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A. RESPONDANT'S STATEMENT OF ISSUES

1. Were the Superior Court's Findings of Fact supported by substantial credible evidence?
2. Were the Superior Court's Conclusions of Law supported by the Findings of Fact?

B. RESPONDENT'S STATEMENT OF THE CASE

Cortney R. Black is a 35 year old man who began working for Comcast in 2004 as an installation technician. CP 102, 106. Prior to working for Comcast, Cortney R. Black performed similar work for Lucent Technologies for approximately seven years. CP 104.

Mr. Black did not have any problems with his right shoulder prior to making the claim in this particular case. CP 110.

Mr. Black described his job as requiring a lot of reaching, stooping, climbing, crawling, pulling and securing cable, carrying and supporting ladders, and digging if the cables were located underground. CP 106.

As an installation communications technician, Mr. Black was responsible for everything from the roadway up to and inside of the home that he was servicing. Nine times out of ten he would work alone. CP 107.

He was required to use basic hand tools to accomplish the cable connecting points. He also used, as stated, ladders, shovels, cable reels and stands which may or may not have to be removed from the vehicles, but

most of the times they would have to be removed in order to be used. CP 108. The cable reels and stands weigh upwards of 35 to 50 pounds, and sometimes over 75 pounds. CP 108.

In addition to the above-stated equipment, the claimant also had to carry a tool bag which was the size of a small duffle bag and which weighed anywhere between 25 and 35 pounds. CP 109.

In some cases he would have to carry a ladder at the same time in order to avoid numerous trips back to the vehicle for long distances. In those cases a ladder would be carried on his right shoulder and the tool bag would be carried in his left hand. CP 109.

Mr. Black was primarily left hand dominant. CP 109.

His job also required using a computer that was located in his work vehicle which required him to outstretch his right arm quite far and slightly behind him in order to access the computer. CP 110.

At pages 14-16 of his testimony, Mr. Black described his typical day as follows:

- Q. Okay, let's go back to the physical requirements of your job. Describe what a normal day would be for you and what physical activities you would have to do in order to accomplish the job?
- A. Well, again, after walking around the house and deciding what the issue was, and, again, sometimes it would pertain to pulling cables from the house over to the street, sometimes it could be aerial,

sometimes it could be underground, in either case it is generally a decent distance. Sometimes it's a short distances, but most cases it's 50 to 100, maybe 300 feet.

Once you get over that 100 to 150 mark, you have to change the size of cable that you're using, and that's where we move up to the larger diameter cable, and that reel of cable alone can weigh 75 pounds with a stand. And trying to pull that length of cable from the home to the roadway or from the roadway to the home depending on the circumstances, it can be quite difficult while standing in the air on a ladder with a belt and you're putting all your might into that while pulling it tight, because they do have certain tension requirements that you have to meet and also certain heights across the roadway that you have to adhere to.

Underground it can be much more difficult because there's more friction fighting you, as a lot of times it can be in conduit from the home to the connection point, but with that restriction via trying to pull the cable through the conduit, it can be kind of difficult trying to do it on your own. In some cases, I'd have to call for other people to assist so that somebody can push on one end and pull on the other, but nine times out of ten I was on my own trying to get it done because I worked in very remote locations.

- Q. Okay. What length of cable would you pull and install as you just described on a daily basis?
- A. It could be 200 to 500 feet in a day.
- Q. Okay. And how many days a week were you working in the – you know, in the month before this claim was made?
- A. The scheduled shift I was working was four ten-hour days, but those ten-hour days could easily transition into 12-hour days because when you're in the middle of a job with a customer like that, you can't just simply stop, walk away, and go home, you have to complete that job.

CP 111-113.

Mr. Black developed right shoulder problems back in June 2010 that progressively got worse. CP 113. He tried to live with the pain but eventually it got so bad that he went into a walk-in clinic. At that clinic, a doctor asked him to extend his arm out fully to his right side and then rotate his palm upward toward the ceiling and the pain quadrupled with that procedure. At that point, he was sent to an orthopedic, Dr. Hung. CP 113-114.

Leading up to the development of his right shoulder problems, Mr. Black was not doing anything that was strenuous or repetitive with his arms and shoulders and his upper back in his non-work activities. In the weeks and months leading up to the development of his right shoulder problems, he was working 10 to 12 hours a day for four days out of the week doing the activities that were described above. CP 116.

