NO. 99954-6

SUPREME COURT
OF THE STATE OF WASHINGTON

MICHAEL AND MARILEE COAKER, and the marital community composed thereof,

Appellants,

v.

WASHINGTON STATE DEPARTMENT OF LABOR AND INDUSTRIES,

Respondent.

ANSWER TO PETITION FOR REVIEW, DEPARTMENT OF LABOR AND INDUSTRIES

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I. INTRODUCTION

This case is resolved by the ordinary application of statutory construction principles and the substantial evidence standard of review. In a routine decision, the Court of Appeals properly interpreted the Industrial Insurance Act to require corporate officers to pay industrial insurance premiums when those officers participated in their company's willful failure to pay premiums. The payment of premiums to the State Fund is a core need under the Industrial Insurance Act to allow "sure and certain relief" for injured workers. RCW 51.04.010.

The corporate officer liability issue here stemmed from Mike's Roofing, Inc.'s failure to pay $580,000 in premiums to compensate injured workers. The Board of Industrial Insurance Appeals affirmed the Department's assessment in this amount. Mike's Roofing did not appeal, but also paid not one premium due—rejecting a payment plan. Instead, Michael Coaker, the company's co-owner with Marilee Coaker, told the Department's agent: "do you think I'm going to pay this?"

AR 556. Yet business records showed that Mike's Roofing had substantial earnings in the years before the assessment. The Coakers then dissolved their business in April 2015.

The Department then assessed Michael and Marilee Coaker in June 2016 under RCW 51.48.055, a statute that allows the Department to assess premiums owed on corporate officers upon dissolution of their business, if those officers willfully failed to pay premiums. The Coakers appealed to the Board and then, in early 2017, while Board proceedings were pending, declared bankruptcy. AR 437. The Coakers then sought to claim the bankruptcy exemption to the willful liability statute. But, as the Board and Court of Appeals correctly interpreted, this statute applies only if bankruptcy occurred before the willful liability assessment, which is made upon dissolution of the business.

Claiming no responsibility for the premiums they willfully failed to pay, the Coakers candidly disclose that their interpretation of the statute would allow them to declare

bankruptcy when their business "learn[s] there was in fact a reason to file for bankruptcy—to allow its officers to avail themselves of RCW 51.48.055(4)." Pet. 15. In other words, all corporate officers could escape personal liability by simply filing for bankruptcy when notified of the willful liability assessment. This means the State Fund could never receive payment for premiums that were willfully not paid.

The Court of Appeals properly rejected this interpretation of RCW 51.48.055(4). The Coakers argue the decision conflicts with cases involving statutory construction principles about grammar tenses. But no conflict exists because RCW 51.48.055 requires that assets must "have been applied to [the business's] debts through bankruptcy," "[u]pon . . . dissolution." The plain language is clear.

The Coakers also try to fight the findings that they intentionally failed to pay premiums their company owed the Department. But substantial evidence shows that they acted

willfully and a substantial evidence challenge presents no reason for review.

II. ISSUES

1. Corporate officers who willfully fail to pay premiums are personally liable for such unpaid premiums upon dissolution of the corporation. RCW 51.48.055(4) excuses them from liability only if all of the corporation's assets "have been applied to its debts through bankruptcy or receivership." Does subsection (4) excuse the Coakers' willful failure to pay premiums when their business did not declare bankruptcy until *after* the Department charged them with liability?

2. Does substantial evidence support the finding that the Coakers willfully failed to pay premiums when the record shows that despite having substantial earnings in the years preceding the assessment, their business paid no premiums, and Mr. Coaker directly signaled to the Department that he would not pay the premiums?

