

No. 80753-1

SUPREME COURT
OF THE STATE OF WASHINGTON

AMERICAN BEST FOOD, INC., a Washington
corporation d/b/a CAFE ARIZONA; and MYUNG CHOL
SEO and HYUN HEUI SE-JEONG,

Respondents,

v.

ALEA LONDON, LTD., a foreign corporation,

Petitioner.

ALEA LONDON, LTD.'S ANSWER
TO THE WASHINGTON STATE TRIAL LAWYERS
ASSOCIATION FOUNDATION'S AMICUS CURIAE BRIEF

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I. INTRODUCTION

Petitioner Alea London, Ltd. (“Alea”) files this answer to the amicus curiae brief filed by the Washington State Trial Lawyers Association Foundation (“WSTLA”).

WSTLA asks this Court to transform all disputes between policyholders and insurers over whether a complaint gives rise to a duty to defend into cases of per se bad faith.¹ The proposed sweeping change to black letter insurance principles is simply not necessary. The “unreasonable, frivolous, or unfounded” test to determine if an insurer is in bad faith has been firmly established by this Court and applied without difficulty by underlying courts. WSTLA’s rule would not serve to enhance the law. Further, if this Court were to adopt the proposed rule, the result would be both widespread confusion and a massive increase in declaratory judgment filings. Such developments would have a detrimental impact on Washington citizens.

This Court should decline WSTLA’s request for a sea change in Washington insurance law, and instead conclude that as a matter of law no bad faith claim can be sustained where, as here, an insurer’s coverage

¹ The issue raised by WSTLA was not raised by any party in this case. As a general rule, “[t]his court does not consider issues raised first and only by amici.” *Madison v. State*, 161 Wn.2d 85, 104 n.10, 163 P.3d 757 (2007). Because resolution of WSTLA’s issue is not necessary for proper resolution of this case, this Court should decline to address it.

decision was both rendered in accordance with Washington regulations and based on a reasonable interpretation of Washington law.

II. STATEMENT OF THE CASE²

For the purposes of this answer, Alea relies upon the statement of the case set forth in its supplemental brief.

III. ARGUMENT³

WSTLA asks this Court to adopt an entirely new, and entirely unnecessary, rule in the context of Washington insurance law. As discussed below, the proffered rule would not only render dozens of this Court's seminal holdings meaningless, it would also be utterly unworkable in practice.

A. Well-Established Insurance Principles Exist for Determining When There is a Duty to Defend and When There is Bad Faith.

The determination of bad faith turns on whether the insurer acted in a way that was "unreasonable, frivolous, or unfounded." *Smith v. Safeco*, 150 Wn.2d 478, 485, 78 P.3d 1274 (2003) (quoting *Overton v. Consol. Ins. Co.*, 145 Wn.2d 417, 433, 38 P.3d 322 (2002)); *see also Kirk*

² It is significant that WSTLA elected not to address the clear meaning of "arising out of" as established under Washington law, and also elected not to address the actual language of the complaints that dictate whether a duty to defend exists. Instead, WSTLA assumes that Alea's determination that it had no duty to defend was incorrect. WSTLA Br. at 7 ("[I]t is assumed that ... Alea owed Café Arizona a defense ..."). The law and the facts before this Court confirm that Alea correctly determined that there was no duty to defend.

³ In accordance with RAP 10.3(e), the scope of Alea's answer is limited to the new matters raised in WSTLA's amicus curiae brief.

v. Mt. Airy Insurance Company, 134 Wn.2d 558, 560, 951 P.2d 1124 (1998) (citing *Wolf v. League Gen. Ins. Co.*, 85 Wn. App. 113, 122, 931 P.2d 184 (1997)). Available penalties for bad faith include coverage by estoppel (in excess of the stated policy limits), attorneys' fees, and unlimited treble damages. See *Kirk v. Mt. Airy Ins. Co.*, 134 Wn.2d 558, 561, 951 P.2d 1124 (1998); *Olympic Steamship Co., Inc. v. Centennial Ins. Co.*, 117 Wn.2d 37, 811 P.2d 673 (1991); RCW 48.30.015(1).

