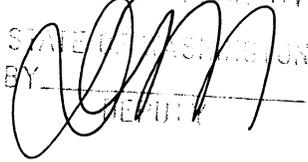


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NO. 36682-7-II

R. SIDNEY SHAW, PERSONAL REPRESENTATIVE OF THE
ESTATE OF GARY DELGUZZI AND DAVID L. MARTIN

APPELLANTS

V.

IN RE THE ESTATE OF JACK DELGUZZI

RESPONDENT

APPELLANT'S BRIEF
AMENDED

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May 27, 2008

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- Appendix 1.** Unpublished Opinions of this Court: No. 217520-0-II, January 8, 1999 (“UPO-1”) and No. 24860-3-II. August 31, 2001 (“UPO-2”)
- Appendix 2.** Plaintiff’s Objections to Final Supplemental to Final Report and Petition for Decree of Distribution (Amended)(Factual)
- Exhibit AA.** Bookkeeping records of Ms Leslie Stanton, disclosing the presence of a “private agreement” between Mr. Wilbert and his lawyers, Short Cressman and Burgess to contravene the fee award earlier made by Judge Costello to the law firm and to Mr. Wilbert
- Exhibit BB.** The “Covenant Mutually Tolling the Statute of Limitations signed by Short Cressman and Burgess and William E. & Loretta D. Wilbert permitting the Wilberts to conceal and convert the claims of the Estate of Jack Delguzzi and the Trust of Gary Delguzzi against SCB for the Wilberts’ own use and benefit.
- Exhibit A.** Memorandum Decision– October 10, 1997
- Exhibit B.** Order Regarding Administrative Expense & Reimbursement Claims and Plan for Distribution – June 6, 1998
- Exhibit C.** Declaration of William E. Wilbert – May 15, 1998
- Exhibit a (cited at p.2, ¶ 6) Appointment of Agent
- Exhibit b (cited at p.11, ¶ 27) Wilbert Time Records
- Exhibit c (cited at p.29, ¶ 34) Costa Rica Hours and Expense Adjustment Exhibit d (cited at p.30, ¶ 38)
- Exhibit e (cited at p.33, ¶ 40) Spreadsheet referring to “Order Regarding Administrative Expense ...” (Exhibit B, above of June 6,

1998)

Exhibit D. Declaration of Paul R. Cressman, Sr., dated Jan. 20, 1997

Exhibit a: Agreement Apr 28, 1982

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Exhibit c: Summary of SCB invoices Jan 1986 to Dec 1990

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Exhibit G. Recalculation of the fee amount (\$123,923.50) claimed by
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Exhibit I. Mr. Kleinman's (1) Excel file "feesum.xls" summarizing
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Exhibit K. Known real estate commissions to
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Exhibit L. Calculation (using Wilbert CPA Kleinman's calculations)
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Exhibit M. Wilbert's Supplement to Final Report and Petition for
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valuation of the Estate's Malcolm Island transfer to himself.

Exhibit N.

- Exhibit O.** Page from Mr. Kleinman's "feesum.xls" showing total asset sales of \$8,749,332
- Exhibit P.** Page from Mr. Kleinman's "feesum.xls" with total asset receipts of \$1,449,397 (Sales of \$1,220,083 plus "Contract Collections" of \$229,314.)
- Exhibit Q.** IRS Adjusted Assessment for Estate Tax showing taxable estate of \$9,593,408
- Exhibit S.** Wilbert's Supplement to Final Report and Petition foDecree of Distribution, pp. 23- 34 offering his explanation of the Estate's loss from the sale of its Costa Rica holdings at a large loss to a German investor (page 32) whose name was not authorized to be released to the Administrator by the Mr. Wilbert's partner, Sr. Claudio Cerdas in the related water company which serviced the estate's developments.
- Exhibit T.** Copy of the settlement schedule between Estate of Jack Delguzzi and Bruno Delguzzi, his brother's estate awarding Surfside Estates to Jack's Estate, deeds effecting the transfers and the title reports showing later history of the properties as of Jan. 12, 2007.
- Exhibit U.** Properties that Administrator Ellis alleged that she could not sell and the title summaries of those properties.
- Exhibit V.** Complaint for Foreclosure (Real Property Tax Liens) and title report on Assessor No. 06 30 09 570800 0000 in Clallam County showing the Deed of Trust in favor of Cedarwood Properties, Inc, of which Gary Delguzzi's Estate was 34% beneficial interest owner when the property was sold by

Administrator Ellis.

Exhibit W. Title report on Clallam County Assessor No. 06 30 09 570800 0000 showing the Deed of Trust in favor of Cedarwood Properties, Inc, of which Gary Delguzzi's Estate was 34% beneficial interest owner when the property was sold by Administrator Ellis.

Exhibit X. Darrell D. Hallett's Appointment of Successor Trustee for Deed of Trust on property owned by the Jack Delguzzi Estate corporation, DelHur, Inc., where the underlying encumbrance in favor of Mr. Hallett's law firm, (Chicoine & Hallett) was not paid when the property was sold by Administrator Ellis and where she refused to explain the debt or its forgiveness and where the debt forgiveness was not reported to IRS.

Exhibit Y. 1999 final 1120 federal income tax return for DelHur, Inc., which showed the unexplained disappearance of \$799, 337 in corporate equity on its last page.

Exhibit Z. Affidavit of William E. Wilbert, Administrator, and 12 Year Report dated October 15, 1991.

Appendix 3. Pages 1 & 2 from Tab 6 of the Comprehensive Accounting of Administrator Wilbert that were prepared by his C. P. A. Craig Kleinman. (CP 1635)

Appendix 4. Affidavit of Administrator Wilbert dated March 14, 1986 including exhibits containing attorney fee invoices of SCB filed March 17, 1985 (CP 1981, 2021, 2070, 2314)

Appendix 5. Gary Delguzzi estate's Motion and Declaration to Compel filing of Inventory and Appraisement. (CP 1838)

Appendix 6. Gary Delguzzi's Motion to Compel Discovery. (CP 1876)

Appendix 7. Declaration of Kathryn A. Ellis Re: Final Supplemental. (CP
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Appendix 10. Motion to Vacate Fee Award of Mr. Wilbert of June
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Appendix 11. Affidavit of Wilbert dated Jan 25, 1984. (CP 2314, 2336)

Appendix12. Delguzzi CounterMotion for Constructive Trust, et al. (CP
1847)

ASSIGNMENTS OF ERROR

ASSIGNMENT NO. 1– The superior court, sitting in probate, erred in entering certain interim orders during the administration of William E. Wilbert (August 13, 1982 to March 24, 2004).

ASSIGNMENT NO. 2– The superior court, sitting in probate, erred in entering interim orders and a final order during the administration of Kathryn A. Ellis (January 7, 2005 to July 27, 2007), particularly in its entry of the “Order on Final Supplemental to Final Report and Petition for Decree of Distribution” on July 27, 2007.

ASSIGNMENT NO. 3– The superior court erred in entering an order on December 7, 2007 which failed to order consolidation of the Second Amended Complaint of Gary Delguzzi of July 16, 1996 with the Complaint that was filed by his estate in Clallam County Superior Court in cause number 06-2-01085-2 on December 5, 2006, before ordering a change of venue to King County Superior Court of only the later Complaint.

ISSUES RELATING TO THE ASSIGNMENTS OF ERROR

ISSUE NO. 1: The trial court improperly approved payments by the estate’s second administrator, William E. Wilbert, to himself, to his alter egos, which included corporate entities which he controlled, to his family members, and to his attorneys and others, more particularly:

- A. Fees for estate administration that were greater in amount than proven;
- B. Fees where Administrator Wilbert was intentionally and obviously in breach of his fiduciary duties;

- C. Attorney fees that were excessive and improperly documented;
- D. Overhead and expense reimbursements contrary to contracted amounts;
- E. Real estate commissions that were denied by the probate court and prohibited by law;
- E. Interest on fees and expenses that were prohibited the probate court;
- F. Interest payments on purported loans to the Estate in breach of his fiduciary duty prohibiting self-dealing;
- G. Interest paid to his attorneys that were contrary to probate court order and while in breach of their fiduciary duties, particularly R.P.C. 1.8;
- H. Unexplained payments for fees to unknown entities.

ISSUE NO. 2: The probate court entered interim and final orders approving Mr. Wilbert's accountings for estate assets, administrative fees, attorneys fees, expenses, real estate commissions, interest and other non-specific items that were not supported by the evidence and that were contrary to law.

ISSUE NO. 3: The probate court entered interim and final orders approving the accountings of the estate administrators for estate properties inventories, values, sales, expenses and other assets which orders were contrary to and/or not supported by evidence and that substantially undervalued or that failed to account for estate assets.

ISSUE NO. 4: The probate court entered interim and final orders approving the accountings of the estate's administrators for nonprobate assets in which Gary Delguzzi held vested interests and which orders were

contrary to law and equity and/or not supported by evidence and that permitted Administrator Wilbert to undervalue or not account for or pay over the assets to Gary Delguzzi and for which failures Administrator Ellis had suitable remedies available and which she declined and refused to exercise on behalf of Gary Delguzzi and on behalf of the estate.

ISSUE NO. 5: The court approved the Final Supplemental to Final Report and Petition for Decree of Distribution (“Final Supplemental” hereinafter) of Administrator Ellis despite substantial evidence that this Final Supplemental was legally and factually inaccurate, as it failed to include legally sufficient reporting between January 1997 and her appointment on January 12, 2005 and was therefore so incomplete and insufficient that the order closing the estate was jurisdictionally deficient.

ISSUE NO. 6: The interim and final orders of the probate court did not consider and give effect to the substantial, competent, and uncontroverted evidence that a private agreement existed between Administrator Wilbert and his attorneys that was designed to conceal the conversion of assets of the estate and assets of Gary Delguzzi by Wilbert during his administration.

ISSUE NO. 7: The final order of the probate court was entered without benefit of a verified and complete Inventory and Appraisement so that substantial estate assets were not accounted for and thus were not marshaled and applied for the benefit of the estate creditors and its heir.

ISSUE NO. 8: The final order of the probate court was entered without

any requirement that Administrator Ellis account for certain known assets of the estate and the nonprobate assets of Gary Delguzzi, thus abandoning those assets without excuse, justification or explanation.

ISSUE NO. 9: The final order of the probate court was entered in contravention of the procedural requirements of the probate code, which were jurisdictional.

STATEMENT OF THE CASE

TWO PRIOR UNPUBLISHED OPINIONS. There are two prior unpublished opinions (“UPOs”) from this court for this case¹. The case includes both the probate for the estate of Jack Delguzzi and the tort complaint of his son, Gary Delguzzi, the estate’s sole heir, tenant-in-common and creditor. Gary Delguzzi’s Second Amended Complaint and Petition for Removal of Administrator Wilbert, dated June 29, 1996 was filed within Clallam County probate proceedings titled “Estate of Jack Delguzzi” and also bears Clallam County cause number 8087². The defendants named in the complaint are Mr. Wilbert, who was the Estate’s administrator for 22 years, his alter ego corporations and others, most of whom were never served. The two UPOs deal primarily with the tort complaint. The administration of the Jack Delguzzi probate was the

¹ Copies are at Appendix 1 and are dated January 8, 1999 (21752-0-II) and August 31, 2001(24860-3-II), Petition for Review denied, September 4, 2002.

² A pre-SCOMIS cause number, as the initial probate petition was filed in 1978, the year of Jack Delguzzi’s death.

source of most of Gary Delguzzi's tort claims and its history and the history of the entire case comes to light through review of those two opinions. Although this appeal is more related to the probate of Jack Delguzzi than to the tort claims of Gary Delguzzi, the two cannot be easily or logically separated.

As can be seen from the later UPO in Appendix 1, on January 17, 1997, Mr. Wilbert brought on for hearing his motion for sanctions against Gary Delguzzi related to the Complaint, alleging discovery violations, but supporting it not with Delguzzi's 44 pages of answers to the Wilbert discovery requests related to Gary Delguzzi's tort claims, but with Delguzzi's separate 4 pages of objections. The second UPO³ shows that the court was also confused by Wilbert's attorney who attempted to convince the court that trial on the tort claims was scheduled for hearing on the next court day, January 21, 1997, when that trial date had not been set. The tort claims and Delguzzi's petition for removal of Mr. Wilbert as administrator of the Jack Delguzzi estate, which was set for hearing on January 21, were both dismissed on January 17, 1996 and monetary sanctions were imposed so that Gary Delguzzi's Motion to Compel Discovery from Mr. Wilbert was not heard. UPO No. 21752-0, p. 4.

WILBERT'S FINAL ACCOUNTING IN 1997 After the Delguzzi Petition and Complaint were dismissed, the court proceeded with

³ UPO 21752-0, fn. 7.

the hearing on Wilbert's Petition for Final Accounting and Decree of Distribution (CP 1746) which was signed by Mr. Wilbert and his estate attorney Larry N. Johnson on December 12, 1996 and set for hearing on January 21, 1997. That Petition was supplemented by the filing and courtroom service of the Supplement to the Petition for Final Accounting and Decree of Distribution (CP 1189, 1263, 1363, 1464, 1564) on January 17, 1997 immediately after the court dismissed the Gary Delguzzi matters. This Supplement was also dated and signed on December 12, 1996 by Wilbert and Johnson. It addressed additional issues not included in the original Petition for Final Accounting and Decree of Distribution.

Mr. Wilbert's final accounting for the period from August 13, 1982 to September 30, 1996 included a report by C.P.A. Craig Kleinman of Lakewood, Colorado. (CP 1635) The Kleinman Report showed that loans had been made to the estate by Mr. Wilbert and Mr. Cressman totaling only \$200,000 with \$100,000 each from Wilbert and Paul R. Cressman, Sr. (CP 1635)[Apdx. 2⁴, Ex.I] while filings by Wilbert in the probate matter showed that their loans to the estate, and those of the Lockwood Foundation, a Cressman client, had totaled \$800,000 . [Apdx. 2, Ex.4]

The Kleinman report does not report the amounts of the interest on the Wilbert, Cressman and Lockwood Foundation loans, which they

⁴ Appendix 2 (CP 194) consists of "Plaintiff's Amended Objections to Final Supplemental to Final Report and Petition for Decree of Distribution (Factual)" of July 7, 2007. Many of the documents referred to by Appellant's Brief are included here for reference ease.

allegedly made to the estate.

CRESSMAN FEE DECLARATION. The fees of Short Cressman & Burgess, who were the attorneys for Administrator Wilbert until they withdrew in 1991, were presented by the Affidavit of Paul R. Cressman, Sr., the firm's senior partner which was dated January 20, 1997(CP 1119)[Apdx. 2, Ex. D]. He made the claim that the firm was then owed \$404,040 in fees and costs and \$506,898 in interest for the period from 1982 until the end of 1985. Mr Cressman also testified that the firm had been paid \$723,989. He also sought \$154,231.16 for fees and costs between the end of 1985 and the law firm's withdrawal in 1991, which he supported with dates and amounts of invoices totaling only \$123,923.50. (CP 1119)[Apdx. 2, Ex.D (c)] No invoices were included with Mr. Cressman's 1997 filing.

FEE INVOICES FILED IN 1986. On March 17, 1986, Mr. Wilbert filed a substantial number of Short Cressman & Burgess invoices **(CP 1981, 2021, 2070, 2314)** for the claimed work to date (February 1982 to December 31, 1985), purportedly to satisfy an order entered in December of 1985 that required that the firm justify its fees in order to receive a \$200,000 payment. The itemization contained in those invoices contained only the tasks, the attorney names and the hours worked on each task. All hourly rates, extensions of hours times rates, costs, payments, credits and other financial information was redacted or had never been entered for the invoices.

ATTORNEY FEE SUMMARY The details of the amounts summarized on Mr. Cressman's one page summary of claims (CP 1119) [Apdx. 2, Ex. D(b)] for fees and costs paid and those still claimed to be owed, cited above, is thus not in the record, as no complete invoices have ever been filed by the law firm in this case despite their representation of Mr. Wilbert in this probate from 1982 to November 1991.

SCB - ESTATE SECURITY AGREEMENT. Mr. Cressman included as Exhibit A (CP 1119) [Apdx. 2, Ex. D(a)] to his affidavit, a security agreement for April 1982 between his firm, the estate, some of its entities, Gary Delguzzi, and Wilbert and his controlled entities that was signed after the law firm was retained, that purported to grant substantial additional security and benefits to the law firm. There has never been a showing that either Gary Delguzzi or Mr. Wilbert was advised of the right to independent legal counsel before this agreement was signed.

DELGUZZI CLAIMS DISMISSED AGAIN. After remand in 1999, the trial court again dismissed Gary Delguzzi's tort claims and the petition for removal of Mr. Wilbert based upon various theories. In this court's UPO dated August 31, 2001, those claims were reinstated based on the following reasoning:

DelGuzzi again moved to compel discovery. But Wilbert urged the court to dismiss DelGuzzi's claim, this time based on res judicata, collateral estoppel, and law of the case doctrine. Wilbert argued that, although DelGuzzi's wrongful estate administration claims had originally been dismissed as a discovery sanction, DelGuzzi was nevertheless barred from relitigating them on remand because the same issues had been decided in the probate hearing following

the dismissal and before we heard the previous appeal.

* * *

Wilbert contends that res judicata bars DelGuzzi's claims because DelGuzzi had a chance to litigate fully those claims in the Final Accounting hearing of January 21, 1997. The record is to the contrary. Because another judge had dismissed DelGuzzi's wrongful estate administration claims as a sanction for discovery violations, the trial court limited the January 21 hearing to Wilbert's final accounting of the estate. DelGuzzi neither presented nor had an opportunity to present his claims at that hearing.

WILBERT AND SCB FEES AND COSTS AWARD.

On October 10, 1997, Judge Costello entered a Memorandum Decision [Apdx. 2, Exh. A] (CP 1966 & 2566) that awarded Wilbert's initial estate attorneys, Short Cressman & Burgess, the sum of \$404,040 in fees and costs plus interest at an unspecified rate. The same Memorandum Decision disallowed some items and amounts of Mr. Wilbert's fee and cost reimbursement requests and required that he negotiate or reduce his claims and present them to the court.

WILBERT DECLARATION FEE AND EXPENSE CLAIM.

On May 15, 1998, Mr. Wilbert filed a Declaration [Apdx. 2, Ex.C] (CP 741) in response to the October 10, 1997 Memorandum Decision which included a spreadsheet at its Exhibit E, to address its requirements.

ORDER REGARDING ADMINISTRATIVE EXPENSE AND REIMBURSEMENT CLAIMS AND PLAN FOR DISTRIBUTION.

On June 5, 1998, Judge Costello entered an Order Regarding Administrative Expense and Reimbursement Claims and Plan for Distribution [Apdx. 2, Exh.B] (CP 2559 & 2566) which referred to and seemed to approve Mr. Wilbert's adjusted claims, but did not address the

additional claims in the Wilbert Declaration or correct his failures to implement the reductions that were ordered by his Memorandum Decision of October 10, 1997. No order or judgment was later proposed or presented by Mr. Wilbert to quantify or clarify the ambiguities in the Order Regarding Administrative Expense and Reimbursement Claims and Plan for Distribution of June 5, 1998 as its blanket adoption of the Wilbert Declaration of May 15, 1998 made it appear that the Declaration had either not been read or understood.

Although the Order Regarding Administrative Expense and Reimbursement Claims and Plan for Distribution of June 5, 1998, directed and defined a procedure for the closure of the estate, Mr. Wilbert continued in office as the administrator until his death on March 24, 2004, but made no annual reports or interim accountings after that Order.

ESTATE ORDERED CLOSED AGAIN IN 2007.

On July 27, 2007, Judge Costello entered an Order on Final Supplemental to Final Report and Petition for Decree of Distribution [Apx. 9](CP 1784) to close the Jack Delguzzi estate, conditioned upon Administrator Ellis disposing of certain remaining properties of the estate and filing receipts showing the disbursements of the remaining properties and funds of the estate. There is no record of such a filing, leaving the estate still open, in much the same fashion as happened when Judge Costello ordered that it be closed in 1998 [Apx. 2, Exh. B](CP 810).

The above and following orders that address both the probate of

Jack Delguzzi and the tort claims of Gary Delguzzi were entered between 1998 and 2004 are now under review, as are the 2005 through 2007 activities of administrator Ellis. These include the denial of Gary Delguzzi's Motion and Order to Show Cause of October 24, 2003 (CP 1876) [Apdx. 6] and his Motion to Vacate the June 5, 1998 Fee Award to Administrator Wilbert (CP 374 371) [Apdx. 10] and orders entered in the probate that were foundational, including the Memorandum Decision of Judge Costello dated October 10, 1997 [Apdx. 2, Ex. A] (CP 1966 & 2566) which addressed the fees of Wilbert's estate attorneys, Short Cressman & Burgess and Chicoine & Hallett as well as the Order Regarding Administrative Expense and Reimbursement Claims and Plan for Distribution of June 5, 1998 that also addressed Mr. Wilbert's fees and expense claims. [Apdx. 2, Exh. B].

DEATHS OF WILBERT AND GARY DELGUZZI.

Mr. Wilbert died while still the administrator of the Jack Delguzzi estate on March 24, 2004. Gary Delguzzi died February 11, 2004, over 25 years after his father, never having received a distribution of his share of the tenancy in common properties that he owned with his father, repayment of the loans made to his father's estate or his inheritance.

MARTIN AND ELLIS ADMINISTRATIONS

On August 8, 2004, C.P.A. David L. Martin was appointed as the

interim administrator of the estate⁵ so that a timely creditor's claim could be filed against the estate of William E. Wilbert. By order of October 18, 2004 (CP 1215), Martin was to be replaced by Gary Velie, a retired Clallam County judge who was then employed as a deputy sheriff. Mr. Velie never qualified by posting a bond.

During C.P.A. Martin's brief tenure as the estate's administrator, he recovered certain of Mr. Wilbert's estate records, finding new evidence about the representations that had been made to the court by Mr. Wilbert and his representatives regarding fees, expenses, and assets in the 1997 and 1998 hearings and that much of it was intentionally false.

On January 13, 2005, Kathryn Ellis, a Seattle bankruptcy trustee and lawyer was appointed and qualified shortly thereafter.⁶

Mr. Delguzzi, now the estate of Gary Delguzzi, had been seeking discovery since late 1996 as reflected in the two UPOs and his Motions to Compel Discovery of January 1997, August of 1999 and September of 2003, all of which were denied.⁷ The files discovered in 2004 by Mr. Martin, although not complete, contained substantial evidence to show that the interim orders of 1997 through 1998 were not based upon full disclosure and much of the Wilbert evidence was patently untrue.

⁵ (CP 1865)

⁶ (CP 1859)

⁷ (CP 1972, Jan. 15, 1997; CP 1958, May 21, 1999 & CP 1927, Sep. 2, 2003.)

KATHRYN A. ELLIS ADMINISTRATION

The actions of Administrator Ellis during 2005 and 2007 accomplished little toward closing the information and financial gaps between the approximately 9.4 million dollars worth of assets of the estate⁸ which the IRS assessed in October of 1982 (CP 194)(Apdx.2, Ex.Q) and negative 1.6 million dollars that was alleged by Wilbert in his 1997 petition.(CP 1635).

During Ms Ellis' administration, she identified 19 parcels of real estate and a promissory note receivable from a prior real estate sale as the only remaining estate assets, which she sold and then disbursed the funds to the prior administrative claimants including to herself. There have never been any distributions to the general creditors of the estate. [Apdx. 7](CP 1786 & 2497)

In June 11, 2007, with her Declaration for Order on Final Supplemental to Final Report and Petition for Decree of Distribution, (CP 261, 267) and the Order thereon dated July 31, 2007[Apdx.9](CP 1784), Ms Ellis tried to close the estate, although there does not appear to be compliance with the requirements of that order as to filing proof of receipts and disbursements after that date, leaving this 1978 probate matter still open.

⁸The UPO of August 31, 2001, No. 24860-3-II, under the section titled "Facts" found that during Wilbert's administration, ". . .the estate's net assets have diminished from \$7.36 million in 1989 to less than the \$1.6 million Wilbert billed in 1997. Although the estate was ready to be closed at least by 1997, it remains open today."

The most revealing aspect of her hasty attempt to close this troublesome estate was the issue raised by the payments based on a “private agreement” between Mr. Wilbert and Short Cressman & Burgess that she included with her Declaration of June 19, 2007 [Apdx. 7] (CP 1786 & 2497) regarding apportionment of the funds from the estate’s liquidation to Wilbert and SCB where the ratio bears no resemblance to the probate court’s fee orders. This was revealed by the documents filed by Ms Ellis in support of her Declaration in Support of Final Supplemental to Final Report and Petition for Decree of Distribution filed June 19, 2007.

VENUE CHANGED BEFORE CASES CONSOLIDATED

In November of 2006, Loretta D. Wilbert, as Personal Representative of the probate estate of William E. Wilbert, denied the creditor’s claim that the Estate of Jack Delguzzi had filed against Mr. Wilbert’s estate in 2004 and advised that unless suit was commenced on those claims within 30 days, the claims would be forever barred. On December 5, 2006, suit was commenced and on December 7, 2007, Judge Craddock Verser of Jefferson County Superior Court, ordered that the venue for this suit be transferred to King County, but denied the motion of the plaintiff to first consolidate that suit with the Second Amended Complaint of Gary Delguzzi⁹ that shared the same cause number (No.

⁹ On June 2, 2006, Judge Leonard Costello entered an order approving assignment of claims asserted by the estate of Jack Delguzzi against the Estate of William E. Wilbert to Gary Delguzzi’s probate estate, thus relieving the irreconcilable and blinding conflict of interest, wherein Mr. Wilbert was in the position of being required as a fiduciary to assert or deny claims

8087) as the Jack Delguzzi probate.¹⁰ [Apx. 8]

WILBERT'S MISSING MULTI-YEAR REPORT IS DISCOVERED

In discovery proceeding in a related King County case in 2007, a copy of the Wilbert multi-year report was first seen. This started as the "12 Year Report" then was designated the "13 Year Report" and then became the "14 Year Report" and then it disappeared. A copy of the report is included at [Apx. 2, Ex.Z](CP 1746). Even a casual comparison of the report to the Wilbert Final Accounting and Petition for Decree of Distribution After Order of Solvency of December 1996 makes it appear that the two documents refer to different probate proceedings rather than both to the Estate of Jack Delguzzi. It is unknown why Administrator Wilbert abandoned and then concealed this project after the hundreds of hours that the estate was charged for its research and compilation or what he planned to do with it.

For example, the "12 Year Report" states at page 16 as follows:

The 30 percent of the Costa Rica Development which belongs to the estate is held as security toward advances made by the trust to the estate, and should be conveyed free and clear without claim since the security has been sold to Gary Delguzzi.

This is in stark contrast to Wilbert's Supplement to his Final

against himself for his actions as administrator of the Jack Delguzzi estate.

¹⁰ Although the motions and supporting materials of the plaintiff included both matters that were under consideration, including cause number 8087 and 06 2 01085 2, these documents were apparently filed only under cause number 06-2-01085 2, and these Clerk's Papers will need to be and will be supplemented by the appellant.

Accounting which makes the claim that the estate owned 80 percent of the Costa Rica corporations and land holdings and that Gary has no interest, individually, whereas the 12 Year Report establishes that the estate owned 30 percent, all of which was transferred (“sold”) to Gary Delguzzi and that an additional 50 percent owned by Gary’s trust, which is now dissolved, would belong to the Gary Delguzzi estate.

The 12 Year Report explains that Gary Delguzzi had security interests in those percentages, but as a sale in 1987 had failed, “. . . his shares should now be held by Gary free of all claims.” [Apx 2, Exh. Z, pp. 15-17].

ARGUMENT

ATTEMPTED CLOSURE OF THE ESTATE BY ADMINISTRATOR ELLIS

The most recent administrator, Kathryn A. Ellis, made numerous mistakes, committed numerous oversights, and refused to investigate and marshal other remaining assets of the estate and is responsible for resulting losses to the estate, its creditors and heir. Wilkins v. Lasater, 46 Wn App. 766, 733 P.2 221(1987); Tucker v. Brown, 20 Wn.2 740, 150 P.2 604(1944).

Ms. Ellis was unwilling to provide a verified inventory and appraisal as required by RCW 11.44.015, 11.44.025, and 11.44.050.[Apx. 5](CP 1838)

When Administrator Ellis moved to close the estate with her

declaration on June 19, 2007 [Apdx. 7](CP 1786 & 2497), she filed copies of bookkeeping records prepared by Administrator Wilbert's bookkeeper, Leslie Stanton [Apdx. 2, Exh AA] which were prepared for a period after Administrator Wilbert died, in lieu of submitting her own legally sufficient accounting for the approximately 7 years between Mr. Wilbert's 'final' accounting in 1997 and his passing in 2004. These records also did not address the period between the cutoff for the Kleinman Report (September 30, 1996) and June 24, 1998, leaving not even bookkeeping records for that period.

Even if the records Ms Ellis filed had been of her own making and had been properly authenticated and been for the full period after the prior accounting, they still do not satisfy the requirements for a final accounting. The use of computer printouts by the executor is adequate to show money collected and debts paid but not sufficient to constitute the final report required of an executor by R.C.W. 11.76.025. Walker's Estate, 10 Wash.App. 925, 521 P.2d 43 (1974).

The most startling aspect of Ms Ellis' neglect in her attempt to close this troublesome estate was the issue raised by the payments based on the "private agreement" between Mr. Wilbert and Short Cressman & Burgess that she included with her Declaration of June 19, 2007 [Apdx. 7] (CP1413) and the consideration that changed hands regarding apportionment of the fee payments to Wilbert and his attorneys from this multimillion dollar estate's liquidation after 1998. The ratio of payments

for fees and costs paid to Administrator Wilbert and Short Cressman & Burgess bears no resemblance to the probate court's fee order.

The first known document referring to the "private agreement" was attributed by Ms Ellis¹¹ to the Declaration of Leslie Stanton, who stated that she "prepared the books and records of the Estate of Jack Delguzzi" and that attached were "true and accurate financial records of the financial statements for the period of October 1, 1997 though May 31, 2004" and that Ms Stanton was the "bookkeeper of the deceased defendant, William E. Wilbert." None of the data from which these summaries were prepared has been made available.

The distribution summary prepared by and attached to the declaration of Ms Stanton showed previously undisclosed disbursements totaling \$378,096, as follows:

Legal	C&H \$202,299
Legal	Darrell Hallett \$30,000
Legal	Davis Wright Tremaine \$40,000
Legal	Hillis Clark Martin and Peterson \$2,037
Legal	Johnson \$608
Legal	Talmadge \$1,525
Legal	Miscellaneous \$2,000

¹¹ Ellis Declaration dated June 19, 2007 (CP 1413). The Declaration refers to the "Objection to Margaret Shaw's Proposed Nominees for Successor Administrator" which includes the Stanton Declaration, but Ms. Ellis does not swear and affirm that the Stanton Declaration representations are true, either on information or belief or her personal knowledge. Her oath is limited to saying that it is a true copy of the Stanton Declaration. The Ellis attempt to authenticate the Stanton materials is double hearsay about inadmissible opinion testimony.

Wilbert Admin fees \$38,170
Accounting \$61,457

While the 1997 hearings on fees and expenses included evidence from Chicoine & Hallett for their fees as attorneys for the estate, their fee invoices (CP 832 & 965) had all time records redacted from them for October 5, 1993 to January 21, 1994, although Wilbert's Administrator's Billing Book (CP 1746) for this same period shows considerable amounts of his activity with the Chicoine & Hallett attorneys related to sale of the estate's Costa Rica holdings and negotiations with the IRS related to federal estate taxes, as well as with Short Cressman & Burgess regarding their fee claims, so it cannot be told if the above payments shown to "Chicoine & Hallett", "Hallett" and "Johnson" are part of this panoply or not, particularly with the redactions of about 3 ½ months of their time entries in the midst of Wilbert's furious documented negotiation activities with the law firm during this time.

There are also payments for property taxes, office, "Wilbert reimbursement" and "rent." None of these claimed expenses of the estate have been justified, been previously approved by the court, or have been shown to be reasonable, beneficial to the estate, or otherwise properly chargeable to the estate. R.C.W. 11.44.015, .025 & .050.

PRIVATE AGREEMENT-COVENANT MUTUALLY TOLLING S/L

Attachment A to the Stanton declaration [Apdx. 7][Apdx. 2, Exh. AA] included check registers and a document titled "Court Approved Fees

Prior to June 1998” which has in its lower left hand corner, the notation “See Private Agreement” with asterisks beside it and beside the columns for amounts owed and paid to SCB (Short Cressman & Burgess) and WEW (William E. Wilbert) showing that the fee payments had been equalized. Ms. Ellis’ failure to report and resolve the reallocation of the court ordered fees by Administrator Wilbert and SCB, particularly in light of the Covenant Mutually Tolling the Statute of Limitations which came to light during her administration was an additional breach of her fiduciary duties. State ex rel. National Bank of Commerce of Seattle v. Frater, 18 Wash.2d 546, 140 P.2d 272 (1943) and RCW 11.44.015 and 11.48.090 and 11.48.140.

The ‘private agreement’ changes the ratios and amounts Wilbert and SCB had presented evidence of and that they had sworn was the proper amounts due and to which they were entitled. The ratio went from the apparent 4:1 ratio in the Order to \$941,932 each, as the “private agreement” equalized their fees.¹² What the Stanton materials do not show is the consideration that changed hands that formed the basis for that agreement.

Logically and chronologically, it could only be the claims related to the “Covenant Mutually Tolling the Statute of Limitations” (**CP 194**) [Apdx. 2, Ex. BB] which permitted Wilbert and his wife, on the one hand and SCB, on the other, to delay pressing the dispute between them based

¹² Wilbert claimed that he was entitled to \$1,644,542 in his fee declaration of June 15, 1998, [Apdx. 2, Ex.C(E)] while SCB had been granted \$404,040 by the Memorandum Decision of October 10, 1996, [Apdx. 2, Ex.A] establishing a ratio of approximately 4:1 for their participation in the liquidation proceeds of this 30 year old multimillion dollar estate.

upon some activity undertaken (or neglected) by the law firm or on behalf of the Estate of Jack Delguzzi and the Trust of Gary Delguzzi.

This Covenant Mutually Tolling the Statute of Limitations was renewed periodically until shortly after June 5, 1998 , the date of the Order Regarding Administrative Expense and Reimbursement Claims and Plan for Distribution. [Apdx. 2, Ex.B]

The ‘Covenant’ showed that Wilbert had converted claims belonging to the Estate of Jack Delguzzi and to the Trust of Gary Delguzzi with the knowledge and apparent consent of the law firm. These claims appeared to indicate that the law firm had mismanaged, committed malpractice, neglected or otherwise caused damages to those entities while they were represented by Wilbert and that he had the right to pursue the damages for himself and his wife. There is no mention in the Covenant Mutually Tolling the Statute of Limitations of Mr. Wilbert acting in a representative capacity.

