

No. 32858-5-II

COURT OF APPEALS, DIV. II  
OF THE STATE OF WASHINGTON

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Save Columbia CU Committee and Robert Tice, Appellants,

vs.

Columbia Community Credit Union, Karen Martel, Edwin C.  
Bell, Dale Magers, William F. Byrd III, Robert M. Byrd,  
Dennis McLachlan, Mark L. Ail, Connie Jones, and Bruce  
Davidson, Respondents.

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APPELLANTS' OPENING BRIEF

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## ASSIGNMENTS OF ERROR & ISSUES

**Assignment of Error #1:** The trial court erred in denying Plaintiffs' motion for summary judgment on their claim ("the Term Limits Claim") that certain Defendants were barred by the bylaws of Columbia Community Credit Union ("Columbia" or "CCCU") from continuing to serve as, or from being re-elected as, its directors.

**Issue #1:** Were Plaintiffs entitled to summary judgment on the Term Limits Claim?

**Assignment of Error #2:** The trial court erred in dismissing the Term Limits Claim on Defendants' motion for summary judgment.

**Issue #2:** Were Defendants entitled to dismissal on summary judgment on the Term Limits Claim?

**Assignment of Error #3:** The trial court erred in dismissing, for failure to state a claim, Plaintiffs' claim ("the Fiduciary Duty Claim") that the Columbia directors breached their fiduciary duties to Columbia and its members.

**Issue #3:** Did Plaintiffs' Fiduciary Duty Claim state a claim upon which relief could be granted?

**Assignment of Error #4:** The trial court erred in dismissing, for failure to state a claim, Plaintiffs' claim ("the Access to Records Claim") that Defendants had wrongfully denied Plaintiffs and other members of Columbia access to its bylaws and bylaw amendments, minutes of its

member and director meetings, its corporate policies and plans, and other records.

**Issue #4:** Did Plaintiffs' Access to Records Claim state a claim upon which relief could be granted?

**Assignment of Error #5:** The trial court erred in dismissing, for failure to state a claim, Plaintiffs' claim ("the No Enabling Law Claim") for a declaratory judgment that no law enables a Washington state chartered credit union to convert into a Washington state chartered savings bank.

**Issue #5:** Did Plaintiffs' No Enabling Law Claim state a claim upon which relief could be granted?

**Assignment of Error #6:** The trial court erred in dismissing, for failure to state a claim, Plaintiffs' claim ("the Supermajority Vote Claim") for declaratory judgment that Washington law requires that any conversion or merger of a Washington state chartered credit union be approved by a two-thirds vote of its members voting on the proposal.

**Issue #6:** Did Plaintiffs' Supermajority Vote Claim state a claim upon which relief could be granted?

## STATEMENT OF THE CASE

Columbia Community Credit Union (“Columbia” or “CCCU”) is a credit union chartered by the state of Washington under Chapter 31.12 of the Revised Code of Washington. It is a nominal party Defendant/respondent in this proceeding. The other Defendants/respondents—Karen Martel, Edwin C. Bell<sup>1</sup>, Dale Magers, William F. Byrd III<sup>2</sup>, Robert M. Byrd, Dennis McLachlan<sup>3</sup>, Mark L. Ail, Connie Jones, and Bruce Davidson<sup>4</sup>—were members of Columbia’s board of directors in early 2004.

Plaintiff/appellant Save Columbia CU Committee (“Save CCU”) is a nonprofit corporation formed in January 2004 by members of Columbia who were opposed to the proposed conversion of Columbia into a bank. It is an entity member of Columbia. Plaintiff/appellant Robert Tice is a member of Columbia and of Save CCU, as were John Bucholtz and Steve Straub (who were co-plaintiffs in the trial court but who declined to participate in this appeal).

On April 15, 2003, Columbia’s board of directors adopted a plan of conversion (CP 188-95) whereby it would convert into a Washington mutual savings bank. The board had studied the conversion process for nearly nine months before that. CP 100. On August 5, 2003, Columbia

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<sup>1</sup> Lost directorship in election at Columbia’s annual meeting held September 15, 2004.

<sup>2</sup> Lost directorship in election at Columbia’s annual meeting held September 15, 2004.

<sup>3</sup> Lost directorship in election at Columbia’s annual meeting held September 15, 2004.

<sup>4</sup> Lost directorship in election at Columbia’s annual meeting held September 15, 2004.

mailed to its members a disclosure statement (CP 179-87) apprising them of the proposed conversion, soliciting their vote in favor of it, and asserting that the affirmative vote of a majority of the members who actually vote was required to approve the conversion. CP 182. At a special meeting of Columbia members held November 3, 2003, the conversion was approved by a member vote of 4,821 to 4,407, a 52 percent approval. (CP 7, 10) On January 30, 2004, Columbia announced that its federal regulator, the National Credit Union Administration (“NCUA”), had disapproved the voting methodology it had employed in seeking member approval of the conversion, so a re-vote of members would be required in order for Columbia to convert to a bank. CP 196.

In early March 2004, the trial court granted a mandamus application brought by Save CCU and certain of its members, ordering the directors of Columbia to hold a special meeting for its members to vote, in person or by mailed-in ballot, on the removal of its directors as requested by a petition that had been signed by 3,593 of its members and presented to Columbia in mid-January 2004. Complaint ¶¶16; CP 4, 42-3, 126, and 314. From January until the special meeting on March 28, 2004, the Defendants caused Columbia to conduct a costly and aggressive campaign to persuade its members to vote to retain, rather than vote to remove, the directors. CP 43, 63-82. In the ensuing vote, each director retained his or her office by receiving between about 51 percent to 53 percent of the votes cast. Verba-

tim Report of Proceedings (“VRP2”)<sup>5</sup> on April 22, 2004, page 36.

On March 16, 2004, Plaintiffs filed a Complaint for Declaratory Judgment and for Injunctions, commencing the proceeding that is the subject of this appeal. CP 1-11. The Complaint asserted five claims—the Term Limits Claim, the Fiduciary Duty Claim, the Access to Records Claim, the No Enabling Law Claim, and the Supermajority Vote Claim. *Id.* See Assignments of Error, *supra*. On April 2, 2004, Plaintiffs moved for summary judgment on the Term Limits Claim. CP 88-107. On April 5, 2004, Defendants moved for dismissal of each claim for failure to state a claim upon which relief can be granted (CR 12(b)(6)), or, alternatively, partial summary judgment dismissing Plaintiffs’ Term Limits Claim. CP 108-48. On April 22, 2005, the trial court heard arguments on those motions. VRP2. On April 23, 2005, as requested by the trial court during the prior day’s hearing (VRP2 21-5), Defendants supplemented the record concerning the Term Limits Claim. CP 293-308.

