❑ EXPEDITE
❑ No hearing set

X Hearing is set

Date:March 27, 2009
Time: 9:00 a.m.
Judge/Calendar: Murphy

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

FOR THURSTON COUNTY

IN RE: WASHINGTON BUILDERS BENEFIT TRUST	No. 08-2-01674-6
RE SOURCES FOR SUSTAINABLE COMMUNITIES *ET AL*, Plaintiffs, v. BUILDING INDUSTRY ASSOCIATION OF WASHINGTON *ET AL.* Defendants.	DECLARATION OF STEPHAN SEFCIK, PHD

I, Stephan Sefcik, hereby declare the following under penalty of perjury under the laws of the State of Washington.

A. Qualifications.

1. My full name is Stephan Edward Sefcik, and I am the A. Kirk Lanterman/Holland America Professor of Accounting in the School of Business at

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the University of Washington. I currently serve as the Associate Dean of Undergraduate Programs at the Michael G. Foster School of Business. Before that I have served as Faculty Director of the Technology Management MBA (TMMBA) Program, Chairman of the Accounting Department from 1999 – 2002, and Faculty Director of the Environmental Management Program, a separate certificate track in our full-time MBA program.

2. At the University of Washington, I teach Financial Accounting at the undergraduate level and have taught Financial Reporting at the graduate level. In addition, I teach or have taught in various Executive Education programs for firms such as The Boeing Company, Microsoft, Paccar, and RealNetworks on accounting and management issues.

3. I received both my undergraduate and graduate education from the University of Illinois, Urbana-Champaign, where I graduated with a B.S., M.A.S. and Ph.D., all in accounting. I passed the CPA exam in May 1975 in Illinois. However, because I do not practice, I am not currently licensed in Washington, the state in which I reside.

4. I am the author or co-author of over thirty papers. I have published over ten studies in "top-tier" academic journals including *Journal of Accounting Research, Journal of Accounting and Economics, Journal of Financial Economics, Journal of Accounting, Auditing, and Finance, Journal of Accounting and Public Policy, Journal of Financial and Quantitative Analysis, Review of Quantitative Finance and Accounting, and Financial Management*. I currently sit on the Editorial Board of the *Journal of Accounting and Public Policy*.

5. A copy of my curriculum vitae is attached in **Appendix A**.

B. Purpose and Limitations of Study Being Conducted.

6. I have been retained by the Plaintiffs to review financial documents provided by the Washington Builders Benefit Trust ("WBBT" or "Trust"), to

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identify trust management practices that may have harmed the financial interests of the trust beneficiaries, and to roughly estimate the economic losses sustained by the beneficiaries as a result of these practices.

7. At this stage of my work, I have completed a sufficient financial analysis to support my general conclusions that a thorough independent accounting is necessary and that substantial interest has been skimmed from the Trust. However, due to the opacity of the Trust's bookkeeping, significant additional work would be necessary to precisely quantify values.

8. I understand that there is a dispute over whether the Trust is authorized to pay its affiliates a marketing assistance fee ("MAF"). This is a legal question outside of my analysis. However, I did analyze whether the timing and calculation of the MAF payments conformed to the 1994 Declaration of Trust, upon which the trustees apparently rely in making the disputed payments.

C. Description of WBBT.

9. According to numerous documents provided by the Trust, its purpose is to hold, invest and distribute tax refunds paid by the State of Washington through the Return on Industrial Insurance ("ROII") program sponsored by the Building Industry Association of Washington ("BIAW"). ***Ex. A*** *(tax refund checks);* ***Ex. B*** *(1994 Declaration of Trust);* ***Ex. C*** *(WBBT Accountant's Review Report);* ***Ex. D*** *(WBBT Investment Policy Statement);* ***Ex E*** *(Request for Proposal); Ex. F (WBBT Tax Returns).* The program has over 6,000 employer participants. In recent years, WBBT received between $30 to $50 million dollars annually from the State of Washington and these payments constituted over 95% of trust assets. ***Ex A, Ex. C*** *at BIAW-21594.*

D. General Conclusions.

10. My preliminary conclusion is that WBBT has managed trust assets in a manner that is not in the best interest of the trust beneficiaries and which has almost

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certainly caused significant economic harm to the trust beneficiaries. For example, I have found that trust funds have been improperly commingled and interest belonging to the beneficiaries has been misappropriated. I estimate that over the past four to five years, these practices have very likely deprived the beneficiaries of between $600,000 and $1.3 million in interest. In addition, even if one is to assume that the Trust was authorized to pay its affiliates a "marketing assistance fee," it appears that this fee was improperly calculated and prematurely paid, which appears to have deprived the beneficiaries of an additional $3.6 million in principal and interest since 2003.

11. I have found that the Trust has allowed trust assets to be repeatedly placed in the interest-bearing accounts of its for-profit affiliate, BIAW Member Services Corporation ("MSC"). While in such accounts, trust funds were repeatedly commingled with assets of MSC.

12. I have found that the Trust allowed MSC to retain trust funds in its own accounts for significant periods of time and to earn and retain interest earned on trust funds. The Trust has acknowledged this practice but has deemed the interest retained by MSC to be "a small amount" of "incidental interest earned on funds that pass through its accounts for a few days." ***Ex. L*** (WBBT answers to interrogatories 9 and 12). That assessment is incorrect. The financial documents show that trust funds remain in MSC accounts for far longer than "a few days" and that this practice has very likely deprived the beneficiaries of between $600,000 and $1.3 million in interest over just the past four to five years.

13. I have seen other discrepancies and questionable calculations in the trust financial documents that raise serious questions about the preservation and disposition of trust assets.

14. Thus, I have found that the Trust's practices described herein may have deprived the beneficiaries of as much as $4.9 million in interest and principal over

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the discussed period. It is my opinion that it will take a comprehensive trust accounting overseen by a disinterested and independent entity to unwind these transactions, to determine the amounts and disposition of trust assets, and to determine the full extent of damages sustained by the trust beneficiaries.

