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Court of Appeals
Division III
State of Washington

COA No. 312348

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III**

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 BRIEF

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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CONTENTS	i-ii
TABLE OF AUTHORITIES.....	iii-v
I. INTRODUCTION	1
II. COUNTER STATEMENT OF THE ISSUES.....	3
III. STATEMENT OF THE CASE.....	3
IV. ARGUMENT	20
1. Status on Interlocutory Appeal.....	20
2. This claim of wrongful discharge in violation of public policy is the original, constructive discharge claim, which remains viable.....	22
3. 18 U.S.C.A. § 1514A (SOX) is inadequate to protect the public in “ <i>Thompson v St. Regis</i> ” circumstances.....	27
a. SOX protects employees who report existing law violations of others, i.e., whistleblowers. It is inadequate when there is no law violation.....	27
i. CHS/Rockwood argue inapplicable whistleblower law, but Washington distinguishes between whistleblower conduct and refusal to engage in illegal behavior in public policy claims.....	30

b.	Where the identity of the employer cannot be determined, the employing entity may not be subject to SOX, and SOX is an inadequate remedy.....	34
c.	Where the nature of the financial information required by the employer to be falsified is not subject to SOX, SOX is an inadequate remedy.....	38
d.	Encouraging reporting of non-existent claims is contrary to public policy.....	39
e.	Even were SOX to be applicable to the conduct, employer, or information at issue, it provides no adequate relief.....	40
4.	There are no other statutes which provide an adequate remedy for the conduct pled.....	42
V.	CONCLUSION.....	45
	CERTIFICATE OF SERVICE.....	47

TABLE OF AUTHORITIES

CASES:

<i>Anderson v. Akzo Noble Coatings, Inc.</i> , 172 Wn.2d 593, 260 P.2d 857 (2011).....	31, 32
<i>Bishop v. PCS Administration (USA), Inc.</i> , 2006 WL 1460032 (N.D. Ill., May 23, 2006).....	29
<i>Cudney v. AlSCO, Inc.</i> , 172 Wn.2d 524 (2011).....	26, 31
<i>Dicomes v. State</i> , 113 Wn.2d 612, 782 P.2d 1002 (1989).....	22, 27
<i>Feldman v. Law Enforcement Associates Corp.</i> , 2013 WL 3288309 (E.D.N.C. June 28, 2013)	30
<i>Gardner v. Loomis Armored, Inc.</i> , 128 Wn.2d 931, 913 P.2d 377 (1996).....	22, 25
<i>Guyden v. Aetna, Inc.</i> , 544 F.3d 376 (2d Cir. 2008)	29
<i>Korslund v. DynCorp Tri-Cities Servs., Inc.</i> , 156 Wn.2d 168, 125 P.3d 119 (2005).....	23, 31, 32
<i>Lawson v. FMR LLC Co.</i> , 670 F.3d 61 (1 st Cir. 2012).....	34
<i>Livingston v. Wyeth, Inc.</i> , 520 F.3d 344 (4 th Cir. 2008)	29, 30
<i>Lockheed Martin Corp. v. Admin. Review Bd., U.S. Dep't of Labor</i> , 717 F.3d 1121 (10 th Cir. 2013)	28

<i>Piel v. City of Federal Way</i> , 177 Wn.2d 604, 306 P.3d 879 (2013).....	1, 21, 22, 25, 32
<i>Rose v. Anderson Hay and Grain Co.</i> , 168 Wn.App. 474, 276 P.3d 382 (2012).....	31, 40
<i>Smith v. Bates Technical College</i> , 139 Wn.2d 793, 991 P.2d 1135 (2000).....	31, 32
<i>Thompson v. St. Regis Paper Co.</i> , 102 Wn.2d 219, 685 P.2d 1081 (1984).....	1, 22, 23, 25, 33, 45
<i>Van Asdale v. International Game Technology</i> , 577 F.3d 989 (9 th Cir. 2009)	28, 29
<i>Weiss v. Longquist</i> , 173 Wn.App. 344, 293 P.3d 1264 (2013).....	33
<i>Welch v. Chao</i> , 536 F.3d 269 (4 th Cir. 2008)	29, 30

STATUTES:

15 U.S.C. § 78ff(a).....	44
18 U.S.C.A. § 1001.....	44
18 U.S.C.A. § 1341.....	28, 38, 44
18 U.S.C.A. § 1343.....	28, 38, 44
18 U.S.C.A. § 1344.....	28, 38, 44
18 U.S.C.A. § 1348.....	28, 38, 44
18 U.S.C.A. § 1514A.....	27, 28, 34
18 U.S.C. § 1350.....	44
49 U.S.C.A. § 31105.....	32

RCW 9.24.050	43
RCW 46.61.502	26

I. INTRODUCTION.

Where an employee reports another employee's law violation law to a supervisor, or to an agency tasked to monitor such violations, the reporting employee becomes a "whistleblower," and is protected by various statutes from retaliation for their act of reporting. But where an employee is ordered by superiors to violate the law, and refuses to do so, that employee is not a whistleblower. No law violation exists to report. If that employee is discharged for refusing to violate the law, no adequate remedy exists to protect the employee, and thereby the public, from the employer's behavior or from its ramifications, except for the tort of wrongful discharge in violation of public policy. Where an employee refuses to commit a wrongful act, and is discharged, the resultant claim is the original wrongful discharge public policy tort established by our state Supreme Court in 1984 in *Thompson v. St. Regis Paper Co.*, 102 Wn.2d 219, 685 P.2d 1081 (1984).

Most recently, our state Supreme Court reiterated the need for this public policy tort even in whistleblower claims, where statutory protections may apply. In *Piel v. City of Federal Way*¹, the court held

¹ 177 Wn.2d. 604, 306 P.3d 879 (2013).

that public policy wrongful termination claims may properly proceed even where statutory schemes exist which allow for administrative remedies, because some statutes which address the conduct still remain inadequate to protect the public policy.

