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**I. ASSIGNMENTS OF ERROR**

Respondent is not seeking review and accordingly has no assignments of error.

**II. STATEMENT OF THE CASE**

**A. Factual History.**

Respondent is accepting the Statement of the Case as set forth by Appellant except for the statements set forth herein.

RoseAnne Larson is the surviving wife of the decedent. CP at 1. She is named as Executrix of the Estate of Raymond M. Larson in his Last Will and Testament. CP at 4. She signed an oath when appointed to undertake her responsibilities under law as required by the dictates of the Testator and the surviving Trustee. As stated by Appellants in their brief, Raymond M. and Gene M. Larson established a trust on November 1, 1989 to be distributed according to the dictates therein and “any amendments made to said trust agreement subsequent to the date of said Trust. “ CP at 309-11.

It is agreed that the plain language of the Raymond M. and Gene M. Larson Trust establishes its principle purposes in Paragraph 3.1 of the Trust document, and that both Raymond and Gene Larson agreed that they would provide for their care and welfare during their lifetimes and to:

“ . . . ensure an orderly and economical transition of the Trustor’s assets after their deaths to the distributees and beneficiaries identified

in Schedule B, attached hereto, and made a part of this Agreement by this reference.” CP at 272 (¶ 3.1 of the Raymond M. and Gene M. Larson trust.

Appellants argue in their Statement of the Case that the living trust created by Raymond and Gene Larson provides for two separate trusts including a second “catch-all” trust (p. 5 of Appellants’ Brief) which is set forth in the Trust document, and that this second Trust is labeled as the “Marital Trust.” CP at 289-90. Provisions for the “Marital Trust “ are contained within Paragraph B.2.3 of the Trust documents. Nothing is stated in the Trust Agreement that this shall constitute a second trust. Appellants are urging that this “second” trust has its own amendment or modification provisions that “. . . narrowly permits the surviving Trustee to make amendments.” P. 5 of Appellants’ Brief.

Schedule B is a part of the Living Trust Agreement and was signed and approved by both Raymond and Gene Larson. CP at 295. The Living Trust Agreement provides that upon the death of the first Trustor (Gene Larson) “. . . that *all assets of the Trustors*, regardless of their nature or location shall continue in trust for the benefit of the survivor Trustor and *shall be called the ‘Marital Trust.’*” (Emphasis added) CP at 289. Schedule B then goes on to state how the Living Trust shall provide for the Survivor Trustor in Section II, Paragraph B.2.3 (a). CP at 289. The Living Trust then provides what is to happen when the surviving Trustor (Raymond Larson) dies in Section II,

Paragraph B.2.3 (b) CP at 290. The Trust Agreement which was signed and approved by both Raymond and Gene Larson contains a general power of appointment in Schedule B providing that when this happens the principal and undistributed income is to be distributed to

“ . . . such person, persons or organizations as the surviving Trustor has specified in his or her last will or in a written and notarized amendment to the Paragraph B.2.3. . . ” CP at 290.

The Living Trust Agreement signed and approved by both Raymond and Gene Larson then goes on to provide in Schedule B, Section II, paragraph B.2.3 (b) (2) that in the event that the surviving Trustor (Raymond Larson) does not exercise his or her power of appointment and does not provide for the distribution of the corpus in his or her will or amendment to the Trust that then it will be “. . . distributed as provided in Section III of this Trust Agreement.” CP at 290.

On October 2, 2001 Raymond Larson signed and approved an Amendment to the Living Trust which was prepared by the Wills and Living Trust Center under the supervision of Griffin and Williams, PS, attorneys at law. CP at 302-07. This amendment does three things, as follows: 1) changes the name of the Living Trust, 2) changes the name of the corporate trustee, adds Raymond Larson’s wife as a co-trustee, and limits the compensation to be paid to the trustees, and 3) provides for the distribution of the corpus of the trust upon the demise of

Raymond Larson under his general power of appointment with a life estate of the income to his wife, RoseAnne Larson, and upon her demise the remainder to a catholic church and the Arch Diocese of Seattle in equal shares. CP at 302-03. The 2001 Amendment To Trust contains two notarized affidavits. CP at 06-07.

