Supreme Court No. 100172-0

Division II Court Of Appeals No. 54390-7-II

2nd Amended Petition For Review

IN THE SUPREME COURT
FOR THE STATE OF WASHINGTON

MICHAEL J. COLLINS PRO SE

PETITIONER

v

OLYMPIC INTERIORS INC.

RESPONDENTS

PETITION WORD COUNT CERTIFICATE OF COMPLIANCE, APPENDIX, AS 2nd AMENDED PETITION FOR REVIEW FILED

PETITION FOR REVIEW

R.A.P. 13.4 - RAP 18.17

Petition For Review is based on Division II Court Of Appeals August 9, 2021 Rejection of my April 19, 2021 Request For Reconsideration

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On review of the Pierce County Superior Court

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APPENDIX INCLUDED
Physically filed same day, as Petitioner unable to scan

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A. IDENTITY OF PETITIONER

Comes forth Michael J. Collins Pro se, to e-file this 2nd Amended PETITION FOR REVIEW

B. DIVISION II COURT OF APPEALS DECISION

12 Oral Argument as I will this Supreme Court reserve, as 15 minutes only, would not have been Division II sufficient, to argue my well-pleaded issues as to 'merits' of my case, but in its April 6, 2021 decision, referenced as justification in-part, to reject 'merits' of my Appeal, in direct reference to my not providing proof of 'Spoliation' when I in my original January 3, 2019, Trial Court COMMENCEMENT OF ACTION, CP at 1-27, and in my December 2, 2019 PLAINTIFFS FURTHER OPPOSITION TO DEFENDANTS REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT CP at 137-157, I provide document proof of 'Spoliation' by Olympic Interiors Inc., not,,, 'Spoliation' at the Trial Discovery process, but specific to Olympic payroll 'Spoliation' upon my January 30, 2017 Neck, and Right

Shoulder Injuries, I documented real-time, then my 'merits' as,,, Olympics' 'Spoliation', and Defamation/ Libel *per se*, also Division II ignored, was 'employer retaliation', for Olympics' sole intent to discredit me, is RCW 51.24.020 Intentional Injury, as actionable.

C. ISSUES PRESENTED FOR REVIEW

See pages 40-41 from my December 2, 2019 CP at 137-157, as 'Attachments', Olympic Interiors Inc'., Doug Bagnell, whom the Court Of Appeals held in high esteem, in its April 6, 2021 decision, page 40 at 24-25, and page 41 at 1-3, Doug Bagnell on the record at the Board Of Industrial Insurance Appeals, testifies that I was hired under no other capacity, other than a ''drywall installer''…

Then this solidifies my argument on the merits that Olympic Interiors Inc., INTENTIONALLY 'Spoliated' my February 10, 2017 Time-Sheet, and Payroll Document, as Olympic 'Spoliated' my January 30, 2017 signed Time-

Sheet, that in detail describes my January 30, 2017 Neck, and Right Shoulder Injuries, as the fraudulent versions are also as Attachments in my January 3, 2019 Trial Court COMMENCEMENT OF ACTION.

As Bagnells' Board Of Appeals testimony contradicts his (November 4, 2019 DECLARATION, Resp. CP at 215-228), as the very document Olympic Interiors Inc., relies, to support its Motion For Summary Judgment, and as Court Of Appeals pg.1 is not correct that I Michael J. Collins failed to prove a 'Spoliation' claim, as proven by very specific Board Of Appeals testimony of Bagnell, then the Court Of Appeals is not correct that the Trial Court granted Summary Judgment correctly, as based on no correct 'legal theory', as this Court Of Appeals nowhere in its April 6, 2021 decision, ever references CR56(c)(**f**)(g))(**h**), as I cite in my original Brief to the Court Of Appeals February 10, 2020, as ,,,'bad faith',,, on the part of Olympic, as Bagnells' November 4, 2019 DECLARATION, through Discovery, that clearly

contradicts his Board Of Appeals testimony in-part referenced by this Court Appeals in its page 3 of its April 6, 2021 decision, as I prove, then Motion For Summary Judgment, cannot stand to grant Summary Judgment for the Defendant.

Nowhere in the Court Of Appeals April 6, 2021 decision does it acknowledge my continuous Discovery requests since my Board Appeal, and thru my Trial Court case, for Olympic to produce my true actual, factual signed Time-Sheet from January 30, 2017, that would have proven real time, my January 30, 2017 as real-time documented Neck, and (Right Shoulder Injuries, as I had 2 surgeries), as signed by me on January 30, 2017.

