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DIVISION III
STATE OF WASHINGTON
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In Re RAPID SETTLEMENTS, LTD'S Application for
Transfer of Structured Settlement Payment Rights

BRIEF OF RESPONDENTS SYMETRA LIFE INSURANCE COMPANY
AND SYMETRA ASSIGNED BENEFITS SERVICE COMPANY

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR BENTON COUNTY
Cause No. 04-2-02767-2

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and Symetra Assigned Benefits Service Company

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Rule 443

I. INTRODUCTION

Rapid Settlements, Ltd. (“RSL”) has repeatedly evaded the efforts of Symetra Assigned Benefit Services Company (“Symetra Assigned”) and Symetra Life Insurance Company (“Symetra Life”), collectively Symetra, to collect on a 2008 King County judgment (“2008 Judgment”), which resulted from RSL’s abusive practices under Washington’s Structured Settlement Protection Act (“SSPA”), RCW 19.205.010 *et seq.* *Rapid Settlements, Ltd. v. Symetra Life Ins. Co.*, 134 Wn. App. 329, 335, 139 P.3d 411 (2006).¹

RSL has defied the orders of the Washington courts and refused to pay the judgment. Symetra has exhausted all of the normal methods of collection, to no avail. This appeal arises out of Symetra’s judicial efforts to set off an obligation Symetra owes to RSL against the 2008 Judgment.

In July 2004, RSL as transferee filed an application for approval of transfer of structured settlement payment rights from Nicholas Reihls to RSL under the SSPA (“Reihls Application”). CP 001-008. Symetra Life as the annuity issuer and Symetra Assigned as the structured settlement

¹ In that case, RSL as transferee filed an application for approval of transfer of structured settlement payment rights from William Thompson to RSL. *Rapid Settlements*, 134 Wn. App. at 330. Symetra as the structured settlement obligor and annuity issuer objected because the application did not comply with the SSPA. *Id.* at 332. The trial court agreed with Symetra, dismissing the application without prejudice. *Id.* Symetra sought its fees from RSL for having to bring an objection, which the court awarded. *Id.* at 335.

obligor filed an objection to the transfer. CP 552-62. On May 12, 2005, over Symetra's continuing objections, the Benton County Superior Court approved RSL's application and entered an order ("2005 Order") transferring a structured settlement payment right (the "Assigned Payment")² from Mr. Reihls to RSL. CP 153-157. The 2005 Order provided, in part, that "pursuant to the Structured Settlement Protection Act, RCW Chapter 19.205, by making and delivering the Assigned Payments to RSL as set forth in the foregoing, Structured Settlement Obligor and Annuity Issuer [Symetra]³ will be discharged from all liability for these payments due payee under the annuity" CP 156.

Also in July 2004, RSL as transferee filed an application for approval of transfer of structured settlement payment rights from a different payee, William Thompson, to RSL under the SSPA (the "Thompson Application"). *Rapid Settlements*, 134 Wn. App. at 331. Symetra also objected to the Thompson Application because it failed to meet the requirements of the SSPA . *Id.* at 331-32. The King County Superior Court denied RSL's application without prejudice. *Id.* at 332. In January of 2005, Symetra filed a petition for attorney's fees under the SSPA, for fees incurred as a result of RSL's noncompliance with the

² The Assigned Payment is due on September 2, 2012.

³ Symetra Assigned Benefit Service Company is the structured settlement obligor and Symetra Life Insurance Company is an annuity issuer under the 2005 Order.

SSPA. *Id.* The trial court granted Symetra’s petition for fees, and RSL appealed that decision to the Washington Court of Appeals, Division 1. *Id.*

On appeal, the court found in favor of Symetra because the Thompson Application did not comply with the SSPA and the “sole responsibility and liability for noncompliance with the [SSPA rests] upon the transferee [RSL].” *Id.* at 334. Because RSL had failed to comply with the SSPA, RSL was liable for all resulting costs, including Symetra’s fees. *Id.* In addition, allowing Symetra to collect attorney fees from RSL’s failure to comply with the SSPA “is consistent with the purpose of the SSPA, which is to prevent abuses by companies that seek to purchase structured settlement payment rights in exchange for deeply discounted lump sum payments.” *Id.* at 335. The court awarded further fees and costs to Symetra. *Id.* at 335-36.

RSL then appealed to the Washington Supreme Court. The Washington Supreme Court denied RSL’s petition for review, and awarded Symetra further fees and costs. *Rapid Settlements Ltd. v. Symetra Life Ins. Co.*, 160 Wn.2d 1015, 161 P.3d 1027 (2007). On October 31, 2008, the King County Superior Court consolidated the judgments (the “2008 Judgment”). CP 160-62.

Symetra thereafter sent multiple demand letters to RSL for payment of the judgment, sent post-judgment discovery to RSL, and attempted to garnish RSL's bank account, to no avail. CP 123. RSL claimed that it had no assets in Washington or Texas. CP 211-231. Symetra turned to a Washington asset that it knew it owed to RSL: the Reih's transfer approved in the 2005 Order. Consequently, Symetra sought a set off from the payment due under the 2005 Order for RSL's obligation under the 2008 Judgment.

In June 2010, Symetra sought relief in Benton County Superior Court under Rule 60(b) to allow the set off under the 2005 Order. Symetra sought a set off because the 2005 Order created a mutuality of obligation between Symetra and RSL, whereby Symetra owed an obligation to RSL to remit annuity proceeds to RSL under the 2005 Order and RSL owed an obligation to Symetra as a judgment debtor pursuant to the 2008 Judgment in the Thompson matter.

Before the trial court could decide the Rule 60(b) motion, RSL-3B IL, Ltd. ("RSL-3B") intervened, claiming that RSL-3B, not RSL, was entitled to the Assigned Payment. The trial court disagreed and correctly exercised its discretion in finding that Symetra's obligation under the 2005 Order was to make the Assigned Payment to RSL, which was the

“transferee” under that the SSPA. CP 491-92; RP 20. Consequently, Symetra’s payment obligation was to RSL, not RSL-3B.

The trial court also correctly ruled that substantial evidence supported corporate disregard between RSL and RSL-3B. The evidence included (1) false statements to Symetra and the court by RSL-3B about RSL’s legal status; (2) evidence that RSL commingled its property; (3) evidence that RSL was a mere shell without assets established for the purpose of obtaining structured settlement transfer orders in Washington and elsewhere on behalf of RSL-3B and other Rapid entities; and (4) evidence that RSL and RSL 3-B had the same ownership, same legal representatives, same registered agent and same address at the time of the 2005 Order. RSL-3B made the same arguments to the trial court in a motion for reconsideration, which the trial court correctly denied.

II. RESPONSE TO APPELLANT’S ASSIGNMENTS OF ERROR & ISSUES

RSL-3B fails to assign any error or address any argument regarding the trial court’s denial of its motion for reconsideration, therefore any such arguments are waived. *Smith v. King*, 106 Wn.2d 443, 451–52, 722 P.2d 796 (1986); *State v. Chaussee*, 77 Wn. App. 803, 895 P.2d 414 (1995) (dismissal required where party fails to assign error to an order). The issues raised in this appeal by RSL-3B in section 1.2 (B), (C),

(D), (E), and (F) were never raised in the trial court. (CP 390-393, 402-408). These issues, which relate to the application of Texas law (B-C, E-F) and evidentiary objections (D) are waived and cannot be considered for the first time on appeal. *Sorenson v. Pyeatt*, 158 Wn.2d 523, 543, 146 P.3d 1172 (2006); *Roberson v. Perez*, 156 Wn.2d 33, 39, 123 P.3d 844 (2005); RAP 2.5(a).

III. STATEMENT OF THE CASE

A. The Judgment – In Re William Thompson

Symetra Life and Symetra Assigned are Washington corporations. Symetra Assigned is a structured settlement obligor, meaning it assumes the obligation to make periodic payments under a structured settlement agreement. See RCW 19.205.010(15). Symetra Life is an annuity issuer, meaning that it issues annuity contracts to fund the obligation of the structured settlement obligor under the structured settlement agreement. RCW 19.205.010(1). Under the SSPA, the “payee” is usually a tort victim entitled to receive tax-free payments under a structured settlement. RCW 19.205.010(8).

Historically, structured settlement agreements prohibited payees from accelerating, selling or assigning payments in order to preserve favorable tax treatment. However, following a change in federal law, Washington passed the SSPA to allow payees to “transfer” some or all of

the periodic payments in exchange for a lump sum. A “transfer” is “any sale, assignment, . . . or encumbrance of structured settlement payment rights by a payee for consideration.” RCW 19.205.010(18). The “transferee” is “a party acquiring or proposing to acquire structured settlement payment rights through a transfer.” RCW 19.205.010(21).

