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No. 98277-5

(COA No. 80095-7-I)

SUPREME COURT OF THE STATE OF WASHINGTON

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James Robinson, Scott Smith, and Michael Mattingly, Petitioners below,

SCOTT SMITH,

*Petitioner,*

v.

AMERICAN LEGION DEPARTMENT OF WASHINGTON, INC. and  
WAYNE ELSTON, COMMANDER,

*Respondents.*

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On Appeal from Thurston County Superior Court  
(Cause No. 17-2-03285-34)

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**RESPONDENTS' ANSWER TO SCOTT SMITH'S  
PETITION FOR REVIEW**

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## I. INTRODUCTION

Respondent THE AMERICAN LEGION DEPARTMENT OF WASHINGTON, INC. (“ALWA”) hereby makes its answer to the Appellant SCOTT SMITH’s (“Mr. Smith”) petition (“Petition”) asking this Court to grant review of the court of appeals’ Published Opinion in this action filed on November 25, 2019 (“Opinion”). Review should not be granted because the Opinion does not conflict with any decision of this Court and, although the issue at hand may be one of substantial public interest, this Court need not decide it at this time because the Opinion correctly interpreted and applied the applicable statute.

## II. LEGAL AUTHORITY AND ARGUMENT

### **A. The Court Should Disregard Mr. Smith’s Unsupported Claims Regarding Alleged Financial Mismanagement and Embezzlement.**

In a desperate attempt to get this Court to accept review of this case, Mr. Smith claimed in his Motion that “Petitioner Scott Smith and his co-petitioners below, Robinson and Mattingly, sought access to [ALWA’s] corporate records...because of long-standing concerns of financial mismanagement and embezzlement.” (Petition at 3-4.) Mr. Smith went onto claim that he was “concerned about the ongoing embezzlement of hundreds of thousands of dollars.” (Petition at 4.) Neither of these claims were supported by any citation to the record in violation of RAP

13.4(c)(6). This is clearly an attempt by Mr. Smith to prejudice the Court against ALWA by injecting unsubstantiated and inflammatory allegations against ALWA. We urge the Court not to consider these claims for which there is no evidence in the record.

**B. The Opinion Does Not Conflict With Any Decision of This Court.**

In his Petition, Mr. Smith claimed that the Opinion is fundamentally inconsistent with this Court's holdings in State ex rel. Weinberg v. Pacific Brewing & Malting Co., 21 Wash. 451, 58 P. 584 (1899), State ex rel. Grismer v. Merger Mines Corp., 3 Wn.2d 417, 101 P.2d 308 (1940), and State ex rel. Beaty v. Guarantee Manufacturing Co., 103 Wash. 151, 174 P. 459 (1918). (Petition at 8-10.) All of those cases predated the adoption of the Washington Business Corporations Act ("WBCA"), Title 23B RCW, along with its attorney fee provision, RCW 23B.16.040(3), in 1989. While those cases confirmed a shareholder's right to inspect corporate records, they are irrelevant to the issue at hand because they did not create an independent basis for attorneys' fees.

Mr. Smith argued that Grismer stands for the proposition that the Court's holding in Weinberg still underlies and animates later statutes, such as the WBCA. (Petition at 10.) What Grismer directly says is, "It is the generally accepted rule that statutes...do not abridge, restrict, or repeal, bu [sic] enlarge, extend, and supplement, the common law rule."

Grismer, 3 Wn.2d at 422. Indeed, the WBCA enlarged, extended, and supplemented a shareholder's common law right of inspection by giving courts the authority to award attorneys' fees in certain circumstances. But since Weinberg, Grismer, and Beaty were all decided before such a possibility for attorneys' fees existed, they are not controlling authority on the application of RCW 23B.16.040(3).

In Washington, a litigant is only entitled to an award of attorneys' fees in certain, limited situations:

Washington follows the American rule in awarding attorney fees. Under that rule, a court has no power to award attorney fees as a cost of litigation in the absence of contract, statute, or recognized ground of equity providing for fee recovery.

