

**FILED**  
**COURT OF APPEALS**  
**DIVISION ONE**

SEP 28 2010

NO. 62778-3-1

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

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MARY FUNG KOEHLER,

Plaintiff-Appellant,

v.

ALLSTATE INSURANCE COMPANY, an Illinois Corporation;  
HILLYARD INDUSTRIES, aka HILLYARD, INC., a Missouri  
corporation; PROFESSIONAL CLEANING AND RESTORATION  
SERVICES, LLC., dba SERVPRO, a Washington corporation;  
BRENT YOUNG and JANE DOE YOUNG, husband and wife and  
the marital community composed thereof; AND James YOUNG and  
JANE DOE YOUNG, husband and wife and the marital community  
, composed thereof.

Defendants-Respondents.

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ON APPEAL FROM KING COUNTY SUPERIOR COURT  
CAUSE NO. 07-2-21367-8 SEA (Hon. Michael J. Trickey)

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REPLY BRIEF OF APPELLANT

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MARY FUNG KOEHLER,  
Appellant, *Pro se*,  
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WSBA#1327

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## I. ISSUE OF FACT

### A. HILLYARD'S MSDS FOR #166 RE-JUV-NAL

Respondent Hillyard at pages 8 and 9 of its brief takes the position that the trial Court properly dismissed Mary's product liability claim, brought under RCW 7.72.72.030(1)(a), based on her failure to show any genuine issue of material fact that Re-Juv-Nal was defectively designed. It denies that its product contains no unnecessary hazardous substances in contradiction to its own MSDS #166 dated September 21, 2006. (CP 707-708) that was attached as **APPENDIX-3** and **APPENDIX-4** of Mary's brief and is A-1 and A-2 in this reply brief.

Under **SECTION V – PHYSICAL HAZARDS** of (A-1 here),

Hillyard's document clearly states the following excerpt:

**“Hazardous Decomposition Product or Products:** Thermal decomposition may produce toxic vapors/fumes of Hydrogen chloride, amines, and other organic materials, and oxides of carbon and nitrogen.

### **SECTION VI – HEALTH HAZARD DATA**

**Routes of entry:** Inhalation? Yes      Skin yes  
Eye? Yes      Ingestion? Yes

**HEALTH HAZARDS (1. Acute and 2. Chronic)**

1. From previous experious experience with a 2 oz. per gallon alkaline squat, the oral LD50 (rat); 1850 mg/kg; dermal LD50 (RAabbit): 4430 mg/kg.: Eye: Diluted product 1.64 (rabbitA) essentially non-irritat. Inhalation of fine mist fog can cause irritation of mucos membranes. Fine mist application is not recommended.

2. None known to Hillyard.

**Chemical listed as Carcinogen or Potential Carcinogen:**  
**National Toxicology program = No I.A.R.C. Monographs = No OSHA = No**

**Signs and Symptoms of Exposure:** Causes irreversible eye damage. Do not get in eyes or clothing. Wear protective eyewear (goggles, face shield, or safety glasses). Avoid contact with skin. Harmful if inhaled. Avoid breathing spray mist. Wash thoroughky with soap and water after handling, Remove contaminated clothing and wash clothing before reuse.

#### **SECTION VI – HEALTH HAZARD DATA continued: (A-2 here)**

**Medical Conditions Generally Aggravated by Exposure:** None known to manufacturer.

**Emergency and First Aid Procedures:** **If in eyes:** Hold eye open and rinse slowly and gently with water for at least 15-20 minutes. **If on skin or clothing:** Take off contaminated clothing. Rinse skin immediately with plenty of water for 15-20 minutes. **If inhaled:** Move person to fresh air. If person is not breathing, call 911 or an ambulance, then give artificial respiration, peferably by mouth- to- mouth, if possible. Call a poison control center or doctor for treatment advice. Have product container or label with you when callin a poison control center or doctor or going for treatment. **NOTE TO PHYSICIAN:** Probable mucosal damage may contraindicate the use of gastric lavage.”

#### **B. SERVPRO'S MSDS FOR # 166 RE-JUV-NAL**

The MSDS for #166 Re-Juv-Nal for Distributor SERVPRO INDUSTRIES. INC., dated Jan. 02, 2002 was placed in Mary's

mailbox at the subject house on September 3, 2004. (A-3 to A-4)

**Under SECTION 6 –HEALTH HAZARD DATA (A-4)** The routes of entry were check marked on the form for skin contact, skin absorption, eye contact, inhalation, and ingestion.

**“The Health Hazards (Acute and Chronic) Eye contact: primary irritation, Ingestion: can cause gastrointestinal irritation nausea, vomiting and diarrhea. Skin contact: possibly primary irritation. May be harmful if swallowed. (LD50 = 6.9 g/kg) fine mist application is not recommended. Signs and symptoms of Overexposure Irritation of affected organ or organs, Direct eye and skin contact can cause irritation.**

**Medical Conditions Generally Aggravate by Exposure Dermatitis.**

**Emergence and First Aid Procedures**

**SKIN: Wash skin with soap and waater for 15 minutes. Call a physician.**

**EYES: Flush with water for 15 minutes, If irritation persists, consult a physician,**

**INHALATION: Move to fresh air. Seek medical attention if breathing becomes difficult.**

**INGESTION: Induce vomiting, consult a physician & drink promptly a large quantityof water.**

**GENERAL ADVICE: Avoid alcohol and call a physician immediately.”**

This is the raw data that the trial Court has totally disregarded. Defendants Hillyard and Servpro have by their own documents shown that Re-Juv-Nal is dangerous. The excerpts are in larger print than the original documents, and the bold print is

what their MSDS documents highlighted so that this Court can read the words more easily.

**A- 3** under **SECTION 2-INGREDIENTS** lists the **HAZARDOUS INGREDIENTS** with their **CAS#s**. CAS number means the unique identification number assigned by the Chemical Abstracts Service to specific hazardous chemical substances. “. . .when it has a C.A.S. number, it means it is an E.P.A. hazard.” (CP 776 at page 89 line 22-23 )

All of the symptoms Mary has testified to in her deposition such as headaches, weakness, inability to climb hills, balance, hoarseness, skin, breathing, brain fog, respiratory, and memory problems (CP 788) are identical with those set forth in both MSDSs. It was over two months after her exposures to Re-Juv-Nal that she first learned the symptoms causing her continuing health problems were identical to the health hazards listed in both Material Safety Data Sheets.

The other declarants, Timothy Fung, Maria Roberts, Mark Keltner, are also still affected by the symptoms consistent with the health hazards listed above even though they entered the subject house from over one to almost two years after Re-Juv- Nal was mist sprayed by Servpro in spite of the MSDS recommendations

against it. Mary's house was uninhabitable since the spraying occurred on June 28, 2004.

Hillyard supplied two instances of people affected by their product in September and October 2004. (A-26-A27)

## **II. Failure of Defendants to Answer Discovery**

Counsel for the three Defendants orchestrated three separate Motions for Summary Judgment to be heard on August 29, 2008. Allstate's was dated August 1, 2008 (CP 1111-1136); Hillyard's (CP 945-962) and Servpro's (CP 667-678) were both filed on July 28, 2008. Supporting declarations consisted of over 700 pages of Marys' deposition was reduced to 177 pages by Hillyard. (CP 754-931).

On July 15, 2008, Mary served her First Set of Interrogatories and Requests for Production to Defendant Allstate and its Counsel, which were returned on August 14, 2008 with the addition "AND OBJECTIONS THERETO" under the title of the document. (CP 183-206). Beginning with Interrogatory No. 1 to Request for Production No. 9 (CP 188 -203), every answer by Allstate's counsel, Mr. Rory Leid, III, was in the form of an objection

providing not a shred of information. Mr. Leid signed each and every objection and after the date he signed the interrogatories. (See A -5 to A -20 ). No other officer or agent of Allstate signed the document. Mr. Lied never moved the Court for a protective order.

A working copy of the above pleadings was submitted to Judge Trickey and filed with the King county Clerk in Kent as ATTACHMENT II. The Court was also advised why Mary orally requested a CR 56(f) continuance to allow more time to obtain proper discovery as the discovery cut-off date was April 20, 2009.

Likewise, On Hillyard partially answered part of the discovery requested by Mary, stating in several instances that they had not completed discovery to answer, and objecting to others thereby failing to answer. (CP 1392 to 1393, as A-21 to A22) Hillyard also inserted its general objections to discovery at A-23 to A-25 (CP ) and never moved the Court for a protective order.

Servpro and the Youngs were served with interrogatories on July 30, 2008 (CP1207 to 260) which they responded on October 10, 2008 leaving Mary little time to digest their answers when her responses to the summary judgment motions were due on October 13, 2008. (CP 1200-1206) (A-28 to A- 34 )

The Youngs discovery requests from Mary were essentially identical. (CP 1290 to 1307). The Youngs responded by each party submitting their minimal answers by attaching them to Mary's discovery request documents. ( CP 1284 to 1289 appended here as A-35 to A-40 ) Not a single document was ever produced by Servpro and the Youngs pursuant to the requests from Mary. They never sought protection from the interrogatories they objected to. (CP 1200-1206) (A-28 to A-34 )

All three defendants than argued in their briefs and in court that Mary had failed to move to compel them to provide answers document requests that they objected to. (CP 1392 to 1393).

In turn they had 5 days of Mary's video taped deposition, 3 days of her deposition taken by Mr. Leid pursuant to Examinations Under Oath in around the first of March 2005, and her thorough and complete answers to interrogatories propounded by Allstate (CP 80-1199), Hillyard (CP 148-182), and Servpro (CP ).

### **III. Managa v. Hyundai Motor America**

The Supreme Court in Managa v. Hyundai Motor America NO. 80922-4 (November 2009) held that the trial Court appropriately diagnosed Hyundai's willful efforts to frustrate and

undermine truthful pretrial discovery efforts by striking its pleadings and rendering an \$8,000,000 default judgment to appropriately compensate the other party and hopefully educate and deter others so inclined. Relevant holdings of the Supreme Court are as follows.

**¶ 1 Trial courts need not tolerate deliberate and willful discovery abuse. .**

***“A trial court abuses its discretion when its order is manifestly unreasonable or based on untenable grounds.”*** Fisons, 122 Wash.2d at 339, 858 P.2d 1054 (citing Holbrook v. Weyerhaeuser Co., 118 Wash.2d 306, 315, 822 P.2d 271 (1992)). ***“A discretionary decision rests on ‘untenable grounds’ or is based on ‘untenable reasons’ if the trial court relies on unsupported facts or applies the wrong legal standard; the court’s decision is ‘manifestly unreasonable’ if ‘the court, despite applying the correct legal standard’ to the supported facts, adopts a view ‘that no reasonable person would take.’”*** Mayer, 156 Wash.2d at 684, 132 P.3d 115 (internal quotation marks omitted) (quoting State v. Rohrich, 149 Wash.2d 647, 654, 71 P.3d 638 (2003)).

**23 Broad discovery is permitted under CR 26. “It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears to be reasonably calculated to lead to the discovery of admissible evidence.” CR 26(b)(1). If a party objects to an interrogatory or a request for production, then the party must seek a protective order under CR 26(c). CR 37(d). If the party does not seek a protective order, then the party must respond to the discovery request. The party cannot simply ignore or fail to respond to the request. “[A]n evasive or misleading answer is to be treated as a failure to answer.” CR 37(d). Hyundai never sought a protective order under CR 26(c) but simply objected to Magaña’s discovery requests, asserting the**

***requests were overbroad and not reasonably calculated to lead to the discovery of admissible evidence.***

¶ 28 A corporation must search all of its departments, not just its legal department, when a party requests information about other claims during discovery. Here Hyundai searched only its legal department. Hyundai's counsel<sup>6</sup> told the trial court that in response to request for production 20, Hyundai's search "was limited to the records of the Hyundai legal department" and that "no effort was made to search beyond the legal department, as this would have taken an extensive computer search." CP at 5319. As the trial court correctly found, "[t]here is no legal basis for limiting a search for documents in response to a discovery request to those documents available in the corporate legal department. This would be the equivalent of limiting the responses in Smith [, 113 Wash.App. 306, 54 P.3d 665,] to a search for chemical tests which were on record in the corporate legal office, without disclosing that the search was so limited." CP at 5319-20. The trial court went on to say, "the legal department at Hyundai worked closely with the Consumer Affairs Department with respect to customer complaints and claims, including product liability claims. The vehicle owners' manual directed customers to call the Consumer Affairs number." CP at 5320. Hyundai had the obligation to diligently respond to Magaña's discovery requests about other similar incidents. It failed to do so by using its legal department as a shield. The trial court also found "Hyundai had the obligation not only to diligently and in good faith respond to discovery efforts, but to maintain a document retrieval system that would enable the corporation to respond to plaintiff's requests. Hyundai is a sophisticated multinational corporation, experienced in litigation." *Id.* Hyundai willfully and deliberately failed to comply with Magaña's discovery requests since Magaña's initial requests in 2000 and continued to do so.

