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-No. 88293-2  
JAN 02 2013

SUPREME COURT  
OF THE STATE OF WASHINGTON

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

TIMOTHY WEIDERT, individually and L.W. WEIDERT FARMS, INC.  
a Washington corporation,

Respondents,

vs.

JERALD A. HANSON d/d/a WALLA WALLA INSURANCE  
SERVICES, and JERALD and JANE DOE HANSON, Husband and Wife,

Defendants,

PRODUCERS AGRICULTURE INSURANCE COMPANY,  
a Florida corporation,

Petitioner

**FILED**  
E JAN 10 2013  
CLERK OF THE SUPREME COURT  
STATE OF WASHINGTON

PETITION FOR REVIEW

Brendan V. Monahan (WSBA #22315)  
Sarah L. Wixson (WSBA #28423)  
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**I. IDENTITY OF THE PETITIONER**

Sarah Wixson, counsel for Producers Agriculture Insurance Company, asks this Court to accept review of the decision of Division III of the Court of Appeals.

**II. COURT OF APPEALS DECISION**

Petitioner seeks review of *Weidert v. Hanson*, \_\_\_ Wn. App. \_\_\_, 288 P.3d 1165 (2012) filed on November 29, 2012. A copy of the decision is in the Appendix at pages A-1 through A-4.

**III. ISSUES PRESENTED FOR REVIEW**

- A. Is a motion to compel arbitration a suit in equity subject to abuse of discretion review?
- B. Does RCW 7.06A.060 give the trial court the discretion to invalidate an arbitration agreement based upon its equitable powers?
- C. If the trial court has discretion to invalidate an arbitration agreement RCW 7.06A.060, is this in conflict with the Federal Arbitration Act, 9 U.S.C. § 1, *et seq.*?
- D. Did the decision below fail to apply the strong presumption favoring arbitration?

**IV. STATEMENT OF THE CASE**

Tim Weidert and L.W. Weidert Farms (“the Weiderts”) purchased a Multi-Peril Crop Insurance Policy (MPCI Policy) for the 2009 crop year.

CP 2, ¶ 3.1. The policies were sold through a private insurance agent, Jerald Hanson. *Id.* The policies were issued by Producers Agriculture Insurance (“ProAg”), a private insurer, and reinsured by the Federal Crop Insurance Corporation as part of a government program established by the Federal Crop Insurance Act (FCIA). CP 2, ¶ 3.1. Federal law defines and governs the sale, issuance, and service terms of the policies. *Nobles v. Rural Cmty. Ins. Servs.*, 122 F. Supp. 2d 1290, 1295 (M.D. Ala. 2000).

In general, an MPCCI Policy provides a form of catastrophic insurance protecting farmers from losses resulting from specified perils. The insurance guarantees that the farmer will have the equivalent of a crop production at a specified level per acre. *Meyer v. Nat’l Farmers Union Prop. & Cas. Co.*, 957 F. Supp. 1492, 1494 (D. Wyo. 1997). The Weiderts assert that ProAg determined the approximate insurable yield, but then determined that the FCIC “cup” protection was not available to them, and adjusted<sup>1</sup> the insured yield. CP 2-3, ¶ 3.3 and ¶ 3.8. The Weiderts brought claims of breach of contract and misrepresentation asserting that Pro Ag “used deceptive quotations or evaluations.” CP 6, ¶ 9.2.

The policy contains a dispute resolution clause that provides, in pertinent part:

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<sup>1</sup> The Common Crop Insurance Regulations provides that “approved yield[s] will be adjusted” for a variety of reasons. 7 C.F.R. § 457.8, ¶ 3.

(a) If you and we fail to agree on **any determination** made by us . . . the disagreement must be resolved through arbitration . . .

\*\*\*

(2) If you fail to initiate arbitration in accordance with section 20(b)(1) **and complete the process**, you will not be able to resolve the dispute through judicial review.

Basic Provisions, 7 C.F.R. § 457.8, ¶ 20 (emphasis added).

Pursuant to the terms of the MPCCI Policy, the Weiderts initiated arbitration, but did not complete the process. CP 119. At the same time, the Weiderts brought a civil suit against the insurance agent, Jerald Hanson. CP 1. Soon after the Weiderts joined ProAg as a co-defendant in the civil litigation. CP 1-6. ProAg moved to compel arbitration and stay the court proceedings under the terms of the MPCCI Policy and the Federal Arbitration Act. CP 7-19. The trial court denied the motion because “its equitable powers allow the Court to override any arbitration requirement, under the unique facts of this case.” CP 213-216.

The Court of Appeals, under the abuse of discretion standard, found that the trial court’s decision was based upon “tenable grounds” and affirmed.

