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No. ~~698110-9-L~~

**COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON**

ELVIRA WILLIAMS, Appellant,

v.

SEATTLE PLASTIC SURGERY ASSOCIATES, P.C. d/b/a
LIFESTYLE LIFT SEATTLE, a domestic corporation; and
SCIENTIFIC IMAGE CENTER MANAGEMENT, INC., a foreign
corporation, Respondents.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY
#10-2-05815-0 SEA

REPLY BRIEF OF APPELLANT

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INTRODUCTION

Respondents choose to focus on the words rather than the reasoning and substance behind the *Ambach* decision. They insist on a broad interpretation of the language of the opinion so that they can obtain immunity for the actions of their client. It was precisely for this reason, out of concern that the *Ambach* opinion could be stretched in a way that would lead to unintended consequences, that Justice Chambers, in his concurring opinion, wrote a warning that can be paraphrased as follows: *Ambach* is not intended to provide immunity to merchants that do not follow the law and engage in unfair or deceptive acts at the expense of the people of the State of Washington. *Ambach v. French*, 167 Wn.2d 167, 180, 216 P.3d 405 (2009) (Justice Chambers, concurring opinion).

Then there is the bitter irony of Defendants' collateral estoppel argument. Bitter irony given that this is an appeal from a motion for summary judgment that denied Mrs. Williams the opportunity to try her Consumer Protection Act claim before a jury of her peers. Defendants fail to meet their burden of proof, a burden that is in place to prevent Defendants from quietly getting rid of Mrs. Williams's claim without first trying the merits of the claim. A claim that is about a public matter, with the potential for

repetition and affecting a large number of consumers. A claim about a matter that needs to be aired in public, so that all consumers touched by Lifestyle Lift® can learn what their rights are under the law. The illusionary shortcut suggested by Defendants in the end will result in a longer journey for all. Appellant Elvira Williams respectfully requests a published ruling of the Court of Appeals on this important issue affecting the public, and a reversal and remand for trial on the Consumer Protection Act claim.

I. A Cheap Facelift Still Carries a Price Tag.

Mrs. Williams is not disputing that the Lifestyle Lift® is a cheap facelift. In fact, if the Lifestyle Lift® would have been advertised as “Discount Facelift,” or “Half a Facelift for Half the Price,” she would have never sued them for breach of the Consumer Protection Act – the advertisement would have been mostly truthful, and Mrs. Williams would not have parted with her money. (CP 285-86).

The injury to business and property is not that Mrs. Williams could have had a cheaper facelift somewhere else, or that she could have had better results for the same price. The injury to business and property is that Mrs. Williams would not have given a dime to Lifestyle Lift® if she would have known the truth about

Lifestyle Lift® from the start. She was not in the market for an ordinarily invasive facelift and would not have paid for one. (CP 285-86).

The amount of Mrs. Williams's injury has to be decided by a jury, but Plaintiff's counsel argues that it should be the full \$4,600.00. (CP 425, 556-60). The reason for including the \$600.00 that Mrs. Williams paid for the liposuction in the total amount of the damages is simple – the liposuction is an add-on procedure that Lifestyle Lift® sells together with their main course to generate additional revenues. (CP 556-58). "In addition, submental liposuction should be considered and discussed with the patient." (CP 430).

People do not usually go to Lifestyle Lift® just to get a liposuction, nor are they usually sold just the liposuction. (CP 540-55). They go there for the advertised "breakthrough medical procedure" (CP 546), the Lifestyle Lift®, and then they are sold options and upgrades – truly, this is similar to going to a car dealer, where one goes to buy a car and is then sold a number of upgrades and options which one might or might not need. Mrs. Williams would not have purchased the liposuction but for the purchase of the Lifestyle Lift®. (CP 285-86). The liposuction was part of a

package deal, with a package discount, it was part of the sale of the Lifestyle Lift®, the way it is usually sold to the public and the way it was sold to Mrs. Williams. (CP 425, 430, 556-60). However, it is always possible that the jury could decide to award Mrs. Williams's only \$4,000.00, the cost of the Lifestyle Lift® without any add-ons, a question of fact to be decided at trial.

II. Respondents Ignore the Reasoning behind the *Ambach* Decision.

What is remarkably absent from the Brief of Respondents is any analysis of the reasons for the Washington Supreme Court's holding in *Ambach v. French*, 167 Wn.2d 167, 216 P.3d 405 (2009). It is almost as though Respondents do not wish to explore the reasons for the Supreme Court's decision because they do not like the places where this exploration might take them.

