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Blankenship v. Washington Trust Bank Clerk's Record v. 1 Dckt. 38426

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TERESA R. BLANKENSHIP,

Petitioner/Respondent,

vs.

WASHINGTON TRUST BANK as trustee,

Respondent/Respondent

WILLIAM MICHAEL BOWMAN and ERIC BOWMAN,

Intervenors/Appeliants.

Appealed from the District Court of the First Judicial District of the State of Idaho in and for Bonner County

HONORABLE JOHN T. MITCHELL District Judge

JUL 2 1 2011 TODD M. REED

Source Respondent

PETER J. SMITH, IV Attorneys for Respondent/Respondent

VOLUME 3

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Order Allowing Amended Petition and Continuing Trial filed June 11, 2008 (Rec'd in Bonner Co. 06/25/2008)
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Motion to Refer Case to Mediation filed August 20, 2008
Motion to Compel Discovery filed August 26, 2008
Affidavit of Peter J. Smith in Support of Motion to Compel filed August 26, 2008
Amended Petition for Removal of Trustee, Preliminary Injunction and Complaint for Damages filed August 26, 2008
Motion for Leave to Resign filed August 26, 2008
Notice of Withdrawal of Motion to Compel filed September 3, 2008
Order Granting Motion to Refer Case to Mediation filed September 10, 2008
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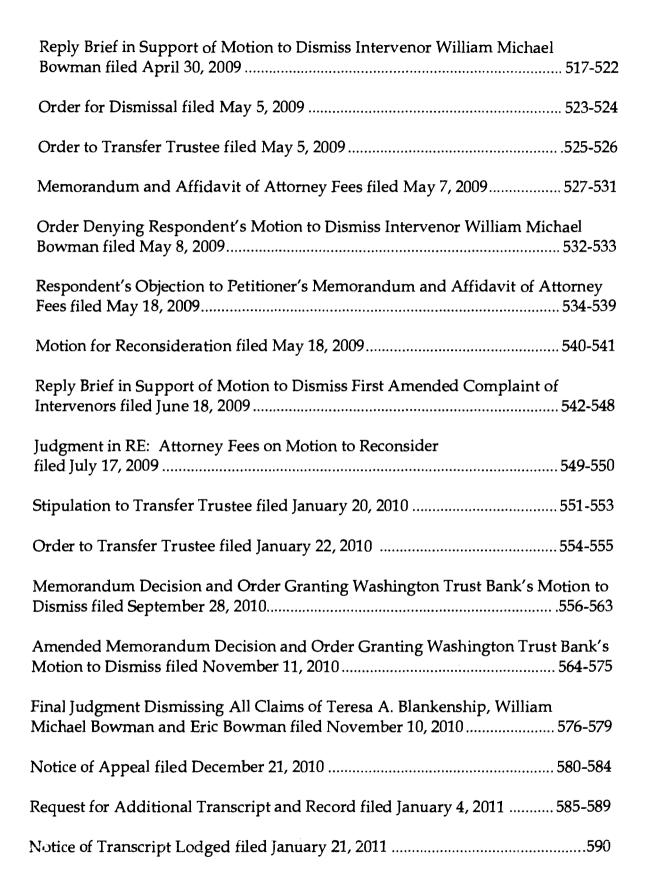
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Motion for Certification of Partial Summary Judgment Pursuant to IRCP Rule 54(b) and Motion to Continue Trial filed March 5, 2009
Order Allowing Intervention of Eric Bowman filed March 5, 2009
Motion to Change Venue of Trial filed March 6, 2009
Motion to Amend Pretrial Order filed December 12, 2007 to Allow Depositions of Intervenors filed March 6, 2009
Order Denying Petitioner's Objection to Respondent's Objection filed March 9, 2009
Order Regarding Respondent's Motion for Summary Judgment filed March 9, 2009
Order Overruling Washington Trust Bank's Objections and Denying Its Motion to Strike filed March 9, 2009
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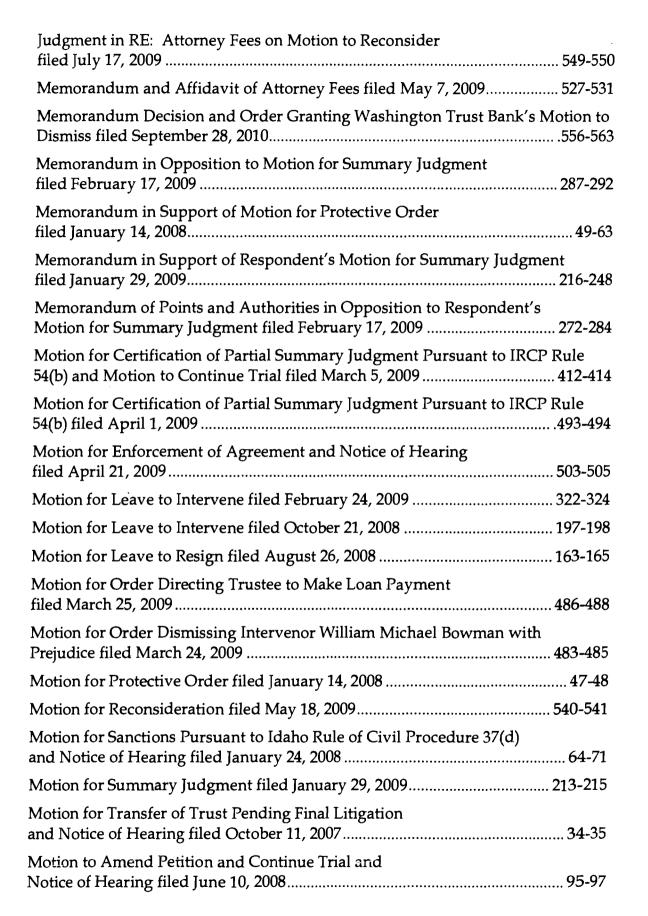




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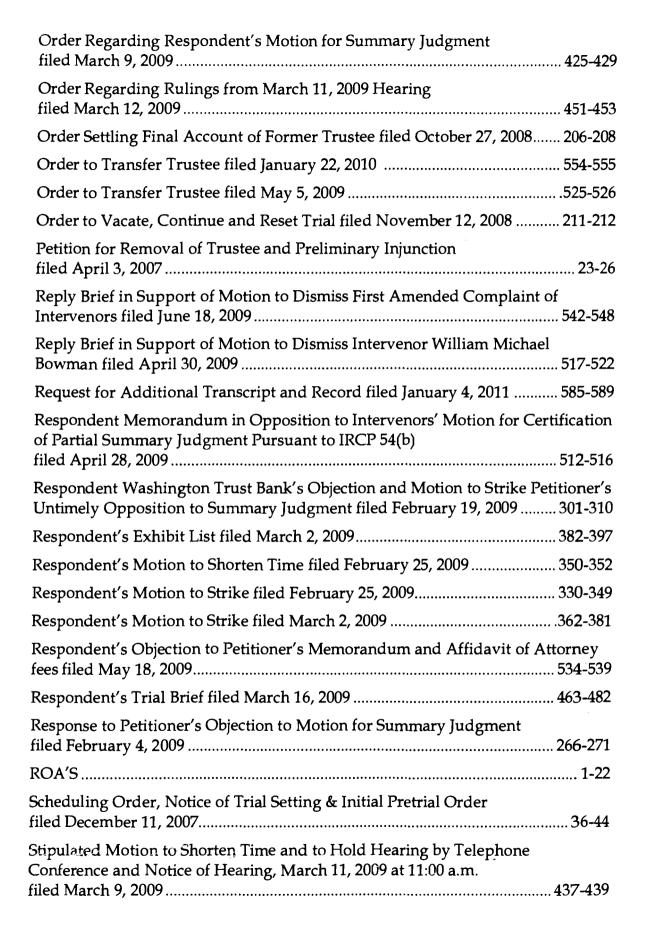


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Objection to Motion for Summary Judgment filed February 2, 2009
Objection to Motion to Dismiss Amended Complaint filed April 24, 2009
Objection to Motion to Dismiss filed April 16, 2008
Objection to Motion to Dismiss Intervenor, William Michael Bowman filed April 24, 2009
Objection to Notice of Filing Verified Account of Former Trustee under Seal filed September 25, 2008
Objection to Petitioner's Motion for Sanctions filed February 5, 2008
Objection to Transfer of Trustee Without Payment of Outstanding Liabilities filed March 25, 2009
Order Allowing Amended Petition and Continuing Trial filed June 11, 2008 (Rec'd in Bonner Co. 06/25/2008)
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POWELL & REED, P.C. Todd M. Reed, Attorney at Law 318 Pine Street P.O. Box 1005 Sandpoint, Idaho 83864 Phone: (208) 263-3529 Fax: (208) 263-4438 ISB No. 4788

STATE OF IDA HO DUNTY OF BOMME IST JUDICIAL

2239 MAR - 3 P U: 35

MARIE SCOTT CLERK DISTRICT COURT DEPUTY

Attorney for Petitioner

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

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TERESA R. BLANKENSHIP,	
Petitio	ner,
٧s๋.	
WASHINGTON TRUST BANK, as Trustee,	
Respon	ndent,

Case No.: CV 2007-00572

NOTICE OF PRETRIAL COMPLIANCE RE: WITNESSES AND EXHIBITS

COMES NOW, the Petitioner, TERESA R. BLANKENSHIP, by and through her attorney

of record, Todd M. Reed, and respectfully submits the following Pretrial Compliance Re. Witnesses and Exhibits.

It is anticipated the witnesses who may be called at time of trial are:

- 1. Teresa R. Blankenship 1404 Cedar Street Sandpoint, Idaho 83864 (208) 263-0498
- Gary Blankenship 1404 Cedar Street Sandpoint, Idaho 83864 (208) 263-0498



- Susan Kuzma C/O Lukins & Annis, P.S. 250 Northwest Blvd., Suite 102 Coeur d'Alene, Idaho 83814 (208) 667-0517
- 4. Diane Albrethsen C/O Lukins & Annis, P.S. 250 Northwest Blvd., Suite 102 Coeur d'Alene, Idaho 83814 (208) 667-0517
- 5. Bev Kee, CPA 515 Pine Street, Suite H Sandpoint, Idaho 83864 (208) 263-6305
- Ned Brandenberger
 Sandpoint Property Management
 314 North Third Avenue
 Sandpoint, Idaho 83864
 (208) 253-9233
- 7. Russ Rector 505 North Sixth Avenue Sandpoint, Idaho 83864

Further, Petitioner reserves the right to supplement this list and to call any witnesses listed by any of the parties to this matter.

EXHIBITS

List of Exhibits (See attached)

DATED this *3* day of March, 2009.

44

TODD M. REED Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on this $\underline{\mathscr{B}}$ day of March, 2009, I served a true and correct copy of the foregoing on the individuals listed below, by the following method:

Mischelle R. Fulgham Lukins & Annis, PS 250 Northwest Blvd, Suite 102 Coeur d'Alene, Idaho 83814-2971



U.S. Mail, postage prepaid Hand Delivered Overnight mail Faxed (208) 664-4125

James Theodore Diehl Attorney at Law 106 West Superior Street Sandpoint, Idaho 83864

U.S. Mail, postage prepaid Hand Delivered Overnight mail Faxed (208) 263-8983

The Honorable John T. Mitchell Kootenai County District Court Post Office Box 9000 Coeur d'Alene, Idaho 83814

U.S. Mail, postage prepaid Hand Delivered Overnight mail Faxed (208) 446-1132

aLaire Bitton

NOTICE OF PRETRIAL COMPLIANCE RE: WITNESSES AND EXHIBITS: 3

PETITIONER'S LIST OF EXHIBITS

Case: BLANKENSHIP vs. WTB Petitioner: TERESA BLANKENSHIP Bonner County Case No. CV 2007-00572

Date: March 3, 2009

Respondent: WASHINGTON TRUST BANK

Counsel for Petitioner: TODD M. REED

Counsel for Respondent:

MISCHELLE R. FULGHAM

No.	Description	Admitted by Stip.	Offered	Rec'd	Refused	Res Ru
1	Deed of Trust, Instrument No. 735775					
2	Last Will and Testament of Althea Lorraine Bowman					
3	Petitioner's Responses to First Set of Interrogatories			-		
4	Petitioner's Responses to Second Set of Interrogatories			<u> </u>		
5	Amended Kentucky Fried Chicken Lezse Dated August 31, 1994					
6	Letter dated April 1, 2003 from Jan Dalziel to Doug Edwards					
7	WTB's internal Memorandum dated April 8, 2003, re KENTUCKY FRIED CHICKEN rental increases					
8	Letter dated April 11, 2003, from Jan Dalziel to KFC tenants regarding delinquent taxes and sewer payments					
9	WTB's accounting fees for property management					
10	Appraisal					
11	Letter dated August 4, 2006 from Appraisal Associates to Jan Dalziel authorizing the Appraisal					
12	Riley Creek Contract					
13	May 2007 Owner Statement Summary provided by Sandpoint Property Mangement					
14	August 26, 2007 Owner Statement Summary provided by Sandpoint Property Mangement					
15	Avista Statements					

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16	A.L. Bowman Trust Income and Expense Reconciliation 2005				
17	Email dated May 2, 2008 from Petitioner re: Riley Creek signs				
18	Property Profit and Loss Statement for 06/25/08-07/22/08				
19	Bill for replaced "For Rent" signs				
20	Letter dated April 29, 2005 from WTB to Russ Rector outlining his responsibilities				
21	Summary of Management Fees Charged Until October 2008				
22	A.L. Bowman Trust Income and Expense Reconciliation 2006				
23	Correspondence regarding alley repair and photos			_	
24	Letter dated November 13, 2006 from Donald Steinke				
25	Letter dated September 26, 2007 from Lukins & Annis to Donald Steinke	 			
26	Email dated October 21, 2007 between Petitioner and Susan Kuzma				
27	Email dated February 20, 2007 between Petitioner and WTB	 			
28	Letter dated January 21, 2007 from Lukins & Annis			-	-+
29	Letter dated June 12, 2007 from Beneficiaries to WTB				
30	Email dated June 19, 2007 between Petitioner and Dale Schuman				
31	Letter dated June 25, 2007 from Lukins & Annis				T
32	A.L. Bowman Trust & Expense Reconciliation 2004 and Disbursement Activity				
33	Letter dated September 19, 2003 from WTB				
34	Letter dated October 24, 2002 and December 20, 2002, from WTB	 			-
55	Bowman Trust rent calculations				
36	Email dated March 14, 2007 from WTB	 	-		
37	Email dated February 19, 2007 from Petitioner to WTB	 		-	
38	Email dated April 16, 2007 from Petitioner to WTB	 			+

39	Email dated June 13, 2007 from Gary Blankenship to Rob	<u> </u>	-			
	Blume					
40	Letter dated September 19, 2005 from WTB to Donald					
	Steinke	[
41	Letter dated June 25, 2007 from Lukins & Annis to Donald				1	
	Steinke					
42	Email dated October 18, 2007 between Petitioner and Dale					
	Schuman					
43	Kentucky Fried Chicken sewer LID computations					
	·					
44	Tax Documents					
4.5						
45	Email dated March 5, 2008 between Petitioner and Susan				Í	
	Kuzma					
46	A. L. Bowman Trust Income and Expense Reconciliation					
a	2007					
47	Owner Statement Summary					
	Dated May 29, 2007					
48	Bev Kee's computations re: Kentucky Fried Chicken rent			······································	1	
	escalation					

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POWELL & REED, P.C. Todd M. Reed, Attorney at Law 318 Pine Street P.O. Box 1005 Sandpoint, Idaho 83864 Phone: (208) 263-3529 Fax: (208) 263-4438 ISB No. 4788

STATE OF IDAHO	
221017910E16118(422)	

2009 MAR -4 P 4: 25

MARIE SCOTT CLERK DISTRICT COURT	
CLEININ DIE M	,
DEPUTY	

Attorney for Petitioner

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

TERESA R. BLANKENSHIP,	·····)	
Petitioner,)	
🐑 VS.)	
WASHINGTON TRUST BANK,)	
as Trustee,)	
Respondent,)	

Case No.: CV 2007-00572

SUPPLEMENTAL NOTICE OF PRETRIAL COMPLIANCE RE: WITNESSES AND EXHIBITS

COMES NOW, the Petitioner, TERESA R. BLANKENSHIP, by and through her attorney

of record, Todd M. Reed, and respectfully submits the following Pretrial Compliance Re: Witnesses

and Exhibits.

It is anticipated the witnesses who may be called at time of trial are:

1. Teresa R. Blankenship 1404 Cedar Street Sandpoint, Idaho 83864 (208) 263-0498

Teresa R. Blankenship will testify as to all facets of the management of the trust in question by both Washington Trust Bank, as well as the prior trustee and reported damages caused by Washington Trust Bank.

Rine t



2. Gary Blankenship 1404 Cedar Street Sandpoint, Idaho 83864 (208) 263-0498

Gary Blankenship will testify as to all facets of the management of the trust in question by both Washington Trust Bank, as well as the prior trustee and reported damages caused by Washington Trust Bank.

Susan Kuzma
 C/O Lukins & Annis, P.S.
 250 Northwest Blvd., Suite 102
 Coeur d'Alene, Idaho 83814
 (208) 667-0517

Susan Kuzma will testify to all aspects of the management of the trust by her.

Diane Albrethsen
C/O Lukins & Annis, P.S.
250 Northwest Blvd., Suite 102
Coeur d'Alene, Idaho 83814
(208) 667-0517

Diane Albrethsen will testify to all aspects of the management of the trust by her.

5. Bev Kee, CPA 515 Pine Street, Suite H Sandpoint, Idaho 83864 (208) 263-6305

Bev Kee will testify as to the accounting that she has done regarding the delinquency or reduced amount in rent payments.

6. Ned Brandenberger
 Sandpoint Property Management
 314 North Third Avenue
 Sandpoint, Idaho \$3864
 (208) 263-9233

Ned Brandenberger will testify regarding the management of certain properties by him on behalf of Blankenship's a Washington Trust Bank, as well as communication between them.

7. Russ Rector 505 North Sixth Avenue Sandpoint, Idaho 83864

SUPPLEMENTAL NOTICE OF PRETRIAL COMPLIANCE RE: WITNESSES AND EXHIBITS: 2 409

Russ Rector will testify regarding the management of certain properties by him on behalf of Blankenship's a Washington Trust Bank, as well as communication between them.

Further, Petitioner reserves the right to supplement this list and to call any witnesses listed by any of the parties to this matter.

DATED this _____ day of March, 2009.

N

TODD M. REED Attorney for Petitioner

CERTIFICATE OF SERVICE

Mischelle R. Fulgham Lukins & Annis, PS 250 Northwest Blvd, Suite 102 Coeur d'Alene, Idaho 83814-2971



U.S. Mail, postage prepaid Hand Delivered Overnight mail Faxed (208) 664-4125

James Theodore Diehl Attorney at Law 106 West Superior Street Sandpoint, Idaho 83864

U.S. Mail, postage prepaid Hand Delivered Overnight mail Faxed (208) 263-8983

The Honorable John T. Mitchell Kootenai County District Court Post Office Box 9000 Coeur d'Alene, Idaho 83814



U.S. Mail, postage prepaid Hand Delivered Overnight mail Faxed (208) 446-1132

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SUPPLEMENTAL NOTICE OF PRETRIAL COMPLIANCE RE: WITNESSES AND EXHIBITS: 4

TYPE HILLS

POWELL & REED, P.C. Todd M. Reed, Attorney at Law 318 Pine Street P.O. Box 1005 Sandpoint, Idaho 83864 Phone: (208) 263-3529 Fax: (208) 263-4438 ISB No. 4788

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Attorney for Petitioner

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

TERESA R. BLANKENSHIP,)
Vs.)))
WASHINGTON TRUST BANK, as Trustee,)))
Respondent,)
_)
WILLIAM MICHAEL BOWMAN and)
ERIC BOWMAN,)
)
Intervenors,)
)
VS.)
)
WASHINGTON TRUST BANK,)
As Trustee,)
Respondent,)

Case No.: CV 2007-00572

MOTION FOR CERTIFICATION OF PARTIAL SUMMARY JUDGMENT PURSUANT TO IRCP RULE 54(b) AND MOTION TO CONTINUE TRIAL

COMES NOW, the Petitioner, TERESA R. BLANKENSHIP, by and through her attorney of record, Todd M. Reed and hereby moves for a certification of partial summary judgment, pursuant to IRCP Rule 54(b) to allow Plaintiff to appeal the partial grant of summary judgment in favor of the Defendant. Petitioner further moves that the underlying trial be vacated to allow Petitioner to appeal the District Court's decision.

By granting a Rule 54(b) motion, the litigants would avoid the potential of two (2) separate trials, if in fact the Court of Appeals/Idaho Supreme Court rules in favor of the Petitioner on their appeal of the partial summary judgment

DATED this <u>5</u> day of March, 2009.

lon TODD M. REED

Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on this 5 day of March, 2009, I served a true and correct copy of the foregoing on the individuals listed below, by the following method:

Mischelle R. Fulgham Lukins & Annis, PS 250 Northwest Blvd, Suite 102 Coeur d'Alene, Idaho 83814-2971

U.S. Mail, postage prepaid Hand Delivered Overnight mail Faxed (208) 664-4125

James Theodore Diehl Attorney at Law 106 West Superior Street Sandpoint, Idaho 83864



U.S. Mail, postage prepaid Hand Delivered Overnight mail Faxed (208) 263-8983

The Honorable John T. Mitchell Kootenai County District Court Post Office Box 9000 Coeur d'Alene, Idaho 83814



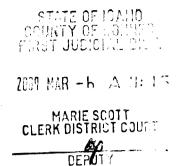
U.S. Mail, postage prepaid Hand Delivered Overnight mail Faxed (208) 446-1132

aLaire Bitton

MOTION FOR CERTIFICATION OF PARTIAL SUMMARY JUDMENT PURSUANT TO IRCP 54(b) - 3

63/W+1+	∥ ST₽	···· ·
1	J. T. DIEHL Attorney at Law	STATE OF IDALLE
2	106 W. Superior Street Sandpoint, Idaho 83864	2009 MAR - 5 A 11: 121.
3	(208) 263-8529 {SB#3526	CLERK DISTRICT COUL
5	Attorney for Petitioner Bowman	CLERK DISTRICT OF
6	IN THE DISTRICT COURT OF TH	E FIRST JUDICIAL DISTRICT OF THE
7	STATE OF IDAHO, IN AND	FOR THE COUNTY OF BONNER
8	TERESA A. BLANKENSHIP,)	Case No. CV-2007-00572
9	Petitioner)	
10	VS.)	
J. I .	washington trust bank,) as Trustee,)	ORDER ALLOWING INTERVENTION OF ERIC BOWMAN
12) Respondent.)	
13)	
14	WILLIAM MICHAEL BOWMAN and) ERIC BOWMAN;)	
· 15) Intervenors,)	
16 17) vs.)	
18) WASHINGTON TRUST BANK,) as Trustee,)	
19) Respondent)	
20)	
21	This matter having come before the co	urt on March 2, 2009, at 4:00 p.m., pursuant to a
22	Motion to Intervene filed by ERIC BOWMAN.	Attorney MISCHELLE FULGHAM, on behalf of
23	WASHINGTON TRUST BANK, was present,	as was Attorney J. T. Diehl, on behalf of ERIC
24 25	BOWMAN and WILLIAM MICHAEL BOWMA	N, as was Attorney, TODD REED on behalf of
25	Plaintiff, TERESA BLANKENSHIP. The C	ourt having received no filed objections from
27		·
28		
	ORDER ALLOWING INTERVENTION OF ERIC BOWMAN -1-	

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-	9 J F
I	attomeys MISCHELLE FULGHAM and TODD REED to the Motion to Intervene and the Court
2	being fully apprised and having heard no objection, and good cause appearing,
3	IT IS HEREBY ORDERED that ERIC BOWMAN is authorized to intervene in the
4	pending action.
5	IT IS SO ORDERED this day of March, 2009.
6	
7	JOHN T MITCHELL
9	District Court Judge
10	
11	CERTIFICATE OF DELIVERY
12	I hereby certify that a true and correct copy of the foregoing document was served this
13	5 day of March, 2009, by:
14	United States Mail Hand Delivery
15	Facsimile
16	to:
17	Mischelle R. Fulgham Peter J. Smith IV
18	LUKINS & ANNIS, P.S. 250 Northwest Blvd, Suite 102
19	Coeur d'Alene, ID 83814-2971 Fax 208-664-4125
20	
21	Todd M. Reed POWELL & REED
22	P. O. Box 1005 Sandpoint, ID 83864
23	Fax 208-263-4438 -
24	J. T. Diehl Attorney at Law
25	106 West Superior Street
26	$Fax 208-263-8983 \checkmark$
27	Bonner Co. Dist CEt
28	
9	ORDER ALLOWING INTERVENTION OF ERIC BOWMAN -2-



MISCHELLE R. FULGHAM ISB #4623 PETER J. SMITH IV ISB #6997 LUKINS & ANNIS, P.S. Ste 102 250 Northwest Blvd Coeur d'Alene, ID 83814-2971 Telephone: (208) 667-0517 Facsimile: (208) 664-4125

Attorneys for Respondent WASHINGTON TRUST BANK

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

TFRESA A. BLANKENSHIP,

Petitioner,

NO. CV-2007-00572

v.

WASHINGTON TRUST BANK, as Trustee,

Respondent.

WILLIAM MICHAEL BOWMAN and ERIC BOWMAN,

Intervenors,

v.

WASHINGTON TRUST BANK, as Trustee,

Respondent.

MOTION TO CHANGE VENUE OF TRIAL

MOTION TO CHANGE VENUE OF TRIAL: 1

(



WASHINGTON TRUST BANK, the Respondent in the above-entitled action, moves the court, under the provisions of Rule 40(e)(1)(C), I.R.C.P., for an order granting a change of venue, on the ground that, as shown in the attached affidavit, the convenience of witnesses and the ends of justice will be served by the change, since the Judge's chambers are located in Kootenai County and the location is more central for many witnesses who are traveling from Spokane, Washington, Lewiston, Idaho, Rathdrum, Idaho, and Tri-Cities, Washington.

Information and knowledge of the above grounds for a change of venue first came to defendant on March 4, 2009 when it learned another trial also scheduled for March 16, 2009 has been dismissed, and this present action is the only case remaining set for trial on March 16, 2008. This motion is made as soon thereafter as Respondent could investigate the information acquired.

This motion is made and based on the affidavit of Mischelle R. Fulgham, served and filed with this motion, and on all the pleadings, papers, records, and files in this action.

DATED this 5th day of March, 2009.

LUKINS & ANNIS, P.S.

LER.F

ISB #4623 Attorneys for Respondent WASHINGTON TRUST BANK

MOTION TO CHANGE VENUE OF TRIAL: 2

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5th day of March, 2009, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to all counsel of record as follows:

Todd M. Reed Powell & Reed, P.C. 318 Pine Street Post Office Box 1005 Sandpoint, Idaho 83864-1339 Attorney for Teresa R. Blankenship, Petitioner

Ted Diehl, Attorney at Law 106 W. Superior Sandpoint, Idaho 83864

Honorable John Mitchell Kootenai County Courthouse Post Office Box 9000

Coeur d'Alene, Idaho 83816

- U.S. Mail
- Hand Delivered
 - Overnight Mail
- N Telecopy (FAX) to (208) 263-4438
- U.S. Mail Hand Delivered Overnight Mail X Telecopy (FAX) to (208) 263-8983 U.S. Mail Hand Delivered Overnight Mail K Telecopy (FAX) (208) 446-3132

MOTION TO CHANGE VENUE OF TRIAL: 3





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MARIE SCOTT CLERK DISTRICT COURT DEN

MISCHELLE R. FULGHAM ISB #4623 PETER J. SMITH IV ISB #6997 LUKINS & ANNIS, P.S. Ste 102 250 Northwest Blvd Coeur d'Alene, ID 83814-2971 Telephone: (208) 667-0517 Facsimile: (208) 664-4125

Attorneys for Respondent WASHINGTON TRUST BANK

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

TERESA A. BLANKENSHIP,

Petitioner,

NO. CV-2007-00572

v.

WASHINGTON TRUST BANK, as Trustee,

Respondent.

WILLIAM MICHAEL BOWMAN and ERIC BOWMAN,

Intervenors,

v.

WASHINGTON TRUST BANK, as Trustee,

Respondent.

MOTION TO AMEND PRETRIAL ORDER FILED DECEMBER 12, 2007 TO ALLOW DEPOSITIONS OF INTERVENORS.

MOTION TO AMEND PRETRIAL ORDER FILED DECEMBER 12, 2007 TO ALLOW DEPOSITIONS OF **INTERVENORS: 1**

K:\W\WASHING081400\BOWMAN00756\PLDG\MOTION TO AMEND PRETRIAL ORDER-030509-PJS-DOCX 3/5/09





Respondent, WASHINGTON TRUST BANK hereby moves the Court pursuant to Idaho Rules of Civil Procedure 1, 7(b)(3) and 16(b) for an order amending the Pretrial Order entered on December 11, 2007 to allow Respondent to take the depositions of Intervenors during the week of March 9, 2009. This motion is based on the fact that Respondent did not know what Intervenor WILLIAM MICHAEL BOWMAN's claims were until he filed his Complaint on February 17, 2009, and ERIC BOWMAN was only allowed to intervene in this case on March 2, 2009. He still has not filed his complaint.

Counsel for Intervenor, William Michael Bowman has refused to consent to his client's deposition saying the Court's Pretrial Order has cut off depositions.

Additionally, counsel for Intervenor, Eric Bowman has refused to provide any dates despise repeated requests from Respondent's attorney. Time is running out as the trial starts March 16, 2009.

Respondent requests the Court extend its pretrial deadline for depositions as to these Intervenors only and order that their depositions occur during the week of March 9, or in the alternative, Respondent requests that this Court issue an Order barring Intervenors from testifying at trial.

DATED this 5th day of March, 2009.

LUKINS & ANNIS, P.S.

ISB #4623 Attorneys for Respondent WASHINGTON TRUST BANK

MOTION TO AMEND PRETRIAL ORDER FILED DECEMBER 12, 2007 TO ALLOW DEPOSITIONS OF INTERVENORS: 2

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5th day of March, 2009, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to all counsel of record as follows:

Todd M. Reed Powell & Reed, P.C. 318 Pine Street Post Office Box 1005 Sandpoint, Idaho 83864-1339 Attorney for Teresa R. Blankenship, Petitioner	U.S. Mail Hand Delivered Overnight Mail Telecopy (FAX) to (208) 263-4438
Ted Diehl, Attorney at Law 106 W. Superior Sandpoint, Idaho 83864	U.S. Mail Hand Delivered Overnight Mail Telecopy (FAX) to (208) 263-8983
Honorable John Mitchell Kootenai County Courthouse Post Office Box 9000 Coeur d'Alene, Idaho 83816	U.S. Mail Hand Delivered Overnight Mail Telecopy (FAX) (208) 446-1132
	0

E FULGHAM

MOTION TO AMEND PRETRIAL ORDER FILED DECEMBER 12, 2007 TO ALLOW DEPOSITIONS OF **INTERVENORS: 3**

STATE OF IDALIC JUNTY OF BOLD JUDICU

MAR - 9 A 9 20

MARIE SCOTT CLERK DISTRICT COURT

MISCHELLE R. FULGHAM. ISB #4623 PETER J. SMITH IV. ISB #6997 LUKINS & ANNIS. P.S. 250 Northwest Blvd., Suite 102 Coeur d'Alene, ID 83814-2971 Telephone: (208) 667-0517 Facsimile No.: (208) 664-4125

Attomeys for Respondent

03/09/08

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

TERESA R. BLANKENSHIP,

v.

Petitioner,

WASHINGTON TRUST BANK, as trustee,

Respondent. |

NO. CV-2007-00572

ORDER DENYING PETITIONER'S OBJECTION TO RESPONDENT'S OBJECTION

THIS MATTER came on for hearing on March 2, 2009, on Petitioner's Objection to Respondent's Objection to Strike Petitioner's Summary Judgment Response. The Court reviewed the parties' submissions and the record and files herein, heard counsels' arguments, and the Court being fully advised in the premises,

IT IS HEREBY ORDERED Petitioner's Objection to Respondent's Objection to Strike Petitioner's Summary Judgment Response is DENIED.

DATED this 34 day of March, 2009.

