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STATE OF WASHINGTON

No. 82950-1

SUPREME COURT

OF THE STATE OF WASHINGTON

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CHERYL FORBES and COLLEEN MYERS,

Petitioner on Review

v.

AMERICAN BUILDING MAINTENANCE COMPANY WEST;  
ABM JANITORIAL SERVICES; ABM INDUSTRIES INC.,

Defendants,

and

MARY E. SCHULTZ and ASSOCIATES, P.S.,

Respondent to Petition

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**RESPONDENT'S SUPPLEMENTAL BRIEF  
TO PETITION FOR REVIEW**

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CLERK

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**A. Introduction.**

This is Respondent Mary Schultz's supplemental brief in *Forbes v. American Bldg. Maintenance Co. West*, 148 Wn. App. 273, 198 P.3d 1042 (2009).

**B. Issues for Review.**

1. Is an award of prejudgment interest properly within a court's discretion when the award is against a party who owes another party funds, but who controls, deposits and invests all funds owed into a bank account under her own name while disputing the debt?

2. Is a satisfaction of judgment a binding accord and satisfaction contract between two parties, which substitutes for any prior settlement agreement?

**C. Statement of the Case.**

Respondent Attorney Mary Schultz, ("Schultz"), performed a six week employment discrimination trial against Defendant ABM Industries, Inc. ("ABM") for Petitioner Cheryl Forbes, ("Forbes"), pursuant to a contingent fee agreement. *Appendix A hereto; CP 555-568*. Trial resulted in total judgments in Forbes's favor of \$5.7 million. *CP 1801, 1802; and CP 372-373*. Schultz represented Forbes on appeal, whereby all verdicts and judgments were affirmed. *CP 1804*. By then, the judgments obtained were

worth approximately \$7,000,000. *CP 1810*. After Schultz responded to ABM's petition for review, ABM made an opening settlement offer to Forbes of \$5,000,000. *CP 1804, 1805*. On August 1, 2005, Forbes met with new counsel, discharged Schultz by email, and settled her case with ABM. *CP 1804, finding 51; CP 1806, finding 62*. Forbes completed all subsequent settlement negotiations through her new counsel. *CP 1806, finding 63*. On Aug. 2, 2005, Schultz filed a lien against the judgment values at her contractual 44% trial fee. *Forbes*, 148 Wn. App. at 284. ABM deposited those liened funds into the registry of the court to allow Forbes and Schultz to address their fee dispute. *Appendix B, CP 499-500*.

On September 16, 2005, Forbes executed and filed a Satisfaction of Judgment for ABM. *Appendix D, CP 497-498*. The Satisfaction confirmed Forbes's recovery of her judgment in the amount of \$5,655,176.70.<sup>1</sup>

Throughout the year long pendency of the ensuing fee dispute, Forbes made no tender of any funds owed to Schultz. In July 2006, the trial court ordered Forbes to pay Schultz the majority of substantial fees owed. *CP 2099*. The Court ordered Forbes to pay the settlement

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<sup>1</sup> The Satisfaction of Judgment reads as follows:

"Cheryl Forbes, Plaintiff and Judgment Creditor in this action, hereby acknowledges full satisfaction of the judgment recovered ... in the amount of \$5,655,176.70, together with interest, as this claim has been settled."

*Appendix D, CP 497, emphasis added.*

contingency of the fee contract as opposed to the trial contingency, concluding that Forbes had settled her case. *CP 1810*, finding 87. It ordered prejudgment interest on amounts owed. *CP 1813*. Both rulings were upheld on appeal. *Forbes*, 148 Wn. App. at 301. The Appellate Court modified the amount owed by Forbes, however, because the satisfaction of judgment document confirmed the amount Forbes actually “received” via her settlement. Forbes appeals from both decisions.

**D. Argument.**

**1. Standard of review – Prejudgment Interest.**

A trial court's award of prejudgment interest is reviewed for abuse of discretion. *Crest Inc. v. Costco Wholesale Corp.*, 128 Wn. App. 760, 775, 115 P.3d 349, 357 (2005); *Hadley v. Maxwell*, 120 Wn. App. 137, 141, 84 P.3d 286 (2004).

**2. Contingency fee contracts provide for liquidated amounts owing.**

Prejudgment interest applies when a party retains funds rightfully belonging to another, and where the amount of the funds at issue is “liquidated”; that is, an amount owed is considered liquidated if it can be calculated with precision and without reliance on opinion or discretion. *Mahler v. Szucs*, 135 Wn.2d 398, 429-430, 957 P.2d 632 (1998), citing *Prier v. Refrigeration Eng'g Co.*, 74 Wn.2d 25, 33, 442 P.2d 621 (1968);

*State Dept. of Corrections v. Fluor Daniel, Inc.*, 160 Wn.2d 786, 789, 161 P.3d 372 (2007). Contingency fee contracts between an attorney and their client are considered liquidated, because the provisions of the contract are formulaic, can be applied with precision, and the amount owed computed without exercising discretion. *Mahler*, 135 Wn.2d at 428; and see *Taylor v. Shigaki*, 84 Wn. App. 723, 732, 930 P.2d 340 (1997). The contract at issue here provides for formulaic results. *Appendix A, para. 5*.

Forbes claims that by her challenging her contract in its entirety, or by making claims of misconduct against her lawyer, she may render a formulaic contractual fee unliquidated. Washington courts have repeatedly rejected this concept. Differences of opinion as to what is owed, including claims that nothing at all is owed, have never been held to properly excuse a party from paying for work performed for them. *Prier*, 74 Wn.2d at 34; *Taylor*, 84 Wn. App. at 732. It is equally well established that a dispute over the whole or part of the claim does not convert a liquidated claim to an unliquidated claim. *Weyerhaeuser Co. v. Commercial Union Ins. Co.*, 142 Wn.2d 654, 685, 15 P.3d 115 (2000). A liquidated claim remains liquidated even if a party is partially successful in reducing his or her share of liability. *Id.*, 142 Wn.2d at 685; *Prier*, 74 Wn.2d at 33.

Forbes argues that *Cosmopolitan Eng'g Group, Inc. v. Ondeo Degremont, Inc.*, 128 Wn. App. 885, 117 P.3d 1147 (2005) supports her

proposition that a contracted fee is an unliquidated amount owing. Not only does the case not so state—it addresses matters of quantum meruit—but its discussion on prejudgment interest is unpublished.

Forbes next claims that the trial court's discretion over what constitutes a "reasonable fee" renders a formulaic contractual contingent fee unliquidated. She misconstrues the authority of a trial court in a fee dispute. *Ross v. Scannell*, 97 Wn.2d 598, 647 P.2d 1004 (1982) does not address liquidated fees. It holds that where an attorney's acts are egregious enough, i.e., where the attorney is "guilty of fraudulent acts or gross misconduct in violation of a statute or against public policy," a client may assert a defense to the attorney's action for fees. *Id.* at 610. But that attorney's action for fees remains based on the formulaic contract.

Here, Forbes cannot render a contractual fee owed unliquidated by claiming misconduct. Any such ruling would promote withholding of fees, contractual disputes, and accusations of attorney misconduct.

Forbes also argues that RCW 4.24.005 "unliquidates" her fee owing because the trial court can allegedly set the fee it desires.<sup>2</sup> The statute says no such thing. And such a reading would nullify fee contracts

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<sup>2</sup> RCW 4.24.005 states in relevant part as follows: "Any party charged with the payment of attorney's fees in any tort action may petition the court not later than forty-five days of receipt of a final billing or accounting for a determination of the reasonableness of that party's attorneys' fees. The court shall make such a determination and shall take into consideration the following:...."

entirely. In fact, RCW 4.24.005 is simply the statute whereby the court determines whether the fee contractually set by the attorney is a "reasonable fee." Here, the trial court considered the statute and found the contracted fee reasonable. *CP 1809-1810; CP 1811, para. 90.*

Forbes also confuses precedent involving attorney fee determinations between a plaintiff and a defendant, with that precedent addressing contractual fees owed by a client to their own attorney. *See, e.g. Weyerhaeuser Co.*, 142 Wn.2d at 688; *Safeco Ins. Co. v. Woodley*, 150 Wn.2d 765, 773, 82 P.3d 660, 664 (2004) (holding that a liquidated sum is present where ratios exist for determining shares of legal expenses, but such fees do not exist in awards of, e.g., "prevailing party fees" determined at the discretion of the trial judge); versus, e.g., *Goncharuk v. Barrong*, 132 Wn. App. 745, 750, 133 P.3d 510 (2006); *Taylor*, 84 Wn. App. at 723; and *Barrett v. Freise*, 119 Wn. App. 837, 82 P.3d 1179 (2003). Discretionary fee determinations between, e.g. Forbes and ABM are different than contractual formulaic fees between a client and her attorney; the precedent cited by Forbes is inapplicable.

In sum, no abuse of discretion occurred in the trial court's determination that the amounts owed by Forbes were a liquidated contractual sum owing, subject to prejudgment interest.

3. **If a party controls the investment of disputed funds, that party has use value of the funds, subject to prejudgment interest.**

a. The court registry protection for tendered funds is inapplicable here.

Historically, the protection against prejudgment interest for funds placed into the court registry arises for those funds acknowledged as owed by a party disputing a debt. On acknowledging a debt owed, the debtor may tender the amounts disclaimed into the registry. *See Koncicky v. Sekac*, 103 Wn. App. 292, 298, 12 P.3d 645 (2000). The registry is created for this purpose, per interpleader statutes, i.e. RCW 4.08.160 and RCW 4.08.170. By depositing “the full amount of such money or indebtedness” agreed to be owed, the party “shall not be liable for any costs accruing in said action.” *RCW 4.08.170*.

The interpleader statutes are consistent with court rule (CR) 22, which also governs interpleader. Here, ABM was the interpleader. *Appendix B, CP 499-500*. ABM interpled funds into the registry to avoid its own exposure to double or multiple liability. *See CR 22; and see, e.g., Messinger v. New York Life Ins. Co.*, 20 Wn. App. 790, 795, 581 P.2d 1381 (1978).

Forbes was not an interpleader. She did not disclaim any funds into the registry, and made no tender to Schultz of funds owed at any time. The interpleader rationale behind registry protection does not apply to Forbes's actions. *RCW 4.08.170*.

Forbes argues that prejudgment interest is tolled because ABM interpleaded the funds into the Court for her. Her cite to *Crest Inc.*, 128 Wn. App. at 760, does not support her claim. Consistent with *Koncicky*, the *Crest* court holds that the protection from prejudgment interest in the registry is only on "undisputed amounts" agreed owed, paid into the court's registry. *Id.* at 775.

Again, Forbes did not interplead the funds. *CP 499-500*. She did not disclaim her interest in those funds. She is not protected by the interpleader statutes. *Koncicky*, 103 Wn. App. at 298.

b. Forbes had use value of the registry funds.

"The touchstone for an award of prejudgment interest is that a party must have the 'use value' of the money improperly." *Mahler*, 135 Wn.2d at 430. "Use value" occurs when a party has the *ability* to invest the funds owed, whether they choose to exercise that ability or not. In other words, "use value" doesn't require actual use. *Id.* This court's opinion in *Mahler* makes clear that a party who retains owed funds even in their own counsel's trust account has use value of the funds, because they

have the ability to invest the funds if they so choose. *Id.* at 430.

Consistently, in *Richter v. Trimberger*, 50 Wn. App. 780, 782, 750 P.2d 1279 (1988), the Trimbergers offered Richter \$12,000, and tendered those funds into the court registry. Richter chose not to accept those tendered funds. *Id.* But simply because Richter did not use the tendered funds, the debtor had disclaimed the use value to Richter by tender. *Id.* at 785. Richter could have invested the funds. *Id.* As a result, prejudgment interest was not proper--the use value of the funds had been transferred to the creditor. *Id.* at 786.

In sum, the act of tendering disclaimed funds into the registry to the person owed the debt, assumedly to promote resolution of the claim, is the act that removes the "use value" of the funds from the debtor/offeror, and places that use value in the hands of the creditor.

Forbes never relinquished use value of these funds in the registry.

c. Forbes used the registry funds.

Not only did Forbes *not* use the registry to disclaim funds, and thereby relinquish use value, but she *used* the funds. Forbes took possession of ABM's interpled funds by demanding a Clerk's check directly payable to her bank "for the benefit of Cheryl Forbes." *Appendix E, CP 2105-2109*. Forbes sent the Clerk a W-9 form. *Id.* An IRS W-9 form is a "payee" form. *See Appendix F, I.R.S. Dept. of Treasury Instructions*

for Request of Form W-9, with “payee” used throughout. By this demand, Forbes obtained transfer of the funds, and invested the funds herself “in trust for Cheryl Forbes,” in her selected money market account, at her chosen investment rate of 2.9%. *Appendix E, CP 2105-2109.*

And thusly, not only did Forbes not relinquish use value, she invested the funds for her own benefit. She used the funds.

