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STATE OF WASHINGTON  
COURT OF APPEALS  
DIVISION I

CASE NO.: 60509-7-I

MARC STEPHEN RENNER, Appellant,

v.

CITY OF MARYSVILLE, Respondent.

**MARC RENNER'S RESPONSE TO  
CITY OF MARYSVILLE'S PETITION FOR REVIEW  
TO THE SUPREME COURT OF THE STATE OF WASHINGTON**

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C. **Did the Court of Appeals err in holding that respondent substantially complied with the claim statute requirement that he state the “sum of damages” he was claiming where his defenses are his bona fide and honest effort and the impossibility of stating on-going damages where the petitioner possessed most of the information about the value of his on-going wage claims and he set forth their continuing nature and elements?**

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## FORWARD

Petitioner does not appear to address any of the RAP 13.4 (b) criteria for discretionary review directly. While the petition does not mention the rule, it does seem to argue consideration (1) that the Court of Appeals' opinion is in conflict with Supreme Court decisions. The Court of Appeals' opinion explains how this is not so. None of the grounds exist in this case with its relatively narrow and rare fact pattern. This is a substantial compliance case driven by its specific facts.

Petitioner attempts to raise an issue of the validity of the verification of respondent's signature on the claim form. The issue was not raised before in either the trial court or the Court of Appeals, thus it will not be addressed herein.

### I. ISSUES PRESENTED FOR REVIEW

- A. **Did the Court of Appeals err by holding that the petitioner's multiple deceptive acts did not preclude it from raising its claim statute compliance defense?**
- B. **Did the Court of Appeals err by holding that respondent substantially complied with the claim statute requirement that he state his address where he made a bona fide effort and the information was uniquely well known to the petitioner prior to the claim filing?**
- C. **Did the Court of Appeals err in holding that respondent substantially complied with the claim statute requirement that he state the "sum of damages" he was claiming where his defenses are his bona fide and honest effort and the impossibility of stating on-going damages where the petitioner**

**possessed most of the information about the value of his on-going wage claims and he set forth their continuing nature and elements?**

## **II. STATEMENT OF THE CASE**

Respondent offers the following objections and corrections to petitioner's recitation.

There is no evidence in the record that Mr. Renner's position was an exempt administrative position precluding him from joining the union, nor that there was a well-documented history of misconduct.

Mr. Renner does deny that petitioner's discovery responses, which were admittedly deceptively mislabeled as "Objections" to plaintiff's discovery responses both in their title and on each footer on every page, were reviewed by his attorney. They were overlooked, just as it appears that the mislabeling caused petitioner's attorney to overlook them when she brought petitioner's motion for summary judgment. They were discovered by Mr. Renner's attorney as he prepared the response to the motion and revealed them therein. Thereafter, petitioner made much ado about them as they did add to the strength of its position to the extent that it could convince the court to overlook the reason they were initially overlooked. See p.6 Brief of Appellant and CP31 § C and its Ex. 2, at CP 39-60, and especially CP 40 at items 2 & 3 and CP 54-55 at items 57-60. Petitioner states that: 'It is clear he was fully aware' of the responses

particularizing the claim form defenses because respondent's attorney did nothing after the responses hiding as objections were received. It is unimaginable that Mr. Renner's attorney would not have cured the claimed defects had they not been hidden, just as it is hard to imagine that petitioner's attorney would not have used them in her motion had they not become hidden to her also.

Plaintiff was, for almost six years, the commended Computer Network Administrator for the City of Marysville, responsible for all of its information and computer network systems, including telephone, radio, 911 and other systems for all departments including police and Fire District No. 12. On December 2, 2003, he was fired in violation of clear state public policy for attempting to join the Teamsters Union which was the city employees' collective bargaining unit. Throughout his tenure, he knew and worked in frequent and often overtime and emergency contact with all city officials who often contacted him at his residences throughout his many years with the city. CP 72 at its Ex. 1, CP 74-75; and its Ex. 2, CP 77-78, (§§ III – VI); and CP 25-27.

His responsibilities necessarily involved being called at home or being called into city facilities from his homes on overtime basis as emergencies and other needs arose. He was expected to maintain the Fire District #12 and Marysville Fire District networks on off hours.

