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STATE OF WASHINGTON

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APPELLANTS OPENING BRIEF
TO WASHINGTON STATE COURT OF APPEALS
DIVISION II

Court Of Appeals Case No. 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)

This Opening Brief File Date August 21, 2015

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ASSIGNMENTS OF ERROR

1. Trial Court erred by not allowing myself a necessary Discovery process after the (first) of three different judges that were assigned to this case at issue in less than two months,,, decided for still undisclosed reasons, to remove (herself) from my case, only after rendering an erroneous decision in direct reference to Attorney General [AG] (especially), Governor, and L&I statutory, and common-law 'special duty' owed me. This would have required a Discovery process from the (third) Trial Court Judge, where I Plaintiff would easily prove non-compliance with a prior 'smoking gun' directly related (not time-barred) legal decision,,, which along with my timely notice to the [S]tate in 2014, created a [S]tate 'special duty' owe me, and a 'special relationship' with me. APP."EX" 1-2. "CP" 110-113.
2. The (second) Trial Court Judge who I never even appeared before, erred by never forwarding my powerful Amended Principle Pleadings to the (third) Trial Court judge assigned to this case at issue. Then that (third) Trial Court judge see "RP" 1-31, never even read the content of my Plaintiff Amended Principle Pleadings, and its incontrovertible documents as Exhibits that were indefensible, and that would have proven facts as I presented, and that would have clearly established [S]tate duty, breach of duty, causation, and injury, for my strong Tort complaint, then easily defeating a 12(b)(6) dismissal.

3. Judge Culpepper (third), erred, relying on an erroneous interpretation of a Defense filed Restatement (Second) of Torts Section 46, (1965), where Defense Counsel Rice, was deliberately dishonest in the content, and context of that specific Restatement. I made that clear in my Reconsideration pleadings subsequent to Judge Culpeppers' April 17, 2015 dismissal, (as I was not able to respond prior to April 17, 2015 (because Defense cleverly did not file this misstatement of Restatement law,, until April 15, 2015,, as Defense counsel Rice knew I would destroy as erroneous, all his erroneous citations,, but this was ignored by Judge Culpepper. This misstatement of law, is what Judge Culpepper directly based his April 17, 2015 dismissal as he also directly relied on a Defense filed case law citation *Cena v State*, where Defense is despicably out-of-context as irrelevant. This as Cena was seeking L&I time-loss benefits, I, with deliberate intent, never requested in this Tort complaint, as Cena, APP."EX" 3, would have received an L&I Appealable Order, (example) "CP" 128, discussing disposition of her L&I monetary benefits sought, then could have had that exact complaint heard under the Industrial Insurance 'Act' legal process. See "CP" 128,140,141, as L&I 2007, 2010, and 2014 Appealable Orders, in my specific case,, then Cena will not define [S]tate duty, breach of duty, causation, and injury, to create Tort.

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

Whether the Trial Court misstated, and ignored Washington State Statutory law, RCW 51.04.020(6), RCW 43.06.010(7)(11), and RCW 43.10.030(2)(4)(5)(7), WAC Codes WAC 296-20-01002, WAC 296-14-970(4)(5), Washington State Constitutional Law as Art. I Section 3, Art. I Section 32, Art. III Section 5, Art. III Section 21, Restatement, and common law, supporting (my specific case) of [S]tate Tort.

Whether the Trial Court abused its discretion by never even reading, then never even considering, the content, and strength of my Superior Court Tort Complaint, as was not forwarded to (third) Judge, by (second) Judge.

Whether the Trial Court misstated law, and abused its discretion, by ignoring my (not time-barred) legal victory April 18, 2007 "CP" 110-113, and its profound due process mandate for L&I, and for the [AG], to prove compliance thereof, and what could subsequently be brought to, and what could subsequently be heard,,, under the Industrial Insurance Act, by way of a latest L&I Appealable Order,,, as my proper Tort complaint is not based on an Industrial Injury, or Occupational Disease, as my proper Tort complaint is not based on what gave rise to my original Industrial Injury.

Whether the Trial Court misstated law, and abused its discretion, by ignoring, then not considering, a [S]tate 'special duty' owed, as legally defined,,, and a [S]tate (to me) 'special relationship' as legally defined,,, as directly relating to the incontrovertible facts of (my case specific).

STATEMENT OF THE CASE

On April 18, 2007, I Plaintiff Pro se Michael J. Collins was victorious in compelling L&I to completely change the criteria upon which my then L&I claim would be adjudicated pursuant to. "CP" 110-113.

Under the Industrial Insurance Act, once the BIIA remanded back to the Department (L&I),,, after April 18, 2007, it the BIIA, could never 'go back', and enforce its own decision later. "CP" 143-145.

The Attorney General on November 14, 2011, realizing how important it was to make it appear it had complied with the April 18, 2007 BIIA decision in my favor,,, compelling L&I to 'further adjudicate my claim on a different legal standard',,, filed a Sworn Statement, signed by L&I's David A. Iverson swearing to compliance with the April 18, 2007 BIIA legal decision in my favor, for which there is no time limitation for compliance "CP" 110-113.

On February 28, 2014 I Plaintiff Pro se Michael J. Collins, requested of the Governor, Attorney General, and the L&I Director, to investigate, and enforce the April 18, 2007 BIIA decision in my favor. "CP" 162-173.

My Superior Court Tort complaint was filed within the applicable 3 year statute of limitations November 7, 2014, from November 14, 2011, but there is no time limitation on 2007 legal Order compliance "CP" 110-113.

The issue(s) upon which my Tort complaint is/are directly based, are completely separate from, as not directly related to, as not based on, what gave rise to my original L&I injury. "CP" 162-173.

ARGUMENT

I ask with this Plaintiff Argument, this Appellate Court faithfully refer to my "CP" included Exhibits 110-175, [APP. "EX"], and 'RP" argument. Because the Superior Court improperly dismissed my proper Tort complaint, filed in Superior Court with original jurisdiction as proper, and as improperly dismissed by Superior Court based both on misstatements of law, and also based on not taking into consideration my incontrovertible Exhibits establishing a claim history, then establishing duty on the part of the [S]tate, I with my argument will establish as proper, a de novo, and abuse of discretion review by this Appellate Court. Superior Court took the position that there was no duty on the part of the [S]tate, but I will establish a 'special duty' owed me in multiple ways,, on the part of the [S]tate in my case as specific. See "CP" 162-173.

The Governor, Attorney General, and L&I Director, were asked to conduct an investigation in an investigative capacity only, not in a quasi-judicial capacity see "CP" 29-30, 54-56, so there is no discretionary, absolute, or qualified immunity available for the [S]tate in (my case specific).

Atteberry v Nacona General Hospital 430 F.3d 245,253,257 (5th Cir. 2005),,, 'acting, or failing to act with Deliberate Indifference to a substantial risk of serious harm, is the equivalent to recklessly disregarding that risk'... 2 prong test for me Plaintiff to defeat defenses qualified immunity,,, my 'property interest' rights were violated, and

defendants actions, and failing to act [AG],,, were unreasonable in light of the law that was clearly established at that time. To consciously disregard a known excessive risk to my health. I have shown defendants were aware of facts from which an inference of a risk existed, and defendants actually drew an inference with its March 11, 2014 letter 'expressly assuring' me an investigation/opinion into my case. "CP" 175. Deliberate Indifference defeats 12(b)(6). If the reasonableness of the defenses non actions,,, in 2014, are an 'issue of law',,, for the court, fine, as opposed to a question of fact for a jury to decide whether the [S]tate was acting in good faith covering up, and ignoring its non-compliance with the April 18, 2007 legal Order in my favor.

It was not reasonable for the [AG] to ignore my complaint in 2014, knowing I had no remedy under the 'Act', to enforce compliance with my April 18, 2007 BIIA victory, then giving [AG] a 'special duty' owed me... See "CP" 54-56, 93-94, how the separation of powers argument will not protect the [S]tate when a ministerial duty only was requested by me.

When I Plaintiff prevailed April 18, 2007 I defeated not just L&I, but I also defeated the Attorney General, then creating a 'special duty' owed me by the Attorney General as (my case specific).

When the Attorney General from here forth [AG], filed that November 14, 2011 Sworn Statement "CP" 133-134, it created a 'special duty' owed me.

A damages action in tort for liability will lie, against a government entity, where there has been a definite invasion of the legal rights of the individual from government nonfeasance. Where statutes prescribe positive duties, authorities acting under them are responsible when a subjective, or personal legal right has been infringed. Officers are liable for refusal to act if the statute authorizing them to act turns out to be constitutional, and if some private individual has been injured thereby. This is reference to RCW 43.06.010, RCW 43.10.030, RCW 51.04.020. See "CP" 9, 95-105, and my proper reference to *Cushman v Shinseki*. Just as in *Cushman* which along with *Goldberg v Kelly*, as powerful U.S. Supreme Court precedent cases, drawing very powerful parallels to my case, as once a claim has been approved as in *Cushman, and Goldberg*, and my case in 1993, then ,,, 'property interest' ,,, has been established. Unlike an initial application only, ,,, which establishes no 'property interest' ,,, then provides no 'legitimate entitlement' to benefits of any variety, ,,, not just monetary, but also claim adjudication propriety, ,,, once my claim was approved in 1993, ,,, it cannot be denied later, without due process. By the [S]tate never complying with my April 18, 2007 victory compelling them to 'further adjudicate my claim on a different legal standard' giving then L&I, and the [AG] a 'special duty' owed me, both L&I, and the [S]tate has denied my 'property interest' illegally, by providing no remedy for me under the 'Act' with the deliberate omissions in L&I's 2007, 2010,

and 2014 Appealable Orders. "CP" 128,140,141.

Conley v Gibson 355 U.S. 41 (1957),,, 12(b)(6) must not be granted 'unless it appears beyond doubt that Plaintiff can prove no set of facts in support of his claim which would entitle him to relief'.

I have presented sufficient 'legal theory of 'duty' for relief.

Rule 8,, Plaintiff must be given fair opportunity at Discovery

I have stated a clear basis for relief, and not just 'bare averments', for a 'substantive legal theory'. 12(b)(6) dismissal movant, has burden to prove my case is not actionable, Judge Culpepper ignored this.

My case,,,, is an 'issue of first impression'. 12(b)(6) cannot lie when Discovery would have shown admissible evidence. "CP" 110-113.

12(b)(6) dismissal raises only an 'issue of law', so it is reviewed de novo substantive level means, on the merits, as [AG] enforcement duty...

Defense counsel Rice cites and Judge Culpepper relies on *Dicomes v State* 113 Wn. 2d 612, 630, 782, P.2d 1002 (1989),,, App."EX" 3, a case actually supporting my position, as State Supreme Court only denied *Dicomes* position,,, because she was considered a policymaker for one, therefore there was a question of contributory fault,,, and,,, her ability to seek, and procure future employment was not (foreclosed) by the States action to terminate her employment. (Foreclosed) is the key dynamic here, as the [S]tate in (my case specific), as Judge Culpepper and Defense counsel Rice relying on *Dicomes*,,, must prove my ability to procure remedy for my specific complaint,,, under the 'Act',,, was

somehow not (foreclosed),,, by the content, and intentional omissions in L&I's 2007, 2010, and 2014 Appealable Orders ""CP" 128,140,141. Defense must also prove contributory fault on my part. APP."EX" 3, pg.6 at 16-17. This becomes very relevant because the Superior Court hid behind the cloak of Defense cited misstatements of Restatement of Torts, and misstatements of case law, to deny original jurisdiction of my Tort complaint. See "CP" 58, 59, 99, for my powerful citation to *Rothwell v Nine Miles Falls School District 149 Wash. App.771, 782, 206 P.3d 347 (2009)*,,, where the Appellate Court would have allowed her tort complaint (if only) based on a complaint not bound by the 'exclusive remedy provisions' of the 'Act', to mean, as not based on an occupational disease, on industrial injury as (my case specific). But *Rothwell* fails,, where I succeed in that specific regard. As *Rothwell* fails for specific reasons, then a specific contrast to my case. There are no 'enforcement mechanisms' under the 'Act". Then the [AG] had a statutory 'special duty', and a common-law 'special duty', in (my case specific),,, to become that 'enforcement mechanism' after April 18, 2007 – August 3, 2007. "CP" 128, 162-164,165-173. By 2014, the [AG] knew it was my only hope under the 'Act'. The [AG] knew that it was the [S]tates highest-ranking law 'enforcement' officer. As in *Cushman*, my 5th, and 14th Amend. rights were violated under the, 'Act', then Constitutional law was established, and State law under the

'Act' RCW 51.04.020(6), as L&I Director 'special duty' was established. Then it was unreasonable for the [AG] to ignore my complaint in 2014. This, as opposed to any attempt by defense to cite *Mitchell v Forsyth* 472, U.S. 511 (1985),,, where in that U.S. Supreme Court case, the U.S. Attorney General was not responsible, or liable, because the surveillance laws (later enacted),,, were not established at the time at issue in that case.

