

FILED

OCT 21 2011

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 298728

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

WASHINGTON MOTORSPORTS LIMITED PARTNERSHIP, a/k/a
Washington Motorsports, Ltd., by and through Barry W. Davidson, in his
capacity as Receiver and as Acting Managing General Partner,

Plaintiff/Respondent,

v.

SPOKANE RACEWAY PARK, INC., a Washington for profit
corporation and General Partner of Washington Motorsports Limited
Partnership,

Defendant, and

JEROME SHULKIN, Appellant.

BRIEF OF RESPONDENT WML

REED & GIESA, P.S.
JOHN P. GIESA, WSBA #6147
AARON D. GOFORTH, WSBA #28366
Attorneys for Respondent Washington Motorsports Ltd.
222 North Wall Street, Suite 410
Spokane, WA 99201
Telephone: (509) 838-8341
Facsimile: (509) 838-6341

FILED

OCT 21 2011

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 298728

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

WASHINGTON MOTORSPORTS LIMITED PARTNERSHIP, a/k/a
Washington Motorsports, Ltd., by and through Barry W. Davidson, in his
capacity as Receiver and as Acting Managing General Partner,

Plaintiff/Respondent,

v.

SPOKANE RACEWAY PARK, INC., a Washington for profit
corporation and General Partner of Washington Motorsports Limited
Partnership,

Defendant, and

JEROME SHULKIN, Appellant.

BRIEF OF RESPONDENT WML

REED & GIESA, P.S.
JOHN P. GIESA, WSBA #6147
AARON D. GOFORTH, WSBA #28366
Attorneys for Respondent Washington Motorsports Ltd.
222 North Wall Street, Suite 410
Spokane, WA 99201
Telephone: (509) 838-8341
Facsimile: (509) 838-6341

TABLE OF CONTENTS

	<u>Page</u>
1. INTRODUCTION	1
a. Identity of Respondent/Plaintiff (Washington Motorsports Limited Partnership), Appellant (Jerome Shulkin), and Defendant (Spokane Raceway Park, Inc.)	1
b. Brief Background	2
2. ASSIGNMENTS OF ERROR	3
3. ISSUES PRESENTED FOR REVIEW	4
4. STATEMENT OF THE CASE	5
5. ARGUMENT	19
A. Standard of Review	19
B. The Trial Court Properly Sanctioned Shulkin Under CR 26(g)	20
C. Shulkin’s Arguments	24
i. Sanctions for violations of CR 26(g) are allegedly discretionary, not mandatory.	25
ii. The trial court allegedly already sanctioned Moe relating to the discovery requests at issue.	27
iii. Shulkin’s co-counsel, David Miller, allegedly provided a version of the discovery responses that differed from those “certified” by Shulkin.	27
iv. Shulkin’s request for an award of attorneys’ fees relating to the Court’s Motion to Dismiss Shulkin’s appeal as untimely.	28

D.	WML Should be Awarded its Reasonable Attorneys' Fees and Costs Pursuant to RAP 18.1	29
6.	CONCLUSION	31

TABLE OF AUTHORITIES

	<u>Page</u>
<u>Table of Cases</u>	
<i>Amy v. Kmart of Washington LLC</i> , 153 Wn. App 846 (2009)	21, 22
<i>Burnet v. Spokane Ambulance</i> , 131 Wn.2d 484 (1997)	26
<i>Carlson v. Lake Chelan Cmty. Hosp.</i> , 116 Wn. App 718 (2003)	25, 26
<i>Deutscher v. Gabel, D.O.</i> , 149 Wn. App. 119 (2009)	26
<i>In re Estate of Jones</i> , 152 Wn.2d 1 (2004)	4
<i>In re Firestorm 1991</i> , 129 Wn.2d 130 (1996)	23
<i>Johnson v. Mermis</i> , 91 Wn. App. 127 (1998)	30
<i>Magana v. Hyundai Motor Corp.</i> , 167 Wn.2d 570 (<i>en banc</i> 2009)	19, 20, 29, 30
<i>Mayer v. Sto Indus., Inc.</i> , 156 Wn.2d 677 (2006)	26
<i>Perry v. Costco Wholesale, Inc.</i> , 123 Wn. App 783 (2004)	25, 26
<i>Physicians Ins. Exch. v. Fisons Corp.</i> , 122 Wn.2d 299 (1993)	3, 5, 18, 20, 21, 22, 23, 25, 31
<i>Willener v. Sweeting</i> , 107 Wn.2d 388 (1986)	4

Table of Statutes

RCW 7.60.190(2) 1

Table of Rules

CR 11 14

CR 11(b) 14

CR 26 26

CR 26(b) 14

CR 26(f) 26

CR 26(g) *Passim*

CR 37(a)(3) 22

CR 37(b) 19, 26

CR 37(b)(2) 26

CR 37(d) 30

CR 54(b) 19

GR 14.1 30

LCR 37(a) 15

RAP 2.5(a) 24

RAP 10.3(g) 4

RAP 14.2 30

RAP 18.1 25, 29

RAP 18.1(a) 29

RAP 18.1(b) 29

RAP 18.1(d)..... 5, 31

RAP 18.1(i) 31

RAP 18.8(b) 29

RAP 18.9(a) 5, 30

1. INTRODUCTION

a. **Identity of Respondent/Plaintiff (Washington Motorsports Limited Partnership), Appellant (Jerome Shulkin), and Defendant (Spokane Raceway Park, Inc.)**

The underlying lawsuit (the “Receivership Case”) is between Respondent/Plaintiff, Washington Motorsports Limited Partnership (“WML”), and the Defendant Spokane Raceway Park, Inc. (“SRP”). The Appellant, Jerome Shulkin (“Shulkin”), is the attorney who represented Orville Moe (“Moe”) (a nonparty) in relation to the award of sanctions against Shulkin for certifying certain supplemental proceedings discovery responses of Moe in violation of CR 26(g).

At one time, Moe was the President and majority shareholder of SRP. Moe was not named as a party in the Complaint (or the amendments thereto), but after Barry W. Davidson was appointed as Receiver and as Acting Managing General Partner over WML, Moe appeared in the case, through his own counsel, pursuant to a provision in Washington’s Receivership Statute, RCW 7.60.190(2). Numerous other persons have similarly appeared although they were not named as parties.

SRP controlled WML as its general partner for 34 years, until July 1, 2005, when it was removed from that position by Superior Court Judge

Robert D. Austin and replaced by the Receiver. After appointment of the WML Receiver, Moe (as President of SRP) caused SRP to file a Chapter 11 bankruptcy petition in August of 2006. Almost immediately thereafter, upon motion by the Receiver, the United States Bankruptcy Court for the Eastern District of Washington removed Moe from control of the debtor in possession (SRP) and John Munding was appointed as SRP's Chapter 11 trustee.

b. Brief Background

WML is in the process of attempting to collect a judgment against Moe in excess of \$373,000 entered in September of 2008. As a part of that process, in November of 2009, the trial court ordered Moe to answer written supplemental proceedings discovery. Moe disobeyed that order and several additional orders to provide proper answers to that discovery.¹ He did provide improper answers to that discovery on several occasions (one of which was “certified” by Shulkin) which the trial court found to be “untimely, incomplete and evasive....”

¹ Moe continued to disobey the trial court’s orders despite the threat of (and ultimately the imposition of) a \$2,000.00/day remedial sanction and the issuance of a bench warrant for Moe’s arrest. The bench warrant was ultimately lifted on July 28, 2011, when Moe appeared in Court for a supplemental proceedings deposition (CP 592), but this was not until after Judge Plese had entered another judgment against the Moes for in excess of \$750,000.00 in additional remedial sanctions. CP 585-591.

In December of 2010, Moe submitted yet another set of discovery responses which were improperly “certified” by Shulkin. Those discovery responses were virtually identical to those the trial court had already found to be “untimely, incomplete and evasive....”

WML’s counsel conducted a “meet and confer” with Shulkin in an effort to avoid a motion to compel, but Shulkin failed to take advantage of that opportunity. As such, upon motion by WML, the trial court properly considered and applied the *Fisons*² factors and sanctioned Shulkin for the attorneys’ fees and costs that WML incurred in relation to Shulkin’s improper certification of those discovery responses.

2. ASSIGNMENTS OF ERROR

WML does not make any assignments of error.

Shulkin’s alleged “Assignments of Error” are difficult to understand. He does not cite any of the trial court’s findings of fact or conclusions of law, or any other portion of the Orders or Judgment at issue. As such, Shulkin did not assign error to any of the trial court’s findings of fact made in support of the orders for sanctions against him (CP 195-201, CP 202-

² *Washington State Phys. Ins. Exch. & Assoc. et al. v. Fisons Corp.*, 122 Wn.2d 299, 345, 356 (1993).

206)³ which form the bases of the Judgment at issue in this appeal (CP 212-216),⁴ nor has Shulkin made any attempt to show the finding of fact were not supported by substantial evidence. *Willener v. Sweeting*, 107 Wn.2d 388, 393 (1986). See Brief of Appellant Shulkin, p.3. RAP 10.3(g).⁵ As such, the trial court's findings of fact are verities for this appeal, *In re Estate of Jones*, 152 Wn.2d 1, 8 (2004), and are fatal to his appeal. Such facts from the Order granting sanctions (CP 195-201) are referenced herein as "Unchallenged FF ___".

3. ISSUES PRESENTED FOR REVIEW

Shulkin's alleged "Issues Pertaining to Assignments of Error" are also difficult to understand. WML states the issues presented for review are as follows:

a. Did the trial court abuse its discretion in sanctioning Shulkin for the attorneys' fees and costs that WML incurred in relation to Shulkin's

³ These Orders are also attached hereto as Appendices 2 and 3 for ease of reference.

⁴ The Judgment is also attached hereto as Appendix 4 for ease of reference.

⁵ RAP 10.3(g) provides in relevant part as follows: "A separate assignment of error for each finding of fact a party contends was improperly made must be included with reference to the finding by number. The appellate court will only review a claimed error which is included in an assignment of error or clearly disclosed in the associated issue pertaining thereto." (Emphasis added)

improper certification of discovery responses in violation of CR 26(g) considering that: (1) the discovery responses were deficient on their face; (2) the discovery responses were almost identical to prior responses certified by Shulkin that the trial court had already determined were “untimely, incomplete and evasive”; (3) WML’s counsel had a proper meet and confer with Shulkin, and he failed to remedy the deficiencies; and (4) the trial court properly considered and applied the *Fisons* factors prior to issuing the sanctions at issue?

b. Should this Court award WML its attorneys’ fees and costs incurred in defending this appeal, pursuant to RAP 18.1(d), RAP 18.9(a), and/or CR 26(g), where applicable law grants WML a right to recover such fees and costs, and where Shulkin’s appeal is frivolous in that it fails to offer any reasonable basis as to how the trial court abused its discretion.

4. STATEMENT OF THE CASE

For context of the underlying case and the sanctions at issue in this appeal, a somewhat lengthy background relating thereto is provided.

Despite its length, the following is the “abridged” version.⁶

⁶ Shulkin provides virtually no background of the case or the sanctions at issue in his “Statement of the Case.” Shulkin only generally refers this Court to review

WML's Receivership Case has been pending since 2003. The Superior Court file contains over 2,100 filings. Judge Robert D. Austin presided over WML's Receivership case from its inception in 2003 to the end of 2009. Judge Annette S. Plese has presided over WML's Receivership case from the beginning of 2010 to the present.⁷ The Receivership Case is ongoing.

Spokane Raceway Park, Inc. ("SRP") is the Defendant in WML's Receivership Case. SRP is the former general partner of WML. CP 288. Moe is the former president of SRP.⁸ *Id.* Moe was removed from any

"Docket No. 54 through Docket No. 1248," (Shulkin's Brief, p.4) but he did not designate any of those pleadings as Clerk's Papers.

⁷ This Court is familiar with WML's Receivership Case and Moe. There have been at least fourteen motions for discretionary review/notices of appeals connected with that case to date. *See* Division III case nos. 24102-5, 24378-8, 25947-1 (adjunct case), 26331-2, 26334-7, 26592-7, 27076-9 (arising out of an attempted appeal in another case by Deonne Moe of an order entered in the Receivership Case), 27747-0, 27816-6, 27898-1, 28477-8, 29028-0, 29792-6, and 29872-8 (this appeal).

⁸ At least ten (10) attorneys have appeared for Moe (either individually or for SRP while he still had control thereof) during this case, including the following Robert Kovacevich (for SRP), Carl Oreskovich (for SRP), Bruce Boyden (to file a Chapter 11 Petition for SRP), Mark Vovos, William Baker, Donna Boris (*pro hac vice*), Aaron Lowe, Jerome Shulkin, Robert Christie, and David Miller. All have withdrawn (some citing ethical issues). Moe has also recently attempted to utilize the services of Terry-Lee (a non-lawyer) to draft pleadings on his behalf. *See* Division III Case No. 29792-6. In fact, the trial court entered a Cease and Desist Order prohibiting Terry-Lee from, among other things, continuing to engage in the unauthorized practice of law. CP 583.

further control of SRP by the United States Bankruptcy Court, after Moe caused it to file for protection under Chapter 11 of the Bankruptcy Code. John D. Munding was appointed as SRP's Chapter 11 Trustee. CP 319.

After a lengthy evidentiary hearing/trial (14 trial days over a seven-month period / fourteen witnesses / over 100 exhibits)(CP 287), Judge Austin appointed Barry W. Davidson as WML's Receiver and Acting Managing General Partner in July of 2005, thereby removing SRP and Moe from any further control of WML. CP 303-305, and CP 307-310.

Judge Austin also tasked the Receiver with, among other things, a duty to reconstruct WML's partnership register (identifying owners, addresses, unit numbers, etc.) (CP 308-309), since Moe had failed to properly do so. CP 290, ¶11. The Receiver was also tasked with investigating self-dealing and fraud by Moe and his family relating to the acquisition and sale of WML units. CP 309, ¶b.

As a part of that process, the Court ordered Moe to turn over certain documents to WML's Receiver (including documents regarding his claims of ownership of WML Partnership units). *E.g.*, CP 312-313. Moe disobeyed multiple orders to produce documents. CP 330-336.

Based upon Moe's repeated disobedience of Court Orders, and based upon a prior remedial sanction order that Moe would be sanctioned \$1,000.00 per day for every day Moe continued to wrongfully withhold documents from WML, on September 19, 2008, Judge Robert Austin entered a Final Judgment in the amount of \$373,626.10 against Moe for his contempt of numerous court orders to produce documents, etc. Unchallenged FF 1 (CP 196); *see also* CP 330-336. That Judgment was affirmed by the Division III Court of Appeals. Unchallenged FF 2 (CP 196); *see also* CP 416-428.⁹

As a part of WML's efforts to collect that judgment, on November 16, 2009, Judge Austin entered an "Order Requiring Orville L. Moe to Answer Plaintiff's First Supplemental Interrogatories and Requests for Production Propounded to Orville L. Moe" within 30 days of service thereof. Unchallenged FF 3 (CP 196); *see also* CP 337-338. On February 8, 2010, Moe filed untimely responses to that discovery. Unchallenged FF 4 (CP 196); *see also* CP 339-374. Shulkin signed a "certification" of those answers (Unchallenged FF 4, CP 196), although he

⁹ On June 21, 2011, the trial court entered a final judgment against Orville and Deonne Moe in excess of \$750,000.00 based upon additional remedial sanctions relating to Moe's refusal to obey court orders. CP 585-591. That Judgment was not appealed by the Moes.

tried to limit the scope of his certification by adding an illegible statement thereto. CP 159.¹⁰ The trial court ruled that those answers were “untimely, incomplete and evasive...” Unchallenged FF 4; *see also* CP 408-409. Despite Shulkin’s improper certification of those “incomplete and evasive” answers, WML did not seek sanctions against Shulkin relating to his signing thereof.

On February 16, 2010, the trial court (*ex parte* department) entered an Order for Supplemental Proceedings, requiring Moe to sit for a deposition on February 25, 2010. CP 375-377. That deposition was moved to March 15, 2010 to accommodate Shulkin’s schedule. Moe failed, however, without proper justification, to attend that deposition. CP 391, ¶15.

On April 29, 2010, the trial court entered another Order for Supplemental Proceedings, requiring Moe to sit for a deposition on May 6, 2010 and to produce the documents identified therein. CP 378-386. During the April 29, 2010 hearing (which was not attended by Moe), the trial court informed Shulkin that she would issue a Civil Bench Warrant for

¹⁰ For whatever reason, the version of these discovery responses that Shulkin filed with the Court did not contain this certification. *See* CP 339-374. The version he served upon WML’s counsel were certified, however. *See* CP 159.

Moe's arrest if Moe failed to attend the May 6, 2010 deposition (unless excused by prior Order of the Court). CP 389, ¶5. Shulkin fully informed Moe of the Order to appear and that the Court would issue a bench warrant if he failed to appear. *Id.*

Moe failed to attend his Court ordered May 6, 2010 supplemental proceedings deposition, failed to produce the court ordered documents, and did not seek or obtain an order of protection regarding the Court's Order and threatened bench warrant. CP 389-390, ¶¶6-8.

