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SUPREME COURT  
STATE OF WASHINGTON

2007 OCT 22 P 3: 20  
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80480-0  
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STATE OF WASHINGTON

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Supreme Court No. 80480-0  
Court of Appeals No. 56265-7-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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SATOMI OWNERS ASSOCIATION, a Washington Non-Profit  
Corporation,

Respondent

v.

SATOMI, LLC, a Washington Limited Liability Company,

Petitioner.

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ANSWER TO BRIEFS OF AMICUS CURIAE LESCHI CORP.,  
BLAKELY VILLAGE, LLC AND BIAW

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**I. ANSWER TO LESCHI CORP. AND BLAKELEY VILLAGE, LLC'S BRIEFS**

The briefs of Leschi Corp. and Blakeley Village, LLC raise no additional issues not already covered at length in the Association's Brief or in its Answer to the Brief of Amicus Curiae Master Builders Association. Thus, the Association will not repeat those arguments here.

**II. ANSWER TO BRIEF OF BUILDING INDUSTRY ASSOCIATION OF WASHINGTON**

The Association has detailed the relevant facts of the case subject to the petition in its Answer to Petition for Review. It therefore incorporates by references and relies upon those same facts for this Answer.

Under RAP 13.4(b), a petition for review will be accepted by the Supreme Court *only if* the Court of Appeals decision is in conflict with a decision of the Supreme Court or of another Court of Appeals decision, if it involves a significant question of law under the State or Federal Constitutions, or if it involves an issue of substantial public interest. BIAW's Brief does not directly address any of these prongs in support of review, but merely rehashes the breadth of the commerce clause and the policy favoring arbitration.

BIAW essentially argues that Court of Appeals' determination that the FAA does not apply is inconsistent with federal law based solely on the result – the determination that the FAA does not apply. This is absurd. As argued at length in Respondent's Brief, the Court of Appeals correctly applied the black letter terms of the FAA and determined that the

Limited Warranty was not a “contract evidencing a transaction involving interstate commerce.” BIAW’s argument amounts to a claim that every contract evidences a contract involving interstate commerce.

In its Brief, BIAW argues that the Court of Appeals ignored congressional intent and “the United States Supreme Court’s record on the FAA.” But BIAW does not cite any actual congressional history, nor does it indicate why it would be necessary to resort to legislative history when the language of the FAA is clear and unambiguous. Instead, BIAW makes the same mistake as Appellant the other amicus curiae, arguing that the Court of Appeals somehow ignored the doctrine of federal preemption. Again, the Court of Appeals affirmed that federal law preempts state law *where it applies*. Whether the FAA applies depends upon the specific application of the facts to the law. Thus, no issue of constitutional magnitude is implicated.

Nor does BIAW address any actual conflict between the Court of Appeals decision here and any other case in which this Court held that federal law has preempted state law. Instead, it merely regurgitates Appellant’s argument that the Court of Appeals reliance upon *Marina Cove*<sup>1</sup> was misplaced, arguing that *Marina Cove* is distinguishable because defective materials are alleged here and implies that interstate goods were *not* used in the construction of the Marina Cove Condominiums. This is simply not the case.

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<sup>1</sup> *Marina Cove Condominium Owners Ass’n v. Isabella Estates*, 109 Wn. App. 230 (2001).

As argued at the trial court level, *Marina Cove* held that the limited warranty did not evidence interstate commerce despite the fact that materials comprising the condominium traveled in interstate commerce because it properly focused upon the contract containing the arbitration clause:

[T]he Texas Court of Appeals held that a contract between an out-of-state property owner and a Texas contractor to perform repair work on an apartment complex located in Texas was not a transaction substantially affecting interstate commerce and therefore the FAA did not apply. Similarly here, the Marina Cove Condominiums were constructed, marketed and sold solely within the state of Washington. *The contract at issue is a limited warranty offered by a Washington corporation on condominium units located within the state, whose owners all reside in Washington.* The only connection to other states involves one buyer, who moved to Washington from another state, and another buyer, who transferred funds from an out-of-state bank account for use as a down payment on one unit purchased. That negligible contact with other states does not constitute a substantial effect on interstate commerce. The FAA does not apply.

