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No. 70843-1-1

COURT OF APPEAL,
OF THE STATE OF WASHINGTON, DIVISION I

SEATTLE-TACOMA INTERNATIONAL TAXI ASSOCIATION,

Appellant,

v.

GURUNHAM SINGH KOCHER, KAHSAI SIUM, CABDI NUUR
CALASOW, DEEQ A. FARAH, MICHAEL B. MEGNTA, GENENE
DERAMU, NIRMAL CHEEMA, PARMINDER SINGH CHEEMA,
PARAJMIT SINGH DHALIWAL, SARAWAN SINGH BAL,
MUSTAFE HASSAN ISMAIL, HASSAN MOHAMED, DEJENE W.
GEMECHU, and SOLOMON MELLES,

Respondents,

BRIEF OF RESPONDENTS

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2011 SEP 30 PM 4:20

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I. INTRODUCTION AND SUMMARY OF ARGUMENT

STITA Airport Cab (herein STITA) was designed to exclusively pick-up lucrative airport fares, which made it the most profitable taxicab company. STITA's only real purpose was to renew its exclusive airport license, which it did multiple times over twenty plus years.

In 2008, Port staff told STITA that its exclusive airport license would be released for open bidding due to several complaints. STITA had to increase its 160 taxicab fleet for the first time by 50 taxicabs to meet provisions of the unreleased request for proposals (RFP).

STITA solicited dozens of immigrant taxi drivers (herein drivers) to join it by telling them that it was an opportunity of a lifetime. STITA told the drivers that the airport was making STITA add more cabs for its next renewal because it had too much business. STITA told the drivers that this renewal would be automatic like all prior renewals. STITA assured the drivers that they were 100% certain STITA's exclusive license would be renewed. STITA assured the drivers that the \$10,000 they deposited with STITA would be put in a segregated account and "safe." These assurances induced the drivers to incur thousands in expenses and essentially put-up their life savings to join STITA.

STITA concealed from the drivers that its exclusive airport license was being released for open bid for the first time. STITA excluded the

drivers from voting and becoming board members to keep them ignorant of the airport renewal process.

STITA told the drivers they needed to fill out an application to join STITA, so STITA could show the airport that it had enough taxicabs to handle all the extra business. STITA said it was just a formality and that what they agreed to verbally was all that mattered. STITA's attorney drafted an amended application. The drivers were not represented by counsel nor did any of them meet with STITA's attorney. None of the drivers received copies of their signed applications. The drivers all emigrated from third world countries. English is their second language and each has trouble understanding the legal import of documents written in English.

The drivers were "shocked" and "devastated" when they discovered STITA lost its bid to renew its exclusive airport license. STITA's agents assured the drivers they would reverse the award through court action. STITA immediately terminated all driver deposit payment until STITA renewed its exclusive airport license.

In August 2010, the Washington State Supreme Court denied STITA's petition to review the denial of injunction against the Port award. The Port signed a contract with Yellow Cab the next day. STITA planned to force the Port to rescind its contract by preventing Yellow Cab from

having enough cabs to meet the obligations of the Ports RFP by cornering the city-county taxicab license market. Instead of returning the drivers' deposits, STITA threatened to sue the drivers if they left to Yellow Cab. Each driver partnership had to pay another \$10,000 to join Yellow Cab and another \$5,000 to enter the airport. STITA transferred nearly all of the drivers deposits to its general account. The drivers immediately demanded their deposits back from STITA. STITE decided to sue the drivers instead of returning their deposits.

STITA misled dozens of hardworking immigrant taxi drivers into joining it and paying it hundreds of thousands of dollars. The trial court found that STITA's misrepresentation of the airport renewal process amounted to negligent misrepresentation of existing facts notwithstanding the written "disclaimer" in the last paragraph of the amended application. STITA's misrepresentations went to the very heart of the drivers' contract with STITA and were a proximate cause of the drivers' loss.

The trial court's ruling was based upon the testimony of 16 witnesses, voluminous exhibits and a trial spanning a month. The trial court ruled that STITA was unjustly enriched when it kept the drivers' deposits and ruled that there were equitable grounds to rescind the amended application. The trial court awarded quasi-contractual damages by fashioning an equitable award. It did not award lost profits or income.

II. ISSUES PRESENTED

1. Did the trial court have sufficient evidence to support its finding that STITA negligently misrepresented the airport renewal process?
2. Did the trial court have equitable grounds to rescind the amended application?
3. Did the trial court have sufficient evidence to award its quasi-contractual damages per its finding of unjust enrichment, negligent misrepresentation and remedy of rescission?

III. STATEMENT OF THE CASE¹

A. SUMMARY OF PROCEEDINGS BELOW

In March of 2010, the drivers formally demanded damages from STITA. (CP 614 at Para. 48) STITA sued the drivers' making the demand for breach of contract. (*Id.*) The drivers countersued for fraud in the

¹ This brief has been organized in conformance with the guidelines described on Washington State Appellate Court website for Division 1 which states the following: "2.DISCUSS FACTS AND PROCEDURE IN CONNECTION WITH EACH ISSUE. We have noticed a trend toward briefs that begin with a summary of 'procedural facts' followed by a lengthy statement of 'substantive facts.' This formulaic approach is not required by RAP 10.3(a)(4), which merely says that a brief should include a "fair statement of the facts and procedure relevant to the issues presented for review." Often it is preferable to begin with an overview summarizing the proceeding below and explaining each party's theory of the case. The statement of facts and procedure relevant to an issue can then be set forth just before the argument pertaining to that issue. This court generally does not like to be introduced to the case through a recitation of the trial testimony.
http://www.courts.wa.gov/appellate_trial_courts/?fa=atc.display_divs&folderID=div1&fileID=briefWriting

inducement, fraud in the execution, negligent misrepresentation, unjust enrichment and consumer protection violations and prayed for the remedy of rescission. (CP 39) STITA moved for summary judgment on its breach of contract claim and to dismiss the drivers' counterclaims. (CP 59) The trial court denied STITA's motion to prevail on its breach of contract claims and allowed the drivers' fraud in the inducement, negligent misrepresentation and unjust enrichment claims to proceed. (CP 292) STITA made a motion for discretionary review. (CP 633) It was denied. (*Id.*) The appellate court found negligent misrepresentations about the "airport renewal process" were material misrepresentations of existing facts. (CP 639)

