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COURT OF APPEALS  
DIVISION II

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STATE OF WASHINGTON

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Case No. ~~3895-8-II~~

38956-8-II

**COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON**

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Nattalia Sharinger, Appellant, vs.  
Carol Kopansky and John Doe Kopansky, and the  
marital community composed thereof.

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**BRIEF OF APPELLANT**

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## **I. INTRODUCTION**

This case involves an appeal by Nattalia Sharinger for relief from a judgment based upon an attorney lien filed by her former attorney Karen K. Koehler, Esq. demanding legal fees based upon estimated hourly claim following Koehler's withdrawal before contingency was realized. A disagreement between the parties, (attorney and client) developed concerning the value of the case and whether it should go to trial. Koehler made no preparations for trial, in two and one-half (2 ½) years; failed to depose defendant and obtain defendant's essential medical records required for trial, and withdrew after Appellant did not agree to settle the case.

The trial court's award of attorney fees to Koehler violates RCW 1.2, RCW 1.6, and RCW 71, because Koehler's withdrawal was voluntary before the contingency was realized. Sharinger seeks to reverse the judgment granting Koehler's attorney lien.

## **II. ASSIGNMENT OF ERROR**

The court erred by awarding attorney fees to Koehler by finding that Koehler's withdrawal was justified or for good cause, when it found that Sharinger did not fire Koehler, and did not create difficulties to avoid her obligation to pay contracted contingency fees.

### **III. ISSUES PERTAINING TO ASSIGNMENT OF ERRORS**

A. The trial court has the discretion to determine attorney fees, but does a court violate its discretion by misapplication of the law on untenable grounds; and is the discretion abused when a decision is manifestly unreasonable or exercised based on untenable grounds and/or untenable reasons.

B. Did the court abuse its discretion by granting a judgment for estimated hours claimed by Koehler in a contingency case, wherein the attorney did almost nothing to prosecute the case and knowingly misrepresented the insurance policy amount to force the client to accept a settlement and further falsely accused her client of perjury.

### **IV. STATEMENT OF THE CASE**

Karen K. Koehler, Esq., ("Koehler"), an attorney in the law firm of Strimatter Kessler Whelen Withey Coluccio, was retained on or about September 1, 2005 as counsel for litigation of the March 29, 2005 personal injury case of Nattalia Sharinger against Carol Kopansky. CP 403-405. This appeal involves a judgment based solely on an attorney lien filed simultaneously by Koehler with her May 13, 2008 withdrawal. (CP 681, 683)

Koehler failed to sign the Contract to Hire, failed to complete said document and misdated it as September 1, 2004, a year before the actual date of September 1, 2005. CP 403-405. For two years Koehler did absolutely nothing on the case, CP 1-2, after Sharinger contacted Koehler as to the progress of the case, Koehler called back stating the case is lost because Kopansky had died. (CP 85). Sharinger and her husband understandably were concerned about Koehler's inattention to the case and requested in the strongest of terms to have Koehler file a suit. Suit was filed on March 16, 2007 (CP 690).

Sharinger's husband investigated and found the house had been sold and Kopansky was alive but had moved from the jurisdiction (CP 85); by e-mail Koehler responded "Hi Dan, you are quite the sleuth. I forgot to tell you that I did speak to Mr. Kopansky. He called after they were served and was yelling and upset that they were on the verge of bankruptcy and his wife was dying..." (CP 85)

