

CAUSE No. 72946-2

COURT OF APPEALS, DIVISION ONE  
IN THE STATE OF WASHINGTON

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STATE OF WASHINGTON  
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NANCY LOE, Appellant/Cross-Respondent,

v.

BENSON VILLAGE ASSOCIATES, a Washington Corporation; CARPINITO & GOODWIN dba BENSON VILLAGE APARTMENTS I, a Washington Partnership; OLYMPIC MANAGEMENT COMPANY, a Washington Corporation; JOSEPH CARPINITO and JANE DOE CARPINITO, individually and as a marital community; and WILLIAM CARPINITO and JANE DOE CARPINITO, individually and as a marital community, Respondents/Cross-Appellants.

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**BRIEF OF RESPONDENTS/CROSS-APPELLANTS**

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## **I. INTRODUCTION**

The civil rules allow courts to issue sanctions for improper behavior. However, when parties abuse the rules to support false allegations for monetary gain, the sanction process fails and justice is not served. In the instant case, justice was not served because the trial court's decisions ultimately encouraged and, indeed, rewarded such abuses.

Appellant/Cross-Respondent Nancy Loe claims that Respondents/Cross-Appellants Benson Village Associates, et al (collectively referred to as "Benson Village"), deliberately hid an operations manual during the discovery process, implicitly suggesting that the manual was the "smoking gun" document that Loe needed to prove her case. The plain facts of this case, the evidence exhaustively presented at trial, and the jury's ultimate verdict belie this suggestion. Loe's initial discovery request was narrowly tailored and referenced only the specific area where the accident occurred. Therefore it did not occur to Benson Village that the manual in question was responsive to the original requests. When plaintiff clarified and then expanded the scope of the discovery request, Benson Village produced the entire manual without objection. More importantly, rather than being some sort

of “smoking gun” revelation, the existence of the manual and Benson Village’s fulfillment of its safety and maintenance policies actually served as additional evidence that Benson Village did no wrong in the accident in question.

The contrasting results at arbitration and at trial demonstrate the evidentiary significance of the operations manual. Loe did not have the manual at arbitration yet won on liability—Benson Village was found 100 percent liable—and Loe received an award near the jurisdictional limit. At trial, with the manual on full display, the jury rejected Loe’s arguments that Benson Village acted wrongfully and returned a defense verdict.

Benson Village received a complete defense verdict at trial. The truth-finding purposes of our jury system should have yielded a just result in which plaintiff would have received no financial benefit from her ill-founded claims against a fault-free defendant. Instead, prior to the jury trial in question, Loe manipulated the discovery rules to net a financial windfall in the form of securing monetary sanctions for the late production of a policy manual which ultimately served only as additional evidence of the defendant’s reasonable and professional behavior.

In the Washington Supreme Court’s seminal opinion in Wash. State Physicians Ins. Exchange & Assoc. v. Fisons Corp., 122 Wn.2d 299, 858 P.2d 1054 (1993), the court warned against requests for sanctions turning into a money-making “cottage industry” for attorneys. Fisons, 122 Wn.2d at 356. This is precisely what occurred here. Loe “made money” by securing sanctions for a collateral discovery issue of no evidentiary benefit to her in a scenario where the defendant bore no blame for her unfortunate accident. By allowing Loe to be rewarded for such actions, the trial court encourages the sharp practices condemned by the Fisons court. The policy considerations outlined by the Fisons court strongly support reversal. Benson Village requests that the Court decline to embolden such improper behavior and reverse the trial court’s issuance of sanctions.

## **II. ASSIGNMENTS OF ERROR**

### ***Respondents’/Cross-Appellants’ Assignment of Error***

The trial court erred in entering the Order Granting Plaintiff’s Motion for Sanctions on December 8, 2014, and in denying Defendants’ Motion for Reconsideration of Order Granting Plaintiff’s Motion for Sanctions on January 26, 2015.

### ***Issues Pertaining to Assignments of Error***

The trial court ordered monetary sanctions against defendants for not immediately producing the entirety of an operation manual during discovery. The plaintiff's discovery requests were narrowly tailored, and the original requests did not trigger in defendants the thought that the manual was responsive. Defendants did later produce the entire manual upon clarification and expansion of the discovery request. Did the court err in ordering these monetary sanctions and denying defendants' subsequent motion for reconsideration where the order was not based on appropriate law or supported by the facts, and where the facts show that defendants acted with reasonable justification and in good faith?

As to the plaintiff's assignment of error, the trial court determined that the least severe sanctions, i.e., monetary sanctions, were appropriate. Did the trial court correctly decline to impose the severe sanction of denying the defendants' request for a trial de novo where the late production was not willful or deliberate, the plaintiff was not substantially prejudiced as a result of the late production, and the court noted on the record that lesser sanctions were sufficient?

### **III. STATEMENT OF THE CASE**

In her opening brief, Loe cites selected facts in this case. There are additional facts that are relevant here. For example, the placement of the three small pumpkins is significant because it relates to Loe's theory of the case. Rather than being placed "in a common walkway of the apartments," as Loe states in her Opening Brief, at trial Loe herself testified that the small pumpkins were placed "around the base" of a "four- or five-foot cement planter" which was pushed up next to the wall near the apartment office door. CP 114. Loe assumed that the pumpkins were placed next to the planter as a presentation for Thanksgiving. CP 114. The planter was round in shape, "tall and skinny," and was positioned about two inches from the outside wall of the office building. CP 114. So, rather than the subject pumpkins being placed "in the walkway" outside the office, Loe herself testified that they surrounded a planter which was just two inches away from the wall of the office building.

This matter was arbitrated on August 5, 2014. CP 12. Loe prevailed at arbitration, winning an award of \$45,956.50, an amount very near the jurisdictional limit of \$50,000.00. CP 115; CP 123; RCW 7.06.020. In addition, the arbitrator found Benson

Village to be 100 percent at fault for the accident, so Loe completely won on the issue of liability despite not having a copy of Olympic Management Company's Operations Manual. CP 115; CP 123.

There are also several facts not mentioned by Loe regarding the discovery issues in this case that are relevant. Requests for Production Nos. 5 and 9 were served only on defendant Benson Village Associates. CP 111. Request for Production No. 5 limits documents to **the area where the incident occurred**. CP 111 (emphasis added). Request for Production No. 9 limits documents to policies or procedures referring to slips and falls or other injuries **to tenants**. CP 111 (emphasis added). The specificity of the language in Requests for Production Nos. 5 and 9 did not trigger in Benson Village the thought that the Operations Manual of Olympic Management Company, or the Personal Protective Equipment information for employees, would be responsive to these requests at the time Benson Village initially prepared its answers. CP 112; CP 122.

After Benson Village filed its request for a trial de novo on August 22, 2014 (CP 115; CP 124), counsel for both parties conducted a CR 26 discovery conference on August 27, 2014. CP

112; CP 122. During the conference Loe's counsel stated that he thought there was a policy manual. CP 112; CP 122. After realizing for the first time what Loe had intended to obtain in her first discovery requests, Benson Village supplemented its discovery responses on September 5, 2014, by producing approximately 20 pages of documents from the Operations Manual. CP 112; CP 122; CP 145-165. Benson Village did not produce the entire 300-plus page Operations Manual at that time because the remainder of the documents contained in the Operations Manual was not at all responsive to Loe's requests. CP 112; CP 123.