Dayton v. Farmers Ins. Grp., 124 Wn.2d 277, 280, 876 P.2d 896, 897–98 (1994) (internal citation omitted). There is no contract involved in this case. And critically, the pre-WBCA caselaw cited by Mr. Smith did not create or recognize any ground of equity which might entitle a shareholder to an award of attorneys' fees if he or she demanded to inspect records and was wrongfully refused. Therefore, the only basis on which Mr. Smith might be entitled to an award of attorneys' fees is under the WBCA.

The Opinion does not conflict with Weinberg, Grismer, Beaty, or any other decision of this Court because the Opinion applied RCW 23B.16.040(3), whereas Weinberg, Grismer, Beaty, pre-dating the WBCA,



do not even address the same. The Weinberg case was about whether a shareholder needed to make an accusation of mismanagement or malfeasance in order to inspect the books of the corporation. Weinberg, 21 Wash. at 458 (court held no such accusation need be made). The Grismer and Beaty cases were about whether shareholders had improper motives in seeking to inspect corporate records. Beaty, 103 Wash. at 157-58 (owner of rival firm acquired small number of shares in corporation for purpose of acquiring corporation's trade secrets); Grismer, 3 Wn.2d at 422 (corporation failed to prove that shareholder's purpose in requesting to inspect corporate records was to harass, stir up strife, and bring about change in management).

This case is not about Mr. Smith's motives in requesting to inspect ALWA's corporate records. Rather, this case is about whether ALWA met its burden of proof to avoid an award of attorneys' fees under RCW 23B.16.040(3). Since Weinberg, Grismer, and Beaty did not touch on this issue, the Opinion does not conflict with those or any other decision of this Court, and accordingly, there is no basis for review under RAP 13.4(b)(1).

**C. The Issue of Shareholder Entitlement to Attorneys' Fees Under the WBCA May Be One of Substantial Public Interest But This Court Need Not Review the Opinion Because It Correctly Interpreted and Applied the Statute.**

The only other ground for review argued by Mr. Smith is RAP

13.4(b)(4). (Petition at 7.) For review to be accepted under that rule, this Court must find the issue of shareholders' entitlement to attorneys' fees under the WBCA is one of substantial public interest that should be determined by this Court. ALWA concedes this may be an issue of substantial public interest. The Opinion should not be reviewed in order to decide the issue, however, because the Opinion correctly interpreted and applied RCW 23B.16.040(3).

If this were an appeal over access to corporate records, Mr. Smith may have a point that Weinberg, Grismer, and Beaty recognize a shareholder's right to inspect a broad array of corporate records, so long as done for a proper purpose. But this is not a dispute over access to corporate records. Rather this is merely a case about whether a shareholder is entitled to an award of attorneys' fees under the WBCA. As detailed below, Mr. Smith is not entitled to an award of attorneys' fees in this case.

1. Mr. Smith Did Not Request to Inspect Any Records That He Was Legally Entitled to Inspect and Which ALWA Refused Inspection Prior to Mr. Smith Filing Suit. This Precludes an Award of Attorneys' Fees Under the WBCA.

Mr. Smith is not entitled to an award of attorneys' fees under RCW 23B.16.040(3) because he did not request to inspect records to which he was legally entitled and have ALWA refuse his inspection before he filed

suit. These statutory prerequisites to an award of attorneys' fees were not met, and therefore the Petition should be denied.

- a. For a Shareholder to Be Entitled to Attorneys' Fees Under the WBCA, the Shareholder Must Make Demand on the Corporation to Inspect Records and Allow the Corporation an Opportunity to Respond Before Filing Suit.

In the Petition, Mr. Smith claimed the statute "states no specific time-frame for requesting documents (such as before starting litigation)". (Petition at 11-12.) This is not accurate. If Mr. Smith's claim were true, a shareholder would be within his or her rights to initiate litigation and be awarded attorneys' fees even before the shareholder asked the corporation to inspect records. The WBCA does not allow for this. An award of attorneys' fees may not be granted if the statutory procedures were not observed, and those procedures were not observed in this case.