The case was tried to the bench. (CP 644) The judge heard 16 witnesses and reviewed over 90 admitted exhibits. (*Id.*) The case spanned one month with 15 actual days of trial. (*Id.*) The trial court issued findings of fact and conclusions of law in favor of the drivers' negligent misrepresentation and unjust enrichment claims and granted the remedy of rescission. (CP 618-621) STITA vacated the findings per CR 52(c) to challenge the sufficiency of the evidence supporting the findings. (CP 529) At the hearing to amend the findings, the trial judge explained the evidentiary basis behind its findings of facts and conclusions of law. (VR at Vol. 3)(CR 584)

The court awarded equitable damages and quasi-contractual remedies. (CP 621) The court found there was sufficient evidence to return the deposits each partnership paid STITA, award change of association costs and refund the fee to rejoin Yellow Cab that five of the eleven drivers had to repay when they pulled their cabs out of Yellow Cab in reliance on STITA's misrepresentations. (CP 622-CP 624) The court limited the drivers' damages because it considered the financial loss STITA suffered in losing its exclusive airport license. (CP 622) The court did not award lost income or profits.

B. SUMMARY OF PARTIES' THEORIES OF THE CASE

The trial court judge had sufficient evidence to find negligent misrepresentation and unjust enrichment. It had an equitable basis to rescind the amended application. The drivers submitted sufficient evidence of damages for the court to issue quasi-contractual damages. Thus, the trial court awarded damages that can be characterized as both restitution and reliance damages and were ultimately meant to put the drivers back into the position they would have been before joining STITA.

STITA's theory is that the court erred in awarding negligent damages because it did not have evidence of the drivers' net business income while at STITA, so the court could not award lost profits. They further argue there was no misrepresentation of existing fact because there

was no duty to disclose the competitive bidding of its exclusive license. STITA also argues that since there was no basis for the negligent misrepresentation award, the unjust enrichment award and rescission remedy must be reversed. Furthermore, they argued that the independent duty doctrine bars recovery. Finally, they request the appellate court interpret the amended application to enforce payment of the deposits.

IV. ARGUMENT

A. STANDARD OF REVIEW

“The inherent function of the superior court is to decide factual disputes...” Wenzler & Ward Plumbing & Heating Co. v. Sellen, 53 Wn.2d 96, 101(1958) Once the trial court finds substantial factual evidence the appellate court “will not to substitute our judgment for that of the trial court, even though we may believe an erroneous conclusion was reached.” *Id.*; Fischler v. Nicklin, 51 Wn.2d 518, 542 (1958) A trial court's decision to rescind a contract will be reviewed for abuse of discretion. Willener v. Sweeting, 107 Wn.2d 388, 397 (1986)

B. STITA MADE NEGLIGENT MISREPRESNTATIONS OF FACTS REGARDING THE AIRPORT RENEWAL PROCESS

The test for negligent misrepresentation is as follows:

- (1) the defendant supplied information for the guidance of others in their business transactions that was false;

- (2) the defendant knew or should have known that the information was supplied to guide the plaintiff in his business transactions;
- (3) the defendant was negligent in obtaining or communicating the false information;
- (4) the plaintiff relied on the false information;
- (5) the plaintiff's reliance was reasonable; and
- (6) the false information proximately caused the plaintiff damages.

Ross v. Kirner, 162 Wn.2d 493, 499, 172 P.3d 701 (2007)²

STITA's agents made material negligent misrepresentations of existing facts to the drivers. STITA also concealed material facts related to the airport renewal process in a fraudulent manner.

*I. FACTS RELATING TO STITA'S NEGLIGENT
MISREPRESENTATIONS TO THE DRIVERS
REGARDING THE AIRPORT RENEWAL PROCESS*

STITA was created in the 1980s to exclusively service customers at the airport. (CP 606 at Para. 1) STITA's main purpose was to maintain and renew its exclusive license at the airport. (*Id.* at Para. 2) For over twenty years, STITA "automatically" renewed its exclusive license at the airport multiple times. (*Id.* at Para.3; CP 587 ln. 3-12)

Port employees complained to STITA staff about deadheading, that STITA was mistreating drivers and that customers were waiting too long. (CP 606 at Para. 4) In 2008, Port employees told STITA that its exclusive airport license would not be renewed automatically and that it

² STITA used the old test for negligent misrepresentation (App. Br. at Pg. 26 fn. 11)

would be released for competitive bidding for the first time. (*Id.* at Para.5-6)

Since its inception, STITA kept its fleet at approximately 160 county licensed taxicabs. (*Id.* at Para. 7) In 2008, STITA devised a plan to increase its fleet by 50 city-county licensed taxicabs in order to meet the requirements of the Port's future RFP, the terms of which had not been released. (*Id.* at Para. 8; *Id.* at footnote 4; CP 588 ln. 4-23);

STITA invited dozens of drivers to bring taxicab businesses from other companies to STITA. (CP 607 at Para. 10) STITA board members told the drivers at meetings and individually that STITA had automatically renewed its exclusive license at the airport multiple times over the past couple decades and this time was going to be no different. (*Id.*) STITA board members told the drivers they were 100% certain STITA would renew its exclusive license at the airport. (*Id.*) STITA also told the drivers that the Port was making STITA add 50 more cabs after the next renewal because STITA had too much business at the airport. (*Id.*)

STITA's agents did not tell the drivers verbally or in writing that the exclusive airport license would be released for open bidding. (*Id.* at Para. 11-12) STITA had near weekly meetings with Port staff where they would sometimes get more details about the future competitive bidding process. (CP 608 at Para. 14) STITA didn't disclose this to the drivers.

(CP 607 Para. 11) STITA did not allow the drivers to vote or become board members, in order to keep them completely ignorant of the airport renewal process. (CP 609 Para. 17)

During the spring of 2009, STITA's attorney re-drafted a document entitled "amended application" to join STITA.³ (CP 608 at Para. 14) STITA's attorney only met with STITA board members, not the drivers. (*Id.* at Para. 15) Each of the witnesses from STITA, including its attorney and five board members, could not clearly explain the language in the amended application when testifying at trial. (*Id.* at Para. 16)

The drivers were not represented by counsel. (*Id.*)The drivers are all immigrants and English is their second language. (*Id.*) They have trouble understanding the legal import of documents written in English. (*Id.*) Most support large families in the United States and in their homelands of Somalia, Ethiopia, Eritrea and India. (*Id.*)

The trial court found STITA's agents made material misrepresentations of existing fact that were false or made "in a fraudulent manner." (CP 618 at Para. 65) The court also found that the misrepresentations were "not just an opinion or hopeful statement." (*Id.*)

The trial court further found that "STITA's failure to disclose and the actual concealment of the RFP process was also a misrepresentation.

