FILED
SUPREME COURT
STATE OF WASHINGTON
8/28/2023 4:34 PM
BY ERIN L. LENNON
CLERK

IN THE SUPREME COURT FOR THE STATE OF WASHINGTON
CASE NO. 1022328

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON
NO. 83693-5-I

APOLLONIA KWAN, et al.,

Petitioners,

v.

ALAN B. CLARK, et al.

Respondents.

CLARK RESPONDENTS' ANSWER IN OPPOSITION TO PETITION FOR FURTHER REVIEW OF COURT'S UNPUBLISHED APRIL 10, 2023 OPINION

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I. INDENTITY OF PARTIES OPPOSING PETITION FOR REVIEW

The Clark Respondents[1] through their attorneys of record, Williams Kastner & Gibbs, PLLC, oppose Petitioners' motion for further review pursuant to RAP 13.4.

II. SUMMARY OF OPPOSITION ARGUMENT

Petitioners fail to demonstrate any of the four RAP 13.4(b) considerations for acceptance of review. There is no conflict with a decision of the Supreme Court or of the Court of Appeals. There is no significant question of law under the Constitution of the State of Washington or of the United States involved and there is no issue of substantial public interest that should be determined by the Supreme Court.

[1] The Clark Appellants include Alan B. Clark and Lynne Clark, a married couple, GREENSPACE INC., a Washington corporation, GREENSTREET LLC, a Washington limited liability company, FIRST HILL PARTNERS LLC, a Washington limited liability company, FIRST HILL PROPERTIES LLC, a Washington limited liability company, EAST HILL SUMMIT LLC, a Washington limited liability company, and ARCA, a Washington Limited Liability Company.

There is no significant question of law under the Constitution of the State of Washington or of the United States involved. The Court of Appeals concluded that the Arbitrator did not award prejudgment interest and there was no ambiguity in blank spaces on a form. If the Arbitrator had intended to award prejudgment interest, he would also have made the date findings necessary to calculate prejudgment interest. He did not do so. Moreover, when the arbitrator intended to award prejudgment interest, as he did on Judgment No. 2, he did so explicitly—not by a speculative inference based on a blank space in a form prepared by Petitioners themselves.

As to the second issue, there is no substantial public interest in this Court reviewing an unpublished decision construing for the very first time, RCW 7.60.290(5). The statute was enacted in 2004. The factual circumstances present here are narrow and the statutory construction is premised on well-established principles. No Washington authority presents a

contrary result or opinion, and the decision is not binding on any other court.

Petitioners also claim that the Court of Appeals ruling precludes a fair and equitable apportionment of receivership expenses. But this is inaccurate. No equitable apportionment has yet to occur in this case. Rather than such result being precluded, the Court of Appeals has remanded the case so that it may be done.

III. THERE IS NO AMBIGUITY, AND ESTABLISHED PRECEDENT DICTATES THE REVERSAL OF AN AWARD OF PREJUDGMENT INTEREST WHEN THERE IS NO SUCH AWARD IN THE ARBITRATION AWARD

The finality of arbitration awards is an important public policy.[2] In the cases relied on by Petitioners, an ambiguity prevented the arbitration award from fully resolving the dispute between the parties.[3] But there is no ambiguity here.

Instead, Petitioners seek further review asking this Court

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[2] *Snoqualmie Police Ass'n*, 165 Wn. App. 895, 899–904, 273 P.3d 983 (2012).

[3] *Tolson v. Allstate Insurance Co.,* 108 Wn. App. 495, 32 P.3d 289 (2001) and similar authorities.

to reopen the dispute between the parties and require the Arbitrator to make *additional* findings and conclusions that he did not make in the Arbitration Award.

Finding no ambiguity in the Arbitration Award, this case was correctly resolved by the Court of Appeals in reliance on *Elcon Const., Inc. v. E. Washington Univ.*, 174 Wn.2d 157, 273 P.3d 965 (2012). In *Elcon*, the Supreme Court held that “Elcon may not recover statutory interest on the arbitrator's award through a post award motion.” *Elcon,* 174 Wn.2d at 170–71. The Supreme Court reasoned the trial court has no basis for adding prejudgment interest to an arbitration award because that interest was part of the merits of the controversy, and therefore “forbidden territory for a court” confirming the award. *Id*. The *Elcon* Court did not remand the case to the arbitrator to inquire whether he had made a mistake, to explain his award or to allow the arbitrator to make additional findings. Instead, the Court ended the dispute clearly stating:

> Elcon may not recover statutory interest on the arbitrator's award through a postaward motion.

