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Mark DeCoursey <mhdecoursey@gmail.com>

Re: Answer to Petition

1 message

Mark DeCoursey <mhdecoursey@gmail.com> Mon, Feb 14, 2011 at 11:45 AM
To: "McBride, Ryan P." <mcbrider@lanepowell.com>, "Gabel, Andrew J." <GabelA@lanepowell.com>
Cc: Carol DeCoursey <cdecoursey@gmail.com>

Meant to add in addition:

The CPA prescribes recovery of "the costs of the suit." (RCW 19.86.090). It uses a different wording from RCW 4.82.010 and does not refer to 4.82.010. The application of the restrictions in 4.82.010 to the recovery of all of "the costs of the suit" are inappropriate and not in keeping with the statutory requirement that the provisions of the CPA shall be "liberally construed."

Discovery in a CPA suit may involve expensive exploration of fact, as in this case. Whether depositions are used at trial is not material to their actual value to the case or to the materiality of the evidence thereby collected. The use of depositions in witness impeachment is a mere circumstance of the foolishness of witnesses, and should not affect the recoverability of those costs. Therefore, the provision in RCW 4.82.010 that recovery of those costs is limited to the "pro rata basis for those portions of the depositions introduced into evidence or used for purposes of impeachment" is not in keeping with the CPA's mandate that the CPA statute shall be "liberally construed that its beneficial purposes may be served." The beneficial purposes to public policy will not be served if the plaintiff must take a loss on the "costs of the suit" to recover damages.

In this and other DeCourseys object to the remand to Superior Court to recalculate the costs of the suit to fit the narrow provisions of RCW 4.82.010. (Opinion 39)

On Mon, Feb 14, 2011 at 8:22 AM, Mark DeCoursey <mhdecoursey@gmail.com> wrote:

> We have considered very carefully our discussions, your advice, and all the other elements of the situation, and this is our decision. We must in fact include that extra information that you know as "the three pages" in our answer to the petition, rewritten as attached. Our criteria for this decision are as follows:
>
> Denial of the petition is not a certainty. If we go the Supreme Court, we stand to lose another $50,000 in fees that will not be recoverable under the CPA.
>
> And either way we must consider the fees for the remand and its preparation, where likely the same story will replay with yet more money carved out of the award.
>
> We have one opportunity to argue this point, and that opportunity is now. To fail to argue it now is to concede those fees, even if all goes well.
>
> The upshot is that we are playing against our own money. We cannot win, we can only lose; and a "victory" will be just a reckoning of how much we have left.
>
> We certainly understand that a review will delay the payout -- maybe by 18 months. How well does $100,000 balance against 18 months? I can tell you that $100,000 is more than my net

> income for that period.
>
> You will also argue that a Supreme Court review throws the whole award in the air and we may lose much more than that.
>
> If the Supreme Court judges see something wrong in your responses to Windermere thus far, they will accept Windermere's petition and hear their issues. The inclusion of the "three pages" will surely not cause them to change their mind about the issues you addressed. How much faith do we have in the courts? How likely do you really think a reversal of opinion after the Court of Appeals has come down so solidly on our side?
>
> We would love to have a declaration from Grant as a mayor/city council member of Bellevue, stating that he believes an accessible, workable Consumer Protection Act is good for business and the community because honesty and fair dealing boosts consumer confidence and is the key to prosperity -- something like that.
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> --
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