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NO. 91610-1

SUPREME COURT OF THE STATE OF WASHINGTON

WASHINGTON STATE DEPARTMENT OF LABOR AND
INDUSTRIES,

Respondent,

v.

LYONS ENTERPRISES, INC. d/b/a JAN-PRO CLEANING SYSTEMS,

Petitioner.

**DEPARTMENT OF LABOR AND INDUSTRIES'
SUPPLEMENTAL BRIEF**

ROBERT W. FERGUSON
Attorney General

STEVE VINYARD
Assistant Attorney General
WSBA No. 29737
Office Id. No. 91022
P.O. Box 40121
7141 Cleanwater Drive SW
Olympia, WA 98504-0121
(360) 586-7715



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I. INTRODUCTION

The Industrial Insurance Act is designed to reduce economic suffering caused by work-place injuries—to that end it embodies a legislative choice to provide broad coverage for Washington workers. Such coverage is not diminished by the choice of a business model. The selection of the franchise business model does not exclude the janitorial franchisees here; rather they are subject to the Act because the essence of the work they perform under their contracts with Lyons Enterprises, Inc. (Lyons) is personal labor. Just like any other independent contractor would be, they are covered workers under these circumstances.

When deciding whether Lyons's franchisees are covered, this Court should focus on the work that Lyons's franchisees provide to Lyons. Under the Act, it is the essence of the work performed under a contract, not the essence of a business model, that determines whether the worker is covered by the Industrial Insurance Act. Because Lyons's relationship with its franchisees, at its essence, is the exchange of personal labor for money, Lyons's franchisees are workers covered by the Act.

II. ISSUES

1. When deciding whether Lyons's franchisees were covered under the Industrial Insurance Act, is the work performed by Lyons's franchisees examined rather than the franchise relationship itself, when the case law establishes that the proper focus is on the essence of the work performed under a contract?

2. Is an independent contractor exempt from coverage merely because the contractor had the ability to use another worker when *White v. Department of Labor & Industries*, 48 Wn.2d 470, 294 P.2d 650 (1956), held that an independent contractor is exempt only if he or she “employs others” to perform work?
3. Does the exception in RCW 51.08.195 for independent contractors who perform work under a contract apply to a franchisee who is not free from the direction or control of a franchisor and who is not customarily engaged in an independently established trade or business?

III. STATEMENT OF THE CASE

A. Lyons Contracts for Cleaning Services and Directs Its Franchisees to Provide Those Services to Lyons’s Customers

Jan-Pro International provides janitorial services to 32,000 customers in 48 states and nine countries, using the “Jan-Pro System.” CP 1902-03. Lyons is a regional franchisor for Jan-Pro International, operating in western Washington. CP 2132.

Lyons enters into contracts with businesses to provide commercial cleaning services. *See* CP 1907-08, 1926, 2155, 2167. Lyons offers each cleaning contract to one of its franchisees, which the franchisees can either accept (thereby entering into a contract *with Lyons* to provide services to that particular customer) or reject. *See* CP 316, 1908. If the franchisee accepts the assignment, he or she must provide commercial cleaning services to Lyons’s customer. CP 1902, 1906. If the franchisee rejects it, Lyons attempts to find the franchisee another cleaning contract. CP 1911.

Lyons can remove a franchisee from a cleaning contract either for cause or without cause. CP 318, 1918. If Lyons removes a franchisee from a customer account for a reason “other than Franchisee Misconduct,” and if it does so within one year of the date that the franchisee began providing cleaning services to that customer, then the franchise agreement provides that Lyons shall find a new account for the franchisee “within a reasonable time.” CP 318. “Franchisee misconduct” is defined as “faulty workmanship, untrustworthiness, dishonesty, providing services in a manner unsatisfactory to one or more customers, or otherwise defaulting under this Agreement or its service contract with the Customer.” CP 318. Lyons has no duty to find replacement work for a franchisee if an account is taken away based on “franchisee misconduct.” *See* CP 318.

