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

Petitioners,

v.

ALPHA NURSING & SERVICES, INC.,

Respondent,

and CHRISTINE THOMAS,

Respondent/Cross-Petitioner.

**SUPPLEMENTAL BRIEF OF
RESPONDENT/CROSS-PETITIONER CHRISTINE THOMAS
AND RESPONDENT ALPHA NURSING & SERVICES, INC.**

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I. INTRODUCTION

This Court granted review to address (1) whether Washington courts have personal jurisdiction over a Norwegian citizen who was personally served at her residence in Norway with a summons, complaint and *ex parte* waiver of affirmative defenses, written entirely in English, after the statute of limitations expired, and (2) whether the trial court and the Court of Appeals properly determined that the statutory mandatory reporting requirements under the Abuse of Vulnerable Adults Act, RCW 74.34.035 (“AVAA”), were satisfied under the facts presented.

On the first issue (an issue that the trial court certified for immediate appeal¹) Nurse Thomas² respectfully requests that this Court hold that the requirements of the *Hague Convention on Service Abroad of Judicial and Extra-judicial Documents in Civil or Commercial Matters*, Nov. 15, 1965, 20 U.S.T. 361, T.I.A.S. No. 6638 (the “Hague Convention”) and the alternative service provisions of CR 4(i)(1) were not satisfied by Kim.³ Nurse Thomas also asks this Court to hold that where, as here, a plaintiff inexcusably fails to proceed with a case in a timely manner, effecting service on one defendant does not toll the statute of limitations under RCW 4.16.170 or Sidis v. Brodie/Dohrmann, Inc., 117

¹ CP 532-34.

² Defendant/Respondent/Cross-Petitioner Christine Thomas, R.N., is referred to as “Nurse Thomas.”

³ Plaintiff/Petitioner Esther Kim, as Personal Representative of the Estate of Ho Im Bae, and the other surviving family members are referred to collectively as “Kim.”

Wn.2d 325, 815 P.3d 781 (1991), as to the other unserved defendants. Therefore, this Court should conclude that the claims against Nurse Thomas must be dismissed based upon a lack of personal jurisdiction.

On the second issue, Nurse Thomas and Alpha⁴ ask this Court to hold that the trial court and the Court of Appeals properly found that Kim failed to establish a duty to report under the AVAA. Accordingly, this Court should reverse on the service issues raised in Nurse Thomas' cross-petition, and affirm on the reporting issue raised in Kim's petition.

II. ASSIGNMENTS OF ERROR

1. Nurse Thomas assigns error to the determination that service of process (written strictly in English) on a foreign national in her native county via personal service through a private process server was in compliance with the Hague Convention and CR 4(i)(1), despite the foreign country's strict use of a Central Authority for foreign service of process, its specific objections to all other methods of personal service under the Hague Convention and its translation requirements for foreign service of process.

2. Nurse Thomas assigns error to the determination that plaintiffs in multi-defendant actions are entitled to unlimited tolling of the statute of limitations as to unserved defendants, regardless of the degree of effort and diligence made to effect service, after service is completed against one defendant.

III. STATEMENT OF THE CASE

Nurse Thomas incorporates by reference the Statement of Facts in her Cross-Petition for Review and as recited by the Court of Appeals.

⁴ Respondent Alpha Nursing & Services, Inc., is referred to as "Alpha."

IV. ARGUMENT: NURSE THOMAS'S CROSS-APPEAL ADDRESSING SERVICE OF PROCESS

A. Whether Service Was Proper is Reviewed *De Novo*.

“Proper service of the summons and complaint is a prerequisite to the court obtaining jurisdiction over a party, and a judgment entered without such jurisdiction is void.” Streeter-Dybdahl v. Nguyet Huynh, 157 Wn. App. 408, 412, 236 P.3d 986 (2010) (footnote omitted); see In re Marriage of Markowski, 50 Wn. App. 633, 635-36, 749 P.2d 754 (1988) (explaining that proper service “is essential”). Due process guarantees the defendant the right to notice that a lawsuit has been commenced and an opportunity to be heard. Karl B. Tegland & Douglas J. Ende, 15A *Wash. Prac., Handbook Civil Procedure* § 15.1 (2014-2015 ed.) (citing Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314, 70 S. Ct. 652, 94 L. Ed. 865 (1950)). “A construction of the Due Process Clause which would place impossible or impractical obstacles in the way could not be justified.” Mullane, 339 U.S. at 314. Whether service of process was proper is a question of law that is reviewed *de novo*. Streeter-Dybdahl, 157 Wn. App. at 412.

B. Service of Process on a Norwegian Citizen Residing in Norway Must Be Conducted Through Norway's Central Authority In Order to Comply With Hague Convention and CR 4(i)(1).

