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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

COA No. 301648

**IN THE COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON**

LISA BUHR,

Appellant,

v.

STEWART TITLE COMPANY,

Respondent.

APPELLANT'S REPLY BRIEF

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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CONTENTS	i-ii
TABLE OF AUTHORITIES.....	iii-v
I. REPLY – DISCOVERY RIGHTS VIOLATION	1
a. Stewart’s statement of the case misstates the record	2
b. “Closed” means many things to many people	5
c. The meaning of “closed” is irrelevant to discovery rights	6
d. Plaintiff Lisa Buhr preserved error.....	6
e. CR 56(f) is irrelevant	7
f. Buhr made her need for CR 30(b)(6) evidence clear	10
g. Trial court error in cutting off discovery is not harmless.....	11
II. REPLY – SUMMARY JUDGMENT.....	12
a. Stewart improperly reverses the burden of proof	13
b. Stewart failed to meet its burden of proof.....	13
c. Stewart’s other responses are without merit	17

III. STEWART IS ESTOPPED FROM AVAILING
ITSELF OF AN “ACQUITTAL” OF AN
ALLEGEDLY INDEPENDENT COMPANY22

IV. CONCLUSION.....24

CERTIFICATE OF SERVICE.....25

TABLE OF AUTHORITIES

CASES:

Arkison v. Ethan Allen, Inc.
160 Wn.2d 535, 160 P.3d 13 (2007)..... 22

Blair v. Ta-Seattle East No. 176,
171 Wn.2d 342, 254 P.3d 797 (2011)..... 8, 13

Bulman v. Safeway, Inc.,
144 Wn.2d 335, 27 P.3d 1172 (2001)..... 18

Burnet v. Spokane Ambulance.
131 Wn.2d 484, 933 P.2d 1036 (1977)..... 3

Cunningham v. Reliable Concrete Pumping, Inc.,
126 Wn.App. 222, 108 P.3d 147 (2005)..... 22

Flower v. T.R.A. Indus., Inc.,
127 Wn.App. 13, 111 P.3d 1192 (2005)..... 2

Guile v. Ballard Community Hosp.,
70 Wn.App. 18, 851 P.2d 689 (1993)..... 9

John Doe v. Puget Sound.
117 Wn.2d 772, 782-83, 819 P.2d 370 (1991)..... 1

Kuest v. Regent Assisted Living, Inc.,
111 Wn.App. 36, 43 P.3d 23 (2002)..... 18

Lowy v. Peace Health.
Supreme Court Docket No. 85697-4 (Jun. 21, 2012)... 1, 6, 8, 11, 13

Manor v. Nestle Food Co.,
78 Wn.App. 5, 895 P.2d 27 (1995)..... 12, 21

<u>MRC Receivables Corp. v. Zion,</u> 152 Wn.App. 625, 218 P.3d 621 (2009).....	9
<u>Neighborhood Alliance of Spokane County v. County of Spokane,</u> 172 Wn.2d 702, 261 P.3d 119 (2011).....	1, 2, 6, 8, 13
<u>Putman v. Wenatchee Valley Med. Ctr., P.S.,</u> 166 Wn.2d 974, 216 P.3d 374 (2009).....	2
<u>Owest Corp. v. Washington Utilities and Trans. Com'n,</u> 140 Wn.App. 255, 166 P.3d 732 (2007).....	9
<u>Stewart v. Chevron Chem. Co.,</u> 111 Wn.2d 609, 762 P.2d 1143 (1988).....	18
<u>Turner v. Kohler,</u> 54 Wn.App. 688, 775 P.2d 474 (1989).....	9
<u>Young v. Key Pharmaceuticals, Inc.,</u> 112 Wn.2d 216, 770 P.2d 182, 189 (1989).....	13, 17
 <u>STATUTES:</u>	
RCW 23B.19.020	19
RCW 49.60	12, 18
RCW 49.60.040(11)	12, 14
 <u>RULES:</u>	
ER 803(a)(6), (8) & (17)	17
ER 804(b)(3).....	17, 18
RAP 2.4(b).....	7

CR 30(b)(6)	7, 8, 10, 11
CR 56(f).....	7, 8, 9, 10, 11

I. REPLY – DISCOVERY RIGHTS VIOLATION

This state’s Supreme Court just today powerfully reiterated the constitutional right to justice administered openly. Within that right is the right of access to the courts. And the right of access is closely tied to the right of discovery as implemented by the court rules. *Lowy v. PeaceHealth*, Supreme Court Docket No. 85697-4, *6-7 (Jun. 21, 2012), citing *John Doe v. Puget Sound Blood Ctr.*, 117 Wn.2d 772, 782-83, 819 P.2d 370 (1991). Civil rule discovery rules “implement the right of access” as to any litigant. *Id.* Broad discovery is necessary to ensure access to the party seeking it. *Id.*

Here, the trial court globally terminated Plaintiff Buhr’s right of access to the court, and her right thereby to justice, by terminating all of her rules discovery rights at the veritable outset of both parties initiating those processes.