Under RCW 4.08.160, when “disclaimed” funds are tendered, a litigant may ask that the funds be invested. *RCW 36.48.090.* But that isn’t what Forbes did here. Here, ABM made that investment request. *CP 499-500.* The Clerk did not invest the funds at ABM’s request.<sup>3</sup>

The same statute expressly prohibits the Clerk from placing those funds “in the possession of any person to be used for any purpose; nor shall (the Clerk) loan or in any manner use or permit any person to use the same...” *RCW 36.29.020.* Here, the Clerk delivered the funds into the possession of Forbes’s bank, for Forbes’s benefit, at Forbes’s directive, and allowed her the use of the funds as an investment, and as a W-9 payee. *CP 2105-2109.* Forbes invested the funds.

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<sup>3</sup> The investment authority given the clerk, i.e. “such investment” authority, per RCW 36.48.090 requires the Clerk to invest the funds in an authorized means under RCW 36.29.020, which did not occur here. *Id.* And per RCW 36.29.020, the Clerk’s investment authority under RCW 36.48.090 is limited “up to the insurance limits afforded such accounts by the federal savings and loan insurance corporation,” i.e., \$250,000. *See annotations to RCW 36.29.020, citing Op.Atty.Gen.1983, No. 19; and see also <http://www.fdic.gov/deposit/deposits/dis/index.html>.*

To recap, not only were these disputed funds not disclaimed to the registry by Forbes, but Forbes actively removed those funds and re-deposited the funds into a trust for herself. She invested them for herself while the action was pending. Forbes not only had “use value” of the funds, she “used” the funds.

Forbes cites *Wilson v. Henkle*, 45 Wn. App. 162, 169, 724 P.2d 1069 (1986) as alleged support for her claim that she had no authority or control over the funds in the registry. Her actions show the opposite. Moreover, her reliance on *Wilson* is misplaced. *Wilson* simply identifies the duty of the clerk to “distribute the funds to the party or parties that show themselves entitled thereto...” per RCW 4.44.480. *Id.* at 169. Here, Forbes was not entitled to the disputed funds, but used the funds anyway.

Per *Mahler* and by statute, prejudgment interest was well within the trial court’s discretion.

**4. The September 16, 2005 Satisfaction of Judgment is the only contract existing between Forbes and ABM, as it substituted and discharged any prior agreements.**

a. The standard of review is de novo.

Forbes asserts that the Appellate court determined an issue of “fact” as to whether or not she settled her suit for \$5 million. *See Forbes Petition for Review, pp. 15-20.* It did not. The Appellate Court held that

the Satisfaction of Judgment filed by Forbes on September 16, 2005 controlled “the amount *actually received* in settlement.” *Forbes*, 148 Wn. App. 278, *emphasis added*. In other words, the Appellate court held that what controlled the contingent fee contract application was the accord and satisfaction—not just the accord. This is a ruling of law.

Absent a dispute over relevant facts, the construction or legal effect of a contract is a question of law reviewed de novo. *Yeats v. Yeats' Estate*, 90 Wn.2d 201, 204, 580 P.2d 617 (1978); *Rosen v. Ascentry Technologies, Inc.*, 143 Wn. App. 364, 369, 177 P.3d 765 (2008). The relevant facts here are that Forbes entered into a settlement contract with ABM on September 15, 2005. A day later, she then entered into a satisfaction of judgment with ABM on September 16, 2005. *Appendix C, and Appendix D*. No dispute exists over those relevant facts.

Likewise, interpretation of the *terms* of the agreement between Forbes and ABM is also a question of law, subject to de novo review. *Major Products Co., Inc. v. Northwest Harvest Products, Inc.*, 96 Wn. App. 405, 411, 979 P.2d 905 (Div. I, 1999). The terms of the agreement between Forbes and ABM are at issue.

- b. The Satisfaction of Judgment is the only existing agreement between Forbes and ABM upon which rights can be based.

Forbes verbally claimed to have settled for \$5,000,000.<sup>4</sup> But Forbes's self-serving testimony about the amount for which she settled with a third party has no probative force. *Ziebarth v. Manion*, 161 Wn. 201, 206, 296 P. 561 (1931). A party may not establish agreement with a third party by self-serving testimony. *Fairchild v. Davis*, 148 Wn. App. 832, 207 P.3d 449 (2009).

Forbes also produced a near completely redacted September 15, 2005 settlement agreement. *Appendix C, CP 1947-1950*.<sup>5</sup> But that settlement agreement is only an "accord," i.e., an agreement pending the full performance of that accord. *Rosen*, 143 Wn. App. at 369-372. A settlement agreement is presumed to be only an "executory accord," not the substituted contract. *Id.* at 370. The original \$7 million in judgments held by Forbes against ABM were merely suspended by this September 15 settlement accord. *Id.* Had ABM breached that accord, Forbes would have

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<sup>4</sup> Schultz was excluded from all involvement in the settlement, in spite of repeatedly requesting information. *App. E, CP 2116-2118*. She received only a redacted settlement agreement; Schultz argued that whatever Forbes's settlement was, the Satisfaction of Judgment controlled. *Opening Brief, pp. 39-40, § d.*

<sup>5</sup> On appeal, and on a motion to reconsider, Forbes improperly submitted additional evidence, i.e., the full contract, to Division III. That evidence was not before the trial court. It must be disregarded, although it becomes irrelevant in any event.

been able to enforce her original \$7 million in judgments, or her accord. Accord and satisfaction therefore consists not only of (1) a bona fide dispute, and (2) an agreement to settle that dispute, but (3) *performance* of that agreement. *Perez v. Pappas*, 98 Wn.2d 835, 843, 659 P.2d 475 (1983), *emphasis added. Id.*

An accord is thus enforceable as a contractual agreement in its own right. *Id.* But an accord and satisfaction becomes a new agreement. *Northwest Motors, Ltd. v. James*, 118 Wn.2d 294, 303-04; 822 P.2d 280 (1992); *Hynes v. Hynes*, 28 Wn.2d 660, 672, 184 P.2d 68 (1947); *Oregon Mut. Ins. Co. v. Barton*, 109 Wn. App. 405, 413-414, 36 P.3d 1065, 1069 (2001). Upon Forbes as creditor removing the funds from the control of the debtor ABM, a substitute contract—the accord and satisfaction—is effected. *State Dept. of Fisheries v. J-Z Sales Corp.*, 25 Wn. App. 671, 680, 610 P.2d 390 (1980).

In other words, Forbes's September 15 settlement accord shows only what was contemplated between Forbes and ABM that she receive. The September 16 Satisfaction of Judgment then substituted for her September 15 settlement accord. That completed accord and satisfaction thereby cut off all defenses and arguments based on the underlying settlement contract. *Northwest Motors Ltd.*, 118 Wn.2d at 304-305. The Satisfaction is the agreement between Forbes and ABM, not the accord.

Indeed, all Forbes objectively evidenced was her accord—her email, and the settlement accord contract. Had ABM’s performance of the accord resulted in only \$5,000,000 total, however, the Satisfaction would have said so by simply stating, e.g., “Forbes confirms receipt of \$5,000,000 from ABM in full satisfaction and compromise of all judgments rendered herein.” But the Satisfaction does not say that. In fact, the “settlement reached” cannot be determined from the document. The Satisfaction simply says, “...as this claim has been settled.”<sup>6</sup> By operation of law, under the substitute contract, Forbes’s “settlement reached” is unknown; recovery of her judgment is substituted. The specific language used by Forbes in the substitute contract confirms only that she recovered her judgment of \$5,655,176.70.

The result is mandatory. All prior contracts having been superceded and the Satisfaction *substituted* therefore, the Satisfaction is the only agreement between Forbes and ABM. It therefore controls party rights. The amount listed by Forbes as recovered, and the manner of recovery so identified, cannot be contradicted by parole evidence. *Shelton v. Fowler*, 69 Wn. 2d 85, 93, 417 P.2d 350 (1966). Any ambiguity in the

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<sup>6</sup> The Satisfaction of Judgment reads as follows:

“Cheryl Forbes, Plaintiff and Judgment Creditor in this action, hereby acknowledges full satisfaction of the judgment recovered ... in the amount of \$5,655,176.70, together with interest, as this claim has been settled.”

*Appendix D, CP 497.*

Satisfaction is construed against the drafter. *Felton v. Menan Starch Co.*, 66 Wn.2d 792, 797, 405 P.2d 585 (1965). Extrinsic evidence may not be used to "vary, contradict or modify the written word" of that contract. *Hearst Communications, Inc. v. Seattle Times Co.*, 154 Wn.2d 493, 503-504, 115 P.3d 262, 267 (2005), *quote omitted*.

Specificity is required in a satisfaction, per RCW 4.56.100, because once entered, a satisfaction of judgment is a binding accord and satisfaction. *See, e.g., Lindsay v. Pacific Topsoils, Inc.*, 129 Wn. App. 672, 679, 120 P.3d 102 (2005) (wherein a party allowed for withdrawal of disputed funds only if the other agreed that the money drawn constituted a full satisfaction of judgment, and wherein the court held that such an act of withdrawal would render that party vulnerable to the application of "accord and satisfaction"). Once the judgment is discharged by a satisfaction, any such Satisfaction of Judgment on the parties involved becomes irrevocable. *Western Community Bank v. Grice*, 55 Wn. App. 290, 292-294, 777 P.2d 39 (1989) (holding that CR 60 may not even be available to claim error in the substance of such a document).

Moreover, an attorney's act in directing a satisfaction of judgment is binding on a client. *State v. Ballinger*, 41 Wn. 23, 29-30, 82 P. 198 (1905). If Forbes's attorney violated a duty to Forbes in directing such an

accord and satisfaction, then she must look to that attorney for her remedy, not to Schultz. *Id.*

The September 16 Satisfaction of Judgment thus substituted for the September 15 accord. The Satisfaction is therefore the only contract between Forbes and ABM. The Appellate Court correctly ruled that the amount “actually received” was \$5,655,175.70.

- c. The Satisfaction must be applied to determine the contingency owed as to both the amount and the manner of recovery.

Upon properly concluding that the amount “actually received” by Forbes is that listed in the satisfaction, the Appellate Court erroneously failed to implement that controlling Satisfaction to the *manner* of recovery. As noted above, the substitute contract between Forbes and ABM contains no numerical “settlement reached” upon which the contingency fee contract’s settlement percentage can operate.

Applied here, the operative November 2, 2004 contingency fee agreement between the parties reads as follows:

5. Contingency Fee: The attorney fees shall be a sum equal to 40% of any and each ... amounts reached in settlement ... and forty (44%)(sic) percent of any judgment after a trial on the merits and/or appeal by any part to the action,  
... \* \*

*Appendix A(ii), CP 556.*

The substitute contract does not identify the amount reached in settlement. It identifies only recovery of the judgment in the amount of \$5,655,176.70. Thus, the only contingency term able to be applied is that term applicable against recovery of the judgment. This is consistent with the continued portion of the fee contract:

**\* \* \* “.....the attorney herein agreed and agrees to continue representation on the case on a contingent fee basis only, in exchange for the larger percentage of any amount reached in settlement reflected above, i.e. \$40%, and a larger percentage of the receipt following trial, i.e. 44%.”**

*Appendix A(ii); CP 556; emphasis added, bold in original.*

The substitute contract also confirms Forbes's "receipt following trial" in the very same amount as the judgment "recovered." Again, only the "receipt following trial" is able to be applied under the Satisfaction.

The "judgment contingency/receipt following trial" contingency of 44% is the only contractual fee percentage able to be applied to the agreement made between Forbes and ABM.

Remand under these facts is not a proper remedy. Forbes' Satisfaction is an irrevocable substitute contract. Whatever Forbes's accord with ABM, the judgment was discharged against ABM by the Satisfaction, and the substitute document became irrevocable.

No manifest injustice exists in applying this substitute contract as written. Per the trial court, Forbes was arguably attempting to “stiff” her own attorney.<sup>7</sup> If error existed in such efforts, then Forbes’s remedy is with the attorney who took her down that road, not with Schultz.<sup>8</sup>

### CONCLUSION

This Court should affirm the trial court’s prejudgment interest award on fees contractually owed by Forbes to Schultz. It should further affirm that the September 16, 2005 Satisfaction is the only contract existing between Forbes and ABM identifying the terms of their agreement, that the Satisfaction contract discharged the judgment, and that the Satisfaction is binding. The court should modify the decision below to implement the Satisfaction as written. Specifically, because the Satisfaction provides no figure for any “settlement reached,” but substitutes only the “judgment recovered,” and Forbes’s “receipt following trial,” of \$5,655,176.70, the

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<sup>7</sup> By recovering \$5,000,000 and arguing that Schultz must accept an hourly fee, Forbes hoped to recover \$4.6 million—this is over a million dollars more than she would have recovered had she recovered the entire \$7 million in judgments and properly paid her contracted fee (her 50% would have been \$3.5 million).

