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Supreme Court No. 90976-8

Court of Appeals No. 70529-6-I

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SUPREME COURT OF THE STATE OF WASHINGTON

BRIAN LONG,
Petitioner

v.

BRUSCO TUG & BARGE, INC., a Washington Corporation;
BO BRUSCO and his marital community,
Respondents

SUPPLEMENTAL BRIEF OF PETITIONER BRIAN LONG

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ORIGINAL

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I. INTRODUCTION

Jury misconduct denied Petitioner Brian Long a fair trial. After the close of evidence, jurors usurped the role of the trial judge by injecting false and wholly extrinsic Maritime and Coast Guard laws into Long's disability-retaliation case under the Washington Law Against Discrimination ("WLAD"), RCW 49.60 *et seq.* These jurors improperly inserted false and external legal premises that transformed Long's protected activity – hiring an employee with a perceived disability and opposing his termination – into an illegal act. The misconduct falsely, but convincingly, provided Defendants Brusco Tug & Barge ("BTB") with a non-retaliatory reason for taking adverse actions against Long. The improper injection of this false, outside law irrevocably prejudiced Long's credibility, and his ability to meet his burden of proof on the protected activity and causation elements of his disability-retaliation claim. Jury misconduct perpetuated stereotypes of disabled individuals and undermined the very purposes of the WLAD – to stamp out and eradicate discrimination. The lower courts' erroneous decisions wrongly justify for cause exclusions of a broad class of potential jurors whose specialized training might give them any legal knowledge. As such, this Court should reverse the lower courts and remand this case for a new trial.

II. SUMMARY OF ARGUMENT

In every instance where outside law has been injected into the case, Washington courts have granted a new trial. *Adkins v. Aluminum Co. of Am.*, 110 Wn.2d 128, 138, 750 P.2d 1257 (1988); *see also Bouton-Perkins Lumber Co. v. Huston*, 81 Wash. 678, 684, 143 P. 146 (1914); *State v. Clausing*, 147 Wn.2d 620, 629, 56 P.3d 550 (2002). In our civil jury system it is fundamental to a fair trial that the court, “declare[s] the law,” and that the jury applies that law to evidence admitted at trial. *See* Const. art. 4 § 16. When jurors defy the court’s instructions to apply the law that is given to them and insert outside legal premises that have not been vetted by the judge or the parties, they engage in severe misconduct which is prejudicial and warrants a new trial.

Here, jurors undermined Long’s credibility and his ability to prove Defendants’ retaliatory motive by instructing the jury that Maritime and Coast Guard laws positively prohibit people with prosthetics from working as deckhands. These erroneous legal conclusions were not in evidence, had not been argued by the parties, and were not included in the court’s jury instructions on the law. Yet, during a lengthy speech read from notes improperly prepared outside the jury room, Juror 12 instructed the jury that Maritime and Coast Guard laws “**simply do not allow people to crew boats and act as Able Bodied Seamen with prosthetics,**” and

that “no laws” would permit them to work on a boat. CP 1788 ¶4; CP 1784 ¶7. Juror 11 similarly usurped the trial judge’s role as the sole legal expert and instructed the jury that, “yeah, that breaks Coast Guard law,” in reference to Long’s protected activity – hiring a deckhand with a prosthetic below the knee to crew a tugboat. CP 1781 ¶8. If Long’s actions violated the law, then Defendants had a legitimate non-retaliatory reason to be angry and take adverse actions against him.

