No. 103894-1

SUPREME COURT
OF THE STATE OF WASHINGTON

C.C., an individual,

Respondent,

and

A.B., an individual; D.E.F., an individual; M.R., an individual; J.L., an individual; B.F., as guardian for K.F., an individual; C.B., an individual; A.M., an individual,

Plaintiffs,

v.

KIWANIS INTERNATIONAL, a non-profit entity; KIWANIS PACIFIC NORTHWEST DISTRICT, a non-profit entity; KIWANIS OF TUMWATER, a non-profit corporation; KIWANIS OF CENTRALIA-CHEHALIS, a non-profit entity; KIWANIS OF UNIVERSITY PLACE, a non-profit entity; KIWANIS VOCATIONAL HOME, a nonprofit entity; LEWIS COUNTY YOUTH ENTERPRISES, INC. d/b/a Kiwanis Vocational Homes for Youth, a non-profit corporation,

Petitioners,

and

CHARLES McCARTHY, an individual; EDWARD J. HOPKINS, an individual; UNITED WAY OF PIERCE COUNTY, d/b/a CHILDREN'S INDUSTRIAL HOME and/or COFFEE CREEK CENTER; COFFEE CREEK CENTER, a

non-profit entity; CHILDREN'S INDUSTRIAL HOME d/b/a COFFEE CREEK CENTER, a non-profit entity; MENTOR HOUSE, d/b/a CHILDREN'S INDUSTRIAL HOME and/or COFFEE CREEK CENTER, a nonprofit entity; STATE OF WASHINGTON; STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND HEALTH SERVICES, DEPARTMENT OF CHILDREN, YOUTH AND FAMILY SERVICES, CHILD PROTECTIVE SERVICES, governmental entities,

Defendants.

REPLY ON KIWANIS
PETITION FOR REVIEW

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A. INTRODUCTION

As this Court is aware, both the Kiwanis entities and C.C. have now filed petitions for review to this Court;[1] the Kiwanis entities' petition relates to the published portion of Division II's decision on the corporate dissolution statute of repose, to which C.C. has now answered. C.C. filed a belated petition for review as to some aspects of the unpublished portion of Division II's decision. The Kiwanis entities will answer that petition in due course.

This RAP 13.4(d) reply on the Kiwanis entities' petition for review on the application of RCW 23B.14.340 in this case is before the Court because C.C., in answering that petition, has raised a new issue – whether the statute is actually a statute of repose. Answer at 24-32. That new issue entitles the Kiwanis

[1] The question of whether C.C. may file a separate petition for review or was obligated to raise any new issues he wanted to present in a timely answer to the Kiwanis petition for review pursuant to RAP 13.4(d) is before this Court on the Kiwanis entities' motion to modify a Clerk's ruling that allowed such a novel procedure.

entities to file this reply accordingly.

C.C.'s argument that RCW 23B.14.340 is not a statute of repose is entirely unsupported in this Court's jurisprudence on statutes of repose, and is contrary to case law. C.C.'s contingent argument is nothing but a calculated, meritless diversion from the real issue in this case that C.C. himself told Division II was so novel and important that it merited publication.[2] The issue of whether RCW 23B.14.340's statute of repose bars C.C.'s claims against the Kiwanis petitioners merits this Court's review. RAP 13.4(b).

B. STATEMENT OF THE CASE

C.C.'s counterstatement of the case, ans. at 9-12, is a revisionist history intended to divert the Court's attention from

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[2] Publication of this opinion will provide valuable guidance to trial judges in applying established principles of law to recurring materially identical facts and will ensure consistency in the application of the rule of law in such cases. RAP 12.3(e)(4), (e)(5).

Motion to publish at 3.

the core facts of this case.

KVH had two corporate boards, as all agree. The formal corporate board of directors was for Lewis County Youth Enterprises; it actually ran KVH, selecting its officers and staff and conducting day-to-day operations of the group home. The other board was advisory, pet. at 3-5, as C.C. even acknowledges. Ans. at 10-11. Regardless of the nature of the boards, they were both *corporate boards of directors* associated with KVH, to which RCW 23B.14.340 applies; C.C. has nowhere denied that both boards relate to corporations or that the corporate entities were long ago dissolved. Pet. at 6.