Koehler failed to depose defendant Kopansky, interrogatories were the only discovery addressed to defendant, to which an unsigned response claiming \$300,000.00 policy limit was received on or about October 15, 2007. CP 658, 667. This was in

conflict with a \$500,000.00 policy limit verbally given to Sharinger's husband by Mr. Kopansky during April, 2005. See CP 407, 410-411. After Sharinger's deposition and interrogatories provided to Travelers, Koehler called by wire on or about February 13, 2008, requesting in the strongest of terms for Sharinger to accept a \$200,000.00 settlement based on a \$300,000.00 policy, of which \$65,000.00 had been paid out to another claimant. CP 410-411. Up to this date of February 13, 2008, Sharinger had no legal and factual information as to the actual and correct amount of the Travelers Indemnity Company insurance policy. Sharinger's husband demanded a copy of the policy and the policy was provided stating an amount of \$500,000.00. CP 127. On May 5, 2008, Koehler demanded that Sharinger accept the take-it-or-leave-it final offer of \$200,000.00, Sharinger refused that settlement offer. On May 8, 2008, Koehler suggested that Sharinger discharge her. Sharinger did not discharge Koehler, and Koehler withdrew on May 13, 2008 and filed an attorney lien on the same date. CP 681, 683. Koehler now based her justification for her withdrawal in that Sharinger had falsely accused Koehler of violating the attorney/client privilege. Sharinger asked by May 23, 2008 letter (CP 331-332, 421) for Koehler to release and revoke her attorney

lien to which, on May 29, 2008 Koehler responded and in part accused Sharinger and her husband of conspiracy to commit perjury and committing perjury (CP 334-335). Subsequent information discovered that Koehler received from Travelers by letter of September 7, 2005 (CP 407-408), and March 22, 2006 the correct policy limit of \$500,000.00, and received the Travelers policy on or about October 27, 2007, but failed to inform Sharinger of these facts, and misrepresented the policy amount as only \$300,000.00. Also, Travelers informed Sharinger that Koehler agreed with Travelers not to change the false \$300,000.00 limit on the interrogatories, and, in February, 2008, Koehler claims to have relied on it. Sharinger on her own volition fought the case to conclusion and received \$25,000.00 more than the last offer of Koehler's, and settled the case for \$225,000.00. Koehler demanded one-third (1/3) of \$200,000.00, and on the instruction of the court, filed an estimated time of 144 hours, at an hourly rate of \$700.00, which the court granted in judgment, and received by Koehler, at the rate of \$400.00 per hour, for a total of \$57,600.00 (CP 70).

## V. ARGUMENT

### A. THE TRIAL COURT ABUSED ITS DISCRETION BASED UPON A MISAPPLICATION OF LAW ON UNTENABLE GROUNDS AND REASONS. THE TRIAL COURT ERRED IN FINDING THAT KOEHLER HAD JUSTIFIABLE AND GOOD REASONS TO WITHDRAW.

Koehler placed into the court record the incomplete, legally insufficient CONTRACT TO HIRE (CP 403-405), which is misdated as September 1, 2004 (about six months prior to the accident) and not executed as a legal instrument (contract) by Karen K. Koehler's failure to affix her signature. Further, the essential element of a contract, as to what representation would be provided, was not completed:

**"Clients as legal counsel for all purposes in connection with a claim against \_\_\_\_\_, which occurred or arose on or about \_\_\_\_\_, in the County of \_\_\_\_\_, State of \_\_\_\_\_ on the following conditions." (CP 404)**

The trial court's award of attorney fees of \$57,600.00 based upon an estimated 144 hours of legal work at \$400.00 per hour abused its discretion by a manifestly unreasonable decision based on untenable grounds, given the facts and applicable legal standards, i.e., that Appellant falsely accused Koehler of violating attorney/client privilege, a fact contradicted by a sworn Declaration;

and that Appellant committed the felony crime of perjury, which has also been factually and totally disproved.

The factual findings of the Trial Court are unsupported by the record, based on an incorrect standard, because Koehler did nothing to prosecute the case. Koehler was “hedging her bets”, and withdrew on grounds that client uncooperatively wished to go to trial. The Trial Court ruled on hearsay, ignoring a Declaration as to Koehler’s violation of attorney/client privilege, and ruled against Appellant in consideration of documents sent by mail and wire, which falsely accused Appellant of perjury, a felony crime in this jurisdiction.

