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No. 81923-8

**SUPREME COURT
OF THE STATE OF WASHINGTON**

AFSHIN PISHEYAR,

Appellant/Cross-Respondent,

v.

RICHARD M. SNYDER, et ux., and DAVID HANNAH, et ux., et al.,

Respondents/Cross-Appellants.

ANSWER TO PETITION FOR REVIEW

Ronald L. Berenstain, WSBA No. 7573
RBerenstain@perkinscoie.com
William C. Rava, WSBA No. 29948
WRava@perkinscoie.com
PERKINS COIE LLP
1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099
Telephone: 206.359.8000
Facsimile: 206.359.9000

Attorneys for Respondents/Cross-
Appellants
Richard M. Snyder, et ux., and David
Hannah, et ux., et al.

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. ISSUES PRESENTED FOR REVIEW	1
III. STATEMENT OF THE CASE.....	2
A. The Parties and Their Relationship.....	2
B. The Reverse Stock Splits and Pisheyar's Efforts to Stop Them.....	3
C. Pisheyar's "Personal" Claims Also Lack Evidence.....	6
IV. ARGUMENT.....	8
A. The Petition Does Not Involve An Issue of Substantial Public Interest.....	8
B. Pisheyar's Lack of Standing to Pursue His Purported Derivative Claims Is Not An Issue of Substantial Public Interest	11
C. The Exclusivity of Pisheyar's Appraisal Remedy Is Not An Issue of Substantial Public Interest	14
V. CONCLUSION.....	20

TABLE OF AUTHORITIES

	Page
Cases	
<u>Arctic Stone, Ltd. v. Dadvar</u> , 127 Wn. App. 789, 112 P.3d 582, 584 (2005).....	14
<u>Finley v. Curley</u> , 54 Wn. App. 548, 774 P.2d 542 (1989).....	12
<u>Grant County Fire Prot. Dist. No. 5 v. City of Moses Lake</u> , 150 Wn.2d 791, 803, 83 P.3d 419 (2004).....	10
<u>Grosset v. Wenaas</u> , 42 Cal.4th 1100, 175 P.3d 1184 (Cal. Feb. 14, 2008)	12
<u>Haberman v. Wash. Public Power Supply Sys.</u> , 109 Wn.2d 107, 744 P.2d 1032 (1987).....	12
<u>In re Nw. Greyhound Lines Inc.</u> , 41 Wn.2d 672, 251 P.2d 607 (1952).....	20
<u>In re Pers. Restraint of Dalluge</u> , 162 Wn.2d 814, 177 P.3d 675 (Jan. 17, 2008)	10, 11
<u>Kilian v. Atkinson</u> , 147 Wn.2d 16, 50 P.3d 638 (2002).....	17
<u>Korslund v. DynCorp Tri-Cities Servs, Inc.</u> , 121 Wn. App. 295, 88 P.3d 966 (2004), <i>affd</i> , 156 Wn.2d 168, 125 P.3d 119 (2005).....	18
<u>Lewis v. Anderson</u> , 477 A.2d 1040 (Del. 1984).....	12
<u>Matteson v. Ziebarth</u> , 40 Wn.2d 286, 242 P.2d 1025 (1952).....	17, 18
<u>Matthew G. Norton Co. v. Smyth</u> , 112 Wn. App. 865, 51 P.3d 159 (2002).....	20
<u>Matthews v. Wenatchee Heights Water Co.</u> , 92 Wn. App. 541, 963 P.2d 958 (1998).....	17, 18
<u>Noakes v. Schoenborn</u> , 116 Or. App. 464, 841 P.2d 682 (1992).....	13

TABLE OF AUTHORITIES
(continued)

	Page
<u>Romero v. US Unwired, Inc.</u> , Civil Action Nos. 04-2312, 04-2436, 2006 WL 2366342 (E.D. La. Aug. 11, 2006)	13
<u>Saito v. McCall</u> , No. Cir. A. 17132-NC2004, 2004 WL 3029876 (Del. Ch. Dec. 20, 2004).....	12
<u>Saldin Sec., Inc. v. Snohomish County</u> , 134 Wn.2d 288, 949 P.2d 370 (1998).....	2
<u>State v. Peterson</u> , 186 P.3d 1179 (Wn. App. July 7, 2008)	10
<u>State v. Thomas</u> , 150 Wn.2d 821, 83 P.3d 970 (2004).....	2
<u>State v. Watson</u> , 155 Wn.2d 574, 122 P.3d 903 (2005).....	9, 10, 11
<u>Walter J. Schloss Assocs. v. Arkwin Ind., Inc.</u> , 90 A.D.2d 149, 455 N.Y.S.2d 844 (N.Y. App. Div. 1982) (Mangano, J., dissenting), <u>rev'd, adopting dissenting opinion</u> , 61 N.Y.2d 700, 460 N.E.2d 1090, 472 N.Y.S.2d 605 (1984).....	19
<u>Wolf v. Scott Wetzel Servs, Inc.</u> , 113 Wn.2d 665, 782 P.2d 203 (1989).....	18
Statutes	
Model Bus. Corp. Act § 13.02 (1984)	19
Model Bus. Corp. Act Anno. § 13-02 (2005)	20
RCW 23B.13.020(1)	16
RCW 23B.13.020(2).....	16, 17
RCW 23B.13.230.....	16
RCW 23B.13.250.....	5
RCW 23B.13.300(1).....	16
RCW 23B.13.300(2).....	5
RCW 23B.13.300(5)	16

