

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
CLERK'S OFFICE

Jan 05, 2017, 1:31 pm

RECEIVED ELECTRONICALLY

No. 93824-5

(Court of Appeals No. 74611-1-I)

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

FUTURESELECT PORTFOLIO MANAGEMENT, INC.,
FUTURESELECT PRIME ADVISOR II LLC, THE MERRIWELL
FUND, L.P., and TELESIS IIW, LLC

Plaintiffs/Petitioners,

v.

TREMONT GROUP HOLDINGS, INC., TREMONT PARTNERS, INC.,
OPPENHEIMER ACQUISITION CORPORATION,
MASSACHUSETTS MUTUAL LIFE INSURANCE CO., GOLDSTEIN
GOLUB KESSLER LLP, ERNST & YOUNG LLP and KPMG, LLP

Defendants/Respondents.

REPLY ON PETITION FOR REVIEW OF
FUTURESELECT PORTFOLIO MANAGEMENT, INC.,
FUTURESELECT PRIME ADVISOR II LLC, THE MERRIWELL
FUND, L.P. AND TELESIS IIW, LLC

**GORDON TILDEN THOMAS &
CORDELL LLP**

Jeffrey M. Thomas, WSBA #21175
1001 Fourth Avenue, Suite 4000
Seattle, WA 98154
ATTORNEYS FOR
Plaintiffs/Petitioners

**THOMAS, ALEXANDER &
FORRESTER LLP (OID 91133)**

Steven W. Thomas, *admitted pro hac vice*
Mark Forrester *admitted pro hac vice*
14 - 27th Avenue
Venice, CA 90291
ATTORNEYS FOR Plaintiffs/Petitioners



ORIGINAL

TABLE OF CONTENTS

	<u>Page</u>
ARGUMENT.....	3
1. Plaintiffs' Petition Satisfies the Requirements of Either RAP 13.4 or 13.5	3
2. FutureSelect Is Entitled to Appellate Review of the Arbitration Order	7
3. Review of the Arbitration Order Is Not Untimely.....	11
CONCLUSION.....	14

TABLE OF AUTHORITIES

	<u>Page</u>
Cases	
<i>2005 Tomchin Family Charitable Trust v. Tremont Partners, Inc.</i> , No. 600332-09 (N.Y. Sup. Ct. May 26, 2009)	7
<i>Agile Safety Variable Fund, L.P. v. Tremont Grp. Holdings Inc.</i> , Case No. 10-2904, slip op. (Colo. Dist. Ct. Apr. 25, 2012)	6
<i>Askenazy v. KPMG LLP</i> , 83 Mass. App. Ct. 649, 988 N.E.2d 463 (2013).....	5
<i>Curtis v. Olson</i> , 28 Fla. L. Weekly D545, 837 So. 2d 1155 (Fla. Dist. Ct. App. 2003).....	11
<i>Daginella v. Foremost Ins. Co.</i> , 197 Conn. 26, 495 A.2d 709 (1985).....	11
<i>Ex Parte Cox</i> , 828 So. 2d 295 (Ala. 2002)	10
<i>Flatland Real Estate Co. v. Dugas Constr., Inc.</i> , 784 So. 2d 867 (La. Ct. App. 2001)	11
<i>Fox v. Sunmaster Prods., Inc.</i> , 115 Wn.2d 498, 798 P.2d 808 (1990) 15, 16	
<i>Fuqua v. SVOX AG</i> , 2014 Ill. App. 131429, 13 N.E.3d 68, 382 Ill. Dec. 655 (2014)	10
<i>Hill v. Garda</i> , 179 Wn.2d 47, 308 P.3d 635 (2013)	passim
<i>Holloman v. Circuit City Stores, Inc.</i> , 391 Md. 580, 894 A.2d 547 (2006).....	10
<i>Horanburg v. Felter</i> , 136 N.M. 435, 99 P.3d 685 (N.M. Ct. App. 2004)	10
<i>Hosiery Mfrs. Corp. v. Goldston</i> , 238 N.Y. 22, 143 N.E. 779 (1924).....	11
<i>In re Greening</i> , 141 Wn.2d 687, 9 P.3d 206 (2000)	4, 16
<i>Iowa Mgmt. & Consultants, Inc. v. Sac & Fox Tribe of the Miss. in Iowa</i> , 656 N.W.2d 167 (Iowa 2003).....	11

