APPELLANTS REPLY BRIEF
TO WASHINGTON STATE COURT OF APPEALS
DIVISION II

Court Of Appeals Case Number 47565-I-II

MICHAEL J. COLLINS - APPELLANT PRO-SE

v.

STATE OF WASHINGTON &
OFFICE OF THE GOVERNOR,
OFFICE OF THE ATTORNEY GENERAL,
DEPARTMENT OF LABOR & INDUSTRIES,
IN ITS/THEIR OFFICIAL CAPACITY
(Respondents)

Reply Brief File Date October 27 2015

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I made it clear to [AAG] Matthew H. Rice in Superior Court, that he, [AG] correct the caption of his/its documents filed to match my amended caption as filed specifically,,, in its/their Official Capacity. See amended caption of my Superior Court Pleadings. See [AAG] Gregory G. Silvey who can not even get his caption heading consistent in the entirety of documents filed in this Court Of Appeals September 11, 2015. See Respondents Extension of Time being correctly captioned, Silvey's Declaration as correctly captioned, then see Respondents Notice Of Withdrawal, and Defendants Supplemental Designation Of Clerks Papers not correctly captioned as how Matthew Rice continued to incorrectly caption his pleadings filed in Superior Court. I demand the defense explain this intentionally incorrect captioning to this Court Of Appeals, as Rice with deliberate intent, captioned his pleadings incorrectly.
I asked this Court of Appeals in my Opening Brief, to compel the Defense to prove in micro-detail, date stamped documentary proof fashion, that must be consistent with exactly upon what criteria my then L&I claim was adjudicated, that compliance was fulfilled by L&I's David Iverson, between April 18, 2007 date of mandate of Judge Stewart, "CP" 110-113, and yet further illegal claim closure of August 3, 2007 "CP" 128, because, it is the (Special Duty) that was created for the [S]tate thru 2014, from that Legal Order as not time-barred, that must be defense proven as fulfilled, to also defend the November 14, 2011

provably perjured Sworn Statement "CP" 133-134, and, for the [S]tate to defend Duty, Breach Of Duty, Causation, Tort.

Every provable Tort committed by L&I, and [AG], from 2007, thru 2014, was to intentionally avoid having to address, and to intentionally avoid compliance with that not-time barred Legal Order of April 18, 2007, "CP" 110-113. Special Circumstance-Special Relationship-Special Duty Breached in (my case specific), because of that ever still significant Legal Order, because of [S]tate non-compliance of a Legal Order, as supported by common law, = Tort.

Semler v Psychiatric Inst., 538 F.2d 121 (4th Cir. 1976) cert denied. 429 U.S. 827 (1976)...

The court can rely on cases, (or as my 'matter of first impression case),,, to define a 'special relationship', such as [disobedience of a court order, or a statute], or [failure to provide information]',,,'to include relaying the court's, or in (my case specific), the BIIA decision to a doctor, so the IME doctor could also decide whether a complete medical adjudication was realized in direct reference to an original adjudication, as opposed to an 'aggravation' adjudication'. I strongly surpass the criteria needed in (my case specific), to establish a 'Special Circumstance', for all 3 legal disobedience reasons, [S]tate disobedience by not complying with BIIA mandate "CP" 110-113, [S]tate disobedience by failing to provide game-changing information to the IME, and [S]tate disobedience to relevant [S]tate statutes as listed in the Statutes, and Regulations Table of my Opening Brief, for both L&I, and the [AG], to create [S]tate Duty, [S]tate Breach Of Duty, Causation, and Tort, as supported by real-world common-law.

Also from *Semler*,,, a 'special relationship', was created by a judges order, then imposed a 'duty'... Also from *Semler*,,, 'custodial duty' by reasonable care, was mandated from precise language in a court order to retain custody,,, in (my case specific),,, for L&I to resume jurisdiction, to correct my then L&I claim, adjudication with precise BIIA Order language eliminating the 7-year rule.

From *Semler* Appeals Court,,, 'we conclude that the district court (trial court),,, correctly concluded that the state court's order imposed a ,,,'duty',,, to retain custody until subject was released by a further court order'. (My case specific),,, until L&I wrote a further Appealable Order (see BIIA June 11, 2007 mandate,,, "CP" 131-132, ..."includes but is not limited to"...),,, proving its compliance,,, that could be heard,,, and confirmed,,, by a subsequent BIIA tribunal as L&I fulfilling compliance of BIIA Order of April 18, 2007, "CP" 110-113.

Also from *Semler*,,, a 'ministerial act',,, is defined as, obedience to a mandate in a court order. (My case specific), L&I & [AG] intentionally ignored obedience as its duty breached, to the mandate in the April 18, 2007 BIIA Order. "CP" 110-113.

Also from *Semler*,,, [fair warning] as in (my case specific), "CP" 155,162-173... *Brown v MacPherson's, Inc., 86 Wn.2d 293,545 P.2d 13 (1975)*, pg. 22 of my Opening Brief filed to this Court Of Appeals,,,

"the court expanded the concept of government liability, holding that agencies could have liability for failure to perform duties lying outside the statutory authority of the agency,,, or necessarily implied therefrom"...
From Seattle University Law Review, The Value Of Government Tort Liability...

See defense "CP" 293. See handwritten additions by [AAG] Matthew Rice.

These exact handwritten additions were not specifically decided by Judge van Doorninck, but only added by Rice dishonestly. See my "CP" 78, My Motion For Reconsideration which was never heard by Judge van Doorninck, because she removed herself from my case. My Motion was directly related to 'Powers', then 'Duty' as defined, as owed me in [S]tate statutes, for [AG], and L&I, in (my case specific), independent of a Constitutional Tort only dismissal by Judge van Doorninck whom delayed deciding on 'Powers', and 'Duties' until later. Continued Reply as directly related to defense Designation of Clerks Papers, and specific defense pleadings upon which Judge Culpepper directly relied. See defense "CP" 279-287. In this Defense Motion To Dismiss Plaintiff's Third Amended Complaint, defense lists all my counts, but fails to discuss, or defend 'duty', as must be discussed in context. At defense "CP" 281, defense never counter argues to the mandate in a prior Legal Order, my "CP" 110-113, that created the (my case specific) [S]tate 'Special Duty', as in *Semler.* This makes my counts seem trivial, as not illuminating actual L&I claims manager, and L&I supervisor conspiracy to conceal, and to avoid discussing facts of my then L&I claim in the 2014 adjudication. This from experienced trained L&I operatives, who knew if they never discussed my issues in a further L&I Appealable Order I would never be able to hold them accountable under the 'Act'. That they were correct in this evil oppressive agenda, will prove my point to a jury, that must be educated on L&I's subject-matter jurisdiction, in a Superior Court Trial. This now directly relates to defense citing *Birklid,* as defense "CP" 283-284.

Wn. State Supreme Court, and even Ninth Circuit Court Of Appeals found in *Birklid*, that sufficient provable facts, as I have clearly established in (my case specific), would also defeat defense Motion For Summary Judgment to dismiss. Since my case is procedurally correct, as a Tort case that cannot be heard under the 'Act', then defense citing of *Birklid*, to somehow support its position, becomes erroneous, and actually supports my position to survive a dismissal per 12(b)(6), and also defense Motion For Summary Judgment to dismiss.

