

SUPREME COURT  
STATE OF WASHINGTON

MASCO CORPORATION,

Petitioner,

v.

ALFREDO SUAREZ

Respondent.

**MOTION TO STRIKE  
PETITIONER'S  
REPLY**

**I. IDENTITY OF MOVING PARTY**

The Department of Labor and Industries, Respondent in this appeal, seeks the relief designated in Part II of this motion.

**II. STATEMENT OF RELIEF SOUGHT**

The Department requests that this Court strike Masco Corporation's reply, filed in this Court on April 1, 2019.

**III. FACTS RELEVANT TO MOTION**

On February 22, 2019, Masco Corporation filed a petition review seeking review of Division One's opinion in *Masco Corp. v. Suarez*, \_\_\_ Wn. App. \_\_\_, 433 P.3d 824, 826 (2019). That opinion addressed when the Department of Labor and Industries can issue a penalty to a self-insured employer for unreasonably delaying the payment of wage replacement benefits to an injured worker. The Court of Appeals affirmed the

Department's penalty against Masco for unreasonably delaying the payment of benefits to Alfredo Suarez.

Suarez filed an answer on March 19, 2019. The Department's answer is due April 24, 2019. *See* Clerk's Ruling Granting Extension (March 4, 2019). On April 1, 2019, Masco filed a reply to Suarez's answer.

#### **IV. GROUNDS FOR RELIEF AND ARGUMENT**

A party seeks review of a Court of Appeals decision terminating review by filing a petition for review in this Court. RAP 13.4(a). Parties may file answers to the petition. RAP 13.4(d). A party may file a reply to an answer "only if the answering party seeks review of issues not raised in the petition for review." RAP 13.4(d). In such case, the reply "should be limited to addressing only the new issues raised in the answer."

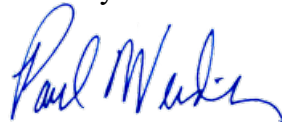
Suarez's answer did not seek review of issues not raised in Masco's petition for review. Masco therefore cannot file a reply. RAP 13.4(d). This Court should strike Masco's reply.

#### **V. CONCLUSION**

The respondent Alfredo Suarez did not seek review of new issues in his answer to Masco's petition for review. So Masco cannot file a reply to his answer under RAP 13.4(d). This Court should strike Masco's answer.

RESPECTFULLY SUBMITTED this \_\_5<sup>th</sup>\_\_ day of April, 2019.

ROBERT W. FERGUSON  
Attorney General



PAUL WEIDEMAN, WSBA No. 42254  
Assistant Attorney General  
Office Id. No. 91018  
800 Fifth Ave., Suite 2000  
Seattle, WA 98104  
(206) 389-3820

No. 96879-9  
**IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON**

MASCO CORPORATION,

Petitioner,

v.

ALFREDO SUAREZ,

Respondent.

DECLARATION OF  
SERVICE

DATED at Seattle, Washington:

The undersigned, under penalty of perjury pursuant to the laws of the State of Washington, declares that on the below date, I served the Department's Motion to Strike Petitioner's Reply to counsel for all parties on the record addressed as follows:

**E-filing via Washington State Appellate Courts Portal:**


Susan L. Carlson  
Supreme Court Clerk  
Supreme Court  
[supreme@courts.wa.gov](mailto:supreme@courts.wa.gov)

**E-mail via Washington State Appellate Courts Portal:**

Steven Busick  
Busick Hamrick Palmer PLLC  
[sbusick@busicklaw.com](mailto:sbusick@busicklaw.com)

James Gress  
Gress Clark Young & Schoepper  
[jim@gressandclarklaw.com](mailto:jim@gressandclarklaw.com)  
[becky@gressandclarklaw.com](mailto:becky@gressandclarklaw.com)

DATED this 5th day of April, 2019.

  
EILEEN T. WEST  
Legal Assistant  
Office ID No. 91018  
Office of the Attorney General  
800 Fifth Ave., Suite 2000  
Seattle, WA 98164-1012  
(206) 389-3893

**WASHINGTON ST. ATTORNEY GENERAL - LABOR & INDUSTRIES DIVISION - SEATTLE**

**April 05, 2019 - 2:48 PM**

**Transmittal Information**

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**Appellate Court Case Number:** 96879-9  
**Appellate Court Case Title:** Masco Corporation v. Alfredo Suarez  
**Superior Court Case Number:** 16-2-02585-8

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Department's Motion to Strike Petitioner's Reply Declaration of Service

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Sender Name: Eileen West - Email: eileenw1@atg.wa.gov

**Filing on Behalf of:** Paul Michael Weideman - Email: paulw1@atg.wa.gov (Alternate Email: )

Address:  
800 Fifth Avenue, Ste. 2000  
Seattle, WA, 98104  
Phone: (206) 464-7740

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