The court found:

**Court: While Ms. Koehler may have felt compelled to Withdraw, this fact does not equate to a “dis-charge” of counsel as contemplated by Taylor in the absence of Ms. Sharinger’s intent to create such perceived necessity. No such intent has been shown. (CP 65)**

The court below used *Ausler v. Ramsey*, 73 Wn.App. 231 (1994) as the legal basis for resolving the attorney lien issue:

The court found:

**Court: “Therefore, the crucial issue in the present case is whether Ms. Koehler’s withdrawal was justified or for good cause.” (CP 65)**

The court, in support of its opinion, stated the following:

**Court:** “The evidence clearly establishes a difficult relationship between the parties. . .The Court has reviewed the correspondence by e-mail and letters between the parties. . .and finds a common component, i.e., a general lack of trust in the judgment of Ms. Koehler by Ms. Sharinger and Mr. Gellert (hereinafter, “clients”)” (CP 65)

**Court:** “Clear from the above statement is the fact that Ms. Sharinger had abandoned all trust in Ms. Koehler.” (CP 68)

**Court:** “5. On May 12, 2008, Ms. Koehler wrote a letter to Ms. Sharinger wherein she advised of her intent to withdraw as legal counsel on the case.” (CP 67)

The Court below erred in concluding that the breakdown in the attorney/client relationship was based on the behavior and actions of Appellant and her husband. The question as to who caused the breakdown is rather simple, it is based on the facts submitted to the court showing Koehler’s actions in hiding documents Koehler received from Travelers Indemnity Company, (“Travelers”), providing material false facts to Appellant, and making material false accusations against Appellant and her husband.

*Ausler, supra* defines “good cause” as client’s claim is fraudulent, attorney has professional objections to client’s retention of additional counsel, client is uncooperative, client degrades the

attorney, client refuses to pay justified attorney fees and costs or ethical rule require the attorney to withdraw, and finally if the attorney and client suffer a “breakdown” in communications.

As **Ausler**, *supra*, established that an attorney withdrawal based upon a client not heeding legal advice is not an acceptable justification for withdrawal.

This Honorable Appeals Court should consider if Appellant/Plaintiff could have maintained trust in Koehler, when Koehler:

(a) Hid and failed to provide Appellant a copy of the September 7, 2005 Travelers letter (CP 407-408) stating the insurance limit of \$500,000.00.

**Koehler: We initially believed the defense policy was \$500,000.00 Travelers insurers for defendant so advised us by letter on September 7, 2005. . . (CP 249)**

(b) Hid and failed to provide Appellant the March 22, 2006 letter from Travelers again providing the \$500,000.00 policy limit. (CP 583)

(c) Hid and failed to provide a copy of the Travelers policy stating the \$500,000.00 limit:

**Koehler: To his credit Mr. Gellert wanted to see the policy...Some time after the discovery answers of**

**October 27. . defendant produced the Travelers policy. . The policy was actually for \$500,000 as we originally thought. (CP 249).**

(d) Agreed with Traveler's attorney not to correct a flawed inadmissible interrogatory which falsely claimed the insurance limit as only \$300,000.00.

**Travelers: Mr. Morgan had discussions with your prior counsel and a copy of the policy was provided which accurately reflected the \$500,000.00 combined single limit. Mr. Morgan felt based on this discussion with your former counsel and providing a copy of the policy there was no need to do anything further. . .and this included correcting the interrogatory. (CP 184)**

**Koehler: I spoke with Mr. Morgan who advised the interrogatory was in error and quickly apologized. (CP 249)**

(e) Attempted to force a settlement on Appellant by wire for only \$200,000.00 by knowingly using the false interrogatory that only a \$300,000.00 policy existed.

**Koehler: In answers to interrogatories on October 27, 2007, defendant stated they were \$300,000.00. . .sought the advice of my partners as to whether it would be advisable to settle \$35,000.00 short of available remaining policy limits. (CP 411)**

**Koehler: The \$300/\$500 problem I fear is as much my fault as Mike's. Clearly they wrote the wrong amount on the interrogatories. . .I don't remember things like numbers. . .I relied on the interrogatory. (CP 249-250)**

(f) Failed and refused to depose defendant.