E. Trust funds have been repeatedly commingled with non-trust assets.

15. Financial documents produced through discovery show that the Trust has allowed trust funds to be repeatedly placed in interest bearing accounts belonging to its affiliate, MSC. Checks from the Washington State Department of Labor and Industries ("DLI") totaling approximately 30 to 50 million dollars per year have been deposited directly into two MSC money market accounts. This can be seen from the cancelled checks and bank statements for these accounts. *See for example* ***Ex. A*** (cancelled checks showing all DLI checks deposited into MSC accounts xxxxx458 or xxxxx433); ***Ex.G*** *at BIAW 21949;* ***Ex. H*** *at BIAW 10302; and* ***Ex. I*** *at BIAW 10415* (samples of MSC bank statements showing deposits of DLI checks into MSC accounts).

16. While in MSC money market accounts, the trust funds are not segregated or earmarked, but instead are commingled with other funds of MSC.[1] Trust funds are routinely transferred from the money market accounts to MSC checking accounts where they are again commingled with non-trust assets and used for both trust and non-trust purposes. *Id. See* ***Exhs. G, H and I*** (samples of bank statements showing deposit of trust funds into commingled accounts and transfer to connected checking accounts which are used for trust and non-trust purposes).

17. The routine and successive commingling of trust funds obfuscates the fate and disposition of trust funds, making it impossible for a beneficiary to

[1] To the extent that such funds may have been received as marketing assistance fees, I understand that there is a dispute as to their legal owner. Also, retained proceeds on trust funds likely belong to the Trust.

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understand the movement of trust funds, the precise amounts of trust funds held or their disposition, or to determine the extent that the trust was damaged. Indeed, I sincerely doubt that the trustees or their accountants could do so without a major historical audit of the account activity.

18. Virtually all of the damages and potential damages discussed in this declaration result from poor trust management practices, which could have been easily prevented by use of proper (and probably legally required) trust management practices.

F. Interest earned on trust funds has been misappropriated.

19. I have reviewed numerous trust documents that indicate that all interest earned on trust funds belongs to the trust beneficiaries. ***Ex. B*** (1994 Declaration of Trust); ***Ex. D***. (WBBT Investment Policy Statement); ***Ex. E***. (RFP); ***Exhs. J and K*** (WBBT trustee meeting minutes); ***Ex. L*** (WBBT Response to Interrogatory 8 ¶ 4 ("In general, *all of the earnings are distributed to participants*, less expenses of WBBT. … In general, net earnings are distributed to ROII participants as part of the refund checks issued each July.") (emphasis added). Thus, it is the written policy and purported practice of WBBT to distribute trust earnings to the beneficiaries. *Id.* This, of course, is typical of a trust.

20. However, I am able to conclude that a significant portion of trust earnings are being misappropriated. The Trust accounts for and distributes to the beneficiaries only the interest earned by trust funds while they are in the Trust's investment accounts ("WBBT investment accounts"), but allows its affiliate MSC to retain all proceeds earned on trust funds while in MSC money market accounts. My finding is confirmed by the Trust's response to Plaintiff's interrogatory Number 9, in which it admits that MSC retains these trust earnings. ***Ex. L*** (WBBT discovery responses, Int. 9 and 12).

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21. I find that the Trust is incorrect in describing the proceeds retained by MSC as merely "a small amount of interest." *Id.* Given that the trust is responsible for distributing between $30 and $50 million of state tax refunds each year, every day in which interest is not earned for trust beneficiaries constitutes a significant financial loss. The Trust is also incorrect in stating that MSC retains only "incidental interest earned on funds that pass through its accounts for a few days." *Id.* As discussed below, the trust's financial documents indicate that tens of millions of dollars of trust funds are left for days in MSC money market accounts, millions of dollars of trust funds are left for months, and hundreds of thousands of dollars of trust funds are left for an entire year or perhaps longer.

22. The tax returns and accountants reports confirm that the interest earned by MSC is never recaptured by the Trust on behalf of the beneficiaries. *Compare **Exhs. C** at BIAW 21592 and **Ex. F** at BIAW 22011, 22016, 22020 and 22028* (WBBT claims to earn interest only through its investment accounts held by AG Edwards and claims no interest in 2007); ***Ex. L*** (WBBT admission that MSC retains interest). Despite requests, the Trust apparently was not able to provide an accounting of this foregone interest. *Id.* This is not surprising since it will take a significant effort.

23. Quantifying the interest lost by the trust is complicated by numerous factors:

- Trust funds are repeatedly commingled, making it difficult to determine the total amount of trust funds held by MSC at any particular time.
- As MSC money markets earned *and retained* interest on trust funds, these accounts contained an increasing residual balance of trust funds.

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- Trust funds are not handled in a consistent manner.[2]
- Significant amounts of trust funds remain in MSC accounts for different periods of time, ranging from days to years.
- No effort is made to promptly transfer trust funds to the Trust or to maximize the time trust funds earn interest for the beneficiaries.[3]
- Atypical transactions involving trust funds cannot be explained by the financial documents.
- The practice of combining and "netting out" debts and transfers between MSC and the Trust for multiple plan years makes it impossible to track trust funds through accounts without reference to detailed accounting documents.[4]
- The Trust earns a fluctuating rate of return on its investments, at which any loss to the beneficiaries should be calculated.

24. These damages could easily have been avoided by keeping trust funds in interest-bearing accounts belonging to the Trust. This simple step would have allowed easy tracking of trust assets and protected all proceeds on trust funds for the trust beneficiaries.

G. Estimate of misappropriated interest lost by beneficiaries.

25. Despite uncertainties, I believe that it is very likely that the deposit of trust funds in MSC accounts deprived the beneficiaries of between $600,000 and

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[2] For example, DLI checks are deposited into different money market accounts and transferred though different checking accounts. Sometimes trust funds are wired to the Trust's investment accounts from money market accounts and sometimes from checking accounts.

[3] In contrast, effort is made to maximize interest earned on trust funds while they remain in MSC accounts. For example, trust funds are held in interest bearing money market accounts that are tied to checking accounts, and transferred out of the interest bearing accounts only as checks are drawn upon such funds. MSC financial documents show that MSC retains interest on these trust funds.

