

No. 71121-1-I

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COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON

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CPI POOL FUNDING, LLC, a Washington  
limited liability company,

*Appellant,*

v.

LONGWELL ARBORS, LLC, a Washington limited  
liability company; LONGWELL COMPANY, a Washington  
limited liability company; and STANLEY XU and  
NANLING CHEN, husband and wife, individually and the  
marital community comprised thereof,

*Respondents.*

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**BRIEF OF RESPONDENTS**

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## **I. INTRODUCTION**

The limited arbitration agreement negotiated by the parties regarding certain specified claims – arising out of a prior lawsuit – cannot be fairly said to encompass the issues in this litigation. Among other things, the CR 2A Stipulation signed in August 2011 identified and defined specific claims that were to be mediated and/or arbitrated and excluded all others.

The argument by Appellant that the current claims must be arbitrated simply overlooks or ignores the first and most important prong of any analysis as to whether a given claim must be arbitrated – whether the parties contractually agreed to arbitrate the claim. Although it is true that public policy favors arbitration of claims, arbitration cannot be compelled if the claims are not within the scope of the parties’ agreement to arbitrate.

The trial court Order denying Appellant’s motion to compel arbitration hit the nail on the head. Judge Jay V. White wrote:

“... the CR 2A agreement in Cause # 10-2-10156-0 KNT did not refer “all” Financial Accounting Claims to arbitration; it only referred to “the” Financial Accounting Claims between the parties to that lawsuit. It, on its face, does not cover the plaintiff’s claims in this lawsuit. Accordingly, Defendant’s motion to compel is denied for this and other reasons set forth in Plaintiff’s pleadings.”

CP 384.

Respondents never agreed to arbitrate the claims involved in this lawsuit. The expressly limited scope of the prior agreement to arbitrate certain claims must be respected and Respondents respectfully submit that the trial court ruling must be affirmed.

## **II. STATEMENT OF ISSUES**

1. In light of the plain language of the August 3, 2011 CR 2A Stipulation, which includes only certain defined “Financial Accounting Claims” for arbitration and which excludes all other claims from arbitration, can the Court fairly say that the unrelated claims in the current litigation must be arbitrated?

2. Did the trial court commit error by making a determination of whether “... an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate,” as it was required to do under RCW 7.04A.060(2)?

## **III. STATEMENT OF THE CASE**

In June 2010, Longwell Arbors, LLC (“Longwell Arbors”), was the managing member of an entity known as Arbors at Sunset, LLC (“Arbors at Sunset”), which owned and operated a residential apartment complex in Renton, Washington. Longwell Company (“Longwell”) was the property manager for Arbors at Sunset. CP 240. As of that date, CPI Pool II Funding,

LLC (“CPI”), was the only non-managing member of Arbors at Sunset, holding 80% of the outstanding member interests. CP 240.

**A. In 2010, CPI Sued Longwell, Asserting Certain Financial Accounting Damage Claims.**

On or about June 1, 2010, CPI filed suit in King County Superior Court (the “CPI Litigation”) against Longwell Arbors, Arbors at Sunset, Longwell, Stanley Xu (“Xu”) and his wife, Nanling Chen (“Chen”) (collectively, “Longwell”). The CPI Litigation alleged breaches of the terms of the First Amended and Restated Operating Agreement for Arbors at Sunset (the “Operating Agreement”). CP 246-353. It is significant that the Operating Agreement does not contain an arbitration clause. CP 240.

The claims asserted by CPI in the CPI Litigation included damage claims through the date of the Complaint against Longwell Arbors, as managing member, and sought the removal of Longwell Arbors as managing member. CP 175-206.

Longwell Arbors and the other defendants in the CPI Litigation generally denied the allegations in the complaint, but did not assert claims for affirmative relief from CPI. Specifically, but without limitation, none of the defendants in the CPI Litigation sought to recover damages from CPI. CP 240.