Scott Craig, a supervisor for Comcast, acknowledged that the job duties Mr. Black testified to were accurate and that the technicians normally worked alone. He also acknowledged that the technicians can carry loads of about 80 pounds. He further acknowledged that the technicians have to pull this cable when they're up in the ladder position with the ladder extended upward. This required the technician to pull the cable from the drum which

is behind them. He further acknowledged that the technicians had to extend their arms out when they pulled the cable. Mr. Craig further acknowledged that a normal house drop is probably 125 feet and an extreme RG 11 drop would be 300 feet with a bigger cable. Finally, Mr. Craig acknowledged that Mr. Black never had any right shoulder problems before this claim. CP 145-147.

Mr. Craig also acknowledged that he was not out observing Mr. Black's work activities in May or June of 2010. CP 143.

Dr. John C. Hung, MD, an orthopedic surgeon specializing in treatment of the shoulder, testified for Mr. Black. He first examined Mr. Black on June 8, 2010. CP 206-209.

Dr. Hung's most significant findings in his clinical examination of Mr. Black are summarized at CP 209, starting at line 17 as follows:

- A. For me, in terms of his function, his range of motion and strength were all pretty normal, but then the most interesting thing was the fact that he had provocative tests that were pretty positive, most specifically tests that would indicate a labral tear of some sort.

These provocative tests, which are specific to shoulder function, are described in great detail by Dr. Hung from pages 7 through 10 (CP 209-212) of his deposition testimony. These provocative tests were repeated by Dr. Hung on June 22, 2010 and the findings were the same. See CP 214-215.

In the meantime, Dr. Hung ordered an MRI scan arthrogram of the right shoulder. Dr. Hung's reading of the MRI arthrogram was that it showed significant labral pathology. CP 214-215.

Dr. Hung, as an orthopedic surgeon who specializes in shoulder surgery, always reads the actual films himself in diagnosing and treating his patients. CP 216.

At pages 14-16 of his deposition testimony (CP 216-218), Dr. Hung carefully explained the findings of labral pathology that are seen on the MRI arthrogram films. These films were marked and were admitted into evidence without objection.

Dr. Hung went on to explain his opinion regarding the cause of labral tears at pages 17-18 (CP 219-220) of his deposition as follows:

- A. I think labral tears occur for different reasons. It depends on what your occupation is, and it depends on things that you do and also if you had a fall or injury of some sort.

Specifically, I see them in people who are throwers, people who pitch, people who play volley ball, even swimmers who have specific reasons to put their arms in certain positions that would lead that to be more likely to tear. Pitchers specifically and quarterbacks tend to have this issue because of the frequency of the arm being placed in a position that would cause a stress and then eventually lead to tears.

Other issues would be people who work a lot with heavy laboring, specifically doing things above the shoulder level or if they happen to have to

catch certain objects in unpredictable situations that could lead to falls or issues where they've fallen and they've caught themselves. Those are positions that tend to lead me to see a lot of labral tears in that sense.

People who are laborers, who do a lot of things at or above the shoulder level, especially if they're constantly in that position for a prolonged period of time, can also end up with labral issues, more degenerative in nature, but they do occur.

Emphasis added.

When asked whether, based upon the history that he obtained from Mr. Black, if he had an opinion based upon reasonable medical probability as to what the cause of his right shoulder pathology was, Dr. Hung answered as follows at pages 18-19 (CP 220-221) of his deposition:

- A. Well, outside of him doing anything sports related or having an injury that he didn't tell me about, you know, the fact that he's doing a lot of pulling with heavy cables and heavy equipment was probably the source, and I think he – I know I didn't put it in my notes, but I think I remember – I recall him telling me that those are tasks that he's doing frequently throughout the day, and so it would make – for me, I would think that probability-wise, that was probably where he developed the injury.

Mr. Black filed an application for worker's compensation benefits for a right shoulder injury sustained while he was working for Comcast Corporation. CP 294.

Dr. Jorge M. Medina, MD, a radiologist, read the MRI arthrogram that was performed on Cortney R. Black. CP 247-248. Dr. Medina interpreted this study to be normal, however, he was aware that Dr. Hung disagreed with his opinion. Dr. Medina deposition, CP 248-249.

Dr. Medina acknowledged that he was not an orthopedic surgeon and that he has never performed any orthopedic type surgeries on the shoulder. CP 250-251. Dr. Medina also verified that he never conducted a physical exam on Mr. Black. CP 251. Dr. Medina also acknowledged that he knows Dr. Hung, Mr. Black's treating orthopedic surgeon, and recognizes that he is a competent, well-respected orthopedic surgeon. CP 251.

