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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

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LUKINS & ANNIS, P.S.

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NO. 259471

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

WASHINGTON MOTORSPORTS LTD.,
by and through Barry W. Davidson, in his
capacity as Receiver and as Acting General
Partner,

Plaintiff/Respondent,

v.

LARRY D. WYATT,

Defendant/Petitioner,

and

L&D, P.L.L.C., a Washington limited
liability company, and JANE DOE
WYATT,

Defendants.

WML RECEIVER'S
RESPONSE BRIEF IN
OPPOSITION TO
PETITIONER WYATT'S
MOTION FOR
DISCRETIONARY REVIEW

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WML Receiver and Acting Managing General Partner

ORIGINAL

I. IDENTITY OF RESPONDENT

Respondent is Washington Motorsports, Ltd. ("WML"), a Washington Limited Partnership, acting by and through Barry W. Davidson, in his capacity as its Court-appointed Receiver and Acting Managing General Partner (the "Receiver").

II. DECISION

Petitioner Larry Wyatt requests review of the of the Order Denying Change of Trial Judge, entered by Judge Robert D. Austin, Spokane County Superior Court Cause No. 06-2-00566-4, on February 9, 2007 (hereafter "Order"). The Order is attached to the Petitioner's Appendix as Exhibit B.

III. ISSUES PRESENTED BY THE MOTION FOR DISCRETIONARY REVIEW

The Receiver believes that the issues presented by Petitioner's Motion for Discretionary Review should actually be stated as follows:

1. In light of the legislative intent of the new omnibus Receivership statute to create a "comprehensive, streamlined, and cost-effective" Receivership case procedure (*see* notes to RCW 7.60.005) and the accompanying, specific statutory mandate that all cases brought by or against a Receiver are to be "adjunct" to the main receivership case and referred to the same judge who is assigned to the main receivership case, was it obvious error for the trial court to follow the mandate of the new statute and deny a motion for change of judge made by a defendant sued by the Receiver in such an "adjunct" case?

2. Where the new Receivership statute, RCW 7.60.190(2) mandates that all cases by or against a Receiver be referred to the judge assigned to the main receivership case, was it obvious error for the trial judge assigned to a long pending, complex main Receivership case, to not transfer both the Adjunct Case and the main receivership case to another judge, where the Petitioner's motion below did not request a change of judge in the Main Receivership Case, and the defendant, the creditors, and the hundreds of persons in interest in the Main Receivership Case had received no notice or opportunity to be heard on the issue?

IV. STATEMENT OF THE CASE

The Main Receivership Case was commenced by certain of several hundred limited partners of WML against WML's then general partner, Spokane Raceway Park, Inc. ("SRP")¹ on October 30, 2003 under Spokane County Cause No. 03-2-06856-4. Judge Austin has presided over the Main Receivership Case since its inception. *See* Finding of Fact (FF) 1, Order Denying Motion for Change of Trial Judge (the "Order"), attached to the Petitioner's Appendix as Exhibit B.

On July 1, 2005, Barry W. Davidson was appointed as the General Receiver and Acting Managing General Partner of WML. *Id.* at FF 9.²

¹ SRP filed a Chapter 11 bankruptcy in August 2006. After a limited lift stay order was obtained by the WML Receiver in the SRP Bankruptcy Court, the Main Receivership Case proceedings resumed. SRP is participating in the Main Receivership Case through its Chapter 11 Bankruptcy Trustee, Attorney John D. Munding.

² The derivative plaintiff's claims on behalf of WML against SRP have been taken over for direct prosecution by the WML Receiver on behalf of WML.

Wyatt is an employee of L&D. L&D had been the accountant for WML since approximately 1980. *See* Complaint, attached to Petitioner's appendix as Exhibit A.

Wyatt and L&D specially appeared in and actively participated in the Main Receivership Case since at least as early as February of 2004. They have filed objections and briefs, have been allowed to make oral arguments, and sought or opposed several of the numerous discretionary orders that have been made in that case.

Specifically, on February 6, 2004, Wyatt and L&D, through their counsel, Lukins & Annis, P.S., filed a Special Notice of Appearance in the Main Receivership Case *See* Order, FF 2.³

On December 23, 2004, Plaintiffs in the Main Receivership Case moved to compel the production of documents by L&D pursuant to a Subpoena Duces Tecum. *Id.* at FF 3.

