

# “Learning the Ropes”

November 7-9, 2023  
DoubleTree by Hilton Hotel Portland  
1000 NE Multnomah St.  
Portland, OR 97232

[Visit Conference Site](#)

**Total MCLE credits: 15.75**

**Total Practical Skills Credits: 9.75**

**Total Ethics Credits: 2**

**Total Mental Health/Substance Use Credits: 1**

**Total Introductory Access to Justice Credits: 3**

**Day 1: 6.75 MCLE credits**

4.75 Practical Skills Credits – Oregon Practice and Procedure

2 Ethics Credits – Oregon Specific

**Day 2: 6 MCLE credits**

3.5 Practical Skills Credits – Oregon Practice and Procedure

1 Mental Health/Substance Use Credit

1.5 Introductory Access to Justice Credits

**Day 3: 3 MCLE credits**

1.5 Practical Skills Credits – Oregon Practice and

Procedure 1.5 Introductory Access to Justice Credits

# Learning the Ropes

## Agenda

### DAY 1

*Day 1 qualifies for 6.75 MCLE Credits (4.75 Practical Skills Credits - Oregon Practice and Procedure; 2 Ethics Credits – Oregon Specific)*

November 7–9, 2023

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[conference.osbplf.org](http://conference.osbplf.org)

8:00 – 8:30 Registration/Check-In

8:30 – 9:00 PLF Overview

Learn about the Professional Liability Fund (PLF) and your legal malpractice coverage, both at the primary and optional excess levels.

Megan I. Livermore, *PLF Chief Executive Officer*

Emilee Preble, *PLF Director of Administration & Underwriting*

9:00 – 10:00 Introduction to Claims and Risk Management

Get a general overview of the PLF's claims and risk management departments, the services they offer, and what to do when you make a mistake.

Matthew A. Borrillo, *PLF Director of Claims*

Hong Dao, *PLF Director of Practice Management Assistance Program*

10:00 – 10:15 Break

10:15 – 11:15 Regulation of Lawyer Conduct in Oregon (*1 Ethics Credit - Oregon Specific*)

Get to know the Oregon State Bar and revisit your ethical duties of loyalty, competence, and integrity as lawyers.

Linn D. Davis, *Oregon State Bar Assistant General Counsel and Client Assistance Office Manager*

11:15 – 12:15 Professionalism: Be the Person Your Dog Thinks You Are (*1 Ethics Credit - Oregon Specific*)

Understand the concept of professionalism from a judge's perspective, so even your pet would take pride in your conduct.

The Honorable John V. Acosta, *United States Magistrate Judge*

The Honorable Eric L. Dahlin, *Multnomah County Circuit Court Judge*

12:15 – 1:30 Meet the Judges Luncheon (included in registration fee)



Professional  
Liability Fund

# Learning the Ropes *Agenda*

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## DAY 1, continued

### Choose a Concurrent Session

1:30 – 2:15 Civil Motion Practice  
Laura Caldera Loera  
*Bullivant Houser Bailey PC*

2:15 – 2:20 Transition

2:20 – 3:05 Family Law  
Amanda C. Thorpe  
*Cauble & Whittington*

3:05 – 3:10 Transition

3:10 – 3:55 Criminal Law  
Justin N. Rosas  
*The Law Office of Justin Rosas*

1:30 – 2:15 Estate Planning and Administration;  
Guardianships and Conservatorships  
Melissa F. Busley  
*Dunn Carney LLP*

2:15 – 2:20 Transition

2:20 – 3:05 Personal Injury  
Robert Le  
*The Law Office of Robert Le*

3:05 – 3:10 Transition

3:10 – 3:55 Business Transactions  
Scott D. Schnuck  
*Altus Law LLC*

3:55 – 4:05 Break

4:05 – 5:05 Alternative Dispute Resolution – Mandated and Voluntary  
Explore the array of alternative dispute resolution (ADR) options for resolving conflict and understand when ADR may be mandatory or voluntary.

Lisa Brown, *Lisa Brown Attorney LLC*



# Learning the Ropes Agenda

## DAY 2

*Day 2 qualifies for 6 MCLE Credits (3.5 Practical Skills Credits - Oregon Practice and Procedure; 1 MHSU Credit; and 1.5 Introductory Access to Justice Credits)*

- 8:00 – 8:30 Registration/Check-In  
8:30 – 10:00 Essential Guide to Practice Management

Gain fundamental insights and tips for handling the lawyer trust account, conflicts of interest, technology, office systems, file management, and avoiding common pitfalls.

Rachel Edwards and Monica H. Logan, *PLF Practice Management Attorneys*

- 10:00 – 10:15 Break

### Choose a Concurrent Session

#### Creating a Firm

- 10:15 – 11:15 Solo Success: Launching Your Own Practice

Rachel Edwards  
*PLF Practice Management Attorney*

- 11:15 – 12:15 Solo Success: Staying the Course

Jinoo Hwang  
*Northwest Legal*

Jessica M. Nomie  
*Jessica Nomie Law*

Maria Zlateva  
*Attorney at Law*

Monica Logan, Moderator  
*PLF Practice Management Attorney*

#### Joining a Firm

- 10:15 – 11:45 Associate Success: Tips for Joining Firms (Part I)

Anthony Li, Associate  
*Reynolds Defense Firm*

Holly J. Martinez, Associate  
*Perkins Coie LLP*

Nicholas Sanchez, Associate  
*Markowitz Herbold PC*

Traci R. Ray, Moderator  
*Executive Director, Barran Liebman LLP*

- 11:45 – 12:15 Associate Success: Tips for Joining Firms (Part II)

Parna Mehrbani, Partner  
*Tonkon Torp LLC*

Bryan R. Welch, JD, CADC I  
*OAAP Attorney Counselor*



# Learning the Ropes *Agenda*

## DAY 2, continued

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[conference.osbplf.org](http://conference.osbplf.org)

12:15 – 1:30 Bar Leader Luncheon (included in registration fee)

1:30 – 3:00 Pro Bono, Legal Aid, and Other Tools to Provide Access to Justice for All (1.5  
*Introductory Access to Justice Credits*)

Learn about the unmet legal needs in Oregon and discover the tools to assist lawyers in addressing these needs, ensuring that everyone has equal access to justice.

Ayla Ercin, *Executive Director, Campaign for Equal Justice*

Jill R. Mallery, *Statewide Pro Bono Manager, Legal Aid Services of Oregon*

William C. Penn, *Oregon Law Foundation Executive Director and Legal Services Assistant Director*

3:00 – 3:15 Break

3:15 – 4:15 Lawyer Well-Being (1 *Mental Health and Substance Use Education Credit*)

Join the Oregon Attorney Assistance Program (OAAP) to uncover challenges lawyers encounter in their practice and explore strategies for maintaining well-being.

Kyra M. Hazilla, JD, LCSW, *OAAP Director and Attorney Counselor*

Douglas S. Querin, JD, LPC, CADC I, *OAAP Senior Attorney Counselor*

Bryan R. Welch, JD, CADC I, *OAAP Attorney Counselor*

Kirsten Blume, JD, MA Candidate, *OAAP Attorney Counselor Associate*

# Learning the Ropes *Agenda*

## DAY 3

*Day 3 qualifies for 3 MCLE Credits (1.5 Practical Skills Credits - Oregon Practice and Procedure; 1.5 Introductory Access to Justice Credits)*

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[conference.osbplf.org](http://conference.osbplf.org)

8:00 – 8:30 Registration/Check-In

8:30 – 9:30 Courtroom Do's and Don'ts

Hear about successful protocols and procedures that can help you navigate the courtroom effectively and make the most out of your legal proceedings.

The Honorable Adrian L. Brown, *Multnomah County Circuit Court Judge*

The Honorable Benjamin Souede, *Multnomah County Circuit Court Judge*

9:30 – 10:00 Tips, Traps, and Tools for Navigating Negotiations and Professional Relationships

Learn the basics of successful negotiations, how to find common ground, and how to achieve your desired outcomes while fostering positive relationships with your counterparts.

Richard Vangelisti, *Vangelisti Mediation LLC*

10:00 – 10:15 Break

10:15 – 11:45 Lawyering for Clients with Diverse Needs *(1.5 Introductory Access to Justice Credits)*

Gain practical tips and advice on representing a diverse range of clients, including minors, aging clients, and members of the LGBTQ community; understand their unique needs and challenges so you can provide them with the quality legal representation they deserve.

Darin J. Dooley, *Draneas Huglin Dooley LLC*

Talia Y. Guerriero, *Albies Stark & Guerriero*

Jennifer A. McGowan, *Youth Rights & Justice*

# CHAPTER 6

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## **ESTATE PLANNING AND ADMINISTRATION; GUARDIANSHIPS AND CONSERVATORSHIPS**

Melissa F. Busley  
*Dunn Carney LLP*



## Chapter 6

# ESTATE PLANNING & ADMINISTRATION; GUARDIANSHIPS & CONSERVATORSHIPS

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### Additional Resources

*Duties of a Conservator*, Professional Liability Fund

Circuit Court letter to the Personal Representatives of the Estate, September 2016

*Capacity Issues in Representing Clients*, Oregon Estate Planning and Administration Section Newsletter, April 2010

# ESTATE PLANNING AND ADMINISTRATION; GUARDIANSHIPS AND CONSERVATORSHIPS<sup>1</sup>

## INTRODUCTION

The estate planning and administration area, including guardianships and conservatorships, is an ideal choice for a practitioner who wants to be challenged intellectually, have minimal contentious negotiations, and experience a sense of service to and interpersonal connection with individuals and families.

### I. WHAT IS THE SUBSTANCE OF THIS PRACTICE AREA?

This practice area includes establishing wills and trusts, powers of attorney and advance health care directives for clients, as well as guardianships and conservatorships for individuals who are unable to manage their health care, residential decisions and/or financial matters due to incapacity. Some practitioners in this area also handle litigation matters and negotiate prenuptial agreements; some even cross into pure domestic relations work, handling divorces and custody disputes. Others blend a general business practice with their estate planning practice, which works nicely when your firm clientele includes many small business owners. Estate planning attorneys regularly become generalists, to some extent, because our clients face so many issues – as employees, as business owners, as real property owners, as landlords, as parents, and so on. If you want to practice in this area and do not want to be a generalist, you will quickly learn that having a referral list for trusted attorneys who provide services that are complementary to your own gives you a value-added service you can provide to your clients.

A. **Components of an estate planning practice.** Estate planning is more of a process than a product. Executing a will, for example, is just one piece of the overall practice. We provide a service that generally results in the delivery of a product (i.e., estate planning documents). Working with clients through the estate planning process often involves a great deal of client education so that the client has an understanding of how the pieces of his or her plan fit together to accomplish the client's goals.

1. ***Developing a client base.*** This, of course, occurs over time. The practice of law is truly a relationship-driven practice. As you develop relationships in your community (with other lawyers in your firm and elsewhere, with clients, with CPAs and financial planners, with brokers, fellow alumni, and so forth) and those relationships are based on mutual respect, the work will come through referrals. In this practice area, knowing your referral sources and taking care of them is a very important key to success. It is even more important to simply do good work: be responsive, respectful and pragmatic in all of your dealings. The most valuable referrals you receive will be those that begin with the following declaration: "I received your name from my friend who worked with you on her estate planning. She highly recommended you."

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<sup>1</sup> Thank you to my colleague Heather L. Guthrie for graciously allowing me to use her presentation materials.

2. ***Establishing the relationship.***
  - a. *Engagement letter.*
  - b. *Joint representation memo.* Representing both spouses in their estate planning is common, but informed consent of the jointly represented clients is a must.
  - c. *First meeting(s).* The most important thing to do in an initial meeting with clients is to listen. Ask open-ended questions and let the clients tell you their stories. By doing this, and listening actively, you accomplish two things: first, you immediately establish who the important people in the room are – this process is all about the *client*. Second, you learn what is important to the clients so that you can identify issues and build a plan that is right for the client. You cannot create an estate plan that accomplishes your client’s goals until you understand what those goals are. Do not be surprised when, even in multi-million dollar estates, the clients are more interested in talking about their children’s special challenges with money – or other issues – than about reducing their overall estate tax risk. Your job is to deal with both of these issues, but pay attention to what matters most to the client. By letting your client know that you are listening to what they have to say and problem-solving around their concerns, you establish credibility and trust. Often, I have just one initial meeting with clients and in the next meeting we sign documents, working through drafts by telephone and email. However, some clients have such complicated plans that it can take more than a year and many meetings before a plan is finalized.
  - d. *Educate the client.* Estate planning is not something clients do every day and many clients will only have a basic understanding (at best) of what it entails. A common assumption is that the passage of all of one’s assets will be governed at death by the individual’s will. However there are lots of different methods for passing property at death that can affect the overall distribution of assets following one’s death. Be prepared to educate your clients about these different methods and how they will be used to carry out the overall distribution scheme desired by the client.
3. ***Evaluating challenges and strategies for the particular client.*** The unique challenges of a client may be myriad. While listening to your client’s story, you will need to identify issues which may include any or many of the following:
  - a. Blended family issues. Second marriages and children from previous marriages or relationships. Support obligations to previous family.