At the outset, it is undisputed that Kim never accomplished service of process on Nurse Thomas through Norway's Central Authority. CP 558, 631-33. There is nothing in the record indicating an actual attempted service by the Central Authority or the completion of such service by the Central Authority before summary judgment was entered. As a result, the

only service of process at issue before the Court is Kim's attempted service of process on Nurse Thomas, a Norwegian citizen residing in Norway, through a private process server, with documents written strictly in English. CP 1236-1254. As discussed below, this service violated the Hague Convention and should be deemed ineffective as a matter of law.

1. Kim Failed to Serve Nurse Thomas Through Norway's Central Authority.

The explicit language of the Article 5 of the Hague Convention, supported by case law, is overwhelmingly clear that service of process under Article 5 must be done through the foreign country's designated "Central Authority." See Broad v. Mannesmann Anlagenbau AG, 196 F.3d 1075, 1077 (9th Cir. 1999) (stating that under Article 5 the designated central authority is "solely responsible for serving the document"); Brockmeyer v. May, 383 F.3d 798, 801 (9th Cir. 2004) (stating that Article 5 affirmatively requires the Central Authority to effect service). Article 5 does not address or authorize service of process methods except through the designated Central Authority.⁵ As such, any service of process without use of the Central Authority⁶ cannot be in compliance with Article 5.

⁵ Service of process by methods other than through the Central Authority is encompassed within Article 19. Brockmeyer v. May, 383 F.3d 798, 801-02 (9th Cir. 2004).

⁶ Norway has designated The Royal Ministry of Justice and Public Security Department of Civil Affairs as its Central Authority. See Norway – Central Authority & Practical Information, Hague Conference on Private International Law, available at: [http://www.hoch.net/index_en.php?act=authorities.details&aid=246]

Here, it is undisputed that Kim never completed service on Nurse Thomas through Norway's Central Authority. Throughout this litigation, Kim has instead relied upon her attempted service of process on Nurse Thomas through a private process server pursuant to RCW 4.28.185. CP 1246-54. But service through a private process server does not satisfy Article 5. Thus, the only conclusion to be drawn from Kim's failure to complete service of process through Norway's designated Central Authority is that Kim failed to comply with Article 5.

2. Norway Has Objected To All Other Methods of Service of Foreign Process.

Even though Nurse Thomas was not served through Norway's Central Authority, the Court of Appeals stated in its opinion that Kim's service on Nurse Thomas by private process server complied with the Hague Convention. See Kim v. Lakeside Adult Family Home, 186 Wn. App. 398, 406, 345 P.3d 850 (2015), review granted (Wash. Sept. 2, 2015). A lynchpin of the Court of Appeals' reasoning was a case decided by the U.S. Court of Appeals for the Third Circuit discussing service in Japan (which was not discussed in the parties' briefing), DeJames v. Magnificence Carriers, Inc., 654 F.2d 280 (3d Cir. 1981). In DeJames, the Third Circuit stated that the Hague Convention "allows service to be effected without utilizing the Central Authority as long as the nation receiving service has not objected to the method used." Id. at 288. Following this reasoning, the Court of Appeals determined that Kim's alternative service on Nurse Thomas was valid, presuming that Norway

(like Japan) “has not objected to personal service.” Kim, 186 Wn. App. at 406. As explained below, this presumption is incorrect as a matter of law.

Article 10 of the Hague Convention provides for methods of service other than through the Central Authority, but expressly states that such methods are only permitted if “the State of destination does not object[.]” Hague Convention art. 10. Significantly, Norway has expressly objected to the *entirety* of Article 10, including its allowances for personal service: “The Government of Norway is opposed to the use of such methods of service or transmission of documents on its territory as mentioned in Articles 8 and 10 of the Convention.” Norway – Central Authority & Practical Information, Hague Conference on Private International Law;⁷ see Norway Declarations Reservations.⁸

Given Norway’s explicit objections to Article 10 and all other methods of personal service of foreign process, the only method of service permitted in Norway under the Hague Convention is through its Central Authority.⁹ The Court of Appeals’ reliance upon the Third Circuit’s

⁷ Norway – Central Authority & Practical Information, Hague Conference on Private International Law is available at: [http://www.hcch.net/index_en.php?act=authorities.details&aid=246]. A copy of this legal authority is attached to this brief as Appendix A.

⁸ Norway Declarations Reservations is available at: [http://www.hcch.net/index_en.php?act=status.comment&csid=414&disp=resdn]. A copy of this legal authority is attached to this brief as Appendix B.

⁹ In briefing presented to the Court of Appeals, Kim asserted that her service of process was authorized under Articles 5 and 19 of the Hague Convention. Nurse Thomas’s briefing accordingly focused on those two

discussion of Japanese service in DeJames, 654 F.2d at 288, is therefore misplaced. To the contrary, Norway's square opposition to service of process in the manner attempted in this case controls.

