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Court of Appeals, Div. II No. 56174-3-II

SUPREME COURT
OF THE STATE OF WASHINGTON

TONY VARNEY and GERALYN VARNEY

Petitioners,

V.

CITY OF TACOMA,

Respondents.

PETITIONERS' MOTION FOR DISCRETIONARY REVIEW

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TABLE OF CONTENTS

I. IDENTITY OF PETITIONER..... 1

II. DECISION BELOW 1

III. ISSUES PRESENTED FOR REVIEW..... 1

IV. STATEMENT OF FACTS AND PROCEDURE..... 1

 A. Mr. Varney’s RCW 51.32.185 industrial insurance claim..... 2

 B. Relevant Timeline of the City’s tortious industrial Insurance claims handling 3

 C. The present action. 13

 The Appellate Court..... 20

V. ARGUMENT 22

VI. CONCLUSION..... 31

 Word Count Certification 31

Appendix A - Plaintiff’s Brief to Discovery Master filed on 4/23/21

Appendix B – Privilege Logs

TABLE OF AUTHORITIES

Cases

<i>Barriga Figueroa v. Prieto Mariscal</i> 193 Wash. 2d 404, 411–12, 441 P.3d 818 (2019).....	29, 30
<i>Brand v. Dep't of Lab. & Indus. of State of Wash.</i> 139 Wash. 2d 659, 670–71, 989 P.2d 1111 (1999), as amended on denial of reconsideration (Apr. 10, 2000), as amended (Apr. 17, 2000).....	28
<i>Cedell v. Farmers Insurance Co. of Washington</i> 176 Wn.2d 686, 295 P.3d 239 (2013)	23, 26, 30
<i>Craig v. A.H. Robins Co.</i> 790 F.2d 1, 5 (1st Cir.1986)	27
<i>St. Paul Fire & Marine Ins. Co. v. Onvia, Inc.</i> 165 Wash.2d 122, 129, 196 P.3d 664 (2008).....	25, 28

Statutes

RCW 4.96.010.....	30, 31
RCW 41.26.28.....	31
RCW 48.18.140.....	26
RCW 51.04.010.....	29
RCW 51.04.062.....	25

RCW 51.08.100.....	26
RCW 51.08.140.....	26
RCW 51.08.150.....	26
RCW 51.08.160.....	26
RCW 51.08.180.....	26
RCW 51.12.010.....	26
RCW 51.13.030(5).....	26
RCW 51.14.080(3).....	25
RCW 51.16.035(1).....	26
RCW 51.16.040.....	26
RCW 51.32.010.....	26
RCW 51.32.185.....	2, 6, 7, 27, 28

Other Authority

RAP 7.3.....	21
RAP 13.5(b)(1) through (4).....	23
RAP 18.7.....	31

ROBERT H. ARONSON, THE LAW OF EVIDENCE IN
WASHINGTON § 501.03[2][h][ii], at 501–24 (4th ed.2012). 26

WAC 296-14 26

WAC 296-15 26

WAC 296-15-320(1) & (2) 24

WAC 296-15-330(1), (3), (4) & (5)(d) 24, 25

WAC 296-15-310 25

I. IDENTITY OF PETITIONER

Petitioners are Tony and GERALYN Varney.

II. DECISION BELOW

This motion seeks Supreme Court review of the Court of Appeals February 14, 2023 opinion in case No. 56174-3-II.

III. ISSUES PRESENTED FOR REVIEW

1. Did the Court of Appeals commit an obvious error which would render further proceedings useless, or probable error that substantially alter the status quo or substantially limits the Varney's freedom to act, or so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a court, as to call for the exercise of revisory jurisdiction by the Supreme Court?

IV. STATEMENT OF FACTS AND PROCEDURE

The City of Tacoma ("City"), a self-insurer, committed abuse of process and industrial insurance act bad faith, as a continuous tort, for years – ignoring their own IME doctors, frivolously appealing when no right of appeal existed, and intentionally misrepresenting clear facts from the insured's

(Varney)'s jury trial. *CP 56-70, CP 452-459, and Appendix A - Plaintiff's Brief to Discovery Master filed on 4/23/21.*

Now, the City hides the evidence of its abuse of process and insurance bad faith conduct behind claims of attorney-client and work product privilege to prevent Varney from proving this case.

The City produced over 80 pages of privilege **logs**. *CP 485-684, Appendix B.* Privilege is not available when perpetrating a fraudulent scheme – such as tortious IIA claims-handling.

A. Mr. Varney's RCW 51.32.185 industrial insurance claim.

Tony Varney filed for industrial insurance benefits on July 30, 2009 for his July 21, 2009 stroke caused by occupational reactive hypertension [a heart problem], from smoke, fumes and toxic substances, and strenuous physical activity. *CP 76-82.* His employer was the City.

B. Relevant Timeline of the City's tortious industrial insurance claims handling.

February 3, 2010: Varney's claim was allowed. *CP*

84.

February 10, 2010: City filed a Protest. *CP 86.*

March 1, 2010: City's third party administrator ("TPA") had Mr. Varney undergo an independent medical examination by Drs. Stump and Thompson. *CP 88-106.* The "DIAGNOSIS" section in the IME report states: "Left hemiparesis due to right basal ganglia hemorrhage associated with exacerbated hypertension, **secondary to occupational stress.**" [Bold added] *Id.*

Drs. Stump and Thompson also opined: (1) Mr. Varney suffered a left hemiparesis due to right basal ganglia hemorrhage associated with exacerbated hypertension, "secondary to occupational stress", (2) Mr. Varney's stroke developed as a result of his elevated blood pressure (i.e. hypertension), and (3) **stresses of employment** were a cause of Mr. Varney's current condition. *Id.* That IME report should have resulted in the City dismissing its appeal.

March 19, 2010: Britta Holm, the account executive for the City's TPA, sent a letter to the Department intentionally

omitting that the City's its IME doctors opined that Mr. Varney's condition was related to his occupation. *Id.*

April 29, 2010: The Department affirmed its February 3, 2010 allowance order. *CP 108-109.*

June 24, 2010: The City appealed the Department's allowance order. *CP 111-114.*

July 1, 2010: City then subjected Mr. Varney to another IME - this time with Dr. Gary Schuster on July 1, 2010. *CP 116-130.* Dr. Schuster's report related Mr. Varney's stroke to his occupation. *Id.* Now, its three IME doctors related Mr. Varney's condition to his occupation.

September 15, 2010: The April 29, 2010 allowance order was affirmed. That affirmed the February 3, 2010 claim allowance order. *CP 132-133.*

October 4, 2010: The City appealed the September 15, 2010 allowance order and started four more years of litigation. *CP 135-139.*

March, 2014: Mr. Varney's industrial insurance claim was tried to a twelve-person jury in the Pierce County Superior

Court. The jury trial was about the cause of Mr. Varney's hemorrhagic stroke and whether his stroke was a "heart problem." This was objectively clear from the Board's decision on appeal, the trial testimony, the verdict form's interrogatory, the verdict and judgment. *See e.g. Board decision CP 251-260, Dr. Utt testimony pg. 9, 17-18, Dr. Schuster testimony pgs 13-14, 16, 18, 29, Dr. Judish testimony pgs 7,12, 24, Dr. Price testimony pgs 35-36, Verdict form CP 178-179, Judgement on verdict CP 181-183*

The question on the verdict form answered by the jury read, "Was the Board of Industrial Insurance Appeals correct when it decided that on July 21, 2009, or July 22, 2009, Mr. Varney did not develop any heart problem." *CP 178-179.*

March 26, 2014: The jury returned an 11-1 verdict in favor of Varney and determined that Mr. Varney did develop a heart problem on July 21 or 22, 2009. *Id.*

May 23, 2014: The Judgment on the jury verdict was entered and clearly stated: "the claim is remanded to the Department of Labor & Industries with instructions to issue an

order that directs the self-insured-employer, City of Tacoma, to **allow claim SE-05746 for a heart problem pursuant to RCW 51.32.185.**” [Bold added]. *CP 181-183*. The City did not appeal. By not appealing, the City accepted the jury’s verdict and the Court’s Judgment, which became final.

The City went on with its frivolous, bad faith abuse of process conduct.

June 3, 2014: The Department issued a **ministerial order** to comply with the Superior Court’s May 23, 2014 judgment. The ministerial order literally states, “Action is taken in accordance with the Pierce County Superior Court order dated 5/23/2014 under cause number 12-2-08221-4.” [Bold added]. *CP 185-186*. This ministerial order indicated that Mr. Varney’s claim, “is allowed for a heart problem pursuant to RCW 51.32.185.” *Id.*

A ministerial order – i.e. an order implementing a prior order of the Superior Court – cannot be appealed. There is **no lawful process** for appealing a ministerial order.

August 15, 2014: The City’s attorney sent a letter to the

Department attempting to re-litigate the issue already decided by the jury. *CP 386-446*. Even the Board's order – which was on appeal to the Superior Court – states, “Mr. Varney alleged that his hemorrhagic stroke was a cardiovascular incident - a heart problem.” *CP 140-157*. The trial testimony revolved around the cause of his hemorrhagic stroke and whether it was a heart problem. *CP 178-179*.

There was **no lawful process** for re-litigating a final verdict and judgment – except by successful appeal to a higher court.

In the letter the City's attorney states, “while Mr. Meyers [Varneys' counsel] would like to think that a brain injury and a heart condition are the same thing and therefore benefits should be paid, it is yet to be determined by an individual with the appropriate credentials that Mr. Meyers' assertion is true.” *CP 386-446*. That was a bad faith misrepresentation. The jury heard the testimony of numerous medical experts, and based on the evidence presented, the jury decided the stroke was an occupational heart problem.

The City's attorney stated that the City, "is proceeding to have the claimant's heart condition evaluated and further action can be taken after that has occurred." *Id.* There was **no lawful process** to have Mr. Varney submit to a post-judgment IME when, based on the jury's verdict, the claim was allowed, judgment was entered and not appealed. The City in bad faith and continuing abuse of process ignored the law again.

September 26, 2014: The Department issued **another ministerial order** – this time clarifying for the City what everyone already knew, but what the City in an abuse of process and bad faith refused to accept – that the hemorrhagic stroke resulting from the cardiovascular condition was allowed. *CP 209-210.*

September 26, 2014: (unlawful protest letter incorrectly dated July 26, 2014): The City protested the Department's September 26, 2014 ministerial order – another non-appealable order. *CP 212-214.* There was **no lawful process** for the City to re-litigate this issue, as it was decided by the jury and reduced to a final judgment.

In this abuse of process and bad faith and unlawful protest letter, the City argued that the September 26, 2014 order was “at best, premature.” *Id.* The City claimed that they “are not aware of any medical opinion that establishes a causal relationship between the “heart problem” allowed by the Superior Court Judgment and the hemorrhagic stroke.” *Id.* This misrepresentation continued the abuse of process and bad faith.

The City then disclosed that it was “in the process of obtaining medical information to address the issue of causal relationship.” *Id.* Six months after the verdict and judgment, the City was still abusing process in a bad faith attempt to relitigate the case it did not appeal.

The City also indicated that it had scheduled Mr. Varney to undergo an IME on September 29, 2014, and stated that, “it is simply unknown what the opinion of that expert might be.” *Id.* There was **no lawful process** to make Mr. Varney submit to that IME. The City chose not to appeal, but then intentionally chose to engage in continued abusive, bad faith fabricated litigation processes.

The City wanted to review and all documentation or other information the Department relied upon in making its decision contained in the September 26, 2014 **ministerial order** and obtain an “evaluation from the cardiologist to assess whether the order is correct or not.” *CP 212-214*. This bad faith and unlawful “protest” resulted in delay and meritless litigation.

December 3, 2014: Varneys filed a motion for summary judgment at the Board, because judicial estoppel, res judicata and collateral estoppel applied to the City’s conduct. *CP 216-239*.

May 27, 2015: Administrative Law Judge Jinhong’s order was essentially an admonishment of the City:

Despite its displeasure with the Pierce County Superior Court’s verdict, the City of Tacoma did not take further appeal of this matter with the Court of Appeals. . .

Based on the record established before the Board in 2010, the superior court appeal, and this round of appeals, **it’s clear that the doctrine of res judicata applies and operates as a complete bar to re-litigation of claims that were in fact raised** and those that could have been raised in the prior litigation, but were not. Here, the parties are the same, as is the subject matter.

If the City of Tacoma wished to further dispute the jury's findings, it could have done so by filing and appeal with Division II of the Washington State Court of Appeals. Alas, it did not. . . .

[Bold added]. CP 241-249.

July 14, 2015: The City continued its abusive pattern of bad faith and frivolous appeals, and appealed ALJ Jinhong's order to the Board.

August 10, 2015: The City's TPA Britta Holm signed a Declaration under penalty of perjury, stating part: "That the claim for an occupationally related 'heart problem' has not been made during the initial claim filing and adjudication." *CP 386-446, CP 283-288.*

This Declaration selectively (intentionally) omitted that the diagnosis section of the Department's "Physician's Initial Report" form on this claim notes that Mr. Varney's stroke was a "Hypertensive emergency". *CP 76-82.*

November 9, 2015: The Board agreed with the jury, the judgment and ALJ Jinhong, and issued its order, which stated in part, "We believe that this [jury] instruction **makes clear** that the jury was including Mr. Varney's stroke in its verdict. Pursuant

to this instruction, the heart problem and stroke were to be considered in concert.” [Bold added]. *CP 251-260*. The Board also stated, “We conclude that **the doctrine of res judicata bars the re-litigation** of whether Mr. Varney’s stroke is covered by the Industrial Insurance Act and we affirm the Department order on appeal.” [Bold added]. *id.*

C. The present action.

Varneys initiated the present action against the City for ongoing abuse of process, tortious conduct (including bad faith negligent claims handling, negligent and/or intentional infliction of emotional distress, and other harms), outrage, and hostile and abusive and discriminatory acts. *CP 32-28*.

Varneys sent the City Interrogatories and Requests for Production. The City redacted a voluminous amount of evidence during the time of its bad faith and tortious claims handling and litigation relating to Varney’s industrial insurance claim. *See Appendix B - privilege logs*

The City withheld this evidence under a claim of attorney-client and/or work product privilege. The City has produced 80

pages of three separate privilege logs. *Appendix B - privilege logs.*

Ms. Holm was deposed by Varney's counsel and was asked if she intentionally omitted material information from her August 10, 2015 Declaration. "Did you leave out the part about was filed for blood pressure causing the stroke as a result of claimant's job with the City of Tacoma intentionally?" *CP 283-288.*

The City's attorney objected and coached Ms. Holm by stating, "There's no indication that she actually wrote this and made the decision about what to include." *Id.* This was an improper coaching of the witness by the City's attorney; a clear attempt to urge the witness to parrot, as testimony, counsel's assertion. It also raises the question of who, on behalf of the City, made the decision about what Ms. Holm would testify by sworn Declaration.

Ms. Holm was also asked if she was aware that hypertension is a heart problem. *CP 283-288.*

Before Ms. Holm gave a responsive answer, the City's

attorney interjected, “Then I would ask that we go off the record and that the host of the meeting move us into a breakout room so that we can talk it through to determine whether or not there is a —”. *Id.*

The City’s attorney stated that, “It might be [an attorney-client privilege] if in fact her [the witness’s] understanding came from a conversation with counsel.” *Id.* This was another improper coaching of the witness by the City’s attorney, and it also evidences that during Varney’s underlying industrial insurance claim, the City’s attorney was manipulating or otherwise orchestrating (behind the scenes) the City’s TPA as to what the TPA’s understanding of a medical condition in Varneys’ claim should be.

The City’s attorney also instructed Ms. Holm to not answer any questions regarding Exhibit 3 to the deposition of Angela Hardy, and asserted attorney-client privilege and attorney work-product privilege for communications with and from its TPA. *CP 1260-1426.*

The City, both in its redaction of material documentary

evidence and at depositions, has attempted to use attorney-client and/or work product privilege as a shield to bury the evidence of its tortious claims handling, bad faith and abuse of process.

Varneys filed a motion, requesting the trial court to strike the City's claims of attorney-client and work product privilege for all documents created relating to Varney's L&I claim No. SE05746. *CP 56-70 and CP 452-459, 479.*

1. The trial court appointed a Discovery Master to (1) review the record and identify any portions of the communications and documents (that were redacted or withheld by the City under a claim of attorney-client and/or work product privilege as identified on the City's privilege logs) which contain information "relevant to or that could lead to the discovery of admissible evidence in support of" Varneys' "tortious Abuse of Process claims"; and (2) inform the trial court of his assessment as to whether the claimed privileges apply to the portions of the communications and documents that were redacted or withheld by the City. *CP 728-732.*

The Discovery Master was retired judge Richard

McDermott, who served as a King County Superior Court judge from 2000 to 2017, after a lengthy legal career as an attorney.

2. The trial court undertook in camera review, as did the Discovery Master. *7.16.21 VRP p.8.* The Discovery Master reviewed all documents and communications that were identified on the City's privilege logs, various pleadings orders and depositions, the Complaint and Answer, and the City's answers and responses to the Varney's discovery requests.

3. The Discovery Master reviewed each document and gave his assessment to the trial court on privilege in a five page letter to the trial court. *10.21VRP p. 5. 6.10.21 VRP p. 3.* He also provided the trial court with a chart, an annotated privilege log, reflecting his assessment of privilege. *6.10.21 VRP p. 5-6.* The trial court even stated, "I've not had a Special Master before that wrote such a detailed but specific letter directly to the Court." *6.10.21VRP p. 3-4.*

4. The trial held a follow-up telephone conference with the Discovery Master. *7.16.21 VRP p. 4.*

The trial court pointed out that the Discovery Master, "had

the benefit of the briefs of the parties, and the pleadings, and his experience as a sitting judge for 17 years, and the rules of evidence, and statutory guidance.” 7.16.21 VRP p. 5.

5. The trial court held multiple oral arguments and after considering the Discovery Master’s hours of review of thousands of documents, the trial court issued a draft order 7.16.21 VRP p. 13 requiring the City to produce to Varneys an unredacted copy of:

1. The documents marked as “NO” by the Special Discovery Master (meaning not privileged);
2. Documents bates stamped as TH 011127, 011129, 011166;
3. Documents bates stamped as VARNEY-AH 000260-261 (with partial redactions retained as directed by court), VARNEY-AH 001372 (except for second full paragraph which remain redacted), VARNEY EV 005720, and VARNEY EV 005727. *id.*

However, after another oral argument, the trial court revised its draft order and entered an order that:

1. Required the City to produce to the Varneys’ counsel an unredacted copy of (a) the documents marked as “NO” by the Special Discovery Master and (b) documents bates stamped as TH 011127, 011129, 011166, (c) documents

bates stamped as VARNEY-AH 000260-261 (with partial redactions retained as directed by court), and VARNEY-AH 001372 (except for second full paragraph which remain redacted);

2. Allowed the City to keep VARNEY EV 005720 and VARNEY EV 005727 redacted; and
3. Stayed the City's obligation to produce the unredacted documents, to give the City another opportunity to submit briefing (i.e. exceptions to the Court's order) and another opportunity for oral argument. *CP 1431-1523.*

On August 4, 2021, the City filed its exceptions to the trial court's order on report of special master. *CP 871-883.* The City raised new arguments, this time pertaining to "internal communications". *Id.* Varneys filed their response, and the City replied. *CP 884-901 and CP 902-908.*

On August 13, 2021, the trial court held another oral argument session where the City's attorney admitted that Ms. Hardy is a City employee and not an attorney and Ms. Holm is an employee of Eberle Vivian, who was administering the claim in the underlying L&I matter. *8.13.21 VRP p.6.*

On August 16, 2021 the trial court issued an amended order. *CP 1524-1529.* This order allowed the City to retain

several redactions of evidence that were marked by the Discovery Master as “No” (meaning not privileged). *id.*

The trial court also “declined to apply a blanket waiver of attorney-client/work product privilege under a fraud exception”. *id.* This allowed the City to continue to shield evidence from Varneys in an ongoing abuse of process and bad faith.

The trial court’s order did require that the City produce unredacted copies of certain documents. *CP 1524-1529.* The trial court specifically identified the bases for her ordering production without redaction. *CP 1524-1529.*

The City filed a Motion to Certify Issues for Discretionary Review, and Varney’s filed their Motion for Certification. *CP 915-921 and CP 922-927 respectively. CP 931-937 and CP 941-944.* On August 27, 2021, the trial court again heard oral argument and issued an Order Granting Motions to Certify Issues. *CP 947-952.*

The Appellate Court.

Knowing what the actual issues were that needed appellate

review (based on the parties' briefing and oral argument) and knowing that its reading of the fourth certified issue did not properly address those issues, the Appellate Court did not remedy that substantial problem and failed the parties and this case. The Appellate Court has authority to perform all acts necessary or appropriate to secure the fair and orderly review of a case. *See RAP 7.3.*

Here, the Appellate Court "declined to answer" the first three certified issues. As to the fourth certified issue, the Appellate Court (1) criticized it as "poorly worded" and "unclear", (2) read it as having a literal meaning, but then analyzed it as if it had a different meaning, (3) refused to consider industrial insurance act bad faith in the context of the privilege issues here even though it knew that was an issue that needed review, and (4) failed to take necessary and appropriate action to secure the fair review of the actual issues in this case.

The Appellate Court also committed probable and obvious error by ignoring critical statutes, re-framing the issue, and

mischaracterizing Varney's position.

V. ARGUMENT

The Appellate Court failed to address whether the trial court erred by determining that insurance bad faith does not apply. Varney's motion for discretionary review clearly laid out that one of the Superior Court's decisions for which Varneys sought review was, "the Court's determination (as evidenced by her oral ruling on 8/13/21) that insurance bad faith does not apply to this case."

The Appellate Court then stated in its opinion, in a footnote, that, "Due to the language of the certified question, the ruling indicated that this court would **only consider abuse of process** in the context of the privilege issues here." [Bold added].

This error substantially alters the status quo because by not addressing the issue of bad faith here, the Appellate Court has insulated the self-insured employer from facing Varney's cause

of action for the SIE's bad faith handling of Varney's industrial insurance act claim.

Varney had no right to use his private health insurance for his occupational disease, because he was required by law to use industrial insurance. The decision to immunize the self-insured employer from a bad faith claims-handling cause of action simply because his disease was "occupational" is a decision that warrants interlocutory review under RAP 13.5(b)(1) through (4). It creates an immediate bar on Varneys to uncover the exact type of discovery that is used to prove such claims (i.e. the claims file).

After refusing to review the first three certified issues, the Appellate Court stated as to Certified issue No. 4 that, "Read literally, it broadly asks whether the crime/fraud exception to attorney-client privilege can apply in abuse of process claims." The Appellate Court then adopted the commissioner's mischaracterization of the certified issue, which was whether the holding in *Cedell v. Farmers Insurance Co. of Washington*, 176

Wn.2d 686, 295 P.3d 239 (2013) applies outside of a first-party insurance context.

Having re-framed that certified issue, the Appellate Court then ignored crucial and controlling case law and mischaracterized Varney's argument. That is the exact type of evidence that is needed to prove such claims.

The Appellate Court then incorrectly stated that Varney "was in an adversarial rather than a fiduciary relationship with the city as it related to [Varney's original worker's compensation claim]." *Opinion at 8-9*. That obvious error was used by the Court to form its ultimate holding.

The relationship between the City and Varney was adversarial **and primarily** fiduciary. Varney had every right to trust that his self-insured employer would properly handle his claim, without resort to abuse of process and/or bad faith tactics.

The statutory and regulatory scheme shows that the relationship between the City /TPA and Varney is primarily fiduciary. It shows that there is a quasi-fiduciary duty for the City

to **act in good faith** toward its employee in an industrial insurance claim. *WAC 296-15-320(1) & (2); WAC 296-15-330(1), (3), (4) & (5)(d); and WAC 296-15-310, RCW 51.14.080(3); RCW 51.04.062.*

The insurance arrangement and the statutory scheme supporting the quasi-fiduciary duty was discussed at pages 32 through 35 in the Varneys' response brief.

The Court misapprehended these points, which is evident by its mischaracterization of Varneys' assertion and argument. This obvious error was further exacerbated because the Appellate Court relied on the lack of an insurance contract as a basis for its opinion. The existence of a contract is a red herring, because the duty of good faith is not specific to the main benefits of a contract but instead permeates "**the insurance arrangement.**" [Bold added] *St. Paul Fire & Marine Ins. Co. v. Onvia, Inc.*, 165 Wash.2d 122, 129, 196 P.3d 664 (2008).

There need not be a literal "contract" between the City and Varney because (1) it is the insurance **arrangement** that

controls, and (2) **each factor that the law requires be contained in the written insurance contract is also contained within the Industrial Insurance Act** – which is the “contract” (RCW 48.18.140) for injured workers.

The Industrial Insurance Act is the written statutory policy for injured workers. Each of the factors in (a) through (f) of RCW 48.18.140 are memorialized within the Industrial Insurance Act. *e.g. RCW 51.13.030(5), 51.16.035(1), 51.16.040, 51.32.010, 51.08.100, 51.08.140, 51.08.150, 51.08.160, 51.08.180, 51.12.010, Chapter 296-14 WAC, Chapter 296-15 WAC.*

All of the above points also evidence Varneys’ bad faith industrial insurance claims handling cause against the City.

The Supreme Court in *Cedell* stated: “Where there is a valid attorney-client privilege, **the fraud exception is one of the exceptions that will pierce the privilege.**” [Bold added] *Cedell*, at 697.

“The fraud exception to the attorney-client privilege is deeply rooted in our jurisprudence.” *Id.*, at 699. For this, the

Supreme Court cited to ROBERT H. ARONSON, THE LAW OF EVIDENCE IN WASHINGTON § 501.03[2][h][ii], at 501–24 (4th ed.2012), which cited to *Craig v. A.H. Robins Co.*, 790 F.2d 1, 5 (1st Cir.1986).

Notably, in the *Craig, id.*, case, the Court stated:

We note with considerable skepticism the fact that defendant's argument in support of its claim of error consists of a brief discussion of the attorney-client privilege and the principles underlying it, while scrupulously avoiding any mention of **the crime-fraud exception, i.e., the principle that attorney-client consultations to further a crime or fraud are not privileged**, *Commonwealth v. Kiley*, 373 Mass. 454, 462, 367 N.E.2d 837 (1977); *see also* 8 C. Wright & A. Miller, *Federal Practice and Procedure* § 2017, at 134 (1970).

.....

We agree with the Second Circuit that this kind of continuing fraudulent misrepresentation and cover-up vitiates not only any attorney-client privilege but also any work product immunity. *In re John Doe Corp.*, 675 F.2d 482, 492 (2d Cir.1982). [emph added].

Craig id., at 4.

The Appellate Court incorrectly stated that, “The Varneys assert, without citation to authority, that RCW 51.32.185 – the Presumption of Occupational Disease for Firefighters statute –

which they claims is “forced on” Varney, creates an insurer-insured relationship between Varney and the City.” The Appellate Court cited to the Varney’s response brief at page 32.

Not once did Varneys cite to RCW 51.32.185 on page 32 of their response brief nor on pages 33 through 35, where the Varneys cited to various RCWs and WACs to show the quasi-fiduciary duty for the City (as a self-insured employer) to act in good faith.

The Supreme Court has held that the duty of good faith is not specific to the main benefits of a contract but instead permeates “**the insurance arrangement.**” [Bold added]. *St. Paul Fire & Marine Ins. Co. v. Onvia, Inc.*, 165 Wash.2d 122, 129, 196 P.3d 664 (2008). Varneys’ argument focused, in large part, on the “**insurance arrangement**” and cited *St. Paul, id.*

In *Brand v. Dep't of Lab. & Indus. of State of Wash.*, 139 Wash. 2d 659, 670–71, 989 P.2d 1111 (1999), as amended on denial of reconsideration (Apr. 10, 2000), as amended (Apr. 17, 2000), the Washington State Supreme Court specifically referred

to the Industrial Insurance Act as a “system of limited insurance”.

There is no reasonable dispute that by virtue of an injury or illness being “on the job”, the worker is barred from using his health insurer to cover his claim and is forced to use industrial insurance. *e.g. RCW 51.04.010.*

If Varney’s disease was not occupational, he could use his private health insurance. If his private health insurer administered his claim in bad faith, Varney would have a cause of action against his insurer for bad faith. Yet, because his claim is occupational, Varney is required to use industrial insurance. That **insurance arrangement** is forced by law upon Varney.

