

62969-7

62969-7

NO. 62969-7-1  
COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON

SEA CON, LLC, Washington limited liability company  
and NATIONAL UNION FIRE INSURANCE COMPANY, Appellants.

v.

NORTH COAST ELECTRIC COMPANY, a Washington corporation,  
Respondent.

---

**RESPONSE TO APPELLANTS' SUPPLEMENTAL BRIEF**

---

Wm. Randolph Turnbow, WSBA 19650  
Attorney for North Coast Electric Company  
Respondent

Wm. Randolph Turnbow  
Attorney at Law  
U.S. Bank Building  
800 Willamette Street, Suite 750  
Eugene, OR 97401  
(541) 677-6121

FILED  
COURT OF APPEALS, DIVISION I  
STATE OF WASHINGTON  
2010 MAY 24 AM 9:54

## RESPONSE

This court should reject Appellants' challenge to the acknowledgment language in North Coast's Claim of Lien because it is barred by *res judicata* principles, and because it was not raised below and North Coast was prejudiced by that. If this court decides it can reach the issue, it should reject Appellants' arguments because *Williams v. Athletic Field, Inc.*, No 33607-3-II, 2010 WL 1408281 (2010), was wrongly decided. Finally, even if this court concludes that *Williams* was correctly decided, the acknowledgment language in North Coast's Claim of Lien is not identical to the language found inadequate in *Williams v. Athletic Field, Inc.*, No 33607-3-II, 2010 WL 1408281 (2010) and does substantially comply with RCW 60.04.091(2).

### **Appellants' Challenge to the Validity of North Coast's Lien is Barred by *Res Judicata*.**

Appellants' very late challenge to the acknowledgement language in North Coast's lien is barred by principals of *res judicata*. The validity of North Coast's lien was determined in the original trial court proceedings in 2004. The 2004 judgment foreclosed North Coast's lien

against Sea Con<sup>1</sup> in the amount of \$28,011.38. CP 94. Sea Con did not appeal that judgment and it is, therefore, final<sup>2</sup>. *See e.g., National Union Fire Ins. Co. of Pittsburgh, Pa. v. Northwest Youth Services*, 97 Wash.App. 226, 233, 983 P.2d 1144 (1999), *review denied*, 139 Wash.2d 1020, 994 P.2d 845 (2000)(a grant of summary judgment is a final judgment on the merits with the same preclusive effect as a full trial).

As the Supreme Court has recently reaffirmed in *City of Arlington v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 164 Wn.2d 768, 791-92, 193 P.3d 1077 (2008) (internal quotations omitted):

Resurrecting the same claim in a subsequent action is barred by *res judicata*. Under the doctrine of *res judicata*, or claim preclusion,

---

<sup>1</sup> Appellants argue that because National Union is not named as a judgment creditor in the 2004 judgment, National Union is not barred from raising the validity of the lien on appeal. That argument demonstrates a misunderstanding of National Union's role here. National Union is the surety on the lien bond that Sea Con purchased in order to release the property from the lien. CP 96. National Union is obligated to pay the judgment foreclosing the lien only if Sea Con does not. It is, however, in privity with Sea Con and can not raise issues finally determined against its principal, Sea Con, in the 2004 litigation. *See DBM Consulting Engineers, Inc. v. United States Fidelity and Guaranty Company*, 142 Wn. App. 35, 37, 170 P.3d 592 (Div. I 2007) (when an owner of property subject to a lien records a lien bond, the bond becomes security for the lien and guarantees payment of a judgment upon the lien, and the surety on the bond must pay if the principal fails to pay a foreclosure judgment on the lien.)

<sup>2</sup> Indeed, according to this Court's 2006 opinion, p. 4, Sea Con "acknowledged the validity of [that] portion of the lien" and litigated only the question of the proper interest rate. CP 104.

a prior judgment will bar litigation of a subsequent claim if the prior judgment has a concurrence of identity with [the] subsequent action in (1) subject matter, (2) cause of action, (3) persons and parties, and (4) the quality of the persons for or against whom the claim is made.

Here, there can be no doubt that these requirements are met. North Coast filed this action in 2002 to foreclose on its lien against the property. Sea Con obtained a bond from National Union in order to release the property from the lien. The validity of the lien was, of course, central to the foreclosure issue. A judgment of foreclosure was entered and Appellants, both of whom were parties to the 2002 litigation, did not appeal that judgment. The subject matter, the cause of action, and the persons and parties are identical here. Accordingly, this court should reject Appellant's attempt to relitigate<sup>3</sup> the validity of North Coast's lien.

