

FILED  
Court of Appeals  
Division II  
State of Washington  
4/2/2018 10:52 AM

No. 51143-6-II

---

**COURT OF APPEALS  
DIVISION II  
OF THE STATE OF WASHINGTON**

---

ALFREDO SUAREZ, *Appellant*,

v.

MASCO CORP., et al., *Respondent*.

---

**RESPONDENT'S BRIEF**

---



Rebecca K. Corcoran, WSBA #51995  
Attorney for Respondent  
Gress, Clark, Young & Schoepper  
8705 SW Nimbus Avenue, Suite #240  
Beaverton, OR 97008  
(971) 213-3170

**TABLE OF CONTENTS**

I. TABLE OF AUTHORITIES.....ii

II. INTRODUCTION.....1

III. STATEMENT OF ISSUES.....1

IV. STATEMENT OF THE CASE.....2

V. ARGUMENT.....3

    A. THIS COURT SHOULD FIND THAT UNDER RCW 51.52.050 THE SELF-INSURED EMPLOYER IS ENTITLED TO DEFER PAYMENT UNTIL THE BOARD ACTS UPON A TIMELY FILED MOTION FOR A STAY OF BENEFITS .....2

    B. THIS COURT SHOULD FIND THAT THERE WAS A GENUINE, LEGAL DOUBT AS TO WHETHER MASCO CORP. OWED PAYMENT AND THEREFORE PENALTY IS INAPPROPRIATE.....6

VI. CONCLUSION.....8

## TABLE OF AUTHORITIES

### CASES

<i>Stuckey v. Dep't of Labor &amp; Indus.</i> , 129 Wash.2d 289, 295, 916 P.2d 399 (1996).....	2
<i>Taylor v. Nalley's Fine Foods</i> , 119 Wn.App. 919, 923, 83 P.3d 1018 (Div. 2, 2004).....	3, 6
<i>Cockle v. Dep't of Labor &amp; Indus.</i> , 142 Wn.2d 801, 808, 16 P.3d 583 (2001).....	3
<i>Dep 't of Labor &amp; Indus. v. Granger</i> , 159 Wn.2d 752, 757, 153 P.3d 839 (2007) .....	6

### STATUTES

RCW 51.52.050.....	2, 3, 6, 7, 8
RCW 51.12.010.....	6
RCW 51.48.017.....	8

### BOARD DECISIONS

<i>In re: Alfredo Suarez</i> , BIIA Dec. 15 20822 (2016) .....	4, 7
<i>In re Frank Madrid</i> , BIIA Dec., 86 0224-A (1987).....	5, 7

## **INTRODUCTION**

The Masco Corp., by way of their attorneys, seeks affirmance of the Superior Court's Conclusions of Law. Specifically, interpreting that RCW 51.52.050 allows for the employer to defer payments while awaiting a Board of Industrial Insurance Appeals' action on a timely filed Motion for Stay of Benefits. Applying this correct statutory interpretation, Masco Corp. did not have benefits payable and due until the order denying the Motion for Stay of Benefits was received by the employer. Furthermore, even if the statute was incorrectly interpreted by the Department, there was genuine legal doubt of Masco Corp.'s obligation to pay benefits and therefore any penalty is inappropriate.

## **STATEMENT OF ISSUES**

1) Under Revised Code of Washington (RCW) 51.52.050(2)(b), is the self-insured employer required to pay benefits while a timely filed Motion for Stay of Benefits is pending before the Board?

No.

2) Even if a self-insured employer is obligated by the statute to pay benefits while a timely filed Motion for Stay of Benefits is pending before the Board, did Masco Corporation possess a genuine doubt from a legal standpoint or a medical standpoint as to its obligation to pay such that the delay was reasonable?

Yes.

## STATEMENT OF THE CASE

On December 19, 2014, the Department of Labor and Industries (Department) ordered self-insured employer, Masco Corp., to pay time-loss benefits to claimant, Alfred Suarez, from October 11, 2013, through December 10, 2014, for an industrial injury suffered during his employment, Clerks Papers No. 10, Certified Appeal Board Record (CABR). The employer filed a Notice of Appeal to the Board of Industrial Insurance Appeals on February 2, 2015, and simultaneously filed a Motion for Stay of Benefits.