The WBCA sets forth a detailed procedure for inspecting corporate records. First, the statute sets forth two different classes of records that shareholders are entitled to inspect. *See*, RCW 23B.16.010. Some of those records must be maintained at the corporation's principal office, and so that class of records shall be referred to as "Principal Office Records". RCW 23B.16.010(5). There is no requirement as to where the other corporate records must be kept, and so that class of records shall be referred to as "Other Corporate Records". RCW 23B.16.020(2). The fact

that the WBCA lists categories of records that shareholders are entitled to inspect implies that, at least under the WBCA, shareholders are not necessarily entitled to inspect *all* records a corporation may maintain.

Next, the statute sets forth separate procedures for shareholders to demand inspection of Principal Office Records and Other Corporate Records. RCW 23B.16.020(1-3). For Principal Office Records, the procedure is straightforward: the shareholder need only give the corporation five-days' notice. RCW 23B.16.020(1). For Other Corporate Records, the shareholder must give notice of the records he or she is demanding to inspect at least five-days in advance, and meet the following three-part test: "(a) The shareholder's demand is made in good faith and for a proper purpose; (b) The shareholder describes with reasonable particularity the shareholder's purpose and the records the shareholder desires to inspect; and (c) The records are directly connected with the shareholder's purpose." RCW 23B.16.020(3). In both cases, the shareholder is required to provide the corporation with a demand to inspect records identified in the statute, and then give the corporation at least five days to allow the inspection.

From there, the statute sets forth judicial remedies if the corporation wrongfully refuses to allow an inspection. For demands to inspect Principal Office Records, the following relief is available:

**23B.16.040. Court-ordered inspection**

(1) If a corporation does not allow a shareholder who complies with RCW 23B.16.020(1) to inspect and copy any records required by that subsection to be available for inspection, the superior court of the county where the corporation's principal office, or, if none in this state, its registered office, is located may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the shareholder.

RCW 23B.16.040(1) (emphasis added). For demands to inspect Other Corporate Records, the following relief is available:

**23B.16.040. Court-ordered inspection**

...

(2) If a corporation does not within a reasonable time allow a shareholder to inspect and copy any other record, the shareholder who complies with RCW 23B.16.020 (2) and (3) may apply to the superior court of the county where the corporation's principal office, or, if none in this state, its registered office, is located for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

RCW 23B.16.040(2) (emphasis added). In both instances, the statute makes it clear that the shareholder must comply with RCW 23B.16.020 (demand to the corporation, followed by an opportunity for the corporation to allow inspection) before the shareholder is entitled to avail him or herself of the statutory remedies. The pre-litigation notice and opportunity provisions are included to allow the corporation an opportunity to permit the records inspection before any lawsuit is filed, as in many cases the shareholder's demand will not be controversial.

- b. For a Shareholder to Be Entitled to Attorneys' Fees Under the WBCA, a Court Must Order a Corporation to Allow Inspection of Records That Were Demanded Before Litigation Was Commenced.

Even if a shareholder observes the required pre-litigation procedures, is denied an inspection, and files suit, he or she is still not necessarily entitled to attorneys' fees. For there to be an entitlement to attorneys' fees under the WBCA, the court must order the corporation to allow inspection of the records that were demanded and denied. *See*, RCW 23B.16.040(3). RCW 23B.16.040(3) provides as follows:

**23B.16.040. Court-ordered inspection**

...

(3) If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the shareholder's costs, including reasonable counsel fees, incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the shareholder to inspect the records demanded.

RCW 23B.16.040(3) (emphases added). This section makes it clear that the shareholder must demand to inspect certain records, be denied before filing suit, and then have the court order inspection of those certain records in order to be entitled to an award of attorneys' fees.

