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NO. 62894-1-I
COURT OF APPEALS
DIVISION I
OF THE STATE OF WASHINGTON

CLIFFORD WAYNE WOODALL, individually and as representative of
the ESTATE OF HENRY WAYNE WOODALL; and SHARON G.
WOODALL KING,

Respondents,

vs.

AVALON CARE CENTER - FEDERAL WAY, L.L.C.,

Appellant.

OPENING BRIEF OF APPELLANT

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I. INTRODUCTION

Appellant/Cross Respondent Avalon Care Center – Federal Way LLC appeals a partial denial of a motion to compel arbitration. This case involves an explicit agreement to arbitrate all claims, including claims of “any spouse, children or heirs of the Resident or Executor of the Resident’s estate,” arising out of care provided by Appellant/Cross Respondent Avalon Care Center – Federal Way, LLC (“Avalon Federal Way”). As a matter of first impression this Court must decide if such an express arbitration agreement applies to wrongful death claims.

Avalon Federal Way moved to compel arbitration in response to claims brought by the personal representative (“PR”) for the decedent against its skilled nursing facility where the decedent had resided. The PR brought claims on behalf of the decedent (survivor) as well as on behalf of the decedent’s children (wrongful death as well as the two adult children in their individual capacity). The Court granted the motion to compel arbitration on the survivor claim. The Court denied the motion to compel arbitration on the wrongful death claim – splitting the claim, based on the same facts, into two actions in two different forums. Avalon appeals the portion of the order that denied arbitration seeking an order compelling arbitration as to all claims.

Avalon Federal Way raises a jurisdictional challenge to the claims of Clifford Wayne Woodall, individually, and Sharon G. Woodall King. They are improper parties without standing under the wrongful death statute RCW 4.20.010 as they are suing in their individual capacity rather

than as Personal Representative. Neither Clifford Woodall nor Sharon King has standing, as individuals, to bring either a survivor or a wrongful death claim.

II. ASSIGNMENT OF ERROR

1. The trial court erred when it denied the portion of Appellant/Cross Respondent's Motion to Compel Arbitration that applied to the wrongful death claims.

III. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

Did the trial court err in its partial denial of Appellant/Cross Respondent's Motion to Compel Arbitration as to the wrongful death claims where

- (1) The arbitration agreement is broadly worded and specifically includes wrongful death claims,
- (2) A wrongful death claim is a derivative action brought by the Personal Representative of the estate of the decedent,
- (3) Washington favors arbitration, and
- (4) Where the court's order requires splitting of claims based upon the same facts into two separate court and arbitration proceedings.

IV. STATEMENT OF THE CASE

A. Procedural Facts.

The estate of Henry Woodall filed suit against Avalon Federal Way on August 1, 2008. CP 3-6. This suit was brought by his personal representative, Mr. C. Woodall. CP 69. The Complaint alleged causes of

action for survivorship by the estate and wrongful death causes of action for the personal representative and the surviving children. CP 5-6. These causes of action arise out of health care provided to Henry Woodall. CP 2.

Defendant Avalon Federal Way moved to compel arbitration pursuant to the Agreement executed by Mr. Woodall. CP 22-27. The motion initially was granted. CP 78-80. Subsequently, the Court acknowledged plaintiffs' late filed responsive pleadings. CP 90-91. The Court considered the late pleadings as a Motion for Reconsideration and requested additional briefing on two discreet topics. CP 90-91. The Court partially granted and partially denied the Motion to Compel Arbitration. CP 141-42. The Court "reluctantly" determined that the "analysis and outcome must be different for the survival claims...and the wrongful death claims...joined in this action." CP 141.

The Court wrote "[t]he wrongful death claim of his children...are independent claims as to which the arbitration agreement does not apply" and these claims could be pursued in court. CP 142. The Court took care to clearly state that the "reluctance" in its decision "stems from concurrence in the assertion made by the defendant that '[l]itigation in two separate forums is inefficient, unfair and exposes [all parties] to the inherent danger of conflicting outcomes based on the same set of intertwined facts.'" CP 142.

