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SUPREME COURT OF THE STATE OF WASHINGTON

CHADWICK FARMS OWNERS ASSOCIATION,  
a Washington nonprofit corporation,

Respondent,

v.

FHC LLC, a Washington limited liability company,

Petitioner,

v.

AMERICA 1<sup>ST</sup> ROOFING & BUILDERS, INC., a  
Washington corporation; CASCADE UTILITIES, INC., a  
Washington corporation; MILBRANDT ARCHITECTS, INC.,  
P.S., a Washington corporation; PIERONI ENTERPRISE, INC.,  
d/b/a PIERONI'S LANDSCAPE CONSTRUCTION, a  
Washington corporation; TIGHT IS RIGHT CONSTRUCTION,  
INC., a Washington corporation; GUTTER KING, INC.,  
a Washington corporation,

Respondents.

\_\_\_\_\_  
CHADWICK FARM OWNERS ASSOCIATION'S ANSWER TO  
FHC LLC's PETITION FOR REVIEW  
\_\_\_\_\_

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A. IDENTITY OF RESPONDING PARTY

Respondent Chadwick Farms Owners Association, plaintiff and appellant below, submits this answer to FHC LLC's petition for review.

B. COURT OF APPEALS DECISION

On June 18, 2007, Division I of the Court of Appeals issued its published decision, Chadwick Farms Owners Ass'n v. FHC, LLC, \_\_\_ Wn. App. \_\_\_, 160 P.3d 1061 (2007), affirming in part and reversing in part the trial court's September 30, 2005 summary judgment dismissal of Chadwick Farms' claims against, and various third-party claims brought by, FHC LLC, an administratively dissolved LLC that, while Chadwick Farms' claims were pending, failed to seek reinstatement within two years after the effective date of its administrative dissolution. The Court of Appeals (1) reversed the dismissal of Chadwick Farms' claims against FHC LLC, finding that RCW 25.15.303, the 2006 amendment to the Limited Liability Company Act that provided a three-year survival period within which claims against a dissolved limited liability company (LLC) may be brought, applies retroactively and permits actions against an LLC even when that company's certificate of formation has been cancelled, but (2) affirmed the dismissal of FHC LLC's third-party claims against various subcontractors, concluding that RCW 25.15.270(6) mandates an administratively dissolved LLC to wind up its affairs by "[t]he expiration

of two years after the effective date of dissolution under RCW 25.15.185 without reinstatement of the limited liability company.”<sup>1</sup> While the Court of Appeals correctly reinstated Chadwick Farms’ claims against FHC LLC, the Court of Appeals erroneously interpreted RCW 25.15.270(6) to affirm the dismissal of FHC LLC’s third party claims. Chadwick Farms respectfully submits that review should be granted to correct the Court of Appeals erroneous interpretation of RCW 25.15.270(6) and to reinstate FHC LLC’s third-party claims against various subcontractors.<sup>2</sup>

C. ISSUES PRESENTED FOR REVIEW

1. Did the Court of Appeals correctly reverse the trial court’s dismissal of Chadwick Farms’ claims against FHC LLC on the grounds that RCW 25.15.303, the 2006 amendment to the Limited Liability Company Act providing a three-year survival period within which claims against a dissolved limited liability company (LLC) may be brought, applies retroactively and permits actions against an LLC even when that company’s certificate of formation has been cancelled?

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<sup>1</sup> The Court of Appeals also held that the trial court abused its discretion in failing to permit Chadwick Farms to amend its complaint to add a company member and manager as defendants for their failure to properly wind up FHC LLC’s affairs. FHC LLC has not petitioned for review of that portion of the Court of Appeals’ decision.

<sup>2</sup> Chadwick Farms has an interest in having FHC LLC’s third-party claims against various subcontractors reinstated to preserve FHC LLC’s rights to coverage as an additional insured under third-party defendants’ insurance, see CP 172, 175-76, so that FHC LLC has sufficient insurance to pay Chadwick Farms’ damages.

2. Should the Court of Appeals' reversal of the trial court's dismissal of Chadwick Farms' claims also be affirmed because the trial court erred as a matter of law in concluding that, under the Limited Liability Company Act as it existed prior to the enactment of RCW 25.15.303 in 2006, once two years had passed after FHC LLC had been administratively dissolved and failed to seek reinstatement, it ceased to exist, such that any claims against it, including Chadwick Farms' already pending claims, could no longer be pursued?