Separate Division II Appeal No. 54939-5, is scheduled for October 21, 2021.

Bagnells' November 4, 2019 DECLARATION Resp. CP at 215-228, included his June 22, 2017 **MEMO**, from which Bagnell had no necessary proof to support his contentions, though per the 'Americans with

Disabilities Act', if,,, I had any such Neck restrictions, same as a Neck disability, if,,, then upon being considered for employment, and as hired by Bagnell January 27, 2017, Bagnell was legally compelled to inform me on that day, January 27, 2017, of the duties of a ,,,''drywall installer'',,, see Bagnell page 41 at 1-3, CP at 137-157, and, to prove documentation, on that day January 27, 2017, of any such ''obvious'' neck conditions if,,, I possessed any such neck restrictions.

As I possessed no such neck restrictions January 27, 2017, Bagnell acted in Discovery 'bad faith',,, as his (entire record) **MEMO**, then his February 10, 2017 fraudulent Time-Sheet, in his November 4, 2019 DECLARATION, directly upon which Trial Court Summary Judgment was granted.

Page 6, of Court Of Appeals April 6, 2021 decision, does reference the Trial Court 'incorrect legal theory' comments specific to RP pg.21 at 5-11 ,,,trial judge,,, ,,,''But getting back to the issue at hand'',,,

as my RCW 51.24.020 INTENTIONAL INJURY claim, is not based on my denying, or based on challenging ,,,'employers' right to dispute claims of injuries'...

Then this is absurd for the Court Of Appeals, and the Trial Court, to ignore the provable 'spoliation', as proven by Bagnells' pages 40-41 CP at 137-157 Board Of Appeals testimony contradicts his November 4, 2019 DECLARATION, then violating the Summary Judgment process, then it is not relevant that 'an employer does have every right to dispute claims of injuries', but does not have a right to 'spoliate' facts.

Nowhere in this No. 54390-7 Appeal April 6, 2021 decision, does the Court Of Appeals reference RCW 51.16.070, or RCW 51.48.040.

The Anti-SLAPP statutes as absurdly invoked by Olympic Interiors Inc. counsel, and in large part upon which Trial Court Summary Judgment was granted, then a Trial Court Error, and Court Of Appeals Error to not address the Anti-SLAPP statutes invoked as a

Defense by Olympic counsel, in its Trial Court, and Division II Pleadings, are not relevant to protect Olympic Interiors Inc., in my Trial Court Summary Judgment process.

As Board Of Industrial Insurance Appeals process as legal fact, can only 'hear',,, what the Department of Labor & Industries as the 'original and sole tribunal per the ,,,'ACT',,, writes in its Appealable Order, then no way I Michael J. Collins, specific to RCW 51.24.020 could have brought forth to be heard.

D. STATEMENT OF THE CASE ARGUMENT

Nowhere in this No. 54390-7 Appeal April 6, 2021 decision, does it address erroneous Anti-SLAPP statutes, upon which Olympic relied for its defense, as defeated in my Court Of Appeals Assignment Of Errors pg.4, Trial Court error no 5, and as specific to my prevailing Court Of Appeals argument, as my 'multiple genuine issues of material fact'.

1 RP at pg.9. Trial Court did not address Anti-SLAPP

statutes upon which Olympic relied for its defense, as RCW 4.24.500-(***510)-520, (***RCW 4.24.525(4)(b)), as Olympic had initial burden to prove).

''Finally, we decline to consider the remaining issues because they were not sufficiently briefed or preserved by Collins''… From Division II April 6, 2021 Decision. 1-2

This is well pleaded in my Trial Court PLAINTIFFS' DECLARATION filed December 2, 2019 CP at 158-162, also my Division II Assignment Of Errors pg.4, Error No.5.

There are no 'disputed facts' specific only to,,, Doug Bagnell testimony, pgs. 40-41 CP at 137-157 as Bagnell Board Of Appeals testimony, and my October 21, 2019 PLAINTIFFS: DECLARATION,,, CP at 38-66.