On December 30, 2004, L&D's counsel filed a Declaration in Response to Motion to Compel in the Main Receivership Case. *Id.* at FF 4. On [April 22], 2005, Wyatt and L&D filed an Objection to Third Subpoena Duces Tecum for Records Deposition of L&D in the Main Receivership Case. *Id.* at FF 5.⁴

On May 5, 2005, a Second Motion to Compel was filed in the Main Receivership Case against L&D regarding additional documents and another

³ In Judge Austin's Order, he took judicial notice of all the contents of the court file and the proceedings which occurred before him in the Main Receivership Case. *See* Order.

⁴ The Finding of Fact contains a typo that was not objected to before entry. The Finding lists the date as May 4, 2006 but the correct date was April 22, 2006.

Subpoena Duces Tecum served upon it in the Main Receivership Case. *Id.* at FF 6.

On May 9, 2005, L&D filed a Response Brief and supporting Declaration from its counsel in the Main Receivership Case. *Id.* at FF 7.

On May 10, 2005, L&D's counsel appeared in person and argued in opposition to Plaintiffs' Motion to Compel in the Main Receivership Case. *Id.* at FF 8. The court granted Plaintiffs' Second Motion to Compel. *Id.*

After Mr. Davidson was appointed as Receiver of WML, L&D and Mr. Wyatt did not withdraw their Special Notice of Appearance in the Main Receivership Case. *Id.* at FF 10. Neither sought a change of judge in the Main Receivership Case. Instead, L&D submitted a Proof of Claim against WML to the Receiver in the Main Receivership Case, dated September 9, 2005. The "Declaration of Larry Wyatt in Support of Proof of Claim by L&D," under the caption of the Main Receivership Case, was attached in support of the Proof of Claim. *Id.* at FF 11.

On December 28, 2005, L&D filed a response to the Receiver's Interim Report filed in the Main Receivership Case. *Id.* at FF 12.

On February 3, 2006, WML, through its Receiver, Mr. Davidson, filed this case (Spokane County Superior Cause No. 06-2-00566-4) (hereafter the "Adjunct Case") as an Adjunct Case to the Main Receivership Case. *Id.* at FF 13. The caption properly reflected the cause numbers of both the Adjunct Case and the Main Receivership Case. *See* Complaint, attached at Exhibit A to the Petitioner's appendix. The Adjunct Case was initially assigned to Judge Neal Q. Rielly, but was reassigned

to Judge Robert D. Austin, pursuant to RCW 7.60.160, as a case adjunct to the Main Receivership Case. *Id.* at FF 14.

After the Adjunct Case was filed, L&D filed in the Main Receivership Case on February 17, 2006 a Memorandum in Opposition to Motion for Order Authorizing Employment of Reed & Giesa, P.S., and Esler, Stephens & Buckley as attorneys for the Receiver, and subsequently appeared and presented oral argument to Judge Austin in the Main Receivership Case in opposition to the employment of the Receiver's counsel. *Id.* at FF 15.

After the Adjunct Case was assigned to Judge Austin, Wyatt filed a Motion for Change of Judge pursuant to RCW 4.12.050 on May 4, 2006. *See Order*, at FF 16. Neither the motion nor its caption made any reference to the Main Receivership Case. *See Motion for Change of Judge attached as Exhibit F to the Petitioner's appendix.*

Wyatt's motion sought a change of judge only in the Adjunct Case—it **did not** request a change of judge in the Main Receivership Case. *Id.* Wyatt's motion was served **only** upon the Receiver and his counsel in the Adjunct Case and not upon the defendant (SRP) in the Main Receivership Case or upon WML's creditors or the several hundred other persons in interest (the hundreds of WML's limited partners) in the Main Receivership Case. *Id.* Thus, none of those parties, creditors, or other persons in interest were given notice or opportunity to be heard on the issue of whether the judge presiding over the Main Receivership Case should be changed because of Wyatt's motion.

Although Judge Austin had made no discretionary rulings in the Adjunct Case at the time of Wyatt's Motion for Change of Judge, he had made numerous discretionary rulings in the Main Receivership Case after the Defendants had jointly filed a Special Notice of Appearance. *See* Order, at FF 17. Many of these orders had been opposed in both oral and written argument by Wyatt.