Id. at 170–71. The Court did not remand the case to resolve claimed issues of the arbitrator's possible mistaken intention, as Petitioners request here. In the interests of the finality of arbitration awards, it ended the dispute.

Petitioners, in seeking further review, seek to undermine the finality of arbitration awards and avoid the import and holding of *Elcon*. They moved for reconsideration after losing on appeal on the grounds that blanks on a form of judgment prepared by Respondents themselves preclude finality, overruling the long standing holding of *Elcon* and the line of supporting cases dating back to 1896. According to Petitioners, this is because the "blanks" are allegedly ambiguous and capable of two meanings. But blank spaces are not ambiguous—they are just blanks that have no meaning. One can speculate why they are blank but that is not the same thing

as construing an ambiguous term. Blank spaces are not capable of two meanings because they have no meaning; they are blanks.

Petitioners' claimed ambiguity is not about the meaning of chosen words but whether the Arbitrator intended to fill in the blank spaces on Petitioner' form. Maybe he did, maybe he did not. It is not a question of what the Arbitrator meant, but rather, whether he mistakenly failed to do what Petitioners speculatively claim he intended to do.

Petitioners' speculation violates the well-considered rule that " 'no review will lie for a mistake in either [the law or facts]' " *Clark County Pub. Util. Dist.,* 150 Wn.2d at 245, 76 P.3d 248 (internal quotation marks omitted) (quoting *Dep't of Soc. & Health Servs. v. State Pers. Bd.,* 61 Wn. App. 778, 783–84, 812 P.2d 500 (1991)). And Petitioners' speculation as to whether the Arbitrator intended the court to fill in the blanks on Petitioners' proposed form of judgment is not well grounded in fact. This is because the Arbitrator also did not make the

necessary date findings or identify the liquidated amounts necessary to calculate prejudgment interest.

The absence of such findings in the Award with respect to Judgment No. 1 is not because such findings and conclusions were not possible, it is because the Arbitrator simply did not make those findings or conclusions.

The Arbitrator prepared two judgments. In contrast to Judgment No. 1, in Judgment No. 2 the Arbitrator explicitly included prejudgment interest in the Arbitration Award. As to Judgment No. 1, there is nothing. There are no dates and no specific liquidated amount(s) that would allow interest to be awarded.

This absence of any findings in the Arbitration Award as to when and on which sums to calculate prejudgment interest leaves the trial court in the very same situation as in *Elcon*, with "no basis for determining whether the amount awarded met the test for [prejudgment] interest;" and with no date or time frame over which to calculate such interest. Under these

circumstances, the missing information leaves no room for ambiguity, even if an ambiguity could exist in a blank on a proposed form drafted by Respondents. The Arbitrator unequivocally, and beyond any speculation, did not award prejudgment interest and did not make any of the findings necessary to calculate an award of prejudgment interest. There is no ambiguity about this fact. For all these same reasons, the rational and the holding of *Elcon* applies, just as the Court of Appeals correctly ruled.

A. THE ALLEGED AMBIGUITY IS RESPONDENTS' OWN CREATION

Notably, Petitioners' alleged ambiguity is not in the Arbitration Award. Rather, the claimed ambiguity is of Petitioners' own creation in blank spaces on a proposed form of judgment drafted by Petitioners. At page 3 of their briefing in support of reconsideration, "[Petitioners], acknowledge there is no explicit statement in the body of the Award stating that

prejudgment interest *does* apply.[4]" In other words, Petitioners have conceded, as they must, that there is no award of prejudgment interest on Judgment No. 1 in the Award.

The allegedly ambiguous "words" are blank spaces in a proposed form of judgment that Petitioners themselves drafted. Thus, the alleged "ambiguity" is not the work of the Arbitrator; it does not contain any of his drafting efforts; and it is not signed by the Arbitrator. Rather, the alleged ambiguity is a blank space drafted by Petitioners' counsel. The name of Petitioners' counsel's law firm appears prominently on the proposed form. It is on counsel's pleading paper, not the Arbitrators, avoiding any possible confusion regarding its authorship.

[4] This statement is not entirely accurate as both the Arbitration Award and the proposed judgment included prejudgment interest on Judgment No. 2, demonstrating that the Arbitrator knew how to award prejudgment interest and demonstrating when he intended to do so.

