

Supreme Court No. 91538-5  
(Consolidated with Supreme Court No. 91852-0)  
Spokane Co. Superior Court Cause No. 11-2-04875-1

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SUPREME COURT OF THE STATE OF WASHINGTON

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MARY RUSHING as the Administrator and on Behalf of the Estate  
of ROBERT COON, and MARY RUSHING, individually,

*Plaintiff-Petitioner,*

vs.

FRANKLIN HILLS HEALTH & REHABILITATION CENTER,  
MELISSA CHARTREY, R.N., AURILLA POOLE, R.N., JANENE  
YORBA, Director of Nursing,

*Defendants-Respondents.*

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PETITIONER'S ANSWER TO AMICI CURIAE WASHINGTON  
STATE ASSOCIATION FOR JUSTICE FOUNDATION AND  
WASHINGTON HEALTH CARE ASSOCIATION

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Plaintiff-Petitioner Mary Rushing, individually and as personal representative of the estate of Robert Coon ("Rushing"), submits this answer to the amicus curiae briefs filed on behalf of the Washington Health Care Association ("WHCA") and Washington State Association for Justice Foundation ("WSAJF"):

**I. WHCA wrongly contends that there is no authority supporting the existence of a fiduciary relationship between nursing homes and their residents *as a matter of law*, and does not address the reasons for recognizing such a relationship, based on the analogy to the physician-patient relationship and the statutes and regulations governing nursing homes.**

WHCA wrongly contends that "no authority exists *anywhere*" for the proposition that a fiduciary relationship exists as a matter of law between nursing homes and their patients. *See* WHCA Br., at 3-4 (emphasis in original). In *Gordon v. Bialystoker Ctr. & Bikur Cholim, Inc.*, 45 N.Y.2d 692, 698, 385 N.E.2d 285, 412 N.Y.S.2d 593 (1978), which was cited in Rushing's opening brief, *see* Pet. Br., at 29 n.29, the highest court of New York held that a "nursing home's assumption of complete control, care and responsibility of and for its resident" results "in the creation of a fiduciary relationship." The court characterized this holding as an "indisputable" conclusion arising from the nature of the relationship between a nursing home and its residents. *See id.*, 45

N.Y.2d at 698. Although this holding was bolstered by trial testimony regarding residents' dependence upon the nursing home, the cited testimony was not specific to any particular resident, let alone the particular resident whose estate brought suit against the nursing home. *See id.* Subsequent case law seems to confirm that *Gordon* recognized a fiduciary relationship between nursing homes and their residents as a matter of law. *See Di Maio v. State*, 517 N.Y.S.2d 675, 678 (N.Y. Ct. Cl. 1987) (stating "[t]he law has recognized several such fiduciary relationships—attorney and client, guardian and ward, trustee and *cestui que trust*, perhaps physician and patient, ***and nursing home and hospital patient***"; citing *Gordon*; emphasis added).

Moreover, the rationale of *Gordon* is not limited to fiduciary relationships arising as a matter of fact. The court stated that "[t]he acceptance of such responsibility with respect to the aged and infirm who, for substantial consideration availed themselves of the custodial care offered by the institution, resulted in the creation of a fiduciary relationship[.]" *Gordon*, 45 N.Y.2d at 698 (brackets added). Subsequent case law has elaborated on this rationale, lending further support to recognition of a fiduciary relationship between nursing homes and their residents as a matter of law:

With the general increase in the longevity of men and women, the elderly population in this nation has increased and will continue to do so, and, with such demographic change, more and more of the elderly will find themselves in the care of nursing home proprietors. It is inevitable that the aged and infirm, under such circumstances, will become very dependent upon those who tend their wants, and a high degree of confidentiality will develop under which the aged will reveal to them their closest thoughts and the state of their financial affairs. Although the vast majority of those who so care for the aged are honest and dedicated professionals, the relationship is one from which the greedy and the corrupt may find considerable gain.