**B. The Parties Negotiated a CR 2A Stipulation to Mediate and/or Arbitrate Certain Limited Claims Raised by the CPI Litigation and to Exclude All Others.**

Certain damage claims in the CPI Litigation were the subject of a CR 2A Stipulation negotiated and executed by the parties on August 3, 2011, and entered with the Court on August 5, 2011. CP 119-123. Among other things, the Stipulation confirmed:

a. The trial court's decision regarding to remove Longwell Arbors and install CPI as managing member of Arbors at Sunset (paragraph 1);

b. CPI's duties as managing member (paragraph 2);

c. The parties' agreement that the "Financial Accounting Claims" and/or "Financial Damage Claims" would be submitted to Hon. Terry Lukens (Ret.) for arbitration if the parties could not resolve them (paragraph 3);

d. That all claims other than those specifically identified in the Stipulation were excluded from arbitration (paragraph 4, lines 10 - 11), thereby emphasizing that the scope of the parties' agreement to arbitrate was expressly and narrowly limited;

e. That all other claims by CPI were released (paragraph

4, lines 13 - 16). The plain language of this provision further confirmed the unilateral nature of the claims subject to the agreement to arbitrate (*i.e.*, only claims asserted by CPI);

f. That Longwell Arbors retained its 20% interest in Arbors at Sunset;

g. That CPI was required to undertake certain tasks if it were to solicit an offer for the sale of the property, and that it was to otherwise maximize the value of the asset for the non-managing member; and

h. That the CPI Litigation would be dismissed, with prejudice, meaning that all issues arising out of that litigation were fully and finally resolved. CP 119-123.

Following the entry of the Stipulation with the court on August 5, 2011, the parties were unsuccessful in negotiating a resolution of the Financial Accounting Claims and/or the Financial Damages Claims with Judge Lukens as mediator. Thereafter, the mediator became the Arbitrator. CP 241.

On or about January 17, 2012, the Arbitrator issued an Interim Award regarding the amount due to CPI on the Financial Accounting Claims and/or

the Financial Damage Claims asserted in the CPI Litigation. A Final Award on CPI's Financial Accounting Claims was entered on February 29, 2012, and was confirmed by the Court on or about April 2, 2012. CP 125-127, CP 129-135.

On or about June 19, 2012, the 20% interest of Longwell Arbors in Arbors at Sunset was sold by the King County Sheriff pursuant to a Sheriff's Notice of Levy and Notice of Sale. CP 137-146. Accordingly, as of June 19, 2012, any interest of Longwell Arbors in Arbors at Sunset was extinguished. CP 242.

At no time during the CPI Litigation did Longwell assert any of the claims that are part of this litigation. Indeed, the existence of the facts giving rise to the claims asserted in this lawsuit were unknown to plaintiffs at the time the CPI Litigation was resolved. CP 242.

The "Financial Accounting Claims" and/or "Financial Damage Claims" referenced in the CR 2A Stipulation negotiated by the parties in the CPI Litigation were expressly limited to a subset of the claims that had been asserted by CPI in that lawsuit. By its terms, all other claims were expressly excluded from arbitration. CP 242.

**C. In 2013, Longwell Commenced Litigation Against CPI Asserting New and Different Damage Claims.**

The claims asserted by plaintiffs in the current lawsuit (the “Longwell Litigation”) arise out of CPI’s failure to abide by its continuing obligations as the managing member of Arbors at Sunset. They are unrelated to the “Financial Accounting Claims” or the “Financial Damage Claims” previously asserted by CPI in the CPI Litigation, and they are outside the limited scope of the issues the parties agreed to arbitrate in the August 3, 2011 CR 2A Stipulation. The issues in the Longwell Litigation include, without limitation:

- a. Breach of CPI’s fiduciary duty to non-managing members, as set forth in the Operating Agreement and otherwise;
- b. Breach of CPI’s duty to provide timely and accurate reports to non-managing members, as set forth in the Operating Agreement;
- c. Inaccurate, conflicting and potentially actionable financial records and/or tax returns; and
- d. Excessive and/or improper expenses charged to the books of Arbors at Sunset, resulting in allegedly reduced profits (or allegedly increased losses), thereby artificially reducing or eliminating distributions to non-managing members. CP 242-243.

