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WASHINGTON STATE
SUPREME COURT

PETITIONERS STATE SUPREME COURT PETITION FOR REVIEW
TO WASHINGTON STATE SUPREME COURT

Reference

Division II Court Of Appeals Case Number 47565-I-II

MICHAEL J. COLLINS - PETITIONER PRO-SE

v.

STATE OF WASHINGTON &
OFFICE OF THE GOVERNOR,
OFFICE OF THE ATTORNEY GENERAL,
DEPARTMENT OF LABOR & INDUSTRIES,
IN ITS/THEIR OFFICIAL CAPACITY
(Respondents)

Petition For Review File Date May 31, 2016



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I. IDENTITY OF PETITIONER.

The Petitioner is Michael J. Collins Pro se, as the original, and only Plaintiff before Pierce County Superior Court, and the original, and only Appellant before Division II Court Of Appeals.

II. COURT OF APPEALS DECISION.

Petitioner Pro se Michael J. Collins seeks review of the Unpublished Opinion terminating review by the Court Of Appeals Division II, on May 10, 2016, in Michael J. Collins Pro se v State Of Washington & Office Of The Governor, Office Of The Attorney General, Department Of Labor & Industries, in its/their Official Capacity, a copy of which is appended hereto as Appendix A.

III. ISSUES PRESENTED FOR REVIEW.

A [S]tate Legal Order as written, mandates proof of compliance from the losing party. A [S]tate Legal Order as written, creates a 'Special Circumstance', a 'Special Relationship', and ministerial 'Special Duty' owed the prevailing party. Then a 12(b)(6) dismissal must prove no 'Special Duty' was owed to me.

A [S]tate tendered specific [S]tate acknowledgment of 'Special Duty' owed, though based on [S]tate deception on the court, and provably never actually fulfilled,,, then creates as material, (and not standing alone), foreseeability of Physical, and Emotional Distress Tort Harm, as not negligent, but Intentional, and foresees Due Process Harm, as to the facts of (my case specific), also support 'Continuing Violation' Tort, as affirmative 'Special Duty' owed, by way of the Legal Order at issue, as a Question Of Law. See RAP 13.4(b)(1)(3).

A (my case specific) properly interpreted 'express assurance' sought by me, and given by the [S]tate, then creates a 'Special Relationship', then material to fulfill procedural due process as violated, as facts of (my case specific), and any dispute over interpretation of an 'express assurance' creates a 'genuine issue of material fact'. And whether I Michael J. Collins detrimentally relied on this specific 'express assurance' as not general, or public intended in nature, is a Question Of Fact not amenable to defense summary judgment, but is a 'Special Relationship', and 'Special Duty' owed as a Question Of Law. RAP 13.4(b)(1)(3), Art. I Section 3 Wn. St. Const. When there is no legal remedy as I have proven, and as controlled by Defendant Department Of Labor & Industries under the Industrial Insurance Act (IIA), or the 'Act',,, in (my case specific), then statutory duty, by way of an already [S]tate acknowledged 'Special Duty' owed, is imposed on the Department, and the Attorney General, to investigate provable criminal, and civil misconduct in the adjudication of my then Worker's Compensation claim, which provides no enforcement mechanism for (my case specific). An established 'Special Relationship', did compel a written opinion by the Attorney General, to obtain 'legislative guidance' as to my [specific issues] as prevailing, pursuant to this existing Legal Order, that the Department provably never complied, are specific issues that meet, and surpass the [separate injury test], as not related to my original industrial injury, and specific Tort damages I seek are not compensable per the 'Act'. Intentional Infliction of Emotional Distress, (L&I), Bad Faith Breach of 'Special Duty', owed, consistent with an already existing 'Special Relationship', L&I, and

Office Of The Attorney General, and provable past history misconduct of L&I, and Office Of The Attorney General, and [S]tate Bad Faith nonfeasance, as actionable Tort Per RCW 4.92.090.(100).(110). Intentional Tort Claim I filed is proper under the Washington State Tort Statute supported by my cited Restatements Of Law Of Torts in Superior Court as original jurisdiction, and the Legal Order at issue, as the Legal Foundation, upon which specific [S]tate 'Special Duty' was owed, is the Question Of Law. RAP 13.4(b)(3).

IV. STATEMENT OF THE CASE.

On February 8, 2006 I Michael J. Collins, was successful at having my then Industrial Injury claim re-opened by the Department Of Labor & Industries from here forward described as (L&I),,, for treatment from an on-the-job injury of January 18, 1993, as my then L&I claim was then closed illegally by L&I, April 19, 1995, as that specific closure was never communicated to me as I was able to prove at a Board Of Industrial Insurance Appeals (BIIA),,, Hearing on March 1, 2007, and I prevailed. 'CP' 110-113.

