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STATE OF WASHINGTON

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Supreme Court No. _____
Court of Appeals No. 55867-6-I

**IN THE SUPREME COURT FOR THE STATE OF
WASHINGTON**

STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS,
In its own capacity and as assignee of claims of University Mechanical
Contractors, Inc., Bergelectric Corporation and Pacific Construction Systems, Inc.

Respondent/Plaintiff,

v.

FLUOR DANIEL, INC., a foreign corporation, and FIREMAN'S FUND INSURANCE
COMPANY, a foreign corporation,

Petitioner/Defendants.

PETITION FOR REVIEW

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I. IDENTITY OF PETITIONER

Petitioner/Defendant Fluor Daniel, Inc. (“Fluor”) is a foreign corporation authorized to do business in the State of Washington. Fluor was hired by Respondent The State of Washington Department of Corrections (“DOC”) to serve as the General Contractor/Construction Manager for the construction of the Stafford Creek Correctional Center in Aberdeen, Washington (the “Project”). Petitioner/Defendant Fireman’s Fund Insurance Company (“Fireman’s”) is a foreign corporation authorized to do business in the State of Washington. Fireman’s issued bonds on behalf of Fluor for Fluor’s work on the Project.

II. CITATION TO COURT OF APPEALS OPINION

Fluor seeks review of the State of Washington Department of Corrections v. Fluor Daniel, Inc., 2005 Wash. App. LEXIS 3236, ____ Wn. App. ____ (No. 55867-6-I, December 12, 2005), a published opinion of Division I of the Court of Appeals. *See* Appendix A.

III. STATEMENT OF ISSUES

After years of litigation in King County Superior Court, and on the eve of a jury trial, DOC and Fluor elected to submit their competing claims to binding arbitration. As part of the written arbitration agreement both Fluor and DOC waived their right to appeal the arbitration award. While the award could not be appealed, the parties did agree that the

arbitration award could be entered as a judgment under RCW 7.04.150 (Repealed 2005). On January 18, 2005, the arbitrator selected by the parties entered an award of \$5,997,645 in favor of Fluor. Even though the award was final because DOC could not appeal the award, DOC did not immediately pay the arbitration award.

When payment was not made, Fluor, consistent with the written arbitration agreement, filed a motion to have the award confirmed as a judgment. The Honorable William L. Downing granted Fluor's motion, determined the arbitration award was a liquidated sum and awarded prejudgment interest for the period of time between entry of the arbitration award and confirmation of the arbitration award.

Division I reversed the trial court's decision to award prejudgment interest based upon its conclusion that the arbitrator's award was not a liquidated sum. The Court of Appeals determined that the arbitration award was not liquidated because RCW 7.04.160 (repealed 2005) and RCW 7.04.170 (repealed 2005) allow for vacation and modification of an arbitration award under very limited circumstances.

Did the Court of Appeals' err in determining that the arbitration award was not a liquidated sum where the parties had expressly waived their right to appeal the arbitration award or should the Court of Appeals

have treated the non-appealable award as a liquidated sum upon which prejudgment interest would accrue?

IV. STATEMENT OF THE CASE

Fluor was the general contractor hired by DOC to perform work on the Stafford Creek Correction Center Project.¹ DOC was the owner of the project. Following completion of the construction project, DOC commenced litigation against Fluor in King County Superior Court.² After a bench trial regarding the interpretation of certain clauses of the parties' contract, a jury trial was scheduled for September 27, 2004.³ Shortly before commencement of the scheduled trial, Fluor and DOC reached agreement on a Partial Settlement And Alternative Dispute Resolution Agreement (Agreement).⁴ The Agreement provided in relevant part as follows:

Fluor and DOC will stipulate to a stay of the present court proceeding and to submit all remaining disputes to expedited binding Arbitration as more specifically set forth below. The stay will remain in effect until conclusion of the Arbitration and Award of the Arbitrator in which event either party may enter the Award in Court in accordance with the statutory procedure for enforcement of Arbitration Awards, **subject to the limitations herein** on enforcement of the Award, or until either party moves to lift the stay to enforce the terms of this Agreement or seek other

¹ CP3.

² CP 3.

³ CP 3.

⁴ CP 3-11.

appropriate relief if the party is in breach of this Agreement.⁵

One of the limitations contained in the Agreement with respect to the Arbitration Award was that both DOC and Fluor waived all of their rights to appeal the Arbitration Award. Specifically, the last sentence of paragraph 8 of the Agreement provides:

Fluor and DOC each waive any and all rights to appeal the Arbitration Award.⁶

The agreed upon waiver was very broad and necessarily included a waiver of the parties' right to seek any changes or modification of the award under RCW 7.04.160 (Repealed) and RCW 7.04.170 (Repealed).

The arbitrator agreed upon by DOC and Fluor was Jerry Hainline.⁷ Mr. Hainline conducted the arbitration hearing from December 8, 2004 through December 14, 2004. Following the conclusion of the hearing, and in accordance with the terms of the Agreement, Mr. Hainline issued an Award on January 18, 2005. The Award was in favor of Fluor and provided that Fluor was entitled to payment of \$5,997,645, including \$392,668 in sales tax.⁸

Under Washington's repealed arbitration statute, RCW 7.04, et. seq., a party to an arbitration normally had the right to seek review (i.e.,

⁵ CP 3, ¶1 (emphasis added).

⁶ CP 4, ¶8 (emphasis added).

⁷ CP 8, ¶1.

appeal) of an arbitration award. RCW 7.04.160 (repealed) allowed for a Superior Court to vacate an award, and RCW 7.04.170 (repealed), allowed for a Superior Court to modify an award.

Here, neither Fluor nor DOC were entitled to seek a review of the Award under the above statutes because they both expressly agreed to waive any and all rights to appeal.⁹ As a result, upon the arbitrator's issuance of the Arbitration Award the amount owed to Fluor by DOC became a liquidated sum. The amount of the award was fixed and could not be changed by the Superior Court. Further, as a liquidated sum Fluor was entitled to prejudgment interest at the statutory rate of 12% per annum.

On January 21, 2005, Fluor moved the Trial Court for an Order Confirming Arbitration Award and Entry Of Judgment Against DOC.¹⁰ As part of the Entry of Judgment requested by Fluor, Fluor included prejudgment interest from the date of the Arbitration Award (January 18, 2005) to the anticipated date for entry of the Judgment (February 8, 2005). The total prejudgment interest amount requested by Fluor was \$43,380.22.¹¹

⁸ CP 12.

⁹ CP 4, ¶8.

¹⁰ CP 13-17.

¹¹ CP 16.

