Supreme Court No. 90630-1

Court of Appeals, Division I, Nos. 31451-1-III & 31789-7-III

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

WALTER L. TAMOSAITIS and SANDRA B. TAMOSAITIS, a marital community,

Plaintiffs/Petitioners,

v.

BECHTEL NATIONAL, INC., FRANK RUSSO and GREGORY ASHLEY,

Defendants/Respondents

RESPONDENTS' ANSWER TO PETITION FOR REVIEW

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TABLE OF CONTENTS:

TABLE OF AUTHORITIES:

Cases

Statutes

Rules

Other Authorities

A. Introduction and Summary of BNI's Position.

Respondents Bechtel National, Inc., Frank Russo and Gregory Ashley (collectively "BNI") request that this Court deny Walter Tamosaitis's petition for discretionary review. Tamosaitis makes no argument that the Court of Appeals decision conflicts with any Washington appellate decision, RAP 13.4(b)(1) and (2). The court in fact followed established Washington law, that of other states, and the Restatement (Second) of Torts in requiring a threshold showing of pecuniary loss in order to maintain a claim of tortious interference with a business expectancy.

Nor does this case present an issue of substantial public interest, RAP 13.4(b)(4), the only basis argued by Tamosaitis for review by this Court. To begin with, the Court of Appeals properly rejected Tamosaitis's contention that existing tort and statutory remedies are inadequate. Tamosaitis affirmatively availed himself of the protections afforded by federal whistleblower laws by bringing claims against BNI, URS, and the DOE under the Energy Reorganization Act ("ERA"), 42 U.S.C. §5851 *et seq.*, but then *voluntarily* dismissed his ERA whistleblower claim against BNI, while moving forward with his parallel claims against URS and DOE in federal court. Tamosaitis should not now be heard to complain about the "unavailability" of a remedy he elected not to pursue against BNI.

Similarly, the Court of Appeals followed settled law in affirming the trial court's denial of Tamosaitis's CR 60 motion, and in refusing to allow Tamosaitis to supplement the record on appeal with evidence of events occurring long after the trial court entered final judgment. If Tamosaitis claims to have suffered damages due to subsequent tortious conduct, the courts are open to him. But as the Court of Appeals observed, a trial court does not abuse its discretion in refusing to vacate a judgment based on "a change in facts that had not yet occurred at the time judgment was entered." Op. at 15-16.

Finally, because the trial court's entry of summary judgment was supported by multiple alternative grounds, review by this Court would be futile. While expressing doubt that Tamosaitis could satisfy the other elements of a tortious interference claim, the Court of Appeals found it unnecessary to rule on the four alternative grounds for affirmance. Op. at 2 n.1. As this Court may affirm due to Tamosaitis's inability to satisfy any legal requirement of the tort, RAP 13.7(b), those alternative grounds present four additional reasons that no substantial public interest would support this Court's review. The trial court's action is accurately viewed as a routine entry of summary judgment based on undisputed, case-specific facts demonstrating that the plaintiff's claim was fatally flawed in several respects.

B. Restatement of the Case.[1]

1. Background Facts.

BNI is the prime contractor on the U.S. Department of Energy's Waste Treatment & Immobilization Project ("WTP" or the "Project") in Richland, Washington. URS Energy & Construction, Inc. ("URS") is BNI's subcontractor on the Project. Tamosaitis, who was an employee of URS, was assigned to a senior management position at the Project from 2003 to 2010, when he was reassigned by his employer URS. I CP 1662, 1668-69.

As Tamosaitis's claim was dismissed on summary judgment, the Court of Appeals' opinion repeats many of Tamosaitis's unproven and contested allegations in the light most favorable to the non-moving party. Most of those contested facts refer to background matters that are not directly relevant to the issues raised in Tamosaitis's petition. The directly relevant facts are undisputed and established by Tamosaitis's own contemporaneous documents and testimonial admissions—most of which are conveniently ignored by Tamosaitis in his petition. For example, Tamosaitis asserts that he always expected to remain at WTP through

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[1] Tamosaitis's Petition addresses the consolidated appeal of two separate trial court rulings, and thus involves two separate records on appeal—the record of the trial court's summary judgment dismissing his tortious interference claim (cited as "I CP __") and the record on his second appeal of the trial court's denial of his CR 60 motion (cited as "II CP __").

start-up and operations (*see, e.g.*, Petition at 4), but this after-the-fact assertion is flatly contradicted by multiple emails he sent to fellow URS management employees, inquiring about new assignments at a variety of URS projects, in May and June 2010—just a few weeks before his July 2, 2010 reassignment off the Project. Many of these emails were labeled "Jobs for Walt." *See, e.g.*, I CP 1789-90, 1792, 1794-95, and 1797-98.