More critically, C.C. simply disregards the nature of the liability he claims against the Kiwanis entities. As the Kiwanis entities explained in their petition for review at 4-5, C.C. did not contend that those entities had any direct liability; rather, they were *only* allegedly vicariously liable as "principals" on theories

of agency/apparent authority.[3]

Ironically, C.C. acknowledges the general principle that the discharge of an agent from liability can have implications for the principal's vicarious liability. Ans. at 21-23. Indeed, that point has consequences here where C.C., like other claimants represented by PCVA, settled with the McCarthy Estate and Cornwell.[4]

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[3] C.C. complains in an odd footnote, ans. at 15 n.3, that the Kiwanis petitioners' argument about the express language of RCW 23B.14.340 and the immunity afforded "directors, officers, or shareholders" is somehow "unclear." The statute's *express language* covers all the owners (shareholders) and managers (officers/directors) of the corporation, as well as the corporation itself. It is C.C.'s characterization of the relationship between the Kiwanis entities and the KVH boards that is unclear. The Kiwanis entities' alleged liability is vicarious only, derivative of the KVH boards, apparently, but C.C. has never been particularly clear as to the specifics of such derivative liability.

[4] Lost on C.C. is the fact that where he has dismissed the alleged agents such as McCarthy/Cornwell in settlement, he has also dismissed any "principal." The general rule, based on traditional agency principles, is that a settlement between a plaintiff and an agent will release the principal from any vicarious liability. *Glover for Cobb v. Tacoma Gen. Hosp.*, 98 Wn.2d 708, 718-24, 658 P.2d 1230 (1983), *reversed on other grounds*, *Crown Controls, Inc. v. Smiley*, 110 Wn.2d 695, 756

C. ARGUMENT ON REVIEW

As part of its diversionary tactic to convince this Court, contrary to established case law, that RCW 23B.14.340 is somehow not a statute of repose at all, C.C. tries to reimagine his factual argument as to the relationship between the Kiwanis entities and the LCYE board of directors and the KVH advisory board.

On the one hand, he has acknowledged that the Kiwanis entities have no direct liability for any abuse that may have occurred at the KVH group care facility. No Kiwanis entity licensed KVH, selected boys for placement there, or paid for their residence there. The State did that. No Kiwanis entity engaged in any actual abuse. Charles McCarthy, Guy Cornwell,

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P.2d 717 (1988). This rule applies when a plaintiff settles with an agent that is financially able to fully compensate the plaintiff. *Id*. at 724; *Accord, Pickett v. Stephens-Nielsen, Inc*., 43 Wn. App. 326, 717 P.2d 277 (1986); *Perkins v. Children's Orthopedic Hospital*, 72 Wn. App. 149, 864 P.2d 398 (1993); *Hogan v. Sacred Heart Medical Center*, 122 Wn. App. 533, 94 P.3d 390 (2004), *review denied*, 153 Wn.2d 1026 (2005).

and their staff allegedly did that.

Rather, he contends that the boards were negligent in their supervision of the group home, and the Kiwanis petitioners were *vicariously liable* for the two boards' actions on a theory of agency/apparent authority.

These facts being true, C.C. wants this Court to ignore, however, RCW 23B.14.340's express language that exonerates corporations and their "directors, officers, or shareholders" from any liability once three years have expired after the corporation's dissolution. C.C. wants this Court to adopt the incredible notion, as did Division II, that although the Legislature wanted *finality* as to corporate liability upon the termination of the corporation's existence,[5] exonerating the dissolved corporation, its directors,

[5] The common law on dissolved corporations was harsh. Any claim by or against the corporation ended upon dissolution. *Ballard Sq. Condo Owner Ass'n v. Dynasty Constr. Co.*, 158 Wn.2d 603, 609-10, 146 P.3d 914 (2006). The Legislature allowed some claims against dissolved corporations to survive when it enacted RCW 23B.14.340. But that survival statute at its core still provides for *finality* – all claims, known or unknown, may not proceed if they are not filed within three years of the

officers, and even shareholders (all the managers and owners of the corporation) from any claims, it nevertheless intended to allow lawsuits to persist long after the corporate dissolution, as to the very unusual group of persons or entities who allegedly were "principals," parties whose liability was *derivative* of that of the two KVH-related boards of directors. As to those "principals," service club boosters, claims against their "agents," corporate directors were barred by RCW 23B.14.340, as C.C. has nowhere denied.

RCW 23B.14.340 is a statute of repose intended to bar *all claims* pertaining to the dissolved corporation and its management/ownership. C.C. is compelled to argue that the statute is not a statute of repose because, as such, it so clearly bars his claims against the Kiwanis entities.

A statute of repose forecloses any redress, based on policy grounds. *Bennett v. United States*, 2 Wn.3d 430, 454, 539 P.3d

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corporation's dissolution.

