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SUPREME COURT

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PETITIONERS STATE SUPREME COURT REPLY TO ANSWER  
TO WASHINGTON STATE SUPREME COURT

STATE SUPREME COURT CASE 93190-9

MICHAEL J. COLLINS - PETITIONER 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)

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REPLY FILE DATE      August 6, 2016

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Michael J. Collins Petitioner Pro-se  
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Edgewood, Washington 98371  
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 ORIGINAL

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### I. IDENTITY OF PETITIONER.

The Petitioner is Michael J. Collins Pro se, as the original, and only Plaintiff before Pierce County Superior Court, and the original, and only Appellant before Division II Court Of Appeals.

### II. COURT OF APPEALS DECISION.

A copy of the unpublished opinion terminating review by the Division II Court Of Appeals dated May 10, 2016, as Michael J. Collins Pro se v State Of Washington, Office Of The Governor, Office Of The Attorney General, Department Of Labor & Industries, in its/their Official Capacity, is attached to Appendix A of my Petition For Review filed May 31, 2016.

### III. ISSUES PRESENTED BY STATE RESPONDENTS IMPROPERLY DISTORT MY QUESTION OF LAW ISSUES REQUIREMENT PER RAP 13.4(b)(3)

#### Defense Answer pg.2 II. Counterstatement Of Issues

1. No less than 8 times,,, AAG Silvey states 'constitutional tort'. My Amended Brief upon which Superior Court incorrectly never even reviewed, proof of which is in the transcripts filed in Division II Court Of Appeals, but that specific transcript was never even reviewed by Division II Court Of Appeals see No. 47565-I-II slip op May 10, 2016 Judge Lee,,, so the Court Of Appeals incorrectly overlooked this game-changing procedural process denial by Superior Court, was not based on 'constitutional tort'. Superior Court incorrectly, specifically, denied me proper procedural process.

My March 23, 2015 Amended Brief 'CP' 84-109, would have been the specific Amended Brief filed for review in Superior Court, and filed for review in Division II Court Of Appeals, and is not based on 'constitutional tort'. Silvey is perpetuating this arrogant misstatement of facts with his answer. So Division II Court Of Appeals could not have possibly, or properly determined any part of my valid Tort case with Superior Court having, but incorrectly denying, original subject matter jurisdiction over my common law Tort case.

2. Division II Court Of Appeals incorrectly based its entire review on 'constitutional tort', not on my provable set of facts supporting my common law Tort case, of which is supported by incontrovertible date stamped documentary Exhibits, that originate directly from my L&I file,, which were incorrectly, and completely ignored by Division II Court Of Appeals, of my properly filed Tort case, so it could not possibly have properly determined whether a Question Of law under the Constitution of the State Of Washington was implicated.

3. See Silvey answer at pg. 9 as he cites *Rothwell*. I only cited *Rothwell* in 2014, to properly draw the contrast from my case to *Rothwell*, to mean, my [separate injury] as not compensable under the 'Act',,, as was the exact element to be determined in *Rothwell*, whom voluntarily stated her injury was work related, my [separate injury] is not work related. Contrast! Silvey, and fellow AAG Mathew Rice whom have an undying proclivity to cite precedent

out-of context, and dishonestly, were in prior pleadings very proud, and most solicitous in citing *Dicomes v State*,,, as if *Dicomes* would somehow support their defense of my properly filed common law Tort case. But when I most certainly impeached *Dicomes*,,, as clearly not supporting the [S]tate in direct reference to intentional infliction of emotional distress,,, after Rice dishonestly pleads why this very State Supreme Court dismissed *Dicomes'* complaint,,, one quote from *Dicomes* by this very State Supreme Court is a game-changer. ...'It is the manner in which the discharge was accomplished'... [that makes all the difference in the world [sic]].. Now to (my case specific) 'it is the manner in which my then L&I claim was adjudicated prior to, and after the BIIA Legal Order in my favor 'CP' 110-113,,, that will prove common law Torts as committed by L&I, for the sole intent of avoiding accountability of not complying with 'CP' 110-113,,, 'it is the manner in which 3 IME's were instructed by L&I in 2007, 2010, and 2014 for the clear intent of lying to, deceiving, and concealing game-changing information from doctors who's IME results would then become a matter of record, and upon which my then L&I claim would be denied directly pursuant to. So Division II Court Of Appeals could not have properly applied precedent, and,,, their decision is in conflict with this very State Supreme Court's reasoning in *Dicomes*... Intentional Infliction of Emotional Distress of which *Dicomes* could not prove, but (my case specific) does. I am baffled as to why Silvey did not cite *Dicomes* in [S]tates Answer to my Petition.

