IN THE SUPREME COURT OF THE STATE OF OREGON

In the Matter of the Marriage of

PATRICIA POLLOCK,
Petitioner-Respondent, Cross-Appellant,
Petitioner on Review.

and

WILLIAM LAWRENCE POLLOCK,
Respondent-Appellant, Cross-Respondent,
Respondent on Review.

Yamhill County Circuit Court
DO080256

A147846
S062000

BRIEF ON THE MERITS OF PETITIONER ON REVIEW

Review of the Decision of the Court of Appeals
on Appeal from a Judgment of the Circuit Court for Yamhill County
Honorable Carroll J. Tichenor, Judge

Opinion Filed: October 30, 2013 Author of Opinion: J. Egan
Concurring Judges: Armstrong, Nakamoto, Egan

Attorneys for Petitioner on Review:

David N. Hobson, Jr., OSB #852364
Hobson and Associates, LLC
18255 SW Tualatin Valley Hwy.
Aloha, Oregon 97006
Telephone: (503) 649-6333
Email: david@hobsonlawoffice.com

William R. Valent, OSB #854394
6500 SW Macadam Ave., Ste. 300
Portland, Oregon 97239
Telephone: (503) 245-1211
Email: wilrv@aol.com

….. continued

Attorney for Respondent on Review:

Helen C. Tompkins, OSB #872100
Law Office of Helen C. Tompkins, PC
333 S. State Street, Suite V121
Lake Oswego, Oregon 97034
Telephone: (503) 534-5020
Email: htompkinslaw@aol

May 2014

TABLE OF CONTENTS

STATEMENT OF THE CASE, LEGAL QUESTIONS PRESENTED 1

PROPOSED RULES OF LAW. 2

NATURE OF THE ACTION, RELIEF SOUGHT
AND JUDGMENT RENDERED. 2

STATEMENT OF FACTS. 3

SUMMARY OF ARGUMENTS. 6

ARGUMENT 8

CONCLUSION. 17

TABLE OF AUTHORITIES

Cases

Brown v. Portland School Dist. # 1,
291 Or 77, 84, 628 P2d 1183 (1981) 16

Conrad and Conrad,
191 Or App 283, 292, 81 P3d 749 (2003) 8

Feves v. Feves,
198 Or 151, 159-60, 254 P2d 694(1953) 13

Great American Ins. v. General Ins.,
257 Or 62, 72, 475 P2d 415 (1970) 16

Grossman and Grossman,
338 Or 99, 106 P3d 618 (2005) 9, 11

Grossman and Grossman,
191 Or App 294, 300, 82 P3d 1039 (2003) 10

Hill and Hill,
124 Or 364, 264 P. 447 (1928) 11

McDonnal and McDonnal,
293 Or 772, 652 P2d 1247 (1982) 13

Pollock and Pollock,
259 Or App 230, 313 P3d 367 (2013) 3, 10, 11, 12, 13, 14, 15, 17

Prime and Prime,
172 Or 34, 139 P2d 550 (1943) 9, 10

State Statutes

ORS 42.230. 15

ORS 107.089. . . . . 7, 8, 11, 13

ORS 107.104. . . . . .1, 7, 10, 12, 13

ORS 107.105. . . . . 6, 8, 13

ORS 107.452. 7

Rules

ORAP 9.17(b)(ii)(B) 3

UTCR 8.010(4) 8

PETITIONER ON REVIEW'S BRIEF ON THE MERITS

STATEMENT OF THE CASE

LEGAL QUESTIONS PRESENTED

1. Does the policy of promoting settlements negate the law mandating the trial court to require full disclosure of assets?

2. Is there any circumstance in which a party should be denied the right to discovery of "all the parties' assets" in a proceeding to challenge whether a proposed settlement is just and proper?

3. Does the policy set forth in ORS 107.104(1)(a) as applied to mediated agreements between Husband and Wife not yet reduced to judgment, authorize the Court to specifically enforce provisions of that mediated agreement, irrespective of whether it is equitable, because to so enforce select provisions supports the Oregon policy of promoting settlement agreements . . . "[which] is better served by protecting reliance on those [very] agreements?"

4. Does the language cited by the Court of Appeals within the parties' mediated agreement to the effect that the agreement was to "resolve all claims between the parties" necessarily suggest waiver by the parties of their rights to pursue discovery beyond the signing of the mediated agreement?