Tamosaitis similarly ignores other undisputed evidence: *e.g.*, that URS actively tried to assist him in his search for a new assignment; that he unrealistically sought to limit his job search to the Richland area; and that upon his transfer off WTP he was immediately reassigned to the very position (on a different URS-run project) he had asked for in an email just five weeks earlier. *See* the "Statement of the Case" at pages 4-22 of BNI's response brief below dated August 15, 2012. Most significantly for purposes of his petition for review are Tamosaitis's sworn admissions that he could not identify any pecuniary loss whatsoever. He admitted in his deposition testimony, given over a year after his departure from WTP in October 2011, that he "continued to receive" his full "URS salary." I CP 1657. When combined with his bonus and a "retirement benefit" associated with a previous position with a URS predecessor, his total annual compensation was about $375,000, not including his employee benefits package. I CP 1663-64. Tamosaitis further acknowledged that he

could not identify any monetary damages suffered as a result of his July 2, 2010 reassignment off WTP without speculating. I CP 1683-84.

Those dispositive admissions constituted the evidence before the trial court on summary judgment. The Court of Appeals was thus correct in observing that Tamosaitis "did not lose any pay" resulting from his departure from the Project. Op. at 5.

2. The Filing of Tamosaitis's Legal Claims, and his Subsequent Voluntary Decision to Abandon his Whistleblower Claim Against BNI.

Following his July 2, 2010 transfer off the Project, Tamosaitis brought two lawsuits. First, on July 30, 2010, he commenced an administrative action before the U.S. Department of Labor, naming URS and (eventually) DOE and BNI as respondents, pursuant to the whistleblower protection provisions of the ERA. He filed this separate action in Benton County Superior Court on September 13, 2010, against BNI, URS, and five individual defendants, alleging civil conspiracy and tortious interference with business expectancy. I CP 1-34.

Nearly a year later, after substantial discovery had taken place in this action, Tamosaitis voluntarily dropped BNI from his ERA whistleblower action, II CP 230, and also voluntarily dismissed his civil conspiracy claim against the BNI and URS defendants in this action. I CP 1522-24.

3. The Trial Court's Entry of Summary Judgment on Tamosaitis's Tortious Interference Claim and Denial of his Untimely Rule 60 Motion.

On January 9, 2012, the trial court granted BNI's summary judgment motion on Tamosaitis's remaining tortious interference claim. I CP 2503-04. That ruling was supported by *five separate and independent grounds*, all of which were based on the inconsistencies between the admitted facts in the record and the black-letter legal requirements of a tortious interference claim. *See, e.g.*, I CP 1625-30, 1632-33. The trial court denied Tamosaitis's motion for reconsideration, entering final judgment in favor of BNI, on February 23, 2012. I CP 2576. Tamosaitis appealed. On February 7, 2013, this Court denied his motion for direct review and transferred the case to the Court of Appeals.

On May 8, 2013, over fourteen months after entry of final judgment, and several months after the briefing on his main appeal had been completed, Tamosaitis filed a CR 60 motion with the trial court. The sole basis for this untimely collateral attack on the final judgment was his claimed disappointment with the size of an annual performance bonus he received in March 2013—nearly three years after his departure from WTP, his last contact with BNI—from a *non-party* to this litigation, his employer URS. II CP 2. The trial court denied Tamosaitis's CR 60

motion. II CP 549-51. His appeal of that ruling was consolidated by Division III with his earlier appeal of the final judgment.

4. The Court of Appeals' Affirmance of the Trial Court's Rulings and Rejection of Tamosaitis's Eleventh-Hour Attempt to Supplement the Record on Appeal.

In briefing on his second appeal, Tamosaitis sought to introduce evidence that he received a layoff notice from URS in October 2013, along with other evidence that was not in the record on either appeal and had never been considered by the trial court. Op. at 13. Tamosaitis made this eleventh-hour attempt to supplement the appellate record despite the absence of evidence that BNI played any role in URS's decision to lay him off, or was even aware of that decision. Indeed, that event occurred *39 months* after Tamosaitis's last contact with WTP or BNI, and well over a year after the trial court entered final judgment in this case.

In a unanimous decision issued on July 1, 2014, the Court of Appeals affirmed the trial court's entry of summary judgment, affirmed the trial court's denial of the CR 60 motion, and refused to consider the after-occurring evidence submitted for the first time on appeal.