As this Court references (that legal life-blood to this Petition) Legal Order, 'CP' 110-113, it will see that the 7-Year Rule no longer applied as of my April 18, 2007 BIIA victory as 'CP' 110-113. Then as a strong legal position I possessed, I demanded my 2007 second opinion that revealed a more substantive, and more serious (multiple diagnosis code) diagnosis, and as related to my on-the-job injury in 1993 'CP' 114, be what my then industrial injury claim be adjudicated properly pursuant to, as the 7-Year Rule from April 19, 1995 date of previous illegal claim closure, no longer was relevant as legal to support L&I's position, to be allowed to adjudicate my then injury

claim on a much lessor accepted condition directly related to the illegal claim closure of April 19, 1995, and a much lessor accepted condition than what my Attending Physician diagnosed in 2007 as 'CP' 114, as officially, and legally within the 7-Year Rule,,, as the 7-Year Rule was not longer in effect.

'CP' 110-113. Immediately following my BIIA victory as 'CP' 110-113, which states clearly as a legal mandate for L&I, to "further adjudicate this matter on a different legal standard", L&I provably further adjudicated my then L&I claim on the same illegal standard as they had adjudicated my then L&I claim prior to my legal victory as 'CP' 110-113. And L&I conducted the May 1-4, 2007 Independent Medical Exam, (IME), 'CP' 115-116 (2 pages only, as I have complete March, 2007 L&I, to IME Instructions as in my L&I claim file I possess) filled with provable multiple lies from L&I, provable concealment of claim history facts from L&I, to the IME panel, and only upon which the IME can consider, and only be directly conducted ('CP' 136-137 as clear proof), as adjudicated, and conducted on that same illegal standard as prior to the BIIA Legal Order 'CP' 110-113, thus ignoring the mandate in that Legal Order, and closed my claim August 3, 2007 on that same illegal standard directly related to the illegal claim closing Order of April 19, 1995. The [c]oncealment of claim history facts, is no minor issue. David A. Iverson who plays an important role in my Tort complaint as 2007 ,,origin of evil,, as 1 example, and I have many thru 2014, concealed 'CP' 119, placing me in the Sedentary see 'CP' 119 seditary sic., employment category, from the IME panel in May, 2007, in those March 27, 2007 David A. Iverson L&I, to

IME Instructions 'CP' 115-116, and then through Iverson's as a 'Deliberate Indifference' Intent, and follow through, submitted to the IME panel 'CP' 122-123 in the 'very heavy' employment category. Thus Iverson is with ,, 'Deliberate Intent' ,, placing me in 'physical harms way' for the sole purpose of obtaining a (favorable to him) IME rating, and claim closure, before I was ever at MMI ('CP' 154 Dr. Alinea working with Dr. Zhong 'CP' 114,118), and before my claim would ever have been 'further adjudicated on a different legal standard'. 'CP' 110-113.

My 2010, and 2014 claim re-opening applications, and denials, were simply repeat processes by L&I, based on the same illegal criteria, as L&I thru September 25, 2014 would never address my specific issues as why they would never adjudicate my claim on Dr. Zhong's more serious diagnosis within the 7-Year Rule,,, which they were legally required to do.

In 2014, I requested the help of the L&I Director Sacks, the Governor, and [A]ttorney [G]eneral who was (neutral at the time in 2014), because there were no pending cases against L&I filed by me. 'CP' 162-173. I ask the [AG] to write an opinion and communicate with the legislature to compel L&I to 'further adjudicate my claim on the proper legal standard'. I had a strong position that L&I was never going to correct my claim on their own as 'CP' 110-113 mandated they do, because with them (L&I) now abusing their subject-matter jurisdiction for now 7 years, while I continued to suffer in pain, 'CP' 138-139 where my 2014 Provider now reveals an even more serious multiple diagnosis code diagnosis, and to ,, "Re-open claim" ,, and with no enforcement mechanism under the 'Act', they L&I, would never be held

accountable under the 'Act' as written. See 'CP' 142, but first, and especially 'CP' 176. But no action was ever realized by the [AG]. 'Continuing Violation Tort' by (L&I), supported by that legal doctrine, applies to (my case specific).