- b. Special needs of children or grandchildren.
  - c. Anticipated inheritances.
  - d. Non-traditional families. Unmarried and/or LGBTQ clients.
  - e. Taxable gift issues. Did the clients make a substantial gift recently to help a child buy a first home? Did they give beyond the gift tax exemption threshold?
  - f. Real estate in multiple states or out of the country.
  - g. Children in troubled marriages.
  - h. Charitable inclinations and goals.
  - i. Beloved pets. To whom should these pets go? Is a pet trust wanted or warranted?
  - j. Care for parents of the clients. Many children support their parents in some way. How should that care continue after your client dies if the parents survive?
  - k. Health issues of the client.
  - l. Rental property issues. If the clients own rental property, do they own it outright or in an entity? Who manages the property? Do they have adequate insurance? Is entity ownership advisable?
  - m. Death tax exposure at the state and/or federal level.
  - n. Selecting fiduciaries. Who will care for minor children? Who will manage money for the beneficiaries? Who will make health-care decisions for the client in the event of incapacity?
  - o. Business ownership and transition planning.
4. ***Drafting documents.*** Every estate plan should consist of the following documents at a minimum:
- a. *Will.* This document establishes how property (that is owned by the client in his/her own name and which will not pass by beneficiary designation) will pass at the client's death. The document must be carefully drafted and properly executed (two witnesses).
  - b. *Power of Attorney.* Preparing for incapacity with a power of attorney is a critical part of this process. If the client has a stroke, for example, the Will does nothing – it speaks only at death – and absent a power of attorney (or trust – see below), it may be necessary to commence conservatorship proceedings to manage assets.
  - c. *Advance Directive.* An important part of this process is to discuss with your clients whether or not they would like to execute an advance directive giving decision-making authority related to end-of-life circumstances and giving advance direction about the client's wishes regarding tube feeding and life support.

Many estate plans will also include trusts of one sort or another, whether revocable living trusts (as a privacy and probate-avoidance vehicle, and an alternate mechanism for managing assets in the event of incapacity) or irrevocable trusts as part of a death-tax minimization plan (such as an Irrevocable Life Insurance Trust or ILIT). Also, it is not uncommon for a client's Will to create trusts (testamentary trust) that are funded after death. These testamentary trusts don't typically avoid the need for probate, but can be helpful in dealing with different client concerns (such as minor beneficiaries).

5. ***Executing documents and following-up on executing the plan.***
  - a. *Execution and Safe-keeping of Documents.* Overseeing the proper execution of and providing guidance about safe-keeping of estate planning documents is also part of the process.
  - b. *Beneficiary designations.* Providing the client with beneficiary designations that are tailored to dovetail with the client's plan and advising the client about updating their beneficiary designations are essential. This is becoming an increasingly important piece of estate planning as many clients have much of their wealth in retirement plans that pass based on beneficiary designations.
  - c. *"Funding" a Trust.* If the client has entered into a trust agreement, transferring assets to the trust – so-called "funding" of the trust – is essential. You should provide instructions to the client that explain exactly what needs to be done: how should the new accounts be titled? How can they change title to their cars? What about time-share interests? Specific instructions for each type of asset should be provided. Prepare deeds where appropriate. Advise clients to obtain lender consents, where applicable. Provide alternative recommendations for POD designations. Explain. Note: funding a trust does not occur until after a client's death, if you only have testamentary trusts.
6. ***Staying in touch with the client.*** The key to staying in touch with clients is maintaining a good database of client information that allows you to search for, for example, all clients with tax-planning documents so that when a change in the tax laws occurs, you are able to readily sort through your clients to determine who should receive a letter from you regarding the change and any updates that the client should consider. Many clients will execute their plan and you will not hear from them again for years. Other clients have plans of such complexity that the process involves several phases (establishing the basic plan; enhancing that plan with irrevocable trust(s) and the like) and demands regular maintenance. Some clients will become friends with whom you have regular contact.

B. **Administration.** Administering trusts and estates is all about putting the plan into action after death.

1. ***Probating a Will.*** The process of probating a Will involves the following basic steps:
  - a. Preparing a petition asking the court to admit the Will to probate and appoint the person designated in that Will as personal representative.
  - b. Sending notice of the probate to heirs and devisees.
  - c. Publishing notice of the probate and appointment to commence the period during which creditors may bring claims against the decedent's estate. Giving notices to known creditors.
  - d. Preparing and filing an inventory of assets that are probate assets (assets not passing by beneficiary designation or by survivorship).
  - e. Preparing and filing an affidavit of compliance with respect to certain duties of the personal representative.
  - f. Reporting to the court all acts of the personal representative, including accounting for all income and expenditures, and asking the court to approve distribution of assets.
  - g. Confirming the filing of fiduciary income tax returns (with the taxing authorities, not the court, but an important step nevertheless).
  - h. Distributing assets in accordance with the Will, obtaining and filing receipts for distributions, discharging the personal representative and closing the estate.

If the decedent died without a Will, the same basic steps are followed except that: (1) assets pass to the decedent's heirs by the laws of intestacy; (2) the statute establishes an order of preference for individuals who may serve as personal representative; and (3) bonding of the personal representative may be required. Probate can take anywhere from 6 months to several years, depending on a myriad of complicating factors. Every estate is different, and the foregoing is intended as a general outline to give you a sense of the basics. Probate is a cooperative process between attorney and client; paralegals can be invaluable in this process to track deadlines, draft documents and coordinate with the client while keeping fees as low as possible.

2. ***Administering a Trust.*** Trust administration includes many of the same basic steps as probating a Will (e.g., determining who the beneficiaries are, determining what the assets are and taking control of them, filing necessary tax returns (income and estate), reporting to the beneficiaries, and so forth), but without court oversight. Instead of working from the Will and the statutes, trust administration is controlled by the terms of the trust agreement itself; it is fundamentally a matter of contract. If a trust agreement calls for outright distribution, trust administration can be quite brief. If it calls for assets to continue in trust, it may continue for many



years. You should become familiar with the provisions of the Oregon Uniform Trust Code in order to comply with reporting requirements that are imposed by statute, some of which can be waived by the terms of the trust agreement but some of which cannot. See ORS Chapter 130.

3. ***Estate Tax Returns.*** Estate tax returns can be required whether you are administering a probate estate or doing a post-mortem trust administration. Whether they are required depends on the fair market value of the decedent's assets on the date of death rather than on the estate planning vehicle used. Some CPAs will prepare these returns; however, in most cases the attorney is better positioned to prepare them because so much of how assets are valued and reported for estate tax purposes is driven by an estate plan developed by the attorney.
4. ***Administering Based on Estate Planning Documents Prepared by Another Attorney.*** Keep in mind that not every administration will be an administration of documents you prepared; quite often, you will never have seen the documents before. Your job is to figure out what was intended based on the words of the document. Keep this in mind when you are drafting, too. Someone else may be administering your documents twenty years from now, so *draft clearly and carefully.*

#### C. **Guardianships and Conservatorships.**

1. ***Guardianships.*** Establishing a guardianship is necessary when an individual is unable to make health-care or residential decisions for him/herself. Typically, the need arises when an elderly person with some mental disability becomes combative and unwilling to go along with a caregiver's plan. Guardianships may also be necessary in the case of a minor whose natural parent is deceased or otherwise unable to care for the child. Note the following standard that must be met in order to establish a guardianship: "A guardian may be appointed for an adult person only as is necessary to promote and protect the well-being of the protected person. A guardianship for an adult person must be designed to encourage the development of maximum self-reliance and independence of the protected person and may be ordered only to the extent necessitated by the person's actual mental and physical limitations." ORS 125.300. See ORS 127.505-660 regarding Advance Directives for health care. See ORS 127.700-737 regarding Declarations for Mental Health Treatment.
2. ***Conservatorships.*** Establishing a conservatorship is necessary when an individual is unable to make financial decisions in his/her own best interests. Typically, the need arises when an elderly person begins mismanaging money or in the event of a stroke or similarly debilitating condition that limits the person's ability to handle his or her own financial affairs. A conservatorship may also be necessary in the case of a minor who is entitled to receive funds but as a matter of law is deemed to not have capacity to manage those funds. Note the following standard that

must be met in order to establish a conservatorship: “Upon the filing of a petition seeking the appointment of a conservator, the court may appoint a conservator and make other appropriate protective orders if the court finds by clear and convincing evidence that the respondent is a minor or financially incapable, and that the respondent has money or property that requires management or protection.” ORS 125.400. See ORS 125.005(3) for definition of financially incapable.

3. **Generally.** The tests relating to and the process of establishing guardianships and conservatorships are set forth in ORS Chapter 125. Often, a debilitating condition makes it necessary to establish both a guardianship and a conservatorship at the same time, though the need for a conservatorship can generally be avoided if the individual has an adequate Power of Attorney in place. Guardianship and conservatorship practice is generally a fairly small part of most estate planning and administration practices because in many cases, if a plan is in place that includes incapacity planning – as any such plan should – a guardianship or conservatorship can often be avoided. With respect to conservatorships for minors, there are mechanisms for avoiding a conservatorship altogether in certain circumstances, such as where the dollar amount is relatively small or where the conservatorship is thought to be needed solely to settle a claim. See ORS 126.700 and ORS 126.725.

D. **Resources.** The following are some helpful resources for this practice area:

1. Administering Oregon Estates. Oregon Bar Association Continuing Legal Education publication, updated periodically.
2. Administering Trusts in Oregon. Oregon Bar Association Continuing Legal Education publication, updated periodically.
3. Elder Law. Oregon Bar Association Continuing Legal Education publication, updated periodically.
4. Guardianships, Conservatorships and Transfers to Minors. Oregon Bar Association Continuing Legal Education publication.
5. Oregon Revised Statutes chapters 111 through 130.
6. Will and Trust Forms, published by US Bank National Association.
7. The list-serv of the Estate Planning and Administration section of the Oregon State Bar, as well as periodic publications by this group, which in many cases are available on-line.
8. OSB site generally for form letters, conflicts waivers, etc.

## II. WHAT IS AN AVERAGE DAY LIKE IN THIS PRACTICE AREA?

### III. WHAT ARE THE PROS AND CONS OF THIS PRACTICE AREA?

- A. ***Pace of practice – the prospect of balance.*** One of the reasons I have chosen to practice in this area is that for the most part I can control the pace. Whereas the pace of many practice areas is purely client driven (such as in the business transaction environment), the estate planning area is usually a fairly calm and controlled process that allows me to maintain some balance between my personal and professional life. Exceptions include client illness and client travel plans, among other things. On the administration side of practice, there are statutory deadlines that drive much of the practice.
- B. ***Litigation – knowing your limits.*** Fortunately, I practice in a firm where I have litigators who are available to handle contentious matters that are headed for court. However, many estate planning and administration attorneys handle litigation as part of their practice.
- C. ***Profitability – the small matter challenge.*** Keeping the estate planning and administration balance in your practice is important because while the estate planning side often consists of small matters that generate minimal fees relative to the administrative tasks involved (opening the file, running conflicts, overseeing or doing the work in a cost-effective fashion), the administration side generally involves much more time and generates more significant fees. This is a business reality that practitioners deal with in different ways, but doing both sides of the practice – planning and administration – also makes you a better resource for your clients and helps you develop a better skill set because you know how the plan you drafted works out in practice.
- D. ***Working independently.*** Many who practice in this area work very independently. If you are conscientious and detail-oriented, this can be a plus – no one is looking over your shoulder. On the other hand, not having a second set of eyes reviewing your work and not having a second brain to help you think through difficult concepts means you must be meticulous in your drafting and in your communications with your client.
- E. ***Personality characteristics of a good estate planning and administration practitioner.*** The following is a list of personality characteristics that are important to have in order to succeed and enjoy practicing in this area:
1. A good listener
  2. Compassionate
  3. Detail-oriented
  4. Practical
  5. Patient
  6. Must enjoy working with elderly people

#### IV. CONCLUSION

Practicing in this area can be tremendously rewarding, both personally and professionally, but it is not for everyone. If you crave the challenge of the courtroom or if you thrive on the adrenaline of fast-paced transactional work, working solely in this practice area is probably not for you. On the other hand, if you are looking for a practice that offers a sense of service to individuals, a richness of intellectual challenge, and a relatively controlled pace, you should consider pursuing the estate planning and administration area.