C. Restatement of Issues Relevant to Petition for Review.

Tamosaitis improperly states as "issues" legal theories that were not addressed by the Court of Appeals or that were rejected by the Court of Appeals because they rely on evidence that was not before the trial

court when it dismissed his claim on summary judgment. For instance, Tamosaitis mischaracterizes an issue that was neither raised by BNI below nor addressed by the Court of Appeals—whether an at will employee can sue for interference with a business expectancy—as implicating a conflict between divisions of the Court of Appeals. Petition at 2-3, 20; See *infra* § D(4) at n.5. As a petitioner in this Court, however, Tamosaitis is limited to seeking review of the Court of Appeals decision, RAP 13.4(b), and may not seek an advisory opinion on abstract issues that were not addressed by the Court of Appeals and never presented below.

The issues presented by the Court of Appeals decision are:

(1) Is pecuniary loss a threshold element of a claim for tortious interference with a business expectancy?

(2) Did the trial court properly exercise its discretion in denying Tamosaitis's CR 60 motion, which was directed to evidence that did not even exist until more than a year after entry of final judgment?

(3) Did the Court of Appeals properly refuse to consider after-occurring evidence that was never before the trial court and thus could not conceivably have affected its ruling on the summary judgment motion?

(4) Should this Court deny review because even were Tamosaitis's claim not barred by his inability to show pecuniary loss, the trial court's dismissal of his tortious interference claim would nonetheless be affirmed

because of Tamosaitis's inability to establish any of four other legal requirements of a tortious interference with business expectancy claim?

D. Argument Why Review Should Be Denied.

Tamosaitis concedes that the Court of Appeals' holding that pecuniary loss is a threshold element of a claim for tortious interference does not conflict with existing Supreme Court or Court of Appeals authority. RAP 13.4(b)(1), (2). He makes no claim that the ruling implicates constitutional issues justifying this Court's review under RAP 13.4(b)(3). He instead invokes RAP 13.4(b)(4) concerning matters of "substantial public interest." *See, e.g.*, Petition at 13. Yet nothing about the Court of Appeals' disposition of this fact-specific case implicates the public interest.

1. The Court of Appeals was Correct in Ruling that a Tortious Interference Claim Requires a Threshold Showing of Pecuniary Loss.

The Court of Appeals properly held that "a claim of tortious interference with a business expectancy requires a threshold showing of resulting pecuniary damages." Op. at 8. This ruling is in harmony with existing Washington authority. For example, in *Newton Ins. Agency & Brokerage, Inc. v. Caledonian Ins. Group, Inc.*, 114 Wn. App. 151, 158, 52 P.3d 30 (2002), the Court of Appeals stated that a business expectancy is "something of pecuniary value." Other reported Washington cases

concerning tortious interference—including the cases cited by Tamosaitis—invariably involve an element of compensable pecuniary damage. Op. at 8; *see, e.g., Cherberg v. Peoples Nat'l Bank of Wash.*, 88 Wn.2d 595, 606-07, 564 P.2d 1137 (1977) (business disruption losses); *Mutual of Enumclaw Ins. Co. v. Gregg Roofing, Inc.*, 178 Wn. App. 702, 710, 315 P.3d 1143 (2013) (lost profits); *review den.*, 180 Wn.2d 1011 (2014). Moreover, as the Court of Appeals observed, courts in other states that have addressed the issue, including Massachusetts, Iowa, and Pennsylvania, have similarly determined that a threshold showing of pecuniary loss is required. Op. at 10-12.

Tamosaitis attempts to rely on *Max–Planck–Gesellschaft Zur Förderung Der Wissenschaften E.V. v. Whitehead Inst. for Biomedical Research, 850 F. Supp. 2d 317 (D. Mass. 2011)*, to support his argument that "future" damages are sufficient to sustain a claim for equitable relief under a tortious interference theory. Petition at 17. In *Max-Planck-Gesellschaft*, however, the court held that "pecuniary harm is a necessary element of a tortious interference claim." 850 F. Supp. at 326. Moreover, in discussing the adequacy of "future *particularized* damages," *id.* (emphasis added), the court clearly referred to readily identifiable, certain-to-occur losses as a result of the present set of facts—not, as in the instant case, unrelated losses allegedly arising from new facts that did not even

come into existence until more than a year after final judgment was entered.[2]

The Court of Appeals expressly followed this Court's lead by relying on "the provisions of the *Restatement (Second) of Torts* to guide the development of this tort in Washington." *See* Op. at 9; *see also Calbom v. Knudtzon*, 65 Wn.2d 157, 163, 396 P.2d 148 (1964) (applying Restatement provisions including §766 and cmt. c thereto in defining a Washington tortious interference claim). The Restatement is clear that a tortious interference claim is an economic tort "for pecuniary loss resulting from the interference." Rest. (2d) Torts §766, cmts. c and t (1979). As the Court of Appeals noted, the Restatement "goes on to explain that this tort generally does not cover other non-commercial relationships such as 'interference with personal, social and political relations.'" Op. at 9; Rest. §766 at cmt. c.