The SSPA requires the transferee to comply with specified notifications, disclosures, and processes that are designed to protect the payee and “interested parties” and allow the court to determine whether a transfer is in the payee’s “best interests.” RCW 19.205.020-.030. The SSPA places the ultimate liability for compliance on the transferee. RCW 19.205.060(6).⁴

RSL is a Texas limited partnership that is in the business of purchasing payments from payees. RSL has filed fifteen transfer applications in Washington seeking approval of transfers it entered with payees, including William Thompson and Nicholas Reihs, the payees whose structured settlements are at issue in this case. CP 284-379; CP 640.

⁴ “Compliance with the requirements set forth in RCW 19.205.020 and fulfillment of the conditions set forth in RCW 19.205.030 is the sole responsibility of the transferee in any transfer of structured settlement payment rights, and neither the structured settlement obligor nor the annuity issuer bear any responsibility for, or any liability arising from, noncompliance with the requirements or failure to fulfill the conditions.” RCW 19.205.060(6).

In July 2004, RSL and Mr. Thompson, a Washington resident, entered into an agreement (“Thompson Transfer Agreement”) under which Mr. Thompson agreed to transfer one of his future payments for a lump sum payment from RSL. *Rapid Settlements, Ltd. v. Symetra Life Ins. Co.*, 134 Wn. App. 329, 331, 139 P.3d 411 (2006). On October 26, 2004, RSL filed the Thompson Application in King County Superior Court. *Id.* Symetra opposed the Thompson Application because the proposed transfer failed to meet the requirements of the SSPA. *Id.*

During argument on the Thompson Application, counsel for RSL asserted to the Court that RSL was the transferee and that it would be held liable under the SSPA. When faced with the argument that the Thompson Transfer Agreement attempted to shift liability away from RSL in violation of the SSPA,⁵ RSL’s counsel asserted:

Mr. Peterson: The only liability, it is the transferee, Rapid, that bears all of the responsibility.

The Court: But then there’s a provision in the agreement which says you are not liable.

Mr. Peterson: That [provision] can’t override this [SSPA].

The Court: Why have it in there at all?

Mr. Peterson: I think it [the transfer agreement] is being misinterpreted. I mean, I think as between those parties it may not mean that its not liable, but it doesn’t put Symetra in a position of liability, because this [SSPA] statute says that if the court enters an order, it protects Symetra from all of these claims regarding the underlying transaction.

⁵ RSL 3-B points to the same liability shifting clause in the Reih’s Transfer Agreement. Appellant’s Brief, p. 13.

CP 636-637, 640.

Following this hearing, the King County trial court agreed that RSL had not complied with the SSPA and dismissed the Thompson Application without prejudice.⁶ *Rapid Settlements, Ltd.*, 134 Wn. App. at 332. Symetra then filed a petition under RCW 19.205.040 for attorneys' fees and costs incurred as a result of RSL's noncompliance with the SSPA. *Id.* The court granted Symetra's petition and awarded fees and costs in the amount of \$7,927.50. *Id.* RSL appealed that decision to the Washington Court of Appeals, Division One, which upheld the trial court's determination and awarded further fees on appeal. *Id.* at 335-36.

The Washington Supreme Court denied RSL's petition for review. *Rapid Settlements Ltd. v. Symetra Life Ins. Co.*, 160 Wn.2d 1015, 161 P.3d 1027 (2007). On July 5, 2007, the Washington Supreme Court awarded Symetra additional attorney's fees. CP 208-209. On October 31, 2008, the King County Superior Court entered the total judgment of \$39,287.04. CP 160-62. To date, RSL has refused to pay the judgment.

B. RSL Evades Collection Attempts

After the Thompson judgment was confirmed in October 2008, Symetra attempted to collect the judgment from RSL. RSL ignored

⁶ RSL re-filed the application in Cowlitz County and obtained an order transferring the Thompson payment. RSL-3B took assignment of that payment. CP 375-79.

multiple demand letters sent by Symetra. CP 123. Symetra domesticated the judgment to RSL's principal place of business, Texas, and issued interrogatories to RSL in order to identify RSL property. CP 123-24, 217-31. On March 17, 2009, RSL, through Stewart Feldman, the "designated representative for Rapid Settlements, Ltd.," issued objections and responses to Symetra's Post Judgment Interrogatories. CP 231. RSL claimed that it owned no property in Texas. CP 230. Symetra then sought a writ of garnishment on RSL's bank account, but learned the assets were held under the name of another Rapid entity. CP 217-27.

Appellant argued to the trial court that RSL (which is now apparently called Liquidated Marketing) "ceased doing business several years ago." CP 410. Yet, in July 2010, the Texas Secretary of State listed RSL as "in existence." CP 421, 425. As recently as January 2010, RSL was aggressively litigating an action in Texas in order "to thwart the execution of a valid judgment against Rapid." CP 234. In addition, RSL engaged in litigation throughout 2010. *See, e.g., Rapid Settlements, Ltd. v. Shcolnik*, No. H-10-1366, 2010 U.S. Dist. LEXIS 118792 (S.D. Tex. Nov. 8, 2010); *In re RSL Funding, LLC & Rapid Settlements, Ltd.*, No. 14-10-01111-CV, 2010 Tex App. LEXIS 9157 (Ct. App. Tex. Nov. 18, 2010); *Hartford Life Ins. Co. v. Rapid Settlements, Ltd.*, No. 14-09-00169-CV, 2010 Tex. App. LEXIS 7774 (Ct. App. Tex. Sept. 23, 2010).

Symetra submitted declaration testimony to the trial court that revealed that on January 19, 2010, a writ of execution was served on RSL at the same address that RSL and RSL 3-B share. CP 241-43. The name on the door of the business was “Rapid Settlements, Ltd.” *Id.* During the execution, employees at that location self-identified as “Rapid” employees. *Id.* Numerous documents bearing RSL’s name, such as checks and operations manuals, were found in the office. *Id.* Ms. Susan Hatcher, a declarant in this case, was present during the execution of that writ. *Id.* The execution efforts ceased when Mr. Feldman, the President of RSL, assaulted counsel for the judgment creditor. *Id.*; CP 233-253; *Rapid Settlements, Ltd. v. Settlement Funding, LLC d/b/a Peachtree Settlement Funding*, No. 14-09-00637-CV, 2010 Tex. App. LEXIS 7412 (Ct. App. Tex. Sept. 9, 2010).

As the record shows, RSL has gone to great lengths to avoid paying its creditors, including Symetra. Despite RSL’s claim that it has no assets with which to satisfy the judgment against it, RSL has assets in Washington that are due to it under the May 2005 Order granted under the SSPA.

C. The 2005 Transfer Order – *In Re Nicholas Reihls*

On November 19, 2004, RSL filed the Reihls Application with the Benton County Superior Court, seeking to purchase a structured settlement

payment from Nicholas Reihs. CP 001-008. Mr. Reihs, a Kennewick resident, had suffered an injury relating to an accident that took place in Ritzville when he was a minor. *Id.* The court-approved structured settlement included a \$60,000 guaranteed payment due to Mr. Reihs on September 2, 2012. CP 009-017.

The Reihs Application sought approval of a transfer agreement under which Mr. Reihs would sell his \$60,000 future lump sum payment to RSL in exchange for a \$20,000 payment to Mr. Reihs upon court approval. CP 025-30.

RSL filed and served notice upon Symetra and on January 12, 2005, Symetra filed an Objection because the Reihs Application violated the SSPA. CP 552-62. Among other things, the Reihs Application would have given RSL a security interest in all payments due from Symetra, not just the \$60,000 payment at issue, and would have given RSL an irrevocable power of attorney over all payments due.⁷ CP 555. None of

⁷ The Thompson Application and the Reihs Application suffered from the same deficiencies, which is typical of RSL transfer applications. *See* CP 592-627 (transcript of Illinois state proceeding where Hartford objected to an RSL transfer because the transfer agreement included an undisclosed encumbrance via a right of first refusal, a 10% penalty for failure to give the right of first refusal, and binding the payee regardless of whether the application is approved by the court); CP 730-732 (in Tennessee action, court ruled that RSL failed to make a full disclosure as required under the law); CP 736-752 (Indiana case where RSL sought to intervene to prevent another company from purchasing annuity in “violation” of RSL’s right of first refusal).

those transactions were disclosed in the “Disclosure Statement” as required under RCW 19.205.020. *Id.*

On March 18, 2005, RSL filed an Amended Application (“Reihs Amended Application”), which attached an Amended Transfer Agreement. CP 054-61. The Amended Transfer Agreement was signed on March 1, 2005, by Mr. Reihs and Mr. Feldman on behalf of RSL. CP 083. It expressly stated that Mr. Reihs (called the “Assignor”) “hereby sells, assigns, and transfers to Rapid Settlements all of Assignor’s right, title, and interest (including all benefits and rights relating thereto) in the Assigned Payment(s). Rapid Settlements hereby purchases and accepts such assignment and transfer of the Assigned Payment(s).” CP 078.

