**FOR PUBLICATION**

# UNITED STATES COURT OF APPEALS
# FOR THE NINTH CIRCUIT

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| MARTIN HEIMBIGNER,<br><br>*Plaintiff - Appellant*,<br><br>v.<br><br>EDGEWATER SERVICES, LLC; GREGORY JONES; MATTHEW SNYDER,<br><br>*Defendants - Appellees*. | No. 25-2325<br><br>D.C. No. 4:24-cv-05092-TOR<br>Eastern District of Washington, Richland<br><br>ORDER CERTIFYING QUESTION TO THE SUPREME COURT OF WASHINGTON |

Filed September 17, 2026

Before: Jennifer Sung, Salvador Mendoza, Jr., and Roopali H. Desai, Circuit Judges.

Order

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## SUMMARY*

### Certification to Washington Supreme Court

The panel certified to the Washington Supreme Court the following questions:

> (1) Does Washington law recognize common-law wrongful termination claims against indirect employers?
>
> (2) Does Washington law recognize common-law wrongful termination claims against individuals such as officers, managers, or supervisors?

## COUNSEL

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* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

## ORDER

Martin Heimbigner appeals the district court's dismissal of his common-law wrongful termination claim against his indirect employer, Edgewater Services, LLC ("Edgewater"), and two Edgewater executives (collectively, "Defendants"). We have jurisdiction under 28 U.S.C. § 1291.

Whether Heimbigner failed to state a wrongful termination claim against Defendants turns on two unresolved questions of Washington law:

> (1) Does Washington law recognize common-law wrongful termination claims against indirect employers?
>
> (2) Does Washington law recognize common-law wrongful termination claims against individuals such as officers, managers, or supervisors?

We may certify a question to the Washington Supreme Court when, in our opinion, "it is necessary to ascertain the local law of [the] state in order to dispose of such proceeding and the local law has not been clearly determined." Wash. Rev. Code § 2.60.020. We conclude both factors are met here. Further, we exercise our discretion to certify these questions because the state law issues involved present important public policy ramifications and have broad application. *See High Country Paving, Inc. v. United Fire & Cas. Co.*, 14 F.4th 976, 978 (9th Cir. 2021). Accordingly, we respectfully ask the Washington Supreme Court to exercise its discretion to decide one or both of the certified questions described above.

## I. FACTUAL AND PROCEDURAL BACKGROUND[1]

This diversity action arises from Plaintiff Martin Heimbigner's termination as the Chief Financial Officer ("CFO") of Solgen Enterprises, LLC ("Solgen"), a residential solar power sales and installation company based in Pasco, Washington. Defendant Edgewater is an investment advisory firm registered in Delaware and based in Chicago, Illinois. In May 2022, Edgewater acquired a 30% interest in Solgen. At that time, Defendant Gregory Jones, Edgewater's President, joined Solgen's Board of Directors.

Edgewater and its executives largely directed and facilitated Heimbigner's recruitment. In September 2022, Edgewater directed Solgen to hire a new CFO using an executive search firm. The firm and Edgewater executives jointly selected Heimbigner as a candidate for the position. Edgewater's President, Defendant Jones, and its Vice President, Steven Resnick, interviewed Plaintiff and performed a final reference check. In November, Solgen's Chief Executive Officer emailed Heimbigner an offer letter, copying Jones on the email. Heimbigner accepted the position and signed an employment agreement. The only parties to the employment agreement were Heimbigner and Solgen, but the agreement required Plaintiff to send any notices related to the agreement to both Solgen and

[1] The following facts are taken from the Complaint. Because the district court dismissed the action at the pleading stage, "[u]ncontroverted allegations in the complaint must be taken as true, and conflicts over statements contained in affidavits must be resolved in [the plaintiff's] favor." *Love v. Associated Newspapers, Ltd.*, 611 F.3d 601, 608 (9th Cir. 2010).

Edgewater. Heimbigner negotiated his compensation package with Edgewater executives.

In January 2023, Solgen sought a bank loan from the Canadian Imperial Bank of Commerce ("CIBC") to finance its acquisition of a solar installation company. The loan agreement required Solgen to perform a financial audit in accordance with generally accepted accounting principles ("GAAP"). It also required Heimbigner to certify that Solgen's financial statements were materially correct in accordance with GAAP.