## V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

### A. The Decision of the Court of Appeals Is in Conflict with Decisions of the Supreme Court and Other Decisions of the Court of Appeals [RAP 13.4 (b)(1)-(2)].

Review is warranted because the decision below conflicts with the decisions of this Court and the decisions of other Court of Appeals regarding the burden of proof, presumption and law applicable to questions of arbitrability.

#### 1. Questions of Arbitrability Are Reviewed De Novo

The Court of Appeals, relying exclusively upon California case law, found that a motion to compel arbitration is “a suit in equity.” *Weidert*, 288 P.3d at 1166 (citing *Eng’rs & Architects Assn’n v. Cmty. Dev. Dep’t*, 30 Cal.App.4th 644, 35 Cal.Rptr.2d 800, 805 (1994)). The Court of Appeals then determined that “the standard for review for a judge’s exercise of equitable authority is abuse of discretion.” *Weidert*, 288 P.3d at 1166 (citing *Rabey v. Dep’t of Labor & Indus.*, 101 Wn. App. 390, 397, 3 P.3d 217 (2000)).

The Court of Appeals’ application of the abuse of discretion standard of review is contrary to well-settled Washington law questions of arbitrability<sup>2</sup> are reviewed de novo. *Kruger Clinic Orthopaedics, LLC v. Regence BlueShield*, 157 Wn.2d 290, 298, 138 P.3d 936 (2006) (citing

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<sup>2</sup> Unconscionability, discussed *infra*, is also a question of law Washington courts review de novo. *Nelson v. McGoldrick*, 127 Wn.2d 124, 131, 896 P.2d 1258 (1995).

*Zuver v. Airtouch Commc'ns, Inc.*, 153 Wn.2d 293, 302, 103 P.3d 753 (2004). It is also well-settled that under both Washington and federal law there is a strong presumption favoring arbitration. *Zuver v. Airtouch Commc'ns, Inc.*, 153 Wn.2d 293, 301, 103 P.3d 753 (2004) (quoting *Moses H. Cone Memorial Hosp. v. Mercury Const. Corp.*, 460 U.S. at 25, 103 S. Ct. 927, 74 L. Ed. 2d 765 (1983)).

Under the abuse of discretion standard the trial court's decision "will not be disturbed on review except on a clear showing of abuse of discretion, that is, discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." *In re Kirby*, 65 Wn. App. 862, 829 P.2d 1139 (1992). Under this standard the trial judge "is granted a limited right to be wrong, by appellate court standards, without being reversed." *State v. Marks*, 90 Wn. App. 980, 983, 955 P.2d 406 (1998). The decision may be "wrong" from the perspective of a de novo review, but may nonetheless be affirmed as "tenable" under an abuse of discretion review. Thus, an abuse of discretion standard is akin to a presumption in favor of the trial court's decision. The Court of Appeals' application of the wrong standard of review is of particular consequence because the application of the deferential standard of review effectively negates Washington's strong presumption favoring arbitration. The Court

should accept review to correct the standard applicable to all questions of arbitrability and preserve the presumption favoring arbitration.

2. Trial Courts Do Not Have Unlimited Authority to Invalidate Arbitration Agreements Under Their Equitable Power

Review is also warranted because the decision below, under the guise of “equity”, gives trial courts unprecedented authority to invalidate agreements to arbitrate.<sup>3</sup> The Washington Uniform Arbitration Act, RCW 7.04A.060(1), provides that an agreement to arbitrate is “valid, enforceable, and irrevocable except upon a ground that exists at law or in equity for the revocation of contract.” The Act limits the court’s decision-making authority. *Townsend v. Quadrant Corp.*, 153 Wn. App. 870, 879, 224 P.3d 818 (2009). Nonetheless, the decision below held that under the Act, RCW 7.04A.060(1), the trial court had discretion to “override any arbitration requirement” on the basis of “[j]udicial economy, duplicative costs, and the potential of inconsistent results.” *Weidert*, 288 P.3d at 1167. Essentially, the decision below held that an arbitration agreement may be avoided if enforcement would result in piecemeal litigation. *Id.*

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<sup>3</sup> Although the decision below stated that it left open the possibility of arbitration, it nonetheless affirmed the decision of the trial court. to use its equitable power to “override any arbitration agreement.” It is unclear what, if any, claims would be subject to arbitration and when the arbitration would occur. The decision below left the scope and timing of arbitration issues to the trial court’s discretion. *Weidert*, 288 P.3d at 1167.

