

Honorable Judge McDermott
Honorable Judge Richard D. Eadie
Hearing Date: 08/14/12
Hearing Time: 9:00 AM

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

LANE POWELL, PC, an Oregon
professional corporation,

Plaintiff,

v.

MARK DECOURSEY and CAROL
DECOURSEY

Defendants

No. 11-2-34596-3 SEA

**DECOURSEYS’ REPLY IN
SUPPORT OF MOTION TO
VACATE AND RECUSE
AND SUBJOINED DECLARATION**

1. RELIEF REQUESTED

DeCourseys respectfully request Judge Eadie, presiding in this case, to vacate all orders he has issued on the case and recuse himself.

2. STATEMENT OF FACTS

Evidence of Prejudice: Lane Powell’s Latest Prevarication. Lane Powell asserts the DeCourseys have “no evidence demonstrating the actual prejudice or potential bias necessary for judicial qualification.” Probably the most convincing evidence of this judge’s bias is the fact that he has allowed Lane Powell’s attorneys to repeatedly make false statements to the court despite overwhelming proof that those statements were false, granted the motions based on those false statements, and then ordered DeCourseys to pay Lane

1 Powell's attorneys for abusing the courts in this fashion.

2 In further perjury, Lane Powell's attorneys Sulkin, Eaton, & Montgomery state in
3 their *Opposition*: "Lane Powell filed and served an attorneys lien in the Windermere lawsuit
4 after judgment has been entered against Windermere." (Pg. 4, Lines 12-14)

5 As "proof," Lane Powell's attorneys cite to Lane Powell's lien, clearly dated **August**
6 **3, 2011**, attached as Exhibit A to the *Opposition*. But the Amended Final Judgment was filed
7 on **November 3, 2011**. See **Exhibit A** of this Reply. August comes *before* November. So
8 no, Lane Powell did not file its lien after judgment had been entered. Lane Powell filed its
9 lien *before* judgment had been entered.
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11 Sulkin, Eaton, & Montgomery also state: "In fact, before this lawsuit had even
12 begun, Windermere was obligated and (eventually did) pay the judgment against it." This is
13 another lie. Lane Powell filed its lawsuit on **October 5, 2011**. The First Partial Payment of
14 Judgment was filed on **November 4, 2011**. **Exhibit B**. October comes *before* November.
15 Thus Windermere did not pay a penny until well *after* Lane Powell filed this lawsuit.
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17 Lying to the courts is perjury. RCW 9A.72. A judge who allows attorneys to lie in
18 his court is aiding and abetting such perjury and denigrates the court system in the eyes of
19 the public.
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21 **The Relevant Facts.** Sulkin, Eaton & Montgomery cite *Marriage of Meredith* thus:
22 "The test for determining whether a judge's impartiality might reasonably be questioned is
23 an objective one that assumes the reasonable person knows and understands all the relevant
24 facts." In this case, the relevant facts were supplied by the Public Disclosure Commission:
25 Claire Eadie is/has been a Windermere broker/agent for almost a decade and her
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1 commissions have contributed at least \$289,000 to the Edie family income between 2003-
2 2012. The Eadie's family holding in the Windermere Retirement Plan is between \$40,000
3 and \$99,999. A reasonable person who knows these facts *would* doubt a judge's impartiality
4 in the present case. But of course attorneys who have the gall to tell provable lies about
5 fundamental documents –lies about the date a lawsuit was entered or the date a judgment was
6 entered – and tell those lies in court, over their signatures -- are not reasonable persons.
7 They are people who, for the price of their legal fees, would swear on the Bible that up is
8 down, black is white, and August 3, 2011 really comes after November 3, 2011. They are
9 also attorneys who would, for the price of their legal fees, find *no* appearance that Judge
10 Eadie had a conflict of interest vis a vis his wife's Windermere employment ... Perhaps they
11 will next tell the court the earth is flat and expect the court and the Washington public to
12 swallow that, too.

