

No. 63519-I

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I
SEATTLE

Kirk R. Hogle, Appellant
George H. Luhrs, Attorney for Appellants,

v.

Arica Fishing Company, L.L.C., Respondent

RESPONDENT'S BRIEF

David C. Bratz, WSBA #15235
Kathryn P. Fletcher, WSBA #22108
LeGros Buchanan & Paul, P.S.
701 Fifth Avenue, Suite 2500
Seattle, WA 98104
Phone: (206) 623-4990
Fax: (206) 467-4828
Attorneys for Respondents

2009 DEC 10 PM 4:22

STATE OF WASHINGTON
CLERK OF COURT
J. B. ...

TABLE OF CONTENTS

Contents	Page
I. INTRODUCTION.....	1
II. ISSUES PRESENTED FOR REVIEW	3
III. STATEMENT OF THE CASE AND ARGUMENTS BY ISSUE	4
A. Facts Related to Issues No. 1(a), (b), and (c).....	4
1. Plaintiff’s Injury and Subsequent Signed Receipt and Release Settling His Injury Claim.	4
2. Consideration for Hogle’s Release.	12
3. Hogle’s Ratification of Release Through Negotiation of the Settlement Checks.	15
B. Argument On Issue 1(a):.....	20
1. Standard of Review:.....	20
2. The Parol Evidence Rule Does Not Apply:	21
C. Argument on Issue 1(b):.	25
1. Adequate, Independent Medical Advice:.....	26
2. Adequate Consideration:.....	28
3. Coercion and Mental Condition:.....	29
D. Argument on Issue 1(c):.....	30
E. Facts Related to Issue 2:.....	38
F. Argument on Issue 2: The Trial Court Properly Declined To Consider Hogle’s Surreply.	39
G. Facts Related to Issue No. 3:.....	41
H. Argument on Issue No. 3:	42
1. Accident or Surprise Under CR 59(a)(3):.....	42
2. Newly Discovered Evidence Under CR 59(a)(4):	44
3. Manifest Injustice (CR 59(a)(9)):	47
I. Facts Related to Issue No. 4:.....	48
J. Argument on Issue No. 4: The Trial Court Correctly Awarded Costs.....	48

IV. CONCLUSION	50
V. APPENDIX.....	52

TABLE OF AUTHORITIES

Cases	Page
<i>Adams v. Rockmeadow Equestrian Center, Inc.</i> , 94 Wn.App. 1053 (1999).....	40
<i>Adams v. Western Host, Inc.</i> , 55 Wn.App. 601, 608, 779 P.2d 281 (1989).....	45
<i>Battery Steamship Corp. v. Refineria Panama S.A., et ano</i> , 1975 AMC 842, 847-48 (2 nd Cir. 1975)	22
<i>Bloxom v. Deitchler</i> , 175 Wash. 431, 437, 27 P.2d 720 (1933)	43
<i>Borne v. A&P Boat Rentals</i> , 780 F.2d 1254, 1258 (5 th Cir. 1986)	30
<i>Charpentier v. Fluor v. Ocean Services, Inc.</i> , 613 F.2d 81, 84 (5 th Cir. 1980).....	32
<i>Citizens for Clean Air v. City of Spokane</i> , 114 Wash.2d 20, 41, 785 P.2d 447 (1990)	48
<i>Davies v. Holy Family Hospital</i> , 144 Wn.App. 483, 183 P.3d 283 (2008).....	47
<i>Day v. American Seafoods Co., LLC</i> , 2009 AMC 1098 (9 th Cir. 2009)	23
<i>Durden v. Exxon Corp.</i> , 803 F.2d 845 (5 th Cir. 1986).....	32
<i>Ernst Home Ctr. V. Sato</i> , 80 Wn.App. 473, 491, 910 P.2d 486 (1996).....	49
<i>Garrett v. Moore McCormack Co.</i> , 317 U.S. 239, 248, 63 S.Ct. 246, 87 L.Ed. 239 (1942).....	32
<i>Harrington v. Atlantic Sounding Co., Inc.</i> , No. 06-CV-2900(NG)(VVP) (September 11, 2007) 2007 WL 2693529 (E.D.N.Y.).....	35
<i>Hisle v. Todd Pacific Shipyards Corp.</i> , 151 Wn.2d 853, 860, 93 P.3d 108 (2004) (citing <i>Kruse v. Hemp</i> , 121 Wn.2d 715, 722, 853 P.2d 1373 (1993))	20

<i>Holaday v. Merceri</i> , 49 Wn.App. 321, 329, 742 P.2d 127 (1987).....	44
<i>King v. Rice</i> , 146 Wn.App. 662, 672, 191 P.3d 946 (2008)....	46
<i>Lian v. Stalick</i> , 106 Wn.App. 811, 825, 25 P.3d 467 (2001) ...	47
<i>Lilly v. Lynch</i> , 88 Wn. App. 306, 321, 945 P.2d 727 (1997)....	42
<i>Marriage of Tomsovic</i> , 118 Wn.App. 96, 109, 74 P.3d 692 (2003).....	46
<i>Marshall v. Bally's Pacwest, Inc.</i> , 94 Wn.App. 372, 379, 972 P.2d 475 (1999).....	34
<i>Matter of Munford</i> , 97 F.3d 449 (11 th Cir. 1996)	31
<i>Monk v. City of Auburn</i> , 128 Wn.App. 1066 (2005)	40
<i>Niven v. E.J. Bartells Co.</i> , 97 Wn.App. 507, 513, 983 P.2d 1193 (1999).....	21
<i>Oltman v. Holland Am. Line USA, Inc.</i> , 163 Wn.2d 236, 243, 178 P.3d 981 (2008)	21
<i>Oregon Mutual Insurance Company v. Barton</i> , 109 Wn.App. 405, 410 (2001).....	36
<i>Orsini v. O/S Seabrooke O.N. 614, 416, 247 F.3d 953, 959</i> (9 th Cir. 2001).....	28
<i>Pereira v. Boa Viagem Fishing Corp.</i> , 11 F.Supp.2d 151, 153 (D.Mass. 1998)	31
<i>Resner v. Arctic Orion Fisheries</i> , 83 F.3d 271, 274 (9 th Cir. 1996)	34
<i>Robertson v. Douglas S.S. Co.</i> , 510 F.2d 829, 836 (5 th Cir. 1975)	26
<i>Saunders v. Lloyd's of London</i> , 113 Wash.2d 330, 345, 779 P.2d 249 (1989).....	49
<i>Schultz v. Paradise Cruises, Ltd.</i> , 888 F.Supp. 1049 (D. Hi. 1994)	26
<i>Sea-Land v. Sellan</i> , 64 F.Supp.2d 1255, 1261-62 (S.D.Fla. 1999), <i>aff'd</i> 231 F.3d 848 (11 th Cir. 2001)	22
<i>Simpson v. Lykes Bros, Inc.</i> , 22 F.3d 601 (5 th Cir. 1994).....	27

<i>Sitchon v. American Export Lines, Inc.</i> , 113 F.2d 830, 832-33 (2 nd Cir. 1940).....	27
<i>Smith v. King</i> , 106 Wash.2d 443, 451-52, 722 P.2d 796 (1986)	49
<i>Smith v. Pinell</i> , 597 F.2d 994 (5 th Cir. 1979).....	36
<i>State Dep't of Fisheries v. J-Z Sales Corp.</i> , 25 Wn.App. 671, 680 (1980).....	36
<i>State v. Costich</i> , 152 Wn.2d 463, 477, 98 P.3d 795 (2004)	21
<i>State v. Dennison</i> , 115 Wash.2d 609, 629, 801 P.2d 193 (1990)	49
<i>State v. Marks</i> , 71 Wn.2d 295, 427 P.2d 1008 (1967)	47
<i>TCW Special Credits v. Chloe Z Fishing Co.</i> , 129 F.3d 1330, 1331 (9 th Cir. 1997).....	24
<i>Thompson v. D.C. America, Inc.</i> , 951 F.Supp. 192, 196 (M.D.Ala. 1996).....	33
<i>Thorman v. American Seafoods Co.</i> , 421 F.3d 1090, 1097-98 (9 th Cir. 2005).....	37
<i>Wagner Dev. V. Fidelity & Deposit</i> , 95 Wn.App. 896, 907, 977 P.2d 639 (1999).....	44
<i>Weyerhaeuser Co. v. Commercial Union Ins. Co.</i> , 142 Wn.2d 654, 683, 15 P.3d 15 (2000)	42
<i>Wis. Lumber Co. v. Greene & Western Tel. Co.</i> , 127 Iowa 350, 744, 101 N.W. 742 (1904).....	43

Other Authorities

3A Arthur Linton Corbin, CONTRACTS § 573, p. 357 (1960)	21
RESTATEMENT, (SECOND) of Contracts, § 210(1) (1981)	22

I. INTRODUCTION

Plaintiff/Appellant Kirk Hogle (“Hogle”) claims he injured his knee on August 31, 2006 while working aboard the fishing vessel F/T ARICA as a Chief Engineer. He was employed by Arica Fishing Company, LLC (“Arica”). After his doctor released him to return to work several months later, Hogle signed a Release of All Claims on February 12, 2007 which bars his underlying action. This Release was a full and final settlement of all claims related to his knee injury in exchange for valid and adequate consideration, to be paid in installments dependent on the timing and value of fish product sales for identified fishing trips that Hogle missed on account of his knee injury. Furthermore, by later depositing his settlement checks, Hogle ratified his Release with the benefit of the fully informed advice of his maritime attorney. Roughly nine months after signing the Release, Hogle brought his action for damages in King County Superior Court on November 1, 2007, despite having given up all rights to do so in his Release.

Pursuant to the unambiguous terms of the Release, Arica paid Hogle the second and third installments of the Release’s consideration as the proceeds from sales of its fish became available as is customary in the commercial fishing industry. Hogle was represented by counsel at the

time of both of these payments. Moreover, in September 2008, Arica provided Hogle's attorney with a complete written explanation of the third installment of the Release payment prior to Hogle cashing it and further ratifying the Release. Specifically, Arica explained to Hogle's then attorney that this third check to Hogle constituted supplemental settlement consideration for the Receipt and Release Hogle signed on February 12, 2007. CP 186. Arica further explained that the federal government's seizure of fish proceeds from the F/T ARICA's first trip in 2007 had prevented Arica from distributing proceeds to the crew previously. *Id.* Then, with the fully informed legal advice of his own attorney regarding the nature of the check, and admittedly "suspecting" the check was consideration for the February 12, 2007 Release, Hogle deposited the final Release installment check, thereby fully ratifying his Release with Arica. CP 176, line 12 – 178, line 18; CP 179, line 22 – 180, line 6. Hogle has not returned these settlement funds to Arica or deposited them with the court.

Arica moved for summary judgment based on Hogle's Release. Following briefing and oral argument by the parties, the trial court granted summary judgment for Arica on March 20, 2009. Hogle moved for reconsideration, which the trial court denied on April 15, 2009. Hogle

appeals from the trial court's Order Granting Summary Judgment entered on March 20, 2009, the trial court's striking of Hogle's late submitted Surreply on the same day, its April 15, 2009 Order Denying his Motion for Reconsideration, and its March 26, 2009 Judgment for Defendant which included statutory jury demand costs of \$250.

II. ISSUES PRESENTED FOR REVIEW

Issue 1(a): Did the trial court properly consider evidence outside the four corners of the document concerning the terms and circumstances of the Release where the Release was not a fully integrated contract, and where the allegedly erroneous admission of parol evidence is entirely mooted in any event by Hogle's subsequent ratification of the Release with the fully informed advice of counsel?

Issue 1(b): Were Hogle's arguments against the enforceability and validity of the Release mooted by Hogle's subsequent ratification of the Release with the fully informed advice of counsel?

Issue 1(c): Did the trial court correctly rule that Hogle ratified his Release, thus barring his claims, based on Hogle's negotiation of the final settlement installment check after he was admittedly aware he had signed a Release of all claims, when he admittedly suspected the check was

consideration for his Release, and when he had the fully informed advice of his own counsel?

Issue 2: Did the trial court exercise proper discretion in striking Hogle's Surreply when (a) applicable court rules do not allow surreplies, (b) the Surreply in question dealt with the testimony of a witness who Hogle previously had the opportunity to depose in time for his Opposition briefing but elected to delay, and (c) the evidence in the Surreply was mooted in any event by Hogle's subsequent ratification of the Release?

Issue 3: Was it an abuse of discretion for the trial court to deny Hogle's Motion for Reconsideration when he presented no newly discovered evidence and satisfied no other grounds for reconsideration under Civil Rule 59?

Issue 4: Did the trial court correctly award the \$250 cost of the jury demand as a taxable cost pursuant to RCW 4.84.010(1)?

