

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

FILED
COURT OF APPEALS
DIVISION II
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STATE OF WASHINGTON
BY [Signature]

APPELLANT'S BRIEF

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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;
- F. Interest prohibited by order of the probate court;
- G. Interest in breach of his fiduciary duty prohibiting self-dealing;
- H. Interest to his attorneys that violated their fiduciary duties, particularly RPC 1.8;
- I. 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 had an interest 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 7, 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 (August 30, 2001) 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. See UPO 21752-0. 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

³ UPO 21752-0, fn. 7.

Delguzzi Petition and Complaint were dismissed, the court proceeded with 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 buttressed 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)[Apx. 2, 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 . [Apx. 2, Ex.4]

The Kleinman report does not report the amounts of the interest on the Wilbert, Cressman and Lockwood Foundation loans, which they 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)[Apx. 2, Ex. E]. 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)[Apx. 2, Ex.E(B)] No invoices were included with the 1997 filing.

FEE INVOICES FILED IN 1986. On March 14, 1986, Mr. Wilbert had filed a substantial number of Short Cressman & Burgess invoices 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 extensions of hourly rates, costs, payments, credits and other financial information was redacted or had never been entered for the invoices. (Sub# 13,135,136,137)(See Supplemental Designation of Clerk's Papers dated February 4, 2008 and CP #to be identified when assigned).

ATTORNEY FEE SUMMARY The details of the amounts summarized on Mr. Cressman's one page summary of claims [Apdx. 2, Ex. E(B)] for fees and costs paid and those still claimed to be owed cited above is thus not known, as no completed invoices have ever been filed.

SCB - ESTATE SECURITY AGREEMENT Mr. Cressman included as Exhibit A (CP 1119) to his affidavit, a security agreement 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 30, 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

MEMORANDUM DECISION. On October 10, 1997, Judge Costello entered a Memorandum Decision (CP 749) that awarded Wilbert's initial estate attorneys, Short Cressman & Burgess, the sum of \$404,040 in fees and costs plus interest from that date 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 5/15/1997. On May 15, 1998, Mr. Wilbert filed a Declaration (CP 741) in response which included a spreadsheet at Exhibit E, to address the requirements of the Memorandum Decision.

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 (Sub# 810) which referred to and seemed to approve Mr. Wilbert's adjusted claims, but did not address the additional claims in the Declaration or the incomplete adjustments that were ordered by the

Memorandum Decision of October 10, 1997. No order or judgment was later proposed or presented by Mr. Wilbert to quantify or clarify the ambiguities of the amounts in the Order Regarding Administrative Expense and Reimbursement Claims and Plan for Distribution of June 5, 1998.

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 in 2004, but made no annual reports or interim accountings after entry of that Order.

ESTATE ORDERED CLOSED AGAIN IN 2007.

On July 27, 2007, Judge Leonard Costello entered an Order on Final Supplemental to Final Report and Petition for Decree of Distribution [Apx. 9](Sub# 1432) 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 and the undersigned has not been served with any receipts or other proof of disbursements, apparently leaving the estate still open, in much the same fashion as happened when Judge Costello ordered that it be closed in 1998 (CP 810), again leaving control of the timing and procedure with others.

These orders that touch on both the probate of Jack Delguzzi and the tort claims of Gary Delguzzi were entered between 1998 and 2004 are

under this court's review, as are the 2005 through 2007 activities of administrator Ellis.

ORDER TO SHOW CAUSE. Those include the denial of the Gary Delguzzi Order to Show Cause (**CP 1089**)

DELGUZZI'S MOTION TO VACATE THE FEE AWARD for Administrator Wilbert [Apdx. 10] and orders entered in the probate that were foundations for the June 5, 1998 Order, including the Memorandum Decision of Judge Costello dated October 10, 1997 [Apdx. 2, Ex. A] that decided the fees of Wilbert's initial estate attorneys, Short Cressman & Burgess.

DEATHS OF WILLIAM E. 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 died, 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 estate⁴ so that a timely creditor's claim could be filed against the estate of William E. Wilbert. By order of August 8,

⁴ Sub# 1160B. See Supplemental Designation of Clerk's Papers dated February 4, 2008.

2004, 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 and taking the administrator's oath.

During C.P.A. Martin's brief tenure of C.P.A. Martin as the estate's administrator, he recovered certain of Mr. Wilbert's estate records and examined them, finding new evidence that 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.

On January 13, 2005, Kathryn Ellis, a Seattle bankruptcy trustee and lawyer was appointed and qualified shortly thereafter.⁵

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.⁶ 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.

KATHRYN A. ELLIS ADMINISTRATION

The actions of Administrator Ellis during 2005 and 2007 accomplished little toward narrowing the information and financial gaps

⁵ ((Sub# 1231) See Supplemental Designation of Clerk's Papers dated February 4, 2008.

⁶ (Sub# 629, 874, 1062. See Supplemental Designation of Clerk's Papers dated February 4, 2008.)

between the approximately 9.4 million dollars worth of assets of the estate⁷ which the IRS assessed in October of 1982 (CP 194)(Sub# Q) and the approximate negative net worth of the Jack Delguzzi estate at 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 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. [Apx. 7]

In June 11, 2007, with her Declaration for Order on Final Supplemental to Final Report and Petition for Decree of Distribution, (CP 261,167) and the Order thereon dated July 27, 2007 [Apx.9] , Ms Ellis moved 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.

The most intriguing and revealing aspect of her 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 18, 2007 [Apx. 7] regarding apportionment of the funds from the estate's liquidation where

⁷The 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 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. [Apdx. 7]

JUDGE VERSER'S ORDER. 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. In December of 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 Delguzzi⁸ that shared the same cause number (#8087) as the Jack Delguzzi probate.⁹

WILBERT'S MISSING MULTI-YEAR REPORT IS DISCOVERED

In discovery proceeding in a related King County case in 2007, a

⁸ 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 against himself for his actions as administrator of the Jack Delguzzi estate.

⁹ 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.

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]. 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 estate proceedings rather than both to the Estate of Jack Delguzzi. CP 1746. 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 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 failed, “. . . his shares

should now be held by Gary free of all claims.”

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]

When Administrator Ellis moved to close the estate with her declaration on June 19, 2007 [Apx. 7](Sub# 1413), she filed copies of bookkeeping records prepared by Administrator Wilbert’s bookkeeper, Leslie Stanton, prepared for a period after Administrator Wilbert died, in lieu of submitting her own legally sufficient accounting for the approximately 9 years since Wilbert’s ‘final’ accounting in 1997.

Even if the records Ms Ellis filed had been of her own making and had been properly authenticated, 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 intriguing and revealing aspect of Ms Ellis' 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 document referring to the "private agreement" was attributed by Ms Ellis¹⁰ 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 she 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

¹⁰ Ellis Declaration dated June 18, 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. Is double hearsay and inadmissible opinion testimony.

declaration of Ms Stanton [Apdx. 7], for November 1, 1997 through May 31, 2004 shows previously undisclosed disbursements \$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
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 649 A-E) 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. What the other payments for "legal" are can only be guessed at.

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. These must either be justified or disallowed.

R.C.W. 11.44.015, .025 & .050.

PRIVATE AGREEMENT-COVENANT MUTUALLY TOLLING S/L

Attachment A to the Stanton declaration [Apx. 7] 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 these matters was a 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 thought that they were entitled to \$941,932 each, showing that the agreement equalized their fees.¹¹ What the Stanton materials do not show is the consideration that changed hands that formed the basis for that

¹¹ Wilbert claimed that he was entitled to \$1,644,542 in his fee declaration of June 15, 1998, [Apx. 2, Ex.C(E)] while SCB had been granted \$404,040 by the Memorandum Decision of October 10, 1996, [Apx. 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.

agreement. Logically and chronologically, it could only be the claims related to the “Covenant Mutually Tolling the Statute of Limitations” (CP 194 [Apdx. 2¹², 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 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 approximately 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. These claims were that the law firm had mismanaged, committed malpractice, neglected or otherwise caused damages to those entities while represented by Wilbert and that he had the right to pursue the damages for himself and his wife. There is no mention of Mr. Wilbert acting in a representative capacity as to these claims.

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

¹² Appendix 2 (CP 194) consists of “Plaintiff’s Objections to Final Supplemental to Final Report and Petition for Decree of Distribution” of July 7, 2007. Many of the documents referred to in Appellant’s Brief are included here for ease of reference.

during Wilbert's life to himself and to SCB are at the core of this intriguing scenario and reveal the secret resolution of the 'Covenant' claims, even though details of the dispute and its settlement are still to be disclosed.

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 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 receipt of 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 (CP 587)[Apdx. 2, Ex.I] 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 and then he just refused to give any of them back, 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 had received approximately \$700,000 in real estate commissions from sales of estate properties to that

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 587)[Apdx. 2, Ex.I]

time and many more properties were still to be sold by him. A reconstruction, admittedly incomplete, from the data available shows sales of estate properties that generated \$758,968 in Wilbert entity commissions. [Apx. 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 [Apx. 2, Ex. A] for the commissions (\$372,160) reduced the subtotal to \$127,840 and the Costa Rica adjustments in the amount of \$115,182 further reduced it to \$12,658, although 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. [Apx. 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]

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 1090)[Apdx. 6] 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 his Supplement to the Final Accounting. Gary Delguzzi is also entitled to his

¹³ Summarized in Appdx. 2, Ex.L .

34% interest, or \$76,500, plus interest.

Now the Wilbert subtotal is \$1,313,896 + \$148,500 or \$1,462,394 and using the Kleinman Report numbers, \$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 (Wilbert interest) or \$1,720,151 (Kleinman Report), to which interest on the overpayments must be added.

ATTORNEY FEE PROCEEDINGS IN 1997-1998

On June 5, 1997, this Court entered a Memorandum Decision [Appdx. 2, Ex.A] which ordered that Short Cressman & Burgess ("SCB"), the lawyers for Administrator Wilbert from 1982 to 1991, were to receive \$404,040, plus 12% simple interest from that date for its costs and fees.

This amount was based upon representations that were unsupported by any

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.

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 \$200,000 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 __)(Sub# 134, 135, 136 and 137)¹³ 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. E(C)][Apdx. 2, Ex.G]

While the 1986 invoices consist of all only non-financial details, the 1997 documents from Mr. Cressman are only summaries with no details. 9 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 amounts should indicate at least approximately how the court arrived at the

¹³ 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.

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.E) states “The total amount due to our firm as of September 30, 1996 (the date contained in Mr. Wilbert’s final report) is \$910,908. That consists \$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. (CP __)(Sub# 134, 135,136 &137) (See Supplemental Designation of Clerk's Papers dated February 4, 2008.)

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] The total amount claimed for “production” (fees) in the amount of \$1,128,029 in Ex. B of the Cressman Affidavit [Appdx. 2, Ex.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. E(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 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, [Apdx. 4](Sub# 128) 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 explained contradiction between what Mr. Wilbert and his accountant, Administrator Wilbert filed an annual accounting for 1985 that showed that loans totaling \$800,000 were made to the estate by himself, Mr. Cressman and the Lockwood Foundation, a Cressman client in 1985. [Apdx. 4] The Kleinman Report only showed a total of \$200,000 in loans to the estate for that year, with \$100,000 each from Cressman and Wilbert and none from the Lockwood Foundation. [Apdx. 3]

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 estate at a value of \$9,593,408, valued at the time 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]

The law firm and the prior administrator were overpaid in the total amount of at least \$3,810,470. [Appdx. 2, Ex.D]

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.¹⁴ In that petition, Administrator Wilbert claimed that he had transferred this property that was located north of Victoria in 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 so that it was worth considerably more than Wilbert claimed, at the time he took it for himself, and when 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 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. 6,

¹⁴ Discussed more fully at pages 9-10 of this Appellant's Brief.

Ex.CW] 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 Elwha Bluffs during the Ellis Administration shows a Deed of Trust in favor of the later attorneys for Mr. Wilbert (Chicoine & Hallett) on the property 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 signed and recorded with an apparent unjustified clouding of the title.

This is somewhat like the above described redacted fee invoices. While those redactions will deny compensation to the law firms, the breaches of their fiduciary duties that are attempted to be concealed requires inquiry and explanation, particularly where the losses and corrupt practices evident in the administration of this estate have been so secretive, substantial and damaging. [Appdx. 2, Ex.X]

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]

Also, 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 assets of that amount of value when there were no assets left. An entry was made called "Closing Entry" in the amount of \$799,237 with no explanation of what happened to that 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 the current administrator 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 current administrator, apparently having just disappeared. The value, with interest at the judgment rate, was in excess of \$5,000.000.(Sub# 1331)

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.

On October 24, 2003, Gary Delguzzi's attorney proceed to address 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 an 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 687, 572, &569)

On October 20, 2003, the trial court signed an order for the administrator of the Estate of Jack Delguzzi, William E. Wilbert, to show cause why \$3,425,150 should not be returned by Mr. Wilbert to Gary Delguzzi for Gary's separate and co-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, Judge Costello explained to Mr. Hallett, Wilbert's counsel, four times, exactly what was expected of him and exactly what relief Delguzzi was seeking. [Apx 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 by his 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.

Appellant 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 error for the trial court to refuse to grant the relief sought by the Delguzzi's motion for 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, 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 signed the Order to Show Cause why Administrator Wilbert should not disgorge his lawful takings in the amount of \$3,425,150.00. Appellant requests that the matter be remanded to the trial court with an order to grant the relief that is being sought.

**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. 06-2-01085-2¹⁵ to King County Superior Court.[Apdx. 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

¹⁵ 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.

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 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 alleging very much the same actions and causes of action.

The interests of justice require that these two matters be consolidated with the venue laid in King County, Washington Superior Court 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. Stell 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 Final Supplemental filed by Administrator Ellis (CP 262¹⁶) includes a trust account register from February 11, 2005

¹⁶ See also Ellis Declaration dated June 19, 2007, Sub# 1413, which is included in Appellant's Supplemental Designation of Clerk's Papers dated February 4, 2008.

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’ 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 cloing and 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, who was a mastermind at sowing dissent, creating conflict and confusion and who delighted in deceit.

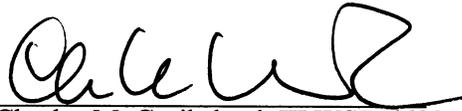
The administrator's fees and expenses cry out for an order requiring that they be disgorged with interest at the highest rate allowed by law so as to return these funds to the estate. With the millions of dollars of missing, undervalued and converted property, what was a \$10 million or so estate when 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 4th of February 2008.

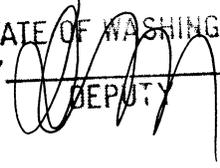


Charles M. Cruikshank III WSB 6682
Attorney for Appellants

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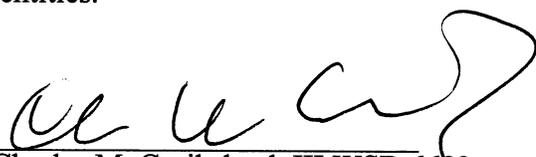
IN AND FOR THE WASHINGTON COURT OF APPEALS

DIVISION II

CASE NO. 36682-7-II

In re: Estate of Jack Delguzzi	CLALLAM COUNTY SUPERIOR COURT CAUSE NO. 8087
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 Brief on this February 5, 2008 upon the following persons / parties /entities.


Charles M. Cruikshank III WSB 6682

Carl L. Gay 829 E. 8 th Street. #A Port Angeles, WA 98362	G. Michael Zeno 4020 Lake Wash. Blvd.100 Kirkland, WA 98033	Andrew W. Maron 999 Third Avenue. #3000 Seattle, WA 98104
Kathryn A. Ellis 600 Stewart Street. #620 Seattle, WA98101-1261		

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

APPENDICES NOS. 1-9
TO
APPELLANT'S BRIEF

CHARLES CRUIKSHANK

WSB 6682

108 So. Washington St. #306

Seattle, Washington 98104

(206)624-6761

ATTORNEY FOR APPELLANTS

Appendix 1

Not Reported in P.2d, 93 Wash.App. 1048, 1999 WL 10081 (Wash.App. Div. 2)
(Cite as: Not Reported in P.2d)

C

In re Estate of **DelGuzzi**
Wash.App. Div. 2, 1999.

NOTE: UNPUBLISHED OPINION, SEE
RCWA 2.06.040

Court of Appeals of Washington, Division
2.

Jack J. **DELGUZZI**, Deceased, Gary
DelGuzzi and Charles M. **Cruikshank**, III,
Appellants,

v.

William E. **WILBERT**, individually and as
administrator of the Estate of Jack
DelGuzzi; Loretta Dickson Wilbert,
spouse of William E. Wilbert; William E.
Wilbertbroker, Inc., a Washington
corporation; William E. Wilbert, P.S., Inc.,
a Washington corporation, Cedarwood
Properties, Inc., a Washington corporation;
W and S Investments, Inc., a Washington
corporation; Hemisphere, Ltd., a
Washington corporation; 400430 D.C.
Ltd., a British Columbia, Canada
corporation; 413505 T of G Holdings D.C.,
Ltd., a British Columbia, Canada
corporation; William Dickson Wilbert, and
Kathleen Ann Wilbert, husband and wife;
Daniel Gerard Jarboe and Jane Doe Jarboe;
Laure Anne Wilbert and John Doe Wilbert,
husband and wife, Ellen D. Clark and
Davis Wright Tremaine, Allen D. Clark
and Jane Doe Clark; Davies, Wright AMD

Tremaine, a Washington general
partnership; Gary Parish and Susan Parish,
husband and wife, William A. and Michel
Shao Hai Carlsen, husband and wife;
Gerald H. Shaw and Jane Doe Shaw,
husband and wife; Paul R. Cressman and
Short And Cressman, a Washington
general partnership; Wilbert F. Hammond
and Jane Doe Hammond, husband and
wife; Lockwood Foundation; Western
Surety Company, a company licensed to do
business in the State of Washington, John
Doe, I through John Doe XX and Jane Doe
I through Jane Doe XXV; ABC
Corporations I through XX; William W.
Wilbert, Trustee of the Irrevocable Trust of
Gary **DelGuzzi**; William E. Wilbert, as
Trustee of the Trust of Loretta Dickson
Wilbert; Western Surety Company; and
Toth Wilbert & Hannon, an unknown
entity; Sosumi, Inc., a Washington
corporation, respondents.

No. 21752-0-II.

Jan. 8, 1999.

Appeal from Superior Court of Clallam
County, Docket No: 80-8-7. Judgment or
order under review, Date filed: 02/10/97,
Judge signing: Hon. William E. Howard.

Charles M. **Cruikshank** Iii, Attorney At
Law, 108 S Washington St # 306, Seattle,
WA 98104, for appellant(s).

Not Reported in P.2d, 93 Wash.App. 1048, 1999 WL 10081 (Wash.App. Div. 2)
(Cite as: Not Reported in P.2d)

Gary J. DelGuzzi, 1306 Western Avenue # 402, Seattle, WA 98104, pro se.

Larry N. Johnson, , Chicoine & HallettPSWaterfront Plc 1 Ste 803, 1011 Western Ave, Seattle, WA 98104, and G.M. Zeno Jr., Davidson Czeiler eta, 1520 Kirkland Way Ste 400, P.O. Box 817, Kirkland, WA 98083-0817, for respondent(s).

HOUGHTON

*1 Gary DelGuzzi appeals from the trial court's dismissal of his claims against William E. Wilbert, several of Wilbert's adult children, and two corporations wholly owned by the children.^{FN1} Gary DelGuzzi and his attorney, Charles Cruikshank, further appeal the trial court's imposition of fees and sanctions against them. We affirm the trial court's imposition of fees and sanctions regarding claims against the Wilbert children, reverse the trial court's dismissal of claims and imposition of fees and sanctions regarding William E. Wilbert, and remand for further proceedings.

FN1. The Wilbert children are Laure Anne Wilbert, Daniel G. Wilbert, and William D. Wilbert. Their corporations are SoSumi, Inc., and Puget Sound Property Consultants, Inc. We refer to these respondents as the Wilbert children.

FACTS

Jack DelGuzzi died in 1978, appointing his son and sole heir, Gary DelGuzzi (DelGuzzi), as personal representative of his estate. DelGuzzi served as personal representative until August 13, 1982, when he resigned in favor of the current administrator, William E. Wilbert (Wilbert). In 1994, DelGuzzi, through his counsel Charles Cruikshank (Cruikshank), served a complaint on Wilbert.^{FN2} The complaint accused Wilbert, who is a real estate agent and developer, of breach of fiduciary duty, self-dealing, and failure to properly account for estate assets. It requested an accounting and the return of any improper fees, charges, and distributions. DelGuzzi amended his complaint several times.

FN2. The first complaint was never filed.

The second amended complaint, dated September 14, 1994, named additional defendants. The additional defendants included the Wilbert children, who are all licensed real estate agents. All of the Wilbert children performed services for the estate and were compensated by the estate. These services included real property sales, property development, property management, appraisal work, and clerical and administrative services. In addition to cash payments for commissions and fees, at least one of the children was compensated with two parcels of real property of the estate.

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The second amended complaint requested orders voiding transfers of estate assets to Wilbert, his family members, and their related corporate entities, and removing Wilbert as administrator. Wilbert moved to dismiss based upon lack of jurisdiction. The jurisdictional hearing did not occur until almost two years later, and the motion was denied.

DelGuzzi filed another amended complaint on July 16, 1996. It separated plaintiff's claims into two separate petitions. The first petition (removal petition) requested orders removing the administrator, directing him to render an accounting, appointing a successor, and for other related relief under RCW 11.96.020, .070, .080, .140, and 11.68.070. The trial court set an evidentiary hearing on the motion to remove the administrator for January 21, 1997.

The second petition (damages petition) alleged tort claims against the administrator for various breaches of fiduciary duty, violation of a court order requiring reporting and approval of administrative fees, using alter ego corporations to conceal estate transactions, improperly borrowing plaintiff's separate trust fund assets to pay estate liabilities, and failing to close the estate in a timely manner. In his damages petition, **DelGuzzi** requested an order setting a trial date on damages, but no date was ever set.

The Wilbert Children's Motion to Dismiss

*2 On November 15, 1996, the Wilbert children's counsel sent a letter to **Cruikshank** requesting that he drop them from the lawsuit because the complaint failed to state a legally cognizable claim against them. The letter warned that if the claims were not dismissed voluntarily, the Wilbert children would move for dismissal and seek CR 11 sanctions. **Cruikshank** did not respond to the letter. On December 18, 1996, the Wilbert children filed a motion to dismiss and for CR 11 sanctions.

Wilbert's Motion for Sanctions

On November 8, 1996, Wilbert served his first set of interrogatories on **DelGuzzi**. **DelGuzzi's** responses were due on December 9, 1996. CR 33(a). On that day, **Cruikshank** informed Wilbert's counsel that he would serve partial responses the following day and the remainder within a week. The next day, **Cruikshank** served only a list of objections to the interrogatories. The parties met and discussed the objections. Wilbert then filed a motion to compel responses to the interrogatories. **DelGuzzi** filed a motion to extend time to respond.

On December 17, 1996, the parties met and entered into an agreement on several matters: each side would continue its respective motion (to compel discovery and extend time); **DelGuzzi** would

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abandon his motion to compel discovery; FN3 and, **DelGuzzi** would provide full and complete answers to Wilbert's interrogatories by January 2, 1997.

FN3. **DelGuzzi** first served interrogatories and requests for production on September 3, 1996. He moved for an order compelling discovery and for discovery sanctions on November 7, 1996.

On December 30, 1996, **Cruikshank** asked Wilbert's counsel for an extension until January 3, 1997 to provide the responses. Wilbert's counsel agreed, and **Cruikshank** timely served the responses. The responses were 36 pages of objections and answers. A response to each of defendant's 85 interrogatories was provided, but many of the answers were vague or did not provide the specific information requested. Many of the responses stated that specific information could not be provided because of Wilbert's failure to provide discovery to **DelGuzzi**.

On January 13, 1997, Wilbert filed a motion for sanctions under CR 37(d) for evasive and misleading discovery. Wilbert also requested CR 11 sanctions, claiming that **DelGuzzi's** interrogatory responses showed his complaint was not well grounded in fact when filed. The motion stated that a hearing was set for January 21, 1997 on **DelGuzzi's** claims. It did not distinguish between the removal petition, set for hearing on January 21, and the

damages petition, for which no trial date had been set.

On January 15, 1997, **DelGuzzi** moved to compel discovery. He claimed that Wilbert had failed to properly respond to interrogatories and had denied that business records existed for many of the estate's corporate interests. He further claimed that Wilbert had repeatedly failed to produce source documents for his estate reports and accountings, such as bank statements, check registers, deposit books, and cash journals. **DelGuzzi's** motion to compel was noted for hearing on January 17, 1997, the same day that Wilbert's and the Wilbert children's motions for sanctions were to be heard. Because of its disposition of the defendants' motions, the trial court did not rule on **DelGuzzi's** motion to compel.

Trial Court Rulings

*3 At the January 17, 1997 hearing, the trial court granted the Wilbert children's motion, dismissing them from the lawsuit and awarding them fees and costs of \$10,174.45 under CR 11. The monetary sanction was assessed solely against **Cruikshank**. The trial court dismissed the claims both on the pleadings, under CR 12(c) and 9(b), and on summary judgment, under CR 56.

The trial court also granted Wilbert's motion and dismissed all of **DelGuzzi's**

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claims against Wilbert as a sanction under CR 37(d) and CR37(b)(2)(C). The trial court found that Wilbert incurred a total of \$183,867.53 in expenses in defending the action and ordered a \$30,000 sanction for violations of CR 37(d) and CR 11. The trial court assessed the monetary sanction against both DelGuzzi and Cruikshank.

Both Cruikshank and DelGuzzi appeal.

ANALYSIS

Dismissal of Claims Against the Wilbert Children and Award of CR 11 Sanctions

Cruikshank does not challenge the trial court's dismissal of the claims against the Wilbert children, but he argues that the sanctions imposed were improper and unreasonable. He argues that because the allegations against the Wilbert children were only legally insufficient but not factually inaccurate, CR 11 sanctions were improper. He also claims that the trial court erred in dismissing the claims and imposing sanctions before affording DelGuzzi full discovery. Finally, he claims that the amount of the sanction was unreasonable.

A court's imposition of CR 11 sanctions is reviewed for abuse of

discretion. *Biggs v. Vail*, 124 Wash.2d 193, 197, 876 P.2d 448 (1994) (citing *Washington State Physicians Ins. Exch. & Ass'n v. Fisons Corp.*, 122 Wash.2d 299, 338-39, 858 P.2d 1054 (1993)). A trial court abuses its discretion when its order is manifestly unreasonable or based upon untenable grounds. *Fisons*, 122 Wash.2d at 339, 858 P.2d 1054.

CR 11 requires that pleadings signed by an attorney be well grounded in fact, warranted by law, and based upon reasonable inquiry. Before imposing sanctions, the trial court must find both that a complaint lacks a factual or legal basis and that the attorney who signed and filed the complaint failed to conduct a reasonable inquiry into its factual and legal basis. *Bryant v. Joseph Tree, Inc.*, 119 Wash.2d 210, 220, 829 P.2d 1099 (1992). The reasonableness of an attorney's inquiry is evaluated by an objective standard. *Bryant*, 119 Wash.2d at 220, 829 P.2d 1099 (citing *Miller v. Badgley*, 51 Wash.App. 285, 299-300, 753 P.2d 530, review denied, 111 Wn.2d 1007 (1998)). The court should inquire whether a reasonable attorney in like circumstances could believe his or her actions to be factually and legally justified, considering such factors as the time available to the attorney, the complexity of the factual and legal issues, and the need for discovery to develop factual circumstances underlying a claim. *Bryant*, 119 Wn.2d at 220-21.

*4 Here, Cruikshank had ample time to determine whether claims against the

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Wilbert children were appropriate: the complaint was first filed in February 1994, and the Wilbert children were not named as defendants until September 1994. Information about the work they did for the estate was provided to DelGuzzi in December 1994, almost two years before they asked to be voluntarily dropped from the lawsuit.

Although Cruikshank asserts that he needed additional discovery to substantiate his claims, he never presented a cognizable legal theory under which the Wilbert children could be liable to DelGuzzi. They had no fiduciary duty to DelGuzzi and therefore could not be liable for "selfdealing," as DelGuzzi's complaint alleged. And if DelGuzzi were bringing a fraudulent transfer claim, he failed to do so with the particularity required by CR 9(b), that is, he failed to specifically identify a single parcel of real property as having been fraudulently transferred and presented no evidence suggesting the Wilbert children intentionally participated in a scheme to defraud DelGuzzi. See RCW 19.40 et seq. (outlining fraudulent transfer claims); *Park Hill Corp. v. Don Sharp, Inc.*, 60 Wash.App. 283, 287-88, 803 P.2d 326 (fraudulent transfer claim requires intent to defraud), review denied, 117 Wash.2d 1005, 815 P.2d 265 (1991); *Deyong Management, Ltd. v. Previs*, 47 Wash.App. 341, 346-47, 735 P.2d 79 (1987). Under these circumstances, a reasonable attorney would not have been justified in naming the Wilbert children defendants.

As required before imposing sanctions, the trial court specifically found that DelGuzzi's complaint against the Wilbert children was legally and factually insufficient and made without reasonable inquiry. Cruikshank's argument that sanctions are not appropriate where a claim is not factually inaccurate but is merely legally insufficient is contradicted by the plain text of CR 11.^{FN4} His contention that he should have been permitted additional discovery before sanctions were imposed fails precisely because the insufficiency of his pleading is legal rather than factual. Cruikshank's purpose of naming the Wilbert children to acquire jurisdiction over estate property they may have improperly received is not legally cognizable. The trial court did not abuse its discretion in finding that Cruikshank both failed to conduct a reasonable investigation and made legally and factually insufficient claims.

FN4. "The signature [on a pleading] of a party or of an attorney constitutes a certificate by the party or attorney that ... to the best of the party's or attorney's knowledge, information, and belief ... it is well grounded in fact and is warranted by existing law...." CR 11.

If CR 11 is violated, a court may impose sanctions, including the reasonable expenses incurred by the other party as a result of offending pleading. CR 11. Fees granted under CR 11 must be limited to

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those amounts reasonably expended in responding to the sanctionable filing. *MacDonald v. Korum Ford*, 80 Wash.App. 877, 892, 912 P.2d 1052 (1996). Here, the sanctionable conduct was naming the Wilbert children as defendants without investigating whether there was a legal basis for doing so. **Cruikshank** offers no arguments in support of his assertion that \$10,174.45 is not reasonable. Therefore the trial court did not abuse its discretion in imposing the entire amount of fees incurred by the Wilbert children as a sanction.

Dismissal of Claims Against Wilbert and Award of CR 11 Sanctions

1. Dismissal as a Discovery Sanction

*5 **Cruikshank** next contends that the trial court erred in dismissing **DelGuzzi's** claims as a discovery sanction under CR 37(d). He asserts that the trial court's decision was improper because it was based upon factual errors, because the trial court failed to find prejudice and willfulness, and because no prior discovery order had been entered. Discovery sanctions under CR 37, like sanctions under CR 11, are reviewed for abuse of discretion. *Rhinehart v. Seattle Times*, 59 Wash.App. 332, 339, 798 P.2d 1155 (1990), review denied, 124 Wash.2d 1010, 879 P.2d 293, cert. denied, 513 U.S. 1017, 115

S.Ct. 578, 130 L.Ed.2d 494 (1994). Because dismissal is the most severe sanction a court may impose, its use must be carefully considered by the trial court to assure that it is merited. *Anderson v. Mohundro*, 24 Wash.App. 569, 575, 604 P.2d 181 (1979), review denied, 93 Wn.2d 1013 (1980).

a. Factual Errors

Cruikshank asserts that the trial court was mistaken as to two important factual issues when it ordered dismissal of **DelGuzzi's** claims:

(1) the court believed that the January 21, 1997 evidentiary hearing encompassed both the removal petition and the damages petition; and (2) the court was given the wrong document to review as **DelGuzzi's** responses to Wilbert's interrogatories.

DelGuzzi's removal petition was based upon RCW 11.96.020, .070, .080, .140, and 11.68.070. Those provisions permit interested persons to petition for a declaration of rights, including orders that the personal representative do or abstain from doing any particular fiduciary act. RCW 11.96.070(b), .080. An interested party may also petition for removal of the personal representative. RCW 11.68.070. Grounds for removal include waste, embezzlement, mismanagement, fraud, incompetence, neglect, or other reasons deemed sufficient by the court. RCW

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11.28.250. The court has discretion to order removal of the personal representative if "it appears that said personal representative has not faithfully discharged said trust or is subject to removal for any reason specified in RCW 11.28.250."RCW 11.68.070.

Neither party addresses what level of proof was required at the removal hearing and whether the amount and type of proof would substantially differ from that presented at the hearing on the damages petition.^{FN5} All of Wilbert's interrogatories specifically referred to the allegations contained in the damages petition. The trial court appears to have been unclear as to the scope of the January 21st hearing ^{FN6} and never clearly expressed its position as to which claims that hearing was to encompass.^{FN7}

FN5. Wilbert assumes that all of the allegations made in the petition for damages would also have been presented at the removal hearing.

FN6. At the hearing, **Cruikshank** specifically informed the court that the motion to remove Wilbert was scheduled for the next court date, but no hearing had yet been set for the petition for damages. The court then asked the other two attorneys what they thought was to occur on January 21st:

THE COURT: What do you think is scheduled to happen on Tuesday?

MR. ZENO: My own understanding is that, and I'm not the best one to tell you because I didn't appear in this case until the fall, but my understanding is that there's a hearing on the plaintiff's motion to remove the personal representative....

THE COURT: ... I heard Mr. **Cruikshank** say that there was not going to be a trial on Tuesday. That there was only his motion to remove the personal representative and trial would come at a subsequent time. And so I need to know what your position is on that.

MR. JOHNSON: My understanding from your order, your Honor, is that you have set a hearing and an evidentiary hearing of Mr. **Cruikshank** to carry his burden to establish the allegations in his petition to justify removal of Mr. Wilbert as administrator are [sic] established and to give Mr. Wilbert the opportunity to defend against those allegations.

... All of [the allegations] are directed towards supposed bad acts or acts of Mr. Wilbert as administrator and that I assume he is attempting to utilize those to justify removal of Mr. Wilbert.

FN7. The court stated:

Now, I understand contrary to what Mr. **Cruikshank** has just argued that on Monday we are going to have or Tuesday we have scheduled a trial. The trial is on the petition of Mr. **DelGuzzi** ... to have the personal representative of the estate removed. In doing that, the plaintiff has a fairly heavy burden [T]he plaintiff can't simply make the 56 factual

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allegations ... and stand on those facts and not tell the defendants the basis for those facts.

Although the court appears to contemplate a hearing on the removal petition, the 56 factual allegations were contained in the damages petition.

Also the trial court was given the wrong document to review as **DelGuzzi's** answers to Wilbert's interrogatories. Wilbert accurately quoted several interrogatories and **DelGuzzi's** responses in his memorandum supporting the motion, but he stated that **DelGuzzi's** responses were attached as exhibit H. Exhibit H was not **DelGuzzi's** 36 pages of objections and responses dated January 3, 1997, but consisted of **DelGuzzi's** four pages of objections and responses to defendant's first request for production of documents, also dated January 3, 1997.^{FN8}

FN8. At oral argument, Wilbert acknowledged that the wrong responses were attached to the motion for sanctions, but claimed that the correct responses were attached to **DelGuzzi's** motion for reconsideration. The motion for reconsideration was not included in the appellate record. But our analysis would not change even if the trial court had reviewed the correct document.

*6 It appears that the trial court was mistaken, or at best unclear, as to the two

factual issues **Cruikshank** raised. This confusion in the record leads us to hold that the trial court failed to exercise its discretion on reasonable grounds.

b. Due Process

The choice of what sanctions to impose for a discovery violation is within the trial court's discretion. *Peterson v. Cuff*, 72 Wash.App. 596, 601, 865 P.2d 555 (1994) (citing *Rhinehart v. KIRO, Inc.*, 44 Wash.App. 707, 710, 723 P.2d 22 (1986), review denied, 108 Wn.2d 1008 (1987)). Constitutional due process, however, limits the circumstances under which a court can dismiss a plaintiff's claims as a discovery sanction. *Associated Mortgage Investors v. G.P. Kent Constr. Co.*, 15 Wash.App. 223, 227, 548 P.2d 558 (citing *Pioche Mines Consol., Inc. v. Dolman*, 333 F.2d 257 (9th Cir.1964), cert. denied, 380 U.S. 956 (1965)), review denied, 87 Wn.2d 1006 (1976).

Due process requires that a trial court find "a willful or deliberate refusal to obey a discovery order, which refusal substantially prejudices the opponent's ability to prepare for trial" before dismissing an action. *Peterson*, 72 Wash.App. at 601-02, 865 P.2d 555 (quoting *Associated Mortgage Investors*, 15 Wash.App. at 228-29, 548 P.2d 558). The trial court must make it clear on the record whether the factors of willfulness and prejudice are present before dismissing

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plaintiff's claims. *Peterson*, 72 Wash.App. at 559, 864 P.2d 384 (citing *Snedigar v. Hoddersen*, 114 Wash.2d 153, 170, 786 P.2d 781 (1990)). The court must also consider whether lesser sanctions would suffice. *RCL Northwest, Inc. v. Colorado Resources, Inc.*, 72 Wash.App. 265, 271-72, 864 P.2d 12 (1993) (quoting *Snedigar*, 114 Wash.2d at 169-70, 786 P.2d 781).

Here, the trial court considered the issue of prejudice, although without making an express finding on the record. The court noted that trial was set for the next business day, discovery had not been complied with, and **DelGuzzi** had not sought a protective order or a continuance. But the trial court did not consider willfulness. Nonetheless, a violation is willful and deliberate if it is done without reasonable excuse. *RCL Northwest*, 72 Wash.App. at 272, 864 P.2d 12 (citing *Rhinehart*, 59 Wash.App. at 339, 798 P.2d 1155). **Cruikshank** presented several excuses: he had been unable to supply complete answers because Wilbert, who had all of the estate's accounting records, failed to comply with discovery.^{FN9} He was also disadvantaged in discovery because his client was very ill and suffered from memory problems.^{FN10} He had only a few months to pursue discovery, not a few years, as defendants alleged.^{FN11}

FN9. Wilbert claims to have completely answered these interrogatories and made available

all of the estate documents for inspection. The court never considered **DelGuzzi's** motion to compel or made any findings regarding Wilbert's discovery compliance.

FN10. **DelGuzzi's** illness requires him to take up to 16 different medications daily, including tranquilizers. He suffers from confusion, memory loss, disorganization, and decreased comprehension and concentration. These problems were apparent during his deposition.

FN11. **Cruikshank** asserts that defendants had delayed the hearing on their jurisdictional motion for almost two years, until September of 1996. **Cruikshank** did not pursue discovery until after that motion was denied.

*7 The trial court noted that having an ill client must have impeded **Cruikshank's** ability to handle the case, but it did not consider the reasonableness of **Cruikshank's** other excuses. The court summarily stated that **Cruikshank** had failed to comply with his obligation under the court rules, without discussing or inquiring into the reasons for the failure. Because the trial court failed to consider the reasonableness of **Cruikshank's** excuses and the willfulness of his conduct, the trial court failed to comply with due process requirements.

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The trial court also failed to adequately consider whether a sanction short of dismissal would have sufficed. See *Peterson*, 72 Wash.App. at 601, 865 P.2d 555 (citing *Snedigar*, 114 Wash.2d at 170, 786 P.2d 781). The trial court discussed only two options: Dismiss the action, one, or try to put the burden on the trial judge on Tuesday of identifying what information plaintiffs could present that was not included in the failure to respond. I think those interrogatories pretty much cover every single thing that the plaintiffs could produce at any trial. For that reason, I'm going to grant the request to dismiss.

As discussed above, the trial court apparently believed that all of **DelGuzzi's** claims were set for hearing on January 21st (both the removal petition and the damages petition). The trial court erred in dismissing the claims that were not set for trial, as defendants were not yet substantially prejudiced in their trial preparation. As a lesser sanction, the trial court could have precluded evidence for which responses were inadequate at the removal hearing and ordered responses by a reasonable date before the trial on the damages petition. Because the trial court apparently considered lesser sanctions based upon its belief that all of plaintiff's claims were set for hearing on January 21st, its ruling was based upon untenable grounds.

Moreover, although our courts have not addressed this issue, courts in other jurisdictions have held that dismissal is not

warranted absent a finding of willfulness or fault on the part of the party itself rather than the party's attorney. See, e.g., *Birds Int'l Corp. v. Arizona Maintenance Co.*, 135 Ariz. 545, 662 P.2d 1052, 1054-55 (1983); *Cole v. Bayley Prods., Inc.*, 661 So.2d 1299, 1299-1300 (Fla.App.1995); *LeBlanc v. GMAC Fin. Servs.*, 695 So.2d 1106, 1108 (La.App.1997); *Nevada Power Co. v. Fluor Illinois*, 108 Nev. 638, 837 P.2d 1354, 1359 (1992); *Zaccardi v. Becker*, 88 N.J. 245, 88 N.J. 245, 440 A.2d 1329, 1332-33 (1982); *In re Barnes*, 956 S.W.2d 746, 748 (Tex.App.1997). Here, the trial court expressly stated that **DelGuzzi** was not at fault and may have had valid claims.^{FN12} Under these circumstances, absent a finding of willfulness on **Cruikshank's** part and because lesser sanctions were not properly considered, dismissal of **DelGuzzi's** claims was an abuse of discretion.

FN12. The court stated to **Cruikshank**: I think that your client may have some ... valid concerns, and those concerns should be brought to the court's attention so that a decision can be made about whether the personal representative can be removed. And should be removed. But you, Mr. **Cruikshank**, have not complied with the court rules.

....
 ... That's your problem. It's not your client's problem.

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2. CR 11 Sanctions

*8 In addition to dismissing **DelGuzzi's** claims as a discovery sanction, the trial court imposed attorney fees and costs against **Cruikshank** and **DelGuzzi** under CR 37(d) and CR 11. The trial court imposed a total of \$30,000, a portion of Wilbert's attorney fees and costs in defending the entire action. **Cruikshank** argues that the CR 11 sanctions were inappropriate and the \$30,000 figure was not reasonable. Because the sanctions imposed were a substantial amount of money, appellate review of the award should be inherently more rigorous to ensure that such sanctions are quantifiable with some precision. *MacDonald*, 80 Wash.App. at 892, 912 P.2d 1052 (citing *Thomas v. Capital Sec. Servs., Inc.*, 836 F.2d 866, 883 (5th Cir. 1988)).

CR 11 permits the court to order an attorney or party ^{FN13} to pay the other party's reasonable expenses incurred because of a filing deemed to violate CR 11. Here, the trial court based the sanctions upon both CR 11 and CR 37(d), without finding a specific violation of CR 11. The court merely stated: "I think it's appropriate to grant sanctions because this hearing wouldn't be required except for the fact that there was failure to comply."

FN13. **DelGuzzi** argues that the CR 11 sanctions against him are in error because sanctions against a party are only available under

RCW 4.84.185. He cites *Havsy v. Flynn*, 88 Wash.App. 514, 945 P.2d 221 (1997), where the court stated: "Sanctions against an attorney are awarded under CR 11. Sanctions against a party are awarded under RCW 4.84.185." *Havsy*, 88 Wn.App. at 521. *Havsy*, however, did not involve CR 11 sanctions. CR 11 clearly permits sanctions against "the person who signed [the offending pleading], a represented party, or both." CR 11; see also *Blair v. GIM Corp.*, 88 Wash.App. 475, 481-82, 945 P.2d 1149 (1997); *Rhinehart v. Seattle Times Co.*, 51 Wash.App. 561, 581, 754 P.2d 1243 (citing *Wilson v. Henkle*, 45 Wash.App. 162, 174, 724 P.2d 1069 (1986)), review denied, 111 Wn.2d 1025 (1988), cert. denied, 490 U.S. 1015 (1989).

As discussed, before imposing CR 11 sanctions, the trial court must find both that a complaint lacks a factual or legal basis and that the attorney who signed and filed the complaint failed to conduct a reasonable inquiry into its factual and legal basis. *Bryant*, 119 Wash.2d at 220, 829 P.2d 1099. Also, the trial court must specify in the record the specific pleading that violates CR 11. *MacDonald*, 80 Wash.App. at 892, 912 P.2d 1052. Because the trial court neither identified a specific pleading nor examined its factual basis, CR 11 sanctions were not appropriate.

Monetary sanctions were, however,

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permissible under CR 37(d). That rule allows the court to impose the reasonable expenses caused by a party's failure to respond to discovery as a sanction, in addition to any other sanctions imposed. On remand, the trial court may impose as a discovery sanction Wilbert's reasonable expenses incurred as a result of **DelGuzzi's** failure to comply with discovery.

3. Sanctions Against **Cruikshank**

Cruikshank further contends that the trial court violated CR 54(f)(2)(B) and improperly imposed sanctions against him that were initially imposed only against **DelGuzzi**.

CR 54(f)(2)(b) requires that counsel be given five days' notice of presentation and served with a copy of any order or judgment prior to its entry. **Cruikshank** asserts that the trial court's order of January 17, 1997 granting Wilbert's motion was signed by the judge in his absence after the proceedings. He therefore claims that Wilbert's counsel had an improper ex parte contact with the trial court.

Wilbert counters that he served a copy of all orders on **Cruikshank** at least five days before the orders were entered. **Cruikshank's** assertion that the order was signed in his absence is not itself a violation of CR 54(f)(2), which merely requires that the parties be given five days' notice and served with a copy of the order.

*9 The January 17, 1997 order granting Wilbert's motion ordered attorney fees as a sanction against "Plaintiff Gary **DelGuzzi**." The order was signed by the judge and Wilbert's counsel. The later order and judgment, dated April 8, 1997, imposed the sanction against both **Cruikshank** and **DelGuzzi**. The April 8th order stated that both counsel had participated in a teleconference hearing that set the sanction amount. In the April 8th order, the trial court found that judgment against both **DelGuzzi** and **Cruikshank** was appropriate.

These facts do not demonstrate a violation of CR 54(f)(2), or that adding **Cruikshank** to the judgment was improper. **Cruikshank** cites *Havsy v. Flynn*, 88 Wash.App. 514, 945 P.2d 221 (1997), arguing that the court may not include counsel for a party in a sanctions order when counsel was not named in the original order. The *Havsy* case, however, does not discuss sanctions against an attorney but only considers when RCW 4.84.185 sanctions are proper against a party. *Havsy*, 88 Wash.App. at 521, 945 P.2d 221. Because **Cruikshank** fails to provide either authority or a factual basis to support his claims under CR 54(f)(2), his argument fails.

Fiduciary Conflict of Interest re Judgment in Favor of Wilbert

DelGuzzi, appealing pro se, contends it

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is an impermissible conflict of interest for Wilbert, as administrator, to pursue a judgment in an estate proceeding against the sole heir, and that it is improper for Wilbert to levy DelGuzzi's property to satisfy the judgment because Wilbert learned the location of DelGuzzi's property through his fiduciary relationship.

Although DelGuzzi is correct that a fiduciary has a duty to avoid conflicts of interest, it does not follow that Wilbert has violated that duty by defending his actions as administrator and seeking sanctions where appropriate. DelGuzzi's assertion that an administrator who breaches his fiduciary duty is not entitled to fees is likewise correct, but here no breach of fiduciary duty was ever proved. DelGuzzi's conflict of interest claims are otherwise unsupported and therefore fail.

In sum, the trial court did not abuse its discretion in awarding CR 11 sanctions to the Wilbert children. But the trial court abused its discretion in dismissing DelGuzzi's claims against Wilbert as a discovery sanction, and that dismissal is reversed. The \$30,000 sanction imposed under CR 11 and CR 37(d), following Wilbert's motion, was also an abuse of discretion. On remand, the trial court may impose, as a sanction under CR 37(d), the amount reasonably incurred by Wilbert as a result of DelGuzzi's failure to properly respond to discovery.

Affirmed in part, reversed in part and remanded for further proceedings.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

MORGAN and SEINFELD, JJ., concur.
Wash.App. Div. 2, 1999.
In re Estate of DelGuzzi
Not Reported in P.2d, 93 Wash.App. 1048,
1999 WL 10081 (Wash.App. Div. 2)

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OPO 2
Aug 31, 2001

LEXSEE 2001 WASH. APP. LEXIS 2024

In re the Estate of JACK J. DELGUZZI, Deceased. GARY DELGUZZI and CHARLES M. CRUIKSHANK, III, Appellants, v. WILLIAM E. WILBERT, individually and as administrator of the Estate of Jack DelGuzzi; LORETTA DICKSON WILBERT, spouse of William E. Wilbert; WILLIAM E. WILBERT-BROKER, INC., a Washington corporation; WILLIAM E. WILBERT, P.S., INC., a Washington corporation, CEDARWOOD PROPERTIES, INC., a Washington corporation; W and S INVESTMENTS, INC., a Washington corporation; HEMISPHERE, LTD., a Washington corporation; 400430 D.C. LTD., a British Columbia, Canada corporation; 413505 T of G Holdings D.C., LTD., a British Columbia, Canada corporation; WILLIAM DICKSON WILBERT, and KATHLEEN ANN WILBERT, husband and wife; DANIEL GERARD JARBOE and JANE DOE JARBOE; LAURE ANNE WILBERT and JOHN DOE WILBERT, husband and wife, ELLEN D. CLARK and DAVIS WRIGHT TREMAINE, ALLEN D. CLARK and JANE DOE CLARK; DAVIES, WRIGHT AND TREMAINE, a Washington general partnership; GARY PARISH and SUSAN PARISH, husband and wife, WILLIAM A. and MICHEL SHAO HAI CARLSEN, husband and wife; GERALD H. SHAW and JANE DOE SHAW, husband and wife; PAUL R. CRESSMAN and SHORT AND CRESSMAN, a Washington general partnership; WILBERT F. HAMMOND and JANE DOE HAMMOND, husband and wife; LOCKWOOD FOUNDATION; WESTERN SURETY COMPANY, a company licensed to do business in the State of Washington, JOHN DOE, I through JOHN DOE XX and JANE DOE I through JANE DOE XXV; ABC CORPORATIONS I through XX; WILLIAM W. WILBERT, Trustee of the Irrevocable Trust of Gary DelGuzzi; WILLIAM E. WILBERT, as Trustee of the Trust of Loretta Dickson Wilbert; WESTERN SURETY COMPANY; and TOTH WILBERT & HANNON, an unknown entity; SOSUMI, INC., a Washington corporation, Respondents.

No. 24860-3-II

COURT OF APPEALS OF WASHINGTON, DIVISION TWO

2001 Wash. App. LEXIS 2024

August 31, 2001, Filed

NOTICE: [*1] RULES OF THE WASHINGTON COURT OF APPEALS MAY LIMIT CITATION TO UNPUBLISHED OPINIONS. PLEASE REFER TO THE WASHINGTON RULES OF COURT.

SUBSEQUENT HISTORY: Petition for Review Denied September 4, 2002, Reported at: 2002 Wash. LEXIS 572.

PRIOR HISTORY: Appeal from Superior Court of Clallam County. Docket No: 80. Date filed: 06/18/1999. Judge signing: Hon. William E. Howard.

DISPOSITION: Reversed.

CASE SUMMARY:

PROCEDURAL POSTURE: In this case involving defendant administrator's alleged breach of his fiduciary duty, the Superior Court of Clallam County (Washington) dismissed plaintiff heir's petitions for removal of the administrator and re-imposed discovery sanctions on remand from a previous appeal. The heir appealed.

OVERVIEW: Following the imposition of discovery sanctions against the heir, the case was remanded for evaluation of the heir's discovery objections and responses. The heir's claim was then dismissed after the trial court determined that the heir had adequate

2001 Wash. App. LEXIS 2024, *

opportunity to raise his claims during a final accounting hearing. The reinstatement of the monetary discovery sanctions ignored the appellate court's concerns about factual errors and circumvention of due process. The trial court did not consider lesser sanctions short of dismissing the action. The doctrines of res judicata and collateral estoppel did not apply, and the trial court abused its discretion by failing to address the due process concerns. The accounting hearing focused on the administrator's petition for approval of his fees, but it did not resolve the heir's tort claims and related issues. Both dismissal of the wrongful estate administration action and reimposition of discovery sanctions were error.

OUTCOME: The trial court's reimposition of monetary sanctions was reversed, and the heir's action was reinstated.

LexisNexis(R) Headnotes

Civil Procedure > Sanctions > Discovery Misconduct

[HN1] A trial court has broad discretion to impose sanctions for a party's failure to comply with discovery. The appellate court reviews discovery sanctions for abuse of discretion.

Civil Procedure > Appeals > Standards of Review > Abuse of Discretion

[HN2] A trial court abuses its discretion when its order is manifestly unreasonable or exercised on untenable grounds.

Civil Procedure > Sanctions > Discovery Misconduct

[HN3] Although the plain language of Wash. Super. Ct. Civ. R. 37(a) references an order compelling discovery, a motion to compel compliance with the rules is not a prerequisite to a sanctions motion.

Civil Procedure > Sanctions > Discovery Misconduct

[HN4] Although prejudice is a prerequisite to dismissal as a discovery sanction, it is not a prerequisite to imposition of fees as a discovery sanction.

Civil Procedure > Sanctions > Discovery Misconduct

[HN5] The requirements that there be a finding of willfulness and prejudice, that the trial court consider lesser sanctions, and that the trial court consider the party's reasonable excuses apply only as to whether dismissal of a claim is an appropriate discovery sanction. The case law does not similarly apply these requirements to the appropriateness of monetary discovery sanctions.

Civil Procedure > Costs & Attorney Fees > Judgment Interest

[HN6] Where the appellate court on remand leaves the trial court with a mere mathematical problem, interest

runs from the date of the original judgment.

Civil Procedure > Costs & Attorney Fees > Judgment Interest

[HN7] Judgments generally shall bear interest from the date of entry thereof. In any case where a court is directed on review to enter judgment on a verdict or in any case where a judgment entered on a verdict is wholly or partly affirmed on review, interest on the judgment or on that portion affirmed shall date back to and shall accrue from the date the verdict was rendered. *Wash. Rev. Code § 4.56.110.*

Civil Procedure > Preclusion & Effect of Judgments > Res Judicata

Civil Procedure > Preclusion & Effect of Judgments > Collateral Estoppel

[HN8] Res judicata and collateral estoppel are issues of law, which are reviewed de novo.

Civil Procedure > Preclusion & Effect of Judgments

[HN9] It is appropriate to consider a previous unpublished decision in examining the issues of law of the case, res judicata, or collateral estoppel.

Civil Procedure > Preclusion & Effect of Judgments > Res Judicata

[HN10] Wash. Super. Ct. Civ. R. 8(c) requires a party affirmatively to plead res judicata.

Civil Procedure > Preclusion & Effect of Judgments > Res Judicata

[HN11] Res judicata as claim preclusion encompasses the idea that when the parties to two successive proceedings are the same, and the prior proceeding culminated in a final judgment, a matter may not be relitigated, or even litigated for the first time, if it could have been raised, and in the exercise of reasonable diligence should have been raised, in the prior proceeding.

Civil Procedure > Preclusion & Effect of Judgments > Res Judicata

[HN12] In general, one cannot say that a matter should have been litigated earlier if, for some reason, it could not have been litigated earlier; thus, res judicata will not operate if evidence needed to establish a necessary fact would not have been admissible in the prior proceeding. Similarly, one cannot say that a matter should have been litigated earlier if, even though it could have been litigated earlier, there were valid reasons for not asserting it earlier.

Civil Procedure > Preclusion & Effect of Judgments > Collateral Estoppel

[HN13] The doctrine of collateral estoppel, also called issue preclusion, prevents relitigation of an issue by a

party against whom the bar is sought if that party had a full and fair opportunity to litigate that issue in a prior proceeding. The party asserting collateral estoppel bears the burden of proof.

Civil Procedure > Preclusion & Effect of Judgments > Collateral Estoppel

[HN14] The party asserting collateral estoppel must prove four elements: (1) The issue decided in the prior adjudication was identical with the one presented in the second; (2) the prior adjudication ended in a final judgment on the merits; (3) the party against whom the doctrine is asserted was a party or in privity with a party to the prior action; and (4) application of the doctrine will not work an injustice on the party against whom it is to apply. All four elements must be satisfied in order for collateral estoppel to apply.

Civil Procedure > Preclusion & Effect of Judgments > Law of the Case Doctrine

[HN15] Wash. R. App. P. 2.5(c)(2) restricts the law of the case doctrine and allows the appellate court to review the propriety of an earlier decision in the same case and, where justice requires, decide the case on the basis of its opinion of the law at the time of the later review.

Civil Procedure > Preclusion & Effect of Judgments > Law of the Case Doctrine

[HN16] Wash. R. App. P. 2.5(c)(2) requires that justice be done.

COUNSEL: For Appellant(s): Charles M. Cruikshank III, Attorney At Law, Seattle, WA.

For Respondent(s): Larry N. Johnson, Attorney At Law, Seattle, WA.

JUDGES: Authored by J. Robin Hunt. Concurring: David H. Armstrong, Quinn-Brintnall, J.

OPINIONBY: J. Robin Hunt

OPINION: HUNT, J. -- Gary DelGuzzi appeals (1) dismissal of his petitions for removal of his father's estate administrator, William Wilbert, and for damages; and (2) reimposition of discovery sanctions on remand from a previous appeal. As to the first claim, he argues that the trial court erred in dismissing on grounds of res judicata, collateral estoppel, and the law of the case doctrine. As to the second claim, he argues that the trial court failed to follow our remand instructions. We agree on both claims. The record does not show that the trial court evaluated DelGuzzi's discovery objections and responses to determine (1) whether he failed to comply with Wilbert's [*2] discovery requests; and (2) what reasonable expenses Wilbert incurred, if any, as a result of any failure to comply. Accordingly, we reverse the trial

court's reimposition of monetary sanctions, and we reinstate DelGuzzi's action.

FACTS

I. THE FIRST APPEAL

A. PRECIPITATING EVENTS

Jack DelGuzzi died in 1978, leaving his son and sole heir, Gary DelGuzzi (DelGuzzi) as personal representative of his estate. DelGuzzi served as representative until August 13, 1982, when he resigned in favor of the current Administrator, William Wilbert.

Under Wilbert's administration, DelGuzzi has received no distributions from the multi-million dollar estate. Wilbert, however, has billed the estate for 125% of its net value; of this billed amount, he has been paid fees and costs totaling about 90% of the net estate. Moreover, 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 still remains open.

In July 1996, DelGuzzi filed an amended complaint, (1) requesting removal of Wilbert as Administrator, requiring an accounting, appointing a successor, [*3] and granting other relief; and (2) alleging that Wilbert caused tort damages by breaching his fiduciary duty as Administrator, violating a court order requiring reporting and fee approval, using alter-ego corporations to conceal estate transactions, improperly using DelGuzzi's trust fund to pay estate debts, and failing to close the estate in a timely fashion. In October 1996, Wilbert filed his answer to DelGuzzi's petitions, adding affirmative allegations and defenses, including estoppel a day later.

The court set an evidentiary hearing on the removal petition for January 21-22, 1997. n1 During fall 1996, the parties served interrogatories and requests for production on each other. DelGuzzi responded to Wilbert's interrogatories with a four-page list of objections. n2 Wilbert filed a motion to compel responses to his interrogatories. DelGuzzi submitted 36 pages of answers and objections, providing some response to all 85 of Wilbert's interrogatories; many of DelGuzzi's responses did not provide the requested information. DelGuzzi asserted that he could not produce all requested information and documents because Wilbert had the information and Wilbert had failed to provide requested [*4] discovery to DelGuzzi.

n1 Wilbert later moved for a hearing on his Final Report and Petition for Decree of Distribution After Order of Solvency, Inventory

of Appraisalment of the assets of the Estate, and Comprehensive Accounting of the Estate. The court entered a stipulated order setting this hearing for the same dates as the previously set hearing on the removal petition.

n2 It was this document -- not the subsequent 36-page document of answers and objections -- that Wilbert submitted to the trial court to support his original motion to dismiss DelGuzzi's claims as a discovery sanctions.

Wilbert moved for sanctions under CR 11 n3 and CR 37(d), alleging that DelGuzzi had provided evasive and misleading discovery. DelGuzzi moved to compel discovery, claiming that Wilbert had failed to respond to interrogatories, had denied the existence of business records for many of the estate's corporate assets, and had failed to produce source documents (such as bank statements, check registers, deposit books, and cash [*5] journals) for estate reports and accountings. The hearing for both motions was set for January 17.

n3 Wilbert also sought CR 11 sanctions. The CR 11 issue was decided in the previous appeal and is not before the court in this case.

At the January 17 hearing, the superior court n4 granted Wilbert's motion for discovery sanctions against both DelGuzzi and his lawyer, Charles Cruikshank. The court ruled that DelGuzzi's interrogatory answers were evasive, n5 ordered DelGuzzi to pay \$ 30,000 in attorney fees and costs to Wilbert, n6 and dismissed DelGuzzi's claim under CR 37(d). The superior court so ruled based on DelGuzzi's initial four-page objection to Wilbert's interrogatories, which Wilbert had included with his motion for sanctions. The superior court did not consider DelGuzzi's subsequent 36 pages of answers and objections. Nor did the court consider or rule on DelGuzzi's motion to compel discovery.

n4 Judge William Howard. [*6]

n5 As we noted in the first appeal, Wilbert gave the trial the trial court the wrong set of responses to his interrogatories in "exhibit H" attached to his memorandum supporting his motion for discovery sanctions. That attachment was not DelGuzzi's 36 pages of objections and responses from January 3, 1997, but rather DelGuzzi's four-page response.

n6 The court based the monetary sanctions on

both CR 11 and 37.(d) without finding a specific violation of CR 11, noting simply, "I think its appropriate to grant sanctions because this hearing wouldn't be required except for the . . . failure to comply."

On January 21, 1997, a different superior court judge n7 conducted an evidentiary hearing limited to Wilbert's final report and accounting for the estate. Neither that judge nor any other judge conducted a hearing on DelGuzzi's motion to compel discovery because the previous judge had dismissed DelGuzzi's action against Wilbert. Thus, DelGuzzi had no opportunity to compel the discovery that he claims was necessary to litigate his claim for wrongful administration of his father's estate.

n7 Judge Leonard Costello.

[*7]

B. PREVIOUS APPELLATE COURT DECISION

DelGuzzi appealed both discovery sanctions -- dismissal of his lawsuit for wrongful estate administration and the attorney fee award to Wilbert. We reversed the discovery-sanction dismissal of DelGuzzi's claims against Wilbert. Opinion at 10-41, 13-16. n8 We affirmed CR 11 sanctions against DelGuzzi for his claims against Wilbert's children. But because the lower court had not specified what pleading, interrogatory answers, or objections had violated CR 11, we reversed the attorney fee sanctions arising from DelGuzzi's allegedly inadequate responses to Wilbert's discovery requests.

n8 *In re the Estate of DelGuzzi, 1999 Wash. App. LEXIS 12, No. 21752-0-II, 1999 WL 10081 (Wash. Ct. App., January 1999).*

We also ruled, however, that monetary sanctions for failure to respond to discovery were theoretically permissible under CR 37(d). Accordingly, we held that on remand, the trial court could impose a CR 37(d) sanction for *reasonable expenses* that Wilbert incurred "as a result [*8] of DelGuzzi's failure to respond properly to discovery."

II. REMAND PROCEEDINGS -- EVENTS LEADING TO SECOND APPEAL

On remand, Wilbert asked the lower court to reinstate the attorney fee sanctions against DelGuzzi and Cruikshank under CR 37(d). The superior court n9

granted the request and reimposed the \$ 30,000 sanction, plus \$ 7,650 in interest.

n9 Judge Howard.

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.

A different superior court judge n10 again dismissed DelGuzzi's claim, reasoning that at the January 21, 1997, hearing on Wilbert's final [*9] report and accounting for the estate, DelGuzzi had adequate opportunity to raise any and all claims and had lost. The superior court reasoned that at the previous probate proceeding: (1) the superior court found Wilbert's Administrator fee reasonable; (2) this finding thereby necessarily included that the Administrator did not breach his fiduciary duty to the estate; and (3) this finding necessarily included DelGuzzi's claims of fraud/self-dealing and necessarily decided the claims in Wilbert's favor. The superior court did not address how DelGuzzi could have effectively mounted a challenge to the estate's administration without his discovery requests having been heard or granted. DelGuzzi amended his appeal to include this ruling and dismissal of his claims on remand.

n10 Judge Leonard Costello.

ANALYSIS

I. DISCOVERY SANCTIONS

[HN1] A trial court has "broad discretion" to impose sanctions for a party's failure to comply with discovery. *Burnet v. Spokane Ambulance*, 131 Wn.2d 484, 494, 933 P.2d 1036 (1997). [*10] We review discovery sanctions for abuse of discretion. *Biggs v. Vail*, 124 Wn.2d 193, 197, 876 P.2d 448 (1994) (citing *Washington State Physicians Ins. Exch. & Ass'n v. Fisons Corp.*, 122 Wn.2d 299, 338-39, 858 P.2d 1054 (1993)). [HN2] A trial court abuses its discretion when its order is manifestly unreasonable or exercised on untenable grounds. *Fisons*, 122 Wn.2d at 339; *Burnet*, 131 Wn.2d at 494.

A. RE-IMPOSITION OF \$ 30,000 DISCOVERY SANCTION ON REMAND

DelGuzzi first argues that the trial court erred in reinstating the monetary sanctions on remand because Wilbert failed to move to compel discovery, which is a procedural prerequisite to CR 37(b) or 37(d) remedies. We disagree. [HN3] Although the plain language of CR 37(a) references "an order compelling discovery," "[a] motion to compel compliance with the rules is not a prerequisite to a sanctions motion." *Fisons*, 122 Wn.2d at 345. Moreover, the record does not support DelGuzzi's claim that Wilbert never moved to compel. n11

n11 In our previous opinion, we noted that Wilbert moved to compel before the December 1996 negotiations between the parties.

[*11]

DelGuzzi's second argument is that the trial court erred in reinstating the monetary sanctions absent a showing or finding that his allegedly misleading or evasive interrogatory responses prejudiced Wilbert. DelGuzzi acknowledges CR 37(d)'s provision that "an evasive or misleading answer is to be treated as a failure to answer," which allows sanctions for "reasonable" expenses incurred by the other party, including attorney fees. Citing no authority, he argues that a party must be "prejudiced" by the misleading or evasive answer before sanctions may be granted. [HN4] Although prejudice is a prerequisite to *dismissal* as a discovery sanction, n12 it is not a prerequisite to imposition of *fees* as a discovery sanction. n13

n12 See, e.g. *Peterson v. Cuff*, 72 Wn. App. 596, 601-02, 865 P.2d 555 (1994) (citing *Snedigar v. Hoddersen*, 114 Wn.2d 153, 169-70, 786 P.2d 781 (1990)).

n13 Furthermore, DelGuzzi's argument ignores that the opposing party incurs attorney fees and expenses in seeking to compel discovery and that these costs alone can constitute prejudice in the form of monetary harm.

[*12]

DelGuzzi's third argument is that the attorney fee and costs award was unreasonable because Wilbert incurred them while seeking discovery *sanctions* rather than while seeking discovery itself. The trial court had evidence (primarily counsel's declarations and supporting exhibits) to support Wilbert's claim that he had incurred over \$ 30,000 in expenses in attempting to *obtain discovery*, not *sanctions*, from DelGuzzi. Based

on these facts, the award was not an abuse of discretion.

Nonetheless, DelGuzzi's final argument is more compelling: The trial court's reinstatement of the monetary discovery sanctions on remand ignored our previously stated concerns about factual errors and circumvention of due process in the trial court's original award of sanctions, the subject of the previous appeal. Again, we acknowledge that the plain language of CR 37(d) gives a trial court broad discretion to impose costs as a sanction for evasive answers. In our previous opinion, we highlighted significant due process deficiencies underlying the original imposition of sanctions. Yet, the trial court did not address or remediate these deficiencies before reinstating the monetary discovery sanctions [*13] on remand.

We resolve the due process concerns by looking to the record and the law. [HN5] The requirements that there be a finding of "willfulness" and "prejudice," that the trial court consider lesser sanctions, and that the trial court consider the party's reasonable excuses apply only as to whether *dismissal* of a claim is an appropriate discovery sanction. The case law does not similarly apply these requirements to the appropriateness of monetary discovery sanctions. n14 DelGuzzi's reliance on our previous ruling, that a substantial monetary sanction requires a more rigorous review, n15 is misplaced: In our previous opinion we discussed sanctions under CR 11, not CR 37, the focus of the trial court's order on remand and the instant appeal.

n14 See, e.g., *Peterson*, 72 Wn. App. at 601-02 (discussing necessity of finding willfulness and prejudice for dismissal purposes); accord *Snedigar*, 114 Wn.2d at 170. These cases do not discuss monetary sanctions.

n15 Reply Br. of Appellant at 5 (citing *MacDonald v. Korum Ford*, 80 Wn. App. 877, 892, 912 P.2d 1052 (1996) (citation omitted)).

[*14]

But the factual errors are more egregious. In the first appeal, we noted that in ruling on Wilbert's discovery motions, the trial court considered the wrong documents - - Wilbert gave the trial court the wrong set of DelGuzzi's responses to interrogatories. Thus, before dismissing DelGuzzi's action, the previous trial court considered only his initial four-page objection to Wilbert's interrogatories, not DelGuzzi's later 36 pages of objections and substantive responses. Opinion at 12. And on remand, the trial court did not address our factual concerns. Nor did its order on remand indicate that the court had considered the correct interrogatory responses before reimposing the monetary sanctions.

Failure to consider DelGuzzi's actual answers and

objections deprived the court of the only available means for determining whether DelGuzzi and Cruikshank complied as fully as possible with Wilbert's interrogatories. If they did comply as fully as possible, then their responses were not misleading or evasive and, thus, did not warrant sanctions. In our remand order, we authorized discretionary imposition of a discovery sanction only for expenses "incurred as a result of DelGuzzi's *failure* [*15] *to comply* with discovery." Opinion at 17 (emphasis added). We cannot tell from the record that the trial court on remand followed this directive in considering or determining whether DelGuzzi's answers and objections to the interrogatories were inappropriate or a "failure to comply with discovery." Absent such determination, and in light of the trial court's apparently summary reimposition of the very monetary sanctions that we had just vacated, the trial court's monetary sanctions on remand were an abuse of discretion.

B. INTEREST

Since we again reverse the monetary sanctions, we also reverse the interest award. Nonetheless, we address whether the trial court had authority to award interest because it may arise again if the trial court again imposes discovery sanctions on remand after proper consideration of DelGuzzi's responses to Wilbert's interrogatories.

On remand from the first appeal, Wilbert requested and obtained an award of post-judgment interest on his judgment for monetary damages to run from the first entry of judgment awarding sanctions in April 1997. DelGuzzi contends that the award of interest was in error. He first argues that because "the amount was not liquidated, [*16] there is no basis for prejudgment interest." Br. of Appellant at 33. But this argument misapprehends the nature of the interest award here. The interest runs from the date of the original judgment and is therefore post-judgment interest. Thus, DelGuzzi's first argument lacks merit.

But DelGuzzi's argument relying on case law and the statute rests on firmer footing. It is well settled that [HN6] where the appellate court on remand leaves the trial court with "a mere mathematical problem, . . . interest [runs] from the date of the original judgment." *Yarno v. Hedlund Box & Lumber Co.*, 135 Wash. 406, 408-09, 237 P. 1002 (1925). DelGuzzi correctly asserts that such is not the case here, analogizing to *Fisher Properties, Inc. v. Arden-Mayfair, Inc.*, 115 Wn.2d 364, 798 P.2d 799 (1990). There, because the appellate court required the trial court to consider two alternative measures of damages on remand, our Supreme Court ruled that the remand required new findings and a new judgment. *Fisher Properties*, 115 Wn.2d at 373-74. Here, we required the trial court to make a new factual

finding based on the correct document (DelGuzzi's actual answers [*17] and objections to Wilbert's interrogatories); as in *Fisher*, we effectively required entry of a new judgment.

Our analysis is consistent with the plain language of the statute prescribing interest on judgments, [HN7] *RCW 4.56.110*, which provides that, generally "judgments shall bear interest from the date of entry . . . thereof." The statute further provides in any case where a court is directed on review to enter judgment on a verdict or in any case where a judgment entered on a verdict is wholly or partly affirmed on review, interest on the judgment or on that portion . . . affirmed shall date back to and shall accrue from the date the verdict was rendered.

RCW 4.56.110.

The second quoted passage does not apply here because we did not simply direct the trial court to enter judgment on a verdict or a partly-affirmed portion of a verdict. Thus, under the statute, there can be no imposition of interest dating back to the first trial court's original award of monetary sanctions, which we previously reversed. Rather, we remanded for reconsideration in light of the first trial court's original factual mistakes, thereby requiring [*18] entry of a new judgment. Accordingly, if on the instant remand the trial court considers the correct document containing DelGuzzi's answers to Wilbert's interrogatories, and if it again imposes monetary sanctions, interest would begin to run from the date of entry of that new judgment.

II. DISMISSAL OF DELGUZZI'S CLAIMS

The trial court dismissed DelGuzzi's claims on grounds of res judicata and collateral estoppel. [HN8] These are issues of law, which we review de novo. *Mountain Park Homeowners Ass'n Inc. v. Tydings*, 125 Wn.2d 337, 341, 883 P.2d 1383 (1994). See also *Kuhlman v. Thomas*, 78 Wn. App. 115, 120, 897 P.2d 365 (1995) (appellate review of proper application of res judicata is question of law); *State v. Bryant*, 100 Wn. App. 232, 236-37, n.9, 996 P.2d 646 (2000) (appellate review of proper application of collateral estoppel is reviewed de novo).

[HN9] It is appropriate to consider our previous unpublished decision n16 in examining the issues of law of the case, res judicata or collateral estoppel. *State v. Sanchez*, 74 Wn. App. 763, 765 n.1, 875 P.2d 712 (1994). The instant appeal involves the same case, the [*19] same parties, and some of the same issues as the first appeal. Wilbert has raised both res judicata and collateral estoppel issues. Both parties have invoked the law of the case doctrine.

n16 We may also use our prior unpublished opinion as evidence of the facts established in earlier proceedings in the same case or in a different case involving the same parties. *Island County v. Mackie*, 36 Wn. App. 385, 391 n.3, 675 P.2d 607 (1984).

A. DUE PROCESS

When we remanded this case in 1999, our core concerns were the trial court's failure to make any finding of willfulness on the part of DelGuzzi and his attorney or prejudice to Wilbert, and its failure to consider lesser sanctions short of dismissing DelGuzzi's action. We noted in our previous opinion that such failure runs afoul of constitutional due process limits. Opinion at 13 (citing *Peterson v. Cuff*, 72 Wn. App. 596, 601-02, 865 P.2d 555 (1994)).

Yet on remand, the trial court not only failed to enter findings that [*20] DelGuzzi willfully evaded Wilbert's discovery requests or that DelGuzzi's objections and partial responses prejudiced Wilbert, it did not even address those issues. Likewise, it did not consider lesser sanctions short of dismissing DelGuzzi's action outright. Then, upon Wilbert's motion, the court postponed a hearing on DelGuzzi's renewed motion to compel discovery and relied entirely on res judicata and collateral estoppel as grounds for dismissing his claims. Unless those doctrines apply, the trial court abused its discretion and committed an error of law by failing to address the due process concerns we raised in our previous decision.

As we noted in our opinion on the first appeal, to satisfy due process, the trial court had to establish on the record that there was "willfulness" by DelGuzzi and "prejudice" to Wilbert before dismissing DelGuzzi's claims. Opinion at 13 (citing *Peterson*, 72 Wn. App. at 559, 601-02) (emphasis added) The trial court was also first required to consider whether less severe sanctions would suffice. *RCL Northwest, Inc. v. Colorado Resources, Inc.*, 72 Wn. App. 265, 271-72, 864 P.2d 12 (1993) (quoting *Snedigar v. Hoddersen*, 114 Wn.2d 153, 170, 786 P.2d 781 (1990)). [*21] Thus, because the trial court failed to make such a record, unless DelGuzzi's claims are barred by claim or issue preclusion or the law of the case doctrine, dismissal was erroneous.

B. RES JUDICATA

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.

First, as DelGuzzi correctly notes, Wilbert has not preserved his *res judicata* claim. [HN10] CR 8(c) requires a party affirmatively to plead *res judicata*, which Wilbert failed to do. n17 See also, *Bruce v. Foley*, 18 Wash. 96, 50 P. 935 (1897); *Mahoney v. Tingley*, 85 Wn.2d 95, 100, 529 P.2d 1068 (1975). Nor have the parties waived compliance with this mandatory provision of CR 8(c). Thus, we need not address this issue on appeal. *Federal Signal Corp. v. Safety Factors, Inc.*, 125 Wn.2d 413, 433-35, 886 P.2d 172 (1994). [*22]

n17 Wilbert admits that this defense did not arise until we reversed the discovery sanction of dismissal in the prior appeal. He asserts, however, that he may now raise the defense on remand from that ruling. He cites no case law to support this argument.

Nonetheless, in order to avoid its possible application on remand, we briefly address the substance of Wilbert's *res judicata* claim. We extensively discussed the applicability of *res judicata* in *Kelly-Hansen v. Kelly-Hansen*, 87 Wn. App. 320, 941 P.2d 1108 (1997):

[HN11]

[R]es judicata [as claim preclusion] encompasses the idea that when the parties to two successive proceedings are the same, and the prior proceeding culminated in a final judgment, a matter may not be relitigated, or even litigated for the first time, *if it could have been raised, and in the exercise of reasonable diligence should have been raised*, in the prior proceeding.

Kelly-Hansen, 87 Wn. App. at 328-29 (footnotes [*23] omitted) (emphasis added). We concluded:

[HN12]

In general, one cannot say that a matter should have been litigated earlier if, for some reason, *it could not have been litigated earlier*; thus, *res judicata will not operate . . . if evidence needed to establish a necessary fact would not have been admissible in the prior proceeding*. Similarly, one cannot say that a matter should have been litigated earlier if, even though it could have been litigated earlier, *there were valid reasons for not asserting it earlier*.

Kelly-Hansen, 87 Wn. App. at 330-31 (citations omitted) (emphasis added). Such is the case here.

First, because the previous judge had dismissed his claims, DelGuzzi no longer had any matters before the court to litigate. Second, although at the Final Accounting hearing, DelGuzzi could have alleged that Wilbert had

breached his fiduciary duties, DelGuzzi had no evidence to support such allegations; the previous judge had failed to entertain his motion to compel Wilbert to provide such discovery and instead found DelGuzzi to have been the party failing to comply with discovery. At this point it was arguably futile to renew his motion to compel. [*24] Third, because he could not compel discovery and because he no longer had an active claim, DelGuzzi could not have offered crucial evidence in the previous proceeding to establish the necessary facts underlying his dismissed claims. n18 *Res judicata* does not now preclude DelGuzzi's raising the issues of wrongful dismissal of his claim and implicit denial of his discovery motion.

n18 Had he been able to obtain the necessary discovery from Wilbert, DelGuzzi could have used any evidence gleaned therefrom in the Accounting and Fee Petition hearing. Indeed, the trial court below noted that allowing DelGuzzi's tort claim to proceed would require reopening the estate for a second accounting of the Administrator's acts, which the trial court was unwilling to undertake.

C. COLLATERAL ESTOPPEL

Wilbert also contends that collateral estoppel bars DelGuzzi's claims. [HN13] The doctrine of collateral estoppel, also called issue preclusion, prevents relitigation of an issue by a party against whom the bar is sought if that party [*25] had a full and fair opportunity to litigate that issue in a prior proceeding. *Nielson v. Spanaway Gen. Med. Clinic, Inc.*, 135 Wn.2d 255, 262, 956 P.2d 312 (1998). The party asserting collateral estoppel bears the burden of proof. *Nielson*, 135 Wn.2d at 263.

[HN14] The party asserting collateral estoppel must prove four elements: (1) The issue decided in the prior adjudication was identical with the one presented in the second; (2) the prior adjudication ended in a final judgment on the merits; (3) the party against whom the doctrine is asserted was a party or in privity with a party to the prior action; and (4) application of the doctrine will not work an injustice on the party against whom it is to apply. *Nielson*, 135 Wn.2d at 263. All four elements must be satisfied in order for collateral estoppel to apply. DelGuzzi directly challenges the application of elements (1), (2) and (4). We agree that elements (1) and (4) are lacking.

For the reasons we mention in our discussion of *res judicata*, *supra*, the issue before us on appeal is not the same as the issue decided at the January 21, 1997, hearing. Again, that hearing focused [*26] on the estate

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administrator's petition for approval of his fees and plan of distribution. It did not resolve DelGuzzi's tort claims and related issues because the previous judge had dismissed DelGuzzi's action and had not granted his motion to compel Wilbert to produce necessary documents. n19 Consequently, the issues involved in DelGuzzi's claims were not necessarily determined at the estate accounting hearing.

n19 Moreover, DelGuzzi had already appealed the dismissal of his action and denial of discovery, but the appeal had not yet been resolved.

As to the fourth element, it would work an injustice to apply collateral estoppel to preclude resolution of DelGuzzi's claims. First, the trial court wrongfully dismissed his claims, in part because it had the wrong documents before it. Second, Wilbert's failure to return to DelGuzzi key source documents from DelGuzzi's original administration of the estate n20 limited his ability to participate fully in the estate accounting hearings and to challenge the accuracy [*27] of Wilbert's accounting. Without these documents, DelGuzzi could not effectively impeach or rebut testimony at the hearing that the estate's loss of millions of dollars was not attributable to Wilbert, even though some evidence could have cast doubt on Wilbert's estate administration. n21 Application of collateral estoppel here would be manifestly unjust.

n20 DelGuzzi asserts that Wilbert produced only about half the amount of documents he had turned over to Wilbert some fifteen years earlier and that the documents Wilbert did produce were irrelevant and immaterial. Reply Br. of Appellant at 15-16.

n21 For example, Wilbert's accountant testified that Wilbert's fees and costs totaled about 90% of the net estate and that Wilbert had billed the estate for 125% of its net value. The net assets of the estate had apparently diminished from \$ 7.36 million in 1989 to less than the \$ 1.6 million Wilbert had billed in 1997. There was some indication the estate could have been closed as early as 1984. The trial court concluded, in 1997, that the estate was ready to be closed. Still, it is not closed. Rather, this probate proceeding has been open for more than 18 years. And DelGuzzi, his father's sole heir, asserts that he has never received a distribution from the estate during Wilbert's administration.

[*28]

As with *res judicata*, collateral estoppel does not

apply to bar resolution of DelGuzzi's claims.

D. LAW OF THE CASE

Finally, Wilbert argues that the law of the case doctrine bars DelGuzzi from now challenging the court's imposition of discovery sanctions and dismissal of his claims. He cites no case law in support. Wilbert contends that in our previous opinion, we held that monetary sanctions for discovery violations under CR 37(d) were *required* and that became the law of the case in this matter. Br. of Resp't at 19. He is wrong.

First, he misconstrues our prior ruling. We did not hold that CR 37(d) sanctions were mandatory. Rather, we ruled that they were *available*, contingent on the trial court on remand redressing its previous error in ignoring DelGuzzi's answers and objections to Wilbert's interrogatories. Second, Wilbert's argument contravenes [HN15] RAP 2.5(c)(2), which restricts the law of the case doctrine and allows us to "review the propriety of an earlier decision . . . in the same case and, where justice [requires], decide the case on the basis of [its] opinion of the law at the time of the later review." Under this rule, we may rectify any misunderstanding [*29] Wilbert may have as to the nature of our prior ruling in this case. Moreover, under this rule we also address the apparent misapprehension of our remand order requiring the trial court to show on the record its consideration of the appropriate document(s) before considering whether to reimpose sanctions against DelGuzzi.

[HN16] RAP 2.5(c)(2) requires that justice be done. Thus, we again address both the trial court's mistakes and DelGuzzi's due process rights. We hold that the law of the case doctrine does not apply here to bar DelGuzzi's appeal from dismissal of his claims.

CONCLUSION

The trial court's stated reasons do not support dismissal of DelGuzzi's claims. The trial court failed to follow our directive on remand to consider the substance of Wilbert's discovery requests and the substance of DelGuzzi's responses and objections, including his claim that he was unable to respond because Wilbert possessed critical documents that DelGuzzi had earlier turned over to Wilbert and which Wilbert refused to return to DelGuzzi. Therefore, both dismissal of DelGuzzi's wrongful estate administration action and reimposition of \$ 30,000 in discovery sanctions against DelGuzzi, plus interest, [*30] were error.

On remand, the trial court should consider (1) DelGuzzi's motion to compel discovery, (2) DelGuzzi's 36-page response to Wilbert's interrogatories and any other evidence pertinent to DelGuzzi's claim of inability to respond, n22 and (3) only then reconsider Wilbert's motion for discovery sanctions if still potentially

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pertinent.

n22 The trial court should make clear on the record what documents it has considered and the basis for its ruling.

Reversed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate

Reports, but will be filed for public record pursuant to *RCW 2.06.040*, it is so ordered.

Hunt, J.

We concur:

Armstrong, C.J.

Quinn-Brintnall, J.

Appendix 2

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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 OBJECTIONS TO FINAL SUPPLEMENTAL TO FINAL REPORT AND PETITION FOR DECREE OF DISTRIBUTION [AMENDED] [FACTUAL]

SUMMARY OF CURRENT STATUS AND ELLIS ISSUES

The current administrator, Kathryn A. Ellis, has made numerous mistakes, committed numerous oversights, and refused to investigate and marshal the assets of the estate. She is responsible for resulting losses to the estate, its creditors and heir. She wishes to close the estate nonetheless, and the Court is requested to hold the estate open and require her to properly account for and pay over to the creditors and the heir the funds and assets that she has not properly dealt with to date.

The most intriguing aspect of the current attempt to close this troublesome estate is the issue raised by the payments that appear to be based on a "private agreement" during the Wilbert administration after the Order was entered on October 10, 1998.

1 Based upon the positions of the parties, and the lack of a definitive Order that determined
2 exactly who gets what, it is difficult to be precise but it appears as though Wilbert would
3 take the position that he was owed the figure shown on Exhibit E to his fee declaration of
4 June 5, 1998, which is \$1,644,542. As other materials in this memoranda and declaration
5 will show, he was actually in debt to the estate at the time of that Order, but he didn't act
6 like it, neither did Short Cressman & Burgess act as though they knew they owed the
7 estate money, although they almost certainly did know.

8 So if we assume that Mr. Wilbert's position was, despite the lack of an Order
9 precisely saying so, that he was owed \$1,644,542, and that SCB was owed \$404,040, as
10 of 10/10/98, the ratio is approximately 4 to 1, which means that for every dollar paid
11 these to administrative claimants, Wilbert's payments should have been four times bigger
12 than those to Short Cressman & Burgess.

13 That was not the case. As can be seen from the check summary provided by
14 Mr. Wilbert's bookkeeper, Leslie Stanton, there was a "private agreement". See
15 Exhibit AA, the first exhibit to this memorandum. That agreement quantifies the amount
16 that Wilbert and SCB were owed equally \$941,932 each. That number is not a number
17 that can be readily found in these materials. But it does indicate that there was an
18 agreement between these two: Wilbert the Administrator and SCB the attorneys to share
19 equally as to fee disbursements post October 1998.

20 Attached hereto is a copy of a "Covenant Mutually Tolling the Statute of
21 Limitations" [Exhibit BB] prepared by Hillis Clark Martin and Peterson, a Seattle law
22 firm, to permit Wilbert and his wife, on the one hand and SCB, on the other, to delay
23 pressing claims between them based upon some activity undertaken by or on behalf of the
24 Estate of Jack Delguzzi and the Trust of Gary Delguzzi by the SCB law firm. Not much
25 more can be told from this document which was produced in discovery in February of
26 2007 in a related King County case, but this Covenant Mutually Tolling the Statute of
27 Limitations was renewed periodically, as shown from other discovery documents until
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1 some time well passed the 1998 Order setting the estate administrative fees.

2 It would appear as though Wilbert had taken claims belonging to the trust of Gary
3 Delguzzi and to the Estate of Jack Delguzzi for the benefit of his very own marital estate,
4 (Bill and Loretta Wilbert) while not reporting the conversion of these claims to the court,
5 creditors, or the heir, while claiming that the law firm had mismanaged, committed
6 malpractice, or otherwise interfered with those claims and he had the right to collect the
7 damages for himself and his wife. There is no identification of him in a representative
8 capacity, but the claims are those of his marital estate.

9 It would appear as though Mr. Wilbert took things that didn't belong to him from
10 the estate and from the trust of Gary Delguzzi, and he had Short Cressman Burgess
11 associated with those and then he wished to make a claim against SCB for what they did,
12 or did not do, with those claims. SCB, as law firms will do, had claims back against
13 Wilbert in his capacity as the owner of those claims and not as the trustee or as the
14 administrator as demonstrated by the covenant mutually tolling the statute of limitations.

15 The "private agreement," in the lower left corner of the Stanton exhibit and the
16 equal payments that were made during Wilbert's life to himself and to SCB seem to be at
17 the core of this intriguing scenario.

18 Of course the underlying claims between the parties must be investigated and
19 disclosed because apparently Wilbert's has absconded with a valuable asset of the estate
20 that he was willing to put on ice and hold off litigating against SCB for recovery until
21 such time as it could be done after the Jack Delguzzi estate was closed, so as not come to
22 the attention of the court, the creditors and the heir of the estate.

23 This is one more reason to keep this estate open until a full and complete
24 investigation and full accounting can be completed.

25 **PRIOR CLOSING IN 1997**

26 **HISTORY OF PAYMENTS SOUGHT AND AWARDED – SCB**

27 On June 5, 1997, this Court entered a Memorandum Decision [Exhibit A] which

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1 ordered that Short Cressman & Burgess (“SCB”), the lawyers for Administrator Wilbert
2 from 1982 to 1991, were to receive \$404,040, plus 12% simple interest from that date for
3 its costs and fees. This amount was based upon representations unsupported by evidence
4 that were made to the Court by that law firm. For example, the ‘evidence’ that was filed
5 by SCB in March of 1986 to support a payment to them of \$200,000 consisted of a stack
6 of billing statements or invoices nearly 2 inches thick that contains no rates for the
7 attorneys, no totals of the hours each worked, no extensions of the amounts claimed
8 owed, no costs, no payments and no financial data whatsoever. The only other fee
9 statements filed are those that accompanied the Cressman Fee Declaration in 1997 which
10 totals only \$123,923., and is the only supported quantification of their fees and costs.

11 The Declaration of Paul R. Cressman dated January 21, 1997 (Exhibit E hereto
12 and 1997 Fee Hearing Exhibit No. 62) stated at Page 4, “The total amount due to our firm
13 as of September 30, 1996 (the date contained in Mr. Wilbert’s final report) is \$910,908.
14 That consists \$404,040 in fees and costs and \$506,868. in interest.” His declaration
15 included Exhibit A, which is a security agreement dated April 28, 1982, Exhibit B, the
16 “Delguzzi Matters” fee summary and Exhibit C, two pages of invoice dates and amounts
17 appearing to total \$154,231.16 for the SCB fees and costs for the period of January 1986
18 through December 1990.

19 Exhibit B to the Cressman Declaration shows collections of \$723,989. There was
20 a promissory note payable by the estate to SCB dated July 15, 1986 in the principal
21 amount of \$454,380 (Exhibit F). If the columns of numbers in Exhibit C to the Paul R.
22 Cressman declaration are compared to the invoices which were included with the
23 declaration and which are now in the court file, the total amounts to only \$123,923.
24 (Exhibit G).

25 The Memorandum Decision of October 10, 1997 allowed only \$404,040. SCB
26 and Wilbert had agreed by acceptance of the July 15, 1986 promissory note that the firm
27 was owed \$454,380. They had received \$723,989 (Cressman Decl. Exhibit B) and had
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1 billed an additional \$123,923 (Exhibit G) so they were overpaid at the time in the amount
2 of \$145,686 [Exhibit H]. ($\$454,380 - \$723,989 = (\$269,609) + \$123,923 = (\$145,686)$).

3 With the payments they received after the Memorandum Decision, although
4 already overpaid and with interest on those overpayments, they now owe the estate
5 \$1,175,745 (Exhibit D)

6 HISTORY OF- ADMINISTRATOR WILBERT

7 On June 5, 1998, this court entered the "Order Regarding Administrative
8 Expenses and Reimbursements [Exhibit B] that ordered that Mr. Wilbert was to be paid
9 the amount designated in his 'final' accounting, with certain adjustments, which was the
10 report prepared by Craig Kleinman, C.P.A. (the "Kleinman Report") and which was filed
11 in December of 1996.

12 The adjustments required Administrator Wilbert to deduct the interest which he
13 sought in the Kleinman Report, to deduct the reimbursements for his time and staff time
14 which was claimed for activities in Costa Rica (finding, incidentally, a breach of his
15 fiduciary duties for these charges) and to deduct from his claim the real estate
16 commissions for sales of estate properties that he had paid to himself, his family members
17 and alter ego companies that he controlled.¹ Interest was allowed, only beginning October
18 10, 1997 at 12% simple interest, not at the compound rate Mr. Wilbert had sought.

19 Exhibit I, prepared by Mr. Kleinman, who prepared the financial accountings for
20 Administrator Wilbert's 1997 final report, represented that as of September 30, 1996, the
21 administrator was owed only \$500,000 (tab 4, page 1, found at Exhibit I).

22 The same page showed "Page Consolidated Total of Estate Related Commissions"
23 to be \$372,160. The Memorandum Decision disallowed commissions as for the Costa
24 Rica related hourly billings. Mr. Wilbert's fee declaration of May 15, 1998 (Exhibit C)

25 ¹Hemisphere Properties, Ltd, William E. Wilbert-Broker, Inc., William E. Wilbert, P.S. Inc.,
26 Sosumi, Inc. Daniel D. Wilbert (son), Laure A. Wilbert (daughter), William D. Wilbert (son), Loretta
27 D. Wilbert (wife) and others.
28

1 deducted the \$115,182 for the Costa Rica expenses but did not deduct the interest nor the
2 commissions. Wilbert also claimed that the denied commissions only totaled \$169,685,
3 compared to the Kleinman calculation of \$372,160, but he declined to deduct them
4 nonetheless.

