

No. 40152-5-II

DIVISION II OF THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON

DAVID H. REGAN,

Appellant,

vs.

MELISSA McLACHLAN; METRO CITY
BAIL BONDS; PIERCE COUNTY, WA.,

Respondents.

APPEAL FROM THE SUPERIOR COURT
OF WASHINGTON FOR PIERCE COUNTY

Cause No. 09-2-01653-1

BRIEF OF APPELLANT

BRETT A. PURTZER
WSB #17283
CASEY M. ARBENZ
WSB #40581

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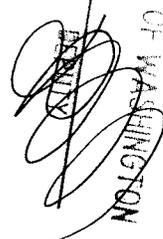
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DIVISION II
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I. ASSIGNMENTS OF ERROR

1. The trial court erred when it adopted the facts as set forth in State v. Cruz, 146 Wn.App. 1006 (2008).

2. The trial court erred when it dismissed Mr. Regan's claim under CR 12(b)(6) because the Pierce County Clerk's Office is not entitled to quasi-judicial immunity for ministerial tasks.

3. The trial court erred when it dismissed Mr. Regan's claim under CR 12 (b) (6) because the legal issues in Mr. Regan's case were different than those in State v. Cruz and, thus, the doctrine of collateral estoppel is inapplicable.

II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Whether the trial court erred when it adopted the facts set forth in State v. Cruz, 146 Wn.App. 1006 (2008)? (Assignments of Error 1).

2. Whether the Pierce County Clerk's Office - when involved in ministerial tasks - is entitled to quasi-judicial immunity such that Mr. Regan's claim could properly be dismissed under CR 12(b)(6)? (Assignments of Error 2).

3. Whether the legal issues in Mr. Regan's case were separate from those presented in State v. Cruz such that the doctrine of collateral estoppel was inapplicable and Mr. Regan's case was improperly dismissed under CR 12(b)(6)? (Assignments of Error 3).

III. STATEMENT OF THE CASE

A. Procedural History

According to the Clerk's Papers, David H. Regan, Pro Se Plaintiff herein, filed a complaint for damages on July 6, 2009, against Defendants Melissa McLachlan and Rexall Hawkins, husband and wife, and their marital community; Metro City Bail Bonds; Pierce County, Washington and Clark County, Washington. CP 5. On September 14, 2009, Defendant Rexall Hawkins filed his answer as did Defendant Melissa McLachlan. CP 18,28. On September 29, 2009, Defendant Clark County filed its answer. CP 39. On October 22, 2009, Plaintiff Regan filed a motion for default judgment against Metro City Bail Bonds, Melissa McLachlan and Rexall Hawkins. CP 134.

On November 6, 2009, Defendant Pierce County filed a CR 12(b)(6) motion to dismiss and noted a hearing to be held on December 4, 2009. CP 189. On November 24, 2009, Plaintiff Regan noted a hearing for "Summary Judgment/Dismissal" - scheduled to occur on December 4, 2009 - requiring the presence of Rexall Hawkins, Melissa McLachlan/Metro City Bail Bonds and the

representative for Pierce County, Daniel Hamilton. CP 308. On November 30, 2009, Pierce County filed a reply brief in support of its motion to dismiss under 12(b)(6). CP 310. Additionally, this brief moved to strike Plaintiff's response brief - that included a motion for summary judgment - as untimely under the Court Rules. Id. Defendant Hawkins and Defendant McLachlan also objected to the motion for summary judgment - arguing that it did not comply with the Court Rules. CP 321, 322.

At the hearing on December 4, the trial court struck several exhibits from Plaintiff Regan's brief in opposition to Pierce County's motion to dismiss¹, struck Plaintiff's motion for summary judgment and granted Pierce County's motion for dismissal under CR 12(b)(6). CP 323-24. In the order of findings pursuant to CR 54, the Court stated the following:

1. As its factual findings, this court adopts and incorporates, as if fully set forth herein, those facts stated in the unpublished opinion

¹ It appears a bench copy was given to the judge, but that the brief was never actually filed - as it is not listed in the Clerk's Papers.

of the Court of Appeals in State v. Cruz, 146 Wn.App. 1006 (2008)².

2. Defendant Pierce County and its Officers enjoyed quasi-judicial immunity as the actions alleged by Plaintiff were performed pursuant to lawfully executed court orders.
3. The doctrine of collateral estoppel bars Plaintiff from asserting claims against Defendant Pierce County and its officers for returning the \$50,000 bond at issue in the Cruz case to Metro City Bail Bonds, pursuant to court order.
4. It would be unjust to delay entry of judgment as to Defendant Pierce County under CR 54(b) because (a) this court entered a final order on December 4, 2009 dismissing all Plaintiff's causes of action against Defendant Pierce County (b) the dismissal of Pierce County will not adversely affect the remaining defendants, and (c) continuance of this action against the remaining defendants will not adversely affect Pierce County.

CP 337-38.

Additionally, at the December 4th hearing, the trial court denied Plaintiff Regan's motion for default judgment against the defendants,

² While this is an unpublished opinion, because the Court may take judicial notice of an opinion dealing with the same parties and issues, it is properly cited within this brief. See Bingham v. Lechner, 111 Wn.App. 118, 45 P.3d 562 (2002).

including Metro City Bonds, LLC - who had never answered the complaint. CP 326.

On January 6, 2010 a stipulation and order of dismissal was filed - dismissing Defendant Clark County, WA from the lawsuit. CP 328.

Mr. Regan now challenges findings 1-3 noted above, as well as the denial of his motion for default judgment against Metro City Bail Bonds. This appeal was timely filed.

B. Facts

Melissa McLachlan was formerly a member of Metro City Bail Bonds, LLC, and was conducting business on behalf of Fairmont Specialty Insurance Company (Fairmont). However, while operating Metro City, McLachlan was failing to pay Fairmont Insurance the required surety premium proceeds. See Complaint for Damages, CP 5-17. Both Fairmont and United States Fire Insurance Company are owned by Fairfax Financial Holdings. Cruz, 146 Wn.App at 2.

On May 10, 2006, Metro City issued a \$50,000.00 bail bond to secure the appearance of Javier Quiroz Cruz, a defendant in a criminal matter, in Pierce County Superior Court. CP 09.

On July 24, 2006, Mr. Cruz's bail was forfeited by the trial court. See Exhibit "A". The surety for the bond was Fairmont Insurance. Id. When Mr. Cruz failed to appear for a pre-trial conference, a Pierce County Deputy Prosecuting Attorney, von Wahlde, filed a motion or forfeiture on the bond, which was granted. See Exhibit "B" and "C". Mr. Cruz was later returned to custody and the Court ordered the bond returned to Metro City Bail Bonds. See Exhibit "D".

Following this order, the surety for Metro City Bail Bonds, Fairmont Insurance, filed a motion in the criminal case against Cruz for return of funds. See Exhibit "E". Fairmont asserted it was entitled to these funds because the check was issued by United States Fire Insurance Company and had a "clear notation on the face of the check [stating that], if funds were to be recouped, then said funds were to be returned to United States Fire Insurance Company." See Exhibit "F" and Exhibit "I". Additionally, prior to issuance of the above order returning funds to Metro City, on August 3, 2006, Prosecutor von Wahlde had received a letter from Fairmont

requesting that the bond be returned to United States Fire Insurance Company. See Exhibit "G". Apparently based on the above assertions, on May 23, 2007, the Court ordered Metro City or Melissa McLachlan to re-deposit \$49,250.00³ with the Clerk of the Court. See Exhibit "H". Ms. McLachlan appealed the Court's order. Cruz, 148 Wn.App at 1.

