Case No. 102239-5

(Court of Appeals Case No. 84130-1-I)

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

R.K.,

Petitioner,
v.

UNITED STATES BOWLING CONGRESS, ET AL.,

Respondents.

RESPONDENT UNITED STATES BOWLING CONGRESS' ANSWER TO PETITION FOR REVIEW AND CONDITIONAL CROSS APPEAL

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A. IDENTITY OF RESPONDING PARTY

Respondent United States Bowling Congress ("USBC") answers petitioner R.K.'s Petition for Review ("Petition") and asks this Court to decline review.

B. COURT OF APPEALS DECISION

R.K. seeks review of the Court of Appeals' July 3, 2023 published opinion. This Court should deny review. R.K. has failed to cogently argue the applicable standards for review of the factually intensive and well-reasoned Court of Appeals decision, *R.K. v. United States Bowling Congress*, __ Wn. App. 2d __, 531 P.3d 901, 2023 WL 4311464 (July 3, 2023) (App. A to Petition) ("Opinion" or "Op."). Contrary to R.K.'s claim, the Opinion is not in conflict with *H.B.H. v. State*, 192 Wn.2d 154, 429 P.3d 154 (2018). In the Opinion, Division I unraveled the complex facts and correctly determined that Young American Bowling Alliance ("YABA"), the predecessor to USBC, owed R.K. no duty of care. Further, there is no argument that review

is necessary to present an issue of substantial public interest. *See* RAP 13.4(b)(1) and (4).

C. ISSUES PRESENTED FOR REVIEW

This case is not appropriate for review by this Court under RAP 13.4(b). If this Court grants review, the issue presented would be:

Should this Court accept discretionary review when the Court of Appeals' Opinion follows decisions from this Court as well as other decisions of the Court of Appeals and does not involve an issue of substantial public interest? *No.*

If this Court accepts review, the conditional issues for review raised by USBC include:

1. Should this Court grant review and affirm the Court of Appeals' Opinion because the statute of limitations on R.K.'s claims had run before he filed his lawsuit? *Yes.*

2. It is a general principle of corporate law that a parent corporation is not liable for the acts of its subsidiaries. USBC formed in 2005 through the merger of YABA, Women's

International Bowling Congress, Inc. ("WIBC"), and American Bowling Congress ("ABC"). USBC assumed the liabilities only of the merged corporations. Should this Court grant review and affirm the Court of Appeals' dismissal of R.K.'s claims against USBC because USBC—as the successor of YABA—did not assume the liabilities of YABA's subsidiary Washington State Young American Bowling Alliance ("WS-YABA"), the entity whose member is alleged to have committed the criminal actions upon which all other claims are based? *Yes.*

D. STATEMENT OF THE CASE

1. Facts.

R.K. was born on December 12, 1979 and turned 18 on December 12, 1997. CP 72-73. In 1997, when R.K. was 17 years old, he met Ty Treddenbarger and joined Puget Sound Travel League ("PSTL"), a local bowling league run by Treddenbarger. CP 105. After graduating from high school in the spring of 1998, R.K. continued to bowl in the PSTL and to travel with

Treddenbarger, when R.K. was over the age of majority. CP 106-107;167-169.

On March 28, 2017, R.K. told police he had been abused by Treddenbarger more than twenty years earlier. R.K. disclosed two instances of abuse that took place shortly before his 18th birthday, and one instance of abuse that took place in San Diego in 1998 (after he had reached the age of majority). R.K. identified four other instances of abuse but admitted they may have taken place after the San Diego incident, *i.e.,* after he reached the age of majority.

a. Alleged Abuse.

(i) Alleged abuse in Las Vegas, Nevada.

In 1997, R.K. claims to have accompanied Treddenbarger to Las Vegas. On that trip R.K. alleges he awoke to find Treddenbarger fondling his penis. CP 724. The trip was not associated with any bowling tournament, certified or otherwise. CP 751, 755, 757, 759, & 761.

(ii) Alleged abuse in Ellensburg, Washington.

In 1997, R.K. went to a bowling jamboree organized and run solely by WS-YABA. CP 157. R.K. alleges he woke to the feeling of Treddenbarger fondling his clothed penis. CP 118-119.

(iii) Alleged abuse in R.K.'s home.

