FILED
SUPREME COURT
STATE OF WASHINGTON
12/10/2021 11:30 AM
BY ERIN L. LENNON
CLERK

No. 100370-6

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

R.N., individually, J.W., individually, and S.C., individually,

Respondents,

vs.

HENRY MEISTER, an individual; B. DALE SHANNON, an individual; and GUY CORNWELL, an individual,,

Petitioners,

and,

KIWANIS INTERNATIONAL, a non-profit entity; KIWANIS PACIFIC NORTHWEST DISTRICT, a non-profit entity; KIWANISOF TUMWATER, a non-profit corporation; KIWANIS OF CHEHALIS, a non-profit entity; KIWANIS OF GRANDMOUND ROCHESTER, a non-profit entity; KIWANIS OF GRAND-MOUND, a nonprofit entity; KIWANIS OF ROCHESTER, a non-profit entity; KIWANIS OF CENTRALIA, a non-profit entity; KIWANIS OF CENTRALIACHEHALIS, a non-profit entity; CHARLES McCARTHY, an individual; GUY CORNWELL, an individual; LEE COUMBS, an individual; SAM C. MOREHEAD, an individual; EDWARD J. HOPKINS, an individual; LEWIS PATTON, an individual; KIWANIS OF CHEHALIS, a non-profit corporation,

Defendants

ANSWER TO PETITION FOR REVIEW

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I. IDENTITY OF RESPONDENT

Respondents R.N., J.W., and S.C., survivors of sexual abuse while placed in a group home, Kiwanis Vocational Home for Youth ("KVH"), ask this Court to deny review of Division Two of the Court of Appeals' published opinion, *R.N. v. Kiwanis Int'l*, ___ Wn. App. 2d__, 496 P.3d 748 (2021).

II. RESTATEMENT OF ISSUES

1. Do Petitioners fail to demonstrate a conflict with this Court's precedent regarding the personal liability of corporate officers and employees—which has always imposed liability for a corporate officer's own tortious conduct committed within the scope of official responsibilities and employment or agency or other sufficient "participation" in tortious conduct—and liability for breaches of special relationship duties—which has always imposed liability for failing to act to protect children from foreseeable risks of abuse by third parties—when the Court of Appeals held Petitioners may be personally liable if they "participated" in the corporation's negligence by breaching direct responsibilities or failing to exercise their own direct authority within the corporation to prevent child abuse?

2. Do Petitioners fail to demonstrate a conflict with this Court's precedent regarding the personal liability of corporate officers where this Court has always imposed liability for officers' personal "participation" in breaches of tort duties committed in the exercise of their official corporate responsibilities or authority; this Court has only imposed affirmative act, knowledge, or intentional requirements on officers' liability for ***other*** corporate agents or employees' tortious conduct; and the Court of Appeals applied these correct standards to the Survivor's claims?

3. Do Petitioners fail to demonstrate a conflict with Court of Appeals' precedent regarding corporate officers' personal liability where Petitioners conflate the standards for corporate officers' personal liability for torts they commit within the scope of their official responsibilities—and who are always liable for such torts—and the standards for officers' liability for the tortious acts of ***other*** corporate agents or employees—which require affirmative acts, knowledge, or approval by the officer for liability to attach—and the Court of Appeals' decision applied the correct substantive standards to Plaintiffs' claims?

4. Do Petitioners fail to demonstrate an issue of "substantial public interest" warranting review under RAP 13.4(b)(4) where the Court of Appeals applied over a century of Washington law regarding corporate officers' and employees' personal liability for torts committed within the scope of their official responsibilities or employment?

III. RESTATEMENT OF THE CASE

A. Underlying Facts

KVH was operated by a non-profit corporation, Lewis County Youth Enterprises ("LYCE"). During their placement at KVH, each of the Survivors was sexually abused and raped by KVH employees John and Peggy Halvorsen between 1988 and 1989.[1]

KVH dissolved in 2010. Between 2015 and 2018, the Survivors sued LCYE; Kiwanis International and regional and local Kiwanis entities, including Kiwanis Pacific Northwest District; and several corporate officers and directors, including Petitioners, in a series of amended complaints.

Petitioner B. Dale Shannon was a lieutenant governor of Kiwanis Pacific Northwest District. Petitioner Guy Cornwell was employed as KVH's "Director of Youth Care" between

[1] Because this appeal arises from petitioners' summary judgment motion, the Survivors state the facts in the light most favorable to them, as did the Court of Appeals.