III. STATEMENT OF THE CASE AND ARGUMENTS BY ISSUE

A. Facts Related to Issues No. 1(a), (b), and (c)

1. Plaintiff's Injury and Subsequent Signed Receipt and Release Settling His Injury Claim.

Hogle worked as a Chief Engineer on the commercial fishing vessel the F/T ARICA in August of 2006. The ARICA is a 158 foot

vessel that catches and processes fish, primarily in the Bering Sea and the Gulf of Alaska. On August 31, 2006, while performing repairs in the vessel's fish processing factory, Hogle allegedly injured his right knee. CP 5, ¶ 3.1. He continued to work without incident and finished his contract on the ARICA then returned home to Arizona where he ultimately underwent knee surgery in November, 2006 for a torn meniscus. His doctor, Robert Kersey, M.D., released him to return to full duty without restrictions as of February 5, 2007 and recommended no further medical treatment. CP 116. Arica paid Hogle his contractual maintenance payments and all of Hogle's medical bills (known as cure) through the date Dr. Kersey released him to return to work. CP 111, ¶ 4.

Independent maritime adjuster Anissa Olson of the Polaris Group works on behalf of Arica Fishing Company to administer maritime benefits to injured crewmembers, including their medical treatment and maintenance payments. CP 110, ¶ 2. Ms. Olson managed Hogle's claim with respect to his knee injury. CP 111, ¶ 3. Arica Human Resources Manager Jackie Little also communicated with Mr. Hogle during the course of his knee injury claim. CP 125-126, ¶ 3.

In January of 2007, Hogle advised Ms. Little that he was ready to return to work and strongly desired to do so. *Id.* In fact, he wanted to

return to work before his medical release from his doctor Robert Kersey M.D. would be effective and told Ms. Little that he felt fully able to do so. *Id.* Nonetheless, Ms. Little advised Hogle that he could not return to work until his medical release took effect. *Id.* Dr. Kersey had given him a release date of February 5, 2007. *Id.*, CP 111, ¶ 4, CP 116.

Prior to February 12, 2007, Hogle and Ms. Little spoke on the phone and discussed closing and settling his knee claim. CP 126, ¶ 4. Hogle and Ms. Little agreed to settle his claim for the amount of wages he would have earned on the F/T REBECCA IRENE¹ on her first two trips of A season 2007 (trips RI 07-01 and 07-02) had he been able to work them. *Id.*

On February 12, 2007, Hogle went to the Arica offices for the purpose of meeting with Ms. Little to close his claim regarding his knee injury. *Id.*, ¶ 5. Ms. Little and Hogle again discussed and confirmed that the settlement amount would be the wages he would have earned on trips RI 07-01 and 07-02.² *Id.*

¹ The F/T ARICA and the F/T REBECCA IRENE are managed by the same company. Prior to his brief stint as temporary relief Chief Engineer on the ARICA in the summer of 2006, Hogle had worked for several years as Chief Engineer on the REBECCA IRENE, and planned on returning to the REBECCA IRENE in 2007.

² In fact, Hogle was paid \$6,913.54 *over* what he would have earned as wages during the first two trips of the REBECCA IRENE's A season. The

In accordance with vessel crewmember's contracts, crewmembers receive a preliminary crewshare settlement based on 75% of the estimated production share and bonus due them (less applicable payroll deductions) within 14 days of the end of the contract period. CP 127, ¶ 7; CP ___ Respondent's Praecipe, Ex. B thereto, p.1-2, ¶ 4 (copy attached to Appendix herewith).³ They then receive a "final" settlement after the actual sale of the fish produced on the pertinent fishing trip. *Id.* These payments had not yet been calculated or made to the REBECCA IRENE crew as of February 12, 2007 so the precise amount Hogle would have earned on these trips was not ascertained as of the date of his settlement and Release. CP 127, ¶¶ 7 & 8.

Also, by February 12, 2007, Ms. Little had become aware of an issue regarding certain fish (Atka mackerel) caught by the REBECCA IRENE during trip 07-01 in what was later determined to be a closed area. CP 125-129, ¶¶ 5, 10-11. Until the issue was resolved, the federal

settlement payments made to Hogle represented his gross compensation for trips 07-01 and 07-02 had he worked them. However, if he had actually worked those trips, payroll deductions would have amounted to \$6,913.54 less than the \$22,193.43 total he was paid in exchange for his Release. CP 125-129, ¶¶ 6-12.

³ Respondent filed a Supplemental Designation of Clerk's Papers with the Superior Court and the Court of Appeals on November 24 and 25 respectively designating this Praecipe and Exhibit B thereto. At the time Respondent filed this brief, however, it had not been provided with a

government⁴ prevented the REBECCA IRENE and other vessels from distributing proceeds from sale of fish caught on that trip in the closed area. *Id.* Ms. Little explained this issue to Hogle, and advised him that because of the government action, the REBECCA IRENE did not know when it would be able to fully ascertain the total crew wages for trip RI 07-01. CP 126-127, ¶ 5. Hogle indicated that he understood the issue, indeed he expressed his own belief that it would probably be a long time before the issue with the government was settled if ever, and that he understood that part of his settlement would come later once the final crew shares had been determined. *Id.* Hogle still wanted to settle his knee injury claim as proposed. *Id.* Ms. Little then called Ms. Olson on the phone and asked her to come to her office for the purpose of closing and settling Hogle's claim. *Id.*; CP 111, ¶ 5. Ms. Olson prepared a Release of All Claims and went to the Arica offices to meet with Hogle. CP 111, ¶ 5.

Once there, Ms. Olson met with Hogle in Ms. Little's office to discuss his knee claim. CP 111-112, ¶ 6. Hogle confirmed that his doctor had released him to regular duty and that he wished to settle his claim. *Id.*

supplemental index with a numbered designation for this document. *See* Respondent's Appendix, pp. _____.

⁴ Specifically, the National Marine Fisheries Service, or "NMFS," which is a part of the National Oceanic and Atmospheric Administration, or "NOAA."

He also confirmed that he wanted to and was ready to return to work on the fishing vessel. *Id.* Hogle confirmed to Ms. Olson his understanding of the settlement amount, which he and Ms. Little had previously determined. *Id.* During their meeting, Ms. Little again explained to Ms. Olson and Hogle that those amounts had yet to be determined due in part to the NMFS closed area enforcement issue. *Id.* Hogle appeared to Ms. Olson to be well aware of that issue, and the probability of delay in payment of settlement consideration in the form of prospective wages from that trip—if such consideration could be paid at all—pending resolution of the government action and a determination of whether the government would allow the company to keep product sale proceeds from fish caught in the closed area, and thus pay agreed shares to the crew (and agreed consideration based on would be shares to Hogle). *Id.* Since the amount of those fishing wages was unknown on February 12, 2007, Ms. Olson wrote into the Release of All Claims the words “in exchange for payment to me of the amount of wages I would have earned on _____.” *Id.* Hogle himself handwrote the words “trips RI 07-01 + 07-02” into that blank line. *Id.*

When Ms. Olson meets with a claimant to settle his or her claim, it is her practice to explain the terms and effect of the Release and his or her

rights to him or her, and to carefully read the entire Release Of All Claims and the attached Rights of Seamen aloud to the claimant. CP 112, ¶ 7. Ms. Olson did this during her meeting with Hogle on February 12, 2007. *Id.* Ms. Olson recalls that Hogle did not ask any questions or seek further explanation during this meeting and Ms. Olson did not document any questions in her file notes. *Id.* If Hogle had asked any questions or needed further clarification or asked for additional time to think about the Release or its consequences, this information would have been reflected in Ms. Olson's notes. *Id.* No such information is reflected in her notes or elsewhere in her file. *Id.*

It is also Ms. Olson's practice to ask a claimant whether he or she is under the influence of any drugs or alcohol at the time of signing a release. CP 113, ¶ 8. On February 12, 2007, Hogle did not advise Ms. Olson that he was taking any medication at the time he signed the Release, nor did he appear to be under the effect of any medication. *Id.* (While Hogle later contended that he was, in fact, suffering ill effects of various medications at the time he signed his Release, in an attempt to generate a triable issue of fact concerning his capacity to contract, not only is his testimony on this issue highly suspect, but it is moot given his subsequent unmedicated ratification of the Release.) Hogle signed the Release of All

Claims without hesitation in the presence of Ms. Olson and notary public Cordi Fitzpatrick. *Id.* Ms. Fitzpatrick then notarized the Release. *Id.*; CP 118-121.

The notarized Release is titled a **RELEASE OF ALL CLAIMS** at the top in bold, underlined, capital letters. CP 118-121. In pertinent part, the Release states that it is a release of all legal claims,

“including injury to my right knee, whether presently known or discovered in the future, arising out of or connected with my employment on the F/T ARICA on or about August 31, 2006, and any and all other claims that could be brought by me arising out of or related to my employment on the F/T “ARICA” ...”

Id., p. 1. The Release contains the bold, underlined words “**READ CAREFULLY**” in capitals at the top of the first page and in bold, underlined writing at the bottom of that page, states “**THIS IS A RELEASE. I am giving up every right I have.**” *Id.* The Release also contains the language “I have been advised of my right to seek legal counsel of my choosing, but I have elected to conclude this matter by myself, without a lawyer representing me.” *Id.* Immediately preceding Hogle’s signature on page 2, the Release reads in bold, capital letters:

I HAVE READ AND UNDERSTAND EACH AND EVERY TERM OF THIS RELEASE OF ALL CLAIMS AND I HAVE PERSONALLY FILLED IN THE INFORMATION IN HAND WRITING. I UNDERSTAND IT TO BE A FULL AND COMPLETE RELEASE OF ALL CLAIMS WHICH I MAY HAVE, AND I EXECUTE IT VOLUNTARILY BY SIGNING MY NAME BELOW. I KNOW THAT SIGNING THIS PAPER SETTLES AND ENDS EVERY CLAIM I MAY HAVE.”

Id., p. 2. The blanks on the Release are filled out in Hogle’s handwriting and Hogle admits the signature is his. *Id.*; CP 178, ll. 22-24; CP 174, line 11 – 175, line 16.

The third page of the Release is titled “RIGHTS OF SEAMEN.” It explains in detail Hogle’s maritime rights to maintenance and cure as well as his right to bring actions for unseaworthiness and under the Jones Act. CP 118-121, p. 3. Hogle signed this page as well, and filled in his name in the blank indicating “I, Kirk R. Hogle have read the above article entitled “Rights of Seamen” and have understood the same. I have read this before signing any release.” *Id.*

2. Consideration for Hogle’s Release.

Commercial fishermen such as those employed on the ARICA and the REBECCA IRENE are paid a share of the vessel’s catch based on the crewmember’s contract. As set forth above, in accordance with vessel

crewmember contracts, had Hogle worked the first two trips of 2007's A season on the REBECCA IRENE, he would have received a preliminary crewshare settlement based on 75% of the estimated production share and bonus due him (less applicable payroll deductions) within 14 days of the end of the contract period. CP 127, ¶ 7; CP ___ Respondent's Praecipe and Ex. B thereto, p.1-2, ¶ 4 (with attached Appendix). He would have then received a "final" settlement after the actual sale of the fish produced on the pertinent fishing trip. *Id.*

Thus, as part of the consideration for Hogle's Release, he was paid an initial payment of \$12,092.11 via check no. 07420 dated February 22, 2007, when the rest of the REBECCA IRENE crew received their initial payments for trips 07-01 and 07-02. CP 127, ¶ 8; CP 144. This sum represented his **gross** preliminary settlement, *i.e.*, there were no payroll deductions as there would have been had he actually worked those trips. CP 127, ¶ 8. As such, the "preliminary" was actually more than Hogle would have received as a "preliminary" had he actually worked on the vessel. *Id.*

Hogle was paid a second installment for his Release of \$2,363.13 via check no. 19907. CP 127-128, ¶ 9, CP 146. Hogle negotiated the check on November 28, 2007. CP 146. (By this time, Hogle was

represented by Seattle maritime attorney Joseph Stacey since he wrote Ms. Olson advising of his retention by Hogle on September 6, 2007. CP 123-124.) This represented Hogle's "final" crewshare settlement for the two referenced trips, but did not include a share constituting government seized proceeds from the fish caught in the closed area, as the NMFS enforcement action remained unresolved. CP 127-128, ¶¶ 9 & 10. Again, the sum represented Hogle's gross pay. *Id.* No payroll deductions were taken out. *Id.*

Later, after the "final" settlement, additional compensation was paid to the REBECCA IRENE crew for trip 07-01, following resolution of the government enforcement issue. CP 128, ¶ 10. As noted above, during her first trip of A season, trip 07-01, the REBECCA IRENE and several other boats had caught fish in what they later learned was a closed area. CP 125-129, ¶¶ 5 and 10. NOAA prohibited the REBECCA IRENE and other vessels from distributing the proceeds from those fish until the issue with the federal government was resolved. *Id.* The dispute was finally resolved in late June, 2008, and the company was allowed to pay the crew on that trip from seized funds. CP 128, ¶10; CP 148-153.