³ STITA's attorney also drafted the original application to join STITA that was signed by half of the drivers before they also signed the amended application.

STITA had a duty to disclose this information to the drivers.” (CP 619 at Para. 66)

Finally, the trial court also made the following findings:

68. STITA intended for the drivers to rely on these [false] statements in order to induce them to join STITA, so STITA could increase its fleet by 50 city-county licenses to meet the provisions of the future RFP.
69. None of the drivers knew that STITA’s exclusive license would be released for public bidding and would not had joined STITA and paid STITA thousands of dollars had they known.
70. The drivers did in fact rely on this misrepresentation and their reliance was reasonable and justified. STITA’s board had special expertise in the renewal process which they had engaged in for decades. STITA board members had direct contact on a near weekly basis with Port staff including Stacy Mattson. The information regarding the future RFP and renewal process was not easily attainable and was in fact meant to stay private until the RFP decision of December 2009. The representations made by the board members to the drivers were also meant to secure their confidence and induce them to act by joining STITA and paying STITA thousands of dollars.
71. The drivers suffered damages as a result of STITA’s actions (see section on damages below)

(CP 619)

The court also found that STITA continued, even through trial, to conceal these relevant facts by concealing when it discovered its exclusive airport license was going out for open bid:

Plaintiff’s [STITA’s] trial brief which falsely states “Defendants have no evidence suggesting that STITA had any reason to be on notice of the change in Port policy before the Port’s RFP was issued in September 2009 – months after all Defendants had already signed their contract [and paid STITA

\$10,000].” (Pl. Tr. Br. at Pg. 16 ln. 12-15) “Unbeknownst to STITA, the Port of Seattle decided that, rather than renewing the contract with STITA has [sic] [as] it had done in the past, the Port would put the contract up for a supposedly competitive bid process. STITA did not receive the Port’s RFP until September 29, 2012, [sic] which was well after the Defendants had joined [and paid STITA \$10,000].”(Id. at Pg. 6 ln. 5-7)

(CP 618 at footnote 30)

2. *STITA'S NEGLIGENT MISREPRESENTATIONS REGARDING THE AIRPORT RENEWAL WERE MATERIAL MISREPRESENTATIONS OF EXISTING FACT*

Under Washington law, a defendant is liable for negligent misrepresentation when it 1) makes material negligent misrepresentations of existing fact, or 2) negligently fails to disclose information when it has a duty to do so. MultiCare Health Sys. v. Lexington Ins. Co., 539 Fed. Appx. 768, 770 (2013), *citing* Van Dinter v. Orr, 157 Wn.2d 329 (2006)

STITA’s agents made material negligent misrepresentations of existing fact. Here, even if STITA didn’t have a duty to disclose, it had to communicate accurate and true information about the airport renewal process once they chose to speak about the matter. STITA’s agents made the following misrepresentations to the drivers, which were false when made 1) STITA’s exclusive airport license will be automatically renewed, like it had been multiple times in the prior two decades, and 2) they were 100% certain STITA would renew its exclusive airport license.

The trial court found that STITA's agents "knew this was false or spoke in ignorance of its falsity in a fraudulent manner." The court also found that these statements to be "misrepresentations of existing fact" and "not just an opinion or hopeful statement." Thus, the court had a sufficient basis to find negligent misrepresentation.

3. *STITA'S CONCEALMENT OF THE RELEASE OF ITS EXCLUSIVE LICENSE FOR OPEN BID AMOUNTED TO A NEGLIGENT MISREPRESENTATION*

The Restatement (Second) of Torts § 551 states:

Liability for Nondisclosure

(1) One who fails to disclose to another a fact that he knows may justifiably induce the other to act or refrain from acting in a business transaction is subject to the same liability to the other as though he had represented the nonexistence of the matter that he has failed to disclose, if, but only if, he is under a duty to the other to exercise reasonable care to disclose the matter in question.

(2) One party to a business transaction is under a duty to exercise reasonable care to disclose to the other before the transaction is consummated,

(a) matters known to him that the other is entitled to know because of a fiduciary or other similar relation of trust and confidence between them; and

(b) matters known to him that he knows to be necessary to prevent his partial or ambiguous statement of the facts from being misleading; and

(c) subsequently acquired information that he knows will make untrue or misleading a previous representation that when made was true or believed to be so; and

(d) the falsity of a representation not made with the expectation that it would be acted upon, if he

*subsequently learns that the other is about to act in reliance upon it in a transaction with him; and (e) facts basic to the transaction, if he knows that the other is about to enter into it under a mistake as to them, and that the other, because of the relationship between them, the customs of the trade or other objective circumstances, would reasonably expect a disclosure of those facts.*⁴

(Emphasis added)

Nondisclosure of a material fact can be a breach of the general duty of good faith that all parties to a contract are under. Liebergesel v. Evans, 93 Wn. 2d 881, 891-893 (1980); See 1-203 of the Uniform Commercial Code

STITA had a general duty of good faith, as a party to a contract, to disclose to the drivers its exclusive license was being released for open bid. This was material and its concealment induced the drivers to join STITA and pay it thousands of dollars.

STITA's only real defense at trial was that it did not know its exclusive license would be released until the RFP was released on September 29, 2009 (see *supra* at Pg. 11). The trial court discovered this was false. STITA still "vigorously" challenges this finding, but the facts

⁴ "There are indications, also, that with changing ethical attitudes in many fields of modern business, the concept of facts basic to the transaction may be expanding and the duty to use reasonable care to disclose the facts may be increasing somewhat. This Subsection is not intended to impede that development." Comment L to Restatement (Second) of Torts § 551.

are overwhelmingly against their position. (App. Br. at Pg. 11) In 2008, STITA knew that its exclusive license was being released for open bid. In fact, STITA decided in 2008 to let the drivers join precisely to prepare for the terms of the future RFP which required a larger fleet. This is well before the drivers paid STITA money to join. The trial court judged the credibility of several witnesses to determine STITA's claim to be false.

STITA had a duty to disclose to the drivers, as the restatement states, "subsequently acquired information that he knows will make untrue or misleading a previous representation that when made was true or believed to be so" or "partial or ambiguous statement of the facts from being misleading." In fact, they intentionally concealed information about the renewal process from the drivers. Thus, the duty to disclose was breached.