I meet all the required criteria in *Birklid*, as my Tort claim facts establish Malicious Intent on the part of L&I, and [AG], because of the [S]tate's motive not to comply with a Legal Order "CP" 110-113, though it created a [S]tate 'Special Duty', not fulfilled, as Question Of Fact for a jury. This jury deciding factor, was the directly related Wn. State Supreme Court, and Ninth Circuit required criteria in *Birklid*. See defense "CP" 284 at ft,nt.[2] I totally agree with [AAG] Rice's discussed criteria mandate for me, to establish my proper Tort complaint, but defeats position of Judge Culpepper, "RP" 28, at 6-7,,, "You've got a gripe with L&I"... Judge Culpepper never read my complaint, never took the [S]tate 'Special Duty' owed me into consideration, as he relied on misstatements of law. What also makes defense citing of *Birklid* so erroneous, in context to somehow supporting its position, is that RCW 51.24.020, as cited many times in *Birklid*,,, is specifically for a case against an employer, that has that specific statute to support a proper Tort claim. No such Tort statute exists under the 'Act',,, for my extraordinary 'matter of first impression' proper Tort claim. [AAG] Rices' discussion under that

specific ft.nt.[2] is remiss, as repleat with irresponsible defense attorney denial of deliberate, and specific captioning in my Tort case, that I clearly state in all my Superior Court pleadings, to mean,,, MALICIOUS CONDUCT,,, INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS,,, INTENTIONAL TORT...

I knew the stringent requirement of a Tort claim, that was once an Industrial Insurance Act injury claim, because I knew how unfair Superior Court would be in favoring the defense, and I was correct, as Judge Culpepper proved it, as I filed documentary proof in Superior Court "CP" 143-145, that my specific issues as a proven [S]tate Duty, *Semler,,*, could never be heard under the 'Act'...

[AAG] Rice, with deliberate dishonesty, and deliberate avoiding of the facts, distorted Restatements Of Law Of Torts, in direct relation to my provable facts, which easily defeats 12(b)(6),,, and then the defense must now address the facts of my case that must be 'viewed in a light most favorable to my position', to easily defeat a future defense Motion For Summary Judgment to dismiss.

I have established [S]tate Special Duty, [S]tate Breach Of Duty, Causation, Tort. See defense "CP" 284-285. See *Dicomes*... See my discussing *Dicomes* in my Opening Brief pgs. 8,29. In defense "CP" 284-285, this very same [AAG], Matthew Rice, whom added language in Judge van Doorninck's decision, that was never specifically decided by Judge van Doorninck, is once again intentionally dishonest specifically, as to why the State Supreme Court rejected *Dicomes'* case, in his/its Motion, defense "CP" 285, upon which Judge Culpepper directly relied, as a misstatement of Case Law, then Common Law. By his

intentionally dishonest citing of *Dicomes,,,* Rice is attempting to marginalize my position of Tort Of Outrage, why [AG] in (my case specific), refused to conduct an investigation into David Iverson's written perjured Sworn Statement "CP" 133-134, suborned by [AAG] Lionel Greaves, as Rices' Motion is intentionally, and dishonestly drawing incorrect parallels to the written statement at issue in *Dicomes.* And, Rice is attempting to marginalize the significance of provable lies/concealment in the L&I, to IME instructions from 2007 "CP" 115-116, from 2010 "CP" 151-153, and from 2014 "CP" 147-150, because *Dicomes* complained of a document drafted by the DOL that was detrimental to her. But that is not why the State Supreme Court rejected *Dicomes'* argument. A written document detrimental to *Dicomes,* did not preclude her finding further equal employment, as the State Supreme Court was aware of her finding new, comparable employment. So, there would have been no ultimate damages for *Dicomes* to prevail upon.
I made clear in my Opening Brief, and my Superior Court pleadings, APP "Ex". 3, to Judge Leanderson, as she never considered, but Judge Culpepper relied,,, as misstatement of law,,, [foreclosed] is a key game-changing dynamic. The State Supreme Court rejected *Dicomes* argument specifically because, *Dicomes'* ability to procure future employment was not ,,,[foreclosed],,, by the action of the DOL... But Rice cites Restatement (Second) Of Torts Section 46 (1965),,, defense "CP" 284-285, with a deliberate intent to dishonestly cite that Restatement's intent, to somehow relate to *Dicomes,* ill-fated written document argument.
This State Supreme Court deciding criteria in *Dicomes,,,* is powerful in direct

relation to (my case specific), because my ability to have my then L&I claim adjudicated legally to completion, was [foreclosed],,, by the [S]tate,,, with deliberate intent, not complying with an already Legal Order,,, "CP" 110-113... Defense cited *Dicomes,,,* then defense designated "CP" 288-308, (See defense EXIBITS A-B specifically), so now I ask this Court Of Appeals to compel defense accountability, to compel defense to position that my ability to have my then L&I claim adjudicated to a legal completion, was somehow not [foreclosed] by L&I, and the [S]tate, not complying with Judge Stewarts' Order mandate "CP" 110-113, by with deliberate intent not addressing my issues in further Appealable Orders "CP" 128, "CP" 140, "CP" 141, and that my specific complaint directly related to L&I non-compliance of "CP" 110-113, could somehow have been heard at the BIIA under the 'Act',,, as issues,,, that are completely separate from,,, what gave rise to my original injury (see *Cena*,,, which Rice cites in defense "CP" 283, along with *Dicomes*), as both cases *Cena,* and *Dicomes,* of which actually make my case, and support my position. This [foreclosed] dynamic also becomes very powerful for another reason. Defense "CP" 194-195, all complainants in the cases Rice cites, (omitting *Cougar*), either did, or could have had, their issues heard in a prior legal process. I have proven I could not. "CP" 143-145. [Foreclosed] is the key. Defense has committed itself to *Dicomes* with [foreclosed] dynamic, now it must answer for it. This compels the negative 'domino effect' as mandate for defense, as step, by step, it must justify 2014 [S]tate action/inaction, since April 18, 2007 "CP" 110-113,

giving rise to my Tort case, because of provable actionable Torts it committed. As defense will fail to justify, it must be, 'hoist by its own *Birklid-Dicomes* petard'... If Judge Culpepper had actually read my pleadings, see "RP", he would have clearly seen the INTENTIONAL requirement as fulfilled. [AAG] Rice read them! And, in a provable Tort action, courts should rely more on Restatements Of Law Of Torts, than on governing statutes, when the [AG] denies statutory duty.

A specific application of the 'legislative intent exception' of specific statutory language for the [AG] in (my case specific), by the [AG] taking specific enforcement action in (my specific defined circumstance),,, was an [AG] 'Special Duty', and would have avoided [AG] [S]tate liability in 2014.

Dicomes was not deprived statutory, and common law due process. I was.

