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No. 91393-5

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

SANDRA C. THORNELL,

Plaintiff,

vs.

SEATTLE SERVICE BUREAU, INC., d/b/a NATIONAL SERVICE
BUREAU, INC., and STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendants.

Filed E
Washington State Supreme Court
SEP 18 2015
Ronald R. Carpenter
Clerk

BRIEF OF AMICUS CURIAE
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I. IDENTITY AND INTEREST OF AMICUS CURIAE

The Washington State Association for Justice Foundation (WSAJ Foundation) is a not-for-profit corporation organized under Washington law, and a supporting organization to the Washington State Association for Justice (WSAJ). WSAJ Foundation has an interest in the rights of plaintiffs under the civil justice system, including an interest in proper interpretation and application of the Consumer Protection Act, Ch. 19.86 RCW (CPA).

II. INTRODUCTION AND STATEMENT OF THE CASE

This review presents questions certified by the U.S. District Court for the Western District of Washington regarding the reach of the CPA, similar to those reserved by the majority and addressed by a 4-justice plurality of the Court in Schnall v. AT&T Wireless Servs., Inc., 171 Wn. 2d 260, 277 n.4, 259 P.3d 129 (2011) (majority opinion); id., 171 Wn. 2d at 287-89 (Sanders, J., dissenting); id. at 281 (Chambers, J., concurring in part and dissenting in part).

Sandra C. Thornell (Thornell), a Texas resident, filed a class action complaint against Seattle Service Bureau, Inc. (SSB), and State Farm Mutual Automobile Insurance Company (State Farm). Thornell alleges unfair or deceptive acts or practices in attempting to collect on subrogation claims in violation of the CPA, similar to the claims involved in Panag v.

Farmers Ins. Co., 166 Wn. 2d 27, 204 P.3d 885 (2009). The underlying facts are drawn from the federal court’s “Order Certifying Questions to Washington Supreme Court” (Certification Order), and the briefing of the parties. See State Farm Br. at 4-7; SSB Br. at 2-3; Thornell Br. at 4-11.¹

For purposes of this amicus curiae brief, the following facts are relevant: Thornell originally filed her CPA complaint in Washington state court, and the action was removed to federal court. The putative class has not been certified, but it appears to consist of 26,273 subrogation claims, 702 of which involve Washington residents. See Thornell Br. at 1-2 & n.1, 9, 16. The subrogation claims belong to State Farm, an Illinois insurer. The claims were apparently “assigned” by State Farm to SSB, although State Farm seems to retain some residual interest in the proceeds of the claims. See State Farm Br. at 6; State Farm Reply Br. at 15, 21. The federal court describes SSB as State Farm’s “alleged Washington agent.” Certification Order at 3; see also State Farm Br. at 7; State Farm Reply Br. at 16-17. SSB, a Washington company, attempted to collect on the subrogation claim against Thornell by sending allegedly deceptive correspondence to her in Texas, portraying the subrogated amount as a liquidated debt, and demanding that payment of the claim be sent to SSB in Washington.

¹ A copy of the Certification Order is reproduced in the Appendix to this brief.

State Farm and SSB moved to dismiss Thornell's complaint under Fed. R. Civ. P. 12(b)(6) on multiple grounds, including that the CPA does not apply "extraterritorially," i.e., to claims of a nonresident plaintiff against a Washington company or a foreign company operating through an agent located in the state. While the federal court denied the motion to dismiss on other grounds, it did not reach a decision with respect to extraterritorial application of the CPA. Instead, it elected to certify this issue of state law to this Court, which has accepted the certification.

III. ISSUES PRESENTED

The federal court certified the following issues to this Court:

- 1) Does the Washington Consumer Protection Act create a cause of action for a plaintiff residing outside Washington to sue a Washington corporate defendant for allegedly deceptive acts?
- 2) Does the Washington Consumer Protection Act create a cause of action for an out-of-state plaintiff to sue an out-of-state defendant for the allegedly deceptive acts of its in-state agent?

Certification Order at 4.

IV. SUMMARY OF ARGUMENT

The sole issue before the Court under the certified questions is the extraterritorial application of the CPA to claims of a *nonresident plaintiff* against a Washington company and a foreign company operating through an agent located in the state. Unquestionably, the CPA applies to *nonresident defendants*. In keeping with the codified statement of

legislative purpose “to protect the public and foster fair and honest competition,” RCW 19.86.920, and the text of the act itself, the CPA should also be interpreted to apply to nonresident plaintiffs bringing suit against resident defendants and nonresident defendants acting through a resident agent. The Court should answer “Yes” to both certified questions. On remand, the federal court may address any remaining choice of law and federal constitutional issues arising under the facts of this case.

V. ARGUMENT

A. **The Certified Questions Before The Court Are Limited To An Issue Of Statutory Construction Involving The Extraterritorial Reach Of The CPA.**

The certified questions before the Court are limited to statutory construction of the CPA. In the course of addressing these questions, the parties discuss the impact of choice-of-law principles, and related limits on the application of state law under the Due Process and Full Faith and Credit Clauses of the U.S. Constitution and principles of federalism.² These issues are not encompassed within the questions certified by the federal court. None of the parties has suggested that the questions should

² The Due Process argument is tied to State Farm’s fact-intensive choice of law analysis, representing a limit on application of the forum state’s law. See State Farm Br. at 4, 30-34, 38; State Farm Reply Br. at 20-23. The independent significance of the Full Faith and Credit and federalism arguments is not fully explained, but these arguments appear to be tied to the choice of law analysis as well. See State Farm Br. at 4, 30-33, 38 (referencing Full Faith and Credit Clause and principles of federalism); State Farm Reply Br. at 23-25 (linking federalism argument to Commerce Clause). State Farm also invokes the doctrine of constitutional avoidance as an aid to interpreting the CPA, which is addressed in § B, infra. See State Farm Br. at 1, 4, 30; State Farm Reply Br. at 1, 20.

be reformulated, and it does not appear that the questions could be reformulated to address these issues.³

Analyzing choice of law principles begs the question of whether the CPA, in the abstract, has extraterritorial application, and federal constitutional questions are not a proper subject for certification. To the extent these issues must be addressed in this case, they are properly reserved for the federal court on remand. Nonetheless, given the prominence of these issues in the briefing, some comment is warranted regarding their relationship to the certified questions before the Court.

Re: Choice of Law

With respect to choice of law, SSB argues that Texas law should apply to Thornell's claims under the most significant relationship test. See SSB Br. at 5-8. State Farm agrees that Texas law applies under this test, and urges that choice of law principles should serve as a limit on interpretation of the CPA. See State Farm Br. at 3 (stating, without citation to authority, "[t]o the extent the CPA's text leaves any room for doubt, it must be interpreted consistently with rules governing choice of law"); id. at 22 (similar).

³ In formulating the certified questions as it did, the federal court may have recognized that, if the certified questions are answered "No," this would resolve the case without the need to address the choice of law and federal constitutional issues.