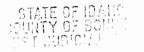
JOHN T. MITCHELL, DISTRICT JUDGE

ORDER DENYING PETITIONER'S OBJECTION TO RESPONDENT'S OBJECTION: 1

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Mar. 9. 2009 8:49AM FRIEDLANDER 0705/09 THU 16:55 FAX 509 747 2323	HAYR	YNES MITCHELL STOW No.7055 P. 9 3 LUKINS & ANNIS
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	. •	
CLERK'S CE	RTI	IFICATE OF SERVICE
I HEREBY CERTIFY that on th	9	day of March, 2009, I caused to be served a true thod indicated below, and addressed to all counsel
Mischelle R. Fulgham Peter J. Smith IV 250 Northwest Blvd., Suite 102 Coeur d'Alene, Idaho 83814 Attorneys for Respondent, Washington	Trust	U.S. Mail Hand Delivered Overnight Mail Telecopy (FAX) to (208) 664-4125 st Bank
Todd M. Reed Powell & Reed, P.C. 318 Pine Street Post Office Box 1005 Sandpoint, Idaho 83864-1339 Attorney for Teresa R. Blankenship, Peti	itione	U.S. Mail Hand Delivered Overnight Mail Telecopy (FAX) to (208) 263-4438
Ted Diehl, Attorney at Law 106 W. Superior Sandpoint, Idaho 83864 Attorney for William Michael Bowman a Bowman, Intervenors Bonner Co Dist C. 1	and E	 □ U.S. Mail □ Hand Delivered □ Overnight Mail Eric □ Telecopy (FAX) to (208)-263-8983
Donner (o pist (.t.		Frence Clauser
• •	C	CLERK OF THE COURT
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9.		
ORDER DENYING PETTTIONER'S OBJ	ECTI	TION TO
RESPONDENT'S OBJECTION: 2		424

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MARIE SCOTT CLERK DISTRICT COUR
DEPRY

MISCHELLE R. FULGHAM ISB #4623 PETER J. SMITH IV ISB #6997 LUKINS & ANNIS. P.S. Ste 102 250 Northwest Blvd Coeur d'Alene. ID 83814-2971 Telephone: (208) 667-0517 Facsimile: (208) 664-4125

0 7

Attorneys for Respondent WASHINGTON TRUST BANK

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

NO. CV-2007-00572

ORDER REGARDING RESPONDENT'S

MOTION FOR SUMMARY JUDGMENT

TERESA R. BLANKENSHIP,

Petitioner,

_ _ _ _ _

γ.

WASHINGTON TRUST BANK, as Trustee,

Respondent.

WILLIAM MICHAEL BOWMAN and ERIC BOWMAN,

Intervenors.

v.

WASHINGTON TRUST BANK, as Trustee,

Respondent.

ORDER REGARDING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT: 1 425

KINAWASHTNERBIARAWAANAAASKIPI DEIMERMET OPDED ABAAADDIS DIS DOOTY SISKA

Respondent, WASHINGTON TRUST BANK, moved the Court for an Order granting summary judgment holding that, under the undisputed facts of this case, Respondent is entitled to judgment as a matter of law.

This matter having come before the above-entitled Court, and the Respondent, appearing by and through its attorneys of record, Mischelle R. Fulgham and Peter J. Smith IV, and the Petitioner, TERESA R. BLANKENSHIP, appearing through her attorney, Todd M. Recd, and Intervenors, WILLIAM MICHAEL BOWMAN and ERIC BOWMAN, appearing through their attorney Ted Diehl.

In its Motion, Respondent asked this Court:

1. To dismiss Petitioner's and Intervenors' request for an order for removal of WTB as Trustee because it voluntarily resigned as Trustee;

2. To dismiss Petitioner's and Intervenors' request for a preliminary injunction prohibiting WTB from selling real property held by the children's trusts because it is no longer the Trustee;

3. To dismiss Petitioner's and Intervenors' claim of damages purportedly caused by the advance of funds to Ryan Bowman's Trust and recording of a Deed of Trust against the undivided ¼ interest in the real property held by Ryan Bowman's Trust because she lacks standing to bring such a claim;

4. To dismiss Petitioner's and Intervenors' claim of damages purportedly caused by the advance of funds to Ryan Bowman's Trust and recording of a Deed of Trust against the undivided ¼ interest in the real property held by Ryan Bowman's Trust because such action is authorized by the Last Will and Testament and Idaho law;

ORDER REGARDING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT: 2

No.7055 P. 5 3 2005

5. To dismiss Petitioner's and Intervenors' claim of damages based upon WTB's purported negligent operation of the Trusts; and

6. To dismiss Intervenor WILLIAM MICHAEL BOWMAN from this action for failure to file a pleading as required by Rule 24(c) of the Idaho Rules of Civil Procedure.

The Court, having reviewed all of the briefing and affidavits filed by all parties, hereby finds that:

1. Petitioner's and Intervenors' request for an order for removal of WTB as Trustee is moot;

2. Petitioner's and Intervenors' request for a preliminary injunction prohibiting WTB as Trustee from selling real property held by the children's trusts is moot;

3. Respondent was authorized by the Last Will and Testament and idaho law to advance funds to Ryan Bowman's Trust and to record a Deed of Trust against the undivided ¼ interest in the real property held by Ryan Bowman's Trust;

4. A material question of fact remains as to whether WTB was negligent in the operation of the Trusts;

5. A material question of fact remains as to whether Petitioner and Intervenor have standing to assert negligence claims for damages; and,

6. Intervenor WILLIAM MICHAEL BOWMAN should not be dismissed from this action for failure to file a pleading as required by Rule 24(c) of the Idaho Rules of Civil Procedure.

IT IS HEREBY ORDERED that:

1. WTB's first request for summary judgment is hereby granted and Petitioner's and Intervenors' request for an order for removal of WTB as Trustee <u>is dismissed</u>;

ORDER REGARDING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT: 3

No.7055 Р. 6 3 😰 оов ()))

2. WIB's second request for summary judgment is hereby granted and Petitioner's and Intervenors' request for a preliminary injunction prohibiting WTB, acting as Trustee, from selling real property held by the children's trusts is dismissed;

3. WTB's third request for summary judgment is denied as genuine issues of material fact exist as to whether Petitioner and Intervenor lack standing to claim negligence damages for the advance of funds to Ryan Bowman's Trust and recording of a Deed of Trust against the undivided ¼ interest in the real property held by Ryan Bowman's Trust <u>is not</u> <u>dismissed</u>.

4. WTB's fourth request for summary judgment is hereby granted and Petitioner's and Intervenors' claims of damages purportedly caused by the advance of funds to Ryan Bowman's Trust and the recording of a Deed of Trust against the undivided ¼ interest in the real property held by Ryan Bowman's Turst <u>is dismissed</u> because such action is authorized by the Last Will and Testament and Idaho law.

5. WTB's fifth request for summary judgment is hereby denied and Petitioner's and Intervenors' claim of damages based upon WTB's purported negligent operation of the Trusts is not dismissed.

WTB's sixth request for summary judgment is hereby denied and Intervenor
 WILLIAM MICHAEL BOWMAN is not dismissed.

ORDER REGARDING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT: 4

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No.7055 P. 7 ³ 2007

This Sh day of March, 2009.

JOHN **AITCHELL** DISTRICT JUDGE

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the _____ day of March, 2009, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to all counsel of record as follows:

Mischelle R. Fulgham Peter J. Smith IV 250 Northwest Blvd., Suite 102 Coeur d'Alene, Idaho 83814 Attorneys for Respondent. Washington Trust Bank	U.S. Mail Hand Delivered Overnight Mail Telecopy (FAX) to (208) 664-4125
Todd M. Reed Powell & Reed, P.C. 318 Pine Street Post Office Box 1005 Sandpoint, Idaho 83864-1339 Attorney for Teresa R. Blankenship, Petitioner	U.S. Mail Hand Delivered Overnight Mail Telecopy (FAX) to (208) 263-4438
Ted Diehl, Attorney at Law 106 W. Superior Sandpoint, Idaho 83864 Attorney for William Michael Bowman and Eric Bowman, Intervenors	U.S. Mail Hand Delivered Overnight Mail Telecopy (FAX) to (208)-263-8983
Bonner Co. Dist Crt	\wedge

win CLERK OF THE COURT

ORDER REGARDING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT: 5

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STATE OF IDAHO TOUNTY OF SOULT AT JUDICIAL

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MARIE SCOTT CLERK DISTRICT COURT

MISCHELLE R. FULGHAM, ISB #4623 PETER J. SMITH IV, ISB #6997 LUKINS & ANNIS, P.S. 250 Northwest Blvd., Suite 102 Coeur d'Alene, ID 83814-2971 Telephone: (208) 667-0517 Facsimile No.: (208) 664-4125

Attorneys for Respondent

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

TERESA R. BLANKENSHIP,

v

Petitioner,

NO. CV-2007-00572

WASHINGTON TRUST BANK, as trustee, Respondent. ORDER OVERRULING WASHINGTON TRUST BANK'S OBJECTION AND DENYING ITS MOTION TO STRIKE

THIS MATTER came on for hearing on March 2, 2009, on Respondent Washington Trust Bank's Objection and Motion to Strike Petitioner's Untimely Filing of Opposition to Motion to Summary Judgment. The Court reviewed the parties' submissions and the record and files herein, heard counsels' arguments, and the Court being fully advised in the premises,

IT IS HEREBY ORDERED Respondent Washington Trust Bank's Objection is overruled and its Motion to Strike Petitioner's Untimely Filing of Opposition to Motion to Summary Judgment is DENIED.

DATED this 34 day of March, 2009.

JOHN T. MITCHELL. DISTRICT JUDGE

ORDER OVERRULING WASHINGTON TRUST BANK'S OBJECTION AND DENYING ITS MOTION TO STRIKE: 1 430 Mar. 3. 2009 8:48AM FRIEDLANDER HAYNES MITCHELL STOW 03/05/09 THU 16:55 FAX 508 747 2323 LUNIO

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the \underline{j} day of March, 2009, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to all counsel of record as follows:

Mischelle R. Fulgham Peter J. Smith IV 250 Northwest Blvd., Suite 102 Coeur d'Alene, Idaho 83814 Attornevs for Respondent, Washington Trust Ban	L L L L L L L L L L L L L L L L L L L	U.S. Mail Hand Delivered Overnight Mail Telecopy (FAX) to (208) 664-4125
Todd M. Reed Powell & Reed, P.C. 318 Pine Street Post Office Box 1005 Sandpoint, Idaho 83864-1339 Attorney for Teresa R. Blankenship, Petitioner		U.S. Mail Hand Delivered Overnight Mail Telecopy (FAX) to (208) 263-4438
Ted Diehl, Attorney at Law 106 W. Superior Sandpoint, Idaho 83864 Attorney for William Michael Bowman and Eric Bowman, Intervenors		U.S. Mail Hand Delivered Overnight Mail Telecopy (FAX) to (208)-263-8983
Bonner Co. Dist Cel	LK OF TH	CALL Clauser

ORDER OVERRULING WASHINGTON TRUST BANK'S OBJECTION AND DENYING ITS MOTION TO STRIKE: 2 431

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	1 2 3 4 5 6 7 8 9		HE FIRST JUDICIAL DISTRICT OF THE FOR THE COUNTY OF BONNER		
	10	Petitioner,) OBJECTION TO AMENDING		
	11	vs.) PRETRIAL ORDER		
	12	WASHINGTON TRUST BANK, as Trustee,			
*	13	Respondent.)		
প্রমায় - প , ,	15 16	WILLIAM MICHAEL BOWMAN and ERIC BOWMAN,)))		
	17	Intervenors,			
	18	VS.			
	19 20	WASHINGTON TRUST BANK, as Trustee,) 		
	21) Respondent.)			
	22	COMES NOW, Intervenors, WILLIAM MICHAEL BOWMAN and ERIC BO\WMAN, by a			
	23	through their attorney, J. T. DIEHL, and hereby object to Respondent's Motion to Amend Pretrial			
	24	Order. The allegation by Respondents in their motion is that they were unaware of what claims			
	25 26	were to be filed by WILLIAM MICHAEL BOWMAN until the Complaint was filed on February			
	26	17, 2009. In point of fact, the claims were se	et forth in the Affidavit in support of the Motion for		
	28				
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		OBJECTION TO AMENDING PRETRIAL OR	UEK -1- 、		

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1 2 3 4 5 6 7 8	Intervention by WILLIAM MICHAEL BOWMAN filed on October 23, 2008. The actual Order for Intervention was entered on November 12, 2008. At any time subsequent to entry of the Order allowing intervention, Respondents could have deposed WILLIAM MICHAEL BOWMAN which they failed to do. Now, with trial less than a week away, Respondents are now asking to depose WILLIAM MICHAEL BOWMAN. It is unreasonable, under the circumstances, to require Intervenor to appear for deposition days before trial.
9	WHEREFORE, the undersigned hereby requests the Court deny Respondent's motion.
10	Respectfully submitted this \mathcal{I}_{a} day of March, 2009.
11	A T
12	Letter.
13	J. T. DIEHL Attorney for Intervenors
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21 22	
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	OBJECTION TO AMENDING PRETRIAL ORDER -2- 433

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	1	
	2	CERTIFICATE OF DELIVERY
	3 4	μ I hereby certify that a true and correct copy of the foregoing document was served this day of March, 2009, by:
	5	United States Mail Hand Delivery
	6	to:
	7 8	Mischelle R. Fulgham Peter J. Smith IV LUKINS & ANNIS, P.S.
	9 10	250 Northwest Blvd, Suite 102 Coeur d'Alene, ID 83814-2971 Fax 208-664-4125
	11	Todd M. Reed POWELL & REED
	12	P. O. Box 1005 Sandpoint, ID 83864
	13	Fax 208-263-4438
		Honorable John T. Mitchell District Court Judge
•	15 16	Kootenai County Courthouse P. O. Box 9000
	17	Coeur d'Alene, ID 83816 Fax 208-446-1132
	18	Allan Ander
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		OBJECTION TO AMENDING PRETRIAL ORDER -3-
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POWELL & REED, P.C. Todd M Reed, Attorney at Law 318 Pine Street P.O. Box 1005 Sandpoint, Idaho 83864 Phone: (208) 263-3529 Fax: (208) 263-4438 ISB No. 4788

STATE OF IDAHO COUNTY OF BONNER AST JOEN TIAL DISTRICT

2009 MAR -9 P 4: 42

SCOTT

TRICT COURT

Attorney for Petitioner

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

TERESA R. BLANKENSHIP, Petitioner, vs. WASHINGTON TRUST BANK, as Trustee, Respondent,

Case No.: CV 2007-00572

OBJECTION TO MOTION FOR CHANGE OF VENUE

COMES NOW, the Petitioner, TERESA R. BLANKENSHIP, by and through her attorney of record, Todd M. Reed and hereby joins J. T. Diehl's Objection to Motion for Change of Venue.

DATED this $\begin{array}{c} C \\ \end{array}$ day of March, 2009.

TODD[®]M. REED Attorney for Petitioner

CERTIFICATE OF SERVICE

ł

I hereby certify that on this day of March, 2009, I served a true and correct copy of the foregoing on the individuals listed below, by the following method:

Mischelle R. Fulgham Lukins & Annis, PS 250 Northwest Blvd, Suite 102 Coeur d'Alene, Idaho 83814-2971



U.S. Mail, postage prepaid Hand Delivered Overnight mail Faxed (208) 664-4125

James Theodore Diehl Attorney at Law 106 West Superior Street Sandpoint, Idaho 83864

U.S. Mail, postage prepaid Hand Delivered Overnight mail Faxed (208) 263-8983

The Honorable John T. Mitchell Kootenai County District Court Post Office Box 9000 Coeur d'Alene, Idaho 83814



U.S. Mail, postage prepaid Hand Delivered Overnight mail Faxed (208) 446-1132

JaLaire Bitton

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LUKINS & ANNIS, CDA.

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		STATE OF IDAHO COUNTY OF BOID TOT JUDICIAL
1	J. T. DIEHL	2009 MAR - 9 D L: 19
2	Attorney at Law 106 W. Superior Street	MARIE SCOTT
3	Sandpoint, Idaho 83864 (208) 263-8529	CLERK DISTRICT COUR
4	ISB #3526	DEPUTY
5	Attomey for Intervenors	
6		
7	IN THE DISTRICT COURT OF TH	E FIRST JUDICIAL DISTRICT OF THE
8		FOR THE COUNTY OF BONNER
9	TERESA A. BLANKENSHIP,)	Case No. CV-2007-00572
10	Petitioner,)	STIPULATED MOTION TO SHORTEN TIME AND
11	vs.)	TO HOLD HEARING BY TELEPHONE CONFERENCE
12	WASHINGTON TRUST BANK,) as Trustee,)	AND NOTICE OF HEARING
13) Respondent.)	March 11, 2009 at 11:00 a.m.
24		
15 16	WILLIAM MICHAEL BOWMAN and) ERIC BOWMAN,)	
17	Intervenors,)	
18	vs.)	
19	WASHINGTON TRUST BANK,	
20	as Trustee,)	
21	Respondent)	
22	COMES NOW, the Petitioner, TERES	A BLANKENSHIP, by and through her attorney,
23	TODD M. REED; the Intervenors, WILLIAM N	ICHAEL BOWMAN and ERIC BOWMAN, by and
24	through their attorney. J. T. DIEHL: and the Re	espondent, WASHINGTON TRUST BANK, by and
25	-	AM, and hereby stipulate and move the Court to
26	- ,	on for Certification of Partial Summary Judgment
27	and the sure balles is debaug we many	
28	STIPULATED MOTION TO SHORTEN TIME HOLD HEARING BY TELEPHONE CONFER NOTICE OF HEARING -1-	

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LUKINS & ANNIS, CDA.

Q003/003

03/05/2009 18:11 2082638983 PAGE 03/03 1 Pursuant to I.R.C.P. Rule 54(b) and motion to vacate trial. The basis for this stipulated motion 2 Is there is insufficient time before the trial scheduled for March 16, 2009, to properly notice up this 3 hearing. 4 Petitioner/Intervenors/Respondent further stipulate that the heading on the above 5 referenced motions be held by telephone conference at 11:00 o'clock a.m. on March 11, 2009, 6 which telephone conference shall be coordinated by the laws offices of J. T. Diehl. 7 Respectfully submitted this _____ day of March, 2009. 8 9 10 TODD M. REED J. T. DIEHL 11 Attomey for Petitioner Attomey for Intervenors 12 ISB 6997 13 MISCHELLE R. FULGHAM far 14 Attomoy for Respondent 15 16 CERTIFICATE OF DELIVERY 17 18 I hereby certify that a true and correct copy of the foregoing document was served this 9 day of March, 2009, by: 19 United States Mail 20 Hand Delivery Facsimile 21 to: 22 Honorable John T. Mitchell District Court Judge 23 Kootenai County Courthouse P. O. Box 9000 24 Coeur d'Alene, ID 83816 25 Fax 208-448-1132 the I hade 26 27 28 STIPULATED MOTION TO SHORTEN TIME AND TO HOLD HEARING BY TELEPHONE CONFERENCE : NOTICE OF HEARING -2-

03/09/2009 09:15 208267 78 POWELL & REED PAGE 02/02 03/05/2009 18:10 20826-3983 PAGE R ীৰ 1 Pursuant to I.R.C.P. Rule 54(b) and motion to vacate trial. The basis for this stipulated motion 2 is there is insufficient time before the trial scheduled for March 16, 2009, to properly notice up this 3 hearing. 4 Petitioner/Intervenors/Respondent further stipulate that the hearing on the above 5 referenced motions be held by telephone conference at 11:00 o'clock a.m. on March 11, 2009. б which telephone conference shall be coordinated by the laws offices of J. T. Diehl. 7 Respectfully submitted this _____ day of March, 2009. 8 9 10 TODD M. REED IFHI 11 Attorney for Petitioner Attomey for intervenors 12 13 MISCHELLE R. FULGHAM 14 Attorney for Respondent 15 16 17 CERTIFICATE OF DELIVERY 18 I hereby certify that a true and corract copy of the foregoing document was served this day of March, 2009, by: 19 United States Mail 20 Hand Delivery -Facsimile 21 to 22 Honorable John T. Mitchell District Court Judge 23 Kootenai County Courthouse 24 P. O. Box 9000 Coeur d'Alene, ID 83816 25 Fax 208-448-1132 en LAL 25 27 28 STIPULATED MOTION TO SHORTEN TIME AND TO HOLD HEARING BY TELEPHONE CONFERENCE ; NOTICE OF HEARING -2-

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PETER J. SMITH IV ISB #6997 LUKINS & ANNIS, P.S. Ste 102 250 Northwest Blvd Coeur d'Alene, ID 83814-2971 Telephone: (208) 667-0517 Facsimile: (208) 664-4125

Attomevs for Respondent WASHINGTON TRUST BANK

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

TERESA A. BLANKENSHIP,

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WASHINGTON TRUST BANK, as Trustee,

Respondent.

WILLIAM MICHAEL BOWMAN and ERIC BOWMAN,

Intervenors,

v.

ν.

WASHINGTON TRUST BANK, as Trustee,

Respondent.

NO. CV-2007-00572

STIPULATION ON SUBMISSION OF TRIAL BRIEFS

IT IS HEREBY STIPULATED by and between the parties hereto through their

STIPULATION ON SUBMISSION OF TRIAL BRIEFS:

1

u⊻.ju u ∠:

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respective attorneys to delay the filing and exchanging of the Trial Briefs and Proposed Findings of Fact and Conclusions of Law until Thursday, March 12, 2009. This delay will allow the various motions, including a motion to continue the trial, to be heard on Wednesday, March 11, 2009 prior to serving of the above referenced documents.

DATED this 9^{+1} day of March, 2008.

LUKINS & ANNIS, P.S.

By

PETER J. SMITH IV, ISB #6997 Attorneys for Respondent

DATED this _____ day of March, 2008.

POWELL & REED, P.C.

By

TODD M. REED, ISB #4788 Attorneys for Petitioner

DATED this _____ day of March, 2008.

By_

J.T. DIEHL, ISB #3526 Attorneys for Intervenors

STIPULATION ON SUBMISSION OF TRIAL BRIEFS: 2

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POWELL & REED

LUNING & ANNU, CMM.

respective attorneys to delay the filing and exchanging of the Trial Briefs and Proposed.

March 11, 2009 prior to serving of the above referenced documents.

Findings of Fact and Conclusions of Law until Thursday, March 12, 2009. This delay will

allow the various motions, including a motion to continue the trial, to be heard on Wednesday,

PAGE 82/92

03/09/2009 13:48 FAI 208 664 4125

DATED this 9th day of March, 2008. LUKINS & ANNIS, P.S. By PETER J. SMITH IV, ISB #6997 Attorneys for Respondent DATED this _____ day of March, 2008. POWELL & REED, P.C. P TODD MAREED, ISB #4788 Attorneys for Petitioner DATED this day of March, 2008. By J.T. DUEHL, ISB #3526 Attomeys for Intervenora STIPULATION ON SUBMISSION OF TRIAL BRIEFS: 2 K-WWASHINGON 1400-BOWMANDO 156 PLDGASTEULATION REGARDING TRIAL BRIEFS-010909-PIS-PIS-DOCK 19809 442



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LURINS & ANNIS. CDA.

PAGE

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Findings of Fact and Conclusions of Law until Thursday, March 12, 2009. This delay will

allow the various motions, including a motion to continue the trial, to be heard on Wednesday,

March 11, 2009 prior to serving of the above referenced documents.

DATED this _____ day of March, 2008.

LUKINS & ANNIS, P.S.

Bv

PETER J. SMITH IV, ISB #6997 Attorneys for Respondent

DATED this _____ day of March, 2008.

POWELL & REED, P.C.

By___

TODD M. REED, ISB #4788 Attomeys for Petitioner

DATED this day of March, 2008.

DIEHL, ISB #3526 Attorneys for Intervenors

STIPULATION ON SUBMISSION OF TRIAL BRIEFS: 2

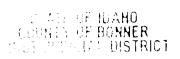
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 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 	STATE OF IDAHO, IN AND TERESA A. BLANKENSHIP, Petitioner, vs. WASHINGTON TRUST BANK, as Trustee, Respondent. WILLIAM MICHAEL BOWMAN and ERIC BOWMAN, Intervenors, vs. WASHINGTON TRUST BANK, as Trustee, Respondent.	Case No. CV-2007-00572 OBJECTION TO MOTION FOR CHANGE OF VENUE
28	OBJECTION TO MOTION FOR CHANGE OF 4	- VENUE -1- 4 4

1 same consideration as given to witnesses not occupying such relationship. See Stephen v. 2 Hoffman, 86 Idaho 304, 386 P.2d 56 (1963). All but one of the witnesses listed by Respondent 3 are employees and; therefore, should not be given the same consideration as the non-party 4 witnesses. This objection is further supported by the Affidavit of J. T. DIEHL filed herewith. 5 Respectfully submitted this \mathcal{A} day of March, 2009. 6 7 8 NEHI Т 9 Attorney for Intervenors 10 CERTIFICATE OF DELIVERY 11 I hereby certify that a true and correct copy of the foregoing document was served this 12 day of March, 2009, by: 13 **United States Mail** Hand Delivery 14 Facsimile 15 to: 16 Mischelle R. Fulgham Peter J. Smith IV 17 LUKINS & ANNIS, P.S. 250 Northwest Blvd, Suite 102 18 Coeur d'Alene, ID 83814-2971 Fax 208-664-4125 19 Toud M. Reed 20 **POWELL & REED** P. O. Box 1005 21 Sandpoint, ID 83864 Fax 208-263-4438 22 23 Honorable John T. Mitchell **District Court Judge** 24 Kootenai County Courthouse P. O. Box 9000 25 Coeur d'Alene, ID 83816 Dan L Ander Fax 208-446-1132 26 27 28 **OBJECTION TO MOTION FOR CHANGE OF VENUE -2-**

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MISCHELLE R. FULGHAM ISB #4623 PETER J. SMITH IV ISB #6997 LUKINS & ANNIS, P.S. Ste 102 250 Northwest Blvd Coeur d'Alene, ID 83814-2971 Telephone: (208) 667-0517 Facsimile: (208) 664-4125

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Attomevs for Respondent WASHINGTON TRUST BANK

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

LUMINO & ANNIO, UMA

TERESA A. BLANKENSHIP,

Petitioner,

NO. CV-2007-00572

V.

WASHINGTON TRUST BANK, as Trustee,

Respondent.

WILLIAM MICHAEL BOWMAN and ERIC BOWMAN,

Intervenors,

v.

WASHINGTON TRUST BANK, as Trustee,

Respondent.

OBJECTION TO ENTRY OF A FINAL JUDGMENT UNDER I.R.C.P. 54(b)

OBJECTION TO ENTRY OF A FINAL JUDGMENT UNDER I.R.C.P. 54(b): 1

K/W/WASHING081400/BOWMAN00756/PLDG/OBJECTION TO RULE 54(B) CERT-031009-PJS-PJS.DOCX 3/11/09

Respondent WASHINGTON TRUST BANK objects to Petitioner's Motion for

Certification of Partial Summary Judgment Pursuant to Rule I.R.C.P. 54(b) and Motion to

Continue Trial.

Idaho Rule of Civil Procedure 54(b) provides the standard to be applied when the Court is considering whether to grant a Rule 54(b) Certificate of Final Judgment. It states, in relevant

part:

When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third party claim, or when multiple parties are involved, the court may direct the entry of a final judgment upon one or more but less than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of the judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates less than all the claims or the rights and liabilities of less than all the parties shall not terminate the actions as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties. If any parties to an action are entitled to judgments against each other such as on a claim and counterclaim, or upon cross-claims, such judgments shall be offset against each other and a single judgment for the difference between the entitlements shall be entered in favor of the party entitled to the larger judgment.

The decision to grant or deny a 54(b) certificate rests in the sound discretion of the trial

judge who is best able to evaluate the situation. Brinkmeyer v. Brinkmeyer, 135 Idaho 596,

599, 21 P.3d 918, 921 (2001). An order granting partial summary judgment may be certified as

a final order pursuant to Rule 54(b), if the order resolves one or more of the claims between

some or all of the parties. Toney v. Coeur D'Alene Sch. Dist. No. 271, 117 Idaho 785, 786, 792

P.2d 350, 351 (1990).

OBJECTION TO ENTRY OF A FINAL JUDGMENT UNDER I.R.C.P. 54(b): 2 However, the Idaho Supreme Court has cautioned that I.R.C.P. 54(b) certification should not be granted routinely, or as a matter of course; it should be reserved only for "the infrequent harsh case." Kolln v. Saint Luke's Regional Medical Center, 130 Idaho 323, 328, 940 P.2d 1142, 1147 (1997) (quoting Pichon v. L.J. Broekemeier, Inc., 99 Idaho 598, 602, 586 P.2d 1042, 1046 (1978)) (additional citations omitted). The party requesting certification must show that it will suffer some hardship or injustice, or provide some other compelling reason why the certification should be granted. Kolln, 130 Idaho at 328, 940 P.2d at 1147. Further, mere delay is not a hardship in and of itself, because I.R.C.P. 54(b) contemplates that there will normally be a delay in cases involving multiple parties and motions. Id.

In granting a 54(b) certificate the trial judge should determine whether the interests of justice served by an immediate appeal would outweigh the policy against piecemeal appeals. Bishop v. Capital Financial Services, 109 Idaho 866, 868, 712 P.2d 567, 569 (1985) citing Pichon v. L.J. Broekemeier, 99 Idaho 598, 586 P.2d 1042 (1978).

In this case, a rule 54(b) certificate should not be issued. Petitioner has failed to show that she will suffer some hardship or injustice if the rule 54(b) certificate is not entered or provide some other compelling reason why the certification should be granted.

Petitioner claims the entry of the rule 54(b) certificate would "avoid the potential of two (2) separate trials, if in fact the Court of Appeals/Idaho Supreme Court rules in favor of the Petitioner on their [sic] appeal of the partial summary judgment." However, the opposite is true. If an appeal is allowed to go forward immediately, there may be another appeal by

OBJECTION TO ENTRY OF A FINAL JUDGMENT UNDER I.R.C.P. 54(b): 3 Petitioner, Intervenors or Respondent after the trial is held. The interests of justice and judicial economy are best served by this case moving on to trial. After trial, the parties can appeal the final decision of this Court <u>in its entirety</u>. In this case, the interests of justice that would be served by an immediate appeal are not outweighed by the policy against piecemeal

appeals.

As to Petitioner's Motion to Continue the trial, it appears it is made contingent upon her motion for a rule 54(b) certificate. Notwithstanding, Respondent objects to any continuance of the trial.

DATED this 10th day of March, 2009.

LUKINS & ANNIS, P.S.

By

MI\$CHELLE R. FULGHAM ISB #4623 Attorneys for Respondent WASHINGTON TRUST BANK

OBJECTION TO ENTRY OF A FINAL JUDGMENT UNDER I.R.C.P. 54(b): 4

K:\W\WASHING081400\BOWMAN00756\PLDG\OBJECTION TO RULE 54(B) CERT-031009-PJS-PJS.DOCX 3/11/09

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 11th day of March, 2009, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to all counsel of record as follows:

Todd M. Reed Powell & Reed, P.C. 318 Pine Street Post Office Box 1005 Sandpoint, Idaho 83864-1339 Attorney for Teresa R. Blankenship, Petitio	ner	U.S. Mail Hand Delivered Overnight Mail Telecopy (FAX) to (208) 263-4438
Ted Diehl, Attorney at Law 106 W. Superior Sandpoint, Idaho 83864		U.S. Mail Hand Delivered Overnight Mail Telecopy (FAX) to (208) 263-8983
Honorable John Mitchell Kootenai County Courthouse Post Office Box 9000 Coeur d'Alene, Idaho 83816		U.S. Mail Hand Delivered Overnight Mail Telecopy (FAX) (208) 446-11.32
	MISCHELLE R	U R - R

OBJECTION TO ENTRY OF A FINAL JUDGMENT UNDER I.R.C.P. 54(b): 5

STATE OF DAME

2009 MAR 12 A 11: 15

MARIE SCOTT CLERK DISTRICT COUR ap---

MISCHELLE R. FULGHAM ISB #4623 PETER J. SMITH IV ISB #6997 LUKINS & ANNIS. P.S. Ste 102 250 Northwest Blvd Coeur d'Alene. ID 83814-2971 Telephone: (208) 667-0517 Facsimile: (208) 664-4125

Attornevs for Respondent WASHINGTON TRUST BANK

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

TERESA A. BLANKENSHIP,

Petitioner,

٧.

WASHINGTON TRUST BANK, as Trustee,

Respondent.

WILLIAM MICHAEL BOWMAN and ERIC BOWMAN,

Intervenors,

v.

WASHINGTON TRUST BANK, as Trustee,

Respondent.

