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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

IAN DEAN,

Plaintiff/Appellant,

v.

THE FISHING COMPANY OF ALASKA, INC.

and

ALASKA JURIS, INC.,

Defendants/Respondents

SUPPLEMENTAL BRIEF OF RESPONDENTS THE FISHING
COMPANY OF ALASKA, INC. AND ALASKA JURIS, INC.

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I. INTRODUCTION

At issue in this case is the question of the proper legal standard to be applied when a seaman brings a pre-trial motion for the general maritime remedies of maintenance and cure in a state court action. Respondents The Fishing Company of Alaska, Inc. and Alaska Juris, Inc. (collectively "FCA") maintain that Division One of the Court of Appeals correctly held that a seaman's personal injury action is subject to the Washington Civil Rules and as such, a pre-trial motion to compel the payment of maintenance and cure is governed by Civil Rule 56. Because appellant Ian Dean failed to show that there were no disputed issues of material fact regarding his entitlement to maintenance and cure, the trial court correctly denied his Motion to Reinstate Maintenance and Cure, and this Court should affirm that decision.

In addition, the parties agreed to seek review of the trial court's denial of Mr. Dean's motion to compel a response to written discovery regarding the existence of surveillance. Division One declined to reach the issue, finding it to be moot. To the extent that the scope of this Court's review includes the propriety of the trial court's ruling on this issue, the denial of the motion to compel should be affirmed.

II. ASSIGNMENTS OF ERROR AND ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Mr. Dean asserts that Division One erred by affirming the trial court's use of the CR 56 summary judgment standard to his Motion to Reinstate Maintenance and Cure. FCA maintains that the trial court and Division One correctly determined that in a maritime personal injury case brought in state court, a seaman is required to satisfy the summary judgment standard to obtain a maintenance and cure award before trial.

2. Mr. Dean asserts that Division One should have considered and reversed the trial court's denial of his motion to compel discovery regarding the existence of surveillance. FCA maintains that the trial court correctly determined that the existence of surveillance materials is not discoverable, and that Division One did not err in declining to review that ruling.

III. STATEMENT OF THE CASE

FCA presented a thorough Statement of the Case in its Answer to the Petition for Review and hereby incorporates by reference the detailed review of the factual background and procedural history of this case set forth in therein.

At this juncture, FCA wishes to clarify for the court how this case and the issues it presents fit into the larger picture of the handling of

seamen's personal injury claims. As counsel for FCA explained to Division One at oral argument, in most instances, when a seaman becomes ill or injured in the service of a vessel, his claim for the maritime benefits of maintenance and cure is handled by a claims adjuster for the vessel owner's insurer. Appendix to FCA's Answer to Petition for Review at A1.12. That claims handling system functions efficiently and effectively such that the majority of maintenance and cure claims are resolved without litigation. The question this Court is being asked to consider comes into play only in those relatively infrequent cases, such as this one, where a lawsuit has been filed and the parties seek to have the court resolve the issue of the seaman's entitlement to maintenance and cure. Therefore the number of cases in which courts will be called upon to apply the legal standard decided upon in this case will be relatively small, with most cases continuing to be handled through routine claims handling procedures.

IV. ARGUMENT

A. The Summary Judgment Standard Applies to a Seaman's Pre-Trial Motion for Maintenance and Cure.

1. Standard of Review.

A trial court's denial of summary judgment is reviewed *de novo*. *Rivas v. Overlake Hosp. Med. Ctr.*, 164 Wn.2d 261, 266, 189 P.3d 753

(2008). The trial court's decision as to the proper legal standard to apply is a conclusion of law that is likewise reviewed de novo. See *Smith v. Bates Tech. College*, 139 Wn.2d 793, 800, 991 P.2d 1135 (2000) (conclusions of law are reviewed de novo).

2. The *Vaughan* Principle Does Not Undermine the Applicability of the Summary Judgment Standard to a Seaman's Pre-Trial Motion for Maintenance and Cure.