TABLE OF AUTHORITIES
(continued)

	Page
Regulations and Rules	
CR 23.1	11
RAP 10.3(a)(5).....	2
RAP 13.4(b)	8, 10
RAP 13.4(b)(1)	14
RAP 13.4(b)(2)	14
RAP 13.4(b)(4)	8, 9, 10, 14
RAP 2.3(b)(4)	8
Other Authorities	
1 S.J. 3087-88, 51st Leg. (Wash. 1989).....	20
1 S.J. 379-380, 51st Leg. (Wash. 1989).....	16
2 American Law Institute, <u>Principles of Corporate Governance</u> (1994)	13
2 S.J. 2983, 51st Leg. (Wash. 1989).....	16
2 S.J. 3088, 51st Leg. (Wash. 1989).....	19
Laws of 1933, ch. 185, § 41.....	16

I. INTRODUCTION

The petition seeks review of a unanimous Court of Appeals decision in a private dispute between a former shareholder, Afshin Pisheyar ("Pisheyar"), and the majority shareholders, Richard Snyder ("Snyder") and David Hannah ("Hannah"), in two closely-held Washington corporations, Sound Infiniti, Inc., d/b/a Infiniti of Kirkland ("Sound Infiniti") and Infiniti of Tacoma at Fife, Inc. ("Infiniti of Tacoma;" together, the "Corporations"). In affirming the trial court in large part and reversing it in part, the Court of Appeals applied the Civil Rules and well-established case law resulting in the dismissal of Pisheyar's derivative claims for lack of standing and applied the Washington Business Corporations Act ("Act") and settled case law to dismiss his other claims because the Act provides for an exclusive appraisal remedy. This sound and correct decision by the Court of Appeals does not come close to the type this Court should review as it does not present issues of substantial public interest, the only ground for review presented by Pisheyar. This Court should deny the petition.

II. ISSUES PRESENTED FOR REVIEW

1. Should the Court accept review where Pisheyar's lack of standing to pursue his purported derivative claims is not an issue of substantial public interest?
2. Should the Court accept review where the exclusivity of

Pisheyar's appraisal remedy is not an issue of substantial public interest?¹

III. STATEMENT OF THE CASE

A. The Parties and Their Relationship.

Snyder and Hannah have been in the automobile business for approximately 30 years. CP 256 ¶¶ 15, 16; 946; 950. In 1997, Snyder, Hannah and Pisheyar, who began working for Snyder about 15 years earlier, formed Sound Infiniti. CP 17; 256 ¶ 19. When Pisheyar initiated this action, Hannah owned 51%, Snyder 30% and Pisheyar 19% of Sound Infiniti. CP 256 ¶ 20. In 2003, Snyder, Hannah, Pisheyar and Robert Curtis formed another corporation, Infiniti of Tacoma. When Pisheyar initiated this action, Snyder owned 51%, Hannah 25%, Pisheyar 19% and Curtis 5% of Infiniti of Tacoma. CP 257 ¶ 24. The shareholders of the Corporations agreed that Pisheyar would have no role in the management of either dealership. E.g., CP 257 ¶ 26; 478 § 2. Hannah and Snyder manage the dealerships, both of which are successful and profitable. E.g., CP 257-58 ¶¶ 27-32; 259 ¶ 40; 944; 946; 951; 2455-2457:19.

¹ Although the Court of Appeals only accepted interlocutory review of and decided three issues, Op. at 8, and although Pisheyar's petition initially identifies four issues being putatively presented for review, Pisheyar offers no argument regarding the fourth issue, Pet. at 2, which relates to the characterization of certain damage he allegedly suffered. Without any argument, this issue is not properly presented for review. See, e.g., Saldin Sec., Inc. v. Snohomish County, 134 Wn.2d 288, 297 n. 4, 949 P.2d 370 (1998) ("brief must include argument in support of issues presented for review as well as citation to authority;" citing RAP 10.3(a)(5)); State v. Thomas, 150 Wn.2d 821, 868-69, 83 P.3d 970 (2004) ("this court will not review issues for which inadequate argument has been briefed or only passing treatment has been made"). Snyder and Hannah, therefore, will not address this issue in this Answer except to note that (1) whether alleged damage to a single shareholder in this case, as measured by alleged losses to the Corporations, is characterized as derivative or personal is not an issue of substantial public interest and (2) the Court of Appeals decision concluding that the alleged damage is derivative was correct.

