

63776-2

63776-2

FILED  
OCT 17 2010  
COURT OF APPEALS  
CLERK OF THE  
STATE OF WASHINGTON  
BY \_\_\_\_\_

NO. 63776-2-1

**COURT OF APPEALS FOR DIVISION I  
OF THE STATE OF WASHINGTON**

<p>JACK FLETCHER, as Personal Representative of the Estate of LEO FLETCHER, deceased, and on behalf of all statutory beneficiaries,</p> <p style="text-align: center;">Appellant,</p> <p style="text-align: center;">vs.</p> <p>THE STATE OF WASHINGTON, by and through the UNIVERSITY OF WASHINGTON, UNIVERSITY OF WASHINGTON MEDICAL CENTER, and THE UNIVERSITY OF WASHINGTON SCHOOL OF MEDICINE,</p> <p style="text-align: center;">Respondents.</p>	<p style="text-align: center;">APPELLANT'S REPLY BRIEF</p>
---	--

FILED  
OCT 12 2010  
COURT OF APPEALS  
CLERK OF THE  
STATE OF WASHINGTON  
BY \_\_\_\_\_

**I. INTRODUCTION**

In their brief, Respondents take great effort at presenting and arguing the facts of the case, rather than addressing the narrow issues on appeal. As was stated in Appellant's Brief, the issues on appeal are as follows:

(1) Did the trial court commit reversible error in failing to strike the testimony of Dr. Veal, as requested by Appellant's attorney.

(2) Did the trial court commit reversible error, prejudicing the rights of the Fletcher Estate, by incorrectly interpreting or applying Washington law, when it determined that impeachment of a witness at trial was the only remedy for a failure of a party to disclose substantive changes in its expert witnesses testimony.

(3) Did the trial court commit reversible error based on an incorrect ruling on law, or otherwise abuse its discretion, in failing to grant the Fletcher Estate's motion for a new trial.

A careful review of Appellant's Brief, Respondents' Brief, and this Appellant's Reply Brief will confirm that Dr. Veal's testimony was materially changed from that in his deposition. This was acknowledged by Dr. Veal at trial. Prior to trial, Appellant's counsel made a written request to Respondents' trial attorney to update expert testimony, to which Respondents' trial attorney replied there was none. Subsequently, the trial Judge made both an error in law, and abused his discretion, by failing to strike the testimony of Dr. Veal, first, and second, by failing to grant a new trial. Both decisions were premised upon the erroneous legal conclusion that the only trial remedy available for failure to update expert testimony was impeachment of the witness by cross-examination, and that any misconduct

of Respondents' trial attorney in failing to properly update expert testimony was an issue separate from the expert's trial testimony. However, Washington law allows a trial Judge the discretion to assess the circumstances of the testimony, the discovery issues, and potential prejudice, to allow for such testimony to be stricken.

## **II. DR. VEAL'S CHANGED TESTIMONY WAS MATERIAL AND PREJUDICIAL**

With regard to Dr. Veal's testimony, Respondents argue that there was no change in Dr. Veal's testimony at trial from that of his deposition regarding pulmonary edema, or "leaky lungs;" that his *admitted changed testimony* about evidence of hemolysis (destruction) of the wrong type of red blood cells was minor and immaterial; and that changing Dr. Veal's time of trial testimony until after Appellant's rebuttal witness (Dr. Pearl) was of no consequence, as Dr. Pearl wasn't an expert on hemolysis. Appellant disagrees with all these contentions. Dr. Veal's changed testimony went to the heart of Appellant's theory of causation.

Appellant's primary trial causation witness was hematologist Dr. Harry Jacob. An abstract of Dr. Jacob's testimony, which is pertinent to this appeal, is as follows:

- (1) It is documented in the medical literature that a transfusion of as little as 50 cc (less than 2 oz.) of the wrong type of

blood can result in death. On October 15, 2004, Mr. Fletcher received four units (1500 cc's) of the wrong type blood over a 12 hour period. (CP 199)

(2) Immediately, upon beginning of the first transfusion of type A blood into Mr. Fletcher's type O blood/circulatory system, the hemolysis (destruction) of type A red blood cells occurred as these antibodies perforated the type A red blood cell walls. Hemolysis of red blood cells release hemoglobin into the affected person's bloodstream. (CP 199)