This extrinsic law crushed Long’s credibility, and crippled his ability to prove reasonable belief and causation, essential elements of his disability-retaliation claim under the WLAD. Indeed, if the jury believed Long violated the law by hiring a deckhand with a perceived disability and putting him to work on a boat, then there would be a legitimate (but completely false) non-retaliatory reason for firing him. Furthermore, Long’s complaints about BTB’s refusal to hire him would appear reckless, negligent and unreasonable. It would severely undermine Long’s ability to prove he engaged in protected activity, which required he have a “reasonable belief” he was opposing disability discrimination under Instruction 7. CP 1756. Certainly Long’s credibility and managerial skills would be severely undermined if the jury believed he broke these outside laws. CP 1748-1749. Defendants’ retaliatory motive was the most relevant and difficult burden Long had to prove at trial, and is particularly difficult

in the retaliation context where “the employer is not apt to announce retaliation as his motive,” *Wilmot v. Kaiser Aluminum & Chem. Corp.*, 118 Wn.2d 46, 69, 821 P.2d 18 (1991). Nothing could impact the verdict more substantially than false legal premises that could lead the jury to believe that Long recklessly ignored laws designed to make our oceans safe when he engaged in protected activity.

Jury misconduct undermined the very purposes of the WLAD, a public policy recognized as of “the highest priority.” *Antonius v. King County*, 153 Wn.2d 256, 268, 103 P.3d 729 (2004). “[D]iscrimination threatens not only the rights and proper privileges of its inhabitants but menaces the institutions and foundation of a free democratic state.” RCW 49.60.010. The anti-retaliation provision of the WLAD is necessary for the effective enforcement of these anti-discrimination laws. RCW 49.60.210. The introduction of outside laws to falsely claim that individuals with prosthetics cannot work on boats perpetuates the ugly stereotypes the WLAD seeks to eradicate and that Long opposed before he was fired. This impacted the verdict and denied Long his constitutional right to a fair trial.

III. ARGUMENT

The trial court erred as a matter of law when it failed to grant Long a new trial after jurors injected outside Maritime and Coast Guard laws that could have impacted the verdict. “[A]n order granting or denying a

new trial will not be reversed except for an abuse of discretion; **this principle being subject to the limitation that, to the extent that such an order is predicated upon rulings as to the law, no element of discretion is involved.**" *Ayers v. Johnson Johnson Baby Prods. Co.*, 117 Wn.2d 747, 768, 818 P.2d 1337 (1991) (emphasis added). Whether alleged juror misconduct inheres in the verdict is a question of law and "the deference [a reviewing court] ordinarily gives a trial court's [decision on a motion for] a new trial does not apply. *Id.* Thus, whether the lower courts erred in concluding that jurors' instructions regarding Maritime and Coast Guard laws inhered in the verdict is an issue of law that must be reviewed de novo.

Moreover, the lower court's conclusion, based on its erroneous view of the law, that the jurors' insertion of these outside laws did not objectively affect the verdict is an abuse of discretion because the court necessarily "abuse[s] its discretion if it based its ruling on an erroneous view of the law." *Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp.*, 122 Wn.2d 299, 339, 858 P.2d 1054 (1993).

A. Jurors Committed Prejudicial Misconduct by Usurping the Role of the Trial Judge and Inserting Outside Law into Long's WLAD Retaliation Case.

1. Injecting false, outside law into the case, always warrants granting a new trial.

Every published Washington case has ordered a new trial when the jury is exposed to outside law not contained in the court approved jury instructions. “Jury misconduct ... results where a juror provides the jury with erroneous statements of law.” *Adkins*, 110 Wn.2d at 137. (emphasis added). Outside law is per se prejudicial because it usurps the role of the trial judge, the only legal expert in the case. Extrinsic evidence or law is improper because it will not have been subject to objection, cross examination, explanation, or rebuttal by either party. *Richards v. Overlake Hosp. Medical Center*, 59 Wn. App. 266, 270, 796 P.2d 737 (1990). As this Court confirmed in *Adkins*, a case where jurors consulted outside law through a legal dictionary to define negligence, “legal premises not applicable to the facts of this case...could well have confused or misled the jury.”¹ 110 Wn.2d at 138.