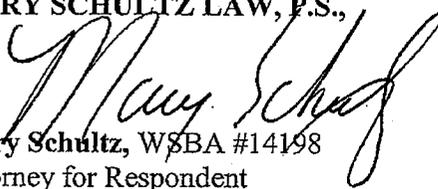
<sup>8</sup> Consistently, it is repeatedly held that a client may not avoid a contingency fee agreement on full performance by using a successor counsel to finalize the work. *Goncharuk*, 132 Wn. App. at 750; *Taylor*, 84 Wn. App. at 728; *Barrett v. Freise*, 119 Wn. App. at 837. The anomaly of an attorney completing a six-week trial for a client, obtaining and protecting judgments, and collecting those judgments for the client by the offer made—and then having the client discharge the lawyer, accept the results and argue through successor counsel that “ambiguity” exists in the fee contract to avoid a fully performed trial contingency is prevented by the Satisfaction.

appropriate contractual contingency of 44% is the only contingency applicable to the result.

DATED this 23 day of Nov, 2009.

**Respectfully Submitted,**

**MARY SCHULTZ LAW, P.S.,**

  
**Mary Schultz, W&BA #14198**  
**Attorney for Respondent**

**CERTIFICATE OF SERVICE**

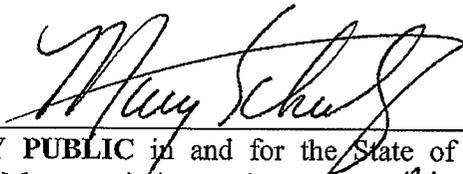
The undersigned hereby certifies that she is a person of such age and discretion as to be competent to serve papers.

On the 23<sup>rd</sup> day of November, 2009, I served via email a copy of the foregoing **Respondent's Supplemental Brief to Petition for Review** upon the Attorneys for Petitioner, Cheryl Forbes, to Mr. Kenneth Kagan at kagan@carneylaw.com, Mr. Bryce Wilcox at bwilcox@lukins.com, and Mr. Michael Franklin at mfranklin@lukins.com.



**TINA REHM**

**SUBSCRIBED AND SWORN** to before me this 23<sup>rd</sup> day of November, 2009.



**NOTARY PUBLIC** in and for the State of Washington, residing in Spokane. My commission expires: Nov 13, 2011.

**APPENDIX A**

## AMENDED CONTRACT FOR LEGAL SERVICES

### HOURLY/CONTINGENT FEE AGREEMENT

1. In consideration of legal services to be rendered by **MARY SCHULTZ AND ASSOCIATES, P.S.** (hereinafter "Attorney"), the undersigned clients, Cheryl Forbes and Colleen Myers (hereinafter "Clients"), retained the Attorney to prosecute all claims, inclusive of civil rights claims including, but not limited to, medical payments, lost wages and lost benefits, for the Clients' injuries and damages sustained as the result of the Clients' employment with **Allied Janitorial Services and ABM Janitorial Services** and the Clients' cessation of employment from **ABM Janitorial Services**.

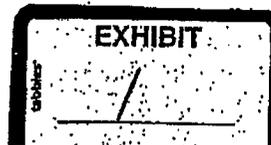
All reference to "Client" hereafter shall relate to both clients, unless otherwise specified.

### AUTHORIZATION AND CONSENT

2. The Clients hereby empowers, designate and appoint the Attorney as their true and lawful counsel, hereby authorizing and empowering her to do any and all things necessary and proper in the enforcement, compromising, settling, adjusting, and collecting of the said claims and causes of action, and further authorizing and empowering her to sign any and all pleadings and other papers necessary and proper in connection with the prosecution or enforcement of the said claim or cause of action, and the collection of damages awarded or to be paid thereunder, and to receive in the name and instead of the Clients any moneys or other things of value which may properly be payable or deliverable to the Clients on account of any judgment recovered or any settlement agreed upon in connection with the said claim or cause of action.
3. Full power and authority by the Clients is given to the Attorney to adjust, settle, or compromise the interests of the Clients, but no final settlement shall be made and consummated by the Attorney without first submitting the offer, compromise or adjustment to the Clients.
4. The Clients agree not to compromise the claim without the Attorney's authority, agreement, and consent, and the Attorney is not authorized to do so without the consent of the Clients.

### FEES

The agreed upon fees are based upon the amount in controversy, the novelty and difficulty of the matter, the skill required to perform the legal service properly, and the experience, reputation and ability of the lawyer or lawyers performing the



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services for the adverse party; provided however that said fee rate shall be deemed reasonable

5. Contingency Fee: The Attorney's fees shall be a sum equal to 40% percent of any and each (if applicable in the event both cases are settled independently) amounts reached in settlement, and/or arbitration, and forty (44%) percent of any judgment after a trial on the merits and/or appeal by any party to the action, less payments made by the Client pursuant to the Hourly Rate provision in Paragraph 6. \*\*

Any attorney fees due and owing on the full settlement or judgment amount shall be due in a lump sum at the conclusion of the case, or as settlement is received on each matter if settled independently. This provision shall be fully enforceable notwithstanding that the debtor, i.e. ABM, may be only partially able to pay due to financial inability, or that collection is necessary after partial payment, or in the event that only partial payment is received prior to the debtor filing any action which would result in a stay or termination of the Attorney's ability to obtain full satisfaction on this contingency, such as bankruptcy. In the event of structured settlements however, the fee shall be withdrawn only as the appropriate contingency percentage of each settlement payment. Conclusion of the case shall be deemed to include settlement, judgment after suit, arbitration award, appeal award, or termination by Client. The Client understands that she has the right to request the Court to reduce the Attorney's fee in this matter if she believes the fee to be excessive.

6. Hourly Rate: Due to the complexity of the issues involved in this matter and the risks inherent to the fact that the Attorney has been asked to assume responsibility for this matter at a late stage in the proceedings, the Client did originally contribute by payment \$100.00 per hour for the Attorney's services on the hourly rate of \$250.00 per hour for such actions. At that time, the parties agreed that the part of the contingency fee earned by the Attorney shall be reduced by the amount paid for fees by the Client pursuant to this paragraph's requirement of contribution. *Reimbursement of costs is addressed separately below at par 7, and is not encompassed here.*

**\*\*\*MODIFICATION TO PARAGRAPHS 5 and 6**

The original contract between the parties provided for a 33% and 40% contingency respectively for settlement and trial, however it also included an hourly rate as indicated as par 6 above. Given the growing expense and complexity of the case, as of Sept. 11, 2001, the clients ceased paying this \$100 per hour fee, and many costs (see below), including transportation, were also unreimbursed upon accrual. Notwithstanding, the attorney herein agreed and agrees to continue representation of the case on a contingent fee basis only, in exchange for the larger percentage of any amount reached in settlement reflected above, i.e. 40%, and a larger percentage of the receipt following trial, i.e. 44%.

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Further, when the clients ceased payment, and as noted, it was intended that the clients continue to pay all costs associated with this case, including but not limited to investigative work, experts, deposition costs, travel costs as necessary, subpoena costs; however the clients have subsequently defaulted on many said payments as well. It is intended that both clients continue to pay all costs associated with this case, and such will be addressed below at the costs paragraph of number 8.

7. **Recovery of fees:** Additionally, in an action for a violation of civil rights in either state or federal court, and in the event that prevailing party attorney fees and/or costs are awarded to either the Client or the Attorney, all such fees shall be paid directly to the Attorney in full in addition to the terms of provisions in Paragraphs 5 and 6 of this agreement. Said statutory fees and costs will be reduced by any amount previously paid to the Attorney by the Client for the specific recovered costs only.

#### COSTS AND EXPENSES

8. All reasonable costs and expenses associated with pursuing the matter in Paragraph 1 will be charged to the Client separately from the Attorney's hourly rate. The Client agrees to pay for, reimburse and save the Attorney harmless from any and all costs, disbursements and expenses incurred or deemed necessary by the Attorney in the handling of the Client's case, including copy costs of 10 cents a page, service costs, witness fees, investigator's fees, costs of depositions and court reporters, any long distance charges, travel costs for depositions, including hotel, car, and reasonable daily expense, costs of electronic legal research, etc., and fee costs as designated below. Costs are designated as all necessary chargeable or taxable legal costs that shall be expended, paid out, or obligated by the Attorney in the prosecution of said cause.

Further, when the clients ceased payment as detailed above at par 6, it was intended that the clients continue to pay all costs associated with this case, including but not limited to investigative work, experts, deposition costs, travel costs as necessary, subpoena costs; however the clients have subsequently defaulted on many said payments as well. These expenses will remain due and owing to the attorney, and shall be taken from recovery of settlement, judgment and/or costs directly. Clients herein agree to use their best efforts to continue to assist with such expenses in order to assist in the success of this litigation given the significant financial burden placed on the undersigned attorney due to the inability to contribute to fees, ad the complexity and range of this case.

9. By this paragraph, it is expressly understood and agreed that the Attorney may, as a matter of convenience, advance all necessary costs, including cost of investigation, court costs, expenses, court reporters, depositions, witness fees, expert fees, travel costs and any and all other costs which the Attorney may deem necessary in

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prosecuting this claim and then bill the Client directly. If recovery is obtained from other sources for said costs, those amounts will be deducted from the Client's billing.

10. Fees chargeable as costs:

- a. The Attorney may, in her discretion, employ investigators or other experts whose fees shall be chargeable as advance costs.
- b. The Attorney may, at her own expense, employ associate counsel if she considers it necessary to the proper prosecution of the claim.
- c. The Client authorizes the Attorney to employ experts, including medical experts, counselors, psychiatrists, accountants, accident reconstruction experts, etc. as may be required in the action, and agrees to pay the Attorney all expenses that have been incurred in the preparation of the case up to this time, and also such expenses or other expenses in or about or concerning this action. These individuals may be retained at the discretion of the Attorney in pursuit of this claim.
- d. All expenses and charges of any nature, including trial appearances made by experts in connection with the above claim are litigation costs.
- e. The Client agrees to pay the witnesses necessary to sustain the action and to pay all costs and disbursements of expert witnesses, if any, as well as all other witnesses and their costs and disbursements.

**FAILURE TO SETTLE IN GOOD FAITH, WITHDRAWAL OR DISCHARGE**

11. The Clients agree that in the event a reasonable offer is proposed in settlement of this case, and this counsel advises the Client(s) to accept such offer believing it to constitute an offer which will in all probability not be improved upon by trial, and the Client refuses authority to accept such offer without good cause, and the Client proceeds either with or without this counsel to trial or further hearing and receives less than the offered amount, or loses fees accorded the Attorney by such prior settlement offer, then the full fees accumulated by the Attorney on an hourly basis as designated herein shall be due and owing this office from the Client, and fully enforceable as hourly billing pursuant to the standard civil rights hourly rate of \$250 per hour.

**LIFE INSURANCE**

12. Based upon the necessity to amend this agreement to reflect the current financial agreement between the client and the attorney, and the significant advance of time and fees, including expert costs, depositions, travel fees and charges, etc, the clients agree to

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submit to a life insurance application process to allow the undersigned attorney to purchase a life insurance policy on each client's life in an amount sufficient to cover the potential value of the claim to the office, which the attorney would estimate at \$3 million dollars for Cheryl Forbes and \$2 million dollars for Colleen Myers. The law office shall own said policies on the lives of each client, shall list itself as beneficiary of said policies, shall pay and all premiums associated with retaining such policies, and shall have exclusive control over the right to extend, terminate or alter such policies to meet the needs of the case. All proceeds from such policies, in the event the policies are ever effected would be collected by the law office in their entirety, and are not subject to a division, i.e. any contingency to the client's estate. The policies are purely designed to cover the costs of this action and work performed and expectations of recovery for which all was done in the event of the resultant difficulties with prosecution of the case, in many scenarios, e.g. one witness lost for the other, one claimant lost, etc. The nature of this claim is such that its strength lies in the joining of the claims and the ability of each's testimony as it contributes to the cause of the other, and it such is lost, serious financial consequences to this office could occur.

Further, all costs of said policies are chargeable to the clients as costs of this proceeding given the necessity of monetary advances of funds, and shall be considered a business necessity in a case of this type, and thus considered accrued costs for which reimbursement if required.