3. Did the Court of Appeals erroneously conclude that RCW 25.15.270(6) mandates that an administratively dissolved LLC wind up its affairs by "[t]he expiration of two years after the effective date of dissolution under RCW 25.15.185 without reinstatement of the limited liability company," and did the Court of Appeals thus erroneously affirm the trial court's dismissal of FHC LLC's third-party claims against various subcontractors?

D. STATEMENT OF THE CASE

1. The parties and their claims.

FHC LLC, a Washington limited liability company, was formed to construct a condominium project known as Chadwick Farms. CP 2, 76 at ¶ 2. After completing the construction, FHC LLC ceased operations. CP 2, 76 at ¶ 3. On March 24, 2003, the Secretary of State issued a Certificate

of Administrative Dissolution for FHC LLC, because of FHC LLC's failure to file an annual report or license renewal. CP 13.

On August 18, 2004, Chadwick Farms sued FHC LLC, alleging that FHC was responsible for multiple construction defects and that, as a result of FHC's breach of warranties, the Chadwick Farms condominiums and common elements suffered water intrusion. CP 121-25.

On March 24, 2005, more than seven months after Chadwick Farms initiated this action, two years had passed since the Secretary of State issued the Certificate of Administrative Dissolution for FHC LLC. FHC LLC had not filed an application for reinstatement as of that date. CP 76 at ¶ 4. Nor did it file a certificate of cancellation after that date. See CP 166-68, 169-73, 176 at ¶ 7. Shortly after the two-year reinstatement period had passed, FHC LLC, on April 5, 2005, answered Chadwick Farms' complaint, denying Chadwick Farms' claims, CP 126-29, and alleging that it "is no longer in business and is a dissolved entity." CP 127 at ¶ 2. FHC LLC also asserted numerous affirmative defenses, and reserved the right to bring third-party claims. CP 127-28.

On May 6, 2005, over a month after the two-year reinstatement period had passed, FHC LLC received leave to file a third-party complaint against five companies (America 1st Roofing & Builders, Cascade Utilities, Milbrandt Architects, Pieroni Enterprise, and Tight Is Right

Construction). See 131-33, 137-38. On September 27, 2005, FHC LLC received leave to file an amended third-party complaint against another company (Gutter King). See CP 211-13, 214-27.

2. The summary judgment motions and responses.

On August 24, 2005, FHC LLC moved for summary judgment dismissal of Chadwick Farms' claims, CP 1-8, 9-19; see also CP 67-76, asserting that, as of March 24, 2005 (seven months after Chadwick Farms filed its complaint), when two years had passed after FHC LLC was administratively dissolved, it ceased to exist and any claims against it could no longer be pursued, CP 4-7, 67-72.<sup>3</sup> FHC cited RCW 25.15.080 and 25.15.290(4) for the proposition that its certificate of formation was canceled by operation of law on March 24, 2005, two years after its

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<sup>3</sup> After FHC LLC filed its summary judgment motion, third-party defendant Pieroni moved to dismiss FHC LLC's third-party claims on grounds that, when FHC LLC filed its first third-party complaint on May 11, 2005, it did not have standing to bring or to prosecute its third-party claims. See CP 20-28. Third-party defendants Milbrandt and Cascade joined in Pieroni's motion. See CP 46-47, 50-51. In response, FHC LLC agreed that, if the court granted its summary judgment motion, then the court should also grant the third-party defendants' motions, but asserted that, if the court denied its motion, then the court should also deny the third-party defendants' motions. See CP 60-64. In reply, Cascade argued that whether the court denied FHC LLC's motion was irrelevant to the third-party defendants' motions because Chadwick Farms had no ability to maintain FHC LLC's form as a limited liability company, but FHC LLC did have that right and ability if it wanted to pursue claims against Cascade or anyone else. See CP 77-82. Pieroni also argued that Chadwick Farms' arguments in opposition to FHC LLC's motion were not applicable to the third-party defendants' motions because FHC LLC was responsible for allowing its certificate of formation to be canceled and had not brought its third-party claims before its certificate was canceled. See CP 91-93; see also CP 88-90.

administrative dissolution.<sup>4</sup> CP 5. FHC also cited RCW 25.15.070 and 25.15.295 for the proposition that, once its certificate of formation was canceled, its winding up period ended and it ceased to exist.<sup>5</sup> Id.

