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SUPREME COURT OF THE STATE OF WASHINGTON

In re the Estate of James W. Haviland, Deceased.

DONALD HAVILAND, ELIZABETH HAVILAND, and MARTHA
CLAUSER,

Appellants,

v.

MARY HAVILAND,

Respondent.

**BRIEF OF AMICUS CURIAE
NATIONAL CENTER ON ELDER ABUSE**

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Other Authorities

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Amstadter, A., Zajac, K., Strachan, M., Hernandez, M., Kilpatrick, D., & Acierno, R., <i>Prevalence and Correlates of Elder Mistreatment in South Carolina: The South Carolina Elder Mistreatment Study</i> , 26 JOURNAL OF INTERPERSONAL VIOLENCE 2947 (2011); retrieved from http://jiv.sagepub.com/content/26/15/2947.abstract	3

Bendix, J., *Exploiting the Elderly*, RN (2009); retrieved from <http://www.modernmedicine.com/modernmedicine/Modern+Medicine+Now/Exploiting-the-elderly-How-nurses-can-halt-the-abu/ArticleStandard/Article/detail/585000>6, 9

Dessin, C., *Financial Abuse of the Elderly*, 36 IDAHO LAW REVIEW 203 (2000)..... 6, 10, 13

Jayawardena, K. & Liao, S., *Elder Abuse At End of Life*, 9 JOURNAL OF PALLIATIVE MEDICINE 127 (2006); retrieved from http://www.centeronelderabuse.org/docs/EAatEndofLife_LiaoJayawardena2006.pdf 11, 13

Lachs, M.S., Williams, C.S., O'Brien, S., Pillemer, K.A. & Carlson, M.E., *The Mortality of Elder Mistreatment*, 280(5) JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION 428 (1998); retrieved from <http://jama.ama-assn.org/content/280/5/428.full.pdf> 11

Laumann, E., Leitsch, S., & Waite, L., *Elder Mistreatment in the United States: Prevalence Estimate from a Nationally Representative Study* 63B(4) JOURNAL OF GERONTOLOGY S248 (2008); retrieved from http://www.rand.org/content/dam/rand/www/external/labor/aging/rsi/rsi_papers/2009/waite2.pdf.....9, 13

Lifespan of Greater Rochester, Inc., Weill Cornell Medical Center of Cornell University, New York Department for the Aging, *Under the Radar: New York State Elder Abuse Prevalence Study*, SELF-REPORTED PREVALENCE AND DOCUMENTED CASE SURVEYS FINAL REPORT (2011); retrieved from <http://www.lifespan-roch.org/documents/UndertheRadar051211.pdf>3, 4, 5, 7, 10, 11, 12

MetLife Mature Market Institute, National Committee for the Prevention of Elder Abuse, Center for Gerontology at Virginia Tech, *The MetLife Study of Elder Financial Abuse: Crimes of Occasion, Desperation, and Predation Against America's Elders*, METLIFE MATURE MARKET INSTITUTE, NEW YORK (2011); retrieved from <http://www.metlife.com/assets/cao/mmi/publications/studies/2011/mmi-elder-financial-abuse.pdf>.....3, 4, 5, 9, 10, 11

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- Moore, S., Schaefer, J., *Remembering the Forgotten Ones: Protecting the Elderly from Financial Abuse*, 41 SAN DIEGO L. REV. 505 (2004)5, 6
- Nerenberg, L., *Forgotten Victims of Elder Financial Crime and Abuse: A Report and Recommendations*, NATIONAL CENTER ON ELDER ABUSE (1999); retrieved from http://www.ncea.aoa.gov/ncearoot/Main_Site/Library/Publications/Publications.aspx.....5, 6, 8, 10, 11, 12
- Pinsker, D.M., McFarland, K., & Pachana, N.K., *Exploitation in Older Adults: Social Vulnerability and Personal Competence Factors*, 29(6) JOURNAL OF APPLIED GERONTOLOGY 740 (2010); retrieved from <http://jag.sagepub.com/content/early/2009/10/01/0733464809346559>9
- Washington State Department of Social and Health Services, retrieved from <http://www.aasa.dshs.wa.gov/APS/>4, 7

