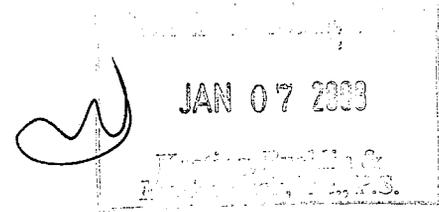


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NO. 60509-7

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

MARC STEPHEN RENNER, Appellant,

v.

CITY OF MARYSVILLE, Respondent.

BRIEF OF APPELLANT

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I. ASSIGNMENT OF ERROR

1. The trial court erred in entering the order of August 21, 2007 granting the city defendant/respondent's Motion for Summary Judgment of Dismissal.

Issues Pertaining to Assignment of Error

1. Is it appropriate to dismiss an action against a municipality in which the plaintiff substantially complied with the content requirements of the claims statute, RCW 4.96.020 (3), as permitted by the substantial compliance statute, RCW 4.96.010 (1), because he did not specifically state his residential address for six months prior to the accrual of his claim and did not state a precise numerical figure for the amount of damages sought when:

- A. The city initiated the address problem by omitting any request for it from its customized claim form;
- B. The address was well known to the city, plaintiff having been its employee who was solely responsible for all of its computer and communications systems for about six years prior to the accrual of his claim;
- C. The city was complicit in failing to specify its complaints in its generalized boilerplate Answer to the Complaint;

- D. In response to plaintiff's discovery requests for such specificity, the city was complicit in suspiciously hiding its only specific and particularized statement of its complaints in a mislabeled and inappropriate pleading entitled "Defendant's Objections to Plaintiff's First Interrogatories and Requests for Production;"
- E. Plaintiff stated the nature of the damages he sought and that they were on-going for the unforeseeable future and therefore then undeterminable, which was an honest answer given under the oath required;
- F. Defendant secured answers to all of its address inquiries and to all of its damage inquiries to the extent possible by way of its two sets of extensive discovery requests and the responses plaintiff provided under oath thereto;
- G. Over the course of 21 months of litigation the defendant brought no motions of any sort for any remedy whatever for its perceived claim notice omissions;
- H. The only motion for a remedy was brought after the statute of limitations had run;
- I. The only remedy sought was that of dismissal; and

J. The defendant effectively cured the omissions with its discovery requests and was not prejudiced in any way in that prior thereto it already had the address information which is the subject of its complaints; and further, because the dollar figure for damages it complains it should have gotten would have been a worthless piece of incredible fiction unworthy of plaintiff's oath?

II. STATEMENT OF THE CASE

Plaintiff was, for about 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 residence. CP 72 at its Ex. 1, CP 74-75; and its Ex. 2, CP 77-78, (§§ III – VI); and CP 25-27.

Prior to commencing this action, plaintiff obtained from the city its customized "Claim For Damages Form" which the city had drafted and provided and which bore the city's logo and instructions. He filled out the

form in good faith, reasonably answering all inquiries appearing thereon with the information available to him at the time. He verified it and, on May 26, 2005, caused it to be served on the City Clerk. It is Exhibit 1 to defense counsel's declaration in support of defendant's summary judgment motion. CP 72 at 74-75 (the claim form in its entirety); CP 25 at 26, lines 4-26 & 28, lines 1-3.

On October 21, 2005 Plaintiff commenced suit by filing his complaint which alleges at paragraph I that:

The defendant is a municipality and political subdivision of the state of Washington with which a proper claim for damages was filed in a timely manner, the appropriate period of time within which suit may not be commenced after the filing of a claim has run without any response of any sort, and this action has been filed within the applicable time period thereafter.

CP 72 at its Ex.2, CP.77, § I.

The defendant's Answer thereto states in response that:

Defendant admits it is a municipal corporation with which a claim for damages was filed and against which suit was commenced more than 60 days following the claim filing. Defendant denies the remaining allegations in § I.;

and the fourth of its six common and generalized boilerplate affirmative defenses is, in spite of plaintiff having used the city's own form, the allegation:

That Plaintiff has failed to comply with the requirements of RCW 4.96.
CP 72 at its Ex.3, CPs 81 § I and 83 § 4.

Plaintiff was spared the full specific citation.

Along with his summons and complaint, plaintiff effected service of his First Interrogatories and Requests For Production to defendant which contained the following requests:

2. If you claim insufficiency of process state each fact upon which you base such claim, and "identify" each person who has knowledge about that claim and each "document" which substantiates, corroborates, contradicts and/or negates such claim.