. Magaña was entitled to the discovery he requested. Hyundai never requested a protective order, and the discovery requests were reasonably calculated to lead to the production of admissible evidence. The discovery requested should have been given to Magaña in a timely manner. Magaña need not have continually requested more discovery and updates on existing requests. Additionally Magaña should not have needed to file a motion for an order to compel Hyundai to produce the documents Hyundai was required to produce by the discovery requests themselves, nor does this opinion rest on the existence of a discovery order.

**¶ 38 Magaña's ability to prepare for trial was substantially prejudiced because of Hyundai's egregious actions during discovery.**

**¶ 39 A court should issue sanctions appropriate to advancing the purposes of discovery. Burnet, 131 Wash.2d at 497, 933 P.2d 1036. The discovery sanction should be proportional to the discovery violation and the circumstances of the case. Id. at 496-97, 933 P.2d 1036. “[ Its failure to do so constitutes an abuse of discretion.” Rivers, 145 Wash.2d at 696, 41 P.3d 1175.**

**¶ 40 “The right of trial by jury shall remain inviolate.” Const. art. I, § 21; see also CR 38. “Due process is satisfied, however, if, before entering a default judgment or dismissing a claim or defense, the trial court concludes that there was ‘a willful or deliberate refusal to obey a discovery order, which refusal substantially prejudices the opponent’s ability to prepare for trial.’” Behr, 113 Wash.App. at 330, 54 P.3d 665 (internal quotation marks omitted) (quoting White v. Kent Med. Ctr., Inc., 61 Wash.App. 163, 176, 810 P.2d 4 (1991)).**

**dissent.**

**¶ 52 Our constitution expressly provides, “The right of trial by jury shall remain inviolate.” Wash. Const. art. I, § 21. Further, this court has held, “ “[i]t is the policy of the law that controversies be determined on the merits rather than by default.” ’” Little v. King, 160 Wash.2d 696, 703, 161 P.3d 345 (2007) (alteration in original) (quoting Griggs v. Averbeck Realty, Inc., 92 Wash.2d 576, 581, 599 P.2d 1289 (1979) (quoting Dlouhy v. Dlouhy, 55 Wash.2d 718, 721, 349 P.2d 1073 (1960))). Given the reverence our state constitution gives to the jury trial right and the important policy of deciding cases on the merits, due process of law demands that a jury trial be allowed to proceed to conclusion on the merits unless such extreme prejudice has occurred that renders a trial on the merits no longer possible. See Smith v. Behr Process Corp., 113 Wash.App. 306, 325-27, 54 P.3d 665 (2002). Thus, an unjustified denial of the jury trial right implicates due process considerations of both the Washington and United States**

**Constitutions. Wash. Const. art. I, § 3; U.S. Const. amend. XIV, § 1.**

**¶ 53 To avoid unconstitutional violations of the jury trial right and due process, a default judgment imposed as a discovery sanction may be granted only in a case clearly showing (1) a party willfully or deliberately violated the discovery rules and orders, (2) the opposing party was substantially prejudiced in its ability to prepare for trial, and (3) the trial court explicitly considered lesser sanctions, which could be tailored to adequately deter, punish, compensate, and educate. *Burnet v. Spokane Ambulance*, 131 Wash.2d 484, 494, 933 P.2d 1036 (1997); *Wash. State Physicians Ins. Exchange & Ass'n v. Fisons Corp.*, 122 Wash.2d 299, 858 P.2d 1054 (1993). Trial court findings regarding discovery sanctions are reviewed for abuse of discretion. *Fisons*, 122 Wash.2d at 338, 858 P.2d 1054. Discretion is abused if “the trial court relies on unsupported facts or applies the wrong legal standard,” or if the court “adopts a view “that no reasonable person would take.”” *Mayer v. Sto Indus., Inc.*, 156 Wash.2d 677, 684, 132 P.3d 115 (2006) (quoting *State v. Rohrich*, 149 Wash.2d 647, 654, 71 P.3d 638 (2003) (quoting *State v. Lewis*, 115 Wash.2d 294, 298-99, 797 P.2d 1141 (1990))).**

#### **IV. Lay v. Expert Testimony**

See *Lindy Hansel et al., v. Ford Motor Company*, 3 Wn.App. 151, 473 P.2d 219 (1970) where expert testimony stating a standard of care to govern a tort action is not necessary when the duty is so obvious that a layman can recognize it. Likewise, it can be inferred that a layman can recognize the common symptoms

of skin, pulmonary, hoarseness and eye irritation without the necessity of an expert witness.

Mary did not see the necessity of an expert for her health problems and the standard of care issues. It is her contention that expert testimony stating a standard of care to govern a tort action is unnecessary when the duty is so obvious that a layman can recognize it.

Such is the situation here where the employees of Servpro violated the standard of care in their act of spraying the basement with what Servpro acknowledged was Re-Juv-Nal.

In *Douglas v. Bussabarger*, 73 Wn.2d 476, 438 P.2d 829, (1968),

“Defendants argued that In the absence of negligence so obvious that a layman can recognize it, some medical testimony is necessary to support a finding that the doctor departed from the standard of reasonable care. Often this requirement becomes a difficult, almost insurmountable obstacle for plaintiffs in malpractice suits when they encounter what has been termed the "conspiracy of silence.”

«1» But none of the cases go so far as to require that malpractice be established exclusively by the testimony of doctors. If the rule is to have any rational justification at all, it should be limited to the requirement that, in those cases in which negligence is not apparent, some medical testimony is necessary to establish the proper standard of care. See Note, *Malpractice and Medical Testimony*, 77 Harv. L. Rev. 333, 334-36 (1963).

In the absence of negligence so obvious that a layman can recognize it, some medical testimony is necessary to support a finding that the doctor departed from the standard of reasonable care. Often this requirement becomes a difficult, almost insurmountable obstacle for plaintiffs in malpractice suits when they encounter what has been termed the "conspiracy of silence." But none of the cases go so far as to require that malpractice be established exclusively by the testimony of doctors. If the rule is to have any rational justification at all, it should be limited to the requirement that, in those cases in which negligence is not apparent, some medical testimony is necessary to establish the proper standard of care. (Footnote omitted.) Much the same thought is stated in *W. Prosser, Torts* § 32 (3d ed. 1964):

Where the matter is regarded as within the common knowledge of laymen, as where the surgeon saws off the wrong leg, or there is injury to a part of the body not within the operative field, it has been held that the jury may infer negligence without the aid of any expert. (Footnotes omitted.)

Due process is satisfied if, before entering a default judgment or dismissing a claim or defense as a discovery sanction, the trial court concludes that there was a willful or deliberate refusal to obey a discovery order, which refusal substantially prejudices the opponent's ability to prepare for trial. U.S.C.A. Const.Amend. 14; CR 37(b).

In *State v. Ortiz*, 119 Wn.2d 294, P.2d 1060 (1992), the Supreme Court held that under ER 602 and ER 701, opinion testimony of a lay witness is admissible if it is helpful to the trier of fact and is based

rationality on personal knowledge and perception. The portions of the Declarations under oath of Timothy Ronald Fung (CP 1148-1152); Jerry Bedlington (CP 1160-1164 ); Mark Keltner (CP 324-1328); Nicholas Chariton (CP 1166-1169 ): and Maria Roberts (CP 1170-1175); that Defendants had the lower Court strike all fall into this category.

The past practical work experiences of Tim and Jerry to monitor their respective past work environments for toxic substances for the protection of their coworkers as emergency response team members could qualify them as lay experts. Likewise, Maria was a volunteer Shoreline EMT and could probably qualify based on acquired knowledge too. All of the Declarants made their statements based on their personal knowledge and perception when they described Mary's nonverbal acts. The striking of major portions of their declarations is a Constitutional violation of Mary's right to due process and for a jury of her peers to determine the facts

The Supreme held *IN RE PENELOPE B.*, 104 Wn.2d 643, 709 P.2d 1185 (1985) that In-court testimony as to out-of-court statements or actions is not hearsay evidence if it is not offered to prove the truth of out-of-court assertions. An in-court description of a person's nonassertive nonverbal conduct, such as physical

reactions, moods, or displays of knowledge, is not hearsay whether or not that person has testimonial competency.

In *Cole v. United States*, 327 F.2d 360, 361 (9th Cir. 1964); *State v. McCaughey*, 14 Wn. App. 326, 328, 541 P.2d 998 (1975); *K. Tegland* 331, at 111. “NONVERBAL CONDUCT that is not intentionally being used as a substitute for words to express a fact or opinion is not hearsay. An involuntary act such as trembling would be admissible as nonassertive nonverbal conduct whereas the act of nodding one's head affirmatively or pointing to identify a suspect in a lineup would be hearsay and not admissible because it is assertive nonverbal conduct”.

“The admissibility of nonassertive verbal or nonverbal conduct as circumstantial evidence of a fact in issue is governed by principles of relevance, not by hearsay principles. An assertion that is circumstantial evidence proves a fact indirectly, by implication; credibility of the declarant is not important because the relevance of the assertion does not depend on its truth. If tulips bloom, they are not making assertions that it is spring; but the testimony of a witness that tulips were observed to be blooming may be offered as

circumstantial evidence of spring. If a dog limps, it is not thereby making an assertion and the testimony of a witness that the dog was observed to be limping may be offered as circumstantial evidence that the dog was injured. Similarly, the testimony of a witness that he or she observed a person limping may be offered as circumstantial evidence that the person was injured.” See 11 J. Moore, Federal Practice 800.01 (2d ed. 1982); K. Tegland 331-33.

Most of the statements of Plaintiff's declarants are based on their personal observations of Mary's health before and after June 28, 2004.

#### **V. Res Ipsa Loquitor**

Servpro argues that Res Ipsa Loquitor does not apply. Its authorities are easily distinguished from this case as Mary had none of the symptoms associated with the use of Re-Juv-Nal after remediation started on June 25, 2004 and over the weekend while living in the upstairs in the house and able to go down the basement with no side effects until after Servpro sprayed the basement. At that point chemical reactions started that made the

house uninhabitable and dangerous to others in it for short periods of time even after 22 months since the spraying occurred.

The Supreme Court in *Vogreg v. Shepard Ambulance Service, Inc.*, 47 Wn.2d 659, 289 P. (2d) 350, (1955) held that it was a situation in which the doctrine of *res ipsa loquitur* is applicable as a circumstantial evidence case. In it, the jury is permitted to infer negligence from an accident which ordinarily would not have occurred unless someone was negligent. The jury may make the inference of negligence or it may refuse to do so.

This is another instance of the lower Court invading the province of the jury in holding as a matter of law that *Res Ipsa Loquitur* does not apply and thereby abused his discretion.

### **CONCLUSION**

How the lawyers for Hillyard and Servpro can claim *Re-Juvenal* is innocuous controverts their clients's own literature on the properties and dangers in exposure to it.

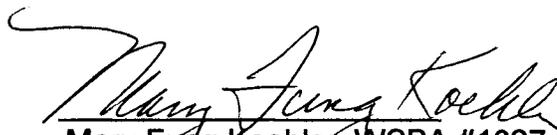
Clearly more discovery is necessary and should have been allowed by granting Mary her CR 56(f) oral motion. Failure to do so was an abuse of discretion by the lower Court especially since

on October 8, 2008, it had signed an agreed Order Amending Case Schedule signed by all the parties' counsel to continue the discovery cut off date to April 20, 2009 for a June 8, 2009 trial date. (CP 1137-1144)

Based on the foregoing abuses of discretion of the lower Court in not honoring its written order of October 9, 2008 and the record clearly shows that the defendants deliberately and willfully undermined Mary's Constitutional right to due process by their joint refusal to truthful pretrial discovery, all of the Orders of Dismissal must be reversed and this matter remanded to the trial Court to allow time for adequate discovery prior to a new trial date.