Dr. Medina further acknowledged that it is a common practice that surgeons read the imaging films independently and that the surgeons can differ with the radiologists in terms of the findings of the imaging studies. CP 251-252.

Dr. Medina acknowledged that there may be some subtle findings that surgeons believe are present in the imaging films that are not seen or recorded by the radiologists and that surgeons can disagree with the radiologists in terms of interpreting the films. Dr. Medina deposition, page 12. CP 256.

At the request of the employer, Dr. Colm O'Riordan, reviewed Dr. Hung's report, an MRI of Mr. Black's shoulder, reviewed Dr. Medina's interpretation of the MRI of Mr. Black, and, on August 4, 2010, examined Mr. Black. CP 170-175.

Dr. O'Riordan is a retired orthopedic surgeon. CP 168. Dr. O'Riordan testified that he performed the same specific provocative tests for shoulder pathology as Dr. Hung. CP 187-191. Dr. O'Riordan agreed that Mr. Black had pain in his shoulder and was not embellishing (CP 184) but concluded that Mr. Black's symptoms were not related to an on-the-job injury. CP 196. However, Dr. O'Riordan did not properly document that he performed the provocative tests. CP 187-191. Furthermore, Dr. O'Riordan also failed to prescribe or document with any specificity clinical testing procedures from which one could conclude that those provocative tests were performed. CP 187-191.

Dr. O'Riordan acknowledged that the history documents that Mr. Black did not have any problems with his right shoulder before this claim was made. CP 179. Dr. O'Riordan also acknowledged that Mr. Black had to lift and carry loads up to 70 pounds and that he was aware that Mr. Black's work often required overhead type work with his arms, and pulling and twisting and lifting. CP 180. Dr. O'Riordan further acknowledged that

Mr. Black had to carry a duffle-bag-sized tool bag that weighed a significant amount. CP 180. Dr. O'Riordan acknowledged that Mr. Black did not have any non-work activities that would put significant stress on his shoulder. CP 181. Dr. O'Riordan acknowledged that Mr. Black's work activities would at times put a significant stress on his shoulder. CP 181.

On October 19, 2010, the Department of Labor and Industries denied Mr. Black's claim and further ordered that Mr. Black had to repay Comcast for provisional time loss compensation paid from June 8, 2010 through September 17, 2010. CP 294-295.

Mr. Black protested the October 19, 2010 order but the Department affirmed the order on September 14, 2011. CP 295.

Mr. Black appealed the October 19, 2010 order to the Board of Industrial Insurance Appeals. CP 295. Following a full hearing and presentation of all evidence, Industrial Appeals Judge Craig C. Stewart issued a Proposed Decision and Order on September 19, 2012 that affirmed the two prior orders issued by the Department of Labor and Industries. CP 295.

Mr. Black appealed Judge Stewart's September 19, 2012 Proposed Decision and Order to the Board of Industrial Insurance Appeals. CP 295.

On November 9, 2012, the Board of Industrial Insurance Appeals affirmed Judge Stewart's September 19, 2012 Order. CP 295.

Mr. Black appealed the Board of Industrial Insurance Appeals decision to the Pierce County Superior Court. CP 295. A bench trial was held on December 13, 2013. CP 295. After considering the Board record and the briefing and the arguments of counsel, Judge Hogan of the Pierce County Superior Court entered an order finding, based on a preponderance of evidence, that the Orders of the Department of Labor and Industries dated September 14, 2010 and October 19, 2010, and the Orders of the Board of Industrial Insurance Appeals dated September 19, 2012 and November 9, 2012 were incorrect. CP 295. Judge Hogan determined, based on a preponderance of the evidence, that Mr. Black's right shoulder condition, diagnosed as a labral tear, arose naturally and proximately out of his work activities with Comcast. CP 295.

Judge Hogan found that Mr. Black's condition was an occupational disease within the meaning of RCW 51.08.140. CP 295.

C. ARGUMENT

- 1. The Superior Court's Findings are supported by substantial credible evidence.**

Appellant Comcast challenges Pierce County Superior Court Judge Hogan's Findings of Fact numbers 7 and 8 and Conclusions of Law 2 and 3.

Finding of Fact number 7 reads as follows:

The Court after considering the Board record, the briefing and the arguments of counsel, finds, based upon a preponderance of the evidence, that the Order of the Department of Labor and Industries dates [sic] September 14, 2010 and October 19 2010 and the Orders of the Board of Industrial Insurance Appeals dated September 19, 2012 and November 9, 2012 are incorrect.