**Appellants' Failure to Raise the Issue Below Should Not be Excused.**

Leaving aside the *res judicata* problem, this court should not excuse the lesser, although still weighty, problem of failure to preserve the issue below.

---

<sup>3</sup> The trial court rejected Appellants' attempts to relitigate the lien validity issue during the trial on remand. See Findings and Conclusions, CP 1030. However, in their Notice of Appeal from the remand judgment Appellants purport to also appeal the 2004 judgment. CP 1052. Appellants' opportunity to appeal the 2004 judgment is long gone. RAP5.2(a).

Appellants argue that this court should excuse Appellants' failure to raise the acknowledgment issue because Division II's "brand new interpretation" of RCW 60.04.091 "was not available to them" at the time of trial. That argument should be rejected. If every new interpretation of a statute is grounds for excusing the requirement that parties must raise at trial issues that they seek to raise on appeal, then the preservation of error requirement is meaningless and its important functions are lost<sup>4</sup>.

The question is not whether Division II's new interpretation of RCW 60.04.091 in *Williams v. Athletic Field, Inc.*, No 33607-3-II, was available, but rather whether the elements of the argument leading to that new interpretation were available – and they were. The statutory language relied on by Division II has been in place since at least 1985. Appellants have been in possession of North Coast's Claim of Lien containing the allegedly inadequate acknowledgment language since at least 2002. There is no reason that Appellants, had they truly been concerned about the validity of North Coast's lien, could not have developed the same argument developed in *Williams v. Athletic Field*. But Appellants' did not. Indeed, in the 2004 litigation Appellants acknowledged the validity

---

<sup>4</sup> Three of those important functions are: 1) ensuring that the opposing party has a fair chance to respond; 2) ensuring that the trial court has an opportunity to consider and rule on the issue; and 3) ensuring a complete record for appeal.

of North Coast's lien. CP 104.

The Order Granting Motion for Reconsideration and Filing New Opinion (attached for the court's convenience), in *Williams* is worth noting on the preservation of error question. In that Order, Division II ruled specifically that it would allow the parties to make the acknowledgment argument on reconsideration only because "the Williamses challenged the validity of the corporate acknowledgement below". Here, in contrast, Appellants did not raise the argument below and did not appeal or seek cross review of the trial court's judgment foreclosing North Coast's lien. Finally, Appellants' failure to raise the alleged inadequacies of the attestation clause in North Coast's lien during the first trial (resulting in the 2004 judgment), or in the trial on remand from which this appeal arises, substantially prejudices North Coast. Had Appellants timely raised the issue, North Coast would have moved to amend the lien and that motion likely would have been granted.

Appellants contend that *Ben Holt Industries, Inc. v. Milne*, 36 Wn. App. 468, 675 P.2d 1256 (Div. I 1984), establishes that defects in the acknowledgement clause of an instrument cannot be remedied by amendment, but that conclusion is dicta because it was not necessary to the resolution of the case. In *Ben Holt*, the court held that partial performance of the lease took it out of the statute of frauds and, therefore,

there was no requirement that the lease be evidenced by a writing. Once the requirement of a writing was removed, any deficiencies in the writing were beside the point.

A more recent case from Division III, *Schumacher Painting Co. v. First Union Management, Inc.*, 69 Wash. App. 693, 701, 850 P.2d 1361 (Div. III 1993) held that a claim of lien could be amended to add a previously omitted verification page<sup>5</sup>. The court explained that:

Former RCW 60.04.060 allows amendments to the *claim of lien*<sup>6</sup> to rectify problems like the one presented in the first appeal in this case—a required verification is not attached.

The fact that the verification page was missing means that the notarized acknowledgement clause was also missing. The notarized acknowledgement clause was not simply deficient (as alleged here), it was entirely absent. Even so, the *Schumacher* court held that the claim of lien could be amended. North Coast would have relied on *Schumacher* as support for a motion to amend the claim of lien, had Appellants actually raised the issue below. Appellants' six-years-too-late (from the time of

---

<sup>5</sup> In the *Schumacher* opinion, Division III refers the reader to an unpublished decision earlier in the case, presumably to flesh out the facts. Counsel has read that opinion to be sure that nothing in it makes the citation of the published opinion cited here inapposite or unpersuasive.