The duty also arises "where a party relies on the specialized and superior knowledge of the other party." Favors v. Matzke, 53 Wn. App. 789, 796 (1989) Here the court found that STITA had special expertise in the renewal process spanning decades. STITA often reminded the drivers of this fact. The court also found they also had superior knowledge because they were in near weekly contact with the Port about the renewal process. The court also held that the drivers justifiably relied upon

STITA's misrepresentations.⁵ Thus, STITA negligently breached this duty.

The duty also arises "where a seller knows a material fact that is not easily discoverable by the buyer."⁶ *Id.* Here, the trial court held that not only were facts related to the RFP and renewal process not easily attainable, but STITA intentionally concealed them. Thus, STITA breached its duty.

The duty also arises where "by the lack of business experience of one of the parties, the other takes advantage of the situation by remaining silent." Oates v. Taylor, 31 Wn.2d 898, 904 (1948) Here, STITA's owners and board members knew that the drivers were totally new and ignorant of the airport renewal process. STITA took advantage of this ignorance by remaining silent.

⁵ The trial court's finding of justifiable reliance, which is a question of fact, invalidates STITA's leading argument that *Ross* clearly "dooms Defendants' theory." (App. Br. at Pg. 25 Para. 3)

⁶ STITA pulls a quote from an exhibit admitted during respondent Mustafe Ismail's testimony, which it purports reveals that the drivers understood the "disclaimer." (App. Br. at Pg. 10) At trial it was made clear that the document was produced after STITA lost its initial bid in December of 2009 in a committee set up by STITA. STITA signals that Mr. Ismail got the documents through the subsequently created committee on page 11 of its brief. Furthermore, as repeatedly shown, the alleged disclaimer does not bar this lawsuit because it did not disclose whether STITA's exclusive license would be renewed or that it gave license to STITA to misrepresent the airport renewal process.

C. THE TRIAL COURT HAD EQUITABLE GROUNDS TO RESCIND THE AMENDED APPLICATION

1. *FACTS RELATED TO THE TRIAL COURT'S EQUITABLE BASIS FOR RESCINDING THE AMENDED APPLICATION TO JOIN STITA*

As stated above, *supra* at IV.B. 1, in 2008 STITA learned that its exclusive airport license was being released and decided to add 50 new cabs to prepare for provisions of the future RFP.

The drivers spent several days doing the following to prepare to join STITA and several more days doing the same thing to leave STITA: paint and decal their vehicles, uninstall old taxi association dispatch equipment and install new taxi dispatch equipment, drive to Olympia to get the proper taxicab business license, go to the city of Seattle agency responsible for taxicabs, go to the licensing with the King County taxi agency, go to the department of licensing, get release documents from taxicab associations and undergo city taxi inspections. (CP615-616)

In December of 2009, the Port committee reviewing the proposals gave Yellow Cab's proposal more points than STITA's. STITA's board repeatedly assured the drivers that STITA was blocking the committee's point award in court and that STITA would still renew its airport concession. *Id.* In early January 2010, STITA's board postponed all driver deposit payments until STITA won its exclusive license. (CP 611) STITA

owner-driver partnerships were ordered to pay into the drivers' segregated account to balance out the money spent by drivers, but they never did. *Id.*

The drivers immediately tried to join Yellow Cab, but Yellow Cab would not let them join and instead put them on their waiting list. (VR at Vol. 2, 52:13-24;54:1-9; 59:5-10)The trial court found that STITA knew the drivers would leave for Yellow Cab if STITA lost its exclusive license. *Id.* Taxicabs must be part of a taxicab company or their valuable taxicab medallions will be relinquished to the city. (*Id.* at 52:9-12)

In February of 2010, STITA's board resigned and a new board took office. (CP 611 at Para. 34) The new board posted driver notices showing over two hundred thousand dollars in drivers' deposits in their segregated account to assure the drivers their money was "safe." (CP 612 at Para. 36)

In August of 2010, the Supreme Court of Washington denied STITA's request for review to enjoin the committee's airport contract award to Yellow Cab. (CP 612 at Para. 37) The next day, Yellow Cab signed a contract with the Port to take over STITA's exclusive license on November 1, 2010. (CP 612 at Para. 38)

In September of 2010, STITA posted a driver notice threatening to sue drivers for the full \$20,000 deposit if they left STITA. (CP 612 at Para. 39) STITA planned to force the port to rescind its contract with

Yellow Cab by cornering the city-county taxicab license market. (*Id.*; CP 607 at Para. 9) CP This would prevent Yellow Cab from meeting the terms of its concession agreement that required 210 city-count licensed cabs. *Id.*

Also in September of 2010, STITA board notes show that STITA still had \$220,000 in the segregated drivers' account, nearly the same amount shown to the drivers at the beginning of the year as "safe." (CP 613 at Para. 43) By October 2010 the drivers had all left STITA for Yellow Cab. (CP 613 at Para. 44) Also in October of 2010, STITA transferred \$57,563 from the drivers' segregated account to STITA's general account. (*Id.*) In February of 2011, STITA transferred over \$100,000 from the drivers' segregated account to STITA's general bank account, taking the balance down to \$14,700. (CP 614 at Para. 47)

In March of 2011, 7 of the 50 taxicab partnerships demanded, through counsel, the return of their \$10,000 deposits. (CP 614 at Para. 48) In April and May, correspondence between counsel regarding the drivers' demand for damages ensued. (*Id.*) In June of 2011, STITA filed a lawsuit against the driver partnerships represented by counsel (*Id.*)⁷

⁷ STITA dismissed three of the drivers, Gurunham Kochar, Parajmit Dhaliwal and Cabdi Nuur Calasow, without prejudice at trial because they were not represented by counsel. (CP 663)

After STITA presented its case-in-chief and the drivers rested their case, STITA brought a motion to dismiss per CR 41(e)(3) which governs bench trials. (VR at Vol. 2, 20:8-22) STITA spent nearly an hour and fifteen minutes arguing that the drivers waived their right to rescission for failure to bring it promptly. (CR 657)