(3) Hemoglobin is what causes blood to appear red in color, and when released into the blood stream due to hemolysis, some is filtered by and excreted through the kidneys, and appears as pink or red urine. This process of hemolysis of foreign, wrong type blood cells is referred to as an acute hemolytic blood transfusion reaction ("transfusion reaction"). Predictably, the aggressive antibody release against the wrong type A red blood cells not only caused perforation or destruction of the A red blood cells, it caused, among other things, classic, clinically observed, symptoms such as: (a) Mr. Fletcher's blood vessels to constrict resulting in hypertension (high blood pressure); and (b) perforation of capillaries of the circulatory system, which was evidenced by fluid accumulating in the

tissues of the lungs, resulting in pulmonary edema (or “leaky lungs”), and generalized swelling (edema) of his body. (CP 199-201)

(4) Mr. Fletcher suffered from both a very large, acute hemolytic transfusion reaction, and a longer, slower delayed reaction.

(CP 208)

A relevant portion of Dr. Jacob’s trial testimony follows:

“Q. [By Mr. Riccelli] There’s a note at 500 hours or 5 a.m. on the morning of 15<sup>th</sup> October 2003, nursing notes and assessment that talk about urine turning pink. It appears from the nursing notes and the flow charts that Mr. Fletcher received some or one unit of A blood at 3 a.m. in the morning or approximately 300 hours, and one about 500 hours or 5 a.m. in the morning, and there’s the note at 500 hours or 5 a.m. in the morning that the urine is turning pinker. What if anything does that have to do with this process?

A. That tells you *he’s having massive and sudden perforation of his red blood cells with leak of hemoglobin into his plasma and then filtration through the kidneys and output through the urine.*”

(CP 209 – emphasis added)

In this instance, much of Appellant’s theory of causation at trial rested upon Dr. Jacob’s testimony about clinically observed and measured symptoms that appeared shortly after Mr. Fletcher was transfused the wrong blood type, and after being admitted to Harborview. Two of the primary diagnostic symptoms were hemoglobin appearing in the urine as pink or red coloring and a reddish sediment; and x-rays suggesting pulmonary edema or

leaky lungs. Recall that at his discovery deposition, Dr. Veal agreed that Mr. Fletcher's urine evidenced hemolysis shortly after being transfused the wrong blood type.

Q. [By Mr. Riccelli] **Well, what explained the reddish sediment viewed by the nurse in her chart notes on the 16<sup>th</sup> of October at 4:40 p.m.?**

MR. JOHNSON: Asked and answered. Go ahead.

THE WITNESS: Should I answer it again?

Q. [By Mr. Riccelli] Well – MR. JOHNSON: (Nodding.)

THE WITNESS: Okay.

**A. Yeah, I think it – it probably was hemolysis.**

(CP 59, 306 - emphasis added)

In their brief, Respondents argue that Appellant's attorney simply failed to make proper, historic inquiry of Dr. Veal about the foundation of his opinions. Respondents state that had Appellant's attorney done so, Dr. Veal would have clearly testified that Mr. Fletcher's lungs were "leaky from the time of the motor vehicle collision and that he would have related it back to portable laboratory readings taken by the air ambulance crew during transport to Harborview from Walla Walla.

However, also during his discovery deposition, Dr. Veal attempted to separate these two primary symptoms of hemolysis by time, as he linked symptoms of pulmonary edema (leaky lungs), to sepsis (bacterial infection)

occurring on October 20, 2004.

“Q. [BY MR. RICCELLI]. Culture and – yeah, culturing of the kidneys. I mean, I assume – and I’m just a layperson, I’m just an attorney; I’m not a doctor but I assume that if you’re saying sepsis caused kidney failure, then sepsis must have entered the organ itself and damaged it. The bacterial –

A. No, sir. *The inflammatory mediators that are generated by the sepsis –*

Q. Okay.

A. *They cause what is functionally a burn within the blood vessels of the body. That’s why the lungs leak.* That’s why the blood vessels in the kidneys become dysfunctional.