1986 and 1991. Petitioner Henry Meister was a member of KVH's board of directors.

The trial court granted Petitioners' motions for summary judgment and dismissed the Survivors' claims against them. The trial court ruled that, due to Petitioners' status as corporate officers or employees, as a matter of law, the corporate dissolution survival of remedy statute, RCW 23B.14.340, categorically barred claims against Petitioners based on tortious conduct they individually committed in the scope of their corporate employment or agency. The trial court did not reach the issue of whether genuine issues of material fact existed as to whether Petitioners individually owed and breached duties to the Survivors.

B. The Court of Appeals' Opinion

On appeal, the Court of Appeals held that RCW 23B.14.340 did not apply to claims against Petitioners based on "breaches of duties owed by individuals, apart from their role in the corporation, simply because those individuals happen to be directors, officers, or shareholders of the dissolved corporation." *R.N.*, 496 P.3d at 759. It rested this holding on decades of over a century of Washington precedent holding that "persons are and always have been liable for the torts they commit." *Id.*

Applying that same century-plus of precedent, the Court

of Appeals also held that Petitioners can be personally liable for "participating" in a corporation's negligence if that duty was within the scope of their corporate responsibilities, authority, or employment and they breached that duty.

It further held that LCYE had a "special relationship to protect the children in its care," including the Survivors, "from foreseeable harms." *Id.* at 758. Accordingly, it identified that the relevant tort duty requires a defendant "to not only conform to a standard of care in their affirmative acts but also to not omit those acts reasonably necessary for the protection of the plaintiff in guarding against foreseeable harm from third parties." *Id.* at 761-62 (citing *H.B.H. v. State*, 192 Wash.2d 154, 169, 429 P.3d 484 (2018)).[2]

Accordingly, it remanded to the trial court with the following instructions:

> First, whether any of the individual defendants had the direct responsibility or authority to prevent abuse against the children. And, if so, whether they failed in the performance of that duty where they knew or should have known such abuse would occur and failed to take reasonably necessary action to protect the children.

[2] Petitioners do not contest any of these holdings regarding LCYE's special relationship with the Survivors or the specific duties that it imposed.

Id. at 762.

IV. ARGUMENT WHY REVIEW SHOULD BE DENIED

A. Review of the Court of Appeals' Decision is Unwarranted under RAP 13.4(b)(1) Because it Correctly Applied Over a Century of this Court's Precedent Holding Corporate Officers and Employees Personally Liable for Torts They Committed Within the Scope of Their Official Responsibilities and Authority

RAP 13.4(b) limits review of decisions by the Court of Appeals to a narrow set of circumstances. Petitioners first contend that review is warranted under RAP 13.4(b)(1) because it conflicts with the Court's decisions in *Keodalah v. Allstate Ins. Co*., 194 Wn.2d 339, 330-52 (2019), and *Annechino v. Worthy*, 175 Wn.2d 630, 638 (2012). They claim this is so because those cases held that corporate employees or agents are not "individually liable unless there is some concurrent duty of care to the third party that exists in law ***in the absence of that employment relationship***." PFR at 8 (emphasis added). What Petitioners seek is a massive contraction of Washington tort law in conflict with over one hundred years of the Court's precedent, including *Keodalah* and *Annechino*.

Washington has adopted the *Restatement (Third) of Agency* §§ 7.01-7.02 to govern the personal liability of employees or agents for torts committed within the scope of

employment or agency. *Annechino v. Worthy*, 175 Wn.2d 630, 638, 290 P.3d 126 (2012). Relying on the *Restatement*, the Court has held that "[a]n employee or agent is ***personally liable*** to a third party injured by his or her ***tortious*** conduct, ***even if that conduct occurs within the scope of employment or agency***." *Annechino*, 175 Wn.2d at 638 (emphasis added) (citing *Eastwood v. Horse Harbor Found., Inc.*, 170 Wn.2d 380, 400, 241 P.3d 1256 (2010); RESTATEMENT (THIRD) OF AGENCY § 7.02 (2006)). Contrary to Petitioners' misrepresentation, the mere fact that an employee or agent personally commits a tort arising from performance of their specific job duties or their specific authority and responsibilities as an agent does not shield them from personal liability. Rather, personal liability attaches where "'the agent's conduct breaches a duty that the agent owes to the third party.'" *Annechino*, 175 Wn.2d at 638 (quoting RESTATEMENT (THIRD) OF AGENCY § 7.02).