On May 7, 2005, the trial court signed a ruling (CP 309-18) granting Defendants’ motion for summary judgment on the Term Limits Claim, denying Defendants’ CR 12(b)(6) motion on the Fiduciary Duty Claim and the Access to Records Claim, and granting it on the No Enabling Law Claim and the Supermajority Claim. After motions for reconsideration were filed by Defendants (CP 329-48) and Plaintiffs (CP 354-64), the trial

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<sup>5</sup> The record includes a Verbatim Report of Proceedings (“VRP1”) on March 24, 2004.

court on June 17, 2004, signed a ruling (CP 426-29) modifying its earlier ruling by granting Defendants' CR 12(b)(6) motion as to the Fiduciary Duty Claim and the Access to Records Claim. On December 28, 2004, the trial court entered an order (CP 416-19) consistent with its rulings. Plaintiffs have appealed that order. CP 420-25.

During a hearing on March 24, 2004, counsel for the Plaintiffs and Defendants stipulated that the trial court, in the declaratory judgment action, could take judicial notice of the contents of its court file in the mandamus action. VRP1 8. To aid the appellate court, attached as an appendix to this brief is a pleading filed February 23, 2004, in the mandamus action—"Declaration of David E. Doss in Support of Memorandum in Opposition to Application for Writ of Mandamus"—that includes as exhibits Columbia's amended and restated bylaws and its settlement agreement dated February 6, 2004, with the Washington Department of Financial Institutions ("DFI") concerning its members' petition for a special meeting referenced above. As permitted by RAP 9.6(a), Appellant promptly will supplement its designation of clerk's papers with that pleading as well as, from that court file, the Application for Writ of Mandamus and the Ruling on Application for Writ of Mandamus.

## ARGUMENT

### 1. **Were Plaintiffs entitled to summary judgment on the Term Limits Claim?**

Plaintiffs were entitled to summary judgment on the Term Limits Claim. The Bylaws of CCCU, at Article V, Section 2, in effect since November 1999, imposed a limit on the number of consecutive terms as a director, by providing as follows:

**Section 2. Term of Office.** Each Director, upon election, may serve a maximum of three (3) consecutive, three (3) year terms, unless the Director resigns, dies, or is removed under this Article. A mandatory absence from the Board of two (2) years is required before a Director can be re-elected to serve another term of office. Each Board member's term of office shall be staggered, with an equal number of Directors elected each year, as far as possible.

RCW 31.12.235(3) provides as follows:

(3) A director must meet any qualification requirements set forth in the credit union's bylaws. If a director fails to meet these requirements, the director shall no longer serve as a director.

Evidence indicated that directors Connie Jones, Dennis McLachlan, Robert Byrd, William Byrd, and Mark Ail either failed in their last election, or would fail in the impending 2004 election, to meet the qualification requirement set forth in Columbia's bylaws at Article V Section 2. CP 96-97, 203-06.

In the trial court's ruling, it agreed with Plaintiffs, as did the Defendants, that "the bylaws and articles of an organization or association

constitute a contract between the association and its members.” CP 312. This appellate court recognized, in *Lake Limerick Country Club v. Hunt Mfg. Homes*, 120 Wn. App. 246, 260-61, 84 P.3d 295 (2004), that while an organization’s bylaws are enforced as contracts, they are not *implied in fact contracts* that may be enforced based upon some mutual intention of the contracting parties, but rather are *implied in law contracts* enforced according to their terms to prevent unjust enrichment of a member who derives benefits from the organization. The reason for that is because bylaws are enforceable against members and shareholders who were not themselves involved, nor successors to persons involved, in the drafting of the bylaws provisions. Persons who are not participants in formulating an agreement or bylaw provision cannot be said to have shared a mutual consent and intention with those who were. Similarly, when no actual negotiation and mutual consent occurs, such as when a consumer buys a nonnegotiable insurance contract, a mutual consent as to the meaning of terms cannot be found through extrinsic evidence. *Lynott v. Nat’l Union Fire Ins. Co.*, 123 Wn.2d 678, 684, 871 P.2d 146 (1994)([W]here there are actual negotiations, the context principle, as appropriately limited by its definition, permits admission, and examination of extrinsic evidence.)

Only in a very closely held organization, such as a family business, would the facts and circumstances permit the finding among *all* members or shareholders of a mutual consent and intention to contract through

adoption of particular bylaw provisions. In *Hollis v. Garwall, Inc.*, 137 Wn.2d 683, 974 P.2d 836 (1999), the Washington supreme court emphasized that under the “context rule” of *Berg v. Hudesman*, 115 Wn.2d 657, 801 P.2d 222 (1990), courts must not consider, when interpreting contract language, extrinsic evidence of the “unilateral and subjective intention” of one or more but fewer than all the contracting parties. In *Hollis*, at 696, the supreme court held that a trial court properly refused to consider, under the context rule, the affidavit of one of ten owner/developers allegedly asserting the mutual intention of all ten original contracting parties.

In contrast, in the case at bar, the trial court interpreted the term limits bylaws provision by considering as “most significant” the affidavit of a mere observer—David Doss—concerning the asserted mutual intention of the eight directors who adopted that provision on November 16, 1999. CP 125-26, 132, 299-303, 311. Not only is there good reason to question what the actual mutual intention of those eight directors (none of whom submitted affidavits), but the thousands of members of Columbia cannot be said to have shared any particular intention mutually shared by those eight.

As Plaintiffs argued to the trial court (CP 91-2), Washington case law deems a corporation’s members or shareholders to have knowledge of its bylaws. *Hudson v. Alaska Airlines*, 43 Wn.2d 71, 74, 260 P.2d 321 (1953)(“Members, officers, and directors are generally conclusively

presumed to know the corporate by-laws.”); *State ex Rel. Carriger v. Campbell Food Markets, Inc.*, 60 Wn.2d 478, 482, 374 P.2d 435 (1962)(“[S]tockholders are charged with knowledge of the contents of the corporation’s bylaws.”). It is irrational to treat corporate shareholders or members as knowing that which is not apparent from the ordinary meaning of the words and terms employed in a corporation’s bylaws.

