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DIVISION II

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STATE OF WASHINGTON

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No. 54390-7-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

MICHAEL J. COLLINS

Appellant Pro se,

v.

OLYMPIC INTERIORS INC.,

Respondent.

REPLY BRIEF OF APPELLANT

RAP 10.2(d), 10.3(c)

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I. REPLY INTRODUCTION

I Appellant Michael J. Collins Pro se, herein Reply to an Olympic Interiors Inc. counsel, perfunctory Respondent Brief, to mean, simply a banal copy of its dishonest Trial Court argument, as an incomplete Respondent argument, as specific to my actionable Tort Of Outrage, to include pain and suffering, and actionable Intentional Infliction Of Emotional Distress, and as actionable Defamation *per se*, by Olympic Interiors Inc., as Olympic Interiors Inc. duty, then Olympic Interiors Inc. breach of that duty, as Olympic Interiors Inc. foreseeability, as proximate cause, and through its Intentional **Spoliation**,,, as Olympic Interiors Inc. acts, and omissions, actionable 'but for' cause in fact, unbroken by any superseding cause, solidifying legal causation, and legal damages, specific to Legislative Intent, in RCW 51.24.020, for which my specific 'Intentional Injury' case, was directly intended.

This specific Reply will highlight further, that it is Olympic counsels' inaccurate, and dishonest argument, proving that ('authority', Olympic Interiors Inc.) breach of its duty owed, as provable Tortious omission, is the origin of its **not** defensible Defamation *per se*, after it Olympic Interiors Inc., committed Intentional Infliction Of Emotional Distress, and Tort Of Outrage, to cover-up my January 30, 2017 INJURIES, by Intentionally submitting false information to 'authority' L&I.

II. REPLY ARGUMENT SPECIFIC TO RESPONDENT INTRODUCTION, AND STATEMENT OF THE ISSUES AND CASE FALSITY.

There is no undisputed evidence, to which Olympic counsel Wells, Willert refers, that shows the Department conducted an independent investigation specific to my complaint, that would have, as I requested, then in July, 2017, must include a Deposition of me, and of Olympic Interiors Inc., persons, to be utilized in an 'ACT' legal process.

Never happened, as was never conducted/completed as specific. This is intentionally untrue by Olympic counsel. See "and determined that the *medical* evidence did not support Collins' claim – a decision that was affirmed by the Board of Industrial Appeals".

First, even if this were true, which it is **not** as specific, the Board of Industrial Appeals does **not** have jurisdiction per my RCW 51.24.020 Intentional Injury complaint. See the statutory construction of RCW 51.24.020, that Olympic counsel somehow,,, misreads.

Now, see the intentional dishonesty by Olympic counsel, as because Olympic filed the June 22, 2017 **MEMO**, and subsequent letters to the Department, and Board testimony transcript pages, available at an RAP 11.4(i) Oral argument process in this court I certainly request, and as I have clearly, and incontrovertibly proven, that **no** Statute, or any Legislative Intent per the 'ACT' or any Settled Law per the 'ACT' supports the Department SEGREGATION of my NECK INJURY,

and as Olympic counsel Wells, and Willert, by way of my signature approval in this case, have researched my NECK medical history prior to my January 30, 2017 NECK INJURY working for Olympic Interiors Inc., and found **no** known, diagnosed, or treated neck condition of any type, or from any cause, prior to January 30, 2017, and as any body part SEGREGATION per the 'ACT' must have a same body part medical history, as a known, diagnosed, and treated condition, prior to filing a claim per the 'ACT', for the Department to be legally able to SEGREGATE,,, as SEGREGATION is a legal,,, **not** a medical concept per the 'ACT', as a legal fact,,, as a mater of law,,, and,,, as Dr. Joan Sullivan testimony revealed,,, she was never asked to consider an INJURY to my NECK, as were her IME INSTRUCTIONS, for her August 21, 2017 IME, CP at 157 (at 5-6), then Wells/Willert are ,,,with INTENT,,, lying to this court.

Second, Defamation *per se* from Olympics' June 22, 2017 **MEMO**, along with Olympics' **Spoliation** of material evidence, that documented my January 30, 2017 INJURIES, does **not** shift burden to me Plaintiff, but burden of proof remains with Olympic Interiors Inc., and allows an 'adverse inference' for the jury against Olympic for failure to produce. See my Appeal Brief Defamation *per se*, and **Spoliation** discussion.