3. Produce a true and correct copy of all "documents" that pertain to any claim of insufficiency of process.

57. Describe all facts upon which you base your denial of any portion of Plaintiff's Complaint and "identify" or otherwise describe their source.

58. Produce all "documents" or evidentiary items supporting the position you take on the preceding item.

59. Describe all facts upon which you base allegations of affirmative defenses in response to Plaintiff's Complaint.

60. Produce all "documents" or other evidentiary items supporting the position you take on the preceding items.

CP 31, § B verifying the recitations made, inter alia, in CP 62 at 64, lines 1-15.

On 12/6/05, before filing its Answer of 12/12/05, the defense sent plaintiff's attorney a letter requesting one of several extensions of the time limits for discovery responses, which both counsel have done for each other on multiple occasions on a most cordial bases and for good reasons throughout the two plus year course of this litigation. Accompanying that letter and bearing the same date was a pleading entitled "Defendants Objections to Plaintiff's First Interrogatories and Requests for Production" in which no effort was made to provide any discovery but which contained repetitious boilerplate stock defense objections of probable impropriety to every discovery request. CP 31, § C and its Ex.1, at CP 33-38. [See Johnson v. Jones, 91 Wn. App. 127 (1998) reh. den. 156 Wn. 2d 1019 @ 133-34 regarding boilerplate objections.] No complaints or factual information were provided therein indicating any problem with the claim for damages.

However, overlooked in defendant's motion for summary judgment is a curious second document also entitled "Defendant's

Objections to Plaintiff's First Interrogatories and Requests for Production" found by plaintiff's attorney after overlooking it several times while reviewing documents in the course of preparing the response to that motion. It is dated 2/3/06. In addition to containing at least the same – if not more – of the repetitious boilerplate stock defense objections to all discovery requests, it does contain some responses material to this motion as follows – the numbers of the responses corresponding to the numbers of the discovery requests quoted above:

2. Not applicable.

3. Not applicable.

57. Objection. This case was only recently filed and discovery is still in the very early stages. Defendant has not had an opportunity to participate in its own discovery yet in this matter and cannot provide complete response to these requests. Object to the extent this requests attorney client privileged or work product information. Without waiving these objections, Defendant provides the following response. See documents provided in response to Plaintiff's public disclosure request. The decision to terminate Plaintiff was in no way based upon any alleged activity of Plaintiff to become a part of a union.

58. Objection. This case was only recently filed and discovery is still in the very early stages. Defendant has not had an opportunity to participate in its own

discovery yet in this matter and cannot provide a complete response to these requests. Without waiving these objections, Defendant provides the following response. See documents provided in response to Plaintiff's public disclosure request.

59. Objection. This case was only recently filed and discovery is still in the very early stages. Defendant has not had an opportunity to participate in its own discovery yet in this matter and cannot provide a complete response to these requests. Without waiving this objection, Defendant provides the following response.

Plaintiff was terminated by the City of Marysville due to his own misconduct and unprofessional behavior. He was not terminated in violation of public policy or for any improper reason. In addition, discovery may show that Plaintiff failed to mitigate his alleged damages. Plaintiff failed to comply with RCW 4.96 as he did not state an amount of damages or his residences for six months prior to accrual of his claim, and the claim form is not properly verified. Further, plaintiffs cannot obtain prejudgment interest or punitive damages against governmental entities such as the City of Marysville.

60. Objection. This case was only recently filed and discovery is still in the very early stages. Defendant has not had the opportunity to participate in its own discovery yet in this matter and cannot provide a complete response to these requests. Without waiving these objections, Defendant provides the following response. See documents

provided in response to Plaintiff's public disclosure request. CP 31 § 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.

Even earlier, on October 19, 2005, plaintiff's attorney had made another effort to anticipate these issues and secure specific particularized information on any procedural complaints by sending a Public Disclosure Request to the city stating:

Pursuant to RCW 42.17.270, we seek access to and copies of all "documents" and information relating to:

1. A. The original and all copies of Plaintiff's claim for Damages bearing all marks of any kind indicating its receipt by any city official, employee and department.
- B. Any and all persons appointed as an agent to receive Claims for Damages against the City.

