EXHIBIT 1

**H**

Court of Appeals of Washington,
Division 2.
LANDSTAR INWAY, INC., Appellant,
v.
Frank SAMROW and Jane Doe Samrow and the marital community comprised thereof; Respondent,
Oasis Pilot Car Service LLC; and CJ Car Pilot, Inc., Defendants.

No. 43894–1–II.
May 6, 2014.

**Background:** Corporation that provided road transportation of cargo brought action against limited liability company (LLC) that dispatched pilot car operator, member of LLC, and pilot car operator, alleging negligence, breach of contract, and breach of indemnity for damages incurred when piloted cargo load scraped bottom of overpass during transport. Member moved for summary judgment. Corporation moved for permission to file amended complaint. The Superior Court, Pierce County, Susan K. Serko, J., granted summary judgment in favor of member. Corporation moved for reconsideration. The Superior Court denied corporation's motions for reconsideration and to amend complaint. Corporation appealed.

**Holdings:** The Court of Appeals, Bjorgen, J., held that:
(1) corporation and member contested by implication corporation's unpleaded claims of corporate disregard and independent duty doctrine;
(2) as a matter of first impression, a party seeking to disregard the corporate form due to fraud need not satisfy the civil rules' heightened pleading requirements for fraud;
(3) genuine issues of material fact precluded summary judgment on issue of whether member was individually liable under corporate disregard theory;
(4) member was not individually liable under independent duty doctrine;
(5) member was not individually liable on theory of breach of duty to personally provide pilot car services to corporation;
(6) member was not individually liable under theories of non-delegation; and
(7) member was not individually liable on partnership theory.

Affirmed in part, reversed in part, and remanded.

West Headnotes

**[1] Appeal and Error 30 ⚿893(1)**

30 Appeal and Error
30XVI Review
30XVI(F) Trial De Novo
30k892 Trial De Novo
30k893 Cases Triable in Appellate Court
30k893(1) k. In general. Most Cited Cases

Appellate court reviews de novo a trial court's decision to grant a motion for summary judgment.

**[2] Appeal and Error 30 ⚿863**

30 Appeal and Error
30XVI Review
30XVI(A) Scope, Standards, and Extent, in General
30k862 Extent of Review Dependent on Nature of Decision Appealed from
30k863 k. In general. Most Cited Cases

Appellate court's review of a trial court's decision to grant a motion for summary judgment requires the appellate court to perform the same inquiry as the trial court.

**[3] Appeal and Error 30 ⚿863**

30 Appeal and Error
30XVI Review

30XVI(A) Scope, Standards, and Extent, in General
30k862 Extent of Review Dependent on Nature of Decision Appealed from
30k863 k. In general. Most Cited Cases

**Appeal and Error 30 ⚿934(1)**

30 Appeal and Error
30XVI Review
30XVI(G) Presumptions
30k934 Judgment
30k934(1) k. In general. Most Cited Cases

On review of a trial court's decision to grant a motion for summary judgment, an appellate court examines the record, including the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits, in the light most favorable to the nonmoving party, drawing all reasonable inferences in the nonmoving party's favor, to determine if a genuine material issue of fact exists. CR 56(c).

**[4] Appeal and Error 30 ⚿959(1)**

30 Appeal and Error
30XVI Review
30XVI(H) Discretion of Lower Court
30k959 Amended and Supplemental Pleadings
30k959(1) k. In general. Most Cited Cases

**Appeal and Error 30 ⚿977(1)**

30 Appeal and Error
30XVI Review
30XVI(H) Discretion of Lower Court
30k976 New Trial or Rehearing
30k977 In General
30k977(1) k. In general. Most Cited Cases

Appellate court reviews a trial court's decision regarding either a motion for reconsideration or a motion to amend a complaint for an abuse of discretion.

**[5] Appeal and Error 30 ⚿946**

30 Appeal and Error
30XVI Review
30XVI(H) Discretion of Lower Court
30k944 Power to Review
30k946 k. Abuse of discretion. Most Cited Cases

A trial court abuses its discretion if its decision is manifestly unreasonable or based upon untenable grounds or reasons.

**[6] Appeal and Error 30 ⚿946**

30 Appeal and Error
30XVI Review
30XVI(H) Discretion of Lower Court
30k944 Power to Review
30k946 k. Abuse of discretion. Most Cited Cases

A trial court's decision is manifestly unreasonable, thereby constituting an abuse of discretion, if it is outside the range of acceptable choices, given the facts and the applicable legal standard.

**[7] Appeal and Error 30 ⚿946**

30 Appeal and Error
30XVI Review
30XVI(H) Discretion of Lower Court
30k944 Power to Review
30k946 k. Abuse of discretion. Most Cited Cases

A trial court's decision is based on untenable grounds, thereby constituting an abuse of discretion, if the factual findings are unsupported by the record, if the decision is based on an incorrect standard, or if the facts do not meet the requirements of the correct standard.

**[8] Appeal and Error 30 ⚿840(4)**

30 Appeal and Error
30XVI Review
30XVI(A) Scope, Standards, and Extent, in

General
30k838 Questions Considered
30k840 Review of Specific Questions and Particular Decisions
30k840(4) k. Review of questions of pleading and practice. Most Cited Cases

Appellate court looks to the record as a whole to see if parties have contested an unpleaded claim by implication by contesting the claim, the evidence in the record, and the trial court's consideration of the legal and factual issues involved.

**[9] Judgment 228 ⚷189**

228 Judgment
228V On Motion or Summary Proceeding
228k189 k. Defects and objections. Most Cited Cases

Corporation that provided road transportation of cargo and member of limited liability company (LLC) that dispatched pilot car operator contested by implication corporation's unpleaded claims of corporate disregard and independent duty doctrine, even though such claims were not formally before trial court in corporation's action against LLC, member, and pilot car operator for negligence, breach of contract, and breach of indemnity for damages incurred when piloted cargo load scraped bottom of overpass during transport, where record from hearing on member's motion for summary judgment contained extensive discussion of corporate disregard and independent duty doctrine and evidence that corporation relied on to present such theories of member's individual liability, and trial court ultimately denied corporation's motion to amend its complaint to add such theories after rejecting them on their merits.

**[10] Corporations and Business Organizations 101 ⚷3641**

101 Corporations and Business Organizations
101XV Unincorporated Business Organizations
101XV(E) Limited Liability Companies
101k3632 Members, Owners, and Shareholders
101k3641 k. Liability for acts and debts of company. Most Cited Cases

A limited liability company (LLC) is a statutory business structure that is like a corporation in that members of the company are generally not personally liable for the debts or obligations of the company. West's RCWA 25.15.125(1, 2).

**[11] Corporations and Business Organizations 101 ⚷3614**

101 Corporations and Business Organizations
101XV Unincorporated Business Organizations
101XV(E) Limited Liability Companies
101k3613 Disregarding Entity; Piercing Protective Veil
101k3614 k. In general. Most Cited Cases

Just as the courts may disregard the separate existence of a corporation to impose personal liability on the corporation's shareholders, courts may disregard the limited liability company (LLC) entity to impose personal liability on the LLC's members under certain circumstances. West's RCWA 25.15.060, 25.15.125(1, 2).

**[12] Corporations and Business Organizations 101 ⚷3614**

101 Corporations and Business Organizations
101XV Unincorporated Business Organizations
101XV(E) Limited Liability Companies
101k3613 Disregarding Entity; Piercing Protective Veil
101k3614 k. In general. Most Cited Cases

Courts employ the same test used to determine the propriety of piercing the veil of the corporate form to determine the propriety of piercing the veil of the limited liability company (LLC) form to impose liability on LLC members. West's RCWA 25.15.060, 25.15.125(1, 2).

**[13] Corporations and Business Organizations 101 ⚷3614**

101 Corporations and Business Organizations
101XV Unincorporated Business Organizations
101XV(E) Limited Liability Companies
101k3613 Disregarding Entity; Piercing Protective Veil
101k3614 k. In general. Most Cited Cases

Under the test to determine the propriety of piercing the veil of the limited liability company (LLC) form to impose liability on LLC members, a plaintiff must prove that the LLC form was used to violate or evade a duty and that the LLC form must be disregarded to prevent loss to an innocent party. West's RCWA 25.15.060, 25.15.125(1, 2).

**[14] Corporations and Business Organizations 101 ⚷3614**

101 Corporations and Business Organizations
101XV Unincorporated Business Organizations
101XV(E) Limited Liability Companies
101k3613 Disregarding Entity; Piercing Protective Veil
101k3614 k. In general. Most Cited Cases

Under the test to determine the propriety of piercing the veil of the limited liability company (LLC) form to impose liability on LLC members, establishing that the LLC form was used to violate or evade a duty requires the plaintiff to show an abuse of the LLC form. West's RCWA 25.15.060, 25.15.125(1, 2).

**[15] Corporations and Business Organizations 101 ⚷3614**

101 Corporations and Business Organizations
101XV Unincorporated Business Organizations
101XV(E) Limited Liability Companies
101k3613 Disregarding Entity; Piercing Protective Veil
101k3614 k. In general. Most Cited Cases

An abuse of the limited liability company (LLC) form, as may warrant piercing the veil of the LLC form to impose liability on LLC members, typically involves some manner of fraud, misrepresentation, or some form of manipulation of the LLC to the member's benefit and creditor's detriment. West's RCWA 25.15.060, 25.15.125(1, 2).

**[16] Corporations and Business Organizations 101 ⚷3614**

101 Corporations and Business Organizations
101XV Unincorporated Business Organizations
101XV(E) Limited Liability Companies
101k3613 Disregarding Entity; Piercing Protective Veil
101k3614 k. In general. Most Cited Cases

Under the test to determine the propriety of piercing the veil of the limited liability company (LLC) form to impose liability on LLC members, establishing that the LLC form must be disregarded to prevent loss to an innocent party requires the plaintiff to show that disregarding the LLC form is necessary to avoid the consequences of intentional misconduct harmful to the plaintiff. West's RCWA 25.15.060, 25.15.125(1, 2).

**[17] Corporations and Business Organizations 101 ⚷1038**

101 Corporations and Business Organizations
101II Disregarding Corporate Entity; Piercing Corporate Veil
101k1035 Reasons and Justifications
101k1038 k. Fraud or illegal acts in general. Most Cited Cases

As used in the cases concerning disregard of the corporate form due to fraud, "fraud" carries the broader meaning of inequitable or unconscionable conduct, rather than the limited common law meaning of fraudulent misrepresentation.

**[18] Corporations and Business Organizations 101 ⚷3614**

101 Corporations and Business Organizations
101XV Unincorporated Business Organizations
101XV(E) Limited Liability Companies

101k3613 Disregarding Entity; Piercing Protective Veil

101k3614 k. In general. Most Cited Cases

Common law fraud falls within the ambit of fraud, misrepresentation, or manipulation constituting an abuse of the limited liability company (LLC) form and thus may warrant piercing the veil of the LLC form to impose liability on LLC members. West's RCWA 25.15.060, 25.15.125(1, 2).

**[19] Fraud 184 ⚿3**

184 Fraud

184I Deception Constituting Fraud, and Liability Therefor

184k2 Elements of Actual Fraud

184k3 k. In general. Most Cited Cases

To establish fraudulent misrepresentation, a plaintiff must prove nine elements: (1) representation of an existing fact; (2) the materiality of the representation; (3) the falsity of the representation; (4) the speaker's knowledge of the falsity of the representation or ignorance of its truth; (5) the speaker's intent that the listener rely on the false representation; (6) the listener's ignorance of its falsity; (7) the listener's reliance on the false representation; (8) the listener's right to rely on the representation; and (9) damage from reliance on the false representation.

**[20] Fraud 184 ⚿17**

184 Fraud

184I Deception Constituting Fraud, and Liability Therefor

184k15 Fraudulent Concealment

184k17 k. Duty to disclose facts. Most Cited Cases

An omission may constitute fraudulent misrepresentation if the speaker had a duty to disclose information and breached this duty.

**[21] Fraud 184 ⚿17**

184 Fraud

184I Deception Constituting Fraud, and Liability Therefor

184k15 Fraudulent Concealment

184k17 k. Duty to disclose facts. Most Cited Cases

A duty to disclose material information can arise in arm's-length contract negotiations because of the contractual duty of good faith.

**[22] Pleading 302 ⚿18**

302 Pleading

302I Form and Allegations in General

302k18 k. Certainty, definiteness, and particularity. Most Cited Cases

Civil rules oblige a plaintiff alleging fraud claims to plead the elements of fraud and the factual circumstances constituting the fraud or face dismissal of the complaint. CR 9(b).

**[23] Corporations and Business Organizations 101 ⚿1031**

101 Corporations and Business Organizations

101II Disregarding Corporate Entity; Piercing Corporate Veil

101k1031 k. Nature of remedy. Most Cited Cases

"Corporate disregard" is not a freestanding claim for relief; rather, corporate disregard is an equitable remedy that allows a trial court to impose liability on a shareholder for a corporation's debts.

**[24] Courts 106 ⚿97(1)**

106 Courts

106II Establishment, Organization, and Procedure

106II(G) Rules of Decision

106k88 Previous Decisions as Controlling or as Precedents

106k97 Decisions of United States Courts as Authority in State Courts

106k97(1) k. In general. Most Cited Cases

State courts may refer to federal courts' de-

cisions on procedural issues as persuasive authority when interpreting analogous state rules of procedure.

**[25] Corporations and Business Organizations 101 ⚿1085(3)**

101 Corporations and Business Organizations
101II Disregarding Corporate Entity; Piercing Corporate Veil
101k1079 Actions to Pierce Corporate Veil
101k1085 Pleading
101k1085(3) k. Fraud or illegal acts in general. Most Cited Cases

**Pleading 302 ⚿18**

302 Pleading
302I Form and Allegations in General
302k18 k. Certainty, definiteness, and particularity. Most Cited Cases

A party seeking to disregard the corporate form due to fraud need not satisfy the civil rules' heightened pleading requirements for fraud. CR 9(b).

**[26] Judgment 228 ⚿181(31)**

228 Judgment
228V On Motion or Summary Proceeding
228k181 Grounds for Summary Judgment
228k181(15) Particular Cases
228k181(31) k. Stock and stockholders, cases involving. Most Cited Cases

Genuine issues of material fact existed as to whether member of limited liability company (LLC) that dispatched pilot car operator committed fraud to satisfy LLC's contractual duties to corporation that provided road transportation of cargo, whether recognizing LLC's status helped accomplish that fraud, and whether disregard of LLC's status was necessary to avoid injustice, precluding summary judgment on issue of whether member was individually liable to corporation, under corporate disregard theory, for damages incurred when piloted cargo load scraped bottom of overpass during transport. West's RCWA 25.15.060, 25.15.125(1, 2); CR 56(c).

**[27] Corporations and Business Organizations 101 ⚿1038**

101 Corporations and Business Organizations
101II Disregarding Corporate Entity; Piercing Corporate Veil
101k1035 Reasons and Justifications
101k1038 k. Fraud or illegal acts in general. Most Cited Cases

An abuse of the corporate entity, as may warrant piercing the veil of the entity to impose liability on a shareholder, is established when recognizing the corporate entity would help accomplish a fraud.

**[28] Corporations and Business Organizations 101 ⚿1038**

101 Corporations and Business Organizations
101II Disregarding Corporate Entity; Piercing Corporate Veil
101k1035 Reasons and Justifications
101k1038 k. Fraud or illegal acts in general. Most Cited Cases

Normally a corporate entity will be regarded unless to do so would help accomplish the breach of a duty owing to a person who has dealt with the corporation; in exceptional cases, however, when a natural or artificial person sought to be held liable has so conducted himself or itself with respect to the person seeking relief that not to enforce the remedy for breach against that person would aid in the perpetration of a wrong as, for example, accomplishing a fraud, the corporate entity will be disregarded to prevent such a result.

**[29] Corporations and Business Organizations 101 ⚿1037**

101 Corporations and Business Organizations
101II Disregarding Corporate Entity; Piercing Corporate Veil
101k1035 Reasons and Justifications

101k1037 k. Justice and equity in general. Most Cited Cases

To determine whether disregard of the corporate form is necessary to avoid an injustice, a court must examine the nexus between the abuse of the corporate form and the injury that the plaintiff claims justifies the disregard of the corporate form.

**[30] Judgment 228 ⚿186**

228 Judgment
228V On Motion or Summary Proceeding
228k182 Motion or Other Application
228k186 k. Hearing and determination. Most Cited Cases

Trial court's denial of motion by corporation that provided road transportation of cargo, which motion sought reconsideration of trial court's grant of summary judgment in favor of member of limited liability company (LLC) that dispatched pilot car operator, in corporation's action against LLC, member, and pilot car operator for damages incurred when piloted cargo load scraped bottom of overpass during transport, was based on an erroneous reading of the record and thus constituted abuse of discretion.

**[31] Torts 379 ⚿105**

379 Torts
379I In General
379k105 k. Purpose or function of tort law. Most Cited Cases

Tort law serves society's interests in freedom from harm, with the goal of restoring the plaintiff to the position he or she was in prior to the defendant's harmful conduct.

**[32] Contracts 95 ⚿1.1**

95 Contracts
95I Requisites and Validity
95I(A) Nature and Essentials in General
95k1.1 k. In general. Most Cited Cases
(Formerly 95k1)

**Damages 115 ⚿120(1)**

115 Damages
115VI Measure of Damages
115VI(C) Breach of Contract
115k120 Failure to Perform in General
115k120(1) k. In general. Most Cited Cases

Contract law serves society's interest in performance of promises, with the goal of placing the plaintiff where he or she would be if the defendant had performed as promised.