The trial court found that Moe's refusal to have his depositions taken and to provide WML with documentation relating to his assets, liabilities, and income was an effort to prevent the Receiver from collecting WML's judgment against Moe. CP 392, ¶17. As such, on May 6, 2010, the trial court issued a bench warrant for Moe's arrest. Unchallenged FF 5 (CP 196); *see also* CP 387.

On June 4, 2010, the trial court further attempted to obtain Moe's compliance to have his deposition taken and to produce documents. Specifically, she entered a remedial sanction order which required Moe to sit for a deposition (and produce certain documents) on June 11, 2010, or the Court would impose remedial sanction of, among other things,

\$2,000.00/day for every day after June 11 that Moe failed to sit for his deposition. CP 400-401. Moe failed to comply with that Order, and on June 11, 2010, the trial court commenced the remedial sanctions against Moe. CP 409, ¶2.

The trial court further ordered Moe to give proper responses to WML's First Supplemental Proceedings Interrogatories (which had previously been ordered to be answered by December 23, 2009), by June 18, 2010. CP 410. Moe disobeyed that Order as well. CP 414-415, ¶¶8-9.

Although Moe continued to fail to provide proper answers to WML's discovery, in September and October of 2010, Moe moved (through Shulkin)¹¹ to quash the bench warrant the trial court had issued against him. CP 510-511 & CP 513-514. The trial court denied those Motions. *E.g.*, CP 515-517.¹²

¹¹ Moe was also represented at that time by attorney David Miller. CP 512.

¹² The Court did not specifically rule on Moe's September 2010 motion to quash. It was noted on only two days' notice, and was predated by the service of additional "supplemental" discovery responses by Moe that had not been signed by any of his counsel. CP 431-509. Of course, CR 26(g) provides that unsigned answers must be "stricken unless it is signed promptly after the omission is called to the attention of the party making the ... response...."

On December 23, 2010, Moe (through Shulkin) filed another motion to quash the bench warrant (Unchallenged FF 7, CP 197) without first providing proper answers to WML's discovery. CP 518-520. The hearing was held the same day. The trial court denied that motion. Unchallenged FF 7, CP 197; *see also* CP 521. As part of the Order denying that motion to quash, the trial court ruled that she would quash the bench warrant when "Mr. Moe has made a good faith effort to fully answer WML's discovery." CP 521.

In the oral argument relating to that Motion, WML's counsel urged the trial court to require Moe's counsel to comply with the rules and sign any subsequent responses offered by Moe. CP 83, Ins.9-13 ("we want his counsel to sit down with [Moe] and sign their own name on the dotted line that the answers they are giving comply with the rules and that they are making a good faith effort to get all the documents and all the information that's requested.") The trial court agreed and orally ruled that any supplemental responses by Moe would have to be signed by one of Moe's counsel. CP 88, Ins. 13-15 (counsel must "sit down and go through the interrogatories fully and sign off on the dotted line to each and every question..."); CP 90, ln.2 (counsel must "fill them out and sign them...");

CP 92, Ins.11-13 (“fill out the paperwork honestly, accurately, and fully signed off by an attorney....”)

On or about December 28, 2010, Moe’s counsel apparently delivered supplemental responses by Moe to the trial court for review (Unchallenged FF 10, CP 197), but failed to file those responses, and they were not received by WML’s counsel until December 30, 2010. CP 03, ¶2. The discovery responses (obviously prepared in an improper haste to file them before Judge Plese was out for the holidays), were virtually identical to Moe’s February 2010 discovery responses which the trial court had already determined were “untimely, incomplete and evasive....” CP 408-409. *Also compare CP 339-374 with CP 06-73.*¹³ Shulkin’s co-counsel, David Miller, refused to certify the responses (CP 116), presumably because they were deficient. Mr. Miller filed a Notice of Intent to Withdraw shortly thereafter. CP 522-527.

Moe’s responses were “certified” by Shulkin. Specifically, the Certification states as follows:

¹³ CP 06-73 are Moe’s December 2010 discovery responses at issue. They are also attached hereto as Appendix 1 for ease of reference.

On January 5, 2011, counsel for WML called Shulkin to have a “meet and confer” to give Shulkin an opportunity to cure his improper certification (Unchallenged FF 12, CP 198; *see also* CP 03, ¶5), and to satisfy the requirements of LCR 37(a)(regarding “conferring”). Specifically, WML’s counsel telephonically informed Shulkin that Moe’s answers were once again evasive and incomplete and that Shulkin’s signature was a violation of CR 26(g). CP 03, ¶5. WML’s counsel offered Shulkin until January 7, 2011 to provide new answers. *Id.*; *see also* CP 74.

Shulkin stated he did not think he could meet that deadline, but would call the next day to provide a day by which new answers would be provided. CP 74. Shulkin did not call back to provide a date by which new answers would be provided. CP 03. In fact, new answers were never provided by Shulkin. Unchallenged FF 12, CP 198. WML’s counsel sent Shulkin an email to confirm the substance of the telephonic “meet and confer” conversation. CP 74. As such, WML’s attempt to resolve this matter without Court involvement was ignored by Shulkin.

On January 28, 2011, WML still had not received updated discovery responses from Shulkin on behalf of Moe, so it moved for the imposition of sanctions against Shulkin for his signature on Moe’s discovery responses

which was made in violation of CR 26(g). CP 528-530 (Notice), CP 111-113 (Motion), CP 99-110 (Memorandum), CP 2-98 (Declaration of Counsel).

In Shulkin's response to WML's Motion, he did not attempt to justify the propriety of the content and substance of the answers. CP 114-117 (Declaration), CP 118-133 (Memorandum), CP 134-137 (Response). Instead, he appeared to concede they were deficient, but instead claims he was justified in signing the improper answers, because Mr. Miller refused to sign them "at the last minute." *Id.* During the February 17, 2011 hearing, Shulkin conceded he took "that risk" and was "wrong." RP 20, lns.1-16.

Now, I know what the law is. I know how close it was, but I, also, knew that I had the responsibility to get something to this Court before a tragedy might occur, and I had to take that risk, and if I'm wrong because of that, so be it.

I am wrong.

.... So I guess I have to say I'm at the mercy of the Court.

Id.

On March 22, 2011, the trial court entered an Order granting WML's motion for sanctions, an Order quantifying the amount of sanctions ordered,

and a Final Judgment on the sanctions. CP 195-201 (sanctions), CP 202-206 (quantification), CP 212-216 (Final Judgment).¹⁵ *See also* Appendices 2-4.

As part of the Order granting sanctions (CP 195-201), the trial court made the following unchallenged findings of fact which are verities in this appeal:

1. “The discovery responses ... were incomplete and inaccurate. Many contain blanks and/or do not provide the requested information.” Unchallenged FF 14 (CP 198).

2. “It does not appear that Mr. Shulkin read the final answers before he signed them. Mr. Shulkin did not make a reasonable inquiry into the answers that were submitted.” Unchallenged FF 15 (CP 198).

3. “The answers were submitted for the improper purpose of attempting to have this Court quash the bench warrant issued against Mr. Moe without providing WML with the information it requested in the discovery responses.” Unchallenged FF 17 (CP 199).

¹⁵ In addition to the foregoing cited pleadings, WML offered substantial additional pleadings and evidence in support of its motion for sanctions. *See* generally CP 138-159 (WML’s Reply Memo); CP 531-538 (WML’s fee declaration); CP 566-568 (WML’s Cost Bill); CP 160-174 (WML’s motion to quantify); CP 569-571 (Notice of Hearing re: motion to quantify); and CP 539-565 (Notice of Presentment of Judgment).

Based upon the foregoing findings of fact, the trial court properly determined that Shulkin's certification of the discovery responses was a violation of CR 26(g). CP 199, ¶18. In exercising her discretion in determining the appropriate sanction, the trial court properly considered and applied the *Fisons* factors as follows:

19. This Court has considered the following factors in fashioning an appropriate sanction: the least severe sanction adequate to serve its purpose should be imposed, the sanction should ensure the wrongdoer does not profit from its violation, whether the violation was intentional, and the other party's efforts to mitigate resulting prejudice.

20. Sanctions must also be severe enough to deter attorneys and others from participating in similar conduct in future matters.

21. This Court has considered lesser remedial sanctions, including not imposing an award of attorneys' fees. The Court finds, however, that a lesser sanctions will not serve the purposes of the Rules.

22. This Court has also considered that this is the second time that Mr. Shulkin has signed discovery responses by Mr. Moe which do not comply with the rules. This Court has also considered that WML's counsel offered Mr. Shulkin an opportunity to remedy the improper answers prior to moving for sanctions, but Mr. Shulkin failed to take advantage of that opportunity.

CP 199-200.

Based upon the following considerations, the trial court sanctioned Shulkin in the amounts of attorneys' fees and costs that WML incurred in relation to Shulkin's improper certification (to be established by a subsequent declaration). CP 200, ¶2.

WML then moved for the trial court to quantify the amount of such fees and costs to be awarded to WML, and that they be reduced to a final judgment pursuant to CR 54(b). CP 160-174. Specifically, WML sought an award of \$8,624.00. CP 161. The request was supported by a declaration of WML's counsel. CP 531-538.¹⁶ After hearing, the trial court awarded WML the amount it had requested. CP 202-206. It also entered final judgment on the award. CP 212-216. This appeal followed.

5. ARGUMENT

A. Standard of Review

"A trial court exercises broad discretion in imposing discovery sanctions under CR 26(g) or 37(b), and its determination will not be disturbed absent a clear abuse of discretion." *Magana v. Hyundai Motor*

¹⁶ Shulkin has not sought review of the amount of attorneys' fees and costs awarded, but only apparently whether the trial court should have awarded any fees and costs. *See also* RP 14 (March 22, 2011 hearing)("The Court: I did not see anything in the court file or copies given to me that you were objecting to their amounts and/or their attorney's fees request. Mr. Shulkin: That is correct....")

Am., 167 Wn.2d 570, 582 (2009)(citation omitted). “A trial court abuses its discretion when its order is manifestly unreasonable or based on untenable grounds.” *Id.* at 582 (quoting *Washington State Phys. Ins. Exch. & Assoc. et al. v. Fisons Corp.*, 122 Wn.2d 299, 339 (1993)). “A discretionary decision rests on ‘untenable grounds’ or is based on ‘untenable reasons’ if the trial court relies on unsupported facts or applies the wrong legal standard; the court's decision is ‘manifestly unreasonable’ if ‘the court, despite applying the correct legal standard to the supported facts, adopts a view ‘that no reasonable person would take.’ ” *Id.* at 583 (citations omitted).

B. The Trial Court Properly Sanctioned Shulkin Under CR 26(g).

CR 26(g) provides in relevant part as follows:

Every request for discovery or response or objection thereto made by a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the request, response, or objection and state his address. The signature of the attorney or party constitutes a certification that he has read the request, response, or objection, and that to the best of his knowledge, information, and belief formed after a reasonable inquiry it is: (1) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (2) not interposed for any improper purpose, such as to harass or to cause unnecessary

delay or needless increase in the cost of litigation; and (3) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation. If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response, or objection and a party shall not be obligated to take any action with respect to it until it is signed.

If a certification is made in violation of the rule, the court, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney fee.

(Emphasis added).

“Under this rule, an attorney must certify in his or her discovery response that he or she made a ‘*reasonable inquiry*’ into the existence of the requested material.” *Amy v. Kmart of Washington LLC*, 153 Wn. App. 846, 869 (2009)(emphasis original). “A ‘reasonable inquiry’ is judged by an objective standard.” *Id.* “[I]ntent need not be shown before sanctions are mandated,” *Fisons* at 345, although a lack of intent can be considered “in fashioning sanctions.” *Id.* at 356. Even “[s]ubjective belief or good faith alone no longer shields an attorney from sanctions under the rules.” *Id.* at 343.

“The purpose of CR 26(g) is to deter discovery abuses, which include delaying tactics, procedural harassment, and mounting legal costs.” *Kmart* at 869. An evasive or incomplete answer is to be treated as a failure to answer. CR 37(a)(3). Sanctions are mandatory when discovery rules are violated. *See* CR 26(g)(“shall impose”); *see also Fisons* 355.

In *Fisons*, the Washington Supreme Court enunciated factors for courts to consider when fashioning an appropriate sanction: the least severe sanction adequate to serve its purpose should be imposed, and the sanction should ensure the wrongdoer does not profit from its violation. The court may also consider whether the violation was intentional, and the other party's efforts to mitigate resulting prejudice. *Fisons* at 355-56. “In determining what sanctions are appropriate, the trial court is given wide latitude.” *Id.* at 355.

While the imposition of sanctions “is a difficult and disagreeable task for a trial judge, it is a necessary one if our system is to remain accessible and responsible.” *Id.* (Emphasis added). “Misconduct, once tolerated, will breed more misconduct and those who might seek relief against abuse will instead resort to it in self-defense.” *Id.* (Citation omitted)

Sanctions must be severe enough to deter attorneys and others from participating in similar conduct in future matters. *Id.* at 356. Courts should not sit back and wait for an incipient *Fisons* case to ripen before ordering sanctions. *In re Matter of Firestorm*, 129 Wn.2d 130, 152, (1996) (J. Talmadge, concurrence). “Where there is an indication a serious potential exists for abuse of civil discovery, the courts are obliged to act.” *Id.*

The trial court properly found through unchallenged findings of fact that Shulkin violated CR 26(g) by certifying Moes’ blatantly deficient discovery responses. Unchallenged FF 1-17 (CP 196-199). In exercising its considerable discretion to fashion an appropriate sanction, the trial court properly considered and applied the *Fisons* factors. CP 199-200, ¶¶18-22. The sanction is particularly appropriate given that the discovery responses certified by Shulkin were almost identical to a prior set of discovery responses that the trial court found to be incomplete and evasive (CP 196, ¶4), and because Shulkin refused WML’s counsel’s efforts to avoid a sanction motion and simply have Shulkin provide appropriate responses, (CP 198, ¶12), and because Shulkin has not (and could not) argued that Moe’s discovery responses were proper (and thus his certification proper) (*see* Shulkin’s Brief), and because the trial court had already previously

warned Moe's counsel that they would be held responsible if they provided any additional deficient discovery responses. CP 88, lns. 14-16; CP 90, ln.2; CP 92, lns.11-13.

Shulkin has shown no abuse of discretion. He is simply requesting this Court to substitute its judgment for that of the trial court. The trial court should be affirmed.

C. Shulkin's Arguments

Although Shulkin's arguments are difficult to follow, they can be summarized as follows: (1) sanctions for violation of CR 26(g) are allegedly discretionary, not mandatory; (2) the trial court allegedly already sanctioned Moe relating to the discovery requests at issue; and (3) Shulkin's co-counsel, David Miller, allegedly provided a version of the discovery responses that differed from those "certified" by Shulkin. Shulkin also makes an unfounded request for an award of fees.

The first two arguments were not made in the trial and should be rejected out of hand. RAP 2.5(a). The arguments also fail on the merits. Shulkin's "different set" assertion is also demonstrably false. As to Shulkin's request for an award of fees, there is no applicable law granting

such a right, and, in any event, Shulkin failed to comply with RAP 18.1 to succeed in such a request.

i. Sanctions for violation of CR 26(g) are allegedly discretionary, not mandatory.

CR 26(g), by its plain terms, makes sanctions mandatory for violations thereof. (“If a certification is made in violation of the rule, the court ... **shall impose** ... an appropriate sanction...”)(emphasis added). Washington courts have consistently affirmed the mandatory nature of such sanctions. *Washington State Phys. Ins. Exch. & Assoc. et al. v. Fisons Corp.*, 122 Wn.2d 299, 345, 356 (1993); *Perry v. Costco Wholesale, Inc.*, 123 Wn. App. 783, 805 (2004); *Carlson v. Lake Chelan Cmty. Hosp.*, 116 Wn. App. 718, 737 (2003). Of course, as the trial court also properly found, it is the type of any sanction that is within the discretion of the trial court. CP 199, ¶18.

Shulkin cites a few inapposite cases which allegedly stand for the proposition that even when a court finds a violation of CR 26(g), whether to impose a sanction is discretionary (not mandatory). *See* Shulkin’s Brief, pp. 8-12. Shulkin is clearly wrong, and many of the cases actually stand for the opposite proposition for which Shulkin cites them. The cases are addressed in turn.