#### ABANDONMENT OF CLAIM

13. The attorney agrees that she will not abandon this claim, or terminate her employment for either client, absent just cause under the Rules of Professional Conduct attached hereto or the client's violation of Par 17 below. In the event the Attorney feels that she is required to withdraw because of the situation in the provisions stated in Paragraph 11, and the Attorney's good faith belief that withdrawal is required under ethical rules, or because the Client is simply intransigent with regard to fair settlement, then that provision shall control as to fees due and owing.
- a. In the event of forced termination due to the RPCs, fees and costs accrued to that point shall remain due and owing per par 5 and 6 herein; however if the attorney abandons this claim without just cause based on client conduct, then no such fees shall be due and owing, including those accrued to date.
14. If the Client elects to abandon the claim or discharge the Attorney, the Client agrees to pay the Attorney at the rate of Two Hundred and Fifty Dollars (\$250) per hour for all hours the Attorney has served the Client in this litigation up to the time the abandonment or discharge is communicated to the Attorney. Payment is due prior to release of the Client's file. Attorney agrees to provide the Client with evidence of hours worked upon the Client's request.

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15. It is further mutually agreed that this contract shall be irrevocable, and the unwarranted discharge or attempt to discharge the Attorney shall *not affect nor* destroy her right, interest, and lien in the said claim or the proceeds.

#### APPEAL/COLLECTION

16. It is expressly understood and agreed that the Attorney is not obligated to pursue the matter through an appeal or any collection process that may be required. If appeal is undertaken, or collection needed, the Client agrees that said appeal will be under the terms and conditions as previously outlined in this Agreement.

#### CLIENT'S OBLIGATION

17. In order for the Attorney to be able to effectively represent the Client, and thus to complete the terms of this contract, the Client understands, and agrees, to be responsible for, certain obligations.

- a. Responsiveness The Client understands and agrees, that litigation requires the cooperation of the Client on short notice. This can occur when motions are filed by an opposing party, or by the Client, and strict timelines are in place. In the event this office contacts the Client in such an instance, the Client agrees to provide full cooperation as necessary on an expedited basis.
- b. Truthfulness and Full Disclosure: Effective representation also requires that the Attorney be able to rely on the Client for timely, accurate, and complete information. Information that the Client does not desire disclosed without the Client's authorization is given protection of confidentiality, and the Client understands and agrees that it is critical that the Client be truthful and open with the Attorney.
- c. Cooperation: The Client understands and agrees that failure to cooperate in this regard can make effective representation impossible, and is inherently risky, as it makes it difficult to properly present the Client's case within the bounds of the law. As well, the Attorney is under obligation by the rules of professional conduct and as an officer of the court to decline to present evidence known to the Attorney to be false, and the Attorney must be able to rely on the Client's truthfulness to accomplish this obligation. The Client understands this, and understands and agrees to open disclosure of both positive and detrimental information to her claim, to allow said information to be known in advance, and to facilitate a better chance of success, through more prepared and effective representation.

#### PARTIES BOUND

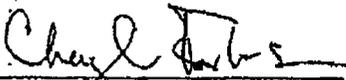
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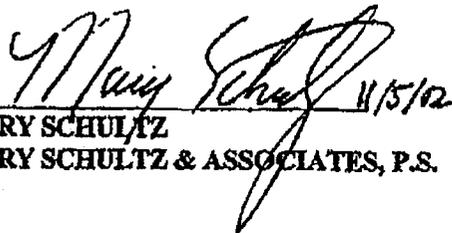
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18. The Clients agree to bind all heirs, executors, and legal representatives to the terms of this contract.

Each Client has read and fully understands and agrees to abide by the terms of this contract.

EXECUTED this 4 day of Nov., 2002.

  
CHERYL FORBES

  
MARY SCHULTZ  
MARY SCHULTZ & ASSOCIATES, P.S.

  
COLLEEN MYERS

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CONTRACT FOR LEGAL SERVICES  
Hourly Fee Agreement

COPY

CIVIL

Parties:

This agreement, made on the 18<sup>th</sup> day of January, 2001, at 818 West Riverside, Suite 660, Spokane, Washington 99201, is between CHERYL L. FORBES, (Client) and MARY SCHULTZ of MARY SCHULTZ & ASSOCIATES, P.S. It is understood and agreed that the client employs this law firm, and the law firm accepts employment, upon the following terms and conditions, to which the client expressly agrees.

Scope of Agreement:

1. The Client has retained MARY SCHULTZ of MARY SCHULTZ & ASSOCIATES, P.S. to represent him/her in the matter of inquiry into pending Employment Discrimination claim and determination of validity of claim prior to trial retention agreement, if any.

Retainer & Fees:

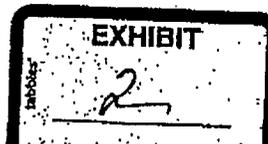
2. Payment for handling of the Client's legal affairs and of a reasonable attorney's fees is based upon the amount in controversy, the novelty and difficulty of the matter, the skill required to perform the legal service properly, the amount involved and the experience, reputation and ability of the lawyer or lawyers performing the services for the adverse party; provided however that said fee rates listed below shall be deemed reasonable:

The Client agrees to pay for the above legal services at an hourly rate, and that the hourly rate for handling the matter in Paragraph 1 is as follows:

Mary Schultz .	
State civil	\$200 per hour
Federal civil	\$200 per hour
Civil Rights	\$250 per hour
Associates	\$150 per hour
Contract Counsel*	\$150 per hour
Paralegal	\$ 45 per hour

The client understands and agrees that MARY SCHULTZ may assign staff attorneys, law clerks, interns, or paralegals to assist with this matter as necessary. The client agrees that there will be a minimum 0.2 hour charge on all attorney/client contacts, phone or otherwise. Secretarial and office staff expenses are included in the fee schedule and will not be billed. Non-office expenses are discussed in Paragraph 5.

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\* This counsel may employ outside (contract) counsel to perform projects on any given case as the need may arise as determined by the undersigned. Such projects are generally research or statistics based, and contract counsel would be operating in place of an associate. In the event of specialty projects with counsel emphasizing a particular expertise, the contract rate may increase to a level consistent with that counsel's standard billable hour.

3. In order to obtain the services of this attorney, the Client agrees: see paragraph 4. Advances, Fees, and Costs. In the event this attorney agrees to act as trial counsel in the pending superior court matter, this contract shall be superseded by a retainer agreement for said purpose between the parties.

Payment in full is required prior to release of documentation and file information to the client.

**Rate Changes:**

This employment agreement is intended to serve as a contract over an indefinite time period. As a result, and from time to time, this firm may change the various fee rates cited in this employment agreement and at such time as that is done, the Client will be given written notice of any such change in the fee rate. The Client will not be required to sign a new employment agreement unless the Client wishes to do so at that time.

**Estimates:**

The Client recognizes and agrees that the amount of fees in connection with this particular case or matter is not contingent upon the outcome of such case or matter, and that the client will be billed on an hourly basis. The client understands that it is impossible to determine in advance the precise nature and extent of the necessary legal service required to resolve this or any other matter, or the time which will be necessary to resolve any issues undertaken by this firm. The total time involved varies from case to case, depending upon the time spent in telephone conversations, office conferences, discovery proceedings, court hearings, trial attendance, travel, preparation of pleadings, legal research, preparation for hearings, and for trial.

**Trial Fees:**

At such time as any case is scheduled for trial, the attorney may evaluate the case, and the law firm may require that additional money be placed into the trust account designated below as security for payment of fees. The Client agrees to pay such amounts into trust should such be requested by the law firm. In any event, the Client agrees to pay all past due balances of fees and costs incurred and billed in connection with this case at least fifteen (15) days prior to the trial date. This firm will not be expected, nor required, to finance expenses and costs of trial of any matter.

**Recovered Fees:**

The court may sometimes order the adverse party to pay part or all of the

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client's legal fees and costs, although sometimes the court makes no order for fees or costs. Because fees and costs awards of this type are largely unpredictable, any such awards, if and when paid, must be considered to be merely "on account," and the client remains primarily liable for payment of the total fees and costs. Amounts received pursuant to any court order will be credited to the client's account. The court award of fees and costs does not impact, nor set out, nor limit, the client's liability to pay legal fees and costs in any way under this contract. The pursuit of fees and costs against the adverse party is an additional service provided on the client's behalf, and the client shall be expected to pay fees and costs to this firm under the same terms and on the same basis as incurred for the law firm's representation of the client in the underlying matter. Further, if the court does assess fees and costs or any part thereof against the adverse party to apply on the account, which the client owes the law firm, the collection of such award from the adverse party shall be considered as a further service on the client's behalf; notwithstanding that, in accordance with the provisions of state law, such a judgment for fees and costs may be payable directly to this firm. Accordingly, the client agrees to pay all fees and costs incurred in the collection of any court award of fees and costs from the adverse party. Any part of an award of fees and costs that is collected, will be credited to the account the client owes to the law firm. The client fully understands and agrees that the client is at all times primarily liable for the full amount of fees and costs, and any pursuit therefore against the adverse party, is on the client's behalf as an additional service for the client.

Advances,  
Fees, and  
Costs:

4. The Client herein agrees to deposit in the office's trust account the sum of \$2,500.00, to be held in trust and to be paid out to the office to cover all attorney fees and services generated during the pre-retention inquiry of plaintiff's matter for trial. This money in trust belongs to you as the client, but is there to pay all expenses and costs as they accrue. Any balance will be refunded at the conclusion of this contract, unless fees or costs are due and owing, in which event trust proceeds shall be applied to such fees or costs as available, and any remaining balance then refunded.

In the event that this office allows the client to accumulate fees for services and/or costs in trust, all costs advanced will be paid in full by the client from these funds upon request by this office.

Costs:

5. All reasonable costs and expenses associated with defending or pursuing the matter in Paragraph 1 will be charged to the Client separately from the attorney's hourly rate. The client agrees to pay for, reimburse and save the attorney harmless from any and all costs, disbursements and expenses incurred or deemed necessary by the attorney in the handling of the client's

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case, including copy costs of .10 cents a page, service costs, witness fees, investigator's fees, costs of depositions and court reporters, any long distance charges, etc., and fees costs as designated below. Costs are designated as all necessary chargeable or taxable legal costs which shall be expended, paid out, or obligated by the attorney in the prosecution of said cause.

By this paragraph, it is expressly understood and agreed that the attorney may, as a matter of convenience, advance all necessary costs, including cost of investigation, court costs, expenses, court reporters, depositions, witness fees, expert fees, and any and all other costs which the attorney may deem necessary in prosecuting this claim and then bill the client directly. If recovery is obtained from other sources for said costs, those amounts will be deducted from the client's billing.

Costs of litigation do not include medical services rendered to the client. The client is fully liable for all such expenses.

As to fees from experts or professionals authorized by this contract which are also includable and chargeable as costs to the client:

- a. The attorney may, in her discretion, employ investigators or other experts whose fees shall be chargeable as advance costs.
- b. The client hereby authorizes the attorney to employ appraisers or experts, including medical experts, counselors, psychiatrists, accountants, business evaluators, appraisers, etc., as the attorney deems necessary in the action, and agrees to pay the attorney all expenses that have been or are incurred in this process, including for work product and trial appearances.
- c. The client agrees to timely pay the witnesses necessary to sustain the action and to pay all costs and disbursements of expert witnesses, if any, as well as those costs of all other witnesses and their costs and disbursements, in timely fashion.

**Timely  
Payment  
and Fees**

6. In order for this office to continue to provide a higher level of service to clients, it is and has been necessary to limit client base in this office. It has therefore become necessary as a result for all clients to pay their accounts in a timely fashion on a monthly basis.

In order to assist in this obligation, this office will provide a regular and predictable billing to you on a monthly basis with a full accounting for time

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and costs accrued.

The Client is to pay all amounts owed within 14 days of receiving a written statement. Late payment is subject to an interest charge of 1 percent per month (12% per year) on the existing balance, including interest. The Client agrees to pay for all expenses, including attorney's fees, incurred by the Attorney in enforcing this agreement's payment terms against the client.

**Opinions  
Regarding  
Outcome:**

7. The Client acknowledges that the Attorney has made no guarantee regarding the successful termination of the claim, and all expressions made by the Attorney or any employee of the Attorney are opinions only.

**Modification  
& Waivers:**

8. This agreement may be modified at any time but, except as noted otherwise herein, only upon the written and signed amendment executed by the Client and the Attorney. This office's election to forego enforcement of an obligation set forth in this agreement is not a permanent waiver, and this office may demand compliance at any time after said obligation came due.

**Termination  
of the  
Agreement:**

9. This attorney/client relationship is terminable at will. You may discharge this office without cause, and, likewise, this attorney may withdraw from your representation without cause, at any time. Withdrawal prior to full use of the retainer credited to your account is controlled by paragraph 2 above.
10. On termination of this agreement, the parties are released from the obligations set forth in Paragraph 2 and 3. The Client remains responsible for all fees and costs incurred by this office before the termination as identified in paragraphs 2, 3, and 4 through 6 herein.
11. The attorney client relationship may be terminated by the client's mailing notice to the attorney's business address, or by the attorney mailing notice to the client's last known address of record.