Lyons collects a ten percent royalty fee and a five percent management fee on all of its cleaning contracts. CP 1928. In some cases, Lyons charges the franchisee one or more additional fees. CP 1915-16, 1932-33. Lyons must remit three percent of the gross billing amount to Jan-Pro International. CP 1931. After collecting all applicable fees, Lyons then sends the remainder to the franchisee. CP 1930.

Under the terms of the franchise agreement, a franchisee may only provide commercial cleaning services through Lyons during the life of the franchise agreement and cannot perform any commercial cleaning services

of any kind for a year after the franchise agreement is terminated.

CP 344-45, 1920.¹ If a franchise is terminated, Lyons has the right to purchase all of the former franchisee's assets related to commercial cleaning, including items that do not bear the Jan-Pro trademark. CP 344.

A franchisee may advertise and seek customers on its own, but, if the franchisee convinces a new customer to sign up for cleaning services, the new customer must sign a contract with Lyons and the cleaning contract becomes the property of Lyons. CP 1933.

Before a franchisee can provide any cleaning services, he or she must complete a 30-hour training course over a five-week period regarding the proper methodology for cleaning when using the Jan-Pro System. CP 1912. New franchisees are provided with a 422-page training manual outlining the Jan-Pro System, a roughly 200-page safety manual, and a roughly 100-page policies and procedures manual. CP 1938, 2027-28. The franchise agreements reference those manuals, and provide that the franchise agreement may be terminated if the franchisee fails to follow the procedures set forth in those manuals. CP 335, 340.

¹ Lyons argues that a former franchisee is not required to terminate his or her business after the franchise agreement ends, and suggests that the former franchisee is merely restricted from directly competing with Lyons for customers for one year. Pet. at 19. However, a former franchisee not only cannot do work in the janitorial business for one year after the contract terminates but must also relinquish whatever interest he or she holds in a company that performs commercial cleaning services. See CP 344-45.

Lyons conducts audits on at least a quarterly basis of all of its customer accounts to ensure that the franchisees are providing appropriate janitorial services. CP 2173-74.

B. The Court of Appeals Concluded That Many of Lyons's Janitor Franchisees Were Likely Its Workers

After an audit, the Department of Labor and Industries (Department) found that several of Lyons's franchisees were "workers" as defined by RCW 51.08.180; CP 1744-46. Lyons appealed to the Board of Industrial Insurance Appeals, which decided that the franchisees who employed workers of their own were exempt from industrial insurance coverage, but that the remaining franchisees were covered workers. CP 22-31. The superior court found that all franchisees were covered. CP 2391-99. The Court of Appeals held that the franchisees who did not have workers of their own were covered, but that the ones who did have workers of their own were not. *Lyons v. Dep't of Labor & Indus.*, 186 Wn. App. 518, 532-35, 347 P.3d 464 (2015). The Court of Appeals concluded that the record was insufficient to allow for a determination regarding how many of Lyons's franchisees actually used other workers to provide cleaning services. *Id.* at 538. It remanded the case to the Board. *Id.*

This Court then granted Lyons's petition for review.

IV. ARGUMENT

A. Lyons Is an Employer, and Its Franchisees Are Its Workers, Because It Contracts With Its Franchisees for Work and the Essence of the Work Under Those Contracts Is Personal Labor

Lyons, like any other business that uses independent contractors to perform labor, is responsible to pay workers' compensation premiums for the franchisees who perform work for it when the essence of the work that is performed under those contracts is the franchisee's personal labor. *See* RCW 51.08.180; *White*, 48 Wn.2d at 472-74. Under the plain language of the Industrial Insurance Act, the proper focus is on the essence of the *work* that is performed under an independent contract. RCW 51.08.180; *Norman v. Dep't of Labor & Indus.*, 10 Wn.2d 180, 184, 116 P.2d 360 (1941) (noting that whether an independent contractor is covered by the Act depends on whether "the essence of the work being performed . . . was personal labor"); *Dana's Housekeeping, Inc. v. Dep't of Labor & Indus.*, 76 Wn. App. 600, 607, 886 P.2d 1147 (1995) (rejecting employer's argument that the essence of its contract with its workers was "an agreement to accept referrals and share a fee" rather than the personal labor of the housecleaners).