A. Proceedings Below.

See 'CP's 143-145 as 2 different BIIA appearances, both of which state clearly sic., 'I can't go back', to mean, address my issues as specific, about the tortious manner in which L&I has adjudicated my claim, and other clear language in those colloquy's stating the same. My issues as specific I brought to the BIIA in 2007 (after the August 3, 2007 illegal closure), and in 2010-2011 are not in reference to my original industrial injury, or what gave rise to my original industrial injury, thus the BIIA lacked jurisdiction. Since 2007, I have attempted to procure a Writ of Mandamus in Superior Court as dismissed on procedural grounds only,,, thus not implicating any preclusion, and I have attempted to procure a prospective, and monetary legal remedy in Federal Court dismissed on procedural grounds only, thus not implicating any preclusion, as in both legal actions as I state, no legal process would allow litigation on the merits. Defense has not challenged preclusion on appeal and thus cannot challenge preclusion now. And in 2014 a provable new Tortious adjudication by L&I, creates a whole new complaint as never having been litigated before a legal process anyway.

B. Restatements Of Law Of Torts And Tort Statute Prevails.

As there is no remedy under the 'Act' for a Tort complaint as to my specific Tort claim as provable Torts committed, then Restatements Of Law Of Torts

(not even challenged as ignored as convenient by the Division II Court Of Appeals in its original decision May 10, 2016, Appendix A, and the Tort Statute under RCW 4.92 prevail as supporting (my case specific), and was proper before a Superior Court with original jurisdiction.

V. ARGUMENT: WHY REVIEW SHOULD BE ACCEPTED.

- A. An existing Legal Order as 'CP' 110-113, and Dept. Of L&I as the [S]tate, (compliance as provably never fulfilled), created a 'Special Circumstance', a 'Special Relationship', and actionable 'Special Duty', as a Question Of Law. RAP 13.4(b)(1)(3). Art. I Section 3 Wn. St. Const.

I ask first and foremost of this Supreme Court, to faithfully read all my Clerks Papers as 'CP', and as Exhibits, filed in Division II Court Of Appeals, to include the Report Of Proceedings from the April 17, 2015 Superior Court incorrect dismissal where Judge Culpepper provably from the transcripts 'RP', filed in Court Of Appeals, proves, never had my pleadings forwarded to him from previous Judge Leanderson recused 2 days earlier, without a Hearing taking place to produce any transcripts from her court, as 'RP', and 'CP' at issue, as expectedly forwarded to Supreme Court. I say expectedly because in the Court Of Appeals May 10, 2016 decision, Appendix A (pg. 5 ft.nt.1), "He fails to provide citation to the record",,, when I have proof that my 'CP', and 'RP', was filed on or before due date, in Division II Court Of Appeals July 7, 2015. This was either incompetent, or corrupt on the part of Division II Court Of Appeals. From my original Tort claim to the State, to my Superior Court Briefs, and (Amended Briefs, to eliminate

Constitutional Tort as not needed),,, to establish my proper Tort case, the entire history of my then L&I claim must be understood, to have complete comprehension by this Supreme Court, to include my incontrovertible Exhibits proving no remedy for me under the 'Act', and the criminal element also involved, that must be incorporated as well as [S]tate liability Tort civil damages I seek as in context for review, establish 'Special Duty' owed as breached in this 'matter of first impression' case, as 'Act' unprecedented, then Washington State Tort unprecedented, but proper per RCW 4.92.100. The Proceedings Below support my position in a powerful manner in that it establishes that the [AG] by representing The Department Of Labor & Industries (L&I), in those legal proceedings, was well aware of what my exact complaint, as issues entailed since April 18, 2007 as 'CP' 110-113. See in my October 27, 2015 Court Of Appeals Reply pgs. 18-20, I impeach *Berge v Gorton 88 Wn.2d 756,567 P.2d 187 (1977)*,,, I impeached because Defense in 'CP' 195 ft.nt. cites *Berge*, as somehow drawing parallels by way of [AG] discretionary immunity in my case. But *Berge* actually supports my case because former [AG] Slade Gorton was acting within the (at the time) existing law, but when the State Supreme Court found this existing law to be unconstitutional, ,,,*Gorton* immediately complied,, with the State Supreme Court Legal Order, (proof) of which was simply, he terminated disbursement of the education funds at issue. (My case Specific) RAP 13.4(b)(1)(3). The 'ministerial' 'Special Duty' created by Legal Order 'CP' 110-113 in (my case specific) must also be fulfilled with (proof),,, from the [S]tate,,