All employees and agents owe duties to third parties inherent in the exercise of job responsibilities, their authority as an agent, or otherwise delegated to them by their employer or corporation. For example, employees and agents owe "a duty to exercise reasonable care in rendering services to a third person when the agent undertakes to do so to perform a duty owed by the principal to the third party." RESTATEMENT

(THIRD) OF AGENCY § 7.02. Indeed, as the Court has held since at least 1902:

> "But if the agent once actually undertakes and enters upon the execution of a particular work, it is his duty to use reasonable care in the manner of executing it, so as not to cause any injury to third persons which may be the natural consequence of his acts."
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> . . . .
>
> "It is difficult . . . to give a sound reason why a person who, acting as a principal, would be individually liable to third persons for an omission of duty, becomes exempt from liability for the same omission of duty because he was acting as a servant or agent. The tort is none the less a tort to the third person, whether suffered from one acting as a principal or agent, and his rights ought to be the same against the one whose neglect of duty has caused the injury."

Lough v. John Davis & Co., 30 Wash. 204, 212, 70 P. 491 (1902) (quoting with approval *Osborne v. Morgan*, 130 Mass. 102, 103, 39 Am. Rep. 437 (1880) and *Mayer v. Thompson-Hutchison Bldg. Co.*, 104 Ala. 611, 622, 16 South. 620, 28 L. R. A. 433, 53 Am. St. Rep. 88 (1894)).

The sort of "omissions" within the scope of employment or agency for which employees or agents may be personally liable includes "'the omission to do something which ought to be done,—as when an agent engaged in the performance of his undertaking omits to do something which it is his duty to do under the circumstances, as when he does not exercise that degree of care which due regard for the rights of others

requires.'" *Lough*, 30 Wash. at 215. Indeed, the Court more recently has held that "an agent whose negligent acts or omissions in the performances of the duties entrusted to him renders his principal liable in damages, is also liable for his own negligence." *Russell v. City of Grandview*, 39 Wn.2d 551, 556, 236 P.2d 1061 (1951).

Accordingly, consistent with both the modern *Restatement* and this long-established precedent, Washington law permits individuals to sue both principals and agents in the same lawsuit for torts committed within the scope of employment. *See Dishman v. Whitney*, 121 Wash. 157, 209 P. 12 (1922) (personal injury action against both employer and employee to recover damages for negligence); *Wilson v. Times Printing Co.*, 158 Wn. 95, 290 P. 691 (1930) (same); *Gattavara v. Lundin*, 166 Wn. 548, 7 P.2d 958 (1932) (school district and teacher sued for injuries to a schoolboy when teacher hit him with car during recess); *Yurkovich v. Rose*, 68 Wn. App. 643, 847 P.2d 925 (1993) (estate of deceased 13-year-old student sued district and bus driver alleging negligence).

Washington extends no lesser personal liability to employees or agents simply based on the fact that they are a corporate officer. "The liability of an officer of a corporation for his own tort committed within the scope of his official duties is the same as the liability for tort of any other agent or

servant." *Johnson v. Harrigan-Peach Land Dev. Co.*, 79 Wn.2d 745, 752-53, 489 P.2d 923 (1971) (quoting *Dodson v Econ. Equip. Co.*, 188 Wn. 340, 343, 62 P.2d 708 (1936)).

Nonetheless, in an attempt to manufacture a conflict warranting review, Petitioners misrepresent *Keodalah* by asserting it "established" that corporate employees or agents are not "individually liable unless there is some concurrent duty of care to the third party that exists in law ***in the absence of that employment relationship***."[3] PFR at 8 (emphasis added). But

[3] Petitioners further distort *Keodalah* by stating that it concluded "the insurer's statutory, regulatory, and ***common law*** duties of good faith were owed by the corporate insurer, not by the individual claims adjuster." PFR at 11 (emphasis added). Rather, contrary to Petitioners' misrepresentations and consistent with the Court of Appeals' opinion in this case, Justice Yu's dissent in *Keodalah* observed that the majority opinion ***did not*** address whether insurance adjusters could be individually liable for breaches of common law duties of good faith committed within the scope of employment. 194 Wn.2d at 356 (Yu, J., dissenting). The dissent further observed that Washington's framework for imposing a tort duty supports a common law bad faith cause of action against adjusters. *Id.* at 356-63. And the Court of Appeals has held that Washington's common law imposes a duty of good faith on insurance adjusters, and they may be sued individually for breaches of that duty committed within the scope of their employment. *Merriman v. American Guarantee & Liability Insurance Co.*, 198 Wn. App. 594, 611, 396 P.3d 351 (2017); *see also Fiorito v. Bankers Standard Ins. Co.*, C19-1760-JCC, 2020 WL 4333779, at *2 (W.D. Wash. July 28, 2020) (concluding *Merriman* held that insurance adjusters owe a common law duty of good faith to insureds).