**B. Procedural History.**

RoseAnne Larson has never brought a motion seeking court approval for her to be appointed as successor trustee of the Raymond M. and Gene M. Larson Trust as stated by Appellants in their Brief on page 9. RoseAnne Larson did seek and obtain an order appointing her as a successor trustee of the Tacoma Industrial Trust, a business trust used in the business pursuits of Raymond Larson, and which post became vacant on the death of Raymond Larson. CP at 49.

**III. SUMMARY OF ARGUMENT**

The appeal does involve the construction of a living trust agreement. Raymond Larson did make attempted amendments to the trust provisions during Gene Larson's life time without her joining in the amendment procedure. It is admitted that Mr. Larson did not have the authority, acting alone to accomplish some of those amendments.

The 2001 amendments to the living trust were done after Gene Larson had died. Appellants are of the position that Paragraph 2.1 of the trust absolutely prohibits the surviving trustor from amending the provisions for distribution of the trust, even though Section B.2.3 of

the trust specifically contains a general power of appointment and grants the surviving trustor the ability to name the residual beneficiaries by way of last will or notarized amendment to the trust, and if he or she does not do so then the distribution shall be in accordance with Section III of Schedule B.

Nothing is contained in the Living Trust Agreement that can be construed to provide for two separate trusts, as Appellants have suggested. On the contrary, Schedule B in Section II, Section B.2.3 provides that “. . . *all assets of Trustors, regardless of their nature or location, shall continue in trust for the benefit of the survivor Trustor and shall be called the ‘Marital Trust.’*” (Emphasis added) CP at 289. This interpretation is not irreconcilable with Paragraph 2.1 as suggested by Appellants. Conversely, the purpose of the trust as specified in Paragraph 3.1 is to give each of the Trustors a lifetime income, and then to pass on the corpus as authorized and provided in Schedule B. Schedule B, Section II, paragraph B.2.3 (b) (1) specifically grants a general power of appointment to the surviving Trustor to name the beneficiaries by way of last will or notarized amendment to the Trust. The surviving Trustor, in making the provision for the residual beneficiaries and in providing for a life estate to his second wife is not “acting alone” in amending or revoking the trust since that power is granted to him by Gene Larson when she

gave him the power of appointment set forth in Schedule B, Section II, paragraph B.2.3 (b) (1). CP at 290.

The 2001 amendments to the living trust agreement contain two notarizations. CP at 445-6. The requirement of Schedule B, Section II, paragraph B.2.3 (b) (1) is that the amendment (document) be notarized. CP at 290. There is no requirement that Raymond Larson's signature be notarized as suggest by Appellants at page 14 of their brief.

#### IV. ARGUMENT

##### A. Standard of Review.

It is agreed that the Court of Appeals engages in a de novo review of the appealed issues in this matter. *Jones v. Allstate Ins. Co.*, 146 Wn.2d 291, 300; 45 P. 3d 1068 (2002). It is also agreed that the interpretation of a writing is a question for the court to determine. *In re Estate of Larson*, 71 Wn. 2d 349, 354; 428 P. 2d 558 (1967).

Further, it is agreed that at the trial level no issues of material fact were raised and that the trial court was confronted with pure issues of law. We also agree that the critical issue before this Court is the construction of the 1989 Raymond M. and Gene M. Larson Trust, and that this review is on a de novo basis.