and provably has never been. See in my same October 27, 2015 Reply,,
pgs. 2,3,4,6,9, *Semler v Psychiatric Inst. 538 F.2d 121, (4th Cir.1976)*
cert. denied 429 U.S. 827 (1976),,, see ...'Special Relationship'... It is the
indefensible, and provable, 'Special Relationship', in (my case specific),
that the [S]tate must address, and will never be successful at doing so.
It is the 'Special Relationship' also creating a 'Special Circumstance', and
a 'Special Duty' owed me, RAP 13.4(b)(3), never considered by Superior
Court, and ignored by Court Of Appeals, that would certainly survive a
12(b)(6) dismissal, and,, defense Motion for Summary Judgment, as a
necessary Discovery process must compel this (proof), as in *Berge*.
Court Of Appeals had the power to compel this (proof), as I ask of them.
This Court can recognize multiple types of a 'Special Relationship' that
will be indefensible in (my case specific). See 'CP' 84-109, pg. 22 as
my March 23, 2015 Amended Brief, and from which the April 17, 2015
Superior Court Hearing Judge Culpepper should have considered.
See *Munich v Skagit Emergency Communications Center 172 Wn.2d*
1026, 268 P.3d 225, 175 Wn.2d 871 (2011-2012). See 'CP' 162-173, 176.
'CP' 176 as in-context to factual history of (my case specific), when that
March 11, 2014 letter by then neutral [AAG] Lopez was written, taking into
factual consideration that there was no pending legal action between
myself and L&I, when I wrote the letters of request as 'CP' 162-173, and,
when then [AAG] Lopez wrote that letter, which as extrapolated properly
clearly contains an 'Express Assurance', that if there was no (at that exact

time in history) legal action, between myself, and L&I which there was not,,, then she (Lopez) representing the [AG], would write a legal opinion.

See *Munich*, and RAP 13.4(b)(1). *'The trial court ruled that a genuine issue of material fact existed on the issues of whether an express assurance was sought and given,,, and whether Munich detrimentally relied on any such assurance'*.

Since a 'Special Relationship' had already existed between myself, and the [S]tate since April 18, 2007 as 'CP' 110-113, and since [AAG] Lionel Greaves representing The Office Of The Attorney General, and who was well aware of my specific complaint directly related to L&I, [S]tate provable non-compliance with the Legal Order 'CP' 110-113, as a game-changing Legal Order to mean specifically, my then L&I injury claim would never be adjudicated legally, or constitutionally without compliance,,, filed what he (Greaves) knew to be, a Perjured Sworn Statement in Federal Court. 'CP' 133-134. Greaves represented L&I from BIIA, to Superior Court, to Federal Court. Since The Office Of The Attorney General knew in 2014, that L&I was not going to ever comply with 'CP' 110-113 unless legally compelled to do so and because a 'Special Relationship' had already existed, to even include [AG], as by (tendering) 'CP' 133-134, the [S]tate acknowledged a 'Special Duty', that now becomes a Statutory Duty owed me, the acknowledged 'Special Duty' owed now triggers foreseeability of both Due Process Harm, and Physical, Emotional Distress Tort Harm, pursuant to the specific facts as claim history of (my case specific). RCW 43.10.030(5)(7). RAP 13.4(b)(3). See I meet and surpass all 3 criteria for a 'Special Relationship' in *Munich*. RCW 43.06.010(7)(11). And L&I Director Sacks had a clear Statutory Duty

under RCW 51.04.020(6), to investigate my claim history, and to ensure I received the result of the May 21, 2014 IME opinion, 'CP' 155 as Sacks' 'Special Duty', because of 'CP' 110-113 as provable L&I non-compliance thus far in 2014, pursuant to WAC 296-14-400, WAC 296-14-970(4)(5), as added affirmative 'Special Duty' owed, because my 2007, 2010, 2014 IME's were L&I fraudulently never L&I instructed to include consideration of proper [Accepted Condition] WAC 296-20-01002, as diagnosed by my then Attending Physician Dr. Zhong in 2007, 'CP' 114,118, Dr. Alinea in 2010, 'CP' 154, and my Provider Dr. Kaler in 2014 as 'CP' 138-139.

I will impeach entire 2nd par. of WAC 296-14-400, ie., no prior final closure. L&I financially gained from the fraud ('misconduct' in my civil Tort Claim), upon the IME process, as they knew my claim would be costly to correct, in other words, to comply with Legal Order 'CP' 110-113. RAP 13.4(b)(3). Make this clear, just because L&I violated a 'Special Relationship', and a 'Special Duty' owed me from 2007-2014, for financial gain, to deprive me of benefits per the 'Act' I was owed, does not mean I am seeking benefits, or,, cleverly attempting to disguise my Tort Claim to obtain the equivalent of benefits owed me under the 'Act', as I do not need to, as provable Torts committed by L&I alone solidify Tort damages as my Tort Claim properly filed. See *Cena v State* 121 Wn. App. 352, 357-58, 88 P.3d 432 (2004),,, as first cited by the defense to pathetically attempt to draw parallels to (my case specific), and impeached by me. Cena was seeking L&I time-loss benefits as (compensable under the 'Act'), and disguising it as a Tort Claim. The key and game-changing point is,,, are my issues of [S]tate 'Special Duty' owed,

