

**FILED**

**JAN 18 2012**

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

NO. 30429-9-III

Superior Court No. 2011-02-03334-6

IN THE COURT OF APPEALS  
FOR THE STATE OF WASHINGTON  
DIVISION III

JANET BARNHART, as Personal Representative of the  
Estate of Reva Barnhart,

Appellant

v.

LIBERTY MUTUAL INSURANCE COMPANY; and  
KATHLEEN BARNHART, as Special Administrator of  
the Estate of Morris Warren Barnhart,

Respondent

---

APPELLANT'S OPENING BRIEF

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**I. TABLE OF CONTENTS**

I. TABLE OF CONTENTS ..... i

II. TABLE OF AUTHORITIES..... iii

III. ASSIGNMENT OF ERROR ..... 1

IV. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR ..... 1

V. STATEMENT OF THE CASE ..... 2

VI. STATEMENT OF THE FACTS ..... 3

VII. STANDARD OF REVIEW ..... 9

VIII. ARGUMENT ..... 10

Issue No. 1. The Court should apply Washington law because the original action was decided by Washington Courts and the state of Washington has an interest in the proceedings. ....10

A. Washington has Personal Jurisdiction over Kathleen Barnhart and the Liberty Mutual Insurance Company and is therefore the proper forum for the current action. ....10

B. Washington law is the appropriate law to apply as it has the “most significant relationship” to the controversy.....12

i. Both the “place where the injury occurred” and the “place where the conduct causing the injury occurred” was Washington.....15

ii. The “domicile, residence, nationality, place of incorporation and place of business of the parties” varies.....15

	iii.	The “place where the relationship, if any, between the parties is centered” is Washington. .....	16
Issue No. 2.		Liberty Mutual Insurance Company, as Surety of Kathleen Barnhart, Special Administrator of the Estate of Morris Barnhart, is obligated under the terms of the bond to pay when the Principal violates her duties.....	19
Issue No. 3.		Whether under Washington law, Janet Barnhart is entitled to an award of attorneys fees. ....	21
IX.		MOTION FOR ATTORNEY’S FEES ON APPEAL.....	22
X.		CONCLUSION.....	22
XI.		APPENDIX .....	A-1

## II. TABLE OF AUTHORITIES

### Cases

<i>International Shoe v. Washington</i> , 326 U.S. 310, 66 S.Ct 154 (1945).....	10
<i>Baffin Land Corp. v. Monticello Motor Inn, Inc.</i> , 70 Wn.2d 893, 425 P.2d 623 (1967).....	13
<i>Hesthagen v. Harby</i> , 78 Wn.2d 934, 481 P.2d 438 (1971).....	18
<i>In Re Wheeler Estate</i> , 71 Wn.2d 759, 431 P.2d 608 (1967).....	21
<i>Johnson v. Spider Stag Corp.</i> 87 Wn.2d 577, 555 P.2d 997 (1976)..	11, 12
<i>National Bank of Washington v. Equity Investors</i> , 86 Wn.2d 545, 546 P.2d 440 (1976).....	19
<i>O'Brien v. Shearson Hayden Stone, Inc.</i> , 90 Wn.2d 680, 586 P.2d 830 (1978).....	13
<i>Olympic Steamship v. Centennial Ins. Co.</i> , 177 W.2d 37, 811 P.2d 673 (1991).....	21
<i>Patterson v. Bixby</i> , 58 Wn.2d 454, 364 P.2d 10 (1961) .....	12
<i>Schnall v. AT&amp;T Wireless Servs., Inc.</i> , 171 Wn.2d 260, 259 P.3d 129 (2011).....	12
<i>Sloan v. West</i> , 62 Wn. 623, 116 P. 272 (1911).....	21
<i>Tyee Const. Co. v. Steel Products, Inc., of Wash.</i> , 62 Wn.2d 106, 381 P.2d 245 (1963).....	10
<i>Vallandigham v. Clover Park Sch. Dist. No 400</i> , 154 Wn.2d 16, 109 P.3d 805 (2005).....	8
<i>Cotton v. Kronenberg</i> , 111 Wn.App. 258, 44 P.3d 878 (Div. I 2002).....	9
<i>Payne v. Saberhagen Holdings</i> , 147 Wn.App. 17, 190 P.3d 102 (Div, I 2008) .....	17

*Singh v. Edwards Lifesciences Corp.*, 151 Wn.App. 137, 210 P.3d 337  
(Div. I 2009)..... 11