I. INTEREST OF AMICUS

The National Center on Elder Abuse (NCEA) is a resource center funded by the Administration on Aging division of the United States Department of Health and Human Services. The Center is housed at the Center of Excellence on Elder Abuse and Neglect in the Program in Geriatrics at the University of California, Irvine. The University of California, Irvine is a nonprofit organization created under Section 501(c)(3) of the Internal Revenue Code. NCEA is dedicated to the prevention of elder mistreatment. In pursuing this mission, NCEA has developed resources and expertise on financial exploitation of vulnerable adults. Part of NCEA's mission is to share its expertise with governmental entities, community-based organizations, professionals and the public, working toward the common goal of preventing and eradicating elder mistreatment.¹ For example, the State of Washington Department of Social and Health Services used data compiled by the National Center on Elder Abuse to support legislation passed in 2011 that

¹ As a publicly funded organization, NCEA does not engage in lobbying or advocacy regarding specific laws, but provides educational and training support to other entities and the public in furtherance of its mission.

broadened the definition of financial exploitation under the Vulnerable Adult Protection Act, RCW 74.34.²

II. INTRODUCTION

As reflected in the empirical data discussed below, financial exploitation³ of vulnerable adults is a significant and escalating social problem. Perpetrators target the most vulnerable of the elderly population – those who have physical, functional, and mental limitations, and those who are socially isolated. As a result, vulnerable adults are frequently unable or afraid to do anything about the exploitation. Even when the exploitation is reported to authorities, few cases result in protective action by the police or the courts, despite devastating effects on victims. State legislatures in recent years have enacted civil laws intended to redress financial exploitation by authorizing courts to disinherit individuals who commit financial exploitation against vulnerable adults.

² See House Bill Report ESHB 1008 at 5 (Appendix to Appellants' Supplemental Brief at 7); Final Bill Report SSB 5042 at 1 (Appendix to Appellants' Supplemental Brief at 16).

³ The terms "financial exploitation" and "financial abuse" are used interchangeably in this Brief. In the studies referred to in this Brief, financial exploitation unless otherwise specified is defined as the illegal or improper use, control over, or withholding of property or income for another person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage.

III. FINANCIAL EXPLOITATION OF VULNERABLE ADULTS

A. Financial Exploitation of Vulnerable Adults Is Prevalent and Reported Cases Are Increasing.

In 1998, the National Center on Elder Abuse published the results of a national study of elder abuse, which “estimated that 450,000 older adults in domestic settings in the US were newly abused, neglected, and/or exploited in 1996. The study also found that for every reported incident of elder abuse, neglect, exploitation or self-neglect, approximately five go unreported.”⁴

“New research indicates that the instances of elder financial abuse are far higher than previously reported.”⁵ A national study conducted in 2008 that surveyed 5,777 older adults found that 5.2 percent of the persons surveyed had been financially abused by family members within the past 12 months.⁶ A South Carolina study found that 6.6 percent of elderly

⁴ Lifespan of Greater Rochester, Inc., Weill Cornell Medical Center of Cornell University, New York Department for the Aging, *Under the Radar: New York State Elder Abuse Prevalence Study, SELF-REPORTED PREVALENCE AND DOCUMENTED CASE SURVEYS FINAL REPORT* at 12 (2011) (citing National Center on Elder Abuse (1998)).

⁵ MetLife Mature Market Institute, National Committee for the Prevention of Elder Abuse, Center for Gerontology at Virginia Tech, *The MetLife Study of Elder Financial Abuse: Crimes of Occasion, Desperation, and Predation Against America's Elders*, METLIFE MATURE MARKET INSTITUTE, NEW YORK (2011) at 3, 16.

⁶ Acierno, R., Hernandez, M.A., Amstadter, A.B., Resnick, H.S., Steve, K., Muzzy, W., & Kilpatrick, D.G., *Prevalence and Correlates of Emotional, Physical, Sexual, and Financial Abuse and Potential Neglect*

adults were financially exploited by family members.⁷ A New York study found that major financial exploitation had the highest one year incidence rate of any type of self-reported elder mistreatment at 41 per 1,000 surveyed.⁸ Other evidence that financial exploitation is increasing comes from the study conducted by the MetLife Mature Market Institute, which estimated that the aggregate dollars lost by victims increased from \$2.6 billion to \$2.9 billion between 2008 and 2010, representing a 12 percent increase.⁹

The number of reported cases of financial exploitation in Washington mirrors the national upward trend. Data compiled by Washington's Adult Protective Services¹⁰ shows a 53.7 percent increase between 2001 and 2009 based on the following numbers:

2001: 2,641 reported cases
2002: 2,892 reported cases

in the United States: The National Elder Mistreatment Study, 100 AMERICAN JOURNAL OF PUBLIC HEALTH 292, 294 (2010)).

