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CASE NO.: 1036311
IN THE SUPREME COURT OF THE STATE OF
WASHINGTON

CASE NO.: 84503-9
IN THE COURT OF APPEALS OF THE STATE OF
WASHINGTON
DIVISION ONE (1), KING COUNTY

DOMINIQUE M. KEIMBAYE
Petitioner/Appellant

v.

SAFECO INSURANCE COMPANY OF AMERICA, A
LIABILITY MUTUAL INSURANCE COMPANY AND
KIMBERLY A. EXE,
individuals,

Respondent/Defendants.

APPEALS FROM KING COUNTY SUPERIOR COURT
Case NO.: 21-2-07543-2SEA
Honorable Adrienne McCoy

DOMINIQUE KEIMBAYE
PO BOX: 2024
BELLEVUE, WA 98009
PRO SE PLAINTIFF

**PETITIONER'S REPLY TO RESPONDENT'S ANSWER
TO MOTION FOR JUDGMENT ON ALL REMAINING
COMPENSATORY DAMAGES**

TABLE OF CONTENTS

<u>CONTENTS</u>	<u>PAGE</u>
I- INTRODUCTION-----	1
II- COUNTER-STATEMENTS AND ARGUMENT TO RESPONDENT’S ASSERTIONS-----	1, 17
A. Petitioner’s Motion for Judgment on All Remaining Compensatory Damages Meets the Criteria Outlined in RAP 10.4(d) and RAP 17.4(d)-----	2, 3
B. The Supreme Court Has the Authority to Award the Relief Sought by Petitioner -----	3, 4
C. Additional Legal and Precedents Supporting Petitioner’s Position-----	5, 11
a) The Supreme Court’s Role in Ensuring Fairness and Justice in Awarding Damages	
b) The Appellate Court Has the Authority to Correct Errors of Law and Fact When the Record Supports It	
c) The Trial Court’s Findings Were Based on Insufficient and Improperly Excluded Evidence, Which Justifies Supreme Court Intervention	

- d) Substantial Evidence Supports the Need for an Increased Damage Award
- e) Public Policy Considerations for Correcting Errors in Damage Awards

D. Further Justification for the Supreme Court's Exercise of Its Authority in This Case-----11, 17

- a) The Supreme Court's Discretion to Review and Correct Under-Compensatory Awards
- b) The Supreme Court's Role in Reviewing Factual Errors in the Context of Legal Principles
- c) The Award of Prejudgment Interest and Attorney Fees is Mandated Under Washington Law
- d) Justice and Fair Compensation: The Court's Duty to Correct Inadequate Awards

III- CONCLUSION-----18

TABLE OF AUTHORITIES

<u>AUTHORITIES</u>	<u>PAGES</u>
<u>Washington Cases:</u>	
<i>Baum v. Murray</i> , 23 Wn.2d 890, 903, 162 P.2d 801, 807 (1945) -----	3, 4
<i>Booth v. Kappel</i> , 138 Wn. App. 76, 156 P.3d 945 (2007) -----	17
<i>Brower v. State</i> , 137 Wn.2d 44, 76, 969 P.2d 42, 60 (1998) ----	9
<i>Dyal v. Fire Companies Adjustment Bureau</i> , 23 Wn.2d 515, 522, 161 P.2d 321, 324 (1945) -----	8
<i>Dykstra v. James</i> , 139 Wn.2d 401, 987 P.2d 587 (1999) -----	12
<i>Edwards v. Morrison-Knudsen Co.</i> , 61 Wn.2d 593, 599, 379 P.2d 735, 739 (1963) -----	5
<i>Lantis v. Pfarr</i> , 67 Wn.2d 994, 995, 410 P.2d 900, 901 (1966) --- -----	10
<i>Lawson v. State</i> , 107 Wn.2d 444, 448, 730 P.2d 1308, 1310 (1986) -----	6
<i>Money Mailer, LLC v. Brewer</i> , 194 Wn.2d 111, 130, 449 P.3d 258, 268 (2019) -----	7
<i>Oil Heat Institute of Washington v. Town of Mukilteo</i> , 81 Wn.2d 7, 9, 498 P.2d 864, 866 (1972) -----	10, 11
<i>Schreiber v. In re Personal Restraint of Schreiber</i> , 154 Wn.2d 40, 45, 110 P.3d 104 (2005) -----	13, 14

State v. Peltier, 181 Wn.2d 290, 332 P.3d 457 (2014) -----13, 14

Stringfellow v. Stringfellow, 56 Wn.2d 957, 959, 350 P.2d 1003,
1004 (1960) -----8

Swartley v. Seattle School District No. 1, 70 Wn.2d 17, 23–24,
421 P.2d 1009, 1014 (1966) -----4, 16, 17