Third, because Olympic failed to document any somehow,,, neck condition January 27, 2017, when I sat in Olympics' office, 3 feet

across the table from Doug Bagnell who signed that June 22, 2017 **MEMO**,, as I was filling out my pre-employment paperwork, if,, I had any such "obvious" (Bagnell) neck conditions,, then Olympics' Bagnell failure to document real-time on January 27, 2017, any such if,, existed neck conditions,, which did **not** exist January 27, 2017, Olympic corporate duty, and, even per the 'American with Disabilities Act',,, as competent guidance,, for my specific argument, as to what a potential employer can ask during the pre-employment interview, specific to type-of-work tasks, as sheetrock [hanging], is a well known 'very heavy' duty work,, as Department of L&I officially classified,, as if any condition is ,, 'obvious',,, or ,, 'revealed',,, then Olympics' Bagnell duty to ask, and to document, is breached January 27, 2017, then the June 22, 2017 **MEMO**, directly upon which the Department relied to SEGREGATE, and then to REJECT my NECK INJURY claim, is Olympic Interiors Inc., Defamation *per se*, because Olympic never protected itself by documenting any neck condition, January 27, 2017.

Fourth, I will also be able to show an RAP 11.4(i) Demonstrative Exhibit at Oral argument, Bagnell Board testimony as ER 804(b)(1), where he Bagnell, as desperate, in an attempt to somehow 'walk back' his January 27, 2017 **not** supported June 22, 2017 **MEMO**, as, "I didn't notice you had a problem the neck" sic., as transcribed... But see the June 22, 2017 Bagnell signed **MEMO**,, as,, "I do

specifically recall Michael having some obvious mobility restrictions with his neck". Bagnell has no ER 613(a), or ER 806 credibility.

This is the same Olympics' Doug Bagnell, who CP at 119, admits to me bringing to his attention, a "coding error" ,,, CP at 152, as my true description is Olympics' January 30, 2017 signed Time-Sheet, and February 10, 2017 pay stub INTENTIONAL FALSIFICATION,,, EX at 19, EX at 20, EX at 150, EX at 151 as same,,, then Bagnell CP at 153, testifies that somehow,,, "It's not a requirement" ,,, to mean, to sign a timecard. But see signature line as proper,,, as is industry standard,,, as required for an employee,,, on CP at 150,,, and as Bagnell CP at 153, CP at 154, admits the 'exact capacity' for which I Michael J. Collins was hired,,, is **not** 32 total hours worked documented, as then Olympic fraudulent,,, on CP at 150,,, as a much lighter work documented on CP at 150, is **not** the type-of-work,,, that I Michael J. Collins performed, or that injured me,,, then same Doug Bagnell who CP at 120-122, maintains his fraud specific to Exhibit C,,, same as CP at 150, as somehow as "true and correct".

Bagnell, and its legal counsel, Wells, and Willert, with INTENT, are, and have, deceived the Superior Court, and this Court Of Appeals.

Then Wells, and Willert violated CR 56(g), then the dismissal of my RCW 51.24.020 case was a Superior Court Prejudicial Error, and must be reversed, and a jury must hear my RCW 51.24.020 case.

Also specific to the dynamic that is Olympics' legal problem in their defense, as because they did not document any such somehow neck condition January 27, 2017, because I possessed no such neck condition to document January 27, 2017, then solidifies Defamation *per se* in its June 22, 2017 **MEMO**, is supported by *Ortiz v Chipotli Mexican Grill*, (Cal. Super. 2018),,, (unpublished), see in my my Appeal Brief Appendix, and Brief pages 54,55,56.

Olympic counsel is remiss, as I euphemistically state, as, its dishonest, as desperate interpretation for the jury decision in *Ortiz*' favor, see Respondent Brief pg.19, is not materially dispositive on whether *Ortiz* was terminated or not, but as specific, the jury did not believe *Chipotle* ever had any such video proving *Ortiz* stole money from the company safe, that *Chipotle* claim to possess such a video.

And that *Chipotle* had a 'corporate duty',,, to maintain such a video,,, if it ever existed,,, which it did not... Olympic had the same 'corporate duty', to document any such, if,,, any such neck condition existed,,, which did **not** exist January 27, 2017,,, then the violation of such Olympic 'pre-employment hiring duty', solidifies its only after-the-fact of my timely filed INJURIES claim, June 20, 2017,,, did Olympic now position, that I Michael J. Collins had an 'obvious' neck condition January 27, 2017. Then the SEGREGATION of my NECK INJURY,,, requires the testimony of Department Claim manager Mark Fowble,

as the Department 'claim adjudicator', who is **not** protected by any such general application of the 'mental process privilege'. Also see as even from the Board Of Appeals in *In re: Pablo Garcia, Dckt. No. 05 15239* (March 28, 2006),,, found that a claim adjudicator must testify to the 'grounds', and 'reason' for its Order, to include 'when' the decision was made, as (unpublished), but powerful persuasive argument, as (Department claim manager Mark Fowble made his decision to Reject by way of his illegal SEGREGATION, my ,,INJURIES,,, claim, based directly on Olympics' June 22, 2017 **MEMO**),,, then 'when',,, becomes ever so materially relevant to the June 22, 2017 **MEMO** content, from 'authority' Olympic Interiors Inc., to convince 'authority' Department Of L&I, to refuse to allow my claim, then solidifies Defamation *per se*.