##### B. Law Regarding Trust Amendments.

Here again, we agree with Appellants that this Court looks first to the Trustors' intent as manifested in the trust agreement when

making an interpretation thereof. *In re Estate of Preston*, 59 Wn. 2d 11, 15; 365 P. 2d 595 (1961); *In re Estate of Larson*, 58 Wn. 2d 673, 678; 364 P. 2d 494 (1961). The Courts examine the entire trust instrument to determine to what extent it can be amended or modified, and what powers are reserved by the Trustor to accomplish this. *In re Estate of Button*, 79 Wn. 2d 849, 852; 490 P. 2d 731 (1971)

**C. The Terms of the Raymond M. and Gene M. Larson Trust Grant a Power of Appointment to the Surviving Trustor to Designate the Beneficiaries After the Demise of the Surviving Trustor**

Appellants are relying on Paragraph 2.1 of the Trust Agreement (CP at 272) ignoring the general power of appointment granted to the surviving Trustor and contained in Schedule B, Section II, Paragraph B.2.3 (b). CP at 290. This power of appointment is available to the surviving trustor, so if Gene Larson had survived Raymond Larson, she would have had the power to name the residual beneficiaries by will or notarized amendment to the Trust. Appellants are of the position that Paragraph 2.1 of the Trust trumps the power of appointment that *both* trustors (Gene and Raymond Larson) granted to themselves.

**1. Paragraph 2.1 and Schedule B. Section II, Paragraph B.2.3 (b) Are Not Conflicting When Reading the Entire Trust Agreement as a Whole.**

Appellants advance the theory that the act of *both* trustors is required to make provision for the residuary beneficiaries through a power of appointment done after the demise of the first trustor, citing *Williams v. Springfield Marine Bank*, 475 N. E. 2d 1122, 1125 as authority. This is obviously something that cannot be accomplished since one of the Trustors is deceased. A general power of appointment expressly granted to the surviving trustor is not present in the *Williams* court facts. We agree that when the trust instrument requires both settlors acting jointly to accomplish a revocation or amendment to the terms of the trust, then both must join. But here the 2001 amendments to the Trust, with the exception of naming RoseAnne Larson as a co-trustee are within the powers granted to the surviving trustor by the trust instrument. In other words, the surviving trustor, Raymond Larson was acting within the power and authority expressly granted him by the trust document *approved by both trustors* acting jointly in making the 2001 amendments, save and except naming RoseAnne Larson as a co-trustee.

Appellants go on to cite the RESTATEMENT (THIRD) OF TRUSTS ¶ 63, cmt. K as authority for their theory that action of both spouses during their lifetime is necessary to make an amendment to the trust. But note that the commentary states “. . .[i]n the absence of a contrary provision in the terms of the trust.” (Emphasis added.) The power of appointment is present in the trust and authorizes the action

taken by Mr. Larson in designating the beneficiaries on his demise.

We do not need to go beyond the provisions of the trust instrument to find that the surviving trustor had the power and authority to name the residuary beneficiaries.

Appellants argue that when the Co-Trustors granted one person the right to make amendments, they did so explicitly in the trust agreement. Page 20 of their Brief. They state that the Co-Trustors carefully contemplated and set forth when a single Trustor could take action, “acting alone.” They ignore the fact that the Co-Trustors, acting jointly did set forth an express power of appointment in Schedule B, Section II.

“A general power of appointment is a right to use or appropriate property subject to that power. The power is conveyed by will or trust from one person (the donor, testator, or trustor) to another (the donee or holder). The holder of the power receives all rights to appoint the property to him-or herself or others in accordance with the terms of the will or trust instrument. If the power is exercisable in favor of the holder, it is a general power of appointment, and the value of all property subject to that power will be included in the gross estate of the holder at the date of death.” IRC Sec. 2041 (b) (1) *The CPA Journal*, November 1991.

Appellants argue at page 22 of their brief that Gene Larson was “not a part of these decisions” in making the amendments and go on to state that therefore the amendments are legally invalid in their entirety. We agree that the Trust Agreement does not authorize the surviving trustor to name RoseAnne Larson as a co-trustee. However, the Trust Agreement expressly authorizes the surviving Trustor to designate the

residuary beneficiaries. The Trust Agreement does authorize the surviving Trustor to name the Trustee or Trustees with limitation. The 2001 Amendments remove Randall Larson as a Trustee, and this act is within the rights granted to the surviving Trustor. CP at 281.