Walker v. State, 153 Wn. App. 701, 708, 224 P.3d 814, 818
(2009) -----5, 6

Washington State Rules, Regulations, & Statutes

RAP 10.4-----2

RAP 17.4-----2

RCW 4.56.110-----15

RCW 4.84.010-----15

RCW 4.84.185-----15

RCW 19.52.020-----15

I. INTRODUCTION

The legal issues at hand arise from an admitted motor vehicle collision between Petitioner Dominique Keimbaye (“Keimbaye”) and Respondent Kimberly A. Exe (“Exe”) in June 18, 2018. This Reply is filed in response to Respondent’s Answer to Petitioner’s Petition for Review and Request for Relief (“Petition”) and her objection to Petitioner’s Motion for Judgment on All Remaining Compensations. While Respondent attempts to argue that Petitioner’s Motion is procedurally deficient and that the requested relief is beyond the jurisdiction of this Court, the facts, case law, and legal principles establish a compelling case for the Supreme Court to grant Petitioner’s Motion and award damages sought.

II. COUNTER-STATEMENTS AND ARGUMENT TO RESPONDENT’S ASSERTIONS

A. Petitioner's Motion for Judgment on All Remaining Compensatory Damages Meets the Criteria Outlined in RAP 10.4(d) and RAP 17.4(d)

Respondent argues that Petitioner's Motion should be denied due to procedural deficiencies under **RAP 10.4(d)** and **RAP 17.4(d)**. However, these arguments mischaracterize the procedural posture and intent behind Petitioner's Motion. First, Petitioner's Motion, while included in his Reply, was filed in accordance with the principles of justice and equity to correct a manifest error in the trial court's findings. Specifically, Petitioner seeks the Supreme Court's intervention to correct the trial court's failure to award compensatory damages for proven medical expenses, lost wages, and pain and suffering, which are undisputed in terms of their occurrence and severity.

RAP 10.4(d) and **RAP 17.4(d)** primarily govern situations where a motion seeks to preclude hearing a case on its merits, which is not the case here. Petitioner's Motion does

not seek to bypass substantive review but seeks a just and lawful correction of the judgment to properly reflect the damages Petitioner has suffered. Moreover, Respondent's claim that Petitioner's Motion was filed improperly as part of the Reply is not only without merit, but it also fails to account for the Clerk's set briefing schedule, which permitted Petitioner's motion to be heard in conjunction with the petition for review. The Motion should not be denied on procedural grounds, as it aims to ensure fairness and finality in the litigation of Petitioner's claims.

B. The Supreme Court Has the Authority to Award the Relief Sought by Petitioner

Respondent contends that the Supreme Court cannot increase the award made by the jury unless a mathematical error is demonstrated. This is a misreading of the relevant law. While the Supreme Court has historically refrained from altering jury awards absent computational error (see *Baum v. Murray*, 23 Wn.2d 890, 903, 162 P.2d 801, 807

(1945)), this Court has also recognized its authority to intervene when there are clear errors in the trial court's application of the law or when there are egregious deficiencies in the damages awarded. In *Swartley v. Seattle School District No. 1*, 70 Wn.2d 17 (1966), the Supreme Court reaffirmed that "where there is substantial evidence to support a verdict, the decision of the trial court should not be disturbed unless it is so far inadequate or excessive as to be without support in the evidence."

Here, Petitioner has demonstrated that the trial court erred by failing to award compensatory damages for proven economic losses such as medical expenses and wage loss, as well as non-economic damages related to emotional distress. As *Swartley* emphasizes, the Court has the power to ensure that the damages awarded reflect the full scope of a party's loss. Therefore, the Supreme Court possesses the authority to correct the trial court's judgment and grant Petitioner the relief requested.

C. Additional Legal and Precedents Supporting Petitioner's Position

In further support of Petitioner's Motion for Judgment, additional case law reinforces the arguments made above, specifically regarding the role of the appellate courts in addressing errors in the lower court's judgment.

a) The Supreme Court's Role in Ensuring Fairness and Justice in Awarding Damages

The Supreme Court has a significant role in ensuring fairness and justice in the awarding of damages. In *Edwards v. Morrison-Knudsen Co.*, 61 Wn.2d 593, 599, 379 P.2d 735, 739 (1963), the Court held that when "the amount of damages awarded is so inadequate that it shocks the conscience," appellate courts have a duty to correct the under-award of damages.

Moreover, in *Walker v. State*, 153 Wn. App. 701, 708, 224 P.3d 814, 818 (2009), as amended on reconsideration (Feb. 11, 2010), the Court affirmed

that appellate courts are charged with reviewing whether the trial court's decisions regarding damages were "clearly erroneous" and "not supported by substantial evidence." The facts in this case establish that Petitioner was entitled to compensatory damages, which the trial court erred in failing to award.

b) The Appellate Court Has the Authority to Correct Errors of Law and Fact When the Record Supports It

In *Lawson v. State*, 107 Wn.2d 444, 448, 730 P.2d 1308, 1310 (1986), the Supreme Court held that "when the trial court has committed an error of law or when there is an injustice to the party, the appellate court is empowered to correct such errors." The trial court in this case committed an error of law by excluding relevant and material evidence of Petitioner's medical expenses and lost earnings, which were necessary to substantiate his claims.

