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No. 55867-6

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

THE STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS, in its own  
capacity, and as assignee of claims of University Mechanical Contractors, Inc.,  
Bergelectric Corporation, and Pacific Construction Systems, Inc.

Appellant,

v.

FLUOR DANIEL, INC., a foreign corporation, and FIREMAN'S FUND INSURANCE  
COMPANY, a foreign corporation,

Respondents.

**RESPONSE BRIEF OF RESPONDENTS FLUOR DANIEL, INC.  
AND FIREMAN FUND'S INSURANCE CO.**

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## I. INTRODUCTION

The Honorable William L. Downing's February 8, 2005 Order Granting Fluor Daniel, Inc.'s (Fluor) Motion for Confirmation of Arbitration Award and Entry of Judgment, including prejudgment interest from January 18, 2005 through February 18, 2005, should be affirmed by the Court. Appellant Washington State Department of Corrections' (DOC) arguments on appeal against the award of prejudgment interest for the limited period of time between entry of Arbitrator Jerry Hainline's Arbitration Award on January 18, 2005 and confirmation of the Arbitration Award by the King County Superior Court on February 8, 2005 are the same misguided legal arguments that were properly rejected by the Trial Court. DOC's arguments fail because: (1) under settled Washington law when an amount owed becomes liquidated, prejudgment interest is recoverable; and (2) the Trial Court's decision to award interest for the period of time between entry of the Arbitration Award on January 18, 2005<sup>1</sup> and confirmation of the Arbitration Award under RCW 7.04, et seq. was within the Trial Court's authority under Washington law.

When existing Washington law is applied to the undisputed facts, as set forth in the record on appeal and as presented to the Trial Court, the only reasonable conclusion is that the Trial Court properly awarded

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<sup>1</sup> The date the sum owed to Fluor by DOC became liquidated.

prejudgment interest from the date of the Arbitration Award to entry of judgment in favor of Fluor on February 8, 2005. For this reason, the Honorable William L. Downing's Order must be affirmed and DOC's Appeal denied.

## **II. STATEMENT OF ISSUE**

Was the Honorable William L. Downing's Order granting Fluor's Motion for Confirmation of Arbitration Award and Entry of Judgment in favor of Fluor, including prejudgment interest from the date the Arbitration Award was entered to entry of the Judgment in Superior Court proper where the sum owed by DOC to Fluor became liquidated upon entry of the Arbitration Award, where DOC and Fluor had expressly agreed the Arbitration Award would be final and binding and where DOC and Fluor had waived any and all rights to appeal or contest the Arbitration Award?

## **III. STATEMENT OF FACTS**

The facts relevant to the limited issue raised by DOC's appeal are simple and straightforward. Fluor was the general contractor hired by DOC to perform work on the Stafford Creek Corrections Center Project.<sup>2</sup> DOC was the Owner of the Project. Following completion of the construction project, DOC commenced litigation against Fluor in King

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<sup>2</sup> CP 3.

County Superior Court.<sup>3</sup> After a bench trial regarding the interpretation of certain clauses of the parties' contract, a jury trial was scheduled for September 27, 2004.<sup>4</sup> Shortly before commencement of the scheduled trial, Fluor and DOC reached agreement on a Partial Settlement And Alternative Dispute Resolution Agreement (Agreement).<sup>5</sup> The Agreement provided in relevant part as follows:

Fluor and DOC will stipulate to a stay of the present court proceeding and to submit all remaining disputes to expedited binding Arbitration as more specifically set forth below. The stay will remain in effect until conclusion of the Arbitration and Award of the Arbitrator in which event either party may enter the Award in Court in accordance with the statutory procedure for enforcement of Arbitration Awards, subject to the limitations herein on enforcement of the Award, or until either party moves to lift the stay to enforce the terms of this Agreement or seek other appropriate relief if the party is in breach of this Agreement.<sup>6</sup>

In addition, the parties agreed to waive any and all rights to appeal the Arbitration award. Specifically, the last sentence of paragraph 8 of the Agreement provides:

Fluor and DOC each waive any and all rights to appeal the Arbitration Award.<sup>7</sup>

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<sup>3</sup> CP 3.

<sup>4</sup> CP 3.

<sup>5</sup> CP 3-11.

<sup>6</sup> CP 3, ¶1.

