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STATE OF WASHINGTON  
COURT OF APPEALS, DIVISION I

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JUDITH A. LONNQUIST and LAW OFFICES OF JUDITH A.  
LONNQUIST, P.S.

Appellants,

v.

REBA WEISS

Appellee.

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**APPELLANTS' SUPPLEMENTAL BRIEF  
ON ATTORNEY'S FEES**

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ..... .iii

I. INTRODUCTION ..... 1

II. ASSIGNMENTS OF ERROR.....2

    A. Assignments of Error.....2

    B. Issues Pertaining to Assignments of Error ..... 3

III. STATEMENT OF THE CASE ..... 4

    A. Procedural History .....4

    B. Statement of Facts .....6

IV. ARGUMENT .....8

    A. The Award of Attorney’s Fees Was  
    Fundamentally Flawed ..... 8

    B. The Trial Court Erred by Concluding That The Hours  
    Incurred by Plaintiff’s Counsel Were Reasonable. .... 12

    C. The Requested Fees Were Not Reasonable..... 14

    D. The Trial Court Erred by Denying Discovery of  
    Plaintiff’s Fee Agreement and Other Pertinent  
    Information ..... 15

    E. The Trial Court’s Imposition of Individual Liability For  
    Attorney’s Fees Was Contrary to Law. .... 16

    F. The Trial Court Erroneously Imposed the Wrong Rate of  
    Interest. .... 18

V. CONCLUSION .....29

APPENDIX .....Following Page 20

## TABLE OF AUTHORITIES

### Cases

<i>Abels v. Snohomish County PUD No. 1</i> , 69 Wn. App. 542, 849 P.2d 1258 (1993), <i>rev. den'd</i> , 122 Wn.2d 1024, 866 P.2d 39 (1994).....	9
<i>Absher Constr. Co. v. Kent Sch. Dist. No. 415</i> , 79 Wn. App. 841, 917 P.2d 1086 (1995).....	10
<i>Bentzen v. Demmons</i> , 68 Wn. App. 339, 842 P.2d 1015 (1993).....	12
<i>Bowers v. Transamerica Title Ins. Co.</i> , 100 Wn.2d 581, 675 P.2d 193 (1983).....	9
<i>Cudney v. AlSCO</i> , 172 Wn.2d 524, 259 P.3d 244.....	2
<i>Dep't of Corrections v. Flur Daniels</i> , 160 Wn.2d 786, 161 P.3d 372 (2007).....	19
<i>Fisher Properties v. Arden-Mayfair</i> , 106 Wn.2d 826, 726 P.2d 8 (1986).....	9
<i>Hume v. American Disposal Co.</i> , 124 Wn.2d 656, 880 P.2d 988 (1994).....	9
<i>Loeffelhotz v. Citizens for Leaders with Ethics</i> , 119 Wn. App. 665, 82 P.3d 119 (Div. I, 2004).....	8, 9
<i>Mahler v Szucs</i> , 135 Wn.2d 398, 957 P.2d 632 (1998).....	12, 14
<i>Martinez v. City of Tacoma</i> , 81 Wn. App. 228, 914 P.2d 86 (1996).....	9

<i>Nordstrom, Inc. v. Tampourlos,</i> 107 Wn.2d 735, 733 P.2d 208 (1987).....	12
<i>Pannell v. Food Services of America,</i> 61 Wn. App. 418, 810 P.2d 952 (1991).....	8
<i>Scoccolo Constr., Inc. v. City of Renton,</i> 158 Wn.2d 506, 145 P.3d 371 (2006).....	19
<i>Scott Fetzer Co. v. Weeks,</i> 114 Wn.2d 109, 786 P.2d 265 (1990).....	8
<i>Smith v. Dalton,</i> 58 Wn. App. 876, 795 P.2d 706 (1990).....	12
<i>State Farm Mut. Auto. Ins. Co. v Johnson,</i> 72 Wn. App. 580, 871 P.2d 1066, <i>review denied,</i> 124 Wn.2d 1018, 881 P.2d 254 (1994).....	12
<i>Steele v. Lundgren,</i> 96 Wn. App. 773, 982 P.2d 619 (1999).....	9, 12
<i>Travis v. Horse Breeders,</i> 111 Wn.2d 396, 759 P.2d 418 (1988).....	9
<b>Statutes</b>	
RCW 19.52.....	20
RCW 49.48.030.....	8, 16, 17
RCW 49.52.070.....	8, 16, 17
<b>Rules</b>	
CR 68.....	5, 8, 17
RPC 1.5.....	1, 6, 14, 16
RPC 1.5(a).....	14, 15

