

CASE NO. 68253-9-I

COURT OF APPEALS, DIVISION I
STATE OF WASHINGTON

RYAN AND WAGES, LLC, a Washington Limited Liability Company
through its Members, JULIA MCCORD and THE CONJUNCTIONAL
PATRIOTIC SOVEREIGN PATHWAY,

Appellants/Cross-Respondents,

vs.

TOM WAGES, an Individual, and REDDING LAKE STEVENS, LLC,
an Oregon Limited Liability Company,

Cross-Appellant/Respondent.

CROSS-RESPONDENTS' RESPONSIVE BRIEF ON APPEAL

Mark D. Kimball, WSBA No. 13146
Mark@mdklaw.com
James P. Ware, WSBA No. 36799
James@mdklaw.com
MDK Law Associates
10900 NE 4th St., Suite 2030
Bellevue, WA 98004
(425) 455-9610

Attorneys for Appellants/Cross-Respondents
Ryan and Wages, LLC, Julia McCord, and The Conjunctional Patriotic
Sovereign Pathway

2012 JUN 10 PM 2:47
COURT OF APPEALS, DIVISION I
STATE OF WASHINGTON
JULIA MCCORD

TABLE OF CONTENTS

	<u>Page</u>
I. RESPONSE TO ASSIGNMENT OF ERROR.....	1
II. CLARIFICATION OF THE STATEMENT OF THE CASE... 2	2
A. History of the Case.	2
B. Motion in Limine.....	5
C. Trial	9
III. LEGAL ARGUMENT	10
A. The Trial Court did not Abuse its Discretion when it Excluded Testimony that did not Tend to Prove or Disprove that Judicial Dissolution was Proper or the Value of the Company’s Assets so that the Court Could Distribute them Pursuant to RCW § 25.15.300.....	10
B. The Court’s Ruling on the Motion in Limine was not Based Upon an Erroneous Interpretation of RCW § 25.15 <i>et seq.</i>	14
C. The Trial Court’s Factual Findings were Supported by Substantial Evidence.	16
1. Standard of Review for Factual Findings.	16
2. The Trial Court did not Err When it Established the Members’ Initial Capital Contributions.....	17
3. The Triad Court did not Err When it Established that Wages had a Negative Capital Account Balance.	19
IV. CONCLUSION	20

TABLE OF AUTHORITY

	<u>Page</u>
Cases	
<i>Davis v. Globe Mach. Mfg. Co.</i> , 102 Wn.2d 68, 684 P.2d 692 (1984)	11
<i>Hendrickson v. King County</i> , 101 Wn. App. 258, 2 P.3d 1006 (2000).....	11
<i>State v. Powell</i> , 126 Wn.2d 244, 893 P.2d 615 (1995)	11
<i>Havens v. C&D Plastics, Inc.</i> , 124 Wn.2d 158, 876 P.2d 435, (1994)	11,16
<i>Noble v. A&R Envtl. Servs., LLC</i> , 140 Wn. App. 29, 164 P.3d 519 (2007).....	12
<i>Davis v. Dep't of Labor & Indus.</i> , 94 Wn.2d 119, 615 P.2d 1279 (1980)	17
<i>Holland v. Boeing Co.</i> , 90 Wn.2d 384, 583 P.2d 621 (1978)	17
<i>State v. Camarillo</i> , 115 Wn.2d 60, 794 P.2d 850 (1990)	17
<i>Reynolds Metal Co. v. Electric Smith Const. & Equip. Co.</i> , 4 Wn. App. 695, 483 P.2d 880 (1971).....	17

TABLE OF AUTHORITIES (Continued)

	<u>Page</u>
Statutes, Codes, and Civil Rules	
RCW § 25.15.300.....	4,5,6,7,8,12,13,14,16
RCW § 25.15.275.....	10,12
ER 401.....	16
ER 402.....	16

I. RESPONSE TO ASSIGNMENTS OF ERROR

1. The Trial Court did not abuse its discretion when it precluded both parties from introducing testimony and evidence regarding whether the \$1,250,000.00 distribution by Redding Lake Stevens, LLC (the “LLC”) constituted a return of capital or income because Appellant sought judicial dissolution of the LLC—and Respondents acquiesced—and therefore such evidence would have been irrelevant and confusing because the only issue before the Court was the proper distribution of the LLC’s assets among creditors and Members pursuant to RCW § 25.15.300 and the LLC Operating Agreement.