See CR 56(e). Because Olympic counsel, and Olympics' Bagnell, with INTENT, violated CR 56(g), I, as the opposing party to a Summary Judgment Motion by the Defendant, can supplement my Opposition with 'further affidavits'. If the Trial Court did not allow my further Opposition, then that is a Trial Court Error, that does not punish me on Appeal.

And because Olympic counsel, and Olympics' Bagnell, violated CR 56(g), and by way of **not** producing what Olympic did possess, but refuse to produce, thru 5 Discovery Requests by me, specific to the January 30, 2017 INJURIES DETAILED real-time documented, and signed by me and by my supervisor February 2, 2017, Time-Sheet,,,

CR 56(e),(f) support my filing further Opposition affidavits, as filed.

Then Trial Court striking of any further pleadings specific to my CR 56(e),(f) protection,,, is a Trial Court Error. Then RAP 9.12 does **not** work against me now on Appeal as, my ,,issues,,, were clearly stated in my timely filed pleadings to the Trial Court, well before Summary Judgment, as in my January 3, 2019 COMMENCEMENT OF ACTION filed, with attached Exhibits as evidence.

Then my CR 56(e),(f) protection, does **not** render any of my further Opposition to Summary Judgment, untimely, or improper, as, CR 56(f),,, "may order a continuance" ,,, "or make such other order as is just"... Then CR 56(g), as this Appeals Court remand to Trial Court, warrants both Wells, and Bagnell, "be adjudged guilty of contempt" ,,, to include, (see my October 21, 2019 PLAINTIFFS: DECLARATION OF CR 26(i) DISCOVERY GOOD FAITH 'MEET AND CONFER') ,,, as CP at 58-60 pictures,,, as Olympic counsel fraudulently designated Exhibits 1-3, as would have been approved by Bagnell, prior to the August 13, 2019 Deposition of me Michael J. Collins, and as was Olympic counsel intended,,, to be offered to Superior Court as CR 60 (b)(4) fraud, as they do **not** depict the size, and weight of Sheetrock material that Olympic as in violation of WDLI safety recommendations, forced me to 'hang' by myself, EX. at 61-66. See CP at 56-57, as my detail describing safety violations, and my January 30, 2017 INJURIES.

See my October 28, 2019 MOTION TO COMPEL CP at 70–76.

Then see despicable Olympic counsel position, Response Brief pgs.1-2. If the Trial Court ignored my CR 56(e),(f) protection, as Olympic counsel, and Olympics' Bagnell violation of CR 56(g), that is a Trial Court Prejudicial Error.

Remember, it is not the Olympic safety violations, but the Olympic cover-up of those safety violations, by covering-up my January 30, 2017 type-of-work I performed,, (as Olympics' fraudulent type-of-work I performed, was submitted as falsified, to the Department, March 31, 2017), CP at 116-117 CP at 123, for the Olympic sole INTENT, to, by way of its falsified information submitted to the Department, avoid an 'adverse effect' on its 'experience rating' ,,, that caused my INJURIES, that my RCW 51.24.020 INTENTIONAL INJURY case is directly based as proper, and as actionable.

So as RAP 9.12 does **not** preclude my Appeal issues, there is a more profoundly despicable position Olympic counsel takes herein.

See my clearly defeating the anti-SLAPP Statutes argument by Olympic counsel in its Motion For Summary Judgment pleadings, in my Appeal Brief to this Court Of Appeals, and after my Opposition to Summary Judgment argument in Trial Court. See even after I clearly defeat, as an absurd Olympic position, any such anti-SLAPP protection by Olympic counsel, Olympic still argues anti-SLAPP protection.

So as convenient, Olympic is attempting to have this Appeals Court decide that somehow,, my defeating their absurd position, that somehow,, the anti-SLAPP Statutes are even remotely relevant to protect Olympic, cannot be reviewed, because somehow, my defeating the anti-SLAPP protection position by Olympic counsel, was somehow stricken by the Trial Court. Which is not true. See Trial Court decision as Response pg.7 as, "I am dismissing the claims in whole that Mr. Collins had made",,, that must include my defeating Olympics' position, specific to somehow being protected by anti-SLAPP.