# Estate Planning, Administration, Guardianships and Conservatorships

Melissa F. Busley | Portland, Oregon



## Overview



- Estate planning
- Probate and trust administration
- Guardianships and conservatorships



## Client Education

- You need to learn about the client:
  - Who are they and their family?
  - What are their assets?
  - Any “special” challenges?
- You need to educate the client:
  - Different ways for assets to pass
  - Different tools for different tasks
  - A good estate plan is tailored to the client

## Evaluating Challenges and Strategies: Issue Spotting

- Family issues
- Asset issues
- Tax issues
- Other issues



## Evaluating Challenges and Strategies: Issue Spotting

- Family issues may include:
  - Blended family situation
  - Special needs of children or grandchildren
  - Non-traditional families
  - Children in troubled marriages
  - Care for parents of the clients

## Evaluating Challenges and Strategies: Issue Spotting

- Asset issues may include:
  - Anticipated inheritances
  - Real estate in multiple states or out of the country
  - Rental property issues
  - Business ownership and transition planning
  - Retirement plans, annuities and life insurance



## Evaluating Challenges and Strategies: Issue Spotting

- Tax issues may include:
  - Taxable gift issues
  - Death tax exposure at the state and/or federal level
    - What states may be able to tax
    - Oregon exemption is \$1,000,000
    - Federal exemption in 2023 is \$12,920,000 (with expanded exemption set to sunset after 2025)
    - Federal estate tax portability
    - Basis consistency reporting
    - Marital deduction elections and portability require timely filing

## Evaluating Challenges and Strategies: Issue Spotting

- Other issues may include:
  - Charitable inclinations and goals
  - Beloved pets
  - Health issues of the client
  - Selecting fiduciaries



## Drafting Documents: The Essentials

- Will
- Power of attorney
- Advance directive for health care decisions

## Executing Documents and Follow-Up

- Execution ceremony and document safekeeping
- Beneficiary designations – this can be critical
- “Funding” trusts
- Staying in touch



## Post-Mortem Administration

- Wills – probate
- Trusts – post-mortem trust administration
- Estate tax returns
- Survivorship and beneficiary designations
- Administering based on documents prepared by other attorneys

## Probate Administration

1. Determine if testate or intestate
2. If bond is required, check if nominated PR is bondable
3. Prepare petition and other initial documents
  - Determine probate assets and estimated value
  - Determine interested persons
  - Notices for interested persons and publication should be ready once court appoints PR
4. Give your PR client a roadmap

## Trust Administration

- Governed by Oregon Uniform Trust Code (Chapter 130), as modified by the Trust Agreement
- Review trustee, distribution and survivorship provisions
- Review asset ownership -- confirm assets are held by trust (or whether probate is required)
- Notices to beneficiaries

## Other Administration

- Estate tax evaluation
- Work through beneficiary designations
- Consider disclaimers

## Guardianships and Conservatorships

- What they are
  - Guardianship: Decisions about the person
  - Conservatorship: Decisions about the person's stuff
- How to avoid them
  - Powers of attorney
  - Trusts
  - Advance directives



## Guardianships and Conservatorships

- Process and follow-up
  - Petition and appointment
  - Annual reporting



## The Realities of Estate Planning



*"In this world nothing can be said to be certain, except death and taxes."*

Benjamin Franklin, 1789



## Developing a Book of Business and Keeping Clients (Happy)

- Developing a client base
  - Relationship, relationship, relationship
- Establishing the client relationship
  - Your first meeting(s)
- Evaluating challenges and strategies for the particular client

## The Pros and Cons of this Practice Area

- Pace of practice and prospect of balance/control
- Litigation
- Profitability
  - The small matter challenge
- Working independently
  - Details, details, details
- Who is happy doing this kind of work?



## Questions?

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## CHAPTER 6

### ESTATE PLANNING & ADMINISTRATION; GUARDIANSHIPS & CONSERVATORSHIPS

#### Resources

*Duties of a Conservator*, Professional Liability Fund

Circuit Court letter to the Personal Representatives of the Estate, September 2016

*Capacity Issues in Representing Clients*, Oregon Estate Planning and Administration Section Newsletter, April 2010

This document summarizes your duties as a conservator for a minor or a financially incapable person. You must exercise scrupulous good faith in managing the protected person's affairs. Everything you do must be for the benefit of that protected person and to protect his or her economic interests. Oregon law imposes penalties for financial or physical abuse of a protected person.

In certain counties, non-professional conservators are required to attend a training course. You must register for this training by \_\_\_\_\_, no later than fifteen days (some counties allow 20 days) following your appointment as a conservator. You can register for the class online at [www.guardian-partners.org](http://www.guardian-partners.org), or by telephone at (971) 409-1358. The training must be completed by \_\_\_\_\_, no later than 60 days (some counties allow 90 days) following your appointment as a conservator. If you have any questions about specific rights or duties involved in the conservatorship, please ask an attorney.

The following list describes some of your important duties as conservator:

1. You must take possession of all the property of substantial value of the protected person, although you may permit the protected person to retain possession and control of property and funds for living requirements, depending on the needs and capacities of the protected person.
2. You must take possession of any rents, income, or profits that accrue from the property of the protected person, whether they accrue before or after your appointment as conservator. You cannot sell a protected person's home without obtaining prior court approval.
3. You also must take possession of the proceeds of any sale, mortgage, lease, or other disposition of the protected person's property.
4. If real property of the protected person is located in a county other than the county of appointment, you must file a certified copy of the inventory or a real property abstract in the county or counties where that real property is located.
5. Within 90 days of your appointment as conservator, you must file with the court an inventory of all property of the protected person that has come into your possession or knowledge. If you subsequently acquire possession or knowledge of any additional property that is not included in that inventory, you must file a supplemental inventory within 30 days after receiving possession or knowledge of the property.
6. You must pay the valid debts of the protected person that are chargeable against the conservatorship estate. Debts which you believe are suspect or fraudulent can be denied. You should consult an attorney to assist with the denial process.
7. You must make prudent investments with the conservatorship assets. In most cases, this will require the advice of a professional.
8. When managing the conservatorship assets, you must take into consideration any known estate plan of the protected person, including any will of the protected person, trusts, or joint ownership or payable on death arrangements. Obtain prior court approval before making any changes which would impact the protected person's estate plan, including changing beneficiaries on insurance or annuities or surrendering policies for cash.
9. You must evaluate the need to obtain insurance on conservatorship assets and obtain such insurance if advisable.
10. You must pay, contest, or settle claims submitted against the conservatorship estate. You are also authorized to prosecute valid claims of the protected person and deny payment of invalid claims.
11. You must prepare and submit necessary state and federal income tax returns on behalf of the protected person, using an individual tax return as opposed to a fiduciary tax return.
12. You may set up a separate conservatorship checking, savings and investment account to hold unrestricted assets. Set up restricted accounts to hold assets restricted by order of the court. Depending on the county in which the conservatorship is filed, you may be required to have the

checks returned to you by the bank and to submit those canceled checks or electronic vouchers to the court with your periodic accountings.

13. You must carefully account for all money or property received and all expenditures and disbursements made related to the conservatorship estate. You may not withdraw any money from restricted accounts without prior court approval/court order.
14. You must prepare and file with the court written accountings each year within 60 days of the anniversary of your appointment as required by law. In addition, you must file an accounting within 60 days after: (a) the protected person dies, (b) a minor protected person reaches age eighteen, or (c) an adult protected person becomes able to manage his or her financial resources. You must also file a final accounting within 30 days after your removal, your resignation, or the termination of your authority.
15. With each accounting filed with the court, you must submit a list of receipts and disbursements, including check numbers, in chronological order, as well as statements from depositories showing current balances. Some counties may require you to file the original canceled checks or electronic vouchers.
16. You must serve copies of the accountings with notice of time to file objections on certain persons, including the protected person (if he or she is fourteen years of age or older), the protected person's spouse, the parents of a protected person under age fourteen, any guardian appointed for the protected person or personal representative of the estate, and other persons either requesting notice through the court or directed to be notified by the court. See ORS 125.060(3).
17. You must obtain court approval before payment can be made to you as conservator for services rendered to the protected person or to a lawyer who is the lawyer for you as conservator. Any other attorneys employed by you as conservator should also have their fees approved before payment from a protected person's funds.
18. When a minor for whom a conservatorship was established reaches the age of eighteen, or when the court is satisfied that the protected person is no longer financially incapable, you may pay all claims and expenses of administration as approved in a final accounting, filed with the court, and distribute all remaining funds and properties to the former minor or protected person as soon as possible.
19. You must not enter into any transaction in which there is a potential conflict of interest. Any sale or encumbrance of conservatorship assets to a conservator, the spouse, agent or business partner of the conservator is voidable, unless first approved by the court.
20. You must obtain court authority to resign as conservator and must file a final accounting with the court, even if the protected person dies.
21. Upon the death of the protected person, you must deliver to the court any will of the deceased that has come into your possession, inform the personal representative or a beneficiary named in the will that you have done so, and preserve the conservatorship estate for delivery to the personal representative of the deceased protected person, claiming successor, trustee or other person entitled to the assets. You must file a final accounting of conservatorship assets.

I have provided this list of duties to the conservator.

\_\_\_\_\_  
*Attorney for Conservator*

\_\_\_\_\_  
*Date*

I have read these duties and understand that I must fulfill these duties as conservator.

---

*Conservator*

---

*Date*

### **IMPORTANT NOTICES**

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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MULTNOMAH  
1021 SW Fourth Avenue Portland Oregon 97204  
Probate Department 503-988-3022 Opt.4

'2016

**Re: In the Matter of:** [Decedent Name]  
**Case No.** [Case No.]

Dear [Personal Representative Name(s)]

The Court has appointed you Personal Representatives of this estate. You are now officers of and responsible to the Court for the proper administration of the estate's assets. Court rules require that you have an attorney. Please seek your attorney's advice on all matters concerning the estate, but pay special attention to the following rules:

1. If your case was filed on or after February 2, 2015, ***you must complete Non-Professional Fiduciary Education and Training within 60 days.*** You must schedule your training within 15 days of appointment. Included with this letter is additional information regarding this requirement as well as directions for scheduling your class.

2. Immediately take possession of all of the decedent's assets now belonging to the estate. Within 60 days of your appointment you must file an inventory with the Court listing your estimated values of all of the estate's assets as of the date of decedent's death.

3. ***Keep the money and property of the estate separate from your own assets and from any other person's assets.*** Do not commingle or mix assets of the estate in your personal bank or brokerage accounts. Do not mix any estate money with your own or anyone else's.

4. Do not lend funds of the estate to anyone without first obtaining permission from the Court by Court Order. ***Never borrow money from the estate for yourself.***

5. ***Make estate checks payable to the provider of goods or services, not to "cash" or yourself.*** Keep estate funds in accounts for which the financial institution provides you a written record showing the date, payee and amount for each disbursement from the account. The record may be an original canceled check, a copy of the canceled check showing it has cleared the bank, or information printed in a regular statement from the financial institution. Keep accurate records of all receipts of funds. Every receipt and disbursement must be separately itemized. Avoid cash transactions.

6. ***Do not pay any bill of the estate without determining that you have the authority to do so.*** Use estate funds, not your own funds, to pay estate expenses whenever possible. If you have paid estate expenses, such as funeral expenses, from your own funds, and if you have a receipt or other proof of the payment, you may reimburse yourself from estate funds. Keep all payment proofs for filing with the Court. If the decedent owed a debt to you, you must have a written order from the Court before you pay that debt.

7. ***Do not give any estate property to any heirs or other persons without the prior written approval of the Court.***

8. ***You must be able to file an accounting of all receipts and expenditures in the estate.*** It must also show assets on hand at the beginning and end of the accounting period. Written proofs of payment and the first and final statements for each bank or other account in the estate must be filed with the accounting. If you are unable to file a final accounting within a year plus 60 days of your appointment, you must file an annual accounting at that time.

Your compliance with these requirements and your prompt attention to any notices from the Court will simplify your task and will be appreciated by the Court. The Court cannot offer legal advice, so please consult your attorney if you have any questions. Thank you for your cooperation.

Cc: [Personal Representative's Attorney]

**MANDATED TRAINING for NEW NON-PROFESSIONAL  
TRUSTEES and PERSONAL REPRESENTATIVES**  
Effective February 2, 2015

Effective February 2, 2015, all non-professional trustees and personal representatives appointed by the Multnomah County Circuit Court must, within 15 days of their appointment date, register for a Oregon fiduciary education class. Non-professional fiduciaries should select a session keeping in mind that they must complete Oregon fiduciary education within 60 days of their appointment date.

Oregon fiduciary education classes are one hour classes about the responsibilities of Trustees and Personal Representatives. There are separate classes for trustees and personal representatives. The class will orient non-professional fiduciaries to decision-making, laws, working with the court and attorneys; and give practical tips about successfully managing the issues that are common for non-professional fiduciaries.

Currently, the mandated content is delivered by the non-profit Guardian Partners. This class is held at least once a month. Please contact Guardian Partners for the scheduled time and place. For people who live more than 2 hours from Portland or for whom it is impossible to attend, remote learning opportunities may be available. You can request more information on this option when you register.

