

Supreme Court No. 94559-4

SUPREME COURT OF THE STATE OF WASHINGTON

MICHAEL GILMORE, a single man,

Plaintiff-Petitioner,

vs.

JEFFERSON COUNTY PUBLIC TRANSPORTATION BENEFIT
AREA, d/b/a Jefferson Transit Authority, a municipal corporation,

Defendant-Respondent.

MICHAEL GILMORE'S ANSWER TO AMICUS PETITION OF
WASHINGTON STATE LABOR COUNCIL

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I. IDENTITY OF PETITIONER

Pursuant to RAP 10.1(e) and RAP 10.3(f), Petitioner/Plaintiff Michael Gilmore answers the Washington State Labor Council's Amicus Memorandum herein, and responds in part to Respondent/Defendant Transit Authority's answer thereto.

II. INTRODUCTION

Mr. Gilmore largely concurs with the points raised by the Washington State Labor Council's (WSLC) Amicus Memorandum, but herein adds some additional information. Instead of addressing the substance of the new information in the WSLC Amicus Memorandum, Respondent/Defendant Transit Authority's Answer to the Amicus Memorandum primarily repeats the arguments the Transit Authority already made in its response to the Petition for Review herein.¹

III. STATEMENT OF THE CASE

The underlying facts are described in more detail in Mr. Gilmore's Respondent's Brief filed in the Court of Appeals, and in his Petition for Review filed herein, which also was accompanied by a copy of his Court of Appeals Respondent's Brief.

¹ RAP 10.3(f) provides that an answer to an Amicus Memorandum to Respondent/Defendant is "limited solely to the new matters raised in the brief of amicus curiae."

In short, Mr. Gilmore was injured in a motor vehicle collision while he was on the job. He eventually received L&I benefits and he also brought a “third party” tort claim against the tortfeasor Jefferson County Public Transportation Benefit Area, a/k/a Jefferson Transit Authority. The jury found in Mr. Gilmore’s favor and the trial judge denied Jefferson Transit Authority’s motion for a new trial. The Transit Authority appealed, and Division II reversed the jury verdict. Mr. Gilmore petitioned this Court for review, and the WSLC filed an Amicus Memorandum urging this Court to grant review.

IV. ARGUMENT

In support of its contention that this case raises issues of substantial public interest and of substantial concern to injured Washington workers and to Washington’s workers compensation system, the WSLC makes the point that in 2016 alone, there were 2,362 L&I claims filed as a result of highway accidents. *See*, Amicus Curiae Memorandum of the Washington State Labor Council, p. 4, and references cited therein.

A further review of the information provided at the L&I website which the WSLC cited shows that, of all the forty types of on-the-job injuries tracked by the Department in 2016, “highway accidents”, such as

Mr. Gilmore's case presents, were 11th in frequency and 8th in expenditure for the Department. In 2016, the Department paid out \$21,003,851 for highway accident cases, before accounting for reimbursements the Department received from the third party cases arising out of some of these highway crashes. *Id.*

This additional information further establishes the public interest in case law pertaining to L&I third party cases. The admission of defense expert witness testimony and of L&I collateral source payments, and reversals for unpreserved alleged errors and for discretionary trial court decisions, all may negatively impact L&I third party cases and thus negatively impact both injured workers and the Department.

In reply to the Transit Authority's Answer to Amicus Memorandum, Mr. Gilmore incorporates the arguments made in his Petition for Review. Briefly, Division II mischaracterized the gravamen of the trial court's ruling on the proffered Tencer evidence, and did so in such a manner that its decision, if upheld, would make the admission of Tencer's evidence mandatory in virtually every motor vehicle tort case. The Court of Appeals held that Tencer's testimony should have been admitted because this case involves disputes over "causation of the injury

and the nature and extent of the injury”. Court of Appeals decision, p. 16. But since nearly every motor vehicle tort case involves those disputes, this holding would make Tencer’s testimony admissible in virtually every case. That is a matter of substantial public interest, and it is contrary to Division I decisions upholding the exclusion of Tencer, and is contrary to this Court’s decision that his testimony should at best be considered on a case-by-case basis.

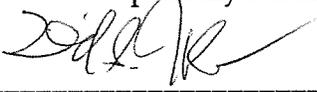
Similarly with respect to the L&I collateral source rule, the trial court invited the defense below to provide authority that this door could be opened under these facts, but the defense never did so. Yet Division II held it was reversible error to have excluded the evidence, despite case law and the special L&I collateral source statute. Again, this holding would make L&I collateral source evidence admissible in virtually every L&I third party case. This is a matter of substantial public interest and is contrary to the holdings of this Court regarding collateral sources, especially in the L&I context. The Transit Authority’s idea, promoted for the first time on appeal, that Mr. Gilmore’s trial presentation without medical bills somehow unilaterally eliminated L&I’s interest in his case is

incorrect. Furthermore, such an unbriefed issue should hardly be a basis for this Court to deny review.

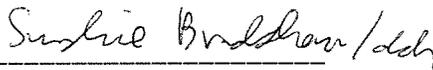
V. CONCLUSION

Mr. Gilmore asks this Court to grant review herein.

Respectfully submitted this 17th day of August, 2017.



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DECLARATION OF FILING & SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington that on August 17, 2017, I arranged for filing and service of the accompanying Respondent's Petition for Review by e-filing and e-service through the Court's web portal, upon all counsel of record herein.

Dated this 17th day of August, 2017, at Burien, WA.



David S. Heller

HELLER LAW FIRM PLLC

August 17, 2017 - 4:58 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 94559-4
Appellate Court Case Title: Michael Gilmore v. Jefferson County Public Transportation
Superior Court Case Number: 10-2-00390-7

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Comments:

Answer to Amicus Memorandum of Washington State Labor Council

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