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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

**IN RE RIVER PARK SQUARE PROJECT
BOND LITIGATION.**

NO. CS-01-0127-EFS

SPOKANE DOWNTOWN
FOUNDATION'S RESPONSE TO
PRESTON GATES & ELLIS'
MOTION FOR PARTIAL
SUMMARY JUDGMENT RE
WSSA CLAIMS

Defendant Spokane Downtown Foundation (“the Foundation”) submits this memorandum, the accompanying Statement of Facts, the Declaration of the Board of Directors of the Spokane Downtown Foundation, and the Declaration of Kevin W. Mickey in opposition to the motion for partial summary judgment filed by defendant Preston Gates & Ellis (“Preston”).

The Foundation respectfully requests the court deny Preston's motion for partial summary judgment because Preston's role and responsibilities in the garage transaction and bond issue were far broader than the role of Perkins Coie in *Hines v. Data Line Systems*, 114 Wn.2d 127, 787 P.2d 8 (1990), and exceed the scope of "routine professional services."

I. BACKGROUND

Christine Schnug, David Broom and Thomas White are volunteers who serve on the Foundation's board of directors ("the Board") without compensation. *Foundation's Statement of Facts*, ¶¶ 2, 13. Before they agreed to serve as volunteer directors for the Foundation, Ormsby advised them that he and the Preston firm were experts in municipal finance, including on-behalf-of or 63-20 financing, and that the Foundation could rely on Preston's experience in respect to the Foundation's role in the bond financing and garage purchase. *Id.*, ¶ 9. There was no written engagement letter that limited the scope of work that Preston would provide to the Foundation, and no express or implied limitation on Preston's role as issuer's counsel, bond counsel or general counsel for the Foundation. *Id.*, ¶ 10.

The Board members have no prior experience with local government or city revenue bonds, and relied on Preston's expertise regarding all aspects of the garage transaction and the bond issue. *Id.*, ¶¶ 15-16. Preston did not inform the Foundation Board members they had an "independent obligation" to evaluate the terms of the garage financing plan. *Id.*, ¶ 17.

The Foundation relied on Preston to fulfill its obligations (to the extent such obligations existed) with respect to all information contained in the Official Statement, not just information related to the Foundation. *Id.*, ¶ 33. Preston advised the Foundation

regarding disclosures, presented a draft of the Preliminary Official Statement to the Foundation Board, and performed the Foundation's "due diligence" on the Official Statement. *Id.*, ¶ 31. The Foundation Board members signed the General Certificate contained in the Official Statement pursuant to Preston's direction and assurances that the Foundation's obligations had been met. *Id.*, ¶ 32.

Preston was responsible for determining how to structure the garage transaction to attain tax exempt status and gave an unqualified opinion that interest on the bonds was exempt from federal income tax. *Id.*, ¶ 49. The opinion was meant to influence potential investors, and enhanced the marketability of the bonds. *Id.*, ¶ 50. Thus, by virtue of its tax opinion, Preston had a role in the sale or marketability of the bonds. *Id.*, ¶ 51.

Contrary to Preston's conclusory assertions, the firm's activities with respect to the garage transaction exceeded the scope of "routine professional services." *Id.*, ¶¶ 9-52. For example, unbeknownst to the Foundation, Preston lawyers consulted with the Developer concerning financing for the garage before the volunteer Board was appointed. *Id.*, ¶ 4. The Board members believed and understood that the price for the garage was negotiated by the City, the Developer and Ormsby, and that Preston was involved in negotiating the terms of the ground lease and the parking facility lease agreement. *Id.*, ¶¶ 21- 22. Preston also handled all routine matters related to the Foundation. *Id.*, ¶ 34. For instance, Preston prepared budgets for the Foundation and maintained the Foundation's official records and files. *Id.*, ¶¶ 34-35.

Preston, on behalf of the Foundation, along with representatives of the City, the PDA, the Developer, and others formed a working group to resolve issues related to the garage

transaction. *Id.*, ¶ 24. The working group was comprised of experts, including municipal finance experts from Preston. *Id.*, ¶ 25. The Foundation Board members did not attend working group sessions. *Id.*, ¶ 29.

