Supreme Court Case No. 92572-1
Court of Appeals No. 32702-7-III
Superior Court No. 14-2-01009-0

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

CRAIG S. CULBERTSON,

Appellant,

vs.

WELLS FARGO INSURANCE SERVICES USA, INC.; JOSHUA TYNDELL and JANE DOE; and RHONDA IDE and JOHN DOE,

Respondents.

ANSWER TO PETITION FOR REVIEW

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A. IDENTITY OF RESPONDENTS.

The Respondents are Wells Fargo Insurance Services USA, Inc., ("Wells Fargo") and Joshua Tyndell ("Tyndell")[1].

B. ISSUES PRESENTED BY PETITION FOR REVIEW.

1. Does the decision that the Wells Fargo Handbook, as a matter of law, did not contain any promises of specific treatment in specific circumstances conflict with existing Washington law?

2. Does the decision that Wells Fargo unilaterally modified Culbertson's at-will compensation terms as a matter of law conflict with existing Washington law?

3. Does the decision not to apply judicial estoppel against Wells Fargo conflict with existing Washington law?

C. STATEMENT OF CASE.

1. Culbertson's initial at-will employ by Wells Fargo.

On October 17, 2006, Wells Fargo offered employment to Culbertson through a written offer letter. (CP 9, 561-562) The letter listed Culbertson's starting compensation, and specified that employment with Wells Fargo would be at all times "at-will," meaning that it had "no specified term or length," and that both parties had "the right to terminate [Culbertson's] employment at any time, with or without advance notice and with or without cause." (CP 561-562) No employee of Wells Fargo

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[1] Claims against former defendants Ms. Rhonda Ide and John Doe were dismissed with prejudice and not appealed, and they are not Respondents to the Petition. (CP 423-425)

had the authority to alter the at-will status, and employment was contingent upon execution of a non-compete agreement. (CP 562) Culbertson signed the offer letter and the non-compete agreement, and began his employ with Wells Fargo. (CP 9, 555-559, 562, 578)

2. The Wells Fargo Team Member Handbooks.

At the start of his employment, Culbertson read a hard copy and an electronic copy of the Wells Fargo Handbook effective at that time, dated January 1, 2006 (the "2006 Handbook"). (CP 9, 429) The cover page of the 2006 Handbook stated it was "updated online on an ongoing basis," and provided a conspicuous disclaimer that the Handbook was "not a contract of employee 'rights,'" and that "employment at Wells Fargo is on an 'at-will' basis." (CP 585, 591) It further specified:

> **[t]his Handbook is not a contract of employment**. Your employment with a Wells Fargo company has no specified term or length; **both you and Wells Fargo have the right to terminate your employment at any time, with or without advance notice and with or without cause. This is called "employment at will."**

(CP 600, emphasis added) In a chapter entitled "Leaving Wells Fargo," it again stated that employment was "at-will," and declared that the Handbook was not a contract of employment. (CP 686)

The version of the Handbook effective at the time of Culbertson's termination was dated January 2014 ("2014 Handbook"). (CP 9, 429, 734-1004) Culbertson and Wells Fargo agree that the 2014 Handbook contain

essentially the same language as the 2006 version regarding at-will employment status. See, CP 737, 823.

In the 2014 Handbook, Wells Fargo once more made it clear that it retained the discretion to terminate its employees' at-will, with or without notice, cause, performance counseling, or corrective action:

> [i]n most cases, if you have a performance issue, your manager will work with you to provide the appropriate performance counseling and corrective action so that you have the opportunity to improve. ... **However, the policy is not progressive.** This means that your manager reserves the right to use any part of the process that he or she feels is appropriate for the situation – and, if necessary, to terminate employment without implementing performance counseling and corrective action. This is consistent with our "employment at will" policy.

(CP 879, emphasis original)

Lastly, in the "Career, Performance & Problems Solving" chapter of the 2014 Handbook, Wells Fargo directly referred its employees back to the at-will policy, and stated that it did not "alter or modify Wells' Fargo's 'employment at will policy'." (CP 879, 882) The underlined/hyperlink reference back to the at-will policy is also found in the provision of the 2014 Handbook regarding "Immediate Termination." (CP 975)

3. Wells Fargo's compensation plans.

In December, 2009, Wells Fargo began the process of unilaterally modifying the terms of Culbertson's compensation. (CP 9, 430, 534-535, 542-546, 1005-1012) Around that same time, Wells Fargo also rolled-out

a new non-compete agreement to supersede its earlier version (the "2010 TSA"). (CP 534-535, 547-549, 566-568)