The fee for the class is \$100 per trustee or personal representative. To see the class schedule, register, and pay go to [guardian-partners.org](http://guardian-partners.org). If you do not have internet access, please call Guardian Partners at (971) 409-1358.

## Capacity Issues in Representing Clients

By Mark M. Williams, Gaydos Churnside & Balthrop

### Introduction

Pornography and legal capacity have two things in common: (1) they are difficult terms to define, and (2) we tend to rely on the standard of “we know it when we see it” in making case-by-case determinations, as Justice Potter Stewart famously framed the issue of defining pornography in *Jacobellis v. Ohio*, 378 US 184, 197 (1964).

To establish an attorney-client relationship with an adult, a client’s legal competency to make and articulate decisions is a threshold question. The attorney should understand the standards for the capacity required to perform legal acts and what steps can be taken to maximize a client’s decision-making ability. An understanding of the legal requirements for capacity is crucial for an attorney to effectively represent clients who may have diminished capacity. Finally, the ethical obligations of the attorney vary widely with the ability of the client to evaluate the attorney’s advice and give the attorney direction.

Estate planning lawyers are routinely called upon to determine the capacity of clients. Do they have the ability to articulate their wishes? Are they able to enter into a contract of employment? Do they need a surrogate decision-maker? What fiduciary standard will be applied in making decisions for the client? What standard applies to the particular legal question at hand? How is legal capacity determined?

Few of us have formal training in capacity assessment, but we have some excellent guides available to us. The Oregon State Bar has published *The Ethical Oregon Lawyer* with an entire chapter (18) entitled “Representing Clients with Diminished Capacity and Disability” by Michael Levelle. It provides a summary of a “sliding scale” of capacity appropriate to different situations. The American Bar Association in conjunction with the American Psychological Association (ABA/APA) has also published *Assessment of Older Adults with Diminished Capacity: A Handbook for Lawyers*. Both of these publications are available online at no charge to Oregon attorneys.

The ABA/APA publication includes a helpful chapter, “Capacity Worksheet for Lawyers,” which includes observational signs from cognitive functioning (memory, language, calculation skills, disorientation) and emotional functioning (distress, liability) to behavioral functioning (delusions, hallucinations, hygiene). Then we are asked to record mitigating factors and consider the varying standard of legal capacity. The form is a useful tool in assisting a lawyer with marshalling the information that supports a conclusion regarding capacity. It is not a mental status exam, which is the province of highly trained professionals, and it is not a substitute for the diagnosis or opinion of medical or psycho-social professionals.

Consider three different, but typical, scenarios from my practice: (1) estate planning for a client with bickering devisees; (2) filing a guardianship/conservatorship petition against

an alleged incapacitated person; and (3) filing a guardianship/conservatorship petition against a client whose capacity has deteriorated since my initial representation and legal services.

### **Estate Planning for a Client with Bickering Devisees**

Early in my career I had a terminally ill woman referred to me for estate planning by her son. It turned out that the son was alcoholic and dependent fiscally and psychologically on his mother. It also turned out that he had a sister who was fiercely independent and highly suspicious of anything her mother did to benefit her brother. Mother wanted me to prepare a will for her. We established at the outset that mother was my only client, but her son brought her to the initial appointment and it was apparent that her estate plan was to be skewed to his substantial benefit. Mother's terminal illness had her on hospice care, and there were significant issues about her mental health. Did mother have the capacity to enter into a retainer agreement with me? Was she being unduly influenced by her son to articulate the choices she made in defining her estate plan? Did she have testamentary capacity to sign the documents I prepared for her? All of these questions require answers.

After meeting with her, I felt confident that she had the capacity to engage me and direct me, but what was that confidence based upon? I met with her several times, and she had a lively personality, she was oriented to time and place, she understood the gravity of her health conditions, she knew that her time on this Earth was limited, she was able to articulate reasons for her decisions about who should be in charge of her affairs and how her assets should be divided, and she was consistent in her analysis and determinations. Over the course of the relationship I came to be acquainted with her personality and her biases. I also got to meet both the son and the daughter and had various interactions with them, which were consonant with her descriptions of them. She certainly knew the natural objects of her bounty and was familiar with the nature and extent of her assets, so I determined that I was willing to sign her will as a witness to her testamentary capacity.

But I am a lawyer, and I also had concerns about the impending will contest that seemed likely to follow, so I wanted to have some back-up. I called in a gero-psychiatric specialist to administer a formal mental status exam and had my client release those test results to me for future use in defending her capacity. I also had the specialist sign as the second witness to attest to her capacity. No will contest was ever filed.

Was this necessary, prudent, or even advisable under the circumstances? Soon after going through this process, I heard noted will contest attorney Jim Cartwright speak at a CLE program and ask the rhetorical question: If you sought a professional evaluation for this client, but did not do it for every client, isn't that evidence that you doubted your client's capacity? It was a statement that struck me dumb. Since most clients would not begin to consider the added cost and inconvenience of a mental status test, requiring every client to get one is infeasible. I have relied on my own determination of testamentary capacity ever since, relying on my ever-increasing years of experience to buttress my ability to make that determination. I consider a number of factors from my observation of the

client's cognitive, emotional, and behavioral functioning, but in the final analysis, it comes back to the pornography standard: I know it when I see it.

### **Filing a Petition for Guardianship/Conservatorship Against an Incapacitated Person**

I think of guardianship and conservatorship as solutions to assist someone with medical and financial decision-making. Of course, there are limits. ORS Chapter 125 provides that the court may only impose this solution if it is the least restrictive alternative available to accomplish the purpose of keeping a person or his or her money safe from his or her own inability to make appropriate decisions. How do lawyers get sufficient information to make this determination and get a court to sign a limited judgment appointing another person to serve as a decision-maker?

Remember that reasonable investigation is required. When a client suggests a need for a guardianship for another person, the attorney for the petitioner must establish that (1) the need exists (and the court will likely recognize that need), and (2) the proposed guardian is appropriate for the role. This is usually done based on information provided by the petitioner and without contact with the proposed protected person. The attorney is required to make a reasonable investigation before filing a petition and must believe the petition is well founded in law and fact. ORCP 17; *Whitaker v. Bank of Newport*, 101 Or App 327, 333, 795 P2d 1170 (1990), *aff'd*, 313 Or 450 (1992).

The need exists when the proposed protected person is "incapacitated," that is, suffering from an impairment that affects the person's ability to receive and evaluate information or to communicate decisions to such an extent that the person presently lacks the capacity to meet the essential requirement for physical health or safety. "Meeting the essential requirements for physical health or safety means those actions necessary to provide the health care, food, shelter, clothing, personal hygiene and other care without which serious physical injury or illness is likely to occur." ORS 125.005(5).

ORS 125.400 provides that "upon the filing of a petition seeking the appointment of a conservator, the court may appoint a conservator and make other appropriate protective orders if the court finds by clear and convincing evidence that the respondent is a minor or financially incapable, and that the respondent has money or property that requires management or protection." "Financially incapable" means a condition in which a person is unable to manage his or her financial resources effectively for reasons including, but not limited to, mental illness, mental deficiency, physical illness or disability, chronic use of drugs or controlled substances, chronic intoxication, confinement, detention by a foreign power, or disappearance. ORS 125.005(3). These requirements bootstrap from one to the other to the logical and legal conclusion of the need for appointment of a conservator.

To get an order from the court, it is simplest if medical evidence is offered. A letter from the treating or primary care physician of the proposed protected person stating that there is a medical condition warranting the imposition of the guardianship or conservatorship



may be obtained under some circumstances but not in others. A particular diagnosis, for example, that the person has Alzheimer's disease, is *not* sufficient. *See Shaefer v. Schaefer*, 183 Or App 513 (2002). The *impairment* must be shown. *See In the Matter of Baxter*, 128 Or App 91 (1994) (holding that double amputee status did not equal financial incapacity). Important information may be provided by social workers, caregivers, and other persons with the ability to observe the functioning of the proposed protected person. Depending on the credentials of these individuals (RN, LCSW, MSW, PhD), their evidence may be sufficient to support a petition. Sometimes the lawyer may need to rely solely on the observations of friends and neighbors. In such a case, an opportunity to observe and the length and nature of the relationship are important factors to describe in the petition.

The lawyer must always consider lesser measures than a full-blown guardianship/conservatorship to achieve the purpose of protection. *See* ORS 125.150(7)(c). Intervention and support from a local area agency on aging may be adequate to meet the needs of the proposed protected person. A power of attorney, an advance directive for health care, and a living trust may exist or be creatable. The lawyer should make certain these avenues have been explored. If they have, they may provide additional evidence to support the petition.

### **Filing a Petition for Guardianship/Conservatorship Against an Incapacitated Client**

What happens when a person who apparently needs a guardian or conservator is your own client whose capacity has deteriorated over time since your last contact? Oregon Rule of Professional Conduct 1.14 provides some guidance, exhorting the maintenance of a "normal client-lawyer relationship" "as far as reasonably possible" when the client is incapacitated and the taking of reasonable action to protect the client as deemed necessary by the attorney.

There is no Oregon case law interpreting the current ethical rule. The Oregon State Bar has given us Formal Ethics Opinion 2005-41, which does little more than recite the above rule when asked what duties a lawyer has when a current/former client begins to demonstrate a lack of capacity that is damaging. The American Bar Association has given us ABA Formal Ethics Opinion 96-404. The ABA analysis is this: Attorneys should not bring an action against a client to seek the initial appointment of a fiduciary in a protective proceeding, but may do so if the determination that it is necessary and reasonable has been made by the attorney. And once a court has made a determination that the client is incapacitated, the lawyer may represent the fiduciary appointed by the court to protect the client.

A lawyer may refer the matter to another appropriate party and continue to represent the client in the ensuing protective proceeding. The altruistic view of this posture is that it allows the attorney to ensure that the proceeding is fair and the client has every opportunity to avoid the imposition of authority against him or her, but it allows the attorney with a long-term relationship with the client to remain in the role of advisor and protector of the client, while advocating for the long-time judgments of the client.



Continuing to represent a client deemed by the attorney to be incapacitated raises its own issues. How does the attorney take direction from the incapacitated client? What position does the attorney take if the client changes long-held views regarding estate disposition, fiduciary preferences, or other matters expressed when the client's capacity was not in question?

### **Conclusion**

Incapacity can be devastating to a client. Recognizing incapacity may be as simple as knowing it when you see it, but making the appropriate determination of how to proceed as an attorney once the incapacity is recognized requires a sophisticated analysis of the psycho-social, legal, and ethical components of appropriate representation of a client.

*This article was originally published in the Oregon Estate Planning and Administration Section Newsletter, Vol. 27, No. 2, April 2010. This article is posted with permission.*

# CHAPTER 8

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## PERSONAL INJURY

Robert Le  
*The Law Office of Robert Le*

# Chapter 8

## PERSONAL INJURY

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**PLAINTIFF'S  
EXHIBIT**  
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**PLAINTIFF'S  
EXHIBIT**  
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**PLAINTIFF'S  
EXHIBIT**

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**PLAINTIFF'S  
EXHIBIT**  
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24 HOURS

AAA APPROVED

PLAINTIFF'S  
EXHIBIT

Ex. 1 - Pg. 5 of 17





E TOW  
PROVED

24 HOURS

**PLAINTIFF'S  
EXHIBIT**  
Ex. 1 - Pg. 6 of 17





















PRIESTSPAN  
Zephyrus  
1A 7E168  
WEST VIRGINIA

**PLAINTIFF'S  
EXHIBIT**  
Ex. 1 - Pg. 11 of 17





HYBRID

**PLAINTIFF'S  
EXHIBIT**  
Ex. 1 - Pg. 12 of 17





Yesterday

6:31 PM



0:00



**PLAINTIFF'S EXHIBIT**  
Ex. 1 - Pg. 13 of 17





**PLAINTIFF'S  
EXHIBIT**  
Ex. 1 - Pg. 14 of 17





**PLAINTIFF'S  
EXHIBIT**  
Ex. 1 - Pg. 15 of 17













# EXPLANATION OF REIMBURSEMENT ("EOR")

This is not a bill  
Copy  
Representative Copy

Idaho

Company : 004 - USAA Casualty Insurance Company  
Receive Date : 07/27/2019  
Service Provider :

Member Number :  
Date Of Loss :  
Customer Service :  
Fax :

Representative : ROBERT LE

1235 SE MORRISON ST  
PORTLAND, OR 97214

Provider Title :  
Provider Specialty :  
Billing Provider :  
  
Patient :

The enclosed information is to inform you of the adjusting decision that has been made by USAA concerning your claim for payment of medical bills pursuant to your available coverages. Please review the billed services noted below for accuracy of treatment received. If the services billed do not reflect the treatment that you received, please immediately contact your USAA claims representative. If this form indicates that further information is requested from the provider in order to make a payment decision, please request that your provider supply that information. If you or your provider have questions concerning the information contained on this form or any accompanying physician's letter, or do not agree with the adjusting decision of USAA, please see the last page of this form for instructions regarding the procedure for obtaining answers to questions or to formally appeal this adjusting decision. Payments reflected on this EOR are sent separately from this EOR.