Opening Brief of Appellant has already devoted a section to the cases that were used by the Washington Supreme Court as legal precedent in *Ambach*. (Opening Brief of Appellant, §VI.C). It explains how *Stevens v. Hyde Athletic Indus., Inc.*, 54 Wn. App. 366, 773 P.2d 871 (1989), *Hiner v. Bridgestone/Firestone, Inc.*, 91 Wn. App. 722, 959 P.2d 1158 (1998), or *Ass'n of Wash. Pub. Hosp. Dists. v. Philip Morris Inc.*, 241 F.3d 696 (9th Cir. 2001), the three

cases at the heart of *Ambach*, can be distinguished from the present case. It also explains what are some of the common themes that run through those decisions.

Likewise, Opening Brief of Appellant analyzed *Wright v. Jeckle*, 104 Wn. App. 478, 16 P.3d 1268 (2001) and *Young v. Savidge*, 155 Wn. App. 806, 230 P.3d 222 (2010) because they provide context and help us to understand the ruling of the Washington Supreme Court in *Ambach*. (Opening Brief of Appellant, § VI.B). At the heart of a CPA claim is the question of whether or not a merchant has engaged in an unfair or deceptive act or practice, with the capacity to deceive a substantial portion of the public. WPI 310.08. This is an important distinction – the Consumer Protection Act was designed to protect the **public** from unscrupulous merchants, not just the individual. See *Panag v. Farmers Ins. Co. of Wash.*, 166 Wn.2d 27, 49, 204 P.3d 885 (2009). It is also one of the tests used by the Supreme Court in *Ambach*, and one of the reasons why they rejected the plaintiff's claim in *Ambach*. The Washington Supreme Court cites a case similar to *Wright* and *Young*, *Michael v. Mosquera-Lacy*, 165 Wn.2d 595, 200 P.3d 695 (2009), in support of its holding. *Michael* deals

primarily with the question of whether the plaintiff's lawsuit would serve the public interest. *Michael*, 165 Wn.2d at 605.

Though Ambach's case is before us only on the issue of whether her injury is to "business or property," **[(1)]** the structure of her CPA claim is similar to *Michael's*. [*Michael v. Mosquera-Lacy*, 165 Wn.2d 595, 200 P.3d 695 (2009)]. **[(2)]** She also fails to allege that Dr. French actively solicited her as a patient or advertised shoulder surgeries to the general public. **[(3)]** The individual *Hangman Ridge* [*Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 719 P.2d 531 (1986)] factors should not be read in isolation so as to render absurd conclusions. **[(4)]** While Ambach's payment for her surgery may look on its face like the purchase of a good or service envisioned by the CPA, her actual damages demonstrate that what she really seeks is redress for her personal injuries, not injury to her business or property. **[(5)]** We hold that because Ambach's purported CPA injury is payment for a surgery from which personal injury also arose, she has failed to state a prima facie CPA claim.

Ambach, 167 Wn.2d at 179 (footnotes omitted, section numbers and emphasis added). It is clear that the Washington Supreme Court in *Ambach* is trying to decide first and foremost whether the plaintiff's claim is just a clever ruse, the proverbial wolf in sheep's clothing. "Ye shall know them by their fruits. Do men gather grapes of thorns, or figs of thistles?" Matthews 7-16 (King James). The inquiry must begin with the nature of the plaintiff's claim. **[(1)]** and **[(2)]** The Supreme Court demonstrates that the

plaintiff's claim in *Ambach* was similar to the one in *Michael*, a case where the plaintiff had failed to show that her lawsuit would serve the public interest. In *Michael* there was no evidence of unfair or deceptive advertising or marketing aimed at the general public, and the same was true in *Ambach*. *Ambach*, 167 Wn.2d at 177-78. **[(3)]** The Supreme Court then warns that one must look at all *Hangman Ridge* elements¹ together to determine whether or not there is a *prima facie* Consumer Protection Act claim. **[(4)]** Next, the Supreme Court points out that *Ambach*'s Consumer Protection Act claim could not survive independently of her personal injury claim, that they are one and the same. **[(5)]** Because of that lack of independence between the CPA claim and the personal injury claim, the Supreme Court then finds that the plaintiff in *Ambach* failed to state a *prima facie* case. In *Ambach* but for the fact that the plaintiff was injured there would be no evidence to bring a *prima facie* Consumer Protection Act claim.