As discussed above, Kim did not serve Nurse Thomas through Norway's Central Authority but attempted service through a private process server. Norway has explicitly objected to this method of service. As such, the Court of Appeals' conclusion that Kim's attempted service on Nurse Thomas was "due and proper service under the laws of Norway," is incorrect because it failed to consider and analyze Norway's clear objections to Article 10. Kim, 186 Wn. App. at 406.

3. The Internal Court Rules of Norway Do Not Apply.

The Court of Appeals' decision further concludes that Kim's method of service complied with Norway's internal court rules on service of process, but offers no analysis of either Article 19 of the Hague Convention or the internal court rules of Norway. Even if Article 19 were somehow applicable, there is no indication that Norway intended for its internal court rules to apply to foreign litigants for service of foreign process written in a foreign language on its citizens within its borders. Indeed, Kim failed to offer any case law, or any expert legal opinion, supporting the broad application of Norway's internal court rules.

Article 19 of the Hague Convention provides that service of documents from abroad may be made by any method permitted by the _____ articles. It is the Court of Appeals' reliance on Article 10 and DeJames that necessitates discussion of Article 10 at this time.

internal law of the receiving state. Brockmeyer v. May, 383 F.3d 798, 801-02 (9th Cir. 2004). Courts, however, have repeatedly held that Article 19 authorizes only those methods of service that *explicitly* allow the service of documents coming from outside the country in question. GMA Accessories, Inc. v. BOP, LLC, No. 07-civ-3219-PKC-DCF, 2009 WL 2856230 (S.D.N.Y. Aug. 28, 2009); ePlus Technology, Inc. v. Aboud, 155 F.Supp.2d 692, 700 (E.D. Va. 2001); Banco Latino, S.A.C.A. v. Gomez Lopez, 53 F.Supp.2d 1273, 1279-80 (S.D. Fla. 1999); EOI Corp. v. Med. Mkt. Ltd., 172 F.R.D. 133, 136 (D.N.J. 1997); In re Mak Petroleum, Inc., 424 B.R. 912, 920 (Bankr. M.D. Fla. 2010).

Norwegian Courts of Justice Act, ch. 9 § 168 (2005), translated from Norwegian, states in full:¹⁰

§ 168. Service of process by a process server shall to the greatest possible extent take place in person, preferably at the recipient's place of residence or regular workplace. Where he/she is personally served, the service is valid regardless of where the encounter takes place.

Section 168 contains no indication that it applies to foreign process.

Even if Kim could overcome Norway's specific objections to all methods of foreign service of process except through its Central Authority, Kim has failed to offer any case law or expert legal opinion suggesting that this internal Norwegian court rule, lacking any explicit language regarding its application to foreign process, can be utilized by

¹⁰ An unofficial translation of the Norwegian Court rules can be located at: <http://www.domstol.no/en/National-Courts-Administration/Publications/>.

foreign litigants. Likewise, the Court of Appeals offered no analysis as to whether the Norwegian government indeed permitted such internal process rules to apply to foreign service of process outside of the process already set forth in the Hague Convention, but simply concluded that Kim's attempted service of process on Nurse Thomas complied with Norway's internal laws. Kim, 186 Wn. App. at 406. There is nothing in the record or applicable law to support this conclusion. Thus, the Court of Appeals' decision regarding service of process must be reversed.

4. Kim's Service of Process on Nurse Thomas With Documents Written Strictly in English, Violates Norway's Translation Requirements.

Even if the technical aspects of Kim's service of process could somehow be deemed proper, it is undisputed that Kim attempted to serve Nurse Thomas, a Norwegian citizen residing in Norway, with process written strictly in English, in violation of Norway's translation requirements under the Hague Convention.

Norway has placed translation requirements on service of foreign process pursuant to the Hague Convention:

Under the regulations adopted by Royal Decree on 12 September 1969, requests for service will only be complied with when the document to be served is written in *Norwegian, Danish or Swedish, or if the request is accompanied by a translation into one of these languages*, unless the document is meant to be delivered only to an addressee who accepts it voluntarily.

See Norway – Central Authority & Practical Information, Hague Conference on Private International Law¹¹ (emphasis added). This is further confirmed by the U.S. State Department, which makes clear that service of process to Norway’s Central Authority must be translated.¹² Moreover, Norwegian Courts of Justice Act, ch. 9 § 136 (2005) requires that all court pleadings be written in Norwegian or accompanied by a translation. The Court of Appeals, in affirming Kim’s attempted service of process written strictly in English, failed to address these external and internal translation requirements established by the Norwegian government. As there is no way to reconcile Kim’s service of process of documents written in English with these requirements for translation, this is another reason why service was improper.