2. The Trial Court did not abuse its discretion when it found that the LLC’s CPA, Richard Cunningham, provided calculations of Appellant’s capital account balance that were supported by evidence in the record.

3. The Trial Court did not abuse its discretion when it found that Richard Cunningham provided calculations of Respondents’ capital account balances that were supported by evidence in the record.

4. The Trial Court did not abuse its discretion when it found that the value of Respondents' Lake Stevens property was \$4,048,000.00 when Respondents provided the property to the LLC as a capital contribution.

5. The Trial Court did not abuse its discretion when it determined that \$1,250,000.00 was properly distributed to Respondents pursuant to Article XIV of the LLC Operating Agreement based on the evidence in the record.

II. CLARIFICATION OF THE STATEMENT OF THE CASE

A. History of the Case

Pursuant to Tom Wages' (hereinafter "Wages") request—and Respondents' acquiescence to Appellant's request—the Trial Court ordered judicial dissolution of Ryan & Wages, LLC (hereinafter "the Company") in accordance with Article XIV of the Ryan & Wages LLC Operating Agreement. In directing that the Company be dissolved, the Court directed that the Company be dissolved in accordance with RCW §25.15.300 and the subject LLC Operating Agreement. Additionally, the Trial Court did not find that Wages had misappropriated funds. Despite the fact that the Court granted the statutory relief sought by Appellant—Appellant's request that the Company be judicially dissolved—Appellant has appealed the Court's findings.

In his recitation of the factual history of this Matter, Wages spends a great deal of time discussing the history of Ryan & Wages, LLC, its Members, and its other business ventures prior to initiation of this litigation. For purposes of this Appeal, however, the parties' focus should be the arbitration decision¹, actions that occurred after the November 2009 arbitration award, and testimony and other evidence properly admitted at trial.

In December 2009, approximately one month after the arbitration award, Julia McCord and the Conjunctional Patriotic Sovereign Pathway as Members of Ryan & Wages, LLC (hereinafter collectively referred to as "Ryan") filed suit against Wages to have him removed as Manager of the Company and for misappropriation of funds.² In response, Wages filed Counterclaims seeking judicial dissolution of the LLC. Ryan did not oppose Wages' request for judicial dissolution in its Answer to Wages' Counterclaims. (CP 464-5)

Article XIV of the Company's limited liability agreement provides that upon dissolution, the company's liabilities shall be paid as follows:
(a) liabilities to creditors in order of priority as provided by law; (b)

¹ The trial court indicated that the parties could not litigate alleged actions that occurred prior to the arbitration decision—November 2009—but rather had to limit claims to actions which occurred after November 2009.

² Wages agreed to resign as Manager of Ryan & Wages, LLC shortly after Ryan filed this action.

liabilities to members for the credit balance in their capital account which represents their contributions to the LLC; (c) liabilities to the members for the credit balance in their capital accounts after payments under (a) and (b); and (d) liabilities to the members in respect to their share of the profits and other compensations. (CP 469) In fact, Wages cited to Section 14.6 in his Counterclaim:

The company's limited liability agreement provides that upon dissolution, the company's liabilities shall be paid as follows: (a) liabilities to creditors in order of priority as provided by law; (b) liabilities to the members for the credit balance in their capital account which represents their contribution to the company; (c) liabilities to members for the credit balance in their capital account after payments under (a) and (b); and (d) liabilities to the members in respect to their share of the profits and other compensations. (CP 469)

Wages sought to have the Company dissolved with profit interests distributed among the Members last. Therefore, contrary to Wages' assertion in his Brief, he conceded months before Redding Lake Stevens, LLC provided the Company with the \$1,250,000.00 distribution (hereinafter the "Redding Distribution"), that the last distribution among Members of the Company's assets would be for the Members' profit interests. (CP 469)