My April 18, 2007 legal victory changed business as usual then, and is still what the [S]tate must defend successfully, to include proving I could have had remedy under the 'Act', to defeat my proper Tort complaint.

See "CP" 110-113.

See Restatement (third) of Torts Sections 38-42 (2011)...

See Restatement (third) of Torts Section 1 Section 33(b) proposed final draft (2005) as (Larson's Workers Compensation Law),,, for a 'more broader tort liability analysis by the court' to create an intentional tort, when the [S]tate had both knowledge, of my doctors reports of worsening, and intentional purpose to cause me further physical, emotional harm, and violating my 'property interest' legitimate entitlement. See how proper interpretation of those Restatements, support (my case specific) as [S]tates affirmative duty, and 'special relationship' duty owed.

My April 18, 2007 legal victory, creates the [S]tate 'special relationship'.

Also see Restatement (Second) of Torts Section 874(A) (1979).

Cnty. of Sacramento v Lewis 523 U.S. 833 (1998),,, *When the executive official had time to deliberate, but the official was nevertheless deliberately indifferent, the deliberate indifference shocks the conscience and violates substantive due process.*

See "CP" 4-5 where I first cite, *Cougar Bus. Owner's Assn' v State* 97 Wn.2d 466,476, 647 P.2d 481,486 (1982),,, to simply show a contrast, to mean, as not correct, for the [S]tate, to claim discretionary immunity in (my case specific) as opposed to *Cougar*,,, where a legitimately, and honorably intended public safety decision by the Governor then,,, after the Mt.St. Helens disaster,,, as public duty, to then Defense counsel Rice in (my case specific), citing this case to despicably attempt to draw some type of comparison, again, for discretionary immunity purposes. In my case, the Governor was well informed that the [AG] was the last hope for remedy under the 'Act', and by ignoring my request for help was not an honorable choice on the part of the Governor, and [AG], but was unreasonable, then not allowing the Governor, and [AG] to be protected by discretionary immunity in (my case as specific). The Governor is protected by the 'public duty doctrine' even for a mistake, unless a specific individual was promised specific help, by way of a specific 'express assurance'. An 'express assurance', like in (my case specific) creating the 'special relationship'. See "CP" 102-108,142, 175.

So Rice is comparing an honorable public safety concern Governor's

decision in *Cougar*,,, to [AG] in my case, only refusing to address my specific complaint about why L&I, the [S]tate, never complied with the April 18, 2007 BIIA decision in my favor, because it, the [S]tate, knew it could never defend the perjury in that November 14, 2011 Sworn Statement claiming compliance with that April 18, 2007 decision in my favor, because it knew it never actually complied with that decision. This is how dishonest the attempt,,, by Defense counsel Rice. I ask this Appellate Court to see clearly and indisputably,,, Judge van Doorninck on February 27, 2015, and Judge Culpepper on April 17, 2015, both signed Defense counsel Rices' Proposed Orders. Then it is not arguable,,, that any, and all misstatements of law, as misstatements of Restatements of Torts, and misstatements of case law citations cited by Defense counsel Rice, and signed off on by Judge van Doorninck, and Judge Culpepper means,,, that those erroneous citations are being accepted by those respective Judges,,, then the decisions made by those Judges as I specifically state,,, are misstatements of law upon which any, or all of my case, was dismissed, with those respective decisions on February 27, 2015, and April 17, 2015. So Judge van Doorninck, and Judge Culpepper acknowledged, and accepted misstatements of law which must be reversed as a matter of law. Rice cited cases before Judge van Doorninck, in direct relevance to the Appellate Courts not accepting a Constitutional context Tort complaint,

just to make a specific example of my 'property interest' as being violated, where all persons at issue in the cases Rice cites, either had an opportunity to have, or did have, remedy as (not foreclosed),,, in a prior legal process. Rice was intentionally dishonest about the specific context of Restatement (Second) of Torts Section 46 (1965), of which Judge Culpepper accepted. When Judge Culpepper May 4, 2015, states in his own Order, that my 'materials were examined', to what does he refer! Only my Motion for Reconsideration pleadings that includes my pleading to Judge Culpepper that he did not view my Amended Principle Brief to include my 40 Exhibits, "CP"110-175, when he dismissed with prejudice on April 17, 2015, based on Defense counsel Rices' misstatements of law.. See "CP" 176-187. And Judge Culpepper on May 4, 2015 states, "having reviewed its prior decision", meaning, his, Judge Culpeppers' decision directly relating to Rices' misstatements of law, and not reviewing my Amended Principle Brief, and included 40 Exhibits, "CP" 110-175, proving to be admissible thru Discovery, denied me with an erroneous 12(b)(6) dismissal. Rices' citations are all based on a perfect-world-scenario, where there would have been no 'special duty' owed by the [S]tate, as there was in my case. Restatement (third) of Torts Section 40 (2011),,, 'Courts are free to recognize specific 'special relationships', not just 'express assurance' 'special relationships', that of course also exist in (my case specific). The law has developed to recognize a select group of relationships between

2, or more parties requiring a 'special duty' of care, where the traditional default no duty rule would otherwise apply'. My case is that select case, because of the prior to, and thru 2014, conduct of L&I. Section 39...

Section 38: Tort law can serve as an 'enforcement mechanism' when a statute, or regulation has been violated. See "CP" 27-64,100,109.

Defense misstatements of law, and misstatements of Restatements, as accepted, and utilized by Superior Court to dismiss, are reversible error.

And I ask this Appellate Court demand Defense counsel Rices' pleadings that are as attached to Rices' Proposed Orders signed by those Judges.

Then this allows this Appellate Court to review this specific dynamic as I have outlined, by both de novo, and abuse of discretion review.

The specific lies as 'communication' from L&I Claims manager Eric Brooks, to IME Examiners in the April, 2014 L&I, to IME Instructions, as "CP" 147-150, 110-113, could not be heard at BIIA after the September 25, 2014 L&I Appealable Order, as the 'specific issues', as lies, in those instructions, were (with L&I intent) not discussed in that September 25, 2014 L&I Appealable Order and would require me to 'go back' and make relevant,,, the April 18, 2007 BIIA decision that in 2014,,, the BIIA would not be able to 'go back', "CP" 143-145, and review, and of course not be able to enforce, just as the BIIA could not enforce it in 2007, 2010-2011. The April 18, 2007 legal decision is the key, which is why L&I, and their legal counsel will not address that legal decision in my favor. WPI 1.6

would allow me in a civil trial, to (for a limited purpose only),,, establish that David Iverson,,, as L&I, never complied with that April 18, 2007 legal Order in my favor, then in 2007, nor did Maria McBride in 2010, which is the legal foundation to whether my then L&I claim would be adjudicated legally based on the proper criteria as a mandate from that April 18, 2007 legal Order, in 2014. "CP" 155, I am requesting the result of the May 21, 2014 IME, where those Examiners would not conduct a formal Examination because of the ,,,'issues',,, in my claim, but did transcribe a report,,, as I sat in the IME office on May 21, 2014, and took part in this recorded transcript, that is not in L&I's favor, so L&I will not provide me it, even though I have every right to demand it,,, and will obtain it,,, thru Discovery denied me by the improper dismissal of Judge Culpepper on April 17, 2015.

See Restatement (Second) of Torts (1965) Rice cites in his April 15, 2015 Pleading, (that I ask this Appellate Court to demand be produced by Rice), and the misstatements of that Restatement,,, accepted by, and directly upon which Judge Culpepper based his dismissal. APP."EX" 5. APP."EX" 4, ...'lies'... found by the Supreme Court as provable, constitute, 'outrageous', 'extreme', and 'severe'. And in that same Restatement it states 'malice of intent' (easily provable as committed by L&I because they would not correct their lies told to the IME Examiners when I ask them to do so in 2007-2014),,, can be for recovery of

damages. So again, I meet, and exceed, the criteria mandate to constitute Tort(s) committed, and liability attached to the [S]tate, as both a 'foreseeability of harm', and 'malice of intent' are obviously present as [S]tate Tort(s) committed, that are not related to any occupational disease, or original injury, therefore not bound by, or able to be heard under, the 'exclusive remedy provisions' of the 'Act'. Again, I have proven this as fact with "CP" 143,144,145. In that same Restatement Rice cites, APP."EX" 4, pg.2, it discusses, (as L&I knew from the results of the May 4, 2007 IME, that I was 'susceptible to stress because of my 'war so to speak'),,, against L&I, directly relating to the improper adjudication of my then L&I claim, not related to my original industrial injury as memorialized by the Psychiatrist in "CP" 146. Foreseeability of harm is a question of law, but causation is a question of fact for a jury, as the [S]tate Intentionally Inflicted Emotional Harm upon me from 2007-2014, by not complying with the April 18, 2007 legal Order that compels them 'to further adjudicate my claim on a different legal standard'. Defense must define that 'legal standard'. I will prove,,, L&I adjudicated my then L&I claim after April 18, 2007,,, on the same 'illegal standard' that they adjudicated my claim prior to that April 18, 2007 legal Order. This is why they, L&I, the [S]tate, and its legal counsel,,, are afraid to address the April 18, 2007 legal mandate.

I ask this Appellate Court to read faithfully the claim history as I outline clearly in "CP" 27-64, which explains why complying with the April 18, 2007 legal Order was the life-blood of my then L&I claim. L&I based all 3 IME Instructions 2007, 2010, and 2014, on a much lessor 'accepted condition' criteria WAC 296-20-01002,,, from an illegal claim closing Order of April 19, 1995 that does not even exist,,, to support L&I's position,,, because of the April 18, 2007 legal Order mandate,,, and (from what my Attending Providers diagnosed in "CP"114,118,119, 138-139, as officially, and legally within the 7-year rule), because there is no 7-year rule from April 19, 1995. See the April 18, 2007 legal order Judge Stewart discussing the 7-year standard as,,, 'no longer correct'. "CP" 110-113. That's how weak L&I the [S]tates' case is, and will be. And, if L&I, the [S]tate, is going to stand by the 7-year rule even though not correct, from April 19, 1995, or from August 3, 2007 closing order, it would have been compelled to complete a policy 16.40 "CP" 156-158, as I requested in "CP" 155, addressing my specific 'issues', but it did not. This Policy 16.40 mandate was necessary at least after August 3, 2014, and prior to L&I's September 25, 2014 Denial Order. "CP" 128,140, which has no mention of my 'specific' requests in that L&I Appealable Order, then along with my April 18, 2007 issue, could not be heard under the 'Act'. And remember, both L&I, and the [AG] as the [S]tate, committed themselves, and created a 'special duty' owed me when they knowingly

filed a perjured Sworn Statement on November 14, 2011. "CP" 133-134. Parallels from *Cushman v Shinseki* "CP" 9,95-105 become so powerful as in *Cushman* there were altered medical reports, an original denial of a legal remedy under the Statute that dictates the VA benefit legal process, then a need for an honorable trustworthy IME, (Independent Medical Examination). But, there was an ,,, 'enforcement mechanism',,,, to provide eventual legal remedy by the Federal Circuit,,, for *Cushman*...