In the appeal, Pierce County appeared as a co-respondent with McLachlan. Id. The County defended the original order returning funds to Metro City/McLachlan and asserted that the trial court lacked jurisdiction to order Metro City/McLachlan to return the bond because "McLachlan [was] a non party and cannot and should not be bound by the order of the Superior Court acting in its criminal capacity." Id.

In its opinion, the Court of Appeals found that the original remittance order complied with state law and that the money was properly returned to Metro City/McLachlan. Id. However, the Court stated that "[w]hether Fairmont and Fire Insurance

³ This was the full amount of the bond (\$50,000.00) minus a standard court fee.

Co. otherwise have a claim against the clerk, Metro City, or McLachlan is not before us."

IV. ARGUMENT

I. The trial court erred when it granted defendant Pierce County's 12(b)(6) motion to dismiss.

CR 12(b)(6) grants the trial court the authority to dismiss a case where the plaintiff has failed to state a claim upon which relief can be granted. Under CR 12(b)(6) a plaintiff states a claim upon which relief can be granted if it is possible that facts could be established to support the allegations in the complaint. See Halvorson v. Dahl, 89 Wn.2d 673, 674, 574 P.2d 1190 (1978) ("On a [CR] 12(b)(6) motion, a challenge to the legal sufficiency of the plaintiff's allegations must be denied unless no state of facts which plaintiff could prove, consistent with the complaint, would entitle the plaintiff to relief on the claim."); see also Christensen v. Swedish Hosp., 59 Wn.2d 545, 548, 368 P.2d 897 (1962) (citing Conley v. Gibson, 355 U.S. 41, 78 S.Ct. 99, 2L.Ed.2d 80 (1957)). A case dismissed pursuant to CR 12(b)(6) is reviewed de

novoo. King v. Snohomish County, 146 Wn.2d 420, 423-24, 47 P.3d 563 (2002).

Here, this Court should reverse the trial court's dismissal of Mr. Regan's claim because (1) the legal issues set-forth in State v. Cruz, while similar, were not the same as in Mr. Regan's case and thus, it was improper for the trial Court to adopt the facts from that case, (2) Mr. Regan targeted the Pierce County Clerk's office in his lawsuit, and because the clerk's office does not enjoy quasi-judicial immunity when performing ministerial tasks, it was improper for the Court to dismiss his claim under 12(b)(6), and (3) the doctrine of collateral estoppel does not apply in this case because there are different legal issues than those set-forth in the Cruz case, and, thus, the trial court erred when it dismissed this case.

- A. It was improper for the trial court to adopt the facts from the Cruz case because the legal issues were different.

In Cruz, the Court was addressing whether a criminal docket was the appropriate venue for addressing the legality of a remittance order. While the Court never reached that issue, because the legal issues were different, and because the

parties submitted factual assertions specific to those unique legal issues, it was improper for the trial court in this case to rely on the facts from Cruz.

Specifically, as noted above, the Court in Cruz acknowledged that its decision did not foreclose claims against "the clerk, Metro City, or McLachlan..." Cruz 146 Wn.App at 11. Because Mr. Regan's case is specifically directed at those three defendants, it was improper for the trial court to conclude that the only facts to consider were those alleged in the Cruz case.

- B. Because the Pierce County Clerk's office does not enjoy quasi-judicial immunity, it was improper for the trial court to dismiss Mr. Regan's claim.

The trial court concluded that, because the Pierce County Clerk's office acted pursuant to a valid court order, it is immune from lawsuits under the doctrine of quasi-judicial immunity. However, because the clerk's actions were ministerial, quasi-judicial immunity does not apply.

In Washington, Judges are absolutely immune from civil damage lawsuits for acts performed

within their judicial capacity. Taggart v. State, 118 Wn.2d 195, 203, 822 P.2d 243 (1992). This is so to ensure that judges can administer justice without fear of personal consequences. Id. at 203; Adkins v. Clark County, 105 Wn.2d 675, 677, 717 P.2d 275 (1986). Quasi-judicial immunity "'attaches to persons or entities who perform functions that are so comparable to those performed by judges that it is felt they should share the judge's absolute immunity while carrying out those functions.'" West v. Osborne, 108 Wn.App. 764, 772-73, 34 P.3d 816 (2001) (*quoting Lutheran Day Care v. Snohomish County*, 119 Wn.2d 91, 99, 829 P.2d 746 (1992), *cert. denied*, 506 U.S. 1079, 122 L.Ed. 2d 353, 113 S.Ct. 1044 (1993)), *rev. denied*, 145 Wn.2d 1012, 37 P.3d 292 (2000). A purely ministerial act by a clerk of the court is not a judicial act. Mauro v. Kittitas County, 26 Wn.App. 538, 540, 613 P.2d 195 (1980). However, when performing court-ordered functions, a person acts as an "arm of the court," and is protected by quasi-judicial immunity. Reddy v. Karr, 102 Wn.App. 742, 749, 9 P.3d 927 (2000);

Babcock v. State, 116 Wn.2d 596, 809 P.2d 143
(1991).

A "ministerial" act is one that "involves obedience to instructions or laws instead of discretion, judgment, or skill - the court clerk's ministerial duties include recording judgments on the docket." Black's Law Dictionary 1011 (7th ed. 1999). The duties of a superior court clerk are defined by statute and include, "keep[ing] the records, files and other books and papers appertaining to the court." RCW 2.32.050(3). "Generally speaking, a clerk of court is an officer of a court of justice, who attends to the clerical portion of its business, and who has custody of its records and files ... Such an office is essentially ministerial in its nature, and the clerk is neither the court nor a judicial officer." Swanson v. Olympic Peninsula Motor Coach Co., 190 Wash. 35, 38, 66 P.2d 842 (1937); see 15A Am. Jur. 2d, Clerks of Court § 21. The clerk's duties are described on the Pierce County website as:

[M]ostly administrative in nature, being quasi-judicial in some cases. The Clerk is responsible for maintaining the records of all cases filed in the

Superior Court dating back to the 1890's. The Clerk has several quasi-judicial duties, which include issuance of various writs, orders, subpoenas and warrants."

Pierce County Clerk of the Superior Court,
available at:

<http://www.co.pierce.wa.us/pc/abtus/ourorg/clerk/home.htm> (last modified April 14, 2010).

In Mauro, 26 Wn.App. at 541, the Kittitas County clerk failed to record a court order withdrawing a defendant's arrest warrant, and the County argued that the clerk's actions were shielded by judicial immunity. Id. at 539. However, the Court found that the clerk's act was ministerial and that the county would be liable for the "ministerial nonfeasance" of its employee. Id. at 541.

Here, the original \$50,000.00 check had a clear notation on its face stating that "if funds were recouped ... they were to be returned to United States Fire Insurance Company." See Exhibit "I". Like the defendant in Mauro, the Pierce County clerk committed ministerial nonfeasance when it failed to document the clear instructions on the face of the check. Pierce County cannot

claim it was an "arm of the court" because, had the clerk properly noted this instruction upon processing the check - in a manner consistent with its ministerial duties - it would have been unable to process the court order and would have informed the court of the issue.