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NO. CV-2007-00572

ORDER REGARDING RULINGS FROM MARCH 11, 2009 HEARING

ORDER REGARDING RULINGS FROM

MARCH 11, 2009 HEARING: 1 K-WWWASHINGOS14000BOWMAN007569FLOGVORDERS: ORDER DENYING MOTION FOR CHANGE OF VENUE-031109-KMS-KMS.DOCX

On March 11, 2009, Respondent's Motion to Shorten Time to Hear Motion to Change Venue of Trial; Respondent's Motion to Shorten Time to Hear Motion to Amend Pretrial Order filed December 12, 2007; Respondent's to Motion to Change Venue of Trial; Respondent's Motion to Allow Depositions of Intervenors; and Petitioner's Motion for Entry of a Final Judgment Under I.R.C.P. 54(b) came on for hearing.

The Court reviewed the parties' submissions and the record and files herein, heard counsels' arguments, and the Court being fully advised in the premises,

- IT IS HEREBY ORDERED:
- 1) Respondent Washington Trust Bank's Motions to Shorten Time are GRANTED.
- 2) Respondent Washington Trust Bank's Motion to Change Venue of Trial is DENIED.
- 3) Respondent Washington Trust Bank's Motion to Amend Pretrial Order is DENIED because no amendment is necessary or required.
- 4) Respondent Washington Trust Bank's Motion to depose Intervenors or in the A weekij for Trust Bank representative, bar their testimony at trial is GRANTED. Eric Bowman and William Michael Bowman are hereby ordered to report for depositions on March 12, 2009 at 9:30 a.m. and 1:30 p.m., or in the alternative, they are precluded from testifying at the trial of this matter and may risk having their claims dismissed.
- 5) Petitioner, Teresa Blankenship's Motion for Entry of Final Judgment Under I.R.C.P. 54(b) is DENIED.

ORDER REGARDING RULINGS FROM

MARCH 11, 2009 HEARING: 2 K:WWWASHING081400'BO WMAN00756PLDGVORDERS/ORDER DENYING MOTION FOR CHANGE OF VENUE-031109-KMS-KMS-DOCX

day of Formery, 2009. DATED this

JØHN ATTCHELL DISTR JUDGE

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the $\frac{12}{12}$ day of March, 2009, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to all counsel of record as follows:

Mischelle R. Fulgham Peter J. Smith IV 250 Northwest Blvd., Suite 102 Coeur d'Alene, Idaho 83814 Attorneys for Respondent. Washington Trust Bank	U.S. Mail Hand Delivered Overnight Mail Telecopy (FAX) to (208) 664-4325
Todd M. Reed Powell & Reed, P.C. 318 Pine Street Post Office Box 1005 Sandpoint, Idaho 83864-1339 Attorney for Teresa R. Blankenship, Petitioner	U.S. Mail Hand Delivered Overnight Mail Telecopy (FAX) to (208) 263-4438
Ted Diehl, Attorney at Law 106 W. Superior Sandpoint, Idaho 83864 Attorney for William Michael Bowman and Eric Bowman, Intervenors	U.S. Mail Hand Delivered Overnight Mail Telecopy (FAX) to (208)-263-8983
Bonner County Courthouse Clerk of the District Court 215 South 1 st Avenue Sandpoint, Idaho 83864	U.S. Mail Hand Delivered Overnight Mail Telecopy (FAX) to (208)-265-1447
	\wedge

ORDER REGARDING RULINGS FROM

MARCH 11, 2009 HEARING: 3 K://W/Washing081400/BOWMAN00756/FLDG/ORDERS/ORDER DENYING MOTION FOR CHANGE OF VENUE-031109-KMS-KMS.DOCX

1	S. F. DIETIE		
2	106 W. Superior Street	STATE OF IDANC TONTY OF BOLLER TOTOLOGIA	
3	Sandpoint, Idaho 83864 (208) 263-8529		
4	ISB#3526	2209 Mar 12 A 9 CP	
5	Attorney for Intervenors Bowman	HARIE SCOTT CLERK DISTRICT COULT HE FIRST JUDICIAL DISTRICT OF THE	
6	IN THE DISTRICT COURT OF TH STATE OF IDAHO, IN AND	HE FIRST JUDICIAL DISTRICT OF THE	
7	TERESA R. BLANKENSHIP,)	
8) Petitioner	Case No. CV-2007-00572	
10) VS.)		
11) WASHINGTON TRUST BANK,) as Trustee,)	FIRST AMENDED COMPLAINT OF INTERVENOR(S)	
12) Respondent.)		
13))		
14	WILLIAM MICHAEL BOWMAN,) ERIC BOWMAN)		
15	Intervenors,)		
16	vs.)		
17 18	WASHINGTON TRUST BANK,		
19	Respondent.		
20	COMES NOW, Intervenors, WILLIAM	MICHAEL BOWMAN and ERIC BOWMAN, by and	
21	 ຫາວugh their attorney, J. T. DIEHL, and havin	ng received no response to the Original Complaint	
22	pursuant to Rule 15(a) hereby submits its F	irst Amended Complaint against WASHINGTON	
23 24	TRUST BANK, saying and alleging as follows		
25		Ι.	
26	Intervenors are two of the four separat	e beneficiaries of a Trust created by their mother,	
27	ALTHEA BOWMAN, which shall be referred to herein as the "Children's Trust".		
28			
	COMPLAINT OF INTERVENOR -1- 4	5 4	

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1	Π.
2	Intervenor WILLIAM MICHAEL BOWMAN is a resident of Bonner County, Idaho, and
3	Intervenor ERIC BOWMAN is a resident of Kootenai County, Idaho, and the majority of the corpus
4	of the Children's Trust consists of real property which is also located in Bonner County.
5	III.
6 7	Respondent, WASHINGTON TRUST BANK, has administered the Children's Trust from
, 8	its office located in Coeur d'Alene, Kootenai County, Idaho, and currently from its Spokane,
9	Washington, office.
10	IV.
11	On or about December, 2006, and/or January, 2007, Respondent, through its then
12	attorney, JAMES BLACK, notified the beneficiaries that the bank intended to sell some or all of
13	the commercial real property that was providing income to the Children's Trust.
14	V.
15,	The beneficiaries were unanimously opposed to the sale of the real property. Based upon
16	Respondent's stated intent to sell the real property, as well as other deficiencies in operating the
17	trust, the beneficiaries requested that Respondent resign as trustee.
18	VI.
19 20	Despite the demand, Respondent refused to withdraw as trustee and continued to pursue
20	the ultimate sale of real property.
22	VII.
23	As a result of Respondent's refusal to resign, TERESA BLANKENSHIP, one of the
24	beneficiaries of the Children's Trust, with the approval of Intervenor, filed a Petition for Removal
25	of Trustee and sought a preliminary injunction preventing the sale of the real property which
26	Petition was filed on April 3, 2007. The Petition also sought damages for negligent operation of
27	the Trust and breach of fiduciary duty.
28	
	COMPLAINT OF INTERVENOR -2-
	455

1	VIII.
2	Respondent refused to resign as trustee, despite the request by beneficiaries, which
3	refusal has resulted in the beneficiaries incurring attorney's fees and costs which should be
4	recoverable pursuant to Idaho Code §12-120(3) in an amount to be proven at time of trial.
5	IX.
6 7	In addition to WASHINGTON TRUST BANK refusing to resign, and subsequent to the
, 8	filing of the Petition for Removal, Respondent breached its fiduciary duties of good faith and fair
9	dealing by executing a self-serving promissory note on behalf of RYAN BOWMAN in the original
10	amount of \$147,559.24 and secured said promissory note by executing a self-serving deed of
11	trust against the real property belonging to the ALTHEA BOWMAN TRUST.
12	~ X .
13	Not only was the action taken by Respondent imprudent, it represents a breach of fiduciary
14	duty to place a lien on trust assets for the benefit of a single beneficiary without the express
15	written consent and approval of all other beneficiaries.
16	XI.
17	Intervenors, as beneficiaries of the Trust, are entitled to a preliminary injunction preventing
18	sale of the real property and are also entitled to an order quieting title to the real property
19	encumbered by the deed of trust.
20 21	XII.
22	Intervenor has had to employ counsel to ensure that the real property assets were not sold
23	and is now having to incur additional fees and costs for the removal of the encumbrance of the
24	deed of trust.
25	XIII.
26	For approximately, twelve months following the recordation of the deed of trust, the
27	beneficiaries continued to demand that Respondent resign as trustee. Intervenors continued to
28	incur attorney's fees and costs which should be recoverable pursuant to Idaho Code §12-120.
	COMPLAINT OF INTERVENOR -3- 456

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	1	XIV.
	2	It was not until October 23, 2008, that an order was entered appointing BEVERLY KEE
	3	as trustee.
	4	WHEREFORE, INTERVENOR prays for relief as follows:
	5	1. For an order for preliminary/permanent injunction preventing WASHINGTON
	6	TRUST BANK from selling or encumbering Trust real property;
	7 8	2. For an Order quieting title against the lien of the Deed of Trust;
	9	3. For attorney's fees and costs; and
	10	4. For such other and further relief as the Court deems just and proper.
	11	Respectfully submitted this <u>1</u> day of March, 2009.
	12	A. M
	13	J. T. DIEHL
	14	Attorney for Intervenor
	15	
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		COMPLAINT OF INTERVENOR -4-
		457

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	1	
	2	CERTIFICATE OF DELIVERY
	3	I hereby certify that a true and correct copy of the foregoing document was served this
	4	12 day of February, 2009, by:
	- 5	United States Mail Hand Delivery
	6	Facsimile
	7	to:
	8 9	Mischelle R. Fulgham Peter J. Smith IV
	10	LUKINS & ANNIS, P.S. 250 Northwest Blvd, Suite 102
	11	Coeur d'Alene, ID 83814-2971 Fax 208-664-4125
	12	Todd M. Reed
	13	POWELL & REED P. O. Box 1005
	14	Sandpoint, ID 83864 Fax 208-263-4438
	15	Honorable John T. Mitchell
	16	Kootenai County Courthouse P. O. Box 9000
	17	Coeur d'Alene, ID 83816 Fax 208-446-1132
	18	Jan C. Miden
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		COMPLAINT OF INTERVENOR -5- 458
		A U U

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POWELL & REED, P.C. Todd M. Reed, Attorney at Law 318 Pine Street P.O. Box 1005 Sandpoint, Idaho 83864 Phone: (208) 263-3529 Fax: (208) 263-4438 ISB No. 4788

STATE OF IDAHO County of Bonner **S**5 DISTR TCOLID Deputy

Attorney for Petitioner

ų F.

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

TERESA R. BLANKENSHIP:		
Petitioner,		
VS.		
WASHINGTON TRUST BANK, as Trustee, Respondent.		

Case No.: CV 2007-00572

MOTION TO STTRIKE RESPONDENT'S DEFENSES: <u>OR</u> MOTION TO STRIKE EXPERT TESTIMONY OF SUE COOK <u>OR</u> MOTION TO CONTINUE TRIAL AND NOTICE OF HEARING

COMES NOW, the Petitioner TERESA BLANKENSHIP, by and through her attorney of record, Todd M. Reed, and hereby moves the court for various <u>alternative</u> remedies.

This motion is based upon the 'Affidavit submitted by Todd M. Reed, as well as the Pretrial Order of the Court.

Petitioner hereby moves for the Court to strike Washington Trust Bank's, pursuant to the Court's ruling on the record on March 11, 2009. In that ruling, the Court stated that if the Intervenor and/or the Respondent did not make a witness available for deposition then the Court would strike the Intervenor's cause of action or the Respondent's defenses. Under the circumstances that have transpired since that ruling, it is clear that Washington Trust Bank chose not to make Sue Cook available for testimony.

MOTION TO STRIKE RESPONDENT'S DEFENSES <u>OR</u> MOTION TO STRIKE EXPERT TESTIMONY OF SUE COOK <u>OR</u> MOTION TO CONTINUE TRIAL AND NOTICE OF HEARING- 1

In the alternative, Petitioner, by and through her attorney of record, Todd M. Reed, hereby moves this Court to strike and not permit the testimony in the above-referenced trial of Sue Cook, expert witness for Washington Trust Bank. The actions of submitting Sue Cook's information at approximately 4:59 p.m. on Friday, March 13, 2009, is a clear violation of the Court Order and at a time that there was no conceivable way that the Petitioner could depose said witness, the witness should not be allowed to testify. There is no good cause that could possible be shown on why at literally the last minute of the work day before trial this information should be faxed to the Petitioner. Petitioner is substantially prejudiced by this situation.

In the alternative, if this Court chooses not to strike Respondent Washington Trust Bank's defenses and chooses not to strike the testimony of Sue Cook, the Petitioner hereby requests that the Court continue this trial for approximately ninety (90) days to allow the deposition of Sue Cook to take place and for the Petitioner to make arrangements for a rebuttal expert, after her actual testimony is known through deposition, to be acquired and have that individual available for Court.

DATED this 16 day of March, 2009.

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Attorney for Petitioner

MOTION TO STRIKE RESPONDENT'S DEFENSES <u>OR</u> MOTION TO STRIKE EXPERT TESTIMONY OF SUE COOK <u>OR</u> MOTION TO CONTINUE TRIAL AND NOTICE OF HEARING- 2

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NOTICE OF HEARING

Notice is hereby given that the Petitioner, TERESA BLANKENSHIP, by and through her attorney of record, Todd M. Reed, will call on for hearing the foregoing Motions before the Honorable John T. Mitchell, Magistrate Judge of the above Court, on the 16th day of March, 2008, at the hour of 9:00 a.m., or as soon thereafter as it may be heard at the Courthouse in Sandpoint, Idaho, at which time Petitioner will provide oral argument and testimony.

DATED this 4 day of March, 2009.

TODD M. REED

Attorney for Petitioner



CERTIFICATE OF SERVICE

I hereby certify that on this $\underline{1}$ day of March, 2009, I served a true and correct copy of the foregoing on the individuals listed below, by the following method:

Mischelle R. Fulgham Lukins & Annis, PS 250 Northwest Blvd, Suite 102 Coeur d'Alene, Idaho 83814-2971



U.S. Mail, postage prepaid Hand Delivered Overnight mail Faxed (208) 664-4125

James Theodore Diehl Attorney at Law 106 West Superior Street Sandpoint, Idaho 83864

U.S. Mail, postage prepaid Hand Delivered Overnight mail Faxed (208) 263-8983

The Honorable John T. Mitchell Kootenai County District Court Post Office Box 9000 Coeur d'Alene, Idaho 83814



U.S. Mail, postage prepaid Hand Delivered Overnight mail Faxed (208) 446-1132

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MOTION TO STRIKE RESPONDENT'S DEFENSES <u>OR</u> MOTION TO STRIKE EXPERT TESTIMONY OF SUE COOK <u>OR</u> MOTION TO CONTINUE TRIAL AND NOTICE OF HEARING- 4

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MISCHELLE R. FULGHAM ISB #4623 PETER J. SMITH IV ISB #6997 LUKINS & ANNIS, P.S. Ste 102 250 Northwest Blvd Coeur d'Alene, ID 83814-2971 Telephone: (208) 667-0517 Facsimile: (208) 664-4125

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Attorneys for Respondent WASHINGTON TRUST BANK

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

G	TERESA A. BLANKENSHIP,	
4	Petitioner,	NO. CV-2007-00572
	v .	RESPONDENT'S TRIAL BRIEF
	WASHINGTON TRUST BANK, as Trustee,	
	Respondent.	
	WILLIAM MICHAEL BOWMAN,	
	Intervenor,	
	v.	
	WASHINGTON TRUST BANK, as Trustee,	
	Respondent.	

Respondent WASHINGTON TRUST BANK ("WTB") submits this Trial Brief.

I. <u>INTRODUCTION</u>

There are two relevant pleadings that set forth the causes of action that must be tried in this case: the Petitioner TERESA R. BLANKENSHIP's Amended Petition and Intervenor WILLIAM MICHAEL BOWMAN's Complaint (hereinafter referred to as the "Petition" and the "Amended Complaint", respectively).

The Petition seeks the following relief:

1. That WTB be removed as Trustee;

2. That a Permanent Injunction issue, prohibiting the sale of real property within the Trust: and

For damages in an amount to be determined at the time of trial for WTB's
 breach of the duty of loyalty by negligently administering the trust and encumbering trust
 property for its own benefit.

The Amended Complaint of Intervenors WILLIAM MICHAEL BOWMAN and ERIC BOWMAN seeks the following relief:

1. For an order for preliminary/permanent injunction preventing WTB from selling or encumbering Trust real property;

2. For an Order quieting title against the lien of the Deed of Trust.

On Respondent's Motion for Summary Judgment, this Court ruled that Petitioner's demand for removal of WTB as Trustee and request for an injunction prohibiting the sale of real property by the Trustee were both moot. The Court also ruled that WTB did not violate the

terms of the Last Will and Testament or Idaho Law in advancing money to Ryan Bowman's Trust and securing the advance with a Deed of Trust encumbering Ryan Bowman's Trust asset. The ruling on Summary Judgment resolved all of Intervenors' claims, and all but the claim of negligent administration of the trust of the Petitioner.

The Court denied WTB's request for summary judgment on whether WTB breached the duty of loyalty in its negligent administration of the trust and encumbering Ryan Bowman's trust property. The Court also denied WTB's request to dismiss Petitioner and Intervenors claims because they lacked standing to assert claims related to Ryan Bowman's Trust.

II. <u>ISSUES TO BE RESOLVED AT TRIAL</u>

1. Whether Petitioner and Intervenors have standing to assert a claims related to the administration of Ryan Bowman's Trust.

2. Whether WTB negligently administered the Trusts of Petitioner and Intervenors.

III. PROPOSED FINDINGS OF FACTS AND CONCLUSIONS OF LAW

1. On October 9, 1998, Althea Lorraine Bowman executed her Last Will and Testament.

2. At the time, Althea Lorraine Bowman was a widow and she had four (4) living children: William Michael Bowman (Intervenor), Eric Lane Bowman (Intervenor), Ryan Arthur Bowman, and Teresa Renee Bowman Blankenship (Petitioner).

RESPONDENT'S TRIAL BRIEF: 3

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3. Among other things, the Last Will and Testament directed the creation of a Trust for each of Althea Lorraine Bowman's children upon her death.

4. The residuary of Althea Lorraine Bowman's estate became the corpus of the Trust.

5. After the death of Althea Lorraine Bowman, the Trust estate was divided into four (4) equal shares; one share for each surviving child was placed into their individual Trust.

6. The Last Will and Testament expressly directed how each Trust was to be managed and distributed.

7. During the term of each Trust, the Trustee was directed pay to each child all of the current net income of the child's trust.

8. Whenever the Trustee determined that the net income of any child from all sources known to the Trustee was not sufficient for his or her support, health, maintenance, and education, the Trustee was to pay to the child or use for his or her benefit so much of the principal of the child's trust as the Trustee determined to be reasonable for those purposes.

9. When any child reached the age of sixty (60) years, the Trustee was to distribute to the child the balance of his or her trust.

10. The Last Will and Testament imposed and granted certain powers and duties to the Trustee, expressly and specifically including the power of the Trustee to borrow money to be repaid from trust assets and to advance money for the protection of the trust.

11. The duties, powers and rights imposed and granted by the Last Will and Testament were additional to those imposed by and granted by law, which under Idaho law, such powers and rights expressly and specifically included the power of the Trustee to borrow money and to encumber, mortgage, or pledge a trust asset.

12. Petitioner is a beneficiary of one of the four (4) children's trusts created by the Last Will and Testament of Althea Lorraine Bowman.

13. Intervenors are beneficiaries of two of the four (4) children's trusts created by the Last Will and Testament of Althea Lorraine Bowman.

14. WTB was a successor Trustee appointed by the Trust, and took over as Trustee in late 2002.

15. WTB originally employed R&L Property Management to manage the real property.

16. In 2005, R&L Property Management was terminated.

17. Thereafter, WTB managed the property itself.

18. In April of 2007, WTB hired Sandpoint Property Management to managed the property.

19. During its time as Trustee, WTB charged a reasonable fee fee for trust administration.

20. WTB paid R&L Property Management and Sandpoint Property for their services.



21. WTB also paid Russ Rector to perform repair and maintenance on the property.

22. When WTB took over administration of this Trust, the tenant of the KFC property was paying \$4,470.00 per month in rent.

23. The rent was set by the prior trustee.

24. Upon review of the lease, WTB determined that the rent had not been increased pursuant to the terms of the lease.

25. WTB began increasing the rent pursuant to the terms of the lease agreement, but did not attempt to collect rent back rent or reset the rent from the erroneous amount set by the prior trustee.

26. WTB relied upon legal counsel in interpreting the lease agreement for the KFC property.

27. The Last Will and Testament of Althea Lorraine Bowman provides "complete acquittance" to the Trustee when it relies upon legal counsel.

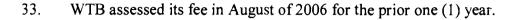
28. WTB was not negligent in administering the Trusts of Petitioner and Intervenors.

29. WTB is required to have an appraisal of all trust property performed every three years.

30. WTB's decision to have an appraisal performed is not negligent.

31. Any fees incurred in performing the appraisal were proper.

32. In August of 2006, WTB determined that had not collected its fee.



34. WTB's fee for administration of the trust was proper.

IV. ARGUMENT

A. <u>Petitioner and Intervenors lack standing to assert any claims related to</u> <u>Ryan Bowman's Trust.</u>

"It is a fundamental tenet of American jurisprudence that a person wishing to invoke a court's jurisdiction must have standing."¹ "The doctrine of standing focuses on the party seeking relief and not on the issues the party wishes to have adjudicated."² In order to satisfy the requirement of standing, Petitioner and Intervenors must "allege or demonstrate an injury in fact and a substantial likelihood that the judicial relief requested will prevent or redress the claimed injury."³

The Last Will and Testament clearly creates one trust for each of the children. The language of the Last Will and Testament divides the principal and interest income into four equal shares, which are administered by one trustee. Article IV, Section A of the Trust states:

The trust estate shall be divided into equal shares, one share for each of my surviving children and one share for each deceased child of mine with surviving descendents. Each share shall be disposed of as provided below in this Article [IV].

Each of the beneficiaries is only entitled to distribution of his or her "share."

Article IV, Section C(2) provides "the Trustee shall pay to the child or use for his or her

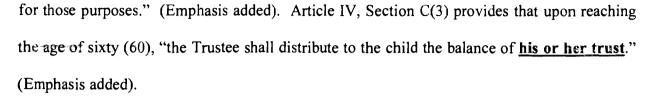
benefit so much of the principal of the child's trust as the Trustee determines to be reasonable

¹ Van Valkenburgh v. Citizens for Term Limits, 135 Idaho 121, 125, 15 P.3d 1129, 1132 (2000).

² Miles v. Idaho Power, Inc., 116 Idaho 635, 641, 778 P.2d 757, 763 (1989).

³ Id.





This language makes it clear that each beneficiary is only entitled to his or her "separate share" held in his or her trust. Because her "share" is held in a separate trust, Petitioner and Intervenors have not nor will they be directly harmed by the advance made to Ryan Bowman's Trust and secured by the interest in real property held by his Trust. Therefore, Petitioner and Intervenors do not have standing to challenge WTB's actions as they relate to Ryan Bowman's Trust.

B. <u>The evidence will show that WTB was not negligent in the operation of the Trusts.</u>

On March 12, 2009, Intervenors dropped their claims of negligence against WTB. Therefore, only Petitioner asserts that she is entitled to damages for WTB's "negligent operation of trust." Petitioner's argument is that WTB "has not operated the real property in a manner in which to maximize the return of profits to benefit the beneficiaries of this Trust."

The Trustee's standard of care and performance is controlled by the terms of the Trust and Idaho Code § 15-7-302. Section 302 states:

Except as otherwise provided by the terms of the trust, the trustee shall observe the standards in dealing with the trust assets that would be observed by a prudent man dealing with the property of another, and if the trustee has special skills or is named trustee on the basis of representations of special skills or expertise, he is under a duty to use those skills.

This provision provides the standard of skill expected from Trustees both individual and corporate, nonprofessional and professional. The duty described by this section conveys the idea that a Trustee must comply with an external, rather than a personal, standard of care.⁴ A "prudent man" is defined as "a trustee whose exercise of trust powers is reasonable and equitable in view of the interests of income or principal beneficiaries, or both, and in view of the manner in which men of ordinary prudence, diligence, discretion, and judgment would act in the management of their own affairs."⁵

C. <u>Petitioner's Specific Allegations of Negligent Administration of the Trust</u>

Petitioner asserts a total of 17 purported negligent acts on the part of WTB in response

to Interrogatory No. 33. As listed by Petitioner, these items include:

- KFC back rent over Figures provided by Bev Kee, CPA Missing lease income for every July increase \$52471.00. Future lease income not obtainable due to agreement signed by attorneys of Lukens and Annis representing WTB \$96,639.72. Total Loss \$149,110.72
- 2. SPM to WTB one month behind money collected not on the books \$9860.73 left in the income and expense account for capital improvement and emergency maintenance.
- 3. Also Income held in the Income and Expense Account. \$2,770.93 as of August 31, 2008.
- Property management fees charged in the Income and Expense Account from (back charged in August: 2006 \$5,117.56) January2006 (charged in August) to March 2007 \$9,894.00.
- 5. WTB fees charged to my personal account until August \$20120.63 x 4 beneficiaries = \$80,482.52.

⁴ See Comment to Official Text of Idaho Code § 15-7-302.

⁵ Idaho Code § 68-104(3).

- 6. The 2 appraisals we paid for in 2006, which cost \$9,000, are incorrect because WTB is supplied the wrong information.
- 7. Riley creek space has been empty nothing done since 4/08 to 8/08 and is no longer paying potential loss due to neglect \$8.250.00
- Triple net KFC Ponderay annual sewer district LID 6 years X \$263.19 = 1579.14 not collected
- 9. Taxes that Riley Creek owes approximately \$3851.05 for taxes we paid. in or will pay in 2nd ½ 2005, 2006, 2007 and 1st ½ 2008. (3 years)
- 10. August 2006 Paving at the Cedar St. Property- loss due to restart and cancellation of part of job \$3,125.00
- 11. Rent collected for. Idaho State Liquor Store in May not in accounting in May 2007present. \$3,300.00+\$24.75/month interest (24.75x 16)+3300.00=\$3,696.00
- September 2007 KFC parking resurfacing of communal property no longer owned by us \$1500.00
- 13. August 2007 Avista payments with no matching receipt. \$773.64
 - 14. Property management fees charged by Sandpoint Property Management from April 2007 to August 2008 \$10943.20
 - 15. Russ Rector has been the property manager since 8/2005. Sandpoint Property Management (SPM) is also managing our property. \$11,250.00
 - 16. Property management fees for R & L Property Management from 1/03 to 7/05 \$5514.00
 - 17. WTB let the, x-pet store, space. continue to be empty for 20 months \$33,000. The x-conference room space has been open for 14 months loss of \$16,800.

Each of these items will be dealt with individually.

1. WTB relied upon legal counsel when it determined what amount of rent to collect from KFC Franchise tenant.

Petitioner asserts that amount of rent collected by the WTB from a particular tenant who

operates a KFC Franchise was less than required by the Lease Agreement. The evidence will

show that if WTB did collect an improper amount of rent, it is certainly not negligent in doing

so. There is undisputed factual evidence proves WTB did so in reliance upon advice of legal

counsel. The Last Will and Testament provides that the Trustee may "rely with acquittance on advice of legal counsel on questions of law and WTB relied upon the advice of its legal counsel in interpreting the subject lease." The interpretation of a lease agreement is certainly a question of law. Therefore, any claim of negligence based upon WTB's failure to collect the proper amount of rent must be dismissed as the Last Will and Testament provided "acquittance" where the Trustee "relies on the advice of legal counsel on questions of law."

Furthermore, the evidence will show that if the improper amount of rent was collected, the failure began with a prior trustee. When the problem was discovered, WTB elected to make increases to the rent each October, but not go back and try to collect rent that the prior trustee failed to collect.

Petitioner also questioned whether the tenant who operates the KFC Franchise paid property taxes and sewer payments. The evidence will show that the tenant who operates a KFC Franchise was current on all amounts owed. This conclusion is based upon WTB's understanding of the lease as advised by legal counsel and based upon its record keeping, which will be admitted into evidence at trial. At this point, there is no evidence that any money is owed for property taxes or sewer payments from this particular tenant. Therefore, there is absolutely no evidence that WTB was negligent on this matter.⁶ Petitioner bears the burden of providing such evidence.

⁶ See Idaho Code 15-7-302.

2. <u>SPM to WTB one month behind money collected not on the books</u> <u>\$9860.73 left in the income and expense account for capital</u> <u>improvement and emergency maintenance.</u>

Petitioner conceded there is no evidence to support this claim on Summary Judgment. Therefore, there is no issue to be resolved at trial. Notwithstanding, this claim is unintelligible and WTB will respond to any evidence presented by Petitioner.

3. <u>Also Income held in the Income and Expense Account. \$2,770.93 as of August 31, 2008.</u>

Petitioner conceded there is no evidence to support this claim on Summary Judgment. Therefore, there is no issue to be resolved at trial. Notwithstanding, this claim is unintelligible and WTB will respond to any evidence presented by Petitioner.

4. Property management fees charged in the Income and Expense Account from (back charged in August: 2006 \$5,117.56) January 2006 (charged in August) to March 2007 \$9,894.00.

When Diane Albrethsen was the administrator of the trust, WTB discovered that WTB had not collected its fees. At her deposition, Ms. Albrethsen addressed the back charging of fee. She explained that the failure to collect the fees was an oversight. WTB elected to collect the fees because they were owed. It is important to note that Petitioner does not assert the fees were improper. The charging of fees that are rightfully due for the administration of a trust is not a negligent act or a breach of any duty. The evidence will show that any claim of negligence based on the collection of fees should be dismissed.

5. WTB fees charged to my personal account until August $20,120.63 \times 4$ beneficiaries = 80,482.52.

This claim of damages is unintelligible. As stated above, WTB's is entitled to collect fees. At her deposition, Diane Albrethsen explained that WTB collected as a fee one percent (1%) of the total value of the trust corpus of the trust per year. In addition, WTB collects a fee of five percent (5%) of the total value the rent collected per year when it is managing real property. Certainly, the charging of fees that are rightfully due for the administration of a trust is not a negligent act or a breach of any duty. The evidence will show that these fees are customary and not overreaching.

6. The 2 appraisals we paid for in 2006, which cost \$9,000, are incorrect because WTB is supplied the wrong information.

Petitioner also appears to assert that various appraisals obtained by WTB were done negligently or were unnecessary. At her deposition, Susan Kuzma was questioned about the appraisals. She stated it is common practice for WTB, acting as Trustee, to get an appraisal of all Trust assets at least every three (3) years. She stated:

From my own experience, and my own specific dialogues with the advisory committee and Rob Bloom in assessing needs of the trust's cash needs and/or the viability of sale, we would tend to look at all the properties in determining whether one property – we were approached by the KFC. I am aware of that, but we might look at other properties, and I believe we did in this case, to determine if selling a different property would behoove the trust, be in the best interest of the trust. So as a fiduciary, we would assess needs, cash needs, concentration of assets, and also what – if we needed to sell, what would be the best thing to sell. So, if we did not have a current appraisal on the books, we would get a newer – especially with changing market values in real estate. So my understanding of why we got appraisals on property other than – I'm giving you a big old answer – other than just simply the KFC, was in assessing the assets as a whole.

She went on to state:

To restate, what I - the point I was trying to make was that KFC would have been the trigger of creating the KFC appraisal. We might have asked for other appraisals, A, because we were looking at whether we had a recent appraisal – again, policy and industry standard is at least every three years you get a current appraisal on a property, whether you have a sale or not – or, we were assessing, comparing the KFC property against other properties to say, well, perhaps this one isn't – we shouldn't look at selling this particular one. Maybe we want to hold on the KFC, but there's another property that we have. Maybe it would behoove us to sell Connie's Mall. And I'm talking about a general thought process and a dialogue as we were weighing the sale – or potential sale or sales.

WTB's actions in obtaining the appraisal was prudent and not negligent. No evidence exists to

the contrary. In fact, according to Susan Kuzma, who has been working with trusts in 1988, it

is industry standard to have appraisals done on a regular basis or when any assets will be sold.

The evidence will show any claim of negligence based upon WTB's acquisition of an appraisal

fails as a matter of law.

7. <u>Riley creek space has been empty nothing done since 4/08 to 8/08 and is</u> no longer paying potential loss due to neglect \$8,250.00.

The evidence will show that WTB hired Sandpoint Property Management to advertise and lease this space. Simply because the space does not lease immediately does not show WTB was negligent.