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15 **Lane Powell's Malpractice Advantaged Windermere.** In their *Opposition*, Sulkin,
16 Eaton & Montgomery state that "Lane Powell and the DeCourseys were equally adverse to
17 Windermere in the underlying lawsuit."¹ (Page 4, Line 5-6) This is not true. During the
18 course of the Windermere lawsuit, Lane Powell committed various acts of malpractice which
19 disadvantaged DeCourseys and benefited Windermere. Lane Powell attempted to negate
20 DeCourseys pretrial advantage by insisting Windermere's experts be admitted to their home
21 after close of discovery. DeCourseys refused – with the result that Windermere had no
22 expert witnesses to present to the jury. On the eve the announcement of the jury verdict,
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25 ¹ Is Lane Powell suggesting that a judge is not disqualified if he is equally prejudiced against
26 both parties? The suggestion is bizarre. Judge Eadie is not supposed to be betting on either
horse in a race over which he is presiding.

1 Lane Powell recommended DeCourseys surrender and accept \$250,000 from Windermere –
2 a sum that would not even cover Lane Powell’s legal fees. DeCourseys refused, and thus
3 were awarded the \$1.2 million victory – a victory Lane Powell claims was the result of *its*
4 efforts. When DeCourseys spoke with Lane Powell’s Grant Degginger after the trial victory,
5 Degginger told DeCourseys that the victory was “not good” for Lane Powell. Obviously
6 Lane Powell must not have wanted a victory that was not “good” for it. The trial judge
7 ordered Windermere to pay 12% post judgment interest, but Lane Powell, without
8 DeCourseys’ knowledge or consent, made an agreement with Windermere to accept 3.49%
9 post judgment interest. When DeCourseys wanted Lane Powell to petition the Supreme
10 Court and present evidence about the way in which Windermere was routinely flouting real
11 estate and consumer protection laws with the complicity of the Department of Licensing and
12 the Attorney General’s Office, was conducting scorched earth litigation and abusing court
13 process – and thus gaining advantage over its competitors -- Lane Powell refused to so
14 petition the Supreme Court. Lane Powell’s Grant Degginger, then City Councilman/Mayor
15 of Bellevue, shamelessly lied to DeCourseys, telling them that the Supreme Court had “no
16 discretion” and pretended he didn’t know court precedents effectively “made” law. When
17 DeCourseys fired Lane Powell on August 3, 2011, Lane Powell was still trying to give away
18 more of the post-judgment interest due to DeCourseys.
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22 **Judge Eadie Informed of Facts.** DeCourseys informed Judge Eadie of these facts.

23 But a judge whose family derives economic benefit from Windermere would certainly have a
24 vested interest in seeing that Windermere’ business practices remained undisturbed. As the
25 famous proverb states: “The enemy of my enemy is my friend.” Such a judge would have a
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1 vested interest in seeing that Lane Powell (i.e., Grant Degginger), who covertly tried to aid
2 Windermere whenever possible, derive as much benefit, and DeCourseys derive little benefit,
3 from the Windermere award.

4 **Fatuous Reasoning: No Need for Code of Judicial Conduct.** According to Sulkin,
5 Eaton, & Montgomery, "... if the Court believed his alleged affiliation with Windermere
6 presented a potential conflict of interest, the Court would have disclosed the fact long ago."
7 Page 4, Lines 8-10. They then cite CJC 2.11, Cmt. 5. But if judges always did what was
8 honorable, there would be no need for a Code of Judicial Conduct. And there would be no
9 need for a Commission on Judicial Conduct, no need for a Public Trust and Confidence
10 Committee. But these Codes and organization exist **because** some judges betray the public
11 trust and conduct themselves badly, or use poor judgment in matters of conflicting interests.

12 **Fatuous Reasoning: No Need for Appeals Courts.** According to Sulkin, Eaton &
13 Montgomery, DeCourseys "do not like the fact that they must comply with Court orders . . ."
14 Those attorneys would give the world to understand that trial courts *always* arrive at the right
15 decisions, and only sore losers complain. If that were so, there would be no reason for
16 Courts of Appeal or Supreme Courts. On the other hand, people like Ms. Eaton and Ms.
17 Montgomery might be denied the right to an abortion if *Roe v. Wade* had not been decided on
18 appeal; so the appeals process can serve some good purpose.