The Supreme Court has unequivocally stated that the “quasi-fiduciary relationship between insurers and insureds arises not only out of the contract, **“but also out of the type of occurrences that are covered by insurance, the high stakes of insurance litigation, and the necessary trust and reliance that an insured places on its insurer.”** [Bold added]. *Barriga*

Figueroa v. Prieto Mariscal, 193 Wash. 2d 404, 411–12, 441 P.3d 818 (2019).

The Supreme Court followed that statement by quoting the very case relied upon by Varney, which held, “An insurer’s duty to exercise good faith is not limited to its contractual obligation to pay benefits, but permeates **the insurance arrangement.**” [Bold added]. *See id. at 412*. The Appellate Court ignored *Barriga* and *St. Paul* cases, *id.*, ignored Varney’s argument, and instead proceeded as if the only case relied on by the Varneys was the *Cedell* case.

The statutory and regulatory scheme establish that a self-insured employer is not permitted to administer Varney’s claim in bad faith with immunity from a cause of action for bad faith, simply because Varney’s illness was “occupational.”

Corporations engaged in insurance are subject to liability for their bad faith claims handling and for abuse of process. Under RCW 4.96.010, the City (a “local governmental entity”), whether acting in a governmental or proprietary capacity, **shall**

be liable for damages arising out of its tortious conduct, [. . .] to the same extent as if they were a private person or corporation.

The Appellate court ignored crucial statutes, RCW 4.96.010 (waiver of sovereign immunity) and RCW 41.26.281 (firefighter right to sue). It did not cite nor refer to either of those statutes in its unpublished opinion. The court did not consider them. Yet, in this case they are controlling law.

Varney was within the subset of individuals to whom RCW 41.26.281 applies. He was a firefighter.

The Appellate court misapprehend the law and ignored law and fact that require reversal.

VI. CONCLUSION

The Court should reverse the prior decision and strike the city's attorney client and work product doctrine privileges in their entirety.

Word certification – pursuant to RAP 18.17 this Motion for Discretionary review contains 5000 words, exclusive of

words contained in the appendices, the title sheet, the table of contents, the table of authorities, the certificate of compliance, the certificate of service, signature blocks, and pictorial images.

RON MEYERS & ASSOCIATES PLLC

A handwritten signature in blue ink that reads "Ron Meyers". The signature is written in a cursive style with a long horizontal stroke extending to the right.

By:

Ron Meyers, WSBA No. 13169

Matthew Johnson, WSBA No. 27976

Tim Friedman, WSBA No. 37983

Attorneys For Petitioners

APPENDIX A

1
2
3 **IN THE SUPERIOR COURT FOR PIERCE COUNTY
IN AND FOR THE STATE OF WASHINGTON**

4 TONY VARNEY and GERALYN VARNEY,
5 husband and wife and their marital
community;

6 Plaintiffs,

v.

7 CITY OF TACOMA,

8 Defendants.

Cause No.: 19-2-04316-0

PLAINTIFFS' BRIEF TO DISCOVERY
MASTER

9
10 **I. INTRODUCTION**

11 The Defendant City of Tacoma ("City") cannot use attorney-client or work product privilege as
12 shields behind which, throughout its handling of Mr. Varney's industrial insurance claim, it commits
13 tortious abuse of process. You have been provided a copy of the Complaint, which discloses that (1)
14 Mr. Varney and his wife lost their home in a foreclosure action as a result of the City's, its agents and
15 its administrator's conduct; and (2) Mr. Varney's family continues to experience financial and
16 emotional damages because of the City's violations of statutes and its tortious conduct in pursuing
17 claims that had been resolved by jury and judgment. You have been appointed by Judge Martin to serve
18 as the Discovery Master, with the task of:

19 (1) Reviewing the record and identifying any portions of the communications and documents
20 (that were redacted or withheld by the City under a claim of attorney-client and/or work product
21 privilege as identified on the City's privilege logs) which contain information "relevant to or that could
22 lead to the discovery of admissible evidence in support of" Plaintiff's "tortious Abuse of Process
23 claims"; and

24 (2) Informing the Court of your assessment as to whether the claimed privileges apply to the
25 portions of the communications and documents that were redacted or withheld by the City under a claim
26 of attorney-client or work product privilege as identified on the City's privilege logs.

1 **II. LEGAL AUTHORITY**

2 **Rule No. 1:** After receiving motions and hearing oral argument, Judge Martin ordered the
3 Discovery Master to review the information being claimed as privileged by the City. This means that
4 Judge Martin has determined that the Plaintiff has shown that a reasonable person would have a
5 reasonable belief that an act of bad faith tantamount to civil fraud has occurred. *See Cedell v. Farmers*
6 *Ins. Co. of Washington*, 176 Wn.2d 686, 699-700 700, 295 P.3d 239 (2013):

7 The fraud exception to the attorney-client privilege is deeply rooted in our jurisprudence.
8 [. . .] Our courts have followed a two-step approach. The first step is to invoke an in
9 camera review and requires a showing that a reasonable person would have a reasonable
10 belief that an act of bad faith tantamount to civil fraud has occurred.

11 **Rule No. 2:** “But it [attorney-client privilege] cannot be asserted to perpetuate a fraud, even
12 civil fraud.” *Stephens v. Gillispie*, 126 Wn. App. 375, 382, 108 P.3d 1230 (2005).

13 **Rule No. 3:** “It is well established that the attorney/client privilege does not extend to
14 communications in which the client seeks advice to aid him in carrying out an illegal or fraudulent
15 scheme.” *Whetstone v. Olson*, 46 Wn. App. 308, 310, 732 P.2d 159 (1986):

16 **Rule No. 4:** “Each self-insurer is ultimately responsible for the **sure and certain delivery**
17 of Title 51 RCW benefits to its injure workers and is **accountable for all aspects** of its workers’
18 compensation program.” [Bold added]. *WAC 296-15-310 in part.*

19 **Rule No. 5:** “Every employer certified to self-insure is **obligated to comply with the**
20 **provisions of Title 51 RCW and the rules and regulations of the department**, and to have the
21 necessary administrative processes in place to manage its self-insurance program.” [Bold added]. *WAC*
22 *296-15-310 in part.*

23 **Rule No. 6:** “The Supreme Court of Washington has said, ‘In abuse of process cases the crucial
24 inquiry is whether the judicial system’s process, made available to insure the presence of the defendant
25 or his property in court, has been misused to achieve another, inappropriate end.’” *Batten v. Abrams*,
26 *28 Wn. App. 737, 745, 626 P.2d 984 (1981)*, quoting *Gem Trading Co. v. Cudahy Corp.*

Rule No. 7: “The gist of the action is the misuse or misapplication of the process, after it has
once been used, for an end other than that which it was designed to accomplish.” [Bold added]. §

1 22:10. Abuse of process—Overview, 16A Wash. Prac., Tort Law And Practice § 22:10 (5th ed.).

2 **Rule No. 8:** “Ulterior purpose” is defined as, “to accomplish an object not within the proper
3 scope of the process”. See *Hough v. Stockbridge*, 152 Wn. App. 328, 343, 216 P.3d 1077 (2009).

4 **Rule No. 9:** “Depositions, motions, interrogatories and other requests for discovery **or legal**
5 **maneuverings** to compel or prohibit action by an opponent all invoke the authority of the court. They
6 are, therefore, the type of process that will support an abuse of process claim.” [bold added] *Hough v.*
7 *Stockbridge*, 152 Wn. App. 328, 346, 216 P.3d 1077 (2009).

8 **Rule No. 10:** “If injury or death results to a member [e.g. any firefighter as defined in RCW
9 41.26.030(17)] from the intentional or negligent act or omission of a member's governmental employer,
10 the member, the widow, widower, child, or dependent of the member shall have the privilege to benefit
11 under this chapter and also have cause of action against the governmental employer as otherwise
12 provided by law, for any excess of damages over the amount received or receivable under this chapter.”
13 *RCW 41.26.281*.

14 III. STATEMENT OF FACTS

15 A. RCW 51.32.185 - the presumptive occupational disease statute:

16 Pursuant to RCW 51.32.185, “**any heart problems** experienced [by Tony Varney] within
17 seventy-two hours of exposure to smoke, fumes, or toxic substances, or experienced with twenty-four
18 hours of strenuous physical exertion due to firefighting activities” are presumed to be occupational.
19 [Bold added]. When this presumption applies, the burden of proof shifts to the employer to rebut the
20 presumption by a preponderance of the evidence. See RCW 51.32.185(1)(d). The presumption shifts
21 both the burden of production and persuasion to the employer. *Spivey v. City of Bellevue*, 187 Wash.
22 2d 716, 728, 389 P.3d 504 (2017).

23 The burden of proof to rebut the presumption is not met by merely rejecting the presumption.
24 The standard for rebutting the presumption “[r]equires that the employer provide evidence from which
25 a reasonable trier of fact could conclude that the firefighter's disease was, more probably than not,
26 **caused by nonoccupational factors.**” [Bold added]. *Spivey, id.*, at 735. If the cause of the disease

1 cannot be identified by a preponderance of the evidence, the firefighter maintains the presumption. *See*
2 *Gorre v. City of Tacoma*, 180 Wn. App. 729, 758, 324 P.3d 716, 721 (2014), as amended on
3 reconsideration in part (July 8, 2014), as amended (July 15, 2014), rev'd on other grounds, 184 Wn.2d
4 30, 357 P.3d 625 (2015). Evidence that there is no known association between the disease and
5 firefighting fails to rebut the presumption. *See Gorre, id.* There may be one or more proximate causes
6 of a condition. *City of Bellevue v. Raum*, 171 Wn. App. 124, 151, 286 P.3d 695 (2012).

7 **B. Tony Varney's RCW 51.32.185 industrial insurance claim.**

8 Plaintiff Tony Varney filed an application for industrial insurance benefits on July 30, 2009 for
9 his July 21, 2009 stroke caused by occupational reactive hypertension [a heart problem], from smoke,
10 fumes and toxic substances, and strenuous physical activity. *Ex A, Decl of TF iso Plaintiffs' Motion*
11 *Regarding Attorney-Client Privilege.* His employer was the Defendant, the City of Tacoma.

12 **C. Relevant Timeline of the City's tortious industrial insurance claims handling.**

13 **February 3, 2010:** Mr. Varney's claim was allowed. *Ex B, Decl of TF iso Plaintiffs' Motion*
14 *Regarding Attorney-Client Privilege.*

15 **February 10, 2010:** Defendant City of Tacoma filed a Protest. *Ex C, Decl of TF iso Plaintiffs'*
16 *Motion Regarding Attorney-Client Privilege.*

17 **March 1, 2010:** The City's third party administrator ("TPA") has Mr. Varney undergo an
18 independent medical examination by Drs. Stump and Thompson. *Ex D, Decl of TF iso Plaintiffs'*
19 *Motion Regarding Attorney-Client Privilege.* The "DIAGNOSIS" section in the IME report states:

20 **DIAGNOSES**

- 21 **1. History of prior industrial injuries involving his left shoulder and left elbow.**
22 **2. Family history of hypertension.**
23 **3. Left hemiparesis due to right basal ganglia hemorrhage associated with exacerbated
hypertension, secondary to occupational stress.**

24 [highlight added] *Id.* Drs. Stump and Thompson opined that Mr. Varney's stroke developed as a result
25 of his elevated blood pressure (i.e. hypertension). *Id.* Drs. Stump and Thompson also admit that
26 stresses of employment are a cause of Mr. Varney's current condition:

1 **Mr. Varney's current condition is due to the natural progression of his hypertension**
2 **along with the stresses of life and employment.**

3 [highlight added] *Id.* That report should have resulted in the City dismissing its appeal.

4 **March 19, 2010:** Britta Holm, account executive for the City's TPA sent a letter to the
5 Department regarding the IME report obtained by the City's TPA. In her letter, Ms. Holm chose not
6 to convey to the Department any of the three IME report excerpts shown above. Stated differently, in
7 her communication with the Department, Ms. Holm intentionally omitted material information that Mr.
8 Varney's condition was related to his occupation. *Id.*

9 **April 29, 2010:** The Department affirmed its February 3, 2010 claim-allowance order. *Ex E,*
10 *Decl of TF iso Plaintiffs' Motion Regarding Attorney-Client Privilege.*

11 **June 24, 2010:** The City appealed the Department's claim-allowance order. *Ex F, Decl of TF*
12 *iso Plaintiffs' Motion Regarding Attorney-Client Privilege.*

13 **July 1, 2010:** Despite having the IME report from Drs. Stump and Thompson, the City's TPA
14 subjected Mr. Varney to another IME - this time with Dr. Gary Schuster. That IME took place on July
15 1, 2010. *Ex G, Decl of TF iso Plaintiffs' Motion Regarding Attorney-Client Privilege.* Dr. Schuster's
16 report unequivocally related Mr. Varney's stroke to his occupation:

17 **It is unquestionable that under the circumstances, Mr. Varney was dehydrated and heat**
18 **exhausted and that on a more-probable-than-not basis, under the stress of his work**
19 **conditions, he developed a headache and in consequence, developed a marked elevation**
20 **of his baseline blood pressure and subsequently stroked, because of the heat conditions**
21 **and dehydration of his work condition. Had it not been for his work condition, it is**

22 **possible he would have developed a hemorrhagic stroke. However, more likely than not,**
23 **the work condition exacerbated and aggravated his blood pressure to the point that his**
24 **stroke was caused.**

25 **Dehydration, probable heat stroke, and marked aggravation of preexisting hypertension,**
26 **with subsequent stroke, related to conditions unique to the day of stroke, 07/21/09, on a**
more-probable-than-not basis.

[highlights added]. *Id.* This IME report should also have resulted in the City dismissing its appeal.
The City did not dismiss its appeal. The City chose (i.e. intent) to pursue its appeal of claim allowance,

1 even though its own IME doctors unequivocally related Mr. Varney's condition to his occupation.

2 **September 15, 2010:** The Department again affirmed claim allowance. The April 29, 2010
3 allowance order was affirmed, which affirmed the February 3, 2010 claim allowance order. *Ex H,*
4 *Decl of TF iso Plaintiffs' Motion Regarding Attorney-Client Privilege.*

5 **October 4, 2010:** The City appealed the September 15, 2010 claim allowance order. This
6 ultimately lead to four years of litigation. *Ex I, Decl of TF iso Plaintiffs' Motion Regarding Attorney-*
7 *Client Privilege.*

8 **March, 2014:** Mr. Varney's industrial insurance claim was tried to a twelve-person jury in the
9 Pierce County Superior Court. The jury trial was about the cause of Mr. Varney's hemorrhagic stroke
10 and whether his stroke was a "heart problem." This was objectively clear from the Board's decision
11 on appeal, the trial testimony, the verdict form's interrogatory, the verdict and judgment:

12 *Dr. Utt trial testimony:*

13 Q And with respect to heart problems and stroke, do you treat patients who have
14 exposures in their occupations that you believe to be related to stroke or heart disease?
MR. HALL: Objection relevance.

15 A Yes.

16 Q And by way of background, is there an interplay between heart disease and stroke?

17 A Yes. They both are cardiovascular diseases and they have similar underlying
18 causes. 9:1-10.
[. . .]

19 Q And what was your opinion as to the cause of the stroke?

20 A Hypertension.

21 Q And let me ask this question that I have been circling around with on you. Does that
22 hypertension under those conditions of physical activity that would be categorized as
strenuous have any affect on the heart?

23 A Yes.

24 Q And what would the affect on the heart be?

25 A Increased work demand, increased workload, increased oxygen consumption,
26 probably, along with an increase in rates that would be an increase in blood pressure.

Q And is that increase in blood pressure the direct cause of stroke in your professional

1 opinion based on reasonable medical probability?

2 MR. HALL: Foundation. Hearsay. Assumes facts not in evidence.
3 Go ahead, Doctor.

4 A Yes.

5 Q And is the fact that his heart was working overtime in any way related to the stroke?

6 MR. HALL: Same objection.

7 A In part, yes.

8 Q How so, Dr. Utt?

9 A Well, the heart plays a role in maintaining blood pressure, obviously, as well as the
10 blood vessels, so if there's an increased workload on the heart and then vasoconstriction
11 or narrowing of the blood vessels is occurring during increased stress, there could be an
12 increased risk of a vascular event somewhere such as the brain.

13 Q If your profession opinion, is that what happened in Tony Varney's case, based on
14 the assumptions I asked you to make and on your record?

15 MR. HALL: Same objection.

16 A Yes. 17:10 - 18:20.

17 *Dr. Schuster trial testimony:*

18 Q And then on 7/23 on page 6 of your report, there's a Dr. Roberto Secaira at St.
19 Joseph's Hospital, and it talks about an echocardiogram that showed mild concentric left
20 ventricle hypertrophy?

21 A Right.

22 Q In your professional opinion based on reasonable medical probability, is that also
23 a heart problem?

24 MR. HALL: Same objection as to the hearsay opinion of Dr. Secaira.
25 Just have to do it phonet- -- actually, it's
26 S-e-c-a-i-r-a.
Go ahead, Doctor.

A So the echocardiogram -- a mild concentric LVH implies that there's a global
symmetrical enlargement of the left ventricle, and then in addition to which there's grade
one diastolic left ventricular dysfunction, both of which are sequelae and consequence
of hypertensive -- and it's considered hypertensive cardiovascular disease.

Q And is an echocardiogram an objective medical test?

A Yes. 13:21 - 14:15

1 [. . .]

2 Q And you had -- based on your review of systems, your history, your review of
3 records, your examination of Tony Varney, you had come to some diagnoses and you'd
4 come to some causation opinions. And would you review for us your diagnoses and the
5 relationship to Tony's employment as a career firefighter?

6 A Yes. The patient had hypertension that predated the July 21st, 2009, stroke. And
7 on July 21st, 2009, he sustained an acute stroke as a result of a combination of
8 dehydration, probable heat stroke and aggravation of the pre-existing hypertension
9 which resulted in combination with the actual stroke itself. That's all on a more
10 probable than not basis. 16:1-13

11 [. . .]

12 Q. [. . .] In accepting these assumptions as true, in your professional opinion based
13 upon reasonable medical probability, does the fact that Tony Varney was engaging in
14 strenuous physical activities throughout the day on July 21st, 2009, make your opinion
15 that this is occupationally connected more likely or less likely; that is, the heart problem,
16 cardiovascular condition, hemorrhagic stroke was caused by his occupation as a career
17 professional firefighter?

18 A The answer would be more likely. 18:13-22

19 [. . .]

20 Q And including the opinion that the hypertension was aggravated by the activities
21 of July 21st, 2009?

22 A It clearly aggravated it, the activity. 29:23-25

23 ***Dr. Judish trial testimony:***

24 Q And in the cardiovascular disease, would stroke be included in that?

25 A Yes. 7:15-17

26 [. . .]

Q If you assume for purposes of this hypothetical, and I'm going to just change it a
little bit, that Tony Varney had a pre-existing cardiovascular condition that included
hypertension. Regardless of whether he got that in a workplace or he got it through other
components of his life, in your professional opinion, based upon a reasonable medical
probability, would such a condition have been aggravated by those periods of strenuous
physical activity on July 21st, 2009, that I had asked you about earlier?

MR. HALL: Same objection.

THE WITNESS: You asked me whether hypertension would be aggravated by those
type of activities?

BY MR. MEYERS:

Q Yes.

A Yes, it would. 12:7-24

[. . .]

1 Q. And Doctor, what are the components of the cardiovascular system?

2 A I would include the heart, the blood vessels, the kidneys, the central and peripheral
3 nervous system which regulate heart rate and blood pressure and vascular tone.

4 Q Does an affect on one of those components of the system have effects on the
5 remaining components of the system?

6 A Yes. 24:7-15

7 *Dr. Price trial testimony:*

8 A. [. . .] but there's certainly a number of potential causes for hypertension.

9 Q. Including heart problems?

10 A. Yes.

11 Q. And can hypertension in and of itself cause heart problems, Dr. Price?

12 A. Yes.

13 Q. Dr. Price, isn't it true that high blood pressure can cause a hemorrhagic stroke?

14 A. Yes. 35:25 - 36:11

15 *Verdict Form:*

16 The question on the verdict form answered by the jury literally read, "Was the Board of
17 Industrial Insurance Appeals correct when it decided that on July 21, 2009, or July 22, 2009, Mr. Varney
18 did not develop any heart problem." *Ex N, Decl of TF iso Plaintiffs' Motion Regarding Attorney-*
19 *Client Privilege.* It was objectively clear – unequivocal even – that this trial was about whether Mr.
20 Varney's stroke was a heart problem.

21 **March 26, 2014:** The jury returned an 11-1 verdict in favor of Plaintiff Tony Varney. *Id.* The
22 jury rendered its verdict and determined that Mr. Varney did develop a heart problem on July 21 or 22,
23 2009.

24 **May 23, 2014:** The Judgment on the jury verdict was entered. The Judgment was clear: "the
25 claim is remanded to the Department of Labor & Industries with instructions to issue an order that
26 directs the self-insured-employer, City of Tacoma, to **allow claim SE-05746 for a heart problem**
pursuant to RCW 51.32.185." [Bold added]. *Ex O, Decl of TF iso Plaintiffs' Motion Regarding*

1 *Attorney-Client Privilege*. The City did not appeal. By not appealing, the City accepted the jury's
2 verdict and the Court's Judgment. The verdict and judgment were final.

3 **June 3, 2014:** The Department issued a **ministerial order** to comply with the Superior Court's
4 May 23, 2014 judgment. The Department's ministerial order literally states, "Action is taken in
5 accordance with the Pierce County Superior Court order dated 5/23/2014 under cause number 12-2-
6 08221-4." [Bold added]. *Ex P, Decl of TF iso Plaintiffs' Motion Regarding Attorney-Client Privilege*.
7 This ministerial order indicated that Mr. Varney's claim, "is allowed for a heart problem pursuant to
8 RCW 51.32.185." *Id*.

9 A ministerial order – i.e. an order implementing a prior order of the Superior Court – is a purely
10 ministerial act and cannot be appealed. Ministerial orders are not appealable. They are not jury
11 verdicts. They are not judgments. There is **no lawful process** for appealing a ministerial order.

12 **August 15, 2014:** The City's attorney sent a letter to the Department attempting to re-litigate
13 the issue that was already decided by the jury (i.e. whether the stroke was a heart problem). *Ex 2, Decl*
14 *of Homan iso Response*. In this letter, the City's attorney argued that the claim was originally "filed for
15 a stroke (brain injury)" and that "the superior court decided that the claim should be allowed, 'but for
16 a heart problem' ". *Id*. The jury's verdict and the Court's judgment were final on this issue. There is
17 no ambiguity. Even the Board's order – which was what was on appeal to the Superior Court – states,
18 "Mr. Varney alleged that his hemorrhagic stroke was a cardiovascular incident - a heart problem." *Ex*
19 *J, Decl of TF iso Plaintiffs' Motion Regarding Attorney-Client Privilege*. The trial testimony revolved
20 around the cause of his hemorrhagic stroke and whether it was a heart problem. The jury was tasked
21 with answering whether the Board was correct when it decided that on July 21, 2009, or July 22, 2009,
22 Mr. Varney did not develop any heart problem. *Ex N, Decl of TF iso Plaintiffs' Motion Regarding*
23 *Attorney-Client Privilege*.

24 There is **no lawful process** for re-litigating a final verdict and judgment – except by successful
25 appeal to a higher court. The City abused the system and intentionally chose to ignore the law.

26 In this same letter, the City's attorney states, "while Mr. Meyers [Plaintiff's counsel] would like

1 to think that a brain injury and a heart condition are the same thing and therefore benefits should be
2 paid, it is yet to be determined by an individual with the appropriate credentials that Mr. Meyers'
3 assertion is true." *Ex 2, Decl of Homan iso Response*. That was an outright misrepresentation. The
4 jury heard the testimony of numerous medical experts, and based on the evidence presented, the jury
5 made its decision that the stroke was an occupational heart problem.

6 In this letter, the City's attorney revealed that the City, "is proceeding to have the claimant's
7 heart condition evaluated and further action can be taken after that has occurred." *Id.* There is **no**
8 **lawful process** to have Mr. Varney submit to a post-trial, post-judgment IME when, based on the jury's
9 verdict, the claim was allowed, judgment was entered and not appealed. The City ignored the law again.

10 **September 26, 2014:** In light of the City attorney's letter, the Department issued **another**
11 **ministerial order** – this time clarifying for the City what everyone already knew by virtue of the trial,
12 verdict and judgment but what the City in bad faith refused to accept – that the hemorrhagic stroke
13 resulting from the cardiovascular condition is allowed. *Ex S, Decl of TF iso Plaintiffs' Motion*
14 *Regarding Attorney-Client Privilege*. The Department directed the City to pay for that condition. This
15 ministerial order merely clarified *for the City* the Department's prior ministerial order.

16 **September 26, 2014:** (unlawful protest letter incorrectly dated July 26, 2014): The City's TPA
17 protested the Department's September 26, 2014 ministerial order – another non-appealable order. *Ex*
18 *T, Decl of TF iso Plaintiffs' Motion Regarding Attorney-Client Privilege*. There was **no lawful process**
19 to protest that ministerial order – as it was merely clarifying a prior ministerial order that was instituting
20 the jury verdict and judgment. There was **no lawful process** for the City to re-litigate this issue, as it
21 was decided by the jury's verdict, resulting in a final judgment.

22 In this bad faith and unlawful protest letter, the City's TPA argued that the September 26, 2014
23 order was "at best, premature." *Id.* The City's TPA actually claimed that they "are not aware of any
24 medical opinion that establishes a causal relationship between the "heart problem" allowed by the
25 Superior Court Judgment an the hemorrhagic stroke." *Id.* This is appalling and an abusive use of
26 process by any objective measure - given that the City was present at the jury trial on this issue.

1 The City's TPA then disclosed that it was "in the process of obtaining medical information to
2 address the issue of causal relationship." *Id.* The parties are now six months past the jury's verdict and
3 the court's judgment, and the City was still engaging the process for a purpose in which it is not
4 intended - re-litigating a final, unappealed judgment on the jury's verdict.

5 The City TPA's letter also revealed that the City scheduled Mr. Varney to undergo an IME on
6 September 29, 2014. The City's TPA stated that, "it is simply unknown what the opinion of that expert
7 might be." *Id.* There is **no lawful process** to have Mr. Varney submit to that IME. The City already
8 had Mr. Varney undergo two pre-trial IME's, and the City had Drs. Stump, Price, Stevenson and Florea
9 testify at trial - and the City lost "on the issue of causation". The City chose not to appeal, but then
10 intentionally chose to engage in continued abusive litigation processes which no lawful process allows.

11 The City's TPA states that the City wants to review that information any and all documentation
12 or other information the Department used or otherwise relied upon in making its decision contained in
13 the 9/26/14 ministerial order and obtain an "evaluation from the cardiologist to assess whether the order
14 is correct or not." *Ex T, Decl of TF iso Plaintiffs' Motion Regarding Attorney-Client Privilege.* This
15 bad faith and unlawful "protest" resulted in several more months of needless delay and litigation.

16 **December 3, 2014:** The Varneys filed a motion for summary judgment at the Board, because
17 judicial estoppel, res judicata and collateral estoppel applied to the City's conduct. *Ex U, Decl of TF*
18 *iso Plaintiffs' Motion Regarding Attorney-Client Privilege.*

19 **May 27, 2015:** Administrative Law Judge Jinhong's order did not mince words:

20 Despite its displeasure with the Pierce County Superior Court's verdict, **the City of Tacoma**
21 **did not take further appeal of this matter with the Court of Appeals.** Instead, **the City of Tacoma**
22 **seeks to revisit the entire matter** arguing the Department has now accepted a separate condition
called hemorrhagic stroke, separate and distinct from the heart condition allowed by the jury.

23 same parties in interest, in multiple forums. **If the City of Tacoma wished to further dispute the**
24 **jury's findings, it could have done so by filing an appeal with Division II of the Washington State**
25 **Court of Appeals. Alas, it did not.** It is time to put this dispute to bed and give finality to the jury's
26 verdict. The Department's order dated September 26, 2014, is CORRECT and is AFFIRMED.