1. The Law Does Not Make an Exception for Franchisees and Franchisors: the Standard Definition of "Worker" and "Employer" Apply to Them

Since 1937, the Act has required employers to provide industrial insurance coverage for independent contractors who provide personal

labor to the employer. RCW 51.08.070; RCW 51.08.180; *see Norman*, 10 Wn.2d at 183. The Act defines “worker” and “employer” in ways that include independent contractors and those who hire them.

RCW 51.08.070, .180. Under the Act, the term “employer” includes any person or entity “who *contracts* with one or more workers, *the essence of which is the personal labor of such worker or workers.*” RCW 51.08.070 (emphasis added). Similarly, “worker” includes every person “who is working under an independent contract, the essence of which is his or her personal labor” RCW 51.08.180.

The Legislature’s intention in expanding the reach of “worker” and “employer” in this fashion was “to broaden the industrial insurance act, and bring under its protection *independent contractors whose personal efforts constitute the main essential in accomplishing the objects of the employment*, and this, regardless of who employed or contracted for the work.” *Norman*, 10 Wn.2d at 184 (emphasis added). This furthers the important goal, inherent in the Industrial Insurance Act, of liberally construing the Act in order to reduce to a minimum the suffering and economic hardship associated with workplace injuries. RCW 51.12.010.

Franchisees who provide labor to other entities as independent contractors, like any other people who provide labor to others as independent contractors, are workers under the Act if they perform work

under contracts and the essence of the work under those contracts is personal labor. The Act neither exempts franchisees from coverage nor provides for a different test to use to decide whether independent contractors who happen to be franchisees are workers.

2. The Proper Analysis Is the Essence of the Work Performed Under a Contract, Not the Type of Business a Worker Is Engaged in

Lyons argues that, when deciding whether Lyons's franchisees are its workers, this Court should not look at the cleaning contracts under which Lyons's franchisees provide labor to Lyons, but instead look only to the contracts that create the franchise relationship itself, and ask whether the essence of the franchise relationship is personal labor. Pet. at 8.

Lyons's argument ignores that it does not simply enter into franchise agreements with its franchisees, it also contracts with them for their labor by offering them work that they then accept. Under RCW 51.08.070 and RCW 51.08.180, the dispositive issue is whether the essence of the work performed under a contract is personal labor, not what the essence of the business relationship is between an independent contractor and the one who hires him or her.

If a firm enters into even one contract with an independent contractor for work, and the essence of the work under that contract is the personal labor of the independent contractor, then the independent

contractor is the worker of that firm and the firm is the employer of that independent contractor. RCW 51.08.070, .180. This is true even if that firm and the independent contractor have a long-term business relationship that involves an exchange of things other than personal labor: so long as the firm entered into one or more contracts with the independent contractor for work and the essence of the work under that contract is personal labor, the independent contractor is the firm's worker when it performs work under that contract.

Lyons contracts with its franchisees for its franchisee's personal labor when it offers cleaning work to them and they accept the offered work. The franchise relationship may involve things other than the provision of labor, but that fact is not relevant to whether Lyons is an employer under the Industrial Insurance Act. Whether Lyons's franchisees are its workers depends on whether it contracts for the labor of its franchisees (it does) and whether the essence of the work performed under those contracts is personal labor (it is).

Obfuscating the issues, Lyons argues that, under the Court of Appeals' opinion, all franchisees that provide "services" rather than "goods" are covered workers, and asserts that this purported dichotomy between goods and services is artificial. Pet. 9-10. However, nowhere did the Court of Appeals endorse the view that the test for coverage is whether

a franchise involves goods or services, and the Department has expressly acknowledged that such a position would be overly simplistic, as questions of coverage under the Act are complex and case-specific.