The REBECCA IRENE's owners thus issued a supplemental crew share payment to the crew from Trip 0701. CP 128, ¶ 11. Pursuant to his

settlement with Arica, Hogle also received a supplemental payment corresponding to what his supplemental crew share payment would have been for the seized fish proceeds, pursuant to the Release terms and as final consideration for the Release he signed on February 12, 2006. *Id.* This payment was for \$7,738.19 in check no. 1027 dated July 11, 2008. *Id.*; CP 155. This check bore the words “Full and Final Settlement” in the bottom left hand corner. CP 155. Again, this sum represented the *gross* compensation which would have been attributed to Hogle had he been a member of the REBECCA IRENE crew at the relevant time. CP 128, ¶ 11. No deductions were taken out, as would have been the case had Hogle worked those trips. *Id.* In total, Hogle was paid \$22,193.43 in settlement of his torn meniscus claim, which was \$6,913.54 over what he would have made had he been able to work on the REBECCA IRENE’s first two trips of 2007, trips 07-01 and 07-02. CP 129, ¶ 12; CP 157.

3. **Hogle’s Ratification of Release Through Negotiation of the Settlement Checks.**

Hogle negotiated his second and third settlement checks which were consideration for his Release after he was represented by counsel. Specifically, he negotiated his second settlement check, check no. 19907 for \$2,363.13 on November 28, 2007, after he had retained Mr. Stacey for

legal representation and even after Mr. Stacey had filed this lawsuit. CP 123-124, 146, 155, 161.

With respect to his third and final settlement consideration check, check no. 1027 for \$7,738.19, Hogle's attorney actually wrote the undersigned counsel for Arica Fishing Company and inquired about the check after Hogle had received it. Again, the check bore the words "Full and Final Settlement" in the front lower left-hand corner. CP 155. Specifically, Mr. Stacey and his paralegal each wrote the undersigned on July 29, 2008 and again on September 2, 2008 asking if the check constituted consideration for Hogle's Release, among other things. CP 182, 184.

Undersigned counsel for Arica David Bratz wrote Mr. Stacey on September 8, 2008 in response. CP 186. Mr. Bratz explained that the \$7,738.19 check to Hogle constituted supplemental settlement consideration for the Receipt and Release Hogle signed on February 12, 2007. *Id.* He further explained that the government's seizure of fish proceeds from Trip 07-01 prevented to the vessel owner from distributing proceeds to the crew previously. *Id.* After having received this full explanation that the check constituted the final installment in Hogle's settlement consideration, and having the full benefit of legal counsel,

Hogle then negotiated and deposited his final settlement consideration check on September 22, 2008 thereby ratifying his Release. CP 155.

Notably, Hogle admitted in his deposition that he deposited this final settlement check not only while represented by counsel but ***based on the advice of his attorney***. CP 176, line 12 -178, line 12; CP 179, line 22-180, line 6. He also admitted that when he cashed the check, he did, in fact, suspect it represented the remaining consideration for the Release he had signed. CP 179, lines 22-25.

Q: Now, turn to Page 3 of Exhibit 14. And here's another check that was issued in July of 2008. Did you get that one?

A: Yes, I did.

Q: And that's on the ARICA, right?

A: Yes.

Q: Did you wonder when you got this why ARICA was writing you a check for \$7,738.19?

A: I was kind of curious about that, so I e-mailed Joe Stacey, who's my attorney.

...

Q: So the question was, did you wonder why when you got this check, why ARICA was issuing you a check for \$7,738.19?

A: Prior to me receiving this check, I realized I had signed – I found out I had signed that release.

Q: Prior to receiving this check you realized you had signed a release?

A: Yes.

Q: And did you note when you got this check that the check said “Full and final settlement” on it?

A: Yes, it did.

Q: And did you cash this check?

A: I deposited it.

Q: And did you realize when you deposited it that this check constituted the remaining consideration that was agreed to, or at least purportedly agreed to in Exhibit 13 for your release?

(Objections omitted.)

A: Okay. Back to Joe Stacey, I asked him about it, and he said go ahead, cash it. And my own thoughts on it was this is a lot – a lot less than the money I had lost, and I will be losing in the future.

Q: Your lawyer advised you to cash it?

A: Yes.

Q: It looks like you cashed it on or about September 22, 2008; is that fair to say?

A: Yes.

...

Q: And you knew at that point that ARICA considered this to be the final installment of the settlement that you agreed to, or at least it believed you had agreed to?

A: I wasn't absolutely sure. I was relying on advice from Joe Stacey.

...

Q: Were you aware when you negotiated the July 11, 2008 check, that ARICA was contending that that was consideration for a settlement?

A: I suspected it.

Q: When you negotiated that, you suspected it?

A: Yes.

Q: Why did you suspect that?

A: Just some of the conversations I had with Joe Stacey. And this was after I had become aware that I had signed the release.

CP 176-180.

Hogle now claims that he has no recollection of signing the Release. He blames this convenient memory lapse on too much Vicodin and Atenolol, his prescription blood pressure medication (specifically, taking either 50 or 75 mg as opposed to his usual 25 mg) on the day he

signed the Release. However, Hogle's mental capacity at the time he signed the Release is moot. Hogle's specious incapacity claim did not need to be addressed at length on summary judgment or here on appeal because Hogle subsequently negotiated each of his settlement checks at a time he does not claim to have been medicated or mentally impaired and thereby **ratified** his Release. Furthermore, not only was Hogle represented by counsel when he negotiated the final two settlement checks, but he actually acted under the advice of his attorney when he negotiated the final settlement consideration check, after the precise nature of the check had been explained in writing to his attorney, and fully suspecting on his own that this third check constituted his final settlement payment for the Release. These facts all serve to ratify the Release *and* to defeat any claim that he did not understand his rights or the effect of the Release.

B. Argument On Issue 1(a): The Trial Court Properly Considered Jackie Little's Testimony, Which Was Mooted In Any Event By Hogle's Subsequent Ratification Of The Release With The Fully Informed Advice Of His Counsel

1. Standard of Review

When reviewing a summary judgment order, the appellate court engages in the same inquiry as the trial court. *Hisle v. Todd Pacific Shipyards Corp.*, 151 Wn.2d 853, 860, 93 P.3d 108 (2004) (citing *Kruse v.*

Hemp, 121 Wn.2d 715, 722, 853 P.2d 1373 (1993)). The standard of review is *de novo*. *Id.*; *Oltman v. Holland Am. Line USA, Inc.*, 163 Wn.2d 236, 243, 178 P.3d 981 (2008). A reviewing court may also affirm the trial court on any alternative ground that the record adequately supports. *See State v. Costich*, 152 Wn.2d 463, 477, 98 P.3d 795 (2004); *Niven v. E.J. Bartells Co.*, 97 Wn.App. 507, 513, 983 P.2d 1193 (1999) (reviewing court can affirm the trial court on any basis supported by the parties' pleadings and the proof).

2. The Parol Evidence Rule Does Not Apply

Hogle cites no legal authority to establish or even support his claim that the Release has “material omissions” that render it ineffective. The parol evidence rule is generally defined as follows: “When two parties have made a contract and have expressed it in a writing to which they have both assented as the complete and accurate integration of that contract, evidence, whether parol or otherwise, of antecedent understandings and negotiations will not be admitted for the purpose of varying or contradicting the writing.” (Footnote omitted.) 3A Arthur Linton Corbin, *CONTRACTS* § 573, p. 357 (1960). Furthermore,

“[t]he parol evidence rule, moreover, renders legally inoperative only evidence of prior understanding and negotiations which

contradicts the unambiguous meaning of a writing which *completely* and *accurately* integrates the agreement of the parties. . . . On the issue[] of . . . whether or not parties assented to a particular writing as the complete and accurate ‘integration’ of their contract, . . . there is no ‘parol evidence rule’ to be applied. On these issues, no relevant evidence, whether parol or otherwise, is excluded.”

Battery Steamship Corp. v. Refineria Panama S.A., et ano, 1975 AMC 842, 847-48 (2nd Cir. 1975)(maritime case declining to apply parol evidence rule). (Indeed, under maritime law even oral contracts are enforceable if otherwise proved through, for example, negotiation of settlement check. *See Sea-Land v. Sellan*, 64 F.Supp.2d 1255, 1261-62 (S.D.Fla. 1999), *aff’d* 231 F.3d 848 (11th Cir. 2001), discussed more fully below.)

“A completely integrated agreement is an integrated agreement adopted by the parties as a complete and exclusive statement of the terms of the agreement.” RESTATEMENT, (SECOND) of Contracts, § 210(1) (1981). Moreover, “[W]hether an agreement is completely . . . integrated is to be determined by the court as a question preliminary to determination of a question of interpretation or to application of the parol evidence rule. *Id.*, § 210(3); *see also, Id.*, § 209(1) and (2). That a writing was . . . adopted as a completely integrated agreement may be proved by any

relevant evidence. *Id.*, § 210, Comment a. Here, the Release does not contain an integration clause. CP 118-121. *Cf, e.g., Day v. American Seafoods Co., LLC*, 2009 AMC 1098 (9th Cir. 2009)(On the basis of the **contract's integration clause and the unambiguous contractual language which explicitly defined the term of the contract**, the district court held that Day could not offer extrinsic evidence to rebut the unambiguous duration agreed upon in the seaman's employment contract)(emphasis added).

In addition to lacking an integration clause, the Release here cannot be said to be a fully integrated contract since the precise dollar amount of the consideration would necessarily, and permissibly, need to be determined by extrinsic evidence outside the four corners of the contract, specifically, the then unknown final sale amount of the fish caught on those two trips. As set forth above, the agreed to consideration for the Release was the amount Hogle would have earned in wages had he worked on REBECCA IRENE trips 07-01 and 07-02. At the time the Release was signed on February 12, 2007, the precise amount of those fishing wages had not yet been ascertained nor had it been paid to the regular REBECCA IRENE crew and due to the seizure of the proceeds of trip RI 07-01 by the federal government. CP 125-129, ¶¶ 5, 8, 9 and 10.

Accordingly, the consideration was defined as “in exchange for payment to me of the amount of wages I would have earned on _____” with Hogle himself handwriting the words “trips RI 07-01 + 07-02” into that blank line. CP 118, 110-113, ¶ 6. Jackie Little’s Declaration testimony addressed this issue with her explanation to Hogle of these facts and was properly admitted. CP 125-129.

The Release’s definition of its consideration as wages yet to be determined does not, however, render the terms of the contract ambiguous. Commercial fishing employment contracts routinely include a compensation mechanism and commensurate clause based on the quantity and value of the catch, similar to that involved here in the Release, and such contracts are not found to be ambiguous. *See, e.g., TCW Special Credits v. Chloe Z Fishing Co.*, 129 F.3d 1330, 1331 (9th Cir. 1997)(explaining that it is typical in commercial fishing contracts to compensate crewmembers by multiplying their rate by the amount of fish caught.). Thus, since it is an unambiguous but not fully integrated contract, the parol evidence rule does not apply to Hogle’s Release and therefore, Ms. Little’s testimony was properly admitted.

Furthermore, Hogle does not claim that he did not understand the Release or its terms at the time he signed it and thus, Ms. Little’s

testimony on this issue in uncontroverted. In fact, Hogle cannot make such a claim because he merely contends that he does not remember signing it. CP 173-175. Indeed, the uncontroverted evidence was that Hogle himself indicated that he understood the issue, indeed he expressed his own belief that it would probably be a long time before the issue with the government was settled if ever (CP 126) and that he understood that part of his settlement would come later once the final crew shares had been determined and the government seizure action resolved. CP 126-127, ¶ 5.

More importantly, and as discussed more completely in section 1(c) below, even if the testimony of Ms. Little is excluded regarding the information provided to plaintiff concerning payment in exchange for the Release at the time he signed it, said information had indisputably been provided to Hogle and his attorney by the time he cashed his final settlement check and thereby ratified the Release. CP 186. Thus, any allegedly erroneous consideration of Ms. Little's testimony is moot.

C. Argument on Issue 1(b): Hogle's Arguments Against The Release's Enforceability Fail And Are Mooted In Any Event By His Subsequent Ratification Of The Release.

In his appeal, Hogle continues to concentrate on various issues related to the circumstances surrounding the Release at the time it was

executed. While Arica will herein address those issues, it reiterates that the main issue here is Hogle's knowing ratification of the Release 19 months after he signed it that was the basis for the trial court's grant of summary judgment in favor of Arica. CP 567-569, RP 45:11-50:19.