CP 295.

Finding of Fact number 8 reads as follows:

As a result, the Court has determined, based upon a preponderance of the evidence, that Cortney R. Black's right shoulder condition, diagnosed as a labral tear, arose naturally and proximately out of his work activities with Comcast Corporation.

CP 295.

Read together, findings of fact 7 and 8 are a clear indication that Judge Hogan found "from a fair preponderance of credible evidence" that the board's findings that Mr. Black was not injured in the course of his employment with Comcast were incorrect.

Comcast challenges these findings on the basis that the evidence did not support a finding that Mr. Black's labral tear was an "occupational

disease” under RCW 51.08.140. Brief of Appellant, p. 8. Specifically, Comcast argues (1) that Dr. Hung’s conclusions were not supported by the facts (Brief of Appellant, p. 10-14); and (2) that Comcast’s experts’ opinions were “more well-reasoned” and should have been relied upon by Judge Hogan because the previous Board decisions had all relied on those opinions. Brief of Appellant, p. 14-17.

a. Standard on Review

Under RCW 51.52.115, appeals to the Superior Court from a decision of the Board of Industrial Insurance Appeals are de novo. However, the Superior Court may not receive any new evidence or testimony. RCW 51.52.115. The findings and the decisions of the board are considered prima facie correct and the burden of proof is on the party seeking review. RCW 51.52.115.

If the Superior Court finds that the board acted within its power and correctly construed the law and found the facts, the Superior Court shall affirm the decision of the board; otherwise, the Superior Court will reverse or modify the decision of the board. RCW 51.52.115.

A party attacking the decision of the board must support its challenge by a preponderance of the evidence. *Ravsten v. Department of Labor & Indus.*, 108 Wn.2d 143, 146, 736 P.2d 265 (1987). On review,

the superior court may substitute its own findings and decision for the Board's only if it finds "'from a fair preponderance of credible evidence', that the Board's findings and decision are incorrect." *McClelland v. ITT Rayonier, Inc.*, 65 Wn.App. 386, 390, 828 P.2d 1138 (1992) (quoting *Weatherspoon v. Department of Labor & Indus.*, 55 Wn.App. 439, 440, 777 P.2d 1084 (1989)).

Appellate review of the Superior Court's decision is "limited to examination of the record to see whether substantial evidence supports the findings made after the superior court's de novo review, and whether the court's conclusions of law flow from the findings." *Young v. Department of Labor & Indus.*, 81 Wn.App. 123, 128, 913 P.2d 402, review denied 130 Wn.2d 1009, 928 P.2d 414 (1996) (citations omitted).

b. Substantial credible evidence supported Judge Hogan's conclusion that Mr. Black had suffered a labral tear to his right shoulder.

It is now well settled that in workers' compensation cases, the court must give special consideration to the attending physician's opinion. *Hamilton v. Department of Labor & Indus.*, 111 Wn.2d 569, 571, 761 P.2d 618 (1988); *Intalco Aluminum v. Department of Labor & Indus.*, 66 Wn.App. 644, 654, 833 P.2d 390 (1992), review denied, 120 Wn.2d 1031, 847 P.2d 481 (1993). This consideration is reasonable in light of the fact

that an attending physician is not “an expert hired to give a particular opinion consistent with one party's view of the case.” *Intalco*, 66 Wn.App. at 654, 833 P.2d 390.

The industrial insurance act, being remedial in nature, must be liberally applied to achieve its purpose: compensation to all covered persons injured in their employment. *Hamilton*, 111 Wn.2d at 572, 761 P.2d 618; *Sacred Heart Medical Ctr. v. Carrado*, 92 Wn.2d 631, 635, 600 P.2d 1015 (1979); RCW 51.04.010. Special consideration of the attending physician's testimony supports this purpose and ensures protection of workers. *Hamilton*, 111 Wn.2d at 572-73, 761 P.2d 618.

In making her ruling, Judge Hogan reviewed the briefing of the parties, the testimony of Mr. Black, the testimony of Mr. Craig, the deposition testimony of Dr. O’Riordan, Dr. Hung, and Dr. Medina. RP 3-4.

