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**COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON**

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STEVEN G. HOPKINS,

Appellant,

v.

DEPARTMENT OF LABOR AND INDUSTRIES OF THE STATE OF  
WASHINGTON,

Respondent.

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**BRIEF OF RESPONDENT  
DEPARTMENT OF LABOR AND INDUSTRIES**

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## I. INTRODUCTION

Individuals who willfully fail to pay industrial insurance taxes are liable for their company's debts even if the company was a corporation. This ensures that Washington's industrial insurance fund is fully funded to protect workers.

The Department of Labor and Industries timely issued a personal liability order to Steven Hopkins for unpaid workers' compensation premiums, which he contests on statute-of-limitation grounds. The limitations period in RCW 51.16.190(2) began to run when the delinquent workers' compensation premiums "became due." Under RCW 51.48.055(1), a corporation's officer, like Hopkins, cannot be personally liable for a corporation's delinquent premiums while the corporation still exists. So unpaid premiums can only become "due" from a corporate officer for collection when the corporation dissolves, if an officer's nonpayment was willful.

Frontier Contractors, Inc., which Hopkins co-owned, dissolved in 2013, owing over \$60,000 in workers' compensation premiums, penalties, and interest. The premiums "became due" to Hopkins in 2013 when the corporation dissolved, and the Department timely issued its personal liability order in 2015—within the three-year statute of limitations—after it determined his nonpayment was willful. This Court should affirm.

## II. ISSUE

RCW 51.16.190(2) provides that the Department must act to collect delinquent premiums and penalties from employers within three years of the date the premiums “became due.” RCW 51.48.055 permits the Department to assert personal liability against a corporate officer who willfully fails to pay premiums, but only after the corporation has dissolved. Do a corporation’s delinquent premiums become “due” to a former officer at the time of the corporation’s dissolution?

## III. STATEMENT OF FACTS

### A. Overview of Applicable Industrial Insurance Laws

The Industrial Insurance Act requires employers “to report and pay workers’ compensation premiums for all covered workers.” *Dep’t of Labor & Indus. v. Lyons Enters. Inc.*, 185 Wn.2d 721, 725, 374 P.3d 1097 (2016); RCW 51.08.180. RCW 51.16.060. The Industrial Insurance Act’s fundamental purpose is to reduce economic suffering caused by industrial injuries and have 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 serves the accident fund from which compensation is paid, thus ensuring that workers are protected. *Littlejohn Constr. Co. v. Dep’t of Labor & Indus.*, 74 Wn. App. 420, 426, 873 P.2d 583 (1994). In addition, collecting premiums serves the Industrial Insurance Act’s goal “to allocate the cost of workplace injuries to the industry that produces them, thereby

motivating employers to make workplaces safer.” *Harry v. Buse Timber & Sales, Inc.*, 166 Wn.2d 1, 19, 201 P.3d 1011 (2009).

Under RCW 51.48.055, after a business dissolves, the Department can assert personal liability for the corporation’s premium debt against individual corporate officers if their failure to pay was willful. The individual cited by the Department must have had control or supervision over the reporting and payment of premiums during the period the debt became due from the corporation. RCW 51.48.055(1). Willful means that the failure “was the result of an intentional, conscious, and voluntary course of action.” *Id.* The statute is intended to discourage financially troubled companies from diverting assets elsewhere to avoid their tax burden. *Shawn A. Campbell & Spouse DBA E & E Acoustics LLC*, No. 13 12674, 2014 WL 1398630, at \*3 (Wash. Bd. Indus. Ins. App. March 27, 2014).

**B. After the Department Obtained a Final Order Assessing Over \$60,000 in Unpaid Workers’ Compensation Premiums, Penalties, and Interest, Frontier Dissolved As a Corporation**

Frontier was a general contractor focused on constructing single-family residences. CP 318. Hopkins formed Frontier in 1988 with a co-owner. CP 318. From 2006 to 2009, Hopkins owned 50 percent of the company. CP 332. For the most part, Hopkins was in charge of Frontier’s books and records, and he paid its bills. CP 334, 345.

The Department audited Frontier to determine if the company owed workers' compensation premiums from the fourth quarter of 2006 through the third quarter of 2009. CP 115. Before the audit, Frontier had not opened a workers' compensation account with the Department to pay workers' compensation premiums. CP 211. During its audit, the Department discovered that Frontier was incorrectly treating two workers as exempt corporate officers and not reporting their hours. CP 183; *see* RCW 51.12.020(8) (excluding bona fide corporate officers from mandatory workers' compensation coverage).

