No. 89862-6

SUPREME COURT
OF THE STATE OF WASHINGTON

CHRISTOPHER R. LARSON,

Petitioner,

v.

JULIA CALHOUN,

Respondent.

ANSWER TO PETITION FOR REVIEW

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A. INTRODUCTION

Appellant Christopher Larson seeks review by this Court of the Court of Appeals opinion that affirmed the trial court's property division issued after a 3-week dissolution trial. *See* Appendix. He contends that the trial court somehow abused its discretion by awarding a portion of his separate property to respondent Julia Calhoun to effectuate a just and equitable distribution of marital property. He argues that because "ample provision" could allegedly be made for Calhoun from the parties' community estate, his separate property should not have been awarded to Calhoun. Petition at 4, 6, 9. Larson has declined in his pleadings to date to define what he means by "ample provision," other than to contend, as he does in his petition, that his "offer" to Calhoun below met that test.

Larson fails to establish any of the RAP 13.4(b) criteria justifying review. The trial court was faithful to the language of RCW 26.09.080 and the case law, particularly *In re Marriage of Konzen*, 103 Wn.2d 470, 693 P.2d 97, *cert. denied*, 473 U.S. 905 (1985). To justify review by this Court, Larson has engaged in a self-interested quest to create a conflict among decisions of this Court, a conflict that does not exist. Larson plays loose with the facts, ignoring the fact that the trial court essentially made the distribution he sought. He ignores or misstates the language of the RCW 26.09.080 and the case law interpreting it, particularly *Konzen*.

Ultimately, the policy advocated by Larson is unsound and will prompt a new round of litigation to decide what "ample provision" means, disrupting the well-understood principles for property divisions in dissolutions. Review is not merited. RAP 13.4(b).

B. ISSUE PRESENTED FOR REVIEW

Calhoun acknowledges Larson's issue, petition at 1, but believes the issue actually before the Court is as follows:

> Where this Court in *Konzen* has interpreted RCW 26.09.080's direction that *all* marital property, both separate and community, is before a court in a dissolution action and that a court has broad discretion to make a just and equitable distribution of marital assets, including the award of separate property from one spouse to the other, and the Legislature has long acquiesced in that interpretation, should this Court disrupt Washington law by substantially modifying or overruling *Konzen* in favor of a new and unsupported "ample provision" principle advocated by Larson?

C. STATEMENT OF THE CASE[1]

Larson's statement of the case in his petition ignores the statement of facts in the Court of Appeals opinion and the trial court's *extensive* findings of fact. He did not assign error to the overwhelming majority of those findings in the Court of Appeals. Br. of Appellant at 1-2. Instead, he spends inordinate time bemoaning how "little" he received in the

[1] Calhoun believes the recitation of the facts in the Court of Appeals' opinion is fair and accurate and supplements those facts only as necessary to respond to misstatements of the record by Larson.

property division and how Calhoun should have accepted his "generous" offer on the division of property at trial. Petition at 3-4, 11-12.[2] This Court should not be misled by Larson's complaints of how unfairly he was treated. Larson also belittles the contributions Calhoun made to the marriage and to the community estate. Petition at 10-11. *See also,* Br. of Appellant at 37 (Larson's only acknowledgement of Calhoun's contribution to the marriage.).[3]

The trial in the case took nearly three weeks before the Honorable William Downing of the King County Superior Court, an experienced trial judge. CP 277. The trial court heard testimony principally on the spouses' voluminous marital assets, the net value of which was estimated at over $500 million and included extensive residential and commercial real property, an interest in the Seattle Mariners, vacation and investment real property, business ventures/investments, art, retirement accounts, Microsoft stock, cash, and personal property. *See, e.g.,* CP 281-85, 290-

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[2] Larson's complaint about unfairness rings hollow. He argues, at least implicitly, that because he allegedly created the parties' vast wealth, he should be the one to benefit from it. This principle is rightly rejected in Washington law. *In re Marriage of DeHollander*, 53 Wn. App. 695, 701, 770 P.2d 638 (1969).

[3] Larson and Calhoun were married for 24 years, although they were together for nearly 30 years. CP 279, 280 (FF 1, 2, 4, 5). Calhoun contributed substantially to Larson's success, by raising their five children and many foster children, and managing their residences and charitable activities, as the record amply documented. CP 328; RP 218, 1500-03, 1509-14, 1576-79, 1581-82, 1588, 1590, 1594-1601, 1606, 1612, 1777-78, 1789, 1798, 1802-04, 1815, 1982-84, 2010, 2012. As the trial court summarized, she was "the approachable face" of the couple. CP 280 (FF 4).

92; RP 371-532, 582-944, 993-1114, 1264-1463, 1624-1748, 1839-1974, 2082-2130. The court also heard testimony concerning the couple's debts. CP 285, 289; RP 120, 223-24, 231-32, 243-44, 546, 1232.

During the trial, Larson proposed that the trial court award Calhoun $104 million comprised of approximately $58 million in real and personal property, approximately $21 million in Microsoft stock, and $25 million in cash. CP 70; RP 27, 549, 552. He also *agreed* to assume *all* of the couple's debt and their charitable liabilities. CP 41, 70-71; RP 1232, 2195. Thus, *it was Larson who proposed that Calhoun should be awarded a portion of his separate property,* CP 70, 214, 552, 555, a point now conveniently overlooked by Larson. Petition at 4.[4]

The trial court entered *extensive* findings of fact and conclusions of law in which it identified the couple's assets and liabilities, determined the value of each, characterized each as either separate or community, and directed a division that was just and equitable. CP 277-302. The trial court divided the marital estate roughly 65% to Larson and 35% to Calhoun. *See* Appendix.[5]

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[4] Calhoun proposed an equal distribution. CP 101. In lieu of a judgment, she proposed that Larson make a transfer payment of $105 million to be amortized over four years. CP 136.

[5] Larson neglects to mention that he retained $356 million of his separate estate and that his total award was $327 million. CP 299-301. By comparison, Calhoun's total award was originally $180 million. *Id.* Those awards were later adjusted in Larson's

In awarding Calhoun a portion of Larson's separate property, the trial court did not make a capricious decision, but properly articulated the applicable law in Conclusion of Law No. 5. CP 297. The court chose to make the distribution that it did "to the extent necessary to achieve a just result," for the reasons it discussed *at length* in the findings, CP 295 (FF 29d), findings that are largely ignored by Larson.

D. ARGUMENT WHY REVIEW SHOULD BE DENIED

Larson offers two essential theories why this Court should grant review. He contends this Court should grant review to give "guidance" to trial courts on the circumstances when a spouse's separate property may be awarded to another. Petition at 13-17. He also contends that there is a conflict among this Court's decisions on when the separate property of one spouse may be awarded to the other spouse. Petition at 5-13. Neither of Larson's contentions is true, nor do they merit review by this Court.

(1) The Court of Appeals Correctly Applied RCW 26.08.090 and the Case Law Interpreting It

Washington law on the division of marital property is clear. Since the enactment of Washington's 1973 Dissolution Act, Washington law has

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favor based on the parties' post-trial agreement. CP 262. Moreover, the value of at least one of his principal assets, the Seattle Mariners, was vastly undervalued by the trial court in light of post-trial events. Br. of Resp't at 44 n.20. Larson will walk away from his 24-year marriage to Calhoun with hundreds of millions of dollars, more than sufficient to satisfy a modern day Croesus.

been clear that *all* property, community and separate, is before a court for distribution in a dissolution action. RCW 26.09.080(1-2). *In re Marriage of Kraft*, 119 Wn.2d 438, 447-48, 832 P.2d 871 (1992).[6] RCW 26.09.080 directs courts to make a "just and equitable" determination of how to divide the "property and liabilities of the parties, *either community or separate.*" (emphasis added). Washington places all property - separate or community - before the judge making the property division. That principle *assumes* that the spouses' separate property may be awarded by the dissolution court. Larson pays no attention to this statutory imperative.

A dissolution court must first properly characterize the spouses' assets, but that is only the initial step. "Characterization of the property, however, is not necessarily controlling; the ultimate question being whether the final division of the property is fair, just and equitable under all the circumstances." *Baker v. Baker*, 80 Wn.2d 736, 745, 498 P.2d 315 (1972); *accord*, *In re Marriage of Hadley*, 88 Wn.2d 649, 656, 565 P.2d 790 (1977); *In re Marriage of Washburn*, 101 Wn.2d 168, 177, 677 P.2d 152 (1984).

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[6] This principle also applied under pre-Act law. *Friedlander v. Friedlander*, 80 Wn.2d 293, 305, 494 P.2d 208 (1972); *Morris v. Morris*, 69 Wn.2d 506, 509, 419 P.2d 129 (1966).

In making a "just and equitable" division of marital property as required by RCW 26.08.090, a trial court has "broad discretion" because it is in the best position to assess the parties' assets and liabilities to determine what is fair, just and equitable under all of the applicable circumstances.[7] *In re Marriage of Brewer*, 137 Wn.2d 756, 769, 776 P.2d 102 (1999). "Mathematical precision" when exercising that broad discretion is not required. *Konzen*, 103 Wn.2d at 477-78. A trial court need not divide community property equally, nor need it award separate property to its owner. *Hadley*, 88 Wn.2d at 656 (community property is not required to be divided equally but equitably); *Blood v. Blood*, 69 Wn.2d 680, 682, 419 P.2d 1006 (1966) (noting the trial court is not bound to award separate property to the party acquiring it); *Oestreich v. Oestreich*, 2 Wn.2d 72, 75, 97 P.2d 655 (1939) (court can award all property, community or separate, to wife regardless of her financial condition).

Absent a *manifest* abuse of discretion, a trial court's property division must stand, as this Court has repeatedly stated. *Washburn*, 101 Wn.2d at 179; *In re Marriage of Landry*, 103 Wn.2d 807, 809-10, 699 P.2d 214 (1985) (no abuse of discretion unless no reasonable judge would have made award).

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[7] Larson pays scant attention to this broad discretion in his petition.

Ultimately, contrary to Larson's contention, there are clear guidelines that apply to the trial court's discretion. RCW 26.09.080 sets forth four distinct *statutory* factors to guide a trial court's allocation of the marital assets. *See* Appendix. One of those factors is the economic circumstances of the parties. In addition to the statutory criteria of a fair, just and equitable distribution, the *case law* has offered a variety of circumstances governing a trial court's exercise of its discretion to award the separate property of one spouse to the other. *Nat'l Bank of Commerce of Seattle v. Green*, 1 Wn. App. 713, 717, 463 P.2d 187 (1969) (statute is not sole basis for distribution); *In re Marriage of Rockwell*, 141 Wn. App. 235, 242-43, 170 P.3d 572 (2007), *review denied*, 163 Wn.2d 1055 (2008) (when making a just and equitable distribution of martial assets, the courts look at the four statutory factors as well as other factors such as the parties' relative health, age, education, and employability).[8] As noted in Kenneth W. Weber, 20 *Wash. Practice, Family and Community Property Law* § 32.15, Washington courts have historically considered a *variety* of relevant factors involving the spouses when allocating marital property.

[8] In what can only be described as a red herring, Larson discusses *Rockwell* and its statement that in long term marriages, an equal distribution of marital property should be the norm. Petition at 15-17. Larson received 65% of the marital property here. The trial court did not rely on *Rockwell* to make an equal distribution. CP 293-95, 297. The trial court did, however, properly articulate the duration of the parties' marriage in FF 1, 26(e), CP 278-79, 295, as required by RCW 26.09.080(3).

Larson acknowledges *none* of these statutory or case law factors in his petition.

In sum, Larson's assertion that trial courts require "guidance" in their exercise of discretion is belied by the existence of the statutory factors in RCW 26.09.080 and the ample case law factors described in the Weber article in *Washington Practice.* The Court of Appeals fully understood and applied the statutory and other factors. Op. at 3-5. Review is not merited on this basis.

