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STATE OF WASHINGTON
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NO. 36127-2-II

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

In re:

THE IRREVOCABLE TRUST OF MICHAEL A. McKEAN

MICHAEL A. McKEAN,
Appellant,

vs.

COMMENCEMENT BAY GUARDIANSHIP SERVICES,
Respondent.

BRIEF OF RESPONDENT

Robert B. Nettleton, WSBA # 17403
Attorney for Commencement Bay Guardianship Services

NEIL, NETTLETON & NEIL, P.S.
5302 Pacific Avenue
Tacoma, WA 98408
(253) 475-8600
Facsimile (253) 473-5746

ORIGINAL

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Appendix:

Appendix A -1	Findings of Fact and Conclusions of Law
Appendix A-2	Amended Statement of Arrangements

A. INTRODUCTION:

Michael McKean (Michael¹) appeals for the sole purpose of voiding orders that ended years of his manipulation of the Irrevocable Trust for Michael Allison McKean's Children (Irrevocable Trust).² Michael prosecutes his appeal without providing a report of the trial proceedings. The findings of fact of the trial court are, therefore, verities on appeal. *Morris v. Woodside*, 101 Wash.2d 812, 815, 682 P.2d 905 (1984).

Michael is someone who disregards proper legal and administrative procedures. FF³ 140. Michael, when he does not get what he wants through the legal system, acts as he so desires without regard to proper procedure or the rule of law. FF 141. Michael's pattern of self-dealing with regard to the Irrevocable Trust, at times, was detrimental to the Irrevocable Trust. FF 171. Michael's conduct made him a de facto trustee of the Irrevocable Trust.⁴ FF 170. Michael is not credible. FF 119. Michael acted in bad faith. FF 168.

A dismissal of the orders entered below will, in part, do the following:

1. Set aside a judgment in favor of the Irrevocable Trust and against Michael for missing rental income in the amount of \$19,891.80;

¹ The use of an individual's first name is to help avoid confusion. No disrespect is intended.

² Michael's stated goal is to have all funds awarded to the Irrevocable Trust returned to him. CP 416, line 11-12.

³ FF is used to identify a "Finding of Fact". The Findings of Fact and Conclusions of Law are attached as Appendix A-1.

⁴ Michael's control of the Irrevocable Trust was contrary to the "estate plan" to avoid inclusion of trust assets in his estate upon his death. Michael acknowledged "I was not the Trustee for the specific reason that were I the Trustee upon my death, that control would cause the Trust assets to be included in my estate." CP 596, line 20-21.

2. Set aside a judgment in favor of the Irrevocable Trust and against Michael for a rental security deposit of \$1,300 that Michael took;
3. Set aside a determination of Irrevocable Trust ownership of stock in Northwest Community Housing, Inc., which lead to the Irrevocable Trust receiving \$20,802.47 from Northwest Community Housing, Inc. The result of which would be a return of the funds to Michael;
4. Set aside a determination of the Irrevocable Trust's actual percentage ownership of equity interest in 66 limited partnerships arising out of a transfer that Michael made to the Irrevocable Trust in 1992;
5. Set aside the determination that Michael could not recover from the Irrevocable Trust the equity interests in 70 limited partnerships that Michael fraudulently conveyed to the Irrevocable Trust in 1997⁵;
6. Set aside the Irrevocable Trust's receipt of funds based on its equity interest in certain limited partnerships. The immediate result of which will be a return of funds to Michael in the amount of \$68,494.01⁶; and
7. Reinstate Michael's control and manipulation of the Irrevocable Trust for Michael's own benefit and to the detriment of the trust beneficiaries.

⁵ "A conveyance in fraud of creditors, though void as to them, is nevertheless valid as between the parties and passes all of the estate of the grantor to the grantee." *Shoemaker v. Finlayson*, 22 Wash. 12, 13, 60 P. 50 (1900); citing to *Sawtelle v. Weymouth*, 14 Wash. 21, 43 P. 1101 (1896). See also *The Estates of Kalwitz v. Kalwitz*, 717 N.E.2d 904 (Ind.App.1999) (Party who places title of property in another, even without valid consideration, for the purposes of defrauding creditors cannot recover property from the grantee.); *In re Marriage of Coleberd*, 933 S.W.2d 863 (Mo.App. SD. 1996) (Although fraudulent conveyance may be void as to creditors, they are, nevertheless valid as against grantor and his privies.).

⁶ The limited partnerships are now burned out tax shelters. FF 135. Some limited partnerships may be eligible to participate in a settlement with FmHA/RHA that could result in a distribution of funds to the partners holding an equity interest. FF 133. If a settlement occurs, the Irrevocable Trust will now receive additional funds based upon the 1997 transfer. Also, Michael is actively seeking buyers for apartment complexes that comprise the limited partnerships. FF 134. When an apartment complex comprising a limited partnership is sold, if there is equity to be distributed, the Irrevocable Trust will now receive additional funds based upon the 1997 transfer.

B. IDENTIFICATION OF INDIVIDUALS AND ENTITIES:

Michael is the trustor of the Irrevocable Trust. FF 30. Michael is the father of two children; Michelle Patricia Gillispie McKean (Michelle) (d.o.b. 8/19/1989) and Morgan McKean (Morgan) (d.o.b. 10/14/1996). FF 25 and 76. Michael is a disbarred attorney and convicted felon. CP 506-522.

Gale Dahlstrom⁷ (Gale) is a life long friend of Michael. FF 10. Gale was the trustee of the Irrevocable Trust. FF 40. Gale, in spite of Michael's criminal use of invoices from Gale's company, still trusts Michael. FF 10; CP 508-509.

Shannon Keene (Shannon) is Michael's sister. Shannon, after Gale resigned as trustee, became trustee of the Irrevocable Trust. CP 926-936; RP⁸ 309, line 23 – RP, line 19.

Laura McKean (Laura) is Michael's second wife. Laura is the mother of Michelle. FF 23 and 25.

Connie McKean (Connie) is Michael's third wife. Connie is the mother of Morgan. FF 72 and 76.

Commencement Bay Guardianship Services (CBGS) is the successor trustee of the Irrevocable Trust. CP 166-173.

Allison Interstate Construction, Inc., (Allison) is a corporation solely owed and controlled by Michael. Allison is Michael's alter ego. FF 51-53; CL⁹ 11.

Northwest Community Housing, Inc., (NWCH) is a corporation that is controlled by Michael. NWCH is Michael's alter ego. FF 113-116; CL 12.

⁷ Sandra Dahlstrom is Mr. Dahlstrom's wife. No allegation was made personally against Mrs. Dahlstrom, only as part of the marital community.

⁸ VRP means Verbatim Report of Proceedings.

⁹ "CL" is used to identify a "Conclusion of Law". See Appendix A-1.

William Wood and/or Forrest Investment Corporation (William) was a business partner of Michael. FF 16.

C. STATEMENT OF THE CASE:

Michael and William, in the 1970s, developed numerous apartment complexes in this and other states. Each apartment complex was developed and marketed as a “private offering” limited partnership to investors so that the investors could receive the tax benefits of participation in the Affordable Housing Program (§515 program) sponsored by FmHA/RHA. Michael and William retained 5% of the profit and loss and 50% of the equity interest in each “private offering”. Michael and William divided between themselves the retained profit and loss and the retained equity. FF 16 and 17.

The federal government, in the late 1970s or early 1980s, investigated William. William was removed from the development of apartment complexes for inclusion in the §515 program. Michael completed the construction of apartment complexes whose development were pending at the time of William’s removal. FF 21. Michael, on his own or through Allison, continued to develop apartment complexes for inclusion in the §515 program. FF 22.

Michael, on December 30, 1992, established the Irrevocable Trust. The trust document creates two trusts. FF 32. One trust is for the benefit of Michelle. FF 32. This trust is known as the “Minterwood Trust” because it holds title to a rental property on Lake Minterwood near Gig Harbor, Washington. FF 34. The other trust is for benefit of Michelle and any other child born (Morgan) of Michael. FF 32. This trust received from Michael 20% of his “then owned”

equity interest in 66 limited partnerships valued at \$275,000 and 100 shares of stock in NWCH valued at \$15,000. FF 35. The list of limited partnerships that was attached to the Irrevocable Trust did not contain an accurate listing of Michael's percentage ownership of equity interest in the limited partnerships. FF 36. Amendments to the certificates of limited partnership confirming Michael's transfer of a portion of his equity interest to the Irrevocable Trust were not filed at the time the Irrevocable Trust was established. FF 38. Michael filed a gift tax return reflecting the gift of the equity interests and the stock. FF 39.

Formalities of trust management were not followed after the establishment of the Irrevocable Trust. Federal income tax returns were not filed for tax years 1993 through 1997. FF 45. Different tax identification numbers were used for the Irrevocable Trust. FF 46, 48, and 91. Correspondence regarding the affairs of the Irrevocable Trust addressed to Gale at Michael's address was not forwarded to Gale. FF 47. Few records were kept. FF 60, 108, and 148. Trust assets were commingled with non-trust assets. FF 51 and 56. Michael misled Gale as to his duties as trustee. FF 41 and 169.

At the time the Irrevocable Trust was established, the only asset that required active management was the "Minterwood Rental". FF 42. Gale delegated management of the rental to Michael. FF 43. A trust bank account to deposit rental income into was not established until February 2000. FF 49. Prior to February 2000, Michael claimed that he deposited the rental income into the Allison checking account. Michael produced no record of rental income being deposited into the Allison checking account. FF 50. Michael's only checking

account at the time was the Allison checking account. Michael deposited all checks that he received, whether to him individually; to his corporation; or to the “Minterwood Trust,” into the Allison checking account. FF 51. Michael paid all obligations, whether personal or corporate, from funds in the Allison checking account. FF 52. Other than file a corporate return for Allison, Michael did not observe corporate formalities with regard to the operation of Allison. FF 53.

Michael, in 1994, opened a Uniform Gift To Minors Account for Michelle. FF 54. This account was funded with non-trust assets. FF 55. Michael used funds in this account to pay the mortgage for the “Minterwood Rental.” FF 56.

Neither Michael nor Gale could account for the “Minterwood Rental” income from January 1, 1993 through February 28, 2000. Based upon estimated figures, gross rental receipts of \$53,555.64 were determined to be missing. FF 59 and 60.

After establishment of the Irrevocable Trust, Michael gave the trust a 4.75% profit and loss interest and a 2.5% equity interest in the limited partnership known as Madras. FF 62. NWCH received a 2.5% profit and loss interest and a 25% equity interest in Madras. FF 63. Michael gave NWCH a profit and loss and equity interest in other limited partnerships that he developed on his own. FF 64.

Michael and William, in 1993, entered into an agreement that increased Michael’s equity interest in certain limited partnerships in the §515 program. Michael’s increased equity interest came from a reduction in William’s equity interest. The agreement also provided that NWCH would receive a 5% equity

interest in the limited partnerships from Michael's equity. FF 65. At the time that Michael and William entered into their agreement, Michael knew that the federal government was investigating William for a second time. FF 67. Amendments to certificates of limited partnership for the limited partnerships affected by the 1993 agreement were not filed with the Secretary of State until 1996. FF 66.

In 1995, Michael's marriage to Laura was dissolved. The list of limited partnerships awarded to Michael in the dissolution proceeding does not account for the gift of equity that Michael made to the Irrevocable Trust in 1992 nor does it account for the increased equity interest that Michael received as a result of his 1993 agreement with William. FF 71.

Within weeks of his marriage to Laura being dissolved, Michael married Connie. FF 72.

Michael, in 1996, learned that he was a named defendant in a federal civil action with regard to his activities in the limited partnerships and that he was also the subject of a federal criminal investigation with regard to his activities in the limited partnerships. FF 75. Michael began to transfer assets out of his name for the purpose of hiding them from the federal government. FF 82.

Michael, on July 11, 1996, filed numerous Amendments to Certificates of Limited Partnership with the Secretary of State. The amendments confirmed the realignment of equity interests under the 1993 agreement between Michael and William. FF 73. The amendments also confirmed Michael's 1992 gift of equity to the Irrevocable Trust. FF 73. Some amendments contained errors with regard

to the Irrevocable Trust's actual ownership of equity interest in certain limited partnerships arising out of Michael's 1992 gift. FF 74.

Michael, on August 25, 1997, transferred 30% of his "then owned" equity interest in 70 limited partnerships to the Irrevocable Trust. FF 84. Michael, by his own admission, made this transfer to hide the equity interest from his primary creditor, the federal government. FF 85.

Michael, on March 3, 1998, pled guilty to six felony violations of federal law. FF 86 and 87. Some of Michael's convictions arose out of his conduct in the development and/or management of apartment complexes in the §515 program. FF 86 and 87; CP 506-510.

After Michael plead guilty and before he began to serve his sentence, Michael commenced a dissolution proceeding to dissolve his marriage to Connie. FF 88 and 89.

Michael was released from prison in late 1999. FF 90. Michael, in February 2000, opened a trust account at Columbia Bank to receive the "Minterwood Rental" income and to pay the mortgage. FF 91. The account was titled "IRR for Michael A. McKean Children, Minterwood Rental A/C, Gale E. Dahlstrom, Trustee. The account statements were addressed to Gale's P.O. Box in Hoquiam, Washington. FF 91. Gale, after receiving the Columbia Bank statements indicating that he was "Trustee", resigned as trustee on August 3, 2000. FF 93 and 94. Gale personally delivered his resignation to Michael. FF

95. After Gale resigned, Shannon began to serve as trustee. FF 102; CP 926–936; RP 309, line 23 – RP 311, line 19. Michael controls Shannon.¹⁰ FF 139.

Michael and Connie’s dissolution case went to trial. Michael’s marriage to Connie was dissolved on November 3, 2000. The court in the dissolution proceeding found that Michael and Connie had abused the Irrevocable Trust; that Michael controlled his family and friends, the designated trustees of the Irrevocable Trust; and that a corporate trustee should be appointed. FF 97; Ex 178 and 179. Michael appealed the decision appointing a corporate trustee. FF 97.

While Michael’s appeal was pending, a motion was filed in the dissolution court to appoint a corporate trustee. FF 98. Michael, on June 1, 2001, filed a declaration stating that Gale was the acting trustee of the Irrevocable Trust.¹¹ FF 98; Ex 229. CBGS was appointed trustee on October 26, 2001. FF 99. CBGS was not notified of its appointment until December 7, 2001. CP 1, line 21-23.

On January 4, 2002, CBGS sought instruction from the court under a “probate cause number” on how to proceed. FF 100; CP 1-85. CBGS learned that Michael had instructed the renter of the “Minterwood Rental” to send the rent to Michael and that if the renter did not comply, Michael would evict him. CP 1. Line 24 – CP line 4.

Michael objected to CBGS’s petition. Michael asserted insufficient service of process. CP 86, line 22-25. The court, on January 15, 2002, instructed

¹⁰ Michel transferred 75% of his stock ownership in NWCH to Shannon because of the federal government. Michael, once his problems are resolved, intends to take the stock back. FF 113-114. Although Michael transferred 75% of his stock in NWCH to Shannon, leaving Michael with 5%, Michael used 80% of the funds distributed out of NWCH to pay his debts. Ex 114.

¹¹ Gale personally delivered his resignation to Michael on August 3, 2000. FF 94 and 95.

CBGS to serve a TEDRA Summons on Michael, Gale, Connie, and Shannon. FF 100; CP 168, line 3-4. CBGS issued and served a TEDRA Summons. CP 911–914.

On January 22, 2002, a hearing was held for Michael and Connie. The court ordered CBGS to assume control of the “Minterwood Rental”. Michael and Connie were also ordered to turn over documentation and other assets to CBGS by February 3, 2002. CP 89-92. Michael and Connie did not comply. CP 168, line 21 – CP 169, line 2.

On February 1, 2002, the Court of Appeals issued its opinion in *In re Marriage of McKean*, 110 Wash.App. 191, 38 P.3d 1053 (2002). FF 101.

On February 4, 2002, CBGS brought the decision of *In re Marriage of McKean, supra*, to the attention of the court in this proceeding. CP 103. CBGS informed the court that it had two options, to proceed “under RCW 11.96A to protect the assets of the children, or to dismiss the action.” CP 94, line 11-17. CBGS then informed the court of what it had discovered with regard prior trust administration and the apparent misuse of other assets belonging to Michelle and Morgan. CP 94, line - 19 CP, line 23. Michael responded by seeking dismissal of CBGS as trustee in this proceeding. CP 105-106.