One must only look at the facts and the evidence of the present case against Lifestyle Lift® to see how this case is very

¹ The five elements of a Consumer Protection Act claim are the following: 1) unfair or deceptive act or practice; 2) occurring in trade or commerce; 3) public interest impact; 4) injury to plaintiff in his or her business or property; and 5) causation. *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 719 P.2d 531 (1986).

different from *Ambach*. When we engage in the same level of scrutiny and the same inquiry that the Washington Supreme Court followed in *Ambach* we see the striking differences, and we see that here we are faced with a merchant whose unfair or deceptive acts affect the public, the very kind of problem the Washington legislature was trying to address when it enacted the Consumer Protection Act. See RCW 19.86.020; RCW 19.86.920; *Panag v. Farmers Ins. Co. of Wash.*, 166 Wn.2d 27, 37, 204 P.3d 885 (2009).

III. Clarification of the Analysis of *Stevens, Hiner, and Ass'n of Wash. Pub. Hosp. Districts*.

Judging from Section III.D of Brief of Respondents perhaps a clarification is in order regarding Opening Brief of Appellant's discussion of *Stevens, Hiner, and Ass'n of Wash. Pub. Hosp. Dists.*² Opening Brief of Appellant explained how all of the above cases, used by the Washington Supreme Court in support of its *Ambach* decision, share in common the fact that the alleged CPA claims relied entirely on the fact that the plaintiffs were physically or emotionally injured. (Opening Brief of Appellant, § VI.C).

² *Stevens v. Hyde Athletic Indus., Inc.*, 54 Wn. App. 366, 773 P.2d 871 (1989); *Hiner v. Bridgestone/Firestone, Inc.*, 91 Wn. App. 722, 959 P.2d 1158 (1998); *Ass'n of Wash. Pub. Hosp. Dists. V. Philip Morris Inc.*, 241 F.3d 696 (9th Cir. 2001)

The facts in *Stevens* were that the plaintiff had bought popular softball shoes and then injured herself while using them. *Stevens*, 54 Wn. App. at 367. The plaintiff in *Stevens* was complaining that the merchant had lied to her because she had used the popular softball shoes for softball and injured herself. She was complaining about her injury, not about the popularity of the shoes – the shoes that she had purchased, the Spot-Bilt Monsters, were indeed very popular softball shoes. She could not have argued in good faith that the merchant had misrepresented the fact that those were popular shoes.

The only reason that the plaintiff in *Stevens* argued that the merchant had lied to her was because of her injuries – without those injuries there would be no misrepresentation, no unfair or deceptive acts or practices, the shoes were exactly what they were advertised to be, popular softball shoes. The plaintiff's claim in *Stevens* was totally dependent on her injury.

Lifestyle Lift® could be delivering 100% successful facelift surgeries and they would still be misrepresenting what they are selling to the public. They claim that they are selling one thing to the public, knowing that they are selling something else. The difference is not because of any physical or emotional injury to the

consumers, it is because of the way the Lifestyle Lift® is sold to the public.

In *Stevens* there was nothing in the facts that would have allowed the Consumer Protection Act to stand on its own, independently of the personal injury claim. The same was true with the facts of *Hiner* and *Ass'n of Wash. Pub. Hosp. Dists.*. Therefore, the plaintiffs' claims in those three cases all fail the test to be used in determining whether or not a CPA claim is independent of a personal injury claim. That test can be rephrased as follows: Without changing the facts of the case, but assuming that the plaintiff was never physically or emotionally injured, is there evidence to support all elements of a CPA claim? In other words, in the absence of any physical or emotional injury does the plaintiff have a *prima facie* CPA claim? If the answer is "yes," then the CPA claim is an independent claim and will survive summary judgment.

IV. The Trial Court Looked at the Wrong Cause and Effect, Trying to Guess What Caused Elvira Williams to Hire an Attorney.

Respondents have highlighted the Trial Court's findings of fact in their Counterstatement of the Case. (Brief of Respondent, § D p. 8). This Court reviews *de novo* the ruling on a summary judgment and any findings of fact entered by the Trial Court will be

considered superfluous. See, e.g., *Thogchoom v. Graco Children's Products, Inc.*, 117 Wn. Ap. 299, 309, 71 P.3d 214 (2003). Furthermore, the Trial Court failed to consider all facts in the light most favorable to the nonmoving party. See, e.g., *Columbia Physical Therapy, Inc., P.S. v. Benton Franklin Orthopedic Associates, P.L.L.C.*, 168 Wn.2d 421, 441-42, 228 P.3d 1260 (2010). (Opening Brief of Appellant, Assignment of Error B).