III. STATEMENT OF FACTS

A. Following the Board's Final Decision Requiring Mike's Roofing To Pay Premiums, Mr. Coaker Refused To Pay and the Department Assessed the Coakers With Personal Liability

In May 2012, the Department audited Mike's Roofing about the premiums it owed from 2009 to 2012. AR 412. The Department found that Mike's Roofing owed significantly more

premiums than it had paid for that period, so it issued a notice of assessment. *See* AR 892-912. Mike's Roofing appealed this decision to the Board, and a Board judge affirmed the Department's assessment. AR 892-912. Mike's Roofing did not petition for review from the proposed decision, so the Board adopted it as a final decision in April 2015. AR 663. Mike's Roofing did not appeal.

After the Board decision affirming the Department's assessment became final, the Department's agent contacted Mr. Coaker and asked him if he was interested in a payment plan. AR 556. Mr. Coaker replied, "Do you think I'm going to pay this?" AR 556.

Mr. Coaker then filed articles of dissolution for Mike's Roofing, which became final on October 2015. AR 437, 670-71.

Because Mike's Roofing had dissolved and because it willfully did not pay the premiums owed (RCW 51.48.055), the

Department issued a notice of assessment that found the Coakers personally liable for the unpaid premiums. AR 567.

B. The Board Found That the Coakers Acted Willfully and Were Personally Liable for the Unpaid Premiums; the Superior Court and Court of Appeals Affirmed

The Coakers appealed to the Board. AR 890. At the hearing, the Department introduced records documenting the income that Mike's Roofing earned from January 2009 through September 2015, showing it had the ability to pay premiums. AR 914-1042.[1]

[1] From January 2009 through December 2012, Mike's Roofing showed earnings most months. *See* AR 914-94. For example, Mike's Roofing had gross earnings of $965,220.94 in December 2012 and gross earnings of $97,746.81 in October 2012. AR 990-94. In 2013, Mike's Roofing reported income of $109,019.09 for January; $259,911.96 for February; $123,686.59 for March; $174,498.45 for August; $122,729.73 for September; $665,511.41 for November and $136,816.57 for December. AR 995-1015. In 2014, Mike's Roofing reported no income except for the month of January ($103,656.65). AR 1017-29. Mr. Coaker did not explain why there was little income in 2014. In 2015, Mike's Roofing reported income of $13,184.86 for January; $12,875.51 in February; $47,618.50 in March and $18,716.16 in April, but no earnings after that. AR 436, 1030-42.

Mr. Coaker testified that he understood the Board's decision on the 2012 audit to mean that Mike's Roofing owed the Department about $500,000, and that he knew the Board's decision was final in April 2015. AR 427, 436. He also testified that Mike's Roofing filed for bankruptcy in early 2017. AR 437. He confirmed that as of the date of the Board's hearing (September 2017), the bankruptcy process was not yet complete. AR 437.

The Board judge issued a proposed decision that upheld the Department's assessment of personal liability against the Coakers. *See* AR 80-101.[2] The Coakers petitioned for review with the Board. AR 24-74. The Board granted review but upheld the Department's assessment of personal liability. AR 6-12, 23.

[2] The judge required the Department to recalculate the amount of the offset because it included amounts other than premiums, interest, and penalties on the interest. AR 80-101. But the judge otherwise upheld the order. *See* AR 80-101.

The Board found that the Coakers "made an intentional, conscious, and voluntary choice to pay other obligations with the firm's funds, and not pay the amount due to the Department for the assessment against Mike's Roofing." AR 10 (FF 10). The Coakers appealed the Board's decision to superior court. CP 1-12. The superior court affirmed the Board's decision, determining that substantial evidence supported the Board's findings and that it did not commit an error of law. CP 86-87.

The Coakers appealed to the Court of Appeals. CP 84-87. The court affirmed, determining that substantial evidence supported each of the Board's findings of fact and that the Department's decision to assess personal liability was correct under RCW 51.48.055. *Coaker v. Dep't of Labor & Indus.*, 16 Wn. App. 2d 923, 925, 484 P.3d 1265 (2021). The court determined that substantial evidence supported the findings because the Board decision requiring the Coakers to pay $580,000 in premiums became final on April 2015 and the evidence showed that the Mike's Roofing had substantial

income in the years prior, yet the Coakers intentionally did not pay any additional premiums after the decision became final. *Coaker,* 16 Wn. App. 2d at 934-36. The court also concluded that RCW 51.48.055(4) did not apply because the Coakers did not finalize Mike Roofing's bankruptcy until after the Department assessed them with personal liability. *Id.* at 936.