DOC opposed Fluor's requested relief.¹² The Honorable William L. Downing rejected DOC's opposition and on February 8, 2005 granted Fluor's Motion for Confirmation of Arbitration Award and Entry of Judgment. The Judgment entered by the Trial Court recognized that the Award was a liquidated sum and included prejudgment interest at 12% per annum from January 18, 2005 (the date of the Award) through February 8, 2005 (the date of the Judgment) in the total amount of \$43,380.22.¹³

On March 8, 2005 DOC appealed the award of prejudgment interest to Fluor. In a published opinion, Division One reversed and remanded the award of prejudgment interest to Fluor. Specifically, the Court of Appeals held that, notwithstanding the parties' express agreement to waive their rights to appeal the arbitration award, the award was not a liquidated sum because under RCW 7.04.160 (repealed) and RCW 7.04.170 (repealed) a Superior Court can vacate, modify or correct an arbitration award.

¹² CP 18-22.

¹³ CP 35-39.

V. ARGUMENT

A. **THE COURT OF APPEALS IGNORED CONTROLLING AUTHORITY FROM THIS COURT REGARDING THE INTERPRETATION OF AGREEMENTS BY IGNORING THE LANGUAGE OF THE PARTIES ARBITRATION AGREEMENT.**

There are two general rules of contract interpretation that the Court of Appeals ignored in reaching its conclusion that the Arbitration Award was not a liquidated sum because Washington's arbitration statute generally allows for a Superior Court to vacate and/or modify an Arbitration Award. First, it is well established in Washington that agreements should be interpreted, whenever possible, in a manner that gives meaning to all provisions of the Agreement. As explained by this Court in Wagner v. Wagner, 95 Wn.2d 94 (1980):

In construing a contract, a court must interpret it according to the intent of the parties as manifested by the words used. Courts can neither disregard contract language which the parties have employed nor revise the contract under a theory of construing it. An interpretation of a writing which gives effect to all of its provisions is favored over one which renders some of the language meaningless or ineffective.¹⁴

Second, Washington follows the objective manifestation theory of contracts. When interpreting agreements the Court has stated that words will be given their ordinary, usual and popular meaning absent a clear demonstration of a contrary intent within the four corners of the

agreement. As recently explained by this Court in First Communications, Inc. v. Seattle Times Co., 154 Wn.2d 493 (2005):

We take this opportunity to acknowledge that Washington continues to follow the objective manifestation theory of contracts. Under this approach, we attempt to determine the parties' intent by focusing on the objective manifestation of the agreement, rather than on the unexpressed subjective intent of the parties. We impute an intention corresponding to the reasonable meaning of the words used. Thus, when interpreting contracts, the subjective intent of the parties is generally irrelevant if the intent can be determined from the actual words used. We generally give words in a contract their ordinary, usual, and popular meaning unless the entirety of the agreement clearly demonstrates a contrary intent. We do not interpret what was intended to be written, but what was written.¹⁵

Here, the Court of Appeals failed to follow both of these well established rules in determining that the January 18, 2005 Arbitration Award was not a liquidated sum. Instead of focusing on what the parties specifically agreed to under the Agreement, the Court of Appeals focused upon the general provisions of Washington's former Arbitration Statute (RCW 7.04, et seq. (repealed)) and gave those provisions priority over the parties' actual Agreement. In so doing, the Court of Appeals rewrote the Agreement and rendered the express waiver of any and all appeal rights meaningless in violation of established Washington case law.

Interestingly, the Court of Appeals stated in Footnote Six that:

¹⁴ 95 Wn.2d at 101 (citations omitted).

¹⁵ 154 Wn.2d at 503-04 (citations omitted).

Nothing in our decision prevents parties to an arbitration agreement from mutually agreeing that interest shall run from the date of the arbitration decision.¹⁶

What the Court of Appeals said parties could do is exactly what DOC and Fluor did by waiving all appeal rights and limiting the Superior Court's role under RCW 7.04, et seq. (repealed) to confirm the award without modification. Despite acknowledging the parties' right to make such an agreement, the Court of Appeals ignored the relevant provision in the DOC/Fluor Agreement.

The relevant provision of the Arbitration Agreement provides:

Once the Arbitrator issues a decision, either party may submit the decision to the King County Superior Court in the action now pending. **The parties agree the judgment to be entered will be in full and complete compliance with the decision of the Arbitrator.** Once that judgment is entered, the judgment will be final and binding on Fluor and DOC. **Fluor and DOC each waive any and all rights to appeal the Arbitration Award.**¹⁷

This provision of the Agreement is unambiguous. The clear, ordinary and usual meaning of the words used in this provision support Fluor's position that the Award was liquidated. While Fluor and DOC agreed that the Arbitration Award could be confirmed as a judgment in accordance with RCW 7.04, et seq. (repealed), Fluor and DOC also agreed that in

¹⁶ See Department of Corrections v. Fluor Daniel, Inc., 2005 Wash. App. LEXIS 3236, #10.

¹⁷ CP 4, ¶8 (emphasis added).

confirming the award the Superior Court was required to enter a judgment in “complete compliance” with the Arbitration decision.

Further, to remove any question as to whether either party could appeal and/or seek changes in the Arbitration Award, Fluor and DOC expressly and clearly waived “any and all rights to appeal.” The intent of DOC and Fluor is clear: The arbitration award was final and not subject to change or modification by the Superior Court.

Viewed in this light, the parties’ Agreement modified the rights previously given to a Superior Court under RCW 7.04.160 (repealed) and RCW 7.04.170 (repealed) to vacate, modify and/or change an arbitration award. As recognized by the Court of Appeals in Footnote Six, parties to arbitration agreements are free to choose the rules and rights that will govern the arbitration and the finality of any award. Here, Fluor and DOC exercised their rights and agreed that the Arbitration Award would not be subject to appeal. Fluor and DOC agreed that it could not be altered by the Superior Court and that the Award had to be confirmed in complete compliance with the Arbitrator’s decision.

Under the Agreement, the Arbitration Award was a liquidated sum since neither party could seek to have the amount of the Award altered. Accordingly, the amount of the Award became a fixed sum. In refusing to recognize this fact the Court of Appeals ignored the clear and

unambiguous meaning of the parties Agreement and rendered Paragraph 8 of the Agreement meaningless. As the Court's interpretation is in conflict with this Court's prior decisions regarding contract interpretation, Fluor's Petition for Review should be granted.

B. THIS PETITION INVOLVES A DECISION OF DIVISION ONE OF THE COURT OF APPEALS WHICH IS IN CONFLICT WITH A DECISION OF DIVISION III OF THE COURT OF APPEALS AND THEREFORE THE ISSUE SHOULD BE DEFINITELY DETERMINED BY THE SUPREME COURT.