## I. INTRODUCTION

This appeal was filed separately from the original appeal in this case because the trial court did not make its ruling on attorney's fees until August 11, 2011, six months after the original appeal had been filed.<sup>1</sup> The only issues addressed in this brief are those related to Weiss's request for attorney's fees and the trial court's rulings thereon. The specific rulings that Appellants/Defendants challenge are as follows: 1) the trial court's failure to determine the key elements of a lodestar: number of compensable hours and reasonable hourly rate, and yet nonetheless awarding \$128,386.62 in attorney's fees (CP 2227-2231, 2203-2205); 2) the August 11 finding that "the amount of time devoted to the engagement by the Law Offices of Robert B. Gould are [sic] reasonable" (CP 2229); 3) the August 11 finding that "the time and fees expended by the defendants in defense of this matter ... [are] reasonable, in most respects" (*Id.*); 4) the August 11 finding that "the Plaintiff's attorney's fees were reasonable in light of the factors in RPC 1.5 (1)-(4) and (7)" (CP 2230); 5) the February 7 order denying Defendants' motion to compel discovery of information pertinent to the fee request (CP 2225);<sup>2</sup> 6) the imposition of individual liability for such fees (*Id.*); and 7) the August 31 ruling that the "Principal

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<sup>1</sup> Unless otherwise noted, all dates refer to the calendar year 2011.

<sup>2</sup> Defendants had requested production of Plaintiff's fee agreements, billing statements, and itemization of fees and cost incurred on each separate cause of action. (CP 2211-2212).

Judgment Amount and Statutory Costs shall bear interest at five point twenty five percent (5.25%) per annum from two weeks after the date of the hearing with oral argument commencing February 21, until satisfied.” (CP 2204).

On September 27, Defendants filed this timely appeal to challenge the foregoing erroneous rulings. Defendants ask that the Court reverse the challenged rulings, vacate the judgment, and remand the case for further proceedings consistent with this Court’s rulings.<sup>3</sup>

## II. ASSIGNMENTS OF ERROR

### A. Assignments of Error

1. The trial court erred in awarding \$128,386.62 in attorney’s fees, without first having determined the key elements of a lodestar: the number of compensable hours and the reasonable hourly rate(s).

2. The trial court erred by concluding, without sufficient factual basis, that the hours incurred by Plaintiff’s counsel were reasonable.

3. The trial court erred by concluding that the fees requested by Plaintiff’s counsel were reasonable.

4. The trial court erred by refusing to order production of information directly relevant to the proper determination of a reasonable fee in this matter.

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<sup>3</sup> If, based on *Cudney v. AlSCO*, 172 Wn.2d 524; 259 P.3d 244, this Court dismisses Plaintiff’s wrongful discharge claim, then no attorney’s fees are awardable and the judgment on fees herein must be vacated.

5. The trial court erred by imposing, without statutory authority, individual liability for such fees.

6. The trial court erred by awarding, on August 11, interest at the rate of 5.25% commencing six months earlier, on February 21.

**B. Issues Pertaining to Assignments of Error**

1. Where Plaintiff's attorney has made it impossible for the trial court to determine either a reasonable hourly rate or the number of hours reasonably spent on a properly compensable claim, it is error for the trial court to award any fees? (*Assignment of Error #1-3*)

2. Where the trial court failed to include key findings and conclusions in its Findings of Fact and Conclusions of Law, should this Court reverse the attorney fee award? (*Assignment of Error #1-3*)

3. Where the party seeking fees has failed to segregate time spent on compensable claims from that spent on non-compensable claims, is it error for the trial court nonetheless to find that the attorney's hours are reasonable? (*Assignments of Error #1-3*)

4. Where the party seeking fees has failed to segregate time spent on claims based on fee-shifting statutes from those based on non-fee-shifting statutes, is it error for the trial court nonetheless to find that the attorney's hours are reasonable? (*Assignments of Error #1-3*)

5. Where Plaintiff brought five separate claims but ultimately was entitled to fees on only one claim, did the trial court err in awarding her \$128,386.62? (*Assignments of Error #1-3*)

6. Where a litigant, faced with an award of fees which it will be obligated to pay to the opposing party, seeks to discover information critical to the determination of a reasonable fee and to which it otherwise

has no access, is it error for the trial court to refuse to compel discovery of the fee agreement, the billing statements, and itemization of fees incurred on each discrete claim? (*Assignments of Error #4*)

7. Where the applicable statute authorizes an award of attorney's fees only against the employer, did the trial court err in imposing joint and severable liability upon the employer and an individual? (*Assignment of Error #5*)

8. Where the trial court made its determination as to the amount of fees to award on August 11, 2011, was it error to make the judgment effective on February 21, 2011 and impose the rate of interest as of February 21 rather than a lower rate of interest in effect as of August 11, 2011? (*Assignment of Error #6*).

### **III. STATEMENT OF THE CASE**

#### **A. Procedural History**

The procedural history of the underlying case is set forth in Defendants' opening brief (at pp. 6-15). The following history pertains only to the issues regarding the award of attorney's fees herein.