Answer to Pet. at 12; Answer to Amicus IFA at 12-14.

Rather, like any other independent contractor, a franchisee who provides work under a contract is a covered worker if the essence of that work is personal labor.² Lyons asks, presumably rhetorically, where the Department will draw the line between franchisees who are covered and those who are not. Pet. 10. The Legislature has decided where to draw the line: the line is drawn between work under an independent contract that

² As it has throughout the case, Lyons points to the McDonald's corporation and argues that it would not make sense to find a McDonald's franchisee to not be covered because he or she sells hamburgers but to find Lyons's franchisees covered because its franchisees provide cleaning services. See Pet. at 9-10. While such a distinction might indeed not make practical sense, that is not the *legal* reason why a typical McDonald's franchisee would not be covered while Lyons's franchisees are covered. First, it would be impossible for a lone McDonald's franchisee to operate without workers, and, therefore, the franchisee would be exempt under *White*, which exempts contractors who cannot perform a contract without assistance. *White*, 48 Wn.2d at 474. Conversely, many of Lyons's franchisees do not have workers of their own. See CP 1636-41 (Department auditor explaining that she found that 18 of Lyons's franchisees had workers of their own and that the other 92 did not). Second, a McDonald's franchisee, like any other independent contractor, would be covered as the worker of a franchisor only if the franchisee provided work to the franchisor under a contract. If, by becoming a franchisee, a McDonald's franchisee obtained the right to do business under the McDonald's trademark but the franchisor did not contract for the labor of the franchisee, then the franchisee would not be covered even if he or she did not have any workers assist in the operation of the business. RCW 51.08.070. Conversely, Lyons does not simply enter into franchise agreements that give its franchisees permission to do business using the Jan-Pro trademark: Lyons directly contracts with its franchisees for their labor, and all of the work that the franchisees perform is done under a contract with Lyons. CP 318, 1902, 1906, 1908.

has personal labor at its essence, and work that has at its essence something other than personal labor. RCW 51.08.070, .180.

3. The Essence of the Work That Lyons's Franchisees Provide to It Is Their Personal Labor

Lyons contracts for the labor of its franchisees: Lyons contracts with a customer for cleaning services, and then offers this work to one of its franchisees. CP 318, 1908. Once a franchisee accepts Lyons's offer of a work assignment, this creates a contract between Lyons and the franchisee to provide cleaning services to that customer. *See* CP 1902, 1906.

Because Lyons contracts with its franchisees for work under independent contracts, and because the essence of the work under those contracts is personal labor, Lyons is an employer and its franchisees are its workers under RCW 51.08.070 and RCW 51.08.180.

Furthermore, even assuming that this Court should look to the essence of Lyons's franchise relationship with its franchisees, the essence of that relationship is also personal labor. In essence, what a franchisee purchases, when it becomes a franchisee, is the right to receive a certain volume of work from Lyons (with the volume of work received depending on the amount the franchisee paid Lyons), and, in return, the franchisee remits a portion of the money he or she earns from performing that work to Lyons. At bottom, the franchise relationship is a mechanism that allows

a franchisee to perform personal labor and receive a guaranteed level of income for that labor, with Lyons sharing in the franchisee's profits.

B. RCW 51.08.070 Applies to Qualified Independent Contractors Regardless of Whether They Are Sole Proprietors

Raising an argument it did not present to the Board, superior court, or Court of Appeals, Lyons contends that franchisees should be exempt based on RCW 51.12.020, which exempts sole proprietors and other business owners from mandatory coverage. Pet. at 11. This Court should not consider that argument because Lyons did not raise it below. *See Pappas v. Hershberger*, 85 Wn.2d 152, 153-54, 530 P.2d 642 (1975); *B & R Sales, Inc. v. Dep't of Labor & Indus.*, 186 Wn. App. 367, 381-83, 344 P.3d 741 (2015); *King Cty. v. Wash. State Boundary Review Bd. for King Cty.*, 122 Wn.2d 648, 668, 860 P.2d 1024 (2015).