**2. Paragraph 2.1 Prohibits Amendments or Revocation That are Contrary to the Other Co-Trustor's Interest.**

The question is whether the 2001 Amendments constitute an amendment or revocation of the Trust Agreement that is contrary to the other co-trustor's interest. The Trust Agreement expressly makes provision for a general power of appointment to the surviving trustor. Both trustors made provision for this power when they executed and approved the entire Trust Agreement. So looking at the entire agreement together with its purpose as set forth Paragraph 3.1 (CP at 272), it is apparent that both Trustors were making provision for an income to the survivor during his or her lifetime, and then to pass the corpus on pursuant to Schedule B. And Schedule B provides for a general power of appointment exercisable by the surviving Trustor, and if not exercised, then by default to the beneficiaries as set forth in Section III of Schedule B. CP at 290. How can this be contrary to the co-trustor's interest when this is exactly what both trustors expressly provided in the Trust Agreement?

Appellants again cite the RESTATEMENT (THIRD) OF TRUSTS ¶ 63, cmt. k and RCW 26.16.030 as authority for their

position that Paragraph 2.1 operates as an absolute prohibition to render inoperative an express power of appointment that is granted to the surviving Trustor. Appellants conveniently omit the fact that the terms of the trust provide for the general power of appointment to each Trustor. The *Restatement* authors comment that

“ . . . [i]f a revocable trust has more than one settlor, *unless the terms of the trust provide otherwise*, each settlor ordinarily may revoke or amend the trust *only* with regard to that portion of the trust property ‘attributable to the settlor’s contribution.’  
“ (Emphasis added.)

Interestingly, Paragraph 3.2 of the Trust provides that each Trustor shall receive provision from the Trust during their lifetimes to be paid from the income and principal. CP at 272. The Trust goes on to provide in Paragraph 3.3 that:

“Upon the death of each of the Trustors, Trustee shall administer the Trust assets, or pay them over, in the manner designated in Schedule B.” CP at 272

Appellants argue at page 25 of their Brief that Gene Larson’s stated purpose in settling trust was to provide for her children and grandchildren. We fail to see that this is a stated purpose of the Trust Agreement. The plain language of the Trust Agreement, read as a whole is to provide for the Trustors during their lifetime, and then to distribute the corpus in accordance with the last will of the surviving trustor or a written and notarized amendment, and if that power of appointment is not exercised then in accordance with Section III of Schedule B.

**3. The “Marital Trust” Includes All Assets of the Trustors, Regardless of Their Nature or Location.**

**a. The Trust Agreement Provides for One Trust Only After the Demise of the First Trustor , and That Trust is the “Marital Trust.”**

Appellants are of the position that the Trust Agreement provides for two separate trusts. They state that the “Marital Trust” consists of the surviving Trustor’s assets that have not already been transferred to the Trust, and that all other assets are outside the Marital Trust. Page 28 of Appellant’s Brief.

This theory cannot be supported by the provisions of the Trust Agreement. The Trust Agreement in Schedule B, Section II, Paragraph B.2.3 provides, in part:

*“Upon the first of Trustors’ deaths, all assets of Trustors, regardless of their nature or location shall continue in trust for the benefit of the survivor Trustor and shall be called the ‘Marital Trust’.”* (Emphasis mine.) CP at 289

The Trust Agreement goes on to state what happens upon the death of the surviving Trustor and provides for the general power of appointment. CP at 290.

The Trust Agreement then provides”

*“in default of any such appointment, the same shall be distributed as provided in Section III of the Trust Agreement.”* CP at 290 (Emphasis added.)

Raymond Larson did complete a written and notarized amendment to Paragraph B.2.3 in the form of the 2001 Amendment to Trust. CP at 302-7.