Once, when R.K.'s parents allowed Treddenbarger to spend the night in their home, R.K. alleges he woke to the feeling of Treddenbarger fondling his clothed penis. CP 129-131, 185-186. R.K. does not know when this incident took place. CP 196.

(iv) Alleged abuse in Millersylvania Park, Olympia, Washington.

R.K. alleges he was abused on a solo camping trip he and Treddenbarger took. CP 115-117. The outing was not associated with a bowling event, certified or otherwise. CP 116; 117. R.K. admits that he does not know when this trip happened and that it may have happened after R.K. reached the age of majority. CP 116.

(v) Alleged abuse in Tumwater, Washington.

R.K. alleges he was abused when he and Treddenbarger spent the night in a hotel room in Tumwater, Washington. CP 119-121. The trip was only peripherally related to bowling in that the next day Treddenbarger and R.K. met other members of the PSTL who had driven down for the day to participate in a local tournament. CP 156. R.K. does not know when this incident took place and admits it may have taken place after he reached the age of majority. CP 121.

(vi) Alleged abuse in Ocean Shores, Washington.

R.K. alleges he was abused when he accompanied Treddenbarger to Ocean Shores, Washington. The trip was not affiliated with any bowling tournament. CP 113. R.K.'s father remembers the trip being precipitated by Treddenbarger's desire to purchase a bowling alley in Ocean Shores. CP 205. As with the other incidents, R.K. admits this trip may have happened after he reached the age of majority. CP 113.

2. Abuse Disclosure.

R.K. graduated from high school in the spring of 1998 and began college over a year later, in the fall of 1999. During the summer of 2000, R.K. confronted Treddenbarger in an email and told Treddenbarger to not contact him again. CP 132-134; 199. That same summer, R.K. told his parents about the abuse. CP 134. R.K.'s mother wanted to "go after him [Treddenbarger] legally" and R.K.'s father wanted to report Treddenbarger's actions. CP 181; 134-135. But, R.K.'s parents deferred to their adult son's wishes and did not report the abuse to the police or YABA, or WA-YABA board members and/or take any other legal action. CP 208-209; 184. Between 2007 and 2011, R.K. disclosed the abuse to his sister and two close friends. All three encouraged R.K. to seek legal redress. CP 140-144. On March 23, 2017, after Treddenbarger's arrest for the alleged molestation of a 15-year-old bowler (T.M.), R.K. contacted the investigating officer and revealed that he (R.K.) had been a victim of Treddenbarger's abuse. CP 218-219; 91. This meeting was more

than three years before R.K. filed suit on September 17, 2020. CP 1-8.

3. R.K.'s Alleged Damages.

R.K. claims the abuse made him emotionally distant and unable to trust others. R.K. has always correlated these distrust issues to the abuse. CP 145-148. Over the past 20 years, while R.K. considered pursuing counseling, he opted not to because he was "skeptical of the benefits." CP 148.

a. Jon Conte, Ph.D.

After filing his lawsuit, R.K. retained forensic psychologist Jon Conte, Ph.D. Dr. Conte did not diagnose R.K. with any new psychological conditions. CP 664; 665. Dr. Conte agreed with R.K.'s self-assessment that the abuse had led R.K. to have trust issues—injuries R.K. had connected to the abuse more than three years before filing his lawsuit. CP 661-662.

In response to USBC's summary judgment, R.K. submitted a declaration from Dr. Conte in which he (Dr. Conte) wrote that R.K. works too hard and that is a newly discovered

injury of abuse. CP 597. Dr. Conte's declaration contradicted his deposition testimony where he testified working long hours might be a defense mechanism not an injury of abuse. CP 663. Irrespective, R.K. does not endorse working hard as an injury. *Id.*

4. USBC Was Formed In 2005, Years After R.K.'s Alleged Abuse.

In 2005, ABC, WIBC, and YABA merged to become USBC, a Wisconsin nonprofit corporation. CP 221-224. The merger became effective on January 1, 2005. *Id.* The Articles of Merger provide:

> **ARTICLE I**
>
> American Bowling Congress, Inc., a Wisconsin nonprofit corporation ("ABC"), Women's International Bowling Congress, Inc., an Illinois nonprofit corporation ("WIBC") and Young American Bowling Alliance, Inc., a Wisconsin nonprofit corporation ("YABA"), will be the non-surviving corporations (collectively, the "**Merging Corporation**").
>
> **ARTICLE II**