Nothing in the plain language of Columbia’s term limits bylaw provision (Article V, Section 2) indicates that terms of office prior to November 16, 1999, are to be ignored when applying the provision. To the extent, if any, that the phrase “upon election” in that provision requires interpretation, its meaning is apparent from the stipulation (CP 203-06) indicating that most of Columbia’s directors were appointed to fill vacancies prior to their first election to office. It was error for the trial court to dismiss Plaintiff’s summary judgment motion.

## **2. Were Defendants entitled to dismissal on summary judgment on the Term Limits Claim?**

If this appellate court agrees with the trial court that the interpretation of Columbia’s term limits bylaw is determined by the subjective intentions of some or all of the eight directors who adopted it on November 16, 1999, it nonetheless should find the trial court erred in granting Defendants’ motion for summary judgment on Plaintiffs’ Term Limits Claim.

Summary judgment is appropriate only when the moving party's motion and supporting evidence meet the initial burden of demonstrating that there is no genuine issue of material fact. *White v. Kent Medical Center*, 61 Wn.App. 163, 170, 810 P.2d 4 (1991). The moving party cannot meet that initial burden through submissions in reply to the nonmoving party's pleadings nor by "supplementing the record" to address factual concerns raised by the court at the hearing on the summary judgment motion. *Id.* In Plaintiffs' pleading concerning the Term Limits Claim filed shortly before the summary judgment hearing on April 22, 2004, Plaintiff pointed out specific facts suggesting concealment of the true intentions of the Columbia directors who adopted the term limits bylaw provision at their November 16, 1999 meeting. CP 277-79. Recognizing that material questions of fact remained about the intentions of those directors at that meeting, the court requested that Defendants supplement the record with the board packet, minutes, and audio tape of that meeting. VRP2 21-25. So the day *after* the hearing on the summary judgment motions, Defendants filed a declaration by a Columbia staff member, Ms. Kathleen Porter, who attended the November 16, 1999, board meeting with an agenda and a heavily redacted copy of the meeting minutes.

The thrust of Defendants' argument is that the term limit bylaw provision was not enacted to immediately disqualify any sitting director, but was to apply to each of them *prospectively*. Plaintiffs agreed, arguing

that under corporate common law, a newly adopted qualification limiting a director's service could not be applied to an incumbent director until after the end of their current term (CP 173, 285-86), but would then apply based upon the actual antecedent facts, including their then terms of service. CP 277. So the assertion that the term limit provision was intended by Columbia's directors to apply *prospectively* does not distinguish between the positions of the Defendants and the Plaintiffs. The Plaintiffs' position is more consistent with the logical purpose of a term limit requirement—to foster a healthy degree of turnover on the board—for Defendants' position would permit several directors to have 20 or 30 year “careers” on Columbia's board. CP 174.

If the board had adopted a bylaw, or the legislature had adopted a statute, barring election to a credit union board position of a convicted felon, it would be irrational to assert that it only applies to persons convicted after the provision's adoption.

The trial court should not have granted dismissal on Defendants' summary judgment motion of the Term Limits Claim.

**3. Did Plaintiffs' Fiduciary Duty Claim state a claim upon which relief could be granted?**

Plaintiffs pointed out to the trial court (CP 159-60) well-established case law that a dismissal for failure to state a claim under CR 12(b)(6) is

appropriate only in those unusual cases in which no possible set of facts can be conceived that would permit relief on the claim asserted. *Bravo v. Dolsen Companies*, 125 Wn.2d 745, 888 P.2d 147 (1995); *Tenore v. AT&T Wireless Servs.*, 136 Wn.2d 322, 962 P.2d 104 (1998); *Hoffer v. State*, 110 Wn.2d 415, 420, 755 P.2d 781 (1988), *aff'd*, 113 Wn.2d 148, 776 P.2d 963 (1989).

In its initial ruling of May 7, 2004, on the Fiduciary Duty Claim, the trial court wrote the following (CP 313-15):

The complaint, filed March 16, 2004, alleges that the directors of the credit union owe a fiduciary duty to “Columbia Community Credit Union and its members.” The alleged breach of that duty consists of denying the request for a special membership meeting; expending “substantial sums[”] to campaign against the directors’ removal vote by employing their control over the property, employees and resources of Columbia Community Credit Union to prevent Plaintiffs from communicating information about the removal vote to Columbia Community Credit Union members; and by the directors exercising their power and authority to retain their positions and the benefits thereof.

Defendants argue that individual members of Columbia Community Credit Union lack standing to raise a breach of fiduciary duty claim, and that the complaint fails to allege facts sufficient to warrant relief in such a claim.

. . . . [Discussion of the standing issue is omitted here.]

I decline to rule that the legislature, by stating that directors of a credit union owe a fiduciary duty to the credit union, intended to eliminate any such duty to its members.

The fiduciary duty set out in RCW [31.12.267] is similar in scope to the duty imposed in various other corporate structures. See RCW 23B.08.420 (standard of conduct for officers in business corporations); RCW 33.16.080 (fiduciary relationship in saving and loan associations); RCW 24.03.127 (duties of directors in a nonprofit corporation). Specifically, the statutory duty

imposed upon directors of a credit union is as follows:

“Directors . . . are deemed to stand in a fiduciary relationship to the credit union, and must discharge the duties of their respective positions:

1. in good faith,
2. With the care on ordinary prudent person in a like position would exercise under similar circumstances; and
3. In a manner the director reasonably believes to be in the best interests of the credit union.”

Contrasting the statutory definition of fiduciary duty with the allegations of the complaint, it does not appear that Plaintiffs have employed the statutory language as a template for drafting the claim. The complaint does allege, however, a violation of the statutory right afforded to members to request and receive a special membership meeting to seek removal of directors, in order to further the director’s term in office, and the expenditure of “substantial sums” to retain the director’s positions. While it is true that some courts, in some cases, have approved the expenditure of corporate funds to lobby for a particular slate of candidates, or to wage a proxy fight, under the standards applicable to a CR 12(b)(6) [motion], a set of facts could be envisioned whereunder action by a Board to retain control of a credit union could be so egregious that it amounts to a violation of the Board’s fiduciary duty. Whether or not Plaintiffs can prove such a set of facts is a matter for summary judgment, rather than a CR 12(b)(6) motion. Therefore, I deny Defendants motion for dismissal of the breach of fiduciary duty claim.