1_____

Davis v Cox,183 Wn.2d 269, 351 P.3d 862 (2015)… Olympic must prove its fraudulent documents content, is statutory L&I ''delegated authority,,,advocacy'',,, for 'public concern decision making'**(Amend 2002 c 232)**,,, which is impossible. Wn. Const. Art. 1 sec. 5 ,,,''being responsible for the abuse of that right''…

2_____

I factually ,,,''preserved'',,, Doug Bagnells' Board testimony as ,,,'evidence',,, pg.40 at 24-25, pg.41 at 1-3, hired as 'drywall installer' only,,, Attachments CP at 137-157. Then see his November 4, 2019 DECLARATION in support of Summary Judgment, as perjurious, means, Summary Judgment at least, based on Bagnells' perjury. And my original June 27, 2017 Report Of Injury, filed to the Department, that was a same detailed description of my January 30, 2017 signed Time-Sheet as 'Spoliated' by Olympic Interiors Inc., then does not compel me yet, a *prima facie* mandate, but for Olympic to produce.

1. Procedural Facts Argument

Doug Bagnells' Board Of Appeals testimony, proving no disputed type of work I performed Question Of Law and Fact, would prove Bagnells' November 4, 2019 DECLARATION Resp. CP at 215-228,,, a CR 56(c) Summary Judgment Olympic Interiors Inc., violation, rendering as Error, Trial Court Summary Judgment.

3 Then as a common Question Of Law and Fact, the fact that the Department ,,,'segregated',,, my Neck Injury, with no known, or diagnosed, neck condition of any kind, in my medical history, prior to my January 30, 2017 Neck Injury, and as the Department would not allow a medical diagnosis in my Neck (only) injury Claim ZB23273 in January, 2018, then the only criteria the Departments' Mark Fowble could have possibly based its decision January 16, 2018, to reject my Neck Injury Claim ZB23273, was falsified documents provided it, by Olympic, discrediting me. Also Defamation *per se*.

3
Page 38 Chapter 5, latest edition of the Medical Examiners' Handbook,**"segregation"**,,, is a legal determination made by the Department''… Then if no 'pre-existing' condition, becomes a legal determination as same. My June 27, 2017 Report Of Injury, was discredited by Olympics' falsified information, based on my factual 'type of work performed'.

Department Claim adjudicator Fowble must testify, and as based on an RAP 3.3 consolidation allowed.

2. Overview Of Relevant Facts Argument

The Court Of Appeals in its April 6, 2021 decision, 'abused its discretion' in the 'issues' it actually decided to address, but decided incorrectly, ignoring claim facts.

E. ARGUMENT: WHY REVIEW SHOULD BE GRANTEDThe Court Of Appeals Erred as it wrongly ignored Trial Court Procedural inequity, and as it ignored its own, and Supreme Court controlling *stare decisis*, and controlling statute, as the merits of my RCW 51.24.020 case, that I Trial Court *prima facie* pleaded, command a reversal, and remand.

Anti-SLAPP statutes cannot protect a commercial business, or same as a private business, as if not a requested 'advocate', Olympic Interiors Inc., was never a requested 'advocate', the speakers, or persons who created the written Intentional untruths such as Olympics' Doug Bagnell who testified at the Board Of Appeals contrary to his November 4, 2019 Declaration to support Summary Judgment, was factually to protect

Olympics' 'private interest', only,,, not to share a 'matter of public concern' information.

Then fact, Olympic has not met either the Spoliation, or Defamation *per se* initial *prima facie* burden, as ,,,Olympics' 'Spoliation' origin,,, specific to a February 10, 2017 after-the-fact of my original January 30, 2017 Neck, and Right Shoulder INJURIES DOCUMENTED, as my, and my job supervisor January 30, 2017 signed ,,,Time-Sheet,,, replaced by an after-the-fact unsigned computer generated fraudulent time-sheet, as Olympics' March 31, 2017 Intentionally falsified Employers' Quarterly Report filed to the Department, specific what exact type of work I performed for Olympic Olympic, even after I Michael J. Collins was in Olympics' office February 10, 2017, a date that signifies my 1 and only payday for Olympic, as I vociferously complained that day, that I do not accept the fraudulent time-sheet, is ,,,origin,,, of Olympics' Spoliation, as 'Spoliation' based in common law, ,,,not,,, Trial Court Discovery as origin.

Since Defamation *per se*, as written, Libel *per se,* as Olympics' Intent, was to cover-up my January 30, 2017 Injuries, because they Olympic, had violated the Department Of Labor & Industries safety recommendations for 1 person alone [hanging] sheetrock weight limit, and since I was injured, Olympics' ,,,'experience rating',,, as a result of safety recommendations not being followed, would likely be 'adversely affected', as a clear ,,,motive,,, for a jury to ultimately consider.

This is what I requested the Department Investigation into Olympics' safety procedure be conducted pursuant to, but was not as specific conducted, specific to my July 25, 2017 initial Investigation request.