19 **Words Mean Their Opposite.** On December 12, 2011, Judge Eadie ordered: "...
20 the civil rules will govern discovery." **Dkt. 44.** On March 2, 2012 Judge Eadie ordered:
21 "The DeCourseys must respond to discovery requests in full with evidence and materials in
22 accordance with this court's order of February 2/3/2012 in accordance with CR 26(b) and ER
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1 502.” **Dkt. 98.**

2 On April 27, 2012, Judge Eadie without apparent cause or explanation, abruptly
3 reversed himself. **Dkt. 106A.** Judge Eadie not only reversed himself, but found DeCourseys
4 in contempt for having followed his earlier orders. Later, on August 2, 2012, **Dkt. 187,**
5 Judge Eadie issued an order in which he reaffirmed the December 12, 2011 order!

6
7 Judge Eadie would give Washington to believe that Washington courts should not be
8 taken seriously, that judges use words to mean whatever Lane Powell wants them to mean,
9 that “privilege” does not mean “privilege” and “the Civil Rules” do not mean “the Civil
10 Rules.” Judge Eadie’s deceptive use of words reveals extreme prejudice against
11 DeCourseys.

12 **RCW 9A.56.110 Extortion.** Under Washington law, extortion is an attempt to
13 obtain *by threat* property or services of the owner. On October 5, 2011, the very day Lane
14 Powell filed its lawsuit, it served discovery requests which demanded that DeCourseys waive
15 their attorney client privilege. In the alternative, of course, DeCourseys could simply avoid
16 the threatened disclosure of their confidences by paying Lane Powell’s exorbitant fee
17 demands. The next day, October 6, 2011, Lane Powell committed a second act of extortion:
18 Lane Powell’s counsel, Robert Sulkin, threatened to use scorched earth litigation to extort
19 DeCourseys into paying Lane Powell’s legal bills. Mr. Sulking stated that Lane Powell “. . .
20 would pay \$800,000 in fees in this suit to recover \$300,000.” **Exhibit C.** DeCourseys have
21 already paid Lane Powell approx. \$313,253.00. At this writing, Lane Powell demands
22 another \$384,881.66 in fees/interest and another \$57,036.30 in more interest.
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25 Judge Eadie has been informed of these facts numerous times, but he apparently
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1 believes Lane Powell's demand of \$755,170.96 for its representation in a Consumer
2 Protection Act lawsuit is reasonable, and is willing to overlook RCW 9A.56.110.

3 **Public Esteem of the Courts.** Judge Eadie's rulings reveal a jurist who was
4 intractably prejudiced against one of the parties (DeCourseys) and in favor of the other (Lane
5 Powell) from the beginning. It appears he never intended to hold a fair trial. From the
6 beginning, he denied DeCourseys routine protection from abusive litigation tactics. When
7 Lane Powell demanded production of massive volume of documents that were already in
8 Lane Powell's files and DeCourseys moved on November 3, 2011 (**Dkt. 11**) for discovery
9 protection, Lane Powell missed the filing deadline but Judge Eadie denied the motion
10 anyway, refusing to sanction Lane Powell for violating discovery rules. Order at **Dkt. 23**.
11 Judge Eadie *sua sponte* crossed out confidentiality provisions in a November 9, 2011 motion
12 (**Dkt. 16**) for a court-supervised discovery conference under CR 26(f), even though the
13 motion was unopposed. Order at **Dkt 35**. When DeCourseys filed a November 21, 2011
14 amended motion (**Dkt 24**) for discovery conference under CR 26(f), he accepted Lane
15 Powell's late response without apology or excuse and denied the motion, and refused to
16 sanction Lane Powell for refusing to confer on discovery under the rules. Order at **Dkt. 44**.
17 In an August 3, 2012 order (**Dkt. 187**), he included that Dkt. 44 order, inferring that the Dkt.
18 44 order was a court-ordered waiver of privilege.
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22 Judge Eadie's rulings against DeCourseys have been so irrational, relentless, and
23 prejudiced, and have departed so far from the accepted and usual course of judicial
24 proceedings, it is hard to avoid the conclusion that, with the assignment of this case to Judge
25 Eadie, the process was intended from the beginning to be an ambush.
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1 **Declaration of Mark DeCoursey**