Mr. Renner's immediate supervisor for the subject six month period immediately preceding his wrongful discharge was the City Finance Director, and throughout his tenure he commonly had direct contact with all members of petitioner's Executive Department, all of whom necessarily had his address, of which there were only two throughout his tenure. His claim for damages was filed with the City Clerk who personally knew him and his then and prior address. The City Manager, Financial Director and Human Resources Director had called and written Mr. Renner at both addresses on multiple occasions over the course of the six months prior to the accrual of his claim when they fired him. Prior to moving to his second address, the City Manager, Petitioner's Chief Administrative Officer, provided Mr. Renner's prospective new landlord at the second address with a character reference for him. He and all his addresses were rather intimately and personally known to all of petitioner's top officials and they were necessarily brought to the attention of those officials frequently due to the nature of Mr. Renner's job. CP 25-26 § 2 and CP 29 at lines 2.5-3.5.

These facts are uncontested.

As to the requirement to state a "sum" of damages as the city's form requests, or an "amount" of damages as required by RCW 4.96.020 (3), Mr. Renner has presented the following facts:

On the date he swore out his claim it was not possible to honestly or accurately compute an actual amount, and he truthfully so stated, explaining that the damages remained on-going and stating the elements thereof, the largest element being the accruing wages and benefits claim related to his former job with the city. As to wages after termination, the city was in exclusive control of data on pay and benefit increases for city employees. The other elements of damage are mostly subjective. The value of Mr. Renner's claims was growing significantly. He stated the element of wages and benefits "since termination" to indicate the continuing growing nature of the claim. In fact, to re-gain employment he had had to enlist in the Army National Guard in January of 2005 which involved a very complicated changing compensation system which anticipated varying compensation and then relative unemployment after training depending on the timing and nature of his ultimate job assignment, and assignment to an active duty unit in 2007 or 2008.

Any "sum" I might have stated in my claim of 5/26/05 would have been a fiction, would have required an accurate crystal ball and would have been unworthy of the required verification under oath.

CP 25 at 26, lines 20 through CP 28 at line 3. [Emphasis added.]

Mr. Renner chose not to fabricate. These facts are not contested nor is the absence of any indication by the city that it held any interest in

exploring settlement. It is reasonable to find that Mr. Renner was, due to the dynamic nature of his circumstances, not prepared or inclined to consider settlement when he filed his claim.

### **III. ARGUMENT**

#### **A. Damages Issue**

The Court of Appeals, at page 2, of the slip opinion, held that under the circumstances of this case, Mr. Renner's effort to explain his damages cannot be said to be insufficient compliance as a matter of law given RCW 4.96.010 (1), enacted in 1967 to compel, in its terms, that (1) the law respecting claim content be liberally construed (2) so that substantial compliance will be deemed satisfactory.

The law should not compel Mr. Renner to state a fictitious or untruthful amount. Ironically, had he stated \$10 million he would not have been criticized.

The Court of Appeals relied upon Brigham v. City of Seattle, 34 Wn. 2d 786 (1949). Petitioner does not say how the holdings conflict excepting its assertion at its page 13 that "Renner did not make any bona fide attempt to comply..." in the sense of not affording the city "a reasonable chance to settle prior to litigation." The Court of Appeals recited the steps Mr. Renner took. It is not inconsistent with Brigham that

it held them to be sufficient. Petitioner is quibbling with facts, hoping to split hairs.

We know of no authority to the effect that Mr. Renner is obliged to offer or to accept an offer to settle, only to afford the city such notice as to afford it the opportunity to investigate the state of the damages case at that time.

### **B. Address Issue**

It would be presumptive of this author to attempt another explanation of the explanation provided in the unanimous Court of Appeals' opinion about why its decision is based upon, and not inconsistent with, this court's prior decisions.

Basically, the opinion is not inconsistent with prior authority because of the significant change made to the claim statute in 1993 which must be construed to have been done by the legislature for a purpose and given its literal meaning which, it follows, is literally different from the language and meaning dealt with in the older case law petitioner contends is inconsistent. Petitioner ignores the change and the Court of Appeals' explanation as it does in the second point it argues in failing to accept the fact that Mr. Renner did provide some information, unlike the claimants in the cases petitioner cites. Thus the court cannot say as a matter of law, it said, that compliance was insufficient, but leaves that factual dispute to the

fact finders. Petitioner wants the Supreme Court to mince and find the facts. As the court unanimously observed at page 8: “On the merits, the city’s position is not strong.”