Stewart Title Company (“Stewart,” previously “Stewart National” in appellant’s opening brief) does not dispute that a refusal to allow discovery to proceed results in an incomplete record, and requires remand for appropriate discovery. *Neighborhood Alliance of Spokane County v. County of Spokane*, 172 Wn.2d 702, 715-16, 719, 261 P.3d 119 (2011). Nor does it dispute that extensive discovery is necessary to

effectively pursue a plaintiff's claim. *Putman v. Wenatchee Valley Med. Ctr.*, 166 Wn.2d 974, 979, 216 P.3d 374 (2009), and see *Flower v. T.R.A. Indust., Inc.*, 127 Wn.App. 13, 38, 111 P.3d 1192 (2005).

Instead, Stewart offers technical arguments which are without merit. Otherwise, Stewart misstates the findings of the trial court, and argues harmless error by denial of discovery rights. The lack of merit of the response confirms the abuse of discretion.

a. **Stewart's statement of the case misstates the record.**

Stewart states that Plaintiff Buhr served discovery on the Defendants in the fall of 2010. *See Response at p. 3, citing CP 126.* CP 126 does not support its statement. CP 126 states that Stewart didn't *respond* to Plaintiff's discovery until September 2010. *CP 126, paras. 5-6.* Stewart was still finalizing its own counsel through September 30, 2010. *P. 25: 9-25; Opening Brief at pp. 2-3.* Stewart's responses provided to Buhr's written discovery were "nothing but objections." *RP 25: 9-20.*

Stewart states that Buhr failed to move to compel answers; but it is the responding party's burden to either respond to the interrogatories or seek a protective order. *Neighborhood Alliance*, 172 Wn. 2d at 718. Stewart failed to do either.

Stewart states that it attempted to schedule depositions in the fall of 2010, but Plaintiff's trial counsel was busy. This is not supported by the listed cites at RP 13-14, nor 19-20. Those cites reflect that the agreed continuation of trial was to accommodate the joint "convenience of the parties." *RP 19: 2-4, 13-24.*

Stewart states that the parties agreed that while trial could be continued for months, the discovery deadline "would not be extended." The cite to CP 82-84 nowhere evidences the phrase "would not be extended." The phrase used is "closed." *CP 83: 15; CP 84: 2.*

Stewart devotes ten pages of its response brief to things that didn't happen and weren't found. As examples, the trial court's order terminating Buhr's discovery right was not a sanction under *Burnet v Spokane Ambulance*, 131 Wn.2d 484, 933 P.2d 1036 (1997), and see *Response at pp. 16-22*. Stewart misconstrues Buhr's arguments—Buhr is not asserting that *Burnet* applies here, as no sanction was ever at issue. See *Opening Brief at p. 22*. Buhr references *Burnet* only as an example of how discovery rights must be preserved even in the presence of discovery violations. *Id.* But this trial court did not find that Buhr "did not offer a good reason for her delay." *Response at 11 vs. CP 87, 249*. It made no finding of any "delay." *Response at pp. 11-*

15 vs. CP 87. Buhr's trial counsel made no argument about any "heavy trial schedule," nor "limited resources" as a basis for a "delay" which was also never found. *Response*, pp. 15, 18. *Id.* Buhr made no request for any "do-over," as there had been no discovery taken. *Response at p. 14 vs. CP 87, 249.* The trial court made no finding that Buhr engaged in any "non-compliance with the court's case scheduling order," *Response*, p. 20, nor that Buhr engaged in "willful disregard of court orders without any reasonable excuse or justification," nor that "Defendants would be prejudiced by an extension of the discovery period," nor that "lesser sanctions were not appropriate in the case." *Response at pp. 20-21 vs. CP 87, 249.* No finding was made that Buhr "and her counsel waited until discovery closed, and until depositions scheduled outside the discovery period for (Plaintiffs') convenience were completed, to challenge defendants' valid objections." *Response at p. 13 vs. CP 87, 249.* None of this was ever found to have occurred.

The only finding made by the trial court is that Buhr agreed that discovery was "closed." *CP 87, 249.*

Stewart's position is not supported by the record as factoring into the court's ruling in any manner.

b. “Closed” means many things to many people.