TABLE OF AUTHORITIES

	<u>Page</u>
<i>KPMG LLP v. Cocchi</i> , 37 Fla. L. Weekly D1081, 88 So. 3d 327 (Fla. Dist. Ct. App. 2012)	6
<i>Kremer v. Rural Cmty. Ins. Co.</i> , 280 Neb. 591, 788 N.W.2d 538 (2010).....	10
<i>N. Ind. Commuter Transp. Dist. v. Chicago Southshore and S. Bend R.R.</i> , 793 N.E.2d 1133 (Ind. Ct. App. 2003)	12
<i>Questar Homes of Avalon, LLC v. Pillar Constr., Inc.</i> , 388 Md. 675, 882 A.2d 288 (2005).....	10
<i>Sandalwood Debt Fund A, L.P. v. KPMG LLP</i> , 2013 WL 3284126 (N.J. Super. Ct. App. Div. July 1, 2013).....	6
<i>Sawyers v. Herrin-Gear Chevrolet Co.</i> , 26 So. 3d 1026 (Miss. 2010).....	11
<i>Siopes v. Kaiser Found. Health Plan, Inc.</i> , 130 Haw. 437, 312 P.3d 869 (2013).....	10
<i>Sisneros v. Citadel Broad. Co.</i> , 140 N.M. 266, 142 P.3d 34 (N.M. Ct. App. 2006)	10
<i>State v. Schwab</i> , 134 Wn. App. 635, 141 P.3d 658 (2006).....	15
<i>Wein v. Morris</i> , 194 N.J. 364, 944 A.2d 642 (2008)	9
<i>Zions Mgmt. Servs. v. Record</i> , 305 P.3d 1062, 2013 UT 36 (Utah 2013).....	12
<i>Zutty v. Rye Select Broad Mkt. Prime Fund, L.P.</i> , 2011 WL 5962804 (N.Y. Sup. Ct. Apr. 15, 2011).....	7
 Statutes	
RCW 7.04A.280(1)(a)-(f)	8, 9
 Other Authorities	
2A L. Orland, Wash. Prac., <i>Rules Practice</i> , § 3061 (1978).....	14

TABLE OF AUTHORITIES

	<u>Page</u>
David B. Harrison, Annotation, <i>Appealability of State Court's Order or Decree Compelling or Refusing to Compel Arbitration</i> , 6 A.L.R.4th 652 (1981).....	12
Rules	
RAP 13.3(d).....	3
RAP 13.4.....	2, 3, 4
RAP 13.5.....	2, 3, 4
RAP 2.2(d).....	14
RAP 2.3.....	2

Plaintiffs/Petitioners FutureSelect¹ here respond to Defendant/Respondent KPMG's Answer in Opposition to FutureSelect's Petition for Review.

KPMG's abject insistence—for nearly five years now—that review of an obviously wrong order compelling arbitration is not required or is untimely or is otherwise unhelpful ignores two, basic facts that the underlying courts have found *in this case*: (1) that parties who have not agreed to arbitrate a dispute, like each of the Plaintiffs, cannot be compelled to arbitrate, and (2) as this Court has observed, it makes no sense and is in fact unconstitutional to require a party to spend millions of dollars on an arbitration *before* a final determination that its right to a jury trial was wrongly compromised by a lower court's order to compel.

These points are essentially uncontested. In a brief rife with “affirm it” keywords—“interlocutory” or “piecemeal” or “discretion”—KPMG fails to address the substantive discussion from this Court's decision in *Hill v. Garda*, 179 Wn.2d 47, 308 P.3d 635 (2013). There, this Court expressly addressed the merits of immediate appeal of an order compelling arbitration, *see id.* at 54-55 (“If a court compels arbitration

¹ Except as otherwise indicated, capitalized terms have the same meaning as they did in FutureSelect's Petition for Review (“Petition”) and KPMG's Answer in Opposition to the Petition for Review (“Answer”).

without deciding the validity of the arbitration clause, a party may be forced to proceed through a potentially costly arbitration before having the opportunity to appeal. . . . We find no support in the rules of procedure or case law for the Court of Appeals' decision to compel arbitration without considering whether the arbitration clause is even valid."), and confirmed that requiring parties improperly compelled to arbitrate to wait for appellate review would result in a tremendous waste of time and resources of both the parties and the courts, and would deprive the wrongly compelled party of its constitutional right to a jury trial. In so doing, Washington joined the bulk of other courts reaching the same, sensible conclusion. *See infra* at 6-7.