[4] For example, on May 5, 2004, MSC deposited into its money market account a check for $25,386,873. Two days later it transferred to the Trust $24,760,847, based upon a "netting out" calculation conducted by MSC staff. **Ex. M** (BIAW 021806 showing netting out calculation).

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$1.3 million in interest over an approximately 4 to 5 year period.[5] This assumes a rate of return of 6%, which is below the 5-year rate of return earned by WBBT investment accounts.[6] A full trust accounting will be necessary to determine the precise amount of lost interest.

H. Description of trust transactions depriving beneficiaries of interest and earning interest for MSC.

1. DLI refund checks are deposited into MSC money market accounts where they remain before being transferred to WBBT investment accounts.

26. Each year the Trust receives from DLI one primary tax refund check and several secondary refund checks.[7] All of these checks are deposited directly into MSC money market accounts and earn interest for MSC until the funds are wired to WBBT investment accounts. The time these checks were held by MSC varied from a few days to as long as 95 days.[8] By simply depositing these checks directly into WBBT's investment or money market accounts, the beneficiaries would have earned significant interest.

27. Since 2004, the decision to deposit these trust fund payments into MSC accounts before transferring them to WBBT investment accounts likely cost the beneficiaries over $133,000 in interest.

28. In response to Plaintiffs' interrogatory Number 9, the Trust admits that MSC earned **and retained** $53,195 in interest on trust funds over this period, just from holding the primary refund checks. I calculate that the beneficiaries' loss was

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[5] The documents allowed most calculations to be carried back approximately 4 years.

[6] Over the past four years, MSC money markets have earned interest ranging from approximately 1.4 to 4 percent. However, the beneficiaries' loss must be based upon the fluctuating return of WBBT investment accounts. Over the past five years, such accounts have averaged a 7.36% rate of return. I have used a 6% rate for my calculations to be conservative.

[7] The primary refund checks are issued in late April to early May and have in recent years ranged from $30 to $50 million. The secondary checks have been as high as $477,000 and are received throughout the year.

[8] *See* 2/05/2004 DLI check for $288,912.

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significantly higher because (1) the Trust did not account for secondary refund checks that were also held in MSC accounts,[9] and (2) the beneficiaries would have earned a higher rate of interest if the funds had been properly deposited in to the Trust's investment account.

2. Before being distributed to beneficiaries and other recipients, trust funds are again transferred through MSC money market accounts, costing the beneficiaries hundreds of thousands of dollars in interest.

29. The larger share of lost interest occurs when the trust funds are on their way towards being transferred to the trust beneficiaries and other recipients. For example, rather than paying beneficiaries from WBBT accounts, all amounts to be distributed are wired from WBBT investment accounts to MSC money market accounts, allowing the trust funds to again earn interest for MSC until the checks to the beneficiaries clear.

30. Trust beneficiaries cash their refund checks over the course of many months and the trust funds are transferred to a checking account only as checks are cashed, thus maximizing the interest earned on these trust funds. As discussed, this interest has never been recovered by the Trust.

31. I have looked closely at 2007 as an example. The chart below reflects that on July 6, 2007, $36,795,140 was transferred from WBBT investment accounts into the MSC money market account for distribution to the trust beneficiaries.[10] The amounts of the checks are transferred from the MSC's money market account to

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[9] For secondary checks, I have calculated the lost interest from the check date until the date it was wired to the WBBT investment account, because it is during this window that beneficiaries could have earned interest if these checks had been handled correctly. This is reasonable also given that primary refund checks were typically deposited within a day of the check date. The bank statements show that in many cases these secondary checks were not promptly deposited.

[10] The distribution worksheet at BIAW 21631 shows the amount of the withdrawal that was for distribution to the beneficiaries.

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MSC's checking account only as the checks clear, causing the balance of these trust funds in the money market account to decline.

Table: Declining balance of trust fund transfer in MSC money market account XXXX458

2007	Transactions	Approximate balance of transferred trust funds in account at end of month
7/6/07 Wire from WBBT For Dist to Beneficiaries	36,795,140	
July	(29,081,421)	7,713,719
August	(6,580,173)	1,133,546
September	(550,497)	583,049
October	(179,295)	403,754
November	(47,297)	356,457
December	(30,932)	325,525
January	(20,871)	304,654
February	(24,401)	280,253
March	(12,425)	267,828

32. During each July, trust funds constituted the significant majority of funds in the money market account. *See **Ex. N*** (July bank statements). Thus, most but not all interest earned by this account were proceeds on trust funds. From 2004-2008, this money market account earned over $310,000 during July alone. *Id.*

33. The interest lost by the beneficiaries is more significant than that represented by the interest earned by the money market account in July for several reasons. First, the Trust's investments earn a significantly higher rate of interest than the money market account. Second, MSC continues to hold significant amounts of trust funds and earn interest on them after July, as indicated in the

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declining balance chart above.[11] I have adjusted for these factors by applying a crude multiplier of 1.5 to the interest earned by the money market account in July of these years, to estimate a loss of interest exceeding $450,000 during this period.

34. As an alternative to the above approximation, I conducted a cross-check which suggests that even that figure is conservative. I calculated that during these July months, the trust funds in this account[12] would have earned around $475,000 at a 6% simple interest rate, as shown in the last two columns of the above table. This figure would increase if one considered lost interest after July.

Table: Interest earned by MSC money market account XXX458 in July months, declining average balance of transferred trust funds in account, and estimate of lost interest in July months.

	Interest earned by MM XXX458 in July	Appx. avg. balance of trust fund transfer during month	Appx. interest earned on avg. balance at 6% simple
2008	$ 95,051	$26,503,261	$132,516
2007	$ 99,371	$22,964,688	$114,823
2006	$ 86,606	$23,135,891	$115,679
2005	$ 23,106	$14,690,457	$73,452
2004	$ 8,337	$8,249,593	$41,248
Totals	**$ 312,471**		**$477,718**

3. Interest on local marketing assistance fee payments.

35. The beneficiaries also lose interest by the Trust's practice of transferring the local "marketing assistance fee" to MSC prior to its distribution to local associations. In the last few years, the local fees were in the range of

[11] The interest earned on checks that are eventually voided is discussed below, and the 1.5 multiplier is chosen with the knowledge that the amounts of the void checks is in this account during July. A full accounting would need to avoid double counting losses.