See *Peterson v State* 100 *Wn.2d 421, 671 P.2d 230 (1983)...*
[3] TORTS: Sovereign Immunity-Discretionary Acts- What constitutes.
"The extremely limited discretionary act exception to the abolition of sovereign immunity applies only to policy decisions resulting from a conscious weighing of advantages versus risks".

As I stated in my Opening Brief, L&I, [AG] refusing to conduct an investigation that was a 'Special Circumstance', 'Special Duty', because of a Legal Order, "CP" 110-113, as in *Semler*,,, only because they knew of what the negative result would be, was not a legitimate government function, and was not discretionary. *Peterson*,,, there is no (my case specific) defense immunity as concerning policy judgment, and discretionary immunity questions... "If however, one, or more of the questions call for or suggests a negative answer, then further inquiry may well become necessary, depending upon the facts and circumstances involved".

'Only policy making decisions (in the province of coordinate branches of government), (legislative intent), which balances legislative policy risks and advantages, enjoy discretionary immunity', but not the policy of a 'ministerial' L&I Appealable Order,,, as a [S]tate 'Ministerial Duty' Breached,,, because of "CP" 110-113...

I have stated clearly, I am not asking for my then L&I claim to be continued, as

I as the victim of an (Intentional Tort), have no legal obligation to mitigate in that

manner, (because I am the victim of an (Intentional Tort)), and it would not be

within a Superior Court original jurisdiction Tort case anyway, and, the damage

is done, the Tort(s) as actionable, and compensable, has/have been committed.

From *Peterson*,,, 'the fact that an employee normally engages in "discretionary activity", is irrelevant if, in a given case, the employee did not render a considered decision'...

This includes government employees,,, from L&I, and the [AG]. *King v Seattle* 84 Wn. 2d 239, 243, 525 P.2d 228 (1974),,, in my Opening Brief pgs. 20,42...

The key, is the powerful word 'considered'. This means, it must have been

'considered' in the original policy making, or legislative intent. L&I provably lying to,

and concealing game-changing L&I claim history information from IME Examiners

and [AG] coverup of a crime of perjury, and subornation of perjury, does not fall

within a 'considered legislative intent', to invoke [S]tate discretionary immunity.

From *Peterson*,,, 'a trial court does not abuse its discretion by allowing a party to propose a hypothetical question based solely on that party's theory of the case, or to include disputed material facts'.

Also, even though my Tort case is not based on simple negligence, but on a

Deliberate Intent by the [S]tate, to cover-up both its legal duty after April 18, 2007

"CP" 110-113, and a crime of perjury, and subornation of perjury, also with

Malicious Nonfeasance as Deliberate Intent, denying me due process. And even though 'foreseeability' in itself,,, standing alone,,, does not create a duty,,, but is directly related, as now materially relevant to an already acknowledged duty,,, in (my case specific), as L&I, and the [AG], acknowledged its duty by unethically attempting to make it appear they complied with a Legal Order "CP"110-113.

By filing that Sworn Statement on November 14, 2011, "CP" 133-134, the [S]tate 'acknowledged' a 'Special Circumstance', then a 'Special Duty' owed me since April 18, 2007. If the [S]tate acknowledged it owed me a 'Special Duty' as specifically described by Iverson in that Sworn Statement "CP" 133-134, and the material facts of (my case specific) proves the [S]tate Breached that 'Special Duty' owed me, there was [S]tate 'Special Duty' owed, [S]tate 'Special Duty' Breached, Causation, and Tort. Then [S]tate 'Foreseeability Duty' of physical, emotional, and due process harm, is materially relevant, and solidifies causation for a jury.

It does not matter that the Sworn Statement at issue was filed in a Federal Court, as a State Court need not have jurisdiction in that legal regard. Only that the relevant document at issue exists, and was tendered by the [S]tate, then the [S]tate is acknowledging 'Special Duty' owed me (in my case specific).

Also, because the [S]tate put the communication of that Sworn Statement into issue, "CP" 133-134, and because the [S]tate, L&I, wrote those provable lies in its April 17, 2014 L&I, to IME Instructions,"CP" 147-150, it does not enjoy privilege.

And, [AG] was [neutral] from February 28-September 7, 2014, "CP" 162-173, as 'Special Duty', to conduct an investigation, and write a legal opinion. "CP" 176.

My Tort Case is consistent with what would be actionable in a private context. As one may not prevail in a Tort case against a supervisor for abuse of discretion, (absent a Legal Order creating a 'Special Duty'),,, as is present in my case, "CP" 110-113, as a mandate for L&I Supervisor Nancy Adams as included in my Third Amended Complaint (counts). Even though Adams had 'fair warning', of the issues that must be addressed in multiple letters "CP" 155 to her, Brooks, and Director Sacks prior to,,, the May 21, 2014 IME based on Intentionally 'falsified' L&I, to IME Instructions, at the hands of Brooks, and as sanctioned by Adams, Adams chose to conspire with Brooks, and Sacks to allow an IME to take place based on Intentionally 'falsified' Instructions, for the sole intent of not allowing me the proper claim Re-opening, or to receive treatment I needed "CP" 138, as diagnosed from my 2014 Provider, that unlike an IME doctor, L&I could not control. This, while I suffer(ed) in pain, is a Tort of outrage as uncivilized by L&I. This uncivilized Tort of outrage, is supported by all Restatements Of Law Of Torts. So the relevant Intentionally dishonest letter written by Adams "CP" 159-161, as will be easily impeached by me as together with testimony from a specific IME doctor involved, cannot be compared to *Dicomes,,,* as the DOL in *Dicomes*, had no such Legal Order creating a mandate and a 'Special Duty', as L&I owed me. But this was this despicable comparison [AAG] Rice attempts to make, and upon which Judge Culpepper directly relied, as a clear misstatement of law. What L&I, and the [AG] did in (my case specific), was not discretionary, as a Legal Order created a 'Special Circumstance', and a 'Special Duty'. "CP" 110-113.

It is clear why Adams would not address my issues in an L&I Appealable Order. It is because she knew she would not be held step, by step legally accountable and answer to a legal process, writing a (letter only), "CP"159-161 under the 'Act'. Adams, with deliberate Intent, deprived me due process under the 'Act', as a 'Special Circumstance', 'Special Duty' was mandatory for Adams, Brooks, Sacks. When Adams refused to address my specific issues as was her 'ministerial' Duty, in a further Appealable Order required after my protest, "CP" 155,,, because of L&I non-compliance with "CP" 110-113, as of 2014, it was not a considered policy decision protected by discretionary immunity. Adams was dishonestly attempting to blame the IME (panel) for not revealing the facts of my entire claim file to me,,, and for not discussing the entire claim history with me, "CP" 160, (when that is not the IME panels' (doctors') duty,,, as not in the L&I, to IME Instructions).

"CP" 136,,, "including those particular issues presented for our consideration",,, from 2010 IME doctor,,, and, "CP" 137,,, "to obtain an objective opinion on your present condition and to answer specific questions related to your condition that were outlined by the requesting party"... [That would be L&I]. This from the 2014 IME doctor. "CP" 175 ("per assignment letter")... From 2006 IME doctor...