Hypothetically, if a court ordered a clerk to make a payment from an account the court believed had money in it, but upon inspection by the clerk was found to not contain any money, the clerk would inform the court of the lack of funds and the court would re-consider its previous order. If the clerk - in an attempt to comply with the order - removed money from another account, the person whose money disappeared would certainly have a claim against the clerk. Here, because the clerk committed the ministerial nonfeasance when it failed to notice or to comply with clear instructions on the face of a check, it was improper for the trial court to dismiss Mr. Regan's case under 12(b)(6).

- C. Collateral estoppel does not apply in this case because Mr. Regan's case involves different issues than those addressed in Cruz.

Resurrection of the same claim in a subsequent action is barred by the doctrine of *res judicata*. Hilltop Terrace Homeowner's Ass'n v. Island County, 126 Wn.2d 22, 31, 891 P.2d 29 (1995). Under this doctrine, or claim preclusion, "a prior judgment will bar litigation of a subsequent claim if the prior judgment has 'a concurrence of identity with [the] subsequent action in (1) subject matter, (2) cause of action, (3) persons and parties, and (4) the quality of the persons for or against whom the claim is made.'" In re Election Contest Filed by Coday, 156 Wn.2d 485, 500-01, 130 P.3d 809 (2006) (*quoting Loveridge v. Fred Meyer, Inc.*, 125 Wn.2d 759, 763, 887 P.2d 898 (1995)). When a subsequent action is based on a different claim, yet depends on issues which were determined in a prior action, the relitigation of those issues is barred by collateral estoppel. Hilltop Terrace Homeowner's Ass'n, 126 Wn.2d at 31. Collateral estoppel, or issue preclusion, requires:

- (1) Identical issues;
- (2) a final judgment on the merits;
- (3) the party against whom the plea is asserted must have been a party to or in

privity with a party to the prior adjudication; and

(4) application of the doctrine must not work an injustice on the party against whom the doctrine is to be applied.

Shoemaker v. City of Bremerton, 109 Wn.2d 504, 507, 745 P.2d 858 (1987) (quoting Malland v. Dep't of Ret. Sys., 103 Wn.2d 484, 489, 694 P.2d 16 (1985)). In addition, "the issue to be precluded must have been actually litigated and necessarily determined in the prior action." Shoemaker, 109 Wn.2d at 508.

Here, because there were not identical issues in the Cruz case, collateral estoppel was incorrectly applied and the 12(b)(6) dismissal was improper.

While the Court in the Cruz case did ultimately conclude that the money was properly returned to Metro City, the Court was never asked to consider whether the clerk committed negligence. In fact, the Court in that case explicitly stated that Fairmont and Fire insurance might still "have a claim against the clerk, Metro City, or McLachlan." Cruz 146 Wn.2d at 11. This fact alone defeats collateral estoppel - especially in light of the holding in Mauro where

the Court determined that a court clerk can commit ministerial malfeasance. Here, because that issue was never addressed, Mr. Regan's complaint properly included claims for which relief could be granted and it was improper for the trial court to dismiss under 12(b)(6).

II. The Court erred when it denied Mr. Regan's motion for default judgment against Metro City.

As this Court is aware, under CR 55 "[w]hen a party against whom a judgment for affirmative relief is sought has failed to appear, plead, or otherwise defend as provided by these rules and that fact is made to appear by motion and affidavit, a motion for default may be made."

Here, a review of the Clerk's Papers reveals that Metro City Bail Bonds never appeared, plead or otherwise defended the case. Because of this, it was error for the Court to not grant Mr. Regan's motion.

V. CONCLUSION

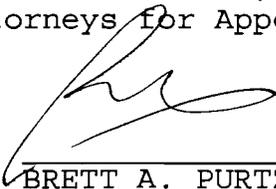
Based upon the arguments contained herein, Mr. Regan respectfully requests that this court reverse the trial court's dismissal pursuant to CR 12(b)(6).

VI. APPENDIX

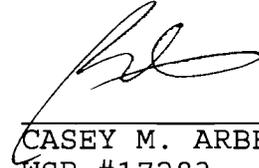
- Exhibit "A" - Metro City Bail Bond
- Exhibit "B" - Motion for Forfeiture of Bail
- Exhibit "C" - Order Forfeiting Bail
- Exhibit "D" - Order Returning Bond
- Exhibit "E" - Motion for Order Requiring
Payment of Funds
- Exhibit "F" - Declaration of Michael Zeimer
- Exhibit "G" - Letter dated August 3, 2006
- Exhibit "H" - Order
- Exhibit "I" - Check

RESPECTFULLY SUBMITTED this 7th day of
September, 2010.

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Attorneys for Appellant

By: 

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WSB #17283

By: 

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CERTIFICATE OF SERVICE

Lee Ann Mathews, hereby certifies under penalty of perjury under the laws of the State of Washington, that on the day set out below, I delivered true and correct copies of brief of appellant to which this certificate is attached, by United States Mail or ABC-Legal Messengers, Inc., to the following:

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David Regan
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Signed at Tacoma, Washington this 7th day of
September, 2010.


Lee Ann Mathews

Case Number: 06-1-01992-1 Date: November 5
SerialID: C6B4D224-F20D-AA3E-5C8D85B99E3AA5
Digitally Certified By: Kevin Stock Pierce County Clerk, Washington



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GERALD A. HORNE
PIERCE COUNTY PROSECUTING ATTORNEY

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IN COUNTY CLERK'S OFFICE

A.M. MAY 10 2006 P.M.

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, COUNTY CLERK
BY _____ DEPUTY

Fairmont Specialty Group
a FAIRFAX company

FAIRMONT SPECIALTY INSURANCE COMPANY
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P.O. Box 2987 - Houston, Texas 77263-0287
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Metro City Bonds, LLC
513 S. 9th Street
Tacoma, WA 98402
(253) 274-8200

IN THE Superior COURT
Pierce COUNTY, STATE OF WASHINGTON
THE STATE OF WASHINGTON

Plaintiff
vs.
Quiroz Cruz, Javier Defendant } ss. No. 06-1-01992-1

Known All Men By These Presents:
That we, Quiroz Cruz, Javier as Principal and FAIRMONT INSURANCE COMPANY, a Delaware Corporation, as Surety (Identified by attached Power of Attorney No. R50 13506597) are held and firmly bound unto the Superior Ct. Tacoma, Pierce County in the sum of 50,000 ^{Court, City, County or State} thousand Dollars (\$50,000), for the payment whereof well and truly to be made we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally firmly by these presents.
The condition of this obligation is such that if the said Quiroz Cruz, Javier principal, shall appear at the next Regular or Special term of the Superior Court Washington to answer the charge of Unlawful CS. and shall appear from day to day and term to term of said Court and not depart the same without leave then this obligation to be void, else to remain in full force and virtue.

Signed and sealed this May day of May, A.D. 2006
Taken before and approved by me:

Thomas J. Felnagle
Judge
Title
Seal T. Felnagle
DEA



Javier Quiroz Cruz
Principal
3805 Howe St., Tac. WA 98444
Address

FAIRMONT INSURANCE COMPANY
(A Delaware Corporation)
By _____

Metro City Bonds, LLC
513 S. 9th Street
Tacoma, WA 98402
(253) 274-8200

THIS BOND IS VOID WITHOUT AN AMOUNT GREATER THEN THE POWER OF ATTORNEY ATTACHED HERETO, IF MORE THAN ONE SUCH POWER IS ATTACHED OR IF WRITTEN AFTER THE EXPIRATION DATE SPECIFIED ON THE ATTACHED POWER OF ATTORNEY.