1. **Adequate, Independent Medical Advice**

Hogle's reliance on *Schultz v. Paradise Cruises, Ltd.*, 888 F.Supp. 1049 (D. Hi. 1994) for the proposition that his Release was invalid due to a lack of full medical information is misplaced. In *Schultz*, the results of Schultz's bone scan were still unavailable at the time she signed her release and therefore, there was no way for either side to know the true extent of plaintiff's injuries. In contrast, here, Hogle here had substantial medical advice from physicians of his own choosing, including his treating orthopedic surgeon Dr. Robert Kersey of Tucson, Arizona where Hogle resides. No information was withheld from Hogle, nor was any further treatment recommended. Dr. Kersey had released him to full duty without restriction and his *diagnosis* has not changed since that time. CP 116. *Cf.*, *Robertson v. Douglas S.S. Co.*, 510 F.2d 829, 836 (5th Cir. 1975) ("The legal distinction must rest on the medical difference between diagnosis and prognosis. A longshoreman who signs a release may have to take his chances that a properly diagnosed condition was the subject of an

overly optimistic prognosis and that his injuries may be more serious and extensive than originally thought.”). “The question in any case is whether the seaman, . . . if he is acting under [medical and/or legal] advice, that advice is disinterested and based on a reasonable investigation.” *Sitchon v. American Export Lines, Inc.*, 113 F.2d 830, 832-33 (2nd Cir. 1940). In *Sitchon*, the fact that the plaintiff had two examinations by the Marine Hospital was deemed sufficient medical advice at the time the seaman signed his release.

In *Simpson v. Lykes Bros, Inc.*, 22 F.3d 601 (5th Cir. 1994), by contrast, a seaman sued his former employer for hearing loss due to excessive noise. In its defense, the employer submitted a release signed by the plaintiff for a prior back injury. The release clearly stated it was a release for any and all liability of any sort, including but not necessarily limited to his back injury. Even then, the court found the release valid in preventing Simpson from bringing the hearing loss claim, despite the fact that Simpson was unaware of his hearing loss claim at the time he signed the release. *Simpson v. Lykes Bros, Inc.*, 22 F.3d 601 (5th Cir. 1994). Here, there is no basis on which Hogle can prove he lacked adequate access to competent medical advice when he signed *or* ratified his Release.

2. Adequate Consideration

Similarly, Hogle's reliance on *Orsini v. O/S Seabrooke O.N. 614, 416, 247 F.3d 953, 959* (9th Cir. 2001) for his claim of inadequate consideration is equally misplaced. In *Orsini*, as is common in seamen's releases cases where the seaman prevails on an inadequate consideration argument, the seaman was paid monies as part of the release which were already owed to him, for example, payments for maintenance and cure. *See, e.g., Orsini, supra*, at 961 (\$500 in consideration amounted to less than seaman would receive as maintenance and cure and rendered the release invalid). Such is not the case here since Hogle's Release amount was above and beyond what had already been paid to him as maintenance and cure. CP 110-113, ¶ 4. Moreover, inadequate consideration alone is not sufficient to invalidate a release. *Orsini, supra*, 962. The key element is whether the seaman understood his rights, and evidence on the adequacy of consideration may be adduced on that question. *Id.* (Appellant's reliance on the obviously biased, supposed "expert" opinion of a fellow Seattle maritime plaintiff's attorney to establish inadequate consideration is completely futile. See CP 479-480, CP 456-57.) Again, even if Hogle

were to succeed in showing that the amount of consideration he was paid somehow meant he did not understand his rights at the time he signed his Release, he can make no such argument when he deposited his final check and ratified the Release since, based on his own testimony, he knew of the Release, suspected the check was consideration therefor, and had the fully informed advice from his counsel at the time.

3. **Coercion and Mental Condition**

Hogle has no evidence of coercion and can claim none. He never made such a statement in deposition, or in his several declarations. Indeed, he cannot claim he was coerced since he testified that he does not remember signing the Release. CP 173-175. He has not and cannot now controvert that sworn testimony and claim that he somehow felt coerced into signing the Release. Similarly, he cannot claim Arica overreached, given the complete, clear, written explanation provided to his lawyer prior to his negotiation of the final check and ratification of the Release, in addition to the information provided to him when he signed the Release.

Hogle's mental capacity at the time he signed his Release is moot. Even if one accepts his self-serving and specious claim of incapacity at the time he signed his Release, he makes no such claim about his mental capacity during the weeks he corresponded with his attorney regarding his

final settlement check and the terms of the Release. He had the benefit of all his faculties when he ratified his Release by cashing his final settlement check with the fully informed advice of his counsel. (*See, e.g., Borne v. A&P Boat Rentals*, 780 F.2d 1254, 1258 (5th Cir. 1986)(the court found no coercion of a plaintiff with only a first grade education, who could not read, write or tell time, when a settlement was negotiated and agreed to by counsel of his own choosing.) Ratification is discussed more completely directly below.

D. Argument on Issue 1(c): Hogle's Negotiation Of The Final Settlement Check Ratified His Release.

The principal issue here is Hogle's ratification of the Release by cashing his final settlement check 19 months after signing the Release (and thereafter retaining the funds) with the fully informed advice from competent legal counsel of his own choosing. In granting Arica's motion for summary judgment, the trial court noted "I think the ratification is the thing that this Court looked at. Most significantly, if there had not been the negotiation of that final settlement check, I don't think we would be here today." RP 49, lines 8-12.

Significantly, Hogle completely ignored the seminal maritime seaman release ratification case, *Sea-Land Service, Inc. v. Sellan*, 64 F.Supp.2d 1255 (S.D.Fla. 1999), *aff'd* 231 F.3d 848 (11th Cir. 2001), in his

appellate brief.⁵ Furthermore, Hogle cites no other case that contradicts the holding in *Sea-Land*, i.e., that a seaman can ratify his release by later negotiation of a settlement check.

Public policy strongly favors enforcement of pretrial settlement agreements in all types of litigation, including those involving a seamen's release. *Sea-Land, supra*, 64 F.Supp.2d 1255, 1260, citing *Matter of Munford*, 97 F.3d 449 (11th Cir. 1996). "If employers are denied any degree of confidence in the finality of a settlement, seamen will lose the option to settle since employers will have little incentive to avoid a full-scale trial on the merits. *Borne, supra*, 780 F.2d 1254, 1257 (enforcing a seaman's release). Denying seamen that option is no kindness. *Id.*

While the law is solicitous of seamen, it does not prevent them from entering into informed and voluntary settlements and from giving binding release in connection therewith. *Sea-Land, supra*, 64 F.Supp.2d 1255, 1260; *Pereira v. Boa Viagem Fishing Corp.*, 11 F.Supp.2d 151, 153 (D.Mass. 1998)(granting summary judgment for employer finding unrepresented seaman's release was valid). Although a seaman may subsequently wish he had made a different choice, second thoughts are not

⁵ (*Sea-Land* was often referred to as *Sellan* in oral argument. See, e.g., RP 27, 33, 34, 44).

a reason for voiding an agreement that was proper and valid when the parties concluded it. *Id.* Moreover, the absence of counsel does not, alone, prevent a seaman from entering an informed, voluntary and binding settlement. *Sea-Land, supra*, 64 F.Supp.2d 1255, 1261; *Pereira, supra*, 11 F.Supp.2d 151, 153; *see also, Durden v. Exxon Corp.*, 803 F.2d 845 (5th Cir. 1986)(affirming directed verdict upholding unrepresented seaman's release); *Charpentier v. Fluor v. Ocean Services, Inc.*, 613 F.2d 81, 84 (5th Cir. 1980)(upholding unrepresented seaman's release).

While a seamen's release must meet the criteria outlined in *Garrett v. Moore McCormack Co.*, 317 U.S. 239, 248, 63 S.Ct. 246, 87 L.Ed. 239 (1942), a seaman's acceptance of a settlement check operates to ratify his settlement agreement. *Sea-Land, supra*, 64 F.Supp.2d 1255, 1262. Where a seaman accepts the benefits of a settlement agreement and knows, or in the exercise of due diligence should have known, the facts concerning that settlement, the seaman ratifies the settlement by accepting the benefits whether the settlement was in the first instance authorized by him, and he is thereafter estopped from attacking the settlement. *Id.* The power of avoidance is lost by ratification of the contract through acceptance of the benefits. *Id.*

In *Sea-Land*, the seaman Sellan represented to Sea-Land that he had accepted the terms of the release by all his actions except, notably, his very signature on the agreement. Even Sellan's own silent refusal to sign the document did not render the contract unenforceable. More to the point, Sellan's acceptance of the settlement check operated to ratify the agreement. "The plaintiff cannot keep the money and at the same time reject the settlement agreement: 'One cannot ratify in part; cannot hold the fruits of the transaction and deny to the other the benefits accruing him...'" *Id.*, quoting *Thompson v. D.C. America, Inc.*, 951 F.Supp. 192, 196 (M.D.Ala. 1996)(finding that a plaintiff's continued retention of the settlement proceeds for more than a year constitutes acquiescence to the terms thereof).

The ratification argument here is even stronger than in *Sea-Land* because Hogle was represented by counsel at the time of his ratification, while the seaman Sellan in *Sea-Land* was not. Additionally, Hogle undisputedly had all the relevant facts at the time he ratified the Release by cashing the final settlement check. The nature and import of the check had been fully explained in writing to his lawyer before he cashed the check. CP 186. Hogle himself even testified that he "suspected" the Release was consideration for his signed Release. CP 179-180. Hogle

cannot later, with a contradictory declaration in a motion for reconsideration following the trial court's decision against him, claim he did not have the relevant facts. *See, Marshall v. Bally's Pacwest, Inc.*, 94 Wn.App. 372, 379, 972 P.2d 475 (1999) (a party cannot establish a genuine issue of material fact with his own self-serving affidavit that is contradicted by his other sworn testimony). Moreover, and as addressed in Arica's argument on Issue 3 more fully below, Hogle's Declaration with his Motion for Reconsideration should not be considered at any rate since it did not constitute "newly discovered evidence" under CR 59 as required.

Similarly, Hogle's claim that because his lawyer (allegedly) did not advise him of potential defenses to the Release, his ratification was uninformed necessarily fails. When a seaman is acting upon disinterested, independent legal advice, a settlement agreement will not be set aside. *Sitchon, supra*, 113 F.2d 830, 832; *Borne, supra*, 780 F.2d 1254, 1258; *see also, e.g., Resner v. Arctic Orion Fisheries*, 83 F.3d 271, 274 (9th Cir. 1996)(explaining in a seaman's release case that even given the employer's fiduciary duty, "Arctic Orion was not obliged to explain the merits of [Resner's] claim to him or to send him to a lawyer").

Rather than address head on the trial court's stated basis for its decision, *i.e.*, ratification, Hogle completely ignores *Sea-Land*. Instead, he erroneously represents that there are no maritime cases directly on point, discusses *Schultz* and *Resner*, neither of which involve ratification, and relies exclusively on an *unreported*, out of circuit decision with no precedential value here that does not even involve a seaman's release but rather an arbitration agreement in *Harrington v. Atlantic Sounding Co., Inc.*, No. 06-CV-2900(NG)(VVP) (September 11, 2007) 2007 WL 2693529 (E.D.N.Y.). *Harrington* was decided based on the Federal Arbitration Act and related federal arbitration precedent as well as New Jersey case law on unconscionability and **not** on the standards set forth for seaman's releases in *Garrett v. Moore McCormack* which the district court in *Harrington* specifically declined to apply. Moreover, *Harrington* did not involve or address any claim of ratification. Even if considered, *Harrington* is distinguishable on its facts as well as the underlying law. Before signing the agreement to arbitrate his injury claim, Harrington's employer did not explain it was a legal document, nor were the legal rights he was giving up explained to him. In contrast here, Ms. Olson did those very things and plaintiff does not dispute her testimony on this issue since he claims he cannot remember the meeting. CP 111-113, ¶ 7, CP 173-175.

Moreover, unlike Hogle, Harrington did not have an attorney. Hogle, in contrast, had the fully informed advice of his lawyer upon negotiation of his last settlement check and ratification of his Release.

Plaintiff cites *Smith v. Pinell*, 597 F.2d 994 (5th Cir. 1979) for the proposition that a seaman's release cannot be limited or altered by state law contract ratification principles. However, *Smith* dealt with a seaman's claim of fraud, which is not an allegation made by Hogle here, and the Fifth Circuit's reversal of the district court's order staying the case. Moreover, here, while well-established state court principles support ratification, particularly that negotiation of a settlement check ratifies a settlement, (*see, e.g., Oregon Mutual Insurance Company v. Barton*, 109 Wn.App. 405, 410 (2001); *State Dep't of Fisheries v. J-Z Sales Corp.*, 25 Wn.App. 671, 680 (1980), *Arica* points primarily to *Sea-Land* as the seminal maritime case applying ratification principles to a seaman's release which is analogous to the situation here. Significantly, *Sea-Land* illustrates that this well-established principle of contract law also applies in a maritime setting.