Michael Ormsby (“Ormsby”), a partner in the Preston firm, was the Foundation’s “primary representative” in the working group. *Id.*, ¶ 26. “Every issue ... relative to the business of issuing bonds and purchasing the garage was ... handled by Mr. Ormsby.” *Id.*, ¶ 27. Ormsby, as a member of the working group, addressed issues such as “parking rates, validation, [and] the AMC issue.” *Id.* Ormsby was the Foundation’s representative in “all of the resolution issues.” *Id.*, ¶ 28. Preston consistently assured the Foundation Board that all issues related to the bonds, the garage transaction and the tax exempt status of the bonds were being taken care of prior to the issue of the bonds. *Id.*, ¶ 30.

Ormsby believed the Foundation was not obligated to close the purchase of the garage as a result of AMC’s notice of default, but did not inform the Board. *Id.*, ¶¶ 36-37. Instead, at the request of the PDA, Ormsby attempted to negotiate a lower price for the garage. *Id.*, ¶ 39. Ormsby attempted to use the AMC notice of default “as leverage in [his] negotiations with the developers.” *Id.*, ¶ 40. When his efforts to negotiate a lower price failed, Ormsby negotiated a Reimbursement Agreement to resolve the AMC matter, without discussing the Foundation’s options with Board members. *Id.*, ¶¶ 38- 39.

Ormsby consulted, on behalf of the Foundation, with the City and the PDA regarding the garage closing. *Id.*, ¶ 42. Ormsby did not inform the Foundation Board “of anything that would have jeopardized the transaction as viable.” *Id.*, ¶ 43. Instead, Ormsby recommended

that the Foundation close the garage transaction. *Id.*, ¶ 44. The Foundation Board members followed Ormsby's recommendation. *Id.*, ¶ 45.

Ormsby advised the Foundation Board on all matters related to the garage transaction. *Id.*, ¶¶ 16, 31-34, 38, 44, 45. The three volunteer directors relied on Ormsby and Preston and followed their advice. *Id.*

II. ARGUMENT

A party is entitled to summary judgment only when the evidence produced by the parties permits but one conclusion. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986). The party seeking summary judgment must show that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). A factual dispute is genuine where "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson*, 477 U.S. at 248. Material facts are those that may affect the outcome of the case. *Id.* All facts and reasonable inferences must be considered in the light most favorable to the nonmoving party. *Id.*

In this case, the evidence produced by the parties creates a genuine issue of fact as to Preston's status as a seller, control person or agent of the Foundation. The evidence shows Preston's role was not confined to the performance of "routine professional services." *Foundation's Statement of Facts*, ¶¶ 1-52. Rather, Preston undertook to represent the Foundation in all aspects of the complex garage transaction and revenue bond issue.

By opposing Preston's motion, the Foundation does not concede liability to any party under any theory. Nor is the Foundation alleging claims against Preston.

A. Preston did much more than render “routine professional services.”

RCW 21.20.430(1) provides that “[a]ny person¹, who offers or sells ² a security in violation of RCW 21.20.010 ... is liable to the person buying the security” Pursuant to RCW 21.20.010,

It is unlawful for any person, in connection with the offer, sale or purchase of any security, directly or indirectly:

- (1) To employ any device, scheme, or artifice to defraud;
- (2) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or
- (3) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

In *Haberman v. Washington Public Supply Power System*, 109 Wn.2d 107, 744 P.2d 1032 (1987), the Washington Supreme Court concluded that liability under RCW 21.20.430(1) is not limited to sellers in “strict privity” with the purchaser. *Id.* at 132. Rather, the court held “a defendant is liable as a seller under RCW 21.20.430(1) if his acts were a substantial contributive factor in the sales transaction.” *Id.* at 131. The court explained that the substantial contributive factor analysis “expands the strict privity

¹ The term “person” is defined to include limited liability partnerships. RCW 21.20.005(9).

