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

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REBA WEISS, a single person,

*Respondent,*

v.

JUDITH A. LONNQUIST, a single person, and LAW OFFICE OF  
JUDITH A. LONNQUIST, PS, a Washington professional services  
corporation,

*Appellants.*

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**RESPONDENT'S SUPPLEMENTAL BRIEF RE: ATTORNEY'S  
FEES**

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## TABLE OF CONTENTS

	<u>PAGE</u>
<b>I. INTRODUCTION</b>	1
<b>II. COUNTER STATEMENT OF THE CASE</b>	2
<b>III. PROCEDURAL BACKGROUND</b>	6
<b>IV. ARGUMENT</b>	6
<b>A. The Award of Attorneys was Eminently Reasonable and Fully supported the Court’s Findings of Fact and Conclusions of Law.</b>	6
<b>B. The Hours Incurred by Plaintiff’s Counsel were Reasonable and were in Large Part a Function of: “...an aggressively litigated case....”. CP 2230.</b>	8
<b>C. The Fees Submitted by Weiss’s Counsel Are Reasonable.</b>	9
<b>D. The Court Exercised Appropriate Discretion in Denying Lonnquist’s Demand for Weiss’s Contingency Fee Agreement With Her Counsel.</b>	9
<b>E. Appellants are Jointly and Severally Liable for Attorneys Fees.</b>	10
<b>F. The Statutory Interest Rate and the Award was Correct.</b>	11
<b>V. CONCLUSION</b>	12

## TABLE OF AUTHORITIES

### Washington State Cases

<u>CASES</u>	<u>PAGE</u>
<i>Bowers v. Transamerica Title Co.</i> , 100 Wn.2d 581, 195, 675 P.2d 193 (1983)	7
<i>Carson v. Fine</i> , 123 Wn.2d 206, 226, 867 P.2d 610 (1994)	10
<i>Chuong Van Pham v. Seattle City Light</i> , 159 Wn.2d 527, 541-542 (2007)	9
<i>Durand v. HIMC Corp.</i> , 151 Wn. App. 818, 837 (2009)(quoting, <i>TMT Bear Creek Shopping Ctr., Inc. v. Petco Animal Supplies, Inc.</i> , 140 Wn. App. 191, 214, 165 P.3d 1271 (2007))	7
<i>Gaglidari v. Denny's Restaurants, Inc.</i> , 117 Wn.2d 426, 451, 815 P.2d 1362 (1991)	11
<i>Johnson v. Harrigan-Peach Land Dev. Co.</i> , 79 Wn.2d 745, 752-53 (1971)	10, 11
<i>Mahler v. Szucs</i> , 135 Wn.2d 398, 435, 957 P.2d 632, amended on recons., 966 P.2d 305 (1998)	6
<i>Martinez v. City of Tacoma</i> , 81 Wn. App. 228, 240 (1996)	7, 10

### Court Rules & Statutes

RPC 1.5 (1) – (4), and (7)	5, 8
RCW 49.48.030	5, 11
RCW 49.52.070	5

## I. INTRODUCTION

1. Appellant Lonquist raises non-meritorious issues with regard to Judge Gonzalez's award of attorney's fees. The trial Court, indeed, did determine the lodestar. CP 2230. The Court had ample evidence and documentation to support not only the hours incurred by plaintiff's counsel, but the reasonableness of those fees.

As a matter of law, as argued in Weiss's Brief [pgs. 19-21, ¶H]: (1), defendants are jointly and severally liable for the fees; and (2) the statutory interest rate is correct and the timing of the award was fair and equitable.

2. The Court, consistent with applicable law on the subject, entered appropriate and accurate Findings of Fact and Conclusions of Law to support the Court's exercise of discretion in determining an award of reasonable attorney's fees. Weiss's counsel, under the protracted nature of this litigation, was not required to segregate attorney's fees by causes of action when it was impossible to do so with any accuracy. The Court exercised its discretion in determining the amount of attorney's fees appropriately awarded to those causes of action entitling Weiss to an award of attorney's fees. While Weiss's counsel disclosed that he was

retained on a contingency fee basis, the fee agreement itself was irrelevant and Lonquist had no legitimate grounds to obtain the agreement.

3. The Court appropriately allowed interest to run *nunc pro tunc* to February 21, 2011 and the amount of the interest on the judgment was legally correct.

## **II. COUNTER STATEMENT OF THE CASE**

Lonquist is a lawyer licensed to practice law in the State of Washington, WSBA no. 6421, and is the owner and controls the Appellant professional service corporation. CP 2. Weiss is also a lawyer licensed to practice law in the State of Washington, WSBA no. 12876. CP 2. The parties had a written employment agreement which expired on October 31, 2006. CP 3,(App. A.) Lonquist was not only Weiss' employer, but supervised her work. CP 3.