⁷ Amstader, A., Zajac, K., Strachan, M., Hernandez, M., Kilpatrick, D., & Acierno, R., *Prevalence and Correlates of Elder Mistreatment in South Carolina: The South Carolina Elder Mistreatment Study*, 26(15) JOURNAL OF INTERPERSONAL VIOLENCE, 2947, 2957 (2011).

⁸ Lifespan, *supra* note 4, at 3, 30. "Major financial exploitation" was defined as "theft of money or property, using items without permission, impersonation to get access, forcing or misleading to get items such as money, bank cards, accounts, power of attorney".

⁹ MetLife, *supra* note 5, at 7.

¹⁰ Washington State Department of Social and Health Services, retrieved from <http://www.aasa.dshs.wa.gov/APS/>.

2003: 2,962 reported cases
2004: 3,281 reported cases
2005: 3,200 reported cases
2006: 3,359 reported cases
2007: 4,054 reported cases
2008: 4,304 reported cases
2009: 4,061 reported cases

Demographics dictate that financial exploitation cases will continue to increase. In 1996, 31 million senior citizens constituted approximately 12 percent of the United States population.¹¹ By the year 2030, their numbers will more than double to 89 million, constituting 25 percent of the population.¹² Nine million senior citizens will be over age eighty-five by the year 2030.¹³ But as quickly as the elderly population grows, elder abuse is growing more rapidly.¹⁴

B. Financial Exploitation of Vulnerable Adults Is Rarely Reported to Authorities during the Victim's Lifetime.

Elder financial abuse remains underreported, under-recognized and under-prosecuted.¹⁵ Studies estimate that only one in five cases of financial exploitation is actually reported to authorities.¹⁶ Older victims of

¹¹ Moore, S., Schaefer, J., *Remembering the Forgotten Ones: Protecting the Elderly from Financial Abuse*, 41 SAN DIEGO L. REV. 505, 516 (2004).

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ MetLife, *supra* note 5, at 4.

¹⁶ Lifespan, *supra* note 4, at 12.

financial abuse are frequently victimized repeatedly over time.¹⁷ Many elderly victims fail to report abuse out of shame, embarrassment, close relationships to their abusers, fear of nursing home placement,¹⁸ and/or the fear that they will lose control of their money if they appear unable to care for themselves.¹⁹

Financial abuse is more difficult to detect and prove than physical abuse.²⁰ Financial exploitation of vulnerable adults almost always occurs “in secret” and, unlike physical or psychological abuse, rarely produces visible signs likely to be observed by third parties.²¹ A victim of financial abuse may not be aware they are being exploited if he or she has turned over management of their affairs to an abuser.²² Also making detection more difficult is the fact that many victims of financial exploitation lack the mental capacity to recognize abuse or to take any action to rectify it.²³ “Physically or cognitively impaired seniors often find the criminal justice

¹⁷ Nerenberg, L., *Forgotten Victims of Elder Financial Crime and Abuse: A Report And Recommendations*, NATIONAL CENTER ON ELDER ABUSE at 8 (1999).

¹⁸ *Id.* at 4; Dessin C., *Financial Abuse of the Elderly*, 36 IDAHO LAW REVIEW 203, 213 (2000); Bendix, J., *Exploiting the Elderly*, RN 42 (2009).

¹⁹ Moore, *supra* note 11, at 520.

²⁰ Dessin, *supra* note 18, at 216.

²¹ *Id.* at 214, 222 (“Bruises are apparent to even a casual observer; a declining savings account balance is not.”).

²² *Id.* at 214-215.

²³ *Id.* at 216.

system incomprehensible and inaccessible. Physical disability prevents some from coming to police stations, prosecutors' offices or court."²⁴

C. Reports of Financial Exploitation to the Authorities Rarely Lead to Prosecution or State Action during the Victim's Lifetime.