*Carey v. Mackey*, 82 Me. 516, 20 A. 84 (1890)..... 16

**Statutes**

RCW 4.28.185 ..... 10, 11

RCW 4.84.330 ..... 22

RCW 7.06.060 ..... 22

RCW 11.32.030 ..... 17, 18, A-1

RCW 11.48.210 ..... 22

RCW 11.76.160 ..... 20, A-1

California Probate Code § 7250..... A-1

California Probate Code § 8480..... A-2

California Probate Code § 8542..... A-2

California Probate Code § 9600..... A-3

California Probate Code § 9601..... A-3

California Probate Code § 9602..... A-4

**Court Rules**

CR 56(c)..... 8

RAP 18.1 ..... 21

**Text Authorities**

11 C.J.S. *Bonds* § 1 (2011) ..... 19

11 C.J.S. *Bonds* § 4 (2011) ..... 16

Restatement (Second) of Conflict of Laws § 175-80 (1971)..... 12

Restatement (Second) of Conflict of Laws § 187 (1971) ..... 13

Restatement (Second) of Conflict of Laws § 359 (1971) ..... 18

### **III. ASSIGNMENT OF ERROR**

Whether the Court erred in denying and failing to grant Appellant Janet Barnhart's Motion for Summary Judgment and in granting Respondent Liberty Mutual Insurance Company's Motion to Dismiss.

### **IV. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

#### **Issue No. 1.**

Whether Liberty Mutual Insurance Company is liable on the Special Administrator Surety Bond posted in the California Probate Court for a judgment obtained in Washington.

#### **Issue No. 2.**

Whether California law or Washington law applies to the proceedings brought by a California Special Administrator against a Washington Personal Representative in the Spokane County Superior Court, State of Washington.

#### **Issue No. 3.**

Whether Janet Barnhart is entitled to attorneys fees and costs in the Superior and Appellate Courts against the Surety, Liberty Mutual Insurance Company.

## **V. STATEMENT OF THE CASE**

This is an action by a Washington Personal Representative against a California Special Administrator's Surety Bond posted in the California Probate Court to recover payment of a Washington judgment for attorney's fees and costs. The California Special Administrator brought an action against the Washington Personal Representative in the Superior Court, Spokane County, Washington, resulting in that Court denying and dismissing the California Special Administrator's claims and issuing a judgment against the California Special Administrator.

## VI. STATEMENT OF THE FACTS

Lloyd and Reva Barnhart had two children, Morris Barnhart and Janet Barnhart, (CP 23). On December 27, 1989, Lloyd Barnhart passed away, (CP 23). An inventory was filed in Lincoln County Superior Court on June 14, 1990, that established Lloyd Barnhart's Estate was valued at \$589,506.00, (CP 23). The entire estate was left to Mr. Barnhart's wife, Reva, (CP 24).

At the time of Lloyd's death, Reva was living with her son, Morris, and daughter-in-law, Kathleen Barnhart, in Las Vegas, Nevada, (CP 24). While living with Morris, Reva provided a Power of Attorney which Morris used to secure a loan against Reva's real property located in Lincoln County for \$100,000.00, (CP 24). Morris also used the Power of Attorney to secure a loan in the amount of \$175,000.00 using Reva's certificates of deposit as security, (CP 24). Shortly thereafter, Morris defaulted on the loans and the creditors foreclosed against the Lincoln County property, (CP 24). While Reva was living with Morris, she executed a will naming both Janet and Morris as heirs and co-personal representatives of the estate, (CP 24).

In November 1991, a guardianship was initiated in Clark County, Nevada, for Reva in which the court transferred the care of Reva to her

daughter, Janet, (CP 24). The Clark County, Nevada, case number is G14568, (CP 24).

In 1992, Janet Barnhart filed a conservatorship in California for her mother, Reva Barnhart, (CP 24). At the time the conservatorship was filed in California, Reva had approximately \$22,942.00 in a bank account and the real property in Lincoln County, (CP 24). The real property contained a mortgage against it for \$100,000.00 that had been created by Morris Barnhart with his Power of Attorney, (CP 24).

On March 27, 1995, Reva Barnhart passed away, (CP 24). Shortly thereafter, Janet filed a petition for letters of administration in Lincoln County, Washington, (CP 24). In the petition, Janet claimed her mother was incompetent at the time she executed her Will and that the Will was invalid, (CP 24). The Lincoln County Superior Court entered an Order confirming Janet Barnhart as Personal Representative and allowing administration without intervention, (CP 24).