The 20 pages that were produced describe or refer to the system of inspecting and maintaining the property generally. CP 112; CP 123; CP 145-165. For example, the manual states that the "property's grounds, laundry rooms, and recreational facilities are to be walked each morning by the Resident Manager, Assistant Manager or Leasing Agent on duty to insure that they are clean and free of debris." CP 147. Tammy Franks, the Resident Manager for Benson Village, testified that the maintenance supervisor and the maintenance techs do their first walk-around on the property at about 6:30 in the morning. CP 188; CP 190. If anything is out of

the ordinary, the maintenance staff takes care of it. CP 190. The maintenance staff then walks the grounds again after lunch. CP 190. Thus the testimony of Tammy Franks as well as the manual itself were entirely consistent with Benson Village's initial response to Plaintiff's Request for Production 5 – "No. This is a general walkway area. The area is inspected daily by the Office and Maintenance staff prior to the office opening and a few times throughout the day." CP 12.

Meanwhile, on or about August 29, 2014, after Benson Village filed its request for trial de novo (CP 115; CP 124), Loe served several new sets of discovery requests, including a first set of discovery requests upon the other defendants and a second set of discovery requests upon defendant Benson Village Associates. CP 113. The relevant requests for production state as follows:

**Request for Production No. 3:** Please provide a complete copy of the preventative maintenance program developed and maintained by the maintenance supervisor from the time period November 2005 to December 2011.

**Request for Production No. 4:** Please produce the entire Operations Manual for Olympic Management Company, which was referenced in Defendants' Answers to Plaintiff's First Request for Production No. 5.

CP 113. On or about October 17, 2014, Benson Village answered these discovery requests and produced the described documents, including the entire Operations Manual:

RESPONSE [to Request for Production No. 3]: A specific preventative maintenance program does not exist. Preventative maintenances and procedures are part of the Personal Protective Equipment information followed by employees in relation to which area they are working in on the property. A copy of the binder is attached.

RESPONSE [to Request for Production No. 4]: A copy of the manual is attached.

CP 113.

Loe filed a motion for sanctions on or about November 12, 2014. CP 10-20. Loe made serious allegations as to Benson Village's intent and integrity that were, at best, baseless and unprofessional, and at worst reckless and full of false innuendo.

CP 111. As a result, Benson Village was compelled to provide a detailed response outlining the actual facts of the case. CP 110-191. Nonetheless, the Honorable Susan Amini granted Loe's motion on December 8, 2014, ordering Benson Village to pay Loe's reasonable attorney fees and costs for attendance at arbitration, the total costs for arbitration, the arbitrator's fees and

costs, and Loe's reasonable attorney fees and costs for bringing the motion. CP 259-261.

In the order, the trial court concluded that the attorney certification to the discovery responses "was not made after reasonable inquiry" and that "the initial responses were not consistent with the letter, spirit, and purpose of the rules." CP 260. The trial court also found that Benson Village "violated discovery rules by failing to timely and completely produce responsive documents..." CP 260. The trial court does not cite to any specific facts to support its conclusions. CP 260.

On December 18, 2014, without conceding that Benson Village violated the discovery rules or failed to make a reasonable inquiry, Benson Village filed a Motion for Reconsideration of a portion of the Order Granting Plaintiff's Motion for Sanctions. CP 282-290. Specifically, Benson Village asked the trial court to reconsider (1) the order to pay fees and costs relating to Loe's attendance at arbitration because the arbitration would have occurred regardless of the discovery issue, and (2) the order to pay Loe's portion of the arbitrator's fees and costs because the arbitrator was appointed pursuant to the Mandatory Arbitration Rules, and thus Loe did not pay any such fees. CP 282-285. In its

motion Benson Village noted that Loe had filed a Statement of Arbitrability on or about March 11, 2014, several months before the subject discovery issues arose. CP 283.

Meanwhile, the jury trial was held in December 2014, before the Honorable Samuel S. Chung. VRP 1. Portions of the manual at issue were admitted as evidence at trial, and Loe first referenced the manual during her opening statement to the jury. VRP 128. The jury returned a defense verdict on December 19, 2014. CP 304-307.

On December 30, 2014, an attorney from Loe's counsel's office, Megan Lou Wernli, filed a declaration claiming fees and costs in the amount of \$9,544.44 as sanctions. CP 340-349. In her declaration Ms. Wernli stated that the hourly rate for James J. Dore, Jr., the attorney who attended arbitration, was \$500.00. CP 340. Mr. Dore did not submit his own declaration.

On January 6, 2015, Loe served Benson Village with a response to Benson Village's Motion for Reconsideration. The court listed it as a pleading it considered in ruling on the motion (CP 372), but the response was apparently never filed with the Clerk's Office because it is not listed on the case's docket. See Appendix at A-1 to A-4. As a result, Benson Village was unable

to designate the response in its Designation of Clerk's Papers.

Benson Village did file and serve a reply to the response. CP 351-365.

Loe appealed the jury verdict on or about January 9, 2015. CP 333-339. The only document attached to Loe's appeal was the Special Verdict Form. CP 333-339. Loe did not appeal the Order Granting Plaintiff's Motion for Sanctions. CP 333-339.

Benson Village filed a Notice of Cross-Appeal on or about January 14, 2015, appealing the Order Granting Plaintiff's Motion for Sanctions. CP 366-371.

After Benson Village had filed its Cross-Appeal, Judge Amini denied Benson Village's motion for reconsideration on January 26, 2015. CP 372-377. The court also awarded Loe \$1,500.00 in sanctions for fees incurred in attending the arbitration and \$1,995.30 for fees and costs incurred in bringing the motion, for a total award of \$3,495.30. CP 377. Citing Rule 1.5(a) of the Model Rules of Professional Conduct of the American Bar Association, the court determined that a reasonable hourly rate for Loe's attorney's attendance at arbitration was \$300, rather than the \$500 hourly rate claimed. CP 376; CP 340.

Benson Village paid the full sanction amount of \$3,495.30 to Loe. See Appendix at A-5 to A-7.

#### IV. ARGUMENT

##### A. Loe Did Not Appeal the Order Granting Sanctions.

As a preliminary and potentially dispositive matter, Loe did not appeal the Order Granting Plaintiff's Motion for Sanctions. Rather, Loe appealed the jury verdict. However, Loe's entire Opening Brief is based upon a new claim that the trial court abused its discretion in declining to strike Benson Village's request for trial de novo in the order granting sanctions. Loe has now abandoned all argument that there were any errors during trial. Because Loe did not timely or actually appeal the order granting sanctions, her entire appeal is moot.

A notice of appeal must designate the decision that the party wants reviewed. RAP 5.3(a). Our Supreme Court recently issued a significant opinion on this subject in Clark County v. Western Wash. Growth Management Hearings Review Bd., 177 Wn.2d 136, 298 P.3d 704 (2013). In Clark County, the Court of Appeals had adjudicated claims relating to the status of annexed lands that were not raised on appeal. The Supreme Court vacated that portion of the decision, concluding that "we prohibit review of

separate and distinct claims that have not been raised on appeal.”

Clark County, 177 Wn.2d at 139. The court unequivocally stated that it would not allow review of issues not appealed because such adjudication

thwarts the finality of unchallenged stipulations and rulings, expends limited judicial resources, diminishes the predictability of adjudication, discourages the private settlement of disputes, and overlooks the need for zealous advocacy to facilitate appellate review. The Court of Appeals’ decision to address the Annexed Lands is contrary to our well-established standards of appellate jurisdiction.

Clark County, 177 Wn.2d at 143. The court expressly held that an appellate court errs when considering issues not properly appealed:

[A]n appellate court must not adjudicate resolved claims that are separate and distinct from the underlying disputes actually raised on appeal; such extraneous claims need not be adjudicated in order to properly decide a case on appeal, and such judicial action needlessly disturbs resolved matters, wastes judicial resources, creates unfair surprise, interferes with and deters private settlements, and risks insufficient advocacy on review. Such judicial action is not required by ‘the merits of the case and the interest of justice’ and thus, is not authorized by our court rules. RAP 12.2. Simply put, an appellate court errs by adjudicating separate and distinct claims resolved below and not raised on appeal.

