

1 **EXPEDITE** (if filing within 5 court days of hearing)

2 Hearing is set:

3 Date: December 1, 2017

4 Time: 9:00 a.m.

5 Judge/Calendar: Hon. Christopher Melly

6
7 SUPERIOR COURT OF THE STATE OF WASHINGTON
8 IN AND FOR THE COUNTY OF CLALLAM
9

10 IN RE THE ESTATE OF:

11 JEFFREY S. THROOP,

12
13 Deceased.

Case No. 17-4-00172-4

**LINDSAY M. THROOP'S RESPONSE
TO AMY BILLINGS' PETITION FOR
BASIC SPOUSAL AWARD (RCW
11.54.010)**

14 **RESPONSE TO PETITIONER'S PETITION**

15 COMES NOW Lindsay M. Throop, beneficiary, daughter of Jeffrey S. Throop, heir to his
16 estate, and an interested party in the matter(s) herein, by and through her attorneys, John D. Black
17 of the John D. Black, PLLC, and James Randall, John A Kesler III, and Jennifer Doehne of the
18 law firm of Bean, Gentry, Wheeler & Peternell, PLLC, and responds to the Petition as follows:
19

20 **I. Interested Parties**

21 1.1 Denied to the extent that whether other persons are entitled to a basic award is a
22 question of law, which must be determined by the Court.

23 1.2 Admit.

24 1.3 Admit.

25 1.4 Admit.

26 1.5 Admit.

27 **LINDSAY M. THROOP'S RESPONSE TO
AMY BILLINGS' PETITIONER FOR BASIC
SPOUSAL AWARD AND COUNTER-
PETITION FOR RELIEF**

Bean, Gentry, Wheeler & Peternell, PLLC
910 Lakeridge Way SW
Olympia, WA 98502
(360) 357-2852
Fax (360) 786-6943

1 **II. Factual/Financial Circumstances**

2 2.1 Denied for lack of knowledge.

3 2.2 Denied. Petitioner states that she earns approximately \$2,975 in net monthly
4 income. Further, Petitioner fails to mention inheritance she received from her mother's estate.
5 Ms. Throop is also under the impression that Petitioner and decedent lived separately and
6 maintained separate residences and accounts prior to marriage and during the marriage as well. A
7 sentiment that is echoed by Petitioner's statement in paragraph 2.1 that "[d]uring the parties'
8 marriage, Jeffrey Throop would control most of the financial aspects of the marital community
9 including any separate or marital bank accounts with Strait View Credit Union." Petitioner appears
10 to have equity in her primary residence, which she received as a result of her 2008 divorce.

11 2.3 Denied for lack of knowledge.

12 2.4 Denied for lack of knowledge.

13 **III. Asset Valuations**

14 3.1 Denied for lack of knowledge. Further, Ms. Throop has knowledge of a fundraising
15 event held to benefit decedent's estate. Ms. Throop witnessed Ms. Billings accept the money
16 received from the charity event but these funds were not included in the Inventory &
17 Appraisal. Ms. Throop is also aware of at least one sale held at decedent's residence for
18 equipment from decedent's business and his personal property, however, proceeds from this and
19 any other sale are not included in the Inventory & Appraisal. Ms. Throop also highly questions
20 the valuations of the assets listed in the Inventory & Appraisal as appearing to be very low.
21 Ms. Throop is under the impression that children of Ms. Billings (step-children of the deceased)
22 have been utilizing many of the decedent's personal on and off road vehicles, such use may
23 decrease the value of such assets and also constitutes unjust enrichment as those vehicles do not
24 belong to Petitioner. These same vehicles have not been made available to Ms. Throop. Further,
25 it does not appear that Petitioner included a Profit and Loss analysis of decedent's business,

1 Clallam Builders in the Inventory & Appraisalment, even though she has included the bank account
2 associated with Clallam Builders and all of the debt associated with Clallam Builders.

3 3.2 Denied for lack of knowledge.

4 3.3 Denied for lack of knowledge.