In 2010, the Department issued a notice of assessment of unpaid premiums for that period. CP 115. The assessment also included penalties and interest. CP 115. Frontier protested that order and the Department reconsidered it. CP 115. The Department affirmed the assessment on February 9, 2012. CP 115. Frontier then appealed that assessment to the Board. CP 115. After hearings, the Board issued an order in November 2012 that slightly modified the premium amount but otherwise affirmed the Department order. CP 1038. Frontier did not appeal, and the Board's order became a final determination of premiums, penalties, and interest owed. CP 115.

**C. After Frontier Dissolved, the Department Cited Frontier's Owner, Steven Hopkins, as Personally Liable for the Unpaid Premiums**

In July 2013, the Secretary of State administratively dissolved Frontier as a corporation for its "failure to file an annual list of officers/license renewal as required by law." CP 366. After that, the Department's revenue agents investigated to determine if Hopkins met the requirements to be held personally liable for Frontier's premium debt. CP 1514. On August 3, 2015, the Department issued an order citing Hopkins as personally liable for the same debt that was the subject of the Board's final order from November 2012. CP 90-92.

Hopkins appealed the personal liability order to the Board. CP 87-88. He moved for summary judgment, arguing that the Department was time barred under RCW 51.16.190(2) from seeking to collect the debt from him more than three years after the premiums became due from the corporation. CP 400-14. The Department cross-moved, arguing that, under RCW 51.48.055, it could not have asserted personal liability against Hopkins before Frontier dissolved. CP 291-300.

**D. The Board and Superior Court Affirmed the Personal Liability Order Against Hopkins**

The hearings judge granted summary judgment to the Department on the statute of limitations issue. CP 1039. The hearings judge later noted

in his proposed decision and order that “the assessment on appeal is not an assessment against Frontier, it is against Mr. Hopkins” and noting that the basis for any recovery against Mr. Hopkins is RCW 51.48.055. CP 53. The hearings judge modified the premiums owed based on a calculation of the funds available to Hopkins when Frontier dissolved. CP 60.<sup>1</sup>

Hopkins filed a petition for review with the Board. CP 38-48. The Board reversed the hearings judge’s modification and affirmed the assessment in full. CP 15-18. The Board found that, before Frontier dissolved, the company had sufficient funds to pay the debt but Hopkins chose not to:

6. Between February 12, 2012, and July 1, 2013, Frontier Contractors, Inc., had in its possession and control sufficient funds that could have been used to pay the amount owed to the Department in full.
7. Mr. Hopkins 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 instead of paying the amount due to the Department.

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<sup>1</sup> At hearing and in briefings before the Board, Hopkins argued the factual and legal basis for the assessment against Frontier, but the hearings judge determined that the order against Frontier was final and binding and could not be re-litigated. CP 54. Hopkins also argued that his wife as a part of the “marital community” should not be held liable for Frontier’s debt, but the hearings judge rejected that argument. CP 54. Finally, Hopkins argued he did not willfully fail to pay Frontier’s debt, but that argument was also rejected. CP 55. Here, Hopkins argues the statute of limitations only. AB 4.

CP 31. Hopkins appealed to superior court, which affirmed. CP 1-3, 1578-81. At the Court of Appeals, Hopkins' only theory is that the statute of limitations bars the personal liability assessment. He does not contest the Board's decision that the Department demonstrated that all the conditions for personal liability had been met, including the Board's finding that he made "an intentional, conscious, and voluntary choice to pay other obligations with the firm's funds instead of paying the amount due to the Department." CP 31. This finding is a verity on appeal. *Nelson v. Dep't of Labor & Indus.*, 175 Wn. App. 718, 723, 308 P.3d 686 (2013) (party's failure to assign error to the findings of fact renders them verities on appeal).

#### **IV. STANDARD OF REVIEW**

When the Department issues a personal liability order against an individual for a corporation's unpaid workers' compensation premiums, penalties, and interest, the individual can appeal to the Board. RCW 51.48.055(5); RCW 51.48.131. The individual bears the burden to show that the individual is not personally liable. *See* RCW 51.48.131; RCW 51.52.050; *Scott R. Sonners, Inc. v. Dep't of Labor & Indus.*, 101 Wn. App. 350, 355, 3 P.3d 756 (2000).