Upon reviewing the statements, Heimbigner began to suspect that Solgen had been prematurely recognizing revenue—that is, Solgen recognized revenue when a solar panel was installed, rather than when it began generating electricity. He believed that this practice misleadingly inflated Solgen's reported revenue in violation of GAAP. He presented his concerns to Moss Adams, the accounting firm hired to conduct the audit, and Moss Adams agreed that this practice violated GAAP. Heimbigner and Moss Adams brought their concerns to Solgen's Board of Directors, on which Jones and another Edgewater executive sat, but the Board refused to make the recommended changes to the financial statements.

In July 2023, Edgewater's Chief Operating Officer, Defendant Matthew Snyder, assumed an additional role as Solgen's Chief Restructuring Officer. On August 8, Jones, Snyder, and Resnick met with Heimbigner and Moss Adams representatives and attempted to convince them to change their conclusion that Solgen's financial statements were materially false. Jones, Snyder, and Resnick also pressured Heimbigner to change his conclusion in several subsequent calls, text communications, Zoom meetings, and email

exchanges. When Heimbigner refused, Jones and Snyder excluded Heimbigner from all calls regarding Solgen's finances, including calls with CIBC. On August 15, Defendant Snyder met with Heimbigner in person and terminated him. Edgewater subsequently terminated its contractual relationship with Moss Adams.

On July 31, 2024, Heimbigner brought state law claims for common-law wrongful termination in violation of Washington public policy and intentional interference with contractual relations against Edgewater, Snyder, and Jones (collectively, "Defendants"). On January 17, 2025, Defendants filed a motion to dismiss for lack of personal jurisdiction and for failure to state a claim. The district court granted the motion in part, dismissing the action for lack of personal jurisdiction and dismissing the wrongful termination claim with prejudice for failure to state a claim.[2]

## II. THE CERTIFIED QUESTIONS

Heimbigner timely appealed both the dismissal of the action for lack of personal jurisdiction and the dismissal of his wrongful termination claim with prejudice. We conclude that the district court erred in dismissing the action for lack of personal jurisdiction.[3] Consequently, we must decide whether we should affirm the dismissal of Heimbigner's wrongful termination claim for failure to state a claim.

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[2] The district court denied the motion in part because it concluded that Heimbigner stated a claim of intentional interference with contractual relations against all Defendants, but that claim is not at issue in this appeal.

[3] We will explain our resolution of the personal jurisdiction issue when we issue our final disposition.

The district court dismissed the wrongful termination claim against all Defendants (Edgewater, Jones, and Snyder) because it concluded that only a direct employer can be liable for wrongful termination, and it is undisputed that Solgen, not Edgewater, was Heimbigner's direct employer.

On appeal, Heimbigner challenges the dismissal on two grounds: First, Heimbigner contends that indirect employers can be liable for wrongful termination under Washington law, and that therefore, he stated a claim against Edgewater, Jones, and Snyder—even assuming Jones and Snyder acted as agents of Edgewater when they terminated him. Second, Heimbigner contends that, even if indirect employers cannot be liable for wrongful termination (and his claim against Edgewater must be dismissed), he still has stated a claim against Defendants Jones and Snyder because he alternatively alleges that they acted as agents of his direct employer, Solgen, when they terminated him. In response, Defendants argue that indirect employer liability is unavailable, and that, even if Jones and Snyder acted as agents of Solgen, the claim against them should still be dismissed because individuals cannot be liable for wrongful termination under Washington law.[4]

We must resolve both certified questions to fully resolve this appeal: If an indirect employer can be liable for wrongful termination under Washington law, then Heimbigner has stated a wrongful termination claim against

[4] Defendants argue that we should affirm the dismissal of the wrongful termination claim on several other grounds, including that Heimbigner failed to allege a violation of public policy, and that he failed to allege sufficient facts showing that Jones or Edgewater participated in the termination. Because we resolve those issues in Heimbigner's favor, the outcome of this appeal turns on the two state-law questions we certify here. We will explain our reasoning when we issue our final disposition.

Edgewater. If individuals can be liable for wrongful termination under Washington law, then Heimbigner has stated a wrongful termination claim against Jones and Snyder. However, if there is neither indirect employer liability nor individual liability for wrongful termination claims, then Heimbigner has failed to state a claim against any of the Defendants, and the district court correctly dismissed the claim with prejudice.

