Supreme Court Case No. 96879-9
Court of Appeals Case No. 51143-6-II

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

MASCO CORPORATION, Petitioner,

vs.

ALFREDO SUAREZ, Respondent

REPLY TO ANSWER

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II. INTRODUCTION

COMES NOW the Petitioner, Masco Corporation, by and through its attorney, Rebecca K. Corcoran, and submits to the Supreme Court of the State of Washington this Reply Brief.

III. CONSIDERING ACCEPTANCE OF REVIEW

This is an Appropriate Case Under RAP 13.4(b)(4)

The claimant argues that because the issue here only applies to the Industrial Insurance Act, Title 51, and only involves statutory rights between injured workers and employers, that this is not an issue of substantial public interest. This implies that any case under the Industrial Insurance Act is not entitled to Supreme Court review unless there is a conflict of Court of Appeals decisions. This statute has never been interpreted by the Supreme Court and had previously never been evaluated by the Court of Appeals. The Supreme Court has previously granted statutory interpretation questions under this Act as being issues of substantial public interest. *Cockle v. Dept. of Labor and Indus.*, 16 P.3d 583, 142 Wash. 2d 801 (Wash., 2001). The Court of Appeals' decision alters and denies the employer due process with regards to finances. The

Supreme Court should not reject the Petition for Review because it only applies to one Act of the Washington State Code.

IV. ARGUMENT

1. The Court of Appeals' Opinion is Foundationally Flawed Based on the Statutory Interpretation

The Court of Appeals explicitly misinterprets the plain language of RCW 51.32.240. The Court of Appeals further provides the recovery under RCW 51.32.240 as reasoning for its decision. "The "plain meaning" of a statutory provision is to be discerned from the ordinary meaning of the language at issue, the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole." *State v. Engel*, 210 P.3d 1007, 166 Wn.2d 572 (Wash., 2009). To interpret a statute based upon context with a fundamental misinterpretation of the contextual statutes provides an unsound foundation for the Court of Appeals' decision. It is appropriate to review this decision now and clarify what the Court of Appeals has confused.

2. The Lower Courts Need Guidance on the Interpretation of this Statute

The claimant indicates that the Board interpretation of the Industrial Insurance Act is not binding, it is entitled to great deference. While the claimant indicates that this should be deferred by to the final result. However, the claimant declines to acknowledge that by creating a

significant decision, *In re Alfredo Suarez*, BIIA Dec., 15 20822 (2016), the Board is essentially acknowledging that this is a statute that requires clarification and interpretation. Under WAC 263-12-195(2), "[g]enerally, a Decision and Order is considered "significant" only if it provides a legal analysis or interpretation not found in existing case law. . ." Within the Board hearing, it was fully acknowledged by the Department that the rule was unclear. (Sheryl Whitcomb, the penalty adjudicator at the Department of Labor and Industries, CP, CABR, page 24). The Court of Appeals determined that this case had "precedential value" by issuing a Published Opinion. RCW 2.06.040. If the statute was clear on its face, as the respondent suggests, it would not require the designation of a significant decision at the Board of Industrial Insurance Appeals or a Published Opinion at the Court of Appeals. While these are not determinative, it certainly demonstrates that this issue has not been litigated before and the Supreme Court needs to provide guidance.

V. UNREASONABLE DELAY

The test for unreasonable delay of benefits remains whether the self-insured employer possessed a genuine doubt from a legal or medical standpoint whether the benefit was payable. *Taylor v. Nalley Fine Foods*, 119 Wn.2d 919, 926, 83 P.3d 1018 (2004). It stands to reason that if there

has been a subsequent issuing of a decision which establishes a precedent or interpretation not found in existing case law, there was clearly legal doubt. As multiple adjudicators have acknowledged, this statute has never been interpreted and therefore there is genuine legal doubt.

VI. CONCLUSION

Based on the reasons outlined in Masco Corp.'s Petition for Review in addition to those outlined above, the Petitioner respectfully requests that you grant the Petition for Review.

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

MASCO CORPORATION, Petitioner, v. ALFREDO SUAREZ, Respondent.	)	No **CERTIFICATE OF MAILING**

I hereby certify that I caused to be served the foregoing **Reply to Answer** on the following individuals on April 1, 2019, by mailing to said individuals true copies thereof, certified by me as such, contained in sealed envelopes, with postage prepaid, addressed to said individuals at their last known addresses to wit:

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I further certify that I filed the original of the foregoing with:

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by e-filing it on: April 1, 2019.

GRESS, CLARK, YOUNG & SCHOEPPER

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