² “‘Sell’ includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value.” RCW 21.20.005(10). “‘Offer’ ... includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.” *Id.*

approach to sellers so as to include those parties who have the attributes of a seller and thus who policy dictates should be subject to liability under RCW 21.20.430(1), but who would escape primary liability for want of privity.” *Id.* at 132.³

The defendants in *Haberman* included attorneys who rendered professional services to the Washington Public Power Supply System, the issuer of revenue bonds. *Id.* at 118. The bondholders alleged the attorneys “performed their jobs negligently and rendered inaccurate information to the Supply System,” *Id.* at 119, and “made material misrepresentations and omissions in connection with the bond sales in violation of the Securities Act of Washington (WSSA).” *Id.* at 124. The trial court held the attorneys were neither sellers nor control persons under RCW 21.20.430(1) and (3), respectively, and dismissed the WSSA claims against them. *Id.* The Washington Supreme Court accepted direct review and reversed. *Id.* at 133.

The *Haberman* court “did not decide if the professional defendants ... qualified as sellers. Instead, [the court] concluded that this issue was factual in nature” *Hoffer v. State*, 110 Wn.2d 415, 430, 755 P.2d 781 (1988), *reconsidered in part*, 113 Wn.2d 148, 776

³ The *Haberman* court rejected the “strict privity” approach before it was adopted by the United States Supreme Court in *Pinter v. Dahl*, 486 U.S. 622 (1988). After *Pinter*, in *Hoffer v. State*, 113 Wn.2d 148, 150, 776 P.2d 963 (1989), the Washington Supreme Court reaffirmed its holding in *Haberman*. The *Hoffer* court noted “that the WSSA has a different purpose than the federal statute, in that it endeavors to protect investors, not just the integrity of the marketplace.” *Hoffer*, 113 Wn.2d at 152.

P.2d 963 (1989). Under *Haberman*, “[w]hether a defendant’s conduct was a substantial contributive factor is necessarily a question of fact.” *Haberman*, 109 Wn.2d at 132. The court listed three factors to be considered in making this factual determination:

- (1) the number of other factors which contribute to the sale and the extent of the effect which they have in producing it;
- (2) whether the defendant's conduct has created a force or series of forces which are in continuous and active operation up to the time of the sale, or has created a situation harmless unless acted upon by other forces for which the actor is not responsible; and
- (3) lapse of time.

Id. at 131-32.

In *Hoffer*, the court reiterated these factors in an action filed by Supply System bondholders against the State Auditor and others. “The bondholders’ allegations focus[ed] primarily on the State Auditor’s failure to inform them of weaknesses in their investments, such as the true extent of the Supply System’s financial difficulties and the unconstitutionality of the bonds’ security arrangement.” *Hoffer*, 110 Wn.2d at 417. The bondholders claimed the State was liable as a seller under the WSSA “for the untrue statements in the Auditor’s two writings” – including a letter in Supply System’s annual report certifying its financial health. *Id.* at 419-420. The State argued that it could not be held liable under RCW 21.20.430(1) “because it did not sell the bonds directly to the bondholders.” *Id.* at 429. Citing *Haberman*, the court rejected the State’s argument. *Id.* at 430.

[T]he letter was arguably issued “in connection with” the sale of the bonds, having been placed in the Supply System’s annual reports, allegedly to influence conduct of actual and potential bondholders. Thus, the State might have violated RCW 21.20.010, and we cannot conclude that the bondholders are foreclosed from recovery under RCW 21.20.430(1).

Id. at 431.

Similarly, in this case, Preston’s tax opinion was issued “in connection with” the sale of bonds. RCW 21.20.010. The opinion was meant to influence potential investors. Plaintiffs allege the opinion was “false and misleading” and was issued by Preston “with the knowledge, expectation and belief that [it] would reasonably be relied upon by potential purchasers of the Bonds.” *Nuveen Quality Income Municipal Fund et al Complaint*, ¶¶ 23-27. Plaintiffs also allege Preston “knew the Official Statements were materially false and misleading.” *Id.*, ¶ 26. According to plaintiffs, “[t]he Bonds could not and would not have been issued had the Preston law firm refused to issue any of the three opinions.” *Id.*, ¶ 26. *See also Asset Guaranty Insurance Company Complaint*, ¶¶37, 60; *U.S. Bank Trust National Association Complaint*, ¶¶ 18-22.

