No.11-1475

In the Supreme Court of the United States

ICICLE SEAFOODS, INC.,

Petitioner,

v.

DANA CLAUSEN,

Respondent.

RESPONSE TO APPLICATION FOR PARTIAL STAY OF JUDGMENT

DIRECTED TO THE HONORABLE ANTHONY M KENNEDY,
ASSOCIATE JUSTICE OF THE SUPREME COURT

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INTRODUCTION

Icicle's request for a stay here should be denied. The application for stay is nothing more than an attempt to sway a member of this Court in advance of consideration of its certiorari petition, as well as to force Clausen to incur still more legal costs in this matter.[1]

In its motion for stay, Icicle Seafoods, Inc. ("Icicle") misrepresents what transpired below in an attempt to bolster its weak petition for a writ of certiorari, currently pending before this Court. Icicle and its attorneys engaged in reprehensible and unethical conduct designed to deprive Dana Clausen, an injured seaman, of his right to maintenance and cure. This Court will not likely grant certiorari and reverse the relatively modest punitive damages imposed under the egregious facts of this case.

A King County, Washington jury, properly instructed on the law, found that Icicle was negligent and culpable for Clausen's injury at sea. It awarded Clausen damages. It awarded punitive damages, finding Icicle's conduct toward Clausen "callous or indifferent, willful or wanton." The trial court entered judgment in the jury's verdict, and including the punitive damages for which Icicle continues to evade responsibility, and awarded Clausen attorney fees incurred as a result of Icicle's bad faith conduct.

Icicle's application does not demonstrate the necessary elements required to obtain a stay. The application should be denied.

STATEMENT OF THE CASE

Dana Clausen was 52 years old when he was injured on the job while in Icicle's employ. Clausen seized an opportunity to work in Alaska, joining the crew of Icicle's

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[1] Icicle has received a stay from the Washington Supreme Court through at least July 10, 2012, when that court will consider the matter further. *See* Appendix.

BERING STAR. He worked on board that vessel for about three years; his last position was Second Engineer where he earned about $30,000 per year plus benefits, and room and board. He was an excellent and valued worker.

While lifting a 122-pound piece of steel, he suffered a serious injury to his low back, neck, and hand. He promptly reported the injury to Icicle. However, Clausen encountered persistent difficulties in getting Icicle, or its adjusting firm, Spartan, to meet its obligation to pay him maintenance and cure, traditional maritime remedies providing room and board and medical expenses, during his convalescence. In some instances, Clausen's medical providers waited as long as 2 years for bills to be paid by Spartan. However, Spartan did see fit to pay for the services of a nurse, Lori Gregoire, to monitor Clausen's treatment in Louisiana, actually paying her more than it paid out for Clausen's medical bills. She attended many of Clausen's medical appointments and reported extensively to Spartan on Clausen's course of treatment. Spartan reported extensively to Icicle on Clausen's claim.

Clausen's injuries to his back, neck, and hand prevented him from performing any work for which he was qualified. Although Icicle paid Clausen his wages due him under his contract with the company, those wages terminated in June, 2006. *Id.* Icicle paid Clausen $20 per day for maintenance (room and board), claiming that this sum would cover lodging, utilities, and meals. Clausen was reduced to living in a broken-down recreational vehicle ("RV") with no heat, air conditioning, running water, or toilet facilities; the RV's roof leaked and could not be repaired. Icicle knew Clausen was living in the decrepit RV. Nevertheless, Icicle terminated the maintenance and cure to Clausen in August, 2006.

In addition to manipulating the payment of maintenance to Clausen, Icicle withheld the payment of cure (medical expenses) necessary for his recovery. As a result of his on-the-job injury, Clausen experienced severe pain. For example, on June 9, 2006, Gregoire reported to Spartan that "Mr. Clausen reports increased pain to his hips and flare upon on Saturday, described as 'lightning bolt' that lasted about ten minutes to his left hip. Dr. Brennan deferred any work release and recommended referral to a neurosurgeon, Dr. Isaza." Later that summer, Clausen visited Dr. Isaza whose August 17, 2006 chart note stated:

> Patient advised to go to ER if medicine is not helping his pain. His friend "franny" is aware of this – she states patient has threatened to kill himself and we advised her to go to ER –

Gregoire reported this to Icicle.