A hearing was held on February 11, 2002 on CBGS’s status. Connie, on behalf of Morgan, requested that CBGS be “allowed to continue” as trustee. RP (February 11, 2002) 16, line 15 – VP 17, line 15.¹² At the conclusion of the hearing, the court reserved ruling on CBGS’s status. CP 132. Michael struck

¹² The Verbatim Transcript of Proceedings for the February 11, 2002 hearing was filed on November 19, 2003.

subsequent hearings to resolve CBGS's status because a mandate had not been issued by the Court of Appeals. CP 169, line 3-9. CBGS scheduled a hearing. CP 169, line 9-10.

Michael, prior to the hearing, submitted a declaration signed on March 5, 2002 wherein he stated that he gave the Irrevocable Trust 20% ownership in NWCH and that the rental income from the "Minterwood Rental" "[has] gone, over the years, into a UGMA bank account at Primevest Securities with Michelle's name on it since the Trust, by its terms, makes the Minterwood home exclusively Michelle's." CP 151, line 20-28. Michael later disavowed the gift of stock in NWCH to the Irrevocable Trust because he did not want CBGS to manage funds that would be distributed to the Irrevocable Trust from NWCH. FF 111-118. After further investigation and through testimony at trial, it turned out that Michael's statement with regard to where he had deposited the "Minterwood Rental" income was misleading. FF 48-51, 54-55, and 91-92.

The court in this proceeding, on March 12, 2002, based in part upon the dissolution court's unchallenged factual findings of trust manipulation and based in part upon what CBGS reported, appointed CBGS successor trustee. FF 103; CP 166-173.

After CBGS was appointed trustee in this proceeding, Michael commenced a Chapter 11 bankruptcy proceeding. FF 104.

CBGS began to marshal assets and assert claims on behalf of the Irrevocable Trust. CBGS asserted a claim in the bankruptcy proceeding with regard to NWCH. Michael disavowed the Irrevocable Trust's stock interest in

NWCH. Michael and NWCH then entered into a Stipulation and Agreed Order in the United States Bankruptcy Court wherein it was agreed that the Irrevocable Trust's claim of ownership of stock in NWCH and certain funds arising out of stock ownership would be resolved in the trust proceeding as opposed to in the bankruptcy proceeding. Ex 114.

Certain limited partnerships were sold. CBGS asserted the Irrevocable Trust's right to a percentage of equity funds based on Michael's 20% equity gift in 1992 and based on Michael transfer of 30% equity in 1997. CP 237-398, 949-957. Michael objected to the Irrevocable Trust's right to receive funds based on the 30% equity transfer in 1997. CP 1009-1010.

CBGS and its counsel acted in good faith. FF 167. The actions of CBGS and its counsel benefited the Irrevocable Trust. CP 782-854.

D. ARGUMENT:

THE COURT HAD JURISDICTION TO APPOINT CBGS TRUSTEE IN THIS PROCEEDING.

The court in the trust proceeding had subject matter jurisdiction, personal jurisdiction, and the inherent power and duty to appoint CBGS successor trustee to protect the minor beneficiaries of the Irrevocable Trust.

Michael is not disputing that the court had subject matter jurisdiction over the Irrevocable Trust under RCW 11.96A.040. Br. of App. 10. Rather, Michael maintains that there is no theory of law that would permit CBGS to initiate this proceeding to protect trust assets from Michael's abuse as a result of the decision in *In re the Marriage of McKean, supra*.

Michael's challenge is based on standing.¹³ Questions of standing are reviewed de novo. See e.g. *Wolstein v. Yorkshire Ins. Co. Ltd.*, 97 Wash.App. 201, 206, 985 P.2d 400 (1999); *In re Adoption of J.D.S.*, 953 So.2d 1133 (Miss.App. 2007) (The question of standing is reviewed a de novo; standing is also an issue which the appellate court may rule on sua sponte, whether it was raised in lower court or not.).

Michael, without providing any record of *In re the Marriage of McKean*, *supra*, argues that RAP 7.2 precluded the dissolution court from entertaining a motion "requesting appointment of a corporate trustee or to enter an order appointing a corporate trustee while the appeal from the dissolution case was pending." Br. of App. 8. Michael's interpretation of RAP 7.2 is wrong. RAP 7.2(c) states that unless the decision has "been stayed as provided in rules 8.1 or 8.3, the trial court has authority to enforce any decision of the trial court..." RAP 7.2(c) goes on to state that "[a]ny person may take action premised upon the validity of a trial court judgment or decision until enforcement of the judgment or decision is stayed as provided in rules 8.1 or 8.3." The dissolution court, because Michael did not seek a stay, had the authority under RAP 7.2(c) to appoint CBGS in October 2001. CBGS, therefore, had the "right to take action premised on the validity of the trial court" order when it initiated this proceeding. RAP 7.2(c).

Michael also argues that "[t]here is no civil rule or statute that authorizes a motion for appointment of a corporate trustee."¹⁴ Br. of App 8. This assertion appears to be supported by Michael's incorrect interpretation of RAP 7.2 and

¹³ Michael does not address standard of review in his initial brief.

¹⁴ Michael's argument ignores situations where a dissolution court can obtain jurisdiction over trust. See e.g. *In re Marriage of Petrie*, 105 Wash.App. 268, 19 P.3d 433 (2001).

upon Michael's self-serving claim of what he believes is the applicable law. As will be shown below, the orders entered in this proceeding are valid and enforceable.

i. The court obtained in personam jurisdiction in this proceeding.

At the time that CBGS commenced this proceeding, CBGS had every right to do so. RAP 7.2(c). CBGS, as trustee, was a party who could commence this proceeding. RCW 11.96A.030(4)(b) and (8). The court in this proceeding, per RCW 11.96A.060, directed CBGS to serve a TEDRA Summons on Michael, Gale, Connie, and Shannon. RCW 11.96A.060 provides that

The court may make, issue, and cause to be filed or served, any and all manner and kinds of orders, judgments, citations, notices, summons, and other writs and processes that might be considered proper or necessary in the exercise of the jurisdiction or powers given or intended to be given by this title. (Emphasis added.)

CBGS obeyed the court's order. Service of the TEDRA Summons upon Michael, Gale, Connie, and Shannon made them parties to the trust proceeding. The court had subject matter and in personam jurisdiction over Michael, Gale, Connie, and Shannon, so the court could enter orders¹⁵ to include but not limited to the appointment of CBGS as trustee.

ii. CBGS had standing to initiate the proceeding under Title 11.96A RCW because it was a "next friend" for the minor beneficiaries.

CBGS had standing to initiate this proceeding. The provisions of Title 11.96A RCW, Title 11.98 RCW, and case law validate CBGS's actions to protect the minor beneficiaries.

¹⁵ Once someone has been made a party to a proceeding, notice by summons of any future action in the proceeding is no longer required. RCW 11.96A.100(2).

“It is the duty of a trustee to administer the trust in the interest of the beneficiaries.” *Tucker v. Brown*, 20 Wash.2d 740, 768, 150 P.2d 604 (1944). A trustee who breaches his or her duties may be removed by a petition brought by a beneficiary. RCW 11.96A.030(4)(e)¹⁶; 11.96A.080; 11.98.039(3). “The decision to remove a trustee is within the discretion of the court, which will remove a trustee only for ‘reasonable cause.’” RCW 11.98.039(3); *Estate of Elhers*, 80 Wash.App.751, 761, 911 P.2d 1017 (1996). A decision to remove a trustee “will seldom be reversed absent a manifest abuse of discretion.” *Elhers* at 761 citing to *Fred Hutchinson Cancer Research Ctr. v. Holman*, 107 Wash.2d 693, 716, 732 P.2d 974 (1987).

Here, the record is replete with facts that establish “reasonable cause” to remove the trustees selected and controlled by Michael. Michael does not challenge the reasons for removal, only that CBGS lacked standing to secure that result.

The reversal of CBGS’s appointment in *In re Marriage of McKean*, *supra*, made CBGS a “next friend” who could act on behalf of the minor beneficiaries. In cases where a minor is unable to exercise his or her rights, it is established law in the State of Washington that a “next friend” can act on behalf of the minor. *In re Ivarsson*, 60 Wash.2d 733, 735, 375 P.2d 509 (1962) citing to *Williams v. Cleveland*, 76 Conn. 426, 56 Atl. 850 (1904).

In *Ivarsson*, the Court held that a “next friend” for a minor child “who conceived that the ward’s estate [was] being wrongfully dissipated” had standing to appeal. *Ivarsson* at 735-736. In *Ivarsson*, the parties “who would normally be

¹⁶ RCW 11.96A.030(4)(e) states that a trust beneficiary is a “party.”

excepted to be protecting the ward's interest in [the] estate" were adverse to each other. *Ivarsson* at 736. In such cases, the Court held, in part, that "it will act sua sponte to protect the apparent interests of the ward or wards; and it will not dismiss a meritorious appeal by a 'next friend'...." *Ivarsson* at 738. The Court quoted and adopted the decision of the New Mexico Supreme Court in *Haden v. Eaves*, 55 N.M. 40, 47, 226 P.2d 457 (1950) that "we are not inclined to 'adopt the attitude of umpires in a contest between adults' and to 'apply ordinary rules of civil procedure' to prevent meritorious appeals involving the rights and property of minors...." *Ivarsson* at 738.

Here, Michael asks this court on appeal to apply ordinary rules of civil procedure such as CR 17(a) and CR 60 to undo the action taken by CBGS. Br. of App. 9. Like the minor child in *Ivarsson*, the minor beneficiaries in this proceeding were unable to assert their right to initiate a removal action under RCW 11.98.039 or Title 11.96A. RCW. Like the adults in *Ivarsson*, the adults in this case were incapable of advocating for the interests of the minor beneficiaries. Like the minor child in *Ivarsson*, the minor beneficiaries in this case were dependent upon the adults to protect them. Like the "next friend" in *Ivarsson*, CBGS was a "next friend" acting for the benefit of the minor beneficiaries.

Consistent with the established case law of the State of Washington, CBGS had standing as a "next friend"¹⁷ to initiate this proceeding.

iii. CBGS had standing to initiate the proceeding under Title 11.96A RCW because it was a de facto trustee.

¹⁷ In the event that Michael replies by arguing that only a parent can be a "next friend", then Connie should be considered a "next friend" when she through legal counsel, on February 11, 2002, requested that CBGS continue to serve as trustee.

In the event that CBGS is not determined to be a “next friend”, CBGS was the “de facto trustee” who could initiate the proceeding and/or pursue litigation on behalf of the Irrevocable Trust. A de facto trustee is an “interested person” within the meaning of RCW 11.96A.030(4)(i) and (5). RCW 11.96A.030(4)(i) confers “party” status on “any other person who has an interest in the subject of the particular proceeding.” RCW 11.96A.030(5) defines an “interested person” as a person who holds power over the trust or any trustee. CBGS, as de facto trustee, was interested in the subject of the proceeding and held power over the trust.

There is no case law in the State of Washington addressing a de facto trustee’s authority to act in the context of a trust proceeding.¹⁸ Washington case law, however, recognizes de facto guardians and validates the good faith actions of de facto guardians. In *King v. Sells*, 193 Wash. 294, 296, 75 P.2d 130 (1938), the Washington State Supreme Court held that the duties of a de facto guardian “are measured by the same standard as a legally appointed guardian.” The Court of Appeals, Division I, in *In Re Guardianship of Bouchat*, 11 Wash. App. 369, 522 P.2d 1168 (1974) cited to *Mayer v. Rice*, 113 Wash. 144, 193 P. 723 (1920)¹⁹; acknowledged that a guardianship proceeding is void for lack of proper service; discussed the concept of a de facto guardian; and held that the actions of the improperly appointed guardian, who acted in good faith, should be approved in the same manner as if the “jurisdiction of the court in the guardianship proceeding had been successfully invoked.” *Bouchat* at 371-372. The same principals that

¹⁸ The concept of a de facto trustee is recognized in corporate law. See e.g. *Puget Sound Pulp & Timber Co. v. Clear Lake Cedar Corp.*, 15 Wash.2d 707, 711-712, 132 P.2d 363 (1942); *Thompson v. Mitchell*, 128 Wash. 192, 198, 201, 222 P. 617 (1924); and *Baggott v. Turner*, 21 Wash. 339, 340, 59 P. 212 (1899).

¹⁹ Unlike Mayer, in personam jurisdiction was obtained in this proceeding.

apply to a de facto guardian should apply to a de facto trustee. See e.g. *Allen Trust Co. v. Cowlitz Bank*, 210 Or.App. 648, 657, 152 P.3d 974 (2007); *decision clarified* at 212 Or.App. 472, 159 P.3d 319 (2007).²⁰

A de facto trustee is someone who (1) assumes the position under color of right or title and (2) who exercises the duties of the office. *In re Banker's Trust*, 403 F.2d 1620, (7th Cir. 1968). "Color of right or title merely means 'authority derived from an election or appointment, however, irregular or informal, so that the incumbent be not a mere volunteer.'" *Banker's Trust* at 20, (citation to other authority omitted.). Courts protect the acts of de facto trustees done in good faith that benefit a beneficiary. *Banker's Trust* at 21; *Crocker-Citizen's National Bank v. Younger*, 4 Cal. 302, 93 Cal. Rptr, 214, 481 P.2d 222 (1971); *In re Dakin's Will*, 296 N.Y.S. 2d 742, 58 Misc.2d 736 (1968).

Here, CBGS assumed the position of trustee pursuant to a dissolution court order that it had every right to rely upon. RAP 7.2(c). CBGS began to exercise the duties of the office of trustee. CBGS, in good faith, initiated this proceeding for the purpose of protecting and obtaining control of the assets of the Irrevocable Trust. When CBGS learned of the irregularity in its appointment, CBGS brought the situation to the attention of the court. CBGS advised the court of what it had discovered. The court, because it already had subject matter and personal jurisdiction over Michael, Gale, Connie, and Shannon considered the situation and appointed CBGS trustee in this proceeding.

²⁰ Until the decision in *Allen*, Oregon, like Washington, recognized the concept of de facto trustee in other contexts. The decision in *Allen* applied the de facto trustee concept to trust proceedings. *Allen* at 659.

Even if the appointment of CBGS as trustee in this proceeding is now deemed defective, CBGS's actions should not be voided for the benefit of Michael. CBGS assumed the position of trustee pursuant to an order entered in this proceeding that it had every right to rely upon. CBGS, in good faith, exercised the duties of trustee. CBGS pursued litigation that benefited the minor beneficiaries. Equity demands that the results of CBGS's efforts be upheld. *In re Bouchat*, at 371-372; *Banker's Trust* at 21; *Crocker* at 229 n. 5; *Dakin's* at 743-744.

iii. The court had the authority under Title 11.96A RCW to appoint CBGS.

The court had the inherent authority under Title 11.96A RCW to appoint CBGS. RCW 11.96A.020(2) authorizes the appointment of CBGS. RCW 11.96A.020(2) states that:

If this title should in any case or under any circumstance be inapplicable, insufficient, or doubtful with reference to the administration and settlement of any matters listed in subsection (1)²¹ of this section, the court nevertheless has full power and authority to proceed with such administration and settlement in any manner and way that to the court seems right and proper, all to the end that the matters be expeditiously administered and settled by the court. (Emphasis added.)

The expansive grant of authority to the court by the legislature in RCW 11.96A.020 means that common law and equitable principals of trust administration were not superceded by Title 11.96A RCW. The legislature knew, based on case law, that there will be circumstances in trust administration that require judicial flexibility. See e.g. *Valley Environmental Laboratory LLC v.*

²¹ RCW 11.96.020(1) states that "it is the intent of the legislature that the courts shall have full and ample power and authority under this title to administer and settle:
(b) All trusts and trust matters.

Yakima County, 139 Wash.App. 239, 244, 159 P.3d 491 (2007) (The legislature is presumed to pass legislation with case law in mind.). The legislature, through RCW 11.96A.020, gave the court flexibility to resolve problems for the benefit and protection of minor beneficiaries in a case such as this. The court properly exercised the power conferred upon it under RCW 11.96A.020 when it appointed CBGS trustee.

THE COURT HAD JURISDICTION OVER NWCH IN THIS PROCEEDING.

Michael asserts two errors with regard to the decision rendered against NWCH. Michael claims that the court disregarded the possibility of expenses and that the court lacked jurisdiction over NWCH because it was not a party.

