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**SUPREME COURT
OF THE STATE OF WASHINGTON**

GREGG BECKER,

Plaintiff/Respondent,

v.

**COMMUNITY HEALTH SYSTEMS, INC. d/b/a COMMUNITY
HEALTH SYSTEMS PROFESSIONAL SERVICES CORPORATION
d/b/a COMMUNITY HEALTH SYSTEMS PSC, INC. d/b/a/
ROCKWOOD CLINIC P.S.; AND ROCKWOOD CLINIC, P.S.,**

Defendants/Petitioners.

RESPONDENT'S SUPPLEMENTAL BRIEF

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ORIGINAL

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I. IDENTITY OF RESPONDENT.

Gregg Becker is the Respondent in this petition for review.

II. SUMMARY OF ARGUMENT.

*Gregg Becker v. Community Health Systems, Inc.*¹ is distinct as to the “jeopardy” clause of the public policy tort of constructive discharge in violation of public policy, because, where no alternative remedy is clearly applicable, then no alternative remedy even exists upon which an “adequacy” analysis can be applied.² This case never reaches the issues Petitioner wants to argue concerning the adequacy or comprehensive nature of the SOX statute, or the conflict it argues exists in precedent. Becker’s case creates a necessary starting point for any jeopardy analysis. If no statute exists which is clearly applicable to the conduct, and to the employer at issue, the tort is the only remedy available. Division III should be upheld.

III. STATEMENT OF THE CASE.

A. The Complaint.

Becker’s complaint was filed against a publicly traded company, CHS, Inc., “doing business as” entities “Community Health Systems, Inc.

¹ *Becker v. Cmty. Health Sys., Inc.*, 182 Wn.App. 935, 332 P.3d 1085 (2014), review granted, 182 Wn.2d 1009, 343 P.3d 759 (2015).

² *Piel v. City of Fed. Way*, 177 Wn.2d 604, 611, 306 P.3d 879 (2013), citing *Cudney v. ALSCO, Inc.*, 172 Wn.2d 524, 259 P.3d 244 (2011); and *Korslund v. DynCorp Tri-Cities Servs., Inc.*, 156 Wn.2d 168, 125 P.3d 119 (2005)

d/b/a Community Health Systems Professional Service Corporation d/b/a Community Health Systems PSC, Inc. d/b/a Rockwood Clinic, P.S.; and Rockwood Clinic, P.S.” *CP 724*. Becker alleged that CHS, Inc. owns and operates hospitals in the State of Washington, including Rockwood. *CP 726, para. 3.4 and 3.5*. CHS, Inc. has its corporate offices in Franklin, Tennessee. *CP 726, para. 3.1*.

CHS, Inc. publicly discusses how its various corporate entities are used to handle subpoenas and investigations by the United States Department of Justice, United States Attorneys’ Offices across the country, the U.S. Department of Health and Human Services, the SEC, private litigants, shareholders, and class action participants. *CP 1542-1547*. Nationwide, actions initially proceed against CHS, Inc., as did Respondent Becker’s here, naming CHS, Inc. as doing business as a variety of entities. *Id.* Litigation must then ensue to find out who CHS might claim is the real entity as issue, so that a court might then determine what remedies might exist.

Respondent Gregg Becker was employed as a Chief Financial Officer, and believed himself to be employed by CHS, Inc. in the CHS position of “Physician Practice Chief Financial Officer – Rockwood Clinic, (Spokane, Washington) – 1024244.” *CP 1367: 12-15*. Becker believed

CHS, Inc. did business in Spokane County through three medical facilities—Deaconess Medical Center, Spokane Valley Hospital, and Rockwood Clinic. *CP 725, 726, para. I, Introduction; paras. 2.4, 2.5, 3.8.*