as a Question Of Law RAP 13.4(b)(3), to include a clear L&I Intentional Due Process violation ,,compensable,, under the 'Act'... No... This is game-changing important, as the [AG] as the Defense legal representative in (my case specific), is taking the position that any remedy I seek is compensable under the 'Act'. This is legally absurd. Be clear, [AG] had/ has reason to not want a special investigation to take place, which must also include investigating their own attorney Greaves, and must also include [AG] answering for Express Assurance 'CP' 176 as not fulfilled. My Tort complaint as provable Torts committed by L&I, is 'separate from what gave rise to original industrial injury'. *Cena*... This is why *Cena* failed. L&I's subject-matter jurisdiction only means,, they control the adjudication of the 'original industrial injury, or occupational disease claim', and an affected worker cannot pursue the employer with the exception of a claim per RCW 51.24.020 which is irrelevant to (my case specific). Subject-matter jurisdiction does not mean L&I can commit provable Torts with impunity. If there is no statute under the 'Act' to file a Tort Claim as there is not, then there is no enforcement mechanism under the 'Act', for (my case specific). Then Restatements Of Law Of Torts and RCW 4.92.100 prevail in (my case specific) to file a Tort Claim with the [S]tate, and in Superior Court. 'It is the position occupied by the defendants' L&I, unconstitutionally controlling my right to Due Process. RAP 13.4(b)(3). See *Reid v Pierce County* 136 Wn.2d 195, 961, P.2d 333, (1998),, Restatement (Second) Of Torts Section 46 (1965) comment e. See my October 27, 2015 Reply pg.29 *Reid*.

See Restatement (Third) Of Torts Sections 37-42 (2011), for the (past history misconduct of the defendants), as being most relevant. This will be consistent with the 'Continuing Violation Tort' doctrine. As from 2007 David A. Iverson, (who provably committed Federal Court Perjury in 'CP' 133-134 filed November 14, 2011), by stating at 'CP' 134 at 5-6,,,

"To comply with the Board's decision, the Department canceled the April 19, 1995 closing order on June 19, 2007". Then see 'CP' 129 authored by, and contradicting the same David A. Iverson 07/16/2007.

'CP' 133-134, as 'CP' 134 at 7-8,,,"On August 3, 2007, the Department issues a new closing order. This order was based on the medical evidence in the Department's claim file as of 2007"...

"The Board's decision" to which Iverson refers, is of course 'CP' 110-113 as the Legal Order at issue, L&I, as 'the Department' provably never complied.

Iverson's 'CP' 133-134 Sworn Statement criminally contradicts 'CP' 129.

"Medical evidence" to which Iverson refers, is a 2007 IME provably based on Iverson's instructions 'CP' 115-116, provably filled with lies, and concealment of information. Refer back to pgs. 4-5 (this Petition), on Iverson in 2007.

Refer to 'CP' 110-113 Judge Stewart pg. 3 at 11,,,

"Mr. Collins reopening application should be treated as a protest to the April 19, 1995 order, and the Department should take appropriate action"...

See 'CP' 128, the August 3, 2007 closing order to which Iverson refers in 'CP' 134 at 7-8. A 'protest' (Judge Stewart),,, means, L&I is legally compelled to address my 'specific issues' of the protest. 'CP' 128 does no such thing.

See 'CP' 155, my protest to L&I's June 2, 2014 Denial Order. See 'CP' 141 does not address my specific issues I requested either. Convenient for L&I.