The decision below is not supported by decisions of this Court or the decisions of other Court of Appeals. The Court of Appeals relied upon *Brown v. General Motors Corp.*, 67 Wn.2d 278, 282, 407 P.2d 461 (1965), for the proposition that piecemeal litigation is “discouraged.” *Weidert*, 288 P.3d at 1167. However, *Brown* did not address the issue of arbitrability nor the revocation of a contract. Rather, *Brown* decided whether the trial court abused its discretion in ordering a separate submission of issues **at trial**. *Brown*, 67 Wn.2d at 282, 407 P.2d 461, *see also* *Sitton v. State Farm Mut. Auto. Ins. Co.*, 116 Wn. App. 245, 257, 63 P.3d 198 (2003) (an order to bifurcate is reviewed for abuse of discretion). Neither *Brown* nor any other known Washington authority holds that an arbitration agreement may be invalidated to avoid piecemeal litigation. The decision below expands the authority of a trial court to invalidate arbitration agreements, is unsupported by Washington law, and is in conflict with Washington’s strong policy favoring arbitration; this Court should accept review.

3. Federal Law Preempts Contrary State Law and Requires Piecemeal Resolution

Furthermore, even if avoiding piecemeal resolution is sufficient to invalidate an arbitration agreement under state law, such a finding is contrary to federal law. The Federal Arbitration Act (“FAA”) contains language identical to RCW 7.04A.060(1): “a contract . . . to settle

[disputes] by arbitration . . . shall be valid, irrevocable , and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.” 9 U.S.C. § 1, *et seq.* The decision below, based only on the language of the statutes, concluded that state law and federal law are “in harmony” and applied state law. *Weidert*, 288 P.3d at 1167.

However, if state law and federal law are not “in harmony,” the FAA displaces conflicting state law. *Satomi Owners Ass’n v. Satomi, LLC*, 167 Wn.2d 781, 800-801, 225 P.3d 213 (2009) (citations omitted). Like state law, the FAA establishes a “federal policy favoring arbitration.” *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 25, 111 S. Ct. 1647, 1651, 114 L. Ed. 2d 26 (1991). However, unlike state law, “the basic purpose of the Federal Arbitration Act is to overcome courts’ refusals to enforce agreements to arbitrate.” *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 270, 115 S. Ct. 834, 130 L. Ed. 2d 753 (1995). As a result, the FAA “leaves no place for the exercise of discretion by [the] court, but instead mandates that . . . courts **shall direct** the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed.” *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218, 105 S. Ct. 1238, 84 L. Ed. 2d 158 (1985) (emphasis in original). Moreover, the FAA not only contemplates piecemeal litigation, but “**requires** piecemeal resolution when necessary to give effect to an arbitration agreement.” *Moses H. Cone Mem’l Hosp. v. Mercury Constr.*

*Corp.*, 460 U.S. 1, 20, 103 S. Ct. 927, 74 L. Ed. 2d 765 (1983) (emphasis added).

If state law allows the exercise of discretion to invalidate an arbitration agreement to prevent piecemeal resolution, it is clearly in conflict with federal law and the Federal Arbitration Act applies. Under the Federal Arbitration Act, “states may not refuse to enforce arbitration agreements based upon state laws that apply only to such agreements.” *McKee v. AT & T Corp.*, 164 Wn.2d 372, 396, 191 P.3d 845 (2008) (citations omitted). However, “generally applicable contract defenses, such as fraud, duress, or unconscionability” may be applied. *Id.* (citing *Doctor’s Assocs., Inc., v. Casarotto*, 517 U.S. 681, 687, 116 S. Ct. 1652, 134 L. Ed. 2d 902 (1996)). The decision below does not rest upon any generally applicable contract defense. Rather, the decision below simply cited duplicative costs and judicial economy as a basis for invalidating the arbitration agreement. Cost may be unconscionable if it presents an insurmountable barrier to plaintiff’s claims. *See Mendez v. Palm Harbor Homes, Inc.*, 111 Wn. App. 446, 45 P.3d 594 (2002), But there is no finding, by either the Court of Appeals or the trial court, that the costs associated with arbitration were unconscionable and the Weiderts admitted that costs are “not a significant factor” in this case. CP 124, lines 23 to 26.

The Court of Appeals' analysis of the law governing questions of arbitrability is a significant departure from existing law. This Court should grant review.

4. Any Doubt as to the Scope of the Arbitration Agreement Are Resolved in Favor of Arbitration

The arbitration clause in the case at hand mandates arbitration regarding a disagreement on “any determination” made by ProAg. CP 12. The decision below found that “the trial court could reasonably conclude Mr. Weidert’s causes of action do not mainly concern a determination by ProAg.” *Weidert*, 288 P.3d at 1167.