On February 25, 2015, the Board issued an order denying the employer's Motion for Stay of Benefits. CP, CABR, Exhibit 4, Appendix D. The employer provided the claimant with provisional benefits on March 6, 2015, immediately within one week of receiving the order denying the Motion for Stay of Benefits. The Motion for the Stay of Benefits was not appealed.

The Department received a written request from the claimant's attorney on July 30, 2015, seeking a penalty against the employer for delaying the time-loss benefits. The Department issued a penalty against the employer citing unreasonable delay and this order was affirmed and then appealed to the Board. CP, CABR, at 33-34.

The Board affirmed this decision and Masco appealed to Superior Court. The Superior Court decided that the benefits were not due and payable until Masco received notice of the order denying the Motion for Stay of Benefits. The Superior Court further decided that if the benefits were payable prior to that date, Masco had a genuine legal doubt of its obligation to pay such benefits. Report of Proceedings (RAP) at 1-61.

## ARGUMENT

### **THIS COURT SHOULD FIND THAT UNDER RCW 51.52.050 THE SELF-INSURED EMPLOYER IS ENTITLED TO DEFER PAYMENT UNTIL THE BOARD ACTS UPON A TIMELY FILED MOTION FOR A STAY OF BENEFITS**

This is an issue of statutory interpretation. Statutory construction is a question of law that is reviewed de novo. *Stuckey v. Dep't of Labor & Indus.*, 129 Wash.2d 289, 295, 916 P.2d 399 (1996). The primary goal for the Court is to carry out legislative intent. *Taylor v. Nalley's Fine Foods*, 119 Wn.App. 919, 923, 83 P.3d 1018 (Div. 2, 2004). In this present case, the Superior Court correctly interpreted RCW 51.52.050 under the necessary canons of statutory interpretation.

The language of RCW 51.52.050(2)(b) states: "An order by the Department awarding benefits shall become effective and benefits due on the date issued. Subject to (b)(i) and (ii) of this subsection, if the Department order is appealed, the order shall not be stayed pending a final decision on the merits unless ordered by the Board." The Motion for Stay of Benefits must be filed within 15 days, and the Board is required to expedite this review and issue a final decision within 25 days of the filing of the motion or the order granting appeal. *Id.* The Department asserts that benefits must be paid within 14 calendar days to avoid a penalty delay, regardless of any appeals filed. This is inconsistent with the legislative intent and canons of statutory construction.

If there is more than one reasonable interpretation of a statute, it is considered ambiguous. *Cockle v. Dep't of Labor & Indus.*, 142 Wn.2d 801, 808, 16 P.3d 583 (2001). When statutory language is ambiguous, the Court must turn to the principles of statutory construction,

case law, and legislative history. At this time there is no case law on this specific issue, so we must turn to the other canons of statutory interpretation.

The legislative history is clear that this was designed to provide an expedited review so that claimants weren't waiting through a long litigation in order to receive their benefits. CP at 38. However, in order for this to be truly fair, an expedited stay of benefits can be issued in order to not shift the financial burden immediately to the employer. As it is not fundamentally "fair" for the claimant to not receive benefits pending the full litigation on the merits, the legislative history demonstrates that they are intending to make this an option for the employer to get relief as well. In the testimony before the Senate regarding this Bill, the Legislative Director for the Joint Council of Teamsters No. 28 states, "after an order by the Department to pay benefits, E2SHouse Bill 3139 would require self-insurers to either pay those benefits *or* request the Board for an expedited review to stay benefits pending a final decision in the case." (emphasis added) CP at 41. This language could not make the legislative intent more clear, self-insured employers have the option of paying immediately or requesting an expedited review to stay benefits. In this case, the employer requested the expedited review and immediately upon the resolution of the expedited review paid the benefits.

The appellant would like this statute to omit the language "on the merits" because the crux of their arguments is that these orders shall not be stayed pending a decision of the Board. The claimant must not ignore language because it is inconvenient to them. In addition, they cannot read into the statute that it says "it shall not be stayed pending a decision on the *Motion for the Stay of Benefits*." In this situation the employer quickly paid the benefits as soon as the motion to stay was denied. Had the employer asserted that they did not have to pay until the appeal was completed on the merits, this would have applied.