On November 6, 1995, Janet Barnhart filed a general inventory and appraisal of Reva Barnhart's assets in the probate, (CP 24). The inventory did not list as an asset any debt owed by Morris to his mother, (CP 24). The inventory did list a debt of \$83,946.00 owed to a creditor of Morris Barnhart's where security was in real property located in Lincoln County, (CP 24-25).

In December of 1997, Janet contacted Morris regarding the funds which were borrowed against the estate, (CP 25). After this discussion, Janet prepared a document entitled "Waiver of Claim of Inheritance," (CP 25). The Waiver, dated January 14, 1998, was signed by Morris Barnhart and states, that Morris had borrowed more than one-half of Lloyd's Estate, and used the funds to start a new business, (CP 83-84). Because Morris was unable to repay the money borrowed from the Estate, he would make no claim and waive his right to inherit from Reva's Estate, (CP 83).

Morris Barnhart passed away in San Diego County, California, on March 1, 2001 (CP 77). As the surviving spouse and sole heir of Morris Barnhart, Kathleen Barnhart brought an action for Judicial Proceedings on July 6, 2006, (CP 73). In the proceedings, *In re Estate of Reva G. Barnhart*, Lincoln County Superior Court Cause No. 95-4-00026-4, Kathleen Barnhart sought to set aside the waiver of inheritance signed by Morris Barnhart and to remove Janet Barnhart as Personal Representative, (CP 73). To substantiate this claim, Kathleen provided a document dated March 14, 1998, allegedly signed by Morris which states

On January 14, 1998 I was coerced by my sister, Ms. Janet Barnhart . . . to sign a "Waiver of Claim of Inheritance". Janet determined that I borrowed more than one-half of my father LLOYD BARNHART's estate and I was forced to sign this

waiver that I make no claims of additional inheritance from my mother's estate and waive all claims and/or rights of inheritance, reports of accounts since the time of my mother's demise on March 27, 1995 and acknowledge that all property in the estate should go to my sister, JANET BARNHART.

At the time that I signed this WAIVER OF CLAIM OF INHERITANCE I was under doctors' care for a serious heart condition, on medication and was in no condition to sign legal documents. I admit that I was under undue distress and was forced to sign this document. Regardless of what Janet Barnhart says, my children are entitled to the inheritance my parents intended them to have.

Janet flew to New Mexico to force me to sign this "Waiver of Claim Inheritance" - taking advantage of my serious medical condition.

This letter revokes and retracts any and all legal documents that I signed on January 14, 1998.

Sincerely,

/s/ Morris Barnhart

(CP 85).

On or about August 16, 2006, venue in the proceedings, Cause No. 95-4-00026-4, was moved from Lincoln County to the Spokane County Superior Court, (CP 87). This Court found that Kathleen's petition was not barred by laches, and that Morris did not validly disclaim his inheritance, (CP 100). On appeal, the Division III Court of Appeals reversed, holding that Kathleen was an improper party to bring the action, and that she had no standing to assert a claim against the Estate, (CP 100).

To remedy this, on July 7, 2009, Kathleen filed a petition for probate in San Diego County Superior Court requesting to be made a "Special Administrator" of the Estate of Morris Warren Barnhart under California Probate Law to "(1) take possession of all real and personal property of the estate of the decedent and preserve it from damage, waste, and injury"; and, "(2) commence and maintain or defend suits and other legal proceedings." (CP 102).

In her petition to the California Probate Court, Kathleen Barnhart argued that under Washington law, she may commence a judicial proceeding to recover against the Estate of Reva Barnhart with the Court's approval, (CP 100). Kathleen Barnhart requested the California Probate Court allow her to "substitute herself as the personal representative of the Estate for herself individually" in the current action in the Spokane Superior Court, (CP 101). The California court granted the petition on July 8, 2009, and required Kathleen Barnhart to obtain a bond in the amount of \$205,000.00, (CP 105). California Probate Code Sec. 8542(a)(1) provides that a special administrator provide a bond required by the court, (CP 58).

As a result, Kathleen Barnhart obtained a bond in the amount of \$205,000.00 from Respondent Liberty Mutual Insurance Company on July 6, 2009, (CP 8). Language contained in the bond states that if Kathleen

"faithfully execute[s] the duties of the trust according to law, then this obligation shall be void, otherwise to remain in full force and effect." (CP 8).