IV. ARGUMENT

This case turns on the routine interpretation of RCW 51.48.055. There is no conflict with cases involving statutory construction principles warranting this Court's review, contrary to the Coakers' claims. The Coakers' proposed interpretation of the statute does not present an issue of substantial public interest and, to the contrary, would allow companies to avoid replenishing the State Fund, defeating the purpose of the statute.

RCW 51.48.055 must be interpreted in the context of the Industrial Insurance Act. The Act's fundamental purpose is to reduce economic suffering caused by industrial injuries and

provide broad coverage to advance that goal. RCW 51.04.010; RCW 51.12.010. The more a statute facilitates full collection of premiums, the better it ensures the State Fund can be used to pay benefits to injured workers. *See Littlejohn Constr. Co. v. Dep't of Labor & Indus.*, 74 Wn. App. 420, 426, 873 P.2d 583 (1994).

RCW 51.48.055 authorizes the Department to find the officers of a dissolved corporation personally liable for the company's unpaid premiums. The statute ensures that the Department can collect unpaid premiums even if the company that failed to pay the premiums has dissolved, at least when the nonpayment was willful. *Hopkins v. Dep't of Labor & Indus*., 11 Wn. App. 2d. 349, 355-56, 453 P.3d 755 (2019). The Department relies on premiums from employers to pay for the benefits it provides to workers who suffer on the job injuries. *Id*. at 355; *WR Enterprises, Inc. v. Dep't of Labor & Indus.*, 147 Wn.2d 213, 216-17, 53 P.3d 504 (2002). Preventing the

Department from collecting premiums owed to it by a defunct business undermines this purpose.

Finally, the finding that the Coakers willfully failed to pay premiums is supported by substantial evidence, and the Coakers' disagreement with that finding does not present an issue warranting this Court's review.

A. The Court of Appeals' Decision Correctly Interpreted RCW 51.48.055's Plain Language and Does Not Conflict with Statutory Construction Principles

No conflict exists with any appellate precedent because the Court of Appeals appropriately applied plain language principles of statutory construction to resolve this case. The Coakers offer, as a basis for review under RAP 13.4(d)(1), a purported conflict with non-workers' compensation cases stating general propositions about grammar tenses. Pet. 9-10. They show no conflict with those cases, which set only general propositions that are not relevant here, and they ignore fundamental principles about plain language statutory construction in making their arguments. And they fail to show

that the Court of Appeals misapplied the law when it interpreted RCW 51.48.055.

The bankruptcy provision of RCW 51.48.055 is an exception from coverage, and as such, it is construed narrowly to facilitate the purpose of the statute: to collect premiums to reimburse injured workers. *See Bostain v. Food Exp., Inc.*, 159 Wn.2d 700, 712, 153 P.3d 846 (2007) (exceptions to remedial statutes must be "narrowly construed and applied only to situations which are plainly and unmistakably consistent with the terms and spirit of the legislation."). Under the plain language of RCW 51.48.055(4), a corporation must complete the bankruptcy process before the Department issues a notice of assessment for the exemption to shield a corporate officer from liability. Any other reading would undermine the purpose of RCW 51.48.055, which is to allow the Department to collect premiums from defunct corporations when the corporation's officers willfully failed to pay premiums.