Tamosaitis quibbles with the Court of Appeals by citing Section 774A of the Restatement for the proposition that the tort can allow recovery of other, consequential damages including emotional distress or actual harm to reputation. But the Court of Appeals did not disagree with

[2] Tamosaitis's attempted reliance on *Renden, Inc. v. Liberty Real Estate P'ship*, 213 Ga. App. 333, 444 S.E.2d 814 (1994), Petition at 18, is equally meritless. The court in that case specifically stated that one of the required elements of a tortious interference claim is "financial injury." 444 S.E.2d at 817.

that proposition. Section 774A is, in fact, in complete harmony with Section 776B's economic definition of the claim: it lists as the first element of recoverable damage "pecuniary loss of the benefits of the contract," and then connects that necessary element of loss with other categories of potentially recoverable damages by the conjunction "and"—not "or."

As the name implies, the tort of interference with *business* expectancy addresses a plaintiff's *economic* interests. The Court of Appeals properly recognized that the non-economic injuries identified by Tamosaitis can be remedied through other causes of action, for instance a defamation action for damage to reputation. Op. at 12-13. The Court of Appeals also correctly rejected Tamosaitis's fallback contention (which violated RAP 9.12 because he first raised it *after* summary judgment had already been entered by the trial court, I CP 2503, 2508) that his alleged loss of books stated a pecuniary damage claim resulting from interference with a business expectancy. As the court observed, any such loss would be "separate and distinct" from damages associated with a lost business opportunity, and would at most state a separate damage claim for "replevin or conversion." Op. at 12. If Tamosaitis believed he had a conversion claim, he was free to assert it.

Tamosaitis admitted under oath that he could not satisfy the threshold requirement of a showing of pecuniary loss. Any effort to do so would be "speculation." I CP 1683-84. Therefore, the Court of Appeals' conclusion that he failed to demonstrate a required element of the tort is in harmony with the record in this case, Washington decisions, the Restatement, and existing authority in other states.

2. Tamosaitis's Claim that he Lacks an Adequate Remedy is Nonsense and is Belied by his Voluntary Dismissal of his Federal Whistleblower Claim Against BNI.

Tamosaitis complains that federal law does not provide sufficient protections for those bringing whistleblower claims, but admits that he exercised his right to assert a claim against URS, DOE and BNI under the whistleblower protection provisions of the ERA.[3] Petition at 15-16. He also complains that the Department of Labor, to whom his ERA claim was initially directed, "does not aggressively pursue whistleblower cases," *id.*,

[3] The ERA is a comprehensive whistleblower protection statute that provides broad remedies including the following: compensatory damages, back pay, front pay, reinstatement, restoration of benefits, and recovery of litigation costs and expenses including attorney's fees. 42 U.S.C. § 5851(b)(2)(B). If the Secretary of Labor fails to issue a final decision within one year of the filing of the complaint, the complainant has the ability to "kick out" his claim to federal district court. *Id.* at § 5851(b)(4). If the Secretary issues a final order within one year of the filing of the complaint, such decision is ultimately appealable to a federal circuit court of appeal. *Id.* at § 5851(c). *Cf. Korslund v. DynCorp Tri-Cities Servs., Inc.*, 156 Wn.2d 168, 191, 125 P.3d 119 (2005) (holding that claimant's action under the ERA provided adequate protection for Washington public policy concerns, and declining to consider a common law whistleblower tort cause of action).

but then admits that he subsequently chose to exercise his "kick-out" rights and transfer the case into United States District Court. *Id.* at 15. Notably, Tamosaitis does not argue that federal court is an inadequate forum, or that federal judges do not take whistleblower cases seriously.