Fluor's Petition for Review should also be granted because the decision of Division I of the Court of Appeals in this case is in conflict with the decision of Division III of the Court of Appeals in Moses Lake v. International Association of Firefighters, Local 2052, 68 Wn. App. 742 (1993). In Moses Lake, one of the issues before the Appellate Court was whether the trial court's refusal to grant prejudgment interest in favor of the firefighters for the period of time between the date of the arbitration award and entry of judgment was proper. In determining that the trial court's refusal to grant prejudgment interest to the firefighters was improper, the Moses Lake Court stated:

Prejudgment interest is allowable when the amount claimed is liquidated, i.e., "where the evidence furnishes data which, if believed, makes it possible to compute the amount with exactness, without reliance on opinion or discretion." Prier v. Refrigeration Eng'g Co., 74 Wn.2d 25, 32, 442 P.2d 621 (1968). See also Hanson v. Rothaus,

107 Wn.2d 468, 472, 730 P.2d 662 (1986). **The salary increase meets the definition of liquidated. As of May 31, 1991, the date of the award, the City was under a duty to raise the firefighters salaries in the amounts specified, subject only to review as provided in RCW 41.56.450.** Contrary to the City's argument, the signing of a collective bargaining agreement in accordance with the award is not a prerequisite to the legal obligation to abide by the award.

The judgment of the Superior Court is affirmed, except for that portion denying prejudgment interest. Prejudgment interest is allowed from May 31, 1991.¹⁸

In Moses Lake, Division III of the Court of Appeals specifically concluded that pre-judgment interest was proper from the time period between the date of the arbitration award and entry of judgment. The determination of the salary increase by the arbitration panel in Moses Lake involved an unliquidated claim. The amount of the salary increase sought by the firefighters was not something that could be computed with exactness. Instead, the amount of the increase in the firefighters' salary required the use of discretion by the arbitration panel.¹⁹ Nonetheless, Division III determined that the firefighters were entitled to prejudgment interest from the date of the arbitration award. Prejudgment interest was granted on the previously unliquidated claim because once the arbitration

¹⁸ 68 Wn. App. at 749 (emphasis added).

¹⁹ 68 Wn. App. at 744-45.

award was entered, the amount became a liquidated sum and the “City was under a duty to raise the firefighter’s salary in the amount specified . . .”²⁰

While Division I attempted to distinguish Moses Lake in reaching its conclusion that the Arbitration Award in favor of Fluor was not a liquidated sum, the results of the two cases cannot be harmonized. Division I’s stated explanation that prejudgment interest was proper in Moses Lake because the review by the Superior Court in Moses Lake was pursuant to RCW 41.56.450 instead of RCW 7.04.160 (repealed) or RCW 7.04.170 (repealed) ignores the actual holding given by Division III. Contrary to Division I’s analysis, in Moses Lake, Division III did not hold that the firefighters were entitled to prejudgment interest because the Superior Court was acting as an appellate court under RCW 41.56.450 such that pre-judgment interest could be awarded back to the date of the arbitration award pursuant to RCW 4.56.110(4) and RCW 4.56.115.

In holding that prejudgment interest started to accrue at the time the arbitration award was entered, Division III did not make any reference to RCW 4.56.110 or RCW 4.56.115. Instead, in Moses Lake Division III determined that prejudgment interest was appropriate because upon entry of the arbitration award in favor of the firefighters, the amount owed to the firefighters was liquidated. As a liquidated sum Division III followed

²⁰ 68 Wn. App. at 749.

established Washington case law that allows prejudgment interest to accrue on liquidated amounts. Division I's interpretation of Moses Lake alters the actual analysis given by Division III in rendering its decision in Moses Lake.

In light of the conflict between Division I and Division III with respect to whether arbitration awards represent liquidated sums at the time the award is entered, the Court should grant Fluor's Petition for Review. The conflict between Division I and Division III should be resolved by this Court.

C. THIS PETITION INVOLVES AN ISSUE OF SUBSTANTIAL PUBLIC INTEREST THAT EFFECTS MOST, IF NOT ALL, PARTIES WHO AGREE TO SUBMIT DISPUTES TO BINDING ARBITRATION WITHOUT THE RIGHT TO APPEAL, AND SHOULD THEREFORE BE DETERMINED BY THE SUPREME COURT.

Finally, Fluor's Petition for Review should also be granted because the issue of whether arbitration awards are liquidated sums upon which pre-judgment interest accrues is an issue which potentially affects all parties who agree to submit their disputes to binding arbitration. It is well settled in Washington that arbitration agreements are favored and will be enforced whenever possible. As explained by this Court in Davidson v.

Hensen:

Washington law generally favors the use of alternative dispute resolution such as arbitration where the parties

agree by contract to submit their disputes to an arbitrator. The parties' rights with regard to arbitration are controlled by their contract and the provisions of RCW 7.04.

Washington courts have given substantial finality to arbitrator decisions rendered in accordance with the parties' contract and RCW 7.04. The shorthand description for this policy of finality is that judicial review of an arbitration award is limited to the face of the award. In the absence of an error of law on the face of the award, the arbitrator's award will not be vacated or modified.²¹

In reliance upon this policy, a large number of contracts entered in the State of Washington require arbitration of all disputes instead of litigation in Washington State Courts. The parties to these contracts expect that the arbitration award will be final.

The Court of Appeals' decision that arbitration awards are not liquidated sums undermines the anticipated finality of arbitration awards and the state's policy strongly favoring the enforceability of arbitration agreements. The decision encourages the non-prevailing party to challenge arbitration awards and prolong entry of a judgment confirming the arbitration award. If arbitration awards are not viewed as liquidated sums upon entry of the award, the non-prevailing party has no incentive to accept the award as final. On the contrary, the non-prevailing party actually has an incentive to contest the award and delay entry of an order confirming the award. Without interest accruing on the arbitration award

the non-prevailing party has everything to gain – by attempting to have the award vacated or modified regardless of how unlikely the chances of success are -- and nothing to lose. Such conduct should not be encouraged. Consistent with the established policy of Washington in favor of arbitration agreements and the finality of arbitration awards, the Court should grant Fluor’s Petition for Review and reverse the Court of Appeal’s decision. Because this matter involves an issue of substantial public interest, review by this Court is appropriate.

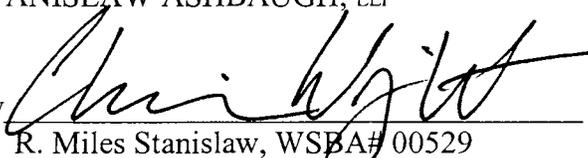
VI. CONCLUSION

For the above reasons, Fluor respectfully requests that the Court grant its Petition for Review, reverse the Court of Appeals, and reinstate the Trial Court’s award of prejudgment interest.