Reading RCW 51.48.055 subsections (1), (2), and (4) together shows that the defense provided in subsection (4) applies only if the bankruptcy process is complete before the Department issues its notice of assessment. The statute provides:

> (1) *Upon* termination, *dissolution*, or abandonment *of a corporate or limited liability company business*, any *officer . . . is personally liable* for any *unpaid premiums* and interest and penalties on those premiums if such officer or other person willfully fails to pay or to cause to be paid any premiums due the department under chapter 51.16 RCW.
>
> For purposes of this subsection "willfully fails to pay or to cause to be paid" means that the failure was the result of an intentional, conscious, and voluntary course of action.
>
> (2) The officer, member, manager, or other person *is liable* only for premiums that *became due* during the period he or she had the control, supervision, responsibility, or duty to act for the corporation described in subsection (1) of this section, plus interest and penalties on those premiums.
>
> . . . .
>
> (4) The officer, member, manager, or other person *is not liable* if all of the assets of the corporation or

> limited liability company *have been applied to its debts* through bankruptcy or receivership.

RCW 51.48.055 (emphasis added).

Under subsection (1), it is the corporation's dissolution ("[u]pon . . . dissolution") that triggers the corporate officer having liability for the corporation's unpaid premiums, penalties, and interest. Subsection (2) clarifies that the officer is liable for premiums that "became due" at a time that the officer had control over the payment of premiums. So read together, under subsections (1) and (2), the "dissolution" of the company makes the officer "liable" for unpaid premiums that "became due" during a period of control.

Subsection (4) then provides that, even if the company has dissolved, the officer is not liable for the unpaid premiums that "became due" if all of the corporation's assets "have been applied to the company's debts" through bankruptcy. So if all of the company's debts have been discharged through bankruptcy when the Department issues a notice of assessment charging the officer with personal liability, the notice of

assessment would be wrong: the officer "is not liable" for the unpaid premiums because all the assets "have been applied" to the company's debts. RCW 51.48.055(4). But if, as here, the company has not declared bankruptcy when the Department issues its assessment, let alone completed the bankruptcy process, then the officer is liable for the unpaid premiums, penalties, and interest, because it would not be true that all of the company's assets "have been applied" to its debts. *Id*.

That subsection (4) includes language in the present tense supports the Department, not the Coakers. The present tense language in subsection (4) relates to the corporate officer's liability under an order charging the officer for unpaid premiums that "became due" during their control. So the officer "is not liable" under a notice of assessment charging them with personal liability if all of the company's assets "have been applied" to its debts at that time.

The Coakers point to the "[t]he officer, member, manager, or other person *is not liable*" statutory language. Pet.

9-10. But they ignore that the rest of the sentence provides that the time is set by determining "if all of the assets of the corporation or limited liability company *have been applied to its debts* through bankruptcy." Thus, the *have been applied* language is operative. The Court of Appeals' construction of the statute considers its plain language and context, consistent with *Dependency of DLB*, 186 Wn.2d 103, 117, 376 P.3d 1099 (2016) and there is no conflict.

The Coakers incorrectly argue that the Court of Appeals' interpretation conflicts with *DLB*, based on an overbroad reading of it. Pet. 9-10. *DLB* did not hold that *any time* a statute uses the present tense, a court should base its decision on the facts that exist at the time the court is making that decision. Rather, *DLB* looked to other provisions in the statutory scheme, and the legislative purpose of the statute, to determine when the statute was operable. Likewise, here the Court of Appeals properly looked at the complete language of the statute and its intent when construing the statute.

Similarly, the Coakers incorrectly argue the decision conflicts with *Estate of Bunch v. McGraw Residential Center*, 174 Wn.2d 425, 433-34, 275 P.3d 1119 (2012). Pet. 10. *Estate of Bunch* recognizes that the present perfect tense describes a state of affairs that was completed in the past and continues to the present. *Estate of Bunch*, 174 Wn.2d at 433-34. But the Court's reading of RCW 51.48.055(4) tracks both the present tense and present perfect tense language in that subsection: the corporate officer "is" not liable at the time of the personal liability assessment if the assets of the corporation "have been applied" to its debts. The Coakers show no conflict.