The Administrative Procedure Act governs appeals beyond the Board. RCW 51.48.131; RCW 34.05.570(3)(d); *Probst v. Dep't of Labor*

*& Indus.*, 155 Wn. App. 908, 915, 230 P.3d 271 (2010). Both the superior court and appellate court review the assessment based on the record before the Board. *Probst*, 155 Wn. App. at 915.

Under the APA, Hopkins bears the burden to prove the Board decision is incorrect. RCW 34.05.570(1)(a). Hopkins essentially argues that the Board erroneously applied the law. *See* Appellant's Brief (AB) 6-8; RCW 34.05.570(3)(d). Whether a statute of limitations applies is a question of law that the appellate court reviews de novo. *Bennett v. Computer Task Grp., Inc.*, 112 Wn. App. 102, 106, 47 P.3d 594 (2002). The court reviews the Board's legal conclusions de novo, giving substantial weight to the agency's interpretation when the subject area falls within the agency's area of expertise. *Dep't of Labor & Indus. v. Mitchell Bros. Truck Line, Inc.*, 113 Wn. App. 700, 704, 54 P.3d 711 (2002).

## V. ARGUMENT

The statute of limitations in RCW 51.16.190(2) does not bar the personal liability order that the Department issued against Hopkins. Under RCW 51.48.055, after a business dissolves, the Department can assert personal liability for the corporation's debt against corporate officers if failing to pay was willful. RCW 51.48.055 facilitates full collection of premiums, which funds the accident fund to protect workers. *See*

*Littlejohn*, 74 Wn. App. at 426. Hopkins wrongly argues that the three-year statute of limitations in RCW 51.16.190(2) bars the Department from seeking to collect this debt. AB 4. The assessment was against Hopkins, not Frontier, and only became due after Frontier was dissolved. Hopkins has conceded that his failure to pay the premiums was willful by not arguing it here. Since the Department issued the personal liability assessment against Hopkins in August 2015, within three years of Frontier's dissolution in July 2013, the assessment is timely.

**A. Hopkins's Debt Became Due Only After Frontier Dissolved So the Department Complied with the Statute of Limitations in RCW 51.16.190(2)**

Because corporations may seek to evade their tax obligations, the Legislature gave the Department the authority to collect premiums from a corporate officer who acts willfully to withhold payment of premiums. RCW 51.48.055's mandate works hand in hand with the statute of limitations in RCW 51.16.190 where the triggering date is the date the Department had collection authority against the officer. Action before that time would be premature.

**1. A former corporation's debt becomes due from a former officer only after the corporation stops operating**

Conceding willful nonpayment, Hopkins argues only that the three-year statute of limitation in RCW 51.16.190(2) bars the August 2015

personal liability assessment under RCW 51.48.055. AB 4. This case involves interpreting these two statutes. The ultimate goal in interpreting a statute is to determine and carry out the Legislature’s intent. *Gorre v. City of Tacoma*, 184 Wn.2d 30, 37, 357 P.3d 625 (2015). The court reads “statutes together to achieve a harmonious total statutory scheme . . . which maintains the integrity of the respective statutes.” *Filo Foods, LLC v. City of SeaTac*, 183 Wn.2d 770, 792, 357 P.3d 1040 (2015). The statute of limitations in RCW 51.16.190 gives the Department three years to collect any delinquent premiums after they become due:

(1) “Action” means, but is not limited to, a notice of assessment pursuant to RCW 51.48.120, an action at law pursuant to RCW 51.16.150, or any other administrative or civil process authorized by this title for the determination of liability for premiums, assessments, penalties, contributions, or other sums, or the collection of premiums, assessments, penalties, contributions, or other sums.

(2) Any action to collect any delinquent premium, assessment, contribution, penalty, or other sum due to the department from any employer subject to this title shall be brought within three years of the date any such sum *became due*.

RCW 51.16.190 (emphasis added). The Department may issue personal liability orders only when the corporation has been terminated, dissolved, or abandoned:

(1) Upon termination, dissolution, or abandonment of a corporate or limited liability company business, any officer, member, manager, or other person having control or supervision of payment and/or reporting of industrial insurance, or who is charged with the responsibility for the filing of returns, 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.

....

(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.

RCW 51.48.055.