Dates Of Service : Please refer to  
Inpatient/Outpatient Summary

WARNING: IDAHO Statutes, Section 41-1331 states: "Any person who knowingly, and with intent to defraud or deceive any insurance company, files a statement or claim containing any false, incomplete, or misleading information is guilty of a felony."

| ICD REF | ICD     | POA | IND   | DIAGNOSIS DESCRIPTION |
|---------|---------|-----|-------|-----------------------|
| 1       | M25.551 |     | ICD-0 | Pain in right hip     |

| LINE NR              | DATE OF SERVICE | CPT CODE | MOD | DESCRIPTION | UNITS | BILLED AMOUNT | +PENALTY REDUCTION | REIM AMOUNT | REASON CODE |
|----------------------|-----------------|----------|-----|-------------|-------|---------------|--------------------|-------------|-------------|
| 1                    | 7/15/19         | L1       |     |             | 1     | 198.00        | 0.00               | 0.00        | PL_13       |
| <b>Total Lines :</b> |                 |          |     |             |       | 1             | 198.00             | 0.00        | 0.00        |

Claim Rep: Elizabeth Jones  
800-531-8722 x 51012





Billing Provider :

Member Number :

Copy

Service Provider :

Total Charges : \$ 198.00

Patient Name :

Dates Of Service : 07/15/2019 - 07/15/2019

Reimbursement Amount : 0.00  
 Apportionment % :  
 Subtotal : 0.00  
 Less Deductible : 0.00  
 Limited Benefits/Copay : 0.00  
 Collateral Source/Healthcare Carrier Payment : 0.00  
 Plus Interest & Penalty : 0.00  
 EOR Check Amount : 0.00  
 Allocated PIP Payment : 0.00  
 Allocated MedPay Payment : 0.00

Comments :

| EXPLANATION                                | EXPLANATION FOR THE REVIEW AMOUNT   | REF DOC_ID | REF LINE NUMBER |
|--|---|------------|-----------------|
| PL_13                                      | No payment is made at this time as your policy has an effective date that allows consideration of medical treatment received only within 2 years from the date of loss. |            |                 |
| <b><u>Inpatient/Outpatient Summary</u></b> |   |            |                 |
| FLAG                                       | DATE RANGE  |            | REF LINE NUMBER |
| L1   | 7/15/2019-7/15/2019   |            | 1               |

Claim Rep: Elizabeth Jones  
800-531-8722 x 51012





|                    |  |      |
|--------------------|--|------|
| Billing Provider : | Member Number :                            | Copy |
| Service Provider : | Total Charges : \$ 198.00                  |      |
| Patient Name :     | Dates Of Service : 07/15/2019 - 07/15/2019 |      |

Reimbursement Amount : 0.00  
 Apportionment % :  
 Subtotal : 0.00  
 Less Deductible : 0.00

**EXPLANATION FOR THE REVIEW AMOUNT**

**No payment is made at this time as your policy has an effective date that allows consideration of medical treatment received only within 2 years from the date of loss.**

| EXPLANATION                         | EXPLANATION FOR THE REVIEW AMOUNT   | REF DOC_ID | REF LINE NUMBER |
|-------------------------------------|---|------------|-----------------|
| PL_13                               | No payment is made at this time as your policy has an effective date that allows consideration of medical treatment received only within 2 years from the date of loss. |            |                 |
| <u>Inpatient/Outpatient Summary</u> |   |            |                 |
| FLAG                                | DATE RANGE  |            | REF LINE NUMBER |
| L1                                  | 7/15/2019-7/15/2019   |            | 1               |

Claim Rep: Elizabeth Jones  
 800-931-8722 x 51012



Printed On --  
 04-Aug-2019 10:35 am

Page 2 of 3





**ROBERT LE, PC**  
ATTORNEY AT LAW

PH | 503.734.2099  
FX | 888.527.9501

1235 SE Morrison Street, 2<sup>nd</sup> FL  
Portland, Oregon 97214

May 31, 2018

**SENT VIA CERTIFIED FIRST CLASS U.S. MAIL: 7016 3010 0001 0747 0537  
& VIA FAX: 800-531-8669**

USAA Insurance  
PO BOX 33490  
San Antonio TX 78265

Re: Our Clients/Your Insured: John Whitman, Jaime Bond Whitman  
Date of Loss: 06/03/2017  
Your Claim No.: 014806885-8  
Your Policy No.: 01480 68 85C 7106 1

Dear Adjuster(s):

Please be advised that this office has been retained to represent the above named party/ your insured in connection to their claim for the injuries sustained from the above-referenced motor vehicle. **Please do not contact our client directly. All correspondence and communication should be directed to our office immediately.** Please be advised that our client is under the care of one or more treatment providers. If our client receives any bills for their treatment(s) in the mail they will be promptly forwarded to your office for payment.

If you do not already have a completed PIP application from our client, please forward one to our Portland office location. If you have a completed PIP application from our client, please forward a copy of the document and the release to our office.

Please provide the following information/documentation:

1. The PIP/medical benefits dollar limits and duration;
2. A certified copy of your insured's policy, including a copy of the declarations page and all endorsements;
3. Copies of any and all statements or investigative reports, written or oral, obtained from our client, or any witnesses regarding this incident;
4. Color copies of any photographs taken of the accident scene, damage done to any of the vehicles involved, and/or our client's injuries;
5. Please provide our office with a copy of your PIP ledger sheet showing the payments that have been made on our client's behalf. If there are bills that have been submitted and not paid, please provide copies of those bills and a brief explanation for the nonpayment.

Please be aware that our client expects their PIP claim to be handled fairly and in full accord with ORS 746.230, which sets forth the standards for the fair handling of PIP claims in Oregon State.

Pursuant to ORS 742.546, please be advised that our office plans to submit a demand to the liability carrier in the amount of \$500,000.00. Be advised, for Oregon insurance policies, it is the policy of this office to NOT extend any efforts on your behalf to obtain collection for you of PIP benefits from the responsible party's insurance carrier, unless a lien is served upon us pursuant to ORS 742.546. This

statute requires you give written notice of your intent to assert a lien “within 30 days from the receipt of notice or knowledge of such claim or legal action”, or such a lien is barred.

Therefore, request is hereby made that you make election of either inter-insurer reimbursement under ORS 742.534, or a lien on plaintiff’s claim under ORS 742.536. These remedies are mutually exclusive. You cannot choose both. Therefore, I need a specific commitment from you whether I am to collect your PIP reimbursement for you as a waiver of any lien or subrogation rights you might otherwise have against any proceeds we recover for our client, and that you are making an election under inter-insurer reimbursement pursuant to ORS 742.534. Any notification to proceed via lien must be made upon this office by personal service, registered or certified mail.

In addition to the above please be advised that this letter should also serve as our proof of loss for PIP benefits and UM/UIM benefits, if applicable. If you need any further information regarding this proof of loss, please let us know immediately. We request immediate payment of all benefits available.

Please be advised that all further communications regarding this matter must be directed to this office. **Pursuant to HIPAA, you are not authorized to provide copies of your insured’s medical records to your UIM/UM adjuster or any third party automobile insurance carriers. Any medical authorizations previously provided to the third party automobile insurance carrier have been revoked.**

Sincerely,

**ROBERT LE PC**

Cc: clients



**ROBERT LE, PC**  
ATTORNEY AT LAW

PH | 503.734.2099  
FX | 888.527.9501

Portland Office  
826 SE 3<sup>rd</sup> Ave., Ste. 302  
Portland, Oregon 97214

April 13, 2021

**SENT VIA US MAIL and EMAIL:**

**Aaron C Denton**  
**Denton Law**  
**650 NE Holladay St Ste 1600**  
**Portland OR 97232**  
**adenton@dentonlawpdx.com**

RE: Whitman and Whitman v. USAA et al  
Multnomah County Case No.: 19CV16005

Demand for Policy Limits

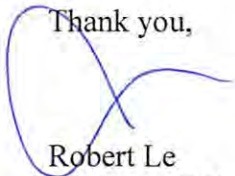
Dear Mr. Denton:

This is a demand for UIM policy limits made payable by Allstate to Plaintiff Jaime Whitman. Your client has recognized Ms. Whitman's injuries and medical treatment are reasonable and necessary by agreeing to pay all of her PIP limits. The only matter remaining is her underinsured motorist claim. As you are aware, Mr. Gatewood admitted liability and in doing so, admitted he crashed into Ms. Whitman's vehicle at a high rate of speed causing her vehicle to flip onto its hood, slide down the highway, and coming to a rest land in the center of the highway. Ms. Whitman and her husband were trapped inside the vehicle on a highway in rural Oregon. She sustained injuries to her \_\_\_\_\_ which some or all continue to this day from this crash.

Please respond to this demand in writing by April 28, 2021. Please include Lucia, my litigation paralegal, in your response and also include her in writing for all future communications. Given my availability, she may be able to respond sooner.

If your client does not tender policy limits, we have full trust in the court and jury system; believing in the citizens of Multnomah County to provide a fair ear and voice in this matter.

Thank you,



Robert Le  
Attorney, P.C.

Cc: client(s)

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IN THE CIRCUIT COURT OF OREGON  
FOR MULTNOMAH COUNTY

JAIME BOND WHITMAN, and JOHN  
WHITMAN

Plaintiffs,

v.

USAA CASUALTY INSURANCE  
COMPANY, and CURTIS GATEWOOD,

Defendants.

Case No. 19CV16005

**FIRST AMENDED COMPLAINT –  
NEGLIGENCE and BREACH OF  
CONTRACT**

Claim for \$804,969.35

ORS 21.160(1)(c)

Not Subject to Mandatory Arbitration

Jury Trial Requested

COMES NOW Plaintiffs, and for cause of action against Defendants, alleges as follows:

**JURISDICTION**

1. This Court has jurisdiction over the parties and the subject matter pursuant to Rule 4 of the Oregon Rules of Civil Procedure.

**PARTIES**

2. Plaintiff Jaime Bond Whitman (hereinafter referred to as “Plaintiff Jaime”) is an individual residing in Boise, Idaho.

3. Plaintiff John Whitman (hereinafter referred to as “Plaintiff John”) is an individual residing in Boise, Idaho.



1           10.     Defendant Gatewood’s conduct created a foreseeable risk of harm to Plaintiffs.

2           11.     As a proximate result of Defendant Gatewood’s negligence, Plaintiff John  
3 suffered injuries to his muscles, tendons, bones, and soft tissue of his back, neck, head,  
4 shoulders, arms, including strains, sprains; and severe headaches, dizziness, dazed, and  
5 nervousness, all of which injuries, and the consequences of them, are or may be permanent. The  
6 collision and these injuries have caused Plaintiff John to suffer pain, inconvenience and  
7 interference with Plaintiff John’s normal and usual activities all to his non-economic damage in  
8 an amount which the jury determines is reasonable, but not to exceed \$300,000.00.

9           12.     In addition, and as a further proximate result of Defendant Gatewood’s  
10 negligence, Plaintiff John suffered economic damages in the form of medical bills and costs in an  
11 amount to be determined at trial but not to exceed \$6,118.55; and future medical expenses in an  
12 amount to be proven at trial but not to exceed \$20,000.00. These costs are continuing and will  
13 be interlineated at the time of trial.

14           13.     As a proximate result of Defendant Gatewood’s negligence, Plaintiff Jaime  
15 suffered injuries to her muscles, tendons, bones, and soft tissue of her back, neck, head,  
16 shoulders, arms, legs, waist, hips, legs, including strains, sprains; and severe headaches,  
17 dizziness, dazed, and nervousness, all of which injuries, and the consequences of them, are or  
18 may be permanent. The collision and these injuries have caused Plaintiff Jaime to suffer pain,  
19 inconvenience and interference with Plaintiff Jaime’s normal and usual activities all to her non-  
20 economic damage in an amount which the jury determines is reasonable, but not to exceed  
21 \$300,000.00.

22           14.     In addition, and as a further proximate result of Defendant Gatewood’s  
23 negligence, Plaintiff Jaime suffered economic damages in the form of medical bills and costs in  
24 an amount to be determined at trial but not to exceed \$28,850.80; and future medical expenses in  
25

1 an amount to be proven at trial but not to exceed \$100,000.00. These costs are continuing, and  
2 will be interlineated at the time of trial.

3 15. Plaintiffs reserve the right to move for punitive damages.  
4

5 **SECOND CLAIM FOR RELIEF**

6 **(Breach of Contract- as to Defendant USAA)**

7 16. Plaintiffs re-allege and reincorporate by reference herein paragraphs 1-15.

8 17. On information and belief, at all material times, Defendant Gatewood had  
9 liability insurance coverage.

