

Hon. Richard D. Eadie  
**Plaintiff's Supplemental Brief  
re Reasonableness of Fees and ISO  
Plaintiff's Motion for Summary Judgment  
Heard With Oral Argument on  
Friday, November 16, 2012**

Note: (1) This document has been redacted in accordance with a settlement agreement with the contractor who ruined our house. (2) Lane Powell's attorneys allege they have placed attorney-client confidences into the public record. Without affirming or denying the content of the allgations, we have redacted the alleged confidences.

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

LANE POWELL PC, an Oregon profes-  
sional corporation,

Plaintiff,

v.

MARK DeCOURSEY and CAROL De-  
COURSEY, individually and the marital  
community composed thereof,

Defendants.

No. 11-2-34596-3SEA

PLAINTIFF LANE POWELL'S  
SUPPLEMENTAL BRIEF RE REA-  
SONABLENESS OF FEES PURSU-  
ANT TO NOVEMBER 16, 2012 OR-  
DER

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## I. INTRODUCTION

Of the \$639,232.26 invoiced to the DeCourseys over four years, Ex. J,<sup>1</sup> only \$152,256.10 in fees and costs have not been reviewed by any court and thus have not been found reasonable. Exs. PP, QQ, RR.<sup>2</sup> Even though the DeCourseys argue that the reasonableness of fees is “irrelevant to a ‘written fee agreement’” (Resp. at 4), Lane Powell nevertheless requests the Court review them to create a complete record for the Court of Appeals. The DeCourseys received from the defendants in the underlying action \$523,006.50 in reasonable attorneys’ fees and costs.<sup>3</sup> Ex. SS. Except for \$4,739.57 disallowed in the Supreme Court, courts awarded Lane Powell *all* the fees and costs it sought, even adding a 30% multiplier for its exceptional work. There is no reason to presume that Lane Powell worked any differently, let alone inefficiently, with respect to the fees not reviewed (as opposed to those reviewed).

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## II. EVIDENCE RELIED UPON

Plaintiff relies on the Declarations of Ryan P. McBride (“McBride Decl.”) with Exhibits 1-2; Andrew J. Gabel (“Gabel Decl.”); and the (First, Second, and) Third of Hayley A. Montgomery with Exhibits A-VV; and the records and files herein.

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## III. ARGUMENT

**A. The \$76,008.50 in Un-Reviewed Fees and Costs the DeCourseys Paid Without Protest Are Not At Issue in This Case**

Of the \$152,256.10 in “un-reviewed” fees and costs, roughly half (\$76,008.50) were paid by the DeCourseys without protest years ago. Ex. PP. (As shown in Ex. J, the

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<sup>1</sup> Exhibits A-OO referenced herein are attached to the 1<sup>st</sup> and 2<sup>nd</sup> Declarations of Hayley A. Montgomery ISO Plaintiff Lane Powell’s Motion for Summary Judgment.

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<sup>2</sup> Exhibits PP-VV referenced herein are attached to the Third Declaration of Hayley A. Montgomery ISO Plaintiff Lane Powell’s Mot. for Summ. J. and Supplemental Brief re Reasonableness of Fees Pursuant to November 16, 2012 Order (“3<sup>rd</sup> Montgomery Decl.”).

<sup>3</sup> These are \$463,427.00 in fees (including a 30% multiplier); \$45,000 in costs in the trial court, \$47,600.61 in the Court of Appeals; and \$11,978.89 in the Supreme Court. Mot. 3-4.

1 last trust account disbursement was applied to the September 22, 2008 Invoice (No.  
2 3431255)). Ex. J. These un-reviewed but paid fees and costs are not in controversy in  
3 this lawsuit, and need not be reviewed for reasonableness. Nevertheless, to make the  
4 Court of Appeals a complete record, Lane Powell requests this Court review such time  
5 entries, which are attached as Ex. QQ.