<sup>6</sup> The current statute contains the same language allowing amendments to a claim of lien by order of the court as long as the interests of third parties are not affected. RCW 60.04.091(2).

the 2004 judgment) raising of this issue has substantially prejudiced North Coast<sup>7</sup>.

Under these circumstances, this court should not exercise its discretion to allow Appellants to challenge the sufficiency of the lien acknowledgment for the first time on appeal.

**Appellants' Lack of Subject Matter Jurisdiction Argument is Meritless.**

Appellants' argument that the trial court lacked subject matter jurisdiction<sup>8</sup> is meritless, confusing the trial court's authority to adjudicate

---

<sup>7</sup> Had Appellants timely raised the issue and prevailed on it, North Coast would have saved the time and the expense related to the appeal of the 2004 judgment, the trial on remand, and this appeal. That is a not insignificant burden on North Coast, or, for that matter, on the state court system.

<sup>8</sup> Appellants also make a relatively incomprehensible argument about "lack of trial court jurisdiction." As far as North Coast can understand, Appellants' argument boils down to an assertion that questions of standing can be raised for the first time on appeal. That might be, but Appellants' argument about standing is the worst sort of bootstrapping. Appellants are arguing that, because North Coast's lien is allegedly invalid, it did not have "standing" to bring a foreclosure action to determine the validity of that lien and, if valid, enforce it. Appellants go on to argue that, because North Coast did not have "standing" (because the lien was invalid), the Superior Court did not have subject matter jurisdiction and all prior proceedings are void. Hence, the trial court did not have jurisdiction to hear our lien foreclosure action. That is silly. One has "standing" when one has a sufficient interest in the claim or defense being made to entitle one to argue about it in court. North Coast filed a claim of lien for materials supplied to the property and it clearly had "standing" to seek the court's help in foreclosing on that lien. If the lien was invalid for some reason, then that would be decided in the lien

a particular *type of controversy* with the trial court's authority to rule in a particular manner. In *Marley v. Department of Labor and Industries*, 125 Wn.2d 533, 886 P.2d 189 (1994), the court explained that a court has subject matter jurisdiction when it has authority to adjudicate the *type of controversy* involved in the action; and that a court does not lose subject matter jurisdiction merely by interpreting the law erroneously. *Id.* at 539.

The Superior Court here quite clearly had subject matter jurisdiction to determine whether the lien was valid. See *Washington Constitution*, Article IV, Section 6 (The superior court shall also have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court); and RCW 60.04.171 and 61.12.040 (providing, in combination, that lien foreclosure actions shall be filed in superior court).

Appellants' argument is really that the trial court *erred* in ruling that North Coast's lien was valid in the 2004 Judgment. That is incorrect, but beside the point. For all the reasons explained above, it is too late for Appellants to raise that argument. If Appellants wanted to challenge the trial court's judgment foreclosing the lien (which as a necessary predicate contains a conclusion that the lien is valid) they were required to do so by

---

foreclosure action, but the validity of the lien is not a condition to subject matter jurisdiction to resolve a lien foreclosure action.

raising their argument before the trial court and appealing or seeking cross review of the 2004 Judgment.

***Williams v. Athletic Field* is Wrongly Decided.**

Appellants' supplemental argument rests entirely on *Williams v. Athletic Field, Inc.*, No 33607-3-II. Frankly, that case was wrongly decided. Division II's analysis rests on the rule that the lien statutes must be "strictly construed" because they are in derogation of the common law. But that is only half of the rule that applies here.

RCW 60.04.900, relating to Mechanics Liens, provides:

RCW 19.27.095, 60.04.230, and 60.04.011 through 60.04.226 and 60.04.261 are to be liberally construed to provide security for all parties intended to be protected by their provisions.

The courts have harmonized this legislative directive for liberal construction with the common law rule of strict construction by strictly interpreting the lien statutes only when determining whether a claimant comes within their scope. If a claimant is determined to be within the class of parties intended to be protected by the lien statutes, then those statutes are liberally construed to protect the lien claimant.

This harmonizing rule has been long applied. *See De Gooyer v. Northwest Trust & State Bank*, 130 Wash. 652, 653, 228 P.835 (1924) *aff'd*, 132 Wash. 699, 232 P. 695 (1925) (stating above rule); and

*Westinghouse Elec. Supply Co. v. Hawthorne*, 21 Wash. 2d 74, 77, 150 P.2d 55, 57 (1944) (reaffirming rule). That rule was reaffirmed as recently as 2009 in *Haselwod v. Bremerton Ice Arena, Inc.*, 166 Wn.2d 489, 498, 210 P.3d 308, 312 (2009) (“[I]f it is determined a party’s lien is covered by chapter 60.04 RCW, the statute is to be liberally construed to provide security for all parties intended to be protected by its provisions.”)