See Olympic counsel reference to RAP 2.1. Nowhere in RAP 2.1 does that rule preclude my Appeal issues as somehow not reviewable.

And if the Trial Court did not address my Motion For Reconsideration argument to include an anti-SLAPP argument, after December 6, 2019, dismissal, as I timely filed and as a Motion Hearing set, CP at 166-177, and CP at 185-193, I do not get punished for that now.

To support Olympic counsel, and Olympics' Bagnell CR 56(g) violation, see CP at 164, as any attorney fees Wells was requesting, was denied,, then this Appeals Court must find that because the Trial Judge based his decision to deny attorney fees to Olympic, it was as based on both Olympic counsels' Discovery violations, and as anti-SLAPP absurdity.

Then if Trial Court as it did not, specify Olympics' obvious CR 56(g) violations, then it was in error to grant Summary Judgment.

The Trial Court cannot have it both ways. It was in error to not specifically decide anti-SLAPP, and CR 56(g) violations, as a reason to deny Olympic attorney fees, and in error to not specifically discuss why somehow RCW 51.24.020 INTENTIONAL INJURY, as nowhere in the transcripts is it Trial Court specified, as to why my case is somehow not actionable, with my COMMENCEMENT OF ACTION Exhibits proving Olympic falsification of documents, for an Olympic cover-up of my January 30, 2017 INJURIES, and by way of Olympic **Spoliation**, and Olympic Defamation *per se*, with no January 27, 2017 support. Then all my ASSIGNMENTS OF ERROR are correct as reviewable.

Again, CR 56(g) violation by Wells, and Bagnell, render any, and all of my Opposition Pleadings, as CR 56(f) timely, and proper, then a Trial Court CR 56(f) as denied me, was Prejudicial Error.

And in my November 8, 2019 Opposition CP at 79-91, as in the Trial Court Order granted, CP at 163, I discuss the absurdity of SLAPP as RCW 4.24.500-525. Then SLAPP should have been Trial Court decided but was not. Then Trial Court Error.

Wells, in his Response, by denying and avoiding my Olympic CR 56(g) violations argument in my Appeal, then bases his specific my ASSIGNMENT OF ERRORS, as somehow not reviewable, on his denial, of why the Trial Court denied him attorney fees. Then this Appeals Court can decide as based both on anti-SLAPP as absurd,

as does **not** protect Olympic, and as Olympic CR 56(g) violations as also reason to deny Olympic attorney fees. Then Summary Judgment as granted is erroneous, and as a Trial Court Prejudicial Error.

See Response pg.9. Trial Court, (see Response pg.7 only states), "dismissing the claims in whole that Mr. Collins has made",,, it does not RAP 9.12 designate specific documents and why my documents are somehow not admissible, or not *prima facie* supporting my position.

Then it is absurd for Olympics' Response to cite RAP 9.12, as somehow precluding my ISSUES ON APPEAL, and as if the Trial Court did somehow specifically designate,,, specific documents I have filed.

So Response 'review as limited', is based on a non-existent premise, fabricated in its Response by Olympic counsel.

See Response pg.11. See 'back door through the appendix' argument.

Then see as intelligent,,, RAP 11.4(i)... Even as 'demonstrative', or as 'illustrative', will strongly support my Oral argument, to remand to Trial Court for further Discovery, and to prepare for a jury Trial.

See Response pg.11. There is **no** absence of any 'genuine issues of material fact'. See Response is replete only,,, with boilerplate citations. See Response pg.12, "or as otherwise provided in this rule"... See ft.nt. 26. I Appellant, do not need to be *pro se* insulted by despicable attorneys, Wells, and Willert, who along with Bagnell, need to be brought up on CR 56(g) contempt charges, as I have stated herein.

See Response pg.13. See my claim for Intentional Infliction of Emotional Distress in my Appeal Brief. I have clearly shown and proven with actual in-context,,, precedent,,, that for Olympic Interiors Inc., to provably falsify documents, to cover-up my January 30, 2017 INJURIES, while I suffer in pain, needing treatment, is clearly within the bounds of Washington Pattern Jury Instructions outrageous conduct.