361 (2023), and bars a claim from arising at all. *Rice v. Dow Chemical Co.*, 124 Wn.2d 205, 211-12, 875 P.2d 1213 (1994). A statute of repose terminates the right to sue after a specified time even if the injury to a plaintiff has not yet occurred. *Wash. State Major League Baseball Stadium Pub. Facilities Dist. v. Huber, Hunt & Nichols-Kiewit Const. Co.*, 176 Wn.2d 502, 510, 296 P.3d 821 (2013).

Despite C.C.'s effort to claim from snippets of this Court's decisions that RCW 23B.14.340 is a "statute of limitations," ans. at 31, those cases do not support his argument. In *Ballard Square*, this Court discussed in detail the Legislature's decisions over the years to abandon the harsh common law rule that prevented a corporation from suing or being sued upon its dissolution; the Court specifically noted that RCW 23B.14.340 is what is generally described as a "survival statute." 158 Wn.2d at 609. When the Court mentioned "statute of limitations" at 612, it was doing so generically.

Not addressed by C.C. is the concurring opinion in *Ballard*

Square that traced various iterations of Washington's survival statute derived from model corporate acts. Of particular note is the fact that the 1989 Legislature did not adopt that portion of the model corporations act that allowed unknown claims against a dissolved corporation to survive. *Id*. at 628-29. Thus, the core feature of a statute of repose has characterized Washington's survival statute since 1989 – even *unknown* claims not brought within the three-year repose period of RCW 23B.14.340 are barred.

Both *Mut. of Enumclaw Ins. Co. v. T&G Constr., Inc.*, 165 Wn.2d 255, 207 P.3d 1251 (2008) and *Chadwick Farms Owners Ass'n v. PHC, LLC*, 166 Wn.2d 178, 207 P.3d 1251 (2009), reference RCW 23B.14.340 as a statute of limitations, but both decisions largely do so as a generic reference and as *dicta*, the nature of RCW 23B.14.340 being irrelevant to each decision's ultimate outcome. Moreover, *Chadwick Farms* specifically describes RCW 23B.14.340 as a survival statute. 166 Wn.2d at 195.

That RCW 23B.14.340 is a survival statute has significant consequences. By their nature, such statutes, like statutes of repose, bar *all* claims, known or unknown, if not filed within the three-year post dissolution period. They are *not* statutes of limitations, as C.C. asserts. "The statutory survival period has been construed as a limitation upon the capacity to sue or be sued rather than as a statute of limitations." 16A *Fletcher Cyclopedia of the Law of Corporations* § 8144.20. "Survival statutes are not statutes of limitation, and they do not extend statutes of limitations." 36 A.L.R. 7th Art. 4 *Preservation, After Dissolution, of Remedy for or Against Corporation under Corporate Survival or Winding Up Statute*. *See Gilliam v. Hi-Temp Products, Inc.*, 677 N.W.2d 856 (Mich. App. 2003) (survival statutes may be statutes of repose that extinguish untimely causes of action before they accrue).

By its express terms, RCW 23B.14.340 bars *any* claim against the corporation and its management/ownership unless such action is commenced within three years of the corporation's

dissolution. Unlike a statute of limitations, there is *nothing* in RCW 23B.14.340 that requires a plaintiff to discover the basis for her/his claim. Like a traditional statute of repose, *any* claim, known or unknown, is barred three years after the corporate dissolution.

Moreover, prior to its present decision describing RCW 23B.14.340 as a statute of repose, op. at 18-19, Division II ruled that RCW 23B.14.340 *is* a statute of repose. *R.N. v. Kiwanis Int'l*, 19 Wn. App. 2d 389, 404, 496 P.3d 748 (2021), *review denied*, 199 Wn.2d 1022 (2022), a case in which C.C.'s present counsel were counsel of record, and this Court denied review. *C.C. does not even cite that decision*, a troubling lack of candor with this Court.

Simply put, RCW 23B.14.340, like other corporate survival statutes, is a statute of repose. Review of C.C.'s contrary contention is unsupported by RAP 13.4(b). However, if anything, C.C.'s argument only confirms that RCW 23B.14.340 requires this Court's definitive interpretation, as

Washington's ultimate arbiter of the meaning of statutory enactments.

D. CONCLUSION

Nothing offered by C.C. should dissuade this Court from granting review on the RCW 23B.14.340 issue, and affirming the trial court's dismissal of the Kiwanis petitioners because they cannot be held vicariously liable for the actions of LCYE d/b/a KVH or its boards where RCW 23B.14.340's statute of repose is a substantive defense barring claims predicated on the actions of a long-dissolved corporate entities and their management. This Court should definitively interpret the scope of RCW 23B.14.340. RAP 13.4(b)(4).

This document contains 2,007 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 10th day of April, 2025.

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

DATED: April 10, 2025 at Seattle, Washington.

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