Appellant relies heavily on the fact that the Board of Industrial Insurance Appeals has designated the *In re: Alfredo Suarez*, BIIA Dec. 15 20822 (2016) decision a “significant decision.” While admitting that this is not binding on the Court, appellant implies this means that it is more correct than other Board decisions when, in fact, it just means that there is clarification needed in this area of law. WAC 263-12-185 states:

Generally, a decision or order is considered "significant" only if it provides a legal analysis or interpretation not found in existing case law or applies settled law to unusual facts. Decisions or orders may be included which demonstrate the application of a settled legal principle to varying fact situations or which reflect the further development of, or continued adherence to, a legal principle previously recognized by the Board.

This does not in any way indicate that the decision is more or less correct than other Board decisions. If anything, significant decisions are more open to further litigation because there is no previous case law. The appeals process means that Board decisions are not infallible. Appellant is essentially determining that the first person to challenge a particular new area of Board interpretation has no recourse because the Board is automatically right. This is counter to the fundamentals of our civil justice system.

In the issue of essential fairness to the employer, if the Department’s interpretation is upheld, there is no recourse for the employer in regard to retroactive benefits because the Department and the appellant assert that the employer must pay benefits within 17 days of the issuance of the Department order. Since the Board, through its expedited review, still has 25 days to decide on a Motion for Stay of benefits, it is completely out of the control of the employer whether it will get hit with a penalty or not. The employer can follow the letter of the

law in the appeals process, which occurred in this case, and the Department is asserting that it is still on the hook for the interim time with no recourse. This cripples the purpose of a Motion for a Stay of Benefits because the employer is still required to pay benefits regardless of the outcome. If the Department's interpretation is deemed correct, it is in conflict with *In re Frank Madrid*, BIIA Dec., 86 0224-A (1987), stating that "we should not penalize an employer for exercising its legal rights conferred by RCW 51.52.050."

Statutes must not be construed in a way that would lead to an unrealistic interpretation. *Dep't of Labor & Indus. v. Granger*, 159 Wn.2d 752, 757, 153 P.3d 839 (2007). The Department and appellant's interpretation is inconsistent with the basic canons of statutory construction. This interpretation was necessarily corrected in Superior Court.

This is not inconsistent with RCW 51.12.010 because the purpose is "reducing to a minimum the suffering and economic loss arising from injuries and/or death occurring in the course of employment." This is exactly why there is an expedited course for the Motion for a Stay of Benefits, to offer a reduced economic loss while something is in the process of appeals.

The employer asks this Court to find that the Superior Court's interpretation of RCW 51.52.050(2)(b) is correct in its interpretation of the statutory language regarding a Motion for Stay of Benefits. The employer further asks this Court to interpret RCW 51.52.050(2)(b) to require the Board to rule on a timely filed Motion for a Stay of Benefits prior to the subject of the motion to stay becoming due.

**THIS COURT SHOULD FIND THAT THERE WAS A GENUINE LEGAL DOUBT AS TO WHETHER MASCO CORP. OWED PAYMENT AND THEREFORE A PENALTY IS INAPPROPRIATE**

Board decisions are not controlling on this Court but they provide guidance for determining when penalty assessments are appropriate. *Taylor v. Nalley's Fine Foods*, 119 Wn. App. 919, 924, 83 P.3d 1018 (2007). It is well established that "unreasonable delay" turns on whether the employer possessed a genuine doubt from a legal or medical standpoint as to who was liable for benefits. *Id.* at 926.