As this Court explained in *King County*, the rule that an appellate court will not consider an argument if it was not presented to an administrative review board “is more than just a technical rule of appellate procedure; instead, it serves an important public policy purpose in protecting the integrity of administrative decision making.” *King County*, 122 Wn.2d at 668. Declining to consider newly raised arguments also serves several public policy interests, including discouraging the flouting

of administrative processes, protecting agency autonomy, aiding judicial review, and promoting judicial economy. *Id* at 668-69.

In any event, Lyons's argument should be rejected, as it would lead to the absurd result of no independent contractors ever being covered under the Industrial Insurance Act, even when they perform work under a contract and the essence of the work is personal labor. Any person who is engaged in activity for profit on a self-employed basis, including one who provides work as an independent contractor, will be a "sole proprietor" under the law unless another type of business entity (such as a corporation or LLC) is created. *See Dolby v. Worthy*, 141 Wn. App. 813, 816, 173 P.3d 946 (2007).

If RCW 51.12.020(5), (8), and (13) are read to exempt all independent contractors from coverage if they are sole proprietors or officers of a corporation or LLC, this would render the Legislature's extension of coverage to independent contractors through its amendments to RCW 51.08.070 and RCW 51.08.180 meaningless, as an independent contractor will always be a sole proprietor (and thus exempt under RCW 51.12.020(5)) or, if an LLC or corporation was formed, an officer of it (and thus exempt under RCW 51.12.020(8) or (13)). It is implausible that the Legislature extended coverage to independent contractors by amending RCW 51.08.070 and RCW 51.08.180 to include them within its reach only

to take coverage away through RCW 51.12.020(5), (8), and (13).³ That, however, would be the inevitable conclusion of applying RCW 51.12.020(5), (8), and (13) to independent contractors, as Lyons argues should happen here. Pet. at 11.

Properly read, RCW 51.12.020 (5), (8), and (13) exempt sole proprietors and officers of corporations or LLCs from coverage as the *employee* of the sole proprietorship, corporation, or LLC, but those subsections of RCW 51.12.020 do not prevent coverage if an independent contractor (who happens to have formed one of those types of businesses) performs work under a contract with another person or firm and the essence of the work under the contract is personal labor. In other words, RCW 51.12.020(5), (8), and (13) clarify that a sole proprietor or officer of a corporation or LLC does not become a covered worker *simply* by virtue

³ This Court's decision in *Department of Labor & Industries v. Fankhauser*, 121 Wn.2d 304, 309, 849 P.2d 1209 (1993), has broad language suggesting that sole proprietors and partners are not covered by the Industrial Insurance Act, but the language in that decision does not reasonably support the conclusion that sole proprietors are never covered even when they provide labor to another under an independent contract, the essence of which is personal labor. The workers in *Fankhauser* sought coverage based on the fact that they developed occupational diseases that were caused in part by work as the employee of an employer and in part by work they performed as sole proprietors. *See id.* at 309-10. The workers did not argue that they were covered as independent contractors, and the court thus had no occasion to consider, and did not address, whether RCW 51.12.020(5) excluded such workers from coverage. *See id.* at 310-14. Rather, the court concluded that the workers were covered because it concluded that the last injurious exposure rule was not a basis to deny coverage to a worker whose disease is caused in part by work as an employee of an employer, which is indisputably covered by the Act. *Id.* at 311-14. Since the court did not discuss the issue of whether independent contractors who provide work under the contract, the essence of which is personal labor, are covered workers even if they happen to be sole proprietors, the decision is of little aid in deciding whether coverage exists in that instance.

of being the owner of a sole proprietorship or an officer of a corporation or LLC. However, RCW 51.12.020 does not preclude a sole proprietor or corporate officer from being covered as an independent contractor under RCW 51.08.070 and .180. This interpretation of RCW 51.12.020(5), (8), and (13) does not render those subsections of the statute meaningless because many sole proprietors and officers of corporations or LLCs (including those who happen to be franchisees) do not provide work under an independent contract and thus would not be covered under the Act.⁴ Lyons's franchisees, however, are covered under the Act, because they perform work under their contracts with Lyons and the essence of that work is personal labor.