Q. Is it the renal failure in your mind that was primary in causing the lung failure?

A. No, sir, in that his lungs had already been injured with the initial trauma, which generated inflammatory response, *the what I believe to be septic episode beginning on the 20<sup>th</sup> when he had the purulent secretions in his bronchoscopy and they got the organisms out. And those things made the lungs very leaky and damaged and stiff.*”

(CP 265-266, 270 - emphasis added)

In his deposition, Dr. Veal clearly and firmly established that Mr. Fletcher’s “leaky lungs” resulted from inflammation caused by the cumulative effect of initial lung injury (occurring in the motor vehicle accident of October 14, 2004) when combined with the later purported pneumonic/septic condition which did not occur until or about October 20, 2004. Respondents’ argument that Dr. Veal would have linked leaky lungs to

the time of the air ambulance transport in his deposition had Appellant's attorney made the proper inquiry, flies in the face of Dr. Veal's actual deposition testimony noted above.

Given this testimony there was no need for Appellant's attorney to explore Dr. Veal's opinion about pulmonary edema or leaky lungs occurring prior to Mr. Fletcher's admission to Harborview on October 14, 2004.

As presented previously in Appellant's brief, Dr. Veal's changes in testimony at trial were significant, especially when juxtaposed against the testimony from other defense expert witnesses, *as both in their discovery depositions and trial testimony: (1) no other defense CR 26(b)(5) expert witness (hereafter expert witness) agreed that the pink urine or reddish sediment in the urine was evidence of hemolysis; and (2) that no other defense expert witness noted that there was any objective, clinical evidence of pulmonary edema or leaky lungs occurring prior to Mr. Fletcher's admission to Harborview.* (RP 4/7/09) At trial, Appellant (logically) intended to cross-examine Dr. Veal based upon his prior deposition testimony, as his testimony was, then, inconsistent with other defense expert witnesses.

At trial, when Dr. Veal was commenting on Mr. Fletcher's condition during air ambulance transport from St. Mary Medical Center in Walla Walla, and before he was admitted to Harborview, Dr. Veal's objectionable trial

testimony included the following.

“Q. [By Mr. Johnson] Were any blood gases or laboratory studies done? I think we heard testimony from the respiratory therapist that they did something called the I-Stat?

A. Yes, sir.

Q. Do you have that result there?

A. Yes, sir. An I-Stat is simply a lab result that can be done with a little handheld module with the results being immediately available to the providers. It's a wonderful thing to have in this kind of situation. We use them in ICU's all the time.

The I-Stat blood has he had at 1845 on 100 percent oxygen showed a PH of 7.31, a PCO<sub>2</sub> of 36.5, and P0<sub>2</sub> of 373. To put that in context, normal PH is about 7.4. I wager nobody in this room has a PH of less than 7.4. His was 7.31.

Normal PCO<sub>2</sub> is 35 to 45, so he's in that window. That's partly – by that point they're bagging him with the tube in. So they're ventilating him appropriately, is what that tells us.

An oxygen level of 373 is lower than one would expect. When you take – we use a number or calculation called the A-A gradient. And it's really a pretty simple thing. The concentration of oxygen and air around us is determined by barometric pressure. In the State of Washington that's generally going to be 760, minus water vapor pressure. So it's going to be just above 700 millimeters of mercury pressure, of oxygen in the air around us.

That oxygen, when we inhale it, it has to go past two very delicate cells, one alveolar, the air sac lining the cell, and one capillary cell on the blood side, just a very thin membrane. So when you inhale 21 percent air like you and I are doing, your lungs just absorb that oxygen lickity split and goes into your bloodstream. And your A-A gradient is ten or less.

The other A, the little A, is the arterial oxygen concentration. So the A-A gradient between the alveolar oxygen

concentration and the arterial oxygen is very low, because of that very thin delicate membrane.

***His first A-A gradient based on those blood gases is over 300. His lungs were getting congested because he was already leaking because of his injury.***

(4/9 RP 14-16 – emphasis added)

Although Respondents' trial counsel acted as though surprised at Mr. Veal's change in testimony, his questioning of Dr. Veal, above, appears to have been designed to elicit that changed testimony.

At trial, not only did Dr. Veal testify that there was objective clinical evidence of leaky lungs prior to Mr. Fletcher's admission to Harborview, but stated that Mr. Fletcher's lungs were "flooding" by the time of admission.

"Q. [By Mr. Johnson] Doctor, there has been a suggestion that Mr. Fletcher didn't need to be on a ventilator at the time he arrived at Harborview and at the time that he was sent to ICU. From your standpoint as a pulmonologist, I'd like you to comment on that.