PROPOSED RULE OF LAW

In a proceeding to whether a mediation agreement is within the range of reasonable resolution and therefore should be enforced, a party is entitled as a matter of law to full disclosure of all assets.

The policy of encouraging settlement does not negate the obligation of the trial court to ensure full disclosure of assets and to determine whether an agreement is within the range of reasonable resolution.

The terms of a mediation agreement should not define the scope of review by the trial court for a determination of whether that agreement is within the range of reasonable resolution.

NATURE OF THE ACTION, RELIEF SOUGHT AND JUDGMENT RENDERED

This is a dissolution of marriage proceeding tried to the Honorable Carroll J. Tichenor in which Husband sought to enforce a handwritten agreement signed in mediation the night before trial and enter a General Judgment of Dissolution consistent with that agreement. Wife objected and sought review of the agreement to determine whether it was within the range of reasonable resolution. The trial court found that the agreement was inequitable, modified the terms of the agreement, and signed a General Judgment of Dissolution of Marriage; Money Award, entered February 8, 2011, granting wife $300,000 more than allowed in the mediation

memorandum. Both parties appealed.

On October 30, 2013, the Court of Appeals issued an opinion reversing and remanding the trial court's decision as to property division, otherwise affirming and affirming on wife's cross appeal. The Court of Appeals in *Pollock and Pollock*, 259 Or App 230, 313 P3d 367 (2013) ruled that the mediated agreement be enforced by determining that the language of the mediation agreement providing that the agreement was to "resolve all claims between the parties" constituted a waiver of wife's right to discovery[1] which was needed to help prove the inequity of the agreement.

STATEMENT OF FACTS

Pursuant to ORAP 9.17(b)(ii)(B), wife sets forth only those facts material to the determination of the review.

The parties married on December 28, 2001. This proceeding was filed on April 30, 2008.

On June 3, 2009, the court entered a decision on the Petitioner's Request for Production of Documents (Supp ER-8) filed on September 4, 2008. (Supp ER-2-7)

On June 3, 2009, the court did not enter a ruling on the motion to compel, but set forth the parameters for the discovery of records in light of the validity of the Premarital Agreement. (Excerpt – 22). The court stated that the

[1] This argument was never made by Husband at trial or on appeal.

Petitioner (wife) was entitled to the records that pertained to joint property or to the separate property of wife that was used to pay the debts of husband's separate property or to increase the value of the husband's separate property. The parties were also told that wife was entitled to evidence that supports wife's claim that the Premarital Agreement supports her claim of partial ownership of Respondent's Separate Property under the terms of the Premarital Agreement.

The court went on to state that the Premarital Agreement was fairly clear that it was the parties' intent to keep each of their separate property out of any claim of it becoming a marital asset. There was always the possibility of commingling the property or in some other way of making it part of the marital assets. However, those properties that are clearly identified as the Respondent's Separate Property by the Premarital Agreement are not subject to being divided or set to determine the equitable distribution of the marital assets.

The court also deferred any decision concerning the husband's claim for attorney fees incurred on the issue of the validity of the Premarital Agreement. The parties were further advised that the court was keeping further ruling on the motion to compel to permit the parties to further attempt to resolve the discovery issues based on the ruling of the court. If they were able to reach an agreement, there was no need for them to return to court;

however, if they could not reach an agreement, they could return to court for a determination by the court. (Excerpt 22-23).

On September 21, 2009, the parties engaged in mediation and signed a settlement agreement that was reported to have resolved all issues in the case (Excerpt 23). (A copy of that mediation agreement is found at Excerpt 36-39.)

The proposed judgment resulting from the settlement agreement was submitted to the court on December 4, 2009; however, wife discharged her attorney, retained new counsel, and objected to the proposed judgment and the enforceability of the settlement agreement. (Excerpt 23).

In late February of 2010, wife filed her Response to Respondent's Order To Show Cause Re: Enforcement of Settlement alleging that the settlement was unjust and inequitable in part because it was made without full disclosure of assets. (Supp. ER-9).