5 If we can believe what the IRS alleged that Wilbert told them in 1982 (Exhibit J)
6 Wilbert had received approximately \$700,000 in real estate commissions from sales of
7 estate properties at that time (1982) and many more properties were still to be sold by
8 him. A reconstruction, admittedly incomplete, from the data available show sales of
9 estate properties that generated \$758,968. in Wilbert entity commissions. [Exhibit K]

10 In summary, with the adjustments required by the Memorandum Decision,
11 Mr. Wilbert's evidence showed that he had billed but was unpaid \$500,000 and that the
12 required adjustments by the Memorandum Decision for the commissions (\$372,160)
13 reduced that to \$127,840 and the Costa Rica adjustments in the amount of \$115,182
14 further reduced the subtotal to \$12,658 although still in Mr. Wilbert's favor.

15 Interest disallowed by the Memorandum Decision totaled \$111,797. [Exhibit I-1],
16 Kleinman report, tab 4, page 2) equals an overpayment subtotal of \$99,059.

17 The agreement upon which Mr. Wilbert relied for his compensation is found at
18 Exhibit A to the Wilbert declaration of May 15, 1998 (Exhibit C) and it does not allow
19 for any overhead, whether rent (\$184,021, Exhibit I-1) or staff (i.e., Wilbert family
20 members)(Exhibit I-2) of \$104,519, for a net overpayment of \$387,599. on January 21,
21 1997, all of which is summarized in Exhibit L.

22 It is appropriate to adjust the payments to Wilbert by the misstatement of the
23 estate's Malcolm Island property values provided by Wilbert in his Supplement to the
24 Final Accounting. [Exhibit M-1] Mr. Wilbert stated that he took this property for his fees
25 and gave the estate credit for \$11,340. Later discovered real property records from the
26 British Columbia Land Office [Exhibit M-2] showed the property was sold by Wilbert for
27 \$325,000 Canadian or some 21 times Wilbert's claimed value. The estate is entitled to a
28

1 credit of \$275,000, which includes adjustment for the U.S./Canadian exchange rate used
2 by Wilbert in the Supplement to the Final Accounting.

3 The Kleinman Report and accounting showed that the total asset sales were
4 \$8,749,332. [Exhibit O] The same report shows that the income from asset sales, as cash,
5 was \$1,220,083 and that the collections from escrows or land contract sales were
6 \$2,290,314 [Exhibit P] leaving \$7,520,018 missing and unaccounted for.

7 In 1982, the IRS assessed the estate at a value of \$9,593,408, valued at the time of
8 Jack Delguzzi's death on June 1, 1978. [Exhibit Q]

9 Because of the lack of a proper order firmly establishing the amounts owed to the
10 these administrative claimants, both the law firm and the prior administrator have been
11 overpaid in the total amount of \$3,098,470 [Exhibit D] and have remained silent about
12 these overpayments, and are still lining up for additional payments.

13 The accountants, Benson & McLaughlin, the last administrative claimants of the
14 many that served the prior administration, are still owed \$163,729.[Exhibit D]

15 ADMINISTRATOR ELLIS DISCREPANCIES

16 Katharine Ellis became the Administrator in January 2005 and promptly set about
17 ignoring the Wilbert transgressions and creating her own.

18 Despite being advised, Administrator Ellis did not investigate and report to
19 the court and the creditors on the missing Malcolm Island, British Columbia property
20 which was misreported by Wilbert in his 1997 fee petition. In that petition, Administrator
21 Wilbert claimed that he had transferred this property gem that was located north of
22 Victoria on the B. C. mainland to himself and credited the estate for its assessed value of
23 \$13,345. for his fees. The 'credit' does not appear in the Kleinman Report. Administrator
24 Ellis was advised that there was a massive misrepresentation in that the prior
25 administrator sold this property for \$325,000 CDN so that it was worth considerably
26 more than Wilbert claimed at the time he took it for himself and when later sold it for
27 about 21 times what he valued it at to the court [Exhibit M]

1 Administrator Ellis also sold property commonly referred to as 999 Three Sisters
2 Road in Port Angeles where the title report showed that there was a deed of trust
3 encumbering the property in favor of Cedarwood Properties Inc., in the amount of
4 \$45,000. from 1995. [Exhibit W]

5 The closing statement for that transaction does not show that Cedarwood was paid
6 and since Gary Delguzzi was a one-third shareholder of Cedarwood Properties, he also
7 was not paid when Cedarwood was dissolved and liquidated during the realm of
8 Administrator Wilbert nor from the sale proceeds of the Three Sisters property by
9 Administrator Ellis.

10 A sale of property called Elwha Bluffs during the Ellis Administration shows a
11 Deed of Trust in favor of the attorneys for Mr. Wilbert (Chicoine & Hallett) after SCB
12 resigned in 1991 on that property and there is no payment on the closing to satisfy that
13 encumbrance on the closing statement that law firms were paid, without justification and
14 without showing that for what or that it was reasonable and necessary or beneficial to the
15 administration of the estate during Mr. Wilbert's administration prior to his death.
16 [Exhibit X]

17 The estate properties that were received from the Surfside Estates partnership
18 shortly after Jack Delguzzi's death in 1978 have disappeared without a trace as there was
19 no known reporting of these assets of the estate and no sales proceeds were that were
20 reported by Wilbert. [Exhibit T]

21 Also, one of the estate's entities called DelHur, Incorporated, in its 1999 final
22 income tax return, showed a "write off" on its final return of nearly \$800,000. This was
23 occasioned by the books and records of the corporation showing assets of that amount of
24 value when there were no assets left. An entry was made "Closing Entry" in the amount
25 of \$799,237 with no explanation of what happened to that missing value. [Exhibit Y, last
26 page]

27 In 2005, Gary Delguzzi, sole heir of the estate, brought on a motion for a
28

1 constructive trust asking the Court to hold funds from sales of the current administrator in
2 trust for the benefit of Gary Delguzzi for jointly owned properties that he shared with his
3 father, the decedent, and Charles Nyhus. For some reason, the Court denied the motion
4 and the assets mentioned therein that belonged to the estate and/or Gary Delguzzi were
5 not accounted for or marshaled by the current administrator². [Exhibits U & V]

6 In 2004, Gary Delguzzi's attorney brought on for hearing a Motion to Vacate
7 Administrator Wilbert's fee award. The court has not ruled on that motion, despite the
8 passage of nearly 3 years since the hearing. Beginning in 2003, Gary Delguzzi's attorney
9 brought on for hearing a series of motions for partial summary addressing some of the
10 above missing assets and issues. When opposed only by a professed lack of understanding
11 in Administrator Wilbert's response, who offered no evidence in opposition to the first of
12 the motions, the court nonetheless denied the motions, without explanation.

13 The fee agreement of April 28, 1982 that was relied upon by Mr. Cressman and by
14 his law firm Exhibit A to his Declaration of January 21, 1997 (Exhibit C to this
15 Memorandum), and the loans discussed below violate the Washington Lawyer Rules of
16 Professional Conduct and are prima facie fraudulent, against public policy and thus
17 unenforceable. Belli v. Shaw, 98 Wn.2d 569, 578, 657 P.2d 315 (1983); Holmes v.
18 Loveless, 122 Wn. App. 470, 475, 94 P.3d 338 (2004) (citing Simburg, Ketter, Sheppard
19 & Purdy, L.L.P. v. Olshan, 97 Wn. App. 901, 909, 988, P.2d 467, 33 P.3d 742 (1999);
20 Cotton v. Kronenberg, 111 Wn. App. 258, 269, 44 P.3d 878 (2002). A fee agreement
21 between a lawyer and a client, revised after the relationship has been established on terms
22 more favorable to the lawyer than originally agreed upon may be void or voidable unless
23 the attorney shows that the contract was fair and reasonable, free from undue influence,
24 and made after a fair and full disclosure of the facts on which it is predicated. Valley/50th
25 Avenue, L.L.C., v. Randall Stewart, Trustee; and Morse & Bratt, 159 Wash.2d 736, 153

26
27 ² Exhibit U, referenced also in the Plaintiff's Procedural Objections to Final Supplemental
28 To Final Report and Petition For Decree of Distribution dated June 28, 2007.

1 P.3d 186(2007), citing to Kennedy v. Clausing, 74 Wn.2d 483, 491, 445 P.2d 637(1968).

2 Administrator Wilbert and his attorney, Paul R. Cressman, Sr., purported to loan
3 the estate substantial sums of money beginning in 1984, or to guarantee loans to the estate
4 without any apparent or demonstrated need for the loans by the estate and then used estate
5 properties to secure the loans, with the only function of these gentlemen being the
6 recipients of interest payments on loans that the estate did not need and that, if it had
7 needed the funds, it could well have borrowed the money itself, using its very substantial
8 inventory of real estate as security. No accounting has been made for the costs of these
9 loans to the estate and no justification that makes business sense has been seen. These
10 loan transactions are presumed to be fraudulent, against public policy and thus
11 unenforceable. Valley/50th Avenue, L.L.C., v. Randall Stewart, Trustee; and Morse &
12 Bratt, supra.

13 In 1991, after SCB had announced its intention of withdrawing, Administrator
14 Wilbert produced a document that he had charged the estate hundreds of hours of his very
15 expensive time to produce, which was variously called the “12 Year Report”, the “13
16 Year Report” and the “14 Year Report”. He never released it, and a copy was first seen by
17 the undersigned in February 2007. It differs remarkable from the final accounting and
18 Petition for Decree of Distribution of Administrator Wilbert from 1997. [Exhibit Z]

19 The distribution summary prepared by and attached to the declaration of Leslie
20 Stanton, the bookkeeper for Administrator Wilbert for the period November 1, 1997
21 through May 31, 2004 shows disbursements totaling \$378,096 as follows:

22 Legal: C&H \$202,299
23 Legal: Darrell Hallett \$30,000
24 Legal: Davis Wright Tremaine \$40,000
25 Legal: Hillis Clark Martin and Peterson \$2,037
26 Legal: Johnson \$608
27 Legal: Talmadge \$1,525
28 Legal: "Miscellaneous" \$2,000
Legal: Wilbert Admin fees \$38,170
Accounting: \$61,457.00

The are also payments reflected for property taxes, office, “Wilbert

1 reimbursement” and “rent.” None of these claimed expenses of the estate have been
2 justified, been previously approved by the court, or have been shown to be reasonable,
3 beneficial to the estate, or otherwise properly chargeable to the estate. These must either
4 be justified or disallowed.

5 Dated and signed this 30th of June 2007.

6 _____
7 Charles M. Cruikshank III

8 SUBJOINED DECLARATION OF COUNSEL AUTHENTICATING DOCUMENTS

9 I am over the age of majority and I am competent to all of the matters as to which I herein
10 testify. I make this declaration under penalty of perjury according to the laws of the state
11 of Washington. All of the documents referenced above or attached hereto are true and
12 accurate copies of the documents as listed and described in the herein and foregoing
13 Amended Memorandum and/or the Memoranda dated 28 June 2007, and filed herein by
14 the plaintiff.

15 Dated and signed at SEATTLE on this June 30, 2007.

16 _____
17 Certificate of Service

18 I certify that I have caused to be served on the below named parties/attorneys a copy of the foregoing on
19 this 30th day of June 2007, by office of personal service, facsimile or by placing such in the U S Mail with
20 first class postage affixed thereto.

21 _____
22 Katherine A. Ellis
23 600 Stewart St. #620
24 Seattle, WA 98101

25 G. Michael Zeno, Jr.
26 4020 Lake Washington Blvd. #100
27 Kirkland, WA 98033

28 Carl Gay
823 East 8th Street.
Port Angeles, WA 98362

James A. Oliver, Short Cressman
999 Third Avenue 3000
Seattle, WA 98104

752/999
Law Offices

• HILLIS CLARK MARTIN & PETERSON •

A Professional Service Corporation
500 Galland Building, 1221 Second Avenue
Seattle, Washington 98101-2925
(206) 623-1745 Facsimile (206) 623-7789

June 28, 1995

RECEIVED
JUN 29 1995

FILE
DDH
LNT

CHICOINE & HALLETT

Mr. James A. Oliver
Short Cressman & Burgess
999 Third Avenue, Suite 3000
Seattle, WA 98104-4008

Re: *Estate of Jack DelGuzzi*

Dear Jim:

Enclosed is a copy of the Extension of Covenant Mutually Tolling Statute of Limitations as signed by me.

Very truly yours,



Michael R. Scott

MRS:nlc
Enclosure

cc (w/encl.): William E. Wilbert
Darrell D. Hallett

#17359 14594-2 DE7011.DOC

BB

C&H 022264

EXTENSION OF
COVENANT MUTUALLY TOLLING STATUTE OF LIMITATIONS

THIS AGREEMENT is made and entered into as of this 26th day of June, 1995, by and between WILLIAM WILBERT and LORETTA WILBERT (hereinafter referred to as "Wilbert") and SHORT CRESSMAN & BURGESS, a law firm, and all of the partners thereof (hereinafter referred to as "the law firm").

RECITALS

A. Wilbert and the law firm are parties to an agreement entitled "Covenant Mutually Tolling Statute of Limitations," dated April 1, 1994 (hereinafter referred to as the "Tolling Agreement"). A true and correct copy of the Tolling Agreement is attached hereto as Exhibit A.

B. The parties desire to extend the term of the Tolling Agreement, as set forth in paragraph 1 of such Agreement, by six months.

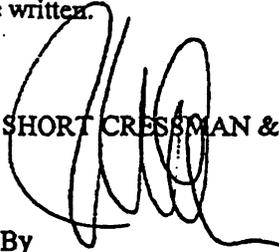
AGREEMENTS

IN CONSIDERATION of the mutual promises and covenants contained herein, the parties agrees as follows:

1. The Tolling Agreement shall remain in force and effect until January 1, 1996. All references in the Tolling Agreement to July 1, 1995, shall be deemed to refer to January 1, 1996.
2. In all other respects, the Tolling Agreement shall be unmodified, including but not limited to the right of either party to terminate the Tolling Agreement upon 60 days' written notice to the other party, pursuant to Paragraph 1 of the Tolling Agreement.
3. The managing partner of the law firm signs this Agreement for the law firm, and represents and warrants that the law firm is a general partnership and that he has the authority to sign this Agreement on behalf of the law firm and all of its partners, and the authority to bind and commit the law firm and all of its partners to the terms of this Agreement.

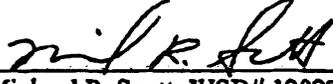
4. Michael R. Scott, of Hillis Clark Martin & Peterson, P.S., signs this Agreement for Wilbert, and represents that he has the authority to sign this Agreement on behalf of Wilbert and the authority to bind and commit Wilbert to the terms of this Agreement.

DATED the year and date first above written.


SHORT CRESSMAN & BURGESS

By _____
JAMES A. OLIVER
Its Managing Partner

WILLIAM WILBERT
LORETTA WILBERT

By  _____
Michael R. Scott, WSB# 12822
Of Hillis Clark Martin & Peterson, P.S.

COVENANT MUTUALLY TOLLING STATUTE OF LIMITATIONS

THIS AGREEMENT made and entered into this 1st day of April, 1994, by and between WILLIAM WILBERT and LORETTA WILBERT (hereinafter referred to as "Wilbert") and SHORT CRESSMAN & BURGESS, a law firm, and all of the partners thereof (hereinafter referred to as "the law firm"),

WHEREAS, William Wilbert was appointed the personal representative of the Estate of Jack DelGuzzi in 1982, and has since that time acted as personal representative of the DelGuzzi Estate;

WHEREAS, William Wilbert was also appointed Trustee of the Gary DelGuzzi Trust in 1982 and acted as such Trustee until approximately 1992;

WHEREAS, the law firm represented William Wilbert as personal representative and may have represented William Wilbert as Trustee from 1982 until 1991;

WHEREAS, Wilbert has been named as a defendant in an action entitled Gary DelGuzzi v. William Wilbert, et al., which has been served but not filed in Clallam County Superior Court. The action alleges that certain actions taken by Wilbert as personal representative and Trustee were inappropriate;

WHEREAS, Wilbert alleges he may have claims against the law firm based on indemnity, contribution, negligence, and other legal theories arising out of the law firm's involvement in the DelGuzzi Estate and Gary DelGuzzi Trust;

WHEREAS, the law firm alleges it may have claims against Wilbert based on indemnity, contribution, negligence and other legal theories arising out of the law firm's and Wilbert's involvement in the DelGuzzi Estate and Gary DelGuzzi Trust;

WHEREAS, Wilbert and the law firm wish to delay any action which would name the law firm and its partners as additional defendants in the above action, or in any independent actions by Wilbert or by the law firm against each other, in consideration of the law firm's agreeing that the statute of limitations in connection with these potential claims by Wilbert may be tolled as to itself, and in consideration of Wilbert's agreeing that the statute of limitations in connection with these potential claims by the law firm may be tolled as to themselves, in the manner set forth below;

WHEREAS, James A. Oliver is the managing partner of the law firm, and is the law firm's duly authorized agent in connection with this matter and thus is empowered to enter into this Agreement on behalf of the law firm partnership and to bind the partnership and the individual partners; and

WHEREAS, Gregory E. Keller of Hillis Clark Martin and Peterson, P.S., is the attorney for Wilbert and is Wilbert's duly authorized agent in connection with this matter and thus is empowered to enter into this Agreement on behalf of Wilbert and to bind Wilbert; now, therefore,

IT IS HEREBY AGREED AND COVENANTED AS FOLLOWS:

1. Any statutes of limitations relating to any claim by Wilbert against the law firm, and by the law firm against Wilbert, arising from or connected in any way with the Estate of Jack DelGuzzi or the Gary DelGuzzi Trust, are hereby tolled from this date until the sooner of July 1, 1995 or the expiration of 60 days from the receipt of written notice by any party of its intent to terminate this Agreement. However, this Agreement shall not revive any period of limitations prescribed by statute for the commencement of any action if such period of limitations has run as of the agreed date of execution of this Agreement.

2. None of the parties to this Agreement acknowledges that any other party has or possesses a valid claim against them. All parties deny any liability to any other party and this Agreement shall not be used or referred to in any proceeding except solely for the purpose of establishing, if the matter be contested, the tolling of the statute of limitations as provided in this Agreement.

3. Except as set forth in this Agreement, the law firm may assert any defense or affirmative defense to any claims that Wilbert may assert against it and Wilbert may assert any defense or affirmative defense to any claims that the law firm may have against him.

4. In the event the law firm or Wilbert, or anyone on their behalf should urge the Court that this Agreement shall not legally operate to toll the statute of limitations in the manner set forth in paragraph 1, or that for any reason Wilbert's claims against the law firm, or the law firm's claims against Wilbert, may have been outlawed by reason of the time interval between this date and July 1, 1995 or any portion thereof and the Court should so rule, or, in the event the Court should so rule on a sua sponte basis, then and in said event the law firm and Wilbert separately covenant and agree that Wilbert shall be entitled to litigate claims against the law firm and that the law firm shall be entitled to litigate claims against Wilbert, arising out of the Jack DelGuzzi Estate or the Gary DelGuzzi Trust and execute

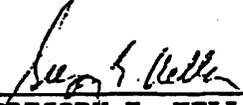
on a judgment obtained, if any, to exactly the same extent as if the court had determined that the tolling provisions set forth in paragraph 1 above are legally operative. Nothing herein shall relieve Wilbert from his burden of proving his claims against the law firm, nor the law firm's burden of proving its claims against Wilbert.

5. The managing partner of the law firm signs this Agreement for the law firm and represents and warrants that the law firm is a general partnership and that he has the authority to sign this Agreement on behalf of the law firm and all of its partners and the authority to bind and commit the law firm and all of its partners to the terms of this Agreement.

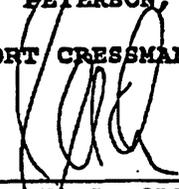
6. Gregory E. Keller of Hillis Clark Martin and Peterson, P.S., signs this Agreement for Wilbert and represents that he has the authority to sign this Agreement on behalf of Wilbert and the authority to bind and commit Wilbert to the terms of this Agreement.

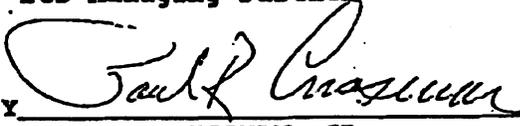
DATED the year and date first above written.

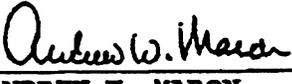
WILLIAM WILBERT
LORETTA WILBERT

BY 
GREGORY E. KELLER, WSBA NO. 13040
OF HILLIS CLARK MARTIN &
PETERSON, P.S.

SHORT CRESSMAN & BURGESS

BY 
JAMES A. OLIVER
Its Managing Partner

BY 
PAUL R. CRESSMAN, SR.

BY 
ANDREW W. MARON

BY Robert E. Heaton
ROBERT E. HEATON

BY Robert J. Shaw
ROBERT J. SHAW

BY Christopher R. Osborn
CHRISTOPHER R. OSBORN

29/wp51/wp/march/delgard.legm

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4 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR CLALLAM COUNTY

5 IN RE THE MATTER OF THE ESTATE
6 OF:

7 JACK DELGUZZI,

8 Deceased.
9

No. 8087

MEMORANDUM DECISION

10
11 The Administrator, William E. Wilbert, filed a Final Report
12 and Petition for Distribution pursuant to RCW 11.76.030. The Report and
13 Petition included a comprehensive accounting for the Estate during the
14 period of his administration. The Court heard testimony and evidence
15 from the Administrator and other interested persons regarding the
16 approval of the Final Report and the Accounting during the periods of
17 January 21 through 23, 1997, and March 24 and 25, 1997. The Court heard
18 oral argument on the matter on April 22, 1997. The parties were
19 directed to submit written memoranda regarding the issues presented by
20 May 23. In mid-August, the Court requested additional briefing on the
21 issue of res judicata raised by the Administrator. Memoranda on that
22 issue were ultimately submitted by the parties by the 25th of September,
23 1997.
24
25
26

JUDGE LEONARD W. COSTELLO
Kitap County Superior Court
614 Division Street, MS-24
Port Orchard, WA 98366
(360) 876-7140

A

1 The Court, pursuant to RCW 11.76.050, shall determine among
2 other things whether the estate is ready to be settled and whether the
3 transactions of the personal representative should be approved.

4 It appears to this Court, having heard the testimony and
5 reviewed the documents made part of the record at the hearings in
6 January and March, that this Estate is ready to be settled and closed,
7 or at least as ready to be settled and closed as it will ever be. In
8 light of the length of time that this Estate has been open and in light
9 of the complexity of the Estate, it appears to this Court that the most
10 orderly way to proceed is for the Court to address the issues contested
11 in January and March regarding administrative expenses and other claims
12 and then allow the parties to attempt to reach an agreement regarding
13 distribution in light of the Court's decision. In the event such an
14 agreement cannot be reached, a further hearing to determine the
15 appropriate plan of distribution will be held.

16 The request of Short, Cressman, Burgess that their attorneys
17 fees and costs which remain unpaid in the principal amount of
18 \$404,040.00 plus interest at 12% should be allowed. Further, the Court
19 believes based on the testimony presented that these fees and interest
20 should be determined a cost of administration. The Court finds the fees
21 in the amount submitted are reasonable in terms of hourly rate and hours
22
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JUDGE LEONARD W. COSTELLO
Kitsap County Superior Court
611 Division Street, MS-24
Port Orchard, WA 98366
(360) 876-7140

1 expended and that the time involved for the fees generated was for the
2 benefit of the Estate of Jack J. DelGuzzi.

3 The claim of Benson McCloughlin for accounting services to the
4 estate should be allowed in the amount of \$64,758.74 as of November 2,
5 1990, with interest accrued as of January 21, 1997, in the amount of
6 \$47,677.72 for a total of \$112,436.46. The principal amount of the
7 claim has now been reduced to a promissory note. The Court is satisfied
8 that the amount of money represented in the note is for services
9 rendered by Benson McCloughlin for the benefit of the Estate of Jack J.
10 DelGuzzi. Those fees should be considered an expense of administration
11 pursuant to RCW 11.76.110.
12

13 Helsell Fetterman Willis and McClure are entitled to the first
14 \$167,777.00 to be distributed to Gary DelGuzzi from the Estate after
15 payment to the cousins Shaw and Myer of \$164,500.00. This claim is not
16 disputed by any of the parties.
17

18 The remainder of this decision will attempt to deal with the
19 administrator's request for approval of the final report, the
20 comprehensive accounting for the Estate, and the approval of the
21 administration expenses and attorneys fees.
22

23 Initially the Court will resolve the issue of res
24 judicata/collateral estoppel raised by the administrator in his reply
25
26

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Kitsap County Superior Court
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1 memorandum in May. Having reviewed the memoranda submitted by all of
2 the interested parties, the Court is satisfied that the Administrator
3 has waived any claim of res judicata or collateral estoppel at this
4 point.

5
6 The Court finds that the fees submitted by Mr. Kleinman for
7 the preparation of the comprehensive accounting seems to the Court to be
8 reasonable and should be considered a cost of administration for the
9 Estate. Likewise, the Court has reviewed the claim of Chicoine and
10 Hallett and also concludes that the fees submitted and claimed are
11 reasonable; and further that the time spent and the fees charged were to
12 the benefit of the Estate and are properly considered a cost of
13 administration of the Estate.
14

15 With regard to the balance of the claims from the
16 administrator for payment, it is simpler perhaps for the Court to
17 indicate based on the testimony and evidence presented what it is not
18 willing to allow. The Court is not persuaded that the payment to the
19 administrator, or to firms that are controlled by the administrator, any
20 real estate commissions over and above the hourly rate of \$130.00 per
21 hour rate should be allowed. The Court will leave it to the parties in
22 interest to determine the exact amounts involved in this regard by the
23 time of the next hearing in this matter.
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Kitsap County Superior Court
614 Division Street, MS-24
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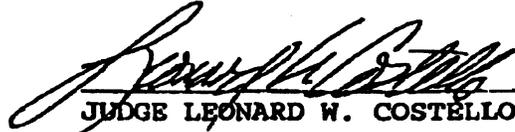
1 Further the Court finds as it relates to the Costa Rica
2 property and transactions that Mr. Wilbert did breach his duty to the
3 Estate as administrator in that he put himself in a situation where his
4 self-interest could potentially conflict with the Estate. Any expenses
5 by the administrator or by persons or entities controlled by the
6 administrator to receive compensation for time spent or expenses
7 relating to Costa Rica activity should not be allowed. The Court is not
8 prepared to make a finding that the actions of the administrator caused
9 a loss to the Estate which must be repaid by the administrator.
10

11 In all other respects, the Court finds that the expenses
12 requested by the administrator are reasonable and should be paid as a
13 cost of administration. The Court is prepared to accept the
14 recommendation of the administrator in terms of procedure to follow to
15 accomplish the distribution of the Estate. That procedure is outlined
16 at page 15 of the memorandum in support of the approval of the final
17 report and accounting through page 16 line 16. Further, with the
18 clarification that if an agreement cannot be reached, proposed plans for
19 distribution will be submitted within 90 days from October 15, with the
20 Court to consider such proposed plans for distribution as close to 135
21 days after the 15th of October as possible. The matters should be set
22 for hearing as the matter may take more than a short hearing to consider
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JUDGE LEONARD W. COSTELLO
Kitsap County Superior Court
614 Division Street, MS-24
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(360) 876-7140

1 those plans. The hearing should be conducted in Clallam County and the
2 date should be set through the scheduler in that County.

3 DATED this 10th day of October, 1997.

4
5 
6 JUDGE LEONARD W. COSTELLO

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR CLALLAM COUNTY

In the Matter of the Estate of	)	NO. 8087
)	
JACK J. DELGUZZI,	)	ORDER REGARDING
	)	ADMINISTRATIVE EXPENSE
Deceased.	)	AND REIMBURSEMENT
	)	CLAIMS AND PLAN FOR
	)	DISTRIBUTION

This matter having come before the Court at a hearing to consider the administrator's Final Report and Petition for Decree of Distribution After Order of Solvency, and the Court having considered the pleadings, memoranda, objections, declarations, testimony, exhibits, and arguments of the administrator and interested parties, and the record in this case,

IT IS HEREBY ORDERED as follows:

1. The Administrator's Fee and Expense Reimbursement Requests:
 - a. The administrator's proposed adjustments to his administrator's fee request, as set forth in Exhibit B (Schedule of Total Administrator's Expenses by Year With Adjustments For Costa Rica Time and Commissions) to the Declaration of

ORDER REGARDING ADMINISTRATIVE EXPENSE
CLAIMS AND PLAN FOR DISTRIBUTION - 1

B

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William B. Wilbert dated May 15, 1998, relating to Costa Rica activity and real estate commissions are hereby adopted and approved.

b. The administrator's computation of the amount of his claims for administrator's fees and expense reimbursement due from the Estate of Jack J. DelGuzzi ("Estate"), as set forth in Exhibit B (Schedule of Total Administrator's Expenses by Year With Adjustments For Costa Rica Time and Commissions) to the Declaration of William B. Wilbert dated May 15, 1998, is reasonable, and his fee and expense reimbursement claims are adopted and approved, except with respect to the administrator's computation of interest due on those claims.

c. The administrator is awarded interest on his approved claim for administrator's fees from October 10, 1997, at a rate of 12% per annum.

d. The administrator is awarded interest on his approved claims for expense reimbursement from October 10, 1997 or the date of payment of the expense by the administrator, whichever date is later, at a rate of 12% per annum.

e. The administrator's request that his expense reimbursement claims be paid first from the remaining assets of the Estate ahead of any other administrative expense claims or other claims against the Estate is denied.

2. Attorneys and Accountants Fees Approved:

a. The request by Short Cressman & Burgess that its attorneys fees and costs, as set forth on Exhibit B attached to the Declaration of Paul R. Cressman, Sr. re: Attorneys' Fees, dated January 20, 1997, is reasonable, is adopted and

ORDER REGARDING ADMINISTRATIVE EXPENSE
CLAIMS AND PLAN FOR DISTRIBUTION - 2

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approved, and shall bear interest at the rate of 12% per annum from January 21, 1997.

b. The request by Benson & McLaughlin that is accounting fees, as set forth in paragraph 3, Brief on Behalf of Benson & McLaughlin, dated May 15, 1997, is reasonable, is adopted and approved, and shall bear interest at the rate of 12% per annum from January 21, 1997.

3. Plan for Distribution and Closing the Estate:

a. The administrator is authorized and directed to hire an appraiser to appraise the fair market value of the remaining real property assets of the Estate, DelHur, Inc., and Cedarwood, Inc. The administrator is directed to proceed as soon as possible to complete the appraisals. The administrator should give consideration to hiring a local Clallam County appraiser to perform the appraisal work for the Estate. In addition, the administrator should give consideration to hiring an appraiser at the least cost to the Estate.

The administrator shall
work to all parties regarding the same a list of
names of appraisers for the administrator to hire to perform the appraisals, the
administrator will promptly give notice to all interested parties of the name and
address of the appraiser he intends to hire and the cost to the Estate to obtain the
appraisals. Any interested party who objects to hiring the appraiser identified
by the administrator shall provide written notice to the administrator, within
three (3) ^{business} days of the date of the administrator's notice to interested parties, of
any objection to hiring the proposed appraiser and the reasons for the objection.

ORDER REGARDING ADMINISTRATIVE EXPENSE
CLAIMS AND PLAN FOR DISTRIBUTION - 3

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In addition, the objecting party shall make arrangements with the clerk of the undersigned judge for a telephone hearing with the undersigned judge ^{or the} and all interested parties wishing to participate in order to present the objections to hiring the appraiser proposed by the administrator.

c. If the administrator receives no objections to hiring the appraiser he proposes to hire, or if any interested party objects but the Court approves hiring the appraiser proposed by the administrator, the administrator shall promptly proceed to hire the appraiser. The administrator is authorized to use Estate assets to pay for the services of the appraiser hired.

d. The administrator shall aggressively and immediately market the remaining real property of the Estate and its related entities. The properties shall be listed with local Clallam County brokers at a sale price of at least the current assessed value for each parcel of property.

e. The administrator is authorized to accept on behalf of the Estate an offer to purchase any parcel of Estate real property at a price equal to or greater than the property's current assessed value. ~~_____~~

f. If an offer is made to purchase Estate real property at a price less than the property's current assessed value, the administrator shall promptly give notice to all interested parties of the terms of the purchase offer. Any interested party who objects to accepting the purchase offer shall provide written notice to the administrator, within three (3) ^{business} days of the date of the administrator's notice, of

ANC

ORDER REGARDING ADMINISTRATIVE EXPENSE
CLAIMS AND PLAN FOR DISTRIBUTION - 4

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any objection to acceptance of the purchase offer and the reasons for the objection. In addition, as soon as possible after providing written notice to the administrator, the objecting party shall make arrangements with the clerk of the undersigned judge for a telephone hearing with the undersigned judge and all interested parties wishing to participate in order to present the objections to acceptance of the proposed purchase offer.

AKC

g. The administrator is authorized and directed to proceed to liquidate DelMar, Inc. and Cedarwood, Inc. *and with notice to all parties,* including but not limited to the payment of any outstanding liabilities of each corporation, preparation and filing of final tax returns, distribution of the remaining assets of each corporation to its shareholders, and dissolving each corporation. Following notice of the same to all interested parties, the administrator is authorized to pay from assets of each corporation all necessary and reasonable costs incurred in liquidating and dissolving the corporations, including necessary and reasonable costs of attorneys, accountants, or other professionals to assist in completing the liquidation and dissolution of the corporations.

h. Following notice of the same to all interested parties, the administrator is authorized to pay from assets of the Estate all necessary and reasonable fees of the administrator, attorneys, and accountants for time spent on matters relating to carrying out the plan for distribution and closing the Estate, and all other

ORDER REGARDING ADMINISTRATIVE EXPENSE
CLAIMS AND PLAN FOR DISTRIBUTION - 5

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necessary and reasonable expenses incurred in continuing the administration of the Estate or in carrying out the plan for distribution and closing the Estate.

McC i.

The administrator is authorized and allowed ^{with prior notice to all parties} to make pro rata interim distributions to the three administrative claimants in partial satisfaction of their

approved administrative claims; provided, however, that the administrator retains in the Estate sufficient liquid assets to meet all necessary and reasonable expenses of the continuing administration of the Estate until it is closed or to carry out the plan for distribution and closing the Estate. Any pro rata interim distribution shall be based on the ratio of the amount of each administrative claim to the total amount of all three administrative claims.

j. Upon written request by the administrator, the Clerk of this Court is authorized and directed to release any funds being held by the Court in this case to the administrator. In lieu thereof, the administrator can request that the Clerk continue to hold such funds, but direct the Clerk to place those funds in an interest bearing account.

k. The administrator shall note a hearing during the month of August 1998 or as soon thereafter as possible for the purpose of setting the fair market value of any Estate properties that have not been sold and/or to resolve any other matters relating to the plan for distribution and closing the Estate.

1. This order entered as a final order on this day.

ORDER REGARDING ADMINISTRATIVE EXPENSE CLAIMS AND PLAN FOR DISTRIBUTION - 6

CHICOINE & HALBERT, P.S.

ATTORNEYS AT LAW

WATCHPOINT PLACE ONE, SUITE 203

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(206) 323-8600

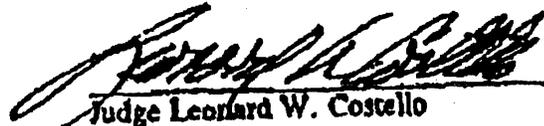
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Dated this 5 day of June 1998.



 Judge Leonard W. Costello

Presented by:
CHICOINE & HALLETT, P.S.

By 

 Larry N. Johnson, WSBA #8786
 Darrell D. Hallett, WSBA #0562
 Attorneys for William E. Wilbert

(See 03)C:\My Documents\WILBERT\PROBATE\PLEAD-2\Order to proposed plan #1.doc

ORDER REGARDING ADMINISTRATIVE EXPENSE
CLAIMS AND PLAN FOR DISTRIBUTION - 7

CHICOINE & HALLETT, P.S.
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**Order Regarding an Administrative Expense and Reimbursement Claims
and Plans for Distribution of 5 June 1998**

This matter having come before the Court at a hearing to consider the administrator's Final Report and Petition for Decree of Distribution after Order of Solvency, and the Court having considered the pleadings, memorandums, objections, declarations, testimony, exhibits, and arguments of the administrator and interested parties, in the record in this case, it is hereby ordered as follows:

1. The Administrator's Fee and Expense Reimbursement Requests:

a. The administrator propose adjustments to his administrator's fee request, as set forth in Exhibit E (Schedule of Total Administrator's Expenses by Year with Adjustments for Costa Rica Time and Commissions) to the Declaration of William E. Wilbert, dated May 15, 1998, relating to Costa Rica activity and real estate commissions, are hereby adopted and approved.

b. The administrator's computation of the amount of his claims for administrator's fees and expense reimbursement due from the Estate of Jack J. Delguzzi ("Estate"), as set forth in Exhibit E (Schedule of Total Administrator's Expenses by Year for the Adjustments of Costa Rica Time and Commissions) to the Declaration of William E. Wilbert, dated May 15, 1998, is reasonable, and his fee and expense reimbursement claims are adopted and approved, except with respect to the administrator's computation of interest due on those claims.

c. The administrator is awarded interest on his approved claim for administrative fees from October 10, 1997, at a rate of 12 percent per annum.

d. The administrator is awarded interest on his approved claims for expenses reimbursement from October 10, 1997, or the date of payment of the expense by the administrator, whichever date is later, at a rate of 12 percent per annum.

e. The administrator's request that his expense reimbursement claims be paid first from the remaining assets of the estate ahead of any other administrative expense claims or other claims against the estate, is denied.

2. Attorneys and accountants fees approved:

a. The request by Short, Cressman and Burgess, that its attorney's fees and costs, as set forth on Exhibit B attached to the Declaration of Paul R. Cressman, Sr., re: Attorney's Fees, dated January 20, 1997, is reasonable, is adopted and approved, and shall bear interest at the rate of 12 percent per annum from January 21, 1997.

b. The request by Benson and McLaughlin that is [sic] accounting fees, as set forth in paragraph 3, Brief on Behalf of Benson and McLaughlin, dated May 15, 1997, is reasonable, is adopted and approved, and shall bear interest at the rate of 12 percent per annum from January 21, 1997.

3. Plan for distribution and closing the estate:

a. The administrator has authorized and directed to hire an appraiser to appraise the fair market value of the remaining real property assets of the estate, Delhur Inc, and Cedarwood, Inc. The administrator is directed to proceed as soon as possible to complete the appraisals. The administrator should give consideration to hiring a local Clallam County appraiser to perform the appraisal work for the estate. In addition, the administrator should give consideration to hiring an appraiser at the least cost to the estate. *The administrator shall provide to all parties requesting the same, a list of all property held by the estate to be disposed of and the current assessed values.*

b. Once the administrator has completed to perform the appraisals, the administrator shall promptly give notice to all interested parties of the name and address of the appraiser he intends to hire and the cost to the estate to obtain the appraisals. Any interested party who objects to hiring the appraiser identified by the administrator shall provide written notice to the administrator, within three (3) *business days* of the date of the administrator's notice to interested parties, of any objection to hiring the proposed appraiser and the reasons for the objection. In addition, the objecting party shall make arrangements with the clerk of the undersigned judge for a telephone hearing with the undersigned judge or *the presiding judge of Kitsap Superior Court or designee*, and all interested parties wishing to participate in order to present the objections to hiring an appraiser by the administrator.

c. If the administrator receives no objections to hiring the appraiser he proposes to hire, or if any interested party but the Court approves to hiring the appraiser proposed by the administrator, the administrator shall promptly proceed to hire the appraiser. The administrator is authorized to use the estate assets to pay for the services of the appraiser hired.

d. The administrator shall aggressively and immediately market the remaining real property of the estate and its related entities. The property shall be listed with local Clallum County brokers at a sale price of at least the current assessed value for each parcel of property.

e. The administrator is authorized to accept on behalf of the estate an offer to purchase any parcel of the estate real property at a price equal to or greater than the property's current assessed value.

f. If an offer is made to purchase the estate real property at a price less than the property's current assessed value, the administrator shall promptly give notice to all interested parties on the terms of the purchase offer. If any interested party objects to accepting the purchase offer, they shall provide written notice to the administrator, within three (3) business days of the date of the administrative notice, of any objection to acceptance of the purchase offer and the reasons for the objection. In addition, as soon as possible after providing written notice to the administrator, the objecting party shall make arrangements with the clerk of the undersigned judge for a telephone hearing with the undersigned judge and all interested parties wishing to participate in order to present objections to acceptance of the proposed purchase offer.

g. The administrator is authorized and directed to proceed to liquidate Delhur Inc. and Cedarwood Inc. *and with notice to all parties*, including but not limited to the payment of any outstanding liabilities of each corporation, preparation and filing of final tax returns, distribution of the remaining assets of each corporation to its shareholders, in dissolving each corporation. Following notice of the same to all interested parties, the administrators authorize to pay from assets from each corporation all necessary and reasonable costs incurred in liquidating and dissolving the corporations, including the necessary and reasonable costs of attorneys, accountants, or other professionals to assist in completing the liquidation and dissolution of the

corporations.

h. Following notice of the same to all interested parties, the administrator is authorized to pay from assets of the estate all necessary and reasonable fees of the administrator, attorneys, and accountants with time spent on matter relating to carrying out the plans for distribution and closing the estate, and all necessary and reasonable expenses incurred in continuing the administration of the estate or in carrying out the plans for distribution and closing the estate.

i. The administrator is authorized and allowed with prior notice to all parties, to make pro rata interim distributions to the three administrative claimants in partial satisfaction of the approved administrative claims; provided, however, that the administrator retains in the estate sufficient liquid assets to meet all necessary and reasonable expenses of the continuing administration of the estate until it is closed or to carry out the plans for distribution and closing the estate. Any pro rata in terms of distribution shall be based on the ratio of the amount of each administrative claim to the total amount of all three administrative claims.

j. Upon written request by the administrator, the Clerk of this Court is authorized and directed to release any funds being held by the Court in this case to the administrator. In lieu thereof, the administrator can request that the clerk continue to hold such funds, but direct the clerk to place those funds in an interest bearing account.

k. The administrator shall hold a hearing in the month of August of 1998 or as soon thereafter as possible for the purpose of stating the fair market values of any estate properties that have not been sold and/or to resolve any other matters relating to the plan for distribution and closing of the estate.

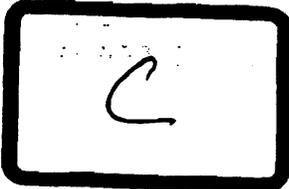
l. This order is entered as a final order on this day.

DATED this 5th day of June, 1998.

/s/

Judge Leonard W. Costello

Presented by Larry N. Johnson



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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR CLALLAM COUNTY

In the Matter of the Estate of	)	No. 8087
)	
Jack DelGuzzi,	)	DECLARATION OF
	)	WILLIAM E. WILBERT
Deceased.)	
)	
)	
)	

I, William E. Wilbert, declare and state the following under penalty of perjury:

1. I am over 18 years of age and competent to make this declaration and do so from personal knowledge.
2. I am the administrator w.w.a., de bonis non, of the Estate of Jack DelGuzzi ("Estate"). I have been the administrator of the Estate since August 1982, when I agreed to replace Gary DelGuzzi, at his request, as personal representative of the Estate.
3. Since 1960 I have been a licensed real estate broker in the state of Washington.
4. I am also an officer, director, and principal shareholder of William E. Wilbert Broker, Inc. ("Broker"), a Washington corporation organized for the purpose of engaging in a real estate brokerage business and real estate development. Broker has conducted its business for over 35 years.

DECLARATION OF WILLIAM E. WILBERT - 1

COPY

EXHIBIT E

1 5. In February 1980, before I became the administrator for the Estate, I was hired
2 by Gary DelGuzzi, who was then the personal representative of the Estate, and J. Dimmett
3 Smith, who was then legal counsel for the personal representative, as property consultant and
4 property expert to provide advice and consultation regarding development and sale of Estate
5 and Estate-related properties, and as a possible expert witness in the lawsuit DelGuzzi v.
6 DelGuzzi, an action between the Estate and the estate of Jack DelGuzzi's brother and business
7 partner, Bruno DelGuzzi. The agreed compensation for my consulting services was at the rate
8 of \$165.00 per hour, which was the rate I was charging my other clients at that time.
9

10
11 6. In October 1981, Gary DelGuzzi, who was then still the personal representative
12 of the Estate, appointed me as real property advisor and Broker as real property manager for
13 all properties in which Gary DelGuzzi individually or the Estate or Estate-related entities had
14 an interest. In addition, Gary DelGuzzi appointed Broker as agent of record for those
15 properties as long as the appointment was in effect. Attached hereto as Exhibit A is a copy of
16 the Appointment of Agent signed by Gary DelGuzzi on October 19, 1981, which made those
17 appointments. At that time, it was agreed that Broker would be compensated for its work as
18 property manager through listing and selling commissions that would be paid for any property
19 sales, including sales of Estate or Estate-related property. Gary DelGuzzi has never revoked
20 that appointment and agreement.
21

22
23 7. When Gary DelGuzzi requested that I become the administrator of the Estate
24 and replace him as the Estate's personal representative, it was agreed that I would reduce my
25 hourly rate for work as administrator of the Estate to \$135.00 per hour and that Broker would
26 continue to act a property manager of the Estate to develop and sell Estate and Estate-related

DECLARATION OF WILLIAM E. WILBERT - 2

EXHIBIT E

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properties with its compensation being real estate commissions earned for listing and selling Estate and Estate-related properties. Since August 1982, that arrangement continued without change, although I have not charged the Estate for all the time I have spent on administration of the Estate, nor has Broker received commissions on all property sales it has accomplished of Estate or Estate-related properties. Since August 1982, I have not increased my hourly rate charged for time I have spent on administration of the Estate.

8. Since 1982, I have maintained billing records of the time I have spent working as administrator of the Estate on administration of the Estate or Estate-related entities, including DelHur, Inc. and Cedarwood Properties, Inc. Those time and billing records were submitted to this Court as part of the hearings on the administrator's Final Report and Petition for Decree of Distribution.

9. I did not include in my time and billing records for administration of the Estate any of the time I spent on behalf of Broker as property manager relating to sales or attempts to sell Estate or Estate-related properties for which Broker was or would have been entitled to receive real estate commissions if or when property sales closed or for property sales that Broker did not earn any real estate commission. No time was charged or billed to the Estate for any Broker-related work, i.e., no administrative billings were made for work performed that was the normal and customary tasks performed by a licensed real estate broker or a licensed real estate agent, whether or not the work resulted in a property sale or a real estate commission for Broker. The only time I billed to the Estate was for my work or the work of my staff relating solely to the administration of the Estate unrelated to any work performed by Broker or others in attempting to sell Estate or Estate-related properties.

DECLARATION OF WILLIAM E. WILBERT - 3

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EXHIBIT E

1 10. During the course of the efforts made by Broker to sell Estate or Estate-related
2 properties, Broker incurred various expenses and costs relating to those efforts to sell
3 properties, including advertising expenses, listing costs, transportation and travel expenses,
4 general office overhead expenses, and other expenses related to real estate sales activity. The
5 Estate has never reimbursed broker for any of those expenses or costs. Broker has only
6 received real estate commissions from the Estate that resulted from the sale of Estate or Estate-
7 related properties.
8

9 11. Throughout the time I have been a licensed real estate broker, it has been a
10 general practice that neither myself nor the real estate agents that have worked for me or
11 Broker maintain time or billing records for time spent for work on either successful or
12 unsuccessful property sales. Based on my experience in the real estate industry, this practice is
13 consistent with the general practice of virtually all real estate brokers and agents involved in
14 the real estate industry, not only in the state of Washington, but also in most other states and
15 countries. The principal reason for this general practice in the industry is that the
16 compensation earned by real estate brokers and agents for property sales is not determined or
17 calculated in any way by the amount of time spent on accomplishing a sale. Commissions for
18 real estate sales usually depend on the type of property sold, the price the property sells for,
19 and the successful outcome of the sale rather than being based on an hourly fee for the time
20 spent on a property sale.
21
22

23 12. Since I became the administrator of the Estate in August 1982, Broker has
24 earned real estate commissions as either the listing agent or selling agent from the sales of
25 Estate or Estate-related properties totaling \$169,684.55. These commissions are the amounts
26

DECLARATION OF WILLIAM E. WILBERT - 4

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EXHIBIT E

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Broker earned net of any commissions Broker was obligated to pay to real estate agents who participated in an Estate property sale and were entitled to receive part of the total commission earned on a property sale. Those real estate agents included real estate agents of other brokerage firms unrelated to Broker as well as real estate agents who were working for Broker.

13. Real estate agents who worked for Broker and earned commissions from the sale of Estate or Estate-related properties, and who are also members of my family, were my sons, William D. Wilbert and Daniel G. Wilbert, my daughter, Laure Anne Wilbert, and my son-in-law, Terry Jarboe. The following are the amount of real estate commissions each of them earned from the sale of Estate or Estate-related properties:

William D. Wilbert	\$54,343.26
Daniel G. Wilbert	49,658.75
Laure Anne Wilbert	30,685.00
Terry Jarboe	<u>5,067.50</u>
TOTAL	\$139,754.01

Each of these family members was a licensed real estate agent in the state of Washington. The commissions earned by each were the result of their work and efforts in accomplishing sales of Estate or Estate-related properties as the sales agent for those property sales. Broker was obligated to pay those commissions to my family members based on compensation agreements with them to pay part of any real estate commissions earned by Broker on property sales accomplished by that real estate agent. Those compensation arrangements between Broker and my family members were the same as compensation arrangements that Broker or I have had with other unrelated real estate agents, and are typical for real estate agents working in brokerage firms in the state of Washington. If those property sales had been accomplished by

DECLARATION OF WILLIAM E. WILBERT - 5

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EXHIBIT E

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any unrelated real estate agent, those agents would have received from the Estate the same commissions as those earned by my family members.

14. None of the commissions earned by my family members identified above have been paid back to Broker or I directly or indirectly, nor do Broker or I have any right to receive back any part of those commissions.

15. In 1992, my son, Daniel G. Wilbert, and my daughter, Laure Anne Wilbert, formed and incorporated their own real estate brokerage firm known as Hemisphere Properties, Ltd. ("Hemisphere"), a Washington State corporation. They own the stock of that corporation and are its officers and directors. I have never held any of the stock in Hemisphere, I have never been an officer or director of that corporation, and I have never controlled or had the right to control the corporation or any of it's activities or operations.

16. Since 1992, Hemisphere, through the work and efforts of my son, Daniel G. Wilbert, and/or my daughter, Laure Anne Wilbert, has been successful in accomplishing sales of Estate or Estate-related properties as the selling agent for those property sales. As a result of those sales, Hemisphere has earned and received real estate commissions from the Estate totaling \$62,747.29.

17. None of the commissions earned by Hemisphere identified above have been paid back to Broker or I directly or indirectly, nor do Broker or I have any right to receive back any part of those commissions.

18. In attempting to determine what, if any, adjustment to my administrator fee and expense reimbursement requests is required based on the Court's direction that those Estate expenses not include any real estate commissions over my hourly rate of \$130 per hour

DECLARATION OF WILLIAM E. WILBERT - 6

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EXHIBIT E

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(although my hourly rate as administrator was actually \$135 per hour), I have reviewed the records of the Estate in an attempt to reasonably determine the amount of time I have spent on selling or attempting to sell Estate or Estate-related properties.

19. Real estate professionals (agents and brokers) take on agency duties in their attempt to receive compensation in the form of commissions earned from properties they list or sell. These agency responsibilities impose on the real estate professionals ethical, legal, and contractual obligations owed to their clients. These duties include acting in good faith and with loyalty to the client in promoting the client's best interests; avoiding misrepresentations, carelessness, or negligence, whether intentional or unintentional, in offering and promoting properties for sale; and using reasonable care and skill in marketing the client's properties. To meet these obligations, a real estate professional must conduct careful research regarding the ownership status and various legal, contractual, title, and/or use restrictions of each of the properties they market, in addition to their time and efforts required to list, advertise, inspect, and market the properties. Even after a sale agreement is entered into, the real estate professional must remain actively involved in seeing the sale is properly completed and closed by assisting in the preparation and review of sale, financing, and closing documents, in inspection of the property and removing sale contingencies, and in otherwise bringing the sale to a close. Because Broker was the broker and listing agent for virtually all Estate and Estate-related properties, through Broker I performed these tasks, duties, and obligations without billing my time as broker or listing agent of those properties to the Estate. My only compensation for time spent on those tasks, duties, and activities was through commissions earned by Broker when a real estate sale was completed and closed.

DECLARATION OF WILLIAM E. WILBERT - 7

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(206) 277-8800

EXHIBIT E

1 20. With Broker acting as selling and/or listing agent for most of the Estate or
2 Estate-related properties, I was actively involved with all aspects of the sales process and in
3 meeting the professional obligations of the broker and agent for the sales and attempted sales of
4 virtually all of the Estate or Estate-related properties. Moreover, due to the complexity and
5 diversity of the Estate properties, the care and skill required to meet these obligations were
6 much more complex, demanding, and time-consuming than is true of most real estate
7 transactions and sales. Many of the Estate properties were affected by and presented unique
8 and difficult problems, including: encroachments; lack of legal access; different and complex
9 land use and zoning restrictions; easement restrictions; complex and sometimes confusing
10 encumbrances on properties; valuable timber holdings; wetlands and endangered species
11 restrictions, particularly as to certain timber holdings; illegal dumping and the required clean-
12 up problems; unauthorized inhabitants (vagrants); unclear, confusing, or questionable legal title
13 and ownership problems, as well as minority ownership issues; and complicated tax
14 consequences resulting from sales. In addition to these problems and complexities, all the
15 Estate properties at some time were encumbered with liens for estate, inheritance, property and
16 other taxes that were required to be removed in order to transfer to a purchaser clear and
17 marketable title. As broker and listing agent for virtually all the Estate or Estate-related
18 properties, I spent time dealing with and resolving these problems for each of the properties
19 involved and listed for sale. My only compensation for time spent on those tasks, duties, and
20 activities was through commissions earned by Broker when a real estate sale was completed
21 and closed.
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DECLARATION OF WILLIAM E. WILBERT - 8

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EXHIBIT E

1 21. According to the Estate records I have maintained as administrator as well as
2 records of Broker, Broker has earned real estate commissions from 85 sales of Estate or
3 Estate-related properties during the time I have been the Estate's administrator. This computes
4 to an average commission per sale of just under \$2,000, excluding property sales accomplished
5 by Broker for which Broker received no commission.

6 22. If I had charged the Estate an hourly rate of \$130 per hour for the time I spent
7 selling the Estate's properties, I would have to have spent an average of 15.36 hours of time on
8 each of the 85 property sales accomplished by Broker to have been entitled to receive the same
9 total real estate commissions earned by Broker from the sale of Estate or Estate-related
10 properties as set forth above. This calculation does not take into consideration any time I spent
11 on property sales for which Broker received no commission, on attempting to sell properties
12 that never sold, or on sales agreements that were entered into, but never closed. Although I
13 did not keep complete records of the actual amount of time I spent on Estate property sales, I
14 have no doubt that I spent on average more than 15.36 hours of time on each of the Estate
15 property sales for which Broker earned a commission, and substantially more than that if you
16 include any time I spent on property sales that Broker received no commission, on attempting
17 to sell properties that never sold, or on sales agreements that were entered into, but never
18 closed.

19 23. Estate properties were listed and actively marketed by Broker through the
20 Washington State multiple listing association. Broker maintained membership in the multiple
21 listing association at an expense that averaged approximately \$200 per month during the period
22 that Broker was selling Estate properties. The Estate did not reimburse any portion of those

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DECLARATION OF WILLIAM E. WILBERT - 9

EXHIBIT E

1 expenses to Broker. The records I maintained show that during the time I have been the
2 Estate's administrator, Broker prepared and submitted 380 property listings of Estate or Estate-
3 related properties with the Washington State multiple listing service.
4

5 24. If I had charged the Estate an hourly rate of \$130 per hour for the time I spent
6 selling the Estate's properties, I would have to have spent an average of 3.43 hours of time on
7 each of the 380 property listings on the multiple listing service done by Broker to have been
8 entitled to receive the same total real estate commissions earned by Broker from the sale of
9 Estate or Estate-related properties as set forth above. I have no doubt whatsoever that I spent
10 on average more than 3.43 hours of time on each of the Estate or Estate-related properties
11 marketed through the multiple listing service.
12

13 25. Each listing of property on the multiple listing service requires the preparation
14 and submission of about seven (7) separate forms containing detailed and specific information
15 about the property. I spent on average at least three (3) hours of time compiling the
16 information and preparing and submitting those multiple listing forms for each property listed.
17 That computes to 1,140 hours of work at \$130 per hour, or \$148,200.
18

19 26. During the time I have been administrator and Broker has been selling Estate
20 properties, I have regularly maintained a telephone directory of my telephone calls that
21 included who I called, when the call was made, the time spent on the call, and the general
22 purpose or description of the telephone call. These included telephone calls relating to my
23 efforts on behalf of Broker to sell or attempt to sell Estate or Estate-related properties. The
24 time spent on those calls were not billed to the Estate as part of my administrator's fees.
25
26

DECLARATION OF WILLIAM E. WILBERT - 10

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EXHIBIT E

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27. Several years ago, my staff and I reviewed, compiled, and summarized the information in my telephone directory to determine the amount of time I had spent on efforts to sell Estate properties for which Broker never received any commission. A large part of the time compiled related to my work for Broker in accomplishing a division of the Nyhus-DelGuzzi partnership and a transfer of the partnership's properties. Broker earned no commission on any of those property transfers, and I did not bill the Estate for the time I spent relating to those property transfers. In recently reviewing the Estate's records following issuance of the Court's recent decision, I discovered these compilations of time spent on certain Estate property transfers or sales for which Broker did not receive or earn any real estate commission. A copy of those records is attached as Exhibit B. The records show the following number of hours spent on those Estate property transfers or sales each year, and the amount I would have earned if I had charged the Estate \$130 per hour for that time:

<u>Year</u>	<u>Hours</u>	<u>@ \$130</u>
1982	38.5	\$ 5,005
1983	233.5	30,355
1984	182.0	23,660
1985	109.5	14,235
1986	275.0	35,750
1987	- 0 -	- 0 -
1988	221.1	28,743
1989	485.0	63,050
1990	- 0 -	- 0 -
1991	<u>102.0</u>	<u>13,260</u>
TOTAL	1,486.6	\$193,258

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28. While I have been administrator of the Estate, Broker has also made ten (10) listings of the Estate's commercial and industrial properties, sub-divisions, partnerships, and/or timber lands with twelve (12) international brokerage firms. These listings required my time

DECLARATION OF WILLIAM E. WILBERT - 11

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EXHIBIT E

1 in preparing the necessary documents for each listing, including translation of documents when
2 required, with the expense of such translations and other costs being incurred and paid by
3 Broker without reimbursement by the Estate.
4

5 29. In 1988 and 1989, Broker participated in real estate expositions or trade shows
6 held in Australia and New Zealand, Hong Kong, and Taipei, Taiwan where I promoted the
7 sale of various properties listed by Broker, including certain properties of the Estate or Estate-
8 related entities. Broker had a display booth at each of those expositions, and prepared
9 brochures, videotapes, slides, and other promotional materials for the shows. Broker incurred
10 costs for travel, hotel, meals, setting up and tearing down booths, and other costs for
11 participating in the shows, in addition to the time I spent promoting and attempting to sell the
12 Estate and other properties at those expositions. All these costs were incurred and paid by
13 Broker, and were not reimbursed by the Estate. The total costs Broker paid for these shows
14 was over \$35,000, of which a reasonable allocation of those costs to the Estate properties being
15 promoted for sale at those expositions was approximately \$10,000.
16
17

18 30. Based on my review of the records of the Estate and Broker, the information set
19 forth above, as well as my own recollection, there should be no adjustment to my request for
20 administrator's fees and expense reimbursement for the real estate commissions received by me
21 or firms I controlled based on the Court's direction that I or firms that I controlled should not
22 be allowed commissions greater than \$130 per hour times the number of hours I spent on
23 selling or attempting to sell Estate or Estate-related properties. Based on the amount of real
24 estate commissions received by Broker as set forth above and the hours I spent on selling or
25 attempting to sell Estate or Estate-related properties, my effective hourly rate for that time is
26

DECLARATION OF WILLIAM E. WILBERT - 12

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substantially less than \$130 per hour. In fact, even if you take into consideration all real estate commissions paid by the Estate to Broker, Hemisphere, and my family members, my effective hourly rate for time I spent selling or attempting to sell Estate or Estate-related properties is still less than \$130 per hour.

31. The Court's Memorandum Opinion in this case dated October 10, 1997, provides that, "Any expenses by the administrator or persons or entities controlled by the administrator to receive compensation for time spent or expenses relating to Costa Rica activities should not be allowed." In order to carry out the Court's direction that any fees or expenses I am requesting be paid to me as administrator not include any time spent or expenses relating to Costa Rica activities, I have reviewed, with the assistance of my staff and counsel, all my billing and expense records to calculate the time spent and billed by my staff and/or I on Costa Rica activities and the expenses that have been paid by the Estate or Estate-related entities on Costa Rica activities. The results of that review are summarized in the schedule attached as Exhibit C entitled "Costa Rica Hours and Expense Adjustments". Exhibit C is my calculation and determination of the yearly and total adjustments that are required to my fee and expense reimbursement requests based on the Court's determination that time spent and expenses relating to Costa Rica activities be disallowed.

32. In Exhibit C, the column labeled "WEW" includes for each year the number of hours I billed for my time spent on Costa Rica activities, and the amounts billed based on those hours times my billing rate of \$135 per hour. The total number of hours I billed on Costa Rica activities, as reflected in the billing statements I have submitted to the Court in this proceeding,

DECLARATION OF WILLIAM E. WILBERT - 13

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1 is 688 hours. This computes to a negative adjustment to my fee request of \$92,880 (688 hours
2 times \$135 per hour).

3
4 33. In Exhibit C, the column labeled "WDW" includes for each year the number of
5 hours billed by my company, William E. Wilbert P.S., Inc. ("P.S."), for time spent by my
6 son, William D. Wilbert, as an employee of P.S., on Costa Rica activities. The total number
7 of hours billed on Costa Rica activities by my son, William D. Wilbert, as reflected in the
8 billing statements that have been submitted to the Court in this proceeding, is 472.8 hours.
9 However, no adjustment is required to my fee request based on the Court's direction for the
10 reason that neither my son, P.S., nor I have ever been paid for the time my son spent on Costa
11 Rica activities, and neither my son, P.S., nor I have requested or are requesting payment or
12 reimbursement of any amount for any time my son spent on Costa Rica activities.
13

14 34. In Exhibit C, the column labeled "Administration" includes for each year the
15 number of hours billed by my staff who have assisted me on matters relating to administration
16 of the Estate for time spent on Costa Rica activities, and the amount billed based on those
17 hours times my staff billing rate of \$75 per hour. The only time spent and billed by my staff
18 on Costa Rica activities was 6 hours, or \$450 of administrator's fees, in 1993.
19

20 35. In Exhibit C, the column labeled "Expenses" includes for each year the amount
21 of expenses paid by the Estate relating to Costa Rica activities based on my review of the
22 Estate's books and records. For the sixteen (16) year period from 1982, the Estate has paid
23 expenses relating to Costa Rica activities totaling \$21,852. Based on the Court's direction,
24 these expenses, therefore, require a negative adjustment to my fee and expense reimbursement
25 request of \$21,852.
26

DECLARATION OF WILLIAM E. WILBERT - 14

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EXHIBIT E

1 36. In Exhibit C, the final column on the right side labeled "Total Adjustments" is
2 the sum of the adjustments shown in each of the other columns for each year for both time
3 billed and expenses relating to Costa Rica activities. The total adjustment shown for each year
4 is my calculation of the amount that my fee and expense reimbursement requests should be
5 reduced based on the direction of the Court that those requests not include any time billed or
6 expenses relating to Costa Rica activities. The total adjustment for all years should be
7
8 \$115,182.

9
10 37. Since August 1982, I have provided my services to the Estate as its
11 administrator, and have billed the Estate for the time I spent in providing those services at a
12 billing rate of \$135 per hour. However, the Estate did not have sufficient cash assets to pay
13 the administrator's fees I billed as they were incurred, and those fees have accumulated and
14 remain unpaid to the extent presented in the time and billing statements I have previously
15 submitted in this probate proceeding. A similar situation occurred with respect to fees incurred
16 by the Estate for the services of attorneys and accountants.

17
18 38. Periodically during the time I have been the Estate's administrator, I have
19 executed on behalf of the Estate agreements to pay the accumulated and unpaid administrator's
20 fees, attorneys fees, and accountants fees, as well as fees for future services rendered,
21 including interest on the amount due, and have agreed to secure the Estate's obligation to pay
22 such administration expenses with deeds of trust on property of the Estate or other security. I
23 have also periodically executed on behalf of the Estate promissory notes evidencing its
24 indebtedness for such administration expenses, including the unpaid administrator's fees the
25 Estate owed me. Those agreements and notes included provisions for the payment of interest
26

DECLARATION OF WILLIAM E. WILBERT - 15

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EXHIBIT E

1 on the unpaid balance owed. Many of the notes provided a lower rate of interest if paid by a
2 specific date, which was generally set as one or two years after execution of the notes. If the
3 Estate defaulted and did not pay by the date specified in the agreement or note, the interest rate
4 would increase to a higher default interest rate, which was usually set based on then existing
5 market interest rates, in addition to a late payment charge, which was usually set at 10% of the
6 face amount of the note. I recall that most often the default interest rate on unpaid
7 administration expenses was 12% or 18%, but I also recall it to be as high as 22%. Examples
8 of such agreements and notes relating to the administrator's fees the Estate owed to me are
9 attached as Exhibit D.

11 39. In making my request for payment of outstanding administrator's fees and
12 expense reimbursement in this probate proceeding, I took no position on whether the Court
13 should, in awarding or directing the payment of outstanding administration expenses
14 (administrator, attorneys, and accountants fees), also award or direct the payment of interest on
15 the unpaid balance of those claims. However, I did take the position that if the Court awarded
16 or directed the payment of interest on the outstanding administration expenses of the other fee
17 claimants (Short Cressman & Burgess and/or Benson McLaughlin), then the Court should also
18 award or direct the payment of interest on my administration expense claims. The Court's
19 Memorandum Decision dated October 10, 1997, does award the other fee claimants interest on
20 their fee claims at an interest rate of 12%.

23 40. Attached hereto as Exhibit E is a schedule of the amount I have calculated I am
24 due for outstanding administrator's fees based on the Court's Memorandum Decision dated
25 October 10, 1997. For the reasons set forth above, the calculation makes adjustments for
26
DECLARATION OF WILLIAM E. WILBERT - 16

EXHIBIT E

1 Costa Rica fees and expenses; makes no adjustment for commissions earned by me or entities I
2 control; and includes a calculation of interest due on the annual unpaid balance of outstanding
3 administrator's fees. The interest calculation uses an interest rate of 12% per annum on the
4 Cumulative Amount Due for the prior year, which includes fee and interest accruals through
5 the prior year end, but does not include any fees that were billed and accrued during the year
6 for which interest is being calculated, or any interest that may have accrued during the year of
7 the interest calculation. Therefore, the interest computed for any year does not include any
8 interest on fees billed during the year of the interest calculation.
9

10 41. During the hearings on my Final Report and Petition for Decree of Distribution
11 for the Estate held before Judge Costello on January 21-22, 1997 and March 24-26, 1997, I
12 presented testimony and exhibits, including my billing records, regarding the amount of
13 administrator's fees I was owed for both my time spent as administrator on Estate matters and
14 the time my staff spent on Estate matters through December 31, 1995. Those billing records
15 did not include the time I spent after December 31, 1995 as administrator, or my staff spent at
16 my direction, working with the Estate's attorneys and accountants to prepare the Estate's
17 comprehensive accounting and Final Report, to prepare for the hearings on the Estate's Final
18 Report, to attend the hearings held on the Final Report, or to handle or deal with other Estate
19 matters. I have included in Exhibit E the time and amounts billed by my staff and I for time
20 spent on those matters relating to administration of the Estate during 1996, 1997, and 1998
21 (through 5/1/98). This includes time spent in preparing the Estate's Final Report and
22 comprehensive accounting, preparing for and attending the hearings last year on the Final
23 Report and closing the Estate, and handling the various affairs of the Estate, such as updating
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DECLARATION OF WILLIAM E. WILBERT - 17

EXHIBIT E

1 the Estate's accounting, paying property taxes and other expenses, getting tax returns prepared,
2 and other matters relating to Estate administration. Billing statements for the time billed are
3 attached as Exhibit F.

4 42. During the hearings on my Final Report and Petition for Decree of Distribution
5 testimony and exhibits were also presented in support of my claim for reimbursement of
6 attorney's and accountant's fees I personally paid for work performed on Estate or Estate-
7 related matters. That evidence included attorney's fees I paid to the law firms of Davis Wright
8 Tremaine and Chicoine & Hallett, P.S., and to the accounting firm of Kleinman, Guerra &
9 Company for work done on Estate-related matters through February 28, 1997. The law firm
10 of Chicoine & Hallett and the accounting firm of Kleinman, Guerra & Company continued to
11 perform work for the Estate after February 28, 1997, primarily related to the hearings on the
12 final report and updating the comprehensive accounting for the Estate. I have updated my
13 expense reimbursement request by including in Exhibit E the additional amounts I have paid to
14 those firms for work they did on Estate-related matters after February 28, 1997 designated as
15 "CPA Fees 3/1/97 to 5/1/98" and "Attorneys fees 3/1/97 to 5/1/98".
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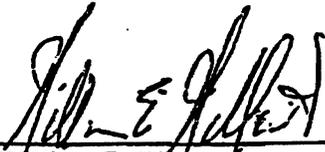
19 43. As reflected in Exhibit E, based on the Court's Memorandum Decision, after
20 making the adjustments to my administrator's fee request as directed by the Court, I am
21 entitled to receive from the Estate administrator's fees, including interest, totaling \$1,197,544,
22 and expense reimbursements totaling \$446,998, for total fees and reimbursements through
23 5/1/98 of \$1,644,542.
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DECLARATION OF WILLIAM E. WILBERT - 18

I declare under penalty of perjury under the laws of the United States and the State of Washington that the foregoing is true and correct to the best of my knowledge.

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DATED this 5 day of May 1998.



William E. Wilbert

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DECLARATION OF WILLIAM E. WILBERT - 19

APPOINTMENT OF AGENT

EXHIBIT A

Gary Del Guzzi, an unmarried man; Gary Del Guzzi as executor for the estate of Jack Del Guzzi; Gary Del Guzzi as his interest may appear in the estate of Bruno Del Guzzi; and as the agent of Charles Nyhus/Del Guzzi properties does herewith appoint William E. Wilbert, individually, as real property advisor; and William E. Wilbert-Broker, Inc., a Washington corporation, as real property manager, to lease, sell and acquire real estate in the United States, Canada and Central America whether they be properties now owned, being acquired or to be acquired in the future, until such time as this authority is withdrawn in writing by Certified mail.

The authority as agent authorizes you to bargain, contract, agree to or for, purchase of property. Receive and take tenements, hereditaments and accept all correspondence and deeds and other instruments, to lease, let, demise, bargain, sell, release and convey said lands upon terms and conditions acceptable to Gary Del Guzzi.

In case of leasing, renting of real property, William E. Wilbert is authorized to sign and execute rental agreements approved by Gary Del Guzzi and/or his attorneys, Smith, Smart, Hancock & Tabler, providing that oral approval has been granted for such a signature and that copies of the form of said agreements is in the hands of Gary Del Guzzi and/or Smith, Smart, Hancock & Tabler at the time of signature.

I herewith appoint William E. Wilbert-Broker, Inc. as agent of record for the above properties for as long as this appointment is in effect.

Gary Del Guzzi
Gary Del Guzzi

STATE OF Washington)
COUNTY OF King) ss.

On this 19 day of October, 1981, before me personally appeared Gary Del Guzzi to me known to be the individual described in the who executed the within and foregoing instrument, and acknowledged that he signed and sealed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

[Signature]
Notary Public in and for the
State of Washington
residing at Bellevue

EXHIBIT A
EXHIBIT C

ESTATE OF JACK DELGUZZI

<u>DATE</u>	<u>PROPERTY NO.</u>	<u>W.E.W. BROKER</u> <u>BUYER</u>	<u>COMMISSIONS</u>	<u>HOOR</u>
-79	11	P.A. CLINIC	0	
01-81	123	BERRY	0	NONE
10-81	195	-	0	-
10-81	196	-	0	-
10-81	207	-	0	-
10-81	208	-	0	-
10-81	209	-	0	-
10-81	210	-	0	-
10-81	221	-	0	-
10-81	222	-	0	-
06-82	308	HURWORTH	0	12
08-82	62	GULETICK	0	10.5

EXHIBIT E

WEW
BROKER

<u>DATE</u>	<u>PROPERTY #</u>	<u>BUYER</u>	<u>COMMISSION</u>	<u>HOURS</u>
09-82	142	-	0	16.0
03-83	155	LUCE	0	114.0
07-83	136	-	0	105.0
08-83	186	GRAY	0	14.5
04-84	161	SMITH	0	18.0
06-84	72	BOHN	0	22.0
06-84	100	SMITH	0	44.0
06-84	10	GALLUT	0	
07-84	159	P.M.M.	0	37.0
07-84	160	SMITH	0	61.0
08-85	58	ANDERSON	0	46.0
08-85	300	KAWAL	0	32.5

EXHIBIT E

WEW
BROKER

<u>DATE</u>	<u>PROPERTY #</u>	<u>BUYER</u>	<u>COMMISSIONS</u>	<u>HOURS</u>
09-85	91	CLARK	0	31.0
12-85	312.2	LUCE	\$ 900	
06-86	98	KIWANIS	0	
07-86	97	BARRELLO	0	
09-86	9.1	KOVACH	\$2940 NOTE	
09-86	103)	WILBERT	0	
09-86	104)	WILBERT	0	
09-86	102)	WILBERT	0	
10-86	140		0	35.0
10-86	144.05	NYHUS	0	80.0
10-86	144.06	NYHUS	0	" "
10-86	144.07	NYHUS	0	" "
10-86	144.08)		0	
10-86	144.09)	WEW	0	

EXHIBIT E

WEW
BROKER

<u>DATE</u>	<u>PROPERTY #</u>	<u>BUYER</u>	<u>COMMISSIONS</u>	<u>HOURS</u>
10-86	144.10)	NYHUS	0	
10-86	144.11	NYHUS	0	
10-86	144.12	WILBERT	\$5000	
10-86	144.13	NYHUS	0	
10-86	144.16		0	
10-86	145	NYHUS	0	
01-87	22 B		\$2450 NOTE	
03-87	22 A		\$2660 NOTE	
03-88	119/20/21	NYHUS	0	
	316			221 1
04-88	309	DAVIS (TIMBER)	\$9000	
05-88	310	WALDRON	\$1750	

EXHIBIT E

WEW
BROKER

<u>DATE</u>	<u>PROPERTY #</u>	<u>BUYER</u>	<u>COMMISSIONS</u>	<u>HOURS</u>
07-88	8	ERICKSON	\$2100	
08-88	217/8	NYHUS		
09-88	84	GROFF	\$5400	
09-88	319.2	KIWANIS	\$1500	
01-89	22 C	.	\$2820 NOTE	
01-89	301	ALSOP	\$2200	
01-89	301.2	ALSOP	\$2200	
	180-128)			
	139-126)	CASSADY		143

EXHIBIT E

WEW
BROKER

<u>DATE</u>	<u>PROPERTY #</u>	<u>BUYER</u>	<u>COMMISSION</u>	<u>HOURS</u>
01-89	38-39) 02-89	LARSON	\$ 2,500	314
02-89	310.6	HALBERG	\$ 4,500	
03-89	319	LBR	\$ 1,200	
05-89	141		\$ 4,000	
05-89	309	KISVARDAY	0	24 W
				4 W
07-89	175	HANSON	\$ 8,600	

EXHIBIT E

WEW BROKER				
<u>DATE</u>	<u>PROPERTY #</u>	<u>BUYER</u>	<u>COMMISSIONS</u>	<u>HOURS</u>
09-89	99	KIWANIS	0	
10-89	300.14	SOEST	\$ 3,000	
12-89	302.5	MCCORD	\$ 2,000	
01-90	318.2	ENDERS	\$ 500	
90	142	YORK	0	(81 HO (LOST IN
05-90	318.2	FLATAU	\$ 550	
03-90	307.4	MCCLASKEY	\$28,250	
04-90	303	PETERSEN	\$ 2,750	
08-90	304.4	WILBERT, P.S.	\$47,500	
10-90	302	MAUSETH	\$ 2,200 (CASE)	
11-90	319.2	LBJ	\$ 1,700	

EXHIBIT E

WEW BROKER				
<u>DATE</u>	<u>PROPERTY #</u>	<u>BUYER</u>	<u>COMMISSIONS</u>	<u>HOURS</u>
01-91	310.8	GILL	\$1,800	
02-91	92		\$4,000 NOTE	
03-91	318.2B	GILL	\$ 625	
04-91	318.2	CARLTON	\$1,300	
04-91	318.01	PARRISH	\$2,800	
06-91	310.05	LESAGE/PAYNTER	\$7,600	
10-91	310.09	COLES/TODD	\$9,000	
10-91	313.00	HAMMON	\$12,600	
PENDING	255	GILBRETH	0	102

216S-PRPTDBL

COSTA RICA HOURS AND EXPENSE ADJUSTMENTS

YEAR	WEW		WDW		ADMINISTRATION		EXPENSES		TOTAL	
	LINTON	REGULAR	HOURS	ADJUSTMENT	HOURS	ADJUSTMENT	ADJUSTMENT	ADJUSTMENT	ADJUSTMENT	ADJUSTMENT
1982	4.0	0.0	0.0	\$0.00	0.0	\$0.00	\$0.00	\$0.00	\$540.00	
1983	396.0	0.2	0.0	\$0.00	0.0	\$0.00	\$2,174.00	\$55,661.00		
1984	119.0	0.0	0.0	\$0.00	0.0	\$0.00	\$2,171.00	\$18,236.00		
1985	68.0	0.0	0.0	\$0.00	0.0	\$0.00	\$1,070.00	\$10,250.00		
1986	0.0	0.0	0.0	\$0.00	0.0	\$0.00	\$1,303.00	\$1,303.00		
1987	0.0	0.0	84.0	\$0.00	0.0	\$0.00	\$6,964.00	\$6,964.00		
1988	0.0	0.0	156.0	\$0.00	0.0	\$0.00	\$1,550.00	\$1,550.00		
1989	0.0	13.5	49.8	\$1,822.50	0.0	\$0.00	\$0.00	\$1,822.50		
1990	0.0	0.0	86.0	\$0.00	0.0	\$0.00	\$1,640.00	\$1,640.00		
1991	0.0	80.0	97.0	\$10,800.00	0.0	\$0.00	\$1,233.00	\$12,033.00		
1992	0.0	0.0	0.0	\$0.00	0.0	\$0.00	\$1,835.00	\$1,835.00		
1993	0.0	7.3	0.0	\$985.50	6.0	\$450.00	\$1,912.00	\$3,347.50		
1994	0.0	0.0	0.0	\$0.00	0.0	\$0.00	\$0.00	\$0.00		
1995	0.0	0.0	0.0	\$0.00	0.0	\$0.00	\$0.00	\$0.00		
1996	0.0	0.0	0.0	\$0.00	0.0	\$0.00	\$0.00	\$0.00		
1997	0.0	0.0	0.0	\$0.00	0.0	\$0.00	\$0.00	\$0.00		
TOTALS	587.0	101.0	686.0	\$92,880.00	472.8	\$0.00	\$21,852.00	\$115,182.00		
PER										
HELSELL			661.9	\$89,357.00	436.3	\$0.00	\$0.00	\$89,357.00		

NEXCEL WILBERT MCG COSTA RICA ADJUSTMENTS 1

AGREEMENT

THIS AGREEMENT is made this 16th day of March, 1983, by and between GARY DELGUZZI, individually, by WILLIAM E. WILBERT as Personal Representative of the Estate of Jack DelGuzzi, deceased, and/or by DELGUZZI CONSTRUCTION, INC., a corporation, hereinafter collectively called the "Debtors"; and SHORT & CRESSMAN, a partnership, WILLIAM E. WILBERT-BROKER, INC., a corporation, and BENSON & McLAUGHLIN, P.S. a corporation, and WILLIAM E. WILBERT, individually, hereinafter collectively called the "Secured Parties"; and DELGUZZI REALTY, INC., a corporation.

WHEREAS Debtors on or about December 30, 1982, were indebted to Secured Parties for services rendered and costs advanced, but were without funds to pay Secured Parties for such services rendered and costs advanced and could borrow funds to make payment thereon only if Secured Parties would guaranty the loan of such funds, and

WHEREAS on or about December 31, 1982, Short & Cressman at the request of the Debtors guaranteed a loan made by The Bank of California, N.A. ("Bank") to the Estate of Jack DelGuzzi ("Estate") in the sum of \$120,000 and on or about January 21, 1983, William E. Wilbert ("Wilbert"), President of William E. Wilbert-Broker, Inc., guaranteed a loan made by the Bank to the Estate in the sum of \$90,000; and to induce the Secured Parties to extend the time for payment of the present indebtedness and to render future services, Debtors are willing to give additional security for the said guaranties and for

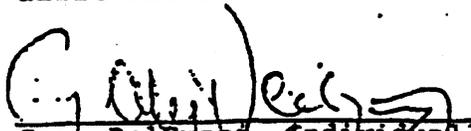
and in case such suit or action is instituted, the Debtors hereby promise and agree to pay, in addition to the cost and disbursements provided by statute, a reasonable sum as attorneys' fees for such suit or Trustee's Sale.

3. DelGuzzi Constructon, Inc. and DelGuzzi Realty, Inc. hereby guaranty payment of all present and future indebtedness and obligations of the Estate of Jack DelGuzzi, deceased, and Gary DelGuzzi, individually, to any or all of the Secured Parties, presently existing or hereafter arising, directly or indirectly, and interest thereon, including any indebtedness or obligation that may arise to Short & Cressman, Wilbert, and/or William E. Wilbert-Broker, Inc. if the loans made by the Bank are not timely repaid by the Estate and Short & Cressman, Wilbert and/or William E. Wilbert-Broker, Inc. make payment of such loans to the Bank.

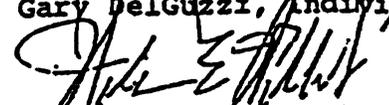
4. Secured Parties hereby agree to render future services to Debtors so long as Debtors are not in default under the terms of this Agreement.

5. This Agreement shall bind and inure to the benefit of the parties, their legal representatives, and assigns.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.



Gary DelGuzzi, Individually



William E. Wilbert as Personal
Representative of the Estate of Jack
DelGuzzi

DELGUZZI CONSTRUCTION, INC.

By: Gary DelGuzzi
Gary DelGuzzi, President

DELGUZZI REALTY, INC.

By: Gary DelGuzzi
Gary DelGuzzi, President

SHORT & CRESSMAN

By: Robert E. Heaton
Robert E. Heaton, Partner

WILLIAM E. WILBERT-BROKER, INC.

By: William E. Wilbert
William E. Wilbert, President

BENSON & McLAUGHLIN, P.S.

By: Gerald H. Shaw
Gerald H. Shaw, Vice-President

William E. Wilbert
William E. Wilbert, Individually

PROMISSORY NOTE

(Secured by a Deed of Trust of Same Date)

\$435,000.00

Bellevue, Washington
December 31, 1989

FOR VALUE RECEIVED, the undersigned promises to pay to William E. Wilbert-Broker, Inc. for the services of William E. Wilbert acting as court-appointed administrator of the Estate of Jack DelGuzzi, the sum of Four Hundred Thirty-Five Thousand and no/100 (\$435,000.00) Dollars with interest thereon from the date hereof at the rate of six percent (6%) per annum.

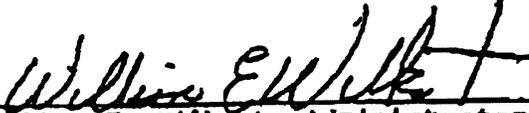
The entire principal sum and then accrued interest on this Note shall be paid in full upon demand on or after July 1, 1991. The undersigned may prepay some or all of this Note at any time or times without prepayment penalty. This Note shall bear interest at the rate of twelve percent (12%) per annum after maturity. A late payment charge of ten percent (10%) of face amount will be assessed if not paid on or before July 1, 1991.

This sum of money represents services provided the Estate of Jack DelGuzzi by William E. Wilbert or William E. Wilbert-Broker, Inc.

The undersigned shall not transfer any interest in this Note or in the real property legally described in the Deed of Trust between undersigned as grantor, William E. Wilbert, as beneficiary, and Pioneer Title Company of Clallam County as trustee, dated of even date herewith and securing the repayment of the indebtedness hereunder, without the prior written consent of the holder/beneficiary to the creditworthiness of the proposed transferee, which consent will not be unreasonably withheld, and without payment of \$135,000 cash to the holder/beneficiary in consideration of the transfer. The \$135,000 will first be applied to unpaid interest, and the balance to principal reduction of the Note.

If this Note is placed in the hands of an attorney for collection, or if suit is brought to collect any of the principal or interest of this Note, the undersigned promises to pay reasonable attorney's fees.

The undersigned executes this Note as the court-appointed Administrator of the Estate of Jack DelGuzzi and not as surety.



William E. Wilbert, Administrator
ESTATE OF JACK DELGUZZI

PROMISSORY NOTE
(Secured by a Deed of Trust of Same Date)

\$73,232.00

Bellevue, Washington
December 31, 1990

FOR VALUE RECEIVED, the undersigned promises to pay to William E. Wilbert-Broker, Inc. for the services of William E. Wilbert acting as court-appointed administrator of the Estate of Jack DelGuzzi, the sum of Seventy Three Thousand Two Hundred Thirty-Two and no/100 (\$73,232.00) Dollars with interest thereon from the date hereof at the rate of six percent (6%) per annum.

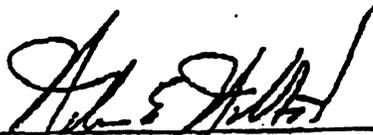
The entire principal sum and then accrued interest on this Note shall be paid in full upon demand on or after July 1, 1992. The undersigned may prepay some or all of this Note at any time or times without prepayment penalty. This Note shall bear interest at the rate of twelve percent (12%) per annum after maturity. A late payment charge of ten percent (10%) of face amount will be assessed if not paid on or before July 1, 1992.

This sum of money represents services provided the Estate of Jack DelGuzzi by William E. Wilbert or William E. Wilbert-Broker, Inc.

The undersigned shall not transfer any interest in this Note or in the real property legally described in the Deed of Trust between undersigned as grantor, William E. Wilbert, as beneficiary, and Pioneer Title Company of Clallam County as trustee, dated of even date herewith and securing the repayment of the indebtedness hereunder, without the prior written consent of the holder/beneficiary to the creditworthiness of the proposed transferee, which consent will not be unreasonably withheld, and without payment of \$25,000 cash to the holder/beneficiary in consideration of the transfer. The \$25,000 will first be applied to unpaid interest, and the balance to principal reduction of the Note.

If this Note is placed in the hands of an attorney for collection, or if suit is brought to collect any of the principal or interest of this Note, the undersigned promises to pay reasonable attorney's fees.

The undersigned executes this Note as the court-appointed Administrator of the Estate of Jack DelGuzzi and not as surety.



William E. Wilbert, Administrator
ESTATE OF JACK DELGUZZI

PROMISSORY NOTE
(Secured by a Deed of Trust of Same Date)

EXHIBIT E

\$181,000.00

Bellevue, Washington
December 31, 1991

FOR VALUE RECEIVED, the undersigned promises to pay to William E. Wilbert-Broker, Inc. for the services of William E. Wilbert acting as court-appointed administrator of the Estate of Jack DelGuzzi, the sum of One Hundred Eighty-One Thousand and no/100 (\$181,000.00) Dollars with interest thereon from the date hereof at the rate of six percent (6%) per annum.

The entire principal sum and then accrued interest on this Note shall be paid in full upon demand on or after July 1, 1993. The undersigned may-prepay some or all of this Note at any time or times without prepayment penalty. This Note shall bear interest at the rate of twelve percent (12%) per annum after maturity. A late payment charge of ten percent (10%) of face amount will be assessed if not paid on or before July 1, 1993.

This sum of money represents services provided the Estate of Jack DelGuzzi by William E. Wilbert or William E. Wilbert-Broker, Inc.

The undersigned shall not transfer any interest in this Note or in the real property legally described in the Deed of Trust between undersigned as grantor, William E. Wilbert, as beneficiary, and Pioneer Title Company of Clallam County as trustee, dated of even date herewith and securing the repayment of the indebtedness hereunder, without the prior written consent of the holder/beneficiary to the creditworthiness of the proposed transferee, which consent will not be unreasonably withheld, and without payment of \$50,000 cash to the holder/beneficiary in consideration of the transfer. The \$50,000 will first be applied to unpaid interest, and the balance to principal reduction of the Note.

If this Note is placed in the hands of an attorney for collection, or if suit is brought to collect any of the principal or interest of this Note, the undersigned promises to pay reasonable attorney's fees.

The undersigned executes this Note as the court-appointed Administrator of the Estate of Jack DelGuzzi and not as surety.



William E. Wilbert, Administrator
ESTATE OF JACK DELGUZZI

TOTAL ADMINISTRATOR'S EXPENSES BY YEAR WITH ADJUSTMENTS FOR COSTA RICA TIME AND COMMISSIONS

Year	Admin. (@ \$135/hr)	Staff (@ \$75/hr)	Total \$ Admin & Staff	Costa Rica Adjustment (Admin. Hrs.)	Costa Rica Adjustment (@ \$135/hr)	Costa Rica Adjustment (Staff Hrs.)	Costa Rica Adjustment (@ \$75/hr)	Costa Rica Adjustment (Expenses)	Total Costa Rica Adjustment	NET TOTAL DUE	Commissions Paid Broker	Commissions Adjustment	Amount Due For Year	Amount Paid By Estate During Year
1982	565.2	0	\$ 76,302	4	\$ (540)	0	\$ -	\$ -	\$ (540)	\$ 75,762	\$ -	\$ -	\$ 75,762	\$ -
1983	1531.15	1	\$ 206,780	396.2	\$ (53,487)	0	\$ -	\$ (2,174)	\$ (55,661)	\$ 151,119	\$ -	\$ -	\$ 151,119	\$ (89,000)
1984	1894.58	18.62	\$ 255,815	119	\$ (16,065)	0	\$ -	\$ (2,171)	\$ (18,236)	\$ 237,579	\$ -	\$ -	\$ 237,579	\$ -
1985	1093.52	7.14	\$ 148,161	68	\$ (9,180)	0	\$ -	\$ (1,070)	\$ (10,250)	\$ 137,911	\$ (5,300)	\$ -	\$ 137,911	\$ (6,000)
1986	590.45	68.4	\$ 83,491	0	\$ -	0	\$ -	\$ (1,303)	\$ (1,303)	\$ 82,188	\$ (5,000)	\$ -	\$ 82,188	\$ (380,367)
1987	242.92	2.55	\$ 32,985	0	\$ -	0	\$ -	\$ (6,964)	\$ (6,964)	\$ 26,021	\$ (150)	\$ -	\$ 26,021	\$ (53,000)
1988	404.81	6.76	\$ 55,156	0	\$ -	0	\$ -	\$ (1,550)	\$ (1,550)	\$ 53,606	\$ (10,152)	\$ -	\$ 53,606	\$ (10,140)
1989	542.22	141.9	\$ 83,842	13.5	\$ (1,823)	0	\$ -	\$ -	\$ (1,823)	\$ 82,020	\$ (33,720)	\$ -	\$ 82,020	\$ (2,200)
1990	251.79	28.45	\$ 36,125	0	\$ -	0	\$ -	\$ (1,640)	\$ (1,640)	\$ 34,485	\$ (75,513)	\$ -	\$ 34,485	\$ (127,400)
1991	435.65	509.93	\$ 97,058	80	\$ (10,800)	0	\$ -	\$ (1,233)	\$ (12,033)	\$ 85,025	\$ (17,332)	\$ -	\$ 85,025	\$ -
1992	115.97	267.7	\$ 35,733	0	\$ -	0	\$ -	\$ (1,835)	\$ (1,835)	\$ 33,898	\$ (22,438)	\$ -	\$ 33,898	\$ (1,723)
1993	344.7	199.58	\$ 61,503	7.3	\$ (986)	6	\$ (450)	\$ (1,912)	\$ (3,348)	\$ 58,156	\$ (80)	\$ -	\$ 58,156	\$ (40,084)
1994	290.74	189.53	\$ 53,465	0	\$ -	0	\$ -	\$ -	\$ -	\$ 53,465	\$ -	\$ -	\$ 53,465	\$ (1,971)
1995	155.4	100.51	\$ 28,517	0	\$ -	0	\$ -	\$ -	\$ -	\$ 28,517	\$ -	\$ -	\$ 28,517	\$ (190,000)
Total	8439.1	1542.07	\$ 1,254,934	688	\$ (92,880)	6	\$ (450)	\$ (21,852)	\$ (115,182)	\$ 1,139,752	\$ (169,685)	\$ -	\$ 1,139,752	\$ (901,885)
1996	104.66	94.25	\$ 21,198	0	\$ -	0	\$ -	\$ -	\$ -	\$ 21,198	\$ -	\$ -	\$ 21,198	\$ -
1997	122.7	223.0	\$ 33,285	0	\$ -	0	\$ -	\$ -	\$ -	\$ 33,285	\$ -	\$ -	\$ 33,285	\$ -
1998	89.08	0	\$ 12,026	0	\$ -	0	\$ -	\$ -	\$ -	\$ 12,026	\$ -	\$ -	\$ 12,026	\$ -
Total	8755.51	1859.32	\$ 1,321,443	688	\$ (92,880)	6	\$ (450)	\$ (21,852)	\$ (115,182)	\$ 1,206,261	\$ (169,685)	\$ -	\$ 1,206,261	\$ (901,885)

EXPENSE REIMBURSEMENTS:

Activity Fees
CPA & Attorneys Fees to 2/28/97
CPA Fees 3/1/97 to 5/1/98
Attorneys fees 3/1/97 to 5/1/98

Total Administrator's Fees and Expense Reimbursement

Interest is computed on the prior year balance due, including interest accruals, but excluding any amounts due accruing in the current year, with payments being applied first to interest then principal.
Interest is computed to 5/1/98.