Stewart continually argues that Buhr’s counsel “agreed...that ...the discovery period...would remain closed.” *Response at, e.g., pp. 4, 5, 14, 17, 18, 20, 21 citing CP 82-86.* Stewart argues that the word “closed” meant “will not be extended.” *See Response at p. 4, citing CP 82-86.* The phrase “will not be extended” is nowhere to be found. *CP 82-86.*

Stewart’s objecting counsel, Lawrence Stuart, offered at the continuance hearing on February 11, 2011 that “closed” meant a cut-off in the *future*, not retroactively. *RP 5: 5-23; RP 21: 14-21.* Stewart counsel Tonja King agreed that all discovery deadlines would move back along with the trial date. *CP 75: 14-20.* Stewart counsel at the hearing, Brooke Cunningham, acknowledged that when trial was continued, the “discovery cut-off date would fall back anyways, Your Honor.” *RP 7: 4-9.* Buhr’s counsel understood the word “closed” to mean made immovable or final in the future upon entry of the new scheduling order. *RP 6: 9-18.* Four out of four lawyers thus agreed that “closed” did *not* mean “will not be extended.”

The ambiguous nature of the word “closed” became the reason the trial court concluded there was no agreement. *CP 87.*

c. **The meaning of “closed” is irrelevant to discovery rights.**

Stewart’s constant reference to “agreements” highlights the abuse of discretion. The trial court’s role in discovery is not to determine what agreements exist that might allow discovery. The duty of the court is to administer justice by protecting the legal rights of a plaintiff to obtain discovery prior to being required to present claims. *Lowy v. Peace Health, supra* at 6-7; *Neighborhood Alliance*, 172 Wn.2d at 718-19. Allowing the defense to argue that “closed” means “will not be extended” as a basis for cutting off discovery rights fails to consider delay, violation of orders, dilatory conduct, or fault. It fails to consider whether material discovery had been done or not done. It nowhere considers prejudice, nor need, nor rights. *CP 87, Order of Feb. 11, 2011; CP 249, Order of May 20, 2011*. Unilaterally interpreting a word to terminate Plaintiff’s substantive discovery rights is abuse of discretion. *Neighborhood Alliance, supra; Lowy, supra*.

d. **Plaintiff Lisa Buhr preserved error.**

Stewart argues that Buhr did not preserve error in the trial court’s July 15, 2011 summary judgment dismissal because she did not name the trial court’s Feb. 11, 2011 and May 20, 2011 orders in her notice of appeal. She does not have to do so. Designating review of

the dismissal order brings up review of all trial court orders not designated in the notice which either prejudicially affected the decision designated in the notice, or which were entered before this court accepted review. *See RAP 2.4(b)*. Both trial court rulings terminating Buhr's right to discovery were entered before review was accepted. *See orders at CP 87, and CP 249 entered in February 2011 and May 2011 respectively, vs. Notice of Appeal filed Aug. 12, 2011 at CP 1996*. The earlier rulings directly led to Stewart's dismissal at summary judgment. *Id.* The orders prevented all discovery wholesale—including denying Buhr her CR 30(b)(6) depositions of corporate executives. This is not only conceded by Stewart, it is affirmatively argued by Stewart. *See Response brief at pp. 23-26.*¹

Error is preserved by operation of RAP 2.4(b).

e. **CR 56(f) is irrelevant.**

Stewart's argument as to CR 56(f) misses the point. Where a court denies a litigant access to justice, the absence of a CR 56(f)

¹ At pp. 23-24, Stewart argues: "Because Plaintiff never took the depositions of representatives of those entities, and never questioned Stewart title company or SISCO executives about the documents on which she relied or the actual contractual and business relationships between the various companies, the testimony in her Declaration and in her representations to the court about what the documents say and mean amount to pure speculation based on inadmissible hearsay." At p. 25, it argues, "Again, no relevant testimony was taken in the case about the relationships between the various SISCO-affiliated entities."

certificate is meaningless. *Lowy v. Peace Health, supra*, at 6-7. Any subsequent order granting summary judgment must be vacated. *Neighborhood Alliance*, 172 Wn.2d at 719. *Blair v. Ta-Seattle East No. 176*, 171 Wn.2d 342, 351-52, 254 P.3d 797 (2011). It is not the absence of a certificate that causes the harm—the harm is Plaintiff’s inability to obtain any rules discovery. *Lowy, supra*. Buhr’s rules discovery rights were terminated months before trial, and at the veritable outset of discovery for both parties.