RESPECTFULLY SUBMITTED THIS 11th DAY OF January, 2006.

STANISLAW ASHBAUGH, LLP

By


R. Miles Stanislaw, WSBA# 00529

Christopher A. Wright, WSBA# 26601

Attorneys for Def./Respondent Fluor Daniel, Inc.

²¹ Davidson v. Hensen, 135 Wn.2d 112, 118 (1998) (citations omitted).

CERTIFICATE OF SERVICE

I certify that on the 11th day of January, 2006 I caused a true and correct copy of the foregoing Petition for Review, Court of Appeals Cause No. 55867-6-1 (Supreme Court Cause No. _____) to be served on counsel for Respondent/Plaintiff via ABC Legal Services, Inc. at the following address:

Douglas Shaftel
Office of the Attorney General
Transportation Public Construction Division
7141 Cleanwater Drive
Tumwater, WA 98501
Attorney for State of Washington Department of Corrections

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 11th day of January, 2006 at Seattle, Washington.



Teresa Lawrence
Assistant to Christopher A. Wright

2006 JAN 11 11:44:50

LEXSEE

STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS, in its own capacity, and as assignee of claims of University Mechanical Contractors, and Pacific Construction Systems, Inc., Respondent, v. FLUOR DANIEL, INC., a foreign corporation, and FIREMAN'S FUND INSURANCE COMPANY, a foreign corporation, Appellants.

NO. 55867-6-I

COURT OF APPEALS OF WASHINGTON, DIVISION ONE

2005 Wash. App. LEXIS 3236

December 12, 2005, FILED

PRIOR HISTORY: [*1] Superior Court County: King. Superior Court Cause No: 01-2-30874-2 SEA. Date filed in Superior Court: February 8, 2005. Superior Court Judge Signing: The Honorable William L. Downing.

COUNSEL: For Appellant(s): Douglas D Shaftel, Washington State Attorney General's Off, Olympia, WA.

For Respondent(s): Richard Miles Stanislaw, Christopher Wright, Stanislaw Ashbaugh LLP, Seattle, WA.

JUDGES: Written by: Judge Coleman. Concurred by: Judges Becker, Appelwick.

OPINIONBY: COLEMAN

OPINION:

COLEMAN, J. -Fluor Daniel, Inc. and the Department of Corrections (DOC) agreed to arbitration to settle their legal dispute. The arbitrator issued his decision, and Fluor moved the superior court to confirm the award and enter judgment. The superior court did so and awarded Fluor prejudgment interest dating back to the date of the arbitration decision. n1 The Department of Corrections appeals the prejudgment interest award. Because the arbitration decision did not constitute a fully liquidated sum entitling Fluor Enterprises to prejudgment interest, we reverse and direct entry of judgment in favor of the DOC on the issue of prejudgment interest.

n1 Both parties agree that the damages at issue in the arbitration were unliquidated, and Fluor does not seek prejudgment interest for the period prior to the arbitration award.

[*2]

FACTS

Fluor Enterprises, Inc. and the DOC entered into a contract for the development of the Stafford Creek Corrections Center. A lawsuit arose between Fluor and the DOC. Before the suit went to trial, the two parties agreed to stay the litigation and submit their remaining disputes to binding arbitration.

Paragraph 8 of the arbitration agreement provided that once the arbitrator reached a decision, either party could submit the decision to the King County Superior Court and that the judgment would be final and binding once entered. The paragraph reads in full,

Once the Arbitrator issues a decision, either party may submit the decision to the King County Superior Court in the action now pending. The parties agree the judgment to be entered will be in full and com-

plete compliance with the decision of the Arbitrator. Once said judgment is entered the judgment will be final and binding on Fluor and DOC. Fluor and DOC each waive any and all rights to appeal the Arbitration Award.

On January 18, 2005, the arbitrator issued his decision that Fluor was entitled to payment of approximately \$ 6 million. Three days later Fluor moved for an order confirming the arbitration [*3] award and for entry of judgment. In its motion, Fluor characterized the arbitrator's award as a liquidated sum and asked for prejudgment interest from the date of the arbitrator's award. The superior court granted Fluor's motion on February 8, 2005, and awarded prejudgment interest dating back to January 18. The DOC appeals.

ANALYSIS

In this decision, we analyze whether the arbitrator's award was a fully liquidated sum entitling Fluor to prejudgment interest from the date of the arbitrator's decision, or whether the award was instead analogous to a jury verdict. An appellate court reviews issues of law de novo. *State v. Campbell*, 125 Wn.2d 797, 800, 888 P.2d 1185 (1995).

Washington's statutory code provides that a court generally may award interest only from the date of entry of the judgment. *RCW 4.56.110(4)*. Interest accrues from the date of a verdict only when a court is directed on review to enter judgment or when the judgment is affirmed on review. *RCW 4.56.110(4)*.

The DOC argues that the arbitrator's award in this dispute was more akin to a jury verdict than a fully liquidated sum and that the [*4] trial court erred in awarding prejudgment interest. We agree. The Court of Appeals has held that in the context of the issue of collateral estoppel, an arbitration award is analogous to a jury verdict or an oral decision, instead of a judgment. *Channel v. Mills*, 61 Wn. App. 295, 299-300, 810 P.2d 67 (1991).

In our judgment, an arbitration award is not the same thing as a final judgment of a court. We reach this conclusion primarily because Washington's statutory scheme for arbitration, *RCW 7.04[.010 et seq.]*, provides a rather elaborate process for the confirmation, vacation, correction or modification of an arbitration award in court and for the entry of a judgment which conforms with the court's final determination. *RCW 7.04.150, .160, .170, .180, .190*. We can only conclude from a plain reading of these statutes that the Legislature did not consider an award in arbitration to be equivalent to a final judgment of a court. If it had it would have been unnecessary to provide a process to reduce the award to judgment. We conclude, therefore, that an award of arbitrators that has not been reduced to judgment pursuant to the statutory [*5] framework discussed above is not equivalent to a judgment. It is, in our view, more akin to a jury verdict or a trial court's memorandum opinion or oral decision, determinations which are not considered equivalent to a judgment.

Channel, 61 Wn. App. at 299-300.