In approximately June 2004, the relationship between Pisheyar, on the one hand, and Snyder and Hannah, on the other, seriously deteriorated. By February 2005, Snyder and Hannah had concluded that irreconcilable differences with Pisheyar—both personal and business—were an obstacle to the continued vitality and success of the Corporations. Consequently, in early 2005, before Pisheyar initiated this action, Snyder and Hannah began exploring options for purchasing Pisheyar's shares in the Corporations. E.g., CP 259 ¶ 35-38; 270; 948; 952.

About one month later, in March 2005, Pisheyar filed his original Complaint, alleging a variety of claims against Snyder and Hannah. CP 1-11; 253 ¶ 1. In the original Complaint, and in the three that followed, Pisheyar alleged that the actions of Snyder and Hannah as officers damaged him both in his individual capacity and in his capacity as a shareholder, entitling Pisheyar to recover both personally and derivatively for the Corporations. CP 1-11; 315-26.

B. The Reverse Stock Splits and Pisheyar's Efforts to Stop Them.

In July 2005, the Corporations informed their respective shareholders of proposals to implement reverse stock splits, which would result in Pisheyar and shareholder Curtis owning fractional shares that the Corporations would be entitled to purchase from these shareholders who owned the fractional shares. CP 33-36, 48-90. Pisheyar moved to enjoin the Corporations from proceeding with the reverse stock splits even though he never claimed any procedural irregularity or fraud. CP 253 ¶ 4.

After briefing, CP 953-96, and oral arguments, the trial court temporarily enjoined the Corporations from implementing the reverse stock splits (the "August 31 TRO"). CP 997-99; 252; 253 ¶ 6. The trial court stated that the purpose of the August 31 TRO was to preserve the status quo until an evidentiary hearing (the "Injunction Hearing") to determine whether a preliminary injunction should issue. CP 253-54 ¶¶ 4-7; 1000-07.

The trial court held the Injunction Hearing, with live testimony, over two days in November and December 2005. CP 252; 1008-2068; RP (11/17/05); RP (12/8/05). The central question was whether, by permitting the Corporations to effect statutorily-permitted reverse stock splits that would result in the Corporations purchasing Pisheyar's and Curtis' shares, the Corporations would possibly be damaged because no one with standing would remain to pursue remedies on behalf of the Corporations, and therefore, possible damage to the Corporations would go unredressed. The trial court thus allowed Pisheyar an opportunity to offer testimony as to how the Corporations had been harmed by Snyder's and Hannah's alleged conduct, including his corporate perquisite claims. CP 254-55 ¶¶ 7-14; RP (11/17/05) 53:15-54:14.

At the Injunction Hearing, Pisheyar failed to offer any evidence of any harm to the Corporations. On December 20, 2005, the trial court dissolved the August 31 TRO, concluding that there was no risk that possible damage to the Corporations would go unredressed by allowing the Corporations to proceed with the reverse stock splits because there was no evidence of damage to the Corporations. CP 251-70, particularly 261 ¶

54; 262 ¶ 61; 263 ¶¶ 67-68; 264 ¶ 72. The trial court further found that because there was no claim of procedural irregularity or fraud, Pisheyar's exclusive remedy for the reverse stock splits is an appraisal proceeding. CP 265-66 ¶¶ 5-7.

Pisheyar filed a motion for discretionary review in March 2006 seeking reversal of the denial of the injunction (Ct. App. # 57803-1), which the Court of Appeals denied in May 2006. Pisheyar thereafter moved to modify, which was also denied by the Court of Appeals.