(g) Failed to request and demand defendant's required medical records essential for trial.

## **B. FALSE CHARGES**

Koehler filed on August 20, 2008 a "RESPONSE TO MOTION TO RESOLVE NOTICE OF ATTORNEY'S LIEN" in which Koehler knowingly made false charges against Appellant and her husband to mislead the Court and obtain unlawfully legal fees Koehler did not earn and was not entitled to.

**Koehler: 3) submitted an untrue interrogatory answer (that she had no prior accidents) which was later discovered upon her confession that it was done on the advice of Mr. Gellert. (CP 70)**

PERSONAL INJURY INTERVIEW REPORT dated

October 17, 2005, at page 2:

**Question: 2. Have you ever filed any kind of a claim against any insurance company for industrial purposes, for veteran's benefit or for any other reason? If you have, please furnish details regarding such claims:**

**Nature of Claim:**

**Appellant: Victim in a car accident in 1991.**

**Appellant: Victim in a car accident in 1993. Got a little money (CP 129-131, 290)**

Therefore, the Court below seriously abused its discretion by allowing this materially false accusation to be made part and parcel

of the court record, i.e., that Appellant and her husband committed perjury (a felony crime) and considering this false charge (even in a remote form) deprived Appellant of a fair and impartial hearing.

**Ausler, supra, and Marriage of Bralley**, 70 Wash. App 646, 651, 855 P.2d 1174 (1993):

**“a trial court abuses its discretion if its decision is in violation of law”**

Therefore, the trial court’s decision is in serious violation of the law. The court’s decision effectively approves Koehler’s use of mail and wire fraud to falsely claim that only a \$300,000.00 Travelers policy existed for settlement and approving Koehler’s material false charges against Sharinger and her husband as to the commission of conspiracy to commit perjury and having actually committed perjury.

The Court further erred in ruling as justification for Koehler’s right to withdraw, on Appellant falsely accusing her former attorney Koehler for committing violation of attorney/client privilege, the Court stated:

**Court: 4. On May 8, 2008 Ms. Sharinger accused Ms. Koehler of violating attorney/client privilege by disclosing to defense and/or to Travelers the vacation plans of Ms. Sharinger. (CP 67)**

Appellant Sharinger sent e-mail on May 8, 2008 at 2:35 to

Koehler:

**Appellant:** Dear Karen: Thanks for sending the attached interrogatory to me. Under the client attorney privilege I informed you that I would be out of the jurisdiction. I am extremely concerned that you informed Travelers of this. And now their first interrogatory is pure harassment in their attempt to force me under oath to disclose the reason for the trip, where I went, with whom I went, and who I met at destination.

Koehler by return same date e-mail stated the following:

**Koehler:** Dear Nattalia: You owe me a major apology. If you would like to discharge me as your counsel please advise me now. (CP 142, 66A)

Michael T. Morgan, Travelers attorney, filed a Declaration on June 17, 2008, under the pain of perjury, with the Court, stating:

**Morgan:** I received a telephone call from Karen Koehler, Plaintiff's attorney, requesting additional time because her client and husband were traveling in Europe, I obliged. (CP 33)

Koehler falsely stated to the Court:

**Koehler:** 5) levied unwarranted accusations that the attorney had breached client confidences.

Based upon a court admissible Declaration by the Traveler's attorney, that in fact Koehler called by telephone and stated that her client was traveling in Europe with her husband appears to be a

reversible error. The Trial Court abused its discretion by punishing Appellant for Koehler's false accusations.

### **C. APPELLANT WAS DEPOSED**

The Court below also ruled that, for example:

**Court: 1. In November, 2007, Ms. Sharinger indicated to Ms. Koehler that she would not allow defense counsel to take her deposition despite her obligation under the rules of discovery. (CP 66)**

Close reading of Appellant's objection is based solely upon Koehler's refusal to depose defendant and agreeing to have only Plaintiff deposed:

**Appellant: Dear Karen and Adena:  
At this time I do not wish my deposition to be taken. I would like to know first Mrs. Kopansky's medical condition before and at the time of the accident, also the complete insurance coverage at that time.**

Appellant/Plaintiff did complete her deposition during February, 2008.