[12] To determine the average balance of the trust funds that were transferred for distribution to the beneficiaries, I used the following calculation: July average monthly balance – July beginning balance. This is conservative in that it assumes that the funds making up the beginning balance remained in the account for the entire month.

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approximately $4 to $5 million. Each year, MSC holds this entire amount in interest bearing accounts for 7 to 10 days before the funds are transferred to the local associations. This practice has deprived the beneficiaries of another approximately $20,000 in interest in the last four to five years. *See* ***Ex. O*** *(MSC bank statements showing transfers).*

4. MSC retains hundreds of thousands of dollars of trust funds in their accounts for a year, depriving beneficiaries of interest.

36. Financial documents show that the Trust allows MSC to retain certain trust funds for an entire year or more.

a. The amounts of voided distribution checks remain in MSC accounts earning interest for MSC for an entire year.

37. Each year, the Trust transfers to MSC the face value of the beneficiary distribution checks, but many of these checks are never cashed. The void check amounts remain in MSC account for the entire year, where they earn interest for MSC rather than for the beneficiaries.[13] At the end of the last five years (03-08), MSC retained the following amounts of trust funds for these "void" checks.

Table: Interest lost due to MSC holding funds for "void checks."

	Appx. funds held due to "void" checks at end of adjustment year	Appx. interest lost by Trust during the one year period
2008	$414,623	$24,877
2007	$426,060	$25,564
2006	$613,789	$36,827
2005	$173,889	$10,433
2004	$318,199	$19,092
Totals	1,946,560	$116,793

[13] The distribution worksheets show these "void" amounts as being additional assets to be distributed to beneficiaries, but they are subtracted from that amount when calculating the withdraw from WBBT investment accounts that is needed to fund the distribution. The void amounts have an "MSC" designation next to them and in some cases there is a notation confirming that the funds are in MSC accounts.

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Ex. P (Trust calculation sheets showing void check amounts remaining in MSC accounts when computing the following year's distribution). If one calculates the lost interest at 6% simple interest, the loss to the beneficiaries from this practice exceeds $115,000.

b. At least $500,000 in DLI refunds were deposited into MSC accounts and may not have been transferred to WBBT.

38. In my review, I have noticed several large transactions that appear atypical. As discussed, normally trust funds received from the State of Washington are deposited into MSC accounts and then transferred into WBBT investment accounts. However, I identified approximately $500,000 in refund checks which were not promptly transferred and instead tracked as accounts receivable. A refund check of $477,623 was deposited to the MSC money market account on October 5, 2007, and it had not been transferred by the end of the year. *See **Ex. Q***. Similarly, a refund check for $25,025[14] was deposited into MSC's account on August 29, 2005, and I could not find evidence of a transfer to WBBT. *See **Ex. R.*** At the end of 2007 and 2005, respectively, rather than being transferred to the Trust, these amounts were considered by the Trust to be accounts receivable from MSC. *See **Ex. Q, R.***

39. This constitutes a serious deviation from standard practice. Even assuming eventual reconciliation of this principal amount, which needs to be confirmed through an accounting, it would have resulted in a loss of interest to the beneficiaries. I have not attempted to quantify this loss.

5. Computation of compound interest.

40. I have conservatively used simple interest in these computations, ignoring the compound interest that would have been actually lost by the trust. This

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[14] The bank statements showing this deposit has a typographical error as to the exact amount of deposit.

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conservatism is used to increase the confidence level in the bottom range of my estimate of lost interest.

6. Opinion as to lost interest.

41. I have estimated that the practices discussed above resulted in a loss to the beneficiaries of roughly $718,000 over the period discussed. From this, I conclude that the practices discussed above very likely deprived the beneficiaries of between $600,000 and $1.3 million over the period. With a significant investment of time and resources, I could narrow this range. However, a full accounting will be necessary to obtain a precise determination of the interest lost by beneficiaries.

I. If WBBT was authorized to pay a marketing assistance fee to its affiliates under the 1994 Declaration of Trust, it appears that such fees were improperly calculated and paid years in advance, significantly harming the beneficiaries.

42. I have analyzed whether the MAF has been paid in conformance with the 1994 Declaration of Trust, upon which the trustees rely in making such payments. I offer no opinion as to whether the 1994 Declaration of Trust is valid in authorizing such payments, which I understand is vigorously disputed in this case.

43. Assuming that the Declaration of Trust validly authorizes WBBT to pay a 10% marketing assistance fee ("MAF") to MSC and a 10% marketing assistance fee to local associations, it appears that the MAF has been improperly calculated and prematurely paid. I calculate that this deprived the beneficiaries of an approximately $3.6 million in interest and principal since 2003, although an accounting will be necessary to confirm this figure.

44. First, the financial documents show a growing discrepancy between the MAF paid to MSC and the Trust's internal calculations showing the MAF that was due. The internal calculations show MSC and the local associations receiving the same MAF (10% to each), while WBBT's Accountant's Report and tax returns show that it actually paid MSC a higher amount. *Compare* ***Ex. C*** *at BIAW 21592,*

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*Ex. F at BIAW 22017, 22028 (accountant's report and WBBT tax returns show discrepancy between state and local marketing assistance fees) and **Ex. S** (internal MAF calculations show identical state and local MAF.*

45. This apparent overpayment to MSC has grown in recent years, from $27,207 in 2004 to $277,640 in 2007, with a total discrepancy of approximately $641,000 over four years. *Id.*

Table: Discrepancy in payment of "marketing assistance fee" to MSC.