Both parties moved for clarification of which documents the Court reviewed and/or considered for the decision. CP 148-50; 162-67. Clarification was received from the court. CP 210-12.

The decision was timely appealed. CP 143-47. The appellate court determined this was an appeal of right for the defendant. *See* Commissioner's Ruling on Appealability dated March 24, 2009.

B. Underlying Facts

1. Henry Woodall Executed a Broad Arbitration Agreement with Skilled Nursing Facility Avalon Federal Way.

Avalon Federal Way is a facility which provides skilled nursing care to residents. CP 23. Mr. Henry Woodall resided at Avalon Federal Way for approximately nine months, from October 2006 to July 21, 2007. CP 23.

Upon Mr. Woodall's admission, he and Avalon Federal Way executed an Arbitration Agreement dated October 6, 2006. CP 32-35. The Arbitration Agreement document caption states in a bold, uncluttered and capitalized font:

**RESIDENT AND FACILITY ARBITRATION AGREEMENT
(Not a Condition of Admission – Please Read Carefully)**

Id. at 32. The Agreement included, among other things, submitting to arbitration all claims of damages related to “medical care rendered or should have been rendered” by the facility. CP 32.

The Agreement provides “[w]e expressly intend that this Agreement shall bind all persons whose alleged claims for injuries or losses arise out of care rendered by the Facility or which should have been rendered by the Facility . . . including any spouse, children or heirs of the Resident or Executor of the Resident's estate.” CP 32.

2. Henry Woodall's Estate and Wrongful Death Claimants Pursued Litigation Against Avalon Federal Way Despite the Arbitration Agreement.

Mr. Woodall had a long and complex medical history for many years prior to his residency at Avalon Federal Way. CP 23. On July 4, 2007, despite precautions established by Avalon Federal Way to protect him, Mr. Woodall injured his hip, was hospitalized for surgical repair, and returned to the facility on July 9, 2007. He was hospitalized again for his hip toward the end of July and did not return to the facility before passing away later that summer. CP 23.

Mr. Woodall is survived by his children, Sharon King and Clifford Woodall. CP 68. Mr. C. Woodall is the Personal Representative. CP 69. He filed this action on August 1, 2008. CP 3-6. In January 2008 and again in October 2008 plaintiffs were made aware that defendant intended to rely on the Arbitration Agreement. CP 96, 101.

V. ARGUMENT

A. Summary of Argument.

All claims in this matter are governed by a valid and enforceable Arbitration Agreement. Henry Woodall was empowered to execute such an agreement and to bind himself, his estate, and his heirs for causes of action derived from his health care. The trial court appropriately ordered the estate's claims into arbitration pursuant to the terms of the Arbitration Agreement. The trial court erred by not ordering all claims into arbitration.

B. The Trial Court Erred When It Denied Avalon Federal Way's Motion to Compel Arbitration of the Wrongful Death Claims Pursuant to the Parties' Arbitration Agreement.

1. The Court Reviews *De Novo* the Denial of a Motion to Compel Arbitration.

An order denying a motion to compel arbitration discontinues the action for arbitration and, therefore, is immediately appealable. RAP 2.2(a)(30); *Stein v. Geonerco, Inc.*, 105 Wn. App. 41, 45, 17 P.3d 1266 (2001) (“A court decision that discontinues an ‘action’ for arbitration falls within the meaning of RAP 2.2(a)(3) because it involves issues wholly separate from the merits of the dispute and because an effective challenge to the order is not possible without an interlocutory appeal”).

The standard of review is *de novo* in an appeal based on motions to compel arbitration. “Review of a trial court’s decision to grant or deny a motion to compel is *de novo*.” *Kruger Clinic v. Regence BlueShield*, 157 Wn.2d 290, 298, 138 P.3d 936 (2006), citing *Zuver v. Airtouch Commc’ns, Inc.*, 153 Wn.2d 293, 302, 103 P.3d 753 (2004). The party opposing arbitration bears the burden of showing that the agreement is not enforceable. *Id.* See *Green Tree Fin. Corp. v. Randolph*, 531 U.S. 79, 92, 121 S. Ct. 513 (2000). The Respondent/Cross Appellant Mr. C. Woodall, bears that burden.