Inexplicably, despite arguing that only federal maritime law applies, Hogle then cites various Washington cases involving fiduciaries and lack of disclosure on the issue of ratification. (Appellant's Brief p.

45.) Still, what even these cases neglect to address and Hogle continues to ignore is the glaringly palpable and ***undisputable fact*** that at the time he ratified the Release, any claimed questions regarding the Release or the proceeds of the seized fishing proceeds from trip RI 07-01 had been completely and fully disclosed and explained in writing to Hogle's attorney. CP 186. He cannot claim lack of disclosure when, as the trial court noted, "[counsel for Arica] couldn't have been more straightforward in writing that letter and certainly Mr. Stacey [Hogle's then attorney], a known maritime attorney, is well aware of what that very concise paragraph meant, and I don't even think I need to get into attorney-client privileged communications. I think the facts speak for themselves." RP 49:18-24. Moreover, while Hogle's Motion for Reconsideration was properly denied, we now know based on Hogle's Declaration therewith that he and his attorney were in communication about this very matter at the time and still, Hogle chose to cash the check. (CP 607, ¶¶ 2-9, 11, CP 615-617, 619, 624-625).

Even in *Thorman v. American Seafoods Co.*, 421 F.3d 1090, 1097-98 (9th Cir. 2005) cited by Hogle, the district court correctly declined to extend the vessel owner's fiduciary duty to impose an affirmative burden to explain their precise compensation methodology under its employment

contract which is analogous to what Hogle contends Arica should have done here.

The undisputed facts here show that at the time he ratified the Release by cashing the final check, Hogle himself suspected that the check was consideration for the Release, Arica had explained in writing to Hogle's attorney that this final check constituted the remaining consideration for the Release as well as the circumstances of the check's timing, Hogle was in communication with his own attorney on this very issue, and he still chose to cash the check and retain the funds. This makes for a clear case for ratification under applicable law and the trial court's decision in Arica's favor should be affirmed.

E. Facts Related to Issue 2

Arica's Motion for Summary Judgment was scheduled for hearing on March 20, 2009, making all of Hogle's responsive papers due on March 9, 2009. CR 56(c). Instead, Hogle served his Additional Brief re Anissa Olson Testimony and Surreply and Third Declaration of George H. Luhrs with Exhibits on March 18, 2009, woefully past the applicable responsive deadline, and thus were not considered by the trial court. CP 486-548, RP 2. Accordingly, Hogle's Surreply and the testimony and exhibits submitted therewith should not be considered on appeal.

Moreover, Hogle's underlying contention on appeal that his Surreply evidence should have been considered by the trial court because he was unable to obtain the deposition of Anissa Olson in time for his March 9, 2009 response deadline is incorrect. In response to Hogle's own suggested dates, Arica advised Hogle that Ms. Olson was available for deposition on February 10, 2009. CP 549-550, 557. In response to Hogle's request for later dates, Arica advised that Ms. Olson was available on February 24 and 25. CP 558-560. Receiving no confirmation from Hogle, Arica again e-mailed Hogle's counsel to follow-up and inquire whether Ms. Olson's deposition would be going forward on February 24 or 25, 2009, dates Hogle himself had requested. CP 561. Hogle did not respond to Arica's offer of various deposition dates, but chose instead to postpone Ms. Olson's deposition for reasons unknown to Arica, despite knowing his Opposition to Arica's Motion for Summary Judgment was due March 9, 2009. CP 550, ¶3.

F. Argument on Issue 2: The Trial Court Properly Declined To Consider Hogle's Surreply.

On a motion for summary judgment, an adverse party may file and serve opposing affidavits, memoranda of law or other documentation not later than 11 calendar days before the hearing. CR56(c). Pursuant to Local Rule, any material offered at a time later than required by the civil

and local rules “will not” be considered by the court over objection of counsel except upon the imposition of appropriate terms, unless the court orders otherwise. KCLR 7(b)(4)(G). Hogle’s Surreply and late “Additional Brief” addressing Ms. Olson’s testimony, were not filed or served until March 18, 2009, a full nine days after her deposition and two days before the hearing date. Arica moved to strike Hogle’s Surreply. CP 562-565. Neither the Civil nor Local Rules permit a Surreply. RP 2, lines 13-16. The trial court properly struck Hogle’s late submitted Surreply and related materials as not permitted by the rules. *See generally, e.g., Monk v. City of Auburn*, 128 Wn.App. 1066 (2005) (surreply not considered); *Adams v. Rockmeadow Equestrian Center, Inc.*, 94 Wn.App. 1053 (1999)(surreply not considered).

With respect to the testimony of Anissa Olson, Hogle cites to Civil Rule 56(f) as grounds for the trial court’s error in not considering her late submitted testimony. However, Civil Rule 56 (f) merely provides that the court “**may**” order a continuance if the party opposing summary judgment cannot present by affidavit facts essential to justify his opposition. Arica first offered Ms. Olson for deposition on February 10, 24 and 25. Hogle’s own inexplicable election to delay her deposition until March 9 knowing his Opposition was due that same day, operated against any continuance.

Furthermore, Hogle did not request a continuance but simply submitted briefing after his applicable deadline.

Finally, the surreply testimony of Ms. Olson which is Hogle's focus on appeal addressed the events that transpired prior to and on February 12, 2007 when Hogle signed his Release. Again, even if the trial court had considered the Surreply, its ruling would remain unchanged since Hogle's subsequent knowing ratification of the Release makes the Surreply moot because no facts or legal arguments raised in his Surreply addressed ratification. CP 486-491.

The trial court properly struck Hogle's Surreply on the grounds that it was impermissible under applicable rules. The trial court's striking of the Surreply was also justified on the supplemental grounds of plaintiff's own inexcusable delay in obtaining the purported evidence submitted therein. Moreover, Hogle's Surreply argument was rendered moot by his subsequent ratification of the Release.

G. Facts Related to Issue No. 3

On March 30, 2009, Hogle moved for reconsideration of the trial court's grant of summary judgment for Arica. CP 570. He apparently decided that the time had come to waive his previously asserted attorney-client privilege (CP 176, RP 14-16) and so disclosed correspondence with

his attorney regarding the release and final settlement check and submitted further declaration testimony. He also claimed a desire at this late date to deposit settlement funds into the court registry in order to distinguish himself from the plaintiff in *Sea-Land* (CP 579-580), although no such deposit was actually made. Nonetheless, the trial court correctly denied Hogle's Motion for Reconsideration on April 17, 2009.

H. Argument on Issue No. 3: Hogle Failed To Satisfy Any Grounds For Reconsideration

We review a trial court's denial of a motion for reconsideration for abuse of discretion. *Lilly v. Lynch*, 88 Wn. App. 306, 321, 945 P.2d 727 (1997). A trial court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds. *Weyerhaeuser Co. v. Commercial Union Ins. Co.*, 142 Wn.2d 654, 683, 15 P.3d 15 (2000).

1. Accident or Surprise Under CR 59(a)(3)

Civil Rule 59(a)(3) permits a court to reconsider a summary judgment ruling resulting from accident or surprise which ordinary prudence could not have guarded against. CR 59(a)(3). Hogle apparently contends that Arica's counsel's statement at oral argument that contracts entered into by incapacitated persons, while voidable, may be affirmed or ratified when the incapacity is over if the individual knowingly accepts the benefit of the contract constitutes "hornbook law" was a surprise and

without authority, thus warranting reconsideration. See, RP 19, lines 4-9. He further claims it “surprised” him that the trial court would find that his being represented by counsel constituted an informed ratification of the Release. *Appellant’s Brief*, P. 51.

Hogle’s argument fails. Hogle’s objection on appeal to the use of the word “hornbook” (or lack of citation to it) is a red herring and does not change the arguments Arica made and that Hogle was able to defend against. Indeed, court opinions routinely refer to “hornbook law” without actually citing the treatise itself. *See, e.g., Wis. Lumber Co. v. Greene & Western Tel. Co.*, 127 Iowa 350, 744, 101 N.W. 742 (1904)(“The corporation cannot accept and ratify the contracts in so far as they are beneficial to it and repudiate them in so far as they imposed any liability on its part. It accepted plaintiff’s money on the strength of these contracts, and cannot, while retaining the same, be heard to say that its officers had no authority to make the contracts under which it was received. This is hornbook law[.]” without citation to hornbook); *see also, e.g., Bloxom v. Deitchler*, 175 Wash. 431, 437, 27 P.2d 720 (1933)(“We have applied only hornbook law to the facts as we see them,” without citation to hornbook).

Moreover, Arica cited case law in its summary judgment briefing for its central proposition, *i.e.*, that Hogle’s cashing of his final two settlement checks paid on his signed Release, the third one cashed with full knowledge and the advice of his attorney, served to ratify his Release. When a party, in using “ordinary prudence”, should be guarded against and aware of claims that may be made against them or their attorney, they cannot obtain reconsideration through surprise. *Holaday v. Merceri*, 49 Wn.App. 321, 329, 742 P.2d 127 (1987). Using “ordinary prudence” here, Hogle could have, and indeed, was, in fact, prepared to defend against such claims. His contention that the trial court’s act of ruling against him was a surprise is not supported by the record or the law. Hogle’s claim of surprise warranting reconsideration fails.

2. Newly Discovered Evidence Under CR 59(a)(4)

To succeed on a motion for reconsideration based on newly discovered evidence, Hogle must submit material evidence that **he could not have discovered with reasonable diligence prior to the summary judgment hearing**. See, CR 59(a)(4)(emphasis added). If the evidence was available but not offered until after that opportunity passes, the parties are not entitled to another opportunity to submit that evidence. *Wagner Dev. V. Fidelity & Deposit*, 95 Wn.App. 896, 907, 977 P.2d 639 (1999).

In his Motion for Reconsideration, however, Hogle submitted no newly discovered evidence but merely elected to waive his attorney-client privilege and submit evidence that was clearly within his possession at the time of the summary judgment briefing and hearing. The reason is simple: Hogle perceived a need to disclose this “evidence” long known exclusively to him once the trial court had ruled against him. However, the evidence had been in his possession all along. Indeed, the bulk of the evidence was correspondence between Hogle and his first attorney in February, July, August, September and October, 2008, well before the March 2009 Summary Judgment hearing date. He also submitted further declaration testimony evidently realizing that his first was insufficient for his purposes. However, “the realization that [the] first declaration was insufficient does not qualify the second declaration as newly discovered evidence” under CR 59. *Wagner, supra*, 95 Wn.App. at 907, citing *Adams v. Western Host, Inc.*, 55 Wn.App. 601, 608, 779 P.2d 281 (1989).

Hogle concedes that the evidence submitted for reconsideration was new only to Arica and the trial court yet not himself, but seems to excuse this belated offering of evidence based on the fact that it consisted largely of attorney client communications and therefore it would have

been “unseemly” to disclose it at summary judgment. Evidently it was no longer unseemly once the trial court had ruled against him.

In *King v. Rice*, 146 Wn.App. 662, the trial court denied reconsideration in part because "King attempted to 'improperly supplement the record with new arguments and evidence that he could have but did not submit to the Court on summary judgment.'" *King v. Rice*, 146 Wn.App. 662, 672, 191 P.3d 946 (2008). The appellate court found that the document did not support reconsideration because King "failed to demonstrate that it could not have been discovered and offered prior to judgment." *Id.* Similarly, in *In re Marriage of Tomsovic*, 118 Wn.App. 96, the court found that the additional evidence Tomsovic presented to the trial court "in the motion for reconsideration was available at the adequate cause hearing, and he fails to adequately explain why he should be excused for neglecting to bring these arguments to the court's attention." *In re Marriage of Tomsovic*, 118 Wn.App. 96, 109, 74 P.3d 692 (2003). The court stated that "evidence presented for the first time in a motion for reconsideration without a showing that the party could not have obtained the evidence earlier does not qualify as newly discovered evidence." *Id.*

Hogle has failed to demonstrate that the evidence he submitted with his Motion for Reconsideration could not have been discovered prior to the summary judgment hearing. Indeed, all the evidence he submitted on reconsideration had long been in existence. Hogle simply admittedly changed his mind as to whether to disclose it.

3. Manifest Injustice (CR 59(a)(9))

Generally, reconsideration under CR 59(a)(9) for lack of substantial justice is rare, due to the other broad grounds afforded under CR 59(a). *Lian v. Stalick*, 106 Wn.App. 811, 825, 25 P.3d 467 (2001). Hogle has failed to demonstrate what manifest injustice resulted from the trial court's decision, other than an apparent change of heart about the amount of his settlement. This does not constitute manifest injustice under the law. *See, e.g., Davies v. Holy Family Hospital*, 144 Wn.App. 483, 183 P.3d 283 (2008)(reconsideration on grounds that substantial injustice had not been done denied when not supported by record).