	*State MAF due, per distribution worksheets, **Ex. S.***	*"Administration Fees" paid, per WBBT Tax Returns (local MAF reported separately). **Ex U.***	*"Marketing Assistance Feee" paid, per Accountant's Report (local MAF reported separately). **Ex. C.***	*Discrepancy*
2004	*$2,162,021*	*$2,189,228*	*n/a*	*$27,207*
2005	*$2,958,969*	*$3,123,529*	*$3,123,529*	*$164,560*
2006	*$3,917,641*	*$4,089,670*	*$4,079,470*	*$172,029*
2007	*$4,869,832*	*$5,147,472*	*$5,147,472*	*$277,640*[15]

46. Second, the 1994 Declaration of Trust states that the MAF is to be paid "*after* payment of all expenses and *final adjustment by DLI*". ***Ex. B**,* 1994 Declaration of Trust, Art. IV § 11 (emphasis added). The term "final adjustment" refers to the third adjustment. *See **Ex. T** (WBBT document discussing "third/final adjustment").* The Trust admits that instead of paying the MAF after final adjustment, it pays 70% of the MAF after the first adjustment, 20% after the second adjustment and 10% after the final adjustment. ***Ex. L.** (answer to Int. 26), **Ex. S*** (showing MAF payments made after each adjustment). If the 1994 Declaration of Trust validly authorized payment of the MAF after final adjustment, I estimate that

[15] MSC's income statement tracks the amount of this discrepancy as "miscellaneous income."

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the prepayment of the MAF would have deprived the beneficiaries of over three million dollars in interest since 2003.[16]

47. Finally, given that MSC receives the largest MAF, I am troubled that the documents show that MSC staff is allowed to calculate its **own** MAF. *See **Exhs. L, V** (WBBT acknowledges that MSC staff carries out these functions).* In my opinion, it is imprudent for a third party to calculate its own payments and this practice may have significantly harmed the Trust in this instance.

48. As discussed previously, these issues raise serious questions that should be evaluated through a trust accounting performed by a disinterested party.

J. Trust documents raise serious questions about the accuracy of trust distributions.

49. The state of the Trust's bookkeeping raises serious questions about the accuracy of the Trust's internal calculations used for accounting for and distributing trust assets. Significant complex calculations are made by hand and notes on such documents admit outstanding questions about the accuracy of such calculations. *See **Ex. W** (bookkeeping calculations) (all emphasis below is added):*

- For example, in reconciling the 2004 adjustment, the bookkeeper says "*the second adjustment does not balance,*" "*check this next year to see if it works for balancing* – if so have Bernie review. ... If so look at Mass Update 2 code – NegCoNotDistB – since it calculates off that query – *could be wrong*." The document refers to a $171,873 figure and says "*Not sure how this ties into balancing?*" There are question marks adjacent to a $31 million figure. *Id. at* BIAW 023765.

[16] This calculation assumes that the interest accumulating on the MAF prior to final adjustment is proportionately distributed (80% to beneficiaries; 20% to recipients of MAF). In contrast, prepayment of a portion of the MAF effectively transfers to the MAF recipients 100% of the interest accruing on the prepaid amounts. My calculation continues to use only simple interest, adding conservatism to the estimate.

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- BIAW 23776 shows efforts to balance the distribution of tens of millions of dollars of trust funds, stating "*I believe this is part of the balancing* since it is NOT included in the NegCoNotDistB calculations in qryWithholdingAdj1_NegSetAsdide that happens in the Mass Update --- *will have to test this theory next year.*"
- On BIAW 23761, a *$6.4 million* calculation is left with the question "*wrong?*"
- Another example is on pages BIAW 23713-15. These appear to be three different drafts of the same sheet of calculations. One says "off," one says "wrong" and the last says "old." *Each states a different amount of trust funds that are supposedly in the MSC checking account at the time:*$491,436.18, ws $549,709.65, and $549,673.65, respectively.
- BIAW 23723 says "*Never balanced 2nd adj – 3rd adj.* Still worked and balance was small." It showed $36,303.65 as "off."
- BIAW 23736 says "*Should have* subtracted $9,589.02 01Adj1 delqrecapt fr 02adj1."
- BIAW 23748 refers to a $261,547.76 figure and admits "*Not sure if the OverpdNotDistB should be part of his calculation*?" In another area, it states "*the 2nd adj. does not balance*, but the 1st and 3rd do. This spreadsheet is only to *make sure the number is not off by any significant amount.*"
- BIAW 23763 states "*Don't understand* 'qrywithholdingAdj_NegSetAside' ' – overpdSetAside OK?"

50. These documents highlight that the "mass updates" and "balancing" calculations applied by MSC to distribute trust funds are so complex that they should be considered suspect and subject to third party review. I sincerely doubt that these calculations could be deciphered and understood by anyone except the MSC staff members who prepare them, and the documents suggest that even they do

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not fully understand and trust these calculations. Such calculations could easily conceal errors or further breaches of trust.

51. Overall, I am left with the impression that there is considerable "slop" in the trust bookkeeping and little assurances of the accuracy of the trust accounting. A comprehensive and independent accounting is necessary to determine the accuracy of the calculations and accounts.

K. Data Reviewed.

52. All of the data I evaluated was provided by WBBT or other defendants through formal discovery as well as the cancelled checks received from DLI. The primary data included: (1) tax returns for WBBT, MSC and BIAW; (2) a three year financial audit conducted by Moss Adams LLP; (3) annual MSC balance sheets and income statements; (4) annual WBBT distribution worksheets; (5) annual WBBT investment account summaries, balance sheets, and general ledgers; (6) MSC bank statements; (7) WBBT investment account statements; (8) List of Department of Labor and Industries tax refund checks and copies of checks; (9) the 1994 Declaration of Trust; (10); various WBBT board minutes; (11) WBBT Investment Policy Statement; and (12) other miscellaneous documents. The key documents upon which I rest my conclusions are attached as exhibits hereto.

Stated under oath this 19th day of March, 2009 in Seattle, Washington.

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VITA

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Two children

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EDUCATION:

May 1983 Ph.D. in Accountancy
University of Illinois
Urbana-Champaign, Illinois

CERTIFICATION:

1975 CPA, State of Illinois

PROFESSIONAL:

2002 – Present	A. Kirk Lanterman / Holland America Professorship
July 2007-Present	Associate Dean for Undergraduate Programs
January 2009-present	Joint Policy Advisory Committee to the Provost,
June 2004-June 2008	Faculty Senate
July 2002 - Present	Faculty Director of the Technology Management MBA Program.
September 1999 - July 2002	Chairman, Department of Accounting, School of Business
September 1996 - Present	Professor, University of Washington.
2000-2002	WSCPA Advisory Council Member
1994-1999	Faculty Director and Research Fellow, Environmental Management Program.
September 1990 - August 1996	Associate Professor, University of Washington.