The arguments KPMG *does* make do not change these essential facts. RAP 13.5 does not apply to the exclusion of RAP 13.4, but it does not matter: Plaintiffs satisfy the requirements of either. Plaintiffs *did* seek discretionary review of the appellate court order, but it does not matter: RAP 2.3 is satisfied whether Plaintiffs mentioned it or not. Finally, this appeal *is* timely because *Hill v. Garda* was decided nearly two years after the Court of Appeals' refusal to review the order compelling arbitration and is an intervening change of law, but it does not matter: this Court has the ability to review, in its discretion, the decisions of the lower courts and to require them to be in conformance with its own rulings.

Expedience need not yield to sense and legal precedent: this Court exists to ensure that is so. Granting Plaintiffs' motion and permitting review of an arbitration agreement materially identical to one already determined—in *this case*—to have no bearing on FutureSelect makes sense and is consistent with the jurisprudence here in Washington and around the country. For these and the reasons stated below and in their Petition, Plaintiffs respectfully request that their motion be granted.

ARGUMENT

1. Plaintiffs' Petition Satisfies the Requirements of Either RAP 13.4 or 13.5

KPMG first argues that RAP 13.5 applies, not RAP 13.4, and that under RAP 13.5, review should only be granted if the Court of Appeals committed “obvious error which would render further proceedings useless” or “probable error and the decision . . . substantially alters the status quo or substantially limits the freedom of a party to act.” KPMG’s argument ignores the rules of appellate procedure, which expressly conflate the two rules as applied here. Under RAP 13.3(d), a petition for review pursuant to RAP 13.4 will be given the same effect as a motion for discretionary review pursuant to RAP 13.5.²

² In its May 19, 2016 Notation Ruling, the Commissioner referred to the November 2011 Order as an “order terminating review” (emphasis added) at least four times (Ruling at 2, 3), and even suggested that FutureSelect should have pursued a “petition for review”

Moreover, whether under RAP 13.5 or RAP 13.4, review should be granted because either (1) there is *obvious* error rendering further proceedings useless, or (2) *probable* error that alters the status quo and severely limits FutureSelect's freedom to act.

As to the first, errors are multiple and obvious. The Court of Appeals declined to review its previous decisions based upon FutureSelect's purportedly untimely request. In effect, the Court of Appeals imposed a time limit for an appeal based upon an intervening decision of this Court before the intervening decision was made. This was obviously incorrect: no such time limit exists and KPMG has not identified any. *See In re Greening*, 141 Wn.2d 687, 697, 9 P.3d 206 (2000) (a party "should not be faulted for having omitted arguments that were essentially *unavailable* at the time," and "where an intervening opinion has effectively overturned a prior appellate decision that was originally determinative of a material issue, the intervening opinion constitutes a 'significant change in the law' for purposes of exemption from procedural bars.") (emphasis in original). The failure of the lower court to even *consider* arbitrability is straightforward error. *Hill*, 179

(emphasis added) (Ruling at 2)—language associated with RAP 13.4. Nevertheless, as explained, review is proper under either RAP 13.4 or 13.5.

Wn.2d at 58. Had it considered the issue, in light of *Hill*, it would have to acknowledge the Plaintiffs' right to appeal.

Moreover, the lower court's errors do not merely "render future proceedings useless." Instead, they *create* a requirement that the parties engage in future proceedings that will be useless. The error requires the parties to participate in lengthy and expensive arbitration before having the opportunity to have the arbitrability of the matter decided. That arbitration is guaranteed to be useless if, as was the case with EY's engagement letter *in this case* and consistent with precedent from Washington and around the country, FutureSelect cannot be compelled to arbitrate. *See, e.g., Askenazy v. KPMG LLP*, 83 Mass. App. Ct. 649, 657, 988 N.E.2d 463 (2013) (where plaintiffs "neither were party, nor expressly assented, to the engagement letters," plaintiffs were "neither implicitly nor equitably bound to arbitrate because their claims are extracontractual, neither contract-based nor dependent upon third-party beneficiary status"); *KPMG LLP v. Cocchi*, 37 Fla. L. Weekly D1081, 88 So. 3d 327 (Fla. Dist. Ct. App. 2012) (under Delaware law, claims asserted by investors in limited partnerships that lost millions of dollars in Ponzi scheme against the auditor of the partnerships' financial statements were direct claims, rather than derivative claims, and thus arbitration provision in contract

between auditor and the manager of the partnerships did not apply to the claims).