Now see why a specific investigation assisted by Sacks, and conducted by

[AG] was also necessary in 2014, along with L&I, and the [S]tate providing step, by step, date stamped documentary proof of compliance, with Judge Stewart's Order 'CP' 110-113, as 'Special Duty' owed me. This is supported by a 'Continuing Violation Tort' from Eric Brooks in his April 17, 2014 L&I, to IME Instructions 'CP' 147-150, who's sole intent was to lie, deceive, and conceal valuable claim history facts from the IME panel, just as was Iverson's sole intent in his March 27, 2007 L&I, to IME Instructions 'CP' 115-116, and Maria I. McBride's sole intent in her L&I, to IME Instructions on August 3, 2010, as 'CP' 151-153. See in all 3 from Iverson, McBride, and Brooks. Additional Issues. None! Eric Brooks in 'CP' 147-150 at 'CP' 148 at 2) Current status of the claim: Brooks states,,, "open"... Make this very clear,,, the sole intent of Brooks telling the IME Examiners ie., panel, that my claim was "open", was to with Deliberate Intent,,, deceive the IME Examiners into taking the position that my claim was open, and somehow my claim had been legally, and properly adjudicated to completion, and now it was time to close my L&I claim before I was ever determined by my Attending Doctor to be at MMI, 'CP' 154, which is a fraud on that IME process by Brooks. Iverson in 2007, McBride in 2010, and Brooks in 2014, desperately needed to ,,,"fast track",, the IME to completion, and desperately needed the IME to be based on a much lessor criteria than what my 2007 Attending Physician in 'CP' 114,118, and my 2014 Provider in 'CP' 138-139 had diagnosed, so the IME panel would not take my legal victory into consideration also as a medical

mandate to correct my claim adjudication, by also taking into consideration 'hypotheticals' as claim history facts as disclosed truthfully, as being legally, and medically mandatory to correct my claim, that must include being considered by way of an IME. See 'CP' 135. See *Brown v MacPherson's Inc.*, 86 Wn.2d 293, 545 P.2d 13 (1975),,, for legal, and medical hypothetical. Eric Brooks in 2014 'CP' 147-150, Iverson in 2007 'CP' 115-116, and McBride in 2010 'CP' 151-153, needed the IME to be based on a much lessor Accepted Condition than my 2007 Attending Physician, 'CP' 114,118 and my 2014 Provider 'CP' 138-139 diagnosed also, as, L&I knew from their experience in Industrial Insurance Law, that a much lessor Accepted Condition (from their wishful position as they wrote the Instructions),,, will not be determined by IME Examiners, to have a causal connection from a seemingly much lessor original injury,,, to my now worsening condition... Iverson's 2007 fraud on the IME process, was an 'antecedent' to Eric Brooks 'CP' 147-150 fraud on the 2014 IME process. But Restatements Of Law Of Torts, only compel me to prove as I have, 'misconduct' to recover actionable Tort damages. See 'antecedent' in my March 23, 2015 Amended Complaint at 'CP' 90-(91 at 15) in direct reference to civil damages allowed for perjury, and subornation of perjury, if the perjury, and subornation of perjury though material to my then legal action, is/was part of a larger scheme than issues determined by that specific legal action. I clearly pass that test, as the Federal Court dismissed only on Rooker-Feldman as procedural only,,, as incorrect, because no prior State Court had decided on the merits of my specific complaint, and then the Federal Court did not as well.

King v Seattle 84 Wash.2d 239, 244 525 P.2d 228, 232 (1974),,,
'The intentional wrongdoer cannot place upon its victim, the duty to mitigate'.
'I fail to understand why an intentional tort-feasor can or should escape liability because he happened to choose a plaintiff who did not have the financial resources,,, in (my case specific) replace with,,, (who did not have the legal chance per the 'Act'),,, to overcome the damages caused by the intentional Tort'... Quoted from majority opinion... Also see Appendix C pg.(b).

I only need to fulfill 3 criteria as tests to solidify 'Continuing Violation Tort' as supporting (my case specific). Also see Appendix C pgs.(c)(d).

1. I filed a BIIA legal complaint after first L&I violation in 2007. 'CP' 143-145.
2. One of the violations must be within the statute of limitations of filing this proper Tort legal action on November 7, 2014. It was!
3. The 'Continuing Violation',,, must be based on the same subject-matter.
This subject-matter mandate is already in place, as L&I has subject-matter jurisdiction, and complete control over an L&I injury claim. The power L&I possesses' per the 'Act', now is their legal albatross, and their legal undoing.
Then 'Continuing Tortious Injury by L&I's Iverson in 2007, McBride in 2010, and Brooks in 2014, are not discrete acts, based on same subject-matter.
See *Vitek v Jones 445 U.S. 480, 445 U.S. 491 (1980),,,* in my Initial Brief filed November 7, 2014 as 'CP' 22 which is pg. 10 at 4-7 of that Brief. See that an Independent Medical Exam can be a medical trier of fact. But, Due Process can only be realized, when the IME is acting in my best interest, to mean, when it the IME can consider [all] claim history facts.
An L&I Appealable Order must be a pre-deprivation Hearing 'equivalent' to fulfill Due Process as a 'Special Duty', to fulfill mandate in 'CP' 110-113, which created a 'Special Relationship', to then fulfill my 'property interest' right, as a Question Of Law. RAP 13.4(b)(3). Art. I Section 3 Wn. St. Const.