On July 21, 2009, Kathleen filed a Motion to substitute herself as personal representative in the proceedings, (CP 110). This motion was granted. After a bench trial, the Superior Court entered Findings of Fact, Conclusions of Law and a Judgment on April 29, 2011, (CP 23-28).

Among other things, the findings of fact stated that "of the \$589,000.00 in [Lloyd]'s estate, [Morris] received the benefit of somewhere between \$275,000 and \$300,000.00." (CP 27). Additionally, the court found that

"[w]ith regard to the Revocation of March of 1998  
... the signature on that in not Morris Barnhart's.  
[sic] I would therefore find that revocation invalid  
and fraudulent."

(CP 27).

The court then dismissed the Petition by Kathleen Barnhart and awarded Appellant Janet Barnhart, as Personal Representative of the Estate of Reva Barnhart, "attorney's fees in the amount of \$20,092.50 and costs in the amount of \$686.54 against the Estate of Morris Barnhart." (CP 28).

## VII. STANDARD OF REVIEW

An order for summary judgment is reviewed *de novo*. *Vallandigham v. Clover Park Sch. Dist. No 400*, 154 Wn.2d 16, 26, 109 P.3d 805 (2005). Essentially, the Court performs the same inquiry as did the trial court. *Id.* Additionally, the Court considers all the facts and reasonable inferences in the light most favorable to the nonmoving party. *Id.*

Summary judgment is proper only where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c). Summary judgment is therefore appropriate only when reasonable minds can reach only one conclusion regarding the material facts. *Cotton v. Kronenberg*, 111 Wn.App. 258, 264, 44 P.3d 878 (Div. I 2002).

## VIII. ARGUMENT

**Issue No. 1. The Court should apply Washington Law because the original action was decided by Washington Courts and the state of Washington has an interest in the proceedings.**

The Trial Court erred in allowing Respondent Liberty Mutual Insurance Company to apply California law in its defense, (RP 2). The original action by Kathleen Barnhart, Special Administrator of the Estate of Morris Barnhart, was brought in a Washington Court, under Washington law, (CP 24). Washington law does not expressly prohibit a foreign Special Administrator from bringing an action in Washington, nor does it prohibit an action from being commenced against a foreign Administrator who has transacted business within the state. RCW 11.32.030.

*A. Washington has Personal Jurisdiction over Kathleen Barnhart and the Liberty Mutual Insurance Company and is therefore the proper forum for the current action.*

Washington's Long-Arm Statute, codified as RCW 4.28.185, allows for an individual, regardless of whether they are a Washington citizen, to be brought under the jurisdiction of the Washington Courts if they transact business within the state, commit a tortious act within the state, or some other act under the statute. *See id.*

To fall within the scope of the long-arm statute, the necessary acts must arise from actions occurring within Washington by either the individual or an agent acting on behalf of the individual or company. RCW 4.28.185(3). Washington Courts have allowed jurisdiction over noncitizen defendants when (1) the noncitizen defendants purposefully did some act or consummated some transaction within Washington; (2) the cause of action arose from, or was connected with, the act or transaction; and (3) the assumption of jurisdiction did not offend traditional notions of fair play and substantial justice. *Tyee Const. Co. v. Steel Products, Inc., of Wash.*, 62 Wn.2d 106, 115-16, 381 P.2d 245 (1963).

Essentially, the statute requires only that there be a proper relationship between the defendant and the forum. A state may therefore enter a binding judgment against a noncitizen defendant as long as that defendant has "minimum contacts" with the forum. *See International Shoe v. Washington*, 326 U.S. 310, 66 S.Ct 154 (1945). Absent these "minimum contacts," a noncitizen defendant would not be afforded the "traditional notions of fair play and substantial justice." *Id.* at 316.

In the present action, Kathleen Barnhart was granted powers as Special Administrator in California to continue an action in Washington from the California Probate Court, (CP 105). The California Probate Court required Kathleen Barnhart to obtain a bond in the amount of

\$205,000 prior to commencing the action, (CP 105). Liberty Mutual Insurance Company was the surety of said bond, (CP 8). Subsequently, the action was brought in Washington against the Estate of Reva Barnhart and was tried in Washington and argued under Washington law, (CP 73). Therefore, Kathleen Barnhart subjected herself to Washington Courts. Likewise, Respondent Liberty Mutual Insurance Company, as surety to Kathleen Barnhart is subject to the laws and jurisdiction of Washington through Kathleen's actions. The trial court erred in concluding that California law applies in the instant matter, (RP 2).