While the parties were in the midst of this litigation, Redding Lake Stevens, LLC distributed to the Company the Redding Distribution

pursuant to the Redding Lake Stevens LLC Operating Agreement. Those funds were deposited into a trust account. (CP 537) After approximately another year of litigation, trial was held in early December 2011 in which the Court Ordered that the Company be dissolved in accordance with Article XIV of its Operating Agreement. (CP 535-44)

B. Motion In Limine

In Ryan's Motion in Limine, Ryan sought to exclude all testimony and evidence that would tend to show that any Member was entitled to a distribution of the Company's assets inconsistent with RCW § 25.15.300 and the LLC Operating Agreement; all testimony and evidence that would tend to show Wages is entitled to relief other than that set forth in Paragraph IV of his Counterclaim; and all any testimony and evidence that is factually inconsistent with Wages' position in his bankruptcy case and filings as to whether he has a capital interest in Ryan & Wages, LLC. (CP 898) Ultimately, the trial court granted only one portion of Ryan's Motion: Exclusion of testimony and evidence that would tend to show that the Members are entitled to a distribution inconsistent with RCW § 25.15.300 and Article XIV of the LLC Operating Agreement.

Ryan sought to limit testimony and evidence both parties might otherwise seek to introduce with respect to Wages' claim to factual issues relevant to dissolution under RCW § 25.15.275. (CP 899) Therefore,

with respect to Wages' claim, Ryan asserted that the Court should exclude testimony and evidence under ER 401 and ER 402 that did not relate to:

(a) whether the Members' strained relationship justified judicial dissolution; and (b) an accounting of the Company's assets so that the trial court could direct dissolution in accord with the provisions of RCW § 25.15.300 and Article XIV of the LLC Operating Agreement. (CP 899)

Ryan asserted that the testimony of the parties' experts was not relevant because both RCW § 25.15.300 and Article XIV clearly set forth a hierarchy of creditors to which the Company's assets should be distributed. (CP 821-22) Further, both RCW § 25.15.300 and the Operating Agreement discussed distribution of the Company's assets; whether the assets could be deemed income or a return of capital for tax purposes is and was wholly irrelevant. (CP 903) The focus upon dissolution is the value of the assets, not the manner in which they were obtained. (CP 903; VR 2-4) Therefore, the order of payment to creditors and Members was not a factual issue but rather a legal issue. The only factual questions that existed were: (a) a determination of who were the Company's creditors; (b) a determination of an accounting of the Company's assets; and (c) a determination of the balance of each of the Members' respective capital accounts. Because Wages' only claim was dissolution pursuant to the LLC Operating Agreement, Ryan reasoned any

testimony or evidence that did not address these issues was irrelevant and would ultimately confuse the factual issues.

In response to Ryan's Motion, Wages asserted that the primary issue before the trial court was not his request for judicial dissolution or misappropriation of Company funds by Wages but rather the distribution of \$1,250,000.00 among the Members. (CP 764) In support of his claim, Wages argued that he was entitled to \$637,500.00 of the \$1,250,000.00 as a profit distribution in December 2010. (CP 769) Wages asserted he was entitled to a distribution as profit even though he alleged—and Ryan conceded—that the assets of the LLC should be distributed in accordance with the provisions of RCW § 25.15.300 and Article XIV of the LLC Operating Agreement. (CP 468-69) Further, he asserted that he was entitled to the distribution even though he did not allege that the Redding Distribution was distributed as a “profit” but rather as “income”. (CP 769-71; VR 9-10) Summarized alternatively, the basis of Wages' argument was that the distribution was a “profit” and therefore Wages should be allowed to introduce testimony and evidence that the Redding Distribution should be divided among the Members of the Company as a profit distribution. (CP 768-70) Specifically, Wages relied on Paragraph 3.9 of the Company's Operating Agreement which provides that:

Distribution to the members of net operating profits of the Company shall be made at least annually except that earnings may be retained by the Company and transferred to Company capital for the reasonable needs of the business...(CP696; 770)

Wages then argued that his expert's testimony was relevant because the characterization of the Redding Distribution determined whether the Members distributed the assets based upon the Members' profit interests or in accordance with RCW § 25.15.300 and Article XIV of the LLC Operating Agreement. In his arguments Wages acknowledged that his expert, Toyer, was going to testify as to whom the trial court should distribute the Redding Distribution, yet conceded that "I don't know that his testimony is even going to get into, you know, tax law beyond that, how the individuals need to treat [the Redding Distribution], how its distributed. That's why it matters." (VR 9:14-17) Therefore, the purpose of the testimony was to determine to whom the Company's assets should be distributed.