These choice of law arguments involve a fact-specific analysis that is separate from determining the meaning of certain CPA provisions and whether the act is intended to apply extraterritorially. Generally speaking, it is true that the most significant relationship test for choice of law, set forth in the Restatement (Second) of Conflict of Laws § 6 (1971), has been adopted and applied by Washington courts. See e.g. Williams v. Leone & Keeble, Inc., 171 Wn. 2d 726, 735 n.6, 254 P.3d 818 (2011) (stating “Washington adheres to the ‘most significant relationship’ test, as developed by the Restatement (Second) of Conflict of Laws § 6 (1971), in a choice of law analysis”).

However, under the Restatement, the most significant relationship test only applies in the absence of a statutory choice of law. See Restatement § 6(2) (stating the most significant relationship test only applies “[w]hen there is no [statutory] directive”). Statutory choice of law takes precedence over the most significant relationship test. See id. § 6(1) (stating “[a] court, subject to constitutional restrictions, will follow a statutory directive of its own state on choice of law”); id. § 6 cmt. *a* (stating “[a] court, subject to constitutional limitations, must follow the directions of its legislature”); see also In re Marriage of Abel, 76 Wn. App. 536, 539-40, 886 P.2d 1139 (1995) (holding superior court erred in calculating child support in accordance with Montana law because RCW

26.19.035(1) represents a statutory choice of law, citing Restatement § 6(1)).

A statute that has extraterritorial effect is deemed to represent a statutory choice of law and must be applied as written, subject only to constitutional limitations. Restatement § 6 cmt. *b* provides:

The court should give a local statute the range of application intended by the legislature when these intentions can be ascertained and can constitutionally be given effect. If the legislature intended that the statute should be applied to the out-of-state facts involved, the court should so apply it unless constitutional considerations forbid.⁴

Thus, if the CPA has extraterritorial reach, it represents a statutory choice of law, and no analysis of the most significant relationship test is necessary. Cf. Thornell Br. at 22 (stating “[t]his Court must apply the CPA as the legislature intended No need exists to examine choice-of-law factors”).⁵

⁴ Restatement § 6, including comments but excluding reporter’s notes, is reproduced in the Appendix.

⁵ State Farm and SSB do not discuss Restatement § 6 or the priority of statutory choice of law rules over the most significant relationship test. SSB relies on this Court’s decision in FutureSelect Portfolio Mgmt., Inc. v. Tremont Grp. Holdings, Inc., 180 Wn. 2d 954, 967, 331 P.3d 29 (2014), which involves Restatement § 145, regarding application of the most significant relationship test to torts in general. See SSB Br. at 6-8. State Farm relies primarily on Restatement § 148, regarding application of the most significant relationship test to fraud and misrepresentation claims. See State Farm Br. at 22, 29. Both of these Restatement sections acknowledge the priority of statutory choice of law rules under Restatement § 6. See Restatement § 145(1) & cmt. *b*; id. § 148(1) & cmt. *b*.

Re: Constitutional Limitations

With respect to the constitutional limitations on choice of law—whether under a statutory choice of law provision or the most significant relationship test—State Farm argues that the Due Process and Full Faith and Credit Clauses of the U.S. Constitution and principles of federalism preclude extraterritorial application of the CPA. See State Farm Br. at 30-38. These issues only surface if the CPA is found to have extraterritorial effect. More importantly, they involve federal, not state, law. As such, they are not encompassed within the certified questions, nor would it be proper to certify them (or reformulate the certified questions) because they do not involve the law of this state. See RAP 16.16 (limiting certification to questions of “state law”); RCW 2.60.020 (limiting certification to “the local law of this state”). The questions before the Court are strictly a matter of statutory construction of the CPA.

B. The CPA Contemplates That Nonresident Plaintiffs May Bring An Action Under RCW 19.86.090 Against Resident Defendants And Nonresident Defendants Acting Through A Resident Agent, In Keeping With The Purpose And Text Of The Act.

Preliminarily, State Farm invokes the doctrine of constitutional avoidance as relevant to interpreting the CPA, without any citation to authority or explanation why the doctrine applies here. See State Farm Br. at 1, 4, 30; State Farm Reply Br. at 1, 20. The doctrine represents an aid to

statutory construction rather than a freestanding constitutional challenge. It applies when a statute is ambiguous and more than one construction is possible, only one of which is constitutional. See Davis v. Cox, 183 Wn. 2d 269, 280 & 282, 351 P.3d 862 (2015). Under these circumstances, courts will adopt the constitutional construction where possible in order to save the statute. See id., 183 Wn. 2d at 280. This is in deference to the authority and role of the legislature. See State ex rel. Dep't of Fin., Budget & Bus. v. Thurston Cnty., 199 Wash. 398, 404, 92 P.2d 234 (1939); State v. Strong, 167 Wn. App. 206, 212-13, 272 P.3d 281, *review denied*, 174 Wn. 2d 1018 (2012).

State Farm does not contend that the CPA is ambiguous, and only invokes the doctrine of constitutional avoidance conditionally, seeming to recognize this limit on the doctrine's applicability. See State Farm Br. at 4 (invoking doctrine "if the CPA were ambiguous"); State Farm Reply Br. at 20 (invoking doctrine "[t]o the extent the CPA is ambiguous"; brackets added); but see State Farm Br. at 30 ("assuming *arguendo* that the CPA's plain meaning and Washington's choice of law rules would otherwise allow a claim"). Because, as explained below, the CPA is unambiguous,

the Court should decline State Farm's invitation to engraft federal constitutional issues onto the certified questions of state law.⁶

The answers to the certified questions lie in applying the customary rules of statutory construction to the CPA. The purpose of statutory construction is to effectuate legislative intent. See Hartman v. State Game Comm'n, 85 Wn. 2d 176, 179, 532 P.2d 614 (1975). Legislative intent is discerned from the statutory context as a whole. See id., 85 Wn. 2d at 179. "Where the legislature prefaces an enactment with a statement of purpose ... that declaration, although without operative force in itself, nevertheless serves as an important guide in understanding the intended effect of operative sections." Id. at 179; accord G-P Gypsum Corp. v. State, 169 Wn. 2d 304, 309-10, 237 P.3d 256 (2010) (stating "a statute's plain meaning should be 'discerned from all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question,'" including "an enacted statement of legislative purpose"; citation omitted).

⁶ State Farm's invocation of constitutional avoidance at this stage of proceedings appears to conflate statutory construction with constitutional limits on choice of law, which is a fact-intensive inquiry more akin to an *as-applied* constitutional challenge. To the extent analysis of the constitutional issues may be influenced by facts revealed during discovery, consideration of these issues is premature in any event. Cf. Judicial Watch, Inc. v. National Energy Policy Dev. Group, 219 F. Supp. 2d 20, 44-55 (D.D.C. 2002) (declining to address fact-intensive constitutional issue on a motion to dismiss where discovery may affect the constitutional analysis), *dismissed on other grounds sub nom. In re Cheney*, 406 F.3d 723 (D.C. Cir. 2005). State Farm remains entitled to have its fact-based federal constitutional arguments adjudicated on remand by the federal court as noted in § A, supra.