Accordingly, contrary to Petitioners' misrepresentations,

Keodalah held no such thing.

The Court of Appeals correctly concluded that *Keodalah* was inapposite because "it turned on whether a statute"—specifically, RCW 48.01.030's duty of good faith in the insurance business and the Washington Consumer Protection Act—"imposed a duty on an individual," not "whether [an insurance] adjuster could be individually liable in tort." *R.N.*, 496 P.3d at 762. Specifically, *Keodalah* held that the plain language and legislative history of both statutes imposed duties only on insurance companies, not individual adjusters. 194 Wn.2d at 350-51. That is a far cry from holding that corporate employees or agents can be individually liable only for breaches of duties that exist in the ***absence*** of the employment relationship.

Petitioners also attempt to manufacture a conflict with *Annechino* by misrepresenting that it, too, held that corporate

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Keodalah—specifically, the body of Washington law not reached by its majority—demonstrates that corporate employees and agents ***can be*** liable for tortious breaches of individual duties that would ***not*** exist absent the employment relationship—such as an insurer's breach of their individual duty of good faith to insureds committed in the scope of employment by an insurer.

officers, employees, and agents can be personally liable only for duties committed within the scope of their official responsibilities or employment that would exist in the absence of that relationship. PFR at 8, 9. But Petitioners conflate personal liability for breaches of corporate duties entrusted to (and thus imposed on) corporate officers or employees inherent in an officer's, employee's, or agent's responsibilities or authority and their personal liability for duties generally owed by the corporation but not the individual. *Annechino* expressly reiterated that officers, employees, and agents are personally liable for their own breaches of duties to third parties within the scope of employment or agency. 175 Wn.2d. at 638. And it additionally addressed their personal liability for breaching a duty the corporation owes where they "knowingly committed wrongful acts or directed others to do so knowing the wrongful nature of the requested acts." 175 Wn.2d at 637.

In that case, the Annechinos sued individual bank officers, asserting breach of quasi-fiduciary duty, when they learned they lost funds in a forced bank takeover, despite having been assured their deposits would be FDIC insured. *Annechino*, 175 Wn.2d at 634-35. This occurred either because bank employees misunderstood FDIC charts or transferred the wrong account. 175 Wn.2d at 634-45. At issue on appeal was whether the bank officers owed the Annechinos a quasi-

fiduciary duty. *Id.* at 635. The Court assumed the bank owed a duty, but held the bank officers could not be personally liable for breaches of it, where there was no indication they knowingly conveyed incorrect coverage information to the Annechinos. *Id.* at 637-38. The Court held too that bank officers could not be personally liable as employees or agents, where nothing indicated they owed an independent duty to the Annechinos or knowingly made misrepresentations. *Id.* at 638.

Like *Keodalah*, nowhere did *Annechino* hold that corporate officers or agents can be personally liable only for torts breaching duties that would exist absent the employment relationship. To the contrary, *Annechino* held that in the absence of a common law duty imposed on the bank officers, they could not be personally liable for breaches of duties held by the corporation alone without knowing participation in them or directing their commission with knowledge of their wrongful nature. In doing so, it reaffirmed long-standing Washington law that corporate officers and employees are personally liable for breaches of individual duties arising from and breached within the scope of their employment.

In this case, the Court of Appeals held that LCYE had a special relationship duty with the Survivors to protect them from harm by third parties. It further held that this particular corporate duty at issue required LCYE "not only to conform to

a standard of care in their affirmative acts but also to not omit those acts reasonably necessary for the protection of the plaintiff in guarding against foreseeable harm from third parties." 496 P.3d at 761-62. Finally, it held that Petitioners can be liable for breaches of this duty if its performance was entrusted to them as part of their responsibilities or authority and they "knew or should have known such abuse would occur and failed to take reasonably necessary action to protect the children." *Id.* at 762.