According to RCW 51.52.050(2)(b), the genuine doubt has to exist at the time the order is entered. By the mere fact that we now have a Board decision and a Superior Court decision in direct opposition of each other supports the employer in its assertion that genuine legal doubt existed. The appellant, again, improperly asserts that by nature of the Board creating a significant decision, that it creates a greater than normal presumption of correctness. If anything, as previously discussed, the establishment of a significant decision emphasizes that there was an area of law where there was ambiguity. WAC 263-12-185. The Board is essentially conceding that there was genuine legal doubt in this area prior to its issuance. While the employer disagrees with the Board decision, as discussed in the previous section, there was obviously legal doubt at the time the order was issued. By assessing a penalty on this case, it flies in the face of *Madrid*. The Board states in *Madrid*, "We accept the proposition ... that generally a failure to pay because of a good faith belief that no payment is due will not warrant a penalty." *In Re: Frank Madrid*, BIA Decision 86 0224-A (1987). The Board explained its reasoning as "an appeal period cannot be used as a shield for an employer's reluctance to pay benefits." *In re Alfredo Suarez*, BIIA Dec., 15 20822 (2016). This is inconsistent with the facts of this case. This issue is not based on an appeal period, it is solely based on the Motion of a Stay of Benefits. Had the employer continued to refuse to pay benefits during the appeal period, this reasoning would be sound and consistent with RCW 51.52.050(2)(b). However, the employer promptly

made payment after the Motion for a Stay of Benefits was denied despite still being in the middle of the appeal period. The employer has never asserted that it should not pay benefits during the entire appeal period and the Superior Court correctly acknowledges this and corrects the Board's interpretation of the employer's stance.

Regardless of this Court's interpretation of RCW 51.52.050(2)(b), it is clear that at the time of this order there was legal ambiguity. For this and the reasons expressed above, the employer asks this Court to uphold the Superior Court decision and find that the employer had a genuine legal doubt as to who was liable for benefits while its timely filed Motion for a Stay of Benefits was pending before the Board. Therefore, any delay in payment was not unreasonable for purposes of RCW 51.48.017.

### **CONCLUSION**

Masco Corp. should not be penalized for awaiting the Board's decision on its timely filed Motion for a Stay of Benefits before issuing those benefits to the claimant. The Superior Court's reading of RCW 51.52.050(2)(b) is the only one that construes the statute in such a way as to not render portions of the statute meaningless or superfluous. Even if this Court finds that the Superior Court's interpretation of RCW 51.52.050(2)(b) is legally inaccurate, there is no basis to penalize the employer pursuant to RCW 51.48.017 for unreasonable delay because the employer had a genuine doubt from a legal standpoint as to its obligation to pay pending its motion. For the foregoing reasons, the employer respectfully requests this Court to uphold the Superior Court decision.

## **INTRODUCTION**

The Masco Corp., by way of their attorneys, seeks affirmance of the Superior Court's Conclusions of Law. Specifically, interpreting that RCW 51.52.050 allows for the employer to defer payments while awaiting a Board of Industrial Insurance Appeals' action on a timely filed Motion for Stay of Benefits. Applying this correct statutory interpretation, Masco Corp. did not have benefits payable and due until the order denying the Motion for Stay of Benefits was received by the employer. Furthermore, even if the statute was incorrectly interpreted by the Department, there was genuine legal doubt of Masco Corp.'s obligation to pay benefits and therefore any penalty is inappropriate.

## **STATEMENT OF ISSUES**

1) Under Revised Code of Washington (RCW) 51.52.050(2)(b), is the self-insured employer required to pay benefits while a timely filed Motion for Stay of Benefits is pending before the Board?

No.

2) Even if a self-insured employer is obligated by the statute to pay benefits while a timely filed Motion for Stay of Benefits is pending before the Board, did Masco Corporation possess a genuine doubt from a legal standpoint or a medical standpoint as to its obligation to pay such that the delay was reasonable?

Yes.

## STATEMENT OF THE CASE

On December 19, 2014, the Department of Labor and Industries (Department) ordered self-insured employer, Masco Corp., to pay time-loss benefits to claimant, Alfred Suarez, from October 11, 2013, through December 10, 2014, for an industrial injury suffered during his employment, Clerks Papers No. 10, Certified Appeal Board Record (CABR). The employer filed a Notice of Appeal to the Board of Industrial Insurance Appeals on February 2, 2015, and simultaneously filed a Motion for Stay of Benefits.

On February 25, 2015, the Board issued an order denying the employer's Motion for Stay of Benefits. CP, CABR, Exhibit 4, Appendix D. The employer provided the claimant with provisional benefits on March 6, 2015, immediately within one week of receiving the order denying the Motion for Stay of Benefits. The Motion for the Stay of Benefits was not appealed.