- *Burnet v. Spokane Ambulance*, 131 Wn.2d 484 (1997): *Burnet* does not involve or cite CR 26(g), but rather involves the discretionary sanctioning provision of CR 37(b)(2) (“may make such orders....”) *Id.* at 494. *Burnet* also does not focus on an award of attorneys’ fees as a sanction (as in this case), but instead involves one of the “harsher remedies allowable under CR 37(b)....” (Prohibiting discovery and precluding testimony on a cause of action) *Id.* at 494-95.
- *Carlson v. Lake Chelan Cmty. Hosp.*, 116 Wn. App. 718 (2003): *Carlson* holds that “[i]f a violation of CR 26 is found, the imposition of sanctions is **mandatory**. CR 26(g).” *Id.* at 737 (emphasis added).
- *Perry v. Costco Wholesale, Inc.*, 123 Wn. App. 783 (2004): *Perry* holds that “a violation of CR 26(g) requires the imposition of an appropriate sanction....” *Id.* at 805. (emphasis added).
- *Mayer v. Sto Indus., Inc.*, 156 Wn.2d 677 (2006): The Court in *Mayer* distinguishes between the mandatory nature of sanctions under CR 26(g) and the discretionary nature of sanctions under CR 26(f). *Id.* at 685-86. It also finds that *Burnet* is inapplicable to an award of sanctions under CR 26(g). *Id.* at 689.
- *Deutscher v. Gabel, D.O.*, 149 Wn. App. 119 (2009): The Court in *Deutscher* refused to “second guess” the trial court’s award of attorneys’ fees as the type of sanction that should be imposed under CR 26(g). *Id.* at 137.

Even if an award of sanctions under CR 26(g) was not mandatory, the trial court properly exercised its discretionary in awarding the sanctions at issue. Shulkin is simply improperly asking this Court to substitute its judgment for that of the trial court as to the appropriate sanction, without

showing any abuse of discretion by the trial court in the sanction it elected to impose.

ii. The trial court allegedly already sanctioned Moe relating to the discovery requests at issue.

Without any citation to the record, Shulkin references several times in his Brief that Moe was sanctioned in 2009 for Moe's discovery responses (or lack thereof). Shulkin is wrong¹⁷ and, in any event, misses the point. Shulkin was sanctioned for his certification of the December 2010 discovery responses which was made in violation of CR 26(g). CP 195-201; *see also* CP 536-538 (only seeking an award of fees and costs incurred between January 3, 2011 and February 24, 2011). It is irrelevant whether Moe was also sanctioned for prior improper and/or failures to answer that discovery. The trial court properly awarded WML only its fees and costs relating to the December 2010 discovery responses.

iii. Shulkin's co-counsel, David Miller, allegedly provided a version of the discovery responses that differed from those "certified" by Shulkin.

Shulkin asserts this argument without any record citation. *E.g.*, Shulkin Brief, pp.13-15. The record establishes that Shulkin's assertion is

¹⁷ The discovery responses were not even due until the end of December in 2009. CP 337-338.

demonstrably false. The trial court rejected this argument after comparing the version of the discovery responses that Shulkin claimed he provided to Mr. Miller (CP 121- 133) with the version submitted by Mr. Miller (CP 61-73). *E.g., also* RP 21-22 (February 17, 2011 hearing). They are identical.¹⁸

iv. Shulkin’s request for an award of attorneys’ fees relating to the Court’s Motion to Dismiss Shulkin’s appeal as untimely.

In Shulkin’s “Conclusion,” he includes a request to recover “such fees and costs which were reasonable to successfully defend against WML’s Motions to dismiss the Appeal....” Shulkin’s Brief, p. 19. Again, Shulkin is off base. First, although WML did file a motion in this Court to dismiss Shulkin’s appeal as untimely, the hearing was actually set on the “Court’s motion to dismiss for failure to timely file the notice of appeal.” *See* May 4, 2011 letter from Commissioner’s Office to counsel; *see also* June 3, 2001 Commissioner’s Ruling (“Court’s motion”). Thus, Shulkin is seeking an award of fees against WML for a hearing set on the Court’s Motion.

¹⁸ Shulkin’s assertion that WML’s counsel has been “inhumane” (p.16) and made a “mockery” of Moe’s efforts (p.18) are unprofessional and inaccurate. The Court found that the physician notes provided by Moe failed to establish good cause to excuse his disobedience of court orders, and that Moe’s disobedience was an effort to prevent WML from collecting its judgment against Moe. CP 391-392, ¶¶16-17.

Second, Shulkin's appeal was untimely, but the Court found that Shulkin had "established the extraordinary circumstances required by RAP 18.8(b) for extending the time for filing of the notice of appeal..." See June 3, 2011 Commissioner's Ruling (emphasis added).

Third, Shulkin has failed to comply with RAP 18.1(a)-(b) ("applicable law" must grant a right; party "must devote a section of its opening brief to the request for fees or expenses.") Neither of these requirements was met.

D. WML Should be Awarded its Reasonable Attorneys' Fees and Costs Pursuant to RAP 18.1

WML also moves for an award of its reasonable attorneys' fees and expenses incurred in defending this appeal, pursuant to RAP 18.1(a)-(b). Applicable law grants WML the right to recover reasonable attorneys' fees and expenses on review. The trial court awarded WML its attorneys' fees pursuant to CR 26(g). That rule provides that "[i]f a certification is made in violation of the rule, the court ... shall impose upon the person who made the certification ... an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney fee." CR 26(g); *see also Magana*

v. Hyundai Motor Am. 167Wn.2d 570, 593 (2010)(awarding attorneys' fees on appeal pursuant to CR 37(d)(containing language similar to CR 26(g)).¹⁹

In addition, WML is entitled to an award of its attorneys' fees and costs in defending this appeal pursuant to RAP 18.9(a).²⁰ Under that Rule, the "appellate court ... on motion of a party may order a party or counsel ... who ... files a frivolous appeal ... to pay terms or compensatory damages to any other party who has been harmed...." "An appeal is frivolous if, considering the entire record, it has so little merit that there is no reasonable possibility of reversal and reasonable minds could not differ about the issues raised." *See Johnson v. Mermis*, 91 Wn. App. 127, 137 (1998).

An appeal of a sanctions order is frivolous, where the standard of review is abuse of discretion, if "there was no reasonable basis to argue that the trial court abused its discretion...." *Id.* at 138. Under this record, there is no reasonable basis to argue the trial court abused its discretion, and Shulkin's appeal is frivolous.

¹⁹ WML has located a Division I case specifically awarding attorneys' fees on appeal pursuant to CR 26(g), but because that opinion is unreported, it is not cited herein. GR 14.1.

²⁰ If WML prevails in defending this appeal, it is also entitled to an award of its costs pursuant to RAP 14.2.

The fees and costs that WML has and will incur in defending this appeal will approach (if not exceed) the sanctions it was awarded in the trial court (which simply reimbursed WML for the attorneys' fees and costs incurred in relation to Shulkin's improper certification). If WML is successful in defending this appeal, but not awarded its attorneys' fees and costs on appeal, the net effect will be that its recovery in the trial court will be pyrrhic, and not fulfill the policies behind *Fisons* and its progeny.

WML also requests that it be granted leave to submit an affidavit detailing the expenses incurred and the services performed by counsel pursuant to RAP 18.1(d), or direct that the amount of fees and expenses to be awarded to WML be determined by the trial court after remand pursuant to RAP 18.1(i).

6. CONCLUSION

This Court should affirm the trial court's judgment, and order that WML be awarded its attorneys' fees and costs incurred in this appeal.

//

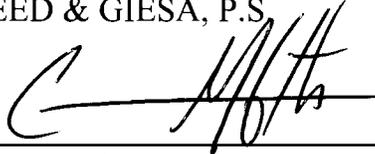
//

//

//

DATED this 21st day of October, 2011.

REED & GIESA, P.S.

A handwritten signature in black ink, appearing to read "John P. Giesa", written over a horizontal line.

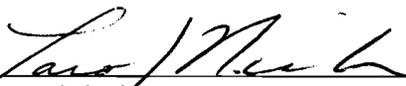
John P. Giesa, WSBA #6147

Aaron D. Goforth, WSBA #28366

Attorneys for Respondent Washington
Motorsports Ltd., by and through Barry W.
Davidson, in his capacity as Receiver and
Acting General Partner

CERTIFICATE OF SERVICE

Per the agreement of counsel for service of pleadings by email, I hereby certify that on the 21st day of October, 2011, I caused a true and correct copy of the foregoing pleading to be sent to the following individuals, as indicated below:



Tara J. Nichols

Jerome Shulkin, Appellant
Jason Friedt
Via email: jshulkin@shulkin.com

John D. Munding
Chapter 11 Bankruptcy Trustee, Spokane Raceway Park, Inc.
Via email: munding@crumb-munding.com

Barry W. Davidson
Receiver and Acting Managing General Partner of WML
Via email: b davidson@dbm-law.net

APPENDIX

- Appendix 1: Plaintiff's First Supplemental Interrogatories and Requests for Production Propounded to Orville L. Moe (with answers and responses attached) (CP 06-73)
- Appendix 2: **Order Granting** WML's Motion for sanctions Against Jerome Shulkin for Signing Orville Moe's Discovery Responses in Violation of CR 26(g) (CP 195-201)
- Appendix 3: **Order Granting** WML's Motion for Order Quantifying the Amount of sanctions Awarded Against Jerome Shulkin For his Signing of Orville Moe's Discovery Responses in Violation of CR 26(g) **and** Motion for Entry of Final Judgment Re: Same (CP 202-206)
- Appendix 4: Final Judgment Against Jerome Shulkin for sanctions (CP 212-216)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SUPERIOR COURT, SPOKANE COUNTY,
STATE OF WASHINGTON

**WASHINGTON MOTORSPORTS
LIMITED PARTNERSHIP**, a/k/a
Washington Motorsports, Ltd., by and
through Barry W. Davidson, in his
capacity as Receiver and as Acting
Managing General Partner,

Plaintiff,

v.

SPOKANE RACEWAY PARK, INC., a
Washington for profit corporation and
General Partner of Washington
Motorsports Limited Partnership,

Defendant.

Case No. **03-2-068564**

**PLAINTIFF'S FIRST
SUPPLEMENTAL
INTERROGATORIES AND
REQUESTS FOR PRODUCTION
PROPOUNDED TO
ORVILLE L. MOE**

To: Orville L. Moe;
And To: Jerome Shulkin, counsel for Orville L. Moe:

YOU ARE HEREBY SERVED with Plaintiff's First Supplemental
Interrogatories and Requests for Production (the "Interrogatories
Interrogatories and Requests for Production"). Pursuant to the Order
Requiring Orville L. Moe to Answer Plaintiff's First Supplemental

Page 1
Plaintiff's First Supplemental Interrogatories
and Requests for Production
Propounded to Orville L. Moe
WML\Receivership Pleadings.cn

Exhibit 1

Appendix 1

DAVIDSON ♦ MEDEIROS
ATTORNEYS AT LAW
A PROFESSIONAL SERVICE CORPORATION

1680 BANK OF AMERICA FINANCIAL CENTER
601 WEST RIVERSIDE AVENUE
SPOKANE, WASHINGTON 99201
FACSIMILE: (509) 623-1660
(509) 624-4600

1 Interrogatories and Requests for Production Propounded to Orville L. Moe,
2 you must answer the Interrogatories fully, separately, and in writing under
3 oath, and you must fully respond to the Requests for Production. You are
4 required to furnish such information as is available to you, not merely the
5 information which you know of your personal knowledge. This includes any
6 information in the possession of your attorneys, agents, accountants,
7 consultants, representatives, and any and all other persons who act and/or
8 have acted on your behalf.
9

10
11 Each interrogatory must be answered in the space provided. Attach
12 additional sheets to complete your answers if the space provided is
13 insufficient.

14
15 You are required to serve your answers to the Plaintiff's First
16 Supplemental Interrogatories and Requests for Production Propounded to
17 Orville L. Moe upon the undersigned attorneys within thirty (30) days from
18 the date of service of these Interrogatories and Requests for Production upon
19 you.
20

21 DEFINITIONS

22 As used in these Interrogatories and Requests for Production, the
23 following shall have the meanings designated below:

24 1. Date. "Date" means the exact date, month, and year if known or
25 ascertainable, or, if not, the best approximation (including relationship to

Page 2
Plaintiff's First Supplemental Interrogatories
and Requests for Production
Propounded to Orville L. Moe
WML\Receivership Pleadings.cn

DAVIDSON ♦ MEDEIROS
ATTORNEYS AT LAW
A PROFESSIONAL SERVICE CORPORATION
1550 BANK OF AMERICA FINANCIAL CENTER
601 WEST RIVERSIDE AVENUE
SPOKANE, WASHINGTON 99201
FACSIMILE: (509) 623-1660
(509) 624-4600

1 other events).

2 2. Document. "Document" means every writing or record of every
3 type and description that is or has been in your possession, control, and
4 custody, or as to which you have access, including, without limitation,
5 emails, contracts, agreements, all bank statements, account agreements,
6 cancelled checks, check registers, deposit slips, 1099s, real estate purchase
7 and sale agreements, deeds, deeds of trust, mortgages, trust agreements,
8 financial statements, financial summaries, loan applications, applications for
9 credit, contracts, settlement statements, real property tax receipts,
10 brokerage statement, insurance policies, policy statements, bonds, notes,
11 debt instruments, patents, inventions, trade names, trademarks, copyrights
12 or royalty agreements, loan documents, guarantees, claims, accountings,
13 appraisals, correspondence, memoranda, stenographic or handwritten notes,
14 reports, records, telegrams, schedules, diaries, notebooks, logbooks,
15 invoices, accounting records, work sheets, charts, notes, drafts, scribblings,
16 recordings, visual displays, photographs, minutes of meetings, tabulations,
17 computations, summaries, inventories, and writings regarding
18 Communications, conferences, conversations, or telephone conversations,
19 and any and all other electronic, taped, recorded, written, printed, or typed
20 matters of any kind or description; every copy of the foregoing whether or not
21 the original is in your possession, custody, or control; and every copy of any
22 of the foregoing whether or not such copy is a copy identical to an original or
23 whether or not such copy contains any commentary or notation whatsoever
24 that does not appear on the original.

25 3. Identity, Identify, and Identification. "Identity," "identify," and
"identification" when used in reference to an individual, means to state his
or her full name, present home address or, if not known, last known home
address, present or last known position and business affiliation (designating
which), present or last known business address (designating which), and
position and business affiliations at the time of the events referred to in the
Interrogatory or answer.

"Identity," "identify," and "identification" when used in reference to a
firm, partnership, corporation, proprietorship, association, or other
organization or entity, means to state its full name and present or last
known address (designating which), and to identify each person who acted
for it with respect to the matters relating to the Interrogatory or answer.

Page 3
Plaintiff's First Supplemental Interrogatories
and Requests for Production
Propounded to Orville L. Moe
WML\Receivership Pleadings.cn

DAVIDSON ✦ MEDEIROS
ATTORNEYS AT LAW
A PROFESSIONAL SERVICE CORPORATION
1550 BANK OF AMERICA FINANCIAL CENTER
601 WEST RIVERSIDE AVENUE
SPOKANE, WASHINGTON 99201
FACSIMILE: (509) 823-1660
(509) 624-4600

1 "Identity," "identify," and "identification" when used in reference to a
2 Document, means to state the date, title, if any, authors, each person who
3 prepared it, each person who received it, type of document (i.e., publication,
4 letter, memorandum, book, telegram, chart, etc.) or some other means of
5 identifying it, its present location or custodian, and the topic or topics
6 discussed therein, and in the case of any document that was, but is no
7 longer, in the possession, custody, or control of Orville L. Moe, what
8 disposition was made of it, and, if destroyed or otherwise disposed of, when,
9 where, how, by whom, under whose direction, and why it was destroyed or
10 otherwise disposed of, and identify all persons who last had custody,
11 possession, or control of the document.

8 "Identity," "identify," and "identification" when used in reference to
9 data or Communication means to state the date and place thereof; the
10 communicator, the communicate, each person who participated therein or
11 who was present during any part thereto; the nature, substance, and
12 content of what was said by each person who participated therein or who
13 was present during any part thereto; the nature, substance, and content of
14 what was said by each person who participated in any way or the substance
15 of the information known by each person to which the information has been
16 disseminated; and, the identity of each and every document relating thereto.

15 "Identity," "identify," and "identification" when used in reference to an
16 event or transaction means to state the names and addresses of the persons
17 involved in or knowledgeable about the event or transaction, the dates on
18 which such events or transactions took place, and a full description of the
19 substance of such events or transactions.

18 "Identity," "identify," and "identification" when used in reference to any
19 other matter in these Interrogatories means to state all data regarding the
20 description and substance of the matters involved up to the limits of
21 reasonableness and relevance as provided by law.

