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## I. ARGUMENT

### A. Venue is Improper in Grays Harbor County.

Venue depends upon location: the location of the parties and the location where the allegedly tortious activity occurred. *See generally* RCW 4.23.020, .025. There are situations where venue lies in more than one county, but this is not one of those cases.

McGee is a corporation that operates a licensed boarding home. Its sole location is in Pierce County. McGee does not advertise its services in any manner in any county of the State of Washington and does not solicit residents. With respect to Mr. Richard Chambers, McGee did not solicit his residency and had no involvement whatsoever in his physical transfer from Grays Harbor County to Pierce County. McGee did not enter into any contracts with an entity in Grays Harbor County, did not make or accept payments with Grays Harbor County and no one from McGee ever set foot in that county. Simply put, McGee has no connection with Grays Harbor County whatsoever. The only proper venue for this suit is Pierce County.

**1. Each and Every Cause of Action Asserted by Plaintiff Against McGee's Guest Home Arose in Pierce County.**

Mr. Chambers alleges that the trial court did not err when it denied McGee's renewed motion to change venue because part of McGee's alleged negligence occurred in Grays Harbor County. Specifically, Mr. Chambers contends:

McGee's failure to properly assess Richard's condition prior to admitting him to its facility, negligent action in admitting him at all given his condition and the lack of adequate staff and resources to properly care for him, and negligent pre-admission planning that failed to include any plan to address the known risk of Richard unsafely leaving the facility.

*Brief of Respondent*, p. 11. Inexplicably, Mr. Chambers alleges that the "provision and gathering and solicitation of the information that lead to the negligent assessment of Richard Chambers" and the alleged negligence described above, occurred in Grays Harbor County. *Brief of Respondent*, p. 13. As the record before this court proves, Mr. Chambers could not be more wrong.

In an attempt to bolster his position on appeal, Mr. Chambers makes numerous false assertions regarding McGee's presence in Grays Harbor County and its interaction with Richard Chambers prior to his arrival at its facility in Pierce County. Contrary to Mr. Chambers

assertions, McGee does not advertise its' services anywhere, including Grays Harbor County, nor does it solicit residents. CP 44. McGee did not solicit Richard Chambers and was not involved in his transfer from his prior facility in Grays Harbor County to McGee. CP 44, 47-49, 69, 72-73.<sup>1, 2</sup> No one from McGee ever set foot in Grays Harbor County.

All the information McGee received regarding Richard Chambers, it received in Pierce County. McGee evaluated that information at its facility in Pierce County. When McGee decided to admit Richard Chambers, it made that decision at its facility in Pierce County. To the extent any of McGee's actions in this regard were negligent, and McGee denies it was negligent, all such actions occurred in Pierce County. It is completely absurd to suggest that such activities occurred in Grays Harbor County. The record is devoid of any evidence that McGee engaged in any meaningful contacts outside its location in Pierce County with respect to its assessment, admission or planning for the admission of Richard

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<sup>1</sup> Numerous times in his brief, Mr. Chambers alleges that Richard Chambers was "taken against his will," before he was admitted at McGee's. Nothing could be further from the truth. Richard Chambers was evicted from his prior living facility for his predatory sexual behaviors towards female residents. *See* CP 47-48, 69-70.

<sup>2</sup> Mr. Chambers also argues that McGee's alleged negligent assessment, admission and pre-admission planning necessarily occurred in part in Grays Harbor County because in response to a motion for summary judgment, McGee argued that DSHS and Westhaven may have negligently sent inaccurate information regarding Richard Chambers. Mr. Chambers' contentions in this regard are red herrings. Venue depends solely upon the claims asserted and the characteristics of the named parties. Actions of non-parties cannot influence or control venue. *See* RCW 4.12.020, .025. The actions of DSHS and Westhaven are irrelevant to this court's analysis.

Chambers. No part of Mr. Chambers' negligence claims arose in Grays Harbor County, rendering venue in that county improper.

**2. McGee's Contact with Grays Harbor County was Inconsequential.**

Plainly, it is Mr. Chambers' contention that a corporation should be subject to suit in any county where it had a business contact, regardless of the nature or quality of that contact. Taking Mr. Chambers' position to its logical conclusion any contact by a corporation with another county, no matter how inconsequential, would be sufficient to establish venue in that county. Mr. Chambers' position is specious and contravenes Washington law.