The New York State Elder Abuse Prevalence Study found a "dramatic gap" between the rate of elder abuse reported by older citizens and the number of cases referred to and served by formal elder abuse service systems.²⁵ The New York State Elder Abuse Prevalence Study found that "only one out of 44 financial abuse cases received service for this form of mistreatment from agencies serving elder abuse victims."²⁶

The following data compiled by Washington's Department of Social and Health Services reflects a similar gap in Washington:

2001:	402 out of 2,641 cases were substantiated:	15.22 %
2002:	428 out of 2,892 cases were substantiated:	14.80 %
2003:	482 out of 2,962 cases were substantiated:	16.27 %
2004:	250 out of 3,281 cases were substantiated:	7.62 %
2005:	302 out of 3,200 cases were substantiated:	9.44 %
2006:	240 out of 3,359 cases were substantiated:	7.14 %
2007:	268 out of 4,054 cases were substantiated:	6.61 %

²⁴ Nerenberg, *supra* note 17, at 4.

²⁵ Lifespan, *supra* note 4, at 2, 55. This finding was made by the New York State Elder Abuse Prevalence Study, which was "one of the most ambitious and comprehensive studies to quantify the extent of elder abuse in a discrete jurisdiction ever attempted, and certainly the largest in any single American state." *Id.* at 1.

²⁶ *Id.* at 50.

2008: 259 out of 4,304 cases were substantiated: 6.02 %
2009: 283 out of 4,061 cases were substantiated: 6.97 %

Washington State Dept. of Social and Health Services.

The above numbers show that less than 7% of financial exploitation cases referred to Adult Protective Services²⁷ in the years 2007 – 2009 were substantiated, representing a 53.3 percent decline from 2001. Thus, not only is there a wide gap between reported and substantiated cases, that gap is widening, while at the same time, the number of reported cases of financial exploitation increased by over 50 percent.

The barriers that prevent vulnerable adults from reporting financial exploitation also make it more difficult to substantiate and prosecute the reported abuse. “Victims with diminished mental capacity who are unable to recall details of the crime or to explain the true impact the crime had on their lives may be poor witnesses. As a result of these problems, many cases go unprosecuted.”²⁸

D. Financial Exploitation is More Prevalent among Very Elderly Persons with Mental, Physical and Functional Limitations.

²⁷ All fifty states have enacted legislation authorizing the provision of Adult Protective Services (“APS”) in cases of elder abuse. While each state's APS statute varies, these laws establish a system for the reporting and investigation of elder abuse, and for the provision of social services to help the victim.

²⁸ Nerenberg, *supra* note 17, at 4, 8.

The criteria that define older adults as “vulnerable” under Washington law, physical, functional and/or mental incapacity, *see* RCW 74.34.020, correlate to higher incidence of financial exploitation. Older adults who need assistance with their activities of daily living and who are in poor health are more likely to be the targets of financial exploitation.²⁹ A number of studies have found that impaired mental functioning that coincides with Alzheimer’s disease and other dementias contributes to the risk of financial exploitation.³⁰ Social isolation has been identified as another risk factor for financial exploitation.³¹ “Impaired older adults are vulnerable to mistreatment due to their incapacity to seek help or stand up to their victimizer.”³²

²⁹ Acierno, *supra* note 6, at 296 (noting that the correlation between financial exploitation and functional and health impairments “echoes past research on fraud and financial abuse of impaired older adults”).

³⁰ *See, e.g.,* Pinsker, D.M., McFarland, K., & Pachana, N.K., *Exploitation in Older Adults: Social Vulnerability and Personal Competence Factors*, 29(6) JOURNAL OF APPLIED GERONTOLOGY 740, 756 (2010), *cited in* MetLife at 16, n. 27.

³¹ Bendix J., *Exploiting the Elderly*, RN (2009) (Appendix 3) (“We often see it [financial exploitation] in a person who has just lost a spouse, is living alone, doesn’t have much family support, and has recently hired a caregiver.”)

³² Laumann, E., Leitsch, S., & Waite, L., *Elder Mistreatment in the United States: Prevalence Estimate from a Nationally Representative Study*, 63B(4) JOURNAL OF GERONTOLOGY S248 (2008). Data reported in this study reflected “increased vulnerability caused by diminished functional capacity, poor health, and cognitive deficits.” *Id.* at S249.