(2) The Court of Appeals' Decision Is Consistent with This Court's *Konzen* Decision

With respect to the specific question of the allocation of separate property in a property division, Washington law is also clear, as the Court of Appeals discussed in its opinion at 5-10. From an erroneous interpretation of *Konzen* and other cases dealing with awards of separate property to the other spouse, Larson seeks to create a conflict that does not exist in order to justify review. He argues for a principle that awards of separate property may not occur if the community property of the spouses makes "ample provision" for the spouses.[9] As the Court of Appeals

[9] Larson's precise claim of error has been a moving target in this litigation. In his statement of grounds for direct review, Larson made more of a frontal attack on this Court's *Konzen* decision, relying on *Bodine v. Bodine*, 34 Wn.2d 33, 207 P.2d 7213 (1949). Statement at 6-9. *Holm v. Holm*, 27 Wn.2d 456, 178 P.2d 725 (1947) is referenced only in a footnote. Statement at 7 n.3. The gravamen of Larson's argument was that a trial court should only award the separate property of one spouse to another if

correctly discerned, Larson's approach improperly singles out the character of the property, op. at 1, and is nowhere supported in the language of RCW 26.09.080 or the case law. Op. at 5.

To understand why Larson's position is both wrong and pernicious, it is important to understand this Court's *Konzen* decision. In *Konzen*, this Court stated that a court in a dissolution action may award the separate property of one spouse to the other to achieve the statutorily required "fair, just and equitable" division of property. 103 Wn.2d at 478. The *Konzen* court *rejected* the concept that the separate property of one spouse could be awarded to the other only in "exceptional circumstances," a concept previously articulated in *Bodine*.[10] This Court concluded that RCW 26.09.080 did not require anything more of a trial court than to

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"exceptional circumstances" were present. *Id.* at 7. He abandoned that contention in the Court of Appeals. Op. at 5 n.4. Larson also suggested that *Konzen* should be modified to confine its reach to economically disadvantaged spouses who would otherwise become impoverished in the absence of a separate property award. Statement at 7-9. He repeated this "impoverishment" analysis in his brief in the Court of Appeals at 28-33, seemingly elevating the economic circumstances of a spouse to a *conclusive* factor when dividing property, rather than one of the factors in RCW 26.09.080. He now appears to have abandoned this issue in his petition. Larson has returned to his contention that trial courts need more "guidance" in applying the factors for distributing separate property and that a court may not award the separate property of one spouse to another if that spouse is "amply" provided for from the community property. Petition at 4, 6, 9.

[10] *Bodine* was decided under a predecessor to RCW 26.09.080. Rem. Rev. Stat. § 989. That predecessor did not have the elements of RCW 26.09.080. *Bodine* did not define what constituted "exceptional circumstances" and the cases it cited in support of that view likewise did not provide content for the principle. 34 Wn.2d at 35. Larson now cites *Bodine* as support of his position. Petition at 9. *Konzen* expressly disapproved the exceptional circumstances language of *Bodine* and effectively overruled it, as the Court of Appeals discerned. Op. at 7.

make a just and equitable distribution of both community and separate property based upon the circumstances of the case. Accordingly, separate property is no longer entitled to special treatment:

> This court will not single out a particular factor, such as the character of the property, and require as a matter of law that it be given greater weight than other relevant factors. The statute directs the trial court to weigh all of the factors, within the context of the particular circumstances of the parties, to come to a fair, just and equitable division of property. The character of the property is a relevant factor which must be considered, but is not controlling.

103 Wn.2d at 478. The Court of Appeals applied *Konzen* in this fashion in *In re Marriage of Griswold*, 112 Wn. App. 333, 347-48, 48 P.3d 1018 (2002), *review denied,* 148 Wn.2d 1023 (2003) (noting that the exceptional circumstances concept in *Bodine* was superseded by the enactment of RCW 26.09.080). Larson does not cite *Griswold.* The Court of Appeals below properly relied on *Konzen* and *Griswold.* Op. at 5-9.

Larson contends that the separate property of the spouse should not be awarded if "ample provision" can be made for the other spouse from the community property, claiming that this Court's decisional law requires this. Petition at 4. *Konzen nowhere* so holds, and it is contrary to the statutory direction in RCW 26.09.080 that *all* property, separate and community, is before a court for division in a dissolution action. Larson's

"ample provision" standard represents nothing more than his self-serving effort to concoct a rule to justify a larger award.

Larson's primary authority for his new gloss on RCW 26.09.080 is this Court's decision in *Holm*. He contends that *Holm* remains good law and that it precludes a trial court from awarding the separate property of one spouse to the other when ample provision can be made for both spouses from the parties' community estate. Petition at 8 n.3. *Holm* is no longer the governing standard after *Konzen*, particularly where *Holm* was decided under the same predecessor statute to RCW 26.09.080 as had been applied in *Bodine*, as the Court of Appeals below properly noted. Op. at 7 n.6.

Holm, like the cases that Larson formerly cited for his "impoverishment" rule, does not support the rule he seeks. In *Holm*, the trial court valued the husband's assets at approximately $73,000 and found that those assets were commingled with the community property thereafter acquired by the parties. 27 Wn.2d at 460. The court then valued the community property at $342,233.67 and divided it equally between the parties. *Id.* The husband appealed, arguing among other issues that the court did not make an equitable division of the property because it awarded the wife one-half of the entire property, without regard for the manner in which it was acquired. *Id.* at 462.

On appeal, this Court reiterated the factors that the trial court is required to consider when making a just and equitable disposition of the marital property. *Id.* at 462-63. This Court did not hold that the necessitous condition of the wife is the *only* basis for making a just and equitable distribution; instead, the Court reiterated that it is merely *one* factor out of several that the trial court must consider.[11] The Court also noted that the nature of the husband's business was such that it required a large amount of capital; that his working capital at the time of the marriage was approximately $73,000; and that he needed that capital to successfully continue his business as it then existed. *Id.* at 464. Thus, *Holm* does not stand for the proposition that the separate property may only be awarded to the other spouse if "ample provision" is not made for the spouses from the community property.

Larson also contends that *Stokes v. Polley*, 145 Wn.2d 341, 37 P.3d 1211 (2001) and *In re Estate of Borghi*, 167 Wn.2d 480, 219 P.3d 932 (2009) support review here. Petition at 5-6. He is wrong, as each case is readily distinguishable. He vastly overstates the holding in *Stokes*. Unlike

[11] In fact, it has long been Washington law that a trial court in making a division of marital property could look to the "necessities of the wife," and, in general terms, the court must look to "the economic condition in which the decree will leave the parties" as "the paramount concern." *DeRuwe v. DeRuwe*, 72 Wn.2d 404, 408, 433 P.2d 209 (1967). This "economic circumstances" facet of a marital property division is now found in RCW 26.09.080(4).

this case, *Stokes* was a quiet title and partition case, the essence of which involved interpreting the parties' dissolution decree. It has nothing to do with RCW 26.09.080. The wife was awarded "one-half the equity" in some real estate owned by the husband. *Id.* at 344. This Court stated that words should be given their ordinary meaning, and the ordinary meaning of "equity" in property is the fair market value of the property over its debts. *Id.* at 348-49. Thus, while the decree made a monetary award, it did not award title or ownership. *Id.* at 351. The Court's reference to the award of separate property is *dicta*. Similarly, the Court's reference in *Borghi* to the importance of separate property does not bear *at all* on the issue of whether separate property can be awarded under RCW 26.09.080. It is a probate case.

The Court of Appeals below correctly applied *Konzen* and concluded *Holm* was inapplicable. Op. at 6. It correctly distinguished *Stokes*. Op. at 10. Larson fails to demonstrate how the Court of Appeals decision contradicted decisions of this Court as a basis for review. RAP 13.4(b).

(3) The Public Policy Sought by Larson Is Unsound

This Court's decision in *Konzen* is sound and should not be changed.[12] Larson's contention for an "ample provision" principle is nothing more than a recasting of *Bodine's* exceptional circumstances concept, *rejected* by this Court in *Konzen.* In any event, the adoption of an "ample provision" standard would represent unsound public policy. First, not only is RCW 26.09.080, and the case law construing it, contrary to this proposed rule, Larson's approach would deny trial courts the opportunity to tailor their decisions allocating the marital assets to the circumstances of the parties before them. *All* property, community and separate, is before the trial court for a reason. A trial court should have flexibility in achieving a just and equitable allocation of marital property

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[12] *Konzen* has been the rule in interpreting that RCW 26.08.090 since 1985. The Legislature has expressed no interest in changing the rule announced in *Konzen.* There has certainly been no public agitation for a change in the allocation of marital property under RCW 26.09.080. The Legislature is presumed to be aware of judicial interpretations of a statute and its failure to amend the statute following judicial interpretation of it evidences legislative acquiescence in that interpretation. *City of Federal Way v. Koenig*, 167 Wn.2d 341, 348, 217 P.3d 1172 (2009) (no amendment of PRA for 23 years since *Nast* decision); *Soproni v. Polygon Apartment Partners*, 137 Wn.2d 319, 327 n.2, 971 P.2d 500 (1999) (no change in product liability law for 10 years after decision); *Coulter v. Asten Group, Inc.*, 135 Wn. App. 613, 620-21, 146 P.3d 444 (2006), *review denied*, 161 Wn.2d 1011 (2007) (no changes by Legislature to interpretation of joint and several liability in asbestos cases for 17 years). The Legislature has acquiesced in the *Konzen* court's analysis of RCW 26.08.090.

Further, under principles of stare decisis, *Konzen* is settled decisional law and should not be overturned. Stare decisis "promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *Payne v. Tennessee*, 501 U.S. 808, 827, 111 S. Ct. 2597, 115 L.Ed.2d 720 (1991). Thus, it is only when a party makes a *clear showing* that the applicable principle is incorrect and harmful that this Court will overrule prior settled precedent. *City of Federal Way*, 167 Wn.2d at

to reflect the particular circumstances of the spouses before the court in the particular dissolution action.

Larson himself has studiously refused throughout this litigation to provide any definition whatsoever to what he meant by "ample provision." Larson's proposed rule would breed new dissolution litigation to determine what constitute the appropriate circumstances for an award of separate property from one spouse to the other. Such uncertainty flies in the face of the wise admonition in *Landry* that certainty and finality in spousal property divisions is essential. 103 Wn.2d at 809-10 (Court admonishes that dissolution decisions should seldom be changed on appeal and appellant bears "heavy burden" to show trial court manifest abuse of discretion).

Moreover, the "exceptional circumstances" concept rejected by this Court in *Konzen* was largely unfair to women. It was the product of an era in which men were more likely to bring separate property assets to the marriage. RCW 26.09.080 was designed to remedy that unfairness. "Ample provision" would be equally unfair and unworkable. How "ample" must the award of community property be before separate property could be awarded? No one, including this Court, can know.

347; *In re Rights to Waters of Stranger Creek*, 77 Wn.2d 649, 653, 466 P.2d 508 (1970). Larson cannot make such a showing here.

Larson actually wants a result-oriented rule that benefits him as an individual with the good fortune to have become an early employee of Microsoft. But this Court better articulated a rule for all Washington citizens in *Konzen*, a rule consistent with RCW 26.09.080.

Larson has not demonstrated anything resembling a need to abandon *Konzen*, particularly where *Holm*, the case on which he relies, involved the predecessor to RCW 26.09.080. This Court should adhere to the wise policy it announced in *Konzen* and deny review. RAP 13.4(b).

(4) The Trial Court Did Not Abuse Its Discretion in Making the Division of Spousal Property

Larson apparently concedes that if the Court of Appeals properly interpreted *Konzen*, the trial court did not abuse its discretion under RCW 26.09.080.

In exercising its discretion here, the trial court here properly looked to the economic circumstances of the parties that would follow from the decree. As evidenced in the court's findings, the trial court's main concern clearly was the economic condition in which the decree would leave Larson and Calhoun. The court took into account not only the ages and earning power of the couple, but the amount of resources that would be available to each after the dissolution, considering the great

disparity between the value of the community assets and the value of Larson's separate property assets.

The trial court here based its decision on the disparity in the parties' incomes, employability, job security, ages, present necessities, foreseeable future obligations, and, presumably, Larson's significant separate property. It then concluded that to place Calhoun in a secure economic position and achieve a just result, it was necessary to award her a portion of Larson's separate property, as Larson himself had proposed. Because of Larson's significant separate property, the trial court was able to do this without jeopardizing Larson's financial security. *See generally*, CP 293-95, 297 (FF 29; CL 5).

Given the disparity in the parties' economic situations, and the outcome, the Court of Appeals properly concluded that there was no manifest abuse of discretion in the trial court's property division. Op. at 10-13.