Symetra objected to RSL’s Amended Application because, among other things, the Amended Reihs Transfer Agreement, just as in the Thompson Transfer Agreement, attempted to discharge RSL from all liability by the use of a re-assignment. CP 648-665.

A hearing was held, and on May 12, 2005, the court approved the transfer. CP 107-111. The Order addressed Symetra’s concern about RSL’s attempt to avoid liability as the transferee. In this regard, it stated: “ORDERED, ADJUDGED, and DECREED that pursuant to the Structured Settlement Protection Act, RCW Chapter 19.205, by making and delivering the Assigned Payments to RSL as set forth in the foregoing,

Structured Settlement Obligor and Annuity Issuer will be discharged from all liability for these payments due payee under the annuity” CP 110.

The payment Mr. Reihs sold to RSL is not due until September 2, 2012.

D. Symetra’s Rule 60(b) Motion to Seek a Set Off on the 2005 Reihs Order to Collect on the 2008 Judgment.

To satisfy the 2008 Judgment, Symetra turned to an asset that it knew it owed to RSL—the payment that Mr. Reihs had sold to RSL. On June 2, 2010, Symetra filed a “Motion for Modification of the Order Approving Transfer of Structured Payment Rights” with the Benton County Superior Court. CP 112.

Symetra served its motion for modification of the 2005 Order on RSL. CP 120, RP 18. Symetra re-noted the motion twice, first at the request of counsel for RSL, and then at the request of counsel who was appearing for RSL 3-B. CP 382-385. On July 2, 2010, RSL-3B filed a Motion to Intervene, “in order to protect its interests.” CP 390-93. RSL-3B then filed an Opposition to the Motion for Modification. CP 402-12. Symetra filed a Reply.

RSL-3B never requested the trial court to allow an evidentiary hearing or to present witnesses or move for continuance, never requested a jury, never issued any discovery or deposition notices, and never explained what discovery was needed. CP 390-93, 402-412. Instead, it

appeared at the July 9, 2010 hearing and relied solely on argument of counsel and a declaration from Susan Hatcher of the Feldman Law Firm.⁸ It also made no objection to the evidence submitted by Symetra in support of its motion. *Id.*

RSL-3B argued that no set off should be made because it claimed there was no mutuality of obligation between RSL-3B and Symetra. CP 402. RSL-3B also argued that Symetra had violated due process and had permitted no time for discovery. CP 403.

The trial court granted the set off (CP 475), holding that RSL, and not RSL-3B, was the transferee, and thus Symetra's obligation ran only to RSL. RP 20. The trial court also found that substantial evidence supported the finding that RSL and RSL-3B were "one in the same," which also supported mutuality of obligation. *Id.*

The trial court asked counsel for Symetra to prepare an order, which she presented after notice to opposing counsel for the Court's signature on August 6, 2010. CP 491, 790-96. RSL-3B filed a Motion for

⁸ In its appeal brief, RSL-3B relies heavily on exhibits and declarations filed with its motion for reconsideration (CP 494-542), none of which were presented to the trial court at the time of the Rule 60(b) motion and none of which contained newly discovered evidence. Accordingly, they are irrelevant to this Court's disposition of the trial court's decision on that motion and should not be considered. *Go2net, Inc. v. C I Host, Inc.*, 115 Wn. App. 73, 90-91, 60 P.3d 1245 (2003) (affidavit submitted with motion for reconsideration should not be considered in reviewing order on summary judgment where "[t]he realization that [the] first declaration was insufficient does not qualify the second declaration as newly discovered evidence.").

Reconsideration (CP 494-512) which the Court denied (CP 543), and to which no error has been assigned by RSL-3B in this appeal.

IV. AUTHORITY AND ARGUMENT

The trial court properly exercised its discretion when it granted Symetra's motion to set off the payment due under the 2005 Order against the 2008 Judgment. Under the SSPA, RSL and not RSL-3B is the "transferee" and therefore is the entity to which Symetra owes the payment obligation. Therefore, RSL and Symetra share a mutuality of obligation.

In addition, RSL and its affiliated companies have moved assets from the company that holds transferee liability (RSL) to related Rapid companies, including RSL-3B, so as to deprive legitimate creditors from being able to satisfy RSL's debts to them. *See, e.g., FinServ Cas. Corp. v. Settlement Funding, LLC*, 724 F. Supp. 2d 662, 665-668 (S.D. Tex. 2010) (describing RSL's attempts to evade creditors). RSL's tactics in avoiding the legal requirements of the SSPA carry over into its tactics in avoiding the legal requirements of the three Washington court judgments ordering it to pay Symetra. This Court should find that the trial court's order granting the set off was not an abuse of discretion.

There also are no due process concerns. RSL-3B had ample notice and opportunity to make its objections and brief its positions to the trial

court. Even though RSL-3B claims that it should have been allowed to conduct discovery, RSL-3B has never propounded discovery or stated exactly *what* discovery it needed. Nor did RSL-3B request a jury trial and one is not permitted in equity.

Further, the trial court appropriately applied Washington law, not Texas law, in this case. RSL-3B failed to assert in the trial court that Texas law should be applied. This argument cannot be raised for the first time on appeal. Moreover, Washington has the most significant and compelling interest in this dispute and Texas law is unavailing in any event.

A. Standard of Review

The trial court granted Symetra's motion under CR 60(b)(6) and (11) to modify the 2005 Order. This Court reviews a CR 60(b) ruling for abuse of discretion. *Haller v. Wallis*, 89 Wn.2d 539, 543, 573 P.2d 1302 (1978); *Barr v. MacGugan*, 119 Wn. App. 43, 46, 78 P.3d 660 (2003). This Court also reviews the application of equitable relief for an abuse of discretion. *Willener v. Sweeting*, 107 Wn.2d 388, 397, 730 P.2d 45 (1986). Discretion is abused when it is exercised on untenable grounds or for untenable reasons. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971). Legal error also constitutes an abuse of discretion.

Council House, Inc. v. Hawk, 136 Wn. App. 153, 159, 147 P.3d 1305 (2006).

The trial court's findings of fact that RSL and RSL-3B are one and the same are reviewed under a substantial evidence standard (defined as evidence sufficient to persuade a reasonable person that the premise is true). *Wenatchee Sportsmen Ass'n v. Chelan County*, 141 Wn.2d 169, 176, 4 P.3d 123 (2000). If the standard is satisfied, a reviewing court will not substitute its judgment for the trial court's judgment even though it may have resolved a factual dispute differently. *Croton Chem. Corp. v. Birkenwald, Inc.*, 50 Wn.2d 684, 685, 314 P.2d 622 (1957).

RSL-3B incorrectly argues that a *de novo* standard of review applies to that portion of the trial court's ruling which applying certain definitions of the SSPA to the facts presented, and applies to any legal conclusions regarding corporate disregard. While statutory interpretations and legal conclusions are generally reviewed under a *de novo* standard, the only "error" assigned by RSL-3B was to the amendment of the 2005 Order under CR 60(b) to allow a setoff of the 2008 Judgment based on two phrases in the 2005 Order ("irrevocable beneficiary" and "unconditionally"). Appellant's Corrected Brief, p. 10. Modification of the 2005 Order was equitable relief under CR 60(b) and the trial court's interpretation of its own order is not statutory construction. This Court's

review of the assigned error is under an abuse of discretion review, not *de novo* review.