EXH. F
PART 1
36 of 66

ADMINISTRATOR'S EXPENSES BY YEAR WITH ADJUSTMENTS FOR COSTA RICA TIME AND COMMISSIONS

Year	Costa Rica Adjustment (Admin. Hrs.) (@ \$135/hr)	Costa Rica Adjustment (Staff Hrs.) (@ \$75/hr)	Costa Rica Adjustment (Expenses)	Total Costa Rica Adjustment	NET TOTAL DUE	Commissions Paid Broker	Commissions Adjustment	Amount Due For Year	Amount Paid By Estate During Year	Interest (@ 12% compound)	Cumulative Amount Due
1992	4	0	\$ (540)	\$ (540)	\$ 75,762	\$ -	\$ -	\$ 75,762	\$ -	\$ -	\$ 75,762
1993	396.2	0	\$ (53,487)	\$ (53,487)	\$ 151,119	\$ -	\$ -	\$ 151,119	\$ (99,000)	\$ -	\$ 137,881
1994	119	0	\$ (16,065)	\$ (16,065)	\$ 237,579	\$ -	\$ -	\$ 237,579	\$ -	\$ 16,546	\$ 392,006
1995	68	0	\$ (9,180)	\$ (9,180)	\$ 137,911	\$ (5,300)	\$ -	\$ 137,911	\$ (6,000)	\$ 46,321	\$ 570,237
1996	0	0	\$ -	\$ -	\$ 82,188	\$ (5,000)	\$ -	\$ 82,188	\$ (380,367)	\$ 22,784	\$ 294,843
1997	0	0	\$ -	\$ -	\$ 26,021	\$ (150)	\$ -	\$ 26,021	\$ (53,000)	\$ 29,021	\$ 296,865
1998	0	0	\$ -	\$ -	\$ 53,606	\$ (10,152)	\$ -	\$ 53,606	\$ (10,140)	\$ 34,409	\$ 374,760
1999	13.5	0	\$ (1,823)	\$ (1,823)	\$ 82,020	\$ (33,720)	\$ -	\$ 82,020	\$ (2,200)	\$ 44,707	\$ 499,288
2000	0	0	\$ -	\$ -	\$ 34,485	\$ (75,513)	\$ -	\$ 34,485	\$ (127,400)	\$ 44,627	\$ 450,999
2001	80	0	\$ (10,800)	\$ (10,800)	\$ 85,025	\$ (17,332)	\$ -	\$ 85,025	\$ -	\$ 54,120	\$ 590,144
2002	0	0	\$ -	\$ -	\$ 33,898	\$ (22,438)	\$ -	\$ 33,898	\$ (1,723)	\$ 70,611	\$ 692,930
2003	7.3	6	\$ (986)	\$ (980)	\$ 58,156	\$ (80)	\$ -	\$ 58,156	\$ (40,084)	\$ 78,341	\$ 789,343
2004	0	0	\$ -	\$ -	\$ 53,465	\$ -	\$ -	\$ 53,465	\$ (1,971)	\$ 94,485	\$ 935,321
2005	0	0	\$ -	\$ -	\$ 28,517	\$ -	\$ -	\$ 28,517	\$ (190,000)	\$ 89,439	\$ 863,277
2006	688	6	\$ (92,880)	\$ (92,874)	\$ 1,139,752	\$ (169,685)	\$ -	\$ 1,139,752	\$ (901,885)	\$ 625,410	\$ 863,277
2007	0	0	\$ -	\$ -	\$ 21,198	\$ -	\$ -	\$ 21,198	\$ -	\$ 103,593	\$ 988,086
2008	0	0	\$ -	\$ -	\$ 33,285	\$ -	\$ -	\$ 33,285	\$ -	\$ 118,568	\$ 1,139,922
2009	0	0	\$ -	\$ -	\$ 12,026	\$ -	\$ -	\$ 12,026	\$ -	\$ 45,597	\$ 1,197,544
2010	688	6	\$ (92,880)	\$ (92,874)	\$ 1,206,261	\$ (169,685)	\$ -	\$ 1,206,261	\$ (901,885)	\$ 893,168	\$ 1,197,544

EXPENSE REIMBURSEMENTS:

Activity Fees

- CPA & Attorneys Fees to 2/28/97
- CPA Fees 3/1/97 to 5/1/98
- Attorneys fees 3/1/97 to 5/1/98

Total Administrator's Fees and Expense Reimbursement

Wilbert claimed real estate commissions

Costa Rica expenses

Interest due, including interest ruling in the current year, when principal.

Wilbert interest on fees & expenses

Payments Wilbert admits receiving.

EXHIBIT OFF
PART 2
EXA.E

Wilbert Declaration
5/15/1998

\$	2,239
\$	306,157
\$	6,573
\$	132,029
\$	1,644,542

TOTAL ADMINISTRATOR'S EXPENSES BY YEAR WITH ADJUSTMENTS FOR COS

Year	Admin. (@ \$135/hr)	Staff (@ \$75/hr)	Total \$ Admin&Staff	Costa Rica Adjustment (Admin. Hrs.)	Costa Rica Adjustment (@ \$135/hr)	Costa Rica Adjustment (Staff Hrs.)	Costa Rica Adjustment (@ \$75/hr)	Costa Rica Adjustment (Expenses)	Total Costa Rica Adjustment	NET TOTAL DUE
1982	565.2	0	\$ 76,302	4	\$ (540)	0	\$ -	\$ -	\$ (540)	\$ 75,71
1983	1531.15	1	\$ 206,780	396.2	\$ (53,487)	0	\$ -	\$ (2,174)	\$ (55,661)	\$ 151,11
1984	1884.58	18.62	\$ 255,815	119	\$ (16,065)	0	\$ -	\$ (2,171)	\$ (18,236)	\$ 237,51
1985	1093.52	7.14	\$ 148,161	68	\$ (9,190)	0	\$ -	\$ (1,070)	\$ (10,250)	\$ 137,91
1986	580.45	68.4	\$ 83,491	0	\$ -	0	\$ -	\$ (1,303)	\$ (1,303)	\$ 82,11
1987	242.92	2.55	\$ 32,985	0	\$ -	0	\$ -	\$ (8,964)	\$ (8,964)	\$ 26,02
1988	404.81	6.76	\$ 55,156	0	\$ -	0	\$ -	\$ (1,550)	\$ (1,550)	\$ 53,60
1989	542.22	141.9	\$ 83,842	13.5	\$ (1,823)	0	\$ -	\$ -	\$ (1,823)	\$ 82,02
1990	251.79	28.45	\$ 36,125	0	\$ -	0	\$ -	\$ (1,640)	\$ (1,640)	\$ 34,48
1991	435.65	509.93	\$ 97,058	80	\$ (10,800)	0	\$ -	\$ (1,233)	\$ (12,033)	\$ 85,02
1992	115.97	267.7	\$ 35,733	0	\$ -	0	\$ -	\$ (1,835)	\$ (1,835)	\$ 33,89
1993	344.7	189.58	\$ 61,503	7.3	\$ (996)	6	\$ (450)	\$ (1,912)	\$ (3,348)	\$ 58,15
1994	290.74	189.53	\$ 53,465	0	\$ -	0	\$ -	\$ -	\$ -	\$ 53,46
1995	155.4	100.51	\$ 28,517	0	\$ -	0	\$ -	\$ -	\$ -	\$ 28,51
Total	8439.1	1542.07	\$ 1,254,934	688	\$ (92,880)	6	\$ (450)	\$ (21,852)	\$ (115,182)	\$ 1,139,75
1996	104.66	94.25	\$ 21,198	0	\$ -	0	\$ -	\$ -	\$ -	\$ 21,19
1997	122.7	223.0	\$ 33,285	0	\$ -	0	\$ -	\$ -	\$ -	\$ 33,28
1998	89.08	0	\$ 12,026	0	\$ -	0	\$ -	\$ -	\$ -	\$ 12,02
Total	8755.51	1859.32	\$ 1,321,443	688	\$ (92,880)	6	\$ (450)	\$ (21,852)	\$ (115,182)	\$ 1,206,26

Interest is computed on the prior year balance due, including interest accruals, but excluding any amounts due accruing in the current year, with payments being applied first to interest then principal.
Interest is computed to 5/1/98.

EXHIBIT E

USER:

- ADMINISTRATOR
- ADM/CONFERENCE
- PRESIDENT
- PRES/CONFERENCE
- BROKER
- WEW

DATE: JAN 21 1997
 22
 23

ADM 30 HRS
 2 staff 70 HRS
 1 CPA 40 HRS

CLIENT:

- EJD
- CEDARWOOD
- DELHUR
- BROKER

21ST COURT 1/2 day
 22nd COURT FULL DAYS
 23rd COURT FULL DAYS

ACTIVITY:

TIME/CHARGE

- CORRESPONDENCE: _____
- TELEPHONE: _____
- RESEARCH/REVIEW: _____

EXHIBIT F

EXHIBIT E

USER:

DATE: MAY 13 97

- ADMINISTRATOR
- ADM/CONFERENCE
- PRESIDENT
- PRES/CONFERENCE
- BROKER
- WEW

*Adm.
30 mins*

CLIENT:

- EJD
- CEDARWOOD
- DELHUR
- BROKER

ACTIVITY:

TIME/CHARGE

- | | |
|--|-------|
| <input type="checkbox"/> CORRESPONDENCE: | _____ |
| <input checked="" type="checkbox"/> TELEPHONE: | _____ |
| <input type="checkbox"/> RESEARCH/REVIEW: | _____ |
| <input type="checkbox"/> OTHER: | _____ |

COMMENTS:

*Telephone conversation Adm/Judge and
attneys*

138.itjesslp

EXHIBIT E

USER:

- ADMINISTRATOR
- ADM/CONFERENCE
- PRESIDENT
- PRES/CONFERENCE
- BROKER
- WEW

DATE: May 24
25
26 } 97

CLIENT:

- EJD
- CEDARWOOD
- DELHUR
- BROKER

ACTIVITY:

TIME/CHARGE

<input type="checkbox"/> CORRESPONDENCE:	<u>ADM : 30 HRS</u>
<input type="checkbox"/> TELEPHONE:	<u>BILL JR 36 HRS</u>
<input type="checkbox"/> RESEARCH/REVIEW:	<u>LAURE ANNE 36 HRS</u>
<input type="checkbox"/> OTHER:	<u>2 ACCTMG 40 HRS</u>

COMMENTS:

court +
review & prep final acctg

130.ltimulip

EXHIBIT E

USER:

DATE: Apr 23 97

- ADMINISTRATOR
- ADM/CONFERENCE
- PRESIDENT
- PRES/CONFERENCE
- BROKER
- WEW

CLIENT:

- EJD
- CEDARWOOD
- DELIUR
- BROKER

ACTIVITY:

TIME/CHARGE

- CORRESPONDENCE: _____
- TELEPHONE: _____
- RESEARCH/REVIEW: _____
- OTHER: _____

COMMENTS:

Probate Court

reviews + prep

ADM:	10 HRS
Bill JR	12 HRS
LaureAnne	12 HRS

130.1time11p

EXHIBIT E

USER:

DATE: Apr 23 97
24 9.7

- ADMINISTRATOR
- ADM/CONFERENCE
- PRESIDENT
- PRES/CONFERENCE
- BROKER
- WEW

Staff total 36 HRS
ADM total 16 HRS

CLIENT:

- EJD
- CEDARWOOD
- DELHUR
- BROKER

ACTIVITY:

TIME/CHARGE

- CORRESPONDENCE: _____
- TELEPHONE: _____
- RESEARCH/REVIEW: _____
- OTHER: _____

COMMENTS: (closing of estate)
court + + plus

23 rd	staff (2) 12 hrs = 24
24 th	staff (2) 6 hrs = 12
23 rd	ADM 10 HRS
24 th	ADM 6 HRS

130.1timeslip

EXHIBIT E

USER:

DATE: April 30 1997

- ADMINISTRATOR
- ADM/CONFERENCE
- PRESIDENT
- PRES/CONFERENCE
- BROKER
- WEW

TOTAL TIME : _____ HRS _____ MINS
 ADM: TAX STATEMENTS 6 HRS 30 MINS
ISSUING CHECKS 1 HRS 30 MINS
(50 checks) 30 STAFF

ADM: CORRECT ASSESSED VALUES 1 HR

STAFF: ADJUST ALL PROPERTY FILES 3 HRS

CLIENT:

- 7 EJD
- 7 CEDARWOOD
- 7 DELHUR
- BROKER

ACTIVITY:

TIME/CHARGE

- CORRESPONDENCE: _____
- TELEPHONE: _____
- RESEARCH/REVIEW: _____
- OTHER: _____

COMMENTS:

- 1- Review property tax stmts
- 2- Arrangement for the paying of APR 30 TAXES
- 3- Adjusting assessed values from '96 to '97 values

130.ltimeclip

EXHIBIT E

USER:

DATE: 5-15-97

- ADMINISTRATOR
- ADM/CONFERENCE
- PRESIDENT
- PRES/CONFERENCE
- BROKER
- WEW

ADM: 4 HRS

CLIENT:

- EJD
- CEDARWOOD
- DELHUR
- BROKER

ACTIVITY:

TIME/CHARGE

- CORRESPONDENCE: _____
- TELEPHONE: _____
- RESEARCH/REVIEW: _____
- OTHER: _____

COMMENTS:

Review Benson McLaughlin brief to
Court 25 pgs

130.1time11p

EXHIBIT E

USER:

DATE: May 17 1997

- ADMINISTRATOR
- ADM/CONFERENCE
- PRESIDENT
- PRES/CONFERENCE
- BROKER
- WEW

Admin: time 2 hrs

CLIENT:

- EJD
- CEDARWOOD
- DELHUR
- BROKER

ACTIVITY:

TIME/CHARGE

- CORRESPONDENCE: _____
- TELEPHONE: _____
- RESEARCH/REVIEW: _____
- OTHER: _____

COMMENTS:

Review CARL Memo to COURT 20 pgs
cross-check with COURT Reporters
Report

ADM
2 HRS

130.itimeslip

EXHIBIT E

USER:

DATE: 5-23-97

- ADMINISTRATOR
- ADM/CONFERENCE
- PRESIDENT
- PRES/CONFERENCE
- BROKER
- WEW

CLIENT:

- EJD
- CEDARWOOD
- DELHUR
- BROKER

ACTIVITY:

TIME/CHARGE

- CORRESPONDENCE: Adm - 3 HRS
- TELEPHONE: _____
- RESEARCH/REVIEW: _____
- OTHER: _____

COMMENTS:

Review 60 pg supplemental report of
Adm. re accty.

130.2line11p

EXHIBIT E

USER:

DATE: June 3 '97

- ADMINISTRATOR
- ADM/CONFERENCE
- PRESIDENT
- PRES/CONFERENCE
- BROKER
- WEW

ADM 4 hrs 15 mins

CLIENT:

- EJD
- CEDARWOOD
- DELHUR
- BROKER

ACTIVITY:

TIME/CHARGE

- CORRESPONDENCE: _____
- TELEPHONE: _____
- RESEARCH/REVIEW: _____
- OTHER: _____

COMMENTS:

- B&M vs Estate
Motion to consolidate CPA's claim with
Estate settlement
- 1 - conference call with Bonding Co & its attorney 30 mins
 - 2 - conference call with estate attorney, Lare Wolfely, 1 hr 15 min
 - 3 - Review Wolfely documents 2 hrs
 - 4 - Review Western Surety Motion 30 mins

130.1timeclip

EXHIBIT E

DATE: June 11 97

USER:

- ADMINISTRATOR
- ADM/CONFERENCE
- PRESIDENT
- PRES/CONFERENCE
- BROKER
- WEW

ADM: 45 mins -

CLIENT:

- EJD
- CEDARWOOD
- DELHUR
- BROKER

ACTIVITY:

TIME/CHARGE

- CORRESPONDENCE: _____
- TELEPHONE: _____
- RESEARCH/REVIEW: _____
- OTHER: _____

COMMENTS:

Review with Western Surety status of B+M
Disgation & motions for dismissal

139. Itmeslip

EXHIBIT E

USER:

DATE: June 18 '97

- ADMINISTRATOR
- ADM/CONFERENCE
- PRESIDENT
- PRES/CONFERENCE
- BROKER
- WEW

CLIENT:

- EJD
- CEDARWOOD
- DELHUR
- BROKER

ACTIVITY:

TIME/CHARGE

- CORRESPONDENCE: ADM 30 mins
- TELEPHONE: _____
- RESEARCH/REVIEW: _____
- OTHER: _____

COMMENTS:

Wolfe's motion for dismissal or
consolidation BxM vs Estate,

130.12line11p

EXHIBIT E

USER:

DATE: July 18 '97

- ADMINISTRATOR
- ADM/CONFERENCE
- PRESIDENT
- PRES/CONFERENCE
- BROKER
- WEW

TOTAL HRS
CPA — 28

Admin. TOTAL HRS 7 15 MINS

CLIENT:

- EJD
- CEDARWOOD
- DELHUR
- BROKER

ACTIVITY:

TIME/CHARGE

CORRESPONDENCE:

TELEPHONE:

RESEARCH/REVIEW:

OTHER:

COMMENTS:

Review work done by CRAIG KLEIMAN CPA
on ESTATE updating data

130.ltimeclip

EXHIBIT E

DATE: 8-15-97

USER:

- ADMINISTRATOR
- ADM/CONFERENCE
- PRESIDENT
- PRES/CONFERENCE
- BROKER
- WEW

Adm - 40 mins

CLIENT:

- EJD
- CEDARWOOD
- DELHUR
- BROKER

ACTIVITY:

TIME/CHARGE

<input type="checkbox"/> CORRESPONDENCE:	_____
<input type="checkbox"/> TELEPHONE:	_____
<input type="checkbox"/> RESEARCH/REVIEW:	_____
<input type="checkbox"/> OTHER:	_____

COMMENTS:

Review judge Howard's order re BEM vs Wilbert

130.12100117

EXHIBIT E

USER:

DATE: ^{OCT} ~~SEP~~ 10 1997

- ADMINISTRATOR
- ADM/CONFERENCE
- PRESIDENT
- PRES/CONFERENCE
- BROKER
- WEW

REVIEW TIME:
Reading MONTHLY
COMPUTER PRINT-OUT
DATA income & expenses

CLIENT:

2 HRS 45 mins

- EJD
- CEDARWOOD
- DELHUR
- BROKER

ACTIVITY:

TIME/CHARGE

- CORRESPONDENCE:
- TELEPHONE:
- RESEARCH/REVIEW:
- OTHER:

Telephone call to KLEINMAN &
GURETT 45 mins.

COMMENTS:

Review 10-Month OPERATING REPORT EJD
ACCTS ONLY
Arrangements MADE TO UP-DATE THE ESTATES
FINAL ACCTS.
TOTAL TIME spent 2 HRS 45 MINS

130.1time1ip

EXHIBIT E

USER:

DATE: Oct 21, 1997

- ADMINISTRATOR
- ADM/CONFERENCE
- PRESIDENT
- PRES/CONFERENCE
- BROKER
- WEW

ADMIN: 1 HR 30 MIN
 STAFF 30 MINS

CLIENT:

- EJD
- CEDARWOOD
- DELHUR
- BROKER

ACTIVITY:

TIME/CHARGE

- CORRESPONDENCE: _____
- TELEPHONE: 15 MINS _____
- RESEARCH/REVIEW: 45 MINS _____
- OTHER: _____

COMMENTS:

- 1- Review TAX QUESTIONS WITH C. KLEINMAN
- 2- Review OCT 21ST TAX LETTER ^{re} engagement to update Final Report
- 3- Review project with STAFF 30 mins

EXHIBIT E

USER:

DATE: OCT 28 1997

- ADMINISTRATOR + STAFF
- ADH/CONFERENCE
- PRESIDENT
- PRES/CONFERENCE
- BROKER
- WEW

TOTAL HRS
 STAFF: 16 HRS
 ADMIN: 2 HRS

CLIENT:

- EJD
- CEDARWOOD
- DELHUR
- BROKER

ACTIVITY:

TIME/CHARGE

- CORRESPONDENCE: _____
- TELEPHONE: _____
- RESEARCH/REVIEW: _____
- OTHER: _____

COMMENTS:

Collection of documents Requested by CPA
 1- 3 TAX Returns 1996 yr end
 2- CASH FLOW SUMMARIES - Quarterly
 3- " " JAN 1 -> OCT ^{EA} entity
 4- Balance sheets ea entity
 5- Copies of SALES completed Btwm Sept '96 OCT 97
ALL Documents were in STORAGE

130.1110011p

EXHIBIT E

USER:

DATE: Jan 15 - 98
16

- ADMINISTRATOR
- ADM/CONFERENCE
- PRESIDENT
- PRES/CONFERENCE
- BROKER
- WEW

Adm 8 HRS

CLIENT:

- EJD
- CEDARWOOD
- DELHUR
- BROKER

ACTIVITY:

TIME/CHARGE

- CORRESPONDENCE: _____
- TELEPHONE: _____
- RESEARCH/REVIEW: _____
- OTHER: _____

COMMENTS:

reviewing
updating and listings with RE Agents
in Callahan, Jefferson, Grant County
multiple listing services
8 HRS

130.1time1p

EXHIBIT E

USER:

- ADMINISTRATOR
- ADM/CONFERENCE
- PRESIDENT
- PRES/CONFERENCE
- BROKER
- WEW

DATE: 5/14/98

ADM
6 HRS

CLIENT:

- EJD
- CEDARWOOD
- DELHUR
- BROKER

2 HRS telephone
2 HRS Review 40pg brief
2 HRS Consult legal counsel
who represented Del Hur

ACTIVITY:

TIME/CHARGE

- CORRESPONDENCE: _____
- TELEPHONE: _____
- RESEARCH/REVIEW: _____
- OTHER: _____

COMMENTS:

PA vs Del Hur
re-filing by Foster & Pepper for City
Case # 95-2-00-232-8

130.itivestp

EXHIBIT E

USER:

DATE: 2- 98

- ADMINISTRATOR
- ADM/CONFERENCE
- PRESIDENT
- PRES/CONFERENCE
- BROKER
- WEW

ADM: 45 min. -

CLIENT:

- EJD
- CEDARWOOD
- DELHUR
- BROKER

ACTIVITY:

TIME/CHARGE

- CORRESPONDENCE: _____
- TELEPHONE: _____
- RESEARCH/REVIEW: _____
- OTHER: _____

COMMENTS:

Review settlement made by Gary in 1982
 with Myers & Shaw - see case #27717
 check Co
 following appearance by their attorney of record
 H.S. Wright since Judge Costello decision

136.121001p

USER:

DATE: Feb '98

- ADMINISTRATOR
- ADM/CONFERENCE
- PRESIDENT
- PRES/CONFERENCE
- BROKER
- WEW

Adm 6 HRS

CLIENT:

- EJD
- CEDARWOOD
- DELHUR
- BROKER

ACTIVITY:

TIME/CHARGE

- CORRESPONDENCE: _____
- TELEPHONE: _____
- RESEARCH/REVIEW: _____
- OTHER: _____

COMMENTS:

Review TAX return prepared by CPA for '97
 1 HR

5 HRS reviewing taxable yr of Del. Her.
 with CPA Larkin re final tax
 return of Estate is closed in 1998

EXHIBIT E

USER:

DATE: 2-4-98

- ADMINISTRATOR
- ADM/CONFERENCE
- PRESIDENT
- PRES/CONFERENCE
- BROKER
- WEW

Adm - 3 hrs 30 mins

CLIENT:

- EJD
- CEDARWOOD
- DELHUR
- BROKER

ACTIVITY:

TIME/CHARGE

- CORRESPONDENCE: _____
- TELEPHONE: _____
- RESEARCH/REVIEW: _____
- OTHER: _____

COMMENTS:

with
pending sale Donahue
sale originally blocked by Gary - his
law suit. - Sale date 1-8-97 withdrawn
2-2-98 Realtor: See Ridge + Westmore
Time spent 3 1/2 HRS

130.1.tif:slip

EXHIBIT E

USER:

DATE: 2-16-98

- ADMINISTRATOR
- ADH/CONFERENCE
- PRESIDENT
- PRES/CONFERENCE
- BROKER
- WEW

CLIENT:

Adm : 8 hrs

- EJD
- CEDARWOOD
- DELHUR
- BROKER

ACTIVITY:

TIME/CHARGE

- | | |
|---|-------|
| <input type="checkbox"/> CORRESPONDENCE: | _____ |
| <input type="checkbox"/> TELEPHONE: | _____ |
| <input type="checkbox"/> RESEARCH/REVIEW: | _____ |
| <input type="checkbox"/> OTHER: | _____ |

COMMENTS:

Review Cedarwood tax return
Reviewed proposed dissolving corp
to close estates

130.ltinellip

EXHIBIT E

USER:

DATE: Mar 16, 1998

- ADMINISTRATOR
- ADM/CONFERENCE
- PRESIDENT
- PRES/CONFERENCE
- BROKER
- WFW

3-13 }
14 }
16 }

CLIENT:

Adm: 30 MRS

- EJD
- CEDARWOOD
- DELHUR
- BROKER

ACTIVITY:

TIME/CHARGE

- CORRESPONDENCE: _____
- TELEPHONE: _____
- RESEARCH/REVIEW: _____
- OTHER: _____

COMMENTS:

Documents to Craig K Kenman to ^{further} update
estate history

- 1 - Order sheets Del Hur - Cedarwood + Estate
- 2 - final tax returns " " "
- 3 - Dempsey court documents " "
- 4 - closing documents on sales

130.timeslip

EXHIBIT E

USER:

DATE: Mar 16th 98

- ADMINISTRATOR
- ADM/CONFERENCE
- PRESIDENT
- PRES/CONFERENCE
- BROKER
- WEW

CLIENT:

ADM: 6 HRS

- EJD
- CEDARWOOD
- PELHUR**
- BROKER

ACTIVITY:

TIME/CHARGE

- CORRESPONDENCE: _____
- TELEPHONE: _____
- RESEARCH/REVIEW: _____
- OTHER: _____

COMMENTS:

Quit title action. Damages property due to refusal by Gary to sign release documents to replace one lost by court (per Judge Wood) time for this matter were in 20 to 30 min increments over 10 days therefore charging Estate 6 HRS for opening, was pd to court for benefit of Estate.

EXHIBIT E

USER:

DATE: Mar 19 '98

- ADMINISTRATOR
- ADM/CONFERENCE
- PRESIDENT
- PRES/CONFERENCE
- BROKER
- WEW

Adm: 2 hrs 20 min

CLIENT:

- EJD
- CEDARWOOD
- DELHUR
- BROKER

ACTIVITY:

TIME/CHARGE

<input type="checkbox"/> CORRESPONDENCE:	_____
<input type="checkbox"/> TELEPHONE:	_____
<input type="checkbox"/> RESEARCH/REVIEW:	_____
<input type="checkbox"/> OTHER:	_____

COMMENTS:

F/u on state condemnation of Estate property
#113 pending since 1996
research 2 hrs
T. phone SW 20 min

EXHIBIT E

USER:

DATE: April 15 '98

- ADMINISTRATOR
- ADM/CONFERENCE
- PRESIDENT
- PRES/CONFERENCE
- BROKER
- WEW

4-15 } Adm
 16 }
 17 } 15 hrs

CLIENT:

- EJD
- CEDARWOOD
- DELHUR
- BROKER

ACTIVITY:

TIME/CHARGE

- CORRESPONDENCE: _____
- TELEPHONE: _____
- RESEARCH/REVIEW: _____
- OTHER: _____

COMMENTS:

Review Del Hurst tax returns for 97/98
Program for dissolving Company
over period 3 days

130.11timeallip

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLALLAM

In Re the Estate of:	}	No. 8087
JACK J. DELGUZZI,		DECLARATION OF PAUL R. CRESSMAN, SR. RE:
Deceased.		ATTORNEYS' FEES

PAUL R. CRESSMAN, SR., declares:

1. I am the senior attorney at the firm of Short Cressman & Burgess P.L.L.C. ("SC&B"), responsible for representation of the Estate of Jack DelGuzzi and its entities.

2. SC&B has received a copy of William Wilbert's Final Report and Petition for Decree of Distribution After Order of Solvency ("Final Report"). Contained within the Final Report (at paragraph 5.1) is a statement as to the amount of outstanding and unpaid fees and costs owed to SC&B, and an affirmation that the outstanding fees and costs are reasonable. Mr. Wilbert has asked our firm to prepare a pleading for filing with the court summarizing our legal services and providing a detailed itemization of the outstanding fees and costs. This Declaration does that.

HIRING OF SC&B

3. Our firm's involvement with the Estate began in February, 1982. Prior to that time, the Estate was primarily represented by the Seattle firm of Smith, Smart, Hancock & Tabler. Some lawsuits and claims involving the Estate and its entities were also being handled by two other law firms.

4. In early 1982, at the request of Gary DelGuzzi, then the executor, we agreed to assume representation of the Estate and its entities. At the time of this agreement with Mr. DelGuzzi, we expected that our firm's work for the DelGuzzi Estate might continue for

DECLARATION OF PAUL R. CRESSMAN, SR. RE: ATTORNEYS' FEES - 1
105824.2/29nk02! (#99999.14)

LAW OFFICES
SHORT CRESSMAN & BURGESS P.L.L.C.
3000 FIRST INTERSTATE CENTER
999 THIRD AVENUE
SEATTLE, WASHINGTON 98104-4088
(206) 682-3333

1 more than one year, but in no way did we know that it would become as protracted and
 2 expensive as it became. We agreed to work at our firm's normal hourly rates. The Estate,
 3 DelGuzzi Construction, Inc., and Gary DelGuzzi entered into an Agreement dated April 28,
 4 1982 (see Exhibit A) to guarantee and secure payment of our fees (and those of the new
 5 accounting firm, Benson & McLaughlin, and the then-property manager, William E. Wilbert).
 6 The security agreement containing cross-guaranties was necessary, in part, because of the
 7 confusing and complicated nature of the ownership of many of the assets of the decedent, Jack
 8 DelGuzzi.

9 5. Gary DelGuzzi resigned as executor on August 13, 1982, and was replaced by
 10 Mr. Wilbert as Administrator of the Estate and president of the various DelGuzzi companies.
 11 Mr. Wilbert was a "hands-on" Administrator; his office performed almost all activities of the
 12 Estate, including records organization and storage, financial accounting and payment, real
 13 property management and sales, corporate management, and negotiation with claimants and
 14 creditors. When he deemed appropriate, he utilized others to assist him, such as Benson &
 15 McLaughlin in the accounting field and our firm (and occasionally others) in various legal
 16 areas.

17 LEGAL SERVICES DURING 1982-1983

18 6. At the time we began our services, an initial 706 form had been filed with the
 19 Internal Revenue Service. Initially, Mr. Wilbert requested that we assist him in the following
 20 areas: (1) resolve the long-standing, unsettled Estate taxes due the Internal Revenue Service;
 21 and (2) resolve the many claims and lawsuits for and against the Estate and its corporate entities.
 22 During the ensuing three years, these two objectives were accomplished.

23 7. In some of the claims and disputes we represented the Estate directly, while in
 24 others we appeared on behalf of corporations or partnerships owned by the Estate. The Estate
 25 was interested in the legal matters involving the corporations because it was a guarantor of
 26 payment and performance bonds issued in favor of the corporations. As the companies were

DECLARATION OF PAUL R.
 CRESSMAN, SR. RE:
 ATTORNEYS' FEES - 2

105824.2/29nk02! (#99999.14)

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 (206) 682-3333

1 no longer active, both Gary DelGuzzi and Mr. Wilbert, as administrators, determined that it was
 2 in the best interests of the Estate to affirmatively handle the corporate claims, rather than to
 3 ignore them, in order to eliminate additional liabilities to the Estate.

4 8. Initially, because of the amount and breadth of legal work, we utilized a number
 5 of our firm's lawyers to accomplish all the tasks requested by the Estate. If the task did not
 6 require a senior attorney, work on the matter was delegated to an attorney with less than a senior
 7 attorney's rates.

8 9. We were paid for much of that initial work by the Estate and its companies, and
 9 also by United Pacific, one of the bonding companies that was potentially liable for the past
 10 activities of the Estate's corporations.

11 SEAFIRST CASE

12 10. Beginning in late 1983 and extending into 1985, the Estate was embroiled in a
 13 major lawsuit with Seattle-First National Bank and Samuel G. Hurworth concerning control of
 14 DelHur, Inc. The Estate owned 80% of DelHur stock, and Hurworth owned 20%. The
 15 Administrator valued DelHur, Inc., an active construction company employing 60 people, as
 16 the major asset of the Estate. This lawsuit eventually consumed a substantial amount of our
 17 firm's time in pre-trial preparation, trial, post-trial document preparation, appellate work, and
 18 finally successful settlement negotiations. The case was concluded in August 1985. The Estate
 19 did not pay SC&B on a current basis during this period, although after the settlement some
 20 funds were used to pay for a portion of the DelHur work.

21 WIND-UP

22 11. During 1986-1990, the matters of the Estate and its companies wound down, and
 23 our legal work declined. In 1990 and 1991, the Estate moved into the stage of developing its
 24 properties and utilized another law firm. We formally withdrew as counsel for the Estate on
 25 October 28, 1991.

26

DECLARATION OF PAUL R.
 CRESSMAN, SR. RE:
 ATTORNEYS' FEES - 3

105824.2/29mk021 (#99999.14)

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 SHORT CRESSMAN & BURGESS P.L.L.C.
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 999 THIRD AVENUE
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 (206) 682-3333

EXPLANATION OF WORK PERFORMED

12. Attached as Exhibit B is a summary of the fees, costs, interest, and payments for each of the 58 matters SC&B handled for the Estate and its entities, DelGuzzi Construction, Inc., DelGuzzi Brothers (a partnership), DelGuzzi Investment, Inc., Del-Hur, Inc., Peninsula Monarch, Inc., and N & D (a partnership). The total amount due to our firm as of September 30, 1996 (the date of the accounting contained in Mr. Wilbert's Final Report) is \$910,908. This consists of \$404,040 in fees and costs and \$506,868 in interest. The court should note that the \$404,040 figure for fees and costs is less than the amount (\$447,380) identified by Mr. Wilbert in his Final Report. Mr. Wilbert has since been advised of the correct figure.

13. The following paragraphs contain a summary explanation of the work performed on each of the matters for which monies are still owed. The order is the same as the matters are listed on Exhibit B.

1. Advisory. A variety of work performed by attorneys in our firm has been posted to this account number. Primarily involved were Paul R. Cressman, Sr., Robert E. Heaton, Robert J. Shaw, Brian E. Lawler, Andrew W. Maron, Christopher R. Osborn, and Paul J. Dayton.

The work included clearing title to various parcels of real estate, sale of properties, real estate loans, contract forfeitures and mortgage foreclosures; various probate matters including the drafting and filing of reports, petitions, inventory and appraisal, inheritance tax return and other probate documents; extensive negotiations and settlement with State Department of Revenue regarding Inheritance Tax and tax liens; extensive negotiations and settlement with the Internal Revenue Service regarding federal estate tax and discharges and subordinations of federal estate tax liens; various corporate matters for the Estate and its entities including preparation of numerous corporate documents; legal research of numerous matters including federal estate tax installment payments, cumulative voting of DelHur, Inc. stock,

DECLARATION OF PAUL R.
 CRESSMAN, SR. RE:
 ATTORNEYS' FEES - 4
 105824.2/29nk02! (#99999.14)

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1 inheritance tax releases, priority of tax liens, due on sale clauses, deduction of accrued interest
2 on State and Federal death taxes, corporate guaranties, deferred tax lien regulations, closing of
3 collateral estates, timber liens, and various business corporation matters; and other
4 miscellaneous matters.

5 2. Rains/Nelson. This matter involved an action, claim, and counterclaims
6 for money due on real estate contracts, and a dispute as to improvements made to the Elwha
7 Park Campground. Our work included pre-trial discovery and a negotiated settlement on each
8 of these issues. Brian E. Lawler was responsible for this matter.

9 3. Levitz Furniture. This was a lien foreclosure proceeding initiated by the
10 Estate. The matter, handled by Mr. Lawler, was settled after investigation.

11 4. WUTC Permit. This matter involved the sale of a WUTC permit, and the
12 procedures necessary to transfer it to the buyer. Mr. Lawler handled this case.

13 5. Nyhus. Charles Nyhus was the co-owner with Jack DelGuzzi of a number
14 of parcels of real property and partnerships. During 1986-1989, various disputes arose
15 regarding the relationship between the Estate and Nyhus, which were logged to this matter by
16 Andrew Maron and Stephen Francks.

17 6. Hamlin. This matter involved numerous petitions and disputes between
18 the Estate and David O. Hamlin, Administrator of the Estate of Bruno DelGuzzi, in the Clallam
19 County probate of the Jack DelGuzzi Estate. Also, this matter included the defense of
20 garnishment actions brought in Clallam County seeking to attach sale proceeds of properties
21 being sold by the Estate; defense of a lawsuit brought against the Estate by Hamlin in King
22 County Superior Court seeking to recover on seven separate causes of action; and other issues
23 raised by Hamlin concerning a 1982 "judgment" in the amount of \$384,462.82 entered in favor
24 of Hamlin against the Estate in a Clallam County Superior Court lawsuit. Robert E. Heaton,
25 Mr. Lawler, Mr. Maron, and I worked on this account.

26

DECLARATION OF PAUL R.
CRESSMAN, SR. RE:
ATTORNEYS' FEES - 5
105824.2/29nk02! (#99999.14)

LAW OFFICES
SHORT CRESSMAN & BURGESS P.L.L.C.
3000 FIRST INTERSTATE CENTER
999 THIRD AVENUE
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(206) 682-3333

1 7. Seattle-First National Bank. This case was complicated litigation regarding
2 the rights of shareholders of DelHur, Inc. in a stock option agreement and to dissolve the
3 corporation. This dispute was crucial to the Estate, for it involved an asset of the Estate valued
4 at \$4,000,000.00. Thus, I spent a substantial amount of my own time (over 500 hours) on this
5 matter. The case proceeded through pre-trial discovery, extensive settlement discussions, a
6 settlement agreement with Seattle-First National Bank,¹ a two-week trial, numerous post-trial
7 hearings, an appeal involving many issues, and finally more lengthy settlement negotiations
8 with Mr. Hurworth and his counsel. The case was successfully concluded by settlement in
9 August 1985, in which the Estate received assets representing 75% of the net worth of the
10 company. Mr. Maron (over 900 hours) and Paul J. Dayton (almost 500 hours) were also
11 significantly involved in this case, while a number of other attorneys assisted on occasion.

12 8. Bevan. Christopher J. Soelling was responsible for this matter. This case
13 was another dispute as to ownership of real property, which was settled after investigation and
14 preparation of the complaint.

15 9. Elwha Property. This matter involved negotiations with the U.S. National
16 Park Service for the sale of Estate property in the Elwha area. Mr. Lawler and Maureen T. Lee
17 handled the case for our firm.

18 10. McClure. This case was a lawsuit brought by McClure to quiet title to
19 property. The case proceeded through pretrial discovery and trial, resulting in a judgment in
20 favor of McClure. Mr. Lawler and Peter J. Feltrup handled this matter.

21 12. Estate of Florence Casady. The Estate of Florence Casady had a claim
22 against certain real property of the Estate of Jack DelGuzzi. This claim was successfully
23 resolved with a negotiated agreement between the parties to an exchange of eight properties.

24 _____
25 ¹ This Declaration will not be unduly lengthened by a discussion of the settlement with SeaFirst. But, it is
26 notable that, to accomplish the settlement, with court review and approval, Mr. Wilbert and I personally loaned
the Estate \$400,000 each.

DECLARATION OF PAUL R.
CRESSMAN, SR. RE:
ATTORNEYS' FEES - 6
105824.2/29nk021 (#99999.14)

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1 Our firm was called upon to obtain court approval of this agreement, and to secure acquiescence
2 by the Estate of Bruno DelGuzzi to the transfer. Mr. Maron was responsible for this matter.

3 14. Moody. This case was a lawsuit between the Estate and Loretta Moody
4 regarding ownership of real property in Port Angeles. The case proceeded through pre-trial
5 discovery and concluded with a settlement immediately prior to trial. C. Benjamin Goodwin
6 and Christopher J. Osborn handled this matter.

7 15. Griffith. This was an unlawful detainer brought by the Estate to evict
8 Mr. Griffith from property owned by the Estate. Mr. Osborn was responsible.

9 16. Lake Farm. This is another lawsuit involving a claim and counter-claim
10 as to ownership of a parcel of Estate real property. Mr. Goodwin and Mr. Osborn were
11 responsible for the case.

12 17. Myers and Shaw. To this matter we posted time spent in communication
13 with attorneys for two of the beneficiaries of the Estate, Katherine Myers and Margaret Shaw.
14 Mr. Heaton performed this work.

15 18. .813-1/2-815 East Front Street. In this matter, Mr. Heaton and Mr. Maron
16 worked with the Estate, a judgment creditor, and a title company to clear title to property in Port
17 Angeles so it could be sold to a third party.

18 19. United Pacific. United Pacific, a bonding company which provided funds
19 to defend and settle various claims against the Estate's companies, sued the Estate as a
20 guarantor. After discovery and negotiation, the case was settled by entering into an agreement
21 which provides that the Estate will pay United Pacific \$150,000 at the closing of the Estate.
22 Mr. Maron and James Davis handled this case.

23 24. v. York. This was a quiet title action commenced against the Estate and
24 others by York. York obtained partial summary judgment. After further discovery, the case
25 was settled. York paid the Estate additional consideration and title was cleared in York's name.
26 Mr. Osborn handled this case.

DECLARATION OF PAUL R.
CRESSMAN, SR. RE:
ATTORNEYS' FEES - 7

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1 matter was concluded by payment by Global's bonding company to DelGuzzi Construction.

2 The responsible attorney was Mr. Maron.

3 4. Daylin Construction. Mr. Lawler was responsible attorney for this matter,
4 which involved a dispute with a subcontractor regarding contract performance on three projects.
5 The case was settled prior to trial after pretrial investigation and discovery.

6 5. Nulton Painting. This matter arose out of a dispute between DelGuzzi
7 Construction and its painting subcontractor on a number of projects. Our firm had two
8 responsibilities. First, the main dispute was primarily handled by the firm of Taylor & Bryan;
9 however, our firm was called upon to advise regarding settlement negotiations. That was
10 because Taylor & Bryan refused to represent the Estate further unless paid on a current basis
11 or advanced a retainer. Mr. Maron was responsible for that portion of the case. Additionally,
12 Mr. Dayton handled a summary judgment motion brought by the Painters Trust seeking
13 payment by DelGuzzi Construction of benefits which Nulton Painting had failed to pay.

14 6, 10, 11. Sound Rokeries; Lower Elwha; Department of Fisheries. These
15 billings include minor activities by attorneys and paralegals to conclude these four matters.

16 12. Shotwell Paving Company. This matter involved a claim for money due
17 by Shotwell Paving Company against DelGuzzi Construction, Inc. Shotwell eventually
18 obtained a consent judgment which was paid by DelGuzzi. Mr. Maron worked on this case.

19 13. James Eshom. Mr. Dayton was the responsible attorney. This matter
20 involved a lawsuit brought by DelGuzzi Construction to recover funds owned by Eshom as a
21 result of construction of Eshom's house. The case was settled after pretrial investigation.

22 14. Modern Supply Company. Mr. Dayton also worked on this case.

23 15. Pollock. This matter involved a personal injury claim against DelGuzzi
24 Construction. After initial investigation by Mr. Lawler, the case was successfully tendered to
25 the insurance company to defend.

26

DECLARATION OF PAUL R.
CRESSMAN, SR. RE:
ATTORNEYS' FEES - 9

105824.2/29nk021 (#99999.14)

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1 It was later learned that the property was owned by Mr. Nyhus and Peninsula Monarch, Inc.,
2 a corporation owned by Gary DelGuzzi and the Trust of Gary DelGuzzi. Therefore, the work
3 done by SC&B in 1988 was logged to "Peninsula Monarch - Payne." Our involvement with the
4 case ended with the partition of property between the Estate and Mr. Nyhus, at which time this
5 property and responsibility for the lawsuit was transferred to Mr. Nyhus.

6 N & D

- 7 1. Florence Casady Settlement. This was continued representation of the
8 Estate regarding clearing title to property owned by N & D, a partnership of the Estate and
9 Charles Nyhus.
- 10 2. Donald Porter. This litigation concerned the Estate's suit to quiet title to
11 land sold to Donald Porter. Porter had failed to pay pursuant to his contract, and the Estate
12 sought to recover title. After an appeal by Porter, the case was settled, and the Estate regained
13 title to the property. Mr. Maron and Mr. Osborn handled the case.
- 14 3. Hippy Farm. Our firm was retained to develop the non-profit homeowner
15 association documents in preparation for the sale of lots. Maureen Lee did the primary work
16 on this matter, with assistance by our corporate paralegal, Wendy Berry.
- 17 4. Eagles Nest. This was another incorporation of a non-profit homeowner
18 association for a development plat. Ms. Lee and Ms. Berry also handled this matter.
- 19 5. v. Payne. See Peninsula Monarch - Payne.

20 WORKING ATTORNEYS AND HOURLY RATES

21 14. The hourly rates that were the basis of the fees charged to the Estate were the
22 normal reasonable rates for each lawyer. Rates in SC&B were and are established by a
23 five-member policy committee after considering the experience and expertise of each of the
24 lawyers, firm overhead costs, the current rates of other attorneys and law firms within the Puget
25 Sound legal community, and the other criteria listed in the Rules of Professional Responsibility
26

DECLARATION OF PAUL R.
CRESSMAN, SR. RE:
ATTORNEYS' FEES - 11

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1 and Code of Professional Conduct. The hourly rates for lawyers in our firm were comparable
2 to rates charged by other Seattle firms for lawyers with similar experience and background.

3 15. I joined this firm in 1949 after graduating from the University of Washington Law
4 School. I have spent my entire legal career with this firm. I am a Fellow in the American
5 College of Trial Lawyers since 1970 and a Fellow in the American College of Trust and Estates
6 Counsel since 1962. I served the Washington State Bar Association as a member of the Board
7 of Governors and chairperson of the Trial Section, Public Relations Committee, Professional
8 Insurance Committee, and Legal-Medical Task Force. I was a trustee of the Seattle-King
9 County Bar Association and the University of Washington Law School Foundation, Alumni
10 Association, and Development Fund Board. I have also served as chairperson of the University
11 of Washington President's Club. The hourly rate charged for my services when our
12 representation of the Estate began in 1982 was \$150. It increased incrementally to \$160 on
13 November 1, 1982, \$175 on June 1, 1983, \$185 on August 7, 1985, \$190 on June 1, 1987, \$195
14 on February 1, 1988, \$210 on May 1, 1989, \$220 on July 1, 1990, and \$225 on February 1,
15 1991.

16 16. Robert E. Heaton was the partner (now member) primarily responsible for
17 corporate and real estate matters for the Estate and its entities. Mr. Heaton is a 1960 graduate
18 of Washington State University and holds a 1963 J.D. from the University of Washington Law
19 School. Mr. Heaton is a member of the American Bar Association's Real Property, Probate, and
20 Trust Law Section. In 1982, his hourly rate was \$110, and was increased to \$120 on
21 November 1, 1982, to \$130 on June 1, 1983, to \$150 on May 2, 1984, to \$155 on August 7,
22 1985, \$160 on June 1, 1987, \$165 on February 1, 1990, and \$175 on February 1, 1991.

23 17. Robert J. Shaw is our firm's senior tax lawyer; in that role, he assisted the Estate
24 in solving its tax problems with the Internal Revenue Service and the Washington State
25 Department of Revenue. Mr. Shaw is a graduate of the U.S. Naval Academy (B.S.), the
26 University of Denver Law School, and New York University (LL.M. in taxation). He has been

DECLARATION OF PAUL R.
CRESSMAN, SR. RE:
ATTORNEYS' FEES - 12

105824.2/29nk021 (#99999.14)

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1 an Adjunct Professor in the Graduate Tax Program of Golden Gate University since 1982. Mr.
2 Shaw's hourly rate when his work began for the Estate was \$90. It increased to \$100 per hour
3 on November 1, 1982, to \$105 per hour on June 1, 1983, to \$120 per hour on May 2, 1984, to
4 \$130 per hour on August 7, 1985, to \$135 on May 1, 1986, to \$140 on June 1, 1987, to \$145
5 on August 1, 1988, to \$155 on May 1, 1989, to \$165 on February 1, 1990, and to \$175 on
6 February 1, 1991.

7 18. Brian E. Lawler was a partner specializing in real estate and land use, both from
8 the business planning perspective and in litigation. A former Environmental Protection Agency
9 investigator, he is a graduate of the University of California at Berkeley (A.B. 1973), and
10 Georgetown University (J.D., 1977). Mr. Lawler's hourly rate at the inception of our firm's
11 representation of the Estate was \$80. It has increased to \$90 on November 1, 1982, to \$95 on
12 June 1, 1983, to \$105 on May 2, 1984, to \$110 on August 7, 1985, to \$120 on May 1, 1986, and
13 to \$125 on June 1, 1987.

14 19. Andrew W. Maron, a partner (now member) in our firm, was primarily
15 responsible for the construction litigation of the Estate. His specialty is construction and
16 business litigation. Mr. Maron is a graduate of the United State Military Academy (B.S., 1967),
17 the University of South Carolina (J.D. 1974), and the University of Virginia (LL.M., 1975). His
18 hourly rate in 1982 was \$80, and was increased to \$90 on November 1, 1982, to \$95 on June 1,
19 1983, to \$110 on May 2, 1984, to \$115 on August 7, 1985, \$120 on May 1, 1986, \$125 on
20 June 1, 1987, \$135 on August 1, 1988, \$140 on May 1, 1989, and \$145 on February 1, 1990.

21 20. Christopher Soelling, now a member of the firm, has a B.S. from the University
22 of Washington in 1977 and a J.D. from Cornell University in 1981. He was primarily involved
23 in commercial and construction litigation. His hourly rate was \$65 until June 1, 1983, when it
24 increased to \$75. The rate became \$85 on May 2, 1984, \$95 on May 1, 1986, and \$105 on
25 June 1, 1987.

26

DECLARATION OF PAUL R.
CRESSMAN, SR. RE:
ATTORNEYS' FEES - 13

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1 21. Paul J. Dayton, also now a member of the firm, has a B.A. from Claremont
2 College in 1979 and a J.D. from the University of California at Los Angeles in 1982. He joined
3 our firm immediately after law school, and has been primarily involved in commercial litigation.
4 His hourly rate was originally \$60 per hour; it was increased to \$70 on June 1, 1983, and to \$75
5 on May 2, 1984.

6 22. Christopher R. Osborn is a member who joined us in 1983 after obtaining a B.A.
7 in 1978 from Duke University and a J.D. in 1983 from the University of Puget Sound Law
8 School. Mr. Osborn's hourly rate was \$50; it increased on June 1, 1983 to \$60 per hour, on
9 October 13, 1983 to \$65, on May 1, 1986 to \$85, to \$90 on June 1, 1987, to \$100 on February 1,
10 1988, to \$105 on August 1, 1988, to \$115 on May 1, 1989, to \$130 on February 1, 1990, and
11 to \$150 on February 1, 1991.

12 23. Peter J. Feltrup was associated with our firm during 1983-1985. He has a J.D. in
13 1983 from UCLA. His hourly rate was \$65.

14 24. Stephen J. Francks was an associate from 1986 to 1990. He has a J.D. from
15 UCLA. His hourly rate was \$65, and was raised to \$70 on June 1, 1987, and to \$80 on May 1,
16 1989.

17 25. Former partner James P. Davis II holds a B.A. from Oberlin College, a M.A.T.
18 from the University of Chicago, and a J.D. from Vanderbilt University. His hourly rate was \$75
19 on June 1, 1987, and was increased to \$80 on February 1, 1988, and to \$85 on August 1, 1988.

20 26. Maureen Lee was an associate with the firm until 1987. She is a graduate of the
21 University of Washington and USC Law School. Her hourly rate was \$65 until May 1, 1986
22 when it was raised to \$85.

23 **SC&B BILLINGS**

24 27. The unpaid fees and costs which are summarized on Exhibit B have been
25 administratively handled between our firm and the Estate in two different ways, a promissory
26 note and periodic billings.

DECLARATION OF PAUL R.
CRESSMAN, SR. RE:
ATTORNEYS' FEES - 14
105824.2/29mk021 (#999999.14)

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(206) 682-3333

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a. In 1982 and early 1983, the Estate and its entities were billed periodically and, as the Estate had funds available to it, the invoices were paid. Between November 1983 and December 1985, as the Estate could not pay our firm on a regular basis, we did not provide formal billings to the Estate. On January 28, 1986, an itemized billing of all fees and costs unpaid as of December 31, 1985, was provided to Mr. Wilbert, and he in turn filed the invoice with this court on March 17, 1986. On July 15, 1986, the billing was memorialized in a promissory note which accrues interest at the prime rate charged by Seattle-First National Bank.

b. Beginning in late 1986, it was decided that the Estate would be billed on a periodic basis (usually quarterly) for all work performed for it and its entities, DelGuzzi Brothers, DelHur, Inc., Peninsula Monarch, Inc., and N & D. The fees and costs invoiced since 1986 accrue interest at our normal rate of 12% per annum. Enclosed as Exhibit C are the invoices from 1986 through 1990.

28. It is my opinion, based on the foregoing, that the fees and costs expended by our firm have been exceedingly reasonable.

I declare under penalty of perjury under the laws of the State of Washington that the facts contained herein are true and correct.

Executed at Seattle, Washington, this 20th day of January, 1997.



PAUL R. CRESSMAN, SR.

Bar No #172

DECLARATION OF PAUL R.
CRESSMAN, SR. RE:
ATTORNEYS' FEES - 15
105124.2/29nk021 (#99999.14)

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SHORT CRESSMAN & BURGESS P.L.L.C.
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999 THIRD AVENUE
SEATTLE, WASHINGTON 98104-4011
(206) 682-3333

EXHIBITS

- A. Security Agreement
- B. Summary of DelGuzzi Matters as of 9/30/96
- C. Invoices (1986-91)

EXHIBIT TO CRESSMAN
DECLARATION OF 1/20/87

AGREEMENT

THIS AGREEMENT is made this 28th day of April, 1982, by and between GARY DELGUZZI, individually; by GARY DELGUZZI as Personal Representative of the ESTATE OF JACK DELGUZZI, deceased; and/or by DELGUZZI CONSTRUCTION, INC., a corporation, hereinafter called the "Debtor", and SHORT & CRESSMAN, a partnership; WILLIAM E. WILBERT-BROKER, INC., a corporation; and BENSON & McLAUGHLIN, P.S., a corporation, hereinafter called the "Secured Parties"; and DELGUZZI REALTY, INC., a corporation, hereinafter called the "Guarantor";

WHEREAS the Debtor is indebted to the Secured Parties for prior services rendered and costs advanced, and Debtor is desirous that additional services be performed by the Secured Parties on its behalf; and

WHEREAS Debtor is presently unable to pay Secured Parties for such prior services rendered and costs advanced and/or for the future services to be rendered and any costs that may be advanced, and

WHEREAS to induce the Secured Parties to extend the time for payment of the past services rendered and costs advanced and to render future services to Debtor;

NOW, THEREFORE, it is hereby agreed as follows:

1. Guarantor hereby agrees to execute a Deed of Trust on real property located in Clallam County, Washington, described as Lots 14 and 15 in Block 20 of Puget Sound Co-Operative Colony's Second Addition to Port Angeles, as recorded in Volume 1 of Plats, page 12, records of Clallam County, Washington, as security for the indebtedness of Debtor, being the indebtedness now existing

and all indebtedness hereafter arising to any or all of the Secured Parties by Debtor, and interest thereon. Debtor hereby agrees to execute a Deed of Trust on real property described as Lots 1, 2 and 3, Block 54, Townsite of Port Angeles, and Lot 4 and Lot 5, EXCEPT West 37 feet, Block 54, Townsite of Port Angeles, Clallam County, Washington, as security for the indebtedness of Debtor, being the indebtedness now existing and all indebtedness hereafter arising to any or all of the Secured Parties by Debtor and interest thereon.

2. Debtor hereby agrees that payments of all indebtedness secured hereby together with interest thereon at the rate of Eighteen percent (18%) per annum shall be paid in full on or before December 31, 1982, and in case the Debtor shall fail to do so, any one or more of the Secured Parties may, at its option, commence a Trustee's Sale or a foreclosure action against the said real property, and in case such suit or action is instituted, the Debtor hereby promises and agrees to pay, in addition to the cost and disbursements provided by statute, a reasonable sum as attorneys' fees for such suit or Trustee's Sale.

3. DELGUZZI CONSTRUCTION, INC. hereby guaranties all present and future indebtedness and obligations of the ESTATE OF JACK DELGUZZI, deceased, and GARY DELGUZZI, individually, to any or all of the Secured Parties, presently existing or hereafter arising, directly or indirectly, and interest thereon.

4. GARY DELGUZZI, individually, hereby guaranties all present and future indebtedness and obligations of DELGUZZI CONSTRUCTION, INC., and the ESTATE OF JACK DELGUZZI, deceased, to any or all of the Secured Parties presently existing or

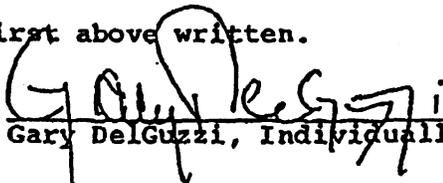
hereafter arising, directly or indirectly, and interest thereon.

5. GARY DELGUZZI, as Executor of the ESTATE OF JACK DELGUZZI, deceased, hereby guaranties all present and future indebtedness and obligations of DELGUZZI CONSTRUCTION, INC., and GARY DELGUZZI, individually, to any or all of the Secured Parties presently existing or hereafter arising, directly or indirectly, and interest thereon.

6. Guarantor hereby guaranties all present and future indebtedness and obligations of DELGUZZI CONSTRUCTION, INC., the ESTATE OF JACK DELGUZZI, deceased, and GARY DELGUZZI, individually, to any or all of the Secured Parties presently existing or hereafter arising, directly or indirectly, and interest thereon.

7. This Agreement shall bind and inure to the benefit of the parties, their legal representatives, and assigns.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.



Gary DelGuzzi, Individually

ESTATE OF JACK DELGUZZI

By: 

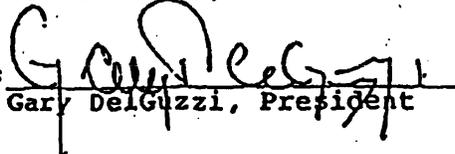
Gary DelGuzzi, Executor

DELGUZZI CONSTRUCTION, INC.

By: 

Gary DelGuzzi, President

DELGUZZI REALTY, INC.

By: 

Gary DelGuzzi, President

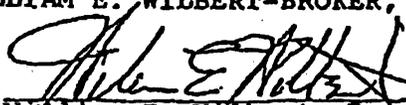
SHORT & CRESSMAN

By:


Paul R. Cressman, Partner

WILLIAM E. WILBERT-BROKER, INC.

By:


William E. Wilbert, President

BENSON & McLAUGHLIN, P.S.

By:


Gerald H. Shaw, Vice-President

NON-721 MATTERS

Calculation through 09/30/88

Mr No.	ESTATE OF J. DELGUZZI (8018)	Production	Interest	Collections	Balance Due
1	Advisory	320,366	189,135	(159,836)	329,665
2	adv. Rains/Nelson	14,847	6,235	(6,927)	13,955
3	Leritz Furniture	660	109	(546)	244
4	WUTC Permit	2,188	487	(1,584)	1,091
5	Nyhus	3,689	2,037	(1,841)	4,106
6	adv. Hamlin	83,331	28,966	(17,980)	84,707
7	adv. Seattle-First Nat'l Bank	400,952	177,372	(346,123)	233,201
8	vs Jack S. Bevan, et al.	849	207	(693)	463
9	Elwah Property-Nat'l Park Service	2,311	1,751	(143)	3,918
10	adv. McClure	35,740	32,729	(100)	66,369
12	v. Estate of Florence Casady	2,301	1,858	0	4,159
13	Costa Rica	426	0	(426)	0
14	vs. Loretta Moody	4,675	4,110	0	8,785
15	Griffin - Unlawful Detainer	256	218	0	476
16	Lake Farm Properties	4,753	4,723	0	9,476
17	adv. C. Myers & M. Shaw	150	121	0	271
18	813-1/2-815 E. Front Street	3,825	2,741	0	6,266
19	v. United Pacific	11,032	5,175	(2,913)	13,294
20	Sale of 819 E. First St.	1,540	0	(1,540)	0
24	vs. York	8,704	6,251	(364)	14,591
25	adv. Olympic Peninsula Dev Co.	871	992	0	1,963
26	v. Nyhus	12,820	6,337	(3,180)	15,977
27	Timber Taxes	602	27	(301)	328
28	Surfside	13,432	11,127	0	24,559
DELGUZZI CONST., INC. (4962)					
1	Advisory	39,552	13,568	(22,773)	30,347
2	vs. Global Northwest Ltd	30,367	4,042	(25,364)	9,046
3	Bureau of Indian Affairs	7,816	0	(7,815)	0
4	vs. Davlin Construction	14,778	4	(14,770)	10
6	vs. Nulton Painting	6,894	592	(5,983)	1,326
6	adv. Sound Rockeries	6,548	17	(6,528)	39
7	United Pacific Ins. adv. Goldfine	510	0	(510)	0
8	adv. Pike Elevator Co.	306	0	(306)	0
9	adv. Know Fire Protection, Inc.	214	0	(214)	0
10	v. Lower Elwha Tribal Community	850	11	(837)	24
11	v. Department of Fisheries	3,148	19	(3,124)	43
12	adv. Shotwell Paving Company	276	127	(120)	284
13	vs. James Eshom	1,692	1,096	(337)	2,450
14	adv. Modern Supply Company	446	94	(329)	211
15	adv. Pollock	274	221	0	495
16	Craisenburg vs. Delguzzi Construction	1,211	978	0	2,189
DELGUZZI BROTHERS (5628)					
1	vs. Bertram Daley	1,534	827	(527)	1,834
2	adv. Western WA Laborers	346	320	0	666
DELGUZZI INVESTMENT (5173)					
1	Adv. Angeles Electric	5,953	1,878	(3,826)	4,203
DEL HUR (6584)					
1	Tax Advisory	830	0	(830)	0
2	Happy Valley	18,918	0	(18,918)	(0)
3	Advisory	18,337	412	(18,398)	2,352
4	Happy Farm	152	0	(152)	0
5	Paisley Sale	4,478	0	(4,478)	0
6	v. Holjerson	25,772	0	(25,772)	(0)
PENINSULA MONARCH (8444)					
1	Advisory	597	0	(597)	0
3	v. McRevey	289	0	(289)	(0)
5	vs. Payne	1,363	1,068	0	2,431
N&O (6519)					
1	Florence Casady Settlement	5,847	2,868	(3,800)	5,104
2	Donald Porter	16,549	9,459	(6,812)	17,296
3	Happy Farm	3,887	3,772	(1,900)	6,499
4	Eagles Nest	934	679	(460)	1,053
5	v. Payne	3,814	2,181	(1,993)	4,002
7	Advisory	4,898	40	(5,866)	20
TOTAL		1,128,029	604,868	(723,883)	810,908

Exhibit B

Summary for legal services rendered from January 1986* through December 1990 in connection with:

Estate of Jack Delguzzi

Invoice Date	
08-Dec-86	\$ 42,648.46
24-Mar-88	20,315.42
25-Mar-88	3,139.00
27-Apr-88	18,760.66
26-Jul-88	6,858.07
22-Dec-88	7,070.76
25-Jan-89	4,756.92
31-May-89	6,604.60
15-Aug-89	3,932.25
23-Oct-89	3,389.10
29-Mar-90	1,649.76
09-Oct-90	1,393.70
09-Oct-90	8,500.13
24-Jan-91	1,891.00
	\$ 128,909.83

Delguzzi Construction, Inc.

25-Mar-88	40.50
24-Jan-91	72.50
	\$ 113.00

DelGuzzi Brothers

24-Mar-88	\$ 244.10
-----------	-----------

Del Hur, Inc.

15-Jun-90	1,495.94
18-Jul-90	126.00
18-Nov-90	253.96
	\$ 1,875.90

Peninsula Monarch

13-Jun-88	300.00
13-Jul-88	175.00
11-Aug-88	477.50
14-Sep-88	108.00
14-Oct-88	82.00
10-Nov-88	5.03
	\$ 1,147.53

Exhibit C

Page 1 of 2 total pages

Summary for legal services (continued):

N & D Holdings * (legal services beginning in 1985)

25-Sep-85	2,628.46
31-Oct-85	127.00
31-Dec-85	558.38
24-Mar-86	8,987.08
11-Apr-86	492.70
15-May-86	543.00
17-Jun-86	1,792.86
18-Jul-86	709.46
13-Aug-86	485.70
12-Sep-86	285.50
10-Oct-86	184.75
10-Nov-86	642.13
08-Dec-86	1,165.00
16-Jan-87	664.56
10-Feb-87	239.03
10-Mar-87	399.92
06-Apr-87	112.50
12-May-87	975.68
10-Jun-87	164.95
10-Jul-87	128.51
12-Aug-87	14.92
09-Sep-87	241.00
12-Oct-87	83.88
10-Nov-87	27.00
07-Dec-87	1.63
10-Feb-88	37.50
11-Apr-88	10.00
13-Jun-88	26.00
13-Jul-88	60.00
11-Aug-88	140.00
14-Sep-88	2.64
14-Oct-88	11.08

\$ 21,940.80

TOTAL FOR ALL SERVICES

\$ 154,231.16

CLALLAM COUNTY SUPERIOR COURT CLERK

DeBuzzi & NS Est
TRG

NO. 8087

ATP Burgess EXHIBIT NO. 62

Date of Court's ruling _____

ADMITTED REFUSED

WITHDRAWN NOT OFFERED

LAW OFFICES
SHORT CRESSMAN & BURGESS

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

3000 FIRST INTERSTATE CENTER
999 THIRD AVENUE
SEATTLE, WASHINGTON 98104-4008
FAX: (206) 340-8856
(206) 682-3333

Received

APR 16 1993

Handled

By _____

PAUL S. CRESSMAN, III., P.S.
JOHN G. BURGESS
DOUGLAS S. HARTWICK
DRIAN L. COMSTOCK
ROBERT L. HEATON
JOHN N. STRABURGEE
JAMES A. CLYDE
DAVID S. ROOPMAN
KIMMETH L. MITER
JOSEPH B. FUCKETT
ROBERT J. SHAW
PAUL S. CRESSMAN, JR.
DEAN S. LAWLER
ANDREW W. MARON
CHRISTOPHER J. FOLLING
PAUL J. BAYTON
BRYAN P. COLUCCIO
ROBERT A. HANCOCK, P.S.
CHRISTOPHER S. GIBSON
MICHAEL S. GARDNER
PAUL S. BISHOP
DAVID S. BATHEN
SCOTT A. BATHEN
THOMAS W. BEAS
STEPHEN P. CONNOR

JAMES P. BOWE
SUSAN THORNBROOK
MARGARET E. BAYTON
LISA WOLFE
JAMES B. COSTELLO
JERRY S. MYERS
BETHAN J. FRANCIS
LAWRENCE S. CHUNG
STEPHANIE S. CHILL
BERRY S. BUCKLIN
ANN T. WILSON
WILLIAM S. SPUR
HELEN AMYTON
WILLIAM A. BURGESS
ROBERT P. MAJERUS
J. CHRISTOPHER JORDAN
DENISE M. DANIEL
CHRIS A. LEONAKI
KAREN A. DRUM

KIMMETH S. BRIGHT
OF COUNSEL
JOSEF SHANKS
COUNSEL TO THE FIRM

April 14, 1993

**ORIGINAL
FILE**

Mr. William E. Wilbert, Administrator
Estate of Jack DelGuzzi
13850 Bel-Red Road
Bellevue, WA 98005

Dear Mr. Wilbert:

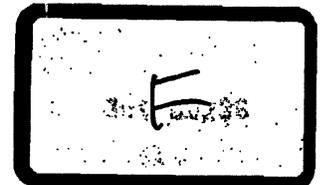
We have your letter of April 9, 1993, to Andy Maron.

Since our meeting with you in January, our partners have been considering how to amicably resolve the long-standing debt of the Estate of Jack DelGuzzi, DelHur, and Gary DelGuzzi to the firm. By way of review, the debt to the firm is as follows:

<u>7/15/86 Promissory Note</u>	<u>\$454,380.00</u>	
Note Interest (1986 - Present)	275,000.00	(approx.)
1986 - 1990 Fees	174,066.00	
Fees Interest (1986 - Present)	<u>95,000.00</u>	(approx.)
Total:	<u>\$998,000.00</u>	(approx.)

As you are aware, it was a major step for our partners to agree to substantially discount this debt, as it did with the offer I relayed in my letter of January 8, 1993. That proposal was for a cash payment or acceptable terms for delayed payment.

You now make an offer whereby we would accept payment of our fee by the conveyance of real property. You have repeatedly been told that our partners do not want to take real estate for payment of our fees and costs. There are a number of reasons for that desire. Despite those reasons, the firm is now willing to make another significant concession to the Estate, its entities,



Mr. William E. Wilbert, Administrator
April 14, 1993
Page 2

and Gary DelGuzzi, and I am authorized to make the following proposal:

We are willing to accept as full payment of the fees and costs owed to Short Cressman & Burgess by the Estate, its entities, and Gary DelGuzzi, the following properties:

1. Properties 80.1-80.4, 80.41, 80.5-80.7, 80.71, 80.8, 80.9, 81.1-81.3, 81.31, 81.4-81.7, 81.71; Brechin's Bluffs, Lots 1-16;
2. Properties 310.00, 310.11-310.15, 310.17, 310.18; Elwha Bluffs, Lots 10-15, 17, 18;
3. Properties #60 and 61; Blocks 3, 4, and 5, Grandview Addition;
4. Cash of \$100,000 within 30 days of the conveyance of the above properties, which will provide funds to pay income taxes and other expenses that result from this transaction. Alternatively, we will accept \$50,000 cash and property #63, Lots 12-16, Illinois Addition.

*To what
are*

** To what
Priority Claim*

We note that the statement in your letter that Brechin's Bluff has an appraised value of \$496,000 is not correct. Lots 1-16 of Brechin's Bluff are appraised at \$254,826. We realize that many of Brechin's Bluff's five acre parcels are appraised only as forest land. Therefore, we assume that the market value of all of Brechin's Bluff exceeds the appraised value.

It is for reasons such as this that we agree with Mr. Chicoline's suggestion that we not enter into a debate as to the value of the above properties. It is clear that the Estate's and DelHur's properties have a wide range of potential present sale prices and future values.

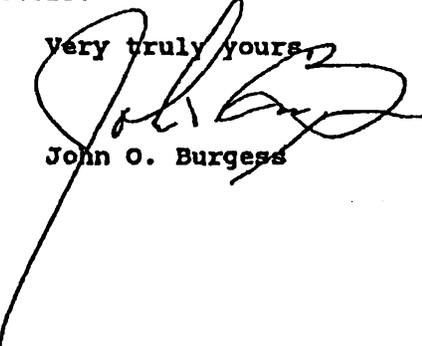
Our firm does not intend to "develop" any of these properties. Therefore, we must consider when accepting any properties from the Estate and/or DelHur that they will be sold, and we will incur the usual 15-20 percent in sales and closing costs. Thus, we recognize that the end amount of money that our firm will receive will be substantially less than any value we could agree on now, or what is owing to the firm.

This offer is subject to: a more definitive agreement that will describe the means by which title will be conveyed and guaranteed and will provide for mutual releases from the Estate

Mr. William E. Wilbert, Administrator
April 14, 1993
Page 3

and Gary DelGuzzi; a physical inspection of the properties; soils investigation; and comparable matters.

Very truly yours



John O. Burgess

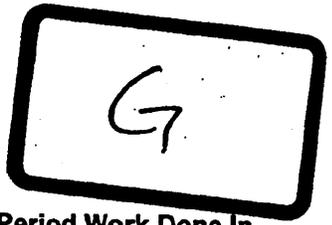
JOB:ka

cc: Policy Committee
Darrell D. Hallett
Paul R. Cressman, Sr.

25\C:\WP\DRK\LTR\WILBERT.LTR

801_00238

Estate of Jack DelGuzzi



Matter Description	Matter #	Invoice Date	Invoice Total	Total For Svcs	Period Work Done In
Advisory	1	12/8/86	\$ 28,974.00	\$ 19,854.50	All of 1986
adv. Rains/Nelson	2	12/8/86	\$ (1,349.40)	\$ 3,872.23	All of 1986
Nyhus	5	12/8/86	\$ 434.18	\$ 434.18	All of 1986
adv. McClure	10	12/8/86	\$ 8,170.38	\$ 8,170.33	All of 1986
v Loretta Moody	14	12/8/86	\$ 897.01	\$ 897.03	All of 1986
v United Pacific	19	12/8/86	\$ 307.79	\$ 307.79	All of 1986
Advisory	1	3/24/88	\$ 41,953.77	\$ 14,680.97	All of 1987
adv. Rains/Nelson	2	3/24/88	\$ (1,023.67)	\$ 108.00	All of 1987
Nyhus	5	3/24/88	\$ 1,370.46	\$ 862.30	All of 1987
adv. Hamlin	6	3/24/88	\$ 456.00	\$ 456.00	All of 1987
adv. McClure	10	3/24/88	\$ 12,621.29	\$ 1,956.91	All of 1987
Griffith	15	3/24/88	\$ 48.00	\$ 48.00	All of 1987
815 Front St	18	3/24/88	\$ 172.70	\$ 172.70	All of 1987
v United Pacific	19	3/24/88	\$ 402.79	\$ 95.00	All of 1987
v York	24	3/24/88	\$ 272.50	\$ 272.50	All of 1987
adv. Olympic Peninsula	25	3/24/88	\$ 970.60	\$ 970.60	All of 1987
v Nyhus	26	3/24/88	\$ 1,148.10	\$ 1,148.10	All of 1987
Advisory	1	3/25/88	\$ 27,272.80	\$ 869.00	Dec of 1986
adv. Rains/Nelson	2	3/25/88	\$ (1,131.67)	\$ 132.00	Dec of 1986
Nyhus	5	3/25/88	\$ 508.16	\$ 74.00	Dec of 1986
adv. McClure	10	3/25/88	\$ 10,664.38	\$ 2,494.03	Dec of 1986
v Loretta Moody	14	3/25/88	\$ 914.63	\$ 17.00	Dec of 1986
Advisory	1	4/27/88	\$ 6,087.86	\$ 6,087.86	1st Qtr 1988
Lake Farm	16	4/27/88	\$ 3,915.70	\$ 3,915.70	1st Qtr 1988
v United Pacific	19	4/27/88	\$ 2,913.00	\$ 2,913.00	1st Qtr 1988
v York	24	4/27/88	\$ 364.00	\$ 364.00	1st Qtr 1988
v Nyhus	26	4/27/88	\$ 3,179.60	\$ 3,179.60	1st Qtr 1988
Timber Taxes	27	4/27/88	\$ 300.50	\$ 300.50	1st Qtr 1988
Advisory	1	7/25/88	\$ 3,496.59	\$ 3,496.59	2nd Qtr 1988
Lake Farm	16	7/25/88	\$ 686.80	\$ 686.80	2nd Qtr 1988
v United Pacific	19	7/25/88	\$ 2,674.68	\$ 2,674.68	2nd Qtr 1988
Advisory	1	12/22/88	\$ 2,372.56	\$ 2,372.56	3rd Qtr 1988
v United Pacific	19	12/22/88	\$ 575.60	\$ 575.60	3rd Qtr 1988
v Nyhus	26	12/22/88	\$ 3,708.10	\$ 3,708.10	3rd Qtr 1988
Surfside	28	12/22/88	\$ 414.50	\$ 414.50	3rd Qtr 1988
Advisory	1	1/25/89	\$ 964.50	\$ 964.50	4th Qtr 1988
Nyhus	5	1/25/89	\$ 1,604.50	\$ 1,604.50	4th Qtr 1988
Lake Farm	16	1/25/89	\$ 150.42	\$ 150.42	4th Qtr 1988
v United Pacific	19	1/25/89	\$ 685.50	\$ 685.50	4th Qtr 1988
v York	24	1/25/89	\$ 94.50	\$ 94.50	4th Qtr 1988
Surfside	28	1/25/88	\$ 678.00	\$ 678.00	4th Qtr 1988
Advisory	1	5/31/89	\$ 1,454.09	\$ 1,454.09	1st Qtr 1989
Nyhus	5	5/31/89	\$ 677.51	\$ 677.51	1st Qtr 1989
v York	24	5/31/89	\$ 367.50	\$ 367.50	1st Qtr 1989
Surfside	28	5/31/89	\$ 4,105.50	\$ 4,105.50	1st Qtr 1989
Advisory	1	8/15/89	\$ 771.50	\$ 771.50	2nd Qtr 1989
Surfside	28	8/15/89	\$ 3,160.75	\$ 3,160.75	2nd Qtr 1989
Advisory	1	10/23/89	\$ 657.80	\$ 657.80	3rd Qtr of 1989
815 Front St	18	10/23/89	\$ 46.00	\$ 46.00	3rd Qtr of 1989

Surfside	28	10/23/89	\$	2,685.30	\$	2,685.30	3rd Qtr of 1989
Advisory	1	3/29/90	\$	1,208.30	\$	1,208.30	4th Qtr 1989
815 Front St	18	3/29/90	\$	46.00	\$	46.00	4th Qtr 1989
v York	24	3/29/90	\$	251.42	\$	251.42	4th Qtr 1989
Surfside	28	3/29/90	\$	144.04	\$	144.04	4th Qtr 1989
Advisory	1	9/25/90	\$	738.59	\$	738.59	1st Qtr 1990
815 Front St	18	9/25/90	\$	306.40	\$	306.40	1st Qtr 1990
Surfside	28	9/25/90	\$	348.71	\$	348.71	1st Qtr 1990
Advisory	1	9/27/90	\$	609.00	\$	609.00	2nd Qtr 1990
adv. McClure	10	9/27/90	\$	279.00	\$	279.00	2nd Qtr 1990
815 Front St	18	9/27/90	\$	1,144.00	\$	1,144.00	2nd Qtr 1990
v York	24	9/27/90	\$	5,116.13	\$	5,116.13	2nd Qtr 1990
Surfside	28	9/27/90	\$	1,352.00	\$	1,352.00	2nd Qtr 1990
Advisory	1	1/24/91	\$	770.00	\$	770.00	3rd Qtr 1990
v York	24	1/24/91	\$	965.00	\$	965.00	3rd Qtr 1990
Surfside	28	1/24/91	\$	156.00	\$	156.00	3rd Qtr 1990
Advisory	1	1/24/91	\$	2,507.38	\$	2,507.38	4th Qtr 1990
v York	24	1/24/91	\$	908.50	\$	908.50	4th Qtr 1990
Surfside	28	1/24/91	\$	387.00	\$	387.00	4th Qtr 1990

TOTAL FOR EJD	\$	123,923.50
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Summary for legal services rendered from January 1986* through December 1990 in connection with:

Estate of Jack Delguzzi

Invoice Date	
08-Dec-86	\$ 42,648.46
24-Mar-88	20,315.42
25-Mar-88	3,139.00
27-Apr-88	16,760.66
26-Jul-88	6,858.07
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25-Jan-89	4,756.92
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Delguzzi Construction, Inc.

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24-Jan-91	72.50
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DelGuzzi Brothers

24-Mar-88	\$ 244.10
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Del Hur, Inc.

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18-Jul-90	126.00
18-Nov-90	253.96
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Peninsula Monarch

13-Jun-88	300.00
13-Jul-88	175.00
11-Aug-88	477.50
14-Sep-88	108.00
14-Oct-88	82.00
10-Nov-88	5.03
	\$ 1,147.53

Summary for legal services (continued):

N & D Holdings * (legal services beginning in 1985)

25-Sep-85	2,628.46
31-Oct-85	127.00
31-Dec-85	556.36
24-Mar-86	8,987.08
11-Apr-86	492.70
15-May-86	543.00
17-Jun-86	1,792.86
18-Jul-86	709.46
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12-Aug-87	14.92
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12-Oct-87	83.88
10-Nov-87	27.00
07-Dec-87	1.63
10-Feb-88	37.50
11-Apr-88	10.00
13-Jun-88	26.00
13-Jul-88	60.00
11-Aug-88	140.00
14-Sep-88	2.64
14-Oct-88	11.08

\$ 21,940.80

TOTAL FOR ALL SERVICES

\$ 154,231.16

Short Cressman Burgess corresponded with William E. Wilbert indicating that they billed approximately \$628,000 between 1982 and 1986. Correspondence indicates that Mr. Wilbert disputed the amount and eventually signed at note for \$454,380 dated July 15, 1986. Further, Short Cressman Burgess billed additional amounts that they have indicated as \$174,000 and \$154,000. They supplied itemized billings support \$123,923 with the Paul R. Cressman's fee affidavit date January 21, 1997. Mr. Cressman's fee summary (Exhibit ___) is summarized below:

SCB statement date January 28, 1986 with the heading "Summary of attached invoices for services rendered through December 31, 1985 on the following matters,," and note dated July 15, 1986	454,380	1
Interest approximated by John O. Burgess in letter dated April 14, 1993 (\$275,000 plus \$95,000) (Exhibit F) +	370,000	2
"1986-1990 Fees" as indicated in John O. Burgess letter dated April 14, 1993	+ 174,066	3
Rounding	- (446)	4
Amount demanded by John O. Burgess in letter dated April 14, 1993. Indicated as approximated. (Exhibit F) =	998,000	5
Apparent interest from April 14, 1993 through December 31, 1997	+ 130,029	6
Indicated "Production" in Exhibit B to Paul R. Cressman's fee affidavit dated January 21, 1997	= 1,128,029	7
Indicated "Collections" in Exhibit B to Paul R. Cressman's fee affidavit dated January 21, 1997	- <u>(723,989)</u>	8
Amount approved in Memorandum Decision dated October 10, 1998 by Honorable Leonard Costello	= <u>404,040</u>	9

The Memorandum Decision dated October 10, 1997 allowed administrative billings of this amount.

This amount is incorrect because false or erroneous information was submitted to the Court. The amount of "production" includes interest of \$370,000 (line 2) plus additional interest of \$130,029 (line 6). This interest was specifically disallowed in the Memorandum Decision but was missed by the Court because it was included as "production"

6+

which the Court apparently concluded was billings for time and expenses.

The corrected amount due from Short Cressman Burgess at December 31, 1997 is computed as follows:

Fees reduced to note dated July 15, 1986	ExH F	454,380	A
Additional fees billed between 1986 and 1991	EXH G	123,923	B
Collections as reported by SCB	EXH. B (CRESSMAN)	<u>(723,989)</u>	C
Amount due to (from) SCB at December 31, 1996		<u>(145,686)</u>	D

The amount due Short Cressman Burgess including the administrative payments subsequent to December 31, 1996 are indicated on Exhibit

—.

EX-101
 Appdx 2 / I-16a

ESTATE OF JACK DELGUZZI		ANALYTICAL REVIEW OF FEES AND ACTIVITY - RECAP ANALYSIS FOR THE PERIOD AUGUST 1982 THROUGH 1995	
RATIO ANALYSIS AND ANALYTICAL INFORMATION			
ADMIN, PROFESSIONAL, & MGT FEES AS A % OF TOTAL VOLUME	3.78%		
SALE COMMISSIONS AS A % OF ASSET SALES	4.25%		
AVERAGE ANNUAL RENT CHARGES BY WILBERT ETAL	\$13,144		
AVERAGE ANNUAL USAGE OF SQUARE FOOTAGE	1,958		
AVERAGE RENT CHARGED PER SQUARE FOOT	\$6.71		
TOTAL HOURS COMMITTED TO ESTATE RELATED ACTIVITIES	14,550		
AVERAGE HOURLY FEE RATE (NON-SECRETARIAL)	\$74		
AVERAGE HOURLY RATE - ADMINISTRATIVE SUPPORT	\$8.00		
AVERAGE INTEREST RATE CHARGED ON AGREED FEES	6.00%		
AVERAGE INTEREST RATE CHARGED ON CASH LOANS	PRIME+1		
	9.00%		
SOURCE OF CASH			
GROSS SOURCE OF CASH	ESTATE	DELHUR, INC.	CEDARWOOD
	6,056,120	23,105,906	702,483
ELIMINATE:			
CEDARWOOD PROPERTIES INC.	(10,900)	0	0
DEL HUR INC.	(1,036,500)	0	0
FROM EXECUTOR TO ADMINISTRATOR'S ACCOUNT	(70,802)	0	0
TRANSFERS FROM ESCROW ACCOUNTS	(37,546)	0	0
LOANS AND OTHER	(2,720,823)	0	0
ADJUSTMENT FOR ASSET SALE GROSS UP	2,243,697	0	0
ADJUSTED SOURCE OF CASH	4,423,246	23,105,906	702,483
PAYMENTS OF EXPENSES OTHER THAN TO WILBERT ETAL			
	3,885,828	22,948,850	280,419
PAYMENTS TO WILBERT ETAL			
ESTATE RELATED COMMISSIONS	0	118,800	49,750
ADMINISTRATOR - ADMIN SUPPORT SALARIES	0	86,310	4,860
ADMINISTRATOR - FEES PAID	0	525,191	0
ADMINISTRATOR - INTEREST PAID	0	101,025	0
ADMINISTRATOR - REIMBURSED EXPENSE	0	41,100	1,792
ADMINISTRATOR - RENT PAID	0	127,010	21,890
WILBERT - PROFESSIONAL FEES	0	283,338	8,229
WILBERT - MANAGEMENT FEES	0	112,549	29,200
WILBERT - TRUSTEE/ADMIN FEES	0	0	2,743
WILBERT	17,200	0	0
AMOUNT BILLED BUT NOT YET PAID	0	0	0
SUB-TOTALS	17,200	765,782	118,464
LESS: DIRECT EXPENSE REIMBURSEMENTS	0	(27,103)	(1,792)
LESS: INTEREST PAID	0	(101,025)	(111,697)
NET TOTALS BILLED	17,200	728,007	116,672
			1,821,950
			500,000
			683,691
			(183,691)
			0
			500,000

INTEREST
 ← STR FF
 ← RENT
 ← Professional Fees
 ← Management Fees
 ← STILL OWED

PAID to Wilbert

FEESUM.XLS

TAB 4, Page 1

APPdx 2-44 I-1

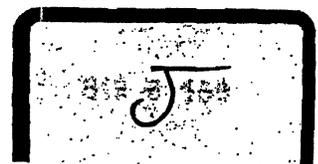
ESTATE OF JACK DELGUZZI			
ANALYTICAL REVIEW OF FEES AND ACTIVITY - RECAP ANALYSIS FOR THE PERIOD AUGUST 1982 THROUGH 1995			
SALE OF ASSETS ANALYSIS			
ESTATE ASSET SALES	3,793,882		
DEL HUR ASSET SALES	4,252,967		
CEDARWOOD ASSET SALES	702,483		
TOTAL ASSET SALES	8,749,332		
COMMISSIONS PAID ON ASSET SALES			
ESTATE	203,610		
DEL HUR, INC.	118,800		
CEDARWOOD	49,750		
TOTAL COMMISSION PAID	372,160		
RENT PAID			
ESTATE	35,121		
DEL HUR, INC.	127,010		
CEDARWOOD	21,890		
TOTAL RENTS PAID	184,021		
HOURS COMMITTED TO ESTATE RELATED ACTIVITIES			
	HOURS FROM 8/20/1985 TO 12/31/1995	HOURS FROM 1/1986 TO 6/1996	TOTAL
WILLIAM E. WILBERT	8,439	0	8,439
W.E. WILBERT PS INC.	4,569	0	4,569
NON-SECRETARIAL	1,542	0	1,542
TOTAL HOURS	14,550	0	14,550
FEES TO WILBERT ET AL (EXCLUDING COMMS, REIMB, INTEREST AND RENT)			
GROSS AMOUNT PER ABOVE	1,820,842		
LESS: COMMISSIONS	(372,160)		
LESS: INTEREST PAID BY ESTATE	(101,025)		
LESS: INTEREST PAID BY DEL HUR, INC.	(10,672)		
LESS: RENT	(184,021)		
LESS: DIRECT REIMBURSEMENTS	(69,995)		
NET ADMIN, MANAGEMENT, PROFESSIONAL FEES BILLED	1,082,969		
HOURS EXPENDED ON ADMINISTRATIVE SUPPORT			
	DEL HUR HOURS	CEDARWOOD HOURS	TOTAL
LORRETA WILBERT	4,818	0	4,818
LAURE ANNE WILBERT	3,490	0	3,490
BILL WILBERT JR.	0	413	1,093
AMY WILBERT	0	986	986
KATHY WILBERT	0	356	356
TERRY JARBOE	1,148	0	1,148
DAN WILBERT	693	365	1,173
TOTAL HOURS	10,149	778	2,137

REAL ESTATE COMMISSIONS
 ↓

Investigation History

Name of the

Date	Investigative Action Taken
5-28-91	Flc. to 13850 Bel-Ren Road, Bellevue (Wilbert office).
Wilson	Met with Wilbert, Eve Fitzsimmons, and Germa Shaw.
	Reviewed some documents detailing asset dispositions in
	estate (said they had ABC messengers deliver copies
	to me last week and will followup) Secured —
	estate 4/30/91 P/L/BALANCE SHEET
	CEDARWOOD PROPERTIES INC. P/L/BALANCE SHEET FOR 4/30/91
	DEL HIL INC. 4/30/91 P/L/BALANCE SHEET
	<p>✓ Wilbert admitted that when he assumed position as personal</p>
	representative that Orin Board of Directors (GARY BELGUVI,
	SON-FIRST TRUST DEPT. CIV 8 CPA) were telling him that
	estate was insolvent, but he felt his real estate and
	property management skills would enable him to
	turn things around. Says total legal bills to
	SHORT, CRESSMAN and predecessor law firm approximate
	→ \$3 million. Wilbert says payments to him as personal rep
	→ or payments to companies he controls as commissions are
	→ probably about \$700K with \$300K paid to him as
	personal rep. Still intending to file OIC with me
	in about two weeks, but no later than July.
	He needs to make decision by August whether to
	purchase assets from estate (decision on OIC) as
	PRB will expire on project in Port Angeles. I pointed
	out complexity of evaluating OIC and suggested review
	on an expedited basis may require 6-12 months for
	review. Suggested bankruptcy by corp. may be only
	way to stall PRB date off. Lots of lobbying — 1000 HOURS OROGRAN; PENNSYLV. ALSO CASH
	[FOIA] Followup on TDA issuance.
5-30-91	Tc to Greg @ OIC. Says 1 st notice issued, and final
Wilson	notice to be issued today (will send me copies).
	expects TDA to issue in 4-5 weeks.
5-3-91	mailed transcripts and int's to Wilbert & Fitzsimmons.
Wilson	
5-30-91	Retrieved Fitzsimmons letter from mail as no 2898 for
Wilson	in file.



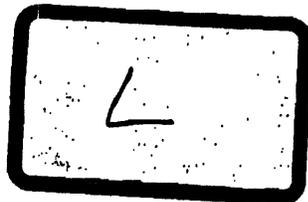
			Observed WEW
Sale Date	Sale	Purchaser	Entity
	Amount		Commissions
07/25/83	97,000	American National Park Service	9,700
12/23/85	9,000	John Lucero & Cathleen Lucero	900
09/24/86	42,000	James Kovach & Sharon Kovach	2,940
01/30/87	35,000	Janice Catalin	37,450
03/08/87	38,000	Mary Perry	40,160
9/8/87	420,815	Whinnie	43,000
04/29/88	90,000	RM Davis Shake	9,000
05/11/88	35,000	Randall Waldron & Sherrie Waldron	1,750
07/08/88	21,000	Robert Erickson, Audrey Erickson, James Carling, Carol Carling	2,100
08/15/88	85,000	Charles & Christine Nyhus	8,500
09/01/88	54,000	Wayne Groff & Sondra Groff	5,400
09/30/88	15,500	Kiwanis Club of PA	1,550
01/12/89	22,000	Delbert Alsop	2,200
01/12/89	22,000	Delbert Alsop	2,200
01/30/89	36,000	Robert Gilley & Paula Taylor	2,820
02/15/89	25,000	Peter Larsen & Harriet Larsen	12,500
03/01/89	45,000	Edwin Halburg, Jr. & Marlene Halberg	4,500
03/01/89	120,000	LBR Construction	12,000
03/01/89	120,000	LBR Construction	12,000
03/01/89	120,000	LBR Construction	12,000
03/01/89	120,000	LBR Construction	12,000
03/01/89	120,000	LBR Construction	12,000
03/01/89	120,000	LBR Construction	12,000
03/01/89	120,000	LBR Construction	12,000
03/01/89	120,000	LBR Construction	12,000
03/01/89	91,500	Lockwood Foundation	10,921
03/01/89	91,500	Lockwood Foundation	10,921
03/01/89	91,500	Lockwood Foundation	10,921
03/01/89	91,500	Lockwood Foundation	10,921
03/01/89	91,500	Lockwood Foundation	10,921
03/01/89	91,500	Lockwood Foundation	10,921

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<u>Sale Date</u>	<u>Sale Amount</u>	<u>Purchaser</u>	<u>Observed WEW Entity Commissions</u>
03/01/89	91,500	Lockwood Foundation	10,921
05/15/89	40,000	Charles Nyhus	4,000
05/26/89	27,000	Christian Kisvarday & Gail Kisvarday	
07/31/89	86,000	Nels & Phyllis Hansen	8,600
10/16/89	30,000	Orin & Althea Soest	3,000
12/15/89	20,000	Ruth McCord	2,000
01/08/90	10,000	Leonard Enders & Margaret Enders	500
03/14/90	385,000	Tod E. McClasky	28,500
04/17/90	55,000	Joesph Petersen & Saralyn Peterson	2,750
05/15/90	11,000	Ernest Flatau & Doris Flatau	1,100
08/15/90	475,000	William E. Wilbert, P.S., Inc.	222,500
10/30/90	22,000	Diane Hauseth	2,200
11/26/90	13,500	LBR Construction	1,700
11/26/90	13,501	LBR Construction	1,700
01/31/91	36,000	Max Franklin	1,800
02/28/91	80,000	Cascade Investment Co.	4,000
03/01/91	12,500	Ty Gill & Joan Gill	625
04/15/91	13,000	William Carlton & Michelle Carlton	1,300
12/12/91	725,000	Thomas Sandor & Vera Sandor	18,125
03/12/93	16,000	Daniel M. Hilt	2,400
03/18/93	40,000	Susan J. Greiner	4,000
09/15/93	25,000	Daniel M. Hilt	2,000
12/17/93	65,000	Shawn Hankins & Jeri Hankins	3,250
02/01/94	90,000	MJR, Ltd.	9,000
02/03/94	85,000	Boettcher & Son, Inc.	8,500
06/06/94	25,000	Jimmy Snodgrass	1,250
06/07/94	42,000	LBR Construction	2,100

<u>Sale</u> <u>Amount</u>	<u>Purchaser</u>	<u>Observed WEW</u> <u>Entity</u> <u>Commissions</u>
19,000	Milan Heger & Tamara Hegerova	8,400
42,000	LBR Construction	2,100
150,000	SSI Properties, Inc.	6,250
175,000	WA DNR	17,500
287,000	Charles Nyhus	28,700
	Total Real Estate Commissions to WEW & Alter Egos	758,968

Amount Due WEW Using Kleinman & Guererra Final Accounting Report as of September 30, 1996 and subsequent payments:	Individual Component	Running Balance	Reference Number
Amount due William E. Wilbert at September 30, 1996--Tab 4 page 2 per Kleinman & Gurrerra Final Accounting	500,000	500,000	1
			2
Adjustments ordered by Honorable Leonard Costello in Memorandum dated October 10, 1997:			3
			4
Real Estate Commissions paid to William E. Wilbert and alter egos--Tab 4 page 2	(372,180)	127,820	5
			6
Costa Rica time and expenses--William E. Wilbert's fee affidavit dated May 18, 1998	(115,182)	12,638	7
			8
Interest paid--Tab 4 page 2. Interest prior to 10/10/97 is not allowed.	(111,697)	(99,059)	9
			10
Rent paid--justification not provided and was included in WEW's billing rate in his fee agreement--Tab 4 Page 2	(184,021)	(283,080)	11
			12
Support salaries--agreement and course of dealings do not permit overhead compensation.	(104,519)	(387,599)	13
			14
May 31 2007 Balance Due To (FROM) William E. Wilbert For Overpayment of Administrative Fees Computed Using Administrative Payments Listed in Kleinman & Gurrerra Final Accounting and Clallam County Court Files	(387,599)	(387,599)	15



After completion of the subdivision and rough road work, Mr. Nyhus decided he wanted a partition of the properties. Mr. Wilbert agreed as administrator to a partition of the property, with the Estate receiving 13 of the 5-acre lots and Nyhus receiving 10 of the lots. The partition resulted in the Estate receiving clear title to more acreage and lots that were more marketable than the previous undivided interest in the larger parcel.

