

81003-6

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STATE OF WASHINGTON
Case No. 81003-6

CAMBRIDGE TOWNHOMES, LLC, a Washington limited liability
company; POLYGON NORTHWEST COMPANY, a Washington general
partnership,

Respondents,

v.

P.J. INTERPRIZE, INC., a Washington corporation,

Petitioner.

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

Petitioner, P.J. Interprize, Inc., (“PJ”) seeks review of an unpublished Court of Appeals decision reinstating indemnity and breach of contract claims asserted by respondents, Cambridge Townhomes, LLC, and Polygon Northwest Company (collectively “Polygon”). PJ’s request for review is based upon its assertion that the Court of Appeals made several errors in its opinion. PJ makes no mention of RAP 13.4(b) and fails to show that this case falls within any of the provisions of that rule. Moreover, as explained below, the Court of Appeals correctly decided the issues before it. Under these circumstances, PJ’s petition for review should be denied.

II. ISSUES PRESENTED FOR REVIEW

1. Polygon sought to recover from PJ for defective work performed by PJ’s predecessor, a sole proprietorship. Shortly before Polygon filed suit, but several years after PJ incorporated, the sole proprietorship filed for bankruptcy. Did the Court of Appeals err in concluding the doctrine of successor liability applied to hold PJ responsible for the sole proprietorship’s obligations where (1) the evidence established the corporation was a mere continuation of the sole proprietorship and (2) the bankruptcy court authorized Polygon to proceed against the sole proprietorship to the extent of its insurance proceeds?

2. After the trial court ruled that Polygon could not pursue PJ with respect to work performed by the sole proprietorship, Polygon moved to add the sole proprietorship as a defendant. Are Polygon's claims against the sole proprietorship barred under RCW 4.16.326(1)(g) where (1) those claims relate back to the filing of Polygon's original complaint, and (2) the claims would have been timely even if the relation back doctrine did not apply?

3. An indemnity claim accrues when the party seeking indemnity pays or is legally adjudged obligated to pay damages to a third party. The evidence before the Court of Appeals established that Polygon entered into a settlement agreement obligating it to pay over \$5 million for construction defects and that Polygon paid this amount to the homeowners association. Did the Court of Appeals err in concluding Polygon's indemnity claim has accrued?

4. PJ argued the indemnity provision in its contract with Polygon applied only to tort claims. The Court of Appeals rejected this argument, citing a decision issued during the pendency of this appeal in which it construed the identical provision to encompass contract-based claims. In *Jones v. Strom Construction Co.*,¹ this Court invalidated a

¹ *Jones v. Strom Constr. Co.*, 84 Wn.2d 518, 527 P.2d 1115 (1974).

provision requiring a subcontractor to indemnify a general contractor for the general contractor's sole negligence. Does the Court of Appeals decision conflict with *Jones* where (1) the decision does not address the issue of an indemnitee's sole negligence and (2) there is no evidence of Polygon's sole negligence?

III. STATEMENT OF THE CASE

A. Factual Background

Cambridge Townhomes, LLC, was the developer and Polygon Northwest Company was the general contractor on the Cambridge Townhomes Condominium project ("the Project") in Kirkland, Washington. (CP 4) The Project consists of 40 multi-unit buildings and was constructed in three phases between late 1997 and the middle of 2000. (CP 4, 456) Polygon hired numerous subcontractors to complete the work, including PJ, a siding installer.² (See CP 561-64)

In early 2003, the Cambridge Townhomes Owners Association ("HOA") notified Polygon of construction defects at the Project. (CP 456, 459) Polygon worked with the HOA to resolve the HOA's claims without

² Polygon entered into Master Agreements with PJ and other subcontractors that applied generally to all work performed by the subcontractors for Polygon. (See CP 551-60) Polygon also entered into separate subcontracts with PJ that applied to each particular project, including Cambridge. (CP 561-64) Thus, the applicable contracts in this case include both the Master Agreements and the Cambridge subcontracts.

litigation and invited the subcontractors to participate in the funding process. (CP 456-57) Polygon also tendered defense of the HOA's claims to the subcontractors pursuant to provisions in the subcontract agreements requiring the subcontractors to indemnify Polygon. (CP 5) The subcontractors did not accept Polygon's tender. (*Id.*) In November 2003, Polygon agreed to settle the HOA's claims for approximately \$5.3 million.³ (CP 2335, 2400)