The Schnall dissent correctly concludes that the CPA should be given extraterritorial effect, see 171 Wn. 2d at 287-89; and the Schnall majority finds “credible reasons” for applying the CPA extraterritorially, although it did not reach the issue, see id. at 277 n.4.⁷ The Court should now hold that the CPA applies extraterritorially to claims of a nonresident plaintiff against a Washington defendant and a foreign defendant operating through an agent located in the state, based on the codified statement of legislative purpose and the language of the CPA itself.

The statement of legislative purpose for the CPA mandates a liberal construction of the act, and provides in pertinent part:

The legislature hereby declares that the purpose of this act is to complement the body of federal law governing restraints of trade, unfair competition and unfair, deceptive, and fraudulent acts or practices in order to protect the public and foster fair and honest competition. It is the intent of the legislature that, in construing this act, the courts be guided by final decisions of the federal courts and final orders of the federal trade commission interpreting the various federal statutes dealing with the same or similar

⁷Specifically, the majority states:

Amicus curiae The American Legislative Exchange Council (ALEC) contends that it was error for the Court of Appeals to conclude that the CPA may be applied to a nationwide class, arguing among other things that by its terms the CPA does not apply extraterritorially. We note that in his amicus brief in support of Schnall's motion for reconsideration, the attorney general has provided us with credible reasons why ALEC's position does not reflect either the language or the policy of the CPA. However, we need not reach this issue because we hold that a nationwide class action under CR 23 cannot be maintained in this case. Moreover, we generally do not address issues raised only by amicus and decline to do so here.

Schnall, 171 Wn. 2d at 276 n.4.

matters and that in deciding whether conduct restrains or monopolizes trade or commerce or may substantially lessen competition, determination of the relevant market or effective area of competition shall not be limited by the boundaries of the state of Washington. To this end this act shall be liberally construed that its beneficial purposes may be served.

RCW 19.86.920 (ellipses added)⁸; see also Panag, 166 Wn. 2d at 37 (recognizing CPA's purpose of promoting fair and honest competition and rule of liberal construction in connection with claim brought under RCW 19.86.020); Indoor Billboard/Washington, Inc. v. Integra Telecom of Washington, Inc., 162 Wn. 2d 59, 73, 170 P.3d 10 (2007) (same).

Nothing in the foregoing statement of legislative purpose limits “the public” protected by the CPA to residents of the state of Washington. On the contrary, the statement that, for certain types of claims cognizable under the act, “the relevant market or effective area of competition shall not be limited to the boundaries of the state of Washington,” suggests that the act is intended to protect members of the public outside of the state. RCW 19.86.920; see also State v. Reader's Digest Ass'n, Inc., 81 Wn. 2d 259, 279-80, 501 P.2d 290 (1972) (invoking market area language of RCW 19.86.920 to reject interpretation of CPA that would “limit the application of RCW 19.86.020 strictly to intrastate commerce”).

⁸ The full text of the current version of RCW 19.86.920 is reproduced in the Appendix.

Furthermore, the purpose of “foster[ing] fair and honest competition” is not limited to business conducted solely within state boundaries. RCW 19.86.920. As explained in the Schnall dissent:

Washington regulates the behavior of Washington businesses; the purpose of the CPA is not only to protect the public *from* unfair and deceptive acts, but also to “foster fair and honest competition” among businesses. RCW 19.86.920. If a Washington business is acting in an unfair or dishonest way nationwide, Washington has a strong interest to address the full, nationwide effects of that behavior; Washington should not become a harbor for businesses engaging in unscrupulous practices out of state.

171 Wn. 2d at 287 (Sanders, J., dissenting; emphasis in original); accord id. at 281 (Chambers, J., concurring in part and dissenting in part, recognizing Washington “has a substantial interest in assuring Washington corporations conduct business in a fair and honest manner” under the CPA); see also id. at 276 n.4 (majority opinion, referencing attorney general’s amicus curiae brief as providing “credible reasons” why extraterritorial application reflects the language and policy of the CPA).

Numerous provisions of the CPA reflect this legislative purpose and intent in various ways:

First, the CPA provides that “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful,” without any express geographic limitation. RCW 19.86.020.

Second, the CPA defines trade or commerce in *nonexclusive* terms to “include the sale of assets or services, and any commerce directly or indirectly affecting the people of the state of Washington.” RCW 19.86.010(2). The words “any,” “indirectly,” and “affecting” and the nonexclusive nature of the definition underscore its breadth.

Third, the CPA defines “person” to include “natural persons, corporations, trusts, unincorporated associations and partnerships,” without any express geographic limitation on where such persons must be located. RCW 19.86.010(1). This definition is sufficiently broad to encompass persons who *violate* the CPA and persons who are *injured* by violations of the CPA, regardless of whether they reside within or outside of the state.

Fourth, the CPA authorizes the attorney general to “bring an action in the name of the state, *or as parens patriae on behalf of persons residing in the state*, against any person to restrain and prevent the doing of any act herein prohibited or declared to be unlawful[.]” RCW 19.86.080 (emphasis added). The italicized text was added to permit the attorney general to bring antitrust actions on behalf of indirect purchasers, a type of claim that is not at issue in this case. See Laws of 2007, Ch. 66, § 1; House Bill Report, S.S.B. No. 5229, 50th Legis., Reg. Sess., Apr. 4, 2007. The balance of this provision authorizes the attorney general to bring an

action in the name of the state for any violation of the CPA, without regard for whether the actor is located or the act occurs within the state.⁹

Fifth, the CPA authorizes the state of Washington to bring an action for damages whenever it is injured, directly or indirectly, by reason of certain violations of the CPA, without regard for whether the actor is located or the act occurs entirely within the state. See RCW 19.86.090.

Sixth, with respect to private litigants, the CPA authorizes “any person who is injured in his or her business or property by a violation of RCW 19.86.020” or other provisions of the act to bring a civil action in superior court. RCW 19.86.090.¹⁰ The “any person” language of this remedy provision is sufficiently broad to encompass private plaintiffs who

⁹ State Farm argues that, because the attorney general’s authority under RCW 19.86.080(1) is limited to actions “as *parens patriae* on behalf of persons *residing in the state*,” the italicized language precludes any action by the attorney general on behalf of non-state residents, and a similar limitation should be read into the private right of action under RCW 19.86.090. See State Farm Br. at 2-3, 11 & 14. This argument should be rejected because the language on which State Farm relies is part of the amendment allowing antitrust actions by the attorney general on behalf of indirect purchasers, as stated in the main text. It was not intended to create a geographic limitation on actions by the attorney general or private litigants.