After Plaintiff prevailed on only two of her five claims, for which the jury awarded a total of \$26,538.63. (CP 604-05), she requested an award of attorney's fees of \$312,665.14, inclusive of a multiplier. (CP 1979).<sup>4</sup> Defendants timely issued written discovery, requesting the following: 1) "copies of any fee agreements between any attorney with whom you have sought [representation], and/or retained for purposes of

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<sup>4</sup> Plaintiff did not provide the amount of fees requested without a multiplier. (CP 1979).

representation of you in this case;” 2) “copies of any billings for fees/costs incurred in representation of you in this case;” and 3) “copies of any and all records of time to date incurred by your attorneys, with descriptions of services rendered for work on each of the [five] discrete claims in this case.” (CP 2211-2212).<sup>5</sup> On January 21, 2011, having received no responses to the requested discovery, Defendants conferred with Plaintiff’s attorney, Robert Gould, to no avail. (CP 2209). Defendants then brought a motion to compel, which, on February 7, 2011, was denied without explanation. (CP 2214-2219, 2225).

Also on February 7, 2011, the parties presented oral argument to the trial court on fees and costs, after which the trial court took the matter under advisement. On August 11, 2011, the trial court issued its Findings of Fact & Conclusions of Law Re Attorney’s Fees, *inter alia*, reducing the total fees by 40% attributable to the unsuccessful defamation claim, and awarding Plaintiff \$171,182.16. (CP 2227-2230). On August 18, 2011, because the August 11 Order had not mentioned the CR 68 Offer of Judgment that the trial court previously had ruled was applicable, Defendants filed a Motion to Clarify. (CP 2187-2190). On August 31, 2011, the trial court granted the motion and reduced the fees by an

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<sup>5</sup> The five discrete claims were: intentional infliction of emotional distress, negligent infliction of emotional distress, defamation, wrongful withholding of wages, and wrongful discharge in violation of public policy.

additional 15%. (CP 2206-2207). Also on August 31, the trial court entered its Judgment Re: Attorney's Fees (CP 2203-2205), from which a timely appeal was taken.

**B. Statement of Facts**

On December 21, 2010, Plaintiff's attorney Robert Gould submitted his Declaration in Support of Award of Attorney Fees with appended time records. None of the time records segregated attorney time according to claim. (CP 1983-2095). Mr. Gould's Declaration lists his hourly rate as variable depending on the nature of the work and the year in which his work was performed. (CP 1975).

On January 27, 2011, Defendants filed their Opposition to Plaintiff's fee request, arguing that a greatly reduced award would be appropriate inasmuch as only the wrongful discharge claim remained as a basis for fee recovery, and since Plaintiff's attorneys had not segregated their time, there was no way to determine an appropriate award. Consequently, Defendants proposed that the court reduce the hourly rates in consideration of the RPC 1.5 criteria, apply those rates to a reduced number of hours to account for unproductive and duplicative time, and then divide that figure by 5 to account for the 4 claims upon which no fees were recoverable. (CP 2124).

As noted above, on August 11, 2011, the trial court issued its Findings of Fact and Conclusions of Law regarding fees. (CP 2227-2231). The court made no finding as to the number of hours reasonably expended and no finding as to the reasonable hourly rates. Although that ruling made reference to “plaintiff’s lodestar hours,” it did not set forth the total lodestar figure (CP 2229) – it simply set forth a reduction of 40% of an unspecified number, which it stated to be \$171,182.16. (CP 2230).

Subsequently, the court could not determine what the original lodestar amount was, and accordingly, on August 29, 2011, requested that the parties advise the court as to the “amount that the lodestar figure is reduced to.” (*See Appendix hereto*, Ex. A). Defendants made the necessary mathematical calculations to extrapolate the amount that the court must initially have determined to be the lodestar and advised the court accordingly. (*See Appendix*, Ex. B). The trial court then ordered that two new paragraphs be added to the Findings of Fact and Conclusions of Law to establish an initial lodestar of \$285,303.33 (CP 2207), but still made no findings as to the number of hours and reasonable rates. (*Id.*).

#### IV. ARGUMENT

##### A. The Award of Attorney's Fees Was Fundamentally Flawed.

Plaintiff herein relied on two statutory provisions as authorizing court-awarded attorney's fees: RCW 49.48.030 and RCW 49.52.070. (CP 1967). As noted above, the trial court properly concluded that no fees could be awarded pursuant to RCW 49.52.070 because Plaintiff had not accepted an \$8,000 CR 68 offer of judgment. (CP 2207). Thus the award of fees herein was limited to the provisions of RCW 49.48.030.