"The duty of an insurer to defend an action brought against a policyholder arises when the complaint is filed and the allegations of the complaint could, if proven, impose liability upon the insured within the coverage of the policy." *E-Z Loader Boat Trailers v. Travelers Indemn. Co.*, 106 Wn.2d 901, 908, 726 P.2d 439 (1986). Insurers need not defend against claims clearly not covered under their policies, however. See *Kirk*, 134 Wn.2d at 561.

If an insurer acts reasonably in assessing and rendering its coverage obligations, that insurer is not in bad faith. This remains true even if the insurer's coverage determination is ultimately deemed to be incorrect. See, e.g., *Coventry Assocs. v. Am. States Ins. Co.*, 136 Wn.2d 269, 280, 961 P.2d 933 (1998) ("[A]n insured is not entitled to base a bad faith claim or CPA claim against its insurer on the basis of a good faith mistake."). Bad faith principles apply to all aspects of insurers' coverage

determinations, including those related to the duty to defend. Here, too, however, the touchstone is the reasonableness of the insurers' determinations. *See, e.g., Holly Mountain Resources, Ltd. v. Westport Ins. Corp.*, 130 Wn. App. 635, 650, 104 P.3d 725 (2005) ("The insured does not establish bad faith, however, when, as here, the insurer denies coverage or fails to provide a defense based upon a reasonable interpretation of the insurance policy.").

B. WSTLA Proposes a Sweeping Change to Washington Insurance Principles That Has Already Been Rejected by This Court.

In contrast to the above, WSTLA grafts together mismatched standards set forth in varied contexts in an attempt to support a new hybrid duty to defend/bad faith test. In order to ascertain precisely what WSTLA has proposed the "new" rule should be, it is necessary to decipher the various pronouncements set forth in WSTLA's brief:

"An insurer that refuses to defend because it misinterprets a question of law bearing on potential coverage does so in good faith only if it is reasonably debatable under the law that the claim is *clearly not covered* at the time the decision not to defend is made. Otherwise the refusal to defend is in bad faith." WSTLA Br. at 6 (emphasis in original).

"[I]f an insurer recognizes a pivotal legal issue is only reasonably debatable, *but cannot say it is reasonably debatable it is clearly not covered*, then a refusal to defend should constitute a breach of the insurer's duty of good faith." WSTLA Br. at 15 (emphasis in original).

It thus appears that the WSTLA rule would turn on whether there exists any form of “debatability” that can be deemed “reasonable” as to whether a claim is “clearly not covered.” Under the proposed rule, apparently, if there is anything debatable about the issues raised in a given liability claim, then it should be per se bad faith if an insurer does not provide a defense.⁴ Given that virtually every issue is at least arguably debatable on some level, WSTLA’s proposed new rule asks this Court to dramatically change Washington insurance and contract principles. In practice, such a rule would effectively require all insurers to provide all policyholders with fully funded defenses regardless of agreed policy terms.

This Court has already addressed the issue of whether to impose bad faith penalties when an insurer incorrectly determines that no defense is owed. In *Greer v. Northwestern Nat’l Ins. Co.*, 109 Wn.2d 191, 202-03, 743 P.2d 1244 (1987), this Court expressly declined to adopt such a rule, thereby drawing a sharp distinction between an act that is unreasonable, frivolous, or unfounded and a coverage determination that is later deemed

⁴ Notably, WSTLA does not limit the applicability of its proposed rule to the duty to defend context. As such, it appears that per se bad faith would follow if coverage is denied and there is a reasonable debate about any fact.

If the rule were to be applied to the indemnity context, would every factual disagreement between a policyholder and an adjuster obligate insurers to accept the policyholder’s position or file a declaratory judgment action?

to be incorrect. *Id.* (rejecting a proposed test that would allow policyholders to recover beyond policy limits when an insurer has “wrongfully refused to defend”), *cited in Kirk*, 134 Wn.2d at 560.

