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STATE OF WASHINGTON
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NO. 96762-8

**SUPREME COURT
OF THE STATE OF WASHINGTON**

CHARLES PEIFFER,

Respondent/Cross-Petitioner,

vs.

PRO-CUT CONCRETE CUTTING AND BREAKING, INC. (UBI No.
602427981); KELLY R. SILVERS and ERIN SILVERS, husband and
wife and the marital community comprised thereof,

Petitioners/Cross-Respondent.

**REPLY TO CHARLES PEIFFER'S
ANSWER TO PRO-CUT'S PETITION FOR REVIEW
AND CROSS-PETITION FOR REVIEW**

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The Court of Appeals committed an egregious error of law in its application of the tolling provisions related to wage claims and Department of Labor & Industry investigations. The Court of Appeals ignored the principles of statutory construction; ignored the purpose and intent of tolling related to statutes of limitations; and completely ignored the conditional provisions of RCW 49.48.083 and .085 in its decision. The Court of Appeals' decision is contrary to State Supreme Court cases and Court of Appeal cases related to statutory construction. See RAP 13.4(b)(1) and (2). The decision of the Court of Appeals involves an issue of substantial public interest that must be remedied by this Court. See RAP 13.4(b)(4). Without remedy, no employer of the State of Washington or those individuals involved in payroll related to employers can read the plain language of RCW 49.48.083 and .085 as well as the other provisions of the Department of Labor & Industries' statute and rely thereupon. Every employer in the State of Washington is impacted by the Court of Appeals' decision.

Employees and employers alike are entitled to the protection granted by the legislature. In wage claims, employers need to be free of stale and prolonged claims. Employers need to be able to rely upon statutes as unambiguously drafted and either be made aware of a claim or, alternatively, be made known aware after an investigation by the

Department of Labor & Industries. The Appellants in this case were not afforded equal protection in this matter.

I. REPLY

A. The Court of Appeals Ignored Statutory Construction Principles, Creating a Result that will have a Substantial Impact on all Employers in and for the State of Washington.

The Court of Appeals, when tolling the statute of limitations, ignored the statutory language that describes the condition that will create tolling. The provision for tolling is specifically defined to allow for an investigation by the Department of Labor & Industries. The statute further provides that upon completion of the investigation, the employer will then get citation and assessment by the Department. *RCW 49.48.083*. Upon Notice, the employer has options. The options include disputing the claim or, alternatively, paying the claim. The tolling provision provided in the wage statute creates an important public interest in allowing employees a cost-efficient mechanism to be paid wages, but also allows employers the ability to pay claims without further dispute. If the employer decides to dispute the claim, or the employee terminates... “within ten days after the employees receipt of the department’s citation and notice”... the employee is entitled to have to bring a cause of action and have the investigation period tolled. Quoting *RCW 49.48.085(1)*.

What the Court has allowed to occur in this case, is to the contrary of the legislative intent and the unambiguous nature of the statute. The result of Court of Appeals' decision is that every employer is now subject to tolling of a wage claim without knowledge. In contrast, the Court of Appeals would allow employees to toll their own statute of limitations by simply making a complaint to the Department and the employee can withdraw it at any time. That is contrary to the strict language of the statute and firmly invokes a substantial public interest in and for the State of Washington.

B. The Court of Appeals Ignored the Well-settled Rule Related to Tolling of Statutes of Limitations.

The term "tolling" means the statutory limitation periods are suspended because of a condition, such as the plaintiff's minority or incapacity, or a situation... *Dude v. Boyd*, 133 Wn.2d 80, 94, 942 P.2d 351 (1997). The wage statute specifically uses the term "toll" with regards to the Statute of Limitations. The legislature has deemed to have chosen the term "tolling" on purpose. *Id.* The legislature is presumed to know the existing state of the law and how terms are used. *Id.* To toll, there must be a "condition". The condition is unambiguously set forth in the statute. The condition includes the completion of an investigation by the Department of Labor & Industries. The Court of Appeals ignored the

unambiguous language of the statute, the intent of tolling, and has potentially impacted every employer in the State of Washington. There is a strong public interest in not only protecting employees, but also protecting employers and those individuals liable for wage claims.

C. There is a Substantial Public Interest in Affording Employers and the Individuals Liable Under the Wage Claim Statute, like Kelly Silvers, Equal Protection Under the Law.

Article 1, Sections 10 and 12 of Washington State Constitution provide privileges and immunities and equal protection for all individuals. The Court of Appeals, unconstitutionally, created a class of people (employees) who can manipulate and create the “condition” for tolling at the expense of the individuals and employers. There can be no dispute that RCW 49.48.083 and .085 specifically reference tolling for purposes of civil actions for wage claims and specifically provides the condition for tolling. The Appellants, including the individuals, were not afforded proper statutory construction.

The clear language of the statute provides the condition that the statute of limitations would be tolled during an investigation. It then defines the period of the investigation. In order to terminate, the employee must wait until ten (10) days after receipt of the Department’s citation and notice of assessment. That never occurred in this case. Kelly Silvers individually and the other Appellants were completely unaware of a

significant claim against them. Yet Kelly Silvers, individually, can be liable for wage claims. See *RCW 49.48.030*; *RCW 49.48.115*.

As applied by Division III Court of Appeals, the statutory scheme of RCW 49.48 is unconstitutional to people similarly situated to Kelly Silvers.

II. ANSWER

In response to the Petition for Discretionary Review, the Respondent seeks review related to not being awarded his tax liability for back wages.

This issue has been resolved by this Court. See *Blaney v. International Association of Machinists and Aerospace Workers, Dist. No. 160*, 151 Wn. 2d. 203, 57 P 3d. 757 (2004).

Washington's wage statutes are specific as to the types of damages recoverable, and the broad category of "actual damages" are not authorized by any of them. Under the Minimum Wage Act, RCW 49.46.090 states that employees are only entitled to "the full amount of such wage rate, less any amount actually paid to such employee by the employer, and for costs such as reasonable attorney's fees as may be allowed by the court." RCW 49.46.090.

In *Blaney*, the court examined the Washington Law Against Discrimination ("WLAD") statutes to determine whether the Respondent

was entitled to receive compensation for the adverse tax consequences of his award at trial. *See Blaney at 216.* The Court began by distinguishing “actual damages” (which are recoverable under the WLAD, but not under the wage statutes), from itemized damages that are specific in nature such as nominal, exemplary, and punitive damages. *Id.* Ultimately, the Court concluded that in order to be able to recover damages relative to the adverse tax consequences of a money award, the cause of action which the Respondent prevailed on must specifically provide for recovery of “actual damages.” *Id.* at 98.

As discussed above, the wage claims asserted by Mr. Peiffer offer very specific types of damages by statute. None of the wage statutes authorize recovery of “actual damages” and instead allow recovery only of the money owed to the employee and, in special circumstances, exemplary damages and attorney fees. Mr. Peiffer is not entitled to damages relative to his tax burden as a result of his wage withholding claims.

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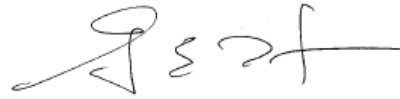
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III. CONCLUSION

The Court should grant review of the Appellants' Petition for Discretionary Review.

RESPECTFULLY SUBMITTED this 6th day of March, 2019.

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CERTIFICATE OF SERVICE

On the 6th day of March, 2019, I caused to be served a true and correct copy of the within document described as Answer to be served on all interested parties to this action as follows:

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