally not offered to general contractors such as MacPherson. *Id.* In any event, MacPherson never applied coverage under that program. Thus, even though the Emerald Series had been in place since 1994, MacPherson's CGL was written on the 1973 form.

In 2000, Mutual of Enumclaw elected to transition the remainder of its commercial lines away from the 1973 program, and write future coverage on the simplified forms. CP 930. In order to offer new kinds of coverage, Washington insurers must file both a "form filing" and a "rates and rules" filing with the Office of the Insurance Commissioner ("OIC"). Because Mutual of Enumclaw participates in the ISO program, Mutual of Enumclaw is entitled to adopt ISO forms and rates filings that have been approved for use by the Commissioner. Mutual of Enumclaw adopted the ISO's form filing (containing multiple forms and endorsements) for the simplified program to establish the Emerald Series in 1994. Because the Emerald Series was a new program with no existing customers, no customers would be "transitioned" to that program, and no rates transition plan was necessary; none was filed.

Unlike the process involved in the creation of the Emerald Series, the transition of all of Mutual of Enumclaw's commercial lines to the simplified program involved issuing new policy forms to existing

customers and altering their premiums in accordance with the new and distinct exposures related to the new forms. CP 932. It was thus considerably more complicated. This transition plan was necessary because the basis on which risks were rated was quite different; that is to say, the aspects of an insured business, such as gross receipts and number of employees, which were considered in setting their premiums were different under the simplified versus pre-simplified programs. *Id.* Even though the OIC had already approved all of the ISO simplified forms on which the commercial lines would be written, Mutual of Enumclaw was required to submit a rates filing describing how the premiums transition from the old rating basis to the new rating basis would be managed.

Of course, all insurers that made the transition to the simplified program in 1986 necessarily faced this same difficulty. ISO addressed this issue by submitting a transition rates filing at that time, which the various insurers could adopt. *Id.* One of the difficulties ISO faced was that in the transition, policy premiums could fluctuate both up and down dramatically when the new rating bases were employed to figure premiums at the individual policy level. CP 932. To alleviate the impact on individual policy holders, ISO added a capping mechanism to the rates transition formula; the renewing premium was not allowed to be more than ten percent lower than the expiring premium, nor was it allowed to be more

than twenty five percent higher than the expiring premium. *Id.* For example, if an insured's expiring premium was \$100, but the renewing premium turned out to be \$80 according to the new rating basis, the insured would actually be charged \$90. On the other hand, if the renewing premium turned out to be \$150 according to the new rating basis, the insured would actually be charged only \$125.

Some years after the 1986 transition, ISO made another change to the methodology of rating risks. Instead of filing Advisory Rates for the various classes of risk, ISO began filing Loss Costs for those risks. CP 919-924. The difference between an Advisory Rate and a Loss Cost is beyond the scope of these arguments, but suffice to say, they are different multipliers that translate from a projected pool of risks to the level of total premium required to bear those risks. There were good, but irrelevant, reasons for switching from the Advisory Rates methodology to the Loss Costs methodology. ISO accomplished this second transition with another rates filing that included translation factors from Advisory Rates to Loss Costs. *Id.*

Thus in 2000, when Mutual of Enumclaw decided to transition the rest of its business to the simplified program, Mutual of Enumclaw was two steps behind ISO with respect to rating risks - the transition from the pre-simplified rating bases to the simplified rating bases, and the transition

from Advisory Rates to Loss Costs. In order to utilize modern ISO Loss Costs ratings, Mutual of Enumclaw was therefore required to make both of those transitions in a single filing, which is the filing at issue in this case. *Id.*

Unfortunately, simply adopting ISO's transition plans wholesale was not workable. Because the simplified program was brand new in 1986, ISO's transition plan to the simplified exposure bases was based on essentially no actuarial data. CP 930. The risks associated with the new policy language were not entirely clear, nor was the relationship between the new rating bases and actual losses established. *Id.* When Mutual of Enumclaw elected to transition its commercial clients to the simplified program in 2000, fourteen years of actuarial data had accumulated, and some of the assumptions that ISO had made in 1986 turned out to be demonstrably incorrect. CP 933. Mutual of Enumclaw submitted the filing to the OIC to accomplish both transitional steps simultaneously, and for a series of company specific deviations from ISO's transition plans that were intended to correct (and thus avoid) problems that ISO itself had encountered in the previous 14 years. *Id.* The filing submitted by MacPherson in support of its liberalization argument is Mutual of Enumclaw's proposal to adopt the ISO rates transitions, with company deviations from ISO's rates filings.

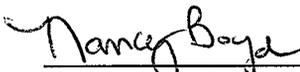
CERTIFICATE OF SERVICE

I, Nancy Boyd, declare that on the date noted below I caused to be delivered via ABC Legal Messengers, Inc., a copy of Mutual of Enumclaw's *Brief of Appellant* to:

Gregory L. Harper
The Harper Firm, PLLC
1420 5th Avenue, Suite 2670
Seattle, WA 98101

I Certify Under Penalty Of Perjury Under The Laws Of The State Of Washington That The Foregoing Is True And Correct. (RCW 9A.72.085)

Signed in Seattle, WA this 9th day of June, 2006.



Nancy Boyd

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