### A. Indirect Employer Liability

Whether Washington law categorically bars common-law wrongful termination claims against indirect employers is an unsettled question of state law. The Washington Supreme Court has never addressed the question. And only one published Washington Court of Appeals case has considered the issue, but it left the question open. *Awana v. Port of Seattle*, 89 P.3d 291, 293–95 (Wash. Ct. App. 2004).

In *Awana*, asbestos abatement workers alleged that their direct employer, Alpha, a government contractor with the Port of Seattle, terminated their employment after they complained about work safety violations at the Seattle airport. *Id.* at 291–92. The workers brought wrongful termination claims against both Alpha and the Port, *id.* at 292, and the Superior Court granted summary judgment in favor of the Port. *Id.* The Washington Court of Appeals affirmed. *Id.* at 295. The court first explained that "[a]n action for wrongful discharge depends, by definition, upon termination of employment," but that the plaintiffs "were not employees of the Port, and the Port did not terminate their employment." *Id.* at 292. Then, the court addressed the plaintiffs' arguments that a direct employment relationship is not required to establish liability. *Id.* at 292–94. The plaintiffs first argued that the Port could still be liable

because, as the owner and general contractor for the airport renovation, it had a duty to protect them from hazards, and that duty should include a duty to protect them from retaliation for reporting safety hazards. *Id.* at 293. The court rejected that argument because the Port's control over the worksite did not confer control over the employment of its subcontractor's employees. *Id.*

The plaintiffs also argued that the Port could be liable for wrongful termination because it exercised such great control over them such that it was their "de facto employer." *Id.* Although the court also rejected this argument, in doing so, it did not address whether a de facto employer could be liable for wrongful termination as a matter of law; rather, it explained that the record showed the Port lacked any authority to intervene in the direct employer's employee relations. *Id.* ("Whatever the Port controlled, it was not [the plaintiffs'] de facto employer."). *See also id.* (An "owner/contractor [cannot] carry out a duty to refrain from retaliatory discharge of workers employed by subcontractors" if it does not have "control over the employment of a subcontractor's workers.").[5]

[5] The court also declined to hold that the Port could be liable for wrongful termination, even if it encouraged the plaintiffs' direct employer to terminate them, because "[c]ourts generally extend tort doctrines only where existing remedies are inadequate." *Awana*, 89 P.3d at 294. And the plaintiffs could pursue other remedies: "a cause of action for tortious interference against the Port," and a "whistleblower action for wrongful discharge in violation of public policy" against their direct employer. *Id.* Heimbigner argues that this aspect of the court's reasoning was abrogated by *Rose v. Anderson Hay & Grain Co.*, 358 P.3d 1139, 1145–47 (Wash. 2015). Defendants contend *Rose* and *Awana* can be reconciled. At a minimum, *Rose* casts doubt on this aspect of *Awana*'s reasoning and thus underscores the uncertainty in the law. This uncertainty supports certifying the issue *Awana* left open.

Heimbigner and Defendants each contend that *Awana* supports their position. Heimbigner argues that *Awana* impliedly recognized that an indirect or "de facto" employer can be liable for wrongful termination and concluded only that the Port was not the plaintiffs' de facto employer because it lacked control over the plaintiffs' employment. He further argues that he has alleged enough facts to show that Edgewater exercised control over his employment, including his termination, and therefore was his de facto employer. Thus, Heimbigner contends, even under *Awana*, he has stated a wrongful termination claim against Edgewater.

For their part, Defendants argue that *Awana* categorically held that indirect employers cannot be liable for wrongful termination, even if they are de facto employers. In their view, *Awana* "reject[ed] the plaintiffs' 'de facto' theory because it was 'based entirely upon cases distinguishing employees from independent contractors.'" Because the plaintiffs were not independent contractors, their "de facto" theory failed, and the court's discussion of whether the Port was the plaintiffs' de facto employer was dicta. Defendants also argue that excluding indirect employers from liability for wrongful termination is consistent with the *Awana* Court's statement that the wrongful termination doctrine is a "narrow" exception to the general rule that employers have discretion to terminate employees at will.

In our view, *Awana* expressly left open the question whether an indirect, de facto employer can be liable for wrongful termination. *Id.* at 294–95 (noting that the "wrongful discharge doctrine must be extended with caution," but that "[p]erhaps a case can be made for its application outside the traditional employment context.").

Because the court concluded that the Port did not control the plaintiffs' employment, the court did not reach the question presented here.