On March 12, 2010, the parties requested a court ruling as to the nature of the questions relating to the Respondent's Separate Property that were permissible during depositions of husband and others. The court stated that questions that pertained to marital property are appropriate however, questions that pertained to the property that was clearly the Respondent's Separate Property are not proper without some showing that the question is related to a claim that marital assets were used to increase the value of or in

some other way was used for the Respondent's Separate Property. The parties were informed that there had to be some valid basis for obtaining information and records of the Respondent's Separate Property as the Respondent's Separate Property would not be used in the determination of an equitable distribution of the marital assets. (Excerpt 23) The parties were informed that husband did not have to answer any question about what he did with his Separate Property unless that disposition involved marital property. (Excerpt 23)

Several months after the parties signed their agreement, wife's new counsel filed a request for production. The trial court stated that it would not order wife's requested discovery in the event it found the parties "settlement agreement" was enforceable. (Excerpt 29)

The matter proceeded to trial on August 2 and 3, 2010 and the court determined that the mediation agreement should be modified to provide wife with an additional $300,000. (Excerpt 34)

Each side appealed and on October 30, 2013 the Court of Appeals issued its decision.

SUMMARY OF ARGUMENTS

The statute mandating that the court require full disclosure of all assets by the parties in arriving at a just property division ORS 107.105(1)(f)(F) is unaffected by any "policy" of promoting settlements.

Elevating policy over substantive law does not promote just and proper property divisions or settlement, rather it undercuts the decades of progress in family law that resulted in the mandatory discovery rules (ORS 107.089) and remedies for failure to disclose (ORS 107.452). Parties' rights to discovery of "all the parties' assets" in a proceeding to challenge whether a proposed settlement is just and proper should not be limited. The trial court has remedies available to it to address inappropriate challenges to such agreements.

ORS 107.104 does not apply to mediation agreements and the policy set forth in ORS 107.104(1)(a) should not be applied to mediated agreements between husband and wife not yet reduced to judgment. Those policies do not authorize the Court to specifically enforce provisions of a mediation agreement, irrespective of whether it is equitable on the theory that enforcing select provisions supports the Oregon policy of promoting settlement agreements . . . "[which] is better served by protecting reliance on those [very] agreements."

The language cited by the Court of Appeals within the parties' mediated agreement to the effect that the agreement was to "resolve all claims between the parties" does not necessarily suggest waiver by the parties of their rights to pursue discovery beyond the signing of the mediated agreement.

ARGUMENT

A just and proper division of assets in a divorce in Oregon is premised upon the statutory mandate that "the court shall require full disclosure of all assets by the parties in arriving at a just property division" ORS 107.105(1)(f)(F). This is not a mere policy statement. It is the law.

It is bolstered, supported and reinforced by trial court rules, other statutes and case law. UTCR 8.010(4), for instance, provides that: ". . . each party must file . . . and serve on the other party a statement listing all marital and other assets and liabilities, the claimed value for each asset and liability and the proposed distribution. . ." ORS 107.089 provides that the parties "shall" provide "all" of various categories of discovery documents. "Shall" and "all" are not "permissive" words. *Conrad and Conrad*, 191 Or App 283, 292, 81 P3d 749 (2003) (cited by the Court of Appeals) holds that "The disclosure requirements of ORS 107.089 also implement ORS 107.105(1)(f)(F), which provides that "[t]he court shall require full disclosure of all assets."

This is the law of the state of Oregon and it is not superseded by "policy" as the Court of Appeals suggests.

The legal history in Oregon of the review of agreements between husbands and wives pending dissolution is long, but consistent in its analytical approach. Trial courts have looked to the overall fairness of such agreements

and have not enforced the individual clauses contained within the agreements when the agreement is outside the range of reasonable resolutions. The analytical approach taken by the courts regarding the issue of the overall fairness of such an agreement is exemplified in *Grossman and Grossman*, 338 Or 99, 106 P3d 618 (2005) by this court's inclusion of a quote from the court of Appeals decision regarding the division of marital property:

> "As the Court of Appeals stated, "If husband were correct, [husband] would receive more than $1 million worth of property, and wife would receive assets valued at less than $100,000." *Grossman and Grossman*, 191 Or App. at 298, 82 P3d 1039 (2004)." Cited in *Grossman and Grossman*, supra, 338 Or at 103, 106 P2d 618 (2005).

In *Prime and Prime*, 172 Or 34, 139 P2d 550 (1943), the Supreme Court summarized the enforceability of contracts entered into between husband and wife, pending divorce, affirming an analytical approach different from ordinary contracts and, perhaps more germanely, directed trial courts away from an analysis which considered isolated clauses within such agreements.