So even though my Petition is proper per RAP 13.4(b)(3),, Question Of Law,, if this State Supreme Court would apply the reasoning in *Dicomes* as Silvey is most certainly asking that this State Supreme Court do,, in 3. pg. 2 of [S]tates answer,, Silvey,, "the issues would be" ,, I will prevail on that specific request to this very State Supreme Court,, by Silvey... This would also apply to [S]tate ministerial 'Special Duty' owed me by way of a Legal Order in my favor 'CP' 110-113, that the Superior Court never considered as it denied me procedural due process. And it is the ultimate determination of this State Supreme Court to decide if proper procedure was fulfilled in Superior Court. [S]tate 'Special Duty' owed me,, as a Question Of Law...

Silvey answer pg. 1,3 with deliberate dishonest intent, to insult this State Supreme Court, cites *Collins v Dep't of Labor & Industries 163 Wn.2d 1020 (2008)*,, as if I were the Collins in that case. I could not possibly have had my case before this State Supreme Court in 2008. See Silvey answer pg. 4. I based my complaint against the Governor, but specifically the Attorney General on actionable nonfeasance as the [AG] acknowledges a 'duty' when its [AAG] Lionel Greaves, filed what he knew to be a perjured Sworn Statement November 14, 2011, while representing the Office Of The Attorney General. Then [AG] owed me a statutory duty to investigate my then L&I claim as it directly related to subornation of perjury it [AG] had committed. Silvey answer pg. 4,, 'to launch an investigation into that failure to reopen his claim",,, that is not what I asked of the [AG] to investigate. This is intentionally dis-



honest by Silvey. See 'CP' 162-173. Silvey answer pg. 6 , "These issues have been litigated to a conclusion in prior cases"... and are not at issue here... This is not true, if they would have been, I would have prevailed under the 'Act',,, see 'CP' 110-113, and ,, 'they are very much at issue here'...

Because Superior Courts Judge Culpepper, if he had actually read my case,,, would had to have determined if a ministerial 'Special Duty' was owed me as it was, before considering a 12(b)(6) dismissal, then Superior Court dismissal was improper, then Division II Court Of Appeals affirming that improper Superior Court 12(b)(6) dismissal was incorrect. Silvey answer pg. 7. "Mr. Collins stated no set of facts",,, again, Intentional Infliction Of Emotional Distress', is against L&I only, actionable nonfeasance is against the [AG]. [AG] must answer for why it intentionally filed what it knew to be a perjured Sworn Statement November 14, 2011, directly related to whether L&I complied with a Legal Order 'CP' 110-113, compelling L&I adjudication of my then L&I claim, "on a different legal standard" Judge Stewart April 18, 2007... I have stated, and can prove many facts to support my common law Tort case. Apparently Silvey having been granted a 30 day extension to file [S]tates answer, did not afford him the ethical approach to review facts before filing [S]tates answer. Silvey answer pg. 7. Silvey cites *Reid*, but conveniently fails to cite the powerful Restatements Of Law Of Torts from *Reid*,,, specifically describing 'position occupied by the actor',,, over the victim [me]... This in direct reference to, actionable Torts, for Intentional Infliction Of Emotional

Distress, by L&I, who abused its power, not complying with 'CP' 110-113.  
and by intentionally lying to, deceiving, and concealing game-changing  
information from IME doctors for the sole intent of obtaining a favorable to  
L&I opinion as a designed L&I plan,,, utilize to deny my then L&I claim.

IV. WHY STATE RESPONDENTS ISSUES PRESENTED  
IN ITS ANSWER, DO NOT SUPPORT STATE  
RESPONDENTS DEFENSE, AND DO NOT PRECLUDE  
I PETITIONER FROM PREVAILING IN MY ISSUES  
PRESENTED IN MY PETITION FOR REVIEW.

