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NO. 91393-5

SUPREME COURT
OF THE STATE OF WASHINGTON

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ON CERTIFICATION FROM THE UNITED STATES DISTRICT
COURT FOR THE WESTERN DISTRICT OF WASHINGTON

IN RE:

SANDRA C. THORNELL,
on behalf of herself and all others similarly situated,

Plaintiff,

v.

SEATTLE SERV. BUREAU, INC.
d/b/a NATIONAL SERV. BUREAU, INC., and
STATE FARM MUT. AUTO INS. CO.,

Defendants.

JOINDER OF PROPERTY CASUALTY INSURERS ASSOCIATION
IN THE AMICUS BRIEF OF WDTL AND DRI-THE VOICE OF THE
DEFENSE BAR

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 ORIGINAL

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Constitutional Provisions, Statutes and Court Rules

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I. IDENTITY AND INTEREST OF AMICUS CURIAE

The Property Casualty Insurers Association (“PCI”) promotes and protects the viability of a competitive private insurance market for the benefit of consumers and insurers, and advocates its members’ positions on important issues in legislatures and courts across the country. PCI is composed of nearly 1,000 member companies, representing the broadest cross section of insurers of any national trade association. PCI members write more than \$195 billion in annual premium, 35 percent of the nation’s property casualty insurance. Member companies write 42 percent of the U.S. automobile insurance market, 28 percent of the homeowners market, 33 percent of the commercial property and liability market and 35 percent of the private workers compensation market.

In Washington, PCI members write 26.8 percent of the property casualty market including 28.8 percent of the personal lines market and 24.1 percent of the commercial lines market.

II. JOINDER IN AMICUS BRIEF OF WDTL AND DRI-THE VOICE OF THE DEFENSE BAR

PCI joins in the amicus brief of the Washington Defense Trial Lawyers (“WDTL”) and DRI-The Voice of the Defense Bar (“DRI”). As WDTL and DRI recognize in the Conclusion of their brief, the fundamental legal issue presented by the District Court’s Certified Questions is the extraterritorial application of Washington’s Consumer Protection Act.

The issue of extraterritorial application of state consumer protection laws is of vital interest to PCI members. WDTL and DRI have demonstrated why this Court should refuse to give extraterritorial application to the Washington Consumer Protection Act in the present case, which in no way implicates the vital interests of Washington consumers. Instead it represents a blatant attempt by a Texas consumer to do an end-run around the requirements for stating a claim under the consumer protection laws of Texas, by bringing an action in Washington and claiming the benefits of Washington's Consumer Protection Act. Validating this forum-shopping will unsettle the interstate private insurance market, by compelling insurers to respond to claims based on state consumer protection laws that have no material connection to the consumer-insurer relationship giving rise to the claim.

In *Schnall v. AT & T Wireless Services, Inc.*, this Court initially rejected giving broad extraterritorial effect to the Washington Consumer Protection Act, only to withdraw that portion of the Court's opinion on reconsideration. See 168 Wn.2d 125, 225 P.3d 929 (2010), *as corrected* (Feb. 9, 2010), *opinion withdrawn on reconsideration* (Feb. 17, 2011), *opinion superseded on reconsideration*, 171 Wn.2d 260, 259 P.3d 129 (2011). PCI urges this Court to re-adopt the reasoning of the initial opinion in *Schnall* of Chief Justice Madsen, which thoroughly explicated why Washington's CPA should not be given extraterritorial application:

The trial court and the Court of Appeals both noted that the CPA was applicable to all plaintiffs' claims because they arose from statute instead of contract. However, nothing in our law

