

No. 93056-2

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

CERTIFICATION FROM UNTIED STATE DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON IN

MICHAEL ALLEN,

Appellant,

v.

ZECHARIAH CLIFTON DAMERON IV AND DANIEL STANDEN

Respondents.

BRIEF OF *AMICUS CURIAE*
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SUPPORTING APPELLANT MICHAEL ALLEN

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I. INTEREST OF AMICUS CURIAE

The Washington Employment Lawyers Association (“WELA”) appear as *amicus curiae* supporting the position of Appellant Michael Allen. WELA’s members frequently represent employees cases brought under state wage statutes. WELA members have an important interest in ensuring that the people responsible for a company’s failure to pay wages can be held individually liable for unpaid wages under chapter 49.52 RCW, despite the company’s insolvency. WELA urges the Court to adhere to its decision in *Morgan v. Kingen*, 166 Wn.2d 526, 210 P.3d 995 (2009), and clarify that officers, vice principals, or agents who control the payment of wages when an employee’s wages accrue cannot avoid individual liability for unpaid wages through corporate bankruptcy.

II. INTRODUCTION AND SUMMARY OF ARGUMENT

A company’s insolvency presents problems for its employees. First, employees will lose their jobs. Second, the company often lacks the funds necessary to pay the wages employees earned prior to the insolvency.

Washington State has chosen to increase the likelihood that employees will be able to recover their unpaid wages by making both the employer and the officers, vice principals, or agents of the employer who control wage payment liable for the willful withholding of wages. RCW

49.52.070. The statute serves twin purposes. First, by raising the specter of personal liability for the people who decide whether to pay wages, the statute encourages those winding up corporate affairs to prioritize payment of wages. Second, when the individuals who control payment of wages fail to ensure that wages are paid, the statute provides employees with a cause of action against those individuals, which increases the likelihood of employees recovering at least part of their wages.

In *Morgan v. Kingen*, this Court held that “bankruptcy of the corporation is not a means to escape personal liability by those who failed to pay wages owed.” 166 Wn.2d 526, 536, 210 P.3d 995 (2009). Since it was decided, *Morgan* has aided employees in recovering unpaid wages despite corporate insolvency. See, e.g., *Jumamil v. Lakeside Casino, LLC*, 179 Wn. App. 665, 671, 319 P.3d 868 (2014) (holding an LLC manager personally liable for unpaid wages when casino filed for bankruptcy shortly after jury verdict against casino for unpaid wages); *Durand v. HMC Corp.*, 151 Wn. App. 818, 834, 214 P.3d 189 (2009) (relying on *Morgan* and holding corporate officers liable for unpaid wages).

Respondents Zechariah Clifton Dameron (“Dameron”) and Daniel Standen (“Standen”) ask this Court to hold that a corporate director who is not an officer can never be individually liable under RCW 49.52.070. That issue is not presented by the certified questions. If the Court

addresses the issue, WELA urges the Court to clarify that corporate directors who control the payments of wages may be personally liable under the statute.

Dameron and Standen also ask the Court to overturn or severely curtail *Morgan*. Because *Morgan* was correct when it was decided and is correct today, WELA urges the Court to answer the certified questions by clarifying that an officer, vice principal, or agent may willfully cause the withholding of an employee's accrued wages and be individually liable under the Wage Rebate Act, even if he or she lost control over corporate finances due to bankruptcy at the time the wages became due.

All of Allen's unpaid wages, including the wages he is owed for unused vacation hours and severance, accrued before AIS filed for bankruptcy. Dameron and Standen controlled the payment of AIS employee wages. Under *Morgan*, they are personally liable despite AIS's chapter 7 bankruptcy petition.

III. FACTUAL BACKGROUND

WELA adopts the statement of facts included in Appellant Michael Allen's ("Allen") opening brief. Appellant's Opening Br. at 3-16. The following facts inform WELA's arguments.

Allen is a former employee of Advanced Interactive Systems, Inc. ("AIS"), a now-bankrupt corporation. Dkt. No. 1 at ¶ 1.1. Allen's offer

letter from AIS included a promise of “three months pay in lieu of notice” if he was terminated for anything other than gross misconduct. Dkt. No. 38-1 at 146.¹ In addition, AIS’s employee handbook provided that Allen and other employees accrued vacation as they worked and promised that “[u]pon termination any amount of earned and unused vacation will be paid at your current pay rate.” Dkt. No. 38-1 at 94. Allen had 320 hours of accrued vacation time before AIS filed for bankruptcy. Dkt. No. 31 ¶ 36. Allen was not paid all of his salary for work performed through March 14, 2013, was not paid for his accrued vacation time, and was not paid severance. Dkt. No. 31 ¶¶ 35–39, 47.