8. <u>Triple net KFC Ponderay annual sewer district LID 6 years X \$263.19 = 1579.14 not collected.</u>

This item is addressed in #1 above. The evidence will show that there are no sewer fees owed by the tenant.

9. Taxes that Riley Creek owes approximately \$3,851.05 for taxes we paid in or will pay in 2nd ½ 2005, 2006, 2007 and 1st ½ 2008. (3 years).

This items is addressed in #1 above. The evidence will show that WTB attempted to collect the back taxes from Riley Creek, but it refused to pay.

10. <u>August 2006 Paving at the Cedar St. Property- loss due to restart and cancellation of part of job \$3,125.00.</u>

WTB is unclear exactly what this claim is referring to. However, the evidence will show that WTB did pay for the property be repaved and the payment was proper for the services rendered.

11.Rent collected for Idaho State Liquor Store in May not in accounting in
May 200/-present.\$3,300.00+\$24.75/monthinterest(24.75x
(24.75x)16)+3300.00=\$3,696.00.

The statements from Sandpoint Property Management will show that the rent was collected in May of 2007 and forwarded to WTB.

12. <u>September 2007 KFC parking resurfacing of communal property no</u> longer owned by us \$1,500.00.

The evidence will show that the KFC tenant repaved the parking lot and sought reimbursement under the terms of the lease agreement. The evidence will show this was a proper payment by WTB.

13. August 2007 Avista payments with no matching receipt \$773.64.

Petitioner alleges the Trust was charged \$773.64 for seven Avista payments and that receipts for said Avista payments did not match that amount. In support of her assertion, Petitioner submits a copy of the statement from Sandpoint Property Management dated August

RESPONDENT'S TRIAL BRIEF: 15

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26, 2007 setting forth said charges and six Avista Utilities receipts which purportedly fail to match the amount on said statement.

Contrary to Petitioner's assertion, the Sandpoint Property Management Statement and the six Avista Utilities receipts establish that the amounts on both for utility mirror one another, and the assertion that the same "did not match" is erroneous. The Sandpoint Property Management Statement provided the following utility charges:

Receipts/Adjustments

2/12 to 3/9	(\$86.03)
7/13 to 8/8	(\$58.75)
1/13 to 2/12	(\$145.57)
5/9 to 6/8	(\$236.82)
6/8 to 7/13	(\$88.69)
3/9 to 4/7	(\$78.89)
4/7 to 5/9	(\$78.89)

Expenses (\$773.64)

A review of the six Avista Utilities Receipts mirror the charges list above:

- 1. Feb 12 2007 to Mar 09 2997 Total Energy Charges This Bill \$86.03
- 2. Jul 7 2007 to Aug 8, 2007 Petitioner failed to provide this Receipt.
- 3. Jan 13 2007 to Feb 12 2007 Total Energy Charges This Bill \$145.47
- 4. May 9-2007 to Jun 8 2007 Total Energy Charges This Bill \$236.82
- 5. Jun 8 2007 to Jul 13 2007 Total Energy Charges This Bill \$88.69
- 6. Mar 9 2007 to April 7 2007 Total Energy Charges This Bill \$78.89

7. Apr 7 2007 to May 9 2007 – Total Energy Charges This Bill \$78.89

The evidence will show that a review of the Sandpoint Property Management Statement and the six Avista Utilities Receipts establish that the charges on the statement are completely consistent with the Avista Utilities Receipts. The same are not evidence of any negligence on the part of WTB. It is Petitioner's burden to present evidence of the alleged negligent act of WTB. The evidence will show that Petitioner has failed to support its assertion with any evidence whatsoever, and any claim of negligent administration based upon the same fails as a matter of law.

14. <u>Property management fees charged by Sandpoint Property Management</u> from April 2007 to August 2008 \$10,943.20.

Russ Rector was hired to perform maintenance on the property, not perform the duties of property management. In order to properly manage the trust assets, WTB hired Sandpoint Property Management to manage the real property. The evidence will show that the fees are reasonable and not evidence of any negligence.

15. <u>Russ Rector has been the property manager since 8/2005. Sandpoint</u> <u>Property Management (SPM) is also managing our property. \$11,250.00.</u>

Property management fees are not evidence of negligence. To the contrary, in order to properly manage the trust assets, WTB hired R&L Property Management to manage the real property. The evidence will show that the fees are reasonable and not evidence of any negligence.

Property management fees for R & L Property Management from 1/03 to 16. 7/05 \$5,514.00.

Property management fees are not evidence of negligence. To the contrary, in order to properly manage the trust assets, WTB hired Sandpoint Property Management to manage the real property. The evidence will show that the fees are reasonable and not evidence of any negligence.

WTB let the x-pet store space continue to be empty for 20 months \$33,000. The x-conference room space has been open for 14 months loss 17. of \$16,800.

No evidence of negligence exists merely because of the inability to rent space in a commercial building. WTB acted reasonably and with due care when it hired a property management firm to advertise and lease these spaces. If they do not lease, this is a result of market forces--not negligence.

RESPONDENT'S TRIAL BRIEF: 18

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V. <u>CONCLUSION</u>

At the conclusion of this trial, the evidence will show that Petitioners and Intervenors lack standing to assert any claim related standing Ryan Bowman's Trust and WTB was not negligent in the operation of the Trusts. WTB requests that all Petitioner's claim of damages be dismissed.

DATED this 12th day of March, 2009.

LUKINS & ANNIS, P.S. By

PETER J. SMITH IV ISB #6997 Attorneys for Respondent WASHINGTON TRUST BANK

RESPONDENT'S TRIAL BRIEF: 19

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th day of March, 2009, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to all counsel of record as follows:

Todd M. Reed Powell & Reed, P.C. 318 Pine Street Post Office Box 1005 Sandpoint, Idaho 83864-1339 Attorney for Teresa R. Blankenship, Petitioner		U.S. Mail Hand Delivered Overnight Mail Telecopy (FAX) to (208) 263-4438
Ted Diehl, Attorney at Law 106 W. Superior Sandpoint, Idaho 83864		U.S. Mail Hand Delivered Overnight Mail Telecopy (FAX) to (208) 263-8983
Honorable John Mitchell Kootenai County Courthouse Post Office Box 9000 Coeur d'Alene, Idaho 83816		U.S. Mail Hand Delivered Overnight Mail Telecopy (FAX) (208) 446-1132
Bonner County Courthouse Clerk of the District Court 215 South 1 st Avenue Sandpoint, Idaho 83864		U.S. Mail Hand Delivered Overnight Mail Telecopy (FAX) (208) 265-1447
Ly Did not fax to court 3-12-2009 because exceeded limit <u>PET</u> of pages imposed by Clerk. The Brief was mailed 3-13-2009. PJS.	TER J. SMIT	H IV

RESPONDENT'S TRIAL BRIEF: 20

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MISCHELLE R. FULGHAM ISB #4623 PETER J. SMITH IV ISB #6997 LUKINS & ANNIS, P.S. Ste 102 250 Northwest Blvd Coeur d'Alene, ID 83814-2971 Telephone: (208) 667-0517 Facsimile: (208) 664-4125

Attomevs for Respondent WASHINGTON TRUST BANK

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

TERESA A. BLANKENSHIP,

Petitioner,

NO. CV-2007-00572

v.

WASHINGTON TRUST BANK, as Trustee,

Respondent.

WILLIAM MICHAEL BOWMAN and ERIC BOWMAN,

Intervenors,

v.

WASHINGTON TRUST BANK, as Trustee,

Respondent.

MOTION FOR ORDER DISMISSING INTERVENOR WILLIAM MICHAEL BOWMAN WITH PREJUDICE

MOTION FOR ORDER DISMISSING INTERVENOR WILLIAM MICHAEL BOWMAN WITH PREJUDICE : 1

KAWASHINOO81400/BOWMAN00756/PLDGMOTION TO DISMISS MIKE BOWMAN-032409-DFS-MRF DOCK 3 2004

6

WASHINGTON TRUST BANK, the Respondent in the above-entitled action, moves the Court for an order dismissing Intervenor William Michael Bowman from this case with prejudice for his failure to appear at his scheduled deposition on March 12, 2009, at 1.30 p.m.

This motion is made and based on the affidavit of Mischelle R. Fulghart served and filed with this motion and on all records and files herein.

DATED this 24th day of March, 2009.

LUKINS & ANNIS, P.S.

Attorneys for Respondent WASHINGTON TRUST BANK

MOTION FOR ORDER DISMISSING INTERVENOR WILLIAM MICHAEL BOWMAN WITH PREJUDICE : 2

K:WWASHING081400/BOWMAN00756PLDO/MOTION TO DISMISS MIKE BOWMAN-032409-DFS-MRF DOCX 2.24 09

484

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 24th day of March, 2009, I-caused to be served a trace and correct copy of the foregoing by the method indicated below, and addressed to all counse; of record as follows:

Todd M. Reed Powell & Reed, P.C. 318 Pine Street Post Office Box 1005 Sandpoint, Idaho 83864-1339 Attorney for Teresa R. Blankenship, Petitio	лег	U.S. Mail Hand Delivered Overnight Mail Telecopy (FAX) to (208) 263-4435
Ted Diehl Attorney at Law 106 W. Superior Sandpoint, Idaho 83864		U.S. Mail Hand Delivered Overnight Mail Telecopy (FAX) to (208) 263-8983
Honorable John Mitchell Kootenai County Courthouse Post Office Box 9000 Coeur a' Alene, Idaho 83816		U.S. Mail Hand Delivered Overnight Mail Telecopy (FAX) (208) 446-1132
Bonner County District Court Clerk 215 S First Ave Sandpoint, ID 83864-1392		U.S. Mail Hand Delivered Overnight Mail Telecopy (FAX) (208) 265 (447) W D A FULGHAM

MOTION FOR ORDER DISMISSING INTERVENOR WILLIAM MICHAEL BOWMAN WITH PREJUDICE : 3

K.WWASHING081400/BOWMAN00756/PLDG/MOTION TO DISMISS MIKE BOWMAN-032409-DFS-MKF DUCA 5.24/09

ZOON MAR 25 A 11: 53

MISCHELLE R. FULGHAM ISB #4623 PETER J. SMITH IV ISB #6997 LUKINS & ANNIS, P.S. Ste 102 250 Northwest Blvd Coeur d'Alene, ID 83814-2971 Telephone: (208) 667-0517 Facsimile: (208) 664-4125

Attorneys for Respondent WASHINGTON TRUST BANK

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

TERESA	Α.	BLANKEN	SHIP.

Petitioner,

ν.

WASHINGTON TRUST BANK, as Trustee,

Respondent.

WILLIAM MICHAEL BOWMAN and ERIC BOWMAN,

Intervenors,

٧.

WASHINGTON TRUST BANK, as Trustee,

Respondent.

NO. CV-2007-00572

MOTION FOR ORDER DIRECTING TRUSTEE TO MAKE LOAN PAYMENT

MOTION FOR ORDER DIRECTING TRUSTEE TO MAKE LOAN PAYMENT: 1

K:\W\WASHING081400\BOWMAN00756PLDG\MOTION DIRECTING PAYMENT BY TRUSTEE-031709-DFS-NBF.DOC.X

e. 005

WASHINGTON TRUST BANK, the Respondent in the above-entitled action, moves the Court for an order directing that prior to the entry of an order terminating her appointment as trustee, that Trustee Beverly Kee, CPA, be required to discharge her pending Trustee liabilities as owed to WTB on the Ryan Bowman Trust's Note and Deed of Trust at issue this litigation. Upon payment of all Trustee liabilities owed to WTB, then Beverly A. Kee may be released from her debts, liabilities, and legal obligations as Trustee and a successor Trustee appointed.

This motion is made and based on the memorandum in support of this motion, the affidavit of Susan Kuzma dated March 25, 2009, served and filed with this motion, the Court ~ Order Regarding Respondent's Summary Judgment dated March 8, 2009, and on all the pleadings, papers, records, and files in this action.

DATED this 24th day of March, 2009.

LUKINS & ANNIS, P.S.

ISB #4623 Attorneys for Respondent WASHINGTON TRUST BANK

MOTION FOR ORDER DIRECTING TRUSTEE TO MAKE LOAN PAYMENT: 2

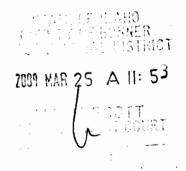
CERTIFICATE OF SERVICE I HEREBY CERTIFY that on the 25th day of March, 2009, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to all counsel of record as follows:

Dener 1	U.S. Mail Hand Delivered Overnight Mail Telecopy (FAX) to (208) 263-4438
	U.S. Mail Hand Delivered Overnight Mail Telecopy (FAX) to (208) 263-8983
	U.S. Mail Hand Delivered Overnight Mail Telecopy (FAX) (208) 446-1111
	U.S. Mail Hand Delivered Overnight Mail Telecopy (FAX) (208) 265-144

MISCHELLE R. FULGHAM

MOTION FOR ORDER DIRECTING TRUSTEE TO MAKE LOAN PAYMENT: 3

K:/W/WASHING081400/BO/WMAN00756/PLDG/MOTION DIRECTING PAYMENT BY TRUSTEE-05: 709-DFS-MKF DOCK - 1- 10



MISCHELLE R. FULGHAM ISB #4623 PETER J. SMITH IV ISB #6997 LUKINS & ANNIS, P.S. Ste 102 250 Northwest Blvd Coeur d'Alene, ID 83814-2971 Telephone: (208) 667-0517 Facsimile: (208) 664-4125

Attomevs for Respondent WASHINGTON TRUST BANK

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

TERESA A. BLANKENSHIP,

Petitioner,

NO. CV-2007-00572

OBJECTION TO TRANSFER OF

OUTSTANDING LIABILITIES

TRUSTEE WITHOUT PAYMENT OF

v.

WASHINGTON TRUST BANK, as Trustee,

Respondent.

WILLIAM MICHAEL BOWMAN and ERIC BOWMAN.

Intervenors,

v.

WASHINGTON TRUST BANK, as Trustee,

Respondent.

OBJECTION TO TRANSFER OF TRUSTEE WITHOUT PAYMENT OF OUTSTANDING LIABILITIES: 1

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Respondent WASHINGTON TRUST BANK objects to Petitioner's and Intervenors' request to transfer the Court's appointment of Trustee Beverly A. Kee, CPA, to Terry Jensen. attorney at law, without payment by the outgoing Trustee of the \$7,444.50 currently owed to Washington Trust Bank on behalf of the Ryan Bowman Trust. (See Affidavit of Susan J Kuzma, dated March 25, 2009, and exhibits attached thereto.)

On or about January 29, 2009, Petitioner's attorney, Todd Reed, filed with the Court a stipulation seeking to release the current Trustee, Beverly A. Kee, from her obligations as Trustee and to transfer all trust responsibilities and rights to Terry L. Jensen, attorney at law Petitioner's counsel did not serve the undersigned with the proposed Transfer of Trustee Stipulation when he filed it. On February 12, 2009, a copy of the Petitioner's filed but unserved transfer request was sent by the Court to Respondent's attorney, along with a handwritten notation from the Court indicating that all parties needed to be served and such service evidenced on the certificate of mailing in order for the Court to take action on the transfer request.

On or about March 19, 2009, Petitioner's attorney requested a "Notice of No Objection" from WTB, essentially agreeing to the transfer of Trustee from Beverly A. Kee to Terry L. Jensen. However, given the existing financial liabilities owed by the current Trustee. Beverly A. Kee, to WTB, the Bank hereby objects to the termination of her appointment as Trustee until and unless the outstanding Trustee's liabilities are paid in full and brought current

By way of background, upon Petitioner's request and without objection, Beverly A. Kee was appointed Trustee by this Court on October 23, 2008. Following this Court's appointment of Ms. Kee as Trustee, she failed and refused to make any loan payments to WTB on behalt of

OBJECTION TO TRANSFER OF TRUSTEE WITHOUT PAYMENT OF OUTSTANDING LIABILITIES: 2

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Ryan Bowman's Trust. While Ms. Kee was Trustee, this Court granted summary sudgment on March 2, 2009, ruling that the loan and the Deed of Trust encumbrance recorded by the Trustee WTB, on behalf of the Ryan Bowman Trust, were proper and authorized under both the Trust instrument and Idaho Iaw. (See Order regarding Respondent's Motion for Summary Judgment signed March 8, 2009). Despite this Court's ruling that the Ioan and encumbrance were proper under the Trust instrument and Idaho Iaw, the Trustee Beverly A. Kee has still failed and refused to make any of the required Ioan payments to WTB. As of March 25, 2009, the amount due from Trustee Beverly A. Kee, on behalf of the Ryan Bowman Trust, to WTB totals \$7,444.50. This Trustee's liability should be paid by the current Trustee, Beverly A. Kee, provto the termination of her appointment as Trustee.

Given the unpaid liability to WTB by the current Trustee. Respondent hereby objects to the Petitioner's requested transfer of Trustee.

DATED this 25th day of March, 2009.

LUKINS & ANNIS, P.S.

HELLE R. FULGHA

MISCHELLE R. FULGHAM ISB #4623 Attorneys for Respondent WASHINGTON TRUST BANK

OBJECTION TO TRANSFER OF TRUSTEE WITHOUT PAYMENT OF OUTSTANDING LIABILITIES: 3

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 25th day of March, 2009, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to all course) of record as follows:

Todd M. Reed Powell & Reed, P.C. 318 Pine Street Post Office Box 1005 Sandpoint, Idaho 83864-1339 Attorney for Teresa R. Blankenship, Petition	er	U.S. Mail Hand Delivered Overnight Mail Telecopy (FAX) to (208) 20114-15
Ted Diehl, Attorney at Law 106 W. Superior Sandpoint, Idaho 83864		U.S. Mail Hand Delivered Overnight Mail Telecopy (FAX) to (208) 263-8485
Honorable John Mitchell Kootenai County Courthouse Post Office Box 9000 Coeur d'Alene, Idaho 33816		U.S. Mail Hand Delivered Ovemight Mail Telecopy (FAX) (208) 446 (111)
Bonner County District Court Clerk 215 S First Ave Sandpoint, ID 83864-1392	Mischelle F	U.S. Mail Hand Delivered Overnight Mail Telecopy (FAX) (208) 265-1447 R. FULGHAM

OBJECTION TO TRANSFER OF TRUSTEE WITHOUT PAYMENT OF OUTSTANDING LIABILITIES: 4

,				
1 2 3 4 5 6	J. T. DIEHL Attorney at Law 106 W. Superior Street Sandpoint, ID 83864 (208) 263-8529 ISB #3526 Attorney for Intervenors Bowman	STATE OF IDALIE COUNTY OF LECTOR FIRST JUSTEL MARIE STATE CLERK DISTRICT COURT DEPUTY HE FIRST JUDICIAL DISTRICT OF THE		
7 8 9 10		FOR THE COUNTY OF BONNER Case No. CV-2007-00572		
11 12 13	vs. WASHINGTON TRUST BANK, as Trustee, Respondent.	PARTIAL SUMMARY JUDGMENT PURSUANT TO I.R.C.P. RULE 54(b)		
14 15 16	WILLIAM MICHAEL BOWMAN and) ERIC BOWMAN,)			
17 18 19	Intervenors,) vs.) WASHINGTON TRUST BANK,) as Trustee,)	• •		
20 21 22	Respondent.)			
23 24 25	COMES NOW, WILLIAM MICHAEL BOWMAN and ERIC BOWMAN, by and through their attorney, J. T. DIEHL, and hereby moves the Court for a certification of partial summary judgment entered the 8th day of March, 2009, pursuant to I.R.C.P. Rule 54(b) to allow Intervenors to appeai			
26 27	the decision.			
28	MOTION FOR CERTIFICATION OF PARTIAL SUMMARY JUDGMENT PURSUANT TO I.R. 403	- C.P. RULE 54(b) -1-		

Ô				
1	Respectfully submitted this $\frac{3}{2}$ day of March, 2009.			
2	N F			
3	Total (
4	4 J. T. DIEHL			
5	Attorney for Intervenors Bowman			
6				
7	CERTIFICATE OF DELIVERT			
8	I hereby certify that a true and correct copy of the foregoing document was served this 31 day of March, 2009, by:			
9	United States Mail			
10	Hand Delivery			
- 11	to:			
* 12	Mischelle R. Fulgham			
13	Peter J. Smith IV LUKINS & ANNIS, P.S.			
	250 Northwest Bivd, Suite 102			
15	Coeur d'Alene, ID 83814-2971 Fax 208-664-4125			
16	Todd M. Reed			
17	POWELL & REED P. O. Box 1005			
18	Sandpoint, ID 83864 Fax 208-263-4438			
19	Honorable John T. Mitchell			
20	District Court Judge Kootenai County Courthouse			
21	P. O. Box 9000 Coeur d'Alene, ID 83816			
22	Fax 208-446-1132			
23	Dans LAnders			
24				
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28				
	MOTION FOR CERTIFICATION OF PARTIAL SUMMARY JUDGMENT PURSUANT TO I.R.C.P. RULE 54(b) -2-			
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MISCHELLE R. FULGHAM ISB #4623 PETER J. SMITH IV ISB #6997 LUKINS & ANNIS, P.S. Ste 102 250 Northwest Blvd Coeur d'Alene, ID 83814-2971 Telephone: (208) 667-0517 Facsimile: (208) 664-4125

Attorneys for Respondent WASHINGTON TRUST BANK

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

TERESA A. BLANKENSHIP,

Petitioner,

v.

WASHINGTON TRUST BANK, as Trustee,

Respondent.

WILLIAM MICHAEL BOWMAN,

Intervenor,

٧.

WASHINGTON TRUST BANK, as Trustee,

Respondent.

NO. CV-2007-00572

MOTION TO DISMISS FIRST AMENDED COMPLAINT OF INTERVENOR(S)

Respondent WASHINGTON TRUST BANK ("WTB") moves the Court pursuant to Idaho Rule of Civil Procedure 12(b)(6) for an order dismissing the First Amended Complaint of Intervenor(s) filed in this matter. This Motion is made upon the grounds that the claims presented in the Intervenors' First Amended Complaint have already been addressed, resolved, and dismissed by this Court in favor of WTB via this Court's Order Regarding Respondent's



Motion for Summary Judgment dated March 8, 2009, and Intervenors can prove no set of facts which would entitle them to the relief they seek. This Motion is supported by the Memorandum in Support filed herewith as well as the record before this Court.

DATED this (day of April, 2009.

LUKINS & ANNIS, P.S.

By

ISB #4623 PETER J. SMITH IV ISB #6997 Attorneys for Respondent

CERTIFICATE OF SERVICE

J HEREBY CERTIFY that on the day of April, 2009, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to all counsel of record as follows:

Ø

Todd M. Reed Powell & Reed, P.C. 318 Pine Street Post Office Box 1005 Sandpoint, Idaho 83864-1339 Attorney for Teresa R. Blankenship, Petitioner

Ted Dichl, Attorney at Law 106 W. Superior Sandpoint, Idaho 83864

U.S. M	lail	
Hand I	Delivered	
Overni	ght Mail	

Telecopy (FAX) to (208) 263-4438

U.S. Mail Hand Delivered Overnight Mail

Telecopy (FAX) to (208) 263-8983

ب.

MISCHELLE R. FULGHAM ISB #4623 PETER J. SMITH IV ISB #6997 LUKINS & ANNIS, P.S. Ste 102 250 Northwest Blvd Coeur d'Alene, ID 83814-2971 Telephone: (208) 667-0517 Facsimile: (208) 664-4125 Attorneys for Respondent	CLERN DE LETA
WASHINGTON TRUST BANK	
	FIRST JUDICIAL DISTRICT OF THE OR THE COUNTY OF BONNER
TERESA A. BLANKENSHIP,	
Petitioner,	NO. CV-2007-00572
ν.	ANSWER TO FIRST AMENDED COMPLAINT OF INTERVENOR(S)
WASHINGTON TRUST BANK, as Trustee,	
Respondent.	
WILLIAM MICHAEL BOWMAN,	
Intervenor,	
Ϋ.	
WASHINGTON TRUST BANK, as Trustee,	
Respondent.	
Respondent WASHINGTON TRUST	BANK ("WTB") answers the First Amended
Complaint of Intervenor(s) as follows:	
I. ANS	SWER
1. Respondent hereby denies each, o	every, and all allegations and representations set
forth in the First Amended Complaint of In	ntervenor(s) ("Complaint") unless specifically
admitted herein.	

-1-

2. In response to the allegations contained in paragraph I of the Complaint, WTB denies the same. By way of further answer, WTB affirmatively asserts that intervenor is a beneficiary of a trust created by his mother, Althea Lorraine Bowman. The Last Will and Testament of Althea Lorraine Bowman created one trust for each one of her four children.

3. In response to the allegations contained in paragraph Π of the Complaint, WTB admits the same.

4. In response to the allegations contained in paragraph III of the Complaint, WTB denies the same.

5. In response to the allegations contained in paragraph IV of the Complaint, WTB admits the same.

6. In response to the allegations contained in paragraph V of the Complaint, WTB admits only that the beneficiaries were unanimously opposed to the sale of the real property, and that the beneficiaries requests that WTB resign as trustee. WTB denies all other allegations contained in paragraph V, including the assertion that there were any deficiencies in operating the trust.

7. In response to the allegations contained in paragraph VI of the Complaint, WTB denies the same.

8. In response to the allegations contained in paragraph VII of the Complaint, WTB admits that Petitioner Theresa R. Blankenship filed a petition for removal of trustee and sought a preliminary injunction preventing the sale of real property on April 3, 2007. WTB also admits that the petition sought damages for the breach of loyalty for negligent operation of the trust. WTB denies all other allegations contained in paragraph VII of the Complaint.

- 2 -

9. In response to the allegations contained in paragraph VIII of the Complaint, WTB denies the same.

10. In response to the allegations contained in paragraph IX of the Complaint, WTB denies the same.

11. In response to the allegations contained in paragraph X of the Complaint, WTB denies the same.

12. In response to the allegations contained in paragraph XI of the Complaint, WTB denies the same.

13. In response to the allegations contained in paragraph XII of the Complaint, WTB lacks sufficient information to admit or deny the allegations contained therein, and as a result, denies the same.

14. In response to the allegations contained in paragraph XIII of the Complaint, WTB admits the first sentence of said paragraph. With respect to the remaining allegations contained in paragraph XIII, WTB lacks sufficient information to admit or deny the same, and as a result, denies the same.

15. In response to the allegations contained in paragraph XIV of the Complaint, WTB admits the same.

AFFIRMATIVE DEFENSES

By way of affirmative defense, WTB states as follows:

Issue Preclusion / Claim Preclusion. The claims alleged by Intervenors in their First Amended Complaint of Intervenor(s) has been previously addressed, resolved, and disposed of in favor of WTB via the entry of the Court's Order Regarding Respondent's Motion for Summary Judgment dated March 8, 2009 in this matter.

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ADDITIONAL RESPONSE BY WTB

In paragraph IX., Intervenors assert that WTB refuse to resign as trustee. WTB affirmatively asserts that it advised the petitioner, on multiple occasions, that it was willing to resign as trustee upon the appointment of a qualified successor trustee. It was not until WTB unilaterally moved to resign as trustee that petitioner and the other beneficiaries of the trusts came forward with a qualified successor trustee. It should be noted that Panhandle State Bank and D.A. Davidson were each considered as trustees, but both refused to act as trustee. Petitioner also advised WTB that it approached the U.S. Bank Trust Department regarding becoming the successor trustee. However, petitioner never provided any information to WTB regarding U.S. Bank's willingness or unwillingness to serve as trustee. In sum, WTB has always been willing to resign as trustee upon the appointment of a qualified successor trustee, but, until October of 2008, no qualified successor trustee had been identified.

The trust, for which the Intervenor is a beneficiary, holds an undivided one-quarter interest in the real property in Bonner County, Idaho. The other undivided interests in said real property are held by the other three trusts created by the Last Will and Testament of Althea Lorraine Bowman. The beneficiaries of these other three trusts are the intervenors – two brothers and the petitioner in this case. Therefore, intervenor lacks standing to bring any claim related to the loan made to the trust of Ryan Bowman and the recording of a deed of trust encumbering the one-quarter, undivided interest held by Ryan Bowman's trust in the real property located in Bonner County, Idaho.

WHEREFORE, having responded and answered the First Amended Complaint of Intervenor(s), WTB prays for relief as follows:

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1. An order dismissing the First Amended Complaint of Intervenor(s) for lack of jurisdiction by the Court.

2. An order dismissing all claims for damages related to WTB's purported refusal to resign as trustee.

3. An order dismissing all claims for damages for breach of fiduciary duty and negligent operation and management of the trust.

4. For attorney's fees and costs in defending this action.

5. For other such relief as the Court may deem just and proper.

DATED this _____ day of thiarch, 2009.

LUKINS & ANNIS, P.S.

MISCHELLE R. FULGHAM, ISB #4623 PETER J. SMITH IV, ISB #6997 Attorneys for Respondent

- 5 -

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 9th day of April, 2009, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to all counsel of record as follows:

Todd M. Reed Powell & Reed, P.C. 318 Pine Street Post Office Box 1005 Sandpoint, Idaho 83864-1339 Attorney for Teresa R. Blankenship, Petitioner

Ted Diehl, Attorney at Law 106 W. Superior Sandpoint, Idaho 83864

	U.S. Mail Hand Delivered
_	Overnight Mail
量	Telecopy (FAX) to (208) 263-4438
,	

	U.S. Mail
	Hand Delivered
	Overnight Mail
□ ¢	Telecopy (FAX) to (208) 263-8983

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ORIGINAL

POWELL & REED, P.C. Todd M. Reed, Attorney at Law 318 Pine Street P.O. Box 1005 Sandpoint, Idaho 83864 Phone: (208) 263-3529 Fax: (208) 263-4438 ISB No. 4788 STATE OF IDANG COUNTY DE ROMAN FIRST CUI FORMER CLERK DISTRICT COURT

Attorney for Petitioner

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

TERESA R. BLANKENSHIP:)
Petitioner,)
VS.)
WASHINGTON TRUST BANK, as Trustee,)))
Respondent.)

Case No.: CV 2007-00572

MOTION FOR ENFORCEMENT OF AGREEMENT AND NOTICE OF HEARING

COMES NOW, the Petitioner, TERESA R. BLANKENSHIP, by and through her attorney of record and hereby moves this court to enforce the agreement reached on the record March 16, 2009, settling the above Petitioner's case in full.

)

Petitioner hereby requests that she be awarded attorneys and costs for having to bring this motion.

Petitioner submits the Affidavit of Todd M. Reed in support of this motion.

DATED this **2**¹ day of April, 2009.

TODD M. REED Attorney for Petitioner

MOTION FOR ENFORCEMENT OF AGREEMENT AND NOTICE OF HEARING - 1

NOTICE OF HEARING

Notice is hereby given that the Petitioner, TERESA BLANKENSHIP, by and through her attorney of record, Todd M. Reed, will call on for hearing the foregoing Motion before the Honorable John T. Mitchell, District Judge of the above Court, on the 4th day of May, 2009, at the hour of 4:00 p.m., or as soon thereafter as it may be heard at the Courthouse in Coeur d'Alene, Idaho, at which time Petitioner will provide oral argument and testimony.

DATED this <u>**Z1**</u> day of April, 2009.