Mr. Nyhus agreed to pay the development obligations to Mr. Wilbert for his work on accomplishing the subdivision out of his share of the property. Mr. Nyhus agreed to transfer five of the ten lots he received from the partition to Mr. Wilbert for this purpose (lots 8,9,10,12, and 16). The transaction value was \$280 per acre based on the assessed value of similar properties. The property was transferred to Mr. Wilbert on October 27, 1986. The Estate paid the legal expenses and its pro rata share of closing costs to accomplish the partition and transfer.

Mr. Wilbert still owns the Grouse Glen lots he received from the transaction. The Estate has sold all 13 lots it received for sales prices totalling \$120,000.

(7) Malcolm Island, Property # 214 --

The Estate acquired full title to this property in January 1986 when the assets of the Nyhus/DelGuzzi partnership were partitioned (see discussion above). The property is located in Canadian waters 400 miles northwest of Victoria, B.C. and consists of 20 usable acres of forest land, but without access roads. The site had been partially burned and logged in the 1960's. The 1986



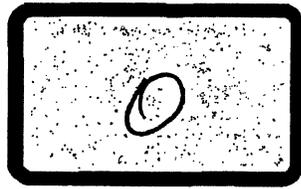
assessed value for the property was about \$11,250 (\$15,000 Canadian).

In November 1986, the property was transferred to Mr. Wilbert as partial payment of administrator's fees he had billed the Estate, with \$11,340 credited toward the administrator's billing. Ten years later, Mr. Wilbert still owns the property, which produces no income, and incurs the cost of annual property taxes. Gary DelGuzzi was fully informed of and consented to the transfer by signing the deed transferring title to the property to Mr. Wilbert.

(8) The Hoyt Rowan Property --

DelHur owned property referred to as the Hoyt Rowan property consisting of 160 acres of timber land located 30 miles west of Port Angeles. The 1986 assessed value of the property as designated forest land was \$6,991. In 1987, the timber had an appraised value of \$196,194. Puget Sound Bank held notes secured by various DelHur assets. The proceeds of those loans had been used to pay the Estate obligations to the Bruno DelGuzzi Estate (see discussion above). The notes were delinquent, the bank was threatening to immediately foreclose on the security if payment was not promptly forthcoming. However, DelHur had no funds to pay the bank debt, and faced the serious risk of losing a substantial portion of the value of this property through a bank foreclosure action. Attempts by Mr. Wilbert to sell the property for DelHur to pay the bank were unsuccessful.

ESTATE OF JACK DELGUZZI		ANALYTICAL REVIEW OF FEES AND ACTIVITY - RECAP ANALYSIS FOR THE PERIOD AUGUST 1982 THROUGH 1988	
ESTATE ASSET SALES	3,793,842		
DEL HUR ASSET SALES	4,282,967		
GEDARWOOD ASSET SALES	322,185		
TOTAL ASSET SALES	8,398,994		
COMMISSIONS	203,610		
DEL HUR, INC.	118,800		
GEDARWOOD	48,785		
TOTAL COMMISSION PAID	371,195		
RENTALS			
ESTATE	35,121		
DEL HUR, INC.	127,710		
GEDARWOOD	21,860		
TOTAL RENTS PAID	184,691		
HOURS			
WILLIAM E. WILBERT	8,438		
W.E. WILBERT PS INC.	4,569		
NON-SECRETARIAL	1,542		
TOTAL HOURS	14,549		
FEES			
GROSS AMOUNT PER ABOVE	1,820,842		
LESS: COMMISSIONS	(872,160)		
LESS: INTEREST PAID BY ESTATE	(10,020)		
LESS: INTEREST PAID BY DEL HUR, INC.	(10,872)		
LESS: RENT	(18,521)		
LESS: DIRECT REBURSEMENTS	(60,965)		
NET ADMIN. MANAGEMENT, PROFESSIONAL FEES BILLED	1,067,984		
HOURS			
LOHRETTA WILBERT	4,818		
LAURE ARRIE WILBERT	3,480		
BILL WILBERT JR.	0		
AMY WILBERT	0		
KATHY WILBERT	0		
TERRY JARBOE	1,148		
DAH WILBERT	683		
TOTAL HOURS	10,149		
ESTATE			
LOHRETTA WILBERT	0		
LAURE ARRIE WILBERT	0		
BILL WILBERT JR.	413		
AMY WILBERT	0		
KATHY WILBERT	0		
TERRY JARBOE	356		
DAH WILBERT	115		
TOTAL	3,137		
TOTAL	13,064		



	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	TOTAL
ESTATE OF JACK DELGUZZI															
SUMMARY ANALYSIS OF CASH FLOW FOR YEARS AUGUST 1982 THROUGH DECEMBER 1995															
SOURCES OF CASH															
SALES OF REAL ESTATE	3,654	0	10,545	3,000	1,000	0	0	0	0	0	0	0	0	0	78,783
CD LOGGING	0	0	0	0	0	0	0	0	0	0	0	0	0	0	84,247
DELGUZZI REALTY	8,083	8,851	864	1,725	(1,076)	0	35,000	0	0	0	0	0	0	0	1,815
CHARLIE MYHUS	262	1,023	0	0	0	0	0	0	0	0	0	0	0	0	2,145
VALLEY PROPERTIES	15	2,130	0	0	0	0	0	0	0	0	0	0	0	0	2,145
DELGUZZI CONSOLIDATED	0	11	0	2,778	0	0	0	0	0	0	0	0	0	0	2,789
DELGUZZI CONSTRUCTION	0	7,071	0	0	0	0	0	0	0	0	0	0	0	0	7,071
PENNSILVA PROPERTIES	0	2,975	0	0	0	0	28,000	0	0	0	0	0	0	0	30,975
NORTHLAND PROPERTIES	0	1,028	0	0	0	0	0	0	0	0	0	0	0	0	1,028
DELGUZZI INC.	0	22,568	0	0	0	0	0	0	0	0	0	0	0	0	22,568
DELGUZZI BROS.	0	14	0	0	0	0	0	0	0	0	0	0	0	0	14
SAGA LOGGING	0	0	3,000	469	0	0	10,000	0	400	0	500	0	0	0	23,489
CEDARWOOD PROPERTIES	0	0	0	0	872,500	0	0	0	1,000	0	0	0	0	0	1,033,500
DELMAR INC.	0	0	0	0	0	0	180,000	0	0	0	0	0	0	0	180,000
IND HOLDINGS	0	758	3,520	1,174	(3,560)	0	0	0	0	0	0	0	0	0	2,592
OTHER SOURCES	0	4,133	6,848	11,178	7,976	6,650	4,871	4,785	3,047	423	0	0	0	0	48,013
RENTAL PROPERTIES	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
RENTAL ESTABLISHMENTS	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
ASSET SALES	4,800	2,000	231,000	37,501	0	0	21,000	95,600	0	0	0	320,000	124,264	0	1,220,043
INSURANCE REIMBURSE	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
TOWNLANDS AND TRADEWELL	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
DUBROF LAND SALE	0	23,713	0	0	0	0	0	0	0	0	0	0	0	0	23,713
SALE OF PERMIT	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
DELGUZZI REALTY RESERVES	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
LEGAL REIMBURSEMENTS	0	4,800	0	0	0	0	0	0	0	0	0	0	0	0	4,800
LOGGING PROCEEDS	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
CONTRACT COLLECTIONS	0	23,896	9,787	12,784	3,044	18,268	15,839	15,831	9,843	0	0	38,860	81,173	0	220,314
DELGUZZI REALTY RESERVE	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
INTEREST	5,275	1,362	362	87	191	138	348	432	3,918	0	33	4	0	0	12,171
DIVIDENDS	14	60	0	0	0	0	0	75,000	0	0	0	0	0	0	75,064
BANK ACCOUNT CLOSEOUTS	0	2,058	1,848	1,886	0	0	0	0	4,200	0	0	0	0	0	9,480
MISCELLANEOUS	48	390	108	0	0	0	0	0	0	378	0	0	2,000	0	2,890
LOGGING	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
IND REIMBURSEMENTS	0	0	0	0	0	0	0	1,850	0	0	0	0	0	0	1,850
FIRST FEDERAL	0	0	0	0	0	0	0	0	0	0	10,000	2,168	1,238	0	13,867
FROM EXECUTOR TO ADMINISTRATORS ACCOUNT	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
TRANSFERS FROM ESCROW ACCOUNT	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
SEE DETAIL BELOW	0	0	0	8,000	0	0	0	808	0	0	0	0	27,740	0	37,546
OTHER SOURCES	0	0	0	0	0	0	0	0	0	0	0	242	0	0	242
USES OF CASH															
CONSTRUCTION	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
FROM LINCOLN BUILDING	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
BANK OF CALIFORNIA	120,000	90,000	0	0	0	0	0	0	0	0	0	0	0	0	210,000
SEAFIRST	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
FROM DELMAR	0	0	744,183	882,600	17,600	17,600	5,000	70,000	3,000	0	2,868	0	0	0	1,724,789
FROM BARY DELGUZZI	0	7,800	18,500	0	0	0	0	0	0	0	0	0	0	0	22,800
SEE DETAIL BELOW	0	0	0	300,102	0	25,000	174,981	0	32,038	0	0	43,121	78,108	13,877	694,334
OTHER USES OF CASH	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
CONSTRUCTION	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
FROM LINCOLN BUILDING	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
BANK OF CALIFORNIA	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
SEAFIRST	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
FROM DELMAR	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
FROM BARY DELGUZZI	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
SEE DETAIL BELOW	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
OTHER USES OF CASH	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

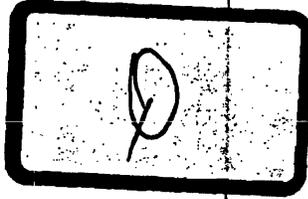


Form 3614-A (May 1978)	Department of the Treasury - Internal Revenue Service Estate Tax (For Persons Who Died After December 31, 1976)	Statement of Schedule 1
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Estate of JACK DELGUZZI	Date of Death June 1, 1978
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Taxable Estate Plus Adjusted Taxable Gifts as Shown In: <input checked="" type="checkbox"/> Return as Filed <input type="checkbox"/> Preliminary Letter Dated <input type="checkbox"/> Statutory Notice Dated	\$ 3,110,922
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Increase (Decrease) To Taxable Estate Plus Adjusted Taxable Gifts (See Attached Explanation of Items) Schedule 1-a	6,482,486
--	------------------



Taxable Estate Plus Adjusted Taxable Gifts as Revised	9,593,408
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Tax Computation	1. Tentative tax	9,593,408
	2. Aggregate gift taxes payable (After Dec. 31, 1976)	5,766,186
	3. Subtract the amount on line 2 from the amount on line 1	5,766,186
	4. Unified credit against estate tax	34,000
	5. Adjustment to unified credit	34,000
	6. Allowable unified credit (Subtract the amount on line 5 from the amount on line 4)	34,000
	7. Gross estate tax (Subtract the amount on line 6 from the amount on line 3) not less than zero	5,732,186
	8. Credit for state death taxes substantiated (x)	0
	9. Gross estate tax less credit for state death taxes (Subtract amount on line 8 from the amount on line 7)	5,732,186
	10. Other credits (w) Tax on Prior Transfers	0
	11. Estate tax liability (Subtract the amount on line 10 from the amount on line 9)	5,732,186
	12. Estate tax assessed	1,113,255
	13. Increase (Decrease) in tax (Subtract the amount on line 12 from the amount on line 11)	4,618,931
	14. Less: Additional credit for state death taxes allowable, if substantiated	1,005,798
	15. Increase (Decrease) in tax after state death taxes allowable (Subtract the amount on line 14 from the amount on line 13)	\$ 3,613,133

TAXPAYER'S NAME

S.S. OR E.I. NUMBER

ESTATE OF JACK DELGUZZI

SSN 533-10-9598V

1. ADJUSTMENTS	D/D 6/1/78	Year:	Year:
(a) Schedule A, Item 1	\$ 568,478		
(b) Schedule A, New Item A	335,000		
(c) Schedule B, Item 4	10,933		
(d) Schedule B, Item 9	690,424		
(e) Schedule B, Item 12	7,185		
(f) Schedule B, Item 13	154,600		
(g) Schedule B, Item 14	(717)		
(h) Schedule B, Item 15	48,436		
(i) Schedule B, Items 1, 3, 5, 11 and 17	595,000		
(j) Schedule C, New Item A-2	25,519		
(k) Schedule F, Item A.1	2,922,512		
(l) Schedule F, Item A.3	19,632		
(m) Schedule F, Item A.4	167,250		
(n) Schedule F, Item A.5	342,731		
(o) Schedule F, Item D	84,289		
(p) Schedule G, New Item A	10,540		
(q) Schedule G, New Item B	52,500		
(r) Schedule J, Item B.2	(45,477)		
(s) Schedule J, Item B.3, Accounting Fees	30,000		
(t) Schedule J, Item B.3, Costs to Close	50,000		
(u) Schedule J, Item B.3, Interest Expense	402,832		
(v) Schedule K, Mtg. & Lien, Item 8	10,819		
(w) Credit for Tax on Prior Transfer Fees	----		
(x) Credit for State Death Taxes	----		
TOTAL ADJUSTMENTS THIS PAGE	\$6,482,486		

Name and Address of Taxpayer(s) Estate of Jack J. DelGuzzi SSN 533-10-9598V
 William E. Wilbert, Personal Representative
 Crossroads Shopping Center, Suite A
 Bellevue, WA 98008

Kind of Tax	<input checked="" type="checkbox"/> Copy to Authorized Representative Robert J. Shaw, Attorney-at-Law SHORT & CRESSMAN 3000 Sea-First Natl. Bank Bldg., Seattle, WA 98154	
Estate		
	Deficiency	

	Increase in Tax	Penalties
Date of Death:		
June 1, 1978	\$4,618,931.00	

See the attached explanation for the above deficiencies

I consent to the immediate assessment and collection of the deficiencies (increase in tax and penalties) shown above, plus any interest provided by law.

Your Signature	▶	Estate of Jack J. DelGuzzi, William E. Wilbert, (Date signed)
Spouse's Signature, If A Joint Return Was Filed	▶	Personal Representative (Date signed)
Taxpayer's Representative Sign Here	▶	(Date signed)
Corporate Name:		.....
Corporate Officers Sign Here	▶	..... (Date signed)
	▶	..... (Date signed)

Note:

If you consent to the assessment of the amounts shown in this waiver, please sign and return it in order to limit the accumulation of interest and expedite our bill to you. Your consent will not prevent you from filing a claim for refund (after you have paid the tax) if you later believe you are entitled to a refund; nor prevent us from later determining, if necessary, that you owe additional tax; nor extend the time provided by law for either action.

If you later file a claim and the Internal Revenue Service disallows it, you may file suit for refund in a district court or in the United States Court of Claims, but you may not file a petition with the United States Tax Court.

Who Must Sign

If this waiver is for any year(s) for which you filed a joint return, both you and your spouse must sign the original and duplicate of this waiver form unless one of you, acting under a power of attorney, signs as agent for the other.

This waiver may be signed by your attorney or agent, provided such action is specifically authorized by a power of attorney which, if not previously filed, must accompany this form.

If this waiver is signed by a person acting in a fiduciary capacity (such as executor, administrator, trustee), Form 56, Notice of Fiduciary Relationship, should, unless previously filed, accompany this form.

If this waiver is for a corporation, it must be signed with the corporate name followed by the signature and title of the officer(s) authorized to sign.

If you agree, please sign one copy and return it; keep the other copy for your records.

Form **4089**
(Rev. April 1979)

Department of the Treasury - Internal Revenue Service

Symbols

Notice of Deficiency-Waiver

AP;SEA;DGB;MCB

Name and Address of Taxpayer(s)

Estate of Jack J. DelGuzzi SSN 533-10-9598V
William E. Wilbert, Personal Representative
Crossroads Shopping Center, Suite A
Bellevue, WA 98008

Kind of Tax



Copy to Authorized Representative
Robert J. Shaw, Attorney-at-Law
SHORT & CRESSMAN
3000 Sea-First Natl. Bank Bldg., Seattle, WA 98154

Estate

~~XXXXXXXXXXXX~~

Increase in Tax

Deficiency

Penalties

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Your
Signature



Estate of Jack J. DelGuzzi, William E. Wilbert, (Date signed)

Personal Representative

Spouse's Signature,
If A Joint Return
Was Filed



(Date signed)

Taxpayer's
Representative
Sign Here



(Date signed)

Corporate
Name:

Corporate
Officers
Sign Here



(Signature)

(Title)

(Date signed)

(Signature)

(Title)

(Date signed)

Note:

If you consent to the assessment of the amounts shown in this waiver, please sign and return it in order to limit the accumulation of interest and expedite our bill to you. Your consent will not prevent you from filing a claim for refund (after you have paid the tax) if you later believe you are entitled to a refund; nor prevent us from later determining, if necessary, that you owe additional tax; nor extend the time provided by law for either action.

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If you agree, please sign one copy and return it; keep the other copy for your records.

Form 4089 (Rev. 4-79)

819_00473

would execute a Promissory Note to UPI for \$154,046 payable without interest upon settlement of the Estate. The Promissory Note was guaranteed by the Irrevocable Trust of Gary DelGuzzi. No portion of the Promissory Note has been paid to date.

h. Sale of the Costa Rican Properties.

(1) Description of the Assets.

In 1979, the Estate assets in Costa Rica were thought to have been primarily shares of stock of several Central American corporations⁴. The Estate was believed to have an interest in the following Costa Rican corporations: Ambos Puertos S.A., Beko S.A., Colorado Lumber Company, Las Veraneras S.A., and Surfside Estates of Costa Rica.

Land ownership in Costa Rica is primarily in Costa Rican corporate entities. This is a result of strict adverse condemnation laws which make it easy for nationals to make a claim of ownership against foreign land holdings. The laws were created to discourage foreigners from acquiring ownership of large amounts of land, leaving nothing for the people of Costa Rica. Costa Rican

⁴ While reviewing documents provided pursuant to discovery requests on January 10, 1997 in the office of Gary DelGuzzi's counsel, previously unknown boxes of Estate records were discovered. Notes pertaining to visits in Costa Rica by Gary DelGuzzi, J. Dimmitt Smith, and Lloyd Boren, reflect the discovery in 1980 of a safety deposit box belonging to Jack DelGuzzi containing gold and silver. The administrator does not know if the contents of the safety deposit box ever became an asset of the Estate. Additionally, these same notes indicate that shares of stock of Ambos Puertos S.A. were sold, with the proceeds going to several persons, including Gary DelGuzzi. The stock of Ambos Puertos S.A. was owned by the Estate. Also discovered was an unmarked box with maps, notes, correspondence, corporate records, and financial records for several of the Central American corporations in which the Estate had an interest.

corporations are afforded similar rights as Costa Rican nationals, in terms of land ownership.

In 1982, no records of any of the corporations, except Beko S.A., were turned over to the current administrator.⁵ At this time the only other property in Costa Rica in which any DelGuzzi had an interest was Finca DelGuzzi, a 170 acre, non-waterfront farm, purportedly acquired by and owned by Gary DelGuzzi. The farm property is adjacent to the property owned by Beko S.A..⁶

Beko S.A. was the primary land owning entity for a project known as the Tamarindo Beach Development.⁷ Tamarindo is a small coastal community located on the Pacific Ocean in the province of Guanacaste, Costa Rica. Development in the community generally consisted of a small motel, a bar, several beach homes, and farm land. The community is 134 miles west of San Jose, the capital of Costa Rica. The nearest town is Santa Cruz, 35 miles to the east.

⁵ On July 11, 1980, Gary signed a notarized affidavit declaring under oath that to his knowledge there are no tax returns, financial statements, or balance sheets for the following corporations: Ambos Puertos, Beko, Colorado Lumber Company, Las Veraneras, and Surfside Estates of Costa Rica. However, the recent discovery documents provided by his counsel to the administrator demonstrates this statement was not accurate.

⁶ In the Declaration of Gary Delguzzi, dated July 8, 1996, Re: Distributions attached to his petition filed in this case, at 15h, Gary DelGuzzi declares under oath that the Estate owes him for a loan of \$160,000 relating to Finca DelGuzzi (Costa Rica). He notes that it was purchased in 1979 for \$80,000. Recent discovery documents provided by Mr. DelGuzzi's counsel indicates that Finca DelGuzzi was in fact purchased with the proceeds of the sale of the stock of Ambos Puertos and Las Veraneras, both of which were assets of the Estate, not Gary DelGuzzi.

⁷ Although Beko was the primary land holding company, others entities that held portions of the land for the project included Finca Tamarindo S.A. and El Capitan S.A. Collectively these entities owned the land (except Finca DelGuzzi) known as the Tamarindo project.

The Tamarindo development consisted of the ownership rights for a proposed destination resort in an area primarily noted for its fishing villages and farmlands.⁸ The project site consisted of approximately 460 acres of ocean front land, north of the San Francisco River and south of Tamarindo Bay.

The Tamarindo project was a proposed subdivision, i.e., the U.S. equivalent of a preliminary short plat. The plat had local jurisdictional approval, roads roughed in, and a water line and power brought to the property boundary.⁹ The owner of the land was vested with the right to build within 164 feet of the water, and to sell 320 lots of various size in residential areas and to construct in three commercial zones either hotels, casinos, or condominiums. All development was subject to installation of infrastructure (roads, power, and water), as well as the development of public park areas. Development could be phased, with sales occurring in areas that were adequately serviced by water and power if the municipality agreed that sufficient infrastructure was in place and public areas developed and deeded to the municipality.

⁸ Although land ownership belonged to primarily Beko, the right to develop and sell the project belonged to Costa Paraiso S.A., an investment group which included William F. Luce, Claudio Cerdas, John A. Luce, and others.

⁹ In 1982 it was believed that the water system that was brought to the property was adequate enough to provide for the entire development. In 1990, while attempting to sell lots to offset costs of maintaining the roads and the development, it was discovered that the entire subdivision was served by a 3" line running to a small pump and well, a water system inadequate to service the planned development. The municipality refused to allow any additional hook ups to this line and required any new hook ups to be provided through a new source, either individual wells or a new water system.

(2) Ownership History.

The DelGuzzi's first became involved in Costa Rica in about 1969. Many details of activities occurring prior to 1982 have never been disclosed. However, in 1980 Mr. Wilbert was hired as a consultant by J. Dimmitt Smith, the then attorney for the Estate, and Gary DelGuzzi. The three visited Costa Rica so Mr. Wilbert could inspect the properties and render advice regarding the viability of the Tamarindo development. At that time, the Estate owned 40% of the stock of Beko S.A.. The remaining 60% belonged to a Theodore Kop, a local Costa Rican businessman. As previously indicated, Finca DelGuzzi¹⁰ was reported to belong individually to Gary DelGuzzi and consisted of land adjacent to the Beko property.

In 1981 Gary DelGuzzi, as personal representative of the Estate, transferred 20% of the Beko stock to Mr. Wilbert in consideration for work he performed for the Estate, as well as an incentive to promote development of the Tamarindo project.

In early 1982, Gary DelGuzzi, as personal representative of the Estate, transferred the remaining 20% of Beko stock owned by the Estate to Charles Nyhus as part of the Nyhus/DelGuzzi settlement.¹¹ That same year, Mr. DelGuzzi instructed Mr. Wilbert to organize the acquisition of the development rights to the Tamarindo project and outstanding Beko stock. It was in August of

¹⁰ Finca DelGuzzi is also known as Inversiones DelGuzzi.

¹¹ The Nyhus/DelGuzzi settlement entered into by Gary DelGuzzi, as personal representative, transferred an undivided 1/2 interest of most Estate land to Mr. Nyhus. This settlement also gave Mr. Nyhus part ownership of several U.S. corporations in which the Estate had an interest. See discussion above.

that year that Gary DelGuzzi requested that Mr. Wilbert succeed him as the Estate's administrator.

On April 15, 1983, Mr. Wilbert, as administrator and officer of Playa Tamarindo S.A., an Estate owned Costa Rican corporation, and Gary DelGuzzi, as president of Northland Properties, Inc., entered into an Agreement with Claudio Cerdas and Costa Paraiso S.A. for the exchange of certain real property owned by the Estate and Northland for all development rights Costa Parasio has with Beko S.A in the Tamarindo project, 50 % of the stock in the Costa Rican corporations El Capitan S.A. and Inversiones Beco S.A., and certain other Costa Rican properties, including one on which a water tank was located.

In early 1983, Gary DelGuzzi as shareholder and officer of Estate entities, and Mr. Wilbert as Administrator, finalized agreements providing for the option to purchase the outstanding 80% of Beko stock and the development rights it held for the Tamarindo project, and the remaining 50% of the stock of El Capitan S.A. and Inversiones Beco S.A., for the sum of \$425,000, to be paid in installments without interest. The option was exercised in April 1986. Over the next three years, the administrator was able to make the payments from borrowed funds and other Estate funds.

(3) Sales and Marketing History.

Marketing of the Tamarindo project escalated in 1983 and 1984 with several leads developing from Europe. Unfortunately, in 1984 political upheaval in Nicaragua and Honduras created an environment of political instability in Costa Rica that discouraged potential

investors. Several major investments by such companies as Holiday Inns and Playboy abandoned their projects, some with 50% finalized construction in place.

In 1986, the political environment stabilized, with new investment interest in Costa Rica developing from Asian and German investors. By 1987, an offer to purchase the Tamarindo project was being negotiated with Grupo Tres, a German construction company, acting as agent for Peter Bertold, a German syndicator, in presenting the offer to the administrator. The offer to purchase was finalized in 1988, but required Beko to complete construction of the infrastructure and roads for the Tamarindo project. Based on closing costs and the estimated construction costs¹², the Estate estimated it would net \$1,100,000 from its \$1,600,000 share of the sale proceeds. Unfortunately, after making a first payment of \$50,000 on the installment sale, Mr. Bertold suffered a heart attack followed by a stroke. Apparently because of this, Mr. Bertold withdrew the credit line which had been funded by a Swiss Bank for the purchase, and the sale then failed.

This was not the only unlucky event occurring in 1988 for the Costa Rican investments. Not only did the sale to the Germans fail due to unforeseen circumstances, there was also upheaval in El Salvador to the north and Panama to the south, completely upsetting

¹² The Estate's closing costs were \$75,000 to Mr. Kop and \$15,000 to Mr. Anderson as finder fees and commissions, and \$160,000 in legal costs. Additionally, early estimates of construction costs were \$413,000, with \$250,000 used as the estimate the Estate's share of those construction costs. Thus, the Estate expected \$500,000 in total costs to meet the obligations under the purchase agreement, or \$1.1 million return from the \$1.6 million sales proceeds.

the political stability of Central America. With refugees pouring into the tiny country of Costa Rica from neighboring countries, investors all but disappeared.

From 1988 to 1992 operations of Beko continued, with small lot sales being made to help offset the costs of maintaining the roads and preventing squatters from making legal claims against the Tamarindo properties. Negotiations were pursued with several potential purchasers, including the previous purchaser's agent, Grupo Tres, but no agreements were finalized.

(4) Development of the Water System.

At this same time, the municipality noted that improvements shown on the plat as being installed were not as submitted to the municipality. Specifically, the information submitted regarding the water system was erroneous, and the installed system was inadequate for even the existing services. Additionally, the time for completing the plat was expiring, and a new request for plat approval would have to be made if the infrastructure was not completed or bonded. The city also required that public parks be deeded to the municipality. Though the plat established and vested the number of lots and setbacks, it did not establish and vest construction requirements or life safety requirements. Therefore, the new requirements for water, electrical, and road design would have to meet current codes. The cost of meeting the new codes appeared to be very substantial, making the development project prohibitive for the Estate to pursue.

While Mr. Wilbert was in Costa Rica, he personally investigated and pursued many potential business opportunities. For example, one venture was a bid for the garbage business contract for the country. The multi-million dollar contract was bid jointly by Mr. Wilbert and Claudio Cerdas, although they were not successful in obtaining the contract. He also considered investments in coffee farms, as were several other investments, usually as possible joint ventures with Mr. Cerdas.

Mr. Cerdas is a successful Costa Rican businessman and former mayor of Santa Cruz in the Guanacaste province. He owned a local garbage company, most of the gas stations in Guanacaste, and several thousand acres of property adjacent to the Tamarindo project.

Mr. Cerdas' property suffered similar problems as the Tamarindo project in that the properties in the area were inadequately serviced by the existing water system. He wished to improve the system of undersized water lines, but was concerned over the "free rider" effect. Santa Cruz had no late comers agreement to reimburse developers for improvements beneficial to others in an area, such as improving a local water system. If that occurred, existing hookups would receive increased pressure and flow without charge or other cost.

In 1991, Mr. Cerdas approached Mr. Wilbert with the idea of a joint venture to form a private utility company. In essence, he proposed that he and Mr. Wilbert jointly fund the costs to install

a main trunk line from a well site and water tank, through public roads serving the Tamarindo community and adjacent lands.

Over 100 property owners with over 2000 lots would ultimately be serviced. It was estimated that hook up fees would pay off the initial investment and income would be generated through metered service to individuals. Mr. Wilbert agreed to participate in this joint venture personally, and made the necessary investment to do so. It was a project that he was able to become involved in, rather than the Estate, because the Estate simply did not have the cash resources or credit available to incur the costs and investment necessary to fund the expensive project.

In 1992, Mr. Cerdas and Mr. Wilbert jointly borrowed (through a line a credit) the funds needed to complete the estimated \$872,000 construction for the water system. Construction began in the summer season of 1992.

(5) Sale of the Estate's Costa Rican Interests.

In late 1993, Claudio Cerdas, on behalf of a German pension fund, presented to Mr. Wilbert an offer to purchase the Tamarindo project for \$400,000.¹³ This offer was the net proceeds for the development that would be received by the Estate, with the purchaser assuming responsibility for all development costs and other requirements necessary to complete the development project.

¹³ The purchase price did not include Finca DelGuzzi, which owned the Tamarindo farm. At that time, Finca DelGuzzi was believed to be an asset of Gary DelGuzzi. Had it been known then that Finca DelGuzzi was actually an asset belonging to the Estate, it is estimated that an additional \$100,000 to \$150,000 would have been generated from the sale for the Estate.

The offer was accepted for the Estate by the administrator. The Estate receive a check for its 80% interest, and Mr. Wilbert received a check for his 20% interest. The farm adjacent to the Beko property remains in the name of Finca DelGuzzi, and was not sold as part of the Tamarindo project.

The offer presented by Mr. Cerdas included an offer to Mr. Wilbert to buy his interest in the water company for \$600,000. Mr. Cerdas explained to Mr. Wilbert that a German investor was interested in buying Mr. Cerdas' property north and adjacent to the Tamarindo project. The investor was also interested in purchasing the Tamarindo project. In order to develop the lands, the investor wanted control of the water company and water system. Mr. Cerdas indicated he was acting on behalf of the German investor to make an offer to purchase the Tamarindo project and water company, but he was not authorized to disclose the investor's name. He also explained that the deal could not be accomplished without the water company included in the purchase. The specific offer presented was to pay \$1,200,000 for the water company, an undisclosed amount for Mr. Cerdas's property, and \$400,000 for the Tamarindo project. These purchase prices for the land were net of any liabilities encumbering the property, with the buyer assuming all future development costs (electrical, roads, etc.).

The offer presented by Mr. Cerdas to purchase the Estate's Costa Rican interests was the first realistic offer the administrator had received since the failure of the previous German sale in 1988. At the time the offer was made, the Estate was badly

in need of cash in order to fund the offer in compromise that had been negotiated with and accepted by the IRS early in 1993. Because of estate tax liens and other encumbrances on all Estate property, and the slow economy and lack of investment interest for property on the Washington peninsula, sale of estate property did not provide a realistic and available option for the administrator to raise funds to pay the IRS, nor did the Estate have access to any credit to do so. More than six months had passed since the offer had been accepted by the IRS to satisfy over \$5 million of estate tax debt for payment of only \$350,000, and there was considerable concern that if the offer was not funded soon, the IRS would consider the Estate in default on the agreement, revoke the agreement, reinstate the total liability, and initiate renewed and more vigorous efforts to collect the tax, with disastrous consequences to the Estate, its other creditors and beneficiaries.

The offer to purchase the Estate's Costa Rican interests, therefore, proved to be very timely, and provided an essential source of funds needed to eliminate more than \$5 million of priority Estate debt. Although he made vigorous efforts to do so, Mr. Wilbert's attempts to negotiate a higher price for the Costa Rican interests proved unsuccessful. Because of the then existing financial condition of the Estate, the administrator determined it was reasonable, prudent, and clearly in the best interests of the Estate to accept the offer presented by Mr. Cerdas.

The offer was accepted, the funds were paid to the Estate for their interest in the Tamarindo project, and those funds were used

by the administrator to help fund the IRS offer in compromise and completely eliminate the Estate's tax liability to the IRS.

i. The Ennis Creek Development.

At the time of his death, Jack DelGuzzi owned 80% of the stock of DelHur, Inc. DelHur owned a substantial amount of real property in and around the Port Angeles area, including the land which later was referred to during the administration of the Estate as the Ennis Creek Development (hereinafter "Ennis Creek"). When DelHur was split up between the Estate and Sam Hurworth, with the Estate retaining 100% of the stock of DelHur (see discussion above), the Ennis Creek property remained an asset of DelHur, and therefore an asset of the Estate.

In 1985, Ennis Creek consisted of 44.32 acres of land south of and abutting Hwy. 101 on its north boundary, and east of the Peninsula Golf Course and the city limits of Port Angeles on its west boundary. To the east and west there were generally low density single family developments and an elementary school. In 1985, the property was unimproved and needed water, sewer and power.

In 1985, Ennis Creek had an assessed value of \$440,491. Tony Samples, property manager for DelHur at that time, determined the fair market value of the Ennis Creek property to be \$457,470. Mr. Samples had listed the property for sale at \$800,000, with DelHur obligated to perform road and utility improvements to the property.

Tony Samples was a salaried employee of DelHur. However, DelHur did not have any cash to pay salaries, and therefore was

3846/3999

A F F I D A V I T

I, William Falconer Luce, citizen of Guatemala, hereby declare that the following transaction took place on or about October 6, 1983.

A Promissory Note in the amount of U.S. \$584,486.25, due and payable by Bako, Sociedad Anonima, of Costa Rica, was transferred and made payable to me as owner with Claudio Cerdas, a citizen of Costa Rica, of Costa Paraiso S.A. and was transferred and made payable to me as part of the purchase of the 100 shares of stock held by Theodor Rudolph Kop Jurgens, whose Identification Number was 863113. The 100 shares of Bako, S.A. stock were transferred to Costa Paraiso, S.A. for the sum of U.S. \$425,000.00.

W.A.R.

The Note, payable to me from Bako, S.A., was transferred to Loretta Rae Wilbert Dickson and William Edward Wilbert Toth, whose passports and identity documents are registered in Costa Rica, by me as a gift for personal services rendered to us. The value of the Note in the amount of U.S. \$584,486.25 had a limited monetary value on May 26, 1983 when the transfer was made. The economic conditions in Central America and the cost of developing the assets of Bako, S.A. would have created a major discount if the Note were marketed at that time. Therefore, the Note had very low monetary value, if any, on the day of transfer. The personal services, on the contrary, were very valuable to us.

Signed this 9th day of July, 1992, in the State of Texas in the United States of America, and was witnessed by a Notary Public of the State of Texas.

William Luce
WILLIAM FALCONER LUCE
Citizen of Guatemala

Carroll Green
CAROL GREEN
Notary Public, State of Texas
My Commission Expires
APRIL 23, 1995

NOTARY PUBLIC
CARROLL GREEN
My Commission expires 6-6-95

PRIVILEGED & CONFIDENTIAL
ATTORNEY-CLIENT WORK PRODUCT

NR

SCHEDULE "B"

DelGuzzi Bros. Partnership Assets
Partitioned to Jack DelGuzzi

CERTIFIED
COPY

1. One-half interest in partnership with Charles Nyhus.
2. Real Estate as to which Charles Nyhus Claims an Interest.

2.1 Hillstrom.

The Southwest Quarter of the Southeast Quarter of Section 23 and the Northwest Quarter of the Northeast Quarter of Section 26, ALL in Township 30 North, Range 12 West W.M., in Clallam County, Washington.

EXCEPT that portion thereof lying Southwesterly of the most westerly creek running through said subdivision and Northerly of the county road as presently laid out and existing.

ALSO EXCEPT that portion thereof described as follows: BEGINNING at the Southwest corner of the Northwest Quarter of the Northeast Quarter of Section 26, Township 30 North, Range 12 West, W.M., running in a northerly bearing along north and south boundary line of Section 26, to the right of way of the county road; thence along right of way of county road to the center of Anton Creek; thence along center of Anton Creek to a point on the south line of the Northwest Quarter of the Northeast Quarter, Section 26; thence westerly along said line to the POINT OF BEGINNING.

ALSO EXCEPT those portions thereof conveyed to Donald Stevens more particularly described as follows:

The South 660 feet of the West 500 feet of the Southwest Quarter of the Southeast Quarter of Section 23, Township 30 North, Range 12 West, W.M., Clallam County, Washington.

EXCEPT any portion thereof lying southwesterly of the most westerly creek as conveyed to Donald Stevens by instrument recorded under Auditor's File No. 340862; ALSO EXCEPT portion thereof, if any, lying easterly of the westerly line of the most easterly creek, as said creek was located on October 30, 1967.

ALSO that portion of the westerly 500 feet of the Northwest Quarter of the Northeast Quarter of Section 26, Township 30 North, Range 12 West W.M., Clallam County, Washington, lying northerly of the county road.

EXCEPT any portion thereof lying southwesterly of the most westerly creek, as conveyed to Donald Stevens by instrument recorded under Auditor's File No. 340862;

T

CERT COP.

3.8

Pacific County.

Division 4, Lot 7, Block 9, Surfside Estates.
Division 4, Lot 9, Block 1, Surfside Estates.
Division 6, Lot 7, Block 1, Surfside Estates.
Division 6, Lot 8, Block 1, Surfside Estates.
Division 20, Lot 9, Block 2, Surfside Estates.
Division 20, Lot 13, Block 1, Surfside Estates.
Division 20, Lot 13, Block 2, Surfside Estates.
Division 20, Lot 44, Block 2, Surfside Estates.
Tax No. 54, Section 15, Twsp. 12 N, Range 11 WWM,
Parcel 16 C.

3.9

Kearns/Spillane.

Lot 14 and the west half of Lot 15, Block 23, 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 said county.

3.10

Ocean View, Beacon Hill and Illinois Land Tracts.

That portion of the Southwest Quarter of the Northeast Quarter in Section 14, Township 30 North, Range 6 West of the Willamette Meridian, described as follows: Beginning at a point 60 feet East and 30 feet North of the center of said Section 14; thence North 4 degrees 33'52" East parallel with the West line of said Southwest Quarter of the Northeast Quarter and 60 feet distant therefrom to an intersection with the southerly line of the right-of-way conveyed to Clallam County by deed dated February 21, 1964 and recorded Volume 272 of Deeds, page 686 under Clallam County Auditor's File No. 346305; thence South 77 degrees 11'48" East along the southerly line of said right-of-way a distance of 138 feet; thence South parallel with the West line of said Southwest Quarter of the Northeast Quarter to a point 30 feet North of the South line thereof; thence West parallel with and 30 feet North of the said South line of the Southwest Quarter of the Northeast Quarter to the point of beginning; situate in Clallam County, Washington.

That portion of the Southwest Quarter of the Northeast Quarter of Section 14, Township 30 North, Range 6

Pacific -
 SELECT DISTINCTROW * FROM PADS Where date >= #01/02/86# and date <= #01/12/07# and comment & remarks & type1 & type2 & type3 & seller & buyname & subdiv & township Like '*wilbert*' and del <> true

Deedtype	Seller	Use/Typ/Rm/B/Ba/Year-Fund/TotlSF	Net Vw	Sales Price
Aud #	Buyer	1stFlr/Bsmf/Bsmu/Gar/Porch/Fn	Loan Aud	
Saladate	Remarks, Comment	Rt/Sp/Other	AV Imp/Land	
Area	Legal	PrevSale	Taxparcel	
	Landuse Acres Lotsize	Ext Rf Svr Wtr		
	Address			
WD 6286 5/24/90 C	Loretta Wilbert For Estate, 13850 Bel-Red Rd, Bellevue WA 98005 Jerome/Dev Nevia 215 W. Holly #B-26 Bellingham WA 98225 DOT (Pvt) \$ 15000 Surfside Est #04 B01 L09 T12/11W/S17	L-O/LOT/ 0 7350	W 70 DOT 6287	30000 /24500
QCD 6631 6/8/90 C	Surfside Homeowners Assoc, , Ocean Park WA 98640 William/Loretta Wilbert 13850 Bel-Red Rd Bellevue WA 98005 Surfside Est #17 B06 L28 T12/11W/S05	L-O/LOT/ sand lot 0 6000		1235 /3500
WD 17603 7/31/91 C	William E Wilbert Ps Inc, 13850 Bel-Red Rd, Bellevue WA 98005 William K/Jackie Robertson POB 3443 Redding CA 96049 Surfside Est #20 B01 L13 T12/11W/S05	L-O/LOT/ 0 8040 Best Ridge Vw 5000/82		25000 /16000
WD 21018 12/3/91 C	Loretta D Wilbert - Trustee, 13850 Bel-Red Rd, Bellevue WA 98005 Cleary 1989 Trust 1018 NE Ria Rancho Pkwy Escondido CA 92029 Surfside Est #06 B01 L08 T12/11W/S17	L-O/LOT/ 0 7616 25000/82	W68	60000 /47600 1716 & 26238
WD 26460 6/15/92 C	Loretta Wilbert - Trustee, 13850 Bel-Red Rd, Bellevue WA 98005 Dave/Lynda Wilson 5718 NE 45th Ave Vancouver WA 98661 Surfside Est #04 B09 L07 T12/11W/S17	L-O/LOT/ 18 0 0 Prime Ridge Vw 25000/82	I	29000 /20000 26187
WD 27117 7/8/92 C	William/Loretta Wilbert, 13850 Bel-Red Rd, Bellevue WA 98005 William/Sandra Dykstra 519 E Race Rd Coupeville WA 98239 Surfside Est #17 B06 L28 T12/11W/S05	L-O/LOT/ 18 0 0 Sand Lot 1235/90		6000 /3500 28205
WD 27150 7/9/92 C	Loretta D Wilbert - Trustee, 13850 Bel-Red Rd, Bellevue WA 98005 Michael/Mine Rogers POB 3986 Portland OR 97208 Surfside Est #20 B02 L44 T12/11W/S05	L-O/LOT/ 18 0 0 7380 Ridge View 25000/82	I	19000 28669
WD 30280 10/14/92 C	William E Wilbert Ps Inc, 13850 Bel-Red Rd, Bellevue WA 98005 L & S Henderson Family Trust POB 584 Fallbrook CA 92028 Surfside Est #06 B02 L01,02 T12/11W/S17	L-O/LOT/ 18 0 0 18590Canal Lot 7000/83		28000 /7000 26248 & 26249
WD 47661 5/13/94 C	Loretta Wilbert, C/O 13401 Bel-Red Rd #B7, Bellevue WA 98005 Gwendolyn Wagner 221 Golden Rod Ct Whites Station NJ 08889 AV '85 DOT(Con) \$ 74000 First Fr Surfside #2 Cdo Unit 2 T12/11W/S08	CDO/RES/ / / / / /1116 / / / /558B1/ 96Wo/Ce 0 0 4500/81 Br Sh	DOT 47662	92500 57000 28111
WD 56403 3/22/95 C	Loretta D Wilbert - Trustee, 13401 Bel Red Rd #B7, Bellevue WA 98005 Martin J/Kathleen Wilkman 1980 SW Schaeffer Rd West Linn OR 97068 Surfside Est #06 B01 L07 T12/11W/S17	L-O/LOT/00.01Ac 18 0.01 0 25000/82	W69	60000 /48300 26237
WD 3054545 7/23/02 C	Beverly K Johnson, 2632 NW Legacy Pl, Corvallis OR 97330 Wilbert P/Barbara Boley 3934 SW 336th Pl Federal Way WA 98023 DOT(Con) \$ 100000 Countryw 11 Williams Pacific Rim L04 T11/11W/S04 23716 'J' Pl-OP	USF/1.0/ / / /109840 /1660 480Dt/ wa/cb 0 7590 Bbrp/ / /DeckRotten-MoValua Ot Co	DOT 3054546	125000 85200 /40000 18842
WD 3087724 11/16/05 B	Nice Assoc Inc, 607 Wilbert St, Bremerton WA 98312 Steven B/Jill Kimball 1143 Paulding St Raymond WA 98577 DOT(Pvt) \$35000 Nice Assoc Inc 92 T13/06W/S03 Pt John/Barbara Giesy Dic	L-O/UNE/06.05Ac 6.05 0	X	37500 /18000 13080321032



SECURITY TITLE INSURANCE COMPANY
OF WASHINGTON
1100 SECOND AVENUE, SEATTLE, WASHINGTON 98101 • MAIN 3-0000

Misc.

Filed for Record at Request of E Mail To:

NAME Surfside Estates
ADDRESS P.O. Box 2174
CITY AND STATE Everett, Washington 98203

582988
RECORDS SECTION
COUNTY OF GRANT
Security Title Ins. Co.
Nov 1 8 42 AM '72
J.F. PEDDYCONE, AUDITOR
GRANT COUNTY, WASH.
DEPUTY

Quit Claim Deed

THE GRANTOR SURFSIDE ESTATES, a joint venture
for and in consideration of partnership distribution
convey and quit claim to JACK DELGUZZI

NO REAL ESTATE EXCISE TAX PAID

AFFIDAVIT No. SL 9571
Date 10-31-72 By [Signature]
MARGARET HARRIS, Treasurer
Grant County, Washington

the following described real estate, situated in the County of Grant
State of Washington, including any after acquired title:
W $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 4.

SUBJECT TO an easement for ingress, egress and utilities over, under and across the
South 30 feet thereof.

ALSO SUBJECT TO the following covenant running with the land: that the grantee, his
heirs, successors and assigns forever, covenants that he or they will dedicate to
Grant County, Washington (or such other governmental entity or municipal corporation
as may be appropriate) an easement for road purposes over and across the above des-
cribed easement whenever the said county (or other appropriate governmental entity
or municipal corporation) shall agree in writing to accept the same as a gift and to
assume all duties of road construction and maintenance thereon, subject to an ease-
ment for utilities therein, belong to said grantee, his heirs, successors and assigns.

TOGETHER WITH an easement for ingress, egress and utilities over, under and across
the following described strips of land: The South 60 feet North 750 feet Gov't.
Lots 2, 3 and 4, Sec. 4; the East 30 feet Gov't. Lot 3, Sec. 4; the West 30 feet
Gov't. Lot 2, Sec. 4; the East 60 feet SE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 4; the South 30 feet N $\frac{1}{2}$ S $\frac{1}{2}$ NW $\frac{1}{4}$,
Sec. 4; the North 30 feet S $\frac{1}{2}$ S $\frac{1}{2}$ NW $\frac{1}{4}$, Sec. 4; the West 60 feet NW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 4; the
West 60 feet NW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 4; the South 30 feet N $\frac{1}{2}$ E $\frac{1}{2}$ SE $\frac{1}{4}$, Sec. 4; the North
30 feet S $\frac{1}{2}$ W, SE $\frac{1}{4}$, Sec. 4; the South 30 feet N $\frac{1}{2}$ SE $\frac{1}{4}$, Sec. 4; the North 30 feet
S $\frac{1}{2}$ SE $\frac{1}{4}$, Sec. 4; the South 30 feet N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 3; the North 30 feet S $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$,
Sec. 3; the South 30 feet NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 3; the North 30 feet SW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 3;
the East 30 feet W, E $\frac{1}{2}$ SW $\frac{1}{4}$, Sec. 3; the West 30 feet E $\frac{1}{2}$ E $\frac{1}{2}$ SW $\frac{1}{4}$, Sec. 3.

All in Township 14 N, Range 23 E.W.H.

EXCEPTING AND RESERVING to the Grantor, his successors and assigns all oil and mineral
rights upon the above described property.

Dated this 15 day of October, 1972.

SURFSIDE ESTATES, a joint venture

By: Ancil Davis
Attorney in Fact

STATE OF WASHINGTON)
COUNTY OF SNOHOMISH) ss.

On this 15th day of October, A.D. 1972, before me the undersigned, a Notary
Public in and for the State of Washington, duly commissioned and sworn personally appeared ANCIL DAVIS
to me known to be the individual who executed the foregoing instrument as attorney in fact of Surfside Estates, a joint
venture, therein described, and acknowledged to me that he signed and sealed the said instrument as such attorney in
fact for said principal, freely and voluntarily, for the uses and purposes therein mentioned, and on oath stated that the
power of attorney authorizing the execution of this instrument has not been revoked.

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



[Signature]
Notary Public in and for the State of Washington,
Residing at EVERETT TC



SECURITY TITLE INSURANCE COMPANY
OF WASHINGTON

1100 SECOND AVENUE • SEATTLE, WASHINGTON 98101 • MAIN 3-0000

Misc.

Filed for Record at Request of & Mail To:

NAME Surfside Estates
ADDRESS P.O. Box 2174
CITY AND STATE Everett, Washington 98203

582991

RECORDED
INDEXED

NOV 18 42 AM '72

J.F. PEDDY CORP. REGISTER
GRANT COUNTY, WASH.
DEPUTY

Quit Claim Deed

THE GRANTOR SURFSIDE ESTATES, a joint venture
for and in consideration of partnership distribution
convey and quit claim to JACK DELGUZZI
NO REAL ESTATE EXCISE TAX PAID
AFFIDAVIT No. 56957
Date 10-31-72 90
C.O. No. 90

the following described real estate, situated in the County of Grant
State of Washington, including any after acquired title:
E $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 4.

MARGARET HARRIS, Treasurer
Grant County, Washington

SUBJECT TO an easement for ingress, egress and utilities over, under and across the
South 30 feet thereof.

ALSO SUBJECT TO the following covenant running with the land: that the grantee, his
heirs, successors and assigns forever, covenants that he or they will dedicate to
Grant County, Washington (or such other governmental entity or municipal corporation
as may be appropriate) an easement for road purposes over and across the above des-
cribed easement whenever the said county (or other appropriate governmental entity
or municipal corporation) shall agree in writing to accept the same as a gift and to
assume all duties of road construction and maintenance thereon, subject to an ease-
ment for utilities therein, belong to said grantee, his heirs, successors and assigns.

TOGETHER WITH an easement for ingress, egress and utilities over, under and across
the following described strips of land: The South 60 feet North 750 feet Gov't.
lots 2, 3 and 4, Sec. 4; the East 30 feet Gov't. Lot 3, Sec. 4; the West 30 feet
Gov't. Lot 2, Sec. 4; the East 60 feet SE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 4; the South 30 feet NE $\frac{1}{4}$ S $\frac{1}{2}$ NW $\frac{1}{4}$,
Sec. 4; the North 30 feet S $\frac{1}{2}$ S $\frac{1}{2}$ NW $\frac{1}{4}$, Sec. 4; the West 60 feet NW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 4; the
West 60 feet NW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 4; the South 30 feet NE $\frac{1}{4}$ S $\frac{1}{2}$ SE $\frac{1}{4}$, Sec. 4; the North
30 feet S $\frac{1}{2}$ S $\frac{1}{2}$ SE $\frac{1}{4}$, Sec. 4; the South 30 feet NE $\frac{1}{4}$ S $\frac{1}{2}$ SE $\frac{1}{4}$, Sec. 4; the North 30 feet
S $\frac{1}{2}$ SE $\frac{1}{4}$, Sec. 4; the South 30 feet NE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 3; the North 30 feet S $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$,
Sec. 3; the South 30 feet NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 3; the North 30 feet SW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 3;
the East 30 feet NE $\frac{1}{4}$ E $\frac{1}{2}$ SW $\frac{1}{4}$, Sec. 3; the West 30 feet E $\frac{1}{2}$ E $\frac{1}{2}$ SW $\frac{1}{4}$, Sec. 3.

All in Township 14 N, Range 23 E.W.H.

EXCEPTING AND RESERVING to the Grantor, his successors and assigns all oil and mineral
rights upon the above described property.

Dated this 15 day of October, 1972.

SURFSIDE ESTATES, a joint venture

By: Ancil Davis
Attorney in Fact

STATE OF WASHINGTON)
COUNTY OF SNOHOMISH)

On this 15th day of October, 1972, A.D. 1972, before me the undersigned, a Notary
Public in and for the State of Washington, duly commissioned and sworn personally appeared ANCIL DAVIS
to me known to be the individual who executed the foregoing instrument as attorney in fact of Surfside Estates, a joint
venture, therein described, and acknowledged to me that he signed and sealed the said instrument as such attorney in
fact for said principal, freely and voluntarily, for the uses and purposes therein mentioned, and on oath stated that the
power of attorney authorizing the execution of this instrument has not been revoked.

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

[Signature]
Notary Public in and for the State of Washington,
Residing at EVERETT



SECURITY TITLE INSURANCE COMPANY

OF WASHINGTON
1100 SECOND AVENUE - SEATTLE, WASHINGTON 98101 - MAIN 3-0000

Misc.

for Record at Request of & Mail To:

Surfside Estates

MISS P.O. Box 2174

AND STATE Everett, Washington 98203

THIS SPACE RESERVED FOR MILLER'S U.S.

582964

FILED UP RECORDING
BOOK OF _____ PAGE

Security Title Ins. Co.
Nov 1 8 41 AM '72

J. F. PEDDYCORD, AUDITOR
GRANT COUNTY, WASH.
DEPUTY

Quit Claim Deed

THE GRANTOR

SURFSIDE ESTATES, a joint venture

for and in consideration of

partnership distribution

NO REAL ESTATE EXCISE TAX PAID

convey

and quit claim

to JACK DELQUIZZI

AFFIDAVIT No. 56-979

Date 10-31-72 by J. J.

the following described real estate, situated in the County of Grant
State of Washington, including any after acquired title:
1/2 NE 1/4 NE 1/4 SW 1/4 Sec. 3.

MARGARET HARRIS, Treasurer
Grant County, Washington

SUBJECT TO an easement for ingress, egress and utilities over, under and across the
West 30 feet thereof.

ALSO SUBJECT TO the following covenant running with the land: that the grantee, his
heirs, successors and assigns forever, covenants that he or they will dedicate to
Grant County, Washington (or such other governmental entity or municipal corporation
as may be appropriate) an easement for road purposes over and across the above des-
cribed easement whenever the said county (or other appropriate governmental entity
or municipal corporation) shall agree in writing to accept the same as a gift and to
assume all duties of road construction and maintenance thereon, subject to an ease-
ment for utilities therein, belong to said grantee, his heirs, successors and assigns.

TOGETHER WITH an easement for ingress, egress and utilities over, under and across
the following described strips of land: The South 60 feet North 750 feet Gov't.
lots 2, 3 and 4, Sec. 4; the East 30 feet Gov't. Lot 3, Sec. 4; the West 30 feet
Gov't. Lot 2, Sec. 4; the East 60 feet SE 1/4 NW 1/4, Sec. 4; the South 30 feet N 1/2 S 1/4 NW 1/4,
Sec. 4; the North 30 feet S 1/2 S 1/4 NW 1/4, Sec. 4; the West 60 feet NW 1/4 SE 1/4, Sec. 4; the
West 60 feet NW 1/4 SW 1/4 SE 1/4, Sec. 4; the South 30 feet N 1/2 N 1/2 SE 1/4, Sec. 4; the North
30 feet S 1/2 N 1/2 SE 1/4, Sec. 4; the South 30 feet N 1/2 NW 1/4 SE 1/4, Sec. 4; the North 30 feet
S 1/2 SE 1/4, Sec. 4; the South 30 feet N 1/2 NW 1/4 SW 1/4, Sec. 3; the North 30 feet S 1/2 NW 1/4 SW 1/4,
Sec. 3; the South 30 feet NW 1/4 NE 1/4 SW 1/4, Sec. 3; the North 30 feet SW 1/4 NE 1/4 SW 1/4, Sec. 3;
the East 30 feet W 1/2 E 1/2 SW 1/4, Sec. 3; the West 30 feet E 1/2 E 1/2 SW 1/4, Sec. 3.

All in Township 14 N, Range 23 E.W.M.

EXCEPTING AND RESERVING to the Grantor, his successors and assigns all oil and mineral
rights upon the above described property.

Dated this 15 day of October, 1972.

SURFSIDE ESTATES, a joint venture

By: Ancil Davis
Attorney in Fact

STATE OF WASHINGTON)
COUNTY OF SNOHOMISH)

On this 15th day of October, A.D. 1972, before me the undersigned, a Notary
Public in and for the State of Washington, duly commissioned and sworn personally appeared Ancil Davis
to me known to be the individual who executed the foregoing instrument as attorney in fact of Surfside Estates, a joint
venture, therein described, and acknowledged to me that he signed and sealed the said instrument as such attorney in
fact for said principal, freely and voluntarily, for the uses and purposes therein mentioned, and he hath stated that the
power of attorney authorizing the execution of this instrument has not been revoked.

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

[Signature]
Notary Public in and for the State of Washington.



SECURITY TITLE INSURANCE COMPANY
OF WASHINGTON
1100 SECOND AVENUE - SEATTLE, WASHINGTON 98101 - MAIN 2-0870

Misc.

Order for Record at Request of & Mail To:

111

NAME Surfside Estates
ADDRESS P.O. Box 2174
CITY AND STATE Everett, Washington 98203

THIS SPACE RESERVED FOR RECORDER'S USE
582967
FILED OR RECORDED
BOOK OF _____ FOR
Security Title Insurance Company
Nov 18 41 AM '72
J. F. PEDDYCORN, AUDITOR
GRANT COUNTY, WASH.
DEPUTY

Quit Claim Deed

THE GRANTOR SURFSIDE ESTATES, a joint venture
for and in consideration of partnership distribution
convey and quit claim to JACK DELGUZZI

NO REAL ESTATE EXCISE TAX PAID
AFFIDAVIT No 56976
Date 10-21-72 By J. J. Harris
MARGARET HARRIS, Treasurer
Grant County, Washington

The following described real estate, situated in the County of Grant
State of Washington, including any after acquired title:
E 1/2 NE 1/4 NW 1/4 SW 1/4 Sec. 3.

SUBJECT TO an easement for ingress, egress and utilities over, under and across the
South 30 feet thereof.

ALSO SUBJECT TO the following covenant running with the land: that the grantee, his
heirs, successors and assigns forever, covenants that he or they will dedicate to
Grant County, Washington (or such other governmental entity or municipal corporation
as may be appropriate) an easement for road purposes over and across the above des-
cribed easement whenever the said county (or other appropriate governmental entity
or municipal corporation) shall agree in writing to accept the same as a gift and to
assume all duties of road construction and maintenance thereon, subject to an ease-
ment for utilities therein, belong to said grantee, his heirs, successors and assigns.

TOGETHER WITH an easement for ingress, egress and utilities over, under and across
the following described strips of land: The South 60 feet North 750 feet Gov't.
Lots 2, 3 and 4, Sec. 4; the East 30 feet Gov't. Lot 3, Sec. 4; the West 30 feet
Gov't. Lot 2, Sec. 4; the East 60 feet SE 1/4 NW 1/4, Sec. 4; the South 30 feet N 1/2 S 1/2 NW 1/4,
Sec. 4; the North 30 feet S 1/2 S 1/2 NW 1/4, Sec. 4; the West 60 feet NW 1/4 SE 1/4, Sec. 4; the
West 60 feet NW 1/4 SW 1/4 SE 1/4, Sec. 4; the South 30 feet N 1/2 N 1/2 SE 1/4, Sec. 4; the North
30 feet S 1/2 N 1/2 SE 1/4, Sec. 4; the South 30 feet N 1/2 SE 1/4, Sec. 4; the North 30 feet
S 1/2 SE 1/4, Sec. 4; the South 30 feet N 1/2 NW 1/4 SW 1/4, Sec. 3; the North 30 feet S 1/2 NW 1/4 SW 1/4,
Sec. 3; the South 30 feet NW 1/4 NE 1/4 SW 1/4, Sec. 3; the North 30 feet SW 1/4 NE 1/4 SW 1/4, Sec. 3;
the East 30 feet W 1/2 E 1/2 SW 1/4, Sec. 3; the West 30 feet E 1/2 E 1/2 SW 1/4, Sec. 3.

All in Township 14 N, Range 23 E.W.M.

EXCEPTING AND RESERVING to the Grantor, his successors and assigns all oil and mineral
rights upon the above described property.

Dated this 15 day of October, 1972.

SURFSIDE ESTATES, a joint venture
By: Ancil Davis
Attorney In Fact

STATE OF WASHINGTON)
COUNTY OF SNOHOMISH) ss.

On this 15th day of October, A.D. 1972, before me the undersigned, a Notary
Public in and for the State of Washington, duly commissioned and sworn personally appeared ANCIL DAVIS
to me known to be the individual who executed the foregoing instrument as attorney in fact of Surfside Estates, a joint
venture, therein described, and acknowledged to me that he signed and sealed the said instrument as such attorney
in fact for said principal, freely and voluntarily, for the uses and purposes therein mentioned, and on oath stated that the
power of attorney authorizing the execution of this instrument has not been revoked.

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

[Signature]
Notary Public in and for the State of Washington
Residence at Everett



SECURITY TITLE INSURANCE COMPANY
OF WASHINGTON
1100 SECOND AVENUE - SEATTLE, WASHINGTON 98101 - MAIN 31000

Misc.

id for Record of Request of & Mail To:

ME Surfside Estates
DRESS P.O. Box 2174
Y AND STATE Everett, Washington 98203

THIS SPACE RESERVED FOR RECORDERS USE
582970
FILED OR RECORDED
BOOK OF _____ FOR
Security Title Ins. Co.
Nov 1 8 41 AM '72
J. F. PEDDYCORD, AUDITOR
GRANT COUNTY, WASH.
DEPUTY

Quit Claim Deed

THE GRANTOR SURFSIDE ESTATES, a joint venture
for and in consideration of partnership distribution
convey and quit claim to JACK DELGUZZI

NO REAL ESTATE EXCISE TAX PAID

AFFIDAVIT No. 56973
Date 10-31-72 By Margaret Harris, Treasurer
Grant County, Washington

The following described real estate, situated in the County of Grant
State of Washington, including any after acquired title:
W $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 3, less county road

SUBJECT TO an easement for ingress, egress and utilities over, under and across the
South 30 feet thereof.

ALSO SUBJECT TO the following covenant running with the land: that the grantee, his
heirs, successors and assigns forever, covenants that he or they will dedicate to
Grant County, Washington (or such other governmental entity or municipal corporation
as may be appropriate) an easement for road purposes over and across the above des-
cribed easement whenever the said county (or other appropriate governmental entity
or municipal corporation) shall agree in writing to accept the same as a gift and to
assume all duties of road construction and maintenance thereon, subject to an ease-
ment for utilities therein, belong to said grantee, his heirs, successors and assigns.

TOGETHER WITH an easement for ingress, egress and utilities over, under and across
the following described strips of land: The South 60 feet North 750 feet Gov't.
Lots 2, 3 and 4, Sec. 4; the East 30 feet Gov't. Lot 3, Sec. 4; the West 30 feet
Gov't. Lot 2, Sec. 4; the East 60 feet SE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 4; the South 30 feet N $\frac{1}{2}$ S $\frac{1}{2}$ NW $\frac{1}{4}$,
Sec. 4; the North 30 feet S $\frac{1}{2}$ S $\frac{1}{2}$ NW $\frac{1}{4}$, Sec. 4; the West 60 feet NW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 4; the
West 60 feet NW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 4; the South 30 feet N $\frac{1}{2}$ N $\frac{1}{2}$ SE $\frac{1}{4}$, Sec. 4; the North
30 feet S $\frac{1}{2}$ N $\frac{1}{2}$ SE $\frac{1}{4}$, Sec. 4; the South 30 feet N $\frac{1}{2}$ SE $\frac{1}{4}$, Sec. 4; the North 30 feet
S $\frac{1}{2}$ SE $\frac{1}{4}$, Sec. 4; the South 30 feet N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 3; the North 30 feet S $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$,
Sec. 3; the South 30 feet NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 3; the North 30 feet SW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 3;
the East 30 feet W $\frac{1}{2}$ E $\frac{1}{2}$ SW $\frac{1}{4}$, Sec. 3; the West 30 feet E $\frac{1}{2}$ E $\frac{1}{2}$ SW $\frac{1}{4}$, Sec. 3.

All in Township 14 N, Range 23 E.W.M.

EXCEPTING AND RESERVING to the Grantor, his successors and assigns all oil and mineral
rights upon the above described property.

Dated this 15 day of October, 1972. SURFSIDE ESTATES, a joint venture

By: Ancil Davis
Attorney in Fact

STATE OF WASHINGTON)
COUNTY OF SNOHOMISH) ss.

On this 15th day of October, A.D. 1972, before me the undersigned, a Notary
Public in and for the State of Washington, duly commissioned and sworn personally appeared ANCIL DAVIS
to me known to be the individual who executed the foregoing instrument as attorney in fact of Surfside Estates, a joint
venture, therein described, and acknowledged to me that he signed and sealed the said instrument as such attorney in
fact for said principal, freely and voluntarily, for the uses and purposes therein mentioned, and on oath stated that the
power of attorney authorizing the execution of this instrument has not been revoked.

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

[Signature] TC
Notary Public in and for the State of Washington,
Residing at _____



SECURITY TITLE INSURANCE COMPANY

1000 SECOND AVENUE • SEATTLE, WASHINGTON 98101 • MAIN 2-8070

Misc.

Request for Record of Request of & Mail To:

Surfside Estates

P.O. Box 2174

Everett, Washington 98203

THIS SPACE RESERVED FOR RECORDING DATA

582976

RECORD OF RECORDS

NOV 1 8 42 AM '72

J. F. PODOYECOS, ASSESSOR
GRANT COUNTY, WASH.
CLERK

Quit Claim Deed

THE GRANTOR SURFSIDE ESTATES, a joint venture

for and in consideration of partnership distribution

NO REAL ESTATE EXCISE TAX PAID

convey and quit claim to JACK DELGOUZZI

AFFIDAVIT No. 56967

Date 10-31-72 by MARGARET HARRIS, Treasurer

the following described real estate, situated in the County of Grant State of Washington, including any after acquired title: 1/2 NE 1/4 NW 1/4 SE 1/4 Sec. 4.

Grant County, Washington

SUBJECT TO an easement for ingress, egress and utilities over, under and across the South 30 feet thereof.

ALSO SUBJECT TO the following covenant running with the land: that the grantee, his heirs, successors and assigns forever, covenants that he or they will dedicate to Grant County, Washington (or such other governmental entity or municipal corporation as may be appropriate) an easement for road purposes over and across the above described easement whenever the said county (or other appropriate governmental entity or municipal corporation) shall agree in writing to accept the same as a gift and to assume all duties of road construction and maintenance thereon, subject to an easement for utilities therein, belong to said grantee, his heirs, successors and assigns.

TOGETHER WITH an easement for ingress, egress and utilities over, under and across the following described strips of land: The South 60 feet North 750 feet Gov't. Lots 2, 3 and 4, Sec. 4; the East 30 feet Gov't. Lot 3, Sec. 4; the West 30 feet Gov't. Lot 2, Sec. 4; the East 60 feet SE 1/4 NW 1/4, Sec. 4; the South 30 feet N 1/2 S 1/2 NW 1/4, Sec. 4; the North 30 feet S 1/2 S 1/2 NW 1/4, Sec. 4; the West 60 feet NW 1/4 SE 1/4, Sec. 4; the West 60 feet NW 1/4 SW 1/4 SE 1/4, Sec. 4; the South 30 feet N 1/2 N 1/2 SE 1/4, Sec. 4; the North 30 feet S 1/2 N 1/2 SE 1/4, Sec. 4; the North 30 feet N 1/2 NW 1/4 SW 1/4, Sec. 3; the North 30 feet S 1/2 NW 1/4 SW 1/4, Sec. 3; the South 30 feet NW 1/4 NE 1/4 SW 1/4, Sec. 3; the North 30 feet SW 1/4 NE 1/4 SW 1/4, Sec. 3; the East 30 feet N 1/2 E 1/2 SW 1/4, Sec. 3; the West 30 feet N 1/2 E 1/2 SW 1/4, Sec. 3.

All in Township 14 N, Range 23 E, W.M.

EXCEPTING AND RESERVING to the Grantor, his successors and assigns all oil and mineral rights upon the above described property.

Dated this 15 day of October, 1972. SURFSIDE ESTATES, a joint venture

By: Aniel Davis Attorney in Fact

STATE OF WASHINGTON)
COUNTY OF SNOHOMISH) ss.

On this 15th day of October, A.D. 1972, before me the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared ANIEL DAVIS to me known to be the individual who executed the foregoing instrument as attorney in fact of Surfside Estates, a joint venture, therein described, and acknowledged to me that he signed and sealed the said instrument as such attorney in fact for said principal, freely and voluntarily, for the uses and purposes therein mentioned, and on oath stated that the power of attorney authorizing the execution of this instrument has not been revoked.

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

[Signature] Notary Public in and for the State of Washington, Residing at [Address]



SECURITY TITLE INSURANCE COMPANY
OF WASHINGTON
1100 SECOND AVENUE • SEATTLE, WASHINGTON 98101 • MAIN 2-0000

THIS SPACE RESERVED FOR FILER'S USE
582979
FILED OR RECORDED:
BOOK OF _____ FOR _____
Security Title Ins. Co.
Nov 1 8 42 AM '72
J. F. PEDDYCORD, AUDITOR
GRANT COUNTY, WASH.
DEPUTY

Misc.
ad for Record at Request of & Mail To:

111

NAME Surfside Estates
ADDRESS P.O. Box 2174
CITY AND STATE Everett, Washington 98203

Quit Claim Deed

THE GRANTOR

SURFSIDE ESTATES, a joint venture

for and in consideration of partnership distribution
convey and quit claim to JACK DELGUZZI

NO REAL ESTATE EXCISE TAX PAID

the following described real estate, situated in the County of Grant
State of Washington, including any after acquired title:
W $\frac{1}{2}$ SW $\frac{1}{2}$ SW $\frac{1}{2}$ NW $\frac{1}{2}$ Sec. 4.

AFFIDAVIT No. 56964
Date 10-31-72 By [Signature]
Deputy:
MARGARET HARRIS, Treasurer
Grant County, Washington

SUBJECT TO an easement for ingress, egress and utilities over, under and across the North 30 feet thereof.

ALSO SUBJECT TO the following covenant running with the land: that the grantee, his heirs, successors and assigns forever, covenants that he or they will dedicate to Grant County, Washington (or such other governmental entity or municipal corporation as may be appropriate) an easement for road purposes over and across the above described easement whenever the said county (or other appropriate governmental entity or municipal corporation) shall agree in writing to accept the same as a gift and to assume all duties of road construction and maintenance thereon, subject to an easement for utilities therein, belong to said grantee, his heirs, successors and assigns.

TOGETHER WITH an easement for ingress, egress and utilities over, under and across the following described strips of land: The South 60 feet North 750 feet Gov't. Lots 2, 3 and 4, Sec. 4; the East 30 feet Gov't. Lot 3, Sec. 4; the West 30 feet Gov't. Lot 2, Sec. 4; the East 60 feet SE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 4; the South 30 feet NW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 4; the North 30 feet S $\frac{1}{2}$ S $\frac{1}{2}$ NW $\frac{1}{4}$, Sec. 4; the West 60 feet NW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 4; the West 60 feet NW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 4; the South 30 feet NW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 4; the North 30 feet S $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 4; the South 30 feet NW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 4; the North 30 feet S $\frac{1}{2}$ SE $\frac{1}{4}$, Sec. 4; the South 30 feet NW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 3; the North 30 feet S $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 3; the South 30 feet NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 3; the North 30 feet SW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 3; the East 30 feet W $\frac{1}{2}$ E $\frac{1}{2}$ SW $\frac{1}{4}$, Sec. 3; the West 30 feet E $\frac{1}{2}$ E $\frac{1}{2}$ SW $\frac{1}{4}$, Sec. 3.

All in Township 14 N, Range 23 E.W.H.

EXCEPTING AND RESERVING to the Grantor, his successors and assigns all oil and mineral rights upon the above described property.

Dated this 15 day of October, 1972.

SURFSIDE ESTATES, a joint venture

By: [Signature]
Attorney in Fact

STATE OF WASHINGTON)
COUNTY OF SNOHOMISH) ss.

On this 15th day of October, A.D. 1972, before me the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared Ancil Davis to me known to be the individual who executed the foregoing instrument as attorney in fact of Surfside Estates, a joint venture, therein described, and acknowledged to me that he signed and sealed the said instrument as such attorney in fact for said principal, freely and voluntarily, for the uses and purposes therein mentioned, and on oath stated that the power of attorney authorizing the execution of this instrument has not been revoked.

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



[Signature]
Notary Public in and for the State of Washington



Misc.

Filed for Record at Request of 6 Mail To:

111

582982
FILED FOR RECORD
NOV 11 8 142 AM '72
J.F. PEDYCOB, CLERK
GRANT COUNTY, WASH.
DEPUTY

NAME Surfside Estates
ADDRESS P.O. Box 2174
CITY AND STATE Everett, Washington 98203

Quit Claim Deed

THE GRANTOR SURFSIDE ESTATES, a joint venture
for and in consideration of partnership distribution
convey and quit claim to JACK DELGUZZI

NO REAL ESTATE EXCISE TAX PAID
AFFIDAVIT No. 56961
Date 10-31-72 By MJ
MARGARET HARRIS, Treasurer
Grant County, Washington

the following described real estate, situated in the County of Grant
State of Washington, including any after acquired title:
E $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 4.

SUBJECT TO an easement for ingress, egress and utilities over, under and across the
North 30 feet thereof.

ALSO SUBJECT TO the following covenant running with the land: that the grantee, his
heirs, successors and assigns forever, covenants that he or they will dedicate to
Grant County, Washington (or such other governmental entity or municipal corporation
as may be appropriate) an easement for road purposes over and across the above des-
cribed easement whenever the said county (or other appropriate governmental entity
or municipal corporation) shall agree in writing to accept the same as a gift and to
assume all duties of road construction and maintenance thereon, subject to an ease-
ment for utilities therein, belong to said grantee, his heirs, successors and assigns.

TOGETHER WITH an easement for ingress, egress and utilities over, under and across
the following described strips of land: The South 60 feet North 750 feet Gov't.
Lots 2, 3 and 4, Sec. 4; the East 30 feet Gov't. Lot 3, Sec. 4; the West 30 feet
Gov't. Lot 2, Sec. 4; the East 60 feet SE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 4; the South 30 feet N $\frac{1}{2}$ S $\frac{1}{2}$ NW $\frac{1}{4}$,
Sec. 4; the North 30 feet S $\frac{1}{2}$ S $\frac{1}{2}$ NW $\frac{1}{4}$, Sec. 4; the West 60 feet NW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 4; the
West 60 feet NW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 4; the South 30 feet N $\frac{1}{2}$ W $\frac{1}{2}$ SE $\frac{1}{4}$, Sec. 4; the North
30 feet S $\frac{1}{2}$ W $\frac{1}{2}$ SE $\frac{1}{4}$, Sec. 4; the South 30 feet W $\frac{1}{2}$ SE $\frac{1}{4}$, Sec. 4; the North 30 feet
S $\frac{1}{2}$ SE $\frac{1}{4}$, Sec. 4; the South 30 feet W $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 3; the North 30 feet S $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$,
Sec. 3; the South 30 feet NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 3; the North 30 feet SW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 3;
the East 30 feet W $\frac{1}{2}$ E $\frac{1}{2}$ SW $\frac{1}{4}$, Sec. 3; the West 30 feet E $\frac{1}{2}$ E $\frac{1}{2}$ SW $\frac{1}{4}$, Sec. 3.

All in Township 14 N, Range 23 E.W.M.

EXCEPTING AND RESERVING to the grantor, his successors and assigns all oil and mineral
rights upon the above described property.

Dated this 15 day of October, 1972.

SURFSIDE ESTATES, a joint venture
By: Ancil Davis
Attorney in fact

STATE OF WASHINGTON)
COUNTY OF SNOHOMISH) ss.

On this 15th day of October, A.D. 1972, before me the undersigned, a Notary
Public in and for the State of Washington, duly commissioned and sworn personally appeared ANCIL DAVIS
to me known to be the individual who executed the foregoing instrument as attorney in fact of Surfside Estates, a joint
venture, therein described, and acknowledged to me that he signed and sealed the said instrument as such attorney in
fact for said principal, freely and voluntarily, for the uses and purposes therein mentioned, and on oath stated that the
power of attorney authorizing the execution of this instrument has not been revoked.

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

[Signature]
Notary Public in and for the State of Washington,
Residing at [Address]

582965

BOOK OF ...
Security Title Ins. Co.
Nov 1 8 42 AM '72
J.P. PEDDYCORS, AUDITOR
GRANT COUNTY, WASH.
DEPUTY

Mod for Record of Request of E Mail To: 111

NAME Surfside Estates

ADDRESS P.O. Box 2174

CITY AND STATE Everett, Washington 98203

Quit Claim Deed

THE GRANTOR SURFSIDE ESTATES, a joint venture
for and in consideration of partnership distribution
convey and quit claim to JACK DELGUZZI

NO REAL ESTATE EXCISE TAX PAID

Affidavit No. 56958
Date 10-31-72 By [Signature] Deputy
MARGARET HARRIS, Treasurer
Grant County, Washington

the following described real estate, situated in the County of Grant
State of Washington, including any after acquired title:
W $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 4.

SUBJECT TO an easement for ingress, egress and utilities over, under and across the
North 30 feet thereof.

ALSO SUBJECT TO the following covenant running with the land: that the grantee, his
heirs, successors and assigns forever, covenants that he or they will dedicate to
Grant County, Washington (or such other governmental entity or municipal corporation
as may be appropriate) an easement for road purposes over and across the above des-
cribed easement whenever the said county (or other appropriate governmental entity
or municipal corporation) shall agree in writing to accept the same as a gift and to
assume all duties of road construction and maintenance thereon, subject to an ease-
ment for utilities therein, belong to said grantee, his heirs, successors and assigns.

TOGETHER WITH an easement for ingress, egress and utilities over, under and across
the following described strips of land: The South 60 feet North 750 feet Gov't.
Lots 2, 3 and 4, Sec. 4; the East 30 feet Gov't. Lot 3, Sec. 4; the West 30 feet
Gov't. Lot 2, Sec. 4; the East 60 feet SE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 4; the South 30 feet N $\frac{1}{2}$ S $\frac{1}{2}$ NW $\frac{1}{4}$,
Sec. 4; the North 30 feet S $\frac{1}{2}$ S $\frac{1}{2}$ NW $\frac{1}{4}$, Sec. 4; the West 60 feet NW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 4; the
West 60 feet NW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 4; the South 30 feet N $\frac{1}{2}$ N $\frac{1}{2}$ SE $\frac{1}{4}$, Sec. 4; the North
30 feet S $\frac{1}{2}$ N $\frac{1}{2}$ SE $\frac{1}{4}$, Sec. 4; the South 30 feet N $\frac{1}{2}$ SE $\frac{1}{4}$, Sec. 4; the North 30 feet
S $\frac{1}{2}$ SE $\frac{1}{4}$, Sec. 4; the South 30 feet N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 3; the North 30 feet S $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$,
Sec. 3; the South 30 feet NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 3; the North 30 feet SW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 3;
the East 30 feet W $\frac{1}{2}$ E $\frac{1}{2}$ SW $\frac{1}{4}$, Sec. 3; the West 30 feet E $\frac{1}{2}$ E $\frac{1}{2}$ SW $\frac{1}{4}$, Sec. 3.

All in Township 14 N, Range 23 E.W.M.

EXCEPTING AND RESERVING to the Grantor, his successors and assigns all oil and mineral
rights upon the above described property.

Dated this 15 day of October, 1972.

SURFSIDE ESTATES, a joint venture
By: [Signature]
Attorney in Fact

STATE OF WASHINGTON)
COUNTY OF SNOHOMISH) ss.

On this 15th day of October, A.D. 1972, before me the undersigned, a Notary
Public in and for the State of Washington, duly commissioned and sworn personally appeared ANCIL DAVIS
to me known to be the individual who executed the foregoing instrument as attorney in fact of Surfside Estates, a joint
venture, therein described, and acknowledged to me that he signed and sealed the said instrument as such attorney in
fact for said principal, freely and voluntarily, for the uses and purposes therein mentioned, and on oath stated that the
power of attorney authorizing the execution of this instrument has not been revoked.

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



[Signature]
Notary Public in and for the State of Washington,
Residing at [Address]

TIMBERLAND HOLDINGS, LLC

P.O. BOX 64891, TACOMA, WA 98464

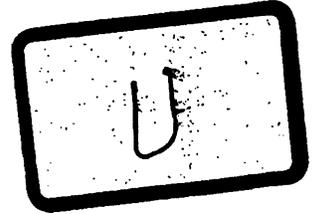
1.866.808.3240 TOLL FREE

253.238.5230 OFFICE

253.238.6042 FAX

JUNE 21, 2007

**KATHRYN A. ELLIS, ESQ.
600 STEWART ST
SUITE 620
SEATTLE, WA 98101
206.682.5002**



RE: 8 PARCELS IN CLALLAM COUNTY.

TIMBERLAND HOLDINGS, LLC IS INTERESTED IN PURCHASING THE FOLLOWING PARCELS:

- 1. 0530085107100000**
- 2. 0729084108700000**
- 3. 0729081400200000**
- 4. 0530053002502001**
- 5. 0530053002501000**
- 6. 0630145205300000**
- 7. 0630125406200000**
- 8. 0630235103640000**

WE ARE WILLING TO CLOSE OUTSIDE OF ESCROW AND ACCEPT A QUIT CLAIM DEED WITH NO TITLE INSURANCE. WE WILL PREPARE ALL THE PAPER WORK INCLUDING THE QUIT CLAIM DEED AND REAL ESTATE EXCISE TAX AFFIDAVITS. OUR OFFER IS \$1,200.00 NET FOR THE EIGHT PARCELS. WE WILL PAY RECORDING COSTS, EXCISE TAX AND ANY BACK TAXES.

IF YOU HAVE ANY QUESTIONS, PLEASE DO NOT HESITATE TO CALL OR EMAIL.

THANK YOU FOR YOUR TIME,

TIMBERLAND HOLDINGS, LLC

BY:


WAYNE KEETON, ITS MANAGER

1.866.808.3240 TOLL FREE 253.238.5230 OFFICE 253.238.6042 FAX INFO@TIMBERLANDHOLDINGS.COM

WWW.TIMBERLANDHOLDINGS.COM

Research re 6/21/2007 Timberland Holdings to Ellis. Total land value according to Clallam County Assessor's Office: \$15,700

1. 9999 Buchanan Dr. Owned by Loretta Wilbert. Parcel 0530085107100000. Assessor's Value = \$50
2. 9999 Olympic Hot Springs. Owned by Christina Nyhus and WE Wilbert Trust. Parcel 0729084108700000. Assessor's Value = \$150
3. 9999 Olympic Hot Springs. Owned by Christina Nyhus and WE Wilbert Trust. Parcel 0729081400200000. Assessor's Value = \$750
4. 9999 Morse Homestead Rd. Owned by EJD. Parcel 0530053002502001. Assessor's Value = \$2,500
5. 9999 Morse Homestead Rd. Owned by Loretta Wilbert. Parcel 0530053002501000. Assessor's Value = \$2,500
6. 9999 S Mt Angeles Rd. Owned by Loretta Wilbert. Parcel 0630145205300000. Assessor's Value = \$1,000
7. 9999 E Hwy 101. Owned by EJD. Taxes paid by Loretta Wilbert. Parcel 0630125406200000. Assessor's Value = \$2,500
8. 9999 S Doss Rd. Owned by EJD, Taxes paid by Loretta Wilbert. Parcel 0630235103640000. Assessor's Value = \$6,250

1
2
3 IN THE SUPERIOR COURT OF THE
4 STATE OF WASHINGTON
5 IN AND FOR THE COUNTY OF CLALLAM

6 IN RE:

7 THE PROCEEDINGS FOR CLALLAM
8 COUNTY FOR THE FORECLOSURE OF
9 LIENS FOR DELINQUENT REAL
PROPERTY TAXES FOR THE YEAR
2001, AND SOME PRIOR YEARS,

NO. 04-2-00792-8

COMPLAINT FOR FORECLOSURE
OF REAL PROPERTY TAX LIENS

10 Plaintiff Clallam County alleges as follows:

11 PARTIES

12 1.1 The Clallam County Treasurer, Ruth M. Gerdon, brings this action in the name
13 of Clallam County pursuant to RCW 84.64.050.

14 1.2 This lawsuit is an in rem proceeding in accordance with RCW 84.64 against all
15 of the property identified in the certificate of delinquency filed on October 1, 2004.

16 JURISDICTION AND VENUE

17 2.1 This complaint for foreclosure of tax liens identified in the certificate of
18 delinquency referred to above is properly before this Court pursuant to RCW 84.64.050.

19 2.2 Venue is proper in Clallam County pursuant to RCW 4.12.010, because all of
20 the subject properties are located in Clallam County.

21 OPERATIVE AND MATERIAL FACTS

22 3.1 A certificate of delinquency was filed with the Court on October 1, 2004,
23 identifying all property in Clallam County that had delinquent taxes for the year 2001 and some
24 prior years, upon which no certificate of delinquency has previously been issued.

25
1 - COMPLAINT FOR FORECLOSURE OF REAL
PROPERTY TAX LIENS

CLALLAM COUNTY
PROSECUTING ATTORNEY
Clallam County Courthouse
223 East Fourth Street, Suite 11
Port Angeles, Washington 98362-3015
(360) 417-2301 FAX 417-2469

1 STATE OF WASHINGTON)
: ss.
2 County of Clallam)

3 RUTH M. GERDON, being first duly sworn on oath, deposes and says:

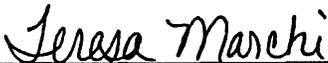
4 I am the duly elected Treasurer for Clallam County, Washington. I have read the fore-
5 going petition and believe the allegations contained therein to be true and correct to the best of
6 my knowledge, information and belief.

7 
8 RUTH M. GERDON, Clallam County Treasurer

9 SUBSCRIBED AND SWORN TO before me this 15th day of October, 2004.

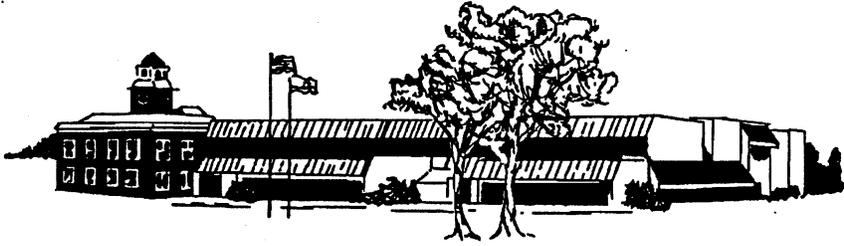
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11 
12 (PRINTED NAME: TERESA MARCHI)
13 NOTARY PUBLIC in and for the State of Washington
14 Residing at Port Angeles, Washington
15 My commission expires: 10/20/06

3 - COMPLAINT FOR FORECLOSURE OF REAL
PROPERTY TAX LIENS

CLALLAM COUNTY
PROSECUTING ATTORNEY
Clallam County Courthouse
223 East Fourth Street, Suite 11
Port Angeles, Washington 98362-3015
(360) 417-2301 FAX 417-2469



**CLALLAM COUNTY
TREASURER'S OFFICE**

**RUTH M. GERDON, TREASURER
JUDITH A. SCOTT, CHIEF DEPUTY**

CLALLAM COUNTY COURTHOUSE

223 EAST FOURTH STREET, SUITE 3

P.O. Box 2129

PORT ANGELES, WASHINGTON 98362-0389

(360) 417-2344

FAX: (360) 417-2252

06 30 09 570800 0000

*Cedarwood Properties, Inc
650 E. North Bend Way
North Bend, WA 980459508

October 1, 2004

Re: In re: Proceedings for Clallam County for the Foreclosure of Liens for
Delinquent Real Property Taxes for the Year 2001 and Some Prior Years
Clallam County Superior Court Cause No. 04-2-00792-8

Dear Taxpayer:

Our records indicate that the parcel(s) noted on the label above are currently in foreclosure. You have been named as a party in a real property tax foreclosure proceeding because a title report shows that you have an interest in a parcel of real property for which property taxes are delinquent. You may be eligible for relief through the **Soldier's and Sailor Civil Relief Act**, (also known as the **Servicemembers Civil Relief Act**) 50 U.S.C. 560 *et seq.* ("SSCRA") In order to verify your eligibility: please contact our office by phone, fax or letter response. You must provide your social security number to verify your eligibility with the Defense Manpower Data Center's Military Verification service.

If you believe you are eligible, please provide us with the following information:

Full Name (as you are registered with the military) _____

Social Security Number _____

Dates of Service _____

Anticipated Discharge Date _____

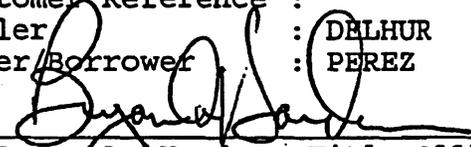
We will need this response within 30 days of this letter to prevent any additional charges to be added to your foreclosure costs. Your immediate response is encouraged.

Sincerely,
Ruth M. Gerdon, Clallam County Treasurer

BY: 
Judith Scott,
Chief Deputy Treasurer

CLALLAM TITLE COMPANY
204 SOUTH LINCOLN
P.O. BOX 248
PORT ANGELES, WA 98362
(360) 457-2000

To:
Clallam Title Company
Port Angeles Escrow
Attn: Shellie Baskins

Clallam Order No. : 93771-A
Customer Reference :
Seller : DELHUR
Buyer/Borrower : PEREZ
By 
Bryan A. Harden, Title Officer

SCHEDULE A

Effective Date: April 7, 2005 at 8:00 a.m.

1. Policy or Policies to be issued:	Amount		
<input checked="" type="checkbox"/> ALTA Owners Policy (10-17-92)	\$99,900.00	Premium	\$520.00
Standard <input checked="" type="checkbox"/> Extended		Tax	<u>43.16</u>

Proposed Insured: DANIEL PEREZ, presumptively subject to the community interest of his wife, if married

- The estate or interest in the land described or referred to in this commitment and covered herein is a FEE SIMPLE ESTATE.
- Title to said estate or interest in said land is at the effective date hereof vested in:

DELHUR, INC., a dissolved Washington corporation
- The land referred to in this Commitment is situated in the County of Clallam, State of Washington and described as follows:

Parcel 1 of Survey recorded April 15, 1987 under Auditor's File No. 590041 in Volume 12 of Surveys, page 114, being a Survey of the Southeast quarter of the Southwest quarter and of the Southwest quarter of the Southeast quarter of Section 35, Township 31 North, Range 7 West, W.M.

Situate in the County of Clallam, State of Washington.

-continued-



SCHEDULE B

Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the company.

GENERAL EXCEPTIONS:

- A. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
- B. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
- C. Easements, claims of easement or encumbrances which are not shown by the public records.
- D. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records.
- E. (A) Unpatented mining claims; (B) Reservations or exceptions in patents or in acts authorizing the issuance thereof; (C) Water rights, claims or title to water; whether or not the matters excepted under (A), (B) or (C) are shown by the public records; (D) Indian tribal codes or regulations, Indian treaty or aboriginal rights, including easements or equitable servitudes.
- F. Any lien, or right to lien, for services, labor, materials or medical assistance theretofore or hereafter furnished, imposed by law and not shown by the public records.
- G. Any service, installation, connection, maintenance, construction, tap or reimbursement charges/costs for sewer, water, garbage or electricity.
- H. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires of record for value the estate or interest or mortgages thereon covered by this commitment.

SPECIAL EXCEPTIONS:

- 1. Lien of real estate excise sales tax upon any sale of said premises, if unpaid (1.78%). Tax code 0101.