'It is the manner in which' Olympic disposed of my January 30, 2017 INJURIES DETAILED Time-Sheet, that will constitute outrage, and is **not** RCW 51.24.020 precluded by boilerplate out-of-context case law. See Response pg.14, as a continuation of boilerplate case law. See Response pg.15. See "Olympic for exercising its right to dispute a worker's compensation claim that he filed months after leaving Olympics' employment"... First, I have 1 year to file a statutory INJURY claim, per the Industrial Insurance Act. And, as you refer to my June 20, 2017 email EX at 16-17 to Olympics' Doug Bagnell, who signed the June 22, 2017 **MEMO**,,, EX at 18, that I have shown is clear Defamation *per se*, see EX at 16 as, "And,,, if you remember, I inquired to Olympic Interiors,,, ,,, as to why Olympic did not properly document my hours,,, as to the exact type of work I performed at Green River College"... That was February 10, 2017, only 8 days from February 2, 2017, when my signed INJURIES DETAILED Time-Sheet, was somehow lost by Olympic, even though that Time-Sheet information would have been directly what my

February 10, 2017 paycheck was based, as to specific type of work, and total hours information, that Bagnell has perjured himself specific to his DECLARATION, CP at 120-123. My CP at 119 "coding error" complaint, was in-person, February 10, 2017. See my June 20, 2017 email EX at 16.

But Wells, and Willert pg.15 want this court to think that somehow my RCW 51.24.020 INTENTIONAL INJURY case, proving Olympic Interiors Inc., falsified material documents, for the sole Olympic INTENT, to cover-up my January 30, 2017 INJURIES, would somehow,, "chill an employer's right to dispute bogus claims"... Then see further reference to Anti-SLAPP.

An employer has every right to dispute an injury claim per the 'ACT'. That is an absurd reason for the Trial Court to dismiss my RCW 51.24.020 INTENTIONAL INJURY case, and must be reversed on Appeal.

Refer back to Response pg.15. Again, since **no** statute, **no** settled law, and **no** prior to my January 30, 2017 INJURIES, neck medical history as **no** known, **no** diagnosed, and **no** treated neck condition, supports the Department SEGREGATION, and Rejection of my NECK INJURY, and since the Department did not allow a NECK ,,INJURY,,, medical exam,,, after the Olympic June 22, 2017 **MEMO**,,, at issue,,, the only possible information the Department could have used to base its decision to Reject my NECK INJURY claim, is what was submitted to them by Olympic Interiors Inc. Remember, Defamation *per se*, only requires a much lessor standard of proof, for damages. See Response pg.16.

Mark Fowble needed testimony will reveal that no medical exam ever decided that no NECK INJURY took place. The Trial Court was in error, as to 'whether reasonable minds could differ' criteria as in my favor, but to then not allow Mark Fowble to be subpoenaed for Trial Testimony.

Causation has clearly been established by my documents offered, in my COMMENCEMENT OF ACTION, and subsequent documents.

See Response pg.17 Wells cites *Polk v INROADS* as in my Appeal Brief, and in my COMMENCEMENT OF ACTION as clearly supporting my RCW 51.24.020 case.

What Olympic counsel as remiss, is missing, is, and as the Trial Court as in error, if a claim can only be based on whether an employer has the right to dispute a claim of injury which an employer does, then why did our Legislature enact RCW 51.24.020? Answer: For a case just like what Olympic Interiors Inc., has done to me. An 'authority' employer, cannot possess unfair advantage on an employee, to commit fraud with impunity.

I only need to prevail on 'altering documents', and 'misrepresentation' pgs.17-18 Response, specific to *Polk v INROADS*, for all my 3 counts against Olympic, as my case even stronger than *Polk*, as, Olympic after its Intentional **Spoliation**, recognized by Washington State Courts, and then my INJURIES cover-up as Outrage, then its Defamation *per se*, as provable now has committed CR 56(g) Discovery 'bad faith' contempt, then CR 56(f) must allow my case to continue,,, to 'prepare for Trial'...

See Response pg.18. I did "submit admissible evidence raising a genuine issue of material fact",,, in my COMMENCEMENT OF ACTION.

See Response nonsense as,,, "Collins aims to hold Olympic liable for disputing his claim"... Again, this is absurd even for a defense attorney. Nowhere in my argument, do I Michael J. Collins, argue an employer's right to dispute an injury claim. This was an absurd decision by Trial Court, RP at 21, and must be reversed, as the law to which Trial Court refers, ignores RCW 51.24.020 INTENTIONAL INJURY.

Olympic counsel thinks it is clever using *Polk* as somehow not supporting my RCW 51.24.020 case,,, because Olympic counsel knows specific *Polk* criteria,,, does support my RCW 51.24.020 case.

That is why Olympic counsel spent so much time on *Polk* argument, but to no avail. It is the initial altering of company documents by Olympic, to cover-up, as Outrage, then its Defamation *per se*, supports my case.

Continue pg.18 Response. "Permitting liability in this context would create a watershed of litigation against employers who exercise their right to dispute an employee's worker's compensation claim"...