In rejecting Wages' position, the Court stated that the characterization of the assets would not aid in its decision-making. (VR 18:8-23) The trial court further noted that the Redding Distribution was an asset of the Company and, in fact, the Company's only asset. (Id.) Further, the trial court noted that both RCW § 25.15.300 and Article XIV outline how distribution of assets should occur upon dissolution. (Id.)

Importantly, the trial court reserved the right to reconsider its ruling after it had heard additional testimony and reviewed admitted evidence. (VR 18:8-23) Very critically, however, Wages never attempted to reargue that Toyer's testimony was relevant.

C. Trial

During the two day trial, Ryan presented testimony from three witnesses: Julia McCord, Floyd Ryan, and Michael Tomlinson. Ryan also examined Tom Wages. Wages, however, presented no witnesses and rested upon the completion of Ryan's case in chief. (See Transcript Indexes for Volume 1 and 2; VR 245:18-19)

Michael Cunningham, the Certified Public Accountant for the LLC, provided testimony as to the balance of each of the Members' respective capital accounts for purposes of dissolving the Company. (VR 195-202) In particular, Cunningham testified that he based his calculations for Wages' capital account primarily upon the arbitrator's determination that Wages' initial capital contribution was \$235,312.00. (VR 195:7-8) Cunningham also testified that he determined that the parties determined the value to of the Lake Stevens Property to be \$4,084,000.00 because the Members of the Company executed the

Redding Lake Stevens Operating Agreement.³ (VR 224:10-18) Further, he testified that he calculated Wages' capital account balance through discussions with Wages about his withdrawals from the Company's accounts and through an audit of the Company's records. (VR 177-182; 191-92) Ultimately, Cunningham concluded that Wages capital account balance was (\$39,215.31). VR 196:20; 197:2-20) Cunningham also determined that Ryan's combined capital account was \$3,314,802.07. (VR 201:4-6)

After Ryan provided its witnesses, Wages rested and did not offer any testimony to contradict Cunningham's testimony. (VR 245:10-19) Therefore, Wages has filed this appeal challenging factual findings by the trial court despite the fact he did not offer any evidence and/or testimony in support of his position.

III. LEGAL ARGUMENT

A. The Trial Court did not Abuse its Discretion when it Excluded Testimony that did not Tend to Prove or Disprove that Judicial Dissolution was Proper or the Value of the Company's Assets so that the Court Could Distribute them Pursuant to RCW § 25.15.300.

Although Wages concedes that he is challenging the trial court's ruling on Ryan's Motion in Limine—which was an evidentiary ruling—

³ Cunningham noted that the value was obtained as a "book" value. Therefore, it was a stipulated value among the Members. (VR 189-90)

Wages incorrectly argues that the applicable standard of review is *de novo*.⁴ (Wages Br. on App. at p. 13) The correct standard of review for a trial court's order granting a Motion in Limine is abuse of discretion.

It is long established that the admission or exclusion of evidence lies largely within the sound discretion of the trial court; absent abuse of that discretion there is no error. **Davis v. Globe Mach. Mfg. Co.**, 102 Wn.2d 68, 76, 684 P.2d 692 (1984). This Court reviews a trial court's decision to admit or exclude expert testimony for an abuse of discretion. **Hendrickson v. King County**, 101 Wn. App. 258, 265, 2 P.3d 1006 (2000). Only when a trial court's exercise of its discretion is manifestly unreasonable or based upon untenable grounds or reasons, an abuse of discretion exists. **State v. Powell**, 126 Wn.2d 244, 258, 893 P.2d 615 (1995). Critically, the exclusion of evidence which is cumulative or has speculative probative value is not reversible error. **Havens v. C&D Plastics, Inc.**, 124 Wn.2d 158, 169-170, 876 P.2d 435, (1994). Exclusion of evidence which has speculative probative value is deemed harmless error. **Id.**

⁴ Upon first glance it appears that Wages applies the correct standard of review in the title or heading which reads: "A. The trial court abused its discretion in excluding evidence..." However, the substance of that section adopts and argues a *de novo* standard. In doing so, Wages fails to explain why this Court should deviate from established case law that an evidentiary ruling will not be disturbed absent a showing of abuse of discretion.