**[33] Action 13 ⚿27(1)**

13 Action
13II Nature and Form
13k26 Contract or Tort
13k27 Nature of Action
13k27(1) k. In general. Most Cited Cases

Generally an injury will sound in either contract or tort, and the plaintiff must seek remedies appropriate to the injury.

**[34] Action 13 ⚿27(1)**

13 Action
13II Nature and Form
13k26 Contract or Tort
13k27 Nature of Action
13k27(1) k. In general. Most Cited Cases

**Torts 379 ⚿114**

379 Torts
379I In General
379k110 Contracts in Relation to Torts
379k114 k. Duty, breach, or wrong independent of contract. Most Cited Cases

The "independent duty doctrine" recognizes that an injury may sound in both tort and contract law and allows a party to pursue both contract and tort remedies if a breach of contract is simultaneously a breach of a tort duty arising independently of the terms of the contract.

**[35] Automobiles 48A ⚿197(1)**

48A Automobiles
48AV Injuries from Operation, or Use of Highway
48AV(A) Nature and Grounds of Liability
48Ak183 Persons Liable
48Ak197 Persons Other Than Owners or Operators in General
48Ak197(1) k. In general. Most Cited Cases

**Corporations and Business Organizations 101 ⚿3641**

101 Corporations and Business Organizations
101XV Unincorporated Business Organizations
101XV(E) Limited Liability Companies
101k3632 Members, Owners, and Shareholders
101k3641 k. Liability for acts and debts of company. Most Cited Cases

Member of limited liability company (LLC) that dispatched pilot car operator owed no duty to corporation that provided road transportation of cargo, arising independently of terms of LLC's contract with corporation, to ensure that pilot car was operated with reasonable skill and judgment, and thus member was not individually liable to corporation, under independent duty doctrine, for damages incurred when piloted cargo load scraped bottom of overpass during transport; although administrative regulation imposed detailed extracontractual requirements on pilot car operation, member assumed no duty to abide by regulation's requirements, since member himself did not provide pilot car services to corporation for transport of load. West's RCWA 25.15.060, 25.15.125(1, 2); WAC 468–38–100.

**[36] Automobiles 48A ⚿197(1)**

48A Automobiles
48AV Injuries from Operation, or Use of Highway
48AV(A) Nature and Grounds of Liability
48Ak183 Persons Liable
48Ak197 Persons Other Than Owners or Operators in General
48Ak197(1) k. In general. Most Cited Cases

**Corporations and Business Organizations 101 ⚿3641**

101 Corporations and Business Organizations
101XV Unincorporated Business Organizations
101XV(E) Limited Liability Companies
101k3632 Members, Owners, and Shareholders
101k3641 k. Liability for acts and debts of company. Most Cited Cases

Member of limited liability company (LLC) that dispatched pilot car operator owed no duty to corporation that provided road transportation of cargo, under terms of LLC's contract with corporation, to personally provide pilot car services to corporation, and thus member was not individually liable to corporation, on theory of breach of such duty, for damages incurred when piloted cargo load scraped bottom of overpass during transport; although corporation alleged that it contracted with LLC specifically to obtain member's expertise, contract expressly gave LLC discretion to determine the manner in which it fulfilled its contractual duties, including discretion to use employees or agents to fulfill contractual duties, and nothing in contract suggested any requirement that member himself provide pilot car services.

**[37] Automobiles 48A ⚿147**

48A Automobiles
48AV Injuries from Operation, or Use of Highway
48AV(A) Nature and Grounds of Liability
48Ak147 k. Requirements of statutes and ordinances in general. Most Cited Cases

**Automobiles 48A ⚿197(1)**

48A Automobiles
48AV Injuries from Operation, or Use of Highway
48AV(A) Nature and Grounds of Liability

48Ak183 Persons Liable
48Ak197 Persons Other Than Owners or Operators in General
48Ak197(1) k. In general. Most Cited Cases

**Corporations and Business Organizations 101 ⚿3641**

101 Corporations and Business Organizations
101XV Unincorporated Business Organizations
101XV(E) Limited Liability Companies
101k3632 Members, Owners, and Shareholders
101k3641 k. Liability for acts and debts of company. Most Cited Cases

Even if duty to abide by detailed requirements imposed by administrative regulation governing pilot car operation was not delegable to pilot car operator by limited liability company (LLC) that dispatched pilot car operator, any non-delegable duty ran to LLC rather than to member of LLC, and thus member was not individually liable to corporation that provided road transportation of cargo, under theories of non-delegation, for damages incurred when piloted cargo load scraped bottom of overpass during transport; pilot car operator was, if anything, LLC's agent or apparent agent, not member's. WAC 469–38–100.

**[38] Principal and Agent 308 ⚿54**

308 Principal and Agent
308II Mutual Rights, Duties, and Liabilities
308II(A) Execution of Agency
308k54 k. Delegation or substitution. Most Cited Cases

Tort and agency law recognize that principals may not delegate the compliance with statutory duties to their agents.

**[39] Corporations and Business Organizations 101 ⚿1141**

101 Corporations and Business Organizations
101III Incorporation and Organization
101III(C) Purposes of Incorporation
101k1141 k. Limitation of personal liability of shareholders. Most Cited Cases

State law allows the use of the corporate form specifically to allow individuals to limit their liability.

**[40] Corporations and Business Organizations 101 ⚿1036**

101 Corporations and Business Organizations
101II Disregarding Corporate Entity; Piercing Corporate Veil
101k1035 Reasons and Justifications
101k1036 k. In general. Most Cited Cases

Absent some kind of fraud or abuse of the corporate form, courts respect the separate existence of a corporation, and the choice to limit liability through incorporation is not, by itself, such an abuse of the corporate form.

**[41] Judgment 228 ⚿185(6)**

228 Judgment
228V On Motion or Summary Proceeding
228k182 Motion or Other Application
228k185 Evidence in General
228k185(6) k. Existence or non-existence of fact issue. Most Cited Cases

Where the nonmoving party asks a court to draw an unreasonable inference on a summary judgment motion, the inference does not create a material issue of fact and summary judgment is appropriate.

**[42] Partnership 289 ⚿466**

289 Partnership
289I The Relation in General
289I(D) Nature and Creation of Relation as to Third Parties
289k466 k. Particular agreements and transactions. Most Cited Cases
(Formerly 289k32)

Inference that member of limited liability company (LLC) that dispatched pilot car operator had

separate, unnamed partnership with LLC was unreasonable, and thus member was not individually liable to corporation that provided road transportation of cargo, on partnership theory, for damages incurred when piloted cargo load scraped bottom of overpass during transport; although member signed contract with corporation on LLC's behalf using title of "Partner," contract disclosed no intent on corporation's part to contract with a partnership between member and LLC to obtain LLC's services, contract spoke only of contractual relationship between LLC and corporation, signature block on contract listed LLC's address, e-mail address, and federal tax identification number, and member testified that he did not know whether there was a distinction between a "partner" and a "member" of an LLC. West's RCWA 25.05.125(1).

**[43] Appeal and Error 30 ⚿193(9)**

30 Appeal and Error
30V Presentation and Reservation in Lower Court of Grounds of Review
30V(B) Objections and Motions, and Rulings Thereon
30k191 Pleading
30k193 Objections to Declaration, Complaint, or Petition
30k193(9) k. Failure to state cause of action. Most Cited Cases

Appellate court would not address corporation's claim that member of limited liability company (LLC) with which corporation contracted committed common law tort of fraud with certain representations that member implicitly or explicitly made to corporation, where neither corporation's complaint nor corporation's amended complaint pled the elements of fraud as required by civil rules. CR 9(b).

****332** David B. Jensen, Sylvia Janelle Hall, Merrick Hofstedt and Lindsey, Seattle, WA, for Appellant.

Richard William Lockner, Attorney at Law, Thomas George Krilich, Attorney at Law, Paul Lawrence Crowley, Lockner & Crowley, Inc., P.S. Tacoma, WA, for Respondent.

Robert William Novasky, Forsberg & Umlauf, P.S., Tacoma, WA, for Other Parties.

BJORGEN, J.

***113** ¶ 1 Landstar Inway Inc. sued Frank Samrow and others over an accident involving a Landstar truck allegedly caused by the negligence of a pilot car operator dispatched through a limited liability company (LLC) of which Samrow was a member. Samrow sought and obtained summary judgment dismissing him from the lawsuit, ***114** arguing that he was shielded from liability as a member of the LLC. Landstar appeals this order and the denial of its motions to reconsider summary judgment and amend its complaint. Landstar argues that the trial court erred because material issues of fact remain as to whether Samrow was (1) personally liable for' the LLC's obligations as one of its members under the doctrine of corporate disregard, (2) personally liable as a partner in an unnamed partnership with the LLC, and (3) personally liable for his own tortious acts. Because genuine issues of fact remain about Samrow's personal liability under the doctrine of corporate disregard, we partially reverse the order for summary judgment and remand for further proceedings.

FACTS

¶ 2 Washington is among the minority of states that do not require the road transportation of tall cargo loads on designated routes. Instead, Washington allows cargo carriers to select their own routes, so long as "pilot car" vehicles escort any tall cargo shipments. Where necessary to ensure that the load can safely travel beneath an overpass, a "pole car," a pilot car with a survey pole exceeding the height of the load attached to the front bumper, must precede the load. In theory, if the pole car can pass through without the pole striking the overpass, so may the cargo shipment. Regrettably, this theory may not always survive its passage through the real world.

¶ 3 In 2003, Samrow became a pilot car operator. For several years, Samrow offered his services in the form of his sole proprietorship, Blacksands Safety and Pilot Car Service. During these years, Samrow often worked with another pilot car operator, Terry Walker. The two of them occasionally provided pilot car services to Landstar.

¶ 4 In 2007, Samrow and Walker realized that they were receiving more offers for work than they could personally handle. They were referring the excess jobs to other contractors, ***115** but decided that they should receive payment for this service. This realization gave birth to Oasis Pilot Car Service LLC. Samrow testified that he and Walker never intended that Oasis would provide pilot car services, but would only dispatch other pilot car operators.

¶ 5 Samrow testified also that he and Walker decided to form Oasis as an LLC because "it would give [them] some protection." Clerk's Papers (CP) at 138. Samrow noted that he and Walker had tried to get insurance for the dispatching business, but no insurer would agree to provide them with a policy because, as a dispatcher, Oasis lacked any "direct link to the jobs." CP at 138. Even after Oasis's incorporation as an LLC, Samrow never successfully obtained insurance for the entity.

¶ 6 Under its business model, when a request for pilot car services came in, Oasis would offer the work to trusted pilot car operators and handle all the billing for the operator, taking 10 percent of the total fee for these services. Because they considered Oasis a dispatcher, both Samrow and Walker kept their sole proprietorships, and often did work referred by Oasis.

¶ 7 After Samrow and Walker formed Oasis, Landstar transferred its business to the new LLC. In July 2009, Landstar and related corporate entities signed two agreements with Oasis: a. "Master Independent Contractor Agreement" (Agreement) and a "Route Survey Indemnity Addendum to Master Independent**333 Contractor Agreement" (Addendum). Through the former, Oasis became one of Landstar's independent contractors providing pilot car services, although it had no obligation to accept every job Landstar offered. Through the latter, Oasis also agreed to provide route surveying services in conjunction with its pilot car services.

¶ 8 The Agreement laid out Oasis's obligations to Landstar. One of Oasis's primary duties was insuring Landstar against any loss it might cause. Part rV.B.l of the Agreement required Oasis to maintain

> ***116 Commercial Automobile Liability** insurance with a combined single limit for bodily injury and property damage of not less than ONE MILLION DOLLARS ($1,000,000) for each occurrence with respect to all vehicles owned, leased, hired, or assigned by Contractor to escort shipments on behalf of Companies. **Commercial General Liability** insurance coverage of not less than ONE HUNDRED THOUSAND DOLLARS ($100,000) per occurrence for personal property in the care, custody or control of Companies while such property is being escorted by Contractor. The Contractor[']s Automobile Liability and Commercial General Liability insurance policies must be endorsed to name the Companies as an additional insured for claims and liabilities arising out of the Contractor's work or services provided or performed under this Agreement.

CP at 103 (emphasis omitted). The Agreement required Oasis to prove it had "procured" and continued to "maintain[ ]" the required insurance. CP at 103. In the event that Oasis failed to "provide satisfactory proof of the liability insurance" required by the Agreement, Landstar reserved the right to purchase insurance at Oasis's expense. CP at 103. Oasis also agreed to

> indemnify and hold harmless Companies and any and all motor carriers for whom Companies are providing transportation services from any and all claims, judgments, costs, expenses and losses (including attorneys' fees) by reason of any claim of damage or injury to person (including death) or property, including but not limited to damage

> or injury sustained by Companies, its employees, drivers, or customers, caused in whole or in part by the negligence, breach of contract, breach of warranty, or other fault or default on the part of Contractor or its employees or agents in the performance of, or pursuant to, its work under this Agreement.

CP at 104. The Addendum contained a similar indemnification clause.

¶ 9 The Agreement also contained a nonassignability clause that declared that "none of the rights or obligations attaching to either party hereunder shall be assignable." CP at 105. However, the Agreement did not specifically require ***117** that Samrow perform the contract on Oasis's behalf. In fact, in keeping with Oasis's status as an independent contractor, the Agreement gave Oasis sole discretion to determine how to perform its contractual duties. CP at 102 ("[Oasis] shall have complete control over the means and method of providing services required to be performed."). To give effect to this discretion, the Agreement speaks generally to Oasis's agents and employees performing its contractual duties and no mention is made of any obligation for Samrow to personally provide the services.

¶ 10 Samrow signed the Agreement on behalf of Oasis using the title "Partner." CP at 106. The signature block where Samrow indicated his title contained Oasis's phone and federal tax numbers, as well as Oasis's e-mail address. Samrow later testified that he did not know whether there was a distinction between a partner and a member of an LLC.

¶ 11 When Landstar sought proof that Oasis had fulfilled its contractual obligation to procure and maintain the requisite insurance, Samrow provided it with the insurance policy for his personal vehicle, which listed Landstar as an additional insured. Samrow testified that he provided his personal insurance because Landstar employees told him that he could do so.

¶ 12 In October 2009 Landstar contracted to transport a tall load from British Columbia to the East Coast. One of Landstar's drivers called Oasis to alert it that he would need route survey and escort services through Washington. Samrow testified that ****334** he told the Landstar driver that "I couldn't handle the job" and that he gave the driver the name of Phil Kent, who provided pilot car services under the trade name CJ Car Pilot Inc. CP at 163–64. When Kent met the driver at the border, however, Kent was driving a vehicle marked with Oasis signs, and Oasis later billed Landstar for Kent's services.

¶ 13 When the two vehicles reached the New York Avenue overpass at milepost 124 on Interstate 5, Kent believed***118** he passed successfully underneath. The Landstar cargo load, however, struck the bottom of the overpass, and, because of the speed at impact, scraped its way completely under it. Landstar eventually paid both the Washington Department of Transportation and the company owning the load for damages to the overpass and the cargo.

¶ 14 When Landstar tendered its indemnity claims to Samrow pursuant to the Agreement, Samrow's insurance company denied the claim because Samrow's policy covered his personal vehicle, which had not been used to escort the load. Landstar then tendered its indemnity claims to CJ Car Pilot and Kent. Kent's insurer also rejected the tender. Eventually, to recover its losses, Landstar sued Oasis, Samrow and his marital community, and CJ Car Pilot Inc., alleging three different causes of action: negligence, breach of contract, and breach of indemnity. Samrow moved for summary judgment dismissing him from the action, claiming that any liability ran to Oasis and not to him personally.

¶ 15 Just before the hearing on Samrow's summary judgment motion, Landstar moved for permission to file an amended complaint that sought to impose personal liability on Samrow for abuse of Oasis's corporate form in two ways. First, Landstar alleged that Samrow had used Oasis to evade a leg-

al duty existing independently of the contract that required him to exercise reasonable care in the provision of pilot car services. Second, Landstar alleged that Samrow had fraudulently failed to disclose that Oasis was only a dispatcher, instead of a provider of pilot car services, and fraudulently represented his own insurance as Oasis's.

¶ 16 At the summary judgment hearing, the parties contested the theories of Samrow's individual liability found in both the original and amended complaints, despite the fact that the trial court had not yet granted leave to amend the complaint. Ultimately, the trial court granted the motion for summary judgment after determining that the facts did not justify disregarding the corporate form or imposing personal liability on Samrow.

***119** ¶ 17 Landstar moved for reconsideration, and the trial court consolidated the hearing on this motion with the hearing on the motion to amend Landstar's complaint. At the hearing, the trial court first heard the motion for reconsideration because the order for summary judgment had dismissed Samrow from the action, so Landstar could not amend its complaint unless the court granted reconsideration. Landstar's arguments at the hearing were essentially the same as the ones it had made at the summary judgment hearing: it contended Samrow was personally liable under the independent duty doctrine and under the doctrine of corporate disregard. The trial court rejected the motion for reconsideration, stating:

> The whole purpose of setting up corporations is to limit liability. So, to say that they did that to limit their liability, well, that's why most corporations are set up. LLCs are set up for that purpose, so I don't think that that, in and of itself, raises the issue of fact. The closest, I think, that the plaintiff gets to an issue of fact on whether there are material misrepresentations or fraud, quite frankly, because that's what you have to raise, an issue on those issues in order to raise an issue as to whether or not the Court should ultimately, as fact finder, pierce the corporate veil, is whether or not he's setting up a corporation just because he can't get insurance. I don't think that gets to raising an issue of fact on piercing the corporate veil; especially in light of the contract which was ultimately signed by the parties, the master contract which talks about, in essence, the responsibility being on, I think, both sides to ensure that there's insurance.
>
> ****335** I still think that my decision on summary judgment was accurate, correct, and I'm going to deny motion for reconsideration, which in turn means that the [motion to amend] is moot.