“However, this CPA aspect of this case wouldn't be before this court but for the alleged med-mal and lack of informed consent claims. Surely, if everything had gone well for the Plaintiff, she would be making no claim.”

(CP 272, ¶ 3). The Trial Court's mistake is simply the following: instead of looking at whether the medical malpractice and informed consent were a necessary ingredient of Plaintiff's CPA claim, the Trial Court looked at the whether she would have consulted an attorney just for the CPA claim. The Trial Court applied the wrong test, and then tried to divine the content of Mrs. Williams's mind. Furthermore, when it tried to divine those contents the Trial Court assumed the worst, thereby looking at the facts in the light least favorable to the non-moving party. See, e.g., *Columbia Physical Therapy, Inc., P.S.*, 168 Wn.2d at 441-42.

V. The Bitter Irony of Respondents' Collateral Estoppel Argument.

The reason for this appeal is that Mrs. Williams was denied the right to present her CPA claim at trial by Defendants' Motion for Summary Judgment. It is therefore bitterly ironic to see the words "collateral estoppel" in Brief of Respondents. They clearly do not want this matter of public interest to be tried before the public.

Defendants bear the burden to prove that Mrs. Williams had a full and fair opportunity to have a jury decide whether Lifestyle Lift® Management and Lifestyle Lift® Seattle engaged in an unfair or deceptive act or practice.³ See *State Farm Mut. Ins. Co. v. Avery*, 114 Wn. App. 299, 57 P.3d 300 (2002) (burden of proof on party seeking collateral estoppel).

In order to prove that [Lifestyle Lift® Management and Lifestyle Lift® Seattle] engaged in an unfair or deceptive act or practice, it is sufficient to show that the act or practice had the **capacity** to deceive a substantial portion of the public. [Elvira Williams] does not need to show that the act or practice was intended to deceive.

³ This matter is on appeal from a motion for summary judgment that dismissed Elvira Williams's CPA claim before trial. Appellant's designated Clerk's Papers are limited to the record that was before the court at the time of the motion for summary judgment and motion for reconsideration. RAP 9.12. Neither party has requested a verbatim report of proceedings. Neither side has made arrangements for a trial transcript or for a transcript of any of the pretrial motions (e.g., motions in limine) because the trial of the informed consent and medical malpractice claims is not the issue that is on appeal.

WPI 310.08 (“Definition – Unfair or Deceptive Act or Practice,” emphasis added). See also *State v. Ralph Williams’ North West Chrysler Plymouth, Inc.*, 87 Wn.2d 298, 317, 553 P.2d 423 (1976). All that Defendants can prove is that a jury previously found that Defendants did not fail to obtain informed consent from Mrs. Williams. (CP 651-52). The issue of whether the acts or practices of Lifestyle Lift® Management and Lifestyle Lift® Seattle had the **capacity** to deceive a substantial portion of the public was never presented to a jury and never decided.⁴ Cf. Jury Instructions and Verdict, CP 630-52 (showing absence of any Consumer Protection Act instructions or questions). This is the fundamental difference between a Consumer Protection Act claim and a claim for failure to obtain informed consent – the Consumer Protection Act focuses on protecting the public from the potential for deceit, while informed consent focuses on the individual, not the public, and actual failure to inform. Compare RCW 19.86.020, and RCW 19.86.920, and *Hangman Ridge*, 105 Wn.2d at 788-89, and WPI 310.01, and WPI 310.04, with RCW 7.70.050(1)(c), and RCW 7.70.060 (signature is *prima facie* evidence of informed consent).

⁴ The record before the Trial Court at the time of the Motion for Summary Judgment included many examples that lead the Trial Court to find that “[h]ere, the advertising of Lifestyle Lift is clearly entrepreneurial and indeed may be deceptive.” (CP 272, ¶ 2).

There is another significant difference in this case – here, the act or practice giving rise to the Consumer Protection Act claim occurred long before Mrs. Williams gave informed consent. (CP 556-60). Timing is of the essence – the sale of the Lifestyle Lift® with the payment of the *de facto* non-refundable deposit happened long before the surgery occurred.⁵ (CP 556-60). Even assuming that by the time she underwent surgery, long after the sale and deadline for a refund, Mrs. Williams fully understood that the Lifestyle Lift® was different than what had been sold to her, by then it was too late, the injury to her property had already occurred. Remedial measures, in this case any information given after the purchase and after the payment of the non-refundable fee, are not relevant to the inquiry of whether or not Mrs. Williams was sold something very different than advertised by Lifestyle Lift® Seattle and Lifestyle Lift® Management. *See, e.g.*, ER 407.