As comprehensive repudiation of Respondents specific Issues presented,  
the absence of language under the Industrial Insurance Act does not preclude  
my valid Tort case. This, as RCW 51.04.010 specifically, becomes irrelevant.  
See,,, [police powers],,,, in RCW 51.04.010, which constitutionally must be  
based on health, safety, and welfare for the community, (that would include  
me),,,, cannot deprive me of my 'protected property interests',,,, in the  
adjudication of my then L&I claim,,, or it would be unconstitutional. This as  
the Tenth Amendment exact language,,, "*The powers not delegated to the  
United States by the Constitution, nor prohibited by it to the States, are  
reserved to the States, respectively, or to the people"...* That would include  
my right to have the [power],,,, to file a proper tort damages action against  
the [S]tate, for provable [S]tate Intentional Torts committed, and as a provable  
'separate injury', caused by [S]tate actors, not compensable under the 'Act.  
Intentional Tort: Is any deliberate interference with a legally recognized  
interest, such as a right to bodily integrity, dominion (property interest),

and freedom from deception. See RCW 51.04.010 in this Reply Appendix. Prior, both [S]tate Defense, and Division II Court Of Appeals incorrectly, and [undecidedly], cited *Birklid v Boeing*. *Birklid* could not prove Intent, as well as other irrelevant to (my case specific) reasons for *Birklid's* failure. But if both [S]tate Defense, and Division II Court Of Appeals would actually read the continually cited other what I call ..., 'spinoff' cases,,, from *Birklid*,,, or any cited 'root case' as a natural case, by case validation, and/ or repudiation, as cited by this Wn. State Supreme Court, or perhaps the United State Supreme Court, and/or other State[s] Supreme Courts,,, they would be more legally credible, intelligent, and correct for doing so.

Example: From (*Birklid*: An employer based case as irrelevant to (my case specific) on the surface)), but,,, from which relevant 'Act' exclusivity factors are in-context cited to support my position. See <sup>1</sup> <sup>1,2,3,4,,,</sup> for other relevant to (my case specific) specific criteria citations,,, as also 'spinoff's,,, from *Birklid*.

Again reference RCW 51.04.010. The absence of specific language in RCW 51.04.010, (that if included would allow me to file a Tort claim against L&I for provable Intentional Torts committed by L&I state actors), such as in an employer based Tort claim under the 'Act',,, is irrelevant under the proper State Tort Statute, as not preempted by any statutory language under the 'Act', and, that does not preclude me from doing so in any specific language in that properly utilized Tort Statute.

<sup>1</sup>  

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*In Copelin v Reed Tool Company 596 S.W 2d 302 (Tex. Civ. App. 1980) from Birklid,, and (albeit an employer based claim), but in context as related to (my case specific),,, a Texas court looked to the state constitution for guidance in deciding whether the legislature intended Workers' Compensation to be the Plaintiff's exclusive remedy,,, as a 'right of redress in courts of the land, rather than by an administrative board'. The court stated, "[i]t is, therefore, not to be doubted that the Legislature is without the power to deny the citizen the right to resort to the courts for the redress of any intentional injury", 'since that right is constitutionally protected'. Just as my right in the Washington State Constitution.*

Restatement (Third) Of Torts Sect. 38 (2005) no enforcement mechanism  
*Coleman v American Universal Insurance Co.*, 86 Wis. 2d 615, 273  
N.W.2d 220 (1979),,, 'the insurer cutoff the plaintiff's benefits three  
times while it was in possession of uncontradicted medical reports  
showing the plaintiff was unable to work'. See my 'CP' 114,118,119,138,139.  
Defendants very pathetic argument in *Coleman*, just as the defendants in  
(my case specific),,, is that because the initial relationship between the  
defendants and then injured worker (*Coleman*), arose under the worker's  
compensation statute, proceedings under that statute are *Coleman's* exclusive  
remedy. *Coleman* trial court mistakenly agreed just as in (my case specific).  
*Coleman*, as I am not seeking, was not seeking worker's compensation  
payment benefits in his tort complaint.

The court held that under these circumstances the acts by the insurer  
constituted a separate tort independent of the worker's compensation act,  
and therefore was not barred by the exclusive remedy provisions.