21 4. Communication. "Communication" means any of the following:
22 (a) any written letter, memorandum, or other Document; (b) any telephone
23 call between two or more persons, whether or not such call was by chance or
24 prearranged, formal or informal; (c) any conversation or meeting between two
25 or more persons, whether or not such a contact was by chance or
prearranged, formal or informal; and (d) any electronic mail, voicemail,
telegraph, tape or video recording, data message, and other media or method

Page 4
Plaintiff's First Supplemental Interrogatories
and Requests for Production
Propounded to Orville L. Moe
WML\Receivership Pleadings.ca

DAVIDSON ♦ MEDEIROS
ATTORNEYS AT LAW
A PROFESSIONAL SERVICE CORPORATION
1550 BANK OF AMERICA FINANCIAL CENTER
601 WEST RIVERSIDE AVENUE
SPOKANE, WASHINGTON 99201
FACSIMILE: (509) 823-1660
(509) 624-4600

1 of communicating information.

2 5. Person. "Person" means an individual, firm, partnership, joint
3 venture, corporation, proprietorship, association, or any other organization
4 or entity.

5 6. Relating to. "Relating to," "relates to," and "related to" means
6 without limitation comprising, concerning, containing, embodying, referring
7 to, alluding to, responding to, in connection with, commenting on, in
8 response to, about, regarding, announcing, explaining, discussing, showing,
9 describing, studying, reflecting, analyzing, or constituting.

10 7. And/Or. For purposes of these discovery requests, "and" and
11 "or" shall be construed conjunctively or disjunctively as necessary to make
12 the request inclusive rather than exclusive.

13 8. You and your. "You" and "your" refers to you and all of your
14 present and former attorneys, agents, accountants, consultants,
15 representatives, and any and all other persons who act and/or have acted on
16 your behalf.

17 9. Own, Hold or Receive. "Own" or "hold" or income that you
18 "receive" includes without limitation (a) assets or properties which are owned
19 or held by trustees, agents, or nominees for your benefit, or on your behalf,
20 and income received by such person for your benefit or on your behalf; and
21 (b) assets or properties which are owned or held by your spouse, and income
22 received by your spouse, except for assets, properties and income which
23 constitute the separate property of your spouse under applicable laws.

24 THESE INTERROGATORIES AND REQUESTS FOR PRODUCTION ARE
25 CONTINUING IN NATURE. ANY INFORMATION THAT COMES INTO THE
POSSESSION OF YOU OR YOUR ATTORNEY THAT WOULD CHANGE THE
ANSWERS IN ANY WAY MUST BE PROMPTLY FURNISHED TO THE
UNDERSIGNED COUNSEL NOT LATER THAN TEN (10) DAYS AFTER
RECEIPT OF SUCH INFORMATION.

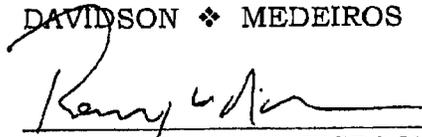
Page 5
Plaintiff's First Supplemental Interrogatories
and Requests for Production
Propounded to Orville L. Moe
WML\Receivership Pleadings.ca

DAVIDSON ♦ MEDEIROS
ATTORNEYS AT LAW
A PROFESSIONAL SERVICE CORPORATION
1550 BANK OF AMERICA FINANCIAL CENTER
601 WEST RIVERSIDE AVENUE
SPOKANE, WASHINGTON 99201
FACSIMILE: (509) 623-1660
(509) 624-4600

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DATED this 26th day of November 2009.

DAVIDSON ❖ MEDEIROS



Barry W. Davidson, WSBA No. 07908
Receiver and Acting Managing General
Partner of Washington Motorsports, Ltd.
1550 Bank of America Financial Center
601 West Riverside Avenue
Spokane, Washington 99201
(509) 624-4600

Page 6
Plaintiff's First Supplemental Interrogatories
and Requests for Production
Propounded to Orville L. Moe
WML\Receivership Pleadings.cn

DAVIDSON ❖ MEDEIROS
ATTORNEYS AT LAW
A PROFESSIONAL SERVICE CORPORATION
1550 BANK OF AMERICA FINANCIAL CENTER
601 WEST RIVERSIDE AVENUE
SPOKANE, WASHINGTON 99201
FACSIMILE: (509) 623-1660
(509) 624-4600

1 **INTERROGATORY NO. 1:** State the name, address, telephone
2 number, and title of anyone who assisted in the preparation of the answers
3 to these Interrogatories. If the person or persons who answered or supplied
4 information for a particular answer is different than the person signing these
Interrogatories, indicate the identity of the source of information or answer.

5 **ANSWER:**

6
7
8 **INTERROGATORY NO. 2:** Prior to answering these Interrogatories,
9 did you make a due and diligent search of your books, records, and papers,
10 and a due and diligent inquiry of your attorneys, agents, accountants,
11 consultants, representatives, and any and all other persons who act and/or
have acted on your behalf?

12 **ANSWER:**

13
14
15 **INTERROGATORY NO. 3:** You receive no income from any source
16 whatsoever, except [list amount(s) and source(s) for the past forty-eight (48)
months].

17 **ANSWER:**

18
19
20 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 1:** Please
21 produce copies of all Documents in your possession or control relating to
22 your answer to Interrogatory No. 3, including, without limitation, all check
23 stubs, 1099s, escrow receipts, deposit slips and other Documents as defined
herein.

24 **RESPONSE.**

25
Page 7
Plaintiff's First Supplemental Interrogatories
and Requests for Production
Propounded to Orville L. Moe
WML\Receivership Pleadings.cn

DAVIDSON ♦ MEDEIROS
ATTORNEYS AT LAW
A PROFESSIONAL SERVICE CORPORATION
1550 BANK OF AMERICA FINANCIAL CENTER
601 WEST RIVERSIDE AVENUE
SPOKANE, WASHINGTON 99201
FACSIMILE: (509) 623-1660
(509) 624-4600

1 **INTERROGATORY NO. 4:** You have, and have had, no accounts in
2 any bank, domestic or foreign, nor have you been a signator on any account
3 in the last forty-eight (48) months, except [list name and address of
institution, dates of accounts and outstanding balance of account].

4 **ANSWER:**

5
6
7 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 2:** Please
8 produce copies of all Documents in your possession or control relating to
9 your answer to Interrogatory No. 4, including, without limitation, all bank
10 statements, account agreements, cancelled checks, check registers, deposit
slips and other Documents as defined herein.

11 **RESPONSE.**

12
13
14 **INTERROGATORY NO. 5:** You receive no fees for consulting,
15 management assistance or other services rendered to any individual or
entity, except [list amount and source].

16 **ANSWER:**

17
18
19 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 3:** Please
20 produce copies of all Documents in your possession or control relating to
21 your answer to Interrogatory No. 5, including, without limitation, all check
22 stubs, 1099s, escrow receipts, deposit slips and other Documents as defined
herein.

23 **RESPONSE.**

24
25
Page 8
Plaintiff's First Supplemental Interrogatories
and Requests for Production
Propounded to Orville L. Moe
WML\Receivership Pleadings.cn

DAVIDSON ♦ MEDEIROS
ATTORNEYS AT LAW
A PROFESSIONAL SERVICE CORPORATION
1550 BANK OF AMERICA FINANCIAL CENTER
601 WEST RIVERSIDE AVENUE
SPOKANE, WASHINGTON 99201
FACSIMILE: (509) 823-1660
(509) 824-4600

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INTERROGATORY NO. 6: You receive no commissions from any source, except [list amount and source.]

ANSWER:

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 4: Please produce copies of all Documents in your possession or control relating to your answer to Interrogatory No. 6, including, without limitation, all check stubs, 1099s, escrow receipts, deposit slips and other Documents as defined herein.

RESPONSE.

INTERROGATORY NO. 7: You receive no stock dividends from any corporation, domestic or foreign, except [list amount and source].

ANSWER:

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 5: Please produce copies of all Documents in your possession or control relating to your answer to Interrogatory No. 7, including, without limitation, all check stubs, 1099s, brokerage statement, deposit slips and other Documents as defined herein.

RESPONSE.

INTERROGATORY NO. 8: You are entitled to no bonus from any business, except [list amount and source].

Page 9
Plaintiff's First Supplemental Interrogatories
and Requests for Production
Propounded to Orville L. Moe
WML\Receivership Pleadings.cn

DAVIDSON ♦ MEDEIROS
ATTORNEYS AT LAW
A PROFESSIONAL SERVICE CORPORATION
1550 BANK OF AMERICA FINANCIAL CENTER
601 WEST RIVERSIDE AVENUE
SPOKANE, WASHINGTON 99201
FACSIMILE: (509) 623-1660
(509) 624-4600

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ANSWER:

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 6: Please produce copies of all Documents in your possession or control relating to your answer to Interrogatory No. 8.

RESPONSE.

INTERROGATORY NO. 9: You have no safe deposit box or access to any safe deposit box, except [list name and address of each institution, each safe deposit box number and the contents thereof].

ANSWER:

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 7: Please produce copies of all Documents in your possession or control relating to your answer to Interrogatory No. 9, including, without limitation, all safe deposit box agreements, safe deposit box inventories and other Documents as defined herein.

RESPONSE.

INTERROGATORY NO. 10: You own no real estate of any nature whatsoever, except [list address, legal description, and date and cost of acquisition of all real estate owned].

ANSWER:

1 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 8:** Please
2 produce copies of all Documents in your possession or control relating to
3 your answer to Interrogatory No. 10, including, without limitation, all real
4 estate purchase and sale agreements, deeds, contracts, settlement
5 statements, real property tax receipts and other Documents as defined
6 herein.

7
8 **RESPONSE.**

9 **INTERROGATORY NO. 11:** You have no ownership interest in any
10 partnership, limited partnership, limited liability company, corporation, or
11 other entity, except [list name of partnership, limited partnership, limited
12 liability company, corporation, or other entity, interest owned and date and
13 cost of acquisition].

14 **ANSWER:**

15 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 9:** Please
16 produce copies of all Documents in your possession or control relating to
17 your answer to Interrogatory No. 11, including, without limitation, all
18 partnership agreements and minutes of all meetings, all limited partnership
19 agreements and minutes of all meetings, all limited liability company
20 agreements and minutes of all meetings, all articles of incorporation and
21 minutes of all meetings of shareholders and directors and other Documents
22 as defined herein.

23 **RESPONSE.**

24 **INTERROGATORY NO. 12:** You do not own any real estate
25 contracts or promissory notes secured by mortgages or deeds of trust, or
have any interest in any real estate contracts or promissory notes secured by

Page 11
Plaintiff's First Supplemental Interrogatories
and Requests for Production
Propounded to Orville L. Moe
WML\Receivership Pleadings.cn

DAVIDSON ♦ MEDEIROS
ATTORNEYS AT LAW
A PROFESSIONAL SERVICE CORPORATION
1650 BANK OF AMERICA FINANCIAL CENTER
601 WEST RIVERSIDE AVENUE
SPOKANE, WASHINGTON 89201
FACSIMILE: (509) 623-1660
(509) 624-4600

1 mortgages or deeds of trust, except [list amount, interest, description of real
2 estate contracts, promissory notes, mortgages, deeds of trust, subject
3 property, and identity of contract purchaser, payor, or mortgagor].

4 **ANSWER:**

5
6 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 10:** Please
7 produce copies of all Documents in your possession or control relating to
8 your answer to Interrogatory No. 12, including, without limitation, all real
9 estate contracts, promissory notes, mortgages, deeds of trust, escrow
10 statements, cancelled checks, 1099s, deposit slips, settlement statements,
11 real property tax receipts and other Documents as defined herein.

12 **RESPONSE.**

13
14 **INTERROGATORY NO. 13:** You own no shares in or assets in any
15 savings and loan associations, except [list name of institution and ownership
16 interest].

17 **ANSWER:**

18
19 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 11:** Please
20 produce copies of all documents in your possession or control relating to
21 your answer to Interrogatory No. 13, including, without limitation, all share
22 certificates, account statements, 1099s, deposit slips, and other Documents
23 as defined herein.

24 **RESPONSE.**

25
Page 12
Plaintiff's First Supplemental Interrogatories
and Requests for Production
Propounded to Orville L. Moe
WML\Receivership Pleadings.cn

DAVIDSON ♦ MEDEIROS
ATTORNEYS AT LAW
A PROFESSIONAL SERVICE CORPORATION
1550 BANK OF AMERICA FINANCIAL CENTER
801 WEST RIVERSIDE AVENUE
SPOKANE, WASHINGTON 99201
FACSIMILE: (509) 623-1660
(509) 624-4600

1 **INTERROGATORY NO. 14:** You own no stocks, bonds, mutual
2 funds, or other securities, except [list, including date and cost of
3 acquisition].

4 **ANSWER:**

5
6 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 12:** Please
7 produce copies of all Documents in your possession or control relating to
8 your answer to Interrogatory No. 14, including, without limitation, all share
9 certificates, account statements, 1099s, deposit slips, and other Documents
10 as defined herein.

11 **RESPONSE.**

12
13 **INTERROGATORY NO. 15:** You have no brokerage account with
14 any broker, except [list name of broker, account number, and outstanding
15 balance in each account].

16 **ANSWER:**

17
18 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 13:** Please
19 produce copies of all Documents in your possession or control relating to
20 your answer to Interrogatory No. 15, including, without limitation, all
21 account statements, 1099s, deposit slips, and other Documents as defined
22 herein.

23 **RESPONSE.**

24
25
Page 13
Plaintiff's First Supplemental Interrogatories
and Requests for Production
Propounded to Orville L. Moe
WML\Receivership Pleadings.cn

DAVIDSON ❖ MEDEIROS
ATTORNEYS AT LAW
A PROFESSIONAL SERVICE CORPORATION
1660 BANK OF AMERICA FINANCIAL CENTER
801 WEST RIVERSIDE AVENUE
SPOKANE, WASHINGTON 99201
FACSIMILE: (509) 623-1660
(509) 824-4600

1 **INTERROGATORY NO. 16:** You own no commodities, except [list,
2 including date and cost of acquisition].

3 **ANSWER:**

4
5
6 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 14:** Please
7 produce copies of all Documents in your possession or control relating to
8 your answer to Interrogatory No. 16, including, without limitation, all
9 account statements, 1099s, deposit slips, and other Documents as defined
10 herein.

11 **RESPONSE.**

12
13 **INTERROGATORY NO. 17:** You have no commodity account with
14 any broker, except [list name of broker, account number, and outstanding
15 balance in each account].

16 **ANSWER:**

17
18 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 15:** Please
19 produce copies of all Documents in your possession or control relating to
20 your answer to Interrogatory No. 17, including, without limitation, all
21 account statements, 1099s, deposit slips, and other Documents as defined
22 herein.

23 **RESPONSE.**

24
25
Page 14
Plaintiff's First Supplemental Interrogatories
and Requests for Production
Propounded to Orville L. Moe
WML\Receivership Pleadings.cn

DAVIDSON ♦ MEDEIROS
ATTORNEYS AT LAW
A PROFESSIONAL SERVICE CORPORATION
1550 BANK OF AMERICA FINANCIAL CENTER
601 WEST RIVERSIDE AVENUE
SPOKANE, WASHINGTON 99201
FACSIMILE: (509) 623-1660
(509) 624-4600

1 **INTERROGATORY NO. 18:** You have no account with any financial
2 institution whatsoever, except [list name of institution, account number, and
3 balance in each].

4 **ANSWER:**

5
6 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 16:** Please
7 produce copies of all Documents in your possession or control relating to
8 your answer to Interrogatory No. 18, including, without limitation, all
9 account statements, cancelled checks, check registers, 1099s, deposit slips,
10 and other Documents as defined herein.

11 **RESPONSE.**

12
13 **INTERROGATORY NO. 19:** You have no proxies or powers of
14 attorney or authority of any nature whatsoever, either over stocks, bonds,
15 commodity accounts, or other forms of securities, except [identify and
16 describe any such property and beneficial owner thereof].

17 **ANSWER:**

18
19 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 17:** Please
20 produce copies of all Documents in your possession or control relating to
21 your answer to Interrogatory No. 19, including, without limitation, all proxies
22 or powers of attorney and other Documents as defined herein.

23 **RESPONSE.**

24
25
Page 15
Plaintiff's First Supplemental Interrogatories
and Requests for Production
Propounded to Orville L. Moe
WML\Receivership Pleadings.cn

DAVIDSON ♦ MEDEIROS
ATTORNEYS AT LAW
A PROFESSIONAL SERVICE CORPORATION
1550 BANK OF AMERICA FINANCIAL CENTER
601 WEST RIVERSIDE AVENUE
SPOKANE, WASHINGTON 99201
FACSIMILE: (509) 623-1660
(509) 824-4600

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INTERROGATORY NO. 20: You do not act as trustee or fiduciary with respect to any property, either real or personal, except [identify and describe any such property and beneficial owner thereof].

ANSWER:

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 18: Please produce copies of all Documents in your possession or control relating to your answer to Interrogatory No. 20, including, without limitation, all trust agreements, specific asset descriptions and other Documents as defined herein.

RESPONSE.

INTERROGATORY NO. 21: You do not own any bonds, or debt owed by any third party, except [list all bonds, or debt owed by any third party, and date and cost of acquisition].

ANSWER:

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 19: Please produce copies of all Documents in your possession or control relating to your answer to Interrogatory No. 21, including, without limitation, all bonds, notes, debt instruments and other Documents as defined herein.