C. Under *White*, an Employer Must Show That an Independent Contractor Actually Used Another Worker to Perform Some of the Work Under the Contract, Not Simply That the Independent Contractor Could Have Done So

Lyons's franchisees are also not exempt simply because the franchise agreement did not prevent the franchisees from using other workers to perform work under their contracts with Lyons. *See White*, 48 Wn.2d at 472-73. Lyons contends that under *White*, the contractual ability to use another to perform work is enough to deprive an independent contractor of the protection of the Industrial Insurance Act regardless of

⁴ For example, a sole proprietor may own a grocery shop and not provide labor to another under an independent contract. Such a business owner would be excluded under RCW 51.12.020(5) unless it elected coverage.

whether a franchisee ever actually used other workers to perform any of the work under a contract. Pet. 14. *White* does not support this argument: under *White* the key issue is whether an independent contractor actually used other workers to perform some of the work under a contract, not whether the contractual ability to do so existed. *See White*, 48 Wn.2d at 472-73.

White set a three-part test to determine if personal labor is the essence of a contract: personal labor is *not* the essence of the contract if the independent contractor (1) “must of necessity own or supply machinery or equipment (as distinguished from the usual hand tools),” (2) “obviously could not perform the contract without assistance,” or (3) “of necessity or choice *employs others* to do all or part of the work he [or she] has contracted to perform.” *Id.* at 474 (emphasis added). Thus, under the third prong of *White*, an independent contractor is not covered if he or she *actually* “employs others” to do work. This in no way suggests that the mere fact that the independent contractor *could have* assigned the work to another person will prevent the independent contractor from being covered under the Act. *See id.*

Indeed, the *White* court disavowed language that this Court had used in two of its earlier decisions, which had suggested that the mere contractual ability to use another to perform work was enough to defeat

coverage under the Industrial Insurance Act. *See id.* at 472-73 (expressing disagreement with *Crall v. Department of Labor & Industries*, 45 Wn.2d 497, 275 P.2d 903 (1954) and *Cook v. Department of Labor & Industries*, 46 Wn.2d 475, 282 P.2d 265 (1955). *White* explained:

We are now convinced that the language in the *Crall* and *Cook* cases is too broad, and that the legislature in 1937, in adopting the section of the workmen's compensation act with which we are now concerned, had something more in mind than the protection in those extremely rare cases in which the party for whom the work is done *requires the personal services of the independent contractor and is unwilling that any part of the work be done by someone else.*

Id. at 473-74.

Thus, not only did *White* not hold that the contractual ability to use another worker to perform part of the work of a contract defeats coverage under the Industrial Insurance Act, *White* disapproved of language in some of its earlier positions that appeared to endorse that view. *White*, 48 Wn.2d at 473-74. *White* does not aid Lyons. *See id.*

D. Lyon's Franchisees Are Not Exempt Under the Six Factor Test in RCW 51.08.195

Substantial evidence supports the Board's findings that Lyons is not exempt under RCW 51.08.195 because it does not meet all six of the elements required for an exemption under that statute. In a case involving a challenge to the industrial insurance premiums charged to an employer,

the Board's findings of fact are reviewed for substantial evidence. RCW 51.48.131; RCW 34.05.570(3)(e). As the Board found, Lyons's franchisees are neither "free from its direction or control" as required by RCW 51.08.195(1) nor "customarily engaged in an independently established trade, occupation, profession or business," as required by RCW 51.08.195(3); CP 30.

