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STATE OF WASHINGTON
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Supreme Court Case No. 96105-1
Court of Appeals Case No. 50566-5-II

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

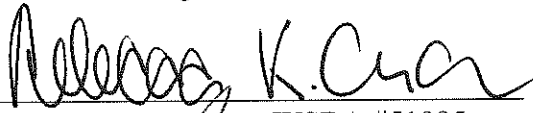
ALFREDO SUAREZ, Petitioner,

vs.

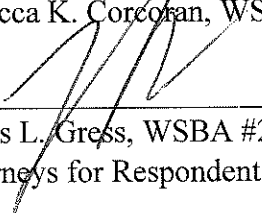
MASCO CORPORATION, Respondent

ANSWER TO PETITION FOR REVIEW

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8705 SW Nimbus Avenue, Suite 240
Beaverton, Oregon 97008



Rebecca K. Corcoran, WSBA #51995



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CODES

WAC 263-12-1255

I. INTRODUCTION

The trial court denying Mr. Suarez's Motion for Continuance was not an abuse of discretion. Likewise, the Court of Appeals was well within its discretion to deny oral argument. There was no abuse of discretion in either situation.

II. ISSUES FOR REVIEW

1. Was the trial court within its appropriate discretion in denying Mr. Suarez's Motion for Continuance when there was sufficient time remaining in the jury trial?
2. Was the Court of Appeals within its discretion in denying Mr. Suarez's request for oral argument?

III. CONSIDERATIONS FOR ACCEPTANCE OF REVIEW

A Petition for Review will be accepted by the Supreme Court only:

- (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
- (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or
- (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
- (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court. (RAP 13.4 (b)).

Mr. Suarez has not provided any indication that this decision is in conflict with any previous Supreme Court or Court of Appeals' opinions. The two issues that Mr. Suarez is alleging do not represent issues of substantial

public interest or significant questions of law. The discretion of the trial judge to maintain order and time management within his court is well established within case law. There is also no substantial right for oral argument and the Court of Appeals' opinion and denial of oral argument is squarely within its discretion as dictated by statute. There is no issue that needs to be addressed by the Supreme Court and therefore the Court of Appeals' decision should be upheld.

IV. STATEMENT OF THE CASE

Alfredo Suarez appealed a Board of Industrial Insurance Appeals' decision to the Superior Court for Clark County. The BIIA reversed a Department order directing Masco Corporation to pay time loss benefits. The case proceeded to a six-person jury trial on April 24, 2017. At the commencement of the trial, the trial court advised the jury on the general schedule of proceedings, including that the court starts promptly at 9:00 a.m. and that the court generally doesn't stay past 5:00 p.m. Mr. Suarez rested his case on the first day of the trial. On April 25, 2017, around 3:20 p.m. Mr. Suarez's attorney requested a Motion to Continue. Judge David Gregerson denied this motion. At 4:39 p.m. the jury retired to begin deliberations. At 5:08 p.m. the jury returned with a unanimous verdict affirming the Decision and Order of the Board of Industrial

Insurance Appeals dated April 12, 2016. Mr. Suarez then appealed the jury verdict to the Court of Appeals, Division II, on the theory that the trial court abused its discretion in denying his Motion for Continuance. The Court of Appeals decided, without oral argument, that the trial court did not abuse its discretion in denying Mr. Suarez's motion and issued an unpublished opinion on June 19, 2018.

V. ARGUMENT

A. The Court of Appeals Properly Affirmed the Trial Court's Discretion in Denying Mr. Suarez's Motion for Continuance

Mr. Suarez argues that the trial court abused its discretion when denying his Motion for Continuance on April 25, 2017. "A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons." *In re Marriage of Littlefield*, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997). In this instance there was no indication that the trial court acted unreasonably in its ruling.

Mr. Suarez provides no justifying cases in which the judge's conduct in this case would rise to the level of abuse of discretion. While there have been examples of a trial court abusing discretion in the matter of

motions for continuance, the employer could find no example of requesting a motion for the sake of jury deliberation. In *Coggle v. Snow*, the Court noted: “The ruling on the motions for a continuance and for reconsideration is within the discretion of the trial court and is reversible by an appellate court only for a manifest abuse of discretion.” *Coggle v. Snow*, 56 Wn. App. 499, 504, 784 P.2d 554 (1990). Here, the trial court judge clearly states in his reasoning that he is “in favor of good time management.” (Report of Proceedings at 7 lines 12-14). “Judicial discretion is a composite of many things, among which are conclusions drawn from objective criteria; it means a sound judgment exercised with regard to what is right under the circumstances and without doing so arbitrarily or capriciously.” *State ex rel. Clark v. Hogan*, 49 Wn.2d 457, 303 P.2d 290 (1956). Additionally, “[i]n exercising its discretion, a court may properly consider the necessity of reasonably prompt disposition of the litigation”. *Trummel v. Mitchell*, 156 Wn.2d 653, 670, 131 P.3d 305 (2006). Appellant argues that time management is an arbitrary and capricious decision which seems counter to the facts.