These holdings were in lockstep with the *Restatement* and over one hundred years of the Court's precedent, including *Keodalah*, and *Annechino.* Because Petitioners fail to demonstrate any conflict between these holdings, *Keodalah*, and *Annechino*, Petitioners fail to demonstrate review is necessary under RAP 13.4(b)(1).

B. Review is Unwarranted under RAP 13.4(b)(1) Because the Court of Appeals' Decision Applied the Correct Washington Substantive Standards Regarding the Personal Liability of Corporate Officers and Employees, Regardless of the Doctrinal Label Applied

Petitioners next assert that review is warranted under RAP 13.4(b)(1) because the Court of Appeals' decision for the first time adopted the "participation theory" of liability—a theory they claim is "distinct" from Washington's "responsible

corporate officer" doctrine. PFR at 13-14. In doing so, Petitioners claim that the Court of Appeals expanded liability under the supposed "responsible corporate officer doctrine" in conflict with the Court's decisions in *State v. Ralph Williams' N. W. Chrysler Plymouth, Inc.,* 87 Wn.2d 298, 553 P.2d 423 (1976); *Johnson*, 79 Wn.2d at 745; and *Messenger v. Frye*, 176 Wash. 291, 295, 28 P.2d 1023 (1934). Again, however, Petitioners fail to demonstrate any conflict.

First, no reported decision by this Court has ever used the phrase "responsible corporate officer doctrine." The ***Court of Appeals*** first applied this label to this Court's formulation of the rules for a corporate officer's personal liability for the corporation's torts in a 1999 opinion. *Dep't of Ecology v. Lundgren*, 94 Wn. App. 236, 243, 971 P.2d 948 (1999) (citing *Ralph Williams' N.W.*, 87 Wn.2d at 322). Prior to this Court of Appeals opinion, Washington appellate courts had consistently described Washington's rules for such personal liability in terms of whether the officer had sufficient "participation" in the torts. *See Annechino*, 175 Wn.2d at 637 (listing cases in terms of "participation" in wrongful acts). There is no "conflict" between the Court of Appeals' application of the "participation" label to Washington's standards for corporate officer liability and ***this*** Court's precedent.

And regardless, Petitioners' claimed conflict is one of

semantics, not substance. Petitioners do not demonstrate that the "responsible corporate officer doctrine" is "distinct" from the "participation theory" applied by the Court of Appeals in this case. To the contrary, their own petition for review admits that liability under either label is predicated on a corporate officer's direct participation in tortious conduct or knowing approval of it:

> The "responsible corporate officer doctrine" states that when "a corporate officer ***participates*** in the wrongful conduct, or with ***knowledge*** approves of the conduct, then the officer, as well as the corporation, is liable for the penalties." *Ralph Williams,* 87 Wn.2d at 322
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> . . . .
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> As the decision acknowledges, the critical factor in participation theory is active ***participation***, or ***knowing*** misfeasance or malfeasance on the part of the individual agent.

PFR at 14, 16 (emphases added).

Nor could Petitioners demonstrate any such conflict despite these concessions. In *Messenger*, the Court held that a corporate officer could be personally liable for his knowing failure to correct other corporate employees' wrongful diversion of water. 176 Wash. at 297-98. That is "knowing misfeasance" as described under the "participation theory"

label. And even Court of Appeals opinions applying the "responsible corporate officer" label to corporate officer liability have held that officers may be liable for knowing failures to correct or prevent wrongful conduct within their authority. *Lundgren*, 94 Wn. App. at 246. Accordingly, Petitioners demonstrate no conflict with the Court's precedent by utilizing the "participation theory" label when applying the same corporate officer, employee, and agent personal liability standards that have existed for over one hundred years in this state.

Nonetheless, Petitioners contend that the Court of Appeals' holding conflicts with *Ralph Williams N.W.*, *Johnson*, and *Messenger*. PFR at 15. They assert that corporate officers' "participation" in a tort for purposes of personal liability is limited to "knowledge, active misfeasance, or malfeasance" and excludes "nonfeasance" such as inaction under a "should have known" standard.[4] PFR at 17.