State v. Marks, 71 Wn.2d 295, 427 P.2d 1008 (1967) relied on by Hogle for the premise that "hindsight" about admission of certain matters of evidence can be the basis for reconsideration bears no resemblance to the facts or issues in this case. *Marks* involved a criminal trial for indecent liberties after which the minor witness' testimony was called into

question based largely on problematic circumstances in the courtroom and the trial court granted a request for a new trial. There was no issue of whether the evidence in question was either “surprise” or “newly discovered.” Additionally, the appellate court there found that the trial court was in the best position to judge the facts and surrounding issues and thus had not abused its discretion in awarding a new trial after carefully laying out the grounds therefor. For all the foregoing reasons, the Court’s decision not to reconsider its grant of summary judgment was not an abuse of discretion and it should be affirmed.

I. Facts Related to Issue No. 4:

The trial court entered judgment for Arica on April 7, 2009. CP 661-663. Part of that judgment was based on a cost bill submitted by Arica with its Motion for Entry of Judgment which Hogle did not designate as part of the record. Said cost bill included statutory filing fees of \$250.00, the fee required and which Arica paid when it filed its jury demand.

J. Argument on Issue No. 4: The Trial Court Correctly Awarded Costs.

Cost awards are within the discretion of the trial court. An appellate court will not overturn the trial court's ruling as to costs unless it has abused its discretion. *Citizens for Clean Air v. City of Spokane*, 114

Wash.2d 20, 41, 785 P.2d 447 (1990). The right to recover costs is wholly a matter of statutory regulation absent an agreement concerning costs between the parties. *Ernst Home Ctr. V. Sato*, 80 Wn.App. 473, 491, 910 P.2d 486 (1996). Costs are defined by RCW 4.84.010 to include specific fees expended by the prevailing party. Filing fees are an item specifically allowed as costs under RCW 4.84.010. RCW 4.84.010(1).

Hogle points to no legal authority whatsoever in support of his appeal in this regard. A party waives any error that is not supported by argument or authority. *Smith v. King*, 106 Wash.2d 443, 451-52, 722 P.2d 796 (1986). An appellate court may decline to consider an issue that the appellant has not developed in the brief or supported with legal argument of citation to relevant authority. *See Saunders v. Lloyd's of London*, 113 Wash.2d 330, 345, 779 P.2d 249 (1989); *State v. Dennison*, 115 Wash.2d 609, 629, 801 P.2d 193 (1990). Hogle has not developed this argument, he did not designate the cost bill as part of the record on appeal, and he cites no legal authority on this issue. The trials court's award of statutory filing fee related to defendants' jury demand was not an abuse of discretion and should be affirmed.

IV. CONCLUSION

As set forth above, not only did Hogle sign a Release in which he gave up his legal right to bring the underlying action against his former employer Arica, more importantly he subsequently ratified that Release by cashing the final consideration check with the fully informed advice of his own legal counsel. The trial court properly granted summary judgment in Arica's favor since there was no genuine issue of fact concerning Hogle's ratification of his Release. The trial court's decision should be affirmed on all counts.

RESPECTFULLY submitted this 10th day of December, 2009.

LEGROS BUCHANAN & PAUL

By: 
David C. Bratz
WSBA #15235
Kathryn P. Fletcher
WSBA #22108
Attorneys for Respondent

2009 DEC 10 PM 4:23
STATE OF WASHINGTON
CLERK OF SUPERIOR COURT

V. APPENDIX

<u>Title</u>	<u>Page</u>
1. Defendant's Praecipe Re: Exhibit B To Declaration of Jackie Little In Support Of Defendants' Motion for Summary Judgment	A-1
2. Defendant/Respondent's Supplemental Designation of Clerk's Papers On Appeal	A-12

HONORABLE JULIE SPECTOR
Scheduled for Oral Argument:
Friday, March 20, 2009 at 1:30 p.m.

IN THE SUPERIOR COURT OF WASHINGTON FOR KING COUNTY
AT SEATTLE

KIRK R. HOGLE

Plaintiff,

v.

ARICA FISHING COMPANY, LLC

Defendant.

No. C07-2-35109-48SEA

**PRAECIPE RE: EXHIBIT B TO
DECLARATION OF JACKIE LITTLE IN
SUPPORT OF DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT**

FILED
CLERK OF SUPERIOR COURT
STATE OF WASHINGTON
2009 DEC 11 AM 4:24

This Praecipe, regarding Exhibit B to the Declaration of Jackie Little in Support of Defendant Arica Fishing Company's Motion for Summary Judgment, is to properly reflect that Exhibit B, one of plaintiff's prior employment contracts, is a two-sided document comprised of 8 pages (8 sides to 4 pieces of paper). A double-sided, 8 page copy of the same contract is attached hereto. Exhibit B originally filed with Ms. Little's Declaration may have inadvertently reflected only one side of each page of the contract.

**PRAECIPE RE: EXHIBIT B TO DECLARATION OF JACKIE
LITTLE IN SUPPORT OF DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT** -Page 1 No. C07-2-35109-48SEA

27016 kc204501

Page A-1

LE GROS BUCHANAN
& PAUL
701 FIFTH AVENUE
SUITE 2500
SEATTLE, WASHINGTON 98104-7051
(206) 623-4990

1
2 DATED this 20 day March, 2009.

3 LE GROS, BUCHANAN & PAUL

4
5 By: 

6 DAVID C. BRATZ, WSBA #15235
7 KATHRYN P. FLETCHER, WSBA #22108
8 Attorneys for Defendant Arica Fishing
9 Company, LLC

10
11 **CERTIFICATE OF SERVICE**

12 The undersigned certifies that on this day he/she caused to be
13 served in the manner noted below, a copy of the document to which this
14 certificate is attached, as on the following counsel of record:

15 George H. Luhrs, Esq.
16 Law Office of George H. Luhrs
17 701 Fifth Avenue, Suite 4600
18 Seattle, WA 98104

- 19 Via Mail
20 Via Facsimile
21 Via Messenger

22 I certify under penalty of perjury under the laws of the State of
23 Washington that the foregoing is true and correct this _____ day of
March, 2009.

Signed at Seattle, Washington

**PRAECIPE RE: EXHIBIT B TO DECLARATION OF JACKIE
LITTLE IN SUPPORT OF DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT** -Page 2 No. C07-2-35109-48SEA

27016 kc204501

Page A-2

LE GROS BUCHANAN
& PAUL
701 FIFTH AVENUE
SUITE 2500
SEATTLE, WASHINGTON 98104-7051
(206) 623-4990

EXHIBIT B

REBECCA IRENE FISHERIES

CREW MEMBER EMPLOYMENT CONTRACT

- 1. PURPOSE.** This document contains the complete agreement between KIRK HOGLE (the Crew Member) and REBECCA IRENE FISHERIES (RIF), under which the Crew Member will be employed aboard the F/T "REBECCA IRENE" (the Vessel).
- 2. DURATION.** This agreement shall become effective on the date the Crew Member arrives aboard the Vessel, (insert date) 20 July 2000. This agreement shall expire at the end of the agreed upon Contract, (first offload after 15 consecutive days), or upon the Crew Member's termination as provided in Paragraph 14; or if the Vessel is at sea on the final day of the Contract, upon completion of offload after voyage; or sooner if the voyage is terminated due to fishing conditions or regulations or conditions of the Vessel. (The Contract can also end as announced by the Vessel captain, other supervisor, or as directed by RIF (See Paragraph 6).
- 3. POSITION AND DUTIES.** The Crew Member agrees to assume the position of Chief to satisfactorily perform any and all duties ordinarily associated with that position and to satisfactorily perform any and all other duties involving fishing, processing, maintenance, loading and off loading of the Vessel, navigation, or other work assigned by the captain, the Vessel fishing captain, or other supervisor in whatever manner he/she directs. The Crew Member agrees to work seven days a week on a schedule of work shifts as established by the Vessel captain, the Vessel fishing captain, or other supervisor. Due to scheduling, weather, or other circumstances, the Crew Member may be expected to offload product not produced during his/her trip.
- 4. COMPENSATION & BONUS COMPENSATION.** Except as provided in Paragraph 14 below, RIF agrees to pay the Crew Member a production share of 1.31 % of the selling price, F.O.B., Alaska, of the frozen fish produced while the Crew Member is on board the Vessel and employed. In addition, the Crew Member shall be paid a Contract bonus of .44 % of the selling price, F.O.B., Alaska, upon completion of the entire Contract upon which the Crew Member was engaged. The total production share earned by the Crew Member under this agreement is the Crew Member's percentage of the final selling price of the frozen fish, as specified in the Vessel's official production report from the date this agreement becomes effective to and including the date the Crew Member's employment under this agreement ends. RIF shall pay a minimum of 75% of the estimated total production share and bonus due to the Crew Member, less applicable payroll tax withholdings or other mandatory assessments; and, other deductions such as ship store charges, payroll draws, telephone charges, housekeeping charges, licenses, medical/dental insurance premiums; 401K deductions; all fines, penalties, fees or damage claims imposed on or incurred by employer as a result of actions or inaction of Crew Member, including but not limited to violations of Employer's No Drugs, Alcohol or Firearms Policy; round-trip air fare, if any (per Paragraph 7.1), etc. within fourteen (14) days of the end of the Contract period by check, mailed to the Crew Member's address provided below.

In the event the crew member elects to have their payroll check held at the company for pickup, the crew member must pick up their check or give delivery instructions to the company within 30 days of end of Contract or payroll will be mailed to the address on the crew member's W-4 form.

The Contract bonus is payable only upon completion of the Contract in which the Crew Member was engaged. Failure of the Crew Member to complete the Contract will automatically terminate any and all obligations RIF has to pay the trip bonus to the Crew Member.

Final Settlement. The final settlement will be sent to the Crew Member upon the selling of the frozen fish. RIF is committed to pay the final settlement within seven (7) days of receiving the final payment for frozen fish produced during the Contract period in which the Crew Member was employed. No advances against final settlements will be authorized by RIF. It is the Crew Member's obligation to keep a current address on record with RIF so the final settlement (share and bonus, if earned), can be sent to the Crew Member.

In addition, RIF shall provide room, board and laundry facilities aboard the Vessel.

5. GUARANTEE OF COMPENSATION DURING CONTRACT PERIOD AND CREW SHARE. RIF offers a guarantee of compensation of \$ ~~7500~~ per month or pro-rata production share, whichever is greater, during the agreed upon Contract period (first offload after 65 consecutive days). Guarantee compensation will be computed after final sales of product for the total Contract period. Guarantee compensation, if any, is due to the crew member ONLY at that time. If payroll advances are requested by the crew member and made available by the company, federal withholdings of 20% and FICA at the applicable rate may be withheld from advances at the company's discretion.

If Contract end is announced by Vessel captain, the Vessel fishing captain, other supervisor, or as directed by RIF due to regulatory actions beyond control of the Vessel, the monthly guarantee is only in effect from the date of hire to the end of the last offload. If for any reason this Contract period is not fulfilled by the Crew Member the Guarantee of Compensation is voided and RIF will pay him/her the daily production share for the days he/she was employed. The total production share earned by the Crew Member is entirely dependent on the final selling price, F.O.B., Alaska of the product generated while the Crew Member is employed under this Contract.

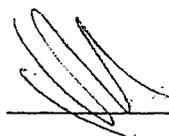
RIF retains sole authority to decide the species and size of fish to be caught and processed and to control all other aspects of Vessel operation. RIF does not make any representations and explicitly confirms that no officer or representative of RIF is authorized to make any representations to the Crew Member guaranteeing or implying to guarantee any specific level of compensation other than contained in this Contract.

6. SHIP OUT OF SERVICE: In the unlikely event of Vessel breakdown, mechanical failure, act of God or any unforeseeable problem the Crew Member will be compensated as if he/she had successfully completed this Contract up to the date of the breakdown.

7. TRANSPORTATION:

7.1 The Crew Member agrees he/she is solely responsible for his/her own transportation to and from original point of hire (Seattle, Washington). Upon successful completion of Contract RIF will provide round trip transportation to original point of hire. If a Contract is not completed Crew Member will pay all costs of transportation to and from the Vessel, including food and lodging.

7.2 It is anticipated that Crew Member will ride the Vessel between the Puget Sound area and the designated fishing port when he/she works the first or last trip of any season. Requests to use air transportation rather than ride the Vessel will require approval from Human Resources Management and RIF. When such requests are granted on a case-by-case basis all travel related costs will be the financial responsibility of the Crew Member.