6 **B. The Court Should Find the \$76,247.60 in Un-Reviewed Fees and Costs that**  
7 **Remain Unpaid Reasonable**

8 **1. Un-reviewed hours**

9 The DeCourseys incurred \$71,916.00 in attorneys' fees based on 567.30 hours of  
10 work performed that remains unpaid and un-reviewed. Ex. PP. The claims brought by  
11 the DeCourseys involved both claims covered by fee shifting and claims not so covered.<sup>4</sup>  
12 As shown in time entries not previously submitted to courts, the time spent by Lane Pow-  
13 ell timekeepers is reasonable in light of the tasks involved and was spent performing tasks  
14 necessary for the efficient and proper representation of the DeCourseys. Ex. RR; *see also*  
15 Degginger Decl. ¶¶ 3-5; McBride Decl. ¶ 5; Mot. at 18-19. As Judge Fox found, Lane  
16 Powell's work warranted a 30% increase to be paid by the defendants. Ex. HH at 5. This  
17 case involved unique circumstances which raise important issues concerning the number  
18 of hours Lane Powell worked. For example, as the DeCourseys agreed, the opponent's  
19 strategy contributed to the size of fees in this case. Ex. K (agreeing that Lane Powell's  
20 fees "were necessarily incurred in this litigation given our opponent's strategy"); Deg-  
21 ginger Decl. ¶ 5. This Court has seen that the DeCourseys are litigious and created an un-  
22 usual amount of lawyer work. *See* McBride Decl. ¶ 7; Ex. RR at 81-82 (describing G.  
23 Degginger's time responding to "multiple" DeCoursey emails). They also created numer-  
24 ous other problems—for example, part of what Lane Powell had to do was make sure that

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25 <sup>4</sup> On appeal, the DeCourseys were entitled only to fees and costs covered by the CPA: the court re-  
26 viewed Lane Powell's invoices (which included all fees and costs incurred on appeal), found them to be  
reasonable, allocated roughly one-half to issues covered by the CPA, and then awarded one-half of the total  
amount of fees incurred on appeal. Ex. G at 2.

1 [REDACTED]  
2 [REDACTED] would  
3 not be admissible at trial. See [REDACTED]

4 [REDACTED]<sup>5</sup> This inhibited  
5 Lane Powell's ability to call key witnesses creating further obstacles to litigating the case.  
6 Gabel Decl. ¶ 2-3. Courts approved as reasonable all but a very small portion of Lane  
7 Powell's hours.<sup>6</sup> There is no evidence to suggest that Lane Powell worked inefficiently  
8 with respect to any of the fees—both reviewed and un-reviewed—in the underlying ac-  
9 tion.

10 **2. Un-reviewed hourly rates**

11 Except for those listed on **Ex. UU**, all hourly rates for timekeepers billing time in  
12 the underlying action have been reviewed for reasonableness. As shown on **Ex. UU**, the  
13 unpaid fees at un-reviewed hourly rates amount to only \$10,025.00 of the total \$71,916.00  
14 in un-reviewed and unpaid fees. Only A. Norby's 2009 and G. Degginger's 2011 contri-  
15 butions even are remotely notable. *Id.* Yet, as established by the Degginger Decl. (which  
16 was not contested by the DeCourseys), these rates are reasonable for Lane Powell's expe-  
17 rience, ability, and reputation, and are customarily charged in the Seattle area for the high  
18 level of skill necessary to perform this type of complex litigation. McBride Decl., ¶ 5 &  
19 **Ex. 2**; Degginger Decl. ¶¶ 4-6; Mot. at 20-24. In addition, some timekeepers listed on **Ex.**  
20 **UU**, including Ms. Norby and Mr. Degginger, have billed time at other hourly rates that  
21 have been found reasonable. *See, e.g., Ex. RR* at 16 (approving 6.1 hours worked by G.  
22 Degginger at his 2008 rate of \$400). Again, the paid attorneys' fees at un-reviewed hour-

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25 <sup>5</sup> [REDACTED]

26 <sup>6</sup> Despite the fact that the Supreme Court Commissioner found Mr. McBride's time to be "general-  
ly reasonable," the Court Commissioner "disallowed some of the claimed hours" by an unknown amount  
because they were "slightly on the strong side." *Ex. I* at 4.

1 ly rates are not in controversy (and thus need not be reviewed for reasonableness), but  
2 Lane Powell nevertheless requests the Court review the paid attorneys' fee at un-reviewed  
3 rates, which are also set forth in Ex. UU.

4 **3. Un-reviewed costs**

5 The DeCourseys incurred \$4,331.60 in costs that remain unpaid and un-reviewed  
6 for reasonableness. Ex. PP; *see also* Ex. RR. These costs include travel expenses, com-  
7 puter legal research, reproduction, messenger, and facsimile costs, and the like—the same  
8 types of costs previously approved by courts as reasonable. Compare Ex. RR at 15, with  
9 Degginger Decl., Ex. 1 at 30. An independent review of the invoiced costs not already  
10 reviewed shows that they are reasonable and were incurred in the performance of tasks  
11 necessary for the efficient and proper representation of the DeCourseys. Ex. RR; Deg-  
12 gginger Decl. ¶ 3.