[4] That Defendants were in a special relationship with the Survivors makes the effort to distinguish nonfeasance from misfeasance irrelevant, as Washington courts have noted that misfeasance "may involve the omission to do something which ought to be done,—as when an agent engaged in the performance of his undertaking omits to do something which it is his duty to do under the circumstances, as when he does not exercise that degree of care which due regard for the rights of others required." *Lough*, 30 Wash. at 215. In the special relationship context, Defendants had a duty to engage in

But Petitioners concede that under Washington law corporate officers are liable for tortious conduct in which they "'participate[] . . . or with knowledge approve.'" PFR at 14 (quoting *Ralph Williams' N.W.*, 87 Wn.2d at 322). In the purest sense, corporate officers "participate" in a corporation's tort when they personally breach a duty. The tort belongs to the "corporation"—in the sense that the corporation is vicariously liable for the officer's tort—yet the officer also is liable for that same tortious conduct within the scope of his corporate responsibilities or authority. *See Saltiel v. GSI Consultants, Inc.*, 170 N.J. 297, 303, 788 A.2d 268 (2002) ("[T]he essence of the participation theory is that a corporate officer can be held personally liable for a tort committed by the corporation when he or she is sufficiently involved in the commission of the tort. A predicate to liability is a finding that the corporation owed a duty of care to the victim, the duty was delegated to the officer and the officer breached the duty of care by his own conduct."). As the Court of Appeals correctly held, that is the scenario presented in this case: LCYE owed a special relationship duty to protect the Survivors from abuse by third parties, that duty includes liability for failure to take affirmative actions to

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affirmative acts to protect the Survivors, and thus the failure to act to protect the Survivors would, under Washington law, constitute misfeasance.

protect them from abuse when they knew or should have known it was a risk, and Petitioners sufficiently "participated" in the tort if preventing abuse was within the scope of their particular responsibilities or authority.

In contrast, corporate officers may also be liable for torts committed by the "corporation" in the sense that they were committed by corporate agents or employees ***other*** than the director—after all, corporations are artificial, intangible entities that can commit acts, including torts, only through their individual agents and employees. *Broyles v. Thurston Cty.*, 147 Wn. App. 409, 428, 195 P.3d 985 (2008); *see also Saltiel*, 170 N.J. at 303 (quoting 3A William M. Fletcher, FLETCHER CYCLOPEDIA OF THE LAW OF PRIVATE CORPORATIONS § 1137 (rev.perm. ed.1994) (footnotes omitted) (emphasis added)) ("'An officer of a corporation who takes part in the commission of a tort by the corporation is personally liable for resulting injuries; but an officer who takes no part in the commission of the tort is not personally liable to third persons for the torts of ***other*** agents, officers or employees of the corporation.'")).

That is the scenario addressed by *Ralph Williams' N.W.*, *Johnson*, and *Messenger*. *See* 87 Wn.2d at 305-11, 322 (corporate officer personally liable for car dealership's numerous unlawful practices formulated and supervised by

officer and performed by other corporate agents); 79 Wn.2d at 753-54 (corporate officer personally liable for participation in fraudulent sales program by providing sales personnel with and directing false statements to be given to customers and overall "control, management, and direction" over sales program"); 176 Wn.2d at 297-98 (corporate officer personally liable for knowing failure to correct others employees' wrongful diversion of water and personal direction to agents to wrongfully build a dam).

Regardless of the label one applies, it is in ***these*** circumstances—a corporate officer's personal liability for breaches of corporate duties by other corporate agents—that the law imposes different "participation" requirements for personal liability, such as affirmative misfeasance, knowledge, direction, or intentionality, and excludes liability for "nonfeasance." And it imposes these requirements in order to shield unwitting corporate officers and agents who fail to take action to prevent the corporation from a tort for which they had no responsibility or knowledge. *See Wicks v. Milzoco Builders, Inc.*, 503 Pa. 614, 622, 470 A.2d 86 (1983); *Lough*, 30 Wash. at 218 (agent not personally liable for injuries to third parties whose only causal connection with the agent is the agent's principal). And as the Court of Appeals correctly held, such requirements were inapplicable to corporate torts that Petitioners themselves

committed in performing duties within their corporate responsibilities or authority. In that scenario, the basic rule of Washington law that has stood for over one hundred years applies: "persons are and have always been liable for the torts they commit." *R.N.*, 496 P.3d at 759. Accordingly, Petitioners fail to demonstrate any conflict with *Ralph Williams' N.W.*, *Johnson*, or *Messenger* warranting review under RAP 13.4(b)(1).