None of what the trial court wrote, quoted above—unlike its analysis of Plaintiffs’ standing—flowed from the trial court’s view, later reconsidered, that Columbia was governed by the Washington Nonprofit Corporation Act. The trial court’s recognition of directors’ fiduciary relationship to their members or shareholders appears, instead, to flow from its tracking of Plaintiffs’ presentation of applicable law (CP 161-65), including Washington cases finding such a fiduciary relationship. *Tefft v. Schaefer*,

148 Wn. 602, 269 P. 1048 (1928); *Hudson v. Alaska Airlines*, 43 Wn.2d 71, 260 P.2d 321 (1953); *State ex rel. Hayes v. Keypoint Oyster*, 64 Wn.2d 375, 391 P.2d 979 (1964).

Concerning the other issue argued by Defendants in opposition to the Fiduciary Duty Claim—that Plaintiffs’ lack standing to bring it—the trial court initially found standing to arise from a provision, RCW 24.03.040, of the Washington Nonprofit Corporation Act.<sup>6</sup> But, upon being shown by Defendants’ motion for reconsideration that the Act is expressly inapplicable to banking and cooperative organizations, the trial court in its ruling on June 7, 2004, reversed itself (CP 428) concerning Plaintiffs’ standing to bring the Fiduciary Duty Claim without, apparently, considering other bases to find their standing.

Under the general common law, persons harmed by another’s breach of duty to them have standing to prosecute a claim against the wrongdoer. *Walker v. Munro*, 124 Wn.2d 402, 419, 879 P.2d 920 (1994)(“The standing doctrine prohibits a litigant from raising another’s legal rights.”)

If the trial court needed an indication within the corners of the Credit Union Act, RCW Chapter 31.12, that members may make claims against credit union directors, it could have found it in RCW 31.12.269. That provision limits the personal liability of directors, subject to exceptions

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<sup>6</sup> At the hearing, Plaintiffs’ counsel denied that Columbia was directly governed by RCW Chapter 24.03, but asserted that the Nonprofit Corporation Act is indicative of the corporate common law. VRP2 11-12.

including when harm was caused by a breach of fiduciary duty under RCW 31.12.267, when acting within the scope of their duties. Because its subsection (2) renders it inapplicable to a director's liability to the credit union or a governmental entity, its chief applicability is as to claims by credit union members against their directors. Another statutory indication that members have standing to bring claims against their organization's directors is RCW 23B.08.320, made applicable to all Washington state corporations (except municipal corporations) by RCW 23B.17.030, which also limits directors' liability, subject to several exceptions.

The trial court was correct to find that Columbia's directors owed fiduciary duties to its members, but was mistaken to find that the members lacked standing to bring claims for breach of those duties.

**4. Did Plaintiffs' Access to Records Claim state a claim upon which relief could be granted?**

Plaintiffs' Access to Records Claim sought to enjoin Defendants from denying Columbia's members access to their bylaws and bylaws amendments, minutes of their member meetings and of those portions of director meetings at which corporate policies and plans are discussed and decided, and copies of corporate policies and plans, and records that enable members to communicate with other members concerning Columbia's corporate affairs. CP 5-6, 8.

Plaintiff's recognize that no specific provision of the Washington Credit Union Act, RCW 31.12, addresses member access to corporate records. But the general common law of Washington and other states plainly permits the owners of a corporation—its shareholders/members—to inspect corporate records for proper purposes. In 1940, the Washington State Supreme Court discussed the corporate records inspection rights of an Arizona corporation's shareholder who had produced a copy of an Arizona statute allegedly granting him inspection rights. In *State ex rel. Grismer v. Merger Mines Corp.*, 3 Wn.2d 417, 101 P.2d 308 (1940), the court said at 420:

**But even if the statute has been repealed, the common law right of a stockholder to examine the books and records of the corporation at proper times and for proper purposes remains.** *State ex rel. Weinberg v. Pacific Brewing & Malting Co.*, 21 Wn. 451, 58 P. 584, 47 L.R.A. 208; *Guthrie v. Harkness*, 199 U.S. 148, 50 L.Ed. 130, 26 S.Ct. 4.

And, under the common law rule, as it prevails in most states, and under statutes similar to the Arizona statute, the burden of showing improper motives on the part of the shareholder in demanding an inspection of the books and records of the corporation is upon the defendant. It is presumed, until the contrary is shown, that the shareholder seeks the information for a proper purpose. *Ontjes v. Harrer*, 208 Iowa 1217, 227 N.W. 101; *Becker v. LeMars Loan & Trust Co.*, 217 Iowa 17, 250 N.W. 644; *Knox v. Coburn*, 117 Me. 409, 104 A. 789; *Dines v. Harris*, 88 Colo. 22, 291 P. 1024; *William Coale Development Co. v. Kennedy*, 121 Ohio St. 582, 170 N.E. 434. **This is the rule that prevails in this state.** *State ex rel. Weinberg v. Pacific Brewing & Malting Co.*, 21 Wn. 451, 58 P. 584, 47 L.R.A. 208; *State ex rel. Lee v. Goldsmith Dredging Co.*, 150 Wn. 366, 273 P. 196. And we will presume that the same rule prevails in Arizona, in the absence of evidence to the contrary. [Emphasis added.]

A comprehensive survey of the national corporate common law on the inspection rights of shareholders was presented in *Tucson Gas & Electric Company v. Schantz*, 5 Ariz. App. 511, 428 P.2d 686 (1967). The court wrote, at 513-14:

The common law rule as to a shareholder's right of inspection is that every shareholder has the right, by reason of his interest therein, to inspect the books and papers of a corporation at reasonable times and places and for proper purposes. 5 Fletcher, *Cyclopedia Corporations* § 2214 (1952). It is thus seen that this right is not an absolute one but rather a qualified one. The basis of a shareholder's right to inspect the books and records of a corporation is his ownership of the corporate property and assets through his ownership of shares; as an owner, he has the right to inform himself as to the management of the corporate property by directors and officers who are his trustees in direct charge of the property. *Guthrie v. Harkness*, 199 U.S. 148, 26 S.Ct. 4, 50 L.Ed. 130 (1905); *William Coale Development Co. v. Kennedy*, 121 Ohio St. 582, 170 N.E. 434 (1930); *Wise v. H.M. Byllesby & Co.*, 285 Ill. App. 40, 1 N.E.2d 536 (1936); *State ex rel. Boldt v. St. Cloud Milk Producers' Ass'n*, 200 Minn. 1, 273 N.W. 603 (1937); 5 Fletcher, *Cyclopedia Corporations* § 2213 (1952); *State ex rel. Lowell Wiper Supply Co. v. Helen Shop, Inc.*, 211 Tenn. 107, 362 S.W.2d 787 (1962). As stated in *William Coale Development Co., supra*:

“Can anything be plainer than the fact that the owner of property has a clear right to inspect his own property? When the owner of property selects an agent or agents to care for and manage his property, how can that act be held to clothe the agent with power to manage the owner as well as to manage the property, and to prevent the owner from even looking at his own property except he do so pursuant to the rules and restrictions promulgated by the agent, who was wholly without power or authority to formulate any such rules or regulations? Are we to forget and abandon all the law pertaining to the relation of principal and agent?”