The judge explained the following reasons why she was denying STITA's motion: 1) given the full context of the regulatory, financial and logistical constraints, the drivers could not feasibly leave STITA until they were allowed into Yellow Cab in the fall of 2010 (VR at Vol. 2, 52:4-18; 54:19-24; 57:25 to 58:1-4); 2) rescinding the deal with STITA was far more complex than simply returning a piece of property or rescinding a sales contract (*Id.* at 53:7-9; 65:16-19); 3) STITA was benefitted by the drivers staying at STITA after the committee issued its point award (*Id.* at 53:2-6; 59:5-10); 4) the drivers in this case were not benefitted by staying at STITA (*Id.* at 55:12-1562:11-12); 5) STITA was on notice that the drivers were on the waiting list to join Yellow Cab and would leave once they had the opportunity (*Id.* at 52:13-24; 54:1-9; 59:5-10); 6) STITA was not prejudiced by the drivers formally pleading rescission when they did (*Id.* at 54:10-12); 7) STITA's repeated assurances that they would fix the problem and renew the contract despite the committee's point award allowed a reasonable basis for the drivers to stay at STITA to see whether

they were actually damaged by the misrepresentation because all the elements of the tort requiring rescission would not be met until that point (*Id.* at 63:9-23); and 7) STITA intimidated some drivers into staying at STITA by manipulating their partners. (*Id.* at 65:17-25 to 66:1-3)

The court ruled in the conclusions of law that STITA admitted the “drivers promptly abandoned STITA once an opportunity with Yellow Cab appeared.” (CP 621 at Para. 79)(quoting STITA’s brief)

2. *THE TRIAL COURT’S RESCISSION OF THE AMENDED APPLICATION WAS A PROPER EXERCISE OF ITS DISCRETION*

A trial court has broad discretion to fashion equitable relief appropriate to the facts, circumstances, and equities before it, and the reviewing court will give great weight to the trial court's exercise of discretion. Standing Rock Homeowners Ass'n v. Misich, 106 Wn. App. 231, 240 (2001) Discretion is abused only if a decision is manifestly unreasonable or based upon untenable grounds. Apostolis v. City of Seattle, 101 Wn. App. 300, 303 (2000)

If a party’s assent to a contract was induced by a material misrepresentation, even by an innocent material misrepresentation, the contract is voidable and rescindable. Yakima County (West Valley) Fire Protection Dist. No. 12 v. City of Yakima, 122 Wash. 2d 371, 390 (1993)

Here, given the negligent misrepresentations of fact described in the immediately preceding section, the court had authority to rescind the amended application. The trial court chose to exercise that discretion after weighing the credible evidence in this particular case. As argued below, STITA raises no valid argument as to why the trial court abused its discretion by not finding waiver.

3. *THE DRIVERS DID NOT WAIVE THEIR RIGHT TO RESCISSION*

Waiver of the right to rescind is a matter of intent and raises a question of fact. Hoke v. Stevens-Norton, Inc., 60 Wn.2d 775, 777-778 (1962) Waiver of a right will not be inferred from doubtful factors, and there must be evidence of intent to relinquish the right. Bonanza Real Estate, Inc. v. Crouch, 10 Wn. App. 380, 386 (1974)

A plaintiff does not waive rescission where, upon discovery of the misrepresentation, the defendant promises to fix the matter. Holland Furnace Co. v. Korth, 43 Wn.2d 618, 627 (1953)(finding the waiver of rescission even after the plaintiff discovered the fraud and continued to use the furnace for months as he waited for the seller to fix it)

The trial court will look at the totality of the circumstances and the particular facts of each case to determine what is a reasonably prompt rescission. (Actions for rescission must be promptly commenced. The

application of the rule is governed by the facts present in each case.”) *See Holland v. Florida*, 130 S. Ct. 2549, 2563, (2010)(holding a court in equity must do case-by-case analysis considering the totality of the circumstances when deciding whether to award equitable remedies) The question of whether rescission was promptly commenced is an issue of fact. *Darnell v. Noel*, 34 Wn.2d 428, 435 (1949)

When judging whether a party has elected to rescind a contract, the court need not only look at the actual date an action for rescission was filed, but may infer election of rescission by the actions of the party. *Id.* at 435 (holding lawsuit for rescission not required to be filed even after defect discovered by plaintiff because defendant tried to fix it)

STITA argues that the drivers waived their right to rescission because they did not leave STITA promptly. But STITA admits the drivers “promptly abandoned STITA once an opportunity with Yellow Cab appeared.” (CP 621 at Para. 79) For this reason alone, STITA’s argument should be denied.

The drivers could not feasibly leave STITA immediately after learning the committee had awarded more points to another company. They immediately tried to join Yellow Cab, but Yellow Cab wouldn’t let them join and instead put them on a waiting list. They would lose their taxicab license and business if they were not part of a taxicab company.

They have to jump through several city, county, state and port regulations before moving their cabs to another company. They also could not afford to join a third company and expend all of the time and money necessary to do so, only to be required to spend all the same time and money to join Yellow Cab when it decided to allow them to join a few months later.

Furthermore, leaving would not be feasible because the whole purpose of the deal and investment was to get a shot at the airport. It would unreasonably skyrocket damages to leave STITA simply to preserve a legal right for a decision made years from then.

Also, STITA forced some drivers to stay through intimidating their partners. STITA should not be rewarded for trapping the drivers in an untenable position with their partners.

In addition, STITA was on notice that the drivers would be leaving STITA once they had an opportunity to join Yellow Cab. The trial court found that STITA was in no way prejudiced by the drivers pleading rescission when they did. Furthermore, STITA was benefitted and not prejudiced by the drivers staying at STITA because the larger number of cabs improved its chances to win its injunction by showing STITA had the requisite number of cabs to win. But the drivers did not benefit by staying at STITA a few extra months, because they continued to receive lower

driving and lease income. Thus, it would be inequitable to reward STITA and penalize the drivers by waiving their right to rescission.

The drivers would not have been damaged if STITA was able to actually reverse the port committees' award and was able to renew its airport license. STITA assured the drivers it would still get the airport license and reverse the committees' award. The constant assurances, if true, would have prevented any damage to the drivers caused by the misrepresentations. The court used the analogy of the a fraud claim to explain that not all of the elements of fraud may be met in a circumstance where, even though the first elements may be met (misrepresentation of an existing fact) the last few (damages, proximate cause, reasonable reliance) were not yet met. Thus, the drivers claim for rescission was not ripe in December of 2009.

Lastly, once the drivers left STITA and STITA spent their money, the drivers almost immediately demanded damages. Any delay in filing a formal action with the remedy of rescission was the fault of STITA's breach of an oral agreement and about scheduling litigation.⁸ There was no intent to waive the right to rescind and this in no way prejudiced STITA.