Preston does not contest these allegations in its moving papers, rather it argues it is exempt from liability because it allegedly provided only “routine professional services” to the Foundation, was “not involved in the solicitation process” and “does not have the attributes of a seller.” *Preston Memorandum in Support of Motion for Partial Summary Judgment*, at 9-12. Preston emphasizes that it “had virtually no contact whatsoever with any potential purchasers of the Bonds.” *Id.* at 6. However, under the substantial contributive factor test, direct contact between the “seller” and buyer is not required. *Haberman*, 109

Wn.2d at 132. If the *Haberman* court had intended to limit liability to those who are directly involved in sales or solicitation, it could have said so explicitly and omitted the factors enunciated. If the *Haberman* court so intended, it would have dismissed the WSSA claims against the Supply System's bond counsel.

Preston relies primarily on *Hines v. Data Lines Systems*, 114 Wn.2d 127, 787 P.2d 8 (1990), and *Moore v. Kayport Package Express, Inc.*, 885 F.2d 531 (9th Cir. 1989), in support of the proposition that a lawyer who renders "routine professional advice" cannot be liable as a seller under the WSSA. Neither case stands for the proposition asserted, and both are distinguishable.

In *Moore*, "[d]efrauded investors who lost money in the purchase of unregistered securities sued the principals involved, as well as various accountants, lawyers and stockbrokers" for violations of section 12(2) of the Securities Act of 1933. *Moore*, 885 F.2d at 533. The investors contended the "lawyer defendants were liable as 'sellers' under section 12(2) because their actions were a substantial factor in bringing about the sales transactions." *Id.* at 535. "Based on *Pinter*," the Ninth Circuit rejected the substantial factor test, and held the investors failed to state a claim. *Id.* at 537. "Under the *Pinter* analysis," the court held the lawyers were "only subject to section 12(2) liability if they solicited the purchases and were motivated, at least in part, by financial gain." *Id.* *Moore* is of no help in deciding the parameters of seller liability under the WSSA.

In *Hines*, private placement investors brought an action under the WSSA against Data Line Systems, its directors, Evan Llewellyn Securities, Inc. and Perkins Coie, the law

firm “retained as legal counsel with respect to the [company’s] stock offering.” *Hines*, 114 Wn.2d at 132. Perkins Coie’s activities were limited to (1) preparing the private placement memorandum, and (2) advising Data Line regarding the necessity of disclosing information about the president’s medical condition to potential investors. *Id.* at 150-51. The plaintiffs conceded (perhaps mistakenly) that drafting the placement memorandum was insufficient to impose seller liability under *Haberman*. *Id.* at 149. More importantly, “[a]t the time Perkins Coie prepared the placement memorandum, it contained no misstatement regarding [the president’s] health.” *Id.* at 150. Consequently, the court focused on the advice given by Perkins Coie to its client, Data Line, regarding the disclosure. Based on the evidence presented, the court concluded “[t]he advice ... was not a catalyst in the sales transaction between Data Line and the investors.” *Id.*

Instead, the actions of Evans Llewellyn and the directors had the predominant effect of bringing about the sale. Data Line and Evans Llewellyn conducted the sales transactions beginning with distributing the placement memorandum to securing sales closings with interested investors. In any event, advice by counsel to an issuing company about the materiality of certain facts is the rendering of routine professional legal services in connection with an offer.

Id. at 149-50.

The *Hines* court did not hold that every lawyer who consults, advises or renders legal services in connection with an offer is always exempt from liability as a seller. Rather, the court distinguished “between those advisors whose role is confined to rendering routine professional services in connection with an offer, and active participation in the sales transactions.” *Id.* at 149, citing *Ahern v. Gaussoin*, 611 F.Supp. 1465 (D.Or. 1985),

abrogated on other grounds by *Securities Investor Protection Corp. v. Poirier*, 653 F.Supp.63, 67 (D.Or. 1986). “[A]ctive participation in the sales transaction” is not limited to active solicitation of buyers. *Hoffer*, 110 Wn.2d at 429-30; *Haberman*, 109 Wn.2d at 131-32.⁴ As the Ninth Circuit concluded in *Ahern*, liability extends “to those persons who have played a substantial role in the process leading to the sales transaction at issue.” *Id.*⁵