Dated September 27, 2010,

Respectfully submitted,



Mary Fung Koehler, WSBA #1327  
Appellant *Pro Se*  
2629 B – 11<sup>th</sup> Avenue East  
Seattle, Washington 98102-3902  
(425) 301-2967  
maryfung7@yahoo.com

## MATERIAL SAFETY DATA SHEET

EPA Reg. No. 47371-131-1658

EPA Est. No. 1658-MO-1

NFPA RATING: Health = 2 Flammability = 0 Reactivity = 0  
 HMIS RATING: Health = 2 Flammability = 1 Reactivity = 0

## SECTION I – IDENTITY AND MANUFACTURER'S INFORMATION (1090A)

Manufacturer's Name: HILLYARD INDUSTRIES

Product Name: RE-JUV-NAL

Address: 302 North Fourth Street  
St. Joseph, MO 64501

Date Prepared: September 21, 2006

Prepared by: Regulatory Affairs Department

Emergency Telephone No.: (800) 424-9300 (Only in the event of chemical emergency involving a spill, leak, fire, exposure or accident involving chemicals.)

Other information calls: (816) 233-1321 (Ext. 8285)

<http://www.hillyard.com>

## SECTION II – INGREDIENTS/IDENTITY INFORMATION

## Components

## (Specific Chemical Identity:

Common Name(s)	CAS#	OSHA PEL	ACGIH TLV	OTHER LIMITS RECOMMENDED	%
Didecyl dimethyl ammonium chloride	7173-51-5	not established	N/A	N/A	2.54
n-Alkyl (C <sub>14</sub> 50%, C <sub>12</sub> 40%, C <sub>16</sub> 10%) dimethyl benzyl ammonium chloride	8001-54-5	not established	N/A	N/A	1.69
Octyl dimethyl amine oxide	2605-78-9	not established	N/A	N/A	---
Edtate Disodium	139-33-3	not established	N/A	N/A	---
Deionized water	7732-18-5	none	N/A	N/A	---

## SECTION III – PHYSICAL / CHEMICAL CHARACTERISTICS

Boiling Point: 210°F      Specific Gravity (H<sub>2</sub>O = 1): 25°C = 1.00      & 39°C = 1.00  
 Vapor Pressure (mm Hg.): 17.6      Percent Volatile by Volume (%): 94.7  
 Vapor Density (AIR = 1): 0.6      Evaporation Rate (ethyl ether = 1): slower than 1  
 Solubility in Water: complete      Appearance and Odor: clear, reddish-orange liquid; floral odor  
 pH of concentrate: 7.2 - 8.2

## SECTION IV – FIRE AND EXPLOSION HAZARD DATA

Flash point: &gt;200°F (Tag Closed Cup)      Flammable Limits: LEL = Not applicable      UEL = Not applicable

Extinguishing Media: Foam, alcohol foam, carbon dioxide, dry chemical, water

Special Fire Fighting Procedures: Must wear NIOSH/MSHA approved self-contained breathing apparatus and protective clothing. Cool fire-exposed containers with water spray.

Unusual Fire and Explosion Hazards: Products of combustion are toxic.

## SECTION V – PHYSICAL HAZARDS

Stability: Stable

Conditions to Avoid: N/A

Incompatibility (Materials to Avoid): Strong oxidizing and reducing agents.

Hazardous Decomposition Products or Byproducts: Thermal decomposition may produce toxic vapors/fumes of Hydrogen chloride, amines, and other organic materials, and oxides of carbon and nitrogen.

Hazardous Polymerization: Will not occur      Conditions to Avoid: None known to Hillyard

## SECTION VI – HEALTH HAZARD DATA

Routes of entry: Inhalation? yes      Skin? yes      Eye? Yes      Ingestion? yes

## HEALTH HAZARDS (1. Acute and 2. Chronic)

1. From previous experience with a 2 oz. per gallon alkaline quat, the oral LD50 (rat): 1850 mg/kg; Dermal LD50 (Rabbit): 4430 mg/kg.; Eye: Diluted product 1:64 (rabbit) essentially non-irritating; Skin irritation: Diluted product 1:64 (rabbit) non-irritating. Inhalation of fine fog mist can cause irritation of mucous membranes. Fine fog mist application is not recommended. 2. None known to Hillyard.

Chemical listed as Carcinogen or Potential Carcinogen:

National Toxicology Program = No

I.A.R.C. Monographs = No

OSHA = No

Signs and Symptoms of Exposure: Causes irreversible eye damage. Do not get in eyes or clothing. Wear protective eyewear (goggles, face shield, or safety glasses). Avoid contact with skin. Harmful if inhaled. Avoid breathing spray mist. Wash thoroughly with soap and water after handling. Remove contaminated clothing and wash clothing before reuse.

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**SECTION VI -- HEALTH HAZARD DATA continued:**

**Medical Conditions Generally Aggravated by Exposure:** None known to manufacturer.

**Emergency and First Aid Procedures:** **If in eyes:** Hold eye open and rinse slowly and gently with water for at least 15-20 minutes. **If on skin or clothing:** Take off contaminated clothing. Rinse skin immediately with plenty of water for 15-20 minutes. **If inhaled:** Move person to fresh air. If person is not breathing, call 911 or an ambulance, then give artificial respiration, preferably by mouth-to-mouth, if possible. Call a poison control center or doctor for treatment advice. Have the product container or label with you when calling a poison control center or doctor or going for treatment. **NOTE TO PHYSICIAN:** Probable mucosal damage may contraindicate the use of gastric lavage.

**SECTION VII -- PRECAUTIONS FOR SAFE HANDLING AND USE**

**Steps To Be Taken In Case Material Is Released Or Spilled:** Caution. Floors may become slippery. Wear appropriate protective gear and respiratory protection where mist or vapors of unknown concentrations may be generated (self-contained breathing apparatus preferred). Dike and contain spill with inert material (sand, earth, etc.) and transfer the liquid and solid separately to containers of recovery or disposal. Keep spill out of sewers and open bodies of water.

**Waste Disposal Method:** Dispose of in compliance with all federal, state and local laws and regulations. Incineration is the preferred method.

**Precautions To Be Taken In Handling And Storing:** Keep away from children.

**Other Precautions:** Store in original container in areas inaccessible to children. Open dumping is prohibited Do not reuse empty container. This product contains no reportable quantities of toxic chemicals subject to reporting requirements of Section 313 of SARA Title III Emergency Planning & Community Right to Know Act of 1986 and 40 CFR Part 372.

**SECTION VIII -- CONTROL MEASURES**

**Ventilation:** In processes where mists or vapors must be generated, proper ventilation must be provided in accordance with good ventilation practices. **Respiratory Protection (Specify Type):** In processes where mists or vapors may be generated, a NIOSH/MSHA jointly approved respirator is advised in the absence of proper environmental controls. **Protective Gloves:** Rubber or neoprene, when needed, to prevent skin contact with concentrate. **Eye Protection:** Wear chemical splash goggles where there is a potential for eye contact. Use safety glasses with side shields under normal use conditions. **Other Protective Clothing or Equipment:** Eye wash; safety shower, protective clothing (long sleeves, coveralls or other, as appropriate), when needed to prevent skin contact with concentrate. **Work / Hygienic Practices:** Wash hands thoroughly after handling.

**SECTION IX -- TRANSPORTATION INFORMATION**

**Applicable regulations:** 49 CFR = No; IMCO = No; IATA = No

**Proper shipping name:** Cleaning Compound; **UN No.:** Not applicable; **Limited Qty.:** Not applicable;

**Hazard Class:** Not applicable

**Labels required:** Not required **Exception:** Not applicable

**EPA Hazardous waste number/code:** Not listed

**Hazardous waste characteristics:** **Ignitability** = Not applicable; **Corrosivity** = Not applicable; **Reactivity** = Not applicable

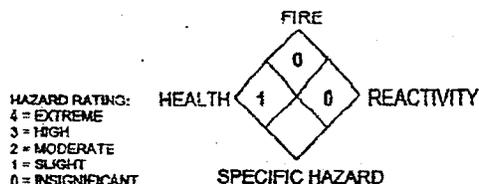
**DISCLAIMER OF WARRANTIES**

**NO REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR OF ANY NATURE ARE MADE WITH RESPECT TO THE PRODUCT(S) OR INFORMATION CONTAINED IN THIS MATERIAL SAFETY DATA SHEET. The information and recommendations contained in this Material Safety Data Sheet are supplied pursuant to 29 CFR 1910.1200 of the Occupational Safety and Health Standards Hazard Communication Rule. All information contained herein is presented in good faith and is believed to be appropriate and accurate. THE BUYER OR USER ASSUMES ALL RISKS ASSOCIATED WITH THE USE, MISUSE OR DISPOSAL OF THIS PRODUCT. THE BUYER OR USER IS RESPONSIBLE TO COMPLY WITH ALL FEDERAL, STATE OR LOCAL REGULATIONS CONCERNING THE USE, MISUSE OR DISPOSAL OF THESE PRODUCTS.**

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**SERVPRO INDUSTRIES, INC.**

**Material Safety Data Sheet (USA)**  
**#166 Re-Juv-Nal**



SECTION 1 – PRODUCT INFORMATION		
Product Name <b>Re-Juv-Nal</b>	Product Use <b>EPA Registered Disinfectant/Cleaner</b>	EPA Number <b>47371-131-1658</b>
Distributor's Name <b>SERVPRO INDUSTRIES, INC.</b>		Supplier's Name
Street Address <b>575 Airport Blvd., Gallatin, Tn. 37066</b>		Street Address
Information Telephone Number <b>(615) 451-0200</b>	Date Prepared <b>Jan. 02, 2002</b>	City, State, Zip
Emergency Telephone Number <b>(800) 535-5053</b>	Sig. of Preparer (optional) <b>Chemical Dept.</b>	Emergency Telephone Number

SECTION 2 – INGREDIENTS				
HAZARDOUS INGREDIENTS	OSHA PEL	ACGIH TLV	Other limits	%
<b>Dodecyl Dimethyl Ammonium Chloride</b> CAS# 7173-51-5	N/E	N/E	N/E	2.31
<b>n-Alkyl Dimethyl Benzyl Ammonium Chloride</b> CAS# 8001-54-5	N/E	N/E	N/E	1.54
<b>Octyl Dimethyl Amine Oxide</b> CAS# 2605-78-9	N/E	N/E	N/E	N/E
<b>Edtate Disodium</b> CAS# 139-33-3	N/E	N/E	N/E	N/E
<b>Deionized Water</b> CAS# 7732-18-5	N/E	N/E	N/E	N/E

SECTION 3 – PHYSICAL DATA		
Appearance and Odor <b>Pale red/orange liquid with pleasant floral fragrance.</b>	Solubility in Water <b>Completely</b>	Evaporation Rate (Butyl Acetate = 1) <b>&lt;1</b>
Boiling Point (°F) <b>210°F</b>	Vapor Pressure (mm Hg) <b>17.6</b>	Vapor Density (Air=1) <b>0.6</b>
Specific Gravity (H <sub>2</sub> O=1) <b>1.0</b>	Melting Point (°F) <b>N/A</b>	pH <b>6.5-7.5</b>

SECTION 4 – FIRE AND EXPLOSION DATA	
Flash Point (Method Used) <b>Non-flammable. N/A</b>	
Extinguishing Media <b>None required. If other materials are on fire in the area these containers may swell and burst. Water spray is effective at cooling.</b>	
Special Fire Fighting Procedures <b>Water may be used to cool containers to prevent pressure build-up and possible explosion when exposed to extreme heat.</b>	
Unusual Fire and Explosion Hazards <b>Closed containers may explode (due to build-up of steam pressure) when exposed to extreme heat.</b>	

SECTION 5 – REACTIVITY DATA	
Stability <b>Stable <input checked="" type="checkbox"/> Unstable <input type="checkbox"/></b> Conditions to Avoid <b>High temperatures.</b>	
Incompatibility (Materials to Avoid). <b>Strong oxidizing agents (i.e. nitric acid, permanganates, etc.) avoid water reactive materials.</b>	Hazardous Decomposition Byproducts <b>CO, CO<sub>2</sub> and various hydrocarbon compounds.</b>
Hazardous Polymerization <b>Will Not Occur <input checked="" type="checkbox"/> May Occur <input type="checkbox"/></b>	
Conditions to Avoid <b>None.</b>	

APPENDIX

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PRODUCT IDENTIFIER

#166 Re-Juv-Nal

### SECTION 6 – HEALTH HAZARD DATA

ROUTE(S) OF ENTRY

Skin Contact  Skin Absorption  Eye Contact  Inhalation  Ingestion

Health Hazards (Acute and Chronic) **Eye contact: primary irritation. Ingestion: can cause gastrointestinal irritation, nausea, vomiting and diarrhea. Skin contact: possible primary irritation. May be harmful if swallowed. (LD50 = 6.9 g/kg) Fine mist application is not recommended.**

CARCINOGENICITY

NTP?