Clark County, 177 Wn.2d at 147.

Our Supreme Court could not have been stronger in its holding. The court’s opinion makes it abundantly clear that an

appellate court may consider only those issues properly appealed by the parties. The court repeatedly stressed this rule and the policies underlying it throughout the opinion. This opinion compels the Court to disregard Loe's entire brief because Loe did not appeal the order granting her motion for sanctions.

While Benson Village did appeal the order granting sanctions, Benson Village's appeal is based on the argument that the order should not have been issued, i.e., that the trial court should not have ordered any sanctions against Benson Village. This is an entirely different matter from whether the trial court erred in not striking Benson Village's request for a trial de novo. As a result, the issue of whether the trial court erred in declining to strike Benson Village's request for a trial de novo is not properly before the Court.

Moreover, Benson Village was not placed on notice that Loe would be appealing the order granting her motion for sanctions. Rather, Benson Village considered Loe's decision to appeal only the jury verdict in determining its own strategy on appeal. Had Loe properly appealed the order granting sanctions, Benson Village, in the interest of zealous advocacy noted by the court in Clark County, may well have taken a different approach.

As a result, Benson Village would be prejudiced if the Court were to consider Loe's appeal of the order granting her motion for sanctions.

Even though Loe's appeal is moot, in an abundance of caution, Benson Village addresses Loe's arguments below.

**B. Standard of Review**

A trial court has broad discretion in determining the appropriate sanctions for violation of a discovery order. Burnet v. Spokane Ambulance, 131 Wn.2d 484, 933 P.2d 1036 (1997). A court's discretion should not be disturbed on appeal except upon a clear showing of abuse of discretion, "that is, discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." Burnet, 131 Wn.2d at 494, quoting Associated Mortgage Investors v. G.P. Kent Constr. Co., 15 Wn. App. 223, 229, 548 P.2d 558 (1976).

"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.'" Magana v. Hyundai Motor

America, 167 Wn.2d 570, 583, 220 P.3d 191 (2009), quoting Mayer v. Sto Indus., Inc., 156 Wn.2d 677, 684, 132 P.3d 115 (2006). “A trial court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law.” Wash. State Physicians Ins. Exchange & Ass’n v. Fisons Corp., 122 Wn.2d 299, 339, 858 P.2d 1054 (1993).

**C. The Trial Court Did Not Abuse Its Discretion in Awarding Only Monetary Sanctions.**

**1. Loe Cannot Establish the Burnet Factors.**

“[T]he court may impose only the least severe sanction that will be adequate to serve its purpose in issuing a sanction.” Teter v. Deck, 174 Wn.2d 207, 216, 274 P.3d 336 (2012). A court must consider whether a lesser sanction would suffice before applying such remedies as dismissal, default, or the exclusion of testimony—sanctions that affect a party’s ability to prepare its case. Mayer v. Sto. Indust., Inc., 156 Wn.2d 677, 132 P.3d 115 (2006).

Before a court issues one of these more severe sanctions, the court must enter findings and conclusions on the record showing that it considered lesser sanctions and that lesser sanctions would have been inadequate. Blair v. Ta-Seattle East No. 176, 171

Wn.2d 342, 352, 254 P.3d 797 (2011). The record must clearly show (1) one 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 whether a lesser sanction would have sufficed. Magana, 167 Wn.2d at 584, citing Burnet, 131 Wn.2d at 494. These three elements are commonly referred to as the “Burnet analysis” or the “Burnet factors.” See, e.g., Jones v. City of Seattle, 179 Wn.2d 322, 338-45, 314 P.3d 380 (2013); Farrow v. Alfa Laval, Inc., 179 Wn. App. 652, 664 n. 8, 319 P.3d 861 (2014).

In Blair, a personal injury lawsuit based upon a slip and fall, our Supreme Court held that the trial court abused its discretion in imposing sanctions for discovery violations without noting its reasons. The plaintiff in Blair did not disclose her proposed witness list until after the deadline for the disclosure of additional witnesses had passed. Blair, 171 Wn.2d at 345. The defendant moved to strike the witnesses, and the trial court granted the defendant’s motion with modifications, limiting the number of witnesses the plaintiff could call at trial. Blair, 171 Wn.2d at 345-46. The trial court did not enter any findings supporting the order. Blair, 171 Wn.2d at 346.

When the plaintiff tried to name additional witnesses, the trial court granted the defendant's motion to strike the witnesses and fined the plaintiff \$500 for violating the court's earlier order. Blair, 171 Wn.2d at 347. Three days before the scheduled trial date the defendant moved for summary judgment dismissal, claiming that the plaintiff could not prove causation in light of the court's orders. The court granted the motion. Blair, 171 Wn.2d at 347. The Court of Appeals affirmed the trial court. Blair, 171 Wn.2d at 347.

The court in Blair held that the trial court abused its discretion:

Neither of the trial court's orders striking Blair's witnesses contained any findings as to willfulness, prejudice, or consideration of lesser sanctions, nor does the record reflect these factors were considered. For example, there was no colloquy between the bench and counsel. There was no oral argument before the trial court entered its orders, and the orders themselves contain bare directives. Under Burnet and Mayer, the trial court therefore abused its discretion by imposing the severe sanction of witness exclusion in the August 14 and October 15 orders.

Blair, 171 Wn.2d at 348-49. The court further held that an appellate court could not, in retrospect, consider the facts themselves as a substitute for the trial court's findings:

Ultimately, the Court of Appeals misread Mayer and Burnet, and erroneously endorsed TravelCenters' view that an appellate court can consider the facts in the first instance as a substitute for the trial court findings that our precedent requires. We reject this premise and hold that the trial court abused its discretion when it imposed the sanction of witness exclusion that was not justified by findings in the record.

Blair, 171 Wn.2d at 351.

Our Supreme Court held similarly in Teter v. Deck, 174 Wn.2d 207, 274 P.3d 336 (2012), a medical malpractice case. In Teter, the initial trial judge excluded a witness as a sanction for untimely witness disclosure and other discovery violations. Teter, 174 Wn.2d at 210-12. A different judge presided over the jury trial, subsequently granting a new trial on the basis that the exclusion was a prejudicial error of law. Teter, 174 Wn.2d at 210. The court agreed with the second judge's decision to grant a new trial. Teter, 174 Wn.2d at 210.

The Teter court began its analysis by stressing the importance of complying with Burnet: "We cannot emphasize too forcefully the importance of adequate findings to support more severe discovery sanctions such as exclusion of a witness." Teter, 174 Wn.2d at 210. Indeed, failure to conclude that a party meets **all** of the Burnet factors warrants reversal:

Although Judge Washington found that the Teters failed to comply with discovery orders and that Dr. Deck was prejudiced in his trial preparation, Judge Washington made no record other than the order: he held no colloquy with counsel and heard no oral argument on the motion. Therefore, the requisite findings must be set forth in the order itself. Because the order contains no finding (1) that the Teters['] discovery violations were willful or (2) that Judge Washington explicitly considered less severe sanctions, Judge González was correct when he concluded that the order does not comply with Burnet.

Teter, 174 Wn.2d at 218 (citations omitted).

In the instant case, the trial court did not make any of the Burnet findings in its order granting sanctions. In addition, the motion was decided without oral argument, so there was no colloquy between the court and counsel as to the Burnet factors. Thus, the trial court correctly declined to impose a more severe sanction beyond a monetary sanction. Moreover, the Court cannot now contemplate the Burnet factors in retrospect. The court in Blair expressly held that an appellate court cannot consider the facts in the first instance as a substitute for the trial court findings.