At the outset it is important to clarify precisely what is at issue in this case and what is not. In his opening brief to the Court of Appeals, Mr. Dean framed the issue presented by this case as "What standard of proof should apply when a seaman moves for reinstatement of maintenance and cure, after his benefits have been cut off by the shipowner?". Brief of Appellant at p. 2. Mr. Dean argued in favor of a "modified summary judgment standard" under which a seaman would have to prove his initial entitlement to maintenance and cure under the normal summary judgment standard, but would be entitled to the benefit of the *Vaughan* principle, which holds that doubts or ambiguities regarding a shipowner's liability for maintenance and cure are to be construed in favor of the seaman,¹ if

¹ This principle has its origins in an earlier United States Supreme Court decision, *Aguilar v. Standard Oil Co.*, 318 U.S. 724, 735, 63 S. Ct. 930, 87 L. Ed. 1107 (1943). But given that the principle was first articulated in its more familiar form in *Vaughan v.*

the shipowner sought to terminate maintenance and cure. *Id.* at p. 6.

As outlined above, the Court of Appeals held that a pre-trial motion for maintenance and cure, whether framed as an initial request for maintenance and cure or a motion to reinstate maintenance and cure, is subject to the Civil Rules and must therefore be treated as a summary judgment motion. *Dean v. Fishing Co. of Alaska, Inc.*, 166 Wn. App. 893, 902-03, 272 P.3d 268 (Div. 1 2012). Division One confronted the issue at the crux of this case, namely how to reconcile the summary judgment standard with the *Vaughan* principle, and concluded, as many other courts have, that the *Vaughan* principle was not intended to "torpedo" the summary judgment standard. *Id.* at 903.

In his Petition for Review, Mr. Dean reframed the issue, asserting that Division One had left the "basic question" unanswered. Petition at p. 6. He conceded that the Court of Appeals had correctly determined that the summary judgment standard applies to motions to reinstate maintenance and cure, but argued that a question remained as to who has the burden of proof on summary judgment. *Id.* at pp. 6-7. As FCA pointed out in its Answer to the Petition, the question of burden of proof was not

Atkinson, 369 U.S. 527, 532, 82 S. Ct. 997, 8 L. Ed. 2d 88 (1962) , it will be referred to herein as the *Vaughan* principle.

before the Court of Appeals and was not disputed by the parties.² In fact, it was not even applicable, given that burdens of proof and persuasion are trial concepts, not summary judgment concepts. Mr. Dean's continued focus on "which party bears the burden of proof on summary judgment" is nonsensical, given that the moving party's burden on summary judgment remains the same, regardless of who bears the burdens of proof or persuasion at trial. *Klossner v. San Juan County*, 21 Wn. App. 689, 693, 586 P.2d 899 (Div. 1 1978) ("On a motion for summary judgment the burden is on the moving party to show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. One who moves for summary judgment has this burden of proof irrespective of whether he or his opponent has the burden of proof at trial." (internal citation omitted)).

In yet another attempt to reframe the issue, amicus curiae the Washington State Association for Justice Foundation has claimed that the "ultimate question" presented by the Petition is "what facts are material for

² It is well established in federal maritime law that the seaman bears the burden of proving his entitlement to maintenance and cure. While the burden is a light one, the seaman must nevertheless show that he or she (1) was engaged as a seaman, (2) sustained an injury or illness while in the ship's service, and (3) incurred or is incurring expenditures. *Tuyen Thanh Mai v. Am. Seafoods Co.*, 160 Wn. App. 528, 538-39, 249 P.3d 1030 (2011). The shipowner then has the burden to prove that the seaman has reached maximum cure. *Id.*

summary judgment purposes in resolving a claim for maintenance and cure benefits pending trial." Amicus Curiae Memorandum at p. 1. Contrary to the Foundation's assertion, that is not the question presented by the case, and even if it were, that is not an unresolved issue of federal maritime law for this Court to resolve. Rather, the federal courts have clearly established what types of facts are "material" in resolving a pre-trial motion for maintenance and cure.³ More importantly, the question of what constitutes "material" facts in this context was never raised by the parties and was not addressed by the Court of Appeals. As such, the Foundation raises issues that are outside the scope of the present petition.

The question that is actually presented by this appeal is quite simple. It is whether Civil Rule 56 applies to pre-trial adjudication of a seaman's maintenance and cure claim. At first glance, one wonders why this would be a difficult question, for it would seem that a pre-trial motion on the merits of a maintenance and cure claim would be no different from any other type of claim. The difficulty that arises in this situation emanates from the *Vaughan* principle.

As Judge Coughenour recognized in *Buenbrazo v. Ocean Alaska*,

³ See FCA's Answer to Amicus Memorandum at pages 5-6 for a discussion of federal maritime case law regarding what facts are material for purposes of resolving a pre-trial motion for maintenance and cure.