Under both Washington and federal law, “[c]ourts must indulge every presumption ‘in favor of arbitration, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay, or a like defense to arbitrability.’” *Zuver v. Airtouch Commc’ns, Inc.*, 153 Wn.2d 293, 301, 103 P.3d 753 (2004) (quoting *Moses H. Cone Mem’l Hosp.*, 460 U.S. at 25, 103 S. Ct. 927). Any doubt concerning the scope of the issues covered by the arbitration agreement should be resolved in favor of arbitration. *Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24-25, 103 S. Ct. 927, 74 L. Ed. 2d 765 (1983). The decision below should be reviewed because the it failed to apply this presumption.

**B. This Case Involves an Issue of Substantial Public Interest**

The effects of the decision below are not limited to ProAg. The arbitration agreement in the case at hand is part of a national crop insurance program. The program is governed by the Federal Crop Insurance Act, (“FCIA”), 7 U.S.C. § 1501, *et seq.*, which was enacted “to promote the national welfare by improving the economic stability of agriculture through a sound system of crop insurance . . .” 7 U.S.C. § 1502(a). The Act established the Federal Crop Insurance Corporation (“FCIC”) as an agency of and within the United States Department of Agriculture (“USDA”), 7 U.S.C. § 1503, to administer and regulate a comprehensive all-risk federal crop insurance program. 7 U.S.C. §§ 1503, 1507(c)(2). The procedures, rules, and terms of federal crop insurance are established by the FCIC. 55 Fed. Reg. 23067. Because the terms of the policy are federal regulation, its terms are the same whether the policy issued in Washington or Wisconsin. 7 C.F.R. § 457.8, ¶ 20.

A nation-wide program requires uniformity; the terms and conditions of federal crop insurance “cannot be enforced in a patchwork pattern.” *Id.* at 23067-68. To avoid differing results under the same policy state to state, federal law controls “not only the contractual relationship with its contractors,” but also “the relationship such

contractors have with insureds.” *Id.* at 23068. This includes not only the terms of the arbitration clause, but the timing of arbitration.

The U.S. Department of Agriculture’s Risk Management Agency (“RMA”) on behalf of FCIC provides final agency determinations (“FADs”) interpreting the FCIA and regulations promulgated under FCIA. These determinations are final and binding on all participants in the crop insurance program. 7 C.F.R. § 400.765.

Final Agency Determination, FAD-013 states: “Arbitration must be completed prior to the producer’s bringing any suit in a court.”<sup>4</sup> An agency’s interpretation of its own regulation is entitled to “substantial deference . . . unless it is plainly erroneous or inconsistent with the regulation.” *Sigma Tau Pharms, Inc. v. Schwetz*, 288 F.3d 141, 146 (4th Cir. 2002) (citations omitted). Moreover, deference is especially appropriate if “the regulation concerns a complex highly technical regulatory program, in which the identification and classification of relevant criteria necessarily require significant expertise and entail the exercise of judgment grounded in policy concerns.” *Thomas Jefferson Univ. v. Shalala*, 512 U.S. 504, 512, 114 S. Ct. 2381, 129 L. Ed. 2d 405 (1994) (citations omitted). Because RMA’s interpretation of the insurance

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<sup>4</sup>FAD-013 interprets section 25 of the insurance policy in effect prior to 2005. Nonetheless, FAD-013 manifest RMA’s intent for producers to arbitrate disputes prior to commencing litigation in court.

policies necessitated subject-specific expertise and arose in the context of a broad regulatory scheme, FAD-013 is entitled to substantial deference. As the Supreme Court has stated, “‘the terms and conditions’ upon which valid governmental insurance can be had must be defined by the agency acting for the Government.” *See Federal Crop Ins. Corporation v. Merrill*, 332 U.S. 380, 383, 68 S. Ct. 1, 92 L. Ed. 10 (1947). *See also Flick v. Liberty Mut. Fire Ins. Co.*, 205 F.3d 386, 390 (9th Cir. 2000) *citing Merrill* (federal law mandates that strict compliance with terms of a federal insurance policy).

The decision below ignored FCIC’s regulations, the FCIC’s interpretation of those regulations and the Basic Provisions and did not enforce the terms of the Basic Provisions compelling the arbitration of all disputed determinations made by a private insurer. The decision below is an anomaly in what is supposed to be a uniform system and affects all MPCCI policies issued in Washington. This Court should grant review.

## **VI. CONCLUSION**

The decision below is a significant departure from existing law governing questions of arbitrability and ignores federal law requiring a uniform application of a national system of crop insurance. For the reasons set forth above, ProAg respectfully requests that the Court grant review.

DATED this \_\_\_\_\_ day of December, 2012.