This is why the Accepted 'Condition',,, WAC 296-20-01002,,, based on correct diagnosis codes as IME 'specifically presented',,, as upon which the IME will be based, is legal life-blood important. Adams perpetuated the lie in the L&I, to IME Instructions from David Iverson in 2007, "CP" 115-116,,, from Maria Mcbride in 2010 "CP" 151-153,,, and from Eric Brooks in 2014 "CP" 147-150...

So Adams attempting to blame the IME doctors must legally backfire on her, as L&I would not explain, or justify this in an L&I Appealable Order "CP" 141.

It is provable L&I past history misconduct in scheduled IME Exam Instructions, the result of that IME as then becomes a 'matter of record',,, that in 2014, legally afforded me legitimate 'property interest' right to demand 'before the fact', a copy of a future scheduled L&I, to IME Instructions, and L&I past history misconduct of which creates a 'Special Relationship', 'Special Duty', supported specifically by Restatement (Third) Of Torts Sections 37-42 (2011). Adams was covering for L&I's position as a 'red herring', as L&I refused to correct provable lies in those April 17, 2014 Eric Brooks L&I, to IME Instructions,,, "CP" 147-150. Then Adams was conspiring to cover for Eric Brooks' Intentionally 'falsified' L&I, to IME Instructions. The 'falsified' document dynamic of which, the Federal Courts allowed to be sufficient,,, to base their due process analysis, as a clear violation of due process in *Cushman v Shinseki*. See *Cushman* in my Opening Brief. Defense cannot marginalize relevant 'Intent' of Adams' letter "CP" 159-161, and Adams ignored elimination of the 7-Year rule, "CP" 110-113,,, and 'specific' need for Policy 16.40 completion as Sacks' 'Duty', to avoid accountability of my issues. This Appeals Court can relate Federal case/common Law, and only Wn. State Constitution, for Due Process, and Common Law Torts committed in 2014, to establish specific statutory language Intent as 'Special Duty' owed per RCW 4.92. The 'Special Relationship' created by the very relevant Legal Order "CP" 110-113, creates a 'Special [S]tate Affirmative Duty' owed, then 'Special [S]tate Affirmative Duty' Breached by Sacks, Brooks, Adams [AG] *et al*, then Specific Causation of Due Process, and Emotional Distress injury,,, creating [S]tate Tort liability.

I Plaintiff/Appellant have clearly proven 'Special Duty' owed, as Breached. The burden now falls on the defense to disprove my facts it disputes, that the [S]tate somehow complied with "CP" 110-113 Legal Order. This defeats 12(b)(6) dismissal. All [S]tate Torts committed were Intended to 'falsify' my then L&I claim adjudication, to avoid answering for [S]tate non-compliance with that Legal Order. L&I, as sanctioned, as supported by (then neutral) [AG] Bob Ferguson's Office in 2014, desperately needed an IME as L&I Intentionally based on 'falsified' L&I claim history,,, to become,,, a 'matter of record',,, as L&I Intentionally based,,, on a much lessor 'Accepted Condition',,, than what my 2007 Attending Physician "CP" 114,118, and my 2014 Provider "CP" 138,139 diagnosed,,, and from which both,,, L&I ignored, and upon which the 2007, 2010, and 2014 IME's were L&I Intentionally,,, illegally,,, not based,,, so my then, and still continually worsening condition as never properly treated by L&I, would not be found to be related to my original on-the-job injury. This, to cover-up, to avoid, L&I ever answering for, [S]tate non-compliance with "CP" 110-113 Legal Order, while I suffer(ed) in pain. Because L&I knew of my 'chronic pain syndrome' since 2007, "CP" 114,118, and because L&I knew I was never determined to be at MMI "CP" 154, by a Provider, or Attending Physician, and because L&I knew that "CP" 110-113 dictated that the 7-Year Rule was not a correct legal standard upon which to adjudicate my then L&I injury claim, therefore the IME must be based on the more serious diagnosis from "CP" 114,118,138,139,,, that were then legally,,, within the 7-Year Rule,,, because of "CP" 110-113,,, but L&I illegally did not,,,

then this is uncivilized by L&I, and [S]tate Torts as provably committed, are not actionable under the 'Act',,, and my Tort complaint as incontrovertible, then is properly before Superior Court, with original jurisdiction, as is not related to,,, 'what gave rise to my original industrial injury' per Title 51,,, ie., under the 'Act'. Since I Plaintiff/Appellant, will easily prove, L&I adjudicated my then L&I claim since immediately after the April 18, 2007 Legal Order, "CP" 110-113,,, (which clearly, and legally, created a 'Special Circumstance', as 'Special Duty' owed),,, thru 2014, on the same 7-Year Rule Standard as they, L&I, adjudicated my then L&I claim prior to the April 18, 2007 Legal Order "CP" 110-113,,, then I will easily prove just from that specific alone, (as well as other specifics), that they, L&I, and the [S]tate, could not possibly have complied with,,, "CP" 110-113,,, then [S]tate 'Breach Of Duty', by L&I, [AG] and the [S]tate, as Causation for Emotional Distress, Pain and Suffering, Due Process Violation, then, INTENTIONAL TORT. When [AAG] Rice filed all Exhibits attached thereto in defense "CP" 288-308, 190-223, his attempt was to make it appear Judge van Doorninck would have actually considered 'Special Duty' owed me by the [S]tate, as (my case specific), because of existing Legal Order "CP" 110-113, (even though nothing in a Judge van Doorninck court transcript,,, would specifically (as must be verbatim) support that attempt by Rice))... So Rice's intent,,, Judge van Doorninck then would have decided, no [S]tate Duty was owed. But this despicable attempt by [AAG] Rice fails, as,,, if Judge van Doorninck did consider all defense Exhibits, and relate the significance of all Exhibits with my indisputable argument, then

still decided no 'Special Circumstance', [S]tate 'Special Duty' was owed me, she would misstate Restatements Of Law Of Torts, and Common Law, supporting 'Special Duty' owed me I have cited, and relate specifically to (my case specific). That would be a misstatement of law by Judge van Doorninck, and perpetuated by Judge Culpepper. If Judge van Doorninck did not consider 'Duty' relevance, and significance of specific Exhibits Rice filed, to properly relate 'Special Duty' owed to (my case specific), with specific analysis considering Common Law Tort Duty, and Breach Of Duty requirements, and, what can be properly heard under the 'Act', as a matter of law,,, then, that is an abuse of discretion. Relating Restatements Of Law Of Torts, and Common Law to (my case specific), specific statutory law must be interpreted as it relates to (my case specific). An attorney pre-drafted written order is appropriate as utilized in a trial court, but Judge van Doorninck conveniently removed herself,,, so she would not have to ultimately decide on 'powers', and 'duties' as Common Law, and Statutory Law specific, to my Motion For Reconsideration "CP" 78,,, as never considered by Judge Culpepper either, as to 'Special Duty' Tort analysis to (my case specific). And, in Superior Court, I filed exact Exhibits filed by defense, but court ignored. The fact that the [S]tate defense did not include the April 18, 2007 Judges Order "CP" 110-113, specifically, in its argument concerning my specific (counts), why a 'Special Duty' was owed me by the [S]tate, as (counts) in my Third Amended Complaint, is a game-changer as to an incomplete defense argument, then a reversible, incorrect Superior Court 12(b)(6) dismissal of my proper Tort action.