Becker was recruited by CHS Inc., whom he shorthanded in his complaint as “Community Health Systems (CHS)” in Tennessee. *CP 1367: 5-11.* He worked with CHS, Inc.’s HR Department to secure his employment. *CP 1368: 18-21.* He interviewed with CHS in Tennessee, *CP 1369: 2-5.* He was provided videos about the culture and operations at “Community Health Systems.” *CP 1369: 12-13.* He was moved from his then-location in Atlanta to Spokane by a CHS contractor. *CP 1371: 8-17.* His 401(K) was established with CHS. *CP 1371: 3-7.* Becker was directly supervised by, and reported to, CHS, Inc.’s Chief Financial Officer, Larry Cash, in Franklin, Tennessee. *CP 1372: 21-24.* He was controlled and directed in his work at Rockwood in the state of Washington by CHS financial executives. *CP 1372: 17-20.* Becker states: “As a publicly traded corporation, CHS must report its financial status accurately.” *CP 729, para. 5.8.*

On October 3, 2011, Becker submitted to CHS, Inc.’s Financial Department an accurate and detailed financial projection for Rockwood for the upcoming year of 2012, identifying Rockwood’s accurate cash needs for

both monthly operational expense and capital requirements. *CP 733, para. 5.33*³. Becker's projected report showed a predicted \$12,000,000 operating loss for Rockwood in 2012. *CP 733: 23-25*. CHS had earlier represented to its creditors only a projected \$4,000,000 loss for Rockwood for 2012. *CP 734, para. 5.39*. From October 24 through November 14, 2011, CHS financial supervisors directed him to misrepresent the projected loss. CHS supervisors demanded he rework his accurate figure of \$12,000,000 to a projected loss of only \$4,000,000. *CP 734, para. 5.40*. Becker refused to alter his figure, or to misrepresent the projected loss. *CP 735, para. 5.44*.

Becker was placed on probation, with his performance now rated as "unacceptable." *CP 735, para. 5.47, 5.48*. To retain his position as CHS, Inc.'s Chief Financial Officer at Rockwood, Becker was required to submit the \$4,000,000 loss projection figure demanded by CHS to CHS. *CP 736, para. 5.49*. He was given five days to submit the inaccurate figure, and if he did not, then his job was in jeopardy. *CP 736, para. 5.50, 5.51*.

Becker refused to engage in what he believed to be illegal and criminal behavior. *CP 737, para. 5.55*. Becker observed CHS attempting to

³ The report Becker was required to present to CHS was a projection regarding the estimated financial profitability of Rockwood—a report known as an "EBITDA." This is an approximate measure of a company's operating cash flow. *CP 730, para. 5.12*. Becker understood that this report was of significant import to a company's creditors because, among other uses, it identifies the free income available to the company, Rockwood, to make interest payments on loans. *CP 730, para. 5.13*. The EBIDTA projections also allowed CHS to present its own financial health projections to its investors as a measure of CHS's own liquidity. *Id., para. 5.15*.

circumvent his position to get the report they demanded from one of his subordinates or a replacement. *CP 740: 12-26*. Becker advised CHS, Inc. that if it intended to misrepresent Rockwood's projected budget under the auspices of Becker's department, he would have no option but to submit his resignation. *CP 741, para. 5.85, 5.86*. CHS, Inc.'s employment counsel, Rhea Garrett, determined that Becker's refusal to violate the law was a resignation, and "accepted his resignation" by e-mail. *CP 741, para. 5.90*.

B. Superior Court Procedure.

On February 27, 2012, *after* his termination by email, Becker filed a complaint against CHS, Inc. for wrongful termination in violation of public policy. *CP 122*. Two days later, on February 29, 2012, Becker also filed a complaint against CHS, Inc. with the United States Department of Labor/OSHA. *CP 169-173*. *After he was already discharged*, he reported to OSHA that he had been directed to violate the law by CHS, Inc., but refused to do so. *CP 170*.

