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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 ANSWER TO PETITION FOR REVIEW

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 ORIGINAL

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I. IDENTITY OF RESPONDENT.

Gregg Becker is the Respondent in this petition for review, Respondent in the Division III published opinion in *Gregg Becker v. Community Health Systems, Inc.*, 332 P. 23d 1085 (Aug. 14, 2014), and Plaintiff in the trial court.

II. COUNTERSTATEMENT OF ISSUES PRESENTED FOR REVIEW.

The premise of Petitioners' request for review is that "SOX" adequately promotes the public policy of "honesty in corporate financial reporting." *Petition*, p. 6.¹ The premise is demonstrably unfounded. Petitioners supplemented the record following Division III's ruling to unequivocally show that SOX provides *no* remedy under Becker's facts. *See Appendix* at 42. The "jeopardy" analysis of SOX remedies is rendered superfluous. Petitioners also argue the odd idea that to promote the public policy of honest financial reporting, this court should require that a Chief Financial Officer first violate the law and then "whistleblow" on his own violation so he can avail himself of SOX remedies. A better public policy would be to encourage CFOs to refuse to violate the law in the first place. Overlooked in the petition is also the fact that in none of the "jeopardy"

¹ The Sarbanes-Oxley statute (SOX) is at 18 U.S.C. § 1514A.

precedent cited by the Petitioners was the application of an alternative remedial statute so profoundly uncertain. Here, Petitioner CHS is a corporate chameleon, changing form to avoid the law of whatever state or federal forum it enters. In so doing, it renders the state public policy tort the only available remedy for the facts pled. Finally, if any review is accepted, Division III's opinion should be adopted. Under Petitioners' argument, it is questionable whether this state's original public policy tort created under *Thompson v. St. Regis Paper Co.* would be actionable.² This state's law should return to the consistency of its earlier opinions.

III. STATEMENT OF THE CASE.

A. The Complaint.

Community Health Systems, Inc., (CHS, Inc.), is *not* the Petitioner in this Petition for Review. *Petition, p. 1, Fmte 1.* But CHS, Inc. is the "publicly traded" company with primary corporate offices in Franklin, Tennessee. *CP 726, para. 3.1.* Becker's complaint is filed against the publicly traded company, CHS, Inc., "doing business as" entities "Community Health Systems, Inc. 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.*

² 102 Wn.2d 219 (1984).

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. 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 claims is the real entity as issue, so 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. 1, Introduction; paras. 2.4, 2.5, 3.8.*

Becker had been 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.* CHS, Inc. is the only publicly traded company at issue in this case.

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

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

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 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

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*.

auspices of Becker's department, he would have no option but to submit his resignation. *CP 741, para. 5.85, 5.86.* As long as he remained the CFO, there would be no misleading \$4,000,000 loss projection submitted under his department's authority. *CP 741, para. 5.87.*

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.

After his termination by email, on February 27, 2012, 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.* He reported to OSHA that he was 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,”

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.*

which itself is a “Member of CHS Washington Holdings LLC,” which is 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. 6.*⁵ Fordham attached CHS's Form 10K, first page, which purports to explain why CHS, Inc. refers to everyone as "we." *CP 841.*⁶ In its website, CHS, Inc. says that its direct and indirect subsidiaries actually own and operate its 134 hospitals throughout the country.⁷

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,*

⁵ The logo was actually owned by a different company, and was being licensed to CHS PSC. *CP 832 at para. 3.* Even CHS, Inc.'s website was not owned or operated by CHS. *CP 832, para. 6.*

⁶ This is its explanation:

"Throughout this Form 10-K, we refer to Community Health Systems, Inc., or the Parent Company, and its consolidated subsidiaries in a simplified manner and on a collective basis, using words like "we" and "our." This drafting style is suggested by the Securities and Exchange Commission, or SEC, and is not meant to indicate that the publicly traded Parent Company, or any other subsidiary of the Parent Company, owns or operates any asset, business, or property. The hospitals, operations, and businesses described in this filing are owned and operated, and management services provided, by distinct and indirect subsidiaries of Community Health Systems, Inc."

CP 841.

⁷ The term "CHS" or the "Company" as used in the website is said to refer to "Community Health Systems, Inc. and its affiliates, unless otherwise stated or indicated by context. The term 'facilities' refers to entities owned or operated by subsidiaries or affiliates of Community Health Systems, Inc." *CP 376.*

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.* That entity would tally fourteen entities total. It could not be determined if SOX applied. *Id., p. 9: 21 – p. 10: 6.*⁸

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 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

⁸ 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.*

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*.