LLC, 2007 U.S. Dist. LEXIS 98731 (W.D. Wash. Feb. 28, 2007), there is a tension between the summary judgment standard, which requires all doubts to be resolved in favor of the non-moving party, and the *Vaughan* principle, which requires all doubts and ambiguities regarding maintenance and cure to be resolved in favor of the seaman. *Id.* at *7-9. Resolving that tension is what this case is all about. The trial court and Division One followed numerous federal district courts here in Western Washington and courts from various jurisdictions around the country in concluding that despite this tension, the summary judgment standard nevertheless applies.

In the *Buenbrazo* case, Judge Coughenour considered these competing principles, and ultimately concluded as follows:

While cognizant of the weighty policies in favor of a seaman's right to maintenance and cure, the Court is skeptical that the Supreme Court's admonition that "[w]hen there are ambiguities or doubts, they are resolved in favor of the seaman," [citing *Vaughan, supra*] was designed to torpedo the well-established summary judgment procedure. The resolution of all ambiguities and doubts in favor of the seaman does not do away with the seaman's duty to show at trial that he was "(1) injured or became ill while in the service of the vessel," (2) that "maintenance and cure was not provided; and (3) the amount of maintenance and cure to which the plaintiff is entitled." Ninth Circuit Model Civil Jury Instruction 9.11. Disregarding genuine issues of material facts on these elements that exist prior to trial before each party has had an opportunity to make their case

places too heavy a thumb on the scale in favor of the seaman. Thus, the Court concludes that in spite of the canon of admiralty law that all doubts and ambiguities should be resolved in favor of the seaman, the summary judgment standard should be applied to a pre-trial motion to compel maintenance and cure.

Id. at *9-10; *see also Garretson v. Prowler, LLC*, Case No. C06-1234-JCC, Order (W.D. Wash. Feb. 7, 2008) (“While it is an adage of the special remedy of maintenance and cure that, ‘ambiguities or doubts . . . are resolved in favor of the seaman,’ [. . .], the ordinary summary judgment standard should be applied to a pre-trial motion to compel maintenance and cure.”).

Division One adopted this line of reasoning in its decision in this case, stating “While this court is sensitive to the special solicitude traditionally paid to seamen, we, like Judge Coughenour, do not think that the Supreme Court’s general admonition in *Vaughan* was meant to ‘torpedo the well-established summary judgment procedure.’”

This conclusion is further supported by this Court’s recognition in *Endicott v. Icicle Seafoods, Inc.* that when a seaman chooses to bring a maritime injury action in state court pursuant to the savings to suitors clause (28 U.S.C. § 1333(1)), his claims are governed by state procedural law. 167 Wn.2d 873, 879, 881, 224 P.3d 761 (2010). As the Court of

Appeals concluded in this case, application of state procedural law – specifically, the Washington rules of civil procedure – provides only a limited number of mechanisms for resolving a pretrial maintenance and cure motion. 166 Wn. App. at p. 902-03; *see also Guerra v. Arctic Storm, Inc.*, 2004 AMC 2319, 2320 (W.D. Wash. 2004) (“[o]ther than a motion for summary judgment, [the Court is] aware of no other procedure for obtaining pre-trial judgment on the merits of a claim.”).

In addition to summary judgment under Civil Rule 56, a seaman could conceivably seek a preliminary injunction under Rule 65(a). In the event that disputed factual issues preclude a decision on summary judgment and there is reason to resolve the maintenance and cure issue prior to trial, the seaman may also request a bifurcated trial with an evidentiary hearing on the issue of maintenance and cure under Rule 42(b). Indeed, counsel for Mr. Dean stated at oral argument before Division One that he was in agreement with the idea of using Rule 42 expedited hearings to resolve maintenance and cure disputes of the type presented by this case. Appendix to FCA's Answer to Petition for Review at A1.14.

Counsel for Mr. Dean has subsequently argued in his Petition for Review that the Rule 42 procedure would be "unduly burdensome to

seamen who have already established an entitlement to maintenance and cure" but would be appropriate for a seaman who wishes to initiate payment of maintenance and cure. Petition at pp. 10-11. In doing so, he creates a false distinction between situations in which a seaman seeks to reinstate maintenance and cure after it has been discontinued and situations in which a seaman seeks to compel the initial payment of maintenance and cure. This is a distinction others have misinterpreted as well. See discussion of *Gouma v. Trident Seafoods, Inc.*, *infra*. Yet this so-called distinction has no bearing on the proper legal standard to be applied to a pre-trial motion for maintenance and cure. Whether the seaman seeks to initiate these benefits or reinstate them, he must do so within the confines of the civil rules and satisfy the applicable legal standard, whether it be on a motion for summary judgment under Rule 56 or at a bifurcated hearing under Rule 42.