Verbatim Report of Proceedings (VRP) (June 22, 2012) at 17–18.

¶ 18 Landstar now appeals the trial court's orders granting summary judgment to Samrow and denying its motions to amend its complaint and for reconsideration of the summary judgment order.

***120** ANALYSIS

¶ 19 Landstar seeks reversal of the trial court's summary judgment order and the trial court's denial of its motions to amend its complaint and for reconsideration for three reasons. First, Landstar contends that Samrow's abuse of Oasis's corporate form justifies imposing its liabilities on him as a member under either the doctrine of corporate disregard or the independent duty doctrine. Second, Landstar alleges Samrow bore liability for Oasis's negligence or breach of contract or indemnity because he signed the Agreement as a partner of Oasis. Finally, Landstar contends that Samrow is liable for his own tortious actions. We agree that material questions of fact remain with regard to the disregard of Oasis's corporate form. Consequently, we partially reverse the order for summary judgment.

I. STANDARD OF REVIEW

[1][2][3] ¶ 20 We review de novo a trial court's decision to grant a motion for summary judgment. *Kofmehl v. Baseline Lake, LLC*, 177 Wash.2d 584, 594, 305 P.3d 230 (2013). Our review requires us to "perform[ ] the same inquiry as the trial court."

*Kofmehl,* 177 Wash.2d at 594, 305 P.3d 230. We examine the record, including the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits, in the light most favorable to the nonmoving party, drawing all reasonable inferences in the nonmoving party's favor, to determine if a genuine material issue of fact exists. *Kofmehl,* 177 Wash.2d at 594, 305 P.3d 230; CR 56(c). Summary judgment is appropriate where there is no material issue of fact and the moving party is entitled to judgment as a matter of law. CR 56(c).

[4][5][6][7] ¶ 21 We review a trial court's decision regarding either a motion for reconsideration or a motion to amend a complaint for an abuse of discretion. *City of Longview v. Wallin,* 174 Wash.App. 763, 776, 301 P.3d 45, *review denied,* 178 Wash.2d 1020, 312 P.3d 650 (2013); ***121***Protect the Peninsula's Future v. City of Port Angeles,* 175 Wash.App. 201, 214, 304 P.3d 914, *review denied,* 178 Wash.2d 1022, 312 P.3d 651 (2013). A trial court abuses its discretion if its " 'decision is manifestly unreasonable or based upon untenable grounds or reasons.' " *in rE marriage oF horner,* 151 wash.2d 884, 893, 93 P.3d 124 (2004) (quoting *State v. Brown,* 132 Wash.2d 529, 572, 940 P.2d 546 (1997)). A trial court's

> "decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard."

*Horner,* 151 Wash.2d at 894, 93 P.3d 124 (quoting *In re Marriage of Littlefield,* 133 Wash.2d 39, 47, 940 P.2d 1362 (1997)).

## II. THE ISSUES BEFORE THE TRIAL COURT

¶ 22 One procedural matter requires discussion before turning to the merits of Landstar's appeal. Technically, the corporate disregard and independent duty doctrine theories of Samrow's liability that Landstar urges here were not before the trial court during the summary judgment proceedings. Landstar had only moved to amend its complaint to add these theories of liability a day before the summary judgment hearing, and the trial court had not granted the motion to amend. However, the vast majority of the summary judgment hearing was devoted to discussion of corporate disregard and the independent duty doctrine. The trial court ultimately rejected these theories on their merits at the summary judgment hearing.

****336*** [8][9] ¶ 23 We have recognized that parties may contest unpleaded claims by implication. *Kirby v. City of Tacoma,* 124 Wash.App. 454, 471, 98 P.3d 827 (2004). We look to the record as a whole to see if the parties have actually done so by contesting the issue, the evidence in the record, and the trial court's consideration of the legal and factual issues ***122*** involved. *See Kirby,* 124 Wash.App. at 471, 98 P.3d 827 (quoting *Dewey v. Tacoma Sch. Dist. No. 10,* 95 Wash.App. 18, 26, 974 P.2d 847 (1999)). Here, the record contains extensive discussion of the corporate disregard and independent duty doctrine issues and the evidence Landstar relies on to present these theories. The trial court ultimately denied Landstar's motion to amend its complaint after rejecting the merits of the claims Landstar wished to add. Analogizing *Kirby* to summary judgment proceedings, the parties contested the corporate disregard and independent duty doctrine claims, despite the fact that they were not formally before the court. Therefore, we consider them properly before us.[FN1]

> FN1. For his part, Samrow does not argue that the claims are not before us.

## III. CORPORATE DISREGARD

¶ 24 Landstar first argues that summary judgment was inappropriate because material issues of fact remain concerning whether Oasis's corporate form should be disregarded in order to hold Samrow, as one of its members, individually liable. Specifically, Landstar alleges that material issues of fact remain as to whether Samrow (1) abused the

corporate form through fraud and (2) abused the corporate form by using it to evade a legal duty he owed independently of the Agreement and addendum. We agree that material issues of fact remain about whether Samrow committed fraud that abused the corporate form. These issues of fact, consequently, preclude summary judgment dismissing Samrow from the suit. However, as discussed in Part III B, below, we disagree that material issued of fact remain about Samrow's liability under the independent duty doctrine and affirm the grant of summary judgment with respect to that theory of Samrow's personal liability.

[10][11][12] ¶ 25 An LLC "is a statutory business structure that is like a corporation in that members of the company are generally not personally liable for the debts or obligations of the company." ***123***Chadwick Farms Owners Ass'n v. FHC, LLC,* 166 Wash.2d 178, 186–87, 207 P.3d 1251 (2009); *see* RCW 25.15.125(1), (2). However, just as the courts may disregard the separate existence of a corporation to impose personal liability on the corporation's shareholders, courts may disregard the LLC entity to impose personal liability on the LLC's members under certain circumstances. *Chadwick Farms,* 166 Wash.2d at 200, 207 P.3d 1251; RCW 25.15.060. We employ the same test used to determine the propriety of piercing the veil of the corporate form to determine the propriety of piercing the veil of the LLC form to impose liability on LLC members. *Chadwick Farms,* 166 Wash.2d at 200, 207 P.3d 1251; RCW 25.15.060.

[13][14][15][16] ¶ 26 Under this test, a plaintiff must prove the LLC form "was used to violate or evade a duty and that the LLC form must be disregarded to prevent loss to an innocent party." *Chadwick Farms,* 166 Wash.2d at 200, 207 P.3d 1251. Establishing the first element requires the plaintiff to show "an abuse of the corporate form." *Meisel v. M & N Modern Hydraulic Press Co.,* 97 Wash.2d 403, 410, 645 P.2d 689 (1982). Typically this involves some manner of " 'fraud, misrepresentation, or some form of manipulation of the corporation to the stockholder's benefit and creditor's detriment.' " *Meisel,* 97 Wash.2d at 410, 645 P.2d 689 (quoting *Truckweld Equip. Co. v. Olson,* 26 Wash.App. 638, 645, 618 P.2d 1017 (1980)). Establishing the second element requires the plaintiff to show that disregarding the corporate form is necessary to avoid the consequences of intentional misconduct harmful to the plaintiff. *Meisel,* 97 Wash.2d at 410, 645 P.2d 689.

A. *Fraud.*

[17][18] ¶ 27 Landstar first alleges that Samrow abused the corporate form by committing two different frauds.[FN2] First, Landstar****337** alleges that Samrow fraudulently concealed the ***124** fact that Oasis dispatched pilot car operators instead of providing pilot car services of its own. Second, Landstar contends that Samrow fraudulently misrepresented his own insurance as Oasis's in order to satisfy Oasis's contractual obligation to provide coverage.[FN3]

FN2. As used in the cases concerning corporate disregard, fraud carries the broader meaning of "inequitable or unconscionable conduct" rather than the limited common law meaning of fraudulent misrepresentation. *Viewcrest Co–Op. Ass'n v. Deer,* 70 Wash.2d 290, 294, 422 P.2d 832 (1967); *see Meisel,* 97 Wash.2d at 410, 645 P.2d 689 (citing Thomas Harris, *Washington's Doctrine of Corporate Disregard,* 56 WASH. L.Rev. 253, 260 n.38); *J.I. Case Credit Corp. v. Stark,* 64 Wash.2d 470, 475–76, 392 P.2d 215 (1964) (quoting Charles Horowitz, *Disregarding the Entity of Private Corporations,* 14 WASH. L.Rev. 285, 294 (1939)) (explaining that fraud within the meaning of corporate disregard is broader than fraud within the meaning of common law tortious conduct). Landstar does not avail itself of this wider meaning and contends that Samrow's conduct constituted common law fraud. Nonetheless, common law fraud does fall with-

in the ambit of "fraud, misrepresentation, or ... manipulation" and thus, if Landstar's allegations are true, suffices to allow a court to disregard the LLC form. *See Meisel,* 97 Wash.2d at 410, 645 P.2d 689.

FN3. Landstar does not argue that Samrow's provision of his insurance on Oasis's behalf shows that he treated Oasis as his alter ego, and therefore abused the corporate form by not treating Oasis as a separate entity. *See* Harris, *supra,* at 253.

[19][20][21] ¶ 28 To establish fraudulent misrepresentation, a plaintiff must prove nine elements: (1) representation of an existing fact, (2) the materiality of the representation, (3) the falsity of the representation, (4) the speaker's knowledge of the falsity of the representation or ignorance of its truth, (5) the speaker's intent that the listener rely on the false representation, (6) the listener's ignorance of its falsity, (7) the listener's reliance on the false representation, (8) the listener's right to rely on the representation, and (9) damage from reliance on the false representation. *Baertschi v. Jordan,* 68 Wash.2d 478, 482, 413 P.2d 657 (1966). An omission may constitute a misrepresentation if the plaintiff had a duty to disclose information and breached this duty. *Boonstra v. Stevens–Norton, Inc.,* 64 Wash.2d 621, 624–25, 393 P.2d 287 (1964) ; *Oates v. Taylor,* 31 Wash.2d 898, 903–04, 199 P.2d 924 (1949). A duty to disclose material information can arise in arm's-length contract negotiations because of the contractual duty of good faith. *Liebergesell v. Evans,* 93 Wash.2d 881, 891–94, 613 P.2d 1170 (1980); *Oates,* 31 Wash.2d at 904, 199 P.2d 924.

[22][23] ¶ 29 Samrow argues that we should not even reach the merits of Landstar's corporate disregard theory ***125** because Landstar failed to properly plead fraud according to CR 9(b). CR 9(b) obliges a plaintiff alleging fraud claims to plead the elements of fraud and the factual circumstances constituting the fraud or face dismissal of the complaint. *Haberman v. Wash. Pub. Power Supply Sys.,* 109 Wash.2d 107, 165, 744 P.2d 1032, 750 P.2d 254 (1987). However, despite the nomenclature Landstar used in amending its complaint, corporate disregard is not a freestanding claim for relief. Corporate disregard is instead an equitable remedy that would allow the trial court to impose liability on Samrow for Oasis's negligence, breach of contract, or breach of indemnity. *See Truckweld,* 26 Wash.App. at 643, 618 P.2d 1017.

[24] ¶ 30 There is no Washington case addressing whether a party must satisfy the pleading requirements of CR 9(b) in seeking to disregard a corporate form. The federal courts have, however, addressed the issue, and we may refer to these decisions as persuasive authority interpreting our analogous rules of procedure. *See Chapel Ridge Invs., LLC v. Petland Leaseholding Co.,* No. 1:13–cv–00146–PPS, 2013 WL 6331095, at *6 (N.D.Ind. Dec.4, 2013) (collecting federal cases discussing the pleading requirements for corporate disregard claims); *Washburn v. City of Federal Way,* 178 Wash.2d 732, 750, 310 P.3d 1275 (2013) (citing *Beal v. City of Seattle,* 134 Wash.2d 769, 777, 954 P.2d 237 (1998)). Unfortunately, the federal courts have yet to reach a consensus on whether a plaintiff seeking to disregard the corporate form due to fraud must plead the fraud in accordance with the federal version of CR 9(b). *Chapel Ridge,* 2013 WL 6331095, at *6–7.

[25] ¶ 31 Those federal courts that decline to impose heightened pleading requirements****338** in the context of corporate disregard do so because those pleading standards only apply to claims for relief, not the relief itself. *See Taurus, IP, LLC v. DaimlerChrysler Corp.,* 519 F.Supp.2d 905, 925 (W.D.Wis.2007). These courts do not impose the pleading ***126** requirements of FRCP 9, because the federal courts treat corporate disregard as an equitable remedy, rather than an independent claim. *Taurus,* 519 F.Supp.2d at 925; *see also* 18 Am.Jur.2d *Corporations* § 47 (2004). This interpretation of CR 9 comports with both Washington's commitment to maintaining liberal pleading stand-

ards and its view of corporate disregard as an equitable remedy, not a claim for relief. *See, e.g., Putman v. Wenatchee Valley Med. Ctr.,* 166 Wash.2d 974, 983, 216 P.3d 374 (2009); *Truckweld,* 26 Wash.App. at 643, 618 P.2d 1017. Based on these considerations, we follow those federal courts not requiring parties seeking to disregard the corporate form due to fraud to plead the fraud with particularity.

¶ 32 We turn now to the merits of Landstar's fraud allegation. Landstar introduced evidence that (1) it had done business with Samrow before the incorporation of Oasis, which might reasonably allow it to beheve Oasis was a provider of pilot car services; (2) Oasis held itself out as a provider of pilot car services; (3) the language of the contract suggested that Landstar understood Oasis as aprovider of pilot car services; (4) Samrow did not disclose that Oasis would not, as he had, directly provide pilot car services, but would only dispatch pilot car operators; (5) the contract required Oasis to procure insurance to cover its operations; and (6) Samrow provided his own insurance in the place of providing Oasis's to Landstar. For his part, Samrow introduced evidence that (1) he never considered Oasis anything other than a dispatcher and (2) he provided his personal insurance with Landstar's permission.

[26][27][28] ¶ 33 We hold that material issues of fact remain as to whether Samrow abused the corporate form. The first element of the test for corporate disregard is satisfied when recognizing the corporate entity would help accomplish a fraud:

> [n]ormally a corporate entity will be regarded unless [to do so] would help accomplish the breach of duty owing to the person who has dealt with the corporation. In exceptional cases, ***127** however, when the natural or artificial person sought to be held has so conducted himself or itself with respect to the person seeking relief that not to enforce the remedy for breach against that person would aid in the perpetration of a wrong as, for example, accomplishing a fraud, the corporate entity will be disregarded to prevent such a result.

*Soderberg Adver., Inc. v. Kent–Moore Corp.,* 11 Wash.App. 721, 732, 524 P.2d 1355 (1974). The Supreme Court of Oregon, a state following the same principles of corporate disregard, Harris, *supra,* at 259, expressed a similar approach in its holding that

> "[i]t is well settled that, when corporate entity is used to accomplish fraud or injustice, the courts will disregard it, and will look through the corporate form to the real actor or actors in the transaction."

*Amfac Foods, Inc. v. Int'l Sys. & Controls Corp.,* 294 Or. 94, 106, 654 P.2d 1092 (1982) (emphasis omitted) (quoting *Epton v. Moskee Inv. Co.,* 180 Or. 86, 93, 174 P.2d 418 (1946)).

¶ 34 A reasonable, although not necessary inference from the language of the contract and other evidence is that Landstar wanted Oasis's insurance, not Samrow's, and that Samrow fraudulently provided his own insurance to satisfy Oasis's obligations under the Agreement. Similarly, a reasonable fact finder could conclude that the prior course of dealing and the provision of Samrow's insurance led Landstar to reasonably conclude that Oasis would use Samrow's vehicle to provide the pilot car services called for by the Agreement and that Samrow did not disclose that would not be the case. This, in turn, could have led Landstar to believe the insurance Samrow provided would adequately protect it. Material issues of fact remain as to whether Samrow committed fraud to satisfy Oasis's contractual duties and whether recognizing Oasis's corporate status helped accomplish that fraud. For this reason, the trial court erred in granting summary judgment.

[29] ***128** ¶ 35 We also hold that material issues of fact remain as to whether disregard ****339** of the corporate form is necessary to avoid an injustice. This portion of the test for corporate disregard focuses on the nexus between the abuse of the

corporate form and the injury the plaintiff claims justifies the disregard of the corporate form. *See Meisel,* 97 Wash.2d at 410, 645 P.2d 689. As noted, Landstar has introduced evidence that would allow a reasonable fact finder to conclude that Samrow provided his insurance to satisfy Oasis's contractual obligations. Landstar has also introduced evidence that would allow a reasonable fact finder to conclude that Samrow's provision of insurance on Oasis's behalf prevented it from knowing it needed to purchase its own insurance. The fraud, if proven, would have led to Landstar's losses due to Oasis's breach of the provisions of the Agreement. Disregard of Oasis's LLC form to impose its liability on Samrow would therefore be necessary to avoid an injustice to Landstar arising from Samrow's abuse of that form. *See Chadwick Farms,* 166 Wash.2d at 200, 207 P.3d 1251.