This case presents a clear example of statutory inadequacy in a new era of labyrinth corporate “holding companies,” mergers, memberships, and affiliate structures—all engineered to the point where an employee’s employer turns out to *not* be their employer after all; and where only teams of lawyers and trial court judges can distill evidence, under oath, to identify the employing entity. Such structures thwart the adequacy of legislation to protect the public from corporate misbehavior.

Where no statute unequivocally applies to the conduct, the employee, the employer, or the directive at issue, there is no adequate statutory remedy to protect the public. This state’s original public policy tort claim, designed to ensure that employers, now whether locally or from states away, do not force Washington employees to violate the law to retain their jobs, remains necessary and vibrant today.

II. COUNTER STATEMENT OF THE ISSUES.

1. Where statutory protections are not unequivocally applicable to the conduct, the employee, the employer, or the directive, then a 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.

2. There are no statutory protections adequate to protect the public from a national company demanding that a local accounting executive produce a false financial projection report for the national company's use.

III. STATEMENT OF THE CASE.

Respondent Gregg Becker believed himself to be employed by both Petitioners Community Health Systems, Inc., and Rockwood Clinic, P.S. *CP 725, para. I, Introduction; and para. 3.8.* He believed Community Health Systems to be a corporation licensed in Delaware, but licensed to do business in the State of Washington. *CP 725 at para. 2.5.* He alleged that CHS, Inc. did business in Spokane County through Deaconess Medical Center, Spokane Valley Hospital, and Rockwood Clinic. *CP 726 at 2.4.*

CHS, Inc. is a publicly traded company with primary corporate offices in Franklin, Tennessee. *CP 726, para. 3.1.* Becker alleges that CHS owns and operates hospitals in the State of Washington, including Rockwood. *CP 726, para. 3.4 and 3.5.* Becker was recruited by CHS. *CP 1367: 5-11.* Becker worked with CHS'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.* Becker's position was as a CHS executive, but entitled, "Physician Practice Chief Financial Officer – Rockwood Clinic, (Spokane, Washington) – 1024244." *CP 1367: 12-15.* Becker was employed with both companies through formal employment with Defendant Rockwood, but subject to requirements of reporting to, and direction from, CHS. *CP 727, para. 3.8.* Becker was sent—and signed—employee forms for both corporations at the directive of CHS. *CP 1369: 27; CP 1370: 23-25.* His 401(K) was established with CHS. *CP 1371: 3-7.* He was moved from his then-location in Atlanta to Spokane by a CHS contractor. *CP 1371: 8-17.* He was controlled and directed in his work at Rockwood in the state of Washington by CHS financial executives. *CP 1372: 17-20.* He was

directly supervised by, and reported to, CHS's Chief Financial Officer, Larry Cash, in Franklin, Tennessee. *CP 1372: 21-24.*

Becker's amended complaint states claims against "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.*

Becker alleges that CHS does business in Spokane County through, among others, Rockwood Clinic. *CP 726: 5-8.* He alleges that CHS, Inc., registered in Delaware, is licensed to do business in the State of Washington as Community Health Systems Professional Services Corporation d/b/a Community Health Systems PSC, Inc. *CP 726: 1-4.*

Becker understood that CHS, Inc. was required to report its financial status accurately. *CP 729, para. 5.8.* Becker states: "numerous state and federal laws and ethical codes of conduct require principal financial officers to ensure that any reporting done by that financial officer's corporation does not contain any untrue statement of a material fact, and does not omit to state a material necessary in order to make the statements made, in light of the circumstances under which such statements were made, not misleading." *CP 729 at para. 5.9.*

Becker notes: “As a publicly traded corporation, CHS must report its financial status accurately.” *CP 729, para. 5.8.*

Becker states that on October 3, 2011, he submitted to CHS’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*².

Becker’s projected report showed a predicted \$12,000,000 operating loss for Rockwood in 2012. *CP 733: 23-25.* This would result in CHS being required to report this increase in projected debt over its prior projections of less anticipated loss to its creditors. *CP 733 at 3.36.* CHS would be required to report Rockwood’s needs for extension of, and an increase of, its credit line with CHS. *CP 734, para. 5.37.* CHS had earlier predicted and represented to its creditors only a \$4,000,000 projected loss for Rockwood for 2012. *CP 734, para. 5.39.*

² The report Becker was required to present to CHS was a projection regarding the estimated financial profitability of Rockwood—a report known as an “EBITDA.” This is an approximate measure of a company’s operating cash flow. *CP 730, para. 5.12.* Becker understood that this report was of significant import to a company’s creditors because, among other uses, it identifies the free income available to the company, Rockwood, to make interest payments on loans. *CP 730, para. 5.13.* The EBIDTA projections also allowed CHS to present its own financial health projections to its investors as a measure of CHS’s own liquidity. *Id., para. 5.15.*

Becker alleges that from October 24 through November 14, 2011, CHS financial supervisors directed him to misrepresent the projected loss. His 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, and his performance now rated as “unacceptable.” *CP 735, para. 5.47, 5.48.* To retain his position as Chief Financial Officer, he 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 told his superiors at Rockwood and at CHS that the demands made of him were to engage in illegal and criminal acts. *CP 736, para. 5.52; and see para. 5.54 at CP 737.* He refused to engage in illegal and criminal behavior. *CP 737, para. 5.55.* CHS and Rockwood both continued to demand the false projection. *CP 737, para. 5.57.* Becker was called to Franklin, Tennessee by CHS supervisors for an unspecified meeting. *CP 737, para. 5.59.* When Becker asked if he

should bring legal counsel, CHS summarily canceled the meeting. *CP 738, para. 5.63, 5.64.*

Becker continued his refusal to comply with the demand that he falsify financial reports. *CP 729: 22-24.* He observed CHS now 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 that if it intended to misrepresent Rockwood's projected budget under the auspices of Becker's department, with Becker as the financial CFO, he would have no option but to submit his resignation. *CP 741, para. 5.85, 5.86.* Becker stated that 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 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.*

Becker has never been told to date what projected loss figure CHS or Rockwood ever used. *CP 742, para. 5.91.*

Court procedure.