B. *Washington law is the appropriate law to apply as it has the "most significant relationship" to the controversy.*

Washington courts follow the "most significant relationship" test in determining which state's law to apply when a conflict of law exists. *Johnson v. Spider Stag Corp.* 87 Wn.2d 577, 580, 555 P.2d 997 (1976); *see also Singh v. Edwards Lifesciences Corp.*, 151 Wn.App. 137, 140, 210 P.3d 337 (2009). In applying this test, Washington courts evaluate the following contacts:

- (a) the place where the injury occurred;
- (b) the place where the conduct causing the injury occurred;

(c) the domicile, residence, nationality, place of incorporation and place of business of the parties; and

(d) the place where the relationship, if any, between the parties is centered.

*Johnson*, 87 Wn.2d at 580-81, *quoting* the Restatement (Second) of Conflict of Laws § 175-80 (1971).

The court in *Johnson*, reviewing the conflict of laws between wrongful death actions under Washington and Kansas laws, articulated a two-step analysis in determining the appropriate choice of law: first, a court must assess the contacts with each potentially interested state; and if the contacts are evenly balanced, the court must next assess the state's public policies and governmental interests. *Johnson*, 87 Wn.2d at 852.

With regards to conflict of laws in contracts, Washington courts attempt to generally enforce contractual provisions whenever possible. *Schnall v. AT&T Wireless Servs., Inc.*, 171 Wn.2d 260, 266, 259 P.3d 129 (2011), *citing Patterson v. Bixby*, 58 Wn.2d 454, 459, 364 P.2d 10 (1961). This is especially true when the contract contains a choice of law provision. *Schnall*, 171 Wn.2d at 266. However, if application of the chosen law would be conflict with an essential policy of Washington, a court may void a contractual choice of law provision. *Id.* at 267. *See also O'Brien v. Shearson Hayden Stone, Inc.*, 90 Wn.2d 680, 685, 586 P.2d 830 (1978).

Washington courts also use the “most significant relationship” test in conflict of laws in contract issues. *See O’Brien*, 90 Wn.2d at 684; *see also Baffin Land Corp. v. Monticello Motor Inn, Inc.*, 70 Wn.2d 893, 425 P.2d 623 (1967). The Restatement (Second) of Conflict of Laws, accepted by Washington Courts, states that:

(2) [t]he law of the state chosen by the parties to govern their contractual rights and duties will be applied, even if the particular issue is one which the parties could not have resolved by an explicit provision in their agreement directed to that issue, unless either

(a) the chosen state has no substantial relationship to the parties or the transaction and there is no other reasonable basis for the parties’ choice, or

(b) application of the law of the chosen state would be contrary to a fundamental policy of a state which has a materially greater interest than the chosen state in the determination of the particular issue and which, under the rule of § 188, would be the state of the applicable law in the absence of an effective choice of law by the parties.

Restatement (Second) of Conflict of Laws § 187 (1971).

- i. Both the “place where the injury occurred” and the “place where the conduct causing the injury occurred” was Washington.*

The original action, brought in Washington by Kathleen Barnhart, Special Administrator of the Estate of Morris Barnhart, was to contest the actions of Appellant Janet Barnhart, Personal Representative of the Estate of Reva Barnhart during the probate of the estate in California, (CP 73). When Kathleen Barnhart brought the action in Washington, she argued Washington law, (CP 73). Appellant Janet Barnhart prevailed in the Washington case and was awarded attorneys fees and costs against Kathleen Barnhart, (CP 28). Respondent Liberty Mutual Insurance Company is now asserting that California law applies to the bond which Kathleen Barnhart was required to obtain prior to commencing the action, (CP 57). Appellant Janet Barnhart contends that this action is an extension of the same controversy originally commenced by Kathleen Barnhart and therefore Washington law should be applied.

- ii. The “domicile, residence, nationality, place of incorporation and place of business of the parties” varies.*

Appellant, Janet Barnhart, is a resident of the State of Washington, and a part resident of the State of Arizona, (CP 3).

Kathleen Barnhart, as Special Administrator of the Estate of Morris Warren Barnhart, deceased, was duly appointed Special Administrator of the Estate of Morris Warren Barnhart by the Superior Court of the State of California in and for the County of San Diego, (CP 4).