Treating a pre-trial maintenance and cure motion as a summary judgment motion is the approach that has been used in a number of cases in federal district court here in Western Washington and in other jurisdictions nationwide. See *Davis v. Icicle Seafoods, Inc.*, 2008 U.S. Dist. LEXIS 80818 (W.D. Wash. 2008); *Mabrey v. Wizard Fisheries, Inc.*, 2007 U.S. Dist. LEXIS 38355 (W.D. Wash. 2007); *Finchen v. Holly-Matt*,

Inc., Case No. C04-1285RSM, Order on Pending Motions (W.D. Wash., Nov. 22, 2004); *Loftin v. Kirby Inland Marine, L.P.*, 568 F. Supp. 2d 754 (E.D. Tex. 2007); *Blake v. Cairns*, 2004 U.S. Dist. LEXIS 16837 (N.D. Cal. 2004); *Bloom v. Weeks Marine, Inc.*, 225 F. Supp. 2d 1334, 1336-37 (M.D. Fla. 2002); *SanFilippo v. Rosa S., Inc.*, 1985 U.S. Dist. LEXIS 13020 (D. Mass. 1985); *Pelotto v. L & N Towing Co.*, 604 F.2d 396, 402 (5th Cir. 1979); *Lirette v. K & B Boat Rentals, Inc.*, 579 F.2d 968, 969 (5th Cir. 1978) (same).

While the Ninth Circuit has not ruled directly on this issue, it has declined to award maintenance and cure where there were disputed issues of material fact regarding whether the seaman's alleged accident aboard the vessel had even occurred. *Glynn v. Roy Al Boat Management Corp.*, 57 F.3d 1495, 1505 (9th Cir. 1995). In *Glynn*, the Ninth Circuit affirmed the district court's refusal to require payment of maintenance and cure as a condition of removing a default against the defendants because genuine issues of material fact remained regarding whether the seaman had the alleged medical condition and whether it arose while he was in service of the defendant's vessel. *Id.*

Mr. Dean essentially relies upon a single case, *Gouma v. Trident Seafoods, Inc.*, 2008 AMC 863, 2008 U.S. Dist. LEXIS 108278 (W.D.

Wash. 2008), in support of his argument that the *Vaughan* principle justifies a "modified" or less stringent standard than the normal Rule 56 summary judgment standard for a pre-trial award of maintenance and cure. Yet with all due respect to the author of that decision, in *Gouma*, the court misinterpreted the significance of the distinction between reinstatement and initiation of maintenance and cure, just as counsel for Mr. Dean has here.

In *Gouma*, the court distinguished the *Buenbrazo* and *Mabrey* decisions discussed above, noting that in both of those cases, there was a factual question as to whether the seaman was in the service of the defendant's vessel when he was injured. 2008 AMC at 864-65. In contrast, in *Gouma*, it was undisputed that the plaintiff seaman was injured while in the service of the defendant's vessel. *Id.* Based upon this distinction, the *Gouma* court found that the plaintiff was entitled to a presumptive continuance of maintenance and cure, without citation to any supporting maritime case law. *Id.* at 865. The court went on to state that even if the summary judgment standard were applied, "disputed issues of material fact . . . would simply mean that Plaintiff would be entitled to continue to receive maintenance and cure until the matter was ultimately resolved at trial." *Id.* As FCA pointed out to the Court of Appeals, this is not the

proper standard. A material issue of fact precludes summary judgment for either party, it does not compel it for plaintiff, whether he is a seaman or not. Under this view, maintenance and cure could never be terminated prior to trial or unless the parties reached a settlement.

Despite this analytical error, the *Gouma* court may have nevertheless reached a proper result in that case because it was sitting in admiralty and had the ability to order continuing pre-trial maintenance on an equitable basis. As is outlined in the following section, state courts cannot sit in admiralty and therefore do not have the option of making an equitable award of pre-trial maintenance and cure, but are instead constrained by the rules of civil procedure to apply the summary judgment standard to pre-trial requests for maintenance and cure.

3. Equitable Remedies Available to Federal Courts Sitting in Admiralty Are Not Available in Maritime Actions Brought at Law in State Court.