Lyons seeks an exemption from the plain requirements of the statute. Lyons contends that the control that it exercised over its franchisees is simply a "traditional element of a franchised business" and that this should not constitute "control" for the purposes of RCW 51.08.195(1); Pet. 15-18. However, RCW 51.08.195(1) unambiguously provides that that criterion is met only when the independent contractor is "free" from direction and control; where control is exercised, RCW 51.08.195(1) is not met regardless of why an employer chose to exercise control over the independent contractor. Control was exercised here and Lyons does not meet RCW 51.08.195(1). Lyons may believe it is unfair that it cannot get the benefit of RCW 51.08.195 because its business model is to have control. But like every business owner in Washington, Lyons needs to decide whether its business by necessity requires control; if it does, the exemption does not apply.

Lyons's franchisees are also not "customarily engaged" in an "independently established trade," as most of the franchisees had not performed janitorial work before becoming franchised with Lyons, none could pursue janitorial work independent of Lyons during the life of the franchise agreement, and the "noncompete" clause within the franchise agreement would require them to stop all business activities related to commercial janitorial work for a year once the franchise agreement ended. *Lyons*, 347 P.3d at 473-74. Lyons notes that the franchisees were all "licensed businesses" and were responsible "for their own books, taxes, insurance, employees, scheduling, and more." Pet. 18. However, the key under RCW 51.08.195(3) is whether a franchisee is "customarily engaged" in an "independently established" business. The janitorial businesses the franchisees pursue here are wholly dependent on Lyons and Jan-Pro, and substantial evidence supports the Board's finding to that effect. *See* CP 30.

RCW 51.08.195 allows one who utilizes the work of an independent contractor to not be responsible to pay premiums for the contractor's work even when the essence of the work is personal labor, but only under narrowly defined circumstances that are not present here. Although it does not couch its argument as such, Lyons essentially argues that it is contrary to public policy for it to have to establish that a

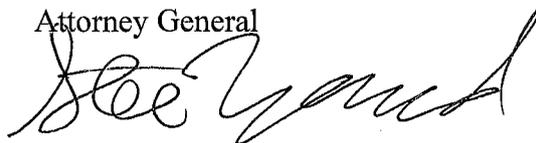
franchisee is free from its direction or control or that it is customarily engaged in an independently established business, touting the benefits of the franchise business model and its importance to the economy. Pet. 16-20. However, Lyons's argument that RCW 51.08.195's requirements are too exacting when applied to franchisees who work as independent contractors is an argument best directed to the Legislature.

V. CONCLUSION

It is well established that it is the essence of the work performed under a contract, not the business model of the one who hires an independent contractor, that determines whether industrial insurance coverage exists. This Court should reject Lyons's attempt to carve out an exception to the coverage requirement merely because it has chosen the franchise model, and affirm the Court of Appeals, which correctly held that Lyons's franchisees perform work for it under independent contracts and the essence of their work—janitorial services—is personal labor.

RESPECTFULLY SUBMITTED this 2nd day of November, 2015.

ROBERT W. FERGUSON
Attorney General



STEVE VINYARD
Assistant Attorney General
WSBA No. 29737
Office Id. No. 90122

NO. 91610-1

**SUPREME COURT
OF THE STATE OF WASHINGTON**

WASHINGTON STATE
DEPARTMENT OF LABOR
AND INDUSTRIES,

Respondent,

v.

LYONS ENTERPRISES, INC.,

Petitioner.

DECLARATION OF
SERVICE

The undersigned, under penalty of perjury pursuant to the laws of the State of Washington, declares that on the below date, I served the Department of Labor and Industries' Supplemental Brief and this Declaration of Service to all parties on record by U.S. Mail and Email as follows:

Ryan P. McBride
Lane Powell, PC
P.O. Box 91302
Seattle, WA 98111-1302
mcbriider@lanepowell.com

Douglas Berry
Miller Nash Graham & Dunn, LLP
2801 Alaskan Way, Pier 70, Suite 300
Seattle, WA 98121-1128
dberry@grahamdunn.com

DATED this 2nd day of November, 2015, at Tumwater, Washington.



AUTUMN MARSHALL

Legal Assistant 3

(360) 586-7737