Respondent, Liberty Mutual Insurance Company, is a foreign corporation doing business in the State of California and in the State of Washington, (CP 4). This pleading was admitted, (CP 48).

These facts favor Washington because both Janet Barnhart and Respondent Liberty Mutual Insurance Company are domiciled in Washington. Kathleen Barnhart, as Special Administrator, is a resident of California, and this does not change the weight of this factor in favor of a Washington situs.

*iii. The "place where the relationship, if any, between the parties is centered" is Washington.*

The "relationship" between the parties centers around the probate of the Estate of Reva Barnhart and Morris Barnhart's waiver of inheritance therein, (CP 73-76, 84). Kathleen Barnhart, Special Administrator of the Estate of Morris Barnhart, brought an action in Spokane County, Washington against the Estate of Reva Barnhart to recover Morris Barnhart's share of the Estate, (CP 73). The Estate was

probated in Lincoln County, Washington, and the original action was brought in Washington and argued under Washington laws, (CP 73). Thus, Washington law is the correct law to apply in the action to recover costs associated with the original action.

Respondent Liberty Mutual Insurance Company argues that California Probate Code and California Contract Law govern Kathleen Barnhart and Liberty Mutual's obligation under the bond, (CP 57).

While Washington and California laws are silent as to the issue, other jurisdictions have held that when a bond is executed in one state and performance on the bond is done in another state, absent an express statement otherwise, the parties are presumed to submit to the laws of the other state. *See* 11 C.J.S. *Bonds* § 4, *citing Carey v. Mackey*, 82 Me. 516, 20 A. 84 (1890). Appellant contends therefore that California law is not applicable because Kathleen Barnhart and Respondent Liberty Mutual Insurance Company executed the bond as required by the California Court to maintain the Washington action.

Additionally, Washington law does not prohibit a special administrator to bring an action in the Washington state court. RCW 11.32.030 provides for the powers and duties of the Special Administrator in Washington. The statute provides that:

The Special Administrator . . . may commence and maintain suits as an Administrator, and may also sell such perishables and other goods as the Court shall order sold, and make family allowances under the order of the Court.

Here there is no question that Kathleen Barnhart came to Washington Court and commenced an action, (CP 73). The trial took place in Spokane County, (CP 4). The judgment and findings were also entered in Spokane County, (CP 23-29). Consequently the “most significant relationship” was in Spokane, Washington, and not in the State of California.

*Payne v. Saberhagen Holdings*, 147 Wn.App. 17, 190 P.3d 102 (2008), involved a products liability involving a de facto merger of corporations and a continuity of the business by the surviving corporation. Payne, the Plaintiff, was a resident of Oregon. The parent company was a resident of Ohio. The products were manufactured in Ohio before the corporation was merged into the Pennsylvania corporation. The Court of Appeals in *Payne* used the same contact rule listed in Restatement (Second) Conflicts of Law. In *Payne* the Trial Court determined that the Pennsylvania law applied for the product line that resulted in the asbestos liability because of the significant contacts within that state.

In addition, the Restatement (Second) of Conflict of Laws § 359 (1971) states

[a]n action may be maintained against a foreign executor or administrator ... to recover damages for any wrong done by him, in the administration of the estate.

The Spokane County Superior Court included in findings of fact in the original action brought by Kathleen Barnhart, in finding No. 42, that the Revocation by Morris Barnhart was "invalid and fraudulent." (CP 27). Appellant Janet Barnhart thus argues that the trial court erred in concluding that California law, and not Washington law, applied, (RP 2).

**Issue No. 2. Liberty Mutual Insurance Company, as Surety of Kathleen Barnhart, Special Administrator of the Estate of Morris Barnhart, is obligated under the terms of the bond to pay when the Principal violates her duties.**

Under Washington law, a special administrator is "an officer of the court and stands in a fiduciary relationship to those beneficially interested in the estate." *Hesthagen v. Harby*, 78 Wn.2d 934, 942, 481 P.2d 438 (1971) As such, a special administrator is "obligated to exercise the utmost good faith and to utilize the skill, judgment, and diligence which would be employed by the ordinarily cautious and prudent person in the management of his own trust affairs." *Id.* If the administrator breaches that duty and causes a loss to another party, the administrator is held liable." *Id.*

A bond is defined as “an obligation in writing, usually under seal, binding the obligor to pay a sum of money to the obligee, which may be conditioned upon a performance.” 11 C.J.S. *Bonds* § 1 (2011). An insurance company who, as a surety, provides a bond is essentially “sell[ing] protection as a sort of commodity.” *National Bank of Washington v. Equity Investors*, 86 Wn.2d 545, 553, 546 P.2d 440 (1976). When providing a bond, a surety will generally investigate the risks associated with the relationship as it will “assume[] that losses will occur for which it must pay.” *Id.* At 553-54.