B. Procedural Background

Polygon also attempted to resolve its claims against the subcontractors without litigation. (CP 457) When those efforts proved unsuccessful, Polygon filed suit, on March 24, 2004, asserting claims for indemnification and breach of contract. (CP 1-16) In an order entered May 16, 2005, the trial court dismissed Polygon's indemnity claims against all defendants on summary judgment. (CP 745-48) The court also ruled that Polygon could not proceed against PJ for claims against PJ's predecessor, a sole proprietorship. (CP 2024-28) The court subsequently dismissed Polygon's breach of contract claims against PJ. (CP 2396-98)

³ Polygon and the HOA executed a settlement agreement on November 21, 2003. (CP 2527-29) After Polygon was not immediately able to fund the settlement, the HOA filed suit against Polygon, in December 2003. (CP 5) The parties settled the claim shortly after suit was filed. (*Id.*)

In addition, the court denied a request by Polygon to amend its complaint to add PJ's predecessor as a defendant. (CP 2393-95)

On December 22, 2005, Polygon filed a notice of appeal seeking review of several orders entered by the trial court, including those described above. (CP 2447-89) In an unpublished opinion filed June 11, 2007, the Court of Appeals reversed the rulings against Polygon.⁴ The court subsequently denied PJ's motion for reconsideration, and PJ now seeks review in this Court.

IV. ARGUMENT

A. Review is not warranted pursuant to RAP 13.4(b).

RAP 13.4(b) does not authorize review in every case in which the Court of Appeals may have erred. Instead, a decision must fall into one of the categories listed in the rule. RAP 13.4(b) provides that a petition for review will be granted only if certain criteria are satisfied.

PJ does not cite RAP 13.4(b) in its petition for review. Instead, it merely asserts review should be granted because of the Court of Appeals' alleged errors.

⁴ *Cambridge Townhomes, LLC v. Pac. Star Roofing*, No. 57328-4-I (Wash. Ct. App., June 11, 2007).

PJ mentions, in passing, that this case involves issues of substantial public interest.⁵ However, it fails to explain how the unpublished Court of Appeals decision, which is predicated upon the specific facts of this case,⁶ satisfies this requirement. PJ also contends the Court of Appeals decision conflicts with this Court's decision in *Jones v. Strom Construction Co.*⁷ As explained in Section E below, and as the Court of Appeals correctly recognized, there is no conflict, and review therefore is not warranted on that basis.

In sum, PJ's petition for review is based upon its assertion that the Court of Appeals decision is wrong. That is not a criterion for review under RAP 13.4(b), and PJ's petition should therefore be denied.

B. The Court of Appeals correctly recognized that the sole proprietorship's bankruptcy does not preclude Polygon's claims.

PJ filed a motion for summary judgment in the trial court asserting, among other things, that P.J. Interprize, Inc., could not be liable for work performed on Phases I and II of the Project because that work was performed by Gerald Utley dba P.J. Interprize, the sole proprietorship. In

⁵ See Petition for Review at 4.

⁶ For example, PJ argues review should be granted because the requirements for successor liability are not satisfied under the facts of this case. See Petition for Review at 12-13.

⁷ *Jones v. Strom Constr. Co.*, 84 Wn.2d 518, 527 P.2d 1115 (1974).

response, Polygon argued (1) the corporation did, in fact, perform work on Phases I and II and (2) the corporation was liable for the sole proprietorship's obligations pursuant to the doctrine of successor liability.

The sole proprietorship incorporated on January 1, 1999. (CP 1440) Several years later, Utley and his wife filed for bankruptcy. (CP 1183-84) The bankruptcy application describes the debtor as an individual, not a corporation, and Schedule F listing creditors holding unsecured claims names only Gerald Utley and his wife as the debtors. (CP 1183, 1186-1203) However, in the section asking for "All Other Names used by the Debtor in the last 6 years" Utley answered, "dba PJ Interprize, Inc." (CP 1183) The bankruptcy then proceeded under the name "Gerald Utley dba P.J. Interprize, Inc." (*See* CP 1206)

Polygon filed a motion for relief from stay asking the bankruptcy court's permission to proceed against the debtor "to the extent of available insurance proceeds." (CP 1211-17) The court granted the motion, allowing Polygon to proceed in this action "against the Debtor . . . for the purpose of pursuing any insurance proceeds that are the result of any insurance coverage the Debtor may possess." (CP 1210) Utley was discharged from bankruptcy June 10, 2004. (CP 1206)

The trial court concluded the sole proprietorship's bankruptcy precluded Polygon from pursuing claims against the corporation arising

out of the sole proprietorship's work. (CP 2026) The Court of Appeals reversed, concluding the corporation was merely a continuation of the sole proprietorship and thus could be held liable for the sole proprietorship's obligations, in accordance with the doctrine of successor liability.