1 must be satisfied.¹⁰ Based on the record established before the Board in 2010, the superior court
2 appeal, and this round of appeals, it's clear that the doctrine of *res judicata* applies and operates as
3 a complete bar to re-litigation of claims that were in fact raised and those that could have been
4 raised in the prior litigation, but were not. Here, the parties are the same, as is the subject matter,

5 *Ex V, Decl of TF iso Plaintiffs' Motion Regarding Attorney-Client Privilege.*

6 **July 14, 2015:** Neither the jury verdict, the judgment on the verdict, the ministerial orders, or
7 ALJ Jinhong's order stopped the City's tortious claims handling and abuse of process. The City chose
8 to appeal ALJ Jinhong's order to the Board.

9 **August 10, 2015:** The City TPA Britta Holm signed a Declaration under penalty of perjury for
10 the City, stating part: "That the claim for an occupationally related 'heart problem' has not been made
11 during the initial claim filing and adjudication." *Ex 24, Dep of Holm, Ex BB, Decl of TF iso Plaintiffs'*
12 *Motion Regarding Attorney-Client Privilege_*. This Declaration selectively (intentionally) omitted that
13 the diagnosis section of L&I "Physician's Initial Report" form notes that his stroke was a "Hypertensive
14 emergency". *Ex A, Decl of TF iso Plaintiffs' Motion Regarding Attorney-Client Privilege.*

15 TPA Britta Holm was asked at her deposition if she intentionally omitted material information
16 from her August 10, 2015 Declaration. Specifically, she was asked, "Did you leave out the part about
17 was filed for blood pressure causing the stroke as a result of claimant's job with the City of Tacoma
18 intentionally?" *Ex BB, Decl of TF iso Plaintiffs' Motion Regarding Attorney-Client Privilege.* The
19 City's attorney objected and coached this witness by stating, "There's no indication that she actually
20 wrote this and made the decision about what to include." *Id.* This was an improper coaching of the
21 witness. It also raises the question of who decided for Ms. Holm how she would testify.

22 **November 9, 2015:** The Board agreed with the jury, the judgment and ALJ Jinhong:

23 We believe that this instruction makes clear that the jury was including Mr. Varney's stroke in its
24 verdict. Pursuant to this instruction, the heart problem and stroke were to be considered in concert.

25 We conclude that the doctrine of *res judicata* bars the re-litigation of whether Mr. Varney's
26 stroke is covered by the Industrial Insurance Act, and we affirm the Department order on appeal.

2 **C. The City used attorney-client or work product privilege as shields behind which,**
3 **throughout its handling of Mr. Varney's industrial insurance claim, it commits**
4 **tortious abuse of process.**

5 The Varney's initiated the present action against the City for abuse of process, tortious conduct
6 (including negligent claims handling, negligent and/or intentional infliction of emotional distress, and
7 other harms), outrage, and hostile and abusive and discriminatory acts. *See Complaint.*

8 The Varney's sent the City Interrogatories and Requests for Production. The City has redacted
9 a voluminous amount of evidence during the time of its bad faith and tortious claims handling and
10 litigation relating to Mr. Varney's industrial insurance claim. The City withholds this evidence under
11 a claim of attorney-client and/or work product privilege. The City has produced three separate privilege
12 logs. The privilege logs themselves are over 96 pages long. The evidence withheld by the City is
13 voluminous. *See flash drive.*

14 Ms. Holm was also asked at her deposition if she was aware that hypertension is a heart
15 problem. *Ex BB, Decl of TF iso Plaintiffs' Motion Regarding Attorney-Client Privilege.* This was asked
16 in the context of the March 9, 2010 letter to the Department that she wrote. Before Ms. Holm gave a
17 responsive answer, the City's attorney interjected, "Then I would ask that we go off the record and that
18 the host of the meeting move us into a breakout room so that we can talk it through to determine
19 whether or not there is a --". *Id.*

20 The Plaintiff's counsel then re-iterated that he simply asked the witness if she understood that
21 hypertension was a heart problem. *Id.* The City's attorney then claimed that "It might be [an attorney-
22 client privilege] if in fact her [the witness's] understanding came from a conversation with counsel."
23 *Id.* This was another improper coaching of the witness by the City's attorney, and it also evidences that
24 during Mr. Varney's underlying industrial insurance claim, the City's attorney was manipulating or
25 otherwise orchestrating (behind the scenes) the City's TPA as to what the TPA's understanding of a
26 medical condition in Mr. Varneys' claim should be.

The City's attorney instructed its witness to not answer any questions regarding Exhibit 3 to the

1 deposition of Angela Hardy, and the City asserted attorney-client privilege and attorney work-product
2 privilege for communications with and from its third party administrator.

3 December 3, 2020 Deposition of Angela Hardy:

4 MS. HOMAN: So before you begin your answer you most certainly can give him a
5 timeline and a chronology. You can give him subject matter of the meeting. If the
6 meeting was involving Mr. Hall or for the purposes of obtaining legal advice, then you
7 may not disclose the communications that occurred or the substance of the meeting.

8 THE WITNESS: And that's what the meetings were about, yes.

9 MR. MEYERS: Well, I am going to disagree with Counsel as to the last part of her
10 statement. I think if Tom Hall was present and you were communicating with him that
11 that would be correct. However, if you were talking with Eberle Vivian, I wanted to
12 know the nature of those communications, and that's not attorney/client or attorney work
13 product, that is you are talking to an agent.

14 MS. HOMAN: Except if the agent is relaying information obtained from counsel or is
15 obtaining information from the City to relay to counsel. Eberle Vivian was often the
16 intermediary between counsel and the City, then those would fall within the scope of the
17 have attorney/client privilege.

18 *Ex AA, Decl of TF iso Plaintiffs' Motion Regarding Attorney-Client Privilege.*

19 IV. CONCLUSION

20 Attorney-client privilege and attorney work-product privilege do not extend to communications
21 respecting proposed wrongdoings, and as such there is no privilege as to communications made in
22 contemplation of the future commission of a crime, or perpetration of a fraud such as tortious claims
23 handling and abuse of process - in which a client asks the advice or assistance of its attorney. Privilege
24 should never be accorded to communications in furtherance of any scheme to deprive another of his
25 rights by tortious or unlawful conduct.

26 Dated this 23rd day of April, 2021

RON MEYERS & ASSOCIATES PLLC



Ron Meyers, WSBA No. 13169
Matthew G. Johnson, WSBA No. 27976
Tim Friedman, WSBA No. 37983
Attorneys for Plaintiffs

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury of the laws of the State of Washington that on the date stated below I caused to be served the Plaintiffs' Brief to Discovery Master upon:

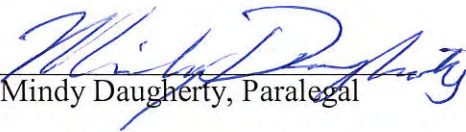
Judge Richard McDermott, Special Discovery Master

[X] Via email per agreement: mnemeth@jamsadr.com

Attorney for Defendants
Jean P. Homan, Deputy City Attorney
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747 Market St., Rm 1120
Tacoma, WA 98402-3767

[X] Via email per agreement: Jhoman@cityoftacoma.org
Gcastro@cityoftacoma.org
Bpittman@cityoftacoma.org

DATED this 23rd day of April, 2021 at Lacey, Washington.


Mindy Daugherty, Paralegal

APPENDIX B

City of Tacoma
Privilege Log – EBERLE VIVIAN Documents (VARNEY EV)
Varney v. City of Tacoma
2/25/2021

Type of Document	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
Eberle Vivian file note - Varney Entered: 02/08/10 Re1: 02/08/10 User: Britta Holm Subject: Update and Action Plan	VARNEY EV 005707	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 05/11/10 Re1: 05/11/10 User: Britta Holm Subject: Update and Action Plan	VARNEY EV 005708	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 10/06/10 Re1: 10/06/10 User: Britta Holm Subject: Status, Action Taken and Plan	VARNEY EV 005710	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 03/09/11 Re1: 03/09/11 User: Britta Holm Subject:	VARNEY EV 005710	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 07/07/12 Re1: 02/07/12 User: Britta Holm Subject: Email with VRC	VARNEY EV 005713-005714	Redacted – Attorney Client Privilege; work product	A
Eberle Vivian file note - Varney Entered: 02/07/12 Re1: 02/07/12 User: Britta Holm Subject: ERC email	VARNEY EV 005714	Redacted – Attorney Client Privilege; work product	A
Eberle Vivian file note - Varney Email string From: Britta Holm To: Alice E. Jacobs, M.S., C.R.C., Case Manager Date: 02/07/12	VARNEY EV 005715	Redacted – Attorney Client Privilege; work product	A

City of Tacoma
Privilege Log – EBERLE VIVIAN Documents (VARNEY EV)
Varney v. City of Tacoma
2/25/2021

Type of Document	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
Subject: Varney			
Eberle Vivian file note - Varney Entered: 03/16/12 Re1: 03/16/12 User: Britta Holm Subject: PC with VRC	VARNEY EV 005716	Redacted – Attorney Client Privilege; work product	A
Eberle Vivian file note - Varney Entered: 05/05/14 Re1: 05/05/14 User: Britta Holm Subject: PC with VRC	VARNEY EV 005719	Redacted – Attorney Client Privilege; work product	A
Eberle Vivian file note - Varney Entered: 05/14/14 Re1: 04/25/14 User: Britta Holm Subject: VRC Update	VARNEY EV 005719-005720	Redacted – Attorney Client Privilege; work product	A
Eberle Vivian file note - Varney Entered: 05/14/14 Re1: 05/14/14 User: Britta Holm Subject:	VARNEY EV 005721-005722	Redacted – Attorney Client Privilege; work product	A
Eberle Vivian file note - Varney Entered: 08/15/14 Re1: 05/20/14 User: Britta Holm Subject: 05/20/14-7/18/14	VARNEY EV 005726-005727	Redacted – Attorney Client Privilege; work product	A
Eberle Vivian file note - Varney Entered: 08/15/14 Re1: 06/27/14 User: Britta Holm Subject: 6/27/14 VRC	VARNEY EV 005728	Redacted – Attorney Client Privilege; work product	A
Eberle Vivian file note - Varney Entered: 09/14/15 Re1: 08/20/15	VARNEY EV 005741	Redacted – Attorney Client Privilege; work product	A

City of Tacoma
Privilege Log – EBERLE VIVIAN Documents (VARNEY EV)
Varney v. City of Tacoma
2/25/2021

Type of Document	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
User: Britta Holm Subject: 8/20/15			
Eberle Vivian file note - Varney Entered: 03/09/16 Re1:03/09/16 User: Britta Holm Subject: PC with Tom and Alice to Discuss Further TX Plan	VARNEY EV 005759	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 09/22/16 Re1: 09/22/16 User: Kevink Subject:Legal-Supervisor Comment-Review	VARNEY EV 005768	Redacted – Attorney Client Privilege; work product	A
Eberle Vivian file note - Varney Entered: 09/26/17 Re1: 09/26/17 User: Britta Holm Subject: Update Email Communication with Tom, Ron and Pat D from DLI	VARNEY EV 005773	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 10/15/17 Re1: 10/15/17 User: Britta Holm Subject: Update and POA	VARNEY EV 005775	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 11/07/17 Re1: 11/07/17 User: Britta Holm Subject: Email from Tom & Ron's Office Re Their Motion to Dismiss Appeal	VARNEY EV 005776	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 06/04/10 Re1: 06/04/10 User: Britta Holm Subject: Email to Legal	VARNEY EV 005846	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 06/04/10	VARNEY EV 005846-005847	Redacted – Attorney Client Privilege	A

City of Tacoma
Privilege Log – EBERLE VIVIAN Documents (VARNEY EV)
Varney v. City of Tacoma
2/25/2021

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Re1: 06/04/10 User: Britta Holm Subject: Email to Legal			
Eberle Vivian file note - Varney Entered: 06/04/10 Re1: 06/04/10 User: Britta Holm Subject: Email Again to Legal	VARNEY EV 005846-005847	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 07/08/10 Re1: 07/08/10 User: Pc Britta Holm Subject: Pc With Legal	VARNEY EV 005848	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 09/03/10 Re1: 09/03/10 User: Britta Holm Subject: 9/1/10 Email from Tom	VARNEY EV 005848-005849	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 09/03/10 Re1: 09/03/10 User: Britta Holm Subject: Email with Tom	VARNEY EV 005849	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 09/03/10 Re1: 09/03/10 User: Britta Holm Subject: Email with Tom	VARNEY EV 005849-005850	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 09/20/10 Re1: 09/20/10 User: Britta Holm Subject: Email to Tom-Re Allowance Order	VARNEY EV 005850	Redacted – Attorney Client Privilege	A

City of Tacoma
Privilege Log – EBERLE VIVIAN Documents (VARNEY EV)
Varney v. City of Tacoma
2/25/2021

Type of Document	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
Eberle Vivian file note - Varney Entered: 09/27/10 Re1: 09/27/10 User: Britta Holm Subject: Email with Legal	VARNEY EV 005851	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 01/14/11 Re1: 01/14/11 User: Britta Holm Subject: Update From Legal and Forwarded to Employer	VARNEY EV 005852	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 03/09/11 Re1: 03/09/11 User: Britta Holm Subject: Update and Action Plan	VARNEY EV 005853	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 03/09/11 Re1: 03/09/11 User: Britta Holm Subject: Email to Tom	VARNEY EV 005853	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 03/15/11 Re1: 03/15/11 User: Britta Holm Subject:	VARNEY EV 005853	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 07/13/11 Re1: 07/03/11 User: Britta Holm Subject: Receipt of Tax From Ingenix and Action Taken	VARNEY EV 005855-005856	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 08/19/11 Re1: 08/19/11 User: Britta Holm Subject: Hearing Dates	VARNEY EV 005857	Redacted – Attorney Client Privilege	A

City of Tacoma
Privilege Log – EBERLE VIVIAN Documents (VARNEY EV)
Varney v. City of Tacoma
2/25/2021

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Eberle Vivian file note - Varney Entered: 09/22/11 Re1: 09/22/11 User: Britta Holm Subject: Email with Legal	VARNEY EV 005859-005860	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 02/07/12 Re1:02/07/12 User: Britta Holm Subject: Email to Tom	VARNEY EV 005860	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 02/07/12 Re1: 02/07/12 User: Britta Holm Subject: Email with Tom	VARNEY EV 005862-005863	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 02/07/12 Re1: 02/07/12 User: Britta Holm Subject: VRC Email	VARNEY EV 005864	Redacted – Attorney Client Privilege; work product	A
Eberle Vivian file note - Varney Entered: 02/07/12 Re1: 02/07/12 User: Britta Holm Subject: Email with LEgal	VARNEY EV 005865-005866	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 03/06/12 Re1: 03/06/12 User: Britta Holm Subject: PC with Tom & Angie Re PD&O	VARNEY EV 005866	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 03/16/12 Re1: 03/16/12 User: Britta Holm Subject: Email with Tom	VARNEY EV 005866-005867	Redacted – Attorney Client Privilege	A

City of Tacoma
Privilege Log – EBERLE VIVIAN Documents (VARNEY EV)
Varney v. City of Tacoma
2/25/2021

Type of Document	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
Eberle Vivian file note - Varney Entered: 04/20/12 Re1: 04/20/12 User: Britta Holm Subject: Email Legal Counsel	VARNEY EV 005870	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 05/21/12 Re1: 05/21/12 User: Britta Holm Subject: Email to Tom Following Our Phone Conversation	VARNEY EV 005871	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 08/13/12 Re1: 08/13/12 User: Britta Holm Subject: Email from Tom 7/31/12	VARNEY EV 005874	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 08/13/12 Re1: 08/13/12 User: Britta Holm Subject: Email to Tom Re Meyer Re Ltr From OP	VARNEY EV 005875	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 08/13/12 Re1: 08/13/12 User: Britta Holm Subject: Email with Tom	VARNEY EV 005875-005876	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 03/26/13 Re1: 03/20/13 User: Britta Holm Subject: Email Update from Tom	VARNEY EV 005877-005878	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 04/03/13 Re1: 04/03/13 User: Britta Holm Subject: Email with Supervisor and Legal Counsel Office	VARNEY EV 005878-005879	Redacted – Attorney Client Privilege	A

City of Tacoma
Privilege Log – EBERLE VIVIAN Documents (VARNEY EV)
Varney v. City of Tacoma
2/25/2021

Type of Document	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
Eberle Vivian file note - Varney Entered: 03/17/14 Re1:03/17/14 User: Britta Holm Subject: 3/17/14 Email from Tom	VARNEY EV 005884-005885	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 03/27/14 Re1: 03/26/14 User: Britta Holm Subject: Legal Update-Trial Results	VARNEY EV 005886-005887	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 03/27/14 Re1: 03/27/14 User: Britta Holm Subject: Notification to the Excess Carrier	VARNEY EV 005887	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 03/27/14 Re1: 03/26/14 User: Britta Holms Subject: Communication With Legal and Employer on Trial Results	VARNEY EV 005887-005888	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 03/30/14 Re1: 03/30/14 User: Lori Clavin Subject: Legal-Supervisor Comment-Review	VARNEY EV 005889	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 04/01/14 Re1: 04/01/14 User: Britta Holm Subject: Email with Tom	VARNEY EV 005890-00591	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 04/03/14 Re1: 04/03/14 User: Britta Holm Subject: Emails from Tom	VARNEY EV 005894-005895	Redacted – Attorney Client Privilege	A

City of Tacoma
Privilege Log – EBERLE VIVIAN Documents (VARNEY EV)
Varney v. City of Tacoma
2/25/2021

Type of Document	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
Eberle Vivian file note - Varney Entered: 04/16/14 Re1: 04/16/14 User: Lori Clavin Subject: Legal-Supervisor Comment-Review	VARNEY EV 005895	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 04/23/14 Re1: 04/23/14 User: Britta Holm Subject: Email to Excess Carrier	VARNEY EV 005895	Redacted – Attorney Client Privilege; Common Interest	A
Eberle Vivian file note - Varney Entered:04/23/14 Re1: 04/23/14 User:Britta Holm Subject: Email to Legal	VARNEY EV 005895-005896	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered:04/25/14 Re1: 04/25/14 User: Britta Holm Subject: 4/25/14 Email with Legal Counsel	VARNEY EV 005896-005898	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 04/25/14 Re1: 04/24/14 User: Britta Holm Subject: 4/24/14 Email with Victor	VARNEY EV 005898-005899	Redacted – Attorney Client Privilege; Common Interest – Legal Strategy	A
Eberle Vivian file note - Varney Entered: 04/25/14 Re1:04/24/14 User: Britta Holm Subject: 4/24/14 Email to Legal	VARNEY EV 005899-005900	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 04/24/14 Re1: 04/23/14 User: Britta Holm Subject: 4/23/14 Email with Lori	VARNEY EV 005900-005902	Redacted – Attorney Client Privilege	A

City of Tacoma
Privilege Log – EBERLE VIVIAN Documents (VARNEY EV)
Varney v. City of Tacoma
2/25/2021

Type of Document	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
Eberle Vivian file note - Varney Entered: 04/25/14 Re1: 04/25/14 User: Britta Holm Subject: Email From Ryan Re: Judgment	VARNEY EV 005902-0058905	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 04/25/14 Re1: 04/25/14 User: Britta Holm Subject: Email With Ryan	VARNEY EV 005905-005909	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 04/25/14 Re1: 04/25/14 User: Britta Holm Subject: Email With Lori and Ryan Re Judgement Fee	VARNEY EV 005905-005912	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 04/28/14 Re1: 04/28/14 User: Britta Holm Subject: Email Notice of IME Cancellation	VARNEY EV 005914	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 05/05/14 Re1: 05/05/14 User: Britta Holm Subject: 4/1/14 Email with Tom	VARNEY EV 005919	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 05/05/14 Re1: 05/05/14 User: Britta Holm Subject: Email to Our Legal	VARNEY EV 005920	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 05/05/14 Re1: 05/05/14 User: Britta Holm Subject: Email to Our Legal	VARNEY EV 005920-005921	Redacted – Attorney Client Privilege	A

City of Tacoma
Privilege Log – EBERLE VIVIAN Documents (VARNEY EV)
Varney v. City of Tacoma
2/25/2021

Type of Document	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
Eberle Vivian file note - Varney Entered: 05/14/14 Re1: 05/14/14 User: Britta Holm Subject: Email to Tom	VARNEY EV 005924	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 05/27/14 Re1: 05/27/14 User: Britta Holm Subject: 5/16/14 Tom's Response to Jewish Chart Note	VARNEY EV 005925	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 05/27/14 Re1: 05/27/14 User: Britta Holm Subject: Email to Tom	VARNEY EV 005925-005926	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 05/27/14 Re1: 05/27/14 User: Britta Holm Subject: Response to Lori	VARNEY EV 005927	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 05/28/14 Re1: 06/25/14 User: Lori Clavin Subject: Legal-Excess-Supervisor Comment-Review	VARNEY EV 005927	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 06/25/14 Re1: 06/25/14 User: Britta Holm Subject: Email to Tom	VARNEY EV 005927	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 07/02/14 Re1: 07/01/14 User: Britta Holm Subject: Email From Ryan Following Phone Discussion	VARNEY EV 005928	Redacted – Attorney Client Privilege	A

City of Tacoma
Privilege Log – EBERLE VIVIAN Documents (VARNEY EV)
Varney v. City of Tacoma
2/25/2021

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Eberle Vivian file note - Varney Entered: 07/02/14 Re1: 07/02/14 User: Britta Holm Subject: Email to Sup Re Status Meeting With Legal	VARNEY EV 005929	Redacted – Attorney Client Privilege; work product	A
Eberle Vivian file note - Varney Entered: 07/02/14 Re1: 07/02/14 User: Britta Holm Subject: Email With Legal	VARNEY EV 005929-005930	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 07/17/14 Re1: 07/17/14 User: Britta Holm Subject: PC With Legal and Lori	VARNEY EV 005930	Redacted – Attorney Client Privilege; Work Product	A
Eberle Vivian file note - Varney Entered: 07/18/14 Re1: 07/18/14 User: Britta Holm Subject: Email with Lori	VARNEY EV 005930-005931	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 07/18/14 Re1: 07/08/14 User: Britta Holm Subject: Legal-Employer Attorney/Email Disc Re Time Loss	VARNEY EV 005931-005933	Redacted – Attorney Client Privilege; Work Product	A
Eberle Vivian file note - Varney Entered: 07/24/14 Re1: 07/23/14 User: Lori Clavin Subject: Legal-Employer/Tom Hall Communication	VARNEY EV 005933-005934	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 08/04/14 Re1: 07/28/14 User: Britta Holm Subject: 7/28/14 Email From Angie	VARNEY EV 005936-005940	Redacted – Attorney Client Privilege	A

City of Tacoma
Privilege Log – EBERLE VIVIAN Documents (VARNEY EV)
Varney v. City of Tacoma
2/25/2021

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Eberle Vivian file note - Varney Entered: 08/04/14 Re1: 08/04/14 User: Britta Holm Subject: 8/4/14 Email With Tom	VARNEY EV 005941-005942	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered:08/06/14 Re1: 08/05/14 User: Britta Holm Subject: 8/5/14 Email with Tom To Confirm IME Docs	VARNEY EV 005942-005943	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 08/06/14 Re1: 07/21/14 User: Britta Holm Subject: 7/21/14 Email With Tom	VARNEY EV 005943-005944	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 08/06/14 Re1: 08/06/14 User: Britta Holm Subject: Update and Action Taken	VARNEY EV 005945-005946	Redacted – Attorney Client Privilege; Work Product	A
Eberle Vivian file note - Varney Entered: 08/07/14 Re1: 08/07/14 User: Britta Holm Subject: Information With Our Legal For the IME Notification Letter	VARNEY EV 005946	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 08/07/14 Re1: 08/07/14 User: Britta Holm Subject: Email to Ryan/Tom	VARNEY EV 005947	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 08/07/14 Re1: 07/16/14 User: Britta Holm Subject: 7/16/14 update From Ryan	VARNEY EV 005947-005951	Redacted – Attorney Client Privilege	A

City of Tacoma
Privilege Log – EBERLE VIVIAN Documents (VARNEY EV)
Varney v. City of Tacoma
2/25/2021

Type of Document	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
Eberle Vivian file note - Varney Entered: 08/07/14 Re1: 07/31/14 User: Britta Holm Subject: 7/31/14 Email From Ryan	VARNEY EV 005952-005953	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 08/08/14 Re1: 08/04/14 User: Britta Holm Subject: 8/4/14 Email with Tom	VARNEY EV 005954-005957	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 08/08/14 Re1: 08/06/14 User: Britta Holm Subject: 7/24/14 Email With Tom	VARNEY EV 005959-005961	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 08/15/14 Re1: 08/15/14 User: Britta Holm Subject: Email From Ryan Direction and Ltr To Send In Response to 10 Day Request	VARNEY EV 005965	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 08/15/14 Re1: 08/15/14 User: Britta Holm Subject: Email to Ryan For Clarification On IME Cover Letter	VARNEY EV 005966	Redacted – Attorney Client Privilege; Work Product	A
Eberle Vivian file note - Varney Entered: 08/15/14 Re1: 08/15/14 User: Britta Holm Subject: Email With Tom Re Meyers 8/11/14 Ltr	VARNEY EV 005970	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 08/15/14 Re1: 08/15/14 User: Britta Holm	VARNEY EV 005978-005979	Redacted – Attorney Client Privilege	A

City of Tacoma
Privilege Log – EBERLE VIVIAN Documents (VARNEY EV)
Varney v. City of Tacoma
2/25/2021

Type of Document	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
Subject: Email to Employer for Info			
Eberle Vivian file note - Varney Entered: 08/18/14 Re1: 08/18/14 User: Lori Clavin Subject: Legal-Excess Supervisor Comment-Review	VARNEY EV 005979	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 09/01/14 Re1: 09/01/14 User: Britta Holm Subject: Email to Tom	VARNEY EV 005980	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 09/01/14 Re1: 09/01/14 User: Britta Holm Subject: Email to Tom For Cover Letter	VARNEY EV 005981	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 09/08/14 Re1: 09/08/14 User: Britta Holm Subject: Email to Tom for IME Cover Letter	VARNEY EV 005981	Redacted – Attorney Client Privilege; Work Product	A
Eberle Vivian file note - Varney Entered: 09/08/14 Re1: 08/22/14 User: Britta Holm Subject: 8/22/14 Email From Tom	VARNEY EV 005982	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 09/08/14 Re1: 8/20/14 User: Britta Holm Subject: 8/20/14 Email With Our Legal Counsel	VARNEY EV 005982-005984	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 09/08/14 Re1: 09/08/14	VARNEY EV 005984	Redacted – Attorney Client Privilege; Work Product	A

City of Tacoma
Privilege Log – EBERLE VIVIAN Documents (VARNEY EV)
Varney v. City of Tacoma
2/25/2021

Type of Document	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
User: Britta Holm Subject: PC With Tom and Ryan			
Eberle Vivian file note - Varney Entered: 09/09/14 Re1: 09/09/14 User: Lori Clavin Subject: Lega-Supervisor Comment-Review	VARNEY EV 005984	Redacted – Attorney Client Privilege; Work Product	A
Eberle Vivian file note - Varney Entered: 09/17/14 Re1: 09/12/14 User: Britta Holm Subject: 9/12/14 Email from Tom	VARNEY EV 005985	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 09/26/14 Re1: 09/26/14 User: Britta Holm Subject: Email From Tom-Ron Meyers	VARNEY EV 005987-005988	Redacted – Attorney Client Privilege; Work Product	A
Eberle Vivian file note - Varney Entered: Re1: User: Subject:	VARNEY EV 005989	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 09/26/14 Re1: 09/26/14 User: Britta Holm Subject: Tom's Response To What I Found on DLI Web Site	VARNEY EV 005989	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 09/26/14 Re1: 09/26/14 User: Britta Holm Subject: Marti's Response	VARNEY EV 005990	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 09/26/14	VARNEY EV 005990	Redacted – Attorney Client Privilege	A

City of Tacoma
Privilege Log – EBERLE VIVIAN Documents (VARNEY EV)
Varney v. City of Tacoma
2/25/2021

Type of Document	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
Re1: 09/26/14 User: Britta Holm Subject: PC With Tom and Martin Re Ron Meyers Recent Email/Ltr and DLI Recent Orders			
Eberle Vivian file note - Varney Entered: 09/29/14 Re1: 09/29/14 User: Britta Holm Subject: PC From Ryan	VARNEY EV 005990-005991	Redacted – Attorney Client Privilege; Work Product	A
Eberle Vivian file note - Varney Entered: 09/24/14 Re1: 09/24/14 User: Britta Holm Subject: Email from Ryan	VARNEY EV 005992-005993	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 09/24/14 Re1: 09/24/14 User: Britta Holm Subject: Lisa V's Email	VARNEY EV 005994-005995	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 09/24/14 Re1: 09/29/14 User: Britta Holm Subject: Email From Tom	VARNEY EV 005995-005996	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 09/29/14 Re1: 09/29/14 User: Britta Holm Subject: Email From Tom	VARNEY EV 005997-005998	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 09/29/14 Re1: 09/29/14 User: Britta Holm Subject: Lisa V's Email	VARNEY EV 005999-006000	Redacted – Attorney Client Privilege	A