None of the foregoing claims asserted in the Longwell Litigation was – or could have been – asserted in the CPI Litigation nor would they have been part of the discussion when the CR 2A Stipulation was negotiated and signed. In part, this is because those claims were not known at the time; in part, this is because the only damage claims in the CPI Litigation (which prompted the limited CR 2A Stipulation) were those claims asserted by CPI.

The claims asserted in the Longwell Litigation were not contemplated by the parties to the CPI Litigation when that action was commenced, nor were they contemplated when the limited CR 2A Stipulation arising out of that lawsuit was negotiated and signed. The Operating Agreement does not contain any arbitration clause. The August 3, 2011 CR 2A Stipulation was limited to the specific issues that were in dispute at the time it was signed, and it was limited to the Financial Accounting Claims and/or Financial Damage Claims asserted by CPI in the CPI Litigation. CP 119-123.

**D. Longwell Successfully Resisted CPI's Motion to Compel Arbitration.**

CPI's initial response to the Complaint in the Longwell Litigation was a motion to compel arbitration. That motion was opposed by Longwell, which asserted that the issues raised in the Longwell Litigation were not part of any arbitration agreement between the parties arising out of the CPI Litigation.

CP 243.

On October 25, 2013, Judge Jay V. White entered his Order denying CPI's motion to compel arbitration. CP 383-385. The Judge made a specific and separate finding, which he hand-wrote on the face of the Order.

The CR 2A agreement in Cause # 10-2-10156-0 KNT did not refer "all" Financial Accounting Claims to arbitration; it only referred to "the" Financial Accounting Claims between the parties to that lawsuit. It, on its face, does not cover the plaintiff's claims in this lawsuit. Accordingly, Defendant's motion to compel is denied for this and other reasons set forth in Plaintiffs' pleadings.

CP 384.

CPI appealed Judge White's ruling. CP 386-390

#### **IV. ARGUMENT AND AUTHORITY**

##### **A. Standard of Review.**

Longwell agrees that the standard of review of the trial court's determination of arbitrability is de novo. *Davis v. General Dynamics Land Systems*, 152 Wn.App. 715, 718, 217 P.3d 1191 (Div. II, 2009). However, a de novo analysis does not lead to a different conclusion than that reached by the trial court.

As discussed in more detail below, the court's initial analysis must relate to the arbitration agreement. If the agreement does not encompass the

item in dispute, arbitration cannot be compelled.

We review questions of arbitrability de novo and determine the arbitrability of the dispute by examining the arbitration agreement between the parties. (Citations omitted).

*Davis*, at 718. Similarly, in *Woodall v. Avalon Care Center*, 153 Wn.App. 919, 231 P.3d 1252 (Div. I, 2010), this Court said:

Whether a person is bound by an agreement to arbitrate is a legal question that is to be determined by the courts. “While a strong public policy favoring arbitration is recognized under both federal and Washington law, ‘arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit.’”

153 Wn.App. at 923.

The fact that this Court’s review of Judge White’s ruling is de novo does not lead to a different result, even when the public policy favoring arbitration is added to the mix. As is set forth in more detail below, the initial determining factor is the scope of the agreement to arbitrate. The trial court’s contract analysis, coupled with its determination pursuant to authority granted by RCW 7.04A.060(2), leads to only one inescapable conclusion: the parties never agreed to arbitrate any of the claims in this litigation and they cannot be compelled to do so.