Both Petitioners CHS, Inc. and Rockwood immediately attempted to remove Becker's state tort action to federal court, where CHS, Inc. argued that it was not Becker's employer, and did not transact business in Washington. *CP 25, 232-233*.⁴ CHS, Inc. filed the declaration of Ben

⁴ Rockwood argued that Becker's wrongful discharge tort claim was a premature statutory Sarbanes-Oxley (SOX) claim, that Becker was required to complete

Fordham, a Vice President and Chief Litigation Counsel of a new entity—“Community Health Systems Professional Services Corporation” (CHS PSC)—and Fordham now detailed veritable cascades of corporate layers, structures, mergers and names—all offshoots of “CHS.” *CP 270-276.* Fordham included a linear graphic chart of these entities that was so confusing, apparently even to him, that he omitted the very “CHS PSC” corporation he claimed to work for. *CP 279 versus Fordham, para. 1 at CP 270.* Fordham declared that Becker was not employed by who Becker thought he was employed by. *CP 275, para. 12.* The people Becker believed to be his CHS supervisors, and who directed his actions, stated Fordham, were actually employees of his own “CHS PSC.” *CP 271, para. 4.*

The chart also shows that Petitioner Rockwood is not a subsidiary of the reporting company CHS, Inc. Instead, Rockwood is a “member” of a local corporate trilogy in a direct line downward from “CHS Washington Holdings LLC,” the latter being a “Class B member of Rockwood and a member of Deaconess and Valley;” the latter CHS Washington Holdings LLC was downline from “Community Health Investment Company LLC,” which itself is a “Member of CHS Washington Holdings LLC,” which is

administrative exhaustion requirements with OSHA before proceeding, and that he could not pursue any lawsuit against Rockwood for six months, when he could then file a SOX claim. *CP 192-193.*

downstream from CHS/Community Health Systems, Inc., the latter being identified as a “[M]ember of Community Health Investment Company LLC,” which is then directly downstream from Community Health Systems Inc., a “publically traded company.” Community Health Systems Inc. only “[O]wns stock of CHS/Community Health Systems, Inc.” *CP 279.*

Within or outside of that structure—it cannot be determined exactly—another exhibit at CP 861, 871 then showed Petitioner Rockwood Clinic, P.S. engaging in a “Reorganization and Merger Agreement” with CHS Washington Holdings LLC, a “Delaware Limited Liability Company (“Holdings”)” (*see above*), an entity called Spokane Clinic Merger Co., P.S., a “Washington professional service corporation (“Merger Co.”),” which is not on Fordham’s organizational chart either (*see CP 279*), and CHS/Community Health Systems, Inc., a Delaware Corporation (“CHS”—not CHS, Inc.), which is then upline from both “Holdings” and Rockwood on Fordham’s chart. *CP 861, 871, and 279.* “Holdings” and “its Affiliates,” the latter unnamed, “operate” the hospitals in the State of Washington. *CP 871.*

CHS, Inc. had not in fact purchased Rockwood, as Mr. Becker believed; instead, Rockwood was purchased by “an indirect subsidiary” of

CHS, Inc., which merged with Rockwood—and then had Rockwood emerging “as the surviving corporation.” *CP 832, para. 5*. This is not reflected on *CP 279*.

The United States District Court agreed with Becker that his core claim was a state claim of constructive discharge, not a SOX claim, allowed Becker to remove reference to SOX as one of the laws Becker refused to violate, and remanded the case to the state trial court to address the state wrongful discharge claim. *CP 749*. Once back in the state court, CHS, Inc. (and Rockwood) then moved to dismiss the state public policy claims, arguing that SOX remedies were available to Becker, and Becker could therefore not avail himself of a public policy wrongful discharge tort. *CP 802, 806*.