By means of this request plaintiff sought to see any copies or unprivileged documents marked up in any way likely to provide clues to any technical problems the defendant may have had with the claim filing process. Plaintiff's attorney does not recall seeing or receiving any such document. CP 31 § B verifying the recitations made, inter alia, in CP 62 at 66, lines 8-14.

Considerable litigation effort occurred between the parties over the course of the 18 months after the claim was presented and finally, after the statute of limitations had run on 12/3/06, the defendant brought this technical threshold entrapping motion. Plaintiff had responded to two sets of extensive discovery requests from the defendant, providing all information then available on addresses, personal history, damages and multiple other issues. Two protective orders had been entered. The defendant had made several cartons of documents available for inspection at its City Hall. They required many months and visits to the Marysville City Hall reviewing four to six cartons of records produced by the defendant pursuant to plaintiff's discovery and Public Records Act requests. The cursory document review and tagging process was completed and 3, 819 pages of selected and then copied material finally became available for study and utilization last August. CP 31 § B verifying the recitations made, inter alia, in CP 62 at 66-67. Also see CP 31 at 32§ C and its Ex. 3 at CP 61.

Discovery had continued thereafter, and a significant amount of effort and expense had been incurred by both parties in preparing this case for trial on its merits at the time the trial court dismissed the case on August 21, 2007. CP 62 at 66 beginning at line 18 through CR 67, line 3; CP 31 §§ B and C and its Ex. 3 at CR 61. It dismissed because Plaintiff

had not literally amended the city's form to add a recital of his address for the six months prior to his firing and because he had not set forth and sworn to an undeterminable exact dollar amount of damages. CP 4 at 6-7.

In neither respect over the course of eighteen months did the city show any sign of caring or prejudice prior to bringing its motion to dismiss. It never complained in a motion to compel discovery or otherwise that Mr. Renner had failed to provide any and all of the information on these topics requested in its two voluminous discovery requests. For plaintiff to have added his address for the last six months he worked for the city or an imaginary dollar amount of damages sought to an amended and re-filed claim form would have been entirely worthless to the city but for the resulting delay and expense it would have imposed on plaintiff who would have had to wait another 90 days and re-file suit.

Mr. Renner addressed the address issue in his declaration for the trial court thusly:

From 1998 until 12/2/03 I was the computer network administrator for the entire City of Marysville. My responsibilities involved maintaining the city's entire computer, telephone and other communications systems with the help of one part-time assistant. My responsibilities necessarily involved being called at my home or being called into city facilities from my home on an overtime basis as emergencies or other needs arose. It was

particularly expected that I would maintain the Fire District 12 and Marysville Fire District networks on an overtime basis. My immediate supervisor for the six months immediately preceding my wrongful discharge was Finance Director Sandy Langdon though I commonly had contact with all members of the Executive Department. All of these people necessarily had my residence addresses, of which there were only two during my employment with the city, at all times during my employment. From 10/02/03 to 11/15/05 it was 6811 54th Pl N.E., Marysville, WA 98270, with a mailing address of P.O. Box 1493, Marysville, WA 98270. The actual residence address is the address I provided on the claim form as it requested and as it was prepared for claimants such as myself by the City of Marysville and obtained from the City of Marysville. I signed it under oath on May 24, 2005 and caused it to be filed with the Marysville City Clerk, who knew me and my then present and prior addresses, on May 26, 2005 as reflected by her receipt stamp on that form. The form bears the City of Marysville logo on the upper left corner.

On that "Claim for Damages Form" I provided all the information requested by the city that I was able to. Most of it was well known to the city since the City Manager, Financial Director, and Human Resources Director are the critical first hand witnesses and actors who, on behalf of the city, personally committed the wrongful acts alleged on behalf of the city and who, in the course of doing so, had me called and wrote to me at my residence on multiple occasions over the course of the six months immediately preceding my wrongful

termination, which included calling me in for meetings.* The letter informing me of my termination was sent to me at my correct address. Shortly after my termination they sent me a check for the sum they then deemed due to me as salary and benefits as well as later sending a W-2 wage and withholding statement for the year 2003.

*Prior to moving into the 6132 1st Ave SE Everett address both the mayor and Mary Swenson [City Manager/Chief Administrative Officer] provided character references to my prospective landlord.

CP 25-26 § 2 and CP 29 at lines 2.5 - 3.5. [Emphasis added.]