Wages' sole claim before the trial court in this matter was that the subject Limited Liability Company should be judicially dissolved. (CP 464-5) Therefore, at the point in time when Wages sought judicial dissolution—and Ryan concurred—the only issues that remained with respect to the Company's affairs were those outlined in RCW § 25.15.275, RCW § 25.15.300, and the Company's LLC Operating Agreement. More specifically, RCW § 25.15.275 states that:

On application by or for a member or manager the superior courts may decree dissolution of a limited liability company whenever: (1) It is not reasonably practicable to carry on the business in conformity with a limited liability company agreement; or (2) other circumstances render dissolution equitable. RCW § 25.15.275.

Once the trial court determined that continued operations of the LLC are not reasonably practicable, then the Court's further inquiry was limited to: (1) the value of the LLC's assets; and (2) the hierarchy of distribution of the assets to creditors and members. **Noble v. A&R Env'tl. Servs., LLC**, 140 Wn. App. 29, 164 P.3d 519 (2007).

Wages' argument is that the trial court erred when it determined that expert testimony regarding whether the Redding Distribution should be treated as profits before dissolution in accordance with RCW § 25.15.275, RCW § 25.15.300, and Article XIV of the Company's LLC Operating Agreement. Wages' assertion is that the trial court abused its

discretion because it excluded expert testimony that would have attempted to show the trial court should have distributed the Company's assets contrary to the plain language of applicable statutory language and the unambiguous language of the Company's LLC Operating Agreement. Yet the hierarchy of creditors and members is not a factual issue but rather a legal one. Wages did not argue that Paragraph 14.6 of the Company's LLC Operating Agreement was ambiguous. Rather, he attempted to argue that testimony which he sought to offer contrary to Paragraph 14.6 and RCW § 25.15.300 was necessary.

Most importantly though, the trial court afforded Wages the opportunity to address the relevance of his expert witness's testimony after she had heard some testimony. However, he elected not to do so. (VR 18:8-23; 245:11-22) The trial court specifically stated that it was willing to reconsider its ruling on the motion in limine at a later time but Wages never exercised that right. In fact, Wages did not even call a witness to testify in support of his legal and factual position. (Id.)

The trial court did not abuse its discretion because the LLC Operating Agreement contemplated profit distributions; unfortunately though the Company's assets were insufficient to make a profit distribution. (CP 822) Wages requested that the trial court exercise its power to dissolve the Company judicially. Once Wages made that

request, the hierarchy of creditors was established by RCW § 25.15.300 and the Company's LLC Operating Agreement. Distribution of LLC assets in accordance with profit shares was contemplated by the Company's Operating Agreement. Accordingly, how an accountant might have characterized the assets if the Company had continued its business operations was wholly irrelevant to the trial and the trial court's findings of fact. Further, the trial court specifically stated that Wages could re-address the ruling on the motion in limine at a later time. Wages elected not only to accept the trial court's ruling but also not to produce any witnesses to support his position.

Because the trial court's decision to exclude both parties' experts from testifying was not arbitrary and because the trial court specifically afforded Wages the opportunity to readdress the trial court's ruling, no abuse of discretion occurred and this Court should affirm the trial court's order granting, in part, Ryan's Motion in Limine.