The court further reasoned that the goal of the ('Acts') statutory  
provisions would be defeated if insurers or (L&I adjudicators) 'sic., as  
in (my case specific),,, were permitted to conduct themselves in bad faith.  
Then a common law provable Intentional Tort damages action defeats  
the Acts' exclusive remedy provisions in (my case specific).

'If the type of injury at issue in the tort case is not covered by the statutory  
scheme of the worker's compensation 'Act' ,,, as in (my case specific),  
(Intentional Infliction of Emotional Distress, by L&I), the fact that worker's  
compensation remedy is available for the original industrial injury is  
irrelevant. Wisconsin Supreme Court found that *Coleman's* separate injury  
for alleged bad-faith conduct by the insurer, does not meet the conditions,  
or allow for, workers compensation exclusivity.

As at the time of the alleged insurer misconduct, *Coleman* was not  
performing service growing out of and incidental to his employment. As the  
genesis of the alleged insurer misconduct did not arise of *Coleman's*  
employment. Larson,,, "also rejects as spurious, any attempt to claim that a  
second injury sustained as a consequence of intentional acts of the insurer  
is merely an extension or 'aggravation' of the work related injury". 'Larson  
uses the "but for" analysis that leads to preposterous results'.

Refer back to my earlier pleadings, and my Petition For Review. L&I as  
agreed to by Larson,,, would not be immune from liability, as they cannot  
have ,,, "complete tort immunity ever after" ,,, for anything its agents do  
as they adjudicate the claim as in (my case specific)... The Wisconsin  
Supreme Court also decided that the defense argument that subject-matter  
jurisdiction is only with the Department of Industry, Labor and Human Re-  
lations (Wisconsin), must fail, as defense must also fail in (my case specific).

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2A A. Larson: Workmen's Compensation Section 68.34(c) at 13-145 (1988), (e) at 13-261 (1993) Section 65.00 at 12 -1 (1983), Tulsa Law Review Vol. 23 Article 6 (1988) Insurer Misconduct: Larson,,, 'a compensation carrier's or (L&I adjudicators' sic.) intentional misconduct in the processing of the claim is neither a "direct", nor a "natural" consequence of an employment injury'. Larson's analysis, 'Coleman court held that the exclusive remedy provision applied only if the injury fell within the coverage of the act'. Professor Larson: A leading authority on workers' compensation law, and one whose teachings as often quoted with approval by this Wn. State Supreme Court as Intentional Tort, as surpassing the 'separate injury' test,,, as now not just limited to an employer in specific context, but would also be applied to a tortious L&I claim adjudication, ie., administration, Intentional Tort, as to (my case specific) per State Tort Statute, and defining Tort Of Outrage, and Worker Compensation Administrative Bad Faith Duty, and per Restatements Of Law Of Torts specific criteria, as civil tort liability not exclusive to, nor as compensable under,,, the 'Act'... Larson's theory recognizes that the initial on-the-job injuries, and subsequent mental injuries inflicted as caused by insurer's specific misconduct, are separate causes of action, and should be treated as such. In cases where there is also a physical component to the second injury, as in (my case specific), recovery may be allowed if the physical component is only an element of damages.

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Hofstra Law Review Vol. 12 Article 6 (1983), Intentional Torts Under Workers' Compensation Statutes: In context to (my case specific) 'Courts' find liability where the defendant's conduct has been 'extreme and outrageous'. 'One instance in which conduct has been deemed to rise to this level is where there is an "abuse by the actor of a position, or a relation with the other, which gives him/her actual or apparent authority over the other, or power to affect his interests". Under this definition, this could be an employer, or, (an L&I operative who abuses his/her control of my then L&I claim adjudication, will certainly qualify for common law tort damages.

"Injury", "injuries", "injured", in RCW 51.04.010, means, an employer based injury only,, of which my ('separate injury' tort claim is not),,, and, the language of, "regardless of questions of fault", means, very clearly, even from a distorted incorrect defense interpretation,, any [would be] fault between me, and the employer, (or some hypothetical 3rd party as on the job related),,, not between L&I, and myself, as my complaint of provable L&I Intentional Torts, in (my case specific).