¹⁰ The conduct actionable by private litigants injured in their business or property under RCW 19.86.090 appears to be the same as the conduct actionable by the attorney general under RCW 19.86.080. See *Lightfoot v. MacDonald*, 86 Wn. 2d 331, 334, 544 P.2d 88 (1976) (stating “an act or practice of which a private individual may complain [under RCW 19.86.090] must be one which also would be vulnerable to a complaint by the attorney general under the act”; brackets added). The only exception appears to be actions by indirect purchasers, which this Court has not addressed. See *Blewett v. Abbott Labs.*, 86 Wn. App. 782, 788-89, 938 P.3d 842 (1997) (holding indirect purchasers lack standing to bring private action under the CPA, while noting “the merits of the indirect purchaser rule are debatable”), *review denied*, 133 Wn. 2d 1029 (1998).

are located within and outside the state, especially in light of the statutory definition of person, discussed above. See RCW 19.86.010(1).

Seventh, with respect to non-per se CPA claims brought by private litigants, the “public interest” element of such claims is satisfied by proof that the defendant’s conduct:

- (1) Violates a statute that incorporates this chapter;
- (2) Violates a statute that contains a specific legislative declaration of public interest impact; or
- (3)(a) Injured other persons; (b) had the capacity to injure other persons; or (c) has the capacity to injure other persons.

RCW 19.86.093. The public interest protected by the CPA is not limited to actors located or acts occurring entirely within the state.

Eighth, the CPA provides for service of process as follows:

Personal service of any process in an action under this chapter may be made upon any person outside the state if such person has engaged in conduct in violation of this chapter which has had the impact in this state which this chapter reprehends.

RCW 19.86.160. This provision confirms that actors located outside the state of Washington are subject to CPA liability for actions that have an “impact in this state,” as State Farm acknowledges. See State Farm Br. at 9.¹¹

¹¹ The full text of the current versions of RCW 19.86.010, .020, .080, .090, .093, & .160 are reproduced in the Appendix.

Nonetheless, SSB and State Farm primarily argue that the reference to “the people of the state of Washington” in the definition of trade or commerce, RCW 19.86.010(2), limits the protection of the CPA to Washington residents. See SSB Br. at 3-5; State Farm Br. at 6; State Farm Reply Br. at 2-4. The Court should reject their interpretation for several reasons:

First, SSB and State Farm implicitly assume that the language referring to “the people of the state of Washington” pertains solely to persons *injured* by violation of the CPA, and that it does not include persons who *violate* the CPA. As noted above, this assumption is incorrect because the statutory language is broad enough to encompass those who violate the CPA, regardless of where their victims may live. See Schnall, 171 Wn. 2d at 287 (Sanders, J., dissenting).

Second, the language of the definition referring to *any* commerce *indirectly affecting* the people of the state of Washington is sufficiently broad to encompass actors located and acts occurring outside of the state.

Third, the definition of trade or commerce is *nonexclusive* and does not foreclose nonresident plaintiffs from pursuing a private remedy under RCW 19.86.090.

Fourth, the geographic limitation on the definition of trade or commerce proposed by State Farm would undermine the purpose of the

act to foster fair and honest competition. See RCW 19.86.920; Readers Digest, 81 Wn. 2d at 279-80; Schnall, 171 Wn. 2d at 287 (Sanders, J., dissenting).

In a similar vein, State Farm argues that the reference to “impact in this state” in the provision authorizing personal service on nonresident defendants, RCW 19.86.160, limits the reach of the CPA. See State Farm Br. at 2-3, 11-12, 14. As with the definition of trade or commerce, State Farm wrongly assumes that the requisite impact solely involves those injured by a violation of the CPA, rather than those who violate the CPA, and thereby undermines the purpose of the act.¹²

An argument similar to the one made by State Farm and SSB here was rejected by the Court in a case brought by an out-of-state plaintiff under the Washington Law Against Discrimination, Ch. 49.60 RCW (WLAD). See Burnside v. Simpson Paper Co., 123 Wn. 2d 93, 98-99, 864 P.2d 937 (1994). In Burnside, the defendant argued that the Court lacked subject matter jurisdiction over a WLAD age discrimination claim brought by the nonresident plaintiff, based on language in that act’s statement of legislative purpose in RCW 49.60.010, referring to the protection of

¹² State Farm’s alleged principal-agent relationship with SSB should be found to have sufficient impact in this state because a principal is liable for its agent’s violations of the CPA. See Wilkinson v. Smith, 31 Wn. App. 1, 10-11, 639 P.2d 768, *review denied*, 97 Wn. 2d 1023 (1982); see also Aungst v. Roberts Constr. Co., 95 Wn. 2d 439, 441-43, 625 P.2d 167 (1981) (discussing similarity between CPA and tort liability based on agency principles).

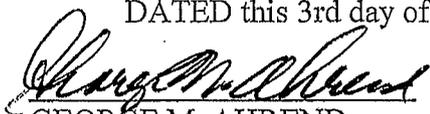
“inhabitants” of the state. See 123 Wn. 2d at 99. The Court rejected this argument, holding that the term “inhabitants” is a general reference not intended to impose a residency requirement in light of the overarching purpose of the WLAD and the required liberal construction of the statute. See id. The Court reasoned that “limiting the statute’s application to Washington inhabitants would effectively allow Washington employers to discriminate freely against non-Washington inhabitants, thus undermining the fundamental purpose of the act, deterring discrimination.” Id. The sensibilities evident in Burnside are equally apt in this context. The Court should reject SSB’s and State Farm’s arguments that the CPA effectively imposes a residency requirement on plaintiffs, based on the underlying legislative purpose and the text of the act itself.¹³

¹³ State Farm relies on Wieber v. Kiessling, 182 Wn. 2d 919, 347 P.3d 41 (2015), to support its restrictive interpretation of the CPA. See State Farm Br. at 14-22. In Wieber, the Court held that Washington’s homestead exemption, see Ch. 6.13 RCW, does not apply extraterritorially, so that a Washington resident who filed bankruptcy was not entitled to claim a homestead exemption in property located in Alaska. In the absence of statutory language expressly supporting or prohibiting extraterritorial application, the Court held that the homestead exemption was limited to property located in the state, based on procedures for declaring, abandoning, and liening a homestead, among other things, that “plainly apply only to courts and agencies in Washington.” 182 Wn. 2d at 926-27. Wieber is distinguishable because no such procedures are applicable to the CPA, and the legislative purpose and provisions of the CPA contemplate extraterritorial application, as described in the main text.

VI. CONCLUSION

The Court should adopt the analysis proposed in this brief, and answer both certified questions "Yes."

DATED this 3rd day of September, 2015.



GEORGE M. AHREND
WSBA # 25160



~~FOR~~ BRYAN P. HARNETIAUX *WSBA AUTHORITY*
WSBA #5169

On Behalf of WSAJ Foundation

Appendix

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7
8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 SANDRA THORNELL,

11 Plaintiff,

12 v.