In January 2006, a majority of the shareholders of the Corporations approved amendments to the respective articles of incorporation reducing the number of outstanding shares (from 100 to 4) (the "reverse stock splits"). CP 173 ¶¶ 2, 3; 175-227; 232 ¶ 4. The Corporations thereafter took the steps required by the Act to implement the reverse stock splits, including tendering to Pisheyar and Curtis checks for the fair value (as defined in RCW 23B.13.250) of their respective interests in the Corporations. Pisheyar disputed the Corporations' determination of the fair value of his 19% interest in both Corporations, made a demand for payment based on his determination of fair value, and tendered his shares. CP 273 ¶ 8. In accordance with RCW 23B.13.300(2), Snyder and Hannah commenced a proceeding in King County Superior Court in which the court will determine the fair value of Pisheyar's shares in what is essentially an appraisal proceeding. That action, Sound Infiniti v. Pisheyar, No. 06-2-19673-2 SEA (Downing, J.), the Appraisal Proceeding,

is ongoing but stayed pending appeal.²

After the Corporations effected the reverse stock splits, Snyder and Hannah moved to dismiss Pisheyar's shareholder claims relating to the Corporations, including his derivative minority oppression claim. CP 2069-90. The trial court granted the motion, CP 309-11, but nonetheless permitted Pisheyar to continue litigating his claims for personal damages, including his corporate perquisite claims, even though his alleged damages were based on exactly the same operative facts as the dismissed derivative claims. CP 2124-36; 2269; 2287. The parties thereafter conducted extensive discovery related to Pisheyar's personal claims and personal damages.

C. Pisheyar's "Personal" Claims Also Lack Evidence.

Between approximately August 2005 and October 2006, Snyder and Hannah conducted discovery regarding Pisheyar's alleged personal damages. CP 2158-74, particularly 2170-71. Pisheyar repeatedly failed to provide fulsome and complete answers to damages-related discovery—both written and deposition—resulting in the trial court issuing two orders to compel and sanctioning Pisheyar's conduct. *E.g.*, CP 2140-52; 2801-03. Ultimately, Pisheyar was forced to admit that his alleged personal damages were nothing more than 19% (his former ownership share) of whatever damages the Corporations supposedly suffered arising from

² To be clear, the Appraisal Proceeding relates only to the "fair value" of Pisheyar's shares in Sound Infiniti. There is no dispute that Pisheyar has received "fair value" for his shares in Infiniti of Tacoma.

Snyder's and Hannah's alleged wrongdoing. E.g., CP 2213-21; 2817.

Snyder and Hannah moved for partial summary judgment on Pisheyar's personal minority oppression and damages claims, including the corporate perquisite claims, making several arguments for dismissal. CP 2266-2301. Snyder and Hannah argued that Pisheyar's claims should be dismissed because he could not prove a necessary element of such claims—personal damages—because the only evidence of damages that Pisheyar offered demonstrated that such alleged damages were derivative, not personal, and because Pisheyar presented no evidence that either he or the Corporations had in fact been damaged. E.g., CP 2281; 2297; see also RP (11/3/06) 27:3–31:22.

On December 5, 2006, the trial court denied the summary judgment motions but expressly limited Pisheyar's damages evidence at trial to that "disclosed to [Snyder and Hannah] in pretrial discovery." CP 523-26. Snyder and Hannah moved for reconsideration. CP 2873-2976. On December 28, the trial court in large part granted Snyder's and Hannah's summary judgment motions, holding that, inter alia, Pisheyar's "claims for damages arising out of his claims that [Snyder's and Hannah's] conduct resulted in reduced corporate profits, or increased corporate expenses, and therefore in reduced dividend distributions" are "derivative in nature, and [Pisheyar] lacks standing to assert them." CP 528.

The parties stipulated that the trial court's order on the motion for reconsideration was appropriate for interlocutory review, and the trial court then certified that order and several others pursuant to

RAP 2.3(b)(4). CP 516-18. The Court of Appeals accepted review of three expressly limited issues: (1) the exclusivity of the Appraisal Proceeding regarding Pisheyar's claims related to the reverse stock splits; (2) whether Pisheyar's derivative claims were properly dismissed; and (3) whether Pisheyar's corporate perquisite claims should also have been dismissed as derivative. In a unanimous decision, the Court of Appeals found for Snyder and Hannah and against Pisheyar on each issue, holding that: (1) the Appraisal Proceeding was exclusive regarding Pisheyar's claims related to the reverse stock splits; (2) Pisheyar's derivative claims were properly dismissed; and (3) Pisheyar's corporate perquisite claims should also have been dismissed as derivative.

IV. ARGUMENT

A. **The Petition Does Not Involve An Issue of Substantial Public Interest.**

The Rules of Appellate Procedure provide that a petition for review will be accepted by this Court "only: (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court." RAP 13.4(b).

The sole basis that Pisheyar asserts in support of his petition is that it involves issues of substantial public interest under RAP 13.4(b)(4). Pet.

at 1-2, 6. Accordingly, Pisheyar concedes that there is no conflict between the unanimous Court of Appeals decision here and any decision of this Court or of the Court of Appeals and that the decision raises no significant question of constitutional law.