STOKES LAWRENCE  
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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that on the 31st day of December, 2012, I caused a true and correct copy of the foregoing document, "Petition for Review," to be mailed by United States mail postage prepaid to the following counsel of record:

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288 P.3d 1165  
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Page 1

Court of Appeals of Washington,  
Division 3.  
Timothy WEIDERT, individually and L.W.  
Weidert Farms, Inc., a Washington corporation,  
Respondents,

v.  
Jerald A. HANSON, d/b/a Walla Walla Insurance  
Services, and Jerald and Jane Doe Hanson, Hus-  
band and Wife, Defendants,  
and

Producers Agriculture Insurance Company, a Flor-  
ida corporation, Petitioners.

No. 30357-8-III.  
Nov. 29, 2012.

**Background:** Insured brought action against in-  
surer seeking to recover under crop insurance  
policy for crop damage. The Superior Court, Walla  
Walla County, John W. Lohrmann, J., denied in-  
surer's motion to stay the proceedings and compel  
arbitration. Insurer appealed.

**Holding:** The Court of Appeals, Brown, J., held  
that denial of motion to compel arbitration was  
warranted.

Affirmed.

West Headnotes

[1] Insurance 217 ⇨3277

217 Insurance  
217XXVII Claims and Settlement Practices  
217XXVII(B) Claim Procedures  
217XXVII(B)7 Arbitration  
217k3271 Agreements to Arbitrate  
217k3277 k. Disputes and matters  
arbitrable. Most Cited Cases

Insured's claim stemming from crop insurance  
policy and alleged inducement to purchase insuffi-  
cient policy from insurance agent did not mainly  
concern a determination by insurer, so as to warrant

denial of motion to compel arbitration based on ar-  
bitration clause contained in policy.

[2] Alternative Dispute Resolution 25T ⇨  
213(5)

25T Alternative Dispute Resolution  
25TII Arbitration  
25TII(D) Performance, Breach, Enforcement,  
and Contest  
25Tk204 Remedies and Proceedings for  
Enforcement in General  
25Tk213 Review  
25Tk213(5) k. Scope and standards  
of review. Most Cited Cases  
The Court of Appeals reviews arbitrability  
questions de novo.

[3] Alternative Dispute Resolution 25T ⇨210

25T Alternative Dispute Resolution  
25TII Arbitration  
25TII(D) Performance, Breach, Enforcement,  
and Contest  
25Tk204 Remedies and Proceedings for  
Enforcement in General  
25Tk210 k. Evidence. Most Cited  
When considering a motion to compel arbitra-  
tion, the burden of proof is on the party seeking to  
avoid arbitration.

[4] Equity 150 ⇨1

150 Equity  
150I Jurisdiction, Principles, and Maxims  
150I(A) Nature, Grounds, Subjects, and Ex-  
tent of Jurisdiction in General  
150k1 k. Nature and source of jurisdic-  
tion. Most Cited Cases  
A trial court's inherent powers encompass all  
the powers of the English chancery court.

[5] Appeal and Error 30 ⇨949

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30 Appeal and Error  
30XVI Review  
30XVI(H) Discretion of Lower Court  
30k949 k. Allowance of remedy and matters of procedure in general. Most Cited Cases  
The standard of review for a judge's exercise of equitable authority is abuse of discretion.

[6] Alternative Dispute Resolution 25T ⇄ 205

25T Alternative Dispute Resolution  
25TII Arbitration  
25TII(D) Performance, Breach, Enforcement, and Contest  
25Tk204 Remedies and Proceedings for Enforcement in General  
25Tk205 k. In general. Most Cited Cases

Alternative Dispute Resolution 25T ⇄ 206

25T Alternative Dispute Resolution  
25TII Arbitration  
25TII(D) Performance, Breach, Enforcement, and Contest  
25Tk204 Remedies and Proceedings for Enforcement in General  
25Tk206 k. Nature and form of proceeding. Most Cited Cases

The right to arbitration depends upon contract; a motion to compel arbitration is simply a suit in equity seeking specific performance of that contract.

\*1165 Brendan Monahan, Sarah Lynn Clarke Wixson, Stokes, Lawrence, Velikanje, Moore & Shore, Yakima, WA, for Petitioner.

Kenneth Allen Miller, Miller, Mertens, Comfort, Wagar & Kreutz, PL, Kennewick, WA, for Respondent.

BROWN, J.

