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SUPREME COURT  
STATE OF WASHINGTON  
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NO. 95013-0

IN THE WASHINGTON SUPREME COURT

OLYMPIC PENINSULA NARCOTICS ENFORCEMENT TEAM;  
CLALLAM COUNTY SHERIFF BILL BENEDICT;  
CLALLAM COUNTY SHERIFF'S DEPARTMENT; and  
CLALLAM COUNTY

Appellants,

v.

REAL PROPERTY KNOWN AS

(1) JUNCTION CITY LOTS 1-12 INCLUSIVE, BLOCK 35;

(2) LOT 2 OF THE NELSON SHORT PLAT LOCATED  
IN JEFFERSON COUNTY;

and

ALL APPURTANCES AND IMPROVEMENTS THEREON, OR  
PROCEEDS THEREFROM,

Respondents *in rem*,

STEVEN L. FAGER;  
DBVWC, INC.; and

LUCILLE M. BROWN LIVING TRUST

Interested Parties.

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ON APPEAL FROM  
THE SUPERIOR COURT OF WASHINGTON  
FOR JEFFERSON COUNTY  
No. 09-2-00413-6

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SUPPLEMENTAL BRIEF OF PETITIONER

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A. INTRODUCTION TO THE CASE

This appeal stems from the unlawful seizure of real property located in rural Jefferson County, and the attorney fees awarded to brothers Steve and Tim Fager after they prevailed in the civil forfeiture proceeding. It all began with near simultaneous filing of a civil forfeiture action and criminal charges relating to the growing of marijuana on that property. The Fagers could have pled guilty to misdemeanor charges, which would have had no impact on their livelihood, but it would have meant forfeiting property valued at \$500,000.

To avoid forfeiture, the Fagers incurred considerable expense bringing a successful motion to suppress based on materially false statements contained in the search warrant affidavit. This suppression motion, which was filed under the criminal cause number, resulted in eventual dismissal of the criminal charges and forfeiture action. The trial court awarded attorney fees incurred in bringing the suppression motion that allowed them to prevail in the forfeiture. In doing so, the court made a factual finding that the Fagers would not have incurred the legal expense but for the civil forfeiture.

The court only authorized reimbursement of those legal fees reasonably incurred in defending against the seizure in the forfeiture proceeding. Any fees related to the criminal case but not the forfeiture, were not included. In doing so, the trial court explained the statute does not prohibit

awarding legal fees for work that simultaneously defends the criminal and forfeiture actions. Because there was a forfeiture proceeding, and because the Fagers reasonably incurred attorney fees in fighting that forfeiture, the Fagers were entitled to reimbursement of those legal fees.

OPNET argues for a much narrower reading of the statute, where legal work that serves a dual purpose in the criminal and civil forfeiture must be excluded. But this statute is to be liberally construed in favor of claimants, and as such, the court may not infer a restriction not expressly stated in the statute. Under the plain language of RCW 69.50.505(6), if there is a pending forfeiture proceeding, and if the claimants reasonably incurred attorney fees in fighting that forfeiture, then attorney fees shall be awarded.

OPNET makes additional arguments regarding Tim Fager, claiming for the first time on appeal that he did not file proper notice of claim and that his ownership of the property is not sufficient to bring a claim. Because these arguments were not properly raised below, Tim was deprived of the opportunity to present evidence in response. But even based on the existing record, sufficient evidence supports the court's findings regarding Tim.

## B. ISSUES PRESENTED

1. In a forfeiture proceeding, is a claimant entitled to reimbursement for all legal work reasonably incurred to prevent the forfeiture, even if that work benefited the criminal case as well?

2. Given the required liberal construction of the attorney fee provision, should this Court reject OPNET's attempt to infer a restriction not expressly contained within the plain language of the statute?

3. OPNET has known for more than two years that it would be responsible for both Tim and Steve Fager's attorney fees from the suppression motion. Is OPNET's claim on appeal that Tim did not provide proper notice of his intent, both untimely and without merit?

4. Tim Fager is a major shareholder in the corporation that co-owns the property with Steve Fager. He is also a shareholder in the water company that operates on that property. Where Tim Fager incurred attorney fees in protecting his financial interest by preventing the forfeiture of this property, did the trial court properly order OPNET to pay those fees?

#### C. STATEMENT OF THE CASE

Steve Fager and the Discovery Bay Village Wellness Collective (DBVWC) own the property at 115 Freeman Lane. Tim and Steve Fager are the majority shareholders in DBVWC. *CP 163, 167*. They are also major shareholders in the water company that operates on the property. *Id.*

In addition to the water company, Steve and Tim cultivated medical marijuana on the property. They are both medical marijuana patients. *CP 167*.