My case would do no such thing. Very poetic,,, but based only on a generic defense nonsense legal argument, but **not** my case specific substance **dispositive in Olympics' favor**. So Olympic has not defeated my citation to *Polk v INROADS*.

See Response pg.19, "Olympic simply disputed his claim because he

did not contemporaneously report an alleged injury”.

If that were true, then why did Olympic provably **spoliate**, and conceal from me, my February 2, 2017 Time-Sheet? Then why did Olympic provably falsify information submitted to Department Of L&I, as provable by Doug Bagnells’ own Board testimony,,, September 25, 2018, as to specific exact type-of-work I was hired only,,, to perform? Why was this **not** corrected by March 31, 2017? Or by June 20, 2017? Why did Olympic counsel **not** produce my January 30, 2017 INJURIES DETAILED Time-Sheet,,, in my 5 Discovery requests?

This Olympic ‘innocent act’ must be directly refused on Appeal. I have established Olympic causation for RCW 51.24.020 damages. See Response pg.20. See specific to further absurd defense argument as to Defamation. See Olympic counsel refuses to state,,, Defamation *per se*,,, because Defamation *per se*, has a whole other dynamic as included, and that is my legal argument specific to, whether there was,,, as there was,,, an Olympic duty January 27, 2017,,, to document any such neck condition,,, to support any such future **MEMO**,,, if,,, I Michael J. Collins possessed any such neck condition January 27, 2017. Olympics’ failure to document any such neck condition that did **not** exist January 27, 2017, is game-changing, and dispositive in my favor, as to define Defamation *per se*, carries a much lower standard of proof, and to receive damages, for Defamation *per se* alone. See my Appeal Brief.

Continue Response pg.20. "Collins puts forth no legal authority"...

So apparently I am suppose to cite erroneous, boilerplate case law,,
as out-of-context,,, that Wells, and Willert have done erroneously.

I cited powerful Defamation *per se* ,,,authority,,, in my Appeal Brief.

Again, Olympic counsel is stuck on an employers right to dispute an injury claim, because the Trial Court as incorrect must be reversed by basing its decision on the same absurd injury claim dispute premise. Wells incorrect RP at 7, and Response pg.21, reference to Dr. Sullivan. "the IME performed by Dr. Sullivan" ,,, as I have proven, but apparently Wells, and Willert need further stimuli to comprehend,,, CP at 157,,, "I was never asked if he had an injury" ,,, because the Department protected (same shared interest Olympic), by only basing my neck on a SEGREGATION of some prior never medically known condition, as Dr. Sullivans' IME was based on the June 22, 2017 **MEMO** information provided the Department by Olympic. Remember Wells, and Willert had signed authority by me Michael J. Collins, to research my neck medical history, then they know they are dishonest in their Response.

See Response pg.21. See my Appeal Brief substantive discussion,,, completely destroying Olympics' hope specific to anti-SLAPP protection, as pure desperation now, and again, the Trial Court never decided this in Olympics' favor. See Response, that Defamation is somehow precluded by RCW 4.24.500-525 anti-SLAPP protection. See no Olympic counsel

Defamation *per se*, as conveniently ignoring the *per se* facts supporting my position. See how Wells, Willert, are stuck on only RCW 4.24.510.

See my Appeal Brief substantive argument as to why Olympic must justify all statutes RCW 4.24.500-525, and Olympic counsel Wells, and Willert provide no proper, or prevailing argument specific to, where my RCW 51.24.020 case originated, a private concern, or a public concern?

Answer for Wells, and Willert. A 'private concern'. Then anti-SLAPP cannot possibly support Olympic unless they can argue a 1st Amendment or Wn. St. Art.1 sec. 5 violation, **not** possible, unless my RCW 51.24.020 INTENTIONAL INJURY case, was an original public concern filed case.

See Response pgs.21-22. See continued erroneously cited cases.

See my destroying especially *Bailey v State*, in my Appeal Brief.

So make clear, Olympic counsel is basing my somehow not being able to prevail specific to Defamation *per se*,, based on erroneous,, **not** my case specific applicable,, anti-SLAPP statutes.