⁸ Any delay in the actual words "rescission" being pled was caused by a breach of an agreement by STITA's counsel to wait for the drivers' counsel to return from Africa. It is believed STITA did this to scare off other drivers from joining counsel.

D. THE UNJUST ENRICHMENT CLAIM SURVIVES BECAUSE THE AMENDED APPLICATION WAS RESCINDED

The trial court made factual findings and legal conclusions in favor of the drivers' unjust enrichment claim primarily because STITA did not return the drivers deposits (CP 620) STITA's only argument against the award of unjust enrichment is that since there is no valid negligent misrepresentation claim the amended application cannot be rescinded. (App. Br. at Pg. 34-35) For the reason stated above, the negligent misrepresentation award was issued correctly; the right to rescission was not waived. Thus, following STITA's logic, the unjust enrichment claim survives. STITA has waived all other arguments against the award of unjust enrichment.

E. THE TRIAL COURT ISSUED A PROPER AWARD OF EQUITABLE AND QUASI-CONTRACTUAL DAMAGES

1. *FACTS RELATED THE TRIAL COURT'S PROPER FINDINGS OF DAMAGES*

Each taxi driver partnership paid STITA \$10,000⁹ and incurred the following expenses:

- \$400 to \$500 to paint and decal their taxicab into STITA colors and another \$400 to \$500 to paint and decal out of STITA colors;
- \$500 to install STITA's specialized dispatch equipment and \$500 to uninstall it;

⁹ Sawran Bal paid 5,000 and whose partner paid nothing. (CP 614 at Para. 49)

- \$1,150 city association registration fee to join STITA and another \$1,150 to leave STITA;
- \$250 a month in STITA membership dues;
- \$5,000 fee to rejoin Yellow Cab for the cabs that had to repay it because they pulled-out of Yellow Cab to join STITA;

(CP 616; CP 223 ln. 1-8; CP 251-296 at Paras. 6; CP 469-486; Trial Ex. 138, Trial Ex. 157, CP 94 at Para. m;)

Furthermore, the trial court used the following analogy to explain how the drivers incurred the expenses listed above:

21 [THE COURT] They caused people to jump, to
 22 run. They did not share the information. And so --
 23 MR. GOLDFARB: Okay.
 24 THE COURT: Lots of jumping and lots of running
 25 turned out to be without purpose.

(VR at VOL. 3, 31:16-25)¹⁰

The trial court found that the drivers were in fact damaged even if the court didn't know the precise dollar amount with mathematical certainty; "[T]here is damage. As do I know every penny? I don't know every penny." (*Id.* at 36:2-5)¹¹

¹⁰ After STITA vacated the trial court's findings of fact and conclusions of law for failure to give STITA an opportunity to amend CR 52(c), the trial court held a hearing to explain the basis behind each hearing. The transcript of the hearing is included as VR at Vol. 3. The primary discussion between STITA's counsel and the trial court was whether the court had the evidentiary basis to find any damages for negligent misrepresentation.

¹¹ 2 THE COURT: So it's not as though the fact of damage
 3 is different from do I know every penny. So that's the

The trial court also found that the drivers were in fact damaged because STITA's misrepresentation went to the very value of what it was selling:

30

10 THE COURT: Well, again, it was clear to me. And
11 that's why I made the finding that the reason people were
12 joining STITA is not because gas would cost less or because
13 STITA had the usual array of affairs -- of fares better than
14 Yellow or better than Orange or Farwest or all of the other,
15 but rather, the one special thing that STITA had and **what it**
16 **was selling, was something that they misrepresented.**

(*Id.* at 30:10-16) (Emphasis added)

The court went on to explain that what STITA was selling was an opportunity to benefit from STITA's exclusive license at the airport:

"[THE COURT] It's what did they do for the opportunity for a long-term association with the most lucrative opportunity to drive? They're buying an opportunity." (*Id.* at 33:25-34:1-3)

The trial court went on to explain how the misrepresentations went to the very value of the opportunity, which the drivers were paying for:

38

19 [THE COURT] I am saying that -- using the expression "all things
20 being equal"? The array of fares, expenses associated with
21 gas, maintenance, internal association fees, or if there
22 were those sorts of expenses, were not going to be

4 difference. Is there -- as an abstraction, there is damage.
5 As do I know every penny? I don't know every penny.

23 different. **What was different is the opportunity to spend**
24 **\$20,000 to be -- to have your cab worth more and to be an**
25 **owner and to be a member. And that -- that that has value.**

39

1 **And based on that, that when you don't receive that,**
2 **you have been damaged,** even though it at the end of the
3 month you may have earned "X" amount more than you expended.

(*Id.* at 38:19-25 to 39:1-3)

All of the drivers made less in lease and driving income than what they made before they entered STITA and after they left STITA (*Id.* CP 616-617) (VR at Vol. 3, 39:6-14)

The trial court did not award lost profits or lost income to the drivers. (CP 622) Instead the court weighed all of the evidence presented to it regarding damages and considered equitable factors including the financial loss STITA suffered by losing its exclusive airport license. (*Id.*) Based on these factors, did not make STIA pay for some of the drivers' expenses including the \$250 a monthly membership fee, the cost to install and uninstall STITA's specialized dispatch equipment, costs for paint jobs or most of the change of association fee. The court did return the deposits paid by the drivers to STITA, some change of association costs and the fee to rejoin Yellow Cab for cabs. (*Id.*)

2. *THE COURT HAD SUFFICIENT EVIDENCE TO AWARD QUASI-CONTRACTUAL DAMAGES*

In V. C. Edwards Contracting Co. v. Port of Tacoma , 7 Wn. App. 883 , 889 (1972) the court held:

Although this evidence was not sufficient to ascertain damages with mathematical precision, the plaintiff's evidence provided a reasonable basis for allowing the trial court to exercise its sound discretion. We will not disturb a proper exercise of sound discretion.

“The trier of fact has discretion to award damages in an amount falling within the range of relevant evidence.” Shields v. Garrison, 91 Wn. App. 381, 386 (1998) “Rescission’ is an equitable remedy and requires the court to fashion an equitable solution.” Willener, 107 Wn.2d at 397

As explained more fully in the next section, the court may award all damages proximately caused by a negligent misrepresentation including reliance damages and foreseeable consequential damages. The court in *Chapman* explained the purpose of awarding such damages for negligent misrepresentation:

“The purpose of awarding nonpunitive, pecuniary compensation to the injured party is to repair his injury, or to make him whole again as nearly as that may be done by an award of money.” In addition, the rule is no different in a case involving a negligent misrepresentation than where the injury is caused by actionable fraud.