<sup>7</sup> CP 4, ¶8.

The arbitrator agreed upon by DOC and Fluor was Jerry Hainline.<sup>8</sup> Mr. Hainline conducted the arbitration hearing from December 8, 2004 through December 14, 2004. Following the conclusion of the hearing, and in accordance with the terms of the Agreement, Mr. Hainline issued an Award on January 18, 2005. The Award was in favor of Fluor and provided that Fluor was entitled to payment of \$5,997,645, including a total of \$392,668 of sales tax.<sup>9</sup> Because DOC and Fluor expressly agreed to waive any and all rights to appeal upon entry of the Arbitration Award, the amount owed to Fluor by DOC became a liquidated sum entitling Fluor to prejudgment interest at the statutory rate of 12% per annum.

On January 21, 2005, Fluor moved the Trial Court for an Order Confirming Arbitration Award and Entry Of Judgment Against DOC.<sup>10</sup> As part of the Entry of Judgment requested by Fluor, Fluor included prejudgment interest from the date of the Arbitration Award (January 18, 2005) to the anticipated date for entry of the Judgment (February 8, 2005). The total prejudgment interest amount requested by Fluor was \$43,380.22.<sup>11</sup>

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<sup>8</sup> CP 8, ¶1.

<sup>9</sup> CP 12.

<sup>10</sup> CP 13-17.

<sup>11</sup> CP 16.

DOC opposed Fluor's requested relief.<sup>12</sup> The Honorable William L. Downing rejected DOC's opposition and on February 8, 2005 granted Fluor's Motion for Confirmation of Arbitration Award and Entry of Judgment. The Judgment entered by the Trial Court included prejudgment interest at 12% per annum from January 18, 2005 through February 8, 2005 in the total amount of \$43,380.22.<sup>13</sup>

#### IV. ARGUMENT

DOC's opening brief is based upon two mistaken beliefs. First, DOC incorrectly claims the Trial Court had no authority to award prejudgment interest from the date of the arbitration award to entry of the Judgment confirming the Arbitration Award. Second, DOC incorrectly claims that by including prejudgment interest, the Trial Court modified the Arbitration Award in violation of RCW 7.04.170. Both of DOC's claims are without merit.

##### A. **WASHINGTON LAW ALLOWS FOR THE AWARD OF PREJUDGMENT INTEREST FOR THE TIME BETWEEN ENTRY OF THE ARBITRATION AWARD AND ENTRY OF JUDGMENT CONFIRMING THE ARBITRATION AWARD.**

In Weyerhaeuser Co. v. Commercial Union Ins. Co., 142 Wn.2d 654 (2000), the Washington State Supreme Court recognized that prejudgment interest is proper once an amount owed is liquidated. 142

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<sup>12</sup> CP 18-22.

<sup>13</sup> CP 35-39.

Wn.2d at 685-86. Here, once Arbitrator Hainline issued his Award on January 18, 2005, the amount owed to Fluor by DOC became liquidated. As of that date, the amount owed was certain and could not be altered or amended through any appeal to either the Trial Court or the Washington State Courts of Appeal because under the Agreement both DOC and Fluor expressly waived any and all rights to appeal the Arbitration Award.<sup>14</sup>

Without the ability to appeal or modify the Arbitration Award, the amount owed by DOC to Fluor as of January 18, 2005 was a fixed sum. In determining the principal amount to include in the Judgment in favor of Fluor the Trial Court did not have to rely upon any opinions or exercise any discretion. Instead, the Trial Court only had to insert the amount of the Arbitration Award as the Principal Judgment Amount owed to Fluor. Under Weyerhaeuser, the absence of discretion by the Trial Court in determining the Principal Judgment Amount to be entered in favor of Fluor means that the amount owed was liquidated. As a liquidated sum prejudgment interest was properly included by the Trial Court.