E. CONCLUSION

Larson seeks review by this Court to secure a "re-do" of the trial court's property division decision that followed a 3-week trial in which that court properly characterized the marital assets and made a "just and equitable" property division in accordance with RCW 26.09.080 and controlling case law in place for decades. Much of Larson's petition

seems to be a complaint that Calhoun failed to accept his "generous" offer on the division of marital property. Larson has not demonstrated any reason this Court should abandon its *Konzen* decision in favor of a new and uncertain "ample provision" test that artificially truncates trial court discretion in marital property divisions, contrary to RCW 26.08.090 and case law interpreting it.

The Court of Appeals analysis was faithful to the language of RCW 26.08.090 and this Court's long-standing interpretation of it. Review is not merited. RAP 13.4(b).

DATED this 14th day of February, 2014.

Respectfully submitted,

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APPENDIX

RCW 26.09.080:

> In a proceeding for dissolution of the marriage ... the court shall, without regard to misconduct, make such disposition of the property and the liabilities of the parties, either community or separate, as shall appear just and equitable after considering all relevant factors including, but not limited to:
>
> (1) The nature and extent of the community property;
>
> (2) The nature and extent of the separate property;
>
> (3) The duration of the marriage or domestic partnership; and
>
> (4) The economic circumstances of each spouse or domestic partner at the time the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to a spouse or domestic partner with whom the children reside the majority of the time.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In re Marriage of:	)	NO. 69833-8-I
CHRISTOPHER ROSS LARSON,	)	DIVISION ONE
Appellant,	)	
and	)	
JULIA LARSON CALHOUN,	)	PUBLISHED OPINION
Respondent.	)	FILED: November 25, 2013

LAU, J. — This case requires us to determine whether a trial court's authority to award one spouse's separate property to the other spouse in a dissolution action is limited to circumstances where a spouse cannot be amply provided for from community property alone. We conclude that RCW 26.09.080 does not single out the property's character or any other factor to be given more weight. This statute and controlling case authority direct the trial court to make a fair and equitable property division after weighing all relevant factors within the context of the parties' specific circumstances. Because the trial court properly exercised its discretion when it applied this rule to determine a fair and equitable property division, we affirm.

FACTS

Before marrying Julia Calhoun in 1986, Christopher Larson acquired an equity interest in a young company called Microsoft.[1] This interest developed into a colossal fortune, which Larson held principally as his separate property. The marital community also amassed considerable wealth, traceable largely to Microsoft stock options exercised by Larson during the marriage. Larson treated all purchased stock as a community asset, thereby relinquishing any claim to the separate property portion of the asset.[2]

During this long-term marriage, Calhoun "made a major contribution to all that the community accomplished, measured in terms of their children, their foster children, their impact in the broad community and their more narrow business interests." The trial court found that "the marital community benefitted greatly from [Calhoun] serving as, in her phrase, the 'approachable face' of the couple."

Following a three-week trial, the court entered detailed findings of fact and conclusions of law, identified the couple's assets and liabilities, determined their value, characterized each as separate or community, and directed a fair and equitable division. The court awarded Calhoun various community assets worth approximately $139 million. Larson assumed a net community obligation of approximately $29.5 million. Calhoun retained separate property worth $669,000. She assumed no community debt.

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[1] Larson worked part-time for Microsoft in 1975, in association with Bill Gates. Upon graduation from college in 1981, he worked full-time until he retired in 2001.

[2] See In re Marriage of Short, 125 Wn.2d 865, 890 P.2d 12 (1995).

Citing its "broad equitable powers" to "make a lopsided division of community assets and also invade a separate estate to the extent necessary to achieve a just result," the court also awarded Calhoun more than $40 million dollars of Larson's separate property. To effectuate this award, it ordered Larson to transfer shares of Microsoft stock, valued at approximately $14 million,[3] and to make three cash installment payments totaling $27 million.

Larson ultimately retained separate assets worth approximately $357 million. His combined award totaled approximately $327 million dollars. Calhoun's combined award totaled approximately $181 million. Larson appeals the award of a portion of his separate property to Calhoun.

ANALYSIS

Larson challenges the trial court's decision to award approximately $40 million of his separate property to Calhoun. He asserts no challenge to the court's decision to award Calhoun 100 percent of the net community estate or to the court's valuation or characterization of the parties' property. He acknowledges, "[T]his is not a factual appeal." Br. of Appellant at 4.

Larson contends that the trial court "applied an improper legal standard and consequently abused its discretion in awarding Calhoun a significant share of [his] separate estate in addition to the net value of all the community property, because more than ample provision could have been made for Calhoun from the parties' $109 million net community estate." Br. of Appellant at 4-5. He argues that we should "reverse the

[3] Posttrial, the parties agreed to sell the Microsoft stock for tax purposes and to transfer the cash proceeds to Calhoun.

trial court's distribution of the marital estate and direct the trial court on remand to limit its award to the wife to the net value of the community estate." Br. of Appellant at 42.

In a dissolution action, the trial court must order a "just and equitable" distribution of the parties' property and liabilities, whether community or separate. RCW 26.09.080. All property is before the court for distribution. Farmer v. Farmer, 172 Wn.2d 616, 625, 259 P.3d 256 (2011). When fashioning just and equitable relief, the court must consider (1) the nature and extent of the community property, (2) the nature and extent of the separate property, (3) the duration of the marriage, and (4) the economic circumstances of each spouse at the time the property distribution is to become effective. RCW 26.09.080. These factors are not exclusive. The statute requires the court to consider all "relevant factors." RCW 26.09.080.

The court has "broad discretion" to determine what is just and equitable based on the circumstances of each case. In re Marriage of Rockwell, 141 Wn. App. 235, 242, 170 P.3d 572 (2007). A just and equitable division "does not require mathematical precision, but rather fairness, based upon a consideration of all the circumstances of the marriage, both past and present, and an evaluation of the future needs of parties." In re Marriage of Crosetto, 82 Wn. App. 545, 556, 918 P.2d 954 (1996). "Fairness is attained by considering all circumstances of the marriage and by exercising discretion, not by utilizing inflexible rules." In re Marriage of Tower, 55 Wn. App. 697, 700, 780 P.2d 863 (1989). "Just and equitable distribution does not mean that the court must make an equal distribution." In re Marriage of DewBerry, 115 Wn. App. 351, 366, 62 P.3d 525 (2003). "Under appropriate circumstances . . . [the trial court] need not award separate

property to its owner." In re Marriage of White, 105 Wn. App. 545, 549, 20 P.3d 481 (2001).

The trial court is in the best position to decide issues of fairness. Brewer v. Brewer, 137 Wn.2d 756, 769, 976 P.2d 102 (1999). Accordingly, "[a] property division made during the dissolution of a marriage will be reversed on appeal only if there is a manifest abuse of discretion." In re Marriage of Muhammad, 153 Wn.2d 795, 803, 108 P.3d 779 (2005).

> A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons.
>
> A court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard.

In re Marriage of Littlefield, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997) (citation omitted). "Trial court decisions in dissolution proceedings will seldom be changed on appeal." In re Marriage of Stenshoel, 72 Wn. App. 800, 803, 866 P.2d 635 (1993).

Larson contends that while the trial court generally has broad discretion to order a just and equitable distribution under RCW 26.09.080, Washington law prohibits the award of separate property to the nonowning spouse if "ample provision for the [nonowning] spouse can be made from the community estate alone."[4] Br. of Appellant at 21. As discussed below, controlling Washington law imposes no such restriction on the trial court's broad discretion to make a fair and equitable property distribution.

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[4] Larson earlier argued in his statement of grounds for direct review that our Supreme Court should limit the award of separate property of one spouse to another except in exceptional circumstances. He does not make this claim on appeal.

Larson relies on several cases but principally on Holm v. Holm, 27 Wn.2d 456, 178 P.2d 725 (1947), to support his contention. In Holm, the trial court awarded the wife half of the parties' community property (worth $269,397.66) and half of the husband's separate assets (worth $72,836.01). On appeal, the husband argued the distribution was inequitable because it failed to account for the character of the property. The Supreme Court reversed the separate property award, reasoning in part that the wife could be "amply provided for out of the community property, without invading the separate property of the appellant." Holm, 27 Wn.2d at 466. It explained, "This is not a case where, in order to make adequate provision for the necessitous condition of the wife, the court is constrained to take from the husband his separate property." Holm, 27 Wn.2d at 465. It then concluded, "We consider the division made by the trial court unjust and inequitable in so far as it awarded to the respondent a portion of what was appellant's separate property." Holm, 27 Wn.2d at 466.

Larson thus argues, "[A]n award to the wife [Calhoun] of more than $100 million in community property meets the threshold of 'ample provision' that prohibits invasion of the husband's separate estate."[5] Br. of Appellant at 42. Holm is unpersuasive. To the extent the above quoted language in Holm constitutes a holding, this approach was rejected in Konzen v. Konzen, 103 Wn.2d 470, 693 P.2d 97 (1985).

In Konzen, the trial court awarded 30 percent of the husband's separate military pension to the wife to help maintain liquidity. Konzen, 103 Wn.2d at 472. It also ordered an equal division of the parties' community property. On appeal, the husband

[5] Larson claims, "[A]n award of 100% of the value of the community estate to the wife, debt-free, would have generated income for her of at least $2,196,000 a year, without invasion of principal." Br. of Appellant at 34. The court made no such finding.

challenged the award of his separate property. He relied on Bodine v. Bodine, 34 Wn.2d 33, 207 P.2d 1213 (1949), a case predating the enactment of RCW 26.09.080. In Bodine, the court stated, "[W]hile the superior court may, under certain circumstances, award part or all of one spouse's separate property to the other, the situations which warrant such action are exceptional." Bodine, 34 Wn.2d at 35.

Konzen leaves no doubt that separate property is no longer entitled to special treatment. It noted that when Bodine was decided, "courts were free to weigh the character of the property more heavily than other factors when allocating separate property."[6] Konzen, 103 Wn.2d at 477. Unlike its predecessors, RCW 26.09.080, enacted in 1973, "specifically applies the statutory criteria to separate property." Konzen, 103 Wn.2d at 477. The court concluded:

> This court will not single out a particular factor, such as the character of the property, and require as a matter of law that it be given greater weight than other relevant factors. The statute [RCW 26.09.080] directs the trial court to weigh all of the factors, within the context of the particular circumstances of the parties, to come to a fair, just and equitable division of property. The character of the property is a relevant factor which must be considered, but is not controlling.

Konzen, 103 Wn.2d at 478 (emphasis added).

In In re Marriage of Griswold, 112 Wn. App. 333, 48 P.3d 1018 (2002), Division Three of this court addressed the husband's claim that the trial court abused its discretion when it awarded $138,000 of his separate property to the wife without finding

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[6] Holm and Bodine relied on Remington's Revised Statutes § 989, which provided, "In granting a divorce, the court shall also make such disposition of the property of the parties as shall appear just and equitable, having regard to the respective merits of the parties, and to the conditions in which they will be left by such divorce, and to the party through whom the property was acquired, and to the burdens imposed upon it for the benefit of the children, and shall make provision for the guardianship, custody, and support and education of the minor children of such marriage."

"unusual or exceptional circumstances." Griswold, 112 Wn. App. at 347. Rejecting Bodine and the cases following it, the court reasoned:

> [N]one of these cases acknowledges that in the same year the court decided Bodine, the Legislature revised the dissolution statute, listing the specific factors to be considered. See Laws of 1949, ch. 215, § 11. The revision modified the principle that one factor should weigh more heavily than others:
>
> . . . .
>
> Under Konzen, a court need not find exceptional circumstances to justify awarding a portion of one spouse's separate [property] to the other spouse. The trial court here thus did not abuse its discretion by failing to find there were exceptional circumstances.

Griswold, 112 Wn. App. at 347-48.

Larson also contends that Washington courts applying RCW 26.09.080 and Konzen continue to award separate property to the nonowning spouse only when necessary to prevent the nonowning spouse from "falling into poverty." Br. of Appellant at 28 (formatting omitted). He relies on Griswold, In re Marriage of Williams, 84 Wn. App. 263, 927 P.2d 679 (1996), and Bulicek v. Bulicek, 59 Wn. App. 630, 800 P.2d 394 (1990), among others, to support this contention.[7] In each case, the wife earned less than her husband earned or had lesser earning potential. In each case, the court upheld the distribution of the husband's separate property. Griswold, Williams, and

[7] Larson also cites Oestreich v. Oestreich, 2 Wn.2d 72, 97 P.2d 655 (1939), to support his claim that the trial court is allowed to award one spouse's separate property to prevent impoverishing the other. Oestreich is not applicable because the court reasoned that the trial court was free to award all separate and community property to the wife if justified by the circumstances, regardless of her financial circumstances. Larson's reliance on Luithle v. Luithle, 23 Wn.2d 494, 161 P.2d 152 (1945), is also not applicable. There, the court took into account the wife's permanent loss of her monthly social security benefit on marriage in concluding this loss counterbalanced the separate property award. The key consideration in affirming this award was the wife's necessitous condition and the husband's financial ability.