> United States Bowling Congress, Inc., a Wisconsin nonprofit corporation ("USBC"), will be the surviving corporation.
>
> …

CP 221 (emphasis added). As to the Merging Corporations' assets and liabilities, the Plan of Merger specified the liabilities of the Merging Corporations would be assumed by the Surviving corporation, *i.e.,* USBC. It provides:

> 6. The Surviving Corporation shall be responsible and liable for all liabilities and obligations of **Merging Corporations**….

CP 224 (emphasis added). Most importantly, however, USBC did not assume the liabilities of the Merging Corporations' subsidiaries, nor did the subsidiaries merge into USBC. *Id.*

a. Young American Bowling Alliance, USBC's Predecessor.

YABA was a Wisconsin corporation. CP 53. YABA was a nonprofit voluntary membership organization that promoted youth bowling in the United States. YABA had no state or local operations. CP 53. Some states had independently and separately incorporated statewide bowling associations which

were subsidiaries of YABA. *Id.* WS-YABA is an example of one of the separately incorporated YABA subsidiaries. *Id.*

YABA provided standardized policies, rules, and administrative resources for local associations. CP 53. The state and local associations had to follow the general framework provided by YABA. However, the state and local YABA associations' boards (and members) could change the bylaws with a 2/3 vote by the state or local association's board. CP 703-704. The 1997-1998 YABA Handbook had this to say about the autonomy of the state and local associations:

> Bowling's membership organizations are extremely democratic – and any member can propose bylaw changes. Here's a synopsis of each procedure:
>
> …
>
> **YABA**:
>
> - Local YABA board members propose most legislation, although any member may do so.
>
> - Members submit written proposed changes to the association secretary at least 30 days before the next board meeting. Voting members receive their copies at least 10 days before the meeting.

> - As long as there's a quorum, the board can pass legislation with a 2/3 approval vote at any board meeting.
>
> …

CP 704. The board of directors for each local association had to draft and adopt policies and procedures. CP 705. The associations also drafted their own bylaws. CP 707. But most importantly, the local associations were managed by their own boards of directors. *Id.* YABA had no role in the day-to-day operations of independent statewide and local subsidiaries, local leagues, and/or local bowling centers. CP 53.

To promote youth bowling and recreational competition, YABA offered a variety of certification and registration programs. Bowling centers wishing to host YABA-certified tournaments could receive certification, which meant that a center's lanes met national standards, the center used certified equipment such as pinsetters and pins, and the center followed national center certification standards and rules. This afforded participants who believed YABA rules had not been followed an

avenue of redress. CP 54. However, state and local certified tournaments were run by the tournament operator, not by YABA. *Id.* Other than the ability to deny certification based on equipment specifications, YABA had no control over the operations of local bowling centers, whether they were certified or not. *Id.* Similarly, other than the ability to deny certification, YABA had no control over the operations of certified leagues and local tournaments, whether certified or not. *Id.* YABA was not involved with the PSTL. CP 93-94. Per YABA records, PSTL became a certified league in 2000. CP 54. YABA did not control the selection, screening, or supervision of the local volunteers who organized leagues and local tournaments. *Id.*

YABA also offered introductory coaching courses "Level I" and "Level II." CP 54. These introductory courses were geared toward parent volunteers. *Id.* These classes differed from a certification program offered by USA Bowling. CP 711.

Hiring a private coach was unusual and discretionary. CP 54. YABA did not direct the selection process, and it was not

informed when a bowler chose to work with (or stop working with) a coach. *Id.* Neither coaches nor bowlers reported the existence of a coaching relationship to YABA or reported to YABA about any aspect of that relationship. *Id.* YABA did not collect information on coaching relationships from independent state subsidiaries or from any other source. CP 55.

YABA did not review or evaluate the performance of a purported bowling coach. CP 55. The coach and the bowler (or the bowler's parents in the case of a minor) made all arrangements regarding scheduling practices, the types of workouts or training a bowler performed, selecting and registering for tournaments, and travel. *Id.*

b. Washington State Young American Bowling Alliance, Inc.