IARC Monographs?

OSHA Related?

No

No

No

No

Signs and Symptoms of Overexposure **Irritation of affected organ or organs. Direct eye and skin contact can cause irritation.**

Medical Conditions Generally Aggravated by Exposure **Dermatitis.**

Emergency and First Aid Procedures

SKIN: **Wash skin with soap and water for 15 minutes. Call a physician.**

EYES: **Flush with water for 15 minutes. If irritation persists, consult a physician.**

INHALATION: **Move to fresh air. Seek medical attention if breathing becomes difficult.**

INGESTION: **Induce vomiting, consult a physician & drink promptly a large quantity of water.**

GENERAL ADVICE: **Avoid alcohol and call a physician immediately.**

### SECTION 7 – PRECAUTIONS FOR SAFE HANDLING AND USE

Steps to be Taken in Case Material is Released or Spilled

**Contain and remove with inert absorbent rags or sand. Avoid contamination of food, water or feed.**

Waste Disposal Method

**Dispose only in accordance with all federal, state and local regulations. Pesticide wastes are acutely hazardous. Improper disposal of excess pesticide, spray mixture or rinsate is a violation of Federal law.**

Precautions to be Taken in Handling and Storing

**Protect from freezing. Keep away from children.**

Other Precautions

**Triple rinse empty containers thoroughly with water before disposal. Remove contaminated clothing and wash before reuse. This product contains no reportable quantities of toxic chemicals subject to reporting requirements of section 313 of SARA Title 111 Emergency Planning and Community Right to Know Act of 1986 and 40 CFR part 372.**

### SECTION 8 – CONTROL MEASURES

Respiratory Protection

**None needed unless applied by spraying, then use Niosh approved respirator.**

VENTILATION

Local Exhaust

Mechanical

Special

Other

**Must provide adequate ventilation.**

**if necessary**

**N/A**

**N/A**

Protective Gloves

Eye Protection

Other Protecting Clothing or Equipment

**Rubber**

**Safety goggles**

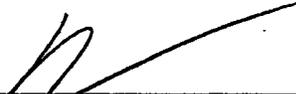
**None**

Work/Hygienic Practices

**Good work habits. Wash hands after use.**

This form complies with OSHA's Hazard Communication Standard, 29 CFR 1910.1200. Servpro, Inc. believes the above information is reliable. Handling of the designated product shall be restricted to qualified persons. Servpro, Inc. makes no warranty, expressed or implied, with respect to such information and assumes no responsibility whatsoever for any damage which results from the use of such information or the designated product. Users must make their own tests when using the designated product with any other product or any process.



  
Rory W. Leid, WSBA #25075  
Masaki J. Yamada, WSBA# 36425

1  
2  
3 INTERROGATORY NO. 2: Did you obtain statements from the Plaintiff? If so, please  
4 set forth the following information for each such statement:

- 5 a) Date  
6 b) Nature (whether written, oral, recorded or transcribed);  
7 c) Substance of information obtained;  
8 d) Identity of person taking the statement; and  
9 e) Identity of the present custodian of each statement (or summary of such  
10 statements, if oral).

11 ANSWER:

12 *Objection, the term "obtain" is vague.*

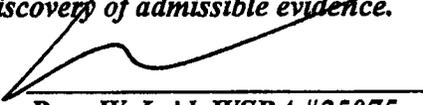
  
Rory W. Leid, WSBA #25075  
Masaki J. Yamada, WSBA# 36425

13  
14 INTERROGATORY NO. 3: Do you possess any documents of any kind signed by or  
15 prepared by the Plaintiff? If so, state for each item:

- 16 a) Date;  
17 b.) Substance of information contained; and  
18 c) Identity of the present custodian of each statement (or summary of such  
19 statements, if oral.)

20 ANSWER:

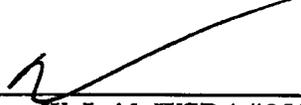
21 *Objection, this interrogatory is overbroad, vague, and seeks information that is  
22 not reasonably calculated to lead to the discovery of admissible evidence.*

  
Rory W. Leid, WSBA #25075  
Masaki J. Yamada, WSBA# 36425

23  
24 INTERROGATORY NO. 4: Identify all persons having knowledge of relevant facts  
25 pertaining to this lawsuit and briefly describe the nature of each person's relevant  
26 knowledge.

1 ANSWER:

2 *Objection, this interrogatory violates attorney-client privilege and work product*  
3 *privilege.*

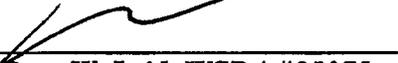
4   
5 Rory W. Leid, WSBA #25075  
6 Masaki J. Yamada, WSBA# 36425

7 INTERROGATORY NO. 5: As to all persons identified in the preceding interrogatory,  
8 have you or anyone known to you, obtained statements from them? If yes, state:

- 9 a) The identity of each person;  
10 b) The type of statement which was taken (whether written, recorded, oral or  
11 transcribed);  
12 c) The identity of the present custodian of each statement (or summary of such  
13 statement is oral) so taken;  
14 d) The date on which the statement was taken; and  
15 e) The identity of the person, agency or entity that requested the statement be  
16 taken.

17 ANSWER:

18 *Objection, vague and ambiguous as to "statements". Further objection in that*  
19 *this interrogatory violates attorney-client privilege and work product privilege.*

20   
21 Rory W. Leid, WSBA #25075  
22 Masaki J. Yamada, WSBA# 36425

23 REQUEST FOR PRODUCTION NO. 1: Produce each statements and documents  
24 obtained by you involving the insurance claims history of plaintiff.

25 RESPONSE:

26 *Objection, this request is overbroad and unduly burdensome, vague, and seeks*  
27 *information that is not reasonably calculated to lead to the discovery of admissible*  
28 *evidence. Further objection in that this request may seek information that is protected*  
29 *by the attorney-client privilege and/or work-product doctrine.*

30   
31 Rory W. Leid, WSBA #25075  
32 Masaki J. Yamada, WSBA# 36425

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1 INTERROGATORY NO. 6: With respect to each expert witness you may intend to call at  
2 trial, if any, state:

- 3 a) Identity, education, training, experience, field of expertise, and employer;  
4 b) The subject matter on which the expert is expected to testify;  
5 c) The substance of the facts of any investigation or study conducted by the expert  
6 concerning which the expert is expected to testify;  
7 d) Whether any written reports were completed by the expert and the date of said  
8 reports;  
9 e) The person who has custody of any reports;  
10 f) Whether the expert has conducted any tests or experiments;  
11 g) The opinions and conclusions as to which the expert is expected to testify;  
12 h) A summary of the grounds and factual basis for each opinion and conclusion;  
13 i) Whether or not you or your counsel have received any written or otherwise  
14 recorded statements or reports from such expert;  
15 j) If the expert did not or will not prepare a written, state the reason why such  
16 report has not or will not be prepared.  
17 k) Hourly rate charged by the expert;  
18 l) Amount of fee charged by the expert on this case;  
19 m) Number of cases the expert has consulted or otherwise been retained on by  
20 your lawyer's firm, including identification of each such case;  
21 n) Number of cases the expert has consulted or otherwise been retained on by  
22 Allstate, including identification of each such case;  
23 o) Identification of all cases in which the expert has testified in deposition;  
24 p) Identification of all cases in which the expert has testified at trial;  
25 p) Identification of all cases in which the expert has been excluded from testifying  
26 at trial.

17 ANSWER:

18 *Objection. This request seeks the production of documents that are privileged  
19 and protected by the attorney client privilege, the work product doctrine, and/or was  
20 created in anticipation of litigation. See Heidebrink v. Moriwaki, 104 Wn.2d 392, 706  
21 P.2d 212 (1985).*

22   
23 *Rory W. Leid, WSBA #25075  
Masaki J. Yamada, WSBA# 36425*

24 REQUEST FOR PRODUCTION NO. 17: : Produce every document, statement or  
25 report referred to in the preceding Interrogatory, or a written summary of the statement, if  
26 oral or not yet reduced to writing.

PLAINTIFF'S FIRST INTERROGATORIES  
AND REQUESTS FOR PRODUCTION TO  
DEFENDANT ALLSTATE INSURANCE  
COMPANY Page 9

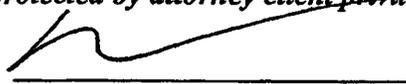
MARY FUNG KOEHLER  
2618-221<sup>ST</sup> AVENUE NE  
Sammamish, Washington 98074-6401  
(425) 301-2967  
maryfung7@yahoo.com

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1 RESPONSE:

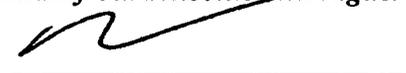
2 *Objection as to the numbering. In further objection, this request seeks the*  
3 *production of documents that are privileged and protected by attorney client privilege.*

4   
5 Rory W. Leid, WSBA #25075  
6 Masaki J. Yamada, WSBA# 36425

7 INTERROGATORY NO. 7: Identify any person or entity who investigated the water  
8 leak, the subject property, and/or the incident which occurred on June 28, 2004, the  
9 remediation if any, and the property and contents before and after the burglary in  
10 December 2004, which gave rise to Plaintiff's insurance claims. This interrogatory shall  
11 include, but is not limited to agents, adjusters, chemists, environmentalists, plumbers,  
12 building trades experts, private detectives, police officers, etc.

13 ANSWER:

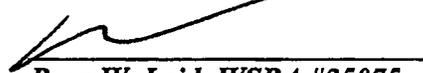
14 *Objection, this interrogatory is overbroad, unduly burdensome and vague.*

15   
16 Rory W. Leid, WSBA #25075  
17 Masaki J. Yamada, WSBA# 36425

18 REQUEST FOR PRODUCTION NO. 3: Produce every document, statement or report  
19 referred to in the preceding Interrogatory, or a written summary of the statement, if oral or  
20 not yet reduced to writing.

21 RESPONSE:

22 *Objection, this request is overbroad, unduly burdensome and vague.*

23   
24 Rory W. Leid, WSBA #25075  
25 Masaki J. Yamada, WSBA# 36425

26 INTERROGATORY NO. 8: Have you conducted or are you aware of any surveillance or  
of Plaintiff, her then fiancée or witnesses to this action? If so, please state:

- 27 a) Identity and relationship to you of each person doing each surveillance or
- 28 investigation;
- 29 b) Your knowledge or approval, if any, of each surveillance or investigation;

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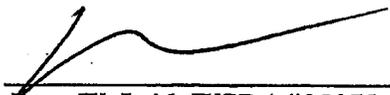
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- Place, date and time of each surveillance or investigation;
- d) Action observed at each surveillance or information obtained by each investigation;
- e) Date and number of pages of all reports of each surveillance or investigation;
- f) Identity of the present custodian of all reports of each surveillance or investigation.

ANSWER:

*Objection, the term "surveillance" is vague.*

  
 \_\_\_\_\_  
 Rory W. Leid, WSBA #25075  
 Masaki J. Yamada, WSBA# 36425

REQUEST FOR PRODUCTION NO. 4: Produce any documents, files or things referred to in the preceding interrogatory including, but not limited to photographs, statements, etc.

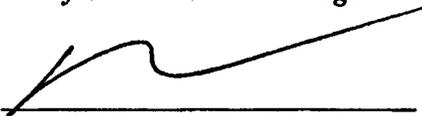
RESPONSE:

*See Answer to previous interrogatory.*

INTERROGATORY NO. 9: Have you conducted an investigation into the background, character, criminal history, employment, or financial condition of the Plaintiff, her then fiancée, Paul Anton McKenzie, or any of Plaintiff's family members? If yes, identify each person or entity who participated in such investigation or inquiry, and provide the date, place, and result of any such inquiry or investigation.

ANSWER:

*Objection, this interrogatory is overbroad, unduly burdensome and vague.*

  
 \_\_\_\_\_  
 Rory W. Leid, WSBA #25075  
 Masaki J. Yamada, WSBA# 36425

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1 REQUEST FOR PRODUCTION NO. 5: Produce any documents, files or things referred  
2 to in the preceding interrogatory including, but not limited to photographs, statements, etc.

3 RESPONSE:

4 *Objection, this request is overbroad, unduly burdensome and vague. Further*  
5 *objection in that this request may seek information that is protected by the attorney-*  
6 *client privilege and/or work-product doctrine.*

7   
8 Rory W. Leid, WSBA #25075  
9 Masaki J. Yamada, WSBA# 36425

10 INTERROGATORY NO. 10: Were any statements, photographs or documents prepared  
11 by and obtained from the persons or entities identified in the preceding interrogatories?