4/10

TODD M. REED Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of April, 2009, I served a true and correct copy of the foregoing on the individuals listed below, by the following method:

Mischelle R. Fulgham Lukins & Annis, PS 250 Northwest Blvd, Suite 102 Coeur d'Alene, Idaho 83814-2971



U.S. Mail, postage prepaid Hand Delivered Overnight mail Faxed (208) 664-4125

James Theodore Diehl Attorney at Law 106 West Superior Street Sandpoint, Idaho 83864

U.S. Mail, postage prepaid Hand Delivered Overnight mail Faxed (208) 263-8983

The Honorable John T. Mitchell Kootenai County District Court Post Office Box 9000 Coeur d'Alene, Idaho 83814



U.S. Mail, postage prepaid Hand Delivered Overnight mail Faxed (208) 446-1132

aire Bitton

,				
1 2 3 4	J. T. DIEHL Attorney at Law 106 W. Superior Street Sandpoint, Idaho 83864 (208) 263-8529 ISB#3526	STATE OF HIMM COUNTY CRASSING TREAT OF HIMMAN BUT APRI 24 (A. 2011)		
5	Attorney for Intervenors Bowman	MARIE SCUTT CLERK DISTRICT COURT		
6 7		HE FIRST JUDICIAL DISTRICT OF THE FOR THE COUNTY OF BONNER		
8	TERESA R. BLANKENSHIP,) Case No. CV-2007-00572		
9	Petitioner) Case NU. CV-2007-00372		
10	VS.			
11	WASHINGTON TRUST BANK, as Trustee,	DISMISS AMENDED COMPLAINT		
12	Respondent.			
13 14	WILLIAM MICHAEL BOWMAN AND			
14	ERIC BOWMAN			
16	vs.)			
17 18) WASHINGTON TRUST BANK,) as Trustee,)			
19) Respondent.)			
20 COMES NOW, Intervenors, WILLIAM MICHAEL BOWMAN and ERIC BOWMAN, I				
21		reby objects to Respondent's Motion to Dismiss		
22	Amended Complaint. As indicated in the A	Amended Complaint. As indicated in the Affidavit of Attorney J. T. Diehl filed herewith, the		
23 24	purpose for the First Amended Complaint for Intervenors was solely to include ERIC BOWMAN			
24	as a party and to remove any allegation in the Complaint relating to the negligence issues which			
26	were to proceed to trial on March 16, 2009. In addition, on the morning of March 16th, in open			
27	Court, the undersigned notified the Court of the filing of the Amended Complaint and that based			
28				
	OBJECTION TO MOTION TO DISMISS AMENDED COMPLAINT -1- 50	6		

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1	upon the filing, we would not be participating in the trial but would preserve our right to appeal the		
2	issues decided at Summary Judgment. Neither Attorney Mischelle Fulgham, nor Attorney Todd		
3	Reed had any objection to that position.		
4	There was no intention to add any additional claims nor to address any issues other than		
5	5 those previously presented. Respondent's current Motion and Memorandum is clearly frivolous		
	6 and unreasonable and a waste of the Court's time as well as the attorney's fees and costs of all		
	7 parties.		
9	8 Respondent's Motion should be denied and an Order should enter awarding to Intervenors		
10	their atterney's fees and costs in having to defend this frivelous action		
11	Respectfully submitted this Z day of April, 2009.		
12	The second secon		
13	Hout		
14	J. I. DIEHL		
1.5			
16	CERTIFICATE OF DELIVERY		
17	I hereby certify that a true and correct copy of the foregoing document was served this 24 day of A_{gril} , 2009, by:		
18	United States Mail		
19	Hand Delivery Facsimile		
20	to:		
21	Mischelle R. Fulgham Peter J. Smith IV		
22	LUKINS & ANNIS, P.S. 250 Northwest Blvd, Suite 102		
23 24	Coeur d'Alene, ID 83814-2971 Fax 208-664-4125		
25	Todd M. Reed		
26	POWELL & REED P. O. Box 1005		
27	Sandpoint, ID 83864 Fax 208-263-4438		
28			
	OBJECTION TO MOTION TO DISMISS AMENDED COMPLAINT -2- 507		

Honorable John T. Mitchell District Court Judge Kootenai County Courthouse P. O. Box 9000 Coeur d'Alene, ID 83816 Fax 208-446-1132 **OBJECTION TO MOTION TO DISMISS** AMENDED COMPLAINT -3-

. 3			0	
1	J. T. DIEHL Attorney at Law	STATE OF IDATION COUNTY OF DATE		
2	106 W. Superior Street			
3	(208) 263-8529 ISB#3526	199 APR 24 (A) 19 11		
4 5	Attorney for Intervenors Bowman	MARIE SCOTT CLERK DISTRICT COURT		
6		TE FIRST JUDICIAL DISTRICT OF THE		
7	TERESA R. BLANKENSHIP,			
8	Petitioner	Case No. CV-2007-00572		
9) vs.			
10	WASHINGTON TRUST BANK,	OBJECTION TO MOTION TO TO DISMISS INTERVENOR,		
11	as Trustee,	WILLIAM MICHAEL BOWMAN		
12	(Respondent.			
13)			
14	WILLIAM MICHAEL BOWMAN AND) ERIC BOWMAN)			
15	Intervenors,) 			
16	VS.)			
17 18	WASHINGTON TRUST BANK,) as Trustee,)			
19	Respondent.)			
20	COMES NOW, WILLIAM MICHAEL BOWMAN, by and through his attorney, J. T. DIEHL			
21	and hereby objects to Respondent's Motion for	and hereby objects to Respondent's Motion for Order Dismissing WILLIAM MICHAEL BOWMAN.		
22	The basis for this objection is that the Court's Order dated March 11, 2009, did require ERIC			
23	BOWMAN and WILLIAM MICHAEL BOWMAN to report for depositions on March 12, 2009, at			
24 25	9:30 a.m. and 1:30 p.m ERIC BOWMAN was present in Kootenai County on March 12, 2009,			
25	at 9:30 a.m. and was deposed. WILLIAM MICHAEL BOWMAN was available for deposition at			
27	1:30 p.m. at the law offices of J. T. Diehl in Sandpoint, Idaho. The Order does not indicate where			
28				
	OBJECTION TO MOTION TO DISMISS INTERVENOR, WILLIAM MICHAEL BOWMAN	N -1-		
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the deposition was to occur and pursuant to Rule 45(f)(2), WILLIAM MICHAEL BOWMAN is entitled to be deposed where he resides, which is Sandpoint, Idaho. Furthermore, on the morning of March 12, 2009, a conformed copy of the First Amended

Complaint was provided to Attorney Mischelle Fulgham eliminating the claims for negligence on behalf of both ERIC BOWMAN and WILLIAM MICHAEL BOWMAN. Ms. Fulgham was further advised that neither ERIC nor MIKE would be appearing at trial and the only interest they had in the proceedings was to pursue the issues on appeal from the Order Granting Summary Judgment executed March 8, 2009. Despite that disclosure of information, Mischelle Fulgham proceeded with the deposition of ERIC BOWMAN, ignored our request for depositions of WILLIAM MICHAEL BOWMAN in Sandpoint and has now filed this Motion to Dismiss William Michael Bowman. Clearly, this is an abuse of the process and appears to be a waste of the Court's time and a waste of attorney's fees and costs on both parties.

14 Respectfully submitted this 24 day of April, 2009.

OBJECTION TO MOTION TO DISMISS INTERVENOR, WILLIAM MICHAEL BOWMAN -2-5.10

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2	CERTIFICATE OF DELIVERY
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4	I hereby certify that a true and correct copy of the foregoing document was served this 24 day of $April$, 2009, by:
5	United States Mail
6	Hand Delivery
7	to:
8	Mischelle R. Fulgham Peter J. Smith IV
9	LUKINS & ANNIS, P.S.
10	250 Northwest Blvd, Suite 102 Coeur d'Alene, ID 83814-2971
11	Fax 208-664-4125
12	Todd M. Reed POWELL & REED
13	P. O. Box 1005
14	Sa ndpoint, ID 83864 Fax 208-263-4438
15	Honorable John T. Mitcheil
16	District Court Judge Kootenai County Courthouse
ļ	P. O. Box 9000
17	Coeur d'Alene, ID 83816 Fax 208-446-1132
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	OBJECTION TO MOTION TO DISMISS INTERVENOR, WILLIAM MICHAEL BOWMAN 511

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I.R.C.P. 54(B)

C:NovelNGroupWise\WTB - Opp. to motion for rule 54(b)-042809-PRH-MRF.docx $5\,1\,2$

MISCHELLE R. FULGHAM ISB #4623 PETER J. SMITH IV ISB #6997 LUKINS & ANNIS, P.S. Ste 102 250 Northwest Blvd Coeur d'Alene, ID 83814-2971 Telephone: (208) 667-0517 Facsimile: (208) 664-4125	2001 MER 28 P 3 22
Attorneys for Respondent WASHINGTON TRUST BANK	
	FIRST JUDICIAL DISTRICT OF THE OR THE COUNTY OF BONNER
TERESA A. BLANKENSHIP,	
Petitioner,	NO. CV-2007-00572
v. WASHINGTON TRUST BANK, as Trustee, Respondent.	RESPONDENT'S MEMORANDUM IN OPPOSITION TO INTERVENORS' MOTION FOR CERTIFICATION OF PARTIAL SUMMARY JUDGMENT PURSUANT TO I.R.C.P. 54(B)
WILLIAM MICHAEL BOWMAN,	
Intervenor,	
ν.	
WASHINGTON TRUST BANK, as Trustee,	
Respondent.	
Respondent WASHINGTON TRUST BA opposition to Intevernors' Motion for Certification	NK ("WTB") submits this memorandum in on of Partial Summary Judgment Pursuant to
I.R.C.P. 54(b).	
RESPONDENT'S OPPOSITION TO INTERVE CERTIFICATION OF PARTIAL SUMMARY J	

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I. ARGUMENT

Idaho Rule of Civil Procedure 54(b) provides in relevant part that "the court may direct the entry of a final judgment upon one or more but less than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of the judgment." Brinkmeyer v. Brinkmeyer, 135 Idaho 596, 599, 21 P.3d 918, 921 (2001). The decision to grant or deny a Rule 54(b) certificate rests in the sound discretion of the trial court. *Id.*

The Idaho Supreme Court has made clear, however, that "the purpose of Rule 54(b) is to avoid piecemeal appeals." As such, the Court has directed that Rule 54(b) certificates should not be entered routinely where partial summary judgments are involved, but rather should be used infrequently and only in particularly harsh cases:

54(b) orders should not be entered routinely or as a courtesy or accommodation to counsel. The power which the Rule confers upon the trial judge should be used only 'in the infrequent harsh case' as an instrument for the improved administration of justice and the more satisfactory disposition of litigation in light of the public policy indicated by statute and rule.

Thorn Creek Cattle Ass'n, Inc. v. Bonz, 122 Idaho 42, 45, 830 P.2d 1180, 1183 (1992). It is incumbent upon the party requesting certification to "show that it will suffer some hardship or injustice, or provide some other compelling reason why the certification should be granted." Kolln v. Saint Luke's Regional Medical Center, 130 Idaho 323, 328, 940 P.2d 1142, 1147 (1997).

In this case, Intervenors request that this Court enter a Rule 54(b) certification with respect to this Court's March 3, 2009 Order entitled "Order Regarding Respondent's Motion for Summary Judgment." The Intervenors specifically request the Rule 54(b) certificate for the purpose of allowing "Intervenors to appeal the decision." (Intervenors Motion for Certification

- 2 -

of Partial Summary Judgment Pursuant to Rule 56(b), p.1). Thus, the Intervenors desire and intend to undertake a piece meal appeal in this action.

Permitting an immediate appeal in this case would be improper given the numerous issues presently pending before this Court between WTB and Intervenors which have not been resolved. For the Court's reference, the following issues are presently unresolved and pending before this Court:

- 1) Out of the six claims WTB sought to dismiss on summary judgment, this Court dismissed three in its March 8, 2009 Order, and denied dismissal of the remaining three. Those claims not dismissed are unresolved and pending before this Court.
- 2) Respondent's Motion For Order Dismissing Intervenor William Michael Bowman with prejudice, filed on March 24, 2009, is unresolved and pending before this Court.
- 3) Petitioners Motion for Enforcement of Agreement, filed on April 21, 2009 is unresolved and pending before this Court.
- 4) Respondent's Motion to Dismiss First Amended Complaint of Intervenors, filed on April 16, 2009, is unresolved and pending before this Court.

Granting a Rule 54(b) certificate with respect to this Court's March 8, 2009 Order would effectively divest this Court of jurisdiction from resolving the above-mentioned pending issues, and would result is a piece meal appeal. Permitting a piece meal appeal in this case, given these unresolved issues would be improper.

As an initial matter, this is not one of the "infrequent harsh cases" where a piece meal appeal would be proper. Thorn Creek Cattle Ass'n Inc., 122 Idaho at 45, 830 P.2d 1183. Intervenors have failed to show or establish that they will suffer some great hardship or injustice in the event the requested immediate appeal is denied, and the above-mentioned pending issues are fully and finally resolved by this Court. See e.g., Kolln, 130 Idaho at 328, 940 P.2d at 1147

- 4 -

(holding, "the party requesting certification must show that it will suffer some hardship or injustice, or provide some other compelling reason why the certification should be granted"). The Idaho Supreme Court has made clear that "mere delay is not a hardship in and of itself, because I.R.C.P. 54(b) contemplates that there will normally be delay in cases involving multiple parties and motions." *Kolln*, 130 Idaho at 328, 940 P.2d at 1147. Simply stated, there is no prejudice that the Intervenors would suffer from going forward and resolving the remaining issues still pending before this Court. As such permitting an immediate appeal by issuing a Rule 54(b) certificate in this case would be improper, and would be contrary to the stated purpose of Rule 54(b), which is to avoid piece meal appeals.

Furthermore, Intervenors have failed to establish that the public policy of judicial economy and the efficient administration of justice would be furthered by permitting an immediate appeal of this Court's March 8, 2009 Order in light of the numerous unresolved issues still pending before this Court. It seems that the exact opposite would be true, and that it would promote judicial economy and the efficient administration of justice to resolve all issues pending before this Court before an appeal is allowed. The piecemeal appeal which Intervenors seek would only ramp up the costs of litigation, significantly delay the resolution of this matter, and provide no benefit to any party. Respondent therefore submits that a Rule 54(b) certificate with respect to this Court's March 8, 2009, permitting the Intervenors to appeal despite the various unresolved issues that are pending before this Court would be improper.

II. CONCLUSION

Respondent WTB respectfully requests that Intervenors Motion for Certification of Partial Summary Judgment Pursuant to I.R.C.P 54(b) be denied.

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DATED this 29th day of April, 2009.

LUKINS & ANNIS, P.S.

ISB #4623 PETER J. SMITH IV ISB #6997 Attorneys for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28^{44} day of April, 2009, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to all counsel of record as follows:

Г

Todd M. Reed Powell & Reed, P.C. 318 Pine Street Post Office Box 1005 Sandpoint, Idaho 83864-1339 Attorney for Teresa R. Blankenship, Petitioner U.S. Mail Hand Delivered Overnight Mail Telecopy (FAX) to (208) 263-4435

Ted Diehl, Attorney at Law 106 W. Superior Sandpoint, Idaho 83864

U.S. Mail		
Hand Delivere	d	
Overnight Mai	1	
Telecopy (FA)		263-8983

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- 5 -

MISCHELLE R. FULGHAM ISB #4623 PETER J. SMITH IV ISB #6997 LUKINS & ANNIS, P.S. Ste 102 250 Northwest Blvd Coeur d'Alene, ID 83814-2971 Telephone: (208) 667-0517 Facsimile: (208) 664-4125	CLERK DISTRICT COURT
Attorneys for Respondent WASHINGTON TRUST BANK	
	E FIRST JUDICIAL DISTRICT OF THE FOR THE COUNTY OF BONNER
TERESA A. BLANKENSHIP,	
Petitioner,	NO. CV-2007-00572
v. WASHINGTON TRUST BANK, as Trustee,	REPLY BRIEF IN SUPPORT OF MOTION TO DISMISS INTERVENOR WILLIAM MICHAEL BOWMAN
Kespondent.	
WILLIAM MICHAEL BOWMAN and ERIC BOWMAN, Intervenors, v. WASHINGTON TRUST BANK, as Trustec, Respondent.	
Respondent Washington Trust Bank	("WTB") replies to Intervenors' Objection to
Motion to Dismiss Intervenor William Michael	Bowman ("Intervenor") as follows:

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I. FACTS

1. In its Order dated March 11, 2009, this Court ordered that Intervenor report for deposition on March 12, 2009 at 1:30 p.m. (Order Regarding Rulings From March 11, 2009, Hearing, ¶4).

2. Consistent with the Court's Order, WIB served Intervenor with a Subpoena Duces Tecum instructing him to appear at the offices of Lukins & Annis, P.S., 250 Northwest Boulevard, Suite 102, Coeur d'Alene, Idaho 83814, on Thursday March 12, 2009, at 1:30 p.m. to testify. (Fulgham Aff., ¶3; Ex. 1).

3. Intervenor failed to appear at the time and place designated in the Subpoena Duces Tecum. (Fulgham Aff., ¶3).

4. At no time did Intervenor request, nor did this Court issue, a protective order permitting Intervenor to fail to appear at the time and place specified in the Subpoena Duces Tecum.

I. ARGUMENT

Intervenor argues that he should not be dismissed for failure to appear at his deposition because he asserts "he is entitled to be deposed where he resides, which is Sandpoint, Idaho." (Intervenors' Objection to Motion to Dismiss Intervenor William Michael Bowman, p. 2). Intervenor's assertion that a party may only be required to attend a deposition in the place where he resides is a misstatement of Idaho law as will be shown below. Furthermore, Intervenor's failure to appear as required by the Subpoena Duces Tecum was wrongful given that no protective order was requested or entered in this matter excusing Intervenor from complying with the requirements of the Subpoena. As a result, Intervenor's argument fails, and dismissal of Intervenor is proper. Idaho Rule of Civil Procedure 45(f)(2) governs where a resident of the state of Idaho may be required to attend a deposition. It provides that a deposition is proper (1) where the resident resides, (2) where the resident is employed, or (3) where the resident transacts business. I.R.C.P. 45(f)(2). In this case, Intervenor transacts business in Kootenai County. Indeed, in the Amended Complaint of Intervenors, Intervenor asserts in Paragraph III that his trust is administered in Kootenai County, Idaho. The trust is the subject matter of this lawsuit, and clearly constitutes the transaction of business in Kootenai County. As a result, holding the deposition of Intervenor in Kootenai County was proper under the plain language of Rule 45(f)(2).

Furthermore, Intervenor was not excused from complying with the Subpoena as Intervenor did not seek, and this Court did not issue, a protective order excusing intervenor from complying with the requirements of the Subpoena. Had the Intervenor disputed whether Kootenai County was an appropriate location for the deposition, his reinedy was to bring the issue before the Court and move the Court for a protective order under Idaho Rule of Civil Procedure 45(d). It would then be this Court's decision to determine whether Kootenai County was a proper location for the deposition or whether a protective order should issue changing the location of the Deposition. However, Intervenor simply made the unilateral, ex parte decision to refuse to comply with the Subpoena as well as this Court's March 11, 2009, Order. Such action is not permitted under the plain language Rule 45. As such, dismissal of Intervenor for failure to appear at his deposition is proper.

Idaho Rule of Civil Procedure 37(b) provides that where a party fails to obey an order of the court requiring that party to participate in discovery. "the court in which the action is pending may make such orders in regard to the failure as are just." This rule "gives the trial court discretion to impose any of several different sanctions, including dismissal of the action."

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Devault v. Steven L. Herndon, A Professional Ass'n, 107 Idaho 1, 2, 684 P.2d 978, 979 (1984); I.R.C.P. 37(b)(2)(C). Such a dismissal by the trial court will not be overturned absent a showing of abuse of the trial court's discretion. *Id*.

The Idaho Supreme Court has upheld a district court's decision to dismiss an action with prejudice for failure to comply with an order compelling a party to participate in discovery. In *Devault*, the plaintiff failed to comply with discovery orders of the trial court to produce certain documents and information. *Id.* As a result, the trial court granted the defendant's motion to dismiss the plaintiff's action with prejudice. *Id.* at 1, 684 P.2d at 978. On appeal, the Idaho Supreme Court affirmed the dismissal with prejudice, holding the trial court's "granting of the motion to dismiss did not constitute an abuse of discretion." *Id.* at 3, 684 P.2d at 980. Furthermore, although Idaho has not specifically addressed the issue of whether dismissal is proper for failure to appear at a deposition when ordered by the court, other jurisdictions have that dismissal is proper under such circumstances. *See e.g., Board v. New York City Transit Auth.* 242 F.3d 364 (2nd Cir. 2000) (holding "district court did not abuse its discretion by dismissing plaintiff's claims with prejudice where plaintiff failed to appear at depositions); *In Re Estate of Atwood*, 240 NE.2d 451 (III. App. 1968) (affirming trial court's dismissal of action where party failed to appear at for the taking of his deposition after having been served with notice).

In this case, the Court's March 11, 2009, Order ordered Intervenor "to report for depositions on March 12, 2009." The Order included a plain warning that Intervenor's claims may be dismissed in the event he failed to report to his deposition. Notwithstanding, Intervenor failed to appear at his deposition despite the Court's order and despite the requirements contained in the Subpoena Duces Tecum setting forth the time and place for the deposition. As a

result of Intervenor's failure to comply with this Court's Order and the Subpoena, dismissal of Intervenor's claims with prejudice is proper under the plain language of the Court's Order and under I.R.C.P 37(b)(2)(C).

II. CONCLUSION

Respondent WTB respectfully requests that Intervenor William Michael Bowman's claims be dismissed from this action with prejudice.

DATED this 30th day of April, 2009.

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LUKINS & ANNIS, P.S.

ER. CHAM

ISB #4623 PETER J. SMITH IV ISB #6997 Attorneys for Respondent

REPLY BREIF IN SUPPORT OF MOTION TO DISMISS INTERVENOR WILLIAM MICHAEL BOWMAN K:\w\washing081400\bowman00756\pldg\WTB - Reply Brief in Support of Mot to Dismiss William Bowman-042909-PRH-MRF.docx

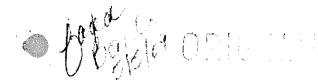
- 5 -

<u>CERTIFICATE OF SERVICE</u>

I HEREBY CERTIFY that on the 30th day of April, 2009, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to all counsel of record as follows:

Todd M. Reed			U.S. Mail
Powell & Reed, P.C.	•		Hand Delivered
318 Pine Street			Overnight Mail
Post Office Box 1005		X	Telecopy (FAX) to (208) 263-4438
Sandpoint, Idaho 83864-1339			
Attorney for Teresa R. Blankenship, 1	Petitioner		
Ted Diehl, Attorney at Law			U.S. Mail
106 W. Superior	;		Hand Delivered
Sandpoint, Idaho 83864			Overnight Mail
Bandpoint, Iauno 05004			Telecopy (FAX) to (208) 263-8983
			1 ciccopy (1 AX) to (200) 203-8365
Honorable John Mitchell			U.S. Mail
Kootenai County Courthouse			Hand Delivered
Post Office Box 9000			Overnight Mail
			Telecopy (FAX) (208) 446-1132
Coeur d'Alene, Idaho 83816			Telecopy (FAX) (208) 440-1132
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REPLY BREIF IN SUPPORT OF MOTION TO DISMISS INTERVENOR WILLIAM MICHAEL BOWMAN K:\w\washing081400\bowman00756\pldg\WTB - Reply Brief in Support of Mot. to Dismiss William Bowman-042909-PRH-MRF.docx



POWELL & REED, P.C. Todd M. Reed, Attorney at Law 318 Pine Street P.O. Box 1005 Sandpoint, Idaho 83864 Phone: (208) 263-3529 Fax: (208) 263-4438 ISB No. 4788

STATE	OF DARO	3
County	of Bonney	j =
FILED_	May 5	2009
AT	Ó'Clock	M
CLERK,	DISTRICT 6	OURT
	an	
Deputy	7	

Attorney for Petitioner

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER MAGISTRATE DIVISION

TERESA R. BLANKENSHIP:)	
-)	Case No.: CV 2007-00572
Petitioner,)	
VS.)	ORDER FOR DISMISSAL
)	
WASHINGTON TRUST BANK,	· · ·)	
as Trustee,)	
Respondent.)	
	·)	• * *

THIS MATTER having come before the Court by way of Stipulation of the parties memorializing the verbal agreements made on the record on March 16, 2009, and good cause being shown:

IT IS HEREBY ORDERED THAT Petitioner cause of action be dismissed with prejudice with both parties bearing their own attorney fees and costs.

DATED this 4th day of May, 2009.

The Honorable John T. Mitchell

CLERK'S CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing Order was mailed, postage prepaid, this _____ day of May, 2009, addressed to:

Todd M. Reed Attorney at Law Post Office Box 1005 Sandpoint, Idaho 83864

U.S. Mail, postage prepaid Hand Delivered Overnight mail Faxed (208) 263-4438

Mischelle R. Fulgham Lukins & Annis, PS 250 Northwest Blvd, Suite 102 Coeur d'Alene, Idaho 83814-2971

U.S. Mail, postage prepaid Hand Delivered Overnight mail Faxed 208-664-4125

James T. Diehl-Mld Fax Bonner Co. Courts

Deputy Clerk of the Court



POWELL & REED, P.C. Todd M. Reed, Attorney at Law 318 Pine Street P.O. Box 1005 Sandpoint, Idaho 83864 Phone: (208) 263-3529 Fax: (208) 263-4438 ISB No. 4788

	of Bonner	5,2009
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CLERK,	DISTRICT	COURT
-	an	<i>(</i>
Deputy		

Attorney for Petitioner

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER MAGISTRATE DIVISION

TERESA R. BLANKENSHIP:)
Petitioner,))
vs.)
)
WASHINGTON TRUST BANK,)
as Trustee,)
Respondent.)

Case No.: CV 2007-00572

ORDER TO TRANSFER TRUSTEE

THIS MATTER having come before the Court by way of Stipulation of the parties and good cause being shown:

IT IS HEREBY ORDERED THAT Beverly Kee shall be released from her obligation as Trustee for the Althea Lorraine Bowman's Children's Trust and that all trust responsibilities and rights shall be transferred over to Terry L. Jensen, Attorney at Law.

IT IS HEREBY FURTHER ORDERED THAT Beverly Kee shall be retained as needed for accounting for the trust, however, the day to day ongoing operations shall be conducted by the Trustee Terry Jensen.

DATED this 4 day of May, 2009.

The Honorable John T. Mitchell

ORDER TO TRANSFER TRUSTEE - 1

CLERK'S CERTIFICATE OF MAILING

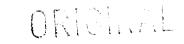
I hereby certify that a true and correct copy of the foregoing Order was mailed, postage prepaid, this $\underline{\circ}$ day of May, 2009, addressed to:

Terry Jensen Attorney at Law Post Office Box 1382 Sandpoint, Idaho 83864	<u> </u>	U.S. Mail, postage prepaid Hand Delivered Overnight mail Faxed - (208) 263-8425
Todd M. Reed Attorney at Law Post Office Box 1005 Sandpoint, Idaho 83864	<u>×</u>	U.S. Mail, postage prepaid Hand Delivered Overnight mail Faxed (208) 263-4438
James T. Diehl Attorney at Law 106 West Superior Street Sandpoint, Idaho 83864	<u> </u>	U.S. Mail, postage prepaid Hand Delivered Overnight mail Faxed (208) 263-8983
Ryan Bowman 605 Monarch Road Sagle, Idaho 83860		U.S. Mail, postage prepaid Hand Delivered Overnight mail Faxed (208)
Mischelle R. Fulgham Lukins & Annis, PS 250 Northwest Blvd, Suite 102 Coeur d'Alene, Idaho 83814-2971	<u>}</u>	U.S. Mail, postage prepaid Hand Delivered Overnight mail Faxed 208-664-4125
Beverly Kee, CPA 515 Pine Street, Suite H Sandpoint, Idaho 83864 Bonner Cc. Cethouse -	_X Faxed	U.S. Mail, postage prepaid Hand Delivered Overnight mail Faxed (208)

ausa

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Deputy Clerk of the Court



POWELL & REED, P.C. Todd M. Reed, Attorney at Law 318 Pine Street P.O. Box 1005 Sandpoint, Idaho 83864 Phone: (208) 263-3529 Fax: (208) 263-4438 ISB No. 4788

Attorney for Petitioner

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

))

))

TERESA R. BLANKEN	ISHIP:	
P	etitioner,	
VS.		
WASHINGTON TRUST BANK, as Trustee,		
R	espondent.	

Case No.: CV 2007-00572

MEMORANDUM AND AFFIDAVIT OF ATTORNEY FEES

Petitioner, by and through her attorney of record, Todd M. Reed, does hereby submit this Memorandum and Affidavit of Attorney's Fees in the above-entitled matter to represent actual attorney fees incurred in the amount of One Thousand Two Hundred Forty-two Dollars (\$1,242.00).

STATE OF IDAHO)) ss. County of Bonner)

I, Todd M. Reed, being first duly sworn, depose and say:

1. That I am an attorney at law licensed to practice my profession in the State of Idaho and am the attorney of record for the Petitioner, TERESA BLANKENSHIP, in the above-entitled action.

- 2. That I am knowledgeable of the various costs and disbursements incurred by said Petitioner in the above-entitled action; and to the best of my knowledge and belief, the items set forth above are true and correct and necessarily incurred by the Petitioner, and that the costs claimed are in compliance with Rule 54 of the Idaho Rules of Civil Procedure.
- 3. The computation of attorney's fees is based upon time slips which are kept on every case upon which are made daily entries recording the nature of service. The time slips have been condensed onto one sheet and are attached hereto. The amount of attorney time which the time slips record is 6.90 hours. I have applied my standard rate of \$180.00 per hour and have arrived at the sum of \$1,242.00
- 4. That the time slips are summarized in the sheet attached hereto and incorporated herein by reference as Exhibit "A".
- 5. To the best of my knowledge the time and labor required pursuant to what has occurred is reasonable under the circumstances. Additionally, there was no specific novelty or difficulty in dealing with this issue and the skill that was required to perform these legal services properly in experience and ability is reasonable under this particular field of law. Additionally, I am aware that the prevailing charges for like kind of work are similar to the fees charges hourly in this particular matter and this was not a fixed or contingent fee. Furthermore, there were no time limitations imposed by the client or circumstances that required additional difficulties. The amount of work involved is relative to the charge and the results that we obtained were successful. There are no special issues as to the undesirability of this case, nor any unusual aspects about the length of the professional relationship with the client. Finally, the award is similar to other motions that I am familiar with in legal proceedings.

DATED THIS <u>7</u> day of May, 2009.

TODD M. REED

Attorney for Petitioner

SUBSCRIBED AND SWORN to before me this _____ day of May, 2009.



Motary Public for the State of Idaho Residing at: Print Piver

My Commission Expires: 3.8.10

CERTIFICATE OF SERVICE

I hereby certify that on this $\underline{+}$ day of May, 2009, I served a true and correct copy of the foregoing on the individuals listed below, by the following method:

Mischelle R. Fulgham Lukins & Annis, PS 250 Northwest Blvd, Suite 102 Coeur d'Alene, Idaho 83814-2971



U.S. Mail, postage prepaid Hand Delivered Overnight mail Faxed (208) 664-4125

James Theodore Diehl Attorney at Law 106 West Superior Street Sandpoint, Idaho 83864

U.S. Mail, postage prepaid Hand Delivered Overnight mail Faxed (208) 263-8983

The Honorable John T. Mitchell Kootenai County District Court Post Office Box 9000 Coeur d'Alene, Idaho 83814



U.S. Mail, postage prepaid Hand Delivered Overnight mail Faxed (208) 446-1132

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EXHIBIT "A"

03/26/09	Review documents; letter to opposing counsel		
		.50	90.00
03/26/09	Phone call with Ted Diehl	.20	36.00
04/01/09	Review documents from opposing counsel/letter To opposing counsel/Motion for Enforcement of Judgment	1.30	234.00
04/21/09	Prepare Motion and Affidavit	.70	126.00
04/23/09	Prepare Stipulation	N	O CHARGE
05/01/09	Prepare for hearing	.50	90.00
05/04/09	Travel to Coeur d'Alene for hearing/meet with Client/attend hearing/travel back to Sandpoint	3.0	540.00
2 05/05/09 2	Prepare Order In Re: Attorney Fees/Memorandum and Affidavit of Attorney Fees	00.70	126.00
	TOTAL	6.90	\$1,242.00

· @ B	Bongleiog	
1 2 3 4	J. T. DIEHL Attorney at Law 106 W. Superior Street Sandpoint, Idaho 83864 (208) 263-8529 ISB#3526	STATE OF IDAHO County of Bonner FILED May 8 2009 AT O'Clock N CLERK, DISTRICT COURT
5	Attorney for Intervenors Bowman	
6 7		THE FIRST JUDICIAL DISTRICT OF THE D FOR THE COUNTY OF BONNER
8	TERESA R. BLANKENSHIP, Petitioner)) Case No. CV-2007-00572)
9 10	vs.)
11	WASHINGTON TRUST BANK, as Trustee,	 ORDER DENYING RESPONDENT'S MOTION TO DISMISS INTERVENOR WILLIAM MICHAEL BOWMAN
12 13	Respondent.))
14 × 15	WILLIAM MICHAEL BOWMAN AND ERIC BOWMAN Intervenors,)))
16	VS.))
17 18	WASHINGTON TRUST BANK, as Trustee,	<pre>/ / / / / / / / / / / / / / / / / / /</pre>
19	Respondent.)
20	This wetter same or for bearing a) n May 1, 2000, at 1:00 alalask a m. symutant ta
21	This matter came on for hearing on May 4, 2009, at 4:00 o'clock p.m. pursuant to	
22	Respondent, WASHINGTON TRUST BANK's Motion to Dismiss Intervenor, WILLIAM MICHAEL	
23	BOWMAN. Respondent was represented by attorney, MISCHELLE FULGHAM, and Intervenor,	
24	WILLIAM MICHAEL BOWMAN, was represented by attorney, J. T. DIEHL. The Court having	
25	reviewed the Affidavits and Memorandum of both parties and having heard oral argument at time	
26	of hearing and being fully appraised:	
27		
28	ORDER DENYING RESPONDENT'S MOTIC TO DISMISS INTERVENOR WILLIAM MICH 5%	

1 IT IS HEREBY ORDERED that Respondent's Motion to Dismiss WILLIAM MICHAEL 2 BOWMAN is hereby denied. 3 It is so ordered this the day of May, 2009. 4 5 6 JOHN TÎ. MITCHELL District Court Judge 7 8 CERTIFICATE OF DELIVERY 9 I hereby certify that a true and correct copy of the foregoing document was served this 10 day of May, 2009, by: 11 **United States Mail** Hand Delivery 12 Facsimile 13 to: 14 Mischelle R. Fulgham Peter J. Smith IV 15 LUKINS & ANNIS, P.S. 250 Northwest Blvd, Suite 102 16 Coeur d'Alene, ID 83814-2971 Fax 208-664-4125 17 Todd M. Reed 18 **POWELL & REED** P. O. Box 1005 19 Sandpoint, ID 83864 Fax 208-263-4438 20 21 J. T. Diehl Attorney at Law 22 106 W. Superior Street Sandpoint, ID 83864 FICAN Vausa 23 Fax 208-263-8983 ayed Bonnulo. 5/8/09 24 25 26 27 28 ORDER DENYING RESPONDENT'S MOTION TO DISMISS INTERVENOR WILLIAM MICHAEL BOWMAN -2-533

MISCHELLE R. FULGHAM ISB #4623 PETER J. SMITH IV ISB #6997 LUKINS & ANNIS, P.S. Ste 102 250 Northwest Blvd Coeur d'Alene, ID 83814-2971 Telephone: (208) 667-0517 Facsimile: (208) 664-4125 STATE OF IDAHO COUNTY OF BONNEF FIRST JUDICIAL DR

1001 MAY 18 P 1: 08

MARIE SCGTT CLERK DISTRICT COURT DEPLEY

Attorneys for Respondent WASHINGTON TRUST BANK

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

TERESA A. BLANKENSHIP,

Petitioner,

v.