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 with Mr. Allen....”

THE COURT: The end.”

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

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 this:

"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. Division III.

In understated fashion, Petitioners footnote how Division III's ruling "erroneously" names CHS, Inc., as the appellant. *Petition, p. 1, Ftnote. 1.* CHS, Inc., the SOX reporting company, is dismissed.

D. The Administrative OSHA Process.

Meanwhile, back in the federal OSHA proceeding, CHS, Inc. and Rockwood both argued via a 27-page letter to OSHA that Becker had **no remedy under SOX, because SOX did not apply to Becker's situation.** *CP 1282-1308; CP 1287, para 2, CP 1296 at A; CP 1299 at C.* CHS, Inc. and Petitioner Rockwood defended themselves from the application of SOX by claiming that SOX does not apply to the conduct at issue for six different reasons, including that the figures Becker was directed to falsify were "forward looking statements" not covered by SOX. *CP 1299, 1287.*

They argued that the financial numbers would “never be reported to the public.” *CP 1287, “First,” and 1296 at A.* They argued that no SOX implications existed because of “safe harbor” regulatory rules. *CP 1299 at C.* They argued that no SOX violation could exist because the figures being required to be reported were immaterial. *CP 1287.* And of course, they argued that since Becker had refused to falsify information or violate the law, neither Petitioner had ever reported false financial information. *CP 931.*⁹

By September 25, 2012, OSHA’s Department’s investigator responded to CHS, Inc. that it had no idea when its investigation of the February 25, 2012 complaint would start:

“I have many cases ahead of this one, and it will probably be quite a while before you hear back from me regarding this investigation.”

CP 1072.

⁹ The SOX statute is a whistleblower statute, per its very title: “**a) Whistleblower protection for employees of publicly traded companies.**” *18 USCA § 1514A.* 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 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).

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 SOX "applies to CHS, Inc." *A-42-43, Petition for Review*. There is no finding that SOX applies to the petitioner here—"CHS PSC." Neither CHS, Inc. nor Rockwood appealed the Secretary's findings.¹⁰

The reason why the Assistant Secretary denied Becker any SOX remedy remains unclear. Becker told OSHA that he was "forced to resign" in his complaint, but the OSHA finding is simply that Becker had "resigned" his position. *A-042, 045, 046*. OSHA appears not to recognize Washington's concept of constructive discharge as retaliation. *See Objections to Investigator's Finding, A-055 at (1) and (2)*. Or, since the Petitioners took the position that, e.g., the information Becker was directed to falsify was not information covered by SOX, or that, e.g., because Becker refused to violate the law, he was not "reporting existing violations" and could not obtain SOX protection, then Petitioners' arguments could also have been the reason. Whatever OSHA's rationale, one thing is clear—SOX is not available to Mr. Becker on his facts.

¹⁰ 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 WHY REVIEW SHOULD NOT BE ACCEPTED

The original public policy tort was defined in *Thompson v. St. Regis Paper Co.*, 102 Wn.2d 219, in circumstances nearly identical to Becker's. *Id.*, and see *Piel v. City of Fed. Way*, 177 Wn.2d 604, 609 (2013). The claim thereafter applied generally in four areas, the *first* of which applies to Becker: "(1) where the discharge was a result of refusing to commit an illegal act, (2) where the discharge resulted due to the employee performing a public duty or obligation, (3) where the [discharge] resulted because the employee exercised a legal right or privilege, and (4) where the discharge was premised on employee 'whistleblowing' activity." *Id.*, citing *Dicomes v. State*, 113 Wn.2d 618 (1989). The Petitioners' argument is directed to the fourth area, which is not implicated here.¹¹ The tort became more complicated for practitioners

¹¹ The precedent cited by CHS/Rockwood are also whistleblower "reporting" cases, i.e., the employee reports existing law violations by others. See *Korslund v. DynCorp Tri-Cities Servs., Inc.*, 156 Wn.2d 168, 172-173 (2005) (where the claim was for retaliation and harassment for the plaintiffs' reports of existing safety violations, mismanagement, and fraud at the Hanford Nuclear Reservation; *Cudney v. AlSCO, Inc.*, 172 Wn.2d 524, 530 (2011) (employee reported other people's existing safety violations, and received whistleblower status; employee was not directed to himself violate the law); *Rose v. Anderson Hay & Grain Co.*, 335 P.3d 440, 476, 478 (2014) (Rose claimed that his employer had violated the law, and the law violated was a particular federal Act, which specifically prohibited an employer from terminating an employee for refusing to violate that Act. In *Weiss v. Lonnquist*, 173 Wn.App. 344 (2013)), an attorney refused to engage in "unethical" conduct, not illegal conduct, under *the Rules of Professional Conduct*. Unethical behavior is not necessarily illegal. *Weiss* also conceded that the disciplinary rules of the bar offered her an alternative means of protecting that public policy of candor towards the tribunal.