Defamation *per se*, Libel *per se* is always actionable *per se*, specific also to the negligence standard, as a lesser standard, as the 'substantial effects' of Olympics' Defamation *per se*, with the written untruths after my January 30, 2017 Injuries, did convince the Department to reject my claim, when no medical doctor on record,

ever determined, that I somehow never sustained a Neck, or Right Shoulder injury.

Then the Department is the 'authority recipient' of the March 31, 2017 falsified Quarterly Report, and February 10, 2017 fraudulent time-sheet by Olympic, as both document a much lessor type of work, than the actual much heavier duty type of work of [hanging] sheetrock, as the specific number of hours I worked [hanging] only, prior to my January 30, 2017 injuries, was not even the total number of hours [hanging] only, as documented on the March 31, 2017 Quarterly Report, or February 10, 2017 fraudulent time-sheet. Then WPI 14.03, and WPI 30.06, and WPI 30.01.03 support my case.

See in my February 10, 2020 Division II filed BRIEF OF APPELLANT, *Robel v Roundup 148 Wn.2d 35, 59 P.3d 611 (2002),,,* as dispositive, powerful precedent ignored by Division II, but supports my argument, as specific to *Robel,* I, in my RCW 51.24.020 case, fulfill Olympic as 'principle authority', and with their 'vicarious liability', acted 'within the scope of their employment',

violated, to falsify, and Spoliate facts of my January 30, 2017 Neck, and Right Shoulder injuries, to cover-up their abuse of the system, as Olympic knew the harm to discredit me, that would come from their conduct.

See Missouri State case *Polk v INROADS/St Louis Inc., 951 S. W. 2d 646, 648 (Mo. App. E. D. July 22, 1997),,, s*ee the related significance of my Restatement (second) Of Torts section 46 cmt d. (1965),,, cited in my Division II BRIEF OF APPELLANT, at pg.19, as *Polk* describes uncanny parallels to what I 'expose' as Olympic Interiors Inc., provably committed, as employer/INROADS had to know harm that would come to its employee, the *INROADS* court found, there was outrageous conduct by employer *INROADS*, beyond what *Polk*, or society should have to tolerate, as based on *Polk* exposed 'supervisors' misrepresentation', then as motive for employer retaliation.

Ortiz v Chipotli Mexican Grill (Cal. Super 2018) not published, only because after employee *Ortiz'* trial victory, over employer *Chipotli*, who accused *Ortiz* of stealing from

the company safe,,, to justify its eventual terminating of *Ortiz'* employment, *Chipotle* moved to settle.

Olympic 'SPOLIATION' is actionable, as again, see in my February 10, 2020 filed Division II BRIEF OF APPELLANT, *Sweet v Sisters of Providence in Wash. 895 P.2d 484,491 (Alaska 1995),,,* supports a clearly dispositive Division II Court Of Appeals case *Homeworks Constr., Inc. v Wells133 Wn. App. 892, 138 P.3d 654 (2006).* Division II ignored its own precedent.

Then see in that same February 10, 2020 filed BRIEF OF APPELLANT, *Cook v Tarbert Logging, Inc., 190 Wn. App. 448, 360 P.3d 855 (2015),,,* confirms that if Olympic had a 'duty to preserve', which Olympic most clearly did, pursuant to RCW 51.16.070, and RCW 51.48.040, as Olympics' statutory 'duty to preserve' my January 30, 2017, and same as my February 2, 2017 signed Time-Sheet, that real-time,,, documented my Neck, and Right Shoulder injuries, as specific to [hanging] sheetrock, not a much lighter duty framing, then 'Spoliation' is relevant,

and then actionable specific to RCW 51.24.020.

See *McDonald v Department Of Labor & Industries 104 Wn. App. 617* 17 P.3d 1195, Division II Court Of Appeals (2001),,, argument in my February 10, 2020 Division II BRIEF OF APPELLANT Appendix Exhibit H but contradicted in my favor *In re: Pablo Garcia Dckt. No.15239 (March 28, 2006)*,,, of my Division II Appeal No. 54939-5 case, as separate to this Division II (declined No. 54390-7, as now this Supreme Court Petition For Review), was wrongly cited, and decided, by the Board Of Industrial Insurance Appeals, Superior Court, and by the Division II Court Of Appeals.

*S*ee *Cushman v Shinseki United States Court Of Appeals For The Federal Circuit 576 F.3d 1290 (2009),,,* specific whether to an altered document, *Cushman*, or a document with Intentionally altering determinative facts as Olympic committed in this Appeal, is same, specific to my Washington State Constitutional ,,,'protected property interest' rights,,, in either Appeal.