**Client's  
Obligation**

12. In order for the undersigned attorney to be able to effectively represent a client, and thus to complete the terms of this contract, then the client understands, and agrees, to be responsible for, certain obligations.

**Responsiveness:** The client understands and agrees, that litigation requires the cooperation of the client on short notice. This can occur when motions are filed by the other side, or by the client, and strict timelines are in place.

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In the event this office contacts the client in such an instance, the client agrees to provide full cooperation as necessary on an expedited basis. The client agrees to keep the law firm properly advised of the location and telephone number where the client may be contacted. The client agrees to respond to any reasonable request by the law firm for information, consultation, or advice.

**Truthfulness  
and Full  
Disclosure:**

Effective representation also requires that the attorney be able to rely on the client for timely, accurate, and complete information. The client understands and agrees that it is critical that the client be truthful and open with the attorney.

The client understands and agrees that failure to cooperate in this regard can make effective representation impossible, and is inherently risky, as it makes it difficult to properly present the client's case within the bounds of the law. As well, this attorney is under obligation by the rules of professional conduct and as an officer of the court to decline to present evidence known to that attorney to be false, and this attorney must be able to rely on the client's truthfulness to accomplish this obligation. The client understands this, and understands and agrees to open disclosure of both positive and detrimental information to their claim, to truthfully disclose all material facts to the firm as requested by the law firm, and to allow said information to be known in advance.

EXECUTED this 18<sup>th</sup> day of January, 2001.

Chung A. Forbes.  
CLIENT

EXECUTED this 21 day of January, 2001.

MARY E. SCHULTZ & ASSOCIATES, P.S.,

Mary Schultz  
MARY E. SCHULTZ WSEA #14198  
Attorney at Law

ATTACHMENT A

Rule 1.15 Declining or Terminating Representation

- (a) Except as stated in section (c), a lawyer shall not represent a client or, where representation has commenced, shall, notwithstanding RCW 2.44.040, withdraw from the representation of a client if:
- (1) The representation will result in violation of the Rules of Professional Conduct or other law;
  - (3) The lawyer is discharged (by the client).
- (b) Except as stated in section (c), a lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests of the client, or if:
- (1) The client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;
  - (2) The client has used the lawyer's services to perpetrate a crime or fraud;
  - (3) The client insists upon pursuing an objective that the lawyer considers repugnant or imprudent;
  - (4) The client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;
  - (5) The representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or
  - (6) Other good cause for withdrawal exists.

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**APPENDIX B**

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**FILED**  
**SEP 16 2005**  
THOMAS R. FALLQUIST  
SPOKANE COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF  
WASHINGTON FOR SPOKANE COUNTY

CHERYL L. FORBES and COLLEEN A. MEYERS,  
Plaintiffs,  
vs.  
AMERICAN BUILDING MAINTENANCE COMPANY-WEST, ABM INDUSTRIES, INC.,  
Defendants.

Case No. 99-2-05753-2

NOTICE OF CASH DEPOSIT IN  
SETTLEMENT AND SATISFACTION  
OF JUDGMENT

Submitted with this notice is a check for \$3,572,754.33 made payable to the Spokane County Superior Court Clerk pursuant to the settlement of this matter and the August 16, 2005, Amended Notice of Lien filed by Forbes' former attorney Mary Schultz. The clerk is directed to hold the funds during the resolution of the fee dispute between the plaintiff Cheryl Forbes and her former attorney, intervening party Mary Schultz.

Pursuant to RCW 36.48.090, the clerk is directed to invest the funds in an interest bearing trust account subject to the clerk's investment service fee, all as provided in RCW 36.48.090.

STIPULATED MOTION TO VACATE JUDGMENT - 1

EDWARDS, SIEH, SMITH &  
GOODFRIEND, P.S.  
500 WATERMARK TOWER, 1109 FIRST AVENUE  
SEATTLE, WASHINGTON 98101  
(206) 624-0974 FAX (206) 624-0809

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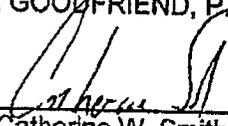
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The funds shall be held pending order of this court releasing said funds.

Dated to this 16<sup>th</sup> day of September, 2005.

EDWARDS, SIEH, SMITH  
& GOODFRIEND, P.S.

By:   
Catherine W. Smith  
WSBA No. 9542

Attorneys for Defendants

STIPULATED MOTION TO VACATE JUDGMENT - 2

EDWARDS, SIEH, SMITH &  
GOODFRIEND, P.S.  
500 WATERMARK TOWER, 1109 FIRST AVENUE  
SEATTLE, WASHINGTON 98101  
(206) 624-0974 FAX (206) 624-0809

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**APPENDIX C**

STATEMENT AGREEMENT AND RELEASE

Cheryl L. Forbes ("Forbes"), American Building Maintenance Co. West and ABM Industries Incorporated ("The Parties") enter into the following Settlement Agreement and Release ("Agreement"):

I. RECITALS

A. Forbes was employed by American Building Maintenance Co. West ("ABM Co.") as a Branch Manager until her employment terminated in February of 1999.

B. In September 1999, Forbes filed a complaint against ABM Co. in Spokane County Superior Court (Case No 99-2-05753-2). In her complaint, Forbes alleged gender discrimination in violation of the Washington Law Against Discrimination, RCW 49.60 et seq. Later, Forbes amended her complaint to add ABM Industries Incorporated as a defendant. Both ABM Co. and ABM Industries Incorporated (collectively "ABM") denied her allegations, and thus denied that its actions with respect to Forbes were in any way unlawful. The case was tried to a jury who returned a verdict for Forbes. ABM appealed the resulting judgment to the Washington Court of Appeal (Docket number 22056-5-00). The appeal was denied in a decision dated April 21, 2005. ABM has filed a petition for review by the Washington Supreme Court (Case number 77154-5) and the parties await a decision on that petition. All proceedings described above hereinafter called "the Action".

C. The Parties now desire to settle their disputes and any claims stemming from Forbes's employment by ABM or the ensuing litigation.

II. AGREEMENTS

In consideration of the mutual covenants and promises contained herein, the Parties agree as follows:

A. ABM will pay a total of \$5,000,000 (five million dollars) (the "Settlement Amount").



Payment shall be made as follows:

- \$3,572,754.33, the amount specified in the August 16, 2005, Amended Notice of Lien filed by Forbes' former attorney Mary Schultz, shall be deposited into the registry of the Spokane Superior Court in an interest-bearing money market fund. If it is determined by the Court that Mary Schultz or Mary Schultz & Associates is entitled to any portion of these funds, ABM shall issue a Form 1099 to Ms. Schultz and/or Mary Schultz & Associates reflecting said amounts.
- \$35,613.33 to Talmadge Law Group. ABM shall issue a Form 1099 to the Talmadge Law Group to reflect this payment.

EXHIBIT G

Ci

3. ~~By will of the testator to the testator by will transfer to the trust account of her estate~~  
~~attorney, Charles W. Arnold.~~

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

G.

[REDACTED]

H.

[REDACTED]

I.

[REDACTED]

J.

[REDACTED]

K.

[REDACTED]

err

[REDACTED]

Y. [REDACTED]

Clayton Forbes  
CHEVALL FORBES

9-14-05  
DATE

ABM INDUSTRIES INCORPORATED

By Andi A. Deane  
George Smith, Executive Vice-President  
Linda K. ...

9/15/05  
DATE

AMERICAN BUILDING MAINTENANCE CO. WEST

By Jack Smith  
Jack Smith, Senior Vice-President

9/19/05  
DATE

Civ

**APPENDIX D**

RECEIVED

SEP 15 2005

ALLEN & McLANE, P.C

FILED

SEP 16 2005

THOMAS R. FALLOQUIST  
SPOKANE COUNTY CLERK

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IN THE SUPERIOR COURT OF THE STATE OF  
WASHINGTON FOR SPOKANE COUNTY

CHERYL L. FORBES and COLLEEN A. MEYERS,  
Plaintiffs,

vs.

AMERICAN BUILDING MAINTENANCE COMPANY-WEST, ABM INDUSTRIES, INC.,  
Defendants.

Case No. 99-2-05753-2

*D39038229*  
SATISFACTION OF JUDGMENT

(Clerk's Action Required)

KNOW ALL MEN BY THESE PRESENTS, that Cheryl L. Forbes, plaintiff and judgment creditor in this action, hereby acknowledges full satisfaction of the judgment recovered against American Building Maintenance Company-West and ABM Industries, Inc., defendants and judgment debtors, in the amount of \$ 5,655,176.70, together with interest, as this claim has been settled. Said judgment was entered in Spokane County Superior Court under the above-referenced cause number on January 16, 2004 and amended nunc pro tunc on January 21, 2004.

SATISFACTION OF JUDGMENT - 1

EDWARDS, SIEH, SMITH &  
GOODFRIEND, P.S.  
500 WATERMARK TOWER, 1109 FIRST AVENUE  
SEATTLE, WASHINGTON 98101  
(206) 624-0974 FAX (206) 624-0809

*Di 497*



**APPENDIX E**

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**FILED**  
**JUN 09 2006**  
THOMAS R. FALLQUIST  
SPOKANE COUNTY CLERK

**RECEIVED**  
**JUN 09 2006**  
**LUKINS & ANNIS, P.S.**

**SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF SPOKANE**

**CHERYL FORBES and COLLEEN MYERS,**

Plaintiffs,

vs.

**AMERICAN BUILDING MAINTENANCE  
COMPANY WEST; ABM JANITORIAL  
SERVICES; ABM INDUSTRIES INC.,**

Defendants,

and

**MARY E. SCHULTZ and ASSOCIATES, P.S.,**

Intervening Party.

No. 99-2-05753-2

**DECLARATION OF  
MARY SCHULTZ**

**RE:  
RECONSIDERATION--  
COURT REGISTRY**

Mary E. Schultz, being first duly sworn upon oath, declares as follows:

1. I am the Intervening Party in the above matter.
2. Attached is the September 27, 2005 letter received from Lukins and Annis invoking RCW 36.48.090 and directing the court clerk to issue a check transferring all settlement funds in the Registry to Forbes's selected bank and banker. The clerk was told that Forbes would invest the funds in a money market fund at a 2.94% APR under

DECLARATION OF MARY SCHULTZ RE: RECONSIDERATION--COURT REGISTRY  
Page 1 of 2  
CIV\FORBES\PLEADINGS\DEC.MS.RECONSIDER.FINAL.DOC

*Mary Schultz & Associates, P.S.*  
Attorneys at Law  
810 Lincoln Building  
818 West Riverside  
Spokane, Washington 99201  
Phone (509) 458-2750  
Fax (509) 458-2730  
Seattle (206) 547-1938

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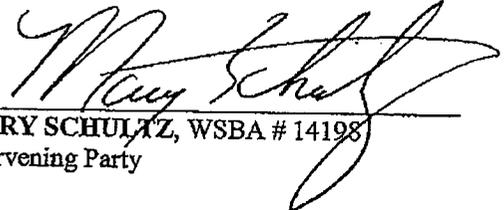
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Forbes's Social security number. The account was to be set up for Forbes's benefit. See Attachment A.

3. Also attached is correspondence confirming the exclusion of the undersigned from any involvement in the settlement process, or knowledge of what was occurring, despite inquiries. See Attachment B.

I declare under penalty of perjury, pursuant to the Laws of the State of Washington, that the foregoing statement is true and correct to the best of my knowledge.

SIGNED at Spokane on June 9, 2006.