The parties also discuss two federal district court cases addressing Washington wrongful termination claims. Neither is persuasive authority on the issue because they each rely exclusively on *Awana*. *See MacDonald v. Grace Church Seattle*, No. C05-0747C, 2006 WL 1009283, at *1–3 (W.D. Wash. Apr. 14, 2006); *Bailey v. Alpha Techs. Inc.*, No. C16-0727, 2016 WL 4211527, at *3 (W.D. Wash. Aug. 10, 2016). Moreover, like *Awana*, neither squarely addresses whether an indirect employer can be liable for wrongful termination if it had control over the plaintiff's employment.

Recognizing there is no controlling precedent, both parties make policy arguments in favor of their respective positions. Heimbigner argues that the Washington Law Against Discrimination ("WLAD") counsels adopting a broad definition of "employer" for the purpose of common-law wrongful termination claims. The WLAD defines "employer" broadly as "any person acting in the interest of an employer, directly or indirectly." Wash. Rev. Code § 49.60.040(11). And the Washington Supreme Court has, at times, looked to the WLAD for guidance in common-law wrongful termination cases. *E.g., Cagle v. Burns and Roe, Inc.*, 726 P.2d 434, 437 (Wash. 1986) (concluding a plaintiff may recover emotional distress damages for common-law wrongful termination because the WLAD "illustrate[s] this state's policy favoring awards of damages for emotional distress"); *id.* ("[B]ecause discriminatory termination of employment [under the WLAD] embodies a clear mandate of public policy, it is analogous to wrongful termination of employment in violation of public policy, and is therefore

persuasive authority in this case."); *see also, e.g.*, *Allison v. Hous. Auth. of Seattle*, 821 P.2d 34, 42–43 (Wash. 1991) (holding the same burden of proof applies to common-law wrongful termination claims involving retaliation for filing a workers' compensation claim and WLAD cases involving retaliation for filing a discrimination claim).

For their part, Defendants highlight the Washington Supreme Court's description of the tort of wrongful termination as a "narrow" exception to at-will employment. *See Becker v. Cmty. Health Sys., Inc.*, 359 P.3d 746, 749 (Wash. 2015). We note, however, that the Court in *Becker* also explained that this narrow exception is "recognized as a means of encouraging employees to follow the law and preventing employers from using the at-will doctrine to subvert those efforts to promote public policy." *Id.*; *see also Thompson v. St. Regis Paper Co.*, 685 P.2d 1081, 1089 (Wash. 1984) ("We believe that this narrow public policy exception should be adopted because it properly balances the interest of both the employer and employee.").

These arguments involve exactly the type of "important public policy ramifications" with "broad application" that the Washington Supreme Court should consider in the first instance. *High Country Paving, Inc.*, 14 F.4th at 978. Thus, "in the spirit of comity and federalism," *id.*, we ask the Washington Supreme Court to decide whether indirect employers may be liable for common-law wrongful termination.

### B. Individual Liability

Heimbigner alleges in the alternative that Snyder and Jones acted as agents of Solgen, his direct employer, when they orchestrated his termination. If, under Washington law, individuals such as officers, managers, or supervisors may

be liable for wrongful termination, then the district court erred in dismissing Heimbigner's wrongful termination claim against Snyder and Jones in their capacities as agents of Solgen, even if indirect employers cannot be liable.[6]

Whether Washington law recognizes wrongful termination claims against individuals such as officers, managers, or supervisors is also an unsettled question of law. The Washington Supreme Court has not addressed the issue, and federal district courts disagree about how the court would rule.

In *Blackman v. Omak School District*, the plaintiff, a former school principal, brought wrongful termination claims against her former employer (the school district) and the district superintendent who terminated her. No. 2:18-CV-0338, 2019 WL 2396569, at *1–2 (E.D. Wash. June 6, 2019). The superintendent moved to dismiss the plaintiff's wrongful termination claim "because the tort can only be asserted against an employer, not an employee of the employer." *Id.* at *3. The district court recognized that the Washington Supreme Court has not yet resolved whether individuals can be liable for common-law wrongful termination. *Id.* at *3–4. But it predicted that the Washington Supreme Court would recognize claims against individual defendants because "the purpose of the wrongful discharge tort—namely, the deterrence of discharge in violation of public policy—is best served if individual employees, particularly those in a position of power, are held personally liable for conduct that violates public policy and

[6] If both indirect employers and individuals can be liable for wrongful termination, then the district court also erred in dismissing Heimbigner's claims against Synder and Jones in their capacities as agents of Edgewater.

effectuates another employee's termination." *Id.* at *4. The district court thus denied the superintendent's motion to dismiss but reserved the right to later certify the issue of individual liability to the Washington Supreme Court. *Id.* at *4 n.1.