1. The Court of Appeals ruling does not conflict with bankruptcy law.

PJ argues that Polygon is attempting to circumvent the bankruptcy court's order by asserting successor liability against the corporation.⁸ PJ's argument is wrong in two respects.

First, only Gerald Utley, as sole proprietor, was discharged in bankruptcy. PJ was not a debtor in bankruptcy, and none of its liabilities were discharged. To the extent Polygon seeks to recover from PJ, it is not seeking to recover a debt discharged in bankruptcy. By seeking to prove PJ's successor liability, Polygon may prove the sole proprietorship's liability, but it is seeking to recover only from PJ. The sole proprietor's discharge does not protect PJ, which did not declare bankruptcy and was not discharged.

Second, to the extent Polygon seeks to recover from the sole proprietorship's insurance assets, it has leave of the bankruptcy court to do so. Thus, Polygon may seek not only to recover from PJ (and any rights it

⁸ Petition for Review at 9-11.

may have to insurance coverage available to its predecessor) but also from the sole proprietor's insurers for the sole proprietor's (or its successor's) liability.

In sum, Polygon is not seeking to recover damages from the sole proprietorship except to the extent it has been specifically authorized to do so by the bankruptcy court. The fact that Utley filed for bankruptcy over five years after the sole proprietorship incorporated does not apply retroactively to prevent Polygon from proceeding against the corporation under the theory of successor liability.

2. Polygon was not required to assert a claim for successor liability in its complaint.

PJ also argues that Polygon cannot assert successor liability because Polygon did not include a claim for successor liability in its complaint.⁹ PJ fails to appreciate that successor liability is not a claim; it is a theory of liability. In particular, Polygon asserted *claims* against PJ and the other defendants for indemnity and breach of contract. Polygon further asserted that PJ Interprize, Inc., should be held liable for those *claims* based upon a *theory* of successor liability. Polygon was under no obligation to assert a separate claim for successor liability in its complaint,

⁹ *Id.* at 11.

and its failure to do so does not preclude Polygon from arguing this theory of recovery.

3. The Court of Appeals correctly concluded the corporation was a mere continuation of the sole proprietorship.

Under the doctrine of successor liability, a corporation that purchases the assets of another corporation can be liable for the debts of the seller if (1) the buyer expressly or impliedly agreed to assume the seller's debts, (2) the purchase is a merger or consolidation, (3) the buyer is a mere continuation of the seller, or (4) the corporations are transferring the assets for the fraudulent purpose of avoiding liability.¹⁰ In this case, the Court of Appeals concluded PJ Interprize, Inc., was a "mere continuation" of PJ Interprize, and the corporation therefore could be held liable for the obligations of the sole proprietorship.¹¹

PJ contends successor liability does not apply in this case because (1) the doctrine does not apply when an entity changes from a sole proprietorship to a corporation and (2), even if it did, P.J. Interprize, Inc., is not a "mere continuation" of P.J. Interprize.¹² As the Court of Appeals

¹⁰ *Eagle Pac. Ins. Co. v. Christensen Motor Yacht Corp.*, 135 Wn.2d 894, 901, 959 P.2d 1052 (1998).

¹¹ Slip op. at 11.

¹² Petition for Review at 11-14.

correctly recognized, PJ is wrong on both counts.

First, although the Washington courts have not directly addressed this issue, courts in other jurisdictions have recognized that a corporation can be a continuation of a sole proprietorship for purposes of successor liability.¹³

Second, the fact that the sole proprietorship was discharged in bankruptcy does not prevent application of the doctrine of successor liability. In support of its argument on this issue, PJ relies upon cases from other jurisdictions in which the courts declined to find successor liability because (1) the plaintiff failed to pursue his claim in the bankruptcy court¹⁴ and (2) the sole proprietor had died, and his estate had already been probated.¹⁵

In this case, PJ Interprize's discharge in bankruptcy does not preclude application of the successor liability doctrine because (1) the corporation became liable for the sole proprietorship's obligations many

¹³ See, e.g., *Firkin v. U.S. Polychemical Corp.*, 835 F. Supp. 1048, 1051 (N.D. Ill. 1993); *Clardy v. Sanders*, 551 So. 2d 1057, 1062-63 (Ala. 1989); *C & J Builders & Remodelers, LLC v. Geisenheimer*, 733 A.2d 193, 197 (Conn. 1999); *Monroe v. Interlock Steel Co.*, 487 N.Y.S.2d 1013, 1015 (N.Y. Sup. Ct. 1985); *Tift v. Forest King Indus., Inc.*, 322 N.W.2d 14 (Wis. 1982).