¶ 1 Producers Agriculture Insurance Company (ProAg) appeals the trial court's equitable decision to deny its motion to stay proceedings and compel

contractual arbitration in a crop damage dispute with Tim Weidert and L.W. Weidert Farms, Inc. (collectively Mr. Weidert). ProAg contends the trial court erred in overriding the arbitration agreement because the Federal Crop Insurance Act (FCIA), 7 U.S.C. § 1501, and the Federal Arbitration Act (FAA), 9 U.S.C. § 1, preempt Washington law. Because the superior court properly exercised its equitable powers, we affirm the ruling denying the motion to stay proceedings without prejudice to either party to renew the motion to compel arbitration of the remaining issues at some future time.

FACTS

¶ 2 Mr. Weidert purchased a Multi-Peril Crop Insurance (MPCI) policy for the 2009 crop year. In general, an MPCI policy provides catastrophic insurance protecting farmers\*1166 from losses resulting from specified perils. Jerald Hanson, owner of Walla Walla Insurance Services, sold the policy to Mr. Weidert. The policy was insured by ProAg, a private insurer, and reinsured by the Federal Crop Insurance Corporation (FCIC) as part of a government program established by the FCIA.

¶ 3 The policy contains a dispute resolution clause partly providing:

Mediation, Arbitration, Appeal, Reconsideration, and Administrative and Judicial Review.

(a) If you and we fail to agree on any determination made by us ... the disagreement may be resolved through mediation[.] If resolution cannot be reached through mediation, or you and we do not agree to mediation, the disagreement *must be* resolved through arbitration in accordance with the rules of the American Arbitration Association (AAA).

Clerk's Papers (CP) at 12 (citing 7 C.F.R. § 457.8(20)). The policy goes on to state, "If you fail to initiate arbitration ... and complete the process, you will not be able to resolve the dispute through judicial review." CP at 12 (citing 7 C.F.R. § 457.8(20)(b)(2)).

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(Cite as: 288 P.3d 1165)

¶ 4 A drought occurred during the 2009 crop year; consequently, Mr. Weidert filed a crop loss claim with ProAg. Mr. Weidert was indemnified for approximately \$522,306. Mr. Weidert believed he was inadequately advised and misled regarding his planting and coverage needs. Mr. Weidert initiated arbitration. He then sued ProAg and his insurance agent, Mr. Hanson and his spouse.

¶ 5 ProAg asked the court to stay proceedings and compel arbitration under the terms of the MPC policy and the FAA. The trial court denied ProAg's motion to compel, finding "its equitable powers allow the Court to override any arbitration requirement, under the unique facts of this case." CP at 213. ProAg appealed.<sup>FN1</sup>

FN1. The Hansons are not parties to this appeal.

#### ANALYSIS

[1] ¶ 6 The issue is whether the trial court erred in exercising its equitable powers to stay the court proceedings and override the arbitration clause in the parties' policy. ProAg contends federal law preempts the court's equitable powers.

[2][3] ¶ 7 We review arbitrability questions de novo. *Zuver v. Airtouch Commc'ns, Inc.*, 153 Wash.2d 293, 302, 103 P.3d 753 (2004). The burden of proof is on the party seeking to avoid arbitration. *Id.*

[4] ¶ 8 Our state constitution vests trial courts with the power to fashion equitable remedies. CONST. art. IV, § 6; see *Kingery v. Dep't of Labor & Indus.*, 132 Wash.2d 162, 173, 937 P.2d 565 (1997) (Industrial Insurance Act does not "alter the constitutional equity power of Washington's courts over industrial injury cases."). Additionally, a trial court's inherent powers encompass "all the powers of the English chancery court." *Blanchard v. Golden Age Brewing Co.*, 188 Wash. 396, 415, 63 P.2d 397 (1936) (quoting *State ex rel. Roseburg v. Mohar*, 169 Wash. 368, 375, 13 P.2d 454 (1932)).

¶ 9 The power of equity has been construed "as broad as equity and justice require." *Agronic Corp. of Am. v. deBough*, 21 Wash.App. 459, 463-64, 585 P.2d 821 (1978) (quoting 27 Am.Jur.2d *Equity* § 103 (1966)). Indeed, the whole idea behind courts of chancery and their equitable powers was to mitigate the harsh absolute dictates of common law rules.

[5] ¶ 10 The standard of review for a judge's exercise of equitable authority is abuse of discretion. *Rabey v. Dep't of Labor & Indus.*, 101 Wash.App. 390, 397, 3 P.3d 217, (2000), *review dismissed*, (No. 70030-3 May 8, 2001). Thus, we review the record to determine whether the trial judge's grant of equitable relief is based upon tenable grounds or tenable reasons. *Pederson's Fryer Farms, Inc. v. Transamerica Ins. Co.*, 83 Wash.App. 432, 454, 922 P.2d 126 (1996).