The Court herein granting \$57,600.00 judgment based on Appellant's justifiable communication, as covered under the free speech clause should be a reversible error.

### **D. CONCLUSIVE EVIDENCE**

Even viewing Koehler's actions in the most favorable light, and giving the benefit of doubt to Koehler's actions, by only

considering it under the principle of circumstantial evidence:

Koehler's agenda was to have Appellant accept the \$200,000.00 Travelers settlement offer, based upon the incorrect interrogatory falsely claiming only \$300,000.00 limit of the Traveler's policy.

Koehler planned to withdraw and file an attorney lien to collect one-third (1/3) of the offered \$200,000.00 settlement , if Appellant refused to accept. The following facts clearly prove:

(a) On May 5, 2008 Koehler makes a final demand for Appellant to settle the case.

(b) On May 8, 2008 Appellant informed Koehler that she did not agree to settle the case for \$200,000.00.

(c) On the same day, May 8, 2008, Appellant informed Koehler of her extreme concern that Koehler informed Travelers of confidential attorney/client information.

(d) Koehler on the same date, May 8, 2008, responds that if Appellant would like to discharge Koehler/Appellee then please advise her now.

(e) On May 11, 2008, Koehler/Appellee wanted to bring another attorney (one of her partners) in a telephone conference to seek Appellee's settlement acceptance.

(f) When Appellant declined, Koehler began assigning to client's actions such false definitions as "sabotage. . .intimidation... conspiracy theories. . .level of paranoia. . .in order to reap the benefits of legal representation of his wife with the intent to avoid payment for valuable service rendered.

(g) Koehler made intentional and knowingly false public charges of perjury (a felony crime) against Appellant and her husband to win her attorney lien.

Keeping in mind that Koehler is an officer of the court, and, as such, the Court below was subjected to a multi-page (whether it is accurate or not) history of Koehler's accomplishments. By the following emotional, provocative, strident, untrue libelous comments, Koehler most likely influenced the Court. As is true in most attorney/client relationships, much of the events are conducted by telephone and in person, and unfortunately those discussions are not recorded and cannot therefore be part of this record.

It should suffice to say, that based upon all the evidence submitted, Koehler had no intention in going to trial in Clallam County, and built a complete record to withdraw if Appellant rejected the settlement offer. Considering that Koehler failed to sign

the CONTRACT TO HIRE, therefore while Appellant signed the contract Appellant was left out in the cold because Koehler has not signed the contract.

Based on this document no enforceable contract appears to exist between Appellant Sharinger and Appellee/Respondent Koehler.

The Court's reliance on Koehler's false misrepresentation and ignoring the Declaration of the Travelers attorney should be considered as sufficient for reversal of the Court's order and judgment.

On March 3, 2008, at 11:22 a.m., Travelers informed Koehler among other things:

**Travelers: It makes me think that we have to play by the same old rules of low balling, posturing, and eventually mediating (sic) in order to settle these types of cases. (CP 134)**

Koehler by return e-mail stated to Traveler's attorney

Michael T. Morgan:

**Koehler: You told me you were agreeing to liability in part so we wouldn't have to depose her. What's up? (Sent March 3, 2008 11:34 a.m.) (CP 134)**

Travelers replied on March 3, 2008 at 1:44 a.m.:

**Travelers: A discovery dep, Karen. I knew that you would have to depose her before moving on the issue,**

**and I am trying to make this as easy as possible on her. Don't get me wrong. I also thought it was in her best interest to admit, given the officer's statements in the police report. (CP 134)**

**Police Rpt: Driver of Veh#1 stated did take medication earlier and has had blackout problems in the past. (Veh #1 driver defendant Kopansky)**

Travelers, by their March 3, 2008 11:52 a.m. e-mail informed Koehler of the medical claim now advanced by defendant:

**Travelers: She told me she never really healed from subject accident.**

These intentional or negligent actions by Koehler left Appellant without a right to seek and obtain defendant's medical records to prove that defendant's medical condition was not caused by the accident. It was defendant's prior medical condition of passing out repeatedly, caused the accident. Defendant ignored competent medical advice and was convicted in traffic court for reckless driving and negligence.

