**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**
**IN AND FOR THE COUNTY OF BENTON**

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| SCOTT BRUNDRIDGE, DONALD HODGIN, JESSIE JAYMES, CLYDE KILLEN, PEDRO NICACIO, SHANE O'LEARY, RAYMOND RICHARDSON, JAMES STULL, RANDALL WALLI, DAVID FAUBION, and CHUCK CABLE,<br><br>Plaintiffs,<br><br>v.<br><br>FLUOR HANFORD, INC., a Washington corporation; FLUOR FEDERAL SERVICES, a Washington corporation<br><br>Defendants. | Case No. 99-2-01250-7<br><br>Hon. Carrie Runge<br><br>[PROPOSED] ORDER DENYING DEFENDANT'S CR 60 MOTION FOR RELIEF FROM JUDGMENTS<br><br>Trial Date: July 18, 2005 |

Defendant Fluor Federal Services, Inc.'s CR 60 Motion for Relief from Judgments came before this Court for hearing on May 5, 2006. Defendant was represented at the hearing by William R. Squires III of Summit Law Group PLLC, Michael King of Lane Powell PC, Ralph Pond of Benedict Garratt, PLLC, and the plaintiffs by John P. Sheridan of The Law Office of



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John P. Sheridan, P.S. The Court has reviewed the parties' motion papers, including the declarations and accompanying exhibits, and considered the arguments of counsel,

AND HEREBY FINDS AS FOLLOWS:

1. The defendant's CR 60 motion improperly seeks to have the Court review issues of law which were not timely raised during the trial, and are not properly raised in a CR 60 motion.
2. The plaintiffs brought successful claims of wrongful discharge in violation of public policy.
3. The claim of wrongful discharge in violation of public policy contains four elements as follows:

   a) The existence of a clear public policy (*clarity* element);

   b) That discouraging the conduct in which [he or she] engaged would jeopardize the public policy (*jeopardy* element);

   c) That the public-policy-linked conduct caused the dismissal (*causation* element);

   d) The defendant must not be able to offer an overriding justification for the dismissal' (*absence of justification* element).

*Korslund v. Dycorp Tri-Cities Services, Inc.*, 156 Wash.2d 168, 178, 125 P.3d 119 (2005) (citation omitted) ("*Korslund* II).

4. In the trial management report, defendant admitted to the existence of the first two elements of the claim namely the clarity and jeopardy elements.
5. The defendant now seeks to challenge whether plaintiffs met their burden of proving the jeopardy element after having waived it in the trial management report by arguing in the CR 60 motion that the defendant was "unable to argue the point" that "other means of promoting the public policy are were adequate until the Supreme Court decided *Korslund* II because the



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decision created new law and that the defendant was bound by the conflicting law of *Korslund* I.[1] Defendant's reply at 3, n.2. I reject defendant's argument.

6. Defendant offers no case on point to support its claims that this Court should consider this legal issue under CR 60 as "new law." Defendant fails to distinguish cases cited by the plaintiffs' for the proposition that CR 60 "is not intended to be used as a means for the court to review or revise its own final judgments, or to correct any errors of law into which it may have fallen." *In re Marriage of Alder*, __ Wn.App. __, 129 P.3d 293, 297 (2006). Errors of law "must be raised on appeal." *In re Marriage of Thurston*, 92 Wn.App. 494, 500, 963 P.2d 947 (1998) (errors of law may not be corrected by CR 60). But even if defendant could produce legal authority to support its proposition that a trial court may consider "new law" under CR 60, a review of the case law in existence at the time of this trial shows that *Korslund* II contains no significant new law.

7. This case was brought to trial in July 2005. At that time, adequate case law existed to provide defendant notice of its potential defenses. First, in *Korslund* I, which was a summary judgment dismissal, the Court of Appeals held that "[w]hether a plaintiff has satisfied the jeopardy element is a question of fact. *Korslund* I at 320. Thus, Defendant Fluor was on notice that it too could have challenged the jeopardy element as a question of fact under

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[1] *Korslund v. Dycorp Tri-Cities Services, Inc.*, 121 Wash.App. 295, 88 P.3d 966); *affirmed in part*, 156 Wash.2d 168, 178, 125 P.3d 119 (2005)



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*Korslund* I, but it chose instead to waive that element. Second, *Hubbard v. Spokane County*, 146 Wash.2d 699, 717, 50 P.3d 602 (2002) put the defendant on notice that a defendant could challenge the jeopardy element as a matter of law when no other facts are presented. In *Hubbard*, the Court examined the statute in question and analyzed, again at summary judgment, whether other means already existed that adequately protected the public policy in question." *Hubbard* at 716-717. Instead of pursuing that argument at trial after the submission of relevant facts, the defendant here chose to admit the jeopardy element for the purposes of this trial.

8. *Korslund* II is a new decision but is not significantly new law as defendant contends. It simply applied the 2002 *Hubbard* holding to a fact pattern that is similar to, but not identical to, the fact pattern in this case. The *Korslund* II Court cited directly to *Hubbard* at 716-717 for the proposition that the ERA, under the facts presented at summary judgment, was adequate as a matter of law to protect the policies cited by the plaintiff. *Korslund* II at 182. As noted by the dissent, there were no facts in the record regarding the adequacy of the ERA other than the statutory provisions. *Korslund* II at 192-193.

9. *Korlund* II does not mandate that trial courts in the future only consider the jeopardy element as a question of law. The Court specifically held that "the question whether adequate alternative means for promoting the public policy exist ***may*** [not shall] present a question of law." *Id.* at 182.

10. Owing to defendant's admission of elements one and two of wrongful discharge, plaintiff was for the most part unable to present evidence addressing those issues.



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11. The defendant's failure to challenge the jeopardy element at trial now would prejudice the plaintiffs' ability to obtain proper review of the issue after trial or on appeal because little or no evidence was presented at trial on the clarity or jeopardy elements, in part, owing to successful motions in limine filed by the defendant to exclude such evidence.

12. In summary, the defendant could have chosen to challenge the clarity and jeopardy elements of wrongful discharge at trial, but instead, chose to admit those elements. Defendant will not now be permitted to challenge those elements post-trial in a CR 60 motion.

THEREFORE, based on the argument of counsel and the evidence presented, defendant's motion is DENIED.

IT IS SO ORDERED.

DATED this 5 day of May, 2006.

Carrie Runge

CARRIE L. RUNGE
JUDGE
BENTON COUNTY SUPERIOR COURT

Presented by:

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