¶ 36 Samrow argues that Landstar should have realized that someone other than Samrow would escort its cargo because of provisions in the contract authorizing Oasis to use employees or agents to discharge its obligations, meaning that no fraud occurred. Samrow contends that Landstar should have viewed the provision of his insurance as a breach of the provision requiring Oasis to provide insurance and exercised its option to purchase coverage at Oasis's expense. Samrow's argument, however, misses Landstar's point and misstates the provisions of the Agreement. Landstar contends that Samrow passed off his own personal insurance information as Oasis's, which precluded Landstar from exercising its contractual option to purchase insurance based on Oasis's failure to obtain coverage. If true, and if Landstar reasonably relied on this falsity and suffered damages in consequence, Samrow committed fraud. Again, a ***129** material issue of fact remains, and the trial court should have denied the motion for summary judgment.[FN4]

FN4. On remand, the trial court will need to apply CR 15 to determine the propriety of allowing Landstar to amend its complaint to add the corporate disregard theory of Samrow's liability.

[30] ¶ 37 The trial court based its denial of Landstar's motion to reconsider on Samrow's argument about Landstar's failure to procure insurance. In making its ruling, the trial court mistakenly characterized the Agreement as placing on both parties the responsibility to obtain insurance. The terms of the contract required Oasis to procure insurance and only allowed Landstar to do so where Oasis breached this obligation. Because the trial court based its ruling on an erroneous reading of the record, it abused its discretion in denying the motion for reconsideration.

B. *Independent Duty Doctrine*

¶ 38 Landstar also alleges that Samrow abused the corporate form by using Oasis to evade a legal duty to provide pilot car services in a reasonable manner that existed independently of the contract. To support its claim of an independent duty, Landstar cites WAC 468–38–100 and argues that this provision required Samrow to "operate the pilot car (or to ensure that the driver of the pilot car hired by Samrow operated the pilot car) with reasonable skill and judgment." Br. of Appellant at 17.

[31][32][33][34] ¶ 39 Tort law serves "society's interests in freedom from harm, with the goal of restoring the plaintiff to the position he or she was in prior to the defendant's harmful conduct." *Alejandre v. Bull,* 159 Wash.2d 674, 682, 153 P.3d 864 (2007). In contrast, contract law serves "society's interest in performance of promises, with the goal of placing the plaintiff where he or she would be if the defendant had performed as promised." *Alejandre,* 159 Wash.2d at 682, 153 P.3d 864. Generally an injury will sound in either contract or tort, and the plaintiff must seek remedies appropriate to the injury. *See* ***130***G.W. Constr. Corp. v. Prof'l Servs. Indus., Inc.,* 70 Wash.App. 360, 364, 853 P.2d 484 (1993). However, the independent duty doctrine recognizes that an injury may sound in both tort and contract law. Under the doctrine a party may pursue both contract and tort remedies if a breach of contract is simultaneously a "

breach of a tort duty arising independently of the terms of the contract." *Eastwood v. Horse Harbor Found., Inc.,* 170 Wash.2d 380, 389, 241 P.3d 1256 (2010) (lead opinion by Fairhurst, J.).

****340** [35] ¶ 40 We conclude that Samrow owed no independent duty under these facts. WAC 468–38–100 imposes detailed requirements on the operation of pilot cars, focusing on required equipment and the driver's duties in operating the vehicle. Among these are requirements that the pilot car driver notify the operator of the truck of overhead obstructions and that the pilot car have a height pole in certain circumstances. WAC 468–38–100(6), (14). Thus, the breach of any duty arising out of these provisions would be defined by the failure to provide pilot car services in accordance with their terms. Samrow, however, never provided pilot car services here, and we cannot say that he assumed any duty to act with ordinary care under WAC 468–38–100. Samrow could not use the corporate form to evade a duty he did not have.

[36] ¶ 41 Landstar also asks us to hold that Samrow owed a personal duty to provide pilot car services to Landstar under the Agreement. The Agreement provides no support for this argument. FN5 The Agreement gave Oasis the discretion to determine the manner in which it fulfilled its contractual duties. This discretion encompassed using employees or agents to perform the required tasks; none of this spoke to a requirement that Samrow provide the services himself. Further, Landstar is blurring contract and tort duties in its argument. There is no general duty requiring ***131** individuals in Samrow's position to provide pilot car services and no tort related to breach of this duty.

> FN5. Landstar alleges that it contracted with Oasis specifically to obtain the expertise of Samrow. The record, however, contains no evidence of this.

[37][38] ¶ 42 As to Landstar's claim that Samrow owed a duty to ensure that Oasis discharged any duty imposed by WAC 468–38–100, this appears to be an argument that any duty under the WAC provision was nondelegable. Tort and agency law recognize that principals may not delegate the compliance with statutory duties to their agents. *Carabba v. Anacortes Sch. Dist. No. 103,* 72 Wash.2d 939, 957–58, 435 P.2d 936 (1968) (citing Restatement (Second) of Agency § 214); *Millican v. N.A. Degerstrom, Inc.,* 177 Wash.App. 881, 890–91, 313 P.3d 1215 (2013), *review denied,* 179 Wash.2d 1026, 320 P.3d 718 (2014). If anything, Kent was either Oasis's agent or its apparent agent, not Samrow's, so any duty ran to Oasis, not Samrow. We find no basis for imputing Kent's liability to Samrow under theories of nondelegation.

[39][40] ¶ 43 Landstar argues finally that it would be unjust to allow Samrow to escape liability for Oasis's breach of a nondelegable duty because doing so would amount to an abuse of the corporate form. Landstar's argument reduces to a claim that Samrow and Walker could not incorporate and operate Oasis as an LLC because doing so limited their liability. We long ago rejected this argument. As with all American jurisdictions, Washington's law allows the use of the corporate form specifically to allow individuals to limit their liability. *See Truckweld,* 26 Wash.App. at 644–45, 618 P.2d 1017. Absent some kind of fraud or abuse of the corporate form, we respect the LLC's separate existence, and the choice to limit liability through incorporation is not, by itself, such an abuse of the corporate form. *Truckweld,* 26 Wash.App. at 644–45, 618 P.2d 1017.

## IV. PARTNERSHIP LIABILITY

[41] ¶ 44 Landstar also argues that summary judgment was inappropriate because material issues of fact remain as ***132** to Samrow's liability because he signed the Agreement and Addendum as a partner with Oasis, making him liable for the partnership's debts. As noted above, summary judgment is proper only where no material issue of fact remains, entitling a party to judgment as a matter of law. Again, we draw all reasonable inferences in favor of the nonmoving party. When these reasonable

inferences create material issues of fact, summary judgment is inappropriate. *Kofmehl,* 177 Wash.2d at 594, 305 P.3d 230. In contrast, where a party asks us to draw an unreasonable inference, the inference does not create a material issue of fact and summary judgment is appropriate. *Lynn v. Labor Ready, Inc.,* 136 Wash.App. 295, 310–11, 151 P.3d 201 (2006); *Marshall v. AC & Inc.,* 56 Wash.App. 181, 184–85, 782 P.2d 1107 (1989).

¶ 45 If Landstar is suggesting that Samrow's use of the title "Partner" effectively ****341** converted the LLC into a partnership, its position cannot be sustained. Nothing in the terms or purposes of applicable statutes suggests that the protections of an LLC are lost by signing as a partner instead of a member.

[42] ¶ 46 We take Landstar's position, instead, to be that Samrow's signature as a partner showed that he had entered into an unnamed separate partnership with Oasis. We agree that if Samrow had entered into such a partnership, he could be personally liable for the partnership's debts under RCW 25.05.125(1). However, the inference of an unnamed partnership was unreasonable, and the trial court properly declined to deny summary judgment on the basis of that unreasonable inference. As Samrow argues, the Agreement and Addendum disclose no intent on Landstar's part to contract with a third entity, a partnership between Samrow and Oasis, to obtain Oasis's services. All of the provisions of the Agreement and Addendum speak only of a contractual relationship between Oasis and Landstar. Further, the signature block on the Agreement and Addendum lists Oasis's address, e-mail address, and federal tax identification number. This information ***133** indicates that Samrow was signing on behalf of Oasis, but that he simply used the wrong title to do so. Samrow's deposition confirms this understanding of the information in the signature block on the Agreement and Addendum: he testified that he did not know that incorporation as an LLC transformed him and Walker from "partners" into "members." *See* CP at 161.

## V. SAMROW'S PERSONAL LIABILITY

¶ 47 Finally, Landstar contends that the trial court erred in granting Samrow summary judgment because material issues of fact remain about Samrow's liability for his own tortious acts. In support, Landstar simply repeats its allegations that Samrow committed the common law tort of fraud with certain representations he implicitly or explicitly made to it.[FN6]

> FN6. At oral argument, Landstar also alleged that material issues of fact remained about Samrow's negligence in picking the route used by Kent. Landstar did not assign error to the trial court's grant of summary judgment in this regard, and, although it made argument in this respect before the trial court, it provided no argument as to any error in its appellate briefs. The issue is not properly before us and we decline to address it. *See Holland v. City of Tacoma,* 90 Wash.App. 533, 537–38, 954 P.2d 290 (1998); RAP 10.3(a)(6).

[43] ¶ 48 Landstar presents Samrow's fraudulent statements here as an independent tort claim, rather than as a means to relief, as it did in seeking corporate disregard as a remedy. CR 9(b) does apply where the party sets out a claim for fraud. Under CR 9(b), Landstar needed to affirmatively plead the nine elements of fraud in its amended complaint or face its dismissal. *Haberman,* 109 Wash.2d at 165, 744 P.2d 1032, 750 P.2d 254; *Schreiner Farms, Inc. v. Am. Tower, Inc.,* 173 Wash.App. 154, 163, 293 P.3d 407 (2013). Neither Landstar's complaint nor its amended complaint pleads the elements of fraud as required by CR 9(b). Because Landstar's pleading failed to satisfy the requirements of CR 9(b), we cannot address the merits of its claim. Summary judgment in Samrow's favor was appropriate as to this theory of Samrow's liability.

## ***134** CONCLUSION

¶ 49 We partially reverse the summary judgment order dismissing Samrow from Landstar's

suit, because material issues of fact remain about whether Samrow abused the corporate form by committing fraud; and we remand to the trial court. If the finder of fact determines that Samrow abused the corporate form in this way, consistently with Part II. A. of the Analysis above, the trial court may disregard Oasis's LLC form in imposing any liability for that fraud.

We concur: WORSWICK, C.J. and JOHANSON, J.

Wash.App. Div. 2,2014.
Landstar Inway Inc. v. Samrow
181 Wash.App. 109, 325 P.3d 327

END OF DOCUMENT

EXHIBIT 2

**H**

Court of Appeals of Washington,
Division 3,
Special Panel.
Daniel DICKENS, Petitioner,
v.
ALLIANCE ANALYTICAL LABORATORIES, LLC, a Washington liability company; Anne Cote and John Doe Cote, wife and husband; and Gary Lukehart and Mary Lukehart, husband and wife; and RSRT, LLC, a Washington limited liability company, Petitioners.
William R. Rice and Heidi K. Rice, Petitioners,
v.
Alliance Analytical Laboratories, LLC, a Washington liability company; Anna Finch and John Doe Finch, wife and husband, Gary Lukehart and Jane Doe Lukehart, husband and wife, Petitioners.

No. 23038–4–III.
May 10, 2005.
Reconsideration Denied June 23, 2005.

**Background:** Former employees sued former employer, a limited liability company (LLC) with two members, one of which was a second LLC with one member, and they also sued that member individually to recover unpaid wages. Default was entered against employer. The Superior Court, Yakima County, Ruth E. Reukauf, J., denied cross-motions for summary judgment, and certified questions relating to agency for potential discretionary review. Limited discretionary review was granted.

**Holding:** The Court of Appeals, Brown, J., held that issue of material fact existed as to whether individual was personally liable as agent for unpaid wages, through piercing corporate veil of his LLC, precluding cross-motions for summary judgment.

Reviewed and remanded.

West Headnotes

**[1] Judgment 228 ⚿181(21)**

228 Judgment
228V On Motion or Summary Proceeding
228k181 Grounds for Summary Judgment
228k181(15) Particular Cases
228k181(21) k. Employees, cases involving. Most Cited Cases

**Judgment 228 ⚿181(31)**

228 Judgment
228V On Motion or Summary Proceeding
228k181 Grounds for Summary Judgment
228k181(15) Particular Cases
228k181(31) k. Stock and stockholders, cases involving. Most Cited Cases

Genuine issue of material fact existed as to whether member of limited liability company (LLC), which company was member of employer which was also an LLC, was personally liable under "anti-kickback" statute, which prohibits employers and employer agents from willfully and intentionally depriving employees of wages, for employees' unpaid wages, through piercing corporate veil of his LLC, precluding cross-motions for summary judgment in employee's action against employer and member as individual. West's RCWA 25.15.060, 49.52.050(2).

**[2] Labor and Employment 231H ⚿163**

231H Labor and Employment
231HIV Compensation and Benefits
231HIV(A) In General
231Hk161 Constitutional and Statutory Provisions
231Hk163 k. Purpose. Most Cited Cases

**Labor and Employment 231H ⚿210**

231H Labor and Employment
231HIV Compensation and Benefits
231HIV(A) In General

231Hk209 Deductions, Fines, and Forfeitures
231Hk210 k. In general. Most Cited Cases

"Anti-Kickback" statute, which prohibits employers and employer agents from willfully and intentionally depriving employees of wages, was enacted to prevent abuses by employers in a labor-management setting, such as coercing rebates from employees in order to circumvent collective bargaining agreements. West's RCWA 49.52.050(2).

**[3] Corporations and Business Organizations 101 ⚷3639**

101 Corporations and Business Organizations
101XV Unincorporated Business Organizations
101XV(E) Limited Liability Companies
101k3632 Members, Owners, and Shareholders
101k3639 k. Fiduciary duties; loyalty, care, and good faith. Most Cited Cases
(Formerly 241Ek21 Limited Liability Companies)

**Corporations and Business Organizations 101 ⚷3646**

101 Corporations and Business Organizations
101XV Unincorporated Business Organizations
101XV(E) Limited Liability Companies
101k3643 Directors, Officers, and Agents; Non-Member Managers
101k3646 k. Rights, duties, and liabilities. Most Cited Cases
(Formerly 241Ek21 Limited Liability Companies)

In a limited liability company (LLC), the fiduciary duty exists among the company, its members, and its managers.

**[4] Corporations and Business Organizations 101 ⚷1031**

101 Corporations and Business Organizations
101II Disregarding Corporate Entity; Piercing Corporate Veil
101k1031 k. Nature of remedy. Most Cited Cases
(Formerly 101k1.4(1))

Piercing the corporate veil is an equitable remedy imposed to rectify an abuse of the corporate privilege.

**[5] Corporations and Business Organizations 101 ⚷1043**

101 Corporations and Business Organizations
101II Disregarding Corporate Entity; Piercing Corporate Veil
101k1042 Factors Considered
101k1043 k. In general. Most Cited Cases
(Formerly 101k1.4(1))

**Corporations and Business Organizations 101 ⚷1037**

101 Corporations and Business Organizations
101II Disregarding Corporate Entity; Piercing Corporate Veil
101k1035 Reasons and Justifications
101k1037 k. Justice and equity in general. Most Cited Cases
(Formerly 101k1.4(2))

To pierce the corporate veil, two separate, essential factors must be established; first, the corporate form must be intentionally used to violate or evade a duty and, second, the fact finder must establish that disregarding the corporate veil is necessary and required to prevent an unjustified loss to the injured party.

****889** ***436** Robert E. Lawrence–Berrey, Attorney at Law, Yakima, WA, for Petitioners Daniel Dickens, William R. Rice and Heidi K. Rice.

Brendan Victor Monahan, Attorney at Law, Yakima, WA, for Petitioners Gary Lukehart and Mary Lukehart.

****890** BROWN, J.

¶ 1 Following denied cross-motions for sum-

mary judgment, the parties received a stipulated order from the trial court certifying four questions for potential discretionary review:

> 1. What is the definition of an "agent" under RCW 49.52.050, and what does a plaintiff have to prove in order to hold a defendant personally liable as an agent of an employer?
>
> 2. Is it enough that the purported agent have some power and authority to make decisions regarding the payment of wages, or must the purported agent have actually exercised such authority?
>
> 3. If actual exercise of authority is not required, what else, if anything must the plaintiff prove?
>
> 4. Does the summary judgment record allow either party to prevail as a matter of law on the certified issues?

***437** ¶ 2 Our commissioner granted limited review for issues arising under *Ellerman v. Centerpoint Prepress, Inc.*, 143 Wash.2d 514, 22 P.3d 795 (2001) regarding "whether to be an 'agent' for the purposes of RCW 49.52.070 a defendant need only have certain authority from the employer or whether it is necessary that the defendant also exercise that authority[.]" Commissioner's Ruling, August 18, 2004. We decline to give advisory opinions. Thus, our analysis is confined to responding to the limited grant of discretionary review in the narrow context of whether the trial court erred in denying the cross-motions for summary judgment on the issue of Gary Lukehart's personal liability. Ordinary agency principles apply. Undeveloped material facts exist. We find no error in denying summary judgment, and remand this matter back to the trial court.

## FACTS

¶ 3 Daniel Dickens and William R. Rice are unpaid employees of Alliance Analytical Laboratories, L.L.C. (AAL). The AAL Limited Liability Company (L.L.C.) is a start-up operation with two members, Anita Cote and RSRT, L.L.C. Gary Lukehart created RSRT "for the sole purpose of acting as a member of AAL." Clerk's Papers (CP) at 188. Mr. Lukehart signed the AAL Limited Liability Company agreement as "Manager" for RSRT. CP at 290. In the agreement, Ms. Cote and Mr. Lukehart are named managers of AAL and are referred to individually as "directors" and collectively as the "Board of Directors." CP at 277. After the employees sued AAL, Ms. Cote, RSRT, and Mr. Lukehart individually for their unpaid wages, orders of default were granted as to AAL and Ms. Cote.