B. The Coakers Have Not Shown an Issue of Substantial Public Interest

As discussed above, the Coakers have not shown that the Court of Appeals' interpretation of the statute conflicts with precedent. Nor does their contrary interpretation present an issue of substantial public interest warranting this Court's review. To the contrary, the ordinary application of

RCW 51.48.055 ensures that companies cannot get out of paying industrial insurance appeals by simply changing their legal status. RCW 51.48.055 must be read to accomplish this purpose and in doing so cannot be interpreted so that its terms are rendered meaningless or in conflict with the statute's purpose. *See Rivard v. State*, 168 Wn.2d 775, 783, 231 P.3d 186 (2010).

Yet the Coakers ask for a reading of the exemption that not only conflicts with its plain language but also renders the statute virtually useless as a mechanism to collect premiums from defunct employers. Pet. 8-17. As noted above, the Coakers candidly disclose that their reading of the statute would allow companies to declare bankruptcy when the company "learn[s] there was in fact a reason to file for bankruptcy—to allow its officers to avail themselves of RCW 51.48.055(4)" once they learn of the willful liability assessment. Pet. 15. But if the corporate officer can file for bankruptcy on the company's behalf long after the Department issues its notice of assessment,

and doing so causes the personal liability assessment to become retroactively incorrect, then the exception in subsection (4) swallows the rule.

This is because under the Coakers' theory there would be no deadline for a corporation to file for bankruptcy, so the corporation's controlling officers could unilaterally terminate their own liability at any time. On the other hand, requiring the corporation to complete the bankruptcy process before the Department issues its order means that the officers cannot unilaterally immunize themselves from liability at any time, which means RCW 51.48.055 remains effective as a tool to collect premiums when corporate officers willfully failed to pay premiums. This requirement to complete the bankruptcy before the assessment reflects that the bankruptcy exemption is only a narrow exception from coverage.

The Coakers insist that their reading of the statute gives corporations "a reasonable, but not indefinite" period to declare bankruptcy and still rely on the exemption in subsection (4).

Pet. 16. But their reading of the statute does not do that because there is no deadline on when a corporation can declare bankruptcy. There would be an effectively indefinite window to declare bankruptcy because the corporation can declare bankruptcy at any time and the appeals process could be used to extend litigation about any assessment for many years, buying time for the bankruptcy to be completed.

The Coakers argue that the Legislature's purpose in including subsection (4) in RCW 51.48.055 was to extend the "bedrock principle" that corporate officers are generally not personally liable for the debts of a corporation. Pet. 12 (citing *Morgan v. Burks*, 93 Wn.2d 580, 585, 611 P.2d 751 (1980) and *Landstar Inway, Inc. v. Samrow*, 181 Wn. App. 109, 131, 325 P.3d 327 (2014)). But those cases refer to the traditional rules about corporate officer liability, not the specific enactment in RCW 51.48.055, the express purpose of which is to *extend* personal liability to corporate officers who willfully failed to pay premiums on the corporation's behalf. And it is implausible

that the Legislature would extend personal liability to corporate officers only to then create a loophole which effectively guts that extension. RCW 51.48.055 protects injured workers by closing a gap in coverage for employers who willfully fail to pay premiums and then dissolve, so its exemptions should be read narrowly so that it can serve its purpose.

On a related note, the Coakers insist that a statute should not be read in a vacuum, and should be read with its objectives and consequences in mind, citing *Burns v. City of Seattle*, 161 Wn.2d 129, 146, 164 P.3d 475 (2007), but it is the Coakers who ignore the objectives of the statute. Pet. 14-15. The statute's objective is to discourage willful nonpayment of industrial insurance premiums and to close a gap in coverage when employers dissolve a business without paying premiums. This purpose is furthered by a narrow reading of subsection (4) and thwarted by an overbroad one. *See Bostain*, 159 Wn.2d at 712 (exceptions read narrowly).