10 18. At all material times, Plaintiffs were insured by Defendant USAA Policy No.  
11 01480 68 85C 7106 1 (hereinafter “the insurance policy”), which provided underinsured motorist  
12 coverage to Plaintiffs in the amount of \$500,000.00 each person and \$1,000,000.00 per accident.

13 19. Plaintiffs have performed their obligations required by the insurance policy.

14 20. Defendant USAA has breached its obligations under the insurance policy by  
15 failing to pay Plaintiffs underinsured motorist benefits in the amount of \$500,000.00 each person  
16 and \$1,000,000.00 per accident.

17 21. Plaintiffs are entitled to recover reasonable attorney fees from Defendant USAA  
18 pursuant to ORS 742.061.

19 22. Plaintiffs reserve the right to move for punitive damages.  
20

21 **THIRD CLAIM FOR RELIEF**

22 **COUNT III**

23 **(Breach of Contract- PIP- As against Defendant USAA)**

24 23. Plaintiff Jaime re-alleges and reincorporates by reference herein paragraphs 1-22.

25 24. On June 3, 2017, Plaintiff Jaime was insured by Defendant USAA for motor

1 vehicle coverage, Policy Number: 01480 68 85C 7106 1, Claim Number 014806885-008:, that  
2 included Personal Injury Protection (“PIP”) benefits.

3 25. Plaintiff Jaime has performed all conditions required of her under Oregon law and  
4 the insurance policy to receive the PIP benefits.

5 26. Despite the steady stream of premiums paid by Plaintiff Jaime to ensure that such  
6 coverage would be there, Defendant USAA has breached the contract in one or more of the  
7 following particulars:

- 8 a. By refusing to pay for medical expenses that were reasonably and necessarily  
9 incurred as a result of the collision described above.

10 27. As a result of this breach of contract, Plaintiff Jaime has suffered economic  
11 damages in an amount to be determined at trial but not to exceed \$25,000.00.

12 28. Plaintiff is entitled to her reasonable attorney fees pursuant to ORS 742.061.

13 29. Plaintiffs reserve the right to move for punitive damages.

14  
15 **THIRD CLAIM FOR RELIEF**

16 **COUNT IV**

17 **(Breach of Contract- PIP- As against Defendant USAA)**

18 30. Plaintiff John re-alleges and reincorporates by reference herein paragraphs 1-28.

19 31. On June 3, 2017, Plaintiff John was insured by Defendant USAA for motor  
20 vehicle coverage, Policy Number: 01480 68 85C 7106 1, Claim Number 014806885-008:, that  
21 included Personal Injury Protection (“PIP”) benefits.

22 32. Plaintiff John has performed all conditions required of him under Oregon law and  
23 the insurance policy to receive the PIP benefits.

24 33. Despite the steady stream of premiums paid by Plaintiff John to ensure that such  
25



1 coverage would be there, Defendant USAA has breached the contract in one or more of the  
2 following particulars:

3 b. By refusing to pay for medical expenses that were reasonably and necessarily  
4 incurred as a result of the collision described above.

5 34. As a result of this breach of contract, Plaintiff John has suffered economic  
6 damages in an amount to be determined at trial but not to exceed \$25,000.00.

7 35. Plaintiff is entitled to his reasonable attorney fees pursuant to ORS 742.061.

8 36. Plaintiffs reserve the right to move for punitive damages.

9  
10 WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

11 ON THEIR FIRST CLAIM FOR RELIEF as against Defendant Gatewood:

12 a. For Plaintiff John's noneconomic damages in an amount which the jury  
13 determines to be reasonable but not to exceed \$300,000.00;

14 b. For Plaintiff John's economic damages in an amount to be determined at trial but  
15 not to exceed the amount of \$6,118.55 and future medical expenses in an amount  
16 to be determined at trial but not to exceed the amount of \$20,000.00;

17 c. For Plaintiff Jaime's noneconomic damages in an amount which the jury  
18 determines to be reasonable but not to exceed \$300,000.00;

19 d. For Plaintiff Jamie's economic damages in an amount to be determined at trial but  
20 not exceed the amount of \$28,850.80 and future medical expenses in an amount to  
21 be determined at trial but not to exceed the amount of \$100,000.00;

22 e. For Plaintiffs' costs and disbursements incurred herein; and

23 f. For such other and further relief as the Court deems just and equitable.

24 ON THEIR SECOND CLAIM FOR RELIEF as against Defendant USAA:

25 g. For Plaintiff John's noneconomic damages in an amount which the jury

1 determines to be reasonable but not to exceed \$300,000.00;

2 h. For Plaintiff John's economic damages in an amount to be determined at trial but  
3 not exceed the amount of \$6,118.55 and future medical expenses in an amount to  
4 be determined at trial but not to exceed the amount of \$20,000.00;

5 i. For Plaintiff Jaime's noneconomic damages in an amount which the jury  
6 determines to be reasonable but not to exceed \$300,000.00;

7 j. For Plaintiff Jaime's economic damages in an amount to be determined at trial but  
8 not exceed the amount of \$28,850.80 and future medical expenses in an amount to  
9 be determined at trial but not to exceed the amount of \$100,000.00;

10 k. For Plaintiffs' costs and disbursements incurred herein; and

11 l. For such other and further relief as the Court deems just and equitable.

12 ON THEIR THIRD CLAIM FOR RELIEF as against Defendant USAA PIP:

13 f. For reasonable and necessary medical expenses incurred by Plaintiff Jaime  
14 following this accident in an amount to be determined at trial but not to exceed the  
15 amount of \$25,000.00;

16 g. For Plaintiff Jaime's reasonable attorney fees and costs incurred in bringing and  
17 prosecuting this action pursuant to ORS 742.061;

18 h. For Plaintiffs' costs and disbursements incurred herein; and

19 i. For such other and further relief as the Court deems just and equitable.

20 ON THEIR FOURTH CLAIM FOR RELIEF as against Defendant USAA PIP:

21 f. For reasonable and necessary medical expenses incurred by Plaintiff John  
22 following this accident in an amount to be determined at trial but not to exceed the  
23 amount of \$25,000.00;

24 g. For Plaintiff John's reasonable attorney fees and costs incurred in bringing and  
25 prosecuting this action pursuant to ORS 742.061;

- 1 h. For Plaintiffs' costs and disbursements incurred herein; and  
2 i. For such other and further relief as the Court deems just and equitable.  
3

4 Dated this 14<sup>th</sup> day of June, 2019.  
5

6 ROBERT LE, ATTORNEY, P.C.  
7

8 /s/Robert Le  
9 Robert Le, OSB No. 094167  
10 Of Attorneys for Plaintiffs  
11 rl@robertlelaw.com  
12 Trial Attorney: Robert Le  
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FILED  
22 JUL 18 PM 12:21  
4TH JUDICIAL DIST.

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MULTNOMAH

JAIME BOND WHITMAN, and JOHN  
WHITMAN

Case No. 19CV16005

Plaintiffs,

VERDICT FORM

v.

USAA CASUALTY INSURANCE  
COMPANY,

Defendant.

We the jury find:

1. What are plaintiff Jaime Bond Whitman's economic damages related to the June 3, 2017, motor vehicle collision?

Answer: \$ 135,000

2. What are plaintiff John Whitman's economic damages related to the June 3, 2017, motor vehicle collision?

Answer: \$ 15,000

3. What are plaintiff Jaime Bond Whitman's non-economic damages related to the June 3, 2017, motor vehicle collision?

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Answer: \$ 365,000

What are plaintiff John Whitman's non-economic damages related to the June 3, 2017, motor vehicle collision? Answer: \$ 85,000

There are no more questions. Your presiding juror should sign and date this verdict form.

DATED this 15<sup>th</sup> day of July, 2022.

C. Paige Juntunen  
Presiding Juror

Carolyn Paige Juntunen  
Printed Name

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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
IN AND FOR THE COUNTY OF MULTNOMAH

|                                  |   |                             |
|----------------------------------|---|-----------------------------|
| JAIME BOND WHITMAN and JOHN      | ) | Case No. 19cv16005          |
| WHITMAN,                         | ) |                             |
|                                  | ) | <b>GENERAL JUDGMENT AND</b> |
| Plaintiffs,                      | ) | <b>MONEY AWARD</b>          |
|                                  | ) |                             |
| v.                               | ) |                             |
|                                  | ) |                             |
| USAA CASUALTY INSURANCE COMPANY, | ) |                             |
| and CURTIS GATEWOOD,             | ) |                             |
|                                  | ) |                             |
| Defendants.                      | ) |                             |
|                                  | ) |                             |

---

Plaintiffs brought a breach of contract claim against their insurer, Defendant USAA Casualty Insurance Company (“USAA”). Plaintiffs alleged claims against USAA for payment of personal injury protection (“PIP”) and underinsured motorist (“UIM”) benefits. Plaintiffs’ PIP claims were resolved on summary judgment. Plaintiffs’ UIM claims proceeded to trial before the Honorable Celia A. Howes commencing on July 11, 2022, and concluding on July 15, 2022. After trial, the jury awarded plaintiff John Whitman \$15,000 in economic damages and \$85,000 in non-economic damages. Due to offsets provided to USAA based on plaintiffs’ prior settlement with defendant Gatewood and USAA’s payment of PIP benefits, Mr. Whitman is not entitled to entry of a judgment against USAA. The jury awarded plaintiff Jaime Whitman \$135,000 in non-economic damages and \$365,000 in non-economic damages. After USAA’s offsets for Mrs. Whitman’s

1 settlement with defendant Gatewood, and for USAA's payment of PIP benefits, Mrs. Whitman is  
2 entitled to entry of a money judgment in the amount of \$375,000.

3 NOW THEREFORE, IT IS HEREBY ADJUDGED, Plaintiff Jaime Whitman does have a  
4 judgment against Defendant USAA Casualty Insurance Company as follows:

5 MONEY AWARD

6 Judgment Creditor: Jaime Whitman  
7 c/o Robert Le, Attorney PC  
8 826 SE 3<sup>rd</sup> Ave, Ste. 302  
9 Portland, OR 97214  
503-734-2099

10 Creditor's Attorney, Address, and Phone: Robert Le  
11 Robert Le, Attorney PC  
12 826 SE 3<sup>rd</sup> Ave, Ste. 302  
Portland, OR 97214  
503-734-2099

13 Judgment Debtor: USAA Casualty Insurance Company  
14 9800 Fredericksburg Road  
San Antonio, Texas 78288

15 Debtor's Attorney, Address, and Phone: Aaron Denton  
16 Denton Law  
17 650 N.E. Holladay Street, Suite 1600  
18 Portland, Oregon 97232  
(503) 595 – 8199

19 Interested Owed to Date: None

20 Post Judgment Interest: Simple interest to accrue at 9% per  
21 annum from entry of judgment

22 Periodic Accruals: Per annum

23 ///

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1 Costs and Disbursements: To be determined  
2 Attorneys' Fees Awarded: To be determined  
3 Total Money Judgment: \$375,000  
4

5 **1/17/2023 8:30:59 AM**

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7 \_\_\_\_\_  
Circuit Court Judge Celia A. Howes

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**UTCRC 5.100 CERTIFICATE OF READINESS**

This proposed order or judgment is ready for judicial signature because:

1.  Each party affected by this order or judgment has stipulated to the order or judgment, as shown by each party's signature on the document being submitted.
2.  Each party affected by this order or judgment has approved the order or judgment, as shown by each party's signature on the document being submitted or by written confirmation of approval sent to me.
3.  I have served a copy of this order or judgment on each party entitled to service and:
  - a.  No objection has been served on me.
  - b.  I received objections that I could not resolve with a party despite reasonable efforts to do so. I have filed a copy of the objections I received and indicated which objections remain unresolved.
  - c.  After conferring about objections, [role and name of objecting party] agreed to independently file any remaining objection.
4.  Service is not required pursuant to subsection (3) of this rule, or by statute, rule, or otherwise.
5.  This is a proposed judgment that includes an award of punitive damages and notice has been served on the Director of the Crime Victims' Assistance Section as required by subsection (5) of this rule.
6.  Other: \_\_\_\_\_.

/ s / Aaron C. Denton  
By: \_\_\_\_\_  
**Aaron C. Denton**  
OSB #022890  
Telephone: (503) 595-8199

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5 IN THE CIRCUIT COURT OF THE STATE OF OREGON  
6 FOR THE COUNTY OF MULTNOMAH  
7

8 JAIME BOND WHITMAN, and JOHN  
9 WHITMAN,

10  
11 Plaintiffs,

12 v.