Sensing a fatal defect in their argument, Petitioners inaccurately assert that the proposed form of judgment, drafted by them, was "incorporated" into the Arbitration Award. But that is not what the Arbitrator said or did. Rather, the Arbitrator's statement falls far short of incorporation. Instead, the Arbitration Award states:

> The Arbitrator has attached a proposed form of Judgment hereto which he believes properly reflects this ruling and Award.

CP 922; para. 11.

The Arbitrator's belief is correct. He did not award prejudgment interest on Judgment No. 1, and neither do the blanks on the form drafted by Petitioners. The proposed form of judgment also properly reflects the Arbitration Award because the proposed form does not include any of the factual determinations [including starting dates] necessary for the calculation of an award of prejudgment interest and it does not identify which, if any, sums were liquidated amounts and which sums were not.

And there is no ambiguity about the dates—they are missing. The missing dates, like the missing award of prejudgment interest, are missing from both the Arbitration Award and from the proposed form of judgment.

Petitioners claim they are seeking clarification, but they are really asking the Supreme Court to instruct the Arbitrator to determine whether he should make *additional* findings and conclusions that he did not make in the Arbitration Award. Such direction by the Court would overturn *Elcon* and defeat the public policy of finality achieved by the *Elcon* ruling.

B. The Trial Judge Was Not Presented with the Same Form of Judgment as the Arbitrator

The missing dates demonstrate further flaws in Petitioners' argument. Petitioner had to add the dates to the proposed form of judgment. At least one of the dates inserted by Petitioners, September 17, 2018, does not exist anywhere in the Arbitration Award. Not even as a passing reference.

Thus, while an empty blank on a form could be a proper reflection of the Arbitration Award, the footnotes and amounts

added later by Petitioners and submitted for entry by the trial court are not. Compare CP 995 to CP 1521.

The proposed form of judgment presented to the trial court for entry is not the same proposed form of judgment the Arbitrator believed reflected his Award. *Id.* Thus, Petitioners' argument that the trial court also found the blank spaces ambiguous is not accurate. The trial court may have had a redlined copy, but he was not presented with blank spaces in a form, and the trial court did not then fill in the blank spaces with information from the Arbitration Award. Instead, the factual findings necessary for the computation of prejudgment interest—the same findings not made by the Arbitrator—were added to the form by Petitioners before it was submitted to the trial court on the motion for presentation. Compare CP 995 to CP 1521.

Petitioners not only added footnotes to the form of judgment with the missing dates necessary to compute interest, they also improperly *selected* the amounts of the award on

which prejudgment interest was to run. In doing so, Petitioners chose the entire net principal balance of the award without considering a $597,666 setoff due to the Clark Respondents. CP 984 and CP 988. Petitioners also elected to award prejudgment interest to themselves on the entire net principal amounts in the Award even though the net sums incorporated amounts the Arbitrator had specifically ruled were not subject to prejudgment interest.[5] None of Petitioners' additions—additions that are inherent and necessary in any award of

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[5] The judgment entered by the trial court awarded prejudgment interest on the total net principal amount awarded to Petitioners, even though that net principal amount included millions of dollars the Arbitrator specifically excluded from any award of prejudgment interest. The excluded amounts incorporated into the net principal judgment amount include $700,000 owed by Clark to Mountlake Village and $1.2 million owed by respondent Kwan to First Hill Properties. CP 983- 984. Moreover, a $597,666 offset owed to Clark was not set off against the principal judgment sum. CP 984 and CP 988. In the case of an earlier judgment on a loan, CP 970-971, the Petitioners awarded themselves prejudgment interest on top of prejudgment interest that had already accrued on the earlier judgment and provided for that compounded interest to accrue for an even longer time frame. CP 987, Note 1, red font.

prejudgment interest—appear anywhere in the form of proposed judgment that the Arbitrator viewed as a reflection of his award. They appear only in the form of judgment that Petitioners modified and then presented for entry to the trial court.[6] Compare CP 995 to CP 1521.

Petitioners make a last attempt to buttress their claim by arguing that statements by the Arbitrator—that no prejudgment interest was to be awarded as to some specific sums—must mean the negative inference that the Arbitrator was silently awarding prejudgment interest. Petitioners' conclusion is belied by the fact that the Arbitrator was perfectly able to award prejudgment interest and did affirmatively and explicitly award prejudgment interest when he intended to do so. CP 984 and compare CP 995 to CP 996. When the Arbitrator intended to

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[6] Petitioners were likely aided in gaining entry of this reformed form of judgment by the Receiver's termination of special litigation counsel. An event that occurred in the month prior to Petitioners' presentation of the modified proposed judgment to the court for entry as the final judgment. CP 1463-64.

award prejudgment interest, he explicitly did so, not by silence and not by using unfilled blank spaces on a proposed form he did not draft.