For 'property interest' right as to (my case specific) see *Cushman v Shinseki* 576 F.3d 1290, 1293 (Fed. Cir. 2009)... The parallels from *Cushman* to (my case specific) are extraordinary. *Cushman* had sustained a back injury same as my 1993 on-the-job injury. *Cushman's* claim was approved some years in the past before the case as *Cushman v Shinseki*, same as (my case specific). Then *Cushman* had protected 'property interest' to demand his claim be adjudicated legally, and not be denied based solely on unconstitutional, or illegal methods, same as (my case specific) 'property interest' right to demand. Although *Cushman's* case was based on Federal Law, mine on State Law. *Cushman* originally had an administrative Appeals Board process, that could not provide remedy. Unlike (my case specific), *Cushman* had other Appeals Board processes for which to utilize, as well as the Federal Courts to include the Ninth Circuit Court Of Appeals. In *Cushman*, due process analysis was based strictly, and clearly on an IME 'altered medical document', that found him to be more employable in a more stringent work category than what was originally determined. Exact due process, and Tortious violation by Iverson in (my case specific) in 2007 IME, 'CP' 122-123, antecedent to McBride in 2010, and antecedent to Brooks in 2014. Replace altered medical document in *Cushman*, to falsified, and concealment of valuable claim facts in L&I, to IME Instruction documents,,, from which then the IME can only consider, see 'CP' 136,137, the IME opinion from which then will become a matter of record, and directly upon which a denial of my claim will be directly based. Then due process analysis in (my case specific) must be based on the

entire adjudication of my then L&I claim after April 18, 2007 'CP' 110-113, especially, and the falsified documents with concealed claim history facts for the sole intent by L&I, of deceiving the IME Examiners to consider less than the truth, and facts, when L&I as the [S]tate had a 'Special Duty' to correct my then L&I claim as a Question Of Law. RAP 13.4(b)(3) Art.I Wn. St. Const. From *Cushman*, The Due Process Clause is violated when I had proven an entitlement to the benefits at issue in my then L&I claim, and (specific) remedy is not available under the governing statutes, and regulations, per the 'Act'. The due process violation was consequential in the outcome of my then L&I claim, that would have a reasonable probability of a different result. The sheer number of times I appealed the denial of my L&I claim, is not relevant to the question of whether I received a fair Hearing. Process which is a mere gesture, is not due process. See 'CP' 143-145. BIIA Hearings as controlled by an L&I latest Appealable Order. Restatement (Second) Of Torts Section 46 (1965) comment f 'whether I was peculiarly susceptible to Emotional Distress, and defendants knowledge of this fact. See 'CP' 146. WPI 14.03, as 14.03 (01-04), confirmed by this State Supreme Court, Issue instruction WPI Ch. 20, and Damages instruction WPI Ch. 30, will support my position in a jury trial, as relates to 'Outrage', and 'Intentional Infliction Of Emotional Distress' in direct reference to L&I, as not based on negligence. In 2014, Brook's had knowledge of my existing pain and suffering, as he lied to, and concealed information from IME, as 'outrageous, uncivilized' conduct. WPI 1.06, WPI 6.07, supports an otherwise time-barred claim history, relevant now in my Tort case, in direct reference to future David A. Iverson testimony.

And, this directly connected series of claim history Tortious misconduct by [S]tate actors as (my case specific), and my documentary Exhibits as proof, 'CP',,, supports 'Continuing Violation Tort' doctrine, as, not discrete acts. Again, just because L&I committed provable Torts to avoid providing benefits per the 'Act', does not mean I now seek benefits compensable per the 'Act'. Tort damages I demand, are not compensable per the 'Act' as distinguishable. I will easily prove L&I adjudicated my then L&I claim on the exact same illegal standard after April 18, 2007, 'CP' 110-113, as they did prior to April 18, 2007. Then L&I could not possibly have complied with 'CP' 110-113 just from that perspective alone, and I will prove with other cross verification, L&I could not possibly have complied. L&I adjudicating (my L&I claim specific) with a clear Deliberate Intent to avoid accountability of a 'Special Duty' owed, does not fulfill affirmative 'Special Duty' owed, as a Question Of Law. RAP 13.4(b)(3).

B. The Court Of Appeals misinterpreted Proceedings below.

Refer to pages 7-8 this Petition, in my V. ARGUMENT at A.