RESPONSE.

1 **INTERROGATORY NO. 22:** You own no insurance policy of any
2 type, except [list name of company, face amount of policy, type, cash value,
3 beneficiary, and loans against said policy].

4 **ANSWER:**

5
6 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 20:** Please
7 produce copies of all Documents in your possession or control relating to
8 your answer to Interrogatory No. 22, including, without limitation, all
9 insurance policies, policy statements, and other Documents as defined
10 herein.

11 **RESPONSE.**

12
13 **INTERROGATORY NO. 23:** You receive no dividends from any
14 insurance company, except [list name of company, face amount of policy,
15 type, cash value, beneficiary, and loans against said policy].

16 **ANSWER:**

17
18 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 21:** Please
19 produce copies of all Documents in your possession or control relating to
20 your answer to Interrogatory No. 23 including, without limitation, all
21 insurance policies, policy statements, and other Documents as defined
22 herein.

23 **RESPONSE.**

24
25
Page 17
Plaintiff's First Supplemental Interrogatories
and Requests for Production
Propounded to Orville L. Moe
WMI\Receivership Pleadings.cn

DAVIDSON ♦ MEDEIROS
ATTORNEYS AT LAW
A PROFESSIONAL SERVICE CORPORATION
1550 BANK OF AMERICA FINANCIAL CENTER
601 WEST RIVERSIDE AVENUE
SPOKANE, WASHINGTON 99201
FACSIMILE: (509) 623-1660
(509) 624-4600

1 **INTERROGATORY NO. 24:** You are not the beneficiary of any
2 insurance policy, except [list name of company, face amount of policy, type,
3 cash value, beneficiary, and loans against said policy].

4 **ANSWER:**

5
6 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 22:** Please
7 produce copies of all Documents in your possession or control relating to
8 your answer to Interrogatory No. 24, including, without limitation, all
9 insurance policies, policy statements, and other Documents as defined
10 herein.

11 **RESPONSE.**

12
13 **INTERROGATORY NO. 25:** You pay no premiums on any insurance
14 policy, except [list name of company, face amount of policy, type, cash value,
15 beneficiary, and loans against said policy].

16 **ANSWER:**

17
18 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 23:** Please
19 produce copies of all Documents in your possession or control relating to
20 your answer to Interrogatory No. 25, including, without limitation, all
21 insurance policies, policy statements, and other Documents as defined
22 herein.

23 **RESPONSE.**

24
25
Page 18
Plaintiff's First Supplemental Interrogatories
and Requests for Production
Propounded to Orville L. Moe
WML\Receivership Pleadings.cn

DAVIDSON ♦ MEDFIROS
ATTORNEYS AT LAW
A PROFESSIONAL SERVICE CORPORATION
1550 BANK OF AMERICA FINANCIAL CENTER
601 WEST RIVERSIDE AVENUE
SPOKANE, WASHINGTON 99201
FACSIMILE: (509) 623-1560
(509) 624-4600

1 **INTERROGATORY NO. 26:** You have no interest in any patents,
2 inventions, trade names, trademarks, copyrights or royalty agreements,
3 except [list].

4 **ANSWER:**

5
6 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 24:** Please
7 produce copies of all Documents in your possession or control relating to
8 your answer to Interrogatory No. 26, including, without limitation, all
9 patents, inventions, trade names, trademarks, copyrights or royalty
10 agreements and other Documents as defined herein.

11 **RESPONSE.**

12
13 **INTERROGATORY NO. 27:** You have no claim against any
14 insurance company, except [identify company, amount, and description of
15 claim].

16 **ANSWER:**

17
18 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 25:** Please
19 produce copies of all Documents in your possession or control relating to
20 your answer to Interrogatory No. 27, including, without limitation, copies of
21 all claims, correspondence and other Documents as defined herein.

22 **RESPONSE.**

23
24
25
Page 19
Plaintiff's First Supplemental Interrogatories
and Requests for Production
Propounded to Orville L. Moe
WML\Receivership Pleadings.cn

DAVIDSON ♦ MEDEIROS
ATTORNEYS AT LAW
A PROFESSIONAL SERVICE CORPORATION
1550 BANK OF AMERICA FINANCIAL CENTER
601 WEST RIVERSIDE AVENUE
SPOKANE, WASHINGTON 99201
FACSIMILE: (509) 823-1860
(509) 624-4600

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INTERROGATORY NO. 28: You have no claim against or any interest in any estate or any trust of any person, whether living or dead, except [identify estate or trust, amount of claim, and description of claim].

ANSWER:

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 26: Please produce copies of all Documents in your possession or control relating to your answer to Interrogatory No. 28, including, without limitation, copies of all claims, correspondence and other Documents as defined herein.

RESPONSE.

INTERROGATORY NO. 29: You have no claim against any person, whether living or dead, or any entity or third party, except [list individual, entity, or third party, amount of claim, and description of claim].

ANSWER:

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 27: Please produce copies of all Documents in your possession or control relating to your answer to Interrogatory No. 29, including, without limitation, copies of all claims, claims, responses, correspondence and other Documents as defined herein.

RESPONSE.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INTERROGATORY NO. 30: You are not a plaintiff or defendant in or otherwise prosecuting any action or proceeding now pending in any court, except [list the style of each case, case number, and court in which each case is pending].

ANSWER:

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 28: Please produce copies of all Documents in your possession or control relating to your answer to Interrogatory No. 30, including, without limitation, copies of all pleadings, correspondence and other Documents as defined herein.

RESPONSE.

INTERROGATORY NO. 31: You are not a party to any arbitration proceeding now pending before any arbitrator or board of arbitration, except [identify each proceeding].

ANSWER:

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 29. Please produce copies of all Documents in your possession or control relating to your answer to Interrogatory No. 31, including, without limitation, copies of all arbitration demands, submissions, pleadings, correspondence and other Documents as defined herein.

RESPONSE.

1 **INTERROGATORY NO. 32:** You are not a party to any
2 administrative proceeding now pending, except [identify each proceeding].

3 **ANSWER:**

4
5
6 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 30:** Please
7 produce copies of all Documents in your possession or control relating to
8 your answer to Interrogatory No. 32, including, without limitation, copies of
9 all claims, responses, submissions, pleadings, correspondence and other
10 Documents as defined herein.

11 **RESPONSE.**

12
13 **INTERROGATORY NO. 33:** You have no interest in any promissory
14 notes, drafts, or other commercial paper, except [identify maker or drawer,
15 amount, and payment terms].

16 **ANSWER:**

17
18 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 31:** Please
19 produce copies of all Documents in your possession or control relating to
20 your answer to Interrogatory No. 33, including, without limitation, copies of
21 all promissory notes, drafts, or other commercial paper and other
22 Documents as defined herein.

23 **RESPONSE.**

24
25
Page 22
Plaintiff's First Supplemental Interrogatories
and Requests for Production
Propounded to Orville L. Moe
WML\Receivership Pleadings.cn

DAVIDSON ♦ MEDEIROS
ATTORNEYS AT LAW
A PROFESSIONAL SERVICE CORPORATION
1550 BANK OF AMERICA FINANCIAL CENTER
601 WEST RIVERSIDE AVENUE
SPOKANE, WASHINGTON 99201
FACSIMILE: (509) 623-1660
(509) 624-4600

1 **INTERROGATORY NO. 34:** You are not entitled to receive any
2 money from any state, city or federal government or agency or department
3 thereof, except [identify agency or department and amount of benefit].

4 **ANSWER:**

5
6 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 32:** Please
7 produce copies of all Documents in your possession or control relating to
8 your answer to Interrogatory No. 34, including, without limitation, copies of
9 explanation of benefits, correspondence and other Documents as defined
10 herein.

11 **RESPONSE.**

12
13 **INTERROGATORY NO. 35:** You are not entitled to any federal or
14 state income tax refund, except [identify and list amount].

15 **ANSWER:**

16
17
18 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 33:** Please
19 produce copies of all Documents in your possession or control relating to
20 your answer to Interrogatory No. 35, including, without limitation, copies of
21 federal, state or other income tax returns for the past three years,
22 correspondence and other Documents as defined herein.

23 **RESPONSE.**

24
25
Page 23
Plaintiff's First Supplemental Interrogatories
and Requests for Production
Propounded to Orville L. Moe
WML\Receivership Pleadings.cn

DAVIDSON ❖ MEDEIROS
ATTORNEYS AT LAW
A PROFESSIONAL SERVICE CORPORATION
1550 BANK OF AMERICA FINANCIAL CENTER
601 WEST RIVERSIDE AVENUE
SPOKANE, WASHINGTON 99201
FACSIMILE: (509) 623-1860
(509) 624-4600

1 **INTERROGATORY NO. 36:** There are no judgments or decrees
2 outstanding against you, except [list style of each case, case number, and
3 court that entered each judgment or decree].

4 **ANSWER:**

5
6 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 34:** Please
7 produce copies of all Documents in your possession or control relating to
8 your answer to Interrogatory No. 36, including, without limitation, copies of
9 each judgment or decree, correspondence and other Documents as defined
10 herein.

11 **RESPONSE.**

12
13 **INTERROGATORY NO. 37:** You have executed no guaranties of the
14 indebtedness or obligation of any individual or entity, except [identify debtor,
15 amount, and holder of each guaranty].

16 **ANSWER:**

17
18 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 35:** Please
19 produce copies of all Documents in your possession or control relating to
20 your answer to Interrogatory No. 37, including, without limitation, copies of
21 each guaranty, correspondence and other Documents as defined herein.

22 **RESPONSE.**

23
24
25
Page 24
Plaintiff's First Supplemental Interrogatories
and Requests for Production
Propounded to Orville L. Moe
WML\Rccivership Pleadings.cn

DAVIDSON ✦ MEDEIROS
ATTORNEYS AT LAW
A PROFESSIONAL SERVICE CORPORATION
1650 BANK OF AMERICA FINANCIAL CENTER
601 WEST RIVERSIDE AVENUE
SPOKANE, WASHINGTON 99201
FACSIMILE: (509) 623-1660
(509) 624-4600

1 **INTERROGATORY NO. 38:** You have made no gifts since October 1,
2 2005, except [list property given, approximate value thereof in terms of cost
3 at acquisition, date of gift, identity of recipient, and relationship to recipient
(if any)].

4 **ANSWER:**

5
6
7 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 36:** Please
8 produce copies of all Documents in your possession or control relating to
9 your answer to Interrogatory No. 38, including, without limitation, copies of
10 all receipts, descriptions of property given, correspondence and other
Documents as defined herein.

11 **RESPONSE.**

12
13
14 **INTERROGATORY NO. 39:** You have made no conveyances of real
15 or personal property for less than full value since October 1, 2005, including
16 not only conveyances of assets but also releases or waivers of any valuable
17 claims or contract rights which you owned or held against other parties,
18 except [list property transferred, approximate value thereof in terms of cost
at acquisition, property or money received for such transfer (if any), date of
transfer and identity of recipient, and relationship to recipient (if any)].

19 **ANSWER:**

20
21
22 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 37:** Please
23 produce copies of all Documents in your possession or control relating to
24 your answer to Interrogatory No. 39, including, without limitation, copies of
all releases, waivers, transactional documents, deeds, bills of sale, bank
records, correspondence and other Documents as defined herein.
25

Page 25
Plaintiff's First Supplemental Interrogatories
and Requests for Production
Propounded to Orville L. Moe
WML\Receivership Pleadings.cn

DAVIDSON ♦ MEDEIROS
ATTORNEYS AT LAW
A PROFESSIONAL SERVICE CORPORATION
1550 BANK OF AMERICA FINANCIAL CENTER
801 WEST RIVERSIDE AVENUE
SPOKANE, WASHINGTON 99201
FACSIMILE: (509) 823-1660
(509) 824-4800

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

RESPONSE.

INTERROGATORY NO. 40: During the past twelve (12) months, you have not made any payments to creditors and other third parties, except [identify creditor and list amount and date of payment].

ANSWER:

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 38: Please produce copies of all Documents in your possession or control relating to your answer to Interrogatory No. 40, including, without limitation, copies of all bank records, checks, receipts, escrow records, transactional documents, correspondence and other Documents as defined herein.

RESPONSE.

INTERROGATORY NO. 41: During the past twelve (12) months, you have not made any payments to banks, financial institutions, or other holders of notes, bonds, or other indebtedness, except [identify creditor and list amount and date of payment].

ANSWER:

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 39: Please produce copies of all Documents in your possession or control relating to your answer to Interrogatory No. 41, including, without limitation, copies of all bank records, checks, receipts, escrow records, transactional documents, correspondence and other Documents as defined herein.

Page 26
Plaintiff's First Supplemental Interrogatories
and Requests for Production
Propounded to Orville L. Moe
WML\Receivership Pleadings.cn

DAVIDSON ♦ MEDEIROS
ATTORNEYS AT LAW
A PROFESSIONAL SERVICE CORPORATION
1550 BANK OF AMERICA FINANCIAL CENTER
601 WEST RIVERSIDE AVENUE
SPOKANE, WASHINGTON 99201
FACSIMILE: (509) 823-1680
(509) 824-4600

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

RESPONSE.

INTERROGATORY NO. 42: No real or personal property is held by others for your benefit, except [list property so held, approximate value thereof in terms of costs of acquisition, date of acquisition, and identity of holder].

ANSWER:

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 40: Please produce copies of all Documents in your possession or control relating to your answer to Interrogatory No. 42, including, without limitation, copies of all transactional documents, deeds, bills of sale, bank records, correspondence and other Documents as defined herein.

RESPONSE.

INTERROGATORY NO. 43: You are not indebted to any bank, savings and loan association, credit union, finance company, brokerage house or individual, except [list name of institution or creditor, amount of indebtedness, and date indebtedness incurred].

ANSWER:

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 41: Please produce copies of all Documents in your possession or control relating to your answer to Interrogatory No. 43, including, without limitation, copies of all loan agreements, credit agreements, leases, rental agreements, margin

Page 27
Plaintiff's First Supplemental Interrogatories
and Requests for Production
Propounded to Orville L. Moe
WML\Receivership Pleadings.cn

DAVIDSON ♦ MEDEIROS
ATTORNEYS AT LAW
A PROFESSIONAL SERVICE CORPORATION
1550 BANK OF AMERICA FINANCIAL CENTER
601 WEST RIVERSIDE AVENUE
SPOKANE, WASHINGTON 99201
FACSIMILE: (509) 623-1660
(509) 624-4600

1 agreements, account records, receipts, loan statements, correspondence and
2 other Documents as defined herein.

3 **RESPONSE.**

4
5
6 **INTERROGATORY NO. 44:** You own no airplane, automobile, boat
7 trailer, boat, or any motor vehicle of any nature whatsoever, except [make,
8 model, serial number, date, and cost of acquisition].

9 **ANSWER:**

10
11 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 42:** Please
12 produce copies of all Documents in your possession or control relating to
13 your answer to Interrogatory No. 44, including, without limitation, copies of
14 all certificates of title, certificates of origin, bills of sale, correspondence and
15 other Documents as defined herein.

16 **RESPONSE.**

17
18 **INTERROGATORY NO. 45:** You do not own or have any interest in
19 any work of art, except [include description, date and cost of acquisition].

20 **ANSWER:**

21
22 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 43:** Please
23 produce copies of all Documents in your possession or control relating to
24 your answer to Interrogatory No. 45, including, without limitation, copies of
25 all inventories, purchase agreements, correspondence and other Documents

Page 28
Plaintiff's First Supplemental Interrogatories
and Requests for Production
Propounded to Orville L. Moe
WML\Receivership Pleadings.cn

DAVIDSON ♦ MEDEIROS
ATTORNEYS AT LAW
A PROFESSIONAL SERVICE CORPORATION
1550 BANK OF AMERICA FINANCIAL CENTER
601 WEST RIVERSIDE AVENUE
SPOKANE, WASHINGTON 99201
FACSIMILE: (509) 623-1660
(509) 624-4600

1 as defined herein.

2 **RESPONSE.**

3
4
5 **INTERROGATORY NO. 46:** You own no house, dwelling place,
6 condominium, apartment or cooperative apartment, except [list address,
7 date, and cost of acquisition].

8 **ANSWER:**

9
10
11 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 44:** Please
12 produce copies of all Documents in your possession or control relating to
13 your answer to Interrogatory No. 46, including, without limitation, copies of
14 all transactional documents, deeds, real estate contracts, escrow records,
real property tax receipts, bank records, correspondence and other
Documents as defined herein.

15 **RESPONSE.**

16
17
18 **INTERROGATORY NO. 47:** You have not had any financial
19 statement prepared, nor have you issued any financial statement to any
20 bank, financial institution, entity, or person since October 1, 2005, except
21 [identify bank, financial institution, entity, or person and date of each
financial statement].