Mr. Chambers' misinterprets and misapplies the law set forth in *State ex. Rel. Anacortes Veneer, Inc. v. O'Phelan*, 23 Wn.2d 142, 160 P.2d 515 (1945). The test set forth in that case is not whether a corporation had contact with a county other than its county of residence. Rather, as was addressed in McGee's opening brief, a plaintiff may sue a corporation outside its county of residence only if that corporation transacted business in the county at issue and those transactions were a *substantial* part of its usual and ordinary business and the plaintiff's claims arise from those transactions.<sup>3</sup> *See generally Trans-Northwest Gas,*

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<sup>3</sup> This of course assumes that the corporation, like McGee, would not agree to be sued in a non-residential county.

40 Wn.2d at 37 citing *State ex rel. Anacortes Veneer, Inc. v. O'Phelan*, 23 Wn.2d 142, 154, 160 P.2d 515 (1945) (emphasis added). Proof that a corporation engaged in substantial business transactions does not create an alternative “residence” as suggested by plaintiff. Rather, it simply creates another location where a defendant may properly be sued. See RCW 4.12.025(3).

McGee relies upon *Trans-Northwest Gas* and *Anacortes Veneer*, because those decisions demonstrate the type and quality of business transactions that must exist in another county for venue to be proper outside the corporation’s county of residence. The “transactions” at issue in those cases were large transactions that involved activity in the county where the plaintiffs filed suit. Moreover, the transactions of the defendant corporations in the non-resident counties were continuing and critical to its ongoing business when each cause of action arose. For example, in *Trans-Northwest Gas*, the defendant corporation Northwest “surveyed routes and made market and field studies in Spokane County” which were alleged to be important to Northwest and vital to the construction and success of its enterprise. *Trans-Northwest Gas*, 40 Wn.2d at 37. The surveys and market studies were ongoing in Spokane County when TNG’s cause of action against Northwest arose. *Id.*

In *Anacortes Veneer*, the defendant corporation entered into an oral

contract in Pacific County to purchase logs. *Anacortes Veneer*, 23 Wn.2d at 145. Anacortes Veneer paid half the contract price and received logs in Anacortes, Washington that were cut and sent from Pacific County over a period of several months before suit was filed for breach of the aforementioned contract. *Id.*

The limited contact Mr. Chambers claims supports venue in Grays Harbor County differs significantly from the transactions at issue in *Trans-Northwest Gas* and *Anacortes Veneer*. Unlike the defendants in the *Trans-Northwest Gas* and *Anacortes Veneer*, there is no evidence McGee had ongoing transactions in Grays Harbor County when Mr. Chambers' claims arose. At best, McGee had a single incidental contact with Grays Harbor County regarding Mr. Chambers. McGee called Richard Chambers' prior facility simply to confirm the unsolicited information it received from DSHS. McGee did not engage in ongoing business transactions, enter into any contracts, make or accept payments or participate in any other activities in Grays Harbor. McGee never advertised in Grays Harbor County and no one from McGee ever set foot inside that county on behalf of the corporation. Incidental contact, like the contact at issue here, is insufficient under Washington law to create an alternative venue for this lawsuit in Grays Harbor County.

In another effort to persuade this court that venue is proper in Grays Harbor County, Mr. Chambers urges this court to rely upon case law addressing long-arm jurisdiction. He claims it is analogous to the venue issue presented herein. Mr. Chambers failed to provide any authority to support his contention in this regard and his arguments and assertions comparing law analyzing long-arm jurisdiction to venue must be disregarded.

“Venue and jurisdiction are distinct concepts.” *Dougherty v. Dept. of Labor & Indust.*, 150 Wn.2d 310, 315, 76 P.3d 1183 (2003). Jurisdiction refers to the “power and authority” of a court and it is not procedural in nature. *Id. internal citations omitted*. “A court may acquire jurisdiction even though it is not the court of proper venue.” *Id. citing Indus. Addition Ass’n v. Comm’r of Internal Revenue*, 323 U.S. 310, 315, 65 S.Ct. 289, 89 L.Ed. 260 (1945). Venue on the other hand, depends upon location and had to “do with the place of a proceeding.” *Id.* at 316 *internal citations omitted*. “While location determines venue, the ‘location of a transaction or a controversy usually does not determine subject matter jurisdiction.’” *Id. citing* 20 Am.Jur.2D *Courts* § 70, at 384 (1997). Due to these differences between jurisdiction and venue, it would be improper to analyze one using case law interpreting the other.