C. **In Order to Adopt WSTLA’s Proposed Rule, This Court Would Need to Overrule Dozens of Cases, in Whole or in Part.**

WSTLA concedes that the adoption of its proposed rule would require “reexamination” of this Court’s own approach to insurance cases, as reflected in prior decisions.⁵ This is an extreme understatement. Indeed, if this Court were inclined to adopt WSTLA’s rule, this Court would be obligated to expressly overrule a large number of seminal cases that have governed Washington insurance law for more than twenty years. Cases decided by this Court that address an insurer’s right to be wrong without being in bad faith include: *Mulcahy v. Farmers Ins. Co. of Washington*, 152 Wn.2d 92, 106, 95 P.3d 313 (2004); *Overton v. Consolidated Ins. Co.*, 145 Wn.2d 417, 434, 38 P.3d 322 (2002); *Ellwein v. Hartford Acc. and Indem. Co.*, 142 Wn.2d 766, 776, 15 P.3d 640 (2001), *overruled in part on other grounds by Smith v. Safeco*, 150 Wn.2d 478, 485-86, 78 P.3d 1274 (2003); *Coventry Assocs. v. Am. States Ins. Co.*, 136 Wn.2d 269, 280, 961 P.2d 933 (1998); *Leingang v. Pierce County Medical Bureau, Inc.*, 131 Wn.2d 133, 155, 930 P.2d 288 (1997);

⁵ See WSTLA Br. at 15 n.10.

Industrial Indem. Co. of the Northwest, Inc. v. Kallevig, 114 Wn.2d 907, 917, 792 P.2d 520 (1990); *Saunders v. Lloyd's of London*, 113 Wn.2d 330, 345, 779 P.2d 249 (1989); *Transcontinental Ins. Co. v. Washington Pub. Utils. Dists.' Util. Sys.*, 111 Wn.2d 452, 470-71, 760 P.2d 337 (1988); *Greer v. Northwestern Nat'l Ins. Co.*, 109 Wn.2d 191, 202-03, 743 P.2d 1244 (1987); and *Villella v. Pub. Employees Mut. Ins. Co.*, 106 Wn.2d 806, 821, 725 P.2d 957 (1986). Cases decided by other Washington appellate courts include: *Holly Mountain Resources, Ltd. v. Westport Ins. Corp.*, 130 Wn. App. 635, 650, 104 P.3d 725 (2005); *Rizzuti v. Basin Travel Service of Othello, Inc.*, 125 Wn. App. 602, 617, 105 P.3d 1012 (2005); *Wright v. Safeco Ins. Co. of America*, 124 Wn. App. 263, 279-80, 109 P.3d 1 (2004); *International Ultimate, Inc. v. St. Paul Fire & Marine Ins. Co.*, 122 Wn. App. 736, 756 87 P.3d 774 (2004); *James E. Torina Fine Homes, Inc. v. Mutual of Enumclaw Ins. Co.*, 118 Wn. App. 12, 21, 74 P.3d 648 (2003); *Griffin v. Allstate Ins. Co.*, 108 Wn. App. 133, 143, 29 P.3d 777 (2001); *Keller v. Allstate Ins. Co.*, 81 Wn. App. 624, 634, 915 P.2d 1140 (1996); *Roberts v. Allied Group Ins. Co.*, 79 Wn. App. 323, 326, 901 P.2d 317 (1995); *Schelinski v. Midwest Mut. Ins. Co.*, 71 Wn. App. 783, 863 P.2d 564 (1993); *Starczewski v. Unigard Ins. Group*, 61 Wn. App. 267, 273 & n.4, 810 P.2d 58 (1991); *Ins. Co. of the State of Pa. v. Highlands Ins. Co.*, 59 Wn. App. 782, 786-87, 801 P.2d 284 (1990);

Castle & Cooke, Inc. v. Great Am. Ins. Co., 42 Wn. App. 508, 518, 711 P.2d 1108 (1986); *Felice v. St. Paul Fire & Marine Ins. Co.*, 42 Wn. App. 352, 361, 711 P.2d 1066 (1985); *Smith v. Ohio Cas. Ins. Co.*, 37 Wn. App. 71, 74-75, 678 P.2d 829 (1984); and *Miller v. Indiana Ins. Cos.*, 31 Wn. App. 475, 479, 642 P.2d 769 (1982).