Dameron and Standen were members of the AIS board of directors. Dkt. No. 1 at ¶¶ 3.2–3.3; Dkt. No. 38-1 at 68–77. The AIS bylaws provided that the directors “shall manage the business of the corporation.” Dkt. No. 31-1 at 5. In the weeks leading up to AIS’s filing for chapter 7 bankruptcy, Dameron and Standen determined which employees to pay and how much to pay them. Dkt. No. 38-1 at 68–77. Dameron and Standen also determined that AIS should file for bankruptcy and when to do so. *Id.*

¹ WELA refers to the page numbers assigned to documents by the district court’s Electronic Case Filing (ECF) system, which appear as headers at the top of documents filed in the district court.

IV. AUTHORITY AND ARGUMENT

A. **If the Court entertains the argument that a corporate director cannot be held individually liable under the Wage Rebate Act, the Court should forcefully reject the argument.**

1. The Court should decline Dameron and Standen's invitation to answer a question different than the ones certified by the district court.

The district court's certified questions assume that Dameron and Standen were officers, vice principals, or agents of Allen's employer for purposes of RCW 49.52. *See* Dkt. No. 83 at 3 (asking about the liability of an officer, vice principal, or agent in specific circumstances). Indeed, in a related case the district court expressly found Dameron and Standen were agents or vice principals of AIS. *See Kalmanovitz v. Standen*, No. C14-1224RSL, 2015 WL 9273611, at *3 (W. D. Wash. Dec. 21, 2015).

Nonetheless, Dameron and Standen ask this Court to determine whether or not they fall within the class of individuals who may be liable under RCW 49.52. Resp. Br. at 19. This Court may reformulate certified questions. *Danny v. Laidlaw Transit Servs., Inc.*, 165 Wn.2d 200, 205, 193 P.3d 128 (2008). But Dameron and Standen ask the Court to do far more than "reformulate" the certified questions. They call on the Court to answer an entirely different question—one which the district court has already answered. The Court should decline to do so. A federal court's certification of questions to this Court is not an opportunity for a party to

re-argue any issue it lost in federal court. *See, e.g.*, RCW 2.60.020 (providing that this Court “shall render its opinion in answer” to the “question of local law” certified by the federal court).²

If it considers the issue, the Court should find that Dameron and Standen are within the class of individuals who may be personally liable for failure to pay wages.

2. A corporate director can be personally liable for failure to pay wages.

Dameron and Standen ask this Court to conclude that a person who holds the title “director” but does not hold the title “officer” cannot be individually liable under the Wage Rebate Act, even if the director controlled the payment of wages. *See* Resp. Br. at 20–26. The Court should forcefully reject this argument, which contravenes the plain text of the statute and Washington’s strong policy favoring payment of wages.

For more than half a century, the Court has emphasized the importance of liberally construing Washington’s wage statutes to ensure employees are paid for their work. *Schilling v. Radio Holdings, Inc.*, 136 Wn.2d 152, 159, 961 P.2d 371 (1998) (citing *Brandt v. Impero*, 1 Wn. App. 678, 682, 463 P.2d 197 (1969)). Washington’s adoption of a

² Dameron and Standen also include factual statements aimed at supporting their assertion of a bona fide dispute over whether Allen was owed wages. Resp. Br. at 15–16. Whether there is a bona fide dispute that negates willfulness under RCW 49.52.070 is a question of fact. *See Schilling v. Radio Holdings, Inc.*, 136 Wn.2d 152, 160, 961 P.2d 371 (1998). The district court did not reach that issue, and it is not before this Court.

“comprehensive legislative system with respect to wages indicates a strong legislative intent to assure payment to employees of wages they have earned.” *Schilling*, 136 Wn.2d at 159. The purpose of RCW 49.52.050 is “to see that the employee shall realize the full amount of the wages which by statute, ordinance, or contract he is entitled to receive.” *Id.* (quoting *State v. Carter*, 18 Wn.2d 590, 621, 140 P.2d 298 (1943)).