Before the trial court could have imposed a sanction as severe as denying Benson Village's request for a trial de novo, the court would have had to conclude that all Burnet factors were met, finding that (1) Benson Village willfully or deliberately violated

the discovery rules, and (2) Loe was substantially prejudiced in her ability to prepare for arbitration. The trial court would also have needed to explicitly consider on the record whether a lesser sanction would have sufficed. The trial court did not make any of these findings; indeed, none of the three factors is met here. Because the trial court did not make such findings as to the Burnet factors, the trial court properly declined to award a sanction as severe as striking Benson Village’s request for a trial de novo.

When courts engage in a Burnet analysis, they are often deciding whether to exclude certain evidence or witnesses. In contrast, the remedy Loe is seeking—striking the entire jury trial—is beyond draconian in comparison. A right to a trial before one’s peers is one of our most fundamental rights. Indeed, our state Constitution states that “[t]he right of trial by jury shall remain inviolate....” Wash. Const. art. I, § 21. Loe’s request that the Court take that inviolate right away from Benson Village is wholly inappropriate.

- a. Benson Village Did Not Willfully or Deliberately Violate the Discovery Rules.

Our Supreme Court recently held that mere failure to comply with a court order is insufficient evidence to satisfy the willfulness prong:

This court has held that a party's failure to comply with a court order will be deemed willful if it occurs without reasonable justification. [Citations omitted.] It has more recently noted, however, that Burnet's willfulness prong would serve no purpose 'if willfulness follows necessarily from the violation of a discovery order.' Blair II, 171 Wash.2d at 350 n. 3, 254 P.3d 797. Something more is needed.

Jones v. City of Seattle, 179 Wn.2d 322, 345, 314 P.3d 380 (2013), quoting Blair v. Ta-Seattle East No. 176, 171 Wn.2d 342, 254 P.3d 797 (2011).

Benson Village did not willfully or deliberately violate the discovery rules. Loe's first discovery requests were narrowly tailored—they asked for documents relating to the walking surface **where the incident occurred** and the policies or procedures referring to injuries to **tenants**. These requests are specific as to the type of document sought, the area of property involved, and the types of incidents involved. Because the requests were so narrowly tailored, the possibility that the requests were intended to cover something as broad as the entire Operations Manual for Olympic Management Company, or the Personal Protective

Equipment information for employees, did not occur to Benson Village at the time Benson Village prepared its first responses. As a result, Benson Village did not produce these documents in its first responses. Benson Village reasonably interpreted Loe's initial discovery requests.

Nonetheless, when Loe's counsel indicated on August 27, 2014, that he thought a policy manual existed, Benson Village willingly delivered the relevant portions of the Operations Manual to plaintiff on September 5, 2014. And, when Loe requested the entire Operations Manual in her **second** discovery requests to Benson Village Associates, Benson Village produced it without objection. Benson Village also produced in response to Loe's **second** discovery requests the Personal Protective Equipment information for employees.

There is no willful or deliberate violation here. Despite Loe's claims, there is unquestionably no evidence that Benson Village was hiding the Operations Manual or the Personal Protective Equipment information for employees. Indeed, there is nothing in any of these offerings that Benson Village that Benson Village would want to hide. Further, upon clarification and expansion of the discovery requests, Benson Village promptly

produced the requested documents. Even though the remainder of the Operations Manual beyond those 20 pages was not likely to lead to the discovery of admissible evidence, Benson Village produced it without objection to show its good faith. The Personal Protective Equipment information for employees was similarly irrelevant but, again, Benson Village produced it to show its good faith. Finally, Benson Village paid Loe the full sanction amount. Benson Village absolutely did not willfully or deliberately violate the discovery rules.

b. Loe Was Not Substantially Prejudiced.

There is no evidence that Loe was substantially prejudiced by Benson Village's allegedly late discovery responses. Indeed, there is no evidence of any prejudice to Loe in her not having the manual in question. Loe claims that not having the manual harmed her case, but she does not explain how she was harmed. Further, Loe offers no evidence or theory as to how exactly the manual helps her. Loe's theory of the case is that she tripped on small pumpkins placed by Benson Village employees next to a planter positioned two inches from the building next to the door to the office. In other words, Loe claims that Benson Village should not have placed the pumpkins along the planter. There is nothing in

the Operations Manual, including the 20 pages Benson Village initially produced, that relates to planters or other decorative materials placed next to buildings. There is no evidence that Benson Village violated any of the procedures outlined in the manual. There is no evidence that the policies in the manual were not enforced. There is no information in the manual that Loe could highlight that would support an argument that Benson Village breached the duty of care it owed to her.

The manual states that the “property’s grounds, laundry rooms, and recreational facilities are to be walked each morning by the Resident Manager, Assistant Manager or Leasing Agent on duty to insure that they are clean and free of debris.” And indeed, the evidence shows that Benson Village fulfilled this duty. In fact, Benson Village went above and beyond that duty. Tammy Franks testified that the maintenance staff walks the grounds each morning and again after lunch, so the manual shows that Benson Village fully complied with the manual and acted with diligence in maintaining its property. Thus, the manual ultimately supports, rather than harms, Benson Village’s case.

Moreover, Loe prevailed at arbitration, receiving an award of \$45,956.50, near the jurisdictional limit. In addition, the

arbitrator found Benson Village 100 percent at fault, so Loe completely won on the issue of liability despite not having a copy of the manual at arbitration. Given the generous arbitration award Loe received, Loe certainly cannot show any prejudice by not having the manual at arbitration. There is simply no basis for Loe's claim of substantial prejudice. Loe could hardly have received a better result at arbitration.

If Loe is suggesting that the arbitrator would have given her more money had the arbitrator been given a copy of the manual, Loe's reasoning is flawed. Since the arbitrator had already determined that Benson Village was 100 percent liable, the only means by which Loe could have received a higher award was via an increase in the amount of damages awarded. However, the manual is wholly unrelated to Loe's claimed damages. Therefore, Loe could not have legitimately received an increased damages award based upon disclosure of the manual.

Furthermore, Loe did have the full manual at trial, and the jury returned a defense verdict. Thus, without question, having the manual did not help Loe in any respect. Loe was not prejudiced in the slightest amount by the delay in producing the manual.

Loe is asking the Court to consider a sanction much more severe than the mere exclusion of a witness—Loe is asking the Court to deny Benson Village’s right to a trial de novo and, in fact, strike the entire jury trial held in this case. This would be an extraordinary measure that is completely unwarranted by the circumstances. At best for Loe, Benson Village failed to grasp the full intent of Loe’s initial discovery requests, not realizing that pages from the manual might be responsive to Loe’s requests. There is absolutely no evidence that Benson Village willfully or deliberately hid the manual. Moreover, an actual review of the manual reveals nothing that Benson Village would want to hide. In fact, the manual supports Benson Village’s position that it did not breach a duty to maintain its property. Loe’s unprecedented request is not a suitable response to Benson Village’s innocent possible oversight.

c. The Trial Court Noted in the Order That Lesser Sanctions Were Appropriate.

According to the third Burnet factor, a court must explicitly consider on the record whether a lesser sanction would have sufficed before a court can issue a more severe sanction. The trial court in the instant case did explicitly consider on the record

whether a lesser sanction would have sufficed, and the court concluded that, indeed, a lesser sanction was sufficient. Although Benson Village disagrees with the court's award of monetary sanctions, the court did effectively hold that any sanction more severe than monetary sanctions would have been unwarranted.

The trial court expressly concluded in its Order Granting Plaintiff's Motion for Sanctions that "the least severe sanction necessary to support the purpose of the sanction should be imposed." Implicit in this ruling is the finding that more severe sanctions, such as denying Benson Village its request for trial de novo, would have been inappropriate. Therefore, there is no basis for the issuance of a sanction as severe as striking Benson Village's request for a trial de novo. Further, since it is not an appellate court's role to re-examine the facts as a substitute for the trial court findings, the trial court's determination stands.