¹⁴ *Consol. Servs. & Constr., Inc. v. S.R. McGuire Builder & Gen. Contractor*, 854 N.E.2d 715 (Ill. App. Ct. 2006).

¹⁵ *Crane Constr. Co. v. Klaus Masonry, LLC*, 114 F. Supp. 2d 1116 (D. Kan. 2000).

years before Utley filed for bankruptcy, and (2) the bankruptcy court specifically authorized Polygon to pursue the sole proprietorship's insurance proceeds. Holding P.J. Interprize, Inc., liable for the obligations of the sole proprietorship will not interfere with the rulings of any other court, and the cases cited by PJ are therefore inapposite.

PJ also argues that, assuming the successor liability doctrine can apply when a sole proprietorship changes into a corporation, the requirements for successor liability are not present in this case.¹⁶ In particular, PJ contends that Polygon did not establish that the corporation is a continuation of the sole proprietorship because there was no continuity of officers, directors, or shareholders between the two entities.¹⁷ PJ fails to appreciate that the factors used to determine whether one corporation is a continuation of another corporation cannot be strictly applied when, as here, the initial entity is a sole proprietorship. Obviously, a sole proprietorship can *never* have officers, directors, or stockholders, so this requirement can *never* be satisfied when a sole proprietorship converts into a corporation. Moreover, there would be no reason for a sole proprietorship to "sell" its assets to a corporation operated by the sole proprietor.

¹⁶ Petition for Review at 12-13.

¹⁷ *Id.*

Instead, the courts have looked at whether the old and new entities are engaged in the same type of business, whether the same individuals are involved, and whether the successor continued operations initiated by its predecessor.¹⁸

In this case, as the Court of Appeals recognized, there are numerous indicia establishing that P.J. Interprize, Inc., was a mere continuation of P.J. Interprize, the sole proprietorship. For example, Utley was both the sole proprietor and the president of the corporation. The sole proprietorship and the corporation performed the same work for the same contractor. The directors of the corporation were Utley's family members and long-time employees of the sole proprietorship.¹⁹

Under these circumstances, as the Court of Appeals correctly recognized, the corporation is merely a continuation of the sole proprietorship and, as such, should be held responsible for the sole proprietorship's obligations.

¹⁸ See, e.g., *Tift*, 322 N.W.2d at 17-18; *Firkin*, 835 F. Supp. at 1050-51; *Clardy*, 551 So. 2d at 1059; *C & J Builders*, 733 A.2d at 194-95; *Monroe*, 487 N.Y.S.2d at 1014.

¹⁹ Slip op. at 11. And, as the Court of Appeals noted, the trial court concluded the corporation was merely a continuation of the sole proprietorship because "[I]t's the same people and they're doing the same business, and all of this is a continuation." (10/21/05 RP at 66)

C. **The Court of Appeals correctly recognized that Polygon's claims are not barred under RCW 4.16.326(1)(g).**

After the trial court ruled Polygon could not proceed against the corporation for claims against the sole proprietorship, Polygon sought to amend its complaint to add the sole proprietorship as a defendant. PJ argued, among other things, that the amendment would be futile because the claims against the sole proprietorship were time-barred. The Court of Appeals rejected this argument.²⁰

PJ relies upon RCW 4.16.326(1)(g) to support its claim that Polygon's claims against the sole proprietorship are untimely.²¹ RCW 4.16.326(1)(g), which went into effect July 27, 2003, states:

(1) Persons engaged in any activity defined in RCW 4.16.300 may be excused, in whole or in part, from any obligation, damage, loss, or liability for those defined activities under the principles of comparative fault for the following affirmative defenses:

* * *

(g) To the extent that a cause of action does not accrue within the statute of repose pursuant to RCW 4.16.310 or that an actionable cause as set forth in RCW 4.16.300 is not filed within the applicable statute of limitations. In contract actions the applicable contract statute of limitations expires, regardless of discovery, six years after substantial completion, or during the period enumerated in RCW 4.16.300, whichever is later

²⁰ Slip op. at 12-13.