B. The Trial Court Did Not Abuse its Discretion in Granting Symetra's CR 60(b) Motion to Modify

The trial court did not abuse its discretion in granting Symetra's request for an offset under CR 60(b). Under long-recognized common law in Washington and across the United States, trial courts have held the equitable power to award an offset. *See, e.g., Studley v. Boylston Nat. Bank*, 229 U.S. 523, 528, 57 L. Ed. 1313, 33 S. Ct. 806 (1913); *Reichlin v. First Nat'l Bank*, 184 Wash. 304, 315, 51 P.2d 380 (1934) ("whether mutual judgments may be satisfied by being set off against each other rests largely within the court's discretion . . . the application to set off judgments should be made in equity and controlled by equitable principles."). Judgments or orders for money that have become "final and conclusive" may be offset from each other, whether arising upon contract, tort, or otherwise. *Reichlin v. First Nat'l Bank*, 184 Wash. at 314; *Johnson v. City of Aberdeen*, 147 Wash. 482, 266 P. 707 (1928).

Generally, to effect the offset of one judgment against another, the judgments must be between the same parties in the same capacity. *Johnson*, 147 Wash. at 485; *Reichlin*, 184 Wash. at 314-15. Courts, however, have the equitable authority to offset claims between parties

against the claim of a third party if “it becomes necessary for a clear equity or to prevent irremediable injustice.” 20 Am. Jur. 2d Counterclaim, Recoupment and Setoff 47, at 267; *see also Reichlin*, 184 Wash. at 315; *Darwish v. Harmon*, 633 N.E. 2d 546, 546 (Ohio Ct. App. 1992). Applying to the trial court for relief from an order under CR 60(b) is a recognized method for seeking an offset. *See, e.g., Roboserve, Inc. v. Kato Kagaku Co., Ltd.*, 121 F.3d 1027, 1031-33 (7th Cir. 1997) (upholding motion under FRCP 60(b) for offset of judgments).

CR 60(b)(6) provides that a prospective judgment that is no longer equitable in its application may be modified. In addition, CR 60(b)(11), the so-called “catch all” provision, allows relief from judgments for “any other reason”:

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

....

(6) The judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, **or it is no longer equitable that the judgment should have prospective application;**

....

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

CR 60(b)(6), (11). Proceedings to modify orders are “equitable in nature and the court should exercise its authority liberally” to preserve

“substantial rights and do justice between the parties.” *In re Marriage of Hardt*, 39 Wn. App. 493, 497, 693 P.2d 1386 (1985).

“This provision was designed to deal with problems arising under a judgment that has continuing effect, where a change in circumstances after the judgment is rendered makes it inequitable to enforce the judgment.” *Metro. Park Dist. v. Griffith*, 106 Wn.2d 425, 438, 723 P.2d 1093 (1986). In addition, CR 60(b)(11) may be applied in “extraordinary” or “unusual” circumstances, not covered in any other section of CR 60(b). *Yearout v. Yearout*, 41 Wn. App. 897, 902, 707 P.2d 1367 (1985).

The continued enforcement of the prospective application of the 2005 Order would be inequitable. RSL had repeatedly defied this court’s judgments and has taken advantage of the Washington SSPA. RSL has a history of abusing the SSPA and seeking to avoid the rule of law. *See e.g., Allstate Settlement Corp. v. Rapid Settlements, Ltd.*, 559 F.3d 164, 172 (3d Cir. 2009) (“Given Rapid Settlements’ history of attempting to circumvent state structured settlement protection acts . . . the District Court was well within its discretion to enjoin Rapid from further use of its scheme to plague Allstate.”); *Symetra Life Ins. Co. v. Rapid Settlements, Ltd.*, 567 F.3d 754, 755 (5th Cir. 2009) (listing seven cases across the country where courts have concluded that RSL cannot use a sham arbitration as a device to bring about an otherwise unlawful transfer). Equity requires that RSL

and RSL-3B not be allowed to take advantage of their corporate forms to avoid liability.

RSL was the transferee in both the Reihls and Thompson cases, RSL-3B was RSL's "assignee" in both cases, and Symetra was the annuity issuer and obligor in both cases. *Rapid Settlements, Ltd.*, 134 Wn. App. at 335; CP 153-156. Because both RSL and RSL-3B acted in the same capacity in both matters, an offset is equitable and prevents the absurdity of Symetra paying RSL when RSL owes a debt to Symetra.

C. Symetra's Only Obligation Under the 2005 Order is to RSL, the "Transferee" under the SSPA

Under RCW 19.205.040, Symetra is released from any and all liability for the transferred payments to all persons and entities except the transferee:

Following a transfer of structured settlement payment rights under this chapter:

- (1) The structured settlement obligor and the annuity issuer shall, as to all parties except the transferee, be discharged and released from any and all liability for the transferred payments[.]

RCW 19.205.040(1). RSL-3B argues that there is no mutuality of obligation because RSL and RSL-3B are separate entities. However, this argument misses a key fact: under the SSPA and under the 2005 Order,

RSL and not RSL-3B is the “transferee,” thus, Symetra’s obligation to remit the period payment runs solely to RSL.

1. Under the SSPA, RSL is the Transferee

Under the SSPA, a transfer of structured settlement payment rights is not effective unless a court approves the transfer and certain conditions are met. RCW 19.205.030. Once a transfer is approved by the court, the structured settlement obligor and the annuity issuer remain liable for the payment only to the “transferee,”⁹ as that term is defined under the SSPA: the “party acquiring or proposing to acquire structured settlement payment rights through a transfer.” RCW 19.205.010(21).

A “transfer” is any sale, assignment or encumbrance of structured settlement payment rights “by a payee” for consideration. RCW 19.205.010(18). The statute requires the transferee to provide the payee with a disclosure statement setting forth the financial information for the transfer before the payee enters into the transfer agreement and requires the transferee to inform the payee that the payee has the right to seek independent professional advice. RCW 19.205.020-30. After the disclosures are made and the transfer agreement is signed, the application “for approval of a transfer of structured settlement payment rights **shall be made by the transferee [and] the transferee shall file** with the court

⁹ RCW 19.205.040(1).

. . . and serve all interested parties . . . [a] copy of **the transferee’s application** . . . [and] [n]otification that any interested party is entitled to support, oppose, or otherwise respond to **the transferee’s application**” RCW 19.205.050 (emphasis added). Thus, under the statute, the transferee is the person or entity who enters into a transfer agreement with the payee and who is required to prepare the disclosure statement, notify the payee of the right to individual counsel, enter into the transfer agreement with the payee, apply to the court for approval of the agreement, and provide notice of the transfer hearing to all interested parties.

In this case RSL, and not RSL-3B, entered into the transfer agreement with Mr. Reihls, and performed all of the acts that a transferee is required to perform under the SSPA. RSL-3B plainly admits that it *was not even a party* to the transfer action. Appellant’s Corrected Brief, at 2-3 (“3B remained a stranger to the litigation until forced to intervene by Symetra’s motion to modify the Transfer Order.”). Yet RSL-3B now claims to have been the transferee all along and that RSL was merely a “marketing company” that, for a fee, located and identified annuity streams for purchase by third parties. Appellant’s Corrected Brief, at 12. This argument is in contravention of the SSPA and the factual record.

The transfer agreement and amended transfer agreement provide that Mr. Reihls “hereby sells, assigns, and transfer to Rapid Settlements all of [his] rights, title, and interest [and] Rapid Settlements hereby purchases and accepts such assignment and transfer of the Assignment Payment(s).” CP 078. Mr. Reihls, for consideration, entered into the transfer with RSL. RCW 19.205.010(18) .

The disclosure statement provided to Mr. Reihls and filed with the court states that it is “being provided by Rapid Settlements, Ltd. . . . in connection with Payee’s agreement to transfer and assign to Rapid Settlements certain structured settlement payment rights.” CP 047. The disclosure statement further provides that “Rapid Settlements, Ltd. is purchasing this transfer.” CP 049. RSL is also the entity that provided notice of the payee’s right to receive independent professional advice, and the payee affirmed that he had “been advised in writing by Rapid Settlements, Ltd. to seek independent professional advice[.]” CP 050.

RSL filed the Application and Amended Application for Approval of Transfer of Structured Settlement Payment Rights, neither of which mentioned RSL-3B as the transferee. CP 001-008; CP 054-61. The Amended Application provides that the payee desired to change the beneficiary of the payments to “Rapid Settlements, Ltd.” and asks the

court to “approve the transfer to RSL of the structured settlement payment rights[.]” CP 060-61.

Contrary to RSL-3B’s claims now that RSL was merely a “marketing agent” and had no rights in the payments, in the Application and Amended Application that RSL filed with the court, RSL states that it “reserves the right to assign its rights under this amended application to another person or entity” CP 060. If RSL was just a marketing agent, rather than a statutory “transferee,” then it had no interest or rights to assign to RSL-3B, including any interest in the Assigned Payment.¹⁰

The statutory scheme of the SSPA, which by design of the legislature must be followed before a transfer will be approved, leaves no room for the possibility of a non-party acting as a transferee. *See, e.g., In re Application for Approval by Rapid Settlements, Ltd.*, 133 Wn. App. 350, 357, 136 P.3d 765 (2006) (describing the required transfer application process).