CHS PSC’s Fordham filed a second declaration. *CP 831-834*. He attempted to explain why he, as an employee of CHS PSC, should be allowed to testify about companies which apparently did not employ him, from some “off the chart” entity. *CP 831, para. 1 and 2 vs. CP 279*. Fordham now explained that CHS, Inc. had “jurisdictional contacts,” and that part of his job was to monitor the lawsuits across the country in which CHS, Inc. had been named as a defendant. *CP 832: 1-6*. Fordham went on to explain that even the *logo* of CHS, Inc. and the website were not as they

seemed, and were not owned by CHS, Inc. *CP 832 at para. 3, para. 3,6.*

The issue of which of entity actually employed CFO Becker, or operated in Washington, made its way to hearing in the state trial court as an indirect part of CHS, Inc. and Rockwood dismissal motions. By the time of hearing, Becker's counsel counted thirteen different CHS entities "straight line and sideways" referred to by various classifications. *RP, July 27, 2012, p. 12: 9-13.* CHS PSC, one of the two now petitioning employers, was still not listed on any of the charts or documents. *App. 122, App. 86; App. 212: 1-5.* Were that entity added to the mix, it would tally a total of fourteen entities. It could not be determined if SOX applied. *Id., p. 9: 21 – p. 10: 6.*⁵

Even the entities CFO Becker had understood to be an integrated set of "acquired entities" in the Spokane area, which he himself was designed to oversee, were not as he believed them to be. *CP 273 at para. 7, and compare chart at 279.* The company Becker thought he was working for in Spokane, "CHS, Inc." did not even function in the state of

⁵ Becker theorized that CHS Washington Holdings, LLC, a Delaware corporation, did business as Rockwood Clinic, P.S., which had merged with "Rockwood Clinic Real Estate Holdings," a Delaware corporation, which merged with "CHS Washington Holdings, LLC," a Delaware corporation; that also merged with "Spokane Clinic Merger Co.," and that also merged with CHS Community Health Systems, Inc., which was depicted as being in an upline path, and which did business as "CHS" and "Community Health Systems." *Id., p. 11: 7-16.* But as CHS PSC's Fordham noted, Rockwood's owner, Delaware Limited Liability Company "CHS Washington Holdings LLC, was actually also a "class B member of Rockwood." *CP 272, para. 6, and 279.*

Washington. *Id.* As Becker's counsel noted, "That's not a parent subsidiary structure, that's a mess..." *RP, July 27, 2012, p. 11: 17-18.*

The trial court agreed. It noted the "plethora of corporate entities, many of which have almost the same name....[M]ost all of them call themselves Community Health Systems in some fashion or another. Maybe it is doing business as, or whatever, but this is a very complicated way to do business." *RP, July 27, 2012, p. 51: 17-24.* The court likened the CHS corporate entities to "a bowl of spaghetti at this point, I am not sure exactly what it looks like." *RP 81: 1-6.* The trial court never determined who employed Becker. *RP July 27, 2012 at 52-53.* But it did dismiss CHS, Inc. as a named defendant on CHS, Inc.'s claim that it did not employ Becker. It kept "CHS PSC" as the CHS Defendant. *CP 918-19; RP July 27, 2012, p. 58: 21-25.*⁶

⁶ Colloquy with "CHS PSC" counsel as to the rest of the presentation is illustrative:

MR. KEEHNEL: Your Honor, there never was actually a ruling on CHS PSC's separate little motion about can you name a defendant as a ..."

THE COURT: I think what I said, counsel, is that I am going to rule that you are a defendant in this case.

MR. KEEHNEL: Okay.

THE COURT: Part of this might be because CHS, shall we say, has a lot of entities, People can get confused and, frankly, I think Mr. Becker was somewhat confused.

MR. KEEHNEL: Finally, Your Honor, with CHS PSC having joined in the motion, given this very interesting issue that you just addressed

The trial court's September 7, 2012 order denying CHS PSC's motion to dismiss Becker's public policy tort claims declines to make findings, and states only that:

"1. Community Health System Professional Service Corporation's motion to dismiss is DENIED.

1. The plaintiff's action shall proceed against the following two defendants: (1) Community Health Systems Professional Services Corporation and (2) Rockwood Clinic P.S."

CP 1322.