See *Berge v Gorton* in defense "CP" 195 ft.nt. Yet another defense cited case (AAG Rice), supporting my argument. Former Attorney General Slade Gorton terminated the disbursements of tuition supplements once it was determined by the State Supreme Court, that the funds were unconstitutionally disbursed. Prior to that, the funds were being disbursed legally pursuant to applicable law. It was then a discretionary decision,,, for Gorton to not pursue,,, legal action to recover disbursement of funds that were disbursed legally at the time prior.

'The Attorney General's exercise of discretion creates liability on the part of his surety RCW 42.08.020, only when the exercise is arbitrary, and capricious, I.E., willful, and unreasoning action in disregard of facts, and circumstances'. 'Personal liability for discretionary acts depends on an error, or mistake resulting from corrupt, or malicious motives'. Like in (my case specific)...

So even a defense argument as to Attorney General discretionary immunity, in a general context, will not be legally sufficient in (my case specific), as the Attorney General's Office filed what I will prove they knew to be,,, a perjured Sworn Statement "CP" 133-134, as by doing so, it not only then acknowledged a 'Special Circumstance', (see circumstance in *Berge v Gorton*), as 'Special Circumstance' created by an existing Legal Order "CP" 110-113 in (my case specific),,, and 'Special Duty' owed me, but was filed with a corrupt, and malicious motive by the [AG]. So in 2014, the [AG] then only refused to conduct a proper investigation in (my case specific), because it's sole INTENT,,, was to cover-up a crime it had committed,,, along with its then client David Iverson, and it knew what the result of that investigation would uncover. That is an [AG] 'abuse of discretion' as a prototype example,,, in (my case specific).

There was no existing Legal Order upon which *Gorton* was compelled to comply, or violated, (as the [AG] was in clear disregard of facts as in (my case specific)), prior to him *Gorton*, then terminating the disbursement of tuition funds once the ,,,court,,, did determine,,, the funds as being disbursed unconstitutionally,,, and,,, from which *Gorton* then complied, as terminating disbursement if those funds. Then nonfeasance (non-performance of a required duty) was a 'required duty',,, per RCW 43.10.030(4),(5),(7), for [AG] in (my case specific) in 2014, because of the existing Legal Order of April 18, 2007 "CP" 110-113, and because the [AG] committed itself as to being obligated to a 'Special Duty' owed me in 2014, when it filed what it knew to be a perjured Sworn Statement November 14, 2011, and my Superior Court case was filed November 7, 2014 within the 3-year statute. No discretion for [AG] to cover-up crime of perjury, and its subornation of perjury. There was then no claim upon which relief could be granted in *Berge,,,* and that exact criteria upon which the State Supreme Court acknowledged as its only duty, from *Berge,,,* to mean, to determine if I have stated a claim upon which relief can be granted, as I clearly have. [AG] Ferguson would be foolish before the State Supreme Court, arguing no 'duty' was owed me, citing *Berge,,,* in comparison to (my case specific),,, and as he attempts to justify why The Office Of The Attorney General albeit under former [AG] Rob McKenna, (who remember, unsuccessfully argued,,, before the State Supreme Court,,, pursuant to separation of powers,,, in direct reference to [S]tate TORTS committed, see *Adna* as I cite in, "CP" 4-5, and in my Opening Brief to this Court Of Appeals),,,

and pursuant to a 'ministerial duty' in Adna, and in (my case specific) why he, Ferguson, would not conduct an investigation in 2014, into [AG] filing 'motive', and truthfulness, of 2011 Sworn Statement at issue,,, "CP" 133-134,,, as he Ferguson, knew the significance of an investigation that was a clear 'Special Duty' owed me, because of an existing Legal Order "CP" 110-113, and it was a Legal Order in *Berge*,,, upon which *Gorton* legally complied,,, once decided by the State Supreme Court, as he Ferguson attempts to claim discretionary immunity from liability, as a [S]tate 'ministerial duty' was created, and owed, in (my case specific),,, for L&I, and [AG], because of Legal Order "CP"110-113. Though the April 18, 2007 Legal Order "CP"110-113, did not create a duty for the [AG] then at that time,,, that is not the deciding factor in (my case specific). It is because the [AG] with 'corrupt', and 'malicious' 'motives',,, wanted to make it appear that its client complied with that Legal Order, by arbitrarily, and capriciously filing what it knew to be a perjured Sworn Statement November 14, 2011, because [AG] knew the financial, and due process implications of L&I's provable non-compliance of that Legal Order by its 2011 client,,, L&I... Then, in (my case specific), the decision by the [AG] in 2014, (who had full opportunity to appeal at the BIIA after April 18, 2007 but chose not to),,, to refuse to write a Legal Opinion on Legislative Intent, and as L&I Torts as provably committed, and its, [AG], and specific Restatements Of Law Of Torts ability to enforce the April 18, 2007 Legal Order "CP"110-113, as Plaintiff/Appellant prevailing, constitutes an [AG] statutory abuse of discretion.

As in 2014, [AG] knew of L&I Dir. Sacks statutory Duty per RCW 51.04.020(6), and that Sacks, Brooks, Adams *et al* never complied with WAC 296-14-970(4)(5), and illegally allowed my then L&I claim adjudication, to include the 2014 L&I, to IME Instructions (as an Intentionally Falsified Document),,, to be based on an much lessor 'Accepted Condition',,, than my 2007 Attending Physician's multiple ICD diagnosis code diagnosis "CP" 114,118, or my 2014 Provider as, 'Re-open claim',,, and his multiple ICD diagnosis code diagnosis "CP" 138,139, then L&I violated WAC 296-20-01002 as I suffered in pain.[1] Then L&I would never address my specific issues per the April 18, 2007 Legal Order "CP" 110-113, that created an L&I 'Special Duty' owed me in an L&I Appealable Order, then [AG] knew L&I was Intentionally depriving me due process, as I continue(d) to suffer(ed) in pain, is uncivilized,,, and outrageous,,, as 'Special Duty' Breached, Causation as TORT. The merits of my case can be considered by this Appeals Court to reverse.

[1] From *Brown v MacPherson's Inc.,* [1]
"All we need decide is, whether the facts described, if established, would entitle the appellants to relief under the allegations in their complaints,,, If they would, they constitute a state of facts which would entitle appellants to relief, and would therefore be adequate to justify denial of the CR 12(b)(6) Motion, which cannot be granted if any state of facts could exist under which the plaintiff's claim could be sustained". Then Summary Judgment only, for my facially adequate complaint. And, (my case specific), L&I Breached 'Special Duty' to Instruct IME Examiner's, to consider factual background of my case, ie., medical 'hypothetical', as "CP" 135. Defense "CP" 194, at 2, defense "CP" 280, at 20,21 'hypothetical facts',,, as this Appeals Court considers, IME Examiner's, not allowed to consider provable facts. "an appellate court may consider the factual background of the case as presented by counsel at trial or on appeal to determine whether a hypothetical state of facts exists under which the plaintiff would be entitled to relief under the allegations. Dismissal must be overturned where such a hypothetical state of facts is found". Such an opinion by this Appeals Court, would confirm, I am entitled to TORT relief.