In addition, Loe's argument that a monetary sanction of \$3,500 is meaningless to an insurance company is indecorous and contrary to the rules. Whether a party has liability insurance is irrelevant. ER 411. Therefore, whether defendants had insurance and who paid the sanction is completely immaterial to the Court's decision. Indeed, Loe's argument reveals her true motives here—

to avoid the consequences of an unfavorable jury verdict, and net a windfall of \$45,956.50 for a meritless personal injury claim.

These are wholly improper goals of a motion for sanctions and a true waste of scarce judicial resources.

## **2. The Cases Cited by Loe Do Not Support Her Position.**

The cases cited by Loe do not support her position. Benson Village certainly agrees that a court is “to consider the least severe sanction necessary to support the purpose of the sanction.” Loe Opening Brief at 8-9. Benson Village would, however, like to address the opinion by Division Three in Carlson v. Lake Chelan Community Hosp., 116 Wn. App. 718, 75 P.3d 533 (2003), which Loe relies upon in her brief. The opinion in Carlson is flawed for two reasons: (1) it did not apply the Burnet factors, and (2) it did not require a finding of substantial prejudice.

The court in Carlson cites Burnet but does not follow the Burnet rule. This is especially problematic because the Carlson court was examining whether to exclude evidence at trial, which is considered a more severe sanction that triggers the contemplation of the Burnet factors. Magana, 167 Wn.2d at 584. Instead of weighing the three Burnet factors, the court in Carlson relied on

CR 26 and its conclusion that a “showing of intentional conduct is not required as even an inadvertent failure to disclose is enough if there is a violation of the rule without a reasonable excuse.”

Carlson, 116 Wn. App. at 739, citing In re Estate of Foster, 55 Wn. App. 545, 548, 779 P.2d 272 (1989). While it may be appropriate to look to CR 26(g) in some cases where there is no order compelling discovery responses, the court in Carlson was still required to apply the Burnet factors given the severity of the sanction. Magana, 167 Wn.2d at 584. By failing to consider the Burnet factors when weighing the severe sanction of excluding evidence, the Carlson court erroneously applied the law.

In yet another error of law, the court in Carlson relied on In re Estate of Foster but ignored an important requirement outlined by the court in Foster when considering the exclusion of evidence—the finding of substantial prejudice, which is also one of the Burnet factors. In fact, the court in Carlson brushed aside the appellant’s argument regarding prejudice. Carlson, 116 Wn. App. at 740. However, the court in Foster explicitly held that a showing of substantial prejudice is required before a court may consider excluding evidence:

Plaintiff is incorrect, however, in arguing that where a violation is willful, no prejudice need be shown. It is only where willful noncompliance substantially prejudices the opponent's ability to prepare for trial that the exclusion of evidence is within the trial court's discretion.

Foster, 55 Wn. App. at 549 (where the plaintiff suffered no prejudice, there was no abuse of discretion in allowing a late-disclosed expert witness to testify). Thus, by not requiring substantial prejudice, the Carlson court mistakenly applied the law. Moreover, if the trial court in the instant case had followed Foster and looked at whether Loe experienced substantial prejudice, the court would not have found any evidence of substantial prejudice given Loe's favorable arbitration result.

Loe may argue in reply that the Carlson court's errors in applying the wrong standard for excluding evidence are irrelevant because the trial court in the instant case issued monetary sanctions. But Loe chose to cite Carlson in her brief, so presumably Loe thinks that Carlson is good law and is applicable to this case. However, the Carlson opinion is too problematic to provide any meaningful guidance here.

Loe's reliance on Carlson is misplaced for an additional reason. Citing Carlson, Loe argues in her brief that the mere lack

of a reasonable excuse warrants sanctions. However, Loe is incorrect. The recent disapproval by the Jones court renders this theory irrelevant. Jones, 179 Wn.2d at 345. Nonetheless, even if the Court were to hold that this theory is still good law, sanctions are not warranted here because Benson Village did have a reasonable excuse for its delay in producing the Operations Manual. As Benson Village discussed in more detail above, Loe's first discovery requests were narrowly tailored. As a result, the possibility that the requests were intended to cover something as broad as the Operations Manual or the Personal Protective Equipment information for employees did not occur to Benson Village at the time Benson Village prepared its first responses.

When Benson Village later realized what Loe had intended to obtain in her first discovery requests, Benson Village produced the relevant portions of the Operations Manual that were potentially responsive to plaintiff's first discovery requests. And, when Loe requested the entire Operations Manual in her second discovery requests to Benson Village Associates, Benson Village produced it without objection. Benson Village also produced in response to Loe's second discovery requests the Personal Protective Equipment information for employees in relation to the

area of the property in which they are working. Benson Village's actions were certainly reasonable. The trial court certainly did not conclude that Benson Village lacked a reasonable excuse.

**D. The Trial Court Abused Its Discretion in Granting Loe's Motion for Sanctions.**

A court abuses its discretion when it bases its decision on untenable grounds or on an erroneous view of the law. The trial court abused its discretion in granting Loe's motion for sanctions because the trial court did not base its order on the appropriate law when it mistakenly relied on Carlson, and the court did not support its findings with fact. As a result, the order should be reversed.

The trial court cited one case in its Order Granting Plaintiff's Motion for Sanctions—the Carlson opinion issued by Division Three discussed above. Carlson v. Lake Chelan Community Hosp., 116 Wn. App. 718, 75 P.3d 533 (2003). The trial court's citation to Carlson is problematic for two reasons: (1) the opinion in Carlson is flawed because the Carlson court failed to consider prejudice or contemplate the Burnet factors, and (2) the trial court did not examine the requirement of willfulness described in Carlson.

Benson Village discussed in detail above how the Carlson court failed to follow the precedent established in Washington when considering sanctions. The failure of the court in Carlson to require substantial prejudice or to consider the Burnet factors before deciding the question of evidence exclusion renders Carlson irrelevant. Thus, the trial court's reliance upon Carlson in its order granting Loe's motion for sanctions was misplaced.

Moreover, the trial court did not make a finding of willfulness as required by the court in Carlson. While the court in Carlson excluded evidence as a sanction whereas the trial court here issued monetary sanctions, that difference is meaningless because Carlson is the case the trial court chose to cite in its order. Therefore, the trial court presumably thought that the law set forth in Carlson is the appropriate law to follow. Yet, the trial court did not follow the law outlined in Carlson, which required a finding of willfulness even in cases where a court is considering sanctions under CR 26. As a result, the order granting Loe's motion for sanctions is based on an erroneous view of the law, and the trial court thus abused its discretion.

Regardless of the trial court's mistaken reliance on Carlson, the trial court's conclusions are unsupported by fact, and a reversal

of the court's order is warranted for this reason alone. The trial court concluded that the attorney certification to the discovery responses "was not made after reasonable inquiry" and that "the initial responses were not consistent with the letter, spirit, and purpose of the rules." However, the trial court does not cite to any facts in this case that support its conclusions.

The trial court did not articulate how it reached its conclusions. The court did not describe how Benson Village's discovery responses violated the rules. The court did not express how it determined that Benson Village's explanation was insufficient. In its response to the motion for sanctions, Benson Village illustrated how the specificity of the language in the first requests for production did not trigger in Benson Village the thought that the Operations Manual or the Personal Protective Equipment information would be responsive to these requests. Later, after realizing what Loe had intended to obtain, Benson Village produced the requested documents. The trial court does not explain how Benson Village failed to make a reasonable inquiry or how the initial responses were not consistent with the spirit, letter, and purposes of the rules. Rather, the evidence shows

that Benson Village acted with reasonable justification and in good faith.