Although Dr. Brennan opined that Clausen's condition in April-May 2006 had reached maximum medical cure, allowing for the closure of his claim.[2] Gregoire disagreed with Dr. Brennan's conclusion that Clausen's condition had stabilized given Clausen's complaints of pain, and thought Clause needed further curative treatment. Spartan sought a second opinion selecting the Seattle Panel of Consultants to conduct a review of his medical records and status. In a June 20, 2006 letter, just prior to Icicle's termination of his maintenance and cure, Dr. Richard E. Marks, a physician *selected by Spartan*, told Icicle that Clausen had not reached maximum medical cure, he needed treatment by epidural steroid injections, and he was a candidate for surgery. This report was *never disclosed* to Gregoire or Clausen.

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[2] Dr. Brennan's May 19, 2006 report actually referred to Clausen as "she."

Not only did Icicle refuse to pay for Dr. Marks' recommended treatment, it undertook a campaign to obtain a cheap, early settlement of Clausen's overall injury claim before he was represented by counsel. Spartan and Icicle were both well aware of the legal standards for maintenance and cure that required them to take appropriate steps to ensure that Clausen received appropriate room and board and curative treatment. Spartan was clearly aware that Clausen's injuries were serious, noting as early as May 19, 2006 that the doctors believed his injuries were "career ending." This was confirmed in a Spartan May 25, 2006 report to Icicle's insurer. Spartan was fearful that Clausen would secure legal representation and the value of his claim would escalate:

> ... our concern is for the possibility that Mr. Clausen will seek legal representation. Should this occur, the attorney will likely seek general damages for his client who is facing a career-ending injury and the value of this claim will increase considerably. Overall, we see the most beneficial choice is to settle this matter now rather than wait for attorney involvement.

In general terms, Chris Klein of Icicle agreed Clausen's condition was career-ending and he didn't "like the looks of this one." Spartan/Icicle wanted to act "before this guy gets away from us." They wanted to be sure to "corral this guy."

Recognizing Clausen's claim was "wide open," Icicle/Spartan decided upon a strategy that included a neurological referral, medical records review, communication with Clausen directly to obtain a settlement, and even surveillance of Clausen. This strategy was concocted without any thought of Clausen or his medical needs. The hope was that Clausen would "take the bait" and back down from his medical treatment in order to get money upon closure of the file. Spartan/Icicle simply wanted to avoid the $40,000-$75,000 expense of back surgery that Dr. Marks thought might be necessary. Spartan also knew that Clausen's contractual wages were ending and that it could use the

termination of Clausen's maintenance and cure to leverage a settlement favorable to Icicle.

Icicle and Spartan then suppressed Dr. Marks' report. In a very revealing June 28, 2006 telephone note, Klein stated: "Read med recs review Rpt – Not good for Icicle." Gregoire recommended that Clausen follow up with Dr. Isaza on surgery, thereby agreeing with Dr. Marks, not Dr. Brennan, regarding Clausen's status. However, despite the opinions of Dr. Marks and Gregoire, Icicle continued to insist in September and December 2006 that Clausen had reached maximum medical cure.

In September 2007, Icicle even went so far as to sue Clausen in federal court to terminate his right to maintenance and cure. Clausen's medical records, disclosed in Icicle's action, revealed that Icicle's statements were baseless, and Spartan's files demonstrated that each one of Icicle's allegations was false. From progress reports and billing records it was clear that Gregoire was talking with Clausen and his doctors, and she reported all of this information in detail to Spartan. At the time Icicle filed its federal lawsuit, these records were present in Spartan's files. Clausen also provided Spartan fifteen signed releases permitting access to his medical records. Spartan's staff admitted on cross-examination that none of these releases for medical records were ever used.

Clausen filed the present action in state court on January 18, 2008 against Icicle seeking damages for its Jones Act negligence, the unseaworthiness of the BERING STAR, maintenance and cure wrongfully withheld, and punitive damages and attorney fees for Icicle's improper withholding of maintenance and cure. The trial court gave extensive instructions to the jury on the Jones Act, unseaworthiness, and maintenance and cure. In particular, the court gave the jury two instructions on Icicle's wrongful

withholding of maintenance and cure and punitive damages. Icicle did not object to either instruction, and later on appeal to the Washington Supreme Court, failed to assign error to *any* jury instruction, making those instructions the law of the case.