In (my case as specific), L&I illegally denied my Attending Providers more serious diagnosis, there were provable lies told to the IME Examiners in the L&I, to IME Instructions, there was a concealment of very important claim history facts to the IME Examiners, and L&I controlled what remedy, then no remedy available under the 'Act" to hear my specific complaint. An L&I Appealable Order must provide a pre-deprivation Hearing equivalent, or no post-deprivation remedy can take place. Meaning simply/ legally, that L&I must address my specific issues, and specific complaint in the language, and content of its latest Appealable Order, or the BIIA (Board Of Ind. Insurance Appeals) cannot hear my specific complaint. "CP" 143-145. Superior Court is in complete denial of this legal process fact, then in complete denial of this 'Act' deprivation of 'due process' fact. In 2014 L&I, with intent, avoided addressing my 'specific' complaint, because I defeated them April 18, 2007, and L&I knew they could not prevail in any future legal process where they actually had to answer in

micro-detail fashion, how they adjudicated my then L&I claim thereafter. There is no preclusive effect to any of my Exhibits as designated, or my issues, as they have never been considered and decided by any prior legal process. No prior case dismissed on procedural grounds only,, can trigger preclusion. "CP" 64.

Robinson v Ariyoshi 753. F.2d 1468,1472, (9th Cir. 1985),,, "Under the rubric of either jurisdiction, or res judicata, the crux of the question is, whether there has been actual consideration of, and a decision on the issues presented"...

Also issue, or claim preclusion, cannot be implicated if there was no prior judgment on the merits. No prior Federal, or State court would even accept jurisdiction, to include Judge Culpepper on April 17, 2015.

I ask this Appeals Court to review the commentaries, and opinions of former Washington State Supreme Court Justice Utter, so many of which deal directly with the importance of equity in the legal process. Justice Utters' opinions speak directly of individual rights as 'natural rights', and 'substantive rights', relating directly to my right to demand L&I, and [AG] perform its 'special duty' to enforce the April 18, 2007 decision, as they with 'malice of intent', had no intention of doing, then breaching its 'special duty' owed, that was not discretionary.

L&I controlled the legal process and due process under the 'Act', and the Attorney General knew this very well when it filed that November 14, 2011 Sworn Statement claiming compliance with the April 18, 2007

decision and it knew that Sworn Statement was perjured.

Utter, Advancing State Constitutions in Court, Protecting Individual Rights,, Trial Magazine October, 1991... As in Cushman, I had a ['benefit right'] to have my then L&I claim adjudicated constitutionally, because my then L&I claim was already approved in 1993. Whether, and exactly how, L&I complied with the April 18, 2007 Order, is still the key to deciding whether my 'protected property interest' was afforded me by the [S]tate, and, whether a [S]tate 'special duty' existed. This is what I ask this Court Of Appeals demand from the Defense. See the case *Church of Adna v State* as a contrast to *Cougar*. See *King v Seattle 84 Wash. 2d 239,244,525, P.2d 228,232 (1974)...* I ask this Appeals Court to see the obvious violation of my State Constitutional individual rights as I described in "CP" 27-64. *Utter,,* and as this Appellate Court will have jurisdiction to decide. Be clear, I am not taking the position that Superior Court violated my right to due process, that would not be a correct, or a prevailing position for me. "CP" 42, for *Stump v Sparkman 435 U.S. 349,369, (1978),,, and Dykes v Hosemann 776, F.2d 942,949, (11th Cir. 1985),,,* the only needed relevance of these cases as I cite is the fact that, 'no other organ',,, (notwithstanding Superior Court protected by judicial immunity ostensibly),,, 'or any other actor',,, of state government,, (to include L&I,, and The Office Of The Attorney General),,, can breach its

'special duty' owed me, that it created,,, by its malfeasance, misfeasance, and (nonfeasance by way of a cover-up),,, then deprive me 'due process". See Justice Utters' opinions as also related to Washington State Constitution Art. 1 Section 3 'property interest',,, that L&I, and the [AG] knew I possessed in my then L&I claim since 1993. See *Utter, Perspectives on State Constitutions and the Washington Declaration of Rights, 7 Pug. Sound L. Rev. 491,495 (1984)*...

"We have often independently evaluated our state constitution and have concluded that it should be applied to confer greater civil liberties than its federal counterpart when the reasoning and evidence indicated such was intended and is necessary"... "An independent interpretation and application of the Washington Constitution is not just legitimate, historically mandated, and logically essential; it is, in the words of the Washington Supreme Court, a 'duty' that all state courts owe to the people of Washington"... Washington Constitution: Whether textual analysis dictates an interpretation by way of statutory, or constitutional construction, "the meaning given it should be applied in such a manner as to meet new or changed conditions as they arise"...

This directly relates to my argument, as a 'civil liberty' includes, 'the right to a fair court trial', and my 'evidence' filed, defeated 12(b)(6) dismissal. I also ask this Appeals Court to see analysis from Justice Utter relating directly to Art. 1 Section 32 fundamental principles-my individual rights.

Defense counsel Rice states, APP."EX" 4, pg.2 at 23-25 "it is the act, or communication itself that must be outrageous". Rice is with intent being dishonest in the fact that I have with clear exactness, pleaded, and will prove, Brooks "CP" 147-150, with malice of intent, lied in his April 17, 2014 L&I, to IME Instructions, because he Brooks, did not want the IME Examiners to utilize the necessary use of hypothetical criteria, "CP" 56,100-101, 135, to properly, and preponderantly determine, why my then L&I claim medical adjudication did not allow me necessary treatment my Attending Providers diagnosed, and requested "CP" 114,118,138-139. This was 'malice of intent' by Brooks on April 17, 2014, it was outrageous, then will meet the criteria of a Tort in Restatement (Second) of Torts Section 46 (1965), APP."EX" 4 pg.2 at 8-16 cited, and with intent misstated by Rice, and that misstatement of Restatement Law,, as was excepted by Judge Culpepper to dismiss April 17, 2015. So Rices' own pleading criteria legal threshold of what constitutes a Tort, supports my case of Tort. See *Brown v MacPherson's Inc.*, 86 Wn.2d 293,545 P.2d 13 (1975),,, "CP" 56,100-101,135. Hypothetical criteria (by a would be IME Examiner in my case specific), to defeat a Defense 12(b)(6) Motion. This Wash. State Supreme Court sanctioned criteria as in *Brown v MacPherson*, was never considered by Judge Culpepper April 17, 2015, it was my Attachment, "CP" 27-64, filed November 7, 2014 in Superior Court. CR 9(b) "CP" 56, Judge Culpepper ignored this very important, and

very relevant Superior Court pleading rule, cited by me clearly in my pleadings as 'malice of intent', 'state of mind' criteria, to meet the legal standard of an actionable Tort. See "CP" 38, *Ernst & Ernst v Hochfelder* 425 U.S. 185, 96, S.Ct. 1375, 47 L.Ed. 2d. 668 (1976),,, as state of mind ...'scienter'... on the part of Eric Brooks in "CP" 147-150, L&I Director Sacks, and [AG] with 'malice of intent', covering up a crime of perjury/subornation of perjury by its own, "CP" 90-96,101-102,133-134, as the true reason why they refused to conduct an investigation in 2014. This is not somehow protected by generic [S]tate Official discretion. Governor in RCW 43.06.010(1)(11), and [AG] in RCW 43.10.030 (4)(5)(7) especially, as 'special duty' owed me, was not discretionary. This as relates to Washington Constitution Art. III sections 5, and 21. The words 'may', and 'duties', sections 5, and 21, must be textually analyzed, as 'duties', in (my case specific), negates 'may', as somehow only being [S]tate Officer discretionary, and [AG] has no common-law 'powers', "CP" 80-82 (3 ft.nts.), to ignore 'special duty' owed. April 18, 2007 legal mandate "CP" 110-113, illegally ignored by L&I, then mandated to be enforced by [AG] in 2014, supports my position. Utters' opinions support *Brandeis'* statutory construction question, or general law, versus a constitutional question and an 'independent state ground' as a Washington State trial court exercises the 'primacy approach',,, as directly supporting my specific argument of a [S]tate Tort. That

'independent state ground' must include whether the Industrial Insurance Act has an 'enforcement mechanism'. L&I, [AG] in 2014, knew it did not. Superior Court Judge van Doorninck, should have decided the "Acts" statutory construction. Then Judge Culpepper, in his April 17, 2015, and May 4, 2015 Orders, abused his discretion by intentionally ignoring this game changing legal issue, of whether the "Act", has an 'enforcement mechanism', for the legal Order mandate in my favor of April 18, 2007. And if he would have actually read my complaint "CP" 1-64, 84-109, he would clearly see 'enforcement mechanism' in my pleadings argument, as Superior Court had original jurisdiction under the State Tort Act. I ask this Court Of Appeals find, when Superior Court Judge Culpepper with intent, ignored this very relevant Court Rule, CR9(b), that would dictate a necessary Discovery process, to defeat a Defense 12(b)(6) Motion, as I was pleading a 'special matter', in my 'matter of first impression' case,,, it is legally tantamount to a misstatement of Law, and is an abuse of discretion, as Judge Culpepper ignored the rule of law, and ignored CR59(e)(3) APP:"EX" 3, pg. 7, as no language in Judge Culpeppers' May 4, 2015 Denial, shows he after April 17, 2015 ever considered incontrovertible proof in my Exhibits filed, that demands Discovery, in determining dismissal of my Tort case was incorrect, as the April 17, 2015 "RP", shows, he never even read my complaint.

"RP" VERIFICATION STRENGTH TO MY ARGUMENT

Remember, there was no way, I then Superior Court Plaintiff, could have known Judge Culpepper (third judge) on April 17, 2015 was not going to consider my Motion For Reconsideration timely filed March 9, 2015, as never heard by Judge van Doorninck (first judge), even though my pleadings to Judge Leanderson (second Judge), and to Judge Culpepper (third judge), indicated my desire to have Judge van Doornincks' (who was recused from my case without explanation), and her decision reviewed, as I still on February 27, 2015, had my Amended Principle Brief and included Exhibits still to file, as part of that Judge van Doorninck decision, needing to be considered by whatever Judge, (Culpepper), was actually going to hear my case. APP."EX" 1-2. "RP" 4, at 5-9, THE COURT: Judge Culpepper is not even sure why he has the case.

"RP" 15, at 1-2 THE COURT: as Judge Culpepper... "I don't know what happened in April of 2007"... "It doesn't tell me about 2007"... At 3-8 I explain that it is Exhibit #1, as filed in Superior Court March 23, 2015. This proves Judge Culpepper never even read my Amended Complaint prior to April 17, 2015 as he dismissed with prejudice.

"RP" 9, at 4-13, where I, as I have expounded on since April 18, 2007 in all my pleadings thru the various legal processes, as I described the L&I claim life-blood significance of that BIIA victory.

"RP" 9, at 14-15, THE COURT: "If you won that case why are we here?"

Again, this proves the unprepared position of Judge Culpepper in Superior Court as his complete ignorance of my case, as he dismissed my case with prejudice.

"RP" 15 at 18-22. THE COURT: "What happened in"--...

Remember, at this point, I have no idea what Judge Culpepper has, that has been submitted to him from the prior Judge who recused.

"RP" 15 at 23-25. "RP" 16, at 1-4 As I in disbelief on April 17, 2015, but properly maintaining my composure, as Superior Court has completely, incompetently heard my case, as my case was bounced around 3 times, as if this was a script for a Three Stooges movie.

"RP" 16, at 5-6. THE COURT: "I didn't get anything from you".