The court had jurisdiction over NWCH. The claimed errors should be rejected for the following reasons, (1) waiver of error; (2) consent to jurisdiction; and (3) judicial estoppel.

i. Waiver of Error Relating to Disregarding Possibility of Expenses.

Michael, in violation of RAP 9.2(c), did not inform CBGS of his intent to argue that the trial court disregarded the possibility of expenses when it awarded the Irrevocable Trust 20% of any funds distributed to NWCH. Br. of App. 17. Michael, in his Amended Statement of Arrangements stated as follows with regard to NWCH:

Whether the court erred in ordering that 20% of any distribution made to the corporation, Northwest Community Housing, would be remitted to the trustee if (sic) the Irrevocable Trustee, which is based upon the fact that in effect the order constitutes an order (sic) against Northwest Community Housing which was not a party to the proceedings.

Amended Statement of Arrangements, page 1-2, paragraph C.²²

Michael's failure to comply with RAP 9.2(c) constitutes a waiver of the claimed error concerning "expenses." Furthermore, Michael provides no record to enable adequate review of the claimed error.²³ A party who fails to provide an adequate record waives the assignment of error. RAP 9.2(b); *In re Marriage of Haugh*, 58 Wash.App. 1, 6, 790 P.2d 1266 (1990) (Appellant has the burden of perfecting record so that the court has before it all evidence relevant to the issue.)

Even if the court were to overlook Michael's violation of RAP 9.2(b) and (c), Michael's assertion that the court disregarded "expenses" is still waived. Michael does not support his contention with citation to any legal authority. "[A] contention unsupported by legal argument is deemed waived." *Haugh* at 6; citing to *State v. Adams*, 107 Wash.2d 611, 615, 732 P.2d 149 (1987).

ii. Consent to Jurisdiction.

Michael fails to cite any authority to support his assertion that the court lacked jurisdiction over NWCH. Br. of App. 17. "[A] contention unsupported by legal argument is deemed waived." *Haugh* at 6.

Although Michael did assign error to the issue of jurisdiction, Michael's argument ignores crucial facts. Michael and NWCH entered into a Stipulation and Agreed Order wherein Michael and NWCH consented to resolution of the NWCH stock issue in this proceeding. Ex 114. Prior to and after the agreement, CBGS and Michael filed pleadings in trust proceeding addressing the stock

²² Michael's Statement of Arrangements did not comply with RAP 9.2(c). The Statement of Arrangements is attached as Appendix A-2. Michael's Corrected Statement of Arrangements did not affect the assignment of error regarding NWCH.

²³ A careful review of the record provided shows that Michael presented no evidence below on this issue. See e.g. RP 475, line 3-25.

ownership issue.²⁴ Consistent with the agreement, the court below resolved the issue of stock ownership and entitlement to funds based on stock ownership.²⁵

The Washington State Supreme Court in two cases, *In re Wren's Estate*, 163 Wash. 65, 299 P. 972 (1931) and *In re Uzafovage's Estate*, 153 Wash. 620, 280 P. 85 (1929), has held that parties can consent to probate court jurisdiction to resolve disputed issues. The Court in *Wren's Estate* considered an appeal that addressed, in part, a claim of error that the trial court in a probate proceeding lacked jurisdiction to confirm an attorney's lien against one heir. The Court held that the probate court had jurisdiction by stating as follows:

As to the claimed want of jurisdiction of the superior court in a pending probate proceeding to determine controversies arising over claims of property or liens thereon belonging to the estate, as between those interested in the estate and strangers thereto, *the law is settled by our decisions that the court has and may exercise such general jurisdiction when it effectively acquires jurisdiction over the persons of the parties to such controversy in the probate proceeding, since our superior courts in which estates are administered by probate proceedings are courts of general jurisdiction.* (Citations omitted.)

As to the claimed want of jurisdiction over the person of Mrs. Parks and Mr. Pratt as parties to the attorney's lien claim controversy, of course Mr. Pratt *voluntarily submitted* to the jurisdiction of the court in the probate proceeding by filing his petition therein praying for the establishing of his lien claim. Mrs. Parks, it is true, challenged the court's jurisdiction over her person because of her not being required by law to respond to Mr. Pratt's petition, seeking the establishing of his lien claim in the probate proceeding regardless of the nature of the notice or summons which might be served upon her to that end; and also because in no event was she served with proper summons or notice to so respond. We do not find in any of these filed objections to the jurisdiction of the court any reservation of special appearance; and besides, she, at the same time of filing those objections, filed her answer to Mr. Pratt's petition, responding to it upon the merits, without

²⁴ See e.g. CP 33, 152, 177-178, 186-191, 195, 233-234, 235, 239, 244, 707-714, 723-726, 922, 942, 997, and 1009.

²⁵ FF 24, 35, 37, 53, 63-65, 78, 111-118, 120-125; CL 9-15, 21, and 23; Judgment and Order 17, 18, 19, and 24 fn.2 at CP 836-838.

reservation of special appearance. *Thus it seems plain to us that Mrs. Parks ultimately voluntarily submitted herself to the jurisdiction of the court to the extent of enabling the court to lawfully proceed in hearing and determining Mr. Pratt's lien claim upon the merits.* (Emphasis added.)

Wren's Estate, at 75-76.

The Court, in *Uzafovage's Estate*, considered an appeal concerning ownership of certain securities found in a safe deposit box jointly owned by the decedent and her two daughters. The probate court ordered the administrator to open a safe deposit box in the presence of the decedent's children (daughters and son) and make a list of the securities therein. The daughters and the son disagreed as to who owned the securities, the daughters or the estate. The administrator filed a petition with the court setting forth the dispute. A citation was issued to the children. The daughters filed an answer claiming that the securities were their individual property. The son filed a petition claiming the securities belonged to the estate. A hearing was held. At the conclusion of the hearing, the court ruled that the securities belonged to the daughters. The son appealed claiming, in part, that the probate court lacked jurisdiction to try title to the securities. The Court rejected the claim of error. The Court held as follows:

It is first claimed that this was a discovery proceeding, and that the court erred in trying title to the property. The answer to this is that, by the petition of the bank, the answer thereto by the daughters, and the petition of the appellant, the title to the property was put in issue. To determine that was the purpose for which the parties came into court. There was no occasion for a discovery proceeding, because, prior to the time the bank filed its petition, the safe deposit box had been opened and the property listed. *We know of no legal reason why, in the probate proceeding, when the parties come into court without objection and submit title to certain specific property to it for adjudication, the court may not determine the ownership thereof.* (Emphasis added.)

Uzafoage's Estate, at 622-623.

Michael and NWCH, like the parties in *Wren's Estate* and *Uzafoage's Estate*, voluntarily submitted the question of the Irrevocable Trust ownership of stock in NWCH to the court in this proceeding for resolution. The court, therefore, had jurisdiction to resolve the stock ownership issue.

iii. Michael is Judicially Estopped from Challenging Jurisdiction over NWCH.

Michael is judicially estopped from challenging trial court jurisdiction over NWCH. This Court, in *Deveny v. Hadaller*, --- Wash.App ---, 161 P.3d 1059, 1066 (2007), stated as follows with regard to judicial estoppel:

Judicial estoppel precludes a party from gaining an advantage by taking a position inconsistent with a position the party previously took before a court. (Citation to case omitted.) Judicial estoppel is meant to prevent a party from gaining such an advantage or to maintain the integrity of judicial proceedings. (Citation to case omitted.)

The Washington State Supreme Court in *Arkison v. Ethan Allen, Inc.*, 160 Wash.2d 535, 160 P.3d 13 (2007), set forth an initial three prong test to determine if judicial estoppels applies. The test is:

(1) [W]hether “ a party's later position” is “ ‘ clearly inconsistent’ with its earlier position”; (2) whether “ judicial acceptance of an inconsistent position in a later proceeding would create ‘ the perception that either the first or the second court was misled’”; and (3) “whether the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped.” (Citation to cases omitted.)

Arkison at 538-39.

All three prongs of the *Arkinson* judicial estoppel test are satisfied here.

(1) Michael, on appeal, seeks to gain an unfair advantage by taking a clearly inconsistent position from that taken in the Bankruptcy Court and in the court

below. (2) Acceptance of Michael's current position creates the perception that both the Bankruptcy Court and the court below were misled. (3) Michael's inconsistency prevented resolution of the stock ownership issue from occurring in the Bankruptcy Court in 2003. Should Michael's position now be adopted, CBGS would have to relitigate this issue in the Bankruptcy Court.²⁶

Michael is estopped from challenging jurisdiction over NWCH.

MICHAEL SHOULD PAY CBGS'S FEES AND COSTS.

CBGS, pursuant to RAP 18.1, requests an award of trustee's fees and costs and attorney's fees and costs against Michael. RCW 11.96A.150, in pertinent part, states:

(1) Either the superior court or any *court on an appeal may*, in its discretion, order costs, including reasonable attorneys' fees, to be awarded to any party: (a) *From any party to the proceedings*; (b) from the assets of the estate or trust involved in the proceedings.... The court may order the costs, including reasonable attorneys' fees, to be paid in such amount and in such manner as the court determines to be equitable. In exercising its discretion under this section, the court may consider any and all factors that it deems to be relevant and appropriate, which factors may but need not include whether the litigation benefits the estate or trust involved.

(2) *This section applies to all proceedings governed by this title, including but not limited to proceedings involving trusts....* (Emphasis added.)

Michael is the party, through his bad faith, who caused problems for the Irrevocable Trust. A party who causes the problems should be ordered to pay fees and costs. *In re Guardianship of McKean*, 136 Wash.App. 906, 920, 157 P.3d 859 (2007).

²⁶ Assuming the Bankruptcy Court would permit claim assertion.

E. CONCLUSION:

The court in this proceeding had subject matter jurisdiction, personal jurisdiction, and the inherent power and duty to appoint CBGS successor trustee to protect the minor beneficiaries of the Irrevocable Trust.

The court in this proceeding had jurisdiction over NWCH. The claimed error regarding “expenses” has been waived.

The decisions of the court below should be affirmed. Michael should be ordered to pay CBGS’s fees and costs on appeal.

RESPECTFULLY SUBMITTED this 26th day of September, 2007.



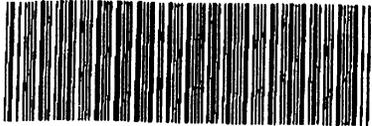
ROBERT B. NETTLETON

WSBA # 17403

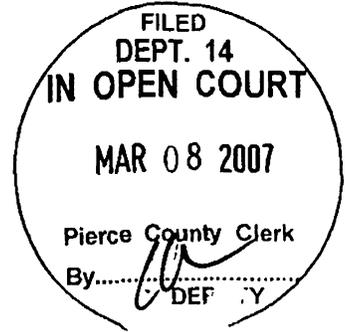
Attorney for Respondent

Commencement Bay Guardianship Services

APPENDIX A-1



02-4-00018-8 27106198 FNCL 03-09-07



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

IN RE THE IRREVOCABLE TRUST

NO.: 02-4-00018-8

OF

FINDINGS OF FACT AND CONCLUSIONS OF LAW

MICHAEL A. MCKEAN.

THIS MATTER having come on regularly before the above-entitled court for hearing on January 19, 2007; for trial on November 7th, 8th, 13th, 14th, 15th, 16th, December 4th, 5th, 6th, 7th, 2006, and January 17th, 2007; and for rulings on December 14, 2006, January 30, 2007, and February 8, 2007.

The Court having considered the testimony of the witnesses, Robin H. Balsam, Kurt J. Salmon, Linda Nelson Lynse, John T. Mellen, Michael Jones, C.P.A., Michael A. McKean, and Gale E. Dahlstrom; the exhibits admitted into evidence; the argument of counsel, and otherwise being fully informed in the premises, finds as follows:

FINDINGS OF FACT

1. Michael McKean (McKean) is a single person.
2. McKean is a resident of Pierce County, Washington.
3. McKean received a degree from Pacific Lutheran University. McKean

NEIL, NETTLETON & NEIL, P.S.
Attorneys at Law
5302 Pacific Avenue
Tacoma, WA 98408
(253) 475-8600
(253) 473-5746 FAX

ORIGINAL

10-7-27

1 received a law degree from New York University School of Law. McKean had a license
2 to practice law in the State of Washington. McKean is a disbarred attorney. McKean,
3 at one time, was employed in the Washington State Attorney General's Office.
4 McKean, at one time, had a NASD broker's license. McKean may still be a licensed
5 real estate broker. McKean was a developer and general partner of approximately 70
6 Farmers Home Administration/Rural Housing Authority (FmHARHA) financed
7 apartments that comprise the limited partnerships at issue herein. McKean owns rental
8 real property. McKean had, at one time, an ownership interest in Dahlstrom Lumber,
9 Inc., and Harpo Investments, Inc. McKean solely owns Allison Interstate Construction,
10 Inc.

11
12 4. McKean is sophisticated in trust matters and is knowledgeable in the
13 duties of a fiduciary.

14 5. Gale and Sandra Dahlstrom (Dahlstrom) are husband and wife. No
15 allegation is made personally against Sandra Dahlstrom, only as part of the marital
16 community.

17 6. Dahlstrom is a resident of Grays Harbor County, Washington.

18 7. Dahlstrom graduated from high school. Dahlstrom served in Vietnam,
19 was wounded and received two Purple Hearts, and was honorably discharged with a
20 50% permanent disability. Dahlstrom graduated from Grays Harbor College.
21 Dahlstrom owns or has owned several successful businesses to include Dahlstrom
22 Lumber, Inc., and Harpo Investments, Inc. Dahlstrom is a limited partner in two of the
23 limited partnerships that McKean developed.

24 8. Although Dahlstrom is a successful businessman, he relies on his
25

NEIL, NETTLETON & NEIL, P.S.
Attorneys at Law
5302 Pacific Avenue
Tacoma, WA 98408
(253) 475-8600
(253) 473-5746 FAX

1 attorney and accountant to keep records for him and to advise him.

2 9. Dahlstrom is not sophisticated in trust matters.

3 10. Dahlstrom and McKean are life long friends. Dahlstrom and McKean trust
4 each other. Dahlstrom and McKean believe and rely upon what the other tells him.

5 11. McKean has acted as Dahlstrom's attorney.

6 12. Commencement Bay Guardianship Services (CBGS) is a Washington
7 State Certified Professional Guardianship Agency.

8 13. Robin H. Balsam (Balsam) is an Attorney licensed to practice law in the
9 State of Washington.

10 14. Balsam is a Washington State Certified Professional Guardian.

11 15. Balsam is a director of CBGS.

12 16. McKean and his former business partner, William Wood and/or Wood's
13 company, Forrest Investment Corporation (hereinafter collectively referred to as Wood)
14 in the 1970s began to develop apartment complexes in this and other states. Each
15 apartment complex was developed and then marketed as a "private offering" to
16 investors. Limited partnerships were created for each apartment complex so that the
17 limited partners could receive the tax benefits of participation in the Affordable Housing
18 Program (§ 515 program) sponsored by FmHA/RHA.

19 17. The "private offerings" to investors in each limited partnership consisted of
20 the limited partners in each venture owning 95% of the profit and loss and 50% of the
21 equity or residual interest (equity interest). McKean and Wood retained 5% of the profit
22 and loss and 50% of the equity interest.

23 18. The profit and loss for each limited partnership was "distributed" annually.
24
25

NEIL, NETTLETON & NEIL, P.S.
Attorneys at Law
5302 Pacific Avenue
Tacoma, WA 98408
(253) 475-8600
(253) 473-5746 FAX

1 The "distribution", for federal income tax purposes, usually resulted in a tax loss.

2 19. The equity interest, if any, after payment of priority obligations in each
3 limited partnership would only be distributed upon the liquidation and termination of the
4 partnership.

5 20. After the apartment complexes that McKean and Wood were developed
6 and limited partnerships for them created, McKean and Wood placed the management
7 of the apartment complexes that they developed and that comprise the limited
8 partnerships with Wood's management company.

9 21. The federal government investigated Wood in the late 1970's or early
10 1980's. Wood's use of funds designated to develop apartment complexes was
11 questioned. As a result of the federal investigation, McKean removed Wood from the
12 development process. McKean completed the development of the apartment
13 complexes whose development was pending at the time of the removal of Wood. After
14 the apartment complexes were developed and limited partnerships formed, McKean
15 placed management of the apartment complexes with Wood's management company.
16

17 22. After completing the development of the apartment complex projects in
18 which Wood was involved, McKean and/or the corporation that he solely owns and
19 controls, Allison Interstate Construction, Inc., continued to develop and form limited
20 partnerships for apartment complexes to be included in the Affordable Housing
21 Program (§ 515 program) sponsored by FmHA/RHA.