2. The Arbitration Agreement Is a Binding Contract.

Parties to a contract are bound by the terms of that contract. *Zuver*, 153 Wn.2d at 302. Henry Woodall contracted with Avalon Federal Way. That contract specifically included an arbitration agreement for any claims

arising out of his health care. CP 32. That agreement was signed October 6, 2004. CP 34.

The Arbitration Agreement document is clearly and unambiguously set forth. CP 32. The second paragraph of the document sets out that the parties agree to binding arbitration “for all disputes and claims for damages of any kind for injuries and losses arising from the medical care rendered or which should have been rendered.” *Id.*

The listed actions include, among others, that “must be arbitrated” are “claims for personal injury from alleged negligence...malpractice” or “any departure from accepted standards of medical or health care.” *Id.*

Respondent/Cross Appellant’s allegation in this case relates to the care and treatment Mr. Woodall received and his hip injury. The causes of action in the complaint include negligence, violation of RCW 74.34 (abuse of the vulnerable adult) and outrage. CP 5-6. Henry Woodall was bound to the terms of the Arbitration Agreement. Respondent/Cross Appellant’s allegations are squarely within the parameters of actions clearly contemplated in the Arbitration Agreement.

3. The Arbitration Agreement Expressly Included Limiting Actions of Heirs

The Arbitration Agreement specifically included contract terms to limit actions brought by heirs. “We expressly intend that this Agreement shall bind all persons...including any spouse, children, or heirs of the Resident or Executor of the Resident’s estate.” CP 32.

The language and intent of the agreement are clear and

unequivocal. Henry Woodall validly bound his personal representative to arbitrate all disputes or claims for damages of any kind. This is not an unusual occurrence and it is similar to the valid restrictions testators commonly make on their heirs. *See, e.g., Saunders v. Callaway*, 42 Wn. App. 29, 34, 708 P.2d 652 (1985) (testators can validly restrict the ability of heirs to sell property).

All the claims in this action should be submitted to arbitration pursuant to the Arbitration Agreement executed by Henry Woodall.

C. The Arbitration Agreement Requires Arbitration of the Derivative Wrongful Death Claims

Henry Woodall executed a valid and enforceable Arbitration Agreement. That agreement clearly covers all claims brought in this case. Pursuant to that agreement, all claims should be arbitrated.

1. The Wrongful Death and Survival Claims Are Based on the Same Set of Facts and Wrongful Death Claims Are Derivative.

All claims in this case arise out of health care provided to Henry Woodall. Washington tort law recognizes two causes of action where a defendant's negligence causes the death of another: (1) wrongful death statutes, RCW 4.20.010 and RCW 4.20.020 and (2) the survival statutes, RCW 4.20.046 and RCW 4.20.060. *Otani v. Broudy*, 151 Wn.2d 750, 754-55, 92 P.3d 192 (2004). Survival actions are often brought together with wrongful death actions, but they are conceptually distinct. *See Federated Services Ins. Co. v. Estate of Norberg*, 101 Wn. App. 119, 126, 4 P.3d 844 (2000). Survival actions allow the decedent's existing causes

of action to survive as an asset of his estate; wrongful death actions allow for compensation for losses caused by the decedent's death. *Id.*

Plaintiffs have alleged claims under both causes of action.

a. Washington's survival statutes

The survival statutes preserve causes of action for injuries suffered prior to death but do not create new causes of action for statutorily named beneficiaries. *Otani*, 151 Wn.2d at 755. The purpose of awarding damages under the survival statutes is to remedy the common law anomaly which allowed tort victims to sue if they survived but barred their claims if they died. *Id.* at 755.