An arbitrator's award is analogous to a jury verdict in the context of this dispute as well. Until entry of judgment, a court may vacate a jury verdict in specialized circumstances as provided in CR 59(a). n2 A court also may request a party to consent to a reduction or increase in the damages awarded by a jury in lieu of a new trial. *RCW 4.76.030*. n3 It is for these reasons that a jury verdict, even though for a specific sum, is not considered a fully liquidated amount. *Kiessling v. NW. Greyhound Lines, Inc.*, 38 Wn.2d 289, 297, 229 P.2d 335 (1951).

n2 CR 59(a) provides: "**Grounds for New Trial or Reconsideration.** The verdict or other decision may be vacated and a new trial granted to all or any of the parties and on all or part of the issues when such issues are clearly and fairly separable and distinct, on the motion of the party aggrieved for any one of the following causes materially affecting the substantial rights of such parties:

- (1) Irregularity in the proceedings of the court, jury or adverse party, or any order of the court, or abuse of discretion, by which such party was prevented from having a fair trial;
- (2) Misconduct of prevailing party or jury; and whenever any one or more of the jurors shall have been induced to assent to any general or special verdict or to a finding on any question or questions submitted to the

jury by the court, other and different from his own conclusions, and arrived at by a resort to the determination of chance or lot, such misconduct may be proved by the affidavits of one or more of the jurors;

(3) Accident or surprise which ordinary prudence could not have guarded against;

(4) Newly discovered evidence, material for the party making the application, which he could not with reasonable diligence have discovered and produced at the trial;

(5) Damages so excessive or inadequate as unmistakably to indicate that the verdict must have been the result of passion or prejudice;

(6) Error in the assessment of the amount of recovery whether too large or too small, when the action is upon a contract, or for the injury or detention of property;

(7) That there is no evidence or reasonable inference from the evidence to justify the verdict or the decision, or that it is contrary to law;

(8) Error in law occurring at the trial and objected to at the time by the party making the application;

(9) That substantial justice has not been done."

[*6]

n3 *RCW 4.76.030* reads, "If the trial court shall, upon a motion for new trial, find the damages awarded by a jury to be so excessive or inadequate as unmistakably to indicate that the amount thereof must have been the result of passion or prejudice, the trial court may order a new trial or may enter an order providing for a new trial unless the party adversely affected shall consent to a reduction or increase of such verdict,"

Similarly, under Washington's arbitration statutes, an arbitration award is not a liquidated sum because the superior court may vacate, modify, or correct the award before entry of judgment under certain conditions described in *RCW 7.04.160* n4 and *RCW 7.04.170*. n5 It is true that the grounds for modifying, vacating, or correcting an arbitration award are narrower than the grounds for vacating or changing a jury verdict prior to entry of judgment. But the superior court's authority under the arbitration statutes to modify, vacate, or correct an award before entry of judgment means that [*7] an arbitration award, like a jury verdict, is not fully liquidated until the arbitrator's award is reduced to judgment.

n4 *RCW 7.04.160* reads, "In any of the following cases the court shall after notice and hearing make an order vacating the award, upon the application of any party to the arbitration:

"(1) Where the award was procured by corruption, fraud or other undue means.

"(2) Where there was evident partiality or corruption in the arbitrators or any of them.

"(3) Where the arbitrators were guilty of misconduct, in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence, pertinent and material to the controversy; or of any other misbehavior, by which the rights of any party have been prejudiced.

"(4) Where the arbitrators exceeded their powers, or so imperfectly executed them that a final and definite award upon the subject matter submitted was not made.

"(5) If there was no valid submission or arbitration agreement and the proceeding was instituted without either serving a notice of intention to arbitrate, as provided in *RCW 7.04.060*, or without serving a motion to compel arbitration, as provided in *RCW 7.04.040(1)*.

"An award shall not be vacated upon any of the grounds set forth in subdivisions (1) to (4), inclusive, unless the court is satisfied that substantial rights of the parties were prejudiced thereby.

"...."

[*8]

n5 *RCW 7.04.170* provides, "In any of the following cases, the court shall, after notice and hearing, make an order modifying or correcting the award, upon the application of any party to the arbitration:

- (1) Where there was an evident miscalculation of figures, or an evident mistake in the description of any person, thing or property, referred to in the award.
- (2) Where the arbitrators have awarded upon a matter not submitted to them.
- (3) Where the award is imperfect in a matter of form, not affecting the merits of the controversy. The order must modify and correct the award, as to effect the intent thereof."

Fluor contends that the decision in *City of Moses Lake v. Int'l Ass'n of Firefighters, Local 2052*, 68 Wn. App. 742, 847 P.2d 16 (1993), supports its argument that an arbitration award does constitute a liquidated sum. In *Moses Lake*, an arbitration panel decided a collective bargaining dispute pursuant to *RCW 41.56.450* between the City and the Association. *Moses Lake*, 68 Wn. App. at 743-44. [*9] The City appealed to the superior court, which affirmed the decision and refused to grant prejudgment interest. *Moses Lake*, 68 Wn. App. at 745. The City appealed to the Court of Appeals, which affirmed the arbitration decision and reversed the superior court's order denying prejudgment interest. *Moses Lake*, 68 Wn. App. at 745, 749. The *Moses Lake* court ruled that the arbitration decision constituted a liquidated sum, as it placed on the City a duty to raise firefighters' salaries in the amount specified. *Moses Lake*, 68 Wn. App. at 743-44, 749. The *Moses Lake* decision is inapposite, however, because in the context of *RCW 41.56.450*, a superior court acts as an appellate court when it reviews an arbitration decision under an "arbitrary or capricious" standard. *RCW 41.56.450*. The decision of the *Moses Lake* court to order prejudgment interest back to the arbitration award is therefore consistent with a court's authority to award prejudgment interest back to the date of the verdict when it is directed on review to enter judgment under *RCW 4.56.110(4)* [*10] and *RCW 4.56.115* ("[W]here a court is directed on review to enter judgment...interest...shall date back to and shall accrue from the date the verdict was rendered.").

We reverse and direct entry of judgment denying Fluor's request for prejudgment interest. n6

n6 Nothing in our decision prevents parties to an arbitration agreement from mutually agreeing that interest shall run from the date of the arbitration decision.

Coleman, J.

WE CONCUR:

Appelwick, J.

Becker, J.

RCW 4.56.110 Interest on judgments.

Interest on judgments shall accrue as follows:

(1) Judgments founded on written contracts, providing for the payment of interest until paid at a specified rate, shall bear interest at the rate specified in the contracts: PROVIDED, That said interest rate is set forth in the judgment.

(2) All judgments for unpaid child support that have accrued under a superior court order or an order entered under the administrative procedure act shall bear interest at the rate of twelve percent.