2 Mark DeCoursey hereby declares as follows:

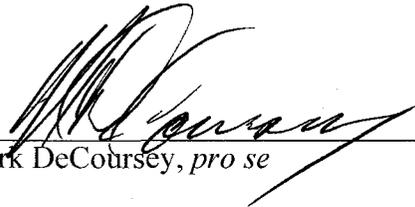
3 Being over the age of eighteen and competent to testify, I hereby attest and declare
4 the following under the laws of perjury of the State of Washington:

5 **Exhibit A** is a true and fair copy of the November 3, 2011 Amended Final Judgment
6 filed in the Windermere lawsuit, Case Number 06-2-24906-2 SEA.

7 **Exhibit B** is a true and fair copy of the November 4, 2011 First Partial Satisfaction of
8 Judgment filed in the Windermere lawsuit, Case Number 06-2-24906-2 SEA.

9 **Exhibit C** is a true and fair October 6, 2011 email from Paul Fogarty to DeCourseys.

10 SIGNED this 16th day of August, 2012.

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13 By 
14 Mark DeCoursey, *pro se*

**DECOURSEYS' REPLY IN SUPPORT OF MOTION TO VACATE AND
RECUSE**

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KING COUNTY, WASHINGTON
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DEPARTMENT OF
JUDICIAL ADMINISTRATION

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

V&E MEDICAL IMAGING SERVICES, INC. a
Washington corporation, dba AUTOMATED
HOME SOLUTIONS,

No. 06-2-24906-2 SEA

**AMENDED FINAL JUDGMENT
[Proposed]**

Plaintiff,

v.

MARK DECOURSEY and CAROL
DECOURSEY, husband and wife, individually
and the marital community composed thereof

Defendants/Third-Party Plaintiffs

v.

PAUL H. STICKNEY, PAUL H. STICKNEY
REAL ESTATE SERVICES, INC.,
WINDERMERE REAL ESTATE / S.C.A. INC.

3rd Party Defendants

JUDGMENT SUMMARY

1. JUDGMENT CREDITORS: Mark and Carol DeCoursey
2. JUDGMENT CREDITORS' ATTORNEY: Michele Earl-Hubbard
3. JUDGMENT DEBTOR: Paul H. Stickney, Paul H. Stickney Real Estate Services,
Inc., Windermere Real Estate / S.C.A. Inc.
4. ATTORNEY FOR JUDGMENT DEBTOR: William Hickman and Pamela A.
Okano

- 1 5. DAMAGES: \$522,200.00
2 6. ATTORNEYS' FEES AT TRIAL COURT LEVEL: \$463,427.00
3 7. COSTS AT TRIAL COURT LEVEL: \$650.00
4 8. ATTORNEY'S FEES FROM DIVISION ONE COURT OF APPEALS: \$47,000.00
5 9. COSTS FROM DIVISION ONE COURT OF APPEALS: \$600.61
6 10. ATTORNEY'S FEES FROM WASHINGTON STATE SUPREME COURT:
7 \$11,945.50
8 11. COSTS FROM WASHINGTON STATE SUPREME COURT: \$33.39
9 12. TOTAL AMOUNT OF INTEREST OWED TO DATE OF AMENDED FINAL
10 JUDGMENT AT 5.25% FROM 10/31/08 TO 11/2/11: \$165,172.14
11 13. TOTAL JUDGMENT INCLUDING COSTS, ATTORNEY'S FEES AND
12 INTEREST TO DATE: **\$1,211,028.64**
13 14. Judgment to bear interest at 5.25% per annum.