Fairmont Specialty Insurance Company
 10777 Westpark Forest, Suite 500 (77042)
 P.O. Box 2807 - Houston, Texas 77252-2807
 (713) 954-8100 (713) 943-4389 FAX

POWER OF ATTORNEY

POWER NO. ***R50 -12506597***

POWER AMOUNT \$ *** 50,000***

KNOW ALL MEN BY THESE PRESENTS that The Fairmont Specialty Insurance Company, a corporation duly organized and existing under the laws of the State of Delaware and by the authority of the resolution adopted by the Board of Directors at a meeting duly called and held on December 19, 1995, which said Resolution has not been amended or rescinded, does constitute and appoint and by these presents does make, constitute and appoint the named agent its true and lawful Attorney-in-Fact for it and in its name, place and stead, to execute, seal and deliver for and on its behalf and as its act and deed, as surety, a bail bond only. Authority of such Attorney-in-Fact is limited to appearance bonds and cannot be construed to guarantee defendant's future lawful conduct, adherence to travel limitation, fines, restitution, payments or penalties, or any other condition imposed by a court not specifically related to court appearance.

This power of Attorney is for use with Bail Bonds only. Not valid if used in connection with Federal Bonds or Immigration Bonds. This power void if altered or erased, void if used with other powers of this company or in combination with powers from any other surety company, void if used to furnish bail in excess of the stated face amount of this power, and can only be used once.

The obligation of the company shall not exceed the sum of *****FIFTY THOUSAND DOLLARS***** and provided this Power-of-Attorney is filed with the bond and retained as a part of the court records. The said Attorney-in-Fact is hereby authorized to insert in this Power-of-Attorney the name of the person on whose behalf this bond was given.

IN WITNESS WHEREOF, THE FAIRMONT SPECIALTY INSURANCE COMPANY has caused these presents to be signed by its duly authorized officer, proper for the purpose and its corporate seal to be hereunto affixed this May of 2006

Bond Amount \$ 50,000

Defendant QUIROZ CRUZ, JAVIER

Charges 1 UNLAW DEL CS

Court Superior

Case No. 06-1-01992-1

City Tacoma State WA

If rewrite, original No. _____

Executing agent [Signature] NAME



By [Signature]
 Richard J. Kilmarszewski
 Vice President

09/01/2006

VOID IF NOT ISSUED BY:

FOR STATE USE ONLY
NOT VALID IF USED IN FEDERAL COURT

COPY FOR COURT

(S)(U)(D) SAFV2300-5

0-0000000247

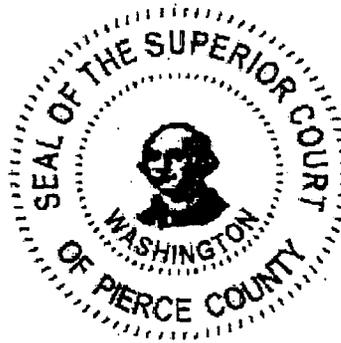
State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that the document
SerialID: C6B4D224-F20D-AA3E-5C639D85B99E3AA5 containing 2 pages
plus this sheet, is a true and correct copy of the original that is of record in my
office and that this image of the original has been transmitted pursuant to
statutory authority under RCW 5.52.050. In Testimony whereof, I have
electronically certified and attached the Seal of said Court on this date.



Kevin Stock, Pierce County Clerk

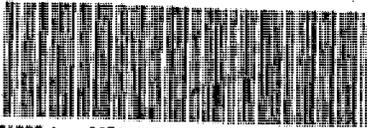
By /S/Melissa Engler, Deputy.

Dated: Nov 5, 2009 3:36 PM



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Case Number: 06-1-01992-1 Date: November 5, 2009
SerialID: C6B4DC84-F20F-6452-D538D5A3E90B1A22
Digitally Certified By: Kevin Stock Pierce County Clerk, Washington



06-1-01992-1 25780633 MTF 07-12-08

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A.M. JUL 11 2006 P.M.
PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY DEPUTY

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

STATE OF WASHINGTON,

Plaintiff, NO. 06-1-01992-1

vs.

JAVIER QUIROZ CRUZ,

Defendant.

MOTION FOR FORFEITURE OF BAIL
AND FOR JUDGMENT ON
APPEARANCE BOND

COMES NOW GERALD A. HORNE, Prosecuting Attorney for Pierce County,
Washington, by and through his Deputy, MARK VON WAHLDE, and moves the Court
pursuant to CR 3.2 and RCW 10.19.090 for forfeiture of bail and for judgment on said
appearance bond in the amount of FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00),
said bond posted in the above-entitled cause and upon which METRO CITY BONDS appears
as surety. Further relief sought by this Motion is for an order of the Court ordering payment
upon any bond so forfeited within two working days of the entry of the Order; for an order
suspending the justification of the bail bond company failing to pay within the required period,
for a deduction from the forfeited proceeds to the victim witness assistance fund and for costs of
\$250.00 and for such other relief the Court deems appropriate.

MOTION FOR FORFEITURE OF BAIL AND FOR
JUDGMENT ON APPEARANCE BOND- 1
quiroz cruz.doc

Office of Prosecuting Attorney/Civil Division
955 Tacoma Avenue South, Suite 301
Tacoma, Washington 98402-2160
Main Office: (253) 798-6732
Fax: (253) 798-6713



0-000000250

Case Number: 08-1-01992-1 Date: November 5, 2009
SerialID: C6B4DC84-F20F-6452-D538D5A3E90B1A22
Digitally Certified By: Kavin Stock Pierce County Clark, Washington

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THIS MOTION is based upon the records and files herein and upon the declaration of
the undersigned.

DATED this 10 day of JULY, 2006.

GERALD A. HORNE
Prosecuting Attorney

By 
MARK VON WAHLDE
Deputy Prosecuting Attorney
WSBA # 18373

Case Number: 06-1-01992-1 Date: November 5, 2009
SerialID: C6B4DC84-F20F-6452-D538D5A3E90B1A22
Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

NO. 06-1-01992-1

DECLARATION

MARK VON WAHLDE, declares under penalty of perjury:

I.

That he is a Deputy Prosecuting Attorney in and for Pierce County, Washington.

II.

That METRO CITY BONDS appears as surety on the bail bonds posted in the above entitled action, a copy of which bond is attached hereto and by this reference made a part hereof.

III.

That the defendant in the above-entitled Superior Court criminal action failed to appear before the Superior Court at such time he/she was required to appear for PRE-TRIAL CONFERENCE, on the 17TH day of MAY, 2006.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

DATED at Tacoma, Pierce County, Washington, this 10 day of JULY, 2006.


MARK VON WAHLDE
Deputy Prosecuting Attorney

Case Number: 06-1-01992-1 Date: November 5, 2009
SerialID: C6B4DC84-F20F-6452-D538D5A3E90B1A22
Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

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MAY 08 2006

GERALD A. HORNE
PIERCE COUNTY PROSECUTING ATTORNEY

FILED
IN COUNTY CLERK'S OFFICE

A.M. MAY 10 2006 P.M.

PIERCE COUNTY WASHINGTON
BY KEVIN STOCK, COUNTY CLERK

Fairmont Specialty Group
a FAIRMONT company

FAIRMONT SPECIALTY INSURANCE COMPANY
10777 Westheimer Road, Suite 500 (77042)
P.O. Box 2207 - Houston, Texas 77224-0207
(713) 864-8100 (713) 864-8288 FAX

Metro City Bonds, LLC

513 S. 9th Street
Tacoma, WA 98402
(253) 274-8200

IN THE Superior COURT
Pierce COUNTY, STATE OF WASHINGTON

THE STATE OF WASHINGTON
Plaintiff

vs.