Ultimately, the trial court's order merely quotes the rules without offering a factual basis for its findings. Because the trial court failed to offer an adequate legal or factual basis for its order, the order rests on untenable grounds and is based on untenable reasons. As a result, the trial court abused its discretion. Therefore, the order should be reversed and vacated, and Loe should be ordered to return the entire award amount to Benson Village.

**E. The Trial Court Abused Its Discretion in Denying Benson Village's Motion for Reconsideration.**

The trial court abused its discretion in denying Benson Village's Motion for Reconsideration. The court had ordered Benson Village to pay Loe's attorney's fees and costs for filing the motion for sanctions and attorney's fees for attendance at arbitration. However, Loe had filed a Statement of Arbitrability several months before the discovery issues arose. Therefore, the arbitration did not occur as a result of Benson Village's alleged discovery violations; the arbitration would have occurred regardless of the discovery issues.

The court in Fisons explicitly warned against such awards to litigants because some attorneys might be tempted to use requests for sanctions for monetary gain:

Where compensation to litigants is appropriate, then sanctions should include a compensation award. However, we caution that the sanctions rules are not ‘fee shifting’ rules. Furthermore, requests for sanctions should not turn into satellite litigation or become a ‘cottage industry’ for lawyers. To avoid the appeal of sanctions motions as a profession or profitable specialty of law, we encourage trial courts to consider requiring that monetary sanctions awards be paid to a particular court fund or to court-related funds.

Wash. State Physicians Ins. Exchange & Assoc. v. Fisons Corp.,  
122 Wn.2d 299, 356, 858 P.2d 1054 (1993) (footnotes omitted).

The award of fees of \$1,500.00 for Loe’s attendance at arbitration, which would have occurred regardless of the discovery issues, does not meet the purpose of sanctions under Fisons. Rather, awarding fees and costs for attendance at arbitration over-compensated Loe in the precise ways cautioned by the Fisons court. The Fisons court clearly advised against such awards, expressing concern that motions for discovery sanctions should not be exploited by attorneys as a profitable area of law.

Because the arbitration would have occurred regardless of the discovery issue involving the manual, requiring Benson Village

to compensate Loe for fees and costs for attending the arbitration allowed Loe to profit from the collateral discovery issue. As a result, the award to Loe of fees and costs related to arbitration is based on untenable grounds and for untenable reasons, and thus the award is an abuse of discretion. Because the trial court abused its discretion in awarding \$1,500.00 to Loe for attendance at arbitration, the award should be reversed and vacated.

Moreover, the award of \$1,995.30 for fees and costs Loe incurred in filing the motion for sanctions was likewise an abuse of discretion because the motion process was abused by Loe to make money from collateral discovery disputes, which Benson Village described above, and to conduct a fishing expedition. Washington courts have expressly held that fishing expeditions are not the purpose of the discovery rules. See, e.g., Howell v. Spokane & Inland Empire Blood Bank, 117 Wn.2d 619, 818 P.2d 1056 (1991) (trial court did not abuse its discretion by refusing to allow certain discovery to prevent a fishing expedition).

At trial, the jury undoubtedly saw the manual for what it truly was—a satellite issue that was wholly unrelated to the relevant evidentiary issues in the case. Accordingly, Loe's barrage of discovery requests related to the manual (which merited no

damning evidence whatsoever) was nothing more than a mere fishing expedition. Because Washington courts warn against such fishing expeditions, the trial court's award of fees and costs incurred in filing the motion is incompatible with Washington law.

In the end, the trial court abused its discretion in granting Loe's motion for sanctions and in denying Benson Village's motion for reconsideration. In addition to the many ways in which the trial court abused its discretion discussed in the preceding section, the trial court's order rewards fishing expeditions and encourages the development of a cottage industry by attorneys who would exploit the civil discovery rules to make money on collateral discovery disputes. Therefore, the order granting sanctions rests on untenable grounds and is based on untenable reasons. As a result, Benson Village requests that the Court reverse and vacate the order granting sanctions, and order Loe to return the full sanction amount to Benson Village.

If the Court declines to order Loe to return the sanction award to Benson Village, Benson Village requests in the alternative that the Court order Loe to pay the full sanction amount to a court-related fund of the Court's choosing. This would properly address the Fisons court's concern that requests for

sanctions not develop into a cottage industry for attorneys and would be more in keeping with the spirit of the Fisons court's decision and the discovery rules.

**V. CONCLUSION**

Litigants should not be rewarded for manipulating the civil rules for monetary gain. The Fisons court cautioned courts against allowing this kind of behavior to proliferate. Yet, the trial court rewarded Loe for such improper behavior by ordering Benson Village to pay money to Loe for Benson Village's alleged discovery violation. In the end, the jury saw the manual for what it truly was—a satellite issue that did not show any wrongdoing by Benson Village, but instead underscored its professionalism and its robust compliance with the very policies set out in the manual. Benson Village respectfully requests that the Court decline to support the development of a cottage industry of motions for discovery sanctions as a profitable specialty of law.

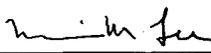
Benson Village requests that the Court deny Loe's appeal of the Order Granting Plaintiff's Motion for Sanctions. Not only did Loe fail to properly appeal the order, but also the trial court correctly determined that lesser sanctions were appropriate. The striking of an entire jury trial as punishment for a late discovery

response is completely unwarranted.

Benson Village further requests that the Court reverse and vacate the trial court's Order Granting Plaintiff's Motion for Sanctions and the Order Denying Defendants' Motion for Reconsideration of Order Granting Plaintiff's Motion for Sanctions because the monetary sanctions issued by the court were not supported by the appropriate law or the facts in this case.

RESPECTFULLY SUBMITTED this 29<sup>th</sup> day of September, 2015.

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# **APPENDIX**



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Superior Court Case Summary

About Dockets

**Court:** King Co Superior Ct  
**Case Number:** 13-2-34157-3

**About Dockets**

Sub	Docket Date	Docket Code	Docket Description	Misc Info
1	10-01-2013	COMPLAINT	Complaint	
2	10-01-2013	SET CASE SCHEDULE JDG0008	Set Case Schedule Judge Jay V. White, Dept 8	12-15-2014ST
3	10-01-2013	CASE INFORMATION COVER SHEET LOCK	Case Information Cover Sheet Original Location - Kent	
4	10-01-2013	SUMMONS	Summons	
5	10-21-2013	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
6	10-21-2013	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
7	10-21-2013	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
8	10-23-2013	NOTICE OF APPEARANCE	Notice Of Appearance /defs	
9	11-12-2013	ANSWER & AFFIRMATIVE DEFENSE	Answer & Affirmative Defense /defs	
10	11-15-2013	NOTICE OF ABSENCE/UNAVAILABILITY	Notice Of Absence/unavailability	
11	02-06-2014	ORDER FOR CHANGE OF JUDGE JDG0020	Order For Change Of Judge Judge Susan Amini, Dept 20	
12	02-25-2014	JURY DEMAND RECEIVED - TWELVE	Jury Demand Received - Twelve	250.00
13	03-11-2014	STATEMENT OF ARBITRABILITY	Statement Of Arbitrability	
14	04-03-2014	NOTICE OF APPOINTMENT AS ARBITRATOR	Notice Of Appointment As Arbitrator	
15	05-22-2014	NOTICE OF HEARING	Notice Of Hearing /mand Arbitration	08-05-2014
16	08-01-2014	NOTICE OF ABSENCE/UNAVAILABILITY	Notice Of Absence/unavailability	
17	08-19-2014	ARBITRATION AWARD	Arbitration Award	
18	08-22-2014	REQ FOR TRIAL DE NOVO & SEAL AWARD	Req For Trial De Novo & Seal Award	
19	08-22-2014	NOTICE OF TRIAL DATE JDG0020	Notice Of Trial Date Judge Susan Amini, Dept 20	12-15-2014ST
20	08-22-2014	NOTICE	Notice Re Order Setting Case Sched	
21	09-16-2014	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
22	09-18-2014	NOTICE OF ATTY CHANGE OF ADDRESS	Notice Of Atty Change Of Address	
23	11-12-2014	NOTICE OF HEARING ACTION	Notice Of Hearing Amini/mt For Sanctions/pltfs	11-21-2014

You are viewing the case docket or case summary. Each Court level uses different terminology for this information, but for all court levels, it is a list of activities or documents related to the case. District and municipal court dockets tend to include many case details, while superior court dockets limit themselves to official documents and orders related to the case.