-continued-

2. General taxes, as follows, together with interest, penalty and statutory foreclosure costs, if any, after delinquency:

<u>TAX ACCOUNT NO.</u>	<u>YEAR</u>	<u>AMOUNT BILLED</u>	<u>AMOUNT PAID</u>
#073135 340010	2005	\$369.97+16.78	None Paid

3. Reservations contained in instruments,
 Executed By : Evar A. Halberg and Ruth A. Halberg, his wife
 Recorded : January 29, 1979 and March 16, 1982
 Auditor's File Nos. : 491982 and 528911
 As Follows : Evar and/or Ruth Halberg, their heirs and assigns, reserve and retain unto them all oil and mineral rights
 Affects : An undivided half interest in said premises and other lands
4. Covenants, restrictions, easement and assessments contained in Declaration of Protective Restrictions,
 Recorded : October 27, 1987
 Auditor's File No. : 597179
 Executed By : Del Hur, Inc., et al
5. Easement to locate, construct, operate, repair and maintain an electric transmission and distribution line or system including the right to cut and trim trees to the extent necessary to keep them clear of said line or system and to cut down from time to time, all dead, weak, leaning or dangerous trees that are tall enough to strike the wires in falling.
 Granted To : Public Utility District No. 1
 Recorded : November 21, 1979
 Auditor's No. : 502691
6. Easement for ingress, egress and utilities as delineated on Survey recorded April 15, 1987 in Volume 12 of Surveys, page 114 under Auditor's File No. 590041.
7. Right of the Elwha Bluffs Estates Management Association to levy and collect charges and assessments, as disclosed by instrument recorded October 27, 1987 under Auditor's File No. 597179.

8. Deed of Trust to secure an indebtedness of the amount herein stated and any other amounts payable under the terms, conditions, provisions and stipulations.
- | | |
|---------------|--|
| Amount | : \$45,000.00 |
| Dated | : July 3, 1995 |
| Recorded | : July 5, 1995 |
| Auditor's No. | : 725071 |
| Grantor | : Del Hur, Inc. |
| Trustee | : Chicago Title Insurance Company, a corporation |
| Beneficiary | : Cedarwood Properties, Inc. |
9. Delhur, Inc., was dissolved by the Secretary of State in the year 2000, for failure to pay annual license fees.

Please submit evidence of the authority of the officer executing the proposed Deed on behalf of Delhur, Inc. in accordance with its Articles of Incorporation and court order or approval to be filed in Clallam County Superior Court Probate Case No. 8087 for the Estate of Jack Del Guzzi, deceased.

End of Special Exceptions

Note: Abbreviated Legal Description:

Parcel 1 Surv 12/114

**END OF SCHEDULE B
CONDITIONS AND STIPULATION AS HERETO ATTACHED**

BH/ao

CC: Tim Riley, Coldwell Banker Uptown
Lynn Moreno, Jace the Real Estate Company

CLALLAM TITLE CO.
RECORDED IN REC'D OFFICE

2005 MAY 10 PM 12: 05



2005 1156204 Clallam County

①

THE ESTATE OF JACK DELGUZZI
650 E. NORTHBEND WAY
NORTH BEND, WA 98045-9508

APPOINTMENT OF SUCCESSOR TRUSTEE

THE ESTATE OF JACK DEL GUZZI, WILLIAM WILBERT, ADMINISTRATOR is
the Grantor, and CHICAGO TITLE COMPANY
is the Trustee, and
CHICOINE & HALLETT, P.S. is the
Beneficiary under that certain Deed of Trust recorded APRIL 26, 2000
as Clallam County Auditor's File No. 2000-1046098.

Pursuant to RCW 61.24.010, the undersigned, who is the present
Beneficiary under said Deed of Trust, hereby directs said
CHICAGO TITLE COMPANY
to resign, and hereby appoints CLALLAM TITLE COMPANY
whose address is
204 S. LINCOLN STREET, PORT ANGELES, WA 98362
as successor trustee under said deed of trust, he to have all the
powers of all previous trustees, effective forthwith.

IN WITNESS WHEREOF, the undersigned corporate beneficiary has
caused its corporate name to be signed and affixed hereto by its
duly authorized officer.

PLEASE SIGN

CHICOINE & HALLETT, P.S.
BY: [Signature]

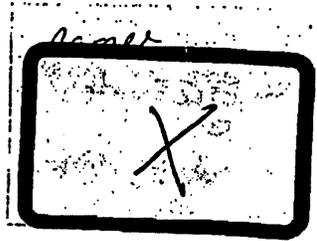
STATE OF WASHINGTON)
COUNTY OF)

I certify that I know or have satisfactory evidence that
Darrell Hallett is the individual
who in my presence signed this instrument, on oath stated that
he/she was authorized to execute the instrument and acknowledged it
as the partner of Chicoine & Hallett, P.S. to be the free and
voluntary act and deed of such party for the uses and purposes
therein mentioned.

WITNESS MY HAND AND OFFICIAL SEAL this 26 day of April,
2005



[Signature]
NOTARY PUBLIC in and for the
State of Washington, residing
at Seattle, WA
My commission expires 10/5/06



Form **1120** U.S. Corporation Income Tax Return **1999**

Department of the Treasury Internal Revenue Service

COPY

Instructions are separate. See instructions for Paperwork Reduction Act Notice.

OMB No. 1545-0123

For calendar year 1999 or tax year beginning **May 1, 1999**, ending **Dec 31, 1999**

A Check if a: 1 Consolidated return (attach Form 951) <input type="checkbox"/> Use IRS label. 2 Personal holding company (attach Schedule PH) <input type="checkbox"/> Otherwise, please print or type. 3 Personal service corp (as defined in Regs Section 1.441-4T - see instructions) <input type="checkbox"/>		Name DEL MUR, INC. Number, Street, and Room or Suite Number (if a P.O. box, see instructions.) PO BOX 2056 City or Town NORTH BEND State ZIP Code WA 98045	B Employer Identification Number 91-0793832 C Date incorporated 05/08/69 D Total Assets (see instructions) 1,015,668.
E Check applicable boxes: (1) <input type="checkbox"/> Initial return (2) <input checked="" type="checkbox"/> Final return (3) <input type="checkbox"/> Change of address			

INCOME	1a Gross receipts or sales	b Less returns & allowances	c Balance	1c
	2 Cost of goods sold (Schedule A, line 8)			2
	3 Gross profit. Subtract line 2 from line 1c			3
	4 Dividends (Schedule C, line 19)			4
	5 Interest			5 21.
	6 Gross rents			6
	7 Gross royalties			7
	8 Capital gain net income (attach Schedule D (Form 1120))			8
	9 Net gain or (loss) from Form 4797, Part II, line 18 (attach Form 4797)			9
	10 Other income (see instructions - attach schedule)			10
	11 Total income. Add lines 3 through 10			11 21.
DEDUCTIONS	12 Compensation of officers (Schedule E, line 4)			12
	13 Salaries and wages (less employment credits)			13
	14 Repairs and maintenance			14
	15 Bad debts			15
	16 Rents			16 900.
	17 Taxes and licenses			17 866.
	18 Interest			18
	19 Charitable contributions (see instructions for 10% limitation)			19
	20 Depreciation (attach Form 4562)	20		20
	21 Less depreciation claimed on Schedule A and elsewhere on return	21a		21b
	22 Depletion			22
	23 Advertising			23
	24 Pension, profit-sharing, etc. plans			24
	25 Employee benefit programs			25
	26 Other deductions (attach schedule). See Other Deductions Statement			26 8,485.
	27 Total deductions. Add lines 12 through 26			27 10,251.
	28 Taxable income before net operating loss deduction and special deductions. Subtract line 27 from line 11			28 -10,230.
	29 Less: a Net operating loss (NOL) deduction (see instructions)	29a		29a
	b Special deductions (Schedule C, line 20)	29b		29b
30 Taxable income. Subtract line 29c from line 28			30 -10,230.	
TAX AND PAYMENTS	31 Total tax (Schedule J, line 12)			31
	32 Payments: a 1999 overpayment credited to 1999	32a		32a
	b 1999 estimated tax payments	32b		32b
	c Less 1999 refund applied for on Form 4466	32c		32c
	d Bal		32d	32d
	e Tax deposited with Form 7004		32e	32e
	f Credit for tax paid on undistributed capital gains (attach Form 2439)		32f	32f
	g Credit for federal tax on fuels (attach Form 4136). See instructions		32g	32g
	33 Estimated tax penalty (see instructions). Check if Form 2220 is attached			33
	34 Tax due. If line 32h is smaller than the total of lines 31 and 33, enter amount owed			34
35 Overpayment. If line 32h is larger than the total of lines 31 and 33, enter amount overpaid			35	
36 Enter amount from 35 you want credited to 2000 estimated tax			36 Refunded	

Under penalty of perjury, I declare that I have examined this return, including any supporting schedules and statements, and to the best of my knowledge and belief, this return, and complete Declaration is true and correct.

Signature of Taxpayer: *[Signature]* Date: *4/20*

Preparer's Signature: *[Signature]* Date: *3-9-00* Check if self-employed

Firm's Name (or yours if self-employed) and Address: **CHRYS LOEKEN, CPA**
1815 121ST AVE SE
BELLEVUE WA 98005

Preparer's EIN or PTIN: **P00106050**
 EIN: **91-1623048**
 ZIP Code: **98005**

DelHur00347



Cost of Goods Sold (see instructions)	
1 Inventory at beginning of year	1
2 Purchases	2
3 Cost of labor	3
4 Additional Section 263A costs (attach schedule)	4
5 Other costs (attach schedule)	5
6 Total. Add lines 1 through 5	6
7 Inventory at end of year	7
8 Cost of goods sold. Subtract line 7 from line 6. Enter here and on line 2, page 1.	8

- 9a Check all methods used for valuing closing inventory:
- (i) Cost as described in Regulations Section 1.471-3
 - (ii) Lower of cost or market as described in Regulations Section 1.471-4
 - (iii) Other (specify method used and attach explanation) _____
- b Check if there was a writedown of subnormal goods as described in Regulations Section 1.471-2(c).
- c Check if the LIFO inventory method was adopted this tax year for any goods (if checked, attach Form 970).
- d If the LIFO inventory method was used for this tax year, enter percentage (or amounts) of closing inventory computed under LIFO. 9d
- e If property is produced or acquired for resale, do the rules of Section 263A apply to the corporation? Yes No
- f Was there any change in determining quantities, cost, or valuations between opening and closing inventory? If "Yes," attach explanation. Yes No

Dividends and Special Deductions (see instructions)	(a) Dividends received	(b) Percentage	(c) Special deductions (a) x (b)
1 Dividends from less-than-20%-owned domestic corporations that are subject to the 70% deduction (other than debt-financed stock)		70	
2 Dividends from 20%-or-more-owned domestic corporations that are subject to the 80% deduction (other than debt-financed stock)		80	
3 Dividends on debt-financed stock of domestic and foreign corporations (Section 246A)			
4 Dividends on certain preferred stock of less-than-20%-owned public utilities		42	
5 Dividends on certain preferred stock of 20%-or-more-owned public utilities		48	
6 Dividends from less-than-20%-owned foreign corporations and certain FSCs that are subject to the 70% deduction		70	
7 Dividends from 20%-or-more-owned foreign corporations and certain FSCs that are subject to the 80% deduction		80	
8 Dividends from wholly owned foreign subsidiaries subject to the 100% deduction (Section 245(b))		100	
9 Total. Add lines 1 through 8. See instructions for limitation			
10 Dividends from domestic corporations received by a small business investment company operating under the Small Business Investment Act of 1958		100	
11 Dividends from certain FSCs that are subject to the 100% deduction (Sec 245(c)(1))		100	
12 Dividends from affiliated group members subject to the 100% ded (Section 243(a)(3))		100	
13 Other dividends from foreign corporations not included on lines 1, 6, 7, 8, or 11			
14 Income from controlled foreign corporations under subpart F (attach Form(s) 5471)			
15 Foreign dividend gross-up (Section 78)			
16 IC-DISC and former DISC dividends not included on lines 1, 2, or 3 (Section 246(d))			
17 Other dividends			
18 Deduction for dividends paid on certain preferred stock of public utilities			
19 Total dividends. Add lines 1 through 17. Enter here and on line 4, page 1			
20 Total special deductions. Add lines 9, 10, 11, 12, and 18. Enter here and on line 29b, page 1			

Compensation of Officers (see instructions for line 12, page 1)
 Note: Complete Schedule E only if total receipts (line 1a plus lines 4 through 10 on page 1, Form 1120) are \$500,000 or more.

1	(a) Name of officer	(b) Social security number	(c) Percent of time devoted to business	Percent of corporation stock owned		(f) Amount of compensation
				(d) Common	(e) Preferred	
			%	%	%	
			%	%	%	
			%	%	%	
			%	%	%	
			%	%	%	
2	Total compensation of officers					
3	Compensation of officers claimed on Schedule A and elsewhere on return					
4	Subtract line 3 from line 2. Enter the result here and on line 12, page 1					

Tax Computation (see instructions)

1 Check if the corporation is a member of a controlled group... 2a If the box on line 1 is checked, enter the corporation's share of the \$50,000, \$25,000, & \$9,925,000 taxable income brackets... 3 Income tax... 4a Foreign tax credit... 4b Possessions tax credit... 4c Check: Nonconventional source fuel credit... 4d General business credit... 4e Credit for prior year minimum tax... 5 Total credits... 6 Subtract line 5 from line 3... 7 Personal holding company tax... 8 Recapture taxes... 9 Alternative minimum tax... 10 Add lines 6 through 9... 11 Qualified zone academy bond credit... 12 Total tax...

Other Information (see instructions)

1 Check method of accounting: a X Cash... b Accrual c Other... 2 See the instructions and enter the: a Business activity code no. 531390... b Business activity INVESTMENT... c Product or service REAL ESTATE... 3 At the end of the tax year, did the corporation own, directly or indirectly, 50% or more of the voting stock of a domestic corporation?... 4 Is the corporation a subsidiary in an affiliated group or a parent-subsidiary controlled group?... 5 At the end of the tax year, did any individual, partnership, corporation, estate or trust own, directly or indirectly, 50% or more of the corporation's voting stock?... 6 During this tax year, did the corporation pay dividends... 7 Was the corporation a U.S. shareholder of any controlled foreign corporation?... 8 At any time during the 1999 calendar year, did the corporation have an interest in or a signature or other authority over a financial account... 9 During the tax year, did the corporation receive a distribution from, or was it the grantor of, or transferor to, a foreign trust?... 10 At any time during the tax year, did one foreign person own, directly or indirectly, at least 25% of: (a) the total voting power of all classes of stock of the corporation... 11 Check this box if the corporation issued publicly offered debt instruments with original issue discount... 12 Enter the amount of tax-exempt interest received or accrued during the tax year... 13 If there were 75 or fewer shareholders at the end of the tax year, enter the number... 14 If the corporation has an NOL for the tax year and is electing to forego the carryback period, check here... 15 Enter the available NOL carryover from prior tax years...

4/30/99

4/30/00

Balance Sheets per Books	Beginning of tax year		End of tax year	
	(a)	(b)	(c)	(d)
Assets				
1 Cash		1,912.		
2a Trade notes and accounts receivable				
b Less allowance for bad debts				
3 Inventories				
4 U.S. government obligations				
5 Tax-exempt securities (see instructions)				
6 Other current assets (attach schedule)				
7 Loans to shareholders		902,251.		
8 Mortgage and real estate loans				
9 Other investments (attach schedule)				
10a Buildings and other depreciable assets				
b Less accumulated depreciation				
11a Depletable assets				
b Less accumulated depletion				
12 Land (net of any amortization)		111,505.		
13a Intangible assets (amortizable only)				
b Less accumulated amortization				
14 Other assets (attach schedule)				
15 Total assets		1,015,668.		
Liabilities and Shareholders' Equity				
16 Accounts payable				
17 Mortgages, notes, bonds payable in less than 1 year				
18 Other current liabilities (attach sch)				
19 Loans from shareholders				
20 Mortgages, notes, bonds payable in 1 year or more				
21 Other liabilities (attach schedule)				
22 Capital stock: a Preferred stock				
b Common stock	97,728.	97,728.		
23 Additional paid-in capital				
24 Retained earnings - Approp				
25 Retained earnings - Unappropriated		917,940.		0.
26 Adjustments to shareholders' equity				
27 Less cost of treasury stock				
28 Total liabilities and shareholders' equity		1,015,668.		0.

Note: The corporation is not required to complete Schedules M-1 and M-2 if the total assets on line 15, column (d) of Schedule L are less than \$25,000.

Reconciliation of Income (Loss) per Books With Income per Return (see instructions)			
1 Net income (loss) per books	-10,230.	7 Income recorded on books this year not included on this return (itemize):	
2 Federal income tax		Tax-exempt interest \$	
3 Excess of capital losses over capital gains			
4 Income subject to tax not recorded on books this year (itemize):			
5 Expenses recorded on books this year not deducted on this return (itemize):		8 Deductions on this return not charged against book income this year (itemize):	
a Depreciation	\$	a Depreciation	\$
b Contributions carryover	\$	b Contribution carryover	\$
c Travel & entertainment	\$		
6 Add lines 1 through 5	-10,230.	9 Add lines 7 and 8	
		10 Income (line 28, page 1) - line 6 less line 9	-10,230.

Analysis of Unappropriated Retained Earnings per Books (Line 25, Schedule L)			
1 Balance at beginning of year	917,940.	5 Distributions	
2 Net income (loss) per books	-10,230.	a Cash	
3 Other increases (itemize):		b Stock	
		c Property	108,473.
		6 Other decreases (itemize):	
		See Ln 6 Stmt	799,237.
		7 Add lines 5 and 6	907,710.
4 Add lines 1, 2, and 3	907,710.	8 Balance at end of year (line 4 less line 7)	0.

Schedule PH
(Form 1120)

U.S. Personal Holding Company (PHC) Tax

OMB No. 1545-0122

See separate instructions. Attach to tax return.

1999

Department of the Treasury
Internal Revenue Service

For Paperwork Reduction Act Notice, see the Instructions for Forms 1120 and 1120-A.

Name
DEL HUR, INC.

Employer Identification Number
91-0793832

Undistributed Personal Holding Company Income (See instructions.)

ADDITIONS	1	Taxable income before net operating loss deduction and special deductions. Enter amount from Form 1120, line 28		1	-10,230.
	2	Contributions deducted in figuring line 1. Enter amount from Form 1120, line 19		2	
	3	Excess expenses and depreciation under section 545(b)(5). Enter amount from Part V, line 2		3	
	4	Total. Add lines 1 through 3		4	-10,230.
DEDUCTIONS	5	Federal and foreign income, war profits, and excess profits taxes not deducted in figuring line 1 (attach schedule)		5	
	6	Contributions deductible under section 545(b)(2). See instructions for limitation		6	
	7	Net operating loss for the preceding tax year deductible under section 545(b)(4)		7	
	8a	8a	Net capital gain. Enter amount from Schedule D (Form 1120), line 12. Foreign corporations, see instructions		
		8b	b Less: Income tax on this net capital gain (see section 545(b)(5)). Attach computation	8c	
	9	Deduction for dividends paid (other than dividends paid after the end of the tax year). Enter amount from Part VI, line 5		9	
	10	Total. Add lines 5 through 9		10	
	11	Subtract line 10 from line 4		11	-10,230.
	12	Dividends paid after the end of the tax year (other than deficiency dividends defined in section 547(d)), but not more than the smaller of line 11 or 20% of line 1, Part VI		12	
	13	Undistributed PHC income. Subtract line 12 from line 11. Foreign corporations, see instructions		13	0.

Note: If the information in Part II and Part IV is not submitted with the return, the limitation period for assessment and collection of the PHC tax is any time within 6 years after the return is filed. See section 6501(f).

Personal Holding Company Income (See instructions.)

14	Dividends		14	
15a	15a	Interest	21.	
	15b	b Less: Amounts excluded (attach schedule)	15c	21.
16	Royalties (other than mineral, oil, gas, or copyright royalties)		16	
17	Annuities		17	
18a	18a	Rents		
	18b	b Less: Adjustments to rents (attach schedule)	18c	
19a	19a	Mineral, oil, and gas royalties		
	19b	b Less: Adjustments to mineral, oil, and gas royalties (attach schedule)	19c	
20	Copyright royalties		20	
21	Produced film rents		21	
22	Compensation received for use of corporation property by 25% or more shareholder		22	
23	Amounts received under personal service contracts and from their sale		23	
24	Amounts includible in taxable income from estates and trusts		24	
25	PHC income. Add lines 14 through 24		25	21.

Tax on Undistributed Personal Holding Company Income

26 PHC tax. Enter 39.6% of line 13 here and on Schedule J (Form 1120), line 7, or on the proper line of the appropriate tax return

Schedule PH (Form 1120) 1999

BAA

Stock Ownership Requirement Under Section 542(a)(2)

Enter the names and addresses of the individuals who together owned directly or indirectly at any time during the last half of the tax year more than 50% in value of the outstanding stock of the corporation.

1	(a) Name	(b) Address	Highest percentage of shares owned during last half of tax year	
			(c) Preferred	(d) Common
			%	%
			%	%
			%	%
			%	%
			%	%
			%	%
2 Add the amounts in columns (c) and (d) and enter the totals here.....▶			%	%

Excess of Expenses and Depreciation Over Income from Property Not Allowable Under Section 545(b)(6) (See instructions for Part I, line 3.)

1	(a) Description of property	(b) Date acquired	(c) Cost or other basis	(d) Depreciation deduction	(e) Repairs, insurance, and other expenses (section 162) (attach schedule)	(f) Total of columns (d) and (e)	(g) Income from rent or other compensation	(h) Excess (column (f) less column (g))

2 Total excess of expenses and depreciation over rent or other compensation. Add the amounts in column (h) and enter the total here and on Part I, line 3.....▶

Note: Attach a statement showing the names and addresses of persons from whom rent or other compensation was received for the use of, or the right to use, each property.

Deduction for Dividends Paid Under Sections 561 and 562

1	Taxable dividends paid. Do not include dividends considered as paid in the preceding tax year under section 563 or deficiency dividends as defined in section 547.....▶	1	
2	Consent dividends. Attach Forms 972 and 973.....▶	2	
3	Taxable distributions. Add lines 1 and 2.....▶	3	
4	Dividend carryover from first and second preceding tax years. Attach computation.....▶	4	
5	Deduction for dividends paid. Add lines 3 and 4 and enter the result here and on Part I, line 9.....▶	5	

Form 1120, Page 1, Line 26
Other Deductions Statement

Accounting	<u>3,750.</u>
Legal and professional	<u>3,667.</u>
Office expense	<u>234.</u>
Outside services	<u>834.</u>
Total	<u>8,485.</u>

Form 1120, Sch K, Corporation Ownership Information
Ques 5 Stmt

Name	ID No.
ESTATE OF JACK DEL GUZZI	91-6230500

Form 1120, Page 4, Schedule M-2, Line 6
Ln 6 Stmt

CLOSING ENTRY	<u>799,237.</u>
Total	<u>799,237.</u>

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF CLALLAM

In the Matter of the Estate)	No. 8087
))	Affidavit of
))	William E. Wilbert,
))	Administrator, W.W.A., D.B.N.
Jack DelGuzzi, Deceased)	Twelve Year Report
_____)	

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

DATED THIS 15TH DAY OF OCTOBER 1991, REPORT OF THE ADMINISTRATOR REGARDING THE ESTATE OF JACK DELGUZZI DURING THE PAST TWELVE YEARS OR FROM THE DATE OF DEATH TO AND INCLUDING THE PRESENT.

STATEMENT: EXISTING CONDITION AUGUST 1982 - Originally, the Executor or the Executor's attorneys, filed a 706 Tax Form prepared by the accounting firm of Peat Marwick Main (Mitchell) & Co., and entered into an individual payment plan with the Internal Revenue Service under Section 6166 of the Internal Revenue Code. Some scheduled payments were made under this Section. However, the Estate of Jack DelGuzzi received notice from the IRS sometime during the years 1982-1983, changing the net taxable value of the Estate from that sum which was submitted on the original 706 Tax Form to a sum that was greater than five million dollars. Said sum was renegotiated with the IRS by the present Administrator in what is now referred to as the Pink 706. IRS notices reflected a balance owing of approximately \$900,000.00 on March 1, 1984. At that time the real properties were reviewed and adjusted by Agreement between the Internal Revenue Service agent, the Estate's tax attorney, Robert

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Shaw, of Short Cressman & Burgess, and the accounting firm of Benson & McLaughlin, P.S., represented by Gerald H. Shaw. At that time we were not in a position to ask that consideration be made for adjustments in either cash, property loss (settlement transfers) or for the extended debt liability. By that, I mean no consideration was given to the fact that Jack DelGuzzi, individually, had guaranteed to Seattle First National Bank and United Pacific Insurance Company the debts of DelGuzzi Construction, DelGuzzi Bros., DelGuzzi Realty, DelGuzzi Industries and DelHur, Inc. The 706 reflected a valuation of \$500,000.00 or more for DelGuzzi Construction Company and DelGuzzi Realty, and 1.8 million dollars for DelHur, Inc. In reality, at the time of death the liability for the incomplete work or the work in progress exceeded the net worth of DelGuzzi Construction Company, DelGuzzi Realty and DelGuzzi Industries. Although no payment was ever made to DelGuzzi for the DelHur stock held by Sam Hurworth, more than 20% of the assets of this company was given to Sam Hurworth (See Exhibit ____.) It appears then that the 706 net worth should have been adjusted further because of the out-of-court settlement with the Bruno estate (See Exhibit ____), which effectively created a reduction of assets for the Jack DelGuzzi estate of more than \$400,000 for those liabilities that were assumed through this court settlement with the estate of Florence Casady and Charles Nyhus. The Casady Settlement required transfers from both Gary DelGuzzi holdings, the Estate and Nyhus/DelGuzzi holdings, which

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reduced the assets by again more than \$100,000.00. These liabilities against the Estate were not finalized until sometime between 1982 to 1984. They have never been taken into consideration when adjustments were made by the IRS as to the net value of the Estate of Jack DelGuzzi and, subsequently, the tax due on the Estate. The Administrator has no knowledge why the IRS and the Estate Tax Counsel have not yet reviewed these deductions and adjusted the tax.

The Administrator participated in out-of-court settlements in conjunction with United Pacific Insurance Company (Bond Department) affecting 118 claims. More than \$200,000.00 in cash was used from the Estate's assets to conclude these claims. United Pacific contributed an additional \$150,000.00 and thus became a judgement creditor. These settlements included warranty work and incomplete work for what was by then non-operating companies.

It is necessary to talk about the history of the Estate and its background, and to consider the fact that Jack DelGuzzi acted as executor of the estate of his brother, Bruno. During the time frame between Bruno's death, March 1972, and Jack's death, June 1978, it appeared that a considerable amount of turmoil and confusion reigned. I do not believe that the former executor of the Estate of Jack DelGuzzi, Gary DelGuzzi, knew the extent of the co-mingling of assets, or the path his father and his Uncle John were taking in

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relation to Bruno's estate. There is nothing official in the records to provide us with a solid background into the Bruno DelGuzzi estate. However, it is known that a settlement agreement was reached in or about October 1981. The executor of the Estate of Jack DelGuzzi, Gary DelGuzzi, was required by this settlement to compromise the Estate by accepting as a liability provision, costs and bequests provided for under the Bruno DelGuzzi Will. The Bruno DelGuzzi Will admitted to Probate was set aside or voided. (I am not sure how this came about.) The trial documents of DelGuzzi vs. DelGuzzi should explain that the Bruno DelGuzzi Will was determined to be fraudulent and a fake. Rumor and hearsay are that John DelGuzzi, who died in December 1981, was the author and signer of that Will which provided benefits for his nieces, Margaret Shaw and Catherine Myers, as well as for himself. Limitations of ownership of some of the property interests that were held by Jack and Bruno were also removed. The Bruno estate by this out-of-court settlement was given all of the income producing properties owned by the DelGuzzi Brothers, as well as Jack DelGuzzi's personal residence where John lived. All of the marketable or close-in vacant properties, plus a substantial amount of cash quadrupled the net estate of Bruno. A fire destroyed or damaged hundreds of cases of records. Payments made for all personal debt service mining expenses of Bruno, wife and daughter during the time between Bruno DelGuzzi's death in 1976 and the settlement date of October 1981 were made by the corporations

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and/or the Estate of Jack DelGuzzi. As far as I can determine, the Bruno DelGuzzi family continued to live in the lifestyle they enjoyed prior to Bruno's death without interruption. This lifestyle reduced the liquidity in Jack DelGuzzi's estate and the other DelGuzzi interests.

John DelGuzzi, Catherine Myers and her sister, Margaret Shaw (nieces to the DelGuzzi brothers), were to receive \$165,000.00 from the Bruno estate. This liability was transferred to the Jack DelGuzzi estate.

STEERING COMMITTEE.

Sometime between 1980 and 1981, a STEERING COMMITTEE was created wherein J. Dimmitt Smith, partner in the law firm of Monheimer Van Friedenburg and Smith, and a gentlemen by the name of David Rice, of Peat Marwick Main (Mitchell) & Co., provided DelGuzzi Construction Company with a General manager who became a member of the Steering Committee. This person was hired at the rate of \$15,000 a month, plus expenses. John DelGuzzi and Gary DelGuzzi completed the five-person committee. Lloyd Boren, a former partner of Peat Marwick Main & Co., was advisor to J. Dimmitt Smith and the Steering Committee at the Estate's expense. Gary DelGuzzi played a minor role because of the positions taken by the others on the Steering Committee. The Steering Committee, created and approved by the court, had an expense allowance of

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approximately \$50,000 a month. Operating expenses of the Estate office included, but were not limited to, an office manager forms clerk, who drew a salary of \$2,500 per month, and who had a secretary and bookkeeper earning \$1,500 per month. The leased Estate office with its furnishings, fixtures, autos and equipment totaled an additional \$4,000 a month. Gary DelGuzzi was paid a salary initially as president of DelGuzzi Construction Company and vice president of DelHur, Inc. However, the salaries were terminated in 1981. By the beginning of 1981 the highly liquid companies had used up their liquidity. The Estate and the companies were borrowing heavily from Seattle First National Bank. Gary DelGuzzi, as executor, paid out to Monheimer Van Friedenburt and Smith, and to Peat Marwick & Main Co. fees for both the Bruno and Jack DelGuzzi estates of approximately \$1,655,000.00 before January 1982 (see Exhibit 42). The Bank seized the stock and took control of the DelHur Board of Directors in 1982 to protect the security. Payments for dividends, loans and leases to the Estate were terminated.

STOCK PLEDGE WITHOUT AUTHORITY.

A second major discrepancy occurred in 1982. Minority stockholder in DelHur, Inc., Sam Hurworth, discovered that J. Dimmitt Smith delivered and pledged the Stock of DelHur, Inc. to Seattle First National Bank. This was contrary to an agreement entered into between himself and Mr. Smith, as

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attorney for the estates of Bruno and Jack, which prohibited the pledging of DelHur, Inc. stock to anyone without Mr. Hurworth's consent. The stock certificate failed to show the limitations of its usage and ability to be pledged as collateral. A suit between Seattle First National Bank and the Estate commenced for the recovery of loans. The Bank obtained a judgement in the approximate amount of 1.4 million dollars, plus interest and costs, against the Estate. During this time, a suit was commenced between the Estate of Jack DelGuzzi and Sam Hurworth. Mr. Hurworth was attempting to buy the remaining 80% of assets of DelHur, Inc. for an undisclosed amount, but less than \$1,400,000, and an IRS release of lien against the stock of DelHur for payment of \$200,000. Hurworth's offer came about with funding from Seafirst in a private sale. Please note that it appears the IRS approved that or revalued DelHur property from \$1,800,000 to \$200,000.

The lawsuit tried in Clallam County resulted in an out-of-court settlement with Seafirst when Paul R. Cressman, William E. Wilbert and Gary DelGuzzi, through the Lockwood Foundation, lent the Estate 1.4 million dollars in the form of cash and guarantees to the banks. Arrangements were made wherein the court ordered, and all parties approved, the subrogation of the State of Washington, Internal Revenue Service and the creditors to Paul R. Cressman for a \$400,000 cash loan; a joint loan of \$400,000 from Seafirst to William

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E. Wilbert and Paul R. Cressman; and a \$200,000 cash advance from William E. Wilbert; and the Lockwood Foundation and the Trust of Gary DelGuzzi for an additional \$200,000 cash plus a line of credit. This loan was secured with the property of the Gary DelGuzzi Trust. The IRS approval is evidenced by an example filing attached hereto (Exhibit 46) and by reference made a part hereof.

The borrowings from Paul R. Cressman, William E. Wilbert and Gary DelGuzzi were three-fold. A Living Trust was created for Gary DelGuzzi in 1982 and set in motion by Robert Heaton of Short Cressman & Burgess, who also was the Estate's general counsel. Gary DelGuzzi, as Trustor, allowed the Trustee of his Living Trust, William E. Wilbert, to pledge assets from that Trust as additional collateral to the Lockwood Foundation (a charitable trust). The State of Washington and the IRS also received additional guarantees from the Trust to insure the Estate's ability to repay the debt and offset settlement with Nyhus, Kop and others. This would in effect cost the Estate and the Trust approximately \$700,000 in land and cash.

DELHUR, INC. DIVISION AND SETTLEMENT.

A buy out agreement that was entered into between the Estate and Sam Hurworth, following the Seafirst trial, caused the devaluation of DelHur assets. Further complications arose

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because of the transferring of land and receivables from DelHur, the Estate incurred additional lawsuits and claims plus necessitated the clearing of title on subdivision lots already sold. Legal fees amount to \$95,268.00 (see Exhibit ____). However, settlement costs amounted to \$75,000.00 in cash. The debt owed by DelHur to William E. Wilbert, P.S. for services by William D. Wilbert (son of Administrator) began by William D. Wilbert spending approximately three-fourths of his time working with Andy Maron of Short Cressman & Burgess to satisfy the claims of Happy Valley, the Peisley Rezone and Holgerson water leases. Originally, a participation of 20% equity in the property and future sales of both Ennis Creek and Portage Industrial Park was planned rather than an hourly rate for William D. Wilbert's services since there was a lack of cash funding. Later it was determined by our accountant and legal advisors that a fixed contract should be negotiated; thus, resulting in a \$600,000.00 fee agreement that was executed for services rendered for the completion of the LID and rezoning of the properties. Although, a PRD was required but not anticipated after the rezoning, no additional fees were being levied against DelHur for what was described by the Port Angeles City Council as an additional eight weeks delay, but what took one and three-quarter years, and is still not yet finalized. DelHur provided William D. Wilbert an allowance of \$394 bi-monthly during this time. In addition to the allowance (\$394.00) the sum of \$600,000 for all work in

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relation to the property management, zoning, LID and PRD of DelHur was to be paid from sales of land.

MANAGEMENT COSTS OF DELHUR.

Before the separation, DelHur employed a property manager (Tony Samples), who had little or no real estate management experience, for a salary, with a total fringe benefit package which included medical, pension and an automobile. The administrative package, which included the property manager; the president, Sam Hurworth, and the Hurworth family members, plus a secretary and bookkeeping service, was costing DelHur more than \$150,000 a year plus offices, automobiles and overhead.

After the separation of assets and the division, NO salary and benefits were paid to either the president or property manager of DelHur. The Wilbert family was paid on a 1099 Tax Form for part-time works for corporation need (See Report Exhibit 43B.) However, cash for DelHur legal work was paid to Short Cressman & Burgess (See Exhibit ____). Between 1984 and 1991 the Administrator received in cash a sum of \$53,000 toward overhead (See Exhibit 44) of W.E.W., P.S. and DelHur, who agreed that the \$53,000 was in addition to the \$600,000.00 deferred fee to William D. Wilbert for services and company expenses based on outside advice. Remember, the price was in the form of a note and deed of trust, not cash

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on a monthly basis.

BRUNO PAY OFF.

The first action of the Administrator, acting as President of DelHur, Inc., was to deliver a dividend to the Estate, which was used to pay off and settle the Bruno DelGuzzi judgement and claims, which amounted to more than \$450,000 at that time.

SEAFIRST LOAN.

A loan from the Bank of Seattle in the amount of \$800,000 was arranged by the Administrator, as president of DelHur, and who guaranteed the loan personally. Proceeds from this loan were released to the Estate so it could pay Seattle First National Bank approximately \$500,000 with accumulated interest.

ADMINISTRATIVE COST.

\$300,000 was paid with court approval (\$200,000 S&C \$100,000 Administrator) toward their accumulated fees which were \$650,000 December 1985 and \$396,000. Messers. Cressman, Heaton and Maron, the Administrator and the accounting firm of Benson & McLaughlin, P.S. reviewed the Report to the Court. The Administrator's fees, the legal fees and the

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accounting fees were filed by Short Cressman & Burgess with the court.

In 1987 William D. Wilbert, acting as development consultant to DelHur, Inc. through his affiliation with William E. Wilbert, P.S., undertook the LID for the roads water and power rezoning application of Ennis Creek, plus other related projects. These included the projects known as Portage Industrial Park and Halberg Subdivision Development. William D. Wilbert spent nearly full time working for the benefit of DelHur as the documentation will show through July 1991. DelHur did not have cash flow to pay the cost of these services. The original price paid for both of the properties (by Sam Hurworth as president of DelHur) prohibited any possible profitable resale either as residential properties or as vacant land. The cost of basic developments such as water sewer and roads necessary to sell lots less than five acres exceeded one million dollars. The base price of the land for these properties being held at book, made it impossible to recover. Therefore, the planned unit development was necessary and feasible.

Both Ennis Creek and Portage Industrial Park are saleable as profitable projects. However, in the case of Ennis Creek, there are still pending appeals before the courts by the Mantooths (neighbors). Therefore, this project has not yet begun its construction which was planned for fall 1990 or

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spring 1991. DelHur, Inc. would have acted as it has acted throughout its operating history, as developer-builder. DelHur is not financially strong enough to borrow the capital funding without outside guarantees. Because of what might now be a three year delay, Ennis Creek must be sold at a substantial discount in order to attract money into the Estate to meet its debt obligations. Portage Industrial Park requires roads, water and electricity. DelHur, Inc. and the Estate do not have the required capital to fund this project either.

NYHUS SETTLEMENT AND SEPARATION.

Gary DelGuzzi, prior to removing himself of the burden of administration, deeded to Charles Nyhus an undivided one-half interest in all of the Wineberg properties as well as one-third of the corporate development companies and \$150,000 cash. This gave Charles Nyhus equal management as well as ownership in the sale of timber and land. Nyhus now held one-third interest in the corporate stock of the three corporations while the Estate held one-third interest. Therefore, we had a now saleable or marketable situation.

Charles Nyhus, under the direction of a Tenant in Common agreement called "Nyhus/DelGuzzi Holdings", sold timber, paid taxes, costs and distributed funds. This entity sold some properties as well. The Administrator and Nyhus had a

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separate account which required joint signatures of Nyhus and the Administrator, Nyhus and/or his wife and the Administrator to distribute funds from that account. Reports were made quarterly to the court. No salaries or fees were paid to Nyhus or Wilbert. A great deal of tension arose when the State of Washington claimed that more than \$100,000 in taxes were evaded by this entity and wanted immediate payment. Mr. Nyhus made a settlement with the State of Washington which was never made public. The Estate spent more than \$10,000 in legal fees and more than \$4,000 in accounting fees in attempting to determine what happened to the timber and the money. The end result was insufficient to pursue the matter further legally. The matter was dropped as a matter of practicality. However, the result was a separation of the Nyhus/DelGuzzi Holdings. The Estate proceeded with clear title to two-thirds of the three corporations, and their merger to what is known as Cedarwood Properties, Inc. The Estate retained 60% of the new entity. The Trust of Gary DelGuzzi held 40%.

NYHUS AND KOP - COSTA RICA

Shares held in Costa Rican companies were subdivided. A development fee of 50% of sales was negotiated prior to 1976 giving equity control to others. Sales (Real Estate Commission Agreement) of 35% also existed for the subdivision lots and 20% for land tracts. Fees were paid Harry Davidson,

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Inc., U.S.A., in the amount of 35% under a real estate commission agreement (stands for subdivisions offshore and 20% bulk land sales). Gary DelGuzzi transferred land, cash and mortgages on other land to help Estate cash flow prior to August 1982 in exchange for 50% of Costa Rican holdings. (See Trust Document prepaid by Robert Heaton of Short Cressman & Burgess.)

GARY DELGUZZI LOANS.

Although the court documents and priority claim documents do not provide a direct, clear referral to Gary DelGuzzi giving security of the Lincoln Building to the Lockwood Foundation, the loan was made and secured by assets of Gary DelGuzzi's Living Trust. Furthermore, in order to maintain and protect the interest of the Estate, and guarantee to the U.S. Government and the State of Washington assets to liquidate for taxes, Gary DelGuzzi placed mortgages and liens against personal holdings that were properties held by him or by corporations in which he held substantial interest. Therefore, the Trust of Gary DelGuzzi exchanged lands or shares of stock in its ownership of shares of Beko and El Capitan stock. The Estate at that point was transferring 50% stock from the holdings and development proceeds. This came about because the development rights were held by Costa Paraiso, a Costa Rican corporation owned by the Luce and Cerdas Families. Pursuant to the agreement entered into by

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Jack DelGuzzi, Charles Nyhus, another Nyhus (presumably Charles Nyhus's brother) and Theo Kop agreed, in exchange for roads, water and other development costs, to give 50% of the proceeds of sale to the Luce and Cerdas Families. The result was Costa Paraiso acquired all of the Kop/Nyhus stock for cash then sold and traded for cash and property all of these interests to the Trust of Gary DelGuzzi and the Estate. The Estate, Kop, Nyhus and Costa Paraiso in 1981 transferred 20% in the entirety to a development company. Now the total interest in Costa Rica is: 20% others; 50% Trust; 30% Estate which is pledged to Gary DelGuzzi. The 30% of the Costa Rican development which belongs to the Estate of Jack DelGuzzi is held as security toward advances made by the Trust of Gary DelGuzzi to the Estate, and should be conveyed free and clear without claim since the security has been sold to Gary DelGuzzi.

Had the Costa Rican option to purchase in 1987, which was later treated as a failed sale, proceeded and been carried out, the Estate would have received all of the net cash for which it was sold, and Gary DelGuzzi would have been returned his security. However, the reality was that the sale failed and that many of the properties conveyed by Gary and his interest had by this time been sold to pay debt. Therefore, the shares should now be held by Gary DelGuzzi free of all claims.

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Gary DelGuzzi, personally, and through his Living Trust, in 1982 paid more than one hundred thousand dollars to the government to meet the scheduled Section 6166 installment. Since that time other assets have been sold and pooled, and the proceeds used to pay other debts and judgements owing on the Estate. Therefore, it can be reasonably understood that the ownership by the Estate in Costa Rica should be now conveyed or transferred to the Trust of Gary DelGuzzi or Gary DelGuzzi, individually, free of all claims.

JUDGEMENT/PRIORITY/SETTLEMENT CLAIMS AND ADMINISTRATIVE COSTS

In 1984 the Administrator, to reduce mounting interest costs, asked the Administration's creditors to reduce their receivables from the Estate by accepting land on real estate contract as other asset as payment. Releases were given by all (IRS, State of Washington, secured creditors), and the Administrator and the accounting firm of Benson & McLaughlin, P.S. reduced their fee (See Quarterly and Annual Report). However, the law firm of Short Cressman & Burgess did accept land on contract because of they said was their income tax exposure. They did agree to accept a \$452,000 note (after \$200.000 was paid in cash).

THE PLAN (EXHIBIT 100).

We are again asking to transfer land by agreement, and as we

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had recommended in 1984 to the parties who have an interest in the Estate. The Administrator and Benson & McLaughlin, P.S., who both lost money in the transaction, are still agreeable to accept land at this time.

Non Priority Settlements:

Therefore, we ask the court to approve by adjusting the order of priority, the transfer of the following properties to the cousins in the Estate of Jack DelGuzzi combined Property No. 116; to United Pacific Insurance Company Property No. 147; to Willis McClure Property No. 16 (EJD) and Property No. 306 (DelHur); to Benson & McLaughlin, P.S. Property No. 60.00.

Senior Priority Claimants.

To the following priority claimants, Gary DelGuzzi, Lockwood Foundation, William E. Wilbert and Paul R. Cressman, the following properties: To Lockwood Foundation/Trust of Gary DelGuzzi the property known as Brechin Bluffs Property Nos. 80.10 through 81.71; to William E. Wilbert Property No. 96.00; to Paul R. Cressman Property No. 36.00.

I, therefore, ask the court to direct and order the firm of Short Cressman & Burgess; Administrator William E. Wilbert; William E. Wilbert-Broker, Inc.; Internal Revenue Service and the State of Washington to issue releases of those properties

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and all claims against them, and approve their transfer at fair market value.

EVEN THOUGH THE STATE OF WASHINGTON AND THE INTERNAL REVENUE SERVICE HAVE ACCEPTED PAYMENT AND DISTRIBUTION FROM FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF PORT ANGELES FOR SOME OF THE 1990-91 TRANSACTIONS, BOTH AGENCIES HAVE FAILED TO DEPOSIT WITH FIRST FEDERAL SAVINGS AND LOAN THOSE DOCUMENTS WHICH WOULD ENABLE PIONEER TITLE COMPANY OF CLALLAM COUNTY TO ISSUE TITLE POLICIES.

BACKGROUND.

NOW THEREFORE, the Administrator wishes to review with the court the overall background of the Estate and its financial condition which lead to the Distribution Agreement. Negotiations had progressed to the point where the Internal Revenue Service, State of Washington, Administration and the claimants against the Estate of Jack DelGuzzi had agreed to a compromise arrangement wherein payments would be made according to a percentage of net proceeds from liquidation of the real property held by the Estate of Jack DelGuzzi. The Administrator, not having a legal background or being a practicing attorney, was unaware that this agreement should have in effect been called an Offer in Compromise.

On September 10, 1991, the IRS elected to file a lien for

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\$4,043,652.68 against the Estate, which is contrary to the court order that was entered into March 15, 1984. The IRS applied the funds they had received under the Offer in Compromise Distribution Agreement that was in effect, but also added interest and penalties to arrive at the figure they now claim to be the amount of debt owing the Government as of May 1, 1991. This filing has jeopardized the liquidation and sale of any further assets of the Estate, since Pioneer Title Company of Clallam County and others have advised us they will not escrow or insure any Estate property unless a full release is in hand from the IRS and the State of Washington at the time of closing (See Exhibit No. ___). Therefore, Hold Harmless and Claim Releases against all parties who have a relationship to the Estate of Jack DelGuzzi should now be ordered.

The only remaining dispute of the Estate is the true allocation of funds owing to the United States of America Internal Revenue Service, the State of Washington, Short Cressman and Burgess and the Administrator. The fairest position appears to be to pool properties for distribution, with each priority claimant having a representative. A fifth party, appointed by the court, such as Gerald Shaw, CPA, would act as the coordinator of the assets and allow for the collection of funds in escrow. Alternatively, the parties could agree to accept specific properties or pooled properties which would be in their best interest. Attached

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and by reference made a part hereof is a description of these pooled properties (See exhibit of remaining properties.)

I further request that the court order and direct the Estate to transfer the property known as Brechin Bluffs, Property Nos. 80.10 through 81.71. The Estate had a pending sale on this property that failed for a value of \$450,000 gross, less selling costs and commissions, to the Trust of Gary DelGuzzi in exchange for the Trust of Gary DelGuzzi reassuming the entire responsibility for the obligation to the Lockwood Foundation.

Separate decisions and future court action probably are necessary to determine the interest that is continuous between the Administrator and the law firm of Short Cressman & Burgess. Short Cressman & Burgess has contributed little or no benefits to the Estate since 1990 other than those for which they were paid in 1984. Short Cressman & Burgess in 1984 rejected the Administrator's Distribution Plan based upon the transfer of land. Instead they would only accept an interest bearing Promissory Note which has accumulated and does have a remaining billed balance. The Administrator, himself, recognizes that the work done in 1982 through 1984 by the law firm was trying, necessary and cumbersome to unscramble due to the Estate's condition and lack of cooperation from outsiders. However, the fact that it took until 1991 for the law firm to bill for services prior to

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1984 is somewhat confusing to the Administrator. The fact that the law firm spent as much money as it did on the McClure Settlement on behalf of the Administrator is, also, somewhat disconcerting, since the Administrator always insisted, and the correspondence with the law firm will indicate, that the law firm discontinue negotiating and go to trial where both the Administrator and Gary DelGuzzi would be exonerated of any claims by the McClure people. Therefore, the exact status of the billing is still not challenged by the Administrator, but questioned by others.

SOLVENCY AND INSOLVENCY.

The entire question of solvency and insolvency depends upon interpretation in law rather than reality. I once again take the court back to 1982 to the appointment of the Administrator at the request of the Executor and beneficiaries. The Administrator was directed by the beneficiaries and the Executor to proceed to conserve and pay all of the debts of the Estate; conserve and agree to settle the properties which were involved in suits, countersuits and litigation, acquire usability and access rights and delay the sale of properties until the market was favorable. Not to sell the properties for the proverbial 5 or 10 cents on the dollar. The IRS and the State of Washington acknowledged that funding was not possible due to litigation. Cash was not available to pay debts, therefore, the interpretation of

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solvency and insolvency seems to be moot because in the opinion of the layman, all the parties had waived their rights to claim insolvency based upon true solvability during 1981-1988 when the titles were clouded. The court itself declared the Estate insolvent based upon marketing and marketability of the property. Therefore, at this time it appears that the long delays through court actions and economic trends and changes have put the Estate once again in jeopardy, and the only reasonable solution was advanced in February of this year.

The Administrator approached the Trustor, heirs, beneficiaries and claimants with an alternative Offer in Compromise. The Offer in Compromise in itself has had to be altered again due to a continuation of litigation, appeals and failure of banks to finance real property development. The Administrator believes it is in the best interest of the Estate and its beneficiaries to distribute land at this time and set a fixed amount of money owing to be paid the Administrator, the attorneys, the IRS and the State of Washington with an orderly liquidation of these remaining assets under the supervision of a committee. The administration and the Estate of Jack DelGuzzi should close as far as needing the Administrator to further direct the activities of the Estate, and a committee should continue or discontinue the services of William E. Wilbert-Broker, Inc.

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The Administrator would like to point out to the court that there are only three persons in the Wilbert companies who have a working knowledge, other than the Administrator, of the properties, their condition, access and even their location. The commission structure that was set forth by the Administrator in February 1991 in a directive to all of the participating real estate firms and brokers for the sale of property, utilized the commission schedule which is attached and by reference made a part hereof. This Agreement should remain in effect and be authorized by the court. The liquidation should continue, and all the parties surrender their security to the court and allow the court to direct quarterly the distribution of assets and remaining guarantees of the Estate. Neither the law firm of Short Cressman & Burgess nor the Administrator should be entitled to further services or compensation other than their representatives being paid on an agreed per diem basis for participating in the review and marketability of the Estate's assets called

who hold title for collateral purposes only to the joint holdings remaining whether they be corporate or otherwise.

We strongly urge the court at this time to review the sensitive areas that have arisen during the past year, issue the necessary orders to continue the liquidation of the Estate, prohibit the loss of sales which are now mounting due to the actions of the IRS in filing an unreasonable lien

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against the Estate, the declination of the State of Washington to sign releases, the assistance of the law firm of the failure of the law firm who has declined to resign or to acknowledge that they are not into acting in the best interest of the Estate, but only in their own interest, and that these orders be issued and put into effect immediately.

Respectfully Submitted,

William E. Wilbert

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ATTACHED AND BY REFERENCE MADE A PART HEREOF IS:

1. Legal, location and value of all properties held by the Estate and its corporations. Market value is not based on district sales or auctions.
2. Complete detail of all sales made
3. Administration costs by Executor, Gary DelGuzzi
4. Administrative costs submitted by Administrator, William E. Wilbert
5. Details of payment to all related interests of administration
6. Payment and billing from Short Cressman & Burgess. Note: Billings have not been reviewed by court, beneficiaries or Executor.
7. Payment to Administrator, William E. Wilbert. Not reviewed by court; however, reviewed by beneficiaries and approved by them.

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On September ____, 1991, the Short Cressman & Burgess law firm wrote of their withdrawal to the legal and personal counsel for the Administrator. However, the Administrator pointed out that since January 1990, Short Cressman & Burgess has not responded to the request for legal assistance, but has only discussed the lack of payments due them for their unapproved billings received from March 1991 dating back to 1984.

I now ask the Court to appoint _____ as legal counsel to the Administrator of the Estate of Jack DelGuzzi, and provide payment as priority to all others from the remaining assets.

If the Court agrees to distribute the following:

Senior Priority Claimants:

1. Lockwood Foundation/Gary DelGuzzi - The Brechin Bluffs Property Nos. 80.10 through 81.74
2. Gary DelGuzzi - The remaining interest in Costa Rica
3. Paul R. Cressman - Property No. 36.00
4. William E. Wilbert - Property No. 96.00

Priority Administrative Costs:

1. Short Cressman & Burgess - Balance of billing in the

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amount of \$ _____.

2. William E. Wilbert - Balance of billing in the amount of \$ _____.

Claimants and Judgements:

1. United Pacific Insurance Co. - Property No. 147
2. Margaret Shaw and Catherine Myers (Cousins) - Property No. 116.
3. Willis McClure - Property No. 16 (EJD) and Property No. 306 (DelHur)
4. Benson & McLaughlin, P.S., Property No. 60.00

The remaining asset distribution of

1. Short Cressman & Burgess/William E. Wilbert - 50%
Income (Each)
2. State of Washington - 10% Income
3. Internal Revenue Service - 40% Income

Should be deed to Internal Revenue Service, State of Washington, Short Cressman & Burgess and William E. Wilbert

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for security property

second proceeds paid to them from a trustee

216.1 ejd12

Appendix 3

ESTATE OF JACK DELGUZZI

SUMMARY ANALYSIS OF CASH FLOW FOR YEARS AUGUST 1982 THROUGH DECEMBER 1995

	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1
SOURCE OF CASH													
FROM AFFILIATES													
CD LOGGING	3,654	0	10,545	3,000	1,000	0	55,584	0	0	0	0	0	0
DELGUZZI REALTY	8,083	9,651	864	1,725	(1,076)	0	0	35,000	0	0	0	0	0
CHARLIE NYHUS	292	1,023	0	0	0	0	0	0	0	0	0	0	0
VALLEY PROPERTIES	15	2,130	0	0	0	0	0	0	0	0	0	0	0
DELGUZZI CONSOLIDATED	0	11	0	2,778	0	0	0	0	0	0	0	0	0
DELGUZZI CONSTRUCTION	0	7,071	0	0	0	0	0	0	0	0	0	0	0
PENISULA PROPERTIES	0	2,975	0	0	0	0	0	28,000	0	0	0	0	0
NORTHLAND PROPERTIES	0	1,028	0	0	0	0	0	0	0	0	0	0	0
DELGUZZI INC.	0	22,556	0	0	0	0	0	0	0	0	0	0	0
DELGUZZI BROS.	0	14	0	0	0	0	0	0	0	0	0	0	0
SAGA LOGGING	0	26,000	3,000	469	0	0	0	0	0	0	0	0	0
CEDARWOOD PROPERTIES	0	0	0	0	0	0	0	10,000	0	400	500	0	0
DELHUR, INC.	0	0	0	0	872,500	0	160,000	0	3,000	1,000	0	0	0
N&D HOLDINGS	0	756	3,620	1,174	(3,050)	0	0	0	0	0	0	0	0
SUB-TOTAL AFFILIATES	12,044	73,215	18,029	3,146	869,374	0	215,584	3,000	3,000	400	500	0	0
OTHER SOURCES													
RENTAL PROPERTIES	0	4,433	5,648	11,173	7,975	5,650	4,871	4,793	3,047	423	0	0	0
REFUNDS & SETTLEMENTS	93,405	145,592	11,884	3,533	8,400	0	2,485	160	0	2,517	0	0	0
ASSET SALES	4,600	2,000	221,000	37,501	0	0	21,000	95,600	0	0	0	320,000	12
INSURANCE REFUNDS	24,046	314	0	0	0	0	0	0	0	0	0	0	0
TIDELANDS AND TRADEWELL	0	0	0	0	0	0	0	0	0	0	0	0	0
DUSHOP LAND SALE	0	23,713	0	0	0	0	0	0	0	0	0	0	0
SALE OF PERMIT	0	0	0	0	0	0	0	0	0	0	0	0	0
DELGUZZI REALTY RESERVES	0	0	0	0	0	0	0	0	0	0	0	0	0
LEGAL REIMBURSEMENTS	0	4,500	0	0	0	0	0	0	0	0	0	0	0
LOGGING PROCEEDS	0	0	0	0	0	0	0	0	0	0	0	0	0
CONTRACT COLLECTIONS	0	23,966	9,797	12,794	3,044	18,268	15,838	15,631	9,843	0	0	38,960	81
DELGUZZI REALTY RESERVES	17,000	0	0	0	0	0	0	0	0	0	0	0	0
INTEREST	5,275	1,362	382	87	191	138	349	432	3,918	0	33	4	0
DIVIDENDS	14	50	0	0	0	0	0	75,000	0	0	0	0	0
BANK ACCOUNT CLOSEOUTS	0	2,058	1,546	1,686	0	0	0	0	0	4,200	0	0	0
MISCELLANEOUS	46	390	108	0	0	0	0	0	0	0	376	0	2
LOGGING	0	0	0	0	0	0	0	0	0	0	0	0	0
N&D REIMBURSEMENTS	0	0	0	0	0	0	0	1,859	0	0	0	0	0
FIRST FEDERAL	0	0	0	0	0	0	0	0	0	0	0	0	0
FROM EXECUTOR TO ADMINISTRATOR'S ACCOUNT	70,802	0	0	0	0	0	0	0	0	0	10,500	2,159	1
TRANSFERS FROM ESCROW ACCOUNT	0	0	0	8,000	0	0	0	806	0	0	0	0	21
SEE DETAIL BELOW	0	0	0	0	0	0	0	0	0	0	0	242	0
SUB-TOTAL OTHER SOURCES	215,188	88,578	253,565	55,774	19,510	123,056	44,543	193,281	16,208	7,140	10,509	367,365	23
LOANS AND OTHER													
FROM LINCOLN BUILDING	67,000	0	0	0	0	0	0	0	0	0	0	0	0
BANK OF CALIFORNIA	120,000	90,000	0	0	0	0	0	0	0	0	0	0	0
SEAFIRST	0	0	0	0	0	0	0	0	0	0	0	0	0
FROM DELHUR	0	0	0	744,193	882,500	17,500	5,000	70,000	3,000	0	2,586	0	0
FROM GARY DELGUZZI	0	7,000	15,500	0	0	0	0	0	0	0	0	0	0
SEE DETAIL BELOW	0	0	0	330,102	0	25,000	174,591	0	32,038	0	0	43,121	7
SUB-TOTAL LOANS AND OTHER	187,000	97,000	15,500	1,074,295	882,500	42,500	179,591	70,000	35,038	0	2,586	43,121	7
TOTAL SOURCES OF CASH	414,232	378,593	284,594	1,169,215	1,771,484	66,556	439,718	337,281	64,846	8,540	14,005	404,486	33

FOR YEARS AUGUST 1982 THROUGH DECEMBER 1995

	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	TOTAL
	3,654	0	10,545	3,000	1,000	0	55,584	0	0	0	0	0	0	0	73,783
	8,083	9,651	864	1,725	(1,076)	0	0	35,000	0	0	0	0	0	0	54,247
	292	1,023	0	0	0	0	0	0	0	0	0	0	0	0	1,315
	15	2,130	0	0	0	0	0	0	0	0	0	0	0	0	2,145
	0	11	0	2,778	0	0	0	0	0	0	0	0	0	0	2,789
	0	7,071	0	0	0	0	0	0	0	0	0	0	0	0	7,071
	0	2,975	0	0	0	0	28,000	0	0	0	0	0	0	0	30,975
	0	1,028	0	0	0	0	0	0	0	0	0	0	0	0	1,028
	0	22,556	0	0	0	0	0	0	0	0	0	0	0	0	22,556
	0	14	0	0	0	0	0	0	0	0	0	0	0	0	14
	0	26,000	3,000	469	0	0	0	0	0	400	500	0	0	0	29,469
	0	0	0	0	0	0	160,000	0	3,000	1,000	0	0	0	0	10,900
	0	0	0	0	872,500	0	0	0	0	0	0	0	0	0	1,036,500
	0	756	3,620	1,174	(3,050)	0	0	0	0	0	0	0	0	0	2,500
	17,044	13,215	16,029	9,146	969,374	0	215,584	73,000	3,000	1,400	500	0	0	0	275,292
	0	4,433	6,648	11,173	7,975	5,650	4,871	4,793	3,047	423	0	0	0	0	49,013
	93,405	145,592	11,884	3,533	8,400	0	2,485	160	0	2,517	0	0	55	0	268,031
	4,600	2,000	221,000	37,501	0	0	21,000	95,600	0	0	0	320,000	124,284	394,098	1,220,083
	24,046	314	0	0	0	0	0	0	0	0	0	0	0	0	24,360
	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	0	23,713	0	0	0	0	0	0	0	0	0	0	0	0	23,713
	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	0	4,500	0	0	0	0	0	0	0	0	0	0	0	0	4,500
	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	0	23,966	9,797	12,784	3,044	18,268	15,838	15,631	9,843	0	0	38,960	81,173	0	229,314
	17,000	0	0	0	0	0	0	0	0	0	0	0	0	0	17,000
	5,275	1,362	382	87	191	138	349	432	3,918	0	33	4	0	0	12,171
	14	50	0	0	0	0	0	75,000	0	0	0	0	0	0	75,064
	0	2,058	1,546	1,686	0	0	0	0	0	4,200	0	0	0	0	8,490
	46	390	108	0	0	0	0	0	0	0	376	0	2,000	0	2,920
	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	1,859	0	0	0	0	0	0	1,859
	0	0	0	0	0	0	0	0	0	0	10,500	2,159	1,238	0	13,897
	0	0	0	0	0	0	0	0	0	0	0	0	0	0	70,802
	70,802	0	0	0	0	0	0	806	0	0	0	0	27,740	0	37,546
	0	0	0	9,000	0	0	0	0	0	0	0	0	0	0	242
	0	0	0	0	0	0	0	0	0	0	0	242	0	0	242
	215,188	208,378	257,365	75,774	9,610	24,056	44,543	194,281	6,908	7,140	10,909	361,365	216,400	394,098	2,060,905
	67,000	0	0	0	0	0	0	0	0	0	0	0	0	0	67,000
	120,000	90,000	0	0	0	0	0	0	0	0	0	0	0	0	210,000
	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	0	0	0	744,193	882,500	17,500	5,000	70,000	3,000	0	2,596	0	0	0	1,724,789
	0	7,000	15,500	0	0	0	0	0	0	0	0	0	0	0	22,500
	0	0	0	330,102	0	25,000	174,591	0	32,038	0	0	43,121	78,105	13,577	696,534
	187,000	37,000	15,500	107,295	882,500	42,500	179,591	70,000	35,038	0	2,596	3,121	78,105	13,577	2,720,823
	4,423	578,593	284,894	1,159,215	1,771,484	66,556	439,718	337,281	64,846	18,540	14,005	404,486	314,593	407,675	6,056,120

ASSET SALES
CONTRACTS COLLECTED

TAB 6

Appendix 4

FILED

DEC 26 1985

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF CLALLAM

EMILY RUSSO-Clerk
Clallam County - By:

In the Matter of the Estate)
)
 of)
)
 Jack DelGuzzi,)
)
)
 Deceased.)
 _____)

No. 8087
Annual Report
as of August 15, 1985

Pursuant to the Order of the Honorable Judge Grant S. Meiner, the Administrator of the Estate of Jack DelGuzzi hereby submits the attached accounting of the affairs of his administration from August 15, 1984 through August 15, 1985. This accounting is being presented unaudited but the check registers and files are regularly reviewed by the accounting firm of Benson & McLaughlin, P.S.

Respectfully submitted this 24th day of December, 1985.



WILLIAM E. WILBERT, Administrator,
W.W.A., D.B.N., of the Estate of Jack DelGuzzi

861
138

SCHEDULE OF ASSETS AND LIABILITIES

AUGUST 15, 1985

ASSETS

CASH:

First Interstate Bank accounts including reserves for settlements	\$ 26,866	
Savings Account	669	
	<hr/>	\$27,535

NOTES RECEIVABLE:

Skagit Valley Mall (Maturity value - \$305,000)	\$ 200,000	
Hill	200	
	<hr/>	200,200

STOCKS (UNLISTED) (approximate value):

Surfside S.A. - 7%	\$ 10,000	
Colorado Lumber Co. - 17.5%	50,000	
Surfside Properties USA	5,000	
Peninsula Properties/Northland Properties/ Cedarwood Properties	201,100	
DelGuzzi Construction, Inc. - 100%	900	
DelGuzzi Realty, Inc. - 100%	90,000	
DelHur, Inc.	4,000,000	
Beko, S.A. - 20%	125,000	
El Capitan, S.A. - 50%	225,000	
Finca El Tamarindo, S.A. - 100%	900,000	
Option for 80% of Beko	350,000	
	<hr/>	5,957,000

REAL PROPERTIES (approximate value):

Joint Ownership (Nyhus)	\$1,200,000	
Commercial Property - 100%	440,000	
Improved Property - 100%	196,000	
	<hr/>	<u>1,836,000</u>

TOTAL ASSETS:

\$ 8,020,735

SCHEDULE OF LIABILITIES

AUGUST 15, 1985

PRIORITY CLAIMS (approved by Court, IRS, State of Washington):

William E. Wilbert - note #1	\$ 100,000	
William E. Wilbert - note #2	100,000	
Interest Due Through 8/15/85	<u>16,400</u>	\$216,400
Paul R. Cressman - note #1	\$ 200,000	
Paul R. Cressman - note #2	200,000	
Interest Due Through 8/15/85	<u>32,800</u>	432,800
Lockwood Foundation	\$ 200,000	
Interest Due Through 8/15/85	<u>14,400</u>	214,400
Seattle First National Bank	\$ 400,000	
Interest Jan. 1 - Aug. 15, 1985	\$ <u>24,500</u>	424,500
Internal Revenue Service-Estate Taxes		1,128,000
State of Washington-Inheritance Taxes		345,000
Interest due state and federal govt. Estimated by accounting firm to 8-15-85		720,000
ADMINISTRATIVE FEES:		
Trial & Court Costs, Settlement Costs		1,029,000

LIABILITIES CONTINUED

SECURED CLAIMS:

Real Estate Mortgages

#7391	\$ 23,800	
#7332	<u>21,000</u>	
		\$44,800

JUDGMENT:

Bruno DelGuzzi Estate.
Principal, Interest, Costs:

* Balance Owing 8/15/85 402,958

OBLIGATIONS:

Trust of Gary DelGuzzi

Loans and advances - Estimated 200,000

Delinquent Real Estate Taxes on

Some Properties 20,000

Smith, Smart, Hancock & Tabler-legal fees

Estate of John DelGuzzi 4,600
94,000

Margart Shaw 35,000

Katherine Meyers 35,000

Reserved for possible claim 66,400

235,000

Leases, rents, storage, operations

(85-86 reserve) 72,000

TOTAL LIABILITIES

\$5,484,858

*Paid 12/12/85 at discount.

LIABILITIES CONTINUED

CLAIMS:

United Pacific Insurance Co. has asserted a claim. No legal action has been instigated. No formal petition has ever been made to the Court regarding their request that the Estate is obligated to pay their distribution on behalf of DeGuzzi Construction bond settlements in the amount of approximately \$150,000. The administrator and his legal advisors are still reviewing and discussing this matter with United Pacific. \$150,000

MAXIMUM TOTAL LIABILITIES & CLAIMS

\$5,643,858

SUMMARY OF RECEIPTS & DISBURSEMENTS
FOR THE 12 MONTH PERIOD
AUGUST 16, 1984 - AUGUST 15, 1985

RECEIPTS

CASH ON HAND 8/15/85	\$10,566
Estate Share of Net Income of N&D Holdings	9,200
*Gross Rental Property Income	12,688
Refunds & Settlements	5,033
Funds from Corporations:	
**DelGuzzi Realty, Inc.	-0-
DelGuzzi Construction, Inc.	-0-
Peninsula Properties, Inc.	-0-
Cedarwood Properties, Inc.	-0-
Northland Properties, Inc.	-0-
DelGuzzi Consolidated, Inc.	2,778
Interest	236
Saga Logging, Inc. Dissolution	3,000
Gravel Pit (N&D Holdings Disbursement)	3,630
St. of WA Reimbursement	4,984
Rice/Endicott Sale Proceeds	6,900
Loan From DelHur, Inc.	80,000
Pioneer Title-John DelGuzzi	1,500
***Savings Account Closed	1,686
Proceeds From Lockwood Foundation	
Purchase of Gray Contract	25,500
Contract Collections:	
Hoch (paid off)	789
Skagit Valley	8,483
Hill	670
Escrow FFSL	3,541
Mathia note (paid off)	575
TOTAL	\$181,759

* Funds held in William E. Wilbert Broker, Inc., Rental Properties, Trust Account. Rental deposits not reflected as income but held for tenant's good faith (\$2,005).

** Income from Lopez house owned by Realty is reflected in Gross Rental Income above.

*** Dormant account was pledged to Sea-First as security, therefore, not included in assets in prior year's report.

RENTAL PROPERTY EXPENSES:

Mortgages, Maintenance, Taxes, Utilities, Insurance, Collections, Settlements & Costs	\$ 7,618
--	----------

FUNDS DISBURSED FOR CORPORATIONS:

DelGuzzi Construction, Inc. (Corporate License)	\$ 50	
Peninsula Properties, Inc.	-0-	
Cedarwood Properties, Inc.	-0-	
Northland Properties, Inc.	<u>-0-</u>	50

ESTATE OPERATING EXPENSES:

Mortgage Payments	\$ 2,880	
Bruno DelGuzzi Estate	35,000	
Real Estate Taxes (Partial)	6,293	
Service Contracts	26,257	
Salaries & Payroll Taxes	8,624	
Travel	3,498	
Interest on Loans	37,436	
Office Expenses	21,998	
Insurance-held in trust acct.	3,240	
CPA - Benson & McLaughlin	-0-	
Admin. - William E. Wilbert	-0-	
Legal - Short & Cressman	-0-	
Title & Transfer Costs	1,330	
Reserves for Title Clearance (Quiet Title Actions)	<u>16,000</u>	
		<u>162,606</u>

TOTAL		\$170,274
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DIFFERENCE		\$11,535
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Bank Account Balances August 15, 1985

*250 Tenant Deposits	\$1,455
Rental Management	9,469
*161 Estate Management	1,397
Reserves	16,000
FFSL Estate Savings	669
Total Balances	28,990
Less Tenant Deposits & Reserves	<u>(17,455)</u>
	\$11,535

Appendix 5

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CLALLAM COUNTY WASHINGTON SUPERIOR COURT

<p>In re the Estate of Jack Delguzzi, Deceased</p>	<p>No. 8087</p> <p>REPLY: RE MOTION FOR ORDER COMPELLING COMPLIANCE WITH R.C.W. 11.44.015 & 11.44.025 AND FOR CONFORMED COPIES OF TAX RETURNS</p>
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DECLARATION OF COUNSEL IN REPLY

I am of the age of majority and otherwise fully competent to testify as I do herein.

I make this declaration of my personal knowledge, except as otherwise herein stated.

1. Attached hereto is a table that compares the properties of the estate in August 1998 and the list that was submitted by Ms Ellis with her annual report of January 3, 2006. There are properties that appear on one but not the other of these two reports. There is considerable confusion about what assets of the estate exist, their identities and their values.
2. The 1998 report was prepared by a firm of independent appraisers hired by Mr. Wilbert. It is not known where the list of properties Ms Ellis used was obtained.
3. Despite Ms Ellis's speculation to the contrary, Gary Delguzzi never filed an Inventory and Appraisement during his period of service as executor of this estate.
4. As to the copies of the estate's 1041 income tax returns that lack signature pages, the only means known to the undersigned of authenticating them before trial is to

1 depose Ms Ellis. She has twice successfully resisted giving her testimony before
2 and if she were successful when her records deposition was attempted, it would
3 not be possible to authenticate the tax returns.

4 5. It is very bad practice to not maintain a record of the signature page of a tax return
5 to use for proof of filing in the event that the IRS should dispute the receipt of the
6 returns. If that should ever happen, Ms Ellis would be personally responsible for
7 the resulting penalties and interest.

8 Dated and signed under penalty of perjury pursuant to the laws of the state of
9 Washington at Seattle, on this 29th of June, 2006.

10

11

Charles M. Cruikshank III
12 Attorney for E. Sidney Shaw

13

MEMORANDUM IN REPLY

14

RCW 11.44.015(1) states, in part:

15

16 Within three months after appointment, unless a longer time shall be
17 granted by the court, every personal representative shall make and verify
18 by affidavit a true inventory and appraisal of all of the property of the
19 estate passing under the will or by laws of intestacy and which shall have
20 come to the personal representative's possession or knowledge, including a
21 statement of all encumbrances, liens, or other secured charges against any
22 item.

* * *

19

20 Ms Ellis was appointed in February of 2005. The 'every' in the statute is a totally
21 inclusive requirement. She is in violation of the statute. The penalty for violation of the
22 statute is found in

23

Part of RCW 11.44.025, follows:

24

25 * * * [T]he personal representative shall cause the property to be inventoried and
26 appraised and shall make and verify by affidavit a true inventory and appraisal
27 of the property within thirty days after the discovery thereof, unless a longer time
28 shall be granted by the court, and shall provide a copy of the inventory and
29 appraisal to every person who has properly requested a copy of the inventory
30 and appraisal under RCW 11.44.015(2).

27

She is slightly correct. She is not required to file the Inventory and Appraisal,

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but she is required to make it under oath and to serve it. If she does not wish to file it, all she needs to do is to request that it not be filed, for whatever reason she might have.

The sanctions for failure to comply with the Inventory and Appraisalment statutes are found at RCW 11.44.050, and include removal, denial of fees and liability on the fiduciary's bond. If not providing the sworn Inventory and Appraisalment is so important to Ms Ellis that she wishes to risk those penalties, one certainly must wonder what she is hiding to take such a risk.

Dated this June 29, 2006.

Charles M. Cruikshank III

Certificate of Service
Certificate of Service

I certify that I have caused to be faxed the below named parties/attorneys a copy of the foregoing on this 29th day of June 2006, at (206)624-2631.

Appendix 6

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR CLALLAM COUNTY

In Re of the Estate of)
JACK J. DELGUZZI.)
Deceased.)
GARY DELGUZZI.)
Plaintiff.)
v.)
WILLIAM E. WILBERT.)
et al..)
Defendants)

NO. 8087

DECLARATION OF CRUIKSHANK
IN SUPPORT OF MOTION FOR ORDER
TO SHOW CAUSE

1. My name is Charles M. Cruikshank III and I am over the age of majority, and fully competent as to all matters herein. I am the attorney for Gary Delguzzi and have been so since 1994.
2. I make this declaration in support of the order to show cause and I am authenticating the documents attached as exhibits to the declaration of Gary Delguzzi herein.
3. Exhibit A-1 is a copy of the quitclaim deed from Cascade Investment Properties, Inc. to William E. Wilbert-Broker, Inc. dated September 28, 1983, as recorded in Clallam County, Washington recorder's office on November 18, 1993.
4. Exhibit A-2 is the statutory warranty deed wherein Jack and Gary Delguzzi acquired the 813 East Front Street property on 11 July 1977, subject to the Smith mortgage which was payable to First Federal Savings and Loan.
5. Exhibit A-3 is a copy of the statutory warranty deed from "Gary Delguzzi, as his separate estate; and William E. Wilbert, administrator of the estate of Jack Delguzzi", to Cascade Investment

EXH 2

Charles M. Cruikshank III
108 S. Washington St. 306
Seattle, Washington 98104
(206)624-6761 WSB 6682

1 Properties Incorporated dated 26 February 1991, as well as the underlying promissory note dated
2 February 25, 1991 and the closing statement for that property dated 28 February 1991, as well
3 as the estate summary of the transaction, and the recorded assignment of leases and rent dated
4 26 February 1991.

- 5 6. Exhibit A-4 is the statutory warranty deed from William E. Wilbert-Broker, Incorporated to
6 Laurence M. Dempsey and the letter from Laure Anne Wilbert of Hemisphere Properties,
7 Limited dated February 21, 1997 to Clallam Title Company regarding the terms and payoff of
8 the principal balance on the Dempsey assumption.
- 9 7. Exhibit A-5 is motion, affidavit, and order quieting title entered on 5 December 1997.
- 10 8. Exhibit A-6 is a copy of the check from Clallam Title Company to Clallam County Superior
11 Court for the payoff of the principal balance owed to Gary Delguzzi and to the estate dated
12 January 13, 1998.
- 13 9. Exhibit A-7 is a spreadsheet showing the current value of payments received on 813 Front Street
14 and how such value was calculated.
- 15 10. Exhibit A-8 is a copy of the First Federal check for payment from Clallam Title for the
16 underlying Smith mortgage on 813 East Front Street.
- 17 11. Exhibit A-9 is a copy of the May 19, 2000 letter of Mr. Wilbert to the Clallam County Clerk
18 demanding payment of the 813 East Front Street sale proceeds.
- 19 12. Exhibit B-1 is a copy of the settlement agreement dated 25 July 1984 between Mr. Wilbert and
20 Mr. Hamlin, acting as respective administrators of the estate of Jack Delguzzi and Bruno
21 Delguzzi. Page 5 of that Exhibit details the funds of Gary Delguzzi held at the title company.
- 22 13. Exhibit B-2 is a computation of the amount owed to Gary Delguzzi on the Bruno settlement
23 transaction and the comments that explain that page 12 of Exhibit B-1 directs that \$90,000.00
24 be paid to the IRS. Review of the transcript of Federal estate taxes obtained from the IRS shows
25 no such payment received in 1984 and that the alleged amount of \$49,000.00 was not added as
26 an amount due from Gary Delguzzi related to the Estate court-ordered accountings for 1984.
- 27 14. Exhibit C-1 consists of copies of the closing statement and Estate's records of the Turnbow
28 transaction, which was the sale from Peninsula Monarch, Inc., Gary Delguzzi's solely owned

corporation, to Mr. and Mrs. Nyhus.

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15. Exhibit C-2 is a copy of the summary of the calculations of the amount owed to Gary Delguzzi on the Turnbow sale. It states that the records of Peninsula Monarch do not reflect receipt of a \$30,000.00 trade property, and such amount is therefore not included in the calculation and that the alleged payment of \$28,000.00 to the IRS and the Washington Department of Revenue are not reflected in the court-ordered accountings and so are not considered in the calculations. There is a notation in the court-ordered accountings for June 15, 1984 that \$75,000.00 was received as a loan from the trust of Gary Delguzzi Delguzzi relating to this sale, but the escrow documentation does not show this amount. The real estate commission of 10 percent reflected on the escrow statement is not considered as there is no evidence of a real estate listing agreement.
16. Exhibit D-1 is a copy of the earnest money receipt and agreement of June 14, 1982 on the "Little property", where this jointly held property of Gary Delguzzi and his late father was agreed to be sold by Gary Delguzzi while he was still personal representative of the estate.
17. Exhibit D-2 is a copy of Wilbert's transaction summaries and documentation for this sale showing that the sale closed on September 13, 1982 and that an adjustment was made on September 22, 1982 and shows Gary Delguzzi's signature individually and a signature line for Mr. Wilbert as 'personal representative'. Mr. Wilbert assumed the office of Estate Administrator on August 12, 1982.
18. Exhibit E-1 is a copy of the closing summary prepared by William E. Wilbert and signed by Gary Delguzzi and Wilbert dated 25 July 1983. It does not include any substantiation for the "out-of-pocket expenses" of Nyhus and that amount is not considered in the calculation of the amount due to Gary Delguzzi nor is the payment to Wilbert of \$9,700.00 as there is no evidence of his entitlement to such commission, although titled as "administrative expense".
19. Exhibit E-2 is a summary of the calculation of the amounts owed to Gary Delguzzi on this transaction.
20. Exhibit F-1 is a copy of the sworn Supplement to Final Report and Petition for Decree of Distribution, pages 45 and 46, signed by William E. Wilbert pursuant to his petition for fees and

filed in this court on December 12 1996.

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21. Exhibit F-2 is a copy of the "Transfer of an Estate in Fee Simple", dated 4 November 1986, as filed in and obtained from the British Columbia Area Assessor government office showing that Wilbert took the full ownership of the Northland Properties, Inc. 40 acre parcel in the Malcolm Island, British Columbia. In its upper right corner, it shows the market value of an undivided one half interest to be \$33,000.00, or a total value of the property as \$66,000 CDN, nearly six times the value assigned to it by Mr. Wilbert's sworn Supplement to Final Accounting.
22. Exhibit F-3 is a copy of the "Freehold Transfer" wherein Wilbert transferred the Malcolm Island property to Silvertip Land Corporation on December 15, 2000 for the sum of \$300,000.00 CDN, also obtained from British Columbia Area Assessor government office.
23. Exhibit F-4 is a table showing the calculation of the amount due to Gary Delguzzi for his interest in the Malcolm Island property by virtue of his ownership of 34% of the common stock of Northland Properties, Inc. In 1986, at the time Mr. Wilbert took it from the Estate at a fraction of its actual value.¹
24. I retained Certified Public Accountant David Martin to assist with valuation matters related to Cedarwood Properties, Inc. and he prepared and signed the Valuation Report included here with to value Gary Delguzzi's interest in Cedarwood Properties, Inc. The value he reached for Mr. Delguzzi's interest as of October 10, 2003 is \$2,423,414, per the enclosed Report.

19 Further, your declarant sayeth naught.

20 Dated this 20th of October 2003.

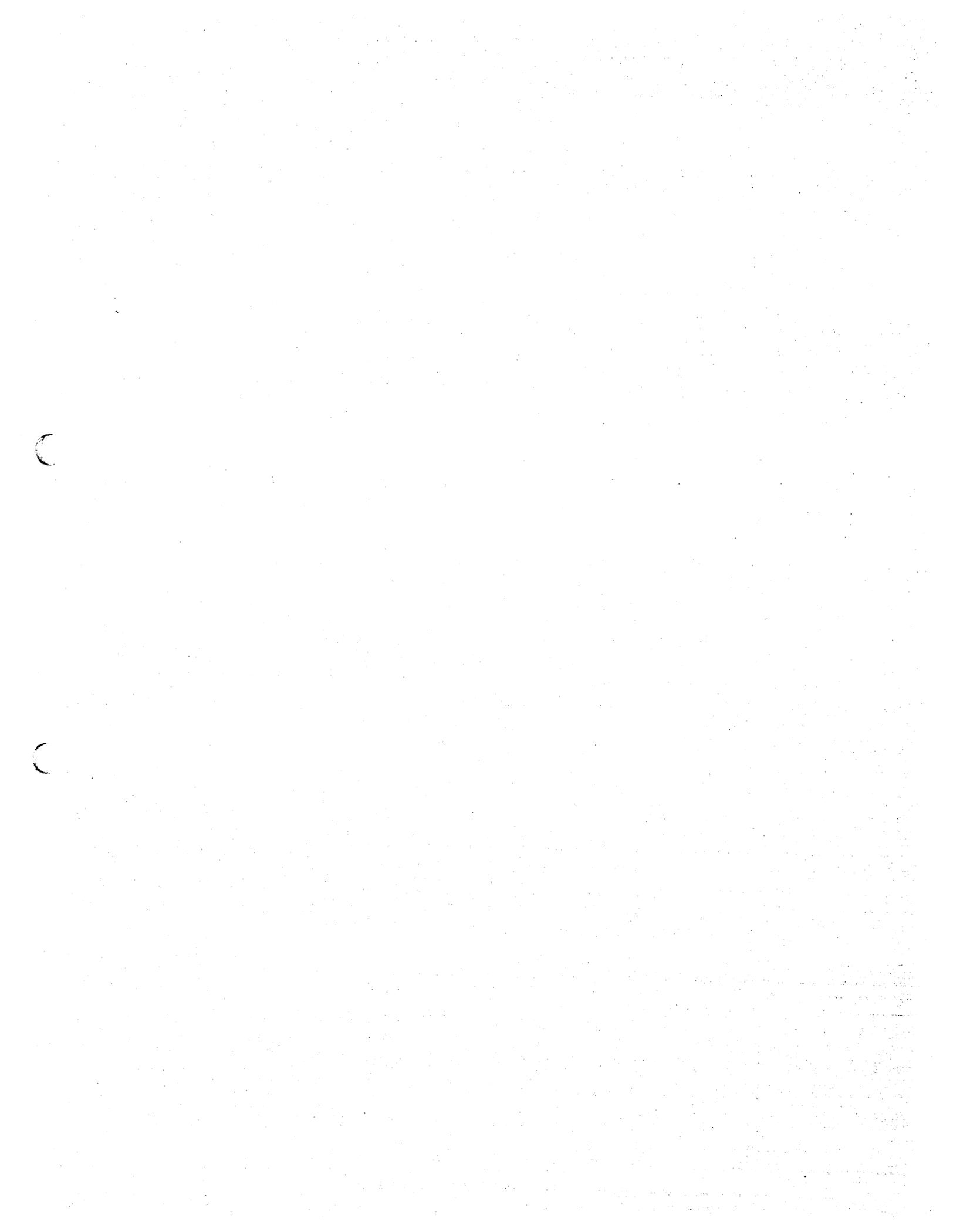
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22 Charles M. Cruikshank III

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¹ This is not the first or last time that Mr. Wilbert has taken Estate properties for his fees and dramatically undervalued their value. See the Memorandum Opinion of Judge Grant Meiner dated March 22, 1984, where Judge Meiner found that Wilbert had transferred an Estate property to himself at a value of only \$120,000 while its appraised value was \$180,000. This was the transaction that cost Mr. Wilbert his non-intervention powers as Administrator.

Summary of Delguzzi Claims

	<u>Total Claim</u>	<u>Gary Delguzzi Claim</u>	<u>Estate of J. Delguzzi Claim</u>
Cedarwood Properties, Inc.	\$ 7,430,461	\$ 2,413,414	\$ 5,017,047
813 Front	435,552	217,776	217,776
Bruno Settlement	290,700	290,700	-
Turnbow	224,904	224,904	-
Little Property	143,722	71,861	71,861
Elwha Property	312,030	104,010	208,020
Malcolm Island	301,425	102,485	198,941
Total	\$ 9,138,795	\$ 3,425,150	\$ 5,713,645



TRANSAMERICA
TITLE INSURANCE COMPANY

696508

THIS SPACE PROVIDED FOR RECORDING PURPOSES
RECORDED IN RECORDS CLERK'S OFFICE
93 NOV 18 PM 11 48
VOL 1030 PAGE 147
HARRY HODDY, AUDITOR
CLALLAM COUNTY, WASH.
BY AS DEPUTY

696508

FILED FOR RECORD AT REQUEST OF
NO. 21004
CLALLAM COUNTY
TRANSACTION EXCISE TAX
PAID NOV 16 1993
AMOUNT
COUNTY TREASURER
BY [Signature]

WHEN RECORDED RETURN TO
NAME [Signature]
ADDRESS 824-B E. 6th St.
CITY, STATE, ZIP PORT ANGELES, WA 98362

Quit Claim Deed

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 foreclosure conveys and quit claims to William E. Wilbur - 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, Gene Wilfly, rental & security deposits and keys.

Dated September 23, 1993

CASCADE INVESTMENT PROPERTIES INC.
(Individual)
By [Signature] PRES.
(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 23 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.
Witness my hand and official seal hereto affixed 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

7

Exhibit A-1

WHEN RECORDED RETURN TO

AMOUNT COUNTY TREASURER BY *[Signature]*

CLALLAM COUNTY, WASH. BY *[Signature]* DEPUTY

696508

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 claims to *William E. Wilkint - 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, *Gene Wilfley*, rental & security deposits and keys.*

Dated *September 23*, 19*93*



CASCADE INVESTMENT PROPERTIES, INC.
By *[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 *23* 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 _____ 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 _____ preferred 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____.

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

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: *10-21-95*

C

C

473.035 78 3-9



SECURITY TITLE INSURANCE COMPANY
OF WASHINGTON
1109 SECOND AVENUE • SEATTLE, WASHINGTON 98101 • MAIN 3-0870

THIS SPACE RESERVED FOR RECORDER'S USE
William F. Smith
1977-3 11:07
494 668
Sharon Paul

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

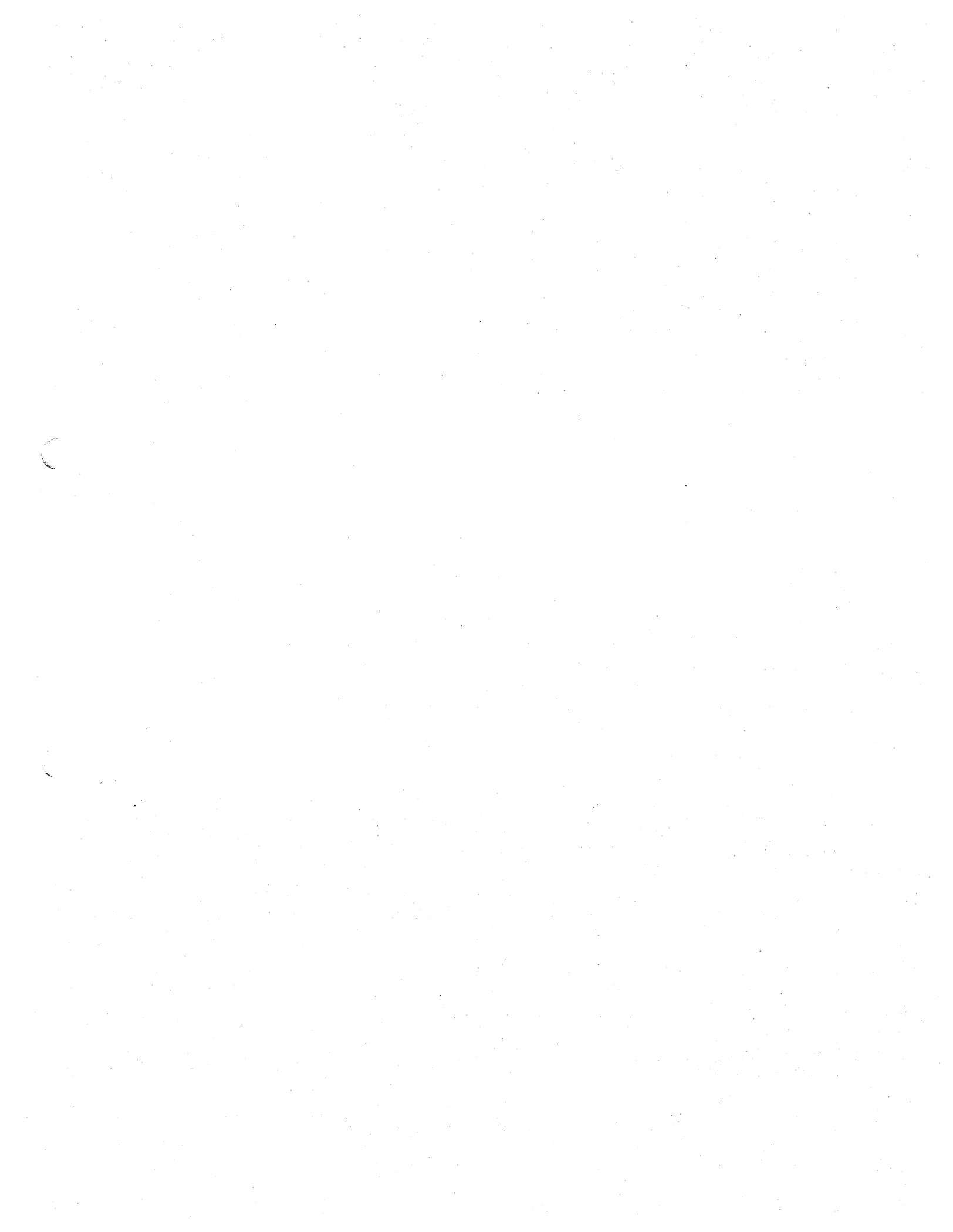
PAID AUG 3 - 1977

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

Dated this 11th

day of July 1977

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



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

Statutory Warranty Deed

FORM L-58 (3-84)

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

DATED THIS 25TH DAY OF FEBRUARY, 1991.

By By

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

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

COUNTY OF } ss
COUNTY OF } ss

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

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

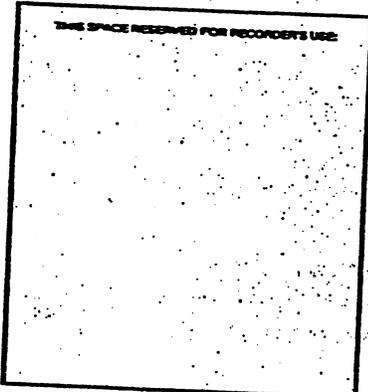
Notary Public in and for the State of Washington, residing at My appointment expires on

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



REVENUE STAMPS

M-59852-TE

Statutory Warranty Deed

FORM L-68 (3-84)

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 25th DAY OF FEBRUARY, 1991.

CASCADE INVESTMENT PROPERTIES, INC.

[Signature]
 BY: **FERRY A. FELL, PRESIDENT**

DATED THIS 25TH DAY OF FEBRUARY, 1991.

By _____ By _____

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

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 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.
 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 _____

Notary Public in and for the State of Washington, residing at _____
 My appointment expires on 909 622

647649

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\$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. Payments. 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 is 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

PROMISSORY NOTE

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.

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

William E. Wilbert COPY
 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

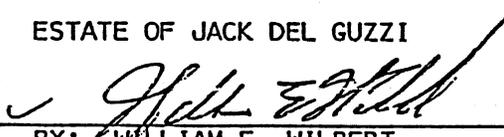
CONTINUED

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 7th DAY OF FEBRUARY, 1991.



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

ESTATE OF JACK DEL GUZZI


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

LEGAL: 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

M-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 DelGuzzi, under Probate No. 8087, hereinafter designated "Assignee", the Lessor's interest under each and every lease or rental agreement, now existing or hereinafter made, affecting 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 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 Forms 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 collection 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.

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 "X" 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.

IN WITNESS WHEREOF, Assignor has executed this instrument this 26th day of February, 1991.

CASCADE INVESTMENT PROPERTIES, INC.

BY: Terry Fell
TERRY FELL, President

Terry Fell
TERRY FELL Individually

647653

STATE OF WASHINGTON)
COUNTY OF CLALLAM) ss.

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 FELL, 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.

[Signature]
Notary Public in and for the State of Washington, residing at Los Angeles.
My commission expires 12-15-92.

STATE OF WASHINGTON)
COUNTY OF Clallam) ss.

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 FELL, 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.