Quiroz Cruz, Javier
Defendant

ss. No. 06-1-01992-1

Known All Men By These Presents:

That we, Quiroz Cruz, Javier as Principal and FAIRMONT INSURANCE COMPANY, a Delaware Corporation, as Surety (Identified by attached Power of Attorney No. R5D 13506597) are held and firmly bound unto the Superior Ct. Tacoma, Pierce County the sum of 50,000 Dollars (\$50,000), for the payment whereof well and truly to be made we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally firmly by these presents.

The condition of this obligation is such that if the said Quiroz Cruz, Javier Principal, shall appear at the next Regular or Special term of the Superior Court Washington to answer the charge of Unlawful CS. and shall appear from day to day and term to term of said Court and not depart the same without leave then this obligation to be void, else to remain in full force and virtue.

Signed and sealed this May day of May, A.D. 2006

Taken before and approved by me:

[Signature]
Judge **MARIMAS J. FELNAGLE**

[Signature]
Title



Javier Quiroz Cruz
Principal
3805 Howe St., Tac. WA 98444
Address

FAIRMONT INSURANCE COMPANY
(A Delaware Corporation)

By [Signature]
Metro City Bonds, LLC
513 S. 9th Street
Tacoma, WA 98402
(253) 274-8200

THIS BOND IS VOID IF ANY SURETY FOR AN AMOUNT GREATER THAN THE POWER OF ATTORNEY ATTACHED HERETO, IF MORE THAN ONE SUCH POWER IS ATTACHED OR IF WRITTEN AFTER THE EXPIRATION DATE SPECIFIED ON THE ATTACHED POWER OF ATTORNEY.

Fairmont Specialty Group
 FAIRMONT Insurance
 Fairmont Specialty Insurance Company
 10777 Westheimer Road, Suite 500 (71042)
 P.O. Box 2057 - Houston, Texas 77252-2057
 (713) 654-6100 (713) 643-6282 FAX

POWER OF ATTORNEY

POWER NO. ***R50 -12506597***

POWER AMOUNT \$ *** 50,000***

KNOW ALL MEN BY THESE PRESENTS that The Fairmont Specialty Insurance Company, a corporation duly organized and existing under the laws of the State of Delaware and by the authority of the resolution adopted by the Board of Directors at a meeting duly called and held on December 19, 1995, which said Resolution has not been amended or rescinded, does constitute and appoint and by these presents does make, constitute and appoint the named agent its true and lawful Attorney-in-Fact for it and in its name, place and stead, to execute, seal and deliver for and on its behalf and as its act and deed, as surety, a bail bond only. Authority of such Attorney-in-Fact is limited to appearance bonds and cannot be construed to guarantee defendant's future lawful conduct, adherence to travel limitation, fines, restitution, payments or penalties, or any other condition imposed by a court not specifically related to court appearance.

This power of Attorney is for use with Bail Bonds only. Not valid if used in connection with Federal Bonds or Immigration Bonds. This power void if altered or erased, void if used with other powers of this company or in combination with powers from any other surety company, void if used to furnish bail in excess of the stated face amount of this power, and can only be used once.

The obligation of the company shall not exceed the sum of *****FIFTY THOUSAND DOLLARS***** and provided this Power-of-Attorney is filed with the bond and retained as a part of the court records. The said Attorney-in-Fact is hereby authorized to insert in this Power-of-Attorney the name of the person on whose behalf this bond was given.

IN WITNESS WHEREOF, THE FAIRMONT SPECIALTY INSURANCE COMPANY has caused these presents to be signed by its duly authorized officer, proper for the purpose and its corporate seal to be hereunto affixed this DAY of May MONTH 2006 YEAR

Bond Amount \$ 50,000
 Defendant Quiroz Cruz, Javier
 Charges 1 UNLAW DEL CS
 Court Superior
 Case No. 06-1-01992-1
 City Tacoma State WA
 If rewrite, original No.
 Executing agent R. J. Klimaszewski NAME



By Richard J. Klimaszewski
 Richard J. Klimaszewski
 Vice President

09/01/2006

VOID IF NOT ISSUED BY:

FOR STATE USE ONLY
NOT VALID IF USED IN FEDERAL COURT

COPY FOR COURT

Case Number: 06-1-01992-1 Date: November 5, 2009
 SerialID: C6B4DC84-F20F-6452-D538D5A3E90B1A22
 Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

B130 7/12/2006 B0009

0-000000254

S-0023AFS (01/05)

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that the document
SerialID: C6B4DC84-F20F-6452-D538D5A3E90B1A22 containing 5 pages
plus this sheet, is a true and correct copy of the original that is of record in my
office and that this image of the original has been transmitted pursuant to
statutory authority under RCW 5.52.050. In Testimony whereof, I have
electronically certified and attached the Seal of said Court on this date.



Kevin Stock, Pierce County Clerk

By /S/Melissa Engler, Deputy.

Dated: Nov 5, 2009 3:37 PM



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The copy associated with this number will be displayed by the Court.

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2 should not well and truly make his/her personal appearance before the above-entitled Court on
3 the day of call, and the METRO CITY BONDS as surety did bind himself/themselves jointly
4 and severally with said Defendant/Principal on the above-mentioned bond, and the Court being
5 in all things duly advised, Now, Therefore,

6
7 IT IS HEREBY ORDERED, ADJUDGED and DECREED that said Defendant/Principal,
8 JAVIER QUIROZ CRUZ, is in default upon his/her bond hereinabove more fully described and
9 that said bond herein is declared forfeited, and the plaintiff herein, State of Washington, does
10 have and recover judgment as follows:

11
12 Against METRO CITY BONDS, as surety, in the sum of FIFTY THOUSAND DOLLARS
13 (\$50,000.00); and

14 IT IS FURTHER ORDERED, ADJUDGED and DECREED that \$500.00 shall be deducted
15 from the proceeds and transmitted for the Victim-Witness Assistance Fund, pursuant to RCW
16 7.68.035(3).

17
18 IT IS FURTHER ORDERED, ADJUDGED and DECREED that within two (2) business
19 days after the entry of this Order of Forfeiture, said bonding company shall present to the Civil
20 Division of the Pierce County Prosecuting Attorney's Office a receipt showing that full payment
21 of the appearance bond has been made. If said bonding company fails to present the receipt
22 within the two (2) business day period, the Court will entertain a further motion to revoke the
23 justification of the delinquent bonding company.

24 ***

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IT IS FURTHER ORDERED, ADJUDGED and DECREED that \$250.00 of said judgment constitutes non-refundable costs.

DONE IN OPEN COURT this 20th day of JULY, 2006



JUDGE

Presented By:

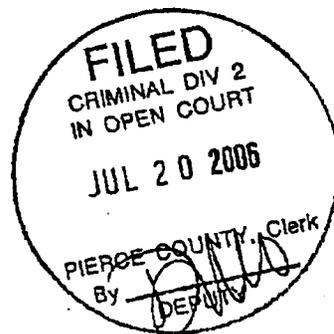
GERALD A. HORNE
Prosecuting Attorney

Approved for entry:



Deputy Prosecuting Attorney 35534

Surety



State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that the document
SerialID: C6B4D59F-F20F-6452-D1A176AC293FC9AE containing 3 pages
plus this sheet, is a true and correct copy of the original that is of record in my
office and that this image of the original has been transmitted pursuant to
statutory authority under RCW 5.52.050. In Testimony whereof, I have
electronically certified and attached the Seal of said Court on this date.