In none of the cases cited by Petitioners did the court remand an arbitration award to allow an arbitrator to make additional findings of fact necessary to award, define, and support a missing element of damages. None of the cases involve a proposed form of judgment drafted by the respondents themselves and then altered before the final presentation for entry by the court. Rather, in *Snoqualmie Police Ass'n v. City of Snoqualmie,* 165 Wn. App. 895, 273 P.3d 983 (2012), the court held that the award to "make him whole" was ambiguous "[b]ecause there is more than one reasonable way to read this award to accomplish that objective . . .." *Id*. at 898-899. And as the court explained in *Tolson v. Allstate Insurance Co,* "[t]he letter could be read in at least two ways, and it was not clear from the letter's plain language which of the two possible readings was correct." *Snoqualmie*

Police Ass'n, 165 Wn. App. at 900, citing *Tolson v. Allstate Insurance Co.,* 108 Wash.App. 495, 498, 32 P.3d 289 (2001). Similarly, in *Hanford Atomic Metal Trades Council v. General Electric Co.* 353 F.2d 302 (9th Cir. 1965) the district court found that the award was susceptible to two different interpretations.

Unlike the cases relied on by Respondents, a remand here would not be about the Arbitrator *clarifying* his meaning in making a choice of words, but whether the Arbitrator should reopen the arbitration proceeding to make the *additional* findings and legal conclusions necessary to support an award of prejudgment interest. Only after making additional findings, could the Arbitrator fill in the blanks Petitioner's contend are ambiguous.

The blanks in the form cannot be read two ways where factual findings are missing from the Award that would need to exist to support Petitioners' claimed interpretation. The absence of these findings, controlling legal precedent, and the public

policy of finality compels this Court to decline the invitation to remand the case back to arbitration based on Petitioners' speculation about whether the Arbitrator intended to fill in a blank space in a form drafted by Petitioners.

This is especially true where the lack of necessary findings on dates and specific amounts leaves no real question of the Arbitrator's intention, especially when compared to his explicit award on the same issue of prejudgment interest with respect to Judgment No. 2, CP 995-996, on the same form. In Judgment No. 2 the award is explicit, in the arbitration award itself, in the supporting schedules, and in the filled blanks in the form the Arbitrator believed reflected his rulings. CP 984, para. 3, in the attached tables, CP 991, and in the proposed form of judgment. CP 996. But not Judgment No. 1. CP 995.

Speculation about whether missing information might fill in blanks on a form drafted by Petitioners does not justify reopening the Arbitration Award to make additional required findings and conclusions. As the court observed in *Snoqualmie*

Police Ass'n, "[p]ublic policy in Washington strongly favors the finality of arbitration awards," and great deference is afforded to the arbitrator. *Snoqualmie Police Ass'n*, 165 Wn. App. at 899–904. "Therefore, the arbitrator is the final judge of both the facts and the law, and mistakes in either respect are not reviewable." *Id*.

Here, there is no award of prejudgment interest in the Arbitration Award and there are none of the necessary factual findings that would allow for its calculation. In such circumstances, well established Supreme Court case law dictates the result. In *Elcon*, the Washington Supreme Court did not remand the issue to the arbitrator. It ruled that a trial court has no basis for adding prejudgment interest to an arbitration award and ended the dispute. *Elcon*, 174 Wn.2d at 170–71. The same conclusion is compelled here, and so is the same result.

IV. THE COURT'S CONSTRUCTION OF RCW 7.60.290(5) IS CORRECT

Petitioners contend that the Court of Appeal's construction of RCW 7.60.290(5) is incorrect and argue that the Court's reliance on *Umpqua Bank v. Shasta Apts., LLC*, 194 Wn. App. 685 (2016), *Landmark Dev. Inc. v. City of Roy*, 138 Wn.2d 571 (1999); and *Wash. Nat. Gas Co. v. Pub. Util. Dist. No. 1*, 77 Wn.2d 94 (1969), is misplaced and in error. Petitioners argue essentially that the language of the statute is entirely redundant surplusage as a receivership court already has the power to do whatever it wishes irrespective of and with or without reference to RCW Chapter 7.60. The Court of Appeals correctly rejected this argument.