This Court has stated that "substantial public interest" under RAP 13.4(b)(4) refers to issues with "sweeping implications." State v. Watson, 155 Wn.2d 574, 578, 122 P.3d 903 (2005). In Watson, for example, the Pierce County Prosecuting Attorney distributed a memorandum to all Pierce County Superior Court judges stating that his office would no longer recommend certain drug sentences. Id. at 575. Nine months later, Watson was convicted of a drug offense and the prosecuting attorney attached a copy of the memorandum to the sentencing brief, showing it to defense counsel beforehand. Id. at 576. In affirming the trial court's sentence, the Court of Appeals declared sua sponte that the memorandum was an improper ex parte communication, but determined that it was harmless in this particular case. Id. On petition for review, this Court held that Watson "presents a prime example of an issue of substantial public interest. The Court of Appeals holding, while affecting parties to this proceeding, also has the potential to affect every sentencing proceeding in Pierce County . . . where [the drug] sentence was or is at issue." Id. at 577. As a result, the Court noted that the decision "invites unnecessary litigation . . . creates confusion generally . . . [and] has the potential to chill policy actions taken by both attorneys and judges." Id. This Court thus granted the state's petition for review. Id. at 578.

Similarly, in the context of granting review in cases that have been rendered moot, this Court accepts review under RAP 13.4(b)(4) "if guidance would be helpful to public officers and the issue is likely to recur." In re Pers. Restraint of Dalluge, 162 Wn.2d 814, 819-20, 177 P.3d 675 (Jan. 17, 2008). The factors governing such review include: "(1) the public or private nature of the question presented; (2) the desirability of an authoritative determination which will provide future guidance to public officers; and (3) the likelihood that the question will recur." State v. Peterson, 186 P.3d 1179, 1181 (Wn. App. July 7, 2008) (internal quotes omitted). The standard is high.³

Other than unsupported conclusory assertions, Pisheyar offers nothing to explain why the Court of Appeals decision merits review under the stringent "substantial public interest" standard.⁴ As explained more fully below, the issues raised in this case do not come close to warranting review under this demanding standard.

³ The RAP 13.4(b)(4) "substantial public interest" standard is consistent with this Court's "substantial public importance" test for resolving standing issues. In that context, an issue "is of substantial public importance, [if it] immediately affects significant segments of the population, and has a direct bearing on commerce, finance, labor, industry, or agriculture." See, e.g., Grant County Fire Prot. Dist. No. 5 v. City of Moses Lake, 150 Wn.2d 791, 803, 83 P.3d 419 (2004) (internal quotes omitted). Again, this Court grants review only to those cases that will affect large segments of the population.

⁴ Instead, Pisheyar merely argues that the Court of Appeals erred in arriving at its decision. See, e.g., Pet. at 9 (asserting that "the reasoning of the Court of Appeals . . . warrants reversal of the decision."). But, the Washington Supreme Court is not an "error-correcting" court; it reviews limited categories of cases in the exercise of its discretion within the Rules of Appellate Procedure. See RAP 13.4(b).

B. Pisheyar's Lack of Standing to Pursue His Purported Derivative Claims Is Not An Issue of Substantial Public Interest.

Pisheyar fails to effectively explain why the trial court's and Court of Appeals' routine application of the Civil Rules and well-settled Washington case law in a private dispute among shareholders in closely-held corporations involves an issue of substantial public interest. Pet. at 18-20. Instead, he simply offers the same arguments that both lower courts rejected, now urging this Court to overturn governing law for an approach favored by a single Oregon intermediate appellate court. This argument for review fails for two reasons.

First, Pisheyar's lack of standing to pursue purported derivative claims on behalf of the Corporations in which he no longer owns shares is not an issue of substantial public importance. Unlike Watson and Dalluge, this is a private dispute among less than a handful of shareholders, and the result relies on long-established Washington case law that does not require any new authoritative determination. Moreover, the Court of Appeals decision will not have "sweeping implications," precisely because it is entirely consistent with both the plain language of the applicable rules (CR 23.1) and cases from Washington and the "majority of other jurisdictions." Op. at 17. In short, this issue is not one of substantial public interest as that standard has been consistently defined by this Court.

Second, and relatedly, the Court of Appeals decision on this issue is correct. In a shareholder derivative suit, a putative derivative plaintiff seeks to assert rights or remedies belonging to a corporation for the

corporation's benefit that the corporation has not pursued on its own. Derivative suits are rare because the Washington legislature and courts have long recognized the strong presumption in favor of allowing a corporation's board of directors to determine in its business judgment what if any claims it will pursue. As such, in Washington, derivative suits are disfavored and may be brought only in exceptional circumstances. Haberman v. Wash. Pub. Power Supply Sys., 109 Wn.2d 107, 147, 744 P.2d 1032 (1987).