It seems apparent that “all assets regardless of their nature or location” includes all assets, whether they are an interest in trust or otherwise. And the word “Trustors” plural is set forth in the Trust Agreement so as to include all assets of both Trustors in the Marital Trust. The Trust Agreement does not state “all their other assets’ as suggested by Appellants at page 32 of their Brief.

Schedule B, Section II, Paragraph B.2.3 (a) (CP at 289) makes provision for a lifetime income to the surviving Trustor to be paid from the Marital Trust. If there are two separate trusts created by this Trust Agreement, then there is no provision for a life estate to the surviving Trustor as to the other trust. This kind of result does not comply with the purposes of the Trust Agreement as set forth in Article III. CP at 272-3.

The plain language of the Trust Agreement is that the Trustors have a life estate from the Trust (a single trust) and that the residual is administered in accordance with Schedule B which includes the power of appointment to designate the beneficiaries (“ . . . such person, persons, or organizations as the surviving Trustor has specified. . .” CP at 290.

**b. The Trial Court did not Ignore Paragraph 2.1 in Finding that the Surviving Trustor had Express Authority to Make Notarized Amendments to the Beneficiaries of the Trust Pursuant to Section II, Schedule B.**

As previously stated, Paragraph 2.1 of the Trust Agreement is a prohibition for a Trustor to make any amendments or revocations to the trust, *acting alone*, as would affect the other Trustor's interest. The Trustors, and both of them *acting together* provided for a general power of appointment as to residuary beneficiaries after the demise of the surviving Trustor in the integrated Trust Agreement. Raymond Larson was not *acting alone* when he signed and executed the 2001 Amendment to Trust before two witnesses and two notaries.

Appellants cite *In re Estate of Button*, 79 Wn. 2d 849 at 852 (1971) in support of their position that Raymond Larson's 2001 Amendment to Trust was a unilateral act. Page 34 of Appellants' Brief. In that case our Supreme Court held that a settlor of a trust has the power to revoke *if and to the extent that the trust agreement so provides* citing RESTATEMENT (SECOND) OF TRUSTS, ¶ 330. Appellants are overlooking the fact that the Trust Agreement gives the settlors a general power of appointment to designate beneficiaries, thus granting a power to amend with regard to naming the beneficiaries of the corpus.

Appellants state further in page 34 of their Brief that Gene Larson provided that her interest in the community estate go first to her surviving spouse and then to her two children and eight grandchildren. Respondents fail to find that Gene Larson evinced irrevocably that her interest go to her children and grandchildren (citing CP at 272 and the Paragraph 2.1 prohibition which makes no reference to children or grandchildren) where the Trust Agreement provides that she is granting her survivor a general power of appointment to name the beneficiaries, which was a mutual (both Trustors) grant.

**. D. The 2001 Amendment to the Larson Trust is Written and Contains Not One but Two Notarized Affidavits of the Subscribing Witnesses.**

Appellants are urging this Court to find that the 2001 Amendment was not notarized.

The Trust Agreement, Schedule B, Section II, Paragraph B.2.3 (b) (1) provides that the general power of appointment be accomplished by last will or “. . . in a written and notarized amendment to this Paragraph B.2.3 . . .” CP 290.

The 2001 Amendment to Trust is in six pages. CP at 441-6. The third page is signed by the Trustor, Raymond M. Larson. CP at 443. The fourth page is a Witness Statement, or certification of two witnesses, that Raymond M. Larson, as “Signor”, subscribed his name

to the instrument in the presence of the witnesses and that he declared to the witnesses that this was Mr. Larson's amendment. CP at 444. The Witness Statement goes on to provide that they subscribed their names thereto as "Witnesses" at Mr. Larson's request and in his presence, and in the presence of each other, and that at the time of Mr. Larson's signing he appeared to be of sound and disposing mind and not under any restraint, to the best of the knowledge and belief of the witnesses.