On October 9, 2009, OPNET and Clallam County seized the 115 Freeman Lane property and initiated a forfeiture proceeding in Jefferson County. *CP 508-09*. On that same day, the prosecutor charged Steve and Tim Fager with one count of Manufacturing Marijuana and one count of Possession with Intent to Deliver Marijuana. *CP 535*. The charges were based on marijuana found in a building at 115 Freeman Lane. *Id.*

Steven Fager, individually and in his role as representative for the DBVWC, was served with notice of the forfeiture and filed an objection. *CP 508-09*. Tim Fager was served with a forfeiture notice relating to personal property seized from his house, which had also been searched. *CP 355-59*. He filed an objection to that seizure, upon which he later prevailed. *CP 355-59*. Tim was not served with notice of the 115 Freeman Lane seizure and, accordingly, did not file a notice of claim.

The total value of property seized exceeded \$500,000 at the time of the raid. *CP 167*. The economic loss through seizure would have had a much bigger impact on the Fagers than the potential criminal convictions. *Id*; *CP 163*. As self-employed businessmen, Tim and Steve were unconcerned with marijuana convictions on their records. *Id.*

Steve Fager hired Jeff Steinborn to represent him in the criminal case and the forfeiture. *Id.* Jeff Steinborn “advised Steve that he could plead guilty to a misdemeanor with little or no jail time, but that it would allow

the State to keep his property.” *CP 160*. Per Mr. Steinborn, “Steve was unequivocal in stating that while he was not concerned about a conviction for marijuana on his record, he was unwilling to surrender the property wrongfully seized by OPNET.”<sup>1</sup> *Id.*

Tim Fager agreed. He and his attorney “theorized that the criminal and civil forfeiture cases were both part of a concerted attempt by OPNET to obtain the property at 115 Freeman Lane. From inception, our strategy in the criminal case was directed at preventing a civil forfeiture.” *CP 206*.

The attorneys explained that a favorable ruling in a suppression motion would resolve the civil forfeiture because of collateral estoppel. By contrast, if they won a suppression motion in the civil forfeiture case first, the State would not be barred from pursuing the criminal case. *CP 160, 163, 206*. Accordingly, the hearing in the forfeiture proceedings was continued pending resolution of the criminal case. *CP 34-36*.

OPNET’s continued delays and failure to comply with discovery requests required the defense to bring multiple motions to compel discovery and officer interviews, all of which were granted. *CP 174, 178, 268-80*. Following a nine-day hearing, the trial court found that the officers had

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<sup>1</sup> Jeff Steinborn was later replaced by local counsel Mike Haas, who received the same instructions from Steve Fager. Mr. Haas recalled that at his first meeting with Steve, “a criminal conviction was the least of Steven Fager’s concerns. His sole focus was on protecting the property he had worked so long and hard to acquire.” *CP 174*.

repeatedly made false statements regarding their ability to smell growing marijuana, and that these statements were made with a reckless disregard for the truth. CP 214. Excluding that evidence from the search warrant affidavit, the court suppressed the evidence and dismissed the charges. *Id.*

Acknowledging the interconnectedness of the criminal prosecution and civil forfeiture, the prosecution left the decision of whether to appeal up to OPNET stakeholders. CP 265-67. Prosecutor Mark Nichols informed Risk Management that if the suppression order was not reversed, the stakeholders “will in all likelihood be required to pay the Fagers’ attorney fees, which are believed to be substantial.” CP 265-67. After considering these consequences, OPNET decided to file an appeal.

Following Division Two’s opinion affirming the suppression order, counsel for the Fagers filed a motion for summary judgment in the forfeiture case based on collateral estoppel. A month later, OPNET finally released the property and moved to dismiss the forfeiture. CP 107.

Steve and Tim Fager filed the anticipated motion for attorney fees, supported by timesheets and declarations from Jeff Steinborn, Mike Haas, James Dixon, Steve Fager, and Tim Fager. CP 48-50; 159-285. The Fagers only sought attorney fees for work related specifically to the forfeiture. Time entries related solely to the criminal case were excluded. CP 176, 208.

In its written opposition, OPNET argued there was no prevailing party because of the dismissal, no fees are allowed for defense of a criminal action, and the amount was unreasonable in light of supporting documentation. CP 307. OPNET also challenged specific charges. CP 331-32; CP 510-11. To expedite matters, the Fagers removed all questioned charges. CP 537-38. Nowhere in its 30-page brief did OPNET argue Tim Fager's bills should be treated differently from Steve's bills. See CP 305-334.