On or about December 22, 2009, Culbertson received a packet of documents containing: (1) a copy of "Wells Fargo Insurance Services USA, Inc. Producer Plan, effective January 1, 2010" (comp plan); (2) Culbertson's "Appendix A[2]" to the January 1, 2010 Producer Plan; and (3) a copy of the new 2010 TSA[3]. (CP 534-535, 542-549, 565-568)

The January 1, 2010 Producer Plan stated that it superseded any previous agreement regarding employee compensation, and set forth how commissions where going to paid, including how they would be paid to employees who were terminated. (CP 542-544, 1005-1007) Appendix A to the Producer Plan stated the provisions of the comp plan would apply and the employee would be paid in accordance with the terms even if the employee did not sign it. (CP 9, 565)

Appendix A also gave Culbertson notice that Wells Fargo was offering a new and additional consideration, for one year only, for those

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[2] Throughout the litigation Culbertson has misrepresented the one-page "Appendix A" as the entire comp plan; however, as recognized by the Trial Court and the Court of Appeals, the entire plan, including the Appendix A, is six pages total, and contains multiple terms ignored by Culbertson. (CP 542-546, 565, 1005-1011)

[3] The extent of the Producer Plan and TSA documents, how Culbertson received them, and the words used in distributing them, were not material or relevant to Wells Fargo's Motion for Partial Summary Judgment.

Wells Fargo employees who entered into the new 2010 TSA. (CP 565) The 2010 TSA also stated in it the additional consideration. (CP 566) On January 5, 2010, Culbertson executed the 2010 TSA, and following the 2010 year, he was paid the additional consideration for entering into the new non-compete agreement. (CP 116-117, 293, 508, 568)

After the roll-out of the 2010 comp plan, Wells Fargo unilaterally modified the comp plans (known as "WFIS Sales Incentive Plan" in later versions) on approximately a yearly basis; the version in effect at the time of Culbertson's termination was April 1, 2013. (CP 430-431, 1013-1028)

Culbertson received actual notice of the unilateral modification for the April 1, 2013 compensation plan via an e-mail sent on December 31, 2012, from the Executive Vice President and Head of Insurance Brokerage and Consulting for Wells Fargo. (CP 431-432, 1029-1031) Culbertson acknowledged and responded to that e-mail through his Wells Fargo work e-mail. (CP 432, 1032, 1037-1039, 1072-1074)

Culbertson's supervisor Tyndell also sent out an e-mail on October 29, 2013, to all Spokane sales executive employees, including Culbertson, which provided an online link to the compensation plan document, and instructed employees to "take time to review this document." (CP 431, 1029) Culbertson received this notice of the 2013 comp plan. (CP 432, 1029-1031, 1033)

The April 1, 2013 comp plan specified in relevant part that: (1) it superseded any prior plan(s) or agreements regarding compensation; (2) it did not create an employment contract, nor alter the at-will relationship; (3) it would be applied and the employee would be paid in accordance with its terms even if the employee did not sign it; and (4) how/when commissions were paid if an employee was terminated. (CP 1022-1027)

4. Culbertson's termination.

On February 3, 2014, Culbertson's employment was terminated by Wells Fargo for falsification of company records.[4] (CP 10, 28) After Culbertson's termination, Culbertson's post-termination compensation was paid by Wells Fargo pursuant to the 2013 comp plan. (CP 432-433, 518-519, 526-527, 529-531, 550-551)

5. The companion case not on Appeal.

Contemporaneous to the filing of the Complaint by Culbertson, Wells Fargo filed a separate lawsuit against Culbertson, seeking in part to enforce the 2010 TSA. (CP 109-131) In that case, Culbertson alleged as one of his defenses that the 2010 TSA was not valid and enforceable against him for lack of independent consideration. (CP 513)

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[4] Culbertson judicially admitted that his employment with Wells Fargo was at all times "at-will;" therefore, it is irrelevant whether Culbertson's termination was with or without cause, and with or without advance notice. (CP 506)

Wells Fargo filed a Motion for Partial Summary Judgment in that case, which was granted; the trial court ruled that as a matter of law the 2010 TSA Culbertson signed was valid and supported by independent consideration. (CP 295, 299-303)