#### **E. CONFIDENTIAL CLIENT ATTORNEY COMMUNICATION**

1. E. The Trial Court's intrusion in the confidential attorney/client conversation appears to trigger constitutional issues as to client's right to free speech.

**Court:** The court has reviewed the correspondence by e-mail and letter between the parties (Exhibit 8) and finds a common component, i.e., a general lack of trust in the judgment of Ms. Koehler by Ms. Sharinger and Mr. Gellert (hereinafter "clients"). (CP 90 p3)

Clearly Appellant Sharinger had the right to express her well justified concerns, which indeed became a reality and fatal to any future trial.

**Appellant:** Karen: I am not arguing that admission of liability is not a good idea for Travelers. But a serious problem looms here – one that will allow Travelers to argue that while negligence admitted, Kopansky unfortunately just passed out. . .the big Travelers argument will be that I was not seriously injured, and Kopansky could not help her passing out. . .Please let us consider this in a serious manner. Once we give up any right to depose her and obtain the medical records we could be on the ropes. . . (CP 105)

A client has the right to bring to the attention of her attorney serious concerns, Koehler's e-mail response dated October 26, 2007, 11:00 a.m., states:

**Koehler:** I reiterate, that I will represent you to the best of my ability, but I cannot let my clients tell me how to legally proceed. . .as your lawyer I will make all legal decisions. (CP 112)

On November 26, 2007 Koehler e-mailed "All SKWS Partners Subject: problem client", and stated behind the client's back the following:

**Koehler:** The insurance company accepted liability via letter within days after the crash. Predictably changed its mind. . .the insurer agreed to stipulate to liability. My client instructed me not to agree to that stipulation. . .and wanted me to get defendant's medical records and take her deposition. . .The defense wants to take depositions. . .As there is only a \$300K policy. . .I hate to discharge them since. . .the case is worth a significant amount of money. (CP 118)

#### **F. CLIENT'S RIGHT TO DISCOVERY**

The Court also based its opinion on Appellant's opposition to giving up her right to depose defendant and obtain defendant's crucial medical records:

**Court:** 2. The clients were critical of any acceptance of a defense stipulation liability, a stipulation strongly recommended by Ms. Koehler. (CP 66)

Clients were only critical of giving up all of their rights to discovery. Deposition of defendant and obtaining of her medical records was essential to a fair and adequate settlement and/or for a possible future trial. (CP 66A p11) Appellant already had a letter admitting liability from Travelers by the May 5, 2005 letter:

(a) **Travelers:** We have completed our investigation and are accepting liability for this accident on behalf of our insured. (CP 74-75)

(b) and a statement from the police:

**Police Rpt: Driver of Veh#1 stated did take medication earlier and has had blackout problems in the past. (Veh#1 driver defendant Kopansky)**

and decision of the traffic court that defendant caused the accident and severe permanent injuries to Appellant by driving under her known dangerous medical condition.