**B. The Trial Court Abused its Discretion When it Denied McGee's Motion to Change Venue.**

Mr. Chambers incorrectly claims that the trial court did not err when it denied McGee's motion to change venue because the "long-standing preferences under Washington law for honoring the plaintiff's choice of venue." When a defendant is sued in a county other than the county of its residence, as a matter of right, the defendant is entitled to change venue to the county where it resides. *Andrews v. Cusin*, 65 Wn.2d 205, 396 P.2d 155 (1964); *State v. Superior Court of King County*, 156 Wn. 302, 286 P. 851 (1930); *Leopold v. Livermore*, 115 Wn. 481, 197 P. 778 (1921).

As such, the trial court has absolutely no discretion when deciding a motion to change venue unless and until the opposing party proves that venue is proper in more than one county. McGee set forth in its briefing the legal standard used to determine whether a corporation can be sued in a county other than its county of residence. Plaintiff did not establish at the trial court level, and has not established here, that Grays Harbor County is an appropriate venue under RCW 4.12.025(3). Because there is no evidence Grays Harbor County is an appropriate alternative venue, under Washington law, the trial court has no discretion on the issue of venue. As a matter of right McGee is entitled to change venue to Pierce

County. The trial court abused its discretion when it denied McGee's motion to change venue.

## II. CONCLUSION

Venue is a basic legal principle that dictates the proper location for a legal proceeding. There may be more than one proper venue for a matter; however, as a matter of right, the defendant is entitled to move an action into the county of its residence. *Andrews v. Cusin*, 65 Wn.2d 205, 396 P.2d 155 (1964); *State v. Superior Court of King County*, 156 Wn. 302, 286 P. 851 (1930); *Leopold v. Livermore*, 115 Wn. 481, 197 P. 778 (1921).

Mr. Chambers incorrectly argues that a single contact, such as a single telephone call McGee made to Grays Harbor County to confirm information regarding the decedent, is sufficient contact to enable a plaintiff to sue a corporation in a county other than its county of residence. According to Mr. Chambers, the quality or nature of the contact is irrelevant to the court's analysis; the only requirement is that contact is made. Mr. Chambers advocates a position that is contrary to Washington law and taken to its logical conclusion, his position creates absurd results.

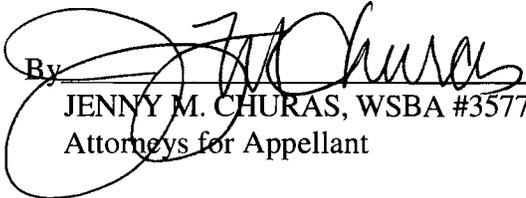
RCW 4.12.025(3) specifically states where a corporation may be sued. Read in its entirety, the statute clearly intends that a corporation be sued only in locations where it knowingly and purposefully engages in

commerce. This is supported by the holdings in *Trans-Northwest Gas* and *Anacortes Veneer*. Those cases specifically held that a corporation can be sued outside its county of residence only when it engages in transactions in another county that constitute a substantial part of its usual and ordinary business.

Here, the trial court erred when it denied McGee's motion to transfer venue to the county of its residence. The record before this court demonstrates that there is no evidence to establish that McGee engaged in any activity in Grays Harbor County that constituted a transaction, much less a transaction that was a substantial part of its usual and ordinary business. The trial court's ruling is contrary to Washington law and as such, constitutes obvious error and the trial court abused its discretion when it denied McGee's motion to change venue. Reversal of the trial court's ruling is proper.

RESPECTFULLY SUBMITTED this 2<sup>nd</sup> day of March, 2011.

JOHNSON ANDREWS & SKINNER, P.S.

By  \_\_\_\_\_  
JENNY M. CHURAS, WSBA #35772  
Attorneys for Appellant

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DECLARATION OF SERVICE

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I, JANE JOHNSON, hereby declare as follows:

STATE OF WASHINGTON  
BY Jane Johnson  
DEPUTY

1. That I am a citizen of the United States and of the State of Washington, living and residing in King County, in said State, I am over the age of eighteen years, not a party to the above-entitled action, and competent to be a witness therein.

2. On the 2<sup>nd</sup> day of March, 2011, I caused a copy of the attached REPLY BRIEF OF APPELLANT to be served upon the following in the manner noted:

**Attorneys for plaintiff:**

Jeffrey A. Damasiewicz  
Phillips Krause & Brown  
101 E. Market St., Ste. 525  
Aberdeen, WA 98520  
Fax: 360-533-2760

*Via Fax and Federal Express Overnight Mail*

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

DATED this 2<sup>ND</sup> day of March, 2011 at Seattle, Washington.

Jane Johnson  
JANE JOHNSON