A hearing was held on August 5, 2015. OPNET'S main argument was that the forfeiture statute only permitted reimbursement of fees for work related "solely" to the forfeiture. CP 318. OPNET acknowledged that if this same legal work had been filed under the concurrent forfeiture cause number, it would have been reimbursable. RP 39. OPNET argued that in order to receive attorney fees, the forfeiture proceeding had to be heard first. *Id.*

The trial court rejected that reasoning, finding it inconsistent with the plain language and legislative intent behind the statute. CP 519. Fees were appropriate because there was a forfeiture proceeding, and that the Fagers incurred legal expenses in defending against that forfeiture. *Id.*

D. ARGUMENT

**1. The plain language of the statute permits reimbursement for legal fees incurred in preventing a forfeiture, even when that work also served the criminal case.**

The forfeiture statute contains an attorney fee provision. In 2001, this statute was modified so that claimants could receive reimbursement from the government for wrongfully seized property. *Guillen v. Contreras*, 169 Wn.2d 769, 777, 238 P.3d 1168 (2010). As modified, the statute provides in relevant part:

In any proceeding to forfeit property under this title, where the claimant substantially prevails, the claimant is entitled to reasonable attorneys' fees reasonably incurred by the claimant.

RCW 69.50.505(6).

RCW 69.50.505(6) has four requirements for reimbursement: 1) a forfeiture proceeding, where 2) the claimant substantially prevails, and in doing so 3) reasonably incurs attorney fees that 4) are reasonable. All four conditions are easily satisfied in this case.

**a. There was a proceeding to forfeit property.**

RCW 69.50.505(3) provides that when real property is seized, “proceedings for forfeiture shall be deemed commenced by the seizure.” OPNET seized the 115 Freeman Lane property on October 9, 2009 and filed a forfeiture action the same day. CP 21-29. The hearings were continued,

but never stayed, and the forfeiture action was eventually dismissed on August 5, 2015. *CP 35, 42-44, 107.*

**b. The Fagers substantially prevailed in the forfeiture proceeding.**

A claimant “substantially prevails” when he or she recovers property that had been seized by law enforcement. *Guillen*, 169 Wn.2d at 780.

**c. The Fagers reasonably incurred legal fees in defending against the forfeiture.**

Judge Harper made a factual finding that “the Fagers reasonably incurred the requested attorney fees in defending against the forfeiture.” *CP 539*. The trial court considered all of the evidence submitted and determined that the Fagers would not have spent over \$300,000 in attorney fees to avoid a misdemeanor that would not have impacted either of their livelihoods. The court reasonably concluded that the discovery and suppression motions focused on preventing loss of real property through forfeiture. This was a factual finding for which there was substantial evidence.

**d. The attorney fees in this case are reasonable.**

OPNET did not challenge the reasonableness of the fees charged. *See RP 20-21.*

**2. OPNET argues for a restrictive reading of a statute meant to be liberally construed in favor of claimants.**

Under the plain language of the case, the Fagers incurred legal expenses in the forfeiture proceeding. As a result of that legal work, they

recovered their property. Reimbursement of those legal expenses is appropriate under RCW 69.50.505(6).

In arguing for a restrictive reading of the term “in any proceeding to forfeit property,” OPNET appears to suggest that compensation must be based solely on the pleadings filed under the forfeiture cause number. *Brief of App. at 13-15*. This strained interpretation ignores the reality of legal work. A lack of pleadings under a particular cause number does not equate with a lack of work on the subject matter of said cause. What matters is whether the legal work allowed the claimant to prevail in the forfeiture proceeding. The fact that the work also benefited the criminal case is of no significance under the plain meaning of the statute.

The federal forfeiture statute is often interpreted as more restrictive than Washington’s statute. But even federal courts have rejected this overly technical approach. *See United States v. Coffman*, 625 Fed. Appx. 285 (2015). In *Coffman*, Ms. Anderson made an “innocent owner claim” on forfeited property. There was also a criminal case relating to the same incident involving different defendants. The court consolidated the criminal case and civil forfeiture so that all motions were filed under the criminal cause number. Ms. Anderson prevailed, but the lower court denied attorney fees because the specific statute only reimbursed legal fees incurred in a “civil forfeiture proceeding.” *Id. at 287*.