22 23. McKean married his second wife, Laura McKean on April 16, 1988.
23 Dahlstrom was McKean's best man.

24 24. McKean, on April 19, 1988, incorporated Northwest Community Housing
25

NEIL, NETTLETON & NEIL, P.S.
Attorneys at Law
5302 Pacific Avenue
Tacoma, WA 98408
(253) 475-8600
(253) 473-5746 FAX

1 Corporation (NWCH). McKean was the President. Laura McKean was the Vice
2 President and the Secretary/Treasurer. 500 shares of capital stock in NWCH were
3 "subscribed¹" to McKean's corporation, Allison Interstate Construction, Inc.

4 25. McKean's first child, Michelle Patricia Gillispie McKean was born to
5 McKean and Laura McKean on August 19, 1989.

6 26. In 1990, McKean commenced a dissolution action to dissolve his
7 marriage to Laura McKean under Pierce County Superior Court Cause No.: 90-3-
8 04783-0.

9 27. Laura McKean, on or about January 10, 1992, transferred, by Quit Claim
10 Deed, title of the real property commonly known as 15002 113th KPN, Gig Harbor,
11 Washington and legally described as:

12 Lot 30, Block 3, Lake Minterwood Subdivision according to Plat recorded
13 in Book 35 at pages 54 and 59, Pierce County, Washington.

14 to Gale Edward Dahlstrom, as Trustee for Michelle Patricia Gillespie McKean, a minor,
15 under the Washington Uniform Gift to Minor's Act. The Quit Claim Deed was recorded
16 on March 12, 1992 under Auditor's No. 9203120592. This property is now referred to
17 as the "Minterwood Rental."

18 28. McKean, on or about January 20, 1992, wrote a letter addressed to
19 Dahlstrom at the street address of one of Dahlstrom's business ventures. Dahlstrom
20 maintains that mail is not delivered to the street address of that business venture.
21 Dahlstrom does not recall seeing the letter. The letter indicates that Dahlstrom
22 accepted being Trustee of the "Minterwood Rental." The letter also confirms telephone
23
24

25 ¹ Stock certificates were never issued by NWCH.

NEIL, NETTLETON & NEIL, P.S.
Attorneys at Law
5302 Pacific Avenue
Tacoma, WA 98408
(253) 475-8600
(253) 473-5746 FAX

1 conversations between McKean and Dahlstrom regarding McKean's continued
2 management of the "Minterwood Rental."

3 29. On or about December 30, 1992, McKean established the Irrevocable
4 Trust for Michael Allison McKean's Children (Irrevocable Trust).

5 30. McKean is the Trustor of the Irrevocable Trust.

6 31. At the time the Irrevocable Trust was established, McKean had only one
7 child, Michelle Patricia Gillispie McKean.

8 32. The Irrevocable Trust contains provisions that establish two separate
9 trusts. One trust, a sub-trust within the Irrevocable Trust, was solely for the benefit of
10 Michelle Patricia Gillespie McKean. The other trust was for the benefit of Michelle
11 Patricia Gillespie McKean and any other children born to McKean.

12 33. McKean, as Trustor, relieved the Trustee of the requirement to provide an
13 accounting pursuant to Title 11.106 RCW (The Trustees' Accounting Act).

14 34. The sub-trust solely for the benefit of Michelle Patricia Gillespie McKean
15 was funded with real property referred to as the "Minterwood Rental" and \$15,000 worth
16 of repairs to the real property. The trust solely for the benefit of Michelle Patricia
17 Gillespie McKean is also referred to as the "Minterwood Trust."

18 35. The trust for the benefit of Michelle Patricia Gillespie McKean and any
19 other children born to McKean received 100 shares of stock in NWCH valued by
20 McKean at \$15,000.00 and 20% of McKean's "then owned" equity interest in 66 limited
21 partnerships valued by McKean at \$275,000.00. McKean's transfer of 20% of his "then
22 owned" equity interest to the Irrevocable Trust is referred to as the "1992 Transfer."
23

24 36. The list of the limited partnerships that was attached to the December 30,
25

NEIL, NETTLETON & NEIL, P.S.
Attorneys at Law
5302 Pacific Avenue
Tacoma, WA 98408
(253) 475-8600
(253) 473-5746 FAX

1 1992, Transfer of Partial Equity to the Irrevocable Trust did not contain an accurate
2 listing of all of McKean's percentage ownership of equity interests in the 66 limited
3 partnerships. McKean concedes that he transferred 20% of his "then owned" equity
4 interest in 66 limited partnerships to the Irrevocable Trust and that any error in the list of
5 the limited partnerships attached to the Irrevocable Trust reflecting a lower percentage
6 equity interest owned by McKean in 1992 should now be corrected to reflect McKean's
7 true intention to transfer 20% of his "then owned" equity interest. Attached as Exhibit
8 "A" and incorporated herein by this reference is a spreadsheet reflecting McKean's
9 "then owned" equity interest in the 66 limited partnerships in 1992; the resulting
10 Irrevocable Trust ownership of an equity interest in the 66 limited partnerships after the
11 "1992 Transfer;" and McKean's remaining equity interest after the "1992 Transfer."

12
13 37. The Irrevocable Trust's equity interest that it received in 1992 in the 66
14 limited partnerships were derivative of McKean's equity or residual interest.

15 38. Amendments to all 66 Certificates of Limited Partnership confirming the
16 "1992 Transfer" were not filed with the Secretary of State for the State of Washington
17 (Secretary of State) on/or about the time the Irrevocable Trust was established.

18 39. McKean signed and filed a gift tax return with the federal government
19 reporting the transfer of assets into the Irrevocable Trust.

20 40. Dahlstrom, on December 30, 1992, met with McKean and McKean's
21 attorney Linda Nelson (n/k/a Linda Nelson Lysne). During that meeting, Dahlstrom
22 signed the Irrevocable Trust as Trustee; signed a Notification to Beneficiary of Right of
23 Withdrawal as Trustee; signed the receipt of assets as Trustee; and signed a Quit
24 Claim Deed that was recorded under Pierce County Auditor No. 9212310209 as Gale
25

NEIL, NETTLETON & NEIL, P.S.
Attorneys at Law
5302 Pacific Avenue
Tacoma, WA 98408
(253) 475-8600
(253) 473-5746 FAX

1 Edward Dahlstrom as Trustee for Michelle Patricia Gillespie McKean, a minor, under
2 the Washington Uniform Gift to Minor's Act to Gale Edward Dahlstrom as Trustee of the
3 Irrevocable Trust for Michael Allison McKean's Children dated December 30, 1992.
4 Dahlstrom, however, did not receive copies of the Trust document or any other
5 document that he signed on December 30, 1992.

6 41. After speaking to McKean, Dahlstrom believed that Dahlstrom would have
7 no active management responsibilities of the Irrevocable Trust until McKean passed
8 away or until McKean was unable to manage the assets himself.

9 42. At the time the Irrevocable Trust was established in 1992 the only asset
10 that required active management was the "Minterwood Rental."

11 43. Dahlstrom delegated the management of the "Minterwood Rental" to
12 McKean.

13 44. The formalities of trust management and administration of the Irrevocable
14 Trust were not followed after December 30, 1992.

15 45. Federal Income Tax Returns for the Irrevocable Trust were not filed for tax
16 years 1993, 1994, 1995, 1996, and 1997.

17 46. Different tax identification numbers were used for the Irrevocable Trust.

18 47. Some correspondence regarding the affairs of the Irrevocable Trust was
19 addressed to Dahlstrom at McKean's residence address in Gig Harbor, Washington.
20 McKean did not forward that correspondence to Dahlstrom.

21 48. An account was opened at Columbia State Bank for the Irrevocable Trust
22 in the mid to late 1990's. The account number was 00-0005940-2. The account was
23 titled "IRR Trust for Michael A. McKean Children, Gale E. Dahlstrom, Trustee." The
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NEIL, NETTLETON & NEIL, P.S.
Attorneys at Law
5302 Pacific Avenue
Tacoma, WA 98408
(253) 475-8600
(253) 473-5746 FAX

1 account statements were addressed to Dahlstrom's P.O. Box in Hoquiam, Washington.
2 The only statement produced by Dahlstrom indicates that the statement period covered
3 June 25, 1998 through June 25, 2000. During the period of time covered by the
4 statement, the only activity in the account was the posting of interest. The tax
5 identification number listed on the account statement for the account is not the tax
6 identification number for the Irrevocable Trust. The tax identification number listed on
7 the account statement is for the limited partnership known as Madras.

8 49. A trust bank account to deposit rental income received from the
9 "Minterwood Rental" portion of the Irrevocable Trust known as the "Minterwood Trust"
10 was not established until February 2000.

11 50. Prior to February 2000, McKean, rather than deposit rental income from
12 the "Minterwood Rental" into a trust account, claims to have deposited the rental
13 income into the Allison Interstate Construction, Inc., checking account. No record of
14 rental income for the "Minterwood Rental" being deposited into the Allison Interstate
15 Construction, Inc., checking account was produced.

16 51. McKean's only checking account at the time was the checking account for
17 Allison Interstate Construction, Inc. McKean deposited all checks that he received,
18 whether to him individually; to his corporations; or to the "Minterwood Trust," into the
19 Allison Interstate Construction, Inc., checking account.

20 52. McKean paid all obligations, whether personal or corporate, from funds
21 held in the Allison Interstate Construction, Inc., checking account.

22 53. Other than file a corporate tax return for Allison Interstate Construction,
23 Inc., McKean did not observe corporate formalities with regard to the operation of
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NEIL, NETTLETON & NEIL, P.S.
Attorneys at Law
5302 Pacific Avenue
Tacoma, WA 98408
(253) 475-8600
(253) 473-5746 FAX

1 Allison Interstate Construction, Inc.

2 54. McKean, on or about November 18, 1994, opened a Uniform Gift To
3 Minors Account for Michelle Patricia Gillispie McKean at the Bank of Grays Harbor.
4 McKean was the custodian. The account was known as the PrimeVest Account. The
5 account number was 54551991.

6 55. The PrimeVest Account was funded with non-trust assets; Upjohn Stock,
7 Upjohn stock dividends, and various gifts that McKean and his mother made to the
8 account. It is not clear if rental income from the "Minterwood Rental" was deposited
9 into the PrimeVest Account.

10 56. McKean used funds in the PrimeVest Account to pay the mortgage for the
11 "Minterwood Rental."

12 57. Between 1993 and February 2000, the "Minterwood Rental" was
13 continuously rented. Periods of vacancy between renters were of short duration.

14 58. McKean paid for and contributed the cost of any repairs and/or
15 maintenance to the "Minterwood Rental" to the "Minterwood Trust."

16 59. Dahlstrom and McKean are unable to account for the "Minterwood Rental"
17 income from January 1, 1993 through February 28, 2000, a period of 86 months.

18 60. Based upon the 1998, 1999, 2000, 2001, 2002, and 2003 1041 Returns,
19 the total rental income received from the "Minterwood Rental" over this 6-year period
20 was \$44,837.00. The annual average rental income during this 6-year time period
21 was \$44,837.00 ÷ 6 years) was \$7,472.84. The average monthly rental income (\$7,472.84
22 ÷ 12 months) was \$622.74. \$622.74 multiplied by 86 months (the period of time for
23 which rent cannot be accounted for) results in a gross rent for the 86-month period of
24
25

NEIL, NETTLETON & NEIL, P.S.
Attorneys at Law
5302 Pacific Avenue
Tacoma, WA 98408
(253) 475-8600
(253) 473-5746 FAX

1 \$53,555.64. Since the Court has had to resort to estimating the rental income, the
2 rental income for the 86-month period of time is not a liquidated amount.

3 61. The average mortgage payment from January 1, 1993 through February
4 28, 2000 was \$391.44. \$391.44 multiplied by 86 months (the period of time for which
5 rent cannot be accounted for) results in mortgage payments totaling \$33,663.84.

6 62. After the Irrevocable Trust was created, McKean made the Irrevocable
7 Trust a limited partner in the limited partnership known as Madras. The trust received a
8 4.75% profit and loss interest and a 2.5% equity interest.

9 63. McKean also made NWCH a limited partner in the limited partnership
10 known as Madras. NWCH received a 2.5% profit and loss interest and a 25% equity
11 interest.

12 64. McKean also made NWCH a profit and loss and an equity interest partner
13 in other limited partnerships. Those partnerships include, but may not be limited to,
14 Jetty and Redmond.

15 65. In 1993, perhaps August 1993, McKean and Wood entered into an
16 agreement that increased McKean's equity interest in certain limited partnerships that
17 he and Wood had developed² from 10% or 12% to 20%³. McKean's increased equity
18 interest came from a reduction in Wood's equity interest. The agreement between
19 McKean and Wood also provided that NWCH would receive a 5% equity interest in the
20 limited partnerships. The 5% equity interest that NWCH received was derivative of
21 McKean's equity interest. Attached as Exhibit "B" and incorporated herein by this
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25 ² There are two (2) different versions of the 1993 Agreement between Wood and McKean.

³ The 1993 Agreement between McKean and Wood did not acknowledge the "1992 Transfer."

NEIL, NETTLETON & NEIL, P.S.
Attorneys at Law
5302 Pacific Avenue
Tacoma, WA 98408
(253) 475-8600
(253) 473-5746 FAX

1 reference is a list of the limited partnerships reflecting McKean's increased equity
2 ownership interest in certain limited partnerships and NWCH's equity ownership in
3 certain limited partnerships as a result of the 1993 agreement with Wood.

4 66. Amendments to the Certificates of Limited Partnership for limited
5 partnerships affected by the 1993 agreement were not filed with the Secretary of State
6 until 1996.

7 67. At the time that McKean entered into the 1993 agreement with Wood,
8 McKean knew that the federal government was investigating (the second investigation)
9 Wood and/or Wood's management company.

10 68. After McKean and Wood entered into the 1993 agreement, the
11 management of the apartment complexes that were owned by the limited partnerships
12 was transferred to Pacific Cities, a management company in Tacoma, Washington.

13 69. McKean was able to secure a job for his girlfriend/future wife, Connie
14 McKean at Pacific Cities. McKean was also able to secure a job for Connie McKean's
15 father at Pacific Cities.

16 70. McKean and Laura McKean separated for the last time on or about
17 September 12, 1993.

18 71. On November 7, 1995, McKean's marriage to Laura McKean was
19 dissolved. Exhibit 1 to the Findings of Fact and Conclusions of Law entered under
20 Pierce County Superior Court Cause No. 90-3-04783-0 contains a list of the limited
21 partnerships that were ultimately awarded to McKean. Exhibit 1 does not account for
22 the increased equity interest that McKean received in certain limited partnerships as a
23 result of the 1993 agreement with Wood nor does Exhibit 1 account for McKean's "1992
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NEIL, NETTLETON & NEIL, P.S.
Attorneys at Law
5302 Pacific Avenue
Tacoma, WA 98408
(253) 475-8600
(253) 473-5746 FAX

1 Transfer" to the Irrevocable Trust.

2 72. McKean married his third wife, Connie McKean on November 25, 1995.
3 Dahlstrom was McKean's best man.

4 73. On or about July 11, 1996, McKean filed numerous Amendments to
5 Certificates of Limited Partnership with the Secretary of State. The amendments
6 formally place in the record of the limited partnerships affected by the 1993 agreement
7 between McKean and Wood, McKean's increased equity or residual ownership interest;
8 McKean's transfer of 5% of his equity interest to NWCH; and McKean's "1992 Transfer"
9 to the Irrevocable Trust.

10 74. The Amendments to Certificate of Limited Partnership for St. George and
11 Kodiak that were filed with the Secretary of State in 1996 contained errors with regard
12 to McKean's "then owned" equity ownership interest and the resulting equity interest
13 transferred to the Irrevocable Trust arising out of the "1992 Transfer."

14 75. Sometime in the late summer or fall of 1996, McKean learned that he was
15 a named defendant in a federal civil action with regard to his activities in the limited
16 partnerships. McKean also learned that he was the subject of a federal criminal
17 investigation with regard to his activities in the limited partnerships.

18 76. McKean's second child, Morgan McKean was born to McKean and
19 Connie McKean on October 14, 1996.