The Coakers also incorrectly argue that a company has little reason to file for bankruptcy other than doing so to trigger RCW 51.48.055(4)'s exemption for corporate officers, so the statute should be read broadly to allow for late bankruptcies. Pet. 13-14. This argument fails for two reasons. First, it greatly overstates the case to say companies have little other reason to file for bankruptcy than obtaining the benefits of subsection (4): the data the Coakers cited at the Court of Appeals shows that while more individuals than corporations file for bankruptcy, almost 14,000 corporations filed for chapter 7 bankruptcy in 2018 alone. *See* Appellant's Br. 25. It is unlikely that more than a tiny fraction of those corporations did so to try to obtain the benefits of RCW 51.48.055(4) for their officers. Second, the Coakers make the wrong inference from the fact that corporations relatively rarely declare bankruptcy: the Legislature presumably was aware of this fact and intended for subsection (4) to be a narrow exemption.

The Coakers also wrongly argue that the opinion here conflicts with *Hopkins*, 11 Wn. App. 2d 349, by taking a phrase from that decision out of context. Pet. 17. In *Hopkins*, a statute of limitations case, the petitioner argued that even for actions brought to collect premiums against corporate officers personally, the three-year limitations period should begin on the date the company fails to pay its premiums. *Hopkins*, 11 Wn. App. 2d at 352. The court instead held that the statute begins to run when the company dissolves and the officer becomes personally liable. *Id.* at 352-57. In rejecting the petitioner's argument, the court agreed with the Board judge's observation that the petitioner's interpretation would mean "[a] financially troubled corporation would only have to avoid dissolution or abandonment of the corporate form for three years to totally remove any corporate officer liability." *Id*. at 356. Thus, *Hopkins* interpreted the statute of limitations to avoid allowing a company to delay dissolving just to avoid the willful liability assessment. *Hopkins*'s holding supports that there should not be

games playing of the sort that the Coakers advocate to avoid paying premiums. *Id.* The Coakers show no conflict and no issue of substantial public interest, so their petition should be denied.

Finally, the Coakers make several policy arguments that ignore that RCW 51.48.055(4)'s exemption only becomes relevant in the first place when a corporate officer willfully fails to pay premiums. The Coakers argue that the Department's reading of the statute requires corporations to be "clairvoyan[t]" (Pet. 15), creates "perverse incentive[s]" to file bankruptcies (Pet. 16), and will thwart entrepreneurship and cause "financial ruin" (Pet 16). These arguments fail.

No clairvoyance is needed to avoid liability: an officer who does not willfully fail to pay premiums is not liable. And the incentive the Department's reading of the statute creates is to encourage employers to pay premiums if the employer can do so, which is hardly perverse. Nor is it perverse to encourage a corporation to file for bankruptcy if the reason it is dissolving

is that it cannot pay its debts. This is the purpose of bankruptcy laws. And the only entrepreneurs who would be chilled from doing business are ones who willfully fail to pay premiums. Nor is widespread financial ruin a plausible scenario under any reading of the statute, because presumably very few employers willfully fail to pay premiums.

The Coakers fail to show any conflict with case law or an issue of substantial public interest, and their arguments about the statute lack support. Review should be denied.

C. A Substantial Evidence Challenge Presents No Ground for Review Under RAP 13.4(b)

The Coakers show no reason why their disagreement with the Board's findings about their willful nonpayment of premiums (*see* Pet. 17-20) warrants this Court's review. The Board's findings have ample support in the record and establish that the Coakers are subject to personal liability as a result of willfully failing to pay premiums that they knew Mike's Roofing owed to the Department, in their capacity as officers of

that corporation. The Court of Appeals properly concluded that substantial evidence supported the Board's findings and the Coakers do not show otherwise.

The Board's key findings about the Coakers' willful nonpayment of industrial insurance premiums were:

> 9. Between July 1, 2009, and April 2015, Mike's Roofing had in its possession and control sufficient funds that could have been used to pay the amount owed to the Department in full.
> 10. Michael Coaker and Marilee Coaker had actual knowledge of the debt owed to the Department and made an intentional, conscious, and voluntary choice to pay other obligations with the firm's funds, and not pay the amount due to the Department for the assessment against Mike's Roofing.
> 11. Michael Coaker and Marilee Coaker had the option to set up a payment plan for the assessment owed to the Department, but refused.
> 12. Michael Coaker and Marilee Coaker's failure to pay the assessment owed against Mike's Roofing was willful.