In that case, Wells Fargo ***never*** contended that the 2010 Producer Plan was limited to the one page Appendix A; that Culbertson's signature on Appendix A was relevant to the determination of the validity of the 2010 TSA; nor that the 2010 Producer Plan and Appendix A was an "exchange of promises" or a "bilateral contract," not subject to unilateral modification by Wells Fargo. The exchange of consideration related solely to the 2010 TSA. (CP 239-240)

In its briefing, Wells Fargo argued plainly that "Culbertson accepted the additional 1% commissions when he signed the 2010 TSA, and thereafter received the additional 1% commissions. These facts establish the appropriate additional consideration independent of Wells Fargo's previous agreements with Culbertson, and satisfy Washington law rendering the 2010 TSA enforceable." (CP 251) All references to "it" and the "new agreement" made by Wells Fargo in that case concerned the 2010 TSA, and not the Producer Plan and Appendix A.

In oral argument, Wells Fargo also made clear that Appendix A was simply notice of the additional consideration for the 2010 TSA:

> Again, Appendix A **is to the** comp plan, and it says in there it's giving him notice that purchaser will receive the following consideration for signing the new TSA. One percent on new revenue and additional one percent on net new revenue. **He's not getting that for signing the comp plan or Appendix A.**

(RP 5-6, 11, CP 277-278, 283) (emphasis added)

D. THE PETITION FOR REVIEW SHOULD BE DENIED.

The decision of the Court of Appeals affirming summary dismissal of Culbertson's claims is not in conflict with existing Washington law, and involves no issues of substantial public interest; therefore, review should be denied. See, RAP 13.4(b).

1. The decision that the Wells Fargo Handbook did not contain promises of specific treatment does not conflict with Swanson or Korslund.

The unanimous Division III decision that the Wells Fargo Handbook did not, as a matter of law, provide promises of specific treatment in specific circumstances, is not at odds with either of the fact-specific Washington Supreme Court cases Swanson v. Liquid Air Corp., 118 Wn.2d 512, 826 P.2d 664 (1992), or Korslund v. DynCorp Tri-Cities Servs., 156 Wn.2d 168, 125 P.3d 119 (2005). Both Swanson and Korslund acknowledge that it is proper for a trial court to decide the pertinent issues as a matter of law on summary judgment. Korslund, 156 Wn.2d at 185; Swanson, 118 Wn.2d at 522. Examination of the record

here and the rulings in both Swanson and Korslund illustrate that Culbertson's reliance on those two cases is wrong.

First, Swanson involved an issue between two contradictory written employment materials. The first was an existing employee manual which stated that the employees' employment was at-will, and contained a disclaimer. The second was a later drafted "Memorandum of Working Conditions," which stated that in certain circumstances "at least one warning ***shall*** be given" prior to termination. Swanson, 118 Wn.2d at 516 (emphasis added). The Memorandum did not contain a disclaimer, at-will language, or provide any discretion to the employer in applying the policy.

The court in Swanson held that because the two documents were inconsistent, and the Memorandum was drafted after the employment manual, genuine issues of material fact existed as to whether the employer made a promise of specific treatment in specific circumstances when it wrote that it "shall" not discharge plaintiff without at least one prior warning. Swanson, 118 Wn.2d at 519. Because of the inconsistency, the court also concluded that the effect of the employer's disclaimer was an issue to be determined by the trier of fact. Id.

Here, unlike Swanson, there is only one written document on which Culbertson relies for his claim: the Handbook, which does not any contain contradictory or inconsistent language with respect to terminating

Culbertson's at-will employment. Nowhere in the Handbook does it state that Wells Fargo "shall," "will," or "must" do (or not do) anything specific to terminate Culbertson's at-will employment. In fact, directly distinguishable from Swanson, the statements that Culbertson relies upon establish Wells Fargo's discretion, and reinforces the at-will relationship.

And, the most significant distinguishable fact from Swanson is that there is a conspicuous disclaimer contained in Wells Fargo's Handbook. A conspicuous disclaimer that is effectively communicated to the employee, which is not negated by later inconsistent representations, can disclaim as a matter of law what might otherwise appear to be enforceable promises in handbooks or similar documents. Quedado v. Boeing Co., 168 Wn.App. 363, 374, 276 P.3d 365 (2012) [citing Swanson]. The Swanson court recognized, as Division III found here, that "in some circumstances it may be possible to determine the effect of a disclaimer as a matter of law." Swanson, 118 Wn.2d at 528; see also, Nelson v. Southland Corp., 78 Wn.App. 25, 33, 894 P.2d 1385 (1995) ("[a]s a matter of law, by including the disclaimers within the very policies and procedures at issue, Southland provided Mrs. Nelson with reasonable notice it did not intend to be bound by them. In addition, the disclaimers were effective as a matter of law."). Therefore, the decision is not in conflict with the fact-specific holding of Swanson.