In furtherance of those important purposes, RCW 49.52.070 provides that “any employer and any officer, vice principal or agent of any employer” who willfully fails to pay wages is liable for twice the unpaid wages and the employee’s costs and attorney’s fees. The statute gives employees recourse against those individuals who are responsible for the employer’s failure to pay wages. *See Morgan*, 166 Wn.2d at 535–36. The statute’s inclusion of “vice principals” and “agents” as persons who may be individually liable evinces legislative intent to bring within the statute the individuals who in fact control payment of employee wages, regardless of their title. *See Morgan*, 166 Wn.2d at 538 (explaining that “payment of wages holds a preferential statutory position”).

In *Ellerman v. Centerpoint Press*, 143 Wn.2d 514, 521 (2001), this Court explained that “clearly” under the common law, “the term vice principal is broad and could include a manager or supervisor.” The Court also referred to the Black’s Law Dictionary definition of agent: “a person

authorized by another to act for him.” *Id.* at 522 (quoting Black’s Law Dictionary 85 (4th ed.)). The Court’s holding in *Ellerman* reflects the legislative intent to impose personal liability on any officer, vice principal, or agent of an employer who had “some control over the payment of wages.” *Ellerman*, 143 Wn.2d at 522. Nothing in *Ellerman* supports the view that a corporate director who is not an officer cannot be subject to liability under RCW 49.52.070.

Dameron and Standen point to *Rekhter v. Department of Social and Health Services*, 180 Wn.2d 102, 123, 323 P.3d 1036 (2014), and *LaCoursiere v. CamWest Development, Inc.*, 181 Wn.2d 734, 744–45, 339 P.3d 963 (2014), to support their argument that they are not within the class of individuals subject to personal liability under RCW 49.52.070. *Rekhter* and *LaCoursiere* stand for the unremarkable proposition that to be personally liable, an individual must (1) be an officer, vice principal, or agent and (2) have control over payment of wages. In both cases, the plaintiffs sought to hold one corporate entity liable for a separate employing entity’s non-payment of wages, which is entirely different from suing an employer’s corporate directors for non-payment of wages. WELA agrees that only individuals who fall within the categories listed in RCW 49.52.070 can be liable under the statute. But WELA strongly disagrees with Dameron and Standen’s assertion that an individual whose

title is “director” cannot be an agent or vice principal under the statute.

Washington courts have applied a functional test to determine whether a person may be held individually liable under RCW 49.52.070. This can be seen in the Court’s decision in *Failla v. FixtureOne Corp.*, 181 Wn.2d 642, 336 P.3d 1112 (2014), which highlights the kinds of facts that establish whether a corporate officer, vice principal, or agent had control over payment of wages. In *Failla*, the Court affirmed a trial court’s finding of individual liability for unpaid wages: “[t]he critical, but not stringent, prerequisite to liability is that the employer’s (or officer’s) failure to pay wages was ‘willfull.’ The employee need only show that the refusal to pay was a volitional act” *Id.* at 655 (emphasis added). “Officers, vice-principals, and agents act willfully if those individuals exercise control over the employer’s funds and still fail to pay their employees.” *Id.* at 656.

Applying those principles, the *Failla* Court found that the individual defendant “controlled FixtureOne’s finances, had the ability to pay Failla, and failed to do so willfully.” *Id.* at 656. The Court explained that *Morgan* was based on the CEO’s “ultimate control of the business’s finances, which included the authority to hire employees and set compensation.” *Id.*; see also *Jumamil*, 179 Wn. App. at 672–73, 683 (describing the facts supporting conclusion that an LLC manager was personally liable for unpaid wages). Dameron and Standen offer no reason to depart from a

functional approach based the individual's control over wage payment.

In referring to the canon of statutory construction *expressio unius est exclusio alterius*, Dameron and Standen ignore RCW 49.52.070's use of the words "vice principal" and "agent." The existence of statutes in other areas of Washington law discussing both officers and directors, does not mean that the word "directors" was omitted from RCW 49.52.070 in order to shield directors from personal liability. It appears that none of the other statutes to which Dameron and Standen refer include the phrase "officer, vice principal or agent." Counsel for WELA conducted a search of Washington statutes and found no other instance of those terms used together in the Washington code.³ If RCW 49.52.070 only used the term "officer" then comparison with statutes referring to "officers and directors" would carry some weight. But because RCW 49.52.070 reaches officers and the broad categories of vice principals and agents, it is unnecessary to include the narrower term director. The *expressio unius* canon of construction does not help Dameron and Standen.