indicates that CPA claims by nonresidents for acts occurring outside of Washington can be entertained under the statute. “Because the laws of each state are designed to regulate and protect the interest of that state's own residents and citizens, each state has a measurable, and usually predominant, interest in having its own substantive laws apply.” 4 Conte & Newberg, *supra*, § 13:37, at 438. While it is true that “Washington has a strong interest in regulating any behavior by Washington businesses which contravenes the CPA,” CP at 421 (Mem. Op. at 5), the CPA indicates the legislature's intent to limit its application to deceptive acts that affect the citizens and residents of Washington. The CPA states: “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.” RCW 19.86.020. “Trade” or “commerce” is defined as “the sale of assets or services, and any commerce directly or indirectly affecting the people of the state of Washington.” RCW 19.86.010(2) (emphasis added). To state a CPA claim a person must show that the unfair or deceptive act affected the people of the state of Washington. This geographic and jurisdictional limitation originates in the CPA's history as a tool used by the State attorney general to protect the citizens of Washington. *Indoor Billboard/Wash., Inc. v. Integra Telecom of Wash., Inc.*, 162 Wn.2d 59, 74, 170 P.3d 10 (2007). The attorney general of the state of Washington has no power outside the geographic boundary of this state. It is understood that her actions will be brought on “behalf of persons residing in the state.” RCW 19.86.080(1).

This statutory and jurisdictional limitation cannot be obviated simply because the claimants are private citizens. Indeed, our courts retained this limitation for private attorneys general through the requirement that the private claimants prove a defendant's practices affect “the public interest.” *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 784, 719 P.2d 531 (1986). Because of the statute's jurisdictional limitation, applicable to both the attorney general and private claimants, a private claimant cannot state a CPA claim by proving the defendant's practices affected the public interest or the citizens of another state. See *Lyon*, 194 F.R.D. at 215 (“State consumer fraud acts are designed to either protect state residents or protect consumers engaged in transactions within the state.”). RCW 19.86.920 does not indicate otherwise. This portion of the CPA

empowers courts analyzing unfair competition claims to consider “whether conduct restrains or monopolizes trade or commerce” even when those market effects are felt outside of Washington. RCW 19.86.920. This provision merely closes a potential loophole in the CPA that would allow companies to escape liability by claiming their methods of competition are within Washington's boundaries even though those methods effectively monopolize trade outside the state. This portion of the statute does not give Washington the power to enforce its laws outside its territorial borders.

Even the general extraterritorial flavor of RCW 19.86.920 cannot change the clear standing limitations in the statute: a claimant must allege injury in trade or commerce that “directly or indirectly affect[s] the people of the state of Washington.” RCW 19.86.010(2); *Panag v. Farmers Ins. Co. of Wash.*, 166 Wn.2d 27, 38, 204 P.3d 885 (2009) (“[T]he *Hangman Ridge*-test incorporates the issue of standing, particularly the elements of public interest impact and injury.”). In the context of this case, the CPA only applies to claims brought by persons residing in Washington.

168 Wn.2d at 142-43.

“In the context of this case,” as well, the CPA applies only to claims brought by persons residing in Washington. Plaintiff Thornell’s CPA claims are therefore barred because she resides in Texas.

III. CONCLUSION

This Court should answer “no” to the questions certified to it by the United States District Court for the Western District of Washington.

Respectfully submitted this 8th day of September, 2015.

CARNEY BADLEY SPELLMAN, P.S.

By Michael B. King
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Insurers Association*

DECLARATION OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that I am an employee at Carney Badley Spellman, P.S., over the age of 18 years, not a party to nor interested in the above-entitled action, and competent to be a witness herein. On the date stated below, I caused to be served a true and correct copy of the foregoing document on the below-listed attorney(s) of record via Email and first-class United States mail, postage prepaid, to the following:

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DATED this 8th day of September, 2015 in Seattle, Washington.



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Subject: Thornell v. Seattle Service Bureau et al., WSC Cause No. 91393-5

Dear Clerk:

Attached for filing are the following documents:

- *Motion for Acceptance of the Joinder by the Property Casualty Insurers Association in the Amicus Brief of WDTL and DRI-The Voice of the Defense Bar; and*
- *Joinder of Property Casualty Insurers Association in the Amicus Brief of WDTL and DRI-The Voice of the Defense Bar.*

Proof of Service for each submission is attached to the individual submission.

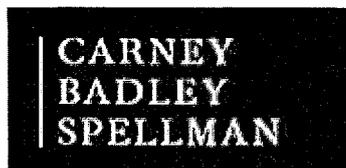
Case Name: *Thornell v. Seattle Service Bureau et al.*

Cause #: 91393-5

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