September 1987 - August 1990	Assistant Professor, University of Washington.
September 1986 - August 1987	Visiting Assistant Professor, University of Washington.
January 1982 - September 1986	Assistant Professor, University of British Columbia, Faculty of Commerce and Business Administration, Vancouver, British Columbia, Canada.
1991-Present	Board of Directors: Three Sigma Manufacturing, Inc., Renton, Washington, 98032.
1994	Advisory Board: Synergies Venture Capital

AWARDS:

2006	Wells Fargo Faculty Award for Undergraduate Teaching
2006	Professor of the Quarter, Undergraduate Program, Spring 2006
2005	TMMBA Alumni Cup: Outstanding TMMBA Shareholder Value Award
2003-2004	Washington Society of CPAs (WSCPA) Outstanding Educator Award
2003	Professor of the Year, The Technology Management MBA Program
2002 - Present	A. Kirk Lanterman / Holland America Professorship.
2001	Delta Upsilon Fraternity's Outstanding Educator Award.
1999-2002	Reimers Research Fellow.
1999	PACCAR Award for Teaching Excellence (included a $25,000 stipend).
1999	Daniel R. Siegel Service Award (MBA).
1998-1999 and 1999-2000	The Management Program's Excellence in Teaching Award (Executive Programs).
1998	Recipient (as Director) of World Resources Institute's Outstanding Leadership in Management Education in Environmental Curriculum and Activities.
1998	Dean's Leadership and Service Award (included $1000 stipend).
1997-1998 and 1998-1999	Marguerite Reimers Endowed Fund for Accounting Excellence (included stipend).
1996	Charles Summer Teaching Award, First Annual, MBA and Ph.D. (included $1000 stipend).

1996	Andrew V. Smith Faculty Development Award (included $4000 stipend).
1994-1999	Faculty Director and Research Fellow, The Environmental Management Program.
1993-1994	William R. Gregory Accounting Faculty Fellow.
1992-1993	Winner of Core Professor of the Year (MBA): University of Washington.
1992	Winner of the Core Professor of the Quarter (MBA): University of Washington, Autumn.
1992	Alpha Kappa Psi Professor of the Year (Undergraduate).
1992	Recipient of Daniel R. Siegel Service Award, First Annual (MBA).
1990	Burlington Northern Foundation: Faculty Achievement Award in Teaching Excellence (included $7500 stipend).
1987	Winner of Core Professor of the Quarter (MBA): University of Washington, Autumn.

ACADEMIC SERVICE:

External:

Editorial Board of Advances in Quantitative Analysis of Finance and Accounting (1986-1987).

Editorial Board of Journal of Accounting and Public Policy (1999-Present).

Ad Hoc Reviewer for:

- Accounting Review
- Journal of Business and Economics
- The Financial Review
- Journal of Financial and Quantitative Analysis
- The Accounting Educators' Journal
- Financial Management
- Contemporary Accounting Research
- Review of Quantitative Finance and Accounting
- Accounting Horizons
- Journal of Accounting and Public Policy
- Academy of Management Journal
- Journal of Financial Economics

Invited Speaker to the American Accounting Association New Faculty Consortium, 2000,1995.

Faculty Representative to the American Accounting Association New Faculty Consortium, 1994.
Program Committee for American Accounting Association, 1993.

Internal

2007-Present, Associate Dean for Undergraduate Programs.
Faculty Senator, 2006-2007, 2007-2008.
Business and Economic Development Program, Emeritus Board, 2002-present.
2002 – 2007, Faculty Director, TMMBA Program.
2005 –2006, Faculty Director. MSIS/MBA Program.
Invited Speaker, Accounting Career Awareness Program (ACAP) 1998-2003.
Undergraduate Curriculum Review Committee, 2003.
Professorship Committee, 2003.
Summer Research Grant Committee, 2003.
Search Committee for the Olesen/Battelle Chair, 2003.
ADF Board, 2003-Present.
Chairman, 1999-2002, Department of Accounting.
UIF Review Committee, 2001. Reviewed the Health Sciences Interdisciplinary Partnerships in Clinical Education (HSPICE) Program.
Chair, B.A. Faculty Council, 1998-1999.
B.A. Faculty Council, 1997-1998.
Faculty Excellence Award Search Committee, 1996-1997.
Management Science Chair Search Committee, 1996-1997.
Business and Economic Development (BED) Program Advisory Board, 1995-present (formerly the Urban Enterprise Development Program).
Accounting Chair Search Committee, 1995-1996.
Chair, Master Program Committee, 1994-1995, 1995-1996.
Professorship Search Committee, 1995-1996.
Acting Chair, Part-time MBA Program Planning Committee, 1995.
Strategic Planning Task Force ("Group of Twenty"), 1995.
Task Force on Environmental Education, 1995.
Faculty Director, The Environmental Management Program, 1994-1999.
Masters Program Committee, 1990-1992, 1993-1994.
B.A. Faculty Council, 1989-1991, and 1993.
Branch Campuses: Curriculum and Facilities Planning Committees, 1992-1994.

TEACHING:

Work with Ph.D. Students:
Served on ten dissertation committees (five as chairman).

Courses Recently Taught:
Financial Accounting (BA 500 in MBA Core).
Financial Reporting (TMMBA Program).
Introductory Financial Accounting (Acctg. 220, now Acctg. 215, undergraduate).
Environmental Accounting (MBA elective).

Other Courses Taught:
Environmental Management (various sessions).
Managerial Accounting (MBA Core).
Financial Statement Analysis (undergraduate).
Financial Accounting (for non-Accounting students, undergraduate).

Ph.D. Seminar on Positive Theory (Acctg. 580).