and courts when a four part test was adopted under *Gardner v. Loomis Armored, Inc.*, 128 Wn.2d 931, 941 (1996). A clarified criteria now required that the employee show a “jeopardy” element, specifically, that “discouraging the conduct in which [the employee] engaged would jeopardize the public policy.” *Piel*, 177 Wn.2d at 610.¹² But this language was then further enhanced to the point of generating a veritable litany of appellate efforts to properly apply it.¹³ A later analysis then requires a plaintiff to show, in establishing jeopardy, that other means for promoting the policy are inadequate, and that the plaintiff’s actions were the only available adequate means to promote the public policy. *Id.*, at 625, citing *Cudney v. AlSCO, Inc.*, 172 Wn.2d 524, 530 (2011). But Petitioners’ comparing SOX remedies to constructive discharge remedies in this Petition for satisfaction of the jeopardy element is meaningless now that Petitioners have filed evidence showing that SOX provides no remedy for

¹² An employee may recover for wrongful discharge in violation of public policy under a test which examines (1) the existence of a “clear public policy” (“clarity” element), (2) whether “discouraging the conduct in which [the employee] engaged would jeopardize the public policy” (“jeopardy” element), (3) whether the “public-policy-linked conduct caused the discharge” (“causation” element), and (4) whether the employer is “able to offer an overriding justification for the [discharge]” (“absence of justification” element). *Gardner*, 128 Wn.2d at 941; *Piel v. City of Fed. Way*, 177 Wn.2d at 610.

¹³ As noted by *Becker v. CHS, Inc.’s* concurring J. Fearing, “*Gardner* went beyond listing jeopardy as one of the four elements of the tort of wrongful discharge. The landmark decision added a fluffy description of the element, fraught with ambiguity and nuance that created the puzzlement about which I write.” *Becker*, 332 P.3d at 1095, referencing *Gardner*, 128 Wn.2d at 945.

Becker, for one unexplained reason or another.

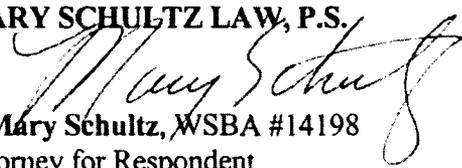
V. CONCLUSION.

This state's public policy tort claim for wrongful discharge remains the only adequate means to protect the public from companies who demand that their employees violate the law, or lose their job, and for employees who resign instead of violating the law. Division III's ruling can only be affirmed in light of the OSHA evidence now in the record, as Becker's facts no longer conflict with any of the precedent cited. The petition should be denied.

In the alternative, if this court accepts review, then it should affirm and expand Division III's ruling to return the law of constructive discharge to something short of the complexity of patent litigation. The present law applied per the Petitioners' theories could well eviscerate the original public policy tort in *Thompson*, when virtually the same cause of action existed.

Respectfully submitted this 13th day of December, 2014.

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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 **December 14, 2014**, she electronically filed the foregoing **Respondent's Answer to Petition for Review**, and served the following individuals in the manner indicated below:

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Dated this 14th day of December, 2014.


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To: Diana Nelson
Cc: Mary Schultz; Tina Ingram; Keller Allen; prm@kellerallen.com; Keehnel, Stellman; Heaton, Katherine; patsy.howson@dlapiper.com
Subject: RE: Becker v. CHS, Inc., et al. -- Supreme Court No. 90946-6 -- Response to Petition for Review ATTACHED

Received 12-15-2014

Supreme Court Clerk's Office

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From: Diana Nelson [mailto:Diana@MSchultz.com]
Sent: Sunday, December 14, 2014 8:46 AM
To: OFFICE RECEPTIONIST, CLERK
Cc: Mary Schultz; Tina Ingram; Keller Allen; prm@kellerallen.com; Keehnel, Stellman; Heaton, Katherine; patsy.howson@dlapiper.com
Subject: Becker v. CHS, Inc., et al. -- Supreme Court No. 90946-6 -- Response to Petition for Review ATTACHED

Dear Clerk of the Court: Attached for filing is Respondent Gregg Becker's *Response to Petition for Review*. Please advise should you have questions, or any difficulty opening the attachment. Thank you very much,

Respectfully,

Diana Nelson-Falkner

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