Looked at another way, even if CR 56(f) were involved, Buhr materially complied. Buhr specifically asked the trial court in February and April 2011 for permission to engage in rules discovery globally, including asking for *permission* to take a CR 30(b)(6) deposition to begin to develop her necessary evidence required for showing corporate integration. *CP 93*. The trial court denied Buhr these rights. *CP 249-50*. Its order was unequivocal. *CP 249*. Its rationale was fatal. By April 15, 2011, the trial court had now evolved to deciding that Buhr had “agreed” to cut off discovery back in January 2011, and Buhr would thus be held to that “agreement.” *CP 249 vs CP 87*.

When Stewart filed its inevitable motion for summary judgment, nothing about the basis for the trial court’s ruling had changed. Buhr

would still have “agreed” to cut off all of her discovery rights as of January 2011. *CP 249*. Buhr thus materially complied with any CR 56(f) obligation by twice requesting discovery rights by the time of filing.

This scenario is distinct from the cases cited by Stewart. In neither *Turner v. Kohler*, 54 Wn.App. 688, 693-94, 775 P.2d 474 (1989), nor *Guile v. Ballard Community Hosp.*, 70 Wn.App. 18, 24-25, 851 P.2d 689 (1993) was the plaintiff denied all rules discovery rights by trial court order. To the contrary, the evidence needed was under the control of each plaintiff. Each Plaintiff simply failed to obtain their own medical expert to controvert defense affidavits. The *Guile* trial court in fact itself continued the defendants’ summary judgment motion, and told the plaintiff’s counsel to get what was needed. 70 Wn. App. at 21.²

Buhr’s situation differs. Buhr presented everything she had by affidavit. CR 56(f) is not applicable.

² *MRC Receivables Corp. v. Zion*, 152 Wn.App. 625, 628-29, 218 P.3d 621 (2009) is not on point. The case involves an untimely response being filed to a motion for summary judgment, and a request at oral argument for the court’s consideration of the untimely response. Such has no bearing here. In *QWEST Corp. v. City of Bellevue*, 161 Wn.2d 353, 369-370, 166 P.3d 667 (2007), the defendant filed a CR 56(f) affidavit for a motion for continuance, but was denied. The evidence sought was irrelevant to the issue. The complaint “raised purely legal issues (and) fact discovery was irrelevant to the determination of the case.” *Id.* at 369. Again, this is not applicable here—corporate integration is fact dependent, as Stewart concedes.

f. **Buhr made her need for CR 30(b)(6) evidence clear.**

Stewart argues that Buhr “did not tell the court, nor does she tell this court, how the additional evidence she claims she needed would have raised a genuine issue of material fact relevant to her claims against Stewart Title Company.” *Response brief at p. 15*. Again—this misses the point. A party doesn’t even know what evidence might be available until they begin the discovery process. This case involves a global termination of discovery at its outset. Moreover, the argument is contrary to the record. Buhr’s counsel specifically told the trial court that evidence regarding the integration of and connections between these two defendant companies had to be developed. Such facts are “germane to determining the liability and/or connection of Stewart Title Guarantee Company as a proper party defendant in this case.” *CP 93: 8-15*. Counsel specified that a CR 30(b)(6) deposition needed to be taken “to determine the connections between both entities.” *CP 93: 8-15*.³

³ Stewart at one point argues that Buhr “had a specific opportunity to investigate the relationships between these two entities when she deposed Stewart Title of Spokane’s president, Mr. Carollo, but her attorney elected not to do so.” *Response at 14*. But Mr. Carollo was not even able to testify as to which company paid his own employees. *CP 1671: 82-83*. All he knew was that his boss was in Seattle, and that Stewart performed payroll, accounting, and human resources services for his local entity. *Pl. Ex. 55, p. 48:20; CP 1671 at 82-83*. Stewart elsewhere then argues that the evidence presented by

g. **Trial court error in cutting off discovery is not harmless.**

Stewart thus argues that the trial court's terminating discovery globally was harmless because Stewart produced "alarm records" from the local business during an agency proceeding, and "pin" numbers for the alarm entries. *See p. 12 of Response Brief and n. 2 at p. 12.* First, terminating discovery rights at the outset is never harmless. *Lowy v. Peace, supra*, at 6-7. Moreover, local pin numbers and alarm records have nothing to do with corporate integration. None of what was produced by Stewart had relevance to corporate integration.⁴

Stewart itself argues that the trial court's termination of discovery was not harmless—but fatal. It argues that *because* of the lack of CR 30(b)(6) corporate evidence, it was entitled to dismissal. *See Response Brief at pp. 23-25.* The trial court's refusal to allow Ms. Buhr her Civil Rule discovery rights thus directly led to Stewart's

Buhr at summary judgment had no relevance to the relationship between Plaintiff and Stewart Title Company, because the meaning of her documents was not "explained" by Stewart executives in a corporate deposition. *See Response at pp. 23-25.* Stewart argues that "[B]ecause Plaintiff never took the depositions of representatives of those entities, and never questioned Stewart Title Company or SISCO executives about the documents on which she relied or the actual contractual and business relationships between the various companies, the testimony in her Declaration and in her representations to the Court about what the documents say and mean amount to pure speculation based on inadmissible hearsay." *Id.* At page 25, Stewart again argues, "Again, no relevant testimony was taken in the case about the relationships between the various SISCO-affiliated entities."

dismissal. Stewart's argument as to harmless error is without merit.