**B. CPI’s Argument Ignores the Contract Analysis and the Initial Determination the Court is Statutorily Required to Make Regarding Arbitration.**

Longwell acknowledges that the Washington Uniform Arbitration Act, chapter 7.04A RCW (the “Act”), governs agreements to arbitrate. (Cite) Further, Longwell agrees that the Court shall order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate. RCW 7.04A.070(1).

However, CPI’s argument conveniently overlooks the provisions of RCW 7.04A.060(2) and applicable case law which requires the court to first perform a contract analysis. The statute requires the trial court to determine whether an arbitration agreement exists or whether a controversy is subject to an agreement to arbitrate. “The court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.” RCW 7.04A.060(2). Accordingly the court – not an arbitrator – is obliged to make the initial determination of whether an arbitration agreement exists and, if so, whether the parties have agreed that a specific issue was included in the arbitration agreement.

The answer to the question of whether the parties have agreed to arbitrate a claim turns on a contract analysis.

Arbitration is a statutorily recognized special proceeding. The rights of the parties are controlled by the statute. (Citation omitted) Arbitration traces its existence and jurisdiction first to the parties' contract and then to the arbitration statute itself. *Thorgaard Plumbing & Heating Co. v. King County*, 71 Wn.2d 126, 132, 426 P.2d 828 (1967).

*Price v. Farmers Insurance Company of Washington*, 133 Wn.2d 490, 496, 946 P.2d 388 (1997). See, also, the labor law case of *Meat Cutters v. Rosauer's Super Markets*, 29 Wn.App. 150, 627 P.2d 1330 (Div. III, 1981), wherein Court noted:

The obligation to submit an issue is wholly contractual and arbitrability of a dispute depends upon the terms of the agreement. "A party cannot be required to submit to arbitration any dispute which he has not agreed to submit." *Atkinson v. Sinclair Refining Co.*, 370 U.S. 238, 82 S.Ct. 1318, 1320-21, 8 L.Ed.2d 462 (1961).

29 Wn.App. at 153-54. Here, the contract did not include the claims asserted by Longwell.

In *ML Park Place v. Hedreen*, 71 Wn.App. 727, 738-39, 862 P.2d 602 (Div. I, 1993), the court considered the effect of an arbitration clause in the governing document (*i.e.*, the Joint Venture Agreement). Citing *W.A. Botting Plumbing & Heating Co. v. Constructors-Pamco*, 47 Wn.App. 681, 736 P.2d 1100 (Div. I, 1987), the *Hedreen* court articulated the guiding concepts for

contractual arbitration:

(1) *the duty to submit a matter to arbitration arises from the contract itself*; (2) the question of whether parties have agreed to arbitrate a dispute is a judicial one unless the parties clearly provide otherwise; (3) a court should not determine the underlying merits of a dispute in determining the arbitrability of an issue; and (4) arbitration of disputes is favored by the courts. (Citation omitted) (Emphasis supplied).

47 Wn.App. at 738. The *Hedreen* court then noted:

Here, it is undisputed that the arbitration clause of the Joint Venture Agreement contains *no exclusions of any sort*; in fact it is broad and inclusive, requiring arbitration of “[a]ny disputes...which may arise between or among the joint venturers in connection with this joint venture and/or to rights of any joint venturers...” *Absent an express provision excluding a particular type of dispute*, “only the most forceful evidence of a purpose to exclude a claim from arbitration can prevail.” (Citation omitted) (Emphasis supplied).

47 Wn.App. at 739. Here, the putative arbitration clause found in the CR 2A Stipulation is very narrowly circumscribed, and it expressly states that all other claims are excluded from arbitration.

The more recent case of *Kamaya v. American Property Consultants, Ltd.*, 91 Wn.App. 703, 715, 959 P.2d 1140 (Div. I, 1998) is also instructive. In that case, again unlike the situation at bar, a broad form of arbitration clause was included in the governing document, which was a partnership

agreement. The court essentially reiterated the *W.A. Botting* criteria and went on to note:

The U.S. Supreme Court has held that because arbitration “is a matter of consent, not coercion, and parties are generally free to structure their arbitration agreements as they see fit[,] [parties] may specify by contract the rules under which arbitration will be conducted. (Citation omitted).

