

## SUMMARY STATEMENT

*Liberty Bankers Life Insurance Company v. Witherspoon, Kelley, Davenport & Toole, P.S.*  
Docket No. 41993

In a case arising out of Kootenai County, the Idaho Supreme Court vacated the judgment of the district court and remanded for further proceedings. The case involves the competing security interests of Liberty Bankers Life Insurance Company (“Liberty”) and Witherspoon, Kelley, Davenport, & Toole, P.S. (“Witherspoon”) in certain real and personal property located in Post Falls, Idaho (“Post Falls Landing” and the “Marina” respectively), which were formerly owned by the Point at Post Falls, LLC and Post Falls Landing Marina, LLC (collectively, “The Point”).

The district court made three judgments that were vacated by the Idaho Supreme Court. First, the district court held on summary judgment that Liberty was judicially estopped from arguing that a modification to its underlying loan agreement with The Point (the “Eighth LMA”) was not enforceable. The Idaho Supreme Court held that this judgment was an abuse of discretion because the district court had failed to find, as is required for judicial estoppel, that Liberty had obtained a judgment, advantage, or consideration by previously taking an inconsistent position on that issue. Second, the district court held that under Idaho Code section 45-108 Liberty and The Point’s entry into the Eighth LMA had released part of the deed of trust on Post Falls Landing and created a replacement deed of trust. The Idaho Supreme Court held that this judgment was in error because Idaho Code section 45-108 does not apply to deeds of trust, and furthermore, because the Eighth LMA did not purport to release the deed of trust itself, but rather contemplated that Liberty would release the deed of trust by filing a release of lien. Finally, the district court held that the entirety of the Marina was personal property, and was not a fixture to the Post Falls Landing. The Idaho Supreme Court held that the district court erred by improperly focusing on the subjective evidence of the builder’s intent, rather than the objective circumstances surrounding the Marina’s construction.