13 USAA CASUALTY INSURANCE  
14 COMPANY,

15 Defendant.  
16

Case No. 19CV16005

**PLAINTIFFS' STATEMENT FOR  
ATTORNEY FEES, COSTS, AND  
DISBURSEMENTS**

Trial Judge: Hon. Celia Howes

Oral Argument Requested

17 The undersigned attorney offers the following facts in support of an award of \$222,642.50  
18 in reasonable and necessary attorney fees incurred in prosecuting plaintiffs' claims, the  
19 application of a 2.0 multiplier to that amount for a total of \$445,285.00 for work on their claims,  
20 awarding \$24,002.50 to date in fees related to their fee petition, and \$5,718.16 in litigation  
21 expenses, costs, and disbursements, for a total award of \$475,005.66. Plaintiffs' attorney fee  
22 request is summarized in Exhibit A to the concurrently-filed Declaration of Robert Le and  
23 supported by Plaintiffs' concurrently-filed memorandum.

24 **I. Right to Attorney Fees.**

25 Plaintiffs are entitled to recover attorney fees, costs and disbursements pursuant to ORS  
26 742.061 and ORCP 68. Defendant USAA Casualty Insurance Company (hereinafter referred to  
as "USAA") does not dispute plaintiff's entitlement to attorney fees on their breach of contract

1 claim as to personal injury protection (“PIP”) benefits, only the amount of their reasonable  
2 attorney fees.

3 With respect to plaintiffs’ breach of contract claim as to underinsured motorist (“UIM”)  
4 benefits, USAA contests both plaintiff’s entitlement to attorney fees and the reasonable amount  
5 of such fees. As further discussed in their supporting Memorandum, Plaintiffs are entitled to  
6 attorney fees on their UIM claim because (1) they are the prevailing parties given the jury’s  
7 verdict in their favor, (2) Plaintiffs are entitled to recover attorney fees under ORS 742.061  
8 because settlement was not made within six months of the proof of loss, and (3) USAA failed to  
9 bring itself within the “safe harbor” provision of ORS 742.061(3) or else left the safe harbor by  
raising non-safe harbor issues.

10 **II. Amount of Attorney Fees.**

11 The total number of hours and services rendered in the prosecution of plaintiffs’ claims in  
12 this action by each attorney and staff member and their hourly rates are set forth in detail **Exhibit**  
**1** hereto, which is summarized as follows:

| <b>Name</b>                  | <b>Position</b> | <b>Hourly Rate</b> | <b>Hours Billed</b> | <b>Subtotal Fees</b> |
|------------------------------|-----------------|--------------------|---------------------|----------------------|
| Robert Le (Ex. 1a)           | Attorney        | \$425.00           | 322.9               | \$137,232.50         |
| Matthew Kirkpatrick (Ex. 1b) | Attorney        | \$450.00           | 150.3               | \$67,635.00          |
| Andrew Grade (Ex. 1c)        | Attorney        | \$425.00           | 16.2                | \$6,885.00           |
| Lucia Becchetti (Ex. 1d)     | Paralegal       | \$150.00           | 72.6                | \$10,890.00          |
| <b>TOTALS:</b>               |                 |                    | <b>562.0</b>        | <b>\$222,642.50</b>  |

18  
19 **A. ORS 20.075 Factors.**

20 The specific factors under ORS 20.075 supporting plaintiffs’ requested fees are discussed  
21 in the accompanying Memorandum and summarized below:

22 ORS 20.075(1)

- 23  The conduct of the parties in the transactions or occurrences that gave rise to the  
24 litigation including any conduct of a party that was reckless, willful, malicious, in  
25 bad faith or illegal;  
26  The objective reasonableness of the claims and defenses asserted by the parties;

- 1            The extent to which an award of an attorney fee in the case would deter others
- 2                                    from asserting good faith claims or defenses in similar cases;
- 3            The extent to which an award of an attorney fee in the case would deter others
- 4                                    from asserting meritless claims and defenses;
- 5            The objective reasonableness of the parties and the diligence of the parties and
- 6                                    their attorneys during the proceedings;
- 7            The objective reasonableness of the parties and the diligence of the parties in
- 8                                    pursuing settlement of the dispute;
- 9            The amount that the court has awarded as a prevailing party fee under ORS
- 10                                   20.190; and
- 11            Such other factors as the court may consider appropriate under the circumstances
- 12                                   of the case.

11       ORS 20.075(2)

- 12            The time and labor required in the proceeding, the novelty and difficulty of the
- 13                                    questions involved, and the skill needed to perform the legal services properly;
- 14               The likelihood, if apparent to the client, that the acceptance of the particular
- 15                                    employment will preclude any other employment by the lawyer;
- 16            The fees customarily charged in the locality for similar services;
- 17            The amount involved and the results obtained;
- 18               The time limitations imposed by the client or circumstances;
- 19            The nature and length of the personal relationship with the client;
- 20            The experience, reputation and ability of the lawyers performing the services;
- 21            Whether the fee is fixed or contingent; and
- 22            Whether the attorney performed the services on a pro bono basis or the award of
- 23                                    attorney fees otherwise promotes access to justice.

22    **B.     Additional Work on Attorney Fee Petition.**

23            In addition to their attorney fees incurred in prosecuting their claims, plaintiffs request

24    \$24,002.50 in attorney fees to date for preparing their fee petition. This comprises 8.2 hours and

1 \$3,485.00 by Mr. Le, 29.6 hours and \$9,765 by Mr. Kirkpatrick,<sup>1</sup> 24.7 hours and \$10,497.50 by  
2 Andrew Grade, and 1.7 hours and \$255 by Ms. Becchetti. Plaintiffs will submit a supplemental  
3 request if necessary for the additional costs and expenses incurred in responding to defendant's  
4 objections to their fee petition and for the fee hearing.

5 **C. Multiplier**

6 Plaintiffs request a 2.0 fee multiplier on their \$222,642.50 in requested Lodestar amount  
7 of attorney fees incurred in prosecuting this action, increasing it to \$445,285.00.

8 **III. Costs and Disbursements**

9 Plaintiffs are entitled to recover costs and disbursements, which include amounts directly  
10 billed to or paid for by the client that are not overhead expenses already reflected in the hourly  
11 rate or fee. These include the filing fee, service fees, prevailing party fee pursuant to ORS  
12 20.190(2)(a)(A), medical record fees, and subpoena costs. Plaintiff incurred a total of \$5,718.16  
13 in recoverable litigation costs, including a \$640.00 prevailing party fee under ORS  
14 20.190(2)(a)(B).<sup>2</sup> The itemized list of litigation expenses is attached hereto as **Exhibit 2**.

15 **IV. Summary**

16 In summary, Plaintiffs are entitled to an award of reasonable and necessary attorney fees  
17 in the sum of \$222,642.50, with a 2.0 multiplier on that amount, \$24,002.50 in attorney fees to  
18 date related to the fee petition, and \$5,718.16 in costs and disbursements, for a total award of  
19 \$475,005.66.

20 ///

21 ///

22 ///

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23 <sup>1</sup> The amount of Mr. Kirkpatrick's requested attorney fees for work on the fee petition has been  
24 reduced by \$3,555 due to certain non-attorney work he performed, such as formatting the time  
25 records exhibits, preparing the exhibits to the Le Declaration, and entering the Memorandum's  
26 citations to the record.

<sup>2</sup> Plaintiffs' actual costs in this action total approximately \$51,000 to date. The vast majority are  
not recoverable, including \$31,000 in expert expenses, along with deposition costs, travel,  
lodging, meal, and other expenses.

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**V. Declaration in Support**

This statement is further supported by the Declaration of Robert Le, its exhibits, Plaintiff’s Memorandum, and the court’s files and record in this matter.

**I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND IT IS MADE FOR USE AS EVIDENCE IN COURT AND IS SUBJECT TO PENALTY FOR PERJURY.**

DATED this 20<sup>th</sup> day of January, 2023.

ROBERT LE, ATTORNEY P.C.

/s/Robert Le  
Robert Le, OSB No. 094167  
Of attorneys for Plaintiffs  
rl@robertlelaw.com

1 CERTIFICATE OF SERVICE

2  
3 I hereby certify that on this 20th day of January 2023, a copy of the foregoing  
4 PLAINTIFFS’ STATEMENT FOR ATTORNEY FEES, COSTS, AND DISBURSEMENTS  
5 was delivered via first class mail, postage prepaid, and email to:

6 Aaron C Denton  
7 Denton Law  
8 650 NE Holladay St Ste 1600  
9 Portland OR 97232  
adenton@dentonlawpdx.com  
Attorney for Defendant USAA

10  
11 /s/Robert Le  
12 Robert Le, OSB No. 094167  
13 Of Attorneys for Plaintiffs  
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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MULTNOMAH

JAIME BOND WHITMAN and JOHN  
WHITMAN,

Plaintiffs,

v.

USAA CASUALTY INSURANCE  
COMPANY,

Defendant.

Case No. 19CV16005

SUPPLEMENTAL JUDGMENT AND  
MONEY AWARD

The Court, having reviewed the file and record, heard the parties' evidence and arguments during a hearing on March 3, 2023 and April 7, 2023, the Court having issued the June 8, 2023, Opinion and Order on Attorney Fees in this matter, and being fully advised in the premises,

NOW THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that, in addition to the sums awarded in the January 17, 2013, General Judgment, plaintiffs have further judgment against defendant USAA Casualty Insurance Company for attorney fees in the amount of \$276,380.88 and \$3,021.21 in costs and disbursements, pursuant to ORS 742.061 and ORCP 68.

MONEY AWARD

1. Judgment Creditors:

Jaime Bond Whitman and John Whitman  
c/o Robert Le  
826 SE 3<sup>rd</sup> Ave., Ste. 302  
Portland, OR 97214  
Telephone: (503) 734-2099



1 2. Attorney for Creditors:

Robert Le  
826 SE 3<sup>rd</sup> Ave., Ste. 302  
Portland, OR 97214  
Telephone: (503) 734-2099

2  
3  
4 3. Judgment Debtor:

USAA Casualty Insurance Company  
c/o Aaron C. Denton  
Denton Law  
650 NE Holladay St., Ste. 1600  
Portland, OR 97232  
Telephone: (503) 595-8199

5  
6  
7  
8 4. Attorney for Debtor:

Aaron C. Denton  
Denton Law  
650 NE Holladay St., Ste. 1600  
Portland, OR 97232  
Telephone: (503) 595-8199

9  
10  
11 5. Costs and Disbursements:

\$3,021.21

12 6. Attorney Fees:

\$276,380.88

13 7. Post- Judgment Interest:

Simple interest at 9% per annum on the total  
judgment from the date the judgment is  
entered until paid

14  
15  
16 **6/23/2023 12:59:18 PM**

17 

18 Circuit Court Judge Celia A. Howes

19  
20  
21 SUBMITTED BY:

22 Robert Le, OSB #094167  
23 Of Attorneys for Plaintiffs

24  
25 SUPPLEMENTAL JUDGMENT AND MONEY  
AWARD- 2

ROBERT LE ATTORNEY P.C.  
826 SE 3<sup>rd</sup> Ave., Ste. 302  
Portland, OR 97214  
8-46 Tel: (503) 734-2099 Fax: (888) 527-9501  
rl@robertlelaw.com

CERTIFICATE OF SERVICE

I, Robert Le, of the law firm ROBERT LE, ATTORNEY P.C., attorneys for the Plaintiff herein, certify that I have served Declaration of Stephen Leggatt in Support of Plaintiffs' Statement for Attorney Fees upon:

**Aaron C Denton**  
**Denton Law**  
**650 NE Holladay St Ste 1600**  
**Portland OR 97232**  
**adenton@dentonlawpdx.com**  
**Of Attorney for Defendant USAA**

- By mailing a copy thereof in a sealed, first class postage prepaid envelope addressed to the above-named attorneys/or parties (if pro se) at the addresses as set forth above by placing a copy thereof duly certified by the undersigned attorney and deposited the same in the United States Post Office, on the 8<sup>th</sup> day of June, 2023;
- By e service through Odyssey File and Serve a copy thereof to said attorney's email address as shown above on the date set forth on the 8<sup>th</sup> day of June, 2023; and
- By emailing a copy thereof to said attorney's email address as shown above on the date set forth on the 8<sup>th</sup> day of June, 2023.

ROBERT LE, ATTORNEY P.C.  
826 SE 3<sup>rd</sup> Ave., Ste. 302  
Portland, OR 97214  
Tel: 503-734-2099  
Fax: 888-527-9501

By: /s/Robert Le  
Robert Le, OSB No. 094167  
Of Attorneys for Plaintiff

1 **CERTIFICATE OF READINESS – UTCR 5.100(2)**

2  
3 This proposed Judgment/Order:

- 4 1.  Was served on opposing counsel not less than 3 days prior to submission to the court.
- 5 2.  Is accompanied by a stipulation by opposing counsel that no objection exists to the
- 6 the Judgment/Order.
- 7 3.  Was mailed to a self-represented party at the party’s last known address not less
- 8 than 7 days prior to submission to the court and was accompanied by notice of the
- 9 time period to object.
- 10 4.  Is not subject to service requirements pursuant to UTCR 5.100(3).