Extrinsic law does not have the safeguards inherent in the adversarial system where the trial judge is a gatekeeper, subject to review by appellate courts. Jury instructions, which are carefully vetted by the

¹As discussed in the Long’s Petition for Review, jury misconduct is not limited to extrinsic evidence presented in written form even though, here, Juror 12 did in fact bring in outside notes. *Halverson v. Anderson*, 82 Wn.2d 746, 752, 513 P.2d 827 (1973)(juror’s mere comments relating to airline pilots’ earnings, evidence outside of the record at trial, were misconduct); *see also Loeffelholz v. C.L.E.A.N.*, 119 Wn. App. 665, 683 n.36, 82 P.3d 1199 (2004)(rejecting the argument that outside facts or law must be based on external sources to constitute juror misconduct). In their answer, Defendants again completely fail to address *Halverson* and *Loeffelholz*.

parties and the trial judge, are the only law the jurors can hear in a fair trial:

Legal questions are decided by the court, not the jury, for good reason. By arguing to the court, the lawyers have the opportunity to argue canons of construction; applicable law, including case precedent; and all the other traditional elements that make up legal argument. A judge trained in law then decides whether or not the proposition is legally correct. And he or she can then craft an instruction for the jury.

State v. Clausing, 147 Wn.2d at 629 (even a limiting instruction does not cure putting outside law before the jury)(emphasis added). Instruction 1 clearly informed the jury to not bring outside law into this case, and that they “must apply the law from [the judge’s] instructions” and must “accept the law as [the judge] explain[s] it.” CP 1748.

As Defendants concede, Maritime and Coast Guard laws were not properly before the jury. As such, the legality of Long’s hiring of Anthony Morgan should never have been considered. It is for this very reason, however, that the jury’s injection of these false and outside laws severely impacted the verdict. Four unrebutted declarations prove that jurors inserted these legal premises and usurped the trial judge’s role and instructed on the law. The jury heard outside laws that were not before them but if true, completely undermined Long’s retaliation claims.

2. As a matter of law, inserting outside and erroneous law into jury deliberations does not inhere in the verdict -- it is always misconduct and is prejudicial.

The injection of erroneous law into jury deliberations cannot inhere in the verdict and is reviewed de novo. *See Ayers*, 117 Wn.2d at 768. Courts are not required to ignore misconduct simply because it occurs during jury deliberations. Juror declarations inhere in the verdict only to the extent they rely solely on the juror's thought processes. *Richards*, 59 Wn. App. at 272. Outside law, however, reflects "specialized knowledge of the law," not a juror's thought process.

This Court recognizes two tests for determining whether evidence in a juror's affidavit inheres in the verdict: (1) whether the facts alleged are linked to the juror's motive, intent, or belief, or (2) whether the facts alleged can be rebutted without probing a juror's mental processes. *Breckenridge v. Valley General Hosp.*, 150 Wn.2d 197, 205, 75 P.3d 944 (2003) (quoting *Gardner v. Malone*, 60 Wn.2d 836, 841, 376 P.2d 651 (1962)). Thus, testimony as to the fact of misconduct is properly considered; testimony as to the effect of misconduct is not. *Gardner*, 60 Wn.2d at 842-43. The court can properly consider the fact that jurors injected outside law without probing the jury's mental thought processes.

Here, un rebutted juror declarations prove that two jurors instructed the jury about outside Maritime and Coast Guard laws, falsely stating that

these laws prohibit a deckhand with a prosthetic leg from working on a boat. CP 1781, 1784, 1788, 1791. These definitive legal premises do not implicate the juror's thought processes any more than an erroneous jury instruction reflects the thought process of the judge who wrote it or the jury who in error followed it. *See e.g. In re Stankewitz*, 40 Cal.3d 391, 400 n.4 (1985). We do not need to know what the jurors thought about the erroneous outside law undisputedly before them to conclude that it objectively prejudiced Long.

The fact that these declarations are unrebutted and must be taken as true, actually makes it more obvious that this does not require "probing a juror's mental processes." It happened for a fact, and it is unrefuted. False and extrinsic laws were improperly inserted in this case. Thus, under both tests recognized by this Court, the unrebutted juror declarations do not inhere in the verdict and must be taken as true.