Mr. Renner testified on the “sum of damages” issue as

follows:

On its claim form, the city asked me to state under oath the “sum” of damages claimed as arising from my wrongful termination. It was not then possible to honestly or accurately do so, so I told them the truth that the sum was then “undetermined pending further investigation and discovery.” On the second page I accurately provided the additional response that the sum included: “wages and benefits as well known to the city since termination plus front pay, emotional damages, costs, fees and such other damage as determined.”

I was, and am, claiming wages and benefits since termination through that date and continuing through the date of this declaration because I was unable to obtain reasonably comparable employment or employment for which I was qualified through the date of my verified claim form.

Being unable to obtain such employment, in January of 2005 I enlisted in the Washington Army National Guard to secure training to become qualified as a counter-intelligence agent, an MOS 97E Human Intelligence Collector, and to become proficient in Arabic. Initially, from January, 2005 until 11/15/05, I was stationed in Washington State engaged in and paid for once a month regular drilling while I continued to look for other work. On 11/15/05 I went to active duty status in California for 63 weeks of Arabic study and an additional five months of training, in which I am still engaged, though now in Arizona. There also has been an additional 6 weeks of training in Kentucky. If I graduate this September as fully qualified, and my interim top secret security clearance becomes stable, my present expectation is that I will be taken off active duty status and returned to Washington where I will no longer receive active duty pay, but pay for one weekend a month drill while I look for full time Guard positions for which I can apply.

I do not believe that I will be able to calculate, or employ an expert to help me accurately calculate, my damages in this case until and unless I am placed in a full-time active duty unit and have a better opportunity to confer with my attorney. There have been too many variables for me to be able to calculate my damages. They include needing additional discovery from the city about pay raise statistics since my termination, assembling my information about varying allowances and benefits since I joined the national guard which include living and other allowances such as location and the foreign language benefit and their

pro rata reductions for time off of active duty as well as a better analysis of emotional and other damages which have varied considerably and may vary again until I am again able to secure regular full-time work for the first time since my termination from the City of Marysville.

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.

Mr. Renner's declarations and the procedural history recited above are uncontested. The City of Marysville suffered no damage or prejudice at all from the omissions of which it complains and for which it sought no remedy beyond issuance of its two sets of interrogatories and requests for production. It has not complained about any of the discovery responses it received which are material hereto. It thereby secured its remedy, if any was due, but nonetheless raised the claim form complaints for the first time in an unobscured clear and particularized way after the statute of limitations had run. Its sole interest in these two de minimus complaints lies in the hope fulfilled by the trial court that plaintiff would be nit picked out of ever being heard on the merits.

III. ARGUMENT

The parties will be denied access to justice unless we come to this court to contest this picking of nits. The current Meridian-Webster Online Dictionary defines “nit-picking” as “minute and usually unjustified criticism.” We respectfully submit that the term is appropriate to this defendant’s complaints which the trial court found to be sufficient justification for imposing the death penalty of procedural remedies.

The standard of review of a grant or denial of a motion for summary judgment is de novo. Wm. Dickson Co. v. Pierce County, 128 Wn. App. 488, 492 (2005). The facts and all reasonable inferences are viewed in a light most favorable to the nonmoving party. Vallandigham v. Clover Park School Dist. No. 400, 154 Wn. 2d 16, 26 (2005). Summary judgment is appropriate only if reasonable persons could reach only one conclusion. Dickson, supra at 492.

The subject statutes are:

RCW 4.96.010 (1)

All local governmental entities, whether acting in a governmental or proprietary capacity, shall be liable for damages arising out of their tortious conduct, or the tortious conduct of their past or present officers, employees, or volunteers while performing or in good faith purporting to perform their official duties, to the same extent as they were a private person or corporation. Filing a claim for damages within the time allowed by law shall be a condition precedent to the commencement

of any action claiming damages. The laws specifying the content for such claims shall be liberally construed so that substantial compliance therewith will be deemed satisfactory.

[Emphasis added.]

RCW 4.96.020 (3)

All claims for damages arising out of tortious conduct must locate and describe the conduct and circumstances which brought about the injury or damage, describe the injury or damage, state the time and place the injury or damage occurred, state the names of all persons involved, if known, and shall contain the amount of damages claimed, together with a statement of the actual residence of the claimant at the time of presenting and filing the claim and for a period of six months immediately prior to the time the claim arose.

Plaintiff respectfully asserts that Dyson v. King County, 61 Wn.