The general survival statute provides that “[a]ll causes of action by a person or persons against another person or persons shall survive to the personal representatives . . . PROVIDED, HOWEVER, that the personal representative shall only be entitled to recover damages for pain and suffering, anxiety, emotional distress, or humiliation personal to and suffered by a deceased on behalf of those beneficiaries enumerated in RCW 4.20.020.” RCW 4.20.046(1).

The special survival statute relates to personal injury actions and provides the personal representative of a decedent the authority to bring a cause of action for a decedent's personal injuries if the injuries were the cause of death. *See* RCW 4.20.060.

b. Washington's wrongful death statutes

Washington's wrongful death statutes, RCW 4.20.010 and RCW

4.20.020, create causes of action to benefit specific surviving beneficiaries of the deceased. *Otani*, 151 Wn.2d at 755.

The wrongful death statutes read:

§ 4.20.010. *Wrongful death -- Right of action* When the death of a person is caused by the wrongful act, neglect or default of another his personal representative may maintain an action for damages against the person causing the death; and although the death shall have been caused under such circumstances as amount, in law, to a felony.

§ 4.20.020. *Wrongful death -- Beneficiaries of action* Every such action shall be for the benefit of the wife, husband, state registered domestic partner, child or children, including stepchildren, of the person whose death shall have been so caused. If there be no wife, husband, state registered domestic partner, or such child or children, such action may be maintained for the benefit of the parents, sisters, or brothers, who may be dependent upon the deceased person for support, and who are resident within the United States at the time of his death.

RCW 4.20.010-020. Actions for wrongful death are strictly statutory and must be instituted by the personal representative of the deceased for the benefit of the wife, husband or child of the deceased. *Wood v. Dunlop*, 83 Wn.2d 719, 723, 521 P.2d 1177 (1974).

Unlike survival causes of action, the benefit of a wrongful death claim does not flow to the estate of the deceased. *Id.* It is the personal representative, not the statutory beneficiary, who possesses the claim (as a statutory agent or trustee), who is the “nominal” party to the action, and who must maintain it on behalf of the statutory beneficiary. *Id.* Although separate causes of action, these claims are derivative of the same

facts. Here, the claims are based upon allegations concerning health care provided to Henry Woodall and arise out of the facts that were subject to the contract between Mr. Woodall and Avalon Federal Way.

c. Wrongful death claims are derivative of the wrongful act causing death

The difference between wrongful death statutes and survival statutes has been described by the Washington Supreme Court as follows: “[W]rongful death and survival actions can be distinguished in that the wrongful death statutes govern postdeath damages of the deceased and the survival statutes govern predeath damages.” *Otani*, 151 Wn.2d at 755.

Wrongful death claims, although separate causes of action from survival claims, are derivative in the sense that they derive from the wrongful act causing the death, rather than from the person of the deceased. *See Johnson v. Ottomeier*, 45 Wn.2d 419, 423, 275 P.2d 723 (1954); *see also Ginochio v. Hesston Corp.*, 46 Wn. App. 843, 846, 733 P.2d 551(1987).

In *Ginochio*, Mr. Ginochio was killed while operating machinery. His widow, as personal representative of his estate, brought suit against the defendant alleging negligence, strict liability, and breach of warranty. *Id.* at 843-44. The jury found Mr. Ginochio 60 percent negligent. The trial court entered judgment on the verdict reducing the award to the estate in the survival action by 60 percent, but did not reduce the award to his widow as statutory beneficiary in the wrongful death action.

In determining whether the wrongful death award should also be reduced, the Court of Appeals noted that the 1981 Tort and Product Liability Reform Act specifically allowed fault to be imputed in a wrongful death action because it is a derivative action: “This is appropriate since wrongful death actions are in a sense derivative actions and the contributory fault of the decedent spouse should be taken into account in determining the amount of the surviving spouse’s recovery.” *Id.* at 845 *quoting* Senate Select Comm. On Tort & Prod. Liab. Reform, Final Report 1981 at 49.