Additionally, in *Money Mailer, LLC v. Brewer*, 194 Wn.2d 111, 130, 449 P.3d 258, 268 (2019), the Court emphasized that an appellate court can review and overturn a trial court's judgment when there is a material error, even when the judgment was based on a reasonable conclusion. The Court noted that "the appellate court's role is not limited to simply upholding the trial court's judgment, but rather to ensure that the judgment is supported by sound legal principles and substantial evidence." In this case, the trial court's refusal to award the full damages supported by the evidence constitutes such an error that should be rectified by this Court.

c) The Trial Court's Findings Were Based on Insufficient and Improperly Excluded Evidence, Which Justifies Supreme Court Intervention

Respondent asserts that the trial court's findings were adequately supported by substantial evidence and that the Court of Appeals correctly affirmed the trial court's

judgment. However, Respondent overlooks the fact that Petitioner was precluded from introducing essential medical testimony and documentation at trial, which directly impacted the jury's ability to fully assess Petitioner's damages.

As the Supreme Court held in *Stringfellow v. Stringfellow*, 56 Wn.2d 957 (1960), and reaffirmed in *Dyal v. Fire Companies Adjustment Bureau*, 23 Wn.2d 515 (1945), the power to weigh the evidence lies with the jury and the trial court, but this power is not absolute and can be reviewed where there is a miscarriage of justice. In this case, Petitioner's injuries were well-documented but were not fully presented to the jury due to procedural limitations. This Court's intervention is necessary to prevent an unjust result based on incomplete and misleading evidence.

d) Substantial Evidence Supports the Need for an Increased Damage Award

Petitioner respectfully submits that the relief sought in this Motion is not only legally justified but also consistent with prior decisions by the Supreme Court and while Respondent claims that the trial court's decision was supported by substantial evidence, Petitioner asserts that the evidence clearly shows that the trial court failed to award damages that were proven and warranted by the facts of the case. The lack of awarded damages for past medical expenses and lost wages represents a significant deviation from the standard of compensation that would be just under the circumstances. In *Brower v. State*, 137 Wn.2d 44, 76, 969 P.2d 42, 60 (1998), the Court held that appellate courts may intervene to "ensure that justice is done" when there is a substantial injustice in the trial court's judgment. The trial court's failure to award compensatory damages for medical expenses, wage loss, and pain and suffering, given the undisputed

evidence presented by Petitioner, is a clear injustice that should be corrected by this Court.

As noted in *Lantis v. Pfarr*, 67 Wn.2d 994, 995, 410 P.2d 900, 901 (1966), the Supreme Court has held that it is the jury's duty to determine damages, but when substantial evidence of loss is presented and improperly excluded, it is the responsibility of the appellate courts to ensure that the final judgment reflects the full scope of the damages incurred.

e) Public Policy Considerations for Correcting Errors in Damage Awards

The policy underlying the Washington State Rules of Appellate Procedure and case law is to ensure that damages awarded by a trial court are not only supported by the evidence but also reflect the full and fair compensation for the harm suffered by the plaintiff.

In *Oil Heat Institute of Washington v. Town of Mukilteo*, 81 Wn.2d 7, 9, 498 P.2d 864, 866 (1972),

the Court emphasized the importance of providing “just compensation” for a party’s losses, particularly where the evidence clearly supports such compensation. Petitioner’s injuries and losses are well-documented, and the failure to award reasonable compensation directly contradicts the public policy interest in providing full redress for those who have been harmed due to the fault of others.

D. Further Justification for the Supreme Court's Exercise of Its Authority in This Case

This case exemplifies the need for the Supreme Court to step in to rectify the lower court’s failure to award compensatory damages supported by substantial evidence and the legal standards established by the Court.

a) The Supreme Court’s Discretion to Review and Correct Under-Compensatory Awards

As the highest appellate court in Washington State, the Supreme Court has the discretion to review cases where the trial court’s decision is contrary to the

principles of justice and fairness. In *Dykstra v. James*, 139 Wn.2d 401, 987 P.2d 587 (1999), the Supreme Court acknowledged its authority to review the sufficiency of damages awarded in a case where a party claims that the jury's verdict is insufficient or inconsistent with the law. The Court stated that the trial court's failure to fully compensate a party for all proven losses justifies the Court's intervention when there is a compelling case that the trial court did not follow established law or procedures in arriving at its verdict.