91 Wn.App. at 715. The parties are “generally free” to determine the issues that they want to send to arbitration. They did so in the CPI Litigation, and excluded all others.

In this case, the Operating Agreement between the parties did not provide a broad form of arbitration clause. Indeed, it did not include any arbitration clause. It was not until years later, after CPI commenced a lawsuit alleging violations of the Operating Agreement and seeking damages, that the parties ultimately agreed to arbitrate certain defined, limited financial claims and to exclude all others. That agreement, negotiated in the context of the CPI Litigation, cannot be used to require arbitration of the issues presented in the Longwell Litigation.

**C. The Arbitration Provision in the CR 2A Stipulation Negotiated in the CPI Litigation Cannot be Fairly Said to Cover Longwell’s Claims in this Lawsuit.**

The court must undertake a contract analysis before it looks to the arbitration statute:

Arbitration traces its existence and jurisdiction first to the parties' contract and then to the arbitration statute itself. (citation omitted) Parties are free to decide if they want to arbitrate. (citation omitted) The parties may also decide the issues to be submitted to arbitration.

*Rimov v. Schultz*, 162 Wn.App. 274, 280, 253 P.3d 462 (Div. I, 2011).

Without exception, every case cited in CPI's Brief involves an arbitration clause in the contract giving rise to the dispute. And, the scope of that clause was broad. For example, in *Verbeek Properties v. Greenco Environmental*, 159 Wn.App. 82, 246 P.3d 205 (Div. I, 2010), the arbitration clause in the parties' contract read:

The parties agree that any claim or dispute arising out of this Agreement shall be submitted to, and be subject to, binding arbitration for resolution.

159 Wn.App. at 85. Likewise, in *W.A. Botting v. Constructors-Pamco*, 47 Wn.App. 681, 736 P.2d 1100 (Div. I, 1987), the arbitration clause read:

Any controversy or claim affecting only CONTRACTOR and SUBCONTRACTOR and arising out of or relating to this CONTRACT, or the breach thereof, shall be settled in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, and judgment upon the award may be entered in any court having jurisdiction thereof.

47 Wn.App. at 682.

In every case cited by CPI, a broad form arbitration clause was imbedded in the contract itself.<sup>1</sup> One of the issues for the courts to determine in virtually all of the cases cited by CPI was whether the broad form arbitration clause covered the matter at hand.

Here, the Operating Agreement that underpins Longwell's claims does not contain an arbitration clause. CP 11-117. The CPI Litigation was commenced in June 2010; more than fourteen months later, certain carefully delineated claims were sent to mediation and arbitration by virtue of a separately negotiated CR 2A Stipulation, crafted by attorneys who fully understood the meaning and import of their words. That Agreement expressly identified the "Financial Accounting Claims" and/or "Financial Damages Claims" that were to be resolved in this fashion. Any and all others were to be excluded from arbitration. CP 119-123.

When the parties negotiated the terms of the CR 2A Stipulation in August 2011, the parties did not agree to resolve all claims arising out of the Operating Agreement by arbitration. Nor did they even agree to resolve all

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<sup>1</sup> See, for example, *Kamaya v. American Property Consultants, Ltd.*, 91 Wn.App. 703, 714 (the partnership agreement "contains a broad and inclusive internal dispute provision that ultimately requires arbitration of all unresolvable disputes and differences between the partners..."); *ML Park Place v. Hedreen*, 71 Wn.App 727, 739, 862 P.2d 602 (1993)("the arbitration clause of the Joint Venture Agreement contains no exclusions of any sort; in fact it is broad and inclusive").

financial claims by arbitration. Instead, they only agreed to resolve certain claims, raised in the CPI Litigation and expressly identified in the CR 2A Agreement.