13 **C. The DeCourseys are Responsible for Reimbursing Lane Powell for the**  
14 **\$45,000 Cost Award Disallowed on Appeal**

15 The DeCourseys are responsible for reimbursing Lane Powell for the \$45,000 in  
16 costs found reasonable by Judge Fox but disallowed on appeal. *See* Ex. E. Indeed, the  
17 Real Estate Purchase and Sale Agreement (REPSA) provided for “attorneys’ fees and ex-  
18 penses” for the prevailing party only “when the buyer and seller are engaged in litigation.”  
19 Ex. H at 36 n.24. Because, as the appellate court found, the DeCourseys did not sue the  
20 seller of the house, they were not entitled to fees under the REPSA. *Id.* The DeCourseys  
21 are estopped from challenging these costs as unreasonable, Mot. at 14-16, and remain re-  
22 sponsible for paying them. Certainly, Lane Powell should not be required to bear costs  
23 incurred on the DeCourseys’ behalf that were found reasonable but disallowed on appeal  
24 as not provided for under law.

25 **D. The Court Should Find Ryan McBride’s 2011 Hourly Rate to Be Reasonable**

26 Of those hourly rates that have been reviewed, all but Ryan McBride’s 2011 rate  
have been found reasonable. Thus, to the extent there is a dispute about Lane Powell’s

1 hourly rates already reviewed by courts, it is limited only to the \$4,739.57 in fees that  
2 were not awarded by the Supreme Court in the underlying action. Ex. I at 4. Notwith-  
3 standing the Commissioner's ruling, Mr. McBride's \$440 rate is reasonable. Mr. McBride  
4 has extensive appellate experience. McBride Decl. ¶ 1-2. His \$440 rate is customarily  
5 charged in the Seattle area for the high level of skill necessary for this type of complex  
6 appellate practice. *Id.* ¶ 3. Mr. McBride's \$440 rate was found reasonable in at least  
7 three subsequent appellate cases, including one before the same Supreme Court Commis-  
8 sioner that disallowed some of his fees. *Id.* Ex. 1.

9 Even if Mr. McBride's 2011 rate were excessive (it is not), it would result in a set-  
10 off of \$4,739.57—the same amount disallowed by the Supreme Court Commissioner—in  
11 addition to any amounts the Court finds excessive for the 15.8 hours worked by Mr.  
12 McBride in 2011 that were not already reviewed for reasonableness. *See* Ex. VV.

#### 13 IV. CONCLUSION

14 Lane Powell respectfully requests the Court find the fees and costs that remain un-  
15 reviewed to be reasonable, grant summary judgment to Lane Powell on its breach of con-  
16 tract claim for these amounts (in addition to the amounts already awarded), enter an order  
17 directing disbursement of the balance of the \$384,881.66 in the Court Registry to Lane  
18 Powell, and order the DeCourseys to release a sufficient amount from the amounts held in  
19 the form of a supersedeas bond to Lane Powell to cover interest accrued pursuant to the  
20 parties' Fee Agreement (\$37,793.79). A proposed form of findings of fact and conclu-  
21 sions of law is lodged herewith.

22 DATED this 30<sup>th</sup> day of November, 2012.

23 McNAUL EBEL NAWROT & HELGREN PLLC

24 By: 

25 Robert M. Sulkin, WSBA No. 15425  
26 Majaika M. Eaton, WSBA No. 32837  
Hayley A. Montgomery, WSBA No. 43339

Attorneys for Plaintiff

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

<p>LANE POWELL PC, an Oregon professional corporation,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>MARK DeCOURSEY and CAROL DeCOURSEY, individually and the marital community composed thereof,</p> <p style="text-align: right;">Defendants.</p>	}	<p>No. 11-2-34596-3SEA</p> <p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER ON LANE POWELL PC'S MOTION FOR SUMMARY JUDGMENT</p> <p><b>PROPOSED</b></p>
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On November 16, 2012, this matter came on for hearing before the Court on Plaintiff Lane Powell PC's Motion for Partial<sup>1</sup> Summary Judgment in favor of Plaintiff Lane Powell PC against Defendants Mark and Carol DeCoursey ("DeCourseys") for the following relief:

1. Judgment that the DeCourseys breached the parties' September 19, 2007 contract (as amended December 30, 2008), in which the DeCourseys had agreed to pay Lane Powell for its legal services in connection with a lawsuit entitled *V&E Medical Imaging Services, Inc. v. Mark DeCoursey, et ux., et al.* ("underlying action");

<sup>1</sup> As stated in Lane Powell's opening brief, Lane Powell's motion seeks partial summary judgment (because it was based only on Lane Powell's breach-of-contract claim), but that claim includes the full amount of damages sought in this lawsuit. In short, with the granting of Lane Powell's motion, it will be unnecessary to address Lane Powell's alternative claims.

