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Supreme Court No. 89873-1
Court of Appeals No. 42940-3-II

SUPREME COURT
STATE OF WASHINGTON

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GREGG ROOFING, INC.,

Petitioner

v.

MUTUAL OF ENUMCLAW INSURANCE COMPANY,

Respondent

RESPONDENT'S STATEMENT OF ADDITIONAL
AUTHORITY

Brent W. Beecher
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 ORIGINAL

Mutual of Enumclaw submits the following additional authority:
Experience Hendrix L.L.C. v. Hendrixlicensing.com Ltd., 742 F.3d 377 (9th Cir. 2014). This case affirms, in relevant part, the trial court's determination in that case that reputational harm to a business is appropriately based on actual evidence of economic harm visited on plaintiff. The 9th Circuit recognized the jury had sufficient evidence to employ the "before-versus-after" valuation method of corporate goodwill endorsed by the Federal District Court, even though coming to a different conclusion about the sufficiency of that evidence:

There was significant evidence to support the jury's finding of the fact that Pitsicalis's deceptive trade practices injured Experience Hendrix's reputation and goodwill. As to the amount of that harm, the jury had evidence regarding the total licensing revenue that Experience Hendrix earned during the period of time before and during Pitsicalis's infringing activity. From this information, jurors could have calculated the amount of harm Pitsicalis caused to Experience Hendrix's business reputation and goodwill "with reasonable certainty." *Lewis River Golf, Inc. v. O.M. Scott & Sons*, 120 Wash.2d 712, 845 P.2d 987, 990 (1993) (en banc); see *Wash. State Physicians*, 858 P.2d at 1071 ("Damages for loss of professional reputation are not the type of damages which can be proved with mathematical certainty and are usually best left as a question of fact for the jury.") Specifically, this evidence indicated that Experience Hendrix's overall licensing revenue declined by \$1,022,351.70 during 2009, the period during which Pitsicalis was infringing Experience Hendrix's trademarks. That information provided a legally sufficient basis for the jury's award of a total of \$1,050,000 in damages for harm to

Experience Hendrix's reputation and goodwill, and thus permitted these damage awards to survive Pitsicalis's Rule 50(b)(3) motion.

Id at 393 (footnotes omitted).

Respectfully submitted this 28th day of April 2014.

HACKETT, BEECHER & HART

/s/*

Brent W. Beecher, WSBA #31095

Attorneys for Respondents Linvog

*Original Signature on File

CERTIFICATE OF SERVICE

I, Nancy Boyd, declare that on the date noted below, I caused to be delivered via ABC legal messengers, Respondent Mutual of Enumclaw's

STATEMENT OF ADDITIONAL AUTHORITY to:

Howard M. Goodfriend
Edwards Sieh Smith & Goodfriend, P.S.
1109 First Avenue, Suite 500
Seattle, WA 98101-2988

William J. Leedom
Bennett, Bigelow & Leedom PS
601 Union Street, Suite 1500
Seattle, WA 98101

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

Signed in Seattle, Washington this 28th day of April 2014.

/s/*

Nancy Boyd

*Original Signature on File

OFFICE RECEPTIONIST, CLERK

To: Nancy Boyd; howard@washingtonappeals.com; wleedom@bblaw.com; Brent Beecher
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From: Nancy Boyd [mailto:nboyd@hackettbeecher.com]

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Subject: Supreme Ct. No. 89873-1; Ct. of Appeals No. 42940-3-II

Re: Gregg Roofing, Inc. v. Mutual of Enumclaw

Attached please find Respondent's Statement of Additional Authority and Certificate of Service for filing with the court.

Thank you very much,
Nancy

--

Nancy Boyd
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