In *Satomi Owners Association v. Satomi*, 167 Wn.2d 781, 225 P.2d 213 (2009), the Washington Supreme Court opined:

While a strong public policy favoring arbitration is recognized under both federal and Washington law (citations omitted), “arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit.” (citations omitted) *Davidson v. Hensen*, 135 Wn.2d 112, 118, 954 P.2d 1327 (1998) “Washington law generally favors the uses of alternative dispute resolution such as arbitration *where the parties agree by contract to submit their disputes to an arbitrator.*” (emphasis in original).

167 Wn. 2d at 810. This same concept was articulated in *Weiss v. Lonquist*, 153 Wn.App. 502, 224 P.3d 787 (Div. I, 2009):

Regardless of whether the Federal Arbitration Act (FAA) 9 U.S.C. §§1-16, or the Washington Uniform Arbitration Act (UAA), chapter 7.04A RCW applies, our analysis as to whether Weiss’s claims are subject to arbitration begins in the same manner. As arbitration is a matter of contract, parties cannot be compelled to arbitrate unless they agreed to do so.

153 Wn.App. at 510. *See, also, Fichtner v. Mutual of Enumclaw*, 100 Wn.App. 649, 652, 998 P.2d 332 (Div. I, 2000) (“A party is required to

arbitrate only those disputes it has agreed to arbitrate.”); *King County v. Boeing*, 18 Wn.App. 595, 603, 570 P.2d 713 (Div. I, 1977) (arbitration “should not be invoked to resolve disputes that the parties have not agreed to arbitrate.”)

**D. The Trial Court Acted Within its Statutory Authority and Mandate When it Determined that the Issues in the Current Lawsuit Were Not Subject to Arbitration.**

CPI argues that the trial court exceeded its authority when it denied CPI’s motion to compel arbitration exceeded its authority. In other words, CPI apparently believes the trial court has no role in determining whether the parties have a valid arbitration agreement or whether a given claim or controversy is within the arbitration agreement.

Such a position is not only counter to the express requirement of RCW 7.04A.060(2), it is contrary to well-established case law. The case of *Townsend v. Quadrant*, 153 Wn.App. 870, 878-79, 224 P.3d 818 (Div. I, 2009) is instructive. In that matter, four families who purchased homes built by Quadrant sued Quadrant and its parent corporations on a variety of theories, including an assertion that the arbitration clause was unconscionable and therefore unenforceable. The Purchase and Sale Agreement (“PSA”) in all four transactions contained a broad mandatory arbitration provision,

covering any controversy or claim arising out of or related to breach of the PSA or any claimed defect.

Quadrant filed a motion to compel arbitration under RCW 7.04A.280(1)(a). Among other things, Quadrant asserted that an arbitrator, not a court, should decide whether the PSA was invalid on grounds of unconscionability. Quadrant appealed the trial court's denial of the motion to compel.

On appeal, Quadrant made an argument akin to that of CPI in this case by claiming that the trial court acted *ultra vires* when it determined that the PSA was unenforceable. Here, CPI claims that the trial court was not authorized to render a decision on the existence or scope of any arbitration agreement between CPI and Longwell. In *Quadrant*, this Court rejected that argument:

As a threshold matter, the parties dispute whether chapter 7.04A RCW gives the courts or the arbitrator the authority to decide the challenges at issue in this case.

RCW 7.04A.060 provides circumscribed decision-making authority for both the courts and arbitrators:

(1) An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except on a ground that

exists in law or in equity for the revocation of contract.

(2) The court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.

(3) An arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled and whether a contract containing a valid arbitration agreement is enforceable.

153 Wn.App. at 878-79.

The ruling by Judge White was totally in keeping with the statutory authority (indeed, the mandate) that: “The court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.” RCW 7.04A.060(2). The trial court reviewed the August 3, 2011 CR 2A Stipulation and properly determined that this controversy is not subject to an agreement to arbitrate. That ruling should not be disturbed.