¶ 11 The Washington Uniform Arbitration Act, chapter 7.04A RCW, provides circumscribed decision-making authority for the courts stating, "An agreement contained in a record to submit to arbitration ... is valid, enforceable, and irrevocable except upon a \*1167 ground that exists at law or in equity." RCW 7.04A.060(1). The FAA likewise states that a "written provision in ... a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction ... shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. In this sense, state and federal law are in harmony.

¶ 12 ProAg is not the sole party to Mr. Weidert's claim; the Hansons are additionally named defendants concerning separate non-contractual state-based negligence and consumer protection claims. Ordering a portion of the proceedings to be arbitrated and the other portion tried in the superior court results in discouraged piecemeal litigation. *Brown v. Gen. Motors Corp.*, 67 Wash.2d 278, 282, 407 P.2d 461 (1965). Judicial economy, duplicative costs, and the potential of in-

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consistent results provide tenable grounds for the trial court's decision.

[6] ¶ 13 The right to arbitration depends upon contract; while a motion to compel arbitration is "simply a suit in equity seeking specific performance of that contract." *Eng'rs & Architects Ass'n v. Cmty. Dev. Dep't*, 30 Cal.App.4th 644, 35 Cal.Rptr.2d 800, 805 (1994). Here, the controversy is not about the right to arbitration but rather whether arbitration is the appropriate means of conflict resolution given the number of defendants and causes of action. The parties' policy states, "if [Mr. Weidert] and [ProAg] fail to agree on any determination made by [ProAg] ... disagreement must be resolved through arbitration." CP at 12. The trial court could reasonably conclude Mr. Weidert's causes of action do not mainly concern a determination by ProAg; rather they relate to whether he was wrongly induced to purchase an inadequate insurance policy. Our reasoning, and that of the trial court, does not preclude the parties from submitting ProAg's determinations to eventual arbitration. The timing of when arbitration is necessary in relation to litigation of Mr. Weidert's noncontractual state-based negligence and consumer protection claims is left to the discretion of the trial court.

¶ 14 In sum, because tenable grounds exist to support the trial court's decision to exercise its equitable powers, the court did not abuse its discretion in denying ProAg's motion to stay the state court litigation.

¶ 15 Affirmed.

WE CONCUR: KORSMO, C.J., and KULIK, J.

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**FILED**  
**NOV. 29, 2012**  
In the Office of the Clerk of Court  
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION THREE

TIMOTHY WEIDERT, individually and  
L.W. WEIDERT FARMS, INC., a  
Washington corporation,

Respondents,

v.

JERALD A. HANSON, d/b/a WALLA  
WALLA INSURANCE SERVICES, and  
JERALD AND JANE DOE HANSON,  
Husband and Wife,

Defendants,

and

PRODUCERS AGRICULTURE  
INSURANCE COMPANY, a Florida  
corporation,

Petitioners.

No. 30357-8-III

PUBLISHED OPINION

Brown, J. • Producers Agriculture Insurance Company (ProAg) appeals the trial court's equitable decision to deny its motion to stay proceedings and compel contractual

arbitration in a crop damage dispute with Tim Weidert and L.W. Weidert Farms, Inc. (collectively Mr. Weidert). ProAg contends the trial court erred in overriding the arbitration agreement because the Federal Crop Insurance Act (FCIA), 7 U.S.C. § 1501, and the Federal Arbitration Act (FAA), 9 U.S.C. § 1, preempt Washington law. Because the superior court properly exercised its equitable powers, we affirm the ruling denying the motion to stay proceedings without prejudice to either party to renew the motion to compel arbitration of the remaining issues at some future time.

#### FACTS

Mr. Weidert purchased a Multi-Peril Crop Insurance (MPCI) policy for the 2009 crop year. In general, an MPCI policy provides catastrophic insurance protecting farmers from losses resulting from specified perils. Jerald Hanson, owner of Walla Walla Insurance Services, sold the policy to Mr. Weidert. The policy was insured by ProAg, a private insurer, and reinsured by the Federal Crop Insurance Corporation (FCIC) as part of a government program established by the FCIA.

The policy contains a dispute resolution clause partly providing:

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mediation, the disagreement *must be* resolved through arbitration in accordance with the rules of the American Arbitration Association (AAA).

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A drought occurred during the 2009 crop year; consequently, Mr. Weidert filed a crop loss claim with ProAg. Mr. Weidert was indemnified for approximately \$522,306. Mr. Weidert believed he was inadequately advised and misled regarding his planting and coverage needs. Mr. Weidert initiated arbitration. He then sued ProAg and his insurance agent, Mr. Hanson and his spouse.