City of Tacoma
Privilege Log – EBERLE VIVIAN Documents (VARNEY EV)
Varney v. City of Tacoma
2/25/2021

Type of Document	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
Eberle Vivian file note - Varney Entered: 09/29/14 Re1: 09/29/14 User: Britta Holm Subject: Britta's Email to All Confirming He Attended IME – Dr. Thompson	VARNEY EV 006001-006002	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 09/24/14 Re1: 09/24/14 User: Britta Holm Subject: Email Lisa and Mine	VARNEY EV 006003-006007	Redacted – Attorney Client Privilege; Work Product	A
Eberle Vivian file note - Varney Entered: 09/30/14 Re1: 09/30/14 User: Britta Holm Subject: Tom's Response	VARNEY EV 006008	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 09/30/14 Re1: 09/30/14 User: Britta Holm Subject: Email Tom, Lisa and Myself	VARNEY EV 006009	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 09/30/14 Re1: 09/30/14 User: Britta Holm Subject: Lisa Tom	VARNEY EV 006010-006011	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 09/30/14 Re1: 09/30/14 User: Britta Holm Subject: Email With Angie	VARNEY EV 006011-006013	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 10/01/14 Re1: 09/30/14 User: Britta Holm Subject: Lisa, Tom Email	VARNEY EV 006013	Redacted – Attorney Client Privilege	A

City of Tacoma
Privilege Log – EBERLE VIVIAN Documents (VARNEY EV)
Varney v. City of Tacoma
2/25/2021

Type of Document	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
Eberle Vivian file note - Varney Entered:10/02/14 Re1: 10/02/14 User: Britta Holm Subject: REviewOF CAC and Email to Lisa, Tom Ryan	VARNEY EV 006014	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered:10/02/14 Re1: 10/02/14 User: Britta Holm Subject: Email With Lisa, Ryan and Tom	VARNEY EV 006015-006016	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 10/03/14 Re1: 10/03/14 User: Britta Holm Subject: Email to Lisa, Tom, Ryan, Gina and Kori Re: Morning 10/3 CAC Action	VARNEY EV 006017-006018	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 10/03/14 Re1: 10/03/14 User: Shared Email With Angie and Marti Subject:	VARNEY EV 006018-006019	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 10/03/14 Re1: 10/03/14 User: Britta Holm Subject: Tom's Response	VARNEY EV 006019	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 10/03/14 Re1: 10/03/14 User: Britta Holm Subject: Email from Lisa	VARNEY EV 006020-006021	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 10/03/14 Re1: 10/03/14 User: Britta Holm	VARNEY EV 006022-006023	Redacted – Attorney Client Privilege	A

City of Tacoma
Privilege Log – EBERLE VIVIAN Documents (VARNEY EV)
Varney v. City of Tacoma
2/25/2021

Type of Document	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
Subject: Email with Ryan			
Eberle Vivian file note - Varney Entered: 10/03/14 Re1: 10/03/14 User: Britta Holm Subject: Email Lisa	VARNEY EV 006023-002026	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 10/03/14 Re1: 10/03/14 User: Britta Holm Subject: Email With Lisa, Ryan	VARNEY EV 006026-006027	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 10/03/14 Re1: 10/03/14 User: Britta Holm Subject: Email With Lisa, Ryan	VARNEY EV 006028-006029	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 10/03/14 Re1: 10/03/14 User: Britta Holm Subject: Email, Ryan, Lisa	VARNEY EV 006030-006031	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 10/03/14 Re1: 10/03/14 User: Britta Holm Subject: Gina's Update On Confirmation of Protest at DLI	VARNEY EV 006032-006034	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 10/06/14 Re1: 10/06/14 User: Britta Holm Subject: Email to Legal	VARNEY EV006036-006037	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 10/09/14 Re1: 10/08/14	VARNEY EV 006037	Redacted – Attorney Client Privilege; Work Product	A

City of Tacoma
Privilege Log – EBERLE VIVIAN Documents (VARNEY EV)
Varney v. City of Tacoma
2/25/2021

Type of Document	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
User: Lori Clavin Subject: Legal-Supervisor Comment-Review/Excess			
Eberle Vivian file note - Varney Entered: 10/15/14 Re1: 10/15/14 User: Britta Holm Subject: Conference Call	VARNEY EV 006038	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 10/22/14 Re1: 10/22/14 User: Britta Holm Subject: Email From Tom	VARNEY EV 006039	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 10/30/14 Re1: 10/30/14 User: Britta Holm Subject: Email With Tom	VARNEY EV 006039	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 10/30/14 Re1: 10/30/14 User: Britta Holm Subject: Email With Tom	VARNEY EV 006040-006041	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 11/05/14 Re1: 11/05/14 User: Britta Holm Subject: Email To Tom and Ryan Re S.A.W.	VARNEY EV 006041	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 11/06/14 Re1: 11/06/14 User: Britta Holm Subject: Email to Our Legal	VARNEY EV 006042	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 11/06/14	VARNEY EV 006043	Redacted – Attorney Client Privilege	A

City of Tacoma
Privilege Log – EBERLE VIVIAN Documents (VARNEY EV)
Varney v. City of Tacoma
2/25/2021

Type of Document	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
Re1: 11/06/14 User: Britta Holm Subject: Email Sent To Our Legal			
Eberle Vivian file note - Varney Entered: Re1: User: Subject:	VARNEY EV 006044-006045	Redacted – Attorney Client Privilege; Common Interest	
Eberle Vivian file note - Varney Entered: 11/06/14 Re1: 11/06/14 User: Britta Holm Subject: Response From Our Legal	VARNEY EV 006046	Redacted – Attorney Client Privilege	
Eberle Vivian file note - Varney Entered: 11/06/14 Re1: 11/06/14 User: Britta Holm Subject: Email to Legal With VRC Info	VARNEY EV 006046-006047	Redacted – Attorney Client Privilege	
Eberle Vivian file note - Varney Entered: 11/06/14 Re1: 11/06/14 User: Britta Holm Subject: Email From Our Legal Counsel	VARNEY EV 006048-006050	Redacted – Attorney Client Privilege	
Eberle Vivian file note - Varney Entered: 11/09/14 Re1: 11/09/14 User: Britta Holm Subject: Email With Legal	VARNEY EV 006051-006052	Redacted – Attorney Client Privilege	
Eberle Vivian file note - Varney Entered: 11/13/14 Re1: 11/13/14 User: Britta Holm Subject: Action with Legal	VARNEY EV 006053	Redacted – Attorney Client Privilege	

City of Tacoma
Privilege Log – EBERLE VIVIAN Documents (VARNEY EV)
Varney v. City of Tacoma
2/25/2021

Type of Document	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
Eberle Vivian file note - Varney Entered: 11/13/14 Re1: 11/13/14 User: Britta Holm Subject: Email With Sup Re Conversation With Legal and Action Plan	VARNEY EV 006053-006054	Redacted – Attorney Client Privilege	
Eberle Vivian file note - Varney Entered: 11/13/14 Re1: 11/13/14 User: Britta Holm Subject: Legal Emails	VARNEY EV 006054-006055	Redacted – Attorney Client Privilege	
Eberle Vivian file note - Varney Entered: 11/14/14 Re1: 11/14/14 User: Britta Holm Subject: Email from Legal	VARNEY EV 006057-006058	Redacted – Attorney Client Privilege	
Eberle Vivian file note - Varney Entered: 11/14/14 Re1: 11/14/14 User: Britta Holm Subject:	VARNEY EV 006058-006060	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 11/17/14 Re1: 11/17/14 User: Britta Holm Subject: Email To Ryan & Tom Re Amounts 4/30/12-7/28/14	VARNEY EV 006060-006061	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 11/17/14 Re1: 11/17/14 User: Britta Holm Subject: Email with Legal	VARNEY EV 006061-006062	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 11/17/14 Re1: 11/03/14 User: Britta Holm Subject:Email from Ryan	VARNEY EV 006062	Redacted – Attorney Client Privilege	A

City of Tacoma
Privilege Log – EBERLE VIVIAN Documents (VARNEY EV)
Varney v. City of Tacoma
2/25/2021

Type of Document	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
Eberle Vivian file note - Varney Entered: 11/17/14 Re1: 11/17/14 User: Britta Holm Subject: 11/17/14 Conference Call	VARNEY EV 006063	Redacted – Attorney Client Privilege; Work Product	A
Eberle Vivian file note - Varney Entered: 11/17/14 Re1: 11/17/14 User: Lori Clavin Subject: Legal-Supervisor Comment Review	VARNEY EV 006063	Redacted – Attorney Client Privilege; Work Product	A
Eberle Vivian file note - Varney Entered: 11/19/14 Re1: 11/19/14 User: Britt Holm Subject: Email to Legal	VARNEY EV 006063-006064	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 11/19/14 Re1: 11/19/14 User: Britta Holm Subject: Email From Ryan	VARNEY EV 006064	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 11/19/14 Re1: 11/19/14 User: Britta Holm Subject: Legal	VARNEY EV 006065	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 11/19/14 Re1: 11/19/14 User: Lori Clavin Subject: Legal-Employer Attorney email/Tom Hall	VARNEY EV 006066	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 12/01/14 Re1: 12/01/14 User: Lori Clavin Subject: Legal-Employer Attorney	VARNEY EV 006067-006068	Redacted – Attorney Client Privilege	A

City of Tacoma
Privilege Log – EBERLE VIVIAN Documents (VARNEY EV)
Varney v. City of Tacoma
2/25/2021

Type of Document	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
Eberle Vivian file note - Varney Entered: 12/01/14 Re1: 12/01/14 User: Lori Clavin Subject: Legal-Employer Communication/Employee Att	VARNEY EV 006068-006070	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 12/08/14 Re1: 12/06/14 User: Britta Holm Subject: Email From Tom	VARNEY EV 006071-006072	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: Britta Holm Re1: 12/08/14 User: 12/06/14 Subject: Email With Our Legal Counsel Re Paper Work From Clmt Legal	VARNEY EV 006072-006073	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 12/01/14 Re1: 12/10/14 User: Britta Holm Subject: Update From Telephone Conference	VARNEY EV 006073-006074	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 12/10/14 Re1: 12/10/14 User: Britta Holm Subject: PC With Ryan Re Conference Call	VARNEY EV 006075	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 12/30/14 Re1: 12/29/14 User: Britta Holm Subject: Email With Ryan	VARNEY EV 006077	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 12/30/14 Re1: 12/29/14 User: Britta Holm Subject: Email to Lori Re Ryan's Email	VARNEY EV 006078	Redacted – Attorney Client Privilege; Work Product	A

City of Tacoma
Privilege Log – EBERLE VIVIAN Documents (VARNEY EV)
Varney v. City of Tacoma
2/25/2021

Type of Document	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
Eberle Vivian file note - Varney Entered: 12/30/14 Re1: 12/29/14 User: Britta Holm Subject: Email to Ryan Following Email With Lori	VARNEY EV 006079	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 01/09/15 Re1: 01/08/15 User: Britta Holm Subject: Email from Tom	VARNEY EV 006080	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 01/14/15 Re1: 01/13/15 User: Britta Holm Subject: Email Re State Conference and Judge Decision	VARNEY EV 006083	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 02/12/15 Re1: 02/12/15 User: Lori Clavin Subject:	VARNEY EV 006086	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 02/13/15 Re1: 02/13/15 User: Lori Clavin Subject: Legal-Excess/Supervisor Comment-Review	VARNEY EV 006086	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 02/25/15 Re1: 02/24/15 User: Britta Holm Subject: Email Correspondence With Our Legal	VARNEY EV 006086-006087	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 02/26/15 Re1: 02/25/15 User: Britta Holm Subject: Legal Update From Phone Conference 2/25/15	VARNEY EV 006087-006088	Redacted – Attorney Client Privilege	A

City of Tacoma
Privilege Log – EBERLE VIVIAN Documents (VARNEY EV)
Varney v. City of Tacoma
2/25/2021

Type of Document	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
Eberle Vivian file note - Varney Entered: 03/25/15 Re1: 12/29/14 User: Britta Holm Subject: Email From Ryan	VARNEY EV 006089-006090	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 03/28/15 Re1: 12/10/14 User: Britta Holm Subject: 12/10/14 Update From Angie-Legal Counsel Office	VARNEY EV 006090-006091	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 04/01/15 Re1: 04/01/15 User: Lori Clavin Subject: Legal-Excess-Supervisor Comment-Review	VARNEY EV 006091	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 04/07/15 Re1: 04/06/15 User: Britta Holm Subject: Email With Tom	VARNEY EV 006091-006092	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 04/07/15 Re1: 04/07/15 User: Britta Holm Subject: Email to Lori As FYI	VARNEY EV 006092	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 04/16/15 Re1: 04/16/15 User: Britta Holm Subject: 4/15/15 Email Update From Tom	VARNEY EV 006094-006095	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 05/06/15 Re1: 04/29/15 User: Britta Holm Subject: Email With Lori, Tom	VARNEY EV 006096-006098	Redacted – Attorney Client Privilege	A

City of Tacoma
Privilege Log – EBERLE VIVIAN Documents (VARNEY EV)
Varney v. City of Tacoma
2/25/2021

Type of Document	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
Eberle Vivian file note - Varney Entered: 05/06/15 Re1: 04/15/15 User: Britta Holm Subject: 4/15/15 Email From Tom	VARNEY EV 006099-006100	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 05/28/15 Re1: 05/14/15 User: Britta Holm Subject: Email With Legal	VARNEY EV 006101	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 05/28/15 Re1: 05/28/15 User: Lori Clavin Subject: Legal-Supervisor Comment-REview	VARNEY EV 006102	Redacted – Attorney Client Privilege; Work Product	A
Eberle Vivian file note - Varney Entered: 06/03/15 Re1: 06/03/15 User: Britta Holm Subject: 6/1/15 Email From Tom Re the PD&O	VARNEY EV 006102	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 06/25/15 Re1: 06/25/15 User: Britta Holm Subject: Email From Tom	VARNEY EV 006103-006104	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 07/06/15 Re1: 07/06/15 User: Lori Clavin Subject: Legal-Excess-Supervisor Comment-Review	VARNEY EV 006104	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 07/08/15 Re1: 07/08/15 User: Britta Holm Subject: Email From Tom Re “Petition For Review”	VARNEY EV 006104-006105	Redacted – Attorney Client Privilege	A

City of Tacoma
Privilege Log – EBERLE VIVIAN Documents (VARNEY EV)
Varney v. City of Tacoma
2/25/2021

Type of Document	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
Eberle Vivian file note - Varney Entered: 07/06/15 Re1: 07/08/15 User: Britta Holm Subject: Email from Tom Re New Motion For Summary Judgment on Penalty Orders	VARNEY EV 006105-006106	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 07/14/15 Re1: 07/14/15 User: Britta Holm Subject: Email With Legal RE PFR	VARNEY EV 006106	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 07/21/15 Re1: 07/21/15 User: Britta Holm Subject: Email with Tom Hall Re Our PFR	VARNEY EV 006108-006109	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 08/03/15 Re1: 08/03/15 User: Britta Holm Subject: Spoke with Tom	VARNEY EV 006109-006110	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 08/05/15 Re1: 08/05/15 User: Email With Legal Subject:	VARNEY EV 006110	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 08/08/15 Re1: 08/08/15 User: Britta Holm Subject: Email With Legal Re Communicaiton With Clmt Legal	VARNEY EV 006110	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 08/05/15 Re1: 08/07/15 User: Britta Holm	VARNEY EV 006112	Redacted – Attorney Client Privilege	A

City of Tacoma
Privilege Log – EBERLE VIVIAN Documents (VARNEY EV)
Varney v. City of Tacoma
2/25/2021

Type of Document	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
Subject: Marti's Response to Tom Re Clmt Legal Email			
Eberle Vivian file note - Varney Entered: 08/22/15 Re1: 08/21/15 User: Britta Holm Subject: Email From Legal	VARNEY EV 006123-006124	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 08/26/15 Re1: 08/26/15 User: Britta Holm Subject: Email to Employer To Confirm They Agree With Tom's 8/21/15 Email	VARNEY EV 006124-006125	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 08/26/15 Re1: 08/24/15 User: Britta Holm Subject: 8/24/15 With Supervisor	VARNEY EV 006125-006126	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 09/05/15 Re1: 09/02/15 User: Britta Holm Subject: Email From Tom Re Meyers Penalty Fee Request	VARNEY EV 006126-006127	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 09/14/15 Re1: 09/14/14 User: Britta Holm Subject: Email With Legal To Confirm the Allowed Condition	VARNEY EV 006131	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 09/14/15 Re1: 09/14/15 User: Britta Holm Subject: Email to Legal	VARNEY EV006131-006132	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 09/14/15	VARNEY EV 006132-006133	Redacted – Attorney Client Privilege	A

City of Tacoma
Privilege Log – EBERLE VIVIAN Documents (VARNEY EV)
Varney v. City of Tacoma
2/25/2021

Type of Document	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
Re1: 09/14/15 User: Britta Holm Subject: Response To Tom's 9/11/15 Email			
Eberle Vivian file note - Varney Entered: 09/14/15 Re1: 09/14/15 User: Britta Holm Subject: Confirmation From Legal To My Email	VARNEY EV 006135-001636	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 09/14/15 Re1: 09/14/15 User: Britta Holm Subject: Update and POA	VARNEY EV 006137	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 09/14/15 Re1: 09/14/15 User: Britta Holm Subject: Update With Legal	VARNEY EV 006137-006138	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 09/14/15 Re1: 09/03/15 User: Britta Holm Subject: Email with Legal	VARNEY EV 006138-006139	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 09/14/15 Re1: 08/14/15 User: Britta Holm Subject: Email With Legal	VARNEY EV 006140-006141	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 09/14/15 Re1: 09/08/15 User: Britta Holm Subject: Email From Legal	VARNEY EV 006144	Redacted – Attorney Client Privilege	A

City of Tacoma
Privilege Log – EBERLE VIVIAN Documents (VARNEY EV)
Varney v. City of Tacoma
2/25/2021

Type of Document	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
Eberle Vivian file note - Varney Entered: 09/14/15 Re1: 07/08/15 User: Britta Holm Subject: 7/8/15 email From Legla	VARNEY EV 006144	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 09/14/15 Re1: 06/19/15 User: Britta Holm Subject: 6/19/15 Legal	VARNEY EV 006145	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 09/14/15 Re1: 06/19/15 User: Britta Holm Subject: Tony Varney 6/19/15 Legal	VARNEY EV 006145	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 09/14/15 Re1: 09/14/15 User: Lori Clavin Subject: Legal-Excess-Supervisor Comment-Review	VARNEY EV 006147	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 09/22/15 Re1: 09/22/15 User: Britta Holm Subject: 9/22/15 Email From Tom Re Recent Filing from Meyers Dated 9/18/15	VARNEY EV 006147	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 10/09/15 Re1: 10/09/15 User: Britta Holm Subject: Discussion With Sup On Penalty Order	VARNEY EV 006150-006151	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 10/09/15 Re1: 10/09/15 User: Britta Holm	VARNEY EV 006151-006152	Redacted – Attorney Client Privilege	A

City of Tacoma
Privilege Log – EBERLE VIVIAN Documents (VARNEY EV)
Varney v. City of Tacoma
2/25/2021

Type of Document	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
Subject:			
Eberle Vivian file note - Varney Entered: 10/09/15 Re1: 10/09/15 User: Britta Holm Subject: Email With Tom	VARNEY EV 006153	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 10/09/15 Re1: 10/09/15 User: Britta Holm Subject:Email With Employer Approval	VARNEY EV 006153-006154	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 10/12/15 Re1: 10/09/15 User: Britta Holm Subject: 10/9/15 Email From Tom Re Action From IAJ	VARNEY EV 006155	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 10/19/15 Re1: 10/19/15 User: Britta Holm Subject: Email to Tom	VARNEY EV 006156	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 10/19/15 Re1: 10/19/15 User: Britta Holm Subject: Update From Tom and Action to Be Taken	VARNEY EV 006156-006157	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 10/26/15 Re1: 10/26/15 User: Lori Claven Subject: Legal-Supervisor Comment-REview	VARNEY EV 006157	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 11/16/15 Re1: 11/12/15	VARNEY EV 006159-006160	Redacted – Attorney Client Privilege	A

City of Tacoma
Privilege Log – EBERLE VIVIAN Documents (VARNEY EV)
Varney v. City of Tacoma
2/25/2021

Type of Document	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
User: Britta Holm Subject: 11/12/15 Email With Employer and Legal			
Eberle Vivian file note - Varney Entered: 11/17/15 Re1: 11/17/15 User: Email With Tom In Regards To Meyers 11/11/15 Ltr Subject:	VARNEY EV 006160	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 11/17/15 Re1: 11/17/15 User: Britta Holm Subject: Email To Legal With VRC Info	VARNEY EV 006160-006161	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 11/20/15 Re1: 11/19/15 User: Britta Holm Subject: Email With Legal Re VRC	VARNEY EV 006165-006166	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 11/25/15 Re1: 11/25/15 User: Britta Holm Subject: Email With Lori, Tom Re Penalty Order 11/20/15	VARNEY EV 006167-006168	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 11/25/15 Re1: 11/25/15 User: Britta Holm Subject: Email With Marti	VARNEY EV 006169	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 12/08/15 Re1: 12/06/15 User: Britta Holm Subject: Email With Tom Re the Doc Dated 11/17/15 Which We Sent To Tom on 12/1	VARNEY EV 006172-006173	Redacted – Attorney Client Privilege	A

City of Tacoma
Privilege Log – EBERLE VIVIAN Documents (VARNEY EV)
Varney v. City of Tacoma
2/25/2021

Type of Document	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
Eberle Vivian file note - Varney Entered: 12/08/15 Re1: 12/08/15 User: Britta Holm Subject: Email From Tom	VARNEY EV 006174	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 12/14/15 Re1: 12/14/15 User: Britta Holm Subject: Email From Tom	VARNEY EV 006177	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 12/14/15 Re1: 12/08/15 User: Britta Holm Subject: Email From Lori in Response To Marti's Email	VARNEY EV 006178	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 12/14/15 Re1: 12/14/15 User: Britta Holm Subject: Email With Lori To Tom's Email	VARNEY EV 006180-006181	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 12/21/15 Re1: 12/21/15 User: Lori Clavin Subject: Email With Legal and Employer-Discussion To Be on 1/7/16	VARNEY EV 006182	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 12/31/15 Re1: 12/20/15 User: Britta Holm Subject: Email With Legal and Employer-Discussion To Be on 1/7/16	VARNEY EV 006182-006186	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 01/07/16 Re1: 01/07/16 User: Lori Clavin Subject: Legal-Supervisor Comment Review	VARNEY EV 006184-6186	Redacted – Attorney Client Privilege	A

City of Tacoma
Privilege Log – EBERLE VIVIAN Documents (VARNEY EV)
Varney v. City of Tacoma
2/25/2021

Type of Document	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
Eberle Vivian file note - Varney Entered: 01/21/16 Re1: 01/21/16 User: Britta Holm Subject: Email To Tom Re Employer Decision Re Appeal Of 11/20/15 Order	VARNEY EV 006196-006197	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 01/02/16 Re1: 01/21/16 User: Britta Holm Subject: Angies Response	VARNEY EV 006197-006198	Redacted – Attorney Client Privilege; Work Product	A
Eberle Vivian file note - Varney Entered: 01/21/16 Re1: 01/21/16 User: Britta Holm Subject: Email With Lori	VARNEY EV 006198-006200	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 01/21/16 Re1: 01/21/16 User: Britta Holm Subject: Employer Provided Go Ahead to Appeal the 11/20/15 Order	VARNEY EV 006200-006201	Redacted – Attorney Client Privilege; Work Product	A
Eberle Vivian file note - Varney Entered: 03/09/16 Re1: 03/09/16 User: Britta Holm Subject: Email With Tom	VARNEY EV 006205-006206	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 03/09/16 Re1: 03/06/16 User: Britta Holm Subject: PC With Tom and Alice To Discuss Further TX Plan	VARNEY EV 006207	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 03/14/16 Re1: 03/10/16 User: Britta Holm Subject: Legal Email With Excess	VARNEY EV 006217-006219	Redacted – Attorney Client Privilege	A

City of Tacoma
Privilege Log – EBERLE VIVIAN Documents (VARNEY EV)
Varney v. City of Tacoma
2/25/2021

Type of Document	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
Eberle Vivian file note - Varney Entered: 03/15/16 Re1: 03/15/16 User: Lori Clavin Subject: Legal-Excess-Supervisor Comment-Review	VARNEY EV 006222	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 04/11/16 Re1: 04/11/16 User: Britta Holm Subject: Email From Tom	VARNEY EV 006222-00623	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 05/04/16 Re1: 04/28/16 User: Britta Holm Subject: Email From Tom-With Current Legal Issues	VARNEY EV 006223-006224	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 05/04/16 Re1: 05/04/16 User: Britta Holm Subject: Britta Holm	VARNEY EV 006224	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 06/13/16 Re1: Lori Clavin User: Legal-Excess-Supervisor Comment-Review Subject: Lori Clavin	VARNEY EV 006226	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 06/28/16 Re1: 06/28/16 User: Britta Holm Subject: Email With Excess and Legal	VARNEY EV 006225-006226	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 06/29/16 Re1: 06/29/16 User: Britta Holm Subject: Email From Victor & Tom	VARNEY EV 006226-006227	Redacted – Attorney Client Privilege	A

City of Tacoma
Privilege Log – EBERLE VIVIAN Documents (VARNEY EV)
Varney v. City of Tacoma
2/25/2021

Type of Document	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
Eberle Vivian file note - Varney Entered: 06/29/16 Re1: 06/29/16 User: Britta Holm Subject: Response to Excess Carrier	VARNEY EV 006228-006229	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 07/01/16 Re1: 06/30/16 User: Britta Holm Subject: Email with Excess	VARNEY EV 006231	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 08/11/16 Re1: 07/19/16 User: Britta Holm Subject: Email From Tom Re Clmt Legal Re PD&O	VARNEY EV 006232-006233	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 08/11/16 Re1: 07/08/16 User: Britta Holm Subject: Email From Tom Re PD&O	VARNEY EV 006233	Redacted – Attorney Client Privilege; Work Product	A
Eberle Vivian file note - Varney Entered: 12/08/16 Re1: 12/08/16 User: Kevink Subject: Legal-Supervisor Comment-Review	VARNEY EV 006238	Redacted – Attorney Client Privilege; Work Product	A
Eberle Vivian file note - Varney Entered: 12/14/16 Re1: 12/13/16 User: Britta Holm Subject: Update From Tom and Email With Angie	VARNEY EV 006238-006239	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 01/17/17 Re1: 01/17/17 User: Britta Holm Subject: Update From Tom	VARNEY EV 006240-006241	Redacted – Attorney Client Privilege	A

City of Tacoma
Privilege Log – EBERLE VIVIAN Documents (VARNEY EV)
Varney v. City of Tacoma
2/25/2021

Type of Document	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
Eberle Vivian file note - Varney Entered: 01/17/17 Re1: 01/17/17 User: Britta Holm Subject: Update From Legal	VARNEY EV 006241-006242	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 01/17/17 Re1: 01/17/17 User: Britta Holm Subject: Email With Legal	VARNEY EV 006242-006244	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 01/17/17 Re1: 01/17/17 User: Britta Holm Subject: Email With Legal	VARNEY EV 006244-006245	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 01/24/17 Re1: 01/24/17 User: Britta Holm Subject: Email From Tom To Angie For Further Action	VARNEY EV 006247-006248	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 01/25/17 Re1: 01/25/17 User: Britta Holm Subject: Email With Angie and Tom Re Ron's 1/24/17 Email	VARNEY EV 006248-006249	Redacted – Attorney Client Privilege; Work Product	A
Eberle Vivian file note - Varney Entered: 01/26/17 Re1: 01/26/17 User: Britta Holm Subject: Conference Call With Legal, Employer and Lisa V	VARNEY EV 006252	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 05/01/17 Re1: 05/01/17 User: Britta Holm Subject: Email Update From Tom	VARNEY EV 006262	Redacted – Attorney Client Privilege	A