And, reasonableness, outrage, and uncivilized INTENT of the defendants acts, are 'questions of fact' for a jury. If they are material issue(s) in resolving litigation, the granting of Summary Judgment is improper. So defense in (my case specific), would fail in dismissal on Summary Judgment as well, as same standard applied by this Appeals Court (with all my powerful admissible documents supporting my allegations), in a future defense Motion for Summary Judgment dismissal. And, a trial is absolutely necessary where there is a genuine issue as to any material fact ,,,such as,,, just exactly how L&I complied with the April 18, 2007 Legal Order "CP" 110-113, creating a 'Special Duty' for compliance, with only "CP" 133-(134 - 3. at 5-6), and, exactly how that is supported with L&I written proof in any L&I Appealable Order directly related to specific entirety of its adjudication of my L&I claim from April 18, 2007, thru September 25, 2014 "CP" 141. All provable L&I Torts committed, were to INTENTIONALLY avoid compliance with "CP" 110-113 by fast-tracking an IME, L&I knew it could control, with the lies, deception, and concealment, in its 2014 Instructions. "CP" 147-150.

I will produce a separate page than "CP" 146 pg.8, as May 4, 2007 IME psychiatric exam, as admissible, along with psychiatric testimony, that my stress is only related to,,, [my war with L&I] sic., but verbatim as documented exactly, from my discussing my emotional distress with that psychiatrist, as only to my then L&I claim not being adjudicated properly before/after the April 18, 2007 Legal Order. Then my 'stress', is not related to what gave rise to my original industrial injury. 'Hypothetical state of facts' by this Court Of Appeals. I have actionable damages.

Defense "CP" 183,194, *Cutler v Phillips Petroleum Co.,124 Wn.2d 749, 755,* 881 *P.2d 216 (1994),* out-of-context as defense citation. Wn. St. Supreme Court finds all applicable state Tort laws in *Cutler,,,* are pre-empted by federal statutes that allow 'exclusive remedy' for a (claim of benefits per ERIS(Act) (employer plan)), for which I have made implicitly clear in my discussing *Cena,,,* I deliberately am not seeking specific L&I 'Act' time-loss (benefits), but RCW 4.92 monetary relief as State Tort Statute. From *Cutler,,,* even acts to 'discriminate against a participant of the benefit plan, breach, criminal acts, or purpose of interfering with the attainment of any right to which the participant may become entitled',,, can be litigated under ERISA federal statute, but removed to federal district court [only]. Then pre-emptive federal statute 29 U.S.C. in *Cutler,,,* clearly affirmed by the Wn. State Supreme Court, becomes the enforcement mechanism, pre-empting a Tort cause of action, which also does not exist under the Industrial Insurance 'Act'. But, defense fails to address as missing in *Cutler,,,* there was no existing [S]tate Legal Order "CP" 110-113, creating a 'Special Duty' owed, 'Special Duty' Breached, 'Causation', to solidify my proper Tort case. Contrast: Trial Court in (my case specific) was not correct to assume, and/or find a relation to, my Tort complaint, to benefits allowed under the 'Act' only, as a deciding factor in *Cutler.* 'Hypothetical',,, trial court was obligated to consider deciding a 12(b)(6) Motion in (my case specific) as a Question Of Law,,, was a [S]tate 'duty' owed me! Yes! The state trial court in (my case specific) ignored 'genuine issue(s) of material fact'. My Tort complaint is proper before a State Court with original jurisdiction. *Cutler,,,* Wn. State Supreme Ct., affirms pre-emption in cases where State Court

must inquire into the existence of an ERISA covered plan, to determine if the employer had a pension defeating motive, and to determine if there is a state claim for damages, as prior U.S. Sup. Ct.,,, found, there was not. Then [S]tate Trial Court (my case specific), must find, my State Tort Claim passes a required test, as 'separate from what gave rise to my original industrial injury', *Cena,,,* then pre-empts a [S]tate Court inquiry into the benefits, and remedy as [only] allowed per the 'Act', as I never sought compensation relief per the 'Act', in my Tort case. *Cena...* (My case specific), Legislative Intent precludes Tort relief per the 'Act'. And, 'outrage' as my Tort Case proves, passes the 'separate injury test'. *Cena...* Defense in citing *Cutler*, wants this Appeals Court to think, that somehow Judge Culpepper would actually properly consider all 'hypothetical' facts, and my documents, (my case specific), to find no claim for relief. "RP" proves differently. But Judge Culpepper concurred with defense pleadings, as Misstatements of Law. *Cutler,,,* and Cena,,, become more significant specific to defense Response. In *Cutler,,,* the Wn. St. Supreme Court determined *Cutler* was cleverly, and improperly using a Tort complaint case, to acquire [benefits] available under the exclusive remedy provisions of ERISA. *Cutler,,,* was not at the mercy of,,, an ,,,employer,,, Appealable Order,,, that would unconstitutionally control the legal process, as I was in 2014 by L&I, as L&I intentionally deprived me due process by with DELIBERATE INTENT,,, not 'addressing my protest of 4/19/95' "CP"131-132, in the September 25, 2014 Order, "CP"141, or any prior L&I Order. Silvey's Response, conveniently fails to acknowledge this *Cutler* game-changer.

Cena,,, was frustrated that L&I was not timely writing an Appealable Order, from which *Cena* could have demanded by way of a Writ of Mandamus. Cena,,, was allowed a Motion For Summary Judgment decision, not a 12(b)(6), where *Cena,* was able to demand (facts of the case) be addressed by L&I before dismissal. I was not given any such process. And, all my Exhibits as "CP" 110-175, were filed as attached to my original complaint, and to my Superior Court Amended complaint to allow discovery. And, yet Silvey in defense Response, speaks of I Plaintiff/Appellant as 'facts not supporting' my entire complaint. L&I had no problem writing a 2014 timely Appealable Order in (my case specific), only they avoided 'addressing my protest of 4/19/95', "CP" 131-132. In *Cena,,,* L&I with clear specific language, albeit belated, and after *Cena* was already paid over $179,000 thus far by 1996, addressed Cena's issues,,, as requested by Cena, in an Appealable Order, then Cena had remedy at BIIA to take their complaint. Writ of Mandamus would be futile for me in (my case specific), once L&I wrote its timely Appealable Order, it controlled the only ('Act') legal process available. No less that 4 times in defense 21 pg. Response, Silvey speaks very clearly of monetary benefits, and/or compensation. Silvey is despicable in his dishonest attempt to this Court Of Appeals by again basing his very weak argument on the IIA, the 'Act', as being the exclusive remedy. But my proper tort complaint per RCW 4.92 a Tort statute that will include a 'due process' injury, as again, I with deliberate Intent never requested L&I monetary benefits, or L&I monetary compensation, in my valid Tort complaint per RCW 4.92. This destroys the