After a two-week trial, and two and half days of deliberation, the jury returned a verdict in Clausen's favor. The jury concluded that Icicle was negligent, although it found Clausen was comparatively at fault by 44%. The jury found past damages of $209,100, and future damages of $244,000, for a total of $453,100. That verdict was reduced to $253,000 to reflect Clausen's proportionate share of fault. The jury entered a supplemental verdict in which it determined that Clausen's loss of maintenance and cure was respectively $19,300 and $18,120. The jury also concluded that Icicle not only unreasonably withheld maintenance and cure, but it was "callous and indifferent, or willful and wanton" in failing to do so, awarding Clausen $1.3 million in punitive damages. The court also awarded Clausen further compensatory damages for Icicle's bad faith conduct in the form of attorney fees of $387,558 and costs of $40,547.57.[3]

At trial, Icicle did not disclose documents, including Dr. Marks' expert report. Clausen's counsel learned of the documents and they were eventually disclosed. The court sanctioned Icicle in connection with its failure to turn over to Clausen's counsel the entire adjuster file, omitting Dr. Marks' panel report as well as Icicle communications acknowledging that the report "did not look good" for Icicle. The court found that Icicle and its counsel violated discovery rules, noting that the violations were "reckless." The court took issue with the certification by Icicle and its counsel that production was

[3] Icicle stayed enforcement of the entire judgment during the pendency of the appeal in the Washington Supreme Court, even though it did not assign error to the negligence or maintenance and cure aspects of the judgment.

complete and counsel's failure to more rapidly disclose the insufficient production. The court imposed sanctions of $10,000 against Icicle and $5,000 against its trial counsel. The Washington State Bar Association subsequently disciplined Icicle's trial counsel.

Icicle then filed a motion to amend the judgment challenging the jury's punitive damage award. The trial court entered an extensive order denying Icicle's motion. The Washington Supreme Court affirmed the trial court's judgment in its entirety. *Clausen v. Icicle Seafoods, Inc.*, 174 Wn.2d 70, 88, 272 P.3d 827, 837 (2012).

REASONS WHY STAY SHOULD BE DENIED[4]

A. This Court Will Likely Not Grant a Writ of Certiorari or Reverse in a Case Where Particularly Egregious Conduct Resulted in a Reasonable Punitive Damages Award that Complies with This Court's Jurisprudence

Icicle contends that a stay should be granted because this Court will likely grant certiorari and reverse the jury's punitive damages award. Citing largely from the dissenting opinion in this case, Icicle misreads *Exxon Shipping Co. v. Baker,* 544 U.S. 471 (2008) and ignores the rest of this Court's due process jurisprudence on punitive damages. *Id.* Icicle is wrong, both in suggesting that this Court limits punitive damages to a 1:1 ratio, and that the punitive damages award here was excessive because the Court included Clausen's attorney fees as part of his compensatory damages.

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[4] Icicle's stay request is arguably moot because the Washington Supreme Court *has already granted Icicle a stay.* In its application, Icicle deceptively states that the Washington Supreme Court granted a stay "to permit Icicle to seek a stay from this Court." Application at 2. Icicle also claims that the stay will "expire" on July 10.

What the Washington Supreme Court actually did was grant Icicle a stay, and set the matter for its July 10 motion calendar. *See Appendix.* It said nothing about the purpose of its order, and Icicle's statement that the Court granted the stay to allow Icicle time to file the present application is *false*. Icicle's claim that the stay will "expire" on July 10 is also misleading. The Washington Supreme Court has plainly stated that it will consider this matter further on July 10, and has not indicated whether it will continue to impose a stay. *Id.*

Exxon does not mandate that all maritime personal injury punitive damages must be limited to a 1:1 ratio, or even a near 1:1 ratio, with compensatory damages. There, Exxon's personnel engaged in *recklessness*, not willful misconduct. When the United States Supreme Court stated that it imposed a cap of 1:1 in "such maritime cases" that did not involve "exceptional blameworthiness" or "behavior driven primarily by desire for gain" and that was "profitless for the tortfeasor," the Court obviously implied that the 1:1 cap was not universal. *Exxon,* 544 U.S. at 510-13. Moreover, the Court also focused on the substantial compensatory damages of $507 million awarded in that case, noting it was not a small case. *Id.* at 514.[5] Thus, *Exxon* imposed a 1:1 ratio under those particular facts, *id.*, and it did not establish a 1:1 limit for *all* maritime cases, particularly a case like this where Icicle's conduct was willful and wanton.