Dameron and Standen assert that corporate law principles and the Restatement (Second) of Agency absolve corporate directors from

³ Counsel searched the Washington Statutes (WA-ST) database within Westlaw for the exact phrase "officer, vice principal or agent" and for the term "officer" within the same sentence as the term "vice principal" and "agent." All results were sections of the Wage Rebate Act.

individual liability for unpaid wages, but this too is unavailing. Restatement (Second) of Agency § 14C states that corporate directors are not necessarily agents of the corporation. Furthermore, in the comment that Dameron and Standen themselves cite, the Restatement recognizes that a director

may, and frequently will, be appointed an agent of the corporation. For example, the board may exercise its express or implied power to confer authority upon him to act for the corporation In these cases, he is necessarily an agent, and normally a general agent, of the corporation, since he acts on its behalf and subject to its control exercised through the board of directors.

Restatement (Second) of Agency § 14C, cmt. b (emphases added). Far from precluding a finding that a corporate director is an agent of a company, the Restatement recognizes that corporate directors “frequently” are general agents of the corporation.

Immunizing corporate directors from personal liability for unpaid wages, regardless of their ability to control the payment of wages, would undermine the very purpose of RCW 49.52.070 and unfairly limit an employee’s ability to recover earned wages. *See, e.g., Durand*, 151 Wn. App. at 835 (explaining that RCW 49.52.070 creates liability for individuals who control payment of wages, regardless of whether it would be appropriate to pierce the corporate veil). It would also be incongruous for the legislature to create a cause of action against a vice principal (a

non-officer employee) who controls payment of wages, but not a corporate director who controls payment of wages.

In short, the inquiry does not end with the fact that Dameron and Standen each had the title “director” but not “officer.” The decisive question is whether Dameron and Standen were agents or vice principals of AIS who controlled the payment of wages. The district court has already answered that question in the affirmative. *See* Dkt. No. 83 at 3 (certified questions); *Kalmanovitz*, 2015 WL 9273611, at *3 (stating that AIS’s bylaws “authorized the directors to act on its behalf and to control the corporation’s business affairs”). Further, the evidence in the certified record demonstrates the correctness of the district court’s conclusion. *See, e.g.*, Dkt. No. 31-1 at 5; Dkt. No. 38-1 at 68–77.

B. *Morgan* supplies the answers to the certified questions.

The issue squarely before the Court is whether Dameron and Standen may escape personal liability for Allen’s unpaid wages because the wages did not become due until after AIS filed for bankruptcy.

In *Morgan*, this Court was presented with the following question: “Under RCW 49.52.070, is financial status (*i.e.* chapter 7 bankruptcy) a sufficient defense to avoid personal liability when a party responsible for the payment of wages failed to pay wages owed to its employees?” 166 Wn.2d at 533. The Court answered no and held that “bankruptcy of the

corporation is not a means to escape personal liability by those who failed to pay wages owed.” *Id.* at 536.

The defendants in *Morgan* were Morgan and Switzer, two officers of Funsters Grand Casino, Inc. *Id.* at 531. Funsters filed for chapter 11 bankruptcy and Morgan and Switzer continued to operate the casino as debtor-in-possession. *Id.* at 532. The bankruptcy court converted the proceeding into a chapter 7 liquidation after Morgan and Switzer refused to inject sufficient capital into to the casino to satisfy unpaid debts, including wages owed. *Id.*

Before the Funsters bankruptcy was converted from a chapter 11 to chapter 7 proceeding, the individual defendants “allowed unpaid wages to accrue for two pay periods.” *Morgan*, 166 Wn.2d at 535. “[T]he wages were accrued prior to the chapter 7 conversion.” *Id.* at 536. The pay date for the second pay period, however, occurred after the bankruptcy was converted to a chapter 7 proceeding. *Id.* at 535 n.1. This Court affirmed the trial court’s entry of judgment in favor of the Funsters’ employees, which included the unpaid wages earned in both pay periods, as well as exemplary damages, costs and attorneys’ fees. *Id.* at 532, 540.

Here, the district court declined to hold Dameron and Standen personally liable for withholding the wages owed to Allen because the pay date for those wages occurred after Dameron and Standen lost control of

AIS's finances. Dkt. No. 68 at 7. But this Court rejected that very reasoning in *Morgan*, where Kingen and Switzer argued they lacked control over the payment of wages, as required by *Ellerman*, when the wages became due. 166 Wn.2d at 535 (rejecting Kingen and Switzer's argument that due to Funsters chapter 7 bankruptcy, "failure to pay these wages was beyond their control"); *see also id.* at 542 (Sanders, J. dissenting) ("Kingen and Switzer are not asserting the defense of financial inability to pay. Instead they could not legally pay their employees after the bankruptcy proceeding was converted."). The district court's conclusion that Dameron and Standen did not have the control over payment of wages required by *Ellerman* is tantamount to adoption of the dissent in *Morgan*.