Finally, and to the extent the lower court's error was "probable" instead of "obvious,"³ FutureSelect's freedom to act is clearly limited by that probable error. Making the requirement of years of arbitration and millions of dollars spent a prerequisite to FutureSelect's constitutional right to a jury trial is debilitating, and fatally so. FutureSelect's retiree investors do not have time to engage in multiple proceedings just to see how it would have come out. Moreover, and unlike KPMG, FutureSelect does not have the capacity to be exposed financially to multiple litigations of the same claims. Requiring it to do so—once in a doomed arbitration and then again in the jury trial that it sought in the first instance—is

³ KPMG argues that those cases were wrongly decided, then declares that KPMG was dropped from those complaints—a fact irrelevant to the claims and issues at hand here. Moreover, KPMG's reference to other courts that have found that arbitration agreements are enforceable against Rye Fund investors like FutureSelect (Answer at 14, n.12) neglects to mention the critical distinction: in those cases, the courts found the claims to be derivative. See *Sandalwood Debt Fund A, L.P. v. KPMG LLP*, 2013 WL 3284126, at *7-8 (N.J. Super. Ct. App. Div. July 1, 2013) (claims derivative because plaintiffs "failed to show that the injury is independent of any alleged injury to the limited partnership," and "claimed damages would not benefit plaintiffs alone but would inure to the benefit of the Rye Funds, and all partners accordingly"); *Agile Safety Variable Fund, L.P. v. Tremont Grp. Holdings Inc.*, Case No. 10-2904, slip op. (Colo. Dist. Ct. Apr. 25, 2012) (plaintiffs' claims derivative as "limited partners suffered harm because the entire fund was diminished," and complaint did "not sufficiently allege . . . [that] the individual limited partners suffered an economic loss distinct from that sustained by the [funds] as a whole"); *Zuty v. Rye Select Broad Mkt. Prime Fund, L.P.*, 2011 WL 5962804, at *17 (N.Y. Sup. Ct. Apr. 15, 2011) (plaintiffs did not oppose motion to compel arbitration); *2005 Tomchin Family Charitable Trust v. Tremont Partners, Inc.*, No. 600332-09 (N.Y. Sup. Ct. May 26, 2009) (derivative action, stayed pending arbitration).

tantamount to the forcible waiver of the constitutional right to access to the courts.

2. FutureSelect Is Entitled to Appellate Review of the Arbitration Order

KPMG next argues that “70 years of precedent” and the Revised Uniform Arbitration Act (“RUAA”) prohibit appeal from a decision compelling arbitration, and that the *Hill* decision did not change that *sub silentio*. KPMG is wrong on several counts.

First, the “70 years of precedent” to which KPMG refers came before this Court’s decision in *Hill*. For decades, this Court had not considered an automatic right to appeal decisions *compelling* arbitration, even though there was an immediate right to appeal orders *denying* arbitration. The *Hill v. Garda* decision marked an intervening change in the law in which this Court specifically stated that it was addressing the question for the first time and established its interpretation of Washington law on the right to appeal decisions compelling arbitration. To the extent prior case law prohibited appeal before completing an arbitration, the “70 years” of Court of Appeals’ decisions before *Hill v. Garda* were overturned.

Second, KPMG has misread—and overread—the RUAA. Washington’s RUAA does not prohibit appeals from orders compelling

arbitration. In fact, the rule referenced by KPMG, RCW 7.04A.280(1)(a)-(f), simply lists certain kinds of orders regarding arbitration that are expressly permitted to be appealed. There is no claim, in legislative history or on the text of the law, that this is an all-inclusive list, let alone any discussion of the required timing of the appeal. If the RUAA were interpreted as prohibiting such appeals under the principle *expressio unius exclusio alterius*, as KPMG argues, the result would be that a party compelled to arbitrate could *never* appeal a trial court's decision to compel arbitration, even after arbitration was complete. This is obviously incorrect and KPMG has repeatedly said that FutureSelect *would* have the right to appeal after arbitration. This concession is inconsistent with KPMG's claim that RCW 7.04A.280(1)(a)-(f) prohibits appeal from an order compelling arbitration by virtue of its alleged "silence" on the issue. See *Wein v. Morris*, 194 N.J. 364, 380, 944 A.2d 642 (2008) ("there is no express provision [in the UAA] for an appeal from an order compelling arbitration and staying the judicial proceeding," but "we find it appropriate to deem an order compelling arbitration a final judgment appealable as of right" to "provide uniformity, promote judicial economy, and assist the speedy resolution of disputes").