Appellant e-mailed to Koehler on October 25, 2007 at 7:32

a.m. in part the following objections:

**Appellant: Please, Karen, I DO NOT – nor can I agree to giving up my rights under law. Please demand that Travelers provide a court admissible response to your interrogatory and production of documents. I feel I have a right to these and I should have them. I fully complied with all discovery filed by Travelers.**

On October 26, 2007 at 12:04 p.m., Appellant e-mailed:

**Appellant: Nothing I have said concerns your ability to represent my best interest. But giving up my right to have full and complete discovery is something else, I do object in not even knowing what insurance coverage there is:. . But, I do not agree to give up all defendant's discovery. This is not said in anger. If you give up discovery there will be no reasonable settlement offer. If we have to go to court, I will not be properly compensated.**

The court erred by the justification for the judgment to

Koehler, as

**Court: 3. On February 29, 2008 Mr. Gellert sent an e-mail to Ms. Koehler critical of the progress of the case. Then on March 7, 2008 he e-mailed again referring**

**to the defense attorney as “your friend” and questioning Ms. Koehler’s abilities by stating the following: “Amazing that you cannot see through their misrepresentations.” Ms. Koehler’s response addressed to Ms. Sharinger outlines her concern with Mr. Gellert’s continued interference in the case. . .Due to your inability to control. Dan, I believe your best interest may be served by accepting the settlement offer. (CP 66)**

Mr. Gellert’s e-mail was based upon conversations and is also documented in the February 15, 2008 letter, wherein during the critical phase of this litigation, Appellant’s attorney is discussing other issues and lunch with defense attorney.

Whether Mr. Gellert’s comments are fully justified or not, certainly they come under constitutional protection of free speech, i.e., right of clients to speak their mind to their attorney when confronted with evidence that indicates a relationship, which may or may not compromise a court suit.

**Trav/Atty: At some point, I would love to have lunch with you and talk about how you value cases.**

Travelers’ attorney Morgan also filed a Declaration under the pain of perjury on falsely claiming and misrepresenting to the court:

**Morgan: Plaintiff fired her attorney, and is attempting to litigate the case without the assistance of legal counsel.**

These Gellert e-mails were sent in response to Koehler's e-mail dated February 18, 2008 at 3:24 p.m., which admitted and documented the unbelievable circumstance of misleading Appellant to settle her case for the low ball \$200,000.00 amount, based upon a flawed and incorrect interrogatory claiming that only a \$300,000.00 Travelers policy.

**Koehler: The \$300/\$500 problem I fear is as much my fault as Mike's. Clearly they wrote the wrong amount on the interrogatories. . .I don't remember things like numbers. . .I relied on the interrogatory. (CP 249-250)**

Travelers informed Appellant by e-mail on June 9, 2008 at 12:23 p.m. of the following:

**Travelers: Mr. Morgan had discussions with your prior counsel and a copy of the policy was provided which accurately reflected the \$500,000.00 combined single limit. Mr. Morgan felt based on this discussion with your former counsel and providing a copy of the policy there was no need to do anything further. . .and this included correcting the interrogatory.**

Based upon the foregoing facts and circumstances, Koehler was demanding through mail and wire that Appellant accept the settlement of \$200,000.00 because there was only a \$300,000.00 policy and a third party settlement already used up \$65,000.00,

leaving only \$235,000.00 remaining. Without defendant's deposition and medical records trial was out of the question.

Appellant, through her own efforts, did settle the case on August 7, 2007 for \$225,000.00, \$25,000.00 above the final offer of \$200,000.00 demanded as a settlement by Koehler.

**G. COURT'S OVER RELIANCE ON KOEHLER'S EXPERTISE.**

The court below erroneously ruled that based only upon Koehler's extensive experience as a personal injury attorney, Koehler's mere presence on the case resulted in this settlement, ignoring Koehler's malfeasance in this specific case:

**Court: The Court finds Ms. Koehler to be an experienced, successful and well recognized attorney in the field of personal injury. Her credentials are impressive and certainly her mere presence in the case played a part in the offer of settlement obtained from Travelers.**

This Court's attention is directed to A. herein, to consider the failure of Koehler even to execute a simple legal contract, which seriously conflicts with the inflated opinion of Koehler's actions in this case. Therefore, the Court abused its discretion in a decision that is manifestly unreasonable and is based on untenable reasons and grounds.

Appellant is not contesting and appealing Koehler's training, experience of political savvy in the legal community.