Again, this proves Judge Culpepper did not receive my Amended Brief, and 40 Exhibits filed to Judge Leanderson, who recused only 2 days earlier, APP. "EX" 2, and never transferred my documents to Judge Culpepper so he could make a competent decision, but he dismissed with prejudice anyway. "RP" 16, at 6. I do not even know what Judge Culpepper is referring to, as,,, "printing myself"...

"RP" 16, at 13-16. I am in disbelief of the courts incompetence.

"RP" 16, at 17-20. THE COURT: Judge Culpepper is insulting me with this explanation. "and I didn't get any"... Again this proves Judge Culpepper never read my Amended Brief, but dismissed with prejudice.

"RP" 17, at 5-7. THE COURT: "What did they not do"...

Is he (Judge Culpepper) this for real, I ask rhetorically in this appeal!

I explained this very clearly many times for exactly 8 years, what L&I was "supposed to do under the April 18th, 2007 order".

"RP" 17, at 8-25. a 'more serious diagnosis'. "CP" 114,118,138,139.

See "CP" 1-64, to include ATTACHMENT filed, for complete explanation.

"RP" 17, at 22-25. Relate to *Cushman*. "CP" 147-150, and my argument concerning the importance of the L&I, to IME Instructions.

"RP" 18, at 1-8. At 4-5, 'part of my 40 Exhibits filed'. "CP" 143-145, proving my issues directly relating to my April 18, 2007 legal victory compelling L&I to correct my then claim, could not be heard under the 'Act'.

"RP" at 18, 6-8. THE COURT: Once again proving Judge Culpepper could not possibly have even read my complaint timely, and properly filed in Superior Court prior to April 17, 2015, but he dismissed with prejudice.

"RP" 18, at 15, my argument, 'BIIA cannot go back and enforce their order'.

"CP" 143 at 26 "I can't go back",,, ...BIIA Judge Stockman... Proof...

"RP" 18, at 18-19. I am stunned that Judge Culpepper has not even read my complaint, but he dismissed with prejudice.

"RP" 18, at 22-25. I explain as I have in all my substantive pleadings, how David A. Iverson's perjury, and AAG Lionel Greaves' subornation thereof "CP" 134, is directly related to a common-law, and statutory duty owed me by the [S]tate to investigate my complaint, as the correction

of my 2014 L&I claim re-opening application was directly dependent on this [S]tate investigation, to prove compliance with "CP"110-113. "RP" 19 as I explain. Then at 19-22. THE COURT: My answer,,, because [AG] has to enforce April 18, 2007, as it knew L&I would not. "RP" 20 at 10-13. 'Special Relationship', as this Court of Appeals can recognize, did indeed exist in an unprecedented definition in (my case specific) because of the April 18, 2007 Order, compelling L&I to correct my then L&I claim, that Judge Culpepper ignored with his intentionally favorable to the [S]tate questions to me, about why the Governor, and [AG] would somehow be responsible. "RP" 20, at 25, "RP" 21, at 1-2. THE COURT: This question is truly beyond belief by Judge Culpepper. He is obviously attempting to justify his already pre-determined decision to dismiss with prejudice, as he completely ignores the significance of the non-compliance with "CP"110-113. The Governor RCW 43.06.010, and [AG] RCW 43.10.030, as the only [S]tate Officers in (my case specific) to secure this opinion to allow me to have enforced "CP" 110-113. "RP" 21, at 14-25. my argument. Again, 'Special Relationship', and 'Special Duty' owed me by the [S]tate, but Judge Culpepper who admits to not having my complaint before him, is ignoring the fact that my complaint could not be heard under the 'Act', and therefore needed to be enforced by the [AG], as the [AG] lost on April 18, 2007. "RP" 22, at 2. It should be,,, in context,,, (not compel)... At 8-9.

"when they originally said they would"... See "CP" 142. Legal extrapolation from "CP" 176, shows [AG] promise to write an opinion.

"RP" 23, at 5-15. My argument of true [AG] intent to not investigate.

"RP" 23, at 19-25 Defense Counsel Rice in a previously pleading, admits that my type of complaint could not be heard under the 'Act'. But then Rice tries to marginalize my complaint, that I have not brought forth a case of tort of outrage, when Restatement of Torts as I cite,,, support that I most clearly have brought an actionable Tort complaint.

"RP" 24, at 1-4. At least Judge Culpepper addresses lies by Brooks.

"RP" 24, at 12-18. Rice. at 13-14 "I don't see the lie in this document".

Discovery will prove intentional lies in "CP" 147-150. Rice, the Supreme Court does not (in-context),,, state that at all in *Grimsby, or Dicomes*. See my powerful correct Supreme Court deciding in *Dicomes* argument and related citing of Restatement (Second) of Torts Section 46 (1965), that completely defeats Rices intent to distort what the Supreme Court actually based its decision on in *Dicomes, Cena*. APP. 'EX' 3.

And, how intentional 'lies' are considered actionable 'tortious outrage'.

"RP" 24, at 19-25, and "RP" 25, at 1-5. Rice is attempting to downplay the significance of the provable facts, by intentionally ignoring the mandate for L&I in "CP" 110-113, by fabricating a scenario, then states, "remedy for that is through the industrial insurance act". Is that a fact!

"CP" 145 especially 12-26. "issues before me". BIIA Judge Stockman.

"RP" 26, at 12-13. THE COURT: "Well, Mr. Collins, why it is outrageous conduct if they make a mistake?"

Referring of course to my complaint of Brooks' lies as are outrageous conduct worthy of a tort action. Mistake! Are you kidding me! sic...

Again, this position by the court is based on not knowing any details of the history of my then L&I claim, because Judge Culpepper never even read my complaint, and why compliance with "CP" 110-113 was so important, as the life-blood of whether my then L&I claim, to include the IME, *Cushman*,,, would be legally adjudicated after April 18, 2007, based on the proper, legal 'Accepted condition'. WAC 296-20-01002.

"RP" 26, at 13-14 Judge Culpepper, "Lets say they don't follow the order of 2007, they screwed up".

My response now. If L&I just 'screwed up',,, then why did they not correct their 'screw up',,, in 2007, 2010, 2014, with an Appealable Order I could take to the BIIA while I then, and still, linger in pain, and suffering because by not complying with that April 18, 2007 BIIA Order compelling L&I to 'adjudicate my claim on a different legal standard',,, I would never receive the proper medical attention that my Attending doctor requested back in 2007. "CP" 114,118. Why did Judge Culpepper not ask that question, or consider that 'outrage' that L&I perpetuated! Why was Discovery not allowed with medical testimony to corroborate my position!

"RP" 26, at 16 "Anything you don't like, is that an outrage?"

This is truly unbelievable by Judge Culpepper. See *Cushman*.

"RP" 27, at 16-17 THE COURT: "That you can't do that and therefore is that the tort of outrage?"

Judge Culpepper is of course directly referring to me not being able to take my complaint to the BIIA, as somehow being my sole complaint of tort of outrage, to justify his decision to dismiss. That is not what creates the tort of outrage, it is the lies that took place prior by L&I, with subject-matter jurisdiction controlling my claim with intentional dishonesty.

"RP" 27, at 21. Judge Culpepper, is harping on the Governor, because it is a despicably convenient justification for his already pre-determined decision to dismiss my case, but does not allow Discovery to take place to direct attention to the primary tort of outrage, the lies as outrage by Eric Brooks in "CP" 147-150, supported by Nancy Adams, Joel Sacks. "RP" 28, at 6-7 Judge Culpepper. "You've got a gripe with L&I. That's what you got".

This comment by Judge Culpepper proves he was not going to hear my provable tort complaint as a court of proper original jurisdiction, by he, Judge Culpepper distorting, and ignoring what I can prove by not even allowing Discovery, and justifying his position by way of, any L&I complaint (according to what Judge Culpepper based his dismissal on) I could possibly have, can be heard under the 'Act'. "CP"143-145 proves different. This allowed Superior Court unjustifiably to not accept original jurisdiction.

Note: "RP" 29 at 16. I Michael J. Collins did not state this Thurston County language is involved in the transcript here. That was Rice.

**'SPECIAL DUTY' WAS OWED ME BY THE [S]TATE
SUMMATION ARGUMENT**

'Special Duty' owed me by the [S]tate, cannot be fully appreciated by this Appellate Court without reading the entirety of my pleadings specific also to "CP" 1-64, which includes what I have often in my earlier pleadings referenced as, my 'ATTACHMENT', which is simply my original complaint filed with the State per RCW 4.92.100, which describes why my then claim history, of my then L&I claim, is so relevant. This original complaint was filed as an 'ATTACHMENT',,, in Superior Court, November 7, 2014. Specific 'Constitutional Tort' as not necessary for me to prevail, does not diminish my [S]tate Constitutional right to demand due process from L&I, from April 18, 2007, thru September 25, 2014, nor does it eliminate the statutory duty of specific [S]tate actors that the Washington Constitution affords me to demand, specific to my 'matter of first impression' case. I will also pray that this Appellate Court faithfully reference my (then Exhibits),,, now "CP" 110-175,,, filed in Superior Court March 23, 2015, "CP" 84-175, as they are in order with my original (hand written numbers), in the event of any ("CP") reference mistake on my part, in this brief. Since the [AG], and Governor, have no common-law powers to ignore a 'special duty' owed me in 2014, developed because of a 'special relation-

ship' as clear, because of my April 18, 2007 legal victory compelling L&I, the [S]tate, to correct my then L&I claim, in (my case specific), and because of provable past history dishonest conduct by L&I, in the adjudication of my then L&I claim, common-law must be the [S]tates' 'legal undoing' in (my case specific). In *State ex. rel Dunbar v State Board 140, Wash. 433, 249 Pac. 996, (1926)*,,, "CP" 31, a dated case, but holds a very significant, and related to (my case specific) opinion. The [AG] especially, and the Governor, (my case specific), cannot sit supinely by, and facilitate an injustice as L&I was perpetuating in my then L&I claim. The [AG], and Governor, were given clear notice in my February 28, 2014 letter, and beyond, that L&I did not comply with a legal Order "CP" 110-113, and I would never be able to receive remedy under the 'Act'. The in-context to (my case specific) premise of *Dunbar*, does not have to be in direct reference to a state officer, it also means L&I Director Joel Sacks a state official, who clearly ignored, then clearly violated RCW 51.04.020(6) as his statutory 'special duty' owed me. [AG] paramount 'special duty' owed, was to me, not to L&I, *Dunbar*, as violations of the Washington State Constitution, and RCW 51.04.020(6) a state statute, *Dunbar*, drawing powerful parallels to (my case specific). Then the common-law creates a 'special statutory duty' for [AG]. As former [AG] Rob McKenna who foolishly attempted to argue before the State Supreme Court attempting to limit types of tort actions, as to

what would define a tort, and was equally as pathetic in arguing discretionary immunity by the [S]tate, "CP" 4 as (ft.nt 1), and failed in his separation of powers defense of the state, as a 'ministerial act' as in (my case specific), does not share separation of powers discretionary protection for the [S]tate, especially when there is a foreseeability of harm, as there was in (my case specific), by the [S]tate. And "CP" 8 (ft.nt 3). As a victim of a provable Intentional Tort, I have no legal obligation to now mitigate this matter. ""CP" 80-82- from *Goldmark* thru (ft.nt.3). If the [AG], and Governor, as the highest-ranking officials in the [S]tate Government are 'subject to the same set of laws', 'and the exercise of government power is limited by those laws', and the common-law describes clearly in *Dunbar*, that the [AG] cannot sit supinely by and allow (Director Sacks in my case specific), to violate his duties, then statutory construction, and proper interpretation as proper in-context legal extrapolation of the 'special statutory duty' owed by the [AG], and Governor support their violations of that specific as (my case specific) 'special statutory duty' owed. In *Taylor*, and *YAF* from *Goldmark*, who "necessarily rely on a mistaken common-law authority in the office of the attorney general",,, does not weaken my argument of [AG] 'special duty' owed me, because of the pre-existing legal Order "CP"110-113, giving [AG] a 'special duty' owed in (my case specific), and the [S]tate is avoiding this in-context defense.