Additionally, cases decided by this Court that set forth the “unreasonable, frivolous, or unfounded” standard for bad faith as applied to a breach of the insurance contract include: *Mutual of Enumclaw Ins. Co. v. Dan Paulson Const., Inc.*, 161 Wn.2d 903, 916, 169 P.3d 1 (2007); *Smith v. Safeco*, 150 Wn.2d 478, 484, 78 P.3d 1274 (2003); *American States Ins. Co. v. Symes of Silverdale, Inc.*, 150 Wn.2d 462, 469, 78 P.3d 1266 (2003); *Truck Ins. Exch. v. Vanport Homes, Inc.*, 147 Wn.2d 751, 765, 58 P.3d 276 (2002); *Overton v. Consol. Ins. Co.*, 145 Wn.2d 417, 433, 38 P.3d 322 (2002); *Barstad v. Stewart Title Guar. Co., Inc.*, 145 Wn.2d 528, 543, 39 P.3d 984 (2002); *Kirk v. Mt. Airy Ins. Co.*, 134 Wn.2d 558, 560, 951 P.2d 1124 (1998)); and *Transcontinental Ins. Co. v. Washington Pub. Utils. Dists.’ Util. Sys.*, 111 Wn.2d 452, 470-71, 760 P.2d 337 (1988) (describing standard as “unreasonable, frivolous, or untenable”). Cases decided by other Washington appellate courts that apply the “unreasonable, frivolous, or unfounded” standard for bad faith as applied to a breach of the insurance contract include: *Holly Mountain*

Resources, Ltd. v. Westport Ins. Corp., 130 Wn. App. 635, 650, 104 P.3d 725 (2005); *Werlinger v. Clarendon Nat. Ins. Co.*, 129 Wn. App. 804, 808, 120 P.3d 593 (2005); *Wright v. Safeco Ins. Co. of America*, 124 Wn. App. 263, 279, 109 P.3d 1 (2004); *Petersen-Gonzales v. Garcia*, 120 Wn. App. 624, 632, 86 P.3d 210 (2004); *Griffin v. Allstate Ins. Co.*, 108 Wn. App. 133, 143, 29 P.3d 777, 36 P.3d 552 (2001); *Stouffer & Knight v. Continental Cas. Co.*, 96 Wn. App. 741, 755, 982 P.2d 105 (1999); and *Wolf v. League Gen. Ins. Co.*, 85 Wn. App. 113, 122, 931 P.2d 184 (1997).

D. This Court Should Not Adopt the Confusing and Unworkable Rule Proposed by WSTLA.

The duty to defend/bad faith rule described in WSTLA's brief contemplates the application of a "reasonable debatability" standard. WSTLA contends this standard should be used to assess whether a claim is "clearly not covered." Although cases from this Court and from the Court of Appeals address the reasonableness of insurers' actions in asserting that whether there has been insurer bad faith, WSTLA appears to suggest that courts should also endeavor to ascertain the reasonableness of arguments made by policyholders.⁶ If there is anything debatable about the issues raised in the context of a given third-party claim (perhaps from the perspective of the policyholder, a court in a subsequent lawsuit, a

⁶ See WSTLA Br. at 7 n.6 (discussing the use of out-of-state cases to support the reasonableness of the insured's legal argument).

foreign court, or some other person or entity), WSTLA argues that it should be per se bad faith for an insurer not to provide its policyholder a defense. As discussed below, the new rule proposed by WSTLA is not only confusing, it is also unworkable in practice.

1. Difficulties in Ascertaining When a Point of Law Can Be Relied Upon.

WSTLA acknowledges existing, long established Washington law to the effect that an insurer need not provide a defense if there is clearly no coverage under the policy.⁷ However, under the proposed WSTLA rule, as a practical matter an insurer can safely decline to provide a defense only if a point of law is universally agreed upon. It is not surprising that WSTLA fails to describe a situation that would allow a denial of coverage under such a rule. Indeed, a creative lawyer could argue that almost any point of law is not universally agreed upon.

Under WSTLA's rule, if there exists tangential support for coverage in another jurisdiction or, perhaps, in an imaginative (and thus at least arguably "debatable") argument, the insurer would be obligated to fully fund a defense. This gives rise to a number of questions about the very nature of "settled" law within any given jurisdiction. Is a point of law still "reasonably debatable" if one appellate division has passed upon

⁷ See WSTLA Br. at 5.

it, but another has not? What if a federal court passes on an issue of another state's law in a manner that is contrary to pronouncements on Washington law from this Court? Does that render the central point of law discussed "reasonably debatable"? What if 49 states (including Washington) have ruled one way on a given issue and 1 state rules to the contrary? Does that render the central issue "reasonably debatable"? Considering the infinite number of inherent factual distinctions between all cases, could one reasonably argue that no legal principle can ever be deemed fully, completely settled, and beyond debate?