The court held that since wrongful death claims are derivative, the decedent’s fault should be imputed to reduce the wrongful death award. *Id.* at 848-49. The heirs are bound to the actions, including negligence, of the decedent. *Id.*

Since wrongful death claims are derivative, Henry Woodall’s heirs similarly should be bound by his covenants in the Arbitration Agreement. As the decedent’s fault is imputed to reduce a wrongful death award, *id.*, so should the decedent’s voluntary execution of the Arbitration Agreement bind his heirs in the wrongful death action.

2. Actions Based on the Same Set of Facts Should Be Litigated in the Same Forum to Preserve Fairness and Judicial Efficiency.

Separate forums are not favored in this State for judicial efficiency concerns. *See, e.g., State v. Dent*, 123 Wn.2d 467, 484, 869 P.2d 392 (1994). Plaintiffs brought factually intertwined survival and wrongful death claims. Plaintiffs are bound to arbitrate their survival claims, the

same way Henry Woodall would be bound if he were still alive. *See Federated Serv's v. Norberg*, 101 Wn. App. at 127 (explaining that a survival action does not create a separate claim for survivors, but preserves causes of action that a person could have maintained had he not died). A separate action should not be appropriate for the Plaintiffs' wrongful death claims.

The trial court reluctantly concluded that the survival claims and the wrongful death claims must be treated separately. The court noted that litigation in two separate forums is inefficient, unfair, and exposes all parties to the inherent danger of conflicting outcomes based on the same set of intertwined facts. CP 141.

The wrongful death and survival claims are based on the same set of facts. The wrongful death claim is derivative of the same alleged wrongful act alleged to have caused Henry Woodall's death. The wrongful death claims should be subject to Henry Woodall's Arbitration Agreement. This pragmatic and appropriate solution supported by the public policy in favor of arbitration is to arbitrate all claims.

Refusing to compel arbitration of the wrongful death claims along with the survival claims results in substantial alteration of the status quo and substantial limitation of the freedom of one or more parties to act. Avalon Federal Way and Mr. Woodall bargained for the arbitration of all claims arising from service provided to Mr. Woodall. Arbitration generally reduces time and expense in resolving a dispute. *Dauidsen v. Hensen*, 135 Wn.2d 112, 118, 954 P.2d 1327 (1998). The Superior

Court's denial of Avalon Federal Way's motion to compel arbitration of the wrongful death claims denies Avalon Federal Way the right to move forward with the arbitration of all claims. The refusal requires all parties to expend additional time and energy in litigation, and denies Avalon Federal Way the substance of its bargain: a nonjudicial claims resolution process.

Through the Arbitration Agreement, the parties sought to create efficiency, expediency and consistent results by providing for the resolution of all claims arising from Avalon Federal Way's care in one forum. This contractual right is frustrated by the partial denial in the Order.

D. Washington Has a Strong Public Policy of Favoring Arbitration.

Washington strongly favors arbitration of disputes. *Munsey v. Walla Walla College*, 80 Wn. App. 92, 94-95, 906 P.2d 988 (1995). "Among other things, arbitration eases court congestion, provides an expeditious method of resolving disputes and is generally less expensive than litigation." *Id.* "We construe the agreement then to enforce arbitration, if possible." *Id. citing Clearwater v. Skyline Constr. Co.*, 67 Wn. App. 305, 314, 835 P.2d 257 (1992). The purpose of arbitration is to avoid the formalities, the delay, the expense and the vexation of ordinary litigation. *See Davidsen*, 135 Wn.2d at 118.

Under Washington's Uniform Arbitration Act, "[a]n agreement contained in a record to submit to arbitration any existing or subsequent

controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except upon a ground that exists at law or in equity for revocation of contract.” RCW 7.04A.060(1).

Considering (1) Washington’s strong public policy favoring arbitration, (2) the signed arbitration agreement that encompassed all causes of action and all heirs of Henry Woodall; and (3) the fact that plaintiffs’ survival action must be arbitrated the Court erred in denying Defendant’s motion to compel arbitration of the wrongful death claim.