In order to commence and maintain a derivative action, a plaintiff must have a proprietary interest, i.e., be a shareholder of that corporation. Id. at 149; see also Finley v. Curley, 54 Wn. App. 548, 557, 774 P.2d 542 (1989). A plaintiff who ceases to be a shareholder, voluntarily or by reason of a corporate action, loses standing to continue a derivative suit. Lewis v. Anderson, 477 A.2d 1040, 1046-49 (Del. 1984) ("A plaintiff who ceases to be a shareholder, whether by reason of a merger or for any other reason, loses standing to continue a derivative suit."); Saito v. McCall, No. Cir. A. 17132-NC2004, 2004 WL 3029876, at *9 (Del. Ch. Dec. 20, 2004) ("[A] derivative shareholder must . . . maintain shareholder status throughout the litigation."); Grosset v. Wenaas, 42 Cal.4th 1100, 1115, 175 P.3d 1184 (Cal. Feb. 14, 2008) (same). Here, because Pisheyar is no longer a shareholder, the trial court and Court of Appeals appropriately dismissed all his derivative claims for lack of standing.

In spite of this well-settled law on standing, Pisheyar urges this Court to follow Noakes v. Schoenborn, 116 Or. App. 464, 841 P.2d 682

(1992), which adopts the 2 American Law Institute, Principles of Corporate Governance § 7.02(a) (1994) (the "ALI Principle"). Noakes and the ALI Principle are readily distinguishable.

The Noakes court and the ALI drafters were primarily concerned that, where shareholder status is lost involuntarily, there might be circumstances in which no entity would remain to represent the best interests of the corporation. Noakes, 841 P.2d at 686; ALI Principle § 7.02(a)(2) cmt. Even if this minority position had merit—which it does not—its premise is not relevant here, where, prior to permitting the reverse stock splits to proceed, the trial court expressly considered whether the proposed corporate actions might leave damage to the Corporations unredressed. As the Court of Appeals held, however, "[b]ecause Pisheyar had a full and fair opportunity to demonstrate to the trial court that there was a likelihood that the actions of Snyder and Hannah had damaged the [C]orporations, . . . there is no basis to depart from the well-established rule that a shareholder must remain a shareholder in order to maintain corporate derivative claims." Op. at 18-19.⁵

As the unanimous Court of Appeals decision states, the application of the Civil Rules and "well-established" case law to Pisheyar's case can lead to only one result—dismissal of Pisheyar's derivative claims because

⁵ Moreover, Noakes and the ALI Principle are firmly in the minority. See ALI Principle § 7.02(a)(2) cmt. a. ("Section 7.02 departs from the majority approach"); see also Romero v. US Unwired, Inc., Civil Action Nos. 04-2312, 04-2436, 2006 WL 2366342, at *5 (E.D. La. Aug. 11, 2006) (rejecting the ALI Principle in light of prevailing Delaware and federal law).

he was no longer a shareholder and thus lacked standing. The trial court and the Court of Appeals got it right. There is no basis for review by this Court.

C. The Exclusivity of Pisheyar's Appraisal Remedy Is Not An Issue of Substantial Public Interest.

The Court of Appeals held that the "unambiguous text of the [Act], its legislative history, and controlling case law all compel the conclusion that appraisal is the exclusive remedy for dissenting shareholders in [Pisheyar's] circumstance." Op. at 9. Without citation to RAP 13.4(b)(1) or (2) and without identifying any specific Washington cases, Pisheyar nonetheless claims that the decision "effectively overturns Washington law protecting minority shareholders from majority shareholder oppression," "will have the effect of encouraging misconduct and retaliation of majority shareholders," and therefore constitutes an issue of substantial public interest. Pet. at 8, 16. Pisheyar's arguments are again more specious than solid.

First, as described more fully below, Pisheyar cannot argue that the Court of Appeals decision creates a conflict. His petition seeks review under only RAP 13.4(b)(4), not subsections (1) or (2), which specifically relate to alleged conflicts in the law. Pet. 1-2, 6. See also Arctic Stone, Ltd. v. Dadvar, 127 Wn. App. 789, 794 n.6, 112 P.3d 582, 584 (2005) ("We do not address assignments of error unsupported by argument or citation to authority.").

Second, Pisheyar states that this is "an issue of first impression,"

another admission that undercuts his request for review. If the Court of Appeals had ruled on the exclusivity of a shareholder's appraisal remedy for the first time in this case, the decision could not be in direct conflict with, much less "overturn," any existing laws or cases. The Court of Appeals decision cannot both create a conflict with existing cases and be a case of first impression. In fact, it is neither.