Under RCW 51.48.055, delinquent premiums become due for former officers only after the corporation dissolves. RCW 51.16.190(2) starts the limitation period from “the date any such sum became due.” This means the date that any sum became due from a former officer under RCW 51.48.055(1) is the date that the corporation is dissolved.<sup>2</sup> This reading harmonizes the statutes because only at the time of corporate dissolution, termination, or abandonment can the Department issue a personal liability order and seek to collect a defunct corporation’s debts from a former officer.

Read together, the Department has three years from dissolution to pursue personal liability against a former corporate officer. This reading gives effect to both statutes, providing the Department with an important

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<sup>2</sup> The Board follows this approach. *Shawn A. Campbell*, 2014 WL 1398630, at \*2 (Bd. Ind. Ins. App. March 27, 2014). The court gives “great deference” to the Board’s interpretation of the Industrial Insurance Act. *Weyerhaeuser Co. v. Tri*, 117 Wn.2d 128, 138, 814 P.2d 629 (1991).

collection tool in the form of personal liability while also respecting the time constraint on collection actions in RCW 51.16.190(2).

Hopkins points to language in the personal liability statute that the officer “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.” RCW 51.48.055(1); AB 6. He argues that the debt “became due” under RCW 51.16.190(2) during the chargeable period of the premiums under RCW 51.48.055(2). AB 6. He is mixing up concepts. The language “brought within three years of the date *any such sum became due*” means the operational day the employer first owed the debt to the Department. RCW 51.16.190(2). Under RCW 51.48.055, liability for the debt attaches when the corporation dissolves. The parameters of that debt are set by the sums the employer owed before the corporation dissolved. But this is not when the debt “became due” for the officer because that occurs only upon dissolving of the corporation.

While RCW 51.48.055(2) restricts the Department’s ability to assess corporate officers for premiums to those that “became due during the period he or she had the control, supervision, responsibility, or duty to act for the corporation,” this “became due” language is a restriction on the underlying assessment, not a restriction on the Department’s collection of the personal liability debt. As a precondition of asserting personal liability,

the Department had to show that Hopkins was acting on behalf of the corporation during the period of Frontier's audit—the fourth quarter of 2006 through the third quarter of 2009. There is no dispute that Hopkins was the majority owner of Frontier during this period and the person mainly responsible for paying Frontier's bills. CP 331-32, 334, 345. So the Department gave effect to the "became due" requirement of RCW 51.48.055(2) in assessing the debt. The Department assessed only personal liability against Hopkins for premiums that became due from Frontier while Hopkins was acting for the corporation. But under RCW 51.48.055, Hopkins did not owe the money until the corporation dissolved and that is the operational day that Hopkins first owed the debt to the Department. This is the trigger date under RCW 51.16.190—when the debt became due.

The Department's August 2015 assessment was against Hopkins, not Frontier. CP 53. The debt became due, relative to Hopkins, only when Frontier dissolved in July 2013. The Department had no authority under RCW 51.48.055 to assert that liability before July 2013. So premiums had not "become due" against Hopkins. And since August 2015 is within three years of July 2013, the assessment is not time barred.

**2. Personal liability is a collection tool to ensure that injured workers receive the benefits they need**

The Department's interpretation of RCW 51.48.055 and RCW 51.16.190 gives effect to their purposes. Personal liability as provided for in RCW 51.48.055 is a collection tool that allows the Department to cite not just corporations, but also individual corporate officers, when certain conditions are met. The individuals cited must have been responsible for paying industrial insurance premiums and must have willfully failed to pay those premiums. *Id.* But the Department has the authority to issue personal liability orders only if the corporation has been terminated, dissolved, or abandoned. The Legislature wants corporate officers to ensure that their companies pay their fair share into the workers' compensation fund. When a corporation dissolves after an officer willfully evades payment, the Legislature makes the officer personally responsible for unpaid premiums. The Legislature gave the Department the authority to deter financially troubled corporations from diverting their assets and then dissolving in order to evade their obligations to pay workers' compensation premiums. That is why the Legislature provided for personal liability for the willful nonpayment of premiums.

Adopting Hopkins's theory that "becomes due" in RCW 51.16.190 is the date the premiums were first owed by Frontier and not the date they

were first owed by Hopkins would thwart the purposes behind the RCW 51.48.055 and RCW Title 51's overarching goal to ensure sure and certain relief to injured workers. RCW 51.04.010. As the hearings judge noted, a corporation faced with a notice of assessment could simply delay in dissolving the company, or choose to spend time litigating the underlying debt to defeat the Department's exercise of personal liability, since every quarter that passed would be one less quarter the Department could collect on. CP 53.