Consistent with the strong public policy supporting arbitration in Washington, the legislature specifically allowed arbitration of wrongful death claims based on negligence in the provision of health care.

This chapter applies to any cause of action for damages for personal injury or wrongful death based on alleged professional negligence in the provision of health care where all parties to the action have agreed to submit the dispute to arbitration under this chapter in accordance with the requirements of RCW 7.70A.020.

RCW 7.70A.010.

The legislative intent was to provide access to safe, affordable health care to the citizens of Washington State and provided that one way to accomplish this goal was to allow for arbitration:

[This legislative body] [d]eclares an intent to provide incentives to settle cases before resorting to court, and to provide the option of a more fair, efficient, and streamlined alternative to trials for those for whom settlement negotiations do not work.

HB 2292 Digest for 2SHB 2292.

As part of the solution to provide access to safe, affordable health care to Washington citizens, arbitration provides a more fair, efficient, and streamlined alternative to disputes regarding health care. Strong public policy supports enforcement of valid arbitration agreements. Public policy supports enforcement of the Arbitration Agreement for both factually-entwined survival and wrongful death claims.

E. Case Law from California Supports Compelling Arbitration in These Circumstances.

The Superior Court erred in its legal conclusion that the Arbitration Agreement did not apply to the wrongful death claims. The issue has not been decided in Washington. No Washington precedent supports the trial court's conclusion. The conclusion is contrary to clearly stated public policy in Washington. The broad language in the Arbitration Agreement and case law from California support the opposite result.

Mr. Woodall's agreement to arbitrate "all disputes and claims for damages of any kind for injuries and losses arising from the medical care rendered or which should have been rendered after the date of this Agreement" (CP 32) should apply to the wrongful death claims arising from his care at the Avalon Federal Way facility. The Arbitration Agreement is broad to encompass all claims and expressly bind children and heirs, stating:

We expressly intend that this Agreement shall bind all persons whose alleged claims for injuries or losses arise out of care rendered by the Facility or which should have been rendered by Facility after the date of this Agreement, including any spouse, children or heirs of the Resident or

Executor of the Resident's estate.

Id. Mr. Woodall bound his Estate, who must prosecute the wrongful death claim, and his heirs, who benefit from the wrongful death claim, when he executed the Arbitration Agreement based on the clear language of the agreement.

Washington law does not prohibit application of the Arbitration Agreement to the wrongful death claims. Washington's stated public policy strongly supports broad enforcement of arbitration agreements. *See Munsey v. Walla Walla College*, 80 Wn. App. 92, 94-95, 906 P.2d 988 (1995).

California courts have created varying results on the issue, leading the United States District Court to synthesize the California decisions in its 2007 decision *Clay v. Permanente Medical Group, Inc.*, 540 F. Supp. 2d 1101 (2007). *Clay* supports arbitration of the wrongful death claim in these circumstances where the Estate is bound by the decedent's agreement and the agreement evidences an express intent to bind heirs. *Id.* at 1111-12, *citing Herbert v. Superior Court of Los Angeles County*, 169 Cal. App. 3d 718, 215 Cal. Rptr. 477 (1985). In distinguishable California decisions where arbitration was not compelled, the agreements at issue did not evidence an intent to bind heirs. *See Rhodes v. California Hospital Medical Center*, 76 Cal. App.3d 606, 143 Cal. Rptr. 59 (1978); *Ruiz v. Podolsky*, 175 Cal. App. 4th 227, 2009 Cal. App. LEXIS 1001 (June 24, 2009). Given the clear intent to bind the heirs expressed by Henry Woodall, the trial court should have found, as the District Court in

Clay found, that the Arbitration Agreement required arbitration of the wrongful death claims.

F. Avalon Federal Way Moves to Dismiss the Wrongful Death Claimants For Lack of Standing Under RCW 4.20.010.

This Court need not reach the merits of the dispute as to individual plaintiffs Clifford Woodall and Sharon Woodall King. They have no standing to participate in this action. A wrongful death claim may only be maintained by the personal representative of the deceased.