Washington law states that “[w]henver a decree shall have been made by the court for the payment of creditors, the personal representative shall be personally liable to each creditor . . . . *The personal representative shall likewise be liable on his bond to each creditor.*” RCW 11.76.160 (emphasis added).

Appellant Janet Barnhart, as Personal Representative of the Estate of Reva Barnhart, was awarded a judgment against “The Estate of Morris Barnhart-Kathleen Barnhart, Personal Representative” fees and costs in the amount of \$20,779.04, (CP 31-32). Washington law allows collection against the bond to a creditor under RCW 11.76.160. This Court should therefore grant a summary judgment against Respondent Liberty Mutual

Insurance Company as the Surety of Kathleen Barnhart and reverse the trial court.

Kathleen Barnhart, as Special Administrator of the Estate of Morris Barnhart, violated her duty to preserve the estate from any "damage, waste, and injury" when she brought a fraudulent claim against the Estate of Reva Barnhart, (CP 23-29).

Appellant contends that Kathleen Barnhart, as Special Administrator of the Estate of Morris Barnhart, violated her duties as a special administrator when she brought what the Superior Court of Spokane County found in Finding No. 42 that the action was "invalid and fraudulent" against the estate of Reva Barnhart, (CP 27).

Because Kathleen Barnhart, as "Special Administrator" of the Estate of Morris Barnhart, was required to procure a bond prior to commencing an action in the name of the Estate, (CP 8), Liberty Mutual, as Surety, is liable for any false actions brought on behalf of the Estate. The trial court erred in failing to grant summary judgment in favor of the Appellant, Janet Barnhart.

**Issue No. 3. Whether under Washington law, Janet Barnhart is entitled to an award of attorneys fees.**

The Washington Supreme Court has provided that "an award of fees is required in any legal action where the insurer compels the insured

to assume the burden of legal action, to obtain the full benefit of his insurance contract, regardless of whether the insurer's duty to defend is at issue." *Olympic Steamship v. Centennial Ins. Co.*, 177 W.2d 37, 53, 811 P.2d 673 (1991). Therefore, as a matter of law, Janet Barnhart is entitled to attorneys' fees and court costs which arose out of prosecuting this case in the trial court.

RCW 11.48.210 grants the Court in probate matters discretion to award attorney's fees. *Sloan v. West*, 62 Wn. 623, 116 P. 272 (1911). The Estate of Reva Barnhart was enhanced by Appellant Janet Barnhart. Attorney's fees should be allowed on that basis. *See In Re Wheeler Estate*, 71 Wn.2d 759, 431 P.2d 608 (1967).

#### **IX. MOTION FOR ATTORNEY'S FEES ON APPEAL**

Appellant Janet Barnhart respectfully moves this Court for an award of attorney's fees on appeal pursuant to RAP 18.1, RCW 4.84.330, RCW 7.06.060, RCW 11.48.210, and *Olympic Steamship*, 177 W.2d at 53, 811 P.2d 673, and authorities cited under Issue No. 3 in this brief.

#### **X. CONCLUSION**

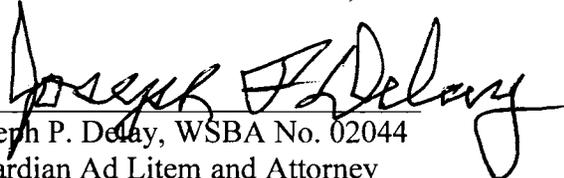
For the foregoing reasons, Appellant Janet Barnhart respectfully requests this Court reverse the decision of the Spokane County Superior Court and grant summary judgment to the Appellant. Respondent Liberty

Mutual Insurance Company should be assessed attorneys fees and costs in the trial court. Additionally, Appellant Janet Barnhart respectfully requests this Court grant Appellant's Motion and an award of attorneys fees on appeal.

Dated this 17<sup>th</sup> day of January, 2012.

Respectfully Submitted.