Judge Hogan had evidence through Mr. Black’s testimony that he had no problems with his right shoulder prior to working for Comcast and that his employment at Comcast required him to work four ten-hour days per week where he would carry heavy loads with his right arm, pull 250-500 feet of wire per day, sometimes through conduit or up a ladder while he stood on the ladder, load heavy equipment and materials on and off his

truck, dig ditches, climb, and crawl. CP 102-116. Judge Hogan was also aware that Mr. Black had testified that he not had any problems with his shoulder prior to working for Comcast and was not engaged in any activities outside of his job that might injure his shoulder. CP 110, 116.

Judge Hogan was aware that Mr. Black's supervisor at Comcast, Mr. Caig, had verified that Mr. Black's description of his daily activities was accurate, that Mr. Black had never had any problems with his right shoulder before this claim, and that he was not observing Mr. Black's work activities in May or June of 2010. CP 143-147.

Judge Hogan had evidence through Dr. Hung that Dr. Hung had examined Mr. Black twice, had administered diagnostic tests of Mr. Black's shoulder, had ordered an MRI of Mr. Black's shoulder, and had reviewed the MRI himself. CP 206-218. Judge Hogan was also aware that Dr. Hung believed that the activities Mr. Black are the sort of activities that can cause a labral tear in a shoulder muscle. CP 219-220. Judge Hogan was aware that it was Dr. Hung's opinion that Mr. Black was suffering from a labral tear of his shoulder muscle and that Dr. Hung believed that the labral tear was caused by Mr. Black's work activities. CP 214-221.

Judge Hogan was aware that Dr. O’Riordan, Comcast’s paid expert (CP 178-179), disagreed with Dr. Hung’s independent diagnosis that Mr. Black was suffering from a significant labral tear in his shoulder (CP 173), but agreed that Mr. Black had pain in his shoulder, believed that Mr. Black was not embellishing, agreed that Mr. Black had no problems with his shoulder prior to making this claim, acknowledged that Mr. Black had to carry heavy loads and work with his arms above his head, agreed that Mr. Black’s work would put significant stress on his shoulder, and agreed that Mr. Black did not engage in any non-work activities that would put significant stress on his shoulder. CP 179-181, 184.

Judge Hogan was aware that Dr. Medina, the radiologist who disagreed with Dr. Hung’s determination that the MRI of Mr. Black’s shoulder showed a labral tear (CP 247-249) acknowledged that he was not an orthopedic doctor, had never performed any orthopedic surgeries, had never physically examined Mr. Black, acknowledged that Dr. Hung is a competent and well-respected surgeon, and acknowledged that surgeons can differ with radiologists in terms of the findings of imaging studies. CP 247-252, 256.

Judge Hogan was required to give special consideration to Dr. Hung’s opinion as Mr. Black’s treating physician in part because Dr. Hung

was not “an expert hired to give a particular opinion consistent with one party's view of the case.” *Intalco*, 66 Wn.App. at 654, 833 P.2d 390. Given that the industrial insurance act must be liberally applied to achieve its purpose of compensation to all covered persons injured in their employment (*Hamilton*, 111 Wn.2d at 572, 761 P.2d 618), Judge Hogan did not err in finding that Dr. Hung’s diagnosis was more the more correct understanding of Mr. Black’s injuries.

Judge Hogan was, therefore, aware of significant credible evidence that Dr. Hung, Mr. Black’s attending physician, had performed a more thorough and objective evaluation of Mr. Black’s condition and was well qualified to render a diagnosis. There was ample evidence in the record to support Judge Hogan’s finding that Mr. Black was suffering from a labral tear in his shoulder and that the tear was caused by his activities at his job with Comcast.

2. Judge Hogan’s legal conclusion that Mr. Black’s right shoulder condition is an occupational disease within the meaning of RCW 51.08.140 is supported by the Findings of Fact.

Appellant Comcast challenges Judge Hogan’s Conclusions of Law numbers 2 and 3. Brief of Appellant, p. 1.

Conclusion of Law number 2 states that, “Cortney R. Black’s right shoulder is an occupational disease within the meaning of RCW 51.08.140.” CP 295.

Conclusion of Law number 3 found that the decisions of the Department of Labor and Industries, Judge Stewart, and the Board of Industrial Insurance Appeals were incorrect and remanded the claim for award of medical treatment and other benefits. CP 296.

A disease is proximately caused by employment conditions, supporting a finding of “occupational disease,” when there is no intervening independent and sufficient cause for the disease, so that the disease would not have been contracted but for the condition existing in the employment. *Raum v. City of Bellevue*, 171 Wn.App. 124, 286 P.3d 695 (2012), *review denied* 176 Wn.2d 1024, 301 P.3d 1047 (2013); RCW 51.08.140.