*Matter of Burke*, 441 N.Y.S.2d 542, 549 (N.Y. Sup. Ct. App. Div. 1981) (citing *Gordon* as an example).

Similarly, in *Isby Brandon v. Beverly Enters., Inc.*, 2007 WL 1087490, at \*3 (N.D. Miss., Apr. 9, 2007), the court denied a motion under the federal counterpart to CR 12(b)(6) on grounds that:

the defendants have not demonstrated that there is no fiduciary relationship between nursing home owners and their patients as a matter of law in Mississippi. Indeed, the very nature of a nursing home patient is very akin to a “ward” under the dominion and control of a fiduciary. The activities of the parties go beyond their operating on their own behalf and the activities for the benefit of both. The nursing home's very mission is to take care of the nursing home patient who, unlike the average hospital patient, is usually permanently invalid and subject to the nursing home. The parties have a common interest and profit from the activities of the other; namely, the nursing home is paid to take care of the patient. The parties obviously repose trust in one another and [as] has been said above, the nursing home as fiduciary has dominion and control over the nursing home patient.

(Brackets added.) The Mississippi Supreme Court previously held that there was no fiduciary relationship as a matter of law between a nursing home **administrator** and residents, and in the course of its decision cited with approval another decision stating that there "probably" is a fiduciary relationship between the nursing home **itself** and residents. See *Howard v. Estate of Harper ex rel. Harper*, 947 So. 2d 854, 861 (Miss. 2006) (citing *Gray v. Beverly Enters.-Miss., Inc.*, 261 F.Supp.2d 652, 662-63 (S.D. Miss. 2003), *rev'd on other grounds by Gray v. Beverly Enters.-Miss., Inc.*, 390 F.3d 400 (5th Cir. 2004).

In any event, whether or not other jurisdictions have previously recognized the fiduciary relationship between nursing homes and their residents as a matter of law, the question presented by this case is whether the Court **should** recognize such a relationship in this case, either as a matter of law or as a matter of fact. Rushing contends that the Court should recognize the fiduciary nature of the relationship as a matter of law based on the analogy to the admittedly fiduciary relationship between physicians and their patients, as well as the statutes and regulations governing nursing homes.

In particular, with respect to the analogy to the physician-patient relationship, Rushing pointed out in her opening brief that both relationships involve disclosure of confidential information and intimate access to one's body in order to obtain necessary care, and physicians and nursing homes have similar duties toward their patients and residents. *See* Pet. Br., at 22-27. WHCA does not address the bases for the analogy.

Instead, WHCA simply contends that the analogy to the physician-patient relationship has been "uniformly rejected," citing two unpublished opinions, one from the U.S. Court of Appeals for the Tenth Circuit and another from the Tennessee Court of Appeals. *See* WHCA Br., at 4-5 (discussing *THI of New Mexico at Hobbs Center, LLC v. Spradlin*, 532 Fed.Appx. 813, 818-19 (2013), and *Reagan v. Kindred Healthcare Operating, Inc.*, 2007 WL 4523092, at \*11 (Tenn. App., Feb. 17, 2007)). The Tenth Circuit did not address the physician-patient analogy, *see THI*, 532 Fed. Appx. at 818-19; and the Tennessee appellate court did not reject the analogy, but instead determined that it was bound by precedent holding there is no fiduciary relationship as a matter of law between a nursing home and a potential resident prior to admission, *see Reagan*, at \*11 (quoting *Owens v. National Health Corp.*, 263

S.W.3d 876, 890 (2007)). The case on which the Tennessee court relied did not address the analogy. *See Owens*, 263 S.W.2d at 889-90. In this case, the Court is not constrained by prior precedent, and should hold that there is a fiduciary relationship between nursing homes and their residents by analogy to the physician-patient relationship.