credibility of defense position as BIIA as exclusive remedy in (my case specific). Defense Response is simply a copy of all case law citations as out-of-context and generic, as cited by [AAG] Rice in defense "CP" as I have referenced herein. Defense Response pg.19, Silvey speaks of my provable allegations supported by documentary evidence and as admissible, as somehow "conclusory". See defense Response pg.4-5. Silvey states, ,,,"the Department did just that"... This directly, and specifically asserts that David Iverson (who filed the provably perjured Sworn Statement "CP" 133-134, and whom I requested be investigated in 2014, for criminal perjury, "CP" 165-173, by an Attorney General's Office that provably suborned that perjury, then 2014 [AG] 'Special Statutory Duty' owed),,, between April 18, 2007, "CP"110-113, and August 3, 2007, "CP" 128, and (see "CP" 129 from July 16, 2007 as an Iverson contradiction to Silvey's Response assertion),,, complied with the April 18, 2007 Legal Order, that Legal Order "CP" 110-113, of which created [S]tate 'Special Duty' owed me in 2007 thru 2014. Not only is that 'conclusory' by Silvey, Silvey is with Deliberate Intent, dishonestly avoiding proving the one element, (compliance with the April 18, 2007 mandate), that would exonerate David Iverson, and the [S]tate, and that directly related to my 2014 L&I claim adjudication, as non-compliance violated 2014 due process. See *Kirby*, and *Lakey* in defense "CP", and defense Response pg.18, and pg. 9 respectively. *Kirby,,,* as laughable,,, for Rice, and Silvey to cite, had as his only complaint, he being called a ,,,'gray haired old cop',,, when I meet the 3 requirements Rice cites defense "CP", (Silvey cites Response pg.18. *Lakey,,,* did not

allege PSE acted unreasonably, and without such allegation, PSE was not liable. Defense "CP" 183,194, absurdly cites *Birnbaum... Birnbaum's* case was precluded by a filing time violation, and damages sought, not allowed by RCW 64.40. All citations in defense Response, offer same out-of context 'outrage' argument. Defense Response pg.6. L&I Director Sacks had a clear statutory duty per RCW 51.04.020(6) to investigate whether an existing Legal Order "CP" 110-113, was complied with, the provable non-compliance of which, and the provable INTENTIONAL failure to investigate, as a 'Special Duty' owed, then as 'Special Duty' Breached, and L&I's INTENTIONAL conspiracy to not address my issues in an L&I Appealable Order (of which only I can appeal), "CP" 143-145 as proof that my issues could never be heard in 2007, and 2010-11, then solidifies an L&I violation of due process as Tort, which cannot be heard at BIIA per the 'Act'. Silvey in his Response as replete with erroneous references to [hypothetical] as would be considered by a trial court. If the trial court in (my case specific) did actually consider a [hypothetical] such as, was a 'duty' owed, and found no 'duty' owed, even though an existing Legal Order "CP" 110-113, compelled L&I to adjudicate my then L&I claim 'on a different legal standard', as L&I provably did not after April 18, 2007,,, this Appeals Court would not be correct to affirm that trial court error. And, 'duty' owed as 'duty breached',,, is a question of fact for a jury. If the trial court deliberately never even read my complaint as the "RP" proves,, to then have my hypothetical facts as proof of what could be heard per the 'Act', and the due process violation by L&I, that the trial court certainly

would know what can, and cannot be heard per the 'Act' legal process, then this Appeals Court cannot affirm that trial court 'abuse of discretion' to purposely not consider all facts in my (as the non-moving party) favor. Then the trial court erred in not compelling a defense Motion for Summary Judgment only, but trial court protected defense. Response pg. 11. (My case specific) is that 'narrow exception'. Foremost in the strength of my case as TORT, as not bound by the exclusive remedy provisions of the 'Act', is, I was exercising my individual right under the Wn. State Constitution in 2014, as my right to demand since April 18, 2007, "CP" 110-113, that L&I 'further adjudicate my then L&I claim on a different legal standard' as was a [S]tate mandate, and a [S]tate 'Special Duty' owed. This Court Of Appeals is very aware of what I can appeal per the 'Act', that is completely controlled by the language, and L&I INTENTIONAL lack thereof, of an L&I Appealable Order,,, of which then controls 'due process' per the 'Act'. This despicable defense by Silvey, as like client, like defense attorney, to mean, both L&I's David Iverson, and [AAG] Lionel Greaves "CP"133-134 committed crimes of perjury, and subornation thereof, which I had every right to demand be investigated, to then compel the correct adjudication of my then L&I claim in 2014, as why Silvey desperately wants this Appeals Court to find that my issues could somehow be heard, as bound by the exclusive remedy provisions of the 'Act'. This so L&I, [AG], could avoid justifying non-compliance of existing Legal Order "CP"110-113, then marginalizing the significance of an investigation that was an (L&I, and [AG] whom had fair warning in 2014),,, 'Special Duty' owed in 2014.

Benefits, and compensation, per the 'Act',,, then became irrelevant,,, until my then L&I claim would be adjudicated on a correct legal standard. "CP" 110-113. See Silvey contradiction pg.11 referencing 'common law' as not governing an L&I claim, I agree, but irrelevant in (my case specific). Then Silvey cites *Reid,,,* pg. 13, "where adequate common law remedies exist". My TORT case is correctly filed, as provable [S]tate TORTS committed, per RCW 4.92.100.(110)... From *Reid,,,* 'a case by case approach will be necessary to define extreme outrageous conduct'... (My case specific) is a unique, extraordinary case, not based on negligence, but test as in *Reid,,,* is still, 'duty' owed, 'duty' breached. *Reid,,,* 'among the factors a jury or court should consider are the position occupied by the defendants' (comment e), L&I controlled all aspects of my then L&I claim adjudication per the 'Act', 'whether plaintiff was particularly susceptible to emotional distress and defendants knowledge of this fact' (comment f), see "CP" 146 from May, 2007. Restatement (Second) Of Torts Section 46 (1965). In *Reid,,,* the 'presence element', if plaintiff is not present when alleged outrage takes place, as specific, *Reid* did, as I have available, a 'common law' civil action. In (my case specific) the 'presence element' becomes automatic, as I was physically present at the IME's in May, 2007, August, 2010, and May, 2014, that were provably based on L&I 'falsified' claim history criteria, as 'outrage',,, then I would never receive proper treatment,,, causing my 'emotional distress'. Wn. State Supreme Court would affirm this Court Of Appeals reversal of the trial court dismissal, as based on my exact argument details of my Appeal.