3. Statements of the law are always based on "specialized knowledge," and are legal opinions that are not personal experiences.

Juror statements regarding erroneous and outside Maritime and Coast Guard laws imparted the kind of specialized knowledge that this Court has said constitutes improper extrinsic evidence. "In determining whether a juror's comments constitute extrinsic evidence rather than personal life experience, courts examine whether the comments impart the

kind of specialized knowledge that is provided by experts at trial.”

Breckenridge, 150 Wn.2d at 199 n.3. Laws and regulations, by their very nature, constitute “specialized knowledge.” See e.g. *Bouton-Perkins*, 81 Wash. at 682 (granting a new trial where jurors considered outside law).

Here, the Court of Appeals properly acknowledged that the jurors’ statements on the law were “highly specialized and uttered in the vein of being an expert,” but then inexplicably claimed they were nevertheless based on personal experience. This was legal error and directly conflicts with *Breckenridge*. The two jurors did not simply state that they personally believed that individuals with prosthetics *should not* work on boats – they applied their specialized knowledge of the law to definitively state as a legal truth that specific laws actually prohibited it.

Specialized knowledge like this cannot be imparted during deliberations. *Breckenridge*, 150 Wn.2d at 199 n.3; *Adkins*, 110 Wn.2d at 138; *Bouton-Perkins*, 81 Wash. at 682; *Fritsch v. J.J. Newberry's, Inc.*, 43 Wn. App. 904, 905, 720 P.2d 845 (1986). (introducing statements regarding the value of damages based on discussion with an attorney does not inhere in the verdict); see also *In re Stankewitz*, 40 Cal.3d at 399-400 (finding jury misconduct when a juror inserted his own experience as a police officer on a question of law).

The law strictly prohibits outside laws and legal opinions to be put in front of the jury because it usurps the judge's role. "Each courtroom comes equipped with a 'legal expert,' called a judge, and it is his or her province alone to instruct the jury on the relevant legal standards."

Clausing, 147 Wn.2d at 628. In voir dire, lawyers have the right to trust prospective jurors will follow the court's instructions. In voir dire attorneys are rightly focused on rooting out juror bias on issues that will actually be decided by the jury. Voir dire would require polling every juror about his or her knowledge of the law, instead of trusting the jurors to follow the standard pattern instruction that prohibits them from bringing in outside law. If the lower courts' ruling is not reversed, it would justify the for cause exclusion of all lawyers and countless other professionals from the jury who have a specialized knowledge of the law, a major departure from established Washington law.

Undisputedly, Maritime and Coast Guard laws were not properly before the jury and were never offered by the parties or sanctioned by the court. Plaintiff had no reason to suspect jurors would violate the court's instructions and insert false and irrelevant laws into deliberations. This misconduct could not have been foreseen and requires a new trial.

B. Jury Misconduct Fabricated a False and Non-Retaliatory Reason for Defendants' Retaliation.

The outside and erroneous law transformed Long's selfless act furthering the WLAD by opposing disability discrimination into careless, reckless, and illegal conduct that violated Coast Guard and Maritime Law. Courts must grant a new trial where jurors inject "legal premises not applicable to the facts of [the] case...which could well have confused or misled the jury." *Adkins*, 110 Wn.2d at 138. A new trial must be granted where the misconduct *could have* affected the verdict:

A new trial **must** be granted unless "it can be concluded **beyond a reasonable doubt** that extrinsic evidence did not contribute to the verdict."

Richards v. Overlake Hospital Medical Center 59 Wn. App. 266, 273, 796 P.2d 737 (1990) (quoting *State v. Briggs*, 55 Wn. App. 44, 56, 776 P.2d 1347 (1989)) (emphasis added). Here it most certainly did.