(3) Judgments founded on the tortious conduct of individuals or other entities, whether acting in their personal or representative capacities, shall bear interest from the date of entry at two percentage points above the equivalent coupon issue yield, as published by the board of governors of the federal reserve system, of the average bill rate for twenty-six week treasury bills as determined at the first bill market auction conducted during the calendar month immediately preceding the date of entry. In any case where a court is directed on review to enter judgment on a verdict or in any case where a judgment entered on a verdict is wholly or partly affirmed on review, interest on the judgment or on that portion of the judgment affirmed shall date back to and shall accrue from the date the verdict was rendered.

(4) Except as provided under subsections (1), (2), and (3) of this section, judgments shall bear interest from the date of entry at the maximum rate permitted under RCW 19.52.020 on the date of entry thereof. In any case where a court is directed on review to enter judgment on a verdict or in any case where a judgment entered on a verdict is wholly or partly affirmed on review, interest on the judgment or on that portion of the judgment affirmed shall date back to and shall accrue from the date the verdict was rendered. The method for determining an interest rate prescribed by this subsection is also the method for determining the "rate applicable to civil judgments" for purposes of RCW 10.82.090.

[2004 c 185 § 2; 1989 c 360 § 19; 1983 c 147 § 1; 1982 c 198 § 1; 1980 c 94 § 5; 1969 c 46 § 1; 1899 c 80 § 6; 1895 c 136 § 4; RRS § 457.]

Notes:

Application -- Interest accrual -- 2004 c 185: See note following RCW 4.56.115.

Application -- 1983 c 147: "The 1983 amendments of RCW 4.56.110 and 4.56.115 apply only to judgments entered after July 24, 1983." [1983 c 147 § 3.]

Effective date -- 1980 c 94: See note following RCW 4.84.250.

RCW 4.56.115**Interest on judgments against state, political subdivisions or municipal corporations – Torts.**

Judgments founded on the tortious conduct of the state of Washington or of the political subdivisions, municipal corporations, and quasi municipal corporations of the state, whether acting in their governmental or proprietary capacities, shall bear interest from the date of entry at two percentage points above the equivalent coupon issue yield (as published by the board of governors of the federal reserve system) of the average bill rate for twenty-six week treasury bills as determined at the first bill market auction conducted during the calendar month immediately preceding the date of entry thereof. In any case where a court is directed on review to enter judgment on a verdict or in any case where a judgment entered on a verdict is wholly or partly affirmed on review, interest on the judgment or on that portion of the judgment affirmed shall date back to and shall accrue from the date the verdict was rendered.

[2004 c 185 § 1; 1983 c 147 § 2; 1975 c 26 § 1.]

Notes:

Application -- Interest accrual -- 2004 c 185: "The rate of interest required by sections 1 and 2(3), chapter 185, Laws of 2004 applies to the accrual of interest:

- (1) As of the date of entry of judgment with respect to a judgment that is entered on or after June 10, 2004;
- (2) As of June 10, 2004, with respect to a judgment that was entered before June 10, 2004, and that is still accruing interest on June 10, 2004." [2004 c 185 § 3.]

Application -- 1983 c 147: See note following RCW 4.56.110.

A-6

RCW 7.04.150**Confirmation of award by court. (Effective until January 1, 2006.)**

At any time within one year after the award is made, unless the parties shall extend the time in writing, any party to the arbitration may apply to the court for an order confirming the award, and the court shall grant such an order unless the award is beyond the jurisdiction of the court, or is vacated, modified, or corrected, as provided in RCW 7.04.160 and 7.04.170. Notice in writing of the motion must be served upon the adverse party, or his attorney, five days before the hearing thereof. The validity of an award, otherwise valid, shall not be affected by the fact that no motion is made to confirm it.

[1982 c 122 § 2; 1943 c 138 § 15; Rem. Supp. 1943 § 430-15.]

A-7

RCW 7.04.160**Vacation of award — Rehearing. (Effective until January 1, 2006.)**

In any of the following cases the court shall after notice and hearing make an order vacating the award, upon the application of any party to the arbitration:

- (1) Where the award was procured by corruption, fraud or other undue means.
- (2) Where there was evident partiality or corruption in the arbitrators or any of them.
- (3) Where the arbitrators were guilty of misconduct, in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence, pertinent and material to the controversy; or of any other misbehavior, by which the rights of any party have been prejudiced.
- (4) Where the arbitrators exceeded their powers, or so imperfectly executed them that a final and definite award upon the subject matter submitted was not made.
- (5) If there was no valid submission or arbitration agreement and the proceeding was instituted without either serving a notice of intention to arbitrate, as provided in RCW 7.04.060, or without serving a motion to compel arbitration, as provided in RCW 7.04.040(1).

An award shall not be vacated upon any of the grounds set forth under subdivisions (1) to (4), inclusive, unless the court is satisfied that substantial rights of the parties were prejudiced thereby.

Where an award is vacated, the court may, in its discretion, direct a rehearing either before the same arbitrators or before new arbitrators to be chosen in the manner provided in the agreement for the selection of the original arbitrators and any provision limiting the time in which the arbitrators may make a decision shall be deemed applicable to the new arbitration and to commence from the date of the court's order.

[1943 c 138 § 16; Rem. Supp. 1943 § 430-16.]

RCW 7.04.170

Modification or correction of award by court. (Effective until January 1, 2006.)

In any of the following cases, the court shall, after notice and hearing, make an order modifying or correcting the award, upon the application of any party to the arbitration:

(1) Where there was an evident miscalculation of figures, or an evident mistake in the description of any person, thing or property, referred to in the award.

(2) Where the arbitrators have awarded upon a matter not submitted to them.

(3) Where the award is imperfect in a matter of form, not affecting the merits of the controversy. The order must modify and correct the award, as to effect the intent thereof.

[1943 c 138 § 17; Rem. Supp. 1943 § 430-17.]

RCW 41.56.450**Uniformed personnel — Interest arbitration panel — Powers and duties — Hearings — Findings and determination.**

If an agreement has not been reached following a reasonable period of negotiations and mediation, and the executive director, upon the recommendation of the assigned mediator, finds that the parties remain at impasse, then an interest arbitration panel shall be created to resolve the dispute. The issues for determination by the arbitration panel shall be limited to the issues certified by the executive director. Within seven days following the issuance of the determination of the executive director, each party shall name one person to serve as its arbitrator on the arbitration panel. The two members so appointed shall meet within seven days following the appointment of the later appointed member to attempt to choose a third member to act as the neutral chairman of the arbitration panel. Upon the failure of the arbitrators to select a neutral chairman within seven days, the two appointed members shall use one of the two following options in the appointment of the third member, who shall act as chairman of the panel: (1) By mutual consent, the two appointed members may jointly request the commission, and the commission shall appoint a third member within two days of such request. Costs of each party's appointee shall be borne by each party respectively; other costs of the arbitration proceedings shall be borne by the commission; or (2) either party may apply to the commission, the federal mediation and conciliation service, or the American Arbitration Association to provide a list of five qualified arbitrators from which the neutral chairman shall be chosen. Each party shall pay the fees and expenses of its arbitrator, and the fees and expenses of the neutral chairman shall be shared equally between the parties.