Based on the record, RSL is the “transferee” under the SSPA. Symetra’s obligation to pay the \$60,000 structured payment runs only to RSL, the transferee, and Symetra is discharged and released from making payments to any other entity. RCW 19.205.040(1). Mutuality of

¹⁰ RSL alleges that, “for a fee” it located the annuity stream for purchase by RSL-3B. Appellant’s Corrected Brief, at 12. However, no such fee was disclosed on the disclosure statement as required. CP 101; RCW 19.205.020(5).

obligation exists between Symetra and RSL; therefore, the court did not abuse its discretion in granting Symetra's request to apply payment due under the 2005 Order to the 2008 Judgment debt of RSL.

2. The Transfer Order Does Not Contravene the Statute

RSL-3B argues that, no matter what the definition and intent of the SSPA, the preamble of the 2005 Order describes RSL-3B as "sometimes referred to as a transferee" and therefore RSL-3B is the transferee. Appellant's Corrected Brief, at 12-14. RSL-3B further argues that because Symetra sent an "acknowledgment" letter to RSL-3B, then RSL-3B must be the transferee. *Id.* at 15. These arguments fail.

Leading up to the transfer hearing, RSL made no mention of RSL-3B in its application, the disclosure statement, the notice, or the transfer agreement. The 2005 Order presented to the trial court on May 12, 2005, was the first mention of RSL-3B to third parties.

The Order provides that the matter came for hearing on "**Rapid Settlement, Ltd.'s ('RSL')** amended application." CP 154 (emphasis added). The Order provides that "either Structured Settlement Obligor or Annuity Issuer **are hereby directed to deliver and make payable to Transferee, its successors, and/or assigns** the following payments[.]" CP 155 (emphasis added). And that "the Assigned Payments shall be

made payable and delivered to Transferee at the following address:
5051 Westheimer, Suite 1875, Houston, Texas 77056-5604.”¹¹

The Order also provides that the “Structured Settlement Obligor and Annuity Issuer **shall change the designated beneficiary** under the Annuity for the Assigned Payments to **RSL-3B-IL, Ltd.** irrevocably, and no other person or entity **other than RSL**, its successor, and/or assigns shall have the authority . . . to change the beneficiary for the Assigned Payments[.]” CP 155. And further that “**RSL, its successor and/or assigns shall . . . send a copy hereof to [Symetra].**” CP 156 (emphasis added). The Order provides that the formal acknowledge shall be sent to “**RSL-3B-IL, Ltd.**” at Suite 1875,¹² but that “by making and delivering the Assigned Payments to RSL as set forth in the foregoing, [Symetra] will be discharged from all liability for these payments due payee under the annuity.” CP 156 (emphasis added).

Under the 2005 Order, the trial court correctly ruled that Symetra was required to make the Assigned Payment to “Transferee” and further recognized, pursuant to the statute, that by making and delivering the Assigned Payment to RSL, Symetra discharged its payment obligation.

¹¹ RSL and RSL-3B share this address.

¹² CP 155-156.

As set forth above, RSL-3B's reading of the 2005 Order (that it is the transferee) would require that the Order be read in violation of the SSPA and the factual record. This is an unreasonable reading, which the trial court properly rejected.

Further, the 2005 Order provides that Symetra's liability will be discharged by making payment to RSL, not to RSL-3B. CP 156 ("by making and delivering the Assigned Payments to RSL as set forth in the foregoing, Structured Settlement Obligor and Annuity Issuer will be discharged from all liability for these payments"). RSL-3B also fails to show how it can be an "irrevocable beneficiary" yet, under the 2005 Order RSL retains the right to change the beneficiary. Thus, the trial court correctly exercised its discretion to find Symetra shares a mutuality of obligation with RSL under the 2005 Order and the 2008 Judgment.

RSL-3B also argues that the July 14, 2005 "acknowledgment letter" sent by Symetra shows that Symetra allegedly agreed to deliver payment only 3B. However, Symetra was directed under the 2005 Order to send an acknowledgment letter, and that such letter should acknowledge that the payments shall be re-directed to RSL-3B. CP 525. RSL-3B also overlooks the fact that Symetra sent the letter to "Rapid Settlements, Ltd.," which shares the same address as RSL-3B, and states in the letter that, per the terms of the order, it acknowledges that the \$60,000 "will be

redirected” to RSL-3B. This supports that RSL retains ownership even while payment is directed to its purported assignee. This is not, as RSL-3B now alleges, an unreserved declaration by Symetra that RSL was not the transferee or that its obligation would not be satisfied by sending payment to RSL.

D. RSL and RSL-3B are One and the Same

Symetra may also take an offset against the 2008 Judgment because the trial court, after having reviewed the record and heard oral argument, found that RSL and RSL-3B are one and the same. RP 20.

Piercing the corporate veil¹³ is an equitable remedy imposed to rectify an abuse of the corporate privilege. *Truckweld Equip. Co. v. Olson*, 26 Wn. App. 638, 643, 618 P.2d 1017 (1980). Under Washington law, a court will pierce the veil and find that a corporate entity is one and the same with another corporate entity¹⁴ when the corporate form has been intentionally used to violate or evade a duty and disregarding the corporate

¹³ Washington courts have used a variety of terms to describe this act, including “alter ego” and “disregarding the corporate entity.”

¹⁴ Washington courts have recognized piercing a corporate veil between shareholders and a corporation, between parent and subsidiary corporations, between affiliated corporations, and between successor entities. *See, e.g., Culinary Workers & Bartenders Union No. 596 v. Gateway Café, Inc.*, 91 Wn.2d 353, 366, 588 P.2d 1334 (1979) (collecting cases where a transferee corporation may be liable for the obligations of a transferor corporation); *Truckweld Equip. Co. v. Olson*, 26 Wn. App. 638, 643, 618 P.2d 1017 (1980) (addressing piercing the veil to find shareholders liable for corporate actions); *J.I. Case Credit Corp. v. Stark*, 64 Wn.2d 470, 475, 392 P.2d 215 (1964) (piercing the veil of affiliated companies); *Minton v. Ralston Purina Co.*, 146 Wn.2d 385, 399, 47 P.3d 556 (2002) (discussing the test for piercing the corporate veil to find a parent company liable).

veil is necessary to prevent an injustice or fraud upon a third party. *Meisel v. M&N Modern Hydraulic Press Co.*, 97 Wn.2d 403, 410, 645 P.2d 689 (1982); *J.I. Case Credit Corp. v. Stark*, 64 Wn.2d 470, 475, 392 P.2d 215 (1964) (a court will pierce the corporate veil when there is “such a commingling of property rights or interests as to render it apparent that they are intended to function as one, and further, to regard them as separate would aid the consummation of a fraud or wrong upon others.”). “Typically, the injustice which dictates a piercing of the corporate veil is one involving fraud, misrepresentation, or some form of manipulation” to the entity’s benefit and the creditor’s detriment. *Truckweld Equip. Co.*, 26 Wn. App. at 644-45.