WS-YABA was a Washington State nonprofit corporation, UBI No. 601 660 041. CP 226-231. Articles of Incorporation were filed with the Secretary of the State of

Washington on November 14, 1983. *Id.* The Articles of Incorporation provided:

> This corporation shall be a **subsidiary** to the YABA, ….

CP 229 (emphasis added). WS-YABA operated through its own board of directors. CP 53. WS-YABA administered its own programs and ran its own day-to-day activities. *Id.* It held its own board meetings and ran its own programs. *Id.* YABA did not supervise the day-to-day operations of WS-YABA. CP 53. Similarly, after USBC's formation, it assumed no control over WS-YABA. *Id.*

WS-YABA planned, organized, and ran a yearly jamboree including the 1997 jamboree at which Petitioner claims to have been abused. CP 544.

5. Ty Treddenbarger.

Treddenbarger was a respected member of the local bowling community. In the 1990s, Treddenbarger organized a bowling league (the Puget Sound Travel League). To USBC's knowledge, Treddenbarger was not employed by any bowling

center or association. CP 55-56. He did not work for USBC's predecessor, YABA, in any capacity; he was neither an employee nor a volunteer. *Id.* Treddenbarger was a board member and president of USBC's predecessor's subsidiary, WS-YABA.[1] *Id.;* CP 113-114.

Treddenbarger took two eight-hour entry-level coaching courses (Level I and II) offered by YABA in September and November 1997. CP 504, 586, 56. R.K. took the same coaching classes the same year Treddenbarger took them. CP 653-654. In 1997-1998, USA Bowling offered a certification program, but Treddenbarger did not participate in that program. CP 711.

In March 2017, Treddenbarger was arrested for allegedly molesting a minor bowler, T.M. CP 74. Treddenbarger pled guilty to criminal charges in federal and state court. CP 237-248; 250-255. R.K. was not the subject of either of these criminal

[1] Contrary to Petitioner's claim, Treddenbarger was not president of Greater Seattle YABA at any time relevant to this action. Treddenbarger resigned as Greater Seattle YABA's president in 1995. CP 567-8.

prosecutions and the abuse that was the subject of those prosecutions took place between 2011 and 2015. CP 243; 250. Before his arrest, neither USBC nor its predecessor knew of Treddenbarger's actions. CP 57.

E. Procedural History.

R.K. filed his lawsuit on September 17, 2020. CP 1-9. On March 4, 2022, USBC moved for summary judgment. CP 12-50. As it relates to this appeal, USBC argued that it could not be liable as YABA's successor because R.K. was not entrusted to YABA's care during any of the occasions when the alleged abuse occurred, and that fact foreclosed a finding that YABA had a duty to protect R.K. CP 739. USBC also argued the statute of limitations on R.K.'s claims had run and that USBC was not liable for its predecessor's (YABA) subsidiaries' (WS-YABA) board member's (Treddenbarger) intentional criminal conduct. CP 29-38.

On April 20, 2022, the trial court granted USBC's motion for summary judgment. CP 813-817, RP 34-37. R.K. appealed.

In a published opinion, Division I affirmed based on a lack of duty. The Court of Appeals did not reach whether R.K.'s claims were also barred by the applicable statute of limitations and/or whether the claims against USBC should be dismissed because USBC—as successor of YABA—did not assume the liabilities of YABA's subsidiary (WS-YABA). Op. ¶ 42.

F. ARGUMENT

Under RAP 13.4(b) Considerations Governing Acceptance of Review, this Court will accept a petition for review in limited circumstances. Here, R.K. seeks review under RAP 13.4(b)(1) and (4), which allow review only:

> (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; … or
> (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

R.K. does not satisfy either prong.

1. The Opinion is Not in Conflict with Any Case of This Court.

It is well-settled Washington law that there is no duty to prevent a third party from intentionally harming another unless

"a special relationship exists between the defendant and either the third party or the foreseeable victim of the third party's conduct." *H.B.H.*, 192 Wn.2d at 168 (citing *Niece v. Elmview Grp. Home*, 131 Wn.2d 39, 43, 929 P.2d 420 (1997) (quoting *Hutchins v. 1001 Fourth Ave. Assocs.*, 116 Wn.2d 217, 227, 802 P.2d 1360 (1991)). R.K. argues that the Court of Appeals "confused these two types of 'special relationships' duties." Pet. at 18. R.K. is mistaken.