WASHINGTON TRUST BANK, as Trustee,

Respondent.

WILLIAM MICHAEL BOWMAN and ERIC BOWMAN,

Intervenors,

v.

WASHINGTON TRUST BANK, as Trustee,

Respondent.

NO. CV-2007-00572

RESPONDENT'S OBJECTION TO PETITIONER'S MEMORANDUM AND AFFIDAVIT OF ATTORNEY FEES

Respondent WASHINGTON TRUST BANK ("WTB") files this objection to Petitioner's

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Memorandum and Affidavit of Attorney Fees filed in this matter.

C)}



A. Under Idaho law, attorney's fees are not awardable where no statute or rule is cited in support.

The Idaho Supreme Court has held that "it is well established that a party claiming attorney's fees must assert the specific statute, rule, or case authority for its claim." *Eighteen Mile Ranch, LLC v. Nord Excavating & Paving, Inc.*, 141 Idaho 716, 720, 117 P.3d 130, 134 (2005). If a party claiming fees asserts that a statute provides for an award of attorney's fees, "the party must cite to the statute, and if applicable, the specific subsection of the statute upon which the party relies." *Bream v. Benscoter*, 139 Idaho 364, 369, 79 P.3d 723, 738 (2003). "The party must then provide a reasoned argument, supported by case law as necessary, explaining why the statutory . . . provision entitles the party to an award of attorney fees." *Id.* Where a party fails to cite to a statute or rule upon which it bases its claim for fees, the claim will not be addressed by the court as a general matter:

The State seeks an award of attorney fees because of the Plaintiffs' repeated motions to alter the burden of proof. In making this request, the State does not cite any statute or rule upon which it bases its claim for attorney fees. The State simply argues, "Plaintiffs' motions below, as well as the presentation of this issue on appeal are without basis and Defendants should, therefore be awarded fees." A party claiming attorney fees must assert the specific statute, rule, or case authority for its claim. Because the State has not cited any statute, rule, or case law supporting its claim for attorney fees, we will not consider the claim.

MDS Investments, LLC, v. State, 138 Idaho 456, 465, 65 P.3d 197, 206 (2003).

In this case, Petitioner's Memorandum and Affidavit of Attorney Fees does not "cite to the statute" and/or "specific subsection of the statute" upon which Petitioner relies upon in requesting fees. Moreover, Petitioner has failed to provide a reasoned argument, supported by case law, explaining why the statutory provision entitled her to an award of attorney fees. Because Petitioner has not cited any statute, rule, or case law supporting her claim for attorney's fees, her request for fees should be denied.

()

Moreover, Petitioner's Motion for Enforcement of the Settlement Agreement merely stated "Petitioner hereby requests that she be awarded attorneys fees and costs for having to bring this motion." Clearly, Petitioner failed to "cite to the statute" and "specific subsection of the statute" upon which she relied in making such a request. Petitioner likewise failed to provide a reasoned argument, supported by case law, explaining why the statutory provision entitled her to an award of attorney fees.

Thus, neither Petitioner's Motion for Enforcement of Settlement Agreement, nor Petitioner's Memorandum and Affidavit of Attorney's Fees complied with the mandatory requirements set forth by the Idaho Supreme Court. Rather, Petitioner' Motion for Enforcement simply provided that she be awarded attorneys fees "for having to bring this motion." This unsupported statement did not put WTB on notice of what statutory provision, or on what grounds Petitioner sought an award of fees. As a result, an award of attorney's fees in this matter is not supported by Idaho law, and WTB respectfully requests that the attorney's fees requested by Petitioner in her Memorandum and Affidavit of Attorney Fees be denied.

B. Any attorney fees that may be awarded should be reduced.

In the event that fees are awarded to Petitioner, WTB requests that the amount claimed by Petitioner be reduced. Under Idaho law, the amount of attorney's fees to be awarded pursuant to a request for attorney's fees is committed to the sound discretion of the district court. *See e.g., Mihalka v. Shepard*, 145 Idaho 547, 553, 181 P.3d 473, 479 (2008) (holding, "the calculation of the amount of the award of attorney fees is committed to the sound discretion of the district court"). In this case, WTB requests that this Court exercise its discretion to reduce the amount requested by Petitioner, given the following:





Petitioner's entry on 3/26/09 provides "review documents; letter to opposing counsel" and "phone call with Ted Diehl." Petitioner is not entitled to fees for the time Mr. Reed spend on the telephone with Mr. Diehl, as the time billed was not related to Petitioner's Motion to Enforce Settlement Agreement, which motion only involved Petitioner and WTB. Second, WTB objects to the entry "review documents" as the same does not specify what work was done, or what documents were reviewed, and does not specify whether the work was related to Petitioner's Motion to Enforce Settlement Agreement.

Petitioner's entry on 4/01/09 provides "review documents from opposing counsel/letter to opposing counsel/Motion for Enforcement of Judgment." WTB objects to "review documents from opposing counsel" as the same does not specify what work was done, or what documents were reviewed, and does not specify whether the work done was related to Petitioner's Motion to Enforce Settlement Agreement. WTB also objects to time billed for the "Motion for Enforcement of Judgment" as there was no Judgment in this case.

Petitioner's entry dated 5/4/09 provides "Travel to Coeur d'Alene for hearing/meet with Client/attend hearing/travel back to Sandpoint." WTB objects to claimed travel time. In this matter it has been the usual practice of counsel for Petitioner to appear telephonically for court hearings rather than appear personally. At the hearing on the Motion to Enforce Settlement Agreement, the court clerk and the parties expected counsel for Petitioner to phone in for the nearing as per his usual practice. It was not necessary for counsel to appear personally and incur travel costs. WTB should not be made to cover time billed for travel costs where it was the choice of counsel to travel to the hearing and such travel was unnecessary.

Thus, a review of the time entries attached to Mr. Reed's Affidavit demonstrates that one or more of the time entries are not related to Petitioner's Motion for Enforcement of the

Settlement Agreement. Additional entries are too vague and non-descriptive for WTB and this Court to decipher what work was completed, and whether such work was related to Petitioner's Motion for Enforcement of the Settlement Agreement. As a result, WTB requests that this Court exercise its discretion to reduce the amount of attorney's fees claimed by Petitioner in the event fees are awarded.

II. CONCLUSION

WTB respectfully requests that the attorney's fees requested by Petitioner in her Memorandum and Affidavit of Attorney Fees be denied. In the event that attorney's fees are awarded, WTB requests that the amount requested by Petitioner be reduced.

DATED this day of May, 2009.

LUKINS & ANNIS, P.S.

ISB #4623 PETER J. SMITH IV ISB #6997 Attorneys for Respondent

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- 5 -

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the day of May, 2009, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to all counsel of record as follows:

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 \Box

Todd M. Reed Powell & Reed, P.C. 318 Pine Street Post Office Box 1005 Sandpoint, Idaho 83864-1339 Attorney for Teresa R. Blankenship, Petitioner

U.S. Mail
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Overnight Mail
Tolocopy $(\mathbf{F} \mathbf{A} \mathbf{Y})$ to (208) 262 A

- Telecopy (FAX) to (208) 263-4438
- Ted Diehl, Attorney at LawImage: Constraint of the second sec

Honorable John Mitchell Kootenai County Courthouse Post Office Box 9000 Coeur d'Alene, Idaho 83816

- U.S. Mail Hand Delivered
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- Telecopy (FAX) to (208) 263-8983
- U.S. Mail
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 - Telecopy (FAX) (208) 446-1132

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MISCHELLE R. FULGHAM
ISB #4623
PETER J. SMITH IV
ISB #6997
LUKINS & ANNIS, P.S.
Ste 102
250 Northwest Blvd
Coeur d'Alene, ID 83814-2971
Telephone: (208) 667-0517
Facsimile: (208) 664-4125

Attorneys for Respondent WASHINGTON TRUST BANK

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

NO. CV-2007-00572

MOTION FOR RECONSIDERATION

TERESA A. BLANKENSHIP,

Petitioner,

v.

WASHINGTON TRUST BANK, as Trustee,

Respondent

WILEIAM MICHAEL BOWMAN and ERIC BOWMAN,

Intervenors,

v.

WASHINGTON TRUST BANK, as Trustee,

Respondent.

Respondent WASHINGTON TRUST BANK respectfully moves the Court pursuant to Idaho Rule of Civil Procedure 11(a)(2)(B) to reconsider its following holdings: (1) its May 4, 2009 decision to grant Petitioner's Motion for Enforcement; and (2) its May 4, 2009 decision to grant Petitioner's request for attorney's fees incurred in pursing her Motion for Enforcement. This motion is supported by the Memorandum and Affidavit in Support filed herewith.

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STATE OF IDARO COUNTY OF BOUKE

MARIE SCOTT

DATED this 15th day of May, 2009.

LUKINS & ANNIS, P.S.

MISCHELLE R. FUEGHAM ISB #4623 PETER J. SMITH IV ISB #6997 Attorneys for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the <u>structure</u> day of May, 2009, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to all counsel of record as follows:

Todd M. Reed Powell & Reed, P.C. 318 Pine Street Post Office Box 1005 Sandpoint, Idaho 83864-1339 Attorney for Teresa R. Blankenship, Petitioner

Ted Diehl, Attorney at Law 106 W. Superior Sandpoint, Idaho 83864

Honorable John Mitchell Kootenai County Courthouse Post Office Box 9000 Coeur d'Alene, Idaho 83816

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-	
MISCHELLE R. FULGHAM ISB #4623 PETER J. SMITH IV ISB #6997	2009 JUN 18 P 3: 25
LUKINS & ANNIS, P.S. Ste 102 250 Northwest Blvd Coeur d'Alene, ID 83814-2971 Telephone: (208) 667-0517 Facsimile: (208) 664-4125	арон.
Attorneys for Respondent WASHINGTON TRUST BANK	
	FIRST JUDICIAL DISTRICT OF THE OR THE COUNTY OF BONNER
TERESA A. BLANKENSHIP,	1
Petitioner,	NO. CV-2007-00572
v. WASHINGTON TRUST BANK, as Trustee, Respondent.	REPLY BRIEF IN SUPPORT OF MOTION TO DISMISS FIRST AMENDED COMPLAINT OF INTERVENOR(S)
WILLIAM MICHAEL BOWMAN and ERIC BOWMAN,	
Intervenors,	
v .	
WASHINGTON TRUST BANK, as Trustee,	
Respondent.	

Respondent ("WTB") files this Reply Brief in support of its Motion to Dismiss First

Amended Complaint of Intervenor(s), and in repose to those arguments set forth by Intervenors

in their Objection to Motion to Dismiss Amended Complaint filed in this matter.

I. SUMMARY OF PROCEDURAL HISTORY PERTINENT TO INTERVENORS WILLIAM MICHAEL BOWMAN AND ERIC BOWMAN

1. This matter originated between Petitioner and WTB on April 3, 2007, when Petitioner filed her Petition for Removal of Trustee and Preliminary Injunction ("Petition for Removal").

2. On October 21, 2008, Intervenor William Michael Bowman moved the Court for leave to intervene in this matter. On November 12, 2008, this Court entered its Order permitting the intervention of William Michael Bowman.

3. On January 29 2009, WTB filed its Motion for Summary Judgment, Seeking the dismissal of the claims set forth by Petitioner in her Petition for Removal.

4. On February 17, 2009, Intervenor William Michael Bowman filed his Complaint of Intervence, alleging causes of action against WTB.

5. On February 24, 2009, Intervenor Eric Bowman moved the Court for leave to intervene in this matter. On March 5, 2009, this Court entered its Order permitting the intervention of Eric Bowman.

6. On March 8, 2009, this Court entered its Order Regarding Respondent's Motion for Summary Judgment ("March 8, 2009 Order"), wherein the Court dismissed, among other things, Petitioner's and Intervenors' request for preliminary injunction prohibiting WTB, acting as Trustee, from selling real property held by the children's trusts, as well as Petitioner's and Intervenors claims for damages purportedly caused by the advance of Funds to Ryan Bowman's Trust and recording of a Deed of Trust against the undivided ¼ interest in the real property held by Ryan Bowman's Trust. 7. At the time this Court's March 8, 2009 Order was issued, Intervenor Eric Bowman had no claims against WTB pending before this Court.

Subsequent to the entry of this Court's March 8, 2009 Order, on March 12, 2009,
 Intervenors William Michael Bowman and Eric Bowman filed their First Amended Complaint of
 Intervenor(s).

9. The allegations set forth in the First Amended Complaint of Intervenor(s) where the first allegations set forth by Intervenor Eric Bowman against WTB in this matter.

10. Because Eric Bowman did not have any claims against WTB pending before the Court at the time this Court entered its March 8, 2009 Order, the claims of Eric Bowman, as set forth in the First Amended Complaint of Intervenor(s) have not been addressed by this Court.

II. ANALSIS

A. Intervenor Eric Bowman is prohibited as a matter of law from re-litigating those claims set forth by him against WTB in the First Amended Complaint of Intervenor(s), which complaint was filed subsequent to this Court's March 3, 2009 Order.

In this case, Eric Bowman had no claims against WTB pending before this Court at the time this Court entered its March 8, 2009 Order. Indeed, the first allegations set forth by Eric Bowman in this matter against WTB were alleged subsequent to this Court's March 8, 2009 Order, when Intervenors filed the First Amended Complaint of Intervenor(s) on March 12, 2009. Because Eric Bowman did not have any claims against WTB pending before this Court when it entered its March 8, 2009 Order, Eric Bowman's claims, as asserted in the First Amended Complaint of Intervenor(s), have not been addressed by this Court and are pending unresolved. Via its Motion to Dismiss First Amended Complaint of Intervenor(s), WTB simply asks this Court to dismiss Eric Bowman's claims on the grounds that issue preclusion principles bar Eric Bowman from asserting and re-litigating said claims as a matter of law.

Under Idaho law, issue preclusion "serves the purpose of protecting litigants from the burden of re-litigating an identical issue with the same party or his privy, of promoting judicial economy by preventing needless litigation, of preventing inconsistent decisions and of encouraging reliance on adjudications." *Maroun v. Wyreless Systems, Inc.*, 141 Idaho 604, 617, 114 P.3d 974, 988 (2005). In order to bar re-litigation of an issue already determined under the doctrine of issue preclusion, five elements must be met:

(1) The party against whom the earlier decision was asserted had a full and fair opportunity to litigate the issue decided in the earlier case; (2) the issue decided in the prior litigation was identical to the issue presented in the present action; (3) the issue sought to be precluded was actually decided in the prior litigation; (4) there was a final judgment on the merits in the prior litigation; and (5) the party against whom the issue is asserted was a party or in privity with a party to the litigation.

Id. at 618, 114 P.3d at 988.

In this case, the claims against WTB set forth by Intervenor Eric Bowman in the First Amended Complaint of Intervenor(s) on March 12, 2009 were the first claims in this action to be lodged against WTB by Eric Bowman. As such, they have not been resolved by this Court. However, Intervenor Eric Bowman is identically situated with Intervenor William Bowman, whose claims against WTB, as set forth in his Complaint of Intervenor, were resolved by this Court via its March 8, 2009 Order. Moreover, the claims set forth by Intervenor Eric Bowman against WTB in the First Amended Complaint of Intervenor(s) are identical to, and mirror, those claims set forth by Intervenor William Bowman against WTB in his Complaint of Intervenor.

By filing the First Amended Complaint of Intervenor(s), and asserting causes of action on his behalf against WTB for the first time, Intervenor Eric Bowman is attempting to re-litigate issues already determined by this Court. Namely, Intervenor Eric Bowman is attempting to relitigate the following issues already decided by this Court via its March 8, 2009 Order: (1) whether he is entitled to an injunction prohibiting WTB from selling real property held by the children's trusts, (2) whether he is entitled to damages purportedly cause by the advance of funds to Ryan Bowman's Trust and recording of a deed of trust against the undivided ¼ interest in the real property held by the Ryan Bowman Trust; and (3) whether he is entitled to an order quieting title to the real property encumbered by the deed of trust.

Intervenor William Bowman had a full and fair opportunity to litigate the abovementioned issues previously in this case. The issues decided by this Court via its March 8, 2009 Order are identical to the issues presented for the first time by Eric Bowman in the First Amended Complaint of Intervenor(s), and WTB was a party to that Order. It follows that Intervenor Eric Bowman can prove no set of facts on which he can prevail on the claims raised in the First Amended Complaint of Intervenor(s) against WTB, and dismissal of the same is proper under Rule 12(b)(6) as a matter of law.

B. The clauns set forth by William Bowman in the First Amended Complaint of Intervenor(s) should be dismissed and barred by principals of claim preclusion.

Under Idaho law, claim preclusion bars parties from re-litigating claims that have already been judicially resolved. *Ticor Title Co. v. Stanion*, 144 Idaho 119, 124, 157 P.3d 613, 618 (2007). For claim preclusion to bar a subsequent action there are three requirements: (1) same parties; (2) same claim; and (3) final judgment. *Id*.

In this case, William Bowman first alleged causes of action against WTB on February 17, 2009 via his filing of his Complaint of Intervenor. It is undisputed that this Court's March 8, 2009 Order dismissed, among other things, the claims against WTB contained in William Bowman's Complaint of Intervenor, including his request for preliminary injunction prohibiting WTB, acting as Trustee, from selling real property held by the children's trusts, as well as his claims for damages purportedly caused by the advance of Funds to Ryan Bowman's Trust and recording of a Deed of Trust against the undivided ¹/₄ interest in the real property held by Ryan Bowman's Trust.

Notwithstanding, on March 12, 2009, <u>subsequent to the Court's entry of its March 8</u>, 2009 Order, Intervenor William Bowman filed his First Amended Complaint of Intervenor(s), realleging causes of action which had already been addressed, resolved, and disposed of by this Court in favor of WTB. The claims set forth by William Bowman against WTB on March 12, 2009 in the First Amended Complaint of Intervenors are identical to those set forth in his Complaint of Intervenor filed on February 17, 2009. Because the claims alleged by Intervenor William Bowmam in the First Amended Complaint of Intervenor(s) were previously addressed and disposed of by this Court via its March 8, 2009 Order, Intervenor William Bowman is now precluded from re-asserting said claims against WTB under the plain language of the Court's March 8, 2009 Order, and under claim preclusion principles. It follows that Intervenor William Bowman can prove no set of facts on which he can prevail on the claims raised in the First Amended Complaint of Intervenor(s) against WTB, and dismissal of the same is proper under Rule 12(b)(6) as a matter of law.

III. CONCLUSION

WTB respectfully requests that this Court grant its motion to dismiss the Intervenors' First Amended Complaint and award WTB its attorney's fees pursuant to Idaho Code § 12-121 and 12-120(3) and costs associated with its defense of the frivolously filed complaint.

DATED this 12 day of June, 2009.

LUKINS & ANNIS, P.S.

ISB #4623

PETER J. SMITH IV ISB #6997 Attorneys for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10^{44} day of June, 2009, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to all counsel of record as follows:

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Todd M. Reed Powell & Reed, P.C. 318 Pine Street Post Office Box 1005 Sandpoint, Idaho 83864-1339 Attorney for Teresa R. Blankenship, Petitioner

Ted Dichl, Attorney at Law 106 W. Superior Sandpoint, Idaho 83864

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Hand Deliver

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Overnight Mail

Telecopy (FAX) to (208) 263-4438

U.S. Mail

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POWELL & REED

POWELL & REED, P.C. Todd M. Reed, Attorney at Law 318 Pine Street P.O. Box 1005 Sandpoint, Idaho 83864 Phone: (208) 263-3529 Fax: (208) 263-4438 ISB No. 4788 •

FATE OF IDARO County of Bonder FILED O'Cikck A 7 DISTRICT COURT CLEKK. Depety

Attorney for Petitioner

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER MAGISTRATE DIVISION

TERESA R. BLANKENSHIP:	
Peti	tioner,
V3.	
WASHINGTON TRUST BANK,	
	pondent.

Case No.: CV 2007-00572

JUDGMENT IN RE: ATTORNEY FEES ON MOTION TO RECONSIDER

THE COURT having awarded attorneys fees to Petitioner, Teresa R. Blankenship, for Respondent's, Washington Trust Bank, Motion to Reconsider, and the Petitioner submitting a Memorandum and Affidavit of Attorney Fees on the Motion to Reconsider and filed on June 30, 2009, and the Respondent failing to file an objection pursuant to I.R.C.P. Rule 54 (d)(6) and 54 (e)(6) the Court hereby enters the following Order in regards to attorney fees:

IT IS HEREBY ORDERED THAT

1. Judgment is entered in favor of the Petitioner against the Respondent in the manner of One Thousand Three Hundred Five Dollars (\$1,305.00).

2. The above amount shall earn statutory interest at a rate pursuant to the laws of the State of Idaho.

DATED this ______ day of July, 2009.

The Honorable John T. Mitchell CLERK'S CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing Order was mailed, postage

prepaid, this _____ day of May, 2009, addressed to:

Mischelle R. Fulgham Lukins & Annis, PS 250 Northwest Blvd, Suite 102 Coeur d'Alene, Idaho 83814-2971

U.S. Mail, postage prepaid
 Hand Delivered
Overnight mail
 Faxed 208-664-4125

James Theodore Diehl Attorney at Law 106 West Superior Street Sandpoint, Idaho 83864

U.S. Mail, postage prepaid Hand Delivered Overnight mail Faxed 208-263-8983

Todd M. Reed Powell & Reed, P.C. Post Office Box 1005 Sandpoint, Idaho 83864

 U.S. Mail, postage prepaid
 Hand Delivered
 Overnight mail
Faxed 208 263-4438

Deputy Clerk of the Court

GLORIANNE GOODING-JONES, P. A.

Attorney at Law 323 North First Avenue, Suite 206 Sandpoint, ID 83864 Tel: (208) 255-2088 Fax: (208) 255-4395 ISB No. 5905 STATE OF IDAHO COUNTY OF BONNER FIRST JUDICIAL DIST.

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MARIE SU CLERK DISTRICT COULT & D

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER MAGISTRATES DIVISION

TERESA R. BLANKENSHIP,	
Petitioner,) CASE NO. CV-2007-00572
VS. WASHINGTON TRUST BANK,) STIPULATION TO TRANSFER) TRUSTEE
Respondent.	

COME NOW the beneficiaries of the althea Lorraine Bowman's Children's trust, **WILLIAM MICHAEL BOWMAN**, **ERIC LANE BOWMAN**, **RYAN ARTHUR BOWMAN** and **TERESA RENEE BLANKENSHIP**, and hereby stipulate that the current Trustee, Terry Jensen, shall be released from his obligation as Trustee and that all Trust responsibilities and rights shall be transferred to Glorianne Gooding-Jones, Attorney at Law.

therein.

Oct 26,2015

ERIC LANE BOWMAN

STATE OF IDAHO, County of Bonner Notary Public - State of Idaho Residing at <u>Sondpoint</u>

My commission expires:



On this 2U day of <u>Determinent</u> 2009, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared, **ERIC LANE BOWMAN**, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.

SS

therein.

ZLE, ZDIS OWMAN

Notary Public - State of Idaho Residing at Sandpoint

My commission expires:

) : ss

)

STATE OF IDAHO,

County of Bonner.

On this 28^{t^2} day of <u>December</u> 2009, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared, **TERESA RENEE BLANKENSHIP**, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.

Notary Public - State of Idaho Residing at <u>Alund Jour</u> Idano therein. My commission expires: 10/30/2012 BRENDA K. SMITH NOTARY PUBLIC STATE OF IDAHO

GLORIANNE GOODING-JONES, P. A. Attorney at Law 323 North First Avenue, Suite 206 Sandpoint, ID 83864 Tel: (208) 255-2088 Fax: (208) 255-4395 ISB No. 5905 STATE OF IDAHO COUNTY OF BONNER FIRST JUDICIAL DIST.

2010 JAN 22 A 10-10

MARIE SCOT F CLERK DISTRICT COURT DEPIIT

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER MAGISTRATES DIVISION

IERESA R. BLANKENSHIP,)
Petitioner,) CASE NO. CV-2007-00572
vs. WASHINGTON TRUST BANK,) ORDER TO TRANSFER) TRUSTEE
Respondent.	/) }

THIS MATTER having come before the Court by way of Stipulation of the parties and good cause being shown:

IT IS HEREBY ORDERED THAT Terry Jensen shall be released from his obligation as Trustee for the Althea Lorraine Bowman's Children's Trust and that trust responsibilities and rights shall be transferred to Glorianne Gooding-Jones, Attorney at Law.

Beverly Kee shall continue to perform needed accounting services for the Trust pursuant to the Court's Order to Transfer Trustee entered in this matter on May 4, 2009.

DATED this 22 nd day of 2010. NUR THE HONORABLE JOHN MITCHELL 554 Order to Transfer Trustee - Page 1 of 2

CLERK'S CERTIFICATE OF MAILING

IT IS HEREBY CERTIFIED that the undersigned is the Deputy Clerk for the above-entitled Court; that on the 32 day of family 2010, the undersigned enclosed a conformed copy of the foregoing Order dated the by the above-entitled Court in the above-entitled action, to the following persons in the following manner; U.S. Mail, Postage Paid Glorianne Gooding-Jones Attorney at Law [[Overnight Mail J Hand Delivered 323 North First Avenue, Suite 206 Facsimile No. Sandpoint, ID 83864 U.S. Mail, Postage Paid Terry Jensen Overnight Mail Attomey at Law Hand Delivered P. O. Box 1382 Facsimile No. Sandpoint, ID 83864 U.S. Mail, Postage Paid Todd M. Reed Overnight Mail Attomey at Law Hand Delivered P. O. Box 1005 Facsimile No. Sandpoint, ID 83864 U.S. Mail, Postage Paid James Theodore Diehl Overnight Mail Attomey at Law Hand Delivered 106 West Superior Street Facsimile No. Sandpoint, ID 83864 U.S. Mail, Postage Paid Beverly Kee, CPA Overnight Mail 120 East Lake Street, Suite 202 Hand Delivered Sandpoint, ID 83864 Facsimile No. U.S. Mail, Postage Paid Ryan Bowman 605 Monarch Road Overnight Mail Sagle, ID 83860 Hand Delivered Facsimile No.

Deputy Clerk

Order to Transfer Trustee - Page 2 of 2



GLORIANNE GOODING-JONES, P. A. Attorney at Law 323 North First Avenue, Suite 206 Sandpoint, ID 83864 Tel: (208) 255-2088 Fax: (208) 255-4395 ISB No. 5905

STATE OF IDAHO COUNTY OF BONNER FIRST JUDICIAL DIST.

2010 JAN 22 A 10: 10

MARIE SCOT I CLERK DISTRICT COURT DEPIT

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER MAGISTRATES DIVISION

TERESA R. BLANKENSHIP,)
Petitioner,) CASE NO. CV-2007-00572
vs. WASHINGTON TRUST BANK,))) ORDER TO TRANSFER) TRUSTEE
Respondent)))

THIS MATTER having come before the Court by way of Stipulation of the parties and good cause being shown:

IT IS HEREBY ORDERED THAT Terry Jensen shall be released from his obligation as Trustee for the Althea Lorraine Bowman's Children's Trust and that trust responsibilities and rights shall be transferred to Glorianne Gooding-Jones, Attomey at Law.

Beverly Kee shall continue to perform needed accounting services for the Trust pursuant to the Court's Order to Transfer Trustee entered in this matter on May 4, 2009.

DATED this 22 nd day of 2010. u va THE HONORABLE JOHN T. MITCHELL

556

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CLERK'S CERTIFICATE OF MAILING

IT IS HEREBY CERTIFIED that the undersigned is the Deputy Clerk for the above-entitled Court; that on the 22 day of Lanunu 2010, the undersigned enclosed a conformed copy of the foregoing Order dated the by the above-entitled Court in the above-entitled action, to the following persons in the following manner; Glorianne Gooding-Jones U.S. Mail, Postage Paid Attorney at Law Overnight Mail Hand Delivered 323 North First Avenue, Suite 206 Facsimile No. Sandpoint, ID 83864 U.S. Mail, Postage Paid Terry Jensen Overnight Mail Attomev at Law Hand Delivered P. O. Box 1382 Facsimile No. Sandpoint, ID 83864 U.S. Mail, Postage Paid Todd M. Reed Overnight Mail Attomey at Law Hand Delivered P. O. Box 1005 Facsimile No. Sandpoint, ID 83864 James Theodore Diehl U.S. Mail, Postage Paid Overnight Mail Attorney at Law Hand Delivered 106 West Superior Street Facsimile No. Sandpoint, ID \$3864 U.S. Mail, Postage Paid Beverty Kee, CPA Overnight Mail 120 East Lake Street, Suite 202 Sandpoint, ID 83864 Hand Delivered Facsimile No. U.S. Mail, Postage Paid Ryan Bowman 605 Monarch Road Overnight Mail Sagle, ID 83860 Hand Delivered Facsimile No. ____

Deputy Clerk

Order to Transfer Trustee - Page 2 of 2

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1208:NO./525 P. JO6/007



GLORIANNE GOODING-JONES, P. A. Attorney at Law 323 North First Avenue, Suite 206 Sandpoint, ID 83864 Tel: (208) 255-2088 Fax: (208) 255-4395 ISB No. 5905 STATE OF IDAHO COUNTY OF BONNER FIRST JUDICIAL DIST.

2010 JAN 22 A 10= 10

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER MAGISTRATES DIVISION

TERESA R. BLANKENSHIP,

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VS.

WASHINGTON TRUST BANK,

Respondent.

CASE NO. CV-2007-00572

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DATED this 22 Mday of 2010. u va THE HONORABLE JOHN T. MITCHELL 558Order to Transfer Trustee - Page 1 of 2

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Order to Transfer Trustee - Page 2 of 2



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2010 JAN 22 A 10= 10

MARIE SCOT I CLERK DISTRICT COURT DEPUT

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER MAGISTRATES DIVISION

TERESA R. BLANKENSHIP, Petitioner, vs. WASHINGTON TRUST BANK, Respondent.