22 **ANSWER:**

23
24
25
Page 29
Plaintiff's First Supplemental Interrogatories
and Requests for Production
Propounded to Orville L. Moe
WML\Receivership Pleadings.cn

DAVIDSON ❖ MEDEIROS
ATTORNEYS AT LAW
A PROFESSIONAL SERVICE CORPORATION
1550 BANK OF AMERICA FINANCIAL CENTER
601 WEST RIVERSIDE AVENUE
SPOKANE, WASHINGTON 99201
FACSIMILE: (509) 623-1660
(509) 624-4600

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 45: Please produce copies of all Documents in your possession or control relating to your answer to Interrogatory No. 47, including, without limitation, copies of all financial statements, financial summaries, loan applications, applications for credit, correspondence and other Documents as defined herein.

RESPONSE.

INTERROGATORY NO. 48: You are not a custodian of any property for any other individual or entity, except [include description of such property and identity of beneficial owner].

ANSWER:

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 46: Please produce copies of all Documents in your possession or control relating to your answer to Interrogatory No. 48, including, without limitation, all transactional documents, deeds, real estate contracts, escrow records, real property tax receipts, bills of sale, bank records, correspondence and other Documents as defined herein.

RESPONSE.

INTERROGATORY NO. 49: You own no property, real or personal, outside of the United States, except [include description of each item and its location, address and legal description of real property, serial numbers (if any), and date and cost of acquisition].

ANSWER:

1 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 47:** Please
2 produce copies of all Documents in your possession or control relating to
3 your answer to Interrogatory No. 49, including, without limitation, all
4 transactional documents, deeds, real estate contracts, escrow records, real
5 property tax receipts, bills of sale, bank records, trust agreements,
6 correspondence and other Documents as defined herein.

7
8
9 **RESPONSE.**

10 **INTERROGATORY NO. 50:** You have no bank accounts, savings
11 accounts or deposit accounts in banks in any foreign countries, except [list
12 name and address of institution and balance of each account].

13 **ANSWER:**

14 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 48.** Please
15 produce copies of all Documents in your possession or control relating to
16 your answer to Interrogatory No. 50, including, without limitation, all bank
17 statements, account agreements, cancelled checks, check registers, deposit
18 slips and other Documents as defined herein.

19 **RESPONSE.**

20 **INTERROGATORY NO. 51:** You own no jewelry or like property
21 having a value in excess of \$500.00, except [list description and date and
22 cost of acquisition].

23 **ANSWER:**

24
25
Page 31
Plaintiff's First Supplemental Interrogatories
and Requests for Production
Propounded to Orville L. Moe
WML\Receivership Pleadings.cn

DAVIDSON ♦ MEDEIROS
ATTORNEYS AT LAW
A PROFESSIONAL SERVICE CORPORATION
1660 BANK OF AMERICA FINANCIAL CENTER
601 WEST RIVERSIDE AVENUE
SPOKANE, WASHINGTON 99201
FACSIMILE: (509) 623-1660
(509) 624-4600

1 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 49:** Please
2 produce copies of all Documents in your possession or control relating to
3 your answer to Interrogatory No. 51, including, without limitation, copies of
4 all receipts, bills of sale, descriptions of property, correspondence and other
5 Documents as defined herein.

6 **RESPONSE.**

7
8 **INTERROGATORY NO. 52:** Except for property herein set forth
9 above, you own no property of any nature whatsoever having a value in
10 excess of \$500.00, except [list description and date and cost of acquisition].

11 **ANSWER:**

12
13 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 50:** Please
14 produce copies of all Documents in your possession or control relating to
15 your answer to Interrogatory No. 52, including, without limitation, copies of
16 all receipts, bills of sale, descriptions of property, correspondence and other
17 Documents as defined herein.

18 **RESPONSE.**

19
20 **INTERROGATORY NO. 53:** Your fixed monthly expenses are as
21 follows: [list amounts and sources].

22 **ANSWER:**

23
24
25
Page 32
Plaintiff's First Supplemental Interrogatories
and Requests for Production
Propounded to Orville L. Moe
WML\Receivership Pleadings.cn

DAVIDSON ♦ MEDEIROS
ATTORNEYS AT LAW
A PROFESSIONAL SERVICE CORPORATION
1550 BANK OF AMERICA FINANCIAL CENTER
601 WEST RIVERSIDE AVENUE
SPOKANE, WASHINGTON 99201
FACSIMILE: (509) 623-1660
(509) 624-4800

1 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 51:** Please
2 produce copies of all Documents in your possession or control relating to
3 your answer to Interrogatory No. 53, including, without limitation, copies of
4 all receipts, billing statements, correspondence and other Documents as
5 defined herein.

6 **RESPONSE.**

7
8 **INTERROGATORY NO. 54:** You are not currently, and have not
9 been at any time since October 1, 2005, a beneficiary of any trust, except
10 [identify trust, all beneficiaries of trust, all assets held by the trust during
11 such period, nature and value of beneficial interest, and date interest was
12 acquired].

13 **ANSWER:**

14
15 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 52:** Please
16 produce copies of all Documents in your possession or control relating to
17 your answer to Interrogatory No. 54, including, without limitation, copies of
18 all receipts, trust agreements, trust financial statements, correspondence
19 and other Documents as defined herein.

20 **RESPONSE.**

21 **INTERROGATORY NO. 55:** You have not conveyed any beneficial
22 interest in any trust, since October 1, 2005, except [list all transactions, date
23 of transfer, nature and value of beneficial interest transferred, to whom
24 transferred, consideration for the transfer, and reason for the transfer].
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ANSWER:

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 53: Please produce copies of all Documents in your possession or control relating to your answer to Interrogatory No. 55, including, without limitation, copies of all transactional documents, bills of sale, assignments, correspondence and other Documents as defined herein.

RESPONSE.

INTERROGATORY NO. 56: No trust in which I have held a beneficial interest at any time since October 1, 2005 has made any transfer of property during such time, except [list all such transactions, including date of transfer, nature and value of property transferred, to whom transferred, consideration for the transfer, and reason for the transfer].

ANSWER:

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 54: Please produce copies of all Documents in your possession or control relating to your answer to Interrogatory No. 56, including, without limitation, copies of all transactional documents, bills of sale, assignments, correspondence and other Documents as defined herein.

RESPONSE.

INTERROGATORY NO. 57: No entity in which I have held an ownership interest in at any time since October 1, 2005 has made any

1 transfer of any property during such time, except [list all such transactions,
2 including date of transfer, nature and value of property transferred, to whom
3 transferred, consideration for the transfer, and reason for the transfer].

4 **ANSWER:**

5
6 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 55:** Please
7 produce copies of all Documents in your possession or control relating to
8 your answer to Interrogatory No. 57, including, without limitation, copies of
9 all transactional documents, bills of sale, assignments, correspondence and
10 other Documents as defined herein.

11 **RESPONSE.**

12
13 **INTERROGATORY NO. 58:** I have no property or assets and have
14 no income except as hereinafter stated. [In connection with all listings and
15 descriptions of assets owned, include the cost of acquisition of each asset.]

16 **ANSWER:**

17
18
19 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 56:** Please
20 produce copies of all Documents in your possession or control relating to
21 your answer to Interrogatory No. 58.

22 **RESPONSE.**

23
24 **INTERROGATORY NO. 59:** I know of no other material facts
25 relating to my financial condition, except:

Page 35
Plaintiff's First Supplemental Interrogatories
and Requests for Production
Propounded to Orville L. Moe
WML\Receivership Pleadings.cn

DAVIDSON ❖ MEDEIROS
ATTORNEYS AT LAW
A PROFESSIONAL SERVICE CORPORATION
1550 BANK OF AMERICA FINANCIAL CENTER
601 WEST RIVERSIDE AVENUE
SPOKANE, WASHINGTON 99201
FACSIMILE: (509) 623-1660
(509) 824-4600

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ANSWER:

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 57. Please produce copies of all Documents in your possession or control relating to your answer to Interrogatory No. 59.

RESPONSE.

DATED this ____ day of _____ 2009.

ORVILLE L. MOE

SUBSCRIBED AND SWORN to before me this ____ day of _____ 2009.

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATION

The undersigned attorney for the party responding to the above discovery matters signs this response in compliance with CR 11.

DATED this ____ day of _____ 2009.

SHULKIN HUTTON INC., P.S.

Jerome Shulkin, WSBA No. 2198
Attorney for Orville L. Moe
7525 Southeast 24th Street, Suite 330
Mercer Island, Washington 98040
Phone: (206) 623-3515

Page 37
Plaintiff's First Supplemental Interrogatories
and Requests for Production
Propounded to Orville L. Moe
WML\Receivership Pleadings.cn

DAVIDSON ❖ MEDEIROS
ATTORNEYS AT LAW
A PROFESSIONAL SERVICE CORPORATION
1650 BANK OF AMERICA FINANCIAL CENTER
801 WEST RIVERSIDE AVENUE
SPOKANE, WASHINGTON 99201
FACSIMILE: (509) 823-1660
(509) 824-4800

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF SERVICE

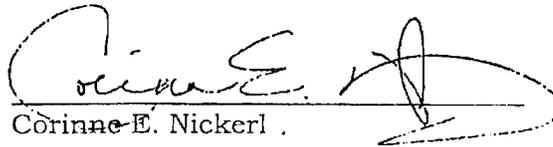
I, Corinne E. Nickerl, a paralegal with the law firm of Davidson ❖
Medeiros, hereby certify that on November 20, 2009, I caused to be served,
an original and three (3) copies of the foregoing PLAINTIFF'S FIRST
SUPPLEMENTAL INTERROGATORIES AND REQUESTS FOR PRODUCTION
PROPOUNDED TO ORVILLE L. MOE, together with a copy of the Ordered
Requiring Orville L. Moe To Answer Plaintiff's First Supplemental
Interrogatories And Requests For Production Propounded To Orville L. Moe
entered herein on November 16, 2009, on the following person in the manner
indicated below at the following address:

Mr. Jerome Shulkin, Esq.
Shulkin Hutton Inc., P.S.
7525 Southeast 24th Street, Suite 330
Mercer Island, Washington 98040

VIA REGULAR MAIL
VIA CERTIFIED MAIL
HAND DELIVERED
BY FACSIMILE
VIA FEDERAL EXPRESS

Attorney for Orville L. Moe

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

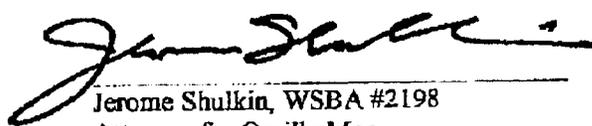

Corinne E. Nickerl

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

CERTIFICATION

The undersigned attorney for the party responding to the above discovery matters signs this response in compliance with CR 11(b). The Interrogatories and Requests were submitted to Orville Moe, who in turn reviewed same, commented, and reviewed them with David Miller, who had same typed.

The responses to the best of my knowledge or were not interposed for any improper purpose, such as to harass or cause unnessesory delay. The haste in preparation is founded on the availability of the judge to review same before the New Year and render a decision relative to removing the immediate thread of bench warrant pending a deposition of Orville Moe.



Jerome Shulkin, WSBA #2198
Attorney for Orville Moe,
7525 SE 24th Street, Suite 330
Mercer Island, WA 98040
206-623-3515

SHULKIN HUTTON INC., P.S.
7525 SE 24th STREET, SUITE 330
MERCER ISLAND, WA 98040
(206) 623-3515

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ANSWER:

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 57. Please produce copies of all Documents in your possession or control relating to your answer to Interrogatory No. 59.

RESPONSE:

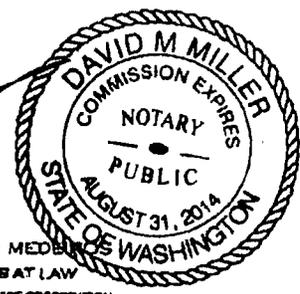
see answers above as stated in several e's

DATED this 8th day of FEBRUARY 2009.

Orville L. Moe
ORVILLE L. MOE
Orville Moe on 12/27/08

SUBSCRIBED AND SWORN to before me this 8th day of February 2009.
December 2010

well
Notary Public in and for the State of Washington, residing at: 3404 W. Lincoln
My commission expires: July 15, 2013



Page 36
Plaintiff's First Supplemental Interrogatories and Requests for Production Propounded to Orville L. Moe
WML\Recovery\ pleadings.cw

DAVIDSON ♦ MEDBERG
ATTORNEYS AT LAW
A PROFESSIONAL SERVICE CORPORATION
1850 BANK OF AMERICA FINANCIAL CENTER
601 WEST RIVERSIDE AVENUE
SPOKANE, WASHINGTON 99201
FACSIMILE: (509) 623-1680
(509) 624-0000

Memorandum of Agreement of Family Limited Partnership

Agreement reduced to writing this 9th day of December 2010 between and among Orville L. Moe, Deonne W. Moe, Susan M. Ross and Terry A. Graham.

Recitals.

Since Clarence and Georgia Moe, father and mother of Orville L. Moe operated the racing at Deer Park Airport, commencing in 1962, Deonne W. Moe, wife of Orville L. Moe, and Susan M. Ross, Terry A. Graham, daughters of Orville L. Moe and Deonne W. Moe and granddaughters of Clarence Moe, have worked as a family partnership in motor racing endeavors of Orville L. Moe and Clarence Moe, with no pay or with pay far below efforts expended.

The Deer Park Drags commenced in 1962 and ended in approximately 1970. Since that time, Orville L. and Deonne W. Moe, and their daughters, Susan M. Ross and Terry A. Graham, have conducted motor racing in Spokane, Washington, as track operator and also has worldwide business in motor racing and other business ventures. Orville L. Moe has since the inception of the motor racing endeavor, as Deonne W. Moe, Susan M. Ross and Terry A. Graham, respectively, were able to expend efforts in the motor racing endeavors, promised that they were owners and would be compensated by ownership.

Orville L. Moe inherited some properties from his parents and bought other properties jointly with his parents. Community and family funds were commingled with separate assets.

The three persons named above agreed that Orville L. Moe could manage the racing efforts and hold title to properties and accounts in his name except for the family residence occupied by Orville L. and Deonne W. Moe.

In consideration for the promise of Orville L. Moe, Deonne W. Moe, Susan M. Ross and Terry A. Graham, have expended thousands of hours of labor, developed techniques and added profits to the family accumulations of cash and property. The span of time of these efforts is 50 years for Deonne W. Moe, 44 years for Susan M. Ross and 41 years for Terry A. Graham.

Commencing in 2004 and later, Orville L. Moe has expended large amounts of cash in personal, unfruitful and unproductive endeavors, hence his capital account has been forfeited. Therefore, the parties agree as follows:

1. The partners hereby form a limited partnership pursuant to the provisions of Revised Code of Washington, Ch. 25.10. At the option of the unanimous consent of the partners, the partnership may be incorporated and family partnership assets contributed to the corporation that may be formed.
2. The name of the entity shall be Clarence Moe Family Limited Partnership or Clarence Moe Family Corporation, Inc.
3. The purpose for the entity shall be to ensure that the business and assets of the partnership shall be continued into the third and future generations of the family motor racing business.

4. The Washington office of the entity shall be located at 2618 W. Upton, Spokane, WA 99205.

5. The capital of the family partnership is:

- 1. U.S. Fast Foods Inc. and related property.
- 2. Real estate located in Lincoln and Spokane County legally

described on Exhibit A.

6. The interest of each partner in profits and losses is:

- 33 1/3% - Deonne W. Moe
- 33 1/3% - Susan M. Ross
- 33 1/3% - Terry A. Graham

7. The capital accounts of the partners are:

- 33 1/3% - Deonne W. Moe
- 33 1/3% - Susan M. Ross
- 33 1/3% - Terry A. Graham

8.1 Interim Distributions. The Managing Partner shall, at the end of each fiscal year, determine distributable cash flow. The Managing Partner shall distribute to the Partners one hundred percent (100%) of the distributable cash flow for the year. Such distribution shall be allocated to the partners in the manner provided in Section ____.

8.2 Withdrawal of a Managing Partner. The occurrence of any of the following events shall constitute a withdrawal of the Managing Partner:

- (a) A voluntary withdrawal pursuant to this Section 8.2;
- (b) An assignment of all of the Managing Partner's partnership interest under Section ____;
- (c) The Managing Partner's removal pursuant to this Section 8.2;
- (d) The occurrence of any of the events specified in RCW 25.10.230(4) or (5) (e.g., bankruptcy);
- (e) The death of a Managing Partner; or
- (f) The incompetence of a Managing Partner.

A Managing Partner may voluntarily withdraw by giving the partnership 90 days written notice.

The limited partners may remove a Managing Partner upon the consent of 66% percent (66% %) of the limited partnership units.

8.3 Withdrawal of a Limited Partner. A limited partner may not withdraw prior to the dissolution and winding up of the partnership as provided in Section 8.2.

8.4 Distribution Upon Withdrawal. The withdrawal or removal of a Managing Partner shall not result in the dissolution of the partnership as to the remaining partners. In such event, the partnership shall have the option of purchasing the withdrawing partner's partnership interest in the manner provided in Section 8.5.