Justice Ginsburg's concurring/dissenting opinion made it clear that a 1:1 ratio was unique to the facts of *Exxon* and did not apply to all maritime cases:

> The 1:1 ratio is good for this case, the Court believes, because Exxon's conduct ranked on the low end of the blameworthiness scale: Exxon was not seeking "to augment profit," nor did it act "with a purpose to injure." What ratio will the Court set for defendants who acted maliciously or in pursuit of financial gain? Should the magnitude of the risk increase the ratio and, if so, by how much?

Id. at 524 (Ginsburg, J., concurring in part and dissenting in part).[6]

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[5] The *Exxon* court was motivated in large measure by the very size of the jury's compensatory damages verdict. Exxon's 1:1 cap was applied in non-maritime cases where the compensatory award, like that in *Exxon*, is particularly large. *State Farm Mut. Auto. Ins. Co. v. Campbell,* 538 U.S. 408, 425 (2003) ("When compensatory damages are substantial, then a lesser ratio, perhaps only equal to compensatory damages, can reach the outermost limit of the due process guarantee.").

[6] As one commentator observed:

> ...the language in *Baker* suggests that a jury will not necessarily be bound by the 1:1 cap unless the circumstances of the case in question mirror

Icicle's claim that its acts were not egregious enough to merit the level of punitive damages awarded to Clausen is equally meritless. Icicle's conduct was cynically manipulative and reprehensible. This Court in *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 575 (1996) indicated that "the most important indicium of the reasonableness of a punitive damages award is the degree of reprehensibility of the defendant's conduct." Thereafter, in *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 419-21 (2003), *cert. denied,* 543 U.S. 874 (2004) this Court identified markers of reprehensibility as follows: (1) Indifference to or reckless disregard for the health of others; (2) the target of the conduct was financially vulnerable; (3) the conduct involved repeated actions and was not isolated; (4) the harm was a result of intentional malice, trickery, or deceit, and was not an accident. Deliberate false statements, acts of affirmative misconduct, and concealment of evidence of improper motive demonstrate reprehensible conduct. *BMW*, 116 S. Ct. at 575-76.[7] This Court also considers the potential damage if the defendant had succeeded in its scheme, as well as the size of the award that is required to deter the defendant from similar conduct in the future. *TXO Production Corp. v. Alliance Resources Corp.*, 509 U.S. 443, 460 (1993).

> those in *Baker*, i.e.: 1) where the defendant's conduct is "worse than negligent but less than malicious;" 2) where the conduct is not driven by the profit motive; 3) where the conduct is subject to regulatory sanctions; and 4) where the plaintiff's damages are significant and the compensatory award is substantial. The more difficult issue is what standard or cap will be imposed when the circumstances are different.

John W. Degravelles, *Supreme Court Charts Course for Maritime Punitive Damages,* 22 U.S.F. Mar. L. J. 123, 143 (2009-10). *See also,* Robertson, 70 La. L. Rev. at 498-99.

[7] The *Exxon* court specifically recognized that the case involved reckless conduct and noted that some states authorize higher ratios for "malicious or dangerous activity designed to increase a tortfeasor's financial gain." *Exxon,* 544 U.S. at 510.

Icicle's radical notion that this Court rejects punitive damages higher than a 1:1 ratio with respect to compensatory damages is simply wrong. In *TXO,* this Court upheld punitive damages that were *526 times greater* than the amount of compensatory damages awarded. *TXO,* 509 U.S. at 459-61. In so doing, this Court observed that punitive damages should be evaluated on a case-by-case basis, considering an array of factors and the common sense of the jury. *Id.* at 455-56. In so holding, this Court noted that many egregious acts may result in little actual monetary harm, but must nonetheless be discouraged so as to prevent similar behavior in the future. *Id.* This Court also *specifically rejected* any attempt to formulate an "objective" test that would draw a bright line regarding when punitive damages are *per se* excessive. *Id.*

Here, Icicle callously and wantonly forced Clausen to suffer while it withheld maintenance and cure owed to him. It then tried to avoid the consequences of these bad acts by manipulating him, thwarting the judicial process, and hiding information. The fact that the amount of maintenance and cure he was denied was relatively small makes Icicle's behavior in withholding it *more egregious,* not less. It should not be used as a justification for reducing the jury's very considered verdict on punitive damages.