On February 27, 2012, Becker filed a complaint for wrongful termination in violation of public policy. *CP 122.*

After his discharge, and after the filing of his lawsuit, on February 29, 2012, Becker also filed a complaint with the United States Department of Labor/OSHA. *CP 169-173*. He reported that he was directed to violate the law during his employment tenure, but refused to do so. *CP 170*. In particular, he refused to violate SOX. *CP 170*.

Both Petitioners CHS and Rockwood (hereafter “CHS/Rockwood”), immediately removed Becker’s state tort action to federal court. *CP 25*. Both attempted to dismiss Becker’s constructive discharge lawsuit. CHS, Inc. argued that CHS was not Becker’s employer, and did not transact business in Washington. *CP 232-233*. Rockwood argued that Becker’s wrongful discharge tort claim was a premature statutory Sarbanes-Oxley (SOX) claim, that Becker was required to complete 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*.

Simultaneously, CHS/Rockwood argued the reverse to the OSHA administrative agency. There, CHS/Rockwood sent a 27-page letter to OSHA claiming that Becker’s SOX complaint should be dismissed by the agency because SOX did not apply to Becker’s

situation for a myriad of reasons. *CP 1282-1308; CP 1287, para 2, CP 1296 at A; CP 1299 at C.* CHS/Rockwood's joint letter to the United States Department of Labor argued that the figures Becker was directed to falsify were "forward looking statements" not covered by SOX. *CP 1299, and 1287.* They argued that SOX does not apply to the conduct at issue for six different reasons, including 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 existed because the figures being required to be reported were immaterial. *CP 1287.*

Back in the Federal District Court, CHS/Rockwood then filed a declaration of Ben Fordham, a Vice President and Chief Litigation Counsel of "Community Health Systems Professional Services Corporation" (CHS PSC), which detailed veritable cascades of corporate layers, structures, mergers and names—all offshoots of "CHS." *CP 270-276.* Fordham included a linear graphic chart that omitted the very corporation Fordham claimed to work for—"CHS PSC." *CP 279 versus Fordham, para. 1 at CP 270.* CHS PSC's 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”—a company not identified on the graphic chart. *CP 271, para. 4.*

The CHS/Rockwood graphic shows Rockwood as a “member” of a local corporate trilogy in a direct line downward from “CHS Washington Holdings LLC,” the latter being a “Class B member of Rockwood and a member of Deaconess and Valley;” the latter CHS Washington Holdings LLC was downline from “Community Health Investment Company LLC,” which itself is a “Member of CHS Washington Holdings LLC,” which is downstream from CHS/Community Health Systems, Inc., the latter 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., then “[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 shows Rockwood Clinic, P.S. having engaged 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”), which is 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*.

The United States District Court stayed CHS/Rockwood’s motion to dismiss, agreed with Becker that a readily amended claim was not a SOX claim at all, and remanded the case to the state trial court to address the state public policy wrongful discharge claim. *CP 749*. CHS/Rockwood then moved to dismiss the state public policy claims in state court, arguing under CR 12(b)(6) that SOX remedies *were* available to Becker, and he could therefore not avail himself of a public policy wrongful discharge tort. *CP 802, 806*.

CHS’s Fordham then filed a second declaration. *CP 831-834*. Fordham now explained why he, as an employee of CHS PSC, should be allowed to testify about companies which did not employ him, from his position with an off-the-grid company. *CP 831, para. 1 and 2 vs. CP*

279. Fordham 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 was not as it seemed. The logo was actually owned by a different company, and was being licensed to CHS PSC. *CP 832 at para. 3*. Even CHS’s website was not owned or operated by CHS. *CP 832, para. 6*. Fordham attached CHS’s Form 10K, first page, which purports to explain why CHS refers to everyone as “we.” *CP 841*. 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*.

In its website, CHS, Inc. publicly details its ownership, operation, and leasing of 134 hospitals throughout the country. At the bottom of the page, it states thusly:

“Community Health Systems Professional Services Corporation.” *CP 376*. 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.

Fordham now disclosed management agreements between the CHS entities. *CP 832 at para. 4*. CHS, Inc. had not purchased Rockwood, as Mr. Becker believed, stated Fordham; 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 issue of who actually employed CFO Becker, or operated in Washington, made its way to hearing as an indirect part of CHS/Rockwood dismissal motions. By the time of the state court hearing on Petitioners’ combined CR 12(b)(6) motions, Becker’s counsel counted thirteen different CHS entities “straight line and sideways” referred to by various classifications. *RP, July 27, 2012, p. 12: 9-13*. Community Health Systems 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*. 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*.

Through all of this, Becker was apparently not employed by CHS PSC, whose personnel were ordering him to violate the law, nor did that company own Rockwood. 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.* In fact, the company Becker thought he was working for in Spokane, “CHS,” 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.*

CHS Inc., the reporting company, discusses publicly how these structures 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.* Many of the actions, as here, appear to proceed initially against CHS, Inc. *Id.*

The trial court reviewed all litigation evidence, declarations, legal briefing, and oral argument. It noted the “plethora of corporate entities, many of which have almost the same name....[M]ost all of them call themselves Community Health Systems in some fashion or another. Maybe it is doing business as, or whatever, but this is a very complicated way to do business.” *RP, July 27, 2012, p. 51: 17-24.* The court likened the CHS corporate entities to “a bowl of spaghetti at this point, I am not sure exactly what it looks like.” *RP 81: 1-6.*

The trial court never determined who employed Becker. *RP July 27, 2012 at 52-53*. It dismissed CHS, Inc. as a named defendant, but kept CHS PSC as the CHS Defendant. *CP 918-19; RP July 27, 2012, p. 58: 21-25*.