On August 1, 2007, Lonquist delegated to Weiss the task of preparing a response to a motion for summary judgment on behalf of a longtime Lonquist client called Jane Doe. CP 4 (3.9).

When Weiss examined Jane Doe's file, she found the complaint filed by Lonquist on Jane Doe's behalf in the Thurston County Superior Court contained an allegation, ¶3.10, that Jane Doe was, "...terminated...without warning and without cause.". CP 4 (3.10),(App. B). In further review of Jane Doe's file in Lonquist's office, Weiss

found a fax dated November 29, 2004 from Jane Doe to Lonquist. CP 4. (App. C). The fax reflected that Doe was aware that the University was going to fire her for legitimate reasons **before** she requested an accommodation, and therefore knew it could not have been in retaliation for the request. (App. C) Weiss also found evidence that Doe had testified falsely at her deposition with Lonquist's knowledge. CP 1104-1105. Upon finding this information, Weiss consulted with the ethics advisor at the Washington State Bar Association, a/k/a Ethics Hotline (CP 3.13) and University of Washington Law Professor, Thomas Andrews. Both advised Weiss that she could not ethically work on the case. CP 1104-1105.

On August 6, 2007, Weiss told Lonquist of the material false testimony that she had discovered in Jane Doe's file and that Weiss could not ethically work on the matter. CP 5 (3.14). Lonquist replied, "I am not happy about this.". CP 5 (3.14).

Precisely two weeks later on August 20, 2007, Lonquist delivered a memorandum to Weiss advising Weiss of her termination within thirty days or "...making September 18, 2007 your last day here.". CP 5 (3.14), App. D). Two days later, Lonquist informed Weiss that she was going to dock Weiss's salary based on Lonquist's unilaterally imposing a "sliding scale schedule effective 8/20/07 – 9/18/07" that purported to change

Weiss's historical salary to billable hours of work performed by Weiss. CP 5 (3.16), 1481, (App. E).

Weiss's uncovering of the falsehood, together with Lonnquist's notice of termination and supposed change in compensation, caused Weiss significant physical and emotional pain. On August 23, 2007, Weiss went to the Swedish Medical Emergency Room suffering from what she thought was a heart attack. CP 3.17, (App. F).

In May of 2008, Weiss brought her complaint for wrongful termination in violation of public policy, outrage, recovery of unpaid wages, statutory penalties, and attorney's fees, defamation and negligent infliction of emotional distress. CP 1-12.

The case went to a jury trial which commenced on November 29, 2010 and went to the jury on December 10, 2010. The jury returned its verdict on Monday, December 13, 2010 in favor of Weiss. CP 604-605. The jury in its verdict found that Weiss was terminated in violation of public policy and that Lonnquist had intentionally withheld wages from Weiss. The jury awarded \$2,084.63 in wage loss for the intentional withholding of wages. The jury awarded \$8,204.00 in wage loss as a result of Weiss's termination in violation of public policy. Pursuant to statute, the Court doubled the wage awards to total \$4,169.26 and

\$16,408.00. The jury also awarded Weiss \$16,250.00 in emotional distress damages. CP 2229, ¶12.

The Court heard argument on Weiss's Motion for Attorney Fees on February 7, 2011. CP 2203-2205. The Court entered its Findings of Fact and Conclusions of Law Re: Attorneys' Fees on August 11, 2011. CP 2227-2231. The Court found that, "This was an aggressively litigated case with complex issues of competing duties. The Plaintiff's attorneys' fees were reasonable in light of the factors in RPC 1.5(1)-(4), and (7)." CP 2229-2230, ¶19. The Court further found that Lonquist had, without justification, objected to thirteen (13) exhibits of Plaintiff's proffered ER 904 and awarded Weiss an additional \$250 for Lonquist's unreasonable objections. CP 2230, ¶20.

Based upon its Findings of Fact, the Court concluded that Weiss was entitled to an award of costs and attorney's fees pursuant to both RCW 49.48.030 and RCW 49.52.070. Significantly, the Court concluded that Weiss's "...actions served an important public policy issue that is preventing misrepresentations and material omissions to the Superior Court as is required by the Rules of Professional Conduct." CP 2230, ¶3. The Court went on to conclude that based upon the findings, Weiss was entitled to a lodestar of \$171,182.00 and a multiplier of 100%. Finally,

the Court concluded that Weiss was entitled to \$1,198.74 by way of statutory costs. CP 2229, ¶16, CP 2230, ¶5.