II. REPLY – SUMMARY JUDGMENT.

Stewart does not dispute that an “employer” is defined as any person acting in the interest of an employer, directly or indirectly, who employs eight or more persons,RCW 49.60.040(11). It does not dispute the premise that this statute's use of the word “person” applies to corporations, or that the statute defines corporations acting in synergy as dual employers. It does not dispute that RCW 49.60 et seq. is an act which seeks to eradicate certain conduct within this state by employers, or that laws are often specifically designed to ensure that though changes in status of employers through merger, consolidation, combination, and otherwise, employees will not have to guess who their employer is to ensure that they receive the statutorily mandated rights. *See, e.g., Manor v. Nestle Food Co.*, 131 Wn.2d 439, 455, 932 P.2d 628, 635 (1997).⁵ It also does not dispute that where discovery orders prevent evidence from being properly collected or presented, any subsequent order granting summary judgment must be vacated.

⁵ *Amended on other grounds*, 945 P.2d 1119 (Wash. 1997) and disapproved of on other grounds by *Washington Indep. Tel. Ass'n v. Washington Utilities & Transp. Comm'n*, 148 Wn. 2d 887, 64 P.3d 606 (2003).

Neighborhood Alliance, 172 Wn.2d at 719; *Blair*, 171 Wn.2d at 351-352; and see *Lowy v. Peace Health*, *supra*, at 6-7.

Instead, Stewart seeks to support the trial court's dismissal by improperly reversing the burden of proof at summary judgment. The argument is plain error.

a. **Stewart improperly reverses the burden of proof.**

In the trial court, Stewart argued that *Buhr* had an obligation to “conclusively establish that Stewart Title Company had an employment relationship with (her).” *CP 258:9-13*. This is a patently wrong standard.

On a summary judgment motion, the *moving* party bears the initial burden of showing the absence of an issue of material fact. *Young v. Key Pharmaceuticals, Inc.*, 112 Wn.2d 216, 225, 770 P.2d 182, 187 (1989). Stewart was the party moving for summary judgment. Stewart bore the burden of showing the absence of material fact on the relevant issue claimed.

b. **Stewart failed to meet its burden of proof.**

Stewart summarily states “Stewart Title of Spokane was Buhr’s employer; Stewart Title Company was not.” See *e.g. Response brief at pg. 6*. This pronouncement fails to answer the relevant questions posed

upon Stewart's request for dismissal. It fails to answer: 1) whether Stewart acted in the interest of the local entity because, if it did, it was an employer as defined under state law (RCW 49.60.040(11)); 2) whether Stewart was integrated with and in control of its local entity; or 3) whether Stewart acted directly in the discharge of Ms. Buhr. *Opening Brief at pp. 25-36.*

None of Stewart's evidence hit any of these marks. As is evident on appeal, the only evidence Stewart presented to support its dismissal was local employee evidence—it cites CP 274, CP 278-279, and CP 282-283. *See Response at pp. 6 and 29.*

The first evidence cited, CP 274, consists of four condensed deposition pages of the testimony of local president Anthony Carollo. Therein, Carollo explains why he discharged Buhr. The second cite, CP 282-83, is again local president Carollo's declaration confirming that Stewart owned 51% of his entity, and offering only three conclusory statements about certain specific actions his local company does *not* do in tandem with Stewart. *CP 282, paras. 6,7 and 11.*

The final evidence, CP 274 and 279, are deposition pages from local employee Plaintiff Buhr. Therein, she states that she is paid through her local entity, and that the only "Stewart Company entity" employing

her is her “Stewart Company entity” in Spokane. *CP 278-79*.

None of this local evidence addresses the national Stewart’s conduct during the local discharge, nor its interrelationship with the local entity, nor its cooperation with and assistance to the local entity. *Stewart* presented no evidence at all about its own conduct. And as Stewart argues elsewhere in its brief—the only evidence which could have properly established corporate level integration would have been evidence from its own “Stewart Title Company or SISCO” executives, not local personnel. *Response, pp. 23-25*. Stewart itself argues that there was no “competent record evidence before the court regarding the relationship between all of the Stewart entities.” *Response at 24*.