Upon the withdrawal or removal of the last remaining Managing Partner, the remaining partners may, at their election, by a unanimous vote of limited partnership units, either:

- (a) Dissolve and wind up the partnership pursuant to Section 8.4;
- (b) Elect a new Managing Partner and continue the business of the Partnership and purchase the withdrawing partner's partnership interest in the same manner as provided in Section 8.1; or
- (c) Elect a new Managing Partner to continue the business of the partnership and either make the withdrawing or removed Managing Partner or limited partner.

8.5 Right of First Refusal.

(a) In the event a partner desires to assign all or a portion of his partnership interest or involuntarily assigns the interest (such as at death, incapacity or bankruptcy) to a third party other than a member of his immediate family, and if a voluntary assignment, has received a bona fide offer to acquire the same from said third party, the partnership shall have the first right to acquire the interest.

(b) The assignor partner or his assignee shall notify the partners and the partnership in writing, by registered mail at the latter's last known address, of such assignment or offer and provide a copy of said offer. The partnership shall then be allowed forty-five (45) days from the date of receipt of the notice, not

counting the day of receiving the same, within which to elect in writing to acquire the interest or to decline to do so.

(c) The purchase price and terms shall be the price and terms offered or as set forth in Section 10, at the election of the partnership.

8.6 Purchase Price of Partnership Interest. The purchase price of the partnership interest owned by parents shall equal to their capital account balance, plus their share of profit or loss of the partnership on the valuation date determined in the manner provided in Sections 6 and 7 herein.

The purchase price of the partnership units of all partners other than parents shall be the amount agreed upon by all such other partners. Such purchase price shall take into account the fact that all gain or loss in the value of the partnership properties from October 2010, is to be allocated to the partners other than parents. If such other partners cannot agree, the price shall be determined by arbitration in accordance with Article 8.14. All of the partners may, by unanimous consent at any time, determine the purchase price by executing and filing with the partnership a written instrument wherein such purchase price is set forth, whereupon, for the period of time stated in the instrument, the purchase price so determined shall supersede the method of determining the purchase price provided in the previous three sentences. Since the purpose of the partnership is as set forth in Section 1, the partners or arbitrators, as the case may be, shall, in determining the value of the

partnership's real property, use the following factors:

(a) The capitalization of income which the property can be expected to yield for farming, ranch or closely held business purposes over a reasonable period of time under prudent management using traditional cropping patterns for the area, taking into account soil capacity, terrain configuration, and similar factors;

(b) The capitalization of the fair rental value of the land for farmland, ranchland, or closely held business purposes;

(c) Assessed land values in the state of Washington, using the value of the land for "open space" purposes;

(d) Comparable sales of other farm, ranch, or closely held businesses and in the same geographical area far enough removed from a metropolitan or resort area so that non-agricultural use is not a significant factor in the sales price; and

(e) Any other factor which fairly values the farm, ranch, or closely held business value of the property.

8.7 Terms of Payment; Security. Payment for the withdrawing partner's interest by the purchasing party shall be made as follows: 20% of the purchase price shall be paid one hundred twenty (120) days after the valuation date and the balance to be paid in equal annual installments, payable on the anniversary date of the closing each year over a period of ten (10) years, plus interest on the unpaid balance as described in Section 8.9 of this agreement, payable with principal.

The withdrawing partner or personal representative of a deceased partner shall be indemnified by the remaining partners against any and all liability on account of debts of the partnership.

Until the amount to be paid for the acquisition of the interest of any deceased, incapacitated or withdrawing partner shall have been paid, the unpaid amount thereof due from time to time shall constitute a charge or lien against the partnership property, subject only to claims of creditors of the partnership. Upon default made in any payment which is to be made for the acquisition of such interest, and if such default shall continue for a period of sixty (60) days after written demand for performance, the legal representative of a deceased partner or incapacitated partner, or the retiring partner, as the case may be, may declare the entire unpaid balance presently due and payable and may further, at his election, require the continuing partnership to be dissolved and liquidated forthwith. Upon any such liquidation, the assets remaining after the payment of all creditors and the continuing partnership shall first be applied toward the payment of unpaid amounts due for the interest of the deceased, incapacitated or retiring partner.

B.8. Payments of Estimated Amounts. If the value of the interest of a partner under this section has not been determined at the time specified for the making of any of the payments called for in the above sections, payment shall be made in an estimated amount.

-8-

follows: (1) payments shall be considered a distribution made in liquidation of the withdrawing partner's partnership interest under IRC § 736(b) to the extent made in exchange for such partner's interest in partnership property (except for unrealized receivables and goodwill); and (2) all additional payments shall be considered a payment of income under IRC § 736(a). If the parties cannot agree upon what percentage of total payments are being made in exchange for such partner's interest in partnership property, such dispute shall be settled by arbitration.

8.11 Dissolution. The partnership shall be deemed dissolved upon the occurrence of any of the following events:

- (a) Expiration of the partnership term;
- (b) The written consent of 66 2/3% of the partners;
- (c) ~~The withdrawal of the partnership~~ The occurrence of an event of withdrawal of a managing partner

unless the partnership is continued;

9

8.9 Interest on Payments. Interest in the amount of prime rate, West Coast of the United States plus two percent yearly rate at July 1 of each year shall be paid for the respective year.

8.10 Income Tax Incidents of Payments. It is the intention of the parties that all amounts payable under this Section to a withdrawing partner or to the successor in interest of a partner shall, for income tax purposes, be classified as follows: (1) payments shall be considered a distribution made in liquidation of the withdrawing partner's partnership interest under IRC § 736(b) to the extent made in exchange for such partner's interest in partnership property (except for unrealized receivables and goodwill); and (2) all additional payments shall be considered a payment of income under IRC § 736(a). If the parties cannot agree upon what percentage of total payments are being made in exchange for such partner's interest in partnership property, such dispute shall be settled by arbitration.

8.11 Dissolution. The partnership shall be deemed dissolved upon the occurrence of any of the following events:

- (a) Expiration of the partnership term;
- (b) The written consent of 66% of the partners;
- (c) The bankruptcy of the partnership business;
- (d) The occurrence of an event of withdrawal of a Managing Partner unless the partnership is continued;

(e) The disposition of substantially all the partnership assets;

(f) The agreement of the limited partners not in default hereunder, by a vote of 65%; or

(g) The removal of the Managing Partner.

No partner shall have the right to dissolve the partnership for any reason other than as set forth above or to withdraw from the partnership other than as set forth in this agreement.

8.12 Winding Up the Partnership. On any dissolution, the partnership shall immediately commence to wind up its affairs. The partners shall continue to share profits and losses in the same proportions as before dissolution.

Any gain or loss or disposition of partnership properties in the process of liquidation shall be credited or charged to the partners in the manner provided in Section 8.10.

Any partnership asset distributed in kind in the liquidation shall be valued in accordance with the procedure described in Section 8.6 herein and treated as though the asset were sold and the cash proceeds were distributed. The difference between the value of the partnership asset distributed in kind and its book value shall be treated as a gain or loss on sale of the partnership asset and shall be credited or charged to the partners in the manner provided in Section 8.6 of this agreement.

Should any partner have a debit balance in his capital account, whether by reason of losses in liquidating partnership assets or otherwise, the debit balance shall represent an obligation from him to the other partners, to be paid in cash within thirty (30) days after written demand by the other partners.

Following the adjustments provided for above, the assets of the partnership shall be forthwith liquidated and the proceeds from the liquidation shall be distributed in the following priority:

- (a) First, to pay or provide for all debts of the partnership including all monies loaned or advanced to the partnership by any of the partners;
- (b) Second, to parents in an amount equal to the credit balance in their capital account;
- (c) Third, to the limited partners in an amount equal to the credit balance in their capital account;
- (d) The balance, if any, to pay to each Managing Partner the amount of the credit balance of his capital account as then constituted.

8.13 Termination. Upon completion of the dissolution, winding up, liquidation, and distribution of the liquidation proceeds or the assets not liquidated, the partnership shall terminate.

8.14 Arbitration - Occasions for Arbitration. In the event of disputes among the partners as to matters of partnership business, which cannot be resolved by such disputes shall be resolved by arbitration in accordance with the

provisions of this section and the partners waive their right to proceed in courts of law or equity as to these matters.

8.15 Procedure. In the event of such dispute as described in the preceding section, the majority of the partners, though less than necessary to control, shall agree within thirty (30) days among themselves and select an arbitrator. The minority in interest of the partners shall, within a similar period, similarly agree and select a different arbitrator, and the two arbitrators so chosen shall select a third within one week of their selection, and then three so chosen, by majority vote, shall render a decision within thirty (30) days, which decision shall be binding on the parties and which decision may be confirmed in a court of law, if necessary, in accordance with the provisions of RCW Ch. 7.04.

8.16 This agreement shall be amended in any respect upon the affirmative vote of one hundred percent (100%) of the limited partners and the consent of the Managing Partner.

Orville L. Moe has been advised to consult a legal or financial representative to review this agreement as it contains significant legal consequences, factual recitals and admissions. He has had ample time to seek assistance and has declined to obtain opinions of the legal ramifications and is signing this agreement of his own free will and without the undue influence of anyone.

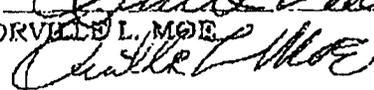
Deonne W. Moe has been advised to consult a legal or financial representative to review this agreement as it contains significant legal

consequences, factual recitals and admissions. She has had ample time to seek assistance and has declined to obtain opinions of the legal ramifications and is signing this agreement of her own free will and without the undue influence of anyone.

Susan M. Ross has been advised to consult a legal or financial representative to review this agreement as it contains significant legal consequences, factual recitals and admissions. She has had ample time to seek assistance and has declined to obtain opinions of the legal ramifications and is signing this agreement of her own free will and without the undue influence of anyone.

Terry A. Graham has been advised to consult a legal or financial representative to review this agreement as it contains significant legal consequences, factual recitals and admissions. She has had ample time to seek assistance and has declined to obtain opinions of the legal ramifications and is signing this agreement of her own free will and without the undue influence of anyone.

IN WITNESS WHEREOF, the partners have signed this partnership agreement.


ORVILLE L. MOE


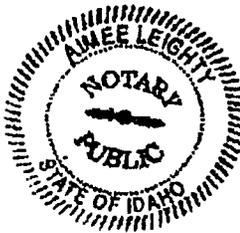
INDIVIDUAL NOTARY
STATE OF IDAHO

County of KOOTENAI

On this 9th day of December, 2010, before me, the undersigned notary public in and for said State, personally appeared

DRIVE L. MOE & DEONAE W. MOE known or identified to me to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me he/she/they executed the same.

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



Aimee Leighty
Notary Public for Idaho
Residing at: SPIRIT LAKE
Commission Expires: 9/10/2014

AMENDED ANSWERS TO INTERROGATORIES

ANSWER TO INTERROGATORY #1

Jerry Shulkin & Associates.

ANSWER TO INTERROGATORY #2

My books and records are in the custody of my _____ office or in the pleadings of the other court case.

ANSWER TO INTERROGATORY #3

Social Security and miscellaneous income when I am employed.

Request for Production #1

See answer to #2. Plus _____ can get Social Security _____.

ANSWER TO INTERROGATORY #4

Some records have been lost but I can check with the bank or current _____ for _____. I was not the owner of these bank accounts except for those taken by the Court, which were joint with my wife.

Request for Production #2

This bank account included family business also and I'll need to find any record I can and separate the family _____ info. As previously stated, all of the documents sought per #4 are not in my possession, or under my control, beyond that which I can recover from the aforesaid banks or from records turned over to the receiver, either by me or my nephew, Troy Moe.

ANSWER TO INTERROGATORY #5

See Answer to Interrogatory #3.

Request for Production #3

*** CANNOT READ THIS ONE ***

ANSWER TO INTERROGATORY #6

No.

Request for Production #4

None I know of.

ANSWER TO INTERROGATORY #7

None that are mine.

Request for Production #5

None.

ANSWER TO INTERROGATORY #8

None.

Request for Production #6

These are in the files at the Receiver and Trustee's offices.

ANSWER TO INTERROGATORY #9

No.

Request for Production #7

None.

ANSWER TO INTERROGATORY #10

My wife and our house at 1616 West Kiernan and a title named on partnership's family assets.

Request for Production #8

None in my possession.

ANSWER TO INTERROGATORY #11

I own a 60% interest in Spokane Raceway Park, Inc. (SRP).

Request for Production #9

These records are in the possession of the Trustee, John Munding.

ANSWER TO INTERROGATORY #12

I have interests in SRP and WML only, but I believe they have been forfeited.

Request for Production #10

See Answer to Interrogatory #12. I believe if I have any they are now in the possession and control of either John Munding or the Receiver, Barry Davidson.

ANSWER TO INTERROGATORY #13

No.

Request for Production #11

None.

ANSWER TO INTERROGATORY #14

Only SRP and WML.

Request for Production #12

See either John Giesa or John Munding, or the Trustee for any records on these matters.

ANSWER TO INTERROGATORY #15

Not for several years now.

Request for Production #13

See Request for Production #12.

ANSWER TO INTERROGATORY #16

None.

Request for Production #14

No.

ANSWER TO INTERROGATORY #17

No.

Request for Production #15

No.

ANSWER TO INTERROGATORY #18

None.

Request for Production #16

See Request for Production #12.

ANSWER TO INTERROGATORY #19

None.

Request for Production #17

See Request for Production #12.

ANSWER TO INTERROGATORY #20

Not that I remember.

Request for Production #18

See Request for Production #12.

ANSWER TO INTERROGATORY #21

No.

Request for Production #19

None.

ANSWER TO INTERROGATORY #22

I don't own any that I know of; the family partnership has a policy for them on me.

Request for Production #20

None.

ANSWER TO INTERROGATORY #23

None.

Request for Production #21

None.

ANSWER TO INTERROGATORY #24

No.

Request for Production #22

None.

ANSWER TO INTERROGATORY #25

None that are mine.

Request for Production #23

None.

ANSWER TO INTERROGATORY #26

None.

Request for Production #24

None.

ANSWER TO INTERROGATORY #27

None that are mine or for my benefit.

Request for Production #25

Fire claim for partnership; none mine.

ANSWER TO INTERROGATORY #28

None.

Request for Production #26

None.

ANSWER TO INTERROGATORY #29

I have claims against several persons and entities in violation of my civil rights.

Request for Production #27

This information is privileged at this time.

ANSWER TO INTERROGATORY #30

Various cases are pending.

Request for Production #28

Privileged.

ANSWER TO INTERROGATORY #31

None that I am aware of at this time.

Request for Production #29

Privileged.

ANSWER TO INTERROGATORY #32

Only in my civil rights cases.

Request for Production #30

Privileged.

ANSWER TO INTERROGATORY #33

No legal interest.

Request for Production #31

None.

ANSWER TO INTERROGATORY #34

Social Security.

Request for Production #32

Social Security.

ANSWER TO INTERROGATORY #35

Not at this time.

Request for Production #33

My wife has produced the tax returns; there are no other requested documents.

ANSWER TO INTERROGATORY #36

John Munding.

Request for Production #34

Not available. See John Munding and Giesa.

ANSWER TO INTERROGATORY #37

None.

Request for Production #35

None.

ANSWER TO INTERROGATORY #38

Family gifts during holidays.

Request for Production #36

Not available.

ANSWER TO INTERROGATORY #39

None.

Request for Production #37

None.

ANSWER TO INTERROGATORY #40

Personal living expenses and attorney's fees.

Request for Production #38

In possession of my wife, Deonne Moe.

ANSWER TO INTERROGATORY #41

Not from any funds of mine.

Request for Production #39

No recollection, but I am checking, and if such is the case it will be so reported.

ANSWER TO INTERROGATORY #42

No.

Request for Production #40

None.

ANSWER TO INTERROGATORY #43

Not that I can recall.

Request for Production #41

See Answer to Interrogatory #43.

ANSWER TO INTERROGATORY #44

Some titles may have been in my name over the years but they _____ to
_____ I have for years.

Request for Production #42

Not in my possession.

ANSWER TO INTERROGATORY #45

No.

Request for Production #43

None.

ANSWER TO INTERROGATORY #46

Only what was listed previously.

Request for Production #44

See Answer to Interrogatory #46.

ANSWER TO INTERROGATORY #47

No.

Request for Production #45

None.

ANSWER TO INTERROGATORY #48

With some family members.

Request for Production #46

None.

ANSWER TO INTERROGATORY #49

None.

Request for Production #47

None.

ANSWER TO INTERROGATORY #50

No.

Request for Production #48

No.

ANSWER TO INTERROGATORY #51

None.

Request for Production #49

No.

ANSWER TO INTERROGATORY #52

Household furniture.

Request for Production #50

None.

ANSWER TO INTERROGATORY #53

Household expenses.