Kevin Stock, Pierce County Clerk

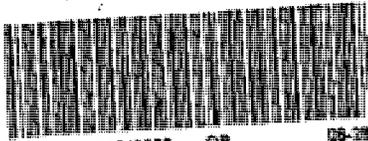
By /S/Melissa Engler, Deputy.

Dated: Nov 5, 2009 3:37 PM



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Case Number: 06-1-01992-1 Date: November 5, 2009
SerialID: C6B4FA3E-F20D-AA3E-530FE439EF9C8490
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FILED
IN COUNTY CLERK'S OFFICE

A.M. AUG 25 2006 P.M.

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

**IN THE SUPERIOR COURT OF THE STATE OF
WASHINGTON IN AND FOR THE COUNTY OF PIERCE**

STATE OF WASHINGTON,

Plaintiff,

vs

JAVIER QUIROZ CRUZ,

Defendant.

NO. 06-1-01992-1

ORDER RETURNING BOND TO
SURETY LESS COSTS PURSUANT
TO RCW 10.19.140

THIS MATTER having come on regularly before the above-entitled Court on the 24th day of August 2006 on a motion to return bail bond pursuant to RCW 10.19.140 by METRO CITY BAIL BONDS, represented by JIM OLIVER, its attorney, and the State of Washington being represented by MARK von WAHLDE, Deputy Prosecuting Attorney for Pierce County, Washington, this Court FINDS as follows:

- (a) That a bail bond in the amount of \$50,000 issued by METRO CITY BAIL BONDS, posted to secure the defendant's appearance in this case was forfeited on 7/24/06.
- (b) That within twelve months of said forfeiture date the defendant has been returned to custody or has been produced in court; and
- (c) That METRO CITY BAIL BONDS was directly responsible for producing the person in court or directly responsible for apprehension of the person by law enforcement.

ORDER RETURNING BOND TO SURETY
LESS COSTS PURSUANT TO RCW
10.19.140

1 of 2

LAW OFFICE OF
JIM OLIVER
PO Box 1297
Tacoma, Washington 98401
253.591.2812



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Accordingly, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the bond posted in this case shall be distributed as follows:

- (1) \$1,095.21 shall be retained by the clerk (composed of \$250.00 costs authorized by RCW 10.19.140 and \$500.00 authorized by RCW 7.68.035(3), and \$345.21 as post judgment interest;
- (2) The balance shall be remitted by the clerk to METRO CITY BAIL BONDS.

DONE IN OPEN COURT this 24 day of August, 2006.

By: [Signature]
 JUDGE APJ
 FILED IN COUNTY CLERK'S OFFICE
 A.M. AUG 25 2006 P.M.
 PIERCE COUNTY, WASHINGTON
 KEVIN STOCK, County Clerk
 BY [Signature] DEPUTY

Presented by:
LAW OFFICES OF JIM OLIVER

[Signature]
 JIM OLIVER, WSBA No. 29984
 Attorney for Surety

Notice of Presentment Waived and
Approved as to Form and Content:

[Signature]
 MARK von WAHLDE, WSBA No. 18373
 Deputy Prosecuting Attorney

ORDER RETURNING BOND TO SURETY
LESS COSTS PURSUANT TO RCW
10.19.140

LAW OFFICE OF
 JIM OLIVER
 PO Box 1297
 Tacoma, Washington 98401
 253.591.2812

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that the document
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Kevin Stock, Pierce County Clerk

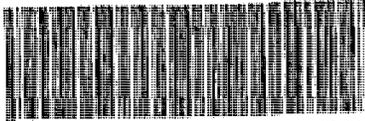
By /S/Melissa Engler, Deputy.

Dated: Nov 5, 2009 3:37 PM



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Case Number: 06-1-01992-1 Date: November 5, 2009
SerialID: C6B4EC63-F20F-6452-D9F95150909C97F0
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06-1-01992-1 27410488 MTOR 05-01-07

FILED
IN COUNTY CLERK'S OFFICE
AM. APR 30 2007 P.M.
PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

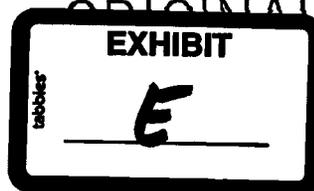
IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,)	
)	
Plaintiff,)	NO. 06-1-01992-1
)	
and)	MOTION FOR ORDER REQUIRING
)	PAYMENT OF FUNDS
JAVIER QUIROZ CRUZ,)	
)	
Defendant.)	

COMES NOW the Surety, FAIRMONT SPECIALTY GROUP and UNITED STATES FIRE & CASUALTY INSURANCE, by and through their attorney, JOHN C. CAIN, and requests that the Court order Pierce County and/or Melissa J. McLachlan d/b/a Metro City Bail Bonds, to pay \$49,250.00 to United States Fire & Casualty Insurance and that it also order that Melissa J. McLachlan, d/b/a Metro City Bail Bonds; to deposit with the Clerk of the Court the sum of \$49,250.00 which, upon deposit, is to be then drawn by Pierce County to reimburse it for its expense and costs for having paid money to United States Fire & Casualty Insurance. This motion is based upon the files and

MOTION FOR ORDER REQUIRING
PAYMENT OF FUNDS
Page 1 of 2.

ORIGINAL



JOHN C. CAIN
ATTORNEY AT LAW
802 NORTH SECOND STREET
TACOMA, WASHINGTON 98403
(253) 572-8338
FAX (253) 572-8460

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pleadings herein, upon the Declaration of Michael P. Ziemer, and upon the Memorandum of Points and Authorities.

RESPECTFULLY SUBMITTED this 19th day of April, 2007.

J. C. Cain
JOHN C. CAIN, WSBA: #16164
Attorney for the Surety

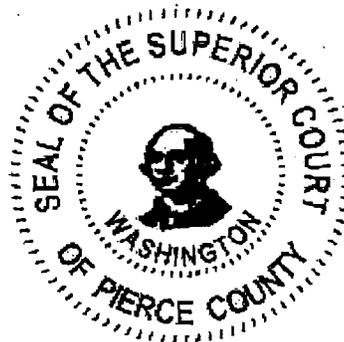
State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that the document
SerialID: C6B4EC63-F20F-6452-D9F95150909C97F0 containing 2 pages plus
this sheet, is a true and correct copy of the original that is of record in my office
and that this image of the original has been transmitted pursuant to statutory
authority under RCW 5.52.050. In Testimony whereof, I have electronically
certified and attached the Seal of said Court on this date.



Kevin Stock, Pierce County Clerk

By /S/Melissa Engler, Deputy.

Dated: Nov 5, 2009 3:37 PM



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Case Number: 06-1-01992-1 Date: November 5, 2009
SerialID: C6B4F02C-F20F-6452-D3F71916D7385B77
Digitally Certified By: Kevin Stock Pierce County Clerk, Washington



06-1-01992-1 27410453 DCLR 05-01-07

FILED
IN COUNTY CLERK'S OFFICE

A.M. APR 30 2007 P.M.

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

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

STATE OF WASHINGTON,)	
)	
Plaintiff,)	NO. 06-1-01992-1
)	
and)	DECLARATION OF MICHAEL
)	P. ZIEMER
JAVIER QUIROZ CRUZ,)	
)	
Defendant.)	