The jury was never asked to limit their inquiry to the way the Lifestyle Lift® was advertised and sold, and decide whether or not

⁵ The sales agreement (CP 556) is signed by the consumer on the day of the sale, after meeting with the salesperson, paying a deposit, and financing the cost of the Lifestyle Lift®. (CP 557-60) The sales agreement clearly states that the consumer only has one week to cancel and obtain a full refund of the deposit. (CP 556). The Informed Consent papers (CP-147-50) are only presented on the day of the surgery, when it is too late to cancel and ask for a refund. This is standard procedure (CP 471).

the events leading up to that sale had the capacity to deceive Mrs. Williams and a substantial portion of the public. *Cf.* Jury Instructions and Verdict, CP 630-52 (allowing the jury to look at all events that took place before and after the surgery). Conspicuously absent from the jury instructions is any of the language found in the standard Washington Pattern Instruction for a CPA claim. WPI 310.01-.09. Likewise, there is nothing in the verdict form that deals with a CPA claim. (CP 651-52). Instead, the jury was simply asked to decide whether by the time Mrs. Williams had surgery two weeks later she had had enough opportunities to learn about the Lifestyle Lift® and give informed consent to the surgery. The jury was allowed to consider all the remedial measures that happened after the sale, including the informed consent paperwork that Mrs. Williams was asked to sign on the day of surgery.⁶

Defendants seek collateral estoppel. They have the burden to persuade the Court that they meet the four requirements for

⁶ From a practical point of view, there is also a significant difference in what needs to be proven in a claim for lack of informed consent versus a Consumer Protection Act claim. The jury knows that by finding lack of informed consent they are telling the doctor/defendant that he/she violated the patient's body, and they expose the doctor to significant damages. On the other hand, in a Consumer Protection Act the damages are often small, the defendant is often a merchant who is deceiving the public, and the evidence that is relevant and can be presented to the jury might include evidence that would not be relevant in an informed consent case and *vice versa*.

collateral estoppel: 1) The issue decided in the prior action was **identical** to the issue presented in the next action; *Luisi Truck Lines v. Washington Utils. & Transp. Comm'n*, 72 Wn.2d 887, 894, 435 P.2d 654, 659 (1967); *Roper v. Marby*, 15 Wn. App. 819, 821-22, 551 P.2d 1381 (1976). 2) The prior action ended in a final judgment on the merits; 3) The party to be estopped was a party or in privity with a party in the prior action; and 4) The application of the doctrine would not work an **injustice**. *Kennedy v. City of Seattle*, 94 Wn.2d 376, 378-79, 617 P.2d 713 (1980). See also *State Farm Mut. Ins. Co. v. Avery*, 114 Wn. App. 299, 304 and 306, 57 P.3d 300 (2002); Furthermore, a corollary to the fact that Defendants have the burden of proof is the rule that collateral estoppel is inappropriate where there is uncertainty as to whether or not an issue was decided in a prior action. See, e.g., *Mead v. Park Place Properties*, 37 Wn. App. 403, 407, 681 P.2d 256 (1984). Defendants fail to meet two of the four requirements – the issue previously decided by the jury is different from the one that will be presented in the Consumer Protection Act action, and the application of the doctrine would work an injustice to Mrs. Williams and to the public.

When an “important public question of law” is involved, collateral estoppel does not operate. *Kennedy v. City of Seattle*, 94 Wn.2d 376, 378-79, 617 P.2d 713 (1980). Here, there is a question of law that will affect the public, the proper interpretation and application of *Ambach v. French*, 167 Wn.2d 167, 216 P.3d 405 (2009). There are also active merchants, including Defendants Lifestyle Lift® Management and Lifestyle Lift® Seattle, who are currently immune from a statute designed to protect the public, and whose actions continue to this day to affect the public. Respondents attempt to seduce the Court into taking what seems like a shortcut. However, the truth is that the proposed “shortcut” leaves matters unresolved and provides no guidance to the public. In fact, the proposed “shortcut” will result in a longer road to recovery for all consumers that were touched or affected by Lifestyle Lift®’s unfair or deceptive acts or practices, and need to know whether or not Lifestyle Lift® is *de facto* immune to lawsuit under the Consumer Protection Act or not. This “shortcut” is designed to keep the truth about Lifestyle Lift® out of the public record. By taking the normal path, by ruling on the merits of Lifestyle Lift®’s immunity claim, the public will know what their

rights are under the law, and Mrs. Williams will be finally afforded justice.