The above scenarios illustrate the unworkability of WSTLA's rule. It may well be impossible to identify a single issue at all that an insurer could confidently deem to be so clearly and universally settled that it is wholly beyond debate. Although WSTLA stops short of expressly saying so, if its proposed rule were to be implemented, its effect would be a requirement that insurers in Washington fully fund defenses in virtually every case, regardless of policy terms, and regardless of prior, seemingly definitive declarations of binding law issued by this Court.⁸

⁸ Given that WSTLA does not limit the applicability of its proposed rule to the third-party/duty to defend context, would every first-party factual disagreement between a policyholder and an adjuster obligate insurers to either make indemnity payments in accordance with the policyholder's position or file a declaratory judgment action? This predicament further illustrates the unwieldy nature of the proposed rule.

2. Forced Declaratory Judgments are Not in the Best Interests of Policyholders.

According to WSTLA, insurers concerned about defending a policyholder where legitimate questions as to coverage exist have a “safe harbor” in the form of declaratory relief.⁹ If unsure that a matter is beyond “reasonable debate,” insurers need only provide a defense and simultaneously commence litigation against their own policyholders in pursuit of a declaration of no coverage.

By any conservative estimate, thousands of insurance claims are made in Washington state each year. As a practical matter, it is difficult to imagine how overloaded our court system would become if a rule were adopted that effectively required each and every insurance claim to be the subject of a separate declaratory judgment lawsuit. Moreover, as this Court recently recognized in *Mutual of Enumclaw v. Paulson Constr.*, 161 Wn.2d 903, 914-15, 169 P.3d 1 (2007), when certain factual issues are involved in the coverage dispute, declaratory judgment actions cannot be litigated until after the underlying action has concluded. In other words, the coverage litigation, designed to resolve whether a duty to defend even exists, in many cases cannot take place until after the entire defense has already been provided.

⁹ See WSTLA Br. at 10.

Under WSTLA's rule, wherever the insurers' position of no coverage is met with a "reasonably debatable" response, a defense is provided and a declaratory judgment initiated. Both the insurer and the policyholder must be active in two simultaneous lawsuits. Forced participation in declaratory judgment litigation is not in the best interests of policyholders. This is especially true when the insurer has a high degree of confidence in a coverage decision. In contrast, the present rules are workable, and provide policyholders with ample remedies and opportunities for redress should they feel their insurer's decisions are either wrong or taken in bad faith. If a policyholder disagrees with a coverage decision, the policyholder can elect to sue the insurer. If the policyholder wins, the insurer must pay the attorney fees associated with the coverage action. See *Olympic Steamship*, 117 Wn.2d 37. Empowering the policyholder with the decision of whether to initiate a declaratory judgment action (in accordance with the current insurance principles and law in Washington) gives the policyholder greater control over his or her own financial exposure, because the policyholder can choose whether or not to sue based on an independent evaluation of the dispute.

3. Bad Faith Penalties Must Be Reserved for Insurer Conduct That is “Unreasonable, Frivolous, or Unfounded.”

Under existing law, bad faith penalties are imposed only if there exists insurer conduct that is “unreasonable, frivolous, or unfounded.” *Smith*, 150 Wn.2d at 485. WSTLA’s rule would transform all disputes over whether a complaint gives rise to a duty to defend into cases of per se bad faith.

There is simply no need to alter the existing test, as it has been firmly established by this Court and applied without difficulty by underlying courts. If an insurer is deemed to have acted in a way that is “unreasonable, frivolous, or unfounded,” courts have the power to impose some of the most severe penalties available in any jurisdiction – namely coverage by estoppel (in excess of the stated policy limits), attorneys’ fees, and unlimited treble damages. *See Kirk*, 134 Wn.2d at 561; *Olympic Steamship*, 117 Wn.2d 37; RCW 48.30.015(1).

Under the proposed rule, if there is anything “debatable” about the issues raised in a third party claim and an insurer does not provide a defense, the fact that a point could be debated will be treated as though the insurer had taken action against its policyholder in an “unreasonable, frivolous, or unfounded” manner. The suggestion that the former should be equated with the latter undermines the seriousness of true bad faith

claims. It also calls for a dramatic departure from established Washington law.