Rockwood's motion to dismiss was also denied. *CP 1025.*

C. The Administrative OSHA Process.

Meanwhile, back in the federal OSHA proceeding, CHS, Inc. and Rockwood argued via both a 2-page letter emphasizing in bold, "**SOX is not applicable.**" *CP 931, 932, bold in original.* In a much more extensive 27-page letter to OSHA, Petitioners detail at least six different reasons, including the fact that the figures Becker was directed to falsify were "forward looking statements" not covered by SOX, *CP 1299, 1287*, that the financial numbers would "never be reported to the public," *CP 1287, "First," and 1296 at A*, that no SOX implications existed because of

with Mr. Allen...."

THE COURT: The end."

RP, July 27, 2012, p. 84: 9-24.

“safe harbor” regulatory rules, *CP 1299 at C*, that no SOX violation could exist because the figures being required to be reported were immaterial, *CP 1287*, and that since Becker had refused to falsify information or violate the law, neither Petitioner had ever reported false financial information. *CP 931, 932*.

Two and a half years later, on July 23, 2014, OSHA’s Assistant Secretary, whose credentials are unknown, issued a one page decision finding that Mr. Becker has no SOX remedy. *A-42-43, Petition for Review*. Why is not explained. *Id.* Moreover, while SOX was determined to apply to the parent reporting company, CHS, Inc., that company is not a party here and it was not the employer that discharged Mr. Becker. There is *no* finding that SOX applies to the petitioner here—“CHS PSC.” *A-42-43, Petition for Review*. Neither CHS, Inc. nor Rockwood appealed the Secretary’s findings.⁷

D. Division III.

Division III’s ruling erroneously names CHS, Inc., as the appellant. *Petition for Review, p. 1, Ftnote. 1.* That SOX reporting company is dismissed.

⁷ The OSHA ruling “finds” that SOX applies to Rockwood, because, the finding goes, Rockwood is a subsidiary of the reporting company CHS, Inc. But CHS, Inc.’s flow chart submitted in the state and federal district courts show that Rockwood is *not* a subsidiary of CHS, Inc., but is owned by the Delaware Limited Liability Company “CHS Washington Holdings LLC,” which is a “class B member of Rockwood.” *CP 272, para. 6, and 279.*

IV. ARGUMENT.

A. The public policy tort.

An “unlawful discharge in violation of public policy” tort action is recognized where an employee is discharged as a result of his refusing to commit an illegal act, or where the employee is discharged because of whistleblowing activity. *Piel v. City of Federal Way*, 177 Wn.2d, 604, 609-10, citing *Dicomes v. State*, 113 Wn.2d 612, 618, 782 P.2d 1002 (1989).⁸

The original public policy tort was defined in *Thompson v. St. Regis Paper Co.*, 102 Wn.2d 219, 685 P.2d 1081 (1984), in circumstances nearly identical to Becker’s. *Id.*, and see *Piel*, at 609. The tort evolved to four elements.⁹ Debate has occurred over the second element of jeopardy, and it is that element at issue here. Certain precedent holds that where there is a statutory remedy available to adequately vindicate the public policy, the tort is not available. *Piel*, at, e.g., 616, citing *Cudney* and *Korsland*. But in *Piel*, this court recognized the need for a public policy tort despite the existence of statutory remedies. *Piel*, 177 Wn.2d at 614 (holding that coexistence of the tort with other “adequate” remedies may be deemed necessary to vindicate the public policy, and addressing, *in part*, the body of

⁸ There are four categories of the tort, but only these two are raised here. *Piel*, 177 Wn.2d at 610.

⁹ *Piel*, 177 Wn.2d at 610.

law applying the collateral estoppel doctrine to such parallel proceedings). In *Becker's* concurring opinion, Judge Fearing also notes that the tort stands independent of any statute, citing *Piel*, among other precedent. See *Becker* at 1098.¹⁰

The *Piel* coexistence ruling is supported by legislative enactment. Statutes may be “comprehensive” efforts to reach the conduct they can actually reach, but they are explicitly not “exclusive” means to address the public policy at issue, because many situations won’t fall into their elemental requisites. See *Piel*, citing PERC, and also see *Becker*, citing SOX. The SOX statute, as an example, invites supplementation. Its existence is not explicitly intended to diminish other remedies:

“Rights Retained by Employee.--Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any employee under any Federal or State law, or under any collective bargaining agreement.”