The Receiver opposed the Motion for Change of Judge in this Adjunct Case, and a hearing was held. *Id.* at FF 18. On June 30, 2006, Judge Austin issued a Memorandum Opinion denying Wyatt's Motion for Change of Judge. Since then the court has made numerous other rulings in the Main Receivership Case concerning a wide variety of matters and disputes, has begun a series of hearings, and has entered rulings involving, among other things, the adjudication of the Receiver's objections to numerous claims of ownership of partnership units by certain parties in furtherance of the discharge of the Receiver's court-ordered duty to create an accurate WML partnership register which SRP had failed to maintain. On February 9, 2007, Judge Austin entered the written Order Denying Motion for Change of Judge, which Order is the subject of Wyatt's Motion for Discretionary Review.⁵ Wyatt filed a

⁵As a matter of context, the court should be made aware that this is the third time a party has sought discretionary review in this court of Judge Austin's interlocutory orders related to the WML Receivership proceedings. On April 29, 2005, an interlocutory appeal of a denial of a motion to intervene in the main case was filed by certain proposed intervenors. *See* Div. Three No. 241025. After several missed deadlines, on July 18, 2005, this appeal was abandoned by a Motion for Voluntary Withdrawal of Appeal. On July 28, 2005, SRP filed a notice of appeal of the order appointing the Receiver. *See* Div. Three No. 24373-8-III. Appeal as of right was denied by a Commissioner's ruling dated February 27, 2006. Discretionary review was denied by a Commissioner's ruling dated June 26, 2006. Shortly

Notice of Discretionary Review only in this Adjunct Case. He did not file a Notice of Discretionary Review in the Main Receivership Case seeking review of any Order entered or not entered in that case.

V. ARGUMENT

Judge Austin did not commit either obvious (or probable error) by denying Wyatt's Motion to Change Judge filed in the Adjunct Case because, among other things: (1) the recently enacted Receivership statute (RCW 7.60.160(2) (2004)) mandates that all cases by or against a Receiver are to be adjunct to the Main Receivership Case and referred to the same judge assigned to the main case, and this provision, in light of the express legislative intent of the new statute to create "comprehensive, streamlined, and cost-effective" Receivership procedures, supersedes the conflicting provisions of RCW 4.12.050 (1941) providing for a right to a change of judge in cases generally; (2) Wyatt's Motion in the trial court did not ask for a change of the judge in the Main Receivership Case, it was not filed in the Main Receivership Case, and the parties, creditors, and other persons in interest in the Main Receivership Case were not provided notice or an opportunity to be heard on the issue; and (3) the Order did not render further proceedings useless in either the Adjunct Case or the Main Receivership Case, and did not alter the status quo or substantially limited Wyatt's freedom to act.

The last reason is addressed first below.

thereafter, SRP filed a Chapter 11 Petition. Shortly after that, on the Motion of the Receiver, the Bankruptcy Court appointed John D. Munding as SRP's Chapter 11 Bankruptcy Trustee.

A. Wyatt Does Not Meet the Standards for Discretionary Review.

Wyatt has sought discretionary review under RAP 2.3(b)(1)&(2).⁶ Those

Rules state the following:

[D]iscretionary review may be accepted only in the following circumstances:

(1) The superior court has committed an obvious error which would render further proceedings useless;

(2) The superior court has committed probable error and the decision of the superior court substantially alters the status quo or substantially limits the freedom of a party to act.

Emphasis added.

1. The Order Is Not Reviewable Under RAP 2.3 (b)(2).

RAP 2.3(b)(2) is inapplicable here on its face. Even if the Petitioner had demonstrated that the Order constituted probable error (which it has not), interlocutory, piece-meal review would still not be proper since the other requirements of RAP 2.3(b)(2) are not present.

The Order clearly did not "substantially alter[] the status quo." To the contrary, it maintains the status quo of Judge Austin presiding over all matters concerning the WML Receivership, including this Adjunct Case as intended by the Legislature when it adopted RCW 7.60.160(2). Likewise, the Order clearly does not

⁶ Wyatt also apparently seeks review under RAP 2.3(d)(1). *See* Wyatt's Motion for Discretionary Review, p.5. That Rule is inapplicable as it only applies to review of "a superior court decision entered in a proceeding to review a decision of a court of limited jurisdiction. . . ."

limit Wyatt's freedom to act in any manner whatsoever. Therefore, interlocutory review is not available under RAP 2.3(b)(2).