The appellate court rejected this overly technical reading of the statute. First, the court noted that the particular docket number is not dispositive “because the Supreme Court allows attorney’s fees to be awarded for work ‘useful and of a type ordinarily necessary’ to secure the final result obtained from the litigation.” *Id.* at 288, quoting *Pennsylvania v. Del Valley Citizens’ Counsel for Clean Air*, 478 U.S. 546, 561 (1986). Further,

In both the civil action and the criminal action, Anderson’s desired final result was the removal of the condo from the order of forfeiture. This similarity between the civil and the criminal actions is important: in cases involving the appropriateness of attorney’s fees in related proceedings we have found significant a similarity in the underlying facts, the procedural history, and the plaintiffs.

*Id.* at 288. While the pleadings were filed in the criminal case, “this work, however, was useful and necessary to secure this result in both the civil action—which the government never sought to terminate—and the criminal action.” *Id.*<sup>2</sup> Accordingly, Anderson was entitled to attorney fees. *Id.*

OPNET’s argument that fees are not allowed in the current case is founded on the erroneous assumption that legal work can only serve one purpose. Certainly, the legislature could have drafted a statute that contains this limitation by adding the phrase “reasonable attorneys’ fees reasonably incurred by the claimant *solely for the forfeiture.*” RCW 69.50.505(6) (with

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<sup>2</sup> In a footnote, the Court distinguished this case from cases in which no civil forfeiture is filed, but simply a motion to return property is filed in the criminal case. In those cases, forfeiture fees are not allowed. *Coffman*, at 287, fn1.

italicized language added). But the legislature did not do so and courts “cannot add words or clauses to an unambiguous statute when the legislature has chosen not to include that language.” *State v. Delgado*, 148 Wn.2d 723, 727, 63 P.3d 792 (2003).

OPNET claims, “the Fagers argue that this Court should ignore what the Legislature unambiguously said in RCW 69.50.505(6) and side with them because RCW 69.50.505(6) should be ‘read liberally.’” *OPNET Answer at 7*. This is not what the Fagers are arguing. To the contrary, the Fagers and the trial court specifically relied upon the statute’s plain language in rejecting OPNET’s tortured interpretation. However, to the extent there is any ambiguity as to whether legal work can serve a dual purpose, or whether the legal work only counts if it is filed under a particular cause number, the rules of statutory construction provide guidance.

Washington cases provide two governing principles for interpretation of forfeiture statutes. First, “forfeitures are not favored and such statutes are construed strictly against the seizing agency.” *Snohomish Reg'l Drug Task Force v. Real Prop. Known as 20803 Poplar Way*, 150 Wn. App. 387, 392, 150 Wn. App. 387 (2009). Second, the legislature intended the attorney fee provision “to be read liberally.” *Guillen v. Contreras*, 169 Wn.2d at 777. Public policy supports awarding attorney fees to claimants

seeking the return of property wrongfully seized by law enforcement. *Moen v. Spokane City Police*, 110 Wn. App. 714, 718-21, 42 P.3d 456 (2002).

“A policy requiring liberal construction is a command that the coverage of an act's provisions be liberally construed and that its exceptions be narrowly confined.” *Nucleonics, v. Washington Pub. Power Supply Sys*, 101 Wn.2d 24, 29, 677 P.2d 108, 110 (1984). OPNET’s attempt to narrowly construe the attorney fee provision to exclude any legal work serving a dual purpose runs afoul of this basic rule of interpretation.

The Fagers noted that without attorney fees, their recovery of the unlawfully seized property would be a pyrrhic victory. *Petition at 14*. OPNET responds that Fagers’ “pyrrhic victory” argument is an issue for the legislature, not the courts. *Answer at 13*. But this Court has repeatedly looked to the legislative intent behind attorney fee provisions in determining their scope. *See e.g., Guillen v. Contreras*, 169 Wn.2d 777 (“this court pays particular attention to the legislative purpose behind attorney fee provisions.”); *Brand v. Dept of L&I*, 139 Wn.2d 659, 667, 989 P.2d 1111 (1999) (“it is important to evaluate the purpose of the specific attorney fee provision and to apply the statute in accordance with that purpose.”)

Here, “the purpose of the addition of the [forfeiture] attorney fee provision was to provide greater protection to people whose property is seized.” *Guillen v. Contreras*, 169 Wn.2d at 777. This legislative intent is

consistent with the trial court's ruling in the current case. The fight with OPNET over seized property nearly bankrupted the Fagers. *CP 168-69*. Only by incurring substantial attorney fees were the Fagers able to establish OPNET's reckless disregard for the truth in its investigation. The Fagers were fortunate they had the resources to continue their protracted battle with OPNET. However, even they could not have brought these motions without the knowledge that they would receive reimbursement from OPNET once the property was returned.