If you are viewing a district municipal, or appellate court docket, you may be able to see future court appearances or calendar dates if there are any. Since superior courts generally calendar their caseloads on local systems, this search tool cannot display superior court calendaring information.

**Directions**

King Co Superior Ct  
 516 3rd Ave, Rm C-203  
 Seattle, WA 98104-2361  
**Map & Directions**  
 206-296-0100[Phone]  
 206-296-0986[Fax]  
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**Disclaimer**

**What is this website?** It is a search engine of cases filed in the municipal, district, superior, and appellate courts of the state of Washington. The search results can point you to the official or complete court record.

**How can I obtain the complete court record?**  
 You can contact the court in which the case was filed to view the court record or to order copies of court records.

**How can I contact the court?**  
 Click [here](#) for a court directory with information on how to contact every court in the state.

24	11-12-2014	MOTION	Motion For Sanctions/pla		<b>Can I find the outcome of a case on this website?</b> No. You must consult the local or appeals court record.
25	11-12-2014	DECLARATION	Declaration Of Megan Lou Wernli		
26	11-13-2014	NOTICE RE: EVIDENTIARY RULE	Notice Re: Evidentiary Rule		
27	11-17-2014	OBJECTION / OPPOSITION	Objection / Opposition/pla		<b>How do I verify the information contained in the search results?</b> You must consult the court record to verify all information.
28	11-19-2014	RESPONSE	Response To Pla Mt/def		
29	11-19-2014	RESPONSE	Response To Pla Mt/ Def		
30	11-20-2014	REPLY	Reply /pla		<b>Can I use the search results to find out someone's criminal record?</b> No. The Washington State Patrol (WSP) maintains state criminal history record information. Click <a href="#">here</a> to order criminal history information.
31	11-20-2014	ORD REQUIRING JOINT PRETRIAL REPORT	Ord Requiring Joint Pretrial Report		
32	11-24-2014	DEFENDANT'S LIST OF WITNESSES	Defendant's List Of Witnesses		
33	11-26-2014	PRE-TRIAL REPORT	Pre-trial Report /joint		<b>Where does the information come from?</b> Clerks at the municipal, district, superior, and appellate courts across the state enter information on the cases filed in their courts. The search engine will update approximately twenty-four hours from the time the clerks enter the information. This website is maintained by the Administrative Office of the Court for the State of Washington.
34	12-08-2014	TRIAL BRIEF	Trial Brief /pla		
35	12-08-2014	PLAINTIFF'S PROPOSED INSTRUCTIONS	Plaintiff's Proposed Instructions		
36	12-08-2014	PLAINTIFF'S PROPOSED INSTRUCTIONS	Plaintiff's Proposed Instructions		<b>Do the government agencies that provide the information for this site and maintain this site:</b>
37	12-08-2014	STATEMENT	Statement /pla		
37A	12-08-2014	NOTICE OF HEARING ACTION	Notice Of Hearing Amini/mt In Limine/pla	12-15-2014	
37B	12-08-2014	MOTION IN LIMINE	Motion In Limine /pla		<b>Guarantee that the information is accurate or complete?</b> <b>NO</b> <b>Guarantee that the information is in its most current form?</b> <b>NO</b> <b>Guarantee the identity of any person whose name appears on these pages?</b> <b>NO</b> <b>Assume any liability resulting from the release or use of the information?</b> <b>NO</b>
37C	12-08-2014	NOTE FOR MOTION DOCKET-LATE FILING	Note For Motion Docket-late Filing	12-15-2014	
37D	12-08-2014	MOTION IN LIMINE	Motion In Limine /def		
37E	12-08-2014	TRIAL BRIEF	Trial Brief /def		<b>Do the government agencies that provide the information for this site and maintain this site:</b>
37F	12-08-2014	DEFENDANT'S PROPOSED INSTRUCTIONS	Defendant's Proposed Instructions		
38	12-09-2014	JOINT STATEMENT OF EVIDENCE	Joint Statement Of Evidence		
39	12-09-2014	ORDER GRANTING MOTION/PETITION	Order Granting Motion For Sanctions		<b>Guarantee that the information is accurate or complete?</b> <b>NO</b> <b>Guarantee that the information is in its most current form?</b> <b>NO</b> <b>Guarantee the identity of any person whose name appears on these pages?</b> <b>NO</b> <b>Assume any liability resulting from the release or use of the information?</b> <b>NO</b>
40	12-10-2014	RESPONSE	Response /defs		
41	12-10-2014	RESPONSE	Response /defs		
42	12-10-2014	OBJECTION / OPPOSITION	Objection / Opposition /defs		<b>Do the government agencies that provide the information for this site and maintain this site:</b>
43	12-15-2014	RESPONSE	Response /pla		
44	12-15-2014	MOTION IN LIMINE	Motion In Limine /pla		
45	12-15-2014	ORDER ON ASSIGNMENT/REASSIGNMENT JDG0015	Order On Assignment/reassignment Judge Samuel S. Chung, Dept 15		<b>Do the government agencies that provide the information for this site and maintain this site:</b>
46	12-15-2014	AGREED ORDER	Agreed Order To Waive Adr		
46A	12-15-2014	JURY TRIAL	Jury Trial		
46B	12-16-2014	DEPOSITION OF	Deposition Of Of Tammy Franks		<b>Do the government agencies that provide the information for this site and maintain this site:</b>
46C	12-16-2014	DEPOSITION OF	Deposition Of Alena Enloe /vol 2		
46D	12-16-2014	DEPOSITION OF	Deposition Of Alena Enloe		
46E	12-16-2014	DEPOSITION OF	Deposition Of Alena Enloe /vol 1		<b>Do the government agencies that provide the information for this site and maintain this site:</b>
46F	12-16-2014	DEPOSITION OF	Deposition Of Alena Enloe /vol 1		
46H	12-16-2014	INTERROGATORIES	Interrogatories /jury Quest For Wit		
46I	12-16-2014	DEPOSITION OF	Deposition Of Corey Pledger		<b>Do the government agencies that provide the information for this site and maintain this site:</b>
46J	12-17-2014	INTERROGATORIES	Interrogatories /jury Quest For Wit		
46K	12-17-2014	DEPOSITION OF	Deposition Of Joseph Sims		