After receiving FHC's motion, Chadwick Farms moved for and obtained, without opposition, a temporary restraining order enjoining FHC LLC from filing a certificate of cancellation with the Secretary of State. CP 166-68, 169-73, 174-93. In so doing, Chadwick Farms relied in part upon the language of RCW 25.15.295(2), which provides that:

Upon dissolution of a limited liability company *and until the filing of a certificate of cancellation* as provided in RCW 25.15.080, the persons winding up the limited liability company's affairs may, in the name of, and for and on behalf of, the limited liability company, prosecute and defend suits . . . . [Emphasis added.]

CP 170. Chadwick Farms sought to prevent FHC LLC from

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<sup>4</sup> In particular, FHC LLC relied upon that portion of the first sentence of RCW 25.15.080, which provides that "[a] certificate of formation shall be canceled upon the effective date of the certificate of cancellation, or as provided in RCW 25.15.290 . . . ," and RCW 25.15.290(4), which provides that, if an application for reinstatement is not made within two years after the effective date of administrative dissolution, "the secretary of state shall cancel the limited liability company's certificate of formation." See CP 5.

<sup>5</sup> RCW 25.15.070(2)(c) provides that: "A limited liability company formed under this chapter shall be a separate legal entity, the existence of which as a separate legal entity shall continue until cancellation of the limited liability company's certificate of formation." RCW 25.15.295(2) provides in pertinent part that:

Upon dissolution of a limited liability company and until the filing of a certificate of cancellation as provided in RCW 25.15.080, the persons winding up the limited liability company's affairs may, in the name of, and for and on behalf of, the limited liability company, prosecute and defend suits . . . .

compromising Chadwick Farms' right to pursue this action, or from losing any rights to coverage as an additional insured under third-party defendants' insurance that FHC LLC may have had for its liabilities to Chadwick Farms. CP 172, 175-76.

Opposing FHC LLC's summary judgment motion, Chadwick Farms pointed out that FHC LLC's interpretation of the Limited Liability Company Act would render several of its provisions meaningless and lead to absurd results, such as allowing LLCs to evade their liabilities and debts. CP 55-56. Chadwick Farms explained, *inter alia*, that (1) under RCW 25.15.285(3), an LLC continues in existence and may wind up its business affairs after administrative dissolution;<sup>6</sup> (2) under RCW 25.15.295(2), "[u]pon dissolution of a limited liability company ***and until the filing of a certificate of cancellation*** as provided in RCW 25.15.080, the persons winding up the limited liability company's affairs may, in the name of, and for and on behalf of, the limited liability company, prosecute and defend suits . . . ;" (3) under the second sentence of RCW 25.15.080, "[a] certificate of cancellation shall be filed in the office of the secretary of state to accomplish the cancellation of a certificate of formation upon the dissolution and the completion of winding up of a limited liability com-

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<sup>6</sup> RCW 25.15.285(3) provides that "[a] limited liability company administratively dissolved continues its existence but may not carry on any business except as necessary to wind up and liquidate its business and affairs."

pany;” (4) under RCW 25.15.300(2), “[a] limited liability company which has dissolved shall pay or make reasonable provision to pay all claims and obligations, including all contingent, conditional, or unmatured claims and obligations, known to the limited liability company . . .;” and (5) there was no evidence that a certificate of cancellation had ever been filed or that FHC LLC had ever completed the winding up process or made reasonable provision to pay all known claims and obligations.<sup>7</sup> CP 52-56.

3. The trial court’s ruling on the summary judgment motions.

On September 30, 2005, the trial court entered an “Order Granting FHC LLC’s Motion for Summary Judgment and Dismissal of All Claims.” See CP 102-04. It also entered orders granting Cascade Utilities’, Milbrandt Architects’, and Pieroni Enterprise’s motions to dismiss FHC LLC’s third-party claims against them. CP 105-07, 98-101, 108-12.<sup>8</sup>

4. The appeal.

Chadwick Farms appealed the dismissal of its claims against FHC LLC, CP 228-36, 246-73, and FHC LLC cross-appealed the dismissal of

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<sup>7</sup> FHC LLC certainly had not paid or made reasonable provision for payment of Chadwick Farms’ claims, which had been filed and were known to FHC more than seven months before the date FHC LLC claims it ceased to exist and could no longer be sued.