Gary Delguzzi’s 1994 tort Complaint threatened to interfere with their secretive resolution of these disputes, necessitating the negotiation of the ‘Covenant’. The “private agreement,” and the Covenant Mutually Tolling the Statute of Limitations and the equal payments that were made during Wilbert’s life to himself and to SCB are at the core of this conflicted scenario and reveal the secret resolution of the ‘Covenant’ claims, even though details of the dispute and its claims are still ‘private’.

These claims between Wilbert and his attorneys demonstrate

another compelling need need for investigation and disclosure as the Wilberts have absconded with a valuable asset of the estate, one significant enough that Administrator Wilbert and SCB were willing to put the dispute 'on ice' and not attempt resolution until after the Jack Delguzzi estate was closed, so as keep it from the attention of the court, the creditors and the heir. This is one more compelling reason to continue the unresolved issues from the administration of this estate until a full and complete investigation and accounting can be completed.

ADMINISTRATOR WILBERT'S FEE PROCEEDINGS IN 1997-1998

On October 10, 1997, the probate court entered a "Memorandum Decision" [Appdx. 2, Ex. A] that ordered that Mr. Wilbert was to be paid the amount designated in his 'final' accounting, with certain adjustments, which were then addressed by Mr. Wilbert in his Declaration of May 15, 1998. (CP 741)[Appdx. 2, Ex. C] The Memorandum Decision did not specific a baseline or starting amount for Wilbert to make his adjustments, but the Kleinman Report stated that as of September 30, 1996, Wilbert had not received only \$500,000 of the total billed to the estate. [Apdx. 2, Ex.I]

Mr. Kleinman also reported that Mr. Wilbert had been paid \$1,820,842 (CP 1635)[Appdx. 2, Ex.I] while Mr. Wilbert, in his Fee Declaration of May 15, 1997 (CP 745)[Appdx. 2, Ex.C (E)] reported his receipts to be only \$901,085, a difference of \$919,757, or 50.5% less than what his accountant reported that he had received.

The Memorandum Decision adjustments required Administrator

Wilbert to deduct the interest that he had charged prior to October 20, 1997 on his fee and expense claims [Apdx. 2, Ex.A] and to deduct the payments for his time and staff time sought for his activities in Costa Rica while finding Wilbert had breached his fiduciary duties for making these claims related to Costa Rica.

He was also ordered to deduct real estate commissions for sales of estate properties that he had paid to himself, his family members and alter ego companies that he controlled.¹³ Mr. Kleinman computed those commissions to be \$367,160.¹⁴ Mr. Wilbert argued, rationalized and objected to the return of these commission for the initial 13 pages of his May 15, 1998 Declaration [Apdx. 2, Ex.C], while claiming them to be only \$169,685 [Apdx. 2, Ex.C (E)] and then he just simply crippled the formula function in the spreadsheet to show that they were calculated, but then not deducted (Exh. E to his May 15 1998 Declaration), thus refusing to return the funds to the Estate, in defiance of the Memorandum Decision.

If we can believe what the IRS alleged that Wilbert told them in 1982 (CP 194)[Appdx. 2, Ex. J] Wilbert and his controlled entitles and family had received approximately \$700,000 in real estate commissions from sales of estate properties to that time and many more properties were still to be sold by them.

¹³ While the Memorandum Decision did not reference its basis for taking back the Wilbert real estate commissions, that result is also mandated by In re Estate of Montgomery, 140 Wash. 51, 53, 248 P.64 (1926) and Estate of George Drinkwater, 22 Wn. App. 26; 587 P.2d 606(1978).

¹⁴ “Total of Estate Related Commissions” in the Kleinman Report at Tab 4, page 1 (CP 1635)[Apdx. 2, Ex.I]

A reconstruction, admittedly incomplete, from the data available shows sales of estate properties that generated \$758,968 in Wilbert entity commissions. [Apdx. 2, Ex.K]

Mr. Wilbert's fee declaration of May 15, 1998 (CP 745)[Appdx. 2, Ex.C] deducted the \$115,182 for the Costa Rica expenses but did not deduct interest, which he had also computed at the compounded rate.

In summary, with the adjustments required by the Memorandum Decision, Mr. Wilbert's evidence showed that he had billed and not been paid only \$500,000 and that the required adjustments by the Memorandum Decision [Apdx. 2, Ex. A] for the real estate commissions (\$372,160) reduced the subtotal to \$127,840 and the Costa Rica adjustments in the amount of \$115,182, which further reduced it to \$12,658, although the amount was then still in Mr. Wilbert's favor.

Interest disallowed by the Memorandum Decision totaled \$111,797 according to the Kleinman Report (CP 194)[Appdx. 2, Ex.I] equals an overpayment subtotal of \$99,059. If Mr. Wilbert's interest figures are to be trusted, this adjustment must be increased to take back another \$781,387 to arrive at an overpayment subtotal of \$880,446. See Wilbert's Fee Declaration of May 15, 1998, where he claims interest received of \$893,138. [Apdx. 2, Ex.C (e)]

The agreement upon which Mr. Wilbert relied for his compensation is Exhibit A to the Wilbert Declaration of May 15, 1998 (CP 194)[Appdx. 2, Ex.C(a)] and it does not permit any of Wilbert's claimed payments for

overhead, whether rent (\$184,021) [Appdx. 2, Ex.I] or staff for \$104,519 (i.e., Wilbert family members)[Appdx. 2, Ex.I] for additional overpayments in the combined amount of \$433,316 taken from the estate by Wilbert by January 21, 1997.¹³ Mr. Wilbert claimed that his hourly rate when he became administrator in October of 1982 was \$135 per hour. [Apdx. 2, Ex. C], although the Order of June 5, 1998 properly determined it to be \$130 per hour, still more than any attorney other than Paul R.. Cressman, Sr., who at least did not add on his overhead in addition. [Apdx. 2, Exh D].

Also, the payments for “professional fees” of \$291,657 and “management fees” of \$141,748 [Apdx. 2, Ex.I]) are without explanation or justification and require additional take-backs of \$433,316 for an overpayment subtotal of \$1,313,896 (using Wilbert’s interest amount) or \$522,655, if we use the Kleinman Report’s interest figure.

It is also appropriate to adjust the payments to Wilbert by the amount of his misstatement of the estate’s Malcolm Island property value in Wilbert’s Supplement to the Final Accounting. [Appdx. 2, Ex.M-1] Mr. Wilbert stated that he took this property for his fees and gave the estate credit for \$11,340. Later discovered real property records from the British Columbia Land Office (CP 687)[Apdx. 6(F-1)] showed the property was sold by Wilbert for \$325,000 CDN or some 21 times Wilbert's claimed value. The estate is entitled to a credit of \$148,500 plus interest, which includes adjustment for the U.S.-Canadian exchange rate used by Wilbert in

¹³ Summarized in Appdx. 2, Ex.L .

his Supplement to the Final Accounting.

After these adjustments, the Wilbert subtotal overpaid was \$1,313,896 + \$148,500 or \$1,462,394 and using the Kleinman Report interest amount, \$671,155.

The Order Regarding Administrative Expense and Reimbursement Claims and Plan for Distribution of June 5, 1998 refers back to the Wilbert Declaration of May 15, 2007, but it does not identify the exact amount of his intended award in that complex, confusing and contradictory document, but Wilbert took the position that he was owed the amount of \$1,644,542.¹² [Appdx. 2, Ex. C(e)] As the other Wilbert evidence shows, he was actually in debt to the estate at the time of entry of the Order and the subsequent payments of \$257,757 reflected on the Stanton spreadsheet ('private agreement')[Apdx. 2, Ex.AA] increased the principal amount to (\$2,220,151) (using Wilbert's interest amount) or (\$1,720,151) (Kleinman interest amount), to which interest on the overpayments must be added.

ATTORNEY FEE PROCEEDINGS IN 1997-1998

On June 5, 1997, the Court entered a Memorandum Decision [Appdx. 2, Ex.A] which ordered that Short Cressman & Burgess ("SCB"), as lawyers for Administrator Wilbert from 1982 to 1991, were to receive \$404,040, for their costs and fees. This amount was based upon

¹² This figure, in conjunction with the SCB Award of \$404,040.00, when divided by two, for a 50-50 split, approximates the Stanton "private agreement" totals. The court orders thus provided for an approximate ratio of 4:1, Wilbert to SCB, payments from the liquidation of this multimillion dollar estate. The 'private agreement' changed that to 1:1, or 50-50.

representations that were unsupported by any credible evidence offered by the law firm or by Mr. Wilbert.

For example, the 'evidence' that was offered by SCB in March of 1986 to support a payment to them of \$200,000¹³ consisted of a stack of invoices nearly 2 inches thick that contained no hourly rates for the attorneys, no totals of the hours each worked, no extensions of hours times rates, no costs, no payments and, in short, no financial data whatsoever. (CP 1981, 2021, 2070, 2314)¹⁴ The only other fee documents are the list of dates and invoice amounts between December of 1985 and 1991 that accompanied the Cressman Fee Declaration in 1997 and which totaled only \$123,923. [Apdx. 2, Ex. D(C)]

While the 1986 invoices consist of all only non-financial details, the 1997 documents from Mr. Cressman are only summaries with no details. Neither of these submissions satisfies ER 1006 regarding summaries, nor do they meet the requirements for proof of attorney fees as established by Absher Constr. Co. v. Kent School Dist., 79 Wn. App. 841, 917 P.2d 1086[905 P.2d 1229] (1995). The Absher court also engaged in a general discussion of the factors governing an award of fees, noting that the burden of establishing the reasonableness of fees is on the party seeking a fee award. There is nothing in the record that quantifies the amount of the SCB claim for the pre-1986 fees. The Absher court explained that fee award

¹³ No evidence was produced by Wilbert or SCB that this amount was actually paid.

¹⁴ The Clallam County Docket for No. 8087 shows for March 17, 1986, Sub#134 Affidavit of Wilbert, and Sub# 135 as Attachment C, Sub# 136 as Attachment B and Sub# 137 as Attachment C[sic]. There is no Attachment A listed.

amounts should indicate at least approximately how the court arrived at the final numbers, and explain why discounts were applied. Both of the SCB submissions not only fail to provide adequate data for an award, but the manipulation and misrepresentation in these evidentiary offerings raises substantial and serious and suspicion as to the integrity of their billing practices.

The Declaration of Paul R. Cressman of January 21, 1997 (CP 1119) [Appdx. 2, Ex.D) states “The total amount due to our firm as of September 30, 1996 (the ending date for Mr. Wilbert’s final report) is \$910,908, which consists of \$404,040 in fees and costs and \$506,868 in interest.” His declaration included Ex. A, a security agreement dated April 28, 1982, Ex. B, the “Delguzzi Matters” fee summary and Exhibit C, two pages of invoice dates and amounts appearing to total \$154,231.16 for the SCB fees and costs for the period of January 1986 through December 1990. There is also a promissory note dated July 15, 1986 to the law firm for \$454,380, ostensibly for their fees and costs to that date.

If the column showing amounts are totaled in Ex. C to the Cressman declaration, the total amounts to only \$123,923 and not \$154,231. (CP 1119)[Appdx. 2, Ex.G]

There was no adequate evidence offered to permit the court to make a proper determination for the fees and costs claimed by the law firm for the fee award addressed by the Memorandum Decision of October 10, 1997, which were only amounts and dates with no supporting details. Since

the SCB invoices filed by Mr. Wilbert on March 17, 1986 contain no financial information whatsoever, they also cannot support a fee award.

The Memorandum Decision of October 10, 1997 [Appdx. 2, Ex.A] allowed the law firm only \$404,040. SCB and Wilbert had agreed by negotiation of the July 15, 1986 promissory note that the firm was owed \$454,380. They claimed to have already received \$723,989 (Cressman Decl. Exhibit B, [Appdx. 2, Ex.E(b)] and had billed (after the above addition correction) an additional \$123,923. Even if the evidentiary foundation for the amount they sought had been admissible and acceptable, they were still overpaid at the time in the amount of \$145,686 calculated as “\$454,380 - \$723,989 = (\$269,609) + \$123,923 = (\$145,686)”. (CP 194) [Appdx. 2, Ex.H]

With the payments they received after the Memorandum Decision, although already overpaid, with interest on those overpayments at 12%, they now owe the estate at least \$1,175,745. [Appdx. 2, Ex.H] which sidesteps the fact that the total amount claimed for “production” (fees) in the amount of \$1,128,029 in Ex. B of the Cressman Affidavit [Appdx. 2, Ex.D(b)], is totally without competent evidentiary support.

The security agreement for fees of April 28, 1982 that was relied upon by Mr. Cressman and by his law firm (Exhibit A to his Declaration of January 21, 1997) [Apdx. 2, Ex. D(a)], and the loans discussed below violate the Washington Lawyer Rules of Professional Conduct, particularly R.P.C. 1.8, and are thus prima facie fraudulent, against public policy and

unenforceable. Belli v. Shaw, 98 Wn.2d 569, 578, 657 P.2d 315 (1983); Holmes v. Loveless, 122 Wn. App. 470, 475, 94 P.3d 338 (2004) (citing Simburg, Ketter, Sheppard & Purdy, L.L.P. v. Olshan, 97 Wn. App. 901, 909, 988, P.2d 467, 33 P.3d 742 (1999); Cotton v. Kronenberg, 111 Wn. App. 258, 269, 44 P.3d 878 (2002).

A fee agreement between a lawyer and a client, revised after the relationship has been established on terms more favorable to the lawyer than originally agreed upon is void or voidable unless the attorney shows that the contract was fair and reasonable, free from undue influence, and made after a fair and full disclosure of the facts on which it is predicated. Valley/50th Avenue, L.L.C., v. Randall Stewart, Trustee and Morse & Bratt, 159 Wash.2d 736, 153 P.3d 186(2007), citing to Kennedy v. Clausing, 74 Wn.2d 483, 491, 445 P.2d 637(1968).

**WILBERT AND ATTORNEY CRESSMAN ALLEGEDLY MAKE
HUGE LOANS TO THE ESTATE**

Administrator Wilbert and his attorney, Paul R. Cressman, Sr., purported to loan the estate substantial sums of money beginning in 1984, [Apx. 4] (CP 2322) and/or to guarantee loans to the estate without any apparent or demonstrated need for the loans by the estate and then used estate properties to secure the loans, with the only function of these gentlemen being the recipients of interest payments on loans that the estate did not need and that, if it had needed the funds, it could well have borrowed the money itself, using its very substantial inventory of real estate

as security. No accounting has been made for the costs of these loans to the estate and no justification that makes business sense has been seen. These loan transactions are presumed to be fraudulent, against public policy and thus unenforceable. Valley/50th Avenue, L.L.C., v. Randall Stewart, Trustee and Morse & Bratt, supra.

In another unexplained contradiction between Administrator Wilbert and his accountant, Wilbert filed an annual accounting for 1985 that showed that loans totaling \$800,000 had been made in 1984 to the estate by himself, Mr. Cressman and the Lockwood Foundation, a Cressman client. [Apdx. 4](CP 2322) The Kleinman Report only showed a total of \$200,000 in loans to the estate, and in those were in 1985, with \$100,000 each from Cressman and Wilbert and none from the Lockwood Foundation. (CP 1635) [Apdx 4]

THE 1997 ACCOUNTING REVEALS MORE MISSING ESTATE ASSETS

The Kleinman Report and accounting showed that the total asset sales were \$8,749,332. [Appdx. 2, Ex.O] The same report shows that the income from asset sales, as cash, was \$1,220,083 and that collections from escrows or land contract sales were \$229,314 [Appdx. 2, Ex.P] leaving \$7,520,018 missing and unaccounted for. A number of that magnitude cannot simply be explained away as 'rounding'.

In 1982, the IRS assessed the net taxable estate at \$9,593,408 as of Jack Delguzzi's death on June 1, 1978. [Appdx. 2, Ex.Q] That

assessment is fairly consistent with the total sales reported by Kleinman, plus the sales reported by Administrator Ellis in 2005-2007. (CP 1413)[Appdx. 7] It is also consistent with Mr. Wilbert's affidavit of January 24, 1984 but none of these are consistent with the Kleinman Report's and Wilbert's allegations that the estate was insolvent at the time Wilbert became Administrator on August 13, 1982. (CP 1636 & CP 1746)

DISCREPANCIES DURING ELLIS' ADMINISTRATION

Ms Kathryn Ellis became Administrator in January 2005 and set about ignoring the Wilbert transgressions and creating her own.

Despite being advised, Administrator Ellis did not investigate and report to the court and the creditors on the missing Malcolm Island property which was misreported by Wilbert in his 1997 fee petition.¹⁵ In that petition, Administrator Wilbert claimed that he had transferred this property that was located north of Victoria, British Columbia to himself and credited the estate for its assessed value of \$13,345 for his fees. This 'credit' does not appear in the Kleinman Report. Administrator Ellis was advised that there was a massive misrepresentation in that the prior administrator sold this property for \$325,000 CDN [Apdx. 6, Exh. F-2]so that it was worth considerably more than Wilbert claimed at the time he took it for himself, and then later sold it for about 21 times what he told the court it was worth. [Appdx. 2, Ex.M]

Administrator Ellis also sold an estate property commonly referred

¹⁵ Discussed more fully at pages 9-10 of this Appellant's Brief.

to as 999 Three Sisters Road in Port Angeles where the title report showed that there was a deed of trust from 1995 in the amount of \$45,000 encumbering the property in favor of Cedarwood Properties, Inc. [Apdx. 2, Ex.W] The closing statement for that transaction does not show that Cedarwood was paid and since Gary Delguzzi was a one-third shareholder of Cedarwood Properties, he also was not paid when Cedarwood was dissolved and liquidated during the realm of Administrator Wilbert nor from the sale proceeds of this Three Sisters property by Administrator Ellis. [Apdx. 6, Ex.CW]

A sale of property commonly known as Lot 18 of Elwha Bluffs during the Ellis Administration shows a deed of trust in favor of Chicoine & Hallett, the later attorneys for Mr. Wilbert [Appdx. 2, Ex.X] and there is no payment reflected on the closing statement to satisfy that encumbrance on the closing statement showing that law firm was paid, and if paid, how much and for what. Or if they were not paid, why the encumbrance was granted to them and then recorded with an apparent unjustified clouding of the title.

This is somewhat like the above described redacted fee invoices of Chicoine and Hallett for the period of October 1993 through January of 1994. While those redactions alone should any deny compensation to the law firms, the breaches of their fiduciary duties that were concealed require further inquiry and explanation, particularly where the losses and corrupt practices evident throughout the administration of this estate have been so

secretive, substantial and damaging.

The estate properties that were received from the Surfside Estates partnership shortly after Jack Delguzzi's death in 1978 have disappeared without a trace as there was no known reporting of these assets and no sales proceeds were that were reported by Wilbert. [Appdx. 2, Ex.T] and as the 2007 title information shows that many of the properties were transferred to Wilbert family members.

One of the estate's entities, DelHur, Incorporated, in its 1999 final income tax return, showed a "write off" on its final return of nearly \$800,000. [Appdx. 2, Ex.Z] This was occasioned by the books and records of the corporation showing equity of that amount when there were no assets left. An entry called "Closing Entry" was made on the income tax return in the amount of \$799,237 with no explanation of what happened to the missing value. This substantial sum has apparently just 'evaporated' and an explanation and recovery are required.

GARY DELGUZZI ATTEMPTS TO RECOVER FROM WILBERT'S ADMINISTRATION

In 2005, Gary Delguzzi, sole heir of the estate, brought on a motion for a constructive trust asking the Court to hold funds from sales of land by Administrator Ellis in trust for the benefit of Gary Delguzzi for jointly owned properties that he shared with his father, the decedent, and Charles Nyhus. The denial of the motion was an abuse of discretion and the assets there identified that belonged to the estate and/or Gary Delguzzi were not accounted for or marshaled by the Ms Ellis, apparently having just

disappeared. The value, with interest at the judgment rate, was in excess of \$5,700,000.[Apdx. 12](CP 1847)

On June 25, 2004, Gary Delguzzi's attorney brought on for hearing a Motion to Vacate Administrator Wilbert's fee award based upon multiple, intentional and egregious breaches of fiduciary duties. (CP 374, 361, 333 & 328) The probate court declined to rule on that motion, despite the passage of over 3 ½ years after it was noted, argued and repeatedly referred to by counsel in other memoranda, arguments and filings, despite the requirements of R.C.W. 2.06.062 that all pending matters must be closed prior to six months after submission.¹⁶

On October 24, 2003, Gary Delguzzi's attorney addressed some of the above missing assets and issues through a Motion and Order to Show Cause why Administrator Wilbert should not be surcharged for the value of Gary Delguzzi's missing and converted nonprobate assets. When opposed, only by a professed lack of understanding by Administrator Wilbert and his attorney in response, who offered no evidence in opposition to the motion, the court nonetheless found that Wilbert had 'shown cause' and denied the relief to Mr. Delguzzi, without explanation. (CP 572, 687)

On October 20, 2003, the trial court signed an order requiring Administrator Wilbert Wilbert, to show cause why \$3,425,150 should not be returned by Mr. Wilbert to Gary Delguzzi for Gary's separate and co-

¹⁶ "The annual salary of the judges of the court of appeals shall be established by the Washington citizens' commission on salaries for elected officials. No salary warrant may be issued to any judge until the judge files with the state treasurer an affidavit that no matter referred to the judge for opinion or decision has been uncompleted for more than six months."

tenancy (nonprobate) properties that Wilbert was administering.

Administrator Wilbert was ordered to show good cause within 60 days, after which Gary Delguzzi had 30 days to reply.

In the October 24, 2003 hearing where the Order to Show Cause was entered, Judge Costello explained to Mr. Hallett, Wilbert's counsel, four times, exactly what was expected of him and exactly what relief Delguzzi was seeking. [Apdx. 6] During the hearing, the court set a date by which Wilbert was required to show cause why the relief sought should not be granted. Mr. Wilbert's Response of December 18, 2003 inexplicably claimed that he did not know what relief Delguzzi was seeking with the Order to Show Cause. His response included no affidavit or other evidence and raised only these three issues:

1. Ordinarily, a motion cannot be made to settle important questions.
2. A motion is not available to determine the merits of the case, and,
3. A motion may present questions of law, but not questions of disputed facts.

Delguzzi filed a reply memoranda arguing that the opposition materials failed to show cause or offer any evidence why the relief sought should not be granted. The trial court found that Mr. Wilbert had shown cause why he should not have to account for or return the converted and missing assets or their value and thus denied the relief sought by Delguzzi, abusing its discretion as a matter of law. As the opposition to the Order to Show Cause that Mr. Wilbert filed did not dispute any of the material facts

by affidavit, declaration, or otherwise, those facts must be taken as established. As the facts were not disputed, it was an abuse of discretion as well as an error of law for the trial court to refuse to grant the relief sought by the Delguzzi's Order to Show Cause.

While an argument from Respondent may now surface that the trial court made a discretionary ruling and that it did not abuse its discretion, a case from the state of Texas referenced an appropriate rule of law:

A trial court has no 'discretion' in determining what the law is or applying the law to the facts. Walker v. Packer, 827 S.W.2d 833, 840 (Tex. 1992).

Gray Delguzzi sought payment for his fifty-percent interest in the assets that he owned as tenant in common with his father, and for other assets which Mr. Wilbert, as the Estate's fiduciary, managed and then caused to disappear.

The court denied the relief that Delguzzi here sought even though it entered the Order to Show Cause why Administrator Wilbert should not disgorge his (lawful) takings in the amount of \$3,425,150, plus interest. Appellant requests that this matter be remanded to the trial court with an order to grant the relief that was being sought by the Order to Show Cause.

**THE DECEMBER 7, 2007 ORDER MAKES AN ORPHAN OF THE
1996 GARY DELGUZZI COMPLAINT**

On December 7, 2007, Judge Craddock Verser of Jefferson County entered an order transferring venue and amending the complaint in Clallam

County Cause No. 06-2-01085-2¹⁷ to King County Superior Court.[Apx. 8] At the same time, he denied the motion of the plaintiff to consolidate that complaint, which was As Gary Delguzzi's estate had been assigned the right to pursue the claims against William E. Wilbert on June 2, 2006, he also had the right to pursue the claims against Mr. Wilbert's probate estate and as the Jack Delguzzi estate had filed a creditor's claim against Mr. Wilbert's estate in August of 2004, Gary Delguzzi had stepped into the shoes of his father's estate as to those claims.

The denial of creditor's claims by the William E. Wilbert estate, by its personal representative Ms Loretta Wilbert, required that, out of an abundance of caution, a new civil matter be opened in addition to the July 1996 complaint of Gary Delguzzi against Mr. Wilbert.

That 1996 Complaint has never been tried, dismissed (without being reinstated on appeal) or otherwise definitively resolved on its merits.

The motions before Judge Verser in December of 2007 were brought on to consolidate the 1996 complaint brought against Mr. Wilbert while he was administrator to Jack Delguzzi's estate, with the complaint filed responsive to the Wilbert Estate's denial of the Creditor's Claim in December of 2006 and then to transfer venue to King County.

The result of the denial of the consolidation prior to the change of

¹⁷ This Complaint was filed in response to the creditor's claim denial by the estate of William E. Wilbert, filed in December of 2006. It incorporates the claims of the Estate of Jack Delguzzi against William E. Wilbert with Gary's claims against Mr. Wilbert. After the probate court approved the assignment of the Jack Delguzzi estate's claims against Mr. Wilbert to Gary Delguzzi Estate, Gary's personal representative assigned the claims to David Martin, who agreed to protect and pay the Jack Delguzzi estate's creditors on a priority basis.

venue leaves the Gary Delguzzi Complaint from 1996 as the only matter remaining in the former estate of Jack Delguzzi's probate matter (No. 8087) with no way to move it and consolidate it now with the Complaint against Mr. Wilbert's estate in the King County lawsuit.

There is no basis for denial of the consolidation, as the claims and causes of action are based upon the same acts of Mr. Wilbert while he was the administrator of the estate of Jack Delguzzi and while he was the officer, director, and of estate corporations in which Gary Delguzzi had a separate interest, in addition to his interest as an heir.

Without this consolidation of the 1996 and the 2006 complaints, the status of some of the causes of action in claims are subject to attack and the only way to continue under the current status is to pursue these two civil actions at the same time, with one with its venue laid in Clallam County and the other in King County. Because of the overlap and the consistency between the causes of action and the activities from which these two complaints are based, the courts will certainly not allow these two matters to be pursued simultaneously, as they allege very much the same actions and the same causes of action.

The interests of justice require that these two matters be consolidated with their venue laid in King County, where all of the witnesses now reside, where virtually all of the evidence is believed to be held, and where the attorneys for all the parties practice.

**THE PROCEDURAL ESTATE CLOSING ERRORS ARE
JURISDICTIONAL**

Administrator Ellis failed to follow the procedures detailed in RCW 11.76.020 through 11.76.050 and 11.28.240. As a consequence the Final Report and Petition for Decree fails to meet applicable standards and must be stricken. There can be no final settlement without compliance with RCW Chapter 11.76, as these procedures are mandatory. Stella Co. v. Smith, 16 Wn.2d 388, 394-397, 133 P.2d 811 (1943).

On December 17, 1996 William Wilbert filed a Final Report and Petition for Decree of Distribution, with a supplemental thereto filed on January 17, 1997. Since 1997 there has not been a hearing in accordance with RCW Chapter 11.76. The Motion for Final Supplemental filed by Administrator Ellis (CP 267) includes a trust account register from February 11, 2005 through July 05, 2006. This Final Supplemental completely ignores the eight plus year period from late 1996 through early 2005, nor does a check register or spreadsheet prepared by some one who calls her a “bookkeeper” completed when the previous Administrator (Wilbert) was deceased satisfy the evidentiary or statutory requirements for a ‘Final Report and Petition’ that is required by R.C.W. 11.76.025.

Nor does the Ellis “Final Supplemental” meet the requirements of R.C.W. 11.76.030 (shall likewise set out the names and addresses...of all the legatees and devisees...and the names and addresses...of all the heirs...) or R.C.W. 11.28.240 which requires that an administrator closing an estate must give notice and fill proof of such to “Any person with an

interest in the estate as an heir, legatee, devisee, distribute, or creditor, whose claim was served and filed, may request special notice of any “matters, steps or proceedings in the administration of the estate ...”.

Nor did Ms Ellis provide the required “. . .particular description of all the property of the estate remaining undisposed” as is required by R.C.W. 11.76.030 or the “. . . other matters as may tend to inform the court of the condition of the estate” also required by the same statute. She failed to have the clerk fix the hearing as is mandatory, or publish the time and place fixed for the hearing, or mail copies of the notice to all heirs, legatees, devisees and distributees as required by R.C.W. 11.76.040. This failure is jurisdictional and renders the decree of distribution void. Hesthagen v. Harby, 78 Wn.2d 934, 481 P.2d 438 (1971).

CONCLUSIONS

The intentionally caused confusion and delay as well as the problems associated with a very complex and financially huge matter where venue is laid in a county where only visiting judges can hear motions and maintain continuity is bound to make consistency and case management much more difficult. This is the monster that only all of these logistical problems, coupled with an administrator such as Mr. Wilbert could create. He was a mastermind at sowing dissent, creating conflict and confusion and he delighted in deceit.

The administrator’s fees and expenses cry out for an order requiring that they be disgorged with interest at the highest rate allowed by

law so as to return these funds to the estate. With the millions of dollars of missing, undervalued and converted property, what was a \$10 million or so estate when Jack Delguzzi died in 1978 would probably be valued at \$30 or \$40 million today with development, growth and inflation, and even more if Jack Delguzzi or his peer at management and investing had been managing it. The assets are so scattered and subdivided and the entire case is now so complicated and convoluted that fully identifying and recovering all or most of the losses may be impossible or so difficult as not to be feasible.

Recovery of the administrator's fees and claimed expenses will be a good start and when the attorney fees that were paid for legal representation whose goals were to assist and conceal the pillaging that the long time administrator committed, an even greater start will have been made.

In order to finally bring this nightmare of a case to an end, this court is requested to direct that the superior court order disgorgement of all of the attorney and administrator fee and cost payments and commit to a carefully crafted and tightly supervised and budgeted closing with the assistance of an auditor, fraud investigator or accountant or other professional with the heretofore missing skills and integrity to identify the properties that have not been inventoried and appraised, secure those that can be economically recovered and report quickly to the court so that this nightmare of an out-of-control probate can be put forever to bed with the

general creditors of the estate and the beneficiaries of Gary Delguzzi's estate receiving the long awaited and much deserved benefits at last.

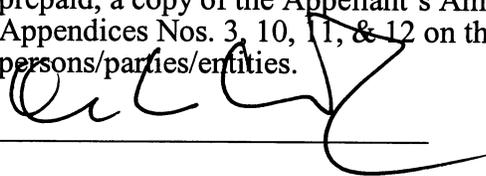
Dated and signed at Seattle, Washington on this 28th of May, 2008.



Charles M. Cruikshank III, WSB-6682
Attorney for Appellants

Certificate of Service

I certify that I caused to be filed and/or served by 1st class US mail, postage prepaid, a copy of the Appellant's Amended Brief and Restated Appendices Nos. 3, 10, 11, & 12 on this May 28, 2008 upon the following persons/parties/entities.



G. Michael Zeno
4020 Lake Wash. Blvd.100
Kirkland, WA 98033

Kathryn A. Ellis
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FILED
COURT OF APPEALS
DIVISION II
03 MAY 29 PM 12:01
STATE OF WASHINGTON
BY 

FILED
COURT OF APPEALS
DIVISION II

08 MAY 29 PM 12:00

STATE OF WASHINGTON
BY 
DEPUTY

NO. 36682-7-II

R. SIDNEY SHAW, PERSONAL REPRESENTATIVE OF THE
ESTATE OF GARY DELGUZZI AND DAVID L. MARTIN

APPELLANTS

V.

IN RE THE ESTATE OF JACK DELGUZZI

RESPONDENT

RESTATED

APPELLANT'S BRIEF

APPENDICES 3, 10, 11 & 12

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WSB 6682

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ATTORNEY FOR APPELLANTS

SECTION PREFACE

TAB 6

The following section details the cash flows of the Estate itself. The schedule referred to as "ESTCONSOL" is a consolidated source and use of cash. It consolidates all years from August 1982 through December 1995.