In this case, prior to filing this lawsuit, Mr. Smith requested and was provided with multiple categories of corporate records including the 2016 midwinter budget, 2015 and 2016 profit and loss statements, 2015

and 2016 balance sheets, and the IRS Form 990 for 2016. (Opinion at 17; CP 17, 144-45, 508, 597.) In addition to those records, before he sued Mr. Smith specifically requested (a) a 2013 audit report, (b) records from a 2011 lawsuit, and (c) a Form 990 for Evergreen Veterans Post 110 The American Legion (“Post 110”). (CP 96, 107.) For the audit report, Mr. Smith was referred to an ALWA member who had a copy. (CP 107.) Mr. Smith never raised the issue of the audit report with the trial court, and so presumably he obtained a copy of the same from the member to whom he was referred. Regarding the 2011 lawsuit records and Form 990 for Post 110, ALWA took the position, and the trial court agreed, that Mr. Smith was not entitled to inspect and copy those records under the WBCA. (CP 389.) Mr. Smith has not challenged those conclusions of law on appeal.

Roughly three weeks *after* he filed suit, Mr. Smith delivered to ALWA’s attorney a lengthy list of records he wished to inspect (“Smith Records Request”), and ALWA immediately began producing records in response to that request. (CP 536-37, 549-50, 597-98.) However, Mr. Smith failed to follow the procedures under RCW 23B.16.020. He did not demand to inspect any particular records, have his demand rejected before he filed suit, and then have the trial court order ALWA to permit inspection of those records. The records the trial court ordered ALWA to provide to Mr. Smith were demanded *after* this action was commenced.

Accordingly, Mr. Smith is not entitled to attorneys' fees under RCW 23B.16.040(3) and there is no need for this Court to examine whether there was substantial evidence to support the trial court's conclusion that ALWA met its burden to avoid an award of attorneys' fees.

In his Petition, Mr. Smith claims that the court of appeals ignored one of the trial court's unchallenged findings of fact that Mr. Smith and his fellow Petitioners below, "[2] Made proper requests to inspect records for purposes of investigating corporate management of the affairs and finances of [ALWA]; [3] Which records were denied by [ALWA]." (Petition at 6; CP 388, ¶ 9.) Note, however, that the trial court's finding did not specify which records were demanded, who demanded them, or when they were demanded. Without factual findings that Mr. Smith personally demanded to inspect particular records, and that his demand was denied before he filed suit, coupled with the trial court ultimately ordering ALWA to permit inspection of those particular records, no award of attorneys' fees is possible under RCW 23B.16.040(3). The record shows that the only records Mr. Smith was not permitted to inspect, and which ALWA was ultimately ordered to permit him to inspect, were requested *after* this litigation was commenced. Accordingly, the Opinion does not overlook the trial court's unchallenged finding of fact, but rather is consistent with the trial court's findings.



2. Substantial Evidence Supports the Trial Court’s Ruling that ALWA Denied Inspection of Limited Records In Good Faith Because It Had a Reasonable Basis for Doubt About the Right of Mr. Smith to Inspect Those Records.

If Mr. Smith made pre-suit demand to inspect specific records, was denied, then sued and had the trial court order ALWA to permit inspection of those records (which did not happen), ALWA could still avoid an award of attorneys’ fees under RCW 23B.16.040(3) if it proved that it refused inspection in good faith because it had a reasonable basis for doubt about the right of Mr. Smith to inspect the records demanded. The trial court found that ALWA met its burden of proof in that regard, and the court of appeals correctly ruled that substantial evidence supported the trial court’s finding. Review should therefore be denied.

a. The Perspective of a Corporation Must Necessarily Be Considered In Determining Whether the Corporation Refused an Inspection In Good Faith Because It Had a Reasonable Basis for Doubt About the Right of a Shareholder To Inspect Records Demanded.

Mr. Smith argued in his Petition that the Opinion “mistakenly flipped the burden of proof of the parties” on the issue of attorneys’ fees, and “placed the burden on [Mr.] Smith to establish that he had properly requested the documents”. (Petition at 5, 6.) In fact, the court of appeals correctly applied the statute. Under RCW 23B.16.040(3) (quoted above), a court must first determine if a shareholder demanded an inspection of

records which, under RCW 23B.16.010, he or she was entitled to inspect, gave the corporation at least five days to respond, and was denied an inspection of those records. If those things are proven, from there RCW 23B.16.040(3) clearly shifts the inquiry to one about whether the corporation had a good faith and reasonable basis for doubt about the right of the shareholder to inspect the records demanded. This analysis necessarily is made from the perspective of the corporation.