Generally speaking, the right of a stockholder extends to all

books, papers, contracts, minutes or other instruments from which he can derive any information that will enable him to protect his interest. 5 Fletcher, Cyclopaedia Corporations § 2239 (1952); 18 Am.Jur.2d Corporations § 199; Annotations: 22 A.L.R. 24, 82; 43 A.L.R. 783, 788; 59 A.L.R. 1373, 1380; 80 A.L.R. 1502, 1514; 174 A.L.R. 262, 286; 18 C.J.S. Corporations § 506.

This common law right of inspection is a remedial right which exists independently of statute. *State ex rel. G.M. Gustafson Co. v. Crookston Trust Co.*, 222 Minn. 17, 22 N.W.2d 911 (1946). Statutes providing for a shareholder's right of inspection have been construed as enlarging or extending the common law right rather than as a restriction or abrogation of the right of inspection. 18 Am.Jur.2d Corporations § 179; 18 C.J.S. Corporations § 502; 5 Fletcher, Cyclopaedia Corporations § 2215 (1952); *Bishop's Estate v. Antilles Enterprises*, 252 F.2d 498 (3d Cir. 1958); *State ex rel. Grismer v. Merger Mines Corporation*, 3 Wn.2d 417, 101 P.2d 308 (1940); *State ex rel. McClure v. Mal-leable Iron Range Co.*, 177 Wis. 582, 187 N.W. 646, 22 A.L.R. 5 (1922); *State ex rel. Lowell Wiper Supply Co. v. Helen Shop, Inc.*, *supra*; *Texas Infra-Red Radiant Company v. Erwin*, 397 S.W.2d 491 (Tex.Civ.App. 1965); *Matter of Steinway*, 159 N.Y. 250, 53 N.E. 1103, 45 L.R.A. 461 (1899).

And the highest New York appellate court similarly has recognized the common law inspection rights of shareholders of a federal savings and loan association, in *Matter of Ochs v. Wash. Hgts. F.S. & L. Assn.*, 17 N.Y.2d 82, 268 N.Y.S.2d 294, 215 N.E.2d 485 (1966), saying at 86:

[A] Federal savings and loan association is an instrumentality of the United States and, more precisely, a creature of the Home Owners' Loan Act of 1933. For this reason no New York statute is directly applicable to the supervision and control of its internal management. However, the enactment in this State of such statutory corporate controls as the Business Corporations Law (1875), the General Corporation Law (1892), the Stock Corporation Law (1892) and the Business Corporation Law (1961) in no way diminished the common-law safeguards already existent in this

area of shareholder inspection. This court clearly so held in *Matter of Steinway* (159 N.Y. 250, 264-265 [1899]). As Judge Vann wrote: “We do not think that the statute now in force is exclusive, or that it has abridged the common-law right of stockholders with reference to the examination of corporate books. By enabling a stockholder to get some information in a new way, it did not impliedly repeal the common-law rule which enabled him to get other information in another way, for the courts do not hold the common law to be repealed by implication, unless the intention is obvious. By simply providing an additional remedy the existing remedy was not taken away. The statute merely strengthened the common-law rule with reference to one part thereof, and left the remainder unaffected.” See, also, the recent case of *Sivin v. Schwartz* (22 A.D.2d 822 [2d Dept., 1964]) wherein the court stated that “In our opinion, that statute is not exclusive; and any stockholder, including one not of record, has a common-law right to inspect the stock books if the inspection is sought in good faith and for a valid purpose.” [Citations omitted.]

In *Fleisher Development v. Home Owners Warranty*, 647 F. Supp. 661, 667 (D.C. 1986), the federal judge presented, under the heading “Common Law Right of Inspection” the following thorough analysis of the law:

The common law has always recognized the right of shareholders to inspect the books and records of corporations to which they belong upon a showing of a proper purpose. The United States Supreme Court recognized this general rule in *Guthrie v. Harkness*, 199 U.S. 148, 154-155, 26 S.Ct. 4, 5-6, 50 L.Ed. 130 (1905), where the Court wrote,

There can be no question that the decisive weight of American authority recognizes the common law right of the shareholder, for proper purposes and under reasonable regulations as to place and time, to inspect the books of the corporation of which he is a member.

*Id.* at 153, 26 S.Ct. at 5. The dominance of this common law rule has never been altered. See, e.g., *Sarni v. Meloccaro*, 113 R.I. 630, 324 A.2d 648, 653 (1974) (upholding shareholder’s common law right to inspect corporate books prior to Rhode Island’s enactment of a statutory right of inspection); *Parish v. Maryland*

& *Virginia Milk Producers Association*, 250 Md. 24, 242 A.2d 512, 547 (1968), *aff'd*, 261 Md. 618, 277 A.2d 19, *cert. denied*, 404 U.S. 940, 92 S.Ct. 280, 30 L.Ed.2d 253 (1971); *State ex rel. Cochran v. Penn-Beaver Oil Company*, 34 Del. 81, 143 A. 257, 259 (1926); Model Business Corp. Act § 16.02 (1985). Moreover, although nearly every jurisdiction has passed a statute addressing shareholders' and members' right to inspect corporate books and records, such legislation has generally supplemented not supplanted the common law right to inspect. *See, e.g., Crane Company v. Anaconda Company*, 39 N.Y.2d 14, 382 N.Y. So.2d 707, 346 N.E.2d 507 (1976); *Tucson Gas and Electric Company v. Schantz*, 5 Ariz. App. 511, 428 P.2d 686 (1967); *State ex rel. Fussell v. McLendon*, 109 So.2d 783, 786 (Ct.App.Fla. 1959); Model Business Corp. Act § 16.02 (1985). *But see Caspary v. Louisiana Land & Exploration Company*, 707 F.2d 785 (4th Cir.1983) (Maryland shareholders' right to inspection superseded by statute). Finally, although there are few cases addressing nonstock corporate members' right to inspect the corporate books and records, those courts considering the issue appear to have extended the common law right to inspect to such nonstock members. *See Parish v. Maryland & Virginia Milk Producers Association*, 250 Md. 24, 242 A.2d 512, 549 (1968), *aff'd*, 261 Md. 618, 277 A.2d 19, *cert. denied*, 404 U.S. 940, 92 S.Ct. 280, 30 L.Ed.2d 253 (1971); *Bill Reno, Incorporated, v. Rocky Mountain Ford Dealers Advertising Association*, 151 Colo. 406, 378 P.2d 206, 207 (1963); 18A Am.Jur.2d Corporations § 354 (1985).