One possible source of the presumption in favor of continuing maintenance and cure adopted by Judge Pechman in *Gouma*, 2008 AMC 863, 2008 U.S. Dist. LEXIS 108278 (W.D. Wash. 2008) – indeed, the most likely source – is the equitable powers of federal courts sitting in admiralty. The United States Constitution grants the federal courts exclusive jurisdiction over admiralty and maritime cases. U.S. Const., Art.

III, Section 2; *see also* 28 U.S.C. § 1333(1). Courts sitting in admiralty have certain equitable powers and may therefore grant certain types of equitable relief that are not available at law. *See, e.g., Swift & Co. Packers v. Compania Colombiana Del Caribe, S.A.*, 339 U.S. 684, 695, 70 S. Ct. 861, 94 L. Ed. 1206 (1950); *Putnam v. Lower*, 236 F.2d 561, 568 (9th Cir. 1956). In particular, federal courts sitting in admiralty have relied on such powers to make pre-trial awards of maintenance and cure. *See Buenbrazo, supra*, at *14-15 (awarding seaman equitable relief of \$40 per day, despite finding that material issues of fact precluded summary judgment on seaman's motion for maintenance and cure).

However, this type of equitable relief is not available in cases like this one, where the seaman elects to bring his maritime action in state court at law, rather than in federal court in admiralty. State courts are permitted to hear maritime claims under what is commonly called the "saving to suitors" clause. 28 U.S.C. § 1333(1). While state courts are granted authority under this statute to hear maritime cases, they may never exercise admiralty jurisdiction. *Linton v. Great Lakes Dredge & Dock Co.*, 964 F.2d 1480, 1487 (5th Cir. 1992) ("Because admiralty jurisdiction is exclusively federal, a true 'admiralty' claim is never cognizable in state court; no 'designation' or state procedure can alter

this.”). Instead, maritime actions brought in state court must necessarily be “at law.” *Endicott*, 167 Wn.2d at 878-79.

Mr. Dean relies upon the recent decision by this Court in *Clausen v. Icicle Seafoods, Inc.*, 174 Wn.2d 70, 272 P.3d 827 (2012), as support for his assertion that the trial court here could have made a pre-trial award of maintenance and cure on an equitable basis. But this is not what *Clausen* holds. In *Clausen*, this Court was charged with determining whether an award of attorney's fees for wrongful withholding of maintenance and cure provided for in *Vaughan* (so-called “*Vaughan* fees”) was properly considered an element of damages that was required to go to the jury, or an equitable remedy that could be awarded by the judge post-trial. 174 Wn.2d at 78-79. The court determined that *Vaughan* fees are equitable in nature, and held that as such, the trial judge did not err in awarding them post-trial. *Id.* at 79-81.

In that context, the Court was considering the nature of a particular remedy afforded by substantive federal maritime law, and whether the trial court properly applied substantive federal maritime law in making an award of *Vaughan* fees post trial. In affirming the trial court's actions in that regard, this Court did not hold that state courts have the ability to sit in admiralty and dispense equitable remedies. Thus, *Clausen* does not

stand for the proposition that a state court may make a pre-trial award of maintenance and cure in equity as a federal court could, for, as stated above, only federal courts may sit in admiralty. State courts, in contrast, are constrained to act at law in maritime cases, and are bound by the rules of civil procedure.

By choosing to bring his maritime claims in state court, Mr. Dean foreclosed his ability to seek equitable remedies that are available only in admiralty. Thus, while Judge Pechman may have awarded maintenance and cure in *Gouma* with the federal admiralty court's equitable powers in mind, and while the court in *Buenbrazo* had the ability to order pre-trial maintenance and cure despite the fact that disputed issues of material fact precluded summary judgment, state courts are limited to procedures available at law, and in particular, under the rules of civil procedure. As outlined above, Rule 56 provides the applicable standard for adjudicating claims on the merits prior to trial, and the trial court here applied the correct standard and the Court of Appeals correctly affirmed the use of that standard.

Moreover, even if a state court were able to act in equity in making a pre-trial maintenance and cure award, it would nevertheless be bound by the rules of civil procedure. CR 1 ("These rules govern the procedure in

the superior court in all suits of a civil nature whether cognizable as cases at law or in equity [. . .]”); *see also Mut. of Enumclaw Ins. Co. v. USF Ins. Co.*, 164 Wn.2d 411, 418-19, 191 P.3d 866 (2008) (reviewing application of Rule 56 summary judgment standard to claims for equitable contribution and subrogation). As such, the trial court is not free to disregard the procedural rules outlined in CR 42(b), 56(c) and 65(a), but must instead follow the proper procedure in each case and apply the appropriate legal standard for each type of proceeding.