In the Opinion, the Court of Appeals correctly began its analysis by noting that "[u]nder Washington case law, entrustment for the protection of a vulnerable victim is the foundation of a special protective relationship." Op. ¶ 17 (citing *H.B.H.*, 192 Wn.2d at 173). For example, schools owe students entrusted to their custody a duty to protect against reasonably anticipated dangers. *Id.* *See* e.g., *McLeod v. Grant Cnty. Sch. Dist. No. 128*, 42 Wn.2d 316, 320, 255 P.2d 360 (1953) (a child is compelled to attend school and the protective custody of teachers is mandatorily substituted for that of the parent). But

where a special relationship is not based on a recognized relationship, i.e., innkeeper to guest, school to pupil, hospital to patient, or DSHS to dependent children, *N.K. v. Corp. of Presiding Bishop of Church of Jesus Christ Latter-Day Saints*, 175 Wn. App. 517, 524-25, 307 P.3d 739 (2013), *review denied*, 179 Wn.2d 1005 (2013), sets forth the framework for examining whether a duty exists. This Court denied review of *N.K.*

In *N.K.*, the Court of Appeals explained that a key feature in a special protective relationship between a plaintiff and an institutional defendant involves a custodial relationship. The court explained why entrustment or custody is so important:

> Without a custodial relationship, typically involving on-the-ground control of day-to-day operations, an institutional defendant is not in a position to provide protection from physical danger as a school or church group does for children, or to monitor personal care as a hospital or nursing home does for disabled patients.

N.K.,175 Wn. App. at 535. But, the Court of Appeals correctly noted that a custodial relationship is not always necessary. Op. ¶ 21; See *H.B.H,* 192 Wn.2d at 170. Contrary to R.K.'s claim,

H.B.H. did not "undermine [] the foundation of Division One's holding that physical custody is a predicate to a special relationship." Pet. at 16. Rather, *H.B.H.* only examined the duty owed by DSHS to foster children following dependency hearings where DSHS becomes the "sole legal custodian of the child." *H.B.H.*, 192 Wn.2d at 166. This Court reasoned that DSHS' role in placing foster children in foster homes was similar to its role in placing vulnerable adults with contractual caregivers because both roles "carry out the State's parens patriae responsibilities." *H.B.H.*, 192 Wn.2d at 171 (citing *Caulfield v. Kitsap County*, 108 Wn. App. 242, 29 P.3d 738 (2001)); see also *Turner v. Dep't of Soc. & Health Servs.*, 198 Wn.2d 273, 287, 493 P.3d 117 (2021).

The narrowness of the *H.B.H.* holding was confirmed in *M.E v. City of Tacoma,* 15 Wn.App.2d 21, 471 P.3d 950 (2020), review denied, 196 Wn.2d 1035 (2021). In *M.E.*, Division II had this to say on that issue:

> *H.B.H.* only addressed whether there was a special relationship between DSHS and foster children. Nothing in *H.B.H.* indicates that the court

> considered any broader context. In fact, *H.B.H.* does not even establish a special relationship between DSHS and children who are not in the legal custody of DSHS.

M.E., 15 Wn.App.2d at 37 (citation omitted). *M.E.* also affirmed that a duty of protection is "based on the liable party's assumption for the responsibility for the safety of another." *Id. (quoting Niece,* 131 Wn.2d at 46).

Here, the Court of Appeals correctly applied the law to the facts and found no "special relationship" existed between R.K. and YABA, a Wisconsin corporation. R.K. disagrees with the Court of Appeals' final holding, that "nothing in the record supports a reasonable inference that YABA assumed responsibility for the safety of R.K.", but that is not a basis for accepting review under RAP 13.4(b)(1). Op. ¶ 23.