This economic reality was addressed in *Guillen*, where this Court was called upon to determine what is meant by "substantially prevails" after a family recovered less than half of the property seized. This Court explained:

Without an award of attorneys' fees, the family will probably have to forfeit all the cash recovered and sell the car to pay its attorneys fighting the civil forfeiture. If the purpose of the statute is to protect citizen's rights against wrongful seizure of their property, then granting attorney fees whenever claimants substantially prevail on some issue, or receive more than nominal relief, may be necessary to accomplish that statutory purpose.

*Guillen*, 169 Wn.2d at 778.

Although this Court has squarely addressed the factors to consider when construing Washington's forfeiture statute, OPNET leans heavily upon a split decision from a court in Alabama construing a different

forfeiture statute. *See Brief of App. at 16-21, citing to U.S. v. Certain Real Property, Located in Huntsville, AL, 579 F.2d 1315 (11<sup>th</sup> Cir. 2010).* In that case, the forfeiture proceeding was stayed while the criminal case progressed. The defendant was acquitted and the State moved to dismiss the forfeiture. Noting that federal case law defines “proceeding” to include associated work, the trial court awarded all attorney fees from the criminal trial. The appellate court reversed the decision. *See United States v. Certain Real Prop., Located in Huntsville, AL, 566 F. Supp. 2d 1252, 1260 (N.D. Ala. 2008), reversed 579 F.3d 1315 (11th Cir. 2009).*

As discussed in prior briefing,<sup>3</sup> *Huntsville* has little to offer in the current case. First and foremost, the two-person majority in Alabama reasoned the fee shifting provision of the Civil Asset Forfeiture Reform Act of 2000 (CAFRA) “must be construed strictly in favor of the sovereign.” *Id.* at 1320. Accordingly, any fee shifting which imposes liability on the government must be “unequivocal.” *Id.* This was a key distinction between the District Court ruling, which had “broadly” construed CAFRA in favor of claimants. In Washington, the attorney fee provision is liberally construed in favor of claimants. *Guillen*, 169 Wn.2d at 777. As such, restrictions or

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<sup>3</sup> *Brief of Resp. at 24-32.*

limitations on recovery should not be inferred. *Nucleonics*, 101 Wn.2d at 29.

The Alabama court also relied upon federal legislation which specifically addresses the interplay of criminal and civil forfeiture proceedings and allows the government to unilaterally stay the civil proceedings. The court reasoned that if Congress had intended to allow for compensation under these circumstances, it would have been included in the statutory scheme. *Id. at 1321-26*. Washington State, by contrast, has no corresponding provision for delineation of criminal and civil matters.

Where CAFRA's language is restrictive, Washington's is broad. The federal law states: "in any civil proceeding to forfeit property." Washington's statute says: "in any proceeding to forfeit property." *Compare* 28 U.S.C. 2465(b)(1)(A) (emphasis added) with RCW 69.50.505(6).

The plain language of the statute and rules of statutory construction support the trial court's ruling.

**3. OPNET's arguments relating to Tim Fager and DBVWC are untimely and lack merit.**

As part of their motion for attorney fees, the Fagers described Tim's ownership interest in the 115 Freeman Lane property. Through declarations, it was established that DBVWC was one of the owners of the property, and that Tim was a major shareholder in that corporation. Tim

was also part-owner of the water company that operated on the property. *CP 163, 167*. The loss of the property would have a significant financial impact on Tim. *Id.* All of Tim's legal fee bills were attached to an affidavit. *CP 229-263, 285*.

OPNET filed a 30-page response brief opposing the requested attorney fees. *CP 305-34*. OPNET raised numerous dubious defenses, and never alleged that Tim's claim for attorney fees should be treated differently than Steve's claim. To the contrary, OPNET challenged specific line entries on Tim and Steve's bill as unreasonable or unrelated to the civil forfeiture. *CP 332*. OPNET also repeatedly referred to the total of both bills, Steven and Tim, when referring to the unreasonableness of the amount requested. *CP 306, 307, 323, 330*. Only at the conclusion of oral argument did counsel mention Tim not being a named party to the lawsuit:

But then finally we have a fee agreement between Mr. Tim Fager and Mr. Jim Dixon. But Your Honor, Mr. Tim Fager is not a party to this case.