In *Dykstra*, the Court emphasized that where evidence is unchallenged, and where the damages awarded by the jury are disproportionately low when compared to the proven losses, the Supreme Court may exercise its authority to ensure that justice is done. Here, Petitioner is similarly situated in that the damages he seeks are based on uncontroverted evidence of injury, medical

treatment, wage loss, and emotional distress. As such, the case presents a clear opportunity for this Court to assert its role in rectifying an unjust outcome and awarding fair compensation in accordance with established legal standards.

b) The Supreme Court's Role in Reviewing Factual Errors in the Context of Legal Principles

It is well-settled that the Supreme Court has not only the authority but also the obligation to correct legal errors made by lower courts. The Court has consistently emphasized that factual errors related to the assessment of damages can be subject to review if they result in manifest injustice. In *In re Personal Restraint of Schreiber*, 154 Wn.2d 40, 45, 110 P.3d 104 (2005), the Court held that "a factual error that leads to a miscarriage of justice may be corrected by the appellate court." In *State v. Peltier*, 181 Wn.2d 290, 332 P.3d 457 (2014), the Supreme Court's power

extends to ensuring that justice is done, and in cases of manifest injustice or significant legal errors in the trial process, it has the authority to grant appropriate relief. The decision in *Schreiber* also serves to underscore that even if the trial court's decision was based on what appeared to be a reasonable assessment of the evidence, this Court may still intervene when the resulting judgment leads to unfair consequences. In this case, the trial court's refusal to allow the jury to consider the full scope of Keimbaye's injuries and medical expenses was a legal error, and the Supreme Court can and should correct that error by awarding the full compensatory damages Keimbaye seeks. The Court has the constitutional mandate to correct substantial injustices that undermine the fairness of the trial process.

c) The Award of Pre and Post judgment Interest and Legal Fees is Mandated Under Washington Law

In addition to correcting the trial court's judgment, Petitioner asserts that pre and post-judgment interest and attorney fees should be awarded. Respondent's arguments against the award of prejudgment interest under **RCW 4.56.110** and **RCW 19.52.020** are misplaced. Washington law mandates that prejudgment interest should be awarded at **12% per annum** from the date of the injury until the compensatory damages are paid in full. Petitioner's injuries occurred on June 18, 2018, and thus, the applicable prejudgment interest should begin accruing from that date, consistent with statutory law. Further, **RCW 4.84.010** and **RCW 4.84.185** provide for the award of attorney fees and costs in cases where the prevailing party has not been awarded the full amount of the damages they sought and where the opposing party's conduct warrants such an award. Respondent's refusal to acknowledge the merit of Petitioner's claims, despite clear evidence of

injury and loss, justifies an award of attorney fees and costs. This is not an incidental matter but an essential component of the relief Petitioner seeks in this case.

d) Justice and Fair Compensation: The Court's Duty to Correct Inadequate Awards

One of the most fundamental roles of the Supreme Court is to ensure that parties receive justice and adequate compensation when their rights are violated.

The Supreme Court, in *Swartley v. Seattle School District No. 1*, 70 Wn.2d 17, 421 P.2d 1009 (1966),

stated that "inadequate awards for damages that fail to reflect the full extent of the injury are an injustice."

This principle directly applies to Petitioner's case, where the trial court's failure to award full compensatory damages, despite the substantial evidence presented, is an injustice that should be corrected.

Furthermore, in *Booth v. Kappel*, 138 Wn. App. 76, 156 P.3d 945 (2007), the Court reiterated that it is an abuse of discretion for a trial court to exclude evidence that is essential to a party's claims, and that a party is entitled to have all relevant and material evidence considered in the determination of damages. The exclusion of critical medical evidence in this case, and the trial court's failure to properly award damages for Petitioner's medical costs and lost wages, directly contradicts the principles set forth in *Booth* and *Swartley*. This is an error that should be corrected by the Supreme Court. Petitioner has suffered significant financial and emotional harm as a result of the injuries sustained in the rear-ended motor vehicle collision with Respondent.

III. CONCLUSION

For the reasons set forth above, Petitioner respectfully requests that the Supreme Court grant his Motion for Judgment on All Remaining Damages and issue a judgment consistent with the evidence presented. This Reply is submitted in good faith, with a firm belief that Petitioner is entitled to the relief sought based on the facts, law, equity of the case, and legal principles presented.

CERTIFICATE OF COMPLIANCE

I certify that on this 12th day of February 2025, I caused a true and correct copy of the foregoing Petitioner's Reply to Respondent's Answer to motion and Request for Relief containing **2,499-word count** to be filed with the Supreme Court via Court of Appeals Division One (1) and served upon all counsel and their Respondent in the above captioned via the Court's eFiling system.

DATED: this 12th of February, 2025 Seattle Washington

Respectfully submitted,

/s/Dominique Keimbaye

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