This case illustrates the need to ensure that companies do not use the appeal system to delay and so avoid a valid tax debt. Frontier litigated the assessment against the corporation, and the assessment did not become final until November 2012. Under Frontier's theory, even if it dissolved later that month and the Department immediately issued a personal liability order, Hopkins would not have been liable for *any* delinquent premiums. That is because all the premiums became due to the corporation more than three years before November 2012 (the premiums covered work from October 2006 through September 2009).<sup>3</sup>

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<sup>3</sup> When an employer protests an assessment of workers' compensation premiums, the Department reconsiders its decision and considers any information the employer provides about whether the original assessment is correct, as was done here. CP 115. That process can take some time, as it did here. CP 115. The Department should not have to rush through the company's reconsideration process, because, under Hopkin's theory, the officer's tax liability clock is ticking.

That makes no sense. The Legislature could not have intended for corporations—especially ones with officers that willfully decline to pay their fair share to the injured workers’ fund—to defeat personal liability through the gamesmanship of litigation. The reason it created personal liability is to ensure that corporations could not avoid paying their fair share by dissolving. But Hopkins’s playbook accomplishes the same result: an officer can avoid most or all liability by litigating the assessment against the corporation. The Legislature could not have intended to eviscerate personal liability when it created it.

### **3. Hopkins’ arguments have no merit**

Reading RCW 51.48.055(1) and RCW 51.16.190(2) together, the Department had three years to assert that Hopkins was personally liable after Frontier dissolved. This is not a “discovery rule” as Hopkins alleges. AB 7. The Department is not asserting that it has three years from the date it learns that the conditions of RCW 51.48.055 have been met to assert personal liability. The inquiry is not fact-specific. Instead, the same three-year period always applies. This is not a subjective determination and there is no dispute that Frontier dissolved as a corporation in July 2013. So the Department had until July 2016 to assess Hopkins personally, and so its August 2015 assessment was timely under RCW 51.16.190(1).

Hopkins notes that the Department has the authority to estimate and assess premiums under RCW 51.16.155 and so the Department does not need to “rely upon self-reporting by the employer.” AB 7. But this misses the point. First, the Department is not arguing for a discovery rule that turns on the facts of a particular case, but rather that it has three years to issue a personal liability order after a corporation dissolves. Second, the Department’s authority to estimate employer premiums is not even involved here as the assessment is against an individual corporate officer, not a corporation. The underlying debt was affirmed in the previous litigation; there was no estimation necessary.

The *Dolman* decision cited by Hopkins does not support that the Department’s personal liability order against Hopkins was untimely. *Dolman v. Dep’t of Labor & Indus.*, 105 Wn.2d 560, 716 P.2d 852 (1986). First, that case did not concern a personal liability assessment; it concerned a notice of assessment issued under RCW 51.48.120 after the Department learned the employer had defaulted on a payment plan. *Dolman*, 105 Wn.2d at 562. The court determined this was an “action” subject to the three-year statute of limitations in RCW 51.16.190 and that the clock began to run when the premiums became due, not when the Department discovered the employer’s default. *Id.* at 566. The Department is not arguing that the clock began to run on the personal liability

assessment when the Department discovered that Frontier dissolved. The underlying fact of Frontier's debt already existed and had been litigated. But it was only with the dissolution of Frontier that the Department had authority to assert liability against Hopkins personally, which it did within three years of the company's dissolution.

The Department can always assert personal liability within three years of a corporation's dissolution. Hopkins seeks to obscure the issue by arguing that the Department is not alleging fraud, an exception under RCW 51.16.190. AB 4. But that misses the point. The Legislature requires only willful nonpayment, not fraud, for personal liability to attach. RCW 51.48.055(1). And personal liability attaches only when the corporation dissolves or terminates—that is when any outstanding delinquent payments become “due” from a former officer, member, or manager who willfully did not pay premiums while the corporation was active.

Hopkins also argues that other emergency collections and fraud statutes obviate the need for the Department to impose personal liability. AB 7. But relying on these provisions would set a much higher bar for collection of premiums from individuals than the Legislature intended. For example, RCW 51.48.170 provides that when an employer is insolvent or about to dissipate assets and the Department can establish that “collection of any taxes accrued will be jeopardized by delaying collection” that the

Department can begin immediate collection efforts. The Legislature could have conditioned personal liability on showing this immediacy, but did not do so.