Under current law, an insurer's legal determinations may be incorrect without being in bad faith. Under the overreaching rule proposed by WSTLA, insurers are not allowed to be wrong. Worse yet, even if the insurers are right in their coverage determination, they would nonetheless be deemed to be in per se bad faith if anyone did or could initiate a "debate" about the issue. Alea urges this Court to squarely and definitively reject WSTLA's confusing and unworkable proposed rule, as its adoption would negatively impact Washington citizens.

IV. CONCLUSION

The guiding principles that govern the duty to defend and bad faith are well established in Washington. The proposed re-write of these principles advocated by WSTLA is unnecessary and inappropriate, particularly in the context of this case where the coverage decision was rendered in accordance with Washington regulations and reflects a reasonable interpretation of Washington law.

If an insurer acts in bad faith, the law provides a number of severe punishments. The rule advocated by WSTLA is impracticable and would result in confusion and a variety of negative consequences for insurers, policyholders, and the judicial system. Under these circumstances, Alea

respectfully requests that this Court either decline to address the issue raised for the first time by WSTLA, or decline to adopt the rule proposed in WSTLA's amicus brief.

RESPECTFULLY SUBMITTED this 13th day of October, 2008.



J. C. Ditzler, WSBA # 19209
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Attorneys for Petitioner Alea London, Ltd.

**FILED AS
ATTACHMENT TO EMAIL**

DECLARATION OF SERVICE

Dava Bowzer states as follows:

I am a citizen of the United States of America and a resident of the State of Washington, I am over the age of 21 years, I am not a party to this action, and I am competent to be a witness herein.

On this 13th day of October, 2008, I caused to be filed via electronic filing with the Supreme Court of the State of Washington, the foregoing ALEA LONDON, LTD.'S ANSWER TO THE WASHINGTON STATE TRIAL LAWYERS ASSOCIATION FOUNDATION'S AMICUS CURIAE BRIEF. I also served copies of said document on the following parties as indicated below:

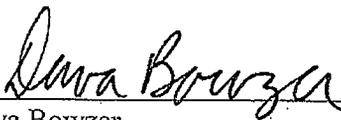
<i>Counsel for Plaintiffs/Appellants:</i> Scott B. Easter Paul J. Miller Sandy K. Lee Montgomery Purdue Blankinship & Austin PLLC 701 Fifth Avenue, Suite 5500 Seattle, WA 98104	<input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Facsimile <input checked="" type="checkbox"/> Via Email <input checked="" type="checkbox"/> Via U.S. Mail
<i>Counsel for Plaintiffs/Appellants:</i> Shane Moloney Short Cressman & Burgess PLLC 999 Third Avenue, Suite 3000 Seattle, WA 98104	<input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Facsimile <input checked="" type="checkbox"/> Via Email <input checked="" type="checkbox"/> Via U.S. Mail

**FILED AS
ATTACHMENT TO EMAIL**

<i>Counsel for Amici WSTLA:</i> Bryan P. Harnetiaux 517 E. 17 th Avenue Spokane, WA 99203 and David M. Beninger 705 – 5 th Avenue, Suite 6700 Seattle, WA 98104	<input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Facsimile <input checked="" type="checkbox"/> Via Email <input checked="" type="checkbox"/> Via U.S. Mail <input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Facsimile <input checked="" type="checkbox"/> Via Email <input checked="" type="checkbox"/> Via U.S. Mail
<i>Counsel for Amici State Farm:</i> Pamela A. Okano Michael S. Rogers Reed McClure 601 Union Street, Suite 1500 Seattle, WA 98101	<input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Facsimile <input checked="" type="checkbox"/> Via Email <input checked="" type="checkbox"/> Via U.S. Mail
<i>Counsel for Amici Weaver/ILMI:</i> Karen Southworth Weaver Soha & Lang, PS 701 – 5 th Avenue, Suite 2400 Seattle, WA 98104	<input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Facsimile <input checked="" type="checkbox"/> Via Email <input checked="" type="checkbox"/> Via U.S. Mail

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

Executed at Seattle, Washington, this 13th day of October, 2008.



 Dava Bowzer

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