App 243 (1991), rev. den. 117 Wn. 2d 1020 (1991) should control because of the fact pattern of complicity by the present defendant is as compelling, and more so, than that in Dyson. In Dyson, the plaintiff filed no claim at all. He went straight to suit. The defendant municipality answered the complaint asserting the statute of limitations but made no reference to any claim deficiency. It moved for summary judgment of dismissal on the claim issue almost two years later after the trap had been closed by expiration of the statute of limitations. The parties had engaged in an insubstantial amount of litigation activity at that point. At page 245 this

court confirmed that no “other Washington case has specifically disapproved of the tactics employed” where, unlike this plaintiff’s case, “substantial litigation procedures have not occurred on the case.” It did so succinctly:

CR 9(c) addresses pleading requirements for conditions precedent. It states that “[a] denial of performance or occurrence shall be made specifically and with particularity.” The City’s answer failed to comply with this rule. By answering without raising the defense and proceeding to defend the case for an appreciable time period while awaiting the running of the statute of limitations, the City did take the type of misleading affirmative action which was lacking in *Mercer*. We hold that by doing so the City is estopped from now raising the defense of failure to comply with its claim filing ordinance.

[*Id.* at 245-246. Emphasis added].

It reversed the trial court’s grant of summary judgment to the defense.

In Mr. Renner’s case the defendant planted the seed of the address omission trap by omitting it from the claim form it drafted and which plaintiff made an extra effort to obtain. In Mr. Renner’s case the defense initially refused to make any response at all to diligent specific interrogatories asking why it made generalized denials of plaintiff’s allegations, including the allegation that he had complied with the claims

statute. Instead, it filed its gratuitous multi-paged barrage of repetitive objections to all of plaintiff's discovery requests which included objections to all six of plaintiff's requests directed at avoiding or curing just such problems. Defendant's Objections to Plaintiff's First Interrogatories and Requests for Production of 12/6/05, CP 31 § C at its Ex. 1 at CP 33-38. On 12/12/05 it filed its glib Answer in violation of the specificity requirements of CR 9 (c) and Dyson and, in many instances, globally denied otherwise uncontested truths. Some non-exclusive examples of such off-hand denials include that of being a political subdivision of the state, that the claim was timely filed as alleged in paragraph I, that the Teamsters Local no. 763 was the collective bargaining unit for city employees at IV, and even a denial that it had fired plaintiff at paragraph VI. It was neither a discriminating nor a particularized document. When the defense eventually did address the issues at hand in its 2/3/06 pleading, the document was mislabeled not only on the title line of the first page but on the footers of each and every page thereafter representing that it was but a second volume of the prior document. The responses sought were craftily buried between objections.

All of these masking actions violate the "specificity and particularity" rule of CR 9 (c), and thus constitute "misleading affirmative action" which drove the Dyson result.

The plaintiff's transgression in Dyson was far more egregious than the petty claims of transgression alleged here against Mr. Renner. On the other hand, the defendant in Dyson engaged in but one type of misleading affirmative act—that of stalling its motion for summary judgment until the limitations period had run. Here, the defendant not only engaged in the three affirmatively deceptive acts discussed above, but did that while engaged in considerably more misleading active litigation making this case much more like Miotke v. Spokane, 101 Wn. 2d 307 (1984), the first Washington case in which misleading affirmative action was held to be sufficient to estop a defendant from prevailing on a motion for summary judgment which had been delayed until the limitations period had run, preventing cure of that plaintiff's total violation of the claim statute.

The defendant has recognized a basis other than Dyson for denial of its motion at page 3, lines 6-11 of its motion for summary judgment, CP 85 at 87, where it states that:

Although strict compliance with procedural requirements is mandatory, the courts have found the rule of substantial compliance may ["must" per RCW 4.96.010 (1)] be applied to the content of the claim. [Citations Omitted.] Substantial compliance is an essential pre-requisite to maintaining an action for damages against a municipality [Citation Omitted.] The rule of substantial compliance applies in this case. [Emphasis added.]