<sup>8</sup> Meanwhile, on September 27, 2005, the trial court granted FHC LLC leave to file an amended third-party complaint naming Gutter King as an additional third-party defendant. CP 211-13. Then, on October 5, 2005, after obtaining summary judgment on the grounds that it had ceased to exist as a legal entity and thus was not capable of being sued (or suing), FHC LLC filed and served on Gutter King the amended third-party complaint. See CP 214-27, 308-09.

its third-party claims against various subcontractors, CP 276-300.<sup>9</sup> Before the parties' briefs were filed, the Washington Legislature enacted Senate Bill 6531, amending the Limited Liability Company Act to add a new survival of claims provision, RCW 25.15.303, which became effective on May 6, 2006, and which provides:

The dissolution of a limited liability company does not take away or impair any remedy available against that limited liability company, its managers, or its members for any right or claim existing, or any liability incurred at any time, whether prior to or after dissolution, unless an action or other proceeding thereon is not commenced within three years after the effective date of dissolution. Such an action or proceeding against the limited liability company may be defended by the limited liability company in its own name.

E. ARGUMENT

Given the widespread use of the LLC form to conduct business in this state, the issues of whether, under the Limited Liability Company Act, even without the 2006 addition of RCW 25.15.303, an administratively dissolved LLC may evade pending claims by failing to seek reinstatement within two years of its administrative dissolution, or can no longer complete, absent reinstatement, the winding up of its affairs after two years of the date of its administrative dissolution, are issues of substantial public interest that should be determined by this Court.

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<sup>9</sup> Although the parties sought direct review by this Court, direct review was denied and the case was transferred to the Court of Appeals.

1. Even before the enactment of RCW 25.15.303 in 2006, an administratively dissolved LLC did not cease to exist for purposes of winding up, and could continue winding up its affairs, including defending and prosecuting suits, after the expiration of the two-year reinstatement period and until the filing of a certificate of cancellation.

Contrary to the conclusion reached by the Court of Appeals, under the Limited Liability Company Act, an administratively dissolved LLC does not cease to exist, and its winding up period does not automatically end, such that it can no longer sue or be sued, just because two years elapse without reinstatement following administrative dissolution. Although the Act is not a model of clarity, when all of its provisions are read in *pari materia*, without rendering any word or provision meaningless, and construed to avoid absurd or fundamentally unjust results as they must be, e.g., City of Pasco v. Napier, 109 Wn.2d 769, 773, 755 P.2d 170 (1988); State v. Contreras, 124 Wn.2d 741, 747, 880 P.2d 1000 (1994); State v. Chapman, 140 Wn.2d 436, 448, 998 P.2d 282, cert. denied, 531 U.S. 984 (2000); Kilian v. Atkinson, 147 Wn.2d 16, 21, 50 P.3d 638 (2002), the Court of Appeals should have reversed not only the dismissal of Chadwick Farms' claims against FHC LLC, but also the dismissal of FHC LLC's third-party claims against various subcontractors.

Under RCW 25.15.285(3), the administrative dissolution of an LLC does not end its existence. Rather, under RCW 25.15.285(3):

A limited liability company administratively dissolved continues its existence but may not carry on any business except as necessary to wind up and liquidate its business and affairs.

Under RCW 25.15.295(2) and 25.15.300(2), such winding up includes prosecuting and defending suits and paying or making reasonable provision to pay all claims and obligations, including contingent, conditional, and unmatured ones, known to the LLC.