RCW 49.48.030 provides:

In any action in which any person is successful in recovering judgment for wages or salary owed to him, reasonable attorney's fees, in an amount to be determined by the court, shall be assessed against said employer or former employer: PROVIDED HOWEVER, That this section shall not apply if the amount of recovery is less than or equal to the amount admitted by the employer to be owing for said wages or salary.

The burden of proving the fee requested is "reasonable," is on the party seeking such recovery, to wit: the Plaintiff. *Loeffelhotz v. Citizens for Leaders with Ethics*, 119 Wn. App. 665, 690, 82 P.3d 119 (Div. I, 2004).

The methodology for determining the award of reasonable attorney's fees is now well established. *See: Pannell v. Food Services of America*, 61 Wn. App. 418, 447, 810 P.2d 952 (1991); *Scott Fetzer Co. v. Weeks*, 114 Wn.2d 109, 786 P.2d 265 (1990). The initial step of the

analysis is to determine the "lodestar," which is calculated by "the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." *Bowers v. Transamerica Title Ins. Co.*, 100 Wn.2d 581, 675 P.2d 193 (1983). The calculation of the lodestar is the "centerpiece" of the reasonable attorney's fee award, but does not end the process of fee setting. *Martinez v. City of Tacoma*, 81 Wn. App. 228, n. 29, 914 P.2d 86 (Div. II 1996).

Washington courts routinely require that where, as here, fee recovery is authorized for only some of the claims pursued in the litigation, the fee award must reflect segregation of time spent on issues for which attorney's fees are authorized from the time spent on other issues. *Hume v. American Disposal Co.*, 124 Wn.2d 656, 880 P.2d 988 (1994); *Abels v. Snohomish County PUD No. 1*, 69 Wn. App. 542, 849 P.2d 1258 (1993), *rev. den'd*, 122 Wn.2d 1024, 866 P.2d 39 (1194). This must include a segregation of time allowed for various legal theories, not only for separate claims. *Travis v. Horse Breeders*, 111 Wn.2d 396, 410-11, 759 P.2d 418 (1988). Segregation of fees is required even where claims overlap or are interrelated. *Loeffelhotz*, 119 Wn. App. at 690; *Travis*, 111 Wn.2d at 411; *Fisher Properties v. Arden-Mayfair*, 106 Wn.2d 826, 850, 726 P.2d 8 (1986). Fees incurred in pursuit of non-fee-shifting claims and unsuccessful claims must be deducted from the lodestar. *Steele*

*v. Lundgren*, 96 Wn.App. 773, 780, 982 P.2d 619 (Div. I, 1999); *Absher Constr. Co. v. Kent Sch. Dist. No. 415*, 79 Wn. App. 841, 847, 917 P.2d 1086 (1995).

Plaintiff originally brought this litigation in May 2008, alleging five (5) causes of action: intentional infliction of emotional distress; negligent infliction of emotional distress; defamation; wrongful withholding of wages; and wrongful discharge in violation of public policy. Only the latter two of those claims allow for recovery of reasonable attorney's fees. The first three claims are not so-called "fee-shifting" claims. All five claims remained in the suit until May 21, 2010, when this court dismissed the two infliction of emotional distress claims. At the time of dismissal, according to the time records submitted by Plaintiff's counsel, he had accrued 398.66 hours of attorney time. (CP 1983-2077). The third claim, defamation, remained in the case until dismissed mid-trial on December 8, 2010. At that time, Plaintiff's counsel had accrued an additional 314.10 hours. (CP 2020-2072). By the time Plaintiff submitted her fee petition, her attorneys had logged a total of 732.21 hours. (CP 2077).

As shown in the attachments to the Declaration of Robert B. Gould, (CP 1883-2095), none of the time attributable to this case was segregated by discrete claim, or even by fee-shifting vs. non-fee-shifting

claims. This critical fact rendered it impossible for the trial court to determine an appropriate lodestar.<sup>6</sup>

Equally problematic was the fact that counsel requested variable hourly rates, initially ranging from \$400 - \$450, depending on the nature of the work, which by 2011 had risen to \$425 - \$500. (CP 1975). None of the attachments designated which work was conducted at which rate. In an attempt to overcome this flaw, counsel suggested that the court use a “blended rate” of \$475. (CP 1978). Accordingly, the court was left to speculate as to the reductions needed to adjust for time attributable to each unsuccessful claim. In so doing, the trial court condoned Plaintiff’s failure to comply with the requirements of Washington law and committed reversible error.

