

FILED
SUPREME COURT
STATE OF WASHINGTON
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No. 98083-7
IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

EVETTE BURGESS
Petitioner.

v.

LITHIA MOTORS, INC.; BMW OF SPOKANE d/b/a
CAMP AUTHOMOTIVE, INC. d/b/a BMW OF SPOKANE,
Respondents.

STATEMENT OF ADDITIONAL AUTHORITIES

John M. Silk, WSBA #15035
Gabriella Wagner, WSBA# 42898
Lisa C. Neal, WSBA# 25686
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Respondents Lithia Motors, Inc., BMW of Spokane, d/b/a Camp Automotive, Inc. d/b/a BMW of Spokane (“Lithia”) submits the following additional authorities pursuant to RAP 10.8:

1. *Aerojet-General Corp. v. American Arbitration Ass’n*, 478 F.2d 248, 251 (9th Cir. 1973) for the propositions that a) “court review of evidentiary rulings should not be had before a final award has been rendered” and b) “Extreme cases can be imagined in which the choice of locale for arbitration is not made in good faith and severe irreparable injury is inflicted on one or more of the parties. In such a case the courts should be free to prevent a manifest injustice.”

2. *Michaels v. Mariforum Shipping, S.A.*, 624 F.2d 411 (2d Cir. 1980), for the propositions a) review of interim orders prohibited by the Federal Arbitration Act (at 414); b) that final awards may be reviewed for “misbehavior” outside the text of the award (at 413); c) that the Act’s language is unambiguous (at 414); and d) the discussion regarding a ruling “fixing the place of an arbitration hearing” might justify review in certain “extreme cases” where the choice of venue was not made in good faith and irreparable injury would result in *Aerojet-General Corp. v. American Arbitration Ass’n*, 478 F.2d 248, 251 (9th Cir. 1973) was dicta (at fn. 5); and e) that the facts presented to the *Michaels* court did not justify consideration of whether “review of interim orders in arbitration extends to such “extreme” situations. (*Id.*)

3. *Orion Pictures Corp. v. Writers Guild of Am., W., Inc.*, 946 F.2d 722, 725 n.2 (9th Cir. 1991) (refusing to apply *Aerojet-General* exception absent evidence that “deferring judicial review until after final award risks destroying a party’s ability to enforce a judgment”).

4. *Kuruwa v. Turner Constr. Co.*, 2013 U.S. Dist. LEXIS 153720, at *6-7 (S.D.N.Y. Oct. 18, 2013), for the proposition that the court’s declining to “to hold that immediate judicial review of a ruling setting the place for arbitration is never justified” in *Aerojet-General* would not be followed in the Circuit.

5. *Shields v. Gen. Mills, Inc.*, No. 0:16-cv-00954-MJD-KMM, 2018 U.S. Dist. LEXIS 25929, at *8-9 (D. Minn. Jan. 26, 2018) (declining to extend the dicta in *Aerojet-General Corp. v. Am. Arbitration Ass’n* and allow interlocutory motion to disqualify an arbitrator).

6. *Compania Panemena Maritima v. J. E. Hurley Lumber Co.*, 244 F.2d 286, 288-89 (2d Cir. 1957), for the proposition that interlocutory arbitration rulings are not reviewable.

7. *G.C. & K.B. Invs., Inc. v. Wilson*, 326 F.3d 1096, 1106 (9th Cir. 2003) for the proposition that review of awards under the FAA may include review of matters outside the “four corners” of the award. “The Wilsons do not claim the award was procured by corruption, fraud or undue means, 9 U.S.C. §

10(a)(1), that the arbitrator was partial or corrupt, 9 U.S.C. § 10(a)(2), that the arbitrator refused to hear evidence or otherwise misbehaved, 9 U.S.C. § 10(a)(3), or that the arbitrator exceeded his powers, 9 U.S.C. § 10(a)(4). Nor do the Wilsons claim any mistake within the four corners of the award itself, such as a miscalculation of a sum or a misdescription of a person or thing, 9 U.S.C. § 11(a), or that the arbitrator acted on a matter not submitted to him, 9 U.S.C. § 11(b), or that there was a flaw in the form of the award, 9 U.S.C. § 11(c). Nor do the Wilsons stand on any of the judicially-developed grounds for vacating an award; that the award was irrational or involved a manifest disregard of the law.” *Id.*

DATED and respectfully submitted this 29th day of June, 2020.

By: s/ Lisa C. Neal
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DECLARATION OF SERVICE

The undersigned certifies that under penalty of perjury under the laws of the State of Washington, that on the below date I caused Statement of Additional Authorities to be emailed, the attached document as follows:

VIA electronic ECF filing

Mary Schultz
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Dated this 29th day of June, 2020.

s/ Alicia Ossenkop
Alicia Ossenkop
Legal Secretary

WILSON SMITH COCHRAN DICKERSON

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Transmittal Information

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