  
MARY SCHULTZ, WSBA # 14198  
Intervening Party

DECLARATION OF MARY SCHULTZ RE: RECONSIDERATION—COURT REGISTRY  
Page 2 of 2  
CIV\FORBES\PLEADINGS\DEC.MS.RECONSIDER.FINAL.DOC

*Mary Schultz & Associates, P.L.L.C.*  
Attorneys at Law  
810 Lincoln Building  
818 West Riverside  
Spokane, Washington 99201  
Phone (509) 458-2750  
Fax (509) 458-2730  
Seattle (206) 547-1938

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ATTACHMENT A

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**LUKINS & ANNIS, P.S.**  
ATTORNEYS AT LAW

1600 WASHINGTON TRUST FINANCIAL CENTER • 717 WEST SPRAGUE AVENUE • SPOKANE, WASHINGTON 99201  
PHONE (509) 455-9555 • FAX (509) 747-2323

RECEIVED RECEIVED

SEP 27 2005 SEP 27 2005

MARKE SCHULTZ  
& ASSOCIATES  
DUNN & BLACK

Bryce J. Wilcox

Admitted In: Washington  
Email address: bwilcox@lukins.com  
Direct Fax: (509) 363-2493

September 27, 2005

**VIA HAND DELIVERY**

Marjorie Kuo  
Head Financial Officer  
Spokane County Clerk's Office  
OCH-3  
1116 W Broadway  
Spokane, WA 99260-0090

Re: *Forbes v. ABM, Cause No. 99-2-05753-2*  
*Money Held in Registry of Court*

Dear Ms. Kuo:

Enclosed please find the completed W-9 form required to invest the funds currently held in the registry of the court. Please invest the money with:

Attn: Carolyn M. McConnell  
Farmers & Merchants Bank  
Private Banking  
508 W. 3<sup>rd</sup> Avenue  
Spokane, WA 99201  
(509) 892-4607

Please make the check payable to Farmers & Merchants Bank for the benefit of Cheryl Forbes.

The money will be invested in a Money Market Account with a current APR of 2.94%. According to a recent conversation with Gary Berg, that account will be initially set up under the name "Spokane County Clerk in Trust for Cheryl Forbes" pending distribution by the Court. The only authorized signers for the account will be Marjorie Kuo, Head Financial Officer, Spokane County Superior Court, and Gary Berg, Chief Deputy of the Superior Court. As indicated on the Form W-9, Cheryl Forbes SSN will be utilized on this account for tax purposes.

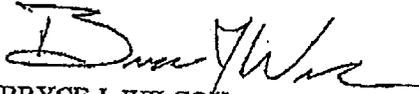
If you have any questions or comments, please feel free to contact me.

SPOKANE • COEUR D'ALENE • MOSES LAKE

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September 27, 2005  
Page 2

Very truly yours,

  
BRYCE J. WILCOX

BJW:mdf  
Enclosure

- cc: Gary Berg, Chief Deputy, Spokane County Court (w/o encls.)  
Bob Dunn, attorney for Mary Schultz (w/o encls.)  
Catherine Smith, attorney for ABM (w/o encls.)  
Keller Allen, attorney for ABM (w/o encls.)  
Carolyn McConnell (w/ encls.)  
Cheryl Forbes (w/ encls.)

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ATTACHMENT B

Evi

*Mary Schultz & Associates, P.S.*

Attorneys at Law

810 Lincoln Building  
818 West Riverside  
Spokane, Washington 99201

[www.mschultz.com](http://www.mschultz.com)

PHONE (509) 458-2750  
FAX (509) 458-2730  
1-800-949-2360  
SEATTLE (206) 547-1938

September 15, 2005

VIA FACSIMILE & REGULAR MAIL

Mr. Michael J. Hines  
Mr. Bryce Wilcox  
Lukins & Annis, P.S.  
1600 Washington Trust Financial Center  
717 West Sprague Avenue  
Spokane, WA 99201-0466

Re: Forbes v ABM/Schultz/et al

Dear Mr. Hines and Mr. Wilcox:

It has been over a month since your firm and Ms. Forbes accepted ABM's opening offer in settlement negotiations. I have heard nothing related to how this settlement is being effected. Damage is occurring daily to the interest of both Ms. Forbes and I as a result, whether you have advised her of that or not. Moreover, matters remain pending in the Appellate court and in the Supreme Court. There is no substantive response to Mr. Dunn's letters.

At present, motions are pending in all three courts—the trial court, Division III and the State Supreme Court. A petition for review is pending in the Supreme Court. An award of fees is pending in Division III. A directive from the appellate court to the trial court requires an additional award of fees at that level. An outstanding motion exists at the trial court level related to the reduction of interest from a 12% rate to a rate of less than 4%. The trial court has not yet received the authority to enter the order to reduce that interest rate. When and if the trial court were to receive that order, that decision is appealable and could be worth hundreds of thousands of dollars of additional damages.

On direct inquiry to ABM, I am told in vague terms that the current devalued settlement is held up by you all trying to "address taxable consequences to Ms. Forbes." I am not told what that means to either of you. This assessment was already underway with Ms. Forbes before she accepted the settlement. We are over a month out now. Given what

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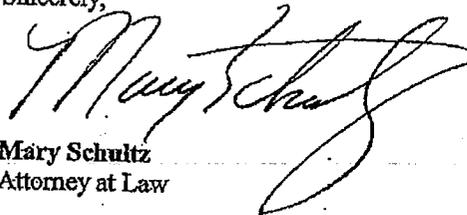
Mr. Michael Hines  
Mr. Bryce Wilcox  
September 15, 2005  
Page 2 of 2

has gone on, it may mean that you are both trying to characterize settlement to avoid the interest I may have in the proceeds, while ABM and your firm seek to avoid further fee awards from the appeal or trial court.

ABM has every reason to damage both the client and me to reduce their liability. They were on the hook for up to \$7,000,000. Your firm has already assisted ABM's interests by entering this case at a critical time and proceeding to advise this client without communicating with me concerning the negotiating environment, or understanding the case status. Your firm appears to have encouraged my client to abandon my representation and hand that to you after I obtained an *opening* offer of \$5,000,000. Your firm's actions have benefited ABM dramatically by devaluing this damage award in an amount exceeding \$1.5 million dollars.

This is a formal demand for information on what is going on, or *not* going on, in regards to this settlement. Please advise immediately to avoid further damage, and to allow me to understand and carry out what responsibilities I retain to the various courts involved.

Sincerely,



Mary Schultz  
Attorney at Law

MS: cm  
pc: Robert Dunn  
pc: Keller Allen, Catherine Smith  
Forbes.v.ABMWilcox.9.15.05.ltr.doc

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\*\*\* TX REPORT \*\*\*  
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*Mary Schultz & Associates P.S.*

Attorneys at Law

810 Lincoln Building  
818 West Riverside  
Spokane, Washington 99201

PHONE (509) 458-2750  
FAX (509) 458-2730  
1-800-949-2360  
www.mschultz.com

**FAX TRANSMITTAL**

TO: Mr. Bryce J. Wilcox  
Mr. Michael J. Hines  
FAX#: 747-2323  
DATE: September 15, 2005  
RE: Forbes v ABM/Schultz, et al  
FROM: MARY SCHULTZ & ASSOCIATES, P.S.

**NOTICE/WARNING**

*The information contained in this facsimile message is attorney privileged and confidential. It is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone, and return the original message to us at the above address VIA the U.S. Postal Service. Thank you.*

**Comments:** To follow, please find a letter from Mary Schultz. Hard copy shall ensue via regular mail. Thank you.

NS/20

EXIX

# Dunn & Black

Attorneys at Law

Michael S. Bissell  
John C. Black  
Richard D. Campbell  
Christian R. Cox  
Robert A. Dunn  
Patrick J. Kirby  
Nicholas D. Kovarik  
Kevin W. Roberts  
Ryan D. Yahne

September 14, 2005

RECEIVED

SEP 15 2005

MARY E. SCHULTZ  
& ASSOCIATES P.C.  
10 North Park Building  
Suite 200  
Spokane, WA 99201  
Voice: (509) 455-8711  
Fax: (509) 455-8734

Mr. Bryce Wilcox  
Lukins & Annis, P.S.  
1600 Washington Trust Financial Center  
717 West Sprague Avenue  
Spokane, WA 99201-0466

Re: Forbes/ABM/Schultz

Dear Bryce:

Once again, what is the status of the ABM/Forbes Settlement? In spite of a court authorized intervention, you have precluded Ms. Schultz from all involvement, input, and notice despite repeated requests. Lukins and Annis has already interefered with this settlement process and the attorney client contract at a critical stage, and that interference has already cost the client and Ms. Schultz both hundreds of thousands of dollars. We are now at Sept 14, 2005 and a settlement reached over a month ago, is not yet finalized.

Lukins and Annis's actions in now failing to timely formalize even the damaging settlement you reached, is causing further damage. Ms Schultz believes ABM is taking advantage of your interference and inexperience in this case to cause more damage. Your firm refuses to send any indication of what is being negotiated, if anything, and that implies a motive. If the actual Settlement Agreement is mishandled as badly as was the settlement itself, then the damage to both the client and to Ms. Schultz will be even more substantial. Please forward all documents identifying the status of the settlement and how it is being formalized, if at all.

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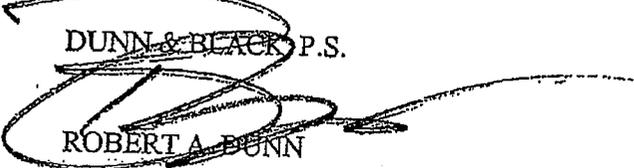
A Professional Service Corporation  
With Lawyers Admitted in Washington, Idaho, Montana, Oregon, Alaska and California

Ex

Bryce Wilcox  
September 14, 2005  
Page Two

Note that when this matter is to be settled, all funds are to be deposited to the registry of the Court so that disbursement can occur pursuant to Court Order.

Very truly yours,

  
DUNN & BLACK P.S.

ROBERT A. DUNN

cc: Mary Schultz, Esq.  
Kelly Allen, Esq.  
wpdocs\2160\Wilcox.091405

# Dunn & Black

Attorneys at Law

Michael S. Bissell  
John C. Black  
Richard D. Campbell  
Christian R. Cox  
Robert A. Dunn  
Patrick J. Kirby  
Nicholas D. Kovarik  
Kevin W. Roberts  
Ryan D. Yahne

September 15, 2005

*Handed*  
**RECEIVED** 5:00  
20 North Post, Suite 200  
Spokane, WA 99201  
Phone: (509) 455-8711  
Fax: (509) 455-8744  
**MARY E. SCHULTZ**  
& ASSOCIATES P.S.  
*[Signature]*

Mr. Bryce Wilcox  
Lukins & Annis, P.S.  
1600 Washington Trust Financial Center  
717 West Sprague Avenue  
Spokane, WA 99201-0466

Re: Forbes v ABM/Schultz/et al

Dear Mr. Wilcox:

This is in response to your September 9, 2005 correspondence. I apologize for my letters so easily confusing you. Nonetheless, I am glad you are being amused by RCW § 2.44.040. Of course since you are being paid while Ms. Schultz is not, it is pretty clear why you are giggling.

I read with interest your tortured waiver argument. It makes no sense, but I suspect you knew that when you sent it to me.

Since you refused to comply with our deposition notice, we will proceed accordingly to have the Court address the issue.

As for your threats of counterclaims, I suggest that you let your future attorneys do the saber rattling for you.

Lastly, since you have finalized Forbes' settlement without involving Ms. Schultz, the damage we warned you of, has been done, unfortunately.

Very truly yours,

DUNN & BLACK, P.S.

*[Signature]*  
ROBERT A. DUNN

RAD:ulp  
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A Professional Service Corporation  
With Lawyers Admitted in Washington, Idaho, Montana, Oregon, Alaska and California  
www.dunnandblack.com

LUKINS & ANNIS, P.S.  
ATTORNEYS AT LAW

1600 WASHINGTON TRUST FINANCIAL CENTER • 717 WEST SPRAGUE AVENUE • SPOKANE, WASHINGTON 99201-0466  
PHONE (509) 435-9555 • FAX (509) 747-3323

RECEIVED  
SEP 16 2005  
MARY E. SCHULTZ  
& ASSOCIATES P.S.  
*Jay*  
*MS*

Bryce J. Wilcox

Email address: bwilcox@lukins.com  
Direct Fax: (509) 363-2493

September 16, 2005

VIA HAND DELIVERY

RECEIVED

Mr. Robert A. Dunn  
Dunn & Black, P.S.  
Ste 200  
10 N Post St  
Spokane, WA 99201

SEP 16 2005  
4:45  
DUNN & BLACK

Re: Forbes v. ABM

Dear Bob:

This is to advise both you and Ms. Schultz that the Forbes v. ABM litigation has been resolved via settlement. As both you and Ms. Schultz were previously advised, Ms. Forbes accepted ABM's \$5,000,000 settlement offer on August 1, 2005. Enclosed is another copy of the email Ms. Forbes sent to Ms. Schultz notifying her of this fact. I believe you already have a copy of the letter Ms. Forbes sent ABM accepting the offer on August 1, 2005.

I have asked you on numerous occasions to provide me with the amount of attorney fees and costs to which Ms. Schultz believes she is entitled. I have also asked for an explanation as to how Ms. Schultz's claimed fee was calculated. To date, I have received insufficient information to determine Ms. Schultz's position. The only information that is available is Ms. Schultz's Amended Notice of Lien filed on August 16, 2005, wherein she claims a lien amount of \$3,572,754.33. Under the terms of the settlement with ABM, ABM has deposited this amount with the Registry of the Court and these funds will remain there pending the issuance of a final court order resolving the fee dispute between our clients.