**E. Alleged Judicial Economy Cannot Trump the Fact that the Parties did Not Agree to Arbitrate the Claims in this Litigation.**

By itself, judicial economy is no reason to send this case to arbitration. The goal of easing court congestion will always favor arbitration. Again, however, CPI ignores the contract argument (*i.e.*, the parties must have agreed to arbitration). The trial court recognized that the parties did not agree to arbitrate the claims in the Longwell Litigation, and this Court’s de

novo review should produce the same result. No amount of “judicial economy” can be permitted to do violence to the parties’ agreement by compelling Longwell to arbitrate claims it did not agree to submit to arbitration.

CPI essentially argues that the arbitrator for the limited claims in the CPI Litigation will hit the ground running. Not true. The only thing Judge Lukens knows is the parties – from an unrelated case with different claims and issues from three years ago. As indicated above, the claims in this action are not the same as the claims raised in the CPI Litigation.

From the standpoint of judicial economy, there is no benefit to arbitration of the claims in this litigation except to the extent it takes a case off the court’s docket. By itself, that argument cannot be used to ignore the lack of an agreement to arbitrate. CPI’s argument is akin to saying that every dispute between the same two parties should be sent to the same judge – no matter how dissimilar the claims and no matter how remote in time – simply because the judge may be familiar with the parties from past matters. Longwell respectfully submits that is not judicial economy.

## **V. CONCLUSION**

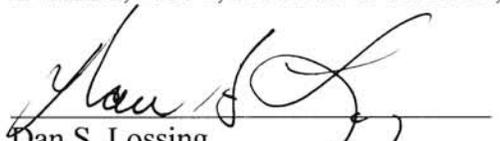
In connection with the resolution of a separate lawsuit filed in 2010,

the parties negotiated a contractual agreement to arbitrate certain specified and narrowly defined claims arising out of that lawsuit (*i.e.*, “**the** Financial Accounting Claims”). They chose not to arbitrate “**all** Financial Accounting Claims,” a fact which is bolstered by the provision that the agreement expressly excluded all other claims from arbitration. The August 3, 2011 CR 2A Stipulation cannot and should not be extended to the current claims. The trial court properly interpreted the prior arbitration agreement and exercised its powers under RCW 7.04A.60(2) to determine that the parties did not agree to arbitrate the disputes in this lawsuit.

For the foregoing reasons, and based upon the above-referenced authority, Longwell respectfully submits that the trial court’s decision to deny CPI’s motion to compel arbitration must be affirmed.

RESPECTFULLY SUBMITTED this 28<sup>th</sup> day of March, 2007.

INSLEE, BEST, DOEZIE & RYDER, P.S.

  
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Dan S. Lossing  
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Bellevue, Washington 98004  
Attorneys for Respondents, Longwell  
Arbors, LLC, Longwell Company and  
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CERTIFICATE OF SERVICE

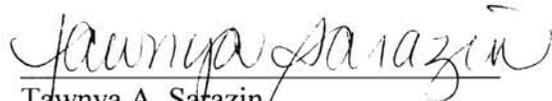
The undersigned certifies that, on this date she caused to be served in this matter a true and correct copy of the BRIEF OF RESPONDENTS on the following and in the manner noted:

John Ahlers	<input type="checkbox"/>	Via Facsimile
<u>jahlers@ac-lawyers.com</u>	<input checked="" type="checkbox"/>	Via U.S. Mail
Ahlers & Cressman, PLLC	<input checked="" type="checkbox"/>	Via Email
999 Third Avenue, Suite 3800	<input type="checkbox"/>	Via Legal Messenger
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Attorney for Appellant		

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Attorney for Appellant		

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

Signed March 28, 2014 at Bellevue, Washington.

  
Tawnya A. Sarazin