With respect to the statutes and regulations governing nursing homes, Rushing pointed out in her opening brief that they recognize the vulnerability and dependence of residents, and the corresponding obligation of nursing homes to protect the interests and foster the welfare of their residents, which is entirely consistent with a fiduciary relationship. *See Pet. Br.*, at 22-24. WHCA does not address the statutes and regulations governing nursing homes as a basis for the fiduciary relationship. Independent of the analogy to the physician-patient relationship, the Court should hold that there is a fiduciary relationship as a matter of law between nursing homes and their residents based on the relevant statutes and regulations. *Cf. Hsu Ying Li v. Tang*, 87 Wn. 2d 796, 800 & n.2, 557 P.2d 342 (1976) (noting that fiduciary relationships arise from statutes in the partnership law context); *Shermer v. Baker*, 2 Wn. App. 845, 853, 472 P.2d 589, *rev. denied*, 78 Wn. 2d 994 (1970) (stating "the

statute itself, RCW 21.20.010 ... creates a form of fiduciary relationship" in the securities law context; ellipses added).

**II. WHCA relies on non-Washington cases to argue that the fiduciary relationship between a nursing home and its residents does not include the admissions process, without acknowledging contrary Washington law regarding regulation of the nursing home admissions process and the scope of fiduciary duties.**

WHCA contends that "[e]very court to consider the issue has held ... there is no fiduciary relationship during the nursing home admission process that would apply to the resident's signing of an arbitration agreement." WCHA Br., at 4 (emphasis in original; brackets & ellipses added). In support of this contention, WHCA cites three published and two unpublished decisions from other jurisdictions. *See id.* at 4-5 (citing *Owens*, 263 S.W.3d at 890; *THI*, 532 Fed. Appx. at 818-19; *Rohlfing v. Manor Care, Inc.*, 172 F.R.D. 330, 351 n.30 (N.D. Ill. 1997); *Gainesville Health Care Center, Inc. v. Weston*, 857 So. 2d 278, 288-89 (Fla. App. 2003); *Reagan*, 2007 WL 4523092, at \*11, and *Manor Care, Inc. v. Douglas*, 763 S.E.2d 73, 77 & n.27 (W. Va. 2014)).<sup>1</sup>

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<sup>1</sup> WHCA incorrectly states that Rushing "ignores" the non-Washington case law regarding fiduciary duties of nursing homes cited in its brief. *See* WHCA Br., at 4. In actuality, Rushing addressed six of the nine non-Washington cases cited by WCHA in her opening brief, along with several additional non-Washington cases that have not been addressed by WHCA. *See* Pet. Br., at 28-29 n.29.

None of these decisions cites any authority, and the primary ratio decidendi is the lack of authority. *See Owens*, at 890 (stating "the plaintiff has cited no authority for the finding that a fiduciary duty is owed to a **potential** patient of a nursing home"; emphasis in original); *THI*, 532 Fed. Appx. at 819 (stating plaintiff "does not identify any New Mexico case declaring that a nursing home has a fiduciary duty to a prospective patient who has not yet entered into an admission contract"); *Rohlfing*, 172 F.R.D. at 351 n.30 (no citation to authority); *Gainesville*, 857 So. 2d at 288 (stating "we have found no authority which holds that a fiduciary breaches that duty by entering into an otherwise valid arbitration agreement"); *Reagan*, 2007 WL 4523092, at \*11 (following *Owens*); *Douglas*, 763 S.E.2d at 77 (declining to recognizing cause of action for breach of fiduciary duty against nursing home "at this time," based on "the small number of jurisdictions who have expressly recognized such a cause of action").<sup>2</sup> In this way, the cases cited by WHCA offer examples of judicial inertia rather than persuasive rationales for declining to recognize the fiduciary relationship between a nursing home and its residents that includes the admissions process.

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<sup>2</sup> *THI*, 532 Fed. Appx. at 819, relied on an analogy to New Mexico insurance law, which "decline[s] to acknowledge the existence of the insurer's fiduciary duty before the issuance or the policy" or "[a]t the application stage." (Brackets added.) This analogy is inapt under Washington law. *See* RCW 48.01.030 (stating the duty of good faith extends to "all insurance matters").

Furthermore, the cases are contrary to Washington law and distinguishable on several levels.