B. The Court's Ruling on the Motion in Limine was not
Based Upon an Erroneous Interpretation of RCW § 25.15 et
seq.

Wages' assertion that the trial court's ruling that granted in part the motion in limine is a straw man argument that is without legal or factual basis. More specifically, Wages' claim that his "repeated contention throughout the case, and what he intended to present at trial, was that he

was entitled to 51% of the \$1,250,000.00 at the time Redding distributed the funds in December 2010”, cannot be true. (App. Br. at p. 15) Wages’ Counterclaim was filed nearly one year before the Redding Distribution occurred. (CP 632) Wages’ claim that the trial court “ignored the requirements of the LLC statutes, and deprived Wages of his right to present evidence...” completely ignores the trial court’s ruling. The trial court stated that:

“...[A]t this point it seems to me in what I have reviewed that [the Redding Distribution] appears to be an asset, the only asset.

Now, whether or not it’s helpful for the Court or the Court needs this expert testimony, it’s a little bit early for me to say. At this point my inclination is to grant the motion in limine. I don’t see how the expert testimony will be of much assistance to the Court. I don’t know that that necessarily means that you’re precluded from making your argument, but at this point it does not seem like it would be information that would assist the Court in really determining the issues in this case. So at this point I’m going to grant the motion.”

(VR 18:8-23) Again, Wages had the opportunity to present further evidence to show the Court that expert testimony would be needed. However, Wages elected to rest without calling a single witness or even attempting to revive or re-address the belatedly-questioned ruling on Respondent’s trial court motions in limine. (VR 245:11-22)

In summary, the trial court determined that the Redding Distribution was an asset and, in fact, “the only asset” of the Company.

Provisions of RCW § 25.15.300 and Section XIV of the Operations Agreement specify that the assets of the Company be distributed to creditors, members for loans, members for return of capital, and then (and only then) as profit. (CP 708) The trial court determined that testimony regarding the characteristic of the asset was irrelevant because the issues to be decided were the capital account balances. (VR 18) The trial court's ruling was not a legal ruling in which it determined the proper interpretation of a statute. The trial court's determination was based upon ER 401 and ER 402. Wages' proposed testimony was irrelevant and would have served only to confuse the factual issues and had, at best speculative probative value. A court is not required to hear testimony which is irrelevant to the legal issues before it. **Havens**, 124 Wn.2d at 169 Therefore, the trial court exercised its discretion and excluded the testimony.

C. The Trial Court's Factual Findings were Supported by Substantial Evidence.

1. Standard of Review for Factual Findings.

Wages argues that this Court, on appeal, should adopt an inappropriate standard of review for a factual finding. Wages appears to rely on an "abuse of discretion" standard; however, that is not the correct standard of review. A trial court's factual determinations will not be

disturbed if they are supported by substantial evidence. **Davis v. Dep't of Labor & Indus.**, 94 Wn.2d 119, 123-24, 615 P.2d 1279 (1980). For purposes of this test, evidence is deemed to be substantial if it is sufficient to persuade a fair-minded person of the truth of the declared premise. **Holland v. Boeing Co.**, 90 Wn.2d 384, 390-91, 583 P.2d 621 (1978). If substantial evidence supports the finding, it does not matter that other evidence may contradict it, because credibility determinations are left to the trier of fact and are not subject to review. **State v. Camarillo**, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). More centrally for purposes of the review now before this Court, appellate courts do not weigh conflicting evidence. **Reynolds Metal Co. v. Electric Smith Const. & Equip. Co.**, 4 Wn. App. 695, 699, 483 P.2d 880 (1971).

*2. The Trial Court did not Err when it
Established the Members' Initial Capital
Contributions.*

On the subject of the Members' initial capital contributions, Michael Cunningham, the Company's Certified Public Accountant, testified as to the capital contributions of each Member⁵ by using the value found in the Redding Lake Stevens LLC Operating Agreement to establish the value of both the Redding Option—which Wages contributed as a

⁵ The capital contributions of McCord and CPSP were established as one contribution because they obtained their Membership status through the Estate of Ryan.

capital contribution—and the Lake Stevens property—property contributed by Ryan. (VR 190:1-3; VR 191:3-9) Cunningham used these numbers because the arbitrator in 2009 established Wages' capital contribution. (VR 191:3-9) Further, the Court based its findings on the fact that the parties agreed in 2005—when the Lake Stevens Property and Redding Option were contributed to the Company—as to the respective value of the property and option. Therefore, in 2005 the parties agreed that the value of the Redding Option was \$235,312 and that the Lake Stevens Property was valued at \$4,048,000.00. (CP 722 VR 189-90)