13 SEATTLE SERV. BUREAU, INC. and
14 STATE FARM AUTO. INS. CO.,

15 Defendants.

CASE NO. C14-1601 MJP

ORDER CERTIFYING QUESTIONS
TO WASHINGTON SUPREME
COURT

16 THIS MATTER comes before the Court on Defendant State Farm Automobile Insurance
17 Company's ("State Farm's) request in the alternative to certify the question of the Washington
18 Consumer Protection Act's extraterritorial application to the Defendants in this case. (Dkt. No. 9
19 at 13.)

20 **Background**

21 The Plaintiff in this putative class action is a Texas resident. (Dkt. No. 1, Ex. A at 3.)
22 According to the Complaint, the Plaintiff received allegedly deceptive debt collection letters
23 from Defendant Seattle Service Bureau ("SSB"), a corporation with its principal place of
24

1 business in Washington, pursuant to the referral of unliquidated subrogation claims to SSB by
2 State Farm, a corporation with its principal place of business in Illinois. (See id.) Plaintiff argues
3 these letters constitute Consumer Protection Act violations by both SSB and State Farm. She
4 alleges she incurred damages by signing up for a credit monitoring service and retaining counsel.
5 (Id. at 9.)

6 The Court denied a Motion to Dismiss in other respects relating to the WCPA claim, but
7 did not reach a decision with respect to the extraterritorial application of the Washington
8 Consumer Protection Act against Washington and Illinois defendants.

9 Defendants argued that the Washington Consumer Protection Act does not apply
10 extraterritorially, citing a Washington Supreme Court opinion that was later withdrawn. Schnall
11 v. AT&T Wireless Servs, Inc., 168 Wn.2d 125, 142 (2010) (“Schnall I”), opinion withdrawn
12 upon reconsideration by Schnall v. AT&T Wireless Servs, Inc., 171 Wn.2d 260 (2011) (“Schnall
13 II”). The superseding opinion contains the dissenting opinion of three justices who would have
14 specifically held that claims against Washington corporations are cognizable under the WCPA,
15 while the majority declined to reach the issue. See Schnall II, 171 Wn.2d 260, 287 (opinion of
16 Sanders, J.). The dissenting justices thought it was important that “[a]t least one party [in the
17 case] is native to Washington in every transaction here.” Id.

18 In the wake of Schnall II, several judges in this District have held that the WCPA has
19 extraterritorial application to claims by out-of-state plaintiffs against Washington corporations
20 based on the understood state of the law prior to Schnall I. See, e.g., Keithly v. Intelius Inc., No.
21 C09-1485RSL, 2011 WL 2790471, *1 (W.D. Wash. May 17, 2011); Rajagopalan v. NoteWorld,
22 LLC, No. C11-05574BHS, 2012 WL 727075, *5 & n.6 (W.D. Wash. Mar. 6, 2012); Peterson v.
23 Graoch Assocs. No. 111 Ltd. Partnership, No. C11-5069BHS, 2012 WL 254264, *2 (W.D.
24

1 Wash. Jan. 26, 2012). This case, however, relates to an Illinois corporation and its alleged
2 Washington agent. No case specifically holds that the WCPA applies to a foreign plaintiff's suit
3 against a foreign corporation, even one that hired a Washington vendor to pursue the conduct at
4 issue.

5 Furthermore, the Ninth Circuit has described the extraterritorial reach of the WCPA as an
6 open question. See Red Lion Hotels Franchising, Inc. v. MAK, LLC, 663 F.3d 1080, 1091 (9th
7 Cir. 2011).

8 Analysis

9 Under Washington law,

10 When in the opinion of any federal court before whom a proceeding is pending, it is
11 necessary to ascertain the local law of this state in order to dispose of such proceeding
12 and the local law has not been clearly determined, such federal court may certify to the
13 supreme court for answer the question of local law involved and the supreme court shall
14 render its opinion in answer thereto.

15 RCW 2.60.020.

16 The certification process serves the important judicial interests of efficiency and comity.
17 According to the United States Supreme Court, certification saves "time, energy, and resources
18 and helps build a cooperative judicial federalism." Lehman Bros. v. Schein, 416 U.S. 386, 391
19 (1974). Because this matter presents a question about the extraterritorial application of an
20 important Washington statute, it has potentially wide-ranging implications for the protection of
21 out-of-state consumers from the allegedly deceptive acts of Washington corporations and the
22 availability of Washington courts for the adjudication of nationwide class actions. The following
23 questions are hereby certified to the Washington Supreme Court:

1
2 1) Does the Washington Consumer Protection Act create a cause of action for a plaintiff
3 residing outside Washington to sue a Washington corporate defendant for allegedly
4 deceptive acts?

5
6 2) Does the Washington Consumer Protection Act create a cause of action for an out-of-
7 state plaintiff to sue an out-of-state defendant for the allegedly deceptive acts of its in-
8 state agent?
9

10 This Court does not intend its framing of the questions to restrict the Washington
11 Supreme Court's consideration of any issues that it determines are relevant. If the Washington
12 Supreme Court decides to consider the certified questions, it may in its discretion reformulate the
13 questions. See *Affiliated FM Ins. Co. v. LTK Consulting Servs. Inc.*, 556 F.3d 920, 922 (9th Cir.
14 2009).

15 **Conclusion**

16 This Court CERTIFIES the above questions and STAYS the action until the Washington
17 Supreme Court answers the certified questions.
18

19 The Clerk of Court is directed to submit to the Washington Supreme Court certified
20 copies of this Order and the Order on the Motion to Dismiss; a copy of the docket in the above-
21 captioned matter; and Docket Numbers 1, 9, 12, 18, 21, 22, and 26. The record so compiled
22 contains all matters in the pending causes deemed material for consideration of the local-law
23 questions certified for answer. The Clerk is further ordered to provide copies of this order to all
24 counsel.

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Dated this 6th day of March, 2015.



Marsha J. Pechman
Chief United States District Judge

Restatement (Second) of Conflict of Laws § 6 (1971)

Restatement of the Law - Conflict of Laws

Database updated June 2015
Restatement (Second) of Conflict of Laws

Chapter 1. Introduction

§ 6 Choice-of-Law Principles

Comment on Subsection (1):

Reporter's Note

Case Citations - by Jurisdiction

(1) A court, subject to constitutional restrictions, will follow a statutory directive of its own state on choice of law.

(2) When there is no such directive, the factors relevant to the choice of the applicable rule of law include

(a) the needs of the interstate and international systems,

(b) the relevant policies of the forum,

(c) the relevant policies of other interested states and the relative interests of those states in the determination of the particular issue,

(d) the protection of justified expectations,

(e) the basic policies underlying the particular field of law,

(f) certainty, predictability and uniformity of result, and

(g) ease in the determination and application of the law to be applied.