There is a danger that in seeking to relieve the crowded dockets and backlog of litigation, courts will too readily turn to rules of res judicata and collateral estoppel. It is critical to remember that the doctrines of claim and issue preclusion are court-created concepts. Accordingly, they can be adjusted to accommodate whatever considerations are necessary to achieve the final objective – doing justice.

Philip A. Trautman, *Claim and Issue Preclusion in Civil Litigation in Washington*, 60 Wash. L. Rev. 805, 842 (September 1985).

VI. Whether or Not Lifestyle Lift®'s Acts and Procedures Were Unfair or Deceptive Is a Question of Fact.

Respondents highlight in their Counterstatement of the Case a document titled "Understanding the Lifestyle Lift® Procedure" – that is a red herring. First, the CPA claim is not a claim about informed consent, therefore signed informed consent documents lack legal significance. *Cf.* RCW 7.70.060 (signed Informed Consent document is *prima facie* evidence of informed consent). Second, it is a remedial measure, therefore inadmissible. ER 407. Third, whether that document helps or harms Plaintiff's CPA claim is a question of disputed fact for the jury to decide. Disputed facts are at best another reason to deny a motion for summary judgment.

Respondents also point to the disclaimer in their glossy brochure reprinted in easy to read 12 points font. (Brief of Respondents, § C p. 6). The original disclaimer would have required some kind of magnification depending on the reader, it was truly “fine print.” (CP 554, the fine print at the bottom of the page). The disclaimer also lives up to its name by being in stark contrast to the entire brochure. One can easily compare that “fine print” to the glossy photographs and bold statements found throughout the brochure, or with the table found on p. 12 of the brochure (CP 551) (highlighting to prospective customers what the Lifestyle Lift® is supposed to be). At most, that “fine print” disclaimer is another fact in dispute that will have to be weighed by the jury when deciding whether the acts or practices of Lifestyle Lift® were unfair or deceptive.

VII. The Remedies and Purpose of the Consumer Protection Act are Different from the Remedies and Purpose of a Medical Malpractice Lawsuit.

The damages of this CPA claim do not include anything beyond the sale of the Lifestyle Lift® – they do not include the cost of post-operative care, and certainly do not include any non-economic damages. Therefore, Elvira Williams’s CPA claim does not allow for any kind of “backdoor access to compensation” denied

in a personal injury suit. *Ambach*, 167 Wn.2d at 179 n.6.⁷ That ship has sailed.

This CPA claim is limited to the amount of a refund, with the statutory penalties that the Washington legislature has enacted to protect consumers in the State of Washington and to encourage fair and honest dealings. See RCW 19.86.090; RCW 19.86.920; *Panag v. Farmers Ins. Co. of Wash.*, 166 Wn.2d 27, 37, 204 P.3d 885 (2009). Mrs. Williams has the right to bring a CPA claim through the front door of the tribunal of justice; she does not need a backdoor to do so. The focus now is on holding Lifestyle Lift® Management and Lifestyle Lift® Seattle accountable for their unfair or deceptive acts or practices. The focus now is on punishment and deterrence, so that Defendants will stop harming the public. See RCW 19.86.090. The focus now is not only on protecting the individual, but on protecting the public. *Panag*, 166 Wn.2d at 49. The focus now is not only on the past, but on the future.

⁷ The Washington Supreme Court was concerned that “[e]ssentially, *Ambach* attempts to use her payment for the surgery as the key to the door of compensation for a panoply of common personal injury damages.” *Ambach*, 167 Wn.2d at 179 n.6. This is very different from the present case, where Mrs. Williams’s Consumer Protection Act claim only seeks a refund of the sale price of the Lifestyle Lift® with statutory punitive damages.

CONCLUSION

Defendants ask for an broad interpretation and application of *Ambach* that absolves them of any malfeasance. Alternatively, they argue that no jury should ever be allowed to decide whether or not their acts or practices were unfair or deceptive. Plaintiff respectfully requests that the Court reverse and remand this case for trial, and let a jury decide whether the public needs to be protected from corporations like Defendants Seattle Plastic Surgery Associates, P.C., and Scientific Image Center Management, Inc.

DATED this 13 day of July, 2012

Respectfully submitted,

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By 
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DECLARATION OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington that on the date stated below, I mailed or caused delivery of the **Reply Brief of Appellant** to:

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DATED this 13th day of July, 2012


Elizabeth Minish