20 77. The United States of America, on or about October 8, 1996, filed a
21 Complaint for Injunctive and Other Equitable Relief under 18 U.S.C. 1345 against
22 McKean and others under United States District Court, Western District of Washington
23 at Tacoma, Cause No. C96-5879.
24
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NEIL, NETTLETON & NEIL, P.S.
Attorneys at Law
5302 Pacific Avenue
Tacoma, WA 98408
(253) 475-8600
(253) 473-5746 FAX

C-1901

1 78. The Federal Court appointed a receiver for the limited partnerships. The
2 receiver replaced McKean and NWCH as managing general partners of the limited
3 partnerships. The receiver eventually retained the services of Attorney John T. Mellen.

4 79. As a result of McKean's conduct and pursuant to the terms of the limited
5 partnership agreements, McKean equity interest in the limited partnerships were
6 converted to that of a special general partner. The equity interest that the Irrevocable
7 Trust has in the limited partnerships that are derivative of McKean's equity interest were
8 also converted to that of a special general partner. A special general partner is a
9 partner who retains an equity interest, but who cannot control the management of the
10 limited partnership.

11 80. The receiver has either sold some of the apartment complexes that
12 comprise the limited partnerships, found new general managers for some of the
13 apartment complexes that comprise the limited partnerships, or still operates some of
14 the apartment complexes that comprise the limited partnerships.

15 81. McKean, after learning that he was a named defendant in federal civil
16 litigation and the subject of a federal criminal investigation, delivered, without saving
17 copies, voluminous documents to the federal government. The documents McKean
18 provided included, but were not limited to, the partnership agreements for the limited
19 partnerships, amendments to any limited partnership agreement for the limited
20 partnerships, annual audits for each limited partnership, and bank records.

21 82. McKean, after learning that he was a named defendant in federal civil
22 litigation and the subject of a federal criminal investigation, began to transfer assets out
23 of his name for the purpose of hiding them from the federal government.
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NEIL, NETTLETON & NEIL, P.S.
Attorneys at Law
5302 Pacific Avenue
Tacoma, WA 98408
(253) 475-8600
(253) 473-5746 FAX

1 83. McKean signed a document that converted his separate property to
2 community property to be owned by McKean and Connie McKean.

3 84. On August 25, 1997, McKean transferred 30% of his "then owned" equity
4 interest in 70 limited partnerships to the Irrevocable Trust. McKean confirmed the
5 transfer to the Irrevocable Trust by executing a Transfer of Partial Equity Interest; by
6 writing his Certified Public Accountant a letter confirming the transfer; and by writing
7 one of his criminal defense attorneys a letter explaining and confirming the transfer.
8 McKean's transfer of 30% of his "then owned" equity interest to the Irrevocable Trust is
9 referred to as the "1997 Transfer." Attached as Exhibit "C" and incorporated herein by
10 this reference is a spreadsheet reflecting McKean's "then owned" equity interest in the
11 70 limited partnerships in 1997; the resulting Irrevocable Trust ownership of an equity
12 interest in the 70 limited partnerships after the "1997 Transfer;" and McKean's
13 remaining equity interest after the "1997 Transfer."

14 85. McKean, by his own admission, in 1997 transferred an additional 30% of
15 his "then owned" equity interest in 70 limited partnerships to the Irrevocable Trust to
16 hide the equity interest from his primary creditor, the federal government.

17 86. The United States of America, on February 26, 1998, filed a document
18 entitled Information against McKean in the United States District Court Western District
19 of Washington at Tacoma under Cause No. CR 98-5068 alleging six felony violations of
20 federal law by McKean relating to the development and management of the limited
21 partnerships that were part of the Affordable Housing Program (§ 515 program)
22 sponsored by FmHA/RHA. McKean was charged with a violation of 18 U.S.C. § 1344
23 for having submitted a forged invoice from Dahlstrom Lumber; with a violation of 18
24
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NEIL, NETTLETON & NEIL, P.S.
Attorneys at Law
5302 Pacific Avenue
Tacoma, WA 98408
(253) 475-8600
(253) 473-5746 FAX

1 U.S.C. § 1014 for having made a false statement to obtain a loan advance to be paid to
 2 Dahlstrom Lumber; with a violation of 18 U.S.C. § 1014 and 2 for a false cost
 3 certification of Dahlstrom Lumber; with a violation of 18 U.S.C. § 1005 for a false
 4 invoice for legal services drawn against the reserve account of a limited partnership⁴;
 5 with a violation of 18 U.S.C. § 1005 for his forging the endorsement of his Certified
 6 Professional Accountant on a check and his fraudulent concealment of the receipt and
 7 possession of the funds; and with a violation of 26 U.S.C. § 7206(1) for the filing of a
 8 false 1995 federal income tax return.

9 87. On March 3, 1998, McKean entered into a Plea Agreement with the
 10 United States of America admitting to the truth of all the allegations contained in the
 11 Information filed against him and pleading guilty to six felony violations of federal law.

12 88. On May 8, 1998, McKean commenced a dissolution action to dissolve his
 13 marriage to Connie McKean under Pierce County Superior Court Cause No. 98-3-
 14 01560-7.

15 89. After McKean commenced the dissolution to dissolve his marriage to
 16 Connie McKean, he was sentenced to prison and began to serve prison time in
 17 Sheridan, Oregon.

18 90. McKean was released from prison in late 1999.

19 91. McKean, in February 2000, opened a trust account to receive the rental
 20 income from the "Minterwood Rental" at Columbia State Bank. The account was titled
 21

22
 23 ⁴ The Information, in part, alleges that McKean, between 1981 and 1990 obtained funds from
 24 reserve accounts. Each apartment complex/limited partnership was required to have a reserve account.
 25 The reserve account provided funds for the operation and maintenance of the apartment complex. The
 interest paid on each reserve account was reduced by agreement with the bank. McKean and Wood
 received the difference between the interest that should have been paid and the interest actually paid.

NEIL, NETTLETON & NEIL, P.S.
 Attorneys at Law
 5302 Pacific Avenue
 Tacoma, WA 98408
 (253) 475-8600
 (253) 473-5746 FAX

1 "IRR Trust for Michael A. McKean Children, Minterwood Rental A/C, Gale E. Dahlstrom,
2 Trustee." The account statements were addressed to Dahlstrom's P.O. Box in
3 Hoquiam, Washington. The tax identification number listed on the account statement for
4 the account is not the tax identification number for the trust. The tax identification
5 number listed on the account statement is for the limited partnership known as Madras.

6 92. From March 1, 2000 until CBGS was appointed Successor Trustee and
7 assumed control over the account that was opened in 2000, the rental income from the
8 "Minterwood Rental" and the mortgage payments of the "Minterwood Rental" were paid
9 from this account titled IRR Trust for Michael A. McKean Children, Minterwood Rental
10 A/C, Gale E. Dahlstrom, Trustee."

11 93. Dahlstrom, in the summer of 2000, contacted his attorney because he
12 was concerned about his receipt of bank statements from Columbia State Bank
13 indicating that he was a "Trustee."

14 94. Dahlstrom, on or about August 3, 2000, signed a Resignation of Trustee.

15 95. Dahlstrom personally delivered the Resignation of Trustee to McKean.
16 Dahlstrom, at that meeting with McKean, indicated that he had only agreed to serve as
17 Successor Trustee in the event that something happened to McKean. Dahlstrom also
18 indicated that he was not willing to be designated Trustee if he was not, in fact, acting
19 as Trustee and controlling the assets. Dahlstrom told McKean that he would consider
20 serving as Trustee if McKean provided all information that he and his attorney
21 requested. McKean promised to do so, but never provided the requested information.
22

23 96. The Resignation of Trustee was not sent to Connie McKean's attorney or
24 to Columbia State Bank.
25

NEIL, NETTLETON & NEIL, P.S.
Attorneys at Law
5302 Pacific Avenue
Tacoma, WA 98408
(253) 475-8600
(253) 473-5746 FAX

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97. McKean's marriage to Connie McKean was dissolved on November 3, 2000. The Findings of Fact and Conclusion of Law and the Decree of Dissolution entered under Pierce County Superior Court Cause No. 98-3-01560-7 found that McKean and Connie McKean had abused the Irrevocable Trust; that McKean controlled his family and friends-the designated Trustees of the Irrevocable Trust; and that a Corporate Trustee should be appointed as Trustee of the Irrevocable Trust. McKean appealed the decision of the Dissolution Court to appoint a Corporate Trustee of the Irrevocable Trust.

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98. While the appeal was pending, McKean filed a Declaration in the summer of 2001 in Pierce County Superior Court Cause No. 98-3-01560-7 that stated that Dahlstrom was the Trustee of the Irrevocable Trust.

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99. The Dissolution Court under Pierce County Superior Court Cause No. 98-3-01560-7 appointed CBGS Corporate Trustee of the Irrevocable Trust on October 26, 2001.

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100. CBGS, on or about January 4, 2002, commenced this action by filing a Petition for Instructions. A hearing was subsequently held. CBGS was directed to issue a TEDRA Summons. A new hearing was scheduled. CBGS issued and served a TEDRA Summons.

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101. On February 1, 2002, Division II of the Court of Appeals reversed and vacated the Dissolution Court's decision to appoint a Corporate Trustee for the Irrevocable Trust.

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24
25
102. McKean's sister, Shannon Keene, on or about March 2, 2002, filed federal income tax returns (1041's) for tax years 1998, 1999, and 2000 for the Irrevocable

NEIL, NETTLETON & NEIL, P.S.
Attorneys at Law
5302 Pacific Avenue
Tacoma, WA 98408
(253) 475-8600
(253) 473-5746 FAX

1 Trust. Shannon Keene signed each return as the Trustee of the Irrevocable Trust.

2 103. The decision of Division II of the Court of Appeals was made known to the
3 Court in this proceeding. The Court in this proceeding, on March 12, 2002, appointed
4 CBGS Successor Trustee for the Irrevocable Trust.

5 104. After CBGS's appointment as Successor Trustee was confirmed in this
6 proceeding, McKean filed Chapter 11 Bankruptcy. McKean's Chapter 11 Bankruptcy
7 was later converted to a Chapter 7 Bankruptcy. The bankruptcy is still pending.

8 105. The list of limited partnerships that McKean filed in the Bankruptcy Court
9 does not reflect the "1992 Transfer" to the Irrevocable Trust; does not reflect McKean's
10 receipt of an increased equity interest as a result of the 1993 agreement with Wood;
11 and does not reflect the "1997 Transfer" to the Irrevocable Trust.

12 106. CBGS took steps to protect the Trust's interests in assets that were also
13 subject to the jurisdiction of the United States Bankruptcy Court by virtue of McKean's
14 filing Chapter 11 that was later converted to a Chapter 7. Those steps include but were
15 not limited to attending and questioning McKean at his 341 Hearings, monitoring
16 pleadings filed in the bankruptcy proceeding, securing Orders to interplead disputed
17 funds into the Registry of the Court under the cause number in this proceeding so that
18 this Court could resolve the underlying disputes between the Irrevocable Trust and
19 McKean; asserting two sets of creditor claims on behalf of the Irrevocable Trust against
20 McKean; and securing two Reliefs from Stay so that this Court could resolve issues
21 between McKean and the Irrevocable Trust.
22

23 107. CBGS also took steps to ascertain and to protect the Trust's interests in
24 the limited partnerships that were part of the federal receivership under United States
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NEIL, NETTLETON & NEIL, P.S.
Attorneys at Law
5302 Pacific Avenue
Tacoma, WA 98408
(253) 475-8600
(253) 473-5746 FAX

1 District Court, Western District of Washington at Tacoma, Cause No. C96-5879. Those
2 steps include, but were not limited to, meeting with Mr. Mellen; reviewing voluminous
3 documents in Mr. Mellen's office; copying documents that were in the possession of Mr.
4 Mellen; and securing Orders to interplead disputed funds into the Registry of the Court
5 under the cause number in this proceeding so that this Court could resolve the
6 underlying dispute between McKean and the Irrevocable Trust.

7 108. CBGS, since McKean and Dahlstrom had few if any records relating to
8 the assets of the Irrevocable Trust, attempted to secure documents from other sources
9 such as but not limited to the Internal Revenue Service, the Secretary of State, banks,
10 Mr. Mellen, and the new managing general partners of the various limited partnerships.

11 109. CBGS had to contact, in some cases repeatedly, the new managing
12 general partners of the various limited partnerships to notify the new general partners of
13 the interest that the Irrevocable Trust had in the limited partnerships.

14 110. McKean employed several attorneys and expended substantial funds in
15 legal fees to obtain copies of documents from the federal receiver and to obtain the
16 names and addresses of the new managing general partners of the limited
17 partnerships.
18

19 111. McKean, after CBGS was appointed Successor Trustee and after he
20 received cash distributions that were equivalent to an 80% interest in NWCH,
21 disavowed his gift of 100 shares of stock in NWCH to the Irrevocable Trust. McKean
22 maintained that a completed gift of stock was not made because stock certificates were
23 never issued to the Irrevocable Trust. McKean also maintained that he could not have
24 made the gift because the stock was actually owned by Allison Interstate Construction,
25

NEIL, NETTLETON & NEIL, P.S.
Attorneys at Law
5302 Pacific Avenue
Tacoma, WA 98408
(253) 475-8600
(253) 473-5746 FAX

CP 901

1 Inc.

2 112. McKean made inconsistent statements under oath in other proceedings
3 about the Irrevocable Trust's ownership of stock in NWCH. In the United States
4 Bankruptcy Court, McKean testified that the Irrevocable Trust owned stock in NWCH.
5 In the guardianship proceeding under Pierce County Superior Court Cause No. 02-4-
6 00243-1, McKean, after he denied the validity of the gift to the Irrevocable Trust in this
7 proceeding, asserted that he had given the Irrevocable Trust a 20% ownership interest⁵
8 in NWCH; that he had given Shannon Keene a 75% ownership interest⁶ in NWCH; and
9 that he still retained a 5% ownership interest⁷ in NWCH.

10 113. According to McKean, he transferred 75% stock ownership in NWCH to
11 Shannon Keene because he was required to do so by the federal government. No
12 shares of stock were issued to Shannon Keene.

13 114. McKean, once his bankruptcy court proceeding is resolved, expects
14 Shannon Keene to return to McKean the 75% stock ownership interest in NWCH that
15 McKean gave her.

16 115. McKean testified that he will shut down NWCH if he is not permitted to
17 operate NWCH the way he wants to operate it.

18 116. McKean, regardless of stock ownership, controls NWCH.

19 117. McKean's motivation in denying the validity of the gift of shares of stock in
20 NWCH to the Irrevocable Trust was to prevent CBGS from managing funds that would
21 be distributed to the Irrevocable Trust from NWCH.
22
23

24 ⁵ 20% would be 100 shares.

25 ⁶ 75% would be 375 shares.

⁷ 5% would be 25 shares.

1 118. McKean, if CBGS were not Trustee of the Irrevocable Trust, would not be
2 denying the validity of the 1992 gift of 100 shares of stock in NWCH to the Irrevocable
3 Trust.

4 119. McKean is not credible.

5 120. McKean's Bankruptcy Trustee, in 2003, received total distributions of
6 \$82,827.00 from NWCH. The funds that NWCH received represented its limited
7 partnership interest in the limited partnerships known as Jetty and Redmond. The
8 funds that McKean's Bankruptcy Trustee received represented McKean's 80%
9 shareholder interest in NWCH. The funds were used by McKean's Bankruptcy Trustee
10 to pay down McKean's personal obligations to the federal government.⁸

11 121. A total of \$20,802.47 was interplead into the Registry of the Pierce County
12 Superior Court.⁹ These funds represent a 20% shareholder interest in NWCH that is
13 claimed by the Irrevocable Trust.

14 122. McKean's Bankruptcy Trustee, in 2004, received distributions from
15 NWCH. The funds that NWCH received represented its equity interest in the limited
16 partnership known as Winnemucca. The funds that McKean's Bankruptcy received
17 represented McKean's 80% shareholder interest in NWCH. The funds were used by
18 McKean's Bankruptcy Trustee to pay down McKean's personal obligations to the
19 federal government.

20 123. A total of \$445.47 was, by agreement, interplead into the Registry of the
21 Pierce County Superior Court. These funds represent a 20% shareholder interest in
22
23
24

25 ⁸ \$66,262.80 was for Jetty and \$21,191.37 was for Redmond.

⁹ \$16,564.20 was interplead for Jetty and \$4,238.27 was interplead for Redmond.