14 **JUDGMENT**

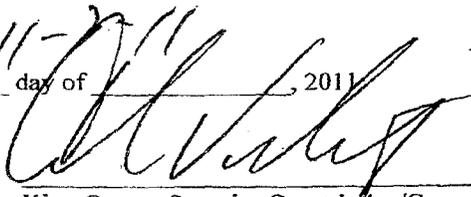
15 This matter was tried by a jury of twelve from October 21, 2008, to October 29, 2008, the
16 Honorable Michael J. Fox presiding. Defendant and Third-Party Plaintiffs Mark and Carol
17 DeCoursey ("DeCourseys") appeared through their attorneys of record. Third-party Defendants
18 Paul H. Stickney, Paul H. Stickney Real Estate Services, Inc., and Windermere Real Estate/SCA,
19 Inc., appeared through their attorneys of record. The parties presented evidence and testimony to
20 the jury. On October 31, 2008, the jury rendered a verdict in favor of the DeCourseys on their
21 claims for Breach of Fiduciary Duty in the amount of \$515,900, and the jury returned a verdict
22 in favor of the DeCourseys on their claim for violation of the Washington Consumer Protection
23 Act in the amount of \$6,300, for a total amount of damages of \$522,200. A copy of the jury's
24 verdict in this action is attached as **Exhibit A**.

1 The trial court awarded the DeCourseys attorney's fees of \$463,427.00. The trial court
 2 also awarded costs to the DeCourseys of 45,442.00. Third-party Defendants appealed the matter
 3 to the Division One Court of Appeals. The Division One Court of Appeals affirmed the jury's
 4 verdict and the trial court's fee award. Division One reversed the cost award and remanded for a
 5 corrected calculation of costs. A true and correct copy of the Division One Opinion is attached
 6 hereto as **Exhibit B**. Division One awarded the DeCourseys fees of \$47,00.00 and costs of
 7 \$600.61. A true and correct copy of the Division One Order is attached hereto as **Exhibit C**.
 8 Third-party Defendants filed a Petition for Review with the Washington State Supreme Court
 9 which was denied. The Washington State Supreme Court awarded the DeCourseys \$11,945.50
 10 and costs of \$33.39. A true and correct copy of the Supreme Court's Order is attached hereto as
 11 **Exhibit D**.

12 The parties through their respective counsel agreed to enter an amended final judgment in
 13 this matter pursuant to the terms stated in the Judgment Summary above. The parties have
 14 agreed to interest from 10/31/08 until paid at 5.25% per annum and accrued interest through
 15 11/2/11 in the amount of \$165,172.14, and costs to be awarded at the trial court level of \$650.

16 Consistent with the above and the parties' agreement, now therefore it is
 17 ORDERED, ADJUDGED AND DECREED that Judgment Creditors Mark and Carol
 18 DeCoursey are awarded a total judgment including costs, attorneys' fees, and interest to date
 19 (11/2/11) of \$1,211,028.64 to be paid by Paul H. Stickney, Paul H. Stickney Real Estate
 20 Services, Inc., and Windermere Real Estate / S.C.A. Inc. with the Judgment to bear interest at
 21 5.25% per annum.

22 DONE IN OPEN COURT this 11-2-11 day of November, 2011



King County Superior Court Judge/Commissioner

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Presented by:

ALLIED LAW GROUP

Michele Earl-Hubbard

Michele Earl-Hubbard, WSBA #26454
Attorneys for Defendant and third-party Plaintiffs Mark and Carol DeCoursey

Approved as to Form and Notice of Presentment Waived

REED MCCLURE

Pamela A. Okano

William Hickman, WSBA #1705
Pamela A. Okano WSBA # 7718
Attorneys for Third-party Defendants

**DECOURSEYS' REPLY IN SUPPORT OF MOTION TO VACATE AND
RECUSE**

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11 NOV 04 AM 9:15

KING COUNTY
SUPERIOR COURT CLERK
E-FILED

CASE NUMBER: 06-2-24906-2 SEA

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SUPERIOR COURT OF WASHINGTON FOR THE COUNTY OF KING

V&E MEDICAL IMAGING SERVICES, INC.,
a Washington corporation, doing business as
AUTOMATED HOME SOLUTIONS,

Plaintiff,

vs.

MARK DECOURSEY and CAROL
DECOURSEY, husband and wife, individually
and the marital community composed thereof,

Defendants/Third Party
Plaintiffs,

vs.

Redacted a Washington
corporation; **Redacted** **Redacted** an individual;
CONSTRUCTION CREDIT CORPORATION,
a Washington corporation; HERMAN RECOR,
ARAKI, KAUFMAN, SIMMERLY &
JACKSON, PLLC; PAUL STICKNEY and
WINDERMERE REAL ESTATE, S.C.A.,
INC.,

Third Party Defendants.