*Marina Cove*, 109 Wn. App. at 243-44. There is no doubt that some materials used in the Marina Cove Condominium were also shipped in interstate commerce, but this connection is so tenuous, it wasn't even raised by the Marina Cove defendant.

BIAW also tries to make much of the fact that Plaintiff's Complaint alleges "defective materials." Read in context, however, it is clear these allegations are part of the warranties provided by defendant under the Washington Condominium Act, not some separate cause of action. Under the Condo Act, all declarants warrant that the condominium is free from defective materials, constructed in accordance with sound engineering and construction principles and in conformance with law.

BIAW's narrow focus on the Association's allegations to distinguish this case from *Marina Cove* is misplaced. This is not a products liability case between a purchaser and an out-of-state manufacturer, where the proper focus would be upon the interstate character of the goods comprising the condominium. As in *Marina Cove*, this is a case by a Washington condominium association against the Washington developer of a Washington condominium to enforce rights under a Washington statute. The transaction evidenced by the Warranty Addendum is several steps removed from these other transactions to subject this case to federal arbitration.

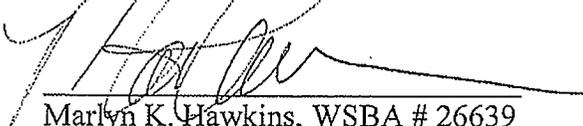
BIAW's attempt to distinguish this case from *Marina Cove* based upon the allegations raised must also fail because it is factually inaccurate. The *Marina Cove* Association *did* allege that materials used in the construction of Marina Cove were defective. Thus, the *Marina Cove* defendant's failure to raise the particular interstate commerce connection raised here may be because that defendant considered it too tenuous even to mention since it relates in no way to the relevant contract.

### III. CONCLUSION

BIAW's Brief does not raise any additional support for review in this case. Because the particular facts in a case involving the FAA is what determines the outcome, this case differs from other Supreme Court cases only in outcome, not in analysis. Thus, the petition should be denied.

Respectfully submitted this 22<sup>nd</sup> day of October, 2007.

BARKER • MARTIN, P.S.



Marlyn K. Hawkins, WSBA # 26639

Dean Martin, WSBA # 21970

Attorneys for Respondent Satomi

Owners Association

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SUPREME COURT  
STATE OF WASHINGTON

2001 OCT 22 P 3: 20

BY RONALD R. CARPENTER

Supreme Court No. 80480-0

Court of Appeals No. 56265-7-I

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SATOMI OWNERS ASSOCIATION, a Washington Non-Profit  
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Petitioner.

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CERTIFICATE OF SERVICE

---

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I, Katherine Smith, hereby certify and declare:

1. I am over the age of 18 years and am not a party to the within cause:

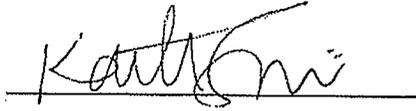
2. I am employed by the law firm of Barker Martin, P.S. My business and mailing address are 719 2<sup>nd</sup> Avenue, Suite 1200, Seattle, WA 98104-1749;

3. On the 22<sup>nd</sup> day of October, 2007, I caused to be served **Answer to Briefs of Amicus Curiae Leschi Corp., Blakeley Village, LLC and Biaw** upon the following in the manner described below:

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Julie Sunday Building Industry of Washington 111 – 21 <sup>st</sup> Avenue SW Olympia, WA 98507 <i>Via Facsimile and U.S. Mail</i>	

I declare under penalty of perjury, under the laws of the State of Washington, that the foregoing is true and correct to the best of my knowledge and belief.

Signed this 22<sup>nd</sup> day of October, 2007 in Seattle, Washington

A handwritten signature in cursive script, appearing to read "Katherine Smith", is written over a horizontal line.

Katherine Smith

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Attached please find Respondent's Answer to Briefs of Amicus Curiae Leschi Corp., Blakeley Village, LLC & BIAW and a Certificate of Service.

Case Name: **SATOMI OWNERS ASSOCIATION v. SATOMI, LLC**

Case No: Supreme Court No. 80480-0  
Court of Appeals No. 56265-7-I

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