NEIL, NETTLETON & NEIL, P.S.
Attorneys at Law
5302 Pacific Avenue
Tacoma, WA 98408
(253) 475-8600
(253) 473-5746 FAX

1 NWCH that is claimed by the Irrevocable Trust.¹⁰

2 124. McKean and NWCH agreed that the Court in this proceeding should
3 resolve the dispute that McKean and NWCH have with the Irrevocable Trust over the
4 Irrevocable Trust's claim of stock ownership in NWCH and the right of the Irrevocable
5 Trust to receive a shareholder distribution from NWCH.

6 125. NWCH had been administratively dissolved by the Secretary of State at
7 the time that distributions in 2003 were made to McKean from NWCH.

8 126. McKean disavowed his "1997 Transfer" of an additional 30% of his "then
9 owned" equity or residual interest in 70 limited partnerships to the Trust.

10 127. The apartment complex that comprised the limited partnership known as
11 St. George was sold by the receiver.

12 128. CBGS asserted a claim to funds representing 20% of McKean's "then
13 owned" equity interest in St. George arising out of the "1992 Transfer". CBGS also
14 asserted a claim to funds representing 30% of McKean's "then owned" equity interest in
15 St. George arising out of the "1997 Transfer."

16 129. The Irrevocable Trust received funds representing 9% of McKean's equity
17 interest in St. George arising out of the "1992 Transfer".

18 130. Funds totaling \$76,738.68¹¹ which represented 12.10% of McKean's
19 equity interest in St. George were interplead into the Registry of the Court to be held
20 pending this Court's resolution of the issue surrounding McKean's 1996 Amendment to
21 Certificate of Limited Partnership for St. George and of the issue of the validity of
22

23
24 ¹⁰ \$443.16 was interplead on April 8, 2004 and \$12.31 was interplead on July 9, 2004.

25 ¹¹ \$76,539.70 was interplead on or about September 16, 2005, and \$198.98 was interplead on
or about March 20, 2006.

NEIL, NETTLETON & NEIL, P.S.
Attorneys at Law
5302 Pacific Avenue
Tacoma, WA 98408
(253) 475-8600
(253) 473-5746 FAX

1 McKean's "1997 Transfer" of an additional "then owned" 30% equity ownership in St.
2 George arising out of the "1997 Transfer" and other limited partnerships to the
3 Irrevocable Trust.

4 131. 30% of McKean's "then owned" 36% equity interest in St. George in 1997
5 is 10.8%.

6 132. 10.8% of the 12.10% of the funds interplead into the Registry of the Court
7 represents \$68,494.01.

8 133. Some of the apartment complexes that comprise the limited partnerships
9 have the potential to participate in a settlement with the FmHARHA. That settlement
10 could result in the distribution of funds to the partners holding an equity interest in the
11 limited partnerships.

12 134. McKean is actively seeking buyers for the apartments complexes that
13 comprise the limited partnerships. A sale of an apartment complex that comprises a
14 limited partnership could result in the distribution of funds to partners holding an equity
15 interest in the limited partnership.

16 135. Many of the apartment complexes that comprise the limited partnerships
17 are now "burned out" tax shelters.

18 136. Many of the apartment complexes that comprise the limited partnerships
19 may now be withdrawn from the Affordable Housing Program (§515 program)
20 sponsored by FmHARHA.

21 137. Dahlstrom, at trial, indicated that he would now be willing to serve as
22 Trustee of the Irrevocable Trust.

23 138. McKean, prior to trial, requested that CBGS be removed as Trustee of the
24
25

NEIL, NETTLETON & NEIL, P.S.
Attorneys at Law
5302 Pacific Avenue
Tacoma, WA 98408
(253) 475-8600
(253) 473-5746 FAX

1 Irrevocable Trust. McKean offered no evidence at trial to justify the removal of CBGS
2 as Trustee.

3 139. McKean is able to control his family and friends.

4 140. McKean disregards proper legal and administrative procedures.

5 141. McKean, when he does not get what he wants through the legal system,
6 will act as he so desires without regard to proper procedure or the rule of law.

7 142. McKean offered no evidence during the first phase of trial in opposition to
8 CBGS's request that the "Minterwood Rental" be sold or in the alternative that the
9 "Minterwood Rental" be distributed to Michelle Patricia Gillespie McKean upon her 18th
10 birthday.

11 143. McKean during the second phase of the trial testified that he would prefer
12 that the "Minterwood Trust" be terminated upon Michelle Patricia Gillespie McKean's
13 18th birthday as opposed to the "Minterwood Trust" remaining under the management of
14 CBGS.

15 144. McKean, after the Court issued an oral ruling on December 14, 2006,
16 presented CBGS with a tenant for the "Minterwood Rental." McKean delivered some
17 funds that he received from the tenant to CBGS. McKean kept the balance of the
18 funds, \$1,300.00. McKean maintains that he gave those funds to Michelle Patricia
19 Gillispie McKean, a minor who is age 17.

20 145. McKean maintains that Michelle Patricia Gillispie McKean is represented
21 by legal counsel, yet does not know the name of legal counsel.

22 146. McKean, after the Court issued its oral decision on December 14, 2006,
23 setting the amount of missing "Minterwood Trust" rent; determining the fees of CBGS to
24
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NEIL, NETTLETON & NEIL, P.S.
Attorneys at Law
5302 Pacific Avenue
Tacoma, WA 98408
(253) 475-8600
(253) 473-5746 FAX

1 be reasonable and necessary; and scheduling January 17, 2007, for a hearing on
2 allocation of responsibility for the missing "Minterwood Trust" rent and allocation of
3 responsibility for fees and costs, filed a Response to Supplemental/Amended Petition
4 for Judicial Proceedings on January 16, 2007. The response contained a denial of
5 issues that were ruled upon on December 14, 2006. The response asserted the
6 affirmative defense of Statute of Limitation.

7 147. The "Minterwood Rental" needed significant repairs after the former
8 tenant vacated in the summer of 2005. The former tenant notified the property
9 manager that the roof leaked when it rained. The roof leaked due to defects in its
10 construction. Cleaning the roof and gutters did not solve the problem. Exterior
11 corrections and repairs were made to the roof and the siding. Interior repairs and
12 corrections to the sheetrock had to wait until the interior wood was completely dry.
13 Mold and the potential for liability arising out of a mold problem were considered and
14 factored into the repair and correction process. The "Minterwood Rental" could not be
15 occupied while the corrections and repairs were being made.

17 148. CBGS has had to address and over come a lack of records for all assets
18 of the Irrevocable Trust; has had to sort through inconsistent statements as to who was
19 acting as Trustee of the Irrevocable Trust prior to CBGS's appointment; has had to sort
20 through inconsistent statements as to where trust funds were deposited; has had to
21 deal with a federal receiver; has had to deal with a bankruptcy court proceeding; has
22 had to obtain, review and organize voluminous records relating to the limited
23 partnerships at issue herein; has had to locate new managing general partners for
24 numerous limited partnerships at issue herein, and write to them sometimes more than
25

NEIL, NETTLETON & NEIL, P.S.
Attorneys at Law
5302 Pacific Avenue
Tacoma, WA 98408
(253) 475-8600
(253) 473-5746 FAX

1 once, to put them on notice of CBGS's appointment as Successor Trustee and to put
 2 them on notice of the Irrevocable Trust's equity or residual ownership interest in the
 3 limited partnerships; has had to manage and keep records relating to the "Minterwood
 4 Rental;" has had to file federal income tax returns for the Irrevocable Trust; has had to
 5 act to interplead funds for the protection of the Irrevocable Trust pending this Court's
 6 determination of issues; has had to assert creditor claims in McKean's Chapter 11 and
 7 Chapter 7 Bankruptcy proceedings; and successfully prosecuted a Quiet Title Action
 8 under Pierce County Superior Court Cause No. 06-2-06662-1 against McKean's
 9 company, Allison Interstate Construction, Inc.¹²

10 149. CBGS and its counsel have had to address issues in trust law; securities
 11 law; partnership law; federal receivership law; Chapter 11 Bankruptcy law; Chapter 7
 12 Bankruptcy law; fraudulent conveyance law; corporate law; stock law; tax law; gifting
 13 law; and spoliation and alteration of evidence.

14 150. CBGS has yet to be compensated for its services provided as set forth in
 15 the First, Second, Third, and Fourth Reports.

16 151. CBGS incurred attorney and/or trustee fees and costs as set forth in the
 17 First Reports as follows:

- | | | | |
|----|----|---------------------|--|
| 18 | a. | "Minterwood Trust:" | Fees: \$3,761.00 (Trustee) |
| 19 | | | Costs: \$7.26 |
| 20 | | | |
| 21 | b. | Trust: | Fees: \$23,317.00 (Trustee) |
| 22 | | | Fees: \$11,679.25 (Robin Balsam Legal) |
| 23 | | | |

24 ¹² McKean asserted herein that the Quiet Title Action was frivolous. McKean maintained that he
 25 and/or Allison Interstate Construction, Inc., had valid liens against the property until it was time for him to
 file a response to a Summary Judgment Motion.

NEIL, NETTLETON & NEIL, P.S.
 Attorneys at Law
 5302 Pacific Avenue
 Tacoma, WA 98408
 (253) 475-8600
 (253) 473-5746 FAX

Costs: \$1,539.61 (Robin Balsam Costs)

CBGS's trustee fees and costs and Balsam's fees and costs are not liquidated amounts.

152. CBGS incurred attorney and/or trustee fees and costs as set forth in the Second Reports as follows:

- a. "Minterwood Trust:" Fees: \$4,556.00 (Trustee)
Costs: \$102.45
- b. Trust: Fees: \$2,018.00 (Trustee)
Fees: \$6,375.00 (Robin Balsam Legal)
Costs: \$211.25 (Robin Balsam Costs)

CBGS's trustee fees and costs and Balsam's fees and costs are not liquidated amounts.

153. CBGS incurred attorney and/or trustee fees and costs as set forth in the Third Reports as follows:

- a. "Minterwood Trust:" Fees: \$2,956.00 (Trustee)
Fees: \$1,111.25 (Robin Balsam Legal)
Costs: \$25.12
- b. Trust: Fees: \$12,461.50 (Trustee)
Fees: \$10,804.25 (Robin Balsam Legal)
Costs: \$817.85 (Robin Balsam Costs)

CBGS's trustee fees and costs and Balsam's fees and costs are not liquidated amounts.

154. CBGS incurred attorney and/or trustee fees and costs as set forth in the

NEIL, NETTLETON & NEIL, P.S.
Attorneys at Law
5302 Pacific Avenue
Tacoma, WA 98408
(253) 475-8600
(253) 473-5746 FAX

1 Fourth Report for the Trust as follows:

- 2 a. Minterwood Trust Fees: \$3,382.50 (Trustee)
- 3 Fees: \$840.00 (Robin Balsam Legal)
- 4 Costs: \$23.14
- 5 Trust: Fees: \$9,781.00 (Trustee)
- 6 Fees: \$5,950.90 (Robin Balsam Legal)
- 7 Costs: \$129.32 (Robin Balsam Costs)

8 CBGS's trustee fees and costs and Balsam's fees and costs are not liquidated
9 amounts.

10 155. CBGS incurred trustee fees and costs from the closing date of the Fourth
11 Report through trial, for the trial only, as follows:

- 12 a, Minterwood Trust: Fees: \$2,247.00
- 13 b. Trust: Fees: \$24,918.00 (Trustee)
- 14 Costs: \$302.00
- 15

16 CBGS's trustee fees and costs are not liquidated amounts.

17 156. CBGS retained the services of Robert B. Nettleton (Nettleton). Nettleton's
18 fees and costs from July 10, 2002 through December 31, 2006 are \$97,230.20 for fees
19 and \$3,829.43 for costs. The time devoted to this proceeding is 519 hours. The
20 average hourly fee is \$187.34. Of the costs incurred, \$2,467.63 are for witness fees,
21 service of process fees, and the copying cost of the trial exhibit notebooks.

22 157. Nettleton's fees and costs from January 1, 2007 through January 30,
23 2007 are \$12,511.00 fees and \$147.34 for costs. Of the costs incurred, \$125.00 is for
24 the transcription fee for of this Court's December 14, 2006, Oral Decision.

25

NEIL, NETTLETON & NEIL, P.S.
Attorneys at Law
5302 Pacific Avenue
Tacoma, WA 98408
(253) 475-8600
(253) 473-5746 FAX

1 158. Nettleton billed fees, as set forth in the billing statements running from
 2 October 14, 21006 through September 18, 2006, in the amount of \$1,533.50 for
 3 services rendered to CBGS as Trustee of the "Minterwood Trust" as set forth in the
 4 Fourth Report.¹³

5 159. Nettleton billed fees in the amount of \$9,444.83 and costs in the amount
 6 of \$1,145.20 for services rendered to CBGS as Trustee of the "Minterwood Trust"
 7 relating to the Quiet Title Action under Pierce County Superior Court Cause No. 06-2-
 8 06662-1 against McKean's company, Allison Interstate Construction, Inc.¹⁴

9 160. Nettleton was admitted to the Washington State Bar in 1987. Nettleton
 10 has trial and appellate court experience. Nettleton's hourly rates from 2002 to the
 11 present have been \$165.00 per hour, \$195.00 per hour, and \$225.00 per hour. The
 12 hourly rates for Nettleton's legal assistant from 2002 through the present have been
 13 \$90.00 per hour and \$95.00 per hour.

14 161. Balsam was admitted to the Washington State Bar in 1984. Balsam has
 15 trial and appellate court experience. Balsam's legal hourly rates from 2002 to the
 16 present have been \$165.00 per hour, \$195.00 per hour, and \$210.00 per hour. The
 17 hourly rates for Balsam's legal assistant from 2002 through the present have been
 18 \$60.00 per hour, \$70.00 per hour, and \$80.00 per hour.

19
 20
 21
 22 ¹³ The Court, on January 19, 2006, reserved ruling on payment of these fees until the
 23 presentation hearing.

24 ¹⁴ The Court, on January 19, 2006, reserved ruling on payment of these fees until the
 25 presentation hearing. A judgment was entered against Allison Interstate Construction, Inc., in the
 Quiet Title Action for legal fees in the amount of \$7,802.33 and costs in the amount of \$899.78.
 There were other named defendants in the Quiet Title Action. The claims against those defendants
 settled without an award of fees and costs to either party.

NEIL, NETTLETON & NEIL, P.S.
 Attorneys at Law
 5302 Pacific Avenue
 Tacoma, WA 98408
 (253) 475-8600
 (253) 473-5746 FAX

1 162. Balsam's hourly rate for services provided as a Director of CBGS from
2 2002 through the present has been \$120.00 per hour and \$140.00 per hour.
3 Depending on the service provided by CBGS staff, the hourly rate for staff services
4 from 2002 through the present has been \$60.00 per hour, \$70.00 per hour, \$80.00 per
5 hour, and \$90.00 per hour.

6 163. This was a complex and difficult case for CBGS and its counsel.

7 164. The legal fees and costs of Nettleton were reasonable and necessary.

8 165. The legal fees and costs of Balsam were reasonable and necessary.

9 166. The Trustee fees and costs of CBGS were reasonable and necessary.

10 167. CBGS and its counsel acted in good faith in this proceeding.

11 168. McKean acted in bad faith in this proceeding.

12 169. Although Dahlstrom breached his duty to the Irrevocable Trust, the breach
13 was unintentional, was not in bad faith, and did not benefit Dahlstrom. Dahlstrom's
14 breach was induced by the direction that McKean gave to Dahlstrom as to Dahlstrom's
15 duties.
16

17 170. McKean became a de facto trustee of the Irrevocable Trust by virtue of
18 Dahlstrom's total delegation of management responsibilities to McKean.

19 171. McKean's pattern of practice of self-dealing with regard to the Irrevocable
20 Trust, at times, was detrimental to the Irrevocable Trust.

21 172. Due to the complexities of this case and the amount of additional time that
22 it would take the parties and the Court, the Court cannot determine with complete
23 accuracy the amount of the legal fees and cost of Balsam and the amount of CBGS's
24 Trustee fees and costs that should be allocated between the trust assets and McKean.
25

NEIL, NETTLETON & NEIL, P.S.
Attorneys at Law
5302 Pacific Avenue
Tacoma, WA 98408
(253) 475-8600
(253) 473-5746 FAX

1 173. Of the total Trustee fees and costs billed to the "Minterwood Trust" by
 2 CBGS through the Fourth Report, 15% of those fees and costs are for routine
 3 administrative matters that any Trustee would provide. 85% of those fees and costs
 4 are for matters relating to McKean's conduct.