5 3.4 Denied for lack of knowledge. Based solely on the information provided in the
6 Inventory & Appraisalment filed by Petitioner, the assets of the estate total \$350,329 and liabilities
7 total \$264,121, which would leave the estate solvent. However, other information alluded to by
8 the Petitioner indicates medical bills alone may be \$400,000.00. But assuming the estate is solvent
9 as Petitioner once claimed, Petitioner's claim for Basic Spousal Award in the amount of \$125,000
10 would push the estate into insolvency. As such, by Petitioning for the basic spousal award under
11 RCW 11.54.010, Ms. Billings is effectively asking for any inheritance otherwise payable to Ms.
12 Throop be paid to Ms. Billings instead.

13 **IV. Request for Award**

14 4.1 Denied that Petitioner is entitled to the relief requested.

15 4.2 Admit.

16 4.3 Denied for lack of knowledge as to whether other interested parties, if any, were
17 given notice.

18 **V. Prayer for Relief**

19 5.1 Denied that Petitioner is entitled to the relief requested.

20 5.2 Denied that Petitioner is entitled to the relief requested.

21 **LAW AND ANALYSIS**

22 Ms. Throop, through her attorneys, contends that Petitioner's Petition is not ripe to be heard
23 and requests that this Court dismiss the Petition without prejudice, or, Continue the Hearing, so
24 that Respondent can investigate the issues and supplemental pleadings may be filed. The facts and
25

1 analysis contained in Respondent's concurrently filed Motion for Continuance are incorporated by
2 reference as if stated fully herein.

3 Alternatively, Ms. Throop requests that the court Grant Petitioner's Petition and allow Ms.
4 Throop to split the award with Petitioner, as provided under RCW 11.54.010(1) and according to
5 the reasons set forth below.

- 6 1. Lindsay Throop is the decedent's sole surviving child from a marriage prior to
7 decedent's marriage to Petitioner. A more detailed history is provided in the
8 Declaration of Lindsay Throop, filed simultaneously with this Response and
9 Motion for Continuance.
- 10 2. Ms. Throop is under the impression that Petitioner wishes to claim all property of
11 decedent's estate – superseding all creditors as well as the other beneficiary. Ms.
12 Throop does not believe that it is an accident that decedent kept his assets titled as
13 separate property.
- 14 3. Per Ms. Billings' statement in her Petition, "[t]here is no or very little titled
15 community property in this estate."
- 16 4. Under intestate law in Washington, a surviving spouse is entitled to one hundred
17 percent (100%) of the community property and one half of the net separate estate
18 if the intestate is survived by issue (whereby the issue also receives a one half
19 interest in the separate estate). See RCW 11.04.015. Due to the lack of titled
20 community property assets, the probate estate must be shared jointly between Ms.
21 Billings and Ms. Throop.
- 22 5. There are several unresolved issues, which could change the outcome of
23 Petitioner's Petition such as assets missing or misreported on the Inventory &
24 Appraisement, Petitioner's Declaration that leaves out income that she received and
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1 equity in her personal residence, payment of “expenses of last sickness”, and a life
2 insurance policy that may or may not require separate litigation.

3 6. In 1992, the decedent named Ms. Throop as the sole beneficiary of an accidental
4 death and dismemberment life insurance policy. The decedent had opportunity but
5 did not change the beneficiary. The life insurance policy is of significant concern
6 because it is valued at \$150,000.00, and the policy administer disputes the validity
7 of said policy. The attorney for Petitioner has communicated both with his client
8 as well as Mr. Black that he intends to pursue and action against the policy
9 administer. There is further potential dispute regarding the policy as it lists Ms.
10 Throop as sole beneficiary of the policy yet Petitioner seems to be making a grab
11 at a communal property interest.

12 7. RCW 11.54.010(1) allows for the award to “be made from either the community
13 property or separate property of the decedent” and further, “the probate and
14 nonprobate assets of the decedent abate in accordance with chapter 11.10 RCW in
15 satisfaction of the award.” Therefore, if the life insurance policy is held to be valid,
16 creditors of the estate may argue that the payment of the award could be made from
17 the unencumbered policy.

18 8. Ms. Throop and her attorneys are not aware of any other nonprobate assets.

