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Washington State Supreme Court

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Ronald R. Carpenter  
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No. 91536-9

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**SUPREME COURT OF THE STATE OF WASHINGTON**

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ESTHER KIM, as Personal Representative of the Estate of HO IM  
BAE on behalf of Mi-Soon Kim, Jae C. Kim, Chang Soon Kim,  
Jae Hong Kim, and Kyoung Soon Kim, surviving family members,  
and the ESTATE OF HO IM BAE,

Petitioners,

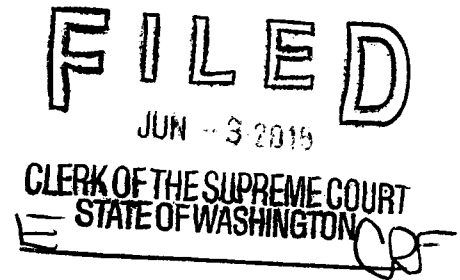
v.

ALPHA NURSING & SERVICES, INC.,

Respondent,

and Christine THOMAS,

Respondent/Cross-Petitioner.



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**MEMORANDUM OF *AMICUS CURIAE*  
LEGAL LANGUAGE SERVICES  
IN SUPPORT OF RESPONDENT/CROSS-PETITIONER'S  
PETITION FOR REVIEW**

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ORIGINAL

## TABLE OF AUTHORITIES

- The *Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters*, [1969] 20 U.S.T. 361, T.I.A.S. No. 6638. (The Hague Service Convention)
- Declarations to the *Hague Service Convention* by Norway, Canada, France, Germany, and India
- *Kim v. Lakeside Adult Family Home*, No. 70892-9-I (Wn. App., Div. I, 2015)
- *Larson v. Yoon*, No. 71561-5-I, (Wn. App., Div. I, 2015)

## INTEREST OF AMICUS CURIAE

Legal Language Services (LLS) is a for-profit company providing international litigation support to attorneys across North America and abroad. LLS' staff attorneys annually oversee hundreds of requests for service of process in dozens of foreign lands, and are globally recognized experts in the procedural intricacies of transnational service.

The company's interest here is to call to the Court's attention the serious risk of deviation from accepted standard practices in service of process across national boundaries, particularly service attempted pursuant to the 1965 *Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters*, [1969] 20

U.S.T. 361, T.I.A.S. No. 6638, commonly known as the Hague Service Convention (“the Convention”).<sup>1</sup>

The conclusion of the Washington Court of Appeals that the personal service attempted upon Cross-Petitioner Christine THOMAS was valid is simply incorrect. Allowing this conclusion to stand, regardless of the Supreme Court’s holding as to other issues in the case for which review is sought, will allow Washington litigants to contravene the letter, spirit, and underlying purpose of the Convention. The holding of the Court of Appeals creates a serious conflict with the Convention. Moreover, the opinion also conflicts with Division I’s own holding in another, more recent matter.

#### **STATEMENT OF THE CASE AT BAR**

This case arises from a wrongful death claim by the heirs and estate of a patient of an adult family home care facility. Among the defendants named in the complaint was Christine Thomas, a former nurse on the facility’s staff and a Norwegian citizen. When the suit was initiated, Thomas had left Washington and resumed her residency in the Kingdom of Norway.

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<sup>1</sup> The full text of the Convention may be accessed on the website of the Hague Conference on Private International Law at [http://www.hcch.net/index\\_en.php?act=conventions.text&cid=17](http://www.hcch.net/index_en.php?act=conventions.text&cid=17). The Convention entered into force in the United States on February 10, 1969, and in Norway on October 1, 1969.

Plaintiffs' counsel hired a private agent to serve Ms. Thomas in Norway. The agent personally handed Ms. Thomas the documents and compelled her to sign a document indicating her acceptance of service. The agent subsequently swore out an affidavit attesting to the event's compliance with internal Norwegian law.

In her motion to dismiss, Thomas asserted that service upon her had violated Norway's declaration to the Hague Service Convention because the plaintiffs had not served her via the Norwegian Central Authority, pursuant to Article 5 of the Convention. The court ruled that, because Norway's internal law allowed for service of process by private agent, Article 19 of the Convention made that method available to litigants who had filed suit against Norwegians abroad. The Court of Appeals upheld this ruling in *Kim v. Lakeside Adult Family Home*, No. 70892-9-I (Wn. App., Div. I, 2015).

#### **ARGUMENT IN SUPPORT OF THE COURT'S ACCEPTANCE OF CROSS-PETITION**

The trial court erred in its application of Article 19 because it disregarded Norway's opposition to the methods articulated in Article 10(b).<sup>2</sup> Article 19 is inapplicable because service by any person deemed

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<sup>2</sup> A digest of Norway's declarations to the Convention may be accessed at [http://www.hcch.net/index\\_en.php?act=authorities.details&aid=246](http://www.hcch.net/index_en.php?act=authorities.details&aid=246), and in more detail at [http://www.hcch.net/index\\_en.php?act=status.comment&csid=414&disp=resdn](http://www.hcch.net/index_en.php?act=status.comment&csid=414&disp=resdn).

competent to serve under Norwegian law necessarily is a prohibited channel for service. Specifically: “The Government of Norway is opposed to the use of such methods of service or transmission of documents on its territory as mentioned in Articles 8 and 10 of the Convention.” Article 10(b) allows foreign litigants to serve via “judicial officers, officials or *other competent persons* of the State of destination” (emphasis added), but only absent an objection by the State of destination. In upholding the trial court’s ruling, the Court of Appeals consequently subjects foreign defendants to methods of service expressly prohibited by the Convention.