Similarly, the undisputed facts in this case are drastically different than those in Korslund. Korslund involved three employees who reported safety violations, mismanagement, and fraud, who then alleged retaliation by their supervisors; those supervisors were never disciplined, despite a policy requiring such discipline.

Because the employer had a policy that mandated non-discretionary disciplinary action in that specific circumstance, the court held that there was an issue of fact whether the employer made promises of specific treatment. The court distinguished its facts with those of Stewart v. Chevron Chemical Company, 111 Wn.2d 609, 762 P.2d 1143 (1988), in which the court held that a termination policy stating that management "should" consider certain factors in layoff decisions was too indefinite to create an obligation. Korslund, 156 Wn.2d at 190. Furthermore, there was no discussion in Korslund concerning any conspicuous disclaimers in the employer's policy documents.

As a result, the facts of Korslund, like Swanson, are directly opposite to the facts and relevant language of the Wells Fargo Handbook; Wells Fargo always retained the ultimate discretion on terminating employees, and applying its policies, and the Handbook did not have any mandatory language. See the Decision, pg. 8.

Lastly, Culbertson contends that the decision is in error because it failed to cite to any of the general policy language that Culbertson believes contains specific promises of specific treatment. However, the decision did not have to burdensomely recite to general non-binding Handbook language because such language is exactly the type that Washington courts find to be general policy statements that are not binding on an employer and do not create a claim. See e.g., Quedado, 168 Wn.App at 370-71 [citing Thompson v. St. Regis Paper Co., 102 Wn.2d 219, 229-231, 685 P.2d 1081 (1984)]. Even Swanson and Korslund acknowledge the Washington legal principal that "general statements of company policy do not constitute promises of specific treatment in specific situations." Korslund, 156 Wn.2d at 190; Swanson 118 Wn.2d at 521-522.

Here, the Handbook's general and discretionary policy statements are not enough to survive summary judgment, and the decision was not in conflict with any existing law as required under RAP 13.4(b)(1) or (2).

2. The decision that Wells Fargo properly unilaterally modified Culbertson's at-will compensation is in harmony with Washington law.

The Court of Appeals properly, and in accord with existing Washington law, affirmed the summary judgment dismissal of Culbertson's breach of contract and corresponding wage claims. Nonetheless Culbertson ignores undisputed facts regarding Wells Fargo's

unilateral modification of Culbertson's at-will employment compensation terms, and the circumstances of Culbertson's execution of the 2010 TSA to claim that his signature on "Appendix A" to the January 1, 2010, and October 1, 2011 comp plans, somehow created bilateral contracts regarding the terms of his compensation, which could not thereafter be unilaterally modified.

However, in applying relevant Washington law to the undisputed facts, such as Duncan v. Alaska USA Fed. Credit Union, Inc., 148 Wn.App. 52, 199 P.3d 991 (2008), the Court of Appeals correctly came to the conclusion that: "the at-will employment relationship still permitted Wells Fargo to unilaterally change the terms of employment," and that Wells Fargo made all payments owing under the 2013 comp plan. See the Decision, pgs. 9, 11.

Culbertson claims that the Court of Appeals improperly used the Duncan case to support its holding. However, Duncan stands for the well-established law that an at-will employee's employment terms and conditions, including compensation, can be unilaterally modified by the employer at any time during the employment relationship with reasonable notice to the employee. Duncan, 148 Wn.App. at 73; see also, Govier v. North Sound Bank, 91 Wn.App. 493, 494, 957 P.2d 811 (1998).

This principal was initially articulated in Thompson v. St. Regis Paper Co., 102 Wn.2d 219, 229, 685 P.2d 1081 (1984), in which the Supreme Court declared as a "rule" that in an at-will employment relationship, an employer can modify the terms of compensation with reasonable notice, and an employee must either accept the changes, quit, or be discharged. Thompson, 102 Wn.2d at 229.