The arbitration panel so constituted shall promptly establish a date, time, and place for a hearing and shall provide reasonable notice thereof to the parties to the dispute. A hearing, which shall be informal, shall be held, and each party shall have the opportunity to present evidence and make argument. No member of the arbitration panel may present the case for a party to the proceedings. The rules of evidence prevailing in judicial proceedings may be considered, but are not binding, and any oral testimony or documentary evidence or other data deemed relevant by the chairman of the arbitration panel may be received in evidence. A recording of the proceedings shall be taken. The arbitration panel has the power to administer oaths, require the attendance of witnesses, and require the production of such books, papers, contracts, agreements, and documents as may be deemed by the panel to be material to a just determination of the issues in dispute. If any person refuses to obey a subpoena issued by the arbitration panel, or refuses to be sworn or to make an affirmation to testify, or any witness, party, or attorney for a party is guilty of any contempt while in attendance at any hearing held hereunder, the arbitration panel may invoke the jurisdiction of the superior court in the county where the labor dispute exists, and the court has jurisdiction to issue an appropriate order. Any failure to obey the order may be punished by the court as a contempt thereof. The hearing conducted by the arbitration panel shall be concluded within twenty-five days following the selection or designation of the neutral chairman of the arbitration panel, unless the parties agree to a longer period.

The neutral chairman shall consult with the other members of the arbitration panel, and, within thirty days following the conclusion of the hearing, the neutral chairman shall make written findings of fact and a written determination of the issues in dispute, based on the evidence presented. A copy thereof shall be served on the commission, on each of the other members of the arbitration panel, and on each of the parties to the dispute. That determination shall be final and binding upon both parties, subject to review by the superior court upon the application of either party solely upon the question of whether the decision of the panel was arbitrary or capricious.

[1983 c 287 § 2; 1979 ex.s. c 184 § 2; 1975-76 2nd ex.s. c 14 § 2; 1975 1st ex.s. c 296 § 29; 1973 c 131 § 4.]

Notes:

Severability -- 1983 c 287: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected."
[1983 c 287 § 6.]

Effective date -- 1975 1st ex.s. c 296: See RCW 41.58.901.

Construction -- Severability -- 1973 c 131: See RCW 41.56.905, 41.56.910.

A-10

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON)	NO. 55867-6-1
DEPARTMENT OF CORRECTIONS,)	
in its own capacity, and as assignee of)	DIVISION ONE
claims of University Mechanical)	
Contractors, and Pacific Construction)	
Systems, Inc.,)	
Respondent,)	
)	
v.)	
)	
FLUOR DANIEL, INC., a foreign)	Published Opinion
corporation, and FIREMAN'S FUND)	
INSURANCE COMPANY, a foreign)	
corporation,)	
Appellants.)	FILED: December 12, 2005
_____)	

COLEMAN, J.—Fluor Daniel, Inc. and the Department of Corrections (DOC) agreed to arbitration to settle their legal dispute. The arbitrator issued his decision, and Fluor moved the superior court to confirm the award and enter judgment. The superior court did so and awarded Fluor prejudgment interest dating back to the date of the

arbitration decision.¹ The Department of Corrections appeals the prejudgment interest award. Because the arbitration decision did not constitute a fully liquidated sum entitling Fluor Enterprises to prejudgment interest, we reverse and direct entry of judgment in favor of the DOC on the issue of prejudgment interest.

FACTS

Fluor Enterprises, Inc. and the DOC entered into a contract for the development of the Stafford Creek Corrections Center. A lawsuit arose between Fluor and the DOC. Before the suit went to trial, the two parties agreed to stay the litigation and submit their remaining disputes to binding arbitration.

Paragraph 8 of the arbitration agreement provided that once the arbitrator reached a decision, either party could submit the decision to the King County Superior Court and that the judgment would be final and binding once entered. The paragraph reads in full,

Once the Arbitrator issues a decision, either party may submit the decision to the King County Superior Court in the action now pending. The parties agree the judgment to be entered will be in full and complete compliance with the decision of the Arbitrator. Once said judgment is entered the judgment will be final and binding on Fluor and DOC. Fluor and DOC each waive any and all rights to appeal the Arbitration Award.

On January 18, 2005, the arbitrator issued his decision that Fluor was entitled to payment of approximately \$6 million. Three days later Fluor moved for an order confirming the arbitration award and for entry of judgment. In its motion, Fluor characterized the arbitrator's award as a liquidated sum and asked for prejudgment

¹ Both parties agree that the damages at issue in the arbitration were unliquidated, and Fluor does not seek prejudgment interest for the period prior to the arbitration award.

interest from the date of the arbitrator's award. The superior court granted Fluor's motion on February 8, 2005, and awarded prejudgment interest dating back to January 18. The DOC appeals.

ANALYSIS

In this decision, we analyze whether the arbitrator's award was a fully liquidated sum entitling Fluor to prejudgment interest from the date of the arbitrator's decision, or whether the award was instead analogous to a jury verdict. An appellate court reviews issues of law de novo. State v. Campbell, 125 Wn.2d 797, 800, 888 P.2d 1185 (1995).

Washington's statutory code provides that a court generally may award interest only from the date of entry of the judgment. RCW 4.56.110(4). Interest accrues from the date of a verdict only when a court is directed on review to enter judgment or when the judgment is affirmed on review. RCW 4.56.110(4).

The DOC argues that the arbitrator's award in this dispute was more akin to a jury verdict than a fully liquidated sum and that the trial court erred in awarding prejudgment interest. We agree. The Court of Appeals has held that in the context of the issue of collateral estoppel, an arbitration award is analogous to a jury verdict or an oral decision, instead of a judgment. Channel v. Mills, 61 Wn. App. 295, 299–300, 810 P.2d 67 (1991).

In our judgment, an arbitration award is not the same thing as a final judgment of a court. We reach this conclusion primarily because Washington's statutory scheme for arbitration, RCW 7.04[.010 et seq.], provides a rather elaborate process for the confirmation, vacation, correction or modification of an arbitration award in court and for the entry of a judgment which conforms with the court's final determination. RCW 7.04.150, .160, .170, .180, .190. We can only conclude from a plain reading of these statutes that the Legislature did not consider an award in arbitration to be equivalent to a final judgment of a court. If it had it would have been unnecessary to provide a process to reduce the award

to judgment. We conclude, therefore, that an award of arbitrators that has not been reduced to judgment pursuant to the statutory framework discussed above is not equivalent to a judgment. It is, in our view, more akin to a jury verdict or a trial court's memorandum opinion or oral decision, determinations which are not considered equivalent to a judgment.