Comment on Subsection (1):

a. Statutes directed to choice of law. A court, subject to constitutional limitations, must follow the directions of its legislature. The court must apply a local statutory provision directed to choice of law provided that it would be constitutional to do so. An example of a statute directed to choice of law is the Uniform Commercial Code which provides in certain instances for the application of the law chosen by the parties (§ 1-105(1)) and in other instances for the application of the law of a particular state (§§ 2-402, 4-102, 6-102, 8-106, 9-103). Another example is the Model Execution of Wills Act which provides that a written will subscribed by the testator shall be valid as to matters of form if it complies with the local requirements of any one of a number of enumerated states. Statutes that are expressly directed to choice of law, that is to say, statutes which provide for the application of the local law of one state, rather than the local law of another state, are comparatively few in number.

b. Intended range of application of statute. A court will rarely find that a question of choice of law is explicitly covered by statute. That is to say, a court will rarely be directed by statute to apply the local law of one state, rather than the local law of another state, in the decision of a particular issue. On the other hand, the court will constantly be faced with the question whether the issue before it falls within the intended range of application of a particular statute. The court should give a local statute the range of application intended by the legislature when these intentions can be ascertained and can constitutionally

be given effect. If the legislature intended that the statute should be applied to the out-of-state facts involved, the court should so apply it unless constitutional considerations forbid. On the other hand, if the legislature intended that the statute should be applied only to acts taking place within the state, the statute should not be given a wider range of application. Sometimes a statute's intended range of application will be apparent on its face, as when it expressly applies to all citizens of a state including those who are living abroad. When the statute is silent as to its range of application, the intentions of the legislature on the subject can sometimes be ascertained by a process of interpretation and construction. Provided that it is constitutional to do so, the court will apply a local statute in the manner intended by the legislature even when the local law of another state would be applicable under usual choice-of-law principles.

Comment on Subsection (2):

c. Rationale. Legislatures usually legislate, and courts usually adjudicate, only with the local situation in mind. They rarely give thought to the extent to which the laws they enact, and the common law rules they enunciate, should apply to out-of-state facts. When there are no adequate directives in the statute or in the case law, the court will take account of the factors listed in this Subsection in determining the state whose local law will be applied to determine the issue at hand. It is not suggested that this list of factors is exclusive. Undoubtedly, a court will on occasion give consideration to other factors in deciding a question of choice of law. Also it is not suggested that the factors mentioned are listed in the order of their relative importance. Varying weight will be given to a particular factor, or to a group of factors, in different areas of choice of law. So, for example, the policy in favor of effectuating the relevant policies of the state of dominant interest is given predominant weight in the rule that transfers of interests in land are governed by the law that would be applied by the courts of the situs (see §§ 223- 243). On the other hand, the policies in favor of protecting the justified expectations of the parties and of effectuating the basic policy underlying the particular field of law come to the fore in the rule that, subject to certain limitations, the parties can choose the law to govern their contract (see § 187) and in the rules which provide, subject to certain limitations, for the application of a law which will uphold the validity of a trust of movables (see §§ 269- 270) or the validity of a contract against the charge of commercial usury (see § 203). Similarly, the policy favoring uniformity of result comes to the fore in the rule that succession to interests in movables is governed by the law that would be applied by the courts of the state where the decedent was domiciled at the time of his death (see §§ 260 and 263).

At least some of the factors mentioned in this Subsection will point in different directions in all but the simplest case. Hence any rule of choice of law, like any other common law rule, represents an accommodation of conflicting values. Those chapters in the Restatement of this Subject which are concerned with choice of law state the rules which the courts have evolved in accommodation of the factors listed in this Subsection. In certain areas, as in parts of Property (Chapter 9), such rules are sufficiently precise to permit them to be applied in the decision of a case without explicit reference to the factors which underlie them. In other areas, such as in Wrongs (Chapter 7) and Contracts (Chapter 8), the difficulties and complexities involved have as yet prevented the courts from formulating a precise rule, or series of rules, which provide a satisfactory accommodation of the underlying factors in all of the situations which may arise. All that can presently be done in these areas is to state a general principle, such as application of the local law "of the state of most significant relationship", which provides some clue to the correct approach but does not furnish precise answers. In these areas, the courts must look in each case to the underlying factors themselves in order to arrive at a decision which will best accommodate them.

Statement of precise rules in many areas of choice of law is made even more difficult by the great variety of situations and of issues, by the fact that many of these situations and issues have not been thoroughly explored by the courts, by the generality of statement frequently used by the courts in their opinions, and by the new grounds of decision stated in many of the more recent opinions.

The Comments which follow provide brief discussion of the factors underlying choice of law which are mentioned in this Subsection.

d. Needs of the interstate and international systems. Probably the most important function of choice-of-law rules is to make the interstate and international systems work well. Choice-of-law rules, among other things, should seek to further harmonious relations between states and to facilitate commercial intercourse between them. In formulating rules of choice of law, a state should have regard for the needs and policies of other states and of the community of states. Rules of choice of law formulated with regard for such needs and policies are likely to commend themselves to other states and to be adopted by these states. Adoption of the same choice-of-law rules by many states will further the needs of the interstate and international systems and likewise the values of certainty, predictability and uniformity of result.

e. Relevant policies of the state of the forum. Two situations should be distinguished. One is where the state of the forum has no interest in the case apart from the fact that it is the place of the trial of the action. Here the only relevant policies of the state of the forum will be embodied in its rules relating to trial administration (see Chapter 6). The second situation is where the state of the forum has an interest in the case apart from the fact that it is the place of trial. In this latter situation, relevant policies of the state of the forum may be embodied in rules that do not relate to trial administration.

The problem dealt with in this Comment arises in the common situation where a statute or common law rule of the forum was formulated solely with the intrastate situation in mind or, at least, where there is no evidence to suggest that the statute or rule was intended to have extraterritorial application. If the legislature or court (in the case of a common law rule) did have intentions with respect to the range of application of a statute or common law rule and these intentions can be ascertained, the rule of Subsection (1) is applicable. If not, the court will interpret the statute or rule in the light of the factors stated in Subsection (2).

Every rule of law, whether embodied in a statute or in a common law rule, was designed to achieve one or more purposes. A court should have regard for these purposes in determining whether to apply its own rule or the rule of another state in the decision of a particular issue. If the purposes sought to be achieved by a local statute or common law rule would be furthered by its application to out-of-state facts, this is a weighty reason why such application should be made. On the other hand, the court is under no compulsion to apply the statute or rule to such out-of-state facts since the originating legislature or court had no ascertainable intentions on the subject. The court must decide for itself whether the purposes sought to be achieved by a local statute or rule should be furthered at the expense of the other choice-of-law factors mentioned in this Subsection.

f. Relevant policies of other interested states. In determining a question of choice of law, the forum should give consideration not only to its own relevant policies (see Comment *e*) but also to the relevant policies of all other interested states. The forum should seek to reach a result that will achieve the best possible accommodation of these policies. The forum should also appraise the relative interests of the states involved in the determination of the particular issue. In general, it is fitting that the state whose interests are most deeply affected should have its local law applied. Which is the state of dominant interest may depend upon the issue involved. So if a husband injures his wife in a state other than that of their domicile, it may be that the state of conduct and injury has the dominant interest in determining whether the husband's conduct was tortious or whether the wife was guilty of contributory negligence (see § 146). On the other hand, the state of the spouses' domicile is the state of dominant interest when it comes to the question whether the husband should be held immune from tort liability to his wife (see § 169).