- 1. None of the decisions cited by WHCA reference comparable statutes or regulations governing the nursing home admissions process, and WHCA does not address the relevant Washington statutes and regulations.**

Washington expressly regulates the admissions process, including "the terms of any admissions contract." RCW 74.42.030; *see also* WAC 388-97-0040 (prohibiting various forms of "discrimination" in the admissions process). In addition, the nursing home's obligations do not exclude the admissions process and are not confined to post-admissions conduct. *See* RCW 74.42.050(1) (regarding residents' right to "be treated with consideration, respect, and full recognition of their dignity and individuality," and "be encouraged and assisted in the exercise of their rights"); WAC 388-97-0180(3) (regarding obligation to "promote and protect the rights of each resident"); WAC 388-97-0240(6) (regarding obligation to "promote the resident's right to exercise decision making and self-determination to the fullest extent possible"). Furthermore, Washington law deems residents of nursing homes to be vulnerable by virtue of the fact that they need to be admitted to such a facility. *See* RCW 74.34.020(21)(d)

(defining "vulnerable adult" to include persons "[a]dmitted to any facility"; brackets added); RCW 74.34.020(6) (defining "facility" to include "nursing homes"). WHCA does not address these statutes and regulations, which distinguish the cases cited by WHCA, and lend support to the existence of a fiduciary relationship between nursing homes and their residents under Washington law that includes the admissions process.

**2. None of the decisions cited by WHCA appear to involve comparable precedent regarding the scope of fiduciary duties, and WHCA does not address the relevant Washington precedent.**

As pointed out in Rushing's briefing, in *Moon v. Phipps*, 67 Wn. 2d 948, 954-55, 411 P.2d 157 (1966), the Court imposed fiduciary duties on an agent referred by a doctor to his patient based on "a vicarious transfer of that trust and confidence through the doctor's psychotherapy and advice." See Pet. Br., at 29 n.29; Reply Br., at 16. *Moon* establishes that the fiduciary relationship is viewed from the beneficiary's point of view, and that the beneficiary does not typically make a distinction between different aspects of the relationship. See *Moon*, 67 Wn. 2d at 954-55. *Moon* is consistent with laws regulating the admissions process for nursing homes.

*Moon* also serves as a basis for distinguishing the cases cited by WHCA, and independently supports the existence of a fiduciary relationship during the admissions process. This is particularly true in a case such as this one, where Rushing's father, Robert Coon, was transferred to Franklin Hills Health & Rehabilitation Center ("Franklin Hills") from an affiliated assisted-living facility located next door, after he suffered a fall and needed a higher level of care than the assisted-living facility could provide. He was transported to Franklin Hills via ambulance from the hospital, and was admitted into the facility for two days before he was presented with the admission documents including the arbitration agreement. Under these circumstances, Mr. Coon was already under Franklin Hill's (and its affiliated assisted-living facility's) care, and it is not possible to separate the admissions paperwork from the rest of the relationship.

In contrast, the cases cited by WHCA assume the lack of any prior relationship and an arm's length transaction, without regard for the vulnerability and dependence of prospective residents. *See Owens*, 263 S.W.3d at 890 (stating "[t]he record discloses no facts supporting a fiduciary relationship, contractual or otherwise, between King and the nursing home prior to the time King, through

Daniel, signed the nursing-home contract"; brackets added); *THI*, 532 Fed. Appx. at 819 (stating "[u]ntil that time [i.e., after contract formation], the prospective patient and the nursing home are engaged in no more than negotiations for services, with the patient free to walk away if he or she deems the offered services unsatisfactory"); *Rohlfing*, 172 F.R.D. at 351 n.30 (stating "prior to Taylor's residence at Manor Care, no confidence or influence could have been present since the parties were still dealing at arm's length"); *Gainesville*, 857 So. 2d at 288 (stating "no evidence was presented sufficient to establish the existence of a fiduciary duty"). As a result, the cases cited by WHCA do not require or permit the Court to carve out the admissions process from the fiduciary duties owed by a nursing home to its residents.