The fifth page is an affidavit of Angela K. Donovan, one of the witnesses. CP at 445. In her affidavit, she states that she was acting under the request of the Trustor, Raymond M. Larson, and having been first duly sworn on oath deposes and says that the Amendment was executed by the Trustor on the date set forth in the Amendment, that the Trustor declared the document to be his amendment, and that he invited Angela K. Donovan to act as a *witness* and to *subscribe* her name to it as a witness. She goes on to state that Raymond M. Larson signed the document in her presence, and in the presence of a second witness, and that Mr. Larson appeared to be of sound and disposing mind and memory and acting freely and without duress or undue influence, and that the witnesses were competent.

The witness signature is notarized and sealed by William C. Donovan, who certifies in his notarization that he knows or has satisfactory evidence that Angela Donovan is the person who appeared before him, and that said Angela Donovan, after first being duly sworn,

acknowledged that she signed the instrument and acknowledged it to be her free and voluntary act for the uses and purposes mentioned in the instrument. CP at 445.

The sixth page is, if you will, a reversal of the fifth page as to the other witness. It is the affidavit of William C. Donovan, notarized and sealed by Angela K. Donovan. CP at 446.

**1. The 2001 Amendment To Trust Complies  
with the Requirements of the Trust Agreement,**

There can be no dispute that the 2001 Amendment to Trust is in writing. The question before the Court is whether the 2001 Amendment to Trust is notarized as required by the Raymond M. and Gene M. Larson Trust.

RCW 42.44.010 (2) sets forth the definition of a Notarial act and notarization, as follows:

“(2) “Notarial act” and “notarization” mean (a) taking an acknowledgment; (b) administering an oath or affirmation; (c) taking a verification upon oath or affirmation; (d) *witnessing or attesting a signature*; (e) certifying or attesting a copy; (f) receiving a protest of a negotiable instrument; (g) *certifying that an event has occurred or an act has been performed*; and (h) any other act that a notary public of this state is authorized to perform. “ (Italics added)

The notaries in this case acted in witnessing or attesting to a signature, and they acted in certifying that an event had occurred or an act had been performed.

The standards for notarial acts are contained in RCW 42.44.080. In this statute, it is stated, in part, as follows:

“A notary public is authorized to perform notarial acts in this state. Notarial acts shall be performed in accordance with the following, as applicable: . . .

*(4) In witnessing or attesting a signature, a notary public must determine, either from personal knowledge or from satisfactory evidence, that the signature is that of the person appearing before the notary public and named in the document.*

. . .

*(7) In certifying that an event has occurred or an act has been performed, a notary public must determine the occurrence or performance either from personal knowledge or from satisfactory evidence based upon the oath or affirmation of a credible witness personally known to the notary public*

. . .

*(8) A notary public has satisfactory evidence that a person is the person described in a document if that person: (a) is personally known to the notary public; (b) is identified upon the oath or affirmation of a credible witness personally known to the notary public; or (c) is identified on the basis of identification documents. “ (Italics added)*

In reviewing pages five and six of the 2001 Amendment to Trust, it is quite apparent that on both pages a notary public acted in witnessing or attesting a signature and in certifying that an event had taken place. This is stated on the face of the document and it is presumed to be valid in all respects.

**2.. The Witnesses To The 2001 Amendment to Trust Are Not Signers As Contemplated By The RCW.**

RCW 42.44.080 (10) provides as follows:

“A notary public is disqualified from performing a notarial act when the notary is a *signer* of the document which is to be notarized.” (Italics furnished)

Webster’s Dictionary defines “sign” as follows:

“sign (vb). *To identify (a record) by means of a signature, mark or other symbol with the intent to authenticate it as an act or agreement of the person identifying it. <both parties signed the contract>*

2. To agree with or join < the commissioner signed on for a four-year term>”

In the case of *Spokane & I. Lumber Company vs. Loy*, 21 Wash 501, 58 Pac. 672 it was held that a notary who was also a surety on a bond is not disqualified to take affidavits of two of his co-sureties because of his interest in the bond.