I, MICHAEL P. ZIEMER, declare under penalty of perjury under the laws of the State of Washington that the following is true and correct to the best of my knowledge and belief.

I am Assistant Vice President of the Fairmont Specialty Insurance Co.. I am the Custodian of Records of the Fairmont Specialty Insurance Co. Attached hereto and fully incorporated herein by reference are the following documents:

1. True and accurate copy of the August 3, 2006 letter which Patricia Ferguson sent to Mr. Mark von Wahle;

DECLARATION OF MICHAEL P. ZIEMER
Page 1 of 5.

JOHN C. CAIN
ATTORNEY AT LAW
802 NORTH SECOND STREET
TACOMA, WASHINGTON 98403
(253) 572-8338
FAX (253) 572-8460



0-000000270

Case Number: 06-1-01992-1 Date: November 5, 2009
SerialID: C6B4F02C-F20F-6452-D3F71916D7385B77
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- 2. True and accurate copy of the October 5, 2006 of Patricia Ferguson who is with the Fairmont Specialty Insurance Co.;
- 3. True and accurate copies of letters dated January 16, 2007 which are signed by me; and
- 4. True and accurate copy of the draft which was sent to the Pierce County Clerk of the Court for payment of the \$50,000.00 to the Clerk of the Court in the above-referenced matter.

I have, on behalf of Fairmont Specialty Insurance Co., retained Mr. John Cain to represent our interest in the recovery of the funds which were incorrectly provided to Metro City Bail Bonds. Mr. Cain has also been authorized by me to represent United States Fire Insurance Company. Fairmont Specialty Insurance Co. and United States Fire Insurance Company are both ultimately owned by Fairfax Financial Holdings and the check which was written to the Pierce County Clerk of the Court came from United States Fire Insurance Company.

Attached to and fully incorporated herein by reference as additional exhibits are:

- 5. Two (2) checks from Tony Bonner that were paid to Metro. They total \$5,000. These were paid to cover the \$5,000 forfeiture in State v. Joseph Bonner, Pierce County Superior Court Cause No. 05-1-03087-1. An Order of Forfeiture was entered on January 18, 2007. Metro pocketed money and additionally expected U.S. Fire to pay the bill.
- 6. \$10,000 check Metro bounced with the Clerk of the Pierce County Superior Court.

Rex Hawkins is an experience bail bondsman. Melissa McLachlan has worked with him for years and is a Clerk in Clark County. This misappropriation of funds cannot be considered an accident or bad

DECLARATION OF MICHAEL P. ZIEMER
Page 2 of 5.

JOHN C. CAIN
ATTORNEY AT LAW
802 NORTH SECOND STREET
TACOMA, WASHINGTON 98403
(253) 572-8338
FAX (253) 572-8460

Case Number: 06-1-01992-1 Date: November 5, 2009
SerialID: C6B4F02C-F20F-6452-D3F71916D7385B77
Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

1 luck.

2 We will assist in the prosecution of Melissa J. McLachlan
3 and/or Rex Hawkins for the improper taking of the monies which was
4 due and owing to Fairmont Specialty Insurance Co. and/or United
5 States Fire Insurance Company. As the letter to Mr. von Wahlde
6 indicated, as well as the clear notation on the face of the check,
7 if funds were to be recouped, then said funds were to be returned
8 to United States Fire Insurance Company. This was written on the
9 payment and this is standard practice in my industry. We are the
10 surety company and we paid the money and we expect to have the
11 money returned to us if reimbursement was ordered by the Court.
12

13 The funds, which were taken by Metro City Bail Bonds,
14 were not the property of Metro City Bail Bonds. These funds were
15 paid by United States Fire Insurance Company and were clearly
16 marked, both on the check along with an accompanying letter, to be
17 returned to United States Fire Insurance Company should any refunds
18 be issued. Let me be clear that at NO TIME was Rex Hawkins,
19 Melissa McLachlan and/or Metro City Bail Bonds authorized to act or
20 accept funds on behalf of United States Fire Insurance Company.
21

22 When Metro City Bail Bonds went out of business, it was
23 believed that they had other forfeitures which were believed to be
24 due and owing. They have taken the files and not made them avail-
25 able to Fairmont Specialty Insurance Co.. Essentially, it would
26 appear that Melissa McLachlan and Rex Hawkins knowingly took money
27 which was not owed to them and have abandoned the Metro City Bail
28 Bonds business. As I am certain the Court is aware, even though

DECLARATION-OF MICHAEL P. ZIEMER
Page 3 of 5.

JOHN C. CAIN
ATTORNEY AT LAW
802 NORTH SECOND STREET
TACOMA, WASHINGTON 98403
(253) 572-8338
FAX (253) 572-8460

0-000000272

Case Number: 06-1-01992-1 Date: November 5, 2009
SerialID: C6B4F02C-F20F-6452-D3F71916D7385B77
Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

1 Metro City Bail Bonds is no longer justified to do business, it is
2 still responsible for forfeitures which were taken out in its name.

3 My understanding is that Melissa J. McLachlan is listed
4 as a sole proprietor of Metro City Bail Bonds. Therefore, it seems
5 only appropriate to me that she be ordered to personally appear in
6 Court and explain why she should not be ordered to return the funds
7 which she took from the Clerk of the Court.

8 I want to emphasize that by paying the money, Fairmont
9 Specialty Insurance Co. took normal business precautions to assure
10 that the funds would be returned to it if prepayment of funds was
11 necessary. I would ask that Pierce County be ordered to issue a
12 check to United States Fire Insurance Company in the amount of
13 \$49,250.00. The check can be sent either to its home office or
14 sent to John Cain who will forward it to us.

15 It is unfortunate that the money was paid out to Metro
16 City Bail Bonds and not to United States Fire Insurance Company,
17 but we did everything we could to ensure that the funds would be
18 repaid to the surety who had paid the funds. Attached as Exhibit
19 7 is a copy of the draft that was sent to the Clerk of the Court.
20 On it we directed that refunds be sent to us.

21 Again, I want to emphasize that I and my company will be
22 more than willing to cooperate in the prosecution for the improper
23 taking of the funds. I could not imagine that Melissa McLachlan or
24 Rex Hawkins actually believed they were entitled to the funds.
25 Melissa J. McLachlan is a Senior Deputy Court Clerk in Clark County
26 Superior Court. Rex Hawkins has been in the bail bond business for
27
28

DECLARATION OF MICHAEL P. ZIEMER
Page 4 of 5.

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1 a number of years. Both of these individuals are familiar with
2 what is standard in the industry. They must have known that they
3 were not entitled to the money when the funds were requested from
4 the Clerk of the Court.

5 This misuse of power and influence with the Court is but
6 a pattern of Metro City Bail Bonds. My company has received \$14,250
7 in checks that were sent to us, but came back marked 'Non-Suffi-
8 cient Funds'. Metro City Bail Bonds has 93 premium powers that are
9 unreported and have not been returned to my company.
10

11 I would ask that the Court order that Melissa J.
12 McLachlan appear in Court and show good cause why the \$49,250.00
13 should not be returned to the Clerk of Court and also ask that the
14 Court order that the money be paid to my employer, United States
15 Fire Insurance Company by Pierce County. If the funds are not
16 placed into the Court Registry by Metro, then Pierce County should
17 be ordered to.