Contrary to Mr. Smith's argument (Petition at 3), neither the statute, nor caselaw which predated the WBCA, created a presumption that a shareholder is entitled to attorneys' fees simply when he or she requests to inspect records and is rebuffed. Rather, the statute sets forth the burden-shifting test discussed above. Even though it was unnecessary (because Mr. Smith failed to observe statutory pre-requisites to an award of attorneys' fees), the trial court conducted the burden-shifting analysis called for under the statute and found that ALWA had made the showing necessary to avoid an award of attorneys' fees. (RP 2/2/18 19:14-19, 27:7-28:5.) The court of appeals correctly found that the trial court's decision was supported by substantial evidence. (Opinion at 1-2.)

b. ALWA Provided Mr. Smith With Substantial Records Without Any Court Order.

First, it needs to be noted that, once Mr. Smith submitted the Smith

Records Request three weeks after he initiated this lawsuit, ALWA took pains to produce to Mr. Smith a voluminous amount of records in a short amount of time. (CP 536-37, 545, 549-50.) Within less than two weeks ALWA produced to Mr. Smith its current articles of incorporation and bylaws, employee policy manual, operating procedures, six years of Forms 990, six years of profit and loss statements, five years of balance sheets, five years of EC meeting minutes, 10 years of minutes from state conventions, Finance Commission and Audit Commission meetings, and every document regarding ALWA on file with Washington Secretary of State's ("WSOS") office dating back to 1919. Id.

Thereafter, ALWA tasked a staff member with fulfilling the rest of the Smith Records Request, and that person spent an estimated 80 hours compiling and producing records to Mr. Smith. (CP 275, 588-89, 592-93, 600-01, 658-60.) ALWA then provided Mr. Smith with five years of bank statements and reconciliations, including cancelled checks, investment account statements, post-closing trial balances, summary annual trial balances, accounts payable and receivable ledgers, employee travel and expense vouchers, operating procedures, personnel policy and procedure manuals, additional Forms 990, meeting minutes, bylaws, profit and loss reports, and balance sheets. (CP 275, 588-89, 592-93, 600-01, 658-60.) At that point, ALWA had provided Mr. Smith with over 12,000 pages of

corporate records in fulfillment of the Smith Records Request voluntarily and without court order. (CP 607.) And, as the Opinion correctly noted, prior to the trial court’s ruling that ALWA was regulated under the WBCA, ALWA provided Mr. Smith with records to which he would not have been entitled under the Washington Nonprofit Corporation Act (“WNCA”). (Opinion at 21.)

- c. ALWA Merely Denied Allowing Mr. Smith To Inspect Five of the 31 Categories of Records He Demanded and the Trial Court Ruled Mr. Smith Was Not Entitled to Inspect Four of Those Five Categories of Records.

ALWA only resisted providing Mr. Smith with five of the 31 categories of records he demanded in the Smith Records Request because it reasonably, and in good faith, doubted Mr. Smith’s right to inspect those records. (CP 228-33, 615-16, 618-19, 647.) Those five categories were: (1) employee complaints, (2) employee lawsuits, (3) Post 110 records, (4) records from the American Legion Washington Auxiliary (“the Auxiliary”), and (5) records containing individual employee’s salaries and benefits. Id. The trial court agreed with ALWA’s position on four of those five categories. (CP 389-90.) It ruled that, under RCW 23B.16.010 and .020, Mr. Smith was not entitled to records of employee complaints or lawsuits. Id. It further ruled that Mr. Smith was not entitled to Post 110 or the Auxiliary’s records because he was not a member or shareholder of

those corporations. Id. Therefore, after the trial court ordered Mr. Smith to stand down and allow ALWA an opportunity to produce records in response to his massive demand, it was revealed that there was only a narrow dispute between the parties as to which records Mr. Smith was entitled to inspect. And on that dispute, the trial court ruled substantially in ALWA's favor. Mr. Smith did not appeal any of the trial court's determinations as to which records he was entitled to inspect.

d. ALWA Refused Inspection of Records Containing Individual Employee's Salaries and Benefits In Good Faith Because It Had a Reasonable Basis for Doubt About Mr. Smith's Right to Inspect Those Records.