Nowhere in the Act is any specific time limit placed on how long an LLC has after it is dissolved, whether administratively or otherwise, to complete the winding up of its affairs. The mere fact that RCW 25.15.290(4) provides that the Secretary “shall cancel” an LLC’s certificate of formation if the LLC does not seek reinstatement within two years after its administrative dissolution,<sup>10</sup> does not mean that the LLC cannot continue winding up its affairs, including prosecuting and defending suits and paying known claims and obligations, past that two-year mark. The Act does not specify how, when, or in what form the Secretary of State is to ultimately accomplish the cancellation of the certificate of formation of an administratively dissolved LLC that does

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<sup>10</sup> RCW 25.15.290(4) states:

If an application for reinstatement is not made within the two-year [reinstatement] period set forth in subsection (1) of this section, or if the application made within this period is not granted, the secretary of state shall cancel the limited liability company’s certificate of formation.

seek reinstatement within two years. Nor does the Act indicate that an administratively dissolved LLC ceases to exist for purposes of winding up, or that any claims by or against it can no longer be brought, or abate, immediately upon the expiration of the two-year reinstatement period. What RCW 25.15.290(4) means when it provides that the Secretary of State “shall cancel” the certificate of formation after the two-year reinstatement has passed without reinstatement is that the LLC can no longer be reinstated, not that it can no longer finish winding up its affairs.

Indeed, it is the second sentence of RCW 25.15.080 that addresses how a cancellation of a certificate of formation is to be accomplished, and RCW 25.15.295(2) that addresses when the persons winding up an LLC can no longer, as part of winding up its affairs, prosecute or defend suits in the company’s name. According to those statutes, a certificate of cancellation must be filed in the Secretary of State’s office to accomplish the cancellation of a certificate of formation upon the dissolution and completion of the winding up process, and persons winding up the LLC’s affairs can continue to do so, including prosecuting and defending suits, until the filing of the certificate of cancellation. RCW 25.15.080 provides:

A certificate of formation shall be canceled upon the effective date of the certificate of cancellation, or as provided in RCW 25.15.290, or upon the filing of articles of merger if the limited liability company is not the surviving or resulting entity in a merger. *A certificate of*

*cancellation shall be filed in the office of the secretary of state to accomplish the cancellation of a certificate of formation upon the dissolution and the completion of winding up of a limited liability company. . . .* [Emphasis added.]

RCW 25.15.295(2) in turn provides:

Upon dissolution of a limited liability company *and until the filing of a certificate of cancellation* as provided in RCW 25.15.080, the persons winding up the limited liability company's affairs may, in the name of, and for and on behalf of, the limited liability company, prosecute and defend suits, whether civil, criminal, or administrative, gradually settle and close the limited liability company's business, dispose of and convey the limited liability company's property, discharge or make reasonable provision for the limited liability company's liabilities, and distribute to the members any remaining assets of the limited liability company. [Emphasis added.]

Nowhere does the Act state that the winding up of an administratively dissolved LLC's affairs, which includes prosecuting and defending suits, must be completed on or before the expiration of the two-year reinstatement period. Indeed, RCW 25.15.270 indicates the opposite, when it provides that an LLC is dissolved and its affairs shall be wound up "*upon*", not *by* (or as of) the expiration of two years after the effective date of an administrative dissolution without reinstatement, in the same way that an LLC is dissolved and its affairs shall be wound up "*upon*", not *by* (or as of), the written consent of all members, or the entry of a decree of judicial dissolution. RCW 25.15.270 provides in pertinent part:

A limited liability company is dissolved and its affairs shall be wound up *upon* the first to occur of the following:

\* \* \*

(3) The written consent of all members;

\* \* \*

(5) The entry of a decree of judicial dissolution under RCW 25.15.275; or

(6) The expiration of two years after the effective date of [administrative] dissolution under RCW 25.15.285 without the reinstatement of the limited liability company. [Emphasis added.]

It cannot seriously be contended that, in cases where dissolution occurs by written consent of the members or judicial decree, the winding up of the LLC's affairs has to be completed before, or by the time, the consent or decree is obtained. To the contrary, the written consent of the members or the entry of a decree of judicial dissolution marks the time "upon" which an LLC must begin winding up its affairs. RCW 25.15.270 does not treat the expiration of the two-year reinstatement period following administrative dissolution any differently than the written consent of all members or the entry of a decree of judicial dissolution for purposes of demarcating when winding up must begin to occur. Thus, the Court of Appeals erred in concluding that RCW 25.15.270(6) mandates an administratively dissolved LLC to wind up its affairs by the expiration of two years after the effective date of its administrative dissolution without reinstatement of the LLC. This Court should accept review and correct

the Court of Appeals' erroneous interpretation of RCW 25.15.270(6).