Again, see my argument pertaining to *Dicomes,,,* as on Reply pgs. 6,7,8,9,12, and pgs. 8,29 in my Opening Brief. See same 3 requirements I meet from defense Response pg. 18, as also cited by the court in *Dicomes*. See pg. 20. Dishonesty from Silvey, as "plaintiff was terminated from employment based on"... This is not true by Silvey. First: What the Court disagreed with, was that *Dicomes* was terminated specifically based on a truthful, but perhaps hurtful to *Dicomes,,,* letter... That is not outrage. Second: Silvey makes my case, pg. 20. "It is the manner in which the discharge is accomplished that might constitute outrageous conduct". Replace 'discharge' with, 'manner in which my 2014 IME Exam was accomplished that might (did) constitute outrageous conduct', based solely on the Intentionally dishonest L&I, to IME Instructions, as "CP" 115,116 (1 pg. only, I have complete file), and "CP" 147-150, from Eric Brooks in 2014. The 2014 IME would become a 'matter of record' before I would ever be found to be at MMI, "CP" 154, and then I would never receive the treatment as my Attending Physician requested 7 years earlier, "CP" 114,118, and my 2014 Provider "CP" 138,139, as I suffer(ed) in pain, and languish(ed) from Emotional Distress as found by a psychiatrist in "CP" 146... That is 'outrageous', that is 'uncivilized', as L&I knew they were lying to those IME doctor's in those L&I, to IME Instructions. There is no such proof of Intentional lies in *Dicomes* discharge. There is no spoliation, as concealment of case facts in *Dicomes* discharge, as there was in the 2014 L&I, to IME Instructions "CP" 147-150, while I suffer(ed) in pain, and languish(ed) from Emotional Distress, as 'outrageous', and

'uncivilized conduct by L&I. There is no 'Special Duty' owed, and 'Special Duty' Breached of a (game-changing) existing Legal Order in *Dicomes* discharge, Silvey in (my case specific) as "CP" 110-113, never even specifically defends in his Response, and 'Special Duty' as Breached, while I suffer(ed) in pain, and while I languish(ed) from Emotional Distress, as 'outrageous', and 'uncivilized' conduct by L&I. *Dicomes* also had opportunity of a Summary Judgment process to prove a 'genuine issue of material fact', I did not! Defense Response, Silvey pg. 21, "under any plausible factual scenario", but based on a frivolous defense, as Silvey does not, (but must) prove compliance with the April 18, 2007 Legal Order "CP" 110-113. The non-compliance of which forced me to suffer in pain, and languish with Emotional Distress, as non-compliance would never allow my then L&I claim to be adjudicated legally so I could receive requested treatment.

CONCLUSION:
SPECIFIC REPLY RELIEF SOUGHT

My entire "CP", and Opening Brief, must be read simultaneously to this Reply. I ask this Court Of Appeals as *sua sponte,* for an 'encouraged' Oral Argument, to compel defense, to prove compliance with Judge Stewart's (not time-barred) mandate in the April 18, 2007 'Legal Order',,, "CP" 110-113, that clearly created a 'Special Circumstance', and a 'Special Duty' owed me, from a then already existing 'Special Relationship'. Defense proof must be <u>micro-detail, step, by step</u> as ([date stamped] in my L&I claim file, which I possess a May 1, 2014 CD copy), <u>documentary proof</u>, that must be exactly consistent with, the exact criteria upon

which my then L&I claim was adjudicated pursuant to, between April 18, 2007, "CP" 110-113, and August 3, 2007 "CP" 128, thru September 8, 2010 "CP" 140, thru April 17, 2014 "CP" 147-150, thru September 25, 2014, "CP" 141, as the defense must also provide a micro-detail accounting of, as it then answers to, "CP" 159, as Adams "appropriately",,, defying Judge Stewart in "CP" 110-113, specifically "CP" 112, (pg.3 at 10-11 "a protest to the April 19, 1995 order"), and ("CP" 129, dated 07/16/2007, contradicted by "CP" 133-(134 pg.2 – 3. at 5-6)),,, both written by L&I's David Iverson whom I asked Sacks, [AG] to be the subject of a very relevant, and warranted investigation, as L&I, [AG] 'Special Duty' owed. I ask this Court Of Appeals reversal include substantive instructions to Superior Court consistent with my Opening, and Reply argument, including, jury education on the Industrial Insurance Act, and exact statutory language clearly violated with Intent (under the 'Act'). Example: RCW 51.04.020(6), as L&I Director Sacks in 2014, had a clear 'Special Duty' under a 'Special Circumstance', to address violations in Regulations,,, as described in my Opening Brief, pgs. 3,17, 30, 38, my Superior Court, and my original complaint to the State, as Sacks' Intentional refusal to investigate what my 2014 L&I claim was being adjudicated pursuant to, creates a Tort of outrage, as Sacks knew then, L&I must, but could not prove, L&I's, the [S]tates', compliance with Legal Order "CP" 110-113 since 2007, as Sacks knew proof of compliance in an L&I Appealable Order,,, would have been necessary to establish that I was afforded due process under the 'Act'. But instead, Sacks' intentional nonfeasance, [foreclosed],,, my ability to have due

process under the 'Act'. It is a Tort of 'outrage' for Sacks (whom had fair warning of an ongoing injustice in my L&I claim), to conspire with, and protect Eric Brooks, whom provably 'falsified' the April 17, 2014 L&I, to IME instructions, for the sole Intent of depriving me due process per the 'Act' as I suffer(ed) in pain. Adams, Brooks, Sacks *et al*, 'Special Duty' owed, 'Special Duty' Breached, Causation, Tort. Defense asks this Court of Appeals to affirm Trial Court 'misstatements of law' in its favor, but it did not prove compliance with Legal Order "CP"110-113 in my favor. I ask this Court Of Appeals to decide that indisputable merits of my case demand my Tort action to proceed forth upon reversal to Superior Court. This will be a plaintiff friendly case to bring to a jury, subsequent to a defense Motion For Summary Judgment to dismiss, subsequent to a Discovery Process that will not be in the defenses' best interest,,, is properly denied by Superior Court, with Tort case original jurisdiction as a matter of law. Then, to avoid a repetitious Appeal by me, if Superior Court is once again incorrect in its decision. Specific Reply Relief Sought herein, does not replace the monetary, and treatment Relief I seek in my INTENTIONAL TORT Case, but to further simplify, and confirm for this Court, as (my case specific), 'Special Circumstance', 'Special Duty' owed, 'Special Duty' Breached, as [S]tate Torts committed, then clearly allowing both monetary, and treatment damages, and relief therefrom, that cannot be denied from a [potentially] corrupt, future Superior Court Post Jury Trial verdict review.

On this day Michael J. Collins October 27 2015

Michael J. Collins – 10101 43rd Street Court East - Edgewood, Wn. 98371

DECLARATION OF MAILING SERVICE

I Appellant Pro-se Michael J. Collins, pursuant to Court Of Appeals case 47565-I-II, do hereby state under penalty of perjury, that I am at least 18 years of age, and that 1 copy of my Reply document filed on date as signed below, has been mailed by way of regular mail, to the defense counsel at the Office Of The Attorney General - Torts Division, at the address as listed below.

On this day Michael J. Collins October 27, 2015
Michael J. Collins 10101 43rd Street Court East-Edgewood, Wn. 98371

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