Because the [AG] knew of the legal Order "CP"110-113, prior to L&I once again closing my claim illegally on August 3, 2007, "CP" 128, as I not only defeated L&I, I also defeated the [AG] on April 18, 2007, and it was legally obvious to even an amateur, that this mandated correction of my then L&I claim, would have to take place, and proven by L&I, of exactly how that was accomplished prior to August 3, 2007, but was not by August 3, 2007, a [S]tate 'special duty' was owed then in 2007 by the [AG], and clearly by September, 2014.

And because common-law allowed me to demand an investigation into perjury, and subornation of perjury orchestrated by the [AG] on November 14, 2011, with the David Iverson Declaration filed, "CP" 133-134, so I could timely file a separate legal action "CP" 90-91, this is the common-law to which the State Supreme Court discusses in *Goldmark, Taylor, and YAF*. The [AG] who is held to the highest standard, owed me an investigation as a common-law duty, then a statutory duty, to simply compel L&I to prove compliance with BIIA Order "CP" 110-113. The burden now falls on the Defense to provide a specific 'duty' rebuttal. The Defense in (my case specific), must provide a specific case with a pre-existing legal Order, as "CP"110-113, as a mandate for the [S]tate, which the [S]tate then ignored, and deprived the victor (me) due process and the Trial court ignored that Order, and was found correct in doing so.

And this must be in-context to what would have been [foreclosed], to mean, could I have had my 'issues' heard per the 'Act' in 2007, 2010, and 2014, if none of those 2007, 2010, and 2014 Final Orders addressed my specific complaint, as a pre-deprivation hearing process. "CP" 143-145, BIIA colloquy pages proves I could not in 2007, 2010-11. No language in "CP" 141, as the September 25, 2014 L&I final Denial Order, allowed my specific issues to be heard per the 'Act', in 2014. Defense in (my case specific), will never find such an in-context case. Parallel from *Cushman*, to (my case specific). Eric Brooks' intentional lies in his April 17, 2014 L&I, to IME Instructions, "CP" 147-150. Conclusion Federal Circuit: 'We find this constitutional right was violated due to the presence of an improperly altered medical record in his file'. 'We therefore confine our due process analysis to the presence of altered documents in Mr. Cushman's medical record'. There was an Appeals Board in *Cushman*, depriving *Cushman* of a fundamentally fair procedure. BIIA (Board) in (my case specific) cannot hear a constitutional complaint. Difference, L&I controls what the Board can hear in its Appealable Order. So in (my case specific) Superior Court must have original jurisdiction. And (my case specific) had the substantive mandate of April 18, 2007 legal Order "CP" 110-113, looming large over my then L&I claim which created 'special duty' by the [S]tate, as the like not present in *Cushman*. Then, intentional non-compliance of that mandate by the [S]tate would

add yet another due process analysis as necessary, as the [AG] had a 'special duty' to enforce that legal Order, when it knew L&I had not, and would not, comply with that legal Order mandate in 2014.

"CP" 9-10 (ft.nts. 4,5) *Mathews/Goldberg* cited in-context in *Cushman*. Also *Vitek v Jones* (ft.nt. 4), defined as an IME, when I pre-warned the IME Examiners in 2014 that the L&I, to IME instructions were filled with lies, "CP" 137, as only part of a multi page note to them, those IME Examiners refused to conduct the IME on May 21, 2014. Then when I requested the result of that IME record, "CP" 155 (1st par.), L&I would not provide it for me because they were not able to get away with deceiving the IME Examiners, as they had done in 2007, and 2010. This IME record must be provided to me thru discovery. The IME team May 21, 2014, acted solely in my best interest *Vitek*, after learning by me, truth of the lies, deception, and concealment in the April 17, 2014 L&I, to IME instructions, "CP"147-150, by not conducting a IME that may well be, (fact, that were), based on erroneous claim history facts. "CP" 155 (1st par.), 'as if adjudicated legally to completion'. "CP" 154, 'never at MMI' 'Maximum Medical Improvement'. "CP" '9-10 (ft.nt.4). "CP" 154 06/24/2010 Dr. Mario Alinea report, is referring to 2007 L&I claim treatment injustice, as a doctor, (unlike the IME Examiners),,, that L&I could not control. So L&I ignored Dr. Alinea, as they ignored Dr. Zhong relating my worsening to on-the-job injury in 1993. "CP"114.

My 'matter of first impression' case is strong to become the state law counterpart to *Cushman*, as *Cushman* was based on federal law, [S]tate torts committed in my case, just as the 'outrageous' dishonest conduct committed in *Cushman*, must have a due process remedy, and do create liability, and are actionable, but in (my case specific), unlike *Cushman*, were not able to be heard under the 'Act'. If the U.S. Supreme Court in *Cushman* concurred in part, that falsifying medical reports was actionable, needing remedy, then this Court of Appeals in (my case specific) must see the need to remedy by way of a Tort action against the [S]tate, the intentional lies, and falsifying claim history facts in the April 17, 2014 L&I, to IME instructions as creating the Torts committed (to start),,, in (my case specific). "CP" 147-150. An IME becomes a 'matter of record' in an L&I claim. An IME was of significance in *Cushman*, and of course in (my case specific). "CP"155. "CP" 102-107. Legislative Intent as strengthening (my case specific). See WAC 296-14-970(4)(5). Defense must justify why Director Sacks, would not provide for me the result of the May 21, 2014 IME report, when I made it very clear to L&I, and to the [AG] in 2014, that WAC 296-20-01002 was not complied with by L&I, after my April 18, 2007 legal victory, mandating L&I 'adjudicate my claim on a different legal standard'. Legislative Intent in RCW 51.04.020(6) then was a mandate for Director Sacks in (my case specific) as he then violated.

Legislative Intent as being violated then creates due process analysis as necessary for both L&I, and the [AG] as the 'special relationship' clearly existed as (my case specific) defines, as both Director Sacks, and [AG] with evil intent, failed to enforce the April 18, 2007 Order. This would also defeat any public duty doctrine argument by the defense, as defeated by 'Legislative Intent', and 'failure to enforce'. My April 18, 2007 legal victory, "CP" 110-113, and its legal mandate for L&I, and the [S]tate, creates the 'special relationship' from the [S]tate, to me, and created a 'special duty' owed to me by L&I, and the [AG], as due process would never be afforded me without compliance with that April 18, 2007 legal Order. [AG] was well aware of this from 2007. Legislative Intent dictates that L&I cannot deny me a 'benefit right', (to mean proper treatment needed), once it is established, by placing 'Unconstitutional' Conditions on me, forcing me to be subjected to an IME that is controlled by L&I with the lies, and deception, in its L&I, to IME instructions. "CP"147-150, "CP" 9-11 (ft.nt. 4-6). Legislative Intent in (my case specific), compelled the [AG] to intervene by enforcing the April 18, 2007 Order by 2014, to provide a 'procedural safeguard' not available per [S]tate Title 51. RCW 43.10.030(5) was an [AG] 'duty'. Restatement (Third) of Torts Sections 38-42 (2011), as very clearly establishing a 2014 [S]tate 'affirmative', and 'special duty' owed me.

My Intentional Tort complaint has never been based on an industrial injury, or occupational disease, and has clearly been based on a separate issue than what 'gave rise to the original claim compensable under the Industrial Insurance Act'. APP. "Ex". 3-pg.3. From *Cena*. [S]tate Duty owed, [S]tate Duty breached, causation, and injury. Tort. Further strengthening (my case specific) in reference to a custodial 'special relationship' that does not have to be in context to a Section 1983 case, and directly consistent with [S]tate duty, and Intentional Tort, as a 'failure to act', while having an 'affirmative duty' owed even as the common law 'affirmative duty rule', (which only applies in favor of the defendant), when there is no 'special relationship'. Example: There is no affirmative duty to act, for a innocent bystander, (not a paid life-guard),,, to rescue a drowning victim from a swimming pool. Example: There is no custodial relationship liability owed a person who (voluntarily) commits a family member to a mental institution, and harm comes to that individual (voluntarily) committed, or another, upon release, if there was no 'at that time' custodial relationship, as existed in my L&I claim. The 'affirmative duty rule' in direct reference to a 'failure to act' has to be identified by the court in specific situations where the duty to act must be imposed, as in (my case specific) as a 'special relationship'. Restatement (Second) of Torts Section 315 (b), 'a special relation exists between the actor and the other which gives to the other a

right to protection'. Subparagraph (b) required the defendants L&I, [AG] and the Governor in (my case specific), before the fact, to not allow the May 21, 2014 IME (as a third party), to take place, as that IME based on L&I falsified criteria, does become a 'matter of record'. The physical harm that has occurred, has been the perpetuation of my pain and suffering from my injury worsening, not allowed to be treated. In 2014, the [AG] knew I would not be protected under the 'Act', and had the duty to control, and protect when it knew L&I would not comply with the April 18, 2007 Order as a game-changing Order. "CP" 110-113. [S]tate had fair warning in (my case specific). "CP" 162-164,165-173. But the [AG], and Governor issued no warning to L&I in 2014, or to the scheduled IME Examiners as special duty in (my case specific). Because my 1993 industrial injury was not voluntary, and because I was compelled to have my industrial injury treated under the 'Act', and because I could not control L&I's abuse of my L&I claim under the 'Act', and because I could not force L&I to comply with "CP" 110-113, under the 'Act', L&I possessed, and abused a custodial relationship with its subject-matter jurisdiction, by intentionally not addressing my issues in the content of its Appealable Orders. So, my case defines a custodial relationship, and custodial control by L&I, as abused by L&I. The [AG], and Governors' common law and statutory duty to enforce compliance with the April 18, 2007 Order mandate "CP" 110-113, not

only restrains my individual 'protected property interest', my victory on April 18, 2007 clearly imposed a special duty on the [AG] to act in case of L&I ultimate non-compliance with that Orders' mandate.

"CP" 15. *King v Seattle* excerpt. As [S]tate Intentional Tortfeasors, [AG], L&I, and Governor, cannot escape liability, just because they knew L&I would, and did unconstitutionally control my right to due process per the 'Act'. [S]tate 'failure to act', creates a special duty owed violation.

"CP" 15-16. *Deshaney* (ft.nt.10). A 'state of mind' evil intent was never considered by the *Deshaney* court, as a 'scienter' as in *Ernst & Ernst*. In (my case specific), L&I's 'state of mind' evil intention, was to have my claim based on a much lessor criteria to avoid an IME worsening opinion as being directly related to my 1993 original industrial injury. In 2014, the [AG] would not conduct an honorable investigation into perjury, and subornation of perjury by its own client, an L&I employee David Iverson, and its own subordinate employee, Lionel Greaves "CP" 134, because the [AG] knew it had suborned perjury. [AG] deprived me due process. And "CP" 136-137, as to what an IME Examiner is only allowed to consider, as "particular issues presented for our consideration", and, "answer specific questions,,, outlined by the requesting party",,, which is L&I, in its L&I, to IME Instructions. Then see further Intentional lies from L&I's Nancy Adams "CP" 160, "IME panel,,, they receive access to your claim file"... Its irrelevant. The IME [panel], can only consider

what L&I instructs in its instructions. "CP" 147-150. Proof, "CP" 136-137.

[S]tate Duty owed, [S]tate Duty breached, causation, and injury. Tort.

I meet the requirement of a [S]tate deprivation of liberty interest,

(defined as my right to individual security to have my then L&I claim

adjudicated legally. And a [S]tate deprivation of property interest, of a

special custodial relationship, controlled, and abused by L&I, as the

[S]tate. And I meet [S]tate custom, or policy (a 2014 L&I Appealable

Order) factor criteria, as L&I causation of injury requirement.