In Duncan, the court affirmed the Thompson rule and held that the employee's compensation "agreement was properly modified because the agreement was a unilateral contract, which was terminable at-will." Duncan, 148 Wn.App. at 78. Here, just like Duncan, it is factually undisputed that: (i) Culbertson was at all times at-will; (ii) Wells Fargo modified Culbertson's compensation terms; (iii) Culbertson received actual notice of the modification; and (iv) Culbertson has been paid all amounts due under the modification.

Furthermore, just as with the facts of Duncan, here there is no "evidence any exchange [of] reciprocal promises, a requirement for a bilateral contract." Duncan, 148 Wn.App. at 74. Culbertson's signatures on Appendix A to the compensation plans in 2009, and in 2011, did not create bilateral contracts on compensation terms, and did not preclude future modifications by Wells Fargo upon reasonable notice. Even the compensation plan documents that Culberson signed directly

acknowledged those facts: "[t]he provisions of the WFIS Producer Plan will be applied and the Participant will be paid in accordance with the terms even if the Participant does not sign Appendix A." (CP 9, 565, 570)

Moreover, Culbertson is incorrect that the decision is in conflict with three cases: Flower v. TRA Industries, Inc., 127 Wn.App. 13, 111 P.3d 1192 (2005), Ebling v. Gove's Cove, Inc., 34 Wn.App. 495, 663 P.2d 132 (1983), and Warner v. Channell Chemical Co., 121 Wash 237, 208 P. 1104 (1922).

First, Flower involved a plaintiff who promised to accept an offer of employment, sell his home in another city and relocate, but only if his employer promised to terminate him only for-cause; based on those very specific facts, the court concluded that the exchange of these promises constituted a bilateral employment contract. Because the parties made the original mutually binding exchange of promises, the court found that a later attempt by the employer to change the employment structure to an at-will relationship did not rescind the employer's obligation to terminate only for-cause. This case holding has absolutely no bearing on Culbertson's at-will employment relationship, and the unilateral modification of its compensation terms by Wells Fargo.

Similarly, Ebling concerned an employer who promised to pay an employee a specific commission percentage, but only if the employee

accepted a transfer to manage a different office; the employee accepted and the employer thereafter attempted to unilaterally modify to reduce the agreed-upon commission rate. Ebling, 34 Wn.App. at 497. The court found that the agreement for the employee to transfer positions in return for a specific commission rate was a bilateral contract. Id. at 498–99.

In stark contrast with the facts of these cases, there was never a bilateral employment contract created between Wells Fargo and Culbertson regarding the terms of his employment, including his compensation. Regardless, as the decision noted, "even if the parties in 2010 had a bilateral compensation agreement, the continued existence of the at-will employment relationship still permitted Wells Fargo to unilaterally change the terms of employment." See the Decision, p. 11.

Furthermore, Ebling was specifically distinguished in Duncan because of the at-will nature of the employment agreement:

> [s]ignificantly, the court [in Ebling] did not address the question of unilateral contracts that are terminable at will. Nowhere in that opinion is there any indication that the question was even argued. Rather, the employer in that case unsuccessfully argued that Ebling was an independent contractor. In short, that court's conclusion that there was a bilateral contract, without more, does not affect our determination here that the 2003 agreement between these parties was a unilateral contract.

Duncan, 148 Wn.App. at 75.

Finally, the decision does not effectively overrule the Warner case as Culbertson contends. That is because Warner, like Flower, did not involve the unilateral modification of an at-will employee's compensation terms. Instead Warner, (from the year 1922, which pre-dates Thompson and its progeny), involved a specific employment contract whereby the employer employed a salesman for a specific period of time (duration), for specific commission rates, and the contract had express terms and conditions on why and how it could be terminated. Those facts are completely different than the facts of our case.

Thus, Flower, Ebling and Warner create no precedent here, and do not conflict with the decision of this at-will employment case.

3. The Court of Appeals' refusal to apply judicial estoppel is not in conflict with any existing Washington case.

Culbertson has unsuccessfully argued, at both the trial court and appellate levels, that Wells Fargo should be judicially estopped from enforcing the 2013 compensation plan, because Wells Fargo argued successfully in its own suit against Culbertson that the 2010 TSA was valid and enforceable based upon the independent consideration it paid to Culbertson for executing the 2010 TSA. However, the Court of Appeals correctly recognized that there was "nothing in the arguments to Judge Plese indicating that Wells Fargo contended Culbertson's future

compensation was governed by the new TSA agreement," and "there is no basis for applying judicial estoppel." See the Decision, pp. 10, 11.