The trial court compounded that error by failing to include in its Findings of Fact and Conclusions of Law any statement of 1) the hourly rate it determined to be reasonable and applied in reaching its fee award, 2) the number of hours it found to be reasonable, 3) the amount of the lodestar, and 4) the number of hours it deducted from the lodestar, if any. The absence of such findings makes review by this Court difficult indeed, and justifies this Court’s reversal of the Findings of Fact and Conclusions

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<sup>6</sup> In its Findings of Fact, the trial court found that Plaintiff’s time and fees were “reasonable in most respects” (CP 2229), but fails to include any finding describing in what respects it determined fees and costs were or were not reasonable, making effective review of the reasonableness finding by this court problematic.

of Law, and the judgment. *See: Steele v. Lundgren*, 96 Wn. App. 773, 783, 982 P.2d 619 (1999). See also: *Mahler v Szucs*, 135 Wn.2d 398, 435, 957 P.2d 632 (1998), where the Supreme Court stated:

Courts should not simply accept unquestioningly fee affidavits from counsel. *Nordstrom, Inc. v. Tampourlos*, 107 Wn.2d 735, 744, 733 P.2d 208 (1987). Consistent with such an admonition is the need for an adequate record on fee award decisions. Washington courts have repeatedly held that the absence of an adequate record upon which to review a fee award will result in a remand of the award to the trial court to develop such a record. *Smith v. Dalton*, 58 Wn. App. 876, 795 P.2d 706 (1990); *Rhinehart v. Seattle Times*, 59 Wn. App. 332, 798 P.2d 1155 (1990); *Bentzen v. Demmons*, 68 Wn. App. 339, 842 P.2d 1015 (1993); *State Farm Mut. Auto. Ins. Co. v Johnson*, 72 Wn. App. 580, 871 P.2d 1066, *review denied*, 124 Wn.2d 1018, 881 P.2d 254 (1994).

The trial court's failure to make the prerequisite findings of fact and conclusions of law constitutes reversible error.

**B. The Trial Court Erred by Concluding That The Hours Incurred by Plaintiff's Counsel Were Reasonable.**

In its Findings of Fact, the trial court asserted that "the amount of time devoted to the engagement by [counsel] in total are [sic] reasonable." (CP 2229). But the "time devoted to the engagement" is not the issue – the issue, as shown above, was the reasonableness of the time spent litigating the only remaining compensable claim, that of wrongful discharge. Without itemization of time spent on that single claim, there

was no basis for such a finding, and the trial court could but speculate as to its reasonableness.

If litigants are permitted to over-recover through billing practices lacking specificity, it is foreseeable that some attorneys will opt not to segregate their time, attributing to any winning claim the bulk of their hours. Such is precisely what happened here. Had Plaintiff's attorney divided his hours evenly across all claims remaining in the case at any given time, he would have had to limit his requested compensation for one-fifth of the time accrued as of May 21, 2010 (79.6 hours), one-third of the time between that point and December 8, 2010 (104.7 hours), and one-half of the remaining time (10 hours), for a total of **194.3 hours**.<sup>7</sup> *See: supra* at 11. Instead, given his proposed rate of \$475 and total request, Plaintiff's counsel requested compensation for **526.6 hours**, *plus* a 25% multiplier. Litigants should not be rewarded, as here, for opaque billing practices. The ruling must be reversed.

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<sup>7</sup> Even this distribution would have been excessive, given the time devoted to the discovery and motions practice to support the unsuccessful claims, but ultimately that led to the dismissal of such claims.

**C. The Requested Fees Were Not Reasonable.**

Plaintiff's attorney requested a fee award of \$312,665.14.<sup>8</sup> Even if that amount were reduced by the 25% requested multiplier, resulting in a requested fee of \$250,132.11, it is simply inconceivable that on a single claim of wrongful discharge, Plaintiff could have amassed that amount of fees.<sup>9</sup> The requested lodestar must have included work on the three unsuccessful claims, all of which were non-fee-shifting.<sup>10</sup> Of course, there is no way to make such determination, since counsel did not segregate his

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<sup>8</sup> In closing argument before the jury, Plaintiff requested \$100,000 in emotional distress damages and \$44,000+ in economic damages. The jury awarded her almost \$120,000 less than Plaintiff requested. Plaintiff's assertion that her attorney invested almost 800 hours to accomplish a verdict that was less than 20% of the amount to which Plaintiff believed she was entitled, can hardly be described as "reasonable." While attorney's fees are not required to be exactly proportionate to the recovery, the trial court certainly should have taken into account RPC 1.5 factor #4's directive to consider "the amount involved and the results obtained." *Mahler*, 135 Wn.2d at 433.

<sup>9</sup> Even without taking into account Plaintiff's proposed multiplier, and accepting Plaintiff's inflated billing rate, as discussed *infra* at 15, Plaintiff requested compensation for 72% of her attorney's fees based on her 20% success rate. Including the multiplier, the requested rate was 90%. Adjusting to a \$400 per hour rate, the requested compensation was 107%. See: RPC 1.5(a) (4), described by the *Mahler* Court as a relevant, albeit not conclusive, consideration in determining the lodestar. *Mahler*, 135 Wn.2d at p. 433.