The lack of a specific statutory articulation of a right does not preclude the enforcement of the right by application of common law principles. In *Barany v. Buller*, 670 F.2d 726 (7th Cir. 1982), the federal circuit court considered a claim by two members of a federal credit union who alleged they were wrongfully removed from their credit union offices. Though the court found no basis for their private claim in the Federal Credit Union Act, the court held that they could bring their claim based upon the common law.

As discussed previously, *supra* at 9, under Washington case law the shareholders or members of a corporation are deemed to know the contents of its bylaws. It defies common sense for courts to charge Columbia's members with knowledge of its bylaws if the courts will not enforce their common law right of access to its bylaws. When the Department of Financial Institutions ("DFI") became involved, early in 2004, in the internal dispute between Columbia's managers and its members, one of its first specific directives to Columbia was "to make its Bylaws reasonably available to members who request a copy." Paragraph 2.5 of the Settlement Agreement between DFI and Columbia dated February 6, 2004, included as an exhibit to the Declaration of David Doss in the appendix hereto. In addition, upon reading Defendants' assertion (CP 120) that the Washington Credit Union Act "confers on DFI (and no one else) the right of inspection of credit union records" the Director of DFI's Division of Credit Unions provided a declaration (CP 287-91) asserting that her agency's position is that a credit union member "is entitled to inspect corporate minutes and other records as long as he has a proper purpose" and that persons should consult general corporate statutes and common law for guidance. The record reflects that DFI routinely seeks guidance from the Washington Business Corporation Act in determining how to address corporate issues involving credit unions which are not addressed in the Credit Union Act. CP 376-82.

It was wrong for the trial court to dismiss Plaintiff's Access to Records Claim based upon Defendants motion under CR 12(b)(6) that it failed to state a claim upon which relief could be granted.

**5. Did Plaintiffs' No Enabling Law Claim state a claim upon which relief could be granted?**

Plaintiffs sought a declaratory judgment that applicable law does not enable Columbia, as a Washington credit union governed by RCW Chapter 31.12, to convert into a Washington chartered savings bank governed by RCW Chapter 32. RCW 32.32.020 enables federal savings banks, national banks, and state commercial banks to convert into state savings banks, but it does not enable state credit unions to do so. RCW 31.12.464 enables a state credit union to convert into a federal credit union, but not into any other type of organization.

Plaintiffs regard the 2000 administrative interpretation by DFI, asserting that state credit unions may convert into state savings banks (CP 146-48), as contrary to Washington law and of no legal or regulatory effect. *Washington Educ. Assoc. v. Washington State Public Disclosure Comm'n*, 150 Wn.2d 612, 80 P.3d 60 (2003)

Columbia's management had expended, since mid-2002, considerable time and money planning to convert it into a state savings bank. CP 98-103, 179-201. When the NCUA, Columbia's federal insurer of its depos-

its, announced on January 29, 2004, its conclusion that Columbia's membership vote on its proposed conversion "was not conducted in a fair and legal manner," Columbia announced that its directors "might decide to place the vote before our membership again." CP 196-98.

On February 6, 2004, when Columbia entered into its settlement agreement with DFI, included as an exhibit to the Declaration of David Doss in the appendix hereto, it plainly contemplated a future conversion, for it included a provision, at paragraph 2.5, that limited Columbia's power to amend its bylaws "until after Columbia's Annual Meeting in 2005 or conversion of Columbia to another form of charter, whichever occurs first." That plainly suggests that Defendants' plans to convert Columbia "to another form of charter," such as that of a bank, were not abandoned. Indeed, the Federal Deposit Insurance Corporation's Order approving deposit insurance for "Columbia State Bank" was effective for a year, with extensions possible, from its issue date of October 10, 2003. CP 199-201. The record before the trial court included Columbia's Plan of Conversion and formal resolutions of its directors adopting it, with the certification of its secretary that those resolutions and Plan had not been rescinded or modified as of November 6, 2003. CP 188-95. No evidence of their later rescission or modification was in the record before the trial court, either, so the court must assume they remained in effect.

Though Plaintiffs argued and demonstrated to the trial court that the

No Enabling Law Claim was ripe for declaratory adjudication (CP 168-171, 357-58), the court granted Defendants' motion to dismiss simply based upon their claim that "Plaintiffs do not allege that Columbia is undergoing a conversion of that one is imminent or planned." CP 120. A genuine legal dispute should not have to be an eleventh-hour emergency or crisis before it is regarded as ripe for adjudication, for courts might then be too preoccupied with other matters to fairly adjudicate the dispute. CP 84-87.

It was wrong for the trial court, based upon the record before it, to dismiss Plaintiffs' No Enabling Law Claim upon Defendants' motion under CR 12(b)(6) that if failed to state a claim upon which relief could be granted..

**6. Did Plaintiffs' Supermajority Vote Claim state a claim upon which relief could be granted?**

Plaintiffs sought a declaratory judgment that applicable law does not enable Columbia, as a Washington credit union governed by RCW Chapter 31.12, to convert into any other corporate organization without the approval of two-thirds of its members who vote at a membership meeting upon the conversion, as required by RCW 31.12.464(1). CP 7. In the documentation and proceedings concerning Columbia's proposed conversion to a state savings bank, Defendants asserted that the conversion

required, under applicable law, merely a majority approval of its members voting on the conversion. CP 10-11, 182.

Plaintiffs contend that the applicable law governing the internal affairs of a Washington chartered credit union is Washington state law, and that the Washington state legislature provided that proposals to merge, convert, or liquidate a state credit union require “supermajority” approval by two-thirds of its members voting on the proposal. RCW 31.12.461, RCW 31.12.464, and RCW 31.12.474. Plaintiffs contend that neither the directors, officers, nor employees of a Washington-chartered credit union have the power to “invoke” the law of a foreign jurisdiction so as to dilute the rights and protections afforded the credit union’s members under the Washington state laws applicable to the internal affairs of the credit union.