As the merits of my Intentional Tort action are indefensible, the burden

now falls on the defense to justify why the April 17, 2014 L&I, to IME

Instructions "CP" 147-150, were not based on my Attending Providers'

multiple ICD code diagnosis, "CP" 114,118,138,139, as are within the

7-year rule, because there was no 7-year rule as applicable from the

April 19, 1995, or August 3, 2007 closures. This directly relates to

Judge Stewart's decision in my favor 'to further adjudicate this matter

on a different legal standard',,, "CP" 112 at 9-10.

And defense must prove that the immediately aforementioned defense,

burden, as outlined by me, could have been (specifically) heard, before

the BIIA, after the September 25, 2014 L&I Order, based solely on the

language of that Order of Denial. "CP" 141. See "CP" 128,140,143-145,

as the August 3, 2007, September 8, 2010 Orders, and BIIA transcript,

proving language, and issues not specific to a latest L&I Order, cannot

be heard, or considered in a subsequent BIIA Hearing under the 'Act'. As the merits of my Intentional Tort action are indefensible, the burden now falls on the defense to prove compliance with the BIIA Order, of April 18, 2007, as not time-barred. "CP" 110-113. As defense will fail in proving compliance, and this must be micro-detail documentary proof,, that must be factually consistent with the adjudication of my then L&I claim, this failure will support the lies in Eric Brooks' April 17, 2014 L&I, to IME Instructions, (state of mind) intended to deceive the IME panel, and intended to deprive me due process, and is a 'tort of outrage'. The [S]tate [AG] as the defense, needs to justify why it chose to break the law and suborn perjury on November 14, 2011, that as I have clearly pleaded numerous times, is directly related to how my 2014 L&I claim re-opening would be adjudicated, and Order of Denial. "CP" 141. [AG] must explain why when it knew David Iverson affirmed the claim closure of April 19, 1995 on July 16, 2007, "CP" 129, then Iverson states, "the Department canceled the April 19, 1995 closing order on June 19, 2007", "CP" 133-134 at 3., only to make it appear L&I complied with "CP"110-113. [AG] still illegally filed that Sworn Statement. Even Iverson as L&I,, knew it had an obligation to make it appear L&I complied with that legal Order in my favor, as legally it did. But refer back to Judge Culpepper "RP" 26, at 13-14,, "Lets say they don't follow the order of 2007, they screwed up"... Like whatever! [sic].

Even L&I's own desperate actions in "CP" 129, 133-134 at 3., would not be in agreement with, or consistent with, Judge Culpeppers' misstatement of law position, April 17, 2015. This is extraordinarily in my favor! This directly relates to my 2014 Tort claim for Intentional Infliction of Emotional Distress as contributory, and perpetuated by the [AG], by ignoring its [S]tate common-law, then statutory special duty owed me. Again, my emotional distress caused by the [S]tates illegal neglect to properly adjudicate (L&I), and to legally enforce [AG], is not caused by what gave rise to my original industrial injury. "CP" 146, par. 2-3, decided after the April 18, 2007 Order "CP" 110-113, to correct my claim. Perjury committed by Iverson, and subornation of perjury committed by AAG Lionel Greaves on November 14, 2011 "CP" 134 at 3., is not time-barred as of the writing of this appeal.

[S]tate Special Duty owed, [S]tate Special Duty breached, causation as outrageous conduct condoned, and perpetuated by [AG], injury as Tort. See "CP" 112, at 9-10, of the April 18, 2007 Order, ..."Mr. Collins' reopening application should be treated as a protest"... This becomes very significant, because pursuant to statutory duty for L&I, under the Industrial Insurance Act, a [protest] to an L&I Appealable Order, to mean specifically, the April 19, 1995 closing Order, which is exactly to what Judge Stewart refers in "CP" 110-113, must be met with a further L&I Appealable Order, addressing my specific [issues], and complaint.

This to compel L&I to legally respond to the [protest]. This means the August 3, 2007 closing Order "CP" 128, was legally mandated to specifically address my specific issues, and complaint. But did not. Nor did L&I Orders "CP" 140-141. See "CP" 155. That is my official, legal, and timely [protest] to L&I's June 2, 2014 original Order, followed by "CP" 141, that no way, addressed my specific issues in my [protest]. This now becomes significant as to the August 3, 2007 closing Order as relevant in 2014, and in my 2015 legal action, because Iverson states in "CP" 133-134 at 4., as provable perjury therein, as not time-barred, "based on the medical evidence in the Department's claim file as of 2007". I will prove that 'medical evidence',,, was a falsified L&I, to IME Instructions, "CP" 115-116. See Iverson,,, at 10), and 13), as a concealment of claim history facts to the IME, and, exactly what Iverson is referring to in "CP" 134 at 4.) See *Cushman*. My May 1, and May 4, 2007 IME, took place after the April 18, 2007 Order "CP" 110-113. See "CP" 162-173 all,,, as (fair notice) letters to the [S]tate. See "CP" 171 *Stone v Olinger*,,, and how the 2007, 2010, and 2014 IME's, could not be legally based on an 'aggravation', if April 19, 1995 closing Order does not even legally exist, Iverson "CP" 134, at 3.,,, to support L&I's adjudication of my then claim in 2007, 2010, and 2014. "CP" 28 as Sup.Ct. ATTACHMENT pg.8, and my argument to support *Stone v Olinger*, and 'aggravation',,, which is what all 3 IME's, in 2007,

2010, and 2014 were illegally based, as life-blood relevant under an L&I claim and especially (my case specific) because of "CP" 110-113. This Court of Appeals cannot allow a precedent to be set, of a government unit, L&I, to illegally refuse to comply with a legal Order because it is not in their favor. Then see Judge Culpeppers' despicable decision. The common-law system of this Court Of Appeals review, will allow it to relate to the actual controversies of *Cushman*, and 'special duty' owed me by [AG] as in *Dunbar*, but (my case specific), for me Appellant to prevail in this Court Of Appeals reversal of the Superior Court decision. As Judge Culpepper ignored the indefensible facts in my pleadings that would clearly have been available to him by May 4, 2015, then Judge Culpepper abused his discretion when he with intent, failed to decide on each count specifically, against the [S]tate defendants, in my March 23, 2015 Amended complaint "CP" 85-88, in context with the obvious merits of my case. And Judge Culpepper misstated the law in direct reference to what can be litigated under the Industrial Insurance Act, and what direct 'enforcement mechanism' is available per the 'Act'. And he misstated the law in direct reference to what would define a tort pursuant to RCW 4.92.090, as I itemized in my counts. Then Judge Culpepper misstated both common-law, and statutory law, in direct reference to what would define a [S]tate 'special duty', and what would then create a specific 'special relationship', with the April

18, 2007 Order looming large over my case in 2014, as a 'legal game-changing Order', and for which the [S]tate provably never complied, as Judge Culpepper abused his discretion by making a mockery of the significance of that legal game-changing Order' in my favor, as he abused his discretion by arbitrarily, and capriciously dismissed my case for the sole purpose of protecting the [S]tate.

CONCLUSION

See "CP" 182-187, I Appellant, then Plaintiff Pro se Michael J. Collins, filed my Objection-Raised Error in Superior Court timely, and complete. I ask this Appeals Court to see that my case would be equally, or even more so as strong both procedurally, and merit based wise, in the State Supreme Court, as many of the Defenses' misstatements of law are State Supreme Court citations, to include Restatement (Second) of Torts Section 46 (1965),,, where Rice is intentionally dishonest about what the State Supreme Court 'limits' as Tort,,, then a settlement from the [S]tate would be in its best interest, as the [S]tate has proven that it cannot prevail on ignoring the specific facts, and not properly citing law. To induce this settlement by the [S]tate, as would be in its best interest, I ask this Appeals Court compel a [S]tate investigation as I had continually requested after "CP" 162-173. In the very Restatement (Second) of Torts (1965) Rice cites, where the misstatements of those Restatements

have been accepted, and utilized by Judge Culpepper to dismiss my case, that very Restatement speaks of any 'sham investigation',,, as an 'outrage,,, then would be tortious, creating yet further [S]tate liability, and compensable as Tort of outrage.

I Plaintiff Pro se Michael J. Collins, again ask of this Court of Appeals per the Rules of Appellate Procedure ability, to demand submittal of all Defense pleadings to Superior Court from December 2014-April, 2015, to include Rices' submitted for the February 27, 2015 hearing, and Judge van Doorninck signed Proposed Order, based on 'perfect world scenario' case law, where there was no already decided legal Order against L&I, the [S]tate, in (my) favor, April 18, 2007 Order, especially, and read the erroneously cited case law by Rice, and misstatements of Restatements by Rice, and upon which Judge van Doorninck, (first judge) and Judge Culpepper (third judge) so directly relied. If the continued corrupt position by the Defense refuses to settle, then I seek this Appeals Court to reverse/remand to trial court for Discovery process, as this Appellate Court finds my case is strong, and correct procedurally, to mean Superior Court original jurisdiction of a proper Tort complaint, as I Plaintiff have shown L&I, Attorney General, and Governor duty, breach of duty, causation, then injury, as was dismissed incorrectly based on both procedural, and merit based errors by Judge Culpepper. Even if the Superior Court found that part of my

counts against the [S]tate were not valid, my counts against L&I alone renders as valid, a Tort complaint not able to be heard under the 'Act'. So there is no legitimacy to Superior Court dismissing my Tort complaint based clearly on misstatements of law, and abuse of discretion. As Rules Of Evidence allows hypothetical expert medical testimony, I ask this Court of Appeals to find, that if the [AG] knew it did not have a duty to act, to investigate my complaint, (as it was also defeated April 18, 2007), it would have written me an official letter explaining why it had no legal duty to act, as [AG] admitted a 'duty' with "CP" 175, 134. I ask this Court of Appeals to demand from [AG], the [S]tate, the result of that "initial investigation" from "CP" 134, dated October 29, 2014, to find that 'Legislative Intent' supports my fact based position, and that, Judge Culpeppers' arbitrary, and capricious decision be reversed. I seek the same compensatory tort damages relief stated in my original Tort complaint to the State, and to Superior Court, (including), plus tort medical damages (costs) for treatment, and care needed. Not one or the other, but both, and not controlled by the Industrial Insurance Act. And, plus, pre-judgment, and post-judgment interest.

On this day Michael J. Collins August 21, 2015

Michael J. Collins - Appellant Pro-se
10101 43rd Street Court East
Edgewood, Washington 98371
(253) 348-5842

Appendix

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR PIERCE COUNTY**

TO: COLLINS, MICHAEL J
PRO SE (Self-Represented)
10101 43RD ST CT E
EDGEWOOD, WA 98371

MICHAEL J COLLINS VS. STATE OF WASHINGTON

14-2-14051-2

The case referenced above has been reassigned to Department 15 Judge GRETCHEN LEANDERSON, from Judge K. A. VAN DOORNINCK. Unless otherwise notified, the case schedule and trial date will remain unchanged.

If the case has been resolved, call Department 15 at (253) 798-3966 or e-mail to: supcrtdept15@co.pierce.wa.us

If you are an attorney and have withdrawn from the case, contact the Clerk's office.

Dated: March 3, 2015

cc: PIERCE COUNTY CLERK
MATTHEW HUNTLEY RICE



Frank E. Cuthbertson
Presiding Judge

**SUPERIOR COURT
OF THE
STATE OF WASHINGTON
FOR PIERCE COUNTY**

RONALD E. CULPEPPER, JUDGE
ANGELA EDWARDS, Judicial Assistant
Department 17
(253) 798-6640

334 COUNTY-CITY BUILDING
930 TACOMA AVENUE SOUTH
TACOMA, WA 98402-2108

April 15, 2015

TO: Michael J. Collins, Pro Se Plaintiff
Matthew Huntley Rice, Attorney for Defendant

RE: MICHAEL J COLLINS vs. STATE OF WASHINGTON
Pierce County Cause No. 14-2-14051-2

Dear Counsel/Litigant:

The above referenced case has been reassigned to The Honorable RONALD E. CULPEPPER, Department 17. If you have any questions please call me at (253) 798-6640.

