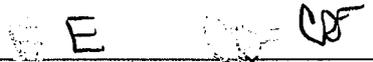


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**SUPREME COURT OF THE STATE OF WASHINGTON**

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CHARLES ROSE,

Plaintiff-Petitioner,

v.

ANDERSON HAY & GRAIN CO.

Defendant-Respondent.

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**PETITIONER'S ANSWER TO BRIEF OF AMICUS CURIAE  
PACIFIC LEGAL FOUNDATION**

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ORIGINAL

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## I. INTRODUCTION

Amicus Pacific Legal Foundation (PLF) begins with the incorrect premise that employees and employers have equal power in the employment relationship and, predictably, arrives at the incorrect conclusion that any limitation on employer discretion is harmful. However, the Court recognized more than three decades ago that the tort at issue here exists to protect public policy by curtailing serious abuses of employer power. The only questions before the Court are what form the tort will take and whether the tort will protect all employees who are fired for acting to protect public policy, not whether the tort will exist as a limit on employer abuse.

## II. ARGUMENT

- A. **PLF's arguments are based on the false premise that employees and employers have equal power in the employment relationship; these arguments ignore this Court's limitations on employer power as appropriate means to protect the public.**

Some limitations on employers' power to hire and fire are appropriate because, despite PLF's insistence to the contrary, employers possess more power in the employment relationship than employees and can use that power in ways that harm society. This Court in *Thompson* court recognized this fact in formulating the tort,

when it established that an employer must not be allowed to use its power to fire employees in ways that contravene public policy. *Thompson v. St. Regis Paper Co.*, 102 Wn.2d 291 at 231, 685 P.2d 1081 (1984).

Further, the limitations placed on employer power by the tort are appropriate and modest because they apply only to intentional tortfeasor employers. To prevail under the tort, a plaintiff must prove that her employer engaged in knowingly bad acts – intentionally firing her for reasons harmful to society. This Court has long recognized that this clear abuse of the employment relationship simply should be limited. *See id.* at 231-32.

**B. Reformulating the jeopardy element consistent with Mr. Rose's briefing does not threaten the employment-at-will doctrine, and instead provides the consistency PLF desires.**

PLF argues that employers should be completely free of outside oversight of their employment decisions. However, employers' actions against public policy are in fact subject to oversight under the current tort, and will be subject to oversight under any formulation of the tort advocated in this case. Presuming that the Court does not intend to abandon the tort of wrongful discharge entirely, given that no party has requested that drastic

outcome, PLF's pleas for unfettered employment-at-will are irrelevant.

Even under the *Koroslund/Cudney* formulation of the tort, every employee wishing to complain about her wrongful discharge in violation of public policy has recourse to *some* court or administrative agency. See *Koroslund v. DynCorp Tri-Cities Servs., Inc.*, 156 Wn.2d 168, 182, 125 P.3d 119, 126-27 (2005); *Cudney v. ALSCO, Inc.*, 172 Wn.2d 524, 536, 259 P.3d 244, 250 (2011). Putting aside the question of whether the remedies available to employees are effective, every employer currently may have its actions scrutinized by some authority outside the employer's organization. There is no evidence that this reality, or the formulation of the tort prior to *Koroslund*, have caused the kind of harm to employers that PLF fears.

The only question remaining is whether the Court will choose the predictable, manageable versions of the tort advocated by Mr. Rose and amici over the more confusing and resource-intensive version of the tort that has resulted from recent cases. The current tort requires the Court to evaluate myriad possible alternative remedies for employees' discharge to determine whether each one is "adequate," in the meantime leaving businesses and

employees alike guessing as to whether the tort applies in a particular instance. PLF strongly advocates simplicity, yet its position requires the preservation of a doctrine that even appellate judges find difficult to understand or apply consistently. *See Becker v. Cmty. Health Sys., Inc.*, 182 Wn. App. 935, 955, 332 P.3d 1085, 1094 (2014) (Fearing, J. and Lawrence-Berry, J., concurring). The best way to protect public policy while providing the consistency and simplicity required by employers and employees is to provide the same tort remedy for all wrongfully discharged employees.

### III. CONCLUSION

For the foregoing reasons, this Court should not adopt the arguments of amicus curiae Pacific Legal Foundation.

DATED this 27<sup>th</sup> day of May, 2015.

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**CERTIFICATE OF SERVICE**

I certify that on the 27th day of May, 2015, I caused a true and correct copy of Petitioner's Answer to Briefs of Amici Curiae Washington State Association for Justice Foundation & Washington Employment Lawyers Association to be served on the following persons by electronic mail, according to agreement:

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Dear Clerk,

Attached is the following for filing with the Court:

- Petitioner's Answer to Brief of Amicus Curiae Pacific Legal Foundation, along with our Certificate of Service.

All parties have previously agreed to email service. Please acknowledge receipt.

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