5. Service on Nurse Thomas Was Not Proper.

Kim’s decision to personally serve Nurse Thomas with documents written in English instead of serving through Norway’s Central Authority contradicts and undermines this purpose and the well-established service of process standards under the Hague Convention, and deprived Nurse Thomas of due process. Failing to provide foreign defendants with proper notice causes unfair prejudice and outcomes that are incredibly disruptive

¹¹ Norway – Central Authority & Practical Information, Hague Conference on Private International Law is available at: [http://www.hcch.net/index_en.php?act=authorities.details&aid=246]. A copy of this resource is attached to this brief as Appendix A.

¹² U.S. Department of State – Legal Considerations for Norway, which are available at [<http://travel.state.gov/content/travel/english/legal-considerations/judicial/country/norway.html>]

to the rights and duties of plaintiffs and defendants, resulting in far-reaching impact. Under these circumstances, this Court should conclude that service was improper and personal jurisdiction was not conferred over Nurse Thomas, thereby necessitating dismissal with prejudice of Kim's claims against her.

C. **There are Limits on the Tolling of the Statute of Limitations Against Unserved Defendants After Service on One Defendant**

Independent of the defective service issue is the issue of when the statute of limitations applicable to Kim's claims against Nurse Thomas expired. In Sidis v. Brodie/Dohrmann, Inc., 117 Wn.2d 325, 815 P.3d 781 (1991), this Court held that, under the specific circumstances presented in that case, RCW 4.16.170 operated to toll the statute of limitations as to unserved defendants based upon service of process that was completed on one defendant. Sidis, 117 Wn.2d at 329. This Court reiterated that such tolling, however, was not indefinite, and admonished plaintiffs as follows: "Plaintiffs must proceed with their cases in a timely manner as required by court rules, and must serve each defendant in order to proceed with the action against that defendant." Id.; see also Bosteder v. City of Renton, 155 Wn.2d 18, 48-49, 117 P.3d 316, 331 (2005) (reaffirming that the period of time the statute of limitations is tolled is not infinite and plaintiffs must proceed in a timely manner).

With this language, this Court made clear the need to balance timely service and tolling. This Court also recognized the potential for abuse, but expressly deferred the issue on the facts presented: "There is

no such abuse here and, therefore, a ruling on this issue can await another time.” Sidis, 117 Wn.2d at 331 (addressing the possibility that plaintiffs might name numerous “John Doe” defendants and serve just one “resulting in what arguably might be considered an abuse of process”). Since then, the outer limits of tolling under Sidis have gone largely unaddressed by Washington courts.

In this case, Kim waited a full year before attempting service on Nurse Thomas despite having specifically named her in the amended complaint, waiting another six months to request her address, and then, despite being provided with that contact information, waiting another three-and-a-half months to attempt service.¹³ CP 909-915, 1091-1092, 1099-1102, 1164-1168, 1281-1283, 1236-1254. Despite this, the Court of Appeals nonetheless concluded that Nurse Thomas was timely served, without any analysis or reference to this Court’s guidance on the limits of such tolling. Kim, 186 Wn. App. at 405.

If the delayed efforts made by Kim to effect service on Nurse Thomas are expressly or implicitly condoned by this Court as being “timely” under Sidis and RCW 4.16.170, the consequence will be to incentivize dilatory conduct. To emphasize the importance of avoiding delay and to give effect to statutes of limitation, which provide predictability and certainty,¹⁴ this Court should confirm that there is a

¹³ A chart of dates and CP cites is attached as Appendix C to this brief.

¹⁴ See generally 1000 Virginia Ltd. P’ship v. Vertecs Corp., 158 Wn.2d 566, 146 P.3d 423 (2006), as corrected (Nov. 15, 2006) (discussing the discovery rule in cases involving construction contracts).

ceiling to such tolling (and in turn, a balance between timely service and tolling).

More specifically, a proper analysis under Sidis, in addressing timeliness, must consider evidence of diligence on the part of a plaintiff's counsel. Here, the record contains no evidence that Kim acted diligently. As noted above, Kim waited a full year before attempting service on Nurse Thomas. CP 924-933, 1236-1254. During that time, Kim waited six months before serving discovery requests seeking Nurse Thomas' contact information. CP1170-1174. Further, despite being notified in November 2012, that Nurse Thomas was a Norwegian citizen and entitled to protection of the Hague Convention, Kim waited another three and a half months before attempting to serve Kim (without the Central Authority), and nearly five months before contacting Norway's Central Authority regarding service.¹⁵ CP 558, 631-633, 1236-1254, 1255-1264. There was no justification for these delays. Kim was well aware of Nurse Thomas' identity and contact information. There is a lack of diligence under these facts, and this Court, as a matter of law, should hold that Kim's actions in attempting to serve Nurse Thomas with process do not warrant the benefit of tolling under Sidis.