12 ANSWER:

13 *See Answer and Response to previous interrogatory and request for production.*

14 REQUEST FOR PRODUCTION NO. 6: Produce any statements, documents,  
15 photographs referred to in your answer to the two preceding two interrogatories.

16 RESPONSE

17 *See Answer and Response to previous interrogatory and request for production.*

18 INTERROGATORY NO. 11: State whether you initiated or are aware of any  
19 investigation into the insurance claims history of the Plaintiff, whether by a person or  
20 computer. If yes, itemize all findings from such investigations.

21 ANSWER:

22 *See Answer to Interrogatory No. 9.*

23 REQUEST FOR PRODUCTION NO.7: Produce any documents obtained by you  
24 involving the insurance claims history of plaintiff.

25 RESPONSE:

26 *See Response to Request for Production 5.*

INTERROGATORY NO. 12: Identify any photographs, videotape, audio or other  
electronic recording or physical evidence of any kind or nature that you have or know the

A-11

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1 existence of which is or may be relevant to any of the issues of this lawsuit, describing in  
2 detail each item and identifying its custodian.

3 ANSWER:

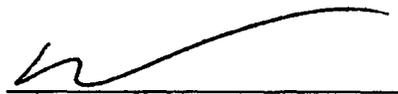
4 *Objection, this interrogatory is overbroad, unduly burdensome and vague.*

5   
6 Rory W. Leid, WSBA #25075  
7 Masaki J. Yamada, WSBA# 36425

8 REQUEST FOR PRODUCTION NO. 8: Produce any photographs, thing or item of  
9 physical evidence referred to in the preceding Interrogatory.

10 RESPONSE:

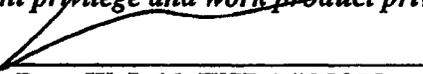
11 *Objection, this request is overbroad, unduly burdensome and vague.*

12   
13 Rory W. Leid, WSBA #25075  
14 Masaki J. Yamada, WSBA# 36425

15 REQUEST FOR PRODUCTION NO. 9: Produce all documents, files or things relating  
16 to or memorializing the "reserve" history or policy extract on Plaintiff's files.

17 RESPONSE:

18 *Objection, the terms "reserve" history or policy extract" are vague. In further*  
19 *objection this request violates attorney-client privilege and work product privilege.*

20   
21 Rory W. Leid, WSBA #25075  
22 Masaki J. Yamada, WSBA# 36425

23 INTERROGATORY NO. 13: Have you either as a defendant or through a cross-claim or  
24 counterclaim, been a party to a lawsuit for bad faith and/or consumer protection violations  
25 relating to property damage claims in the State of Washington during the last 10 years? If  
26 yes, state:

- a) The names of the parties;
- b) Cause number and venue;

- c) The name of the attorney representing the insured in each case;
- d) Whether the case was tried to a verdict;
- e) Whether the case was settled, and if so, for how much?

ANSWER:

*Objection, this interrogatory is overbroad and unduly burdensome, vague, and seeks information that is not reasonably calculated to lead to the discovery of admissible evidence. Further objection in that this interrogatory may seek information that is protected by the attorney-client privilege and/or work-product doctrine.*

  
Rory W. Leid, WSBA #25075  
Masaki J. Yamada, WSBA# 36425

REQUEST FOR PRODUCTION NO.10: Produce any documents involving the insurance claims of your opponents in the preceding interrogatory.

RESPONSE:

*See Answer and Objections to previous Interrogatory.*

INTERROGATORY NO. 14: Have you been the subject of any inquiry or complaint to or from the Office of the Insurance Commissioner of the State of Washington relating to water damage and/or property damage policies during the last 10 years? If, so, state the following:

- a) Name of the complaining party, and the name of that party's attorney if any;
- b) The date of the complaint;
- c) The nature of the complaint;
- d) The disposition of the complaint.

ANSWER:

*See Answer and Objection to Interrogatory No. 13.*

REQUEST FOR PRODUCTION NO. 11: Produce any document, file, photograph statement, thing, and/or inanimate object of any kind which you may intend to use as an exhibit at trial.

RESPONSE:

A-13

197-51  
196

1 RESPONSE

2 *See Answer and Objections to previous interrogatory.*

3 INTERROGATORY NO. 18: Did you place this case into its Special Investigations Unit  
4 (“SIU”) or some similar unit, if so, state:

- 5 a) Dates;  
6 b) What flags or fraud indicators were raised justifying placement into /SUI;  
7 c) Identity of the adjusters who made the placement;  
8 d) Identities of the supervisors who reviewed the appropriateness of the  
9 placements;  
10 e) Whether Plaintiff’s name was placed into any insurance fraud bureaus, if so  
11 identity;  
12 f) Whether referrals were made to the police, FBI, or other law enforcement  
13 agencies and if so, when, by whom and disposition.

14 ANSWER:

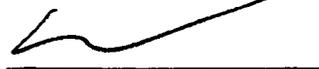
15 *Objection, the phrase “place this case into” is vague. Further objection in that  
16 this interrogatory is overbroad, unduly burdensome, and vague.*

17  
18   
19 Rory W. Leid, WSBA #25075  
20 Masaki J. Yamada, WSBA# 36425

21 REQUEST FOR PRODUCTION NO. 13: Produce any documents you created or  
22 obtained pertaining to the preceding Interrogatory.

23 RESPONSE:

24 *Objection, this request is overbroad, unduly burdensome and vague.*

25  
26   
27 Rory W. Leid, WSBA #25075  
28 Masaki J. Yamada, WSBA# 36425

29 INTERROGATORY NO. 19: With regard to each of your employees who adjusted,  
30 reviewed, advised, consulted, supervised, directed, made an entry in the claims file or did  
31 any work whatsoever regarding claims made by Plaintiff arising out of the water damage,  
32 any attempts at remediation, the incident, property damage, living expenses, burglaries,  
33 etc., state the following:

A-14

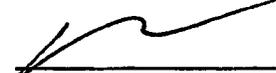
197-53  
198

- 1 a. Name, initials, business address, phone number, title, occupation, job
- 2 duties, and length of time employed by Allstate;
- 3 b. If any of the individual(s) listed in subsection (a) above are no longer
- 4 employed by Allstate, state the date of termination of employment, reason
- 5 for termination of employment, present address and phone number, and
- 6 present employer;
- 7 c. If any of above currently hold a different title, position, or job duties from
- 8 those to which they were assigned and were performing on the date(s) on
- 9 which they took action on which they worked on Plaintiff's claims(s)
- 10 and/or file(s), state the current title, position, job duties, the reason for the
- 11 change and whether the change constitutes a promotion or demotion in
- 12 either position or pay.
- 13 d. For each of the individuals identified in subsection (a) of this Interrogatory,
- 14 list the date(s) on which each individual worked on Plaintiff's files, specific
- 15 work performed, reason for action taken on the case, and the part of
- 16 Plaintiff's case on which the individual worked; and
- 17 e. State the reason for each and every transfer of any and all parts and/or
- 18 portions of Plaintiff's file(s) to from, and amongst the individuals identified
- 19 in this Interrogatory.
- 20

21 ANSWER:

22 *Objection, this interrogatory is overbroad, vague, and seeks information that is*

23 *not reasonably calculated to lead to the discovery of admissible evidence*

24   
25 \_\_\_\_\_  
26 *Rory W. Leid, WSBA #25075*  
*Masaki J. Yamada, WSBA# 36425*

27 REQUEST FOR PRODUCTION NO. 14: Produce all documents setting forth lists of

28 each section, unit, division or office and its make up that handled Plaintiff's claim, with a

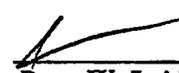
29 breakdown by job title and responsibility of all individuals who make up that section, unit,

30 division or office.

31 RESPONSE:

32 *Objection, this request is overbroad, vague, and seeks information that is not*

33 *reasonably calculated to lead to the discovery of admissible evidence*

34   
35 \_\_\_\_\_  
36 *Rory W. Leid, WSBA #25075*  
*Masaki J. Yamada, WSBA# 36425*

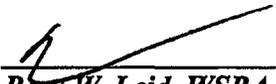
A-15

197-54  
199

1 REQUEST FOR PRODUCTION NO. 15: Produce all documents referring to, relating  
2 to, or otherwise evidencing any and all performance goals/objectives/challenges/quotas  
3 /requirements/standards or other criteria under any other name, for each and every person  
4 who in any way touched, handled, processed, reviewed, evaluated or supervised Plaintiff's  
5 files in relation to their individual unit challenges. These goals or standards may take the  
6 form of statistical performance and evaluation of claims superintendents or evaluators and  
7 may contain statistical performance guidelines for each person.

8 RESPONSE:

9 *Objection, this request is overbroad, vague, and seeks information that is not*  
10 *reasonably calculated to lead to the discovery of admissible evidence. Further objection*  
11 *in that the terms "performance goals/objectives/challenges/quotas*  
12 */requirements/standards or other criteria under any other name" are vague.*

13   
14 Rory W. Leid, WSBA #25075  
15 Masaki J. Yamada, WSBA# 36425

16 INTERROGATORY NO. 21: Identify all computer programs used by you to adjust,  
17 monitor, or otherwise handle Plaintiff's claim, indicating the respective dates each  
18 program was utilized.

19 ANSWER:

20 *Objection, this interrogatory is proprietary and may seek information that is*  
21 *protected by the attorney-client privilege and/or work-product doctrine. In further*  
22 *objection, this interrogatory seeks information that is not reasonably calculated to lead*  
23 *to the discovery of admissible evidence.*

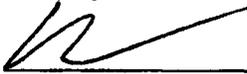
24   
25 Rory W. Leid, WSBA #25075  
26 Masaki J. Yamada, WSBA# 36425

27 INTERROGATORY NO. 22: Did you utilize Colossus in the evaluation of Plaintiff's  
28 claims? If so state:

- 29 a) Date;  
30 b) Identity of the Allstate adjusters who input the data;  
31 c) Identity of the supervisors who reviewed the appropriateness of the data input;  
32 d) Itemization of what information was input by way of dissection forms or other  
33 methods of entry;  
34 e) What versions of Colossus were utilized?  
35 f) What were the Colossus recommendations?

1 ANSWER:

2 *Objection, this interrogatory is overbroad, vague, and seeks information that is*  
3 *not reasonably calculated to lead to the discovery of admissible evidence.*

4   
5 Rory W. Leid, WSBA #25075  
Masaki J. Yamada, WSBA# 36425

6 REQUEST FOR PRODUCTION NO. 16: Produce any documents obtained by you  
7 involving the preceding two Interrogatories.

8 RESPONSE:

9 *Objection, this request is overbroad, vague, and seeks information that is not*  
10 *reasonably calculated to lead to the discovery of admissible evidence*

11   
12 Rory W. Leid, WSBA #25075  
Masaki J. Yamada, WSBA# 36425

13 INTERROGATORY NO. 23: Describe the nature of your relationship with  
14 Servpro referred to as Professional Cleaning and Restoration Services, LLC, dba Servpro,  
15 and any and all agents, employees, officers, executives and owners thereof. Servpro does  
16 not in any way refer to Servpro of East Bellevue, Inc. State the following:

- 17 a) Date and length of time doing business with Servpro.
- 18 b) Date Allstate began recommending its insured to use Servpro for remediation  
19 work.
- 17 c) What qualifications and/or special relationships did Servpro have over and  
18 above other remediation companies;
- 18 d) How many job claims has Allstate paid Servpro on over the past 10 years;
- 19 e) How many times has Allstate recommended Servpro even after their insureds  
20 had already had estimates or done business with other companies at the time of the  
21 insurance intake;
- 21 f) What percentage of your adjusters rely on the expertise of Servpro's employees;
- 22 g) Are your adjusters authorized in controlling the acts of Servpro employees in  
23 spite of the fact that the employment contract is between the insured and Servpro;
- 22 h) Is it company policy to pay Servpro in full for an incomplete job;
- 23 i) Is it company policy to pay a contractor without the knowledge or consent of its  
24 insured;
- 24 j) Is it company policy to pay a contractor without the acknowledgement or  
25 consent of its insured as to a satisfactory job performance;
- 25 k) Is it company policy to pay a contractor by check or draft without requiring that  
26 the insured endorse said document as co-payee;

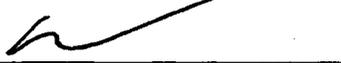
A-17

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201

- 1 l) Is it company policy to pay a contractor without the knowledge or consent of its  
insured:  
2 m) Did Allstate in fact act as set forth in h) through l) in "settlement" of Plaintiff's  
claim;  
3 n) What is each annual monetary value of sums paid to Servpro over the past 10  
4 years;  
o) What percentage of remediation claims paid by Allstate in the King and  
5 Snohomish County metropolitan area goes to Servpro.  
6 p) Has Allstate ever refused to pay Servpro for shoddy or incomplete work on  
behalf of its insured.  
7 q) Is Allstate still recommending Servpro to its insured with water damage claims.