<sup>10</sup> The time records also reflect that Plaintiff's attorney listed a number of entries that are not properly compensable in a fee-shifting case. For example, counsel listed 256 entries for "Intrafirm conferences with his paralegals, totaling 31.85 hours, plus an additional 4 hours for "advice" to paralegals. In addition, plaintiff's attorney listed 52 entries attributed to travel time from his office to various locations, including the King County Courthouse. These entries total 16.25 hours. Travel time is not properly recoverable herein, either as attorney time or a cost. A party should not have to pay for an attorney's time to travel to the courthouse from a location outside the downtown area simply because the attorney has made a personal choice to maintain his office 18-20 minutes away. Finally, Plaintiff's attorney inappropriately billed for administrative tasks, such as drafting and revising the fee agreement with the Plaintiff. The trial court appears to have disregarded such flaws in the billing records.

time, and the court did not require that he respond to Defendants' discovery request seeking such segregation.

As with the percentage of fees requested, Plaintiff also sought an elevated billing *rate* based on her attorney's failure to document his time. Plaintiff did not acknowledge that her attorney's time should be compensated at his lowest billing rate due to his failure to establish specific fees for each item of work performed. Nor even did Plaintiff propose a middle road, such as an average of her attorney's overall fee range (\$450) or the average of his two separate ranges (\$444). Rather, Plaintiff requested attorney's fees at a "blended" rate higher even than the mean of his rates during his highest billing years, in effect again requesting a reward for her attorney's lack of transparency. In deeming Plaintiff's attorney's rate "reasonable" in spite of this conduct, the trial court condoned Plaintiff's failure to comply with the requirements of Washington law and committed reversible error.

**D. The Trial Court Erred by Denying Discovery of Plaintiff's Fee Agreement and Other Pertinent Information**

RPC 1.5(a) provides, in pertinent part, that:

The factors to be considered in determining the reasonableness of a fee include the following:

- (7) Whether the fee is fixed or contingent; and
- (8) The terms of the fee agreement ...

Notwithstanding the fact that in its various rulings regarding attorney's fees, the trial court asserted that it was relying on the RPC 1.5 factors, anomalously, the court denied Defendants' request for production of that key fee agreement. Its ruling provided no insight as to why such discovery was denied. (CP 2225).

Equally inexplicable was the court's refusal to require Plaintiff to respond to Request for Production No. 3 (CP 2212), seeking itemization of the work performed on each discrete claim, as required by Washington law. *See supra*, p. 11. Defendants' discovery request was directed at this very information and should not have been denied. Ironically, if the discovery had been compelled, the court would not have had to speculate as to the amount of the lodestar. Its failure to compel the discovery was clearly erroneous.

**E. The Trial Court's Imposition of Individual Liability For Attorney's Fees Was Contrary to Law.**

In Plaintiff's Motion for Award of Attorney's Fees and Costs,<sup>11</sup> she relied upon RCW 49.48.030 and RCW 49.52.070 as the statutory authority for her fee recovery. (CP 1967). The latter statute is applicable to claims for unpaid wages, such as that brought by Ms. Weiss. On March 10, 2009, Defendants had served an Offer of Judgment upon Plaintiff's

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<sup>11</sup> Neither party appealed the trial court's disposition of the costs issue, so that matter is not before this Court.

attorney, offering to allow judgment to be taken against them on that claim for \$8,000 plus fees and interest. Ten days elapsed with no acceptance. (CP 2122). Since the jury awarded Plaintiff only \$2,084.63 on that claim, which even when doubled in accordance with RCW 49.52.070, did not exceed \$8,000, Plaintiff was not entitled to recover attorney's fees on her wage claim pursuant to CR 68.<sup>12</sup>

As to her wrongful discharge claim, the only statutory basis for her fee recovery was RCW 49.48.030 which provides:

In any action in which any person is successful in recovering judgment for wages or salary owed to him, reasonable attorney's fees, in an amount to be determined by the court, shall be **assessed against said employer or former employer**: PROVIDED HOWEVER, That this section shall not apply if the amount of recovery is less than or equal to the amount admitted by the employer to be owing for said wages or salary [emphasis added].

On its face, this statutory provision limits liability for fee recovery to employers only. Plaintiff conceded in her proposed judgment on fees, that "the Law Offices of Judith A. Lonnquist, P.S. [is] a Washington professional services corporation." (CP 2204, ll. 22-23). Her claim for fees was statutorily limited to only such corporation, her "former employer." *Id.* Nonetheless, the trial court entered judgment listing "Judith A. Lonnquist, a single person/woman" in two places and expressly

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<sup>12</sup> The trial court so found. (CP 2207). No appeal has been taken from that finding.

imposing joint and several liability. (CP 2204, 11.3, 21). Imposition of individual liability for fees is not statutorily authorized. Thus, the trial court committed reversible error by imposing liability on the individual defendant herein.