Morgan can only be distinguished from this case if the Court concludes that Allen's unpaid wages had not "accrued" before Dameron and Standen put AIS into chapter 7 bankruptcy. "Accrued compensation" is "[r]enumeration that has been earned but not yet paid." Black's Law Dictionary 301 (8th ed.). Allen makes claims for three categories of unpaid wages: salary, unused vacation, and severance pay. Dkt. No. 1 ¶¶ 4.8–4.10; Dkt. No. 31 at ¶ 47. Allen earned wages in each category before AIS filed for chapter 7 bankruptcy.

1. *Morgan* unambiguously establishes that individuals who control payment of wages are liable for salary earned before a company files for bankruptcy.

The first category of unpaid wages is salary that Allen earned prior to AIS's March 14, 2013 bankruptcy filing. Dkt. No. 1 at ¶ 4.8. His salary was earned in pay periods ending March 10, 2013 and March 24, 2013. Dkt. No. 31 at ¶ 36 (listing "regular" and "other" wages Allen is owed). There is no basis for distinguishing the salary owed to Allen for work performed prior to the chapter 7 filing from the salary owed to the unpaid employees in *Morgan*. See *Morgan*, 166 Wn.2d at 535 n.1 (noting employees earned all wages before bankruptcy conversion but payday for some of those wages occurred after conversion).

The federal court's refusal to apply *Morgan*, at least with respect to this category of wages, is inconsistent with principles of comity. See, e.g., Dkt. No. 68 at 6 ("The Court finds this part of the [*Morgan*] analysis unpersuasive in that it conflicts with both the language of the statute and prior decisions of the Washington Supreme Court."). When a federal court's jurisdiction is based on diversity of citizenship, see 28 U.S.C. § 1332, the federal court's role is to apply this Court's precedent, not decide whether that precedent is persuasive. See, e.g., *Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 78, 58 S. Ct. 817, 82 L. Ed. 1188 (1938) ("Except in matters governed by the Federal Constitution or by acts of Congress, the law to be

applied in any case is the law of the state. And whether the law of the state shall be declared by its Legislature in a statute or by its highest court in a decision is not a matter of federal concern.”). A Washington employee’s ability to recover unpaid wages should not vary because the employee’s case proceeds in federal rather than state court.

2. Like salary, vacation hours are earned as the employee works.

The second category of unpaid wages is Allen’s 320 hours of unused vacation time. Dkt. No. 1 at ¶ 4.9. Unused vacation benefits are “compensation due by reason of employment”—that is, wages. *McGinnity v. AutoNation, Inc.*, 149 Wn. App. 277, 284–85, 202 P.3d 1009 (2009); see also *Local Union No. 186, United Packing House Food & Allied Workers, AFL-CIO v. Armour & Co.*, 446 F.2d 610, 612 (6th Cir. 1971) (“Many tribunals have taken the view that vacation pay is simply an alternate form of wages, earned at the time of other wages, but whose receipt is delayed.”). Employees typically earn vacation hours as they work, and payment of those hours as wages becomes “due” when the employee either takes a paid vacation from work or is terminated. Consistent with that common practice, AIS’s Employee Manual stated that the company would pay “earned and unused vacation” upon an employee’s termination. Dkt. No. 38-1 at 94.

Before AIS filed for chapter 7 bankruptcy, which terminated Allen's employment, Allen had accrued 320 hours of vacation pay. Dkt. No. 31 at ¶ 36. Allen may not have been entitled to be paid for his unused vacation time until the first regular payday after AIS filed for bankruptcy. But he earned the vacation time before Standen and Dameron chose to file for bankruptcy despite knowing Allen was owed pay for unused vacation time. *Id.* at ¶¶ 31–36. Because Allen's unused vacation hours "accrued" before the chapter 7 filing, *Morgan* controls and subjects Dameron and Standen to personal liability for failing to pay Allen the wages they knew he was owed.