8 Answer:

9 *Objection, this interrogatory is overbroad and unduly burdensome, vague, and*  
10 *seeks information that is not reasonably calculated to lead to the discovery of admissible*  
11 *evidence. Further objection in that this interrogatory may seek information that is*  
12 *protected by the attorney-client privilege and/or work-product doctrine.*

13   
14 Rory W. Leid, WSBA #25075  
15 Masaki J. Yamada, WSBA# 36425

16 REQUEST FOR PRODUCTION NO. 17: Please produce all photographs, motion  
17 pictures, drawings, diagrams, measurements, surveys and other documents in your  
18 possession describing or concerning the events, and happenings, or scene of the Incident  
19 and the subject property.

20 RESPONSE:

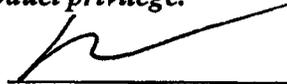
21 *Objection, this request is overbroad, vague, and seeks information that is not*  
22 *reasonably calculated to lead to the discovery of admissible evidence*

23   
24 Rory W. Leid, WSBA #25075  
25 Masaki J. Yamada, WSBA# 36425

26 PRODUCTION NO. 18: Please produce copies of your federal income tax returns for the  
past ten (10) years.

1 RESPONSE:

2 *Objection, this request is proprietary, overbroad and unduly burdensome, vague,*  
3 *and seeks information that is not reasonably calculated to lead to the discovery of*  
4 *admissible evidence. Further objection in that the term "your" is vague. This request*  
5 *also violates attorney-client privilege and work product privilege.*

6   
7  
8 Rory W. Leid, WSBA #25075  
9 Masaki J. Yamada, WSBA# 36425

10 REQUEST FOR PRODUCTION NO. 9: Please produce all documents identified in your  
11 answers to the preceding interrogatories that were not already produced in response to the  
12 preceding requests for production.

13 RESPONSE:

14 *. Objection, as to numbering. In further objection, this request is proprietary,*  
15 *overbroad and unduly burdensome, vague, and seeks information that is not reasonably*  
16 *calculated to lead to the discovery of admissible evidence. Further objection in that the*  
17 *term "your" is vague. This request also violates attorney-client privilege and work*  
18 *product privilege.*

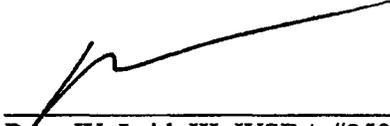
19   
20  
21 Rory W. Leid, WSBA #25075  
22 Masaki J. Yamada, WSBA# 36425

23 INTERROGATORIES propounded AND REQUESTS FOR PRODUCTION  
24 directed to Defendant Allstate Insurance Company this 15th day of July, 2008.

25   
26 Plaintiff, Pro Se  
27 Mary Fung Koehler, WSBA #1327  
28 Address: 2618 -221<sup>st</sup> Avenue NE  
29 Sammamish, Washington 98074-6401  
30 (425) 301-2967

1 DATED this 4 day of August, 2008.

2  
3 COLE, LETHER, WATHEN & LEID, P.C.

4  
5  
6   
7 Rory W. Leid, III, WSBA #25075  
8 Masaki J. Yamada, WSBA #36425  
9 Attorneys for Defendant Allstate

10 **CERTIFICATE OF SERVICE**

11 The undersigned hereby certifies under the penalty of perjury under the laws of the  
12 State of Washington that on this date I caused to be served in the manner noted below a  
13 true and correct copy of the foregoing on the following parties by electronic mail and by  
14 hand delivering an original copy to COLE, LETHER, WATHEN & LEID, P.C.

15 DAVID M. SODERLAND, WSBA#6927  
16 Attorney for Defendants Professional  
17 Cleaning and Restoration Services, LLC  
18 d/b/a Servpro; Brent Young and Jane Doe  
19 Young and James Young and Jane Doe  
20 Young  
21 dsoderland@dunlapsoderland.com

22 William J. Leedom, WSBA #2321  
23 Timothy E. Allen, WSBA #35337  
24 Amy Magnano, WSBA #38484  
25 Attorneys for Defendant Hillyard  
26 Bennett Bigelow & Leedom, P.S.  
1700 Seventh Avenue, Suite 1900  
Seattle, Washington 98101  
206-622-5511 (Telephone)  
206-622-8986 (Facsimile)  
www.bbllaw.com  
amagnano@bbllaw.com

27 COLE, LETHER, WATHEN & LEID, P.C.  
28 Rory W. Leid, III, WSBA# 25075  
29 Masaki J. Yamada, WSBA# 36425  
30 Attorneys for Defendant Allstate  
31 1000 Second Avenue, suite 1300  
32 Seattle, WA 98104-1082

33 **PLAINTIFF'S FIRST INTERROGATORIES**  
34 **AND REQUESTS FOR PRODUCTION TO**  
35 **DEFENDANT ALLSTATE INSURANCE**  
36 **COMPANY Page 23**

MARY FUNG KOEHLER  
2618 - 221<sup>ST</sup> AVENUE NE  
Sammamish, Washington 98074-6401  
(425) 301-2967  
maryfung7@yahoo.com

A-20

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1 c. Pages 3 and 4 of her report set forth her recommendations, none of  
2 them followed except for the use of the negative machines to exhaust  
3 the residual airborne particulate matter and odors before any  
4 remediation was to be attempted.

5 d. She never returned to the site to see that no remediation work was  
6 ever done according to her recommendations.

7 2. On page 7, line 5 -14 of Plaintiff's first Interrogatories, etc, Hillyard said:

8 "9. Defendants have not fully completed their investigation of the facts, relating to  
9 this case, its discovery, and/or its preparation for trial. All responses and  
10 objections contained herein are based on information presently available to and  
11 specifically known to Defendants. Defendants' responses are without prejudice to  
12 Defendants' right to amend or change their responses based on subsequently  
13 discovered facts, Defendants according reserve the right to supplement an/or  
14 amend their responses, and to present additional evidence at a later date."

15 3. Hillyard's answer to Plaintiff's Interrogatory No. 2, at page 11, lines 4-5:

16 "Hillyard has spent \$5000 on testing for safety and effects of possible misuse of  
17 Re-Juv-Nal. The gross profit for Re-Juv-Nal from 1998 through 2008 was  
18 \$1,050,261."

19 4. In response to Plaintiff's Request for Production No. 2, at page 12, lines 9  
20 -11, Hillyard's response was:

21 "Hillyard has requested its telephone records for the subject time period from its  
22 long distance carrier and will produce those records when they are received. See  
23 attached telephone log records for September 2005 – November 2004, relating to  
24 the product Re-Juv-nal."

25 5. Attached are four log reports submitted by Hillyard mentioned above which  
26 Indicate that consumers have been injured from using or others using Re-Juv-Nal in just  
27 a 2 month period out of 17 years of the product being manufactured. EXHIBIT A refers  
28 to the problems of a swim coach regarding the effectiveness of the disinfectant.  
EXHIBIT D refers to to the effect of mold on property. Complaints and reports of arm  
rashes by employees of Fort Morgan Schools custodians using the product by spraying  
which continued even after they used buckets rather than spraying (EXHIBIT C).

Motion for Reconsideration of "Order  
Granting Defendant Hillyard, Inc.'s Motion  
For Summary Judgment" - 4

Mary Fung Koehler  
18515 - 147th Court SE  
Renton, WA 98058-9331  
Cell: (425)-301-2967  
maryfung7@yahoo.com

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1 and a college student being hit on his arm by an overspray of athletic equipment  
2 causing eye irritation (EXHIBIT B). EXHIBIT C)

3 6. The declarations of Timothy Fung, Mark Keltner, Maria Roberts and plaintiff  
4 describe their symptoms which match those set forth in Hillyard's literature and material  
5 data sheets. (See Hillyard's EXHIBIT 1)

6 7. The same pungent odor that permeated plaintiff's house immediately upon  
7 Servpro spraying was the same at least until plaintiff's salvageable belongings were  
8 dumped and/or removed from the house in March -April 2006.

9 8. Hillyard's Response to "Request for Production NO. 9: Produce every  
10 documents, statement, photographs, photocopies, email or report involved in any  
11 submissions to EPA, the pollution information site Scorecard, Environmental  
12 Defense, the Chemical Manufacturers Association and state the role of  
13 participation of Hillyard with respect to the ingredients of Re-Juv-Nal."

14 is "Hillyard does not own the formulation of Re-Juv-Nal."

15 **V. LEGAL AUTHORITY and ARGUMENT**

16 50 Wn. App. 360, HOGLUND v. RAYMARK INDUSTRIES

17 [1] Products Liability - Warnings - Knowledge of Danger - Manufacturer. A manufacturer's  
18 actual or constructive knowledge of dangers incident to reasonably foreseeable uses of its  
19 product is relevant to its negligence in failing to give adequate warnings.

20 [4] Products Liability - Warnings - Compliance With Governmental Specifications - Specificity. A  
21 product manufacturer's failure to warn of the risks of use of the product is not excused under RCW  
22 7.72.050(2), which makes compliance with governmental warning requirements an absolute  
23 defense, when the specifications involved are not related to the giving of warnings regarding the  
24 product.

25 [5] Negligence - Proximate Cause - Intervening Causes - Superseding Cause. A tortfeasor's liability  
26 for the resulting harm continues despite any intervening negligence by another unless the  
27 intervening act is so extraordinary or unexpected that it falls outside the realm of reasonably  
28 foreseeable events. Hugo Hogleund commenced the present action in King County Superior Court on  
or about October 14, 1981, alleging liability on the part of various asbestos manufacturers under  
theories of strict liability, failure to warn, wanton and malicious misconduct, and outrageous  
conduct.

[1] The Washington Supreme Court has recently addressed the admissibility of certain excerpts from the  
Sumner Simpson papers in a shipyard worker's negligence claim in LOCKWOOD v. AC & S, INC., 109  
Motion for Reconsideration of "Order  
Granting Defendant Hillyard, Inc.'s Motion  
For Summary Judgment" - 5

Mary Fung Koehler  
18515 - 147th Court SE  
Renton, WA 98058-9331  
Cell: (425)-301-2967  
maryfung7@yahoo.com

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1 13. Defendant Hillyard refers to Defendant Hillyard Industries aka Hillyard,  
2 Inc., its agents, employees, officers, executives, attorneys, other representatives and  
owners thereof.

3 14. Defendant Servpro refers to Professional Cleaning and Restoration  
4 Services, LLC, dba Servpro, as named in Plaintiff's Amended Complaint. Servpro does  
not in any way refer to Servpro of East Bellevue, Inc.

5 15. Defendant Allstate refers to Allstate Insurance Company., as named in  
6 Plaintiff's Amended Complaint.

7 16. Words in the masculine gender include the feminine and neuter. The  
8 singular number includes the plural, and the plural indicates the singular.

9 17. Water damage remediation refers to the extent of services rendered at the  
10 job site at the home in Lake Forest Park of Plaintiff Mary Fung Koehler beginning in June  
25, 2004, by the employees of Defendants as owners of Defendant Servpro.

11 18. Incident refers to the events and acts by Servpro, its employees, and owners  
12 with respect to the liability exposure caused by the unauthorized spraying of Re-Juv-Nal in  
Plaintiff's basement on June 28, 2004.

13 19. Medical practitioner refers to any physician, nurse, paramedic, physical  
14 therapist, chiropractor, osteopath, psychiatrist, psychologist or other person conducting  
any medically related treatment, examination or therapy.

15  
16 20.. These interrogatories and document requests are continuing in nature, and  
17 you are required to promptly file supplementary answers and produce additional  
18 responsive documents subsequent to the date of answering these interrogatories and  
document requests up to and including the time of trial.

19  
20 **INTERROGATORIES**

21 **DEFENDANTS GENERAL OBJECTIONS**

22 1. **Defendants object to each Interrogatory and Request for Production**  
23 **to the extent that each seeks to elicit attorney work product, communications**  
24 **protected by the attorney-client or joint-defense privileges, or business information**  
25  
26

1 of a confidential or proprietary nature, which might be of advantage to  
2 Defendants' competitors.

3 2. Defendants object to each Interrogatory and Request for Production  
4 to the extent each seeks legal conclusions that are not discoverable or invade the  
5 province of the court asking for conclusions of law.