1. Pursuant to RAP 2.5(a) and RAP 17.4(d), This Court Can Address and Resolve Avalon's Motion.

A party may raise at any time the question of appellate court jurisdiction. RAP 2.5(a). In addition, a party may include in a brief a motion which, if granted, would preclude hearing the case on the merits. RAP 17.4(d). This Court can address and resolve Avalon Federal Way's challenge that Clifford Woodall and Sharon Woodall King lack standing and are improper parties.

2. The Personal Representative Is the Only Proper Plaintiff in a Wrongful Death Action.

Under RCW 4.20.010, when the death of a person is alleged to have been caused by a wrongful act, only that person's personal representative may maintain an action for damages. Here, an action is alleged by Clifford Wayne Woodall and Sharon G. Woodall King in their personal capacities. These are improper parties that lack standing in this matter. They should be dismissed.

3. The Personal Representative Is Bound by the Arbitration Agreement.

The Arbitration Agreement specifically binds the personal representative: “We expressly intend that this Agreement shall bind . . . heirs of the Resident or Executor of the Resident’s estate.” CP 32. As Personal Representative of Henry Woodall, Clifford Woodall is bound by the valid and signed Arbitration Agreement between Avalon Federal Way and Henry Woodall.

Clifford Woodall and Sharon Woodall King, as individuals, lack standing to bring an action for wrongful death. This Court should dismiss them. Clifford Woodall, as Personal Representative of Henry Woodall, is bound by the Arbitration Agreement. The wrongful death claims in this matter must be arbitrated.

VI. CONCLUSION

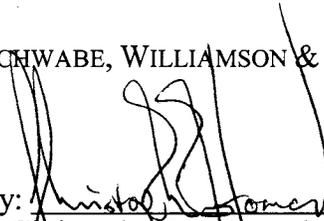
Henry Woodall entered into a valid, enforceable, and broad arbitration agreement. That agreement covers all claims, including wrongful death, brought by Clifford Woodall as his Personal Representative. Henry Woodall had the right to bind himself and his heirs and personal representatives and was empowered to do so. The claims alleged in this matter arise out of health care provided to Henry Woodall. Those claims are clearly within the Arbitration Agreement. Litigating two claims based on the same set of entwined facts in separate forums invites disparate results, judicial inefficiency and unfairness. It is not necessary or appropriate to expose all parties to the inherent danger of conflicting outcomes based on the same set of facts. The trial court erred by not

ordering arbitration of all claims. This Court should reverse that portion of the trial court order.

Clifford Woodall and Sharon Woodall King lack standing in their personal capacities to bring wrongful death claims in this matter. This Court should dismiss them.

Respectfully submitted this 27th day of July, 2009.

SCHWABE, WILLIAMSON & WYATT, P.C.

By: 

Christopher H. Howard, WSBA #11074

Mary Jo Newhouse, WSBA #16396

Averil Rothrock, WSBA #24248

Attorneys for Appellant/Cross Respondent,
Avalon Care Center - Federal Way

CERTIFICATE OF SERVICE

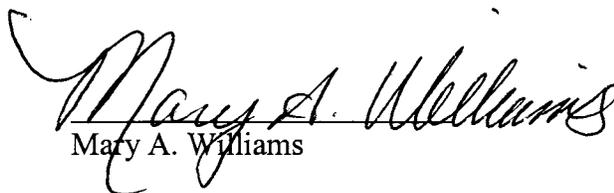
I hereby certify that on the 27th day of July, 2009, I caused to be served the foregoing OPENING BRIEF OF APPELLANT on the following party at the following address:

Stephen Hornbuckle
The Hornbuckle Firm
1621 114th Avenue SE
Arbor Building Suite 123
Bellevue, WA 98004

by:

<input checked="" type="checkbox"/>
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U.S. Postal Service, ordinary first class mail
U.S. Postal Service, certified or registered mail,
return receipt requested
hand delivery
facsimile
electronic service
other (specify) _____


Mary A. Williams

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