Again, see my RCW 4.24.500-525 destruction of Olympics' absurd reliance on any of those statutes, in my Appeal Brief. See my tables specific to my RCW 4.24.510 Appeal Brief argument, as Olympic relies on *Davis v Cox*, as **not** even relevant. See I do **not** cite *Davis v Cox*, in my Appeal Brief, because its application is erroneous by Olympic, as Olympic attempts to justify its application of anti-SLAPP protection. See Response pg.23. Olympic must answer for why the Trial Court

denied attorney fees. Because it did **not** decide specific to anti-SLAPP,,, as somehow protecting Olympic. I prevail either way, either the Trial Court denied Olympic attorney fees based on its CR 56(g) violations, and/or based on **no** anti-SLAPP protection, as the Trial Court simply ignored RCW 51.24.020 INTENTIONAL INJURY, and based its decision on an 'employers right to dispute an injury claim', RP at 21, without any regard for the INTENTIONAL INJURY I have proven, to bring to a jury.

See Response pg.23. ,,, "Trial Court could have"... Then even the Trial Court who knew Olympic based its entire defense on anti-SLAPP,,, did **not** decide,,, based on anti-SLAPP protection for Olympic.

So this Appeals Court must render anti-SLAPP as erroneous,,, then anti-SLAPP as erroneous, does **not** preclude my Defamation *per se* case.

See Olympics' Wells and Willert, Response pgs.23-25, never argue to prevail specific to CR 56(g). Because Olympics' CR 56(g) violation, as now decided by this Appeals Court, as a violation, and the fact that anti-SLAPP is erroneous, destroys Olympics' defense, as Olympic also never argues to prevail specific to my **Spoliation** argument as prevailing, that along with Defamation *per se*, as both INTENTIONAL Spoliation, and (Defamation *per se*, as presumed,,, as no Olympic January 27, 2017 'obvious' neck condition CP at 18 MEMO,,, prior documentary support, as Olympics' 'obvious' disability requirement to ask), does **not** shift burden of proof to me Plaintiff, and both are recognized by Washington Courts.

III. MY REPLY ARGUMENT SUPPORTS MY APPEAL BRIEF

Trial Court simply granted Summary Judgment based on,,, 'an employer has the right to dispute claims of injuries',,, to pass on to the Appellate process, to decide RCW 51.24.020, as a statute that will always command an Appellate decision, by its sheer nature anyway.

Olympic counsel purposely avoids arguing successfully CR 56(g), **Spoliation**, and Defamation *per se*. Then Olympic cannot prevail, as it is those specific legal points, along with ,,,'SEGREGATION',,, a legal concept per the ,,,'ACT',,, **not** a medical concept per the ,,,'ACT',,, then cannot be decided by medical testimony,,, as Questions of Law,,, as 'a matter of law',,, support my RCW 51.24.020 INTENTIONAL INJURY argument, as burden of proof to produce, lies with Olympic Interiors Inc.

Tort Of Outrage, and as Intentional Infliction Of Emotional Distress, as initiated by Olympic Interiors Inc., as of February 10, 2017, stands on its own prior to the June 22, 2017 **MEMO** defamation *per se*, and the **MEMO** CP at 18 perpetuates Outrage, with no January 27, 2017 documentation to support any such if,,, 'obvious' neck problem.

Olympics' burden of proof must include, it proving it fulfilled its statutory 'duty to preserve' specific documents, per RCW 51.16.070, and RCW 51.48.040. That will be impossible. Olympic cannot prevail.

As this Court Of Appeals assiduously interprets properly, my Appeals Brief argument, my RCW 51.24.020 INTENTIONAL INJURY case, is an

extraordinary case, that cannot be decided specific to, 'an employer has the right to dispute an injury claim',,,, only. No one argues that, as simple.

See Olympic Response pg.22, relies on RCW 4.24.510. But Olympic counsel Wells, and Willert, never discuss as convenient, if they Olympic, were ever ,,, 'subject to oversight',,,, by the 'delegating agency',,,, to mean, the Department Of Labor & Industries, specific to RCW 4.24.510,,, that Olympic so proudly relies. See my Appeal Brief starting from pg.25, specific to 'subject to oversight'. Olympic counsel is so vociferously proclaiming in its Superior Court pleadings, and herein, that the Department conducted an 'independent investigation', and somehow found my legal position, and my facts to be unfounded.

So, specific to (RCW 5.45.020, RCW 51.16.070, RCW 51.48.040, see my tables in my Appeal Brief),,,, and also RCW 51.48.020, Olympic must show, just how they Olympic, were 'subject to oversight',,,, to be able to invoke RCW 4.24.510. That means, Olympic must prove the Department conducted a thorough 'independent investigation', that must have also included, I Michael J. Collins, being deposed, or such, on-the-record, that would have held Olympic 'subject to oversight', then held Olympic accountable for its **Spoliation** of material INJURIES DETAILED, and pay roll documents,,,, specific to it Olympics' statutory ,,, 'duty to preserve' those documents, to be able to invoke, its ever so

proud reliance on,,, RCW 4.24.510,,, even if,,, anti-SLAPP somehow protected Olympic, but, which it does not anyway.