Colloquy with “CHS” 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.

After extensive colloquy, representations, and affirmations, 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.

5. 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.* Meanwhile, back in the OSHA agency proceeding, nothing substantive had occurred. By September 25, 2012, CHS/Rockwood was reiterating to OSHA in bold letters: “**SOX is not applicable.**” *CP 932, bold in original.* It argued that neither Petitioner had ever reported false financial information. *CP 931.* It agreed that CHS never violated SOX or the law because Becker refused to report false information. *CP 931.*

By September 25, 2012, OSHA's Department's investigator responded to Petitioner CHS 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.

As of the date of this response brief, no evidence exists in this record that OSHA or any administrative agency has ever done anything to investigate Mr. Becker’s post-discharge February 2012 SOX complaint.

Becker’s amended complaints alleges as follows:

“WHEREFORE, Plaintiff reasserts all of the above; and further alleges as follows:

- 6.1 The public policy of the State of Washington prohibits adverse employment action against an employee who refuses to engage in actions which are reasonably believed to be illegal actions.
- 6.2 Misreporting financial information and misrepresenting a projected budget of a corporation reporting to a publicly traded company is illegal, it constitutes a violation of numerous financial reporting requirements by statute and by ethical codes, and it constitutes corporate fraud.
- 6.3 Plaintiff Becker reasonably believed he was being asked to engage in improper accounting practices and corporate fraud, refused to do so, and reported these concerns directly to both Defendants.
- 6.4 Rockwood and CHS engaged in retaliation and in adverse employment action against Plaintiff for his refusal to engage in improper accounting

practices.

- 6.5 CFO Becker was forced to choose between retaining his job or committing illegal and unethical acts.
- 6.6 Such demands by an employer constitute constructive discharge in violation of public policy.
- 6.7 Defendants constructively discharged Plaintiff.
- 6.8 Defendants' constructive discharge was wrongful discharge in violation of public policy.
- 6.9 Plaintiff is entitled to damages as a result of the Defendants' actions."

Amended Complaint filed May 23, 2012, CP 743-744.

Becker detailed throughout his complaint that the actions he was directed to perform were "illegal and criminal." *CP 737, para. 5.54, 5.52, and supra at 6.1, 6.5.*

IV. ARGUMENT.

1. Status on Interlocutory Appeal.

Respondent Becker stipulated to this interlocutory review to expedite the termination of the litigation. *Respondent's Response to Petitioner's Petition for Discretionary review.* Review is particularly proper here to promote the public policy in a new era of "corporate obfuscation." *Id.* at p. 13. When Gregg Becker, as a Chief Financial

Officer, cannot know the identity of his own employer, then statutory remedies are elusive.

At the time of CHS/Rockwood's original petition for discretionary review, CHS/Rockwood argued that certain inconsistencies existed in this state's case law relative to the "jeopardy" analysis of tort claims for wrongful termination. Since this case was certified, the jeopardy question has now been answered by this state's Supreme Court. In *Piel v. City of Fed. Way*, 177 Wn.2d at 604, 306 P.3d 879 (2013), our Supreme Court has clarified and reaffirmed that statutory remedies do not foreclose more complete tort remedies for wrongful discharge. *Id.* Certain statutes are inadequate to vindicate the public policy at issue. *Id.* Wrongful discharge tort claims remain necessary to vindicate the important public policies recognized even where identifiable and *applicable* statutes exist. *Id.* The *Piel* court did not have to address a situation as confounding as this one. In *Piel*, a statute clearly applicable was simply inadequate to protect the public policy. In this case, a statute that might provide a remedy cannot even be identified.

2. **This claim of wrongful discharge in violation of public policy is the original, constructive discharge claim, which remains viable.**

Four types of public policy tort claims were first recognized in *Dicomes v. State*, 113 Wn. 2d 612, 618, 782 P.2d 1002 (1989). *Piel*, 177 Wn.2d at 609-10. The categories are these: (1) where an employee's 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. *Piel*, citing *Dicomes*, 113 Wn.2d at 618.

The four scenarios are referenced as "categories" in *Gardner v. Loomis Armored Inc.*, 128 Wn.2d 931, 937, 913 P.2d 377, 379 (1996). Becker's claim is that of the first category—an employee discharged as a result of refusing to commit an illegal act. This category one tort was created in 1984, where this state's Supreme Court held that where an employer fired an employee who refused to commit an illegal act, such action controverts a clear mandate of public policy. *Thompson v. St.*

Regis Paper Co., 102 Wn.2d at 234. Unlike cases from the other three categories, such as *Korlund v. DynCorp Tri-Cities Servs., Inc.*, 156 Wash. 2d 168, 181, 125 P.3d 119 (2005), and all of the reporting cases discussed *infra*, this first category of public policy tort does not require that a discharged employee point to a specific statute as promoting the public policy. The mandate of public policy is that of the category itself—employers may not require employees to violate the law—any law—to keep their jobs. *Thompson*, 102 Wn.2d at 234.

The *Thompson* facts are nearly identical to those here. In *Thompson*, an accounting employee was discharged for trying to provide accurate accounting that complied with a certain law. *Id.* at 233-34. The court held that the cited law declared a clear expression of public policy, e.g., that bribery of foreign officials is contrary to the public interest, and that specific companies must institute accounting practices to ensure that this public policy is advanced. If an employee's discharge was thus premised upon his compliance with the requirements of that Act, then the employee's discharge was "contrary to a clear mandate of public policy and, thus, tortious." *Thompson*, 102 Wn.2d at 234.

But while *Thompson* cited to a specific statute at issue as setting the public policy (the Foreign Corrupt Practices Act), what arose from its holding is a far more global public policy, and that is a policy whereby an employer may simply not require an employee to commit illegal acts to retain their job—whatever the statute. *Thompson*, 102 Wn.2d at 234.