¹⁵ A chart of dates and CP cites is attached as Appendix C to this brief.

V. ARGUMENT: KIM'S APPEAL ADDRESSING REPORTING

A. Kim Failed to Establish that Alpha and Nurse Thomas Owed Her Any Duty Under the Abuse of Vulnerable Adult Act.

Addressing the tragic death of Kim's mother, Ho Im Bae, an 84-year-old homicide victim, the trial court and the Court of Appeals found that Kim's negligence claim against Alpha and Nurse Thomas must be dismissed on summary judgment, given Kim's failure to establish a duty to report under the Abuse of Vulnerable Adult Act ("AVAA"), RCW 74.34.035.¹⁶ Kim, 186 Wn. App. at 402, 409, 416.

To prove negligence, a plaintiff must establish: (1) the existence of a duty owed to the complaining party; (2) a breach of that duty; (3) a resulting injury; and (4) that the claimed breach was the proximate cause of the injury. Hansen v. Friend, 118 Wn.2d 476, 479, 824 P.2d 483 (1992). The existence of a duty is a threshold question. Folsom v. Burger King, 135 Wn.2d 658, 671, 958 P.2d 301 (1998). If there is no duty, there is no claim. Id. The plaintiff has the burden of establishing the existence of a duty. Lake Wash. Sch. Dist. No. 414 v. Schuck's Auto Supply, Inc., 26 Wn. App. 618, 621, 613 P.2d 561 (1980).

Kim's Petition for Review takes issue with the lower courts' application of the AVAA. There is, however, no error in the courts' analyses. As set forth by the Court of Appeals, Marion Binondo, R.N.

¹⁶ Given Kim's failure to establish this threshold requirement of a duty, the Court of Appeals accordingly did not address (nor was it required to address) whether the AVAA created an implied statutory cause of action against mandatory reporters who failed to report suspected abuse or assault of a vulnerable adult.

(“Nurse Binondo”) and Nurse Thomas were mandatory reporters under the AVAA. Kim, 186 Wn. App. at 409. The Court of Appeals then analyzed whether Nurses Binondo and Thomas, as mandatory reporters under the AVAA, each had a duty to report to DSHS and/or law enforcement. Id. As to Nurse Binondo—who did not observe any injury, abuse or distress on the day she observed Ms. Bae fall from the bed—there was no duty to report. Id. at 409-10, 416.

As to Nurse Thomas, the Court of Appeals held that she met her mandatory reporting duty by contacting DSHS, but had no additional duty to file a report with law enforcement. Kim, 186 Wn. App. at 409, 412, 414-16. The Court reasoned:

The basis of the abuse was asserted by another patient—a patient who was under narcotics and whose reliability was questioned by both her caregivers. While the suspicions espoused by the other patient may have raised a concern, that concern was passed to DSHS when Thomas made her call.

Id. at 415. Kim failed to “counteract this evidence of unreliability.” Id. at 414. Nurse Thomas did not witness the administering of any morphine, nor did she witness any assault. Id. at 413-14. Indeed, the fact that Ms. Bae died of an overdose of morphine only became known “after the fact.” Id. at 414. Thus, under settled law, Nurse Thomas had no duty to report to law enforcement. Id. at 416.

Kim failed to present admissible evidence sufficient to raise an issue of fact regarding whether Nurses Binondo or Thomas had a reason to believe abuse was occurring. It was therefore, not improper that the Court

of Appeals' Opinion focused on the declarations of Nurses Binondo and Thomas. Kim failed to offer any evidence suggesting that Nurses Binondo and Thomas' statements were unreliable or that the statements of the other patient, who was under the influence narcotics and whose reliability was questioned by both her caregivers, was credible. Kim, 186 Wn. App. at 414. The summary judgment dismissal that followed is in line with well-established law on duty and breach, and should thus be affirmed. See Folsom, 135 Wn.2d at 671.

B. The Abuse of Vulnerable Adult Act Does Not Create an Implied Cause of Action Against Mandatory Reporters.

As discussed above, Kim's failure to meet her burden in establishing a duty precluded the Court of Appeals from addressing whether the AVAA created an implied statutory cause of action against mandatory reporters who failed to report suspected abuse or assault of a vulnerable adult. Even if this Court were to address this second part of the analysis, the Court of Appeal's decision regarding summary judgment should nonetheless be affirmed with this Court declining to create a new cause of action to expand the scope of AVAA civil liability to include a separate cause of action against mandatory reporters who happen to witness a potential event involving a person with whom they have no relationship.