In short, this Court need not rewrite the legal standards applicable to tortious interference claims to fill in any gaps in available legal remedies, to further the public's interest in nuclear safety, or to protect whistleblowers, as Tamosaitis argues. The undisputed facts of this case demonstrate that no such gap exists. Tamosaitis in late 2011 chose to *abandon* his statutory remedy by voluntarily dismissing his ERA whistleblower claim against BNI while continuing forward with his parallel claims against URS and the DOE in federal court. I CP 1522-24, II CP 230. Tamosaitis should not be heard to complain about the supposed unavailability of a remedy he elected not to pursue against BNI.

3. The Court of Appeals Properly Reviewed the Summary Judgment Based on the Evidence Before the Trial Court at the Time it Entered its Order, and was Correct in Holding That the Trial Court Did Not Abuse its Discretion in Denying Tamosaitis's CR 60 Motion.

Tamosaitis never squarely addresses the Court of Appeals' review of the trial court's CR 60 ruling, which was properly affirmed under the deferential abuse of discretion standard. *See in re Marriage of Knutson*, 114 Wn. App. 866, 871, 60 P.3d 681 (2003). This Court will not address

arguments that were not made in a petition for review. *Cummins v. Lewis County*, 156 Wn.2d 844, 851, 133 P.3d 458 (2006). This Court should deny the petition for this reason alone.

Tamosaitis instead uses his CR 60 appeal as a springboard to evade RAP 9.12, by arguing that the after-occurring evidence he improperly attempted to introduce into the record on his *second* appeal is relevant to his *first* appeal concerning the trial court's January 9, 2012 entry of summary judgment. *See, e.g.*, page 19 of his Petition ("[t]he Court called it speculation to link his bonus denial and termination to his whistleblowing, but *at summary judgment*, Dr. Tamosaitis may rely on the inference . . . .") (emphasis added). This is nonsensical. The Court of Appeals properly refused to consider after-occurring evidence that was *not* in the record before the trial court on BNI's summary judgment motion. Op. at 14. Similarly, the Court of Appeals properly rejected Tamosaitis's attempt to scramble the separate records on his two appeals under RAP 9.12. *See Wash. Fed'n of State Emps., Council 28 v. Office of Fin. Mgmt.*, 121 Wn.2d 152, 163, 849 P.2d 1201 (1993) (appellate court limits its review of an order on summary judgment to record before the trial court).

In any event, the Court of Appeals' affirmance of the trial court's denial of the CR 60 motion provides no basis for this Court's review. The Court of Appeals noted that Washington appellate courts have "soundly

rejected" attempts to use CR 60(b)(11) to skirt the one-year limitation on motions brought under subsection 60(b)(3) "as violating the spirit of the rule." Op. at 15. In addition, the court stated, "CR 60 relief will not be granted when the new evidence is a change in facts that had not yet occurred at the time judgment was entered. . . . Stated differently, newly occurring evidence is not the same as newly discovered evidence for purposes of CR 60." Op. at 15-16.

Thus, while the trial court's denial of the CR 60 motion was subject to a highly deferential "abuse of discretion" standard of review, and would necessarily be affirmed unless it was wholly "without tenable grounds or reason," *see* Op. at 14, that ruling was in fact the only outcome consistent with the undisputed facts. Tamosaitis fails to offer any coherent argument to the contrary.

In ruling on Tamosaitis's appeal of the CR 60 denial, the Court of Appeals was correct in refusing to consider after-occurring evidence of Tamosaitis's layoff that was improperly included in his reply brief in violation of RAP 10.4(d), 18.1(b) and 9.11. Op. 13-14. To do so would be illogical, and ultimately futile, as well as legally impermissible: "Even if we were to consider the evidence of Dr. Tamosaitis's termination, we would reach the same result because this after-occurring evidence could not have affected the trial court's ruling that is under review." Op. 14 n.3.

See also BNI's motion to strike (dated January 8, 2014); reply in support of motion to strike (dated February 3, 2014).

If Tamosaitis's improper injection of new evidence on appeal is probative of anything, it further illustrates the adequacy of existing legal remedies. If Tamosaitis believes that URS's March 2013 bonus decision or its October 2013 decision to include him in a workforce reduction gives him a claim he lacked previously, he is free to assert that claim by bringing a new case in a forum of original jurisdiction.[4] The Court of Appeals properly refused to consider this evidence on appeal.

4. The Trial Court's Entry of Summary Judgment was Further Supported by Four Additional Grounds, all Based on Glaring Inconsistencies Between Undisputed Facts in the Record and the Legal Requirements of a Tortious Interference Claim.