Bulicek do not establish a rule that poverty or "necessitous circumstances" alone justify the award of separate property to the nonowning spouse.[8]

In Griswold, discussed above, the court relied on Konzen to hold that the trial court properly declined to find exceptional circumstances existed because it was not required to do so. The court concluded the trial court properly weighed all the facts to determine the distribution was just and equitable.

In Williams, the husband contended, among other issues, that the trial court improperly based the maintenance award on retirement benefits not then accessible and that included four years of his premarital military service. Division Three of this court affirmed, acknowledging that four years of premarital military benefits were, "strictly speaking, [the husband's] separate property." Williams, 84 Wn. App. at 269. Nevertheless, it held, "[T]he status of property as community or separate is not controlling . . . . [T]he ultimate question is whether, under the circumstances, the award is just." Williams, 84 Wn. App. at 269 (citing in part RCW 26.09.080).

In Bulicek, the husband contended that the trial court's pension formula improperly allowed the wife to share in his postseparation contributions to the plan. We observed, "The result is that [the wife] will in effect receive a portion of the postdissolution retirement contributions, which are [the husband's] separate property." Bulicek, 59 Wn. App. at 636. Affirming the trial court's pension formula, we reiterated the RCW 26.09.080 factors that the trial court is required to consider when making a just and equitable disposition of marital property. We stated:

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[8] We are likewise unpersuaded by Larson's reliance on case authority from Wisconsin, Minnesota, Alaska, and Mississippi. As discussed above, RCW 26.09.080 and Konzen control.

> We acknowledge that [the husband's] retirement fund may receive proportionately higher future contributions based upon his career longevity and anticipated increases in annual pay. We further acknowledge that the formula utilized for division of future retirement benefits could result in [the wife's] sharing in those increases. However, far from condemning this apportionment method, we specifically approve it as a means of recognizing the community contribution to such increases.

Bulicek, 59 Wn. App. at 638-39.

Larson also relies on Stokes v. Polley, 145 Wn.2d 341, 37 P.3d 1211 (2001), a quiet title and partition action involving the disputed meaning of a term in a dissolution decree. Unlike the present case, Stokes involved no dispute regarding an award of separate property to the non-owning spouse upon the dissolution of marriage. Nevertheless, Larson points to the court's passing comment that "Washington courts refrain from awarding separate property of one spouse to the other if a just and equitable division is possible without doing so." Stokes, 145 Wn.2d at 347. Larson mistakenly characterizes this bare statement as a binding "limitation on the trial court's authority to invade separate property . . . ." Br. of Appellant at 26. As discussed above, Konzen controls this issue. We are not free to ignore binding Washington Supreme Court precedent and we err when we disregard it. See 1000 Virginia Ltd. P'ship v. Vertecs Corp., 158 Wn.2d 566, 578, 146 P.3d 423 (2006) (Washington Supreme Court decisions are binding on all lower courts in the state); State v. Wentz, 149 Wn.2d 342, 346, 68 P.3d 282 (2003) (the Washington Supreme Court has the ultimate authority to say what a statute means).

We conclude the trial court acted well within its broad discretion by awarding Calhoun approximately $40 million of Larson's separate property. During a three-week trial, the court "listened closely to the testimony of the parties and ten additional

witnesses," "reviewed the exhibits admitted into evidence as well as extensive legal briefing," and "heard closing arguments of counsel." Following trial, the trial judge issued 25 pages of carefully-drafted findings of fact and conclusions of law. It later issued 16 additional pages of amended findings and conclusions to reflect certain posttrial agreements. The record supports Calhoun's correct assertion that "[t]he trial court, an experienced trial judge, did not make a capricious decision." Resp't's Br. at 10.

The court recognized the unique (and possibly incomparable) nature of the case before it. It stated, "To first address the 'elephant in the ballroom', this is not a case like so many others where the concern is with making sure all in the family are housed, clothed and fed." It recognized that Larson "leaves the marriage in excellent fiscal and physical health," and that Calhoun's "fiscal and physical conditions are likewise strong." It also noted, "Both of these impressive people will go on to do well and to do good."

The court found it necessary to award a portion of Larson's separate estate to Calhoun "to achieve a just result." According to the trial court, the separate property award served two objectives. First, it recognized Calhoun's intangible contributions to the marital community. The court explained, "This was, after all, a long-term marriage in which the wife made a major contribution to all that the community accomplished, measured in terms of their children, their foster children, their impact in the broad community and their more narrow business interests." It found that the marital community benefited from Calhoun's engagement with the community at large:

> During her marriage, [Calhoun] was active as a parent, foster parent, overseer of major construction projects and the generous and committed benefactor of numerous charitable organizations. Both the community at large and the marital

> community benefitted greatly from her serving as, in her phrase, the "approachable face" of the couple.

In other words, while Larson generated the couple's considerable wealth, Calhoun's intangible contributions served equally to benefit the marital community.

Second, the award helped ensure Calhoun's short- and long-term financial security. The court found that Calhoun held a college degree in English literature but was not "gainfully employed" during the marriage. Larson, in contrast, obtained significant employment and investment experience during the marriage. The court found he had a "keen business sense" and that, "[i]n recent years, he has stayed busy actively managing his extensive investments and philanthropic endeavors." As between the two, Larson was in a better position to acquire and manage future wealth. The court stated, "It is not that [Calhoun] leaves the marriage in need but the fact is she will leave the marriage in a less advantageous position than her husband."[9] The $40 million separate property award—consisting of Microsoft stock and cash—provided Calhoun with immediate liquidity. Meanwhile, the $139 million community property award—consisting largely of real property and fine artwork—helped guarantee Calhoun's long-term financial health. The court found, "The division to be effectuated will provide the wife with substantial earning capacity, moderate liquidity and assets that can be liquidated prudently as time goes by."

The trial court provided ample, tenable justifications for its decision to award a portion of Larson's separate estate to Calhoun. Its decision fell well within "the range of acceptable choices, given the facts and the applicable legal standard." Littlefield, 133

[9] Although Larson assigns error to this finding, he does not contend that the finding is unsupported by substantial evidence.

Wn.2d at 47. It properly characterized all separate and community property and made a just and equitable distribution of the marital property in accordance with RCW 26.09.080. Finding no abuse of discretion, we affirm the trial court's property distribution and its decree of dissolution.[10]

ATTORNEY FEES ON APPEAL

"Upon any appeal, the appellate court may, in its discretion, order a party to pay for the cost to the other party of maintaining the appeal and attorneys' fees in addition to statutory costs." RCW 26.09.140. "As an independent ground we may award attorney fees and costs based on intransigence of a party, demonstrated by litigious behavior, bringing excessive motions, or discovery abuses." In re Marriage of Wallace, 111 Wn. App. 697, 710, 45 P.3d 1131 (2002). "If intransigence is established, we need not consider the parties' resources." Wallace, 111 Wn. App. at 710.

Calhoun contends she is "entitled to her fees on appeal due to Larson's intransigent conduct."[11] Resp't's Br. at 42. She does not argue that Larson was intransigent below.[12] Instead, she contends that Larson's appeal constitutes intransigence justifying a fee award. She explains:

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[10] Given our disposition in this case, we do not address Calhoun's invited error claim.

[11] Calhoun states, "While RCW 26.09.140 provides that a party in a dissolution action may recover his or her attorney fees on appeal, the statute is not the basis for Calhoun's fee request. Rather, she is entitled to her fees on appeal due to Larson's intransigent conduct." Resp't's Br. at 42.

[12] The trial court did not find that Larson was intransigent. To the contrary, it described the parties as "more congenial . . . than is typical." It also stated, "To the credit of both the parties and their counsel, many potentially thorny points of contention have been agreed upon."

> In this case, there was no need for this appeal. . . .
> . . . . An experienced trial judge ruled in Larson's favor on the legal issue of the characterization of the marital property after a 3-plus week trial. The court then made a discretionary decision to allocate the spouses' property on a 65-35 basis that favored Larson. That should have been the end of this case. But Larson could not stand the fact that his ex-wife received that allocation of marital property and he pursued this needless appeal, seeking to overturn established precedent.

Resp't's Br. at 42-43. She concludes, "Larson's appeal is motivated by self-interest and spite." Resp't's Br. at 43-44.

"Intransigence is the quality or state of being uncompromising." In re Marriage of Schumacher, 100 Wn. App. 208, 216, 997 P.2d 399 (2000); see, e.g., In re Marriage of Foley, 84 Wn. App. 839, 846, 930 P.2d 929 (1997) (appellant filed "numerous frivolous motions," refused to show up for his deposition, and refused to read correspondence from the opposing party's attorney); see also Eide v. Eide, 1 Wn. App. 440, 462 P.2d 562 (1969) (appellant tampered with exhibits). Finding no intransigent conduct by Larson, we deny Calhoun's fee request.[13]

CONCLUSION

Because the record shows no abuse of trial court discretion, we affirm the decree of dissolution. Calhoun's attorney fees request is denied.

WE CONCUR:

[13] Calhoun does not contend that Larson filed a "frivolous appeal" within the meaning of RAP 18.9(a).

THE HONORABLE WILLIAM DOWNING

SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

IN RE THE MARRIAGE OF: CHRISTOPHER ROSS LARSON PETITIONER, VS. JULIA LARSON CALHOUN RESPONDENT.	NO. 10-3-04077-7 SEA AMENDED FINDINGS AND CONCLUSIONS AND ADDITIONAL FINDINGS AND CONCLUSIONS

This matter came on before the Honorable William Downing on petitioner's motion to amend and supplement the court's Findings of Facts and Conclusions of Law at Trial dated December 22, 2011 ("12/22/11 Findings"). The court considered the submissions of the parties and the court finds good cause to enter the following order:

IT IS HEREBY ORDERED that the 12/22/11 Findings are amended as follows:

32. **Future Cash Payments Due Dates.** The future cash payments from petitioner to respondent in 2013 and 2014 are due on January 2nd of each year.

33. **Agreement on Microsoft Stock.** The parties entered into an agreement attached to the Decree as APPENDIX A with respect to the 2011 individual income tax return and the 800,000 shares of Microsoft stock awarded to Respondent as follows:

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a. The parties will file a joint individual income tax return for 2011.

b. The 800,000 shares of Microsoft stock awarded to Respondent will be sold prior to December 31, 2011.

c. Petitioner will pay the tax due on the 2011 joint income tax return, including tax on the sale of the 800,000 shares of Microsoft stock..

d. In exchange for the concessions in sub-paragraphs (b) and (c) above, and as long as he complies with all provisions in the agreement attached to the Decree as APPENDIX A, Petitioner will be awarded the one-third interest in Swauk Valley Ranch LLC, and Petitioner will receive any future tax credits or refunds associated with the 2011 joint income tax return.

34. **Maintenance.** Respondent does not have a need for maintenance.

35. **Attorney's Fees.** Each party received awards of temporary attorney's fees and costs totaling $950,000. The temporary awards were paid in part from community property (Goldman #8395) and in part from Petitioner's separate property (Goldman #0478). Respondent does not have the need for attorney fees.

36. **Bank Accounts Attached To Assets.**

a. Bank of Hawaii account #5080 should be awarded to the Respondent as she was awarded the Hawaii property; and

b. The 2 Laurel Group US Bank accounts #9430 and #9448 should be awarded to the Respondent as the payroll for the employees, many of whom will remain employed by the Respondent, are paid out of these accounts. She created the Laurel name and the building she was awarded is entitled The Laurel Building. She has always

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managed these accounts and written the checks.

37. **The Laurel Group, LLC.** This entity should be awarded to Respondent at no value as many of the employees will remain employed by her and the entity has no value. This entity provides benefits to the employees and the family.

38. **Thistledown, LLC.** This entity should be awarded to the Respondent at no value.