Chapman v. Mktg. Unlimited, 14 Wn. App. 34, 38 (1975)
(quoting DeNike v. Mowery, 69 Wn. 2d 357, 358 (1966))

Quasi-contractual damages are often also meant to return the parties to the status quo ante. Heaton v. Imus, 93 Wn. 2d 249, 252 (1980)
They can include a mix of reliance, restitution damages and sometimes

expectation damages and lost profits. *Id.* Losli v. Foster, 37 Wn. 220, (1950) Unjust enrichment is meant to prevent the acquisition of property under such circumstances where it would be inequitable for the receiving party to retain it. Dargt v. Dragt/DeTray, LLC, 139 Wn. App. 560, 576 (2007)

The \$10,000 in deposits each partnership paid to STITA can be considered both restitution damages and reliance damages. The costs to leave and join STITA (paint jobs, membership fees, installation fees, change of association fees and Yellow Cab rejoin fee) can be considered reliance, consequential and restitution damages. However the court decides to characterize the damages, it had the discretion to award such quasi-contractual damages to restore the drivers to the status quo ante.

The evidence of damages is not reasonably in dispute. STITA stipulated that it received \$10,000 in deposits from each driver partnership. (CP 417-418) The drivers provided several pieces of evidence in their pleadings, declarations trial exhibits and trial testimony regarding the \$5,000 cost to rejoin Yellow Cab. (CP 223 Ln. 6-8; CP 326 ln. 2-3; CP 329 ln. 18-20;CP 333 ln. 20-22; CR 338 ln. 3-4; CR 246 1-2; Trial Ex. 138, CR 469, CR 473 VR at Vol 3, 8:20 to 9:1-16) The change of association registration city fee is not in dispute and the drivers testified to this fact and produced a receipt showing the same. (Trial Ex. 157) Even

the expenses that the drivers did not are not reasonably in dispute like the paint jobs (CP 251-296 at Paras. 6) and the monthly membership fee (CP 94 at Para m.). All of the damages were confirmed by admissible trial testimony which the trial court found consistent and credible.

The court still found evidence of loss of income at STITA, but it did not award this or “lost profit” to the drivers due to lack of evidence like tax returns. In the final analysis, the drivers’ “evidence provided a reasonable basis for allowing the trial court to exercise its sound discretion.” See *V. C. Edwards* 7 Wn. App. at 889

3. *THE COURT FOUND SUFFICIENT EVIDENCE OF DAMAGES TO PROVE NEGLIGENT MISREPRESENTATION*

The Restatement (Second) of Torts § 552B, which is the law in Washington State, states the following:

Damages for Negligent Misrepresentation

1) The damages recoverable for a negligent misrepresentation are those necessary to compensate the plaintiff for the pecuniary loss to him of which the misrepresentation is a legal cause, including:

(a) the difference between the value of what he has received in the transaction and its purchase price or other value given for it; and

(b) pecuniary loss suffered otherwise as a consequence of the plaintiff's reliance upon the misrepresentation.

2) the damages recoverable for a negligent misrepresentation do not include the benefit of the plaintiff's contract with the defendant.

(Emphasis added)

Comment *a* through *f* of Restatement (Second) of Torts § 549 apply to Restatement (Second) of Torts § 552B. *Id.* at comment *a*. Comment *d* of the Restatement (Second) of Torts § 549 states that a plaintiff can recover consequential damages resulting from a misrepresentation as long as the misrepresentation is the cause of loss “that might reasonably be expected to result from reliance upon the misrepresentation.” Thus, all reasonably foreseeable consequential damages are recoverable. Olmsted v. Mulder, 72 Wn. App. 169, 180 (1993); Janda v. Brier Realty, 97 Wn. App. 45, 50 (1999)(quoting Restatement (Second) of Torts § 552B does not limit negligent misrepresentation damages to net out-of-pocket costs).

In *Chapman*, the only Washington State case cited by Restatement (Second) of Torts § 552B, the court found:

In the case at bar, however, where the plaintiff bought no property, but actually suffered damage as a result of the misrepresentation, he is entitled to a recovery for the losses proximately so caused.

Chapman, 14 Wn. App. at 38

The court can award all losses proximately caused by a negligent misrepresentation while choosing not to award damages for out-of-pocket losses. *Id.* (holding the "out of pocket" rules are inappropriate, the plaintiff will be awarded damages for all losses proximately caused by defendant's fraud (**or, in this case, by defendant's negligent misrepresentation.**))(Emphasis added)

"Where it is clear that some damage has been suffered, a liberal rule is applied with respect to determining that damage. Uncertainty as to the quantum of damages is not fatal to a litigant's right to recover damages." *Ivy v. Argentieri*, 2 Wn. App. 999, 1002 (1970)

"The constant tendency of the courts is to find some way in which damages can be awarded where a wrong has been done. Difficulty of ascertainment is no longer confused with right of recovery' for a proven invasion of the plaintiff's rights. . . ." *Wenzler*, 53 Wn.2d at 99

STITA's negligent misrepresentations were wrongful, material and proximately caused the damage to the drivers.

The court found that the drivers did suffer damage directly attributable to STITA's misrepresentations. None of the drivers would have spent the time and expense to pull their cabs into STITA or paid STITA thousands if STITA disclosed that its exclusive license was being

released for competitive bidding. Thus, as the court put it, “Lots of jumping and lots of running turned out to be without purpose.”

The drivers were also damaged because STITA’s misrepresentations went to the only real value of joining STITA; the opportunity to get access to lucrative airport taxi fares. The opportunity to access STITA’s exclusive airport license is what motivated the drivers to put up their life savings. This opportunity was the basic product or thing of value STITA was selling to the drivers. Thus, reliance on STITA’s misrepresentation caused the drivers to incur losses they would not have otherwise have incurred because they wouldn’t have joined STITA and paid it money if they knew of the opportunity was not as STITA presented it.

4. EVIDENCE OF NET OUT-OF-POCKET EXPENSES IS NOT RELEVANT WHERE LOST PROFITS ARE NOT AWARDED AND WHERE THE COURT MADE PROPER EVIDENTIARY RULINGS

STITA’s argues that courts can only award net out-of-pocket expenses for negligent misrepresentation is contradicted by the plain language of the Restatement (Second) of Torts § 552B, which is the law in this state. The court can choose to award damages for negligent misrepresentation that are not characterized as out-of-pocket expenses.