Third, the *Hill* decision does not run counter to the "clear majority of jurisdictions," as KPMG erroneously suggests, in providing a right to

appeal a determination that a party must arbitrate. (Answer at 11).

Washington is among the great bulk of jurisdictions agreeing that orders compelling arbitration should be and are immediately appealable as of right. *See, e.g., Wein*, 194 N.J. at 380; *Sisneros v. Citadel Broad. Co.*, 140 N.M. 266, 142 P.3d 34 (N.M. Ct. App. 2006); *Horanburg v. Felter*, 136 N.M. 435, 99 P.3d 685 (N.M. Ct. App. 2004); *Kremer v. Rural Cmty. Ins. Co.*, 280 Neb. 591, 788 N.W.2d 538 (2010); *Ex Parte Cox*, 828 So. 2d 295, 298 (Ala. 2002); *Fuqua v. SVOX AG*, 2014 Ill. App. 131429, 13 N.E.3d 68, 382 Ill. Dec. 655 (2014); *Holloman v. Circuit City Stores, Inc.*, 391 Md. 580, 894 A.2d 547, 551 (2006); *Questar Homes of Avalon, LLC v. Pillar Constr., Inc.*, 388 Md. 675, 882 A.2d 288 (2005); *Siopes v. Kaiser Found. Health Plan, Inc.*, 130 Haw. 437, 312 P.3d 869 (2013); *Flatland Real Estate Co. v. Dugas Constr., Inc.*, 784 So. 2d 867 (La. Ct. App. 2001); *Sawyers v. Herrin-Gear Chevrolet Co.*, 26 So. 3d 1026 (Miss. 2010); *Hosiery Mfrs. Corp. v. Goldston*, 238 N.Y. 22, 143 N.E. 779 (1924); *Daginella v. Foremost Ins. Co.*, 197 Conn. 26, 31 n.6, 495 A.2d 709 (1985); *Curtis v. Olson*, 28 Fla. L. Weekly D545, 837 So. 2d 1155, 1156 (Fla. Dist. Ct. App. 2003); *Iowa Mgmt. & Consultants, Inc. v. Sac & Fox Tribe of the Miss. in Iowa*, 656 N.W.2d 167, 170 (Iowa 2003); *N. Ind. Commuter Transp. Dist. v. Chicago Southshore and S. Bend R.R.*, 793 N.E.2d 1133 (Ind. Ct. App. 2003); *Zions Mgmt. Servs. v. Record*, 305 P.3d

1062, 2013 UT 36 (Utah 2013). If that is not a majority, there is no “clear majority” on this issue. See David B. Harrison, Annotation, *Appealability of State Court’s Order or Decree Compelling or Refusing to Compel Arbitration*, 6 A.L.R.4th 652 (1981).

Finally, the creation of a right to appeal an order compelling arbitration was not *sub silentio*, as KPMG claims. (Answer at 10). Instead, this Court expressly stated that the Supreme Court had yet to address the question of whether an order compelling arbitration was immediately appealable. *Hill*, 179 Wn.2d at 54-55 (“When the trial court declines to compel arbitration, that decision is immediately appealable. . . . **While we have never addressed whether the opposite is always true**, similar considerations are at play.”) (emphasis added). The Court then proceeded to answer that question, finding “no support” in rules or case law for a Court of Appeals to compel arbitration without first considering whether the clause is valid. *Id.*

KPMG also argues that *Hill* is inapplicable here because that case involved a request under RAP 2.3 for discretionary review (Answer at 11). The fact that *Hill* involved discretionary review actually supports FutureSelect’s position here. In *Hill*, this court observed that there is “no support in the rules of procedure or case law for the Court of Appeals’ decision to compel arbitration without considering whether the arbitration

clause is even valid.” 179 Wn.2d at 55. Therefore, this Court held not merely that the Court of Appeals cannot ignore an appeal of an order compelling arbitration, but rather that the Court of Appeals is *without discretion* to refuse to consider the appealability of *any* gateway issues. A court without discretion is subject to some requirement—in this case, the requirement to consider the appeal of a party wrongly compelled to arbitrate.