39. **Respondent's Occupancy of Norcliffe and Payment of Norcliffe expenses during Respondent's occupancy and Respondent's vacate date.** The Petitioner has been awarded Norcliffe. The parties agreed that the Respondent may stay at Norcliffe through April 30, 2012. From February 2012 through the time she vacates, the Respondent should pay the household staff (housekeeping) expenses. The Petitioner should pay the remaining expenses for said properties, including but not limited to utilities, dues, taxes, insurance, capital/necessary repairs, landscaping and other grounds expenses. Said amounts shall not be considered maintenance. The gardeners at the Norcliffe property may continue to occupy the Jacob house until the Respondent vacates Norcliffe and the Gatehouse. During that time, the gardeners shall continue to do work they would normally do at the Jacob and Allen/Holmes houses. During Respondent's occupancy, she shall not cause or permit any damage to Norcliffe or the grounds (reasonable wear and tear excepted) and she shall reimburse the Petitioner for any such damage that is not covered by any insurance.

IT IS HEREBY ORDERED that the Conclusions of Law are amended as follows:

8. **Cash Payments.** The Decree shall provide that Petitioner shall pay to Respondent cash payments as follows:

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Four tax-free cash payments from the Petitioner totaling $47,770,480.27paid as follows:

1. $12,000,000 paid prior to entry of this Decree of Dissolution on February 3, 2012 ("Immediate Transfer Payment")
2. $20,770,480.27 which are the net proceeds of the December 30, 2011 sale of 800,000 shares of Microsoft stock and shall be paid to the wife on February 3, 2012 pursuant to the agreement attached to the Decree as Appendix A ("Microsoft Stock Proceeds");
3. Transfer payment of $10,000,000 paid on January 2, 2013 ("Future Cash Payment"); and
4. Transfer payment of $5,000,000 paid on January 2, 2014 ("Future Cash Payment").

The Immediate Transfer Payment and the Microsoft Stock Proceeds shall not be a judgment or accrue interest if timely paid pursuant to #1 and #2 above. In the event that either one or both of the payments mentioned in the preceding sentence are not timely paid, the court shall enter an immediate judgment for the unpaid payment(s) which shall accrue interest at 12% per annum from default until principal and interest are fully paid.

The Future Cash Payments shall not be a judgment. The Future Cash Payments shall not accrue interest if timely paid because the Petitioner will need to sell assets to make the Future Cash Payments and will incur costs of sale in doing so. The court could have awarded additional assets to the wife in lieu of the Future Cash Payments, in which case she would have borne the costs of sale. In the event that either one or both of the Future Cash Payments is not

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timely paid, past due payment(s) shall accrue interest at 12% per annum from default until the default is cured or principal and interest are fully paid.

Petitioner shall be in default under the terms as set forth in this Decree if he (a) fails to make any payment when and as due under the terms of this Decree; or (b) fails to perform or comply with, in full, any of the terms of the Deeds of Trust described below.

Upon default, Petitioner shall pay all reasonable costs of collection incurred by Respondent hereunder (including, but not limited to, reasonable attorney's fees, accounting fees, expert fees, and deposition costs).

If the Petitioner defaults on either of the Future Cash Payments, there shall be a 30-day "cure period" from his receipt of notice of default before the Deed Of Trust foreclosure process can begin to give the Petitioner time to cure the default.

If the Petitioner defaults on the first Future Cash Payment and does not cure his default within the 30-day cure period, the Respondent may at her option declare both Future Cash Payments due and payable under the terms of this Decree by giving notice of such declaration to the Petitioner.

Petitioner shall have no claim for offset or credit against the cash payments herein and he shall have no claim for forgiveness of the cash payments. The Future Cash Payments under the terms of this Decree shall be secured by Deeds Of Trust upon improved real estate at 97 Olympic Drive NW, Shoreline, WA 98177 and 95 NW Park Drive, Shoreline, WA 98177, executed simultaneously with this Decree. The form of said Deeds Of Trust is attached to the Decree as Appendix B, including the Master Form Deed Of Trust, except as

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stricken by interlineations, as provided for in RCW 65.08.160 (as edited in Appendix B). The Petitioner may cancel the $30 Million life insurance policy benefitting the Respondent when the Deeds Of Trust are signed by the Petitioner and recorded. Any and all costs incurred by Respondent in connection with recognizing upon the above security shall be included in the costs of collection hereunder for purposes of attorneys' Fees and Collection Costs.

9. **Distribution of Artwork.** The Decree shall provide as follows:

a. The community property appraised artwork is defined as follows:

Total artwork appraised by Debra Force (the "appraised fine art" listed in the Stipulation re: Various Asset Values)	= $115,105,500.00
Plus "Nude with a Parasol" by Louis Ritman (which the parties agree was inadvertently omitted from the Stipulation re: Various Asset Values)	+$ 850,000.00
Less Petitioner's separate pieces (The Baseball Player; Chicago, Bird Catchers which were awarded to Petitioner)	-$4,800,000.00
Less Pan of Rohallion awarded to Petitioner	-$4,500,000.00
Less pieces awarded to Respondent (Sunny Window; Undine; Wood Nymph, Morning Sunshine, Play Days, La Frileuse X 2, Diana)	-$4,452,000.00

The values of the community property appraised artwork shall be determined by the Stipulation re: Various Asset Values, except for the value of "Nude with a Parasol" by Ritman, which the parties agree shall be $850,000.00.

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The parties shall attempt to agree to an equal division of the value of the community property appraised artwork by February 3, 2012. If they cannot reach agreement, each party shall submit to the court on February 8, 2012 a list of community property appraised artwork he or she would like to be awarded in order of priority and the reason therefor. The court will then issue a supplemental order dividing the community property appraised artwork equally between the parties, if possible. If an equal division is not possible, then the court will divide the community property appraised artwork so the totals awarded to each party are less than $1 Million apart.

If the court's division of community property appraised artwork results in one party receiving artwork of greater value than the other, the former shall pay the latter one-half of the difference within 5 (five) days; provided, however, the Respondent's obligation, if any, to pay the difference shall mature within 5 (five) days or upon receipt of the $12 Million referred to in Conclusion 8, whichever is last.

If the Respondent is awarded one or more pieces of artwork currently pledged to JP Morgan for the $45 million line of credit, the Petitioner shall use his best efforts to obtain a release of her artwork from the pledge agreement within 60 days of the date of the court ordered award to the Respondent. In any event, the wife shall not be required to sign a renewal or extension of the JP Morgan pledge agreement when the pledge agreement expires at the end of July 2012.

10. LIABILITIES . The Decree shall provide as follows:

A. Liabilities Under Temporary Order. Petitioner and Respondent

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shall assume and pay any debts and obligations of the parties that are due prior to the entry of the Decree pursuant to the provisions of the Temporary Order entered herein on 09/30/2010.

B. Petitioner's Liabilities. Petitioner shall assume and pay any unpaid indebtedness incurred by the Petitioner subsequent to the entry of the Decree. Except as otherwise provided for in this Decree, Petitioner shall assume and pay any and all indebtedness, liabilities, guarantees, and obligations incident to any asset awarded to the Petitioner. The Petitioner shall assume and pay any and all indebtedness due and owing to Goldman Sachs and JP Morgan. Petitioner shall assume and pay the charitable pledges of the parties in the amounts listed in the Stipulation re: Various Asset Values to Children's, Evergreen School, Solid Ground, University Prep, and Lakeside School. Petitioner shall assume and pay cash payments to the Respondent in the amount of $47,770,480.27 as set forth in Conclusion 8 above. Petitioner's Liabilities are subject to the Duty to Defend, Hold Harmless and Indemnification provisions of Sub-paragraph 10(D) below.

C. Respondent's Liabilities. Respondent shall assume and pay any unpaid indebtedness incurred by the Respondent subsequent to the entry of the decree. Except as otherwise provided for in this Decree, Respondent shall assume and pay

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any and all indebtedness, liabilities, guarantees, and obligations incident to any asset awarded to the Respondent (including any amount due to the Antique Cupboard). Respondent's Obligations are subject to the Duty to Defend, Hold Harmless and Indemnification provisions of Conclusion 10(D) below.

D. Duty to Defend, Hold Harmless and Indemnify. Petitioner and Respondent shall indemnify, defend, hold harmless, protect and reimburse each other for, from, and against any and all legal proceedings, claims, losses, demands, damages, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees and costs), fines, judgments, mediator costs, arbitrator costs, court costs, legal fees incurred on appeal of a collection action and all interest thereon related to or arising from

i. Either's obligations as set forth in this Decree;

ii. Claims pertaining to any property awarded to either;

iii. Claims caused by the negligence or willful act of either; and/or

iv. Claims related to or arising from the death or bodily injury to persons or injury or damage to any property, caused by either or agents or employees of any business property interest awarded to either under

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this decree (collectively, "Claims").

E. Petitioner's and Respondent's duty to defend the other shall arise immediately upon either party providing written notice of a Claim to the other, and applies whether or not the issue of either's liability or other obligation or fault has been determined. The duty to indemnify, defend and hold harmless shall survive the satisfaction and payment of either party's obligations under this decree.

F. Release of Respondent. No later than March 31, 2012, Petitioner shall close the joint Goldman Sachs margin loan account and transfer the margin debt to an account in his name solely. In addition, prior to March 31, 2012, the Petitioner shall ask JP Morgan for a written statement that the Respondent is not liable on the husband's JP Morgan line of credit.

11. Income Tax Liabilities. The Decree shall provide as follows:

The parties shall file a joint individual income tax return for 2011 (the "2011 return"). Pursuant to Appendix A attached to the Decree, the Petitioner shall pay 100% of any tax due on the 2011 return and any later deficiency including tax penalty and interest. The Petitioner shall receive 100% of any refund or tax overpayment on the 2011 return. In addition, the Petitioner is awarded 100% of any credit relating to the 2011 return.

If there is later determined to be a deficiency (including tax, penalty and interest) on a joint income tax return for a year prior to 2011, the responsibility for paying the deficiency shall be divided between the marital community and the

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Petitioner's separate estate in the same proportion as the community and separate adjusted gross income for that tax year. Each party shall pay 50% of the community portion of the deficiency. The Petitioner shall pay 100% of the separate portion of the deficiency.

The Petitioner shall report the Video Networks loss carry forward on future income tax returns.

For any audit, assessment or other action by the IRS relating to a joint income tax return filed by the parties, the Respondent shall sign a power of attorney authorizing the Petitioner to act on her behalf. The Petitioner shall select and pay for any professional he deems necessary to assist him in responding to the audit, assessment or other action.

The liabilities of the parties under this subparagraph shall be subject to the Duty To Defend, Hold Harmless, and Indemnify provisions of Conclusion 10(D) above.

12. **Laurel Group, LLC.** The Decree shall provide as follows: Laurel Group, LLC, shall be awarded to the Respondent at no value.

13. **Thistledown, LLC.** The Decree shall provide the following: Thistledown, LLC shall be awarded to the Respondent at no value.

14. **Petitioner's vacate date.** The Decree shall provide the following: The Petitioner shall vacate the "911 Building" by 04/30/2012 and the Holmes house by 02/15/2012:

15. **Payment of Norcliffe Expenses During Respondent's Occupancy and Respondent's Vacate Date.** The Decree shall provide the following: The Respondent may have until April 30, 2012 to vacate Norcliffe and the Gate house. From February 2012 through the time she vacates, the Respondent shall pay the household staff

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(housekeeping) expenses. The Petitioner shall pay the remaining expenses for said properties, including but not limited to utilities, dues, taxes, insurance, capital/necessary repairs, landscaping and other grounds expenses. Said amounts shall not be considered maintenance.

16. **The Decree shall provide the following:** The Petitioner shall be awarded the Kubota R420 S/N 10686; 2000 Chevrolet truck, license #B71712C; Isuzu flatbed truck, license #A5533OW; the garden equipment located at Jacob House that is used on the Norcliffe house grounds; cash in the amount of $51,182 for the balance remaining in Laurel Group accounts as of 10/31/2011 and Bank of Hawaii account as of 10/31/2011 less the stipulated value of the two trucks awarded to him that were allocated to the Respondent in the Findings (2000 Chevrolet truck at $2,600 and 1996 Isuzu flatbed truck at $400).

The Petitioner may have excess construction materials of his choice that are necessary or potentially valuable for specific application at the Norcliffe house (paving stone, roof tile, bricks, etc.). The excess construction materials are currently stored at a property owned by Thistledown LLC. The Petitioner must take possession of the excess construction materials of his choice within 30 days of entry of the Decree. If the Petitioner takes possession of the excess construction materials, the Respondent shall be awarded the two stone dogs.