**III. WHCA otherwise acknowledges that a fiduciary relationship can arise between a nursing home and its residents as a matter of fact, and does not dispute that the facts of this case are sufficient to establish a fiduciary relationship between Mr. Coon and Franklin Hills.**

WHCA acknowledges that at least "a handful of cases" have recognized the possibility of a fiduciary relationship between nursing homes and residents as a matter of fact. WHCA Br., at 5 (citing *Manor Care, Inc. v. Douglas*, 763 S.E.2d 73, 93 (W. Va. 2014); *Rohlfing*, 172 F.R.D. at 342 & 350-51; *Petre v. Living*

*Centers-East, Inc.*, 935 F. Supp. 808, 812 (E.D. La. 1996); *Schenk v. Living Centers-East, Inc.*, 917 F. Supp. 432, 437-38 (E.D. La. 1996); *Zaborowski v. Hospitality Care Center of Hermitage, Inc.*, 60 Pa. D. & C. 4<sup>th</sup> 474, 489 (Pa. Com. Pl. 2002)). WHCA further acknowledges that these cases are consistent with Washington law. WHCA Br., at 5 (stating "Washington law is the same").

WHCA does not dispute that the facts of this case are sufficient to establish a fiduciary relationship between Mr. Coon and Franklin Hills. These facts include: Mr. Coon's mental illness and cognitive limitations; the comprehensive care provided by Franklin Hills; the acknowledged need to help him with decision making; the undertaking to manage his funds and Social Security benefits; and his acknowledged inability to manage his own affairs. These facts establish a relationship of trust and dependence between Mr. Coon and Franklin Hills that is fiduciary in nature. *See* Pet. Br., at 5-16 & 27.

**IV. WHCA does not dispute that the existence of a fiduciary relationship should result in placement of the burden of proof on the issue of competency on Franklin Hills.**

While it argues that no fiduciary relationship exists between a nursing home and its residents during the admissions process, WHCA does not dispute that the burden of proof on the issue of competency should rest upon Franklin Hills if the Court disagrees and finds a fiduciary relationship, either as a matter of law or a matter of fact. Shifting the burden of proof is one of the effects of a fiduciary relationship in other contexts. The same result should occur in this context because of: the intimate and intrusive nature of the relationship between an nursing home and its residence, which is characterized by trust and dependence, and which is susceptible to abuse; the nature of fiduciary duties, which require a nursing home to place its residents' interests ahead of its own; and the fact that the nursing home is in the best position to establish whether the resident is competent. *See* Pet. Br., at 30-33; Reply Br., at 11-15.

**V. Contrary to WHCA, the Washington Arbitration Act does not preclude a stay of arbitration pending litigation of non-arbitrable claims.**

WHCA correctly notes that arbitration in this case is governed by the Washington Arbitration Act ("WAA"), Ch. 7.04A

RCW, rather than the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1 *et seq.* WHCA Br., at 8. However, WHCA wrongly contends that the WAA "**forbids** [trial courts] from staying arbitration out of a concern that collateral estoppel might apply to related non-arbitrable claims." WHCA Br., at 6-7 (emphasis & brackets added). In actuality, the WAA does not address a stay of arbitration, let alone forbid a stay of arbitration. The trial court is obligated to enforce an agreement to arbitrate, but the statute does not require the arbitration to commence immediately or otherwise address the timing of arbitration. *See* RCW 7.04A.070(1) (providing "[u]nless the court finds that there is no enforceable agreement to arbitrate, it shall order the parties to arbitrate"; brackets added). While the statute expressly provides that litigation of arbitrable claims **must** be stayed pending arbitration, *see* RCW 7.04A.070(6), and non-arbitrable claims **may** be stayed pending arbitration, *see id.*, the statute is silent regarding whether arbitration can be stayed pending litigation of non-arbitrable claims under appropriate circumstances.<sup>3</sup>

Even if the WAA were construed as implicitly precluding a stay of arbitration, the Court still must reconcile this provision with