The content of the relevant local law rule of a state may be significant in determining whether this state is the state with the dominant interest. So, for example, application of a state's statute or common law rule which would absolve the defendant from liability could hardly be justified on the basis of this state's interest in the welfare of the injured plaintiff.

g. Protection of justified expectations. This is an important value in all fields of the law, including choice of law. Generally speaking, it would be unfair and improper to hold a person liable under the local law of one state when he had justifiably molded his conduct to conform to the requirements of another state. Also, it is in part because of this factor that the parties are free within broad limits to choose the law to govern the validity of their contract (see § 187) and that the courts seek to apply a law that will sustain the validity of a trust of movables (see §§ 269- 270).

There are occasions, particularly in the area of negligence, when the parties act without giving thought to the legal consequences of their conduct or to the law that may be applied. In such situations, the parties have no justified expectations to protect, and this factor can play no part in the decision of a choice-of-law question.

h. Basic policies underlying particular field of law. This factor is of particular importance in situations where the policies of the interested states are largely the same but where there are nevertheless minor differences between their relevant local law rules. In such instances, there is good reason for the court to apply the local law of that state which will best achieve the basic policy, or policies, underlying the particular field of law involved. This factor explains in large part why the courts seek to apply a law that will sustain the validity of a contract against the charge of commercial usury (§ 203) or the validity of a trust of movables against the charge that it violates the Rule Against Perpetuities (§§ 269- 270).

i. Predictability and uniformity of result. These are important values in all areas of the law. To the extent that they are attained in choice of law, forum shopping will be discouraged. These values can, however, be purchased at too great a price. In a rapidly developing area, such as choice of law, it is often more important that good rules be developed than that predictability and uniformity of result should be assured through continued adherence to existing rules. Predictability and uniformity of result are of particular importance in areas where the parties are likely to give advance thought to the legal consequences of their transactions. It is partly on account of these factors that the parties are permitted within broad limits to choose the law that will determine the validity and effect of their contract (see § 187) and that the law that would be applied by the courts of the state of the situs is applied to determine the validity of transfers of interests in land (see § 223). Uniformity of result is also important when the transfer of an aggregate of movables, situated in two or more states, is involved. Partly for this reason, the law that would be applied by the courts of the state of a decedent's domicile at death is applied to determine the validity of his will in so far as it concerns movables (see § 263) and the distribution of his movables in the event of intestacy (see § 260).

j. Ease in the determination and application of the law to be applied. Ideally, choice-of-law rules should be simple and easy to apply. This policy should not be overemphasized, since it is obviously of greater importance that choice-of-law rules lead to desirable results. The policy does, however, provide a goal for which to strive.

k. Reciprocity. In formulating common law rules of choice of law, the courts are rarely guided by considerations of reciprocity. Private parties, it is felt, should not be made to suffer for the fact that the courts of the state from which they come give insufficient consideration to the interests of the state of the forum. It is also felt that satisfactory development of choice-of-law rules can best be attained if each court gives fair consideration to the interests of other states without regard to the question whether the courts of one or more of these other states would do the same. As to whether reciprocity is a condition to the recognition and enforcement of a judgment of a foreign nation, see § 98, Comment *e*.

States sometimes incorporate a principle of reciprocity into statutes and treaties. They may do so in order to induce other states to take certain action favorable to their interests or to the interests of their citizens. So, as stated in § 89, Comment *b*, many States of the United States have enacted statutes which provide that a suit by a sister State for the recovery of taxes will be entertained in the local courts if the courts of the sister State would entertain a similar suit by the State of the forum. Similarly, by way of further example, some States of the United States provide by statute that an alien cannot inherit local assets unless their citizens in turn would be permitted to inherit in the state of the alien's nationality. A principle of reciprocity is also sometimes employed in statutes to permit reciprocating states to obtain by cooperative efforts what a single state could not obtain through the force of its own law. See, e.g., Uniform Reciprocal Enforcement of Support Act; Uniform (Reciprocal) Act to Secure Attendance of Witnesses from Without a State in Criminal Proceedings; Interpleader Compact Law.

Reporter's Note

The rule of this Section was cited and applied in *Mitchell v. Craft*, 211 So.2d 509 (Miss.1968). Subsection (1) of the rule was cited and applied in *Oxford Consumer Discount Company v. Stefanelli*, 102 N.J.Super. 549, 246 A.2d 460 (1968).

West's Revised Code of Washington Annotated Title 19. Business Regulations--Miscellaneous (Refs & Annos) Chapter 19.86. Unfair Business Practices--Consumer Protection (Refs & Annos)

West's RCWA 19.86.010

19.86.010. Definitions

Currentness

As used in this chapter:

- (1) "Person" shall include, where applicable, natural persons, corporations, trusts, unincorporated associations and partnerships.
- (2) "Trade" and "commerce" shall include the sale of assets or services, and any commerce directly or indirectly affecting the people of the state of Washington.
- (3) "Assets" shall include any property, tangible or intangible, real, personal, or mixed, and wherever situate, and any other thing of value.

Credits

[1961 c 216 § 1.]

Notes of Decisions (153)

West's RCWA 19.86.010, WA ST 19.86.010

Current with all laws from the 2015 Regular and First Special Sessions that are effective on or before July 24, 2015, the general effective date for laws from the Regular Session, and available laws from the 2015 Second and Third Special Sessions

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KeyCite Yellow Flag - Negative Treatment

Unconstitutional or Preempted Limited on Preemption Grounds by In re Chaussee, 9th Cir.BAP (Wash.), Dec. 18, 2008

West's Revised Code of Washington Annotated

Title 19. Business Regulations--Miscellaneous (Refs & Annos)

Chapter 19.86. Unfair Business Practices--Consumer Protection (Refs & Annos)

West's RCWA 19.86.020

19.86.020. Unfair competition, practices, declared unlawful

Currentness

Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.

Credits

[1961 c 216 § 2.]

Notes of Decisions (877)

West's RCWA 19.86.020, WA ST 19.86.020

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KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

West's Revised Code of Washington Annotated Title 19. Business Regulations--Miscellaneous (Refs & Annos) Chapter 19.86. Unfair Business Practices--Consumer Protection (Refs & Annos)

West's RCWA 19.86.080

19.86.080. Attorney general may restrain prohibited acts--Costs--Restoration of property

Effective: April 18, 2007

Currentness

(1) The attorney general may bring an action in the name of the state, or as *parens patriae* on behalf of persons residing in the state, against any person to restrain and prevent the doing of any act herein prohibited or declared to be unlawful; and the prevailing party may, in the discretion of the court, recover the costs of said action including a reasonable attorney's fee.

(2) The court may make such additional orders or judgments as may be necessary to restore to any person in interest any moneys or property, real or personal, which may have been acquired by means of any act herein prohibited or declared to be unlawful.