1           2.       Damages for breach of the contract in the amount of \$422,675.45  
2 (\$384,881.66 due and owing as of August 3, 2011, plus \$37,793.79 in interest accrued  
3 through the date of hearing).

4           In connection with Plaintiff Lane Powell's motion, the Court heard oral argument  
5 of Plaintiff's counsel and Defendants Pro Se, and considered the following:

- 6           (1)       Plaintiff Lane Powell PC's Motion for Partial Summary Judgment;
- 7           (2)       Declaration of Hayley A. Montgomery in Support of Lane Powell's Motion  
8 for Partial Summary Judgment Exhibits A-MM attached thereto;
- 9           (3)       DeCourseys' Response to Plaintiff Lane Powell's Motion for Partial  
10 Summary Judgment with Subjoined Declaration and Exhibits 1-17  
11 attached thereto;
- 12           (4)       Second Declaration of Mark H. DeCoursey in Opposition to Plaintiff Lane  
13 Powell's Motion for Partial Summary Judgment and the attachment  
14 thereto;
- 15           (5)       Declaration of Carol DeCoursey;
- 16           (6)       Plaintiff Lane Powell's Reply in Support of its Motion for Partial Summary  
17 Judgment; and
- 18           (7)       Second Declaration of Hayley A. Montgomery in Support of Plaintiff Lane  
19 Powell's Motion for Partial Judgment and Exhibits NN-OO attached  
20 thereto.

21           The Court also considered the records and files herein. Based on the argument of counsel  
22 and the evidence presented, and being otherwise fully advised therein, the Court granted  
23 Lane Powell's motion for summary judgment in favor of Lane Powell and against the  
24 DeCourseys for breach of contract. The Court awarded all damages Lane Powell sought,  
25 except for those attorneys' fees and costs that had not already been reviewed for  
26 reasonableness. It also required the parties to file supplemental briefs addressing the issue  
of whether the Court should independently review for reasonableness the fees and costs  
that were previously not reviewed by another court (as well as the issue of whether Ryan  
McBride's 2011 hourly rate is reasonable).



1 In connection with this supplemental briefing, the Court considered the  
2 following:

- 3 (1) Plaintiff Lane Powell's Supplemental Brief re Reasonableness of Fees  
4 Pursuant to November 16, 2012 Order;
- 5 (2) Third Declaration of Hayley A. Montgomery in Support of Lane Powell  
6 PC's Motion for Summary Judgment and Supplemental Brief re  
7 Reasonableness of Fees Pursuant to November 16, 2012 Order;
- 8 (3) Declaration of Ryan P. McBride in Support of Plaintiff Lane Powell PC's  
9 Motion for Summary Judgment and Supplemental Brief re Reasonableness  
10 of Fees Pursuant to November 16, 2012 Court Order;
- 11 (4) Declaration of Andrew J. Gabel in Support of Plaintiff Lane Powell PC's  
12 Motion for Summary Judgment and Supplemental Brief re Reasonableness  
13 of Fees Pursuant to November 16, 2012 Court Order;
- 14 (5) Defendants' response, and supporting material, if any; and
- 15 (6) Plaintiff's reply, and supporting material, if any.

16 The Court also considered the records and files herein. Being fully advised on this matter,  
17 the Court hereby makes the following Findings of Fact and Conclusions of Law and enters  
18 the following Order:

19 1. The DeCourseys entered into a binding written fee agreement with Lane  
20 Powell on September 19, 2007, (as amended December 30, 2008), to pay for legal  
21 services performed in connection with the underlying action, plus interest.


22 2. Pursuant to Rule of Professional Conduct (RPC) 1.5(a), Lane Powell is  
23 entitled to charge and collect the reasonable attorneys' fees and expenses the DeCourseys  
24 agreed to pay under the fee agreement.

25 3. On the DeCourseys' behalf, Lane Powell performed \$639,232.26 in legal  
26 services, \$325,424.26 of which the DeCourseys have not paid.

4. The DeCourseys did not present evidence challenging the reasonableness  
of these fees and costs on summary judgment.

1           5.     The Court finds that Lane Powell reasonably charged the DeCourseys  
2 \$639,232.26 in attorneys fees and costs incurred prevailing in the underlying action, and  
3 Lane Powell is entitled to collect that amount.