As for the single category of records the trial court ordered ALWA to produce, records containing individual employee's salaries and benefits, the trial court ruled that ALWA proved it had a reasonable and good faith basis for doubt as to Mr. Smith's right to inspect the same. (CP 495.) This conclusion is supported by substantial evidence in the record.

i. ALWA Had Reasonable Privacy Concerns.

ALWA's primary concern was for the privacy of its employees. (CP 615-16.) This concern was proven to be reasonable during the trial court proceeding when Mr. Smith filed copies of checks and an investment account statement without redacting account or routing numbers. (CP 337, 340-42, 693-96.) After putting ALWA at risk, Mr. Smith did not even try

to correct his error. (CP 693-96.) Rather, ALWA had to obtain an order redacting those records. Id. This is why, even though the trial court ordered ALWA to provide these sensitive and otherwise confidential records to Mr. Smith, it also expressly ordered that the records produced would be for Mr. Smith, his attorney, and his Co-Petitioners' eyes only. (RP 10/18/17 50:23-25, 51:1-5, 56:19-25; CP 693-96.)

In Wilcher v. Int'l Envtl. Techs., Inc., 168 S.W.3d 58 (Ky. Ct. App. 2005), under a statute virtually identical to RCW 23B.16.040(3), a Kentucky appellate court affirmed a trial court's denial of attorneys' fees to a shareholder, even though the trial court ordered the corporation to produce records, on the basis of the corporation's reasonable privacy concerns. The trial court's ruling in this case was also partially based on ALWA's reasonable privacy concerns.

ii. It Was Unclear Whether Mr. Smith's Inspection Demand Was Governed by the WNCA or WBCA.

ALWA consulted the statute and caselaw to determine whether it was required to permit Mr. Smith to inspect records containing employee's salaries and benefits. (CP 228-33.) Consulting the statute was not straightforward though because ALWA believed it was regulated under the WNCA, Chapter 24.03 RCW, while Mr. Smith claimed it was regulated under the WBCA (although he simultaneously argued he was

entitled to stand in the shoes of a member of ALWA's Executive Committee under a WNCA provision). (CP 171-73, 178-86, 609-13.)

Despite Mr. Smith's characterization of ALWA's corporate status as clear, it was anything but. ALWA was initially incorporated in 1919 as a fraternal organization under Sections 3733 and 3734 of Remington's 1915 Code. (Opinion at 19; CP 551, 554, 560.) Those sections are now codified in Chapter 24.20 RCW, which is found under the same title as the WNCA, whereas the WBCA is codified in an entirely separate title. See, RCW 24.20.010, .020. As of 2017, WSOS listed ALWA's corporation type as "NPD", for nonprofit domestic. (CP 562.) Since 1990, ALWA held the designation of a Public Benefit Corporation ("PBC") (CP 512, 567), and PBC's are only regulated under the WNCA. See, RCW 24.03.490, et seq. ALWA also held Section 501(c)(3) tax status with the Internal Revenue Service. (CP 567.) These things reasonably led ALWA's leaders to conclude the company was regulated under the WNCA.

iii. It Was Unclear Under the WNCA or WBCA Whether Mr. Smith Was Entitled to Inspect Records Containing Individual Employee's Salaries and Benefits.