See from *Cushman*,,, the Court Of Appeals found that *Cushman* could not have received a fair process at the 'administrative level', ie., in my case, the Board Of Appeals, who rejected my timely, and proper offering of Olympics' fraudulent time-sheet, and payroll document, at 'issue',,, as rejected Exhibits,,, but were included in my Appeal, in my original Superior Court COMMENCEMENT OF ACTION, CP at 1-20, CP at 1-27.

The *Cushman* Appeals Court found that *Cushmans'* due process rights were violated by the consideration of 'tainted medical evidence'. In my case specific in this Petition, the Superior Court considered, and allowed Olympics' Doug Bagnell November 4, 2019 DECLARATION, that factually contradicts his prior Board testimony as pages 40 at 24-25, and page 41 at 1-3, as CP at 137-157. See ER 804(b)(1). In *Cushman*,,, 'an administrative person altered a document to make it appear *Cushman* was more employable than he actually was'… In my case specific to both Appeals, Fowble with

the 'authority', to decide facts of my January 30, 2017 injuries, altered, what a medical decision found, specific to SEGREGATION,,, as Question Of law, and Fact.

Specific to my Appeal, Olympics' Bagnell, did alter, with his November 4, 2019 DECLARATION Resp. CP at 215-228, as Trial Court accepted,,, his September 25, 2018 Board testimony pg. 40 at 24-25, and pg. 41 at 1-3, as CP at 137-157. The *Cushman* Court found that the altered document was prejudicial, and was determinative to a proper due process claim.

Because my original June 20, 2017 Neck, and Right Shoulder Injuries Claim ZB21147 was Department accepted as a Right Shoulder claim, (I had 2 surgeries),,, I possess Washington State Article 1 Section 3 Constitutional ,,,'Protected Property Interest',,, specific to Claim ZB21147. So Claim ZB21147, and Neck (only) Injury Claim ZB23273 must legally be (were not) adjudicated separately.

But Fowble illegally 'segregated' my Neck (only) injury Claim ZB23273, at 'issue',,, in this Appeal, as illegally

directly on, separate Claim ZB21147, 'SEGREGATION'.

4 My Trial Court cannot invoke or preempt, ''employers have the right to dispute claims of injuries'', an incorrect 'legal theory', per my RCW 51.24.020 Intentional Injury case, on incorrect RCW 51.04.010 'exclusivity provisions'.

I am allowed per RCW 51.24.020 as specific statutory language allows me, to pursue both statutory remedies.

Trial Court did not approve Anti-SLAPP statutes which Olympic relied, so Summary Judgment must be reversed.

4 See *Seattle-First Nat'l Bank v Shoreline Concrete Co., 91 Wn. 2d 230 241-42 588 P.2d 1308 (1978),,,* RCW 51.04.010 does not exclude preserved tort action per RCW 51.24.020.''By certain specified exceptions'', we referred to statutory exception such as RCW 51.24.020.
Per *Reese*. Employer Sears, failed ultimately at all 3 not legal theories. (1) RCW 51.04.010 exclusive remedy. (2) election of remedies doctrine. (3) that employee could not return to his original duties. Olympic counsel never argued estopple, or 'election of remedies' doctrine, but would be a failed defense anyway. RP pg.8 at 5-11. Court Of Appeals de novo review, incorrectly affirmed Trial Court incorrect legal theory. This as it, and Trial Court, ignored Olympics' Intentional foreseeability, by Olympics' Intentional Tort. *Reese v Sears Roebuck & Co., 107 Wn. 2d 563, 731 P.2d 497 (1987),,,* 'King County Superior Court in granting Sears' Summary Judgment, did not indicate which legal theory supported its decision''. Then Summary Judgment was reversed by our State Supreme Court.

5 *Cushman* Appeals Court, ''The source of the fundamental unfairness that tainted the initial evaluation of Mr. Cushmans' claim, was never removed from any prior proceedings. Therefore none of the subsequent appeals and rehearings Mr. Cushman received satisfied his due process on the 'merits'…

Cushman Court Of Appeals questioned government counsel as to whether the 'merits' of *Cushmans'* claims had been decided/how he could receive a fair hearing.

Had the Department properly completed its (my requested) July 25, 2017 investigation into Olympic, it would have clearly found RCW 51.16.070, and RCW 51.48.040 Olympic violations, as dispositive.

In *McDonald*,,, he never raised his Objections and Errors, but I, in Division II No. 54939-5,,, provably did.