Appellant is appealing that with all of Koehler's experience, training and political positions in the legal community, she violated her oath of office by sending through mail and wire false material facts, knowingly to injure the good reputation of Appellant and her husband, by falsely accusing them of the felony crime of perjury.

Koehler's attached RESPONSE TO MOTION TO RESOLVE NOTICE OF ATTORNEY LIEN, was relied upon by the Court below. Please take note that while Koehler makes strikingly elaborate accusations against Appellant/Plaintiff and her husband, nothing in this Response is under oath. Koehler carefully selected Appellant's e-mails for the Court's consideration to rule on these false, completely untrue inadmissible accusations:

**Synopsis of Counsel's Position. . .Nattalia Sharinger client of Stritmatter Kessler Whelan Coluccio from September 2005 through May 2008. ..Counsel was ultimately forced to withdraw due to Ms. Sharinger's refusal to fulfill her responsibilities as a court litigant and as a client. . .Submitted an untrue interrogatory answer (that she had no prior accidents) which was later discovered upon her confession that it was done upon the advice of Mr. Gellert. . .**

**The retainer fee agreement of September, 2005 provides for cost plus one-third attorneys fee. Here, counsel did not voluntarily withdraw as counsel. She was forced to**

**do so by the actions of Mr. Gellert and Ms. Sharinger. .  
Unauthorized Practice of Law by Dan Gellert. . May 5,  
2008, Ms. Sharinger was advised by counsel "it is  
unlikely a jury will award \$300,000.00 due to lack of  
following up with the physiatrist and other issues. .  
Counsel offered: If you want me to try one more time to  
settle the case, it is possible I could get a little bit more.  
But it would not be \$300,000.00. . On May 8, Ms.  
Sharinger accused counsel of breaching the  
attorney/client privilege. (CP 62).**

The Court erred by assigning blame to Appellant for objecting to Koehler's stipulation of liability, when this stipulation was in exchange for giving up all discovery rights of Appellant as to addressing defendant's medical condition, when:

- (a) police report stated that defendant Kopansky drove a car knowing that she was on medication for a serious and dangerous medical problem in blacking out;
- (b) defendant Kopansky's traffic citation was upheld (convicted) in traffic court;
- (c) Travelers admitted liability on May 5, 2005.

Most significantly, the Court below ignored crucial evidence under the laws of the State of Washington, which grant exclusively the right for plaintiffs in suits for personal injury to approve or reject settlement offers made by defendants.

Effectively the court below ruled in Koehler's favor by ignoring this irrevocable legal right of Appellant/Plaintiff to have refused the \$200,000.00 offer in judgment as demanded by Koehler based upon a legally flawed and incorrect interrogatory. In fact, Appellant/Plaintiff settled her case for \$25,000.00 more, for \$225,000.00.

## **VI. CONCLUSION**

Appellant moves the Court to reverse the orders of the Court below and to vacate the judgment entered in this cause. The actions of Appellee/Respondent Karen K. Koehler are prima facie in documenting outrageous falsehoods sent by wire and mail, sufficient to shock the conscience of a civilized society. Based upon the fact that counsel did almost nothing to prosecute the case, had withdrawn from this contingency case as a result of her neglect, severed the attorney/client relationship through inattention, fully establishes that withdrawal of Karen Koehler was on her volition before the contingency was realized. WHEREAS Karen Koehler's actions waived her fee, therefore the orders and judgments of the Court below should be REVERSED AND THE JUDGMENT SET ASIDE AND VACATED.

RESPECTFULLY SUBMITTED this 25 day of June, 2009.



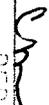
NATTALIA SHARINGER

DECLARATION OF SERVICE

The undersigned declares as follows: (1). I am over the age of eighteen;  
(2). On June 25, 2009 I served by First Class U. S. Mail: Karen K. Koehler  
and Brad Moore, Esq. at Stritmatter Kessler Whelan Coluccio 200 Second  
Avenue W. Seattle, WA 98119 an exact copy of the Brief of Appellant.



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