City of Tacoma
Privilege Log – EBERLE VIVIAN Documents (VARNEY EV)
Varney v. City of Tacoma
2/25/2021

Type of Document	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
Eberle Vivian file note - Varney Entered: 05/02/17 Re1: 05/02/17 User: Britta Holm Subject: Email From Tom Re Judges Response To Fees From Meyers	VARNEY EV 006262-006263	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 05/03/17 Re1: 05/03/17 User: Britta Holm Subject: Email With Legal	VARNEY EV 006263-006264	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 05/03/17 Re1: 05/03/17 User: Britta Holm Subject: Email with Employer Re Tom's Email	VARNEY EV 006264-006265	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 05/03/17 Re1: 05/03/17 User: Britta Holm Subject: Email With Angie (employer) and Tom (Legal)	VARNEY EV 006265-006267	Redacted – Attorney Client Privilege; Work Product	A
Eberle Vivian file note - Varney Entered: 05/09/17 Re1: 05/09/17 User: Britta Holm Subject: Conference Call With Tom, Angie & Kevin	VARNEY EV 006268	Redacted – Attorney Client Privilege; Work Product	A
Eberle Vivian file note - Varney Entered: 05/30/17 Re1: 05/30/17 User: Britta Holm Subject: Email With Tom, Angie and Pat DeMarco at the ATG's Office	VARNEY EV 006268-006229	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 05/30/17 Re1: 05/30/17 User: Britta Holm Subject: Email With Tom and Angie	VARNEY EV 006270	Redacted – Attorney Client Privilege	A

City of Tacoma
Privilege Log – EBERLE VIVIAN Documents (VARNEY EV)
Varney v. City of Tacoma
2/25/2021

Type of Document	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
Eberle Vivian file note - Varney Entered: 06/13/17 Re1: 06/06/17 User: Britta Holm Subject: Email From Tom	VARNEY EV 006272	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 06/13/17 Re1: 06/06/17 User: Britta Holm Subject: Email From Legal-Tom	VARNEY EV 006273	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 06/13/17 Re1: 06/06/17 User: Britta Holm Subject: Email With Legal	VARNEY EV 006273-006274	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 08/29/17 Re1: 08/28/17 User: Britta Holm Subject: Update From Legal	VARNEY EV 006275-006276	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 09/07/17 Re1: 09/06/17 User: Britta Holm Subject: Update with Legal	VARNEY EV 006276	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 09/20/17 Re1: 09/20/17 User: Kevink Subject: Legal-Supervisor Comment-Review	VARNEY EV 006276	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 10/02/17 Re1: 10/02/17 User: Britta Holm Subject: Tom's Response to My Question Prior To Employer Comment	VARNEY EV 006279-006280	Redacted – Attorney Client Privilege	A

City of Tacoma
Privilege Log – EBERLE VIVIAN Documents (VARNEY EV)
Varney v. City of Tacoma
2/25/2021

Type of Document	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
Eberle Vivian file note - Varney Entered: Britta Holm Re1: Response to Legal Following Talk With Employer User: Subject:	VARNEY EV 006280-006281	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 10/02/17 Re1: 10/02/17 User: Britta Holm Subject: Britta Holm	VARNEY EV 006281-006282	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 10/16/17 Re1: 10/16/17 User: Britta Holm Subject: Email With Legal, Employer, Clmt Legal and DLI	VARNEY EV 006283-006284	Redacted – Attorney Client Privilege; Common Interest	A
Eberle Vivian file note - Varney Entered: 10/16/17 Re1: 10/16/17 User: Britta Holm Subject: Email With Our Legal About Confirmation OF How Claim Was Submitted	VARNEY EV 006288	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 11/03/17 Re1: 11/03/17 User: Britta Holm Subject: Email To Legal	VARNEY EV 006293	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 11/07/17 Re1: 11/03/17 User: Britta Holm Subject: 11/3 with Tom	VARNEY EV 006295-006296	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 11/07/17	VARNEY EV 006298-006299	Redacted – Attorney Client Privilege	A

City of Tacoma
Privilege Log – EBERLE VIVIAN Documents (VARNEY EV)
Varney v. City of Tacoma
2/25/2021

Type of Document	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
Re1: 11/07/17 User: Britta Holm Subject: Email To Tom			
Eberle Vivian file note - Varney Entered: 11/07/17 Re1: 11/07/17 User: Britta Holm Subject: Email From Tom	VARNEY EV 006299-006300	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 12/28/17 Re1: 12/28/17 User: Britta Holm Subject: Update, Action Taken and POA	VARNEY EV 006307	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 12/28/17 Re1: 12/28/17 User: Britta Holm Subject: Email to Safety National	VARNEY EV 00307-006308	Redacted – Attorney Client Privilege; Common Interest	A
Eberle Vivian file note - Varney Entered: 01/02/18 Re1: 01/02/18 User: Britta Holm Subject: Email From Excess Re Denial of Second Injury Pension	VARNEY EV 006308-006309	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 01/02/18 Re1: 01/02/18 User: Britta Holm Subject: Email To Employer Re Denial of Second Injury Pension	VARNEY EV 006309-006310	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 01/02/18 Re1: 01/02/18 User: Britta Holm Subject: Response From Employer	VARNEY EV 006311-006312	Redacted – Attorney Client Privilege	A

City of Tacoma
Privilege Log – EBERLE VIVIAN Documents (VARNEY EV)
Varney v. City of Tacoma
2/25/2021

Type of Document	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
Eberle Vivian file note - Varney Entered: 01/02/18 Re1: 01/02/18 User: Britta Holm Subject: Email To Legal With Employer	VARNEY EV 006312-006313	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 01/02/18 Re1: 01/02/18 User: Britta Holm Subject: Email to Legal With Excess Carriers Response	VARNEY EV 006314-006315	Redacted – Attorney Client Privilege	A
Eberle Vivian file note - Varney Entered: 01/02/18 Re1: 01/02/18 User: Britta Holm Subject: Status	VARNEY EV 006315-006317	Redacted – Attorney Client Privilege	A

KEY ITEM	EXPLANATION/AUTHORITY FOR EXEMPTING FROM DISCLOSURE:
A	<p>ATTORNEY/CLIENT PRIVILEGE and/or WORK PRODUCT – These records reflect privileged attorney-client communication, and/or attorney work product protected from disclosure and have been redacted or withheld in their entirety per the following citations:</p> <p>RCW 42.56.290 – “Records that are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts are exempt from disclosure under this chapter.”</p> <p>RCW 5.60.060(2)(a) – “An attorney or counselor shall not, without the consent of his or her client, be examined as to any communication made by the client to him or her, or his or her advice given thereon in the course of professional employment.”</p> <p>RCW 42.56.070(1) – “Each agency, in accordance with published rules, shall make available for public inspection and copying all public records, unless the record falls within the specific exemptions of subsection (6) of this section, this chapter, or other statute which exempts or prohibits disclosure of specific information or records. To the extent required to prevent an unreasonable invasion of personal privacy interests protected by this chapter, an agency shall delete identifying details in a manner consistent with this chapter when it makes available or publishes any public record; however, in each case, the justification for the deletion shall be explained fully in writing.”</p>

City of Tacoma
Privilege Log – Angela Hardy emails (VARNEY AH)
Varney v. City of Tacoma
2/26/2021

Email	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
From: Thomas Hall Sent: April 23, 2015 11:24 pm To: Britta Holm Cc: Hardy, Angela; Spike, Marti Subject: Tony Varney	VARNEY-AH 000001	Redacted – Attorney Client Privilege	A
From: Thomas Hall Sent: April 23, 2015 11:23 pm To: Britta Holm Cc: Hardy, Angela,; Spike, Marti Subject: Tony Varney	VARNEY-AH 000002-000003	Redacted – Attorney Client Privilege	A
From: Thomas Hall Sent: June 1, 2015 3:18 PM To: Britta Holm Cc: Hardy, Angela; Spike, Marti Subject: Tony Varney	VARNEY-AH 000004	Redacted – Attorney Client Privilege	A
From: Thomas Hall Sent: July 8, 2015 9:41 am To: Britta Holm Cc: Hardy, Angela; Spike, Marti Subject: Tony Varney	VARNEY-AH 000094	Redacted – Attorney Client Privilege	A
From: Thomas Hall Sent: August 14, 2015 7:18 am To: Britta Holm Cc: Hardy, Angela; Spike, Marti Subject: Tony Varney	VARNEY-AH 000100	Redacted – Attorney Client Privilege	A
From: Thomas Hall Sent: July 18, 2014 To: Britta, Holm; Lori Clavin Cc: Hardy, Angela; Spike, Marti Subject: Toney Varney	VARNEY-AH 000161	Redacted – Attorney Client Privilege	A
From: Britta Holms Sent: January 2, 2018 10:17am To: Hardy, Angela Subject: Tony Varney	VARNEY-AH 000164	Redacted – Attorney Client Privilege; Common Interest	A

City of Tacoma
Privilege Log – Angela Hardy emails (VARNEY AH)
Varney v. City of Tacoma
2/26/2021

Email	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
From: Victor Heathcote Sent: December 29, 2017 12:29 pm To: Britta Holm Subject: SIF denial	VARNEY-AH 000165	Redacted – Attorney Client Privilege; Common Interest	A
From: Britta Holm Sent: December 28, 2017 To: Victor Heathcote Subject: Tony Varney	VARNEY-AH 000172	Redacted – Attorney Client Privilege; Common Interest	A
From: Britta Holm Sent: January 2, 2018 To: Hardy, Angela Subject: Tony Varney	VARNEY-AH 000174	Redacted – Attorney Client Privilege	A
From: Britta Holm Sent: January 2, 2018 To: Angela Hardy Subject: Tony Varney	VARNEY-AH 00174-00175	Redacted – Attorney Client Privilege	A
From: Thomas Hall Sent: July 18, 2014 To: Britta Holm; Lori Clavin Cc: Angela Hardy; Marti Spike Subject: Tony Varney	VARNEY-AH 000177	Redacted – Attorney Client Privilege	A
From: Thomas Hall Sent: July 21, 2014 7:43 am To: Britta Holm Cc: Angela Hardy; Marti Spike; Ryan Miller Subject: Toney Varney	VARNEY-AH 000180	Redacted – Attorney Client Privilege	A
From: Britta Holm Sent: July 21, 2014 7:30 pm To: Thomas Hall Subject: Toney Varney	VARNEY-AH 000180	Redacted – Attorney Client Privilege	A
From: Thomas Hall Sent: July 21, 2014 To: Britta Holm Cc: Angela Hardy; Marti Spike; Ryan Miller	VARNEY-AH 000183-000184	Redacted – Attorney Client Privilege	A

City of Tacoma
Privilege Log – Angela Hardy emails (VARNEY AH)
Varney v. City of Tacoma
2/26/2021

Email	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
Subject: Tony Varney			
From: Britta Holm Sent: July 21, 2014 To: Thomas Hall Subject: Tony Varney	VARNEY-AH 000184-000185	Redacted – Attorney Client Privilege; work product	A
From: Marti Spike Sent: July 23, 2014 To: Angela Hardy Subject: Tony Varney	VARNEY-AH 000188	Redacted – Attorney Client Privilege	A
From: Marti Spike Sent: July 23, 2014 To: Angela Hardy Subject: Toney Varney	VARNEY-AH 000188	Redacted – Attorney Client Privilege	A
From: Lori Claven Sent: July 23, 2014 To: Angela Hardy Cc: Britta Holm; Marti Spike; Tom Hall Subject: Toney Varney	VARNEY-AH 000188	Redacted – Attorney Client Privilege; Common Privilege	A
From: Thomas Hall Sent: July 21, 2014 To: Britta Holm Cc: Angela Hardy; Marti Spike; Ryan Miller Subject: Tony Varney	VARNEY-AH 000189	Redacted – Attorney Client Privilege	A
From: Britta Holm Sent: July 21, 2014 To: Thomas Hall Subject: Tony Varney	VARNEY-AH 00189	Redacted – Attorney Client Privilege	A
From: Thomas Hall Sent: July 23, 2014 4:49 pm To: Angela Hardy; Lori Clavin Cc: Britta Holm Marti Spike Subject: Tony Varny	VARNEY-AH 000192	Redacted – Attorney Client Privilege	A

City of Tacoma
Privilege Log – Angela Hardy emails (VARNEY AH)
Varney v. City of Tacoma
2/26/2021

Email	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
From: Angela Hardy Sent: July 23, 2014 3:58 pm To: Lori Clavin Cc: Britta Holm; Marti Spike; Thomas Hall Subject: Tony Varney	VARNEY-AH 000192	Redacted – Attorney Client Privilege	A
From: Lori Clavin Sent: July 23, 2014 3:44 pm To: Angela Hardy Cc: Britta Holm; Marti Spike; Tom Hall Subject: Tony Varney	VARNEY-AH 000192	Redacted – Attorney Client Privilege; Common Privilege	A
From: Thomas Hall Sent: July 21, 2014 7:43 am To: Britta Holm Cc: Angela Hardy; Marti Spike; Ryan Miller Subject:	VARNEY-AH 00193	Redacted – Attorney Client Privilege	A
From: Britta Holm Sent: July 21, 2014 7: 30 am To: Thomas Hall Subject: Tony Varney	VARNEY-AH 000193-000194	Redacted – Attorney Client Privilege	A
From: Britta Holm Sent: August 8, 2015 To: Thomas Hall Cc: Angela Hardy; Marti Spike Subject: Tony Varney	VARNEY-AH 000200-000201	Redacted – Attorney Client Privilege	A
From: Thomas Hall Sent: March 26, 2014 To: Britta Holm Cc: Angela Hardy; Marti Spike Subject: Tony Varney	VARNEY-AH 000207	Redacted – Attorney Client Privilege	A
From: Thomas Hall Sent: April 11, 2012 To: Angela Hardy Cc: Britta Holm Subject: Tony Varney	VARNEY-AH 000209	Redacted – Attorney Client Privilege	A

City of Tacoma
Privilege Log – Angela Hardy emails (VARNEY AH)
Varney v. City of Tacoma
2/26/2021

Email	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
From: Thomas Hall Sent: March 26, 2014 To: Marti Spike Cc: Britta Holm; Angela Hardy Subject: Tony Varney	VARNEY-AH 000219	Redacted – Attorney Client Privilege	A
From: Marti Spike Sent: March 26, 2014 To: Thomas Hall; Britta Holm Cc: Angela Hardy; Marti Spike Subject: Tony Varney	VARNEY-AH 00219	Redacted – Attorney Client Privilege	A
From: Thomas Hall Sent: March 26, 2014 To: Britta Holm Cc: Angela Hardy; Marti Spike Subject: Tony Varney	VARNEY-AH 000219-000220	Redacted – Attorney Client Privilege	A
From: Thomas Hall Sent: August 21, 2015 To: Britta Holm Cc: Angela Hardy; Marti Spike Subject: Tony Varney	VARNEY-AH 000221	Redacted – Attorney Client Privilege	A
From: Britta Holm Sent: August 26, 2015 To: Angela Hardy Cc: Marti Spike Subject: Tony Varney	VARNEY-AH 000222	Redacted – Attorney Client Privilege	A
From: Thomas Hall Sent: August 21, 2015 To: Britta Holm Cc: Angela Hardy; Marti Spike Subject: Tony Varney	VARNEY-AH 00022-000223	Redacted – Attorney Client Privilege	A
From: Thomas Hall Sent: October 9, 2015 To: Britta Holm Cc: Angela Hardy; Marti Spike; Lori Clavin Subject: Tony Varney	VARNEY-AH 000224	Redacted – Attorney Client Privilege	A

City of Tacoma
Privilege Log – Angela Hardy emails (VARNEY AH)
Varney v. City of Tacoma
2/26/2021

Email	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
From: Thomas Hall Sent: November 17, 2015 To: Britta Holm Cc: Angela Hardy; Marti Spike Subject: Tony Varney	VARNEY-AH 000234	Redacted – Attorney Client Privilege	A
From: Thomas Hall Sent: November 18, 2015 To: Britta Holm Cc: Angela Hardy; Marti Spike; Lori Clavin Subject: Tony Varney	VARNEY-AH 000237	Redacted – Attorney Client Privilege	A
From: Britta Holm Sent: November 17, 2017 To: Thomas Hall Subject: Tony Varney	VARNEY-AH 000237	Redacted – Attorney Client Privilege	A
From: Thomas Hall Sent: November 19, 2015 To: Britta Holm Cc: Angela Hardy; Marti Spike Subject: Tony	VARNEY-AH 000238	Redacted – Attorney Client Privilege	A
From: Britta Holm Sent: November 19, 2015 To: Thomas Hall Subject: Tony Varney	VARNEY-AH 000238	Redacted – Attorney Client Privilege; work product	A
From: Britta Holm Sent: November 17, 2015 To: Thomas Hall Subject: Tony Varney	VARNEY-AH 000239	Redacted – Attorney Client Privilege	A
From: Thomas Hall Sent: December 7, 2015 To: Britta Holm Cc: Tony Varney Subject: Tony Varney	VARNEY-AH 000240	Redacted – Attorney Client Privilege	A
From: Britta Holm Sent: December 8, 2015	VARNEY-AH 00243	Redacted – Attorney Client Privilege	A

City of Tacoma
Privilege Log – Angela Hardy emails (VARNEY AH)
Varney v. City of Tacoma
2/26/2021

Email	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
To: Thomas Hall Cc: Angela Hardy; Marti Spike Subject: Tony Varney			
From: Angela Hardy Sent: December 15, 2015 To: Marti Spike Subject: Tony Varney	VARNEY-AH 000244	Redacted – Attorney Client Privilege; Discussion of Legal Strategy	A
From: Marti Spike Sent: December 15, 2015 To: Angela Hardy Subject: Tony Varney	VARNEY-AH 00244	Redacted – Attorney Client Privilege; Discussion of Legal Strategy	A
From: Thomas Hall Sent: December 14, 2015 To: Britta Holm Cc: Angela Hardy; Marti Spike Subject: Tony Varney	VARNEY-AH 000244	Redacted – Attorney Client Privilege	A
From: Angeline Welch Sent: December 14, 2015 To: Britta Holm Cc: Angela Hardy; Marti Spike Subject: Tony Varney	VARNEY-AH 000244	Redacted – Attorney Client Privilege	A
From: Thomas Hall Sent: December 30, 2015 To: Britta Holm; Angela Hardy; Marti Spike Subject: Tony Varney	VARNEY-AH 000246	Redacted – Attorney Client Privilege	A
From: Thomas Hall Sent: March 26, 2014 To: Marti Spike Cc: Britta Holm; Angela Hardy Subject: Tony Varney	VARNEY-AH 000260	Redacted – Attorney Client Privilege	A
From: Marti Spike Sent: March 26, 2014 To: Thomas Hall; Britta Holm Cc: Angela Hardy	VARNEY-AH 000260	Redacted – Attorney Client Privilege	A

City of Tacoma
Privilege Log – Angela Hardy emails (VARNEY AH)
Varney v. City of Tacoma
2/26/2021

Email	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
Subject: Tony Varney			
From: Thomas Hall Sent: March 26, 2014 To: Britta Holm Cc: Angela Hardy Subject: Tony Varney	VARNEY-AH 000290	Redacted – Attorney Client Privilege	A
From: Thomas Hall Sent: March 26, 2014 To: Britta Holm Cc: Angela Hardy; Marti Spike Subject: Tony Varney	VARNEY-AH 000260-000261	Redacted – Attorney Client Privilege	A
From: Britta Holm Sent: December 30, 2015 To: Thomas Hall Cc: Angela Hardy; Marti Spike; Lori Clavin Subject: Tony Varney	VARNEY-AH 000263	Redacted – Attorney Client Privilege	A
From: Thomas Hall Sent: December 30, 2015 To: Britta Holm Subject: Tony Varney	VARNEY-AH 000267-000268	Redacted – Attorney Client Privilege	A
From: Thomas Hall Sent: January 15, 2016 To: Britta Holm Cc: Angela Hardy; Marti Spike Subject: Tony Varney	VARNEY-AH 000269	Redacted – Attorney Client Privilege	A
From: Thomas Hall Sent: January 15, 2016 To: Britta Holm Cc: Angela Hardy; Marti Spike Subject: Tony Varney	VARNEY-AH 000270	Redacted – Attorney Client Privilege	A
From: Marti Spike Sent: January 15, 2016 To: Britta Holm Cc: Angela Hardy	VARNEY-AH 000272	Redacted – Attorney Client Privilege; Discussion Legal Strategy	A

City of Tacoma
Privilege Log – Angela Hardy emails (VARNEY AH)
Varney v. City of Tacoma
2/26/2021

Email	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
Subject: Tony Varney			
From: Thomas Hall Sent: January 15, 2016 To: Angela Hardy; Marti Spike Subject: Tony Varney	VARNEY-AH 000272	Redacted – Attorney Client Privilege	A
From: Britta Holm Sent: January 15, 2016 To: Britta Holm Cc: Angela Hardy; Marti Spike Subject: Tony Varney	VARNEY-AH 000273	Redacted – Attorney Client Privilege; Discussion Legal Strategy	A
From: Thomas Hall Sent: January 15, 2016 To: Britta Holm Cc: Angela Hardy; Marti Spike Subject: Tony Varney	VARNEY-AH 000273	Redacted – Attorney Client Privilege; Discussion Legal Strategy	A
From: Thomas Hall Sent: February 5, 2016 To: Britta Holm Cc: Angela Hardy; Marti Spike Subject: Tony Varney	VARNEY-AH 000274	Redacted – Attorney Client Privilege	A
From: Thomas Hall Sent: February 9, 2016 To: Britta Holm Cc: Angela Hardy; Marti Spike Subject: Tony Varney	VARNEY-AH 000275	Redacted – Attorney Client Privilege	A
From: Thomas Hall Sent: March 4, 2016 To: Britta Holm Cc: Angela Hardy; Marti Spike Subject: Tony Varney	VARNEY-AH 000283	Redacted – Attorney Client Privilege	A
From: Thomas Hall Sent: April 3, 2014 To: Britta Holm; Angela Hardy; Marti Spike Subject: Tony Varney	VARNEY-AH 000318	Redacted – Attorney Client Privilege	A

City of Tacoma
Privilege Log – Angela Hardy emails (VARNEY AH)
Varney v. City of Tacoma
2/26/2021

Email	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
From: Thomas Hall Sent: April 3, 2014 10:44 am To: Britta Holm; Angela Hardy; Marti Spike Subject: Tony Varney	VARNEY-AH 000318	Redacted – Attorney Client Privilege	A
From: Thomas Hall Sent: April 3, 2014 9:17 am To: Britta Holm; Angela Hardy; Marti Spike Subject: Tony Varney	VARNEY-AH 000318	Redacted – Attorney Client Privilege	A
From: Thomas Hall Sent: April 3, 2014 To: Britta Holm; Angela Hardy; Marti Spike Cc: Subject:	VARNEY-AH 000318	Redacted – Attorney Client Privilege	A
From: Thomas Hall Sent: April 25, 2016 To: Britta Holm Cc: Angela Hardy; Marti Spike Subject: Varney Reply to claimant's response re Cross Motion SJ	VARNEY-AH 000319	Redacted – Attorney Client Privilege; Work Product	A
From: Tom Hall Sent: December 21, 2016 To: Britta Holm Cc: Angela Hardy Subject: Tony Varny	VARNEY-AH 000329	Redacted – Attorney Client Privilege	A
From: Thomas Hall Sent: July 8, 2016 To: Britta Holm Cc: Angela Hardy; Marti Spike Subject Tony Varney	VARNEY-AH 000331	Redacted – Attorney Client Privilege	A
From: Thomas Hall Sent: July 8, 2016 To: Britta Holm Cc: Angela Hardy; Marti Spike Subject Tony Varney	VARNEY-AH 000340	Redacted – Attorney Client Privilege	A

City of Tacoma
Privilege Log – Angela Hardy emails (VARNEY AH)
Varney v. City of Tacoma
2/26/2021

Email	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
From: Thomas Hall Sent: July 31, 2012 To: Angela Hardy; Britta Holm Subject: Varney Response from City of Tacoma	VARNEY-AH 000349	Redacted – Attorney Client Privilege	A
From: Thomas Hall Sent: May 17, 2014 To: Britta Holm Cc: Angela Hardy; Marti Spike Subject: Tony Varney	VARNEY-AH 00363	Redacted – Attorney Client Privilege	A
From: Lisa Vivian Sent: January 27, 2017 To: Thomas Hall Cc: Britta Holm; Angela Hardy Subject: Tony Varney – ER 408 document	VARNEY-AH 000370	Redacted – Attorney Client Privilege	A
From: Lisa Vivian Sent: January 27, 2017 To: Thomas Hall Cc: Britta Holm; Angela Hardy Subject: Tony Varney – ER 408 document	VARNEY-AH 000379-000380	Redacted – Attorney Client Privilege	A
From: Lisa Vivian Sent: January 28, 2017 To: Tom Hall Cc: Britta Holm; Angela Hardy Subject: Tony Varney – ER 408 document	VARNEY-AH 000389	Redacted – Attorney Client Privilege	A
From: Thomas Hall Sent: January 27, 2017 To: Lisa Vivian Cc: Britta Holm; Angela Hardy Subject: Tony Varney – ER 408 document	VARNEY-AH 000389	Redacted – Attorney Client Privilege	A
From: Britta Holms Sent: October 2, 2017 To: Thomas Hall Cc: Angela Hardy Subject: Tony Varney	VARNEY-AH 000399	Redacted – Attorney Client Privilege	A

City of Tacoma
Privilege Log – Angela Hardy emails (VARNEY AH)
Varney v. City of Tacoma
2/26/2021

Email	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
From: Britta Holm Sent: October 2, 2017 To: Thomas Hall Cc: Angela Hardy Subject: Tony Varney	VARNEY-AH 000400	Redacted – Attorney Client Privilege	A
From: Thomas Hall Sent: October 2, 2017 To: Britta Holm Cc: Angela Hardy Subject: Tony Varney	VARNEY-AH 000400	Redacted – Attorney Client Privilege	A
From: Thomas Hall Sent: October 2, 2017 To: Britta Holm; Angela Hardy Subject: Tony Varney	VARNEY-AH 000401	Redacted – Attorney Client Privilege	A
From: Thomas Hall Sent: October 12, 2012 To: Angela Hardy; Britta Holm Subject: Varney Incidents	VARNEY-AH 000403	Redacted – Attorney Client Privilege	A
From: Angela Hardy Sent: October 12, 2011 To: Thomas Hall Cc: Linda Bauer Subject: Varney Incidents	VARNEY-AH 000403	Redacted – Attorney Client Privilege	A
From: Thomas Hall Sent: October 27, 2011 To: Angela Hardy Subject: Varney Incidents	VARNEY-AH 000550	Redacted – Attorney Client Privilege	A
From: Angela Hardy Sent: October 12, 2011 To: Thomas Hall Cc: Linda Bauer Subject: Varney Incident s	VARNEY-AH 000551	Redacted – Attorney Client Privilege	A
From: Angela Hardy Sent: October 12, 2011	VARNEY-AH 000552	Redacted – Attorney Client Privilege	A

City of Tacoma
Privilege Log – Angela Hardy emails (VARNEY AH)
Varney v. City of Tacoma
2/26/2021

Email	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
To: Thomas Hall Cc: Linda Bauer Subject: Varney Incidents			
From: Thomas Hall Sent: October 12, 2011 To: Angela Hardy Subject: Varney Incidents	VARNEY-AH 000694	Redacted – Attorney Client Privilege	A
From: Angela Hardy Sent: October 12, 2011 To: Thomas Hall Cc: Linda Bauer Subject: Varney Incidents	VARNEY-AH 000694-000695	Redacted – Attorney Client Privilege	A
From: Thomas Hall Sent: May 4, 2017 To: Angela Hardy Subject: Tony Varney	VARNEY-AH 000706-000707	Redacted – Attorney Client Privilege	A
From: Thomas Hall Sent: May 3, 2017 To: Britta Holm Subject: Tony Varney	VARNEY-AH 000718	Redacted – Attorney Client Privilege	A
From: Jolene Davis Sent: April 8, 2011 To: Jim Duggan; Tory Green Cc: Angela Hardy Subject: Varney Incidents	VARNEY-AH 000730	Redacted – Attorney Client Privilege; Work Product	A
From: Jolene Davis Sent: April 4, 2011 To: Jim Duggan; Tory Green Cc: Angela Hardy Subject: Varney Incidents	VARNEY-AH 000730	Redacted – Attorney Client Privilege	A
From: Jim Duggan Sent: April 4, 2011 To: Jolene Davis; Tory Green; Donna Milliren Cc: Angela Hardy	VARNEY-AH 000731	Redacted – Attorney Client Privilege; Work Product	A