A. While his initial intubation was said to be for airway protection, he's fortunate they placed a tube at that time to allow them to be able to deliver the oxygen and ultimately positive pressure he needed to get oxygen into his bloodstream. ***Because even with the positive pressure ventilation, with his lungs flooding like that, his alveoli, the little air sacs, are prone to collapse.*** And then blood just shunts through an air sac that has no oxygen in it at all. And so without a little bit of positive pressure to open those little sacs up, your blood oxygen would be way too low. And within hours, he would have had serious problems. He wouldn't have been able to breath on his own. Probably by the end of the air flight. So it's good that they did it when they kind of had a control situation."

(4/9 RP 20 – emphasis added)

Dr. Veal’s trial testimony about “leaky lungs” occurring prior to Mr. Fletcher’s admission to Harborview is wholly inconsistent with his deposition testimony that the accumulation of factors caused Mr. Fletcher’s lungs to leak on or about October 20, 2004. Query, If Dr. Veal really believed Mr. Fletcher’s lungs were “flooding” as of the time of admission to Harborview on October 14, 2004, why then did he stress, in his deposition, that pneumonia and sepsis, occurring on or about October 20, 2004, in combination with pre-existing traumatic lung injury, as causal of Mr. Fletcher’s leaky lungs.

In their brief, Respondents attempt to rehabilitate Dr. Veal’s trial testimony regarding evidence of hemolysis in Mr. Fletcher’s urine on October 15, 2004, by stating it was a result of the obvious difference between his testimony about hemolysis, generally, and “acute” hemolysis. This is tantamount to an argument of form over substance. According to MedicineNet.com, the definition for the medical term acute is as follows:

“Acute: Of abrupt onset, in reference to a disease. Acute often also connotes an illness that is of short duration, rapidly progressive, and in need of urgent care.

“Acute” is a measure of the time scale of a disease and is in contrast to “subacute” and “chronic.” “Subacute” indicates longer duration or less rapid change. “Chronic” indicates indefinite duration or virtually no change.

The time scale depends on the particular disease. For example, an acute myocardial infarction (heart attack) may last a week while an acute sore throat may only last a day or two.“

Appellant’s primary causation witness, Dr. Jacob, in his testimony quoted above, clearly testifies about Mr. Fletcher suffering a sudden (acute) reaction to the transfusion of the wrong blood type, and relates blood in Mr. Fletcher’s urine, and pulmonary edema as evidence of it. (CP 201) Dr. Jacob also directly refers to this as an acute occurrence. (CP 208, 222). Regardless of Dr. Veal’s “intent” about his testimony, and whether he meant acute or non-acute when referring to evidence of hemolysis in Mr. Fletcher’s urine, it was Appellant’s theory that evidence of hemolysis by pink urine and red sediment in urine was evidence of acute hemolysis. Thus, Dr. Veal’s change in testimony was material and significant regarding evidence of hemolysis, when considered in the context of Appellant’s trial theory of causation.

Simply stated, Dr. Veal’s changes in testimony at trial were material and prejudicial, given the circumstances and the nature of the change in testimony, and the time at trial when the testimony was given. Dr. Veal’s changed testimony appears to have been carefully designed to:

- 1) Mitigate the effect of his prior deposition testimony that pink urine or the reddish sediment in it probably was hemolysis, by stating having more time to review this complex case, he was compelled to change his

thinking; and

(2) Remove pulmonary edema, or leaky lungs, as a primary, post-Harborview admission, and contemporaneous symptom of hemolysis due to a transfusion reaction.

It is Respondents that are disingenuous, by claiming Dr. Veal didn't really change his testimony, as Dr. Veal clearly, directly, and fully admitted during his trial testimony, that it was changed from his deposition, with respect to evidence of hemolysis.

“Q. [By Mr. Riccelli] Doesn't sediment in his urine probably indicate hemolysis?

A. No, Sir, I don't think so.

Q. Turn to page 45 of your deposition, please.

A. This was in July of 2008. Yeah, I had done a lot more reviewing of this stuff since then.

Q. Do you want me to ask you the question?

B. No, I can tell the jury. I acceded to the suggestion that it could have been hemolysis on July 2<sup>nd</sup> of 2008, yeah.

**Q. So your opinion has changed since the time of your deposition?**

**A. It certainly has, because I have had a lot more time to review this.”**

(4/9 RP Veal p. 79 – emphasis added)

With respect to the timing of leaky lungs, Dr. Veal was less than forthcoming.

“Q. [By Mr. Riccelli] Those things taken in the context together made the lungs leaky?”