The MetLife study provided the following profile of victims of financial exploitation:

Most victims were between the ages of 80 and 89, lived alone, and required some level of help with either health care or home maintenance. In almost all of the cases, there existed a combination of tenuous, valued independence and observable vulnerability that merged in the lives of victims to optimize opportunities for abuse by every type of perpetrator – from the closest family members to professional criminals.³³

E. Financial Exploitation of Vulnerable Adults Harms the Victims.

“Mistreatment of older adults has joined economic insecurity, chronic disease and cognitive impairment as recognized major threats to the health and general welfare of individuals in the second half of life.”³⁴ Victims of financial exploitation face staggering financial losses. The study conducted by MetLife quantified loss in the aggregate to be in the billions of dollars annually. The estimated financial loss to victims in 2008 was \$2.6 billion, which increased by 12 percent to \$2.9 billion in 2010.³⁵

For individual victims, financial exploitation can lead to financial ruin with significant psychological, practical, and physical harm. Financial exploitation may compromise a victim’s independence and security and

³³ MetLife, *supra* note 5, at 3.

³⁴ Lifespan, *supra* note 4, at 7.

³⁵ MetLife, *supra* note 5, at 7.

lead to hopelessness, depression, and even suicide.³⁶ It can be as devastating to quality of life as physical abuse.³⁷ “[F]inancial abuse is often the underlying cause of other forms of abuse and is a precursor to more gross forms of abuse.”³⁸ Victims of corroborated elder mistreatment (including financial exploitation) have shorter lifespans than elders who are not victims.³⁹ A longitudinal study published in 1998 found that older adults who have been subjected to any form of mistreatment are three times more likely to die within three years than elders of similar age and medical and social circumstances who have not been mistreated.⁴⁰ As summarized by the MetLife study:

Elder financial abuse continues to decimate incomes both great and small, engenders health care inequities, fractures families, reduces available health care options, and increases rates of mental health

³⁶ Nerenberg, *supra* note 17, at 3. *See also* Laumann, *supra* note 32, at S248 (“Mistreatment has substantial consequences for the health and well-being of elders; older adults who experience mistreatment show increased levels of psychological distress and face increased mortality rates compared to others” (internal citations omitted)).

³⁷ Dessin, *supra* note 18, at 205.

³⁸ Jayawardena, K., Liao, S., *Elder Abuse At End of Life*, 9 JOURNAL OF PALLIATIVE MEDICINE 127, 131 (2006). *See also* MetLife at 17-18.

³⁹ Lifespan, *supra* note 4, at 8 (citing Lachs, M.S., Williams, C.S., O’Brien, S., Pillemer, K.A. & Carlson, M.E., *The Mortality of Elder Mistreatment*, 280(5) JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION, 428, 432 (1998)) (“In summary, reported elder mistreatment confers additional death risk.”)

⁴⁰ *Id.*

issues among elders. Elder financial abuse invariably results in losses of human rights and dignity.⁴¹

Restitution is not an adequate remedy for financial abuse. Even in the cases where the exploitation was reported to the authorities during the vulnerable adult's lifetime, bringing a civil action for the return of the funds is expensive and difficult.⁴² "Hiring civil attorneys to help them recover their losses ... is beyond the financial reach of many victims."⁴³ Perpetrators of financial abuse are frequently judgment proof by the time the abuse is discovered and acted upon.⁴⁴ Finally, the factors that make victims vulnerable to abuse also make it more difficult for them to obtain and collect restitution: "Many victims are unable to do what is necessary to collect restitution as a result of physical or cognitive impairment."⁴⁵

F. Financial Exploitation of Vulnerable Adults is Most Often Committed by Family Members and Paid Caregivers.

The New York State Elder Abuse Prevalence Study found that the "most common perpetrators of major financial exploitation were adult

⁴¹ MetLife, *supra* note 5, at 4.

⁴² Nerenberg, *supra* note 17, at 17-18.

⁴³ *Id.* at 27.

⁴⁴ *Id.* at 28 ("Because financial crime investigations often take months or years, perpetrators' assets are often dissipated or hidden during the process, leaving little or nothing left for victims to collect.")