In this case, Preston was general counsel, issuer’s counsel, and bond counsel for the Foundation at all material times. *Foundation’s Statement of Facts*, ¶ 12. Preston played a role in negotiating the price for the garage, and was also involved in negotiating the terms of the ground lease and the parking facility lease agreement. *Id.*, ¶¶ 21-22. Preston, on behalf of the Foundation, along with representatives of the City, the PDA, the Developer, and others formed a working group to resolve issues related to the garage transaction. *Id.*, ¶ 24. Ormsby was the Foundation’s “primary representative” in the working group. *Id.*, ¶ 26. Without Ormsby’s

⁴ See *Black & Co. v. Nova-Tech, Inc.*, 333 F. Supp. 468, 472 (D.Or. 1971) (Under Oregon’s Blue Sky Law, “a person may be a ‘participant’ in an illegal securities transaction without having communicated with the purchaser. ... [The lawyer for a company which sold unregistered securities] was a participant in the sale because, without his assistance, the sale would not have been accomplished).”

⁵ In *Ahern*, the court applied the “judicially expanded definition of ‘seller’” under section 12 of the Securities Act of 1933 prior to the Supreme Court’s decision in *Pinter*. 611 F.Supp. at 1485.

participation, the garage transaction would not have proceeded, and the bonds would not have been issued.

Preston did not just draft portions of the Official Statement, it performed the Foundation's "due diligence." *Id.*, ¶¶ 31-33. The Foundation relied on Preston to fulfill its obligations (to the extent such obligations existed) with respect to all information contained in the Official Statement. *Id.*, ¶ 33. The Foundation Board members signed the General Certificate contained in the Official Statement pursuant to Preston's direction and assurances. *Id.*, ¶ 32. Preston participated in structuring the transaction to the extent it affected tax exempt status and issued an opinion letter regarding the tax exempt status of the bonds. *Id.*, ¶¶ 35, 48. In short, Preston did much more than render "routine professional services in connection with" the bonds.

B. Whether Preston controlled the Foundation is an issue of fact.

Under RCW 21.20.430(3), "[e]very person who directly or indirectly controls a seller ... liable under subsection (1) ... above, every partner, officer, director or person who occupies a similar status or performs a similar function of such seller ..., every employee of such seller ... who materially aids in the transaction ... is also liable jointly and severally with and to the same extent as the seller" The statute also imposes secondary liability on "every broker-dealer, salesperson, or person exempt under the provisions of RCW 21.20.040 who materially aids in the transaction." *Id.*

In *Hines*, the court "formulated a test for determining when a person may be deemed a control person for purposes of RCW 21.20.430(3)." *Hines*, 114 Wn.2d at 135. "It rejected

the Ninth Circuit’s ‘culpable participation’ test, which requires a finding that the defendant culpably participated in the transaction.” *Herrington v. Hawthorne*, 111 Wn. App. 824, 835, 47 P.3d 567 (2002), *review denied*, 148 Wn.2d 1025 (2003).

Under the plain language of RCW 21.20.430(3), the investors need show only that the defendant “directly or indirectly control[led] [the] seller”. The statute does not require the plaintiff to prove that the defendant “culpably participated” in the alleged violation. Instead, the statute clearly shifts the burden onto the defendant to prove that “he or she did not know, and in the exercise of reasonable care could not have known” of the liability-producing facts.

Id. at 137.

Neither RCW 21.20.430(3) nor *Hines* requires a finding that the defendant possessed the “power to control” the seller, as Preston implies. *Preston Memorandum in Support of Motion for Partial Summary Judgment*, at 15 n.5.⁶ Rather, “[u]nder the plain language” of the statute, plaintiffs need to establish actual control. The determination of the existence of

⁶ The *Hines* court quoted, but did not adopt the 2-prong test introduced in *Metge v. Baehler*, 762 F.2d 621, 631 (8th Cir. 1985), *cert. denied*, 474 U.S. 1057, 106 S.Ct. 798, 88 L.Ed.2d 774 (1986). The *Metge* test, which flows from the definition of “control” in 17 CFR § 230.450(f), requires “the plaintiff to ‘establish, first, that the defendant ... actually participated in (i.e. *exercised* control over) the operations of the corporation in general; then he must prove that the defendant possessed the *power to control* the specific transaction or activity upon which the primary violation is predicated, but he need not prove that this later power was exercised.” *Hines*, 114 Wn.2d at 136 (emphasis in *Hines*, some internal quotations omitted).

such power or influence is a complex question of fact. *Kersh v. General Council of Assemblies of God*, 804 F.2d 546, 548 (9th Cir. 1986). *See also Wenneman v. Brown*, 49 F.Supp.2d 1283, 1290 (D.Utah 1999) (“the control person determination is a factual question not ordinarily subject to resolution on a motion to dismiss”).