**B. Hopkins Is Not Entitled to Attorney Fees Because the Department's Action Was Substantially Justified**

Hopkins should not prevail so he should not receive attorney fees under the Equal Access to Justice Act (EAJA). AB 8-9. But, even if he prevails, he should not receive fees because the Department's personal liability order was substantially justified. And awarding fees now would be premature as there has been no finding that Hopkins is a qualified party or that circumstances would not make an award unjust. *See Brown v. Dep't of Soc. & Health Servs.*, 190 Wn. App. 572, 598, 360 P.3d 875 (2015).

The EAJA does not allow an award of reasonable attorney fees to a prevailing party if the agency's action was substantially justified. RCW 4.84.350(1). The EAJA was intended to "ensure citizens a better opportunity to defend themselves from *inappropriate* state agency actions." *Raven v. Dep't of Soc. & Health Servs.*, 177 Wn.2d 804, 833, 306 P.3d 920 (2013) (quoting *Costanich v. Dep't of Soc. & Health Servs.*, 164 Wn.2d 925, 929, 194 P.3d 988 (2008)).

Although the Act does not define “substantially justified,” case law has established that the state must show that the agency action had a reasonable basis in law and in fact. *Plum Creek Timber Co. v. Forest Practices Appeals Bd.*, 99 Wn. App. 579, 595, 993 P.2d 287 (2000) (“Substantially justified means justified . . . to a degree that could satisfy a reasonable person.”). The agency’s decision need not be correct—only reasonable. *Id.*

In *Department of Labor & Industries v. Lyons Enterprises, Inc.*, 186 Wn. App. 518, 347 P.3d 464 (2015), *aff’d*, 185 Wn.2d 721 (2016), the Department and the company disagreed over whether franchisees performing janitorial work were covered workers under the Industrial Insurance Act. The Court of Appeals ultimately agreed with the company on a significant issue (that the company did not have to pay premiums for franchisees who employed others) but declined to award attorney fees to the company because the Department’s tax assessment against the company was substantially justified. The court noted that “[a]n agency action may be manifestly unjust and still satisfy a reasonable person” and that while the Department’s position was ultimately determined to be incorrect by a reviewing court, the position was not untenable. *Id.* at 542. This was especially true because the existing law on the subject matter was complex and somewhat confused. *Id.*

The Department has substantially prevailed in every forum in which this case has been litigated. Even if Hopkins prevailed, the Department acted reasonably when it issued the personal liability order. There is no existing case law interpreting RCW 51.48.055 or evaluating the interaction of that statute and the three-year statute of limitations in RCW 51.16.190. The Department's interpretation of these statutes gives effect to the Legislature's intent to pursue personal liability for a former officer's willful nonpayment when a corporation dissolves, thus furthering the purpose of Title 51 to keep the workers' compensation fund solvent. The Department's position also follows the Board's guidance in *Shawn Campbell* that the date of corporate dissolution starts the statute of limitations clock. 2014 WL 1398630, at \*2. Even if Hopkins prevails, the Department's actions were substantially justified.

## **VI. CONCLUSION**

Personal liability is a collection tool provided by the Legislature to the Department to ensure that corporate officers of financially troubled companies do not evade their tax burden by diverting their assets elsewhere. RCW 51.16.190 and RCW 51.48.055 can be read harmoniously to mean that the Department has three years to assert personal liability against a corporate officer after a company has

dissolved. Frontier dissolved in July 2013 so the Department's August 2015 assessment against Hopkins as an individual was timely.

RESPECTFULLY SUBMITTED this 13th day of August, 2018.

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No. 51891-1-II

**COURT OF APPEALS FOR DIVISION II  
OF THE STATE OF WASHINGTON**

STEVEN G. HOPKINS,

Appellant,  
v.

WASHINGTON STATE  
DEPARTMENT OF LABOR AND  
INDUSTRIES,

Respondent.

CERTIFICATE OF  
SERVICE

The undersigned, under penalty of perjury pursuant to the laws of the State of Washington, declares that on the below date, she caused to be served the Department's Brief of Respondent and this Certificate of Service in the below described manner:

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DATED this 13th day of August, 2018.

A handwritten signature in black ink, appearing to read "Shana Pacarro-Muller". The signature is written in a cursive style with a large initial 'S'.

---

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