Any question about the authority of the Trail Court to include prejudgment interest when it confirmed the Arbitration Award is resolved by the decision of the court in Moses Lake v. International Ass'n of Firefighters, Local 2052, 68 Wn. App. 742 (1993). In Moses Lake one of

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<sup>14</sup> CP 4, ¶8.

the issues before the court was whether the trial court's refusal to grant pre-judgment interest in favor of the firefighters for the period of time between the date of the arbitration award in favor of the firefighters and entry of judgment was proper. In determining that the trial court's refusal to grant pre-judgment interest to the firefighters was improper, the Moses Lake Court stated:

Prejudgment interest is allowable when the amount claimed is liquidated, i.e., "where the evidence furnishes data which, if believed, makes it possible to compute the amount with exactness, without reliance on opinion or discretion." *Prier v. Refrigeration Eng'g Co.*, 74 Wn.2d 25, 32, 442 P.2d 621 (1968). See also *Hansen v. Rothaus*, 107 Wn.2d 468, 472, 730 P.2d 662 (1986). **The salary increase meets the definition of liquidated. As of May 31, 1991, the date of the award, the City was under a duty to raise the firefighters' salaries in the amount specified, subject only to review as provided in RCW 41.56.450.** Contrary to the City's argument, the signing of a collective bargaining agreement in accordance with that award is not a prerequisite to the legal obligation to abide by the award.

The judgment of the Superior Court is affirmed, except for that portion denying prejudgment interest. **Prejudgment interest is allowed from May 31, 1991.**

Moses Lake, 68 Wn. App. at 749 (emphasis added).

The Moses Lake Court specifically concluded that pre-judgment interest was proper for the time period between the date of an arbitration award and entry of judgment. The determination of the salary increase by the arbitration panel in Moses Lake involved an unliquidated claim. The

amount of the salary increase sought by the firefighters was not something that could be computed with exactness. Instead the amount of the increase in the firefighters' salary required the use of discretion by the arbitration panel, Moses Lake, 68 Wn. App. at 744-45. Nonetheless, the Moses Lake court determined that the firefighters were entitled to pre-judgment interest from the date of the arbitration panel's award. Pre-judgment interest was granted on the previously unliquidated claim because once the arbitration award was entered the amount became liquidated and the "City was under a duty to raise the firefighters' salaries in the amount specified. . . ." Id. at 749.

Similar to the arbitration award in Moses Lake, once Arbitrator Hainline's Award in favor of Fluor was issued on January 18, 2005 the amount owed became a liquidated sum because DOC was under a duty to pay the amount of the Award. By the terms of the parties Agreement the decision of Arbitrator Hainline could not be appealed as both parties had waived any and all appeal rights.<sup>15</sup> As such, under the holding of the court in Moses Lake, the Award should be treated as a liquidated sum and pre-judgment interest should run from the date of the Arbitration Award until entry of judgment.

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<sup>15</sup> CP 4.

DOC's efforts to distinguish Moses Lake are misguided. DOC incorrectly claims that Moses Lake does not address the interest issue presented in this case.<sup>16</sup> A complete review of Moses Lake undermines DOC's argument and establishes that prejudgment interest can and should be awarded by a Superior Court confirming an arbitration award.

DOC's contention that the case is inapplicable because the arbitration award in Moses Lake was subject to reviewed under RCW 41.56.430 instead of RCW 7.04, et seq. is a red herring. While the statutes are technically different, the ability of the Superior Court to modify the Arbitration Award was actually broader in Moses Lake than in the present case. As admitted by the DOC in its Opening Brief, under RCW 41.56.430, the Arbitration Award in Moses Lake was "subject to review by the Superior Court upon the application by either party solely upon the question of whether the decision of the panel was arbitrary or capricious." RCW 41.56.430. In comparison, under Paragraph 8 of the Agreement between Fluor and DOC, no review by the Superior Court was allowed as the parties had expressly waived any and all rights to appeal. As such, as of January 18, 2005, DOC was obligated to pay Fluor the entire amount of Arbitrator Hainline's Award.

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<sup>16</sup> See DOC's Opening Brief at p. 8.

At best, DOC's duty to pay the Award and/or seek review of the Award was the same as the City of Moses Lake's. In reality, DOC's obligation to pay was greater as DOC had waived its right to appeal the Award and have it set aside. In contrast, the City of Moses Lake had the right to request such relief by claiming that the award was arbitrary or capricious.

Having fewer rights for review than the City of Moses Lake, it is disingenuous for DOC to argue that Moses Lake does not apply to the facts of this case. Just like the firefighters in Moses Lake Fluor had an enforceable decision as of the day of Arbitrator Hainline's Award. Any withholding of payment by DOC from that date forward was wrongful and like the firefighters in Moses Lake, Fluor was entitled to prejudgment interest from the date of the award until entry of the Judgment.