19 9. RCW 11.54.030 states that as a condition to the award, “[t]he court may not make
20 an award unless the court finds that the funeral expenses, expenses of last sickness,
21 an expenses of administration have been paid or provided for.” Petitioner claims
22 in her Declaration (paragraph 7) that there are “substantial medical expenses
23 incurred in the sum of approximately \$400,000.00 following the motorcycle
24 accident that are unpaid because of no medical insurance coverage.” The first issue
25 is that the court may not make this award unless these medical expenses have been
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1 paid. If the medical expenses truly equate to over \$400,000.00, then Ms. Throop is
2 wondering why Petitioner filed the Motion for Solvency. Further, there are not
3 enough assets in the estate to cover this single creditor's claim. Therefore Petitioner
4 would be barred from obtaining the award under RCW 11.54.030. The second issue
5 is that the only record of the amount of creditor's claims provided to Ms. Throop is
6 gathered from a letter from Petitioner's attorney dated August 23, 2017, whereby
7 total creditors' claims equal \$264,121.82, which strongly contrasts Petitioner's
8 second statement of "approximately \$400,000.00". Further, medical expenses in
9 the amount provided to Ms. Throop equal \$29,114.59.

10 10. Ms. Throop is requesting this relief based on her current position between
11 undergraduate and graduate school and assistance with her future education. This
12 is assistance that she will not receive from any other source if the life insurance is
13 found to be invalid and failure to meet her financial obligations when it comes to
14 the graduate school application process will equate to not being considered to
15 further her career in the manner she chooses.

16 11. Ms. Throop currently pays approximately \$1,580.00 in monthly bills and expenses.

17 12. Ms. Throop anticipates the impending due date of her undergraduate student loans,
18 which will become due in early 2018 in the approximate monthly amount of
19 \$616.00.

20 13. Ms. Throop has an average monthly income of \$2,200.00.

21 14. Ms. Throop receives no other support from family or friends and has no other access
22 to funds.

23 15. Ms. Throop is currently applying to graduate schools. She is at the point of the
24 process where she'll be required to travel to each graduate school in order to
25

1 3. For such other relief as this Court deems just and equitable.

2 RESPECTFULLY SUBMITTED this 29th day of November, 2017.

3 BEAN, GENTRY, WHEELER & PETERNELL, PLLC
4 Attorneys for Lindsay S. Throop

5 
6 JAMES RANDALL, WSBA #30923

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1 **PROOF OF SERVICE**

2 I certify that I caused to be served a copy of the foregoing document on all other parties
3 or their counsel of record on the date below as follows:

4 Curtis G. Johnson
5 230 E. 5th Street
6 Port Angeles, Washington 98362

- 7 US Mail Postage Prepaid
- 8 Electronic mail
- 9 ABC/Legal Messenger
- 10 Hand delivered
- 11 Facsimile to (360) 452-3897

12
13 I certify under penalty of perjury under the laws of the State of Washington that the
14 foregoing is true and correct.

15 DATED this 29th day of November, 2017, at Olympia, Washington.

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18 Kelly J. Giles

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SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLALLAM

IN RE THE ESTATE OF:

JEFFREY S. THROOP,

Deceased.

Case No. 17-4-00172-4

**DECLARATION OF EMAILED
DOCUMENT (DCLR)**

**[ATTACH AS LAST PAGE OF
EMAILED DOCUMENT]**

Pursuant to the provisions of GR 17, I declare as follows:

1. I am the party who received the foregoing email transmission for filing and certify that it is on bond paper.
2. My address is: 230 East 5th Street, Port Angeles, Washington 98362.
3. My phone number is: (360) 452-4533.
4. The email address where I received the document is: jdblack@olympen.com
5. I have examined the foregoing document, determined that it consists of 10 pages, including this Declaration page, and that it is complete and legible.

1 I certify under penalty of perjury under the laws of the State of Washington that the above
2 is true and correct.

3
4 Dated: November 29, 2017, at Port Angeles, Washington.

5
6 Signature: _____
7 Print Name: John D. Black

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