City of Tacoma
Privilege Log – Angela Hardy emails (VARNEY AH)
Varney v. City of Tacoma
2/26/2021

Email	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
Subject:			
From: Jolene Davis Sent: April 4, 2011 To: Jim Duggan; Tory Green Cc: Angela Hardy Subject: Varney Incidents documents	VARNEY-AH 000731	Redacted – Attorney Client Privilege; Work Product	A
From: Jolene Davis Sent: April 4, 2011 To: Jim Duggan; Tory Green Cc: Angela Hardy Subject: Varney Incidents documents	VARNEY-AH 000731	Redacted – Attorney Client Privilege; Work Product	A
From: Jolene Davis Sent: April 4, 2011 To: Jim Duggan; Tory Green Cc: Angela Hardy Subject: Varney Incidents requested docs	VARNEY-AH 000732	Redacted – Attorney Client Privilege; Work Product	A
From: Tory Green Sent: April 8, 2011 To: Angela Hardy Cc: Jolene Davis; Jim Duggan Subject: Varney Incidents requested docs	VARNEY-AH 000733	Redacted – Attorney Client Privilege; Work Product	A
From: Jolene Davis Sent: April 4, 2011 To: Jim Duggan; Tory Green Cc: Angela Hardy Subject: Varney Incidents requested docs	VARNEY-AH 000733	Redacted – Attorney Client Privilege; Work Product	A
From: Jolene Davis Sent: April 4, 2011 To: Jim Duggan; Tory Green Cc: Angela Hardy Subject: Requested documents	VARNEY-AH 000733-000740	Redacted – Attorney Client Privilege; Work Product	A
From: Tory Green Sent: April 8, 2011 To: Angela Hardy	VARNEY-AH 000741	Redacted – Attorney Client Privilege; Work Product	A

City of Tacoma
Privilege Log – Angela Hardy emails (VARNEY AH)
Varney v. City of Tacoma
2/26/2021

Email	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
Cc: Jolene Davis; Jim Duggan Subject: Requested documents			
From: Tory Green Sent: April 8, 2011 To: Angela Hardy Cc: Jolene Davis; Jim Duggan Subject: Requested documents	VARNEY-AH 000741	Redacted – Attorney Client Privilege; Work Product	A
From: Jolene Davis Sent: April 8, 2011 To: Jolene Davis; Jim Duggan; Tory Green Cc: Angela Hardy Subject: Requested documents	VARNEY-AH 000741-000743	Redacted – Attorney Client Privilege; Work Product	A
From: Thomas Hall Sent: July 14, 2015 To: Britta Holm; Hardy Angela Cc: Marti Spike Subject: Petition for Review	VARNEY-AH 000744	Redacted – Attorney Client Privilege	A
From: Linda Bauer Sent: January 13, 2011 To: Britta Holm Cc: Thomas Hall Subject: Tony Varney mediation	VARNEY-AH 000772	Redacted – Attorney Client Privilege	A
From: Britta Holm Sent: September 22, 2011 To: Thomas Hall Cc: Angela Hardy Subject: Tony Varney	VARNEY-AH 000774	Redacted – Attorney Client Privilege	A
From: Britta Holm Sent: August 15, 2014 To: Thomas Hall Cc: Angela Hard; Martin Spike Subject: Tony Varney	VARNEY-AH 000796	Redacted – Attorney Client Privilege	A
From: Thomas Hall Sent: August 15, 2014	VARNEY-AH 000799	Redacted – Attorney Client Privilege	A

City of Tacoma
Privilege Log – Angela Hardy emails (VARNEY AH)
Varney v. City of Tacoma
2/26/2021

Email	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
To: Britta Holm Cc: Angela Hardy; Marti Spike Subject: Tony Varney			
From: Thomas Hall Sent: August 22, 2014 To: Britt Holm Cc: Angela Hardy; Marti Spike; Ryan Miller Subject: Tony Varney	VARNEY-AH 000802	Redacted – Attorney Client Privilege	A
From: Thomas Hall Sent: August 26, 2014 To: Britta Holm; Angela Hardy; Marti Spike Subject: Tony Varney	VARNEY-AH 000803	Redacted – Attorney Client Privilege	A
From: Thomas Hall Sent: October 16, 2014 To: Lisa Vivian; Britta Holm Cc: Angela Hardy Subject: Tony Varney – October 8, 2014 correspondence	VARNEY-AH 000820	Redacted – Attorney Client Privilege	A
From: Thomas Hall Sent: October 21, 2014 To: Britta Holm; Lisa Vivian Cc: Angela Hardy; Marti Spike Subject: Tony Varney	VARNEY-AH 000824	Redacted – Attorney Client Privilege; Work Product	A
From: Thomas Hall Sent: October 22, 2014 To: Britta Holm; Lisa Vivian Cc: Angela Hardy; Marti Spike; Lori Clavin Subject: Tony Varney	VARNEY-AH 000825	Redacted – Attorney Client Privilege; Work Product	A
From: Thomas Hall Sent: November 13, 2014 To: Britta Holm; Lori Clavin Cc: Angela Hard; Marti Spike; Saada Gegoux; Ryan Miller Subject: Tony Varney	VARNEY-AH 000826-000827	Redacted – Attorney Client Privilege	A
From: Thomas Hall Sent: November 13, 2014	VARNEY-AH 000828-00829	Redacted – Attorney Client Privilege	A

City of Tacoma
Privilege Log – Angela Hardy emails (VARNEY AH)
Varney v. City of Tacoma
2/26/2021

Email	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
To: Britta Holm Cc: Lori Claven; Angela Hardy; Marti Spike; Saada Gegoux; Ryan Miller Bcc: Britta Holm Subject: Tony Varney			
From: Thomas Hall Sent: November 18, 2014 To: Britta Holm; Angela Hardy; Marti Spike Subject: Tony Varney	VARNEY-AH 000831	Redacted – Attorney Client Privilege; Work Product	A
From: Thomas Hall Sent: November 18, 2014 To: Britta Holm Cc: Angela Hardy; Marti Spike Subject: Tony Varney	VARNEY-AH 000845	Redacted – Attorney Client Privilege; Work Product	A
From: Thomas Hall Sent: December 1, 2014 To: Lisa Vivian; Lori Clavin Cc: Britta Holm; Ryan Miller; Angela Hardy Subject: Tony Varney	VARNEY-AH 000847	Redacted – Attorney Client Privilege	A
From: Lisa Vivian Sent: December 1, 2014 To: Lori Clavin Cc: Thomas Hall; Britta Holm Subject: Tony Varney	VARNEY-AH 000847	Redacted – Attorney Client Privilege; Work Product	A
From: Thomas Hall Sent: November 30, 2014 To: Britta Holm Cc: Ryan Miller; Angela Hardy; Marti Spike; Lisa Vivian Subject:	VARNEY-AH 000848	Redacted – Attorney Client Privilege	A
From: Lisa Vivian Sent: December 1, 2014 To: Thomas Hall Cc: Lori Clavin; Britta Holm; Ryan Miller; Angela Hardy; Marti Spike Subject: Tony Varney	VARNEY-AH 000849	Redacted – Attorney Client Privilege; Common Privilege	A

City of Tacoma
Privilege Log – Angela Hardy emails (VARNEY AH)
Varney v. City of Tacoma
2/26/2021

Email	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
From: Thomas Hall Sent: December 1, 2014 To: Lisa Vivian Cc: Lori Clevin; Britta Holm; Ryan Miller; Angela Hardy; Marti Spike Subject:	VARNEY-AH 000849	Redacted – Attorney Client Privilege; Common Privilege	A
From: Lisa Vivian Sent: December 1, 2014 To: Lori Clavin Cc: Thomas Hall; Britta Holm Subject: Tony Varney	VARNEY-AH 000849	Redacted – Attorney Client Privilege	A
From: Lori Clavin Sent: December 1, 2014 To: Lisa Vivian Cc: Thomas Hall; Britta Holm Subject: Tony Varney	VARNEY-AH 000849-00850	Redacted – Attorney Client Privilege	A
From: Thomas Hall Sent: November 30, 2014 To: Britta Holm Cc: Ryan Miller; Angela Hardy; Marti Spike; Lisa Vivian Subject: Tony Varney	VARNEY-AH 000850	Redacted – Attorney Client Privilege	A
From: Angela Hardy Sent: December 1, 2014 To: Lori Clavin Cc: Thomas Hall; Angela Hardy; Britta Holm; Ryan Miller; Marti Spike Subject: Tony Varney	VARNEY-AH 000851	Redacted – Attorney Client Privilege; Common Interest	A
From: Lisa Vivian Sent: December 1, 2014 To: Thomas Hall Cc: Lori, Clavin; Britta Holm; Ryan Miller; Angela Hardy; Marti Spike Subject: Tony Varney	VARNEY-AH 000851	Redacted – Attorney Client Privilege; Common Interest	A
From: Lisa Vivian Sent: December 1, 2014 To: Lori Clavin Cc: Thomas Hall; Britta Holm Subject: Tony Varney	VARNEY-AH 000852	Redacted – Attorney Client Privilege	A

City of Tacoma
Privilege Log – Angela Hardy emails (VARNEY AH)
Varney v. City of Tacoma
2/26/2021

Email	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
From: Lori Clavin Sent: December 1, 2014 To: Lisa Vivian Cc: Thomas Hall; Britta Holm Subject: Tony Varney	VARNEY-AH 000852	Redacted – Attorney Client Privilege	A
From: Lisa Vivian Sent: November 30, 2014 To: Lori Clavin Cc: Thomas Hall; Britta Holm Subject: Tony Varney	VARNEY-AH 000852-000853	Redacted – Attorney Client Privilege	A
From: Thomas Hall Sent: November 30, 2014 To: Britta Holm Cc: Ryan Miller; Angela Hardy; Marti Spike; Lisa Vivian Subject: Tony Varney	VARNEY-AH 000853	Redacted – Attorney Client Privilege	A
From: Thomas Hall Sent: December 9, 2014 To: Britta Holm; Angela Hardy; Marti Spike Cc: Lisa Vivian; Lori Clavin; Ryan Miller Subject: Tony Varney	VARNEY-AH 000854	Redacted – Attorney Client Privilege	A
From: Thomas Hall Sent: December 30, 2014 To: Britta Holm Cc: Lisa Vivian, Lori Clavin; Angela Hardy; Marti Spike Subject: Tony Varney	VARNEY-AH 000858	Redacted – Attorney Client Privilege	A
From: Thomas Hall Sent: January 8, 2015 To: Britta Holm Cc: Ryan Miller; Lori Clavin; Angela Hardy; Mary Santi Subject: Tony Varney	VARNEY-AH 000867	Redacted – Attorney Client Privilege	A
From: Thomas Hall Sent: January 30, 2015 To: Britta Holm Cc: Angela Hardy Subject: Tony Varney	VARNEY-AH 000927	Redacted – Attorney Client Privilege	A

City of Tacoma
Privilege Log – Angela Hardy emails (VARNEY AH)
Varney v. City of Tacoma
2/26/2021

Email	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
From: Thomas Hall Sent: April 15, 2015 To: Britta Holm; Hardy Angela Cc: Marti Spike Subject: Tony Varney	VARNEY-AH 000970	Redacted – Attorney Client Privilege	A
From: Thomas Hall Sent: August 15, 2014 To: Britta Holm Cc: Angela Hardy; Marti Spike Subject: Tony Varney	VARNEY-AH 000971	Redacted – Attorney Client Privilege	A
From: Thomas Hall Sent: October 22, 2014 To: Britta Holm Cc: Lisa Vivian; Angela Hardy; Marti Spike; Lori Clavin Subject: Tony Varney	VARNEY-AH 000978	Redacted – Attorney Client Privilege; Work Product	A
From: Thomas Hall Sent: November 13, 2014 To: Britta Holm Cc: Lori Clavin; Angela Hardy; Marti Spike; Saada Gegoux; Ryan Miller Subject:	VARNEY-AH 000980-000981	Redacted – Attorney Client Privilege	A
From: Angela Hardy Sent: December 1, 2014 To: Lori Clavin Subject: Tony Varney	VARNEY-AH 000982-00983	Redacted – Attorney Client Privilege	A
From: Lisa Vivan Sent: December 1, 2014 To: Thomas Hall Cc: Lori Clavin; Britta Holm; Ryan Miller; Angela Hardy; Marti Spike Subject: Tony Varney	VARNEY-AH 000983	Redacted – Attorney Client Privilege	A
From: Thomas Hall Sent: December 1, 2014 To: Lisa Vivian Cc: Lori Clavin; Britta Holm; Ryan Miller; Angela Hardy; Marti Spike Subject: Angela Hardy	VARNEY-AH 000983	Redacted – Attorney Client Privilege	A

City of Tacoma
Privilege Log – Angela Hardy emails (VARNEY AH)
Varney v. City of Tacoma
2/26/2021

Email	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
From: Lori Clavin Sent: December 1, 2014 To: Lisa Vivian Cc: Thomas Hall; Britta Holm Subject: Tony Varny	VARNEY-AH 000984	Redacted – Attorney Client Privilege; Common Interest	A
From: Thomas Hall Sent: November 30, 2014 To: Britta Holm Cc: Ryan Miller; Angela Hardy; Marti Spike; Lisa Vivian Subject: Tony Varney	VARNEY-AH 000985	Redacted – Attorney Client Privilege	A
From: Thomas Hall Sent: December 6, 2014 To: Britta Holm; Angela Hardy Cc: Marti Spike; Lisa Vivian; Lori Clavin; Ryan Miller Subject: Tony Varney	VARNEY-AH 000986	Redacted – Attorney Client Privilege	A
From: Thomas Hall Sent: December 9, 2014 To: Britta Holm; Angela Hardy; Marti Spike Cc: Lisa Vivian; Lori Clavin; Ryan Miller Subject:	VARNEY-AH 001019	Redacted – Attorney Client Privilege	A
From: Britta Holm Sent: September 30, 2014 To: Angela Hardy Cc: Lori Clavin Subject: Tony Varney	VARNEY-AH 001056-000158	Redacted – Attorney Client Privilege	A
From: Thomas Hall Sent: January 25, 2017 To: Britta Holms; Angela Hardy Subject: Tony Varney	VARNEY-AH 0001065	Redacted – Attorney Client Privilege	A
From: Thomas Hall Sent: September 22, 2011 To: Angela Hardy; Britta Holm Subject: Tony Varney	VARNEY-AH 0001086	Redacted – Attorney Client Privilege	A

City of Tacoma
Privilege Log – Angela Hardy emails (VARNEY AH)
Varney v. City of Tacoma
2/26/2021

Email	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
From: Thomas Hall Sent: August 13, 2015 To: Britta Holm Cc: Angela Hardy; Marti Spike Subject: Tony Varney	VARNEY-AH 001087	Redacted – Attorney Client Privilege	A
From: Thomas Hall Sent: November 29, 2011 To: Angela Hardy Subject: Tony Varney	VARNEY-AH 001088	Redacted – Attorney Client Privilege	A
From: Peggy Buchanan Sent: April 7, 2011 To: Angela Hardy Cc: Jolene Davis Subject: Tony Varney	VARNEY-AH 001091-001102	Redacted – Attorney Client Privilege; Work Product	A
From: Thomas Hall Sent: April 7, 2011 To: Angela Hardy Subject: Tony Varney	VARNEY-AH 001103	Redacted – Attorney Client Privilege	A
From: Angela Hardy Sent: January 31, 2019 To: Jean Homan Cc: Stacy Back Subject: Varney – information and documents	VARNEY-AH 001112	Redacted – Attorney Client Privilege; Work Product	A
From: Jean Homan Sent: January 31, 2019 To: Angela Hardy Cc: Staci Black Subject: Varney - information	VARNEY-AH 001112	Redacted – Attorney Client Privilege	A
From: Thomas Hall Sent: October 5, 2011 To: Angela Hardy Subject: Varney depositions	VARNEY-AH 001148	Redacted – Attorney Client Privilege	A
From: Thomas Hall Sent: October 10, 2011	VARNEY-AH 001160	Redacted – Attorney Client Privilege	A

City of Tacoma
Privilege Log – Angela Hardy emails (VARNEY AH)
Varney v. City of Tacoma
2/26/2021

Email	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
To: Angela Hardy Cc: Linda Bauer Subject: Varney depositions			
From: Thomas Hall Sent: October 10, 2011 To: Angela Hardy Cc: Linda Bauer Subject: Varney depositions	VARNEY-AH 001278	Redacted – Attorney Client Privilege	A
From: Jolene Davis Sent: October 11, 2011 To: Jim Duggan Cc: Angela Hardy Subject: Varney depositions	VARNEY-AH 001288	Redacted – Attorney Client Privilege	A
From: Jim Duggan Sent: October 11, 2011 To: Jolene Davis Cc: Angela Hardy Subject: Varney depositions	VARNEY-AH 001288	Redacted – Attorney Client Privilege	A
From: Thomas Hall Sent: October 10, 2011 To: Angela Hardy Cc: Linda Bauer Subject: Varney depositions	VARNEY-AH 001289	Redacted – Attorney Client Privilege	A
From: Thomas Hall Sent: October 10, 2011 To: Angela Hardy Cc: Linda Bauer Subject: Varney depositions	VARNEY-AH 001292	Redacted – Attorney Client Privilege	A
From: Jolene Davis Sent: June 13, 2011 To: Angela Hardy Cc: Linda Bauer; Comer, Cheryl (Legal); Ronald, Stephens; Mueller, Faith; Thomas Hall; Debbie Dahlstrom Subject: Varney Request for Admissions and Meeting	VARNEY-AH 001313-001314	Redacted – Attorney Client Privilege	A

City of Tacoma
Privilege Log – Angela Hardy emails (VARNEY AH)
Varney v. City of Tacoma
2/26/2021

Email	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
From: Linda Bauer Sent: June 9, 2011 To: Angela Hardy Cc: Britta Holm Subject: Varney Request for Admissions and Meeting	VARNEY-AH 001315	Redacted – Attorney Client Privilege	A
From: Britt Holm Sent: September 26, 2014 To: Thomas Hall Cc: Angela Hardy; Marti Spike Subject: Varney v. City of Tacoma	VARNEY-AH 001339-001340	Redacted – Attorney Client Privilege	A
From: Britt Holm Sent: September 26, 2014 To: Thomas Hall Cc: Angela Hardy; Marti Spike Subject: Varney v. City of Tacoma	VARNEY-AH 001372-001377	Redacted – Attorney Client Privilege	A
From: Linda Bauer Sent: March 22, 2011 To: Angela Hardy Subject: Varney	VARNEY-AH 001377	Redacted – Attorney Client Privilege	A
From: Mari Spike Sent: August 7, 2015 To: Thomas Hall; Britta Holm Cc: Angela Hardy Subject: Tony Varney – Docket Nos 14 27053 & 14 28060	VARNEY-AH 001402	Redacted – Attorney Client Privilege	A
From: Thomas Hall Sent: August 7, 2015 To: Britta Holm Cc: Angela Hardy Subject: Varney - Docket Nos 14 27053 & 14 28060	VARNEY-AH 001402	Redacted – Attorney Client Privilege	A
From: Thomas Hall Sent: August 7, 2015 To: Britta Holm Cc: Angela Hardy; Marti Spike Subject: Varney - Docket Nos 14 27053 & 14 28060	VARNEY-AH 001404	Redacted – Attorney Client Privilege	A

City of Tacoma
Privilege Log – Angela Hardy emails (VARNEY AH)
Varney v. City of Tacoma
2/26/2021

Email	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
From: Thomas Hall Sent: December 14, 2015 To: Britta Holm Cc: Angela Hardy; Marti Spike Subject: Varney – Sup Ct	VARNEY-AH 001406	Redacted – Attorney Client Privilege	A
From: Angeline Welch (Bounds) Sent: December 14, 2015 To: Thomas Hall Cc: Robin Hernandez Subject: Varney – Sup Ct	VARNEY-AH 001406	Redacted – Attorney Client Privilege; Work Product	A
From: Thomas Hall Sent: December 14, 2015 To: Britta Holm Cc: Angela Hardy; Marti Spike Subject: Varney – Sup Ct	VARNEY-AH 001408	Redacted – Attorney Client Privilege	A
From: Angeline Welch (Bounds) Sent: December 14, 2015 To: Thomas Hall Cc: Robin Hernandez Subject: Varney – Sup Ct	VARNEY-AH 001408-001409	Redacted – Attorney Client Privilege	A
From: Thomas Hall Sent: December 14, 2015 To: Britta Holm Cc: Angela Hardy; Marti Spike Subject: Varney – Sup Ct	VARNEY-AH 001410	Redacted – Attorney Client Privilege	A
From: Angeline Welch Sent: December 14, 2015 To: Thomas Hall Cc: Robin Hernandez Subject: Varney – Sup Ct	VARNEY-AH 001410	Redacted – Attorney Client Privilege	A
From: Linda Bauer Sent: April 3, 2013 To: Angela Hardy; Lori Clavin Subject: Tony Varney	VARNEY-AH 001422	Redacted – Attorney Client Privilege	A

City of Tacoma
Privilege Log – Angela Hardy emails (VARNEY AH)
Varney v. City of Tacoma
2/26/2021

KEY ITEM	EXPLANATION/AUTHORITY FOR EXEMPTING FROM DISCLOSURE:
A	<p>ATTORNEY/CLIENT PRIVILEGE and/or WORK PRODUCT – These records reflect privileged attorney-client communication, and/or attorney work product protected from disclosure and have been redacted or withheld in their entirety per the following citations:</p> <p>RCW 42.56.290 – “Records that are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts are exempt from disclosure under this chapter.”</p> <p>RCW 5.60.060(2)(a) – “An attorney or counselor shall not, without the consent of his or her client, be examined as to any communication made by the client to him or her, or his or her advice given thereon in the course of professional employment.”</p> <p>RCW 42.56.070(1) – “Each agency, in accordance with published rules, shall make available for public inspection and copying all public records, unless the record falls within the specific exemptions of subsection (6) of this section, this chapter, or other statute which exempts or prohibits disclosure of specific information or records. To the extent required to prevent an unreasonable invasion of personal privacy interests protected by this chapter, an agency shall delete identifying details in a manner consistent with this chapter when it makes available or publishes any public record; however, in each case, the justification for the deletion shall be explained fully in writing.”</p>

City of Tacoma
Privilege Log
Varney v. City of Tacoma
6/19/2020

Type of Document	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
From: Linda Bauer Date: January 13, 2011 To: Britta Holm Subject: mediation conference	VARNEY TH 000865	Redacted – Attorney Client Privilege	A
From: Thomas G. Hall Sent: Wednesday, September 01, 2010 4:22 PM To: 'Britta Holm' Subject: Tony Varney	VARNEY TH 000866	Redacted – Attorney Client Privilege	A
From: Linda D. Bauer Date: Tuesday, July 06, 2010 10:58 AM To: Britta Holm Cc: Thomas G. Hall Subject: RE: Tony Varney	VARNEY TH 000867	Redacted – Attorney Client Privilege	A
From: Britta Holm [mailto:brittah@eberlevivian.com] Sent: Tuesday, July 06, 2010 10:54 AM To: Thomas G. Hall Cc: Linda D. Bauer Subject: Tony Varney	VARNEY TH 000867	Redacted – Attorney Client Privilege	A
From: Britta Holm [mailto:brittah@eberlevivian.com] Sent: Monday, March 22, 2010 6:52 AM To: Thomas G. Hall Subject: Re: Varney	VARNEY TH 000868	Redacted – Attorney Client Privilege; Work Product	A
From: Ryan Miller Sent: Friday, April 25, 2014 1:25 PM To: 'Britta Holm' Cc: Thomas G. Hall Subject: RE: Tony Varney	VARNEY TH 000870	Redacted – Attorney Client Privilege; Work Product	A
From: Britta Holm [mailto:brittah@eberlevivian.com] Sent: Friday, April 25, 2014 6:57 AM To: Ryan Miller Cc: Angeline Bounds; Thomas Hall; Robin Hernandez Subject: Re: Tony Varney	VARNEY TH 000870-871	Redacted – Attorney Client Privilege	A

City of Tacoma
Privilege Log
Varney v. City of Tacoma
6/19/2020

Type of Document	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
From: Britta Holm [mailto:brittah@eberlevivian.com] Sent: Thursday, April 24, 2014 8:00 AM To: Ryan Miller Cc: Angeline Bounds; Thomas Hall; Robin Hernandez Subject: Re: Tony Varney	VARNEY TH 000871	Redacted – Attorney Client Privilege	A
From: Ryan Miller Sent: Wednesday, April 24, 2014 9:59 AM To: Britta Holm Subject: Re: Tony Varney	VARNEY TH 000871-872	Redacted – Attorney Client Privilege	A
ExamWorks Independent Medical Examination by Robert Thompson, M.D., Cardiologist Dated September 29, 2014	VARNEY TH 000936-938	Redacted – Work Product; Attorney's notations on document	A
October 22, 2014 letter from Thomas G. Hall to Robert Thompson, M.D. re: Tony Varney	VARNEY TH 000940	Redacted – Work Product; Attorney's notations on document	A
Proposed Decision and Order Granting Claimant's Motion for Summary Judgment dated May 27, 2015 signed by Dominique L. Jinhong, Industrial Appeals Judge, Board of Industrial Insurance Appeals	VARNEY TH 000944-947	Redacted – Work Product; Attorney's notations on document	A
Decision and Order re: Claim SE-05746 dated November 9, 2015 signed by David E. Threedy and Frank E. Fennerty, Jr. of the Board of Industrial Insurance Appeals	VARNEY TH 000953-956	Redacted – Work Product; Attorney's notations on document	A
Proposed Decision and Order Granting Claimant's Motion for Summary Judgment dated May 27, 2015 signed by Dominique L. Jinhong, Industrial Appeals Judge, Board of Industrial Insurance Appeals	VARNEY TH 002459-2460; 2462-2463	Redacted – Work Product; Attorney's notations on document	A
RCW 51.52.010 Board of industrial insurance appeals	VARNEY TH 002466	Redacted – Work Product; Attorney's notations on document	A
Varney v. Department of Labor and Industries of the State of Washington, Judgment filed May 23, 2014	VARNEY TH 002793	Redacted – Work Product; Attorney's notations on document	A
Claimant's Motion for Summary Judgment filed December 3, 2014	VARNEY TH 003491-3501	Redacted – Work Product; Attorney's notations on document	A

City of Tacoma
Privilege Log
Varney v. City of Tacoma
6/19/2020

Type of Document	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
Order and Notice from Department of Labor and Industries to Thomas G. Hall dated June 3, 2014	VARNEY TH 005916	Redacted – Work Product; Attorney’s notations on document	A
Order and Notice from Department of Labor and Industries to Thomas G. Hall dated December 2, 2014	VARNEY TH 005942	Redacted – Work Product; Attorney’s notations on document	A
February 24, 2017 letter from Ron Meyers to The Honorable Edmund J. Murphy regarding plaintiff’s closing argument from Cause No. 12-2-08221-4	VARNEY TH 007196	Redacted – Work Product; Attorney’s notations on document	A
February 24, 2017 letter from Ron Meyers to The Honorable Edmund J. Murphy regarding plaintiff’s closing argument from Cause No. 12-2-08221-4	VARNEY TH 007446	Redacted – Work Product; Attorney’s notations on document	A
Tacoma’s Response to Motion for Summary Judgment dated April 11, 2016	VARNEY TH 007796-7799; 7801-7802	Redacted – Work Product; Attorney’s notations on document	A
Medical Examination dated March 1, 2010 by William J. Stump, MD and Alvin J. Thompson, MD.	VARNEY TH 009355-9358; 009360-9361	Redacted – Work Product; Attorney’s notations on document	A
Letter dated July 1, 2010 from David Judish, MD to Britta Holm re: review of Drs. Thompson and Stump’s IME report.	VARNEY TH 009365	Redacted – Work Product; Attorney’s notations on document	A
Letter dated August 20, 2009 from Britta Holm to Rainier Rehabilitation Associates and Patrice Stevenson, MD	VARNEY TH 009380	Redacted – Work Product; Attorney’s notations on document	A
Letter dated August 19, 2009 from Dr. Patrice Stevenson to Britta Holm re: Tony Varney	VARNEY TH 009381	Redacted – Work Product; Attorney’s notations on document	A
City of Tacoma Fire Department Medical Fitness Report Return to Work Recommendations dated July 26, 2009 and signed by Dr. R. Florea.	VARNEY TH 009394	Redacted – Work Product; Attorney’s notations on document	A