18 SIGNED at Houston, Texas, the 16th day
19 of April, 2007.

20
21
22 
23 MICHAEL P. ZIEMER
24
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26
27
28

JOHN C. CAIN
ATTORNEY AT LAW
802 NORTH SECOND STREET
TACOMA, WASHINGTON 98403
(253) 572-8338
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Case Number: 06-1-01992-1 Date: November 5, 2009
SerialID: C6B4F02C-F20F-6452-D3F71916D7385B77
Digitally Certified By: Kevin Stock Pierce County Clerk, Washington
August 3, 2006

Pierce County
Office of the Prosecuting Attorney
Civil Division
955 Tacoma Avenue South - Suite 301
Tacoma, WA. 98402

Att: Mark von Walde
Deputy Prosecuting Attorney

Re: Payment of Bond Forfeiture
Case # 06-1-01992-1 Javier Quiroz Cruz

Dear Mr. vonWalde:

I am in receipt of your fax dated 7/31/06 regarding the above mentioned unpaid bond forfeiture. This is the first notification that we received that this bond was in forfeiture and judgment was issued against it.

I would request 7 to 14 days to have a check processed to resolve this matter. Due to operational changes within the company and present scheduling obligations, officers that I need to provide authorization are out in the field and will not be available until sometime next week.

I would further request that any refunds or remissions be returned to United States Fire Insurance Company in Morristown, New Jersey. They handle the financials for our company and the check will come from them.

If you have questions or need to speak with me, please do not hesitate to call.

Sincerely,
Patricia A. Ferguson
Patricia A. Ferguson
Bail Operations - Surety Division

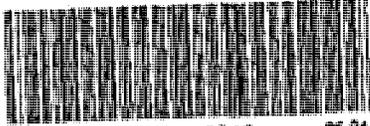
cc: Metro Bail Bonds

70777 Westheimer Road - Houston, Texas 77042 - (713)954-8100

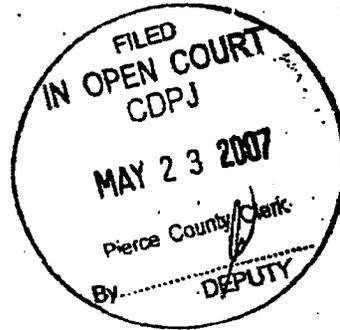


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Case Number: 06-1-01992-1 Date: November 5, 2009
SerialID: C6B52516-F20F-6452-D8E45C1A9E48C4D1
Digitally Certified By: Kevin Stock Pierce County Clerk, Washington



06-1-01992-1 27552891 ORRE 05-24-07



IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

State of Washington
Plaintiff/Petitioner,

Cause No: 06-1-01992-1

vs.

ORDER

JAVIER QUINTANA CRUZ
Defendant/Respondent.

It is ordered that Metro City, Bu. 1 Bonds and/or Melissa J. McLaughlan shall be ordered to deposit with the Clerk of the Court forty-nine thousand two hundred fifty dollars (\$49,250) within ten days of this order. The disposition of the funds shall be determined at another date to be set in an interest bearing account. (EJS)

DATED 05/23/07

copy received objected to for lack of ~~subject~~ jurisdiction over Pierce County
Mal. Wable
Attorney for Plaintiff/Petitioner
WSBA# 18373

Melissa J. McLaughlan
Judge
Melissa McLaughlan
Attorney for Defendant/Respondent
WSBA# OBJECTS.



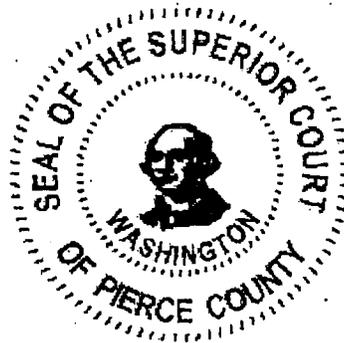
State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that the document
SerialID: C6B52516-F20F-6452-D8E45C1A9E48C4D1 containing 1 pages plus
this sheet, is a true and correct copy of the original that is of record in my office
and that this image of the original has been transmitted pursuant to statutory
authority under RCW 5.52.050. In Testimony whereof, I have electronically
certified and attached the Seal of said Court on this date.



Kevin Stock, Pierce County Clerk

By /S/Melissa Engler, Deputy.

Dated: Nov 5, 2009 3:37 PM



Instructions to recipient: If you wish to verify the authenticity of the certified
document that was transmitted electronically by the Court, sign on to:
<https://www.co.pierce.wa.us/cfapps/secure/linx/courtfilling/certifieddocumentview.cfm>,
enter **SerialID: C6B52516-F20F-6452-D8E45C1A9E48C4D1**.
The copy associated with this number will be displayed by the Court.

Case Number: 06-1-01992-1 Date: November 5, 2009
SerialID: C6B50857-F20F-6452-D7CA2512724257A
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06-1-01992-1 27714839 ORDY 06-21-07

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IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff

vs.

QUIROZ CRUZ, JAVIER,

Defendant

Cause No: 06-1-01992-1

ORDER

FILED
IN OPEN COURT
CDPJ
JUN 20 2007
Pierce County Clerk
By: DEPUTY

The motion of Melissa McLachlan to reconsider and stay the order of May 23, 2007 is denied. The funds (\$49,250) is to be paid to the court registry by no later than July 2, 2007 by 4:30 pm.

DATED this 20th day of June, 2007.

[Signature]
JUDGE
Approved as to form only
[Signature]
RICHARD SHEPARD
Attorney for Defendant
WSBA# 16194

[Signature]
TIMOTHY LEWIS
Attorney for Plaintiff
WSBA# 33767
ATTY for Fairmont

copy received
[Signature]
18373

State of Washington, County of Pierce ss: I, Kevin Stock, Clerk of the
aforementioned court do hereby certify that the document
SerialID: C6B50857-F20F-6452-D7CA25127274257A containing 1 pages plus
this sheet, is a true and correct copy of the original that is of record in my office
and that this image of the original has been transmitted pursuant to statutory
authority under RCW 5.52.050. In Testimony whereof, I have electronically
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Kevin Stock, Pierce County Clerk

By /S/Melissa Engler, Deputy.

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enter **SerialID: C6B50857-F20F-6452-D7CA25127274257A**.

The copy associated with this number will be displayed by the Court.

08/11/2006 15:13 FAX 973490-36

MANAGEMENT PROTECTION

541 5/12/2007 00070

Case Number: 06-1-01992-1 Date: November 5, 2009
SerialID: C6B4F02C-F20F-6452-D3F71916D7385 NO. 0000075971
Digitally Certified By: Kevin Stock Pierce County Clerk, Washington

VENDOR: Clerk of Cou 05
Clerk of Court
Pierce County Superior Court

TOTAL: \$ 50,000.00

Invoice No.	Invoice Date	Invoice Amount	Description
R50-12506597	08/11/06	50,000.00	06-01-01992-1 R50-12506597 Qdrez-Cruz-Frt Payment

Please Detach Before Depositing

VERIFY COMPLETE LIST OF SECURITY FEATURES LISTED ON BACK OF CHECK

UNITED STATES FIRE INSURANCE COMPANY
305 Madison Avenue
P. O. Box 1973
Morristown, New Jersey 07962

ALL REFUNDS OF PREMIUMS MUST BE
RETURNED TO THE FIRE INSURANCE COMPANY
DATE: AUG 11 2006

PAY TO THE ORDER OF: Clerk of Court
Pierce County Superior Court
2302 Tacoma Avenue
Tacoma, WA 98402

50,000.00

0000075971

0000075971 0311002090 3871158

EXHIBIT
I

0-000000282