8. **ILLNESS OR OTHER DISABILITY.** The Crew Member will not be entitled to any compensation for injury or illness unless he/she reports his/her condition and any related accident **immediately** to his/her supervisor and permits his/her condition to be verified by the Vessel captain, the Vessel fishing captain or a doctor designated by RIF. Crew Member must fully and accurately complete injury and medical forms, which are available on the Vessel. Failure to report an accident, injury, or illness in a timely manner may result in the denial of any late-reported claims. RIF's obligation for unearned wages, where legally recoverable, shall expire at the end of the Contract for which the Crew Member was employed. RIF's obligation for maintenance payments where legally required during any period of the Crew Member's onshore recovery shall be paid at the rate of \$20.00 per day until maximum cure is achieved.

9. **CREW MEMBER HANDBOOK.** The Crew Member acknowledges that he/she has received and read a copy of the RIF's Crew Member handbook. He/she agrees to follow the rules outlined therein.

10. **NON-FRATERNIZATION POLICY.** It is the policy of REBECCA IRENE FISHERIES to provide equal opportunity to each employee and to prevent and prohibit unlawful discrimination, harassment, and retaliation in the workplace. To help accomplish these goals, REBECCA IRENE FISHERIES prohibits romantic or sexual relationships between persons working in the same department when one party to the relationship has direct supervisory responsibility over the other party to the relationship. In addition, REBECCA IRENE FISHERIES prohibits romantic or sexual relationships between any person with indirect supervisory authority over the other. REBECCA IRENE FISHERIES also prohibits romantic or sexual relationships between its employees and employees of the management company, Iquique U.S., LLC. REBECCA IRENE FISHERIES also prohibits employees from romantic or sexual relationships with Fisheries Observers.

A person has direct supervisory responsibility over another when he/she is required or is authorized to monitor the job performance, conduct work performance evaluations, fire, transfer, promote, assign or assign tasks, or have any control over the compensation, terms or conditions of the other employee.

A person has indirect supervisory authority over another when he/she has managerial responsibilities, which affect an entire department and/or the entire company.

If an employee is suspected of having a prohibited romantic or sexual relationship with another employee, he or she will be questioned about the relationship in a confidential manner. If a romantic or sexual relationship is found to exist appropriate disciplinary action will be taken, up to and including termination of either or both employees. If the relationship is between a direct supervisor and subordinate their reporting chain of command will be changed immediately, which may require in the discretion of company management, removal of one or both of the employees from the vessel. Management will make the decision based upon legitimate business criteria, including which employee would be more difficult to replace.

Employees should contact the Human Resources Manager of the company if they have any questions about this policy.

11. **EMPLOYMENT POLICY REGARDING POSSESSION OF DRUGS AND ALCOHOL AND/OR FIREARMS.**

Possession of drugs and/or alcohol and/or firearms while aboard the F/T "REBECCA IRENE", hereinafter "the vessel", is a violation of Federal Law and Company Policy. Possession of controlled substances, drug-related paraphernalia (collectively "drugs") is a violation of federal law. Since the possession of drugs is a serious violation of federal law it may result in the imprisonment of the party processing the drugs as well as the possible forfeiture of the vessel on which the drugs are found. In recognition of the serious legal consequences of illegal possession of such drugs, as well as the creation of an unsafe work environment aboard the Vessel, the owners of the Vessel have adopted the following employment policy regarding the possession of drugs and alcohol and/or firearms:

A. Possession of drugs and/or alcohol and/or firearms aboard the Vessel is grounds for immediate termination of the Employment Contract.

B. Possession, sale, or use by Crew Member of ANY amount of controlled substances, drugs of abuse, drug paraphernalia, drug masking agents, or alcoholic beverages on the Vessel or off the Vessel during offloads or while in transit to or from the Vessel will result in immediate termination and loss of all benefits. To this end, Crew Member agrees to cooperate with random, unannounced searches and random drug testing at any time during employment. Crew Member acknowledges that he or she has been given notice of the Company's No Drugs, Alcohol or Firearms Policy, has had an opportunity ask questions about the policy, understands the policy and has agreed to comply with the policy at all times. Employer's managers are prepared to answer any questions Crew Member may have about this policy.

C. Any crewmember regardless of position, found in possession of drugs and/or alcohol and/or firearms will be subject to immediate discharge, shall forfeit all earned wages for that trip, and shall indemnify Owner and the Vessel for any fines, penalties or costs, including lost fishing revenues incurred as a result of such possession or control.

D. The appropriate law enforcement agencies will be informed of a crewmember's possession of such drugs.

E. Full indemnification (repayment) of all costs, lost income, attorney's fees, fines or other expenses resulting from the possession of drugs and/or alcohol and/or firearms by a crewmember will be sought from the individual(s) responsible for the presence of drugs and/or alcohol and/or firearms.

F. A pre-boarding search of the crewmember's person and possessions will be conducted by an Officer of the Vessel. Random searches of the crew, crew's quarters and common are as may be conducted during the Vessel's voyage.

G. Drug use screening through urinalysis will be conducted during the pre-employment process.

In addition, within three (3) days of completion of this Contract and departure from the Vessel, Crew Member must take an Owner-approved non-DOT drug test (safety sensitive positions will take a DOT drug test) and pass with a creatinine level of 20 or more. If Crew Member fails the post-employment drug test, or refuses to submit to said test in the time period allotted (3 days), Crew Member will not be entitled to payment of any bonus compensation (as defined in Paragraph above), or airfare. If a Crew Member leaves the Vessel due to a medical condition and fails his/her post-employment drug test the company will not be obligated to pay the Crew Member unearned wages as the Crew Member would be in breach of the employment contract and will be paid per the contract terms.

If a Crew Member chooses to take their post employment test anywhere other than their point of hire (Seattle, WA), the Crew Member will pay the costs and submit a receipt for reimbursement. Reimbursements will not exceed \$33.00, which is the usual and customary charge in Seattle for a non-DOT test and \$67.00 for a DOT test.

Any Crew Member whose test reveals a creatinine level of 20 or less will be required to retest as soon as possible, but no later than 24 hours after notification by a company representative.

H. A positive affirmation is required from all crew members, including the Master, of their knowledge of, and agreement to abide by the Company's policy regarding possession of drugs and alcohol and/or firearms aboard the Vessel. Possession of drugs and/or alcohol and/or firearms aboard the Vessel is grounds for immediate termination of the Employment Contract.



12. DENTAL AGREEMENT

I UNDERSTAND THAT IT IS MY RESPONSIBILITY TO VISIT A DENTIST AT LEAST ONCE EACH YEAR FOR THE EVALUATION, CLEANING, AND TREATMENT OF MY TEETH AND GUMS.

I understand that my contract term with REBECCA IRENE FISHERIES may involve long periods of time out at sea. I am aware that no dental support is available on board the vessel and that there is not a resident dentist in Dutch Harbor or in many other Alaskan ports. I thus confirm that it is my responsibility to seek treatment for any dental problems or illnesses at my own expense prior to departure. I further confirm that all expenses incurred for the treatment of dental illnesses after departure of the vessel, including but not limited to cavities and decay, fillings, root canal treatment, crown, tooth loss, deterioration of existing bridges and gum disease will be my sole responsibility. In the event my Crew Contract with REBECCA IRENE FISHERIES is terminated and/or I depart the vessel due to dental illness, I understand I am not entitled to unearned wages.

I hereby acknowledge that I have read and understand this dental agreement. I hereby **RELEASE AND DISCHARGE** from any and all claims for benefits relating to dental problems and illnesses not resulting from a reported accident.

MARK R. HOGAN
Crew Member (Print Name)
[Signature]
Signature

07-15-06
Date
919-70-6269
Social Security Number

13. POLICY REGARDING HOUSEKEEPING RESPONSIBILITIES. The Crew Member acknowledges that he/she has read a copy of RIF's Policy Regarding Housekeeping Responsibilities as outlined in the Employee Handbook. He/she agrees to follow the rules outlined therein.

14. TERMINATION. The Crew Member agrees that RIF retains authority to terminate their employment relationship at any time, for any reason, without notice before the end of the Contract. If the Crew Member resigns his/her employment or is discharged before the end of the Contract, RIF will pay him/her a daily pro-rata production share for the days he/she was employed. Final settlements for those crew members that have breached their Contracts will be paid per Section 4, Paragraph 4. This amount, less applicable payroll tax withholdings or other mandatory assessments; and, other deductions such as ship store charges, payroll draws, telephone charges, housekeeping charges, licenses, medical/dental insurance premiums; 401K deductions; all fines, penalties, fees or damage claims imposed on or incurred by employer as a result of actions or inaction of Crew Member, including but not limited to violations of Employer's No Drugs, Alcohol or Firearms Policy; round-trip air fare and lodging shall be paid within fourteen days of the end of the expected to be fulfilled Contract. A charge of \$20.00 for room and board will be assessed for each day the Crew Member remains aboard the Vessel after termination. In the event of termination no Contract bonus will be due the Crew Member.

Situations that will be considered unauthorized conduct and may lead to immediate termination include but are not limited to:

- a) Use or possession of any alcoholic beverage, drugs or narcotics including, without limitation, undisclosed prescription medication or refusal to submit to Employer's drug testing program.
- b) Use or possession of any weapon or firearm while employed under this Agreement.
- c) Threatening, intimidating, coercing, harassing, including sexual harassment of any Crew Member or Employer's representative on or off the Vessel.
- d) Any violation of Employer's EEO and Anti-Harassment Policy, including any retaliation against any Crew Member for making a discrimination or harassment complaint or for cooperating in such an investigation.

[Signature]
INITIALS

- e) Insubordination.
- f) Any conduct not conforming to a reasonable health, safety and living standard set by the Vessel Captain or Employer.
- g) Habitual tardiness.
- h) Willful or gross negligence resulting in damage to Company property or property of fellow workers.
- i) Fighting and/or disorderly or disruptive conduct.
- j) Refusal or general inability to perform the type, quality and quantity of work in a manner satisfactory to the Vessel Captain, Factory Management or other designated representative of Employer.
- k) Theft of Company property or other person's personal property.
- l) Misuse or unauthorized use of ship's communication equipment.
- m) Failure to follow proper sanitation practices and safety rules, including the use of proper eye and hearing protection.
- n) Failure to comply with the terms of this Agreement.
- o) In the event of voluntary or involuntary termination during fishing operations Crew Member understands that his or her meal schedule, room assignment, and other privileges may be changed or restricted as determined by the Vessel Captain. CM Initial Date

15. HARDSHIP ACKNOWLEDGMENT AND ASSURANCE OF FITNESS. The Crew Member acknowledges that he/she is psychologically and physically capable of performing assigned work for the full duration of the contract and that the work he/she has agreed to do is difficult or strenuous. The hours are long, and the work is performed in an industrial environment. The living quarters are confined and the Vessel is totally isolated. Weather conditions can be extreme. With these difficulties and hazards fully understood, Crew Member warrants that he or she has truthfully and fully completed the medical history form and is able to perform the contracted duties without accommodations other than those previously requested of and approved by Employer. Providing false or incomplete medical history information is a serious offense that could potentially compromise the Vessel's ability to respond quickly and effectively in the event of a medical emergency.

The Crew Member acknowledges that good health, sufficient to endure and work in these circumstances, is an absolute prerequisite to acceptance of this employment with RIF. Failure to notify RIF of any existing illness, injury, or contagious diseases, which could affect the Crew member's performance, job conditions, or other persons, is grounds for immediate termination.

The Crew Member further assures RIF that he/she will take care of any personal problems or responsibilities prior to departure that may otherwise have required attention during the Contract period.

16. LANGUAGE. Crew Member warrants that his/her skills in English are adequate to ensure that Crew Member will understand any spoken order of the Captain or other person directing Crew Member aboard the Vessel and to read all instructions with regard to safety and Vessel operations.

17. FISHERIES OBSERVER. The Vessel will at times have on board a domestic Fisheries observer. Crew Member shall not in any way hinder or harass the observer and shall cooperate fully to allow the observer to fulfill his/her job duties. Crew Member expressly recognizes and agrees that he/she is subject to immediate discharge for hindering or harassing the observer.

18. REGULATORY VIOLATIONS. Crew member expressly agrees not to violate or cause the vessel to violate any Federal, State, or local statute or regulation including but not limited to regulations forbidding the retention or destruction of any prohibited species such as salmon, halibut, or crab. Crew member agrees to defend and hold Employer harmless against any claims for violation of this paragraph. Crew Member further agrees that he/she will not seek from either the Vessel Owner or the Employer such potential earning as may be lost due to seizure of the catch, processed product, and/or Vessel as the result of such violation.

19. **CUSTOM HOME PACKS.** In compliance with the regulations forbidding the retention or destruction of any prohibited species, crew member expressly agrees not to make custom home packs including groundfish, halibut, crab, salmon, herring, or any other prohibited species while under Contract with RIF.