Prior to the misconduct, there was no evidence or law which would have allowed Defendants to assert that Long's decision to hire a deckhand with a prosthetic leg violated Maritime or Coast Guard law. However, once jurors inserted this erroneous and outside law, the jury was armed with a legitimate reason to justify Defendants' apparent anger at Long over hiring Morgan which destroyed his ability to prove several elements of his retaliation claim and crippled his credibility.

1. Jury misconduct undermined Long's burden of proving "plaintiff's opposition to discrimination was a substantial factor in defendant's decision in taking the adverse action," when false law manufactured a non-retaliatory and lawful motive/reason as set forth in Instruction 7. CP 1756.

Armed with these false legal premises, that Long's hiring of Morgan and his continued presence on the tugboat violated Maritime and Coast Guard laws, two jurors concocted a legitimate (but false) non-retaliatory motive for Defendants. The causation element (motive) in employment retaliation cases is notoriously difficult to prove, as Washington courts have repeatedly recognized. "Ordinarily, proof of the employer's motivation must be shown by circumstantial evidence because 'the employer is not apt to announce retaliation as his motive.'" *Kahn v. Salerno*, 90 Wn. App. 110, 130, 951 P.2d 321 (1998) (quoting *Wilmot*, 118 Wn.2d at 69); *see also Scrivener v. Clark College*, 181 Wn.2d 439, 445, 334 P.3d 541 (2014) (causation element ordinarily a question of fact for the jury because of the difficulty of proving an employer's motivation). Where the jury is given false law that provides defendants with a legitimate, non-retaliatory reason for taking adverse actions against the plaintiff that he has no opportunity to rebut, prejudicial misconduct results.

Here, if it was illegal for Long to hire Morgan and oppose his termination simply because he had a prosthetic leg, a false legal conclusion that jurors inserted, then Defendants' actions against Long

would have been legitimate. At trial Long had to prove that his hiring of Morgan and refusal to fire him was protected activity and was a substantial factor in Defendants' decision to take adverse actions against him. *See Allison v. Housing Auth. of City of Seattle*, 118 Wn.2d 79, 93, 821 P.2d 34 (1991) (plaintiffs must prove retaliation was a substantial factor motivating the adverse employment action). However, if Maritime and Coast Guard laws prohibit a deckhand from having a prosthetic, then Defendants' motivation could have been based on Long's illegal acts, and not a retaliatory motive. This becomes an alternative and powerful substantial factor (albeit false) motivating Defendants' decisions that could have impacted the verdict.

Defendants' anger and animus at Long was apparent. Defendants stated they were "not going to use the prosthetic leg guy" and that CEO Bo Brusco didn't "want to use him period. Exh. 43; Exh. 33. Morgan's hiring, and the legality of it was central to Long's case given that it was part of his protected activity. Long's protected activity was already intertwined with Morgan's hiring, but became pivotal when jurors claimed it "**breaks Coast Guard law.**" The jury heard substantial evidence proving that Defendant/CEO Bo Brusco and Manager Kevin Campbell were angry at Long for hiring Morgan simply because had a prosthetic leg below the knee.

Defendants also blamed Long for the disability discrimination lawsuit that Morgan filed, following his termination. Ex. 47; RP 489-90; 523-26; 1071-73; 1375. Defendant/CEO Brusco began questioning Long's judgment for the first time in Long's spotless 14 year career with Defendants immediately after he hired Morgan:

Q. Okay, Isn't it true, sir, that once Mr. Morgan had a prosthetic leg and you learned about it you began to question Mr. Long's judgment?

A. Well, certainly I would question his judgment.

Q. You got pretty angry when I asked you about this at your deposition, didn't you?

A. Yeah. And it still bothers me, yes.

RP 1375.

Defendant/CEO Brusco's anger was open and apparent to the jury, who saw and heard it first hand:

A. At that point in time I questioned the fact that that guy right over there was hired. I ask my manager to take care of that company, to take care of me, to take care of those boats, and take care of the crews on the boats, and he would subject our company to something like that.