A. The Unpublished Construction of RCW 7.60.290(5) Narrowly Applies, Presents No Conflicts, and Meets No Substantial Public Interest

Respondents fail to meet the substantial public interest requirement on the statutory construction issue. The opinion is unpublished and is not binding on any other court. In the second place, there are no other grounds for Supreme Court

review because the opinion is the first court to have offered any construction of RCW 7.60.290(5). Thus, the decision is not in conflict with any other published decision by any other Washington court. No constitutional issues are involved or even argued.

Rather, Respondents argue that the Court of Appeals interpretation of RCW 7.60.290(5) is unsupported by law or statute and circumscribes a receivership court's authority to manage a receivership. But the opinion does not do any such thing. It does not broadly prohibit a trial court from apportioning receivership costs, as Petitioners contend, and it certainly does not strip from other Washington courts, common law powers over a receivership, they have held for over a hundred years. Notably there is not a single citation to Washington legal authority in support of this proposition because no Washington court has ever ruled as Petitioner's contend. The lack of authority is deafening.

Not only is the Court of Appeal's decision unpublished, but its interpretation of RCW 7.60.290(5) narrowly applies to the situation where the trial court summarily checked a box on a form to impose a sanction without ever conducting any hearing to apportion receivership costs. CP 1527. In place of a hearing and an exercise of its own discretion, the trial court merely checked a box indicating its adoption of the arbitrator's "suggestion." CP 1527. By doing so, the lower court blankly imposed a penalty that included all the costs of the receivership, without specification or amount and included even those unknown expenses yet to be incurred by the receiver in the future without limitation. (Even the receivership expenses incurred during a successful appeal). This adoption of the Arbitrators "suggestion" occurred even though the Arbitrator had ruled that the issue was outside the scope of the arbitration

agreement, beyond his jurisdiction, and was an issue reserved for the court.[7]

The Court of Appeals did not preclude equitable apportionment, as Petitioners contend, rather the case was remanded so that such apportionment could take place rather than the wholesale imposition onto Respondents of all past and future receivership costs. The Court of Appeal correctly ruled that the legislature allowed such a sanction, as the trial court improperly imposed on Respondents, in only one instance, and that instance explicitly and undeniably did not exist here because the Respondents were not petitioners seeking to impose the receivership on other parties.

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[7] "[T]he Arbitrator concludes that he does not have the authority to make the legal determination as to whether such a reallocation may be made under the applicable statutes or caselaw and refers this issue to the Receivership court for determination. Accordingly, the priority of payment out of the receivership estate may be affected or determined by any reallocation of these fees and costs to the Clarks." CP 1150.

Petitioners' argument depends entirely on the claim that RCW 7.60.290(5) is meaningless, adds nothing to the law and is a statute that may be ignored by the courts. Such conclusions are inconsistent with all the rules of statutory construction. In comparison, the Court of Appeals applied well considered and long-established rules of construction in stating:

> "[W]e generally decline to read into the statute what is not there." *Umpqua Bank*, 194 Wn. App. at 693-94. We do not include words where the legislature chose not to and we construe the statute assuming the legislature meant exactly what it said. *Birgen*, 186 Wn. App. at 858. "Legislative inclusion of certain items in a category implies that other items in that category are intended to be excluded." *Landmark Dev., Inc. v. City of Roy,* 138 Wn.2d 561, 571, 980 P.2d 1234 (1999) (quoting *Bour v. Johnson*, 122 Wn.2d 829, 836, 864 P.2d 380 (1993)). "Where a statute specifically designates the things or classes of things upon which it operates, an inference arises in law that all things or classes of things omitted from it were intentionally omitted by the legislature under the maxim expressio unius est exclusio alterius—specific inclusions exclude implication." *Landmark Dev., Inc.,* 138 Wn. 2d at 571 (quoting *Wash. Nat. Gas Co. v. Pub. Util. Dist. No. 1*, 77 Wn. 2d 94, 98, 459 P.2d 633 (1969)).

The Court of Appeals simply and correctly rejected Petitioners contention that a lower court has equitable authority to ignore the Receivership statute and award receivership expenses as a penalty outside the sole circumstance specifically articulated by the legislature for the imposition of such a sanction:

> The Kwan group procured the receiver's appointment, not the Clarks. It therefore follows that the Clarks, as the defendants in the action, could not procure the receivership wrongfully or in bad faith. RCW 7.60.290 is unambiguous. The legislature determined that full costs of the receivership may be imposed on one party if the receivership was procured wrongfully or in bad faith. Because the Clarks did not procure appointment of the receiver, the trial court erred in apportioning the cost of the receiver against the Clarks. We remand to strike the court's apportionment of receivership costs.