It is like saying that a person hit in a car accident who earns \$10,000 in income while his car is being repaired cannot recover property damage of \$5,000 or medical bills of \$3,000 because those expenses are less than the income. Not so! The tortfeasor is responsible for all damages resulting from their negligence.

STITA's argument that there can be no negligent damages because the drivers didn't present any proof of income or expenses while at STITA is also a non sequitor. First, the court did not award the drivers lost profits or income. Second, STITA does not believe the drivers should be awarded lost profits so it is unclear why they would need to present evidence of net loss while at STITA. Under STITA's test, it is impossible for the drivers would get any damages under STITA's theory even if they proved they had a net loss at STITA.

Plus, the trial court did find evidence that the drivers made less driving income and virtually no leasing income while at STITA compared to what they made before and after leaving STITA. The only way to make income as a taxi driver is through picking up fares¹² or leasing the cab. It is not a stretch to find that they made less income while at STITA even if

¹² Taxi drivers get money from fares by dispatches from the taxi company or by customers hailing them on mostly downtown Seattle streets. STITA did not have a dispatch when they joined unlike all other companies the drivers removed their cabs from.

the judge could not determine the exact amount with mathematical certainty or, as the judge put it “I don’t know every penny.”

In a similar vein, STITA repeatedly argues that the trial judge did not have sufficient evidence to find damages because the drivers objected to a request for production all income and all expenses pursuant. First, as stated above, evidence of profit and loss are not relevant because lost profits were not awarded by the trial court. STITA did not bring a motion to compel a response to the discovery request or even engage in a discovery conference.¹³ The first time STITA sought a remedy was at its motion in limine to disclose all evidence of damages. The court ruled that the drivers could testify to all damages mentioned in any part of the case, including all pleadings and declarations, and to such other damages that are uniform (i.e. set fees, paint jobs, etc...) or not reasonably in dispute (VR at Vol. 1 12-20; Vol. 3 5:12-16) The court did not abuse its discretion in admitting trial evidence. Lodis v. Corbis Holdings, Inc., 172 Wn. App. 835, 854 (2013)(holding an appellate court reviews a trial court’s admission of evidence or refusal to strike evidence and it’s discovery orders for abuse of discretion.)

¹³ STITA rejected all good faith offers to resolve the discovery dispute, including the drivers offer to provide profit loss statement, and instead stated that it would simply move to exclude all driver testimony regarding damages. (CR 443)

Similarly, the court denied STITA's motion to exclude all of the drivers' from testifying at trial for refusing to appear at their depositions without interpreters. (CR 394) The court instead granted STITA another opportunity to take the drivers' depositions to prevent prejudice.¹⁴ *Id.* STITA did not take the depositions. STITA sought another avenue by bringing the motion in limine to exclude the drivers from testifying about damages. It appears STITA strategy was to exclude all evidence outside the four corners of its breach of contract claim. After spending weeks in trial, the court found substantial evidence that the drivers were damaged and thus fashioned an equitable remedy in conformance with the weight of the evidence.

In addition, STITA's reliance on Family Medical Bldg. v. State, 37 Wn. App. 662 (1984) is misplaced because it does not involve a negligent misrepresentation claim and its analysis has been overturned.

Lastly, STITA's heavy reliance on the holding in *Janda* is misplaced because the case is inapplicable because the drivers were not awarded lost profits. Janda, 97 Wn. App. at 52 (holding *Janda* could not recover lost profits where he profited from the sale of property where

¹⁴ The court also awarded STITA the cost to respond to the drivers' motion to quash their deposition notices. The drivers were under the mistaken belief that they were entitled to interpreters because English was their second language and they did not feel comfortable being deposed in English. After a lengthy written analysis of the law, the court did not find authority in this jurisdiction for requiring interpreters. (CR 394)

Janda profited from the sale of property) Also, Janda cites the Restatement (Second) of Torts § 552B holds that nowhere does it state that one is limited to net out-of-pocket expenses in negligent misrepresentation claims. *Id.* at 50

F. THE INDEPENDENT DUTY DOCTRINE DOES NOT APPLY WHERE REAL PROPERTY IS NOT INVOLVED

The Washington State Supreme Court has limited the application of the independent duty doctrine to a narrow class of cases involving claims arising out of construction on real property and real property sales Donatelli v. D.R. Strong Consulting Engineerings, Inc., 174 Wn. 2d 84, 91 (2013) This case does not involve real property. For this reason alone, STITA's argument fails. Also, the independent duty doctrine does not bar a negligent misrepresentation claim that also seeks rescission as a remedy. Jackowski v. Brochelt, 151 Wn. App. 1, 15 (2009)(distinguishing Alejandre); Eastwood v. Horse Harbor Found, Inc., 170 Wn. 2d 380, 387 (2010)

G. STITA'S BREACH OF CONTRACT CLAIM SHOULD BE DENIED BECAUSE THE AMENDED APPLICATION HAS BEEN RESCIDNED

STITA's only argument that this course should read the amended application to enforce payments by the drivers of \$20,000 each is that the rescission remedy was invalid and the terms of the amended application

are not disputed. (App. Br. at Pg. 38) The negligent misrepresentation claim and rescission remedy are valid. Thus, for this reason alone, STITA's argument here fails.

Furthermore, interpretation of the terms of the amended applications were contested, especially the deposit payment provision, and are ambiguous. (CP 417-418) The trial court found that even STITA's witnesses couldn't clearly explain its term. (CP 608 at Para. 16 ln. 19-20) Thus, Berg v. Hudesman, 115 Wn.2d 657 (1990) is applicable.

If this court finds in STITA's favor the court can remand the case to the trial court to find further evidence of the drivers' net out-of-pocket expenses.

V. CONCLUSION

For the foregoing reasons, the respondents respectfully request that the appeal be denied and that the respondents be awarded fees and costs.

DATED this 30th day of April 2014.

Respectfully Submitted,

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DECLARATION OF SERVICE

The undersigned certifies under penalty of perjury, under the laws of the State of Washington, that on April 30, 2014, I caused the service of the foregoing pleading on the following attorney of record of the appellant:

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2014 APR 30 PM 4:20
COURT OF APPEALS
STATE OF WASHINGTON
SPRING DIVISION

DATED this 30th day of April 2014 at Seattle, Washington.

/s/ Yohannes K. Sium
Yohannes K. Sium WSBA 42420