17. **The Decree shall provide the following:** The Respondent shall receive the Mid-Pacific Country Club membership; and the loan receivable from the parties' daughter, Shauna.

18. **Confirmation of Agreement Re: Sale of Microsoft Stock.** The Decree shall include the agreement between the parties dated 12/29/2011 attached as APPENDIX A to

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the Decree and award the one-third interest in Swauk Valley Ranch, LLC, to the Petitioner, on the condition that he transfers the proceeds of $20,770,480.27 from the sale of the Microsoft stocks to the Respondent on or before 02/03/2012.

19. Transfer of Assets and Execution of Necessary Documents. The Decree shall provide the following: Each party shall promptly perform any act reasonably requested by the other party that is necessary to effectuate the terms of this Decree, including but not limited to the execution of documents to transfer assets as provided for in this Decree.

20. The Decree shall provide the following: The parties' obligations under the Decree including the transfer of assets as provided for therein, shall survive the obligor's death and shall be a lien on his/her estate.

21. The Decree shall provide the following: The Respondent shall be awarded the household goods, furnishings and other personal property located at the real property awarded to her (except for those items specifically awarded to the Petitioner) located at 91 Olympic Drive NW (Jacob) and 96 Olympic Drive NW (Allen/Holmes), Lake Armstrong, all 3 parcels located at 510 N. Kalaheo Avenue, 510 "A" N. Kalaheo Avenue, and 510 N. Kalaheo Avenue, 10 Earls Terrace, London, and all real estate located in Thistledown LLC excluding 15733 Palatine Avenue N.

22. The Decree shall provide the following: The Petitioner shall be awarded the household goods, furnishings, and other personal property located in the real property awarded to him (Norcliffe, the Gatehouse, Teltoft, and 15733 Palatine Avenue N.), except for those items specifically awarded to the Respondent.

23. Promptu Systems Corporation (Promptu). The Decree shall provide the following: Any funds the Petitioner receives from Promptu in the future will be disbursed

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in the following order:

A. The Petitioner shall receive the first $9,757,200, which is two times the current value of his investment.

B. The Petitioner shall next receive two times the amount of any additional funds he puts into Promptu after January 1, 2012.

C. The remaining funds the Petitioner receives from Promptu (if any) shall be divided as follows: The Petitioner shall pay the Respondent a tax-free payment *equal* to one-half of the remaining funds *minus* actual taxes paid by the Petitioner. The Petitioner shall receive any remaining funds not paid to the Respondent.

The Petitioner shall initially pay the wife one-half of the remaining funds minus the then-current percentage income tax rate on long term capital gains. The amount subtracted by the Petitioner from the initial payment is referred to in this paragraph as "Petitioner's tax estimate". Within 30 days of the Petitioner filing the income tax return that reports the remaining funds, he shall provide to the Respondent a calculation of "petitioner's actual tax" on Respondent's one-half of the remaining funds. The calculation of "Respondent's actual tax" on wife's one-half of the remaining funds shall be prepared by the accounting firm that prepares the Petitioner's income tax return. "Petitioner's actual tax" on Respondent's one-half of the remaining funds shall be calculated by taking the total tax paid on husband's income tax return that reports the remaining funds, and subtracting the total tax the Petitioner would have paid if he had not reported Respondent's one-half of the remaining funds. If "Petitioner's tax estimate" is less than "Petitioner's actual tax", the Respondent shall pay the different to Petitioner within 10 days of Respondent's receipt of the accountant's calculation. If "Petitioner's tax estimate" is more than "Petitioner's actual tax", the Petitioner shall pay the difference to the wife within

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10 days of Respondent's receipt of the accountant's calculation.

The Petitioner shall provide the Respondent with documentation of any funds he receives from Promptu in the future within 10 days of his receipt of such funds or upon the Respondent's reasonable request; the Petitioner shall provide an accounting of the funds he has paid into Promptu after January 1, 2012 within 30 days of the Respondent's reasonable request.

24. **Video Networks International Ltd (VNIL).** The Decree shall provide the following: Any funds the Petitioner receives from VNIL in the future shall be disbursed in the following order:

A. The Petitioner shall receive the first $2,569,248, which is two times the current value of his investment.

B. The Petitioner shall next receive two times the amount of any additional funds he puts into VNIL after January 1, 2012.

C. The remaining funds the Petitioner receives from VNIL (if any) will be divided as follows: The Petitioner shall pay the Respondent a tax-free payment equal to one-half of the remaining funds minus actual taxes paid by the husband on said one-half of the remaining funds. The Petitioner shall receive any remaining funds not paid to the Respondent.

The Petitioner shall initially pay the Respondent one-half of the remaining funds minus the then-current percentage income tax rate on long term capital gains. The amount subtracted by the Petitioner from initial payment is referred to in his paragraph as "Petitioner's tax estimate". Within 30 days of the Petitioner filing the income tax return that reports the remaining funds, he shall provide to the Respondent a calculation of "Petitioner's actual tax" on Respondent's one-half of the remaining funds. The calculation

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of "Petitioner's actual tax" on Respondent's one-half of the remaining funds shall be prepared by the accounting firm that prepares the Petitioner's income tax return. "Petitioner's actual tax" on Respondent's one-half of the remaining funds shall be calculated by taking the total tax paid on Petitioner's income tax return that reports the remaining funds, and subtracting the total tax the Petitioner would have paid if he had not reported Respondent's one-half of the remaining funds. If "Petitioner's tax estimate" is less than "Petitioner's actual tax", the Respondent shall pay the difference to the Petitioner within 10 days of Respondent's receipt of the accountant's calculation. If "Petitioner's tax estimate" is more than "Petitioner's actual tax", the Petitioner shall pay the different to the Respondent within 10 days of Respondent's receipt of the accountant's calculation.

The Petitioner shall provide the Respondent with documentation of any funds he receives from VNIL in the future within 10 days of his receipt of such funds or upon the Respondent's reasonable request; the Petitioner shall provide an accounting of the funds he has put into VNIL after January 1, 2012, within 30 days of the wife's reasonable request.

DONE IN OPEN COURT this 3rd day of February, 2012.

JUDGE WILLIAM L. DOWNING

Presented by:

JANET A. GEORGE, INC., P.S.

Janet A. George, WSBA No. 5990
Attorney for Respondent

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SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

In re: the Marriage of: CHRISTOPHER ROSS LARSON, Petitioner, and JULIA LARSON CALHOUN, Respondent.	NO. 10-3-04077-7 SEA FINDINGS OF FACT AND CONCLUSIONS OF LAW AT TRIAL

INTRODUCTION

Before the undersigned Judge of the above-entitled Court, this matter came on for trial on November 28 – December 15, 2011. The Petitioner Christopher Larson was represented by attorney Thomas Hamerlinck and the Respondent Julia Calhoun was represented by attorney Janet George. The Court has listened closely to the testimony of the parties and ten additional witnesses, has reviewed the exhibits admitted into evidence as well as extensive legal briefing and heard closing arguments of counsel.

Although the parties may have been more congenial, the issues more engaging and the lawyers considerably more skilled than is typical, it is now the job of the Court, as in any marital dissolution case, to identify the assets and liabilities of the parties, determine the value of each, characterize each as either separate or community, and direct a division that is just and equitable. The concept of fairness and equity requires that the Court state and give consideration to all of the attendant circumstances in which the parties find themselves now and into their post-dissolution futures. See, RCW 26.09.080. Of course, the past is relevant prologue.

To the credit of both the parties and their counsel, many potentially thorny points of contention have been agreed upon. This has left as the primary issues in serious dispute (a) the nature and extent of Mr. Larson's separate estate; (b) the value of certain assets before the court, notably the family residence and an ownership interest in the Seattle Mariners; (c) the dates to be used for the beginning and ending of the marital community; and, most significantly, (d) what division is just and equitable.

In consideration of the foregoing, the Court now makes and enters the following:

FINDINGS OF FACT

1. On the 5th of July, 1986, in Kirkland, Washington, Christopher Larson and Julia Calhoun were joined in marriage. Twenty-three years later, the marital community separated in the summer of 2009. Both agree their marital bond is broken beyond retrieval and ask the Court to dissolve their marriage.

2. The marriage was blessed with five children who now range in age from 26 to 17. Geographically, they are spread out (oldest to youngest and as of the moment) in Seattle, New York, London, California and Massachusetts. With a shared view of the children's best interests, the parties have agreed as to all financial and residential matters that relate to them. A final parenting plan as to the one minor child has already been entered and any necessary orders for the support and education of the children are expected to be submitted in an agreed form.

3. As a student in the 7th grade at Seattle's Lakeside School, Mr. Larson first learned to program a computer. Not unusual today, that was quite remarkable in 1971 and it pointed him on a path that leads to the wealth that is before the Court today. A few years later, in early association with schoolmate Bill Gates (several years his senior), he began working part-time with a nascent company called "Microsoft" in 1975. During his college years at Princeton University (1977-81), where he majored in economics and computer science, he continued working intermittently for Microsoft. Upon graduation in 1981, he began as a fulltime Microsoft employee, significantly one who was granted an equity interest in the company which was not yet publicly traded. He continued as an employee through his marriage five years later in 1986 and up through his retirement in 2001. In recent years, he has stayed busy actively managing his extensive investments and philanthropic endeavors. Only 52 years of age, he leaves the marriage in excellent fiscal and physical health.

4. Having grown up in Wenatchee, Julia Calhoun moved to Seattle where she eventually earned a B.A. in English literature from Seattle University. In the late 1970's she socialized with the bright, young Microsoft crew through whom she met her future husband. During her marriage, she was active as a parent, foster parent, overseer of major construction projects and the generous and committed benefactor of numerous charitable organizations. Both the community at large and the marital community benefitted greatly from her serving as, in her phrase, the "approachable face" of the couple. She did not need to be gainfully employed during the marriage and will not need to be now. 54 years of age, her fiscal and physical conditions are likewise strong.

5. Displaying the keen business sense that would serve him well over the years, Mr. Larson wrote to Bill Gates from Princeton to say he thought he'd only come to work for Microsoft if he received an equity interest in the company. With that wish granted, he returned to Seattle where he and Ms. Calhoun continued the dating relationship they'd begun in 1980. Despite her investment of homemade cookies mailed to him during his senior year, her own businesslike appraisal of him as the next few years unfolded was that "his stock wasn't trading too high with me." In early 1985, he proposed marriage, she demurred, he "made his case" and they "negotiated." She insisted upon a one year engagement and, accordingly, they lived together for about a year (without establishing joint accounts or jointly acquiring any significant assets) before they sealed their commitment with the exchange of wedding vows in July of 1986.

6. By May of 2009, finding herself frustrated by a communications and cooperation gap she felt had been growing for several years, Ms. Calhoun moved out of the parties' primary residence. She briefly moved back in the following month but all agree they never resided together "as husband and wife" after July of 2009. Through that summer, fall and winter, they engaged in unproductive, cursory discussions of a need to formalize their separation or divorce. The Court will adopt July 31, 2009 as the parties' date of separation.

7. From the beginning of the parties' marriage through 2001, the husband was employed by Microsoft. During this time, he received a salary and took full advantage of his employer's stock option and stock purchase plans. Consequently, the marital community amassed considerable wealth. It was testified that the total number of split-adjusted, hypothetical shares of Microsoft stock (if none had been sold) that went into the community estate would be 23,577,316.

8. The marital estate indisputably characterized as community property is currently valued at something over $100 million. It would be higher but for several factors. For one thing, when the community exercised stock options as it did to purchase millions of Microsoft shares, the strike price had to be paid as well as income tax on the "spread." Additionally, the community has had, and has acted upon, the ability to make substantial expenditures for purposes other than the production of income. These include pouring over $165 million into acquisition and renovation of the properties in the Highlands, the purchase of expensive homes in London, Hawaii, Snohomish County and

elsewhere, the construction of a couple of commercial buildings, the purchase of millions of dollars' worth of collectibles such as baseball memorabilia (his interest), Victorian posy holders (her interest), and fine art (appreciated by both) and the altogether commendable charitable contributions in excess of $120 million over the years of the marriage.

9. During the marriage, the community acquired several residential properties in the Highlands, a gated community in Shoreline overlooking Puget Sound. It is said that after acquiring the two properties known as Norcliffe and the Gatehouse for $5.7 million, they invested an additional $160 million in improvements. Included are such features as a ballroom to accommodate 200 guests, an underground parking garage to accommodate 24 vehicles and 13 water features including a turtle pond no doubt enjoyed by an untold number of turtles. In the real estate world, the term "superadequacy" (an improvement that costs more than its contributory value or that, due to its quality or uniqueness, is not fully valued in the marketplace) well describes the situation that has been produced; in fact, this is a rather extreme case.