5 174. Of Balsam's total legal fees and costs billed to the "Minterwood Trust"
 6 through the Fourth Report, 15% of those fees and costs are for routine administrative
 7 matters that any Trustee would provide. 85% of those fees and costs are for matters
 8 relating to McKean's conduct.

9 175. Of the total Trustee fees and costs bill to the Trust by CBGS through the
 10 Fourth Report, 15% of those fees and costs are for routine administrative matters that
 11 any Trustee would provide. 85% of those fees and costs are for matters relating to
 12 McKean's conduct.

13 176. Of Balsam's total legal fees and costs billed to the Irrevocable Trust
 14 through the Fourth Report, 15% of those fees and costs are for routine administrative
 15 matters that any Trustee would provide. 85% of those fees and costs are for matters
 16 relating to McKean's conduct.

17 177. 100% of the Trustee's fees and costs for the trial are for matters relating
 18 to McKean's conduct.
 19

20
 21 **CONCLUSIONS OF LAW**

22 Based Upon the foregoing Findings of Fact, the Court concludes as follows:

23 1. The Court has jurisdiction over the parties and subject matter of this
 24 proceeding and that venue is proper.
 25

NEIL, NETTLETON & NEIL, P.S.
 Attorneys at Law
 5302 Pacific Avenue
 Tacoma, WA 98408
 (253) 475-8600
 (253) 473-5746 FAX

MINTERWOOD TRUST

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2. Although McKean, the Trustor of the Irrevocable Trust, waived the requirement for the Trustee to account pursuant to Title 11.106 RCW, the waiver of the requirement to account did not relieve the Trustee of the duty to maintain records for the Irrevocable Trust.

3. A Trustee may delegate management of Trust property to another. The Trustee, may not, however, delegate all of the Trustee's duties and responsibilities.

4. Dahlstrom's delegation of the management of the "Minterwood Rental" to McKean, at the time that Dahlstrom accepted the position of Trustee of the Irrevocable Trust in 1992, was reasonable and permissible under the law.

5. Dahlstrom's total delegation of all his duties and responsibilities with regard to the "Minterwood Rental" to McKean was not reasonable. Dahlstrom and McKean should, therefore, be held jointly and severally liable for any loss that the Irrevocable Trust has sustained relating to the "Minterwood Rental."

6. Since an accounting with supporting documentation could not be provided for the "Minterwood Rental" rental income by either Dahlstrom or McKean, from January 1, 1993 through February 2000, the only way to determine the amount of rental income for this 86-month period is to estimate the rental income and the mortgage payments. Based upon the estimated rental income of \$53,555.64 and less the estimated mortgage payments of \$33,663.84, rental income of \$19,891.80 is missing and unaccounted for. A judgment in the amount of \$19,891.80 should be entered against Dahlstrom and McKean, jointly and severally.

7. CBGS's request for prejudgment interest, since the amount of missing

NEIL, NETTLETON & NEIL, P.S.
Attorneys at Law
5302 Pacific Avenue
Tacoma, WA 98408
(253) 475-8600
(253) 473-5746 FAX

1 rent is not a liquidated amount, should be denied.

2 *MINTERWOOD SECURITY/RENT DEPOSIT*

3 8. A judgment should be entered in favor of the Irrevocable Trust and
4 against McKean in the amount of \$1,300.00 with interest at 12% per annum for the
5 funds that he received from the new tenant of the "Minterwood Rental" in December
6 2006, and that he failed to deliver to CBGS.

7 *NORTHWEST COMMUNITY HOUSING*

8 9. A corporate veil may be pierced when necessary to do justice in particular
9 cases. The legal fiction of distinct corporate existence may be disregarded where a
10 private person so dominates and controls a corporation that such corporation is that
11 person's alter ego. The corporate veil will be pierced to defeat a fraud, wrong, or
12 injustice, at least, where the rights of third persons are concerned.

13 10. Shares of stock may but need not be represented by certificates.

14 11. Although Allison Interstate Construction, Inc., was the sole shareholder of
15 NWCH stock in 1992, Allison Interstate Construction, Inc., is the alter ego of McKean.
16 As such the corporate veil of Allison Interstate Construction, Inc., should be pierced to
17 prevent the injustice to the Irrevocable Trust that would occur if McKean is permitted to
18 disavow his December 30, 1992, gift of 100 shares of stock in NWCH to the Irrevocable
19 Trust.
20

21 12. Although NWCH is a corporation, it is also an alter ego of McKean. As
22 such the corporate veil of NWCH should be pierced to prevent the injustice to the
23 Irrevocable Trust that would occur if McKean is permitted to disavow his December 30,
24 1992, gift of 100 shares of stock in NWCH to the Irrevocable Trust.
25

NEIL, NETTLETON & NEIL, P.S.
Attorneys at Law
5302 Pacific Avenue
Tacoma, WA 98408
(253) 475-8600
(253) 473-5746 FAX

20. McKean's filing of Amendments to Certificates of Limited Partnership with the Secretary of State in 1996 did not increase or decrease the equity interest that the Irrevocable Trust received in the limited partnerships arising out of the "1992 Transfer." Any error in an Amendment of Certificate of Limited Partnership that reduced the equity interest that the Irrevocable Trust received arising out of the "1992 Transfer" was inadvertent and should now be corrected.

21. An order should be entered establishing the equity interest of McKean and NWCH arising out of the 1993 agreement and the 1996 Amendments to Certificates of Limited Partnership as set forth in Exhibit "B" hereto.

MADRAS

22. An order should be entered confirming the 4.75% profit and loss interest and the 4.75% equity interest that the Irrevocable Trust received in the limited partnership known as Madras.

23. An order should be entered confirming the 2.5% profit and loss interest and the 25% equity interest that NWCH has in Madras.

1997 TRANSFER

24. A party who places title of property in another, even without valid consideration, for the purpose of defrauding creditors cannot recover the property from the grantee.

25. Although a fraudulent conveyance may be void as to creditors, the conveyance nevertheless is valid against the grantor and his privies and passes all of the estate conveyed by grantor and his privies to the grantee.

26. A party who invites and knowingly permits a fraud to be practiced upon

NEIL, NETTLETON & NEIL, P.S.
Attorneys at Law
5302 Pacific Avenue
Tacoma, WA 98408
(253) 475-8600
(253) 473-5746 FAX

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1 his creditors cannot come into court for the purpose of divesting the grantee of the
2 fraudulent conveyance.

3 27. An order should be entered establishing McKean's "then owned" equity
4 interest in the 70 limited partnerships in 1997; the equity interest that the Irrevocable
5 Trust received as a result of the "1997 Transfer"; and McKean's remaining equity
6 interest after the "1997 Transfer" as set forth in Exhibit "C" hereto.

7 28. An order should be entered directing the Clerk of the Pierce County
8 Superior Court to disburse from the Registry of the Court interplead funds from the
9 limited partnerships known as St. George totaling \$76,738.68. The funds should be
10 distributed to CBGS, Trustee of the Irrevocable Trust in the amount of \$68,494.01 and
11 to Kathryn A. Ellis, Bankruptcy Trustee for McKean in the amount of \$8,244.67.

12 *INTERPLEAD FUNDS FOR WINNEMUCCA*

13 29. An order should also be entered directing the Clerk of the Pierce County
14 Superior Court to disburse from the Registry of the Court interplead funds totaling
15 \$445.47. Those funds represent funds submitted on April 8, 2004 and on July 9, 2004
16 for Winnemucca.

17 *REPLACEMENT OF SUCCESSOR TRUSTEE*

18 30. An order should be entered denying Dahlstrom's request to now be
19 appointed Trustee of the Irrevocable Trust.

20 31. An order should be entered denying McKean's request that CBGS be
21 removed as Successor Trustee.

22 *WAIVER OF AFFIRMATIVE DEFENSE*

23 32. A party who fails to timely asserts an affirmative defense waives the right
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NEIL, NETTLETON & NEIL, P.S.
Attorneys at Law
5302 Pacific Avenue
Tacoma, WA 98408
(253) 475-8600
(253) 473-5746 FAX

1 to assert the affirmative defense.

2 33. The assertion that a claim is barred by the statute of limitation is an
3 affirmative defense.

4 34. McKean's assertion of a statute of limitation was untimely. McKean,
5 therefore, waived the affirmative defense.

6 35. An order should be entered denying counsel for McKean's oral motion on
7 January 17, 2007, to dismiss based on statute of limitations.

8 *APPROVAL OF REPORTS*

9 36. The First, Second, Third, and Fourth Reports of CBGS and all acts
10 disclosed by CBGS in those reports and by CBGS during trial and on January 17, 2007,
11 should, in all respects, be confirmed, ratified and approved.

12 *FEES AND COSTS*

13 37. Reasonable attorney's fees and costs can be awarded to any party from
14 any party to the proceeding or from trust assets.

15 38. An award of attorney's fees is discretionary and does not require a finding
16 of bad faith or self-dealing.

17 39. An award of fees is discretionary and can be used to make the trust
18 beneficiaries whole.

19 40. Nettleton's attorney fees in the amount of \$109,741.20 are reasonable
20 and necessary under the circumstances of this case. The costs of Nettleton in the
21 amount of \$3,976.77 are reasonable and necessary under the circumstances of this
22 case.

23 41. Based upon the conduct of McKean, a judgment and order should be
24
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NEIL, NETTLETON & NEIL, P.S.
Attorneys at Law
5302 Pacific Avenue
Tacoma, WA 98408
(253) 475-8600
(253) 473-5746 FAX

1 entered directing that McKean is liable to the Irrevocable Trust for Nettleton's fees in
2 the amount of \$109,741.20 and recoverable costs of \$2,592.63 with interest at the rate
3 of 12% per annum from date of entry of the judgment. An order should also be entered
4 directing CBGS to pay the balance of Nettleton's costs in the amount of \$1,384.14 from
5 the Irrevocable Trust.

6 42. Nettleton's attorney fees in the amount of \$1,533.50 as set forth in his
7 October 14, 2005 billing statement through his September 18, 2006 billing statement for
8 services provided to CBGS as Trustee of the "Minterwood Trust" are reasonable and
9 necessary under the circumstances of this case and should be paid from assets in the
10 "Minterwood Trust."

11 43. Nettleton's fees in the amount of \$9,444.83 and costs in the amount of
12 \$1,145.20 for services provided to CBGS as Trustee of the "Minterwood Trust" in the
13 Quiet Title Action are reasonable and necessary and should be paid from assets in the
14 "Minterwood Trust."

15 44. Balsam's attorney fees through the Fourth Report for the Irrevocable Trust
16 in the amount of \$34,809.40 are reasonable and necessary under the circumstances of
17 this case. The costs of Balsam through the Fourth Report in the amount of \$2,698.03
18 are reasonable and necessary under the circumstances of this case.

19 45. Based upon the conduct of McKean, a judgment and order should be
20 entered directing that McKean is liable for the Irrevocable Trust for 85% of Balsam's
21 fees through the Fourth Report for the Irrevocable Trust in the amount of \$29,587.99
22 and 85% of the costs in the amount of \$2,293.32 and with interest at the rate of 12%
23 per annum from date of entry of the judgment. An order should also be entered
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NEIL, NETTLETON & NEIL, P.S.
Attorneys at Law
5302 Pacific Avenue
Tacoma, WA 98408
(253) 475-8600
(253) 473-5746 FAX

1 directing CBGS to pay 15% of Balsam's fees through the Fourth Report for the
2 Irrevocable Trust in the amount of \$5,221.41 and Balsam's costs in the amount of
3 \$404.71 from the Irrevocable Trust.

4 46. CBGS's Trustee fees through the Fourth Report for the Irrevocable Trust
5 in the amount of \$47,577.50 are reasonable and necessary under the circumstances of
6 this case.

7 47. Based upon the conduct of McKean, a judgment and order should be
8 entered directing that McKean is liable to the Irrevocable Trust for 85% of CBGS's fees
9 through the Fourth Report for the Irrevocable Trust in the amount of \$40,440.87 with
10 interest at the rate of 12% per annum from date of entry of the judgment. An order
11 should also be entered directing CBGS to pay 15% of its fees in the amount of
12 \$7,116.63 through the Fourth Report from the Irrevocable Trust.

13 48. CBGS's Trustee fees incurred from the Fourth Report through February
14 20, 2007 for the Irrevocable Trust relating to the trial herein in the amount of \$24,918.00
15 and costs in the amount of \$302.00 are reasonable and necessary under the
16 circumstances of this case.

17 49. Based upon the conduct of McKean, a judgment and order should be
18 entered directing that McKean is liable to the Irrevocable Trust for 100% of CBGS's
19 fees and costs from the Fourth Report for the Irrevocable Trust through February 20,
20 2007 relating to the trial herein in the amount of \$25,220.00 (\$24,918.00 fees and
21 \$302.00 costs) with interest at the rate of 12% per annum from date of entry of the
22 judgment.
23

24 50. CBGS's Trustee fees in the amount of \$14,655.50 and legal fees in the
25

NEIL, NETTLETON & NEIL, P.S.
Attorneys at Law
5302 Pacific Avenue
Tacoma, WA 98408
(253) 475-8600
(253) 473-5746 FAX

1 amount of \$1,951.25 through the Fourth Report for the "Minterwood Trust" are
2 reasonable and necessary under the circumstances of this case. The costs of CBGS in
3 the amount of \$157.97 through the Fourth Report for the "Minterwood Trust" are
4 reasonable and necessary under the circumstances of this case.

5 51. Based upon the conduct of McKean, a judgment and order should be
6 entered directing that McKean is liable to the "Minterwood Trust" for 85% of CBGS's
7 Trustee fees and legal fees through the Fourth Report in the amount of \$14,115.73 and
8 85% of CBGS's costs in the amount of \$134.27 with interest at the rate of 12% per
9 annum from date of entry of the judgment. An order should also be entered directing
10 CBGS to pay 15% of its Trustee fees and legal fees the amount of \$2,501.02 and costs
11 in the amount of \$23.70 through the Fourth Report from assets in the "Minterwood
12 Trust."

13
14 52. CBGS's Trustee fees from the Fourth Report through trial in the amount of
15 \$2,247.00 for the "Minterwood Trust" are reasonable and necessary under the
16 circumstances of this case.

17 53. Based upon the conduct of McKean, a judgment and order should be
18 entered directing that McKean is liable to the "Minterwood Trust" for 100% of Balsam's
19 fees and costs through the Fourth Report and incurred in trial in the amount of
20 \$2,247.00.

21 54. An order should be entered directing that Dahlstrom should be personally
22 responsible for Dahlstrom's legal fees and costs.

23 //

24 //

25
NEIL, NETTLETON & NEIL, P.S.
Attorneys at Law
5302 Pacific Avenue
Tacoma, WA 98408
(253) 475-8600
(253) 473-5746 FAX

CP 922

55. An order should be entered directing that McKean should be personally responsible for McKean's legal fees and costs.

DONE IN OPEN COURT THIS 8 day of March, 2007.