6 A Department Order, the content only of which, can be heard by the Board Of Appeals. Then see further RP pg.8 at 5-11 at '' Mr. Collins is now using this lawsuit to re-litigate those claims. Mr. Collins had an opportunity to be fully heard''. That is not even possible per Olympic counsels' own prior statement RP pg.7 at 25, RP pg.8 at 1-3, but influenced Trial Court decision to grant Summary Judgment, based on procedural fallacy.

6 This is why my July 25, 2017 Investigation request into Olympic Interiors Inc., not conducted, was so important. As a Department Order, based on my complaint against Olympics' provable Time-sheet 'spoliation' only, could have been heard at the Board… And I still could have filed a separate RCW 51.24.020 claim. Mark Fowble is a material witness in this Petition, and my Division II No. 54939-5 Appeal.

See RP pg.7 at 3-6,,,''but permitted him to file a separate neck injury claim which was later also not permitted based on the medical testimony and the IME performed by Dr. Joan Sullivan''… Not true.

In my November 9, 2020 No. 54939-5 Brief, and in this No. 54390-7 Appeal CP at 38-66 Attachment, as Dr. Sullivan testimony pg.81 at 5-6, at Board Hearing, at what is now No. 54939-5. There was no Neck claim (only) medical exam as ''separate Neck Injury claim''.

Mark Fowble would not allow it, based on a continued dispute by Olympic counsel defaming my position. See RP pg.7 at 3-11... And, Dr. Sullivan testimony as,,, ''I was never asked if he had an injury, I did not address it, and so I can't give an opinion''. So Olympic counsel RP pg.7 at 3-6, all RP defense, lied in this Trial Court.

Then Summary Judgment is not only based on Doug Bagnells' perjurious ''November 4, 2019 DECLARATION in support of Summary Judgment'',,, that contradicts his Board testimony, pg.40 at 24-25, and pg.41 at 1-3, CP

at 137-157, see relation in my November 9, 2020 filed No. 54939-5 Division II Appeal, Appendix Exhibits E-F,,, as Bagnells' reference to 7. Exhibit C, is Olympics' falsified time-sheet, I include in my COMMENCEMENT OF ACTION, CP at 1-27, and in my February 10, 2020 this Appeal No. 54390-7, Exhibit A, but also Summary Judgment based on counsel CR 56**(f)(g)(h)** 'bad faith'. [7]

Because Olympic violated the CR 56(c) Summary Judgment process, and as Trial Court granted judgment as if CR 12(b)(6), Summary Judgment must be reversed.

And Division II April 6, 2021 decision as erroneous, states that I somehow did not plead my over length Brief ''sufficiently''. I need only, the ,,,'notice-pleading standard',,, in a Washington State Court, Article 1 Section 21,,, not a ,,,'plausibility pleading standard'…

7

Renteria v County Of Orange 82 Cal. App. P.3d 833 147 Cal. Rptr. 447 (1978),,, Defendant as 'demurrer' originally sustained, as the essentially 'no fault' 'exclusivity provisions' of the 'ACT' for all wrongs as complained for Intentional Infliction Of Emotional Distress, was ultimately overruled against defendant demurrer. Professor Arthur Larson tort non-physical injury citing Larson supra note 11, S/S 68.34… And Olympic counsel will fail to argue that RCW 51.24.020 is somehow unconstitutional. RCW 51.04.010, CR 12(b)(6), are erroneous, but Olympic counsel violates CR 56**(f)(g)(h).**

RCW 51.04.010 'Exclusivity Provisions', do not contain employer Intentional Injury 'Procedural Safeguards', as in RCW 51.24.020. 'Procedural Safeguards' relevance are found in Federal Law precedent *Mathews v Eldridge 424 U. S. 319 96 S. Ct. 893. (1976),,, and Goldberg v Kelly 397 U. S. 254 90 S. Ct. 1011 (1970),,,* dictates 'Procedural Safeguards' must be present to guarantee a 'pre-deprivation process', and, where my 'protected property interest' per Article 1 Section 3 specific now to both Claim ZB21147, and Claim ZB23273 is in place.