CASE NO. CV-2007-00572

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DATED this 22 nd day of 2010. u va THE HONORABLE JOHN MITCHELL 560Order to Transfer Trustee - Page 1 of 2

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CLERK'S CERTIFICATE OF MAILING

IT IS HEREBY CERTIFIED that the undersigned is the Deputy Clerk for the above-entitled Court; that on the 32 day of Annunu 2010, the undersigned enclosed a conformed copy of the foregoing Order dated the Lanuary, 2010, issued day of by the above-entitled Court in the above-entitled action, to the following persons in the following manner: U.S. Mail, Postage Paid Glorianne Gooding-Jones Attorney at Law Ovemight Mail Hand Delivered 323 North First Avenue, Suite 206 Facsimile No. Sandpoint, ID 83864 U.S. Mail, Postage Paid Teny Jensen Overnight Mail Attorney at Law Hand Delivered P. O. Box 1382 Facsimile No. Sandpoint, ID 83864 U.S. Mail, Postage Paid Todd M. Reed Overnight Mail Attomey at Law Hand Delivered P. O. Box 1005 Sandpoint, ID 83864 Facsimile No. James Theodore Diehl U.S. Mail, Postage Paid Overnight Mail Attorney at Law Hand Delivered 106 West Superior Street Facsimile No. Sandpoint, ID 83864 U.S. Mail, Postage Paid Beverly Kee, CPA Overnight Mail 120 East Lake Street, Suite 202 Hand Delivered Sandpoint, ID 83864 Facsimile No. Ryan Bowman U.S. Mail, Postage Paid Overnight Mail 605 Monarch Road Sagle, ID 83860 Hand Delivered Facsimile No.

Deputy Clerk

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FRIEDLANDER HAYNES MITCHELL STOW

1208:NO./bZb P. 136/007



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2010 JAN 22 A 10: 10

MARIE SCOTI CLERK DISTRICT COULT DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER MAGISTRATES DIVISION

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Respondent.

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562

FRIEDLANDER HAYNES MUICHELL STOW

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Order to Transfer Trustee - Page 2 of 2



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STATE OF IDAHO COUNTY OF BONNER FIRST JUDICIAL DIST.

2010 JAN 22 A 10: 10

MARIE SCOT : CLERK DISTRICT COURT DEPUT

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO. IN AND FOR THE COUNTY OF BONNER MAGISTRATES DIVISION

TERESA R. BLANKENSHIP.

Petitioner.

VS.

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Respondent.

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DATED this 22 nd day of 2010. u va THE HONORABLE JOHN TCHELL 564

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Order to Transfer Trustee - Page 2 of 2

•	STATE OF ID COUNTY OF BO FIRST JUDICIAL D 2010 SEP 28 A	NNER DISTRICT	Coun FILE	TE OF IDAHO aty of BONNER D - 3 O'Clock RK OF DISTRICT	
MARIE SCOTT CLERK DISTRICT COURT		T T COUR T	Deput	ty	
IN THE DISTRI	CT COURT OF THE F		L DIS	TRICT OF TH	E
STATE O	F IDAHO IN AND FOF	R THE COUNT	Y OF E	BONNER	
THERESA R. BLANKE	NSHIP,) Case	No.	S CV 20	07 572
VS.	Petitioner,)) MEMORANDUM DECISION AND) ORDER GRANTING WASHINGTOP			
WASHINGTON TRUST BANK,		TRUST BANK'S MOTION TO DISMISS		ТО	
	Respondent.)			
WILLIAM MICHAEL E BOWMAN,	SOWMAN and ERIC)			
	• Intervenors,				
WASHINGTON TRUST) BANK,)				
) <u>Respondent.</u>)				

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

This matter is before the Court on Respondent Washington Trust Bank's (WTB)

"Motion to Dismiss First Amended Complaint of Intervenor(s)."

Petitioner Theresa Blankenship (Blankenship) is one of four beneficiaries of a trust created by her mother. The trust (real) property is located in Bonner County. In her petition filed April 3, 2007, Blankenship asked this Court to remove WTB as trustee because she alleges WTB participated in lending to other beneficiaries beyond what is permitted in the trust and did not operate the real property to maximize the return of profits to benefit beneficiaries of the trust. Blankenship moved this Court for a Protective Order to prevent WTB from selling the real property over the beneficiaries' 566

objections because the sale would deprive the beneficiaries of future income and assets.

On October 21, 2008, William Michael Bowman, another beneficiary to the trust, filed his motion for leave to intervene, and this Court allowed such on November 12, 2008. On January 17, 2009, WTB filed its Motion for Summary Judgment. On February 17, 2009, Intervenor William Michael Bowman, filed his Complaint of Intervenor. Also, on Feburary 17, 2009, J.T. Diehl, counsel for William Michael Bowman, filed an Affidavit of J.T. Diehl and Memorandum in Opposition to Motion for Summary Judgment. On February 24, 2009, Eric Bowman, another beneficiary, filed a Motion to Intervene which was heard on March 2, 2009. At that hearing, Eric Bowman was allowed to intervene. Order, March 5, 2009. Following oral argument on WTB's summary judgment motion, on March 2, 2009, this Court dismissed Blankenship's and William Michael Bowman's requests for preliminary injunction, ruled the removal of trustee issue was moot, granted summary judgment to WTB on the violation of Idaho trust law and violation of the trust document issues, and permitted only Blankenship's and William Michael Bowman's claims regarding standing and negligence to move on to trial.

On March 11, 2009, this Court denied WTB's motion for change of venue, granted WTB's motion to depose the Bowmans, or in the alternative bar their testimony, and denied Blankenship's motion for LR.C.P. 54(b) Certification and motion to continue trial. On March 12, 2009, Bowmans filed their First Amended Complaint. Trial was held on March 16, 2009, and at trial, Blankenship and WTB settled, placing their settlement agreement on the record.

On March 24, 2009, WTB filed its "Motion for Order Dismissing Intervenor William Michael Bowman With Prejudice", for failure to appear at his scheduled 567 deposition on March 12, 2009. That motion was denied at the May 4, 2009, hearing. WTB filed a Motion for Reconsideration on May 18, 2009. WTB's Motion to Reconsider was denied at oral argument on that motion held on June 24, 2009.

On April 10, 2009, WTB filed its "Motion to Dismiss First Amended Complaint of Intervenors". WTB seeks to dismiss the Intervenors' First Amended Complaint because "... the claims presented in the Intervenors' First Amended Complaint have already been addressed, resolved, and dismissed by this Court in favor of WTB via this Court's Order Regarding Respondent's Motion for Summary Judgment dated March 8, 2009, and Intervenors can prove no set of facts which would entitle them to the relief they seek." Motion to Dismiss First Amended Complaint of Intervenor(s), pp. 1-2. A Memorandum in Support of Motion to Dismiss First Amended Complaint of Intervenor(s) was also filed cn April 10, 2009. On April 24, 2009, Bowmans filed their "Objection to Motion to Dismiss Amended Complaint." On June 18, 2009, WTB filed its "Reply Brief in Suport of Motion to Dismiss First Amended Complaint of Intervenors." On June 23, 2009, Bowmans filed their "Rebuttal Memorandum in Opposition to Motion to Dismiss Amended Complaint^a. At the June 24, 2009, hearing where this Court denied WTB's Motion to Reconsider, this Court was to have also heard argument on WTB's Motion to Dismiss First Amended Complaint of Intervenors. Due to confusion stemming from the multitude of motions filed since trial, and due to the late filing of WTB's Reply Brief in Support of Motion to Dismiss First Amended Complaint of Intervenors and even later filing of Bowmans' Rebuttal Memorandum in Opposition to Motion to Dismiss Amended Complaint, oral argument on WTB's Motion to Dismiss First Amended Complaint of Intervenors was ordered to be heard at a different time. Oral argument on WTB's Motion to Dismiss First Amended Complaint of Intervenors was finally noticed up for hearing on August 31, 2010. 568

II. ANALYSIS.

A. WTB's Motion to Dismiss the First Amended Complaint of Intervenors.

WTB moves to dismiss the first amended complaint pursuant to I.R.C.P. 12(b)(6) for failure to state a claim. Memorandum in Support of Motion to Dismiss First Amended Complaint, p. 3. WTB argues Bowmans can prove no set of facts which would entitle them to the relief sought. Id. WTB states the allegations in the Complaint concern damages purportedly caused by WTB's advance of funds to Ryan Bowman's Trust and recordation of a Deed of Trust against his one-fourth undivided interest in the trust property, which issues have already been addressed and disposed of by this Court on the record on March 8, 2009. Id., p. 4. (Ryan Bowman is the fourth beneficiary to this trust, along with Blankenship, William Bowman and Eric Bowman). The same issue and claim preclusion arguments are advanced by WTB regarding Bowmans' requests for preliminary injunction. Id., p. 5. In response, Bowmans argue the only two purposes of the First Amended Complaint were to name Eric Bowman as an intervenor and to remove the negligence issues. Objection to Motion to Dismiss Amended Complaint, p. 1. Bowmans point out their counsel informed the Court at trial of the filing of the Amended Complaint and that Bowmans would not participate in the trial, but would "preserve our right to appeal the issues decided at Summary Judgment." Id., p. 2. Following summary judgment, only Blankenship's and Bowmans' standing and negligence claims remained. Blankenship's claims were settled thereafter and the matter was dismissed as to her. However, the First Amended Complaint makes the substantive changes of adding intervenor Eric Bowman and removing the negligence claims. It appears Bowmans sought only to appeal this Court's Order on Summary Judgment, but could not do so without an I.R.C.P. 54(b) certificate. Bowmans have not followed through on the I.R.C.P. 54(b) certification process. 569

At oral argument of WTB's motion to dismiss on August 31, 2010, WTB clarified its position. WTB set forth a timeline of events and argued that Eric Bowman moved for leave to intervene on February 24, 2009, was granted leave to intervene on March 5, 2009, and filed his claims via the First Amended Complaint on March 12, 2009, after this Court had already dismissed the same claims on summary judgment on March 8, 2009. Because Eric Bowman had not yet filed his claims as of the March 8, 2009, ruling on summary judgment, WTB argues Eric Bowman cannot appeal the summary judgment, but rather that his appeal lies in an appeal of this Court's dismissing his Amended Complaint. Eric Bowman argued that LR.C.P. 15(c) served to make his claims relate back to the original date Teresa Blankenship filed her Complaint, on April 3, 2007, and, as such, the summary judgment acted upon his claims. WTB replied Eric Bowman's request for intervention was granted by this Court on March 5. 2009, and he filed his Amended Complaint on March 12, 2009. However, this Court entered its Order on summary judgment on March 8, 2009. Thus, WTB states Eric Bowman filed claims that had already been dismissed four days earlier.

Idaho Rule of Civil Procedure 15(c) states in relevant part:

Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the claim of the original pleading.

I.R.C.P. 15(c). A Court's decision with respect to I.R.C.P. 15(c) is a matter committed to the Court's discretion. *Trimble v. Engelking*, 130 Idaho 300, 303, 939 P.2d 1379, 1382 (1997). Here, the acts and occurrences complained of by Eric Bowman were clearly those also giving rise to the initial Complaint filed by Teresa Blankenship. WTB noted at oral argument that Eric Bowman's claims must be dismissed because he is a new party who had no claims before the March 12, 2009, filing of his Amended Complaint and therefore

there was nothing for his Complaint to relate back to as summary judgment had been granted in favor of WTB on March 8, 2010, on the issues raised in his Amended Complaint.

An issue arises as to whether the "relation back" provision applies when there is a different party (compared to the party originally filing the complaint) seeking to amend their pleading to have it relate back to some other party's complaint. Muir v. Pocatello, 36 Idaho 532, 212 P. 345 (1922), and McGrath v. West End Orchard and Land Co., 43 Idaho 255, 251 P. 623 (1926), appear to allow this. In Muir, the Idaho Supreme Court held: "In Idaho Trust & Savings Bank v. Nampa & Meridian Irr. Dist., 29 Idaho, 658, 161 Pac. 872, it is held that where additional parties are brought in after the statute of limitations otherwise would have run as to them except for the action having been previously begun, the cause of action was not barred as to the new parties, and such cause of action after the amendment would relate back to the commencement of the original action " 36 Idaho 532, 212 P. 345, 347. McGrath concerned substitution of an administratrix of a decedent's estate, following the death of the person who was the defendant in the case. The Idaho Supreme Court in McGrath held: "An amendment or substitution of a competent party introduces no new cause of action, but relates back to the commencement of the suit." 43 Idaho 255, 251 P. 623, 626.

The Court notes the time period leading up to the March 16, 2006, trial, was fraught with numerous motions by all parties, some of which were noticed up for hearing and some of which were not. Eric Bowman's counsel was present at the trial and stated he would not participate, but was merely preserving his right to appeal the issues decided on summary judgment. No prejudice would result to WTB if the Court were to deny the motion to dismiss because WTB knew that Eric Bowman would be

seeking a LR.C.P. 54(b) certificate by March 16, 2009, at the latest. Indeed, Eric Bowman has filed two requests for an LR.C.P. 54(b) certificate since hearing on the motion for summary judgment took place (March 5, 2009 and April 1, 2009). At present, WTB is correct in its assertion that no claims remain. Eric Bowman continues to seek an I.R.C.P. 54(b) certificate so that he may appeal the Court's ruling on summary judgment. On April 1, 2009, Bowmans noticed up their Motion for Certification of Partial Summary Judgment pursuant to Rule 54(b) for May 4, 2009. Because of the myriad of other motions heard in this case on May 4, 2009, the Court indicated it would not hear the LR.C.P. 54(b) motion that day, but it could be taken up at a later date. Since that time, Bowmans have not noticed up their LR.C.P. 54(b) motion for hearing. Had Bowmans done so, perhaps this case could have moved on to the idaho appellate courts more than a year ago.

This Court finds Bowmans claims relate back to Blankenship's original complaint which started this litigation. However, due to Bowmans failure to prove any set of facts which would entitle them to relief, there are no claims stated in Bowmans' "Intervenors First Amended Complaint" which remain, and MTB's Motion to Dismiss pursuant to I.R.C.P. 12(b)(6) must be granted against Bowmans. However, the Court's previous grant of summary judgment against Blankenship was not final (discussed below), and since Bowmans appear to seek only an I.R.C.P. 54(b) certificate, and are not raising any issues regarding the merits of the claims in their Amended Complaint, they are entitled to such certificate if they ever notice such up for hearing. Because this Court's summary judgment ruling against Blankenship and William Bowman was not a final appealable order, once either 1) Bowmans finish the LR.C P. 54(b) process or 2) some party provides a "judgment" and has such entered, Bowmans will still be timely on their appeal. Bowmans I.R.C.P. 54(b) motion remains pending, it is just that no party has 572

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not begun to run.

WTB is entitled to have its Motion to Dismiss First Amended Complaint of Intervenors granted, not on the grounds of issue or claim preclusion, but because Bowmans have not proven a set of facts which would entitle them to the relief sought. Bowmans "relief sought" in their First Amended Complaint of Intervenors is very limited, filed only to keep their claim of standing alive, and to seek appeal of this Court's ruling on summary judgment as to the negligence claim. The Court's ruling on those issues on summary judgment as pertains to Blankenship and William Bowman remains for appeal, if appeal is taken. Eric Bowman's claims asserted relate back to Blankenship's complaint, and while those claims are dismissed under LR.C.P. 12(b)(6), Eric Bowman's time to appeal does not begin to run until an appropriate judgment has been entered. It seems the simplest thing would be for Bowmans to complete the LR.C.P. 54(b) process.

IT IS HEREBY ORDERED Respondent WTB's Motion to Dismiss First Amended Complaint of Intervenors is GRANTED under I.R.C.P. 12(b)(6).

Entered this 28th day of September, 2010.

John Mitchell, District Judae

Certificate of Service

I certify that on the <u>38</u> day of September, 2010, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following

Lawyer Todd Reed J. T. Diehl	<u>Fax #</u> <u>Lawyer</u> 208-263-4438 ✓ Peter J Smith/Mischelle Fulg 208-263-8983 ✓	Fax # 9ham 664-4125
Bonner Co.	Dist Cetv	lauser n, Deputy Clerk

STALE OF IDAHO) County of BONNER) [™]
FILED - 0-
AT 4: 50 O'Clock P. M
CLERK OF DISTRICT COURT
Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE

STATE OF IDAHO IN AND FOR THE COUNTY OF BONNER

THERESA R. BLANKENSHIP,)	Case No. S CV 2007 572
Petitioner,) vs.) WASHINGTON TRUST BANK,)	AMENDED MEMORANDUM DECISION AND ORDER GRANTING WASHINGTON TRUST BANK'S MOTION TO DISMISS
) Respondent.)	
WILLIAM MICHAEL BOWMAN and ERIC) BOWMAN,)	۰.
Intervenors,) vs.	
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On March 24, 2009, WTB filed its "Motion for Order Dismissing Intervenor William Michael Bowman With Prejudice", for failure to appear at his scheduled 575

deposition on March 12, 2009. That motion was denied at the May 4, 2009, hearing. WTB filed a Motion for Reconsideration on May 18, 2009. WTB's Motion to Reconsider was denied at oral argument on that motion held on June 24, 2009.

On April 10, 2009, WTB filed its "Motion to Dismiss First Amended Complaint of Intervenors". WTB seeks to dismiss the Intervenors' First Amended Complaint because "....the claims presented in the Intervenors' First Amended Complaint have already been addressed, resolved, and dismissed by this Court in favor of WTB via this Court's Order Regarding Respondent's Motion for Summary Judgment dated March 8, 2009, and Intervenors can prove no set of facts which would entitle them to the relief they seek." Motion to Dismiss First Amended Complaint of Intervenor(s), pp. 1-2. A Memorandum in Support of Motion to Dismiss First Amended Complaint of Intervenor(s) was also filed on April 10, 2009. On April 24, 2009, Bowmans filed their "Objection to Motion to Dismiss Amended Complaint." On June 18, 2009, WTB filed its "Reply Brief in Suport of Motion to Dismiss First Amended Complaint of Intervenors." On June 23, 2009, Bowmans filed their "Rebuttal Memorandum in Opposition to Motion to Dismiss Amended Complaint". At the June 24, 2009, hearing where this Court denied WTB's Motion to Reconsider, this Court was to have also heard argument on WTB's Motion to Dismiss First Amended Complaint of Intervenors. Due to confusion stemming from the multitude of motions filed since trial, and due to the late filing of WTB's Reply Brief in Support of Motion to Dismiss First Amended Complaint of Intervenors and even later filing of Bowmans' Rebuttal Memorandum in Opposition to Motion to Dismiss Amended Complaint, oral argument on WTB's Motion to Dismiss First Amended Complaint of Intervenors was ordered to be heard at a different time. Oral argument on WTB's Motion to Dismiss First Amended Complaint of Intervenors was finally noticed up for 576 hearing on August 31, 2010.

II. ANALYSIS.

A. WTB's Motion to Dismiss the First Amended Complaint of Intervenors.

WTB moves to dismiss the first amended complaint pursuant to LR.C.P. 12(b)(6) for failure to state a claim. Memorandum in Support of Motion to Dismiss First Amended Complaint, p. 3. WTB argues Bowmans can prove no set of facts which would entitle them to the relief sought. Id. WTB states the allegations in the Complaint concern damages purportedly caused by WTB's advance of funds to Ryan Bowman's Trust and recordation of a Deed of Trust against his one-fourth undivided interest in the trust property, which issues have already been addressed and disposed of by this Court on the record on March 8, 2009. Id., p. 4. (Ryan Bowman is the fourth beneficiary to this trust, along with Blankenship, William Bowman and Eric Bowman). The same issue and claim preclusion arguments are advanced by WTB regarding Bowmans' requests for preliminary injunction. Id., p. 5. In response, Bowmans argue the only two purposes of the First Amended Complaint were to name Eric Bowman as an intervenor and to remove the negligence issues. Objection to Motion to Dismiss Amended Complaint, p. 1. Bowmans point out their counsel informed the Court at trial of the filing of the Amended Complaint and that Bowmans would not participate in the trial, but would "preserve our right to appeal the issues decided at Summary Judgment." Id., p. 2. Following summary judgment, only Blankenship's and Bowmans' standing and negligence claims remained. Blankenship's claims were settled thereafter and the matter was dismissed as to her. However, the First Amended Complaint makes the substantive changes of adding intervenor Eric Bowman and removing the negligence claims. It appears Bowmans sought only to appeal this Court's Order on Summary Judgment, but could not do so without an I.R.C.P. 54(b) certificate. Bowmans have not followed through on the I.R.C.P. 54(b) certification process. ドワウ

At oral argument of WTB's motion to dismiss on August 31, 2010, WTB clarified its position. WTB set forth a timeline of events and argued that Eric Bowman moved for leave to intervene on February 24, 2009, was granted leave to intervene on March 5, 2009, and filed his claims via the First Amended Complaint on March 12, 2009, after this Court had already dismissed the same claims on summary judgment on March 8, 2009. Because Eric Bowman had not yet filed his claims as of the March 8, 2009, ruling on summary judgment, WTB argues Eric Bowman cannot appeal the summary judgment, but rather that his appeal lies in an appeal of this Court's dismissing his Amended Complaint. Eric Bowman argued that I.R.C.P. 15(c) served to make his claims relate back to the original date Teresa Blankenship filed her Complaint, on April 3, 2007, and, as such, the summary judgment acted upon his claims. WTB replied Eric Bowman's request for intervention was granted by this Court on March 5. 2009, and he filed his Amended Complaint on March 12, 2009. However, this Court entered its Order on summary judgment on March 8, 2009. Thus, WTB states Eric Bowman filed claims that had already been dismissed four days earlier.

Idaho Rule of Civil Procedure 15(c) states in relevant part:

Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the claim of the original pleading.

I.R.C.P. 15(c). A Court's decision with respect to I.R.C.P. 15(c) is a matter committed to the Court's discretion. *Trimble v. Engelking*, 130 Idaho 300, 303, 939 P.2d 1379, 1382 (1997). Here, the acts and occurrences complained of by Eric Bowman were clearly those also giving rise to the initial Complaint filed by Teresa Blankenship. WTB noted at oral argument that Eric Bowman's claims must be dismissed because he is a new party who had no claims before the March 12, 2009, filing of his Amended Complaint and therefore

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there was nothing for his Complaint to relate back to as summary judgment had been granted in favor of WTB on March 8, 2010, on the issues raised in his Amended Complaint.

An issue arises as to whether the "relation back" provision applies when there is a different party (compared to the party originally filing the complaint) seeking to amend their pleading to have it relate back to some other party's complaint. Muir v. Pocatello, 36 Idaho 532, 212 P. 345 (1922), and McGrath v. West End Orchard and Land Co., 43 Idaho 255, 251 P. 623 (1926), appear to allow this. In Muir, the Idaho Supreme Court held: "In Idaho Trust & Savings Bank v. Nampa & Meridian Irr. Dist., 29 Idaho, 658, 161 Pac. 872, it is held that where additional parties are brought in after the statute of limitations otherwise would have run as to them except for the action having been previously begun, the cause of action was not barred as to the new parties, and such cause of action after the amendment would relate back to the commencement of the original action." 36 Idaho 532, 212 P. 345, 347. McGrath concerned substitution of an administratrix of a decedent's estate, following the death of the person who was the defendant in the case. The Idaho Supreme Court in *McGrath* held: "An amendment or substitution of a competent party introduces no new cause of action, but relates back to the commencement of the suit." 43 Idaho 255, 251 P. 623, 626

The Court notes the time period leading up to the March 16, 2006, trial, was fraught with numerous motions by all parties, some of which were noticed up for hearing and some of which were not. Eric Bowman's counsel was present at the trial and stated he would not participate, but was merely preserving his right to appeal the issues decided on summary judgment. No prejudice would result to WTB if the Court were to deny the motion to dismiss because WTB knew that Eric Bowman would be

seeking a I.R.C.P. 54(b) certificate by March 16, 2009, at the latest. Indeed, Eric Bowman has filed two requests for an I.R.C.P. 54(b) certificate since hearing on the motion for summary judgment took place (March 5, 2009 and April 1, 2009). At present, WTB is correct in its assertion that no claims remain. Eric Bowman continues to seek an I.R.C.P. 54(b) certificate so that he may appeal the Court's ruling on summary judgment. On April 1, 2009, Bowmans noticed up their Motion for Certification of Partial Summary Judgment pursuant to Rule 54(b) for May 4, 2009. Because of the myriad of other motions heard in this case on May 4, 2009, the Court indicated it would not hear the I.R.C.P. 54(b) motion that day, but it could be taken up at a later date. Since that time, Bowmans have not noticed up their I.R.C.P. 54(b) motion for hearing. Had Bowmans done so, perhaps this case could have moved on to the idaho appellate courts more than a year ago.

This Court finds Bowmans claims relate back to Blankenship's original complaint which started this litigation. However, due to Bowmans failure to prove any set of facts which would entitle them to relief, there are no claims stated in Bowmans' "Intervenors First Amended Complaint" which remain, and MTB's Motion to Dismiss pursuant to I.R.C.P. 12(b)(6) must be granted against Bowmans. However, the Court's previous grant of summary judgment against Blankenship was not final (discussed below), and since Bowmans appear to seek only an I.R.C.P. 54(b) certificate, and are not raising any issues regarding the *merits* of the claims in their Amended Complaint, they are entitled to such certificate if they ever notice such up for hearing. Because this Court's summary judgment ruling against Blankenship and William Bowman was not a final appealable order, once either 1) Bowmans finish the I.R.C.P. 54(b) process or 2) some party provides a "judgment" and has such entered, Bowmans will still be timely on their appeal. Bowmans I.R.C.P. 54(b) motion remains pending, it is just that no party has 5×10^{-10}

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noticed such for hearing.

WTB also posits issue and claim preclusion should result in dismissal of Bowmans' Amended Complaint. Memorandum in Support of Motion to Dismiss First Amended Complaint, pp. 3-5; Reply Brief in Support of Motion to Dismiss First Amended Complaint of Intervenors, pp. 3-6. While the granting of WTB's Motion to Dismiss under I.R.C.P. 12(b)(6) would ordinarily render a discussion of issue and claim preclusion moot, because WTB apparently seeks an end to all litigation in this case, *including appeal*, questions of issue and claim preclusion must be discussed. For reasons set forth-below, issue and claim preclusion do not bar Eric Bowman's claims.

B. Issue Preclusion.

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In its Reply Brief, WTB argues the First Amended Complaint should be dismissed as to Eric Bowman because issue preclusion bars his claims. Reply Brief in Support of Motion to Dismiss the First Amended Complaint of Intervenors, p. 3. WTB admits the claims set forth by Eric Bowman "were the first claims in this action to be lodged against WTB by Eric Bowman. As such, they have not been resolved by the Court." *Id.*, p. 4. Nonetheless, WTB states the issues were decided by the Court in its March 8, 2009, Order and Eric Bowman can prove no set of facts on which he could prevail against WTB. *Id.*, pp. 4-5. Bowmans reply there has been no final judgment on the merits in the prior litigation in this matter and Eric Bowman was not a party or in privity with a party in the prior litigation, therefore issue preclusion is not applicable. Rebuttal Memorandum in Opposition to Motion to Dismiss Amended Complaint, p. 3.

As set forth by WTB, issue preclusion, also known as collateral estoppel, protects litigants from relitigating an identical issue with the same party or that party's privy. *Ticor Title, v. Stanion,* 144 Idaho 119, 123, 157 P.3d 613, 617 (2007). The five factors that must be present to bar relitigation of an issue determined in a prior 581 proceeding are: (1) the party against whom the previous decision was asserted had a full and fair opportunity to litigate the issue; (2) the issue previously decided was identical to the instant issue; (3) the issue sought to be precluded was actually decided; (4) there was a final judgment on the merits in the prior litigation; and (5) the party against whom the issue is asserted was a party or was in privity with a party to the prior litigation. 144 Idaho 119, 124, 157 P.3d 613, 618 (citing *Rodriguez v. Dept. of Corr.*, 136 Idaho 90, 93, 29 P.3d 401, 404 (2001).

Here, there was no final judgment on the merits. Idaho Rule of Civil Procedure 58 clearly sets forth that a judgment must be set forth on a document separate from an Order granting summary judgment. *Spokane Structures, Inc. v. Equitable Law, LLC,* _____ Idaho ____, 226 P.3d 1263, 1266-67 (2010). The separate document rule is designed to eliminate confusion about when the clock for appeal begins to run and over what action the Court intended to be its Judgment. ____ Idaho ____, 226 P.3d 1263, 1267, citing 46 AM.JUR.2D *Judgments* § 70 (2006).

A document entitled "Order" that stated "It is hereby ordered that the complaint is dismissed" would constitute a judgment. It would set forth the relief to which the party was entitled. Obviously, however, merely typing "it is so ordered" at the end of a memorandum decision does not constitute a judgment. The judgment must be a separate document that does not contain the trial court's legal reasoning or analysis.

Id. In the instant matter, the Court entered its ruling on the record; there was no written Memorandum and Decision, much less a written Judgment submitted by the parties to the Court for signature and filing. What remained after the Court's Order on summary judgment were the issues of standing and negligence. Bowmans explicitly amended their complaint to "remove the allegations with regards to the issues of negligence and to ensure that ERIC BOWMAN was added as a party to those issues previously argued and ruled upon in the Motion for Summary Judgment." Rebuttal Memorandum in

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Opposition to Motion to Dismiss Amended Complaint, p. 3. Additionally, the term

"privity" has been discussed and defined in case law.

"Privity" is defined as the "connection or relationship between two parties, each having a legally recognized interest in the same subject matter." BLACK'S LAW DICTIONARY 1217 (7th Ed. 1999). It is generally accepted that whether privity exists or not is not simply a matter of relationship,....but, rather, whether a party against whom the doctrine is asserted had its legal rights litigated in the prior action...Indeed, due process concerns would plague a holding that barred a party from asserting its rights when it did not have an opportunity to he heard. (citations omitted).

Schwan's Sales Ent., Inc. v. Idaho Transp. Dept., 142 Idaho 826, 832, 136 P.3d

297, 3030 (2006). Eric Bowman's relationship with William Bowman is therefore not determinative. Eric Bowman had not asserted his legal rights regarding the issues decided on summary judgment. However, by his own statements, Eric Bowman sought only to appeal the issues decided on summary judgment, going so far as to specifically

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remove the negligence issues which remained after summary judgment from

consideration. No such appeal regarding the Court's rulings on summary judgment was

taken in this matter because the I.R.C.P. 54(b) process has not been completed.

However, as discussed above, there has been no final judgment on the merits.

C. Claim Preclusion.

WTB argues claim preclusion bars William Bowman from relitigating claims already decided by the Court. Reply Brief in Support of Motion to Dismiss First Amended Complaint of Intervenors, p. 5.

Because the claims alleged by Intervenor William Bowman in the First Amended Complaint of Intervenor(s) were previously addressed and disposed of by this Court via its March 8, 2009 Order, Intervenor William Bowman is now precluded from re-asserting said claims against WTB under the plain language of the Court's March 8, 2009 Order, and under claim preclusion principles.

Id., p. 6. Intervenors again argue the absence of the elements of the same parties

being involved and no final judgment existing preclude the doctrine of claim preclusion $5\,8\,3$

from barring their claims. Rebuttal Memorandum in Opposition to Motion to Dismiss Amended Complaint, p. 3.

Claim preclusion bars re-adjudication of matters offered and received to defeat a ciaim and "every matter which might and should have been litigated in the first suit." *Magic Valley Radiology, P.A. v. Kolouch*, 123 Idaho 434, 437, 849 P.2d 107, 110 (1993). Claim preclusion, or true *res judicata*, bars a subsequent action with: (1) the same parties, (2) the same claim, and (3) a final judgment. *Ticor*, 144 Idaho 119, 124, 157 P.3d 613, 618. When a valid, final judgment is rendered in a proceeding, it "extinguishes all claims arising out of the same transaction or series of transactions out of which the cause of action arose." *Diamond v. Farmers Group, Inc.* 119 Idaho 146, 150, 804 P.2d 319, 323 (1990).

Although the Court entered its Order on summary judgment on the record on March 2, 2009, no Judgment was ever submitted by the parties for the Court's signature. The issues remaining for trial after summary judgment were issues of standing and negligence. Blankenship settled during trial, and counsel for Intervenor William Bowman notified the Court at trial that, "we would not be participating in the trial but would preserve our right to appeal the issues decided at Summary Judgment." Objection to Motion to Dismiss Amended Complaint, p. 2. Although Intervenors have sought an I.R.C.P. 54(b) certificate on two occasions, no hearing has been held on the issue.

III. CONCLUSION AND ORDER.

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> This Court's Order on Summary Judgment, entered orally on the record with no Judgment ever having been submitted by any party, was not a final judgment. Until a final judgment is entered, this case is not finished and any party's time to appeal has

not begun to run.