If you read the caption, it reads OPNET and other plaintiffs versus real property with real party in interest being Steve Fager and Discovery Bay Water Company [sic] and Lucille Ball Trust. Tim Fager is not even a party into this case.

And so we would submit to this Court that any billings in connection with Mr. Fager's representation were not contemplated with respect to this civil forfeiture.

And I think one thing that's interesting is that all civil forfeiture proceedings involving Tim Fager concluded in 2011.

*RP 43*. The court awarded the requested attorney fees incurred by Tim and Steve Fager. The court explained that it was doing so based on Tim's financial interest in the property through DBVWC. *RP 67-68*. OPNET presented no argument to rebut Tim's ownership interest in the property.

On appeal, OPNET argues that Tim Fager is not a party to the forfeiture because he "failed to satisfy the statutory prerequisites of RCW 69.50.505." *Brief of App. at 39*. Specifically, OPNET argues that Tim had to file a claim of interest in the property under RCW 69.50.505(5) in order to recover reimbursement of attorney fees. *Id.*

This argument fails because RCW 69.50.505(5) only requires a claimant to give notice after he or she is served with a notice of forfeiture. Here, OPNET never served Tim with notice. OPNET claims it was relieved of this obligation because it did not know of Tim's financial interest in the property. *Reply Brief of App. at 17*. OPNET cites to a title search contained in the clerk's papers. *Id.* But had they made this argument below, Tim would have had the opportunity to produce documentation showing OPNET knew of Tim's relationship to the property. This is why specific objections below are required. *See State v. Avendano-Lopez*, 79 Wn. App. 706, 710, 904 P.2d 324 (1995) (the rule requiring an objection is "supported by considerations of fairness to the opposing party."); *State v. Clark*, 124 Wn.2d 90,105, 875 P.2d 613 (1994) (Raising the issue below helps ensure the "benefit of

developed argument on both sides and lower court opinions squarely addressing the questions.”)

Moreover, with the exception of original service of a complaint, issues of notice usually boil down to a simple question: was the other party aware that a claim was being made? *See e.g., Utilities Dist. 1 of Grays Harbor Cty. v. Crea*, 88 Wn. App. 390, 395-96, 945 P.2d 722 (1997) (So long as a party has actual notice that it may be liable for attorney fees and an opportunity to settle the matter, saving the parties time and expense, a trial court’s award of attorney fees is not an abuse of discretion.) Appellants unequivocally knew of Tim Fager’s claim and their responsibility for his attorney fees. This is obvious from Mark Nichols’ warning that if the suppression order was not reversed, the stakeholders “will in all likelihood be required to pay the Fagers’ attorney fees, which are believed to be substantial.” *CP 265-67*. Further, the State’s failure to object or argue in response briefing demonstrates its knowledge of Tim Fager’s claim.

Also unpersuasive is the argument that Tim cannot make a claim as a majority stockholder in DBVWC, because DBVWC never presented a notice of claim. *See Brief of App. at 43-44*. We return again to the fact that OPNET presented Steve Fager with one notice of forfeiture to which he filed one notice of claim in response. *CP 15-17, 32-33*. Had OPNET made a specific objection at the trial level in response to the Fagers’ argument,

the trial court could have made a factual determination as to whether the notice of claim sufficiently advised OPNET that Steve, DBVWC and Tim were part of the claim. *See Presnell v. Safeway*, 60 Wn.2d 671, 675, 374 P.2d 939 (1962) (“Objections must be accompanied by a reasonably definite statement of the grounds therefor so that the judge may understand the question raised and the adversary may be afforded an opportunity to remedy the claimed defect.”) The lack of a timely objection below has deprived this Court of a sufficient factual record from which to evaluate OPNET’s claim.

E. CONCLUSION

As this Court observed, “the government has a strong financial incentive to seek forfeiture because the seizing law enforcement agency is entitled to keep or sell most forfeited property.” *City of Sunnyside v. Gonzalez*, 188 Wn.2d 600, 617, 398 P.3d 1078 (2017). The threat of attorney fees is one of the few means by which government over-reaching can be curbed. The trial court correctly applied the law to the facts in this case. Petitioners respectfully request that this Court reinstate the award of attorney fees, along with the reasonable fees incurred in responding to OPNET’s appeal.

DATED: March 9, 2018

  
\_\_\_\_\_  
James R. Dixon, WSBA #18014  
Counsel for Petitioners

**DIXON CANNON, LTD**

**March 09, 2018 - 4:45 PM**

**Transmittal Information**

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