APPENDIX 3
RESTATED

ESTATE OF JACK DELGUZZI															
SUMMARY ANALYSIS OF CASH FLOW FOR YEARS AUGUST 1982 THROUGH DECEMBER 1986															
USE OF CASH	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	TOTAL
OPERATING EXPENSES	13,920	118,037	2,700	3,401	2,880	2,880	0	0	4,940	4,140	2,928	5,578	6,352	3,166	186,912
PAYMENTS ON NOTES AND MORTGAGES	15,705	41,284	19,908	47,538	6,103	2,815	158,430	153,643	0	0	0	0	0	0	446,434
INSURANCE	3,769	5,432	400	0	0	920	918	460	1,195	0	0	0	0	0	13,061
TAXES & TITLE COSTS	0	5,471	7,788	8,884	129,388	14,860	11,424	18,050	23,918	1,244	(803)	397,898	219,076	6,800	609,349
STORAGE	0	0	940	0	0	0	0	0	0	0	1,504	700	0	0	3,144
OFFICE SUPPLIES & EXPENSE	8,091	11,370	6,000	2,473	644	0	576	1,121	811	776	0	0	0	0	115,954
PROFESSIONAL FEES	6,973	24,900	21,300	148,912	8,769	0	25,746	647	5,000	0	0	0	1,486	3,390	245,092
MANAGEMENT FEES PRE 1982	25,844	90,000	0	0	0	0	0	0	0	0	0	0	0	0	115,954
TRAVEL	3,015	9,688	8,072	2,680	6,369	11,376	3,075	2,854	3,624	64	1,824	0	0	0	52,421
TITLE EXPENSES	0	0	1,288	0	0	0	0	0	0	0	0	0	0	0	1,288
ACCOUNTING	90,598	0	40,000	0	0	0	10,786	1,480	573	1,000	100	1,463	885	1,108	87,951
LEGAL	123,094	10,272	14,760	202,000	3,066	0	8,350	2,690	8,277	0	0	2,048	0	182,008	566,465
OTHER	635	491	786	252	0	810	338	128	672	644	887	460	785	1,468	6,106
ADMINISTRATOR - FEES PAID	0	25,000	62,000	6,000	245,400	0	10,140	0	0	0	0	0	0	0	190,000
ADMINISTRATOR - INTEREST PAID	0	0	0	0	60,025	12,000	0	17,000	0	0	0	0	0	0	101,025
ADMINISTRATOR - REIMBURSED EXPENSE	0	2,861	2,714	8,422	2,816	3,413	3,532	1,821	6,190	0	0	0	8,812	2,629	41,100
ADMINISTRATOR - RENT PAID	0	0	2,800	4,850	8,820	9,300	3,550	2,825	1,178	0	0	0	0	4,900	35,121
SETTLEMENTS	0	0	0	0	6,900	0	0	0	0	0	220	0	0	0	6,120
SALARIES AND PAYROLL TAXES	3,230	2,281	6,211	4,845	43	0	0	0	0	0	0	0	0	0	16,610
AUTO LEASE	6,738	7,828	4,604	3,479	0	0	0	0	0	0	0	0	0	0	24,540
RENTAL EXPENSE	9,971	1,244	0	0	10	0	0	0	412	0	0	0	0	0	11,637
LID ASSESSMENTS	1,386	0	0	0	0	264	0	1,283	0	130	0	0	0	0	2,973
ESCROW FEES	1,017	2,785	0	0	0	0	0	0	0	0	0	0	0	0	3,782
AIRPLANE EXPENSE	0	3,446	0	0	0	0	0	0	0	0	0	0	0	0	3,446
PAYMENTS TO BRUNO ESTATE	0	0	0	0	371,785	0	0	0	0	0	0	0	0	0	371,785
SEE DETAIL BELOW	0	0	0	10,938	113	6,860	10,643	9,701	0	0	1,040	0	0	0	39,225
GRAND TOTAL	3,133	12,618	7,690	14,278	16,888	5,691	7,159	7,384	1,366	532	345	0	0	0	77,344
RENTAL EXPENSES	0	0	1,204	0	0	0	0	0	0	0	0	0	0	0	1,204
SURFSIDE	684	0	0	0	0	0	0	0	0	0	0	0	0	0	684
LINCOLN BLDG TRUST	1,198	0	0	0	0	0	0	0	0	0	0	0	0	0	1,198
MYTHUSDELGUZZI	0	0	0	0	0	0	0	105,000	0	0	0	0	0	0	105,000
PAYMENT ON BEKO STOCK	0	0	0	0	0	0	0	6,000	0	0	0	0	0	0	6,000
R/Road RW PURCHASE	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
DELHUR, INC.	6,000	0	0	0	872,800	(6,000)	0	0	0	0	1,091	0	0	0	873,891
CRESSMAN	0	0	0	0	100,000	0	0	0	0	0	0	0	0	0	100,000
WILLIAM E. WALBERT	0	0	0	0	100,000	0	0	0	0	0	0	0	0	0	148,899
SEE DETAIL BELOW	0	0	0	107,000	0	0	0	0	0	0	0	0	0	0	701,816

AFFILIATE/PROPERTY	12/31/10	12/31/11	12/31/12	12/31/13	12/31/14	12/31/15	12/31/16	12/31/17	12/31/18	12/31/19	TOTAL
DELGUZZI BROS.	2,323	608	0	0	0	0	0	0	0	0	3,231
DELGUZZI CONSTRUCTION	41,447	28	3,849	0	60	6,379	429	0	0	0	62,190
DELGUZZI INVESTMENTS	154	5,803	0	0	0	0	0	0	0	0	6,037
DELGUZZI REALTY	0	1,487	0	0	0	1,790	450	0	0	0	3,707
NORTHLAND PROPERTIES	1,383	483	0	0	0	0	0	0	0	0	1,828
CHARLIE NYHUS	0	487	0	0	0	0	0	0	0	0	487
SURFSIDE U.S.A.	0	308	0	0	0	0	0	0	0	0	308
LOANS RECEIVABLE - OTHER	24,808	36,786	7,283	0	0	0	0	0	0	0	68,834
GARY DELGUZZI	0	0	0	0	0	0	71,000	0	0	0	71,000
DELHUR INC.	0	0	0	0	0	0	100,000	0	0	0	100,000
LUCIE NOTE	0	0	0	0	0	0	0	0	0	27,000	27,000
CEDARWOOD	0	0	0	0	0	0	0	0	0	0	0
SUB-TOTAL LOANS REPAY	24,808	36,786	7,283	0	0	0	171,000	0	0	27,000	285,884
TOTAL ASSETS	103,854	138,820	152,421	13,421	13,421	13,421	2,490	0	0	330,516	1,157,128
LIABILITIES	0	0	0	0	0	0	0	0	0	0	0
NET ASSETS	103,854	138,820	152,421	13,421	13,421	13,421	2,490	0	0	330,516	1,157,128
ASSET SALE GROSS UP PER ANNUAL FORM 1041	0	(2,815)	148,890	86,489	243,047	73,000	2,490	1,177,806	0	0	2,243,887
GROSS SOURCE OF CASH	8,068,120	0	0	0	0	0	0	0	0	0	8,068,120
ELIMINATE:	(10,900)	(1,008,500)	0	0	0	0	0	0	0	0	(1,019,400)
DEL HUR INC.	(70,892)	0	0	0	0	0	0	0	0	0	(70,892)
FROM EXECUTOR TO ADMINISTRATOR'S ACCOUNT	(37,546)	0	0	0	0	0	0	0	0	0	(37,546)
TRANSFERS FROM ESCROW ACCOUNTS	0	0	0	0	0	0	0	0	0	0	0
LOANS AND OTHER	0	0	0	0	0	0	0	0	0	0	0
ADJUSTMENT FOR ASSET SALE GROSS UP	2,243,887	0	0	0	0	0	0	0	0	0	2,243,887
ADJUSTED GROSS UP PER ANNUAL FORM 1041	2,243,887	0	0	0	0	0	0	0	0	0	2,243,887

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RESTATED

CLALLAM COUNTY WASHINGTON SUPERIOR COURT

<p>In re the Estate of Jack Delguzzi, Deceased</p> <p>Margaret M. Shaw, personal representative of the Estate of Gary Delguzzi,</p> <p style="text-align: center;">Plaintiff/Petitioner</p> <p>v.</p> <p>Loretta D. Wilbert, personal representative of the Estate of William E. Wilbert, et al, et ux.</p> <p style="text-align: center;">Defendant/Respondent</p>	<p style="text-align: center;">No. 8087</p> <p style="text-align: center;">Motion for Order Vacating Fee Award of June 5, 1998 to former Estate Administrator</p>
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COMES NOW Margaret M. Shaw, personal representative of the estate of Gary Delguzzi, Petitioner and Plaintiff herein, who moves for order vacating this Court's Order of June 5, 1998 approving fees and expenses of the administrator and those claiming through him for services and expenses related to this estate's administration. Gary Delguzzi, prior to his death on February 10, 2004 was the joint tenant with the Estate of Jack Delguzzi and also the sole heir of that Estate.

This motion is based upon the Declaration of the attorney for the Petitioner and Plaintiff, and the report attached thereto as an Exhibit, to wit, the report letter of David Martin, CPA, which shows therein that this court's Order of June 5, 1998 approving fees and expenses of the previous Administrator, William E. Wilbert, of the was secured based upon extrinsic and collateral fraud prohibiting the parties opposing the evidence

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1 offered for entry of that Order, as proffered by the administrator through a series of
2 hearings in 1997 before this Court.

3 The false evidence offered by then Administrator William E. Wilbert prevented
4 those opposing his fee award, by his intentional acts from the court being presented with
5 a fair submission of the fees and expenses he sought.

6 Dated this 24th of June 2004.

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Charles M. Cruikshank III, attorney for
MARGARET MYERS SHAW
Personal Representative of the Estate of Gary Delguzzi

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CLALLAM COUNTY WASHINGTON SUPERIOR COURT

<p>In re the Estate of Jack Delguzzi, Deceased</p> <p>Margaret M. Shaw, personal representative of the Estate of Gary Delguzzi,</p> <p>Plaintiff/Petitioner</p> <p>v.</p> <p>Loretta D. Wilbert, personal representative of the Estate of William E. Wilbert, et al, et ux.</p> <p>Defendant/Respondent</p>	<p>No. 8087</p> <p>MEMO IN SUPPORT OF Motion for Order Vacating Fee Award of June 5, 1998 to former Estate Administrator</p>
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On June 5, 1998, this court entered an order approving the fee and expense reimbursement application and final accounting of Administrator William E. Wilbert. That order also approved the fees and expenses of Wilbert's attorney and accountants.

Subsequently, it has been discovered that the evidence proffered to the court in support of this fee and expense reimbursement application of the Administrator was so fraught with errors, omissions and intentional misrepresentations that the parties opposing entry of that Order of June 5, 1998 were prevented from a fair submission of the controversy to the court, as shown by the Report of David Martin, C.P.A., submitted herewith.

Where extrinsic or collateral fraud prevents a party from having a fair submission of its controversy to the court, the decree or judgment resulting therefrom may be

1 collaterally attacked and set aside. *In re Haukele's Estate*, 25 Wn. (2d) 328, 171 P.
2 (2d) 199(1956).

3 " . . . [W]here the fiduciary's concealment or failure to disclose prevents the
4 person to whom the duty of disclosure is owed from presenting all the claims or defenses
5 to which he is entitled, the failure to disclose is extrinsic fraud. *In re Estate of Phillips*, 46
6 Wn.2d 1, 15 (Wash., 1955)

7 Older cases, such as *In re Haukele's Estate* were more restrictive, but "[W]ith the
8 advent of CR 60, additional justifications upon which to reopen an estate may exist.
9 Specifically, 60(b)(4) allows the court to vacate a judgment procured through "fraud . . . ,
10 misrepresentation, or other misconduct of an adverse party.' CR 60(b)(4). . . CR
11 60(b)(5). CR 60 also contains a catchall provision, which permits the court to vacate a
12 judgment for "any other reason justifying relief from the operation of the judgment." CR
13 60(b)(11)." *Pitzer v. Union Bank of California*, 141 Wn.2d 539, 552, ___ P.3d ___, (2000).

14 CR 60(b) provides that a "court may relieve a party . . . from a final judgment,
15 order, or proceeding" under specified circumstances. Highland claims that two
16 provisions of CR 60(b) are at issue in this case: CR 60(b)(1), which allows relief when
17 there is an "irregularity in obtaining a judgment or order," and CR 60(b)(4), which
18 permits relief in cases of "[f]raud . . . misrepresentation, or other misconduct of an
19 adverse party[.]" *Haley v. Highland*, 142 Wn.2d 135, 156 (Wash., 2000).

20 CR 60(b) provides in pertinent part:

21 On motion and upon such terms as are just, the court may relieve a party or his
22 legal representative from a final judgment, order, or proceeding for the following
23 reasons:

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25 (4) Fraud (whether heretofore denominated intrinsic or extrinsic),
26 misrepresentation, or other misconduct of an adverse party;

27 (5) The judgment is void;

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(11) Any other reason justifying relief from the operation of the judgment.

CR 60(b)(1) provides that the court may relieve a party or his personal representative from a final judgment or order for "irregularities" in obtaining the judgment or order. Irregularities which can be considered on a motion to vacate a judgment are those relating to want of adherence to some prescribed rule or mode of proceeding. *State v. Price*, 59 Wn.2d 788, 791, 370 P.2d 979 (1962). *In re Guardianship of Adamec*, 100 Wn.2d 166, 174 (Wash., 1983).

Dated this 24th of June 2004.

Charles M. Cruikshank III, attorney for
MARGARET MYERS SHAW

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CLALLAM COUNTY WASHINGTON SUPERIOR COURT

In re the Estate of Jack Delguzzi, Deceased	No. 8087
Margaret M. Shaw, personal representative of the Estate of Gary Delguzzi, Plaintiff/Petitioner	DECLARATION OF COUNSEL IN SUPPORT OF MOTION FOR ORDER VACATING JUNE 5, 1998 FEE AWARD TO ADMINISTRATOR
v. Loretta D. Wilbert, personal representative of the Estate of William E. Wilbert, et al, et ux.	
Defendant/Respondent	

My name is Charles M. Cruikshank III. I am over the age of majority and fully competent as to all matters to which I herein testify.

1. I asked David Martin, CPA, to review, evaluate and report on certain of the events of the administration of the Estate of Jack Delguzzi.

2. His letter report is attached hereto. Exhibit 1 to Mr. Martins's report was signed by me before submission to this court. Exhibit 2 is a Memorandum prepared by Darrell Hallett that was transmitted to me by Jacque Cypers, prior attorney for Gary Delguzzi, who received it from Mr. Hallett.

This declaration is made under penalty of perjury pursuant to the laws of the state of Washington. Dated and signed at Seattle, Washington on this 24th of June 2004.

Charles M. Cruikshank III, attorney for
MARGARET MYERS SHAW

Declaration of Counsel Re:
Motion to Vacate Fee Award -1-

Charles M. Cruikshank III
108 So. Washington St. #306
Seattle, Washington 98104
206 624-6761 WSB #6682

June 23, 2004

Mr. Charles Cruikshank III
Attorney At Law
108 S. Washington, Suite 316
Seattle, WA 98104

Re: Estate of Jack Delguzzi: Investigation of Final Accounting and
Supplement to Final Accounting

Dear Mr. Cruikshank:

Pursuant to our discussions, I carefully reviewed the comprehensive accounting for the Estate of Jack Delguzzi for the period August 1982 through September 1996 (Kleinman report) prepared by Kleinman, Guerra and Company, P.C., Certified Public Accountants, dated December 11, 1996. In addition, I reviewed the supplement to final accounting prepared by the Administrator of the Estate of Jack Delguzzi, William E. Wilbert, dated December 12, 1996. You asked me to read these documents and provide comments about the report given based upon my understanding of the Estate of Jack Delguzzi garnered from work performed for other reports that I issued.

The Kleinman report computed the negative net worth of the Estate to be \$656,981.00 at June 30, 1982.

The Estate paid estate taxes (including interest) in excess of

\$394,075 prior to August 13, 1982, when Mr. Wilbert became Administrator and was then current in its time payment obligations under the installment payment plan (IRC Sec. 6166) (Exhibit 1, page 2). An additional \$75,000 was paid from an unknown source in 1985. The total paid to the IRS, according to the Hallett Memo, appears to be about \$858,000. Inheritance taxes of \$220,368.00 were also paid. Mr. Wilbert paid, also paid, in satisfaction of an Offer in Compromise, the sum of \$367,000 drawn on his British Columbia bank, to the IRS to satisfy the Estate's tax obligations to the IRS.

An attorney for the Administrator, Robert Shaw, entered into a "Stipulation of Agreed Adjustments" with the IRS counsel in October of 1984, setting the deficiency in the estate taxes at \$344,123. Rather than paying that amount from the large amount of cash and cash equivalencies held by Delhur, Inc.¹, one of the Estate's wholly owned corporations, the Administrator largely ignored the obligations of the Estate to the IRS until 1991, when the IRS renewed its collection activities (Exhibit 4, p. C-3, paragraph 2).

② The \$4,000,000 claimed owned by the Administrator to the IRS in his Final Accounting of December 1996 is in stark contrast to the "Stipulation of Agreed Adjustments" as detailed in the Memorandum of Darrell Hallett in 1991, who was the Administrators' attorney and also inconsistent with the Administrator's allegation that when he assumed his office that ". . . in excess of \$1,000,000 in federal estate taxes would have to be paid." (Exhibit 4, page C-1, paragraph (1)).

③ Estate taxes (federal) are not assessed unless there is a positive net worth, meaning the value of assets exceeds the value of the

¹ According to Findings of Fact dated April 2, 1985 in *Seafirst v. Wilbert v. Hurworth*, "As of April 30, 1984 Delhur had an accounting net worth of \$3,340,000.00 including cash and short term investments of \$1,540,000.00."

liabilities. Inheritance taxes are only assessed when there are funds to be distributed to heirs implying there is a positive net worth.

This situation appears to be a dilemma. Either:

- The claimed values in the report are incorrect and the court based its fee award on a document that is dramatically incorrect (perhaps as much as 42 million dollars), or,
- The Kleinman report is correct and the Administrator erroneously paid \$1,078,368 in estate assets to pay state and inheritance taxes that were not due.

The Kleinman report contains several other unexpected amounts and comments.

1. The court ordered accountings filed by the Administrator contain reference to properties in Costa Rica and comments about transfers of property to Costa Rica to expand or develop those interests. There is no mention of a Costa Rican asset in the Estate balance sheet Mr. Kleinman prepared in section 2 of his report. In 1982, the Administrator asserted that the Costa Rica properties represented over one third (39 percent) of the estate's assets. Further, Mr. Kleinman discussed uses of funds in subsequent sections and does not address the transfer of funds reported in the court ordered accounting filed over the years prior to 1997. One of the transfers included a property in Oak Harbor, Washington valued at approximately \$275,000.00 during the mid-1980s. The transfer of these funds should have resulted in an increase in the value of

the Costa Rican property and the failure of the Kleinman accounting to address its accounting and balance sheets to address these values represents a serious discrepancy.

There was also no gain or loss reported on federal corporate income tax returns (Form 1120) that were produced in discovery by the Estate for the same;

2. The Estate and the sole heir, Gary Delguzzi, owned several properties jointly. You filed a Motion for Order to Show Cause in October of 2003 (Exhibit 2) that included a number of these jointly owned properties in which the Administrator fails to distribute the proceeds appropriately between the Estate and Gary Delguzzi. That motion in order to show cause indicated that the Estate was missing assets which I time-valued at \$5,713,645.00. Neither the Final Accounting nor Mr. Wilbert's response to the Order to Show Cause addressed these issues, either in amount or in liability.

There is still no explanation for what happened to that \$5,713,645;

3. Judge Grant Meiner, in 1984, found that the Administrator had transferred an Estate property commonly known as the State Patrol Billing in Port Angeles, Washington to himself and his attorneys for administrative and attorneys' fees. The evaluation assigned by the Administrator was some \$64,000.00 less than the then assessed value of the property. Kleinman's report does not show any transfer to reflect the judge's finding that the Estate was improperly deprived of this \$64,000.00 in value;

4. The Estate balance sheet at June 30, 1982 includes a rental property jointly owned with Gary Delguzzi denoted as "813 Front Street" valued at \$80,000.00. The Order to Show Cause references this property. (Exhibit B, A-1 to A-9). A review of public records indicates this property was sold by the Estate and that Gary Delguzzi was to receive his proportionate share of the sales proceeds.

Subsequently, the Administrator foreclosed on the property twice and, in the process, redirected the sales proceeds (approximately \$100,000.00) to himself and his alter ego corporations. No adjustment for this redirection of funds was noted in the Kleinman report and there is no evidence that Gary Delguzzi received his share of this property. These transactions were not revealed in the Final Accounting.

5. The Kleinman report lists (section 4, page 1) the Administrator receiving \$372,000.00 in real estate commissions. Receipt of real estate commissions by compensated estate Administrator was determined to be impermissible by the Washington Supreme Court in the case of *In Re Estate of Montgomery*, 140 Wash. 51, 53, 248 P. 64, (1926);
6. The Kleinman report (section 4, page 1) shows that the Estate paid \$525,191 in "administrative fees" and separately \$291,567 in "Wilbert-professional fees". These fees appear duplicative as the court found that the hourly rate of the Administrator should incorporate all of his or her fees;

7. Page 3 of the Kleinman report states that "By far the most significant problem you encountered as Administrator and favorably resolved was the Estate's federal and state inheritance tax liabilities. These liabilities had accumulated to an amount which is outstanding and unpaid of more than \$5,000,000.00." Kleinman apparently did not review the IRS stipulation (Exhibit A) where the liability of the Estate was fixed at \$344,123.00 in 1984 by a stipulation in Tax Court. Further, Kleinman does not reflect that the amount accumulated interest and penalties in 1994 incurred because the Estate refused to pay the taxes, even though one Estate-owned entity, DelHur, Incorporated, had over \$1,500,000.00 cash or cash equivalencies and no substantial liabilities; and,

8. The Federal Estate Tax form 706 filed in 1978 lists gross assets of \$3,960,776.00 and liabilities of \$856,110.00 leaving a net worth of \$3,104,666.00. Most of these assets were real estate. Kleinman lists \$27,115,097 of proceeds from asset sales (section 4, page 1). Given that 61% (100% - 39% in Costa Rica) of the assets apparently appreciated by \$23.1 million dollars (\$27.1 million minus \$4 million) and that there was minimal debt, the equity should have appreciated from 3.1 million to \$42.9 million. Instead of \$42.9 million in equity, Kleinman reports equity of a minus \$656,981. This defies explanation.

In summary, the Kleinman report is filled with unanswered questions and contradictions. But it cannot be reasonably questioned that either Kleinman is correct and he claimed the Estate had a negative net worth of \$656,000.00 then it is inescapable that the Administrator improperly paid \$1,078,368 in estate and inheritance taxes that were not due, or, Kleinman is incorrect and the court relied upon false material and

misleading information when approving the Administrator's fee petition.

If Kleinman was correct, on this issue alone, and the Estate has a negative net worth of \$656,000.00, a claim to be made against the Administrator to make the Estate whole. The claim should be for \$1,078,368 plus legal fees and the time-value of money on the estate and inheritance tax issues, alone. There are also the matters of the intentional omissions related to the Estate/Gary Delguzzi jointly owned properties that were not revealed in the Final Accounting which I valued (the Estate's interest) at \$5,713,645.

In the second case, the fee petition should be set aside because the court relied upon incomplete or false information. A new administrator should be able to evaluate the issues raised and decide how to make the Estate whole.

In any case, an administrator needs to be immediately appointed to protect the Estate's interests by making timely claim against the Estate of William E. Wilbert, no later than August 12, 2004, which is four months after the date of the first publication notice to creditors in that estate.

Very truly yours,

David Martin CPA

CHICOINE & HALLETT, P.S.

ATTORNEYS AT LAW

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MEMORANDUM

TO: William E. Wilbert File
William E. Wilbert
Eve M. Fitzsimmons

FROM: Darrell D. Hallett

RE: Jack J. DelGuzzi Estate Tax Liability:
Background and Status

DATE: November 19, 1991

PROCEDURAL HISTORY AND BASIS
FOR FINAL DETERMINATION OF TAX DUE

Jack J. DelGuzzi died on June 1, 1978, leaving as his only beneficiary his son, Gary. Jack DelGuzzi's wife died on August 26, 1966.

I have obtained copies of two federal estate tax returns. Both bear the apparent signatures of Gary DelGuzzi and a representative of Peat, Marwick, Mitchell & Co. Both are dated September 4, 1979. According to Bob Shaw, both returns were filed with the Internal Revenue Service. One return showed a liability of \$646,791. The other showed a liability of \$1,109,688.

The Internal Revenue Service transcript of account (hereinafter "Transcript") as of May 30, 1991 confirms that the Internal Revenue Service processed for assessment the return showing the greater liability. The Transcript indicates the return was received dated September 4, 1979, showing a liability of \$1,109,688. The Transcript also reflects that apparently there was a "math error" determined on the face of the return, and on October 22, 1979, an estate tax in the amount of \$1,113,254.61 was assessed (the reason for the math error is not apparent, and I have not yet tried to pin it down).

The face of both returns reflected an installment payment election under Section 6166 of the Internal Revenue Code. The assessed return reflected a payment of \$48,719 with the return, consisting of \$47,300 in tax, plus \$1,419 in interest.

The Transcript reflects payment of the \$48,719. A Notice dated March 4, 1982 from the Internal Revenue Service indicates that the

Memo re: Estate Tax Liability Status
November 19, 1991

Transcript was corrected to reflect that the "non-deferred" portion of the tax due with the filing of the return was only \$37,546.02, leaving a deferred balance of \$1,075,708.50. The annual installment due was \$107,570.86. Thus, the Transcript was corrected to reflect a credit of \$11,172.98 as of September 4, 1979 resulting from the "excess" payment on that date.

The 1982 Notice also reflects a payment on March 4, 1980 in the amount of \$61,252.71. The Notice indicated that that left \$366.41 still due. Next, a payment of \$102,543 was received on February 19, 1981. The March, 1982 Notice indicates that on that date there was \$232.97 still due. The Notice then calculated interest through March 1, 1982, and showed an amount then due of \$107,978.97.

The Transcript reflects that on March 22, 1982, payment of the full amount due as of March 1 was made.

According to the Transcript and the other documents I now have, no further payments were made until April 2, 1986. The transcript then reflects a credit for \$75,000. The source of this payment is not identified in the documents available to us; it could be from a sale of property. Thus, apparently, the required annual installment payments were not made beginning in 1983.

As to what Notices, if any, were received from the Internal Revenue Service with respect to the unpaid installments, the first Notice currently available to us is a Notice dated August 23, 1985 addressed to Wilbert in care of Bob Shaw (I obtained this Notice from Bob Shaw). The Notice indicates it is a "Correction of our notice of 6/7/85, updated to 9/9/85." Although it is somewhat unclear, it reflects calculation of interest due from March 1, 1982 (the last payment date) up through September 9, 1985, and shows failure to pay penalties for 1984 and 1985. It shows a total "balance due" of \$712,264.30 and then states the following: "The account is in default status under Section 6166 of the Internal Revenue Code. Payment must be made immediately to stop further default action."

Apparently, the required installment payments were not made beginning in 1983. Under Section 6166(g)(3), where there is a default on a Section 6166 installment payment, the full amount of the estate tax liability becomes due "on notice and demand." Arguably, notice and demand pursuant to Section 6166(g)(3) was not made until this year (1991). That is, the 1985 Notice did not on its face make notice and demand for the full outstanding liability. It simply requested payment for the delinquent installment payments (plus penalties) "to stop further default action."

Memo re: Estate Tax Liability Status
November 19, 1991

The only other Notice requesting payment which I now have is the Notice dated May 30, 1991 to Bill Wilbert, which is the "Final Notice" showing the amount due in excess of \$4,000,000. The first paragraph of this form Notice cites that notice and demand has been made previously. According to Bill Wilbert's cover note to Eve Fitzsimmons and Bob Shaw forwarding this Notice, it is the first and only Notice he ever received from the Internal Revenue Service. Bob Shaw did not think he had any other Notice.

The argument we could make, especially with respect to potential fiduciary liability, is that there was no "estate tax due," at least beyond the amount of the delinquent installment payments, until the Internal Revenue Service made notice and demand for the full outstanding balance.

At this point, it should also be noted that the Transcript reflects, in addition to the \$75,000 payment on April 2, 1986, some small payments made in October 1988, January 1989, April 1989, and a \$22,000 payment on April 25, 1989. There is also a small credit on January 2, 1991.

It should also be pointed out that in the 1984 recalculation of the estate tax final liability (i.e., the settlement of the Tax Court case), an interest deduction was allowed for the full amount of the interest payments through March 22, 1982. This would include the \$108,577.97 payment on March 22, 1982. The total interest allowed as a deduction was \$283,939.10.

DIFFERENCES BETWEEN THE TWO INITIAL ESTATE TAX RETURNS

There are a variety of reasons for the differences in bottom-line tax liability (\$646,791 versus \$1,109,688) reflected on the two returns. The return with the higher liability reflects a slightly lower (\$40,000) value for real estate, a significantly lower value for stocks and bonds (about \$400,000, most of which was attributable to valuing the DelHur stock at \$1.1 million instead of \$1.5 million) and an approximate \$800,000 greater value for Schedule F, "Miscellaneous Property," which appears largely attributable to an approximate \$820,000 value for a 50% interest in the DelGuzzi Brothers' Partnership (a zero value was put in the lower liability return for this item). Finally, the lower value return showed on Schedule K a balance due the Bruno DelGuzzi Estate of approximately \$585,000, and a balance due the Estate of John DelGuzzi, Margaret Shaw, and Catherine Myer, of approximately \$165,000. The higher value return reflected no reduction for these items.

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November 19, 1991

On August 23, 1982, a Notice of Deficiency was issued asserting additional estate taxes of approximately \$4.6 million. The Notice started with the taxable estate of approximately \$3.1 million reflected on the estate tax return that was processed for assessment, and made adjustments largely due to increased valuation of the real estate (approximately \$900,000), stock and bonds (including an approximately \$700,000 increase for the interest in DelHur), and the miscellaneous property (including an approximately \$2.9 million increase for the DelGuzzi Brothers' Partnership).

In response to the Notice of Deficiency, a Petition was filed in the Tax Court. Bob Shaw of Short, Cressman & Burgess was counsel for the Estate. In my interview with Shaw, he took the position that, other than to file the Petition, he had a minimal involvement in the resolution of the deficiency case. He stated that Wilbert wanted to work primarily with Jay Shaw in resolving the deficiency case.

According to Bob Shaw, the deficiency case was assigned to Doug Beariault in the Appeals Division. Beariault apparently "discarded" the Notice of Deficiency, and more or less agreed to start from scratch in determining the estate tax liability. Apparently the case was assigned back to the Estate Tax Group to redetermine property values and allowable deductions in conjunction with Bill Wilbert and Jay Shaw.

THE STIPULATED DECISION OF THE TAX COURT CASE

In October 1984, Bob Shaw signed a "Stipulation of Agreed Adjustments" with the Internal Revenue Service District Counsel's Office, which was then filed with the Tax Court. The Stipulation provided, first, that an attached Exhibit, which is the detailed "Audit Statement" reflecting the agreed adjustments to the estate tax return filed, correctly reflected the deficiency in estate tax. The agreed amount of the deficiency was \$344,123.

It is important to note at this point that, generally, the filing of a stipulated deficiency in any estate (or income) tax case in the Tax Court precludes any further adjustment of the liability. That is, if a Notice of Deficiency is issued and a Petition is filed in the Tax Court, the Tax Court then has the jurisdiction to determine the correct estate tax liability, be it a deficiency or overpayment. The Tax Court is required by statute to enter a Decision reflecting the final liability. Generally, in estate tax cases, all administration expenses, deductions for claims, and other items must be taken into account in determining the final figure entered as a deficiency (or overpayment); otherwise, even though the Estate pays claims and expenses that would otherwise

Memo re: Estate Tax Liability Status
November 19, 1991

qualify for deduction, no reduction of the estate tax liability can be claimed after the Tax Court's entry of a Decision.

As a matter of general practice, if there are on-going administration expenses and outstanding claims in an estate tax case docketed in the Tax Court, the only alternatives for obtaining a deduction for these items are either to continue to delay resolution of the case (which can be difficult when the case gets set for trial on the Tax Court calendar and must generally either be settled, continued, or go to trial on the merits), or get the government to agree to some deduction for items that have not yet been paid, but can be estimated.

There are two exceptions to this rule of finality in connection with estate tax cases settled after a Petition has been filed and a final Decision entered in the Tax Court:

1. Credit for State Inheritance Taxes Paid

Under Section 2011(c), credit may be claimed where a Section 6166 election has been made and even though a final deficiency has been entered in the Tax Court within the period that payment is extended under Section 6166; and

2. Deduction for Interest Paid on Federal Estate Tax Liability

Under Section 7481(d) which was enacted in 1988, a deduction may be claimed for interest paid on federal estate taxes even though a prior final Decision has been entered in the Tax Court during the period the payments are deferred under an installment plan under Section 6166.

Because Section 7481(d) was not enacted until 1988, the Stipulation filed with the Tax Court October 24, 1984 provided that, although the figure of \$344,123 correctly reflected the additional tax liability over and above that shown on the return, the case was being "left open" and a final agreed Decision was not being filed for the sole purpose of permitting the Estate to claim the amount of interest accruing on the installment payments as an expense of administration under Section 2053 of the Code. The Stipulation also provided that the Estate could claim a credit for state inheritance taxes upon presentation of proper proof of payment.

Thus, in 1984, there was a final agreement, filed with the Tax Court, between the Estate and the Internal Revenue Service, that the liability of the Estate was that amount shown on the initial assessed return, plus additional taxes of \$344,123. All that was

Memo re: Estate Tax Liability Status
November 19, 1991

left open was a further deduction for interest paid and a credit for state inheritance taxes.

BASIS FOR ARRIVING AT
ADDITIONAL TAX LIABILITY IN 1984

A detailed Audit Statement filed with the Stipulation in 1984 reflects the basis for arriving at the final tax liability figure. In our initial conference with Wilbert, and in his subsequent draft narrative statement asserting the history of the estate tax liabilities and administration of the Estate, questions were raised as to whether: (a) there are unclaimed deductions or credits that could at this point in time be utilized to further reduce the tax liability; and/or (b) to the extent that additional deductions and credits should have been available but were not claimed as a deduction or credit previously in determining the final liability, to what degree, if any, is there a potential liability of either Short, Cressman & Burgess, and/or Jay Shaw.

To answer these questions, we need to refer to the original estate tax return, and to the 1984 Stipulated (i.e. Agreed) Adjustments to that return. The Stipulation of Adjustments reflects the following. The starting point for determining the "final" liability (except for interest on the deferred estate taxes and the state death tax credit) was the taxable estate on the "higher" initial estate tax return filed, i.e., \$3,110,922.¹ A series of adjustments, i.e., increases to the return as well as decreases to the return as filed, were made for a net increase to the return as filed of \$240,970. The final deficiency, i.e., the additional tax due, of \$344,123 was the product of the following:

- A. Adding to the taxable estate a net amount of \$240,770;
- B. Disallowing entirely the credit claimed for state death taxes on the return as filed of \$191,247. The basis for the disallowance was that no state death tax had yet been paid. As noted above, that did not preclude a subsequent adjustment for death taxes paid; and
- C. Disallowing entirely the claimed credit filed on the return for "prior transfers" of \$15,524. The reason given was that the credit on the original return was based upon property passing from the Estate of Bruno DelGuzzi, who died on March 8, 1976. Pursuant to

¹ As noted above, there was apparently a math error on the face of the return which reflected a taxable estate of \$3,104,666. When the return was processed, the math error was corrected.

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findings of fact, conclusions of law, and a decree in the Clallam County Probate Court proceeding concerning Bruno DelGuzzi, the will was declared to be null and void. Thus, according to the audit statement accompanying the Stipulation setting forth the basis for the 1984 final liability, it was determined that Jack DelGuzzi "took nothing" from Bruno DelGuzzi, and no property passed to Jack from Bruno, such that Jack's Estate was not entitled to the credit.

Thus, of the \$344,123 additional tax liability agreed to in 1984, approximately \$200,000 is due to the disallowance of the state death tax credit claimed and the credit claimed for tax paid on property passing from Bruno DelGuzzi's Estate. The balance, i.e., the net addition of \$240,770 to the taxable estate, is attributable to the following:

A. Schedule A - Real Estate

These properties were increased by a total of \$251,478. This apparently was from the "pink sheet" values that Bill Wilbert either determined or substantially participated in determining;

B. Schedule B - Stocks and Bonds

The decedent's interest in "Schedule B" stocks was increased a total of \$967,185. The bulk of that increase came from the following:

1. The decedent's common stock in DelGuzzi, Inc. was increased from \$124,134, as shown on the return, to \$288,019;
2. The decedent's interest in DelHur, Inc., was increased from \$1,127,296 to \$1,800,000; and
3. The decedent's interest in stock in Park Manor Center, Inc. was increased from \$105,000 to \$240,000.

These are the major adjustments to the valuation of stock interests agreed to in 1984. As to the merits of these adjustments, and, particularly, the valuation of \$1,800,000 for the stock in DelHur, Inc. (versus \$1.1 million on the return as filed), Bob Shaw's position is that Bill Wilbert and Jay Shaw were responsible for negotiating these values. Bob Shaw further takes the position that at the time this agreed settlement was

Memo re: Estate Tax Liability Status
November 19, 1991

entered into with the Internal Revenue Service in 1984, he understood from Bill Wilbert that this was a "great settlement" (referring to the overall settlement of \$344,000 in additional tax liability) and, further, that Bill Wilbert indicated there would be little problem in satisfying this liability.