This Court applied that rule in *Northlake Concrete Products, Inc. v. Wylie*, 34 Wn.App. 810, 663 P.2d 1380 (Wash.App. Div. 1 1983):

The mandate of the Legislature in enacting the original lien statutes was that "the lien laws shall be liberally construed with the view to effecting their object." *De Gooyer v. Northwest Trust & State Bank*, 130 Wash. 652, 653, 228 P. 835 (1924). Taken with the strict construction mandated by case law, the phrase has been interpreted to mean that "when it has been determined that persons come within the operation of the act it will be liberally applied to them." *De Gooyer*, at 653, 228 P. 835.

In *Northlake*, once this court determined that the lien claimant came within the operation of the act because the materials supplied by the lien claimant (a plumbing contractor) were, in fact, incorporated into the owner’s property, then it liberally construed the lien statutes to enforce the lien and provide the security those statutes were designed to provide. In this case, it is undisputed that North Coast supplied materials that were

incorporated into the property. North Coast's lien is, therefore, covered by RCW 60.04 and the requirements of that statute should be liberally construed.

The liberal construction element of the harmonized rule is implemented by requiring only "substantial compliance" with statutory lien requirements. *See e.g., Fircrest Supply, Inc. v. Plummer*, 30 Wn. App. 384, 391, 634 P.2d 891, 895 (Div. I, 1981) (lien is enforceable because "the requirements of the statute have been substantially complied with.")

RCW 60.04.091 sets out a sample form for a claim of lien that includes an attestation and an acknowledgment (notary) provision. The statute goes on to provide that a claim of lien that substantially complies with the statutory sample form "shall be sufficient." In the *Williams* case, Athletic Field argued that it had substantially complied with the requirements of RCW 60.04.091 because its Claim of Lien was essentially identical to the sample form provided in the statute.

Division II rejected that argument by noting that the sample form provided by the legislature was "not sufficient" because it satisfied only the requirements of RCW 42.44.100(4) for witnessing an individual signature. In other words, the form of acknowledgement provided in the sample form by the legislature for a Claim of Lien was not, in fact,

sufficient for *any* claim of lien because a claim of lien requires an “acknowledgement” and the sample form was, according to Division II, insufficient as a matter of law for any type of acknowledgement. So, doing exactly as the Legislature directed in the sample form for a Claim of Lien is guaranteed to result in an insufficient acknowledgement for a Claim of Lien and, therefore, an invalid lien.

The *Williams v. Athletic Field* rule is breathtakingly inequitable. In the name of “strict statutory construction” it ignores the Supreme Court’s direction to liberally construe the lien statutes and a clear statutory directive that a particular form of Claim of Lien “shall be sufficient.” With no consideration of the unfair surprise to lien claimants, the lack of prejudice to the property owners, or RCW 60.04.900 which requires liberal construction of the lien laws, the *Williams* case has destroyed the security that the legislature intended to provide to thousands of lien claimants who followed the sample form. For these reasons, *Williams v. Athletic Field* was incorrectly decided and should not be followed.

Under the proper rule, the harmonized rule, North Coast’s Claim of Lien is valid because North Coast clearly falls within the class of persons the Legislature sought to protect and because North Coast substantially complied with the requirements of the lien statutes as explained below.

**North Coast’s Claim of Lien is Sufficient under RCW 60.04.091**

Even if this Court chooses to follow *Williams*, it should hold that North Coast's Claim of Lien is sufficient. RCW 60.04.091(2), Chapters 64.08, and 42.44.100(2), all require that acknowledgments be "substantially in the form" set forth in the statutes. When read together, it is clear that they only require that the substance of the statutes be contained somewhere in whatever form a lien claimant uses.

There are two relevant parts of North Coast's lien. First, it contains an attestation clause signed by one of its managers. Unlike the attestation in *Williams*, which incorrectly states that the individual who signed is "the claimant (or attorney of the claimant, or administrator, representative or agent of the trustees of an employee benefit plan) above named," North Coast's attestation correctly states that Bill Oster is "the Manager of Claimant/Assignee." Additionally, Bill Oster signed the Notice itself as "Manager" of North Coast. Because the attestation language in the Claim of Lien is identical to that in the sample form in RCW 60.04.091(2), there is no dispute that the attestation is adequate.