As the moving party, Stewart thus made no showing of the absence of an issue of material fact as to its own conduct. When Buhr then came forward with her unrebutted and veritable mountain of evidence reflecting Stewart’s integration with its local entities, its publications touting such integration, its nationwide policies and websites and pay structure, its nationwide handbooks and services for local entities, and its use of various names to describe itself in its employee handbook, including calling itself Stewart Title Company, SISCO, Stewart Title Guarantee, Stewart Employee Services, etc., *see*

Opening Brief at pp. 10-18, along with Buhr producing e-mail communications showing “regional” executives from Stewart interacting with Carollo and Buhr as to her discharge, then Buhr’s evidence created a genuine issue of fact for trial as to corporate identity, integration, and direct participation by Stewart. *CP 1803-1808*. Buhr’s evidence was unrebutted.

Stewart argues that Buhr presented no evidence of Stewart’s direct action in her termination. The record is replete with such evidence. *See Appellant’s Brief at p. 36, citing Pl. Ex. 15-25*. Only one such example is that evidence of Stewart regional personnel in Seattle directly managing Buhr’s termination for the local office, and advising Anthony Carollo as to how to proceed. *Pl. Ex. 17, 18, 22, 23, 24 & 25*. Another such piece of evidence was that of local president Anthony Carollo himself attributing his decision to require Ms. Buhr to go on FMLA leave to Stewart National’s regional office directive. *CP 1688, Carollo Deposition, p. 152: 1 – p. 153: 17*. Direct action was evidenced.

Again, Stewart refuted none of this. It presented no evidence at all on its own behalf. All reasonable inferences from this evidence were to be considered in the light most favorable to Buhr on the issue

posed. *Young*, 112 Wn. 2d at 225-226. The voluminous evidence presented by Buhr created issues of material fact as to all theories. Summary judgment was error.

c. **Stewart's other responses are without merit.**

Stewart argues that Buhr's mountain of evidence was inadmissible. *Response at p. 24, citing Ftnte. 1 at CP 1904*. But all such evidence was considered by the trial court. *CP 1991-1993*.

Stewart argues that the publications it makes available nationally to employees, investors, and consumers under its various names were not admissible as hearsay, and that using such materials is "pure speculation based on inadmissible hearsay." Securities and Exchange Commission filings are neither inadmissible hearsay, nor speculation. Public records are admissible under *ER 803(a)(6), (8), (17)*. Admissions of the party opponent are also admissible under *ER 804(b)(3)*.

Stewart asserts that its employee handbook was "unique to Stewart Title of Spokane." It provides no cite to the record for this claim. *See Response at p. 26*. It is also disproved by the handbook itself, which states that it applies nationally to all Stewart associates. *Pl. Ex. 52 at, e.g., STS 00006, 00017, 00015, and see Opening Brief at pp. 13-16*.

Stewart argues that Buhr cannot rely on a handbook she never reviewed to support her claims. *See p. 27*. Stewart confuses a “handbook claim” with a statutory discrimination claim under RCW 49.60. Stewart’s precedent involve claims for relief based on allegations of an employer’s breach of a promise made in the handbook. *See Stewart v. Chevron Chem. Co.*, 111 Wn.2d 609, 762 P.2d 1143 (1988)(pleading wrongful discharge in violation of an employer's policy manual.); *Kuest v. Regent Assisted Living, Inc.*, 111 Wn.App. 36, 41, 43 P.3d 23, 25 (2002) (wrongful termination based on violations of express and implied contracts); *Bulman v. Safeway, Inc.*, 144 Wn.2d 335, 27 P.3d 1172 (2001) (claims for wrongful termination, breach of contract and breach of promise to provide specific treatment in specific situations).

Buhr is not bringing such a claim. Here, she uses the handbook as an admission by Stewart, per ER 804(b)(3), to impeach Stewart’s duplicity in claiming that it was entirely independent from its local entity—when its own public materials say the reverse. Again, the handbook was considered. *CP 1992: 1, showing consideration of Pl. Ex. 52*.

Stewart argues that Ms. Buhr failed to plead a “joint employer” structure, or “integrated enterprise,” or “parent subsidiary liability.”