8 _____

See *State v Fitzpatrick 5 Wn. App. 661,668 (1971) Division II* Court Of Appeals. 'Only Court Of Appeals unpublished opinions are not cited as authority, as U. S. Supreme Court affirms to unpublished cases, ''They generally provide a guide to action the agency may be expected to take in future cases, subject to the role of *stare decisis* in the administrative process, they may serve as precedents'… And specific to Article 1 Section 3 Wn. State Const., I would enjoy 'Protected Property Interest' in my separate Division II No. 54939-5, then Board Hearing, as Board Of Appeals *In re: Danny B. Thomas Dckt. 40,655,*,, as *Thomas* does not presume that the Board has the authority to declare an 'act of the legislature unconstitutional. But the Board does have the authority, as it ignored, to decide whether an 'ACT' statute, gives Claim manager Fowble,,, discretionary authority to 'segregate' illegally. No 'ACT' statute does.

9_____

Because my original Neck/Right Shoulder Injury Claim ZB21147 was approved as Right Shoulder Occupational Disease Claim only, not implicating Olympic as January 30, 2017 'chargeable 'employer', and because Fowble illegally 'segregated' my separate Neck only Injury Claim ZB23273, but based on Claim ZB21147, I had Claim ZB21147 'Protected Property Interest'.

No January 27, 2017 Bagnell/Olympic documentation supports Bagnells' June 22, 2017 **MEMO**, as that **MEMO** was Intended to discredit me Michael J. Collins, when I filed my June 20, 2017 original Injury(s) Claim.

Then Division II Appeal No. 54390-7, as this Petition For Review is directly based, reveals Division II erroneously affirming, as if CR 12(b)(6). RP pg.21 at 5-9. [10]

Just as *Polk, Polk v INROADS,* was subject to intolerable retaliation simply for exposing his employers fraudulent 'misrepresentation' intended to enhance *INROADS* performance standing,,, same as Olympic, who falsified to cover-up my January 30, 2017 Injuries to enhance its Workers Comp. 'experience rating'...

Olympic cannot cite boiler-plate extreme examples from WPI Jury Instructions, as if specific extreme examples only, must support my RCW 51.24.020 case.

10 ''But getting back to the issue at hand, what is important to understand here is that employers do have the right to dispute claims of injuries by their employees''. This Petition Trial Court, never considered my RCW 51.24.020 Intentional Injury argument, but based its decision in ERROR on RCW 51.04.010, that does not allow an injured worker to pursue an employer for Intentional Injury specific to 'no fault'. Then my Article 1 Section 21 right Trial Court violated, and Division II in this No. 54390-7 Appeal ignored Trial Court 'Prejudicial Error'.

Division II disregard as its error, Trial Court ignoring my RCW 51.24.020 'merits' strength of a 'Spoliation' Jury Instruction adduced, based on Olympics' statutory 'duty to preserve', as 'Adverse Inference' Instruction.

As an Unidentified Jury Instruction to 'Anti-SLAPP', erroneous statutes relied upon by Olympic in its Motion For Summary Judgment, is a proper dispositive Jury Instruction, as Trial Court error, Division II ignored, to not decide my RCW 51.24.020 case, also based on Olympics' provable Defamation *per se,* and Intentional Infliction Of Emotional Distress as 'actionable damages'.

11_____
Black's Law Dictionary 268 (8th ed. 2004),,, defines Olympics' 'duty to preserve' 'bad faith', commands Olympic 'burden of proof' prior to any CR 56(c) equitable relief, as Olympic entered the legal process in violation of the 'cleans hands doctrine', and specific to Defamation *per se*. As Black's Law Dictionary 1401(6th ed. 1990),,, will not allow already proven Olympic February 10, 2017 originated 'Spoliation' to be ignored, then Olympics' CR 56(g) Discovery 'bad faith' solidified by its November 4, 2019 Doug Bagnells' DECLARATION in support of Summary Judgment Resp. CP at 215-228, and as also for what legally constitutes 'Spoliation' as actionable, see also, Karl B. Tegland, 5 Washington Practice: Evidence sec. 402.6 at 37. Then Trial Court CR 56(f) was in error, but denied me by my Division II No. 54390-7 Appeal decision. Refer to my substantive February 10, 2020 Brief Of Appellant.

F. CONCLUSION

1. Supreme Court Review, Oral Argument, even combine No. 54939-5, with this Appeal No. 54390-7, compels future Bagnell/Fowble *et al* material testimony then as same Trial Court pre-trial process, and both Trial testimony can be way of RAP 3.3. Consolidation.

2. Or in the alternative, separate Supreme Court Review, Oral Argument, but still compels future Bagnell/Fowble *et al*, material testimony Review.

In either, Bagnell must justify his November 4, 2019 DECLARATION Resp. CP at 215-228, versus his Board Testimony as my CP at 137-157.