Executive Teaching:

- Taught Financial Reporting Class for Masters Program in Computer Science (CSE 590).
- Taught in the Management Program (TMP), the Aerospace Industry Manufacturing Seminar Program (AIMS) for the Boeing Company, the Pacific Coast Banking School (PCBS) and executive courses at Digital Systems International (Mosaix), Attachmate, US Marine, Tyson Seafood, PACCAR, Washington Dental Services, and RealNetworks.
- Taught classes in Understanding and Using Financial Statements to Korean (SK Program) and Taiwanese (UW-NCCU Taiwan Program) executives.
- Taught several all-day seminars entitled "Finance for Non-financial Managers" at Microsoft (and Web TV) in the US and Europe.
- Taught Environmental Accounting sessions for the Washington Society of CPA's.

RESEARCH GRANTS:

$6,400 from the Financial Research Foundation of Canada (with Richardson and Thompson).

$5,000 from the Canadian Academic Accounting Association (CAAA) and Deloitte, Haskins & Sells (with Patricia Hughes).

$12,460 from the Social Sciences and Humanities Research Council of Canada (SSHRC), (with Patricia Hughes).

$8,410 from the Certified General Accountant's Association of Canada (with Clarkson, Dontoh and Richardson).

$10,000 from the Environmental Protection Agency (EPA) to sponsor an Environmental Accounting Research Conference in Summer 1995 (with N. Soderstrom).

$10,000 from the Center for International Business and Economics Research (CIBER) to co-sponsor an International Environmental Management Conference in Summer 1997 in Washington, DC.

MAJOR PUBLICATIONS:

"An Approach to Statistical Inference in Cross-Sectional Regression with Security Abnormal Returns as Dependent Variable" (co-authored with Rex Thompson), Journal of Accounting Research, Autumn 1986, p. 316-334.

"A Test of Dividend Irrelevance Using Volume Reactions to a Change in Dividend Policy" (co-authored with Gordon Richardson and Rex Thompson), Journal of Financial Economics, December 1986, p. 313-333.

"Regulatory Accounting Principles, Forbearance, and the Perpetuation of the Savings and Loan Industry" (co-authored with Julie A. Lockhart and Michael S. Long), Housing Finance Review, Spring 1987, p. 79-91. Winner of the "Dean's Research Award" at Western Washington University, Autumn 1987.

"Trading Volume Reactions to a Change in Dividend Policy: The Canadian Evidence" (co-authored with Gordon Richardson and Rex Thompson), Contemporary Accounting Research, Autumn 1988, p. 299-317.

"Assessing Forecast Error Risk: An Analysis" (co-authored with Peter Clarkson, Alex Dontoh, and Gordon Richardson), CGA Magazine, August 1989, p. 47-52.

"Assessing Forecast Error Risk: A Recommendation" (co-authored with Peter Clarkson, Alex Dontoh, and Gordon Richardson), CGA Magazine, September 1989, p. 51-54.

"Insubstance Defeasances: Security Price Reactions and Motivation" (co-authored with John R. M. Hand and Patricia J. Hughes), Journal of Accounting and Economics, May 1990, p. 47-89.

"Participation Financing: A Comparison of the Characteristics of Convertible Debt and Straight Bonds Issued in Conjunction with Warrants" (co-authored with Michael S. Long), Financial Management, Autumn 1990, p. 23-34.

"Dividend Behavior, Claim Dilution, and Warrants at Maturity: An Empirical Examination of the Implied Variability of Stock Prices" Advances in Quantitative Analysis of Finance and Accounting, ed. by Cheng F. Lee, JAI Press Inc., Greenwich, Connecticut, 1991, p. 71-95.

"Determinants of Accounting Method Choice in the Savings and Loan Industry" (co-authored with Walter G. Blacconiere, Robert M. Bowen, and Christopher H. Stinson), Journal of Accounting and Economics, June 1991, p. 167-201.

"Retained Ownership and the Valuation of Initial Public Offerings: Canadian Evidence" (co-authored with Peter Clarkson, Alex Dontoh, and Gordon Richardson), Contemporary Accounting Research, Autumn 1991, p. 115-131.

"Charges for Comprehensive Obstetric Care at Teaching and Nonteaching Hospitals: A Comparison" (co-authored with Gilad S. Gordon and James P. LoGerfo), The Western Journal of Medicine, December 1991, p. 616-620.

"The Voluntary Inclusion of Earnings Forecasts in IPO Prospectuses" (co-authored by Peter Clarkson, Alex Dontoh and Gordon Richardson), Contemporary Accounting Research, Spring 1992, p. 601-626.

"Market Reaction to Capital Structure Charges and Its Association with Earnings, Cash Flows and Dividends" (co-authored with Michael S. Long and Ileen B. Malitz), Managerial Finance, Volume 18, Number 5, 1992, p. 32-61.

"An Empirical Examination of Dividend Policy Following Debt Issues" (co-authored with Michael S. Long and Ileen B. Malitz), Journal of Financial and Quantitative Analysis, March 1994, p. 131-144.

"Accounting through Green-Colored Glasses: Teaching Environmental Accounting" (co-authored with Naomi S. Soderstrom and Christopher H. Stinson), Issues in Accounting Education, Volume 12, Number 1, Spring 1997, p. 129-140.

"Disclosure of Contingent Environmental Liabilities: Some Unintended Consequences?" (co-authored with S. Jane Kennedy and Terrence R. Mitchell), Journal of Accounting Research, Autumn 1998, p. 257-277.

"Site Uncertainty, Allocation Uncertainty, and Superfund Liability Valuation" (co-authored with Katherine Campbell and Naomi S. Soderstrom), Journal of Accounting and Public Policy, Winter 1998, Volume 17, Numbers 4-5, p. 331-366.

"Earnings Management: IPO Valuation and Subsequent Performance" (co-authored with Larry L. DuCharme and Paul Malatesta), Journal of Accounting, Auditing, and Finance, Fall 2001, Volume 16, Number 4, p. 369-396.

"Closely Held Firms as Going Concerns" (Co-authored with Michael S. Long), The Journal of Entrepreneurial Finance & Business Ventures, Volume 1, Number 1, 2001, p. 37-49.