**F. The Trial Court Erroneously Imposed the Wrong Rate of Interest.**

The trial court's August 31 Judgment states:

Principal Judgment Amount and Statutory Costs shall bear interest at five point twenty five percent (5.25%) per annum from two weeks after the date of the hearing with oral argument commencing February 21, 2011 until satisfied.

(CP 2204 ¶8). The final line of the Judgment also states: "The total judgment shall bear interest at 5.25% from February 21, 2011, nunc pro tunc, until satisfied." (CP 2204, 11. 24-25).<sup>13</sup> In effect, the trial court thereby awarded prejudgment interest,<sup>14</sup> which is impermissible on the facts of this case.

It is axiomatic that prejudgment interest can be assessed only where the amount of the claim is liquidated. The amount of a claim is liquidated if it can be determined by reference to a fixed standard, without

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<sup>13</sup> The trial court had made no corresponding finding or conclusion in its August 11, 2011 Findings of Fact and Conclusions of Law. Indeed, there is no mention of interest or accrual date in the 8/11/11 FF/COL whatsoever.

<sup>14</sup> Since no judgment on fees was not entered until August 31, there can be no question that what was imposed as of February 21, 2011 can only be construed as "prejudgment."

reliance on opinion or discretion.<sup>15</sup> But where an amount of money cannot be calculated without the use of discretion, no prejudgment interest is awardable. *Dep't of Corrections v. Flur Daniels*, 160 Wn.2d 786; 161 P.3d 372 (2007); *Scoccolo Constr., Inc. v. City of Renton*, 158 Wn.2d 506, 519, 145 P.3d 371 (2006).

With respect to attorney fee awards under fee-shifting statutes, the amount is not determined or determinable until the Court renders a decision as to what fee to award. *Id.* That decision in this case was not made until August 11, 2011. And, of course, no judgment of fees had yet been entered. Interest on Plaintiff's fees, necessarily being "post-judgment," cannot be imposed until the judgment on fees was actually entered. In this case, judgment was entered on fees on August 31.

For the same reasons, the 5.25% interest rate set forth in the judgment is also erroneous. The current rate of judgment interest as of

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<sup>15</sup> For example, as the Court said in *Scoccolo Constr., Inc. v. City of Renton*, 158 Wn.2d 506, 519, 145 P.3d 371 (2006): "Prejudgment interest may be awarded when the claim is liquidated." A claim is liquidated 'where the evidence furnishes data which, if believed, makes it possible to compute the amount with exactness, without reliance on opinion or discretion.'). A claim is unliquidated where the exact amount of the sum to be allowed cannot be definitely fixed from the facts proved, disputed or undisputed, but must in the last analysis depend upon the opinion or discretion of the judge or jury as to whether a larger or a smaller amount should be allowed [internal citations omitted]." Here, of course, given that Plaintiff's counsel had not segregated fees based on claims for which fees were recoverable and those for which they were not, nothing was "fixed and determinable," and exercise of judicial determination was required. The court's determination was not made until August 11, 2011.

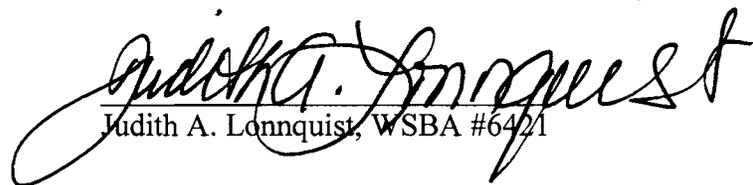
August 17, 2011, pursuant to RCW 19.52 was 4.153% (CP 2238). The Judgment herein charged Defendants interest for a six-month period during which the trial court had yet to establish liability for attorney's fees, as well as charging that interest at an elevated rate no longer in effect as of the time of judgment. In this respect, too, the court's judgment was in error.

#### V. CONCLUSION

For the foregoing reasons, the Defendants request that the trial court's Findings of Fact, Conclusions of Law be reversed and the Judgment vacated.

Dated this 5<sup>th</sup> day of December, 2011.

LAW OFFICES OF  
JUDITH A. LONNQUIST, P.S.



Judith A. Lonquist, WSBA #6421

# Appendix

# Exhibit A

## Judith Lonnquist

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**From:** Robert Gould [rbgould@nwlegalmal.com]  
**Sent:** Monday, August 29, 2011 12:25 PM  
**To:** Chu, Van; 'lojal@aol.com'  
**Cc:** Nicole Jones; 'Ann Holiday'; Reba Weiss  
**Subject:** RE: Weiss v. Lonnquist, No. 08-2-16867-1 SEA: Mtn for clarification

Ms. Chu: In answer to your question the Plaintiff believes that the most conservative lodestar, i.e. smallest and most "beneficial" vis-a-vis Ms. Lonnquist is \$199,711.57. Please see the Gould declaration of 12/21/2010, pages 5 through 7 - Paragraphs 9 and 10.