2. The Order Is Not Reviewable under RAP 2.3 (b)(1).

a. There Was No Obvious Error

Wyatt contends that the denial of his Motion for Change of Judge was obvious error. He argues that it was obvious error for the trial court to decide that the specific judge assignment provisions of the new Receivership statute, RCW 7.60.160(2), coupled with the express legislative intent of this new omnibus statute expressed in RCW 7.60.005, to create "comprehensive, streamlined, and cost-effective" Receivership procedures was in conflict with the change of judge provisions of RCW 4.12.050. Wyatt also argues that it was obvious error for the court to resolve the conflict between both statutes by giving precedence to the new Receivership statute even though the decision below was in accord with black letter rules of statutory construction. Wyatt also argues that it was obvious error for the trial court to not resolve the conflict between the statutes by not only ordering a change of judge in the Adjunct Case but also by ordering a change of judge in the long pending, complex Main Receivership Case even though the Petitioner's motion below did not seek this extraordinary relief, and even though no notice or opportunity to be heard on this issue had ever been given to SRP or to the WML creditors or to the hundreds of other persons in interest (the hundreds of WML limited partners) in the Main Receivership Case.

The trial court clearly has not committed obvious error.

i. The Conflict Between the Statutes was Correctly Resolved Under Black Letter Principles of Statutory Construction

Enacted in 1941, RCW 4.12.050 provides:

Any party to or any attorney appearing in any action or proceeding in a superior court, may establish such prejudice by motion, supported by affidavit that the judge before whom the action is pending is prejudiced against such party or attorney, so that such party or attorney cannot, or believes that he cannot, have a fair and impartial trial before such judge; PROVIDED, That such motion and affidavit is filed and called to the attention of the judge before he shall have made any ruling whatsoever in the case, . . . AND PROVIDED FURTHER, That no party or attorney shall be permitted to make more than one such application in any action or proceeding under this section and RCW 4.12.040.

The new Receivership statute (RCW 7.60, *et seq.*) was enacted in 2004. The stated Legislative purpose of this new omnibus statute is found in the notes following RCW 7.60.005 which state: "The purpose of this statute is to create more comprehensive, streamlined, and cost-effective procedures applicable to proceedings in which property of a person is administered by the courts of this state for the benefit of creditors and other persons having an interest therein."

One of the new comprehensive, streamlined, cost-effective procedures of the Receivership statute mandates that all suits by or against a receiver be presided over by the same judge who is presiding over the receivership case. Now, all suits by or against a Receiver are "adjunct" to the main case and are to be referred to the same judge assigned to the main case. Specifically, pursuant to RCW 7.60.160(2), any litigation by or against the receiver is "adjunct to the receivership case . . . [and] shall be referred to the judge, if any, assigned to the receivership case."

It is clear that the Legislature intended that all disputes involving a Receiver or a Receivership be presided over by the same judge without exception. This conclusion is further supported by reading the Receivership Act as a whole.

RCW 7.60.005 provides in relevant part:

"The definitions in this section apply throughout this chapter unless the context requires otherwise.

(1) "Court" means the superior court of this state in which the receivership is pending.

....

(3) "Estate" means the entirety of the property with respect to which a receiver's appointment applies, ...

....

(8) "Person" means an individual, corporation, limited liability company, general partnership, limited partnership, limited liability partnership, association, governmental entity, or other entity, of any kind or nature.

(9) "Property" includes all right, title, and interests, both legal and equitable, and including any community property interest, in or with respect to any property of a person with respect to which a receiver is appointed, regardless of the manner by which the property has been or is acquired....

(10) "Receiver" means a person appointed by the court as the court's agent, and subject to the court's direction, to take possession of, manage, or dispose of property of a person.

(11) "Receivership" means the case in which the receiver is appointed. "General receivership" means a receivership in which a general receiver is appointed. "Custodial receivership" means a receivership in which a custodial receiver is appointed."

(Emphasis added).