3. Either 1-2 includes my 'damages' to remand this Appeal 54390-7 to Trial Court, as Anti-SLAPP statutes Olympic relied in Trial Court defense as erroneous, as I file dispositive Jury Instructions, as Olympics' 'Spoliation', Defamation/Libel *per se*, all 'material issues', and Bagnell/ Olympic counsel 'bad faith', upon which Trial Court Summary Judgment was directly based.

Olympic counsel CR 56 'bad faith' Discovery violations began August 13, 2019 (my) Deposition, when (they) submitted for Substantive Exhibits, 'pictures' falsely depicting weight limit of 1 person working alone, as Doug Bagnell, (sheetrock expert) masterminded, as I complained of such safety violations January 30, 2017.

See CP at 34-35 as my Objection to pictures 'False Portrayal', as see in CP at 38-66 Attachment (Exhibits), argument, as is Olympic counsel Discovery 'bad faith'.

And (Claim manager Mark Fowble as 'fact' recipient 'authority' of the June 22, 2017 Bagnell **MEMO**) ,,, supports Olympic 'knowing of the harm caused' by its actions 'merits' of my Defamation/Libel *per se* count, and merits' of my Intentional Infliction Of Emotional Distress count, as both must testify. Fowble must show Question Of Law material 'Segregation 'grounds' of my Neck Injury Claim ZB23273, as my Olympic Interiors Inc., RCW 51.24.020, CR 56(c) Question Of Law and Fact.

WASHINGTON STATE SUPREME COURT
NO. 100172-0

DIVISION II COURT OF APPEALS
NO. 54390-7

2nd Amended Petition For Review

APPENDIX

RAP 13.4 RAP 18.17

Exhibit 1 - August 9, 2021 Division II Court Of Appeals denial of Appellants' April 6, 2021 Motion For Reconsideration, based on its included Division II April 6, 2021 UNPUBLISHED OPINION.

Exhibit 2 – RCW 4.24.500

Exhibit 3 – RCW 4.24.510

Exhibit 4 – RCW 51.16.070

Exhibit 5 – RCW 51.48.040

See all Appendix in my February 10, 2020 Division II Court Of Appeals No. 54390-7 Brief Of Appellant.

Supreme Court No. 100172-0

Division II Court Of Appeals No. 54390-7-II

2nd AMENDED PETITION FOR REVIEW

CERTIFICATE OF COMPLIANCE

I Michael J. Collins Pro se, file this Certificate Of Compliance, as in compliance with RAP 13.4, and RAP 18.17, specific to 14 point Microsoft Sans Serif font equivalent to Arial as RAP 18.17(a)(2) allowed. My total word count to include all footnotes herein is,,, 4,983 words.

DECLARATION OF SERVICE

SUPREME COURT No. 100172-0

Division II Court Of Appeals No. 54390-7-II

2nd Amended PETITION FOR REVIEW

MICHAEL J. COLLINS PRO SE v OLYMPIC INTERIORS INC.

I, Michael J. Collins Pro se, as a citizen of the State Of Washington, and under penalty of perjury, do hereby declare that I have served as proper, and as timely, to opposing counsel of record listed herein below, my 2nd AMENDED WASHINGTON STATE SUPREME COURT PETITION FOR REVIEW, specific to my Petitioners' Certificate Of Compliance, and APPENDIX, as Division II April 6, 2021, August 9, 2021 Orders, and relevant included statutes, as my 2nd AMENDED Petition, and as original to be e-filed, and Petitioner same day file in-person, or by U. S. mail, my copy of my 2nd Amended Petition For Review, Division II decisions, and statutes, as my APPENDIX and as the basis for my PFR, same day as original copy e-filed, and U. S. mailed to opposing counsel at address below…

Amended Original e-filed to:
Division II Court Of Appeals
909 A Street, Suite 200
Tacoma, WA. 98402

Amended Copy to:
Williams Kastner & Gibbs PLLC
Two Union Square
601 Union Street, Suite 4100
Seattle, WA. 98101-2380

Total pages including this page as e-filed = 38

e-filed as Michael J. Collins e-signed only

On this day September 2021

Michael J. Collins Pro se
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MICHAEL COLLINS - FILING PRO SE

September 23, 2021 - 4:19 AM

Transmittal Information

Filed with Court:	Court of Appeals Division II
Appellate Court Case Number:	54390-7
Appellate Court Case Title:	Michael J. Collins, Appellant v. Olympic Interiors, Inc., Respondent
Superior Court Case Number:	19-2-04348-8

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