6 3. Defendants object to each Interrogatory and Request for Production  
7 on the basis that each is vague, ambiguous, and/or does not describe the  
8 information sought with sufficient particularity.

9 4. Defendants object to each Interrogatory and Request for Production  
10 on the basis that each calls for information that is neither relevant to the subject  
11 matter of this litigation nor is reasonably calculated to lead to the discovery of  
12 admissible evidence.

13 5. Defendants object to each Interrogatory and Request for Production  
14 to the extent that each would require a response that is privileged and no such  
15 response will be made.

16 6. Defendants object to each Interrogatory and Request for Production  
17 to the extent that each exceeds or contradicts the provision of the Washington Civil  
18 Rules and/or the Local Rules for King County Superior Court.

19 7. Defendants object to each Interrogatory and Request for Production  
20 to the extent that each calls for information or documents where the disclosure of  
21 such information or documents may implicate any common law, administrative,  
22 statutory or constitutional right of privacy.  
23  
24  
25  
26

1           8.     Nothing herein should be construed as an admission by Defendants  
2     respecting the admissibility or relevance of any fact or document, or the truth or  
3     accuracy of any characterization or statement of any kind contained in Plaintiff's  
4     Interrogatories and Requests for Production.

5           9.     Defendants have not fully completed their investigation of the facts  
6     relating to this case, its discovery, and/or its preparation for trial. All responses  
7     and objections contained herein are based on information presently available to  
8     and specifically known to Defendants. Defendants' responses are without  
9     prejudice to Defendants' right to amend or change their responses based on  
10    subsequently discovered facts. Defendants accordingly reserve the right to  
11    supplement and/or amend their responses, and to present additional evidence at a  
12    later date.

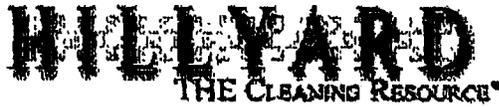
13  
14  
15    INTERROGATORY NO. 1: Please state your full name, your of date incorporation and  
16    federal tax number, and your present head office address. In addition to your present  
17    address, state all other addresses at which you have branches, subdivisions, plant, offices,  
18    and the dates each such unit was created.

19    ANSWER:

20    Hillyard Industries  
21    1964  
22    Federal Tax ID: 44-0284100  
23    302 N 4<sup>th</sup>  
24    St. Joseph, MO 64501

25    Hillyard Corporate Distributors:

26    San Antonio  
27    12871 Wetmore Rd.  
28    San Antonio, TX 78247  
29    11/01/99



### Hillyard Inquiry Logging System

Judy Stevens

7242285199

Inquiry #: 11392  
 Status: Closed  
 Type: Phone  
 Caller Type: End User  
 Category: Hillyard Product Performance Issue  
 Product Category: Chemical Management System (Arsenal®) Arsenal® Products  
 Product Selection: HTL0081606  
 Date Received: 9/28/2004  
 Target Date: 10/12/2004  
 Who Received: esm  
 Hillyard Department: Technical Service  
 Market: Recreation  
 Date Closed: 9/28/2004  
 Short Description: Eye reaction to Arsenal Re-Juv-Nal

Comments/Questions: My son (Mark) was at the local community college working out last Monday when a girl sprayed your Arsenal Re-Juv-Nal on some exercise equipment. Some overspray hit my son on the arm. Apparently he wiped his brow with his arm and has developed a bad eye irritation. He is 17 years old. He went to the doctor last Thursday and he prescribed some eyedrops. They didn't work so we went to the ER. We have since been to an eye specialist. We are now trying drops from him but they don't seem to be working. He has bumps under his eye and the eye specialist says he should be fine. Can your product cause this? What ingredients in this product could cause this? Any suggestions? I just want my son to feel better.

Reply: Judy did have an MSDS. I also e-mailed her the RTU version. This product should only cause minor eye irritation in the diluted form. Some people may have specific reactions to some products, just as people are allergic to certain foods or medications. Please contact the eye specialist if he continues to have problems.

Product Application: Irritation/Inhalation/Skin  
 Post Inv/Product: Unknown

Return to Menu

EXHIBIT B

A-26

167-10

1398



### Hillyard Inquiry Logging System

Mike Karsh  
HFC-Denver

Inquiry #: 11482  
 Status: Closed  
 Type: Phone  
 Caller Type: Corporate  
 Category: Hillyard Product Performance Issue  
 Product Category: Chemical Management System (Arsenal®) Arsenal® Products  
 Product Selection: HIL0081622  
 Date Received: 10/12/2004  
 Target Date: 10/26/2004  
 Who Received: esm  
 Hillyard Department: Technical Service  
 Market: Education  
 Date Closed: 10/12/2004  
 Short Description: Arsenal Re-Juv-Nal causing rashes on arms  
 Comments/Questions: Fort Morgan Schools is using the Arsenal Re-Juv-Nal in their system. They have a few custodians that are developing rashes on their arms from using the product. I have gotten them away from spraying it. They are now using it in buckets. I have trained them to wear gloves but this is happening above the gloves. Should I switch them to the #819 or Vindicator? I may get them some neoprene sleeves to use.  
 Reply: In the RTU form, the #819 and Vindicator have the same level of active quat, so switching to these products won't work. I would discuss the importance of wearing protective equipment and using the product carefully and correctly. If they are splashing the product above the gloves it can cause some irritation. Sounds mainly like a training issue, but they need to follow what is trained.  
 Notes: Mike will also take out some Germicidal Foaming Cleaner aerosol for them to try, in hopes that they can control the spray better and not get it on their skin.  
 Product Application: Irritation/Inhalation/Skin  
 Post Inv/Product: Poor application

Return to Menu

EXHIBIT C

A-27

167-11

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PROFESSIONAL CLEANING  
SUPERIOR COURT

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Honorable Michael Trickey

IN KING COUNTY SUPERIOR COURT, STATE OF WASHINGTON

MARY FUNG KOEHLER, a single person,

Plaintiff,

vs.

ALLSTATE INSURANCE COMPANY, an Illinois corporation; HILLARD INDUSTRIES, aka HILLARD, INC., a Missouri corporation; PROFESSIONAL CLEANING AND RESTORATION SERVICES, LLC dba SERVPRO, a Washington corporation; BRENT YOUNG and JANE DOE YOUNG, husband and wife and the marital community composed thereof; and JAMES YOUNG and JANE DOE YOUNG, husband and wife and the marital community composed thereof,

Defendants.

NO. 07-2-21367-8SEA

DEFENDANT PROFESSIONAL CLEANING AND RESTORATION SERVICES, LLC, D/B/A SERVPRO, A WASHINGTON CORPORATION'S ANSWERS TO PLAINTIFF'S FIRST DISCOVERY

COMES NOW Defendant Professional Cleaning and Restoration Services, LLC, d/b/a Servpro, a Washington corporation and answers Plaintiff's First Interrogatories and Requests for Production as follows:

PROFESSIONAL CLEANING'S ANSWERS TO PL'S FIRST DISCOVERY - 1

A-28

139-55

1  
2 1. Professional Cleaning and Restoration Services, LLC is no longer in business.  
3 Tax ID# was 91-1856670.

4 Last address for Professional Cleaning and Restoration Services before it  
5 went out of business was 1910 - 21<sup>st</sup> Avenue S., Seattle, WA 98144.

6 2. James L. Young and Avon M. Young - 60%  
7 Brent A Young and Kathleen A. Young - 40%

8 3. Discovery is still continuing. Isidro and Jose were dispatched to plaintiff's  
9 house to do the initial remediation work. Additional employees were then  
10 dispatched to remove additional contents from the plaintiff's house. We are  
11 still attempting to locate records which would indicate exactly when and  
12 where each employee was dispatched to perform work at the plaintiff's  
13 residence.

14 4. Not applicable.

15 5. Specialty Claims Management, as claims administrator for Restoration, RRG  
16 issued a reservation of rights letter on February 25, 2008 to Professional  
17 Cleaning & Restoration, LLC.

18 6. Yes. Servpro followed standard cleaning remediation protocol when working  
19 on the plaintiff's property. The Re-Juv-Nal that was applied was properly  
20 mixed and applied.

21 7. Isidro and Jose would have been dispatched to plaintiff's house through the  
22 dispatcher. Other workers who were involved in packing the contents would  
23 also have been dispatched by the Servpro dispatcher.

24 8. There were two separate functions involved. The first was remediation and  
25 the second was pack out (removing contents from the premises). Jose and  
26 Isidro were qualified and experienced technicians in remediation. Various  
employees were sent to do the pack out. There was a question from Allstate  
as to whether or not there was coverage for the pack out and this may have  
delayed the pack out. Defendant denies that employees "appeared and  
disappeared" from the job site.

Request for Production No. 1:

Professional Cleaning and Restoration Services, LLC is out of business.  
We are searching for records that would provide this information. If they

PROFESSIONAL CLEANING'S ANSWERS  
TO PL'S FIRST DISCOVERY - 2

A-29

DUNLAP & SODERLAND, P.S.  
901 FIFTH AVENUE, SUITE #3003  
SEATTLE, WASHINGTON 98164  
PHONE (206) 682-0902  
FAX (206) 682-1551

139-56

1201

1  
2 are located, we will provide them to plaintiff.

3 9. No.

4 10. Isidro and Jose were directed by the dispatcher to perform initial remediation  
5 of the water damage at plaintiff's house.

6 11. Isidro and Jose performed the remediation at plaintiff's house.

7 The address that Servpro has for Jose Aires is 2858 - 4<sup>th</sup> Avenue South,  
8 Burien, WA 98168.

9 The address that Servpro has for Isidro Lopez is 21635 - 31<sup>st</sup> Avenue South,  
10 Des Moines, WA 98189.

11 In addition to Isidro and Jose, James Young has general knowledge regarding  
12 the operations of Servpro, including the premixing of Re-Juv-Nal.

13 12. See answer to No. 11.

14 13. a) 1998 - 2008

b) 1998

15 c) Servpro had no special relationship with Allstate. Servpro was one of  
16 the vendors that Allstate used for water remediation work.

d) Unknown.

e) Unknown.

f) Unknown.

17 g) Generally the adjuster inspects the work, reviews the bill and  
18 authorizes payment.

19 h) Unknown.

i) Unknown.

20 j) Unknown.

k) Unknown.

21 l) Unknown.

m) Unknown.

22 n) Unknown.

23 o) Unknown.

p) No.

24 q) No, Professional Cleaning and Restoration Services is out of business.

25 14. This defendant does not accept the concept that plaintiff's house is  
26 "contaminated". Professional Cleaning and Restoration Services, LLC  
was one of many vendors used by Allstate to mitigate water damage,  
sewer damage and fire damage. As a practice Allstate did not include

PROFESSIONAL CLEANING'S ANSWERS  
TO PL'S FIRST DISCOVERY - 3

A-30

DUNLAP & SODERLAND, P.S.  
901 FIFTH AVENUE, SUITE #3003  
SEATTLE, WASHINGTON 98164  
PHONE (206) 682-0902  
FAX (206) 682-1551

139-57

1202

1  
2 policy holders on checks made payable to Professional Cleaning and  
3 Restoration Services, LLC.

4 Request for Production No. 2:

5 Professional Cleaning and Restoration Service, LLC is out of business.  
6 The existing Professional Cleaning and Restoration Service records  
7 are not indexed. The jobs referred by "Allstate" cannot be easily retrieved.

8 15. This interrogatory should be directed to Allstate, not defendant Professional  
9 Cleaning and Restoration Service, LLC.

10 16. There was a question of whether Allstate had insurance coverage for the  
11 loss. Until this was resolved, Professional Cleaning and Restoration  
12 Service, LLC was instructed to stop packing and moving plaintiff's  
13 personal property.

14 17. Discovery is still being conducted. It is believed no such written records  
15 exist.

16 18. Professional Cleaning and Restoration Service, LLC is not aware of any  
17 communication problems.

18 19. None.

- 19 20. a) Restoration, RRG  
20 b) Policy No. RPU070611 (7/15/2007-7/15/2008)  
21 c) \$1,000,000  
22 d) Professional Cleaning & Restoration, LLC  
23 e) Unknown, this information has been requested.

24 Request for Production No. 3:

25 We have requested a copy of the policy and will provide it upon receipt.

26 21. Barbara Trenary  
Trenary & Associates, LLC  
P.O. Box 1252  
Seahurst, WA 98062

Ms. Trenary is an industrial hygienist who will testify regarding the use of  
Re-Juv-Nal and the techniques used in the restoration industry to control water  
damage.