Second, North Coast's lien contains an acknowledgment, RCW 60.04.091(2) provides that a Claim of Lien shall be acknowledged pursuant to Chapter 64.08. Chapter 64.08, entitled "Acknowledgments", provides a number of different types of acknowledgments for various purposes and parties, including a form for corporate acknowledgment.

RCW 64.08.070 that also allows use of the form in RCW 42.44.100(2).

Both of those statutes require only that the acknowledgement be “substantially” in the form provided. So, the first question here is what is the “substance” required for an acknowledgment.

RCW 64.08.070 provides this form for a corporate acknowledgment:

On this . . . . day of . . . . ., 19. . . , before me personally appeared . . . . ., to me known to be the (president, vice president, secretary, treasurer, or other authorized officer or agent, as the case may be) of the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

[signature and seal of notary]

RCW 42.44.100(2) provides this form for an acknowledgment in a representative capacity:

I certify that I know or have satisfactory evidence that (name of person) is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the (type of authority, e.g., officer, trustee, etc.) of (name of party

on behalf of whom instrument was executed) to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

[signature and seal of notary]

Those provisions require only three simple things. First, the notary must “know of or have satisfactory evidence” of the identity of the person signing. That requirement is satisfied here. Unlike in *Williams*, where the notary simply stated “subscribed and sworn before me,” the notary explicitly states that the attestation was “subscribed and sworn before me...by Bill Oster,” clearly evincing knowledge of Mr. Oster’s identity.

Second, the person signing must attest to his authority to sign the instrument. That requirement is also satisfied here. In the attestation above the acknowledgment, Mr. Oster subscribed and swore in front of the notary, that he was a manager of North Coast. The combination of his position of a manager, his statement under oath that the lien is correct, and his execution of the claim of lien adequately state that he was authorized to sign the Claim of Lien.

Third, the person signing must acknowledge his signing to be the free and voluntary act of his principal *for the purposes mentioned in the instrument*. That requirement essentially duplicates the requirement that the signor state that he or she has authority to sign for the corporation. In

addition, although that requirement has a purpose in the context of a deed or other conveyance where the principle is giving up something, it makes little sense in the context of a claim, particularly a claim in which the signor attests that the contents of the document set out a true and correct statement of the claimant's claim. The purpose of the "instrument" here is to provide notice to all persons that North Coast has a Claim of Lien against the real property. Unlike in *Williams*, where the person signing was not an employee of the company claiming the lien, Mr. Oster is identified as and was a manager of North Coast. Therefore he speaks on behalf of the company, and in so doing, states that the lien is "true and correct...not frivolous...and... made with reasonable cause." Where a company ratifies its own lien with such statements, it is clear that the lien execution was the free and voluntary act of the company.

In summary, despite Sea-Con's arguments to the contrary, the Claim of Lien here is distinguishable in important respects from the Claim of Lien in *Williams*, and it substantially complies with the corporate acknowledgement requirements of RCW 64.08.070 or 42.44.100(2).

**Williams is a Step Backward in the Development of Washington's Lien Jurisprudence.**

The general trend in Washington jurisprudence has been to invalidate liens for major errors or omissions, while allowing statutory

flexibility and upholding lien notices with only minor errors. For example, in *Lumberman's of Washington v. Barnhardt*, the court invalidated a notice of lien because the verification statement in the attestation clause was unsigned and there was “no evidence whatsoever that the claimant was placed under oath with respect to the good faith of the claim.” 89 Wn. App. 283, 287 (1997). Similarly, in *Flag Construction Co. v. Olympic Blvd Partners*, the court invalidated a lien because the verification clause had been signed by the notary instead of the claimant, and the notary had failed to indicate that the claimant had both “signed and sworn to” the clause. 109 Wn. App. 286, 290 (2001).