This is the claim here. Becker was bound by certain laws—Sarbanes-Oxley being only one such law. Similar laws are detailed in the Petitioner’s Opening Brief at 22-23. Perjury may be another. All of these laws establish a public policy of “honesty in business,” but necessarily arising from these statutes is the attendant public policy of ensuring that employers may not direct an employee to report false financial information to retain their job. Becker believed that misrepresenting a projected budget of a corporation reporting to a publicly traded company “is illegal and criminal.” *CP 737, para. 5.52, 5.54*. And it is, via an array of statutes that criminalize such behavior. But where no violation of any of these laws or policies ever occurs, because the employee refuses to violate the law, then another public policy arises--that policy whereby the employer may not require the

employee to commit any illegal act to retain their job—whatever the statute. *Thompson*, 102 Wn.2d at 234.

Becker’s refusal to violate any number of such laws, including SOX, was the reason for his discharge. This is the classic and the original public policy discharge tort, and it states a proper claim on which relief can be granted. *Thompson*, 102 Wn.2d at 234.

CHS/Rockwood recognizes that the holding of *Thompson* is directly on point; both Petitioners thereby claim, without authority, that the *Thompson* ruling has been “substantially refined.” *See Brief* at 39. Both claim that the “jeopardy” element was not adopted until twelve years later in *Gardner*. But *Thompson* was not overruled in *Gardner*. As noted in *Piel*, while the clarity and the jeopardy elements earlier tended to be “lumped together,” *Gardner* did not change the existing common law of the state. 177 Wn.2d at 610. The *Gardner* court reiterates the four categories of public policy torts, and continues to reference the original *Thompson* claim as the prime example of the first category. *See Gardner*, 128 Wn.2d at 936.

CHS/Rockwood attempts to apply the jeopardy reasoning for a category four, i.e., a whistleblower discharge, to the category one discharge. But the two are qualitatively different, and comparisons

misfire. The jeopardy element in a whistleblower claim can be difficult to meet, because statutes exist directly on point that protect the reporting of existing law violations, or that criminalize the conduct of those who *are* violating the law (as reported). *See § 4 infra*. The public policy tort becomes unnecessary. But that is not the case here. An employee directed to violate the law, who *refuses*, and is discharged, does not have *any* statutory remedy. There are no law violations to report. The jeopardy element is thus readily met in a category one claim, because no statute pointedly prohibits an employer from directing an employee to “violate the law,” and the Petitioners have not identified such a law. The only remedy to such employer conduct is in the employee’s refusal. Upon that employee’s discharge for their refusal, the public policy claim arises.

As an example, if there is a driver, and he is drunk, the criminal law is violated and the violation can be reported. *RCW 46.61.502; and see Cudney v. AlSCO*, 172 Wn.2d 524, 527, 259 P.3d 244 (2011). The statute clearly prohibits the conduct, and is easily applied to the obvious perpetrator behind the wheel. Existing law is sufficiently clear to render the existing conduct of that miscreant intoxicated employee illegal. The reporting employee calls the police, who arrest the

perpetrator and administer immediate prosecution. The situation fails as a constructive discharge whistleblower claim.

This case presents no such clarity.

3. **18 U.S.C.A. § 1514A (SOX) is inadequate to protect the public in “Thompson v St. Regis” circumstances.**

a. **SOX protects employees who report existing law violations of others, i.e., whistleblowers. It is inadequate where there is no law violation.**

CHS/Rockwood argue that 18 U.S.C.A.’s § 1514A, a.k.a. “SOX,” allowed Becker an adequate remedy. But SOX is a whistleblower statute. That very title of the statute says as much:

“a) Whistleblower protection for employees of publicly traded companies.”

18 USCA § 1514A.

There must be existing violations of the law to report. The statute then protects an employee reporting conduct that he or she “*reasonably believes constitutes a violation of ...*” *Id.*

This is the classic category four *Dicomes* claim. *Dicomes*, 113 Wn.2d at 618.

And with SOX, the existing violation reported must also be a violation of certain very specific statutes:

“...section 1341, 1343, 1344, or 1348, any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders.”

18 U.S.C.A. 's § 1514A.

SOX is the quintessential whistleblower statute for reporting existing violations of certain statutes that, first, protect *shareholders* of a publicly held corporation, which means that the company at issue must *have* shareholders. The SOX law breaks down into three requisites—application of the SOX statute first requires shareholders, there must be a reporting of existing illegal conduct by others, and that illegal conduct must be *believed* to actively violate certain *specific* laws, even if the violation did not actually occur. As stated in *Lockheed Martin Corp. v. Admin. Review Bd., U.S. Dep't of Labor*, 717 F.3d 1121, 1130 (10th Cir. 2013). “[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.*” *Id.*, *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).

In *Guyden v. Aetna, Inc.*, 544 F.3d 376, 384 (2d Cir. 2008), the Second Circuit holds that an actual violation of the law need not exist, but the employee must reasonably believe that the defendant's existing conduct violates the law. Similarly, in *Bishop v. PCS Administration (USA), Inc.*, 2006 WL 1460032 at *9 (N.D. Ill. May 23, 2006), the court confirms that an employee engages in § 1514A protected activity even if the reported existing conduct did not actually constitute a violation of one of the laws or regulations enumerated in § 1514A(a)(1). And similarly, in *Welch v. Chao*, 536 F.3d 269, 277 (4th Cir. 2008), SOX protection exists where the employee “reasonably believes” the conduct reported constitutes an existing violation. These cases apply SOX to reporting conduct of perceived existing violations of the law by others.

In *Livingston v. Wyeth, Inc.*, 520 F.3d 344, 352 (4th Cir. 2008), the Fourth Circuit confirms that there may well be no SOX protection for a whistleblower who acts *before* there is a violation of the law, precisely because the statute requires employees to have a reasonable belief of an “existing” violation. The statute speaks in the present

tense. There must be reasonable belief that the violation “has happened” or “is in progress.” *Id.* As recently as June 2013, the United States District Court in *Feldman v. Law Enforcement Associates Corp.*, 5:10-CV-08-BR, 2013 WL 3288309 (E.D.N.C. June 28, 2013), reiterated the same “violation of the law” requirement. *Id.*, citing, e.g., *Welch*, 536 F.3d at 275 (quoting *Livingston*, 520 F.3d at 352).