The trial court's factual finding that the parties agreed in 2005 as to the value of the Lake Stevens Property and Redding Option at \$4,084,000.00 and \$235,312.00 was grounded in admissible evidence, the arbitrator's decision and the Redding Lake Stevens LLC Operating Agreement, as well as the testimony of Michael Cunningham. (CP 539) Importantly, Wages provided no meaningful evidence or testimony to refute the trial court's position that in 2005 when the Option and Property were contributed the Members agreed upon specific values for each.

Because the trial court's decision is based upon admissible evidence in the record and because Wages did not provide any meaningful rebuttal evidence, the trial court based its decision on substantial evidence.

Accordingly, the lower court did not err in establishing Ryan's initial capital contributions.

3. The Trial Court did not Err when it Established that Wages had a Negative Capital Account Balance.

Similar to Wages' argument that the trial court erred when it established the Members' initial capital contributions, Wages' claim that that the trial court erred when it determined that he had a negative capital account fails, because the trial court based its decision on substantial evidence in the record and because Wages did not present any testimony to refute Cunningham's calculations. Further, Wages admitted that he agreed to have Cunningham serve as the CPA for the Company. Further, there is no dispute that in the prior litigation among the parties, the arbitrator found Cunningham's reports credible and—in fact—based large portions of the arbitration decision on Cunningham's calculations. At trial the arbitration decision served as a starting point for the parties' dispute and had to be referenced to establish the Members' initial capital contributions. (VR 195:7-8) Other than testimony by Wages—which was not supported by any exhibits showing what he thought his capital account balance should be—Cunningham's calculation was the only evidence presented to establish the capital account balance. Cunningham's calculations were based upon admissible testimony and evidence.

Because the trial court's finding was based upon substantial evidence that was admissible, the trial court did not err when it established that Wages had a negative capital account.

IV. CONCLUSION

Wages' appeal fails because the trial court did not abuse its discretion, nor were the trial court's findings of fact unsupported by substantial evidence. Wages did not present any evidence to controvert that presented by Ryan. Wages requested that the trial court dissolve the Company. The trial court adopted Wages' request but excluded evidence that was not relevant to the Company's dissolution. That does not constitute an abuse of discretion.

The record in this matter shows that the trial court's decision was based upon substantial evidence in the record. The Company's accountant, Cunningham, provided competent testimony as to the Members' capital account balances. Wages offered no evidence or testimony to contradict or refute Cunningham's conclusions. Cunningham was competent to testify as to the balance of the Members' capital accounts and therefore the trial court's factual findings were based upon substantial evidence.

Under the authority and for the reasons discussed above, this Court should affirm the trial court's decision.

Respectfully submitted this 9th day of August 2012.

MDK Law Associates:
MARK DOUGLAS KIMBALL, P.S.
Attorneys for Appellants



James P. Ware, WSBA No. 36799

Proof of Service

The undersigned certifies that on August 9, 2012 arrangements were made for service of a true and correct copy of the within and foregoing Cross-Respondents' Responsive Brief on Appeal upon Respondent and Cross-Appellant as set forth Below:

Attorney for Cross-Appellant Tom Wages

Luke LaRiviere WSBA # 32039
Young deNormandie
Second & Seneca Building
1191 Second Ave., Suite 1901
Seattle, WA 98101
(206) 224-9818
llariviere@ydnlaw.com

Attorneys for Respondent Redding Lake Stevens, LLC

Kellie Gronski, WSBA # 38848
Wright Noel, WSBA # 25264
Carson & Noel PLLC
20 Sixth Ave NE
Issaquah, WA 98027
(425) 837-4717
kellie@carsonnoel.com
wright@carsonnoel.com

Via ABC legal Messenger on August 9, 2012 with a delivery date of August 10, 2012.

Dated: August 9, 2012



James P. Ware, WSBA # 36799
(425) 455-9610