Judicial estoppel applies only when there is an inconsistency in the positions taken by a party, there is a perception a court has been misled, and one party will obtain an unfair advantage from the inconsistent position it has taken. Miller v. Campbell, 164 Wn.2d 529, 539, 192 P.3d 353 (2008). Judicial estoppel is inapplicable when the party can explain the differences in the two positions. Garrett v. Morgan, 127 Wn.App. 375, 112 P.3d 531 (2005) overruled on other grnds., 160 Wn.2d 535 (2007).

Here, Wells Fargo's positions in the two cases were not inconsistent, because the issues are not identical. Wells Fargo's statements in its own suit dealt with the separate law regarding the independent consideration necessary for the enforcement 2010 TSA, which was simply noted in Appendix A, versus the entirety of 2013 comp plan in effect at Culbertson's termination.

Culbertson recognizes that a non-compete agreement can only be enforced against a current employee if the employee receives "independent" consideration, in addition to continued employment. See, Labriola v. Pollard Group, Inc., 152 Wn.2d 828, 834, 100 P.3d 791 (2004). In the action before Judge Plese, Wells Fargo moved for, and obtained a ruling that as a matter of law, the 2010 TSA Culbertson signed

on January 5, 2010 was supported by the independent consideration of an increased commission for the year 2010. The sole issue before Judge Plese was whether Culbertson, by signing the 2010 TSA (***not*** Appendix A) on January 5, 2010, and thereafter being paid the increased commission consideration, created a valid and enforceable non-compete clause. Judge Plese found that it did. Judge Plese did not have before her the issue of the existence of a "bilateral contract" which precluded Wells Fargo from altering any other terms of Culbertson's employment or compensation.

At no time did Wells Fargo ever contend in either case that Wells Fargo made an exchange of promises or a bilateral contract in the 2010 Producer Plan and Appendix A, to form an agreement providing the independent consideration to support the restrictive covenants in the 2010 TSA. At no time in the separate litigation before Judge Plese did Wells Fargo assert that every unilateral change to Culbertson's employment terms had to be mutually negotiated and that he had to "accept" them via a signed document. Wells Fargo never took the position that the 2010 Sales Incentive Plan was limited to Appendix A which Culbertson signed on December 22, 2009, nor was his signature on that document relevant to the ultimate determination of the validity of the 2010 TSA.

Moreover, the record establishes that Wells Fargo and its Counsel argued different law applying to different facts, and apprised both courts

of the relevant issues in the separate actions. At no time was either court "misled" by Wells Fargo in its statements regarding either the comp plans or the non-compete agreement, and there was no "unfair advantage," as necessary to the policy behind judicial estoppel to apply.

Lastly, on this issue Culbertson once more merely re-cites to the inapplicable Flower and Ebling cases to support his basis for review, but as already discussed, these cases on bilateral employment contracts are completely irrelevant to the sole issues before the trial court here of whether Wells Fargo could unilaterally modify Culbertson's at-will employment compensation terms, and whether Culbertson got reasonable notice of the modification; and the sole issue before Judge Plese of whether the non-compete agreement was supported by necessary independent consideration that Wells Fargo paid to Culbertson as a result of his execution of the 2010 TSA. Accordingly, Culbertson's reliance upon Flower and Ebling on this issue is also in error.

E. CONCLUSION.

For the foregoing reasons, none of the four considerations governing acceptance for review under RAP 13.4(b) apply; therefore, the Petition for Review should be denied.

DATED this 4th day of January, 2016.

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AFFIDAVIT OF SERVICE

STATE OF WASHINGTON)
: ss.
County of Spokane)

Scott A. Gingras, being first duly sworn upon oath, deposes and states as follows: At all times hereinafter mentioned I was a citizen of the United States and a resident of the State of Washington, over the age of 18 years, and not a party to this matter. That on January 4, 2016, I served the foregoing document on the following, by causing a true and correct copy of said document to be hand delivered to the address shown below:

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SUBSCRIBED AND SWORN to before me this 4th day of January, 2016.

Notary Public
State of Washington
BEVERLY R. BRIGGS
MY COMMISSION EXPIRES
August 15, 2016

Notary Public in and for the State of Washington, residing at Spo Kane
My commission expires 8/15/2016

OFFICE RECEPTIONIST, CLERK

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Dear Clerk of the Court:
Attached please find Respondents' Answer to Petition for Review in the referenced matter.
If you have any questions, please contact the undersigned or attorney Scott Gingras at sag@winstoncashatt.com.
Thank you.

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