3. Review of the Arbitration Order Is Not Untimely

Finally, KPMG argues, in a variety of ways, that FutureSelect’s motion—and this appellate procedure in general—is untimely. It cannot be so.

To recap, when FutureSelect was originally compelled to arbitration in 2011, it immediately and timely appealed the order so compelling. That appeal was denied in an exercise of discretion by the Court of Appeals. Subsequently, and following the *Hill* decision two years later, the denial of a similar motion to compel by EY, *the imposition of a stay pending the outcome of the EY trial*, and the conclusion of that EY trial—and upon entry of final judgment—FutureSelect then timely filed the present appeal proceedings, again with the same goal: to avoid a wasteful and expensive arbitration that FutureSelect was not properly compelled to participate in anyway.

RAP 2.2(d) expressly allows that an appeal “may be taken” from decisions entered that do not dispose of all the claims or counts as to all the parties. The rule “does not explicitly say what *must* be appealed to avoid loss of the right of review or other prejudice.” 2A L. Orland, Wash. Prac., *Rules Practice*, § 3061, at 432 (1978). An order with regard to one of multiple defendants is a “part of the decision” ultimately rendered in the case. FutureSelect initiated appellate proceedings in *both* instances—upon the issuance of the initial order compelling arbitration and issuance of final judgment against EY. In either case, the appellate right has been preserved.

KPMG’s current argument that this appeal process is somehow “untimely” (Answer at 16-18) is made without reference to any statutory time limits or even guidelines. When an appeal is based upon an intervening change in the law, there is not, as KPMG suggests, a 30-day time limit to file the appeal. In fact, “[the RAPs] make it clear that a party does not automatically lose the right to appellate review of either ‘appealable orders’ or partial ‘final judgments’ by failing to file a notice of appeal within 30 days.” *Fox v. Sunmaster Prods., Inc.*, 115 Wn.2d 498, 505, 798 P.2d 808 (1990).

More broadly, upon a change of law, the appellate court does not “lose the power to change its decision.” (Answer at 19). This is true

because the intervening change in the law is not known at the time of the original order. *See Fox*, 115 Wn.2d at 505 (“A party cannot always know, when the first adverse ‘appealable order’ in a case is entered, if review of that decision will ever be necessary.”); *State v. Schwab*, 134 Wn. App. 635, 647, 141 P.3d 658 (2006) (“Nor is the [appellant’s] motion untimely because the Supreme Court’s [intervening decision] was not foreseeable by any court or party involved in this case.”); *In re Greening*, 141 Wn.2d at 697 (“While litigants have a duty to raise *available* arguments in a timely fashion and may later be procedurally penalized for failing to do so, . . . they should not be faulted for having omitted arguments that were essentially *unavailable* at the time, as occurred here.”) (footnote omitted).

KPMG’s suggestion that FutureSelect was required to appeal more quickly after the decision in *Hill v. Garda* is not based on any actual requirement or precedent or sense. KPMG’s rule would require lawyers to research every issue raised in every order in every case for every client they have or had, and perform this mountain of research periodically so as to file an appeal based on a change of law in a fashion fast enough for KPMG. *See Fox*, 115 Wn. 2d at 505 (it “makes no sense to mandate an immediate appeal from a partial final judgment” because such “a requirement would simply encourage multiple and perhaps unnecessary appeals in multi-party and multi-claim cases”). Any such obligation

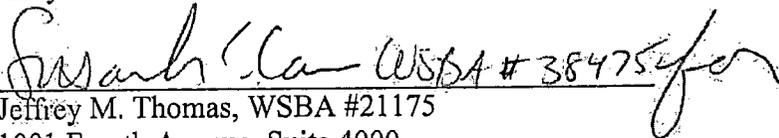
would be overly burdensome and make the conscientious practice of law an impossibility.