4           6.     In the underlying action, the DeCourseys submitted fee and cost reports  
5 that were edited to remove entries not reasonably related to prevailing on claims providing  
6 for fee-shifting. The courts reviewed the edited reports and awarded the DeCourseys  
7 \$568,006.50 (including a 30 percent multiplier) in reasonable attorneys' fees and costs.

8           7.     On summary judgment, this Court found that the DeCourseys are estopped  
9 from challenging the reasonableness of attorneys' fees and costs that were reviewed by  
10 previous courts. Nevertheless, the Court accepts as reasonable the fees and costs awarded  
11 by other courts (including the \$45,000 in costs found reasonable in the trial court but   
12 disallowed on appeal because not provided for under the DeCourseys' Real Estate  
13 Purchase and Sale Agreement (REPSA)), as well as Judge Fox's analysis on Lane  
14 Powell's exceptional work done on the DeCourseys' behalf.

15           8.     The hourly rates charged by attorneys in this matter ranged from \$205 to  
16 \$470. The attorneys were assisted by paralegals and legal assistants, whose hourly rates  
17 ranged from \$80 to \$190.

18           9.     The Court has reviewed the hourly rates of Lane Powell timekeepers that  
19 were not previously reviewed for reasonableness. The Court finds that these hourly rates  
20 are reasonable based on each timekeeper's skill, experience, reputation, and ability, and  
21 are customarily charged in the locality for similar legal services.

22           10.    The Court has reviewed the 2011 hourly rate of Ryan McBride (\$440).  
23 The Court finds that Ryan McBride's 2011 hourly rate (\$440) is reasonable (despite the  
24 fact that a small portion of the fees claimed for Mr. McBride's work was disallowed based  
25 on the Supreme Court commissioner's review). The Court makes this finding based on  
26 his skill, experience, reputation, and ability, the approval of this rate by subsequent courts,

1 including the same Supreme Court commissioner as in the underlying action, and  
2 evidence that this rate is customarily charged in the locality for similar legal services.

3 11. The Court has reviewed the fee and cost reports submitted by Lane Powell.  
4 The Court finds that Lane Powell has appropriately edited the reports to remove time  
5 entries and costs that were previously reviewed in the underlying action.

6 12. The Court finds that the 567.3 hours of work (\$147,924.50) not already  
7 reviewed is reasonable given the novelty and difficulty of the questions involved, amount  
8 involved and results obtained, and nature and length of the professional relationship.

9 13. The Court finds that the \$4,331.60 in costs not already reviewed are  
10 reasonable.

11 14. The Court finds that the terms of the fixed fee agreement between Lane  
12 Powell and the DeCourseys were reasonable, and that the September 19, 2007 fee  
13 agreement, (as amended December 30, 2008), demonstrates that the DeCourseys received  
14 a reasonable and fair disclosure of material elements of the fee agreement and of Lane  
15 Powell's billing practices. Based on the foregoing findings of fact and conclusions of law,

16 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Plaintiff's  
17 Motion for Partial Summary Judgment is GRANTED. Judgment shall be entered in favor  
18 of Plaintiff and against Defendants Mark and Carol DeCoursey for breach of contract in  
19 the amount of \$422,675.45. The Clerk is directed to disburse the balance of the  
20 \$384,881.66 held in the Court Registry to Lane Powell PC, in care of McNaul Ebel  
21 Nawrot & Helgren PLLC.

22 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the  
23 DeCourseys shall release \$37,793.79 of the amounts held in the form of a supersedeas

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1 bond to Lane Powell, in care of McNaul Ebel Nawrot & Helgren PLLC, to cover interest  
2 accrued pursuant to the parties' contract.

3 IT IS SO ORDERED.

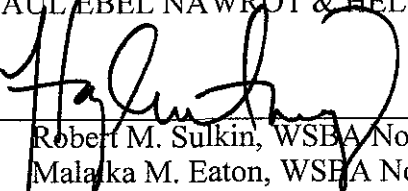
4 DATED THIS \_\_\_\_\_ day of December, 2012.

5  
6 Honorable Richard D. Eadie  
7 King County Superior Court Judge

8 Presented by:

9 McNAUL EBEL NAWROT & HELGREN PLLC

10 By

  
11 Robert M. Sulkin, WSBA No. 15425  
12 Malaka M. Eaton, WSBA No. 32837  
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