Due to their physical, mechanical and aesthetic relationship, Norcliffe and the Gatehouse are best valued as a united estate. Having considered the opinions of Mr. Campos and Mr. Pope, the two real estate appraisal witnesses, the Court finds the current fair market value is $20,000,000. This includes the fixtures in the home (such as fireplaces, mantles, chandeliers and windows) but neither the hanging art nor the outdoor art pieces. While this figure is far below the amount put into the unquestionably fabulous estate, the facts remain that the

current market is not strong and this would be an astounding, record-setting high price for non-waterfront property in King County. It has been agreed that Mr. Larson will retain the Norcliffe and Gatehouse properties (and the Court will simply note with approval his expressed willingness to allow Ms. Calhoun the continued use of the premises through the summer of 2012).

10. For an additional $4.7 million, the community also acquired three adjoining homes in the Highlands. These are known as "Teltoft" ("a cute little Cape Cod"), "Jacob" ("dysfunctional and tired") and "Allen" ("an eclectic post-modern contemporary"). These properties are valued by the Court, respectively, at $1,430,000, $1,200,000 and $1,500,000. Teltoft should stay with Norcliffe and so it is awarded to Mr. Larson; Jacob and Allen shall be awarded to Ms. Calhoun.

11. In addition, the marital community acquired a number of other pieces of real property that are unencumbered and have been valued by stipulation. They are referred to in shorthand as "London" (approximately £10,770,000 or $17,055,803), "Hawaii" ($13,290,000), "Lake Armstrong" ($5,171,000), "Swauk Valley Ranch" ($1,850,000), "Thistledown" ($10,580,000 in commercial properties and $1,487,000 in residential properties), and "The Rocks" ($297,380). All of these are being awarded to Ms. Calhoun with the exception of The Rocks in Scottsdale, Arizona and the Thistledown residential property on Palatine Ave. N. and those pledged to Lakeside School.

12. As to the pieces of outdoor art on the Norcliffe grounds, it must be said that while they unquestionably add to the charm of the estate, they do not add value to match their value if sold separately. It is easily imaginable, for

instance, that a buyer who loved the house might not find it comforting to be always greeted by Diana's "restive dog"; he or she might well prefer a giant typewriter eraser or an Easter Island moai. As noted by both appraisers, those few in the market for a dream house in this price range will expect to indulge their own dream. Ms. Calhoun has expressed a wish to have certain of the outdoor pieces and the Court would award to her "Diana", "Undine", "Shivering Girl(s)", "Wood Nymph", "Girl with Basin" and her choice of either "Playdays" or "Joy of the Waters". To keep "Pan of Rohallion" with Norcliffe, the Court would award it to Mr. Larson. The paintings "Morning Sunshine" and "Sunny Window" would also be awarded to Ms. Calhoun. The stipulated value of these specific pieces awarded to each is approximately $4,500,000. As to the remainder of the outdoor and indoor art works, the parties will need to devise a protocol for effectuating a 50-50 division. The same should be done with respect to an equal division of any other personal property that the Court may neglect to address in these findings or the attached appendix.

13. The parties have other community property assets (such as vehicles, bank accounts, retirement funds, etc.), most of which need not be addressed in these findings although they should find inclusion in the appendix and the eventual decree.

14. Back in 1981, in order to enlist Mr. Larson's services, Microsoft allowed him to purchase a 0.5% equity interest in the company for the grand sum of $56.60. He willingly paid this price and in December of 1981 he was issued certificate number 8 for 56,600 shares in the company. These were his, free and

clear, as of that time. He did need to borrow from the company to pay the income taxes on the spread between the purchase price and the already appreciated value; this loan was repaid from his separate funds. This block of 56,600 pre-IPO shares of Microsoft stock, which subsequently underwent ten two-for-one splits, is the source of Mr. Larson's claimed separate estate. Hypothetically, if none were sold, these shares would have become 32,601,600 shares over time with a December 31, 2010 value of $909,910,656.

15. Before his marriage, Mr. Larson established a separate margin account with Goldman Sachs with an account number ending in 047-8. It was into this account that he placed those separately acquired stocks. Over the years, as these shares grew in both number and value, he used them to borrow against, to secure lines of credit and as the pledges for variable prepaid forward contracts. With the funds thus acquired, he made various investments including some big winners (Dell Computers, Silver Lake Partners), some big losers (Video Networks, Promptu Systems) and some that have appreciated on paper while paying no dividends or profits (Mudville Nine). Within the marriage, it was openly discussed that Mr. Larson would not take such risks with community funds as he did with the funds that he considered his separate estate.

16. As a result of the expenditure of community funds for real estate acquisitions and improvements, for charity and for consumption, while the separate funds were being invested more aggressively, the net result today happens to be that the purported separate estate has maintained a significantly higher value than the community estate although it could have turned out

otherwise. A major disputed issue at trial was whether the present assets that grew from investments made with the funds originating in that pre-marriage stock purchase yet retain a separate character or if they lost it somewhere along the way through commingling with community property.

17. Certainly a key witness at trial, if not *the* key witness, was Gregory Porter. He is the Certified Forensic Financial Analyst (a CFFA who is also a CPA with an MBA and a MS in Taxation) who provided the "tracing" analysis on behalf of Mr. Larson. In court, besides those letters, he tossed around many big numbers, most of them relating to Microsoft shares or to units of currency (dollars, pounds and Euros), but they also included the pretrial hours his team spent on their task ("1700") and the number of pages of materials they reviewed ("several hundred thousand"). It must be stated without equivocation that the Court found Mr. Porter to be an exceedingly reliable witness. His quick mind and engaging presentation were simply a top layer resting upon a solid foundation of a daunting amount of thorough and conscientious work. When he says, as he did, that Mr. Larson maintained "a consistent pattern and practice of keeping his 56,600 shares, and what they grew into and were used for, separate from his later-acquired assets," this carries great weight. This opinion was backed up by a financial records "E-exhibit" the likes of which the Court has not previously seen. Through its live links, documentation was a click away from any entry that demonstrated the source of any funds and the uses to which they were put. As Mr. Porter convincingly stated: "Everything was accounted for and nothing was left over."

18. When gauging the extent to which Mr. Larson had the intention to retain his pre-marital assets as a separate estate, the Court would note the following circumstances:

a) The consistent effort he expended to keep things separate, most all of it successful;

b) The corrective actions he took when he became aware of record-keeping errors made by others; and

c) The open discussions within the marriage of the fact that he would make risky investments with separate funds but not with community funds.

19. Mr. Larson testified that he thought it "prudent" to see that all Microsoft shares were correctly registered either in his name only or in both names and Mr. Porter described him as "meticulous" about doing so. For example, on February 1, 1995, Mr. Larson discovered that 125,000 recently issued shares had been incorrectly registered in his name alone. He immediately directed Microsoft to fix their error, to reissue the certificate in both names and to make sure the records reflected joint ownership dating back to the original issuance.

20. 160 Microsoft shares purchased early during the marriage and 45 shares awarded to Mr. Larson (on the 10th, 15th and 20th anniversaries of his employment) should have been registered jointly but ended up in his name only and these went unnoticed. Together, these shares represent only .14% of his separate hypothetical shares, a *de minimis* amount relative to the 99.86% that were properly registered.

21. At a certain point, due to frequent stock splits, Microsoft stopped routinely issuing certificates to Mr. Larson, in favor of simply issuing "book shares" with registration records kept by a transfer agent. Through no fault on the part of Mr. Larson, and unbeknownst to him, some community-purchased shares were registered only in his name. In April of 2001, Mr. Larson became aware that 2 million mis-registered book shares and 200,000 mis-registered certificates (held in Microsoft's vault until transferred to a bank) were among a larger number that he had pledged to certain lending institutions as security. By June, he had seen that the records were corrected as to the book shares; it took a little longer to get the physical certificates returned and restored to the community but this was accomplished as expeditiously as possible. Through this mix-up, there was no loss to the community and no risk since Mr. Larson had millions of other separate property shares he could and would have used had he known of Microsoft's error. It is true that the community was deprived of the use of the shares during the time they were pledged but there is no indication at all that the community would have done anything other than continue holding the shares.

22. The unintentional use of a small amount of community property collateral to obtains funds (from margin loans, lines of credit or variable prepaid forward contracts) to be used for separate purposes neither harmed the community interest nor placed it in serious jeopardy of being harmed. The same is true as to the J.P. Morgan $50 million line of credit taken out by Mr. Larson in

2008, secured primarily by his interest in Mudville Nine with a value more than twice the amounts he could borrow. For this LOC, because Mr. Larson's separate Goldman Sachs account (047-8) was cross collateralizing the community's Goldman Sachs account (839-5), it was necessary to also pledge, as secondary collateral, certain pieces of community artwork. Again, this did not harm or threaten to harm the community and would not serve to transform the character of the assets acquired (or paid down) with the funds received solely by Mr. Larson on his own separate promise to repay.

23. Into Mr. Larson's separate Goldman Sachs account (047-8), there were a total of four mistaken deposits of community funds over the course of 24 years. One involved a 401(k) dividend ($9749), one involved a community dividend ($2341) and one involved funds from a community account ($23,224). The largest of the four errors ($867,698) came from a $6.6 million settlement of a dispute with UBS and Lydian, a dispute in which there had been separate claims on behalf of the community and Mr. Larson's separate estate. Significantly, Mr. Larson had given express instructions that the proceeds be distributed on a *pro rata* basis between the two accounts. He did not know until Mr. Porter's recent analysis that someone had made a miscalculation that favored the separate account. It sounds more than a little odd to term a cumulative $900,000 error *de minimis* but the fact of the matter is that, over the 24 year span, this account saw deposits totaling $1,800,318,815. Every dollar of this was traced and, of this amount, the mis-deposited funds represent .05%, a *de minimis* amount relative to the 99.95% traceable to separate sources. By comparison, during the same time

period, funds were taken from this separate account and used for community purposes at a rate Mr. Porter calculated at 100 times greater.

24. Mixing facts and law for a moment, the Court would conclude that the evidence has established clearly and convincingly that Mr. Larson's separate estate did not become commingled with the community estate. Funds used for his various post-marriage acquisitions (as discussed in paragraphs 25-27) have been clearly and convincingly traced to a separate source.

25. In 1992, Mr. Larson formed a new corporation and named it for a baseball team famous for leaving the tying runs stranded on base. "Mudville Nine, Inc." was created for the purpose of purchasing and holding a 30.636% interest in the Baseball Club of Seattle LLP, doing business as the Seattle Mariners. Despite the appearance of a couple of anomalous, inconsequential documents prepared by others, Mr. Larson has been at all times the sole shareholder in Mudville Nine. Over the years, Mr. Larson put approximately $65 million into this enterprise which, per the above discussion, remains his separate property. The current fair market value of this separately held asset was in substantial dispute at trial.

26. Each party presented expert testimony from a highly respected appraiser of sports franchises. The husband called Mary Ann Travers of Chicago and the wife presented Don Erickson of Dallas. As to be expected, these CPA's both analyzed the valuation question in terms of team revenues, presupposing rational economic behavior by buyers and sellers. Of course, sports team sellers are often driven to sell by circumstances beyond their control and buyers may

often be buoyed by their egos or, as in the 1992 purchase of the M's, their public spiritedness. Nonetheless, both experts agreed on a general approach: take some recent comparable sales, calculate an average ratio between the sale price and the team's annual revenues, then apply this function to the subject team's revenues to produce a base price that a willing buyer would be expected to pay to a willing seller for the team.

Choosing among the purported comparable transactions, each of which is distinguishable due to its own circumstances involving divorces, bankruptcy filings or MLB pressures, and then "adjusting" the conclusions, injects a distinct subjective element into this mathematical exercise. The Court has reviewed the details of transactions involving the Houston Astros, Texas Rangers, San Diego Padres, Chicago Cubs and Atlanta Braves. The Court would find the May 2011 Astros transaction and the December 2010 Rangers transaction to be the best comparables due to their recency, similar attendance and other factors. The Seattle Mariners' on-field performance probably slides in between the two but, from a business point of view, they enjoy a superior demographic. Based on these comparables, the Court would utilize a revenue multiplier of 3.2.