(3) Upon a violation of RCW 19.86.030, 19.86.040, 19.86.050, or 19.86.060, the court may also make such additional orders or judgments as may be necessary to restore to any person in interest any moneys or property, real or personal, which may have been acquired, regardless of whether such person purchased or transacted for goods or services directly with the defendant or indirectly through resellers. The court shall exclude from the amount of monetary relief awarded in an action pursuant to this subsection any amount that duplicates amounts that have been awarded for the same violation. The court should consider consolidation or coordination with other related actions, to the extent practicable, to avoid duplicate recovery.

Credits

[2007 c 66 § 1, eff. April 17, 2007; 1970 ex.s. c 26 § 1; 1961 c 216 § 8.]

Notes of Decisions (35)

West's RCWA 19.86.080, WA ST 19.86.080

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Unconstitutional or Preempted Limited on Preemption Grounds by In re Chaussee, 9th Cir.BAP (Wash.), Dec. 18, 2008

West's Revised Code of Washington Annotated

Title 19. Business Regulations--Miscellaneous (Refs & Annos)

Chapter 19.86. Unfair Business Practices--Consumer Protection (Refs & Annos)

West's RCWA 19.86.090

19.86.090. Civil action for damages--Treble damages authorized--Action by governmental entities

Effective: July 26, 2009

Currentness

Any person who is injured in his or her business or property by a violation of RCW 19.86.020, 19.86.030, 19.86.040, 19.86.050, or 19.86.060, or any person so injured because he or she refuses to accede to a proposal for an arrangement which, if consummated, would be in violation of RCW 19.86.030; 19.86.040, 19.86.050, or 19.86.060, may bring a civil action in superior court to enjoin further violations, to recover the actual damages sustained by him or her, or both, together with the costs of the suit, including a reasonable attorney's fee. In addition, the court may, in its discretion, increase the award of damages up to an amount not to exceed three times the actual damages sustained: PROVIDED, That such increased damage award for violation of RCW 19.86.020 may not exceed twenty-five thousand dollars: PROVIDED FURTHER, That such person may bring a civil action in the district court to recover his or her actual damages, except for damages which exceed the amount specified in RCW 3.66.020, and the costs of the suit, including reasonable attorney's fees. The district court may, in its discretion, increase the award of damages to an amount not more than three times the actual damages sustained, but such increased damage award shall not exceed twenty-five thousand dollars. For the purpose of this section, "person" includes the counties, municipalities, and all political subdivisions of this state.

Whenever the state of Washington is injured, directly or indirectly, by reason of a violation of RCW 19.86.030, 19.86.040, 19.86.050, or 19.86.060, it may sue therefor in superior court to recover the actual damages sustained by it, whether direct or indirect, and to recover the costs of the suit including a reasonable attorney's fee.

Credits

[2009 c 371 § 1, eff. July 26, 2009; 2007 c 66 § 2, eff. April 17, 2007; 1987 c 202 § 187; 1983 c 288 § 3; 1970 ex.s. c 26 § 2; 1961 c 216 § 9.]

Notes of Decisions (520)

West's RCWA 19.86.090, WA ST 19.86.090

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West's Revised Code of Washington Annotated

Title 19. Business Regulations--Miscellaneous (Refs & Annos)

Chapter 19.86. Unfair Business Practices--Consumer Protection (Refs & Annos)

West's RCWA 19.86.093

19.86.093. Civil action--Unfair or deceptive act or practice--Claim elements

Effective: July 26, 2009

Currentness

In a private action in which an unfair or deceptive act or practice is alleged under RCW 19.86.020, a claimant may establish that the act or practice is injurious to the public interest because it:

- (1) Violates a statute that incorporates this chapter;
- (2) Violates a statute that contains a specific legislative declaration of public interest impact; or
- (3)(a) Injured other persons; (b) had the capacity to injure other persons; or (c) has the capacity to injure other persons.

Credits

[2009 c 371 § 2, eff. July 26, 2009.]

Notes of Decisions (1)

West's RCWA 19.86.093, WA ST 19.86.093

Current with all laws from the 2015 Regular and First Special Sessions that are effective on or before July 24, 2015, the general effective date for laws from the Regular Session, and available laws from the 2015 Second and Third Special Sessions

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West's Revised Code of Washington Annotated

Title 19. Business Regulations--Miscellaneous (Refs & Annos)

Chapter 19.86. Unfair Business Practices--Consumer Protection (Refs & Annos)

West's RCWA 19.86.160

19.86.160. Personal service of process outside state

Currentness

Personal service of any process in an action under this chapter may be made upon any person outside the state if such person has engaged in conduct in violation of this chapter which has had the impact in this state which this chapter reprehends. Such persons shall be deemed to have thereby submitted themselves to the jurisdiction of the courts of this state within the meaning of RCW 4.28.180 and 4.28.185.

Credits

[1961 c 216 § 16.]

Notes of Decisions (12)

West's RCWA 19.86.160, WA ST 19.86.160

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West's Revised Code of Washington Annotated

Title 19. Business Regulations--Miscellaneous (Refs & Annos)

Chapter 19.86. Unfair Business Practices--Consumer Protection (Refs & Annos)

West's RCWA 19.86.920

19.86.920. Purpose--Interpretation--Liberal construction--Saving--1985 c 401; 1983 c 288; 1983 c 3; 1961 c 216

Currentness

The legislature hereby declares that the purpose of this act is to complement the body of federal law governing restraints of trade, unfair competition and unfair, deceptive, and fraudulent acts or practices in order to protect the public and foster fair and honest competition. It is the intent of the legislature that, in construing this act, the courts be guided by final decisions of the federal courts and final orders of the federal trade commission interpreting the various federal statutes dealing with the same or similar matters and that in deciding whether conduct restrains or monopolizes trade or commerce or may substantially lessen competition, determination of the relevant market or effective area of competition shall not be limited by the boundaries of the state of Washington. To this end this act shall be liberally construed that its beneficial purposes may be served.

It is, however, the intent of the legislature that this act shall not be construed to prohibit acts or practices which are reasonable in relation to the development and preservation of business or which are not injurious to the public interest, nor be construed to authorize those acts or practices which unreasonably restrain trade or are unreasonable per se.

Credits

[1985 c 401 § 1; 1983 c 288 § 4; 1983 c 3 § 25; 1961 c 216 § 20.]

Notes of Decisions (31)

West's RCWA 19.86.920, WA ST 19.86.920

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Subject: RE: Case #91393-5 – Sandra Thornell v. Seattle Service Bureau, Inc., et al.

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Subject: Case #91393-5 – Sandra Thornell v. Seattle Service Bureau, Inc., et al.

Dear Mr. Carpenter:

On behalf of the WSAJ Foundation, a letter request to file an Amicus Curiae Brief and an accompanying Amicus Curiae Brief are attached to this email for filing with the Court. Counsel for the parties and other Amicus Curiae are being served simultaneously by copy of this email, per prior arrangement.

Respectfully submitted,

--

Shari M. Canet, Paralegal
Ahrend Law Firm PLLC
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