¶ 4 The parties assert no material facts remain and one or the other should have received summary judgment. However, implicit in this stipulated certification is the premise that both parties believe the trial court erred. We summarize the background facts. In 2001, Anna Cote approached Mr. Lukehart about starting a chemical company ***438** in Yakima County. Ms. Cote showed Mr. Lukehart a business plan and told him she was very wealthy. Eventually, Mr. Lukehart became involved and AAL resulted. Mr. Lukehart's personal liability for the aftermath is now before us.

¶ 5 As noted, AAL was designed to be operated by managers as directors, Ms. Cote (the Cote Director) and Mr. Lukehart (the RSRT, L.L.C. Director). Ms. Cote was the day-to-day operator of AAL. Nancy Flood in AAL's human resources department assisted Ms. Cote with bill paying and the books. The extent of Mr. Lukehart's management of AAL is disputed. Mr. Lukehart asserts he merely played the role of a silent investor, but several AAL employees dispute this assertion.

¶ 6 In 2002, Ms. Cote told Mr. Lukehart insufficient AAL funds existed to cover expenses and payroll. Both Ms. Cote and Mr. Lukehart were signatories on the AAL bank account. RSRT loaned AAL approximately $120,000 over the course of the year in order to cover expenses and payroll. In January 2003, Ms. Cote told Mr. Lukehart insufficient AAL funds existed to cover expenses and

payroll. Again, RSRT loaned AAL $50,000 on January 21, 2003, and $25,000 on January 31, 2003, allegedly for the express purpose of covering payroll. In February 2003, this same process was repeated and RSRT loaned ****891** $69,000 for the express purpose of paying AAL employees.

¶ 7 Apparently, Ms. Cote was diverting funds to herself without paying the employees or other AAL creditors. By January 2003, the AAL line of credit was exhausted and AAL checks were bouncing. In February 2003, AAL loan interest payments were overdue. Creditors placed a lien on the AAL bank account. In March 2003, Mr. Lukehart, personally, made interest payments on the AAL loans. Ms. Flood told Mr. Lukehart several times that AAL employees remained unpaid.

¶ 8 In July 2003, AAL's bank closed its account. Shortly thereafter, AAL realized about $50,000 in income. Ms. Flood unsuccessfully asked Mr. Lukehart to open a new ***439** AAL bank account so that she could put the funds in the bank and use them to cover payroll and expenses. On the advice of his attorney, Mr. Lukehart declined further involvement with AAL. The undeposited money remained at the AAL offices until August 2003, when Ms. Cote individually withdrew the money and opened a new AAL account at another bank.

¶ 9 Ms. Flood told Mr. Lukehart about the new AAL bank account and he told her that there was nothing he could do about it. Apparently, Ms. Cote took the money from the new AAL bank account for her own use and disappeared.

## ANALYSIS

[1] ¶ 10 The issue is whether, considering *Ellerman v. Centerpoint Prepress, Inc.,* 143 Wash.2d 514, 22 P.3d 795 (2001), the trial court erred in denying the cross-motions for summary judgment on the question of Mr. Lukehart's personal liability as an agent under RCW 49.52.050 for the employees unpaid wages per RCW 49.52.070. The employees' contend Mr. Lukehart is an agent of AAL, arguing he is a company employee with actual, if not, exercised authority or control over paying wages. Our review is de novo because the parties have asked us to review a matter of law and the matter touches upon a summary judgment ruling. *Hartley v. State,* 103 Wash.2d 768, 774, 698 P.2d 77 (1985).

[2] ¶ 11 RCW 49.52.050 reflects a strong legislative policy favoring paying wages to employees. *Schilling v. Radio Holdings, Inc.,* 136 Wash.2d 152, 157, 961 P.2d 371 (1998). Often called the "Anti–Kickback statute," it was enacted to prevent abuses by employers in the labor-management setting. *Cameron v. Neon Sky, Inc.,* 41 Wash.App. 219, 222, 703 P.2d 315 (1985). The law curbs employers and certain employees with positions of financial authority, namely officers, vice principals or other employer agents, from willfully and intentionally depriving employees of wages. RCW 49.52.050(2). Courts liberally construe the anti-kickback statute. *Schilling,* 136 Wash.2d at 159, 961 P.2d 371.

***440** ¶ 12 An employer can be found liable under the statute. RCW 49.52. 050. Employers include "every person, firm, partnership, corporation, the state of Washington, and all municipal corporations." RCW 49.48.115. Our courts broadly apply liability to persons who could be considered an employer under the statute. *See Schilling,* 136 Wash.2d 152, 961 P.2d 371; *see also Ellerman,* 143 Wash.2d 514, 22 P.3d 795.

[3] ¶ 13 An L.L.C. manager is entitled to rely in good faith on other managers. RCW 25.15.175. A corporation's fiduciary duty is a duty between corporate directors, the corporation, and its shareholders. John Morey Maurice, *Operational Overview of the Washington Limited Liability Company Act,* 30 Gonz. L.Rev. 183, 200 (1995). In an L.L.C., the duty exists between the company, its members and its managers. *Id.*

¶ 14 Here, RSRT, L.L.C. as an AAL member-manager-director is clearly an employer. RSRT,

L.L.C. is, however, an artificial entity or person created under chapter 25.15 RCW that must act through its members or managers. Therefore, in order to reach Mr. Lukehart personally, the employees must pierce the corporate veil of RSRT, L.L.C. under RCW 25.15.060, which partly provides:

> Members of a limited liability company shall be personally liable for any act, debt, obligation, or liability of the limited liability company to the extent that shareholders of a Washington business corporation ****892** would be liable in analogous circumstances. In this regard, the court may consider the factors and policies set forth in established case law with regard to piercing the corporate veil[.]

[4][5] ¶ 15 Piercing the corporate veil is an equitable remedy imposed to rectify an abuse of the corporate privilege. *Truckweld Equip. Co. v. Olson,* 26 Wash.App. 638, 643, 618 P.2d 1017 (1980). In general, a corporation is considered a separate entity, even if it is owned by a single shareholder. *Id.* at 644, 618 P.2d 1017. To pierce the corporate veil, two separate, essential factors must be established. "First, the corporate form must be intentionally used to violate or evade a duty." ***441***Meisel v. M & N Modern Hydraulic Press Co.,* 97 Wash.2d 403, 410, 645 P.2d 689 (1982). Second, the fact finder must establish that disregarding the corporate veil is necessary and required to prevent an unjustified loss to the injured party. *Id.*

¶ 16 Although the parties argue no material facts exist, Mr. Lukehart and the employees continue to dispute his AAL management role and his knowledge of payroll matters. Further, they disagree about the inferences to be drawn from his personal infusion of funds into AAL. Information in this record regarding RSRT's corporate picture is sketchy. For example, no certificate of formation, L.L.C. agreement, business minutes, or any other records showing RSRT's authorization to Mr. Lukehart, or lack thereof, is before us. Mr. Lukehart correctly points out RSRT is the member of AAL, not him, personally. The combination of these material disputes and lack of clarity undermine the potential for summary judgment.

¶ 17 While Mr. Lukehart casts himself as a silent partner and minimizes his director's role in AAL, the AAL limited liability agreement shows his authority to act in wage matters. And, solely a limited partner in a limited partnership is protected as a silent investor. RCW 25.10.190. While Mr. Lukehart's authority to act may have been by omission delegated to Ms. Cote, it is unclear whether director responsibility could be delegated under the AAL L.L.C. agreement. Further, we view the parties' remaining dispute over alleged willful and intentional actions by Mr. Lukehart or RSRT to be surrounded by material facts precluding summary judgment. In refraining from giving advisory opinions, we express no view regarding Mr. Lukehart's arguments about the impact of the RSRT partnership agreement or the merit of his laches theory. *Walker v. Munro,* 124 Wash.2d 402, 418, 879 P.2d 920 (1994).

¶ 18 A Washington L.L.C. can have solely one member. RCW 25.15.005(4), (5). Here, RSRT was apparently set up solely by Mr. Lukehart to effectuate a family trust. The employees have not provided authority supporting that this is not a lawful activity. And, a limited liability company can ***442** become a member or manager of another limited liability company. *See* RCW 25.15.005(8), (9); RCW 25.15.115. Thus, the decision to utilize RSRT, rather than Mr. Lukehart personally, as the member and manager of AAL facially appears to be a legitimate business decision.

¶ 19 We have concluded RSRT is an employer. Presently, the same cannot be said about Mr. Lukehart without fact-finding to resolve RSRT corporate piercing issues. If the corporate veil is pierced, Mr. Lukehart may be determined to be an employer. Thus, we deem it unnecessary and premature to more fully develop the parties' contentions surrounding the four certified questions related to Mr. Lukehart's alleged agency.

¶ 20 At this point, our need to examine *Ellerman* is limited. In *Ellerman,* Mr. Ellerman, the employee, settled with Rosemary Widener, the employer, before trial. *Ellerman,* 143 Wash.2d at 517, 22 P.3d 795. This left solely Betty Handley, Ms. Widener's business manager, as the purported "vice principal" or "agent" who might be liable at trial under RCW 49.52.070. *Ellerman,* 143 Wash.2d at 517–18, 22 P.3d 795. Because Mr. Lukehart may be an employer like Ms. Widener if RSRT is pierced, we see no point in reasoning whether liability might attach due to some other status.

¶ 21 We reiterate for the present that Mr. Lukehart is listed as a manager solely in his representative capacity for RSRT. Generally, an agent is not liable for acts he has taken in ****893** his representative capacity. *Yuan v. Chow,* 96 Wash.App. 909, 913–14, 982 P.2d 647 (1999). Ordinary agency definitions and principles apply under RCW 49.52.070. As noted, insufficient facts presently exist under agency principles to support attaching personal liability on Mr. Lukehart as a director of AAL in a summary judgment context.

¶ 22 Finally, given the limited nature of our commissioner's grant of discretionary review under RAP 2.3(b)(4), we decline to enlarge the analysis beyond this point. Further reasoning is unwarranted. Omitted is analysis of both parties' attempts to argue federal authority concerning ***443** corporate officer responsibility and the alleged commission of willful and intentional acts. First, any detailed analysis of federal authority is unnecessary because it would not materially advance the ultimate termination of this litigation. RAP 2.3(b)(4). Second, we would risk appearing unfair by seeming to advise one party how to proceed at the expense of the other or risk violating our rule against giving purely advisory opinions. Therefore, we narrowly view the commissioner's grant of discretionary review.

## CONCLUSION

¶ 23 Although we do not know the exact basis for the trial court's denial of summary judgment regarding Mr. Lukehart's personal liability, given our analysis the trial court did not err in denying the cross-motions for summary judgment because in order to reach Mr. Lukehart, the employees must first pierce the RSRT corporate veil. In this limited review, we reason RSRT is an employer, but leave Mr. Lukehart's status open pending fact finding. Because we do not give advisory opinions, we decline to more fully answer the certified questions. Ordinary agency principles apply to these facts. Unresolved material facts remain to be developed here. Considering the interlocutory nature of this review, we remand this matter back to the trial court.

WE CONCUR: SCHULTHEIS, J. and ALLAN, J.P.T.

Wash.App. Div. 3,2005.
Dickens v. Alliance Analytical Laboratories, LLC
127 Wash.App. 433, 111 P.3d 889

END OF DOCUMENT

EXHIBIT 3

**H**

Supreme Court of Washington,
En Banc.
CHADWICK FARMS OWNERS ASSOCIATION, a Washington nonprofit corporation, Respondent,
v.
FHC LLC, a Washington limited liability company, Petitioner,
America 1st Roofing & Builders, Inc., a Washington corporation; Cascade Utilities, Inc., a Washington corporation; Milbrandt Architects, Inc., P.S., a Washington corporation; Pieroni Enterprise, Inc., d/b/a Pieroni's Landscape Construction, a Washington corporation; and Tight is Right Construction, Inc., a Washington corporation, Respondents.
Emily Lane Homeowners Association, a Washington nonprofit corporation, Respondent,
v.
Colonial Development L.L.C., a Washington limited liability company; The Almark Corporation, a Washington corporation; Daniel J. Mus, an individual; Mark B. Schmitz, an individual; Richard E. Wagner, an individual; Alfred J. Mus, an individual; and Does 1 through 25, Petitioners.

Nos. 80450–8, 80459–1.
Argued Nov. 18, 2008.
Decided May 14, 2009.
As Corrected Sept. 14, 2009.
Reconsideration Denied Sept. 18, 2009.

**Background:** Condominium homeowners association brought action against limited liability company (LLC) which had been formed to construct the condominiums, alleging construction defects. LLC filed third-party claims against subcontractors. The Superior Court, King County, Richard A. Jones, J., 2005 WL 4991137 and 2005 WL 4991139, granted summary judgment to LLC as to the construction-defect claims, and dismissed LLC's third-party claims. Cross-appeals were taken. The Court of Appeals, 139 Wash.App. 300, 160 P.3d 1061, affirmed in part, reversed in part, and remanded. Association and LLC sought review. In separate case, condominium homeowners association brought action against a limited liability company (LLC) and its members, alleging construction defects. The Superior Court, King County, Theresa B. Doyle, J., granted summary judgment to members but not to the LLC, and certified the case for discretionary review. Commissioner of Court of Appeals accepted the certification and also accepted cross-review of an issue raised by association. The Court of Appeals, 139 Wash.App. 315, 160 P.3d 1073, remanded. LLC sought review.

**Holdings:** The Supreme Court, Madsen, J., held that:
(1) since administratively dissolved LLC failed seek reinstatement, any suits it brought or any suits against it were limited to two-year winding-up period before it was canceled as a matter of law;
(2) statute setting forth three-year limitations period for filing action against LLC after dissolution does not permit actions against cancelled LLCs;
(3) ability of LLC to sue ends upon cancellation of certificate of formation; and
(4) personal liability may result if the persons winding up the affairs of LLC do not comply with statute governing distribution of dissolved LLC's assets.

Decisions of Court of Appeals affirmed in part and reversed in part.

C. Johnson, J., filed dissenting opinion, in which Sanders, Owens, and Chambers, JJ., concurred.

West Headnotes

**[1] Appeal and Error 30 ⇐893(1)**

30 Appeal and Error
30XVI Review
30XVI(F) Trial De Novo
30k892 Trial De Novo

30k893 Cases Triable in Appellate Court
30k893(1) k. In general. Most Cited Cases

A question of statutory interpretation is reviewed de novo.

**[2] Statutes 361 ⚿1072**

361 Statutes
361III Construction
361III(A) In General
361k1071 Intent
361k1072 k. In general. Most Cited Cases
(Formerly 361k181(1))

Goal of statutory interpretation is to ascertain and give effect to the legislature's intent.

**[3] Statutes 361 ⚿1091**

361 Statutes
361III Construction
361III(B) Plain Language; Plain, Ordinary, or Common Meaning
361k1091 k. In general. Most Cited Cases
(Formerly 361k188)

If a statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent.

**[4] Statutes 361 ⚿1151**

361 Statutes
361III Construction
361III(E) Statute as a Whole; Relation of Parts to Whole and to One Another
361k1151 k. In general. Most Cited Cases
(Formerly 361k205)

**Statutes 361 ⚿1216(1)**

361 Statutes
361III Construction
361III(G) Other Law, Construction with Reference to
361k1210 Other Statutes
361k1216 Similar or Related Statutes
361k1216(1) k. In general. Most Cited Cases
(Formerly 361k223.2(.5))

Plain meaning of a statute may be discerned from all that the legislature has said in the statute and related statutes which disclose legislative intent about the provision in question.

**[5] Corporations and Business Organizations 101 ⚿3661(1)**

101 Corporations and Business Organizations
101XV Unincorporated Business Organizations
101XV(E) Limited Liability Companies
101k3657 Dissolution and Forfeiture
101k3661 Operation and Effect
101k3661(1) k. In general. Most Cited Cases
(Formerly 241Ek49 Limited Liability Companies)

Dissolution does not terminate the existence of a limited liability company (LLC); instead, it begins a period in which the affairs of the company must be wound up. West's RCWA 25.15.270(1), 25.15.285(4), 25.15.295.

**[6] Corporations and Business Organizations 101 ⚿3664**

101 Corporations and Business Organizations
101XV Unincorporated Business Organizations
101XV(E) Limited Liability Companies
101k3657 Dissolution and Forfeiture
101k3664 k. Actions by or against company after dissolution or forfeiture. Most Cited Cases
(Formerly 241Ek49 Limited Liability Companies)

Administratively dissolved limited liability company (LLC) had two years in which to wind up, including prosecuting and defending suits, or else it had to seek reinstatement to obtain additional time in which to complete the winding up process. West's RCWA 25.15.270, 25.15.285(4), 25.15.295(2).

**[7] Corporations and Business Organizations 101 ⚷3664**

101 Corporations and Business Organizations
101XV Unincorporated Business Organizations
101XV(E) Limited Liability Companies
101k3657 Dissolution and Forfeiture
101k3664 k. Actions by or against company after dissolution or forfeiture. Most Cited Cases
(Formerly 241Ek49 Limited Liability Companies)

Since administratively dissolved limited liability company (LLC) failed to seek reinstatement, any suits it brought or any suits against it were limited to the two-year period available for winding up the affairs of LLC before it was canceled as a matter of law; once two-year reinstatement/winding up period passed and LLC's certificate of formation was canceled, it could no longer sue or be sued because it ceased to exist. West's RCWA 25.15.295(2).