As stated above, appellate review of the Superior Court’s decision is “limited to examination of the record to see whether substantial evidence supports the findings made after the superior court’s de novo review, and whether the court’s conclusions of law flow from the findings.” *Young v. Department of Labor & Indus.*, 81 Wn.App. 123, 128, 913 P.2d 402 (1996) (citations omitted).

As discussed above, Judge Hogan's conclusion that Mr. Black suffers from a labral tear of his shoulder muscle that was caused by his work-related activities is supported by ample evidence in the record. All witnesses agreed on the kinds of activities that Mr. Black would perform at his job and that none of his non-work related activities would cause strain to his shoulder. Dr. Hung and Dr. O'Riordan did not disagree about Mr. Black being in pain or telling the truth. Conclusions of Law numbers 2 and 3 flow naturally from Findings of Fact numbers 7 and 8.

3. The opinions of Comcast's witnesses were not more "well-reasoned" than those of Mr. Black's witnesses.

As pointed out above, there were significant weaknesses with the testimony of the Comcast's witnesses. Dr. O'Riordan examined Mr. Black only one time, was paid by Comcast to perform the examination, did not believe Mr. Black was lying, and did not disagree that Mr. Black was in pain. Dr. Medina was not an orthopedist and did not physically examine Mr. Black. Judge Hogan properly determined that it was the opinions of Mr. Black's witnesses that were the more "well-reasoned."

4. Should this court rule in Mr. Black's favor, an award of attorney's fees to Mr. Black is appropriate.

RAP 18.1 authorizes an award of attorney's fees to a party on appeal if such an award is authorized by "applicable law" and the party requests the attorney fees in its brief.

Under RCW 51.52.130,

If, on appeal to the superior or appellate court from the decision and order of the board, said decision and order is reversed or modified and additional relief is granted to a worker or beneficiary...a reasonable fee for the services of the worker's or beneficiary's attorney **shall** be fixed by the court.

Emphasis added.

Further,

[U]nder the Equal Access to Justice Act (EAJA) [RCW 4.84.350]...a party that prevails in a judicial review of an agency action is entitled to attorney fees and other expenses up to \$25,000 unless "the court finds that the agency action was substantially justified or that circumstances make an award unjust." RCW 4.84.350(1). To be entitled to an award of attorney fees under the EAJA, a qualified party is deemed to have prevailed if that party obtained relief on a significant issue. RCW 4.84.350(1). The EAJA also states that "[i]f two or more qualified parties join in an action, the award in total shall not exceed twenty-five thousand dollars." RCW 4.84.350(2).

Gerow v. Washington State Gambling Com'n, 181 Wn.App. 229, 245, 324 P.3d 800 (2014).

Mr. Black prevailed in the Superior Court and was awarded attorney's fees. CP 293-297. Thus, should Mr. Black prevail in this

proceeding, "applicable law," i.e. RCW 51.52.130 or RCW 4.84.350, authorizes an award of attorney's fees to Mr. Black under RAP 18.1.

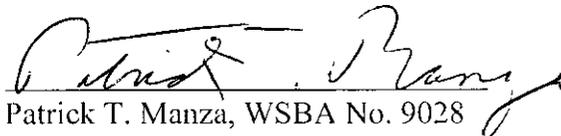
D. CONCLUSION

The Superior Court should be affirmed because the court's Findings of Fact are support by more than a preponderance of the evidence and the Superior Court's Conclusions of Law flow naturally from the Findings of Fact.

This Court should affirm the trial court's ruling and remand for execution of the judgment. This court should also affirm the award of attorney's fees to Mr. Black.

DATED this 17TH day of October, 2014.

Respectfully submitted,


Patrick T. Manza, WSBA No. 9028
Attorney for Respondent

CERTIFICATE OF SERVICE

Marie Devlin hereby certifies under penalty of perjury under the laws of the State of Washington that on the 17th day of October, 2014, I delivered via legal messenger a true and correct original and one copy of the Brief of Respondent to which this certificate is attached to the following:

Court of Appeals, Division II
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Suite 300, MS TB-06
Tacoma, WA 98402-4454

and I delivered via U.S. Mail a true and correct copy of the Brief of Respondent to

Michael J. Orlando
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Signed at Tacoma, Washington this 17th day of October, 2014.



Marie Devlin
Paralegal to Patrick T. Manza