Sincerely,



ANGELA EDWARDS
Judicial Assistant

cc: Pierce County Clerk for filing

FILED
IN COUNTY CLERK'S OFFICE

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APR 13 2015

2015 APR 13 PM 2:27

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

Superior Court Administration

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

MICHAEL J. COLLINS
Plaintiff Pro se
vs.

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

Honorable Gretchen Leanderson
No. 14-2-14051-2

MALICIOUS CONDUCT TORT
INTENTIONAL INFLICTION
OF EMOTIONAL DISTRESS
INTENTIONAL BAD FAITH
CONDUCT BY THE STATE
AS TORT:
PLAINTIFF'S MOTION
IN OPPOSITION

April 17, 2015 MOTION CALENDAR

Comes forth Plaintiff Pro se Michael J. Collins v State (as Captioned) to
timely respond to the erroneous Defense Motion to Dismiss. This court must
refer to my March 23, 2015 Amended Principle Brief for Exhibits referenced.

PLAINTIFF'S OPPOSITION ARGUMENT

1. The despicable manner in which Defense counsel Rice presents his
2. Motion is extraordinarily pathetic. Please read my original complaint to
3. Superior Court filed November 7, 2014. There are 2 alternatives to my
4. original pleading. INTENTIONAL TORT, and CONSTITUTIONAL TORT.
5. I plead my original brief this way in case the Constitutional Tort was dismissed,
6. I would still have the alternative of just an Intentional Tort. This is not my third,
7. or fourth complaint, but only the alternative as captioned in my original brief.
8. Rice states this to attempt to have this court believe I have been unsuccessful
9. in my pleadings as if I have a weak case, and I am desperately hanging on to
10. my legal life as it were.
11. I have certainly pleaded successfully,,, a 'special duty',,, as an actionable duty,,,
12. owed me by the state, as it provided its 'express assurance'. I have certainly
13. pleaded an actionable claim of outrage. Defense pg.3. A hearing as I have
14. requested in my attached Motion must take place by way of a Defense brief
15. where (and thru discovery) the 'outrage' will be obviously evident. Defense
16. counsel cowardly submits documents, but will not provide a supporting argument
17. to those documents, then states I have no claim. Defense will not provide an
18. argument to justify not complying with the April 18, 2007 BIIA Order in my favor
19. compelling L&I to correct my then injury claim,,, 'outrage',,, but states I have no
20. claim. Defense pg.4. I have Lopez's signed copy of her March 11, 2014 'express
21. assurance', then Lopez admitting a 'special duty' owed,,, so what is Rices' point?
22. Defense pg.5. Pathetic citation to *Cena v State*... If one actually reads that case,,,
23. it would see immediately,,, that *Cena* supports my case not the Defense. I have
24. never (as very deliberate on my part),,, based my current complaint on a
25. nonpayment of L&I monetary (time-loss) benefits as in *Cena*.
26.

1. See *Cena*,,,"unless the maladministration of the claim resulted from an occurrence
2. separate from the one giving rise to the claim compensable under the Industrial
Insurance Act. Like my case Hello! There is no outrage in *Cena*,, , only a complaint
about wrongful delay of monetary benefits. *Cena* is based on negligence...

3. I made it clear in my case that it is not based on negligence. This is what Rice
4. compares to my case... Again,, , also see *Rothwell*,, , I cite in my Amended Principle
5. Complaint, pg. 15. From *Cena*... 'no separate remedy under the 'act' for his/her
6. injuries'... See *Rothwell*... My complaint is not based on an industrial injury, or
7. occupational disease, but a tort under the tort act. When is Rice going to 'get it'.
8. Where is a comparison to the April 18, 2007 Order in my favor not having been
9. complied with by L&I,, , giving rise to a 'special duty' owed me by the State. In
10. RCW 51.04.010 it refers to,, , 'for such personal injuries',, , to mean,, , the original
11. occupational injury,, , of which my current complaint is not based. Why does not
12. Rice argue that statutes true meaning. My case is an Intentional Tort case.

13. In *Cena*, there would have been an L&I Appealable Order, stating that all time-loss
14. benefits are no longer payable, that could then be specifically appealed at the BIIA.
15. See (Ex.'s13,23,24) filed March 23, 2015. There is no L&I reference to my specific
16. complaint in those L&I Appealable Orders,, , then was no remedy available at BIIA.
17. See (Ex.'s 26-28). This was intentional by L&I,, , as 'extreme',, , and 'uncivilized',, ,
18. by L&I, as my Attending Physician Dr. Zhong (Ex.2),, , patient me "suffers"...

19. From *Cena*,, , "In order to qualify as an exception to the ban on tort actions,, , based
20. on workplace injuries, *Cena* must satisfy a separate injury test",, , I pass that test...

21. See all my counts,, , are Intentional based... Only the Governors' counts mentions
22. 'willfully and recklessly',, , but the Governor's refusal to investigate,, , is not bound by
23. any exclusive remedy provision as relevant under the "act"... All L&I persons as
24. listed in my counts, acted with 'malice of intent',, , in other words Rice,, , 'Intentional
25. conduct',, , as clearly stated by me in my counts. Defense Pg.6... See *Dicomes*...
26. Defense states extreme, and uncivilized, then it needs to define these elements.

1. See Dr. Zhong (Ex.2) chronic pain syndrome,, from his on-the-job injury in 1993.
2. Then see Dr. Zhong (Ex.5), "I had recommended an interdisciplinary pain manage-
3. ment program evaluation, and this was unfortunately denied by his claim manager,
4. (Iverson). I suffer(ed) in (extreme) pain,, Iverson denied a program that is not pre-
5. cluded as L&I obligation of treatment under the Industrial Insurance Act. Then Rice
6. needs to describe the (civilized) justification of that. Rice opened this argument.
7. Again, I will show you how Rice makes my case, and my 'case in chief'... I have,
8. and will show the [S]tates conduct to be extreme and uncivilized, but Rice cowardly
9. presents documents without arguing, or justifying [S]tate action, or my allegations,
10. to defend against provable extreme, or uncivilized [S]tate conduct. This is why a
11. CR 59(e)(3) court mandated hearing, I request, must take place. See Defense
12. pg.6 - 3 elements. I have clearly pleaded all 3 with documentary proof. See
13. (3) actual result. See (Ex.29)... But I will show [result],,, to have an even more
14. profound disgrace to defense citing of *Dicomes*... *Dicomes* was found by the
15. Washington State Supreme Court to be a policymaker. This is profound because
16. there was then contributory fault found on the part of *Dicomes* in the manner in
17. which she tried to remedy the employer misconduct. Supreme Court also found
18. *Dicomes* 1st Amendment rights as not having been violated, as DOL did not
19. take any affirmative steps to [foreclose] *Dicomes* opportunity to seek employment
20. elsewhere. As a matter of fact [result],,, to which Rice so pathetically relies,, is
21. weak as a comparison to me, as, *Dicomes* found employment elsewhere [result],,,
22. as an executive secretary, a similar position she had at DOL, so there was no
23. liberty interest infringed upon to *Dicomes*. See my Amended Principle Complaint
24. filed March 23, 2015 pgs. 23-24 and my 5 items under 'special relationship'.
25. There was no 'special relationship' in *Dicomes*. *Dicomes* had no prior legal order
26.

1. (Ex.1),,, written in my favor, completely changing as mandated, how my then L&I
2. claim could be adjudicated, and for which Rice is afraid to address, because he
3. knows it is the reason why [AG] and L&I, had a 'special duty' owed me since 2007.
4. *Dicomes* (as a non-comparable Whistleblower case, litigated on that statute), had
5. [result] in her favor as her ability to find further employment was not [foreclosed]
6. by the State. Now,,, see my **(result)**... My **(result)**,,, is never being able to have
7. my then L&I claim adjudicated properly as 'intentional' on the part of L&I. Rice
8. does not base his [AG] duty owed me defense, on the non-compliance of (Ex.1).
9. Rice pathetically states,,, it requires the States actions to be 'intentional'. Is that a
10. fact? See my May 16, 2014 letter to L&I 'after the fact', of L&I receiving a demand
11. (by me),,, for a copy of the L&I, to IME Instructions, but 'before the fact',,, of the
12. May 21, 2014 IME, also filed with my original tort claim to the State, and will be
13. saved for impeachment of Eric Brooks as allowed under the rules of evidence.
14. I make it clear in that letter, pg.2, that it was incorrect of him to 'intentionally' lie
15. to the IME Examiners in those instructions notwithstanding other provable times,
16. as other lies,,, that my claim was [open]. Again, Brooks did this so the IME
17. Examiners would take the position that my then L&I claim had been adjudicated
18. properly to completion. An intentional, and provable lie. But Brooks never (as he
19. could have easily done so) corrected this lie,,, before the May 21, 2014 IME.
20. And Rice wants to talk about 'intentional',,, and 'result'... OK. I will prove, in
21. all 3 L&I, to IME instructions from 2007, 2010, and 2014, that L&I, 'intentionally'
22. lied to those respective IME Examiners for financial gain, all 3 times,,, after the
23. April 18, 2007 legal decision in my favor (Ex.1). All 3 times,,, is not by accident!
24. (Foreclosed),,, as the State Supreme Court firmly relies in *Dicomes*,,, is then the
25. key [element],,, indefensible by Rice, as L&I never allowed me a pre-deprivation
26.

1. hearing equivalent, (an L&I Appealable Order), in 2007, 2010, and 2014, that
2. addressed my 'specific issues',,, after April 18, 2007 (Ex.1),,, then L&I never
3. allowed me a post-deprivation process, a BIIA Hearing, then 'Act' remedy for
4. me was 'foreclosed',,, by L&I,,, [AG],,, Governor,,, and the State, in 2014.
5. (Ex.'s 23,24, 26-28) prove no 2007-2014 'Act' remedy available at the BIIA.
6. Rice then needs to argue successfully, that 'intentionally' lying to doctors for
7. financial gain, repeatedly, is civilized, decent, and not extreme. Rice is basing
8. (as I told this court he would), on erroneously applied out-of-context, generic,
9. and perfect-world-scenario case law, and legal theory, especially duty owed me.
10. See Rice pg.7. He is pathetically attempting to lend credibility to, and to reduce
11. the significance of,,, Iverson, and Greaves perjury, and subornation of perjury,
12. and for the intentional lies L&I told to the IME Examiners, as an erroneous non-
13. comparison,,, by erroneously citing *Dicomes*, 'intentionally prepared false report'.
14. This is despicable of Rice, as that was not the reason the State Supreme Court
15. rejected *Dicomes* position, as I have stated herein. Rice by citing, and by so
16. desperately relying on *Dicomes*, now must show contributory fault on my part,
17. and that my ability to get the State to comply with (Ex.1) was somehow not
18. [foreclosed],,, with a clear State 'special duty' owed me,,, and this then is also
19. only trivial oppression. As a matter of law,,, [foreclosed] is the defenses legal
20. albatross, as I have proven [foreclosed],,, then defeating Rice citing *Dicomes*,,,
21. as *Dicomes*' 'foreclosed',,, actually supports my legal position, as a matter of law.
22. And Rice, the [S]tate, as he/it must, is compelled to address (Ex.1). And Rice,
23. the [S]tate, must address the 'express assurance' to me by the [S]tate. Rices'
24. Restatement (Second) of Torts Sec. 46 (1965), is in employment out-of-context.
25.
26.

1. I would be honored to argue *Dicomes* to the State Supreme Court (as the
2. [S]tate appeals after my trial victory) against [S]tate Attorney General Bob
3. Ferguson himself, as again (foreclosed) is what the State Supreme Court
4. firmly decided against *Dicomes*, because her ability to procure future
5. employment was not (foreclosed). I have proven my ability to get relief under
6. the 'Act', while I suffer(ed) in pain was continually (foreclosed) by way of
7. L&I's 2007, 2010, 2014 Appealable Orders, as L&I operatives knew they
8. could control the legal process under the 'Act', by 'intentionally' never address-
9. ing my issues in their Appealable Orders.