Q. And were you pointing to Mr. Long?

A. That's exactly who I'm pointing at.

RP 1388.

Defendants' anger at trial was palpable and apparent, but the jury misconduct made it warranted and legitimate. If the jury believed that Long violated Maritime and Coast Guard laws, then the anger that BTB and CEO Brusco demonstrated at trial and in exhibits would have been justified. Had Long violated Maritime and Coast Guard laws, Defendants had a powerful substitute reason for questioning Long's judgment and ultimately removing him from his position as the Port of Everett Captain.

2. False extrinsic legal premises undermined Long's credibility, discounted the "value and weight" of his "testimony," diminished the "reasonableness" of his "statements" and undermined his competence, as set forth in Instruction 1. CP 1748-1749.

Long had to present credible testimony to prove his case. However, false, extrinsic law relating to Long's most relevant testimony, his opposition to disability discrimination, was twisted to look like illegal or even criminal conduct. This certainly could have impacted the verdict. The jury was charged in Instruction 1 with weighing opposing testimony from witnesses in what the trial court noted was a "fascinating and well-trying case." Bolstering credibility was so important that Defendants, in closing argument, published an unadmitted and previously undisclosed photograph of Defendant/CEO Bo Brusco and his wife that "defense counsel testified showed her client on his wedding day." CP 2259.

Long's credibility and competence would have suffered in the eyes of the jury if Long's protected activity violated Coast Guard and Maritime Laws. The outside law further undermined the reasonableness of Long's testimony that he reported disability discrimination to Defendants. It inserted the fiction that Defendants' anger at Long merely related to Long's failure to comply with Maritime and Coast Guard laws. It bolstered Defendants' argument that Long showed poor judgment and was not qualified to manage the Port of Everett. RP 2328. If Long's efforts to protect Morgan reflected ignorance of the law, then the weight of the testimony that Long performed well was substantially undermined.

Outside and erroneous laws that Plaintiff never had the opportunity to address, let alone rebut, certainly could have objectively impacted the verdict. In an employment case, where the discharged employees' job performance and Defendants' motive is directly at issue, erroneous claims that the employee violated laws in the performance of his job duties hurt Long's credibility which certainly could have impacted the verdict.

3. Jury misconduct undermined Long's ability to prove "Plaintiff was opposing what he reasonably believed to be discrimination on the basis of a disability," his burden of proof under Instruction 7. CP 1756.

The burden of proof in retaliation cases always remains with the Plaintiff. *Allison*, 118 Wn.2d at 93. Here, Long had to prove he "was

opposing what he reasonably believed to be discrimination on the basis of a disability,” and Defendants reminded the jury of this in closing, RP 2328-29. The jury was never instructed that Long had met his burden, as reflected in Instruction 7. Long’s reasonableness in his belief that Defendants discriminated against Morgan could not be more relevant to Long meeting his burden to prove he engaged in protected activity.

False outside law could have convinced the jury that Long’s claimed “protected activity” was illegal and potentially criminal. If Maritime and Coast Guard laws prohibit deckhands from crewing boats with a prosthetic leg, then Long should have known Morgan was not fit to crew a tugboat. Therefore, it was unreasonable for Long to hire him and oppose Defendants’ desire to fire him because of his prosthetic leg.

The injection of outside law into this case crippled Long’s ability meet his burden of proving that he reasonably believed Defendants’ actions against Morgan were disability discrimination. Jury misconduct gave Defendants a legitimate non-discriminatory reason for not wanting to hire or keep Morgan employed because of his prosthetic.

The lower courts erred by failing to consider the significant negative impact this had on Long’s ability meet his burden of proof that he “reasonably believed” he was opposing disability discrimination. Outside law transformed Defendants’ animus into justifiable frustration and a

desire to comply with Coast Guard and Maritime laws. Certainly a jury could have reasonably found that Defendants' anger at Long was motivated by its desire to meet its legal obligations under Coast Guard and Maritime laws. This clearly could have and did impact the verdict.