Petitioners argue that the statute "simply clarifies a power that already exists, and provides that procedurally, a party may allege wrongful receivership at the time of termination of the receivership and may be entitled to a sanction if such wrongful intent can be proved. *See* RCW 7.60.290(5). But Petitioners' argument would render the statute an

unnecessary nullity. It is not true that a receivership court may award such a penalty against any party to the receivership proceeding, in anyway it sees fit. Nor is there any authority for the imposition of such sanctions, other than the sole and inapplicable basis for such a sanction articulated in RCW 7.60.290(5).

Demonstrating that the factual circumstances here are exceedingly narrow, no other court has had the occasion to rule on this issue and the decision here does not conflict with what Petitioners claim is made clear in *Umpqua Bank,* that the receivership statute presupposes the Court's equitable authority to impose and administer receiverships.

Petitioners argue further that the Court of Appeal's decision could be used by debtors in receivership to contest *any* administrative action taken by a receivership court that is not expressly authorized under the statute. But such an argument is actually the outcome of Petitioners argument that the

Receivership statute is merely advisory, has no meaning and may be ignored.

Ultimately, Petitioners argue that out-of-state caselaw, from California, explicitly holds that receivership courts may apportion fees between parties in receivership. This adds nothing to their petition for further review. None of the out of state authorities involve an interpretation of RCW 7.60.290(5). No other state cited has a similar statute.

But even if they did, no one is contending that the receivership court does not have broad equitable power to equitably apportion receivership expenses between the parties. Equitably apportionment is not what the court did below. Rather it checked a box and imposed a penalty contrary to RCW 7.60.290(5). There is not any record of equitable apportionment because the trial court did not make any findings on apportionment. It didn't even conduct a hearing. It merely checked the box on presentation of the judgment, and in doing so, the lower court imposed a penalty based on an arbitrator's

recommendation who did not even have jurisdiction to decide the issue.

V. CONCLUSION

Petitioners do not meet the RAP 13.4 (b) requirements for further review. The Court of Appeals reversal of the trial courts award of prejudgment interest, where there was no such award in the Arbitration Award, is in strict conformity with Supreme Court precedent in *Elcon Const., Inc. v. E. Washington Univ.*, 174 Wn.2d 157, 170– , 273 P.3d 965 (2012).

The Court of Appeals' decision rejecting the trial court's wholesale imposition of all past and future receivership expenses onto Respondents involves the first construction by any court of the sanction provided by RCW 7.60.290(5). Thus, there is no conflict with a decision of the Supreme Court; or any published decision of the Court of Appeals. No significant question of law is presented under the Constitution of the State of Washington or of the United States. Nor does the unpublished petition involve an issue of substantial public

interest that should be determined by the Supreme Court. Rather, the decision is narrow and based on an extreme (and continuing) sanction premised on a recommendation by an arbitrator who expressly recognized that such a sanction was beyond his jurisdiction and in excess of the scope of the arbitration agreement. The Court of Appeals' remand to the trial court to conduct an equitable apportionment of the receivership's cost and expenses was a proper result that in no way implicates the claims argued by Petitioners.

The premise advanced by Petitioners that the Court of Appeals ruling precludes a fair and equitable apportionment is overstated. No equitable apportionment has yet to occur in this case and rather than such a result being precluded, the Court of Appeals has remanded the case so that it may be done.

DATED this 28th day of August 2023.

I certify that the foregoing contains 4,687 words in compliance with RAP 18.17 (excluding Appendices; Title Sheet/Caption; Tables of Contents/Authorities; Certificates of Compliance/Service; Signature Blocks; and Pictorial Images/Exhibits), as calculated by the word processing software used to prepare this document

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that under the laws of the State of Washington that on June 15, 2023, I caused a true and correct copy of the foregoing document, ***CLARK RESPONDENTS' ANSWER IN OPPOSITION TO PETITION FOR FURTHER REVIEW OF COURT'S UNPUBLISHED APRIL 10, 2023 OPINION*** to be served via the Appellate Court Web Portal to:

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August 28, 2023 - 4:34 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	102,232-8
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