C. Review under RAP 13.4(b)(2) is Unwarranted Where the Court of Appeals' Decision Regarding the Personal Liability of Corporate Officers and Employees for Torts They Personally Commit Does Not Conflict with Other Court of Appeals' Opinions Regarding Personal liability for Torts Committed by Other Corporate Employees or Agents

Petitioners next contend that review is warranted under RAP 13.4(b)(2) because the Court of Appeals' opinion conflicts with Division One's decision in *One Pac. Towers Homeowners' Ass'n v. HAL Real Est. Invs., Inc*., 108 Wn. App. 330, 346–48, 30 P.3d 504, *opinion modified on denial of reconsideration*, 34 P.3d 834 (2001), *aff'd in part, rev'd in part on other grounds*, 148 Wn.2d 319, 61 P.3d 1094 (2002).[5] Like *Ralph Williams'*

[5] Petitioners also claim conflicts with a string cite of Court of Appeals decisions, without argument or elaboration. This Court does not consider conclusory assertions unsupported by sufficient argument or authority. RAP 10.3(a)(6), 10.4. "Such '[p]assing treatment of an issue or lack of reasoned

N.W., *Johnson*, and *Messenger*, however, that case involved claims that the corporate officer should be personally liable for statutory duties solely owed by the corporation to third parties. *One Pac. Towers*, 108 Wn. App. at 347-48.

Unlike this case, there was no allegation that the corporate officer himself was responsible for executing the corporation's duty within the scope of his corporate responsibilities or authority. *Id.* As the Court of Appeals correctly held, in cases like this the standard rule that corporate officers and employees are personally liable for torts they commit within the scope of their official responsibilities applied. Because *One Pac. Towers* is inapposite, Petitioners fail to demonstrate any conflict between it and the Court of Appeals' opinion warranting review under RAP 13.4(b)(2).

D. Petitioners Fail to Demonstrate an Issue of "Substantial Public Interest Warranting Review under RAP 13.4(b)(4) where the Court of Appeals' Opinion Merely Applied a Century of Established Washington Law and Presents a Highly Fact-Contingent Issue

Finally, Petitioners argue that review is warranted under RAP 13.4(b)(4)'s "substantial public interest" standard because

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argument is insufficient to merit judicial consideration.'" *West v. Thurston County*, 168 Wn. App. 162, 187, 275 P.3d 1200 (2012) (quoting *Holland v. City of Tacoma*, 90 Wn. App. 533, 538, 954 P.2d 290 (1998)).

the Court of Appeals' opinion expands tort liability in Washington State. As discussed however, it does not. Rather, Petitioners invite the Court to massively contract tort liability that has existed for over one hundred years in this state. Merely reiterating what has been Washington State law for a century does not warrant review under RAP 13.4(b)(4).

Moreover, even assuming *arguendo* the "substantial public interest" exception to mootness cited by Petitioners also applies to RAP 13.4(b)(4), the specific issue presented by this case is whether the specific corporate responsibility and authority delegated by this specific, defunct corporation to these particular corporate officers and employees encompassed the corporation's special relationship duties to the Survivors, rendering Petitioners personally liable for any breaches of those duties. The highly fact-specific nature of this issue inherently demonstrates that it is "private," not "public" and does not warrant review under RAP 13.4(b)(4).

V. CONCLUSION

For the foregoing reasons, the Survivors respectfully ask the Court to deny this petition for review.

RESPECTFULLY SUBMITTED this 10th day of December 2021.

The undersigned certifies that the number of words contained in this document is 4,929.

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CERTIFICATE OF SERVICE

I, **Sarah Awes**, being first duly sworn upon oath, deposes and says:

I am a citizen of the United States of America and of the State of Washington, over the age of twenty-one years, not a party to the above-entitled matter and competent to be a witness therein.

That on December 10, 2021, I delivered via the Court's Appellate Portal a true and correct copy of the above document, directed to:

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DATED this 10th day of December 2021.

/s/ Sarah Awes
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PCVA LAW

December 10, 2021 - 11:30 AM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	100,370-6
Appellate Court Case Title:	R.N., J.W., & S.C. v. Charles McCarthy, et al.
Superior Court Case Number:	15-2-00383-3

The following documents have been uploaded:

- 1003706_Answer_Reply_20211210112907SC684798_9264.pdf
  This File Contains:
  Answer/Reply - Answer to Petition for Review
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