⁴⁵ *Id.* at 28.

children, grandchildren, other relatives, and paid home care aides.”⁴⁶ The percentages break down as follows:⁴⁷

Spouse/Partner:	7.34 %
Adult Child:	18.08 %
Spouse of Son/Daughter:	3.39 %
Grandchild:	11.86 %
Other Relative	13.56 %
Paid Caregiver	16.38 %

In the New York study, family members were responsible for 54 percent of the reported incidents of major financial abuse. An earlier study published in 2008, found that 44 percent of the elders reporting financial mistreatment identified the perpetrators as family members.⁴⁸

G. Persons Who Financially Exploit Vulnerable Adults Frequently Believe that their Conduct Is Justified.

One of the underlying causes of financial exploitation, which distinguishes it from other types of elder abuse, is that perpetrators frequently believe they are entitled to what they take.⁴⁹ “If the financial abuser is a child or heir, he may view the elder's assets as his own. Thus, he may regard funds taken from the elder as informal advancements on his future inheritance.”⁵⁰ “Family members who financially abuse a dying patient often express the attitude ‘it’s all going to be mine soon

⁴⁶ Lifespan, *supra* note 4, at 34.

⁴⁷ *Id.* at 35.

⁴⁸ Laumann, *supra* note 32, at S251.

⁴⁹ Dessin, *supra* note 18, at 213.

⁵⁰ *Id.*

anyway.”⁵¹ Caregivers who commit financial exploitation often believe that they are entitled to the elder’s assets for care that they have provided to the vulnerable adult.⁵²

H. Legislative Responses to Financial Exploitation.

The seriousness and pervasiveness of financial exploitation have caused state legislatures to examine existing remedies and explore new ones to ameliorate the problem. In addition to Washington, the following states have enacted legislation permitting courts to disinherit individuals for financial exploitation of vulnerable adults: Arizona,⁵³ California,⁵⁴ Illinois,⁵⁵ Oregon,⁵⁶ Maryland,⁵⁷ and Kentucky.⁵⁸

⁵¹ Jayawardena, *supra* note 38, at 129.

⁵² Dessin, *supra* note 18, at 213; MetLife, *supra* note 5, at 21.

⁵³ 46 Ariz. Rev. Code 46-456 (B) (1996) (applying to financial exploitation by fiduciaries or individuals in a position of trust and confidence).

⁵⁴ Cal. Prob. Code 259 (1998) (preventing inheritance by persons who either were convicted of, or found liable by clear and convincing evidence of, physical abuse, neglect or fiduciary abuse).

⁵⁵ Ill. Comp. Stat. 5/2-6.6 (2003) (applying to individuals convicted of certain crimes against elderly or disabled adults, unless the victim knew of the conviction and ratified the intent to transfer the property to the perpetrator).

⁵⁶ Or. Rev. Stat. §112.465 (2005) (allowing disinheritance for physical or financial abuse).

⁵⁷ MD Code Ann. Crim. Law §8-801(c) (2009) (amending criminal code to impose mandatory disinheritance if convicted of certain financial crimes against vulnerable adults).

⁵⁸ KRS § 381.280 (2012) (permitting disinheritance of individuals for physical or financial abuse).

IV. CONCLUSION

The data compiled and summarized by the National Center on Elder Abuse shows that the financial exploitation of vulnerable adults is a prevalent problem that is increasing. It is targeted toward elders who are most vulnerable – those who lack the ability to live independently due to physical, mental and functional incapacities. Financial exploitation is frequently committed over time by family members and caregivers who believe that they are entitled to take the elder's property. Even in cases where the elder has been able to report the financial exploitation to authorities, there is a wide gap between reported and substantiated cases.

Respectfully submitted this 4th day of May, 2012.

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WSBA No. 5207

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

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Supreme Court No. 86412-8

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Deceased.

DONALD HAVILAND,
ELIZABETH HAVILAND, and
MARTHA CLAUSER,

Appellants,

v.

MARY HAVILAND,

Respondent.

CERTIFICATE OF
SERVICE

The undersigned hereby certifies and declares under penalty of perjury under the laws of the State of Washington that the following statements are true and correct:

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Case Name: Estate of James W. Haviland, Deceased
Case Number: 86412-8
Documents: Amicus Brief, Motion for Leave to File Amicus Brief from National Center on Elder Abuse, Certificate of Service
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