10. This (foreclosed) is a game changing dynamic in my favor as a matter of law.
11. See where Rice cites *Kirby*,,, pg.6. *Kirby's* complaint was,,, that he was told by
12. his superior, that he was a grey haired old cop who should retire. And he was
13. then offended by that. This falls under the category of,,, 'are you kidding me!'
14. This is what Rice cites as a weak comparison, but he will not address the facts
15. of my case and the [proverbial] smoking gun documents I have filed to prove
16. [S]tate intentional egregious oppression, and intentional uncivilized [S]tate acts.
17. The State Supreme Court, as does the U.S. Supreme Court, takes erroneous,
18. out-of-context case law citations very seriously.

19. RELIEF SOUGHT FROM THIS OPPOSITION PLEADING

20. For this court to continue my case as actionable, and to compel, as my
21. attached Motions, and March 9, 2015, March 23, 2015, and April 13, 2015
22. pleadings all describe. As Defense has committed itself, and has opened the
23. (proverbial) pandora's legal box, and now must answer for it. So defense
24. must prove to this court as by a CR 59(e) discovery mechanism, that my
25. L&I claim 'property interest',,, was not (foreclosed) by L&I, and [AG].

26. On this day Michael J. Collins Pro-se April 3 2015
Michael J. Collins Plaintiff Pro se -10101 43rd St. Ct. East-Edgewood Wn. 98371

April 15 2015 3:14 PM

KEVIN STOCK
COUNTY CLERK
NO: 14-2-14051-2

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The Honorable Gretchen Leanderson

**STATE OF WASHINGTON
PIERCE COUNTY SUPERIOR COURT**

MICHAEL J. COLLINS,

Plaintiff Pro Se,

v.

STATE OF WASHINGTON &
OFFICE OF THE GOVERNOR;
OFFICE OF THE ATTORNEY
GENERAL; DEPT. OF L&I; ERIC
BROOKS; NANCY ADAMS (Claim
manager/Supervisor); JOEL SACKS
(DIR. L&I) et al tbd,

Defendants.

NO. 14-2-14051-2

DEFENDANTS' REPLY IN
SUPPORT OF MOTION TO DISMISS
PLAINTIFF'S THIRD AMENDED
COMPLAINT

NOTE FOR MOTION CALENDAR
APRIL 17, 2015

Defendants, State of Washington, Office of the Governor, Office of the Attorney General, Department of Labor and Industries, Joel Sacks, Nancy Adams, and Eric Brooks respectfully submit this reply memorandum in support of their motion for an order dismissing Plaintiff's Third Amended Complaint with prejudice for failure to state a claim upon which relief can be granted.

I. REPLY ARGUMENT

In his response, Plaintiff is quick to characterize the strength of Defendants' legal position and equally quick to denigrate Defendants' counsel. But Plaintiff does not point to

1 any allegation or document submitted with his pleading that supports a claim for the tort of
2 outrage against the various State entities and individuals that he has sued.

3 Defendants do not dispute that a claim for outrage arising from the administration of an
4 industrial insurance claim is beyond the exclusive remedy provisions of the Industrial
5 Insurance Act. But Defendants do dispute that Plaintiff has pleaded such a claim. The conduct
6 that Plaintiff alleges – the claimed improper administration of an industrial insurance claim and
7 the apparent refusal to launch an investigation of Plaintiffs' own design – is not outrage as a
8 matter of law. The Supreme Court has made clear the limits of such a claim, relying on the
9 comments to *Restatement (Second) of Torts* § 46:

10 [T]he conduct of the defendant must be outrageous and extreme. As indicated
11 by Comment D., it is not enough that a 'defendant has acted with an intent
12 which is tortious or even criminal, or that he has intended to inflict emotional
13 distress, or even that his conduct has been characterized by 'malice,' or a degree
14 of aggravation which would entitle the plaintiff to punitive damages for another
15 tort.' Liability exists 'only where the conduct has been so outrageous in
16 character, and so extreme in degree, as to go beyond all possible bounds of
decency, and to be regarded as atrocious, and utterly intolerable in a civilized
community.' (Italics ours.) Comment D. further points out that liability in the
tort of outrage 'does not extend to mere insults, indignities, threats, annoyances,
petty oppressions, or other trivialities.' In this area plaintiffs must necessarily be
hardened to a certain degree of rough language, unkindness and lack of
consideration.

17 *Grimsby v. Samson*, 85 Wn.2d 52, 59, 530 P.2d 291, 295 (1975). With due respect to
18 Plaintiff's apparent belief that he has been treated unfairly, nothing that Plaintiff pleads – or
19 asks this Court to hypothecate – rises to the level of outrage as defined by Washington law.

20 Plaintiff suggests that the manner in which his industrial insurance claim was handled
21 was "intentional." *Opposition at 3*. But as set forth in Defendants' motion (and as explained
22 by the Supreme Court in *Grimsby*), merely ascribing malice or bad faith to an act is insufficient
23 to show outrage. *Dicomes v. State*, 113 Wn.2d 612, 630, 782 P.2d 1002 (1989). Rather, it is
24 the act or communication itself that must be outrageous. Plaintiff has pleaded no such act or
25 communication, and has not suggested even hypothetical facts that would support such a claim.
26

1 Plaintiff also claims that a particular treatment regimen recommended by his treating
2 physician was not approved by his claims manager. *Opposition at 4.* Plaintiff may have
3 recourse to dispute the correctness of that decision, but it is not outrageous conduct sufficient
4 to support Plaintiffs' claim before this Court.

5 Plaintiff alleges that his claims manager, Mr. Brooks, "lied" to IME examiners. The
6 communication about which Plaintiff complains is before the Court. *Rice Declaration, Ex. B*
7 *thereto.* If there is something outrageous about Mr. Brooks' communication, it is not apparent
8 to Defendants.

9 Plaintiff argues that he was given an "express assurance" by an assistant attorney
10 general. *Opposition at 6-7.* Of course, the letter sent to Plaintiff, pleaded in his Complaint,
11 and submitted in what is believed to be final form, contains no such assurance. (*See Plaintiff's*
12 *Ex. 40 and Rice Decl. Ex. C thereto.*) Rather, Ms. Fielding Lopez informed Plaintiff that the
13 Attorney General's office would not issue Plaintiff's requested legal opinion. Plaintiff might
14 disagree with this decision, but it is not outrageous.

15 Plaintiff refers to "smoking gun documents" that he has filed that show purported
16 "intentional egregious oppression, and intentional uncivilized [S]tate acts." *Opposition at 7.* If
17 they exist, Plaintiff should bring such documents to the attention of Defendants and the Court.
18 As a matter of law, the conduct and communications alleged in Plaintiffs' Complaint are not so
19 extreme that they can support liability.

20 Plaintiff can prove no set of facts consistent with his Complaint which would justify
21 recovery; his Third Amended Complaint therefore should be dismissed with prejudice.

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II. CONCLUSION

For all of the reasons stated above, Defendants respectfully request dismissal of Plaintiff's Third Amended Complaint with Prejudice.

DATED this 15th day of April, 2015.

ROBERT W. FERGUSON
Attorney General

/s/ Matthew H. Rice
MATTHEW H. RICE, WSBA No. 44034
OID #91023
Assistant Attorney General
Attorney for Defendants

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PROOF OF SERVICE

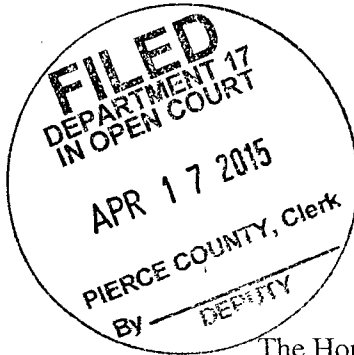
I declare that I sent for service a copy of this document on all parties or their counsel of record on the date below as follows:

<u>Party</u>	<u>Method of Service</u>
Michael J. Collins 10101 43rd Street Ct. East Edgewood, WA 98371	<input type="radio"/> US Mail Postage Prepaid <input type="radio"/> UPS Next Day Air <input type="radio"/> Certified Mail Postage Prepaid <input type="radio"/> By Fax <input type="radio"/> State Campus Mail <input type="radio"/> By e-mail <input checked="" type="radio"/> ABC/Legal Messenger <input type="radio"/> Hand delivered by:

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

DATED this 15th day of April, 2015 at Tumwater, Washington.

/s/ Jodie L. Thompson
JODIE L. THOMPSON, Legal Assistant



Ronald E. C. Pepper
The Honorable Gretchen Leanderson

STATE OF WASHINGTON
PIERCE COUNTY SUPERIOR COURT

MICHAEL J. COLLINS,
Plaintiff Pro Se,
v.

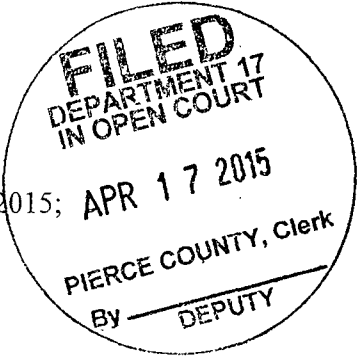
NO. 14-2-14051-2
ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS PLAINTIFF'S
THIRD AMENDED COMPLAINT

STATE OF WASHINGTON &
OFFICE OF THE GOVERNOR;
OFFICE OF THE ATTORNEY
GENERAL; DEPT. OF L&I; ERICK
BROOKS; NANCY ADAMS (Claim
manager/Supervisor); JOEL SACKS
(DIR. L&I) et al tbd,
Defendants.

[PROPOSED]

THIS MATTER coming on for hearing on the motion of Defendants, State of Washington, Office of the Governor, Office of the Attorney General, Department of Labor and Industries, Joel Sacks, Nancy Adams, and Eric Brooks, said Defendants appearing by ROBERT W. FERGUSON, Attorney General, and MATTHEW H. RICE, Assistant Attorney General, and Plaintiff appearing pro se, and the Court having heard argument, considered the records and files herein, including:

1. Defendants' Motion to Dismiss Plaintiff's Third Amended Complaint;
2. Declaration of Matthew H. Rice in Support of Defendants' Motion to Dismiss Plaintiff's Third Amended Complaint and Attachments A-D.



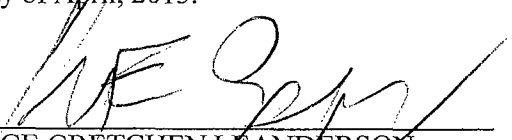
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- 3. Plaintiff's Response, dated April 13, 2015;
- 4. Defendants' Reply;

and being fully advised; now, therefore,

IT IS HEREBY ORDERED that Defendants' Motion to Dismiss Plaintiff's Third Amended Complaint is GRANTED WITH PREJUDICE.


DONE IN OPEN COURT this 17th day of April, 2015.



 JUDGE GRETCHEN LEANDERSON
Ronald E. Calpepper

Presented by:
 ROBERT W. FERGUSON
 Attorney General

Approved as to form and notice of presentation waived:



 MATTHEW H. RICE, WSBA No. 44034
 Assistant Attorney General
 Attorneys for Defendants

 MICHAEL J. COLLINS

FILED
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DIVISION II
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STATE OF WASHINGTON
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State Of Washington
Division II Court Of Appeals Case # 47565-I-II

DECLARATION OF SERVICE

I Michael J. Collins Appellant Pro se, do hereby state under penalty of perjury, that a complete (re-serve) copy,, of my Opening Brief to this Division II Court Of Appeals was timely delivered to the Washington State Office Of The Attorney General, and as Gregory G. Silvey - AAG Defense Attorney of record for the State Of Washington as Official Capacity Defendants, on the date, and to the address as listed, and signed below, by regular U.S. mail, and as required per RAP 10.2(h).

On this day Michael J. Collins August 21, 2015

Michael J. Collins - Appellant Pro se
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Edgewood, Washington 98371
(253) 348-5842

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