C. Schedule F - Other Miscellaneous Property

The next major adjustment in the 1984 final settlement was a decrease in values reflected on Schedule F, "Other Miscellaneous Property," totalling \$272,854. That adjustment in turn came principally from the following adjustments to the items on Schedule F on the return as filed:

1. A 50% partnership interest in DelGuzzi Brothers was reduced from \$819,905 to \$706,845;
2. One-half interest in the Jack DelGuzzi partnership between Jack DelGuzzi and Charles Nyhus was increased from \$224,397 to \$426,364; and
3. The estimated value of inheritance from Bruno DelGuzzi of \$401,353.40 on the return as filed was eliminated entirely, for a reduction in this entire amount.

D. Schedule G - Transfers During Decedent's Life

The return as filed reflected zero. The 1984 agreed settlement reflected \$184,000. The explanation of this adjustment indicates that the decedent was determined to have made a transfer by the creation of the "Lincoln Building Trust" over which decedent retained an interest under Section 2036, 2037 or 2038 requiring its inclusion in the gross estate at fair market value. Fair market value was determined to be \$285,000, and the outstanding mortgage \$149,000. To that amount was added \$35,000, the approximate balance in the checking and savings accounts of the Lincoln Building Trust, for a total addition of \$184,000.

E. Schedule J - Funeral and Administration Expenses

The return as filed claimed a total of \$724,991. This figure is comprised principally of administrator's

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November 19, 1991

expenses of \$125,000, attorneys' fees of \$120,000, accounting fees of \$30,000 (Peat, Marwick, Mitchell & Co.), estimated cost to close the Estate of \$50,000, and interest on the federal estate tax installment payments of \$402,832.

The stipulated settlement allowed a total deduction of Schedule J expenses of \$1,097,747.10, resulting in a decrease to the taxable estate of \$372,756.

The principal items taken into account which were allowed in the final settlement were the following: accounting fees, executor's fees, and attorneys' fees were allowed as a deduction in a total amount of \$811,638. A detailed schedule attached to the Audit Statement reflects all the items that are included in this figure. The Schedule shows the amounts allowed by year, beginning in 1978. As to the amounts paid Bill Wilbert and Short, Cressman & Burgess, the following were allowed:

Bill Wilbert - Executor's Fees

1981	\$ 11,474.00
	2,797.00
	4,121.50
1983	90,000.00
	<u>32,582.00</u>
TOTAL:	\$140,974.50

Short, Cressman & Burgess - Attorneys' Fees

1982	120,000.00
1983	1,893.00
	<u>87,000.00</u>
TOTAL:	\$208,893.00

Apparently the above amounts allowed as executor's fees and attorneys' fees fall far short of the actual fees that were paid. At this point, I am not entirely certain just what the total fees are, but I note from the Schedule of Assets and Liabilities as of March 31, 1985 prepared by Bill Wilbert, on Page 2 it reflects Short, Cressman & Burgess fees through 3/31/85 of \$593,000, and administrator's fees through 3/31/85 of \$268,000. At any

Memo re: Estate Tax Liability Status
November 19, 1991

rate, I discussed with Bob Shaw the issue as to why all attorneys' and executor's fees were not included in the final determination of the estate tax liability. He indicated that the Internal Revenue Service took the position that only those items which had been paid would be allowed as a deduction.

The Stipulation of Agreed Adjustments filed with the Tax Court in 1984 on its face forecloses the claiming of any additional administration expenses paid or incurred after the filing of the stipulation (October 1984). As noted above, the filing of this Stipulation, and, in any event, the entry on March 20, 1991 of a Final Decision in the Tax Court reflecting the liability of \$344,123, legally forecloses any further claim for administration expenses.

Regarding the exposure of Short, Cressman & Burgess for this predicament, several observations should be made. First, as noted above, there is no provision in the law that allows a claim for additional deductions for administration expenses paid or incurred after a final estate tax Decision is entered in the Tax Court. The only exception to the finality resulting from the entry of a Stipulated Decision relates to the state death taxes paid and interest paid on the federal estate tax liability pursuant to a Section 6166 installment arrangement. As a practical matter, when a Notice of Deficiency in an estate tax case is issued and the case then becomes docketed in the Tax Court, the representative ultimately has to either enter into an agreed settlement reflecting the final estate tax liability, go to trial before the Tax Court on issues raised in the Notice of Deficiency and not agreed to, or try to keep the case open as long as possible where there are significant ongoing administration expenses. To some degree, settlements can be made by getting the Internal Revenue Service to agree to some estimate as to future expenses.

In the final analysis, whether there is any exposure here of Bob Shaw for failure to point out to the Estate and Bill Wilbert the finality afforded the stipulated liability (if he did fail to point that out) depends on a number of factors. First, Bob Shaw will contend that Wilbert, together with Jay Shaw, was primarily responsible for the overall settlement, and that Bill Wilbert considered this a "great settlement." If a claim were pursued against his firm, he would no doubt contend that he was faced with the case getting on a Tax Court

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trial calendar and being unable to get the Internal Revenue Service's concessions in valuing the real estate, stock interests, miscellaneous property, as well as the additional deduction allowed the liability due the Bruno DelGuzzi Estate (Schedule K item discussed below). In other words, Short, Cressman & Burgess and Bob Shaw would undoubtedly argue that the settlement was a good one overall, and that the forbearance of additional deductions for future administration expenses was a justified concession. **NOTE:** To what degree could these administration expenses be claimed on income tax returns?

F. Schedule K - Debts of the Estate

The return as filed claimed a deduction for debts against the Estate totalling \$130,302. The 1984 Stipulated Adjustment increased this figure and allowed a net additional deduction of \$421,944.

The principal item allowed in the settlement was an additional deduction totalling \$457,250 for the balance due the Bruno DelGuzzi Estate.

This concludes the major adjustments agreed to in the 1984 Stipulated Decision.

AGREED ESTATE TAX LIABILITY
AS ADJUSTED FOR INTEREST AND ESTATE DEATH TAXES
NOT TAKEN INTO ACCOUNT IN THE 1984 SETTLEMENT

As noted above, in the 1984 settlement, no credit was allowed for state death taxes. Interest on the federal estate tax liability was allowed to the extent of \$283,939, reflecting the payments made through March 22, 1982.

According to the transcript, the total interest accumulated to date is \$_____. Provided that this interest is paid within the period provided by Section 7481(d) and the Stipulated Decision in the Tax Court, then an additional deduction can be claimed and the liability will be reduced. The same situation exists for the state death taxes.

The problem here with respect to both items, i.e., the death taxes and the interest, is whether the Internal Revenue Service could take the position that since there has now been a default and the entire estate tax liability is due, no claim for deduction or credit can now be made even if interest and state taxes are paid because payment was made after the "installment period" terminated. Perhaps, however, at least for Offer in Compromise purposes, the

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Internal Revenue Service could be persuaded to allow a deduction for interest and state death taxes. If so, then the liability for tax would be reduced inasmuch as the death taxes credited and interest on federal estate taxes deduction effect the liability. Tentatively, I think we should do a calculation to make various assumptions and determine the net liability that would result from various amounts of payment. The point here is that there is not due in excess of \$4,000,000 of tax and interest; assuming that that amount or even something lesser is paid, payment will reduce the underlying tax liability. We can potentially mitigate the size of the debt by taking this into account.

THE 1985 DISTRIBUTION PLAN

In June, 1985, a Petition was filed on behalf of the Estate by Andrew Maron of Short, Cressman & Burgess. The Petition submitted a schedule of assets and liabilities of the Estate, showing approximately \$8 million in assets and \$5.5 million in liabilities. The Petition proposed a plan whereby, as properties were sold, the Internal Revenue Service would receive 55%, the State 15%, secured lenders 15%, administration costs 10%, and the Bruno DelGuzzi Estate the other 5%. The Petition was set for hearing. However, according to Bob Shaw, the hearing was never held and no Order was ever entered approving the plan. Nevertheless, properties were sold and the proceeds distributed in accordance with the plan, without objection by the Internal Revenue Service (apparently) until this year.

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Ex. 1 → Ex. 2
↓
is ex. 1 Mr. Martin's report?

CLALLAM COUNTY WASHINGTON SUPERIOR COURT

In re the Estate of Jack Delguzzi, Deceased	No. 8087
Margaret M. Shaw, personal representative of the Estate of Gary Delguzzi, Plaintiff/Petitioner	DECLARATION OF COUNSEL IN SUPPORT OF MOTION FOR ORDER VACATING JUNE 5, 1998 FEE AWARD TO ADMINISTRATOR
v.	
Loretta D. Wilbert, personal representative of the Estate of William E. Wilbert, et al, et ux. Defendant/Respondent	

My name is Charles M. Cruikshank III. I am over the age of majority and fully competent as to all matters to which I herein testify.

1. I asked David Martin, CPA, to review, evaluate and report on certain of the events of the administration of the Estate of Jack Delguzzi.

2. His letter report is attached hereto. Exhibit 1 to Mr. Martins's report was signed by me before submission to this court. Exhibit 2 is a Memorandum prepared by Darrell Hallett that was transmitted to me by Jacque Cypers, prior attorney for Gary Delguzzi, who received it from Mr. Hallett.

his declaration is made under penalty of perjury pursuant to the laws of the state of Washington. Dated and signed at Seattle, Washington on this 24th of June 2004.

Ex. 2 → Ex. 1
↑

Charles M. Cruikshank III, attorney for
MARGARET MYERS SHAW

Declaration of Counsel Re:
Motion to Vacate Fee Award -1-

Charles M. Cruikshank III
108 So. Washington St. #306
Seattle, Washington 98104
206 624-6761 WSB #6682

June 23, 2004

Mr. Charles Cruikshank III
Attorney At Law
108 S. Washington, Suite 316
Seattle, WA 98104

Re: Estate of Jack Delguzzi: Investigation of Final Accounting and
Supplement to Final Accounting

Dear Mr. Cruikshank:

Pursuant to our discussions, I carefully reviewed the comprehensive accounting for the Estate of Jack Delguzzi for the period August 1982 through September 1996 (Kleinman report) prepared by Kleinman, Guerra and Company, P.C., Certified Public Accountants, dated December 11, 1996. In addition, I reviewed the supplement to final accounting prepared by the Administrator of the Estate of Jack Delguzzi, William E. Wilbert, dated December 12, 1996. You asked me to read these documents and provide comments about the report given based upon my understanding of the Estate of Jack Delguzzi garnered from work performed for other reports that I issued.

The Kleinman report computed the negative net worth of the Estate to be \$656,981.00 at June 30, 1982.

The Estate paid estate taxes (including interest) in excess of

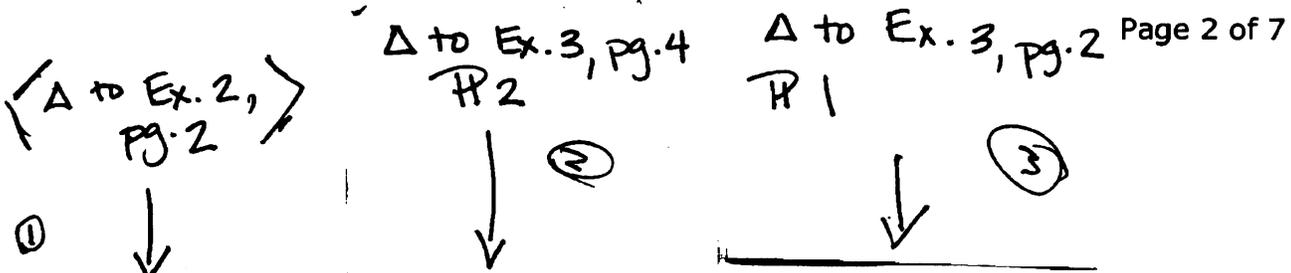
\$394,075 prior to August 13, 1982, when Mr. Wilbert became Administrator and was then current in its time payment obligations under the installment payment plan (IRC Sec. 6166) (Exhibit 1, page 2). An additional \$75,000 was paid from an unknown source in 1985. The total paid to the IRS, according to the Hallett Memo, appears to be about \$858,000. Inheritance taxes of \$220,368.00 were also paid. Mr. Wilbert paid, also paid, in satisfaction of an Offer in Compromise, the sum of \$367,000 drawn on his British Columbia bank, to the IRS to satisfy the Estate's tax obligations to the IRS.

An attorney for the Administrator, Robert Shaw, entered into a "Stipulation of Agreed Adjustments" with the IRS counsel in October of 1984, setting the deficiency in the estate taxes at \$344,123. Rather than paying that amount from the large amount of cash and cash equivalencies held by Delhur, Inc.¹, one of the Estate's wholly owned corporations, the Administrator largely ignored the obligations of the Estate to the IRS until 1991, when the IRS renewed its collection activities (Exhibit 4, p. C-3, paragraph 2).

① The \$4,000,000 claimed owned by the Administrator to the IRS in his Final Accounting of December 1996 is in stark contrast to the "Stipulation of Agreed Adjustments" as detailed in the Memorandum of Darrell Hallett in 1991, who was the Administrators' attorney and also inconsistent with the Administrator's allegation that when he assumed his office that ". . . in excess of \$1,000,000 in federal estate taxes would have to be paid." (Exhibit 4, page C-1, paragraph (1)).

③ Estate taxes (federal) are not assessed unless there is a positive net worth, meaning the value of assets exceeds the value of the

¹ According to Findings of Fact dated April 2, 1985 in Seafirst v. Wilbert v. Hurworth, "As of April 30, 1984 Delhur had an accounting net worth of \$3,340,000.00 including cash and short term investments of \$1,540,000.00"



liabilities. Inheritance taxes are only assessed when there are funds to be distributed to heirs implying there is a positive net worth.

This situation appears to be a dilemma. Either:

- The claimed values in the report are incorrect and the court based its fee award on a document that is dramatically incorrect (perhaps as much as 42 million dollars), or,
- The Kleinman report is correct and the Administrator erroneously paid \$1,078,368 in estate assets to pay state and inheritance taxes that were not due.

The Kleinman report contains several other unexpected amounts and comments.

1. The court ordered accountings filed by the Administrator contain reference to properties in Costa Rica and comments about transfers of property to Costa Rica to expand or develop those interests. There is no mention of a Costa Rican asset in the Estate balance sheet Mr. Kleinman prepared in section 2 of his report. In 1982, the Administrator asserted that the Costa Rica properties represented over one third (39 percent) of the estate's assets. Further, Mr. Kleinman discussed uses of funds in subsequent sections and does not address the transfer of funds reported in the court ordered accounting filed over the years prior to 1997. One of the transfers included a property in Oak Harbor, Washington valued at approximately \$275,000.00 during the mid-1980s. The transfer of these funds should have resulted in an increase in the value of

the Costa Rican property and the failure of the Kleinman accounting to address its accounting and balance sheets to address these values represents a serious discrepancy.

There was also no gain or loss reported on federal corporate income tax returns (F Ex. 2 is Hallett placed in discovery by the Estate for the Memo

2. The Estate and ^{The 10/03 OTSC} IS Ex. D to Dec _{↓ of Cruik REPLY} Delguzzi, owned several properties jointly for Order to Show Cause in October of 2003 (Exhibit 2) that included a number of these jointly owned properties in which the Administrator fails to distribute the proceeds appropriately between the Estate and Gary Delguzzi. That motion in order to show cause indicated that the Estate was missing assets which I time-valued at \$5,713,645.00. Neither the Final Accounting nor Mr. Wilbert's response to the Order to Show Cause addressed these issues, either in amount or in liability.

There is still no explanation for what happened to that \$5,713,645;

3. Judge Grant Meiner, in 1984, found that the Administrator had transferred an Estate property commonly known as the State Patrol Billing in Port Angeles, Washington to himself and his attorneys for administrative and attorneys' fees. The evaluation assigned by the Administrator was some \$64,000.00 less than the then assessed value of the property. Kleinman's report does not show any transfer to reflect the judge's finding that the Estate was improperly deprived of this \$64,000.00 in value;

4. The Estate balance sheet at June 30, 1982 includes a rental property jointly owned with Gary Delguzzi denoted as "813 Front Street" valued at \$80,000.00. The Order to Show Cause references this property. (Exhibit B, A-1 to A-9). A review of public records indicates this Estate and that Gary Delguzzi was the share of the sales proceeds.



Δ to Ex. 2

A-1 to A-9

(OSC is Ex. D

to Decl of CruiK reply)

Subsequently used on the property twice and, in the pr ~~ceeds~~ proceeds (approximately \$100,000.00) to himself and his alter ego corporations. No adjustment for this redirection of funds was noted in the Kleinman report and there is no evidence that Gary Delguzzi received his share of this property. These transactions were not revealed in the Final Accounting.

5. The Kleinman report lists (section 4, page 1) the Administrator receiving \$372,000.00 in real estate commissions. Receipt of real estate commissions by compensated estate Administrator was determined to be impermissible by the Washington Supreme Court in the case of *In Re Estate of Montgomery*, 140 Wash. 51, 53, 248 P. 64, (1926);

6. The Kleinman report (section 4, page 1) shows that the Estate paid \$525,191 in "administrative fees" and separately \$291,567 in "Wilbert-professional fees". These fees appear duplicative as the court found that the hourly rate of the Administrator should incorporate all of his or her fees;

7. Page 3 of the Kleinman report states that "By far the most significant problem you encountered as Administrator and favorably resolved was the Estate's federal and state inheritance tax liabilities. These liabilities had accumulated to an amount which is outstanding and unpaid of more than \$5,000,000.00." Kleinman apparently did not review the IRS stipulation (Exhibit A) where the liability of the Estate was fixed at \$344,123.00 in 1984 by a stipulation in Tax Court. Further, Kleinman does not reflect that the amount accumulated interest and penalties in 1994 incurred because the Estate refused to pay the taxes, even though one Estate-owned entity, DelHur, Incorporated, had over \$1,500,000.00 cash or cash equivalencies and no substantial liabilities; and,

8. The Federal Estate Tax form 706 filed in 1978 lists gross assets of \$3,960,776.00 and liabilities of \$856,110.00 leaving a net worth of \$3,104,666.00. Most of these assets were real estate. Kleinman lists \$27,115,097 of proceeds from asset sales (section 4, page 1). Given that 61% (100% - 39% in Costa Rica) of the assets apparently appreciated by \$23.1 million dollars (\$27.1 million minus \$4 million) and that there was minimal debt, the equity should have appreciated from 3.1 million to \$42.9 million. Instead of \$42.9 million in equity, Kleinman reports equity of a minus \$656,981. This defies explanation.

In summary, the Kleinman report is filled with unanswered questions and contradictions. But it cannot be reasonably questioned that either Kleinman is correct and he claimed the Estate had a negative net worth of \$656,000.00 then it is inescapable that the Administrator improperly paid \$1,078,368 in estate and inheritance taxes that were not due, or, Kleinman is incorrect and the court relied upon false material and

misleading information when approving the Administrator's fee petition.

If Kleinman was correct, on this issue alone, and the Estate has a negative net worth of \$656,000.00, a claim to be made against the Administrator to make the Estate whole. The claim should be for \$1,078,368 plus legal fees and the time-value of money on the estate and inheritance tax issues, alone. There are also the matters of the intentional omissions related to the Estate/Gary Delguzzi jointly owned properties that were not revealed in the Final Accounting which I valued (the Estate's interest) at \$5,713,645.

In the second case, the fee petition should be set aside because the court relied upon incomplete or false information. A new administrator should be able to evaluate the issues raised and decide how to make the Estate whole.

In any case, an administrator needs to be immediately appointed to protect the Estate's interests by making timely claim against the Estate of William E. Wilbert, no later than August 12, 2004, which is four months after the date of the first publication notice to creditors in that estate.

Very truly yours,

David Martin CPA

CHICOINE & HALLETT, P.S.

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FAX: (206) 487-8170

MEMORANDUM

TO: William E. Wilbert File
William E. Wilbert
Eve M. Fitzsimmons

FROM: Darrell D. Hallett

RE: Jack J. DelGuzzi Estate Tax Liability:
Background and Status

DATE: November 19, 1991

**PROCEDURAL HISTORY AND BASIS
FOR FINAL DETERMINATION OF TAX DUE**

Jack J. DelGuzzi died on June 1, 1978, leaving as his only beneficiary his son, Gary. Jack DelGuzzi's wife died on August 26, 1966.

I have obtained copies of two federal estate tax returns. Both bear the apparent signatures of Gary DelGuzzi and a representative of Peat, Marwick, Mitchell & Co. Both are dated September 4, 1979. According to Bob Shaw, both returns were filed with the Internal Revenue Service. One return showed a liability of \$646,791. The other showed a liability of \$1,109,688.

The Internal Revenue Service transcript of account (hereinafter "Transcript") as of May 30, 1991 confirms that the Internal Revenue Service processed for assessment the return showing the greater liability. The Transcript indicates the return was received dated September 4, 1979, showing a liability of \$1,109,688. The Transcript also reflects that apparently there was a "math error" determined on the face of the return, and on October 22, 1979, an estate tax in the amount of \$1,113,254.61 was assessed (the reason for the math error is not apparent, and I have not yet tried to pin it down).

The face of both returns reflected an installment payment election under Section 6166 of the Internal Revenue Code. The assessed return reflected a payment of \$48,719 with the return, consisting of \$47,300 in tax, plus \$1,419 in interest.

The Transcript reflects payment of the \$48,719. A Notice dated March 4, 1982 from the Internal Revenue Service indicates that the

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Transcript was corrected to reflect that the "non-deferred" portion of the tax due with the filing of the return was only \$37,546.02, leaving a deferred balance of \$1,075,708.50. The annual installment due was \$107,570.86. Thus, the Transcript was corrected to reflect a credit of \$11,172.98 as of September 4, 1979 resulting from the "excess" payment on that date.

The 1982 Notice also reflects a payment on March 4, 1980 in the amount of \$61,252.71. The Notice indicated that that left \$366.41 still due. Next, a payment of \$102,543 was received on February 19, 1981. The March, 1982 Notice indicates that on that date there was \$232.97 still due. The Notice then calculated interest through March 1, 1982, and showed an amount then due of \$107,978.97.

The Transcript reflects that on March 22, 1982, payment of the full amount due as of March 1 was made.

According to the Transcript and the other documents I now have, no further payments were made until April 2, 1986. The transcript then reflects a credit for \$75,000. The source of this payment is not identified in the documents available to us; it could be from a sale of property. Thus, apparently, the required annual installment payments were not made beginning in 1983.

As to what Notices, if any, were received from the Internal Revenue Service with respect to the unpaid installments, the first Notice currently available to us is a Notice dated August 23, 1985 addressed to Wilbert in care of Bob Shaw (I obtained this Notice from Bob Shaw). The Notice indicates it is a "Correction of our notice of 6/7/85, updated to 9/9/85." Although it is somewhat unclear, it reflects calculation of interest due from March 1, 1982 (the last payment date) up through September 9, 1985, and shows failure to pay penalties for 1984 and 1985. It shows a total "balance due" of \$712,264.30 and then states the following: "The account is in default status under Section 6166 of the Internal Revenue Code. Payment must be made immediately to stop further default action."

Apparently, the required installment payments were not made beginning in 1983. Under Section 6166(g)(3), where there is a default on a Section 6166 installment payment, the full amount of the estate tax liability becomes due "on notice and demand." Arguably, notice and demand pursuant to Section 6166(g)(3) was not made until this year (1991). That is, the 1985 Notice did not on its face make notice and demand for the full outstanding liability. It simply requested payment for the delinquent installment payments (plus penalties) "to stop further default action."

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The only other Notice requesting payment which I now have is the Notice dated May 30, 1991 to Bill Wilbert, which is the "Final Notice" showing the amount due in excess of \$4,000,000. The first paragraph of this form Notice cites that notice and demand has been made previously. According to Bill Wilbert's cover note to Eve Fitzsimmons and Bob Shaw forwarding this Notice, it is the first and only Notice he ever received from the Internal Revenue Service. Bob Shaw did not think he had any other Notice.

The argument we could make, especially with respect to potential fiduciary liability, is that there was no "estate tax due," at least beyond the amount of the delinquent installment payments, until the Internal Revenue Service made notice and demand for the full outstanding balance.

At this point, it should also be noted that the Transcript reflects, in addition to the \$75,000 payment on April 2, 1986, some small payments made in October 1988, January 1989, April 1989, and a \$22,000 payment on April 25, 1989. There is also a small credit on January 2, 1991.

It should also be pointed out that in the 1984 recalculation of the estate tax final liability (i.e., the settlement of the Tax Court case), an interest deduction was allowed for the full amount of the interest payments through March 22, 1982. This would include the \$108,577.97 payment on March 22, 1982. The total interest allowed as a deduction was \$283,939.10.

DIFFERENCES BETWEEN THE TWO INITIAL ESTATE TAX RETURNS

There are a variety of reasons for the differences in bottom-line tax liability (\$646,791 versus \$1,109,688) reflected on the two returns. The return with the higher liability reflects a slightly lower (\$40,000) value for real estate, a significantly lower value for stocks and bonds (about \$400,000, most of which was attributable to valuing the DelHur stock at \$1.1 million instead of \$1.5 million) and an approximate \$800,000 greater value for Schedule F, "Miscellaneous Property," which appears largely attributable to an approximate \$820,000 value for a 50% interest in the DelGuzzi Brothers' Partnership (a zero value was put in the lower liability return for this item). Finally, the lower value return showed on Schedule K a balance due the Bruno DelGuzzi Estate of approximately \$585,000, and a balance due the Estate of John DelGuzzi, Margaret Shaw, and Catherine Myer, of approximately \$165,000. The higher value return reflected no reduction for these items.

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On August 23, 1982, a Notice of Deficiency was issued asserting additional estate taxes of approximately \$4.6 million. The Notice started with the taxable estate of approximately \$3.1 million reflected on the estate tax return that was processed for assessment, and made adjustments largely due to increased valuation of the real estate (approximately \$900,000), stock and bonds (including an approximately \$700,000 increase for the interest in DelHur), and the miscellaneous property (including an approximately \$2.9 million increase for the DelGuzzi Brothers' Partnership).

In response to the Notice of Deficiency, a Petition was filed in the Tax Court. Bob Shaw of Short, Cressman & Burgess was counsel for the Estate. In my interview with Shaw, he took the position that, other than to file the Petition, he had a minimal involvement in the resolution of the deficiency case. He stated that Wilbert wanted to work primarily with Jay Shaw in resolving the deficiency case.

According to Bob Shaw, the deficiency case was assigned to Doug Beariault in the Appeals Division. Beariault apparently "discarded" the Notice of Deficiency, and more or less agreed to start from scratch in determining the estate tax liability. Apparently the case was assigned back to the Estate Tax Group to redetermine property values and allowable deductions in conjunction with Bill Wilbert and Jay Shaw.

THE STIPULATED DECISION
OF THE TAX COURT CASE

In October 1984, Bob Shaw signed a "Stipulation of Agreed Adjustments" with the Internal Revenue Service District Counsel's Office, which was then filed with the Tax Court. The Stipulation provided, first, that an attached Exhibit, which is the detailed "Audit Statement" reflecting the agreed adjustments to the estate tax return filed, correctly reflected the deficiency in estate tax. The agreed amount of the deficiency was \$344,123.

It is important to note at this point that, generally, the filing of a stipulated deficiency in any estate (or income) tax case in the Tax Court precludes any further adjustment of the liability. That is, if a Notice of Deficiency is issued and a Petition is filed in the Tax Court, the Tax Court then has the jurisdiction to determine the correct estate tax liability, be it a deficiency or overpayment. The Tax Court is required by statute to enter a Decision reflecting the final liability. Generally, in estate tax cases, all administration expenses, deductions for claims, and other items must be taken into account in determining the final figure entered as a deficiency (or overpayment); otherwise, even though the Estate pays claims and expenses that would otherwise

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qualify for deduction, no reduction of the estate tax liability can be claimed after the Tax Court's entry of a Decision.

As a matter of general practice, if there are on-going administration expenses and outstanding claims in an estate tax case docketed in the Tax Court, the only alternatives for obtaining a deduction for these items are either to continue to delay resolution of the case (which can be difficult when the case gets set for trial on the Tax Court calendar and must generally either be settled, continued, or go to trial on the merits), or get the government to agree to some deduction for items that have not yet been paid, but can be estimated.

There are two exceptions to this rule of finality in connection with estate tax cases settled after a Petition has been filed and a final Decision entered in the Tax Court:

1. Credit for State Inheritance Taxes Paid

Under Section 2011(c), credit may be claimed where a Section 6166 election has been made and even though a final deficiency has been entered in the Tax Court within the period that payment is extended under Section 6166; and

2. Deduction for Interest Paid on Federal Estate Tax Liability

Under Section 7481(d) which was enacted in 1988, a deduction may be claimed for interest paid on federal estate taxes even though a prior final Decision has been entered in the Tax Court during the period the payments are deferred under an installment plan under Section 6166.

Because Section 7481(d) was not enacted until 1988, the Stipulation filed with the Tax Court October 24, 1984 provided that, although the figure of \$344,123 correctly reflected the additional tax liability over and above that shown on the return, the case was being "left open" and a final agreed Decision was not being filed for the sole purpose of permitting the Estate to claim the amount of interest accruing on the installment payments as an expense of administration under Section 2053 of the Code. The Stipulation also provided that the Estate could claim a credit for state inheritance taxes upon presentation of proper proof of payment.

Thus, in 1984, there was a final agreement, filed with the Tax Court, between the Estate and the Internal Revenue Service, that the liability of the Estate was that amount shown on the initial assessed return, plus additional taxes of \$344,123. All that was

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left open was a further deduction for interest paid and a credit for state inheritance taxes.

BASIS FOR ARRIVING AT
ADDITIONAL TAX LIABILITY IN 1984

A detailed Audit Statement filed with the Stipulation in 1984 reflects the basis for arriving at the final tax liability figure. In our initial conference with Wilbert, and in his subsequent draft narrative statement asserting the history of the estate tax liabilities and administration of the Estate, questions were raised as to whether: (a) there are unclaimed deductions or credits that could at this point in time be utilized to further reduce the tax liability; and/or (b) to the extent that additional deductions and credits should have been available but were not claimed as a deduction or credit previously in determining the final liability, to what degree, if any, is there a potential liability of either Short, Cressman & Burgess, and/or Jay Shaw.

To answer these questions, we need to refer to the original estate tax return, and to the 1984 Stipulated (i.e. Agreed) Adjustments to that return. The Stipulation of Adjustments reflects the following. The starting point for determining the "final" liability (except for interest on the deferred estate taxes and the state death tax credit) was the taxable estate on the "higher" initial estate tax return filed, i.e., \$3,110,922.¹ A series of adjustments, i.e., increases to the return as well as decreases to the return as filed, were made for a net increase to the return as filed of \$240,970. The final deficiency, i.e., the additional tax due, of \$344,123 was the product of the following:

- A. Adding to the taxable estate a net amount of \$240,770;
- B. Disallowing entirely the credit claimed for state death taxes on the return as filed of \$191,247. The basis for the disallowance was that no state death tax had yet been paid. As noted above, that did not preclude a subsequent adjustment for death taxes paid; and
- C. Disallowing entirely the claimed credit filed on the return for "prior transfers" of \$15,524. The reason given was that the credit on the original return was based upon property passing from the Estate of Bruno DelGuzzi, who died on March 8, 1976. Pursuant to

¹ As noted above, there was apparently a math error on the face of the return which reflected a taxable estate of \$3,104,666. When the return was processed, the math error was corrected.

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findings of fact, conclusions of law, and a decree in the Clallam County Probate Court proceeding concerning Bruno DelGuzzi, the will was declared to be null and void. Thus, according to the audit statement accompanying the Stipulation setting forth the basis for the 1984 final liability, it was determined that Jack DelGuzzi "took nothing" from Bruno DelGuzzi, and no property passed to Jack from Bruno, such that Jack's Estate was not entitled to the credit.

Thus, of the \$344,123 additional tax liability agreed to in 1984, approximately \$200,000 is due to the disallowance of the state death tax credit claimed and the credit claimed for tax paid on property passing from Bruno DelGuzzi's Estate. The balance, i.e., the net addition of \$240,770 to the taxable estate, is attributable to the following:

A. Schedule A - Real Estate

These properties were increased by a total of \$251,478. This apparently was from the "pink sheet" values that Bill Wilbert either determined or substantially participated in determining;

B. Schedule B - Stocks and Bonds

The decedent's interest in "Schedule B" stocks was increased a total of \$967,185. The bulk of that increase came from the following:

1. The decedent's common stock in DelGuzzi, Inc. was increased from \$124,134, as shown on the return, to \$288,019;
2. The decedent's interest in DelHur, Inc., was increased from \$1,127,296 to \$1,800,000; and
3. The decedent's interest in stock in Park Manor Center, Inc. was increased from \$105,000 to \$240,000.

These are the major adjustments to the valuation of stock interests agreed to in 1984. As to the merits of these adjustments, and, particularly, the valuation of \$1,800,000 for the stock in DelHur, Inc. (versus \$1.1 million on the return as filed), Bob Shaw's position is that Bill Wilbert and Jay Shaw were responsible for negotiating these values. Bob Shaw further takes the position that at the time this agreed settlement was

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November 19, 1991

entered into with the Internal Revenue Service in 1984, he understood from Bill Wilbert that this was a "great settlement" (referring to the overall settlement of \$344,000 in additional tax liability) and, further, that Bill Wilbert indicated there would be little problem in satisfying this liability.

C. Schedule F - Other Miscellaneous Property

The next major adjustment in the 1984 final settlement was a decrease in values reflected on Schedule F, "Other Miscellaneous Property," totalling \$272,854. That adjustment in turn came principally from the following adjustments to the items on Schedule F on the return as filed:

1. A 50% partnership interest in DelGuzzi Brothers was reduced from \$819,905 to \$706,845;
2. One-half interest in the Jack DelGuzzi partnership between Jack DelGuzzi and Charles Nyhus was increased from \$224,397 to \$426,364; and
3. The estimated value of inheritance from Bruno DelGuzzi of \$401,353.40 on the return as filed was eliminated entirely, for a reduction in this entire amount.

D. Schedule G - Transfers During Decedent's Life

The return as filed reflected zero. The 1984 agreed settlement reflected \$184,000. The explanation of this adjustment indicates that the decedent was determined to have made a transfer by the creation of the "Lincoln Building Trust" over which decedent retained an interest under Section 2036, 2037 or 2038 requiring its inclusion in the gross estate at fair market value. Fair market value was determined to be \$285,000, and the outstanding mortgage \$149,000. To that amount was added \$35,000, the approximate balance in the checking and savings accounts of the Lincoln Building Trust, for a total addition of \$184,000.

E. Schedule J - Funeral and Administration Expenses

The return as filed claimed a total of \$724,991. This figure is comprised principally of administrator's

Memo re: Estate Tax Liability Status
November 19, 1991

expenses of \$125,000, attorneys' fees of \$120,000, accounting fees of \$30,000 (Peat, Marwick, Mitchell & Co.), estimated cost to close the Estate of \$50,000, and interest on the federal estate tax installment payments of \$402,832.

The stipulated settlement allowed a total deduction of Schedule J expenses of \$1,097,747.10, resulting in a decrease to the taxable estate of \$372,756.