A. Yes sir.

Q. Isn't it a fact, though, you never attributed leaky lungs prior to the time of the sepsis – Let's put it this way: find somewhere in your deposition where you attributed leaky lungs to something prior to the pneumonia and sepsis in your deposition?

MR. JOHNSON: Your honor, that is not an appropriate question.

Q. [By Mr. Riccelli] Would you agree that you did not relate leaky lungs to have occurred prior to his admission at Harborview?

A. **I said, no, sir, in that his lungs had already been injured with the initial trauma which generated inflammatory response.**

Q. All right. Then you didn't say “leaky” there, did you? Continue on.

A. **I will continue if you insist, but, no, I don't say “leaky” there, but I think we both know what I was talking about.**

Q. Well, regardless are you stating that the lungs were leaking as of the air flight?

A. **Yes, Sir.**

(4/9 RP Veal pp. 38-40 – emphasis added)

Finally, as to pulmonary, critical care witness Dr. Veal's testimony, Respondents essentially state, “no harm, no foul” as to changing the day of

Dr. Veal's testimony until after Appellant's rebuttal pulmonary critical care witness, Doctor Pearl. Respondents state that, with regard to the details of an acute hemolytic transfusion reaction, Dr. Pearl disclaimed that he was a hematologist. Therefore, Respondents essentially argue that Dr. Pearl lacked foundation to rebut Dr. Veal's change in testimony about evidencing hemolysis in Mr. Fletcher's urine. This argument fails, as both Dr. Veal and Dr. Pearl are pulmonology/critical care experts, and were not prohibited on commenting about customary evidence of hemolysis as seen by them in their field of expertise, to include evidence of hemolysis in urine. Further, had Dr. Pearl been able to return for rebuttal against Dr. Veal's testimony, he would have been able to address Dr. Veal's surprise testimony about the air ambulance portable laboratory readings evidencing leaky lungs.

### **III. THE TRIAL JUDGE ERRED AS A MATTER OF LAW**

The trial Judge's ruling on the Appellant's motion to strike the testimony of Dr. Veal, at trial, was effectively made in the e-mail of April 12, 2009, which was made a part of the record by the Judge (CP 19-20). The effective ruling was to deny the motion based upon the express, mistaken legal conclusion that the only remedy for an expert witnesses change in testimony is impeachment. It is clear that the judge considered the fact of lack of discovery updates regarding Dr. Veal's testimony, as he also addressed

attorney misconduct. (CP 19-20) Recall that immediately after Appellant's attorney moved to strike Dr. Veal's testimony as he was the last trial witness, the trial Judge made no ruling, dismissed the jury to return for final arguments on Monday (April 13, 2004). By Monday, a time at which Appellant's counsel could go on the record to review the motion, the trial Judge had effectively made his ruling by e-mail. (CP 19-20) That Respondents argue that there was some waiver by Appellant of the motion to strike is unfounded, given the context of the trial Judge's e-mail. (CP 19-20)

Unfortunately, the trial Judge erred when he concluded that the only remedy available to Appellant under the circumstances was impeachment of the witness. See *Port of Seattle Port of Seattle v. Equitable Capital Group, Inc.*, 127 Wash.2d 202, 209,898 P.2d 275 (1995).

#### **IV. THE TRIAL JUDGE ABUSED HIS DISCRETION**

It cannot be stated that the trial Judge exercised his discretion, regarding Dr. Veal's testimony, as there is no record the judge even considered the materiality or impact of the testimony or its prejudicial effect, either at the time of the motion to strike, or at the time of the motion for a new trial. See *Kromer v. J. I. Case Manufacturing Co.*, 62 Wn. App. 544, 815 P.2d 798 (1991). The trial Judge concluded impeachment was the only available remedy at trial regarding Dr. Veal's changed testimony, and

considered the failure to update expert witness testimony as an attorney disciplinary matter, and a separate issue from the testimony itself. In his e-mail the trial Judge stated:

“DR. VEAL: *When a witness arguably changes his testimony, the remedy is* impeachment. With the cross going on for twice the length of the direct, there was ample opportunity for this and it was accomplished. *When an attorney violates the discovery rules, there are other remedies.* I don’t intend to give a jury instruction that is both a prohibited comment on the evidence and an immaterial comment on counsel.”