18 U.S.C.A. § 1514A (d)

The statute itself states that it is not to be construed to remove other remedies. Decisions using the statute to remove such remedies thus contravene the statute. But all this is academic here. In *Becker*, no

¹⁰ J. Fearing also notes that this “adequate statutory remedy” precluding the use of the tort is not a rule embraced by the majority of jurisdictions across the United States; it is used by only a strict minority of Washington, two other states and Guam, use it. *Id. at 1099, citing* 82 Am.Jur.2d Wrongful Discharge § 54 (2014).

alternative remedy clearly existed to vindicate the public policy at issue. Now explicitly under *Becker*, and previously implicitly under *all* precedent in this state, *some* alternative remedy has been shown to be unequivocally available before its adequacy to vindicate the public policy can be assessed, and the tort precluded. In *Becker*, there is no such statute.

B. Becker's case is not a whistleblower case.

Mr. Becker was not discharged because he was a whistleblower. He was discharged because he refused to become a criminal. Numerous laws criminalize financial misreporting. Becker knew this, and refused to commit a crime. There was no crime ever committed to report.¹¹

C. SOX is not applicable to Becker's situation, just as Petitioners argued to OSHA.

The statute promoted most aggressively by the Petitioners in their appeal is the Sarbanes Oxley "Whistleblower" Act (SOX), 18 U.S.C. § 1514A. The SOX statute is a whistleblower statute.¹² And it is a whistleblower statute of very limited application. At its threshold is the

¹¹ See *Becker*, 182 Wn.App. at 947, where Division III notes that Rockwood and CHS did not constructively discharged Becker for engaging in whistleblower activity: "As the trial court concluded, Mr. Becker's amended complaint implicates the public policy of honesty in corporate financial reporting because he alleged he was constructively discharged after refusing to submit a false or misleading EBITDA projection." *Id.*

¹² The SOX statute is entitled: "a) Whistleblower protection for employees of publicly traded companies." 18 USCA § 1514A.

“reporting” identity of the corporation. SOX applies only to publically traded companies, or only *certain* subsidiaries or affiliates whose financial statements are included within a reporting company’s statements.¹³ This is fact based depending on the corporation’s structure. It would be unreasonable to impute knowledge to an employee of CHSI’s parent/subsidiary structure. Even the trial court couldn’t make heads or tails of the CHS parent/subsidiary/affiliate/unrelated structure; it dismissed CHSI anyway on its representation that it was not Mr. Becker’s employer.¹⁴

Even where the actual employing company “reporting” identity can be tied down to a viable reporting category, then SOX will apply only to a whistleblower who reports an *existing* violation of *certain very specific statutes*.¹⁵

¹³ The SOX Whistleblower protections are actionable only against: 1) a company with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l); or 2) a company that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)) including any subsidiary or affiliate *whose financial information is included in the consolidated financial statements of such company*; or 3) a nationally recognized statistical rating organization (as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c); or 4) any officer, employee, contractor, subcontractor, or agent *of such company*. 18 U.S.C.A. § 1514A.

¹⁴ Division III was sufficiently confused that it identified the “Appellant” as the dismissed Community Health Systems, Inc. (CHSI), when that corporation was dismissed from the action at the trial court level.