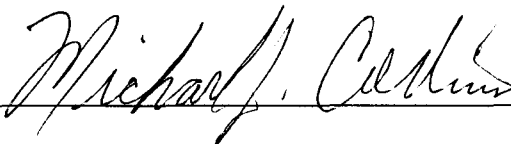
So my Tort damages action against the [S]tate per RCW 4.92, is not <sup>2,3,4</sup> abolished by legislative intent language in RCW 51.04.010.

Under private context of 'Act' employers insurer, as insured must prove intent, or (my case specific) Tort claim against the [S]tate for provable Intentional Torts committed, I establish liability for damages to prevail. 'Special Duty' owed me by the [S]tate is a Question Of Law for Review, consistent with required due process denied me in (my case specific). Respondents specific Issues Presented, did not establish a prevailing contravening argument based on (my case specific), but only on a boilerplate perfect-world-scenario, where a 'Special Duty' owed, would not have been a game-changing mandate. This because the defense cannot successfully argue why its client, L&I, never complied with a Legal Order in my favor 'CP' 110-113, as in (my case specific).

V. CONCLUSION

I Petitioner Michael J. Collins, ask of this State Supreme Court to certainly accept review of my Petition as this matter of first impression case, by way of its extraordinary provable [S]tate Torts committed, clearly warrant a reversal of the Superior Court, and Division II Court Of Appeals Orders. I ask this State Supreme Court to correctly be the ultimate authority in determining the unjust procedure that took place in Superior Court as I describe in my Opening Brief to Court Of Appeals, and, ultimate authority in interpretation of statutes I cite in my Petition, and herein, and, ultimate authority interpreting Restatements Of Law Of Torts. And for this State Supreme Court to determine my Reply is correct per RAP 13.4(d) as new direct Issues in [S]tates answer, and RAP 13.4(c)(7), as my Court Of Appeals Opening Brief, and Supreme Court Petition, direct, and concise, proved [S]tate Torts, and [S]tate Duty owed, not decided below. As with [AAG] Silvey's [S]tate answer, and its intentional deception to deliberately mislead this State Supreme Court, as described herein, is deserving of a strong Silvey admonishment by this Court. Once my proper Tort case is remanded for Discovery, I cannot possibly lose on the merits, for which I have never had the opportunity to be "litigated to a conclusion" (Silvey), as the [S]tate is unable to successfully defend.

On this day



August 6, 2016

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**Michael J. Collins Petitioner Reply to Answer**

**State Supreme Court Case 93190-9**

# **APPENDIX**

**Statutory Provision RCW 51.04.010**

**RCW 51.04.010****Declaration of police power—Jurisdiction of courts abolished.**

The common law system governing the remedy of workers against employers for injuries received in employment is inconsistent with modern industrial conditions. In practice it proves to be economically unwise and unfair. Its administration has produced the result that little of the cost of the employer has reached the worker and that little only at large expense to the public. The remedy of the worker has been uncertain, slow and inadequate. Injuries in such works, formerly occasional, have become frequent and inevitable. The welfare of the state depends upon its industries, and even more upon the welfare of its wage worker. The state of Washington, therefore, exercising herein its police and sovereign power, declares that all phases of the premises are withdrawn from private controversy, and sure and certain relief for workers, injured in their work, and their families and dependents is hereby provided regardless of questions of fault and to the exclusion of every other remedy, proceeding or compensation, except as otherwise provided in this title; and to that end all civil actions and civil causes of action for such personal injuries and all jurisdiction of the courts of the state over such causes are hereby abolished, except as in this title provided.

[ 1977 ex.s. c 350 § 1;1972 ex.s. c 43 § 1;1961 c 23 § 51.04.010. Prior: 1911 c 74 § 1; RRS § 7673.]

DECLARATION OF MAILING SERVICE

I Petitioner Pro-se Michael J. Collins, pursuant to State Supreme Court case 93190-9, hereby state under penalty of perjury, that I am at least 18 years of age, and that 1 complete copy of my State Supreme Court Reply, to Answer, filed on date as written, 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, and on the date as listed below.

On this day Michael J. Collins August 6, 2016  
Michael J. Collins Pro-se-10101 43rd Street Court East-Edgewood, Wn. 98371

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