11 This proposed order or judgment is ready for judicial signature because:

- 12 1.  Each opposing party affected by this order or judgment has stipulated to or
- 13 approved its terms, as shown by each party’s signature on the proposed order or
- 14 judgment being submitted.
- 15 2.  Each opposing party affected by this order has approved the form of the
- 16 document, as shown by written communication to me or phone conference with
- 17 me.
- 18 3.  I have served a copy on all parties entitled to service and provided
- 19 written notice of the 14-day objection period set out in subsection 2(a)(ii) of
- 20 UTCR 5.100 and:
- 21  No objection has been served on me with that time frame.
- 22  I received objection that I could not resolve with the objecting party despite
- 23 reasonable efforts to do so. I have filed with the court a copy of the objections
- 24 I received and indicated which objections remain unresolved.
- 25 4.  The relief sought is against a party who has been found in default.

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5.  An order of default is being requested with this proposed judgment.

6.  Other:

7.  Service is not required pursuant to subsection (1)(c) of UTCR 5.100, or by statute, rule, or otherwise.

8.  This is a proposed judgment that includes an award of punitive damages and notice has been served on the Director of the Crime Victims’ Assistance Section as required by subsection (1)(d) of UTCR 5.100.

DATED this 13th day of June, 2023.

ROBERT LE, ATTORNEY P.C.

By: /s/Robert Le  
Robert Le, OSB No. 094167  
Of Attorneys for Plaintiff

# CHAPTER 10

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## BUSINESS TRANSACTIONS

Scott D. Schnuck  
*Altus Law LLC*

# **Chapter 10**

## **BUSINESS TRANSACTIONS**

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**Learning the Ropes**  
**Business Law and Transactions**

Scott Schnuck, AltusLaw LLC

November 7, 2023

1. Introduction
2. Business 60,000 feet
  - 2.1. Do, sell, count
  - 2.2. Need to understand what your client does to best serve its needs
  - 2.3. Understanding business helps run a successful practice (even as an associate)
3. Business Lawyers
  - 3.1. Providing expertise in areas the client does not have—spotting and navigating a client’s unknown unknowns
  - 3.2. Explaining the navigating the gaps and ambiguities in the “law”
  - 3.3. Explaining uncertainty and taking calculated risks
    - 3.3.1. Risk is inherent
    - 3.3.2. Not trying to avoid risk, trying to avoid unknown or unreasonable risks!
4. What do Business Lawyers Do?
  - 4.1. Help clients run successful businesses!
  - 4.2. Guide business through the wilds of the “law”
    - 4.2.1. General v. specialized v. hyper-specialized
    - 4.2.2. Providing specific deliverables versus liaison with specialized counsel
  - 4.3. Substantive Areas
    - 4.3.1. Entity issues
      - 4.3.1.1. Structure, ownership,
      - 4.3.1.2. Including high-level tax implications
    - 4.3.2. Financing
      - 4.3.2.1. Securities
    - 4.3.3. Ownership transitions
      - 4.3.3.1. M&A
      - 4.3.3.2. Adding/Removing owners
      - 4.3.3.3. Succession planning
    - 4.3.4. Out-of-the-ordinary-course transactions
      - 4.3.4.1. E.g., major purchases, new areas of business
    - 4.3.5. Contract drafting/review
    - 4.3.6. Employment
    - 4.3.7. Intellectual Property
    - 4.3.8. Regulatory compliance
    - 4.3.9. Tax implications
5. Day in the Life
  - 5.1. Review:
    - 5.1.1. Leases, contracts, regulatory notices
  - 5.2. Draft contracts

- 5.3. Entity formations
- 5.4. Assist with company governance
  - 5.4.1. Annual meetings,
  - 5.4.2. Consents/resolutions
  - 5.4.3. Ownership transitions
- 5.5. Advise regarding employment issues
  - 5.5.1. Hiring, pay equity, firing, benefits, practices
- 5.6. Assist with company financing
  - 5.6.1. Borrowing
  - 5.6.2. Additional equity investment
  - 5.6.3. Renegotiating existing debt
- 5.7. Assist with intellectual property issues
  - 5.7.1. Advise on appropriate protections
  - 5.7.2. Liaison with specialty counsel
    - 5.7.2.1. Guide the specialty lawyer
    - 5.7.2.2. Translate what the specialty lawyer says to the client
- 5.8. Assist/guidance with dispute resolution
  - 5.8.1. Litigation strategy
  - 5.8.2. Negotiations
  - 5.8.3. Coordinate/assist with discovery production
  - 5.8.4. Potentially advocate in small matters, regulatory hearings
- 5.9. Consider tax implications from business activities
- 5.10. Strategic counsellor
- 6. What makes a successful Business Lawyer
  - 6.1. Practical advice/guidance
    - 6.1.1. Help the client achieve their business goals
    - 6.1.2. Helping make money or avoid losing money
  - 6.2. Being a problem solver—especially spotting and solving problems the client does not see or appreciate
  - 6.3. Understanding the client’s business
  - 6.4. Ability to evaluate risk
  - 6.5. Ability to explain risk
- 7. Practice Tips
  - 7.1. Speak English!
  - 7.2. Relationships—Understand the nature of your practice—long-term/relationship based clientele
  - 7.3. Less is more
    - 7.3.1. Understand your limitations
    - 7.3.2. Limit areas of expertise/practice
    - 7.3.3. Builds credibility when you bring in an expert
  - 7.4. Prioritize client’s priorities
    - 7.4.1. Solve practical problems not legal problems
    - 7.4.2. A practical solution will nearly always be better than a “legal” solution
  - 7.5. Embrace learning

- 7.5.1. Legalities
- 7.5.2. Business fundamentals
- 7.5.3. People
- 7.6. Do NOT give your time/product away
  - 7.6.1. Your product IS your expertise
  - 7.6.2. You control the delivery of your product
- 7.7. Get the product out the door!
  - 7.7.1. Strive to continuously improve, but don't let perfection defeat progress
- 7.8. A word on resources
  - 7.8.1. Bar books – answering your unknown unknowns
  - 7.8.2. Colleagues – don't abuse their generosity, it is fine to ask, but do your own work
  - 7.8.3. Confirm!
    - 7.8.3.1. ALWAYS verify secondary materials with the case, statute, rule
    - 7.8.3.2. You are responsible for the correctness of your advice/work-product

# Business Law & Transactions

Learning the Ropes 2023

November 7, 2023

## Introduction

- Background—why listen to me...
- Understanding business
- Role of a business lawyer
- What does a business lawyer actually do
- How to be a successful business lawyer
- Practice tips



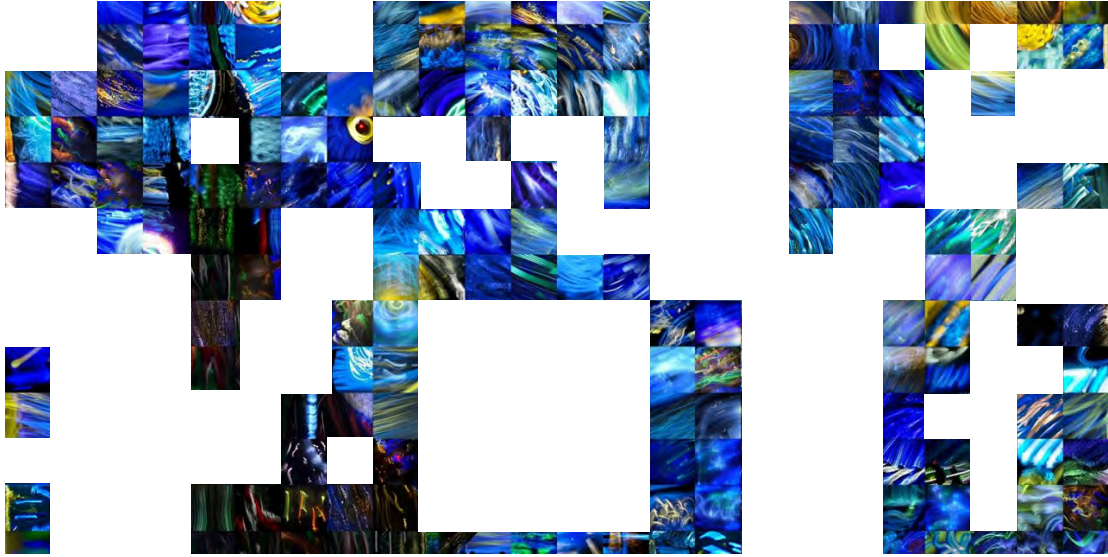
## Business – from 60,000 feet

- All businesses/any business:
  - Makes
  - Sells
  - Counts
  - Everything else is support
- Understand where your service fits in the client's business to help meet the client business' goals
- Useful to understand how a business works for YOUR practice

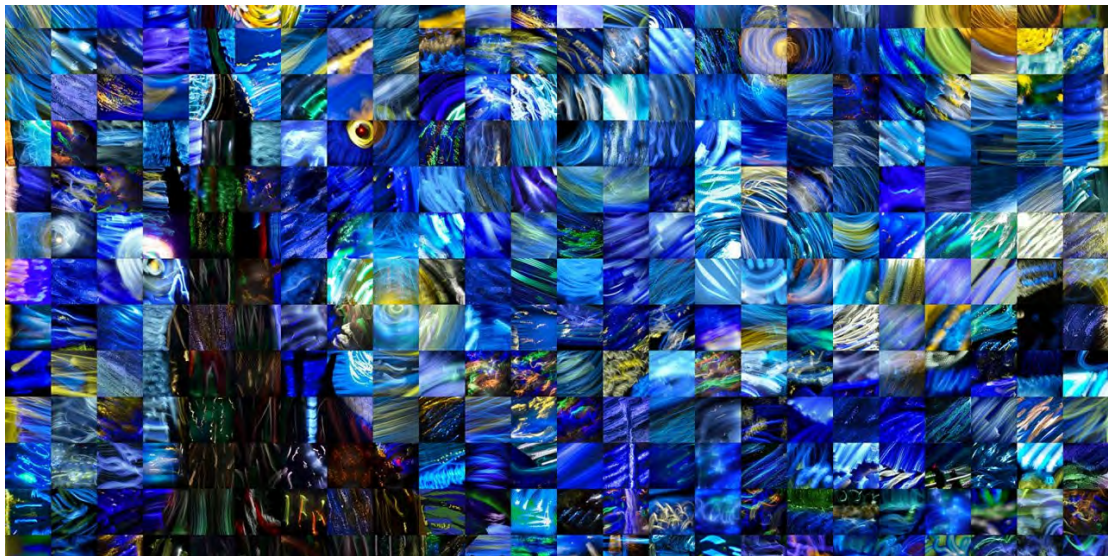
## Unknown Unknowns

- “. . . there are known knowns; there are things we know we know. We also know there are known unknowns; that is to say we know there are some things we do not know. But there are also unknown unknowns—the ones we don't know we don't know.”
  - Donald Rumsfeld, February 12, 2002
- Law (and business law in particular) is about the peril of **unknown unknowns**

# The Law is a Mosaic in Progress



# The Law is a Mosaic in Progress



## Business Lawyering – what is it?

- Provide expertise to the client
  - They do not know what you know
  - They often do not know what they do not know!
- Navigate gaps and ambiguities in the “law”
- Explain uncertainties and risks
  - Goal is NOT avoiding risk
  - Goal IS understanding risk and avoiding unnecessary risk

## Business Lawyering – what we do

- Not giving legal advice (huh?)
- Help clients run successful businesses!
- Think for the client to navigate the wilds of the “law”
- Lawyer’s advice can be:
  - General v. specialized v. hyper-specialized
  - Providing specific deliverables versus liaison with specialized counsel
- Usually focus on a few substantive areas and coordinate the rest



## Business Lawyering – Substantive Areas

- Entities/Ownership transitions
- Governance
- Financing
- Out-of-the-ordinary-course transactions
- Contract review/drafting
- Employment
- Intellectual property issues/protection
- Regulatory compliance
- Tax impacts

## A Day in the Life

- Can be extremely broad and varied!
- Strategic advice/sounding board
- Review/draft legal documents
- Draft company governance/ensure compliance with “formalities”
- Liaise with specialty counsel (guide and translate)
- Negotiate
- Assist with dispute resolution
- Assist with ownership transitions

## How to be Successful

- Give practical advice!
  - Help the client succeed (as the client defines success)
- Spot/solve problems—especially the unknown unknowns
- Understand the client's business
  - If you don't understand it, learn it
- Evaluate risk (don't just run from it)
  - Be aware of Dr. No!
- Explain risk and reward
  - Taking risk is inherent in business (and life)—embrace and navigate!

## Practice Tips

- Speak English NOT lawyerese
- Less is more—understand your limitations
- Prioritize the client's priorities
- Embrace learning
  - You cannot practice from a guidebook
- Do NOT give away your product!
- Get the product out the door
- A word on resources

# Questions

(ideally more questions)