This is a 30% reduction from my, Mr. Waid and Mr. Krikorian's time. If I may attempt to answer anything further please call upon me. Robert B. Gould, WSBA #4353

---

**From:** Chu, Van [<mailto:Van.Chu@kingcounty.gov>]  
**Sent:** Monday, August 29, 2011 11:05 AM  
**To:** Robert Gould; 'lojal@aol.com'  
**Cc:** Nicole Jones; 'Ann Holiday'  
**Subject:** Weiss v. Lonnquist, No. 08-2-16867-1 SEA: Mtn for clarification

Counsel:

The Court is reviewing Defendant's motion for clarification. Please see the attached proposed order, paragraph 2 on page 2. If the Court is inclined to find that the reasonable reduction is 15%, what do the parties propose is the amount that the lodestar figure is reduced to?

Regards,  
Van Chu

Van Le Chu  
Law Clerk/Bailiff to Judge Steven González | King County Superior Court  
516 Third Ave – Courtroom W-941 | Seattle, WA 98104-2381  
Phone: (206) 296-9145 | Fax: (206) 296-9419  
[Van.Chu@kingcounty.gov](mailto:Van.Chu@kingcounty.gov)

<http://www.kingcounty.gov/courts/SuperiorCourt/judges/gonzalez.aspx>

**IMPORTANT:** In order to avoid inappropriate ex parte contact, you are hereby directed to forward this communication to all other counsel not already copied on this email.

# Exhibit B

LAW OFFICES OF  
JUDITH A. LONNQUIST, P.S.

1218 THIRD AVENUE, SUITE 1500  
SEATTLE, WA 98101-3021  
TEL 206.622.2086 FAX 206.233.9165  
LOJAL@aol.com

JUDITH A. LONNQUIST\*  
WENDY L. LILLIEDOLL\*\*

\* ALSO ADMITTED IN ILLINOIS  
\*\* ALSO ADMITTED IN CALIFORNIA

MITCHELL A. RIESE, OF COUNSEL

August 30, 2011

The Honorable Steven Gonzalez  
King County Superior Court  
Judge's Mailroom  
Third & James  
Seattle, WA 98101

Re: *Weiss v. Lonquist*  
Case No. 08-2-16867-1

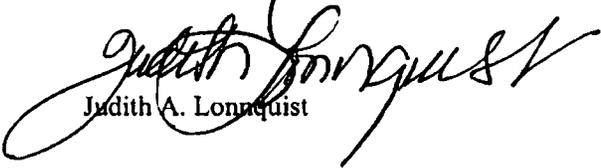
Dear Judge Gonzalez:

In response to your request that the parties propose the amount to which the lodestar be reduced given the Court's inclination that a reasonable reduction for the rejection of the offer of judgment regarding the willful withholding of wages claim would be 15%, it is necessary to calculate the amount determined by the court as the original lodestar before any reductions. Using math, and based upon the Court's earlier determination that a 40% reduction would bring the fee award to \$171,182.00, it would appear that the pre-reduction lodestar was determined to be \$285,303.33. A forty percent deduction for the unsuccessful defamation claim equaled \$114,121.33, leaving the amount originally awarded by this court of \$171,182.00. An additional reduction of 15% would be \$42,795.50 (15% of \$285,303.33). These mathematical calculations result in a reduced fee award totaling \$128,386.50, as shown below:

Gross lodestar	=	\$285,303.33
Minus 40% for unsuccessful defamation claim (\$285,303.33 x .40)	-	\$114,121.33
Minus 15% for rejected offer of judgment on willful withholding of wages claim (\$285,303.33 x .15)	-	<u>\$ 42,795.50</u>
TOTAL REDUCED AWARD	=	\$128,386.50

Attached is a proposed order incorporating the foregoing calculations.

Sincerely,

  
Judith A. Lonquist

JAL/lj  
Encl.  
cc: R. Gould

COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE

LAW OFFICES OF JUDITH A.  
LONNQUIST, P.S. and JUDITH  
A. LONNQUIST,

Appellants,

v.

REBA WEISS,

Respondent.

NO. 66626-6

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5<sup>th</sup> day of December, 2011, I caused to be delivered a true and correct copy of Appellant's Supplemental Brief on Attorney's Fees and this document by method indicated below and addressed to the following:

Robert B. Gould  
2110 North Pacific Street  
Suite 100  
Seattle, WA 98103-9181

- VIA REGULAR MAIL
- VIA CERTIFIED MAIL
- VIA LEGAL MESSENGER
- VIA FAX
- VIA HAND DELIVERY

DATED December 5, 2011.