The Department received a written request from the claimant's attorney on July 30, 2015, seeking a penalty against the employer for delaying the time-loss benefits. The Department issued a penalty against the employer citing unreasonable delay and this order was affirmed and then appealed to the Board. CP, CABR, at 33-34.

The Board affirmed this decision and Masco appealed to Superior Court. The Superior Court decided that the benefits were not due and payable until Masco received notice of the order denying the Motion for Stay of Benefits. The Superior Court further decided that if the benefits were payable prior to that date, Masco had a genuine legal doubt of its obligation to pay such benefits. Report of Proceedings (RAP) at 1-61.

## ARGUMENT

### **THIS COURT SHOULD FIND THAT UNDER RCW 51.52.050 THE SELF-INSURED EMPLOYER IS ENTITLED TO DEFER PAYMENT UNTIL THE BOARD ACTS UPON A TIMELY FILED MOTION FOR A STAY OF BENEFITS**

This is an issue of statutory interpretation. Statutory construction is a question of law that is reviewed de novo. *Stuckey v. Dep't of Labor & Indus.*, 129 Wash.2d 289, 295, 916 P.2d 399 (1996). The primary goal for the Court is to carry out legislative intent. *Taylor v. Nalley's Fine Foods*, 119 Wn.App. 919, 923, 83 P.3d 1018 (Div. 2, 2004). In this present case, the Superior Court correctly interpreted RCW 51.52.050 under the necessary canons of statutory interpretation.

The language of RCW 51.52.050(2)(b) states: "An order by the Department awarding benefits shall become effective and benefits due on the date issued. Subject to (b)(i) and (ii) of this subsection, if the Department order is appealed, the order shall not be stayed pending a final decision on the merits unless ordered by the Board." The Motion for Stay of Benefits must be filed within 15 days, and the Board is required to expedite this review and issue a final decision within 25 days of the filing of the motion or the order granting appeal. *Id.* The Department asserts that benefits must be paid within 14 calendar days to avoid a penalty delay, regardless of any appeals filed. This is inconsistent with the legislative intent and canons of statutory construction.

If there is more than one reasonable interpretation of a statute, it is considered ambiguous. *Cockle v. Dep't of Labor & Indus.*, 142 Wn.2d 801, 808, 16 P.3d 583 (2001). When statutory language is ambiguous, the Court must turn to the principles of statutory construction,

case law, and legislative history. At this time there is no case law on this specific issue, so we must turn to the other canons of statutory interpretation.

The legislative history is clear that this was designed to provide an expedited review so that claimants weren't waiting through a long litigation in order to receive their benefits. CP at 38. However, in order for this to be truly fair, an expedited stay of benefits can be issued in order to not shift the financial burden immediately to the employer. As it is not fundamentally "fair" for the claimant to not receive benefits pending the full litigation on the merits, the legislative history demonstrates that they are intending to make this an option for the employer to get relief as well. In the testimony before the Senate regarding this Bill, the Legislative Director for the Joint Council of Teamsters No. 28 states, "after an order by the Department to pay benefits, E2SHouse Bill 3139 would require self-insurers to either pay those benefits *or* request the Board for an expedited review to stay benefits pending a final decision in the case." (emphasis added) CP at 41. This language could not make the legislative intent more clear, self-insured employers have the option of paying immediately or requesting an expedited review to stay benefits. In this case, the employer requested the expedited review and immediately upon the resolution of the expedited review paid the benefits.

The appellant would like this statute to omit the language "on the merits" because the crux of their arguments is that these orders shall not be stayed pending a decision of the Board. The claimant must not ignore language because it is inconvenient to them. In addition, they cannot read into the statute that it says "it shall not be stayed pending a decision on the *Motion for the Stay of Benefits*." In this situation the employer quickly paid the benefits as soon as the motion to stay was denied. Had the employer asserted that they did not have to pay until the appeal was completed on the merits, this would have applied.

Appellant relies heavily on the fact that the Board of Industrial Insurance Appeals has designated the *In re: Alfredo Suarez*, BIIA Dec. 15 20822 (2016) decision a “significant decision.” While admitting that this is not binding on the Court, appellant implies this means that it is more correct than other Board decisions when, in fact, it just means that there is clarification needed in this area of law. WAC 263-12-185 states:

Generally, a decision or order is considered "significant" only if it provides a legal analysis or interpretation not found in existing case law or applies settled law to unusual facts. Decisions or orders may be included which demonstrate the application of a settled legal principle to varying fact situations or which reflect the further development of, or continued adherence to, a legal principle previously recognized by the Board.