20. **RULES OF CONDUCT.** The parties understand the close living quarters and the demanding nature of work aboard a fishing vessel require special attention to appropriate conduct. Any conduct that seriously infringes upon the rights of fellow crew members will not be tolerated. Specifically, Employee warrants that he/she shall:

- * Comply with all safety instructions.
- * Refrain from the physical or mental harassment of others.
- * REBECCA IRENE FISHERIES prohibits harassment that is sexual in nature, and harassment that is based upon race, color, religion, gender, national origin, age, disability, or other basis protected by local, state, and federal laws.
- * Comply with the provisions of the employee handbook.

1. **NO CAMERAS OR VIDEO TAPE RECORDERS (VTR'S) WILL BE ALLOWED ON THE VESSEL.**

22. **REHIRING.** It is our goal to attract and retain a highly qualified and productive workforce. All job applicants, including those previously employed by REBECCA IRENE FISHERIES will be given full consideration for employment based on training, education, experience, skill, employment history, character, and attitude. All offers of employment or re-employment will come from the Human Resource Department. Vessel personnel are not authorized to make offers or promises of employment.

23. **DISPUTES.** Exclusively the general maritime laws of the United States and applicable United States statutes shall govern this agreement and the employment relationship established hereunder. RIF and Crew Member expressly agree that their respective obligations, rights, and remedies with respect to the employment relationship established by this agreement and all disputes of whatever nature arising out of this employment relationship, shall be governed exclusively by such federal law and shall not be enlarged, supplemented, or modified by the laws of any state or local jurisdiction. RIF and Crew Member agree that any legal action between them may be brought only in either King County Superior in Seattle, Washington or in the United States District Court located in Seattle Washington. Crew Member hereby submits to the jurisdiction of these courts and consents to receive service of process by certified mail to the address provided below or by any other authorized method of service. Crew Member and RIF agree that any legal action arising in connection with this agreement, or arising out of the parties' employment relationship, must be commenced within six (6) months after the expiration of this agreement.

24. **SEVERABILITY.** The parties agree that if a court determines that any part of this agreement is unlawful or unenforceable all other provisions shall remain in full force and effect.

25. **SUBORDINATION.** If the Crew Member's employment becomes subject to a collective bargaining Contract this agreement shall be subsidiary to that Contract.

26. **ENTIRE AGREEMENT** This agreement contains the entire agreement between RIF and the Crew Member; it cannot be modified or waived, except in writing signed by both parties.

REBECCA IRENE FISHERIES:

CREW MEMBER:

Jackie Little
(Signature - Authorized Representative
for Rebecca Irene Fisheries)

[Signature]
(Signature)

7-19-06
(Date)

07-19-06
(Date)

[Signature]
For Crew Contracts Only
(Signature - Authorized Representative
for Vessel Owner)

59-70-6265
Social Security Number

7-19-06
(Date)

Mailing address for settlements and
service of process:

[Signature]
(Signature - Master)

1003 W PROSPECT
SEATTLE WA 98115

7-19-06
(Date)

Phone # 206-299-7383
206-294-9371

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

HONORABLE JULIE SPECTOR

IN THE SUPERIOR COURT OF WASHINGTON FOR KING COUNTY
AT SEATTLE

KIRK R. HOGLE

Plaintiff,

v.

IQUIQUE U.S., L.L.C.; IQUIQUE US, 1
INC., ARICA FISHING COMPANY, LLC;
REBECCA IRENE FISHERIES, L.L.C.

Defendants.

No. C07-2-35109-48SEA

DEFENDANT/RESPONDENT'S
SUPPLEMENTAL DESIGNATION OF
CLERK'S PAPERS ON APPEAL

(Court of Appeals No. 63519-1-1)

(Clerk's Action Required)

Defendant/Respondent, Arica Fishing Company, LLC, per RAP 9.6 and 9.7,
designates the following documents for transmission to the Court of Appeals, Division I.
The Clerk shall assemble the copies and number each page of the Clerk's supplemental
papers in chronological order of filing and prepare an index to the papers. The clerk shall
promptly send a copy of the index to each party. A copy of this document has been filed
with the Court of Appeals and served on all parties of record.

1 I understand that upon receipt of acceptable payment the Clerk will transmit the
2 Clerk's Papers to the appropriate Court. I agree to pay the amount owed within 14 days of
3 receiving a copy of the index, regardless of the status of the appeal.

Docket #	Title of Document	Date of Filing
83	Praecipe Re: Exhibit B to Declaration of Jackie Little in Support of Defendant's Motion for Summary Judgment	3/29/09

4
5
6
7
8
9 DATED this 24th day of November, 2009.

10 LE GROS, BUCHANAN & PAUL

11
12 By: 
13 KATHRYN P. FLETCHER, WSBA #22108
14 Attorneys for Defendant
15 701 Fifth Avenue, Suite 2500
16 Seattle, WA 98104
17 Tel: 206.623.4990
18 Fax: 206.467.4828

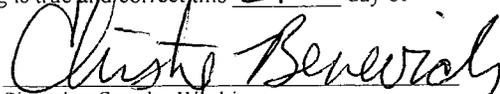
CERTIFICATE OF SERVICE

The undersigned certifies that on this day she caused to be served in the manner noted below, a copy of the document to which this certificate is attached, as on the following counsel of record:

George H. Luhrs, Esq.
Law Office of George H. Luhrs
701 Fifth Avenue, Suite 4600
Seattle, WA 98104

- Via Mail
- Via Facsimile
- Via Messenger

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct this 24th day of November, 2009.


Signed at Seattle, Washington

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23



Thank you. Your document(s) has been received by the Clerk.

Confirmation Receipt

Case Number: 07-2-35109-4 **Case Designation:** SEA

Case Title: HOGLE VS IQUIQUE US ET AL

Filed By: Christie Benevich **Submitted Date/Time:** 11/24/2009 4:30:13 PM

Received Date/Time: 11/24/2009 4:30:13 PM

User ID: benevich **WSBA #:**

Document Type	File Name	Attachment(s)	Cost
OTHER (DO NOT FILE UNSIGNED ORDERS) RE SUPPLEMENTAL DESIGNATION	Hogle - Supp Designations.pdf		0.00



LE GROS
BUCHANAN
& PAUL

LAW OFFICES
SINCE 1890

701 FIFTH AVENUE
SUITE 2500
SEATTLE, WASHINGTON 98104-7051

THOMAS F. PAUL+
ROBERT W. NOITING
MARC E. WARNER
DONALD P. MARINKOVICH
DAVID C. BRATZ+
ERIC R. McVITTIE+
GAIL M. UHN#
SVETLANA P. SPIVAK+

OF COUNSEL
KATHRYN P. FLETCHER#

CAREY M.E. GEPHART †
DUSTIN C. HAMILTON
MARKUS B.G. OBERG

‡ ALASKA & WASHINGTON
† IOWA & WASHINGTON
CALIFORNIA & WASHINGTON
+ ALASKA, OREGON & WASHINGTON
COLORADO, KENTUCKY & WASHINGTON
ALL OTHERS WASHINGTON

TELEPHONE: (206) 623-4990
FACSIMILE: (206) 467-4828
INTERNET: seattle@legros.com
WEB SITE: <http://www.legros.com>

November 24, 2009

George H. Luhrs, Esq.
Law Office of George H. Luhrs
701 Fifth Avenue, Suite 4600
Seattle, WA 98104

RE: Crewmember: Kirk Hogle
Vessel: ARICA
DOL: 8/31/06
Injury: Right knee
Our File No. 27016

Dear Mr. Luhrs:

Enclosed please find a copy of the supplement designation filed November 24, 2009.

Very truly yours,

LE GROS BUCHANAN & PAUL

By



Christie Benevich

Legal Assistant to Kathryn P. Fletcher

Enclosure

27016 kk240303

ABC Legal Messengers, Inc.

Seattle
910-5th Avenue
Seattle, WA 98104
206-623-8771
1-800-736-7295

Tacoma
943 Tacoma Ave. S.
Tacoma, WA 98402
253-383-1791
1-800-736-7250

Everett
2927 Rockefeller
Everett, WA 98201
425-258-4591
1-800-869-7785

Olympia
119 W. Legion Way
Olympia, WA 98501
360-754-6595
1-800-828-0199

Bellevue
126-107th N.E.
Bellevue, WA 98004
425-455-0102

Messenger Service Request

Internet Address: www.abclegal.com

20238222

Handwritten initials/signature

LAST DAY Date/Time	Firm Name LEGROS BUCHANAN & PAUL	Phone (206) 623-4990	Ext. 4017	Attorney KF/DH
11/25/09 By 1:30	701 Fifth Avenue, Suite 2500 Seattle, WA 98104-7051			Secretary christie
	Case Name Hogle v. Iquique		ABC Client # LEGROS - 91820 ✓	
	Cause Number 63519-1-I	Client Matter Number 27016	Date 11/25/2009	

Documents

Copy of Supplemental Designation Filed with King Co Superior Ct 11/24/09

Signature Required On Documents
 Return Conformed ABC Slip Only
 Return Conformed Copy
 Conform Original Do Not File

Other Instructions

Please file with Court of Appeals Division I and Return Copy. Thank you.

SPECIAL

RECEIVED
COURT OF APPEALS
DIVISION ONE
NOV 25 2009

Handwritten: ✓ CW 11:42 COA

FILING	County	Superior Court	District Court (Indicate District)	Auditor	Appeals Ct I-Sea	II-Tac	Federal Civil	Court Bnrkpt	Sea	Tac	State Supreme	Sec State
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>						

THIS FORM NOT FOR PROCESS

PROPER USE OF MESSENGER SLIPS: preparation and final checking of returns!! If for any reason you are confused as to the proper manner in which this messenger slip should be filled out when conveying your specific request instructions . . . PLEASE consult the instructions option or pertinent information that should assist you. ABC Messengers will assume no liability for error which occur as a result of sloppily or improperly filled out messenger slips . . . including filings not marked in the proper and designated filing boxes, etc. This new messenger slip is designed for your convenience and to help insure accuracy. It is essential that the various boxes be utilized for the purpose for which they were designed. By doing this you will greatly help ensure that your requests are completed timely and accurately. These messenger slips are double-checked for the accuracy with which each request was completed. However, remember IT IS EXTREMELY IMPORTANT THAT THIS MESSENGER SLIP ALSO BE CHECKED BY OUR CLIENTS UPON ITS RETURN TO MAKE CERTAIN ALL DELIVERY INSTRUCTIONS WERE FOLLOWED AND COMPLETED AS REQUESTED.

IF THERE IS ANY QUESTION WHATSOEVER THAT A REQUEST WAS NOT COMPLETED PRECISELY AS YOU INDICATED CALL OUR OFFICE IMMEDIATELY.

SPECIALS

Handwritten signature

RETURN COPY

HONORABLE JULIE SPECTOR

RECEIVED
COURT OF APPEALS
DIVISION ONE
NOV 25 2009

IN THE SUPERIOR COURT OF WASHINGTON FOR KING COUNTY
AT SEATTLE

KIRK R. HOGLE

Plaintiff,

v.

IQUIQUE U.S., L.L.C.; IQUIQUE US, 1
INC., ARICA FISHING COMPANY, LLC;
REBECCA IRENE FISHERIES, L.L.C.

Defendants.

No. C07-2-35109-48SEA

DEFENDANT/RESPONDENT'S
SUPPLEMENTAL DESIGNATION OF
CLERK'S PAPERS ON APPEAL

(Court of Appeals No. 63519-1-I)

(Clerk's Action Required)

Defendant/Respondent, Arica Fishing Company, LLC, per RAP 9.6 and 9.7,
designates the following documents for transmission to the Court of Appeals, Division I.
The Clerk shall assemble the copies and number each page of the Clerk's supplemental
papers in chronological order of filing and prepare an index to the papers. The clerk shall
promptly send a copy of the index to each party. A copy of this document has been filed
with the Court of Appeals and served on all parties of record.

DEFENDANT/RESPONDENT'S SUPPLEMENTAL
DESIGNATION OF CLERK'S PAPERS ON APPEAL

RETURN COPY

LE GROS BUCHANAN
& PAUL
701 FIFTH AVENUE
SUITE 2500
SEATTLE, WASHINGTON 98104-7051
(206) 623-4990

CERTIFICATE OF SERVICE

The undersigned certifies that on this day she caused to be served in the manner noted below a copy of the document to which this certificate is attached on the following counsel of record:

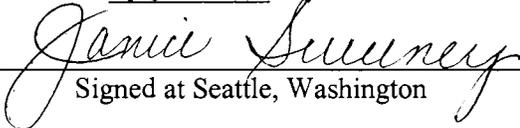
Attorney for Appellants

George H. Luhrs, Esq.
Law Office of George H. Luhrs
701 Fifth Avenue, Suite 4600
Seattle, WA 98104

Via Hand Delivery

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

Dated this 10th day of December 2009.


Signed at Seattle, Washington