> "Even in the case of contracts between husband and wife in anticipation of divorce which merely provide for the present division of their property to the accumulation of which both have contributed, it has been held that equity would refuse enforcement if the agreement was inequitable. In *Hill and Hill*, 124 Or 364, 264 P. 447 (1928), this court refused to enforce such a contract and disposed of the identical real property which was the subject of the contract according to its own determination of the rights of the parties. It is apparent that contracts in anticipation of divorce are subject to peculiar rules not applicable to ordinary contracts for the disposition of property or the payment of money. Id. at 41-42."

The adoption of ORS 107.104(1)(a) was not intended to overrule the lengthy and consistent approach noted in *Prime and Prime* and the many other cases adhering to its holdings. The adoption of ORS 107.104(1)(a) was not intended to undermine the trial court's duty to review such agreements for fairness, as the trial court did in *Pollock*. While the Court of Appeals in *Pollock* repeatedly suggested that the policy of this state is to promote such agreements, it has never been the policy of this state to promote such agreements at the expense of the trial court's duty to hold agreements unenforceable if outside the range of reasonable resolutions, irrespective of the meaning of individual clauses.

In the Court of Appeals version of *Grossman and Grossman*, 191 Or App 294, 300, 82 P3d 1039 (2003) aff'd, 338 Or 99 (2005), the Court of Appeals listed a number of cases in which the trial court found agreements between husbands and wives pending divorce to be inequitable and as a result rescinded those agreements:

> "The most obvious problem with husband's argument is that it flies in the face of a substantial body of case law that is much more recent than Hill. See, e.g., Webber v. Olsen, 330 Or. 189, 194, 998 P.2d 666 (2000) (holding that a trial court is not required to incorporate into the judgment agreements that are unfair to one or the other of the parties); Norris and Norris, 302 Or. 123, 126, 727 P.2d 115 (1986) (stating rule that "the court is not bound by property settlement agreements between the parties"); McDonnal and McDonnal, 293 Or. 772, 778, 652 P.2d 1247 (1982) (holding that a dissolution court may, upon consideration, reject an agreement as unfair to one or the

> other of the parties); Jensen v. Jensen, 249 Or. 423, 430-31, 438 P.2d 1013 (1968) (holding that marital settlement agreements are enforceable when they are equitable given the circumstances of the case); Crowley and Crowley, 134 Or. App. 177, 181, 894 P.2d 1174 (1995) (holding that "courts have the responsibility to distribute property between parties on dissolution in a manner that is just and equitable in the circumstances, which means that courts are not required to accept property settlement agreements submitted by the parties"); Bach and Bach, 27 Or. App. 411, 414, 555 P.2d 1264 (1976) (same). Id. at 300.

The sanctity of a mediation agreement such as this is predicated upon full and fair disclosure and it is protected by a parties right to challenge the agreement as held in *Grossman and Grossman*, 338 Or 99, 106 P3d 618 (2005), *Hill and Hill*, 124 Or 364, 264 P. 447 (1928), and so many cases in that line. The Court of Appeals states that allowing an "attack [of] the validity of a settlement agreement by claiming a lack of discovery would undercut the incentive for the other party to negotiate in the first place," *Pollock and Pollock*, supra, 259 Or App at 244. This concept undermines the existence of the statutory construct that protects divorcing parties. Implicit is the idea that if only a party can induce their spouse to sign an agreement, they are then free from the requirements of full disclosure because the policy of encouraging settlement is more important than the statutory guarantee of full disclosure and a just property division. Such an elevation of policy harkens to the days prior to the existence of mandatory discovery under ORS 107.089; the days when if a party didn't ask about a particular asset, they were out of luck. This

is not and should not be the policy of the state of Oregon. The Court should not elevate the policy of encouraging settlement over the mandate of full disclosure.

Further, the Court should consider that ORS 107.104(2) did not include mediation agreements as enforceable agreements in the same manner as a stipulated judgment signed by the parties, a settlement on the record or a judgment incorporating a "marital settlement agreement." Mediation agreements are often made, as this one was, in the heat of the moment. It can be argued that the rule of the *Pollock* decision will actually discourage settlement of cases. Many practitioners mediate before undertaking discovery or before discovery is complete, secure in the knowledge that the trial court is not obligated to ratify a settlement if ultimately something turns up that demonstrates that the agreement is not just and proper. Under the *Pollock* rationale, the prudent practitioner will never mediate or encourage a client to sign a mediated agreement until they are absolutely sure that there is full disclosure for fear that the policy of enforcing settlements will trump any inequity. The trial court has an ample remedy in an award of attorney fees for inappropriate challenges to the enforceability of parties' agreements. It is noteworthy here that the trial court did not grant husband's petition for fees.