Olympic Response cannot be based on a denial of Olympics' INTENTIONAL INJURY, by citing perfect-world-scenario case law.

There is a legal reason why RCW 51.24.020 exists.

My specific legal complaint is that legal reason.

Olympic counsel never argues RCW 51.24.020 *Birklid v Boeing* test, and *Polk v INROADS*, as a case cited from that test.

Washington State will refer to Missouri, (*Polk v INROADS*), and California cases, *Ortiz v Chipotle*, as a guide to Outrage, and employer INTENTIONAL INJURY, that has a separate RCW 51.24.020 argument to an initial physical injury, to include the INTENTIONAL cover-up of such physical injury, and/or falsification of documents, as Olympic has done. I clearly 'surpass',,,, the *Birklid v Boeing* test.

As Olympic counsel attempts to use *Polk v INROADS* against me, as I state herein, because (*Polk* see cited in my Appeal Brief), so clearly has documents altering, and falsification, and misrepresentation, same as Olympic Interiors Inc., as a dispositive issue, as in my case, then as in my case constituting 'Outrage',,,, and, as then RCW 51.24.020 actionable, is a dispositive case supporting me, irrespective of Motion to dismiss, or Summary Judgment relevance,

because I Plaintiff, because of Olympics' CR 56(g) violations, timely, and substantively issues argued, filed my Opposition to Trial Court.

But see Olympic counsel Wells RP at 8. Wells takes the position in RP at 8, that somehow, it requires some more sinister, 'horror filled event', to constitute Outrage, which is why Wells also cites *Reid v Pierce County*,,, pg.13 as from a Washington Pattern Jury Instruction, as will always cites extreme cases, as WPI examples.

But now Wells is proving that Olympic excepts the dynamics in *Polk v INROADS*,,, as his substantive discussion specific to *Polk v INROADS*, see Response pgs.16-18,, as altering of documents, and misrepresentation, as Outrage,, as is directly relevant to what Olympic committed in my case specific. Then Olympic must except Olympics' **Spoliation**, and falsification of documents for the sole INTENT to cover-up my January 30, 2017 type-of-work performed, and for the sole INTENT to cover-up my INJURIES, as,, 'Outrage'...

See *Dicomes v State* 113 Wash. 2d 612, 782 P.2d 1002, (1989),,, pgs.58-59 in my Appeal Brief,, as,, "it is the manner in which a discharge was accomplished that might constitute outrageous conduct"... Wells cites *Ortiz v Chipotle* specific to her being terminated, as somehow the only dispositive point that must be included for me to cite *Ortiz*, I was not terminated, so somehow no comparison. But I was ignored for future work by Olympic, when I Michael J. Collins

had the audacity on February 10, 2017, (see my June 20, 2017 email as EX 16-17), as in-person, in Olympics' office, to bring to Doug Bagnells' attention, that I demanded justification for my falsified Time-Sheet, and as a falsified pay stub, as EX 19-20.

Remember: The jury awarded *Ortiz* a large judgment, because *Chipotle* could not produce the video it claimed to possess showing *Ortiz* stealing from the company safe, as the jury found *Chipotle* had a 'duty to preserve' that video, if it ever existed, which it did not.

Then Olympic must produce my January 30, 2017 INJURIES DETAILED signed Time-Sheet, and,, Olympic must produce a January 27, 2017 record of an ,,,'obvious' neck restriction,, if it ever existed, which it does not, to avoid Defamation *per se*, for a jury.

IV. CONCLUSION

I request of this Court to find all my ASSIGNMENTS Of ERRORS as proper to be reviewed, as Olympic counsel cites RAP 2.1, and RAP 9.12, by adding language construction that does **not** exist in those specific rules, to somehow preclude review of my issues.

Any RP incomplete, or erroneous 'ACT' reason for Trial Court dismissal of my case, must be reversed, and to prepare for trial.



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STATE OF WASHINGTON

BY _____

No. 54390-7-II

DECLARATION OF MAILING SERVICE

I Michael J. Collins Pro se, under penalty of perjury, and pursuant to the laws of the State Of Washington, do hereby declare, I will both U. S. mail with U.S. mail receipt proof of such U.S. mailing, and will by way of email verification to Olympic Interiors Inc. legal counsel of record Williams, Kastner & Gibbs PLLC, serve an exact copy of my Appellants' REPLY Brief, to Respondents' Brief, (of my original Appeals Brief filed), as I will timely serve, as will be first Court date stamped, to the address, and on the specific date as listed.

On this day Michael J. Collins Pro se March 16, 2020

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