Defendants combined their argument opposing the Supermajority Vote Claim with those against the No Enabling Law Claim. Plaintiffs here do likewise, and incorporate the argument made above concerning the trial court’s dismissal of the No Enabling Law Claim.

**7. Plaintiffs should be awarded reasonable attorneys fees for advocating the corporate governance rights of Plaintiffs and Columbia’s other members in this proceeding.**

Plaintiffs request reasonable attorneys fees for prosecuting this case. Washington state case law recognizes the propriety of courts ordering the payment of attorney fees and expenses by organizations when their

constituents must engage lawyers to vindicate or clarify the lawful rights of those constituents with respect to the organization. A unanimous Washington State Supreme Court wisely observed, “Little good comes from a system where justice is available only to those who can afford its price,” in approving a generous fees award to lawyers who challenged, on behalf of thousands of public employees, administrative practices by a retirement system that infringed upon their rights. *Bowles v. Retirement Systems*, 121 Wn.2d 52, 71, 847 P.2d 440 (1993).

In the corporate setting, that Court in 1980 had recognized the justice and equity of requiring a corporation to pay reasonable fees of lawyers who (*even unsuccessfully*) challenged the corporation’s actions that allegedly infringed upon the preemptive rights of its shareholders to acquire its unissued stock. *Seattle Trust & Savings Bank v. McCarthy*, 94 Wn.2d 605, 612, 617 P.2d 1023 (1980). Explaining the fairness of such a fee allocation, the Court stated, at 612:

[T]he suit was brought to obtain an adjudication for the benefit of the corporation, and ... the defendant was named as representative of the class of minority shareholders, none of whom, insofar as it appears, had a substantial financial interest to protect. It was in the interest of the corporation that the question be vigorously defended, in order to resolve questions concerning the legality of amendment of shareholders’ rights.... If the defendant is forced to pay his attorney fees on appeal, the reasonableness of which has not been questioned, he will have conferred an essentially gratuitous benefit on the corporation.

The *Seattle Trust* court cited to its 1974 ruling in *Weiss v. Bruno*, 83

Wn.2d 911, 523 P.2d 915 (1974) that declared, contrary to the general rule (that parties pay their own lawyers), that “equity may allow reimbursement of attorney fees” in “situations where a litigant confers some other substantial benefit on an ascertainable class, such as corporate stockholders.” They noted, as they said in *Weiss* at 914, that judges’ power to award attorney fees in those situations “springs from our inherent equity powers.”

In *Weiss*, 83 Wn.2d at 913, the Washington court recognized that the equitable principle supporting attorney fee awards in common fund cases “extends to situations where a litigant confers some other substantial benefit on an ascertainable class, such as preserving the rights of corporate shareholders.” For that statement, the Court cited a U.S. Supreme Court case of merely four years earlier, *Mills v. Electric Auto-Lite*, 396 U.S. 375 (1970).

The *Mills* opinion, with its emphasis on the “inherent equitable power” of judges in the context of fee awards, was explained in 1973 by the U.S. Supreme Court in *Hall v. Cole*, 412 U.S. 1 (1973) (member who challenged undemocratic labor union conduct entitled to fee award), as follows, at 4-7:

Although the traditional American rule ordinarily disfavors the allowance of attorneys’ fees in the absence of statutory or contractual authorization, federal courts, in the exercise of their equitable powers, may award attorneys’ fees when the interests of justice so require. Indeed, the power to award such fees “is

part of the original authority of the chancellor to do equity in a particular situation,” *Sprague v. Ticonic National Bank*, 307 U.S. 161, 166 (1939), and federal courts do not hesitate to exercise this inherent equitable power whenever “overriding considerations indicate the need for such a recovery.” *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375, 391-392 (1970); see *Fleischmann Distilling Corp. v. Maier Brewing Co.*, 386 U.S. 714, 718 (1967).

Thus, it is unquestioned that a federal court may award counsel fees to a successful party when his opponent has acted “in bad faith, vexatiously, wantonly, or for oppressive reasons.” 6 J. Moore, *Federal Practice* ¶ 54.77 [2], p. 1709 (2d ed. 1972); see, e.g., *Newman v. Piggie Park Enterprises, Inc.*, 390 U.S. 400, 402 n. 4 (1968); *Vaughan v. Atkinson*, 369 U.S. 527 (1962); *Bell v. School Bd. of Powhatan County*, 321 F.2d 494 (CA4 1963); *Rolax v. Atlantic Coast Line R. Co.*, 186 F.2d 473 (CA4 1951). In this class of cases, the underlying rationale of “fee shifting” is, of course, punitive, and the essential element in triggering the award of fees is therefore the existence of “bad faith” on the part of the unsuccessful litigant.

Another established exception involves cases in which the plaintiff’s successful litigation confers “a substantial benefit on the members of an ascertainable class, and where the court’s jurisdiction over the subject matter of the suit makes possible an award that will operate to spread the costs proportionately among them.” *Mills v. Electric Auto-Lite*, *supra*, at 393-394. “Fee shifting” is justified in these cases, not because of any “bad faith” of the defendant but, rather, because “[t]o allow the others to obtain full benefit from the plaintiff’s efforts without contributing equally to the litigation expenses would be to enrich the others unjustly at the plaintiff’s expense.” *Id.*, at 392; see also *Fleischmann Distilling Corp. v. Maier Brewing Co.*, *supra*, at 719; *Trustees v. Greenough*, 105 U.S. 527, 532 (1882). Thus, in *Mills v. Electric Auto-Lite Co.*, *supra*, we approved an award of attorneys’ fees to successful shareholder plaintiffs in a suit brought to set aside a corporate merger accomplished through the use of a misleading proxy statement in violation of § 14(a) of the Securities Exchange Act of 1934. 48 Stat. 895. 15 U.S.C. § 78n (a). In reaching this result, we reasoned that, since the dissemination of misleading proxy solicitations jeopardized important interests of both the corporation and “the stockholders as a group,” the successful enforcement of the statutory policy necessarily “ren-

dered a substantial service to the corporation and its shareholders.” *Mills v. Electric Auto-Lite Co.*, *supra*, at 396. Under these circumstances, reimbursement of the plaintiffs’ attorneys’ fees out of the corporate treasury simply shifted the costs of litigation to “the class that has benefited from them and that would have had to pay them had it brought the suit.” *Id.*, at 397. [Footnotes omitted.]