The SOX whistleblower statute thus has extremely limited application. It is activated by a report of a very specific and an existing law violation by another, that relates to fraud against shareholders. Mr. Becker was not a whistleblower. He did not report any existing and specific law violations, because he refused to violate the law.

- i. CHS/Rockwood argue inapplicable whistleblower law, but Washington distinguishes between whistleblower conduct and refusal to engage in illegal behavior in public policy claims.

CHS/Rockwood claims that because Becker refused to violate the law, he is whistleblowing. *See Petitioners’ Brief* at 36-37. The argument is controverted by the existence of the four categories themselves—which recognize the qualitative difference. *Gardner*, 128 Wn.2d at 935-936. Becker was not reporting existing violations of the law to his superiors, as

Petitioners conjecture. Becker was telling his superiors that he would not violate the law, and that this is what they were directing him to do. *See Petitioners' Brief* at 36-37. This is not whistleblowing, it is refusing to commit a crime.

The cases cited by CHS/Rockwood to support its argument are inapplicable and classic whistleblower “reporting” cases, i.e., category four cases, where an employee reports existing law violations by others. *See Cudney v. AlSCO, Inc.*, 172 Wn.2d 524, 530 (2011); *Rose v. Anderson Hay and Grain Co.*, 168 Wn.App. 474, 276 P.3d 382 (2012); *Smith v. Bates Technical College*, 139 Wn.2d 793, 991 P.2d 1135 (2000); *Korslund v. DynCorp Tri-Cities Servs., Inc.*, 156 Wn.2d 168, 125 P.3d 119 (2005); *Anderson v. Akzo Noble Coatings, Inc.*, 172 Wn.2d 593, 260 P.2d 857 (2011).

In *Cudney v. AlSCO, Inc.*, the employee reported other people’s *existing* safety violations, and received whistleblower status. The employee was not directed to himself violate the law. 172 Wn.2d at 530.

In *Rose v. Anderson*, Rose claimed that his employer violated the law. The law violated was a particular federal Act, which itself specifically prohibited an employer from terminating an employee for

refusing to violate that Act. 168 Wn.App. at 476, 478, referring to 49 U.S.C.A. § 31105. In other words, the employer not only violated a statute and was reported for it, but it *again* violated the same statute when it fired the employee who refused to violate the statute.

In *Smith v. Bates Technical College*, an employee was discharged after reporting her employer's perceived violations of a collective bargaining agreement, and then filed additional grievances of retaliation for her earlier reporting. 139 Wn.2d at 793.

In *Korlund v. DynCorp Tri-Cities Servs., Inc.*, the claim was one of alleged retaliation and harassment for the plaintiffs' reports of existing safety violations, mismanagement, and fraud at the Hanford Nuclear Reservation. 156 Wn.2d at 172-73.

In *Anderson v. Akzo Noble Coatings, Inc.*, the employee reported existing safety violations, and filed a formal complaint with the State reporting ongoing safety violations, including inadequate training. 172 Wn.2d at 598-99.

Even in *Piel*, recently decided, an employee was discharged for asserting collective bargaining rights, which is a *Dicomes* category three claim. *Piel*, 177 Wn.2d at 604.

Weiss v. Lonquist, 173 Wn.App. 344, 293 P.3d 1264 (2013) is the only remotely parallel fact pattern and exception to CHS/Rockwood's offered reporting cases, but in *Weiss*, an attorney refused to engage in "unethical" conduct, not illegal conduct. She argued that the public policy she was promoting was the policy demanding candor to the tribunal *as set forth in the Rules of Professional Conduct*. Unethical behavior is not necessarily illegal. *Weiss* conceded that the disciplinary rules of the bar offered her an alternative means of protecting that public policy of candor towards the tribunal, because the Washington State Bar Association has the authority and the ability to sanction an attorney. *Weiss*, 173 Wn.App. at 357-58. This situation differs. Becker was ordered to violate the law.

Thompson v. St. Regis applies. Whistleblower statutes do not provide Mr. Becker a remedy for his discharge, because he is not reporting existing law violations.

b. **Where the identity of the employer cannot be determined, the employing entity may not be subject to SOX, and SOX is an inadequate remedy.**

As noted above, the SOX whistleblower statute applies to only very specific companies—the relevant companies are “reporting” companies:

“with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l), or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)) including any subsidiary or affiliate whose financial information is included in the consolidated financial statements of such company, or nationally recognized statistical rating organization (as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c)...”

18 U.S.C. § 1514A.

Only employees of a publicly traded company, or employees of a subsidiary or affiliate of the publicly traded company, are covered by SOX. *See, e.g., Lawson v. FMR LLC Co.*, 670 F.3d 61 (1st Cir. 2012). In *Lawson*, the court held that employees in the mutual fund industry were not covered by SOX even though they were employed by a *contractor* of a publicly-traded company, and even though whistleblowing activities clearly related to SOX Act concerns. The

company being reported must itself be a “reporting” company, or a company who reports their financial information to a reporting company. The corporate labyrinth thwarts this statute as a remedy to the conduct here.

Becker is not employed by the reporting company CHS, Inc., as CHS, Inc. is a holding company with no employees. *RP July 27, 2012 at p. 27: 1-4, 7-10.*

Becker is not employed by a “subsidiary” or “affiliate” of a reporting company because, according to CHSI counsel at oral argument, CHS PSC is a subsidiary of CHSI, and if CHS PSC had been added to the CP 279 chart, it would have been “two tiers down.” *RP 27: 7-14.* But Becker is not employed by CHS PSC either. Rockwood is held by CHS Washington Holdings, LLC. *Id.*, p. 28: 2-11.