The principal items taken into account which were allowed in the final settlement were the following: accounting fees, executor's fees, and attorneys' fees were allowed as a deduction in a total amount of \$811,638. A detailed schedule attached to the Audit Statement reflects all the items that are included in this figure. The Schedule shows the amounts allowed by year, beginning in 1978. As to the amounts paid Bill Wilbert and Short, Cressman & Burgess, the following were allowed:

Bill Wilbert - Executor's Fees

1981	\$ 11,474.00
	2,797.00
	4,121.50
1983	90,000.00
	<u>32,582.00</u>
TOTAL:	\$140,974.50

Short, Cressman & Burgess - Attorneys' Fees

1982	120,000.00
1983	1,893.00
	<u>87,000.00</u>
TOTAL:	\$208,893.00

Apparently the above amounts allowed as executor's fees and attorneys' fees fall far short of the actual fees that were paid. At this point, I am not entirely certain just what the total fees are, but I note from the Schedule of Assets and Liabilities as of March 31, 1985 prepared by Bill Wilbert, on Page 2 it reflects Short, Cressman & Burgess fees through 3/31/85 of \$593,000, and administrator's fees through 3/31/85 of \$268,000. At any

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November 19, 1991

rate, I discussed with Bob Shaw the issue as to why all attorneys' and executor's fees were not included in the final determination of the estate tax liability. He indicated that the Internal Revenue Service took the position that only those items which had been paid would be allowed as a deduction.

The Stipulation of Agreed Adjustments filed with the Tax Court in 1984 on its face forecloses the claiming of any additional administration expenses paid or incurred after the filing of the stipulation (October 1984). As noted above, the filing of this Stipulation, and, in any event, the entry on March 20, 1991 of a Final Decision in the Tax Court reflecting the liability of \$344,123, legally forecloses any further claim for administration expenses.

Regarding the exposure of Short, Cressman & Burgess for this predicament, several observations should be made. First, as noted above, there is no provision in the law that allows a claim for additional deductions for administration expenses paid or incurred after a final estate tax Decision is entered in the Tax Court. The only exception to the finality resulting from the entry of a Stipulated Decision relates to the state death taxes paid and interest paid on the federal estate tax liability pursuant to a Section 6166 installment arrangement. As a practical matter, when a Notice of Deficiency in an estate tax case is issued and the case then becomes docketed in the Tax Court, the representative ultimately has to either enter into an agreed settlement reflecting the final estate tax liability, go to trial before the Tax Court on issues raised in the Notice of Deficiency and not agreed to, or try to keep the case open as long as possible where there are significant ongoing administration expenses. To some degree, settlements can be made by getting the Internal Revenue Service to agree to some estimate as to future expenses.

In the final analysis, whether there is any exposure here of Bob Shaw for failure to point out to the Estate and Bill Wilbert the finality afforded the stipulated liability (if he did fail to point that out) depends on a number of factors. First, Bob Shaw will contend that Wilbert, together with Jay Shaw, was primarily responsible for the overall settlement, and that Bill Wilbert considered this a "great settlement." If a claim were pursued against his firm, he would no doubt contend that he was faced with the case getting on a Tax Court

Memo re: Estate Tax Liability Status
November 19, 1991

trial calendar and being unable to get the Internal Revenue Service's concessions in valuing the real estate, stock interests, miscellaneous property, as well as the additional deduction allowed the liability due the Bruno DelGuzzi Estate (Schedule K item discussed below). In other words, Short, Cressman & Burgess and Bob Shaw would undoubtedly argue that the settlement was a good one overall, and that the forbearance of additional deductions for future administration expenses was a justified concession. **NOTE:** To what degree could these administration expenses be claimed on income tax returns?

F. Schedule K - Debts of the Estate

The return as filed claimed a deduction for debts against the Estate totalling \$130,302. The 1984 Stipulated Adjustment increased this figure and allowed a net additional deduction of \$421,944.

The principal item allowed in the settlement was an additional deduction totalling \$457,250 for the balance due the Bruno DelGuzzi Estate.

This concludes the major adjustments agreed to in the 1984 Stipulated Decision.

AGREED ESTATE TAX LIABILITY
AS ADJUSTED FOR INTEREST AND ESTATE DEATH TAXES
NOT TAKEN INTO ACCOUNT IN THE 1984 SETTLEMENT

As noted above, in the 1984 settlement, no credit was allowed for state death taxes. Interest on the federal estate tax liability was allowed to the extent of \$283,939, reflecting the payments made through March 22, 1982.

According to the transcript, the total interest accumulated to date is \$_____. Provided that this interest is paid within the period provided by Section 7481(d) and the Stipulated Decision in the Tax Court, then an additional deduction can be claimed and the liability will be reduced. The same situation exists for the state death taxes.

The problem here with respect to both items, i.e., the death taxes and the interest, is whether the Internal Revenue Service could take the position that since there has now been a default and the entire estate tax liability is due, no claim for deduction or credit can now be made even if interest and state taxes are paid because payment was made after the "installment period" terminated. Perhaps, however, at least for Offer in Compromise purposes, the

Memo re: Estate Tax Liability Status
November 19, 1991

Internal Revenue Service could be persuaded to allow a deduction for interest and state death taxes. If so, then the liability for tax would be reduced inasmuch as the death taxes credited and interest on federal estate taxes deduction effect the liability. Tentatively, I think we should do a calculation to make various assumptions and determine the net liability that would result from various amounts of payment. The point here is that there is not due in excess of \$4,000,000 of tax and interest; assuming that that amount or even something lesser is paid, payment will reduce the underlying tax liability. We can potentially mitigate the size of the debt by taking this into account.

THE 1985 DISTRIBUTION PLAN

In June, 1985, a Petition was filed on behalf of the Estate by Andrew Maron of Short, Cressman & Burgess. The Petition submitted a schedule of assets and liabilities of the Estate, showing approximately \$8 million in assets and \$5.5 million in liabilities. The Petition proposed a plan whereby, as properties were sold, the Internal Revenue Service would receive 55%, the State 15%, secured lenders 15%, administration costs 10%, and the Bruno DelGuzzi Estate the other 5%. The Petition was set for hearing. However, according to Bob Shaw, the hearing was never held and no Order was ever entered approving the plan. Nevertheless, properties were sold and the proceeds distributed in accordance with the plan, without objection by the Internal Revenue Service (apparently) until this year.

DDH/lw

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CLALLAM COUNTY WASHINGTON SUPERIOR COURT

<p>In re the Estate of Jack Delguzzi, Deceased</p> <p>Margaret M. Shaw, personal representative of the Estate of Gary Delguzzi,</p> <p style="text-align: center;">Plaintiff/Petitioner</p> <p>v.</p> <p>Loretta D. Wilbert, personal representative of the Estate of William E. Wilbert, et al, et ux.</p> <p style="text-align: center;">Defendant/Respondent</p>	<p style="text-align: center;">No. 8087</p> <p style="text-align: center;">Declaration re: ERRATA Motion for Order Vacating Fee Award of June 5, 1998 to former Estate Administrator</p>
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COMES NOW Charles M. Cruikshank III, who publishes the following errata to the Motion for Order Vacating Fee Award of June 5, 1998, previously served and filed dated on 24th of June 2004, specifically to the Letter Report of David Martin, CPA as follows:

Item 1. On page 2, the reference to "Exhibit 4, page C-3" should properly be "Exhibit 3, page 4, ¶ (2)."

Item 2. On page 2, The reference to "Exhibit 4, page C-1, paragraph (1)" should properly be "Exhibit 3, page 2, ¶ (1)."

Item 3. On page 5, the reference to "Exhibit B, A-1 to A-9" should properly be "Exhibit 2, A-1 to A-9).

And, as to the Declaration of Counsel, the Identification of Exhibit 1 therein

1 should properly be Exhibit 2 and Exhibit 2 should be identified as Exhibit 1.

2 The Declaration of Cruikshank should also have included the following:

3 "Exhibit 3 is a copy of a portion of the materials filed herein by Administrator
4 William E. Wilbert in support of his Final Accounting in the Estate of Jack Delguzzi and
5 dated December 12, 1996." A copy of Exhibit 3 is attached.

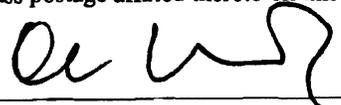
6 The foregoing declaration made under penalty of perjury pursuant to the laws of
7 the state of Washington, by the undersigned, a person of the age of majority and
8 otherwise competent to so testify. Dated and signed at Seattle on this 29th of June 2004.

9 

10 Charles M. Cruikshank III, attorney for
11 MARGARET MYERS SHAW
12 Personal Representative of the Estate of Gary Delguzzi

12 Certificate of Service

13 I certify that I have caused to be served upon the attorneys/parties on Exhibit A hereto copies of the above
14 Errata re: Motion for Order Vacating the Fee Award herein previously entered on June 5, 1998, and Order
15 which were previously served thereon on the 24th of June 2004, by placing such in the U S Mail, with first
16 class postage affixed thereto on this 29th of June 2004.

15 

17 Ex. 2 is
18 correctly
19 labeled in
20 Decl. of
21 Counsel
22 but ref to
23 as Ex. 1 in
24 Mr. Martin's
25 report.

28

Service List
Exhibit A to Certificate of Service

Paul R. Cressman, Sr.
11033 NE 24th St # 200
Bellevue, WA
98004-2971

Andrew W. Maron
John O. Burgess
999 Third Avenue, Suite 3000 Seattle, WA
98104—4008

Darrell D. Hallett
1011 Western Ave, #803
Seattle, WA 98104

Michael R. Scott
Hillis Clark, et al.
1221 Second Avenue #500
Seattle, WA 98101—2925

Carl Lloyd Gay
829 East Eighth Street
Port Angeles, WA 98362

Loretta D. Wilbert
POB 2056
North Bend, WA 98045

Catherine Myers
P.O. Box 726
Clinton, WA 98236

Willis McClure
4303 5. Airport Road
Port Angeles, WA 98363

B. Jeffrey Carl
Hoge Building #910
705 Second Avenue
Seattle, WA 98104

Thomas C. Gores
Perkins Coie
1201 Third Ave. 4800
Seattle, WA 98101

Arnold B. Robbins
2500 Dexter Ave. N. Apt. D
Seattle, WA 98109

Danferd W. Henke
Hellsell Fetterman, LLP
1325 Fourth Avenue, Suite 1500
Seattle, WA 98101

ADMINISTRATOR'S BILLING BOOK

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PREFACE

Jack DelGuzzi died on June 1, 1978, leaving his son Gary DelGuzzi as his only heir. Apparently two federal estate tax returns, both signed by Gary DelGuzzi and prepared by Peat Marwick & Mitchell Co., were filed with the Internal Revenue Service on or about September 4, 1979. The two returns showed significantly different amounts as the taxable estate and federal estate taxes due. The Internal Revenue Service based its assessment upon the return showing a liability of approximately \$1.1 million and a taxable estate of approximately \$3.1 million.

An election was made with the filing of the return to pay the tax due in installments over a ten year period. Interest would accrue on the unpaid tax over the installment period. Thus, when the present administrator, William E. Wilbert, assumed responsibility as administrator in August 1982, in excess of \$1 million, plus interest, was due from the estate for federal estate taxes. State inheritance taxes of over \$350,000 were also unpaid.

Before Mr. Wilbert became administrator in August 1982, virtually all cash and/or liquid assets of the estate had been disposed of. The estate was involved in over 100 lawsuits and/or claims, and had a number of outstanding judgments and unpaid settlements. Section 2 hereto contains a list of the various matters in litigation at the time the present administrator assumed responsibilities in August 1982.

The last accounting by Gary DelGuzzi as executor is a Schedule of Assets and Liabilities dated June 30, 1982 (Section 2 hereto). That schedule shows estate assets of \$17,200 in cash, with remaining assets in the form of closely-held stock interests, partnership interests, and interests in real properties. Over \$1 million was owed to the Seattle First National Bank.

While the schedule showed total assets of \$6,122,700, liabilities (including federal and state taxes) of \$3,604,800, and a net worth of \$2,517,900, the following should be noted:

- (1) The liabilities include federal estate taxes designated on the schedule as "under appeal" in the amount of \$1,400,000. Actually, as of June 30, 1982, in excess of \$1 million in federal estate taxes, plus interest, was owed to the Internal Revenue Service based upon one of the returns signed and filed by Gary DelGuzzi. That amount was not "under appeal" and would have to be paid. The Internal Revenue Service had asserted an additional estate tax deficiency against the estate in the amount of \$4.6 million. That amount was being disputed by the estate, but to the extent the deficiency was sustained, those additional estate taxes, plus interest from the due

date of the federal estate tax return, would have to be paid.

- (2) The executor's accounting reflects a state inheritance tax liability of \$200,000, which is characterized as "undetermined." Actually, the state inheritance tax return had been filed by the estate reflecting a liability of \$344,585 which, like the federal estate tax liability, was to be paid in installments. As of 1982, the only payments made to the estate had been applied to accrued interest only, and the estate owed in excess of \$350,000 based upon the return as filed. The estate would also owe additional inheritance taxes plus interest to the State if the Internal Revenue Service's proposed estate tax adjustments were sustained.
- (3) The liability to Seattle First National Bank is shown on the executor's schedule as \$1,081,800, including a \$274,000 guarantee of DelGuzzi Construction Company notes. In fact, loans due Seafirst then in default exceeded \$1,300,000.
- (4) DelHur stock is shown as having a value of \$2,600,000. However, DelHur at that time was engaged in a lawsuit with its minority shareholder, Sam Hurworth, who was asserting substantial claims against the corporation and the estate.
- (5) Aside from the Hurworth lawsuit, the executor's schedule does not reflect many lawsuits pending against the estate and its entities, nor does the schedule reflect that the estate then owed approximately \$560,000 as a result of lawsuits which had already been settled, including a lawsuit brought by the Estate of Bruno DelGuzzi.

Thus, at the point in time the current administrator assumed responsibilities in August 1982, the estate had no cash, virtually all of its properties were encumbered, and it was involved in over 100 lawsuits, some of which had been reduced to settlements and judgments. Additionally, over \$2 million in federal estate and inheritance tax liabilities were owed, installment payments needed to be made in order to avoid default, and no money was available to make the payments. Finally, the Internal Revenue Service audit of the federal estate tax return threatened the estate with potential liabilities of well over \$5 million.

The prior executor (Gary DelGuzzi) and his counsel sought the services of William E. Wilbert as administrator to assist in attempting to resolve the liabilities of the estate, including federal and state taxes, and maintain its solvency.

Short, Cressman & Burgess had been retained by Gary DelGuzzi prior to Mr. Wilbert becoming administrator, having replaced J. Dimmitt Smith, who previously represented the executor and the estate. Short Cressman continued as counsel for the estate and for the administrator until the firm withdrew in 1991.

William E. Wilbert performed services in a wide variety of matters after assuming the duties of administrator in August 1982, including, but not limited to, the following:

- (1) In response to the Internal Revenue Service's assertion of additional estate taxes (plus interest) owed in excess of \$5 million, Wilbert submitted to the Appeals Office of the Internal Revenue Service materials and information contesting the increased values the Internal Revenue Service Estate Tax Examiner had placed on estate assets, and supporting claims for additional deductions. Ultimately, the Internal Revenue Service agreed to reduce its asserted deficiency from \$4.6 million to \$344,000 (in tax).
- (2) The \$344,000 deficiency, plus interest, remained unpaid, together with the taxes and interest assessed based upon the estate tax return filed. In 1985, the administrator negotiated an arrangement, or "distribution plan" with the Internal Revenue Service whereby partial payments of the estate tax installments due were made to the Internal Revenue Service out of the proceeds of the sale of estate properties. The Internal Revenue Service honored the distribution plan until 1991. In 1991, the estate's account with the Internal Revenue Service was reassigned to a new revenue officer. The estate was then given final notice and demand for payment of the total taxes and interest then calculated to be due, amounting to more than \$4 million. Liens were filed against estate properties and extensive proceedings were undertaken by the Internal Revenue Service seeking to enforce payment.
- (3) The administrator was responsible for defending these proceedings and ultimately negotiating an Offer in Compromise with the Internal Revenue Service whereby the total outstanding liability for estate taxes, interest, and penalties was fully satisfied with a payment of only \$350,000. One of the terms of the compromise was the Internal Revenue Service's agreement not to pursue any portion of the liability against the trust of Gary DelGuzzi and/or against Gary DelGuzzi personally based upon an assertion of transferee and/or fiduciary liability.
- (4) The State of Washington, whose total claim for inheritance taxes and interest exceeded \$650,000, was

Page 4 of 10

compromised for \$150,000. The State of Washington, likewise agreed, as a condition of the compromise, not to assert liability against the administrator, the former executor of the estate, or against the trust of Gary DelGuzzi.

- (5) The Seafirst loans, which were delinquent when the administrator assumed duties in 1982, were satisfied in full through an arrangement developed, negotiated, and partially funded by the administrator.
- (6) A settlement was entered into with Sam Hurworth wherein the assets of DelHur were separated in a reorganization resulting in the estate retaining 100% ownership of the reorganized DelHur Corporation.
- (7) All of the outstanding lawsuits and claims have been resolved.
- (10) As a result of the settlement and satisfaction of the federal and state tax claims and the claims of others, all estate properties are currently marketable and unencumbered, except for priority administration and legal expense claims.

Additionally, extensive time and resources of the administrator and his professional service corporation, William E. Wilbert, P.S., Inc., were expended in connection with the DelHur Corporation's Ennis Creek property. This property consists of some 35 acres which, at the time the administrator assumed responsibilities for the estate, consisted of both commercially zoned property and residentially zoned property which could be developed into no more than 34 single family residences. There were no improvements nor utilities on the property, and it was outside the city limits.

Beginning in 1985, efforts were made on behalf of DelHur to formulate a plan to develop the property, which would maximize its value, and to obtain all necessary governmental approvals. A conditional rezone was obtained permitting multi-family residential development; a PRD (Planned Residential Development) approval was sought, which would allow some 206 residential units, as well as commercial development; and steps were taken to annex the property to the City of Port Angeles and obtain an LID to provide for utilities, streets, and sidewalks. Ultimately, the annexation process was completed, the LID was approved, improvements were placed upon the property, and the PRD was approved.

The entire 35 acre parcel, before annexation, PRD approval, and improvements, was valued at \$400,000 in connection with the Hurworth lawsuit settlement in 1990. After obtaining the entitlements and approvals, most of the commercial portion of the

properties were sold for in excess of \$1.2 million. Unfortunately, before all entitlements could be obtained on the residential portion of the property, a neighboring property owner, Mantooth, started proceedings challenging the proposed residential development. A lawsuit was brought and was successfully defended by DelHur through the Appeals process.

Prior to 1990, no payments were made to or for the benefit of the administrator, his professional service corporation, and/or any related entity or person for all of the work performed on the Ennis Creek project. In 1990, notes were executed for \$600,000 as payment for these services. The notes have been partially repaid. However, substantial amount remains unpaid.

The administrative hours spent in all estate-related matters are reflected in two sections of this report. The first section is a time accounting by the administrator. The section is a four-part report of time. The second section was prepared by William Linton, CPA, accounting counsel hired by the former executor, and subsequently retained by the current administrator. Unfortunately, this second section is slightly cryptic because it is presented in four reports, each covering time periods which overlap one another as well as overlap with the administrator's report. However, there are no duplicate entries and no duplication of time. Unfortunately, the software which generated the report is not available to reproduce or simplify the reports prepared by Mr. Linton.

ESTATE OF JACK DELGUZZI

SCHEDULE OF ASSETS AND LIABILITIES

JUNE 30, 1982

CASH: \$ 17,200.00

ESCROW CLOSING, PENDING: \$ 15,000.00

NOTES RECEIVABLES:

Becko, S.A.	\$ 50,000.00	
Mall Center #2	56,000.00	
Hill	10,000.00	
Surfside, Inc.	<u>4,000.00</u>	
		\$ 120,000.00

STOCKS (UNLISTED):

Surfside, S.A. - 7%	\$ 10,000.00	
Colorado Lumber Co., S.A. - 17 1/2%	35,000.00	
Cedarwood Properties, Inc. - 2/3	80,000.00	
Northland Properties, Inc. - 1/3	190,000.00	
Peninsula Properties, Inc. - 22%	87,500.00	
Surfside Properties, Inc.	10,000.00	
Saga Logging, Inc. - 20%	18,000.00	
Valley Properties, Inc.	0	
DelGuzzi Construction, Inc. - 100%	0	
DelGuzzi, Inc. - 100%	0	
DelGuzzi Investments, Inc. - 100%	0	
DelGuzzi Realty, Inc. - 100%	50,000.00	
Delhur, Inc. - 80%	<u>\$2,600,000.00</u>	
		\$3,080,500.00

PARTNERSHIPS:

Nyhus/DelGuzzi - Half Interest	\$1,800,000.00	
Elwha/DelGuzzi - One Sixth Int.	30,000.00	
All Others	<u>100,000.00</u>	
		\$1,930,000.00

PROPERTY HELD IN THE NAME OF
K DELGUZZI BEFORE TRANSFERS:

\$ 625,000.00

CANADIAN PROPERTY, (Being Held
For Exchange Nyhus/DelGuzzi/Kop)

\$ 175,000.00

RENTAL PROPERTIES

813 Front Street, Port Angeles	\$ 85,000.00	
Lopez House	35,000.00	
Sinclair House (Commercial Zone)	<u>40,000.00</u>	
		\$ 160,000.00

TOTAL ASSETS:

\$6,122,700.00

C-2

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LIABILITIES:

Interest Payable	\$ 51,800.00	
Existing Mortgages (All)	40,000.00	
Seattle-First National Bank Notes:		
(1) Estate Note	\$ 574,000.00	
(2) Estate Note	142,000.00	
(3) Guarantee of Construction Company Note	<u>274,000.00</u>	
		<u>-\$1,081,800.00</u>

ATTORNEYS:

(1) J. Dimmitt Smith (Bruno DelGuzzi Estate Charges Being Paid By Jack DelGuzzi Estate and the Jan. & Feb. Billings)	\$ 82,000.00	
(2) Smith, Smart, Hancock & Tabler	37,200.00	
(3) Short & Cressman	60,000.00	

ACCOUNTANTS:

(1) Peat, Marwick, Mitchell (Prior to Jan. 1, 1982 Excess & Jan., Feb., March, 1982)	27,400.00	
(2) Benson & McLaughlin	10,000.00	
(3) Lloyd Born	5,400.00	

CONSULTANTS:

William E. Wilbert - Broker, Inc. (Management of the Estate Office and Related Corporations)	<u>72,000.00</u>	<u>-\$ 294,000.00</u>
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FEDERAL ESTATE TAXES

Under Appeal		<u>-\$1,400,000.00</u>
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<u>STATE INHERITANCE TAXES - Undertermined:</u>		<u>-\$ 200,000.00</u>
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<u>REAL ESTATE TAXES, 1981 & 1982:</u>		<u>-\$ 20,000.00</u>
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SETTLEMENT LOAN:

Estate of Bruno DelGuzzi	\$ 384,462.82	
Catherine Myers	35,000.00	
Margaret Myers Shaw	35,000.00	
Estate of DelGuzzi	94,500.00	
Mortgage Balance of 821 E. Front St.	<u>10,010.31</u>	
	\$ 558,973.13	

<u>POST SETTLEMENT - Additional Costs and/or Expense</u>	<u>50,000.00</u>	<u>-\$ 609,000.00</u>
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<u>TOTAL LIABILITIES: Including Federal and State Taxes</u>		<u>-\$3,604,800.00</u>
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<u>NET WORTH:</u>		<u>\$2,517,900.00</u>
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G. Lynn Reilly

Date: AUG 23 1982

Date of Death
June 1, 1978

AP:SEA:90-D:DGB:NCB
SSN 533-10-9598V
Tax Year Ended and Deficiency:
\$4,618,931.00

Estate of Jack J. DelGuzzi
Gary DelGuzzi, Personal Representative
c/o Robert J. Shaw, Attorney-at-Law
3000 Seattle-First National Bank Bldg.
Seattle, WA 98154

CERTIFIED MAIL

Person to Contact:
D. G. Beariault
Contact Telephone Number:
(206) 442-1880 Seattle, WA

DUPLICATE ORIGINAL

Dear Mr. DelGuzzi:

This letter is a Notice of Deficiency--as required by law--that we have determined an estate tax deficiency of \$4,618,931. We regret we have been unable to reach a satisfactory agreement in your case. The enclosed statement shows how the deficiency is computed.

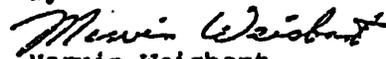
If you want to contest this determination in court before making any payment, you have 90 days from the above mailing date of this letter (150 days if addressed to you outside of the United States) to file a petition with the United States Tax Court for a redetermination of the amount of your tax. The petition should be filed with the United States Tax Court, 400 Second Street NW., Washington, D.C. 20217, and the copy of this letter should be attached to the petition. The time in which you must file a petition with the Court (90 or 150 days as the case may be) is fixed by law and the Court cannot consider your case if your petition is filed late. If this letter is addressed to both a husband and wife, and both want to petition the Tax Court, both must sign the petition or each must file a separate, signed petition. You can get a copy of the rules for filing a petition by writing to the Clerk of the United States Tax Court at the address shown in this paragraph.

If you decide not to file a petition with the Tax Court, we would appreciate it if you would sign and return the enclosed waiver form. This will permit us to charge your account quickly and will limit the accumulation of interest. The enclosed envelope is for your convenience. If you decide not to sign and return the waiver and you do not timely petition the Tax Court, the law requires us to bill you after 90 days from the above mailing date of this letter (150 days if this letter is addressed to you outside the United States).

If you have any questions, please contact the person whose name and telephone number are shown above.

Sincerely yours,

Roscoe L. Egger, Jr.,
Commissioner
By

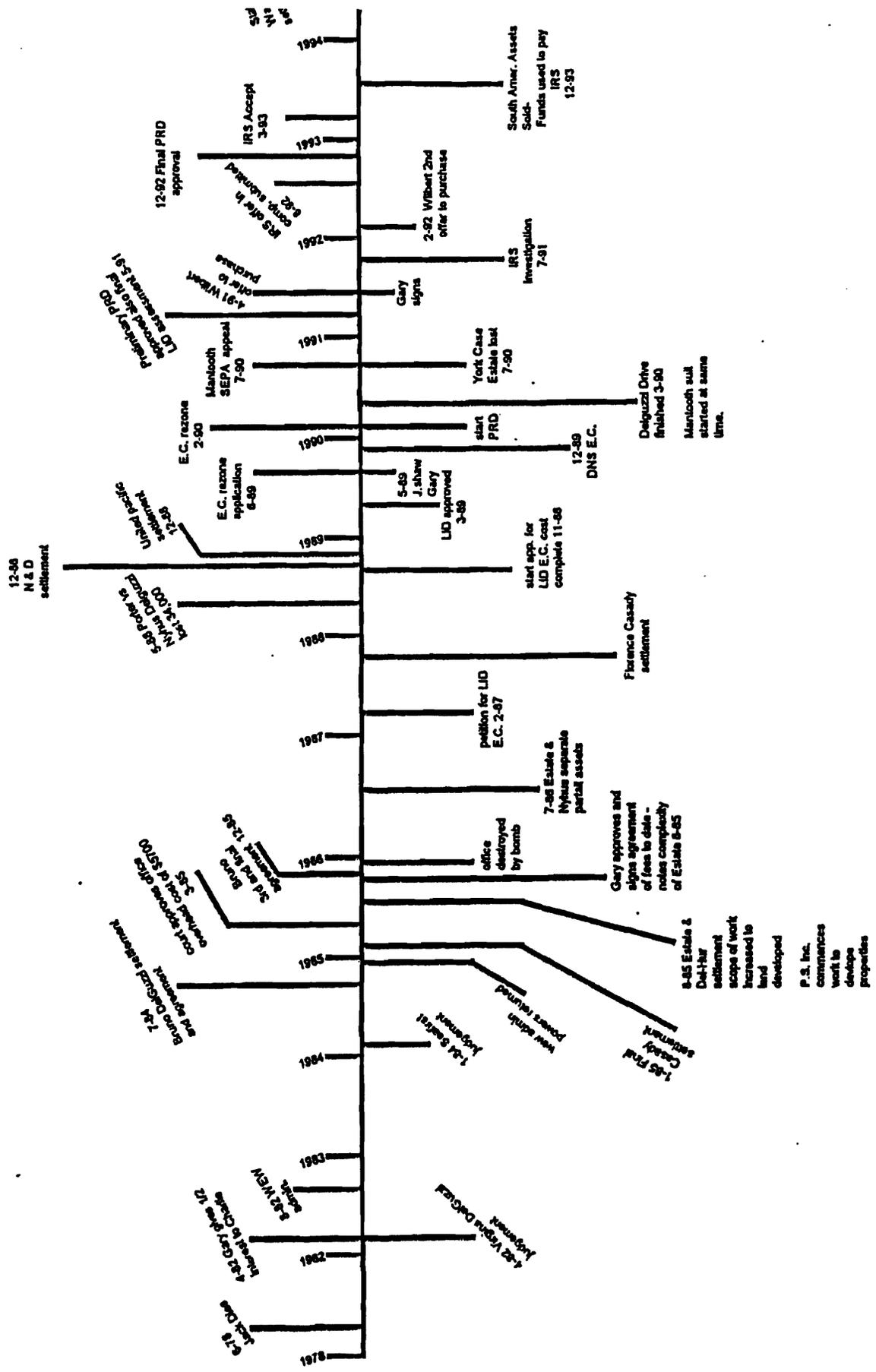

Marvin Weisbart,
Associate Chief
Appeals Office

Enclosures:
Copy of this letter
Statement
Waiver
Envelope

915 Second Ave., Room 2790, Seattle, Washington 98174

Letter 901(RO) (Rev. 3-79)

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TRANSAMERICA
TITLE INSURANCE COMPANY

696508

FILED FOR RECORD AT REQUEST OF

NO. 21004
CLALLAM COUNTY
TRANSACTION EXCISE TAX
PAID NOV 16 1993
AMOUNT
COUNTY TREASURER
BY *[Signature]*

THIS SPACE PROVIDED FOR RECORDING USE
RECORDED IN RECORDS ALGABEE
93 NOV 18 PM 11:48
VOL 1030 PAGE 147
MARY MONYTT, AUDITOR
CLALLAM COUNTY, WASH.
BY *[Signature]* DEPUTY
696508

WHERE RECORDED REFERS TO
NAME *[Signature]*
ADDRESS 824-B E. 8th St.
CITY, STATE, ZIP PORT ANGELES, WA 98362

Quit Claim Deed

LFB-12

THE GRANTOR *Cascade Investment Properties, Inc.*, a Washington corporation, for and in consideration of satisfaction of underlying liens held by grantee and in lieu of foreclosure of deeds and quit claim to *William E. Wilkint-Broder, Inc.*, a Washington corporation, the following described real estate, situated in the County of *Clallam* State of Washington, together with all after acquired title of the grantor(s) therein.

Lot 13, Blk 38, Norman R. Smith's subdivision of the Townsite of Port Angeles, Clallam County, Washington, according to plat thereof recorded in Volume "K" of Deeds, page 1.

*Recording of this deed by grantee or its agent shall constitute full and final satisfaction of all claims relating to this real estate, upon recording. Grantor shall deliver to grantee's agent, *Don Woffley*, rental & security deposits and keys.*

Dated *September 29*, 19*93*

CASCADE INVESTMENT PROPERTIES, INC.
(Individual)
By *[Signature]* (President)
By _____ (Secretary)

STATE OF WASHINGTON
COUNTY OF _____
On this day personally appeared before me
to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that _____ signed the same as _____ free and voluntary act and deed, for the uses and purposes therein mentioned.
GIVEN under my hand and official seal this _____ day of _____ 19____
Notary Public in and for the State of Washington, residing at _____
My appointment expires _____

STATE OF WASHINGTON
COUNTY OF *Clallam*
On this *29* day of *September*, 19*93*, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared *Henry A. Hill*, and *[Signature]*, to me known to be the _____ President and _____ Secretary, respectively, of *Cascade Investment Properties, Inc.*, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on each stated that _____ authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.
Witness my hand and seal this _____ day and year first above written.
[Signature]
Notary Public in and for the State of Washington, residing at *Port Angeles*
My appointment expires *10-31-95*
VOL 1030 PAGE 147

Exhibit A-1

7

NOV 20 1993
AMOUNT
COUNTY TREASURER
BY [Signature] Dep.

CLALLAM COUNTY, WASH.
BY [Signature] DEPUTY

696508

WHEN RECORDED RETURN TO
Name [Signature]
Address 824-B E. 6th St.
City, State, Zip PORT ANGELES, WA 98362

Quit Claim Deed

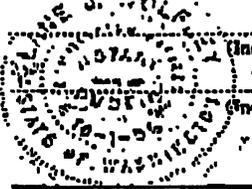
LPB-12

THE GRANTOR Cascade Investment Properties, Inc., a Washington corporation, for and in consideration of satisfaction of underlying liens held by grantee and in lieu of foreclosure conveys and quit claim to William C. Wilbert - Broker, Inc., a Washington corporation, the following described real estate, situated in the County of Clallam State of Washington, together with all after acquired title of the grantor(s) therein.

Lot 13, Blk 38, Norman R. Smith's Subdivision of the Townsite of Port Angeles, Clallam County, Washington, according to plat thereof recorded in Volume "K" of Deeds, page 1.

Recording of this deed by grantee or its agent shall constitute full and final satisfaction of all claims relating to this real estate. Upon recording, grantor shall deliver to grantee's agent, Lane Wilber, rental & security deposits and keys.

Dated September 29, 1993



By CASCADE INVESTMENT PROPERTIES, INC.
[Signature] (President)
By _____ (Secretary)

STATE OF WASHINGTON
COUNTY OF _____

STATE OF WASHINGTON
COUNTY OF Clallam

On this day personally appeared before me _____
to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that _____ signed the same as _____ free and voluntary act and deed, for the uses and purposes therein mentioned.

On this 29 day of September, 1993, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____ and _____

to me known to be the _____ President and _____ Secretary, respectively, of Cascade Investment Properties, Inc. the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that _____ authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

GIVEN under my hand and official seal this _____ day of _____, 19____.

Witness my hand and official seal hereto affixed the day and year first above written.
[Signature]
Notary Public in and for the State of Washington,
residing at Port Angeles
My appointment expires: 10-31-95

Notary Public in and for the State of Washington, residing at _____
My appointment expires: _____

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SECURITY TITLE INSURANCE COMPANY
OF WASHINGTON
1108 SECOND AVENUE • SEATTLE, WASHINGTON 98101 • MAIN 3-0870

THIS SPACE RESERVED FOR RECORDER'S USE

William F. Smith

1977-3 1111:17

494 668

Sheila A. Smith

Filed for Record at Request of

MAIL TO

NAME William F. Smith Agency

ADDRESS P.O. Box 967

CITY AND STATE Port Angeles, WA 98362

STATUTORY WARRANTY DEED

THE GRANTOR William F. Smith and Sheila A. Smith, his wife
 for and in consideration of TEN DOLLARS and other valuable consideration
 in hand paid, conveys and warrants to Jack Del Guzzi, a widower and Gary Del Guzzi, a single man
 as Grantee, the following described real estate, situated in the County of Clallam
 State of Washington:

Lot 13 in Block 38 of Norman R. Smith's Subdivision of
 the Townsite of Port Angeles, as per plat thereof recorded
 in Volume "K" of Deeds, page 1, records of Clallam County,
 Washington.