CONCLUSION

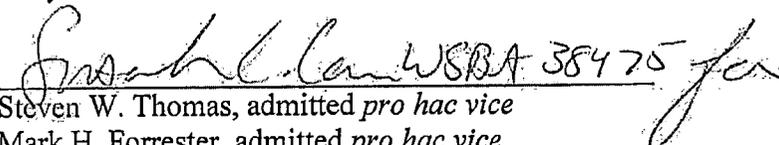
For each of the foregoing reasons, FutureSelect respectfully requests that its Motion be granted.

Respectfully submitted this 5th day of January, 2017.

GORDON TILDEN THOMAS & CORDELL LLP
Attorneys for Plaintiffs/Petitioners

By  WSBA # 384754 for
Jeffrey M. Thomas, WSBA #21175
1001 Fourth Avenue, Suite 4000
Seattle, Washington 98154
Telephone: (206) 467-6477
Facsimile: (206) 467-6292
Email: jthomas@gordontilden.com

THOMAS, ALEXANDER & FORRESTER LLP
Attorneys for Plaintiffs/Petitioners

By  WSBA 38475 for
Steven W. Thomas, admitted *pro hac vice*
Mark H. Forrester, admitted *pro hac vice*
14 27th Avenue
Venice, CA 90291
Telephone: (310) 961-2536
Facsimile: (310) 526-6852
Email: steventhomas@tfsattorneys.com
Email: markforrester@tfsattorneys.com

DECLARATION OF SERVICE

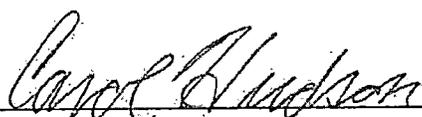
The undersigned declares under penalty of perjury under the laws of the State of Washington that on the below date, I caused a true and correct copy of this document to be delivered to:

Attorneys for Respondent KPMG:

George E. Greer, WSBA #11050
Paul F. Rugani, WSBA #38664
Orrick, Herrington & Sutcliffe LLP
701 Fifth Avenue, Suite 5600
Seattle, WA 98104-7097
ggreer@orrick.com
prugani@orrick.com
Via Email and U.S. Mail

Jonathan Pahl
David A. Forkner
Williams & Connolly LLP
725 Twelfth Street, N.W.
Washington, D.C. 20005
dforkner@wc.com
jpahl@wc.com
Via Email and U.S. Mail

DATED this 5th day of January, 2017, at Seattle, Washington.



Carol Hudson, Legal Secretary
Gordon Tilden Thomas & Cordell LLP

OFFICE RECEPTIONIST, CLERK

To: Carol Hudson
Subject: RE: FutureSelect v. Tremont, No. 93824-5

Received 1-5-17

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

Questions about the Supreme Court Clerk's Office? Check out our website:
http://www.courts.wa.gov/appellate_trial_courts/supreme/clerks/

Looking for the Rules of Appellate Procedure? Here's a link to them:
http://www.courts.wa.gov/court_rules/?fa=court_rules.list&group=app&set=RAP

Searching for information about a case? Case search options can be found here:
<http://dw.courts.wa.gov/>

From: Carol Hudson [mailto:chudson@gordontilden.com]
Sent: Thursday, January 05, 2017 1:29 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: 'ggreer@orrick.com' <ggreer@orrick.com>; prugani@orrick.com; 'dforkner@wc.com' <dforkner@wc.com>; jpahl@wc.com; Jeff Thomas <jthomas@gordontilden.com>; steventhomas@tafsattorneys.com; Mark Forrester <MarkForrester@tafsattorneys.com>; Melissa Lawton <MelissaLawton@tafsattorneys.com>
Subject: FutureSelect v. Tremont, No. 93824-5

Dear Clerk:

Attached for filing in *FutureSelect, et al. v. Tremont Group, et al.*, Supreme Court No. 93824-5, is the following document:

1. Reply on Petition for Review of FutureSelect, et al.

This document is submitted by:

Jeffrey M. Thomas, WSBA #21175
(206) 467-6477
jthomas@gordontilden.com

Carol Hudson | Legal Assistant to:
Jeffrey M. Thomas
Michael Rosenberger
Greg D. Pendleton

Gordon Tilden Thomas & Cordell LLP

1001 Fourth Avenue, Suite 4000
Seattle, Washington 98154
t: 206.467.6477 d: 206.805.6617
w: gordontilden.com

GORDON
TILDEN
THOMAS
CORDELL | **GTTC**