This does not in any way indicate that the decision is more or less correct than other Board decisions. If anything, significant decisions are more open to further litigation because there is no previous case law. The appeals process means that Board decisions are not infallible. Appellant is essentially determining that the first person to challenge a particular new area of Board interpretation has no recourse because the Board is automatically right. This is counter to the fundamentals of our civil justice system.

In the issue of essential fairness to the employer, if the Department’s interpretation is upheld, there is no recourse for the employer in regard to retroactive benefits because the Department and the appellant assert that the employer must pay benefits within 17 days of the issuance of the Department order. Since the Board, through its expedited review, still has 25 days to decide on a Motion for Stay of benefits, it is completely out of the control of the employer whether it will get hit with a penalty or not. The employer can follow the letter of the

law in the appeals process, which occurred in this case, and the Department is asserting that it is still on the hook for the interim time with no recourse. This cripples the purpose of a Motion for a Stay of Benefits because the employer is still required to pay benefits regardless of the outcome. If the Department's interpretation is deemed correct, it is in conflict with *In re Frank Madrid*, BIIA Dec., 86 0224-A (1987), stating that "we should not penalize an employer for exercising its legal rights conferred by RCW 51.52.050."

Statutes must not be construed in a way that would lead to an unrealistic interpretation. *Dep't of Labor & Indus. v. Granger*, 159 Wn.2d 752, 757, 153 P.3d 839 (2007). The Department and appellant's interpretation is inconsistent with the basic canons of statutory construction. This interpretation was necessarily corrected in Superior Court.

This is not inconsistent with RCW 51.12.010 because the purpose is "reducing to a minimum the suffering and economic loss arising from injuries and/or death occurring in the course of employment." This is exactly why there is an expedited course for the Motion for a Stay of Benefits, to offer a reduced economic loss while something is in the process of appeals.

The employer asks this Court to find that the Superior Court's interpretation of RCW 51.52.050(2)(b) is correct in its interpretation of the statutory language regarding a Motion for Stay of Benefits. The employer further asks this Court to interpret RCW 51.52.050(2)(b) to require the Board to rule on a timely filed Motion for a Stay of Benefits prior to the subject of the motion to stay becoming due.

**THIS COURT SHOULD FIND THAT THERE WAS A GENUINE LEGAL DOUBT AS TO WHETHER MASCO CORP. OWED PAYMENT AND THEREFORE A PENALTY IS INAPPROPRIATE**

Board decisions are not controlling on this Court but they provide guidance for determining when penalty assessments are appropriate. *Taylor v. Nalley's Fine Foods*, 119 Wn. App. 919, 924, 83 P.3d 1018 (2007). It is well established that "unreasonable delay" turns on whether the employer possessed a genuine doubt from a legal or medical standpoint as to who was liable for benefits. *Id.* at 926.

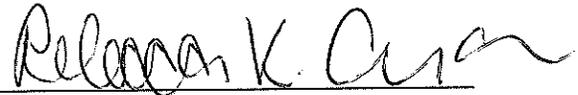
According to RCW 51.52.050(2)(b), the genuine doubt has to exist at the time the order is entered. By the mere fact that we now have a Board decision and a Superior Court decision in direct opposition of each other supports the employer in its assertion that genuine legal doubt existed. The appellant, again, improperly asserts that by nature of the Board creating a significant decision, that it creates a greater than normal presumption of correctness. If anything, as previously discussed, the establishment of a significant decision emphasizes that there was an area of law where there was ambiguity. WAC 263-12-185. The Board is essentially conceding that there was genuine legal doubt in this area prior to its issuance. While the employer disagrees with the Board decision, as discussed in the previous section, there was obviously legal doubt at the time the order was issued. By assessing a penalty on this case, it flies in the face of *Madrid*. The Board states in *Madrid*, "We accept the proposition ... that generally a failure to pay because of a good faith belief that no payment is due will not warrant a penalty." *In Re: Frank Madrid*, BIA Decision 86 0224-A (1987). The Board explained its reasoning as "an appeal period cannot be used as a shield for an employer's reluctance to pay benefits." *In re Alfredo Suarez*, BIIA Dec., 15 20822 (2016). This is inconsistent with the facts of this case. This issue is not based on an appeal period, it is solely based on the Motion of a Stay of Benefits. Had the employer continued to refuse to pay benefits during the appeal period, this reasoning would be sound and consistent with RCW 51.52.050(2)(b). However, the employer promptly