SUBJECT TO mortgage dated February 3, 1975, recorded February 3, 1975
 in Volume 433 page 404 under auditor's file No. 439805 in
 favor of the FIRST FEDERAL SAVINGS & LOAN ASSOCIATION, which
 mortgage and the note secured thereby, the grantees herein agrees
 to assume and pay according to its terms and conditions.

Exhibit A-2

NO. 9163
 CLALLAM COUNTY \$350
 TRANSACTION EXCISE TAX
 PAID AUG 3 - 1977

AMOUNT \$35,000.00
 COUNTY TREASURER
 BY *Cynthia J. Paul*

Dated this 11th

day of July 1977

William F. Smith (SEAL)
Sheila A. Smith (SEAL)

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REVENUE STAMPS

THIS SPACE RESERVED FOR RECORDER'S USE

Filed for Record at Request of
PIONEER TITLE COMPANY
OF CLALLAM COUNTY, INC.
AFTER RECORDING MAIL TO:

CASCADE INVESTMENT PROPERTIES, INC.
1318 EDEN VALLEY ROAD
PORT ANGELES, WASHINGTON 98362

M-59862-TE

FORM L-58 (3-84)

Statutory Warranty Deed

THE GRANTOR GARY DEL GUZZI, AS HIS SEPARATE ESTATE; AND WILLIAM E. WILBERT,
ADMINISTRATOR OF THE ESTATE OF JACK DEL GUZZI, DECEASED
for and in consideration of TEN AND NO/100 DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATION
In hand paid, conveys and warrants to CASCADE INVESTMENT PROPERTIES, INC., A WASHINGTON CORPORATION
the following described real estate, situated in the County of CLALLAM, State of Washington:

LOT 13, BLOCK 38, NORMAN R. SMITH'S SUBDIVISION OF THE TOWNSITE OF PORT ANGELES, CLALLAM
COUNTY, WASHINGTON, ACCORDING TO PLAT THEREOF RECORDED IN VOLUME "K" OF DEEDS, PAGE 1.

SUBJECT TO:
NOTE AND MORTGAGE IN FAVOR OF FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF PORT ANGELES,
A CORPORATION, AS MORTGAGEE, AND WILLIAM F. SMITH AND SHEILA A. SMITH, HIS WIFE AS
MORTGAGORS, DATED FEBRUARY 3, 1975, RECORDED FEBRUARY 3, 1975, UNDER AUDITOR'S FILE NO.
439805 AND NOTE AND MORTGAGE IN FAVOR OF WASHINGTON STATE DEPARTMENT OF REVENUE, AS
MORTGAGEE, AND WILLIAM E. WILBERT, ADMINISTRATOR OF THE ESTATE OF JACK DEL GUZZI, DECEASED,
AS MORTGAGOR, DATED AUGUST 10, 1984, RECORDED AUGUST 27, 1984, UNDER AUDITOR'S FILE NO.
557785, WHICH BOTH SHALL REMAIN THE OBLIGATION OF THE GRANTOR HEREIN, AND WHICH GRANTOR
WARRANTS TO MAINTAIN ACCORDING TO THEIR OWN TERMS AND CONDITIONS AND IN ACCORDANCE WITH
THE TERMS AND CONDITIONS OF THE ALL-INCLUSIVE DEED OF TRUST BEING RECORDED SIMULTANEOUSLY
HEREWITH.

ACCEPTED AND APPROVED THIS ___ DAY OF FEBRUARY, 1991.
CASCADE INVESTMENT PROPERTIES, INC.

BY: TERRY A. FELL, PRESIDENT

COPY REVIEW BY W.E.W.
Date 2/28

DATED THIS 25TH DAY OF FEBRUARY, 1991.

By By

By GARY DEL GUZZI BY WILLIAM E. WILBERT, WILLIAM E. WILBERT, ADMINISTRATOR OF THE
STATE OF WASHINGTON HIS ATTORNEY-IN-FACT STATE OF WASHINGTON ESTATE OF JACK DEL GUZZI, DEC'D
COUNTY OF }
COUNTY OF } "

On this day personally appeared before me
to me known to be the individual described in and who
executed the within and foregoing instrument, and
acknowledged that signed the same as
free and voluntary act and deed, for the
uses and purposes therein mentioned.

GIVEN under my hand and official seal this
day of , 19

Notary Public in and for the State of Washington,
residing at
My appointment expires on

On this day of , 19
before me, the undersigned, a Notary Public in and for the State of Washington, duly
commissioned and sworn, personally appeared
and
to me known to be the President and Secretary,
respectively, of
the corporation that executed the foregoing instrument, and acknowledged the said in-
strument to be the free and voluntary act and deed of said corporation, for the uses
and purposes therein mentioned, and on oath stated that
authorized to execute the said instrument and that the seal affixed is the corporate
seal of said corporation.

Witness my hand and official seal hereto affixed the day and year first above
written.

Notary Public in and for the State of Washington, residing at
My appointment expires on

Exhibit A-3



Filed for Record at Request of
PIONEER TITLE COMPANY
 OF CLALLAM COUNTY, INC.
 AFTER RECORDING MAIL TO:

CASCADE INVESTMENT PROPERTIES, INC.
 1318 EDEN VALLEY ROAD
 PORT ANGELES, WASHINGTON 98362



REVERSE SIDE

M-59852-TE

FORM L-66 (2-84)

Statutory Warranty Deed

THE GRANTOR **CARY DEL GUZZI, AS HIS SEPARATE ESTATE; AND WILLIAM E. WILBERT,**
 ADMINISTRATOR OF THE ESTATE OF JACK DEL GUZZI, DECEASED
 for and in consideration of **TEN AND NO/100 DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATION**
 in hand paid, conveys and warrants to **CASCADE INVESTMENT PROPERTIES, INC., A WASHINGTON CORPORATION**
 the following described real estate, situated in the County of **CLALLAM**, State of Washington:

LOT 13, BLOCK 38, NORMAN R. SMITH'S SUBDIVISION OF THE TOWNSITE OF PORT ANGELES, CLALLAM COUNTY, WASHINGTON, ACCORDING TO PLAT THEREOF RECORDED IN VOLUME "K" OF DEEDS, PAGE 1.
 SUBJECT TO:
 NOTE AND MORTGAGE IN FAVOR OF FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF PORT ANGELES, A CORPORATION, AS MORTGAGEE, AND WILLIAM F. SMITH AND SHEILA A. SMITH, HIS WIFE AS MORTGAGORS, DATED FEBRUARY 3, 1975, RECORDED FEBRUARY 3, 1975, UNDER AUDITOR'S FILE NO. 439805 AND NOTE AND MORTGAGE IN FAVOR OF WASHINGTON STATE DEPARTMENT OF REVENUE, AS MORTGAGEE, AND WILLIAM E. WILBERT, ADMINISTRATOR OF THE ESTATE OF JACK DEL GUZZI, DECEASED, AS MORTGAGOR, DATED AUGUST 10, 1984, RECORDED AUGUST 27, 1984, UNDER AUDITOR'S FILE NO. 557785, WHICH BOTH SHALL REMAIN THE OBLIGATION OF THE GRANTOR HEREIN, AND WHICH GRANTOR WARRANTS TO MAINTAIN ACCORDING TO THEIR OWN TERMS AND CONDITIONS AND IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE ALL-INCLUSIVE DEED OF TRUST BEING RECORDED SIMULTANEOUSLY HEREWITH.

ACCEPTED AND APPROVED THIS 25th DAY OF FEBRUARY, 1991.

CASCADE INVESTMENT PROPERTIES, INC.

BY: Ferry A. Fell, PRESIDENT

DATED THIS 25TH DAY OF FEBRUARY, 1991.

By _____

By CARY DEL GUZZI BY WILLIAM E. WILBERT, HIS ATTORNEY-IN-FACT, WILLIAM E. WILBERT, ADMINISTRATOR OF THE
 STATE OF WASHINGTON STATE OF WASHINGTON ESTATE OF JACK DEL GUZZI, DEC'D

COUNTY OF _____ }
 On this day personally appeared before me

to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that _____ signed the same as _____, free and voluntary act and deed, for the use and purpose therein mentioned.

GIVEN under my hand and official seal this _____ day of _____, 19__

Notary Public in and for the State of Washington, residing at _____
 My appointment expires on _____

COUNTY OF _____ }
 On this _____ day of _____, 19__

before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____ and _____, _____ President and _____ Secretary, respectively, of _____, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the use and purpose therein mentioned, and on each stated that _____ authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

Witness my hand and official seal hereto affixed the day and year first above written.

Notary Public in and for the State of Washington, residing at _____
 My appointment expires on _____

647649

909 622

(6)

FEBRUARY 25 1991

COPY

\$70,000.00

1. Promise to Pay. CASCADE INVESTMENT PROPERTIES, INC., a Washington corporation, and TERRY FELL, Individually, ("Maker" herein), hereby promises to pay to the order of THE ESTATE OF JACK DELGUZZI, its heirs, assigns and successors, or order ("Holder" herein), to an account to be established at First Federal Savings and Loan Association, Port Angeles, Washington, or at such other place as the holder hereof may designate in writing, in lawful money of the United States of America, the principal sum of Seventy Thousand Dollars (\$70,000.00) with interest on the unpaid principal, from the date hereof on the terms and conditions set forth herein.

*AND GARY DEL GUZZI, AS HIS SEPARATE ESTATE

2. Interest Rate. This Note shall bear interest at the rate of ten percent (10%) per annum (the "Interest Rate") on the declining principal balance.

3. Payment. Principal and interest shall be paid as follows:

(a) Interest at the Interest Rate from the date hereof through the last day of the current calendar month shall be paid in advance at the time of execution of this Note;

(b) Thereafter, principal and interest shall be paid in monthly installments in the amount of Six Hundred Twenty-Two and no/100 Dollars (\$622.00) commencing on the first day of the next succeeding calendar month after the date hereof, and continuing thereafter on the same day in each succeeding calendar month until maturity of this Note; and

(c) The entire unpaid principal balance and all unpaid accrued interest shall be due and payable in full on January 1, 2001.

(d) It is understood and agreed that the Maker shall pay the sum of Thirty-Five Thousand and no/100 Dollars (\$35,000) towards the principal balance if the Maker elects to transfer to a third party, or have a third party assume and agree to pay the principal balance of this note, any time during the period of time this note is outstanding.

(e) In the event of non-payment under the terms and conditions of this Note, the Assignment of Rents, executed in conjunction with this Note, will become effective immediately.

(f) This sale and this Note are made with the acknowledgment by the Maker that the Holder will pay the existing first mortgage from the installments made hereunder until said first mortgage is paid in full.

4. Prepayment. Maker shall have the right to prepay this Note in full or in part at any time and from time to time upon thirty (30) days' prior written notice without payment of a prepayment fee; provided, however, that any partial prepayment shall be applied to amounts coming due hereunder in the inverse order of maturity, and no such partial prepayment shall reduce or delay the required monthly installment payments.

5. Application of Payments. Payments made hereunder shall be applied in the following order; Costs of First Federal's Collection Account Fees, Interest Accrued and Due, Principal Amount Due, and finally any excess payment shall be applied as a principal reduction in the inverse order of when due.

6. Acceleration; Cross-Default; Default Interest Rate. This Note shall be in default if payment of any payment due hereunder is not made when due or if there occurs any default in the observance or performance of any covenants, terms or provisions of the Deed of Trust (defined below), or any other instruments relating to or securing this Note executed by Maker, or any instruments evidencing, securing or relating to any other indebtedness of Maker to the holder hereof, and upon such default or at any time thereafter the whole sum of principal and accrued interest hereunder shall, at the option of the holder hereof, become immediately due and payable, anything herein or any instrument securing this Note to the contrary notwithstanding, time

being of the essence. As long as this Note is in default, then, at the option of the holder hereof, without prior notice, this Note shall bear interest at a rate which is four (4%) percentage points per annum above the Interest Rate (the "Default Rate").

7. Curing of Monetary Defaults. A default in payment of any amount due hereunder may be cured only by payment in full of such amount plus the additional interest from the date of default on the unpaid principal balance as of the date of default until the date of payment resulting from the application of the Default Rate, plus any late charges that may be due hereunder or under the Deed of Trust, plus any attorneys' fees or collection costs incurred by the holder hereof by reason of such default.

8. Nonwaiver. Failure to exercise any right the holder may have or be entitled to in the event of any default hereunder shall not constitute a waiver of such right or any other right in the event of any subsequent default.

9. Waiver of Presentment. The Maker and all guarantors and endorsers hereof hereby severally waive presentment for payment, protest and demand, notice of protest, demand, dishonor and nonpayment of this Note, and consent that the holder hereof may extend the time of payment or otherwise modify the terms of payment of any part or the whole of the debt evidenced by this Note, by agreement between the holder hereof and Maker, and such consent shall not alter or diminish the liability of any person or the enforceability of this Note. Each and every party signing or endorsing this Note binds itself as a principal and not as a surety. In any action or proceeding to recover any sum herein provided for, no defense of adequacy of security or that resort must first be had to security or to any other person shall be asserted. This Note shall bind the undersigned and its or their successors and assigns, jointly and severally.

10. Security of Note. This Note is secured inter alia by a first lien Deed of Trust (the "Deed of Trust") of even date herewith by Maker covering property in Clallam County, Washington, together with the buildings and improvements now or hereafter erected thereon.

11. Collection Costs. Maker agrees to pay all costs, including, without limitation, reasonable attorneys' fees, incurred by the holder hereof in any suit, action or appeal therefrom, or without suit, in connection with collection hereof or foreclosure of the Deed of Trust.

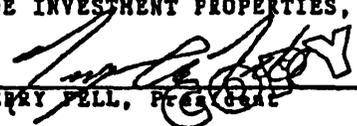
12. Maximum Interest. Neither this Note nor any instrument securing payment hereof or otherwise relating to the debt evidenced hereby shall require the payment or permit the collection of interest in excess of the maximum permitted by applicable law. If this Note or any other instrument does so provide, the provisions of this paragraph shall govern, and neither Maker nor any endorsers of this Note nor their respective heirs, personal representatives, successors or assigns shall be obligated to pay the amount of interest in excess of the amount permitted by applicable law.

13. Late Charge. Maker shall pay a late charge to Holder of Seventy-Five and no/100 Dollars (\$75.00) for each monthly installment not received by Holder or Holder's collection agent within ten (10) days of the date the same is due.

14. Jurisdiction and Venue. Maker hereby irrevocably submits to the jurisdiction of any federal, state or other court sitting in the state or federal court district in which the real property which is the subject of the Deed of Trust is located, or in which any holder hereof has its residence or where it conducts its business, and agrees that venue in any suit or action hereunder may, at the election of any holder hereof, be in any court having jurisdiction and that Maker will not claim that any such forum selected by the holder hereof is an inconvenient forum.

CASCADE INVESTMENT PROPERTIES, INC.

BY:


TERRY PELL, President


TERRY PELL, Individually

THIS NOTE INCLUDES AN AMOUNT REMAINING UNPAID ON TWO MORTGAGES OF RECORD ON REAL PROPERTY AS DESCRIBED IN THE DEED OF TRUST SECURING THE PERFORMANCE OF THE WITHIN NOTE; SUCH REMAINING UNPAID BALANCE OF THE FIRST MORTGAGE BEING \$, AS OF , WHICH PAYEE HEREIN AGREES TO PAY AS THE SAME BECOMES DUE. SHOULD PAYEE FAIL TO MAKE SUCH PAYMENTS PROMPTLY WHEN DUE, PAYOR HEREIN SHALL HAVE THE RIGHT TO MAKE SUCH PAYMENTS AND ANY AMOUNTS SO PAID BY THE PAYOR SHALL BE CREDITED AS PAYMENTS ON THIS NOTE. MORTGAGE REFERRED TO HEREINABOVE IS IN FAVOR OF FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF PORT ANGELES, A CORPORATION, AS MORTGAGEE, AND NAMES WILLIAM F. SMITH AND SHEILA A. SMITH, HIS WIFE AS MORTGAGORS. SUCH REMAINING UNPAID BALANCE OF THE SECOND MORTGAGE BEING \$, AS OF , WHICH PAYEE HEREIN AGREES TO PAY AS THE SAME BECOMES DUE. SHOULD PAYEE FAIL TO MAKE SUCH PAYMENTS PROMPTLY WHEN DUE, PAYOR HEREIN SHALL HAVE THE RIGHT TO MAKE SUCH PAYMENTS AND ANY AMOUNTS SO PAID BY THE PAYOR SHALL BE CREDITED AS PAYMENTS ON THIS NOTE. MORTGAGE REFERRED TO HEREINABOVE IS IN FAVOR OF WASHINGTON STATE DEPARTMENT OF REVENUE, AS MORTGAGEE, AND NAMES WILLIAM E. WILBERT, ADMINISTRATOR OF THE ESTATE OF JACK DEL GUZZI, DECEASED, AS MORTGAGOR.

ACCEPTED AND APPROVED THIS 28th DAY OF FEBRUARY, 1991.


 JACK DEL GUZZI BY WILLIAM E.
 WILBERT, HIS ATTORNEY-IN-FACT
 (PAYEE)


 WILLIAM E. WILBERT, ADMINISTRATOR
 OF THE ESTATE OF JACK DEL GUZZI,
 DECEASED.
 (PAYEE)

SELLER SETTLEMENT STATEMENT

FILE NO. M-59862

ESCROW OFFICER: SUSAN J. PATRICK

BUYER: CASCADE INVESTMENT PROPERTIES, INC.
 1318 EDEN VALLEY ROAD
 PORT ANGELES WA 98362

SELLER: GARY DEL GUZZI/ESTATE OF JACK DEL GUZZI
 13850 BEL-RED ROAD
 BELLEVUE WA 98005

PROPERTY: 813 - 813 1/2 - 815 EAST FRONT STREET PORT ANGELES WA 98362

SETTLEMENT DATE: 02-28-91 PRORATION DATE: 02-28-91 SALE PRICE: 80,000.00

SELLER CREDITS

SALE PRICE.....	80,000.00
COMMISSION PAID BY NOTE & ASSGMT OF D/T.....	8,000.00
	<hr/>
GROSS DUE TO SELLER.....	88,000.00

SELLER CHARGES

	P.O.C.	
FIRST LOAN DEBIT.....		70,000.00
to Seller(s)		
SECOND LOAN DEBIT.....		8,000.00
to Seller(s)		
PRORATA 1991 REAL ESTATE TAXES.....		135.89
PRORATA RENTS.....		89.29
ESCROW FEES..(ONE-HALF).....		166.01
to PIONEER TITLE COMPANY		
RECORDING FEE-ASSIGNMENT OF DEED OF TRUST.....		7.00
to PIONEER TITLE COMPANY		
OWNER'S POLICY (INC. TAX).....		463.54
to PIONEER TITLE COMPANY		
1.53% EXCISE TAX.....		1,224.00
ONE HALF BANK ESCROW COLLECTION SET UP FEE.....		50.00
to FIRST FEDERAL SAVINGS AND LOAN		
ONE HALF BANK ESCROW PRORATA ANNUAL MAINT.FEE.....		16.06
to FIRST FEDERAL SAVINGS AND LOAN		
COMMISSION.....		8,000.00
ESTES REALTY	4,000.00	
WILLIAM E. WILBERT-BROKER	4,000.00	

TOTAL REDUCTIONS TO SELLER..... 88,151.79

GROSS DUE TO SELLER.....	88,000.00
TOTAL REDUCTIONS TO SELLER.....	88,151.79
	<hr/>
NET FROM SELLER.....	151.79

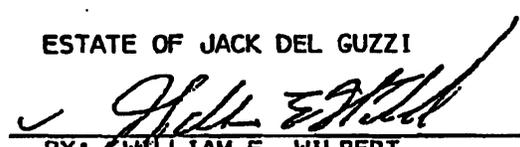
CONTINUED

THE ABOVE FIGURES ARE BASED ON THE CLOSING OF THIS TRANSACTION AS OF THE SETTLEMENT DATE SHOWN ABOVE. ANY ITEM BEARING INTEREST OR ANY PRO-RATION FIGURE MAY CHANGE AND THE NET DUE FROM SELLER MAY BE ADJUSTED ACCORDINGLY DUE TO THE ACTUAL DATE OF CLOSING.

ACCEPTED AND APPROVED THIS 28th DAY OF FEBRUARY, 1991.

ESTATE OF JACK DEL GUZZI


GARY DEL GUZZI BY WILLIAM E. WILBERT,
HIS ATTORNEY-IN-FACT


BY: WILLIAM E. WILBERT,
ADMINISTRATOR

OWNER: Estate of Jack DelGuzzi PROPERTY#: 92 IRS 706#: 7

COUNTY: Clallam CITY: Port Angeles AREA: city

SEC: TOWNSHIP: 30 RANGE: 06

COMMON NAME: Duplex

TAX PARCEL#: 06-30-00-513850

SAL: Lot 13, Block 38, Norman R. Smith's Subdivision of the Townsite of Port Angeles, Clallam County, Washington, according to Plat thereof recorded in vol+
* *****

ASSESSED VALUE: 61,410 YEAR: 90 MARKET VALUE: YEAR:

ASSESSMENT CLASSIFICATION/ZONING: Arterial Commercial District

PROPERTY TAX: 839.09 YEAR: 90 706 VALUE: 48,000

ACRES:

DATE ACQUIRED: 07-11-77 ACQUISITION PRICE: 35,000.

ACQUIRED FROM: Smith

DATE SOLD: 02-28-91 PRICE SOLD: 80,000.

ACCT RECEIVABLE

PURCHASER: Cascade Investment Properties, Inc.

COMMENTS: -LEGAL CONTINUED: "K" of Deeds, page 1.
-Escrow Acct: First Federal Savings & Loan #
\$622.00 monthly payments of \$70,000 promissory note, 10% Interest,
with the unpaid balance due in full on January 1, 2001.
-Escrow Acct: First Federal Savings & Loan
\$8,000. promissory note @ 12% interest: 115./mo with entire balance
due in full January 1, 1994.

647653

N-59862-TE

ASSIGNMENT OF LEASES AND RENTS

Cascade Investment Properties, Inc. and Terry Fell, Individually, hereinafter designated "Assignor", for valuable consideration, the receipt of which is hereby acknowledged, do hereby assign to the Administrator of the Estate of Jack DeGuzzi, under Probate No. 8087, hereinafter designated "Assignee", the Lessor's interest under each and every lease or rental agreement, now existing or hereinafter made, effecting the property hereinafter described or any part thereof, or any building or buildings, or any part thereof, now, or hereafter located thereon, and all rents and other moneys now due or hereafter to become due under any such lease or agreement now existing or hereafter made, or otherwise, for the use or occupation of said described property, or any part thereof, or any such building or buildings, or any part thereof.

Assignor agrees to deliver to Assignee on demand Assignor's executed copy of any or all such leases or rental agreements and further agrees to execute Form UCC-1 Financing Statements as may be hereafter requested by Assignee.

Assignor makes this assignment as additional security for the payment or performance of each and every obligation contained in that certain Installment Note dated FEBRUARY 25, 1991 and that certain Deed of Trust dated FEBRUARY 25, 1991 securing said note, executed by Assignor covering said described property, and recorded in the office of the Recorder of Clallam County, Washington, and this or any other instrument now or hereafter evidencing or securing said obligations, or any of them.

Assignor reserves the right, prior to any default in payment or performance of any obligation secured hereby, to collect and retain such rents as they become due and payable but not otherwise. Upon any such default, Assignee may at any time without notice, and without regard to the adequacy of the security for the obligations secured hereby enter upon and take possession of said described property, or any part thereof, and Assignor shall peaceably surrender such possession to Assignee on demand, and Assignee may rent, lease or operate all or any part of said described property and may sue for or otherwise collect the rents or moneys hereby assigned, or any part thereof, and apply the same, less all reasonable cost and expense of such renting, leasing, operation or collection, including reasonable attorney's fees, or any item or items of indebtedness secured hereby or on the performance of any obligation or obligations so secured, and in such proportion as Assignee in its discretion may determine. No action taken pursuant to any provision hereof shall be deemed to cure or waive any such default or invalidate any act done by reason of such default.

647653

The property herein referred to is described as follows:

Lot 13 in Block 38 of Norman R. Smith's Subdivision of Port Angeles, as recorded in Volume "K" of Deeds, Page 1, records of Clallam County, Washington.

This assignment shall be effective only during the existence of the said note obligation secured by the Deed of Trust described herein.

24th IN WITNESS WHEREOF, Assignor has executed this instrument this day of February, 1991.

CASCADE INVESTMENT PROPERTIES, INC.

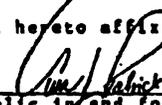
BY: Terry Fell
TERRY FELL, President

Terry Fell
TERRY FELL, Individually

STATE OF WASHINGTON)
) ss.
COUNTY OF CULLAM)

On this 26th day of FEBRUARY, A.D. 1991, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared TERRY YELL, to me known to be the President of Cascade Investment Properties, Inc., the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath states that he is authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.


Notary Public in and for the State of Washington, residing at 1001 ANGUS. My commission expires 12-15-92.

STATE OF WASHINGTON)
) ss.
COUNTY OF CULLAM)

On this 26th day of FEBRUARY, A.D. 1991, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared TERRY YELL, to me known to be the individual described in and who executed the foregoing instrument, and acknowledged to me that he signed and sealed the said instrument as his free and voluntary act and deed for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.


Notary Public in and for the State of Washington, residing at 1001 ANGUS. My commission expires 12-15-92.

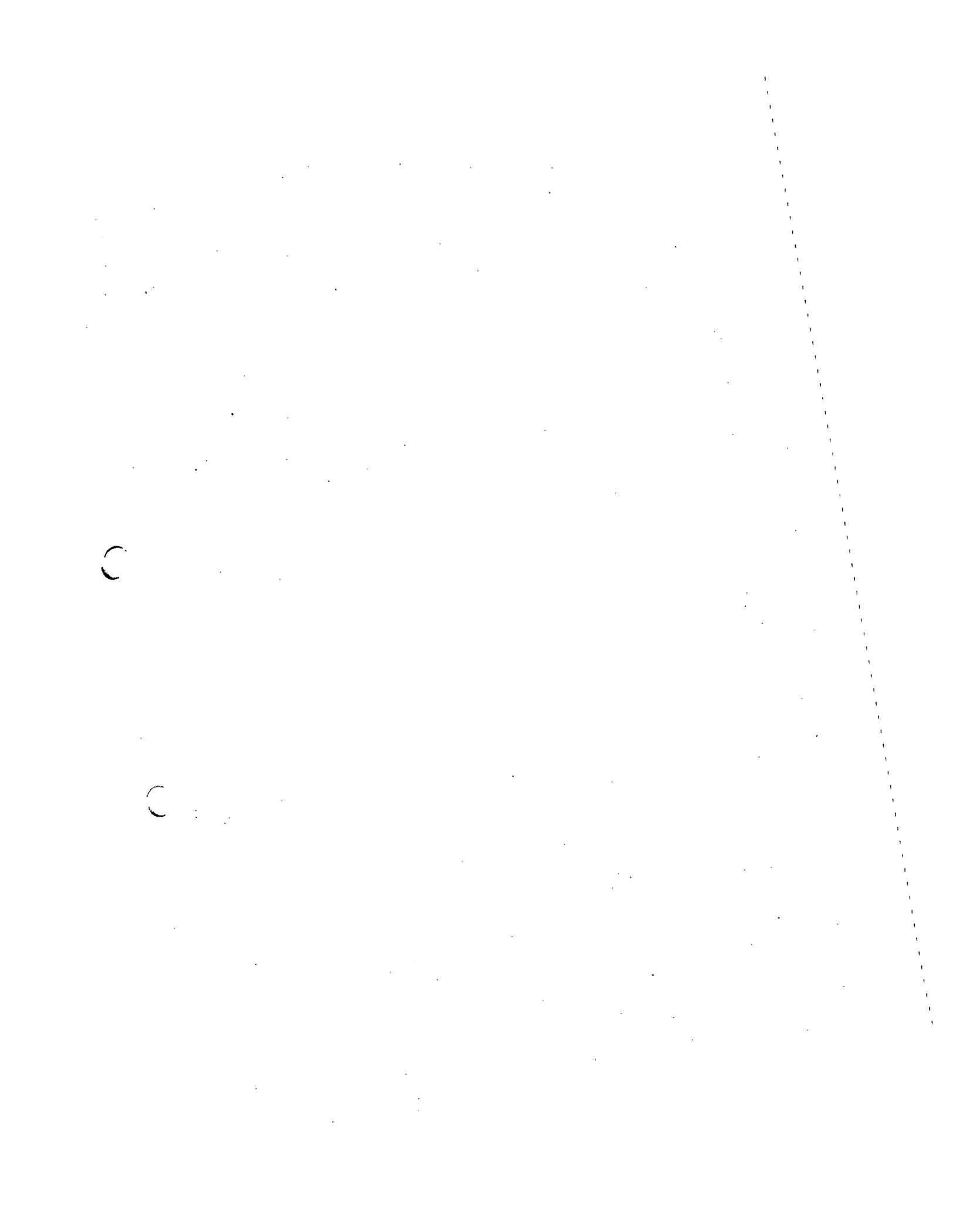
PIONEER TITLE CO.

SI MAR -4 PM 3 23

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647653

647653



HEMISPHERE

PROPERTIES, LTD.

February 21, 1997

Clallam Title Company
Claudette Mingori
Escrow Assistant
P.O. Box 248, 204 S. Lincoln
Port Angeles, WA 98362

Re: Dempsey/DelGuzzi Estate and Gary DelGuzzi
Escrow No. P-2464

Dear Ms. Mingori,

Principal Balance: \$69,215.20 on 2/28/97
Interest Paid to February 28, 1997
Interest Rate: 10%
Monthly Payment: \$622.00
Next Payment due on March 1, 1997
Reserves: None
/ Per Diem: \$19.08

Previous Clallam title accounts regarding this property include P-1132, Clallam Order No. 65110-RA.

Hemisphere Properties has no address and phone number for Gary DelGuzzi. All mail sent to Mr. DelGuzzi has been returned to this office as "forwarding address unknown" by the US Postal Service.

A dispute exists between Gary DelGuzzi and the DelGuzzi Estate. In 1991 this property was deeded over to a beneficiary interest in lieu of foreclosure by Terry Fell. If Mr. DelGuzzi's signature is required, after payment of the mortgage to First Federal, the net funds should probably be held or interplead into probate matter 8087.

Respectfully,



Laure Anne Wilbert

Enclosure

LAW/eba
1800 112TH AVENUE NE, SUITE 260 E • BELLEVUE, WA 98004 • PHONE (206) 635-0801 • FAX (206) 635-0874

A DIVISION OF WILLIAM E. WILBERT BROKER INC. ALL INFORMATION PUBLISHED REGARDING PROPERTY FOR SALE, RENTAL OR FINANCING IS FROM SOURCES DEEMED RELIABLE, BUT NO WARRANTY OR REPRESENTATION IS MADE AS TO THE ACCURACY THEREOF AND SAME IS SUBMITTED SUBJECT TO ERRORS, OMISSIONS, CHANGE OF PRICE, RENTAL OR OTHER CONDITIONS, PRIOR SALE, LEASE OR FINANCING, OR WITHDRAWAL WITHOUT NOTICE.



Exhibit A-4



Filed for Record as Request of

AFTER RECORDING MAIL TO:

Mr. Lawrence M. Dempsey
333 Dempsey Rd.
Port Angeles, Wn. 98363

P-1132 / 65110 CTC

THE SPACE RESERVED FOR RECORDING USE

711073

NO. 2500
CLALLAM COUNTY 1953
TRANSACTION EXCISE TAX
PAID AUG 19 1994
AMOUNT 2500
COUNTY TREASURER
BY *[Signature]*

CLALLAM TITLE COMPANY
RECORDED AT CLALLAM CO.
94 AUG 19 PM 1:07
VOL 1068 PAGE 195
MARY JO GAY, CLERK
CLALLAM COUNTY, WASH.
BY *[Signature]* 150117

Statutory Warranty Deed

FORM L-58 (2-84)

THE GRANTOR WILLIAM E. WILBERT-BROKER, INC., a Washington Corporation
for and in consideration of ten dollars and other valuable consideration
in hand paid, conveys and warrants to LAWRENCE M. DEMPSEY, a single man
the following described real estate, situated in the County of Clallam, State of Washington:
Lot 13, Block 38, Norman R. Smith's Subdivision of the Townsite of
Port Angeles, Clallam County, Washington, according to plat thereof recorded
in volume "K" of deeds, page 1.
Situate in Clallam County, State of Washington.

See exhibit "A" attached hereto for further terms and conditions.

Dated this 11th day of August, 1994

WILLIAM E. WILBERT-BROKER, INC.

By *[Signature]* By

By By

STATE OF WASHINGTON
COUNTY OF }
On this day personally appeared before me

to me known to be the individual described in and who
executed the within and foregoing instrument, and
acknowledged that signed the same as
free and voluntary act and deed, for the
uses and purposes therein mentioned.

GIVEN under my hand and official seal this
day of 19

Notary Public in and for the State of Washington,
residing at
My appointment expires on

STATE OF WASHINGTON
COUNTY OF King }
On this 11th day of August, 1994

before me, the undersigned, a Notary Public in and for the State of Washington, duly
commissioned and sworn, personally appeared
William E. Wilbert-Broker, Inc.

to me known to be the President and Secretary,
respectively, of WILLIAM E. WILBERT-BROKER, INC.

the corporation that executed the foregoing instrument, and acknowledged the said in-
strument to be the free and voluntary act and deed of said corporation, for the uses
and purposes therein mentioned, and acknowledged that the notary office is the temporary
seat of said corporation.

Witness my hand and official seal this day and year first above
written.

[Signature]
Notary Public in and for the State of Washington, residing at
My appointment expires on

BOOK 1068 PAGE 195

Exhibit A-7



1998 1002978 Clallam County

FILED FOR RECORD IN THE CLALLAM COUNTY

OF Clallam Title Co.
RECORDED IN RECORDS/CLALLAM CO.

98 JAN 16 AM 11:46

BY RMH DEPUTY

RETURN ADDRESS

Stephen E. Oliver
Platt, Irwin, Taylor, Colley
Oliver & Moriarty
Attorneys at Law
403 South Peabody
Port Angeles, WA 98362

69531544 CM

ORDER QUIETING TITLE

Reference Number of Related Documents
Deed of Trust 647650 Recorded March 4, 1991

Statutory Warranty Deed 711073 Recorded August 19, 1994

Grantor: William E. Wilbert-Broker, Inc.