Mr. Suarez further argues that the Court of Appeals is flawed in its logic applying ER 611 to this case. There is no reason that ER 611 would not apply in this situation. As the Court of Appeals cites, “The court shall exercise reasonable presenting evidence so as to . . . (2) avoid needless

consumption of time . . .” Mr. Suarez argues that under RCW 51.52.115 this entire rule shall not apply. This is in error. This is in error. ER 1101 clearly states in which situations these evidentiary rules do not apply. Worker’s compensation appeals is noticeably absent from that list. Furthermore, WAC 263-12-125 and RCW 51.52.140 both explicitly state that the civil rules apply to worker’s compensation cases. Just because live testimony is not used in worker’s compensation appeals under RCW 51.52.115, it does not imply that the rules of evidence do not apply or that the court somehow loses its interest in avoiding the needless consumption of time. While the employer agrees that without live testimony the risk of witness harassment would not be applicable, it does not cause the entire evidentiary rule to be void.

A. The Court of Appeals’ Decision on Oral Argument is within its Discretion

Pursuant to RAP 11.4(j) the appellate court may, on its own initiative or on motion of a party, decide a case without oral argument. Appellant provides zero explanation or case law to support why this is an abuse of discretion for the appellate court. Though he alleges that this case has due process implications, he does not indicate how that affects oral arguments. There is no fundamental right to oral arguments and if the appellate court does not feel that it will bring illumination to any issue,

there is no point in clogging up proceedings with unnecessary oral argument. Only approximately one-third of cases hear oral arguments in Division II because of the sheer quantity of cases that are on appeal. The appellate courts have, in recent years, trended away from hearing oral argument in order to increase efficiency, and there is no abuse of discretion where a panel of judges has decided not to waste the Court's time.

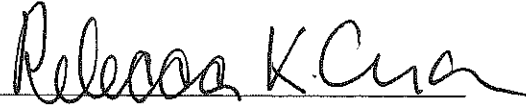
B. Attorney's Fees

Pursuant to RCW 51.52.130 and RAP 18.1(j), the self-insured employer requests reasonable fees and expenses for prevailing at the Court of Appeals and timely filing this answer to the Petition for Review.


VI. CONCLUSION

Based on the preceding evidence, there is no indication that either the trial court or the Court of Appeals abused its discretion in not granting Mr. Suarez's Motion for Continuance or oral argument. Pursuant to RAP 11.4(j), the Court of Appeals is firmly within its discretion to not hear oral argument. Motions for continuance and time management are within the discretion of the Court. Furthermore, there is an interest in not creating procedural delays, which makes the decisions of both the trial court and the Court of Appeals' decisions far from arbitrary and capricious.

The employer respectfully requests that you deny the Petition for Review and sustain the Court of Appeals' correct decision.



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CERTIFICATE OF MAILING

I hereby certify that I caused to be served the foregoing **Respondent's Answer to Petition for Review** on the following individuals on August 10, 2018, by mailing to said individuals true copies thereof, certified by me as such, contained in sealed envelopes, with postage prepaid, addressed to said individuals at their last known addresses to wit:

Steven L. Busick
Busick Hamrick, PLLC
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Vancouver, WA 98666

Sarah E. Kortokrax
Office of the Attorney General of Washington - L&I Division
PO Box 40121
Olympia, WA 98504-0121

And deposited in the post office at Beaverton, Oregon, on said date.

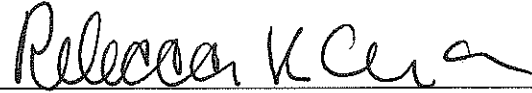
I further certify that I filed the original of the foregoing with:

Clerk of the Court
Washington Supreme Court
415 12th Street W
Olympia, WA 98504

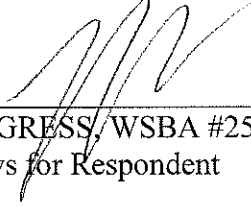
1 by e-filing it on: August 10, 2018.

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GRESS, CLARK, YOUNG & SCHOEPPER



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August 10, 2018 - 4:10 PM

Filing Petition for Review

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: Case Initiation
Appellate Court Case Title: Alfredo Suarez, Appellant v. MASCO Corp., et al., Respondents (505665)

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