²¹ Petition for Review at 14-15.

This statute does not bar either Polygon's breach of contract claim or its indemnity claim against the sole proprietorship.²² First, Polygon's claims against the sole proprietorship are not barred because Polygon's proposed amendment adding the sole proprietorship as a defendant relates back to the date of the original complaint—March 24, 2004.²³ PJ does not mention the relation back doctrine in its petition for review or explain why it would not apply.

Second, even if the relation back doctrine did not apply, Polygon's claims against the sole proprietorship would not be time-barred. Polygon's breach of contract claim accrued, at the latest, in early 2003, when it discovered the construction defects at issue—several months before the effective date of RCW 4.16.326(1)(g).²⁴ (CP 456, 459) When a cause of action accrues before the enactment of a new statute of limitations, the limitations period begins to run from the effective date of

²² PJ fails to distinguish between Polygon's breach of contract and indemnity claims or acknowledge that these claims are treated differently under RCW 4.16.326(1)(g).

²³ See slip op. at 12-13.

²⁴ See *1000 Va. Ltd. P'ship v. Vertecs Corp.*, 158 Wn.2d 566, 582, 146 P.3d 423 (2006). If, as PJ asserts, the cause of action accrued in 1999, it also accrued before the effective date of RCW 4.16.326(1)(g). The statute does not apply retroactively. *1000 Va.*, 158 Wn.2d at 435-36.

the statute that makes the change.²⁵ Thus, the six-year contract statute of limitations did not begin to run until July 27, 2003, meaning that Polygon has until July 27, 2009, to file suit against the sole proprietorship.

Nor would Polygon's indemnity claim against the sole proprietorship be time-barred. That action accrued November 21, 2003, when Polygon settled, and became legally obligated to make payment on, the HOA's claim.²⁶ Polygon filed suit March 24, 2004. The six-year statute of limitations/statute of repose set forth in RCW 4.16.326(1)(g) applies only to contract actions, not to indemnity actions. Thus, Polygon's indemnity claim was timely as long as (1) the claim accrued within six years of substantial completion, in accordance with RCW 4.16.310, and (2) Polygon filed suit within six years after the claim accrued.²⁷ Both these requirements have been satisfied here, and Polygon's indemnity claim against the sole proprietorship therefore is not time-barred.

²⁵ *Merrigan v. Epstein*, 112 Wn.2d 709, 717, 773 P.2d 78 (1989).

²⁶ See *Parkridge Assocs., Ltd. v. Ledcor Indus., Inc.*, 113 Wn. App. 592, 603-04, 54 P.3d 225 (2002) (defendant's indemnification claim accrued *either* when it reached settlement agreement with third party *or* when it actually made payment to third party).

²⁷ See *Cent. Wash. Refrigeration, Inc. v. Barbee*, 133 Wn.2d 509, 517, 946 P.2d 760 (1997) (statute of limitations begins to run on indemnity claim when party seeking indemnity pays or is legally adjudged obligated to pay damages to a third party). Because the indemnity agreement in this case was set forth in a written contract, the six-year statute of limitations applicable to such contracts should apply. See RCW 4.16.040(1).

D. The Court of Appeals correctly ruled that Polygon's indemnity claim has accrued.

PJ argued that Polygon could not enforce an indemnity provision in its contract with PJ because Polygon's indemnity claim has not yet accrued.²⁸ The Court of Appeals rejected this argument and reinstated Polygon's indemnity claim.²⁹

PJ argues the Court of Appeals erred because the November 21, 2003, settlement with the HOA fell through.³⁰ PJ fails to appreciate that the November 21, 2003, Settlement Agreement specifically obligates Polygon to pay the HOA \$5,000,544, thus triggering the accrual of Polygon's indemnity claim.³¹ (CP 2527) In addition, the declaration of T. Christopher Landschulz, Polygon's risk manager, explains:

On or about November 21, 2003, the HOA and Cambridge and Polygon settled the claim under the formal mediation protocol via a written Settlement Agreement. Based upon the neutrals' scope and cost of repair, Cambridge and Polygon *paid* to the HOA the sum of \$5,000,544 with amounts of \$370,809 for allowances and contingencies and \$10,000 for Construction Management held as a reserve by Cambridge and Polygon and paid only on an as needed basis.