made payment after the Motion for a Stay of Benefits was denied despite still being in the middle of the appeal period. The employer has never asserted that it should not pay benefits during the entire appeal period and the Superior Court correctly acknowledges this and corrects the Board's interpretation of the employer's stance.

Regardless of this Court's interpretation of RCW 51.52.050(2)(b), it is clear that at the time of this order there was legal ambiguity. For this and the reasons expressed above, the employer asks this Court to uphold the Superior Court decision and find that the employer had a genuine legal doubt as to who was liable for benefits while its timely filed Motion for a Stay of Benefits was pending before the Board. Therefore, any delay in payment was not unreasonable for purposes of RCW 51.48.017.

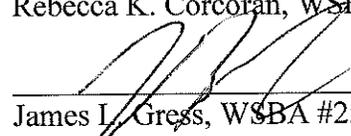
### **CONCLUSION**

Masco Corp. should not be penalized for awaiting the Board's decision on its timely filed Motion for a Stay of Benefits before issuing those benefits to the claimant. The Superior Court's reading of RCW 51.52.050(2)(b) is the only one that construes the statute in such a way as to not render portions of the statute meaningless or superfluous. Even if this Court finds that the Superior Court's interpretation of RCW 51.52.050(2)(b) is legally inaccurate, there is no basis to penalize the employer pursuant to RCW 51.48.017 for unreasonable delay because the employer had a genuine doubt from a legal standpoint as to its obligation to pay pending its motion. For the foregoing reasons, the employer respectfully requests this Court to uphold the Superior Court decision.



---

Rebecca K. Corcoran, WSBA #51995

---

James L. Gress, WSBA #25731

Gress, Clark, Young & Schoepper  
8705 SW Nimbus Avenue, Suite #240  
Beaverton, OR 97008

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**COURT OF APPEALS FOR DIVISION  
II  
STATE OF WASHINGTON**

ALFREDO SUAREZ,	)	No. 51143-6-II
	)	
Appellant,	)	
	)	Clark County
v.	)	
	)	
MASCO CORPORATION,	)	PROOF OF MAILING
	)	BRIEF OF RESPONDENT
	)	
Respondent.	)	
	)	
	)	

The undersigned states that on the 29th day of March 2018 I deposited in the United States mail, with proper postage prepaid, Brief of Respondent as attached, addressed as follows:

Steven L. Busick  
Busick Hamrick, PLLC  
PO Box 1385  
Vancouver, WA 98666

Clark County Superior Court  
1200 Franklin St  
Vancouver, WA 98660-5000



**GRESS, CLARK, YOUNG & SCHOEPPER**

**April 02, 2018 - 10:52 AM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 51143-6  
**Appellate Court Case Title:** Masco Corporation, Respondent v. Alfredo Suarez, Appellant  
**Superior Court Case Number:** 16-2-02585-8

**The following documents have been uploaded:**

- 511436\_Briefs\_20180402105003D2310782\_0982.pdf  
This File Contains:  
Briefs - Respondents  
*The Original File Name was 20180402102322860.pdf*

**A copy of the uploaded files will be sent to:**

- jim@gressandclarklaw.com
- paulw1@atg.wa.gov
- sbusick@busicklaw.com

**Comments:**

Refiling as the brief did not have signatures

---

Sender Name: Jennifer DeOgny - Email: jennifer@gressandclarklaw.com

**Filing on Behalf of:** Rebecca K Corcoran - Email: becky@gressandclarklaw.com (Alternate Email: )

Address:  
8705 SW Nimbus Avenue, Suite 240  
Beaverton, OR, 97008  
Phone: (971) 285-3525

**Note: The Filing Id is 20180402105003D2310782**