(CP 20 – emphasis added)

*Port of Seattle, supra*, however, dictates that when there is a failure to update an expert witness’s testimony, and there is a resulting change of that testimony at trial, striking the testimony is available as a sanction, when considering the potential for prejudice to the non-offending party. Simply put, when a trial Judge has discretion to consider an action, but does not, then it cannot be said that he or she exercised that discretion. Failure to exercise discretion by failure to recognize that authority to exercise it exists, must certainly equate, defacto, to an abuse of such available discretion.

In the second instance, the trial Judge abused his discretion, when, upon being made aware of the prior error in law about the discretion to strike Dr. Veal’s testimony, he failed to grant a new trial. A new trial should have been granted, as the trial Judge committed obvious error, which was prejudicial to the Appellant, by failing to consider striking Dr. Veal’s

testimony due to the trial Judge's misinterpretation or misapplication of Washington law.

Appellant's attorney was surprised by the change in trial testimony as Appellant's attorney had previously exercised due diligence by requesting an update on expert testimony. However, these circumstances do not constitute surprise in the context of that which should have required Appellant to request a new trial, rather than moving to strike Dr. Veal's testimony, during trial. To require Appellant to have done so would have unfairly shifted the burdens of discovery and the fair administration of justice from Respondents and their attorney under these circumstances, to the Appellant. It should be common knowledge, and tantamount to judicial notice, that complex medical malpractice trials are extremely expensive to litigate. To allow an intentional, or unintentional, failure of a party to update expert witness testimony to be the grounds to require an opposing party, at trial, to request a new trial prior to its submission to the jury, rather than to consider striking the testimony, is punitive to the non-offending party. Further, this situation could have been prevented, with due diligence on the part of Respondents' attorney, had he specifically requested an update of testimony from Respondents' expert trial witnesses. There was no offer of proof at the time of the motion to strike or later, at the time of the motion for new trial, that he did so.

Should the appellate court require, under circumstances such as these, that it is mandatory for a non-offending party to move for a new trial pre-verdict, rather than move to strike the offending testimony, query the degree of gamesmanship that could occur in the future, regarding expert testimony and failure to update it. Such a ruling would risk opening the floodgates to this type of occurrence in the future.

## **V. CONCLUSION**

In summary, Dr. Veal, himself, acknowledges that his testimony had changed about evidence of hemolysis from the time of his deposition, regardless of any stated reason for him doing so. A careful review of his deposition testimony and his trial testimony about when Mr. Fletcher's lungs became leaky also confirms change. These changes were material and prejudicial to Appellant and Appellant's theory of causation. It is also patent that, for the purposes of appeal and argument, Respondents' trial attorney did not make inquiry of Dr. Veal regarding any update or change of testimony. Dr. Veal's changed testimony went to the heart of Appellant's theory of causation, which was based upon significant, objective, and clinical symptoms which occurred after the time of Mr. Fletcher's admission to Harborview. The trial Judge erred as a matter of law, when confronted with this situation, regarding options available to him to address Dr. Veal's

changed testimony, as he incorrectly concluded only impeachment was available as a remedy. It follows, then, that the trial Judge abused his discretion by not considering striking the testimony, by first exploring the circumstances of non-disclosure or update, and the potential for prejudice to Appellant. Subsequently, the trial Judge erred and abused his discretion by failing to grant a new trial, by failing to acknowledge the initial error in law, resulting abuse of discretion, and prejudice to Appellant.

WHEREFORE, Appellant's request that this court grant a new trial to Appellant, and deny Respondents' requests, claims and arguments to the contrary.

RESPECTFULLY SUBMITTED this 7 day of October, 2010.

MICHAEL J RICCELLI PS

By:   
Michael J. Riccelli, WSBA #7492  
Attorney for Appellant

400 W. Jefferson, Suite 112  
Spokane, WA 99204-3144  
(509) 323-1120

**DECLARATION OF SERVICE**

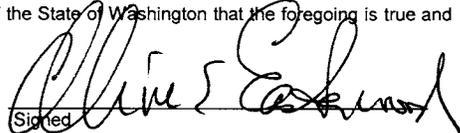
I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Mary Spillane  
Williams, Kastner & Gibbs  
601 Union Street, #4100  
Seattle, WA 98101-2380

- Personal Service
- US Mail
- Hand-Delivered
- Overnight Mail
- Email
- Facsimile

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

10-7-10  
Date

  
Signed