Third, and importantly, the issue is not one of substantial public interest. The Court of Appeals simply and correctly applied the unambiguous language of the Act, supported by its legislative history and Washington and non-Washington cases, to conclude that the only forum in which Pisheyar can pursue his "claims" for the diminution in value of his shares is the Appraisal Proceeding. This conclusion has no impact on any party other than the litigants here. It does not have "sweeping implications" for litigants in other cases, does not involve a public dispute, and does not change any existing shareholder's rights or remedies. Furthermore, that the Act and Washington cases might never have been applied to Pisheyar's exact circumstances in a published opinion before this case suggests that the issue is unlikely to recur, a conclusion that also cuts against allowing review. There is no reason, and Pisheyar has not offered any, that the affirmation of unambiguous provisions of the Act requiring that Pisheyar pursue the exclusive relief provided by the Act presents an issue of substantial public interest.

Finally, Pisheyar's claim that the Court of Appeals has overturned any Washington law or created any conflict is without merit. Instead, as

the Court of Appeals repeatedly stated, this case involves the application of an unambiguous statutory provision, together with supporting case law, legislative history and policy rationales, to Pisheyyar's particular facts.

The Act Is Unambiguous. The right of appraisal for dissenting shareholders has been part of Washington's legal landscape since 1933. Laws of 1933, ch. 185, § 41. The current Act is codified at Chapter 23B.13 RCW and enacts Washington's version of the Revised Model Business Corporation Act ("MBCA"). 1 S.J. 379-380, 51st Leg. (Wash. 1989); 2 S.J. 2983, 51st Leg. (Wash. 1989). The Act entitles shareholders who dissent from certain corporate actions, such as reverse stock splits, to obtain payment for the fair value of their shares. RCW 23B.13.020(1). A dissenting shareholder must demand payment for his shares and deposit his certificates in accordance with the corporations' notice to the shareholder. RCW 23B.13.230. If a shareholder and the corporation cannot agree on the fair value of the shares, the Act requires the corporation to petition the superior court to determine the fair value. RCW 23B.13.300(1). This is the dissenting shareholders' appraisal remedy, and, absent failure "to comply with procedural requirements" or fraud, the jurisdiction of the court in which it is commenced "is plenary and exclusive." RCW 23B.13.300(5) (emphasis added); RCW 23B.13.020(2).

In order to ascertain the meaning of a statute, Washington courts "must look first to its language." Cerrillo v. Esparza, 158 Wn.2d 194, 201, 142 P.3d 155 (2006). If the language is not ambiguous, the court must

give effect to its plain meaning. Id. "If a statute is clear on its face, its meaning is to be derived from the language of the statute alone." Kilian v. Atkinson, 147 Wn.2d 16, 20, 50 P.3d 638 (2002) (citation omitted) (emphasis added). "Courts may not read into a statute matters that are not in it and may not create legislation under the guise of interpreting a statute." Id. at 21 (footnote omitted).

Here, there is no ambiguity in RCW 23B.13.020(2):

a shareholder entitled to dissent . . . may not challenge the corporate action . . . unless the action fails to comply with the procedural requirements imposed by this title . . . the articles of incorporation, or the bylaws, or is fraudulent with respect to the shareholder or the corporation.

The only exceptions to the exclusivity of a dissenter's appraisal remedy are procedural violations or where the corporate action was fraudulent.

Case Law Supports Exclusivity. Washington courts have followed this plain language, holding that appraisal rights are the exclusive remedy for dissenting shareholders challenging a corporate action absent fraud or procedural irregularity. Matteson v. Ziebarth, 40 Wn.2d 286, 242 P.2d 1025 (1952); Matthews v. Wenatchee Heights Water Co., 92 Wn. App. 541, 963 P.2d 958 (1998). Although Matteson and Matthews involved binding shareholders to the corporate action in the absence of a demand for payment for their shares, the principle is identical to the issue presented here: absent procedural irregularities or actual fraud, the legislature has provided an exclusive remedy for shareholders who dissent

from corporate acts—the remedy of appraisal. RCW 23B.13.020.⁶

In spite of the unambiguous statute and the supporting case law, Pisheyar argues here—as he did below—that this outcome is unduly harsh because appraisal will not redress all his claims. Pet. at 17. But, aside from the fact that appraisal will address all of Pisheyar's supposed damages because they all relate to the alleged diminution in value of his shares, Matteson and Matthews demonstrate that Washington courts must look only to the statutory remedy where one is provided, even if adherence to the statute forecloses a plaintiff's only claims for relief (which it does not do here). Indeed, in both Matteson and Matthews, the courts' rulings, which strictly adhered to the Act, left the plaintiffs without either an appraisal remedy or an equitable remedy. Thus, both case law and the plain language of the Act unquestionably support the Court of Appeals decision, and Pisheyar's desire to litigate his claims simultaneously in two courts was properly rejected by the trial court and the Court of Appeals.