The Court of Appeals posits that ORS 107.104 and the law of the *McDonnal and McDonnal*, 293 Or 772, 652 P2d 1247 (1982) decision are

simpatico. Yet the *McDonnal* court, in the same quote referenced by the Court of Appeals, says: ". . . contracts, when entered into freely and voluntarily, shall be held sacred and shall be enforced by courts of justice; and it is only when some other overpowering rule of public policy intervenes, rendering such agreements unfair or illegal, that they will not be enforced. *McDonnal and McDonnal*, 293 Or 772, 779, 652 P2d 1247 (1982) (quoting *Feves v. Feves*, 198 Or 151, 159-60, 254 P2d 694(1953)). Ignoring the fact that *McDonnal* was decided in 1982 and that *Feves* was decided in 1953 as compared to the enactment of ORS 107.089 in 1995 and ORS 107.104 in 2001, the Court of Appeals ignores the actual holding of *McDonnal*: "when some overpowering rule. . . intervenes."

That "overpowering rule" is ORS 107.105(1)(f)(F) which mandates full disclosure. Interestingly, ORS 107.104 carves out this same exception when it states that it is the policy of the State of Oregon to enforce specific types of settlements (although not mediated agreements like this one) "except when to do so would violate the law. . ." The law requires full disclosure.

In this case, the trial court shielded husband from making full disclosure of his separate assets by setting "parameters" on the discovery prior to the parties reaching their mediation agreement and subsequently, as recited by the Court of Appeals, refusing to "order Wife's requested discovery in the event it found that the settlement agreement was enforceable." (*Pollock and*

Pollock, supra, 259 Or App at 241).

Wife never received the discovery she sought; complete disclosure of Husband's separate assets and still, the trial court found the mediation agreement to be inequitable.

Interestingly, the Court of Appeals seizes upon the generic language from the parties' mediated agreement in which the parties purport to "resolve all claims" as a waiver. Perhaps because there exists no case law which approves the specific enforcement of individual clauses in mediated agreements between husbands and wives pending divorce, the Court of Appeals concedes that it is "not in a position . . .to specifically enforce the settlement agreement," *Pollock and Pollock*, supra, 259 Or App at 238. The court nonetheless specifically enforced its interpretation of an individual clause in the mediated agreement by holding that when wife signed the agreement she "waived" the right to seek further discovery because she thereby manifested an intent to be bound. Id at 243-246. The Court of Appeals' conjecture that Wife intended to waive further discovery even if the agreement she signed was unfair is unlikely to be true.

"The fact that wife waived her right to discovery . . ." *Pollock and Pollock*, supra, 259 Or App at 244, was based directly on a clause within the agreement containing a general waiver, but it contained no reference to a waiver of discovery. The language of the agreement is set forth in the Court

of Appeals' decision: [t]his resolve[d] all claims between the parties." *Pollock and Pollock*, supra, 259 Or App at 243. The language is arguably inapplicable to the parties' rights of discovery and has little relevance to the issue of whether the parties' mediated agreement is enforceable as within the range of reasonable resolutions.

The language in the mediated agreement the Court of Appeals seizes upon is a generic phrase intended to resolve property and financial issues between the parties, not to address discovery issues. The Court of Appeals has, without a de novo review of the record, given a more expansive interpretation than the parties intended by agreeing to the term. Indeed the court may have reformed the agreement of the parties by suggesting waiver terms that were not expressly included within the agreement. As set forth in ORS 42.230, a court, in construing a contract, is to "ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted."

Wife continued to seek discovery throughout the dissolution proceeding. Though she unequivocally asserts that she did not waive her claim to discovery, the trial court had already improperly limited her right to discovery before she signed the mediated agreement. *Pollock and Pollock*, supra, 259 Or App at 240-241, 313 P3d 367 (2013) (noting wife's counsel's continuing attempts to obtain discovery and that the trial court set

"parameters" on the discovery sought.) Wife seeks the opportunity to obtain unfettered discovery so that she can pursue her argument that the mediated agreement was not within a range of reasonable resolutions.