See Response Brief at p. 32. The latter is belied by the complaint.⁶

The complaint was considered at summary judgment. *CP 1990: 22-23.* All theories were briefed. *CP 1838-1855.* Stewart responded to these arguments. *CP 1903-1912.*⁷ And the trial court opined on the record as to how Stewart was not a parent company because there was allegedly no evidence that the local entity was a subsidiary. *See RP, Jul. 1, 2011, p. 45: 22 – p. 46: 6.* The trial court referred to the local entity as a “local consortium.” *RP 46: 5.* It decided that a “local consortium” was not a subsidiary. *RP 46: 5.*⁸

⁶ The amended complaint filed by Buhr claims that she was employed with *both* companies “through her employment with the Defendant Stewart Title of Spokane,.” and she claimed that by such local employment, she was thereby also employed by Defendant Stewart Title Company.” *CP 21: 15-19.* Buhr alleged that the Defendant Stewart Title Company transacted business in the State of Washington “in part through Defendant Stewart Title of Spokane, LLC.” *CP 21: 7-10.* Buhr alleged that she “performed work for Defendant companies within Spokane County as an employee of Stewart Title of Spokane and Stewart Title Company,” *CP 21: 23-25,* and that Stewart Title was “liable for the acts of Defendant Stewart Title LLC Company of Spokane,” *CP 22: 4-6,* and that Stewart “directly controls all material aspects of its subsidiary Stewart Title of Spokane, LLC,” *CP 22: 7-8,* and that employees of Stewart Title, LLC identified themselves and held themselves out as employed by the Defendant Stewart. *CP 22: 9-11.* Buhr alleged parent corporation liability against Stewart for the acts of its subsidiary, *CP 22: 12-13,* and that both defendant companies discriminated against her. *CP 28: 21-23,* and that the allegations made were made against both entities, *CP 28-32,* and Buhr requested judgment against both Defendants. *CP 33.*

⁷ Stewart acknowledges that the complaint pled that Stewart National was a corporate subsidiary, and that the parent controlled the local entity. *See Response, finte 10, p. 28.*

⁸ Nowhere did Stewart dispute that its local entity was a subsidiary of Stewart. Stewart evidenced that it owned 51% of Stewart Local. *CP 263: 8-9, and see Respondent’s Brief at finte 10 p. 28.* A subsidiary is no more than a corporation which is majority-owned by a parent company. *RCW 23B.19.020(17).*

Stewart's argument is without merit. All integration, parent-subsidary and direct participation issues were raised and deliberated at summary judgment.

Stewart argues that Buhr's testimony at her deposition estops her from claiming dual employment. *See Response at, e.g., pp. 6-7.* Buhr's cited testimony is not inconsistent with her complaint. The question posed her by Stewart's counsel confirmed the existence of Stewart as the national company, and the local company as a "Stewart Company entity." The question is this: "Were you ever employed *by a different Stewart Company entity* other than Stewart Title of Spokane?" *See Response at 30, citing CP 278-79, emphasis added.* Buhr properly answered in the negative—the "Stewart Company entity" employing her *was* its Spokane entity. *CP 278-279.* This is entirely consistent with her complaint. *CP 21-22.* Buhr's very next answer in her deposition also identifies her "employer" as "Anthony Carollo." *See Response at p. 7, citing CP 278-279.*

The record further established that Buhr wrote to Stewart's Houston personnel asking for the reasons for her termination, not to her Spokane office. *Pl. Ex. 21; Pl. Ex. 25.* Her actions speak louder than misconstruing her words.

Moreover, the law does not hold local employees to understand or attest to national corporation integration structures in any event. Laws which “net” parent companies are passed to ensure that corporate maneuvering does not defeat the purpose of the Act. *See, e.g., Manor v. Nestle Food Co.*, 131 Wn.2d at 455. When an employee of a multi-level entity sees a pay deposit in her account, the employee may naturally attribute it to her local employer, but would have no knowledge of the source of those funds, nor the interaction between the two corporations which produced the pay, nor who runs “iPay” online on the Stewart website, nor what its connection is to her local entity. *See e.g., Pl. Ex. 52, Employee Handbook, p. 14.* Here, even the local entity’s President didn’t know which corporation issued the pay to his employees, or what bank account was used. *CP 1671, pp. 82-83.*

Stewart’s argument is duplicitous. If inconsistency of presentation estops parties at summary judgment, then Stewart should have been estopped from summary judgment on its claimed lack of integration or subsidiary assistance when its SEC filings, employee manuals, forms, emails, and local president’s testimony all establish that Stewart not only intentionally affirmatively integrates its subsidiaries, and controls and assists them nationwide, but touts such

national integration, its national standards, policies, and resources, both publicly and to all of its employees across the country. *See Opening Brief at pp. 7-15, and e.g. Pl. Ex. 17 & 18.* If contradictory positions are precluded, then Stewart's motion should have been denied outright.