The plain meaning of a statute, which reflects legislative intent, is followed whenever possible. Kilian v. Atkinson, 147 Wn.2d 16, 20, 50 P.3d 638 (2002); Lacey Nursing Ctr., Inc. v. Dep't of Revenue, 128

Wn.2d 40, 53, 905 P.2d 338 (1995). The plain meaning rule includes not only the ordinary meaning of the words but also the underlying legislative purposes and closely related statutes to determine the proper meaning of the statute. Dept. of Ecology v. Campbell & Gwinn, L.L.C., 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002). If a statute is plain and unambiguous, meaning is derived from the language itself. Cockle v. Dep't of Labor & Indus., 142 Wn.2d 801, 807, 16 P.3d 583 (2001).

The legislature created the AVAA to “provide protective services in the least restrictive environment appropriate and available to the vulnerable adult.” RCW 74.34.005(6). As part of this statutory scheme, the legislature included a new cause of action to protect vulnerable adults from abandonment, abuse, financial exploitation, or neglect. Schumacher v. Williams, 107 Wn. App. 793, 798, 28 P.3d 792 (2001) (citing RCW 74.34.200). The language of RCW 74.34.200 confirms that the cause of action arises when a vulnerable adult is subject to abandonment, abuse, financial exploitation, or neglect “while residing in a facility or in the case of a person residing at home who receives care *from* a home health, hospice, or home care agency, or an individual provider.” RCW 74.34.200 (emphasis added). The plain language of the statute makes clear that the cause of action arises against those *providing care* to the vulnerable adult. There is no explicit identification of mandatory reporters as defendants under this cause of action, especially where, as in this case, mandatory reporters can include those who offer no treatment or care to, and have no relationship with, the vulnerable adult. Further, there is

nothing in the AVAA's legislative history to suggest any intent to expand civil liability to include a separate civil cause of action against mandatory reporters. See RCW 74.34.053 (persons "who knowingly fails to make" a required report are guilty of a gross misdemeanor).

This interpretation, and the public policy behind it, are further bolstered by case law addressing RCW 74.34.200. The Court of Appeals, having analyzed the legislative findings of the AVAA, determined that the AVAA is intended to protect the elderly, mentally ill, and disabled persons from abuse, neglect, financial exploitation, and abandonment from persons "*with whom the vulnerable adult has a relationship.*" Calhoun v. State, 146 Wn. App. 877, 889, 193 P.3d 188, 194 (2008), as amended (Oct. 28, 2008) (emphasis added) (citing Cummings v. Guardianship Servs. of Seattle, 128 Wn. App. 742, 110 P.3d 796 (2005) (personal representative of elderly woman's estate brought actions against woman's co-guardians, guardians' attorney, and two live-in caregivers, all who had directly provided care for woman, after woman fell and died); Conrad ex rel. Conrad v. Alderwood Manor, 119 Wn. App. 275, 78 P.3d 177 (2003) (personal representative of elderly woman's estate sued nursing home for negligence and neglect); Caulfield v. Kitsap County, 108 Wn. App. 242, 29 P.3d 738 (2001) (disabled patient brought negligence action against DSHS, county, and personal caregiver, for injuries patient sustained from caregiver's neglect)).

In contrast to the circumstances giving rise to these cases are circumstances when a mandatory reporter under the AVAA has no

relationship with the vulnerable adult. Here, it is undisputed that Nurses Thomas and Binondo had absolutely no involvement in the care or treatment provided to Ms. Bae. Nurses Thomas and Binondo had patients that resided in the same facility as Ms. Bae, but Ms. Bae was not their patient and they did not treat her. Kim, 186 Wn. App. at 402-03. Their only connection is that they happened to stumble upon a situation involving a patient with whom they had no knowledge, no relationship, and no context for the situation that eventually unfolded.

RCW 74.34.200 and the AVAA do not, and should not, impose a heightened duty on passersby who happen to qualify as a mandatory reporters. The strong public policy of protecting vulnerable adults from abandonment, abuse, financial exploitation, or neglect at the hands of their caregivers is addressed by the AVAA. To the extent this Court determines that it is necessary to address whether the AVAA created an implied statutory cause of action, this Court should affirm that there no such cause of action against mandatory reporters (such as Nurses Thomas and Binondo) who are not acting in the capacity as caregiver to the plaintiff.

C. Nurse Thomas is Entitled to Recover Attorney Fees and Costs.

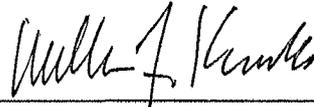
As the prevailing party, Nurse Thomas is entitled to recover her attorneys' fees and costs under the Long Arm Statute, RCW 4.28.185(5). See In re Marriage of Yokum, 73 Wn. App. 699, 707, 870 P.2d 1033, 1037 (1994); RAP 18.1.