RCW 7.60.055 provides in relevant part:

"Except as otherwise provided for by this chapter, the court in all cases has exclusive authority over the receiver, and the exclusive possession and right of control with respect to all real property and all tangible and intangible personal property with respect to which the receiver is appointed, wherever located, and the exclusive jurisdiction to determine all controversies relating to the collection, preservation, application, and distribution of all the property, and all claims against the receiver arising out of the exercise of the receiver's powers or the performance of the receiver's duties...."

(Emphasis added.).

RCW 7.60.060 provides in relevant part:

"(1) A receiver has the following powers and authority in addition to those specifically conferred by this chapter or otherwise by statute, court rule, or court order:

....

(c) The power to assert any rights, claims, or choses in action of the person over whose property the receiver is appointed relating thereto, if and to the extent that the claims are themselves property within the scope of the appointment or relate to any property, to maintain in the receiver's name or in the name of such a person any action to enforce any right, claim, or chose in action, and to intervene in actions in which the person over whose property the receiver is appointed is a party for the purpose of exercising the powers under this subsection (1)(c);"

(Emphasis added).

RCW 7.60.160 provides in relevant part;

"(1) The receiver has the right to sue and be sued in the receiver's capacity as such, without leave of court, in all cases necessary or proper for the conduct of the receivership. However, action seeking to dispossess the receiver of any estate property or otherwise to interfere with the receiver's management or control of any estate property may not be maintained or continued unless permitted by order of the court obtained upon notice and a hearing.

(2) Litigation by or against a receiver is adjunct to the receivership case. The clerk of the court shall assign a cause number that reflects the relationship of any litigation to the receivership case. All pleadings in adjunct litigation shall include the cause number of the receivership case as well as the adjunct litigation number assigned by the clerk of the court. All adjunct litigation shall be referred to the judge, if any, assigned to the receivership case."

(Emphasis added).

RCW 7.60.190 provides in relevant part:

(1) Creditors and parties in interest to whom written notice of the pendency of the receivership is given in accordance with RCW 7.60.210, and creditors or other persons submitting written claims in the receivership or otherwise appearing and participating in the receivership, are bound by the acts of the receiver with regard to management and disposition of estate property whether or not they are formally joined as parties.

(2) Any person having a claim against or interest in any estate property or in the receivership proceedings may appear in the receivership, either in person or by an attorney. Appearance must be made by filing a written notice of appearance, including the name and mailing address of the party in interest, and the name and address of the person's attorney, if any, with the clerk, and by serving a copy of the notice upon the receiver and the receiver's attorney of record, if any. The receiver shall maintain a master mailing list of all persons joined as parties in the receivership and of all persons serving and filing notices of appearance in the receivership in accordance with this section. A creditor or other party in interest has a right to be heard with respect to all matters affecting the person, whether or not the person is joined as a party to the action.

....

(7) All persons duly notified by the receiver of any hearing to approve or authorize an action or a proposed action by the receiver is bound by any order of the court with respect to the action, whether or not the persons have appeared or objected to the

action or proposed action or have been joined formally as parties to the particular action.

First, it is elementary and long-established black letter law that the court's primary duty in construing a statute is to ascertain and give effect to the intent of the Legislature. *State v. Rhodes*, 58 Wn. App. 913 (Div. 2, 1990). Second, the Legislature does not enact superfluous statutes. *Smith v. Whatcom County District Court*, 147 Wn.2d 98 (2002). Third, statutes should be read as a whole. *Jones v. Sisters of Providence in Washington, Inc.*, 140 Wn.2d 112 (2000). Fourth, a statute should be construed so as to make it purposeful and effective rather than futile and meaningless. *Steele ex. rel. Gorton*, 85 Wn.2d 585 (1975).

When the new Receivership Act is construed by these black letter rules, as the court below did, it is clear that, contrary to Wyatt's argument, the comprehensive, streamlined, and cost-effective scheme of the Receivership act is in direct conflict with the older, statutory scheme of RCW 4.12.050 that would otherwise give any number of plaintiffs or defendants in any number of adjunct cases to change the judge, as a matter of right, in the adjunct cases, or in the main receivership case, or both. It is equally clear that the trial court did not commit obvious error.