**B. THE TRIAL COURT DID NOT MODIFY THE ARBITRATION AWARD BY INCLUDING PREJUDGMENT INTEREST.**

DOC's second argument on appeal is that by entering judgment in favor of Fluor and including prejudgment interest from January 18, 2005 until February 8, 2005, the Trial Court exceed its authority under RCW 7.04.170. DOC's argument and reliance on the statute is misplaced. In this case, neither DOC nor Fluor requested a modification of Arbitrator Hainline's award under RCW 7.04.150. Moreover, by entering judgment

in favor of Fluor the Trial Court did not modify the Arbitration Award. The Arbitration Award was only confirmed and entered by the Trial Court. All that the Trial Court did was recognize the fact that once the Arbitration Award was entered, the amount owed to Fluor became a liquidated sum upon which prejudgment interest commenced to run.

By recognizing this fact and including prejudgment interest in the Judgment entered in favor of Fluor, the Arbitration Award was in no way modified. The amount of the Arbitration Award was the amount of the principal judgment included by the Trial Court in the Judgment.<sup>17</sup> As RCW 7.04.170 only deals with the modification of an arbitration award, the absence of any modification to the Award by the Trial Court means that the statute provides no support to DOC's appeal.

Instead of modifying the Award the Trial Court's actions in including prejudgment interest were completely consistent with the holding of the court in Moses Lake. As argued by the DOC in its Opening Brief, the superior court in Moses Lake could only set aside the arbitration award upon a showing that it was arbitrary and capricious. The trial court

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<sup>17</sup> CP 37.

had no other authority to modify or change the award. As such, the statute at issue provided no basis for the superior court to award prejudgment interest from the date of the arbitration award. Despite the absence of a statute authorizing an award of prejudgment interest, the refusal of the superior court to grant the firefighters request for prejudgment interest was deemed improper.

Contrary to DOC's argument, the rationale given by the court in Moses Lake for awarding prejudgment interest was not that the arbitration panel's decision was binding and final under RCW 41.56.450. The stated rationale was not that the trial court's review was equivalent to an appellate review such that interest should be granted in accordance with RCW 4.56.110(4) and RCW 4.56.115 as suggest by DOC at page 11 of its Opening Brief. Instead, the stated rationale given by the Moses Lake court was that prejudgment interest should have been awarded by the superior court because the amount owed to the firefighters by the City had become a liquidated sum at the time the arbitration panel's award was issued. Specifically, the Moses Lake court stated:

The salary increase meets the definition of liquidated. **As of May 31, 1991, the date of the award, the City was under a duty to raise the firefighters' salaries in the amount specified, subject only to review as provided in RCW 41.56.450.** Contrary to the City's argument, the signing of a collective bargaining agreement in accordance with that

award is not a prerequisite to the legal obligation to abide by the award.

The judgment of the Superior Court is affirmed, except for that portion denying prejudgment interest.  
**Prejudgment interest is allowed from May 31, 1991.**

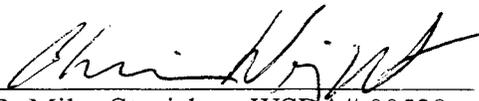
Moses Lake, 68 Wn. App. at 749 (emphasis added). The same rationale applies to this case and demonstrates that by including prejudgment interest in the Judgment requested by Fluor the Trial Court was not modifying the Arbitration Award or exceeding its authority under RCW 7.04.170.

V. CONCLUSION

For the foregoing reasons, DOC's appeal should be denied. The decision of the Court of Appeals in Moses Lake authorizes the award of prejudgment interest from the date of an arbitration award until entry of judgment by a superior court. Therefore, the Trial Court's decision awarding Fluor prejudgment interest from the date the arbitration award was entered should be affirmed.

RESPECTFULLY SUBMITTED this 24<sup>th</sup> day of June, 2005.

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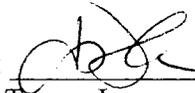
**CERTIFICATE OF SERVICE**

I hereby certify that on the 24<sup>th</sup> day of June, 2005, I served a true and correct copy of the within and foregoing document upon the attorneys named below in the manner noted:

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