### III. PROCEDURAL HISTORY

Plaintiff, in support of an award of attorney's fees, provided to the Court 148 pages of declarations and supporting documentation to substantiate an appropriate award of attorney's fees. CP 1966-2114. The 9 ¾ weeks worth of work (387.05 hours: CP 1976) prior to the time of the attorneys fee hearing, was fully supported in detail. The experience and abilities of plaintiff's counsel was further supported by declarations. CP 1974-1975, 2097, 2100, 2103-2104.

The matter was submitted to the trial court on February 7, 2011. Shortly over six months later on August 11, 2011, the trial court rendered its detailed Findings of Fact and Conclusions of Law and upon a motion by Lonquist, clarified its ruling on August 31, 2011.

### IV. ARGUMENT

#### **A. The Award of Attorneys was Eminently Reasonable and Fully supported the Court's Findings of Fact and Conclusions of Law.**

The Court reviews a trial court's attorney fee award for abuse of discretion. *Mahler v. Szucs*, 135 Wn.2d 398, 435, 957 P.2d 632, *amended on recons.*, 966 P.2d 305 (1998). "A trial court abuses its discretion only when its decision is manifestly unreasonable, or when its discretion is

exercised on untenable grounds or for untenable reasons.”. *Durand v. HIMC Corp.*, 151 Wn. App. 818, 837 (2009)(quoting, *TMT Bear Creek Shopping Ctr., Inc. v. Petco Animal Supplies, Inc.*, 140 Wn. App. 191, 214, 165 P.3d 1271 (2007)).

“The award of attorney’s fees is a critical component of recovery in civil rights cases because, as the Supreme Court has said in *Bowers v. Transamerica Title Co.*, 100 Wn.2d 581, 195, 675 P.2d 193 (1983), its purpose is to encourage active enforcement of the statute. Further, since civil rights claims typically do not involve large damage awards, fee recovery ensures that discriminatees will be able to retain competent counsel.”<sup>1</sup>

The Court made detailed Findings of Fact and Conclusions of Law. These included the difficulty plaintiff had in finding counsel. CP 1959-1960, ¶¶2-3. “A trial court may consider a variety of factors when determining a reasonable attorney fee award, including the level of skill required by litigation, the time limitations imposed, the amount of potential recovery, the attorney’s reputation, and the undesirability of the case.” *Martinez v. City of Tacoma*, 81 Wn. App. 228, 240 (1996).

The Court reviewed the detailed submission of plaintiff in support of an award of attorney’s fees. CP 1966-2114 and CP 1961, ¶13. Contrary to Lonquist’s assertion, the Court found, “...the amount of time devoted to the engagement by the Law Office of Robert B. Gould in total are

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<sup>1</sup> *Washington Employment Law Deskbook*, Judith A. Lonquist, Editor in Chief, Washington State Trial Lawyers Association (now Washington State Association for Justice), Chapter 24, *Righting the Wrong – Remedies for Employment Discrimination*, by Judith A. Lonquist, p. 10 (citations omitted).

reasonable.” CP 1961, ¶15. Based upon the detailed delineation of time (CP 1983-2095), the Court reduced Gould’s lodestar by 40% because Weiss’s causes of action for defamation and infliction of emotional distress had been dismissed. CP 1961, ¶18.

Contrary to Lonquist’s argument that the trial court failed, “to determine the key elements of a lodestar...” [App. supp. brief, pg. 1], the Court made a specific conclusion that the lodestar was \$171,182.00 based on finding that the fees were reasonable in light of the relevant factors.<sup>2</sup> CP 1962, ¶4. The Court clarified its earlier ruling regarding Defendants’ Offer of Judgment (CP 22070 and further reduced the judgment for attorney’s fees to \$129,585.36. CP 2204.

**B. The Hours Incurred by Plaintiff’s Counsel were Reasonable and were in Large Part a Function of: “...an aggressively litigated case....”. CP 2230.**

Lonquist argues that the hours spent by Weiss’s counsel were unreasonable [App. supp. brief, pgs. 12-13]. Yet, Lonquist did not put into evidence the total of her own and her attorney, Mr. Boothe’s, hours.

The Court made an explicit and discretionary finding that should not be overturned on appeal. This finding, that the total amount of time devoted by Weiss’s counsel was reasonable, was made by the trial court

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<sup>2</sup> The Court made the explicit finding, “This was an aggressively litigated case with complex issues of competing duties. The plaintiff’s attorney’s fees were reasonable in light of the factors in RPC 1.5(1) – (4), and (7).” CP 2229-2230, ¶19.

that heard the entire case and reviewed all of the submissions. CP 229. That factual determination is left to the sound discretion of the trial court and should only be reversed for an abuse of discretion. *Chuong Van Pham v. Seattle City Light*, 159 Wn.2d 527, 541-542 (2007). Nothing that Lonquist has submitted or argued comes close to establishing an abuse of discretion by the trial court.