For example, in *Case v. Stark*, the court found that two companies, Case and Credit, were one and the same, in order to prevent an injustice from being worked upon Mr. Stark. In that case, Stark leased a combine from the LaCrosse Hardware Company. *Id.* at 471. Sometime afterward, he exercised an option to purchase the combine from LaCrosse. *Id.* at 471-72. He signed a note and chattel mortgage on J.I. Case Company (“Case”) forms and J.I. Case Credit Corporation (“Credit”) purchased the note and mortgage. *Id.* Stark experienced repeated problems with the combine, returned it to the retailer as irreparable, and refused to pay on the note. *Id.* Credit sued him, claiming he could not assert a defense that the

combine was defective because Credit was a separate corporation from Case. *Id.* at 475. The court disagreed, and found the entities were one and the same because Credit was a wholly-owned subsidiary of Case, the secretary-treasurer of Case was the president of Credit, all the employees of Credit were paid by Case, the credit manager of Credit was also an employee of Case, both companies had the same address, the same lawyer, the same agent, the same auditors, and Credit's only business was to handle retail financing for Case. *Id.*

In addition, the court found that piercing the veil would prevent a wrong against Stark. *Id.* at 478. Case owed a duty to Stark, and to allow Credit to pose as a holder in due course would "permit Case to escape its responsibilities." Thus, for the purpose of that suit, the corporate identities were "one and the same." *Id.* "Although each of the terms of identity may, in itself, be but a link in a chain to join the two corporations, the final connection is established by the duty owed [to Stark]. To hold otherwise would result in a wrong being perpetrated upon Stark." *Id.*

When determining whether a fraud or wrong will be perpetrated upon another, Washington courts look to whether the entities are organized in such a way that they "can be used to defeat the rights of innocent parties, defeat public convenience, or cut off the right of redress." *J.I. Case Credit Corp. v. Stark*, 64 Wn.2d at 477-78. For example, in one

Washington case the court disregarded the corporate entity when the identities of the companies were so intermingled and confusing as to result in probable fraud upon third parties dealing with the corporations. *Associated Oil Co. v. Seiberling Rubber Co.*, 172 Wash. 204, 19 P.2d 940 (1933). In *Associated Oil*, the plaintiff requested a written guaranty from a rubber company. *Id.* at 207-08. The company, a parent corporation, responded by providing a written guaranty signed by its out of state subsidiary with a virtually identical name. *Id.* The court held that the parent company was liable on the guaranty, stating that “the identities are so confused and intermingled as to result in probable fraud upon third persons dealing with the corporations or either of them, whether fraud be actually intended or not.” *Id.*

Similarly, in *Morgan Bros., Inc. v. Haskell Corp., Inc.*, 24 Wash. App. 773, 604 P.2d 1294 (1979), the Haskell Corporation brought an action to recover money it had paid for flanges that turned out not to be as specified. Quotation, acceptance, delivery and invoicing were in the name of Hanson’s Pipe, while much of the written and oral communication was in the name of Hanson’s, Inc. Haskell sued both entities. *Id.* at 774-76. At trial it was established that Hanson's Pipe was a subsidiary of Hanson's, Inc. *Id.* Before the trial ended, Hanson's Pipe became involved in bankruptcy proceedings. *Id.* Haskell requested permission to proceed

solely against Hanson's, Inc. on a theory of corporate disregard. The trial court found that Haskell had reasonably relied on Hanson's, Inc. as the apparently responsible party, and allowed Haskell to obtain a judgment against Hanson's, Inc. *Id.* at 778. In addition, both entities were represented by the same counsel, shared common directors, officers, and principal shareholders, and seemed to act as one enterprise. *Id.*

The same elements supporting corporate disregard are present here. RSL and RSL-3B have an identity of control and ownership. There has been such an intermingling and confusion of their identities so as to result in probable fraud upon payees, the courts, and obligors and issuers, and the transactions between RSL and RSL-3B are set up so that the liability and the assets reside in separate entities, thereby defrauding any potential creditors.

1. Identity of Ownership and Control and Transfer of Assets to Avoid Creditor Claims

RSL and RSL-3B share an identity of beneficial ownership and control. RSL is a registered Texas domestic limited partnership, with a principal place of business at 5051 Westheimer, Suite 1875, Houston, TX 77056. CP 425. RSL's general partner is "Rapid Management Corporation." CP 427-430. RSL's registered agent is Stewart Feldman. CP 425. Mr. Feldman also signed Symetra's garnishment interrogatories

as a representative of RSL, when he claimed it had no assets. CP 228-231. Mr. Feldman is listed as the President, Secretary, Treasurer, CEO, and Director of Rapid Management Corporation. CP 433-441.

RSL-3B is a registered Texas domestic limited partnership, with the same principal place of business as RSL. CP 445. Rapid Management Corporation represented itself to the courts in Washington SSPA transfer applications as “the general partner of Rapid Settlements Ltd. and RSL-3B-IL, Ltd.” CP 348. Accordingly, the ownership of both entities has been held out to third parties as identical. Other documents at the Texas Secretary of State provide that “RSL-3B-IL Management Corporation” is the general partner of RSL-3B, whose principal place of business is also 5051 Westheimer, Suite 1875, Houston, TX. CP 446. RSL-3B-IL Management Corporation is a Texas for-profit corporation that listed Mr. Feldman as the Director, President, Secretary and Treasurer. CP 457. Mr. Feldman is also the registered agent for RSL-3B. CP 445.

The only name on the door of the business located at Suite 1875 is “Rapid Settlements, Ltd.” CP 241-242. When the business was visited in January 2010, by Mr. Paul J. Brown, an attorney in Texas attempting to collect a debt owed by RSL to his client, the business contained numerous documents, checks, and operation manuals that were labeled “Rapid Settlements, Ltd.” CP 242. Yet Mr. Brown was told by Mr. Feldman that

none of the assets on the premises belonged to Rapid Settlements, Ltd. CP 242. The employees at the location identified themselves as “Rapid” employees. *Id.*

In responding to the creditor’s efforts to execute on property located at the 5051 Westheimer, Suite 1875, Houston, TX address, Mr. Feldman represented to the court that the assets at that location actually belonged to yet another Rapid entity, RSL Funding, LLC, and the Feldman Law Firm LLC. CP 256. An affidavit filed in that case by the controller of RSL asserted that RSL had no tangible assets “as of December 31, 2009,” in response to the creditor’s January 19, 2010, effort to recover assets. CP 264. Yet, when RSL, through Mr. Feldman, responded to Symetra’s interrogatories in March 2009, it claimed to have no assets as early as March of 2009. CP 228-31.

While identity of ownership and control will not in itself justify disregard of a corporate entity, the veil will be pierced “where a single party controls several corporations and transfers assets of one into another in order to place them beyond the reach of legitimate creditors[.]” 1 *Fletcher Cyclopedia Corporations*, § 43.20, at p. 768 (1990). That is, the “creditor of an insolvent corporation may properly recover from the debtor’s corporate affiliate where the various corporations are operated under common ownership and unified management, are essentially

engaged in the same or supplementary business, [and are] sharing a single asset or pool of assets among the subdivisions[.]” *Id.*

In this case, there is a clear identity of control and ownership between RSL and RSL-3B, as Mr. Feldman is the beneficial owner, sole director and controlling officer of all of the entities.¹⁵ Moreover, Rapid Management Corporation held itself out to third parties as the general partner of both RSL and RSL-3B. RSL and RSL-3B share a common enterprise; obtaining structured settlement payments from payees. The address associated with RSL-3B is identified as belonging to RSL. Employees at that address did not identify themselves as belonging to any particular “Rapid” company. Assets at that address, including checks, were identified as belonging to RSL, yet were claimed by the sole director and controlling officer of the entities to have been transferred to another Rapid entity, less than two weeks before the writ of execution was served. Yet, when Symetra inquired of RSL about its assets, a full nine months before, RSL claimed it had no assets, but had transferred them to “Liquidated Marketing.” RSL-3B claims RSL assigned to it the right to the Reihls payment, but there is no evidence of an assignment or payment between RSL and RSL-3B for the Reihls transaction. Nor was any payment for such alleged assignment disclosed to the payee as required on

¹⁵ He is the controlling officer and owner of both general partnerships. CP 425-66.

the disclosure statement filed with the court and provided to the payee. RCW 19.205.020; CP 100-102. The trial court correctly ruled there is substantial evidence to find that RSL and RSL 3-B share common control and ownership and that assets were transferred between the entities to avoid the claims of creditors arising out of the very transactions in which both RSL and RSL-3B were engaged.

2. The Corporate form of RSL and RSL-3B is Used to Defeat the Rights of Innocent Parties.

In the underlying Reihis transfer, RSL entered into a Transfer Agreement and an Amended Transfer Agreement with Mr. Reihis. In those Agreements, RSL retains the right to assign, without consent, its rights under the Agreement, and upon assignment, RSL is to be “fully discharged of all liability thereunder.” CP 029-30, 082-83.

RSL and RSL-3B (along with other Rapid companies) have repeatedly used this last-minute “assignment” scheme in the Washington courts. Rapid entities routinely seek to shift the payments from RSL to a number of other Rapid entities, such as RSL-3B-IL, RSL Special IV Ltd., and RSL 5-B-IL. Each of these entities lists its address as 5051 Westheimer, Suite 1875, Houston, TX and all are run by Mr. Feldman. CP 316-21, 336-348, 445. RSL incurs the liability by entering into the transfer with the payee and making the transfer applications under the

SSPA, and the other Rapid entities receive the payments in a behind-the-scenes assignment, the details of which are never disclosed to the payee, the annuity issuer, the obligor, or the court, and which is never directly approved by the court.