VI. CONCLUSION

For the reasons set forth above, Nurse Thomas respectfully requests that this Court reverse the Court of Appeals' decision regarding service of process on Nurse Thomas and conclude that there is no personal jurisdiction because the service on a Norwegian citizen at her Norway residence was improper and, in any event, untimely under the facts of this case. This Court should also affirm the Court of Appeals' decision affirming the summary judgment dismissal of Kim's negligence claim because Kim failed to raise any genuine dispute of material fact establishing a duty on the part of Alpha and Nurse Thomas.

RESPECTFULLY SUBMITTED this 2nd day of October, 2015.

COZEN O'CONNOR



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Christine Thomas and Respondent Alpha
Nursing & Services, Inc.

DECLARATION OF SERVICE

The undersigned states:

I am a citizen of the United States of America and a resident of the State of Washington, I am over the age of 18 years, I am not a party to this action, and I am competent to be a witness herein.

On this 2nd day of October, 2015, I caused to be filed the foregoing *Supplemental Briefing of Nurse Thomas* by e-mail to the Supreme Court for the State of Washington. I also served a copy of said document on the following parties as indicated below:

Parties Served	Manner of Service
<i>Counsel for Appellant:</i>	
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Parties Served	Manner of Service
<p><i>Counsel for Appellant:</i></p> <p>Sidney Tribe Talmadge / Fitzpatrick 18010 Southcenter Parkway Tukwila, Washington 98188-4630 Phone: (206) 574-6661 Fax: (206) 575-1397 Email: sidney@tal-fitzlaw.com</p>	<p>() Via Legal Messenger () Via Overnight Courier (X) Via U.S. Mail (X) Via Email</p>
<p><i>Counsel for Defendant Lakeside Adult Family Home and Gretchen Dhaliwal:</i></p> <p>John C. Versnell, WSBA No. 17755 Eric T. Duncan, WSBA No. 42006 Lawrence & Versnell, PLLC 701 Fifth Avenue, Suite 4120 Seattle, Washington 98104-7097 Phone: (206) 624-0200 Fax: (206) 903-8552 Email: jcv@lvpllc.com etd@lvpllc.com hmm@lvpllc.com</p>	<p>() Via Legal Messenger () Via Overnight Courier (X) Via U.S. Mail (X) Via Email</p>
<p><i>Counsel for Defendant Gretchen Dhaliwal, individually:</i></p> <p>David J. Corey, WSBA No. 26683 Justin P. Walsh, WSBA No. 40696 Floyd, Pflueger & Ringer P.S. 200 West Thomas Street, Suite 500 Seattle, Washington 98119-4296 Phone: (206) 441-4455 Fax: (206) 441-8484 Email: dcorey@floyd-ringer.com jwalsh@floyd-ringer.com hpoltz@floyd-ringer.com</p>	<p>() Via Legal Messenger () Via Overnight Courier (X) Via U.S. Mail (X) Via Email</p>

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

Executed at Seattle, Washington, this 2nd day of October, 2015.


Bonnie L. Buckner, Legal Assistant

APPENDIX A

Authorities

Norway - Central Authority & practical information

Address

Central Authority(ies):

*The Royal Ministry of Justice and Public Security
Department of Civil Affairs*

Contact details:	
Address:	The Royal Ministry of Justice and Public Security Department of Civil Affairs <i>Postal address:</i> P.O. Box 8005 Dep 0030 OSLO <i>Office address:</i> Gullhaug Torg 4 a 0484 OSLO Norway
Telephone:	+47 2224 5451
Fax:	+47 2224 2722
E-mail:	postmottak@jd.dep.no
General website:	http://www.regjeringen.no/nb/dep/jd
Contact person:	
Languages spoken by staff:	Norwegian, Swedish, Danish, English

Practical Information:	
<i>(The following information was provided by the relevant State authorities or was obtained from the replies to the 2003 and/or 2008 Service Convention Questionnaires)</i>	
Forwarding authorities (Art. 3(1)):	The courts (including the conciliation boards) and certain administrative authorities such as the County Governors and the Labour and Welfare Administration.
Methods of service (Art. 5(1)(2)):	