When interpreting contracts, ordinarily a waiver must be plain and unequivocal either "in terms or by such conduct as clearly indicates an intention to renounce a known privilege or power." *Great American Ins. v. General Ins.*, 257 Or. 62, 72, 475 P.2d 415 (1970). See also *Brown v. Portland School Dist. # 1*, 291 Or. 77, 84, 628 P.2d 1183 (1981). ("To make out a case of waiver of a legal right there must be a clear, unequivocal, and decisive act of the party showing such a purpose[.]")

With respect to the Court of Appeals, wife submits that she did not manifest an intention to waive her right to discovery by signing this agreement even if the agreement was unfair and hence, according to case law, unenforceable. Not only does the language of the waiver include no reference to either party's right of discovery, but the record does not support the conclusion that wife intended to waive her rights of discovery even if the agreement between the parties was outside the range of reasonable resolutions. Indeed, to prove her assertion that the agreement was not just and proper, wife should have been allowed discovery. The holding of the Court of Appeals is based on an overly expansive reading of the waiver clause of the parties' agreement. The Court of Appeals' interpretation of the clause is likely

influenced by the court's view that parties who enter into such agreements are presumed to have "sufficiently considered the nature and extent of each other's holdings." *Pollock and Pollock*, supra, 259 Or App at 245, 313 P3d 367 (2013). In reaching its conclusion that wife waived the right of discovery, the Court of Appeals' decision in *Pollock* gives too much weight to the policy of promoting settlement.

Wife submits that this court should make it clear that it is improper to enforce selective terms of a mediated agreement between a husband and wife pending their divorce regardless of whether the agreement between them is within the range of reasonable resolutions and just and proper. Moreover, the meaning of an individual clause in a mediated agreement between a husband and wife pending divorce does not become relevant until the court can determine whether the agreement is within the range of reasonable resolutions.

In this regard, the Court of Appeals put the cart before the horse. No court should concern itself with the individual clauses of a mediated agreement between spouses pending divorce until the agreement has been determined to be within the range of reasonable resolutions and enforceable.

This court should reverse the Court of Appeals' decision.

CONCLUSION

Wife posits that the decision of the Court of Appeals undermines

decades of statutory and case law supporting full disclosure of assets in divorce cases and further that this policy elevates expediency and resolution over fairness. Wife respectfully requests that this court reverse the Court of Appeals' decision and remand this case to the trial court to determine whether the parties' mediation agreement is within the range of reasonable resolution and with instructions that the trial court shall require full disclosure of all of the parties' assets.

Respectfully submitted this 29th day of May 2014.

/s/ David N. Hobson, Jr.
David N. Hobson, Jr., OSB #852364
HOBSON AND ASSOCIATES, LLC
18255 SW Tualatin Valley Hwy.
Aloha, OR 97006
Tel: (503) 649-6333
david@hobsonlawoffice.com
Of Attorneys for
Petitioner on Review Patricia Pollock

CERTIFICATE OF COMPLIANCE

WITH ORAP 5.05(2)(d) and ORAP 5.05(4)(f)

Brief length

I certify that (1) this brief complies with ORAP 5.05(2)(b) and (2) the word-count of this brief (as described in ORAP 5.05(2)(a) is 4175 words.

Type size

I certify that the size of the type in this brief is not smaller than 14 point for both the text of the brief and footnotes as required by ORAP 5.05(4)(f).

DATED this 29th day of May 2014.

/s/ David N. Hobson, Jr.
David N. Hobson, Jr., OSB #852364
HOBSON AND ASSOCIATES, LLC
18255 SW Tualatin Valley Hwy.
Aloha, OR 97006
Tel: (503) 649-6333 Fax: (503) 591-5036
david@hobsonlawoffice.com
Of Attorneys for
Petitioner on Review Patricia Pollock

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing Petitioner On Review's Brief On The Merits on Helen C. Tompkins, Attorney for Respondent on Review, electronically through the court's e-file system on May 29, 2014.

I further certify that on the same date listed above I filed the original of the same document with the Court of Appeals by electronic filing to the State Court Administrator, Records Section, Supreme Court Building, 1163 State Street, Salem, Oregon 97301-2563.

DATED this 29th day of May 2014.

/s/ David N. Hobson, Jr.
David N. Hobson, Jr.
Oregon State Bar No. 852364
HOBSON AND ASSOCIATES, LLC
18255 SW Tualatin Valley Hwy.
Aloha, OR 97006
Tel: (503) 649-6333 Fax: (503) 591-5036
david@hobsonlawoffice.com
Of Attorneys for
Petitioner on Review Patricia Pollock