Request for Production #51

In possession of my wife, Deonne Moe.

ANSWER TO INTERROGATORY #54

No.

Request for Production #52

None.

ANSWER TO INTERROGATORY #55

None.

Request for Production #53

None.

ANSWER TO INTERROGATORY #56

No.

Request for Production #54

None.

ANSWER TO INTERROGATORY #57

Spokane Raceway Park, Inc. has transferred millions of dollars of interest to Kalispel Tribe and Washington Motorsports Limited (WML).

Request for Production #55

Documents in possession of John Munding.

ANSWER TO INTERROGATORY #58

See Request for Production #55.

Request for Production #56

See court record or John Munding or John Giesa.

ANSWER TO INTERROGATORY #59

None at this time that I know of.

Request for Production #57

See Answer to Interrogatory #59.

Honorable Annette S. Plese

FILED

MAR 22 2011

THOMAS R FALLQUIST
SPOKANE COUNTY CLERK

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

WASHINGTON MOTORSPORTS LIMITED
PARTNERSHIP, a/k/a Washington
Motorsports, Ltd., by and through Barry W.
Davidson, in his capacity as Receiver and as
Acting Managing General Partner,
Plaintiff,

Case No. 03-2-06856-4

**ORDER GRANTING WML'S
MOTION FOR SANCTIONS
AGAINST JEROME SHULKIN
FOR SIGNING ORVILLE MOE'S
DISCOVERY RESPONSES IN
VIOLATION OF CR 26(g)**

2003 v.

SPOKANE RACEWAY PARK, INC., a
Washington for profit corporation and General
Partner of Washington Motorsports Limited
Partnership,

Defendant.

THIS MATTER came before the Court for hearing on February 17, 2011 upon
Plaintiff, Washington Motorsports Limited Partnership's ("WML") "Motion for
Sanctions Against Jerome Shulkin for Signing Orville Moe's Discovery Responses in
Violation of CR 26(g)." This MATTER came before the Court for presentment on
March 22, 2011. Having considered the evidence, relevant pleadings, and arguments

ORDER GRANTING WML'S MOTION FOR SANCTIONS AGAINST
JEROME SHULKIN FOR SIGNING ORVILLE MOE'S
DISCOVERY RESPONSES IN VIOLATION OF CR 26(g)-Page 1

REED & GIESA, P.S.
ATTORNEYS AT LAW
222 NORTH WALL STREET, SUITE 410
SPOKANE, WASHINGTON 99201
FACSIMILE: (509) 838-8341
(509) 838-8341

ORIGINAL

Appendix 2

1 of Counsel, the Court makes the following:

2 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

3
4 1. On September 19, 2008, Judge Robert Austin entered a Final Judgment
5 in the amount of \$373,626.10 against Mr. Moe for his contempt of numerous court
6 orders. Clerk's Side #1440.

7
8 2. That Judgment was affirmed by the Division III Court of Appeals.
9 Clerk's Side #1851 at Exhibit 1.

10
11 3. On November 16, 2009, Judge Robert D. Austin entered an Order
12 Requiring Orville L. Moe to Answer Plaintiff's First Supplemental Interrogatories and
13 Requests for Production Propounded to Orville L. Moe within 30 days of service
14 thereof. Clerk's Side #1703.

15
16 4. On February 8, 2010, Mr. Moe filed untimely responses to that
17 discovery. Clerk's Side #1746. This Court ruled that those answers were "untimely,
18 incomplete and evasive...." Clerk's Side #1843, pp.5-6. Mr. Shulkin signed those
19 discovery responses. Clerk's Side #1986 at Exhibit 2.

20
21 5. Orville Moe disobeyed that Order and several subsequent Orders of this
22 Court to provide proper answers and responses to that written discovery and to sit for a
23 supplemental proceedings deposition. *E.g.*, Clerk's Side ##1837, ¶¶2; 1843, ¶¶9-10.

24
25 6. As a result of such contempt, on May 6, 2010, this Court issued a bench
warrant for Mr. Moe's arrest. Clerk's Side #1822.

1 17. The answers were submitted for the improper purpose of attempting to
2 have this Court quash the bench warrant issued against Mr. Moe without providing
3 WML with the information it requested in the discovery responses.
4

5 18. Mr. Shulkin's certification of Mr. Moe's discovery response was a
6 violation of CR 26(g). As such, discovery sanctions are mandatory. The type and
7 amount of such sanctions are within the discretion of this Court.
8

9 19. This Court has considered the following factors in fashioning an
10 appropriate sanction: the least severe sanction adequate to serve its purpose should be
11 imposed, the sanction should ensure the wrongdoer does not profit from its violation,
12 whether the violation was intentional, and the other party's efforts to mitigate resulting
13 prejudice.
14

15 20. Sanctions must also be severe enough to deter attorneys and others from
16 participating in similar conduct in future matters.
17

18 21. This Court has considered lesser remedial sanctions, including not
19 imposing an award of attorneys' fees. The Court finds, however, that a lesser
20 sanctions will not serve the purposes of the Rules.
21

22 22. This Court has also considered that this is the second time that
23 Mr. Shulkin has signed discovery responses by Mr. Moe which do not comply with the
24 rules. This Court has also considered that WML's counsel offered Mr. Shulkin an
25

1 opportunity to remedy the improper answers prior to moving for sanctions, but
2 Mr. Shulkin failed to take advantage of that opportunity.
3

4 **ORDER**

5 **Now, therefore, it is hereby ORDERED, ADJUDGED, AND DECREED**
6 **that:**

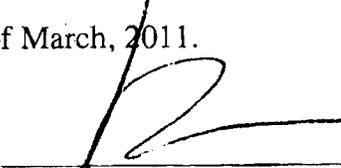
7
8 1. WML's Motion for Sanctions Against Jerome Shulkin for Signing
9 Orville Moe's Discovery Responses in Violation of CR 26(g) is **HEREBY**
10 **GRANTED.**

11
12 2. Specifically, in light of the foregoing considerations, a sanction in the
13 amount of WML's costs and attorneys' fees relating to this Motion (to be established
14 by subsequent declaration) will be awarded against Mr. Shulkin in favor of WML.

15
16 3. WML is hereby granted leave to submit by supplemental declaration and
17 Motion the amount of such attorneys' fees and costs.

18
19 4. The sanctions award will be imposed through a final judgment pursuant
20 to CR 54(b).

21 DONE IN OPEN COURT this 22nd day of March, 2011.

22
23 
24 Annette S. Plese
25 Superior Court Judge

1 PRESENTED BY:
2 REED & GIESA, P.S.

[Handwritten signature]

3
4 John P. Giesa, WSBA #6147
5 Aaron D. Goforth, WSBA #28366
6 Robin Lynn Haynes, WSBA #38116
7 Attorneys for Barry W. Davidson,
8 in his capacity as Receiver and as
9 Acting Managing General Partner of WML

8 APPROVED AS TO FORM AND NOTICE
9 OF PRESENTMENT WAIVED:

10 *Objected on Record by [signature]*

11 Jerome Shulkin, WSBA #2198
12 Shulkin Hutton, Inc., P.S.
13 Attorney for Orville Moe and Deonne Moe

14 APPROVED AS TO FORM AND NOTICE
15 OF PRESENTMENT WAIVED:

16 *[Handwritten signature]*

17 John D. Munding, WSBA #21734
18 Chapter 11 Bankruptcy Trustee for
19 Spokane Raceway Park, Inc.

Honorable Annette S. Plese

FILED

MAR 22 2011

THOMAS R FALLQUIST
SPOKANE COUNTY CLERK

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

WASHINGTON MOTORSPORTS
LIMITED PARTNERSHIP, a/k/a Washington
Motorsports, Ltd., by and through Barry W.
Davidson, in his capacity as Receiver and as
Acting Managing General Partner,

Plaintiff,

v.

2006 SPOKANE RACEWAY PARK, INC., a
Washington for profit corporation and
General Partner of Washington Motorsports
Limited Partnership,

Defendant.

Case No. 03-2-06856-4

**ORDER GRANTING WML'S
MOTION FOR ORDER
QUANTIFYING THE AMOUNT
OF SANCTIONS AWARDED
AGAINST JEROME SHULKIN
FOR HIS SIGNING OF ORVILLE
MOE'S DISCOVERY
RESPONSES IN VIOLATION OF
CR 26(g) AND MOTION FOR
ENTRY OF FINAL JUDGMENT
RE: SAME**

[x] Clerk's Action Required

THIS MATTER came before the Court on March 22, 2011, upon Plaintiff,
Washington Motorsports Limited Partnership's ("WML") Motion for Order
Quantifying the amount of Sanctions Awarded Against Jerome Shulkin for his
Signing of Orville Moe's Discovery Responses in Violation of CR 26(g). Having

ORDER GRANTING WML'S MOTION FOR ORDER
QUANTIFYING THE AMOUNT OF SANCTIONS AWARDED
AGAINST JEROME SHULKIN FOR HIS SIGNING OF ORVILLE
MOE'S DISCOVERY RESPONSES IN VIOLATION OF CR 26(g)-Page 1

REED & GIESA, P.S.
ATTORNEYS AT LAW
222 NORTH WALL STREET, SUITE 410
SPOKANE, WASHINGTON 99201
FACSIMILE: (509) 838-6341
(509) 838-8341

ORIGINAL

Appendix 3

1 considered the evidence, relevant pleadings, and arguments of Counsel, the Court
2 makes the following:
3

4 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

5 1. The Court hereby incorporates by this reference as if fully set forth
6 herein, its Findings of Fact and Conclusions of Law contained in its "Order Granting
7 WML'S Motion for Sanctions Against Jerome Shulkin for signing Orville Moe's
8 Discovery Responses in Violation of CR 26(g)."

9
10 2. As a part of that Order, this Court granted WML its attorneys' fees and
11 costs incurred relating to WML's Motion for Sanctions Against Jerome Shulkin for
12 signing Orville Moe's Discovery Responses in Violation of CR 26(g). As a part of
13 that Order, this Court also granted WML leave to establish the amount of such fees
14 and costs by subsequent Declaration.
15

16
17 3. The Receiver requested the Court to Order Jerome Shulkin to pay WML
18 \$8,460.00 in attorneys' fees and \$164.00 in costs incurred in relation thereto.

19
20 4. The Court has reviewed the time records of the Receiver's counsel for
21 the attorneys' fees and costs claimed in connection with this motion. The time
22 described in the time records was reasonable and the services were necessary because
23 of Mr. Shulkin's signing of Orville Moe's discovery responses in violation of
24 CR 26(g).
25

**ORDER GRANTING WML'S MOTION FOR ORDER
QUANTIFYING THE AMOUNT OF SANCTIONS AWARDED
AGAINST JEROME SHULKIN FOR HIS SIGNING OF ORVILLE
MOE'S DISCOVERY RESPONSES IN VIOLATION OF CR 26(g)-Page 2**

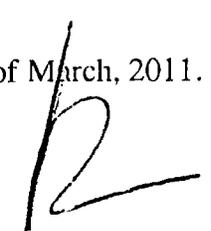
**REED & GIESA, P.S.
ATTORNEYS AT LAW
222 NORTH WALL STREET, SUITE 410
SPOKANE, WASHINGTON 99201
FACSIMILE: (509) 838-6341
(509) 838-6341**

1 judgment on the WML's Motion should be delayed until final adjudication of the other
2 issues, claims, defenses, and disputes in this main Receivership Case.

3
4 3. There is no just reason for delay of entry of this Order and a Final
5 Judgment granting the Receiver's Motion.

6 4 This Court expressly directs that the Final Judgment relating hereto and
7 entered simultaneously herewith shall be immediately entered by the clerk of this
8 court.
9

10 DONE IN OPEN COURT this 22nd day of March, 2011.

11
12
13 
14 _____
Annette S. Plese
Superior Court Judge

15 PRESENTED BY:
16 REED & GIESA, P.S.

17 
18 _____
John P. Giesa, WSBA #6147
19 Aaron D. Goforth, WSBA #28366
20 Robin Lynn Haynes, WSBA #38116
21 Attorneys for Barry W. Davidson,
in his capacity as Receiver and as
22 Acting Managing General Partner of WML
23
24
25

ORDER GRANTING WML'S MOTION FOR ORDER
QUANTIFYING THE AMOUNT OF SANCTIONS AWARDED
AGAINST JEROME SHULKIN FOR HIS SIGNING OF ORVILLE
MOE'S DISCOVERY RESPONSES IN VIOLATION OF CR 26(g)-Page 4

REED & GIESA, P.S.
ATTORNEYS AT LAW
222 NORTH WALL STREET, SUITE 410
SPOKANE, WASHINGTON 99201
FACSIMILE: (509) 838-6341
(509) 838-8341

Honorable Annette S. Plese

FILED

MAR 22 2011

**THOMAS R FALLQUIST
SPOKANE COUNTY CLERK**

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

WASHINGTON MOTORSPORTS LIMITED
PARTNERSHIP, a/k/a Washington
Motorsports, Ltd., by and through Barry W.
Davidson, in his capacity as Receiver and as
Acting Managing General Partner,

Plaintiff,

v.

SPOKANE RACEWAY PARK, INC., a
Washington for profit corporation and General
Partner of Washington Motorsports Limited
Partnership,

Defendant.

Case No. 03-2-06856-4

FINAL JUDGMENT AGAINST
JEROME SHULKIN FOR
SANCTIONS

Clerk's Action Required

JUDGMENT SUMMARY

Pursuant to RCW 4.64.030, the following information should be entered in the

Clerk's Execution Docket:

- Judgment Creditor: Washington Motorsports Limited Partnership, by and through its Receiver and Acting Managing General Partner, Barry W. Davidson

FINAL JUDGMENT AGAINST JEROME SHULKIN FOR SANCTIONS- Page 1

11902247-1 ORIGINAL

REED & GIESA, P.S.
ATTORNEYS AT LAW
222 NORTH WALL STREET, SUITE 410
SPOKANE, WASHINGTON 99201
FACSIMILE: (509) 838-6341
(509) 838-8341

Appendix 4

1 Motion for Sanctions against Mr. Shulkin.

2
3 3. There is no just reason for delay in entering a final judgment on the
4 amounts awarded. This main Receivership case involves multiple issues, disputes,
5 claims, and defenses between WML and Spokane Raceway Park, Inc. and multiple
6 issues, disputes, claims, and defenses involving numerous creditors and persons
7 claiming an ownership in WML. These other issues, disputes, claims, and defenses
8 will take additional time to finally resolve. The requested Final Judgment does not
9 depend upon the outcome of these other issues, claims, defenses and disputes.
10

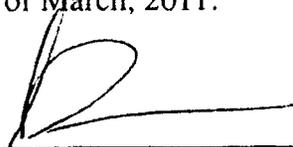
11
12 4. Moreover, pursuant to RAP 7.2(1), an appeal (if any) from this Final
13 Judgment will not delay the adjudication of the other issues, claims, defenses, and
14 disputes in this Main Receivership case.

15
16 5. Based upon the foregoing, and in light of the express purposes of the
17 Receivership Statute to provide more comprehensive, streamlined, and cost-effective
18 receivership procedures, there is no just reason why the entry of Final Judgment
19 regarding the award should be delayed until final adjudication of the other issues,
20 claims, defenses, and disputes in this Main Receivership Case.
21

22 6. Accordingly, the Court enters Final Judgment against Jerome Shulkin in
23 favor of WML in the amount of **\$8,624.00** (consisting of \$8,460.00 in attorneys' fees
24 and \$164.00 in costs)
25

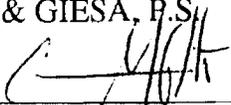
1 7. This Court expressly directs that this **FINAL JUDGMENT** against
2 Jerome Shulkin in favor of WML be immediately entered, and that such **FINAL**
3 **JUDGMENT** be immediately appealable pursuant to CR 54(b) and RAP 2.2(d).
4

5 DONE IN OPEN COURT this 22nd day of March, 2011.
6

7 
8 _____
9 Annette S. Plese
10 Superior Court Judge
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 PRESENTED BY:

2 REED & GIESA, P.S.

3 
4 _____
5 John P. Giesa, WSBA #6147
6 Aaron D. Goforth, WSBA #28366
7 Robin Lynn Haynes, WSBA #38116
8 Attorneys for Barry W. Davidson,
9 in his capacity as Receiver and as
10 Acting Managing General Partner of WML

11 ~~APPROVED AS TO FORM AND NOTICE~~
12 ~~OF PRESENTMENT WAIVED.~~

13 *Objected on Record by phone 3/22/11*
14 

15 _____
16 Jerome Shulkin, WSBA #2198
17 Shulkin Hutton, Inc., P.S.
18 Attorney for Orville Moe and Deonne Moe

19 APPROVED AS TO FORM AND NOTICE
20 OF PRESENTMENT WAIVED:

21 _____
22 John D. Munding, WSBA #21734
23 Chapter 11 Bankruptcy Trustee for
24 Spokane Raceway Park, Inc.