Four years later, another district court came to the same conclusion. *Gaspar v. Turn Techs. Inc.*, No. C23-1274, 2023 WL 8879124, at *3 (W.D. Wash. Dec. 22, 2023) (agreeing with *Blackman*).

But, in *Dahlstrom v. United States*, the district court granted summary judgment to seven individual defendants on the plaintiff's wrongful termination claim on the ground that the wrongful termination doctrine does not provide for individual liability. No. C16-1874RSL, 2019 WL 1514212, at *3 (W.D. Wash. Apr. 8, 2019). The court reasoned, "[t]he nature of the employment contract as between the employer and the employee suggests that a claim that public policy prevents the termination of the contract runs against the employer, not against co-workers or supervisors who may have been involved in the decision to terminate the employment relationship." *Id.* The district court also noted that the wrongful termination doctrine is a "narrow" exception and cited the Washington Court of Appeals' statement in *Awana* that the "doctrine must be extended with caution." *Id.* (quoting *Awana*, 89 P.3d at 294–95).[7]

[7] The *Dahlstrom* court also cited *Jenkins v. Palmer*, asserting that it held that individual wrongful-termination liability was unavailable. *Id.* (citing *Jenkins v. Palmer*, 66 P.3d 1119, 1122 (Wash. Ct. App. 2003)). But *Jenkins* did not so hold; rather, the court held that the plaintiff's coworker was not liable for wrongful termination because the plaintiff was not terminated. *Jenkins*, 66 P.3d at 1122.

In sum, the Washington Supreme Court has not addressed whether indirect employers or individuals may be liable for wrongful termination. *Awana*, the only relevant Court of Appeals decision, involved materially different facts and does not address the liability of an indirect employer that exercises significant control over the plaintiff's employment. And our district courts disagree about how the Washington Supreme Court would resolve these issues. Because "it is necessary to ascertain the local law" of Washington "to dispose of [this] proceeding and the local law has not been clearly determined," Wash. Rev. Code § 2.60.020, and because these issues involve important questions of public policy, we respectfully ask for guidance from the Washington Supreme Court.

## III. ORDER

We certify to the Washington Supreme Court the following questions:

> (1) Does Washington law recognize common-law wrongful termination claims against indirect employers?
>
> (2) Does Washington law recognize common-law wrongful termination claims against individuals such as officers, managers, or supervisors?

We do not intend the phrasing of these questions to restrict the Washington Supreme Court's consideration of the issues. We recognize that the Court may reformulate the questions as it sees fit. *Broad v. Mannesmann Anlagenbau AG*, 196 F.3d 1075, 1076 (9th Cir. 1999); *Lenhardt v. Ford Motor Co.*, 683 P.2d 1097, 1098 (Wash. 1984).

If the Washington Supreme Court accepts review of one or both of the certified questions, we designate appellant Heimbigner as the party to file the first brief pursuant to Washington Rule of Appellate Procedure 16.16(e)(1).

The Clerk of Court is hereby ordered to transmit forthwith to the Washington Supreme Court, under official seal of the United States Court of Appeals for the Ninth Circuit, a copy of this order and all relevant briefs and excerpts of record pursuant to the Revised Code of Washington sections 2.60.010(4) and 2.60.030(2) and Washington Rule of Appellate Procedure 16.16.

Further proceedings in this court on the certified questions are stayed pending the Washington Supreme Court's decision on whether it will accept review and, if so, receipt of the answer to the certified questions. The case is withdrawn from submission, in pertinent part, until further order from this court. The Clerk is directed to administratively close this docket, pending further order. This panel will resume control and jurisdiction upon receipt of an answer to the certified questions or upon receipt of the Washington Supreme Court's decision to decline to answer the certified questions.

When the Washington Supreme Court decides whether to accept one or both of the certified questions (or orders briefing on the questions), the parties shall promptly file a joint report informing us of the decision. If the Washington Supreme Court accepts certification, the parties shall also promptly file a joint status report notifying us when briefing has been completed; when a date is set for oral argument before the Washington Supreme Court; and when that court has rendered an opinion.

**QUESTIONS CERTIFIED; PROCEEDINGS STAYED.**