[Signature]
Notary Public in and for the State of Washington, residing at Los Angeles.
My commission expires 12-15-92.

647653

PIEVEER TITLE CO.

91 MAR -4 10 3 73

SA.

647653

110.3 LeasRent

VOL 909 PAGE 640

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 at Request of

AFTER RECORDING MAIL TO:

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

P-1132 / 65110 CMC

THIS SPACE RESERVED FOR RECORDING USE

711073

CLALLAM TITLE COMPANY
RECORDED IN THE COUNTY OF CLALLAM
94 AUG 19 PM 1:07
VOL 1066 195
MARY HUBBY, JUNIOR
CLALLAM COUNTY, WASH
BY SB DEPUTY

NO. 9 7500
CLALLAM COUNTY 1453 So.
TRANSACTION EXCISE TAX
PAID AUG 19 1994
AMOUNT 95000
COUNTY TREASURER
BY [Signature]

FORM L-58 (3-84)

Statutory Warranty Deed

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 "N" attached hereto for further terms and conditions.

Dated this 11th day of August, 1994

WILLIAM E. WILBERT-BROKER, INC.

By [Signature] 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 18th 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
and

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 both stated that
authorized to execute the said instrument, and that the seal affixed to the corporate
copy of said instrument.

Witness me, 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 1088 PAGE 195

Exhibit A-4



1998 1002978 Clallam County

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

98 JAN 16 AM 11:46
BY DMH DEPUTY

RETURN ADDRESS

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

69531246 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

C

C

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

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

I do not seek any other relief from the Court other than
execution of an Order in recordable form quieting title as
aforesaid. I seek no award of costs or attorney fees and would
intend to direct the closing escrow on the refinance to tender

MOTION FOR ORDER
QUIETING TITLE -4

Platt Irwin Taylor Colley Oliver & Moriarty
Attorneys at Law

403 South Peabody
Port Angeles, Washington 98362

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

DATED this 5 day of November, 1997.

Larry Dempsey
LARRY DEMPSEY Affiant

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

[Signature]
NOTARY PUBLIC in and for the State of
Washington residing at Squam.
My Commission Expires: 9/9/2001.
NOTARY PUBLIC
8-09-2001
STATE OF WASHINGTON

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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

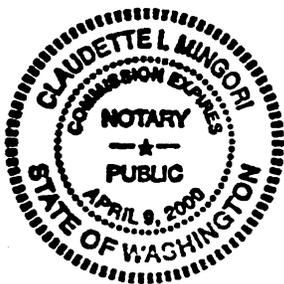
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accordingly, if that transaction is to close, a Court order quieting title is required.

DATE this 3rd of November, 1997.

Cheryl Nipcon
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

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 W. 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 By: B. JEFFREY CARL / WSBA 16710

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

8 By: CARL L. GAY / WSBA 4272
9 Greenaway, Gay & Angier

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

13 By: JOHN O. BURGESS / WSBA
Short, Cressman & Burgess

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

17 By: LARRY JOHNSON / WSBA 5786
18 Chicoine & Hallett, P.S.

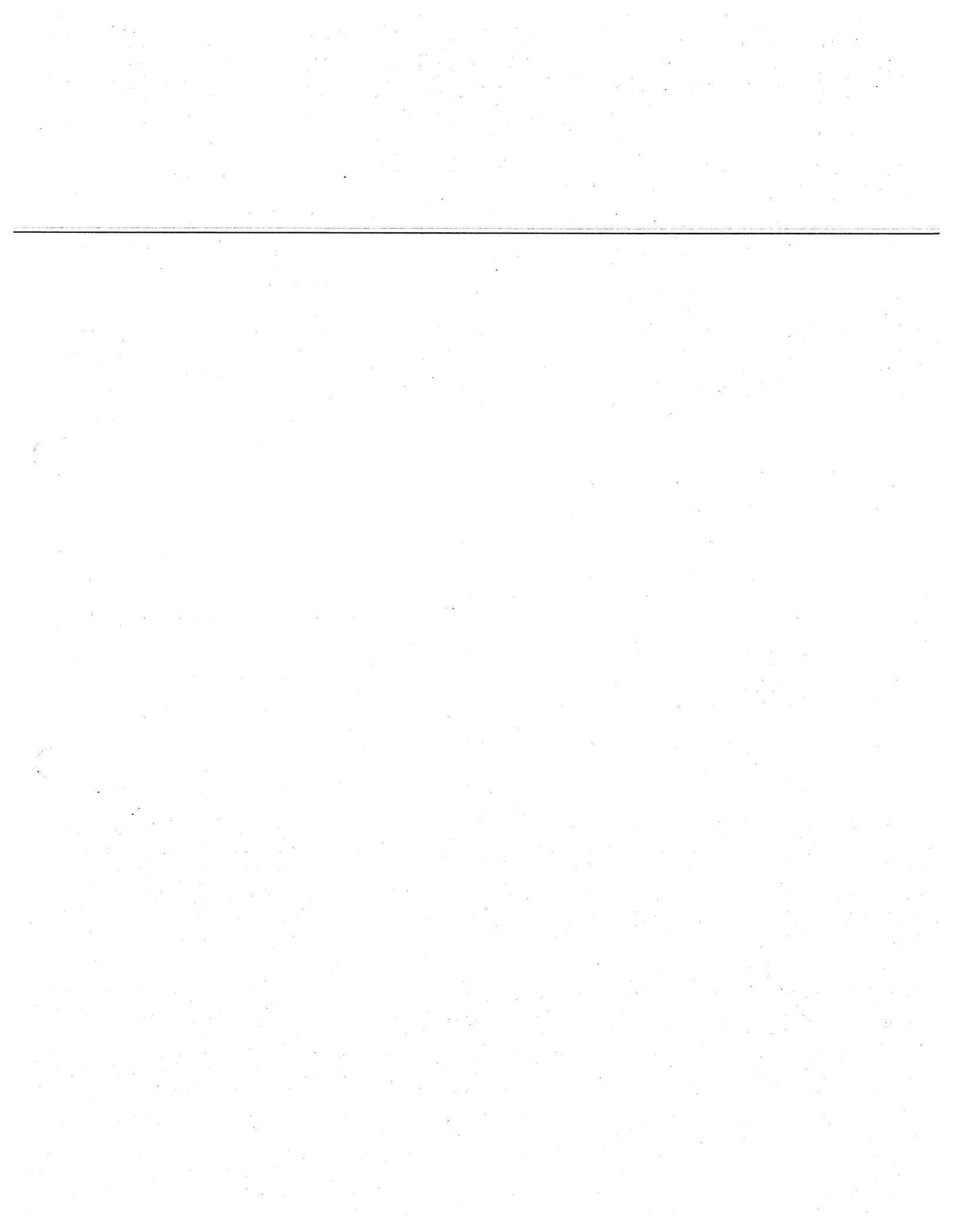
19 Copy received;
20 Approved as to form;
21 Notice of presentation waived:

22 By: Charles M. Cruikshank, III
23 Attorney at Law / WSBA 6682

24
25
26 ORDER QUIETING TITLE
AND DIRECTING ACCEPTANCE
OF FUNDS INTO THE
REGISTRY OF THE COURT -3

STATE OF WASHINGTON } SS
County of Clallam } CERTIFICATE OF CLERK
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 cause, 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 7
day of DEC 19 97
MOLLIE LINGVALL Clerk
By: D. R. [Signature] Deputy

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

DOLLAR

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

P-2464

NOT-NEGOTIABLE

AUTHORIZED SIGNATURE

⑈020508⑈ ⑆225000024⑆ 50521 715⑈

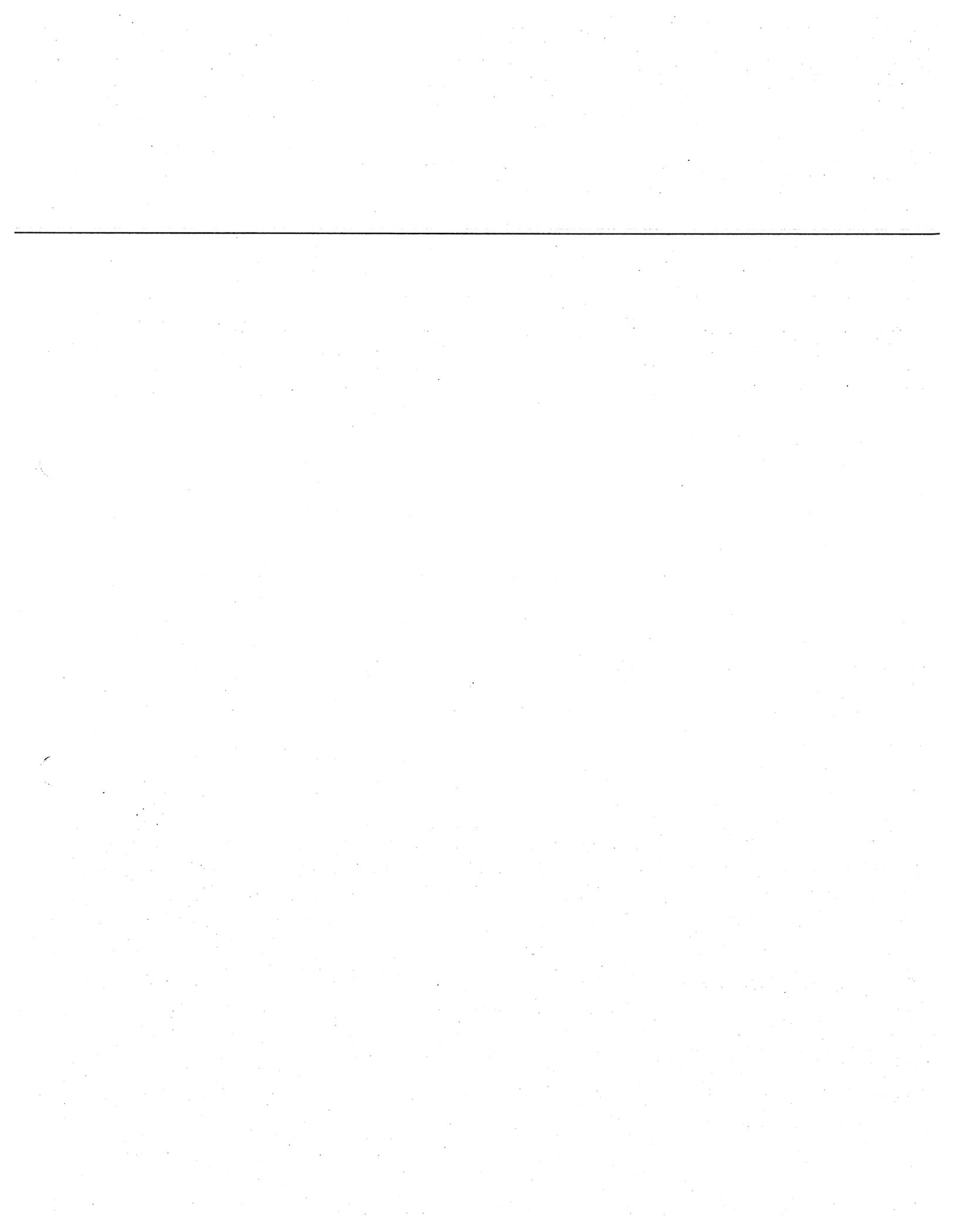
CLALLAM TITLE COMPANY
IOLTA ACCOUNT (PORT ANGELES)

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

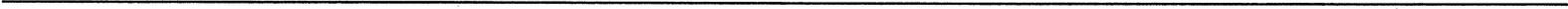


**Current Value of Payments Received on 813 E Front
Port Angeles, WA**

	10 Months							Jan. 13 1998	Total
	1991	1992	1993	1994	1995	1996	1997		
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) Smith payments	(2,060)	(2,472)	(2,472)	(2,472)	2,488	7,464	7,464	261	25,141
Payoffs: Smith Dempsey	-	-	-	-	-	-	-	(7,505)	(7,505)
	-	-	-	-	-	-	-	62,193	62,193
Interest on Liq. Amount @ 12% simple	27,408	18,672	16,806	48,696	18,672	18,672	18,672	55,304	222,902
Total Cash	38,919	24,274	19,831	51,618	17,552	15,311	13,070	32,076	212,651
Gary Delguzzi's Share @ 50%	66,327	42,946	36,637	100,314	36,224	33,983	31,742	87,380	435,552
									\$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



AUTHORIZED SIGNATURE

⑈020507⑈ ⑆125000024⑆ 50521 715⑈

Cheryl P. 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 4-8

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.

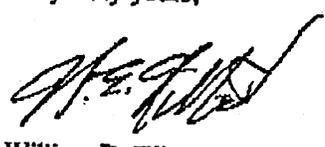
If you have any questions, please contact my attorney, Larry Johnson, at (206) 223-0800. If you need any additional information from me in order to release the funds, please make the request for that information through my attorney. The check should be made payable to "the Estate of Jack Delguzzi, William 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

FILED

AUG 14 1984

#8087

5500-012K
AGREEMENT ✓

AGREEMENT
AGREEMENT

AGREEMENT is made this 25th day of July, 1984 by and between WILLIAM E. WILBERT, as Administrator w.w.a.d.b.n. of the estate of Jack DelGuzzi, Deceased, (hereinafter "Wilbert"), and DAVID O. HAMLIN, as Administrator d.b.n. of the estate of Bruno DelGuzzi, Deceased, (hereinafter "Hamlin"), each acting solely in his capacity as a Personal Representative and not individually.

RECITALS

On April 15, 1982 Findings of Fact, Conclusions of Law and Decree were entered in Clallam County Superior Court Cause No. 27717, entitled "Virginia DelGuzzi, Individually and as Personal Representative of the Community Property of the Estate of Bruno DelGuzzi, Deceased, Plaintiff, vs. Gary DelGuzzi, Individually and as Personal Representative of the Estate of Jack DelGuzzi, Deceased, and as Personal Representative of the Separate Property of the Estate of Bruno DelGuzzi, Deceased, Defendant" (hereinafter the "Decree").

Paragraph 6.2.2 of the Decree provides, in part:

"6.2.2 Bruno DelGuzzi shall be allocated the following cash amounts:

6.2.2(a) The sum of \$624,097.20 in cash. Of this amount, \$72,114.67 was received by the Bruno DelGuzzi Estate during Jack DelGuzzi's administration thereof; \$167,519.71 was received by the Bruno DelGuzzi Estate during Virginia and Gary DelGuzzi's administration thereof (\$33,132.40 of which was turned over to David O. Hamlin when he became Administrator of said Estate); and \$384,462.82 will be paid to David O. Hamlin by the Jack DelGuzzi Estate within thirty (30) days of the date hereof."

Paragraph 15.2 of the Decree provides as follows:

"15.2 All rights, title and interest of Bruno DelGuzzi, Jack DelGuzzi and the DelGuzzi Bros. partnership in the cash amounts identified in paragraphs 6.2.2 above are hereby vested in the Bruno

Exhibit B-1

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The entry of the Decree was preceded by the execution of a stipulation by the Personal Representatives of the estates of Jack DelGuzzi and Bruno DelGuzzi and other parties in interest. Paragraph 15 of the stipulation provides that the estate of Jack DelGuzzi will, upon the entry of the Decree, discharge the lien of a mortgage (hereinafter the "mortgage") held by First Federal Savings & Loan of Port Angeles on property awarded to the Bruno DelGuzzi estate by the Decree located at 821 E. Front Street, Port Angeles, Washington, Loan No. 0101008781. This mortgage is still unpaid, and has a principal balance of approximately \$9,300.00, with interest paid to July 1, 1984. Hamlin has advanced and paid \$400.00 on said mortgage covering the April, May, June and July, 1984 payments of principal and interest thereon.

There is presently pending King County Superior Court Cause No. 82-2-09036-1, entitled "David O. Hamlin, as Administrator d.b.n. of the estate of Bruno DelGuzzi, Deceased, Plaintiff, vs. Gary DelGuzzi, Individually and as Personal Representative of the estate of Jack DelGuzzi, Deceased, and DelGuzzi Construction, Inc., a Washington corporation, Defendants; and William E. Wilbert, as Personal Representative of the estate of Jack DelGuzzi, Additional Defendant." Notices of the pendency of said action have been recorded in the counties of King, Jefferson, Pacific, Grays Harbor, Island and Clallam in the State of Washington.

On June 10, 1983 Hamlin caused a Writ of Garnishment to be issued in said Clallam County Cause No. 27717 directed to and served upon Pioneer Title Company of Clallam County. By its answer to said Writ, Pioneer stated that at the time of the

service of the Writ the sum of \$41,301.96 plus interest was owing to the estate of Jack DelGuzzi; that such amount was withheld under instructions for payment of succession taxes against the estate of Jack DelGuzzi, and that the lien therefor is paramount to that of the Plaintiff in said action. No judgment has been entered as yet in said garnishment proceeding.

On or about September 23, 1983 Wilbert moved to quash said Writ of Garnishment, on the grounds that (1) there exists no judgment against the estate of Jack DelGuzzi, and (2) that in the event a judgment does exist, a party may not execute on a judgment against the Personal Representative of an estate by means of garnishment or otherwise under RCW 11.40.120. Said motion has been argued and determined adversely to Wilbert on both grounds, but no formal order has been entered as yet thereon.

An additional sum of approximately \$49,000.00 is being held by Pioneer Title Company of Clallam County arising out of and withheld from a sale or sales made by the Jack DelGuzzi estate and Gary DelGuzzi and closed subsequent to the service of the Writ of Garnishment, making a total sum in excess of \$90,000.00 now held by Pioneer on account of the lien for succession taxes on the estate of Jack DelGuzzi.

An attorney's fee of \$3,542.00 has been awarded to the estate of Bruno DelGuzzi by the Superior Court for Clallam County, Washington, in connection with certain proceedings had in the matter of the estate of Jack DelGuzzi relating to restriction of the non-intervention powers of the Personal Representative of the Jack DelGuzzi estate.

On June 12, 1984 Hamlin delivered to counsel for Wilbert a partial release of the Notice of Lis Pendens recorded

in Clallam County, Washington notifying of the pendency of said King County Superior Court Cause No. 82-2-09036-1. The real property so released is legally described as:

Lot 1, 2, 3, 4 and 5, Block 54, Townsite of Port Angeles, Clallam County, Washington, EXCEPT the westerly 37 feet of said Lot 5.

Such release was given pursuant to an agreement set forth in a letter written June 11, 1984 by counsel for Wilbert, and modified by Hamlin's letter of June 13, 1984.

Federal estate taxes and interest are owing and unpaid in both the Bruno DelGuzzi estate and the Jack DelGuzzi estate. The parties recognize that the agreement set forth below cannot be carried out unless the liens for succession taxes payable by the estate of Jack DelGuzzi are released with respect to the assets listed below.

The parties desire by this agreement to provide for payment of the indebtedness due the estate of Bruno DelGuzzi from the estate of Jack DelGuzzi, and to provide a means for payment of the Federal estate taxes owing on the estate of Bruno DelGuzzi. It is therefore

AGREED as follows:

1. Contingency. The duty of each party to perform each and every term of this agreement is contingent upon the Internal Revenue Service of the United States approving this agreement and either releasing or entering into a binding agreement to release each item of property listed in Paragraph 3 below from the lien for federal estate taxes, penalties, deficiencies, and interest which are or may be due to the United States from the estate of Jack DelGuzzi.

2. Indebtedness of the Jack DelGuzzi estate. The parties agree that as of July 1, 1984 the Jack DelGuzzi estate

was indebted to the Bruno DelGuzzi estate for the following items which are approximated where the exact balance is unknown:

a. Cash partitioned to the estate of Bruno DelGuzzi by decree entered April 15, 1982 in Clallam County Superior Court Cause No. 27717\ in lieu of specific assets of DelGuzzi Bros, a partnership, and of the rents, issues and profits thereof received by the Jack DelGuzzi estate, payable May 15, 1982.	\$384,462.82
b. Interest on the foregoing amount from May 15, 1982 to July 1, 1984 at 12% per annum. (Interest accrues at 12% per annum from July 1, 1984 until paid.)	98,069.58
c. Attorneys fees allowed by court.	3,542.00
d. Reimbursement of mortgage payments made through July, 1984, on mortgage encumbering 821 East Front Street, Port Angeles, Washington.	400.00
e. First Federal Savings & Loan Association, approximate balance due on mortgage encumbering 821 East Front Street. (Interest must be added from July 1, 1984)	9,300.00
Approximate total indebtedness to July 1, 1984:	\$495,774.40

3. Identification of Property. The real and personal property which shall be used to reduce or pay the above indebtedness and interest in full is as follows:

a. Cash on deposit to credit of Gary DelGuzzi, or the trust for Gary DelGuzzi, and the estate of Jack DelGuzzi at Pioneer Title Insurance Company of Clallam County in the approximate sum of	\$ 90,000.00
b. Vendor's interest in a Real Estate Contract in which the estate of Jack DelGuzzi is the seller and Ernest Gray is the purchaser, approximate balance on May 15, 1984 \$34,000.00, subject to a Real Estate Contract having an approximate balance of \$7,000.00, approximate value as of May 15, 1984	26,000.00
Carried forward:	\$116,000.00
Brought forward	\$116,000.00

c. A 25.5% interest in Northmount Associates, a partnership, having an estimated value of 200,000.00

d. Real property described as:

Lots 14 & 15, Block 20, Puget Sound Co-operative Colony's Second Addition to Port Angeles, Washington according to plat recorded in Volume 1 of Plats, page 12, records of Clallam County, Washington.

Estimated liquidation value 75,000.00

e. Other cash of the Jack DelGuzzi estate, to be applied to repayment of mortgage payments made by Hamlin on loan No. 0101008781, First Federal Savings & Loan of Port Angeles (\$400.00) and to satisfaction of said mortgage in full (approximately \$9,300.00) 9,700.00

f. Real property described as:

Lots 1 through 4, inclusive, and the east 15 feet of Lot 5, Block 38, Fogarty & Dolan's Addition to the Town of Port Angeles, Washington, according to plat thereof recorded in Volume 2 of Plats, page 18, records of Clallam County, Washington;

which property is subject to an unpaid L.I.D. assessment and has an estimated liquidation value of 30,000.00

g. Real property described as:

The north 120 feet of the west half of Lot 7 and of Lot 8 in Block 1 of Tideland West of Laurel Street., Townsite of Port Angeles, situated in Clallam County, Washington;

which property is subject to an unpaid L.I.D. assessment and has an estimated liquidation value of 65,000.00

\$495,700.00

TOGETHER WITH such other funds of the Jack DelGuzzi estate as are necessary to pay interest on its indebtedness of \$384,462.82 to the Bruno DelGuzzi estate under the Decree at 12% per annum, not included in Paragraph 2 above, and to pay in full all other items of indebtedness set forth in said Paragraph 2, irrespective of actual amounts received or credited on the indebtedness from the liquidation or other disposition of the assets listed above.

It is hereby agreed that the only interest payable by the Jack DelGuzzi Estate to the Bruno DelGuzzi Estate shall be simple non-compounded interest payable on the principal sum of \$384,462.82 only.

4. Transfer or Sale of Property.

a. Wilbert agrees to forthwith commence all reasonable efforts to sell for cash Item c, d, f and g listed in Paragraph 3 above. Hamlin authorizes William E. Wilbert-Broker, Inc. to act as Wilbert's agent for the sale of the properties and contracts currently held by Wilbert for the benefit of the Bruno DelGuzzi estate pursuant to the terms of this agreement. William E. Wilbert-Broker, Inc. will be entitled to the usual and customary commissions for its efforts in selling these properties and contracts with such commission to be paid from the proceeds of the sales thereof. It is agreed by Wilbert and Hamlin that a 10% commission for the sale of unimproved land and a commission of 7% on the first \$100,000 and 3-1/2% on the remainder of the sale price for the sale of improved commercial or residential property shall be considered the usual and customary commission. William E. Wilbert-Broker, Inc. shall act as the agent for the sale of these properties on a non-exclusive basis, and Wilbert intends to engage the services of other

realtors on a non-exclusive basis on some or all of the properties and contracts. In no event will the aggregate commission on a sale of any of the property or contracts exceed the usual and customary commission set forth above. If a sale is made to a prospective purchaser introduced to Wilbert by any person other than a licensed real estate broker or agent, no commission shall be payable.

b. Hamlin shall have 30 days from the date of this agreement to elect whether or not to accept a conveyance of Item b in Paragraph 3 above. If Hamlin fails to mail written notice of an election to accept a conveyance of Item b to Wilbert within said period, Wilbert shall, on the expiration of said 30 days, commence all reasonable efforts to sell this item for cash.

If Hamlin elects to accept Item b in lieu of cash, conveyance thereof shall be by special warranty deed and assignment of real estate contract, subject only to the underlying real estate contract, easement, restrictions and reservations of record, and in such event Wilbert shall at the sole cost and expense of the Jack DelGuzzi estate obtain and deliver to Hamlin a standard form policy of title insurance issued by Ticor Title Insurance Company insuring the title so conveyed and subject to no exceptions other than those appearing in the standard printed form of said policy, and those set forth above in this sub-paragraph b. If title is not so insurable, Hamlin shall not be obligated to accept a conveyance and this item shall be sold.

The credit allowable against the indebtedness of the Jack DelGuzzi estate in the event Hamlin elects to accept a conveyance of Item b shall be the difference between the unpaid

balance receivable on the Gray contract, and the unpaid balance owing on the underlying contract, but in no event more than \$26,000.00.

5. Application of Payments or Credit.

a. Cash payments. As between the parties hereto, all cash payments made by Wilbert under this agreement, exclusive of the payment to be made directly to First Federal Savings & Loan of Port Angeles in satisfaction of Mortgage Loan No. 0101008781 shall be applied as follows:

1. First, to interest accruing to date of payment on the indebtedness of \$384,462.82 under the Decree;

2. Second, after said interest is fully paid, to payment of the \$400.00 advanced by Hamlin on said First Federal Savings & Loan Association of Port Angeles mortgage, together with any payments Hamlin advances thereon subsequent to the date of this agreement;

3. Third, to payment of the attorney's fee of \$3,542.00 listed above; and

4. Fourth, to the principal of the indebtedness of \$384,462.82 under the Decree.

b. Credit. If Hamlin elects to accept a conveyance of the Ernest Gray contract, Item 3(b) above, the credit for such conveyance shall be applied against the principal of the indebtedness of \$384,462.82 accruing under the Decree.

6. Payment of Liquidation Proceeds.

a. Time of Payment. The net proceeds of the sale of each item of property sold hereunder shall be due and payable to Hamlin at the closing of each sale. Wilbert agrees to instruct

the agent closing each sale to remit the net proceeds thereof in the manner set forth below.

b. Prior to Payment of Bruno DelGuzzi Estate Taxes.

Until Hamlin notifies Wilbert that all estate tax, deficiency and interest owing to the United States by the estate of Bruno DelGuzzi has been paid, all of the net proceeds of sales of property, and all cash payable hereunder by the Jack DelGuzzi estate, exclusive of the payment to be made directly to First Federal Savings & Loan of Port Angeles in satisfaction of its mortgage, shall be remitted by check or draft payable jointly to the order of the Internal Revenue Service and to David O. Hamlin, Administrator d.b.n. of the estate of Bruno DelGuzzi, Deceased. If a remittance to be made hereunder exceeds the amount then owing by the Bruno DelGuzzi estate on account of such estate tax, deficiency and interest, remittance shall be by two checks, one payable jointly as above set forth to the Internal Revenue Service and to Hamlin in the amount of the unpaid estate tax, deficiency and interest, which amount Hamlin agrees to furnish Wilbert, and the other, for the balance of such remittance, shall be payable to the order of David O. Hamlin, Administrator d.b.n. of the estate of Bruno DelGuzzi, Deceased.

Hamlin agrees to promptly endorse all checks or drafts jointly payable and to deliver them to the Internal Revenue Service for application on the estate tax deficiency and interest owing by the Bruno DelGuzzi estate.

c. After Payment of Bruno DelGuzzi Estate Taxes.

After all estate taxes, deficiency and interest owing by the Bruno DelGuzzi estate are fully paid, all cash remittances payable hereunder shall be made to David O. Hamlin,

Administrator d.b.n. of the estate of Bruno DelGuzzi.

7. Deficiencies in Liquidation Proceeds. If the net proceeds of the sale of any item of property is less than the estimated value thereof set forth in Paragraph 3 above, Wilbert shall, simultaneously with remittance of the net sale proceeds, pay to Hamlin in the manner required under Paragraph 6 above, the amount by which the estimated value of such property set forth in Paragraph 3 exceeds the sale proceeds.

If, after all property listed in Paragraph 3 above has been sold or otherwise disposed of, there remains an unpaid indebtedness of principal and/or interest for the items listed in Paragraph 2 above, then upon the closing of the sale of the last item of property to be sold, Wilbert shall pay to Hamlin the entire then unpaid balance of such indebtedness and/or interest thereon.

8. Accounting.

At the closing of each sale of property occurring hereunder, Wilbert shall furnish to Hamlin an accurate copy of the closing statement showing each item of debit and credit incurred in the making of such sale.

9. Garnishment Proceedings.

Hamlin shall cause an order to be prepared and entered awarding him judgment against Pioneer Title Company of Clallam County for the \$41,301.96 plus interest sequestered by the Writ of Garnishment issued June 10, 1983 in Clallam County Cause No. 27717, and directing that the same be remitted to Hamlin by the garnishee defendant by check payable jointly to the order of the Internal Revenue Service and David O. Hamlin, as Administrator d.b.n. of the estate of Bruno DelGuzzi, Deceased, upon the Internal Revenue Service releasing such funds for this purpose.

As soon as possible after the entry of said order, and after the Internal Revenue Service likewise releases the additional \$49,000, more or less, and interest held by Pioneer Title Company of Clallam County for the account of the Jack DelGuzzi estate, and/or for Gary DelGuzzi, Wilbert agrees to instruct said title company to remit such additional funds and interest to Hamlin by check payable jointly to the Internal Revenue Service and to Hamlin as such administrator as above set forth.

Hamlin agrees, on receipt of such checks, to promptly endorse them and deliver the same to the Internal Revenue Service for application on the indebtedness of the Bruno DelGuzzi estate for estate tax, deficiency and interest.

10. Disposition of King County Action.

Upon and after the entry of an order in Clallam County Cause No. 27717 denying Wilbert's motion to quash Hamlin's Writ of Garnishment and establishing the Decree as a money judgment upon which writs of execution, garnishment and other process may issue as in other money judgments, the parties agree that a stipulated judgment may be entered in said King County Superior Court Cause No. 82-2-09036-1:

a. Awarding Hamlin judgment against DelGuzzi Construction, Inc., a corporation, in the sum of \$1,659.99, covering 1981 taxes on 1020 E. Front Street, (\$2,507.93) plus interest of \$652.06 paid to Clallam County by Hamlin on said taxes, less a rent overpayment of \$1,500.00, and providing no execution shall issue thereon nor supplemental proceedings be had thereunder for a period of six months following the entry of such judgment;

b. Directing the Personal Representative of the estate of Jack DelGuzzi to forthwith pay and satisfy the mortgage held by First Federal Savings & Loan of Port Angeles on the real property at 821 E. Front Street, Port Angeles, Washington;

c. Dismissing all causes of action asserted by the plaintiff in said action other than the third and fourth causes of action, upon which judgment is to be entered, without prejudice and without the award of costs to any party;

d. Expressly directing cancellation of the six Notices of Lis Pendens recorded in connection with said action; and

e. Dismissing all counterclaims of the defendants in said action as against the estate of Bruno DelGuzzi, Deceased, and/or the Personal Representative thereof, with prejudice and without the award of costs to any party hereto, but reserving unto the said defendants the right to assert all claims pleaded in said defendants' counterclaim against any and all persons other than the estate of Bruno DelGuzzi, Deceased, and/or the Personal Representative thereof.

After the entry of such stipulated judgment Wilbert shall be free to record certified copies thereof in each county wherein said Notices of Lis Pendens were recorded.

Wilbert agrees that he will not appeal the order to be entered in Clallam County Cause No. 27717 denying his motion to quash Writ of Garnishment and establishing the Decree as a money judgment, and Hamlin shall have the right to rely thereon as a

final determination.

11. Release of Judgment Lien.

Promptly after the execution of this agreement and after the Internal Revenue Service has made a binding agreement to release all of the assets listed in Paragraph 3 above from its lien for estate tax, deficiency, and interest owing by the Jack DelGuzzi estate, Hamlin agrees to release from the lien of the Decree the real property listed in Paragraph 3 above and the property described on Exhibit A attached hereto and incorporated herein by this reference. Thereafter, as any other real property of the Jack DelGuzzi estate is sold by Wilbert, Hamlin agrees to promptly release such property from the lien of the Decree when requested to do so by Wilbert, which agreement to release shall be binding and automatic during the first two years of the date of this Agreement. Following the filing by Wilbert of his annual report for the Jack DelGuzzi Estate for the year ending August 15, 1985, which is to be filed within sixty (60) days thereafter, Hamlin shall receive prior notice of the hearing date set for the Court's consideration of such annual report, and Hamlin may, at such hearing, ask the Honorable Grant S. Meiner, one of the judges of the Clallam County Superior Court, or such judge to whom the matter may be assigned, to review the disposition of properties, distribution of assets and status of the Jack DelGuzzi Estate, and request the Court to consider the said Estate's progress as to property dispositions, and to consider directing the Personal Representative of the Jack DelGuzzi Estate to furnish other or different security to the Bruno DelGuzzi Estate, if appropriate under all of the circumstances. The Court will be requested to make a finding as to the Estate's progress in disposing of the

properties and to consider what, if any, requirements should be placed upon the Estate insofar as its obligations to the Bruno DelGuzzi Estate and any other obligees in accordance with the Court's legal and equitable powers. Thereafter, at the end of the second year from the date of this agreement, when the Estate is obligated to file an additional annual report with the Court, ~~the same procedure should be followed as indicated above,~~ following the filing of the first annual report.

If any of the real property of the Jack DelGuzzi estate is sold by Wilbert on real estate contract, the written release of the lien of the Decree shall be executed by Hamlin and deposited in escrow to be delivered to the purchaser for recording when the purchaser has fully fulfilled his obligations under the real estate contract.

All instruments of release shall be prepared and recorded, where necessary, at the sole cost and expense of the Jack DelGuzzi estate, the form of which shall be subject to Hamlin's approval, which shall not be unreasonably withheld.

Upon full performance of all of the terms and conditions of this agreement by Wilbert, Hamlin agrees to satisfy the judgment contained in the Decree.

12. Modification of Orders.

Promptly after the execution of this Agreement, the parties agree that an Agreed Order shall be entered in Clallam County Superior Court Cause No. 8087 approving this Agreement, superseding that certain "Agreed Order Providing Information to Estate of Bruno DelGuzzi" entered in said cause on or about September 30, 1983, and constituting entry of an order on the hearing held in Open Court the 15th day of March, 1984. The parties agree that this Agreed Order to be entered shall in addition to decreeing the approval of this Agreement and the

supersession of the September 30, 1983 Agreed Order, provide as follows:

- a. The Estate of Jack DelGuzzi shall provide at quarterly intervals to the Estate of Bruno DelGuzzi, accounting summaries of receipts and disbursements which have occurred during the previous quarter and the checking and receipt registers and other documents reflecting expenditures and income for the previous quarter.
- b. Each time the Administrator of the Estate of Jack DelGuzzi requests the Administrator of the Estate of Bruno DelGuzzi to release a specific item of real property of the Jack DelGuzzi Estate from the lien of the judgment contained in the Decree in connection with a sale of such item, the Administrator of the Estate of Jack DelGuzzi shall furnish the Administrator of the Estate of Bruno DelGuzzi in writing the legal description of the real property being sold, the name of the purchaser, the sale price, and the terms of sale.
- c. The Administrator of the Estate of Jack DelGuzzi shall file quarterly reports with the Court, detailing the amount and kind of property, both real and personal, which the Administrator has received on behalf of the Estate, as well as the disposition of all such property. In addition, said quarterly report shall give a detailed statement of all sums collected by the Administrator and all sums paid out by him. In addition, said quarterly report shall detail such other matters as may be proper or

necessary to give the Court full information regarding any transactions which the Administrator has entered into or which he should enter into. The Administrator shall serve a copy of said report upon Hamlin and his counsel, Henry C. Jameson.

d. The Administrator of the Estate of Jack DelGuzzi shall file a full and complete accounting of his administration of said Estate from August 13, 1982, to the date of such accounting. Said accounting shall be filed with the Court no later than June 29, 1984.

e. The Administrator of the Estate of Jack DelGuzzi shall submit to the Court for approval a plan or schedule for payment of \$384,462.82, plus interest thereon at the rate of 12 percent per annum from May 15, 1982 to date to the Estate of Bruno DelGuzzi. Said plan or schedule shall be filed with the Court no later than June 30, 1984.

f. The Administrator of the Estate of Jack DelGuzzi shall pay reasonable costs and attorneys' fees to Hamlin in the sum of \$3,542.00.

The parties hereto have not agreed to the remaining provision to be entered in the Agreed Order. Therefore, it is agreed by the parties that Hamlin shall have the right to request the Court to order the following:

The Administrator of the Estate of Jack DelGuzzi shall secure prior approval of the Court before making any disbursements from said Estate in payment of attorneys' fees, accounting fees and fees of the Administrator for his services as such, (as

distinguished from clerical and office expenses).

Hamlin agrees that he shall not request the Court to restrict payment of administrative costs other than as set forth above.

In addition, Wilbert shall have the right to request the Court not to so restrict the payment of attorneys' fees, accounting fees and fees of the administrator, but to instead order the following:

On every sale of property of the Estate of Jack DelGuzzi, other than the sale of the property listed in paragraph 3 of the Agreement between the Administrator of the Estate of Jack DelGuzzi and the Administrator of the Estate of Bruno DelGuzzi dated the 25th day of July, 1984, the net proceeds to the Estate of Jack DelGuzzi of each such sale will be distributed as follows:

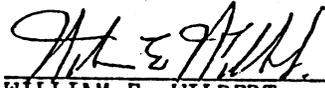
- (1) U.S. Internal Revenue Service: 55%;
- (2) Washington Department of Revenue: 15%;
- (3) Secured lending institutions: 15%;
- (4) Estates of Bruno DelGuzzi and John DelGuzzi, Margaret Shaw, and Catherine Meyer: 5%;
- (5) Administrative costs, including attorneys' fees, accounting fees and fees of the Administrator for his services as such: 10%. Except for payment of such fees from this 10% of the net proceeds of sales of property, the Administrator of said Estate shall secure prior approval of the Court

before making any other disbursements
from said Estate in payment of
attorneys' fees, accounting fees and
fees of the Administrator for his
services as such.

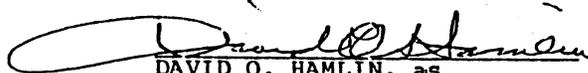
13. Binding on Successors.

This agreement shall be binding upon and inure to the
benefit of the parties hereto, their successors in interest, the
legatees and devisees of the Jack DelGuzzi estate, and the heirs
of the Bruno DelGuzzi estate.

IN WITNESS WHEREOF the parties have executed this
agreement the day and year first above set forth.



WILLIAM E. WILBERT, as
Administrator w.w.a.d.b.n. of
the Estate of Jack DelGuzzi,
Deceased and not individually



DAVID O. HAMLIN, as
Administrator d.b.n. of the
Estate of Bruno DelGuzzi,
Deceased and not individually

STATE OF WASHINGTON)
) SS.
COUNTY OF KING)

On this day personally appeared before me WILLIAM E. WILBERT as Administrator w.w.a.d.b.n. of the estate of Jack DelGuzzi, Deceased, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed as such administrator, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 25th day of July, 1984.

Robert E. Heaton
Notary Public in and for the
State of Washington, residing
at Seattle.

STATE OF WASHINGTON)
) SS.
COUNTY OF KING)

On this day personally appeared before me DAVID O. HAMLIN as Administrator d.b.n. of the estate of Bruno DelGuzzi, Deceased, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed as such administrator, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 25th day of July, 1984.

Robert E. Heaton
Notary Public in and for the
State of Washington, residing
at Seattle.

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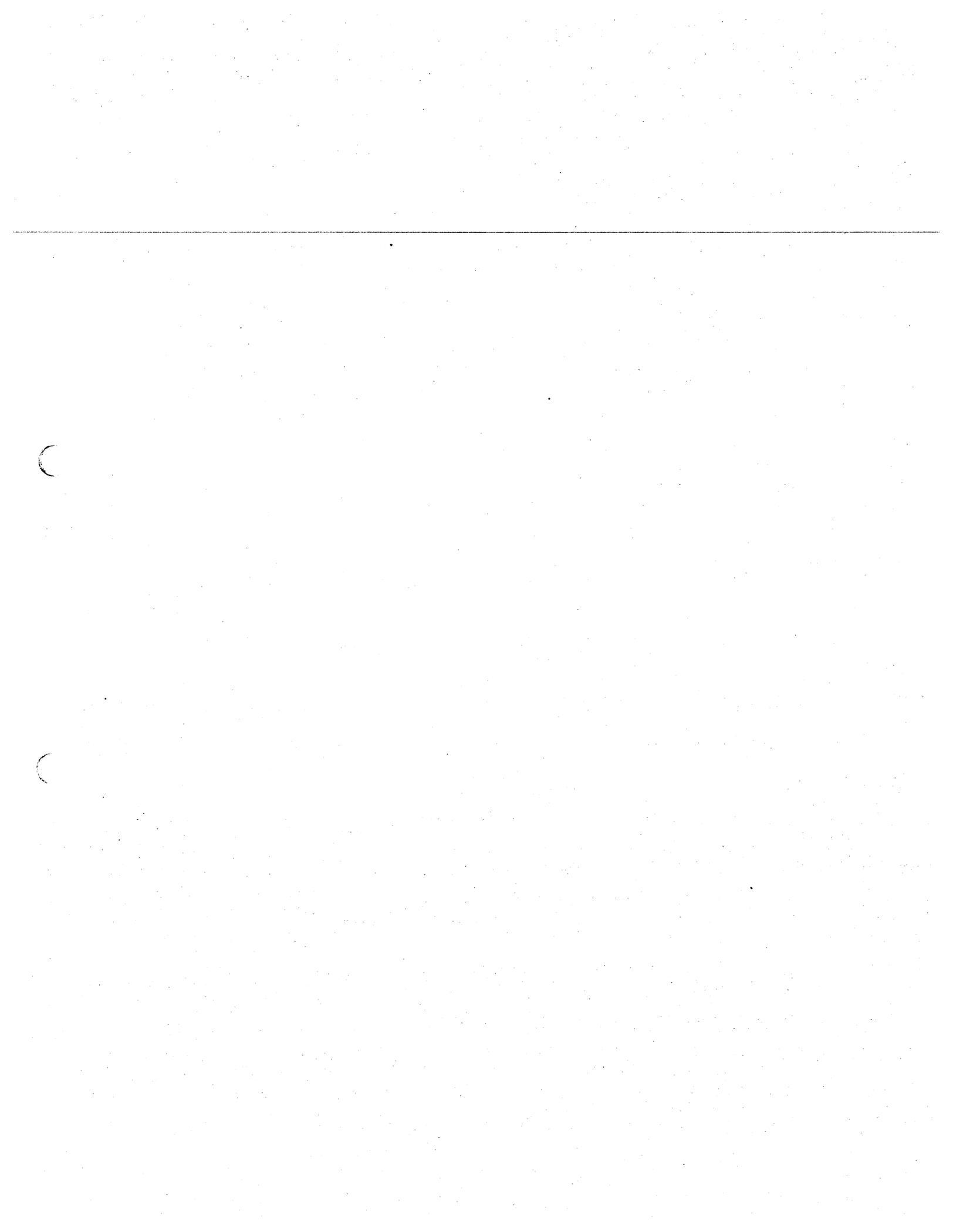
Cash Held by Pioneer Title

Approximate amount of
cash held by Pioneer Title
in July 1984 for Gary Delguzzi \$ 90,000

Interest on Amount
at 12% simple interest 200,700

Total Amount Due \$ 290,700

Note--The Bruno Delguzzi Estate agreement dated July 25, 1984 includes a comment on page 12 that approximately \$49,000 of the \$90,000 will be paid to the IRS. A review of the Estate of Jack Delguzzi's IRS transcript shows no payments received in 1984. Therefore, this amount is not considered as an offset of the amount owed. Further, there is no indication that the \$49,000 was added to the amount due from Gary Delguzzi in the Estate of Jack Delguzzi Court Ordered Accountings for 1984.



OWNER: Peninsula Monarch

PROPERTY#: 217/8s

IRS 706#: 9

COUNTY: Clallam

CITY:

AREA:

SEC: 32

TOWNSHIP: 30

RANGE: 7

COMMON NAME: Turnbow

TAX PARCEL#: 07-30-32-340025

LEGAL: two parcels: The S1/2 of the Sw1/4 of the SE1/4 and Gov lot 5 of Sec 32 EXCEPT the W1/2 of said Gov Lot 5 and EXCEPT the N 654 feet of the E 666 ft of+

ASSESSED VALUE: 984

YEAR: 88

MARKET VALUE:

YEAR:

ASSESSMENT CLASSIFICATION/ZONING: Forest/Timber land

PROPERTY TAX: 24.86

YEAR: 88

706 VALUE:

ACRES: 14.96

DATE ACQUIRED: 7-3-78

ACQUISITION PRICE: \$72,500.00

ACQUIRED FROM: A.W. Turnbow

DATE SOLD: 8-15-88

PRICE SOLD: \$85,000

PURCHASER: Charles Nyhusm, Christina Nyhus

COMMENTS: -LEGAL CONTINUED: said Gov Lot 5. "B": the SW1/4 of Government Lot 5 Section 32, T30N, R7WWM, Clallam County, Washington. Except that portion (if any) lying the North 654 feet of the East 666 feet of Government Lot 5.

****THIS TRANSACTION WAS A LOAN FROM GARY DELGUZZI TO THE ESTATE; *****

Actual Distribution included \$22,000.00 Internal Revenue Service
6,000.00 State of Washington

Exhibit C-1

AMENDED

SELLER SETTLEMENT STATEMENT

FILE NO. M56221TE

ESCROW OFFICER: BARBARA VANNAUSDLE

BUYER: CHARLES NYHUS CHRISTINA NYHUS
P.O. BOX 665
PORT ANGELES WA 98362

SELLER: PENINSULA MONARCH, INC.
13850 BEL-RED ROAD
BELLEVUE WA 98005

PROPERTY: PORT ANGELES WA 908362

SETTLEMENT DATE: 08-15-88 PRORATION DATE: 08-15-88 SALE PRICE: 85,000.00

SELLER CREDITS

SALE PRICE.....	85,000.00
INTEREST FROM SAVINGS A/C.....	1,242.80
GROSS DUE TO SELLER.....	86,242.80

SELLER CHARGES

P.O.C.

PRO-RATA 1988 REAL ESTATE TAXES.....	1.96
PRORATA 1988 REAL ESTATE TAXES.....	22.36
CREDIT FOR TRADE PROPERTY.....	30,000.00
ESCROW FEES.....	145.53
to PIONEER TITLE COMPANY	
DOCUMENT PREPARATION FEE.....	1,050.00
ATTORNEY FEE.....	3,579.80
CPA FEES.....	1,094.00
RECONVEYANCE FEES.....	50.00
to PIONEER TITLE COMPANY	
FAX FEES.....	24.92
to PIONEER TITLE COMPANY	
OWNER'S POLICY (INC. TAX).....	485.10
to PIONEER TITLE COMPANY	
RECORDING 1 MORTGAGE/DEED OF TRUST.....	6.00
RECORDING 1 RELEASE.....	10.00
RECORDING 2 RELEASE.....	5.00
RECORDING LEASE 1.....	5.00
1-34.....	1,139.00
RELEASE AMOUNT.....	22,000.00
to INTERNAL REVENUE SERVICE	
RELEASE AMOUNT.....	6,000.00
to DEPARTMENT OF REVENUE	
COMMISSION.....	8,500.00
WILLIAM E. WILBERT, BROKER, INC.	8,500.00

TOTAL REDUCTIONS TO SELLER..... 74,118.67

GROSS DUE TO SELLER.....	86,242.80
TOTAL REDUCTIONS TO SELLER.....	74,118.67
NET TO SELLER.....	12,124.13

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 to Seller may be adjusted accordingly to the actual date of closing.

Accepted and Approved this _____ day of _____
PENINSULA MONARCH, INC.

BY: _____
William E. Wilbert

LETTER OF SETTLEMENT STATEMENT

FILE NO. M56221TE

ESCROW OFFICER: BARBARA VANNAUSDLE

BUYER: CHARLES NYHUS CHRISTINA NYHUS
P.O. BOX 665
PORT ANGELES WA 98362

SELLER: PENINSULA MONARCH, INC.
13850 BEL-RED ROAD
BELLEVUE WA 98005

PROPERTY: PORT ANGELES WA 98362

SETTLEMENT DATE: 08-15-88 PRORATION DATE: 08-15-88 SALE PRICE: 85,000.00

SELLER CREDITS

SALE PRICE.....	85,000.00

GROSS DUE TO SELLER.....	85,000.00

SELLER CHARGES

P.O.C.

PRO-RATA 1988 REAL ESTATE TAXES.....	1.96
PRO-RATA 1988 REAL ESTATE TAXES.....	22.36
CREDIT FOR TRADE PROPERTY.....	30,000.00
ESCROW FEES.....	145.53
to PIONEER TITLE COMPANY	
RECONVEYANCE FEES.....	50.00
to PIONEER TITLE COMPANY	
OWNER'S POLICY (INC. TAX).....	485.10
to PIONEER TITLE COMPANY	
RECORDING 2 MORTGAGE/DEED OF TRUST.....	6.00
RECORDING 1 RELEASE.....	10.00
RECORDING 2 RELEASE.....	5.00
RECORDING LEASE 1.....	5.00
1.34% EXCISE TAX.....	1,139.00
FAX FEES.....	24.92
to PIONEER TITLE COMPANY	
CPA FEES.....	1,094.00
ATTORNEY FEES.....	3,579.80
DOCUMENT PREPARATION FEE.....	1,050.00
RELEASE AMOUNT.....	22,000.00
to INTERNAL REVENUE SERVICE	
RELEASE AMOUNT.....	6,000.00
to DEPT. OF REVENUE	
COMMISSION.....	8,500.00
WILLIAM E. WILBERT, BROKER, INC.	
	8,500.00

TOTAL REDUCTIONS TO SELLER..... 74,118.67

GROSS DUE TO SELLER.....	85,000.00
TOTAL REDUCTIONS TO SELLER.....	74,118.67

NET TO SELLER.....	10,881.33

=====

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 TO SELLER MAY BE ADJUSTED ACCORDINGLY DUE TO THE ACTUAL DATE OF CLOSING.

ACCEPTED AND APPROVED THIS 11 DAY OF AUGUST, 1988.

PENINSULA MONARCH, INC.
BY William E. Wilbert
WILLIAM E. WILBERT

RECEIVED AUG 18 1988

Estate of Jack DelGuzzi
13850 BEL-RED ROAD
BELLEVUE, WA 98005

SUMMARY OF CLOSING STATEMENT

BUYER:	Charles and Christina Nyhus	
SELLER:	Peninsula Monarch, Inc.	
PROPERTY:	Turnbow #217 & #218	
DATE:	Sale Closed 8/15/88	
SALE PRICE:		\$85,000.00
COSTS TO CLEAR TITLE (taxes, escrow, fees)	\$ 1,894.87	
PROFESSIONAL FEES (CPA, attorney, comm.)	<u>14,233.00</u>	68,872.13
* LAND TRADE	30,000.00	
FUNDS FOR DISTRIBUTION		38,872.13
55% IRS	21,379.67	
15% State of Washington	5,830.82	
30% Secured Creditors	<u>11,661.64</u>	-0-
ACTUAL DISTRIBUTION ON OUR INSTRUCTIONS:		
Internal Revenue Service	\$22,000.00	
State of Washington	<u>6,000.00</u>	10,872.13
Secured Creditors		
Estimated Capital Gains Tax	7,000.00	
Short & Cressman	968.03	
Paul R. Cressman	968.03	
William E. Wilbert	968.03	
Lockwood Foundation	<u>968.04</u>	-0-

* Deed of Trust to be recorded in favor of the Internal Revenue Service when IRS release is received by escrow company.

NOTE: Resale of the 5 lots should close by March 15.

N-115 217CLST

Peninsula Monarch, Inc.

DECEMBER 28, 1988

RON OTTAVELLI
SPECIAL PROCEDURES DIVISION
INTERNAL REVENUE SERVICE
P. O. BOX 1729, MAIL STOP #240
SEATTLE, WA 98111

RE: ESTATE OF JACK DELGUZZI, CASE #8087 AND
OUR LETTER OF OCTOBER 27, 1988

DEAR MR. OTTAVELLI:

PURSUANT TO OUR TELEPHONE CONVERSATION OF LAST WEEK, I AM
SENDING THIS FOLLOW UP LETTER TO COVER THE POINTS OF OUR
CONVERSATION.

1. THE PROPERTY RECEIVED FROM NYHUS (5 TRACTS) WERE 100%
OWNED BY HIM.
2. THE \$22,000 BEING HELD FOR THE IRS BY THE TITLE COMPANY
IS 55% OF THE NET PROCEEDS.
3. A DEED OF TRUST IN THE AMOUNT OF \$16,500 FOR ALL 5 TRACTS
OR \$3,300 ON EACH TRACT IS BEING RECORDED FOR THE BENEFIT
OF THE INTERNAL REVENUE SERVICE.
4. WE HAVE SINCE SOLD THE 5 TRACTS FOR \$30,000. THOSE SALES
WILL CLOSE IN EITHER LATE JANUARY OR EARLY FEBRUARY.

WE WOULD APPRECIATE YOUR TRANSMITTING AS SOON AS POSSIBLE THE
SATISFACTION OF MORTGAGE ON THE PROPERTY CONVEYED SO THAT WE
CAN PROCEED WITH THE PENDING SALES.

RESPECTFULLY,


WILLIAM E. WILBERT
PRESIDENT

WEW/MCS

N-110.2 IRS

C

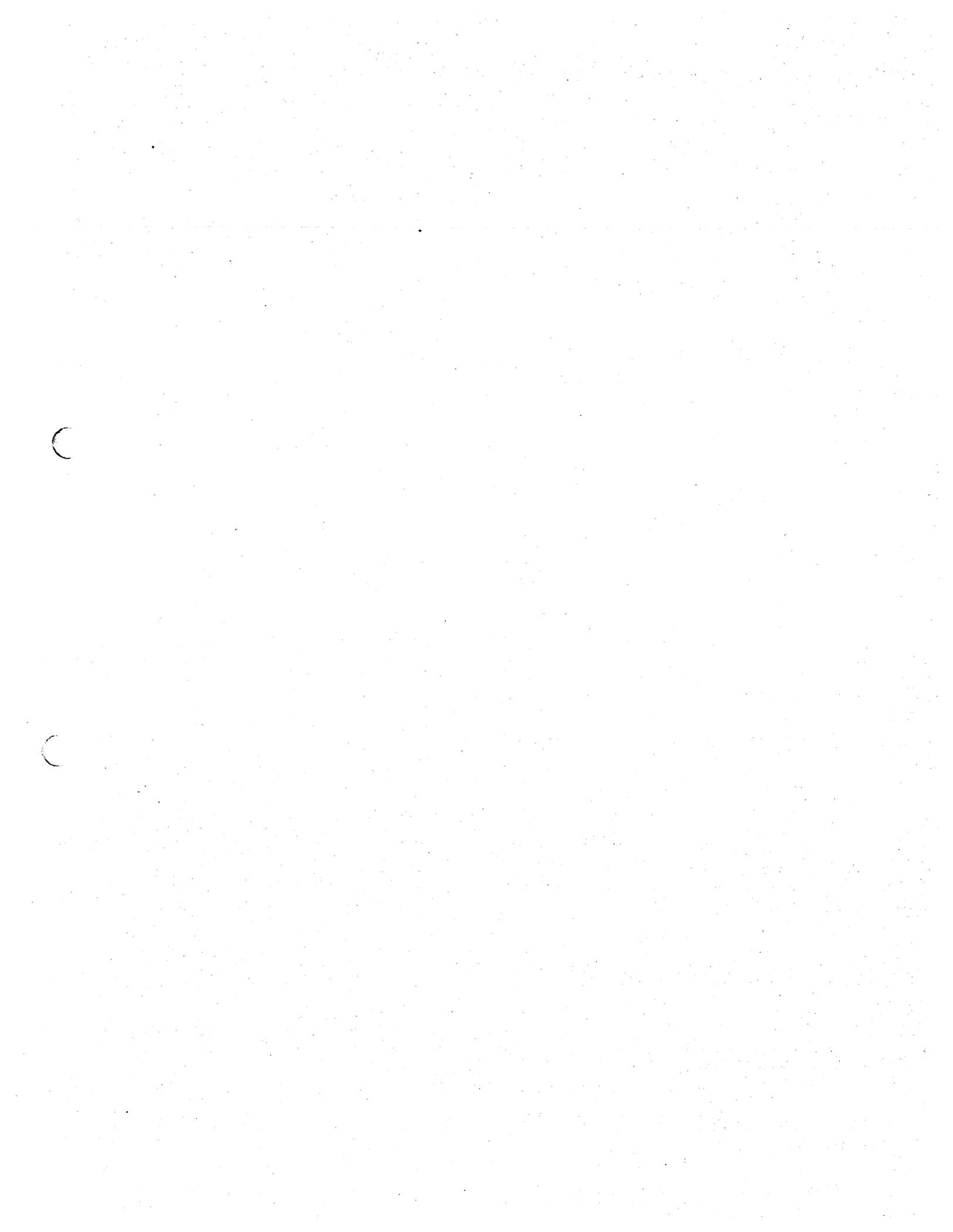
C

Turnbow Sale to Nyhus

Sale Date: August 15, 1988

Sales Price	\$ 85,000	
Interest from Savings	1,243	
		<u>86,243</u>
Real estate taxes	24	
Selling costs	2,921	
		<u>2,945</u>
Total cash from sale--See Note		<u>83,298</u>
Interest on Amount @ 12% simple		<u>141,606</u>
Total Amount Due--100% Gary Delguzzi's		<u>\$ 224,904</u>

Note--The records of Peninsula Monarch do not reflect the receipt of a \$30,000 property allegedly taken in trade on this property. The settlement documents reflect a total of \$28,000 was paid to the IRS and the State of WA Dept of Revenue. There is no indication that these are taxes owed by Peninsula Monarch. In addition, there is no indication of these funds received on the IRS transcript for the Estate of Jack Delguzzi. There is notation in the Court Ordered Accounting as of June 15, 1984 that \$75,000 was received as a loan from the Trust of Gary Delguzzi relating to this sale. The escrow documentation does not show this amount. Further, a real estate commission of 10% of the sales amount is reflected on the escrow statement. There is no documentation that a listing agreement existed and therefore the real estate commission is not considered a cost of the sale.



Station Name: Machine: SEA009MA2451656 Date: 06/26/2003 Time: 4

BMFOLT91-6230500 05198612000 BMF TAX MODULE NM CTRL:DELG
29247-425-61902-9
RETENTION JACK DELGUZZI ESTATE 1041
CAF:0/AIMS SC:00 MF ASS D MOD BAL: 0.00 ARDI:0
ASED:10-06-1990 INTEREST TO DATE:11-27-1989
GOVERNING SC:29 2% TRIGGER DATE: 00-00-0000 FTP STA
HISTORIC ULC:91 INT TOT: 0.00 FTP
TDA COPYS: INT AS: 0.00 FTP TT:
DAR CC:00 INT PD: 0.00 FTP ASD:
LATEST CSED DATE:00-00-0000 RSED DT:00-00-0000 RET DUE DT:04-15
EARLIEST CSED DT:00-00-0000 IMMINENT CSED DT:00-00-0000 F2290 I
DISASTER DUE DT:00-00-0000 AGREEMENT IND:0 FMS-CD:
DIRECT DEPOSIT CODE: DISASTER START DT:00-00-0000

TRANS DATE	AMOUNT	CYCLE	DLN	V
150 11161987	0.00	198744	29244-283-01406-7	TC
	0.00		REMIT AMT (610)	
620 04151987	0.00	198721	29204-129-46516-7	
460 07171987	0.00	198732	29977-206-46466-7	EX
460 09181987	0.00	198743	29977-283-45283-7	EX
420R 11101987	0.00	198746	91977-314-00000-7	PB
			EGC:1000	
421 01241989	0.00	198906	29247-425-61902-9	DI

*nothing
1988*



EARNEST MONEY RECEIPT AND AGREEMENT

109291 (1st Form)

RECEIVED FROM Shelia M. Wahlgren, a married woman as her separate estate Bellevue Washington June 14 '82

One thousand
in the form of check for \$ 1,000.00 Cash for \$ _____ Note for \$ _____ DOLLARS \$ 1,000.00
in part payment of the purchase price of the following described real estate in the City of _____ County of Clallam _____, Washington; Commonly known as
The Little property

(The parties hereto hereby authorize agent to insert over their signatures the correct legal description of the above designated property if unavailable at time of signing, or to correct the legal description contained herein or hereafter.)

Attached and by reference made a part of

TOTAL PURCHASE PRICE IS Forty-two thousand dollars and no cents
\$ 42,000.00 1. payable as follows:

\$1,000 in cash, including the above-received Earnest Money; \$25,000 in the form of a Demand Note due on October 1, 1982 which is secured by a Note and Deed of Trust on the above-described real property by the proposal agreeing to make payments on the Real Estate Contract between Little and DelGuzzi.

1. Title of offer is to be free of encumbrances, or defects, except: Existing Real Estate Contract between Little and DelGuzzi.

Rights reserved in federal patents or state deeds, building or use restrictions general to the district, and holding or zoning regulations or provisions; shall not be deemed encumbrances or defects. Encumbrances to be discharged by seller may be paid out of purchase money at date of closing.

2. Seller agrees to furnish and deliver to office of closing agent as soon as practicable a standard form purchaser's policy of title insurance or report preliminary thereto issued by Pioneer and seller authorizes agent to apply of once for such title insurance. The title policy to be issued shall contain no exceptions other than those provided for in said standard form and cannot be made or amended by termination date set forth in Paragraph 8 hereof, earnest money shall be refunded and all rights of purchase terminated; Provided that purchaser may waive defects agent shall not be responsible for delivery of title.

3. If financing is required purchaser agrees to make immediate application therefor, sign necessary papers, pay required costs, and exert best efforts to procure such financing.

4. (a) If this agreement is for conveyance of fee title, title shall be conveyed by Statutory Warranty deed free of encumbrances or defects except those noted in Paragraph 1.
(b) If this agreement is for sale on real estate contract seller and purchaser agree to execute a Real Estate Contract for the balance of the purchase price on Real Estate Contract Form A-1984 currently distributed by title insurance companies. The terms of said form are herein incorporated by reference. Said contract shall provide that title be conveyed by Warranty Deed. If said property is subject to an existing contract or mortgage or deed of trust which seller is to continue to pay, seller agrees to pay said contract or mortgage or deed of trust in accordance with its terms, and upon default purchaser shall have right to make any payments necessary to remove the default, and any payments so made shall be applied to the payments next falling due on the contract between seller and purchaser herein.
(c) If this agreement is for sale and transfer of vendor's interest under existing real estate contract, the transfer shall be by proper purchaser's assignment of contract and deed sufficient in form to convey after required title.

5. Terms for the current year, rent, insurance, interest, mortgage reserves, water and other utilities considering liens shall be prorated as of date of closing

6. Purchaser shall be entitled to possession on date of closing

7. Purchaser offers to purchase the property in its present condition, on the terms noted. This offer is made subject to approval of the seller by midnight of June 24, 1982 in consideration of agent submitting this offer to seller, purchaser agrees with the agent not to withdraw this offer during said period, or until earlier rejection thereof by seller. Purchaser agrees that written notice of acceptance given to agent by seller shall be notice to purchaser. If seller does not accept this agreement within the time specified, the agent shall refund the earnest money upon demand.

8. The sale shall be closed in the office of Pioneer Title, Port Angeles within 5 days after this insurance policy or report preliminary thereto is delivered showing title insurable, as above provided, or after completion of financing. If financing is called for herein, whichever is later, but in any event not later than 30 days from date of this Agreement, which shall be the termination date. The purchaser and seller will, on demand, deposit to escrow with the closing agent, all instruments and monies necessary to complete the purchase in accordance with this agreement; the cost of escrow shall be paid one-half each by seller and purchaser.

9. There are no verbal or other agreements which modify or affect this agreement. Time is of the essence of this agreement.

WILLIAM E. WILBERT - REAL ESTATE BROKERS
Agent
Purchaser's Address P. O. Box 1669, Forks, WA
Phone 374-9838

Shelia M. Wahlgren, a Licensed Real Estate Broker
Shelia M. Wahlgren, a married woman
as her separate estate.
Purchaser's consent they are of legal age.

The undersigned seller on this _____ day of _____ 19____, hereby accepts and approves the above agreement and agrees to carry out all of the terms thereof and further agrees to pay a commission of None Dollars (\$ _____) to the above agent for services. In the event earnest money is forfeited, it shall be apportioned to seller and agent equally; provided the amount to agent does not exceed the agreed commission. Upon further acknowledgment of a true copy of this agreement, signed by both parties.

Address _____
Gary DelGuzzi
Gary DelGuzzi, Individually and as Personal Representative of the Estate of Jack DelGuzzi,
Deceased
A true copy of the foregoing agreement, signed by the seller, is hereby received on this _____ day of _____ 19____

Exhibit D-1

OWNER: Estate of Jack DelGuzzi
1/2 Interest

PROPERTY#: 1425

IRS 706#:

COUNTY: Clallam

CITY:

AREA:

SEC: 14

TOWNSHIP: 30N

RANGE: 9W

COMMON NAME: Little Property

TAX PARCEL#: 430175

LEGAL: That portion of Government Lot 2 in Section 14, Township 30 North, Range 9 West, W>M> Clallam County, described as follows: Beginning at a point in +

ASSESSED VALUE: 41,840

YEAR: 82

MARKET VALUE:

YEAR:

ASSESSMENT CLASSIFICATION/ZONING:

PROPERTY TAX: 313.39

YEAR: 83

706 VALUE:

ACRES: .22

DATE ACQUIRED: 5-31-77

ACQUISITION PRICE: \$35,000

ACQUIRED FROM: Little

DATE SOLD: 09-22-82

PRICE SOLD: \$42,000.

*Price includes assumption of DelGuzzi/Little Contract
PURCHASER: Sheila Wahlgren

COMMENTS: -LEGAL CONTINUED: in Governemnt Lot 2, Section 14, T30N, R9WWM, whi
point being 1957.2 feet south of and 1461.2 feet west of the NE corner of sai
section 14: thence North 45 degrees 39" West 135.7 feet; Thence South 33
degrees 38' west 100.0 feet; Thence South 26 degrees 21'30" East 50 feet;
thence North 75 degrees 49'30" East 134.5 feet to the point of Beginning.
Together with Shorelands of the Second Class as the same were conveyed by the
State of Washington situated in front of, adjuacent to or abutting thereon.

Department of the Treasury
Internal Revenue Service

United States
Certificate Discharging
Property Subject to
Estate Tax Lien

557773- RECEIVED

Decedent's First Name and Middle Initial JACK	Decedent's Last Name DELGUZZI
Decedent's Social Security Number 533-01-9598	Date of Death June 1, 1978
Domicile at Time of Death Port Angeles, Washington	

TO	
NAME OF APPLICANT	William E. Wilbert
ADDRESS (Number, Street, City or Town, State and ZIP Code)	Administrator of the Estate of Jack DelGuzzi Suite A, 800-156th N.E. Bellevue, WA 98008

I certify that the estate tax for the estate of the decedent named above has been fully paid or otherwise provided for. This certificate discharges the property described below from the lien of the United States imposed by section 6324 of the Internal Revenue Code.

The property is real property located in Clallam County, Washington, and described on Exhibit A attached hereto and incorporated herein by this reference.

#142

1984 AUG 23 PM 3:31
 VOL. 687 PAGE 226
 COUNTY CLERK, AUDITOR
 CLALLAM COUNTY, WASH.
 BY Deaven DEPUTY

SIGNATURE OF CERTIFYING OFFICIAL <i>B. K. Kahan</i>	Title Chief, Special Procedures Staff, Seattle	Date 8/17/84
District or Office		

CLOSING STATEMENT
 GARY DEL GUZZI, A SINGLE MAN, AND WILLIAM E. WILBERT,
 PERSONAL REPRESENTATIVE OF THE ESTATE OF JACK DEL GUZZI, DECEASED
 PURCHASER/SELLER (SELLERS) ESCROW NO. M-44379-TE

PROPERTY ADDRESS	CLOSING DATE	
SEPTEMBER 13, 1982	SEPTEMBER 22, 1982	
ADJUSTMENT DATE	CHARGE	CREDIT
PURCHASE/SALES PRICE	\$	\$ 42,000.00
EARNEST MONEY TO DEPOSIT TO SELLER	100.00	
WORK PERFORMANCE CREDIT DUE PURCHASER		
REAL ESTATE CONTRACT FOR BALANCE OF PURCHASE PRICE WITH		
MORTGAGE: <input type="checkbox"/> PAYOFF <input type="checkbox"/> ASSUMED LOAN NO. _____ LENDER _____ PRINCIPAL BALANCE AS OF _____ \$ _____ INTEREST _____ TO _____ NOTE AND DEED OF TRUST EXECUTED BY PURCHASER	25,629.45	
PRO-RATA INTEREST _____ % FROM _____ TO _____ RESERVE ACCOUNT WITH _____		
ASSUMPTION FEE _____		
CONTRACT: <input type="checkbox"/> PAYOFF <input type="checkbox"/> ASSUMED COLLECTION AGENT _____ PRINCIPAL BALANCE AS OF _____ \$ _____ INTEREST _____ TO _____ CONTRACT BALANCE ASSUMED BY PURCHASER INTEREST ADJ. 6-30 TO 9-22 ASSUMPTION FEE _____	15,370.55 322.78	
PRO-RATA INTEREST _____ % FROM _____ TO _____		
REAL ESTATE SALES TAX 1.07% EXCISE TAX	449.40	
ASSESSMENTS, TAXES: YEAR 1982 AMOUNT \$ 313.39 PRO-RATA		85.86
HAZARD INSURANCE: AMOUNT \$ _____ PREMIUM \$ _____ EXPIRES _____		
DEED STAMPS	26.50	
RECORDING FEES: DEED _____ CONTRACT _____ MORTGAGE/DEED OF TRUST _____ RELEASE OF MORTGAGE/RECONVEYANCE _____ ASSIGNMENT OF DEED OF TRUST	4.00	
TRUSTEE'S FEE FOR RECONVEYANCE		
TITLE INSURANCE PREMIUM	250.10	
WITHHELD FOR WATER & SEWER SERVICE		
ESCROW FEE \$ 150.00 SALES TAX \$ 9.30 ONE-HALF	79.65	
BANK ESCROW COLLECTION FEE FIRST FEDERAL SEL ONE-HALF	37.50	
COMMISSION TO _____		
5% SALES TAX ON PERSONAL PROPERTY		
NET PROCEEDS/BALANCE TO CLOSE		184.07
TOTALS	\$ 42,269.93	\$ 42,269.93

The above figures are based on the closing of this sale as of the adjusted date shown above. Any item bearing interest may change and the net proceeds adjusted accordingly due to the date of actual closing.

ACCEPTED AND APPROVED THIS _____ DAY OF SEPTEMBER 1982.

Gary Del Guzzi
 GARY DEL GUZZI

WILLIAM E. WILBERT, AS PERSONAL

CROSSROADS SHOPPING CENTER, SUITE A
BELLEVUE, WA 98008
TEL: (206) 747-6000

EARNEST MONEY RECEIPT AND AGREEMENT
(Non-residential Form)

RECEIVED FROM Shelia M. Wahlgren, a married woman as her separate estate Bellevue, Washington, June 14, 1982
(Person or entity called "Purchaser")

One thousand DOLLARS (\$ 1,000.00)
in the form of check for \$ 1,000.00 Cash for \$ _____ Note for \$ _____, due _____, paid or delivered to agent as earnest money

in part payment of the purchase price of the following described real estate in the City of _____, County of Clallam, Washington; Commonly known as The Little property
(The parties hereto hereby authorize agent to insert over their signatures the correct legal description of the above designated property if unavailable at time of signing, or to correct the legal description entered if erroneous or incomplete.)

Attached and by reference made a part of _____

TOTAL PURCHASE PRICE IS Forty-two thousand dollars and no cents
is 42,000.00, payable as follows:

\$1,000 in cash, including the above-received Earnest Money; \$25,000 in the form of a Demand Note due on October 1, 1982 which is secured by a Note and Deed of Trust on the above-described real property by the proposal agreeing to make payments on the Real Estate Contract between Little and DelGuzzi.

1. Title of seller is to be free of encumbrances, or defects, except: Existing Real Estate Contract between Little and DelGuzzi.

Rights reserved in federal patents or state deeds, building or use restrictions general to the district, and building or zoning regulations or provisions shall not be deemed encumbrances or defects. Encumbrances to be discharged by seller may be paid out of purchase money at date of closing.

2. Seller agrees to furnish and deliver to office of closing agent as soon as procurable a standard form purchaser's policy of title insurance or report preliminary thereto issued by Pioneer and seller authorizes agent to apply at once for such title insurance. The title policy to be issued shall contain no exceptions other than those provided for in said standard form plus encumbrances or defects noted in paragraph 1 above. Delivery of such policy or title report to closing agent named herein shall constitute delivery to purchaser. If title is not so insurable at above provided and cannot be made so insurable by termination date set forth in Paragraph 8 hereof, earnest money shall be refunded and all rights of purchase terminated: Provided that purchaser may waive defects and elect to purchase. If title is so insurable and purchaser fails or refuses to complete purchase, the earnest money shall be forfeited as liquidated damages unless seller elects to enforce this agreement. The agent shall not be responsible for delivery of title.

3. If financing is required purchaser agrees to make immediate application therefor, sign necessary papers, pay required costs, and exert best efforts to procure such financing.

4. (a) If this agreement is for conveyance of fee title, title shall be conveyed by Statutory Warranty deed free of encumbrances or defects except those noted in Paragraph 1.

(b) If this agreement is for sale on real estate contract seller and purchaser agree to execute a Real Estate Contract for the balance of the purchase price on Real Estate Contract Form A-1964 currently distributed by title insurance companies. The terms of said form are herein incorporated by reference. Said contract shall provide that title be conveyed by Warranty Deed. If said property is subject to an existing contract or mortgage or deed of trust which seller is to continue to pay, seller agrees to pay said contract or mortgage or deed of trust in accordance with its terms, and upon default purchaser shall have right to make any payments necessary to remove the default, and any payments so made shall be applied to the payments next falling due on the contract between seller and purchaser herein.

(c) If this agreement is for sale and transfer of vendee's interest under existing real estate contract, the transfer shall be by proper purchaser's assignment of contract and deed sufficient in form to convey after acquired title.

5. Taxes for the current year, rents, insurance, interest, mortgage reserves, water and other utilities constituting liens shall be prorated as of date of closing

6. Purchaser shall be entitled to possession on date of closing

7. Purchaser offers to purchase the property in its present condition, on the terms noted. This offer is made subject to approval of the seller by midnight of June 24, 1982. In consideration of agent submitting this offer to seller, purchaser agrees with the agent not to withdraw this offer during said period, or until earlier rejection thereof by seller. Purchaser agrees that written notice of acceptance given to agent by seller shall be notice to purchaser. If seller does not accept this agreement within the time specified, the agent shall refund the earnest money upon demand.

8. The sale shall be closed in the office of Pioneer Title, Port Angeles within 5 days after title insurance policy or report preliminary thereto is delivered showing title insurable, as above provided, or after completion of financing, if financing is called for herein, whichever is later, but in any event not later than 30 days from date of this Agreement, which shall be the termination date. The purchaser and seller will, on demand, deposit in escrow with the closing agent, all instruments and monies necessary to complete the purchase in accordance with this agreement; the cost of escrow shall be paid one-half each by seller and purchaser.

9. There are no verbal or other agreements which modify or affect this agreement. Time is of the essence of this agreement.

WILLIAM E. WILBERT - REAL ESTATE BROKERS
Agent

Shelia M. Wahlgren, a married woman
Purchaser
Shelia M. Wahlgren, a married woman
as her separate estate.

Purchaser's Address P. O. Box 1669, Forks, WA
Phone 374-9338

Purchaser warrant they are of legal age.

The undersigned seller on this _____ day of _____, 19____, hereby accepts and approves the above agreement and agrees to carry out all of the terms thereof and further agrees to pay a commission of None Dollars (\$ _____) to the above agent for services. In the event earnest money is forfeited, it shall be apportioned to seller and agent equally; provided the amount to agent does not exceed the agreed commission. If we further acknowledge receipt of a true copy of this agreement, signed by both parties.

Address _____

Gary DelGuzzi
Seller
Gary DelGuzzi, Individually and as Personal Representative of the Estate of Jack DelGuzzi,

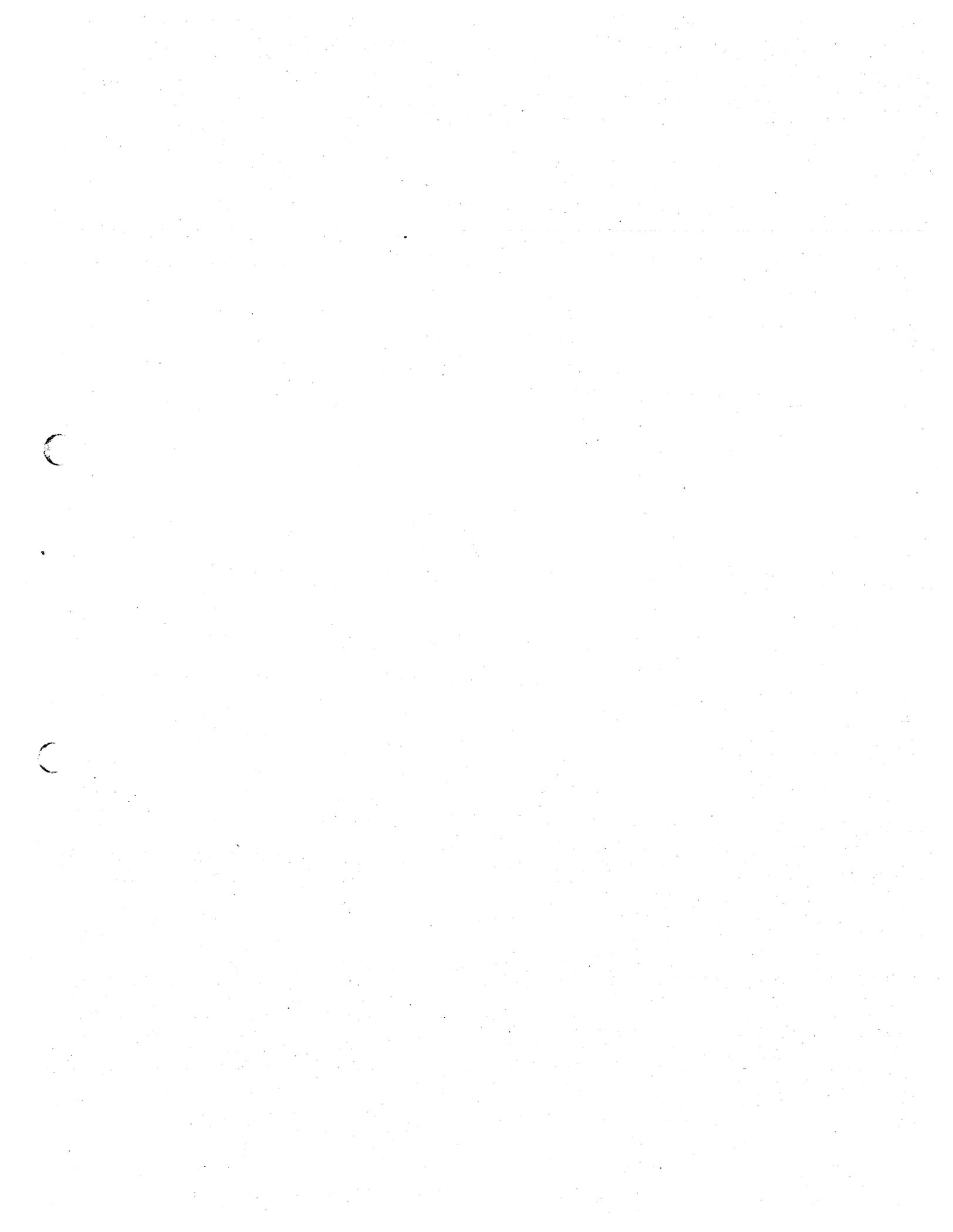
A true copy of the foregoing agreement, signed by the seller, is hereby received on this _____ day of _____, 19____. Deceased

Little Property Note

Sales price from Closing Documents	\$ 42,000
Closing costs	<u>1,170</u>
Cash and Debt Assumed by the Purchaser	40,830
Interest on Above Amount--9/22/82 to 9/30/03	<u>102,892</u>
Total Proceeds plus Interest	<u>143,722</u>
Gary Delguzzi's 50% interest	<u>\$ 71,861</u>

Note--Sale summary indicates that the Estate of Jack Delguzzi owned 50% of this property. The remainder was owned by Gary Delguzzi.

Exhibit D-3



July 25, 1983

TO: TICOR TITLE INSURANCE COMPANY
RE: ESCROW #M44423TE
FROM: CHARLIE NYHUS
GARY DELGUZZI
ESTATE OF JACK DELGUZZI

COPY

You are herewith instructed to disburse the \$97,000 proceeds from our sale to the U.S. National Park Service, of the Elwha Camp Ground properties to the following:

- (1) Escrow Fees - Amount Unknown
- (2) Pro-Rated Taxes - Amount Unknown
- (3) Administrative Expenses
 - (a) Pay to the order of William E. Wilbert - Broker - a check in the amount of \$9,700.
 - (b) Pay to the order of Short & Cressman a check in the amount of \$2,158.40 for fees and costs in defending title in Rains et al. vs. Nyhus, et al., Clallam County Superior Court No. 30448.
- (4) Charles Nyhus.
 - (a) Pay to Charles Nyhus for reimbursement for out-of-pocket expenses advanced a check in the amount of \$15,718.00.
 - (b) Pay to Charles Nyhus as his pro-rata ownership share of net proceeds a check, which is one-third (1/3) of the difference between \$97,000 and items 1,2,3 and 4(a) above. This amount should be approximately \$23,000.
- (5) For the Estate of Jack DelGuzzi.

Pay to William E. Wilbert, Broker, Trust Account, for the benefit of the Estate of Jack DelGuzzi, or to such person as may be directed by William E. Wilbert, Administrator, a 1/3 share of the net proceeds (\$97,000) minus items 1,2,3 and 4(a), which is approximately \$23,000.

Note: These funds are to be held in escrow until you receive a release of lien by the Internal Revenue Service and further instructions of David O. Hamlin and Robert E. Heaton.

Exhibit E-1

(6) For Gary DelGuzzi

Pay to Gary DelGuzzi and William E. Wilbert Broker, Trust Account for the benefit of the Estate of Jack DelGuzzi a 1/3 share of the net proceeds (\$97,000 minus items 1,2,3 and 4(a) which is approximately \$23,000.

Note: There is a dispute as to whom these funds are to be disbursed. Hold these funds in escrow pending further distribution instructions.

In the event we authorize any additional expenditures, these expenditures may be deducted from the checks payable to our personal account.

Approved this 25 day of July, 1983.

Charles Nyhus
His Separate Estate

Gary DelGuzzi
Gary DelGuzzi, Individually and as Personal Representative of the Estate of Jack DelGuzzi, Deceased until August 13, 1982.

Gary DelGuzzi
Gary DelGuzzi
An Individual

William E. Wilbert
William E. Wilbert
Administrator, W.W.A., D.B.N.
Estate of Jack DelGuzzi

QUITCLAIM DEED

The Grantors, CHARLES NYHUS (as his separate estate), GARY J. DELGUZZI, a single man (as his separate estate) and the estate of JACK DELGUZZI, and its heirs by William E. Wilbert, Administrator, each owning an undivided 1/6 interest, for and in consideration of the sum of NINETY SEVEN THOUSAND AND NO/100 DOLLARS (\$97,000.00) convey and quitclaim to the UNITED STATES OF AMERICA, and its assigns, an undivided one-half interest in the fee simple title and any and all after acquired title in the following described property situated in the County of Clallam, State of Washington.

See Exhibit "A" attached hereto and by reference made a part hereof.

TOGETHER WITH THE Grantors' right, title and interest in and to water rights appurtenant to this property.

The land hereinabove described contains 24.29 acres, more or less, of which 2.94 acres, more or less, were previously acquired by the United States from third parties.

The land is conveyed subject to the existing easements of record for public roads and highways, public utilities, railroads, and pipelines. However, it is expressly intended by the parties that the Grantors transfer to the United States all right, title and interest they may have in and to all roads, water lines, pump house and any other public-use facilities located within or in any way connected with the Elwha Park Recreational Campsites, Clallam County, Washington.

The Grantors, individually and collectively, hereby release the United States of America and the National Park Service from any obligation or duty to provide utility services, road maintenance, and for the maintenance of any other facilities, including restroom and bath house facilities and further agree to release any hereafter acquired property within the Elwha Park Recreational Campsites from said maintenance obligation or duty.

TO HAVE AND TO HOLD the above granted and described premises, together with all and singularly the tenements, hereditaments and appurtenances thereunto belonging, or in any way appertaining, unto said UNITED STATES OF AMERICA, and its assigns, forever.

The Grantors further remise, release, and forever quitclaim to the UNITED STATES OF AMERICA, and its assigns, all right, title, and interest which the Grantors may have in the banks, beds, and waters of any streams bordering the said land to be conveyed and also all interest in any alleys, roads, streets, ways, strips, gores or railroad rights-of-way abutting or adjoining said land and in any means of ingress or egress appurtenant thereto.

The land is being acquired by the Department of the Interior, National Park Service.

IN WITNESS WHEREOF, the said Grantors have hereunto set their hand this ____ day of _____, 1982.

CHARLES NYHUS

Gary J. Delguzzi by W.E. Wilbert

GARY J. DELGUZZI
by William E. Wilbert
his Attorney in fact

W.E. Wilbert

WILLIAM E. WILBERT
Administrator of the estate
of JACK DELGUZZI

COPY

OWNER: Estate of Jack DelGuzzi PROPERTY#: 136/7s IRS 706#: A.5

COUNTY: Clallam CITY: AREA:

SEC: 08 TOWNSHIP: 29 RANGE: 07

COMMON NAME: Elwha

TAX PARCEL#: 07-29-08-410630 & 07-29-08-140490

LEGAL: Undivided 1/2 interest SESENE & E2NESE and #4452 SESENE Ease

ASSESSED VALUE: 7,940 YEAR: 83 MARKET VALUE: YEAR:

ASSESSMENT CLASSIFICATION/ZONING: ?

PROPERTY TAX: 72.91 YEAR: 83 706 VALUE: \$180,324

ACRES: 21.35

DATE ACQUIRED: 7-18-66 ACQUISITION PRICE: Mutual Benefits

ACQUIRED FROM: Rains & Lewis

DATE SOLD: 1-6-84 PRICE SOLD: \$97,000.

BUYER: USA GOVERNMENT

COMMENTS: -protracted sale closure due to Rains Suite.

RECEIVED DEC 14 1983

AMENDMENT TO OFFER TO SELL REAL PROPERTY

Re: Olympic National Park
Contract No: CX-9000-3-LO45

Charles Nyhus (as his separate estate), Gary J. DelGuzzi, a Single Man (as his separate estate) and the Estate of Jack DelGuzzi, by William E. Wilbert, its Administrator (hereinafter referred to as the Vendors) and the United States of America, National Park Service, Harlan Hobbs, Chief Land Acquisition Officer (hereinafter referred to as United States) hereby agree to amend the July 20, 1982 offer to sell real property as follows:

1. Paragraph 1, Attachment B, is deleted.
2. Paragraph 2, Attachment B, is deleted.

The purpose of this amendment is to exclude the following lots from the above-referenced sale: Lots 5, 8, 11, 17, 23, 24, 35, 36, 43, 44, 65, 70, 72 and 84, all of which are subject to existing real estate contracts with third parties and for which no fulfillment deeds have been recorded. In the event that the Vendors' interest in such lots are ever conveyed to the United States in the future, the terms and conditions of such conveyance shall be the subject of independent contractual arrangements and shall not be governed by the July 20, 1982 offer to sell and amendments thereto.

DATED this _____ day of December, 1983.

VENDORS:

Charles Nyhus

Gary DelGuzzi By W. E. Wilbert

Gary U. DelGuzzi, Attorney-in-Fact

ESTATE OF JACK DELGUZZI

By


William E. Wilbert (Administrator)

UNITED STATES:

Harlan Hobbs, United States
America National Park Service, Chief
Land Acquisition Officer

Form 792
(Rev. June 1977)

Department of the Treasury
Internal Revenue Service

Decedent's First Name and Middle Initial JACK	Decedent's Last Name DELGUZZI
Decedent's Social Security Number 533-01-9598	Date of Death June 1, 1978
Domicile at Time of Death Port Angeles, Washington	

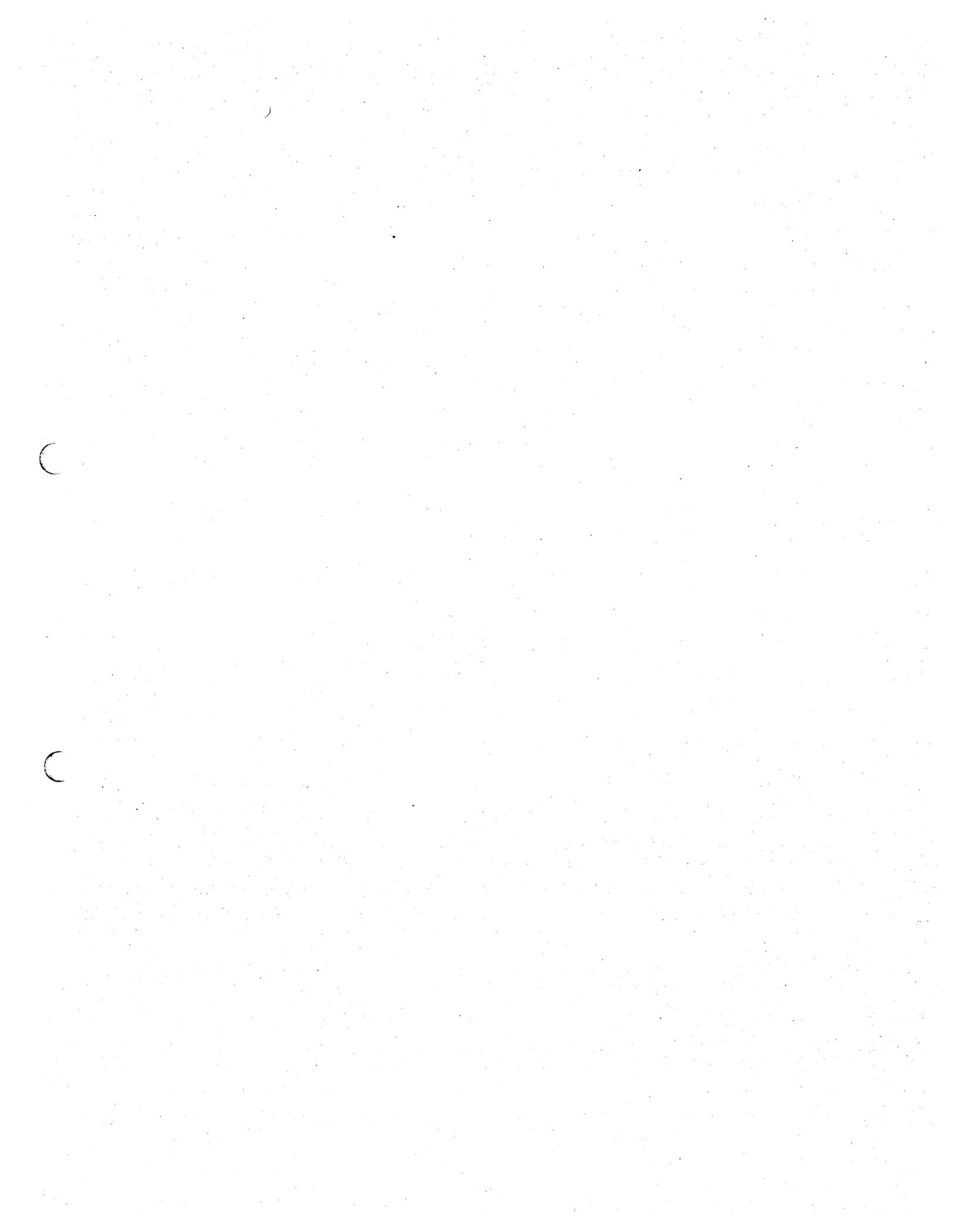
**United States
Certificate Discharging
Property Subject to
Estate Tax Lien**

TO	
NAME OF APPLICANT ▶	William E. Wilbert
ADDRESS (Number, Street, City or Town, State and ZIP Code)	Administrator of the Estate of Jack DelGuzzi Suite A, 800-156th N.E. Bellevue, WA 98008

I certify that the estate tax for the estate of the decedent named above has been fully paid or otherwise provided for. This certificate discharges the property described below from the lien of the United States imposed by section 6324 of the Internal Revenue Code.

The property is real property located in Clallam County, Washington, and described on Exhibit A attached hereto and incorporated herein by this reference.