R.K. also argues the Court of Appeals' opinion "substantially narrows the range of reasonably foreseeable harms from which defendants owe those in their care a duty of protection." Pet. at 25. Again, R.K. is mistaken. In the Opinion,

the Court of Appeals ruled in accord with well-settled Washington law that once a duty is found it is "limited by foreseeability." Op. ¶ 18 (citing *N.K.*, 175 Wn. App. at 530). However, having concluded that no duty existed, the Court of Appeals did not need to reach the issue of foreseeability. Op. ¶ 23. Foreseeability limits the scope of a duty; it does not independently create a duty. *Halleran v. Nu West, Inc.*, 123 Wn. App. 701, 717, 98 P.3d 52 (2004), review denied, 154 Wn.2d 1005 (2005).

Next, R.K. argues that the Opinion conflicts with out-of-state decisions. Pet. at 22. But, conflicts with decisions from foreign jurisdictions does not justify review under RAP 13.4(b)(1). But more importantly, California employs a different analysis in determining whether an institutional defendant has a duty to protect against the tortious acts of a third party. *Brown v. USA Taekwondo*, 11 Cal. 5th 204, 211, 276 Cal Rptr. 3d 434, 483 P.3d 159 (2021). Under a two-part test, in California, a court must first decide if a special relationship exists. *Id.* at 211. If a

special relationship is found, the court must determine whether policy considerations—the *Rowland* factors—support limiting or eliminating this duty.[2] *Id*.

In *Brown*, the California Supreme Court affirmed the finding of a special relationship between a Taekwondo coach and the national governing body ("NGB") of the sport, which imposed upon the NGB a duty to control the coach. *Brown*, 11 Cal. 5th at 211 (plaintiff sufficiently alleged a special relationship between NGB and the coach that enabled the former to control the coach's actions).[3] Aside from this California case

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[2] The *Rowland* factors include "the foreseeability of harm to the plaintiff, the degree of certainty that the plaintiff suffered injury, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant's conduct, the policy of preventing future harm, the extent of the burden to the defendant and consequences to the community of imposing a duty to exercise care with resulting liability for breach, and the availability, cost, and prevalence of insurance for the risk involved." *Brown*, 11 Cal. 5th at 211 n.3 (citing *Rowland v. Christian*, 69 Cal. 2d 108, 113, 70 Cal. Rptr. 97, 443 P.2d 561 (1968)).

[3] The California Court of Appeals, similarly, ruled that "plaintiffs allege[d] facts sufficient to show [the national governing body] had a special relationship with [the coach]"). *Brown v. USA*

having no precedential value, it also addressed the duty to control a tortfeasor rather than the duty to protect at issue in this appeal.

R.K. also cites to *Doe v. United States Youth Soccer Ass'n,* 8 Cal App. 5th 1118, 214 Cal Rptr.3d 552 (2017), a California Court of Appeals case that considered and rejected Washington law. *Id.* at 1131 ("we disagree with *N.K.*"). *Doe* was factually distinguishable because the national organization, unlike YABA, established the standards under which coaches were hired and determined which individuals had "custody and supervision of children involved in its programs." *Id.* Here, despite the lack of precedential value, the Court of Appeals considered the *Doe* opinion and correctly distinguished it. In the Opinion, the Court of Appeals correctly applied Washington law when it found that the record before it was devoid of any evidence that "YABA assumed responsibility for the safety of R.K." Op. ¶ 23.

Taekwondo, 40 Cal. App. 5th 1077, 1094, 253 Cal. Rptr. 3d 708 (2019).

2. This Case is Not One of Substantial Public Importance Requiring This Court's Ultimate Determination.

R.K. argues that the substantial public interest prong permits review. Pet. at 3, 28-30. R.K. is mistaken. Under RAP 13.4(b)(4) review may be granted "[i]f the petition involves an issue of substantial public interest that should be determined by the Supreme Court." There is no substantial public interest at stake in R.K.'s case. The Court of Appeals' Opinion reflects a straightforward application of Washington law on the special protective relationship based on entrustment—recently acknowledged in *H.B.H.*—to the unique facts of this case. The fact that R.K. does not agree with the trial court's and Court of Appeals' factual analysis does not create an "issue of substantial public interest that should be determined by the Supreme Court." RAP 13.4(b)(4). *Compare State v. Watson*, 155 Wn.2d 574, 577, 122 P.3d 903 (2005) (Court of Appeals decision had the "potential to affect every sentencing proceeding in Pierce County

after November 26, 2001, where a DOSA sentence was or is at issue").