C. Jurors Engaged in Misconduct that Denied Long his Right to a Fair Trial and Undermined the Very Purposes of the WLAD

Jurors improperly injected outside laws that they claimed legally barred an employee with a perceived disability from crewing a tugboat. This false law reinforced the discriminatory stereotypes that the Legislature has specifically said "menaces the institutions and foundation of a free democratic state." RCW 49.60.010. "The purpose of Washington's Law Against Discrimination (WLAD), chapter 49.60 RCW, is to eliminate and prevent discrimination in the workplace." *Scrivener*, 181 Wn.2d at 441; *see also Marquis v. City of Spokane*, 130 Wn.2d 97, 109, 922 P.2d 43 (1996) (WLAD's purpose is to "deter and to eradicate discrimination in Washington."). Anti-discrimination statutes, like the WLAD, depend on the cooperation of employees who are willing to file complaints and act as private attorney generals to vindicate employee rights in court. Critical to enforcing these laws is to protect employees and allow them to be free to oppose discrimination without fear of retaliation.

See Burlington Northern and Santa Fe Ry. Co. v. White, 548 U.S. 53, 67, 126 S.Ct. 2405, 165 L.Ed.2d 345 (2006).

Rather than appropriately applying WLAD retaliation instructions to the facts of this case, jurors inserted false Maritime and Coast Guard laws that completely undermined the very purpose of the WLAD. Jurors flipped Washington's anti-discrimination law on its head by inserting erroneous laws that they falsely claimed barred disabled individuals from working as deckhands. The WLAD specifically exists to protect these individuals. Jury misconduct reinforced reprehensible stereotypes about people with disabilities and perceived disabilities. Long opposed discrimination and lost his spotless 14 year career because he protected the rights of Anthony Morgan, a competent deckhand with a perceived disability. He fought for the laws this Courts says are "of the highest priority. This prejudice denied Long a fair trial.

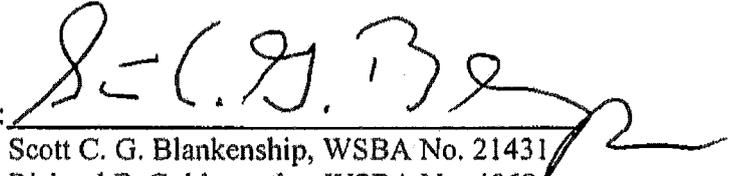
IV. CONCLUSION

Jury misconduct denied Long a fair trial. The lower courts erred as a matter of law by not recognizing that extrinsic law is based on specialize knowledge, and can never inhere in the verdict. The courts compounded this by failing to recognize it severely undermined Long's burden of proof for his retaliation claim. The court had no basis to find beyond a reasonable doubt it did not impact the verdict. Long deserves a new trial.

DATED this 4th day of May, 2015.

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DECLARATION OF SERVICE

I hereby declare under penalty of perjury under the laws of the State of Washington that, on the below date, I sent a true copy of this document to the following:

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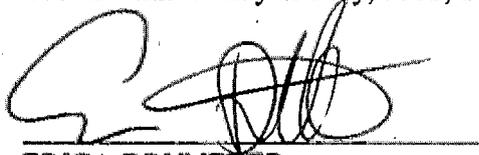
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DATED this 4th day of May, 2015, at Seattle, Washington.



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Subject: Supreme Court No. 90976-8 - Long v. Brusco Tug & Barge, Inc., et al.

Dear Supreme Court Clerk:

Attached is the Supplemental Brief of Petitioner Brian Long in Supreme Court No. 90976-8 (*Brian Long v. Brusco Tug and Barge, Inc. et al.*).

The attorneys for the petitioner are:

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Please confirm receipt of the supplemental brief.

Thank you,
Erica Brunette

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