SIGNATURE OF CERTIFYING OFFICIAL ▶	Title Chief, Special Procedures Staff, Seattle	Date 8/12/84
District or Office		



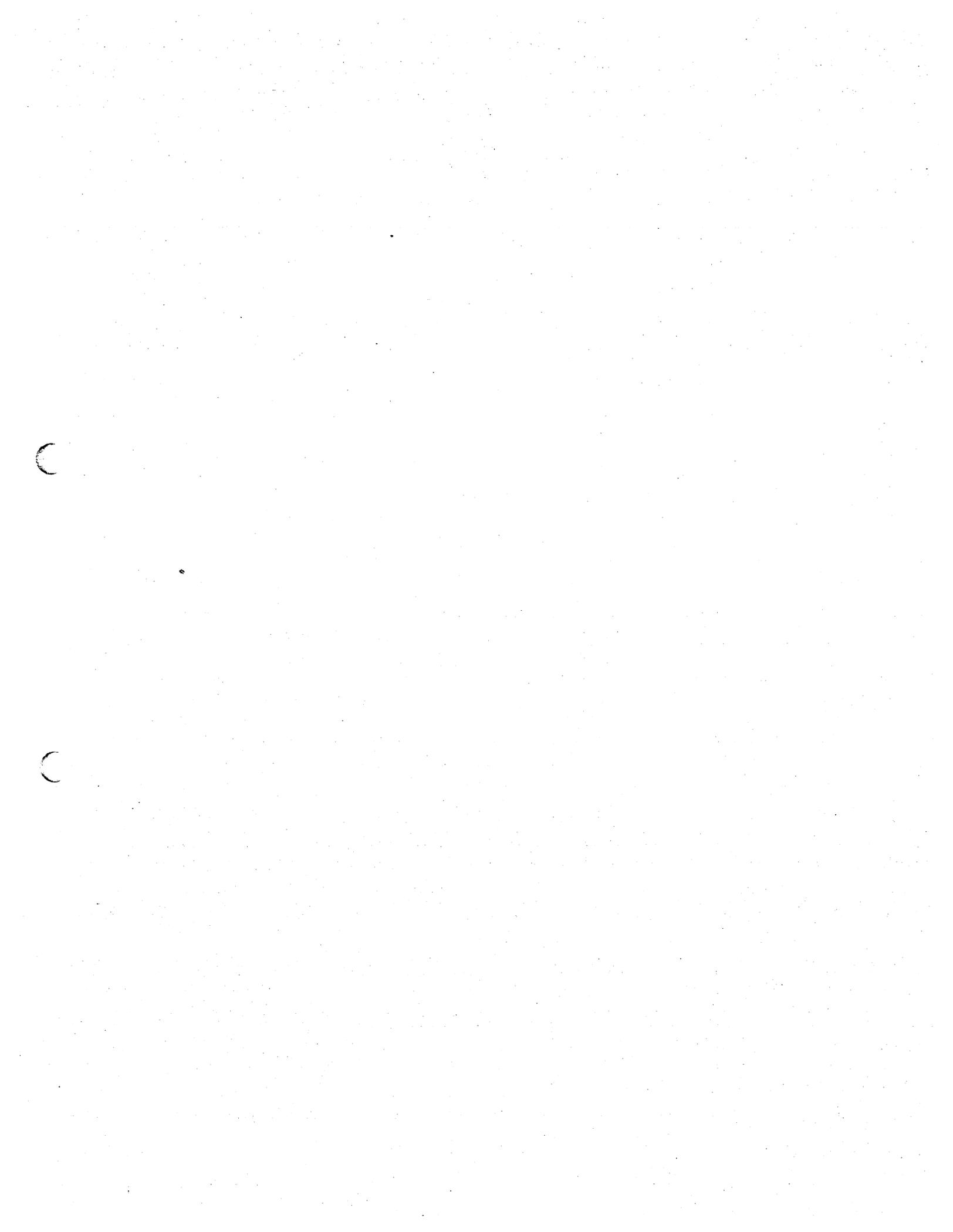
Elwha Property

Sales Price	\$ 97,000
Attorney fees	<u>2,158</u>
Net Sales Price	94,842
Interest at 12% simple from 8/12/84 through 9/30/2003	<u>217,188</u>
Total Principal and Interest	<u>312,030</u>

One-third owned by the Estate of Jack Delguzzi,
Charles Nyhus and Gary Delguzzi per
disbursement instructions signed 7/25/83 by
William Wilbert and Gary Delguzzi

Gary Delguzzi's portion of principal and interest	\$ 104,010
--	------------

Exhibit E-2



After completion of the subdivision and rough road work, Mr. Nyhus decided he wanted a partition of the properties. Mr. Wilbert agreed as administrator to a partition of the property, with the Estate receiving 13 of the 5-acre lots and Nyhus receiving 10 of the lots. The partition resulted in the Estate receiving clear title to more acreage and lots that were more marketable than the previous undivided interest in the larger parcel.

Mr. Nyhus agreed to pay the development obligations to Mr. Wilbert for his work on accomplishing the subdivision out of his share of the property. Mr. Nyhus agreed to transfer five of the ten lots he received from the partition to Mr. Wilbert for this purpose (lots 8,9,10,12, and 16). The transaction value was \$280 per acre based on the assessed value of similar properties. The property was transferred to Mr. Wilbert on October 27, 1986. The Estate paid the legal expenses and its pro rata share of closing costs to accomplish the partition and transfer.

Mr. Wilbert still owns the Grouse Glen lots he received from the transaction. The Estate has sold all 13 lots it received for sales prices totalling \$120,000.

(7) Malcolm Island, Property # 214 --

The Estate acquired full title to this property in January 1986 when the assets of the Nyhus/DelGuzzi partnership were partitioned (see discussion above). The property is located in Canadian waters 400 miles northwest of Victoria, B.C. and consists of 20 usable acres of forest land, but without access roads. The site had been partially burned and logged in the 1960's. The 1986

assessed value for the property was about \$11,250 (\$15,000 Canadian).

In November 1986, the property was transferred to Mr. Wilbert as partial payment of administrator's fees he had billed the Estate, with \$11,340 credited toward the administrator's billing. Ten years later, Mr. Wilbert still owns the property, which produces no income, and incurs the cost of annual property taxes. Gary DelGuzzi was fully informed of and consented to the transfer by signing the deed transferring title to the property to Mr. Wilbert.

(8) The Hoyt Rowan Property --

DelHur owned property referred to as the Hoyt Rowan property consisting of 160 acres of timber land located 30 miles west of Port Angeles. The 1986 assessed value of the property as designated forest land was \$6,991. In 1987, the timber had an appraised value of \$196,194. Puget Sound Bank held notes secured by various DelHur assets. The proceeds of those loans had been used to pay the Estate obligations to the Bruno DelGuzzi Estate (see discussion above). The notes were delinquent, the bank was threatening to immediately foreclose on the security if payment was not promptly forthcoming. However, DelHur had no funds to pay the bank debt, and faced the serious risk of losing a substantial portion of the value of this property through a bank foreclosure action. Attempts by Mr. Wilbert to sell the property for DelHur to pay the bank were unsuccessful.



LAND TITLE ACT
FORM 2
(Section 41 (A) and 44 (a))

AFFIDAVIT OF WITNESS

I, **TRACEY L. MOORE**

PORT ANGELES

of
the State of Washington
in **BRITISH COLUMBIA**, make oath and say:

I was present and as witness instrument duly signed and executed by
CHARLES NYHUS

the party (as to it) for the purposes stated in it.

The instrument was executed at
PORT ANGELES

I know the party(ies) who is(are) 19 years old or more.

I am the subscribing witness to the instrument and am 16 years old or more.

Tracey Moore

Sworn before me at **PORT ANGELES**

State of Washington
in **BRITISH COLUMBIA**, this

11th day of **NOVEMBER** 19 **86**

Patricia Anne Wainwright

State of Washington

*Write name and qualifications under section 48, c.g. A Commissioner for Taking Affidavits for British Columbia.
NOTE: This Affidavit must be sworn by 2 witnesses who is not a party to the instrument.

DATED November 4th 19 86

CHARLES NYHUS

to

WILLIAM EDWARD WILBERT

**TRANSFER OF AN ESTATE
IN FEE SIMPLE**

Filed for Registration at the **Victoria**
Land Title Office on the
day of **November** 19 **86**
under Number

Peter P. Bieg, Esq.
Barrister and Solicitor
#301 - 455 Granville Street
Vancouver, B.C.
V6C 1T9
Telephone: 688-5471

File No.
Mort Payment and Stations Ltd., Vancouver, B.C.
Law and Commercial Solicitors

LAND TITLE ACT
FORM 6
(Section 49)

PROOF OF EXECUTION BY CORPORATION

I CERTIFY that on the

day of 19

in **British Columbia**

(whose identity has been proved by the evidence on oath of said first witness, and otherwise)

who is personally known to me, appeared before me and acknowledged to me that he/she is the authorized signatory of

and that he/she is the person who, subscribed his/here name and affixed the seal of the corporation to the instrument, that he/she was authorized to subscribe his/her name and affix the seal to it (and that the corporation existed at the date the instrument was executed by the corporation).

IN TESTIMONY of which I set my hand and seal of office

at this day of 19

LAND TITLE ACT
FORM 5
(Section 43(a) and 44(b))

**CERTIFICATE OF ACKNOWLEDGEMENT
OF TRANSFEROR**

I CERTIFY that on the

11th day of **NOVEMBER** 19 **86**

at **PORT ANGELES**

in the **Province of British Columbia**
State of Washington, in the United States of America

CHARLES NYHUS

(whose identity has been proved by the evidence on oath of said first witness)

who is personally known to me, appeared before me and acknowledged to me that he/she is (is/are) the person(s) mentioned in the instrument as a transferor (or transferees) and that his/her/their name(s) is/are subscribed to it, that he/she/they (know(s)) the contents of the instrument and executed it voluntarily, and is/are of the age of 19 years or more.

IN TESTIMONY of which I set my hand and seal of office

at **PORT ANGELES**, Washington, U.S.A.
this **11th** day of **NOVEMBER** 19 **86**

Patricia Anne Wainwright
State of Washington

*Where the person making the acknowledgment is a person, the name and qualifications under section 48, c.g. A Commissioner for Taking Affidavits for British Columbia.
*Write name and qualifications under section 48, c.g. A Commissioner for Taking Affidavits for British Columbia.
*Where the person making the acknowledgment is a person, the name and qualifications under section 48, c.g. A Commissioner for Taking Affidavits for British Columbia.
*Write name and qualifications under section 48, c.g. A Commissioner for Taking Affidavits for British Columbia.

3 101092
PETER P. BIEG
BARRISTER & SOLICITOR
NOTARY PUBLIC

SUITE 301 - 455 GRANVILLE STREET
VANCOUVER, B.C. V6C 1T1

TELEPHONE (604) 688-5471

FILE 1346-B

November 12th, 1986

Registrar
Victoria Land Title Office
850 Burdett Avenue
Victoria, B.C.
V8W 1B4

Dear Sir:

Re: Transfer of Title to an Undivided One-Half Interest in and to Comox Assessment District, Parcel Identifier 004-948-441, the Fractional E. 1/4 of the N.W. 1/4 of Sec. 12, Malcolm Island, Rupert District, and Parcel Identifier 004-948-424, the E. 1/4 of the S.W. 1/4 of Sec. 17, Malcolm Island, Rupert District

I am the solicitor for the Transferee, William Edward Wilbert.

The enclosed Form 23 Transfer Instrument was prepared by me and was submitted to my client in Washington for execution by the Transferor in accordance with the requirements of the Land Title Act of British Columbia.

Upon examination of the Transfer Instrument, executed by the Transferor in Washington State and returned to this office, it appears that the name of the attesting witness was typed rather than signed onto the Instrument. However, the Affidavit of Witness signed and sworn by the witness states that the Instrument was in fact signed by the Transferor in the presence of that witness. There is also an Acknowledgment of Maker signed by the Notary Public.

Under the circumstances I would ask that you exercise the discretion vested in the Registrar under Section 50 of the Land Title Act and accept the Instrument for registration notwithstanding the apparent defect in the form of execution.

Yours truly,


PETER P. BIEG

PPB/tm

Land Title Act
Form A

2/2

01 JAN -5 09 09

ES001045

(Section 185(1))

Province of British Columbia

LAND TITLE OFFICE

VICTORIA

(This area for Land Title Office use)

Page 1 of 1 pages

FREEHOLD TRANSFER

1. Application: (Name, address, phone number and signature of applicant, applicant's solicitor or agent)

GIBSON KELLY & IVES (CN:10180),
(c/o Victro Registry Services Ltd.)
Barristers & Solicitors
505 Fifth Street
Courtenay, BC V9N 1K2

Signature of Applicant's Agent- Pamela Crowe

2.(a) Parcel Identifier and Legal Description of Land:

(PID)

004-948-424

(Legal Description)

The East 1/2 of the South West 1/4 of Section 17, Malcolm Island,
Rupert District

(b) Market Value: \$300,000.00

3. Consideration: \$300,000.00

4. Transferor(s):
WILLIAM EDWARD WILBERT

01 01/01/05 09:08:23 01 VI 281949
FEE SIMPLE \$55.00

5. Freehold Estate Transferred:
Fee Simple

6. Transferee(s): (including occupation(s), postal address(es) and postal code(s))
SILVERTIP LAND CORPORATION, (Incorporation No. 600794),
3151 Lockwell Road, Courtenay, BC V9N 8H9

7. Execution(s):** The transferor accepts the above consideration and understands that this instrument operates to transfer the freehold estate in the land described above to the transferee(s).

Name: VINCENT KELLY
Barrister & Solicitor
3rd Floor 736 Broughton Street
Victoria, BC V8W 1E1

Execution Date

Y	M	D
00	12	15

Transferor Signature

WILLIAM EDWARD WILBERT

Officer Certification:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1996, c. 124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.

* If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.

** If space insufficient, continue executions on additional page(s) in Form D.

END OF DOCUMENT

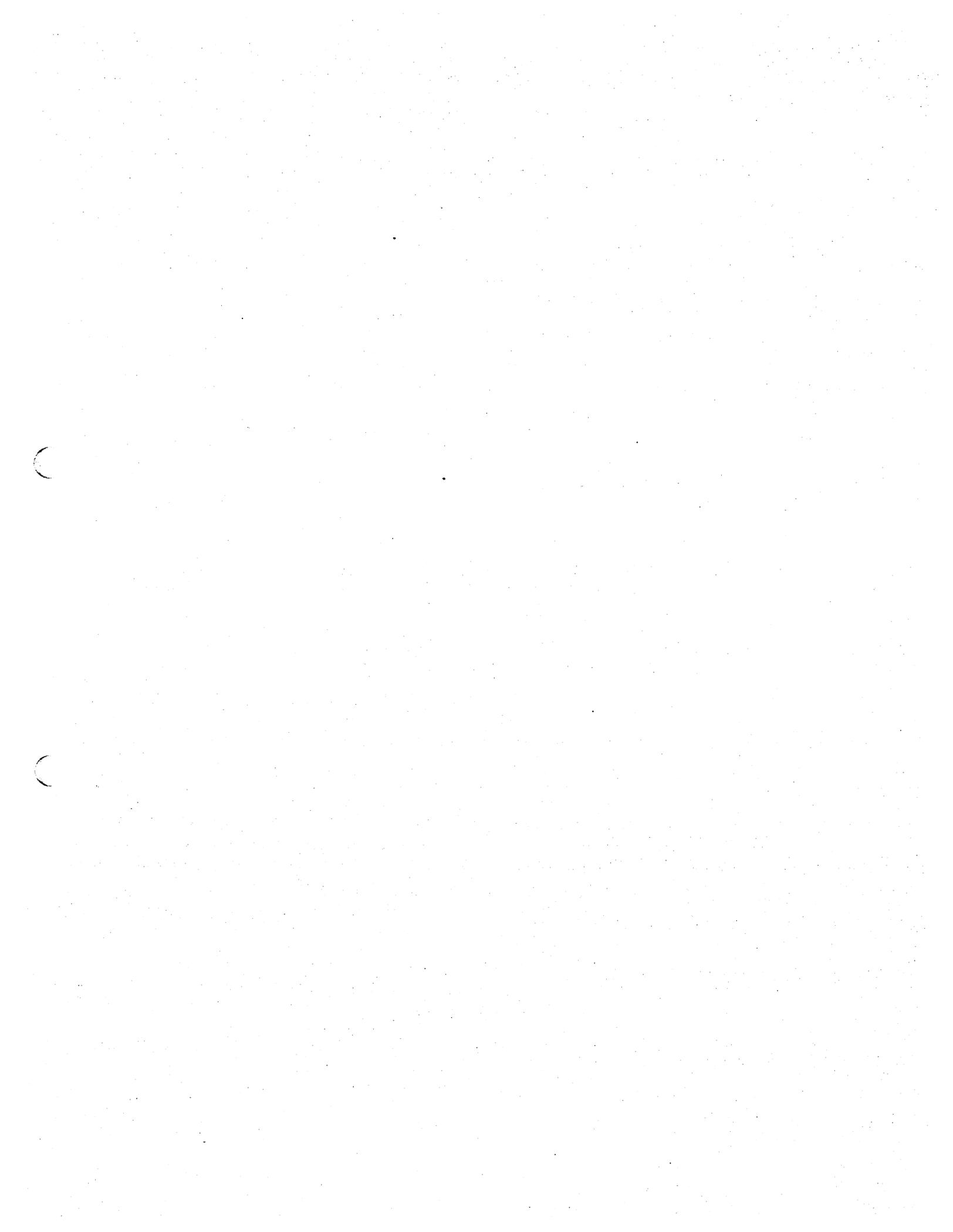
Exhibit F3



Malcolm Island Property

The property was transferred to William Wilbert on 11/4/86 as noted on deed from British Columbia. Deed is from Charles Nyhus and the total declared value is \$66,000 CDN which was \$49,500 US. William Wilbert indicates in the Supplement to the Final Accounting (Supplement) that he deeded the property to himself in lieu of \$11,250 in fees. However, the Final Accounting prepared by Craig Klienman CPA does not show this exchange as compensation to William Wilbert or his aliases. The Articles of Merger for Northland, Peninsula and Cedarwood show that Gary Delguzzi had a 34% interest in Northland Properties, Inc. Therefore, he should receive 34% of the principal and interest computed below and the Estate should receive 66%. The property was sold in 12/15/00 for \$300,000 CDN and this is used as the beginning point of the analysis.

Sale price--CDN	300,000
Sale price--USD	225,000
Interest thereon from 12/15/00 to 9/30/03 @ 12% simple	<u>76,425</u>
Total Principal and Interest--USD	<u>301,425</u>
Gary Delguzzi's 34%	102,485



CRUIKSHANK LAW OFFICE, P. S.
108 S. Washington Street - Suite 306
Seattle, Washington 98104
(206)624-6761 - Fax (800)852-6632

April 21, 2003

Mr. William E. Wilbert
President of Cedarwood Properties, Inc.
c/o Chicoine & Hallett
1011 Western Avenue #803
Seattle, WA 98104

COPY

Re: Dissolution Dividend Application - Cedarwood Properties, Inc.

Dear Mr. Wilbert:

Enclosed please find the "Lost Certificate Indemnity Agreement" signed by my client, Gary J. Delguzzi, relative to his shares of stock in Cedarwood Properties, Inc.

Please tender the check in full value of Mr. Delguzzi's shares of stock in Cedarwood Properties, Inc, payable to him, in care of this office.

Please address any questions about this request to me at the above address and phone.

Very truly yours,

Charles M. Cruikshank III

CMC:os

Enclosure - Lost Certificate Indemnity Agreement dated 21 April 2003

APR 21 2003

Exhibit CW-1

LOST CERTIFICATE
INDEMNITY AGREEMENT

The undersigned ("Shareholder") represents and warrants to Cedarwood Properties, Incorporated, a Washington corporation ("Corporation"), which was administratively dissolved by the Washington Secretary of State on October 19, 1998, and which entered into a Plan of Liquidation and Dissolution on August 5, 1999, the following:

1. The Shareholder is the legal, beneficial, and record owner of 281.6 shares of common stock of the Corporation ("Shares"), which are represented by a stock Certificate, the assigned number of which is unknown, but which number is reflected on the corporate books of record ("Certificate");
2. All of the remaining shares of the common stock of the Corporation have been surrendered and cancelled pursuant to the Plan of Liquidation and Dissolution of August 5, 1999;
3. Neither the Shares nor the rights of the Shareholder in the Shares have been assigned, transferred, hypothecated, pledged, or otherwise disposed of, either in whole or in part;
4. The Shareholder is entitled to the full and exclusive possession of the Certificate and is the tenant in common of the assets, money, choses in action, rights, chattels, or other property, real, actual and inchoate, of the corporation and thus entitled to distribution of such in the ratio of Shareholder's interest to the interests of the other Shareholder or Shareholders, or thirty-two and forty-eight/100 percent (32.48%);
5. The Certificate has been misplaced, lost, stolen, or destroyed and particular circumstances of misplacement, loss, theft, or destruction of the Certificate are as follows:

In late 1989 or early 1990, Mr. William E. Wilbert came to see me to get my signature on many documents some of which were related to the Estate of Jack Delguzzi. I do not recall all of the documents that he presented to me for signing, but he never showed me or tendered to me the stock certificates for Cedarwood Properties, Inc., which I understand was the surviving corporation after two corporations partially owned by the Estate (Peninsula Properties, Inc., and Northland Properties, Inc.) and by me were merged into it.

During and prior to this time, I had signed various powers of attorney in favor of Mr. Wilbert and I believe that he may have used those powers to vote my stock in the above disappearing corporations in order to accomplish the merger. He was then the president and the secretary of all three of these corporations and the only known director. This would have made him the only person with the authority to

issue stock certificates of Cedarwood Properties, Inc. after the above merger, which would have created my individual interest in Cedarwood.

In any event, I do not recall ever seeing any stock certificates of Cedarwood Properties, Inc. showing my ownership, have no idea of where any such certificates could be, if they even exist, other than in Mr. Wilbert's care, custody and control.

The Shareholder hereby requests that the Corporation record on the books of the corporation the cancellation of the Certificate in lieu of his tender of the missing Certificate. Upon issuance of a new Certificate in lieu of the missing Certificate, the Shareholder hereby tenders such Certificate to the Corporation for cancellation pursuant to the Corporation's Plan of Liquidation and Dissolution. The Shareholder's successors and assigns, and each of them, agree to:

1. Indemnify, defend, and hold harmless the Corporation, its officers, directors, registrars, transfer agents, successors and assigns, and any and all of the Corporation's shareholders from and against any and all claims, actions and lawsuits, and from and against any liabilities, losses, damages, costs, charges, attorney fees, and other expenses, of every nature and character, arising, directly or indirectly, out of the issuance of the new Certificate; and
2. Deliver or cause to be delivered to the Corporation the Certificate for cancellation whenever and as if it is ever found.

This Indemnity Agreement is being made to induce cancellation by the Corporation of the Shareholder's lost or missing Certificate without the surrender of the Certificate for cancellation.

Gary J. Delguzzi

Dated this 21st of April 2003.

ACCEPTED BY:

CEDARWOOD PROPERTIES, INCORPORATED

by: _____

Dated this ___th day of April 2003.

Its _____

CRUIKSHANK LAW OFFICE, P. S.

108 S. Washington Street – Suite 306

Seattle, Washington 98104

(206)624-6761 – Fax (800)852-6632

April 30, 2003

Mr. William E. Wilbert
President of Cedarwood Properties, Inc.
c/o Chicoine & Hallett
1011 Western Avenue #803
Seattle, WA 98104

COPY

Re: Dissolution Dividend Application - Cedarwood Properties, Inc.

Dear Mr. Wilbert:

On April 21, I had delivered to you at this address, documentation necessary for payment to Gary Delguzzi of the dissolution dividend on Cedarwood Properties, Inc.

To date, there has been no response to this tender. Since the corporation was liquidated and dissolved nearly 4 years ago, there should be no issues of liquidity or other concerns that would continue to delay the payment to Gary Delguzzi for his interest in Cedarwood Properties, Inc.

If there is some reason that the payment cannot be made by May 2, please advise me immediately, explaining in detail why a further delay is being taken and when, exactly, the payment to Mr. Delguzzi will be made.

If the above request is not honored, I have been instructed to enforce Mr. Delguzzi's rights by legal action.

Please address any questions about this matter to me at the above address and phone.

Very truly yours,

Charles M. Cruikshank III

CMC:os

EXHIBIT CW-2

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR CLALLAM COUNTY

In Re of the Estate of)
JACK J. DELGUZZI,)
Deceased.)
GARY DELGUZZI,)
Plaintiff,)
v.)
WILLIAM E. WILBERT,)
et al.,)
Defendants)

NO. 8087

GARY DELGUZZI's MOTION FOR
MOTION FOR ORDER TO SHOW CAUSE

Comes now Gary Delguzzi, who moves for Order to Show Cause, directed to William E. Wilbert, all as more fully set out in the Declaration of Gary Delguzzi and of his counsel herewith.

Dated this 20th of October 2003.

Charles M. Cruikshank III
Attorney for Gary Delguzzi

Charles M. Cruikshank III
108 S. Washington St. 306
Seattle, Washington 98104
(206)624-6761 WSB 6682

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR CLALLAM COUNTY

In Re of the Estate of)
JACK J. DELGUZZI,)
Deceased.)
GARY DELGUZZI,)
Plaintiff,)
v.)
WILLIAM E. WILBERT,)
et al.,)
Defendants)

NO. 8087

ORDER TO SHOW CAUSE

Gary Delguzzi, having moved for Order to Show Cause, and for good cause shown,
IT IS ORDERED that William E. Wilbert, be and hereby is, ordered to appear before this
court before Judge Leonard Costello, at 614 Division Street, Port Orchard, Washington, at the hour
of _____, on the ___ day of _____, 2003, and then and there show cause, if any there
be, why he should not be ordered to pay over to Gary Delguzzi, and to have judgment entered against
him and against his martial estate and in favor of Gary Delguzzi, in the amount of \$3,425,150.

Dated this 20th of October 2003.

JUDGE LEONARD COSTELLO

Charles M. Cruikshank III
108 S. Washington St. 306
Seattle, Washington 98104
(206)624-6761 WSB 6682

1 Presented by:
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3 Charles M. Cruikshank III
4 Attorney for Gary Delguzzi
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR CLALLAM COUNTY

In Re of the Estate of
JACK J. DELGUZZI,
Deceased.
GARY DELGUZZI,
Plaintiff,
v.
WILLIAM E. WILBERT,
et al.,
Defendants

NO. 8087

DECLARATION OF GARY DELGUZZI
IN SUPPORT OF MOTION FOR ORDER
TO SHOW CAUSE

1. My name is Gary Delguzzi, I am over the age of majority, and competent as to all matters to which I herein testify of my personal knowledge.
2. Pursuant to a Power of Attorney signed by me, William E. Wilbert undertook management, control and ultimately conversion of properties jointly owned by myself and by The Estate of Jack Delguzzi by use of the general Power of Attorney which he held. These are properties that my father, Jack Delguzzi, either acquired in joint ownership between us, or between the two of us and also with Charles Nyhus, my father's business associate.
 - A. **813 EAST FRONT STREET, PORT ANGELES**
3. Included in the jointly owned properties which I owned with my father, Jack Delguzzi, when he died on June 1, 1978 is Lot 13, Block 38, Norman Smith's Subdivision, City of Port Angeles, Washington, commonly known as 813 E. Front Street.
4. On September 28, 1993 (recorded on November 18, 1993), Mr. Wilbert converted ownership of

1 this property to his wholly owned corporation, William E. Wilbert-Broker, Inc., by use of a quit
2 claim deed from the prior defaulted purchaser, Terry Fell of Cascade Investment Properties, Inc.
3 **[EXHIBIT A-1]**. The proceeds of all rental income from the property was also assigned from
4 Cascade Investment Properties to Wilbert.

5 5. There is no record in the Estate's Final Accounting prepared by Mr. Wilbert and his CPA, Craig
6 Kleinman in 1996 of the receipt by the Estate of its one-half share of the value of this property
7 or of any payments made by the subsequent purchaser, Lawrence Dempsey.

8 6. Nor have I ever received any payments of principal or interest from Mr. Wilbert, or William E.
9 Wilbert-Broker, Inc. for my half-interest in this property.

10 7. Attached hereto are copies of the warranty deed showing the assumption where my father and
11 I purchased the property, subject to an underlying mortgage owed by William F. Smith and
12 Shcila A. Smith to First Federal Savings and Loan of Port Angeles. **[EXHIBIT A-2]**

13 8. On March 4, 1991, William E. Wilbert acting as administrator of the estate of Jack Delguzzi and
14 on my behalf with the general Power of Attorney, sold the property for \$88,000.00 to Cascade
15 Investment Properties, Inc. acting through its president, Terry Fell. **[EXHIBIT A-3]** The
16 purchasers also assigned the rental income generated by the property to the Estate and to me,
17 although I did not receive my share.

18 9. Wilbert's accountings show the Estate also did not receive its fifty percent share, although the
19 Cascade Investment Properties and Terry Fell promissory note of February 25, 1991 was payable
20 to the Estate of Jack Delguzzi and "Gary Delguzzi as his separate estate".

21 10. On 1994, William E. Wilbert had Lawrence Fell, and Cascade Investment Properties, Inc., then
22 in default, execute a quit claim deed on this property to William E. Wilbert - Broker, Inc.
23 **[EXHIBIT A-1]** There was no consideration given for this conversion of my property and that
24 of the Estate by Mr. Wilbert and William E. Wilbert-Broker, Inc.

25 11. Mr. Fell made payments through Cascade Investment Properties, Inc. of \$622.00 per month
26 during ten months of 1991, 1992, and seven months of 1993, although Wilbert's court ordered
27 accountings only show receipts of \$2,496, all of them in 1991.

28 12. On August 11, 1984, William E. Wilbert-Broker, acting through William E. Wilbert, permitted

1 assumption of the purchase of the property by Lawrence Dempsey, with the same payments as
2 Cascade Investment Properties (\$622.00 per month). [EXHIBIT A-4]

3 13. The agreement and promissory note between Cascade Investment Properties and the prior sellers
4 (myself and the Estate), called for a \$35,000.00 pre-payment penalty to be made upon early
5 payment or assumption by a third party. The evidence thus indicates that William E. Wilbert -
6 Broker, Inc. collected this \$35,000.00 without accounting to the court on behalf of the Estate of
7 Jack Delguzzi or paying me my one-half interest. [EXHIBIT A-3 - 3rd page]

8 14. On December 5, 1997, after Mr. Dempsey had been making payments for a number of years,
9 he refinanced the property and secured an order quieting title which this court entered on his
10 motion. [EXHIBIT A-5]

11 15. Shortly after that time, Mr. Dempsey made payment of \$62,193.04 into the registry of the court
12 to protect my interest and that of the estate. [EXHIBIT A-6]

13 16. At the time Mr. Dempsey entered into a contract to buy this property in 1994, he also assigned
14 the rental and other income from the property to William E. Wilbert Broker, Inc.

15 17. In 1997, when Mr. Dempsey was applying for financing to pay off the money he owed on the
16 property, he secured an appraisal that valued the property at \$111,000.00 and the rental value was
17 set by the appraiser at \$1,140.00 per month at the same time.

18 18. Mr. Dempsey then made payments totaling \$25,141.00 according to the attached spreadsheet,
19 [EXHIBIT A-7] which was calculated from records subpoenaed from First Federal Savings and
20 Loan in Port Angeles.

21 19. The underlying mortgage (Smith to First Federal Saving & Loan) was ultimately paid off in
22 1998 [EXHIBIT A-8] The Dempsey loan payoff was made to Hemisphere Properties, Ltd., a
23 Wilbert alter ego corporation owned by Laure Ann Wilbert and William D. Wilbert, children of
24 William E. Wilbert. [EXHIBIT A-4]

25 20. On May 19, 2003, without sending a copy of the letter to anyone except his attorney (Larry
26 Johnson) or otherwise letting any party know, Mr. Wilbert wrote to the Clallam County Clerk
27 and took the funds from the court's registry. [EXHIBIT A-9] There has been no disclosure of
28 this conversion of my funds and those of the Estate in Mr. Wilbert's filings with the court.

1 21. The total collections on this property were thus \$222,902, which also did not appear in the
2 Administrator's Final Accounting or any filings with the court since that time. The interest on
3 this amount totals now \$212,651 at 12 percent per annum simple interest for liquidated amounts
4 owed. The total is thus \$435,552, and of that, my half interest is \$217,776. [EXHIBIT A-7]

5 **B. Property sale proceeds held by Pioneer Title paid by Wilbert to Bruno Delguzzi Estate**

6 22. My father's brother and business partner was Bruno Delguzzi. Bruno died before my father and
7 there was a dispute about ownership of assets between Bruno's Estate and my father's Estate,
8 which dispute and litigation resulted in a judgment being entered against my father's Estate in
9 favor of Bruno Delguzzi's Estate.

10 23. When Mr. Wilbert defaulted on the agreed payment of the judgment to Bruno's Estate, its
11 executor, David Hamlin served a Writ of Execution on Pioneer Title in 1984 while Mr. Wilbert
12 was the Estate's Administrator in order to seize proceeds from land sales of my father's estate
13 at the title company.

14 24. Pioneer Title also had money of mine from my separate (not jointly owned) property that was
15 to be disbursed to me. After the Writ of Execution got Mr. Wilbert's attention, he entered into
16 a written agreement with Mr. Hamlin [EXHIBIT B-1, page 5], which called for my separate
17 funds held at Pioneer Title to be paid to partially satisfy the Bruno Delguzzi Estate judgment
18 against my father's estate. I had no personal liability for that judgment, nor did I agree to be
19 personally responsible for payment of the Estate's judgment.

20 25. I have never been repaid for those property sale proceeds.

21 26. Since my money from Pioneer Title was never accounted for as being in the in the Estate of Jack
22 Delguzzi, there is no record of the funds going to the Estate. Mr. Wilbert has denied that the
23 Estate of Jack Delguzzi borrowed any of my personal separate funds, so Mr. Wilbert took the
24 money of mine from Pioneer Title for purposes not related to the Estate of Jack Delguzzi.

25 27. I am thus entitled to the sum of \$290,700 from Mr. Wilbert as principal and interest as calculated
26 in Exhibit B-2.

27 **C. PENINSULA MONARCH, INC. SALE OF "TURNBOW" PROPERTY**

28 28. I was the sole shareholder of Peninsula Monarch, Inc., a now dissolved Washington corporation

1 that was formed by Mr. Wilbert and funded with my separate (non-Estate) assets. Mr. Wilbert
2 held the various corporate offices and dealt with the properties of the corporation as he wished.

3 29. Peninsula Monarch owned a number of parcels of real estate, including one called the "Turnbow
4 property." In 1988, Mr. Wilbert, acting as the president of Peninsula Monarch, sold the Turnbow
5 property to Charles and Cristina Nyhus for \$85,000. [EXHIBIT C-1]

6 30. Neither Peninsula Monarch nor I ever received the proceeds from that sale. The proceeds of that
7 sale do not appear in the Wilbert/Kleinman Final Accounting for the Estate that was filed in
8 December of 1996 nor in Wilbert's court ordered accountings.

9 31. My share of that sale, after adding the 12% simple interest for liquidated amounts is \$224,904
10 per Exhibit C-2, and it is Mr. Wilbert who is indebted to me for it.

11 32. Exhibit C-3 is an extract from the IRS abstract of estate taxes for the Estate. It shows no
12 payments for 1988, contrary to the deduction that Mr. Wilbert alleges in the closing statement
13 for this sale. In short, neither the Estate, the IRS nor Peninsula Monarch ever got the money that
14 Wilbert deducted from the sale proceeds, nor was I ever paid the balance of the sale proceeds.

15 **D. LITTLE PROPERTY, FORKS, WASHINGTON**

16 33. Another property that I owned jointly with the Estate was the "Little" property in Forks,
17 Washington. It was called that because a purchaser was named Little, not because "little" was
18 the property's description. While I was still Personal Representative of the Estate, Ms. Shelia
19 Waldron entered into a Purchase and Sale Agreement to buy that property from me (one-half)
20 and from the Estate (the other one-half). [EXHIBIT D-1]

21 34. That closing took place after Mr. Wilbert became the Estate's Administrator, and the proceeds
22 of that sale do not appear in the Wilbert Estate accountings or the Wilbert/Kleinman Final
23 Accounting of the Estate and I was never paid my half of the proceeds. [EXHIBIT D-2]

24 35. My interest, owed to me by Mr. Wilbert, personally, is now valued at \$71,861 per Exhibit D-3.

25 **E. THE ELWHA - U. S. PARK SERVICE PROPERTY**

26 36. I owned, together with my father and Charles Nyhus, one-third of a parcel of land on the Elwha
27 River that the U. S. Park Service wished to acquire.

28 37. Mr. Wilbert, as administrator and as my attorney-in-fact, with Mr. Nyhus' agreement, sold that

property to the Park Service for \$97,000. [EXHIBIT E-1]

1 38. The only reduction from the sales price that may be proper is the \$2,158.40 for attorney fees, as
2 I recall some litigation that delayed the closing of that sale. My father would never have allowed
3 the deduction of an undocumented sum that is nearly one-sixth of the sales price for “out-of
4 pocket expenses” and Mr. Wilbert is mistaken in doing so, as well.

5 39. Mr. Wilbert also seems to be attempting to disguise a commission to which he is not entitled as
6 “Administrative Expenses.” Just as a lawyer who acts as a personal representative of an estate
7 is not permitted to charge his attorney’s hourly rate for clerical tasks performed in his capacity
8 as a personal representative, Mr. Wilbert cannot be permitted to charge the Estate for both real
9 estate commissions and for his extremely high hourly rate as administrator.

10 40. Wilbert alleged that my one third share of the proceeds was being held due to a ‘dispute’, but it
11 does not show up in any of his accountings as an estate asset or as income to the estate, so this
12 ‘dispute’ is not between me and the Estate, so it must be between him and me, as it him that
13 owes me this money. The only dispute that I am aware of is whether he is entitled to convert my
14 separate property to his ownership with impunity. He has never told me about or made demand
15 on me for anything related to this purported dispute that dates from 1983 or before.

16 41. My share of the proceeds of that sale is now valued at \$104,010 which includes interest at the
17 12% simple judgment rate, calculated as per Exhibit E-2.

18 **F. MALCOLM ISLAND, British Columbia**

19 42. Together with my father, I owned stock in Northland Properties, Inc.(“Northland”). My father
20 (now the Estate) owned sixty-six shares and I owned forty-four shares of the total of one-hundred
21 shares issued and outstanding.

22 43. Northland owned land on Malcolm Island in British Columbia, located between Vancouver
23 Island and the Canadian mainland about 200 miles north of Victoria, B. C.

24 44. In Wilbert’s sworn Supplement to the Final Report [EXHIBIT F-1], he testified that this was
25 property owned by the Estate and that he took this property for his fees in 1986, when he claimed
26 it was assessed at \$11,250 US, and that he credited the Estate for his fee billings in the amount
27 of \$11,340.

1 45. Records secured from the British Columbia land registration authorities show that the land was
2 valued at \$66,000 CDN at the time Wilbert had it transferred to himself, [EXHIBIT F-2] and
3 that he sold it on December 15, 2000 for \$300,000 CDN. [EXHIBIT F-3]

4 46. I have never been paid for my 33% interest in Malcolm Island that was derived through my
5 ownership of Northlands Properties, Inc. stock, and, using Mr. Wilbert's Canadian exchange rate,
6 as specified in his Supplement to Final Accounting, my interest in Malcolm Island would now
7 be worth \$102, 485, in United States currency, per Exhibit F-4.

8 **CEDARWOOD PROPERTIES, INC.**

9 47. During my father's life, he set up several corporations, and I was partial owner of these
10 corporations. Two of these were Northland Properties, Inc., and Peninsula Properties, Inc. I
11 owned a minority interest in these corporations.

12 48. After my father's death on June 1, 1978, the Estate and Mr. Wilbert controlled these
13 corporations, with the majority ownership interest of the Estate and with my general power of
14 attorney.

15 49. There was a lot of co-mingling of the affairs of my father with Charles Nyhus, who was his
16 general partner, co-owner, and joint venturer in various enterprises. There was a partial
17 settlement reached in 1984 between the Estate and Mr. Nyhus, and that settlement called for
18 there to be a continuation of some of the joint ventures between the Estate of Jack DelGuzzi,
19 myself and Charles Nyhus.

20 50. On December 31, 1988, Mr. Wilbert and Mr. Nyhus reached a settlement agreement to divide
21 up the assets jointly owned by the Estate, Mr. Nyhus and myself. That agreement was reduced
22 to writing. (Exhibit 3 to the Cedarwood Valuation prepared by CPA David Martin.)

23 51. At that time Mr. Nyhus released his interest in Cedarwood Properties, which was jointly owned
24 by him and my father, in Northland Properties, Inc. and in Peninsula Properties, Inc. and
25 simultaneously, there was a merger of these three corporations into Cedarwood Properties.

26 52. The Articles of Merger show that I am approximately a one-third owner of Cedarwood, the
27 surviving corporation.

28 53. On June 5, 1998, this court entered an order in this probate that stated:

1 1.1 G. **The administrator is authorized and directed to proceed to liquidate** Delhur Inc.
2 and **Cedarwood Inc.**[sic] and with notice to all parties, including but not limited to the
3 payment of any outstanding liabilities of each corporation, preparation and filing of final tax
4 returns, **distribution of the remaining assets of each corporation to its shareholders,** [sic]
5 in dissolving each corporation. (Emphasis added.)

6 54. On August 5, 1999, Mr. Wilbert, acting as majority shareholder by virtue of his control of the
7 the majority of the shares which belonged to the Estate, caused a plan of dissolution and
8 distribution to be approved for Cedarwood through a shareholders' meeting.

9 55. On April 21, 2003, my attorney, Charles M. Cruikshank III, hand-delivered a demand for
10 payment for my interest in Cedarwood upon Mr. Wilbert, though his attorneys, as Mr. Wilbert
11 had insisted. [EXHIBIT CW-1]

12 56. He sent another letter on April 30, again requesting payment for my interest in Cedarwood.
13 [EXHIBIT CW-2]

14 57. Mr. Wilbert has not responded to these letters.

15 58. The value of my interest in Cedarwood is now \$2,413,414, as calculated by David Martin, CPA,
16 who was retained by Mr. Cruikshank to value my interest in Cedarwood.

17 Further, your declarant sayeth naught.

18 Dated this 19th of October 2003.

19 _____
20 Gary Delguzzi

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR CLALLAM COUNTY

In Re of the Estate of)
JACK J. DELGUZZI,)
Deceased.)
GARY DELGUZZI,)
Plaintiff,)
v.)
WILLIAM E. WILBERT,)
et al.,)
Defendants)

NO. 8087

DECLARATION OF CRUIKSHANK
IN SUPPORT OF MOTION FOR ORDER
TO SHOW CAUSE

1. My name is Charles M. Cruikshank III and I am over the age of majority, and fully competent as to all matters herein. I am the attorney for Gary Delguzzi and have been so since 1994.
2. I make this declaration in support of the order to show cause and I am authenticating the documents attached as exhibits to the declaration of Gary Delguzzi herein.
3. Exhibit A-1 is a copy of the quitclaim deed from Cascade Investment Properties, Inc. to William E. Wilbert-Broker, Inc. dated September 28, 1983, as recorded in Clallam County, Washington recorder's office on November 18, 1993.
4. Exhibit A-2 is the statutory warranty deed wherein Jack and Gary Delguzzi acquired the 813 East Front Street property on 11 July 1977, subject to the Smith mortgage which was payable to First Federal Savings and Loan.
5. Exhibit A-3 is a copy of the statutory warranty deed from "Gary Delguzzi, as his separate estate; and William E. Wilbert, administrator of the estate of Jack Delguzzi", to Cascade Investment

1 Properties Incorporated dated 26 February 1991, as well as the underlying promissory note dated
2 February 25, 1991 and the closing statement for that property dated 28 February 1991, as well
3 as the estate summary of the transaction, and the recorded assignment of leases and rent dated
4 26 February 1991.

- 5 6. Exhibit A-4 is the statutory warranty deed from William E. Wilbert-Broker, Incorporated to
6 Laurence M. Dempsey and the letter from Laure Anne Wilbert of Hemisphere Properties,
7 Limited dated February 21, 1997 to Clallam Title Company regarding the terms and payoff of
8 the principal balance on the Dempsey assumption.
- 9 7. Exhibit A-5 is motion, affidavit, and order quieting title entered on 5 December 1997.
- 10 8. Exhibit A-6 is a copy of the check from Clallam Title Company to Clallam County Superior
11 Court for the payoff of the principal balance owed to Gary Delguzzi and to the estate dated
12 January 13, 1998.
- 13 9. Exhibit A-7 is a spreadsheet showing the current value of payments received on 813 Front Street
14 and how such value was calculated.
- 15 10. Exhibit A-8 is a copy of the First Federal check for payment from Clallam Title for the
16 underlying Smith mortgage on 813 East Front Street.
- 17 11. Exhibit A-9 is a copy of the May 19, 2000 letter of Mr. Wilbert to the Clallam County Clerk
18 demanding payment of the 813 East Front Street sale proceeds.
- 19 12. Exhibit B-1 is a copy of the settlement agreement dated 25 July 1984 between Mr. Wilbert and
20 Mr. Hamlin, acting as respective administrators of the estate of Jack Delguzzi and Bruno
21 Delguzzi. Page 5 of that Exhibit details the funds of Gary Delguzzi held at the title company.
- 22 13. Exhibit B-2 is a computation of the amount owed to Gary Delguzzi on the Bruno settlement
23 transaction and the comments that explain that page 12 of Exhibit B-1 directs that \$90,000.00
24 be paid to the IRS. Review of the transcript of Federal estate taxes obtained from the IRS shows
25 no such payment received in 1984 and that the alleged amount of \$49,000.00 was not added as
26 an amount due from Gary Delguzzi related to the Estate court-ordered accountings for 1984.
- 27 14. Exhibit C-1 consists of copies of the closing statement and Estate's records of the Turnbow
28 transaction, which was the sale from Peninsula Monarch, Inc., Gary Delguzzi's solely owned

corporation, to Mr. and Mrs. Nyhus.

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15. Exhibit C-2 is a copy of the summary of the calculations of the amount owed to Gary Delguzzi on the Turnbow sale. It states that the records of Peninsula Monarch do not reflect receipt of a \$30,000.00 trade property, and such amount is therefore not included in the calculation and that the alleged payment of \$28,000.00 to the IRS and the Washington Department of Revenue are not reflected in the court-ordered accountings and so are not considered in the calculations. There is a notation in the court-ordered accountings for June 15, 1984 that \$75,000.00 was received as a loan from the trust of Gary Delguzzi Delguzzi relating to this sale, but the escrow documentation does not show this amount. The real estate commission of 10 percent reflected on the escrow statement is not considered as there is no evidence of a real estate listing agreement.
16. Exhibit D-1 is a copy of the earnest money receipt and agreement of June 14, 1982 on the "Little property", where this jointly held property of Gary Delguzzi and his late father was agreed to be sold by Gary Delguzzi while he was still personal representative of the estate.
17. Exhibit D-2 is a copy of Wilbert's transaction summaries and documentation for this sale showing that the sale closed on September 13, 1982 and that an adjustment was made on September 22, 1982 and shows Gary Delguzzi's signature individually and a signature line for Mr. Wilbert as 'personal representative'. Mr. Wilbert assumed the office of Estate Administrator on August 12, 1982.
18. Exhibit E-1 is a copy of the closing summary prepared by William E. Wilbert and signed by Gary Delguzzi and Wilbert dated 25 July 1983. It does not include any substantiation for the "out-of-pocket expenses" of Nyhus and that amount is not considered in the calculation of the amount due to Gary Delguzzi nor is the payment to Wilbert of \$9,700.00 as there is no evidence of his entitlement to such commission, although titled as "administrative expense".
19. Exhibit E-2 is a summary of the calculation of the amounts owed to Gary Delguzzi on this transaction.
20. Exhibit F-1 is a copy of the sworn Supplement to Final Report and Petition for Decree of Distribution, pages 45 and 46, signed by William E. Wilbert pursuant to his petition for fees and

filed in this court on December 12 1996.

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21. Exhibit F-2 is a copy of the "Transfer of an Estate in Fee Simple", dated 4 November 1986, as filed in and obtained from the British Columbia Area Assessor government office showing that Wilbert took the full ownership of the Northland Properties, Inc. 40 acre parcel in the Malcolm Island, British Columbia. In its upper right corner, it shows the market value of an undivided one half interest to be \$33,000.00, or a total value of the property as \$66,000 CDN, nearly six times the value assigned to it by Mr. Wilbert's sworn Supplement to Final Accounting.
22. Exhibit F-3 is a copy of the "Freehold Transfer" wherein Wilbert transferred the Malcolm Island property to Silvertip Land Corporation on December 15, 2000 for the sum of \$300,000.00 CDN, also obtained from British Columbia Area Assessor government office.
23. Exhibit F-4 is a table showing the calculation of the amount due to Gary Delguzzi for his interest in the Malcolm Island property by virtue of his ownership of 34% of the common stock of Northland Properties, Inc. In 1986, at the time Mr. Wilbert took it from the Estate at a fraction of its actual value.¹
24. I retained Certified Public Accountant David Martin to assist with valuation matters related to Cedarwood Properties, Inc. and he prepared and signed the Valuation Report included here with to value Gary Delguzzi's interest in Cedarwood Properties, Inc. The value he reached for Mr. Delguzzi's interest as of October 10, 2003 is \$2,423,414, per the enclosed Report.

Further, your declarant sayeth naught.

Dated this 20th of October 2003.

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Charles M. Cruikshank III

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¹ This is not the first or last time that Mr. Wilbert has taken Estate properties for his fees and dramatically undervalued their value. See the Memorandum Opinion of Judge Grant Meiner dated March 22, 1984, where Judge Meiner found that Wilbert had transferred an Estate property to himself at a value of only \$120,000 while its appraised value was \$180,000. This was the transaction that cost Mr. Wilbert his non-intervention powers as Administrator.

RECEIVED

DEC 18 2003

Cruikshank Law Offices, P.S.

SERVICE COPY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR CLALLAM COUNTY

In Re the Estate of Jack J. Delguzzi,

GARY DELGUZZI,

Plaintiff,

v.

WILLIAM E. WILBERT, et ux., et al.,

Defendants.

NO. 8087

DEFENDANTS OPPOSITION TO
PLAINTIFF'S MOTION FOR
ORDER TO SHOW CAUSE

COMES NOW Defendant William E. Wilbert and opposes Plaintiff's Motion for Order to Show Cause, and states as follows:

I.

WHAT RELIEF IS THE PLAINTIFF SEEKING?

Defendants were served with Plaintiff's Motion for Motion for Order to Show Cause on October 20, 2003. It is not clear from the face of the Motion what the Plaintiff is seeking. The Motion simply requests for an "Order to Show Cause." The purpose of a motion under the Civil Rules is to give the other party notice of the relief sought. *Pamelin Industries Inc. v. Sheen- U.S.A., Inc.*, 95 Wash.2d 398, 622 P.2d 1270 (1981). Civil Rule 7(b)(1) requires that a motion "shall state with particularity the grounds thereof, and shall set forth the relief or order sought." (emphasis added).

The Plaintiff's motion simply states the follows:

CHICOINE & HALLETT, P.S.

WATERFRONT PLACE ONE, SUITE 803
1011 WESTERN AVENUE
SEATTLE, WA 98104
(206) 223-0800 FAX (206) 467-8170

1 "Comes now Gary Delguzzi, who moves for Order to Show Cause, directed to William E.
2 Wilbert, all as more fully set out in the Declaration of Gary Delguzzi and of his counsel herewith."
3 See Gary Delguzzi's Motion for Motion for Order to Show Cause. Plaintiff's counsel's declaration
4 merely authenticates the attached exhibits and describes their contents, while Mr. Delguzzi's
5 declaration sets out random allegations without stating the relief or order sought, as required by the
6 Civil Rules of Procedure. Neither of the declarations purport to give notice to Defendants what relief
7 is sought. It is not evident from the face of the Motion what the Order to Show Cause requests of
8 Defendants and Defendants are not clear how to respond to the Motion.
9

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11 II.

12 MOTIONS ARE NOT AVAILABLE TO DETERMINE THE
13 MERITS OF A CASE

14 Mr. Delguzzi's declaration sets out allegations that are factual issues to be resolved at trial.
15 Ordinarily a motion cannot be made to settle important questions. *State v. Alexis*, 21 Wash.App. 161,
16 584 P.2d 963 (Div. 2 1978). A motion is not available to determine the merits of the cause. *Hector*
17 *Isabelle Builder, Inc., v. Welch*, 125 Vt. 267, 214 A.2d 63 (1965). A motion may present questions of
18 law, but not questions of disputed facts. *Electronic Data Systems Corp. v. Heinermann*, 217 Ga.App.
19 816, 459 S.E.2d 457 (1995).
20

21 Mr. Delguzzi is attempting to have the Court resolve disputed factual issues through his motion.
22 He alleges that he had a personal interest in many of the Estate managed properties and he never
23 received the funds he was entitled to. Determining the ownership interest in the Estate properties is a
24 factual issue that needs to be resolved at trial, where each party has a fair opportunity to present all of
25 their evidence to the Court. Determining what, if anything, was paid for each property and what Mr.
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1 Delguzzi was paid is also a factual issue that needs to be resolved at trial. Plaintiff has asserted no
2 question of law and courts may not consider grounds not stated in the motion. *Orsi v. Aetna Insurance*
3 *Co.*, 41 Wn.App. 233, 703 P.2d 1053 (1985).
4

5 III.

6 CONCLUSION

7 The purpose of a motion is to give the Court and the other party notice of the specific relief
8 sought by the moving party and of the grounds supporting the request. Plaintiff's motion provides no
9 notice to the Court nor the Defendants of the relief sought. Plaintiff's declaration merely states
10 allegations based on factual issues, which should be determined by the Court during trial, not through
11 the use of motions. Seeing that the motion has not requested any relief, Plaintiff's motion should be
12 dismissed. To the extent that the Court interprets the Motion as requesting the Court to rule on the
13 ultimate factual issues in dispute, Plaintiff's motion should be denied.
14

15
16 NOW THEREFORE, for the reasons set forth above, the Defendant respectfully requests that
17 Plaintiff's Motion for Motion for Order to Show Cause be denied.
18

19 DATED this 18th day of December, 2003.
20

21 CHICOINE & HALLETT, P.S.

22 By: 

23 Darrell D. Hallett, WSBA #00562
24 Attorney for Defendant William E. Wilbert
25 1011 Western Avenue, Suite 803
26 Seattle, WA 98103

H:\W\Wilbert-9400\PROBATE\Pleadings\Opp. to Order to Show Cause 12.11.03.doc

CHICOINE & HALLETT, P.S.

WATERFRONT PLACE ONE, SUITE 803
1011 WESTERN AVENUE
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(206) 223-0800 FAX (206) 467-8170

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR CLALLAM COUNTY

In Re of the Estate of)
JACK J. DELGUZZI,)
Deceased.)
GARY DELGUZZI,)
Plaintiff,)
v.)
WILLIAM E. WILBERT,)
et al.,)
Defendants)

NO. 8087

REPLY OF GARY DELGUZZI
RE: ORDER TO SHOW CAUSE

The administrator seems to be not taking the Order to Show Cause seriously. After what is perhaps the longest probate administration in the history of the State of Washington, an administration that has been continuously in litigation since Mr. Wilbert was appointed in 1982, and suddenly he cannot understand a motion and order to show cause.

Cautious litigators, when faced with uncertainty, cover all of their bases, although Mr. Wilbert has chosen not to do so in this instance. Exercising the minimal amount of due care, a response would have claimed that, perhaps the motion and order to show cause does not provide any certain claim for the relief sought, and then, would have addressed the merits of the motion, which Wilbert chose not to do, at his express and intentional peril.

Not only did he choose not to address any particular factual issues that he wished to contest, he choose not to offer any evidence to controvert Delguzzi's evidence.

It is incredibly difficult to image that Mr. Wilbert and his attorneys could not comprehend

1 the court's ruling and did not seek to clarify it at the time, on October 20, when the court ordered
2 60 days for the administrator's response and 30 days afterwards for the reply of the
3 plaintiff/petitioner. Mr. Hallett alleges that he did not understand what relief was being sought at
4 that time and he did not seek to have that clarified then, or for sixty days thereafter?

5 The order required William E. Wilbert to show cause, if any he had, why judgment should
6 not be entered against him and his martial estate for \$3,425,150. He has not shown any cause at
7 all on the merits why the relief requested should not be granted.

8 As to the two Washington cases cited by the administrator, the holding of **Pamelin**
9 **Industries, Inc. v. Sheen-U.S.A., Inc.** (95 Wn. 2nd 398, 622 P.2d 1270(1981)) supports the entry
10 of judgment against Mr. Wilbert in this instance. The other case cited (**State v. Alexis**, 21 Wash,
11 App. 161, 584 P.2d 983(1978) merely holds, as a footnote, that there are only "serious motions"
12 and that there is no such thing as a motion made "merely for the record." **Alexis**, footnote 3, at
13 page 168.

14 **Pamelin** holds that a moving party must only "state the relief sought and the grounds
15 justifying the relief." **Pamelin**, at 402. In the case now before the court, these two issues could not
16 be plainer:

17 Relief sought: Judgment for \$3,425,150 in favor of Gary Delguzzi and
18 against William E. Wilbert and his marital estate.

19 Grounds for that relief: The detailed affidavit of Gary Delguzzi which listed in
20 detail, with authenticated copies of evidentiary documents
21 showing real properties and corporate stock that he owned,
22 together with his father when Jack Delguzzi was alive, and
23 with the estate since June 1, 1978, and which were
24 converted, liquidated (Cedarwood Properties, Inc.) or
25 otherwise falsely transferred or incorrectly accounted for by
26 Mr. Wilbert, so that Mr. Delguzzi has never received his
27 share of these assets.

24 As to Cedarwood Properties, Inc., there was an order entered by this court (upon Mr.
25 Wilbert's Motion and upon his attorney's pleading paper) on June 5, 1998, that required Mr.
26 Wilbert to liquidate Cedarwood Properties, Inc. as follows:

27 **The administrator is authorized and directed to proceed to liquidate Delhur Inc.**
28 **and Cedarwood Inc.[sic] and with notice to all parties, including but not limited to**
the payment of any outstanding liabilities of each corporation, preparation and filing

1
2
3 of final tax returns, **distribution of the remaining assets of each corporation to its shareholders**, [sic] in dissolving each corporation. (Emphasis added.)

4 Do we need a trial to determine if Mr. Wilbert has complied with the court's order?

5 Does the series of convoluted, treacherous and deceitful transactions on the 813 East Front
6 Street lot in Port Angeles that was owned jointly by Gary Delguzzi and by the Estate require a trial,
7 where it is undisputed and undisputable that Mr. Wilbert took the property into the name of his own
8 solely owned and closely held corporation, then sold it, kept all of the money, including both the
9 Estate's share as well as Mr. Delguzzi's, and never reported any of those transactions in his fiduciary
10 accounting? Does that require a trial?

11 Does Mr. Wilbert need a trial to change his testimony that was contained in his Supplement
12 to the Administrator's Final Accounting, that he executed under oath in December of 1996, stating
13 that the Malcolm Island property in British Columbia was worth only \$11,250.00 (owned by
14 Northland Properties Incorporated, of which Gary Delguzzi was a shareholder)? Does he need a trial
15 to challenge the value shown by the official British Columbia land records at \$66,000.00 (or about
16 six times his declared value) and which he sold in the year 2001 for \$300,000.00?

17 And Gary Delguzzi's \$90,000.00 of separate property sale proceeds that were held by Pioneer
18 Title Company in Port Angeles, which Wilbert agreed to, and did, transfer to pay off a judgment
19 against the Estate where Mr. Delguzzi was not legally responsible for that judgment, is there
20 evidence that could be presented at trial but not in response to this motion and order to show cause
21 that would exonerate Mr. Wilbert for that conversion?

22 Is there something about these series of events that would require the court to hear live
23 testimony in order to gauge the credibility of witnesses? Would a different result than that sought
24 by Mr. Delguzzi's motion come from that exercise?

25 Where Mr. Wilbert's records show that Gary Delguzzi's jointly owned one-third of the
26 property that was sold to the U. S. Park Service by Wilbert in 1983 for \$97,000.00 was never paid
27 to Mr. Delguzzi, is there need for a trial on that matter, too?

1 And the "Turnbow property", which was owned by Peninsula Monarch, Inc., Gary's solely
2 owned corporation, where Mr. Wilbert sold that real estate for \$85,000.00 in 1988, does the court
3 require live testimony to determine whether Mr. Wilbert paid Gary Delguzzi for that sale?

4 And what about the "Little property," another jointly owned Gary/Jack property that sold for
5 \$42,000.00 in 1982? Is live testimony needed for Mr. Wilbert to dispute that he never paid Gary's
6 share of that sale to Gary?

7 The court gave the Defendant sixty days from October 20 to procure and offer evidence to
8 dispute the evidence offered in support of the motion and Order to Show Cause, and the Defendant
9 could not produce any credible evidence to that end. A trial will not change the fact there is no
10 evidence to defeat the merits of Delguzzi's motion.

11 In summary, it is apparent that there is no defense to these actions by Wilbert and that, trial
12 or no trial, the facts are uncontroverted and incontrovertible.

13 Mr. Wilbert has had his opportunity to show cause why judgment should not be entered
14 against him and his marital estate and he has declined to do so. The relief sought by the motion and
15 order to show cause should be granted.

16 Dated this 31st of December 2003.

17
18 _____
19 Charles M. Cruikshank III
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5 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR CLALLAM COUNTY

6 _____)
7 GARY DELGUZZI,)
Plaintiff,)
8 v.)
9 WILLIAM E. WILBERT,)
et al.,)
10 _____)
Defendants)

NO. 8087

JUDGMENT

11 JUDGMENT SUMMARY

12 JUDGMENT CREDITOR	GARY DELGUZZI
13 JUDGMENT CREDITOR'S ATTORNEY	CHARLES M. CRUIKSHANK III
14 JUDGMENT DEBTORS	WILLIAM E. WILBERT and the Marital Estate of William E. Wilbert and Loretta Wilbert, Husband & Wife
15 AMOUNT OF JUDGMENT	\$3,425,150.00
16 INTEREST TO DATE OF JUDGMENT ¹	\$
17 TOTAL OF TAXABLE COSTS AND ATTORNEY FEES	\$-0-
18 TOTAL OF THIS JUDGMENT	\$

19 This matter having come on hearing on the Order to Show Cause of Plaintiff/Petitioner, and
20 with the court being fully advised herein, the foregoing judgment is hereby entered.
21

22 Done this ___ of January 2004.

23 _____
24 JUDGE LEONARD COSTELLO

25
26 _____
27 ¹ Interest is computed at the judgment rate of 12% annually. Daily rate is \$1,126.08,
28 computed at \$3,415,150 x 12% /365 days, from October 21, 2003.

Charles M. Cruikshank III
108 S. Washington St. #306
Seattle, Washington 98106
206 624-6761 WSB 6682

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Presented by:

Charles M. Cruikshank III WSB 6682

Approved as to form; Notice of
Presentation Waived.

Darrell D. Hallett

Charles M. Cruikshank III
108 S. Washington St. #306
Seattle, Washington 98106
206 624-6761 WSB 6682

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR CLALLAM COUNTY

In Re of the Estate of)
JACK J. DELGUZZI,)
Deceased.)
GARY DELGUZZI,)
Plaintiff,)
v.)
WILLIAM E. WILBERT,)
et al.,)
Defendants)

NO. 8087

SUPPLEMENTAL REPLY MEMO OF DELGUZZI
RE: ORDER TO SHOW CAUSE

Mr. Hallett's Response to the Order to Show cause presents apparent bewilderment and misunderstanding as to whether he was to address the Motion For Order to Show Cause or whether he was to address the Order to Show Cause. Mr. Hallett's Response is disingenuous at best, as the attached Verbatim Report of Proceedings (Exhibit A) makes amply and abundantly apparent.

At page three, there is the following exchange:

THE COURT: All right. Mr. Cruikshank provided me with an order to show cause, directed to Mr. Wilbert to appear before this court and show cause why he should not pay over to Gary Delguzzi and have a judgment entered against him and his marital estate, in favor of Gary Delguzzi, in the amount of \$3,425 -- \$3,425,150. Mr. Hallett, I understand you may not have seen this before. I guess what my intention would be is to sign it and set a return date for 60 days out.
MR. HALLETT: So that would be December 20th.

And, on page 4:

THE COURT: Let's do it this way, Mr. Cruikshank.

1 As far as I'm concerned, I don't want to get
2 involved -- there are counsel represented -- I'll
leave it the way it is. **I'll sign it this way.**

* * *

3 MR. HALLETT: I thought a response was due on the
4 19th to that motion for order to show cause.

THE COURT: **It's an order to show cause.**

5 And, at page 5:

6 THE COURT: I want to get this moving, but I
7 would not anticipate that there's going to be a
8 hearing on the 19th of December to determine
9 whether or not the judgment should be entered.
10 What I anticipated is that **Mr. Wilbert would**
11 **have 60 days to file a written response to**
12 **essentially the motion to have a judgment**
13 **entered against him and his marital estate,** and
14 once there is a response filed to that, that Mr.
15 Cruikshank would then have an opportunity to
file a reply to that.

* * *

12 **Mr. Hallett will have 60 days to respond to the**
13 **motion to have a judgment entered against him,**
14 and Mr. Cruikshank, you will have 30 days after
15 that to respond to whatever Mr. Hallett files,
and then I'll set a hearing within a couple of
weeks after that, to hear this request on the
merits.

16 Mr. Hallett has responded only on procedural grounds and has thus waived his right to a
17 response on the merits of the Order to Show Cause. The undersigned suggests that since the
18 Verbatim Transcript of Proceedings leaves no room for confusion on the procedural issues, there is
19 no need for a hearing on the merits. There has been no opposition to Mr. Delguzzi's statement of the
20 merits as set out in the Order to Show Cause and therefore nothing to address at a hearing. The
21 matter has been fully submitted and is ripe for the court's decision.

22 Dated this 14th of January 2004.

23
24 _____
25 Charles M. Cruikshank III
Attorney for Gary Delguzzi

Certificate of Service

26 I certify that I have caused to be placed in the US Mail, with first class postage affixed thereto, a copy of the
27 foregoing addressed to Darrell Hallett, 1011 Western Avenue #803, Seattle, WA 98104 on this 14th of January 2004.

28 _____
Delguzzi's Supplemental Reply
Re: Order to Show Cause -2-

Charles M. Cruikshank III
108 S. Washington St. #306
Seattle, Washington 98106
206 624-6761 WSB 6682

Appendix 7

JUN 02 2007

Cruikshank Law Offices, P.S.

The Honorable Leonard W. Costello

Hearing Date: June 29, 2007

Hearing Time: 1:30 p.m.

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLALLAM

In the matter of the estate of

JACK DELGUZZI,

Deceased.

No. 8087

DECLARATION OF KATHRYN A. ELLIS
IN SUPPORT OF FINAL SUPPLEMENT
TO FINAL REPORT AND PETITION FOR
DECREE OF DISTRIBUTION

KATHRYN A. ELLIS declares and states as follows:

1. I was appointed the personal representative in this estate on January 7 2005, have testimonial knowledge of the facts set forth in this declaration and am competent to testify thereto.

2. In December of 1996, William Wilbert filed a Final Report and Petition for Decree of Distribution and a Supplement to Final Report pursuant to RCW 11.76.030. The report and supplement total 87 pages in length and explain the complexity of the case, the litigation involved and the liquidation of various assets in this multi-million dollar estate. On October 10, 1997 the Court entered a Memorandum Decision regarding such testimony and approved the Final Report as supplemented. That Memorandum Decision stated:

It appears to this Court, having heard the testimony and reviewed the documents made part of the record at the hearings in January and March, that this Estate is ready to be settled and closed, or at least as ready to be settled and closed as it will ever be.

The Court's decision resolved the administrative claims and the objections thereto and directed the parties to attempt an agreement on the procedure for liquidation of the remaining assets. An

DECLARATION OF KATHRYN A. ELLIS IN SUPPORT
OF FINAL SUPPLEMENT TO FINAL REPORT AND
PETITION FOR DECREE OF DISTRIBUTION - 1

COPY
KATHRYN A. ELLIS, ESQ.
600 Stewart St
Suite 620
Seattle, WA 98101
(206) 682-5002

1 agreement was not reached and accordingly subsequent plans of distribution were filed. On June
2 5, 1998 the Court entered an order regarding the plan for distribution. That plan for distribution
3 essentially directed the manner in which the administrator would liquidate the remaining real
4 property assets of the estate, Delhur Inc., and Cedarwood Inc. and the notice to be provided
5 regarding the same.
6

7 3. Subsequently, the personal representative of the Estate of William Wilbert filed
8 financial statements for the Estate of Jack Delguzzi for the period of October 1, 1997 through
9 May 24, 2004 on or about July 1, 2004. A copy of the objection to Margaret Shaw's Proposed
10 Nominees for Successor Administrator, together with the attachments referred to, is attached
11 hereto as Exhibit 1. As set forth in the documentation attached to that declaration, proceeds were
12 received and disbursed in the amount of \$771,299.96 between October 1, 1997 and May 24,
13 2004.
14

15 4. Subsequently, David Martin was appointed as a temporary personal
16 representative. Mr. Martin filed a Report of Former Administrator in February 2005 showing no
17 receipt or distribution of any funds¹.
18

19 5. Finally, as set forth in Exhibit 1 to the Final Supplement, the current personal
20 representative has received \$430,426.67 from the liquidation of the remaining property, and
21 disbursed the sum of \$414,783.21 to the allowed administrative claimants, leaving the current
22 balance of \$15,643.46 in the estate account. The source of such funds was from the remaining
23 property sales, and has been disclosed in the Annual Report of Sale of Assets filed in December
24
25

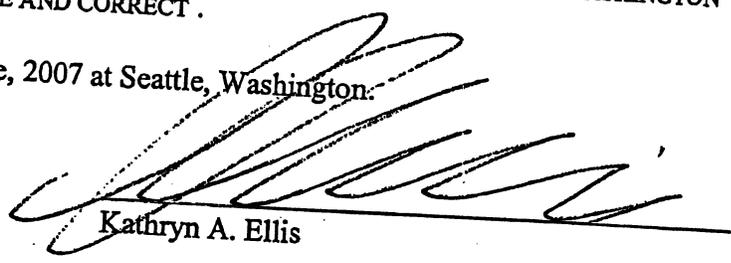
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27 ¹ The report advised that the checks Mr. Martin received for the estate were not deposited to any
28 account but were destroyed by him.

1 of 2005² and as supplemented thereafter to this Court. Attached hereto as Exhibit 2 is a list of
2 the remaining 19 properties referred to in Exhibit 1, and the disposition thereof. Attached hereto
3 as Exhibit 3 is a list of real properties prepared by Charles Cruikshank, which he previously
4 alleged the estate had not administered. Attached hereto as Exhibit 4 is a responsive list to Mr.
5 Cruikshank, explaining the status of the properties.
6

7 6. The Final Report has long ago been filed and approved. While there is no
8 requirement that a supplemental report be filed to show the liquidation of the remaining assets,
9 the same has been done in this case and this case is ready to close.
10

11 I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON
12 THAT THE FOREGOING IS TRUE AND CORRECT .

13 DATED this 17th day of June, 2007 at Seattle, Washington.


Kathryn A. Ellis

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² In July of 2006 this Court held that the personal representative was in compliance with the 11.44.015 & 11.44.025 and denied in its entirety the motion of Gary Delguzzi to compel compliance.

EXHIBIT 1

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR CLALLAM COUNTY

In the Matter of the Estate of
Jack J. Delguzzi,
Deceased.

NO. 8087

OBJECTION TO MARGARET SHAW'S
PROPOSED NOMINEES FOR SUCCESSOR
ADMINISTRATOR

COMES NOW Defendant Loretta Wilbert, personal representative of the Estate of William E. Wilbert, and objects to Margaret Shaw's proposed nominees for the position of Administrator of the Estate of Jack Delguzzi.

In Margaret Shaw's Petition for Order Issuing Letters of Administration and For Nonintervention Powers dated June 1, 2004, Ms. Shaw nominates Mark Mullen, Steve Gish, or David Martin for the position of Administrator of the Estate of Jack Delguzzi. Ms. Shaw offers no indication as to their qualifications to administer this estate.

In this case, a plan of distribution has already been approved by the Court. Attached as Attachment A, to Exhibit 1, are the financial statements for the Estate of Jack Delguzzi for the period of October 1, 1997 through May 31, 2004. There are 19 real properties remaining in the Estate. The sole task of a successor administrator will be to liquidate the real property and disburse the proceeds to the creditors according to the court-approved plan of distribution.

In the interests of preserving what remains in the Estate and minimizing fees to the Estate, Defendant Estate of William E. Wilbert ("Defendant Wilbert") proposes the appointment of a real

COPY

1 estate broker or agent with knowledge of Clallam County properties. Short Cressman & Burgess
2 has proposed the following Port Angeles-area realtors: Quint Boe, Jace Schmitz, or Tim Riley.
3 Defendant Wilbert requests this Court appoint one of the above-named realtors, or an individual
4 with similar expertise in Clallam County real estate. Defendant Wilbert and Short Cressman &
5 Burgess are the two largest creditors of the Estate of Jack Delguzzi. Defendant Wilbert is
6 concerned that excessive administrative fees will deplete what remains in the Estate.

7 Defendant Wilbert opposes the appointment of any administrator who intends to disrupt the
8 plan of distribution, on the grounds that such an appointment would be costly and economically
9 inefficient. As reflected on the financial statements, the 19 remaining properties have an assessed
10 value of approximately \$224,000. One of Ms. Shaw's nominees, David Martin, has submitted an
11 affidavit and letter in support of the Petition against the previous administrator, William E. Wilbert.
12 Because Mr. Martin may not be prepared to follow the plan of distribution, his appointment would
13 not be in the Estate's best interests.

14 Defendant is also concerned about Mr. Martin's understanding of Estate issues. In Mr.
15 Martin's letter, he raises the question as to how the Estate could possibly have a federal estate tax
16 liability if it was insolvent in 1982. Under section 2031(a) of the Internal Revenue Code, an estate's
17 tax liability is generally based upon the value of the estate as of the date of decedent's death¹ (in this
18 case the valuation was done as of 1978) and not the status of the Estate 4 years later. The original
19 Estate tax returns included amounts that were ultimately depleted by lawsuit settlements (there were
20 approximately 100 lawsuits and/or claims pending when Defendant Wilbert became administrator).
21 The Estate reached a settlement with Seafirst bank for \$1.2 million for release of a judgment entered
22 against the Estate while Gary Delguzzi was the administrator. The Estate settled with Charles
23 Nyhus and had to turn over significant interests in property that were assigned to Mr. Nyhus while
24 Jack Delguzzi was the administrator. The original Estate tax return also reflected an asset received
25

26 ¹ In certain situations, not relevant here, an estate's tax liability can be valued at a time six months after the date of death under § 2032 of the Internal Revenue Code.

1 by Jack DelGuzzi as a purported beneficiary of his brother Bruno's will. When Bruno's heirs sued
2 and obtained a judgment against the Estate with respect to Jack DelGuzzi's forgery, these amounts
3 (which were included in the gross Estate for purposes of calculating Estate tax) were reflected as
4 liabilities, and ultimately returned to their rightful owners. See *Supplement to Final Report and*
5 *Petition for Decree of Distribution dated December 12, 1996.*

6 Mr. Martin also appears not to understand the meaning of a "Stipulated Tax Adjustment."
7 Mr. Martin expressed his concern that the Estate paid more in taxes than the \$344,123 that was
8 stipulated as an adjustment in 1984. See *Letter Report of David Martin dated June 23, 2004*, pp. 2
9 & 6. What Mr. Martin fails to understand is that the \$344,123 was an *additional* assessment, over
10 and above the initial self-assessment (reported on the original tax return) of over \$1 million.¹ See
11 *Exhibit 3 to Plaintiff's Declaration re: ERRATA*, p. 2. Both the \$1+ million reported on the
12 original return and the additional \$344,123 remained (substantially) unpaid and accumulated
13 interest. As set out in the final report, the federal estate tax liability stood at approximately \$4
14 million when the IRS liability was settled for \$350,000 in the mid-1990s. See *Final Report and*
15 *Petition for Decree of Distribution after Order of Solvency dated December 12, 1996*, pp. 11-12.

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26 ¹ The amount shown due on the original return was not paid at the time of filing, because the estate was eligible for five years of interest only payments and ten years of principal and interest payments in light of its significant holdings in real property and closely held businesses. Internal Revenue Code § 6166.

1 For the above reasons, the Defendant respectfully requests the Court deny Ms. Shaw's request,
2 and appoint a real estate broker or agent with substantial experience in Clallam County as the
3 administrator to handle the sales of the remaining properties.

4
5 DATED this 1st day of July, 2004.

6
7 CHICOINE & HALLETT, P.S.

8
9 By: Cori Flanders Palmer
10 Cori E. Flanders-Palmer, WSBA #34893
11 Attorney for Defendant Loretta Wilbert, Personal
12 Representative of the Estate of William E. Wilbert
13 1011 Western Avenue, Suite 803
14 Seattle, WA 98103

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR CLALLAM COUNTY

In Re the Estate of Jack J. Delguzzi,
Margaret M. Shaw, personal representative of the
Estate of GARY DELGUZZI,
Plaintiff,
v.
Loretta D. Wilbert, personal representative of the
Estate of WILLIAM E. WILBERT, et ux., et al.,
Defendants.

NO. 8087
DECLARATION OF
LESLIE STANTON

I, Leslie Stanton, declare and state the following under penalty of perjury:

1. I am over 18 years of age and competent to make this declaration and do so from personal knowledge.
2. I was the bookkeeper for the deceased Defendant, William E. Wilbert.
3. In the course of my duties, I prepared the books and records for the Estate of Jack Delguzzi.
4. Attached, as Attachment A, are true and accurate copies of the financial statements for the period of October 1, 1997 through May 31, 2004, which I prepared for the Estate of Jack Delguzzi.

EXHIBIT 1

CHICOINE & HALLETT, P.S.
WATERFRONT PLACE ONE, SUITE 803
1011 WESTERN AVENUE
SEATTLE, WA 98104
(206) 223-0800 FAX (206) 467-8170

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I declare under penalty of perjury under the laws of the United States and the State of Washington that the foregoing is true and correct to the best of my knowledge.

DATED this 30th day of June 2004.

Leslie Stanton

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I declare under penalty of perjury under the laws of the United States and the State of Washington that the foregoing is true and correct to the best of my knowledge.

DATED this 30th day of June 2004.


Leslie Stanton

ATTACHMENT A

ESTATE OF JACK DELGUZZI
CONSOLIDATED BALANCE SHEETS
BALANCE SHEET AS OF MAY 31, 2004

ASSETS:	ESTATE	DELHUR INC. (dissolved)	CEDARWOOD PROPERTIES INC. (dissolved)	COMBINED TOTAL	INTERCOMPANY ELIMINATIONS		CONSOL- IDATED BALANCES
					DEBIT	CREDIT	
CASH-BANK OF AMERICA INTERCOMPANY:	4,191	0	0	4,191	0	0	4,191
ESTATE	0	0	0	0	0	0	0
DELHUR (dissolved)	0	0	0	0	0	0	0
CEDARWOOD (dissolved)	0	0	0	0	0	0	0
PENINSULA MONARCH (dissolved)	0	0	0	0	0	0	0
CONTRACTS RECEIVABLE:	0	0	0	0	0	0	0
HOWEY-LOT 5	8,951	0	0	8,951	0	0	8,951
GARY DELGUZZI (principal only)	14,997	0	0	14,997	0	0	14,997
GARY DELGUZZI (notes approx. \$200,000)	0	0	0	0	0	0	0
LAND	223,200	0	0	223,200	0	0	223,200
PREPAID FEDERAL TAXES (none)	0	0	0	0	0	0	0
FOREIGN STOCKS:	0	0	0	0	0	0	0
FINCA DELGUZZI (undetermined)	0	0	0	0	0	0	0
COLORADO BAR (undetermined)	0	0	0	0	0	0	0
SURFSIDE S.A. (undetermined)	0	0	0	0	0	0	0
TOTAL ASSETS	251,339	0	0	251,339	0	0	251,339

CONSOLIDATED BALANCE SHEETS
BALANCE SHEET AS OF MAY 31, 2004

LIABILITIES:	ESTATE	DELHUR INC.	CEDARWOOD PROPERTIES INC.	COMBINED TOTAL	INTERCOMPANY ELIMINATIONS		CONSOL- IDATED BALANCES
					DEBIT	CREDIT	
ACCOUNTS PAYABLE	0	0	0	0	0	0	0
PROPERTY TAXES	0	0	0	0	0	0	0
COURT APPROVED ADMIN. FEES PAYABLE	0	0	0	0	0	0	0
SCB (INCL INTEREST)	1,283,454	0	0	1,283,454	0	0	1,283,454
ADMINISTRATOR (INCL INTEREST)	1,283,454	0	0	1,283,454	0	0	1,283,454
BENSON MCLAUGHLIN (INCL INT.)	192,628	0	0	192,628	0	0	192,628
PRIORITY CLAIMS NOT YET APPROVED BY COURTS	17,449	0	0	17,449	0	0	17,449
LEGAL (LARRY JOHNSON-unpaid)	0	0	0	0	0	0	0
WEW 1997-2004 ADMIN. FEES (not yet determined)	150,000	0	0	150,000	0	0	150,000
UNITED PACIFIC	0	0	0	0	0	0	0
FEDERAL TAXES PAYABLE (none due)	0	0	0	0	0	0	0
DEFERRED INCOME (none)	0	0	0	0	0	0	0
TOTAL LIABILITIES	2,926,985	0	0	2,926,985	0	0	2,926,985
NET EQUITY (DEFICIT)	(2,675,646)	0	0	(2,675,646)	0	0	(2,675,646)
TOTAL LIABILITIES AND EQUITY	251,339	0	0	251,339	0	0	251,339
CLAIMS AGAINST GARY DELGUZZI							
McCLURE	150,000	0	0	150,000	0	0	150,000
SHAW/MEYERS	167,000	0	0	167,000	0	0	167,000
SHAW	0	0	0	0	0	0	0

of Jack DeIGuzzi
Income
November 1 1997 - May 31, 2004

DATE	SOURCE	AMOUNT
1997		
11/1	US Bank Acct. 490 checking Interest adjustment	
11/10	Dempsey payment received	1,501.50
11/13	Catalan October payment received	622.00
11/30	US Bank Acct. 490 checking Interest payment	268.00
TOTAL		<u>248.03</u>
		2,639.53
1997		
12/1	Casad rent	
12/3	Howey November payment received	300.00
12/8	Catalan November payment received	168.67
12/22	Catalan December payment received	282.57
12/22	Howey December payment received	268.00
12/22	MJR Ltd. note payment received	168.67
12/23	Casad rent	4,200.00
12/30	US Bank Acct. 490 checking Interest payment	300.00
TOTAL		<u>257.11</u>
		5,945.02
1997 TOTAL \$		<u>8,584.55</u>
1998		
1/12	Casad rent	
1/29	Catalan January payment received	300.00
1/29	Howey January payment received	268.00
1/29	Property Sold (Yandell #)	168.67
1/31	US Bank Acct. 490 checking Interest payment	9,764.30
TOTAL		<u>257.96</u>
		10,758.93
1998		
2/17	Casad rent	
2/19	Catalan February payment received	300.00
2/28	US Bank Acct. 490 checking Interest payment	268.00
TOTAL		<u>261.94</u>
		829.94
1998		
3/5	Howey February payment received	
3/5	Casad rent	168.67
3/26	MJR Ltd. Note payment received	300.00
3/21	US Bank Acct. 490 checking Interest payment	4,350.00
TOTAL		<u>288.34</u>
		5,107.01
1998		
4/2	Catalan March payment received	
4/6	Casad rent	282.57
4/12	Howey March payment received	300.00
4/20	Internal Revenue Service-refund	96.67
4/30	Catalan April payment received	1,735.00
4/30	US Bank Acct. 490 checking Interest payment	282.57
TOTAL		<u>141.15</u>
		2,837.96
1998		
5/7	Casad rent	
5/7	Howey April payment received	300.00
TOTAL		<u>168.67</u>
		468.67
1998		
6/3	Howey May payment received	
6/5	Casad rent	168.67
6/22	Catalan May & June payment received	300.00
6/26	MJR Ltd. note paid off	565.14
TOTAL		<u>10,212.58</u>
		11,246.39

of Jack DeGuzzi
Income
November 1 1997 - May 31, 2004

DATE	SOURCE	AMOUNT
1998		
7/1	Howey June payment received	
7/8	Casad rent	168.67
7/14	Howey July payment received	300.00
7/17	Catalan July payment received	168.67
7/21	Hemisphere 578 Account (CD Interest)	282.57
7/23	Internal Revenue Service-refund	362.88
7/31	Property Sold. (State of Washington # 113)	21.00
TOTAL		<u>38,979.68</u>
		40,283.45
1998		
8/6	Casad rent	
8/14	Howey August payment received	300.00
8/19	Property Sold (Reid #118)	168.67
8/26	Property Sold (Nyhus #)	12,851.56
8/25	Property Sold (Reid Lot#3)	352,237.95
8/27	Catalan August payment received	1,932.43
8/31	Seafirst checking interest payment	282.57
TOTAL		<u>35.32</u>
		367,808.50
1998		
9/16	Howey September payment received	
9/16	Catalan September payment received	168.67
9/21	Reid September payment received	282.57
9/30	Seafirst checking interest payment	250.00
TOTAL		<u>115.17</u>
		816.41
1998		
10/5	Refund from postage	
10/16	Catalan October payment received	5.10
10/16	Howey payoff	282.57
10/19	Gilbreth closing	4,121.52
10/20	Reid October payment received	1,558.44
10/31	Seafirst checking interest payment	250.00
TOTAL		<u>78.46</u>
		6,296.09
1998		
11/9	Clallam Cty property tax refund (property sold)	
11/9	Property Sold (Howey Lot 5, Mattawa Acres)	209.34
11/16	Property Sold (Flores Lot 27, Mattawa Acres)	2,254.23
11/17	Catalan November payment received	1,307.75
11/17	Reid November payment received	282.57
11/30	Seafirst checking interest payment	250.00
TOTAL		<u>69.30</u>
		4,373.19
1998		
12/3	Howey November payment received	
12/15	Howey December payment received	154.00
12/15	Property Sold (Bostwick #90)	154.00
12/15	Property Sold (Farks #40)	3,320.57
12/16	Reid December payment received	4,030.07
12/16	Catalan December payment received	250.00
12/17	Property Sold (Clay #101)	282.57
12/28	Flores December payment received	2,844.25
12/31	Seafirst checking interest payment	122.00
TOTAL		<u>29.93</u>
		11,187.39
1998 TOTAL \$		<u>462,013.93</u>

J of Jack DelGuzzi
Income
November 1 1997 - May 31, 2004

DATE	SOURCE	AMOUNT
1999		
1/6	Property Sold (Lee #89)	
1/7	Flores January payment received	5,042.08
1/19	Catalan January payment received	122.00
1/19	Reid January payment received	300.00
1/19	Howey January payment received	250.00
1/27	Clallam vs Donahue (C&H)	154.00
1/31	Seafirst checking interest payment	500.00
TOTAL		<u>29.47</u>
		6,397.55
1999		
2/4	Flores February payment received	
2/17	Catalan February payment received	122.00
2/18	Reid February payment received	300.00
2/23	Howey February payment received	250.00
2/23	Property Sold (Neskas Lot #14, Mattawa Acres)	154.00
2/28	Seafirst checking interest payment	2,364.67
TOTAL		<u>19.04</u>
		3,209.71
1999		
3/1	Neskas March payment Received	
3/4	Flores March payment received	253.44
3/12	Property Sold (Anderson # 60)	122.00
3/16	Property Sold (Lorentzen #106/107)	1,282.48
3/17	Reid March payment received	4,887.22
3/17	Catalan March payment received	250.00
3/18	Howey March payment received	300.00
3/23	Property Sold (Sandberg #150)	154.00
3/31	Seafirst checking interest payment	12,698.62
TOTAL		<u>18.34</u>
		19,966.10
1999		
4/1	Neskas April payment received	
4/2	Internal Revenue Service refund	123.44
4/2	Internal Revenue Service refund	1,785.00
4/21	Catalan April payment received	1,339.00
4/21	Flores April payment received	300.00
4/21	Howey April payment received	122.00
4/30	Seafirst checking interest payment	154.00
TOTAL		<u>11.35</u>
		3,834.79
1999		
5/4	Neskas May payment received	
5/6	Flores May payment received	123.44
5/10	Reid April payment received	122.00
5/17	Howey May payment received	250.00
5/17	Property Sold (Adams #2, Lot 8 & 12, Mattawa Acres)	154.00
5/24	Reid May payment received	20,940.91
5/24	Neskas note paid off	250.00
5/26	Property Sold (US Treasury, American Indian Office, #'s 151,152,153,154)	9,714.94
5/26	Property Sold (US Treasury, American Indian Office, #'s 151,152,153,154)	40.23
5/26	U.S. Postal Service (refund)	46,732.32
5/28	Catalan May payment received	5.15
5/28	Neskas note paid off	282.57
5/31	Seafirst checking interest payment	12.76
TOTAL		<u>12.09</u>
		78,640.41
1999		
6/8	Flores June payment received	
6/24	Reid June payment received	122.00
6/30	Seafirst checking interest payment	250.00
TOTAL		<u>27.44</u>
		399.44

of Jack DeGuzzi
Income
November 1 1997 - May 31, 2004

DATE	SOURCE	AMOUNT
1999		
7/2	Howey June payment received	
7/29	Catalan June payment received	154.00
7/29	Catalan July payment received	300.00
7/29	Reid July payment received	300.00
7/29	Howey July payment received	250.00
7/29	Flores July payment received	154.00
7/31	Seafirst checking interest payment	122.00
TOTAL		<u>12.72</u>
		1,292.72
1999		
8/18	Flores August payment received	
8/18	Reid August payment received	122.00
8/30	Howey August payment received	250.00
8/31	Seafirst checking interest payment	154.00
TOTAL		<u>12.43</u>
		538.43
1999		
9/7	Catalan August payment received	
9/7	Reid note paid off	300.00
9/20	Flores September payment received	16,246.64
9/27	Howey September payment received	122.00
9/30	Seafirst checking interest payment	122.00
TOTAL		<u>10.20</u>
		16,800.84
1999		
10/7	Catalan September payment received	
10/7	Flores October payment received	300.00
10/31	Seafirst checking interest payment	122.00
TOTAL		<u>6.19</u>
		428.19
1999		
11/2	Catalan payment received	
11/2	Howey payment received	300.00
11/12	Flores payment received	154.00
11/19	Property sold (Bennett)	122.00
11/30	Howey payment received	9,344.16
11/30	Seafirst checking interest payment	124.00
TOTAL		<u>4.83</u>
		10,048.99
1999		
12/27	Catalan payment received	
12/31	Seafirst checking interest payment	282.57
TOTAL		<u>4.06</u>
		286.63
	1999 TOTAL	\$ 141,843.80
2000		
1/6	US Treasury, American Indian Office	
1/6	Flores payment received	99.78
1/6	Howey payment received	122.00
1/14	Flores payment received	124.00
1/28	Howey payment received	122.00
1/31	Seafirst checking interest payment	137.00
TOTAL		<u>2.89</u>
		607.67
2000		
2/1	Catalan payment received	
2/10	Flores payment received	282.57
2/28	Howey payment received	122.00
2/28	Seafirst checking interest payment	134.00
TOTAL		<u>2.32</u>
		540.89

of Jack DelGuzzi
Income
November 1 1997 - May 31, 2004

DATE	SOURCE	AMOUNT
2000		
3/7	Catalan payment received	
3/7	Flores payment received	282.57
3/31	Bank of America checking interest payment	122.00
TOTAL		<u>2.33</u>
		406.90
2000		
4/7	Howey payment received	
4/7	Flores payment received	122.00
4/7	Catalan payment received	122.00
4/27	Bank of America checking interest payment	282.57
TOTAL		<u>1.82</u>
		528.39
2000		
5/4	Catalan payment received	
5/4	Howey payment received	282.57
5/11	Flores payment received	134.00
5/28	Howey payment received	122.00
5/31	Flores payment received	134.00
5/31	Bank of America checking interest payment	122.00
TOTAL		<u>0.85</u>
		795.42
2000		
6/12	Catalan payment received	282.57
6/12	Transfer court funds plus interest	67,106.68
6/30	Howey payment received	134.00
6/30	Bank of America checking interest payment	9.45
TOTAL		<u>9.45</u>
		67,532.70
2000		
7/10	Catalan payment received	
7/10	Flores payment received	282.57
7/28	Howey payment received	122.00
7/28	Bank of America checking interest payment	134.00
TOTAL		<u>9.15</u>
		547.72
2000		
8/3	Catalan payment received	
8/3	Flores payment received	282.57
8/3	Misc. Income-bank mistake	122.00
8/29	Howey payment received	1.00
8/31	Bank of America checking interest payment	134.00
TOTAL		<u>8.42</u>
		547.99
2000		
9/21	Catalan payment received	
9/21	Flores payment received	282.57
9/30	Bank of America checking interest payment	122.00
TOTAL		<u>6.39</u>
		410.96
2000		
10/18	Howey payment received	
10/18	Flores payment received	134.00
10/18	Catalan payment received	122.00
10/31	Bank of America checking interest payment	282.57
TOTAL		<u>6.41</u>
		544.98
2000		
11/8	Howey payment received	
11/8	Flores payment received	134.00
11/28	Catalan 2 payments received	122.00
11/30	Bank of America checking interest payment	565.14
TOTAL		<u>4.23</u>
		825.37

of Jack DeGuzzi
Income
November 1 1997 - May 31, 2004

DATE	SOURCE	AMOUNT
2000		
12/21	Catalan payment received	
12/21	Flores payment received	282.57
12/21	Howey payment received	122.00
12/21	Howey payment received	134.00
12/31	Bank of America checking interest payment	134.00
TOTAL		<u>3.70</u> 676.27
		2000 TOTAL \$ <u>73,965.26</u>
2001		
1/17	Flores payment received	
1/24	Catalan payment received	122.00
1/31	Bank of America checking interest payment	282.57
TOTAL		<u>0.49</u> 405.06
2001		
2/14	Howey payment received	
2/14	Flores payment received	134.00
2/14	Property Sold (Quileute Indians)	122.00
2/27	Howey payment received	26,022.60
2/28	Bank of America checking interest payment	134.00
TOTAL		<u>3.79</u> 26,416.39
2001		
3/28	Howey payment received	
3/28	Catalan payment received	134.00
3/28	Flores payment received	282.57
3/31	Bank of America checking interest payment	122.00
TOTAL		<u>7.22</u> 545.79
2001		
4/18	Catalan payment received	
4/18	Flores payment received	282.57
4/30	Bank of America checking interest payment	122.00
TOTAL		<u>5.86</u> 410.43
2001		
5/22	Flores payment received	
5/22	Howey payment received	122.00
5/31	Bank of America checking interest payment	134.00
TOTAL		<u>5.18</u> 261.18
2001		
6/6	Catalan payment received	
6/6	Flores payment received	282.57
6/6	Howey payment received	122.00
6/30	Bank of America checking interest payment	134.00
TOTAL		<u>3.32</u> 541.89
2001		
7/3	Catalan payment received	
7/3	Flores payment received	282.57
7/3	Howey payment received	122.00
7/31	Catalan payment received	134.00
7/31	Flores payment received	282.57
7/31	Howey payment received	122.00
7/31	Bank of America checking interest payment	134.00
TOTAL		<u>3.78</u> 1,080.92
2001		
8/29	Catalan payment received	
8/31	Bank of America checking interest payment	282.57
TOTAL		<u>3.82</u> 286.39

of Jack DeGuzzi
Income
November 1 1997 - May 31, 2004

DATE	SOURCE	AMOUNT
2001		
9/26	Flores payment received	
9/26	Howey payment received	122.00
9/28	Howey payment received	134.00
9/30	Bank of America checking interest payment	134.00
TOTAL		<u>3.50</u> 393.50
2001		
10/10	Flores payment received	122.00
10/10	Catalan payment received	282.57
10/31		4.07
TOTAL		<u>4.07</u> 408.64
2001		
11/1	Howey payment received	
11/28	Flores payment received	134.00
11/28	Flores payment received	122.00
11/28	Howey payment received	122.00
11/30	Bank of America checking interest payment	134.00
TOTAL		<u>3.29</u> 515.29
2001		
12/27	Howey payment received	
12/31	Bank of America checking interest payment	134.00
TOTAL		<u>3.15</u> 137.15
2001 TOTAL \$		<u>31,402.63</u>
2002		
1/24	Flores payment received	
1/29	Howey payment received	122.00
1/31	Bank of America checking interest payment	134.00
TOTAL		<u>2.43</u> 258.43
2002		
2/27	Flores payment received	
2/28	Bank of America checking interest payment	122.00
TOTAL		<u>2.05</u> 124.05
2002		
3/21	Howey payment received	
3/21	Flores payment received	134.00
3/31	Bank of America checking interest payment	122.00
TOTAL		<u>1.85</u> 257.85
2002		
4/26	Flores payment received	
4/26	Howey payment received	122.00
4/29	Bank of America checking interest payment	134.00
TOTAL		<u>1.93</u> 257.93
2002		
5/31	Flores payment received	
5/31	Howey payment received	122.00
5/31	Howey payment received	134.00
5/31	Bank of America checking interest payment	134.00
TOTAL		<u>0.69</u> 390.69
2002		
6/30	Bank of America checking interest payment	
TOTAL		<u>0.37</u> 0.37

of Jack DelGuzzi
Income
November 1 1997 - May 31, 2004

DATE	SOURCE	AMOUNT
2002		
7/2	Howey payment received	-
7/2	Flores payment received	134.00
7/31	Flores payment received	122.00
7/31	Bank of America checking interest payment	122.00
TOTAL		<u>0.22</u> 378.22
2002		
8/20	Flores payment received	
8/20	Howey payment received	122.00
8/31	Bank of America checking interest payment	134.00
TOTAL		<u>0.07</u> 256.07
2002		
9/27	Flores payment received	
9/27	Howey payment received	122.00
9/27	Howey payment received	134.00
9/30	Bank of America checking interest payment	134.00
TOTAL		<u>0.05</u> 390.05
2002		
10/25	Flores payment received	
10/30	Howey payment received	144.00
10/31	Bank of America checking interest payment	134.00
TOTAL		<u>0.13</u> 278.13
2002		
11/20	Howey payment received	
11/22	Flores payment received	134.00
11/26	Flores payment received	144.00
TOTAL		<u>144.00</u> 422.00
2002		
12/12	Howey payment received	
12/31	Bank of America checking interest payment	134.00
TOTAL		<u>0.02</u> 134.02
2002 TOTAL		\$ 3,147.81
2003		
1/29	Flores payment received	
1/31	Bank of America interest payment	244.00
TOTAL		<u>0.06</u> 244.06
2003		
2/5	Catalan interest	
2/5	Catalan reimbursement for office expenses	6,121.78
2/5	Catalan payoff	320.84
2/28	Howey payment received	32,836.15
2/28	Bank of America interest payment	134.00
TOTAL		<u>5.01</u> 39,417.78
2003		
3/5	Flores payment received	
3/5	Howey payment received	194.00
3/31	Bank of America interest payment	134.00
TOTAL		<u>6.10</u> 334.10
2003		
4/1	Flores payment received	
4/25	Howey payment received	122.00
4/26	Flores payment received	134.00
4/26	Howey payment received	122.00
4/30	Bank of America interest payment	134.00
TOTAL		<u>6.65</u> 518.65

of Jack DeGuzzi
Income
November 1 1997 - May 31, 2004

DATE	SOURCE	AMOUNT
2003		
5/31	Bank of America interest payment	
TOTAL		5.54
		<u>5.54</u>
2003		
6/3	Department of Natural Resources	
6/3	Department of Natural Resources	86.40
6/3	Howey payment received	72.00
6/30	Bank of America interest payment	134.00
TOTAL		4.92
		<u>297.32</u>
2003		
7/8	Flores payment received	
7/8	Flores payment received	194.00
7/8	Howey payment received	188.00
7/31	Howey payment received	134.00
7/31	Bank of America interest payment	138.00
TOTAL		2.89
		<u>656.89</u>
2003		
8/14	Flores payment received	
8/31	Bank of America interest payment	188.00
TOTAL		2.56
		<u>190.56</u>
2003		
9/16	Howey payment received	
9/16	Flores payment received	128.00
9/30	Bank of America interest payment	118.00
TOTAL		2.85
		<u>248.85</u>
2003		
10/22	Howey payment received	
10/31	Bank of America interest payment	128.00
TOTAL		2.77
		<u>130.77</u>
2003		
11/25	Howey payment received	
11/26	Flores payment received	128.00
11/30	Bank of America interest payment	336.00
TOTAL		2.35
		<u>466.35</u>
2003		
12/22	Howey payment received	
12/22	Flores payment received	128.00
12/31	Flores payment received (deposited 1/6/04)	188.00
12/31	Bank of America interest payment	138.00
TOTAL		0.25
		<u>454.25</u>
2003 TOTAL \$		<u>42,965.12</u>
2004		
1/23	Howey payment received	
1/31	Bank of America interest payment	128.00
TOTAL		0.23
		<u>128.23</u>
2004		
2/10	Howey payment received	
2/10	Flores payment received	128.00
2/29	Bank of America interest payment	138.00
TOTAL		0.24
		<u>266.24</u>
2004		
3/19	Howey payment received	
3/19	Flores Payoff	128.00
3/30	Bank of America interest payment	6,467.74
TOTAL		0.41
		<u>6,596.15</u>

of Jack DeGuzzi
Income
November 1 1997 - May 31, 2004

DATE	SOURCE	AMOUNT
2004		
4/22	Howey payment received	128.00
4/30	Bank of America Interest payment	0.33
TOTAL		<u>128.33</u>
2004		
5/11	Howey payment received	128.00
5/11	Department of Natural Resources	57.60
5/11	Department of Natural Resources	72.00
2/27	Bank of America Interest	0.31
TOTAL		<u>257.91</u>
	2004 TOTAL \$	<u>7,376.86</u>
	SUMMARY TOTAL	<u>\$ 771,299.96</u>