3. Allen's right to severance pay accrued long before the bankruptcy filing.

The third category of unpaid wages is the severance pay promised to Allen in his offer letter. Dkt. No. 1 ¶¶ 4.2, 4.10. Severance pay amounts promised in an employment contract are wages under sections 49.52.050 and 49.52.070. *Dice v. City of Montesano*, 131 Wn. App. 675, 688, 128 P.3d 1253 (2006); *see also Flower v. T.R.A. Indus., Inc.*, 127 Wn. App. 13, 35–36, 111 P.3d 1192 (2005) (signing bonus amounts promised in offer of employment are wages under section 49.52.050). An employee earns severance pay when he or she accepts an employment offer with a promise of severance but no vesting clause and performs work in consideration of

that agreement. *See, e.g., Barrett v. Weyerhaeuser Co. Severance Pay Plan*, 40 Wn. App. 630, 633–34, 700 P.2d 338 (1985) (“[A] severance pay plan is subject to the same rules of construction as are other contracts.”).

The purpose of severance pay is to alleviate the difficulties caused by the employee’s loss of his job. *See id.* at 633; Benjamin J. Earthman, *Illusory Protection: the Treatment of Severance Packages in Business Bankruptcies*, 5 U. Pa. J. Lab. & Emp. L. 33, 36 (2002) [hereinafter *Illusory Protection*]; Jeffrey D. Mamorsky & Michael B. Snyder, 1 *Emp. Benefits Handbook* § 2.2 (2016) (The purpose of replacement-of-income benefits—including severance—is “providing a stream of income to replace employment earnings that have ended” because of job loss).

An employer’s financial difficulties or insolvency are a foreseeable situation in which employees will need the security promised by a severance provision in an employment contract. *Illusory Protection* at 35. While the priority of a claim for severance in a corporate bankruptcy proceeding may vary, *see Illusory Protection* at 55–67, preserving an employee’s ability to recover promised severance pay from individual officers, vice principals, or agents protects the employee’s ability to obtain the wages promised by employment contracts.

4. An officer, vice principal or agent who controls wage payment cannot unilaterally end that control by directing the company to file for bankruptcy.

Courts have recognized that it would be fundamentally unfair to allow an employer's unilateral actions to determine the employee's entitlement to pay. See *Local Union No. 186*, 446 F.2d at 614 ("Even assuming the company's argument that the anniversary date was an inexorable condition of eligibility for vacation, we find critical the fact that it was the action of the company itself which made impossible the satisfaction of this condition."). In *Local Union No. 186*, the company closed down a plant and refused to pay employees for their vacation hours, arguing that under a collective bargaining agreement, the employees were only "entitled" to vacation if they were working at the plant on an "anniversary date" that occurred after the plant closure. *Id.* at 611. The Sixth Circuit rejected the company's interpretation of the agreement. *Id.* at 613. The court also explained that even if the company's interpretation of the agreement were correct, the employees would be entitled to vacation pay because it was the employer's decision to close the plant that precluded the employees from continuing to work to the anniversary date. *Id.* at 614-15.

The same fairness principles apply here. Dameron and Standen made the decisions that resulted in their "loss" of control over AIS's

finances. They directed the filing of AIS's chapter 7 bankruptcy petition and decided when it would be filed. At the same time, Dameron and Standen chose not to (1) resolve known wage obligations or (2) terminate certain AIS employees (including Allen) before filing the petition. It would be inconsistent with the remedial objectives of the Wage Rebate Act to allow Dameron and Standen to escape liability because of these unilateral actions.

V. CONCLUSION

For all of the foregoing reasons, WELA respectfully requests that the Court answer "yes" to the district court's first certified question. When an officer, vice principal, or agent willfully causes the withholding of an employee's accrued wages, the officer, vice principal, or agent will be individually liable under the Wage Rebate Act even if he or she was no longer controlling payment at the time the wages became due. *See Morgan v. Kingen*, 166 Wn.2d at 535-538. WELA respectfully requests that the Court answer "yes" to the second certified question as well. An officer, vice principal, or agent cannot terminate his own control over payment of wages and escape personal liability under RCW 49.52.070 by directing the entity for which he is an officer, vice principal, or agent to file a Chapter 7 bankruptcy petition.

RESPECTFULLY SUBMITTED AND DATED this 1st day of
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CERTIFICATE OF SERVICE

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I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

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Attached please find the following documents to be filed in *Allen v. Dameron and Standen*, No. 93056-2:

1. Motion for leave to file *amicus curiae* brief by the Washington Employment Lawyers Association.
2. *Amicus curiae* brief of the Washington Employment Lawyers Association.

Each document includes a certificate of service.

These documents are filed by counsel for the Washington Employment Lawyers Association:

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