**[8] Corporations and Business Organizations 101 ⚷3661(1)**

101 Corporations and Business Organizations
101XV Unincorporated Business Organizations
101XV(E) Limited Liability Companies
101k3657 Dissolution and Forfeiture
101k3661 Operation and Effect
101k3661(1) k. In general. Most Cited Cases
(Formerly 241Ek49 Limited Liability Companies)

Dissolution of a limited liability company (LLC) in the form of administrative dissolution begins the winding up period. West's RCWA 25.15.285(3).

**[9] Corporations and Business Organizations 101 ⚷3664**

101 Corporations and Business Organizations
101XV Unincorporated Business Organizations
101XV(E) Limited Liability Companies
101k3657 Dissolution and Forfeiture
101k3664 k. Actions by or against company after dissolution or forfeiture. Most Cited Cases
(Formerly 241Ek49 Limited Liability Companies)

Statute governing limited liability companies (LLCs) and providing that winding up, including prosecuting and defending suits, can continue only until cancellation of certificate of formation applies to administratively dissolved companies just as it applies to member dissolved companies. West's RCWA 25.15.295(2).

**[10] Corporations and Business Organizations 101 ⚷3664**

101 Corporations and Business Organizations
101XV Unincorporated Business Organizations
101XV(E) Limited Liability Companies
101k3657 Dissolution and Forfeiture
101k3664 k. Actions by or against company after dissolution or forfeiture. Most Cited Cases
(Formerly 241Ek49 Limited Liability Companies)

Statute setting forth three-year limitations period for filing action against limited liability company (LLC) after dissolution of LLC does not permit actions against cancelled LLCs. West's RCWA 25.15.303.

**[11] Corporations and Business Organizations 101 ⚷3610**

101 Corporations and Business Organizations
101XV Unincorporated Business Organizations
101XV(E) Limited Liability Companies
101k3610 k. In general; nature and status. Most Cited Cases
(Formerly 241Ek2 Limited Liability Companies)

A limited liability company (LLC) is defined by statute. West's RCWA 25.15.005 et seq.

**[12] Corporations and Business Organizations 101 ⚷3663**

101 Corporations and Business Organizations
101XV Unincorporated Business Organizations
101XV(E) Limited Liability Companies
101k3657 Dissolution and Forfeiture
101k3663 k. Assets, liabilities, claims, and distributions. Most Cited Cases
(Formerly 241Ek49 Limited Liability Companies)

A dissolved limited liability company (LLC) must, under the Limited Liability Company Act, properly complete the winding up process, which includes paying or making arrangements to pay known obligations and claims, even if unmatured or contingent. West's RCWA 25.15.295.

**[13] Corporations and Business Organizations 101 ⚷3641**

101 Corporations and Business Organizations
101XV Unincorporated Business Organizations
101XV(E) Limited Liability Companies
101k3632 Members, Owners, and Shareholders
101k3641 k. Liability for acts and debts of company. Most Cited Cases
(Formerly 241Ek27 Limited Liability Companies)

**Corporations and Business Organizations 101 ⚷3661(1)**

101 Corporations and Business Organizations
101XV Unincorporated Business Organizations
101XV(E) Limited Liability Companies
101k3657 Dissolution and Forfeiture
101k3661 Operation and Effect
101k3661(1) k. In general. Most Cited Cases
(Formerly 241Ek49 Limited Liability Companies)

Members of a limited liability company (LLC) who fraudulently attempt to use the provisions of the Limited Liability Company Act to avoid liability and members who wind up a LLC improperly expose themselves to individual liability. West's RCWA 25.15.295.

**[14] Corporations and Business Organizations 101 ⚷3664**

101 Corporations and Business Organizations
101XV Unincorporated Business Organizations
101XV(E) Limited Liability Companies
101k3657 Dissolution and Forfeiture
101k3664 k. Actions by or against company after dissolution or forfeiture. Most Cited Cases
(Formerly 241Ek49 Limited Liability Companies)

Ability of limited liability company (LLC) to sue ends upon cancellation of certificate of formation. West's RCWA 25.15.070(2)(c), 25.15.295(2).

**[15] Corporations and Business Organizations 101 ⚷1037**

101 Corporations and Business Organizations
101II Disregarding Corporate Entity; Piercing Corporate Veil
101k1035 Reasons and Justifications
101k1037 k. Justice and equity in general. Most Cited Cases
(Formerly 101k1.4(1))

In general, to pierce the corporate veil, the plaintiff must show that the corporate form was used to violate or evade a duty and that the corporate veil must be disregarded in order to prevent loss to an innocent party.

**[16] Corporations and Business Organizations 101 ⚷3614**

101 Corporations and Business Organizations
101XV Unincorporated Business Organizations
101XV(E) Limited Liability Companies
101k3613 Disregarding Entity; Piercing Protective Veil
101k3614 k. In general. Most Cited Cases
(Formerly 241Ek8 Limited Liability Companies)

To pierce the veil of the limited liability company (LLC) so that liability can attach to a member, a plaintiff must show that the LLC form was used

to violate or evade a duty and that the LLC form must be disregarded to prevent loss to an innocent party. West's RCWA 25.15.060.

**[17] Corporations and Business Organizations 101 ⚷3663**

101 Corporations and Business Organizations
101XV Unincorporated Business Organizations
101XV(E) Limited Liability Companies
101k3657 Dissolution and Forfeiture
101k3663 k. Assets, liabilities, claims, and distributions. Most Cited Cases
(Formerly 241Ek49 Limited Liability Companies)

Personal liability may result if the persons winding up the affairs of a limited liability company (LLC) do not comply with statute governing distribution of a dissolved LLC's assets. West's RCWA 25.15.300(2).

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MADSEN, J.

***182** ¶ 1 These consolidated cases involve the capacity of limited liability companies to sue and be sued after their certificates of formation are canceled pursuant to provisions in the Washington Limited Liability Company Act, chapter 25.15 RCW (the Act). Under the plain terms of the Act, a limited liability company ceases to exist as a legal entity and cannot be sued once its certificate of formation is canceled. At the same time, it cannot sue other entities once it is canceled. RCW 25.15.303, enacted after the actions in the present cases were brought, does not change this result. This statute provides that dissolution does not affect any remedy available and it establishes a statute of limitations for suits against limited liability companies that runs from the date of dissolution. The statute does not authorize suits after cancellation, either against or by the limited liability company. Therefore, we reverse the Court of Appeals' decisions***183** in these cases and ****1254** hold that the defendant limited liability companies were not subject to suit once they were canceled.

¶ 2 Also at issue is whether the members of the companies can be sued in their individual capacities. There are several circumstances in which individual liability may exist. Therefore, the Court of Appeals properly held in *Emily Lane Homeowners Ass'n v. Colonial Development, LLC,* 139 Wash.App. 315, 160 P.3d 1073 (2007), *review granted,* 163 Wash.2d 1022, 185 P.3d 1194 (2008), that insofar as the trial court dismissed claims against individual members of the limited liability company solely because of the immunity under the Act, it erred.

## FACTS

### *Chadwick Farms*

¶ 3 On December 23, 1999, FHC, LLC (FHC) formed as a limited liability company under the Act for the purpose of constructing the Chadwick Farms condominiums. After the project was completed, FHC ceased active operations and did not pay license fees or file reports as required by statute. On March 24, 2003, the secretary of state administrat-

ively dissolved FHC, as provided for by RCW 25.15.280 if a limited liability company fails to pay fees or file reports. On August 18, 2004, the Chadwick Farms Owners Association (Owners Association) sued FHC for alleged construction defects. On March 24, 2005, pursuant to RCW 25.15.290(4) the secretary of state canceled FHC's certificate of formation because FHC did not apply for reinstatement as a limited liability company within two years after dissolution as permitted under RCW 25.15.290(1).

¶ 4 Although FHC's certificate of formation had been administratively canceled, on May 11, 2005, FHC filed third-party complaints against subcontractors and design professionals. Then, on August 24, 2005, FHC moved for summary judgment dismissing all of the Owners Association's***184** claims on the basis that FHC ceased to exist upon cancellation of its certificate of formation and all claims against it therefore abated. The third-party contractors and design professionals moved for summary judgment, too, on the basis that as a canceled limited liability company FHC was a legal nonentity that could not pursue third-party claims against them. On September 30, 2005, the trial court granted the motions for summary judgment.

¶ 5 The Owners Association appealed. The Court of Appeals reversed summary judgment in favor of FHC. The court held that RCW 25.15.303, which was enacted while the appeal was pending and had an effective date of June 6, 2006, applied retroactively and permitted the Owners Association's suit against FHC. *Chadwick Farms Owners Ass'n v. FHC, LLC,* 139 Wash.App. 300, 160 P.3d 1061 (2007), *review granted,* 163 Wash.2d 1021, 185 P.3d 1194 (2008). As to the third-party claims brought by FHC, the court determined that RCW 25.15.303 does not apply to actions brought *by* a limited liability company. The court reasoned that FHC's failure to seek reinstatement within two years of dissolution was "fatal to its pursuit of any claim against the subcontractors." *Chadwick Farms,* 139 Wash.App. at 312, 160 P.3d 1061. Once the secretary of state canceled FHC's certificate of formation, the Court of Appeals reasoned, FHC lacked standing to pursue a third-party claim. *Id.* Finally, the Court of Appeals held that the trial court should grant the Owners Association's motion to amend the complaint to add individuals who allegedly failed to properly wind up the affairs of FHC, and in particular, failed to pay or make provision to pay known claims against the company.

¶ 6 FHC sought discretionary review of both holdings, and the Owners Association sought discretionary review of the Court of Appeals' determination that FHC could not pursue third-party claims.

*Emily Lane*

¶ 7 On January 22, 1998, Colonial Development, LLC (Colonial) was formed as a limited liability company for the ***185** purpose of developing and selling the Emily Lane condominiums. On December 22, 2004, the members of Colonial voted to dissolve the company effective the same date. On December 31, 2004, Colonial filed a certification of cancellation with the secretary of state.

¶ 8 About five months later, the Emily Lane Townhomes Condominium Association (Condominium Association) served Colonial with a notice of construction defects under ****1255** chapter 64.50 RCW. On July 19, 2005, the Condominium Association filed suit against Colonial. In its answer, Colonial included in its defenses the fact that it was a "dissolved" [sic] limited liability company not subject to suit. The Condominium Association thereafter amended its complaint to include claims against the individual members, asserting, among other things, improper winding up of the limited liability company, fraudulent concealment, negligent and fraudulent misrepresentation, and it sought to pierce the "corporate veil." [FN1] Clerk's Papers at 603–21; Emily Lane's Answer to Pet. for Review at 6.

FN1. Since Colonial was not a corporation, it was erroneous to speak in terms of pier-

cing the "corporate" veil.

¶ 9 On June 7, 2006, Colonial, its members, and two individually named defendants moved for summary judgment. At this time, RCW 25.15.303 had just become effective. The Condominium Association argued that under the Act claims against a canceled limited liability company never abate. It also argued that RCW 25.15.303 applies retroactively to "revive" barred claims. The trial court denied Colonial's motion for summary judgment. As to the members and individually named defendants, the trial court granted summary judgment. The court then certified the partial summary judgment as appropriate for discretionary review under RAP 2.3(b)(4). The Condominium Association sought cross-discretionary review of dismissal of the members and the individually named defendants.

¶ 10 The Court of Appeals granted discretionary review of the trial court's ruling denying Colonial's motion for summary***186** judgment and, in the interests of judicial economy, also granted review of the summary judgment dismissing the individual members and entities that formed Colonial. The Court of Appeals affirmed denial of summary judgment as to Colonial in light of its decision in *Chadwick Farms,* saying it saw "no reason to treat a member dissolved and cancelled company differently than an administratively dissolved and cancelled company." *Emily Lane,* 139 Wash.App. at 318, 160 P.3d 1073. As to the individual defendants, the court limited review solely to the question whether "the members [of Colonial] were immune from liability as individuals." *Id.* at 319, 160 P.3d 1073. The court held that "[t]o the extent the trial court's summary judgment dismissed the claims against individual members of Colonial on the basis that the [limited liability company] structure provided immunity from liability, it was error." *Id.*

¶ 11 Colonial sought discretionary review.

ANALYSIS

[1][2][3][4] ¶ 12 A question of statutory interpretation is reviewed de novo. *Wright v. Jeckle,* 158 Wash.2d 375, 379–80, 144 P.3d 301 (2006). The goal is to ascertain and give effect to the legislature's intent. *Dep't of Ecology v. Campbell & Gwinn, LLC,* 146 Wash.2d 1, 9–10, 43 P.3d 4 (2002). "[I]f the statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent." *Id.* "The plain meaning of a statute may be discerned 'from all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question.' " *State v. J.P.,* 149 Wash.2d 444, 450, 69 P.3d 318 (2003) (quoting *Campbell & Gwinn,* 146 Wash.2d at 11, 43 P.3d 4). Although there are a number of statutes that must be considered in these cases, in the end the Act provides clear answers in plain language to the questions raised by the parties.

¶ 13 We begin with a general description of limited liability companies. A limited liability company is a statutory ***187** business structure that is like a corporation in that members of the company are generally not personally liable for the debts or obligations of the company and like a partnership in that it can be classified as a partnership for tax purposes and therefore avoid "double taxation." 1 NICHOLAS KARAMBELAS, LIMITED LIABILITY COMPANIES, LAW, PRACTICE AND FORMS § 1:1, at 1–2 (2d ed.2008). In 1994 the legislature authorized the formation of limited liability companies in Washington, which are entirely creatures of statute. Laws of 1994, ch. 211.[FN2]

FN2. Washington's Act is modeled substantially on the Uniform Limited Liability Company Act. 31 DALE L. CARLISLE & BROOKE A. JOHNSON, WASHINGTON PRACTICE: WASHINGTON BUSINESS LAW 689 cmt. to 25.15.005 (2008) (citing *Dragt v. Dragt/DeTray, LLC,* 139 Wash.App. 560, 575, 161 P.3d 473 (2007), *review denied,* 163 Wash.2d 1042, 187 P.3d 269 (2008)).

****1256** ¶ 14 To form a limited liability company, one or more persons must execute a certific-

ate of formation which must be filed in the office of the secretary of state. RCW 25.15.070(1). The limited liability comes into existence when its certificate of formation is filed in the secretary of state's office. RCW 25.15.070(2)(a). In general, a limited liability company can carry on any lawful business or purpose. RCW 25.15.030(1). The company can make and alter agreements for administration and regulation of the company's affairs. RCW 25.15.005(5). A member of a limited liability company may be an individual, partnership, corporation, another limited liability company, or any other legal entity. RCW 25.15.005(8), (9).

¶ 15 A limited liability company can be dissolved in several ways, including (a) the happening of an event specified in the limited liability company agreement, (b) by consent of the members, (c) through judicial dissolution, for example, when one or more members seeks dissolution but not all members consent to dissolution, and (d) through administrative dissolution by the secretary of state. RCW 25.15.270. As to the latter, administrative dissolution can occur when, for example, the limited liability company fails to file required annual reports or pay required license fees, ***188** as occurred in the case of FHC in *Chadwick Farms.* RCW 25.15.280. The secretary of state must give written notice of dissolution that states the grounds for dissolution and the effective date of dissolution. RCW 25.15.285(2). Once the secretary of state gives notice that administrative dissolution is pending, a limited liability company has 60 days in which to correct each ground of dissolution, and if it fails to do so, it is administratively dissolved. RCW 25.15.285(1), (2).

[5] ¶ 16 Dissolution does not terminate the existence of the limited liability company. 1 KARAMBELAS, *supra,* § 9:4, at 9–5 (2d ed. 2008 Supp. 1). Instead, it begins a period in which the affairs of the company must be wound up. RCW 25.15.270(1) ; *see* RCW 25.15.295, .285(4). Winding up involves liquidating assets, paying creditors, and distributing proceeds from liquidation of assets to the members of the company. 1 KARAMBELAS, *supra,* § 9:6, at 9–8.

¶ 17 After dissolution, during which the winding up process is to be completed, the limited liability company's certificate of formation will be canceled. In the case of an administratively dissolved company, if the company does not seek reinstatement within two years after the date of dissolution, then by operation of law its certificate of formation will be canceled by the secretary of state two years after that date. RCW 25.15.285(4), .080, .290(1). This also occurred in the case of FHC, when it failed to seek reinstatement within the two-year period. When a limited liability company dissolves by consent of its members, as in the case of Colonial in *Emily Lane,* it files a certificate of cancellation, which upon its effective date cancels the certificate of formation. RCW 25.15.080.

¶ 18 Upon cancellation, the limited liability company ceases to exist. RCW 25.15.070(2)(c) provides: *"A limited liability company formed under this chapter shall be a separate legal entity, the existence of which as a separate legal entity shall continue until cancellation of the limited liability company's certificate of formation."* (Emphasis added.)

***189** *Whether a limited liability company may be sued after cancellation*

¶ 19 The first issue is whether a limited liability company may be sued after its certificate of formation is canceled, ending its existence as a legal entity.

¶ 20 In *Chadwick Farms,* the Owners Association filed their suit after Chadwick Farms was administratively dissolved and before its certificate of formation was canceled. In reversing the trial court's grant of summary judgment in favor of FHC, the Court of Appeals first said that prior to enactment of RCW 25.15.303 the statutes governing limited liability companies did not provide for survival of a claim after the company's affairs were wound up and a certificate of cancellation had been

filed. **1257*Chadwick Farms*, 139 Wash.App. at 305, 160 P.3d 1061. In other words, under the statutes as they existed prior to RCW 25.15.303, any suit properly filed against a limited liability company abated upon cancellation of the certificate of formation. This conclusion is correct.