To the extent statutes are in conflict, a specific statute controls over a general statute covering the same subject matter. *See State v. Cain*, 28 Wn. App. 462, 465 (1981). Further, courts should avoid construing a statute in a manner which results in unlikely, strange, or absurd consequences. *State v. Contreras*, 124 Wn.2d 741, 747 (1994).

If every defendant in every adjunct suit (potentially limitless) brought by a Receiver of any entity (regardless of size, complexity, or number of separate adjunct suits or the number of separate defendants in such suits) could obtain a change of judge in the adjunct case by filing a motion under RCW 4.12.050 (and also thereby effect a change of judge in the main receivership case), the legislative purposes of the new omnibus Receivership statute would be stood on their head, the specific "same judge" language of the receivership statute would be meaningless, and absurd results would obtain.

Further, complex receivership cases such as WML's can involve numerous parties, literally hundreds of persons in interest, creditors, owners, etc., and involve an essentially unlimited number of potential adjunct cases brought by or against the Receiver. If each person who sues or is sued by the Receiver in an adjunct case can affidavit the judge under RCW 4.12.050 notwithstanding the omnibus scheme of the new act, then the same presiding judge and exclusive jurisdiction provisions of the new scheme would not give effect and would be nullities. As a practical matter, there would not be enough judges in the entire state available to handle large receivership cases. Such would be the absurd, yet logical, result of accepting Wyatt's arguments. Such an absurd result would clearly not give effect to the comprehensive, streamlined, cost-effective proceedings presided over by the same judge as intended by the Legislature.

The case of *LaMon v. Butler*, 112 Wn.2d 193 (1989) is instructive. The LaMons, husband and wife, argued that because they were each parties, each had

independent rights to file Affidavits of Prejudice under RCW 4.12.050. 112 Wn.2d at 202. The court analyzed whether each co-plaintiff could file an Affidavit of Prejudice. Just like in this case, the court had to consider the language of the statute in light of the practical realities to discern the intent of the Legislature in such a circumstance. In *LaMon*, the court refused to read the statute as allowing all parties in a case the separate right to affidavit a judge (even though that is literally how the statute reads), finding that such an interpretation of the statute would mean "scores of judges could be disqualified in a single case. The legislature would not have intended that result." *Id.* at 203. That is precisely the case at bar.

RCW 7.60.160 allows a Receiver to sue or be sued by any number of parties in proceedings adjunct to a receivership case at any given time. If each party sued by or suing the Receiver were allowed to file an Affidavit of Prejudice consistent with RCW 4.12.050, each would presumably be entitled to remove a judge from the receivership case. This would result in absurd consequences, meaning "scores of judges could be disqualified in a single case." *See id.* Surely, just as in *LaMon*, this is not the result contemplated by the Legislature.

In the trial court's Memorandum Opinion, Judge Austin acknowledged the absurd result of the position advocated by Wyatt. *See* Memorandum Opinion, attached as Exhibit H to the Petitioner's Appendix. Specifically, Judge Austin stated in relevant part:

This new [Receivership case administration] process appears to recognize that receiverships can be very complex in legal theories and management and may involve many different parties. Affording, as a

matter of right, a different judge for each potential claimant may exhaust judicial resources, cause inconsistent results, time delays and create chaos instead of efficient administration of justice as contemplated by the new statute.

....

.... Here, LeMaster and Daniels and Wyatt have filed a claim in the receivership. This court will have to rule on the merits of that claim. I may rule to grant the claim only to have an inconsistent result if another court ruled to deny the merits of the claim and grant the receiver judgment. This scenario points out the wisdom of 7.60.160. Another scenario might be this court[']s ruling and that of another court might be the same, but to reach that point both sides would need to present the same evidence twice. This is not judicial economy.

The Order similarly recognized the absurdity of the result of Wyatt's argument.