Per filed materials, Rockwood Clinic’s reporting status cannot be discerned because Rockwood Clinic is (at best) a subsidiary (or affiliate) of an LLC “Class B member of Rockwood and member of Deaconess and Valley” CHS Washington Holdings LLC, which is not identified as a reporting company. *CP 279.* And CHS Washington Holdings LLC is only a possible “member” of a subsidiary LLC known as Community Health Investment Company LLC, which is not

evidenced as a reporting company. *CP 279*. The latter LLC, Community Health Investment Company LLC, is also conversely listed as a “member of CHS Washington Holdings LLC,” which means they are each members of each other, but neither appears to be a reporting company, but may be either a subsidiary or a “member” of a structure known as “CHS/Community Health Systems, Inc”, which is then identified as “a Member of Community Health Investment Company, LLC,” which is then identified as a subsidiary or member of CHS, Inc, which is the publicly traded reporting company, but which allegedly has no employees. *CP 279; RP, p. 27*. Along the way, there are mergers with off-the-grid entities. *CP 861, 871*. And CHS PSC, the Petitioner, is not listed at all. *CP 279*. CHSI counsel confirms, in fact, that CHSI has nothing to do with Rockwood, or anyone in the merger agreement. *RP 29: 13-19*.

It cannot be determined if SOX applies.

And even if Rockwood or CHS PSC could be perceived as an “affiliate” of a reporting company, that affiliate’s financial information must be included in the consolidated financial statements of the reporting company to be covered. *18 U.S.C. § 1514A*. No such

evidence exists in this record.³ Petitioners argue the contrary to OSHA. There, they argue that the information Becker was directed to falsify is not publicly reported; it is protected by “Safe Harbor” exceptions. *CP 1287, 1296, 1299.*

Neither “the public,” nor any employee could access this corporate labyrinth information. It is held somewhere in the bowels of a CHS, Inc. or CHS PSC legal department, the latter entities located in Somewhere, U.S.A. For what it is ultimately worth, the only means of accessing this information is by having a person discharged from his employment file a public policy tort claim naming the “wrong” employer “doing business as” any litany of known names to flush out the actual culprit, as Becker did here. *CP 38-39.* And having done so, the waters begin churning. *CP 29-34 (Notice of Remand).*

SOX cannot provide an adequate remedy. Its application cannot be determined, even on this appeal. This labyrinthine legal conundrum exists with the use of *any* statute, whether civil or criminal. No one can determine what law may apply until one knows who their employer is,

³ This may be because CHS PSC is simultaneously arguing to OSHA that SOX does not apply, so the reporting status of all of these entities must necessarily remain vague.

where that employer is located, who owns it, and in what sense. The SOX remedy is inadequate to protect the public policy of ensuring that employers in one state do not direct employees of other entities in Washington to violate the law, or lose their job in Washington.

c. **Where the nature of the financial information required by the employer to be falsified is not subject to SOX, SOX is an inadequate remedy.**

In the OSHA Agency proceeding, CHS/ Rockwood argue to OSHA that the SOX statute does not apply to Becker because Becker was doing financial *projections*, which are allegedly not included in consolidated financial statements of a publicly traded company. *CP 1291*. Petitioners reference “safe harbor” laws, claiming SOX exemption through those exceptions. *CP 1291*. Petitioners also note to OSHA that SOX applies only to reports of violations of very specific federal statutes, 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. *CP 1291*.

CHS/Rockwood claims that none of these violations are at issue, including for reason of “safe harbor” laws. *CP 1287, 1291-93, 1295-*

97, 1299. Again, the SOX statute does not readily apply to allow for any remedy against the employer's conduct. Mr. Becker's claim is not one to determine the applicability of a statute to the information he was required to falsify; it is an action for constructive discharge for his refusal to commit an illegal act, including basic perjury. SOX is not an adequate remedy to protect the public from the employer conduct evidenced here.

d. **Encouraging reporting of non-existent claims is contrary to public policy.**

CHS/Rockwood argues that public policy must encourage a CFO to report financial improprieties—apparently to a SOX agency. *See Petitioner's Brief* at 40. It should not be the public policy of this state to encourage employees to report non-existent violations of laws. It should be the public policy of this state to encourage employees to walk away from an employer who requires the employee to violate the law to keep a job, and to file a wrongful discharge claim to address the employers' behavior, as that is the only means of protecting the public from such actions.

- e. Even were SOX to be applicable to the conduct, employer, or information at issue, it provides no adequate relief.

Had CHS/Rockwood located a clearly *usable* statute, even such a statute may not provide an adequate remedy to protect the public policy. *Piel*, 177 Wn.2d at 616. As the trial court noted, “[Y]ou can file claims all over the place, but the question is, are they going to be heard? That is an interesting policy matter.” *RP July 27, 2012*, p. 83: 2-4. In *Rose v. Anderson*, for example, the statute which prohibited the employer’s conduct also provided for expedited remedies against the employer. 168 Wn.App. at 478, citing 49 U.S.C. § 31105. But under 49 U.S.C. § 31105, the agency charged is required to conduct an investigation, make findings, and implement relief within *60 days*. Here, the evidence is that an agency claim will not be heard, much less acted on for nearly two years.

On February 29, 2012, after his discharge, Becker filed his agency complaint with OSHA. *CP 169-73*. Seven months later, by September 25, 2012, the agency had still not opened any investigation. *CP 1072*. CHS/Rockwood impliedly agrees in its briefing that reporting SOX violations to OSHA is so futile that the most likely scenario is that

the employee will end up having to file a United States District Court action anyway.

What is evidenced here is that after the proposed six-month exhaustion process, during which nothing happens, a SOX complaint filing in the United States District Court will result in the same position taken by CHS in the agency matter; which is that SOX does not apply to Becker's situation, his employer is not his reported employer, his real employer is not covered by SOX, the information Becker was directed to falsify was not SOX covered reporting information, and is protected by "safe harbor" rules, and that SOX does not apply because this is not a "whistleblower claim."