¶ 21 Under the statutory scheme applying to limited liability companies that are administratively dissolved, if the company does not seek reinstatement it must wind up the company's affairs within that two year period, because once the two years pass, the company no longer exists and has no power to act. While the company still exists, and during the time it is winding up (the time following dissolution and before cancellation of the certificate of formation), it has the power to prosecute and defend suits. RCW 25.15.295(2). But once the company is canceled, it can no longer prosecute or defend suits; it no longer exists as a legal entity. *Id.* (expressly stating that those individuals winding up may prosecute or defend suits "until the filing of a certificate of cancellation"); RCW 25.15.070(2)(c) (a limited liability ceases to exist as a separate legal entity once its certificate of formation is canceled). In addition, during the winding up period a limited liability company must pay or make arrangements for paying *190 known claims and obligations, including all known "contingent, conditional, or unmatured claims and obligations." RCW 25.15.300(2).

[6][7] ¶ 22 Here, FHC, as an administratively dissolved limited liability company, had two years in which to wind up, including prosecuting and defending suits, or else it had to seek reinstatement to obtain additional time in which to complete the winding up process. Because FHC did not seek reinstatement, then any suits it brought or any suits against it were limited to the two year period available for winding up the affairs of the company before it was canceled as a matter of law. Once the two-year reinstatement/winding up period passed and the company's certificate of formation was canceled, it could no longer sue or be sued because it ceased to exist.

¶ 23 The Owners Association contends, however, that in the case of administrative dissolution and cancellation, cancellation means only that the company cannot seek reinstatement once two years have passed without an application for reinstatement. The Owners Association argues that until a certificate of cancellation is actually filed in the secretary of state's office, the limited liability company can continue to wind up, including prosecuting and defending suits.

¶ 24 This argument fails because it conflicts with the Act. If a limited liability company is dissolved upon events specified in the company agreement or the consent of the members, for example, the company and its managers and members control the timing of dissolution, winding up, and filing a certificate of cancellation. In such circumstances, the certificate of formation is canceled by and upon the filing of a certificate of cancellation. RCW 25.15.080. But when the secretary of state administratively dissolves a limited liability for failure to pay fees or file reports (as here), cancellation of the certificate of formation automatically occurs two years later if the company does not seek reinstatement. *See* RCW 25.15.080 ("[a] certificate of formation shall be cancelled upon the effective date of the *191 certificate of cancellation, or as provided in RCW 25.15.290"); RCW 25.15.290(1) (an administratively dissolved limited liability company has a two-year period in which to seek reinstatement); RCW 25.15.290(4) (the certificate of formation of the limited liability company "shall" be canceled if the company does not seek reinstatement within two years).

¶ 25 In other words, filing a certificate of cancellation in the case of a nonadministratively dissolved company establishes the time of cancellation of the certificate of formation, while in the case of an administratively dissolved company, by law the secretary of state must cancel the company's certificate of formation at the end of the two-year period. RCW 25.15.080, .290(4). In either case, the

critical event is the cancellation of the certificate of formation. RCW 25.15.070(2)(c) states, as noted, that a limited liability company continues as a separate legal entity "until *cancellation* of the limited liability company's *certificate of formation.* " (Emphasis added.)

[8][9] ¶ 26 In addition, just as in the case of other dissolutions, dissolution in the form of administrative dissolution begins the ****1258** winding up period, contrary to the Owners Association's argument. RCW 25.15.285(3) provides that an administratively dissolved limited liability company must liquidate and wind up its business and affairs. It states that after dissolution, an administratively dissolved limited liability company "may not carry on any business except as necessary to wind up and liquidate its business and affairs." *Id.* The statutes do not permit an administratively dissolved limited liability company to continue winding up, including prosecuting and defending suits, on its own schedule after cancellation of the company's certificate of formation.[FN3] ***192** RCW 25.15.295(2) applies to administratively dissolved companies every bit as much as applies to others, and this provision states that winding up, including prosecuting and defending suits, can continue only until cancellation.

FN3. Amicus curiae Washington State Association for Justice Foundation (WSAJF) argues that other statutes show that a limited liability company must respond to legal action after cancellation, but the statutes it cites do not support the argument. First, RCW 25.15.285(4), which provides that administrative dissolution of a limited liability company does not terminate the authority of its registered agent, simply does not speak to *cancellation* or the post-cancellation period; it refers only to dissolution. Second, RCW 25.15.335(1) provides that "cancellation does not terminate the authority of the secretary of state to accept service of process on the foreign limited liability company with respect to causes of action arising out of the doing of business in this state." However, the "cancellation" referred to in this statute is cancellation of *registration* of a foreign limited liability company organized under the law of another state or foreign country and registered to do business in this state under RCW 25.15.315. It does not concern cancellation of a foreign limited liability company's certificate of formation (which would be a matter of the other jurisdiction's law in any event). Finally, in connection with the merger provisions of chapter 25.15 RCW, RCW 25.15.410(1)(d) provides that any pending action against an entity that merges with another entity may be continued as if the merger had not occurred or the surviving entity may be substituted in the proceeding for the merged entity whose existence ceased. WSAJF points out that under RCW 25.15.410(1)(a) the separate existence of a merged limited liability company ceases. But contrary to WSTLAF's claim that these provisions would be meaningless if cancellation abated any pending claims, merger is a very different concept from cancellation of a limited liability company following dissolution. In the case of merger, the merged limited liability company's assets and liabilities continue in the resulting entity (or entities), though the limited liability company's separate existence ceases, unlike the situation when a limited liability company is dissolved and canceled. *See* THOMAS A. HUMPHREYS, LIMITED LIABILITY COMPANIES & LIMITED LIABILITY PARTNERSHIPS § 4.04[4], at 4–57 (1998).

¶ 27 Chapter 25.15 RCW, as it existed before enactment of RCW 25.15.303, provided that an action against a limited liability company abates after the company's certificate of formation is canceled; instead, its existence as a separate legal entity ends.

Thus, when FHC's certificate of formation was canceled on March 24, 2005, it ceased to exist as a separate legal entity and could no longer be sued. Similarly, because the Condominium Association's suit was filed in *Emily Lane* after Colonial filed its certificate of cancellation, Colonial was not subject to suit under the statutes as they existed prior to enactment of RCW 25.15.303. There is no basis to treat a member canceled limited liability company differently than an administratively dissolved company, as the Court of Appeals said.[FN4]

> FN4. Relying solely on a single clause in RCW 25.15.295(2) pertaining to authority during the winding up period to discharge or make provision for the company's liabilities, the dissent argues that the legislature did not intend that actions against a limited liability company would abate upon cancellation. This clause, which is not at issue here, does not nullify the entire statutory scheme regarding limited liability companies, and in particular cannot breathe life into an entity that by the plain language of RCW 25.15.070(2) ceases to exist upon cancellation.

***193** *RCW 25.15.303*

[10] ¶ 28 The next issue is whether RCW 25.15.303, enacted while these cases were pending, alters the result. It does not.

¶ 29 RCW 25.15.303 provides:

> *The dissolution of a limited liability company* does not take away or impair any remedy available against that limited liability company, its managers, or its members for any right or claim existing, or any liability incurred at any time, *whether prior to or after dissolution,* unless an action or other proceeding thereon is not commenced within three years after the effective date of dissolution. Such an action or ****1259** proceeding against the limited liability company may be defended by the limited liability company in its own name.
>
> (Emphasis added.)

¶ 30 Although the statute expressly refers to "dissolution," not "cancellation," the Court of Appeals characterized the legislature's choice of the term "dissolution" as "inartful" and held that the statute permits actions against canceled limited liability companies and not just dissolved limited liability companies. *Chadwick Farms,* 139 Wash.App. at 307–12, 160 P.3d 1061. Therefore, the Court of Appeals held, the Owners Association could pursue their action against FHC. Similarly, the court determined, the post-cancellation suit brought in *Emily Lane* was viable.

¶ 31 By its plain language, RCW 25.15.303 provides that (1) dissolution does not affect any claim against a limited liability company and (2) there is a three-year limitations period from the date of dissolution in which to commence suit against a limited liability company. The statute never mentions "cancellation." Of utmost importance, the legislature did not alter any provision in chapter 25.15 RCW and thus it left intact the statutes discussed above which provide that a limited liability company maintains its existence as a ***194** separate legal entity during dissolution but only until cancellation. In particular, as noted, RCW 25.15.295(2) unambiguously states that after a limited liability company is dissolved and before cancellation, i.e., during the winding up period, a manager or other representative who winds up the company's affairs may "prosecute and defend suits" only until cancellation.[FN5]

> FN5. RCW 25.15.295(2) provides in full:
>
> Upon dissolution of a limited liability company and until the filing of a certificate of cancellation as provided in RCW 25.15.080, the persons winding up the limited liability company's affairs may, in the name of, and for and on behalf of, the limited liability company, prosecute and defend suits, whether civil, criminal, or administrative, gradu-

> ally settle and close the limited liability company's business, dispose of and convey the limited liability company's property, discharge or make reasonable provision for the limited liability company's liabilities, and distribute to the members any remaining assets of the limited liability company.

¶ 32 The Condominium Association in *Emily Lane* contends, however, that all canceled limited liability companies are also first dissolved companies, and logically the statute applies to dissolved companies that later cancel themselves. Amicus Washington State Association for Justice Foundation makes a similar argument.

[11] ¶ 33 However, there is a clear distinction between dissolution and cancellation. A dissolved company still exists for the purpose of winding up, during which it can sue or be sued. But once a limited liability company's certificate of formation is canceled, it no longer exists as a separate legal entity for any purpose.[FN6] RCW 25.15.303 does not even ***195** mention cancellation, and the legislature did not alter any of the existing provisions in the Act. On its face, and read in the context of the entire Act, RCW 25.15.303 means that an action against a limited liability company, whether arising before or after dissolution, must be brought within three years of dissolution, but an action against a limited liability company will abate upon cancellation.

> FN6. The Condominium Association in *Emily Lane* makes the argument that the termination of a limited liability company as a separate legal entity does not mean the company has no existence. The Association posits that "[l]ike a partnership at common law, a cancelled LLC [ (limited liability company) ] may have no 'separate' existence apart from its members, but still have existence and be subject to suit," saying that at common law partnerships existed even though they did not in law exist apart from their members. Answer to Pet. for Review at 14 n. 24. However, a limited liability company is defined by statute. As amicus the Washington State Bar Association says, "[t]he LLC is a creature of statute, not of common law" and the "only *relatively* sure footing here is the language of the Act itself." Br. of Amicus Curiae Wash. State Bar Ass'n at 6. Taken to its logical end, the argument would mean that the individual members of an LLC would be liable for the debts and obligations of the limited liability company after the company's existence as a separate legal entity ended, in direct contravention of the immunity afforded by the Act. (While there are certain exceptions to individual immunity, as mentioned and explained below, the general rule is immunity.)

¶ 34 The plain language in RCW 25.15.303 and the other provisions in the Act resolve the statute's meaning. Because we find no ambiguity, we have no reason to consider legislative history. *See* ****1260***Christensen v. Ellsworth,* 162 Wash.2d 365, 372–73, 173 P.3d 228 (2007); *Cockle v. Dep't of Labor & Indus.,* 142 Wash.2d 801, 808, 16 P.3d 583 (2001). But we note that, in any event, the statute's history supports our reading of its plain language. RCW 25.15.303 journeyed through the legislative process hand in hand with the amendment to the survival statute pertaining to corporations that was addressed by this court in *Ballard Square Condominium Owners Ass'n v. Dynasty Construction Co.,* 158 Wash.2d 603, 146 P.3d 914 (2006). Both statutory provisions were in response to the Court of Appeals' decision in *Ballard Square,* where that court determined that, absent a survival statute, claims against a corporation arising after dissolution of the corporation abated. The legislature's concern after this decision was the possibility of a similar court decision in the context of a limited liability company, i.e., a ruling that suit could not be brought following dissolution of a lim-

ited liability company. The house bill report noted, "A recent court decision has left many homeowners without a remedy for claims against a dissolved corporation." H.B. Rep. on S.B. 6531, at 2, 50th Leg., Reg. Sess. (Wash.2006). The report also explains that the Act as it existed had "no express provision regarding the preservation of remedies or causes of action following dissolution of the business entity." *Id.* The house bill report's summary of the effect of the bill states: "Dissolution of a limited liability company will not ***196** eliminate any cause of action against the company that was incurred prior to or after the dissolution if an action on the claim is filed within three years after the effective date of the dissolution." *Id.* at 3.

¶ 35 Both the senate and house bill reports disclose that the legislature clearly knew the difference between "dissolution" and "cancellation"—indeed, the house bill report expressly differentiates between the two—and that its intent was to expressly provide that causes of action do not abate upon dissolution, with a three year limitations period applying to suits brought after dissolution.[FN7] The legislature plainly responded to the concern raised by the Court of Appeals' decision in *Ballard Square,* i.e., ensuring that suit could be prosecuted against a limited liability company after dissolution. The legislature did not otherwise change the statutory scheme.[FN8]

FN7. The Owners Association contends, however, that the legislature "identified the gap it was trying to close by noting that the Act had 'no provision regarding the preservation of claims following cancellation of the certificate of formation.' " Chadwick Farms Owners Ass'n's Suppl. Br. at 19 (quoting H.B. Rep. on S.B. 6531, at 3). The quoted sentence appears in a description of the existing law and accurately states that there is no preservation of claims after cancellation. The explicit reference to "cancellation" does not identify a "gap" the legislature was trying to close, but instead is part of the discussion of existing law that shows the legislature knew the difference between "cancellation" and "dissolution."

FN8. The dissent accepts the argument that RCW 25.15.303 is retroactive and authorizes suits against canceled limited liability companies. But contrary to the dissent's reasoning, the fact that the statute is related to the statute in *Ballard Square* does not mean that the present statute is retroactive. The statute at issue in *Ballard Square* by its express language applied retroactively, unlike the statute in this case, which has absolutely no such language. Since the two statutes went through the legislative process together, this difference shows the legislature did not intend retroactivity. Further, although the legislative history shows that the reason the statute was enacted was the same as the reason that the statute in *Ballard Square* was enacted—the reason was to permit suit against *dissolved* companies (corporations, in the case of *Ballard Square,* and limited liability companies, in the present case). Both statutes, by their express terms, do exactly that. The dissent's reliance on the language in the house bill report that there was no provision in the existing statutes regarding preservation of claims after cancellation is also misplaced. The report was simply stating the facts about the existing state of the law. This language actually shows that the legislature was well aware that there was no provision for preservation of claims after "cancellation" and yet the legislature deliberately and expressly chose to preserve claims after *"dissolution* " and *not* after cancellation. RCW 25.15.303. The legislature clearly knew the difference. After enactment of RCW 25.15.303 there is still no provision for preservation of claims against a canceled limited liability com-

pany.

[12][13] ***197** ¶ 36 The Owners Association argues, however, that unless the statute is applied to canceled companies, a limited liability company could ignore its obligations to pay, fail to file reports and pay fees, and simply wait for two years until it could no longer be sued. Similarly, the Owners Association says, a dissolved company could simply**1261** file a certificate of cancellation and so avoid liability. These arguments do not take into account the whole statutory scheme, however. A dissolved limited liability company must, under the Act, properly complete the winding up process, which includes paying or making arrangements to pay known obligations and claims, even if unmatured or contingent. Members of a limited liability company who fraudulently attempt to use the provisions of the act to avoid liability and members who wind up a limited liability company improperly expose themselves to individual liability, as addressed more fully below.

¶ 37 The homeowners associations also argue that RCW 25.15.303 must be read to apply to a canceled limited liability company because otherwise the statute would be rendered inoperative. But the statute, in conjunction with the rest of the statutes in chapter 25.15 RCW, is effective when applied according to its terms. It provides a three-year period after dissolution in which to assert claims against a limited liability company, up to the time the company's certificate of formation is canceled. In some cases, actions will abate prior to expiration of the three-year period, for example, in a case involving an administratively dissolved limited liability company that does not seek reinstatement. But even in the context of administrative dissolution the statute remains effective because an action might be resolved within the two-year reinstatement period or the administratively dissolved limited liability company might seek reinstatement, which would relate back to the date of dissolution, RCW 25.15.290(3), and thereby obtain time in which to prosecute and defend ***198** existing actions. An administratively dissolved limited liability company may have significant incentive to seek reinstatement because individual members who are winding up a limited liability company's affairs may be personally liable if they fail to do so properly.

¶ 38 We recognize, however, that these arguments reflect the homeowners' view that the statute is unfair when it is applied according to its express terms. However, if the result here is not what the legislature envisioned it is, nonetheless, what the statute plainly provides. We understand from the house and senate bill reports that a comprehensive review of the Act is underway. If the result here is not what the legislature wants, it will be positioned to make additional changes deemed necessary. It is not, however, the province of this court to rewrite RCW 25.15.303 or any other provision of the Act.

¶ 39 We conclude that the statute means precisely what it says. *Dissolution* does not take away or impair any remedy provided that an action is commenced within three years of dissolution. RCW 25.15.303 does not authorize actions against a limited liability company whose certificate of formation has been canceled.[FN9]

> FN9. In light of our holding that RCW 25.15.303 does not permit actions against a canceled limited liability company, we need not reach the question whether the statute applies retroactively. However, as a limitations statute, it would apply to preexisting actions only if the legislature intended retroactive application, and here there is no evidence of such intent. *See Ballard Square,* 158 Wash.2d at 616, 146 P.3d 914.

¶ 40 In *Chadwick Farms* the Owners Association's action against FHC abated when FHC's certificate of formation was canceled and it ceased to exist as a separate legal entity. We reverse the Court of Appeals and hold that the trial court properly granted summary judgment in favor of FHC. In *Emily Lane,* the Condominium Association could not properly sue Colonial because it was a canceled

limited liability company at the time suit was brought. We reverse the Court of Appeals and hold that Colonial's motion for summary judgment should have been granted by the trial court.