AR 10.

Substantial evidence supports the Board's findings. First, there is substantial evidence that Mike's Roofing had the financial capacity to pay the premiums that the Board's 2015

decision found that it owed the Department. *See* AR 914-1042. The Department introduced records showing that Mike's Roofing had gross earnings of over a million dollars in both 2012 and 2013, and non-negligible earnings in 2014. AR 976-1016, 1017-29. Mike's Roofing also had substantial earnings from 2009 through 2011. AR 914-75. While the Coakers argued to the Board that they had no money as of April 2015, they offered little or no business records supporting that claim. AR 489. There is thus substantial evidence that Mike's Roofing could have paid the money but that the Coakers willfully chose not to do so.

Second, Mr. Coaker personally made statements to Department employees that support the inference that he had made a conscious decision to not pay the premiums that the Board had ordered Mike's Roofing to pay. AR 556, 559-60, 585-86. The Department's collection agent testified that when she tried to discuss a payment plan with Mr. Coaker, Mr.

Coaker responded, “Do you think I’m going to pay this?” AR 556.

The Coakers incorrectly argue that both the Board and the Court of Appeals found that the Coakers did not intentionally fail to pay premiums but nonetheless concluded that their failure to pay premiums was willful. Pet. 2 (“As the Court of Appeals acknowledged, it is undisputed ‘the Coakers did not deliberately fail to pay any assessment due’ between 2009 and 2012.”), 17. The Coakers focus on a portion of the Court of Appeals decision, which paraphrases the proposed decision and order, where the court states that the proposed decision determined that the Coakers did not willfully fail to pay premiums between 2009 and 2012, but that the Coakers were still willful in refusing to pay premiums they knew they owed as of April 2015. *Coaker*, 16 Wn.App.2d at 928.

The Coakers’ argument lacks merit. First, an appellate court reviews the final decision and order of the Board, not a proposed decision issued by an industrial appeal judge. *Lyons v.*

Dep't of Labor & Indus., 185 Wn.2d 721, 731, 374 P.3d 1097 (2016); *Stratton v. Dep't of Labor & Indus.*, 1 Wn. App. 77, 79-80, 459 P.2d 651 (1969). Nor is it true that the Board judge found that the Coakers did not deliberately underpay benefits from 2009 to 2012. Instead, the Board judge referenced this testimony but nowhere endorsed it as correct. *See* AR 82-83. But while the Court of Appeals erred in stating that the Board judge found that the Coakers did not deliberately fail to pay premiums from 2009 to 2012, the court properly focused on the substantial evidence supporting the Board's finding that the Coakers willfully failed to pay premiums after the Board's April 2015 decision became final. *Coaker*, 16 Wn.App.2d at 934-36. Given the Board's finding that the Coakers deliberately failed to pay premiums as of April 2015, which the Court of Appeals properly found to be supported by substantial evidence, the court's trivial misstatement regarding the Board judge's finding is immaterial. And the Coakers' deliberate failure to pay premiums as of April 2015 unambiguously

supports the Department's imposition of personal liability. The Coakers show no error and no issue of substantial public interest.

V. CONCLUSION

The Coakers show no conflict with case law and no issue of substantial public interest. The Court of Appeals' decision follows the plain language of the statute and substantial evidence supports the Board's findings. The petition should be denied.

This document contains 4,917 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 2nd day of September, 2021.

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NO. 99954-6

SUPREME COURT
OF THE STATE OF WASHINGTON

MICHAEL E. COAKER, et ux, Appellants, v. WASHINGTON STATE DEPARTMENT OF LABOR AND INDUSTRIES, Respondent.	DECLARATION OF SERVICE

The undersigned, under penalty of perjury pursuant to the laws of the state of Washington, declares that on the below date, I served the Department of Labor and Industries' Answer to Petition for Review and this Declaration of Service in the below described manner:

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