Again, the SOX statute does not clearly and unambiguously apply, and cannot provide an adequate remedy to protect the public policy in a situation such as this. *See Piel, supra*. This is precisely what the trial court concluded in denying dismissal. *RP 82: 10 – RP 83: 4*. The ruling is correct, and should be upheld.

4. **There are no other statutes which provide an adequate remedy for the conduct pled, but those statutes do evidence the public policy.**

CHS/Rockwood searches to find a statute other than SOX which *can* protect the public policy of ensuring that employers (whether in Tennessee or elsewhere) do not order Washington employees to violate the law or lose their Washington job. CHS/Rockwood describes its results as a “daunting array of governmental and private enforcement mechanisms.” *CP 851: 5-7*. Not a single statute offered by both collective Petitioners applies unless someone violates the law. No one did.

But what Petitioners do confirm is the daunting array of legislative efforts at establishing the public policy of “honesty in business,” or, as Becker would otherwise state it, the public policy of ensuring that employers do not direct employees to violate these statutes to keep their jobs.

CHS/Rockwood earlier cited a Washington felony statute. *See CP 850: 17-20, citing RCW 9.24.050*. This statute criminalizes the act of any “director, officer or agent of any corporation or joint stock

association, and every person engaged in organizing or promoting any enterprise, who shall knowingly make or publish or concur in making or publishing any written prospectus, report, exhibit or statement of its affairs or pecuniary condition, containing any material statement that is false or exaggerated.” *RCW 9.24.050*. This is a class B felony, punished by imprisonment in a state correctional facility for not more than ten years, or by a fine of not more than five thousand dollars. *Id.* The use of this statute requires probable cause to believe that Becker filed a false report. He did not. While CHS *directed* Mr. Becker to become a felon, Becker refused. No criminal violation occurred.

Moreover, state criminal statutes apply to conduct in the state of Washington. The perpetrators directing the crime are not in the state of Washington—they are in Tennessee—*maybe*. And the “person” or the “party,” or the “corporation” perpetrator cannot be fathomed, as CHS PSC allegedly does not employ Becker. One can imagine a local Eastern Washington county prosecutor attempting to file Washington state felony charges against a “financial department” in the State of Tennessee for violating Washington law when not only has no violation occurred in the State of Washington, but where the Tennessee employer’s legal department asserts that whoever in Tennessee directed such a purported

violation in Washington isn't employed by the complainant's employer in the first place, and thereby could not direct him to do anything.

CHS/Rockwood offered Washington State Securities Act law, which also requires an existing violation of state security law. *CP 851: 3-4, citing RCW 21.20.430.*

CHS/Rockwood argues that federal criminal laws provide a remedy, citing, e.g., 15 U.S.C. § 78ff(a); 18 U.S.C. § 1341, 1343, 1348; 18 U.S.C. § 1350(c)(1), (2); and 18 U.S.C. § 1001. *CP 850: 6-16.* All of these statutes require existing violations. CHS/Rockwood offers federal civil enforcement statutes. *Petitioners' Brief at 23; CP 850: 20-24.* All require a showing of a violation of SEC reporting obligations.

CHS/Rockwood cite federal private civil enforcement laws which allow class actions by *shareholders* against a company or individuals for existing violations of security laws. *Petitioners' Brief at 23; CP 850: 24 – CP 851: 1-2.* Mr. Becker is not a shareholder of CHS or Rockwood, this is not a shareholder suit, and there are no existing violations to report.

On appeal, CHS/Rockwood cites the Dodd Frank Act, which provides remedies for whistleblowers on specific crimes, *Petitioners' Brief at 17-21*, including crimes in their “infancy.” Again, crimes are not at issue here, including crimes in their infancy, as Becker refused to

commit a crime.

None of the alleged daunting array of statutes offered by CHS/Rockwood protect Mr. Becker, when he is directed to violate the law or lose his job. None of the statutes ensure that employers do not direct employees to violate the law at the risk of losing their job. *Thompson v. St Regis Paper Company* identified this void, and its holding remains all the more necessary today.

V. CONCLUSION.

No clearly applicable and adequate statutory remedy exists to protect the public policy of ensuring that employers, now including multi-level, multi-layered national corporations operating from a corporate hub in Tennessee, do not direct “employees” in this state to violate the law at the risk of the employee losing his Washington job. Corporate holding company structures are designed to thwart statutory liability, and the result is evidenced here.

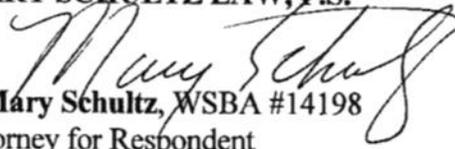
Constructive discharge in violation of public policy claims remain the only meaningful remedy to protect the public policy, just as it did in 1984 in *Thompson v. St. Regis Paper Co.*

The Petitioner’s appeal should be denied, and the matter should

be remanded for trial on Mr. Becker's complaint for wrongful termination in violation of public policy.

Respectfully submitted this 1st day of November, 2013.

MARY SCHULTZ LAW, P.S.



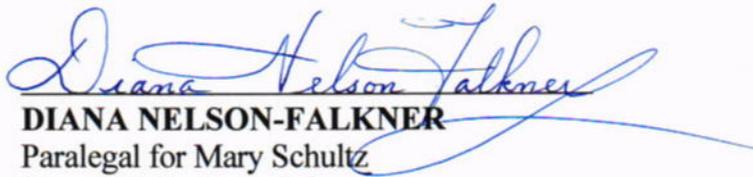
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is a person of such age and discretion as to be competent to serve papers; and that on **November 1, 2013**, she electronically filed the foregoing **Respondent's Brief** using the JIS filing portal, and served the following individuals in the manner indicated below:

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