City of Tacoma
Privilege Log
Varney v. City of Tacoma
6/19/2020

Type of Document	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
Independent Medical Examination report of Gary Schuster, MD dated July 1, 2010.	VARNEY TH 009823-9827; 009831-9834	Redacted – Work Product; Attorney’s notations on document	A
Independent Medical Examination report of Robert Price, MD dated July 1, 2010.	VARNEY TH 009837-9838; 009840-9843; 009845- 9847	Redacted – Work Product; Attorney’s notations on document	A
Office visit note dated November 30, 2007 with Terrill Utt, MD	VARNEY TH 009997	Redacted – Work Product; Attorney’s notations on document	A
PACLAB lab results dated October 16, 2007	VARNEY TH 009999	Redacted – Work Product; Attorney’s notations on document	A
Office visit note dated November 15, 2007 with Oussama Moussan, MD	VARNEY TH 010006	Redacted – Work Product; Attorney’s notations on document	A
Office visit note dated October 22, 2007 with Terrill Utt, MD	VARNEY TH 010012; 010014	Redacted – Work Product; Attorney’s notations on document	A
Office visit note dated April 26, 2005 with Marjorie Bergsma, PA-C	VARNEY TH 010016	Redacted – Work Product; Attorney’s notations on document	A
Excerpt of direct examination of Tony Varney dated November 15, 2011	VARNEY TH 010018	Redacted – Work Product; Attorney’s notations on document	A
Multicare Good Samaritan Hospital History and Physical amended August 11, 2009 signed by Patrice Stevenson, MD	VARNEY TH 010143- 10144	Redacted – Work Product; Attorney’s notations on document	A
Multicare Good Samaritan Radiology Report dated August 10, 2009, CT Head w/o IV Contrast signed by Londe Richardson, MD	VARNEY TH 010147	Redacted – Work Product; Attorney’s notations on document	A

City of Tacoma
Privilege Log
Varney v. City of Tacoma
6/19/2020

Type of Document	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
Department of Retirement Systems Application for Disability Retirement Medical Report – Physician Conclusions dated September 23, 2009 by Patrice Stevenson, MD	VARNEY TH 010187	Redacted – Work Product; Attorney’s notations on document	A
Important Notice – Certification of Disability dated August 3, 2009 signed by Patrice Stevenson, MD	VARNEY TH 010200-10201	Redacted – Work Product; Attorney’s notations on document	A
Certification of Health Care Provider for Family Member’s Serious Health Condition dated July 29, 2009 signed by Gerelyn Varney	VARNEY TH 010206	Redacted – Work Product; Attorney’s notations on document	A
Letter dated August 20, 2009 from Britta Holm to Patrice Stevenson, MD	VARNEY TH 010210	Redacted – Work Product; Attorney’s notations on document	A
Procedure Note dated November 11, 2010 by David Judish, MD	VARNEY TH 010242	Redacted – Work Product; Attorney’s notations on document	A
Provider Note dated September 14, 2010 by David Judish, MD	VARNEY TH 010247	Redacted – Work Product; Attorney’s notations on document	A
Long Term Disability Attending Physician’s Statement dated February 7, 2011 by David Judish, MD	VARNEY TH 010260	Redacted – Work Product; Attorney’s notations on document	A
Outpatient Follow Up Report dated April 16, 2010 signed by David Judish, MD	VARNEY TH 010290	Redacted – Work Product; Attorney’s notations on document	A
Outpatient Follow Up Report dated March 5, 2010 signed by David Judish, MD	VARNEY TH 010295	Redacted – Work Product; Attorney’s notations on document	A
Procedure Note dated January 25, 2010 signed by David Judish, MD	VARNEY TH 010298	Redacted – Work Product; Attorney’s notations on document	A

City of Tacoma
Privilege Log
Varney v. City of Tacoma
6/19/2020

Type of Document	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
Outpatient Follow Up Report dated January 10, 2010 signed by David Judish, MD	VARNEY TH 010308	Redacted – Work Product; Attorney’s notations on document	A
Outpatient Follow Up Report dated November 9, 2009 signed by David Judish, MD	VARNEY TH 010328	Redacted – Work Product; Attorney’s notations on document	A
Outpatient Follow Up Report dated October 21, 2009 signed by David Judish, MD	VARNEY TH 010334	Redacted – Work Product; Attorney’s notations on document	A
Outpatient Follow Up Report dated October 9, 2009 signed by David Judish, MD	VARNEY TH 010342-10343	Redacted – Work Product; Attorney’s notations on document	A
Occupational Medicine Visit Summary dated May 6, 2009 signed by James Nelson, MD	VARNEY TH 010440-010441	Redacted – Work Product; Attorney’s notations on document	A
Occupational Medicine Visit Summary dated April 6, 2009 signed by Mario Alinea, MD	VARNEY TH 010457-010459	Redacted – Work Product; Attorney’s notations on document	A
Medical record request letter from Thomas Hall to Terrill Utt, MD	VARNEY TH 010471	Redacted – Work Product; Attorney’s notations on document	A
Echocardiogram report dated February 23, 2010 signed by Jaime Pugaeda, MD	VARNEY TH 010560-10561	Redacted – Work Product; Attorney’s notations on document	A
Office Visit Note dated November 4, 2009 signed by Terrill Utt, MD	VARNEY TH 010603	Redacted – Work Product; Attorney’s notations on document	A
Outpatient Follow Up Report dated October 9, 2009 signed by David Judish, MD	VARNEY TH 010621	Redacted – Work Product; Attorney’s notations on document	A

City of Tacoma
Privilege Log
Varney v. City of Tacoma
6/19/2020

Type of Document	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
Office Visit Note dated September 11, 2009 signed by Terrill Utt, MD	VARNEY TH 010635	Redacted – Work Product; Attorney’s notations on document	A
Multicare Good Samaritan Hospital History and Physical dated August 3, 2009 signed by Terrill Utt, MD	VARNEY TH 010640	Redacted – Work Product; Attorney’s notations on document	A
St. Joseph Hospital Radiology report dated July 24, 2009 signed by Gabriella Skuta, MD – CT Head with and without Contrast and CT Angiography Head	VARNEY TH 010656	Redacted – Work Product; Attorney’s notations on document	A
Office Visit Note dated May 4, 2009 signed by Terrill Utt, MD	VARNEY TH 010659-10660	Redacted – Work Product; Attorney’s notations on document	A
Office Visit Note dated January 9, 2009 signed by Terrill Utt, MD	VARNEY TH 010662	Redacted – Work Product; Attorney’s notations on document	A
Office Visit Note dated July 9, 2009 signed by Terrill Utt, MD	VARNEY TH 010664	Redacted – Work Product; Attorney’s notations on document	A
Email From: Thomas Hall Sent: March 14, 2019 To: Angeline Welch (Bonds) Subject: Varney, Tony	VARNEY TH 011024-011025	REDACTED – ATTORNEY CLIENT PRIVILEGE	A
Email From: Thomas Hall Sent: March 14, 2019 To: Angeline Welch (Bounds) Subject: Varney, Tony	VARNEY TH 011026	REDACTED – ATTORNEY CLIENT PRIVILEGE	A
Email From: Ryan Miller Sent: November 10, 2017 To: Kevin Kincade cc: Thomas Hall, Britta Holms	VARNEY TH 011059-011060	REDACTED – ATTORNEY CLIENT PRIVILEGE	A

City of Tacoma
Privilege Log
Varney v. City of Tacoma
6/19/2020

Type of Document	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
Subject: City of Tacoma/Meyers			
Email From: Thomas Hall Sent: March 14, 2019 To: Angeline Welch (Bonds) Subject:	VARNEY TH 011067	REDACTED – ATTORNEY CLIENT PRIVILEGE	A
Email From: Thomas Hall Sent: March 14, 2019 To: Angeline Welch (Bounds) Subject: Tony Varney	VARNEY TH 011071	REDACTED – ATTORNEY CLIENT PRIVILEGE	A
Email From: Britta Holms Sent: October 10, 2017 To: Thomas Hall,; Ryan Miller Subject: City of Tacoma updates Claims Meeting	VARNEY TH 011085	REDACTED – ATTORNEY CLIENT PRIVILEGE	A
Email From: Thomas Hall Sent: March 14, 2019 To: Angeline Welch (Bounds) Subject: City of Tacoma Claims Meeting	VARNEY TH 011086	REDACTED – ATTORNEY CLIENT PRIVILEGE	A
Email From: Thomas Hall Sent: March 14, 2019 To: Angeline Welch (Bounds) Subject:	VARNEY TH 011088	REDACTED – ATTORNEY CLIENT PRIVILEGE	A
Email From: Thomas Hall Sent: March 14, 2019 To: Angeline Welch Subject: Tony Varney	VARNEY TH 011094	REDACTED – ATTORNEY CLIENT PRIVILEGE	A
Email From: Thomas Hall Sent: March 14, 2019	VARNEY TH 011096	REDACTED – ATTORNEY CLIENT PRIVILEGE	A

City of Tacoma
Privilege Log
Varney v. City of Tacoma
6/19/2020

Type of Document	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
To: Angeline Welch (Bonds) Subject: Tony Varney			
Email From: Thomas Hall Sent: March 14, 2019 To: Angeline Welch (Bounds) Subject: Tony Varney	VARNEY TH 011098-011099	REDACTED – ATTORNEY CLIENT PRIVILEGE	A
Email From: Thomas Hall Sent: March 14, 2019 To: Angeline Welch (Bounds) Subject:	VARNEY TH 011102	REDACTED – ATTORNEY CLIENT PRIVILEGE	A
Email From: Thomas Hall Sent: March 14, 2019 To: Angeline Welch (Bounds) Subject: Toney Varney	VARNEY TH 011103	REDACTED – ATTORNEY CLIENT PRIVILEGE	A
Email From: Thomas Hall Sent: March 14, 2019 To: Angeline Welch (Bounds) Subject: Tony Varney	VARNEY TH 011104	REDACTED – ATTORNEY CLIENT PRIVILEGE	A
Email From: Thomas Hall Sent: March 14, 2019 To: Angeline Welch (Bounds) Subject: Varney	VARNEY TH 011127	REDACTED – ATTORNEY CLIENT PRIVILEGE	A
Email From: Thomas Hall Sent: March 14, 2019 To: Angeline Welch (Bounds) Subject: Varney	VARNEY TH 011129	REDACTED – ATTORNEY CLIENT PRIVILEGE	A
Email From: Thomas Hall	VARNEY TH 011162	REDACTED – ATTORNEY CLIENT PRIVILEGE	A

City of Tacoma
Privilege Log
Varney v. City of Tacoma
6/19/2020

Type of Document	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
Sent: March 14, 2019 To: Angeline Welch (Bounds) Subject: Varney			
Email From: Thomas Hall Sent: March 14, 2019 To: Angeline Welch (Bounds) Subject: Tony Varney	VARNEY TH 011164	REDACTED – ATTORNEY CLIENT PRIVILEGE	A
Email From: Thomas Hall Sent: March 14, 2019 To: Angeline Welch (Bounds) Subject: Tony Varney	VARNEY TH 011166	REDACTED – ATTORNEY CLIENT PRIVILEGE	A
Email From: Thomas Hall Sent: March 14, 2019 To: Angeline Welch (Bounds) Subject: Varney	VARNEY TH 011167-011168	REDACTED – ATTORNEY CLIENT PRIVILEGE	A
Email From: Thomas Hall Sent: March 14, 2019 To: Angeline Welch (Bounds) Subject: Varney	VARNEY TH 011171	REDACTED – ATTORNEY CLIENT PRIVILEGE	A
Email From: Thomas Hall Sent: March 14, 2019 To: Angeline Welch (Bounds) Subject: Varney	VARNEY TH 011197	REDACTED – ATTORNEY CLIENT PRIVILEGE	A
Email From: Thomas Hall Sent: March 14, 2019 To: Angeline Welch (Bounds) Subject: Varney	VARNEY TH 011203-011204	REDACTED – ATTORNEY CLIENT PRIVILEGE	A

City of Tacoma
Privilege Log
Varney v. City of Tacoma
6/19/2020

Type of Document	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
Email From: Thomas Hall Sent: March 14, 2019 To: Angeline Welch (Bounds) Subject: Varney	VARNEY TH 011210	REDACTED – ATTORNEY CLIENT PRIVILEGE	A
Email From: Thomas Hall Sent: March 14, 2019 To: Angeline Welch (Bounds) Subject: Varney	VARNEY TH 011219	REDACTED – ATTORNEY CLIENT PRIVILEGE	A
Email From: Thomas Hall Sent: March 14, 2019 To: Angeline Welch (Bounds) Subject: Varney	VARNEYTH 011223	REDACTED – ATTORNEY CLIENT PRIVILEGE	A
Email From: Thomas Hall Sent: March 14, 2019 To: Angeline Welch (Bounds) Subject: City of Tacoma updates for Claims Meeting	VARNEY TH 011238	REDACTED – ATTORNEY CLIENT PRIVILEGE	A
Email From: Thomas Hall Sent: March 14, 2019 To: Angeline Welch (Bounds) Subject:Varney	VARNEY TH 011240	REDACTED – ATTORNEY CLIENT PRIVILEGE	A
Email From: Thomas Hall Sent: March 14, 2019 To: Angeline Welch (Bounds) Subject: Varney	VARNEY TH 011241-011242	REDACTED – ATTORNEY CLIENT PRIVILEGE	A
Email From: Thomas Hall Sent: March 14, 2019 To: Angeline Welch (Bounds) Subject:Varney	VARNEY TH 011257	REDACTED – ATTORNEY CLIENT PRIVILEGE	A

City of Tacoma
Privilege Log
Varney v. City of Tacoma
6/19/2020

Type of Document	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
Email From: Thomas Hall Sent: March 14, 2019 To: Angeline Welch (Bounds) Subject: Tony Varney	VARNEY TH 011266-011267	REDACTED – ATTORNEY CLIENT PRIVILEGE	A
Email From: Thomas Hall Sent: March 14, 2019 To: Angeline Welch (Bounds) Subject: Tony Varney	VARNEY TH 011268	REDACTED – ATTORNEY CLIENT PRIVILEGE	A
Email From: Thomas Hall Sent: March 14, 2019 To: Angeline Welch (Bounds) Subject: Varey	VARNEY TH 011298	REDACTED – ATTORNEY CLIENT PRIVILEGE	A
Email From: Thomas Hall Sent: March 14, 2019 To: Angeline Welch (Bounds) Subject: Varney	VARNEY TH 011299	REDACTED – ATTORNEY CLIENT PRIVILEGE	A
Email From: Thomas Hall Sent: March 14, 2019 To: Angeline Welch (Bounds) Subject:	VARNEY TH 011300	REDACTED – ATTORNEY CLIENT PRIVILEGE	A
Email From: Thomas Hall Sent: March 14, 2019 To: Angeline Welch (Bounds) Subject: Varney, Tony – emailing 20170824152545Varney	VARNEY TH 011301	REDACTED – ATTORNEY CLIENT PRIVILEGE	A
Email From: Thomas Hall Sent: March 14, 2019 To: Angeline Welch (Bounds) Subject: Tony Varney	VARNEY TH 011309	REDACTED – ATTORNEY CLIENT PRIVILEGE	A

City of Tacoma
Privilege Log
Varney v. City of Tacoma
6/19/2020

Type of Document	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
Email From: Thomas Hall Sent: March 14, 2019 To: Angeline Welch (Bounds) Subject: Varney	VARNEY TH 011301	REDACTED – ATTORNEY CLIENT PRIVILEGE	A
Email From: Britta Holm Sent: October 2, 2014 To: Thoms Hall; Lisa Vivian Subject: Varney	VARNEY TH 011312	ATTORNEY CLIENT PRIVILEGE	A
Email From: Britta Holm Sent: October 3, 2014 To: Lisa Vivian Cc: Ryan Miller; Thomas Hall; Gina Wanner; Lori Calvin Subject: Varney	VARNEY TH 011313	ATTORNEY CLIENT PRIVILEGE	A
Email From: Britta Holm Sent: October 6, 2014 To: Lisa Vivian; Thomas Hall; Ryan Miller Cc: Gina Wanner; Lori Clavin Subject: Varney	VARNEY TH 0011314	ATTORNEY CLIENT PRIVILEGE	A
Email From: Angeline Bounds Sent: December 10, 2014 To: Britta Holm cc: Thomas Hall; Ryan Miller Subject: Varney, Tony	VARNEY TH 011327	ATTORNEY CLIENT PRIVILEGE	A
Email From: Angeline Bounds Sent: December 10, 2014 To: Britta Holm Cc: Thomas Hall; Ryan Miller Subject: Varney, Tony SE-05746	VARNEY TH 011327-0011328	ATTORNEY CLIENT PRIVILEGE	A
Email	VARNEY TH 011329-		

City of Tacoma
Privilege Log
Varney v. City of Tacoma
6/19/2020

Type of Document	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
From: Thomas Hall Sent: September 26, 2014 To: Holms, Britta; Hardy, Angela; Spike, Marti Subject: Discrimination Claims – Intentional and Negligence-based Tort Claims Are Forthcoming			
Claimant Firefighter’s Motion for Attorney Fees and Costs on Appeal Docket Nos. 1426358, 1426851 & 1427053	VARNEY TN 011338; 011340	Redacted – Work Product; Attorney’s notations on document	A
Declaration of Ron Meyers in Support of Claimant Firefighter’s Motion for Attorney Fees & Costs Docket Nos. 1426358, 1426851 & 1427053	VARNEY TH 011345; 011346	Redacted – Work Product; Attorney’s notations on document	A
Order on Plaintiff’s Motion for Attorney Fees and Costs Thurston Co. Superior No, 13-2-00395-1	VARNEY TH 011355	Redacted – Work Product; Attorney’s notations on document	A
Ron Meyer & Associates PLLC Time Sheet re Claimant Firefighter Tony Varney	VARNEY TH 011391- 011401	Redacted – Work Product; Attorney’s notations on document	A
Proposed Decision and Order Granting Claimant Motion for Summary Judgment, Claim No. SE-05746, Board of Industrial Insurance Appeals, State of WA	VARNEY TH 011407- 011408	Redacted – Work Product; Attorney’s notations on document	A
Email From: Britta Holm Sent: September 14, 2015 To: Thomas Hall Subject: Tony Varney	VARNEY TH 011422- 011425	ATTORNEY CLIENT PRIVILEGE	A
Email From: Angeline Bounds Sent: July 23, 2015 To: Britta Holms Cc: Thomas Hall Subject: Varney, Tony	VARNEY TH 011429	ATTORNEY CLIENT PRIVILEGE	A
Attorney File Notes		ATTORNEY CLIENT PRIVILEGE-Work Product	

City of Tacoma
Privilege Log
Varney v. City of Tacoma
6/19/2020

Type of Document	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
Email From: Angeline Bounds Sent: June 18, 2015 To: Britta Holm Subject: Varney, Tony	VARNEY TH 011431-011432	ATTORNEY CLIENT PRIVILEGE	A
Attorney Work Product case planning form	VARNEY 011433-011440	ATTORNEY CLIENT PRIVILEGE-Work Product	A
Amended Litigation Order Docket Nos. 1427053 & 1428060 Board of Industrial Insurance Appeals, State of Washington	VARNEY TH 011447	Redacted – Work Product; Attorney’s notations on document	A
Order and Notice Dept of L & I, Div. of Industrial Insurance, State of Washington Claim ID: SED5746 Mailing Date: 10/06/15	VARNEY TH 011453	Redacted – Work Product; Attorney’s notations on document	A
Decision and Order Dockets Docket Nos. 1427053 & 1428060 Board of Industrial Insurance Appeals, State of Washington 1/15/16	VARNEY TH 011457	Redacted – Work Product; Attorney’s notations on document	A
Email From: Angeline Bounds Sent: June 18, 2015 To: Britta Holm Cc: Thomas Hall Subject: Varney, Tony	VARNEY TH 011458	ATTORNEY CLIENT PRIVILEGE	A
Attorney File Notes	VARNEY TH 011460	ATTORNEY CLIENT PRIVILEGE-Work Product	A
Email From: Angeline Bounds Sent: February 25, 2015 To: Britta Holm Subject: Varney, Tony – Hrg Update	VARNEY TH 011465	ATTORNEY CLIENT PRIVILEGE	A
Email From: Holms, Britta	VARNEY TH 011470	ATTORNEY CLIENT PRIVILEGE	A

City of Tacoma
Privilege Log
Varney v. City of Tacoma
6/19/2020

Type of Document	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
Sent: December 27, 2017 To: Robin Hernandez Cc: Thomas Hall; William Pratt Subject: Varney, Tony			
Email From: Britta Holms Sent: December 28, 2017 To: Robin Hernandez Subject: Varney, Tony	VARNEY TH 011471	ATTORNEY CLIENT PRIVILEGE	A
Email From: Britta Holms Sent: December 27, 2017 To: Robin Hernandez Cc: Thomas Hall, William Pratt Subject: Varney, Tong	VARNEY TH 011474	ATTORNEY CLIENT PRIVILEGE	A
Email From: Thoms Hall Sent: September 23, 2016 To: Angeline Welch (Bounds) Cc: William Pratt; Robin Hernandez Subject: Emailing – 20160922131542.pdf	VARNEY TH 011476	ATTORNEY CLIENT PRIVILEGE	A
Hearing Schedule Worksheet	VARNEY TH 011484	ATTORNEY CLIENT PRIVILEGE-Work Product	A
Attorney File Notes	VARNEY TH 011526	ACT-Work Product	A
Email string From: Britta Holms Sent: January 2, 2018 To: Thomas Hall Cc: Angeline Welch (Bounds); Robin Hernandez Subject: Tony Varney	VARNEY TH 011554-011555	ATTORNEY CLIENT PRIVILEGE	A
Email string From: Britta Holms Sent: January 2, 2018 To: Thomas Hall	VARNEY TH 011557	ATTORNEY CLIENT PRIVILEGE	A

City of Tacoma
Privilege Log
Varney v. City of Tacoma
6/19/2020

Type of Document	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
Cc: Angeline Welch (Bounds); Robin Hernandez			
Email From: Britta Holms Sent: December 28, 2017 To: Victor Heahcote Subject: Tony Varney	VARNEY TH 011559	CIP	CIP
Email: From: Britta Holms Sent: January 2, 2018 To: Thomas Hall Cc: Angeline Welch; Robin Hernandez Subject: Tony Varney	VARNEY TH 011560	ATTORNEY CLIENT PRIVILEGE	A
Email string From: Britta Holms Sent: January 2, 2018 To: Hardy Angela Subject Tony Varney	VARNEY TH 011561	ATTORNEY CLIENT PRIVILEGE	A
Email From: Britta Holms Sent: January 2, 2018 To: Thomas Hall Cc: Angline Welch (Bounds); Robin Hernandez Subject: Tony Varney	VARNEY TH 011562	ATTORNEY CLIENT PRIVILEGE	A
Email From: Britta Holms Sent: January 2, 2018 To: Hardy, Angela Subject: Tony Varney	VARNEY TH 011563	ATTORNEY CLIENT PRIVILEGE	A
Email string From: Victor Heathcote Sent: February 15, 2018 To: Angeline, Welch (Bounds); Britta Holm Subject: Varney, Tony	VARNEY TH 011568	ATTORNEY CLIENT PRIVILEGE	A

City of Tacoma
Privilege Log
Varney v. City of Tacoma
6/19/2020

Type of Document	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
Email string From Britta Holms Sent: February 15, 2018 To: Angeline Welch Cc: Victor Heathcote Subject: Varney, Tony	VARNEY TH 011570	ATTORNEY CLIENT PRIVILEGE	A
Email From Marne Horstman To: Thomas Hall Sent: October 3, 2018 Subject: Varney	VARNEY TH 011581	ATTORNEY CLIENT PRIVILEGE	A
Email string From: Thomas Hall Sent: October 3, 2018 To: Marne Horstman Subject: Varney	VARNEY TH 011583- VARNEY TH 011584	ATTORNEY CLIENT PRIVILEGE	A
Email From: Thomas Hall Sent: January 17, 2017 To: Angeline Welch Subject: Varney order	VARNEY TH 011586	ATTORNEY CLIENT PRIVILEGE	A
Email string From: Angeline Welch (Bounds) Sent: January 18, 2016 To: Thomas Hall; Robin Hernandez Subject: Varney	VARNEY TH 011589	ATTORNEY CLIENT PRIVILEGE-Work Product	A
Email From: Angeline Welch (Bounds) Sent: January 18, 2016 To: Thomas Hall; Robin Hernandez Subject: Varney	VARNEY TH 011590	ATTORNEY CLIENT PRIVILEGE-Work Product	A

City of Tacoma
Privilege Log
Varney v. City of Tacoma
6/19/2020

Type of Document	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
Email From: Angeline Welch (Bounds) Sent: December 29, 2015 To: Thomas Hall	VARNEY TH 011591	ATTORNEY CLIENT PRIVILEGE-Work Product	A

KEY ITEM	EXPLANATION/AUTHORITY FOR EXEMPTING FROM DISCLOSURE:
A	<p>ATTORNEY/CLIENT PRIVILEGE and/or WORK PRODUCT – These records reflect privileged attorney-client communication, and/or attorney work product protected from disclosure and have been redacted or withheld in their entirety per the following citations:</p> <p>RCW 42.56.290 – “Records that are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts are exempt from disclosure under this chapter.”</p> <p>RCW 5.60.060(2)(a) – “An attorney or counselor shall not, without the consent of his or her client, be examined as to any communication made by the client to him or her, or his or her advice given thereon in the course of professional employment.”</p> <p>RCW 42.56.070(1) – “Each agency, in accordance with published rules, shall make available for public inspection and copying all public records, unless the record falls within the specific exemptions of subsection (6) of this section, this chapter, or other statute which exempts or prohibits disclosure of specific information or records. To the extent required to prevent an unreasonable invasion of personal privacy interests protected by this chapter, an agency shall delete identifying details in a manner consistent with this chapter when it makes available or publishes any public record; however, in each case, the justification for the deletion shall be explained fully in writing.”</p>

City of Tacoma
Privilege Log
Varney v. City of Tacoma
6/21/2019

Type of Document	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
From: Linda Bauer Date: January 13, 2011 To: Britta Holm Subject: mediation conference	VARNEY TH 000865	Redacted – Attorney Client Privilege	A
From: Thomas G. Hall Sent: Wednesday, September 01, 2010 4:22 PM To: 'Britta Holm' Subject: Tony Varney	VARNEY TH 000866	Redacted – Attorney Client Privilege	A
From: Linda D. Bauer Date: Tuesday, July 06, 2010 10:58 AM To: Britta Holm Cc: Thomas G. Hall Subject: RE: Tony Varney	VARNEY TH 000867	Redacted – Attorney Client Privilege	A
From: Britta Holm [mailto:brittah@eberlevivian.com] Sent: Tuesday, July 06, 2010 10:54 AM To: Thomas G. Hall Cc: Linda D. Bauer Subject: Tony Varney	VARNEY TH 000867	Redacted – Attorney Client Privilege	A
From: Britta Holm [mailto:brittah@eberlevivian.com] Sent: Monday, March 22, 2010 6:52 AM To: Thomas G. Hall Subject: Re: Varney	VARNEY TH 000868	Redacted – Attorney Client Privilege; Work Product	A
From: Ryan Miller Sent: Friday, April 25, 2014 1:25 PM To: 'Britta Holm' Cc: Thomas G. Hall Subject: RE: Tony Varney	VARNEY TH 000870	Redacted – Attorney Client Privilege; Work Product	A
From: Britta Holm [mailto:brittah@eberlevivian.com] Sent: Friday, April 25, 2014 6:57 AM To: Ryan Miller Cc: Angeline Bounds; Thomas Hall; Robin Hernandez Subject: Re: Tony Varney	VARNEY TH 000870-871	Redacted – Attorney Client Privilege	A