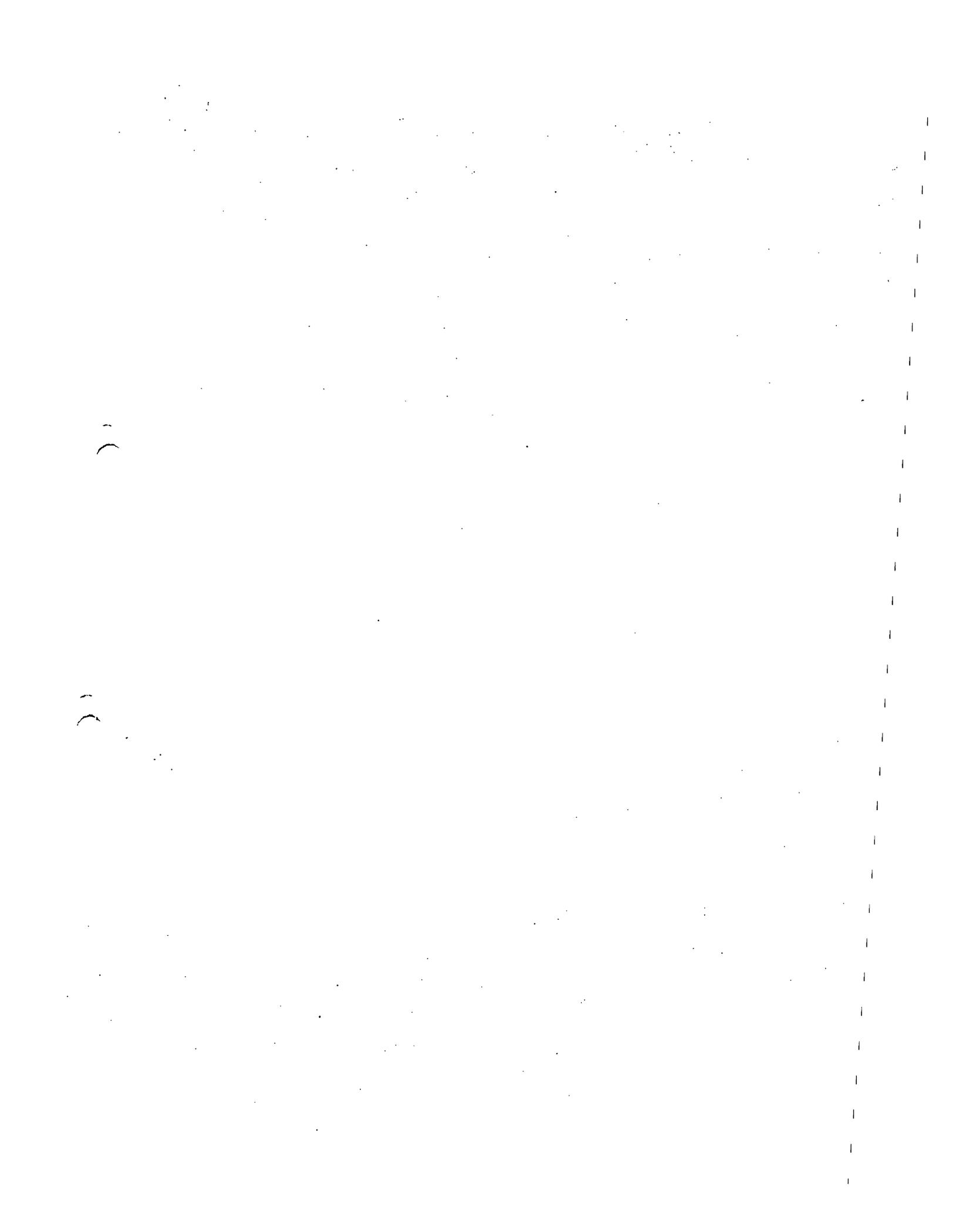
Grantee: Lawrence M. Dempsey, a single man

Legal Description:

LOT 13, BLOCK 38, NORMAN R. SMITH'S SUBDIVISION OF
THE TOWNSITE OF PORT ANGELES, CLALLAM COUNTY,
WASHINGTON, ACCORDING TO PLAT THEREOF RECORDED IN
VOLUME "K" OF DEEDS, PAGE 1.

Records of Clallam County.

Exhibit A-4



1 WASHINGTON, ACCORDING TO PLAT THEREOF RECORDED
2 IN VOLUME "K" OF DEEDS, PAGE 1.

3 Records of Clallam County.

4 from the grantor, William E. Wilbert - Broker, Inc., a
5 Washington Corporation. The purchase was subject to a Note and
6 Mortgage in favor of First Federal Savings and Loan Association
7 of Port Angeles, as mortgagee and William F. Smith and Shelia
8 A. Smith, his wife as mortgagor, dated February 3, 1975, and
9 recorded February 3, 1975, in Volume 433, Page 404, under
10 Auditor's File Number 439805 and also subject to a Note and
11 Deed of Trust dated February 25, 1991, in favor of Gary
12 Delguzzi as his separate estate and William E. Wilbert,
13 administrator of the Estate of Jack Delguzzi deceased, recorded
14 March 4, 1991, under Auditor's File Number 647650, records of
15 Clallam County, Washington, which Deed of Trust and the Note
16 secured thereby, I agreed to assume and pay according to their
17 terms and conditions. The transaction was further subject to
18 an assignment of leases and rents recorded March 14, 1991,
19 under Auditor's File Number 647653.

20 On 2/6/97 ^D of 1997, I desired to refinance this
21 property through First Federal Savings and Loan Association and
22 through that refinancing pay off all underlying indebtedness.
23 The loan has been approved and funds are available to pay off
24 all underlying indebtedness. However, because of pending
25
26

MOTION FOR ORDER
QUIETING TITLE -3

Platt Irwin Taylor Colley Oliver & Moriarty
Attorneys at Law

403 South Peabody
Port Angeles, Washington 98362

1
2 litigation in the Estate of Jack Delguzzi, deceased, and the
3 refusal of Gary Delguzzi to execute any documents to reconvey
4 his interest as set forth in the Note and Deed of Trust
5 identified above, I am unable to refinance. Apparently there
6 are disputes between Mr. Gary Delguzzi and Mr. William Wilbert
7 with regard to the right to the proceeds of the sale of this
8 property. I am not a party to those disputes and have no
9 knowledge of the true right title and interest of Mr. Wilbert,
10 Mr. Wilbert's Corporations, or Gary Delguzzi with regard to the
11 proceeds of the subject Note and Deed of Trust. I simply want
12 to tender into the registry of the Court the total amount which
13 is owed, which is subject to mathematical calculation and
14 confirmation by William E. Wilbert and receive in exchange, an
15 Order of the Court indicating that title is quieted in me as
16 against any claims by, through, or under the Note and Deed of
17 Trust identified above. I can then accomplish a refinance of
18 this property.

19 I do not seek any other relief from the Court other than
20 execution of an Order in recordable form quieting title as
21 aforesaid. I seek no award of costs or attorney fees and would
22 intend to direct the closing escrow on the refinance to tender
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MOTION FOR ORDER
QUIETING TITLE -4

Platt Irwin Taylor Colley Oliver & Moriarty
Attorneys at Law

403 South Peabody
Port Angeles, Washington 98362

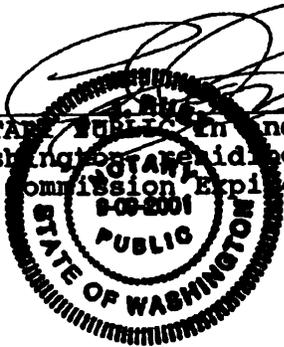
1 funds necessary to satisfy the Deed of Trust into the registry
2 of the Court.

3 DATED this 5 day of November, 1997.

4
5 Larry Dempsey
6 LARRY DEMPSEY Affiant

7 SUBSCRIBED and SWORN to before me this 5 day of
8 November, 1997.

9 [Signature]
10 NOTARY PUBLIC in and for the State of
11 Washington, residing at Squam.
12 My Commission Expires: 9/9/2001.
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We have been unable to close the transaction because of an inability to obtain signatures from Gary Delguzzi accepting the sums necessary to reconvey his interest in that certain Deed of Trust dated February 25, 1991, in favor of Gary Delguzzi as his separate estate and William E. Wilbert, administrator of the Estate of Jack Delguzzi, deceased, recorded March 4, 1991, under Auditor's File Number 647650, Records of Clallam County, Washington.

William E. Wilbert, Administrator of the Estate of Jack Delguzzi, deceased, has advised Clallam Title that the payoff amount for the subject Note and Deed of Trust is \$68,292.29 as of the 1st day of October, 1997, and the per diem interest on said amount is \$ 18.97. If this closing were to occur in the normal course of business, we would tender said amount to William E. Wilbert as Administrator of the Estate of Jack Delguzzi and Gary Delguzzi as his separate estate, by cashier's check in exchange for a full reconveyance of the subject Deed of Trust.

Apparently Mr. Delguzzi is unavailable or refuses to execute the subject Request For Reconveyance of subject Deed of Trust and

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accordingly, if that transaction is to close, a Court order quieting title is required.

DATE this 3rd of November, 1997.

Cheryl Nicpon
CHERYL ~~NIPCON~~ / Affiant
NIPCON

SUBSCRIBED and SWORN to before me this 3rd day of November, 1997, at Port Angeles, Washington.



Claudette J. Moriarty
NOTARY PUBLIC in and for the State of Washington, residing at Port Angeles.
My Commission Expires: 4-9-2000.

CERTIFIED COPY

DEC - 5 1987

CLALLAM COUNTY

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CERTIFICATE OF MAILING

On this day I deposited in the United States Mail a properly stamped and addressed envelope to

attorneys for plaintiff / defendant _____
in this matter, containing a copy of the document on which this declaration appears.

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

SIGNED at Port Angeles, Washington _____

SUPERIOR COURT OF WASHINGTON FOR CLALLAM COUNTY

In the Matter of the Estate)	
)	NO. 8 0 8 7
of)	
JACK J. DELGUZZI,)	ORDER QUIETING TITLE
)	AND DIRECTING ACCEPTANCE
Deceased.)	OF FUNDS INTO THE
)	REGISTRY OF THE COURT

THIS matter having come before the Court on the motion of LARRY DEMPSEY for an Order Quieting Title, and it appearing that said Order should be granted, now, therefore, it is hereby ORDERED, ADJUDGED, and DECREED that title to the property legally described as:

LOT 13, BLOCK 38, NORMAN R. SMITH'S SUBDIVISION OF THE TOWNSITE OF PORT ANGELES, CLALLAM COUNTY, WASHINGTON, ACCORDING TO PLAT THEREOF RECORDED IN VOLUME "K" OF DEEDS, PAGE 1.

Records of Clallam County.

be, and the same is, hereby quieted in LARRY DEMPSEY, a single man, as against any claims of GARY DELGUZZI, as his separate estate, and WILLIAM E. WILBERT, administrator of the Estate of

ORDER QUIETING TITLE
AND DIRECTING ACCEPTANCE
OF FUNDS INTO THE
REGISTRY OF THE COURT -1

Platt Irwin Taylor Colley Oliver & Moriarty
Attorneys at Law
403 South Peabody
Port Angeles, Washington 98362
(360) 457-3327



CERTIFIED
COPY

1
2 Jack Delguzzi, deceased, or their heirs, successors, or
3 assigns, arising from that certain Note and Deed of Trust dated
4 February 25, 1991, recorded March 4, 1991, under Auditor's File
5 Number 647650, records of Clallam County, Washington,
6 pertaining to the property above described.

7 IT IS FURTHER ORDERED that upon receipt by the Clerk of a
8 Cashier's Check in the amount of \$68,292.29, as of the 1st day
9 of October, 1997, and increased on a per diem basis by the
10 amount of \$18.97 until tender is made, this Order Quieting
11 Title shall be filed by the Clerk and may thereafter be
12 recorded by any interested party in the records of the Clallam
13 County Auditor. Distribution of funds paid into the registry
14 of the Court shall be resolved in subsequent proceedings
15 herein.

16 DATED this 3 day of December, 1997.

17
18 
19 LEONARD N. COSTELLO / J U D G E

20 Presented by:

21 PLATT, IRWIN, TAYLOR, COLLEY,
22 OLIVER & MORIARTY

23 
24 Stephen E. Oliver / WSBA 6244
25 Attorney for LARRY DEMPSEY

26 ORDER QUIETING TITLE
AND DIRECTING ACCEPTANCE
OF FUNDS INTO THE
REGISTRY OF THE COURT -2

Platt Irwin Taylor Colley Oliver & Moriarty
Attorneys at Law

403 South Peabody
Port Angeles, Washington 98362
(360) 457-3327

CERTIFIED
COPY

1 Copy received;
2 Approved as to form;
3 Notice of presentation waived:

4 [Signature]
By: B. JEFFREY CARL / WSBA 16730

5 Copy received;
6 Approved as to form;
7 Notice of presentation waived:

8 [Signature]
By: CARL L. GAY / WSBA 9272
Greenway, Gay & Angier

9 Copy received;
10 Approved as to form;
11 Notice of presentation waived:

12 [Signature]
By: JOHN O. BURGESS / WSBA
Short, Cressman & Burgess

13 Copy received;
14 Approved as to form;
15 Notice of presentation waived:

16 [Signature]
17 By: LARRY JOHNSON / WSBA 5796
Chicoine & Hallett, P.S.

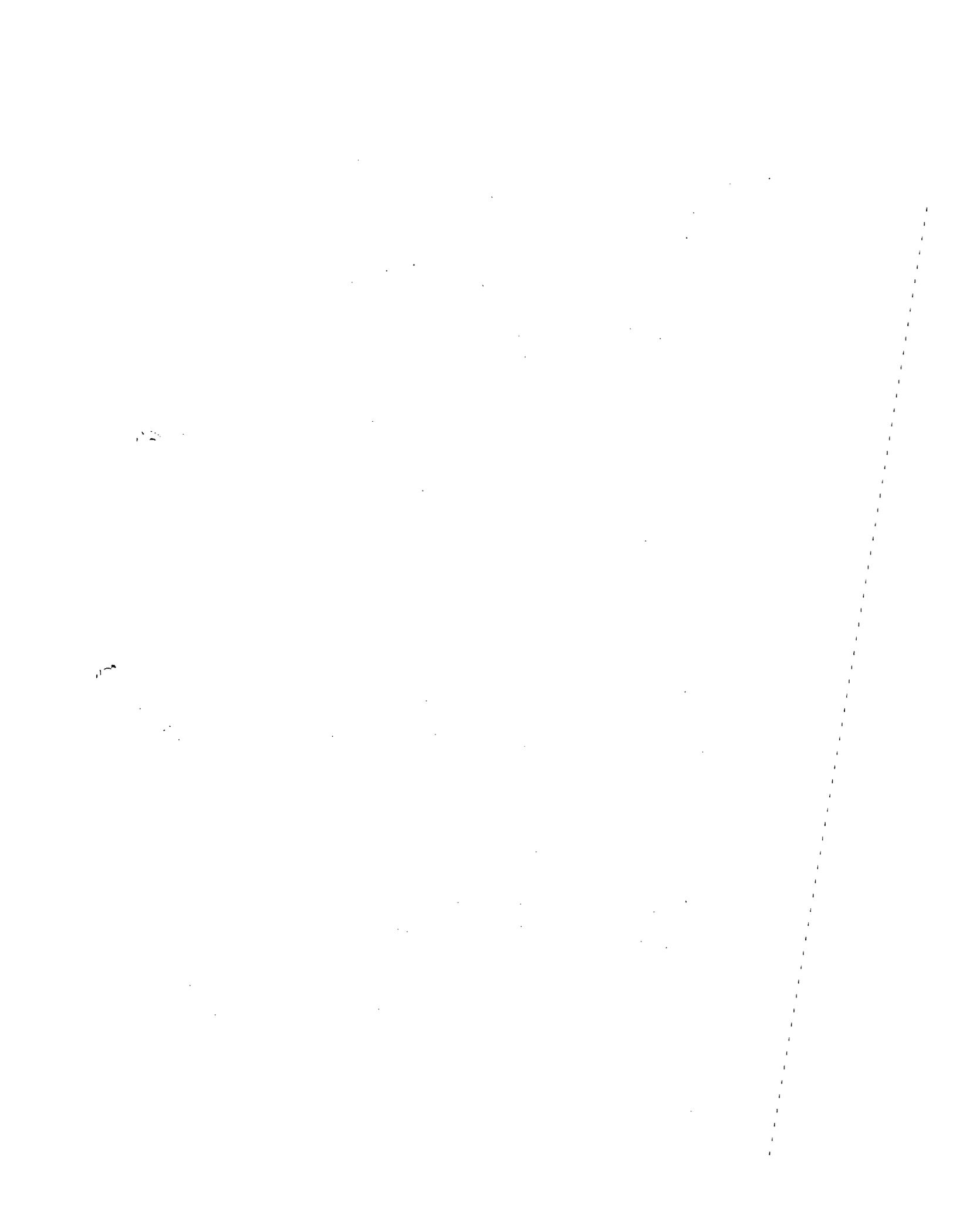
18 Copy received;
19 Approved as to form;
20 Notice of presentation waived:

21 [Signature]
22 By: Charles M. Cruikshank, III
Attorney at Law / WSBA 6687

STATE OF WASHINGTON }
County of Clallam }
MOLLIE LINGVALL, County Clerk of said County and
ex-officio Clerk of Superior Court, do hereby certify
that the above and foregoing is a true and correct
transcript of the above entitled cases, as the same
appears on file in my office.
IN TESTIMONY WHEREOF, I have hereunto set my
hand and affixed the seal of said County this
day of Dec 19 97
MOLLIE LINGVALL Clerk
By: [Signature] Deputy

23
24
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26 ORDER QUIETING TITLE
AND DIRECTING ACCEPTANCE
OF FUNDS INTO THE
REGISTRY OF THE COURT -3

Platt Irwin Taylor Colley Oliver & Moriarty
Attorneys at Law
403 South Peabody
Port Angeles, Washington 98362
(360) 457-3327



CLALLAM TITLE COMPANY
IOLTA ACCOUNT (PORT ANGELES)
P.O. BOX 248
PORT ANGELES, WA 98362

20508

JANUARY 13, 1998

PAY TO THE
ORDER OF

SUPERIOR COURT OF WASHINGTON FOR CLALLAM COUNTY

\$62,193.04

SIXTY TWO THOUSAND ONE HUNDRED NINETY THREE AND 04/100 DOLLARS

DOLLARS



PORT TOWNSEND BRANCH 55707
P.O. BOX 584
PORT TOWNSEND, WA 98368
18-2/1250

P-2464

NOT-NEGOTIABLE

AUTHORIZED SIGNATURE

⑈020508⑈ ⑆125000024⑆ 50521 715⑈

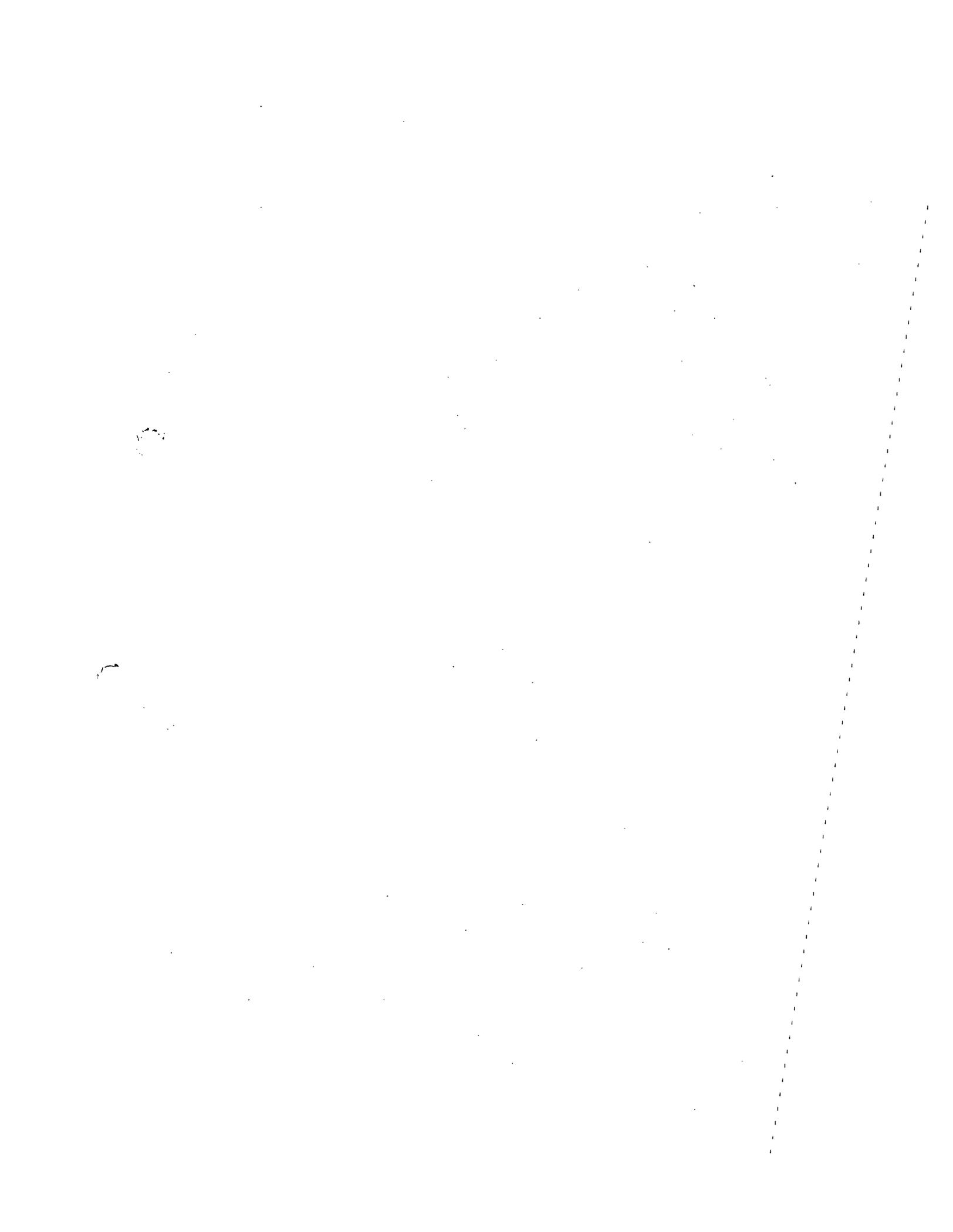
CLALLAM TITLE COMPANY
IOLTA ACCOUNT (PORT ANGELES)

DETACH AND RETAIN THIS STATEMENT
THE ATTACHED CHECK IS IN PAYMENT OF ITEMS DESCRIBED ABOVE.

20508

DATE	DESCRIPTION	AMOUNT
JANUARY 13, 1998	DEL GUZZI P 62,193.04 CHECK TOTAL 62,193.04	
	PAYOFF FOR LAWRENCE DEMPSEY TO WILLIAM WILBERT	

Exhibit A-6

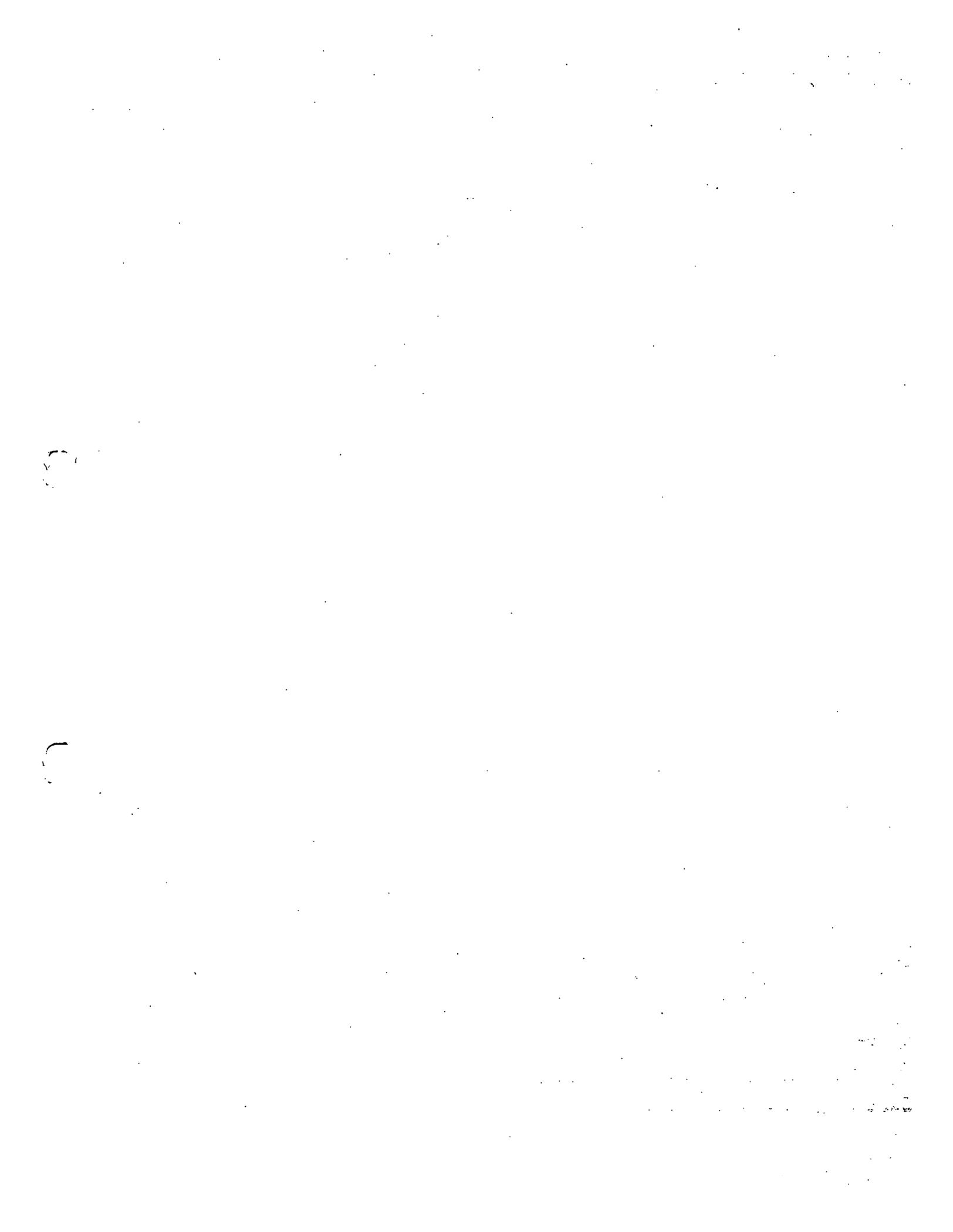


**Current Value of Payments Received on 813 E Front
Port Angeles, WA**

	10 Months										Jan. 13
	1991	1992	1993	1994	1995	1996	1997	1998	Total		
Appraised rental value of \$1,140/mo	11,400	13,680	13,680	13,680	13,680	13,680	13,680	441	\$ 93,921		
Cascade investment Properties (CIP) sale ((88,000-4,000)/2) See Note 1	84,000	-	-	-	-	-	-	-	84,000		
Selling expenses	(2,152)	-	-	-	-	-	-	-	(2,152)		
Less note received from CIP	(70,000)	-	-	-	-	-	-	-	(70,000)		
CIP payments of \$622/mo. beginning 3/1991	6,220	7,464	5,598	-	-	-	-	-	19,282		
Transfer payment specified in the promissory note	-	-	-	35,000	-	-	-	-	35,000		
Dempsey payments (on assumption)	-	-	-	2,488	7,464	7,464	7,464	261	25,141		
Smith payments	(2,060)	(2,472)	(2,472)	(2,472)	(2,472)	(2,472)	(2,472)	(86)	(16,978)		
Payoffs:											
Smith	-	-	-	-	-	-	-	(7,505)	(7,505)		
Dempsey	-	-	-	-	-	-	-	62,193	62,193		
Total Collections	27,408	18,672	16,806	48,696	18,672	18,672	18,672	55,304	222,902		
Interest on Liq. Amount @ 12% simple	38,919	24,274	19,831	51,618	17,552	15,311	13,070	32,076	212,651		
Total Cash	66,327	42,946	36,637	100,314	36,224	33,983	31,742	87,380	435,552		
Gary Delguzzi's Share @ 50%									\$217,776		

Note 1—Mr. Wilbert arbitrarily assessed a 10% real estate commission on the sale in the amount of \$8,000. Fifty percent of the commission was paid to an agent apparently representing the buyer and the remainder remitted to Mr. Wilbert. There is no evidence of a valid real estate listing with Mr. Delguzzi. Therefore, one-half of the total commission is not considered a selling expense.

Exhibit A-7



CLALLAM TITLE COMPANY
IOLTA ACCOUNT (PORT ANGELES)
P.O. BOX 248
PORT ANGELES, WA 98362

2050

JANUARY 13, 1998

PAY TO THE
ORDER OF

FIRST FEDERAL SAVINGS & LOAN #16-007332-0

7,505.2

SEVEN THOUSAND FIVE HUNDRED FIVE AND 28/100 DOLLARS

1 SEAFIRST BANK
PORT TOWNSEND BRANCH 55707
P.O. BOX 584
PORT TOWNSEND, WA 98368
19-2/1250

P-2464

Clayton C. Wald
AUTHORIZED SIGNATURE

⑈020507⑈ ⑆125000024⑆ 50521 715⑈

Pauline Wald

SECURITY FEATURES INCLUDED. DETAILS ON BACK.

CLALLAM TITLE COMPANY
IOLTA ACCOUNT (PORT ANGELES)

DETACH AND RETAIN THIS STATEMENT
THE ATTACHED CHECK IS IN PAYMENT OF ITEMS DESCRIBED ABOVE.

20

DATE	DESCRIPTION	AMOUNT
JANUARY 13, 1998	FIRST FEDER 7,505.28 CHECK TOTAL 7,505.28	
	PAYOFF FOR DEL GUZZI P-2464 CM FFS&L / DEMPSEY	

Exhibit A-8

HEMISPHERE

PROPERTIES, LTD.

February 21, 1997

Clallam Title Company
Claudette Mingori
Escrow Assistant
P.O. Box 248, 204 S. Lincoln
Port Angeles, WA 98362

Re: Dempsey/DelGuzzi Estate and Gary DelGuzzi
Escrow No. P-2464

Dear Ms. Mingori,

Principal Balance: \$69,215.20 on 2/28/97
Interest Paid to February 28, 1997
Interest Rate: 10%
Monthly Payment: \$622.00
Next Payment due on March 1, 1997
Reserves: None
Per Diem: \$19.08

Previous Clallam title accounts regarding this property include P-1132, Clallam Order No. 65110-RA.

Hemisphere Properties has no address and phone number for Gary DelGuzzi. All mail sent to Mr. DelGuzzi has been returned to this office as "forwarding address unknown" by the US Postal Service.

A dispute exists between Gary DelGuzzi and the DelGuzzi Estate. In 1991 this property was deeded over to a beneficiary interest in lieu of foreclosure by Terry Fell. If Mr. DelGuzzi's signature is required, after payment of the mortgage to First Federal, the net funds should probably be held or interplead into probate matter 8087.

Respectfully,



Laure Anne Wilbert

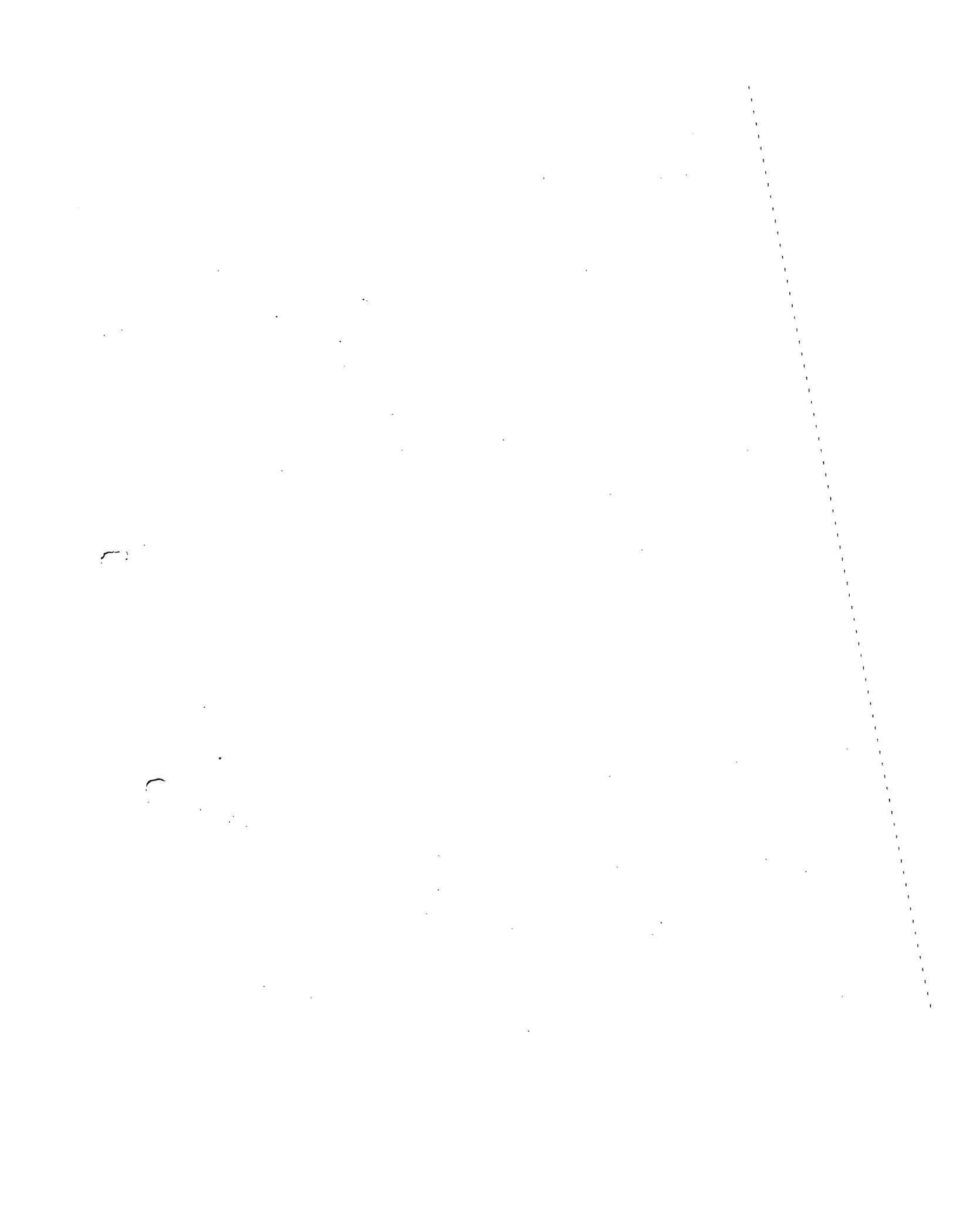
Enclosure

LAW/eba
1800 112TH AVENUE NE, SUITE 260 E • BELLEVUE, WA 98004 • PHONE (206) 635-0801 • FAX (206) 635-0874

A DIVISION OF WILLIAM E. WILBERT BROKER INC. ALL INFORMATION PUBLISHED REGARDING PROPERTY FOR SALE, RENTAL OR FINANCING IS FROM SOURCES DEEMED RELIABLE, BUT NO WARRANTY OR REPRESENTATION IS MADE AS TO THE ACCURACY THEREOF AND SAME IS SUBMITTED SUBJECT TO ERRORS, OMISSIONS, CHANGE OF PRICE, RENTAL OR OTHER CONDITIONS, PRIOR SALE, LEASE OR FINANCING, OR WITHDRAWAL WITHOUT NOTICE.