	<p>The Central Authority forwards the document to the competent District or City Court instructing the Court to effect service. The Court will sometimes effect service itself, but very often this task is carried out by a process server.</p> <p>In general, a process server is used. If the documents are written in Norwegian, Swedish or Danish or accompanied by a translation into one of these languages and if it does not include a date set for hearing in the near future, the documents may be served by post.</p>
Translation requirements (Art. 5(3)):	<p>Under the regulations adopted by Royal Decree on 12 September 1969, requests for service will only be complied with when the document to be served is written in Norwegian, Danish or Swedish, or if the request is accompanied by a translation into one of these languages, unless the document is meant to be delivered only to an addressee who accepts it voluntarily. However, the Ministry of Justice may also in other cases permit the service of documents if it is convinced that the addressee understands the language used in the document.</p> <p>Norway has not entered into any agreement with respect to article 20(b).</p>
Costs relating to execution of the request for service (Art. 12):	No costs
Time for execution of request:	The average time from receipt at the Central Authority to execution of the request varies between 3-5 months.
Oppositions and declarations (Art. 21(2)):	Click here to read all the declarations and reservations made by Norway under this Convention
Art. 8(2):	Opposition
Art. 10(a):	Opposition
Art. 10(b):	Opposition
Art. 10(c):	Opposition
Art. 15(2):	Declaration of applicability

Art. 16(3):	Declaration of applicability
<p>Derogatory channels (bilateral or multilateral agreements or internal law permitting other transmission channels) (Arts. 11, 19, 24 and 25)</p> <p>Disclaimer: <i>Information may not be complete or fully updated – please contact the relevant authorities to verify this information.</i></p>	<p>Supplementary agreements to the Hague Convention of 17 July 1905 and/or of 1 March 1954 were concluded with: <i>Austria; Germany</i> (Berlin, 2 August 1909); <i>Luxembourg</i> (1 June 1910 – Articles 1 and 2).</p> <p>A multilateral convention on judicial co-operation was concluded between: <i>Denmark, Finland, Iceland, Norway and Sweden</i> on 26 April 1974.</p> <p>Lugano Convention of 16 September 1988.</p> <p>Bilateral convention on judicial co-operation: <i>Austria</i> (21 May 1984); <i>Germany</i> (17 June 1977); <i>United Kingdom</i> (London, 31 January 1931 - Articles 2 to 5).</p>
Useful links:	<p><u>Ministry of Justice and the Police and Rettsanmodninger i sivile saker – lister over sentralmyndigheter (in Norwegian only)</u></p>

(This page was last updated on 18 July 2014)

**Conventions
(incl.
Protocols and
Principles)**

- Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters [14]

APPENDIX B

Declarations Reservations

Articles: 8,10,15,16

(Click here for the Central Authority designated by Norway and other practical information)

Text of the declarations:

(...)

4. The Government of Norway is opposed to the use of such methods of service or transmission of documents on its territory as mentioned in Articles 8 and 10 of the Convention.

5. Norwegian courts may give judgment when all the conditions specified in the second paragraph of Article 15 are fulfilled.

6. In accordance with the third paragraph of Article 16, application for relief according to Article 16 will not be entertained if they are delivered to the competent Norwegian authorities after the expiration of three years following the date of the judgment.

APPENDIX C

Appendix

March 21, 2012	Kim amends wrongful death complaint to add Nurse Thomas and Alpha as defendants. CP 924-33.
March 30, 2012	Statute of limitations expires. CP 924-33.
April 30, 2012	Kim sends Requests for Admission solely to Alpha. CP 1164-1168.
May 3, 2012	Alpha responds to Requests for Admission, noting that Nurse Thomas had not been served. CP 1164-68.
November 2012	Kim is advised that Nurse Thomas is a Norwegian citizen and entitled to the protection of the Hague Convention. CP 1255-64.
December 11, 2012	Alpha provides Kim current contact information for Nurse Thomas in Norway. CP 1192-95.
February 27, 2013	Kim again requests, via e-mail, Nurse Thomas' contact information. CP 1199.
March 21, 2013	Kim retains private investigator to hand copies of the First Amended Summons and First Amended Complaint to Nurse Thomas in Norway. CP 1236-54.

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Cc: Knowles, William F.; White, Melissa; Lee, Robert D.; jgooding@glpattorneys.com; afrench@glpattorneys.com; cwilliams@glpattorneys.com; mboller@bollervaughan.com; lizk@bollervaughan.com; sidney@tal-fitzlaw.com; roya@tal-fitzlaw.com; jcv@lvpllc.com; etd@lvpllc.com; hmm@lvpllc.com; dcorey@floyd-ringer.com; jwalsh@floyd-ringer.com; hpoltz@floyd-ringer.com
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Subject: Supplemental Brief of Respondent/Cross-Petitioner Christine Thomas and Respondent Alpha Nursing & Services, Inc. (Case No. 91536-9)

With regard to Supreme Court of the State of Washington Case No. 91536-9, *Kim, et al. v. Alpha Nursing & Services, Inc., et al.*, attached for filing please find *Supplemental Brief of Respondent/Cross-Petitioner Christine Thomas and Respondent Alpha Nursing & Services, Inc.* This document is being filed by William F. Knowles, WSBA No. 17212, 206-242-1289, wknowles@cozen.com.

Thank you.



Bonnie L. Buckner
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