Here, R.K. states, the Court of Appeals' "decision deprives these survivors of a remedy that the Legislature has expanded, not narrowed, allowing victims suffering juvenile sexual abuse to sue even if the abuse occurred decades ago." Pet. at 28. Again, R.K. is mistaken. The Opinion does not address, much less narrow, the period within which victims of childhood sexual abuse may sue. Indeed, having appropriately affirmed the trial court's finding that YABA did not owe R.K. a duty of care, the Court of Appeals did not address USBC's argument that the statute of limitations had run on R.K.'s claims. Op. ¶ 42. There is no substantial public interest at stake here.

3. Conditional Issues.

Should this Court accept review, however, this Court should also accept USBC's conditional issues under RAP 13.4(b)(1): (1) that the statute had run on R.K.'s claims, and (2) USBC did not assume the liabilities of YABA's subsidiary.

R.K. was diagnosed with no new injury within three years of filing his lawsuit. CP 664; 665. Further, R.K., admitted he connected his perceived injury—the inability to trust others—to the alleged abuse years before filing suit. CP 145-146. Under the plain meaning of the words within RCW 4.16.340(1)(c), the childhood sexual abuse statute of limitations, because R.K. connected his injuries to the abuse more than three years before filing, the statute of limitations had run on R.K.'s claims.

In his opposition to USBC's motion for summary judgment, R.K. argued that working too hard was a newly discovered "injury" that tolled the statute of limitations. CP 318, 597. Given the lack of a specific definition within the statute itself, the term "injury" would be interpreted according to its common and legal meaning. *Seattle Hous. Auth. v. City of Seattle*, 3 Wn. App. 2d 532, 538, 416 P.3d 1280 (2018); *HomeStreet, Inc. v. Dep't of Revenue*, 166 Wn.2d 444, 451, 210 P.3d 297 (2009). In this context, "injury" typically refers to harm, damage, or loss suffered by a plaintiff, whether physical,

or emotional. It would be a departure from established case law if "working hard" were to be accepted as an injury under RCW 4.16.340. *State v. Janes*, 121 Wn.2d 220, 232-35, 850 P.2d 495 (1993) (discussing the physiological and psychological effects on children of emotional and sexual abuse); *State v. Stevens*, 58 Wn. App. 478, 496-97, 794 P.2d 38 (1990), *review denied*, 115 Wn.2d 1025 (1990) (discussing the effects of sexual abuse on children). Working hard and having a successful career is not an "injury" that tolled the statute of limitations.[4] CP 631, 683, 687. Therefore, should this Court accept R.K.'s petition, this Court should also address the statute of limitations issue. *Queen City Farms, Inc. v. Cent. Nat'l Ins. Co. of Omaha*, 126 Wn.2d 50, 64 n.1, 882 P.2d 703 (1994).

Similarly, it is well-established that the liability of a subsidiary corporation may only be imputed to a parent

[4] R.K.'s expert identified the evidenced based effects of childhood sexual abuse and working hard and having a successful career is not one of them. CP 675-676.

corporation when state law supports piercing the corporate veil. *Minton v. Ralston Purina Co.*, 146 Wn.2d 385, 398, 47 P.3d 556 (2002). To pierce the corporate veil, two essential factors must be proven: (1) the corporate form was intentionally manipulated to violate or evade a legal duty to the plaintiff, and (2) disregarding the corporate veil is necessary to prevent an unjustified loss to the plaintiff. *Dickens v. All. Analytical Labs., L.L.C.*, 127 Wn. App. 433, 440-41, 111 P.3d 889 (2005). The Court of Appeals did not reach this issue in its Opinion. Should this Court accept review, this Court should also consider whether the Court of Appeals' Opinion should also be affirmed because USBC is not liable for the acts of its predecessor's subsidiary's board member's actions.

G. CONCLUSION

The Court of Appeals' Opinion upholding the trial court's dismissal of R.K.'s claim does not conflict with *H.B.H.* and does not raise an issue of substantial public interest. Because R.K.

meets none of the criteria for review under RAP 13.4(b), the Petition should be denied.

I hereby certify that this document contains 4,923 limit words in accordance with RAP 18.17.

RESPECTFULLY SUBMITTED this 31st day of August, 2023.

KELLER ROHRBACK L.L.P.

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