Beginning Balance \$26,467

ESTATE OF JACK DELGUZZI
 INCOME SUMMARY
 NOVEMBER 1, 1997 - MAY 31, 2004

	BANK INTEREST	CASAD	DEMPSEY	CATALAN	HOWEY	FLORES	REID	YANDELL	WA STATE	NYHUS	GILBRETH	BOSTWICK	PARKE	CLAY
NOV-DEC 1997	2,007	600	622	819	337									
1998	1,640	2,400		3,362	8,130	1,430	15,784	9,764	38,980	352,238	1,558	3,321	4,030	2,844
1999	168			3,265	1,632	1,342	18,247							
2000	58			3,391	1,723	1,586								
2001	47			2,261	1,608	1,464								
2002	10				1,608	1,530								
2003	42			39,279	1,454	2,032								
JAN-MAY 2004	2				640	6,606			130					
TOTAL	\$3,974	\$3,000	\$622	\$52,376	\$17,132	\$15,989	\$34,031	\$9,764	\$39,109	\$352,238	\$1,558	\$3,321	\$4,030	\$2,844

Estate of Jack DeGuzzi
 Expenses
 November 1, 1987 - May 31, 2004

DATE	CHECK	ACCOUNTING	ADMINISTRATIVE	BOOKKEEPING	COOKING	INSURANCE	RENTAL	CELEBRATING	POSTAGE	PROFESSIONAL	PROFESSIONAL	PROFESSIONAL	PROFESSIONAL
2000													
2/1	Cash	4141				2,000.00							
2/28	Centurytel	4142											
TOTAL			\$0.00	\$0.00	\$0.00	\$2,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$2,073
2000													
3/27	Federal Express	4143											
3/27	US Post Office	4144											51.15
	VOID	4145											33.00
TOTAL			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$84.15
2000													
4/3	Centurytel	4146											
4/25	US Post Office	4148											156.43
4/25	Jefferson County Treasurer	4150											35.98
4/25	Clallam County Treasurer	4151											15.44
4/25	Clallam County Treasurer	4152											873.83
4/25	Clallam County Treasurer	4153											13.01
	VOID	4154											214.77
4/25	Clallam County Treasurer	4155											625.29
4/25	Clallam County Treasurer	4156											177.78
TOTAL			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$166.43	\$56.98	\$0.00	\$1,820.12
2000													
5/1	Old Cedar Mint Storage	4147											
5/11	Centurytel	4149											690.00
5/11	Chris Loeken, CPA	4157	1,500.00										28.15
5/30	Bank of America	DM											8.00
5/31	Centurytel	4158											32.15
TOTAL			\$1,500.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$786.30	\$0.00	\$0.00	\$2,256
2000													
6/12	Chris Loeken, CPA	4159	6,675.00										
6/12	Chicoine & Hallett	4180				14,794.00							
6/12	Chicoine & Hallett	4181				2,643.57							
6/12	W.E. Wilbart	4182			3,575.00								
6/30	Centurytel	4183											
6/30	Chicoine & Hallett	4184											26.15
6/30	Chicoine & Hallett	4185				5,232.50							
6/30	Chicoine & Hallett	4186				3,215.00							
6/30	Bank of America	DM				9,311.58							
TOTAL			\$6,675.00	\$3,575.00	\$0.00	\$35,196.63	\$0.00	\$0.00	\$0.00	\$34.16	\$0.00	\$0.00	\$45,480
2000													
7/1	US Post Office	4187											33.00
TOTAL			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$33
2000													
	no expenses in August												

Estate of Jack DelGuzzi
Expenses
November 1, 1997 - May 31, 2004

DATE	ACCOUNTING	AMOUNT	PROPERTY TAX	POSTAGE	PROFESSIONAL	RENT	TRAVEL	PHONE	OTHER	TOTAL
2001	3/5	Centurytel								
	3/15	Chicoine & Hallett						94.52		
	3/15	Hills Clark Martin & Peterson	1,215.97							
	3/28	Centurytel	362.59							
	3/28	Chicoine & Hallett						28.15		
	3/28	Chris Loeken, CPA	20.93							
	3/31	Bank of America	4,425.00							
	TOTAL		\$4,425.00	\$0.00	\$0.00	\$1,899.49	\$0.00	\$128.67	\$0.00	\$6,453.16
2001	4/28	Ole Cedar Mini Storage								
	4/28	Centurytel						690.00		
	4/29	Lorella Wilbert						26.15		
	4/30	Chilam County Treasurer						34.00		
	4/30	Jefferson County Treasurer							948.27	
	4/30	Chilam County Treasurer							14.90	
	4/30	Chilam County Treasurer							673.08	
	4/30	Chilam County Treasurer							12.89	
	4/30	Chilam County Treasurer							40.86	
	4/30	Chilam County Treasurer							225.28	
	TOTAL		\$0.00	\$0.00	\$0.00	\$760.16	\$0.00	\$0.00	\$0.00	\$2,886.64
2001	5/15	Chicoine & Hallett								
	5/29	Bank of America (NSF)						5,433.09		
	TOTAL		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$5.00	\$0.00	\$5,438.09
2001	6/22	Chicoine & Hallett								
	6/30	Bank of America						389.46		
	TOTAL		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$8.00	\$0.00	\$397.46
2001		No expenses in July								
2001										
	8/29	Chicoine & Hallett								
	8/29	Centurytel						82.71		
	TOTAL		\$0.00	\$0.00	\$0.00	\$287.49	\$0.00	\$82.71	\$0.00	\$370.20
2001		No expense in September								
2001	10/1	US Post Office								
	10/1	Chilam County Treasurer								
	10/1	Chilam County Treasurer						34.00		
	10/15	Chilam County Treasurer								
	10/15	Chicoine & Hallett								
	TOTAL		\$0.00	\$0.00	\$0.00	\$218.75	\$0.00	\$34.00	\$0.00	\$252.75
	TOTAL		\$0.00	\$0.00	\$0.00	\$1,701.79	\$0.00	\$0.00	\$0.00	\$1,964.79

Estate of Jack DeGuzzi
Expenses
November 1, 1997 - May 31, 2004

CHECK ACCOUNTING ADMINISTRATIVE BOOKKEEPING COPIING INSURANCE FEES		RENTAL		HOUSING		TRAVEL		CLOTHING		PERSONAL		OTHER		TOTAL	
2001															
11/1	Old Cedar Mini Storage	4211													
11/7	Bank of America (NSF)	DM													
11/28	Loretta Wilbert	4212													
TOTAL:			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$701
2001															
12/27	Leola Stanton	4213		1,080.00											
12/27	W.E. Wilbert	4214													
TOTAL			\$0.00	2,488.75	\$1,080.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$3,568.75
	TOTAL 2001 EXPENSES		\$4,426.00	\$2,488.75	\$1,080.00	\$0.00	\$12,338.44	\$0.00	\$0.00	\$0.00	\$0.00	\$1,768.42	\$0.00	\$0.00	\$26,883
2002															
1/24	Loretta Wilbert	4215													
TOTAL:			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
3/16	Hillis Clark Martin & Peterson	4216													
2/27	Chicohe & Hallett	4217				402.20									
TOTAL			\$0.00	\$0.00	\$0.00	\$1,175.27	\$0.00	\$1,477.47	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$1,677
2002															
3/27	Loretta Wilbert	4218													
TOTAL			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$48
2002															
4/8	CenturyTel	4218													
4/26	Clallam County Treasurer	4220													
4/26	Clallam County Treasurer	4221													
4/28	Clallam County Treasurer	4222													
4/28	Clallam County Treasurer	4223													
4/28	Jefferson County Treasurer	4224													
4/28	Chris Looken, CPA	4225													
4/28	US Post Office	4226													
4/28	Loretta Wilbert	4227													
TOTAL			\$2,100.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$1,783.43
2002															
5/1	Old Cedar Mini Storage	4228													
5/30	Bank of America	DM													
TOTAL			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2002															
6/28	Larry Johnson	4229													
6/30	Bank of America	DM													
TOTAL			\$0.00	\$0.00	\$0.00	\$336.70	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$344

Beginning Balance \$26,467

Estate of Jack DelGuzzi
Distribution Summary
November 1, 1997 - May 31, 2004

DATE	LEGAL C & H	LEGAL DWT	LEGAL HCOMP	LEGAL JOHNSON	LEGAL TALMADGE	LEGAL MISC.	WILBERT ADMIN FEES	WILBERT DISTRIBUTION	ACCOUNTING	PROPERTY TAX	WILBERT REIMBURSEMENT	OFFICE	RENT	TOTAL
NOV-DEC 1997									\$9,175			\$1,338	\$2,700	\$13,2
1998	\$28,415	\$40,000					\$14,739	\$523,750	\$16,067	\$10,077	(loan payment) \$7500 (office) \$548	\$5,048	\$17,550	\$703,64
1999	\$74,011		\$403				\$14,419	\$51,000	\$13,131	\$3,933	(postage & books) \$121	\$4,058	\$6,750	\$167,82
2000	\$56,724		\$248			\$2,000	\$6,545		\$8,925	\$3,726		\$2,025		\$80,19
2001	\$11,974		\$363				\$2,467		\$5,505	\$3,617	(postage)	\$1,714		\$25,68
2002	\$1,175		\$402	\$336	\$1,200				\$2,100	\$2,532	(office supplies)	\$1,154		\$9,08
2003	\$30,000		\$459	\$272	\$325				\$4,455	\$3,488		\$1,679		\$40,67
JAN-MAY 2004			\$162						\$2,100	\$2,936	(office supplies)	\$824		\$6,04
TOTAL	\$202,299	\$40,000	\$2,037	\$608	\$1,525	\$2,000	\$38,170	\$574,750	\$61,457	\$30,309	\$48,370	\$17,840	\$27,000	\$1,046,36
														\$1,046,36

*Davis Wright & Trueman
**Hillis Clark Martin & Peterson

Estate of Jack DelGuzzi
Beginning Balances
November 1, 1997

<u>BANK</u>	<u>ESTATE</u>	<u>DELHUR</u> (Dissolved)	<u>CEDARWOOD</u> (Dissolved)	<u>TOTAL</u>
Broker Trust	74,158 (EJD)	0	0	<u>74,158</u>
TOTAL	<u>74,158</u>	<u>0</u>	<u>0</u>	<u>74,158</u>
Hemisphere	57,399 (Smith Trust)		12,158 (Catalan)	
	447 (Dempsey)		44,843 (Kovach)	
TOTAL	<u>11,147 (CD)</u>	<u>0</u>	<u>35,961 (MJR)</u>	<u>161,955</u>
	<u>68,993</u>		<u>92,962</u>	
Key Bank 453	0	39,137	0	<u>39,137</u>
TOTAL	<u>0</u>	<u>39,137</u>	<u>0</u>	<u>39,137</u>
628	1,569	0	2,439	
TOTAL	<u>1,569</u>	<u>0</u>	<u>2,439</u>	<u>4,008</u>
TOTAL	<u>144,720</u>	<u>39,137</u>	<u>95,401</u>	

CASH TOTAL 279,258

Beginning cash	279,258
Income	771,300
	<u>1,050,558</u>
Expenses	-1,046,365
	<u>4,193</u>
05/31/04 Bank Balance	<u>4,191</u>
	<u>2 rounding</u>

ESTATE OF JACK DEL GUZZI
2004 PROPERTY VALUES

<u>TAX ID</u>	<u>PROPERTY #</u>	<u>ASSESSED VALUE</u>
WILB3000	053005 300250 2001	\$375.00
WILB3000	063008 561115 0000	\$5,750.00
WILB2500	053010 540830 0000	\$2,000.00
WILB3005	053008 510710 0000	\$50.00
WILB3005	053007 517100 0000	\$14,000.00
WILB3005	063008 560800 0000	\$7,500.00
WILB3005	063008 561150 0000	\$6,900.00
WILB3005	063014 520530 0000	\$300.00
WILB3005	063012 540620 0000	\$800.00
WILB3005	063023 510364 0000	\$2,250.00
WILB3005	053005 300250 1000/2001	\$375.00
WILB3005	133034 310025 0000	\$37,340.00
NYHU2010	072908 410870 0000	\$150.00
NYHU2010	072908 140020 0000	\$750.00
DEHL1000	073135 340010 0000	\$36,110.00
DEHL1000	073135 500010 2001	\$25,000.00
DEHL1000	073135 500130 0000	\$16,510.00
DEHL1000	073135 500170 0000	\$32,440.00
DEHL1000	073135 500180 0000	\$35,135.00
	979 507 302	\$365.00
TOTAL ASSESSED VALUE		\$224,100.00

EXHIBIT 2

Properties considered by estate:

#	Parcel #	Location	Description	Status
1	0530105408300000	9999 Bumpy Rd PA	Liebes Addition Lts 19-24 Bl 8	transfer to Benson & McLaughlin re: final distribution
2	0530085107100000	unknown	Auckland Addition Lts 13&14 Bl G	no value/land locked
3	0530075171000000	9999 Orvis St PA	Bayview 2 nd Addition Lts 1-8 LT Bl 7	sold
4	0630085608000000	9999 W Devanny Ln PA	Cain 1 st SubDiv of Lts 1-5 Bl 8 Survey V15 P4	sold
5	0630085611150000	9999 W Courtney Rd PA	Cain 1 st SubDiv of Lts 4-8 Bl 11 ½ Int Survey V12 P4	sold
6	0630085611500000	9999 W Courtney Rd PA	Cain 1 st SubDiv of Lts 13-15 Bl 11 Survey V15 P4	sold
7	1330343100250000	9999 Lk Creek Rd Beaver	NESW Ly N of Lk Creek & EASE 18.87A	sold
8	0729084108700000	9999 Olympic Hot Spgs Rd	TX# 3800 E2NESE 0.08A	no value/land locked/clear title for transfer to Parks Department

9	0729081400200000	9999 Olympic Hot Spgs Rd	#5096 EASES SESENE .07A	no value/land locked/clear title for transfer to Parks Department
10	0530053002502001	9999 Morse Hmstd Rd PA	½ Int W300' of Lot 4 EXC R/W .30A	no value/land locked
11	0530053002501000	9999 Morse Hmstd Rd PA	W300' of Lot 4 EXC R/W ½ Int .30A	no value/land locked
12	0630145205300000	9999 S Mt Angeles Rd PA	Grand View Addition Lots 26&27 Bl 5	no value/land locked
13	0630125406200000	9999 E Hwy 101 PA	NOB Hill Addition Lots 8&9 Bl 6	no value/land locked
14	0630235103640000	9999 S Doss Rd PA	Washington Ave Addition Lot 33 Bl 3	no value/land locked
15	0731353400100000	9999 Three Sisters Way PA	Parcel 1 Survey V12 P114 5.33A	sold
16	0731355000102001	9999 Elwha Bluffs Rd PA	Elwha Bluffs ½ Int Parcel 1	sold
17	0731355001300000	9999 Elwha Bluffs Rd PA	Elwha Bluffs Parcel 13	sold
18	0731355001700000	9999 Elwha Bluffs Rd PA	Elwha Bluffs Parcel 17	sold
19	0731355001800000	9999 Elwha Bluffs Rd PA	Elwha Bluffs Parcel 18	sold

EXHIBIT 3

**Comparison of Wilbert Independent Professional Appraisal of August 1998
And the Ellis listing of January 2006**

	Assessor Tax ID Number	Description	Wilbert Appraised FMV	Wilbert Property No.	Ellis No.
1	053005 300250-2001	Masters Rd	0	117	10 & 11
2	053007 517100	Orvis St.	22,500	36	3
3	053008 510710	Buchanan	0	35	2
4	053010 511500	Lemmon Rd	9,000	107	Not found
5	053010 510320	Lemmon Rd	2,000	106	Not found
6	053010 540830	Bumpy Rd	9,000	73	1
7	063010 511010	S. Race St	0	45	Not found
8	063008 560800	Dallas Ave	17,500	41	4
9	063008 511115, 561150	Courtney Rd	32,000	42-43	5 - 6
10	063008 560550	Palleno Ave	6,500	40	Not found
11	063009 560210	none	10,000	90	Not found
12	063012 521184	3 rd Ave	3,000	101	Not found
13	063012 540620	Hwy 101	0	78	13
14	063014 520300 <i>Same Parcel No.</i>	Mt Angeles Rd	31,000	60	Not found
15	063014 520300	Mt Angeles Rd	0	61	Not found
16	063023 510364	Doss Rd	1,000	108	14
17	073015 410010	Hwy 101	2,500	312.01	Not found
18	073135 500180	Elwha Bluff Rd	51,000	310.18	19
19	073135 340100-0000	Elwha Estates	80,000	310.01	15
20	073135 500100-2001	Elwha Bluff Rd	7,000	310.1	16
21	073135 500130	Elwha Bluff Rd	34,000	310.13	13

	Assessor Tax ID Number		Description	Wilbert Appraised FMV	Wilbert Property No.	Ellis No.
22	073135	500170	Elwha Bluff Rd	38,000	310.17	18
23	133034	310025	Lk Cr. Rd	28,000	149	7
24	142813	310000	none	15,000	150	17
25	152825	110025	LaPush Rd	40,000	212	not found
26	072908	108700	Oly Hot Sp		not found	8
27	072908	140020	Oly Hot Sp		not found	9
28	063014	520530	Mr Angeles Rd		not found	12

EXHIBIT 4

Properties on Charles Cruikshank's list not above:

#	Parcel #	Actual Parcel # per County	Description	
4	053010	511500	0530105115000000	This property is in the name of Ronald and Ann Lorentzen. In addition, the property is not on Lemmons Rd as in Mr. Cruikshank's list but it is vacant residential land on Blackberry Ln, Port Angeles, WA (Lots 1 - 12). This property was sold by the estate to the Lorentzens on 3/11/1999.
5	053010	510320	0530105103200000	This property is in the name of Ronald and Ann Lorentzen. In addition, the property is not on Lemmons Rd as in Mr. Cruikshank's list but it is vacant residential land on Blackberry Ln, Port Angeles, WA (Lots 9 & 10). This property was sold by the estate to the Lorentzens on 3/11/1999.
7	063010	511010	0630105110100000	This parcel number was changed by Clallam County.
10	063008	560550	0630085605500000	This property is in the name of Robert and Candes Parke. In addition, the property is not on Palleno Ave as in Mr. Cruikshank's list but it is vacant residential land on W Devanny Ln, Port Angeles, WA (Lots 9 & 10). This property was sold by the estate to the Parkes on 12/14/1998.
11	063009	560210	063009560210000000	This property is in the name of Donald and Mary Bostwick. In addition, the property is not at "none" as in Mr. Cruikshank's list but it is vacant residential land on Black Diamond Rd, Port Angeles, WA (Lots 2 & 3). This property was sold by the estate to the Bostwicks on 12/11/1998.
12	063012	521184	0630125211840000	This property is in the name of Silver and Donna Clay. This property was sold by the estate to the Clays on 12/16/1998.

14	063014	520300	063014520300000000	This property is in the name of Johnie Key and June Anderson. In addition, the property is not on Mt. Angeles Rd as in Mr. Cruishank's list but it is vacant residential land on Bent Cedars Way, Port Angeles, WA. This property was sold by the estate to Mr. Key and Ms. Anderson on 3/10/1999.
15	063014	520300		This is the same parcel number as the property above.
17	073015	410010	073015410010	This property is in the name of Harold and Jennifer Jacobsen. This property was sold by Delhur Inc. to the Jacobsens on 11/20/2002.
25	152825	110025	1528251100250000	This property is in the name of Quilete Indian Tribe. This property was sold by the estate to the Quilete Indian Tribe on 1/11/2001.

Appendix 8

SCANNED 3

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FILED
CLALLAM CO CLERK
2007 DEC -7 P 4: 29
BARBARA CHRISTENSEN

Visiting Judge
Department 1
Hearing Date: December 14, 2007
Time: 1:30 p.m.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLALLAM

DAVID L. MARTIN,)
)
Plaintiff,)
)
vs.)
)
WILLIAM E. WILBERT, LORETTA D.)
WILBERT, and their marital estate,)
ESTATE OF WILILAM E. WILBERT,)
deceased, and LORETTA D. WILBERT, its)
Personal Representative, ABC)
CORPORATIONS I through XXV, and)
XYZ Partnerships I through XXV, and)
WESTERN BONDING COMPANY,)
)
Defendants.)

No. 06-2-01085-2

12/7/07

~~FILED~~ *Frison*
ORDER CHANGING VENUE
TO KING COUNTY AND
~~AWARDING FEES AND COSTS~~

FILED
CLALLAM CO CLERK
2007 DEC -7 P 3:42
BARBARA CHRISTENSEN

I. HEARING

1.1. This matter came on for hearing before the undersigned Judge/Commissioner on Monday, November 12, 2007 on Loretta Wilbert's Motion for Change of Venue.

Order Changing Venue and
Awarding Fees and Costs - 1

ZENO, DRAKE AND HIVELY, P.S.
4020 LAKE WASHINGTON BLVD. NE, #100
KIRKLAND, WASHINGTON 98033
(425) 822-1511
Fax: (425) 822-1411

ORIGINAL

37 *pr*

1 1.2. The moving party appeared telephonically through her attorney, G. Michael
2 Zeno, Jr. and the respondent appeared telephonically through his attorney, Charles M.
3 Cruikshank III.

4 1.3. The Court considered the pleadings filed by the parties, matters on file, and
5 the argument of counsel, and, based on the foregoing, enters the following order:
6

7 II. ORDER

8 2.1. Venue in Clallam County Superior Court cause no. 06-2-01085-2 is changed
9 to King County Superior Court.

10 2.2. The Court finds that Sidney Shaw, the original plaintiff in Clallam County
11 Superior Court cause no. 06-2-01085-2, and his attorney, Charles M. Cruikshank III,
12 could have determined the county of proper venue with reasonable diligence, and
13 therefore orders that a judgment for \$2000 shall be entered against them jointly and
14 severally for attorneys fees Loretta Wilbert incurred in changing venue.

15 2.3. The successor plaintiff David Martin shall pay the costs of transferring venue
16 of Clallam County Superior Court cause no. 06-2-01085-2 to King County Superior
17 Court.

18 2.4. The Court further orders that no further motions or pleadings seeking
19 affirmative relief may be filed by the plaintiffs in this matter until the attorneys fees and
20 costs of transferring venue have been paid.
21

22 ~~THE COURT~~
*The TRINIS JUDGE will determine if fees
should be ordered for the change of venue. CDV
12/7/07*

Order Changing Venue and
Awarding Fees and Costs - 2

ZENO, DRAKE AND HIVELY, P.S.
4020 LAKE WASHINGTON BLVD. NE, #100
KIRKLAND, WASHINGTON 98033
(425) 822-1511
Fax: (425) 822-1411

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DATED this 7 day of ^{December}~~November~~, 2007.


Judge/Commissioner

Presented by:
ZENO, DRAKE and HIVELY, P.S.

By 
G. Michael Zeno, Jr. WSBA No. 14589
Attorneys for Loretta Wilbert

Order Changing Venue and
Awarding Fees and Costs - 3

ZENO, DRAKE AND HIVELY, P.S.
4020 LAKE WASHINGTON BLVD. NE, #100
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(425) 822-1511
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Appendix 9

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Cruikshank Law Offices, P.S.

The Honorable Leonard W. Costello

Hearing Date: June 29, 2007

Hearing Time: 1:30 p.m.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLALLAM

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In the matter of the estate of

JACK DELGUZZI,

Deceased.

No. 8087

ORDER ON FINAL SUPPLEMENTAL TO
FINAL REPORT AND PETITION FOR
DECREE OF DISTRIBUTION

THIS MATTER having come on before the Honorable Leonard W. Costello of Kitsap
County Superior Court upon the Final Supplemental to Final Report and Petition for Decree of
Distribution filed by the successor Personal Representative, Kathryn A. Ellis, the Court having
reviewed any response thereto or objection, now therefore

IT IS HEREBY ORDERED that the Personal Representative's final supplemental to the
Final Report shall be and is hereby approved.*

IT IS FURTHER ORDERED that the Personal Representative shall be and is hereby
authorized to distribute the remaining property and proceeds in accordance with the final
supplemental to Final Report.

IT IS FURTHER ORDERED that the Personal Representative shall be and is hereby
discharged and her bond released.

IT IS FURTHER ORDERED that this estate shall be closed upon the filing of receipts

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1 showing disbursement and distribution of the remaining property of this estate.

2 DONE IN OPEN COURT this 27 day of July, 2007.

3
4 
5 Hon. Leonard Costello

6 Presented by:

7 

8 Kathryn A. Ellis, WSBA#14333

9 Personal Representative

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10 *KAE* *It is further ordered that the personal
11 representative is authorized, in her sole
12 discretion, to sell the parcels listed in
13 exhibit "u" to the Plaintiff's Objections to
14 Final Supplemental to Timberland Holdings
15 LLC, on the terms set forth in Exhibit "u".
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Appendix 10

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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>
---	--

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

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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	Motion for Order Vacating Fee Award of June 5, 1998 to former Estate Administrator
v.	
Loretta D. Wilbert, personal representative of the Estate of William E. Wilbert, et al, et ux. Defendant/Respondent	

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

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.

7

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

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1 collaterally attacked and set aside. *In re Haukeli'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 Haukeli'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:

24

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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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR CLALLAM COUNTY

In Re the Estate of Jack J. Delguzzi,

Margaret M. Shaw, personal representative of the
Estate of GARY DELGUZZI,

Plaintiff,

v.

Loretta D. Wilbert, personal representative of the
Estate of WILLIAM E. WILBERT, et ux., et al.,

Defendants.

NO. 8087

OPPOSITION TO MOTION FOR ORDER
VACATING FEE AWARD OF JUNE 5, 1998
TO FORMER ESTATE ADMINISTRATOR

COMES NOW Defendant Loretta Wilbert, personal representative of the Estate of William E. Wilbert, and opposes Plaintiff's Motion for Order Vacating Fee Award of June 5, 1998, to Former Estate Administrator.

CASE HISTORY

In 1996, Defendant filed a Final Report and Petition for Decree of Distribution after Order of Solvency, a comprehensive inventory of the assets and liabilities of the Estate, and a comprehensive accounting prepared by an independent CPA firm. Defendant's report and accounting detailed the entire history of the administration of the Estate of Jack Delguzzi since William E. Wilbert became the administrator in 1982. Defendant also requested approval of his administrative expenses incurred since 1982, including administrator fees, and submitted supporting materials, as did other accountants and lawyers for the Estate.

COPY

1 Evidentiary hearings regarding the Final report, accounting, and request for approval of fees
2 were conducted before Judge Costello over a six-day period from January through April 1997.
3 Plaintiff, Gary Delguzzi, testified extensively at the hearing, as did Defendant, William E. Wilbert.
4 Plaintiff had his own accounting expert, Jack Policar, who had the opportunity to review the Kleinman
5 report and testify at length as to his opinions regarding the Final Report and administrative fees. The
6 hearing record consists of over 1,000 pages of transcript and 62 exhibits. On October 10, 1997, Judge
7 Costello entered a Memorandum Decision, attached as Exhibit 1, allowing the bulk of the fees
8 requested, but disallowing and limiting a portion of the administrator fees.

9 Prior to 1982, Plaintiff, Gary Delguzzi, was the administrator of the Estate. The Estate tax
10 return, Form 706, was filed in 1979 while Gary Delguzzi was the administrator of the Estate. The tax
11 return was based upon the value of the Estate as of the date of the decedent's death, which dates back
12 to June 1, 1978. Defendant had no involvement in valuing the Estate property or preparing the Estate
13 tax return. When the Defendant became the administrator in 1982, the Estate Tax liability had already
14 been self-assessed by Plaintiff to be approximately \$1,113,255. In filing the Estate tax return in 1979,
15 Plaintiff elected to pay the tax liability in installments over 15 years, pursuant to Internal Revenue Code
16 § 6166. In 1982, when Defendant William E. Wilbert assumed the role of administrator, the Estate tax
17 that remained due and owing was in excess of \$1 million plus interest.

18 Between 1978 and 1982, when Plaintiff was the administrator, the value and picture of the
19 Estate had changed dramatically. Virtually all cash and/or liquid assets of the Estate had been disposed
20 of, much of the Estate's real property was encumbered with debt, and the principal income-producing
21 asset, Delguzzi Construction, was no longer operating and was insolvent facing many demands of
22 numerous unpaid creditors. *See Supplement to Final Report and Petition for Decree of Distribution*
23 *dated December 12, 1996*, pp. 2-3. In 1982, when Defendant took over as administrator, it was
24 unclear exactly what the net worth of the Estate was because the Estate was involved in over 100
25 lawsuits and/or claims, and had a number of outstanding judgments and unpaid settlements. *See*
26 *Supplement to Final Report and Petition for Decree of Distribution dated December 12, 1996*, p 3.

1 Mr. Martin appears to be alleging that the Estate paid too much in Estate taxes because the
2 Estate had a negative net worth in 1982. Mr. Martin's reasoning is erroneous for two reasons:

- 3 1. Mr. Wilbert did not make the initial self-assessment on the Form 706 and had no
4 involvement in the initial valuation of the Estate for Federal and State tax purposes.
5 Plaintiff, Gary Delguzzi was the administrator at the time the Estate tax return was
6 filed. On the advice of counsel in 1984, Mr. Wilbert did enter into an agreement
7 stipulating to an *additional* Estate tax of \$344,123. This amount represented a
8 negotiated compromise of claims by the Internal Revenue Service (hereinafter, "IRS").
9 Subsequently in the mid-1990's, Mr. Wilbert negotiated a settlement with the IRS,
10 paying \$350,000 in settlement of all claims, including potential transferee and fiduciary
11 liability of Gary Delguzzi, after the liability had ballooned to approximately \$4,000,000
12 in 1991.
- 13 2. Just because the Estate may have had a negative net worth as of 1982, it was not
14 absolved of the tax liability previously assessed. Pursuant to section 2031(a) of the
15 Internal Revenue Code, "the value of the gross estate of the decedent shall be
16 determined by including ..., the value *at the time of his death* of all property, real or
17 personal, tangible or intangible, wherever situated." I.R.C. 2031(a) [emphasis
18 added]. Estate tax is determined by the value of the Estate at the time of death, thus
19 in this case, the Estate tax liability is based on the value of the Estate as of June
20 1978, not as of June 1982, as Mr. Martin would have the Court believe. The
21 original Estate tax returns filed in 1979 included amounts that were ultimately
22 depleted by attorneys' fees and lawsuit settlements (there were approximately 100
23 lawsuits and/or claims pending when Defendant Wilbert became administrator). The
24 Estate reached a settlement with Seafirst bank for \$1.2 million for release of a
25 judgment entered against the Estate while Gary Delguzzi was the administrator. The
26 Estate settled with Charles Nyhus and had to turn over significant interests in

1 property that were assigned to Mr. Nyhus while Jack Delguzzi was the
2 administrator. The original Estate tax return also reflected assets received by Jack
3 DelGuzzi as a purported beneficiary of his brother Bruno's will. When Bruno's
4 heirs sued and obtained a judgment against the Estate with respect to Jack
5 DelGuzzi's forgery, these amounts (which were included in the gross Estate for
6 purposes of calculating Estate tax) were reflected as liabilities, and ultimately
7 returned to their rightful owners. *See Supplement to Final Report and Petition for*
8 *Decree of Distribution dated December 12, 1996.*

9 Mr. Martin also expressed his concern that the Estate paid more in taxes than the \$344,123
10 that was stipulated as an adjustment in 1984. *See Letter Report of David Martin dated June 23,*
11 *2004, pp. 2 & 6.* What Mr. Martin fails to understand is that the \$344,123 was an *additional*
12 assessment, over and above the initial self-assessment (reported on the original tax return) of over
13 \$1 million.¹ *See Exhibit 3 to Plaintiff's Declaration re: ERRATA, p. 2.* Both the \$1+ million
14 reported on the original return and the additional \$344,123 remained (substantially) unpaid and
15 accumulated interest. As set out in the final report, the federal estate tax liability stood at
16 approximately \$4 million when the IRS liability was settled for \$350,000 in the mid-1990s. *See*
17 *Final Report and Petition for Decree of Distribution after Order of Solvency dated December 12,*
18 *1996, pp. 11-12.*

19 20 LAW

21 Plaintiff relies on CR 60 to bring his Motion for relief of judgment. Specifically, Plaintiff
22 claims there was fraud, which entitles him to relief from the judgment entered awarding the former
23 administrative fees. Courts in applying CR 60 require a high burden on the moving party and an
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¹ The amount shown due on the original return was not paid at the time of filing, because the estate was eligible for five years of interest only payments and ten years of principal and interest payments in light of its significant holdings in real property and closely held businesses. Internal Revenue Code § 6166.

1 affirmative showing of fraud. In *Haukeli's Estate*, 25 Wash.2d 328, 171 p.2d 199 (1946), the court
2 held:

3 It is settled law in this state that orders and decrees of distribution
4 made by superior court in probate proceedings upon due notice as
5 provided by statute are final adjudications having the effect of
6 judgments in rem, and are conclusive and binding upon all persons
7 having any interest in the estate and upon the world as well...
8 Extrinsic or collateral fraud,' justifying equitable relief against a
9 judgment or decree, means some intentional act or conduct by which
10 the prevailing party has prevented the unsuccessful party from having
11 a fair submission of the controversy. Id at 334.

12 The cases on which Plaintiff relies establish a high bar for relief under CR 60. In *Haley v.*
13 *Highland*, 142 Wash.2d 135, 12 P.3d 119(2000), the court found that relief under CR 60 was not
14 permitted because the moving party was merely attempting to use CR 60 to revisit an issue on the
15 merits and challenge a conclusion of law. In *re Estate of Phillips*, 46 Wash.2d 1, 278 P.2d 627
16 (1955), the court found that CR 60 was inapplicable because the fraud complained of could have
17 been brought up in the original controversy. In *Haukeli's Estate*, 25 Wash.2d 328, 171 p.2d
18 199(1946), the court found an allegation that pertained only to a question as to the value of property
19 was insufficient to raise a question of fraud and could only be reviewed on appeal. In *Pitzer v.*
20 *Union Bank of California*, 141 Wash.2d 539, 9 P.3d 805 (2000), the court found that the moving
21 party gave no reason to justify relief from operation of the judgment under CR 60. It is evident
22 from the above cases, that the courts require substantive claims of fraud to justify relief under CR
23 60 and is only appropriate in special circumstances.

24 Plaintiff's Motion contains no evidence of fraud, it merely alleges there are unanswered
25 inconsistencies in the Final Report prepared by Mr. Kleinman. This is in no way evidence of an
26 intentional act of fraud by the Defendant. Mr. Cruikshank is merely attempting to challenge the
Final Report in the same way he challenged the report 7 years ago at the hearing. Plaintiff has not
presented any evidence of fraud, nor has he brought any newly discovered evidence to the Court's
attention. He merely presented the opinion of a new expert. The opinion of which was based on

1 old evidence that was disputed over a six day trial in 1997. The Kleinman report was fully
2 disclosed and available to the Plaintiff in 1996. Mr. Martin brings before the Court issues that
3 could have been brought up at the hearing in 1997, most of which were addressed during the 1997
4 hearing. For example, Mr. Martin makes references to Costa Rica, which was extensively litigated
5 in the 1997 hearing and addressed at length in the Supplement to the Final Report and Petition for
6 Decree of Distribution, which was available to the Plaintiff in 1996. In the attached Memorandum
7 Decision, the Court did in fact address the issue of Costa Rica and denied the administrative fees
8 associated with the Costa Rica property sales. As the Court in *In re Phillips, supra*, concluded, CR
9 60 is inappropriate when the allegations of fraud could have been brought out in the original
10 controversy. *In re Estate of Phillips*, 46 Wash.2d 1, 278 P.2d 627 (1955). In *Phillips* the evidence
11 which was the basis for the fraud allegations, had been disclosed during the initial controversy, as is
12 the case here. To allow the Plaintiff to bring a motion under CR 60 based solely on a new expert's
13 review of old evidence is an abuse of the rule and a burden to the courts. CR 60 was intended to be
14 used in special circumstances where the moving party discovered evidence that the other party had
15 intentionally concealed material facts. That is simply not the case here.

16 CONCLUSION

17 Plaintiff offers no evidence of fraud or newly discovered information that would lead a
18 person to believe the Kleinman report was based upon Fraud. Plaintiff merely asked an accountant
19 to review the Kleinman report for his opinion. During the trial in 1997, Defendant had another
20 CPA, Jack Policar, review the Kleinman report. Mr. Policar raised many of the same issues that
21 Mr. Martin endeavors to bring before the Court. The issues set out in Plaintiff's Motion were fully
22 litigated in 1997 and there was an order entered in 1998 approving the administrative fees.
23 Plaintiff's Motion has demonstrated no evidence of fraud and borders on frivolous.
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1 NOW THEREFORE, for the reasons set forth above, the Defendant respectfully requests that
2 Plaintiff's Motion for Order Vacating Fee Award of June 5, 1998 to Former Estate Administrator be
3 denied.

4
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6 DATED this 1st day of July, 2004.

7
8 CHICOINE & HALLETT, P.S.

9
10 By: Cori Flanders-Palmer
11 Cori E. Flanders-Palmer, WSBA #34893
12 *Attorney for Defendant Loretta Wilbert, Personal*
13 *Representative of the Estate of William E. Wilbert*
14 1011 Western Avenue, Suite 803
15 Seattle, WA 98103
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CHICOINE & HALLETT

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4 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR CLALLAM COUNTY

5 IN RE THE MATTER OF THE ESTATE
6 OF:

No. 8087

7 JACK DELGUZZI,

MEMORANDUM DECISION

8 Deceased.
9

0 The Administrator, William E. Wilbert, filed a Final Report
1 and Petition for Distribution pursuant to RCW 11.76.030. The Report and
2 Petition included a comprehensive accounting for the Estate during the
3 period of his administration. The Court heard testimony and evidence
4 from the Administrator and other interested persons regarding the
5 approval of the Final Report and the Accounting during the periods of
6 January 21 through 23, 1997, and March 24 and 25, 1997. The Court heard
7 oral argument on the matter on April 22, 1997. The parties were
8 directed to submit written memoranda regarding the issues presented by
9 May 23. In mid-August, the Court requested additional briefing on the
0 issue of res judicata raised by the Administrator. Memoranda on that
1 issue were ultimately submitted by the parties by the 25th of September,
2 1997.
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JUDGE LEONARD W. COSTELLO
Kitsap County Superior Court
614 Division Street, MS-24
Port Orchard, WA 98366
(360) 876-7140

The Court, pursuant to RCW 11.76.050, shall determine among other things whether the estate is ready to be settled and whether the transactions of the personal representative should be approved.

It appears to this Court, having heard the testimony and reviewed the documents made part of the record at the hearings in January and March, that this Estate is ready to be settled and closed, or at least as ready to be settled and closed as it will ever be. In light of the length of time that this Estate has been open and in light of the complexity of the Estate, it appears to this Court that the most orderly way to proceed is for the Court to address the issues contested in January and March regarding administrative expenses and other claims and then allow the parties to attempt to reach an agreement regarding distribution in light of the Court's decision. In the event such an agreement cannot be reached, a further hearing to determine the appropriate plan of distribution will be held.

The request of Short, Cressman, Burgess that their attorneys fees and costs which remain unpaid in the principal amount of \$404,040.00 plus interest at 12% should be allowed. Further, the Court believes based on the testimony presented that these fees and interest should be determined a cost of administration. The Court finds the fees in the amount submitted are reasonable in terms of hourly rate and hours

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expended and that the time involved for the fees generated was for the benefit of the Estate of Jack J. DelGuzzi.

The claim of Benson McCloughlin for accounting services to the estate should be allowed in the amount of \$64,758.74 as of November 2, 1990, with interest accrued as of January 21, 1997, in the amount of \$47,677.72 for a total of \$112,436.46. The principal amount of the claim has now been reduced to a promissory note. The Court is satisfied that the amount of money represented in the note is for services rendered by Benson McCloughlin for the benefit of the Estate of Jack J. DelGuzzi. Those fees should be considered an expense of administration pursuant to RCW 11.76.110.

Helsell Fetterman Willis and McClure are entitled to the first \$167,777.00 to be distributed to Gary DelGuzzi from the Estate after payment to the cousins Shaw and Myer of \$164,500.00. This claim is not disputed by any of the parties.

The remainder of this decision will attempt to deal with the administrator's request for approval of the final report, the comprehensive accounting for the Estate, and the approval of the administration expenses and attorneys fees.

Initially the Court will resolve the issue of res judicata/collateral estoppel raised by the administrator in his reply

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Kitsap County Superior Court
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2 memorandum in May. Having reviewed the memoranda submitted by all of
3 the interested parties, the Court is satisfied that the Administrator
4 has waived any claim of res judicata or collateral estoppel at this
5 point.

6 The Court finds that the fees submitted by Mr. Kleinman for
7 the preparation of the comprehensive accounting seems to the Court to be
8 reasonable and should be considered a cost of administration for the
9 Estate. Likewise, the Court has reviewed the claim of Chicoine and
10 Hallett and also concludes that the fees submitted and claimed are
11 reasonable; and further that the time spent and the fees charged were to
12 the benefit of the Estate and are properly considered a cost of
13 administration of the Estate.

14 With regard to the balance of the claims from the
15 administrator for payment, it is simpler perhaps for the Court to
16 indicate based on the testimony and evidence presented what it is not
17 willing to allow. The Court is not persuaded that the payment to the
18 administrator, or to firms that are controlled by the administrator, any
19 real estate commissions over and above the hourly rate of \$130.00 per
20 hour rate should be allowed. The Court will leave it to the parties in
21 interest to determine the exact amounts involved in this regard by the
22 time of the next hearing in this matter.

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Kitsap County Superior Court
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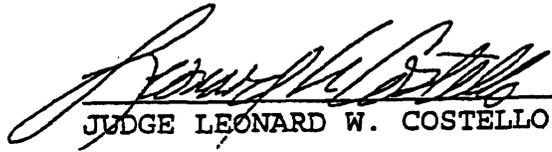
Further the Court finds as it relates to the Costa Rica property and transactions that Mr. Wilbert did breach his duty to the Estate as administrator in that he put himself in a situation where his self-interest could potentially conflict with the Estate. Any expenses by the administrator or by persons or entities controlled by the administrator to receive compensation for time spent or expenses relating to Costa Rica activity should not be allowed. The Court is not prepared to make a finding that the actions of the administrator caused a loss to the Estate which must be repaid by the administrator.

In all other respects, the Court finds that the expenses requested by the administrator are reasonable and should be paid as a cost of administration. The Court is prepared to accept the recommendation of the administrator in terms of procedure to follow to accomplish the distribution of the Estate. That procedure is outlined at page 15 of the memorandum in support of the approval of the final report and accounting through page 16 line 16. Further, with the clarification that if an agreement cannot be reached, proposed plans for distribution will be submitted within 90 days from October 15, with the Court to consider such proposed plans for distribution as close to 135 days after the 15th of October as possible. The matters should be set for hearing as the matter may take more than a short hearing to consider

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(360) 876-7140

those plans. The hearing should be conducted in Clallam County and the date should be set through the scheduler in that County.

DATED this 10th day of October, 1997.


JUDGE LEONARD W. COSTELLO

JUDGE LEONARD W. COSTELLO
Kitsap County Superior Court
614 Division Street, MS-24
Port Orchard, WA 98366
(360) 876-7140

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Honorable Leonard W. Costello
Hearing Date: July 6, 2004
Hearing Time: 9:00 a.m.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLALLAM

In re the Estate of Jack Delguzzi, Deceased,

Margaret M. Shaw, personal representative
of the Estate of Gary Delguzzi,

Plaintiff/Petitioner,

v.

Loretta D. Wilbert, personal representative
of the Estate of William E. Wilbert, et al, et
ux.,

Defendant/Respondent.

NO. 8087

JOINDER IN OPPOSITION TO
MOTION FOR ORDER
VACATING FEE AWARD OF
JUNE 5, 1998 TO FORMER
ESTATE ADMINISTRATOR

Short Cressman & Burgess PLLC hereby joins in the opposition to
motion for order Vacating Fee Award of June 5, 1998 to Former Estate
Administrator filed in this matter by defendant Loretta D. Wilbert, personal
representative of the Estate of William E. Wilbert.

Dated July 2, 2004.

SHORT CRESSMAN & BURGESS PLLC

By


James A. Oliver, WSBA #217

JOINDER IN OPPOSITION TO MOTION FOR
ORDER VACATING FEE AWARD OF JUNE 5,
1998 TO FORMER ESTATE
ADMINISTRATOR - 1

LAW OFFICES
SHORT CRESSMAN & BURGESS PLLC
999 THIRD AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98104-4088
(206) 682-3333

CERTIFICATE OF SERVICE

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

Charles M. Cruikshank III
Attorney at Law
108 S. Washington Street, Suite 306
Seattle, WA 98104

Darrell D. Hallett
Cori Flanders-Palmer
Chicoine & Hallett
1011 Western Avenue, Suite 803
Seattle, WA 98104

via U.S. Mail
 via hand delivery
 via air courier
 via facsimile 1-800-852-6632

via U.S. Mail
 via hand delivery
 via air courier
 via facsimile 206-467-8170

Carl L. Gay
Greenaway Gay & Angier
829 East Eighth Street
Port Angeles, WA 98362

via U.S. Mail
 via hand delivery
 via air courier
 via facsimile 360-452-3724

DATED July 2, 2004.


Kelley Clarke

JOINDER IN OPPOSITION TO MOTION FOR
ORDER VACATING FEE AWARD OF JUNE 5,
1998 TO FORMER ESTATE
ADMINISTRATOR - 2

LAW OFFICES
SHORT CRESSMAN & BURGESS PLLC
999 THIRD AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98104-4088
(206) 682-3333

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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 v.	DECLARATION OF CRUIKSHANK IN REPLY RE: MOTION TO VACATE FEE ORDER OF JUNE 5, 1998
Loretta D. Wilbert, personal representative of the Estate of William E. Wilbert, et al, et ux. Defendant/Respondent	

1. I am over the age of majority and competent as to all matters herein, which I know by personal knowledge.
2. Attached hereto as Exhibit A is a copy of page 22 of the Clallam County Superior Court docket printed on March 27, 2002 showing at SubNom# 649a, dated January 17, 1997, which is the filing of the Supplement to the Final Report and Petition for Decree of Distribution which is the same document referred to in Exhibit B.
3. Exhibit B is page 226 of the hearing transcript on the fee petition of Administrator Wilbert and the testimony reflected therein is that of Jack Policar, CPA, who testified that he had less than one-half hour to examine the Supplement to the Final Report.

- 1 4. The reason that Mr. Policar had less than half-an-hour was because the
2 Supplement to the Final Report was served upon me in the court room on Friday,
3 January 17, 1997, in Clallam County Superior Court, **despite being dated**
4 **December 12, 1996.**
- 5 5. At the end of that hearing, the participants, specifically the undersigned, returned
6 to King County and were faced with a holiday on the following Monday January
7 21, 1997. It was only shortly before the time for Mr. Policar's testimony that I
8 was able to get a copy of the Supplement to the Final Report to him for his
9 review.
- 10 6. Mr. Policar testified early in the morning of the 22nd of January, and, to do so, he
11 had to leave Seattle quite early in order to arrive at the court house in time to
12 testify, thus explaining why he had no time to properly study the Supplement to
13 the Final Report.
- 14 7. Also, the apparently calculated and intentional misrepresentation by Mr. Wilbert's
15 attorney, Larry Johnson, as to the status of the discovery responses of Gary
16 Delguzzi to Mr. Wilbert's discovery requests, at the Friday January 17 hearing
17 impacted the capacity of Mr. Delguzzi to obtain a fair hearing on the
18 Administrator's Fee Petition hearing. That misrepresentation provided the court
19 with its mistaken motivation to dismiss Delguzzi's Petition for the Removal of
20 Wilbert, which was the matter originally scheduled for hearing on January 21,
21 1997 Mr. Johnson's action is an additional example of extrinsic fraud. *See*
22 Unpublished Opinion of Division II, Washington Court of Appeals, *in re the*
23 *Estate of Jack J. Delguzzi, Deceased. Gary Delguzzi and Charles M. Cruikshank,*
24 *lii, Appellants, V. William E. Wilbert*, No. 21752-0-II, filed January 8, 1999 and
25 particularly the following excerpt from pages 14 and 15:

26 Also the trial court was given the wrong document to review as DelGuzzi's
27 answers to Wilbert's interrogatories. Wilbert accurately quoted several
28 [15] interrogatories and DelGuzzi's responses in his memorandum supporting the motion, but he stated that DelGuzzi's responses were

1 attached as exhibit H. Exhibit H was not DelGuzzi's 36 pages of
2 objections and responses dated January 3, 1997, but consisted of
3 DelGuzzi's four pages of objections and responses to defendant's first
request for production of documents, also dated January 3, 1997. Footnote
8.

4 8. In the same decision, Division II found, at footnote 8, that:

5 At oral argument, Wilbert acknowledged that the wrong responses were
6 attached to the motion for sanctions, but claimed that the correct responses
7 were attached to DelGuzzi's motion for reconsideration. The motion for
reconsideration was not included in the appellate record. But our analysis
8 would not change even if the trial court had reviewed the correct
document.

9 9. The same Court of Appeals (but with an entirely different panel of judges) entered
10 an Unpublished Opinion (No. 24860-3-II, In RE the Estate of Jack Delguzzi, Gary
11 Delguzzi, App. Vs. William Wilbert, Res., dated August 31, 2001), that vitiates
12 the argument now made by the estate of the late Administrator as follows:

13 Wilbert contends that res judicata bars DelGuzzi's claims because
14 DelGuzzi had a chance to litigate fully those claims in the Final
15 Accounting hearing of January 21, 1997. The record is to the contrary.
16 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.

17 Nonetheless, in order to avoid its possible application on remand, we
18 briefly address the substance of Wilbert's res judicata claim. We
19 extensively discussed the applicability of res judicata in *Kelly-Hansen v.*
20 *Kelly-Hansen*, 87 Wn. App. 320, 941 P.2d 1108 (1997): {R}es judicata {as
21 claim preclusion} encompasses the idea that when the parties to two
22 successive proceedings are the same, and the prior proceeding culminated
23 in a final judgment, a matter may not be relitigated, or even litigated for
24 the first time, if it could have been raised, and in the exercise of reasonable
25 diligence should have been raised, in the prior proceeding. *Kelly-Hansen*,
26 87 Wn. App. at 328-29 (footnotes omitted) (emphasis added).

27 We concluded:

28 In general, one cannot say that a matter should have been litigated
earlier if, for some reason, it could not have been litigated earlier;
thus, res judicata will not operate . . . if evidence needed to
establish a necessary fact would not have been admissible in the
prior proceeding. Similarly, one cannot say that a matter should
have been litigated earlier if, even though it could have been
litigated earlier, there were valid reasons for not asserting it earlier.
Kelley-Hansen, 87 Wn. App. at 330-31 (citations omitted)
(emphasis added).

Such is the case here. First, because the previous judge had dismissed

1 his claims, DelGuzzi no longer had any matters before the court to litigate.
2 Second, although at the Final Accounting hearing, DelGuzzi could have
3 alleged that Wilbert had breached his fiduciary duties, DelGuzzi had no
4 evidence to support such allegations; the previous judge had failed to
5 entertain his motion to compel Wilbert to provide such discovery and
6 instead found DelGuzzi to have been the party failing to comply with
7 discovery. At this point it was arguably futile to renew his motion to
8 compel. Third, because he could not compel discovery and because he no
9 longer had an active claim, DelGuzzi could not have offered crucial
10 evidence in the previous proceeding to establish the necessary facts
11 underlying his dismissed claims.¹⁸ Res judicata does not now preclude
12 DelGuzzi's raising the issues of wrongful dismissal of his claim and
13 implicit denial of his discovery motion. Unpublished Opinion, Division II,
14 Washington Court of Appeals, No. 24860-3-II, August 31, 2001.
15 (Emphasis Added).

- 9 10. Attached hereto is the transmittal letter from Craig Kleinman, CPA to the
10 Administrator dated December 11, 1996. (Exhibit C)
- 11 11. The latest income tax return for the Estate of Jack Delguzzi (Form 1041) or for
12 Estate entities (Form 1120) that has been produced was for 1993. The court has
13 denied the Motion to Compel Discovery of Delguzzi, presumably confirming the
14 decision of the late Administrator to not disclose the income tax returns for the
15 Estate and its entities (wholly and partially owned) since 1993.
- 16 12. The bookkeeping records submitted by the Estate's bookkeeper show that:
- 17 a. Delhur, Inc., was dissolved as of November 1, 1997 and the value assigned
18 was \$-0-. [Estate of Jack Delguzzi - Beginning Balances - November 1,
19 1997] The Estate owned 100% of this corporation.
- 20 b. Cedarwood Properties, Inc. was dissolved as of November 1, 1997 and the
21 value assigned was \$-0-. [Estate of Jack Delguzzi - Beginning Balances -
22 November 1, 1997] This property was owned 2/3 by the Estate of Jack
23 Delguzzi and 1/3 by Gary Delguzzi. Gary Delguzzi's Order to Show
24 Cause of October 2003 valued the Estate's interest in Cedarwood
25 \$5,017,047 as of October 2004.
- 26 c. The Order of June 5, 1998 required that these two corporations (DelHur
27 and Cedarwood) be dissolved and the proceeds distributed to its
28

- 1 shareholders.
- 2 d. According to the Declaration of Leslie Stanton, the Administrator's
- 3 bookkeeper, these two corporations were dissolved as of November 1,
- 4 1997, seven months before the Order was entered, yet the Estate's portion
- 5 of the Cedarwood proceeds (\$5,017,047) were never received or reflected
- 6 in the bookkeeper's records.
- 7 e. Gary Delguzzi's share of this liquidation has never been distributed to him
- 8 or accounted for.
- 9 f. The proceeds from the dissolution and liquidation of DelHur, Inc., are not
- 10 reflected in the bookkeeping records of Ms Stanton.
- 11 g. DelHur was found by the Findings of Fact and Conclusions of Law in the
- 12 "Seattle First National Bank vs. Wilbert vs. Hurworth" case in Clallam
- 13 County Superior Court to be valued at \$3,640,000 as of April 30, 1984.
- 14 This has apparently disappeared.
- 15 13. There has been no substantive response to Delguzzi's Order to Show Cause
- 16 (Exhibit C to Declaration of Counsel dated 24 June 2004) by the
- 17 Respondent/Defendant to contradict or explain the misappropriation or loss to the
- 18 Estate of \$5,713,645 in jointly owned by Gary Delguzzi and the Estate. The
- 19 Administrator's attorney responded that he "did not understand the Order to Show
- 20 Cause". A copy of that Order is attached as Exhibit D.
- 21 14. The materials (Consolidated Balance Sheet as of May 31, 2004) submitted by Ms
- 22 Stanton indicate that three Costa Rican properties Finca Delguzzi, Colorado Bar
- 23 and Surfside, S.A. are "undetermined" and have no values assigned to them.
- 24 According to the court ordered accounting that Mr. Wilbert filed for the fourth
- 25 quarter of 1982, the Costa Rican assets of the Estate were valued by him at 39%
- 26 of the value of the total estate. This 39%, if it appreciated at the same rate as
- 27 remainder of the Estate (based on the Kleinman report), would have been worth as
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much as \$20 million at the time of its purported sale in 1992.

Further your declarant sayeth not. Dated and signed at Seattle, Washington under penalty of perjury pursuant to the laws of the state of Washington on this 7th of July 2004.



Charles M. Cruikshank III, attorney for
MARGARET MYERS SHAW

-----APPEARANCE DOCKET-----

SUB#	DATE	CODE/ CONN	DESCRIPTION/NAME	SECONDARY
630	01/15/1997	DCLR	TO COMPEL DISCOVERY DECLARATION OF GARY DELGUZZI IN SUPPORT OF MT TO COMPEL DISC	
631	01/15/1997	NTD	AMENDED NOTICE OF DEPOSITION	
632	01/15/1997	DCLR	DECLARATION OF JACK R POLICAR RE MT TO COMPEL PRODUCTION	
633	01/15/1997	DCLR	DECLARATION OF CHARLES M CRUIKSHANK IN SUPPORT OF MT TO COMPEL DISC	
634	01/15/1997	AFSR	AFFIDAVIT/DECLARATION OF SERVICE	
635	01/15/1997	DCLR	SUPPLEMENTAL DECLARATION OF G MICHAEL ZENO JR RE LETTER	
636	01/15/1997	MM	SUPPLEMENTAL MEMORANDUM OF WILBERT CHILDREN ET AL IN SUPPORT OF MOTION TO DISMISS	
637	01/16/1997	MTC	MOTION TO CONTINUE	
638	01/16/1997	DCLR	DECLARATION OF LARRY N JOHNSON	
639	01/16/1997	MM	MEMORANDUM OF PT RE DEF MT TO COM- PEL DISCOVERY & IN SUPPORT OF THE PT MT TO COMPEL DISCOVERY	
640	01/16/1997	CR	CERTIFICATE OF SERVICE	
641	01/16/1997	RSP	RESPONSE & OBJECTION TO PLA MT TO COMPEL DISCOVERY	
642	01/16/1997	DCLR	DECLARATION OF LISA M KIM	
643	01/16/1997	DCLR	DECLARATION OF WOLFLEY	
644	01/16/1997	DCLR	DECLARATION OF GARY DELGUZZI IN RSP TO DEF MT TO COMPEL DISCOVERY	
-	01/17/1997	NOTE	***** VOLUME 13 *****	
645	01/17/1997	OB	OBJECTION TO FINAL REPORT BY BENSON & MCLAUGHLIN'S - SUPPLEMENTAL	
646	01/17/1997	OB	OBJECTION TO FINAL REPORT & PT FOR DECREE OF DISTRIBUTION AFTER ORDER OF VOLVENCY - PT FOR PYMENT OF FEES BENSON & MCLAUGHLIN'S	
647	01/17/1997	DCLR	DECLARATION OF G MICHAEL ZENO JR RE ATTY FEES INCURRED BY MOVING PARTIES	
648	01/17/1997	OR	ORDER GRANTING SANCTION OF DISMISS- AL OF ACTION & ATTY FEES & COSTS	
648A	01/17/1997	MTHRG	MOTION HEARING	
649	01/17/1997	RPT	REPORT - SUPPLEMENT TO FINAL & PT FOR DECREE OF DIST - PART 1	
649B	01/17/1997	OTHER	PART 2	
649C	01/17/1997	OTHER	PART 3	
649D	01/17/1997	OTHER	PART 4	
649E	01/17/1997	OTHER	PART 5	
650	01/17/1997	OB	OBJECTION/OPOSITION TO DEPOSITION DATE	
651	01/21/1997	OB	OBJECTION TO DEPOSITION DATE	
652	01/17/1997	OR	ORDER DIRECTING ISSUANCE OF SUBPOEN	
653	01/17/1997	PT	PETITION -EXPARTE PET FOR ISSUANCE OF SUBPOENA	

Exh A

POLICAR - Cross by Johnson

- 1 Mr. Wilbert in this matter?
- 2 A. You are using those legal terms again. What is that
- 3 in lay terms?
- 4 Q. It's the document that's entitled the Final Report.
- 5 I don't know how else to describe it.
- 6 A. I may or may not have seen that.
- 7 Q. I'm showing you the document entitled Final Report
- 8 and Petition for Decree of Distribution. Have you
- 9 read that?
- 10 A. I don't remember reading that, no.
- 11 Q. Have you been provided and had an opportunity to read
- 12 the Supplement to the Final Report which I'll show
- 13 you here?
- 14 A. I remember seeing this.
- 15 Q. Have you read that?
- 16 A. Well, I mean, I haven't read it thoroughly.
- 17 Q. When did you first see the Supplement to the Final
- 18 Report and how much time did you spend reviewing it?
- 19 A. I can't tell you the exact day and less than half an
- 20 hour.
- 21 Q. You have indicated that you believe that some time in
- 22 1984 or 1985 the estate could have been closed; is
- 23 that correct?
- 24 A. Yes.
- 25 Q. Were you aware that 10 days after Mr. Wilbert was

1-22-1997

P. 226

EXH B

December 11, 1996

Mr. William E. Wilbert
Administrator - Estate of Jack DelGuzzi
1800 112th Avenue N.E., Suite 260E
Bellevue, Washington 98004

Re: Comprehensive Accounting for the Estate of Jack DelGuzzi for the period August 1982 through September, 1996

Dear Mr. Wilbert:

At your request as administrator for the Estate of Jack DelGuzzi we have prepared the accompanying comprehensive accounting (the "Package") for the Estate of Jack DelGuzzi (the "Estate"). The Package includes the balance sheet information as of September 30, 1996. It also reflects an accounting of all receipts and disbursements of funds from August 13, 1982 (your administration commencement date) through December, 1995. The analysis traces all monies in and out of the Estate and its related entities, as well as, the annual changes in the balance sheet accounts for the Estate's majority-owned corporations from August 13, 1982 through 1995. Finally, we have reviewed all payments made by the Estate or related entities to you as the administrator (the "Administrator") or any related entity.

The accounting information presented is based upon our review of the supporting documents enumerated below, financial data for the Estate and its controlled entities, and conversations with the Administrator. We believe that this accounting includes all material transactions of the Estate and its controlled entities (i.e., Del Hur, Inc. and Cedarwood Properties, Inc.) from August, 1982 through 1995. As you are aware, Peninsula Properties, Inc. and Northland Properties, Inc. were merged into Cedarwood Properties, Inc. in the late 1980s.

Our efforts have been focused on accomplishing several objectives. First, we have gathered, reviewed, summarized, and interpreted current financial information and operating data regarding the assets and liabilities of the Estate and its controlled entities, with the objective of presenting separate and consolidated balance sheets for the Estate, Del Hur, Inc. and Cedarwood Properties, Inc. Second, we have reviewed, analyzed, and summarized annual cash flows reflecting receipts and disposition of assets from the time you took over as Administrator through December 31, 1995. In conjunction with this task, we also analyzed the balance sheet as of June 30, 1982 and, with the benefit of hindsight, restated that balance sheet to more accurately reflect the Estate's financial condition as of that date. We then compared the Estate's financial condition

Mr. William E. Wilbert, Page 2

as of the June 30, 1982 to the balance sheet as of September 30, 1996. Third, we considered the feasibility of liquidating the Estate in August 1982, the point when you assumed the responsibilities of the Administrator. Our analysis in this regard was based upon the financial condition of the Estate at August, 1982. Finally, we have reviewed and considered the reasonableness of the fees and other amounts charged in conjunction with the administration of the Estate.

Findings and Conclusions:

Balance Sheet Analysis - A current consolidated balance sheet as of September 30, 1996 is included in the Package at Tab 3. However, the starting point of our analysis utilized the balance sheet as of June 30, 1982, which purported to show positive equity for the Estate of \$2,472,427. Further analysis, using the benefit of hindsight of actual events taking place subsequent to that date, demonstrates that there was in fact, a deficit as of June 30, 1982. The purported equity on the June 30, 1982 balance sheet was incorrect primarily because of numerous lawsuits which resulted from events taking place prior to your appointment as the Administrator. These lawsuits had to be defended by the Estate, a task which you inherited from the previous administrator. It is important to also note that in many of these lawsuits, Gary DelGuzzi was also named as a defendant and, thus, was personally exposed to potential judgments and liability. Based upon this review of the June 30, 1982 balance sheet (see Tab 2 of the Package) which was acknowledged by Gary DelGuzzi, and subsequent factual events of sales and settlements, we offer the following observations and conclusions:

- 1) using hindsight, the positive equity at June 30, 1982 of \$2,472,427 was inaccurate;
- 2) after considering subsequent sales of properties and the settlement of the nearly 140 lawsuits and claims which existed upon your appointment as the Administrator, it would be more accurate to reflect that the Estate had a deficit of approximately \$611,481 at the time you took over as the Administrator.

Examination of the final Federal estate tax return Form 706 reveals a reported net equity of approximately \$3.1 million as agreed to by the Internal Revenue Service as of the date of death in June 1978. The purported net equity, as reflected on the Estate's unadjusted balance sheet as of June 30, 1982 was approximately \$2.47 million. This indicates that during the tenure of Gary DelGuzzi as administrator, the net equity of the Estate decreased approximately \$630,000. The decrease in the Estate's net equity during Mr. DelGuzzi's tenure as administrator is substantially greater when you consider the adjustments which were made to the June 30, 1982 balance sheet primarily to reflect the actual results and cost to settle the numerous lawsuits and claims pending at the time you took over as the Administrator. Another significant factor precipitating this decrease in equity appears to be the approximately \$800,000 (see Tab 13 of the Package) which was paid to Mr. DelGuzzi as wages and loans (which were never repaid) during his tenure as administrator.

Based upon our review and analysis of the financial condition of the Estate at the time you became the Administrator and its current financial condition, we have concluded that the net equity of the Estate increased during your tenure as the Administrator, despite the overwhelming financial problems you faced at the time you became the Administrator. Moreover, while Administrator, you have been able to resolve most of the significant financial problems and lawsuits facing the Estate in 1982 in a way that has conferred substantial benefit upon the Estate, its creditors, and particularly Gary DelGuzzi.

By far the most significant problem you encountered and favorably resolved was the Estate's outstanding federal and state inheritance tax liabilities. These liabilities had accumulated to an amount which was outstanding and unpaid of more than \$5 million. Not only had the IRS filed tax liens on all of the Estate's assets, it had also filed liens on the assets of the Trust of Gary DelGuzzi, including the Lincoln Building. The IRS also repudiated a distribution agreement you had negotiated early in your tenure as Administrator, and was aggressively pursuing collection of the tax liabilities, including assertion of personal liability against you as fiduciary, and fiduciary and transferee liability against Gary DelGuzzi. You were able to successfully negotiate compromises of both the federal and state tax liabilities reducing the Estate's tax liabilities to less than 10% of the outstanding amounts owed. The reduced liabilities were fully satisfied. You accomplished this important result with assistance of counsel which were personally retained and paid for by you, not the Estate. As a result of these compromises, the tax liens on all Estate assets, as well as the assets of the Trust of Gary DelGuzzi, have been removed. The lien removals then enabled certain assets of the Trust of Gary DelGuzzi to be sold. The Lincoln Building was sold with resulting proceeds to the Trust of over \$300,000. These compromises of the tax liabilities have eliminated the possibility of the IRS and/or the state of Washington seeking collection of the taxes from the personal assets of Gary DelGuzzi as either a fiduciary or a transferee.

In addition to resolving the Estate's substantial tax liabilities, you have resolved over 140 lawsuits and other claims against the Estate. For example, you accomplished a resolution of the disputes with the Estate of Bruno DelGuzzi arising out of a settlement and agreement to pay nearly \$400,000 to that estate which was negotiated and agreed to by Gary DelGuzzi, for which he was personally liable and which he failed to pay when due during his tenure as administrator. You negotiated a resolution with Seafirst Bank over substantial loans made by that bank at the request of and during the tenure of Gary DelGuzzi as administrator. You were also successful in resolving disputes with Sam Hurworth regarding Del Hur, Inc., resulting in a split-up of that corporation, and disputes with Charlie Nyhus regarding his property claims to the property of the Nyhus/DelGuzzi partnership. Both these disputes were the result of actions taken by Gary DelGuzzi during his tenure as administrator.

Therefore, considering that there was a significant adjusted deficit at the time you commenced being the Administrator, that your actions in resolving lawsuits and claims against the Estate conferred a significant benefit on the Estate and its creditors and beneficiary (in some instances at your own personal expense), and that as the Administrator you were able to generate

Mr. William E. Wilbert, Page 4

excess funds for distribution to the beneficiary, these facts should reflect positively upon you as the Administrator. The foregoing offers substantial support for the fees you have been paid as Administrator, as well as your claim for the fees charged, but which remain unpaid.

Estate Liquidation - We also examined whether or not it would have been feasible to liquidate the Estate in August, 1982, when you became Administrator, rather than continuing to administrate the assets and activities of the Estate. We considered many factors before arriving at a conclusion regarding the Estate's liquidation at that time. Among those considerations were the following:

- 1) the Internal Revenue Service had a lien at that time against the Estate's assets for approximately \$1.5 million, was auditing the Estate tax return, and had issued a notice of deficiency to the Estate within a few days after you became Administrator, asserting a deficiency in estate tax of over \$4.6 million;
- 2) the inheritance tax liability owed to the state of Washington of over \$350,000 was outstanding and unpaid;
- 3) the potential for transferee liability relating to the settlement of claims and judgments imposed against the Estate;
- 4) the non-liquid nature of a vast amount of the Estate's assets;
- 5) the potential for fiduciary liability of Gary DelGuzzi as administrator;
- 6) the need to obtain additional funding through loans and advances to meet the obligations of the Estate; and
- 7) the numerous lawsuits, claims, and actions against the Estate pending at the time you became Administrator.

Predicated on the foregoing, it is our conclusion that in August, 1982, when you replaced Gary DelGuzzi as the Administrator of the Estate, it would not have been feasible, and appears it would not have been possible, to liquidate the Estate.

Fees Charged in the Estate's Administration - Based upon our review and resulting recap analysis located at Tab 4 of the Package, we conclude that the compensation which was paid to you and your related entities by the Estate and its related entities was both fair and reasonable in relation to the services provided. Moreover, predicated on comparisons to the fees charged in the administration of other large (albeit less involved) estates, as well as the compensation (including unpaid loans) received by Gary DelGuzzi during the four year period of his administration, we believe the subject fees are, if anything, below prevailing market fees for similar services.

More specifically:

- 1) the average annual rental rate for space allocated and used for Estate-related activities was computed to be \$6.71 per square foot, well below the market during that time;
- 2) the average sales commission charged was computed to be 4.25%, which appears to be slightly under market;

- 3) the average hourly fee for administration and related services was computed to be \$74, which appears to be reasonable;
- 4) professional, management and administration fees as a percentage of the gross revenues generated by the Estate were computed to be 3.78%;
- 5) the average hourly rate for administrative support personnel was computed to be \$8.00;
- 6) interest charged on actual funds loaned to the Estate was at prime plus 1%; and
- 7) interest charged on unpaid fees at 6% was significantly below prevailing rates.

The fees referenced above represent all of the remuneration paid to the Wilberts and any related entity. Since the fees charged in each of the above categories are fair and reasonable, it follows that overall, the amounts charged during your tenure as the Administrator of the Estate are both fair and reasonable.

Information and documents reviewed:

Our analysis as set forth above and in the Package following is based upon the review of a vast amount of documentation, including but not limited to the following:

- a) United States estate tax return on Form 706;
- b) Annual estate income tax returns on Form 1041 for the years 1982 through 1995;
- c) Corporate income tax returns on Form 1120 for Del Hur, Inc. for the years 1983 through 1995;
- d) Corporate income tax returns on Form 1120 for Cedarwood Properties, Inc. for the years 1983 through 1995;
- e) Accounting summaries submitted to the Probate Court for the periods from August 1982 to the present;
- f) Settlement documents resulting from the more significant lawsuits involving the Estate;
- g) Detailed schedules of fees paid to Wilbert et al. (including fees, commissions, expense reimbursements, interest, salaries, management fees, trustee fees, and rent) as well as time accumulation reports;
- h) Correspondence to and from the Internal Revenue Service;
- i) Binders and property records for all properties owned by the Estate and its related entities;
- j) Del Hur, Inc. settlement documents for the split-up of Del Hur, Inc.;
- k) Schedule of Estate properties sold;
- l) Schedule of detailed Short, Chessman & Burgess billings by entity;
- m) Corporate income tax returns on Form 1120 for Northland Properties, Inc. for the years 1983 through 1988;
- n) Corporate income tax returns on Form 1120 for Peninsula Properties, Inc. for the years 1983 through 1986;
- o) Estate administration budgets as approved by Gary DelGuzzi;

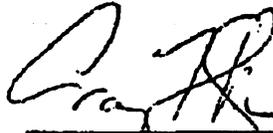
Mr. William E. Wilbert, Page 6

- p) Corporate income tax returns on Form 1120 for DelGuzzi Realty, Inc. for the years 1981 through 1988;
- q) The Estate's balance sheets as of June 30, 1982;
- r) The Wilbert fee book;
- s) Property closing statements;
- t) Detail trial balances for Del Hur, Inc and Cedarwood Properties, Inc. for 1988 through the present; and
- u) Associated correspondence.

Note, this letter has been modified in order to incorporate certain corrections which were discovered subsequent to our report letter dated November 12, 1996. Consequently, the letter dated November 12, 1996 is superseded by this letter.

Very truly yours,

Kleinman, Guerra & Company, P.C.



By: Craig Kleinman, Shareholder

Attachment

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR CLALLAM COUNTY

In Re of the Estate of)
JACK J. DELGUZZI,)
Deceased.)
GARY DELGUZZI,)
Plaintiff,)
v.)
WILLIAM E. WILBERT,)
et al.,)
Defendants)

NO. 8087

ORDER TO SHOW CAUSE

Gary Delguzzi, having moved for Order to Show Cause, and for good cause shown,
IT IS ORDERED that William E. Wilbert, be and hereby is, ordered to appear before this
court before Judge Leonard Costello, at 614 Division Street, Port Orchard, Washington, at the hour
of _____, on the ___ day of _____, 2003, and then and there show cause, if any there
be, why he should not be ordered to pay over to Gary Delguzzi, and to have judgment entered against
him and against his martial estate and in favor of Gary Delguzzi, in the amount of \$3,425,150.

Dated this 20th of October 2003.

JUDGE LEONARD COSTELLO

Charles M. Cruikshank III
108 S. Washington St. 306
Seattle, Washington 98104
(206)624-6761 WSB 6682

EXH D

RECEIVED

DEC 18 2003

Cruikshank Law Offices, P.S.

SERVICE
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR CLALLAM COUNTY

In Re the Estate of Jack J. Delguzzi,

GARY DELGUZZI,

Plaintiff,

v.

WILLIAM E. WILBERT, et ux., et al.,

Defendants.

NO. 8087

DEFENDANTS OPPOSITION TO
PLAINTIFF'S MOTION FOR
ORDER TO SHOW CAUSE

COMES NOW Defendant William E. Wilbert and opposes Plaintiff's Motion for Order to Show Cause, and states as follows:

I.

WHAT RELIEF IS THE PLAINTIFF SEEKING?

Defendants were served with Plaintiff's Motion for Motion for Order to Show Cause on October 20, 2003. It is not clear from the face of the Motion what the Plaintiff is seeking. The Motion simply requests for an "Order to Show Cause." The purpose of a motion under the Civil Rules is to give the other party notice of the relief sought. *Pamelin Industries Inc. v. Sheen- U.S.A., Inc.*, 95 Wash.2d 398, 622 P.2d 1270 (1981). Civil Rule 7(b)(1) requires that a motion "shall state with particularity the grounds thereof, and shall set forth the relief or order sought." (emphasis added).

The Plaintiff's motion simply states the follows:

CHICOINE & HALLETT, P.S.

WATERFRONT PLACE ONE, SUITE 803
1011 WESTERN AVENUE
SEATTLE, WA 98104
(206) 223-0800 FAX (206) 467-8170

1 "Comes now Gary Delguzzi, who moves for Order to Show Cause, directed to William E.
2 Wilbert, all as more fully set out in the Declaration of Gary Delguzzi and of his counsel herewith."
3 See Gary Delguzzi's Motion for Motion for Order to Show Cause. Plaintiff's counsel's declaration
4 merely authenticates the attached exhibits and describes their contents, while Mr. Delguzzi's
5 declaration sets out random allegations without stating the relief or order sought, as required by the
6 Civil Rules of Procedure. Neither of the declarations purport to give notice to Defendants what relief
7 is sought. It is not evident from the face of the Motion what the Order to Show Cause requests of
8 Defendants and Defendants are not clear how to respond to the Motion.
9

10
11 II.

12 MOTIONS ARE NOT AVAILABLE TO DETERMINE THE
13 MERITS OF A CASE

14 Mr. Delguzzi's declaration sets out allegations that are factual issues to be resolved at trial.
15 Ordinarily a motion cannot be made to settle important questions. *State v. Alexis*, 21 Wash.App. 161,
16 584 P.2d 963 (Div. 2 1978). A motion is not available to determine the merits of the cause. *Hector*
17 *Isabelle Builder, Inc., v. Welch*, 125 Vt. 267, 214 A.2d 63 (1965). A motion may present questions of
18 law, but not questions of disputed facts. *Electronic Data Systems Corp. v. Heinermann*, 217 Ga.App.
19 816, 459 S.E.2d 457 (1995).
20

21 Mr. Delguzzi is attempting to have the Court resolve disputed factual issues through his motion.
22 He alleges that he had a personal interest in many of the Estate managed properties and he never
23 received the funds he was entitled to. Determining the ownership interest in the Estate properties is a
24 factual issue that needs to be resolved at trial, where each party has a fair opportunity to present all of
25 their evidence to the Court. Determining what, if anything, was paid for each property and what Mr.
26

1 Delguzzi was paid is also a factual issue that needs to be resolved at trial. Plaintiff has asserted no
2 question of law and courts may not consider grounds not stated in the motion. *Orsi v. Aetna Insurance*
3 *Co.*, 41 Wn.App. 233, 703 P.2d 1053 (1985).
4

5 III.

6 CONCLUSION

7 The purpose of a motion is to give the Court and the other party notice of the specific relief
8 sought by the moving party and of the grounds supporting the request. Plaintiff's motion provides no
9 notice to the Court nor the Defendants of the relief sought. Plaintiff's declaration merely states
10 allegations based on factual issues, which should be determined by the Court during trial, not through
11 the use of motions. Seeing that the motion has not requested any relief, Plaintiff's motion should be
12 dismissed. To the extent that the Court interprets the Motion as requesting the Court to rule on the
13 ultimate factual issues in dispute, Plaintiff's motion should be denied.
14

15
16 NOW THEREFORE, for the reasons set forth above, the Defendant respectfully requests that
17 Plaintiff's Motion for Motion for Order to Show Cause be denied.

18 DATED this 18th day of December, 2003.

19
20
21 CHICOINE & HALLETT, P.S.

22 By: 

23 Darrell D. Hallett, WSBA #00562
24 Attorney for Defendant William E. Wilbert
25 1011 Western Avenue, Suite 803
26 Seattle, WA 98103

H:\W\Wilbert-9400\PROBATE\Pleadings\Opp. to Order to Show Cause 12.11.03.doc

CHICOINE & HALLETT, P.S.

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2.3. '6

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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	REPLY MEMORANDUM RE: MOTION TO VACATE FEE ORDER OF JUNE 5, 1998
v. Loretta D. Wilbert, personal representative of the Estate of William E. Wilbert, et al, et ux. Defendant/Respondent	

The response of the Defendant seems to make some sort of res judicata argument, although not using that term. That argument, whatever it may be called, was specifically and soundly rejected by the Washington Court of Appeals, Division II, in its Unpublished Opinion in this case nearly three years ago. (Declaration of Cruikshank in Reply, ¶ 7, 8, & 9).

Nor did Jack Policar, CPA, have sufficient opportunity to review the Supplement to the Final Report of the late Administrator, as claimed. (Declaration of Cruikshank in Reply, ¶ 2, 3, 4, 5 & 6). According to Mr. Policar's testimony, he had less than thirty minutes to review and study a very substantial document that was 60 pages long, which was simply not adequate, especially to prepare him to testify under cross-examination.

Again, it was the decision of Wilbert's attorneys to prepare and have the Supplement to the accounting signed by Mr. Johnson on December 17, 1996 (Exhibit A) and then not serve it until the last court day (January 17, 1997) before the beginning of the hearing on January 21, and then to allege, as they are now doing, that it was served on

1 or about the date it was signed.

2 The lack of discovery responses of the Administrator to Gary Delguzzi's
3 discovery requests and the intentional misrepresentations of the Administrator's attorney
4 to the court as the state of Delguzzi's responses to discovery further prejudiced the court
5 and prevented a fair hearing on the issues submitted by the Administrator in his fee
6 hearing in 1997 that resulted on the Order of June 5, 1998. (Declaration of Cruikshank in
7 Reply, ¶ 7, 8, & 9).

8 Additional theories of challenging an administrator's fee award are available
9 when an estate is still open, requiring a consideration of the circumstances with which the
10 prior fee award was made. R.C.W. §11.76.010 requires personal representatives to make
11 interim reports not less than annually; these reports update the court on claims filed, paid,
12 and rejected. The Supreme Court of Washington, *In Re Estate of Million*, 18 Wash. 2d
13 824; 140 P.2d 560 (1943), held that interim orders making partial distributions were
14 "subject . . . to subsequent examination and modification on the final hearing." Any
15 interim order making a partial fee award, such as the Order of June 5, 1998, was not
16 immediately appealable because it was subject to modification and thus not final.

17 Wilbert's bookkeeper's records document many additional activities for his fees
18 and expenses and other activities which establish that the Order of July 5, 1998 was not
19 'final', is subject to change and attack and is therefore subject to being vacated. If the
20 Order of June 5, 1998 was final, then there would be no need or right to supplement it as
21 the bookkeeper's declaration purports to do. Additionally, as Mr. Wilbert died on March
22 24, 2004, leaving the office of the Administrator of the Estate of Jack Delguzzi open,
23 there is no one with standing to file reports for the Estate of Jack Delguzzi. While
24 supplemental reports are absolutely necessary, only a properly appointed Administrator
25 has standing to do so.

26 Similarly, R.C.W. §11.48.210 permits a personal representative to apply for an
27 allowance at any time during an estate's administration. The statute does not explicitly
28 provide for modification of administrator fees outside of what would be included in the

1 final report, but the case annotations contemplate that allowances made under this statute
2 are not final. *Taylor v. Burns*, 12 Wash. 2d 686; 123 P.2d 733 (1942); *In re Thomas'*
3 *Estate*, 140 Wash. 296; 248 P. 804 (1926); *In re Estate of Doane*, 64 Wash. 303 (1911).

4 "Extrinsic or collateral fraud,' justifying equitable relief against a judgment or
5 decree, means some intentional act or conduct by which the prevailing party has
6 prevented the unsuccessful party from having a fair submission of the controversy."
7 *Farley*, 10 Wash. 2d at 71; 116 P.2d at 268. The party has no opportunity to present " all
8 of the rights or defenses he is entitled to present" at trial. *Ellis v. Schwank*, 37 Wash. 2d
9 286, 288, 223 P.2d 448, 249 (1950).

10 The comments to Restatement (Second) of Judgments § 70 cmt. c (1982) expand
11 further on the historical notion of extrinsic and intrinsic fraud:

12 The most widely recognized distinction was between "extrinsic" and
13 "intrinsic" fraud. In its core meaning, "extrinsic" fraud meant fraud that
14 induced a party to default or to consent to judgment against him.
15 "Intrinsic" fraud meant knowing use of perjured testimony or otherwise
16 fabricated evidence. But this distinction was obliterated by decisions in
17 which it was reasoned that offering fabricated evidence "prevented" the
18 other party from contesting the proposition for which the fabricated
19 evidence was offered as proof. Hence, in many jurisdictions the
20 distinction between "extrinsic" and "intrinsic" fraud was accepted
21 nominally but not in substance.

22 The comment further set forth three typical exceptions to the general rule that
23 intrinsic fraud did not justify relief: (1) "fraud practiced by a party having a fiduciary
24 capacity." (2) "fraud on the court;" and (3) "fraud against the government or the public
25 welfare." *Id.* (Emphasis supplied), two of which apply in this case.

26 It is thus apparent that 1) Gary Delguzzi did not get an opportunity to
27 present all of his evidence, rights and defenses at the 1997 fee hearing, as a matter of
28 law.

As to the propriety of the payment by the late Administrator of death taxes
exceeding \$1,000,000 on an estate that was allegedly insolvent, there was no reason not
to amend the federal Estate Tax return once the insolvency became known. Nor is there
justification for payment of inheritance taxes which could only be calculated based on

1 the classification of the heir (for the rate of tax) and the actual distribution(s) to made to
2 each category of heir. The rule is simple: "No distribution, no inheritance tax."

3 **SUMMARY**

4 No matter whether the test be that of "law of the case" or "res judicata" as
5 dictated by Division II in 2001, the extrinsic or intrinsic fraud common law, which have
6 not yet been abandoned in Washington, The Restatement (Second) of Judgments, cases
7 decided pursuant to R.C.W. §11.48.210 and 11.76.010 or the CR 60 standard, the July 5,
8 1998 Order is not a final order and it must be set aside.

9 Also, as the Estate has remained open long past the time when the 'final' order
10 was to have it closed and past the time when all assets were to have been distributed, and
11 additional costs, expenses and fees have been paid and as many substantial assets remain
12 missing and unaccounted for and many substantial issues remain unresolved, then the
13 Order of June 5, 1998 must be vacated so that the matter can be properly noted and heard
14 by the court under the control of a new Administrator of the Estate of Jack Delguzzi who
15 does not have the late Administrator's multiple, dramatic and blinding conflicts of
16 interest, some of which were noted in this court's Memorandum Opinion of October 10,
17 1997.

18 Dated at Seattle, Washington on this 6th of July 2004.

19
20 Charles M. Cruikshank III, attorney for
21 MARGARET MYERS SHAW

1 wages, commissions, rent, loan repayments, interest or for other
2 purposes.

3 Included in the Administrator's Billing Book are the detailed
4 time sheets from August 1982 through the present which support the
5 amount of administrator's fees which are outstanding and unpaid, as
6 well as support the amounts that have been previously paid, and
7 show the work done by Mr. Wilbert for the Estate and the
8 reasonableness of the fees he has charged the Estate for his work
9 as the administrator.

10 DATED this 12th day of December, 1996.

11 VERIFICATION

12 State of Washington)
13 County of King) ss.

14 William E. Wilbert, Administrator w.w.a., de bonis non, of the
15 Estate of Jack DelGuzzi on oath affirms that the statements in this
16 Supplement to Final Report and Petition for Decree of Distribution
17 and attachments hereto are true and correct.

18
19 William E. Wilbert, Administrator
20 w.w.a., de bonis non, of the Estate
of Jack DelGuzzi

21 Subscribed and sworn to before me on this ____ day of
22 _____, 1996.

23 Notary Public in and for the State of
24 Washington Residing At _____

25 Expiration Date of Appointment: _____
26 _____

SUPPLEMENT TO FINAL REPORT AND
PETITION FOR DECREE OF DISTRIBUTION - 60

EXH A-1

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Prepared and Presented by:

CHICOINE & HALLETT, P.S.

By:


Larry N. Johnson, WSBA #8786
Darrell B. Hallett, WSBA #0562
Attorneys for William E. Wilbert

W:\WORD\WILBERT\PROBATE\PLEAD\DISTRIBU.PET

SUPPLEMENT TO FINAL REPORT AND
PETITION FOR DECREE OF DISTRIBUTION - 61

EXH A-2

CHICOINE & HALLETT, P.S.
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1911 WESTERN AVENUE
SEATTLE, WASHINGTON 98104
(206) 223-0800

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DIVISION II

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STATE OF WASHINGTON
BY _____

DEPUTY

IN AND FOR THE WASHINGTON COURT OF APPEALS

DIVISION II

CASE NO. 36682-7-II

In re: Estate of Jack Delguzzi	CLALLAM COUNTY SUPERIOR COURT CAUSE NO. 8087
--------------------------------	---

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 Brief on this February 5, 2008 upon the following persons / parties /entities.



Charles M. Cruikshank III WSB 6682

Carl L. Gay 829 E. 8 th Street. #A Port Angeles, WA 98362	G. Michael Zeno 4020 Lake Wash. Blvd.100 Kirkland, WA 98033	Andrew W. Maron 999 Third Avenue. #3000 Seattle, WA 98104
Kathryn A. Ellis 600 Stewart Street. #620 Seattle, WA 98101-1261		