### **C. Governmental Employee Favoritism**

Petitioner argues that the Court of Appeals dealt with Mr. Renner as part of a special or privileged class resulting in public employee favoritism, citing Caron v. Grays Harbor County, 18 Wn. 2d 397 (1943).

No such thing was done. Mr. Renner happened to be a city employee and it is uncontested that the city had unique relevant particularized knowledge about him such that it really did not have to engage in any investigation at all to determine his addresses, his pay and benefits, to determine whether the latter would have risen or not post-termination and much more. All its officials knew these things personally and indeed were themselves the principal witnesses and alleged tortfeasors. They knew the case inside and out but for the post-termination damage amounts which Mr. Renner himself was challenged to calculate as they were moving targets. There is nothing about the Court of Appeals’ opinion that would not apply equally to any non-employee well known to the city such as a volunteer, vendor, crank or the like.

This case is not like Caron because Renner did supply some information both as to damage and address so that there was information

to which the 1967 RCW 4.96.010 could be applied to compel its liberal construction as the city knew almost everything regardless of the claim information provided. It is distinguishable because, in this context, very little claim form information was needed. Just enough to afford something to construe and all of the city's interests, given the context, were satisfied.

#### IV. CONCLUSION

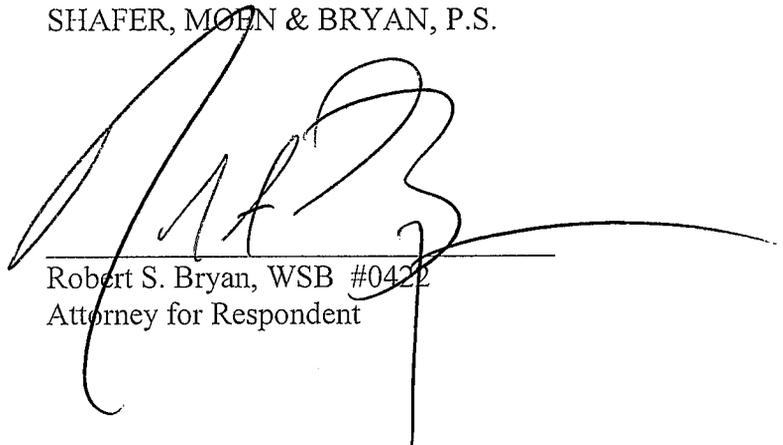
It is respectfully submitted that the context supports the view that the city's interest in claim information was limited to its ability to attempt to use the claim requirement as a trap.

The context is unique. The petition wishes to turn factual issues into conflicts with prior law by disputing the Court of Appeals' determination that they are sufficient to be resolved by fact finders.

Grounds for review under RAP 13.4 (b) (2) have not been shown, no other grounds have been urged and review should be denied.

RESPECTFULLY SUBMITTED this 21<sup>st</sup> day of August, 2008.

SHAFER, MOEN & BRYAN, P.S.



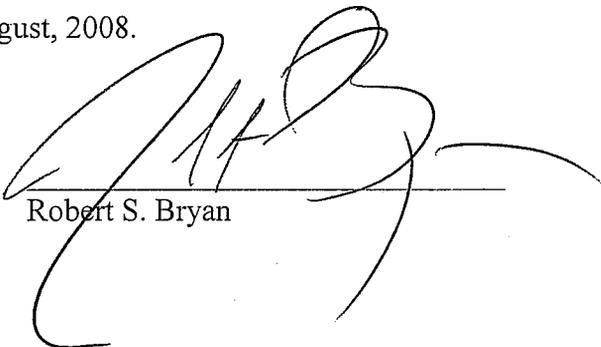
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**CERTIFICATE OF SERVICE**

I certify that I served a copy of Marc Renner's Response to City of Marysville's Petition for Review to the Supreme Court of the State of Washington via legal messenger upon:

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DATED this 21<sup>st</sup> day of August, 2008.

  
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