2. Contrary to FHC LLC's contentions, the Court of Appeals correctly held that RCW 25.15.303 applies retroactively, and preserves claims against even a cancelled LLC if brought within three years after the LLC's dissolution.

During the 2006 legislative session, the Legislature enacted Senate Bill 6531,<sup>11</sup> effective May 6, 2006, adding RCW 25.15.303 to the Limited Liability Company Act, which provides:

The dissolution of a limited liability company does not take away or impair any remedy available against that limited liability company, its managers, or its members for any right or claim existing, or any liability incurred at any time, whether prior to or after dissolution, unless an action or other proceeding thereon is not commenced within three years after the effective date of dissolution. Such an action or proceeding against the limited liability company may be defended by the limited liability company in its own name.

The explicit purpose of that enactment was to preserve remedies when limited liability companies dissolve.<sup>12</sup> The Legislature identified the problem it sought to address as follows:

The law governing LLCs has no express provision regarding the preservation of remedies or causes of actions following dissolution of the business entity. *There is an implicit recognition of the preservation of at least an already filed claim during the wind up period following*

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<sup>11</sup> See <http://apps.leg.wa.gov/billinfo/summary.aspx?bill=6531&year=2006> where copies of Senate Bill 6531, the Senate Bill Report, the House Bill Report, and the Final Report can be found. Copies of those documents were also attached as Appendices to the Brief of Appellant Chadwick Farms Owners Association.

<sup>12</sup> See SB 6531's title ("AN ACT Relating to preserving remedies when limited liability companies dissolve"); and the "Brief Description" contained in SB 6531's Final Bill Report ("Preserving remedies when limited liability companies dissolve").

*dissolution, since the person winding up the affairs is authorized to defend suits against the LLC.* [Emphasis added.] However, there is no provision regarding the preservation of claims following cancellation of the certificate of formation.

The current Business Corporation Act provides that dissolution of a corporation does not eliminate any claim against the corporation that was incurred prior to dissolution if an action on the claim is filed within two years of dissolution. There is no “certificate of cancellation” necessary to end a corporation. (*Note: Another currently pending bill, SSB 6596, would increase this two year period to three years, and would make the provision apply to claims incurred before or after dissolution.*) [Italics in original.]

House Bill Report SB 6531 at 2-3 (Feb. 28, 2006). Moreover, as noted in the summary of the testimony given in support of the bill contained in the House Bill Report, there was concern that:

A recent court decision has left many homeowners without a remedy for claims against a dissolved corporation. The same problem exists with respect to claims against LLCs. The Bar Association is working on a comprehensive review of the LLC law, but it is not done yet. This bill addresses only the problem of survival of claims following dissolution.

The bill is a step in the right direction. It affirmatively states that claims, such as homeowners’ warranty claims, will survive the dissolution of an LLC.

House Bill Report SB 6531 at 3 (Feb. 28, 2006). Similarly, the summary of testimony contained in the Senate Bill Report states: “This bill is good for homeowners. It removes an incentive for LLCs to act in bad faith.” Senate Bill Report SB 6531 at 1 (Feb. 11, 2006).

Although statutory amendments generally apply prospectively, an amendment will be applied retroactively if (1) the legislature so intended, or (2) the amendment is curative, or (3) the amendment is remedial. E.g., McGee Guest Home, Inc. v. Dep't of Social & Health Servs., 142 Wn.2d 316, 324, 12 P.3d 144 (2000). “An amendment is curative only if it clarifies or technically corrects an ambiguous statute.” Id. at 325 (quoting In re F.D. Processing, Inc., 119 Wn.2d 452, 461, 832 P.2d 1303 (1992)). “A statutory amendment is remedial if it relates to practice, procedures, or remedies and does not affect a substantial or vested right.” Robin L. Miller Constr. Co. v. Coltran, 110 Wn. App. 883, 891, 43 P.3d 67 (2002). “When an amendment clarifies existing law and where that amendment does not contravene previous constructions of the law, the amendment may be deemed curative, remedial, and retroactive. This is particularly so where an amendment is enacted during a controversy regarding the meaning of the law.” In re Personal Restraint of Matteson, 142 Wn.2d 298, 308, 12 P.3d 585 (2000) (quoting Tomlinson v. Clarke, 118 Wn.2d 498, 510-11, 825 P.2d 706 (1992)).