Finally, Icicle is wrong when it contends that attorney fees, when awarded as an equitable remedy for bad faith conduct, are not considered compensatory and should not be used to calculate the ratio of compensatory to punitive damages. This Court held otherwise in *Vaughan v. Atkinson*, 369 U.S. 527, 530 (1962), in which it clearly held that attorney fees awarded to seamen forced to go to court to obtain maintenance and cure are an item of compensatory damages, not simply costs to be taxed. In case Icicle perceives any ambiguity in *Vaughn,* this Court's holding was explicitly described in *Fleischmann*

Distilling Corp. v. Maier Brewing Co., 386 U.S. 714 (1967) (*Vaughan* held that "an admiralty plaintiff may be awarded counsel fees as an item of compensatory damages (not as a separate cost to be taxed)").

This Court's decision in *Vaughan*, and the many cases that come after it, all justify an award of fees on equitable grounds to make the plaintiff whole. *Hutto v. Finney*, 437 U.S. 678, 689 n.14 (1978); *Sierra Club v. U.S. Army Corps of Engineers*, 776 F.2d 383, 389-90 (2d Cir. 1985), *cert. denied*, 475 U.S. 1084 (1986); *Centex Corp. v. United States*, 486 F.3d 1369, 1373 (Fed. Cir. 2007).

Indeed, the better-reasoned analysis of *Vaughan* confirms that fees are compensatory in nature. *See, e.g.*, 6 James Wm. Moore, *Moore's Federal Practice* ¶ 54.78[3] at 54-503-504 and n.29 (2d ed. 1994) ("The [*Vaughan*] court found that when a seaman's employer refused to pay the seaman maintenance that 'was plainly owed under the laws that are centuries old,' thus forcing the seaman to retain counsel and sue for it, the expenses of the suit could rightly be treated as part of the compensatory damage.").[8] Equity is a form of remedial relief, it is not punitive in nature. *Mertens v. Hewitt Associates*, 508 U.S. 248, 256, 113 S. Ct. 2063, 2069, 124 L. Ed. 2d 161 (1993).

Thus, the fees awarded here in equity was a part of the compensatory damages Clausen incurred. The fee award obtained by Clausen here was properly treated as part of the compensatory "base" for calculating the punitive fee "cap." The resulting ratio of punitive to compensatory damages is *less than* 3:1.

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[8] As Professor Robertson contends, the punishment/deterrent policy behind punitive damages in wrongful withholding of maintenance and cure is not advanced by attorney fees because fee awards to not constitute a sufficient deterrent because they are blind to the conduct of the defendant and hence cannot be scaled to punish and deter reprehensibility. 70 La. L. Rev. at 488-89.

B. Icicle Will Suffer No Irreparable Harm

Icicle argues it will endure irreparable harm if required to pay Clausen the full amount of the judgment. This statement is patently false in light of the current stay being imposed by the Washington Supreme Court, which will remain in place until *at least* July 10, possibly longer.

Icicle's claim is that the "financially vulnerable" Clausen will "immediately and freely spend" the punitive award, and that Icicle may not be able to recover those funds. Notably, Icicle provides no authority in support of its position that has facts resembling the facts presented here: whether stay of a simple money judgment to a single person that the petitioner does not want to pay is warranted. Instead, the cases Icicle cites involve government agencies or organizations being ordered to pay out awards to hundreds or even thousands of recipients, which would cause an administrative nightmare should reversal mandate a recouping of those funds. *Mori v. Int'l Broth. of Boilermakers*, 454 U.S. 1301, 1302 (1981); *Heckler v. Turner*, 468 U.S. 1305, 1305 (1984); *Edelman v. Jordan*, 414 U.S. 1301, 1302 (1973); *Philip Morris USA Inc. v. Scott*, 131 S. Ct. 1, 5 (2010); *Ledbetter v. Baldwin*, 479 U.S. 1309, 1310 (1986).

Icicle does in fact have a state law remedy for the harm it alleges. Washington State Rule of Appellate Procedure 12.8 states:

> If a party has voluntarily or involuntarily partially or wholly satisfied a trial court decision which is modified by the appellate court, the trial court shall enter orders and authorize the issuance of process appropriate to restore the party any property taken from that party, the value of the property, or in appropriate circumstances, provide restitution. An interest in property acquired by a purchaser in good faith, under a decision subsequently reversed or modified, shall not be affected by the reversal or modification of that decision.