Mr. Renner made no attempt to mislead and made a bona fide attempt to comply with the law, certainly as the city had interpreted it on its own claim form. If Mr. Renner made an omission it was at the defendant's invitation and instance, it was insubstantial, and the purpose of that claim form – both in its literal terms and in the terms of RCW 4.96.020 – of allowing the city to investigate the plaintiff and his claims were satisfied with respect to plaintiff's addresses. This is so not just because simple investigative diligence on the city's part utilizing the only address it asked for would have easily lead to the other, but because plaintiff had been a high profile city employee who was contacted with unusual frequency at his residence throughout the six years immediately prior to the accrual of his cause of action. See Duschaine v. City of Everett, 5 Wn. 2d 181 at 185 and 187-188 (1940) wherein it is said that the purpose of claims provisions is to provide a city with enough information by which to investigate a case, and that:

[I]t is obvious that any bona fide effort on its part to do so will, in any case, develop the fact that the claimant either did or did not reside at the place given in the notice at the time the claim was filed. This meets the very purpose of the act ... and the city can reap every benefit which such a notice, whensoever verified, could confer.

Plaintiff submits that for the reason stated in Duschaine, the real world context in which a claim form dispute arises should be taken into account in considering what the legislature intends when it prescribes liberal construction. Its purpose was to facilitate claims and reduce rarified other worldly nit picking. Duschaine can be so read. That is its effect.

In our action, the City of Marysville wants the court to apply a rule that where no information whatever is given on the claim form about a subject, even when the city omits requesting it, the requisite data cannot be supplied by liberal construction because there is nothing to construe. It cites Sopchak v. Tacoma, 189 Wash. 518, 520 (1937) for the proposition that if no data is provided, there is nothing to liberally construe. Its literal application in this case would be absurd and no tribute to justice where the plaintiff and defendant knew each other so well and depended upon each other at all hours over the time period in issue, where it is the defendant who precipitates the omission and the omission is so inconsequential as to be of no harm and the omitted material of no value to the city in fulfilling the purposes of the claim statute. "Substantial compliance" is a contextual concept; and it is the statute which is to be liberally interpreted. It is doubtful that the legislature intended its words to be employed for

contrary absurd results. In this case both Dyson and Duschaine, supra, trump the city's tasteless position.

Regarding the alleged failure to state the sum of damages, plaintiff is in substantial compliance because of his recitation on the second page of the claim form at item 3, (CP 75) that he seeks his past lost wages and benefits, the amounts of which are well known to the city because it had been the employer and payor, and "front" or future pay for a period and in a sum which necessarily would not be known until he can become re-employed full-time. These statements are subject to realistic liberal construction.

On the first page of the claim form (CP 74) Mr. Renner honestly faced the dilemma faced by all tort claimants whose claims are not liquidated at the time of filing either because they involve past and future general damages and/or future unknown accruing special damages of unknowable duration such as the wage loss this plaintiff continues to endure. Plaintiff has provided reasonable notice that his case involves both.

IV. CONCLUSION

It is respectfully submitted that the facts of this case compel the observation that the complicit defendant seeks a result of which no one of conscience should be proud. The pot is calling the kettle black.

- This plaintiff did not fail to file any claim at all, though the plaintiffs in Dyson and Moitke did. This plaintiff obtained and completed the form this defendant drafted and promulgated for its purposes, of which its effort to obtain a non-meritorious dismissal became one.
- This defendant engaged in four forms of misleading affirmative action:
 1. Initiating the problem by drafting a faulty claim form;
 2. Drafting a vague boilerplate answer while it possessed anticipatory interrogatory requests for specifics;
 3. Drafting a peculiarly suspicious document it mislabeled in title and all footers as “Defendant’s Objections to Plaintiff’s First Interrogatories and Requests for Production,” the same title as had been given to a preceding worthless pleading, and burying the specifics sought in a series of repetitive distracting boilerplate objections; and
 4. Persisting in substantive litigation for another 18 months of the 23 since the claim had been filed while delaying its motion for summary judgment or other

appropriate unmasked notice beyond expiration of the
time limits for corrective action;

- This plaintiff has proceeded in good faith;
- This defendant asks the court to interpret and apply the rule of substantial compliance in the most sterile literal coldly aloof manner possible, asking it to ignore context and pretend its complaints serve justice.

This case deserves to be determined on its merits. We ask that the trial court be reversed.

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RESPECTFULLY SUBMITTED this 7th day of January, 2008.

SHAFER, MOEN & BRYAN, P. S.

Robert S. Bryan, WSBA #422
Attorney for Appellant / Plaintiff
Renner

UNDER PENALTY OF PERJURY I STATE THAT I *hand delivered*
MAILED A COPY OF THIS DOCUMENT *to*
ATTORNEY FOR *Respondent*
ON THE FOLLOWING DATE: *1/2/08*