The Court of Appeals decision did not address the numerous alternative grounds supporting the trial court's entry of summary judgment, all of which were based upon the profound disconnect between the black-letter requirements of a tortious interference claim and the undisputed evidence before the trial court, including most prominently

[4] In fact, Tamosaitis recently did just that by filing a new ERA whistleblower claim, directed primarily to his March 2013 URS bonus and his October 2013 termination by URS, against URS, the DOE and BNI. *Tamosaitis v. URS Corporation, URS Energy and Construction, Inc., Bechtel National, Inc., and the Department of Energy*, DOL Case No. 0-1960-14-026, filed on March 27, 2014.

Tamosaitis's own admissions under oath. The Court of Appeals properly rejected Tamosaitis's attempts to aggrandize his allegations, and instead treated this case for what it was—a garden-variety affirmance of a trial court entry of summary judgment that was *not* a close call and instead was *mandated* by the absence of any evidence demonstrating the existence of material issues of fact. The alternative grounds that were not reached by the Court of Appeals, and which are discussed in detail at pages 25-40 BNI's response brief below, are as follows:

> (1) BNI has sweeping management control over WTP and thus is not a third party to any senior management opportunity at WTP allegedly sought by Tamosaitis. *See* discussion at Resp. Br., pp. 25-28.
>
> (2) Tamosaitis had no valid business expectancy in any specific position at WTP. *See* discussion at Resp. Br., pp. 29-37.[5]
>
> (3) BNI lacked knowledge of the alleged business expectancies upon which Tamosaitis testified his claims are based. *See* discussion at Resp. Br., pp. 37-38.

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[5] In an unconvincing attempt to establish a conflict between Divisions under RAP 13.4(b)(2), Tamosaitis mischaracterizes this issue by claiming that BNI argued that an "at will" employee may never bring a tortious interference claim. Petition at 2-3, 20. As BNI has repeatedly explained, it did not make this argument in its summary judgment motion. Tamosaitis's focus on this issue is thus a red herring. *See* pages 36-37 of BNI's response brief below; *see also* BNI's answer (dated May 1, 2012) to Tamosaitis's motion for direct review, at page 10. In any event, none of the four additional bases for affirmance of the trial court's entry of summary judgment was even addressed by the Court of Appeals. There is no conflict presented by the Court of Appeals decision that could justify review by this Court.

(4) Tamosaitis's separate employment relationship with URS was not breached or terminated as a result of his reassignment off WTP. *See* discussion at Resp. Br., pp. 38-40.

(5) (There was an additional basis for summary judgment that was directed specifically to the tortious interference claim against defendant/respondent Gregory Ashley (who was a BNI employee)—namely no evidence supported plaintiff's contention that Ashley participated in the July 1, 2010 decision to direct URS to complete Tamosaitis's transfer off WTP. *See* discussion at Resp. Br., pp. 47-49.)

Given the avalanche of undisputed evidence introduced by BNI on each of these issues, it is inconceivable that Tamosaitis could prevail on *all* of them. Indeed, while limiting its ruling to the pecuniary loss issue "in an effort to avoid cluttering the reporter volumes with dicta" regarding "the unique and highly fact specific nature of this case," the Court of Appeals expressed "doubt" about Tamosaitis's "ability to satisfy other elements of his cause of action." Op. at 2 n.1.

In sum, even if the Court of Appeals' ruling that a showing of pecuniary loss is required were not so plainly correct, any attempt by Tamosaitis to reverse the dismissal of his tortious interference claim would still be doomed. Pursuant to RAP 13.7(b), BNI expressly preserves all of its arguments concerning the additional bases for affirmance of summary judgment in the unlikely event that review is granted.

E. Conclusion.

This Court should deny the petition for review.

DATED this 2nd day of September, 2014.

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DECLARATION OF SERVICE

The undersigned declares as follows:

1. I am employed at Corr Cronin Michelson Baumgardner & Preece LLP, attorneys for Respondents herein.

2. On September 2, 2014, I caused the foregoing to be filed with the court and served on the parties to this action as follows:

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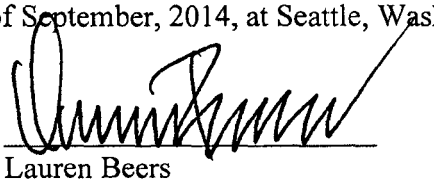
I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 2nd day of September, 2014, at Seattle, Washington.



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Attached please find the following for filing with the Supreme Court of the State of Washington:

1) Respondents' Answer to Petition for Review.

Case Name: Tamosaitis v. Bechtel National, Inc., et al.
Case Number: Supreme Court No. 90630-1

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