Here, there is no question that RCW 25.15.303 clarifies existing law with respect to the preservation of remedies when limited liability companies dissolve, a matter as to which some ambiguity existed. Indeed, it was enacted during controversies about the meaning of the law with

respect to the preservation of remedies against both business corporations and limited liability companies when they dissolve, and does not contravene any previous constructions of the law by this Court. RCW 25.15.303 also relates to remedies,<sup>13</sup> and does not affect a substantial or vested right. Because RCW 25.15.303 is curative and remedial and its retroactive application will serve its remedial purpose, the Court of Appeals correctly concluded that it applied retroactively to preserve Chadwick Farms' claims against FHC LLC, claims brought within three years of FHC LLC's administrative dissolution, and more than seven months before the two-year reinstatement period expired.

The Court of Appeals also correctly rejected FHC LLC's contention that RCW 25.15.303 has no applicability to a cancelled LLC. Indeed, FHC LLC's proffered construction of RCW 25.15.303 would eviscerate and render meaningless the three-year survival of claims provision that the Legislature enacted. Such an interpretation is wholly contrary to the Legislature's intent, especially when the Legislature, in the House Bill Report for SB 6531, identified the gap it was trying to close by noting that, in the Limited Liability Company Act it was amending, "there is no provision regarding the preservation of claims following cancellation of the certificate of formation." See House Bill Report, SB 6531, at 3.

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<sup>13</sup> See footnote 12, supra.

Moreover, FHC LLC's proffered construction of RCW 25.15.303 would lead to absurd and fundamentally unjust results. Under FHC LLC's proffered construction, an administratively dissolved LLC could simply ignore its obligations to pay or make reasonable provision for the payment of known claims, do nothing for two years following administrative dissolution, and watch all pending or known claims or obligations evaporate after the passage of the two-year reinstatement period. Or, an LLC dissolved by consent of its members or judicial decree could equally evade all pending or known claims simply by filing a certificate of cancellation. To allow the passage of the two-year reinstatement period or the filing of a certificate of cancellation to defeat the three-year survival of claims period would render the Legislature's enactment of RCW 25.15.303 meaningless. As the Senate Bill Report, SB 6531, at page 1, makes clear, the purpose of RCW 25.15.303 is to provide a definite three-year period for the survival of claims, and thus, "remove[] an incentive for LLCs to act in bad faith."

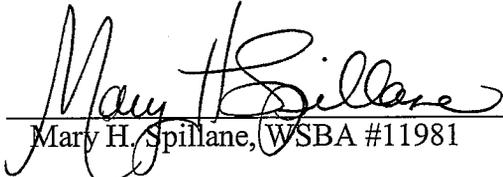
The Court of Appeals correctly held that RCW 25.15.303, being remedial and curative in nature, applies retroactively and provides a three-year period following dissolution of an LLC for survival of claims against it, irrespective of whether the LLC has been administratively cancelled or has filed a certificate of cancellation.

F. CONCLUSION

For the foregoing reasons, and for the reasons stated in Chadwick Farms' other briefs, this Court should (1) accept review of that portion of the Court of Appeals decision which holds that RCW 25.15.270(6) mandates an administratively dissolved LLC to wind up its affairs by the expiration of two years after the effective date of administrative dissolution without reinstatement; (2) affirm the Court of Appeals' reinstatement of Chadwick Farms' claims against FHC LLC; and (3) reverse the Court of Appeals' failure to reinstate FHC LLC's third-party claims against the various subcontractors.

RESPECTFULLY SUBMITTED this 15th day of August, 2007.

WILLIAMS, KASTNER & GIBBS PLLC

By   
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Attorneys for Respondent Chadwick Farms

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BY RONALD R. CARPENTER

I hereby certify that on this 15th day of August, 2007, I caused a  
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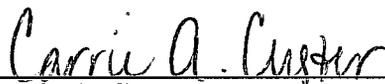
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