¹⁵ SOX requires that the *existing* violation reported must be a violation of certain very specific statutes: “[T]he plain, unambiguous text of § 1514A(a)(1) establishes six categories of employer conduct against which an employee is protected *from retaliation for reporting*: violations of 18 U.S.C. § 1341 (mail fraud), § 1343 (wire fraud), § 1344 (bank fraud), § 1348 (securities fraud), any rule or regulation of the SEC, *or any*

The SOX remedy has now been proved here to be demonstrably nonexistent for Mr. Becker. *A-42-43, Petition for Review*. Why Mr. Becker has no such remedy remains unknown. SOX will certainly apply to the parent reporting company, “CHS, Inc.,” but that company is not Mr. Becker’s employer. It isn’t the company that discharged Mr. Becker. The reporting status of the petitioner “CHS PSC” is not known. *A-42-43, Petition for Review*. And in this court, even Petitioner Rockwood was not represented to be reporting subsidiary.¹⁶ While SOX is thus indeed comprehensive as to conduct it might reach, it doesn’t reach Becker’s facts.

D. Criminal statutes are not applicable because no crime was ever committed.

The criminal statutes offered by the Petitioners and analyzed by Division III all require the commission of a crime to be actionable. *See Becker* at 1091-1092. This includes even 18 U.S.C. §2(a), which criminalizes the act of commanding or inducing a crime that is actually committed, i.e. that “induces its commission.” But committing a crime is

provision of federal law relating to fraud against shareholders.” Lockheed Martin Corp. v. Admin. Review Bd., U.S. Dep’t of Labor, 717 F.3d 1121, 1130 (10th Cir. 2013), emphasis added; and, e.g., Van Asdale v. International Game Technology, 577 F.3d 989, 997 (9th Cir. 2009) (where an employee reported existing conduct of others that was believed to be shareholder fraud).

¹⁶ CHS, Inc.’s flow chart submitted in the state and federal district courts show that Rockwood is *not* a subsidiary of CHS, Inc., but is owned by the Delaware Limited Liability Company “CHS Washington Holdings LLC,” which is a “class B member of Rockwood.” *CP 272, para. 6, and 279.*

precisely what CFO Becker refused to do. Even 17 C.F.R. § 240.21F-2(b)(1)(i)'s remedy for the "reporting of conduct likely to occur" didn't occur here until *after* Mr. Becker was already unlawfully discharged. While employed, Mr. Becker could not report a "crime likely to occur" because such a crime *wasn't* likely to occur. Mr. Becker wouldn't engage in criminal conduct, nor would he let it happen in his department. This remedy only first became available after he was discharged for refusing to commit the crime, when he could now reasonably believe that the crime would be likely to occur.

Even the applicability of RCW's criminal statutes is jurisdictionally uncertain. There is no crime committed in Washington. CHSI, the perpetrator, doesn't do business in the state of Washington. The "perpetrator" directing Becker to commit a crime is in Franklin, Tennessee—not the state of Washington.

E. Becker's case is different.

Even this state's whistleblower cases do not involve facts such as Mr. Becker's. In none of the precedent is there an employer directive to an employee to violate the law or lose his/her job. *See Rickman v. Premera Blue Cross*, 183 Wn.App. 1015 (2014) *review granted*, 182 Wn.2d 1009, 343 P.3d 759 (2015) (*unpub'd*); *Rupert v. Kennewick Irr. Dist.*, 184

Wn.App. 1004 (2014) *review denied sub nom., Rupert v. Kennewick Irrigation Dist.* (Wash. Apr. 1, 2015) (*unpub'd*); *Worley v. Providence Physician Servs. Co.*, 175 Wn.App. 566, 307 P.3d 759 (2013); *Weiss v. Lonquist*, 173 Wn.App. 344, 293 P.3d 1264 *review denied*, 178 Wn.2d 1025, 312 P.3d 652 (2013); *Cudney*, 172 Wn.2d at 524; *Korslund*, 156 Wn.2d at 168; *Dicomes v. State*, 113 Wn.2d at 612. All such cases involve clear application of a statute or administrative regulation to the conduct involved. There is no confusion as to employing entity to assess application of statute. There is no issue arising as to which jurisdiction's statute would encompass the actionable conduct. *Id.*

Even in this state's non-whistleblower cases, the same applies. *Piel*, 177 Wn.2d at 604 (discharge of an employee for asserting collective bargaining rights); *Gardner v. Loomis Armored, Inc.*, 128 Wn.2d 931, 913 P.2d 377 (1996)(discharge of an employee after violating a work rule to save someone in a life-threatening situation); *Thompson v. St. Regis Paper Co.*, 102 Wn.2d at 219 (discharge of an employee for promoting compliance with a certain federal Act).