**C. The Fees Submitted by Weiss's Counsel Are Reasonable.**

The reasonableness of attorney's fees is left to the sound discretion of the Court. *Id.* The Court specifically found that Lonquist had made thirteen (13) unreasonable objections to Weiss's exhibits, illustrating Lonquist's efforts to complicate and delay the case as much as possible. CP 2230, ¶20. The Court found that, "the amount of time devoted to the engagement by the Law Offices of Robert B. Gould in total are reasonable." CP 2229, ¶15. These findings are well within the sound discretion of the trial court and Lonquist has shown absolutely no legitimate basis for reversing these findings.

**D. The Court Exercised Appropriate Discretion in Denying Lonquist's Demand for Weiss's Contingency Fee Agreement With Her Counsel.**

It is axiomatic that the admissibility of evidence is left to the sound discretion of the trial court and will not be reversed without a showing of a manifest abuse of discretion. "Because of the trial court's considerable

discretion in administering Washington Rule of Evidence 403, reversible error is found only in the exceptional circumstance of a manifest abuse of discretion.” *Carson v. Fine*, 123 Wn.2d 206, 226, 867 P.2d 610 (1994).

The details of the fee agreement between Weiss and her counsel had no relevance to a determination of attorney’s fees. *Martinez v. City of Tacoma*, 81 Wn. App. 228, 241 (1996). Without relevance, there was no legitimate reason for Lonquist to obtain a copy of the fee agreement.

Lonquist has not shown any abuse of discretion, let alone a manifest abuse of discretion, in the Court’s denial of her request for Weiss’ contingency fee agreement with her attorney. There is no legitimate reason for her to have obtained the agreement and she has failed to show any abuse of discretion in the Court’s denial of that request.

**E. Appellants are Jointly and Severally Liable for Attorneys Fees.**

Lonquist ignores the fact that she is the sole owner of her legal professional services corporation. An officer of a corporation is liable for a tort committed in the course and within the scope of her official duties to the corporation the same as any other agent or servant is liable for his torts. “Incorporation does not in law shield the actor from the legal consequences of his own tort.” *Johnson v. Harrigan-Peach Land Dev. Co.*, 79 Wn.2d 745, 752-53 (1971).

In the context of wrongful discharge under RCW 49.48.030, our Supreme Court in *Gaglidari v. Denny's Restaurants, Inc.*, 117 Wn.2d 426, 451, 815 P.2d 1362 (1991) held, *inter alia*, "...under RCW 49.48.030, attorneys fees are recoverable in actions for wrongful discharge where back pay or front pay is recovered as lost wages." The jury found that Weiss had incurred lost wages as a direct and proximate result of the discharge in violation of public policy. Accordingly, based on *Johnson, supra*, coupled with the liberal construction that is to be given discharge in violation of public policy cases, the Court was correct in finding Lonquist jointly and severally liable for her own intentional tort.

**F. The Statutory Interest Rate and the Award was Correct.**

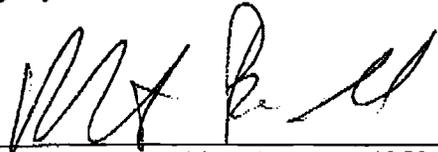
The Court's Findings of Fact and Conclusions of Law on Attorney's Fees were issued six months after the Court heard oral argument on the attorney's fees motion. It was absolutely proper for the Court to issue the decision *nunc pro tunc* to two weeks after the motion was submitted to him. That was within the trial court's discretion and furthermore, was the equitable and correct decision. The Court can, and did, take judicial notice that as of February 21, 2011, the statutory interest rate was 5.25%.

**V. CONCLUSION**

This litigation was contentious and Lonquist brought numerous motions and an interlocutory appeal to this Court, the vast majority of which lacked any validity. This Court should uphold Judge Gonzalez's detailed and reasonable award of attorney's fees.

DATED this 27<sup>th</sup> day of December, 2011.

*Respectfully Submitted,*

By: 

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**DECLARATION OF SERVICE**

On December 27<sup>th</sup> 2011, I caused to be delivered via email (Lonnquist and Boothe) and legal messenger (Lonnquist only) a true and accurate copy of the attached document, to the following:

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The original and one copy of this document were also sent via legal messenger to be filed in the Court of Appeals.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

  
\_\_\_\_\_  
Nicole C. Jones, Paralegal  
LAW OFFICE OF ROBERT B. GOULD