PROFESSIONAL CLEANING'S ANSWERS  
TO PL'S FIRST DISCOVERY - 4

A-31

139-58  
DUNLAP & SODERLAND, P.S.  
901 FIFTH AVENUE, SUITE #3003  
SEATTLE, WASHINGTON 98164  
PHONE (206) 682-0902  
FAX (206) 682-1551

1203

1  
2 Ms. Trenary has not completed any written reports.

3  
4 Silvette Boyajian  
5 Indoor Air and Environmental Services Co.  
6 15213 Fremont Ave.N.  
7 Shoreline, WA 98133

8 Ms. Boyajian is a certified industrial hygienist. She will testify regarding the  
9 test examination she made at the Koehler residence and the use of Re-Juv-Nal.

10 Ms. Boyajian prepared a written report to Allstate Insurance dated July 18,  
11 2004. A copy of this report is marked Exhibit 7 to the deposition transcript of Mary  
12 Fung Koehler.

13 Request for Production No. 4:

14 A copy of Ms. Boyajian's report dated July 18, 2004 is attached to Plaintiff's  
15 deposition as Exhibit 7.

16 Request for Production No. 5:

17 None other than those produced already during discovery.

18 Request for Production No. 6:

19 Discovery is continuing.

20 Request for Production No. 7:

21 We do not believe there are any photographs , motion pictures or videotakes  
22 other than those that have been produced through discovery.

23 Request for Production No. 8:

24 None.

25 22. No.

26 Request for Production No. 9:

Not applicable.

PROFESSIONAL CLEANING'S ANSWERS  
TO PL'S FIRST DISCOVERY - 5

A-32

139-59  
DUNLAP & SODERLAND, P.S.  
901 FIFTH AVENUE, SUITE #3003  
SEATTLE, WASHINGTON 98164  
PHONE (206) 482-0902  
FAX (206) 482-1551

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23. None other than those that have already been produced through discovery.

Request for Production No. 10:

See answer to Interrogatory No. 23.

24. No.

Request for Production No. 10:

Not applicable.

25. Not that we can recall.

26. No.

Request for Production No. 11:

Defendant is not required to produce trial exhibits at this point in time.

27. Plaintiff failed to state a claim upon which relief can be granted against the individual members of the LLC. All of the actions by Professional Cleaning and Restoration Service, LLC were done in the capacity of the limited liability corporation. The individual members have no individual liability.

Plaintiff's comparative negligence/failure to mitigate: discovery is still being conducted.

Plaintiff's damages were proximately caused by the negligence and/or wrongful conduct of third parties not under the control of this answering defendant: discovery is still being conducted.

Defendant Professional Cleaning and Restoration Service, LLC categorically denies plaintiff was damaged in any way. However, Professional Cleaning and Restoration Service, LLC did not manufacture the Re-Juv-Nal applied to plaintiff's property.

Request for Production No. 12:

Not applicable.

PROFESSIONAL CLEANING'S ANSWERS  
TO PL'S FIRST DISCOVERY - 6

139-60

A-33

DUNLAP & SODERLAND, P.S.  
901 FIFTH AVENUE, SUITE #3003  
SEATTLE, WASHINGTON 98164  
PHONE (206) 682-0902  
FAX (206) 682-1551

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Request for Production No. 13:

Objection, these documents are outside the proper scope of discovery and not calculated to lead to any discoverable information.

28: Both Isidro and Jose were well trained technicians. They followed standard water remediation protocol and applied properly diluted Re-Juv-Nal to plaintiff's property.

Request for Production No. 14:  
None.

Request for Production No. 15:  
None.

139-61

PROFESSIONAL CLEANING'S ANSWERS  
TO PL'S FIRST DISCOVERY - 7

A-34

DUNLAP & SODERLAND, P.S.  
901 FIFTH AVENUE, SUITE #3003  
SEATTLE, WASHINGTON 98164  
PHONE (206) 682-0902  
FAX (206) 682-1551

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Honorable Michael Trickey

IN KING COUNTY SUPERIOR COURT, STATE OF WASHINGTON

MARY FUNG KOEHLER, a single	)
person,	)
	)
Plaintiff,	)
	)
vs.	)
	)
ALLSTATE INSURANCE COMPANY, an	)
Illinois corporation; HILLYARD	)
INDUSTRIES, aka HILLYARD, INC., a	)
Missouri corporation; PROFESSIONAL	)
CLEANING AND RESTORATION	)
SERVICES, LLC dba SERVPRO, a	)
Washington corporation; BRENT	)
YOUNG and JANE DOE YOUNG,	)
husband and wife and the marital	)
community composed thereof; and	)
JAMES YOUNG and JANE DOE YOUNG,	)
husband and wife and the marital	)
community composed thereof,	)
	)
Defendants.	)

NO. 07-2-21367-8SEA  
DEFENDANTS BRENT YOUNG  
AND JANE DOE YOUNG  
ANSWERS TO PLAINTIFF'S  
FIRST DISCOVERY

COME NOW Defendants Brent Young and Jane Doe Young and answer

Plaintiff's First Interrogatories and Requests for Production as follows:

1. Brent A. Young and Kathleen A. Young  
c/o Dunlap & Soderland, PS
2. Interlake High School, June 1975

BRANT YOUNG ANSWERS TO  
PL'S FIRST DISCOVERY - 1

**A-35**

DUNLAP & SODERLAND, P.S.  
901 FIFTH AVENUE, SUITE #3003  
SEATTLE, WASHINGTON 98144  
PHONE (206) 682-0902  
FAX (206) 682-1551

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3. Professional Cleaning and Restoration Services, LLC.

4. No.

5. Married Kathleen A. Young on July 25, 1987.

6. Taylor Young, 5/29/91 and McKae Young, 12/22/1997.

7. None that I can recall.

8. The Servpro employees were sent to plaintiff's house for two functions. The first was water remediation and the second was pack out (removing contents from the premises).

Request for Production No. 1:

The address Servpro has for Isidro Lopzz is 21635 - 31<sup>st</sup> Avenue S., Des Moines, WA 98198.

The address Servpro has for Jose Aires If 2858 - 4<sup>th</sup> Avenue S., Burien, WA 98168.

Discovery is continuing. If this information is retrieved from Professional Cleaning and Restoration Service, LLC's records (they are out of business), it will be provided to plaintiff.

9. No.

10. Isidro and Jose would be dispatched to conduct standard water remediation at the plaintiff's house. They were experienced technicians.

11. Isidro Lopez. The address Servpro has for Isidro Lopez is 21635 - 31<sup>st</sup> Avenue S., Des Moines, WA 98198.

Jose Aires. The address that Servpro has for Jose Aires is 2858 - 4<sup>th</sup> Avenue South, Burien, WA 98168.

12. See Interrogatory No. 11. Both Isidro and Jose were experienced water remediation technicians.

BRANT YOUNG ANSWERS TO  
PL'S FIRST DISCOVERY - 2

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13. a) Since 1998.  
b) April 1998  
c) There is no special relationship between Allstate and Servpro.  
d) Don't know.  
e) Don't know.  
f) Don't know.  
g) Don't know.  
h) None, as far as I know.  
i) Don't know.  
j) Don't know.  
k) Don't know.  
l) Don't know.  
m) Don't know.  
n) Don't know.  
o) Don't know.  
p) No.  
q) Professional Cleaning and Restoration Services, LLC is no longer in business.

14. Objection to this interrogatory as far as it assumes that the plaintiff's residence was contaminated or Servpro caused the contamination. Without waiving this objection, Professional Cleaning and Restoration Services, LLC was one of many vendors used by Allstate to mitigate water damage, sewer damage and fire damage. Allstate typically did not include policy holders on checks payable to vendors such as Professional Cleaning and Restoration Services, LLC.

Request for Production No. 2:

- No such records are in the possession of this defendant.
15. I have no idea, this interrogatory should be directed to Allstate Insurance.
16. There was a question of whether or not Allstate had coverage for the loss.
17. I do not believe there are any such written or electronic records regarding the mixing of the solution in a canister.
18. As far as I know there were no communication problems.
19. No.

A-37

139-110  
1286  
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- 1  
2 20. a) Restoration, RRG  
3 b) Policy No. RP&070611 (7/15/2007-7/15/2008)  
4 c) \$1,000,000  
5 d) Professional Cleaning and Restoration, LLC  
6 e) Unknown.

7  
8 Request for Production No. 3:

9 A copy of the policy has been requested from the insurer.

- 10  
11 21. Barbara Trenary  
12 Trenary & Associates, LLC  
13 P.O. Box 1252  
14 Seahurst, WA 98062

15 Ms. Trenary is an industrial hygienist who will testify regarding the use of  
16 Re-Juv-Nal and the techniques used in the restoration industry to control water  
17 damage.

18 Ms. Trenary has not completed any written reports.

19 Silvette Boyajian  
20 Indoor Air and Environmental Services Co.  
21 15213 Fremont Ave.N.  
22 Shoreline, WA 98133

23 Ms. Boyajian is a certified industrial hygienist. She will testify regarding the  
24 test examination she made at the Koehler residence and the use of Re-Juv-Nal.

25 Ms. Boyajian prepared a written report to Allstate Insurance dated July 18,  
26 2004. A copy of this report is marked Exhibit 7 to the deposition transcript of Mary  
Fung Koehler.

Request for Production No. 4:

A copy of Ms. Boyajian's report dated July 18, 2004 is attached to Plaintiff's  
deposition transcript as Exhibit 7.

Request for Production No. 5:

I have no photographs, motion pictures, etc. other than what have been  
produced through the discovery process.

BRANT YOUNG ANSWERS TO  
PL'S FIRST DISCOVERY - 4

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Request for Production No. 6:

I have none of these documents.

Request for Production No. 7:

None other than those produced through the discovery process.

Request for Production No. 8:

None.

22. No.

Request for Production No. 9:

None.

23. None other than those produced through the discovery process.

Request for Production No. 10:

None.

24. No.

Request for Production No. 10:

Not applicable.

25. Not to my knowledge.

26. No.

Request for Production No. 11:

Defendant is not required to produce trial exhibits at this point in time.

27. Plaintiff failed to state a claim upon which relief can be granted against the individual members of the LLC. All of the actions by Professional Cleaning and Restoration Service, LLC were done in the capacity of the limited

BRANT YOUNG ANSWERS TO  
PL'S FIRST DISCOVERY - 5

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liability corporation. The individual members have no individual liability.

Plaintiff's comparative negligence/failure to mitigate: discovery is still being conducted.

Plaintiff's damages were proximately caused by the negligence and/or wrongful conduct of third parties not under the control of this answering defendant: discovery is still being conducted.

Defendant categorically denies plaintiff was damaged in any way. However, Professional Cleaning and Restoration Services, LLC did not manufacture the Re-Juv-Nal applied to plaintiff's property.

Request for Production No. 12:

Not applicable.

Request for Production No. 13:

Objection, these documents are outside the proper scope of discovery and not calculated to lead to any discoverable information.

28. Servpro's technicians, Isidro and Jose, were experienced technicians. They were following standard water remediation protocol and applied properly diluted Re-Juv-Nal.

Request for Production No. 14:

None

Request for Production No. 15:

None.

A-40

139-113  
1289

**FILED**  
COURT OF APPEALS  
DIVISION ONE  
SEP 28 2010

**CERTIFICATE OF SERVICE**

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on September ~~17~~, 2010, I personally caused to be served upon counsel below a true and correct copy of the Reply Brief of Appellant by hand delivering the same to:

**Counsel for Hillyard Industries, aka Hillyard, Inc:**

William J. Leedom  
Tim E. Allen  
Amy Magnano  
Bennett Bigelow & Leedom, PS  
1700 Seventh Avenue, #1900  
Seattle, WA 98101

T: (206) 622-5511  
Fax: (206) 622-8986

**Counsel for Allstate Insurance Company**

Rory W. Leid III  
Cole Lether Wathen & Leid, PS  
1000 Second Avenue, #1300  
Seattle, WA 98101

T: (206) 622-0494  
Fax: (206) 587-2476

**Counsel for Professional Cleaning and Restoration Services, LLC, dba Servpro, Brent Young and Jane Doe Young, husband and wife, and James Young and Jane Doe Young, husband and wife:**

David M. Soderland  
Dunlop & Soderland, PS  
901 Fifth Avenue, Suite #3003  
Seattle, Washington 98164-2049  
Phone: (206) 682-0902  
Fax: (206) 682-1551

Dated this ~~17~~th day of September, 2010, at Seattle, Washington.

  
Mary Fung Koehler, WSBA#1327