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<sup>3</sup> The current version of RCW 7.04A.070 is reproduced in the Appendix.

the contractual nature of arbitration and the right to trial by jury of non-arbitrable claims. Rushing contends that a stay of arbitration should be granted because the potential collateral estoppel effect of arbitration would otherwise give Franklin Hills more than it bargained for, as well as infringing her right to trial by jury. *See* Pet. Br., at 46-50; Reply Br., at 24-25.<sup>4</sup> WHCA does not address these concerns, nor does it explain why the WAA should trump them.<sup>5</sup>

WHCA relies on FAA precedent rejecting collateral estoppel as a basis for staying arbitration pending litigation of overlapping non-arbitrable claims. *See* WHCA Br., at 7-8 (discussing *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213 (1985)). However, this

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<sup>4</sup> Staying litigation of Rushing's wrongful death claims pending arbitration of her survival claims would give Franklin Hills more than it bargained for because Rushing did not sign the arbitration agreement, and her wrongful death claims are not subject to arbitration. *See Townsend v. Quadrant Corp.*, 173 Wn. 2d 451, 464-66, 268 P.3d 917 (2012) (Stephens, J., concurring/dissenting, joined by 4 other Justices, affirming non-signatories are not bound to arbitration agreement); *Woodall v. Avalon Care Ctr.-Federal Way, LLC*, 155 Wn. App. 919, 231 P3d 1252 (2010) (holding wrongful death claims, as distinguished from survival claims, are not subject to arbitration under agreement signed by the decedent).

<sup>5</sup> The Court could determine that the trial court in this case abused its discretion by staying litigation of Rushing's non-arbitrable claims under RCW 7.04A.070(6), but that would not remedy the contractual and constitutional harms she would suffer because, under current court staffing and caseloads, there is a well grounded fear that arbitration will be completed before trial of the non-arbitrable claims can occur. Rushing cannot wait until after arbitration occurs to raise the issue because the issue will be deemed waived or otherwise lost. *See Nielson v. Spanaway General Med. Clinic, Inc.*, 135 Wn. 2d 255, 269, 956 P.2d 312 (1998). It is not enough, as WHCA suggests, to later argue that the result of arbitration should not be given collateral estoppel effect because it did not afford a full and fair hearing. *See* WHCA Br., at 7. A full and fair hearing is not the same as a hearing limited to the issues a party agreed to submit to arbitration or a hearing decided by jury.

precedent is not controlling where the parties have opted for arbitration under the WAA.

In addition, the right to trial by jury under the Washington Constitution is more expansive than the right to trial by jury under the federal constitution. *See Sofie v. Fibreboard Corp.*, 112 Wn. 2d 636, 644 n.4, 771 P.2d 711, 780 P.2d 260 (1989). The Washington Constitution provides that "[t]he right of trial by jury shall remain inviolate." Wash. Const. Art. I § 21 (brackets added). "The term 'inviolable' connotes deserving of the highest protection" and "indicates that the right must remain the essential component of our legal system that it has always been." *Davis v. Cox*, 183 Wn. 2d 269, 288-89, 351 P.3d 862 (2015) (quoting *Sofie*, 112 Wn. 2d at 656). The infringement of Rushing's right to trial by jury is therefore entitled to greater weight under the WAA than it would be under the FAA.<sup>6</sup> Arbitration should be stayed under the circumstances present in this case in order to protect this right.

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<sup>6</sup> WHCA claims "state courts with arbitration acts substantially identical to the WAA consistently hold that trial courts ... must **immediately** compel arbitration notwithstanding the assertion of non-arbitrable claims, even if it would lead to parallel proceedings or inconsistent results." WHCA Br., at 10-11 (ellipses added; emphasis in original; citing *Ingold v. Aimco/Bluffs, LLC Apartments*, 159 P.3d 116 (Colo. 2007); *Wellman, Inc. v. Square D Co.*, 620 S.E.2d 86 (S.C. App. 2005); *Hallmark Indus., LLC v. First Systech Int'l, Inc.*, 52 P.3d 812 (Ariz. App. 2002)). None of these cases uses the word "immediately" or similar language, and none of them addressed arguments comparable to those made by Rushing in this case.