In contrast, in *Fircrest Supply Inc. v. Plummer*, under RCW 60.04.060, a former version of RCW 60.04.091, which required lien claims to be “verified by the oath of the claimant,” the court upheld a notice of lien even though, due to a scrivener’s error, the verification was unsigned. 30 Wn. App. 384, 390-91 (1981). The court focused on the fact that the claimant had signed the claim itself, the claimant’s typed name appeared in the verification statement, the notary had signed the verification statement, and the notary stated that the verification had been subscribed and sworn before him by the claimant. *Id.* at 389-91. Therefore, it was clear that the lien had been verified by oath. *Id.* at 391. Similarly, in *Schumacher*, under the same statute, the court concluded that

a lien submitted without a verification statement still substantially complied with the statute where it was undisputed that the verification had been made, but had inadvertently been omitted from the filed claim. *See Schumacher Painting Co. v. First Union Management*, 69 Wn. App. 693, 697 (citing April 9, 1991 unpublished opinion in the same case). *Williams* is a step backward in this progression.

Here, to the extent the acknowledgement does not conform perfectly to RCW 64.08.070 or 42.44.100(2), any omissions are insubstantial. Unlike *Lumberman's* and *Flag Construction*, the Notice is properly signed and notarized, and there is no question that Bill Oster, as Manager for North Coast Electric, verified its contents. Admittedly, it does not contain the precise language outlined in the acknowledgement statutes for a corporation. However, it substantially complies with both of these statutes by satisfying all the elements therein. Because the omissions in the Notice are insubstantial and in no way frustrate the purpose of a claim of lien (to provide notice to others with an interest or potential interest in the property), it and the underlying lien should not be invalidated.

### **CONCLUSION**

This court should not even reach the acknowledgement issue because it is barred by *res judicata* principles, and because it was not

preserved below. If this Court decides that it can reach the acknowledgement issue, it should reject Appellants' argument based on *Williams* because the case is wrongly decided, and because, even under *Williams*, North Coast's Claim of Lien substantially complies with the acknowledgment requirements in the statutes.

DATED: May 21, 2010.

By WR Turnbow  
Wm. Randolph Turnbow  
WSB 19650  
Attorney for Plaintiff  
Trial Attorney

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION II**

No. 33607-3-II

TERRY L. WILLIAMS and JANIS E.  
WILLIAMS, husband and wife,

Respondents,

v.

ATHLETIC FIELD, INC., a Washington  
corporation,

Appellant.

**ORDER  
GRANTING MOTION FOR  
RECONSIDERATION  
AND  
FILING NEW OPINION**

The Williamses moved for reconsideration of our opinion reversing a trial court order in their favor. They raise several arguments that Athletic Field, Inc., contends cannot be raised on appeal as they were not raised before the trial court. RAP 12.4(c). Because the Williamses challenged the validity of the corporate acknowledgement below, we consider that argument. However, we do not address the Williamses' argument based on the unauthorized practice of law as it was not raised below. RAP 12.4(a).

We agree with the Williamses that Athletic's claim of lien is invalid because it does not satisfy the requirements for corporate acknowledgement and grant their motion for reconsideration and, accordingly, file the attached new opinion.

IT IS SO ORDERED.

THIS \_\_\_\_\_ day of March, 2010.

We concur:

\_\_\_\_\_  
Bridgewater, J.

\_\_\_\_\_  
Houghton, J.

\_\_\_\_\_  
Penoyar, A.C.J.

**CERTIFICATE OF SERVICE**

I hereby certify that on May 21, 2010, I served the foregoing **RESPONSE TO APPELLANTS'**  
**SUPPLEMENTAL BRIEF** on the parties listed below by one or more of the following methods:

  X   emailing a true copy thereof to each person's email address;   X   depositing a  
true copy thereof in the United States mail at Eugene, Oregon, enclosed in a sealed envelope,  
addressed as follows and with postage paid; \_\_\_\_\_ faxing a true copy thereof to each person's  
fax number record; \_\_\_\_\_ hand delivering a true copy thereof to the following address(es):

Mark A. Clausen  
Robert J. Monjay  
Clausen Law Firm PLLC  
701 Fifth Avenue, Suite 7230  
Seattle Washington 98104  
Phone: 206-223-0335  
Fax: 206-223-0337  
[mclausen@clausenlawfirm.com](mailto:mclausen@clausenlawfirm.com)

Of Attorneys for Defendants Seattle Construction Services, Sea Con, LLC and

National Union Fire Insurance Company of Pittsburgh, PA

Nancy K. Cary  
Hershner Hunter, LLP  
180 E. 11<sup>th</sup> Avenue  
Eugene, OR 97401  
[ncary@hershnerhunter.com](mailto:ncary@hershnerhunter.com)

Of Attorneys for North Coast Electric Company



Wm. Randolph Turnbow, WSB 19650  
Attorney for Plaintiff/Respondent