Applying this multiplier to the Mariners' approximately $190 million local revenue figure produces a value of $608,000,000. To this figure must be added the non-operating assets of the team. Assets include vacant land ($3,750,000), future receivables ($21,250,000), and excess working capital (approximately $20,000,000). There is also a liability for a deferred sales tax payment

($12,000,000). This produces a full enterprise value of $641,000,000. The value, then, of Mudville Nine's 30.636% interest would be $196,376,760.

Finally, in determining a *market* value, the Court finds it appropriate to apply a 10% discount based on the facts that Mudville's interest is a minority, non-controlling share and that the BCOS partnership agreement imposes restrictions on a partner's ability to broadly market his interest. This is a relatively low discount since the restrictions are not particularly onerous and were willingly accepted by the local owners with a view to keeping the Mariners "Safe at Home". While not being able to unilaterally hire and fire a field manager (à la Steinbrenner) or to prescribe players' facial hair or its absence (à la Finley), the local minority owners do retain an unusual level of control over certain key ownership decisions. Based on the foregoing, the Court would find the value of Mr. Larson's separate property interest in Mudville Nine, Inc. to be $176,739,084.

27. There are other readily identifiable assets that were acquired as part of Mr. Larson's separate estate. These include interests in the Kelowna Rockets hockey team, Silver Lake Partners, Promptu Systems Corp., Video Networks Ltd., and assorted funds and accounts as well as a 1911 Rolls Royce Silver Ghost, and paintings by Winslow Homer and Norman Rockwell. A fuller listing, together with the agreed values, is contained in the appendix. As to his highly risky investments in the "crammed-down" Promptu Systems and Video Networks (thus far resulting in nothing but heavy losses), the Court will follow the close-to-agreed recommendation that, on the off-chance that one of them finds

success, Ms. Calhoun shall share equally in any profits once Mr. Larson has recouped his investment together with a 100% risk premium.

28. It has been suggested that, by virtue of the fact that the community estate did not experience growth like that of Mr. Larson's separate estate, the Court should find there was a breach of fiduciary duty on his part as manager of the community funds. Of course, the community estate *did grow* tremendously in the sense that it increased from the zero balance at time of marriage to what it is today. In hindsight, it may be noted that, in the risks he took with his separate funds, Mr. Larson had more good picks than bad ones and meanwhile, like many others, he failed to foresee either the failures in the real estate market or in his marriage. As with many other couples, their community estate ended up heavily leveraged as they made joint decisions regarding expenditures for the acquisition of real estate, home improvements and furnishings and for charitable donations. It had to be the expectation shared by the marital community that they would go on for years jointly enjoying their homes and art collection with a passion not measurable by market appraisals. Finally, the husband's cancellation of his life insurance policy (with the $100,000 premium) was neither shown to have been ill-intentioned nor to have had any likelihood of causing harm. The Court would decline the invitation to find any breach of fiduciary duty.

29. As stated at the outset, the Court still must make a division of assets and liabilities that is just and equitable. Although deriving from the same root, the concept of equity refers not to an *equality* of result but rather is descriptive of a process. The result must be fair and the process of reaching it

must be even-handed. In applying this standard to the present case, the Court finds the following six points to be noteworthy:

a) To first address the "elephant in the ballroom", this is not a case like so many others where the concern is with making sure all in the family are housed, clothed and fed. Both of these impressive people will go on to do well and to do good. One has expressed a continuing commitment to fund efforts to ease the struggles of needy children while the other has pledged to continue giving generously to support education. The Court, of course, does not consider these intentions other than to applaud them.

b) Over the years, the community estate has received significant benefits from the husband's separately maintained assets. Of relative small significance is the separate estate's gift to the community that allowed for the purchase of the first family home on Capitol Hill. More significant is that Mr. Larson (and Mr. Porter) treated all Microsoft stock options exercised during the marriage as creating an entirely community asset, thus foregoing his claim under In re: Marriage of Short to his separate property portion of these stock grants that were received and partially earned before the marriage. Finally, over the years, the community has received substantial tax benefits due to the losses experienced by various separate assets.

c) The characterization of property as either separate or community is a legal conclusion that is driven by application of the law to the available evidence rather than by the more flexible notions of equity. In this case, the legal

conclusion as to the separate estate of the husband was compelled by evidence that was clear and convincing.

d) None of this is to say that, under its broad equitable powers, the Court cannot make a lopsided division of community assets and also invade a separate estate to the extent necessary to achieve a just result. It is the Court's intention to do both of these.

e) This was, after all, a long-term marriage in which the wife made a major contribution to all that the community accomplished, measured in terms of their children, their foster children, their impact in the broad community and their more narrow business interests. It is not that she leaves the marriage in need but the fact is she will leave the marriage in a less advantageous position than her husband.

f) The division to be effectuated will provide the wife with substantial earning capacity, moderate liquidity and assets that can be liquidated prudently as time goes by. Meanwhile, the husband, while retaining a substantially greater paper value with his separate property assets, will shoulder all of the parties' debt, most of the risk, heavy carrying costs and interest payments and a considerable amount of trapped-in tax liability. Again, it must be emphasized that both will continue to do well and both will continue to do good.

30. Consistent with the above discussion and the stipulations or agreements of the parties, the document attached as an appendix sets forth the assets and liabilities of the parties, designates their character as either

community or separate, states their value and makes the distribution deemed just and equitable by the Court.

31. As a further division of the assets of the parties, Mr. Larson shall deliver to Ms. Calhoun the sum of $12,000,000 at the time of entry of the decree, an additional $10,000,000 on January 1, 2013 and a final payment of $5,000,000 on January 1, 2014.

Having made the foregoing findings of fact, the Court now makes and enters the following:

CONCLUSIONS OF LAW

1. The Court has jurisdiction over the parties and the subject matter of this action.

2. The parties' marriage is irretrievably broken and a decree of dissolution should enter.

3. The Larson-Calhoun marital community was in existence from July 5, 1986 through July 31, 2009.

4. The character of property is determined as of the date of its acquisition. Property owned by a spouse before marriage, together with the rents, issues and profits thereof, remains the separate property of that spouse. RCW 26.16.010. There is a presumption that any increase in the value of separate property is also separate. There is also a presumption that where separate and community estates coexist, if there are both separate and community funds available, the appropriate fund was used for expenditures

intended to benefit one or the other. In re: Marriage of Pearson-Maines, 70 Wn. App. 860, 867-8 (1993) (citing Pollock v. Pollock, 7 Wn. App. 394 (1972) and other cases.) On the other hand, when separate funds become "hopelessly commingled" with community funds, there is a presumption that they have become community property. To rebut a claim of such commingling, the burden is on the party asserting a separate interest in property acquired during the marriage to establish by clear and convincing evidence that the funding can be traced and identified to a separate source. In this case, the Court is satisfied that such tracing has established that the pre-marriage assets of the husband provided the funding for the post-marriage acquisitions labeled as his separate property in these findings.

5. In applying RCW 26.09.080, no single factor such as the duration of the marriage or the extent of separate property is to be given undue weight. Rather, the statute "directs the trial court to weigh all of the factors, within the context of the particular circumstances of the parties, to come to a fair, just and equitable division of property. The character of the property is a relevant factor which must be considered, but is not controlling." In re: Marriage of Konzen, 103 Wn. 2d 470, 478 (1985).

6. The assets and liabilities of the parties are characterized and valued and shall be disposed of as outlined in the findings above and the attached appendix.

7. During the next fourteen days, the parties shall work to agree upon the form of the necessary final orders to effectuate the rulings indicated herein

and submit them to the Court for entry. Certainly any additional matters that the Court has neglected to address should be incorporated into the Decree, as should any necessary corrections to the Court's arithmetic errors. If agreement is not possible, alternative proposals may be submitted along with a cover letter explaining any disagreements that remain. Based on those submissions, the Court will enter the Decree of Dissolution and, if necessary, an Order of Child Support.

Dated this 22nd day of December 2011.

_____

Honorable William L. Downing

APPENDIX

COMMUNITY PROPERTY	VALUE & AWARDED TO:	
	Mr. Larson	Ms. Calhoun
Norcliffe & Gatehouse	$20,000,000	
Teltoft	$ 1,430,000	
Jacobs		$ 1,200,000
Allen		$ 1,500,000
Hawaii		$13,290,000
London		$17,055,803
Lake Armstrong		$ 5,171,000
Swauk Valley Ranch		$ 1,850,000
The Rocks	$ 297,380	
Thistledown commercial properties		$10,580,000
Thistledown residential properties	$ 336,000	$ 1,151,000
Art work	$55,150,000	$55,150,000
Non-appraised art		$ 390,198
Furnishings	$ 3,340,938	$ 457,609
Collectibles	$ 1,515,070	$ 9,759,882
Golf club memberships	$ 12,000	
Vehicles	$ 212,825	$ 65,400
Jewelry		$ 596,268
Loan to brother		$ 231,000
Wine collection	$ 150,000	

	Mr. Larson	Ms. Calhoun
Goldman Sachs acct. -839-5	(-$113,565,847)	
Microsoft 401(k)		$ 4,002,755
Fidelity IRA		$ 4,000,191
Oppenheimer IRA	$ 6,114,836	
U.S. Bank accts.		
Joint		$ 2,243,485
Laurel accts.	$ 49,731	
Thistledown		$ 702,782
Bank of Hawaii acct.	$ 4,451	
Barclay's Bank acct.	$ 30,343	
National Westminster acct.		$ 56,887
MSFT shares (276,316)		$ 7,358,295
Fidelity acct. -068		$ 350,801
Laurel Ink, Laurel Gifts		$ 283,727
Laurel Foundation, Positive Transitions		$ 1,675,540
Opportunities for Education	$ 533,722	
Charitable commitments (Children's, Evergreen School Solid Ground, University Prep, Lakeside School)	(-$ 5,096,000)	

HUSBAND'S SEPARATE PROPERTY

Mudville Nine	$176,739,084
Less J.P. Morgan loan	(-$ 40,155,987)
Kelowna Rockets	$ 160,013
Promptu Systems	$ 4,878,600

	Mr. Larson	Ms. Calhoun
Video Networks	$ 1,284,624	
Bregal Fund	$ 890,019	
Sand Spring Fund	$ 0	
Silver Lake Partnerships	$ 52,204,911	
Goldman Sachs -047-8	$168,722,516	
Wells Fargo -0204	$ 511,356	
J.P. Morgan acct. (163,702 MSFT shares to W)	$ 8,121,210	$ 4,359,384
Microsoft stock (56,600 shares to H, 349,730 shares to W)	$ 1,507,258	$ 9,313,310
Separate artwork (3 pieces)	$ 4,800,000	
Baseball memorabilia	$ 2,199,221	
1911 Rolls Royce Silver Ghost	$ 1,400,000	
Loan to daughter	$ 318,429	
WIFE'S SEPARATE PROPERTY		
Jewelry		$ 669,000
TRANSFER PAYMENTS (H to W)		
Entry of Decree	(-$ 12,000,000)	$ 12,000,000
January 1, 2013	(-$ 10,000,000)	$ 10,000,000
January 1, 2014	(-$ 5,000,000)	$ 5,000,000

DECLARATION OF SERVICE

On said day below, I emailed a courtesy copy and deposited with the U.S. Postal Service for service a true and accurate copy of the Answer to Petition for Review in the Supreme Court Cause No. 89862-6 to the following parties:

Catherine W. Smith
Valerie A. Villacin
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1619 8th Avenue N.
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Original E-filed with:

Washington Supreme Court
Clerk's Office
415 12th Street West
Olympia, WA 98504

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

Dated: February 14, 2014 at Tukwila, Washington.

Irelis Colon, Paralegal
Talmadge/Fitzpatrick

OFFICE RECEPTIONIST, CLERK

From: Irelis Colon <irelis@tal-fitzlaw.com>
Sent: Friday, February 14, 2014 2:36 PM
To: OFFICE RECEPTIONIST, CLERK
Subject: Christopher R. Larson v. Julia Calhoun - Answer to Petition for Review
Attachments: Answer to Petition for Review.pdf

Dear Clerk:

Attached please find the Answer to Petition for Review for the following case:

Case Name: *Christopher R. Larson v. Julia Calhoun*

Supreme Court Cause No.: 89862-6

Attorney for Respondent: Philip A. Talmadge, WSBA #6973
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Sincerely,

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