**VI. Rushing endorses and adopts the arguments of WSAJF.**

Without limitation, Rushing endorses and adopts the argument that the Court should sequence arbitration and litigation of non-arbitrable claims to preserve the right to trial by jury based on *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500, 510-11 (1959), and *Lytle v. Household Mfg., Inc.*, 494 U.S. 545, 550 (1990). See WSAJF Br., at 16-20. *Beacon Theatres* has been quoted with approval in Washington for the proposition that "[m]aintenance of the jury as a fact-finding body is of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right to a jury trial should be scrutinized with the utmost care." *Auburn Mech., Inc. v. Lydig Constr., Inc.*, 89 Wn. App. 893, 897, 951 P.2d 311 (quoting *Beacon Theatres*, 359 U.S. at 501), *rev. denied*, 136 Wn. 2d 1009 (1998). The rule of *Beacon Theatres* and *Lytle* is bolstered by the more expansive right to trial by jury in Washington. See *Sofie*, 112 Wn. 2d at 644 n.4.

Respectfully submitted this 3rd day of May, 2017.

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The undersigned does hereby declare the same under oath and penalty of perjury of the laws of the State of Washington:

On the date set forth below, I served the document to which this is annexed by email and First Class Mail, postage prepaid, as follows:

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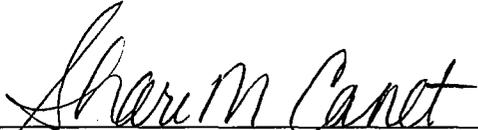
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\_\_\_\_\_  
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# **APPENDIX**

West's Revised Code of Washington Annotated

Title 7. Special Proceedings and Actions (Refs & Annos)

Chapter 7.04A. Uniform Arbitration Act (Refs & Annos)

West's RCWA 7.04A.070

7.04A.070. Motion to compel or stay arbitration

Effective: January 1, 2006

Currentness

(1) On motion of a person showing an agreement to arbitrate and alleging another person's refusal to arbitrate pursuant to the agreement, the court shall order the parties to arbitrate if the refusing party does not appear or does not oppose the motion. If the refusing party opposes the motion, the court shall proceed summarily to decide the issue. Unless the court finds that there is no enforceable agreement to arbitrate, it shall order the parties to arbitrate. If the court finds that there is no enforceable agreement, it may not order the parties to arbitrate.

(2) On motion of a person alleging that an arbitration proceeding has been initiated or threatened but that there is no agreement to arbitrate, the court shall proceed summarily to decide the issue. If the court finds that there is an enforceable agreement to arbitrate, it shall order the parties to arbitrate. If the court finds that there is no enforceable agreement, it may not order the parties to arbitrate.

(3) The court may not refuse to order arbitration because the claim subject to arbitration lacks merit or grounds for the claim have not been established.

(4) If a proceeding involving a claim referable to arbitration under an alleged agreement to arbitrate is pending in court, a motion under this section must be filed in that court. Otherwise a motion under this section may be filed in any court as required by RCW 7.04A.270.

(5) If a party files a motion with the court to order arbitration under this section, the court shall on just terms stay any judicial proceeding that involves a claim alleged to be subject to the arbitration until the court renders a final decision under this section.

(6) If the court orders arbitration, the court shall on just terms stay any judicial proceeding that involves a claim subject to the arbitration. If a claim subject to the arbitration is severable, the court may sever it and limit the stay to that claim.

**Credits**

[2005 c 433 § 7, eff. Jan. 1, 2006.]

Notes of Decisions (14)

West's RCWA 7.04A.070, WA ST 7.04A.070

The statutes and Constitution are current with all laws from the 2016 Regular and Special Sessions and Laws 2017, chs. 1 to 4 of the Washington legislature.

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