III. STEWART IS ESTOPPED FROM AVAILING ITSELF OF AN "ACQUITTAL" OF AN ALLEGEDLY INDEPENDENT COMPANY.

Stewart argues that trial court error in dismissing Stewart is harmless because a jury ultimately exonerated the local Stewart entity. But judicial estoppel precludes a party from gaining an advantage by asserting one position in a court proceeding and later seeking an advantage by taking a clearly inconsistent position. *Arkison v. Ethan Allen, Inc.*, 160 Wn. 2d 535, 538, 160 P.3d 13, 15 (2007); *Cunningham v. Reliable Concrete Pumping, Inc.*, 126 Wn. App. 222, 224-25, 108 P.3d 147, 148 (2005). Stewart's argument should be estopped.

Stewart asked for final judgment by CR 54(b) certificate after its dismissal on summary judgment. *CP 1993: 23-26.* It did this presumably to insulate it from any later plaintiff's verdict against the local company. The trial court granted its request. *Id.* Stewart cannot now claim entitlement to the benefit of what occurred after its final

judgment.

When this appellate court's commissioner then later made an effort to consolidate both appeals against Stewart and Stewart's local entity, *Notice, Nov. 3, 2011*, Stewart objected to the consolidation, arguing that the record on appeal was limited only to the record before the trial court at Stewart's dismissal, and that "the Court of Appeals will not be permitted to review any documents or other evidence of any kind whatsoever beyond the admissible evidence which Judge Sypolt had before him at the time he made his ruling." *Stewart letter to Clerk, Nov. 14, 2011*. This court granted Stewart's request. *Commissioner's Order filed Dec. 16, 2011*.

Stewart now argues the exact opposite. It should be estopped.

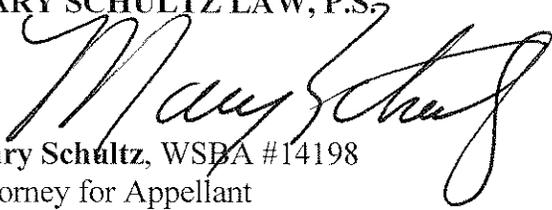
Moreover, Stewart devotes pages of its response to claiming that it is entirely independent from the local Stewart entity, and had no participation with its local entity. How acquittal of an entirely independent defendant would result in Stewart's acquittal is left unexplained. Exoneration of the local entity may well have occurred purely through the jury attributing the actions involved to the national Stewart's directives to its local entity. This remains an unknown, because Stewart avoided trial.

IV. CONCLUSION.

The dismissal of Stewart should be reversed for proper discovery and trial, with fees awarded to Ms. Buhr.

DATED this 21 day of June, 2012.

MARY SCHULTZ LAW, P.S.



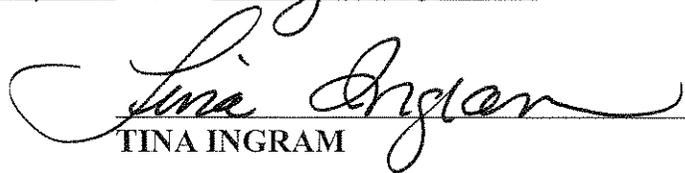
Mary Schultz, WSBA #14198
Attorney for Appellant

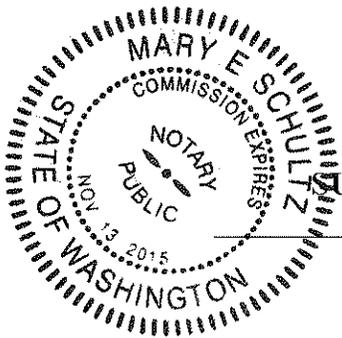
CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is a person of such age and discretion as to be competent to serve papers; and that on the 21 day of June 2012, she served a copy of Appellant's Reply Brief to the following:

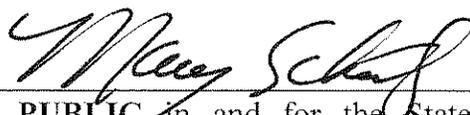
ATTORNEY FOR RESPONDENT	
Mr. James M. Kalamon Mr. Brook Cunningham Paine Hamblen LLP 717 W. Sprague Ave., Suite 1200 Spokane, WA 99201	<input checked="" type="checkbox"/> Regular U.S. Mail
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Dated this 21 day of June, 2012.


 TINA INGRAM



SUBSCRIBED and SWORN to before me this 21 day of June, 2012.


 NOTARY PUBLIC in and for the State of Washington,
 residing in Spokane. Commission Expires: ~~04/01/16~~ 11/13/15