7. Under the circumstances of this case, granting a change of judge would lead to a waste of judicial resources and may lead to inconsistent results. For example, and without limitation, this Court will have to rule on the merits of the Proof of Claim that LeMaster & Daniels submitted against WML in the Main Receivership Case. The factual and legal issues involved in the Proof of Claim that LeMaster & Daniels submitted to the Receiver against WML in the Main Receivership Case will be decided in the main case. Those issues overlap and are intertwined with and inseparable from the issues involved in WML's claims for relief pled against LeMaster & Daniels and Wyatt in this Adjunct Case as well as the issues involved in the counterclaims for relief asserted by these Defendants against WML in this Adjunct Case. Another court may come to a ruling on the merits of the claims and counterclaims in this Adjunct Case that would be inconsistent with the rulings of this Court on the Proof of Claim submitted by LeMaster & Daniels in the Main Receivership Case if the Adjunct Case were assigned to another judge. Even if another court came to the same result, judicial economy would not be achieved because both parties would have to present the same evidence twice.

8. Affording, as a matter of right, a different judge for each potential claimant may exhaust judicial resources, cause inconsistent results, time delays, and create chaos instead of efficient administration of justice as contemplated by the new receivership statute.

See, Order, Conclusions of Law 7 and 8.

Clearly, the trial court has not committed obvious error.⁷

ii. It Would Have Been Obvious Error If the Court Had Changed Judges in Both the Adjunct Case and in the Main Receivership Case Since Wyatt's Motion Below Did Not Even Request Such Extraordinary Relief

Implicitly, recognizing the inherent conflict between the new, specific, omnibus, same presiding judge scheme and legislative intent of the Receivership Act and the non-specific change of judge scheme in cases generally of the older RCW 4.12.050,⁸ Wyatt contends that the trial court committed obvious error by not resolving this conflict by *sua* sponte ordering a change of judges in both the Adjunct Case and the Main Receivership Case. In addition to the fact that such a ruling would have stood the new omnibus Receivership case administration scheme on its head, Wyatt cannot base any appeal on the trial court's failure to grant this extraordinary

⁷ This is especially apparent when Wyatt's appearance in and participation in the Main Receivership Case is considered. While it is true that he was not formerly joined as a party, he did appear and argued for and against discretionary orders. He argues now that he did not have a right to affidavit the court in the Main Receivership Case citing case law for the proposition that a witness cannot affidavit a judge. Wyatt participated in the main case much more than a mere witness participates in a case. He filed a notice of special appearance and by arguing for and against orders, and getting a bite at the apple, he actively participated like a litigant even though he was and is not a formally named party in that case. However, the issues of if, when, and to what extent Wyatt may have had any right to affidavit the judge in the Main Receivership Case before the entry of discretionary rulings that he was allowed to argue about, are not properly before this Court now. Those issues are purely academic and any opinion on them would be merely advisory since Wyatt did not preserve the issue for review. He never moved for a change of judge in the Main Receivership Case, and that case is not before the Court in this Motion for Discretionary Review.

⁸ See Section V.A.2.a.i, *supra*, for further discussion of why this conflict prevents Wyatt from seeking change of judge.

relief since his motion below did not request it; and no one in the Main Receivership Case was given notice or any opportunity to be heard on the issue.

CR 7(b)(1) is clear. It requires a motion to set forth the relief or order sought. Wyatt's motion below sought a change of judge **only** in the Adjunct Case. Indeed, the motion did not even acknowledge or refer to the Main Receivership Case. *See* Motion, Certificate and Order for Change of Judge, attached as Exhibit F to the Petitioner's appendix.

In addition, it is clear from the Certificate of Service attached to the motion that the motion was only served upon the Receiver and his counsel in the Adjunct Case. Wyatt gave no notice to SRP, the defendant in the Main Receivership Case, or to the creditors or hundreds of persons in interest (the WML limited partners), and they were not afforded any opportunity to be heard on the issue. Clearly, the trial court did not commit obvious error by not ordering a change of judge in the Main Receivership Case.

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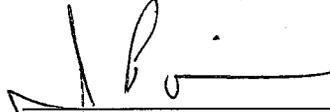
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VI. CONCLUSION

For the foregoing reasons, Wyatt's Motion for Discretionary Review should be denied.

DATED this 24th day of April, 2007.

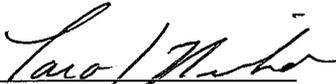
REED & GIESA, P.S.



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

I hereby certify that on the 24th day of April, 2007, I caused a true and correct copy of the foregoing document to be served upon the parties as indicated below.


Tara J. Nichols

Plaintiff/Respondent

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- VIA U.S. MAIL
- VIA HAND DELIVERY
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