In the one case in which an employee was directed to violate the law, there is also a clear application of statute or administrative regulation to the conduct involved, no confusion as to employing entity to assess

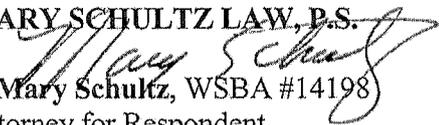
application of statute, and no issue arising as to which jurisdiction's statute would encompass the actionable conduct. *Rose v. Anderson Hay & Grain Co.*, 183 Wn.App. 785, 335 P.3d 440 (2014) *review granted*, 182 Wn.2d 1009, 343 P.3d 759 (2015).

V. CONCLUSION.

A Chief Financial Officer is in a particularly intricate position of being able to promote the public policy of honesty in financial reporting. If, by telling his employer that he will resign rather than violate the law, he risks being discharged, cast into a sea of corporate chameleon identities, told his employer is not his employer, and face some employer arguing contradictory positions in two separate forums to escape the law of each, then he simply cannot refuse to violate the law and walk away. Where no clearly available alternative remedy exists, and that is the case here, the tort is necessary. Division III should be upheld, and the case remanded for further proceedings in the trial court.

Respectfully submitted this 10th day of April, 2015.

MARY SCHULTZ LAW, P.S.


/s/Mary Schultz, WSBA #14198

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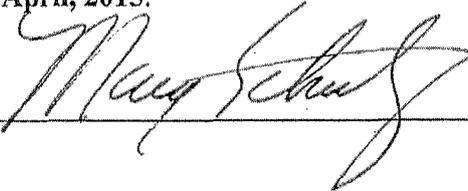
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is a person of such age and discretion as to be competent to serve papers; and that on **April 10, 2015**, she electronically filed the foregoing **Respondent's Supplemental Brief**, and served the following individuals in the manner indicated below:

ATTORNEYS FOR DEFENDANTS/PETITIONERS	
Keller Wayne Allen Law Firm of Keller W. Allen, PC 5915 S Regal Street, Ste 211 Spokane, WA 99223-5083	<input checked="" type="checkbox"/> Via E-Mail
Stellman Keehnel Katherine A. Heaton DLA Piper LLP 701 5th Ave Ste 7000 Seattle, WA 98104-7044	<input checked="" type="checkbox"/> Via E-Mail

Dated this 10th day of **April, 2015**.



OFFICE RECEPTIONIST, CLERK

To: Mary Schultz
Cc: Keehnel, Stellman; Heaton, Katherine; Keller Allen; mmp@kellerallen.com; Patsy Howson; Mary Palmer; Diana Nelson; Tina Ingram
Subject: RE: 90946-6 - Gregg Becker v. Community Health Systems, Inc., et al. RESPONDENT GREGG BECKER'S SUPPLEMENTAL BRIEF

Rec'd 4/10/15

From: Mary Schultz [mailto:MSchultz@MSchultz.com]
Sent: Friday, April 10, 2015 4:14 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: Keehnel, Stellman; Heaton, Katherine; Keller Allen; mmp@kellerallen.com; Patsy Howson; Mary Palmer; Diana Nelson; Tina Ingram
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To the Clerk:

Attached is Respondent Gregg Becker's Supplemental Brief in *Gregg Becker v Community Health Systems, Inc., Rockwood, Supreme Court Cause number 90946-6*. My understanding is that Petitioners have agreed to accept email service.

Regards,

Mary Schultz WSBA 14198

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