RSL has filed 15 applications for transfer of structured settlement payments in Washington. CP 285-301. In each of these cases, RSL acted as the transferee by entering the purchase and sale agreement with the payee, notifying the parties, and providing the required disclosures and filing the transfer application; yet RSL then “assigned” the payments to a different Rapid entity. CP 287-379. This includes the *Thompson* application—the transaction leading to the 2008 Judgment against RSL. RSL “assigned” the Thompson payment to RSL-3B-IL, Ltd. under an order substantially similar to the one at issue here. CP 375-379. Notably, in the Washington orders RSL, as transferee, assumes and retains the liability as to third parties, while another Rapid entity receives the payment. In this way, the Rapid entities are able to separate the assets from the liabilities.¹⁶

¹⁶ See, e.g., CP 320 (“Rapid Settlements Ltd. and its successors and assigns (but not RSL Special-IV or its successors and assigns) shall defend, indemnify and hold harmless”); CP 331-332 (“Rapid shall defend, indemnify and hold harmless” but that the payment should be forwarded to RSL-5B-IL, Ltd.); CP 153-157 ;CP 312-314, CP 324, 344, 356.

The entities' bait-and-switch tactics are further revealed by the argument of RSL's counsel in the Thompson case. There, in an effort to obtain the court's approval of the transfer, RSL argued that under Washington's SSPA it was the transferee and therefore retained the liability imposed by the Act for the benefit of the obligor/issuer. RSL's counsel also argued that the discharge of liability in the transfer agreement (the **same one** that appears in the Reihls agreement)¹⁷ could not be overridden by the SSPA. RSL-3B became the assignee for the Thompson payment, yet never claimed to be the transferee under the SSPA and therefore never undertook liability for the 2008 Judgment.

RSL-3B was not a party to the Reihls proceedings. Yet after Symetra asserted its right to offset on its judgment against RSL, RSL-3B asserted that RSL-3B is the transferee under the SSPA and therefore is entitled to payment, a position that is contrary to the law and the terms of the 2005 Order, as described above. This position is also directly contrary to the argument made by RSL in Thompson, even though RSL and RSL-3B have the same relationship in both the Reihls and Thompson transfers. The only reason for RSL-3B to claim it is the SSPA transferee in Reihls,

¹⁷ In the Transfer Agreement and Amended Transfer Agreement with Mr. Reihls, RSL retained the right to assign, without consent, its rights under the Agreement, and upon assignment, RSL is to be "fully discharged of all liability thereunder," without liability attaching to the assignee. CP 29-30, 82-83.

while not claiming to be the SSPA transferee in Thompson, is to use the entities' corporate forms to avoid liability. This, together with the substantial evidence that assets are transferred between the entities in order to avoid the claims of creditors, is ample support for the trial court's ruling.

Further, where the identities are so confused and intermingled as to result in probable fraud upon third persons dealing with the corporations, whether fraud be actually intended or not, then disregard will apply. *Dummer v. Wheeler Osgood Sales Corp.*, 198 Wash. 381, 391, 88 P.2d 453 (1939). In this case, RSL and RSL-3B are virtually interchangeable in the 2005 Order. RSL and RSL-3B also made no effort to distinguish between themselves when dealing with the payee, Mr. Reih. In addition, there is substantial evidence other than common ownership and control supporting a finding that RSL and RSL-3B should be treated as one and the same for equitable purposes.¹⁸

RSL-3B also argues that the lack of evidence that corporate records of formalities were not kept alone forecloses a finding of alter ego. Appellant's Corrected Brief, at 34. The case cited by RSL-3B to support

¹⁸ In *Minton*, 146 Wn.2d at 399, cited by RSL-3B to support its common ownership argument, the court found that piercing the corporate veil was inappropriate because the plaintiff had not asserted that the companies were attempting to perpetrate a fraud on a third party by maintaining separate identities. In this case, there is substantial evidence that the intermingling of RSL and RSL-3B are perpetrating a probable fraud upon third parties by using the bait and switch tactics described above.

this statement, *Grayson v. Nordic Construction Co.*, 92 Wn.2d 548, 553, 599 P.2d 1271 (1979) does not stand for that proposition. Nowhere in that opinion does the court state that the maintenance of corporate formalities alone is sufficient to defeat a claim for piercing the veil. Instead, the court holds that a corporation should be respected as a separate entity when the shareholders who are also officers and directors “conscientiously keep the affairs of the corporate separate from their personal affairs, and no fraud or manifest injustice is perpetrated upon third persons who deal with the corporation[.]” *Id.* at 553. The present case is unlike *Grayson* in that both companies have participated in tactics designed to obfuscate transfers that are required to be approved by the court in order to keep legitimate creditors from ever collecting a judgment. In this case, there need not be evidence that the corporate “formalities” were not followed because there is substantial evidence that RSL and RSL-3B have been working together to perpetrate an injustice upon third parties.

In sum, the trial court did not abuse its discretion and correctly concluded that RSL and RSL-3B were one and the same, for the purpose of allowing Symetra to offset the Thompson Judgment against the Reihls payment.

E. Due Process is Satisfied

RSL-3B argues that it has suffered due process hardships, asserting improper service of the motion to modify the 2005 Order, that it was not allowed to conduct discovery, that it was not given a jury trial on the issue of alter ego, and that Texas law should apply instead of Washington law. Each of these arguments is without merit.

1. RSL-3B Had No Interest in the Proceedings and by Intervening, Waived Any Objection to Improper Service.

RSL-3B was not a party to the underlying action. RSL-3B also had no interest in the proceedings because it was not the transferee and Symetra's obligation ran to RSL. Accordingly, it was not entitled to service of the notice of the motion to revise the 2005 Order. Nevertheless, a copy of the motion was faxed and mailed to Mr. Feldman, RSL-3B's registered agent and CEO, on June 4, 2010. RP 18.

RSL-3B *chose* to intervene in the action and subjected itself to the court's jurisdiction. *John v. Sotherby's, Inc.*, 141 F.R.D. 29, 37 (S.D.N.Y. 1992) (by moving to intervene in the action, the defendant consented to personal jurisdiction); *Glinka v. Abraham and Rose Co. Ltd.*, 199 B.R. 484, 496 (D. Vt. 1996) (a motion to intervene is fundamentally incompatible with an objection to personal jurisdiction). Once a CR 24 intervention has been allowed, no new Rule 4 service of process is

necessary to require the parties who are already a part of the action to answer. See, e.g., *Breland v. Smith-Johnson, Inc.*, 501 So. 2d 389, 392 (Miss. 1987) (formal service of summons and complaint by intervenor was unnecessary).

Washington courts often look to similar federal rules of civil procedure for guidance in interpreting the Washington rules of procedure. *Biggs v. Vail*, 124 Wn.2d 193, 196-97, 876 P.2d 448 (1994). While no Washington court has dealt with this particular intervention question, the majority of federal courts have found that a party who intervenes is a voluntarily participant in the action and “assume[s] the risk that the court could order relief or enter judgment against it.” *Intrepid Potash-New Mexico, LLC v. U.S. Dept. of Interior*, 669 F. Supp. 2d 88, 91 (D. D.C. 2009). Parties who intervene in an action waive their right to object to venue and personal jurisdiction having voluntarily interjected themselves into the litigation in that forum. *Trans World Airlines, Inc. v. C.A.B.*, 339 F.2d 56, 63-64 (2nd Cir. 1964); 6 Moore’s Federal Practice, 24.22[3] (3d Ed.). A motion to intervene is fundamentally incompatible with an objection to personal jurisdiction. *Pharm. Research and Mfrs. of Am. v. Thompson*, 259 F. Supp. 2d 39, 59 (D.D.C. 2003); 7C Wright, Miller & Kane, § 1920, at 490.

In this case, RSL-3B received actual notice of the motion and intervened in the action. Under Washington law, this is sufficient to forestall any arguments of fair play and substantial justice associated with lack of notice or services. *See, e.g., Lenzi v. Redland Ins. Co.*, 140 Wn.2d 267, 276, 996 P.2d 603 (2000). For example, in *Lenzi v. Redland Ins. Co.*, the insureds sought a declaration that their underinsured motorist insurer was bound to pay a default judgment that had been entered against an uninsured tortfeasor. *Id.* The insurer argued that it had only received a mailed copy of the summons and complaint for the suit against the tortfeasor, and was not actually “served” with the pleadings so had not received “perfected” notice. *Id.* at 275. The court rejected this argument, stating that receipt of the summons and complaint “alerts a potential party there is a lawsuit afoot.” *Id.* The insurer had knowledge of the litigation, had an interest in the outcome, and was obligated to protect its position and could have done so by intervening. *Id.* Receipt of the pleadings alone was sufficient to comport with “notions of fair play and substantial justice.” *Id.* See also *Rosander v. Nightrunner Transp. Ltd.*, 147 Wn. App. 392, 401, 196 P.3d 711 (2008).