City of Tacoma
Privilege Log
Varney v. City of Tacoma
6/21/2019

Type of Document	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
From: Britta Holm [mailto:brittah@eberlevivian.com] Sent: Thursday, April 24, 2014 8:00 AM To: Ryan Miller Cc: Angeline Bounds; Thomas Hall; Robin Hernandez Subject: Re: Tony Varney	VARNEY TH 000871	Redacted – Attorney Client Privilege	A
From: Ryan Miller Sent: Wednesday, April 24, 2014 9:59 AM To: Britta Holm Subject: Re: Tony Varney	VARNEY TH 000871-872	Redacted – Attorney Client Privilege	A
ExamWorks Independent Medical Examination by Robert Thompson, M.D., Cardiologist Dated September 29, 2014	VARNEY TH 000936-938	Redacted – Work Product; Attorney's notations on document	A
October 22, 2014 letter from Thomas G. Hall to Robert Thompson, M.D. re: Tony Varney	VARNEY TH 000940	Redacted – Work Product; Attorney's notations on document	A
Proposed Decision and Order Granting Claimant's Motion for Summary Judgment dated May 27, 2015 signed by Dominique L. Jinhong, Industrial Appeals Judge, Board of Industrial Insurance Appeals	VARNEY TH 000944-947	Redacted – Work Product; Attorney's notations on document	A
Decision and Order re: Claim SE-05746 dated November 9, 2015 signed by David E. Threedy and Frank E. Fennerty, Jr. of the Board of Industrial Insurance Appeals	VARNEY TH 000953-956	Redacted – Work Product; Attorney's notations on document	A
Proposed Decision and Order Granting Claimant's Motion for Summary Judgment dated May 27, 2015 signed by Dominique L. Jinhong, Industrial Appeals Judge, Board of Industrial Insurance Appeals	VARNEY TH 002459-2460; 2462-2463	Redacted – Work Product; Attorney's notations on document	A
RCW 51.52.010 Board of industrial insurance appeals	VARNEY TH 002466	Redacted – Work Product; Attorney's notations on document	A
Varney v. Department of Labor and Industries of the State of Washington, Judgment filed May 23, 2014	VARNEY TH 002793	Redacted – Work Product; Attorney's notations on document	A
Claimant's Motion for Summary Judgment filed December 3, 2014	VARNEY TH 003491-3501	Redacted – Work Product; Attorney's notations on document	A

City of Tacoma
Privilege Log
Varney v. City of Tacoma
6/21/2019

Type of Document	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
Order and Notice from Department of Labor and Industries to Thomas G. Hall dated June 3, 2014	VARNEY TH 005916	Redacted – Work Product; Attorney’s notations on document	A
Order and Notice from Department of Labor and Industries to Thomas G. Hall dated December 2, 2014	VARNEY TH 005942	Redacted – Work Product; Attorney’s notations on document	A
February 24, 2017 letter from Ron Meyers to The Honorable Edmund J. Murphy regarding plaintiff’s closing argument from Cause No. 12-2-08221-4	VARNEY TH 007196	Redacted – Work Product; Attorney’s notations on document	A
February 24, 2017 letter from Ron Meyers to The Honorable Edmund J. Murphy regarding plaintiff’s closing argument from Cause No. 12-2-08221-4	VARNEY TH 007446	Redacted – Work Product; Attorney’s notations on document	A
Tacoma’s Response to Motion for Summary Judgment dated April 11, 2016	VARNEY TH 007796-7799; 7801-7802	Redacted – Work Product; Attorney’s notations on document	A
Medical Examination dated March 1, 2010 by William J. Stump, MD and Alvin J. Thompson, MD.	VARNEY TH 009355-9358; 009360-9361	Redacted – Work Product; Attorney’s notations on document	A
Letter dated July 1, 2010 from David Judish, MD to Britta Holm re: review of Drs. Thompson and Stump’s IME report.	VARNEY TH 009365	Redacted – Work Product; Attorney’s notations on document	A
Letter dated August 20, 2009 from Britta Holm to Rainier Rehabilitation Associates and Patrice Stevenson, MD	VARNEY TH 009380	Redacted – Work Product; Attorney’s notations on document	A
Letter dated August 19, 2009 from Dr. Patrice Stevenson to Britta Holm re: Tony Varney	VARNEY TH 009381	Redacted – Work Product; Attorney’s notations on document	A
City of Tacoma Fire Department Medical Fitness Report Return to Work Recommendations dated July 26, 2009 and signed by Dr. R. Florea.	VARNEY TH 009394	Redacted – Work Product; Attorney’s notations on document	A

City of Tacoma
Privilege Log
Varney v. City of Tacoma
6/21/2019

Type of Document	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
Independent Medical Examination report of Gary Schuster, MD dated July 1, 2010.	VARNEY TH 009823-9827; 009831-9834	Redacted – Work Product; Attorney’s notations on document	A
Independent Medical Examination report of Robert Price, MD dated July 1, 2010.	VARNEY TH 009837-9838; 009840-9843; 009845-9847	Redacted – Work Product; Attorney’s notations on document	A
Office visit note dated November 30, 2007 with Terrill Utt, MD	VARNEY TH 009997	Redacted – Work Product; Attorney’s notations on document	A
PACLAB lab results dated October 16, 2007	VARNEY TH 009999	Redacted – Work Product; Attorney’s notations on document	A
Office visit note dated November 15, 2007 with Oussama Moussan, MD	VARNEY TH 010006	Redacted – Work Product; Attorney’s notations on document	A
Office visit note dated October 22, 2007 with Terrill Utt, MD	VARNEY TH 010012; 010014	Redacted – Work Product; Attorney’s notations on document	A
Office visit note dated April 26, 2005 with Marjorie Bergsma, PA-C	VARNEY TH 010016	Redacted – Work Product; Attorney’s notations on document	A
Excerpt of direct examination of Tony Varney dated November 15, 2011	VARNEY TH 010018	Redacted – Work Product; Attorney’s notations on document	A
Multicare Good Samaritan Hospital History and Physical amended August 11, 2009 signed by Patrice Stevenson, MD	VARNEY TH 010143-10144	Redacted – Work Product; Attorney’s notations on document	A
Multicare Good Samaritan Radiology Report dated August 10, 2009, CT Head w/o IV Contrast signed by Londe Richardson, MD	VARNEY TH 010147	Redacted – Work Product; Attorney’s notations on document	A

City of Tacoma
Privilege Log
Varney v. City of Tacoma
6/21/2019

Type of Document	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
Department of Retirement Systems Application for Disability Retirement Medical Report – Physician Conclusions dated September 23, 2009 by Patrice Stevenson, MD	VARNEY TH 010187	Redacted – Work Product; Attorney’s notations on document	A
Important Notice – Certification of Disability dated August 3, 2009 signed by Patrice Stevenson, MD	VARNEY TH 010200-10201	Redacted – Work Product; Attorney’s notations on document	A
Certification of Health Care Provider for Family Member’s Serious Health Condition dated July 29, 2009 signed by Gerelyn Varney	VARNEY TH 010206	Redacted – Work Product; Attorney’s notations on document	A
Letter dated August 20, 2009 from Britta Holm to Patrice Stevenson, MD	VARNEY TH 010210	Redacted – Work Product; Attorney’s notations on document	A
Procedure Note dated November 11, 2010 by David Judish, MD	VARNEY TH 010242	Redacted – Work Product; Attorney’s notations on document	A
Provider Note dated September 14, 2010 by David Judish, MD	VARNEY TH 010247	Redacted – Work Product; Attorney’s notations on document	A
Long Term Disability Attending Physician’s Statement dated February 7, 2011 by David Judish, MD	VARNEY TH 010260	Redacted – Work Product; Attorney’s notations on document	A
Outpatient Follow Up Report dated April 16, 2010 signed by David Judish, MD	VARNEY TH 010290	Redacted – Work Product; Attorney’s notations on document	A
Outpatient Follow Up Report dated March 5, 2010 signed by David Judish, MD	VARNEY TH 010295	Redacted – Work Product; Attorney’s notations on document	A
Procedure Note dated January 25, 2010 signed by David Judish, MD	VARNEY TH 010298	Redacted – Work Product; Attorney’s notations on document	A

City of Tacoma
Privilege Log
Varney v. City of Tacoma
6/21/2019

Type of Document	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
Outpatient Follow Up Report dated January 10, 2010 signed by David Judish, MD	VARNEY TH 010308	Redacted – Work Product; Attorney’s notations on document	A
Outpatient Follow Up Report dated November 9, 2009 signed by David Judish, MD	VARNEY TH 010328	Redacted – Work Product; Attorney’s notations on document	A
Outpatient Follow Up Report dated October 21, 2009 signed by David Judish, MD	VARNEY TH 010334	Redacted – Work Product; Attorney’s notations on document	A
Outpatient Follow Up Report dated October 9, 2009 signed by David Judish, MD	VARNEY TH 010342-10343	Redacted – Work Product; Attorney’s notations on document	A
Occupational Medicine Visit Summary dated May 6, 2009 signed by James Nelson, MD	VARNEY TH 010440-010441	Redacted – Work Product; Attorney’s notations on document	A
Occupational Medicine Visit Summary dated April 6, 2009 signed by Mario Alinea, MD	VARNEY TH 010457-010459	Redacted – Work Product; Attorney’s notations on document	A
Medical record request letter from Thomas Hall to Terrill Utt, MD	VARNEY TH 010471	Redacted – Work Product; Attorney’s notations on document	A
Echocardiogram report dated February 23, 2010 signed by Jaime Puggedá, MD	VARNEY TH 010560-10561	Redacted – Work Product; Attorney’s notations on document	A
Office Visit Note dated November 4, 2009 signed by Terrill Utt, MD	VARNEY TH 010603	Redacted – Work Product; Attorney’s notations on document	A
Outpatient Follow Up Report dated October 9, 2009 signed by David Judish, MD	VARNEY TH 010621	Redacted – Work Product; Attorney’s notations on document	A

City of Tacoma
Privilege Log
Varney v. City of Tacoma
6/21/2019

Type of Document	Page No.	Redacted or Withheld	Key Item & explanation for exempting from Disclosure
Office Visit Note dated September 11, 2009 signed by Terrill Utt, MD	VARNEY TH 010635	Redacted – Work Product; Attorney’s notations on document	A
Multicare Good Samaritan Hospital History and Physical dated August 3, 2009 signed by Terrill Utt, MD	VARNEY TH 010640	Redacted – Work Product; Attorney’s notations on document	A
St. Joseph Hospital Radiology report dated July 24, 2009 signed by Gabriella Skuta, MD – CT Head with and without Contrast and CT Angiography Head	VARNEY TH 010656	Redacted – Work Product; Attorney’s notations on document	A
Office Visit Note dated May 4, 2009 signed by Terrill Utt, MD	VARNEY TH 010659-10660	Redacted – Work Product; Attorney’s notations on document	A
Office Visit Note dated January 9, 2009 signed by Terrill Utt, MD	VARNEY TH 010662	Redacted – Work Product; Attorney’s notations on document	A
Office Visit Note dated July 9, 2009 signed by Terrill Utt, MD	VARNEY TH 010664	Redacted – Work Product; Attorney’s notations on document	A

KEY ITEM	EXPLANATION/AUTHORITY FOR EXEMPTING FROM DISCLOSURE:
A	<p>ATTORNEY/CLIENT PRIVILEGE and/or WORK PRODUCT – These records reflect privileged attorney-client communication, and/or attorney work product protected from disclosure and have been redacted or withheld in their entirety per the following citations:</p> <p>RCW 42.56.290 – “Records that are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts are exempt from disclosure under this chapter.”</p> <p>RCW 5.60.060(2)(a) – “An attorney or counselor shall not, without the consent of his or her client, be examined as to any communication made by the client to him or her, or his or her advice given thereon in the course of professional employment.”</p> <p>RCW 42.56.070(1) – “Each agency, in accordance with published rules, shall make available for public inspection and copying all public records, unless the record falls within the specific exemptions of subsection (6) of this section, this chapter, or other statute which exempts or prohibits disclosure of specific information or records. To the extent required to prevent an unreasonable invasion of personal privacy interests protected by this chapter, an agency shall delete identifying details in a manner consistent with this chapter when it makes available or publishes any public record; however, in each case, the justification for the deletion shall be explained fully in writing.”</p>

FILED
SUPREME COURT
STATE OF WASHINGTON
4/21/2023 12:46 PM
BY ERIN L. LENNON
CLERK

Supreme Court No.
Court of Appeals, Div II No. 56174-3-II

SUPREME COURT OF THE STATE OF WASHINGTON

TONY VARNEY and GERALYN VARNEY

Petitioners

, v.

CITY OF TACOMA,

Respondents.

DECLARATION OF SERVICE OF
PETITIONERS' MOTION FOR
DISCRETIONARY REVIEW

Ron Meyers WSBA No. 13169
Matthew Johnson WSBA No. 27976
Tim Friedman WSBA No. 37983
Attorneys for Petitioner

Ron Meyers & Associates, PLLC
8765 Tallon Ln. NE, Suite A,
Olympia, WA 98516
(360) 459-5600

I declare under penalty of perjury under the laws of the State of Washington that on the date set forth below, I served the Petitioners' Motion for Discretionary Review on the following parties in each manner set forth:

Originals: Washington State Supreme Court

Via e-filing (filing fee check mailed April 21, 2013)

Copies To: Kimberly J. Cox, Deputy City Attorney
City of Tacoma
Civil Division
747 Market St., Rm 1120
Tacoma, WA 98402-3767

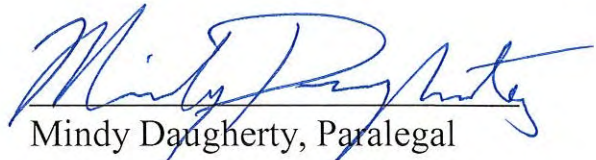
Via Court of Appeals portal and email per agreement:

kcox@cityoftacoma.org

gcastro@cityoftacoma.org

bpittman@cityoftacoma.org

DATED this 21st day of April, 2023, at Hartsville,
South Carolina.


Mindy Daugherty, Paralegal

February 14, 2023

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

TROY VARNEY and GERALYN VARNEY,
husband and wife and their marital community,

Respondents/Cross-Petitioners,

v.

CITY OF TACOMA,

Petitioner/Cross-Respondent.

No. 56174-3-II

(Consolidated with No. 56187-5-II)

UNPUBLISHED OPINION

CRUSER, A.C.J. — Tony Varney worked as a firefighter for the city of Tacoma and, in 2009, suffered a stroke after completing a 24-hour shift. After years of contentious litigation regarding the cause of his stroke, the Varneys¹ brought suit against the city, alleging, among other claims, abuse of process during the underlying workers' compensation litigation. In discovery, the Varneys sought documents relating to Varney's workers' compensation claim, and the city redacted and withheld certain documents under claims of attorney-client privilege and work product. The trial court ordered the city to produce unredacted copies of certain documents and certified issues from its order to this court on discretionary review. These issues are whether (1) documents protected by the attorney-client privilege are discoverable merely because they are relevant to, or could lead to the discovery of admissible evidence in support of, a plaintiff's tortious abuse of process claim, (2) internal communications between corporate employees and agents are

¹ This opinion refers to Tony Varney as Varney when referring to the underlying workers' compensation litigation, and it refers to both Tony and GERALYN Varney as the Varneys when referring to the plaintiffs in the current litigation.

protected by the attorney-client privilege, (3) communications between a corporation and its excess liability insurance carrier are protected by the attorney-client privilege, and (4) waiver of attorney-client privilege, either blanket or partial, applies in the context of the Varneys' abuse of process claim under the fraud exception.

We decline to address the first three issues because review of these issues was improvidently granted. Regarding the fourth issue, we hold that neither partial nor blanket waiver should be found because the fraud exception does not apply in the workers' compensation context. We remand for proceedings consistent with this opinion.

FACTS

I. BACKGROUND

In July 2009, Varney suffered a hemorrhagic stroke after returning home from a 24-hour shift with the Tacoma Fire Department. Following the stroke, Varney filed a workers' compensation claim under the Industrial Insurance Act. The city self-insures workers' compensation claims.

In February 2010, the Washington State Department of Labor & Industries (Department) allowed Varney's claim. The parties then engaged in extensive litigation concerning the cause of Varney's stroke.

The parties went to trial in superior court, which resulted in a favorable verdict for Varney. The city did not appeal the verdict but continued to challenge Varney's claim before the Department. The Department subsequently directed the city to pay for Varney's treatment and time-loss compensation, but did not penalize the city for any unreasonable delay in payments or otherwise issue any sanctions against the city.

II. CURRENT LITIGATION

In January 2019, the Varneys filed a complaint against the city, alleging abuse of process, tortious conduct,² outrage, discrimination, and a hostile work environment.

In response to the Varneys' discovery requests, the city produced over 19,000 pages of documents pertaining to Varney's workers' compensation claim. Some of these documents included communications from Tom Hall, the city's attorney; Angela Hardy, the city's industrial insurance coordinator; and Britta Holm, an account executive at Eberle Vivian, the city's third-party claims administrator for workers' compensation claims. In addition, certain documents contained communications between only Hardy and Holm, without the city's attorney copied on the communications. The city redacted portions of the documents and provided a privilege log for documents and portions of documents that the city believed were protected by attorney-client privilege or work product.

The Varneys then moved to strike the city's claims of attorney-client privilege and work product, arguing that they had a right to a full record of the city's investigation and handling of Varney's claim, as well as communications concerning the litigation that would reveal abusive and wrongful conduct by the city. The city also moved to compel complete discovery responses from the Varneys and moved for in camera review of two documents that the city inadvertently produced on the basis that they contained attorney-client privileged communications.

² "TORTIOUS CONDUCT" was the listed cause of action. Clerk's Papers at 36. This section of the complaint discussed "negligent claims handling by the City of Tacoma" and negligent and/or intentional infliction of emotional distress. *Id.*

The trial court appointed a special discovery master to review the documents listed on the city's privilege logs and report the following to the court:

1. Identify any portions of the communications and documents that were redacted or withheld by the City of Tacoma under a claim of attorney-client and/or work product privilege as identified on the City's privilege logs, which contain information relevant to or that could lead to the discovery of admissible evidence in support of Plaintiffs' tortious Abuse of Process claims; and
2. Inform the Court of his assessment as to whether the attorney-client and/or work product privilege applies to the portions of the communications and documents that were redacted or withheld by the City of Tacoma under a claim of attorney-client and/or work product privilege as identified on the City's privilege logs.

Clerk's Papers (CP) at 730-31.

Following review of the report by the discovery master and several status conferences, the trial court entered an order requiring the city to produce unredacted copies of certain documents that the discovery master identified as not protected by the attorney-client privilege and/or work product doctrine. In addition, the trial court ordered production of unredacted copies of certain documents "which are arguably covered by the attorney-client and/or work [product] privilege" but were "deemed . . . to contain information relevant to or that could lead to the discovery of admissible evidence in support of Plaintiffs' tortious Abuse of Process claims." CP at 1001. The court stayed the city's obligation to produce documents to allow the city to file formal written exceptions. After reviewing the city's exceptions, the trial court permitted the city to retain redactions for certain documents in its amended order on report of special discovery master, but otherwise ordered production of documents as described above. The court also "declined to apply a blanket waiver of attorney-client/work product privilege under a fraud exception as urged by" the Varneys. CP at 997.

Both parties filed motions to certify issues for discretionary review.

The trial court granted the motions, certifying the following issues of law:

a. Whether a trial court can order disclosure of communications protected by the attorney-client and/or work product privileges where the court has not identified a recognized legal exception to the privileges, but instead, has found that such communications contain information relevant to or that could lead to the discovery of admissible evidence in support of a plaintiff's tortious abuse of process claim;

b. Whether internal communications between corporate employees and the corporation's agents about litigation strategy, where those communications are undertaken in response to advice given by the corporation's litigation attorney, are protected from disclosure by the attorney-client privilege; and

c. Whether communications between a corporation and its excess liability insurance carrier about litigation strategy, where those communications are undertaken in response to advice given by the corporation's litigation attorney, are protected by a common interest privilege.

d. Whether a partial or blanket waiver of attorney[-]client/work product privilege applies under the fraud exception in the context of plaintiff's tortious abuse of process allegations in this case.

CP at 949-50. This court granted discretionary review of these certified issues. Comm'r's Ruling (Dec. 16, 2021).

DISCUSSION³

I. CERTIFIED QUESTIONS 1 THROUGH 3

Under RAP 2.3(b)(4), discretionary review may be granted when the superior court has certified that an order "involves a controlling question of law as to which there is substantial ground for a difference of opinion and that immediate review of the order may materially advance

³ Because the ruling granting discretionary review specifically grants review of the issues certified by the trial court, this opinion does not review the trial court's discovery order itself.

the ultimate termination of the litigation.” However, in this case, certified questions one through three ask hypothetical questions that are not tethered to the facts of this case, and they are not rooted in specifically referenced parts of the trial court’s order of which the parties seek review. In that sense, we are in no better position to answer questions one through three than the trial court. Moreover, these questions can be answered by the trial court with a review of case law and secondary research materials. Therefore, our review of the first three issues certified by the trial court would result in an improper advisory opinion. *See Walker v. Munro*, 124 Wn.2d 402, 414, 879 P.2d 920 (1994). Accordingly, we decline to answer the first three issues certified by the trial court as review on these issues was improvidently granted. *See* RAP 7.3 (“The appellate court has the authority to determine whether a matter is properly before it, and to perform all acts necessary or appropriate to secure the fair and orderly review of a case.”).

II. APPLICATION OF FRAUD EXCEPTION IN THE CONTEXT OF ABUSE OF PROCESS CLAIM

The fourth issue certified by the trial court asks “[w]hether a partial or blanket waiver of attorney[-]client/work product privilege applies under the fraud exception in the context of plaintiff’s tortious abuse of process allegations in this case.”⁴ CP at 950.

Both parties, as well as the trial court, relied on *Cedell v. Farmers Insurance Co. of Washington*, 176 Wn.2d 686, 295 P.3d 239 (2013), an insurance case, for their analysis of this issue. *Cedell* dealt with the scope of attorney-client privilege in a first-party insurance bad faith claim. *Cedell*, the named insured, brought a claim for bad faith claims handling against his insurer

⁴ This court’s ruling granting discretionary review acknowledged that the parties disputed whether the Varneys’ suit includes a cause of action for insurance bad faith. Comm’r’s Ruling (Dec. 16, 2021) at 8. Due to the language in the certified question, the ruling indicated that this court would only consider abuse of process in the context of the privilege issues here. *Id.*

and requested his claims file in discovery. *Id.* at 690. After a hearing on Cedell’s motion to compel production, the trial court ordered production of the entire claims file, unredacted. *Id.* at 692-93. When discussing the scope of attorney-client privilege in an insurance bad faith claim, the court explained that the claim “arises from the fact that the insurer has a quasi-fiduciary duty to act in good faith toward its insured.” *Id.* at 696. Therefore, “[t]o accommodate the special considerations of first[-]party insurance bad faith claims, . . . the insured is entitled to access to the claims file” in order to support the insured’s claim. *Id.* at 697.⁵ The court held that a first-party insured is presumptively entitled to the claims file unless the insurer can overcome the presumption by showing that counsel was “not engaged in a quasi-fiduciary function.” *Id.* at 700. If the insurer makes such a showing, the insured may still be able to pierce the attorney-client privilege following a two-step process for asserting civil fraud. *Id.* at 700.⁶

As an initial matter, the certified issue is not particularly clear. Read literally, it broadly asks whether the crime/fraud exception to attorney-client privilege can apply in abuse of process

⁵ The court then explained that the key distinction between a first-party bad faith claim and a UIM bad faith claim is that the UIM insurer “steps into the shoes of the tortfeasor” and, therefore, is entitled to the protections of attorney-client privilege in strategizing possible defenses. *Cedell*, 176 Wn.2d at 697. The privilege may be pierced if a valid exception applies, such as the fraud exception. *Id.*

⁶ The two-step process is as follows:

First, upon a showing that a reasonable person would have a reasonable belief that an act of bad faith has occurred, the trial court will perform an in camera review of the claimed privileged materials. Second, after in camera review and upon a finding there is a foundation to permit a claim of bad faith to proceed, the attorney-client privilege shall be deemed to be waived.

Id. at 700.

claims. The commissioner’s ruling granting review, however, characterizes the question as whether the holding in *Cedell* “applies outside of a private first-party insurance context.” Comm’r’s Ruling (Dec. 16, 2021) at 8 (“This court accepts review of the first and fourth issues because even assuming *Cedell* applies outside of a private first-party insurance context, the *Cedell* waiver applies only to claims for bad faith insurance-related causes of action. The *Cedell* waiver has never been applied to an abuse of process claim.”). We interpret the poorly-worded certified question, therefore, to be whether the *Cedell* waiver applies outside of the first-party insurance context. If it does not, and Varney is not a first-party insured in this context, then the *Cedell* waiver does not apply to the Varneys’ abuse of process claim and the trial court cannot apply a waiver of privilege, either blanket or partial, to these documents.

The Varneys assert, without citation to authority, that RCW 51.32.185—the Presumption of Occupational Disease for Firefighters statute—which they claim is “forced on” Varney, creates an insurer-insured relationship between Varney and the city. Resp’ts’ Response Br. at 32. He then relies on a collection of statutes, WACs, and cases that do not support his claim that he is a first-party insured in his workers’ compensation claim against the city.

The city argues that, first, Varney is not a first-party insured or claimant in this context; second, that the city is not an insurer under RCW 48.01.050; and third, that the fraud exception to attorney-client privilege applied in insurance bad faith claims does not apply to the Varneys’ claim for abuse of process. We agree with the city and answer the fourth certified question in the negative.

First, Varney did not have an insurance contract with the city, as the city notes. Varney’s original claim was a workers’ compensation claim, and he was in an adversarial rather than a

fiduciary relationship with the city as it related to that claim. Furthermore, in the context of the Washington Insurance Guaranty Association Act,⁷ our supreme court has held both that the Department is not an insurer and that self-insured employers are not insurers. *Wash. Ins. Guar. Ass'n v. Dep't of Labor & Indus.*, 122 Wn.2d 527, 533, 859 P.2d 592 (1993), *Stamp v. Dep't of Labor & Indus.*, 122 Wn.2d 536, 542-44, 859 P.2d 597 (1993). Further, “Washington’s public system of workers’ compensation is not the equivalent of insurance.” *Durant v. State Farm Mut. Auto. Ins. Co.*, 191 Wn.2d 1, 15, 419 P.3d 400 (2018). *Cedell* does not apply to this case because the city is not a first-party insurer to Varney in his workers’ compensation claim. Accordingly, the waiver of privilege as discussed in *Cedell* does not apply here.

ATTORNEY FEES ON APPEAL

The Varneys request attorney fees under RAP 18.1 and various statutes and cases.⁸ Parties requesting an award of attorney fees on appeal are required to include a separate section in her or his brief devoted to the request. RAP 18.1(b). The section in the brief must provide argument and citation to authority to apprise us of the appropriate grounds on which we may award attorney fees. *Stiles v. Kearney*, 168 Wn. App. 250, 267, 277 P.3d 9 (2012). Although the Varneys provide citation to authority, they do not provide any argument as to why the cited authority entitles them to fees. Resp’ts’ Response Br. at 46 (“The basis for all claims is that the City intentionally and in bad faith used legal process to deny claims that it knew were valid as early as 2009, and continues

⁷ Ch. 48.32 RCW.

⁸ The Varneys request fees under “RCW 4.84.185, RCW 51.32.185, the Court’s equitable powers, *McGreevy v. Oregon Mut. Ins. Co.*, 128 W[n].2d 26, 904 P.2d 731 (1995)[,] and *Olympic S.S. Co., Inc. v. Centennial Ins. Co.*, 117 Wn.2d 37, 811 P.2d 673 (1991).” Resp’ts’ Response Br.

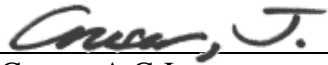
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Consolidated No. 56187-5-II

it[s] wrongful conduct to the present.”). Accordingly, we deny the Varneys’ requests for fees on appeal.

CONCLUSION

We hold that review of the first three issues certified by the trial court was improvidently granted and decline to address those issues. Further, we hold that the waiver of privilege as discussed in *Cedell* does not apply in the workers’ compensation context. We remand for proceedings consistent with this opinion.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.




Cruiser, A.C.J.

We concur:



Lee, J.



Price, J.

RON MEYERS & ASSOCIATES PLLC

April 21, 2023 - 12:46 PM

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