Channel, 61 Wn. App. at 299–300.

An arbitrator's award is analogous to a jury verdict in the context of this dispute as well. Until entry of judgment, a court may vacate a jury verdict in specialized circumstances as provided in CR 59(a).² A court also may request a party to consent to a reduction or increase in the damages awarded by a jury in lieu of a new trial.

² CR 59(a) provides: "**Grounds for New Trial or Reconsideration.** The verdict or other decision may be vacated and a new trial granted to all or any of the parties and on all or part of the issues when such issues are clearly and fairly separable and distinct, on the motion of the party aggrieved for any one of the following causes materially affecting the substantial rights of such parties:

(1) Irregularity in the proceedings of the court, jury or adverse party, or any order of the court, or abuse of discretion, by which such party was prevented from having a fair trial;

(2) Misconduct of prevailing party or jury; and whenever any one or more of the jurors shall have been induced to assent to any general or special verdict or to a finding on any question or questions submitted to the jury by the court, other and different from his own conclusions, and arrived at by a resort to the determination of chance or lot, such misconduct may be proved by the affidavits of one or more of the jurors;

(3) Accident or surprise which ordinary prudence could not have guarded against;

(4) Newly discovered evidence, material for the party making the application, which he could not with reasonable diligence have discovered and produced at the trial;

(5) Damages so excessive or inadequate as unmistakably to indicate that the verdict must have been the result of passion or prejudice;

(6) Error in the assessment of the amount of recovery whether too large or too small, when the action is upon a contract, or for the injury or detention of property;

(7) That there is no evidence or reasonable inference from the evidence to justify the verdict or the decision, or that it is contrary to law;

(8) Error in law occurring at the trial and objected to at the time by the party making the application;

(9) That substantial justice has not been done."

RCW 4.76.030.³ It is for these reasons that a jury verdict, even though for a specific sum, is not considered a fully liquidated amount. Kiessling v. NW. Greyhound Lines, Inc., 38 Wn.2d 289, 297, 229 P.2d 335 (1951).

Similarly, under Washington's arbitration statutes, an arbitration award is not a liquidated sum because the superior court may vacate, modify, or correct the award before entry of judgment under certain conditions described in RCW 7.04.160⁴ and RCW 7.04.170.⁵ It is true that the grounds for modifying, vacating, or correcting an

³ RCW 4.76.030 reads, "If the trial court shall, upon a motion for new trial, find the damages awarded by a jury to be so excessive or inadequate as unmistakably to indicate that the amount thereof must have been the result of passion or prejudice, the trial court may order a new trial or may enter an order providing for a new trial unless the party adversely affected shall consent to a reduction or increase of such verdict,"

⁴ RCW 7.04.160 reads, "In any of the following cases the court shall after notice and hearing make an order vacating the award, upon the application of any party to the arbitration:

"(1) Where the award was procured by corruption, fraud or other undue means.

"(2) Where there was evident partiality or corruption in the arbitrators or any of them.

"(3) Where the arbitrators were guilty of misconduct, in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence, pertinent and material to the controversy; or of any other misbehavior, by which the rights of any party have been prejudiced.

"(4) Where the arbitrators exceeded their powers, or so imperfectly executed them that a final and definite award upon the subject matter submitted was not made.

"(5) If there was no valid submission or arbitration agreement and the proceeding was instituted without either serving a notice of intention to arbitrate, as provided in RCW 7.04.060, or without serving a motion to compel arbitration, as provided in RCW 7.04.040(1).

"An award shall not be vacated upon any of the grounds set forth in subdivisions (1) to (4), inclusive, unless the court is satisfied that substantial rights of the parties were prejudiced thereby.

""

⁵ RCW 7.04.170 provides, "In any of the following cases, the court shall, after notice and hearing, make an order modifying or correcting the award, upon the application of any party to the arbitration:

arbitration award are narrower than the grounds for vacating or changing a jury verdict prior to entry of judgment. But the superior court's authority under the arbitration statutes to modify, vacate, or correct an award before entry of judgment means that an arbitration award, like a jury verdict, is not fully liquidated until the arbitrator's award is reduced to judgment.

Fluor contends that the decision in City of Moses Lake v. Int'l Ass'n of Firefighters, Local 2052, 68 Wn. App. 742, 847 P.2d 16 (1993), supports its argument that an arbitration award does constitute a liquidated sum. In Moses Lake, an arbitration panel decided a collective bargaining dispute pursuant to RCW 41.56.450 between the City and the Association. Moses Lake, 68 Wn. App. at 743–44. The City appealed to the superior court, which affirmed the decision and refused to grant prejudgment interest. Moses Lake, 68 Wn. App. at 745. The City appealed to the Court of Appeals, which affirmed the arbitration decision and reversed the superior court's order denying prejudgment interest. Moses Lake, 68 Wn. App. at 745, 749. The Moses Lake court ruled that the arbitration decision constituted a liquidated sum, as it placed on the City a duty to raise firefighters' salaries in the amount specified. Moses Lake, 68 Wn. App. at 743–44, 749. The Moses Lake decision is inapposite, however, because in the context of RCW 41.56.450, a superior court acts as an appellate court when it reviews an arbitration decision under an "arbitrary or capricious" standard. RCW

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- (1) Where there was an evident miscalculation of figures, or an evident mistake in the description of any person, thing or property, referred to in the award.
 - (2) Where the arbitrators have awarded upon a matter not submitted to them.
 - (3) Where the award is imperfect in a matter of form, not affecting the merits of the controversy. The order must modify and correct the award, as to effect the intent thereof."

41.56.450. The decision of the Moses Lake court to order prejudgment interest back to the arbitration award is therefore consistent with a court's authority to award prejudgment interest back to the date of the verdict when it is directed on review to enter judgment under RCW 4.56.110(4) and RCW 4.56.115 ("[W]here a court is directed on review to enter judgment . . . interest . . . shall date back to and shall accrue from the date the verdict was rendered.").

We reverse and direct entry of judgment denying Fluor's request for prejudgment interest.⁶

Columen, J.

WE CONCUR:

Appelwick, J.

Becker, J.

⁶ Nothing in our decision prevents parties to an arbitration agreement from mutually agreeing that interest shall run from the date of the arbitration decision.