"Disclosure of Private Information and Reduction of Uncertainty: Environmental Liabilities in the Chemical Industry" (co-authored with Katherine Campbell and Naomi S. Soderstrom), Review of Quantitative Finance and Accounting, Volume 21, 2003, p. 345-374.

"Earnings Management, Stock Issues, and Shareholder Lawsuits" (co-authored with Larry L. DuCharme and Paul Malatesta), Journal of Financial Economics, Volume 71, 2004, p. 27-49.

"Executive Compensation and Non-Financial Risk: An Empirical Examination" (co-authored with Katherine Campbell, Derek Johnston, and Naomi Soderstrom), Journal of Accounting and Public Policy, August 2007, Volume 26, Issue 4, p.436-462.

"The Value Relevance of Greenhouse Gas Emission Allowances: An Exploratory Study in the Related United States SO2 Market" (co-authored with Derek M. Johnston, and Naomi S. Soderstrom), October 2008. Forthcoming at The European Accounting Review.

MINOR PUBLICATIONS:

Comments on "Standard Setting and Security Returns: A Time Series Analysis of FAS 8 Events"(prepared by the Research Seminar in Finance and Accounting: Commerce 658/671, co-taught with Rex Thompson), Contemporary Accounting Research, Autumn 1986, p. 242-250.

Monograph review for Contemporary Accounting Research on: "Internal Control in Canadian Corporations: A Management Perspective" (by Lois D. Etherington and Irene M. Gordon). Co-authored with Julie A. Lockhart, Spring 1987, P. 480-484.

"An Environmental Dilemma at Multi Paints, Inc." (co-authored with Robert M. Bowen and Naomi S. Soderstrom), Journal of Accounting Case Research, 1997, Volume 3, Number 2, 1996, p. 55-66.

"Competing in the Part-Time MBA Market: Designing a Successful Program" (Co-Authored with James M. Danko), MBAR Journal, Winter 2000, Volume 1/Issue 1, p. 38-48.

WORKING PAPERS:

"The Value Relevance of Greenhouse Gas (GHG) Emission Allowances" (co-authored with Derek Johnston, and Naomi Soderstrom), September 2007. Under review at The European Accounting Review.

c:vitae/lg.2004/sefcik

"Why was Internet IPO Underpricing so Severe?" (Co-authored with Larry L. DuCharme and Shiva Rajgopal, April 2006.

"Barter Revenue in E-commerce Firms: An Empirical Analysis," (Co-authored with Katherine Campbell), Summer 2002.

WORK IN PROGRESS:

"Do Shareholders react to disclosures of auditor-related or auditor involved outcomes in the 8-K auditor change letter" (Co-authored with Larry L. DuCharme and Kathy Hertz Rupely), September 2007.

"The Effect of Corporate Governance on Shareholder Lawsuits: Has Sarbanes Oxley Had an Impact?" (Co-authored with Larry L. DuCharme and Paul Malatesta), October 2007.

SELECTED CONFERENCES:

"Closely Held Firms as Going Concerns," Presented (by Mike Long) at the Twelfth Annual Entrepreneurial Finance and Business Ventures Research Conference, April 2001, at Syracuse University School of Management, Syracuse, N.Y.

"Earnings Management, IPO Valuation, and Subsequent Performance" (co-authored with Larry L. DuCharme and Paul Malatesta). Presented (by Paul Malatesta) at the Journal of Accounting, Auditing, and Finance (JAAF) Conference in August 2000.

Speaker, "Effective Teaching," The New Faculty Consortium (of the AAA), February 2000, in St. Charles, Illinois.

Panelist, "Teaching Environmental Accounting," Western American Accounting Association (WAAA) Meetings in May, 1998, at Seattle, Washington.

Session Chair, Environmental Accounting, Eleventh Contemporary Accounting Research Conference in November 1996, Banff, Alberta.

"MultiPaint, Inc.: A Case Study" (co-authored with Robert M. Bowen and Naomi S. Soderstrom). Presented at the 1996 Bell Conference of the Management Institute for Environment and Business (MEB) in July 1996, at Toronto, Ontario.

"Superfund Settlements and Firm Valuation" (co-authored with Katherine Campbell and Naomi S. Soderstrom). Presented at the American Accounting Association (AAA) Meetings in August 1994, at New York, New York.

"Accounting Through Green-Colored Glasses" (co-authored with Naomi S. Soderstrom and Christopher H. Stinson). Presented at the American Accounting Association (AAA) Meetings in August 1993, at San Francisco, California.

"The Voluntary Inclusion of Earnings Forecasts in IPO Prospectuses" (co-authored with P. Clarkson, A. Dontoh, and G. Richardson). Presented at the American Accounting Association (AAA) Meetings in August 1990, at Toronto, Ontario.

"Dividend Changes after Security Issuances and Share Repurchases as an Explanation of Observed Market Reactions to Announcements" (co-authored with Michael S. Long and Ileen B. Malitz). Presented at the Financial Management Association (FMA) Meetings in October 1989, at Boston, Massachusetts.

"Insubstance Defeasances: Security Price Reactions and Motivation" (co-authored with John R. M. Hand and Patricia J. Hughes). Presented at the American Accounting Association (AAA) Meetings in August 1989, at Honolulu, Hawaii.

"Participation Financing: A Comparison of Convertible Debt and Bonds with Warrants" (co-authored with Michael S. Long). Presented at the Financial Management Association (FMA) Meetings in October 1987, at Las Vegas, Nevada.

"The Economic Effects of Insubstance Defeasance" (co-authored with Patricia Hughes). Presented at the American Accounting Association (AAA) Meetings in August 1987, at Cincinnati, Ohio.

"Evidence on Wealth Maximization: The Case of Convertible Debt and Dividend Policy" (co-authored with Michael S. Long), 1983. Presented at the Financial Management Association (FMA) Meetings in October 1983, at Atlanta, Georgia.

CONSULTING:

Executive Education: Taught courses in various programs.

Expert Witness: Environmental Accounting Case, settled in arbitration. Financial accounting/tax case, successfully resolved.