Susan K. Serko

The Honorable Susan K. Serko

Presented by:

Approved as to Form:

Robert B. Nettleton

ROBERT B. NETTLETON
WSBA # 17403
Attorney for Successor Trustee,
Commencement Bay Guardianship
Services

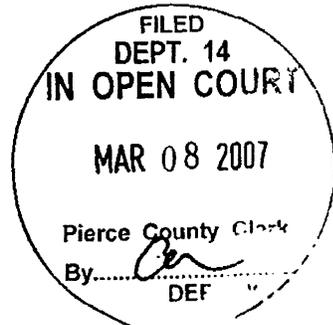
John P. O'Connor

JOHN P. O'CONNOR
WSBA # 6806
Attorney for Michael A. McKean

Approved as to Form;
Notice of Presentation Waived:

Did Not Appear

DAVID L. EDWARDS
WSBA #4047
Attorney for Gale and Sandra Dahlstrom



NEIL, NETTLETON & NEIL, P.S.
Attorneys at Law
5302 Pacific Avenue
Tacoma, WA 98408
(253) 475-8600
(253) 473-5746 FAX

CP 423

EXHIBIT "A"

McKean Partnerships

Partnership	1992 Transfer		
	McKean Interest Prior to Transfer	McKean Interest After Transfer	Trust Interest After Transfer
Albertville Assoc.	10.0%	8.0%	2.0%
Anadarko Assoc.	10.0%	8.0%	2.0%
Baker Assoc.	25.0%	20.0%	5.0%
Barnsville Assoc.	10.0%	8.0%	2.0%
Bayside Assoc.	1.0%	0.8%	0.2%
Brookwood Assoc.	25.0%	20.0%	5.0%
Burlington Assoc.	10.0%	8.0%	2.0%
Castle Rock Assoc.	10.0%	8.0%	2.0%
Chapel Downs Assoc.	10.0%	8.0%	2.0%
Cle Elum Assoc.	25.0%	20.0%	5.0%
Cullman Assoc.	10.0%	8.0%	2.0%
Cut Bank Assoc.	10.0%	8.0%	2.0%
Deming Assoc.	10.0%	8.0%	2.0%
Diana Arms I	10.0%	8.0%	2.0%
Diana Arms II	10.0%	8.0%	2.0%
Douglas Assoc.	16.67%	13.336%	3.334%
Dyersburg Assoc.	10.0%	8.0%	2.0%
Elizabethtown Assoc.	10.0%	8.0%	2.0%
Elko Assoc.	10.0%	8.0%	2.0%
Embaracadero Assoc.	10.0%	8.0%	2.0%
Enterprise Assoc.	10.0%	8.0%	2.0%
Evanston Assoc.	10.0%	8.0%	2.0%
Fallon Assoc.	25.0%	20.0%	5.0%
Forest Special Limited Part.	23.4%	18.72%	4.68%
Forks Assoc.	25.0%	20.0%	5.0%
Friday Harbor Assoc.	16.67%	13.336%	3.334%
Fulton Assoc.	10.0%	8.0%	2.0%
Grants Assoc.	10.0%	8.0%	2.0%
Guymon Gardens Assoc.	19.0%	15.2%	3.8%
Homer Assoc.	16.1%	12.88%	3.22%
Huron Assoc.	10.0%	8.0%	2.0%
Jetty Assoc.	0.0%	0.0%	0.0%
Kearney Assoc.	10.0%	8.0%	2.0%
Kodiak Assoc.	12.0%	9.6%	2.4%
Kodiak II Assoc.	10.0%	8.0%	2.0%
L& B Investments II	10.0%	8.0%	2.0%
Madison Assoc. aka Madras II	0.0%	0.0%	0.0%
Madras Assoc.	0.0%	0.0%	0.0%

McKean Partnerships

Partnership	1992 Transfer		
	McKean Interest Prior to Transfer	McKean Interest After Transfer	Trust Interest After Transfer
Medical Lake Assoc.	10.0%	8.0%	2.0%
Millview Assoc.	10.0%	8.0%	2.0%
Newberry Assoc.	10.0%	8.0%	2.0%
North McMinnville	50.0%	40.0%	10.0%
Northridge Assoc.	25.0%	20.0%	5.0%
Norwegian Woods Assoc.	25.0%	20.0%	5.0%
Ocean Shores Assoc.	50.0%	40.0%	10.0%
Palmer Assoc.	10.0%	8.0%	2.0%
Park Terrace Assoc.	10.0%	8.0%	2.0%
Parkwood Assoc.	25.0%	20.0%	5.0%
Portland Investors (2 apt.)	25.0%	20.0%	5.0%
Raton Assoc.	10.0%	8.0%	2.0%
Rawlins Assoc.	10.0%	8.0%	2.0%
Raymond Assoc.	25.0%	20.0%	5.0%
Redmond Assoc.	0.0%	0.0%	0.0%
Rexburg Assoc.	9.0%	7.2%	1.8%
Riverside Assoc.	10.0%	8.0%	2.0%
Selah Assoc.	10.0%	8.0%	2.0%
Sherwood Glen Assoc.	10.0%	8.0%	2.0%
Silver City Assoc.	10.0%	8.0%	2.0%
Southeast Alaska	25.0%	20.0%	5.0%
St. George Assoc.	45.0%	36.0%	9.0%
Sunset Villa Assoc.	10.0%	8.0%	2.0%
Tanana Assoc.	10.0%	8.0%	2.0%
Towne Square Assoc.	10.0%	8.0%	2.0%
Tremonton Assoc.	10.0%	8.0%	2.0%
View Ridge Assoc.	10.0%	8.0%	2.0%
Villa Assoc.	10.0%	8.0%	2.0%
Villa Canon Assoc.	10.0%	8.0%	2.0%
Wildwood Terrace	10.0%	8.0%	2.0%
Winnemucca Assoc.	25.0%	20.0%	5.0%
Woodridge Assoc.	25.0%	20.0%	5.0%

EXHIBIT "B"

McKean Partnerships

Partnership	1993 Agreement/1996 Amendments			
	McKean Interest Prior to 1993/1996	McKean Interest After 1993/1996	NWCH Interest After 1993/1996	Trust Interest After 1993/1996
Albertville Assoc.	8.0%	13.0%	5.0%	2.0%
Anadarko Assoc.	8.0%	13.0%	5.0%	2.0%
Baker Assoc.	20.0%	20.0%	0.0%	5.0%
Barnsville Assoc.	8.0%	13.0%	5.0%	2.0%
Bayside Assoc.	0.8%	0.8%	0.0%	0.2%
Brookwood Assoc.	20.0%	20.0%	0.0%	5.0%
Burlington Assoc.	8.0%	13.0%	5.0%	2.0%
Castle Rock Assoc.	8.0%	13.0%	5.0%	2.0%
Chapel Downs Assoc.	8.0%	13.0%	5.0%	2.0%
Cle Elum Assoc.	20.0%	20.0%	0.0%	5.0%
Cullman Assoc.	8.0%	13.0%	5.0%	2.0%
Cut Bank Assoc.	8.0%	13.0%	5.0%	2.0%
Deming Assoc.	8.0%	13.0%	5.0%	2.0%
Diana Arms I	8.0%	13.0%	5.0%	2.0%
Diana Arms II	8.0%	13.0%	5.0%	2.0%
Douglas Assoc.	13.336%	13.336%	0.0%	3.334%
Dyersburg Assoc.	8.0%	13.0%	5.0%	2.0%
Elizabethtown Assoc.	8.0%	13.0%	5.0%	2.0%
Elko Assoc.	8.0%	13.0%	5.0%	2.0%
Embaracadero Assoc.	8.0%	13.0%	5.0%	2.0%
Enterprise Assoc.	8.0%	13.0%	5.0%	2.0%
Evanston Assoc.	8.0%	13.0%	5.0%	2.0%
Fallon Assoc.	20.0%	20.0%	0.0%	5.0%
Forest Special Limited Part.	18.72%	18.72%	0.0%	4.68%
Forks Assoc.	20.0%	15.0%	5.0%	5.0%
Friday Harbor Assoc.	13.336%	13.336%	0.0%	3.334%
Fulton Assoc.	8.0%	13.0%	5.0%	2.0%
Grants Assoc.	8.0%	13.0%	5.0%	2.0%
Guymon Gardens Assoc.	15.2%	15.2%	0.0%	3.8%
Homer Assoc.	12.88%	12.88%	0.0%	3.22%
Huron Assoc.	8.0%	13.0%	5.0%	2.0%
Jetty Assoc.	0.0%	0.0%	0.0%	0.0%
Kearney Assoc.	8.0%	13.0%	5.0%	2.0%
Kodiak Assoc.	9.6%	17.6%	0.0%	2.4%
Kodiak II Assoc.	8.0%	13.0%	5.0%	2.0%
L & B Investments II	8.0%	13.0%	5.0%	2.0%
Madison Assoc. aka Madras II	0.0%	0.0%	0.0%	0.0%
Madras Assoc.	0.0%	0.0%	0.0%	0.0%

EXHIBIT "C"

McKean Partnerships

Partnership	1997 Transfer				
	McKean Interest Prior to Transfer	30% Transfer to Trust	McKean Final Interest	NWCH Interest	Trust Final Interest
Alberville Assoc.	13.0%	3.9%	9.1%	5.0%	5.9%
Anadarko Assoc.	13.0%	3.9%	9.1%	5.0%	5.9%
Baker Assoc.	20.0%	6.0%	14.0%	0.0%	11.0%
Barnsville Assoc.	13.0%	3.9%	9.1%	5.0%	5.9%
Bayside Assoc.	0.8%	0.24%	0.56%	0.0%	0.44%
Brookwood Assoc.	20.0%	6.0%	14.0%	0.0%	11.0%
Burlington Assoc.	13.0%	3.9%	9.1%	5.0%	5.9%
Castle Rock Assoc.	13.0%	3.9%	9.1%	5.0%	5.9%
Chapel Downs Assoc.	13.0%	3.9%	9.1%	5.0%	5.9%
Cle Elum Assoc.	20.0%	6.0%	14.0%	0.0%	11.0%
Cullman Assoc.	13.0%	3.9%	9.1%	5.0%	5.9%
Cut Bank Assoc.	13.0%	3.9%	9.1%	5.0%	5.9%
Deming Assoc.	13.0%	3.9%	9.1%	5.0%	5.9%
Diana Arms I	13.0%	3.9%	9.1%	5.0%	5.9%
Diana Arms II	13.0%	3.9%	9.1%	5.0%	5.9%
Douglas Assoc.	13.336%	4.0008%	9.3352%	0.0%	7.3348%
Dyersburg Assoc.	13.0%	3.9%	9.1%	5.0%	5.9%
Elizabethtown Assoc.	13.0%	3.9%	9.1%	5.0%	5.9%
Elko Assoc.	13.0%	3.9%	9.1%	5.0%	5.9%
Embaracadero Assoc.	13.0%	3.9%	9.1%	5.0%	5.9%
Enterprise Assoc.	13.0%	3.9%	9.1%	5.0%	5.9%
Evanston Assoc.	13.0%	3.9%	9.1%	5.0%	5.9%
Fallon Assoc.	20.0%	6.0%	14.0%	0.0%	11.0%
Forest Special Limited Part.	18.72%	5.616%	13.104%	0.0%	10.296%
Forks Assoc.	15.0%	4.5%	10.5%	5.0%	9.5%
Friday Harbor Assoc.	13.336%	4.0008%	9.3352%	0.0%	7.3348%
Fulton Assoc.	13.0%	3.9%	9.1%	5.0%	5.9%
Grants Assoc.	13.0%	3.9%	9.1%	5.0%	5.9%
Guymon Gardens Assoc.	15.2%	4.56%	10.64%	0.0%	8.36%
Homer Assoc.	12.88%	3.864%	9.016%	0.0%	7.084%
Huron Assoc.	13.0%	3.9%	9.1%	5.0%	5.9%
Jetty Assoc.	41.0%	12.3%	28.7%	0.0%	12.3%
Kearney Assoc.	13.0%	3.9%	9.1%	5.0%	5.9%
Kodiak Assoc.	17.6%	5.28%	12.32%	0.0%	7.68%
Kodiak II Assoc.	13.0%	3.9%	9.1%	5.0%	5.9%
L&B Investments II	13.0%	3.9%	9.1%	5.0%	5.9%
Madison Assoc. aka Madras II	16.6%	4.98%	11.62%	0.0%	4.98%
Madras Assoc.	25.0%	7.5%	17.5%	0.0%	10.0%

McKean Partnerships

Partnership	1997 Transfer				
	McKean Interest Prior to Transfer	30% Transfer to Trust	McKean Final Interest	NWCH Interest	Trust Final Interest
Medical Lake Assoc.	13.0%	3.9%	9.1%	5.0%	5.9%
Millview Assoc.	13.0%	3.9%	9.1%	5.0%	5.9%
Newberry Assoc.	13.0%	3.9%	9.1%	5.0%	5.9%
North McMinnville	40.0%	12.0%	28.0%	0.0%	22.0%
Northridge Assoc.	15.0%	4.5%	10.5%	5.0%	9.5%
Norwegian Woods Assoc.	15.0%	4.5%	10.5%	5.0%	9.5%
Ocean Shores Assoc.	40.0%	12.0%	28.0%	0.0%	22.0%
Palmer Assoc.	13.0%	3.9%	9.1%	5.0%	5.9%
Park Terrace Assoc.	13.0%	3.9%	9.1%	5.0%	5.9%
Parkwood Assoc.	15.0%	4.5%	10.5%	5.0%	9.5%
Portland Investors (2 apt.)	20.0%	6.0%	14.0%	0.0%	11.0%
Raton Assoc.	13.0%	3.9%	9.1%	5.0%	5.9%
Rawlins Assoc.	13.0%	3.9%	9.1%	5.0%	5.9%
Raymond Assoc.	15.0%	4.5%	10.5%	5.0%	9.5%
Redmond Assoc.	25.0%	7.5%	17.5%	0.0%	7.5%
Rexburg Assoc.	7.2%	2.16%	5.04%	0.0%	3.96%
Riverside Assoc.	13.0%	3.9%	9.1%	5.0%	5.9%
Selah Assoc.	13.0%	3.9%	9.1%	5.0%	5.9%
Sherwood Glen Assoc.	13.0%	3.9%	9.1%	5.0%	5.9%
Silver City Assoc.	13.0%	3.9%	9.1%	5.0%	5.9%
Southeast Alaska	15.0%	4.5%	10.5%	5.0%	9.5%
St. George Assoc.	36.0%	10.8%	25.2%	0.0%	19.8%
Sunset Villa Assoc.	13.0%	3.9%	9.1%	5.0%	5.9%
Tanana Assoc.	13.0%	3.9%	9.1%	5.0%	5.9%
Towne Square Assoc.	13.0%	3.9%	9.1%	5.0%	5.9%
Tremonton Assoc.	13.0%	3.9%	9.1%	5.0%	5.9%
View Ridge Assoc.	13.0%	3.9%	9.1%	5.0%	5.9%
Villa Assoc.	13.0%	3.9%	9.1%	5.0%	5.9%
Villa Canon Assoc.	13.0%	3.9%	9.1%	5.0%	5.9%
Wildwood Terrace	13.0%	3.9%	9.1%	5.0%	5.9%
Winnemucca Assoc.	15.0%	4.5%	10.5%	5.0%	9.5%
Woodridge Assoc.	15.0%	4.5%	10.5%	5.0%	9.5%

APPENDIX A-2

**IN THE COURT OF APPEALS, DIVISION II
COUNTY OF PIERCE, STATE OF WASHINGTON**

In re:

THE IRREVOCABLE TRUST OF
MICHAEL A. MCKEAN

APPEAL NO. 36127-2-II

AMENDED STATEMENT OF
ARRANGEMENTS

The Appellant, Michael A. McKean, by and through his attorney of record, John P. O'Connor, hereby notifies the Court, and all other involved parties that Michael A. McKean does not intend to file a Verbatim Report of Proceedings.

It is the intent of Mr. McKean to present the following issues for review:

- A. Whether the trial court erred in denying the motion of Michael A. McKean to vacate all orders and dismiss all orders based upon a lack of standing of Commencement Bay Guardianship Services to initiate guardianship proceedings;
- B. Whether the court erred in not dismissing any claims against Michael A. McKean pursuant to the applicable statute of limitations; and
- C. Whether the court erred in ordering that 20% of any distributions made to the corporation, Northwest Community Housing, would be remitted to the trustee if the Irrevocable

COPY

Trust, which issue is based upon the fact that in effect the order constitutes an ordered against Northwest Community Housing which was not a party to the proceedings.

Dated this 16th day of May, 2007.



John P. O'Connor,
WSBA #6806, Attorney for Appellant
2115 North 30th Street, Suite 201
Tacoma, Washington 98403
Phone (253) 572-4264

That on September 27, 2007, I delivered to ABC Legal Services,
Pierce County, for delivery upon:

Commencement Bay Guardianship Services
Attention: Robin Balsam
609 Tacoma Avenue South
Tacoma, Washington 98402

John P. O'Connor
Attorney at Law
2115 North 30th Street
Suite 201
Tacoma, Washington 98403

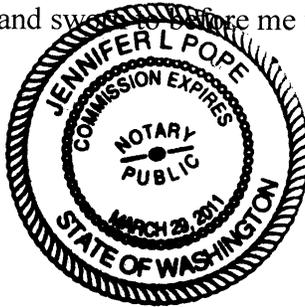
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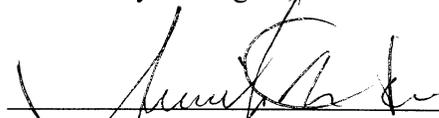
1. Brief of Respondent.



VIRGINIA J. CORREA

Subscribed and sworn to before me this 27th day of August, 2007.





JENNIFER L. POPE
Notary Public in and for the State of
Washington, residing at Tacoma.
My commission expires: 03/29/2011