Furthermore, even if a state trial court had the ability to grant equitable relief outside the bounds of the rules of civil procedure on a pre-trial motion for maintenance and cure, this would not compel a ruling that the seaman would prevail whenever there were disputed issues of material fact. To the contrary, a court acting in equity under such circumstances would have discretion to consider all of the evidence before it on the issue of the seaman's entitlement to maintenance and cure, and would be required to weigh that evidence. *See, e.g., Vasquez v. Hawthorne*, 145 Wn.2d 103, 107-108, 33 P.3d 735 (Wash. 2001).

For instance, if a seaman's motion for pre-trial motion were supported only by the opinion evidence of his treating physician, and the shipowner had contrary opinions from ten well regarded medical experts

with specialized knowledge of the condition at issue, the *Vaughan* principle would not dispense with the requirement that the court evaluate and weigh such evidence, as Mr. Dean seems to suggest. Rather, if the trial court had the ability to resolve disputed issues of material fact on a pre-trial motion for maintenance and cure – which FCA maintains it does not - the trial court would retain discretion to weigh the conflicting evidence and reach its own conclusion on the merits of each case.

4. The Court of Appeals Did Not Err in Affirming the Trial Court's Denial of Summary Judgment in the Present Case.

Summary judgment is appropriate where the moving party establishes that there is no genuine issue as to any material fact and that he or she is entitled to judgment as a matter of law. CR 56(c). In the present case, the trial court properly denied Mr. Dean's motion because there were disputed issues of material fact regarding whether his neck complaints were attributable to an injury that occurred while he was in the service of FCA's vessel and whether his alleged neck condition had reached maximum cure.⁴ The trial court's denial of summary judgment should therefore be affirmed.

⁴ These disputed issues of material fact were outlined in detail in FCA's response brief before Division One at pp. 18-20, which is incorporated herein by reference.

B. The Court of Appeals Did Not Err in Declining to Decide the Surveillance Issue.

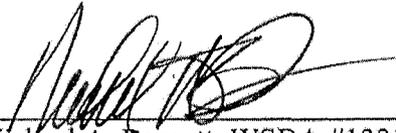
As noted in earlier briefing, the parties stipulated to having the Court of Appeals resolve the question of the discoverability of the existence of surveillance, despite the fact that they had agreed to forego trial de novo. However, FCA finds no error in Division One's decision not to reach this question. In the event that this Court decides to consider the surveillance issue, FCA hereby incorporates by reference Section B of its Response Brief before the Court of Appeals, and respectfully requests affirmance of the trial court's denial of the motion to compel for the reasons set forth therein.

V. CONCLUSION

State courts are bound by the rules of civil procedure in maritime cases. As such, the summary judgment standard set forth in Rule 56 is the appropriate standard for determining factual issues surrounding a seaman's entitlement to maintenance and cure prior to trial on the merits. FCA therefore respectfully requests that this Court affirm the Division One's decision in its entirety.

RESPECTFULLY SUBMITTED this ~~12~~¹³ day of November,
2012.

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No. 87407-7

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**IN THE SUPREME COURT
OF THE STATE OF WASHINGTON**

IAN DEAN,

Petitioner/Appellant,

v.

THE FISHING COMPANY OF ALASKA, INC.
and ALASKA JURIS, INC.,

Respondents/Appellees.

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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of November, 2012, I caused a true and correct copy of the Supplemental Brief of Respondents The Fishing Company of Alaska, Inc. and Alaska Juris, Inc. to be served on the following persons via electronic mail, by prior agreement of all parties:

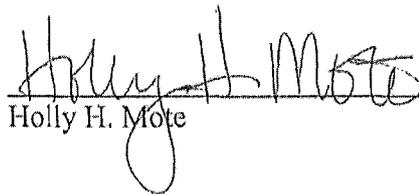
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Case Name: Dean v. The Fishing Company of Alaska, Inc. and Alaska Juris, Inc.

Case Number: 87407-7

Filed by:
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Attached please find the Supplemental Brief of Respondents The Fishing Company of Alaska, Inc. and Alaska Juris, Inc. and the Certificate of Service regarding the above referenced case.

Sincerely,

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