In *58 Am Jur 2d, Notaries Public, § 11 p. 434*, it is stated as follows:

“One who is a party to an instrument, no matter how small or minimal his interest therein, cannot act as a notary public with reference thereto. However, the employment of an attorney in a matter does not generally give a notary any interest which will invalidate an official act done by him.”

The 2001 Amendment to Trust is not a *will* and the execution of this instrument does not need to meet the requirements that are present in executing a will. The requirement that is present is that the *amendment* must be written and notarized. It is both written and notarized.

There is no case in Washington law, or in any other jurisdiction that we can find, that holds that when a notary also acts as a witness to

a signature of the person to be bound by the instrument, that he is then disqualified to act as a notary. The witness is acting as a witness and not as a signer, and is not thereby disqualified from acting also as a notary. Also, in this case there are cross-affidavits, both notarized in proof of the validity of the signature of the Trustor, Raymond M. Larson.

**3. The 2001 Amendment is Notarized, and the Underlying Reason for this Requirement is Met.**

Appellants argue that since Mr. Larson's *signature* is not notarized, the amendment is procedurally infirm and should be declared invalid. Page 39 of Appellant's Brief. Again, the Trust Agreement states that the *amendment* must be in writing and that it must be notarized. There is no requirement that the signature of the signor of the amendment be notarized.

The purpose for requiring a notarized writing is to remove doubt as to the authenticity of the writing. Here, the witnesses both state that Mr. Larson executed the Amendment, that he declared it to be his amendment to the Trust, that he invited the witness to subscribe his or her name to it, that Mr. Larson signed the document in the Witness' presence and in the presence of a second witness, and that Mr. Larson appeared to be of sound and disposing mind and memory, acting freely and without duress or undue influence, and finally that the witnesses were competent.

Respondents argue that because the document is notarized in the fashion that it is that there can be no real doubt as to the documents authenticity.

**E. The Respondent is Entitled to Her Reasonable Expenses, Including Attorneys' Fees, Incurred in this Appeal.**

Appellants are requesting that this Court award them their reasonable expenses and attorneys' fees incurred in bringing this appeal. They cite RCW 11.96.A.150(1) as authority for such an award. This is a two-edged sword.

RCW 11.96.A.150(1) permits an award of attorneys' fees and costs to any party from any party to the proceedings, or from the assets of the estate or trust or from a nonprobate asset that is the subject of the proceedings. There does not appear to be a requirement that a party must prevail in order to be considered for an award.

Respondent estate is appearing in this matter through the Executrix and surviving wife of the decedent, who thus far has had the burden of providing for the costs and attorneys' fees expended and to be expended in this appeal. Since the nature of this cause from the outset is to construe the Trust Agreement together with the amendments to it, it appears equitable to Respondent that the assets of the Trust should bear the actual cost and fees incurred by both Appellants and Respondent in this matter. Certainly the Executrix

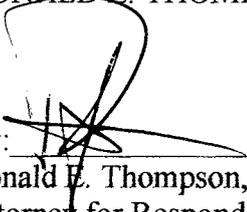
should not be required to suffer these costs and fees. Since there has been a legitimate dispute concerning the interpretation of the Trust Agreement, it appears that likewise it would not be equitable for the Larson Children to suffer costs and fees out of their pockets.

**V. CONCLUSION**

Respondent respectfully requests that the Trial Court's February 17, 2006 and March 10, 2006 orders be affirmed and that this Court make an award of actual attorneys' fees and costs to both Appellants and Respondents to be paid from the Trust assets.

RESPECTFULLY SUBMITTED this 7<sup>th</sup> day of August, 2006.

RONALD E. THOMPSON, PLLC

By:   
\_\_\_\_\_  
Ronald E. Thompson, WSBA #4005  
Attorney for Respondent Estate of  
Raymond M. Larson, Deceased

**Certificate of Service**

I certify that on the 7<sup>th</sup> day of August, 2006, I personally served a true and correct copy of the foregoing Brief of Respondent on counsel for Appellants at the following address:

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Deceased

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Eisenhower & Carlson, PLLC

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