**DELAY, CURRAN, THOMPSON,  
PONTAROLO & WALKER, P.S.**

By   
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## **XI. APPENDIX**

### **Washington Statutes**

#### **RCW 11.32.030.**

Such special administrator shall collect all the goods, chattels, money, effects, and debts of the deceased, and preserve the same for the personal representative who shall thereafter be appointed; and for that purpose may commence and maintain suits as an administrator, and may also sell such perishable and other goods as the court shall order sold, and make family allowances under the order of the court. The appointment may be for a specified time, to perform duties respecting specific property, or to perform particular acts, as stated in the order of appointment. Such special administrator shall be allowed such compensation for his or her services as the said court shall deem reasonable, together with reasonable fees for his or her attorney.

#### **RCW 11.76.160.**

Whenever a decree shall have been made by the court for the payment of creditors, the personal representative shall be personally liable to each creditor for his or her claim or the dividend thereon, except when his or her inability to make the payment thereof from the property of the estate shall result without fault upon his or her part. The personal representative shall likewise be liable on his or her bond to each creditor.

### **California Statutes**

#### **California Probate Code § 7250.**

(a) When a judgment or order made pursuant to the provisions of this code concerning the administration of the decedent's estate becomes final, it releases the personal representative and the sureties from all claims of the heirs or devisees and of any persons affected thereby based upon any act or omission directly authorized, approved, or confirmed in the judgment or order. For the purposes of this section, "order" includes an order settling an account of the personal representative, whether an interim or final account.

(b) Nothing in this section affects any order, judgment, or decree made, or any action taken, before July 1, 1988. The validity of any action taken before July 1, 1988, is determined by the applicable law in effect before July 1, 1988, and not by this section.

(c) This section shall not apply where the judgment or order is obtained by fraud or conspiracy or by misrepresentation contained in the petition or account or in the judgment as to any material fact. For purposes of this subdivision, misrepresentation includes, but shall not be limited to, the omission of a material fact.

**California Probate Code § 8480.**

(a) Except as otherwise provided by statute, every person appointed as personal representative shall, before letters are issued, give a bond approved by the court. If two or more persons are appointed, the court may require either a separate bond from each or a joint and several bond. If a joint bond is furnished, the liability on the bond is joint and several.

(b) The bond shall be for the benefit of interested persons and shall be conditioned on the personal representative's faithful execution of the duties of the office according to law.

(c) If the person appointed as personal representative fails to give the required bond, letters shall not be issued. If the person appointed as personal representative fails to give a new, additional, or supplemental bond, or to substitute a sufficient surety, under court order, the person may be removed from office.

**California Probate Code § 8542**

(a) The clerk shall issue letters to the special administrator after both of the following conditions are satisfied:

- (1) The special administrator gives any bond that may be required by the court under Section 8480.
- (2) The special administrator takes the usual oath attached to or endorsed on the letters.

(b) Subdivision (a) does not apply to the public administrator.

(c) The letters of a special administrator appointed to perform a particular act shall include a notation of the particular act the special administrator was appointed to perform.

**California Probate Code § 9600.**

(a) The personal representative has the management and control of the estate and, in managing and controlling the estate, shall use ordinary care and diligence. What constitutes ordinary care and diligence is determined by all the circumstances of the particular estate.

(b) The personal representative:

(1) Shall exercise a power to the extent that ordinary care and diligence require that the power be exercised.

(2) Shall not exercise a power to the extent that ordinary care and diligence require that the power not be exercised.

**California Probate Code § 9601.**

(a) If a personal representative breaches a fiduciary duty, the personal representative is chargeable with any of the following that is appropriate under the circumstances:

(1) Any loss or depreciation in value of the decedent's estate resulting from the breach of duty, with interest.

(2) Any profit made by the personal representative through the breach of duty, with interest.

(3) Any profit that would have accrued to the decedent's estate if the loss of profit is the result of the breach of duty.

(b) If the personal representative has acted reasonably and in good faith under the circumstances as known to the personal representative, the court, in its discretion, may excuse the personal representative in whole or in part from liability under subdivision (a) if it would be equitable to do so.

**California Probate Code § 9602.**

(a) If the personal representative is liable for interest pursuant to Section 9601, the personal representative is liable for the greater of the following amounts:

(1) The amount of interest that accrues at the legal rate on judgments.

(2) The amount of interest actually received.

(b) If the personal representative has acted reasonably and in good faith under the circumstances as known to the personal representative, the court, in its discretion, may excuse the personal representative in whole or in part from liability under subdivision (a) if it would be equitable to do so.