The portion of the 1970 *Mills* opinion upon which the Washington State Supreme Court appeared to embrace through its citation of *Mills* in its 1974 *Weiss* opinion recognizing judges’ equitable powers to grant fee awards appears to have been the following, 396 U.S. at 391:

While the general American rule is that attorneys’ fees are not ordinarily recoverable as costs, both the courts and Congress have developed exceptions to this rule for situations in which overriding considerations indicate the need for such a recovery. A primary judge-created exception has been to award expenses where a plaintiff has successfully maintained a suit, usually on behalf of a class, that benefits a group of others in the same manner as himself. *See Fleischmann Corp. v. Maier Brewing Co.*, 386 U.S., at 718-719. To allow the others to obtain full benefit from the plaintiff’s efforts without contributing equally to the litigation expenses would be to enrich the others unjustly at the plaintiff’s expense. This suit presents such a situation. The dissemination of misleading proxy solicitations was a “deceit practiced on the stockholders as a group,” *J. I. Case Co. v. Borak*, 377 U.S., at 432, and the expenses of petitioners’ lawsuit have been incurred for the benefit of the corporation and the other shareholders.

The fact that this suit has not yet produced, and may never produce, a monetary recovery from which the fees could be paid does not preclude an award based on this rationale. Although the earliest cases recognizing a right to reimbursement involved litigation that had produced or preserved a “common fund” for the benefit of a group, nothing in these cases indicates that the suit must actually bring money into the court as a prerequisite to

the court's power to order reimbursement of expenses. "[T]he foundation for the historic practice of granting reimbursement for the costs of litigation other than the conventional taxable costs is part of the original authority of the chancellor to do equity in a particular situation." *Sprague v. Ticonic Nat. Bank*, 307 U.S. 161, 166 (1939). This Court in *Sprague* upheld the District Court's power to grant reimbursement for a plaintiff's litigation expenses even though she had sued only on her own behalf and not for a class, because her success would have a stare decisis effect entitling others to recover out of specific assets of the same defendant. Although those others were not parties before the court, they could be forced to contribute to the costs of the suit by an order reimbursing the plaintiff from the defendant's assets out of which their recoveries later would have to come. The Court observed that "the absence of an avowed class suit or the creation of a fund, as it were, through stare decisis rather than through a decree — hardly touch[es] the power of equity in doing justice as between a party and the beneficiaries of his litigation." *Id.*, at 167.

Other cases have departed further from the traditional metes and bounds of the doctrine, to permit reimbursement in cases where the litigation has conferred a substantial benefit on the members of an ascertainable class, and where the court's jurisdiction over the subject matter of the suit makes possible an award that will operate to spread the costs proportionately among them. This development has been most pronounced in shareholders' derivative actions, where the courts increasingly have recognized that the expenses incurred by one shareholder in the vindication of a corporate right of action can be spread among all shareholders through an award against the corporation, regardless of whether an actual money recovery has been obtained in the corporation's favor. For example, awards have been sustained in suits by stockholders complaining that shares of their corporation had been issued wrongfully for an inadequate consideration. A successful suit of this type, resulting in cancellation of the shares, does not bring a fund into court or add to the assets of the corporation, but it does benefit the holders of the remaining shares by enhancing their value. Similarly, holders of voting trust certificates have been allowed reimbursement of their expenses from the corporation where they succeeded in terminating the voting trust and obtaining for all certificate holders the right to vote their

shares. In these cases there was a “common fund” only in the sense that the court’s jurisdiction over the corporation as nominal defendant made it possible to assess fees against all of the shareholders through an award against the corporation.

In many of these instances the benefit conferred is capable of expression in monetary terms, if only by estimating the increase in market value of the shares attributable to the successful litigation. However, an increasing number of lower courts have acknowledged that a corporation may receive a “substantial benefit” from a derivative suit, justifying an award of counsel fees, regardless of whether the benefit is pecuniary in nature. A leading case is *Bosch v. Meeker Cooperative Light & Power Assn.*, 257 Minn. 362, 101 N.W.2d 423 (1960), in which a stockholder was reimbursed for his expenses in obtaining a judicial declaration that the election of certain of the corporation’s directors was invalid. The Supreme Court of Minnesota stated:

“Where an action by a stockholder results in a substantial benefit to a corporation he should recover his costs and expenses. . . . [A] substantial benefit must be something more than technical in its consequence and be one that accomplishes a result which corrects or prevents an abuse which would be prejudicial to the rights and interests of the corporation or affect the enjoyment or protection of an essential right to the stockholder’s interest.” *Id.*, at 366-367, 101 N.W.2d, at 426-427.

In many suits under § 14(a), particularly where the violation does not relate to the terms of the transaction for which proxies are solicited, it may be impossible to assign monetary value to the benefit. Nevertheless, the stress placed by Congress on the importance of fair and informed corporate suffrage leads to the conclusion that, in vindicating the statutory policy, petitioners have rendered a substantial service to the corporation and its shareholders. *Cf. Bakery Workers Union v. Ratner*, 118 U.S.App. D.C. 269, 274, 335 F.2d 691, 696 (1964). Whether petitioners are successful in showing a need for significant relief may be a factor in determining whether a further award should later be made. But regardless of the relief granted, private stockholders’ actions of this sort “involve corporate therapeutics,” and furnish a benefit to all shareholders by providing an important means of enforcement of the proxy statute. To award attorneys’ fees in such a suit to a plaintiff who has succeeded in establishing a cause of action is

not to saddle the unsuccessful party with the expenses but to impose them on the class that has benefited from them and that would have had to pay them had it brought the suit. [Footnotes omitted.]

The equitable principles that were recognized and applied by the U.S. Supreme Court in *Mills* and *Hall*, and were similarly recognized and applied by the Washington State Supreme Court in *Weiss* and *Seattle Trust*, are applicable to this case. Accordingly, Plaintiffs request an award of reasonable attorney fees for prosecuting this case at the trial and appellate court levels.

### CONCLUSION

For the reasons discussed above, the Plaintiffs ask that this appellate court (1) reverse the trial court's dismissal on summary judgment of the Term Limits Claim and its dismissal based on CR 12(b)(6) of the Fiduciary Duty Claim, the Access to Records Claim, the No Enabling Law Claim, and the Supermajority Claim, (2) reverse the trial court's denial of, and affirmatively grant, Plaintiff's summary judgment motion on the Term Limits Claim, and (3) award Plaintiffs reasonable attorney fees for prosecuting this case at the trial and appellate court levels.

Respectfully submitted this 7th day of June, 2005.

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