RSL-3B received actual notice of the motion and intervened in the case. It was afforded an opportunity to present its objections and was heard. Due process is satisfied. *Id.* at 402.

RSL-3B also waived the defense of insufficient service of process by failing to assert it either in a responsive pleading or in a motion under CR 12(b). *French v. Gabriel*, 57 Wn.App. 217, 220, 788 P.2d 569 (1990). Here, in the first pleading filed by RSL-3B, the Motion to Intervene, RSL-3B failed to raise and preserve the issue of service of process. CP 390-392. It did not raise due process and service arguments until it filed its Opposition to Motion for Modification on July 7, 2010, two days ahead of the hearing. CP 402. Its objection to improper service of process is waived.

RSL-3B also argues that due process was violated because the requirements in CR 60(e) were not strictly complied with. However, case law does not require strict compliance with CR 60(e) if the purpose of CR 60(e) has been met, which is ensuring that the opposing party receives adequate notice of the basis for the action, the time and place of the hearing, and the opportunity to be heard. *See Griggs v. Averbek Realty, Inc.*, 92 Wn.2d 576, 583, 599 P.2d 1289 (1979); *Lindgren v. Lindgren*, 58 Wn. App. 588, 593-94, 794 P.2d 526 (1990) (mere technical errors in filing CR 60 motion is harmless error when opponent had adequate notice, sufficient time to prepare, and a meaningful opportunity to be heard).

In this case, RSL-3B received actual notice of the motion and the hearing, RSL-3B chose to intervene, RSL-3B submitted an opposition and

RSL-3B was heard at the hearing. Further, RSL-3B requested and was granted an extension of the motion hearing date by Symetra. RP 15-16. Any technical errors were harmless because RSL-3B had notice, time to prepare a response, and an opportunity to be heard.

RSL-3B also is unable to provide one example of how it has been prejudiced. RSL-3B chose to submit only one declaration with its opposition. While RSL-3B submitted additional affidavits in support of its Motion for Reconsideration, none of the facts in those affidavits were unavailable at the time of the hearing. Both affiants were corporate officers of RSL-3B and RSL, so there was no newly discovered evidence after the hearing. All necessary evidence was available RSL-3B, who chose what to present to the trial court.

2. RSL-3B Had No Right to Trial or Discovery

RSL-3B argues for the first time on appeal that had a right to a trial by jury as to the question of alter ego. RSL-3B never made this argument before the trial court and therefore it is untimely and waived on appeal. *Ford Motor Co. v. Barrett*, 115 Wn.2d 556, 563, 800 P.2d 367 (1990). It is also not permissible under Washington law.

A party is not entitled to a jury trial if the relief sought is equitable in nature. *Brown v. Safeway Stores*, 94 Wn.2d 359, 365, 617 P.2d 704 (1980). Proceedings under CR 60 are “equitable in nature” and the court

should exercise its authority liberally to preserve substantial rights and do justice between the parties. *In re Hardt*, 39 Wn. App. 493, 496, 693 P.2d 1386 (1985). Nor is live testimony required. *Roberson v. Perez*, 123 Wn. App. 320, 331, 96 P.3d 420 (2004); CR 60(e). There is also no right to have a jury determine the equitable remedy of corporate disregard. *Thomas V. Harris*, 56 Wash. L. Rev. 262-63 (1980); *Eagle Pac. Ins. Co. v. Christensen Motor Yacht Corp.*, 85 Wn. App. 695, 707-08, (1997); *Sommer v. Yakima Motor Coach Co.*, 174 Wash. 638, 649, 659, 26 P.2d 92 (1933).

RSL-3B also argues that it should have been allowed to conduct discovery. Nothing in CR 60 requires the court to allow discovery before exercising its equitable powers, and RSL-3B points to no cases stating otherwise. In addition, RSL-3B spends an inordinate amount of time arguing that it was not allowed discovery, but fails to name any evidence that it wanted or needed in discovery in order to respond to the motion. RSL-3B was in the control of all documents relating to RSL-3B and had access to all of RSL's documents, because the president of RSL, Stewart Feldman, is also the president of RSL-3B.

3. Washington Law, Not Texas Law, Applies

RSL-3B argues that the trial court abused its discretion by not applying Texas law. Appellant's Correct Brief, at 39. This argument was

not raised before the trial court and should not be considered on appeal. *Sorenson v. Pyeatt*, 158 Wn.2d 523, 543, 146 P.3d 1172 (2006). However, even if this Court were to consider this argument, the Court should find that Washington law applies.

When parties dispute choice of law, there must be an actual conflict between the laws before Washington courts will engage in a conflict of laws analysis. *Seizer v. Sessions*, 132 Wn.2d 642, 648, 940 P.2d 261 (1997). If an actual conflict of laws exists, the court then determines which jurisdiction has the “most significant relationship” with a given issue. *Id.* at 650.

Even if Texas law presents an actual conflict,¹⁹ the state with the most significant relationship to this matter is Washington.²⁰ In addition, the 2005 Order specifically provides that it is subject to and governed under Washington law. CP 111. Each of these connections with the State

¹⁹ RSL-3B misstates the application of Texas law. None of the corporate disregard cases cited by RSL 3-B relate to the situation here--two related limited partnerships. And, while the Texas Insurance Code exempts annuity benefits from attachment, it applies only to benefits to be provided to “an insured or beneficiary under ...an annuity or benefit plan used by an employer or individual.” Tex. Ins. Code § 1108.051. RSL-3B is neither an individual nor an employer nor the insured nor the beneficiary under such a plan.

²⁰ The reasons being the following: (1) the 2008 Judgment is a Washington judgment; (2) RSL filed the Reih's application in Washington; (3) the 2005 Order is a Washington order; (4) Mr. Reih's is a Washington resident; (5) Symetra Life and Symetra Assigned are Washington corporations; and (6) RSL and RSL-3B have significant contacts with the State of Washington, frequently conduct business in Washington, and make use of Washington courts.

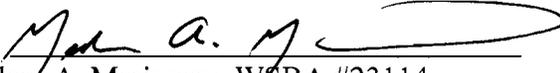
of Washington supports the application of Washington law over Texas law.

V. CONCLUSION

RSL-3B 's appeal should be denied. The trial court did not abuse its discretion in granting Symetra's motion to modify the court's 2005 Order because the 2008 Judgment and RSL's evasion of collection justified the equitable setoff of the payment due under the 2005 Order. The trial court correctly determined Symetra's payment obligation was to RSL under the SSPA and the Reih's order and further that substantial evidence showed that RSL and RSL-3B were one in the same for the purposes of the setoff. Last, RSL-3B was afforded due process and an opportunity to be heard. RSL-3B failed to point to any evidence of prejudice and failed to request and is not entitled to a jury trial. The appeal should be denied.

RESPECTFULLY SUBMITTED this 16th day of September, 2011.

KARR TUTTLE CAMPBELL

By: 
Medora A. Marisseau, WSBA #23114
Attorney for Symetra Life Insurance
Company and Symetra Assigned Benefit
Services Company

No. 297438

COURT OF APPEALS, DIVISION III,
OF THE STATE OF WASHINGTON

In Re RAPID SETTLEMENTS, LTD'S Application for
Transfer of Structured Settlement Payment Rights

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington, that the following is true and correct:

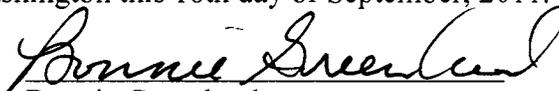
That on September 16, 2011, I arranged for service of the foregoing SYMETRA'S FIRST MOTION TO EXTEND BRIEFING SCHEDULE to the court and to the parties to this action as follows:

Office of the Clerk	_____	Facsimile
Court of Appeals – Division III	X	Messenger
500 N. Cedar St.	_____	U.S. Mail
Spokane, WA 99201	X	Overnight Mail

Matthew W. Daley	_____	Facsimile
Witherspoon Kelly P.S.	X	Messenger
422 West Riverside Ave.	X	U.S. Mail
Suite 1100	_____	Overnight Mail
Spokane, WA 99201		

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

Dated at Seattle, Washington this 16th day of September, 2011.


Bonnie Greenlund