Legislative History Supports Exclusivity. Pisheyar further argues that RCW 23B.13.020 is not exclusive by urging this Court to examine the Act's legislative history. Pet. at 12-15. As the Court of Appeals properly held, however, because the Act is unambiguous, resort to legislative history is neither appropriate nor required. Op. at 11. Even if this Court

⁶ These rulings are consistent with the general rule in Washington that a statutory remedy will bar a common law tort claim if the statutory remedy is mandatory and exclusive. See, e.g., Wolf v. Scott Wetzel Servs. Inc., 113 Wn.2d 665, 668, 782 P.2d 203 (1989); Korslund v. DynCorp Tri-Cities Servs. Inc., 121 Wn. App. 295, 321, 88 P.3d 966 (2004), aff'd, 156 Wn.2d 168, 125 P.3d 119 (2005).

were to look to the legislative history, the legislature's analysis supports exclusivity of the appraisal remedy where, as here, there are no allegations of fraud or procedural irregularity. The Washington legislature adopted verbatim the official comment to the MBCA, which explains that the Act "basically adopts the New York formula as to exclusivity of the dissenters' remedy." 2 S.J. 3088, ¶ 4, 51st Leg. (Wash. 1989); MBCA § 13.02 cmt. at 324 (1984). The "New York formula," in turn, provides that appraisal is the exclusive remedy, except that an individual may bring a proceeding in equity when corporate action is alleged to be fraudulent or illegal. Walter J. Schloss Assocs. v. Arkwin Indus., Inc., 90 A.D.2d 149, 455 N.Y.S.2d 844, 851-52 (N.Y. App. Div. 1982) (Mangano, J., dissenting), rev'd, adopting dissenting opinion, 61 N.Y.2d 700, 460 N.E.2d 1090, 472 N.Y.S.2d 605 (1984) (limiting dissenting shareholder's right to seek relief outside of appraisal when there is an "identical relief available to him in appraisal proceedings"). Thus, just as the Court of Appeals concluded, and contrary to Pisheyar's assertions, the legislative history plainly supports the conclusion that the only court with jurisdiction to consider Pisheyar's claims is the one in which the Appraisal Proceeding is pending. He cannot litigate his claims in this case no matter how he labels them.

Public Policy Supports Exclusivity. Lastly, Pisheyar misapprehends the purpose of the Act as solely affording protection to shareholders. Pet. at 10-12. As the legislative history of the Act illustrates, providing dissenters' rights for reverse stock splits has the dual purpose of affording protection to shareholders and "enhancing the

majority's freedom to make such changes." 1 S.J. 3087-88, 51st Leg. (Wash. 1989). Rather than expose corporations to extended litigation over the propriety of corporate acts, legislatures have adopted dissenters' rights statutes, like the Act, recognizing that procedurally correct corporate actions undertaken by the majority should not be enjoined or delayed by a minority shareholder seeking equitable relief or damages. See MBCA Ann. § 13-02, Official Cmt. (2005) ("The theory underlying [exclusivity of appraisal rights] is that when a majority of shareholders has approved a corporate change, the corporation should be permitted to proceed even if a minority considers the change unwise or disadvantageous.").

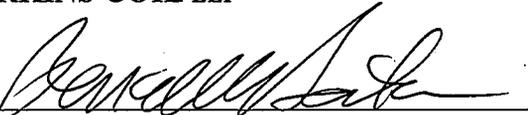
Consistent with these touchstone corporate governance principles, this Court has stated that the Act permits corporate actions removing shareholders by affording the shareholders an appropriate remedy: "[T]hough, in the end, [stockholders] may be forced out of the particular corporation or business activity, an unconscionable financial loss is not their lot because their stock is purchased (by the corporation) . . . at a fair, equitable, or just figure." In re Nw. Greyhound Lines Inc., 41 Wn.2d 672, 677, 251 P.2d 607 (1952); see also Matthew G. Norton Co. v. Smyth, 112 Wn. App. 865, 873, 51 P.3d 159 (2002).

V. CONCLUSION

This case fails to meet the standard for Supreme Court review, and the petition should be denied.

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PERKINS COIE LLP

By: 

Ronald L. Berenstain, WSBA No. 7573

William C. Rava, WSBA No. 29948

1201 Third Avenue, Suite 4800

Seattle, WA 98101-3099

Telephone: 206.359.8000

Facsimile: 206.359.9000

Email: RBerenstain@perkinscoie.com

WRava@perkinscoie.com

Attorneys for Respondents/Cross-Appellants

Richard M. Snyder, et ux., and David

Hannah, et ux., et al.