²⁸ Slip op. at 7.

²⁹ *Id.*

³⁰ Petition for Review at 15-17.

³¹ *See Parkridge*, 113 Wn. App. at 603-04.

(CP 2496 (citation omitted and emphasis added)) Mr. Landschulz also testified, in a declaration dated April 25, 2005, that “Polygon resolved the claims by the HOA via negotiated resolution.” (CP 1435) Under these circumstances, there is ample evidence to support the Court’s conclusion that Polygon’s indemnity claim has accrued.³²

E. The Court of Appeals correctly applied the *MacLean Townhomes* decision.

In concluding the indemnity provision in the agreement between Polygon and PJ applied to Polygon’s claims for economic loss caused by a breach of contract, the Court of Appeals relied upon its earlier decision in *MacLean Townhomes, L.L.C. v. America 1st Roofing & Builders, Inc.*³³ In that case, the court construed the *identical* indemnity provision at issue here in a contract to which PJ was a party. PJ sought review of the *MacLean Townhomes* decision by this Court but later withdrew its petition for review.

³² PJ’s argument is based upon its assertion that the funding for the November 21, 2003, fell through. *Id.* at 16-17. In support of this assertion, PJ relies on evidence stricken by the Court of Appeals. PJ challenges the ruling granting Polygon’s motion to strike but offers no evidence or authority to support its position. In fact, the Court of Appeals correctly refused to consider evidence that PJ did not submit to the trial court.

³³ *MacLean Townhomes, L.L.C. v. Am. 1st Roofing & Builders, Inc.*, 133 Wn. App. 828, 138 P.3d 155 (2006).

PJ contends the *MacLean* decision conflicts with this Court's decision in *Jones v. Strom Construction Co.*,³⁴ asserting *MacLean* authorized indemnity regardless of whether the loss arose from the indemnitor's breach of contractual duties.³⁵ According to PJ, under the reasoning set forth in *MacLean* and adopted by the Court of Appeals in this case, "The only condition necessary to invoke the duty to indemnify is that the claim have some connection with the Corporation's performance of its subcontract."³⁶

The issue before the *MacLean* court and before the Court of Appeals in this case was whether the indemnity provision at issue applied only to tort claims or whether it applied to contract-based claims as well. Neither court made a determination with respect to the scope of liability for contract claims. The Court need not accept review to address an issue that was not before the Court of Appeals and that was not decided by that court.

Moreover, contrary to PJ's assertion, *Jones* did not hold that broad indemnity provisions are unenforceable, it merely limited their application

³⁴ *Jones v. Strom Constr. Co.*, 84 Wn.2d 518, 527 P.2d 1115 (1974).

³⁵ Petition for Review at 17.

³⁶ *Id.*

to “those cases in which some activity of the employer contributed to the injury.”³⁷

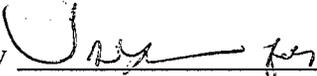
Here, there is no allegation that the damages at issue were caused by Polygon’s sole negligence. Thus, this Court’s decision in *Jones* has no application. As the *MacLean* court correctly recognized, the Washington courts have not prohibited enforcement of indemnity provisions such as those at issue here, and the court did not err in concluding those provisions are not limited to tort claims.

V. CONCLUSION

For the reasons set forth above, Polygon respectfully requests that the Court DENY PJ’s petition for review.

DATED this 4th day of February, 2008.

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³⁷ *Brame v. St. Regis Paper Co.*, 97 Wn.2d 748, 649 P.2d 836 (1982) (citing *Redford v. Seattle*, 94 Wn.2d 198, 205, 615 P.2d 1285 (1980)).

CERTIFICATE OF SERVICE

The undersigned certifies that on this 4th day of February, 2008, I

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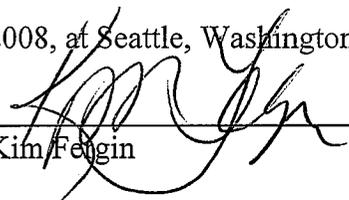
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- first class mail.
- facsimile.

Gregory P. Turner
Lee Smart Cook Martin & Patterson,
P.S., Inc.
701 Pike St., Ste. 1800
Seattle, WA 98101-3929

- hand delivery.
- first class mail.
- facsimile.

I declare under penalty of perjury under the laws of the State of
Washington this 4th day of February, 2008, at Seattle, Washington.



Kim Felgin

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