47	12-18-2014	MOTION FOR RECONSIDERATION	Motion For Reconsideration /defs	
48	12-18-2014	NOTICE OF HEARING ACTION	Notice Of Hearing Amini/mt For Reconsideration/def	12-31-2014
49	12-18-2014	MOTION FOR RECONSIDERATION	Motion For Reconsideration /defs	
49A	12-18-2014	INTERROGATORIES	Interrogatories/jury To Witness	
49B	12-18-2014	INTERROGATORIES	Interrogatories/jury To Witness	
49C	12-18-2014	INTERROGATORIES	Interrogatories/jury To Witness	
49D	12-18-2014	DEPOSITION OF	Deposition Of Nancy Loe	
49E	12-18-2014	DEPOSITION OF	Deposition Of Of St. Elmo Newton	
50	12-19-2014	EXHIBIT LIST	Exhibit List	
51	12-19-2014	WITNESS RECORD	Witness Record	
52	12-19-2014	SPECIAL VERDICT	Special Verdict	
53	12-19-2014	COURT'S INSTRUCTIONS TO JURY	Court's Instructions To Jury	
54	12-19-2014	STIP&OR RET EXHBTS UNOPNED DEPOSTNS	Stip&or Ret Exhbts Unopned Depostns	
55	12-30-2014	DECLARATION	Declaration/megan Lou Wernli	
56	12-30-2014	LETTER	Letter	
57	01-08-2015	REPLY	Reply/defendant	
58	01-09-2015	NOTICE OF APPEAL TO COURT OF APPEAL	Notice Of Appeal To Court Of Appeal	
-	01-09-2015	APPELLATE FILING FEE	Appellate Filing Fee	290.00
59	01-14-2015	NOTICE OF CROSS APPEAL	Notice Of Cross Appeal	
-	01-14-2015	FILING FEE NOT PAID	Filing Fee Not Paid	
60	01-26-2015	ORDER ON MTN FOR RECONSIDERATION	Order On Mtn For Reconsideration /denied	
61	02-02-2015	DESIGNATION OF CLERK'S PAPERS	Designation Of Clerk's Papers Pgs 1-339 72946-2-i / Dore Trans To Coa 02-24-15	
62	02-04-2015	INDEX	Index Clks Pprs Pgs 1-339	
63	02-05-2015	DESIGNATION OF CLERK'S PAPERS	Designation Of Clerk's Papers/suppl 72946-2-i / Lee Pgs 340-377 Trans To Coa 05-11-15	
64	02-20-2015	COMMENT ENTRY	Clks Pprs Pgs 1-339	
65	04-30-2015	COMMENT ENTRY	Clks Pprs Pgs 340-377	
66	04-30-2015	INDEX	Index Clks Pprs Pgs 340-377	
67	05-15-2015	DESIGNATION OF CLERK'S PAPERS	Designation Of Clerk's Papers 72946-2-i/skinner Trans To Coa 06-03-15 Pgs 378-494	
68	05-15-2015	INDEX	Index Clks Pprs Pgs 378-494	
69	05-28-2015	COMMENT ENTRY	Clks Pprs Pgs 378-494	

70	05-28-2015	SATISFACTION	Satisfaction Of Attorneys Fees
-	06-02-2015	VERBATIM RPT TRANSMITTED	Verbatim Rpt Transmitted 06/10/2015 Hrg Of 12/15/2014
-	06-02-2015	VERBATIM RPT TRANSMITTED	Verbatim Rpt Transmitted 06/10/2015 Hrg Of 12/16/2014
-	06-02-2015	VERBATIM RPT TRANSMITTED	Verbatim Rpt Transmitted 06/10/2015 Hrg Of 12/17/2014
-	06-02-2015	VERBATIM RPT TRANSMITTED	Verbatim Rpt Transmitted 06/10/2015 Hrg Of 12/17/2014
-	06-02-2015	VERBATIM RPT TRANSMITTED	Verbatim Rpt Transmitted 06/10/2015 Hrg Of 12/18/2014
-	06-02-2015	VERBATIM RPT TRANSMITTED	Verbatim Rpt Transmitted 06/10/2015 Hrg Of 12/18/2014
-	06-02-2015	VERBATIM RPT TRANSMITTED	Verbatim Rpt Transmitted 06/10/2015 Hrg Of 12/19/2014

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR THE COUNTY OF KING

NANCY LOE, an individual,  
Plaintiff,

vs.

BENSON VILLAGE ASSOCIATES, a Washington  
Corporation; CARPINITO & GOODWIN dba  
BENSON VILLAGE APARTMENTS I, a  
Washington Partnership; OLYMPIC  
MANAGEMENT COMPANY, a Washington  
Corporation; JOSEPH CARPINITO and JANE  
DOE CARPINITO, individually and as a marital  
community; and WILLIAM CARPINITO and  
JANE DOE CARPINITO, individually and as a  
marital community,  
Defendants.

Case No.: 13-2-34157-3 KNT

SATISFACTION OF ORDER  
AWARDING ATTORNEY'S FEES TO  
PLAINTIFF

Whereas the Court ordered defendants to pay attorney's fees and costs to plaintiff on  
January 23, 2015, in the amount of \$3,495.30, and the Order has been fully satisfied; now

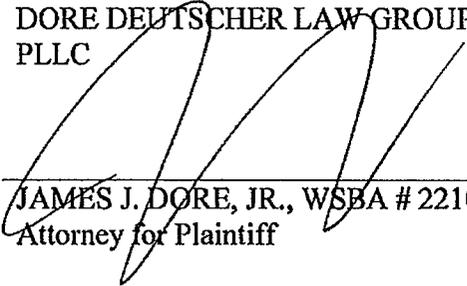
SATISFACTION OF ORDER AWARDING ATTORNEY'S FEES TO PLAINTIFF - 1

1 therefore, receipt of these funds by plaintiff in full satisfaction of the Order is hereby  
2 acknowledged.  
3

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5 DATED: May 20, 2015

DORE DEUTSCHER LAW GROUP,  
PLLC

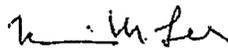
6  
7 BY:

  
8 JAMES J. DORE, JR., WSBA # 22106  
Attorney for Plaintiff

9  
10  
11 DATED: 5/20, 2015

HOLLENBECK, LANCASTER, MILLER  
& ANDREWS

12  
13 BY:

  
14 MARVIN M. LEE, WSBA # 30740  
Attorney for Defendants

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26 SATISFACTION OF ORDER AWARDING ATTORNEY'S FEES TO PLAINTIFF - 2

Hollenbeck, Lancaster, Miller & Andrews  
Mailing Address: PO Box 258829, Oklahoma City, OK 73125-8829  
Office Location: 15500 SE 30<sup>th</sup> Place, Suite 201, Bellevue, WA 98007  
Telephone (425) 644-4440  
Facsimile (425) 747-8338

Employees of the Farmers Insurance Exchange, a Member of the  
Farmers Insurance Group of Companies.

## CONFIRMATION RECEIPT

Case Number: 13-2-34157-3 KNT  
Case Title: LOE VS BENSON VILLAGE ASSOC ET AL  
Submitted By: Marvin Lee  
Bar Number: 30740  
User ID: marvinlee  
Submitted Date/Time: 5/28/2015 1:53:19 PM  
Received Date/Time: 5/28/2015 1:53:19 PM  
Total Cost: \$0.00

### DOCUMENTS

Document Type: OTHER (DO NOT FILE UNSIGNED ORDERS) RE SATISFACTION  
OF ORDER  
File Name: Sat of Order Awarding Attorney's Fees to Plaintiff - Cause #13-2-34157-  
3 KNT.pdf  
Cost: \$0.00

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Printed On: 5/28/2015 1:53:25 PM

**DECLARATION OF SERVICE**

I declare that I served the foregoing BRIEF OF  
RESPONDENTS/CROSS-APPELLANTS on the attorneys below

James Dore, Jr.  
Ann R. Deutscher  
Dore Deutscher Law Group, PLLC  
1122 West James Street  
Kent, WA 98032  
Attorney for Appellant/Cross-Respondent, NANCY LOE  
Phone: (253) 850-6411  
Fax: (253) 850-3360

By causing a full, true and correct copy thereof to be  
HAND-DELIVERED BY ABC MESSENGER SERVICE to the  
party, at the address listed above, which is the last-known address  
for the party's office, on the date set forth below;

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

Executed at Bellevue, Washington, on this 30th day of  
September, 2015.



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Kari Beeler, Paralegal