There is a rich body of Washington case law under that rule articulating how Icicle may proceed. *See, e.g., Ehsani v. McCullough Family P'ship*, 160 Wn.2d 586, 159 P.3d 407 (2007); *State v. A.N.W. Seed Corp.*, 116 Wn.2d 39, 802 P.2d 1353 (1991); *Davenport v. Wash. Education Ass'n*, 147 Wn. App. 704, 197 P.3d 686 (2008). Were this Court to grant review and reverse the Washington Supreme Court, Icicle would be able to seek restitution of any moneys paid to Clausen plus interest, consistent with the principles of common law restitution articulated in the *Restatement of Restitution. Ehsani*, 160 Wn.2d at 590-91.

Also, Icicle provides no evidence that Clausen will disperse the funds, it merely alleges that he will. Bold allegations that a party might have trouble recouping funds do not constitute a sufficient showing of irreparable harm. *Conkright v. Frommert*, 556 U.S. 1401 (2009) (Ginsburg, J. in chambers). The petitioner must establish that "recoupment will be impossible." *Id., Cf. Sampson v. Murray,* 415 U.S. 61, 90 (1974) ("Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough. The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm" (internal quotation marks omitted)). *Id.*

If Icicle actually manages to succeed in its attempts to obtain certiorari and a reversal of the jury's verdict on punitive damages, it can pursue Clausen for recovery, as any party can do in a case such as this. Icicle's arguments do not amount to the "extraordinary circumstances" to which this Court limits its grant of stay power. *Whalen v. Roe*, 423 U.S. 1313, 1316 (1975).

C. The Equities Here Favor Clausen

Having just finished arguing to this Court that Clausen is so destitute that he will immediately spend all of the punitive damages owed to him, Icicle then claims that the equities favor a stay because Clausen has plenty of money. Application at 23. Icicle asserts it has already "made [Clausen] whole" by paying to him a portion of the jury's award, and that payment of the punitive damages will be some sort of undeserved windfall.

Setting aside the contradictory nature of Icicle's assertions, the equities here do not favor a stay. Through its despicable conduct, Icicle managed to avoid paying Clausen what it owed him for six years, while Clausen suffered. Now, Icicle wants to continue to receive the protection of this Court while it engages in pointless last-ditch effort to avoid its legal responsibilities. The equities here favor Clausen.

CONCLUSION

Icicle's application for stay should be denied.

DATED this 18th day of June, 2012.

Respectfully submitted,

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APPENDIX

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June 5, 2012

LETTER SENT BY E-MAIL ONLY

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Re: Supreme Court No. 87314-3 - Dana Clausen v. Icicle Seafoods, Inc.
King County Superior Court No. 08-2-03333-3 SEA

Clerk and Counsel:

Enclosed is a copy of the Order entered following consideration of the above matter on the Court's June 5, 2012, Motion Calendar.

Sincerely,

Ronald R. Carpenter,
Supreme Court Clerk

RRC:alb

Enclosure as referenced

THE SUPREME COURT OF WASHINGTON

DANA CLAUSEN, Respondent, v. ICICLE SEAFOODS, INC., Petitioner.	)	NO. 87314-3 **ORDER** King County Superior Court No. 08-2-03333-3 SEA

Department I of the Court, composed of Chief Justice Madsen and Justices C. Johnson, Owens, J. M. Johnson and Wiggins, considered this matter at its June 5, 2012, Motion Calendar and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the Petitioner's Motion for Discretionary Review and Emergency Motion are denied. The Respondent's request for attorney fees is denied. The Petitioner's request for a stay is granted for a period of 35 days.

This matter will be further considered by a Department of the Court on the Court's July 10, 2012, Department One Motion Calendar.

DATED at Olympia, Washington this 5th day of June, 2012.

For the Court

FILED
SUPREME COURT
STATE OF WASHINGTON
2012 JUN -5 P 3:34
BY RONALD R. CARPENTER
CLERK

Madsen, C.J.
CHIEF JUSTICE

637/100

EIM

DECLARATION OF SERVICE

On said day below I emailed and deposited with the US Postal Service a true and accurate copy of the following document: Response to Application for Partial Stay of Judgment in U.S. Supreme Court Cause No. 11-1475 to the following:

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Original sent by Federal Express for filing with:

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I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: June 18, 2012, at Tukwila, Washington.

Paula Chapler
Talmadge/Fitzpatrick