Also under the terms of the Settlement Agreement, the Talmadge Law Group, PLLC was paid for the services rendered in the Forbes v. ABM matter, and a Release of Attorney's Lien was executed by the Talmadge Law Group, PLLC and filed with the Court today.

SPOKANE • COEUR D'ALENE • MOSES LAKE

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DUNN & BLACK

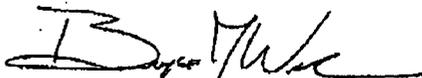
SEP 16 2005

SEP 16 2005

Exit

Mr. Robert A. Dunn  
September 16, 2005  
Page 2

Very truly yours,



BRYCE J. WILCOX

BJW:pml  
Enclosures

cc: Cheryl Forbes (via email w/encls.)  
Keller Allen (via hand-delivery w/o encls.)  
Catherine Smith (via fax w/o encls.)

EXV

Subj: Re: ABM Settlement  
Date: 8/1/2005 1:34:19 P.M. Pacific Standard Time  
From: ForbesC1  
To: Mary@mschultz.com  
CC: Shanna@mschultz.com

I instructed you to submit a counter proposal to ABM last Friday, July 29. In your responsive e-mail to me below, you refused to do so without me meeting your conditions regarding the attorney fees. You did not submit the counter offer as requested. I am invoking my right per my contract to terminate you as my attorney. This is effective immediately.

You no longer are my attorney, nor do you represent me in this matter at this juncture. Please have no communication to ABM or anyone else on my behalf.

I'm further afraid that you have put ABM's \$5 million settlement offer in jeopardy. You know that ABM wanted my answer to their offer before their Board meeting tomorrow. Your refusal to carry out my directions to you and tying your fee to whether I accept ABM's offer has put me in a very compromising position. I'm going to accept ABM's settlement offer. I'm afraid if I don't act now, all might be lost because of your actions. I can no longer stand for you to put your interests above mine.

Monday, August 01, 2005 America Online: ForbesC1

PR 2005

NOTICE OF DEED

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01/01/2005 11:34:19 AM

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**APPENDIX F**

# Instructions for the Requester of Form W-9

(Rev. September 2007)

## Request for Taxpayer Identification Number and Certification



Department of the Treasury  
Internal Revenue Service

Section references are to the Internal Revenue Code unless otherwise noted.

### What's New

Section 6049 contains new information reporting requirements for tax-exempt interest. For information on certification rules for tax-exempt interest payments, see Notice 2006-93 on page 798 of Internal Revenue Bulletin (I.R.B.) 2006-44 at [www.irs.gov/pub/irs-irbs/irb06-44.pdf](http://www.irs.gov/pub/irs-irbs/irb06-44.pdf).

### Reminders

- The backup withholding rate is 28% for reportable payments.
- The IRS website offers TIN Matching e-services for payers to validate name and TIN combinations. See *Taxpayer Identification Number (TIN) Matching* on page 4.

### How Do I Know When To Use Form W-9?

Use Form W-9 to request the taxpayer identification number (TIN) of a U.S. person (including a resident alien) and to request certain certifications and claims for exemption. (See *Purpose of Form* on Form W-9.) Withholding agents may require signed Forms W-9 from U.S. exempt recipients to overcome any presumptions of foreign status. For federal purposes, a U.S. person includes but is not limited to:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- Any estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

A partnership may require a signed Form W-9 from its U.S. partners to overcome any presumptions of foreign status and to avoid withholding on the partner's allocable share of the partnership's effectively connected income. For more information, see Regulations section 1.1446-1.

Advise foreign persons to use the appropriate Form W-8. See Pub. 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities*, for more information and a list of the W-8 forms.

Also, a nonresident alien individual may, under certain circumstances, claim treaty benefits on scholarships and fellowship grant income. See Pub. 515 or Pub. 519, *U.S. Tax Guide for Aliens*, for more information.

### Electronic Submission of Forms W-9

Requesters may establish a system for payees and payees' agents to submit Forms W-9 electronically, including by fax. A requester is anyone required to file an information return. A payee is anyone required to provide a taxpayer identification number (TIN) to the requester.

**Payee's agent.** A payee's agent can be an investment advisor (corporation, partnership, or individual) or an introducing broker. An investment advisor must be registered with the Securities Exchange Commission (SEC) under the Investment Advisers Act of 1940. The introducing broker is a broker-dealer that is regulated by the SEC and the National Association of Securities Dealers, Inc., and that is not a payer. Except for a broker who acts as a payee's agent for "readily tradable instruments," the advisor or broker must show in writing to the payer that the payee authorized the advisor or broker to transmit the Form W-9 to the payer.

**Electronic system.** Generally, the electronic system must:

- Ensure the information received is the information sent, and document all occasions of user access that result in the submission;
- Make reasonably certain that the person accessing the system and submitting the form is the person identified on Form W-9, the investment advisor, or the introducing broker;
- Provide the same information as the paper Form W-9;
- Be able to supply a hard copy of the electronic Form W-9 if the Internal Revenue Service requests it; and
- Require as the final entry in the submission an electronic signature by the payee whose name is on Form W-9 that authenticates and verifies the submission. The electronic signature must be under penalties of perjury and the perjury statement must contain the language of the paper Form W-9.

**TIP** For Forms W-9 that are not required to be signed, the electronic system need not provide for an electronic signature or a perjury statement.

For more details, see the following.

- Announcement 98-27 on page 30 of I.R.B. 1998-15 available at [www.irs.gov/pub/irs-irbs/irb98-15.pdf](http://www.irs.gov/pub/irs-irbs/irb98-15.pdf).
- Announcement 2001-91 on page 221 of I.R.B. 2001-36 available at [www.irs.gov/pub/irs-irbs/irb01-36.pdf](http://www.irs.gov/pub/irs-irbs/irb01-36.pdf).

### Individual Taxpayer Identification Number (ITIN)

Form W-9 (or an acceptable substitute) is used by persons required to file information returns with the IRS to get the payee's (or other person's) correct name and

TIN. For individuals, the TIN is generally a social security number (SSN).

However, in some cases, individuals who become U.S. resident aliens for tax purposes are not eligible to obtain an SSN. This includes certain resident aliens who must receive information returns but who cannot obtain an SSN.

These individuals must apply for an ITIN on Form W-7, Application for IRS Individual Taxpayer Identification Number, unless they have an application pending for an SSN. Individuals who have an ITIN must provide it on Form W-9.

## Substitute Form W-9

You may develop and use your own Form W-9 (a substitute Form W-9) if its content is substantially similar to the official IRS Form W-9 and it satisfies certain certification requirements.

You may incorporate a substitute Form W-9 into other business forms you customarily use, such as account signature cards. However, the certifications on the substitute Form W-9 must clearly state (as shown on the official Form W-9) that under penalties of perjury:

1. The payee's TIN is correct,
2. The payee is not subject to backup withholding due to failure to report interest and dividend income, and
3. The payee is a U.S. person.

You may not:

1. Use a substitute Form W-9 that requires the payee, by signing, to agree to provisions unrelated to the required certifications, or
2. Imply that a payee may be subject to backup withholding unless the payee agrees to provisions on the substitute form that are unrelated to the required certifications.

A substitute Form W-9 that contains a separate signature line just for the certifications satisfies the requirement that the certifications be clearly stated.

If a single signature line is used for the required certifications and other provisions, the certifications must be highlighted, boxed, printed in bold-face type, or presented in some other manner that causes the language to stand out from all other information contained on the substitute form. Additionally, the following statement must be presented to stand out in the same manner as described above and must appear immediately above the single signature line:

"The Internal Revenue Service does not require your consent to any provision of this document other than the certifications required to avoid backup withholding."

If you use a substitute form, you are required to provide the Form W-9 instructions to the payee only if he or she requests them. However, if the IRS has notified the payee that backup withholding applies, then you must instruct the payee to strike out the language in the certification that relates to underreporting. This instruction can be given orally or in writing. See item 2 of the *Certification* on Form W-9. You can replace "defined below" with "defined in the instructions" in item 3 of the *Certification* on Form W-9 when the instructions will not be provided to the payee except upon request. For more information, see Revenue Procedure 83-89, 1983-2, C.B. 613; amplified by Revenue Procedure 96-26 which is on

page 22 of I.R.B. 1996-8 at  
[www.irs.gov/pub/irs-irbs/irb96-08.pdf](http://www.irs.gov/pub/irs-irbs/irb96-08.pdf).

## TIN Applied for

For interest and dividend payments and certain payments with respect to readily tradable instruments, the payee may return a properly completed, signed Form W-9 to you with "Applied For" written in Part I. This is an "awaiting-TIN" certificate. The payee has 60 calendar days, from the date you receive this certificate, to provide a TIN. If you do not receive the payee's TIN at that time, you must begin backup withholding on payments.

**Reserve rule.** You must backup withhold on any reportable payments made during the 60-day period if a payee withdraws more than \$500 at one time, unless the payee reserves 28 percent of all reportable payments made to the account.

**Alternative rule.** You may also elect to backup withhold during this 60-day period, after a 7-day grace period, under one of the two alternative rules discussed below.

**Option 1.** Backup withhold on any reportable payments if the payee makes a withdrawal from the account after the close of 7 business days after you receive the awaiting-TIN certificate. Treat as reportable payments all cash withdrawals in an amount up to the reportable payments made from the day after you receive the awaiting-TIN certificate to the day of withdrawal.

**Option 2.** Backup withhold on any reportable payments made to the payee's account, regardless of whether the payee makes any withdrawals; beginning no later than 7 business days after you receive the awaiting-TIN certificate.



*The 60-day exemption from backup withholding does not apply to any payment other than interest, dividends, and certain payments relating to readily tradable instruments. Any other reportable payment, such as nonemployee compensation, is subject to backup withholding immediately, even if the payee has applied for and is awaiting a TIN.*

*Even if the payee gives you an awaiting-TIN certificate, you must backup withhold on reportable interest and dividend payments if the payee does not certify, under penalties of perjury, that the payee is not subject to backup withholding.*

*If you do not collect backup withholdings from affected payees as required, you may become liable for any uncollected amount.*

## Payees Exempt From Backup Withholding

Even if the payee does not provide a TIN in the manner required, you are not required to backup withhold on any payments you make if the payee is:

1. An organization exempt from tax under section 501(a), any IRA where the payor is also the trustee or custodian, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2),
2. The United States or any of its agencies or instrumentalities,
3. A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities,

4. A foreign government or any of its political subdivisions, agencies, or instrumentalities, or
5. An international organization or any of its agencies or instrumentalities.

Other payees that may be exempt from backup withholding include:

6. A corporation,
7. A foreign central bank of issue,
8. A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States,
9. A futures commission merchant registered with the Commodity Futures Trading Commission,
10. A real estate investment trust,
11. An entity registered at all times during the tax year under the Investment Company Act of 1940,
12. A common trust fund operated by a bank under section 584(a),
13. A financial institution,
14. A middleman known in the investment community as a nominee or custodian, or
15. A trust exempt from tax under section 664 or described in section 4947.

The following types of payments are exempt from backup withholding as indicated for items 1 through 15 above.

**Interest and dividend payments.** All listed payees are exempt except the payee in item 9.

**Broker transactions.** All payees listed in items 1 through 13 are exempt. A person registered under the Investment Advisers Act of 1940 who regularly acts as a broker is also exempt.

**Barter exchange transactions and patronage dividends.** Only payees listed in items 1 through 5 are exempt.

**Payments reportable under sections 6041 and 6041A.** Only payees listed in items 1 through 7 are generally exempt.

However, the following payments made to a corporation (including gross proceeds paid to an attorney under section 6045(f), even if the attorney is a corporation) and reportable on Form 1099-MISC, Miscellaneous Income, are not exempt from backup withholding.

- Medical and health care payments.
- Attorneys' fees.
- Payments for services paid by a federal executive agency. (See Revenue Ruling 2003-66 on page 1115 in I.R.B. 2003-26 at [www.irs.gov/pub/irs-irbs/irb03-26.pdf](http://www.irs.gov/pub/irs-irbs/irb03-26.pdf).)

## Payments Exempt From Backup Withholding

Payments that are not subject to information reporting also are not subject to backup withholding. For details, see sections 6041, 6041A, 6042, 6044, 6045, 6049, 6050A, and 6050N, and their regulations. The following payments are generally exempt from backup withholding.

### Dividends and patronage dividends

- Payments to nonresident aliens subject to withholding under section 1441.
- Payments to partnerships not engaged in a trade or business in the United States and that have at least one nonresident alien partner.

- Payments of patronage dividends not paid in money.
- Payments made by certain foreign organizations.
- Section 404(k) distributions made by an ESOP.