Neither statute, the WNCA or the WBCA, made it clear whether Mr. Smith was entitled to records containing individual employee's salaries and benefits. The WNCA said members were entitled to copies of "statements of accounts and finances" (RCW 24.03.135(3)), while the

WBCA said shareholders were entitled to “accounting records” (RCW 23B.16.010(2)). There were no Washington cases interpreting those key phrases under either statute. Those phrases clearly entitled members or shareholders (as the case may be) to inspect accounting records which detailed the total amount of money spent on employee salaries and benefits. Those type of records were provided to Mr. Smith without a court order. (CP 275, 536-37, 545, 549-50, 588-89, 592-93, 600-01, 658-60.) It was much less clear whether Mr. Smith was also entitled to records showing the details of each individual employee’s salaries and benefits.

ALWA was presented with the dilemma of taking an expansive view of the statutes and provide Mr. Smith with sensitive and confidential records or deny the demand and face potentially having to pay attorneys’ fees. Given its privacy concerns, particularly in light of Mr. Smith’s careless treatment of its corporate records, and given the substantial indicia that ALWA was operating under the WNCA, ALWA elected to deny the inspection with respect to this narrow category of records and present the issue to the trial court for determination.

iv. Mr. Smith Was Not a Shareholder of ALWA, and Therefore, It Appeared He Was Not Entitled To Inspect Any Corporate Records Under the WBCA.

Further adding to ALWA’s doubt about Mr. Smith’s right to inspect records containing individual employee’s salaries and benefits was



the fact that he was not a shareholder of ALWA. (CP 506, 567.) ALWA has never issued any shares of stock. Id. Under the WBCA, only shareholders are entitled to inspect corporate records. See, RCW 23B.16.020(1) (“A *shareholder* of a corporation is entitled to inspect and copy...”) (emphasis added). Therefore, if the WBCA applied, it appeared Mr. Smith was not entitled to inspect any corporate records.

### III. CONCLUSION

For the reasons set forth herein, ALWA respectfully requests that the Court deny Mr. Smith’s Petition.

DATED this 9<sup>th</sup> day of April, 2020.

PHILLIPS BURGESS PLLC



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Trevor A. Zandell, WSBA #37210  
Of Attorneys for Respondents

**DECLARATION OF SERVICE**

I, Rae Charlton, declare under penalty of perjury under the laws of the State of Washington that the following is true and correct: I am over the age of 18, I am competent to give testimony in court, and I make this declaration based on personal knowledge.

On the date indicated above the signature line below, I served the foregoing **Respondents’ Answer to Scott Smith’s Petition for Review** in the above-referenced case on the following individuals, at the addresses and in the manners indicated below:

Joanne G. Comins Rick Halstead & Comins Rick, P.S. P.O. Box 511 Prosser, WA 99350 <i>Of Attorneys for Appellant                  Scott Smith</i>	<input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	First Class U.S. Mail E-mail: <a href="mailto:jgcrick@gmail.com">jgcrick@gmail.com</a> Certified Mail Legal Messenger Electronic Service via e-file
Gregory M. Miller Carney Badley Spellman, P.S. 701 Fifth Avenue, Ste. 3600 Seattle, WA 98104 <i>Of Attorneys for Appellant                  Scott Smith</i>	<input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	First Class U.S. Mail E-mail: <a href="mailto:miller@carneylaw.com">miller@carneylaw.com</a> Certified Mail Legal Messenger Electronic Service via e-file

DATED this 9<sup>th</sup> day of April, 2020 at Tacoma, Washington.

/s/ Rae Charlton  
 Rae Charlton, Paralegal

**PHILLIPS BURGESS PLLC**

**April 09, 2020 - 3:41 PM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 98277-5  
**Appellate Court Case Title:** Scott Smith v. American Legion Department of Washington, et al.  
**Superior Court Case Number:** 17-2-03285-6

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- 982775\_Answer\_Reply\_20200409153858SC876306\_8533.pdf  
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- jgcrick@gmail.com
- miller@carneylaw.com
- rcharlton@phillipsburgesslaw.com

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**Filing on Behalf of:** Trevor Arthur Zandell - Email: tzandell@phillipsburgesslaw.com (Alternate Email: tzandell@phillipsburgesslaw.com)

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