Exhibit A 8



SCANNED-2

FILED
CLALLAM COUNTY
MAY 26 2000
MOLLIE LINGVALL, Clerk

May 19, 2000

Ms. Mollie Lingvall
Clerk of Superior Court
Clallam County Courthouse
223 East Fourth Street
Port Angeles, WA 98362-3098

Re: Estate of Jack DelGuzzi, No. 8087
Release of Funds

Dear Ms. Lingvall:

I am the administrator of the Estate of Jack Delguzzi. On June 5, 1998, Judge Leonard Costello signed an Order Regarding Administrative Expense and Reimbursement Claims and Plan for Distribution. That order was filed on June 8, 1998, and is designated as file sub # 810 according to my records. Pursuant to paragraph 3(j) of that Order, Judge Costello has authorized the administrator to request the release of any funds being held by the Court in the above probate case, or in lieu thereof, request that the Clerk continue to hold the funds, but direct the Clerk to place the funds in an interest bearing account. By letter from my counsel dated June 12, 1998, we requested that the Clerk continue to hold the funds in an interest bearing account. However, at this time, I must request that the funds be released to me for use in meeting Estate expenses in accordance with the authorization provided to me by Judge Costello's Order.

It is my understanding that the current balance in the account is approximately \$66,800. In accordance with paragraph 3(j) of Judge Costello's Order, as Administrator of the Estate of Jack Delguzzi, I request that the Clerk release the funds being held by the Court in the above probate matter, and send those funds to me as Administrator for the Estate.

If you have any questions, please contact my attorney, Larry Johnson, at (206) 223-0800. If you need any additional information from me in order to release the funds, please make the request for that information through my attorney. The check should be made payable to "the Estate of Jack Delguzzi, William E. Wilbert, Administrator", and sent to the following address: P.O. Box 2056, North Bend, WA 98045.

Exhibit A-9

C-C. Gay

Thank you for your prompt attention to this matter. I look forward to hearing from you.

Very truly yours,



William E. Wilbert



1 3. On August 13, 1982, I was appointed by the court as
2 administrator of the Estate. At that time there were more than 100
3 outstanding claims against the Estate and more than 30 lawsuits
4 pending. In the course of administering the Estate I have settled
5 all but three of those claims and lawsuits. I have also assisted
6 Jack DelGuzzi's sole heir, Gary DelGuzzi, in management of construc-
7 tion jobs and negotiation of disputes on behalf of various corpora-
8 tions and partnerships owned by the Estate.

9 4. Until recently, administration of the Estate has been
10 hindered by the Internal Revenue Service's claim of lien. That
11 claim of lien attached to all of the real property owned by the
12 Estate. As long as the IRS claim was unresolved, the Estate could
13 not sell Estate property without negotiating a lien release from the
14 IRS. Even then Estate property could not be sold without payment of
15 a significant portion of the IRS claim.

16 5. The IRS originally claimed that the Estate owed over
17 \$6,000,000 in taxes. Negotiations with the IRS were time consuming
18 and difficult. Because of the inadequate state of the Estate's
19 records, most of the negotiations were devoted to attempting to
20 value various assets of the Estate. Finally, in the past six months,
21 I obtained a tentative settlement of the IRS claim for \$1,300,000.
22 This settlement has not been finalized as it requires approval by
23 various departments of the IRS. We are presently discussing a plan
24 for payment of this debt, and expect approval soon.

25 6. I am currently working to resolve, by either settlement or
26 litigation, the Estate's dispute with its largest creditor, Seattle-
27 First National Bank ("SeaFirst" or the "Bank"). If the case can be
28 concluded, preferably by settlement, the Estate will be free to sell
29 or encumber remaining assets in order to pay the remaining claims
30 against the Estate, including that of the Estate of Bruno DelGuzzi

1 ("Estate of Bruno"). If my non-intervention powers are restricted,
2 however, it will be very difficult, if not impossible, to arrange
3 the financial transactions necessary to fund the settlement. This
4 is true both because potential investors are wary of public dis-
5 closure of the fact and terms of their involvement in transactions
6 of this nature and because the delay involved in obtaining court
7 approval may allow adverse parties time to defeat the settlement.

8 7. Despite my best efforts to negotiate payment of the Estate
9 of Bruno's claim against the Estate, the Estate of Bruno has declined
10 to settle its claim and has instead petitioned to substantially
11 restrict my powers to continue to administer the Estate; the affi-
12 davits submitted in support of that petition contain assertions
13 regarding the solvency of the Estate and my administration of the
14 Estate. Those assertions consist largely of uninformed speculation
15 about the affairs of the Estate.

16 A. Solvency of the Estate.

17 8. At this time, the Estate of Jack J. DelGuzzi is solvent.
18 My most recent appraisal of all of the assets and liabilities of the
19 Estate indicates that the existing assets of the Estate are *w/mf?*
20 \$7,479,045; the existing liabilities of the Estate are \$3,637,540.
21 Therefore, the Estate's assets currently exceed its liabilities by
22 \$3,841,505. (My appraisal of the assets and liabilities of the
23 Estate is attached as Exhibit A to my First Report of Administrator
24 and Petition to Approve Distribution Plan.)

25 B. Conduct of the Parties Relating to the Claim of the Estate of
26 Bruno DelGuzzi.

27 9. The Estate of Bruno's claim against the Estate for \$385,000
28 arose out of an agreement, settling a dispute between the parties,
29 which was incorporated in Findings of Fact and Conclusions of Law
30 entered on April 15, 1982. But the terms of that agreement had been

Who
comes?
BS

1 largely agreed upon seven months earlier in September 1981. At that
2 time, the Estate was prepared to fund the settlement by recourse to
3 its line of credit with SeaFirst in the amount of \$750,000. The
4 Estate was unable to do that because the Estate of Bruno delayed in
5 executing the settlement documents until April 1982. In the interim,
6 the Estate was required to use two-thirds of its line of credit with
7 SeaFirst to pay fees and other costs to operate the Estate. The
8 Estate of Bruno's continued unwillingness to execute a settlement
9 agreement contributed to SeaFirst's change in their requirements for
10 additional loan commitments to the Estate. After January 1982,
11 SeaFirst imposed much more rigid requirements for additional
12 financing.

13 10. In April 1982, when the settlement agreement was finally
14 executed, all parties were aware that the Estate did not have suffi-
15 cient funds available to pay the Estate of Bruno's claim and that
16 the Estate did not have a commitment from SeaFirst or another
17 financial institution to loan the necessary funds. All parties, of
18 course, hoped that the Estate would be able to obtain financing from
19 SeaFirst. (The Estate has, and then had, extensive non-liquid
20 assets which, if converted to cash, will easily satisfy the Estate
21 of Bruno's claim. In April 1982, the Estate's ability to sell
22 assets was limited by the IRS's claim of lien.) But despite the
23 Estate's limited ability to pay the Estate of Bruno's claim within
24 30 days, the Estate of Bruno urged the Estate to execute the settle-
25 ment documents before April 15, so that the Estate of Bruno could
26 preserve a statutory election allowing it favorable tax treatment.
27 Although the Estate had no ready source of funding for the settle-
28 ment, the Estate acceded to the Estate of Bruno's wishes.

29 11. Although the Estate did not have adequate funds on hand to
30 pay the Estate of Bruno's claim, I continued to seek the necessary

ha!

1 funding by obtaining further financing from SeaFirst or by selling
2 Estate property. My efforts to obtain further financing were
3 hindered by the Estate of Bruno's action in filing a lawsuit against
4 the Estate. In connection with that lawsuit, the Estate of Bruno
5 filed a lis pendens which restricted my ability to sell Estate
6 assets to raise funds to pay the Estate of Bruno's debt. The Estate
7 of Bruno also continuously bombarded me with discovery requests,
8 motions, and other petitions which further hindered my efforts to
9 obtain funds to pay the Estate of Bruno's debt.

10 12. Despite the burdensome tactics of the Estate of Bruno, I
11 was able to develop a plan for payment of the Estate of Bruno's
12 claim by conveyance of three parcels of property owned by the Estate.
13 The Estate of Bruno refused to accept that offer, claiming that the
14 properties were not sufficient to satisfy their claim. The Estate
15 of Bruno then submitted a counter proposal, requesting that the
16 Estate convey seven parcels of property worth substantially more
17 than the Estate of Bruno's claim. I rejected that counterproposal
18 because it was unfair to the remaining creditors of the Estate. I
19 have continued to attempt to negotiate with the Estate of Bruno
20 DelGuzzi in order to achieve a equitable settlement. Unfortunately,
21 at this point, those negotiations have not been fruitful.

22 13. Currently, the Estate does not have sufficient cash to pay
23 the Estate of Bruno's claim. As Hamlin is aware, the Estate has
24 sufficient real property holdings with which to satisfy the Estate
25 of Bruno's claim as soon as those assets may be sold or pledged to
26 secure additional financing for the Estate.

27 C. Litigation with Seattle-First National Bank.

28 14. The Estate's ability to raise sufficient sums to pay the
29 claim of the Estate of Bruno in cash has been temporarily restricted
30 because of its dispute with SeaFirst. At this point, no judgments

1 have been entered against the Estate. And, we are in the midst of
2 attempting to negotiate a settlement with SeaFirst. If a settlement
3 is reached, it will result in SeaFirst releasing the Estate's pledge
4 of its stock in Del-Hur, Inc., and the Bank's deeds of trust on
5 other Estate properties. The Estate will, thus, be free to sell
6 Estate assets or pledge Estate assets to obtain financing from other
7 financial institutions in order to pay the claim of the Estate of
8 Bruno.

no longer true

9 15. Hamlin's assertions regarding the current status of the
10 Estate's litigation with SeaFirst are either disingenuous or simply
11 uninformed. Although it is true that the Superior Court for Clallam
12 County has issued a memorandum opinion granting partial summary
13 judgment, no judgments have been entered against the Estate of Jack
14 DelGuzzi.

15 16. Even if a judgment is entered against the Estate, there
16 are motions pending before the Superior Court to stay execution.
17 Thus, there is still a possibility that the Estate's stock will not
18 be sold in a judicial execution sale.

19 17. Even if SeaFirst is successful in compelling a sale of the
20 Estate's stock, the court has ordered that that sale be conducted in
21 a commercially reasonable fashion. In fact, the court has requested
22 a hearing in which the parties will present proposals for sale
23 designed to allow the Estate to obtain the highest possible price
24 for shares of stock. Thus, there is no reason to believe that if
25 the shares of the Estate are sold at a public sale that they will
26 not be sold for their fair market value. At this point, that fair
27 market value is \$3,200,000. (See Exhibit A. to First Report of
28 Administrator.) Thus, if the Estate's shares of stock in Del-Hur
29 were sold, the Estate or its creditors would be entitled to payment
30 of the net proceeds from the sale. Because the excess proceeds

wrong!

1 would either become an asset of the Estate or be used to satisfy
2 existing claims against the Estate, sale of the stock would not have
3 any net effect on the solvency of the Estate. Hamlin's claim that
4 the Estate would be rendered insolvent by such a sale is wrong.

5 D. Payment of Expenses and Administration.

6 18. In his affidavit, Hamlin claims that I have paid legal and
7 accounting fees of the Estate which were excessive. It is my obliga-
8 tion as administrator of the Estate to pay the necessary expenses of
9 administration of the Estate. In this case, I have already explained
10 that administration of the Estate involved settlement of numerous
11 claims and lawsuits. The Estate contains more than 220 parcels of
12 property in at least 11 ownership structures. Full and fair adminis-
13 tration of this Estate has required extensive legal and accounting
14 fees. A significant amount of those fees has been required simply
15 to handle the claims and lawsuits brought by the Estate of Bruno. I
16 am not aware of any indication (and Hamlin does not identify any
17 indication) that the legal and accounting fees charged by the respec-
18 tive law firms and accounting firms which have been employed by the
19 Estate were excessive.

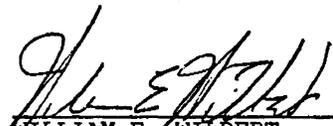
20 E. Periodic Accounting.

21 19. Pursuant to the terms of the agreed order executed by the
22 parties, the Estate of Bruno is currently entitled to a detailed
23 quarterly accounting of the affairs of the Estate. In addition, the
24 Estate of Bruno is entitled to notice of any proposed sale, transfer,
25 or encumbrance of Estate assets to a third party in an amount of
26 \$25,000 or more, at least 31 days prior to the transaction. The
27 agreed order also contains provisions defining the rights of the
28 parties if the Estate of Bruno objects to the proposed transaction.

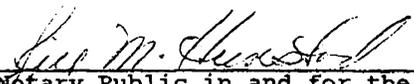
29 20. I have complied with my obligation to provide quarterly
30 accounting to the Estate of Bruno. I have provided the Estate of

1 Bruno with an accounting for the third quarter of 1983. The figures
2 for the fourth quarter of 1983 are almost complete, and will be
3 provided to the Estate of Bruno soon. This fourth quarter report
4 includes the current status of all properties in the Estate.

5 21. The protections contained in the agreed order more than
6 adequately protect the interests of the Estate of Bruno. Further
7 restrictions on my powers will only unduly restrict my ability to
8 raise the funds necessary to resolve the remaining claims against
9 the Estate. At this time, the Estate is fully solvent. If my
10 powers are not further restricted, I fully expect that all the
11 claims and lawsuits which remain will be resolved within the next
12 year.

13 
14 _____
15 WILLIAM E. WILBERT

16 SUBSCRIBED and SWORN to before me this 24 day of January,
17 1984.

18 
19 _____
20 Notary Public in and for the
21 State of Washington, residing
22 at Bellevue.

23 PJD:7H

24 **FILED**
25 JAN 25 1984
26 EMMA KUDDU-WIERK
27 Clallam County - By:
28
29
30



CLALLAM COUNTY WASHINGTON SUPERIOR COURT

In re the Estate of Jack Delguzzi, Deceased	No. 8087
E. Sidney Shaw, Personal Representative of the Estate of Gary Delguzzi Plaintiff v. Loretta D. Wilbert, Personal Representative of the Estate of William E. Wilbert	Plaintiff's Counter-Motion and Memo Re: Motion to Disburse, For More Definite Statement, and Other Matters

SHAW'S COUNTER-MOTION FOR CONSTRUCTIVE TRUST

E. Sidney Shaw, as the Personal Representative of the Estate of Gary Delguzzi, makes a Counter Motion to the Motion for the Order Directing Disbursement and requests that the Court instead enter an order recognizing and establishing a constructive trust to hold all of the real and personal property including all funds now held by the Administrator of the Estate of Jack Delguzzi and all future proceeds and properties of that estate, whenever and however later discovered and taken into custody, until such time as the court makes further order as to the proper distribution of these assets in which Gary Delguzzi and/or his Estate owns an interest as tenant in common with the Estate of Jack Delguzzi.

**PROPERTY OWNED BY GARY DELGUZZI AS A TENANT-IN-COMMON
WITH THE ESTATE OF JACK DELGUZZI – PRELIMINARY
DETERMINATIONS**

- 1 A. The funds, initially \$90,0000, from the sales of real property of Gary Delguzzi,
2 and his father/EJD that were in the custody of Clallam Title Company of Port
3 Angeles and that Mr. Wilbert agreed to pay over to the Bruno Delguzzi Estate on
4 July 25, 1984 to settle the amount owed by the Jack Delguzzi Estate to that estate.
5 Gary Delguzzi had no liability for this payment, as it was entirely the obligation of
6 the Estate of Jack Delguzzi. This total fund was valued by David Martin, C. P. A.
7 at a total of \$290,700 as of October, 2003.
- 8 B. The "Little Property" in Forks, Washington, where Gary Delguzzi initiated the
9 sale in 1982, before Mr. Wilbert became Administrator and where Mr. Wilbert
10 completed the sale and the property was owned as tenants in common between
11 Jack Delguzzi, whihe he was alive and by his estate ("EJD") after his death, and
12 Gary Delguzzi. C. P. A. David Martin valued Gary Delguzzi's interest in that
13 property at \$71,861 in October of 2003.
- 14 C. The funds from the 813 East Front Street property in Port Angeles that were taken
15 by Mr. Wilbert contrary to the tenancy in common ownership interest of Gary
16 Delguzzi, which was valued at \$252,326 by David L. Martin, CPA in July of
17 2005.
- 18 D. Gary Delguzzi's interest as a tenant in common with his father and then his
19 father's estate and with Charles Nyhus in the "Ozette Partnership". The value of
20 Gary Delguzzi's partnership interest is currently valued by C. P. A. David Martin
21 (Exhibit 4 to Cruikshank Declaration) at \$2,464,043 if the proceeds of that
22 partnership were invested since 1982 as apparently indicated by the tax return for
23 1982, or \$378,543 if the proceeds were considered to be a 'liquidated amount' and
24 thus only bore interest at the judgment rate since 1982.
- 25 E. Gary Delguzzi's interest as a tenant in common with his father and then his
26 father's estate and with Charles Nyhus in the "Elwha Partnership". That is
27 currently valued at \$746,769 by C. P. A. David Martin. (Exhibit 5 to Cruikshank

Declaration)

1 F. The property sold to the United States Park Service by Mr. Wilbert on July 25,
2 1983, that was held in tenancy in common with Gary Delguzzi, his father/EJD and
3 Charles Nyhus. Gary Delguzzi's interest was valued by David Martin, C. P. A. at
4 \$104,101 as of October 2003, for the October 2003 Delguzzi Order to Show
5 Cause.

6 G. The liquidation proceeds of Cedarwood Properties, Inc., in which Gary was a
7 32.48% shareholder and his father was a 67.52% shareholder. This court ordered
8 on June 5, 1998 that this corporation was to dissolved and the proceeds of its
9 liquidation were to be distributed to its shareholders. There is no record of Gary
10 Delguzzi ever receiving his share of the liquidation proceeds of Cedarwood,
11 despite the court order directing Mr. Wilbert to so liquidate and pay the
12 liquidation dividends to Gary and to EJD. Gary Delguzzi's share of Cedarwood
13 was valued by C. P. A. David Martin for the October 2003 Delguzzi Order to
14 Show Cause at \$2,423,414. A parcel of land known as the "Three Sisters"
15 (Auditor's File No. 590041) (Cruikshank Declaration, ¶¶ 15, 25 & 45) was sold
16 by the current Administrator on May 31, 2005, which parcel was encumbered by a
17 deed of trust for \$45,000 in favor of Cedarwood Properties, Inc. Gary's increased
18 interest from the settlement due to Cedarwood is an additional \$56,321, increasing
19 the total liquidation dividend for Gary's interest in Cedarwood Properties, Inc. to
20 \$2,479,735. There is no record of Gary Delguzzi's receipt of any Cedarwood's
21 liquidation proceeds.
22
23
24
25
26
27

TABLE OF GARY DELGUZZI'S TENANCY IN COMMON ASSETS

No	Asset	Value	Date of Valuation	Source	Ref.
A	Cash	\$145,350	October 1, 2003	Real estate sales proceeds of tenancy in common properties owned by Jack & Gary Delguzzi	1
B	Cash	\$71,861			
C	Cash	\$252,326			
E	Cash	\$104,101			
F	Unknown as to whether cash or real estate	\$2,464,043	November 9, 2005	Ozette Partnership, a general partnership between Jack Delguzzi, Gary Delguzzi and Charles Nyhus	1
G	Unknown as to whether cash or real estate	\$746,769	December 3, 2005	Elwha Partnership, a general partnership between Jack Delguzzi, Gary Delguzzi and Charles Nyhus	
H	Unknown as to whether cash or real estate	\$2,479,735	October 1, 2003	Cedarwood dissolution dividend owed to Gary Delguzzi pursuant to Order of June 5, 1998	2
Total		6,264,185			

CONSTRUCTIVE TRUST

A constructive trust will be found when property is acquired under circumstances

¹ Gary Delguzzi's Order to Show Cause of October 20, 2003 and the proof submitted therewith.

¹ Letter reports of David Martin, C. P. A., dated December 3, 2005 (Elwha) and November 9, 2005(Ozette) as introduced herewith by the Declaration of Cruikshank dated December 14, 2004.

² Order entered herein dated June, 5, 1998 with valuation as established by Gary Delguzzi's Order to Show Cause of October 20, 2003 and the proof submitted therewith.

such that the holder of legal title would be unjustly enriched at the expense of another interested party. Huber v. Coast Inv. Co., 30 Wn. App. 804,810,638 P.2d 609 (1981); Kinne v. Kinne, 27 Wn. App. 158,617 P.2d 442 (1980), review denied, 95 Wn.2d 1001 (1981). The use of Estate of Gary Delguzzi assets, held in several tenancies in common, to pay creditors of his father's estate certainly constitutes unjust enrichment of his father's estate and would constitute conversion of the separate assets of Estate of Gary Delguzzi to his father's estate. In addition, this result would be an equitably repugnant result, as Gary was named as the sole heir of Jack Delguzzi, who contemplated that Gary would derive financial benefit from Jack's estate, not be drained by it.

A constructive trust treats the one holding the property as trustee for the beneficiary from the time the property holder began to hold the property unconscionably. Huber v. Coast Inv. Co., 30 Wn. App. at 810. The reasons for imposing a constructive trust typically involve fraud, misrepresentation, bad faith, or over-reaching. In re Marriage of Lutz, 74 Wn. App. 356,366,873 P.2d 566 (1994) although a constructive trust also may even arise without fraud or undue influence. A constructive trust arises when a person holding title to property is subject to an equitable duty to convey it to another on the grounds that the person holding title would be unjustly enriched if permitted to retain it. Baker v. Leonard, 120 Wn.2d 538, 547, 843 P.2d 1050 (1993); Scymanski v. Dufault, 80 Wn.2d 77,89, 491 P.2d 1050 (1971).

In these circumstances, the "person holding title" is the Estate of Jack Delguzzi, acting through its administrator, Kathryn A. Ellis.

To establish a constructive trust, there must be clear, cogent, and convincing evidence of the basis for impressing the trust. Baker v. Leonard, 120 Wn.2d 538,547,843 P.2d 1050 (1993). Parole evidence is admissible to establish a constructive trust. Dowgialla v. Knevage, 48 Wn.2d 326, 333, 294 P.2d 393 (1956).

Where the directors of a dissolved corporation do not distribute the remaining

1 corporate assets, the shareholders become tenants in common in those assets. Ban-Mac,
2 Inc. V. King County, 69 W.2d 49, 416 P.2d 464(1966). The shareholders also become co-
3 tenants in contractual rights and choses in action. Follett v. Clark, 19 W.2d 518, 143 P.2d
4 536(1944). Cedarwood falls into this category, even if this court had not ordered a
5 liquidation result on June5, 1998 that was consistent with these cases.

6 A general partnership is dissolved by operation of law upon the death of a partner
7 and the partnership assets are then jointly owned with a separate existence from the
8 partnership itself. RCW 25.05.225(7)(a). This applies to the Ozette and Elwha
9 partnerships.

10 Tenancy in common is the presumptive or residual form of co-tenancy; a
11 conveyance to two or more persons who are not husband wife is as tenants in common
12 unless some other form co-tenancy, usually joint tenancy, is designated. Hamilton v.
13 Jordan 137 W. 92, 241 Pacific 672 (1925).

14 If they are not to have equal shares, the instrument of conveyance to
15 tenants in common should clearly designate their shares because of the
16 presumption of equal shares. 17 Washington Practice: Real Estate:
17 Property Law, § 129.

18 Out of the fiduciary relationship among co-tenants comes a principal that,
19 broadly stated, is that if one co-tenant acquires an outstanding title that is
20 superior to the co-tenant's title, he holds it in constructive trust for all of
21 the co-tenants. This principle is well established in Washington and
22 elsewhere. A situation in which this applies is where the co-tenancy
23 premises are sold for unpaid taxes and one co-tenant buys in the tax title.
24 This does not extinguish the co-tenancy title, but courts declare that the
25 purchasing co-tenant holds title for all the co-tenants. Woodard v.
26 Carpenter 31 Wn. 2d 271, 195 P.2d 983 (1948). Whether or not the courts
27 always speak in these terms, the mechanism at work in all these cases is
28 the equitable power of a court, first to declare co-tenant to be a fiduciary,
and then to declare him constructive trustee of title obtained in breach of
his fiduciary duty. In Washington these, equitable principles have been
applied with vigor. 17 Washington Practice: Real Estate: Property Law, §
1.31.

24 MOTION TO QUASH SUBPOENA DUCES TECUM

25 Ms Ellis, who was appointed as the successor administrator on January 1, 2005, is
26 bound by the order appointing her, which states, at ¶10 as follows:

27 Except as provided by new court order, the Administrator shall provide all

1 parties with reasonable access to the records of the Estate under his/her
2 immediate control and in his/her possession;

3 Not believing that Gary Delguzzi was any access to the files and records, his
4 attorney made and noted for hearing before this court a “**Motion for Order Governing**
5 **File Access**” on May 27, 2005 (Exhibit 2). In the Declaration of Delguzzi’s attorney
6 Cruikshank in support, he alleged without rebuttal that despite nearly six months of Ms
7 Ellis’s administration, he had not been provided access to any files or records of Estate of
8 Jack Delguzzi.

9 Ms Ellis and Mr. Zeno filed responses to this motion and the court declined to
10 enter any order providing or limiting file access beyond what was ordered above on
11 January 7, 2005.

12 Mr. Cruikshank herewith provides what he believes to be his salient
13 correspondence with Ms Ellis and notes that he repeatedly requested access to the files
14 and information of the Estate of Jack Delguzzi, including particularly the tax returns (See
15 Cruikshank Declaration Exhibit 1) which were needed not only for the litigation claims of
16 Gary Delguzzi, but for Ms Ellis to locate assets. Ms Ellis admits that she has “some” tax
17 returns, but has declined to identify or produce those. For a summary of what financial
18 records the Estate of Gary Delguzzi has, wants and why it is important, please see Exhibit
19 3, “What Accounting Information The Estate of Gary Delguzzi Has, Wants And Why.”

- 20 • I requested that Ms Ellis explain to me why the deed of trust in favor of
21 Cedarwood Properties on the “Three Sisters” sale was not paid off or satisfied.
22 Her non-responsive flip remark was “Well it must have been OK, since the sale
23 closed.” The interest of Estate of Gary Delguzzi in that encumbrance was valued
24 at \$56,321. [**Letters to Ellis of April 14 & 27**]
- 25 • Even with repeated requests for the estate and entity tax returns and a trip to her
26 office to obtain them, they still have not been produced. [**Letter to Ellis of**
27 **October 11**]

1 • Once I advised Ms Ellis of the recently discovered the tenancy in common interest
2 of the Estate of Jack Delguzzi and Estate of Gary Delguzzi, she moved quickly to
3 make a distribution to creditors with funds that included Gary Delguzzi joint
4 tenancy property/proceeds. She has not responded to my request that she advise
5 me whether she had information these assets were not as they as I characterized
6 them. [Letter to Ellis of November 23]

7 • The compact disc of files sent to Ms Ellis (August 31) marked “privileged and
8 confidential” from the document production that was password protected from the
9 Iron Mountain document production on August 31 so that she could advise if, in
10 her opinion, they were actually privileged, so that an *in camera* review could be
11 conducted if she thought that privilege was actually associated with the substance
12 of the files has only gotten her to admit that the files are actually marked as
13 “privileged and confidential”, but not to state whether that seemed true to her.

14 In response to requests to authorize Estate of Gary Delguzzi to request tax returns
15 from
16 the IRS, Ms Ellis has imposed several objections including the unsupported generic
17 claims of harassment and she said:

- 18 ▶ She was not convinced that the tax returns will have the information Delguzzi is
19 seeking;
- 20 ▶ The IRS probably won't be able to provide copies of the returns, anyway;
- 21 ▶ She will not authorize the release of the returns unless Delguzzi agrees in advance
22 to pay for the (nominal) cost and to agrees not to seek reimbursement from the
23 Court.

24 Two assets of particular and immediate interest are Cedarwood Properties, Inc.
25 and DelHur, Inc., both of which were ordered to be dissolved and the proceeds distributed
26 theg shareholder of these corporations by this court's order of June 5,1998. Although both
27

1 of these corporations have been dissolved, their assets (and tax returns) seem to have
2 totally disappeared. The 'final' IRS 1120 corporate income tax returns³, which are
3 required to be filed, have never been produced or seen by the plaintiff or his attorney,
4 despite the court order of 1998.

5 The October 20, 2003 Order to Show Cause related, in part, to Cedarwood, of
6 which the Estate of Gary Delguzzi claims the value of its interest to be approximately
7 \$2.5 million, based upon the valuations from earlier accounting records of Mr. Wilbert,
8 but without the final return, it is not possible to know what the defendant thinks was the
9 value of the corporation's assets when it was dissolved.

10 DelHur was valued by Mr. Wilbert at approximately \$635,000 in an accounting of
11 November 30, 1996 and that value represented by DelHur has never been seen again in
12 the accountings, not has the final income tax return been produced or seen by the Estate
13 of Gary Delguzzi of his lawyer.

14 Ms Ellis was repeatedly asked for her complete list of known estate assets⁴, and
15 repeatedly declined to provide that inventory.

16 Ms Ellis bases her motion to quash on CR 26, alleging a lack of relevance and
17 materiality while the Subpoena Duces Tecum with which she was served was issued
18 under CR 45. The standards are entirely different. Witness subpoenaed duces tecum may

19 _____
20 ³ These are just some of the critical tax returns that Ms Ellis claimed might not contain the
21 information that the Estate of Gary Delguzzi was seeking, and that she insisted that the Estate of Jack
22 Delguzzi should not have to pay to obtain.

23 ⁴ On December 9, 2005, Ms Ellis transmitted to Cruikshank 214 pages of documents with
24 the explanation: "Enclosed please find a copy of the infamous "Black Binder" that I just received
25 for the first time on December 6th." Her source for the "Black Binder" was not revealed.
26
27

1 not refuse on grounds that the documents are immaterial, where there is no claim of
2 privilege or confidential nature. State ex rel. Spokane & E. Trust Co. v. Superior Court,
3 109 Wash. 634, 187 P. 358 (1920).

4 While Ms Ellis claims that she has provided all of the non-privileged records of
5 Estate of Jack Delguzzi [**Letter from Ellis of November 4**], the facts do not support that
6 allegation. At the document production at Iron Mountain on June 22, Ms Ellis took 3
7 banker's boxes of files that appeared full plus loose documents roughly equivalent to
8 another banker's box from the eighty-odd banker boxes that were stored at the facility. I
9 do not know the contents of those boxes. It appeared that she left with about four linear
10 feet of files, more or less. She has produced approximately 1 linear inch (1") of files to
11 the undersigned on October 10 (all of which appeared to have been created by her office),
12 exclusive of the "Black Binder" which she claimed to have only acquired on December
13 6⁵. She has identified no allegedly privileged files that she acquired at Iron Mountain or
14 elsewhere.

15 **OTHER ASSETS THAT HAVE NOT BEEN ACCOUNTED FOR**

16 On October 25, 1999, this court entered a Memorandum Opinion and Order
17 granting title to "**Finca Delguzzi**" to the Estate of Jack Delguzzi on Mr. Wilbert's
18 motion. This was well after the purported sale of the Estate of Jack Delguzzi Costa Rica
19 entities to an anonymous buyer who allegedly insisted on keeping all of the records of the
20 Estate of Jack Delguzzi's Costa Rica holdings. "Finca Delguzzi" has not been accounted
21 for and has not appeared in any known records of the Estate of Jack Delguzzi since that
22

23 ⁵ The "Black Binder" contains records of real properties of Cedarwood Properties, Inc., with
24 indicated values of several years ago totaling \$193,000. There has not been sufficient opportunity
25 to determine if this is in addition to the values that were used in the October 2003 valuation that was
26 prepared by David L. Martin, C. P. A. for the Delguzzi Order to Show Cause.
27

1 order was entered. The Memorandum Opinion stated that the property was acquired in
2 1979 for \$80,000, making it worth approximately \$362,188 and \$945,911 today to the
3 Estate of Jack Delguzzi. (Exhibit 6 to Cruikshank Declaration.)

4 On or about October 27, 2000, this court entered an order granting title to the
5 Estate of Jack Delguzzi of "**Property 212**", as Mr. Wilbert claimed that there was a sale
6 pending on that property to the Quillute Tribe⁶. That "Property 212" was not found in the
7 "Black Binder" recently produced by Ms Ellis. The known financial records of Mr.
8 Wilbert, including his court-ordered accountings, do not account for or show the
9 disposition of that property or its sale proceeds, if it has been sold. The property and/or its
10 proceeds seem to have disappeared from the files and records of Estate of Jack Delguzzi.

11 **REQUEST TO STRIKE NOTICE OF TRIAL SETTING**

12 Clallam County local rules require that trial settings be accomplished by providing
13 to the clerk the prescribed form upon which both attorneys indicate their available dates
14 for trial and then to appear before the clerk for a trial assignment date. Only if this
15 procedure is not successful is judicial involvement required. The procedure being utilized
16 by Mr. Zeno does not comply with these requirements. Delguzzi has no objection to the
17 negotiation and setting of a trial schedule, including deadlines for discovery completion,
18 dispositive motions and other pretrial issues with Mr. Zeno and that is in compliance or
19 not inconsistent with the Clallam County local rules.

20 **SUMMARY**

21 The court is requested to:

22 _____
23 ⁶ This was this proceeding that generated the "Second Wilbert Declaration . . ." attached as
24 Exhibit 1 to the November 9, 2005 letter report of David L. Martin C. P. A. , confirming that as of
25 October of 2000, Gary Delguzzi still had joint tenancy interests in the Elwha and the Ozette
26 Partnerships.
27

1 1) Deny the Motion For Disbursement of Ms Ellis and to order imposition of a
2 constructive trust on all of the assets of the putative and apparent assets and the joint
3 tenancy assets of the Estates of Gary and Jack Delguzzi until such time as the tenancy in
4 common ownerships of these Estates are resolved and the Estate of Gary Delguzzi has
5 been fully compensated for its property that has been converted, disappeared or gone
6 missing during the probate of the Estate of Jack Delguzzi;

7 2) Deny the Motions to Quash the Subpoena Duces Tecum and permit the Estate
8 of Gary Delguzzi to obtain copies of the existing estate records;

9 3) Allow the attorneys for the litigation parties to discuss and attempt to resolve
10 the issues raised by Mr. Zeno's Motions to Clarify Claims and Parties for Trial and his
11 Motion to Permit Sale of the claims of the Estate of Jack Delguzzi for approximately 60
12 days and to require judicial intervention only for the issues remaining unresolved after
13 that time;

14 4) Allow the attorneys for the litigation parties to jointly file the Notice of Trial
15 Setting that is compliant with Clallam County Local Rules so as and to get this matter set
16 for trial;

17 5) Allow the attorneys for the litigation parties to negotiate and/or propose a trial
18 scheduling and procedure order consistent with the civil and local rules and request
19 judicial intervention only if they are unable to do so within then next 30 days.

20 Dated and signed on this 14th of December 2005.

21
22
23 _____
Charles M. Cruikshank III
Attorney for the Plaintiff