### Interest payments

- Payments of interest on obligations issued by individuals. However, if you pay \$600 or more of interest in the course of your trade or business to a payee, you must report the payment. Backup withholding applies to the reportable payment if the payee has not provided a TIN or has provided an incorrect TIN.
- Payments described in section 6049(b)(5) to nonresident aliens.
- Payments on tax-free covenant bonds under section 1451.
- Payments made by certain foreign organizations.
- Mortgage or student loan interest paid to you.

### Other types of payment

- Wages.
- Distributions from a pension, annuity, profit-sharing or stock bonus plan, any IRA where the payor is also the trustee or custodian, an owner-employee plan, or other deferred compensation plan.
- Distributions from a medical or health savings account and long-term care benefits.
- Certain surrenders of life insurance contracts.
- Distribution from qualified tuition programs or Coverdell ESAs.
- Gambling winnings if regular gambling winnings withholding is required under section 3402(q). However, if regular gambling winnings withholding is not required under section 3402(q), backup withholding applies if the payee fails to furnish a TIN.
- Real estate transactions reportable under section 6045(e).
- Cancelled debts reportable under section 6050P.
- Fish purchases for cash reportable under section 6050R.
- Certain payment card transactions by a qualified payment card agent (as described in Revenue Procedure 2004-42 and Regulations section 31.3406(g)-1(f) and if the requirements under Regulations section 31.3406(g)-1(f) are met. Revenue Procedure 2004-42 is on page 121 of I.R.B. 2004-31 which is available at [www.irs.gov/pub/irs-irbs/irb04-31.pdf](http://www.irs.gov/pub/irs-irbs/irb04-31.pdf).)

## Joint Foreign Payees

If the first payee listed on an account gives you a Form W-8 or a similar statement signed under penalties of perjury, backup withholding applies unless:

1. Every joint payee provides the statement regarding foreign status, or
2. Any one of the joint payees who has not established foreign status gives you a TIN.

If any one of the joint payees who has not established foreign status gives you a TIN, use that number for purposes of backup withholding and information reporting.

For more information on foreign payees, see the Instructions for the Requester of Forms W-8BEN, W-8ECI, W-8EXP, and W-8IMY.

## Names and TINs To Use for Information Reporting

Show the full name and address as provided on Form W-9 on the information return filed with the IRS and on the copy furnished to the payee. If you made payments to more than one payee or the account is in more than one name, enter on the first name line only the name of the payee whose TIN is shown on the information return. You may show the names of any other individual payees in the area below the first name line.

**Sole proprietor.** Enter the individual's name on the first name line. On the second name line, enter the business name or "doing business as (DBA)" if provided. You may not enter only the business name. For the TIN, you may enter either the individual's SSN or the employer identification number (EIN) of the business. However, the IRS encourages you to use the SSN.

**LLC.** For an LLC that is disregarded as an entity separate from its owner, you must show the owner's name on the first name line. On the second name line, you may enter the LLC's name. Use the owner's TIN. Do not enter the disregarded entity's EIN.

## Notices From the IRS

The IRS will send you a notice if the payee's name and TIN on the information return you filed do not match the

IRS's records. (See *Taxpayer Identification Number (TIN) Matching* below.) You may have to send a "B" notice to the payee to solicit another TIN. Pub. 1281, Backup Withholding for Missing and Incorrect Name/TIN(s), contains copies of the two types of "B" notices.

## Taxpayer Identification Number (TIN) Matching

TIN Matching allows a payer or authorized agent who is required to file Forms 1099-B, DIV, INT, MISC, OID, and /or PATR to match TIN and name combinations with IRS records before submitting the forms to the IRS. TIN Matching is one of the e-services products that is offered, and is accessible through the IRS website. Go to [www.irs.gov](http://www.irs.gov) and search for "e-services." It is anticipated that payers who validate the TIN and name combinations before filing information returns will receive fewer backup withholding (CP2100) "B" notices and penalty notices.

## Additional Information

For more information on backup withholding, see Pub. 1281.

## Request for Taxpayer Identification Number and Certification

Give form to the  
requester. Do not  
send to the IRS.

Print or type See Specific instructions on page 2.	Name (as shown on your income tax return)	
	Business name, if different from above	
	Check appropriate box: <input type="checkbox"/> Individual/Sole proprietor <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) ▶ ..... <input type="checkbox"/> Exempt payee <input type="checkbox"/> Other (see instructions) ▶	
	Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
	City, state, and ZIP code	
	List account number(s) here (optional)	

### Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Social security number
OR
Employer identification number

**Note.** If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

### Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below).

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.

<b>Sign Here</b>	Signature of U.S. person ▶	Date ▶
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### General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

#### Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

**Note.** If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,

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- The U.S. grantor or other owner of a grantor trust and not the trust, and
- The U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

**Foreign person.** If you are a foreign person, do not use Form W-9. Instead, use the appropriate Form W-8 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

**Nonresident alien who becomes a resident alien.** Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

**Example.** Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity not subject to backup withholding, give the requester the appropriate completed Form W-8.

**What is backup withholding?** Persons making certain payments to you must under certain conditions withhold and pay to the IRS 28% of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

**Payments you receive will be subject to backup withholding if:**

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the Part II instructions on page 3 for details),
3. The IRS tells the requester that you furnished an incorrect TIN,

4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or

5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See the instructions below and the separate Instructions for the Requester of Form W-9.

Also see *Special rules for partnerships* on page 1.

## Penalties

**Failure to furnish TIN.** If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

**Civil penalty for false information with respect to withholding.** If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

**Criminal penalty for falsifying information.** Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

**Misuse of TINs.** If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

## Specific Instructions

### Name

If you are an individual, you must generally enter the name shown on your income tax return. However, if you have changed your last name, for instance, due to marriage without informing the Social Security Administration of the name change, enter your first name, the last name shown on your social security card, and your new last name.

If the account is in joint names, list first, and then circle, the name of the person or entity whose number you entered in Part I of the form.

**Sole proprietor.** Enter your individual name as shown on your income tax return on the "Name" line. You may enter your business, trade, or "doing business as (DBA)" name on the "Business name" line.

**Limited liability company (LLC).** Check the "Limited liability company" box only and enter the appropriate code for the tax classification ("D" for disregarded entity, "C" for corporation, "P" for partnership) in the space provided.

For a single-member LLC (including a foreign LLC with a domestic owner) that is disregarded as an entity separate from its owner under Regulations section 301.7701-3, enter the owner's name on the "Name" line. Enter the LLC's name on the "Business name" line.

For an LLC classified as a partnership or a corporation, enter the LLC's name on the "Name" line and any business, trade, or DBA name on the "Business name" line.

**Other entities.** Enter your business name as shown on required federal tax documents on the "Name" line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the "Business name" line.

**Note.** You are requested to check the appropriate box for your status (individual/sole proprietor, corporation, etc.).

### Exempt Payee

If you are exempt from backup withholding, enter your name as described above and check the appropriate box for your status, then check the "Exempt payee" box in the line following the business name, sign and date the form.

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Generally, individuals (including sole proprietors) are not exempt from backup withholding. Corporations are exempt from backup withholding for certain payments, such as interest and dividends.

**Note.** If you are exempt from backup withholding, you should still complete this form to avoid possible erroneous backup withholding.

The following payees are exempt from backup withholding:

1. An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2),

2. The United States or any of its agencies or instrumentalities,

3. A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities,

4. A foreign government or any of its political subdivisions, agencies, or instrumentalities, or

5. An international organization or any of its agencies or instrumentalities.

Other payees that may be exempt from backup withholding include:

6. A corporation,

7. A foreign central bank of issue,

8. A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States,

9. A futures commission merchant registered with the Commodity Futures Trading Commission,

10. A real estate investment trust,

11. An entity registered at all times during the tax year under the Investment Company Act of 1940,

12. A common trust fund operated by a bank under section 584(a),

13. A financial institution,

14. A middleman known in the investment community as a nominee or custodian, or

15. A trust exempt from tax under section 664 or described in section 4947.

The chart below shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 15.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 9
Broker transactions	Exempt payees 1 through 13. Also, a person registered under the Investment Advisers Act of 1940 who regularly acts as a broker
Barter exchange transactions and patronage dividends	Exempt payees 1 through 5
Payments over \$600 required to be reported and direct sales over \$5,000	Generally, exempt payees 1 through 7

<sup>1</sup>See Form 1099-MISC, Miscellaneous Income, and its instructions.

<sup>2</sup>However, the following payments made to a corporation (including gross proceeds paid to an attorney under section 6045(f), even if the attorney is a corporation) and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, and payments for services paid by a federal executive agency.

## Part I. Taxpayer Identification Number (TIN)

**Enter your TIN in the appropriate box.** If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-member LLC that is disregarded as an entity separate from its owner (see *Limited liability company (LLC)* on page 2), enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

**Note.** See the chart on page 4 for further clarification of name and TIN combinations.

**How to get a TIN.** If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local Social Security Administration office or get this form online at [www.ssa.gov](http://www.ssa.gov). You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at [www.irs.gov/businesses](http://www.irs.gov/businesses) and clicking on Employer Identification Number (EIN) under Starting a Business. You can get Forms W-7 and SS-4 from the IRS by visiting [www.irs.gov](http://www.irs.gov) or by calling 1-800-TAX-FORM (1-800-829-3676).

If you are asked to complete Form W-9 but do not have a TIN, write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

**Note.** Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

**Caution:** A disregarded domestic entity that has a foreign owner must use the appropriate Form W-8.

## Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if items 1, 4, and 5 below indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). Exempt payees, see *Exempt Payee* on page 2.

**Signature requirements.** Complete the certification as indicated in 1 through 5 below.

**1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983.** You must give your correct TIN, but you do not have to sign the certification.

**2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983.** You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

**3. Real estate transactions.** You must sign the certification. You may cross out item 2 of the certification.

**4. Other payments.** You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

**5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions.** You must give your correct TIN, but you do not have to sign the certification.

**What Name and Number To Give the Requester**

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account <sup>1</sup>
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor <sup>2</sup>
4. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee <sup>3</sup>
b. So-called trust account that is not a legal or valid trust under state law	The actual owner <sup>3</sup>
5. Sole proprietorship or disregarded entity owned by an individual	The owner <sup>3</sup>
For this type of account:	Give name and EIN of:
6. Disregarded entity not owned by an individual	The owner
7. A valid trust, estate, or pension trust	Legal entity <sup>4</sup>
8. Corporate or LLC electing corporate status on Form 8832	The corporation
9. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
10. Partnership or multi-member LLC	The partnership
11. A broker or registered nominee	The broker or nominee
12. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity

<sup>1</sup> List first and circle the name of the person whose number you furnish, if only one person on a joint account has an SSN, that person's number must be furnished.

<sup>2</sup> Circle the minor's name and furnish the minor's SSN.

<sup>3</sup> You must show your individual name and you may also enter your business or "DBA" name on the second name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

<sup>4</sup> List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships* on page 1.

**Note.** If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

**Secure Your Tax Records from Identity Theft**

Identity theft occurs when someone uses your personal information such as your name, social security number (SSN), or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

Call the IRS at 1-800-829-1040 if you think your identity has been used inappropriately for tax purposes.

Victims of identity theft who are experiencing economic harm or a system problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

**Protect yourself from suspicious emails or phishing schemes.** Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to [phishing@irs.gov](mailto:phishing@irs.gov). You may also report misuse of the IRS name, logo, or other IRS personal property to the Treasury Inspector General for Tax Administration at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at: [spam@uce.gov](mailto:spam@uce.gov) or contact them at [www.consumer.gov/idtheft](http://www.consumer.gov/idtheft) or 1-877-IDTHEFT(438-4338).

Visit the IRS website at [www.irs.gov](http://www.irs.gov) to learn more about identity theft and how to reduce your risk.

**Privacy Act Notice**

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons who must file information returns with the IRS to report interest, dividends, and certain other income paid to you, mortgage interest you paid, the acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA, or Archer MSA or HSA. The IRS uses the numbers for identification purposes and to help verify the accuracy of your tax return. The IRS may also provide this information to the Department of Justice for civil and criminal litigation, and to cities, states, the District of Columbia, and U.S. possessions to carry out their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism.

You must provide your TIN whether or not you are required to file a tax return. Payers must generally withhold 28% of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to a payer. Certain penalties may also apply.

Fr III



**ITG FAQ #5 Answer-What is a Form W-9 and when is it applicable?**

Form W-9, Request for Taxpayer Identification Number and Certification, is used by a U.S. person (including a resident alien) to give their correct TIN to the person requesting it, and when applicable, to:

- certify the TIN you are giving is correct (or you are waiting for a number to be issued),
- certify you are not subject to backup withholding, or
- claim exemption from backup withholding if you are an exempt payee.

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