ProAg asked the court to stay proceedings and compel arbitration under the terms of the MPCCI policy and the FAA. The trial court denied ProAg's motion to compel, finding "its equitable powers allow the Court to override any arbitration requirement, under the unique facts of this case." CP at 213. ProAg appealed.<sup>1</sup>

#### ANALYSIS

The issue is whether the trial court erred in exercising its equitable powers to stay the court proceedings and override the arbitration clause in the parties' policy. ProAg

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<sup>1</sup> The Hansons are not parties to this appeal.

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contends federal law preempts the court's equitable powers.

We review arbitrability questions de novo. *Zuver v. Airtouch Commc'ns, Inc.*, 153 Wn.2d 293, 302, 103 P.3d 753 (2004). The burden of proof is on the party seeking to avoid arbitration. *Id.*

Our state constitution vests trial courts with the power to fashion equitable remedies. Const. art. IV, § 6; see *Kingery v. Dep't of Labor & Indus.*, 132 Wn.2d 162, 173, 937 P.2d 565 (1997) (Industrial Insurance Act does not "alter the constitutional equity power of Washington's courts over industrial injury cases."). Additionally, a trial court's inherent powers encompass "all the powers of the English chancery court." *Blanchard v. Golden Age Brewing Co.*, 188 Wash. 396, 415, 63 P.2d 397 (1936) (quoting *State ex rel. Roseburg v. Mohar*, 169 Wash. 368, 375, 13 P.2d 454 (1932)).

The power of equity has been construed "as broad as equity and justice require." *Agronic Corp. of Am. v. deBough*, 21 Wn. App. 459, 463-64, 585 P.2d 821 (1978) (quoting 27 Am. Jur. 2d *Equity* § 103 (1966)). Indeed, the whole idea behind courts of chancery and their equitable powers was to mitigate the harsh absolute dictates of common law rules.

The standard of review for a judge's exercise of equitable authority is abuse of discretion. *Rabey v. Dep't of Labor & Indus.*, 101 Wn. App. 390, 397, 3 P.3d 217, (2000), *review dismissed*, (No. 70030-3 May 8, 2001). Thus, we review the record to

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*Weidert v. Hanson*

determine whether the trial judge's grant of equitable relief is based upon tenable grounds or tenable reasons. *Pederson's Fryer Farms, Inc. v. Transamerica Ins. Co.*, 83 Wn. App. 432, 454, 922 P.2d 126 (1996).

The Washington Uniform Arbitration Act, chapter 7.04A RCW, provides circumscribed decision-making authority for the courts stating, "An agreement contained in a record to submit to arbitration . . . is valid, enforceable, and irrevocable except upon a ground that exists at law or in equity." RCW 7.04A.060(1). The FAA likewise states that a "written provision in . . . a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. In this sense, state and federal law are in harmony.

ProAg is not the sole party to Mr. Weidert's claim; the Hansons are additionally named defendants concerning separate non-contractual state-based negligence and consumer protection claims. Ordering a portion of the proceedings to be arbitrated and the other portion tried in the superior court results in discouraged piecemeal litigation. *Brown v. Gen. Motors Corp.*, 67 Wn.2d 278, 282, 407 P.2d 461 (1965). Judicial economy, duplicative costs, and the potential of inconsistent results provide tenable grounds for the trial court's decision.

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*Weidert v. Hanson*

The right to arbitration depends upon contract; while a motion to compel arbitration is “simply a suit in equity seeking specific performance of that contract.” *Eng’rs & Architects Ass’n v. Cmty. Dev. Dep’t*, 35 Cal. Rptr. 2d 800, 805 (1994). Here, the controversy is not about the right to arbitration but rather whether arbitration is the appropriate means of conflict resolution given the number of defendants and causes of action. The parties’ policy states, “if [Mr. Weidert] and [ProAg] fail to agree on any determination made by [ProAg] . . . disagreement must be resolved through arbitration.” CP at 12. The trial court could reasonably conclude Mr. Weidert’s causes of action do not mainly concern a determination by ProAg; rather they relate to whether he was wrongly induced to purchase an inadequate insurance policy. Our reasoning, and that of the trial court, does not preclude the parties from submitting ProAg’s determinations to eventual arbitration. The timing of when arbitration is necessary in relation to litigation of Mr. Weidert’s noncontractual state-based negligence and consumer protection claims is left to the discretion of the trial court.

In sum, because tenable grounds exist to support the trial court’s decision to exercise its equitable powers, the court did not abuse its discretion in denying ProAg’s motion to stay the state court litigation.

Affirmed.

No. 30357-8-III  
*Weidert v. Hanson*

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Brown, J.

WE CONCUR:

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Korsmo, C.J.

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Kulik, J.