***199** *Whether a limited liability company has the capacity to sue after cancellation*

[14] ¶ 41 We turn briefly to the question of the capacity of a canceled limited liability company to sue. As noted, the Court of Appeals held that RCW 25.15.303 permitted suits against a canceled limited liability company but did not permit suits by a canceled company. Although the court's reasoning was erroneous, its ultimate conclusion, that a canceled limited liability company lacks capacity to sue, is correct. RCW 25.15.295(2) ****1262** provides as to any dissolved limited liability company that the persons winding up the company's affairs can prosecute or defend suits only until the certificate of cancellation is filed. And, as mentioned before, RCW 25.15.070(2)(c) provides that the separate legal existence of a limited liability company ends upon cancellation of the certificate of formation. Thus, a limited liability company's ability to sue ends upon cancellation.

¶ 42 As to administratively dissolved companies, the legislature's decision that an administratively dissolved limited liability has two years in which to wind up, including prosecuting an action, is not as harsh at it might seem at first. At all times the power to continue to prosecute claims lies with the limited liability company, which can seek reinstatement.

*Personal liability of members of a limited liability company*

¶ 43 The final issue is whether the members of a limited liability company may be personally liable for acts or liabilities of the company. In *Emily Lane,* the Court of Appeals held that to the extent the trial court granted summary judgment to the members of Colonial based on immunity under the Act, it erred. The court explained that individual members could be liable if they failed to properly wind up the affairs of the company, and observed that the Act allows for piercing the veil of a limited liability company. *Emily Lane,* 139 Wash.App. at 319–20, 160 P.3d 1073.

***200** ¶ 44 In *Chadwick Farms,* the Court of Appeals held, as the Owners Association urged, that the trial court should have granted the Owners Association's motion to amend its complaint to add individual defendants based on their alleged failure to properly wind up FHC's affairs and pay or make provision for paying known claims. *Chadwick Farms,* 139 Wash.App. at 313–14, 160 P.3d 1061. FHC does not challenge this holding.

[15][16] ¶ 45 In general, members and managers of a limited liability company are not personally liable for the company's debts, obligations, and liabilities. RCW 25.15.125(1). There are exceptions to this general rule. For example, an individual member is personally liable for his or her own torts. RCW 25.15.125(2). A member is also liable for contributions to which they have agreed and for the return of distributions made while the limited liability company is insolvent or which render the limited liability company insolvent if the member knew the distribution was wrongful. RCW 25.15.195(1), .235(2). Under RCW 25.15.060, a member may also be liable under the theory of piercing the veil of the limited liability company if respecting the limited liability company form would work injustice, in the same way that an individual may be personally liable under the theory of piercing the corporate veil.[FN10] In general, to pierce the corporate veil the plaintiff must show that the corporate form was used to violate or evade a duty and that the corporate veil must be disregarded in order to prevent loss to an innocent party. *Wash. Water Jet Workers Ass'n v. Yarbrough,* 151 Wash.2d 470, 503, 90 P.3d 42 (2004); *Meisel v. M & N Modern Hydraulic Press Co.,* 97 Wash.2d 403, 409–10, 645 P.2d 689 (1982). By analogy, then, a plaintiff would have to show that the limited liability company form was used to violate or evade a duty and that the limited liability company form must be disregarded to prevent loss to an innocent

party.

FN10. RCW 25.15.060 authorizes piercing the veil of a limited liability company and provides that individual members of the company may be liable "to the extent" that shareholders in a corporation may be subject to personal liability under established case law (with exceptions that are not relevant here).

[17] ***201** ¶ 46 Another exception exists when a member is responsible for winding up the affairs of the limited liability company and does so improperly. Following dissolution and during the period of winding up, a limited liability company that is dissolved must pay or make reasonable provision for paying all claims and obligations known to the company, including "contingent, conditional, or unmatured claims and obligations." RCW 25.15.300(2). RCW 25.15.300(2) also states that "[a]ny person winding up a limited liability company's affairs who has complied with this section is not personally liable to the claimants of the dissolved limited liability****1263** company by reason of such person's actions in winding up the limited liability company." It follows that, as the Court of Appeals determined in *Emily Lane,* personal liability to claimants may result if the persons winding up the company's affairs do not comply with RCW 25.15.300. FN11

FN11. *See* 1 STEWART M. LANDEFELD & ERIC A. DEJONG, WASHINGTON BUSINESS ENTITIES: LAW AND FORMS § 20.01[b], at 20–4; § 20.08[c], at 20–23 n. 84 (2d ed.2007) ("[l]imited liability means that no member will be personally liable for the LLC's obligations in excess of the amount that he or she contributed, or is otherwise obligated to contribute, to the LLC"; "[a] person winding up a limited liability company who has complied with the terms of the Washington Act is not personally liable to the claimants of the dissolved LLC").

¶ 47 In *Emily Lane,* the parties' dispute whether Colonial knew (or should have known) prior to cancellation of the claims that were later asserted. Because the Court of Appeals' interlocutory discretionary review in *Emily Lane* addressed only questions of law, and in light of the trial court's apparent summary judgment rulings, whether Colonial was properly wound up and possible personal liability remain to be determined. The Court of Appeals correctly concluded that to the extent the trial court granted summary judgment to the members of Colonial on the basis of immunity under the Act as a matter of law, it did so erroneously.

¶ 48 In *Chadwick Farms,* it appears that the Court of Appeals correctly determined that the trial court should have granted the Owners Association's motion to amend the complaint and add individuals who allegedly failed to ***202** comply with the winding up requirements in RCW 25.15.300(2). Under CR 15(a), leave to amend should be freely granted when justice so requires. During the wind-up period, FHC did not pay the claims asserted by the Owners Association. If those claims are valid and FHC failed to make provision for paying them, then FHC did not properly wind up its affairs—it clearly knew of the claims at the time it was canceled. Nor did FHC seek reinstatement, which would have allowed for litigating those claims and for bringing in the contractors and design professionals as third party defendants. As noted, however, FHC has not challenged the Court of Appeals' ruling that the trial court should permit amendment of the complaint.

¶ 49 We uphold the Court of Appeals' determination in *Emily Lane* that insofar as the trial court granted summary judgment dismissing the claims against individual members of Colonial on the basis that the limited liability company structure provided immunity from liability, it was error.

¶ 50 As noted, *Emily Lane* is here on discretionary review of the Court of Appeals' interlocutory discretionary review of a partial summary judgment. There are numerous claims and issues remaining to be addressed by the trial court. We de-

cline to address issues raised by the Condominium Association that were not subjects of the Court of Appeals' grant of interlocutory discretionary review, including its claim that Colonial "waived" an "abatement defense".

CONCLUSION

¶ 51 In *Chadwick Farms* we affirm the Court of Appeals' determination that under the statutes existing prior to enactment of RCW 25.15.303 a dissolved company whose certificate of formation has been canceled cannot be sued. We reverse the Court of Appeals' holding that RCW 25.15.303 applies in the case of a canceled limited liability company. Instead, the statute provides that dissolution does not take away or impair any available remedy and it establishes a three-year limitations period running from ***203** the date of dissolution. Once a limited liability company's certificate of formation is canceled, however, the company no longer has the capacity to sue or be sued. Accordingly, once FHC was administratively canceled, the Owners Association's claims against the company abated. Similarly, in *Emily Lane* we reverse the Court of Appeals' holding that the Condominium Association could sue Colonial, a canceled limited liability company.

¶ 52 We affirm the Court of Appeals' holding in *Emily Lane* that to the extent the trial court dismissed the Condominium Association's claims against individual members as a matter of law based on immunity under the Act, the trial court erred. There are bases for personal liability that may (or may not) be applicable here We decline to reach other ****1264** issues raised by the Condominium Association because they were not encompassed by the grant of interlocutory discretionary review of the trial court's grant of partial summary judgment.

WE CONCUR: ALEXANDER, C.J., FAIRHURST, J. JOHNSON, JJ., and KORSMO, J.P.T.

C. JOHNSON, J. (dissenting).

¶ 53 The majority too narrowly focuses on only one statutory section, making meaningless other sections the legislature enacted to protect homeowners' rights to pursue their legal remedies. To the majority, cancellation is the only consideration. This conclusion makes little statutory sense if other sections are given their statutory effect. Applying the majority's conclusion, it makes no difference if a limited liability company (LLC) knew of a claim (under RCW 25.15.295(2)), that the LLC had set aside funds/assets to satisfy claims under RCW 25.15.295(2), or that suit was filed to pursue those claims. The majority holds that even if final argument were occurring, or appeal taken, cancellation of the LLC abates any such action. This conclusion simply reads too much out of the statutory scheme and, viewing the entire statutory framework, does not make sense. The Court of Appeals should be affirmed.

***204** ¶ 54 The majority relies on language found in RCW 25.15.295(2): "Upon dissolution of a limited liability company and *until the filing of a certificate of cancellation* ..., the persons winding up the limited liability company's affairs may, in the name of ..., the limited liability company, *prosecute and defend suits* ...." The majority interprets this provision to mean that a lawsuit automatically abates the moment an LLC is canceled unless the lawsuit is completed before the date of cancellation. Majority at 1257. The majority does not find or cite any rule or case to support this proposition; rather, the majority reaches this conclusion based on inference alone. But such a rule proves too much, and the inference made by the majority to reach its rule is weakened by the plain language of the very provision on which the majority relies, RCW 25.15.295(2).

¶ 55 In addition to the language relied on by the majority, RCW 25.15.295(2) also provides that "the persons winding up the limited liability company's affairs *may ... [either] discharge or make reasonable provision for the limited liability company's liabilities* ...." (Emphasis added.) The disjunctive "or" imparts a requirement on the person

winding up the LLC to do one *or* the other. This language also implies that a party who timely commences a lawsuit against an LLC after its dissolution, but before cancellation, should be able to seek remedy from the set-aside funds. This requirement for set-aside funds implicitly preserves the party's suit and supports not reading the statute to require lawsuits to abate automatically when the LLC is canceled.

¶ 56 In other words, with these statutory provisions, the legislature has provided rights to LLCs that dissolve and has required such LLCs to meet certain responsibilities during the windup period. During this period, LLCs have the right to pursue and defend suits and are obligated to set aside funds adequate to satisfy certain liabilities. It makes no sense that the legislature would provide for such rights and responsibilities and then simply allow any claims filed by or against the LLC to abate the moment a certificate of cancellation is filed, which could be in the middle of trial. ***205** This is the majority's conclusion, and such an interpretation misreads the plain language of the statute and fails to give the statutory provisions their full effect.

¶ 57 But even if the majority's interpretation of RCW 25.15.295(2) is plausible, it is somewhat irrelevant to reaching a conclusion in this matter. If we hold RCW 25.15.303 is remedial, it applies retroactively and means interpreting the preamendment language of RCW 25.15.295(2), as the majority does, is unhelpful in determining whether actions against an LLC abate automatically or may survive cancellation for a period of time.

¶ 58 As the Court of Appeals properly recognized, holding that cancellation abates actions notwithstanding the provisions of RCW 25.15.080 "render[s] the 2006 amendment inoperative as it would link the survival of claims not to a specific survival period but rather to the actions or ... nonaction of a ****1265** company." *Chadwick Farms Owners Ass'n v. FHC, LLC,* 139 Wash.App. 300, 311, 160 P.3d 1061 (2007); *see also Emily Lane Homeowners Ass'n v. Colonial Development, LLC,* 139 Wash.App. 315, 318, 160 P.3d 1073 (2007) (stating the holding in *Chadwick* controls the outcome in *Emily Lane* ). The plain language of RCW 25.15.303 provides that an action may lie against an LLC three years from the date it dissolves. Reading the other statutory provisions to construe this provision to mean claims against an LLC abate upon cancellation, simply reads too much out of the statutory provisions.

¶ 59 Generally, a new limitations period runs prospectively. But an amendment to a statute may be applied retroactively if the legislature intends so and permitting retroactivity does not impair a constitutional right. A statute will also apply retroactively if it is curative or remedial. *1000 Va. Ltd. P'ship v. Vertecs Corp.,* 158 Wash.2d 566, 584, 146 P.3d 423 (2006). A statute is remedial when it relates to practice, procedure, or remedies and does not affect a ***206** substantive or vested right.[FN1] " 'When an amendment clarifies existing law and where that amendment does not contravene previous constructions of the law, the amendment may be deemed curative, remedial and retroactive. This is particularly so where an amendment is enacted during a controversy regarding the meaning of the law.' " *In re Pers. Restraint of Matteson,* 142 Wash.2d 298, 308, 12 P.3d 585 (2000) (quoting *Tomlinson v. Clarke,* 118 Wash.2d 498, 510–11, 825 P.2d 706 (1992)).

> FN1. Because an LLC is a creature of statute, accrued actions arising with respect to an LLC cannot spring from the common law. Further, because the action here did not accrue from contract, we are not presented with a concern for the interference with a vested right. There is also no substantive right affected here by applying the statute retroactively.

¶ 60 Here, the legislature enacted RCW 25.15.303 at the same time as a similar amendment to the Business Corporation Act (BCA), chapter 23B.14 RCW.[FN2] The legislative histories of both survival statutes show these amendments were ad-

opted in an effort to address the Court of Appeals' opinion in *Ballard Square Condominium Owners Ass'n v. Dynasty Construction Co.,* 126 Wash.App. 285, 295–96, 108 P.3d 818 (2005), *aff'd on other grounds,* 158 Wash.2d 603, 146 P.3d 914 (2006). The amendment to the BCA is analogous to the amendment to the Washington Limited Liability Company Act (LLCA), chapter 25.15 RCW. The statutes were sponsored by the same legislators and were enacted in tandem. *Compare* H.B. Rep. on S.B. 6531, at 3, 59th Leg., Reg. Sess. (Wash.2006) *with* H.B. Rep. on S.B. 6596, at 7, 59th Leg., Reg. Sess. (Wash.2006) (shows the amendment to the BCA and LLCA were signed into law and became effective on the same day). Further, testimony before the House Judiciary Committee from the bill's sponsor explains the bill's purpose was to correct a problem for LLCs: "[T]he reason I'm here is that I heard this *Ballard Square* decision ... was a problem for both corporations and LLCs.... ***207** So I thought ... we should ... [allow] a three year window in order to sue an LLC ... if [it] dissolved." Answer to Pet. for Rev. at 11 (quoting Senator Weinstein's testimony found in the Transcript of House Judiciary Committee Hearing, Appendix C of the brief). This history shows the statute was intended to be remedial and curative.

> FN2. RCW 23B.14.340 (providing a two-year survival period for claims against a corporation dissolved prior to June 7, 2006, and a three-year period for claims against corporations dissolved on or after June 7, 2006); S.B. 6596, 59th Leg., Reg. Sess. (Wash.2006).

¶ 61 No reason exists to distinguish the remedial and curative nature of this provision from the similar provision in the BCA. The very purpose of these amendments was to provide for a survival of claims after a company dissolves and beyond cancellation (in the case of an LLC). The house bill report shows the legislature identified the problem and enacted RCW 25.15.303 to remedy and cure the problem:

> The law governing LLCs has no express provision regarding the preservation of remedies or causes of actions following dissolution of the business entity. There is an implicit recognition of the preservation of at least an already filed claim during the wind up period following dissolution, since the person winding up the affairs is authorized to defend suits against the LLC. *However, there is no provision regarding* *****1266*** *the preservation of claims following cancellation of the certificate of formation.*

H.B. Rep. on S.B. 6531, *supra,* at 2–3 (emphasis added) (discussing the matters related to preserving remedies). Further review of the legislative history supports this conclusion.

¶ 62 The language of the amendment evidences that the legislature intended for the statute of limitations on a claim against an LLC to run for three years following dissolution and that such claims survive cancellation of the LLC within that three-year period. *See* RCW 25.15.303 ("The dissolution ... does not take away or impair any remedy available against that limited liability company ..., unless an action or other proceeding thereon is not *commenced within three years after the effective date of dissolution.*" (emphasis added)). This language expressly provides a limitations period of three years that is triggered upon an LLC's dissolution. This express language implies the claim may ***208** survive cancellation where cancellation occurs within three years following dissolution.

¶ 63 The majority reasons such a reading is improper given the statutory language of RCW 25.15.295(2) (providing that an LLC ceases to be a separate legal entity after cancellation). Majority at 1259. But because RCW 25.15.295(2) requires the LLC to set aside funds to satisfy liabilities, it is consistent with reading RCW 25.15.303 to permit a survival of claims beyond cancellation.

¶ 64 In any event, the legislative history resolves any ambiguity. Here, the legislature intended for RCW 25.15.303 to permit claims against an

LLC to survive cancellation. In articulating the background for the basis of the bill in support of adopting the amendment that would preserve remedies for parties filing a claim against an LLC, the bill report noted that while "[t]here is an implicit recognition of the preservation of at least an already filed claim during the wind up period.... *[T]here is no provision regarding the preservation of claims following cancellation of the certificate of formation.* " H.B. Rep. on S.B. 6531, *supra,* at 2–3 (emphasis added). This history shows the legislature did not intend for RCW 25.15.303 to operate as the majority suggests. Whether the amendment is plain on its face or ambiguous, RCW 25.15.303 is properly interpreted to permit claims filed against an LLC to survive cancellation provided the claim is filed within three years following dissolution.

CONCLUSION

¶ 65 The Court of Appeals should be affirmed.

WE CONCUR: SANDERS, OWENS, and CHAMBERS, JJ.

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