Where Article 10(b) is not objected to, the State of destination ordinarily will define in its declarations who constitutes appropriate officials and “other competent persons”. Where Article 10(b) methods are opposed, no definition is rendered. Examples:

- Canada expressly authorizes process servers, but modifies its declaration to service outside the province of Quebec.<sup>3</sup> In Quebec, a competent person is defined as “a sheriff or member of the Chambre des huissiers de justice du Québec”.<sup>4</sup>
- France, likewise, limits Article 10(b) persons to *huissiers*.<sup>5</sup>
- In Germany, service is effected by a *Gerichtsvollzieher*, analogous to the French *huissier*, yet this is not set forth in

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<sup>3</sup> A digest of Canada’s declarations to the Convention may be accessed at [http://www.hcch.net/index\\_en.php?act=authorities.details&aid=248](http://www.hcch.net/index_en.php?act=authorities.details&aid=248).

<sup>4</sup> In civil law systems, *huissiers* are quasi-judicial officers, akin to a bailiff in common law jurisdictions; they are tasked specifically with serving process on behalf of the court itself, rather than on behalf of plaintiffs.

<sup>5</sup> A digest of France’s declarations to the Convention may be accessed at [http://www.hcch.net/index\\_en.php?act=authorities.details&aid=256](http://www.hcch.net/index_en.php?act=authorities.details&aid=256).

Germany's declarations, as Germany opposes Article 10 entirely.<sup>6</sup>

- India, a common law system, usually requires service to be effected by a bailiff for actions originating in Indian courts. Still, India expressly objects to Article 10 in its entirety, so no designation of competency is made in India's declarations.<sup>7</sup>

Because Norway likewise objects to Article 10 in its entirety, no definition is made in its declarations; as a result, foreign litigants may not avail themselves of “judicial officers, officials or other competent persons.” Even though Norway's internal law may designate private agents as competent persons for the purpose of serving Norwegian process, its objection to Article 10 proscribes their use by foreign litigants.

Article 19 addresses procedures not articulated previously in the treaty's text, allowing foreign litigants to access alternative methods enshrined in the law of the Destination state. In order to be effective under Article 19, these methods cannot be otherwise mentioned in the Convention. Even if private agents may validly effect service in Norwegian actions, their use is already addressed—namely, under the “other competent persons” umbrella of Article 10(b).

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<sup>6</sup> A digest of Germany's declarations to the Convention may be accessed at [http://www.hcch.net/index\\_en.php?act=authorities.details&aid=257](http://www.hcch.net/index_en.php?act=authorities.details&aid=257).

<sup>7</sup> A digest of India's declarations may be accessed at [http://www.hcch.net/index\\_en.php?act=authorities.details&aid=712](http://www.hcch.net/index_en.php?act=authorities.details&aid=712).

The Court of Appeals, in upholding the trial court's ruling, allows Article 19 to nullify Norway's objection to Article 10. The opinion below stands in direct conflict with the same Court's opinion in *Larson v. Yoon*, No. 71561-5-I, (Wn. App., Div. I, 2015). There, the court invalidated service by mail in Korea on the grounds that Korea objected to service by mail, and that this objection made the method unavailable to Washington litigants. In *Larson*, no inquiry was made into whether mail service was valid under Korea's internal law—the objection gave the court a clear basis for rejection. Yet, if the court had applied the same reasoning as in *Kim*, such internal validity would have allowed mail service in a Washington action, Korea's objections notwithstanding.

By any definition, private agents necessarily fall under the definition "other competent persons", because they are obviously not judicial officers or officials. Although their competence may be established in Norway's internal law, their use is expressly prohibited by objection. Applying the opinion below to future defendants in Norway or India—indeed any Hague signatory country that internally allows methods it opposes from abroad—a Washington litigant might conclude that service by private agent is valid under Washington law.

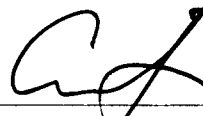
## CONCLUSION

This Court should accept Thomas' Petition for Review because the holding below stands in direct conflict with Norway's express declarations to the Convention. Additionally, the most recent opinions of the Court of Appeals are in conflict.

Plaintiffs' answer to the Petition for Review asserts that this issue is moot because, ostensibly, Ms. Thomas was subsequently served via Norway's Central Authority. While this tends to undercut the argument that private, personal service was valid, it is otherwise irrelevant to whether the Court should grant review. The significant public importance of the issue necessitates a ruling by the Supreme Court. If the opinion below is allowed to stand, regardless of the Court's holding as to other issues in the case, it will remain binding law, so Washington litigants will be allowed to avail themselves of Article 19 in a manner not contemplated by the treaty's drafters, and in direct conflict with the letter and spirit of Article 10.

Respectfully submitted this 15<sup>th</sup> day of May, 2015.

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