WTB is entitled to have its Motion to Dismiss First Amended Complaint of Intervenors granted, not on the grounds of issue or claim preclusion, but because Bowmans have not proven a set of facts which would entitle them to the relief sought. Bowmans "relief sought" in their First Amended Complaint of Intervenors is very limited, filed only to keep their claim of standing alive, and to seek appeal of this Court's ruling on summary judgment. The Court's ruling on those issues on summary judgment as pertains to Blankenship and William Bowman remains for appeal, if appeal is taken. Eric Bowman's claims asserted relate back to Blankenship's complaint, and while those claims are dismissed under I.R.C.P. 12(b)(6), Eric Bowman's time to appeal does not begin to run until an appropriate judgment has been entered. It seems the simplest thing would be for Bowmans to complete the I.R.C.P. 54(b) process.

IT IS HEREBY ORDERED Respondent WTB's Motion to Dismiss First Amended Complaint of Intervenors is GRANTED under I.R.C.P. 12(b)(6).

Entered this 10th day of November, 2010 (nunc pro tunc to September 18, 2010).

Mitchell, District Judge John

Certificate of Service

I certify that on the 10 day of November, 2010, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

Lawyer Todd Reed J T Diehl

Fax # Lawyer 208-263-4438 / Peter J Smith/Mischelle Fulgham 664-4125 -208-263-8983 ~

Jeanne Clausen, Deputy Clerk

MISCHELLE R. FULGHAM, ISB #4623 PETER J. SMITH IV, ISB #6997 LUKINS & ANNIS, P.S. 601 E. Front Street. Suite 502 Coeur d'Alene, ID 83814 Telephone: (208) 667-0517 Facsimile: (208) 664-4125

17<u>5 of 1</u>5480 COURT

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Attorneys for Respondent WASHINGTON TRUST BANK

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

TERESA A. BLANKENSHIP,

Petitioner,

v.

WASHINGTON TRUST BANK, as Trustee,

Respondent.

WILLIAM MICHAEL BOWMAN and ERIC BOWMAN,

Intervenor,

v.

WASHINGTON TRUST BANK, as Trustee,

Respondent.

NO. CV-2007-00572

FINAL JUDGMENT DISMISSING ALL CLAIMS OF TERESA A. BLANKENSHIP, WILLIAM MICHAEL BOWMAN, AND FRIC BOWMAN

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All of the claims in this matter have been dismissed based upon three dismissal proceedings. The first dismissal was based upon Respondent's Motion for Summary Judgment heard on March 2, 2009, with an Order regarding summary judgment entered on March 8, 2009.

FINAL JUDGMENT **DIMISSING ALL CLAIMS** OF TERESA A. BLANKENSHIP, WILLIAM MICHAEL BOWMAN, AND ERIC BOWMAN: 1 K:\W\Washing081400\Bowman00756\PLDG\Final JUDGMENT DISMISSING ALL CLAIMS-092910-AKG-MRF.DOCX 9/30/10 The second round of dismissals involved claims voluntarily settled, withdrawn, and dismissed on the morning of the trial, March 16, 2009, and later confirmed by an Order for Dismissal dated May 4, 2009. The third and final round of dismissals was based upon Respondent's Motion to Dismiss First Amended Complaint of Intervenors heard on August 31, 2010 with a Memorandum Decision Granting WTB's Motion to Dismiss dated September 28, 2010.

First Dismissal - March 8, 2009

On March 8, 2009, this Court entered its Order Regarding Respondent's Motion for Summary Judgment filed on January 29, 2009, wherein the Court dismissed the Petitioner's and Intervenor William Michael Bowman's following causes of action:

- a. Petitioner's request for the removal of Respondent as Trustee¹.
- b. Petitioner and Intervenor William Michael Bowman's request for a preliminary/permanent injunction² prohibiting WTB, acting as Trustee, from selling real property held by the children's trusts.
- c. Petitioner's and Intervenor William Michael Bowman's claims for damages³ purportedly caused by the advance of Funds to Ryan Bowman's Trust and recording a Deed of Trust against the undivided ¹/₄ interest in the real property held by Ryan Bowman's Trust.

The claims set forth in Paragraphs V, VII, IX, and X of Intervenor William Michael Bowman's Complaint were dismissed pursuant to the March 8, 2009 Order Regarding Respondent's Motion for Summary Judgment. At this time, only Petitioner's and Intervenor William Michael Bowman's negligence and damages claims remained for trial.

¹ Paragraph VII of the Petition filed April 3, 2007 and Paragraph VII of the <u>Amended</u> Petition filed August 26, 2008.

² Paragraph IX of the Petition filed April 3, 2007, Paragraph IX of the <u>Amended</u> Petition filed August 26, 2008, Paragraph VII of Complaint of Intervenor filed February 17, 2009, and Paragraph VII of First Amended Complaint of Intervenor(s) filed March 12, 2009.

³ Paragraph XIII of the <u>Amended</u> Petition filed August 26, 2008; Paragraphs IX –X of the Complaint of Intervenor filed February 17, 2009; Paragraphs IX-X of the First Amended Complaint filed March 12, 2009.

Second Dismissal - at Trial

On March 16, 2009, the morning of trial, Petitioner and WTB voluntarily settled by agreeing to dismiss any and all remaining claims against WTB. Petitioner and WTB placed their voluntary settlement on the record. This Court's Order for Dismissal dated May 4, 2009, dismissed all of Petitioner's claims. Also on March 16, 2009, the morning of trial, the Intervenors William Michael Bowman and Eric Bowman informed the Court that they would not be participating in the trial; but they would seek to preserve their right to appeal the dismissals granted to WTB at Summary Judgment on March 8, 2009.

<u>Third Dismissal – September 28, 2010</u>

On August 31, 2010, Respondent's Motion to Dismiss First Amended Complaint of Intervenors was heard. On September 28, 2010, this Court entered its Memorandum Decision and Order Granting WTB's Motion to Dismiss all of Intervenor Eric Bowman's claims.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that all causes of action have been dismissed, withdrawn, settled, and/or found to be moot. A complete and final judgment dismissing all causes of action of all parties shall be entered in this matter at this time. All claims of Petitioner Teresa Blankenship, Intervenor William Michael Bowman, and Intervenor Eric Bowman are hereby fully and finally dismissed.

DATED 10 the day of Noverher, 2010.

Hønorable John T. Mitchell District Court Judge

FINAL JUDGMENT **DIMISSING ALL CLAIMS** OF TERESA A. BLANKENSHIP, WILLIAM MICHAEL BOWMAN, AND ERIC BOWMAN: 3 K:\W\WaShing081400\BOWMAN00756\PLDG\Final JUDGMENT DISMISSING ALL CLAIMS-092910-AKG-MRF.DOCX 9/30/10

Approved As To Content And Form:

DATED this _____ day of _____, 2010.

elle R. Fulgham

Attorney for Respondent

Approved As To Content And Form:

DATED this _____ day of ______, 2010.

Todd M. Reed Attorney for Petitioner

601 E. Front Avenue, Suite 502

Coeur d'Alene, Idaho 83814

Approved As To Content And Form:

DATED this _____ day of ______, 2010.

J.T. DIEHL Attorney for Intervenors

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this $\underline{10}$ day of $\underline{10}$ $\underline{00}$ $\underline{00}$ $\underline{00}$ day de a true and correct copy of the foregoing by the method indicated below, and addressed to all counsel of record as follows:

Todd M. Reed U.S. Mail Hand Delivered Powell & Reed, P.C. 318 Pine Street **Overnight Mail** Post Office Box 1005 Telecopy (FAX) to (208) 263-4438 Sandpoint, Idaho 83864-1339 Attorney for Teresa R. Blankenship, Petitioner Ted Diehl, U.S. Mail Hand Delivered Attorney at Law **Overnight Mail** 106 W. Superior Sandpoint, Idaho 83864 Telecopy (FAX) to (208) 263-8983 Attorney for William Michael Bowman, Intervenor Mischelle R. Fulgham \Box U.S. Mail Peter J. Smith Hand Delivered \Box LUKINS & ANNIS, P.S. **Overnight Mail**

Telecopy (FAX) (208) 664-4125

FINAL JUDGMENT **DIMISSING ALL CLAIMS** OF TERESA A. BLANKENSHIP, WILLIAM MICHAEL BOWMAN, AND ERIC BOWMAN: 4 K:\W\Washing081400\BOWMAN00756\PLDG\Final JUDGMENT DISMISSING ALL CLAIMS-092910-AKG-MRF.DOCX 9/30/10



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CLERK DIS

J. T. DIEHL Attorney at Law 106 W. Superior Street Sandpoint, Idaho 83864 (208) 263-8529 ISB #3526 email: jtdiehl@netw.com

Attorney for Intervenor/Appellant

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

TERESA A. BLANKENSHIP,

Petitioner,

Vs.

WASHINGTON TRUST BANK,

as Trustee,

Respondent.

WILLIAM MICHAEL BOWMAN and

ERIC BOWMAN,

Intervenor/Appellant,

Vs.

WASHINGTON TRUST BANK,

as Trustee,

Intervenor/Appellant,

Vs.

WASHINGTON TRUST BANK,

as Trustee,

Intervenor/Appellant,

Vs.

WASHINGTON TRUST BANK,

as Trustee,

Intervenor.

Case No. CV-2007-00572

NOTICE OF APPEAL

TO: THE ABOVE NAMED RESPONDENT, WASHINGTON TRUST BANK, AND THE PARTY'S ATTORNEY, MISCHELLE R. FULGHAM of LUKINS & ANNIS, P.S. AND THE CLERK OF THE ABOVE ENTITLED COURT

NOTICE IS HEREBY GIVEN THAT:

1. The above named Appellants, WILLIAM MICHAEL BOWMAN and ERIC BOWMAN

appeal against the above named Respondent to the Idaho Supreme Court from the Summary

Judgment ruling entered March 8, 2009, by the Honorable JOHN T. MITCHELL, which Summary Judgment ruling was made final by entry of the Final Judgment on November 10, 2010.

2. Appellant has the right to appeal to the Idaho Supreme Court and the Order described in paragraph 1 above is appealable as a final judgment pursuant to Rule 11(a)(1) I.A.R.

3. Appellant submits the following issues on appeal and also reserves the right to assert other issues at a later date:

(a) Whether it was error for the District Court to grant Summary Judgment in favor of WASHINGTON TRUST BANK ruling that the advance of funds to RYAN BOWMAN'S TRUST and the recording of a Deed of Trust against the testamentary trust of ALTHEA LORRAINE BOWMAN was authorized by the Last Will and Testament and Idaho law;

(b) Whether it was error for the District Court to grant summary judgment in favor of WASHINGTON TRUST BANK on the issue of whether WASHINGTON TRUST BANK, as Trustee, breached its fiduciary duties as Trustee by the advancing of funds to RYAN BOWMAN'S TRUST and executing a Promissory Note and Deed of Trust against real property owned by the BOWMAN TRUST to secure repayment;

(c) Was it error for the District Court to grant summary judgment in favor of WASHINGTON TRUST BANK relating to the request for a preliminary injunction preventing the sale of the real property as well as the request for an order quieting title to the real property owned by the LORRAINE BOWMAN TRUST; and

(d) Was it error for the District Court to sustain Respondents' evidentiary objection relating to the Affidavit of TODD REED in Support of Memorandum in Opposition to Motion for Summary Judgment.

4. No order has been entered sealing all or any portion of the record.

5. Appellant requests the preparation of the following portions of the reporter's

transcript in both hard copy and electronic format:

(a) Oral argument from the Summary Judgment Hearing held March 2, 2009.

6. The Appellant requests the following documents to be included in the Clerk's record in addition to those automatically included under Rule 28 I.A.R.:

(a) Order Allowing Intervention of WILLIAM MICHAEL BOWMAN entered November 12, 2008;

(b) Washington Trust Bank's Motion for Summary Judgment;

(c) Washington Trust Bank's Memorandum in Support of Motion for Summary Judgment;

(d) Affidavit of Peter Smith in Support of Respondent's Motion for Summary Judgment, together with Exhibits "A", "B", "C" and "D";

(e) Affidavit of Susan Kuzma in Support of Respondent's Motion for Summary Judgment, together with Exhibits "A" and "B" thereto;

(f) Intervenor's Memorandum in Opposition to Summary Judgment;

(g) Petitioner's Memorandum of Points and Authorities in Opposition to Respondent's Motion for Summary Judgment;

(h) Affidavit of Teresa Blankenship and associated exhibits filed in support of

Petitioner's Opposition to Summary Judgment;

(i) Affidavit of Todd Reed in support of Memorandum of Points and Authorities

in Opposition to Respondent's Motion for Summary Judgment;

(j) Order Allowing Intervention of Eric Bowman entered March 5, 2009;

(k) Order on Respondent's Motion to Strike dated March 2, 2009;

(I) Order Regarding Respondent's Motion for Summary Judgment dated March 8, 2009; and

(m) Final Judgment.

7. The Appellant further requests the following documents be copied and sent to the Supreme Court:

(a) Last Will and Testament of ALTHEA LORRAINE BOWMAN;

(b) Promissory Note from RYAN BOWMAN TRUST to WASHINGTON TRUST BANK; and

(c) Deed of Trust from RYAN BOWMAN TRUST to WASHINGTON TRUST BANK:

(d) Letter from Tom Culbertson to Todd Reed and Ted Diehl dated June 25, 2007.

8. I certify:

(a) That a copy of this Notice of Appeal has been served on the court reporter of whom a transcript has been requested as named below at the address set out below:

Julie Foland, of P. O. Box 9000, Coeur d'Alene, Idaho 83816-9000

(b) That the Clerk of the District Court for Bonner County has been paid the estimated fee for preparation of the reporter's transcript.

(c) That the estimated fee for preparation of the Clerk's record has been paid.

(d) That the appellant filing fee has been paid; and

(e) That service has been made on all parties required to be served pursuant

to Rule 20. DATED THIS 21 day of December, 2010.

DEHL

Attorney for Appellant

CERTIFICATE OF DELIVERY

 21^{5} , l hereby certify that a true and correct copy of the foregoing document was served this 21^{5} , day of December, 2010, by:

Facsimile

to:

Mischelle R. Fulgham Peter J. Smith IV LUKINS & ANNIS, P.S. 250 Northwest Blvd, Suite 102 Coeur d'Alene, ID 83814-2971 Fax 208-664-4125

Todd M. Reed POWELL & REED P. O. Box 1005 Sandpoint, ID 83864 Fax 208-263-4438

Honorable John T. Mitcheli District Court Judge Kootenai County Courthouse P. O. Box 9000 Coeur d'Alene, ID 83816 Fax 208-446-1132

and L Ander



STATE OF IDAHO COUNTY OF BONNER FIRST JUDICIAL DISTRICT

2011 JAN [4 P 4: 37

MARIE SCOTT CLERK DISTRICT COURT

MISCHELLE R. FULGHAM, ISB #4623 PETER J. SMITH IV, ISB #6997 LINDSEY R. SIMON, ISB #7966 LUKINS & ANNIS, P.S. 601 E. Front Avenue, Ste 502 Coeur d'Alene, ID 83814 Telephone: (208) 667-0517 Facsimile: (208) 664-4125

Attorneys for Respondent WASHINGTON TRUST BANK

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

- TERESA A. BLANKENSHIP,

Petitioner,

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WASHINGTON TRUST BANK, as Trustee,

Respondent.

WILLIAM MICHAEL BOWMAN and ERIC BOWMAN,

Intervenors/Appellants,

٧.

WASHINGTON TRUST BANK, as Trustee,

Respondent/Respondent.

TO: THE ABOVE NAMED APPELLANTS AND THE PARTY'S ATTORNEY, AND THE REPORTER AND CLERK OF THE ABOVE ENTITLED COURT

NOTICE IS HEREBY GIVEN, that the Respondent in the above entitled proceeding hereby requests pursuant to Rule 19, I.A.R., the inclusion of the following material in the reporter's

REOUEST FOR ADDITIONAL TRANSCRIPT AND RECORD: 1

K:\W\WASHING081400\BOWMAN00756\APPEAL\REQUEST FOR ADDITIONAL TRANSCRIPT AND RECORD-010411-AKG-AKG.DOC 1/4/11

NO. CV-2007-00572

REQUEST FOR ADDITIONAL TRANSCRIPT AND RECORD transcript and the clerk's record in addition to that required to be included by the I.A.R. and the Appellant's Notice of Appeal dated December 21, 2010. Any additional transcript is to be provided in hard copy.

1. Reporter's Transcript: In addition to the transcripts requested by Appellants in their Notice of Appeal dated December 21, 2010, Respondent requests the following transcripts be included in the reporter's transcript on appeal:

 Hearing Transcript from February 4, 2009 hearing on Petitioner's Objection to Motion for Summary Judgment.

2. Clerk's Record: In addition to the standard clerk's record requested by Appellants in their Notice of Appeal dated December 21, 2010, and automatically included under Idaho Appellate Rule 28, Respondent requests the following documents be included in the clerk's record:

- a. Petition for Removal of Trustee and Preliminary Injunction (04/03/07)
- b. Answer by Respondent (05/12/08)
- c. Amended Petition for Removal of Trustee, Preliminary Injunction and Complaint for Damages (08/26/08)
- d. Motion for Leave to Resign (8/26/08)
- e. Signed Order Granting Respondent's Motion for Leave to Resign (09/09/08)
- f. Motion for Leave to Intervene (10/21/08)
- g. Affidavit in Support of Motion to Intervene (10/21/08)
- h. Signed Order Appointing Beverly Kee CPA as Trustee (10/23/08)
- i. Signed Order to Vacate, Continue and Reset Trial (11/12/08)
- j. Notice of Hearing [Motion for Summary Judgment] (01/29/09)
- Motion to Waive Time and Notice of Hearing [Objection to Motion for Summary Judgment] (01/29/09)
- Objection to Motion for Summary Judgment and Notice of Hearing (01/29/09)
- m. Stipulation to Transfer Trustee (01/29/09)

REOUEST FOR ADDITIONAL TRANSCRIPT AND RECORD; 2

K:\W\WASHING081400\BOWMAN00756\APPEAL\REQUEST FOR ADDITIONAL TRANSCRIPT AND RECORD-010411-AKG-AKG.DOC 1/4/11

- n. Objection to Motion for Summary Judgment (02/02/09)
- Response to Petitioner's Objection to Motion for Summary Judgment (02/03/09)
- p. No Objection to Stipulation to Transfer Trustee (02/12/09)
- q. Affidavit of J.T. Diehl (02/17/09)
- r. Complaint of Intervenor (02/17/09)
- s. Respondent Washington Trust Bank's Objection and Motion to Strike Petitioner's Untimely Opposition to Summary Judgment (02/19/09)
- t. Affidavit of Mischelle R. Fulgham Regarding Non-Service of Stipulation to Transfer Trustee (02/19/09)
- u. Objection to Lack of Service (02/19/09)
- v. Affidavit of Zanthi Moe (02/23/09)
- w. Affidavit of Todd Reed in Support of Objection (02/23/09)
- x. Objection to Respondent's objection to Strike Petitioner's Summary Judgment Response (02/23/09)
- y. Motion for Leave to Intervene (02/24/09)
- z. Motion to Shorten Time (02/24/09)
- aa. Affidavit of Eric Bowman in support of Motion to Intervene (02/24/09)
- bb. Notice of Hearing [Motion for Leave to Intervene] (02/24/09)
- cc. Affidavit of Mischelle R. Fulgham re: Summary Judgment (02/24/09)
- dd. Respondent's Motion to Strike (02/24/09)
- ee. Respondent's Motion to Shorten Time (02/24/09)
- ff. Reply Brief in Support of Respondent's Motion for Summary Judgment and In Response to Petitioner's Memorandum of Points and Authorities in Opposition to Respondent's Motion for Summary Judgment and Intervenor's Memorandum in Opposition for Summary Judgment (02/24/09)

REQUEST FOR ADDITIONAL TRANSCRIPT AND RECORD: 3

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- gg. Signed Order Overruling Washington Trust Bank's Objection and Denying its Motion to Strike (03/09/09)
- hh. Signed order Denying Petitioner's Objection to Respondent's Objection (03/09/09)
- 3. Exhibits: N/A
- 4. I certify that a copy of this request for additional transcripts has been served on

each court reporter of whom a transcript is required as named below at the addresses set out

below and that the estimated number of additional pages being requested is 25:

Name and address: Julie Foland, 324 W Garden Avenue, P.O. Box 9000, Coeur d'Alene, Idaho 83816-9000.

I further certify that this request for additional record has been served upon the clerk of

the district court and upon all parties required to be served pursuant to Rule 29.

DATED this 4th day of January, 2011.

LINDSEY R. SIMON

REQUEST FOR ADDITIONAL TRANSCRIPT AND RECORD: 4

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4th day of January, 2011, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to all counsel of record as follows:

Todd M. Reed Powell & Reed, P.C. 318 Pine Street Post Office Box 1005 Sandpoint, Idaho 83864-1339

Ted Diehl, Attorney at Law 106 W. Superior Sandpoint, Idaho 83864

Honorable John Mitchell Kootenai County Courthouse Post Office Box 9000 Coeur d'Alene, Idaho 83816

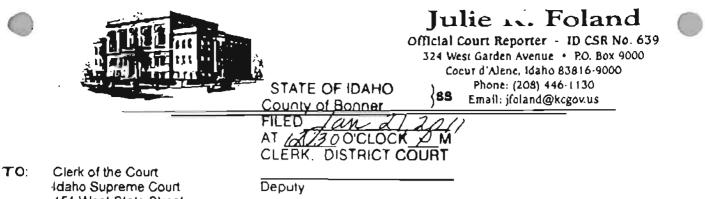
- 🗋 🛛 U.S. Mail
- □ Hand Delivered
- Overnight Mail

C Telecopy (FAX) to (208) 263-4438

- U.S. Mail
- Hand Delivered
- Overnight Mail
- Telecopy (FAX) to (208) 263-8983
- 🗆 U.S. Mail
- Hand Delivered
- Overnight Mail
- Telecopy (FAX) (208) 446-1132

REQUEST FOR ADDITIONAL TRANSCRIPT AND RECORD: 5

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451 West State Street Boise, Idaho 83720

> DOCKET NO. 38426-2011 WILLIAM MICHAEL BOWMAN VS. WASHINGTON TRUST BANK

NOTICE OF TRANSCRIPT LODGED

Notice is hereby given that on January 20, 2011, Hodged a transcript of 70 pages in length, including the February 4, 2009, Hearing Re: Petitioner's Objection to Motion for Summary Judgment, and the March 2, 2009, Hearing Re: Motion for Summary Judgment, for the above-referenced appeal with the District Court Clerk of the County of Bonner in the First Judicial District.

Foland Signature

JULIE K. FOLAND January 20, 2011

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF BONNER UDICIAL DIST.

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2011 FES 28 P 1:44

TERESA A. BLANKENSHIP,

Petitioner,

VS.

WASHINGTON TRUST BANK as trustee, Respondent-

Respondent on Appeal.

WILLIAM MICHAEL BOWMAN and ERIC BOWMAN,

Intervenors/Appellants.

MARIE SCOTT MARIE SCOTT DISTRICT COURT IN SUPREME COURFLOOCKET No. 38426-2011 BONNER COUNTY-CASE NOUCV-2007-0572

DISTRICT COURT CLERK'S MOTION FOR EXTENSION OF TIME TO FILE RECORD

Comes now Shonna Kelso, Deputy Clerk of Bonner County, and hereby moves this Court

for an Order extending time to prepare and serve the appeal record until May 2, 2011.

- The original due date for filing the Clerk's Record was <u>March 22, 2011</u> and the current date is <u>February 25, 2011</u>.
- 2. <u>No</u> extensions of time were previously granted.
- 3. The court reporter lodged transcript on January 21, 2011.
- 4. I have not been able to file the transcript for the following specific reasons:
 - a. Voluminous size of the file-(9 files/4 expanded file folder)
 - b. I have completed <u>0</u> pages of the estimated <u>several hundred</u> required by Rule 28.

CLERK'S MOTION FOR EXTENSION OF TIME-1

copy for file

- 5. I have contacted counsel for the parties and there is no objection from counsel to the request for an extension.
- 6. The number of days deemed necessary is forty making the due date May 2, 2011.
- 7. I expect to complete and file the record within the extended time requested.

Dated this 25th day of February, 2011

els

Deputy Clerk

CERTIFICATE OF MAILING

I hereby certify that on the _____ day of _____, 2011, I caused a true and correct copy of the foregoing document to be served upon the following person(s) in the following manner:

Mr. Ted Diehl 106 W. Superior St. Sandpoint, ID 83864 U.S. Mail
 Overnight Mail
 Hand Delivered
 Facsimile
 Courthouse Mail

[] Other: _____

Ms. Mischelle R. Fulghum Mr. Peter J. Smith, IV Lukins & Annis, P.S. 601 E. Front St., Suite 502 Coeur d'Alene, ID 83814

U.S. Mail
 Overnight Mail
 Hand Delivered
 Facsimile
 Courthouse Mail
 Other:

CLERK'S MOTION FOR EXTENSION OF TIME-1

In the Supreme Court of the State of Idaho

TERESA A. BLANKENSHIP,

Petitioner,

v.

WASHINGTON TRUST BANK,

Respondent-Respondent on Appeal.

WILLIAM MICHAEL BOWMAN, and ERIC BOWMAN, 2011 MAR - 7 P 1: 13

CLERK DISTRICT COURT

ORDER GRANTING MOTION FOR EXTENSION OF TIME TO FILE AND SERVE CLERK'S RECORD

Supreme Court Docket No. 38426-2011 Bonner County Case No. 2007-572

Intervenors-Appellants.

 A DISTRICT COURT CLERK'S MOTION FOR EXTENSION OF 1IME TO FILE AND-SERVE CLERK'S RECORD was filed with this Court by Deputy Clerk Shonna Kelso of Bonner County District Court on March 2, 2011, requesting this Court allow an extension of time until May 2, 2011, to prepare and lodge the Clerk's Record. Therefore, good cause. appearing;

IT IS HEREBY ORDERED that Deputy Clerk Shonna Kelso's MOTION FOR EXTENSION OF TIME TO FILE AND SERVE CLERK'S RECORD be, and hereby is, GRANTED, and Deputy Clerk Shonna Kelso shall be allowed an extension of time until May 2, 2011, to prepare and lodge the Clerk's Record.

DATED This _____ day of March, 2011.

By Order of the Supreme Court

ohn Kay Stephen W. Kenvon, Cle

cc: Counsel of Record District Court Clerk



Clerk of the Courts (208) 334-2210



IDAHO COURT OF APPEALS

STATE OF IDAHO COUNTY OF BONNER FIRST JUDICIAN OF BONNER Elest JUDICIAN OF BONNER Botse, Idaho 83720-0101 2011 MAR - 7 P 1: 12

MARIE SCOTT CLERK DISTRICT COURT

MARIE SCOTT, CLERK Attn: SHONNA KELSO BONNER COUNTY COURTHOUSE 215 SOUTH FIRST AVENUE

CLERK'S RECORD AND TRANSCRIPT DUE DATE RESET

Docket No. 38426-2011

SANDPOINT, ID 83864

WILLIAM MICHAEL BOWMAN v. WASHINGTON TRUST BANK Bonner County District Court #2007-572

The CLERK'S RECORD and REPORTER'S TRANSCRIPT must be filed in this office 06-06-11.

For the Court: Stephen W. Kenyon Clerk of the Courts

03/02/2011 BY: KML





IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

TERESA A. BLAKENSHIP,		
Petitioner/Respondent,		
vs.		
WASHINGTON TRUST BANK,		
Respondent/Respondent		
WILLIAM MICHAEL BOWMAN And ERIC BOWMAN		
Intervenors/Appellant		

SUPREME COURT NO 38426-2011

CLERK'S CERTIFICATE OF EXHIBITS

I, Marie Scott, Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Bonner, do hereby certify that the following is offered as the Clerk's Exhibit on Appeal:

Affidavit of Teresa R. Blankenship filed April 3, 2007. Memorandum in Support of Motion to Dismiss filed January 14, 2008. Affidavit (Susan J. Kuzma) filed January 14, 2008. Memorandum in Support of Motion for Protective Order filed January 14, 2008 Affidavit of Peter j. Smith filed February 5, 2008. Affidavit of Thomas M. Culbertson filed February 5, 2008. Affidavit of Teresa R. Blankenship filed April 16, 2008. Notice of Filing Verified Account of Former Trustee under Seal filed September 22, 2008. Affidavit of Peter J. Smith in Support of Respondent's Motion for Summary Judgment filed January 29, 2009. Affidavit of Susan J. Kuzma in Support of Respondent's Motion for Summary Judgment filed January 29, 2009. Affidavit of Teresa R. Blankenship in Support of Memorandum of Points and Authorities in Opposition to Respondent's Motion for Summary Judgment Filed February 17, 2009.

Clerk's Certificate of Exhibits-2

Affidavit of Todd Reed in Support of Memorandum of Points and Authorities in Opposition to Respondent's Motion for Summary Judgment filed February 17, 2009.

Affidavit of Bev Kee in Support of Memorandum of Points and Authorities in Opposition to Respondent's Motion for Summary Judgment filed February 18, 2009.

Reply Brief in Support of Respondent's Motion for Summary Judgment and in Response to Petitioner's Memorandum of Points and Authorities in Opposition to Respondent's Motion for Summary Judgment and Intervenor's Memorandum in Opposition for Summary Judgment filed February 25, 2009.

Memorandum in Support of Motion for Order Directing Trustee to Make Loan Payment filed March 25, 2009.

Affidavit of Mischelle R. Fulgham in Support of Motion to Dismiss Intervenor William Michael Bowman with Prejudice filed March 25, 2011.

Affidavit of Susan J. Kuzma in Support of Respondent's Motion for Order Directing Trustee to Make Loan Payment filed March 26, 2009.

Memorandum in Support of Motion to Dismiss First Amended Complaint of Intervenor(s) filed April 10, 2009.

Notice of Withdrawal of Objection to Transfer of Trustee and Notice of Withdrawal of Respondent's Motion for Payment from Current Trustee filed April 16, 2009.

Affidavit in Opposition to Respondent's Motion to Dismiss Intervenor, William Michael Bowman filed April 24, 2009.

Affidavit in Opposition to Respondent's Motion to Dismiss First Amended Complaint filed April 24, 2009.

Affidavit of Mischelle R. Fulghum m in Support of Settlement Agreement filed May 5, 2011.

Supplemental Affidavit of Mischelle R. Fulgham in Support of Motion for Reconsideration filed May 18, 2009.

Memorandum in Support of Motion for Reconsideration filed May 18, 2009.

Memorandum in Opposition to Motion for Reconsideration and Request for Attorney's Fees Enforcement filed June 19, 2009.

Memorandum and Affidavit of Attorney Fees filed June 30, 2009.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this $3\pi^2$ day of May, 2011.

ast JUD/C/a fight of the District Court Marie Scott Clerk's Certificate of Exhibits-2 (elto buty Clerk



IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

TERESA A. BLAKENSHIP,)	
) Petitioner/Respondent,))	SUPREME COURT NO 38426-2011 CLERK'S CERTIFICATE
vs.)	
WASHINGTON TRUST BANK,	
Respondent/Respondent)	
) WILLIAM MICHAEL BOWMAN) And ERIC BOWMAN)	
Intervenors/Appellant)	

I, Marie Scott, Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Bonner, do certify that the foregoing Record in this cause was compiled and bound under my direction and is a true, correct and complete Record of the pleadings and documents requested by Appellant Rule 28.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this $\underline{\Im^{r\mathcal{A}}}$ day of May, 2011.

Marie Scott Clerk of the District Court ANNALI MILLING DO LOR SE COUNT Deputy Clerk Elto

Clerk's Certificate





TERESA A. BLAKENSHIP,)
Delitionar / Decreanders) SUPREME COURT NO 38426-2011
Petitioner/Respondent,) CLERK'S CERTIFICATE OF SERVICE
vs.)
WASHINGTON TRUST BANK,)
Respondent/Respondent)
WILLIAM MICHAEL BOWMAN And ERIC BOWMAN	
Intervenors/Appellant)

I, Marie Scott, Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Bonner, do hereby certify that I have personally served or mailed, by United Parcel Service or US Priority Mail one copy of the CLERK'S RECORD to each of the Attorneys of Record in this cause as follows:

J. T. DIEHL ATTORNEY AT LAW 250 NORTHWEST BLVD., STE SANDPOINT, ID 83864 ATTORNEY FOR APPELLANT PETER J. SMITH,IV LUKINS & ANNIS ATTORNEYS 250 NORTHWEST BLVD., STE 102 COEUR D'ALENE, ID 83816 ATTORNEY FOR RESPONDENTS

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 10^{4} day of $______, 2011$.

Marie Scott, Clerk of the District Court

Tielio Deputy Clerk www.mnnnnnnnn minimum

Certificate of Service-1