In *Hines*, the investors “failed to present evidence sufficient to create a factual issue as to control person ... status on the part of Perkins Coie.” *Hines*, 114 Wn.2d at 150. Here, in contrast, there is ample evidence to create a factual issue. Preston utilized its expertise and advised the Foundation Board in all matters related to the garage transaction. *Foundation’s Statement of Facts*, ¶¶ 9-52. The three volunteer directors relied on Preston and followed its advice. *Id.*

Moreover, Preston acted and made decisions on behalf of the Foundation. For example, Ormsby believed the Foundation was not obligated to close the purchase of the garage as a result of AMC’s notice of default, but did not inform the Board. *Id.*, ¶¶ 36-37. Instead, Ormsby attempted to negotiate a lower price for the garage. *Id.*, ¶ 39. Ormsby attempted to use the AMC notice of default “as leverage in [his] negotiations with the developers.” *Id.*, ¶40. When his efforts to negotiate a lower price failed, Ormsby signed a Reimbursement Agreement, without discussing the Foundation’s options with Board members. *Id.*, ¶ 38.

Preston did not inform the Foundation Board “of anything that would have jeopardized the transaction as viable.” *Id.*, ¶ 43. Instead, Preston recommended the Foundation close on the purchase of the garage. *Id.*, ¶ 44. The Foundation Board members

followed Preston’s recommendation. *Id.*, ¶ 45. There is at least a genuine issue of fact as to whether Ormsby and Preston “exercised, directly or indirectly, meaningful hegemony over” the Foundation. *Sheinkopf v. Stone*, 927 F.2d 1259, 1270 (1st Cir. 1991). Under such circumstances, “[a]n attorney can ... be a ‘controlling person.’” *Id.*

An attorney may also be a “controlling person” when counsel acts as an expert in the preparation of securities documents and gives advice to the corporation with respect to the documents. For example, in *Seidel v. Public Service Co. of New Hampshire*, 616 F. Supp. 1342 (D.C. N.H. 1985), the complaint alleged two law firms participated in the preparation, review, supervision, and dissemination of offering documents containing material omissions and misstatements, and that the documents bore “the imprimatur of expertise on the part of such counsel.” *Id.* at 1362. The court found it “difficult to perceive” that the issuer did “not follow the advice of counsel” in light of the lawyer’s expertise, and concluded the lawyers fell “within the ambit of ‘controlling persons’” under section 20(a) of the Securities Exchange Act of 1934. *Id.* (applying the “more rigorous” culpable participation test).

Similarly, in this case, the evidence demonstrates the volunteer directors, who lacked meaningful experience in municipal finance and bond offerings, followed the advice of counsel and relied on counsel’s expertise in these areas. What a reasonable jury could find, based this evidence, is a question of fact.

III. CONCLUSION

The Foundation respectfully requests the court deny Preston's motion for partial summary judgment because Preston may be liable under the Washington State Securities Act (WSSA) as a seller, control person, and/or agent of the issuer.⁷

RESPECTFULLY SUBMITTED this ____ day of _____ 2003.

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⁷ See also *Felts v. National Account Systems Ass'n, Inc.*, 469 F. Supp. 54, 67-68 (D.C. Miss. 1978) (issuer's counsel could be liable to investors as a "participant in the sale," as a "controlling person of the issuer," and for aiding and abetting the issuer because it was foreseeable that legal services provided to the issuer would be relied upon by investors, as third party beneficiaries of those services).

PROOF OF SERVICE

I hereby declare under the penalty of perjury and the laws of the State of Washington that the following statements are true.

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Spokane Downtown Foundation's
Memorandum in Opposition to
Preston Gates & Ellis' Motion for
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DATED this _____ day of _____, 2003, at Spokane, Washington.

Pam Warnick