NO. 06-2-24906-2 SEA

FIRST PARTIAL SATISFACTION
OF JUDGMENT

[Clerk's Action Required]

The undersigned, Michele Earl-Hubbard, attorney for defendants/third party plaintiffs
Mark and Carol DeCoursey, does hereby acknowledge payment of \$815,118.34 from third
party defendants, Paul H. Stickney, Paul H. Stickney Real Estate Services, Inc., and
Windermere Real Estate, S.C.A., Inc., in partial satisfaction of Judgment No. 08-9-32487-2,

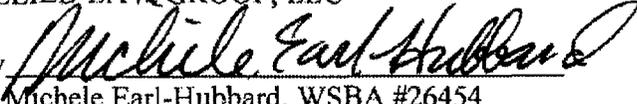
FIRST PARTIAL SATISFACTION OF JUDGMENT - 1

REED MCCLURE
ATTORNEYS AT LAW
TWO UNION SQUARE
601 UNION STREET, SUITE 1500
SEATTLE, WASHINGTON 98101-1363
(206) 292-4900 FAX (206) 223-0152

1 entered on December 29, 2008; Judgment No. 09-9-05984-1, entered on February 27, 2009;
2 an unnumbered judgment that lacked a judgment summary that was nevertheless entered on
3 November 14, 2008; and an amended judgment entered on November 3, 2011, which does
4 not yet have a number, in which third party defendants, Paul H. Stickney, Paul H. Stickney
5 Real Estate Services, Inc., and Windermere Real Estate, S.C.A., Inc. are the judgment
6 debtors and defendants/third party plaintiffs Mark and Carol DeCoursey are the judgment
7 creditors. An amended satisfaction of judgment will be filed giving the number of the
8 amended judgment to be filed.

9 DATED this 3rd day of November, 2011.

10 ALLIED LAW GROUP, LLC

11 By 

12 Michele Earl-Hubbard, WSBA #26454

13 Attorneys for Defendants/Third Party

14 Plaintiffs Mark and Carol DeCoursey

2200 Sixth Avenue, Suite 770

Seattle, WA 98121

15 STATE OF WASHINGTON)

16) ss.

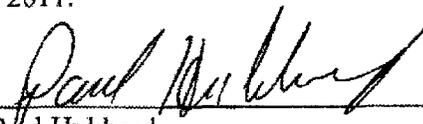
17 COUNTY OF KING)

18 I certify that I know or have satisfactory evidence that Michele Earl-Hubbard, as
19 attorney for creditors, is the person who appeared before me and said person acknowledged
20 that she signed this instrument and acknowledged it to be her free and voluntary act for the
21 uses and purposes mentioned in the instrument.

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DATED this 3rd day of November, 2011.





Paul Hubbard
Notary Public
Residing at Shoreline, WA
My appointment expires 9/15/15

**DECOURSEYS' REPLY IN SUPPORT OF MOTION TO VACATE AND
RECUSE**

C

Mark DeCoursey <mhdecoursey@gmail.com>

LP

Paul E. Fogarty <pfogarty@dearminfogarty.com>

Thu, Oct 6, 2011 at 5:45 PM

To: Carol DeCoursey <cdecoursey@gmail.com>, Mark DeCoursey <mhdecoursey@gmail.com>

Hi Carol and Mark. Sulkin (LP's attorney) called this afternoon to briefly discuss the case. Essentially, paraphrasing, he said that he heard that you had been in contact with **Redacted** this morning and that he didn't want you to contact **Redacted** (We should discuss the arguments for and against his position). He also said that LP does not settle cases when it believes it did nothing wrong, that it believes it did nothing wrong in this case, and that "it would pay \$800,000 in fees in this suit to recover \$300,000." He spoke in generalities about the demand letter and thought the whole thing was frivolous. My response was "thanks Bob, anything else?" He said "no." Then we said goodbye and hung up.

Paul

Paul E. Fogarty

DEARMIN | FOGARTY PLLC

600 Stewart Street, Suite 1200, Seattle, WA 98101

[206.441.0172](tel:206.441.0172) (direct) [206.826.9405](tel:206.826.9405) (fax)

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