

S. Ct. No. 89924-0

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Ct. App., Div. I, No. 681320

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SUPREME COURT OF THE STATE OF WASHINGTON

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NINA L. MARTIN, individually and as Personal Representative of the  
ESTATE OF DONALD R. MARTIN, RUSSELL L. MARTIN,  
THADDEUS J. MARTIN, and JANE MARTIN,

*Petitioners,*

vs.

DEMATIC dba/fka RAPISTAN, INC., MANNESMANN DEMATIC, and  
SIEMENS DEMATIC; GENERAL CONSTRUCTION COMPANY;  
WRIGHT SCHUCHART HARBOR COMPANY; and FLETCHER  
CONSTRUCTION COMPANY NORTH AMERICA,

*Respondents.*

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PETITIONERS' STATEMENT OF ADDITIONAL AUTHORITIES

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THE BUDLONG LAW FIRM  
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George M. Ahrend  
AHREND ALBRECHT PLLC  
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Attorneys for Petitioners

 ORIGINAL

Pursuant to RAP 10.8, Plaintiffs-Petitioners Nina L. Martin, individually and as Personal Representative of the Estate of Donald R. Martin, Russell L. Martin, Thaddeus J. Martin, and Jane Martin (collectively Martin), submit the following statement of additional authorities:

1. **Regarding accrual based on discovery of the identity of the defendant** (Martin App. Br., at 28-31; Martin Reply Br., at 37-40; Martin Pet. for Rev., at 7-10; Martin Supp. Br., at 8-17; Martin Ans. to WSAJ Fdn. Am. Br., at 3):

*Cf. Winbun v. Moore*, 143 Wn. 2d 206, 18 P.3d 576 (2001) (adopting individualized application of the discovery rule to each care provider under the medical negligence statute of limitations, RCW 4.16.350).

2. **Regarding the need to show a lack of inexcusable neglect as a requirement for relation back under CR 15(c)** (Martin App. Br., at 40-41; Martin Reply Br., at 47-49; Martin Pet. for Rev., at 12-15; Martin Supp. Br., at 17-18 n.20; Martin Ans. to WSAJ Fdn. Am. Br., at 5 n.3):

*See Nepstad v. Beasley*, 77 Wn. App. 459, 467-68, 892 P.2d 110 (1995) (questioning “whether the ‘inexcusable neglect’ case law applies to

bar relation back where a party has incorrectly identified a defendant[.]” as distinguish from failure to name an additional defendant).

3. **Regarding the burden of proof for accrual of a claim based upon discovery** (Martin App. Br., at 27):

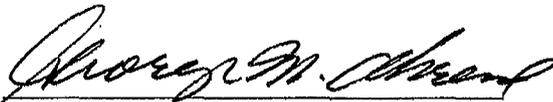
*See Wallace v. Lewis County*, 134 Wn. App. 1, 13, 137 P.3d 101 (2006) (imposing burden of proof on defendant in keeping with the overall burden of proof on affirmative defense based on the statute of limitations; involving 2-year catch-all statute of limitations, RCW 4.16.130; citing *Mayer v. City of Seattle*, 102 Wn. App. 66, 76, 10 P.3d 408 (2000)); *Mayer*, 102 Wn. App. at 76 (imposing burden on defendant; involving RCW 4.16.130; citing *Haslund v. City of Seattle*, 86 Wn. 2d 607, 621-22, 547 P.2d 1221 (1976), which addresses the overall burden of proof on statute of limitations defense).

*But see Burns v. McClinton*, 135 Wn. App. 285, 300, 153 P.3d 630 (2006) (imposing burden of proof on plaintiff as apparent exception to the statute of limitations or a form of tolling rather than a basis for accrual; involving the 3-year statute of limitations for oral contracts, RCW 4.16.080(3); citing *Douglass v. Stanger*, 101 Wn. App. 243, 256, 2 P.3d 998 (2000)), *rev. denied*, 161 Wn. 2d 1005 (2007); *Douglass*, 101 Wn. App. at 256 (imposing burden on plaintiff; involving 3-year statute of limitations for fraud, RCW 4.16.080(4); citing *Interlake Porsche & Audi*,

*Inc. v. Bucholz*, 45 Wn. App. 502, 518, 728 P.2d 597 (1986), *rev. denied*, 107 Wn. 2d 1022 (1987)); *Interlake Porsche*, 45 Wn. App. at 518 (imposing burden on plaintiff; involving RCW 4.16.080(4); citing older authorities involving same statute); *Clare v. Saberhagen Holdings, Inc.*, 129 Wn. App. 599, 603 & n.8, 123 P.3d 465, 467 (2005) (imposing burden on plaintiff; involving 3-year statute of limitations for personal injury, RCW 4.16.080(2); citing *G.W. Constr. Corp. v. Professional Serv. Indus. Inc.*, 70 Wn. App. 360, 367, 853 P.2d 484 (1993)); *G.W. Constr.*, 70 Wn. App. at 367 (imposing burden on plaintiff; involving RCW 4.16.080, but not referencing particular subsection; citing *Interlake Porsche, supra*).

Respectfully submitted this 8th day of October, 2014.

AHREND ALBRECHT PLLC  
Co-Counsel for Petitioners

  
By: George M. Ahrend, WSBA #25160

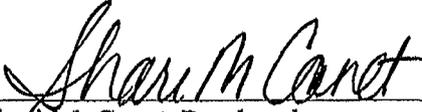
**CERTIFICATE OF SERVICE**

The undersigned does hereby declare the same under oath and penalty of perjury of the laws of the State of Washington:

On October 8, 2014, I served the document to which this is annexed via email and/or First Class Mail, as follows:

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Signed on October 8, 2014 at Ephrata, Washington.

  
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Shari M. Canet, Paralegal

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Please accept for filing the Petitioners' Statement of Additional Authorities, which is attached to this email.

Thank you.

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