C. The Court Of Appeals ignored specific [S]tate statutory (as) 'Special Duty' owed, as it misapplied precedent related to its ignoring of my provable facts of (My Case Specific). 'Special Duty' ignored, was 'Special Duty' as a Question Of Law. RAP 13.4(b)(3).

My ARGUMENT in this Petition reveals absurdity of the Court Of Appeals.

Example: In the original Court Of Appeals unpublished opinion Appendix A

May 10, 2016 at pg. 4 Judge Lee, J. cites RCW 51.04.010 as relating to,,,

*...The IIA precludes any 'tort claims if those claims arise out of an 'injury'...
...compensable under [IIA]'. Mine does not arise out of an industrial injury.*

Then Lee, J. cites *Rothwell*,,, that I cite in my original State claim as 'CP'

Attachment in Superior Court. *Rothwell's* claim was against her employer.

See pg. 5 *Birkliid*. Again, a case against the employer per RCW 51.24.020. No relevance to my proper 'separate injury' Tort claim what so ever. See also pg.5 Lee, J. cites by mistake, RCW 51.04.020 as (6) was Dir. Sacks' statutory 'Special Duty' in 2014, as a Question Of Law. RAP 13.4(b)(3). See in my MOTION FOR RECONSIDERATION as forwarded to this Court, I state,,, Judge Lee, J. 7 times, refers to Constitutional Tort, which is the absurd basis for her affirming Superior Court 12(b)(6) dismissal. When my March 23, 2015 Amended Brief as 'CP' 84-109, which is what the April 17, 2015 Superior Court Hearing was as (my intent) to be based,,, but 'CP' 84-109 was not forwarded to Judge Culpepper from previous Judge Leanderson as I expected it to be, is not based on Constitutional Tort. As this Court distinguishes between 'act', and ('omission' or nonfeasance Dir. Sacks, and [AG]), as now recognized by the Court as actionable for Tort damages as in (my case specific)), I exceed the mandate of a proven prior existing 'Special Relationship'. I then established the prior [S]tate knowledge element as required, then creating a 'Special Duty' owed, as a Question Of Law. RAP 13.4(b)(3). And the Governor, and [AG] are required to faithfully execute the laws of the State. [AG] nonfeasance, as Intentional Bad Faith Duty. Article III Section 5. Article III Section 21. Brooks' provable Torts in 2014 as Intentional Infliction Of Emotional Distress. In Conclusion: Specific Relief from State Supreme Court. To recognize specific Common Law Torts, and damages as in my Tort complaint. Remand to Court Of Appeals for further proceedings to include remand for Superior Court Discovery, as specific provable Torts, not compensable per the 'Act'.

Respectfully Submitted *Michael J. Collins May 31, 2016*
Michael J. Collins Petitioner Pro se -10101 43rd Street Court East - Edgewood, Wn. 98371

Michael J. Collins Petition For Review

APPENDIX

A

Decision(s) of the Division II Court Of Appeals

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

MICHAEL COLLINS,

Appellant,

v.

STATE OF WASHINGTON &
OFFICE OF THE GOVERNOR;
OFFICE OF THE ATTORNEY
GENERAL; DEPARTMENT OF
LABOR & INDUSTRIES IN
ITS/THEIR OFFICIAL
CAPACITY, STATE OF
WASHINGTON,

Respondent.

No. 47565-1-II

ORDER DENYING MOTION FOR
RECONSIDERATION

FILED
COURT OF APPEALS
DIVISION II
2016 MAY 24 AM 10:32
STATE OF WASHINGTON
BY 
DEPUTY

APPELLANT moves for reconsideration of the Court's May 10, 2016 opinion. Upon consideration, the Court denies the motion. Accordingly, it is

SO ORDERED.

PANEL: Jj. Bjorgen, Lee, Worswick

DATED this 24th day of May, 2016.

FOR THE COURT:


C.J. BJORGEN
CHIEF JUDGE

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Michael Collins
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May 10, 2016

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

MICHAEL J. COLLINS,

Appellant,

v.

STATE OF WASHINGTON & OFFICE OF
THE GOVERNOR; OFFICE OF THE
ATTORNEY GENERAL; DEPARTMENT OF
LABOR & INDUSTRIES IN ITS/THEIR
OFFICIAL CAPACITY,

Respondents.

No. 47565-1-II

UNPUBLISHED OPINION

LEE, J. — Michael J. Collins appeals the trial court's CR 12(b)(6) dismissal of two complaints he filed against the State of Washington, the governor, the attorney general, and the Department of Labor & Industries for the denial of benefits involving a 1993 industrial injury. He claims the trial court erred by dismissing his constitutional tort and intentional infliction of emotional distress/tort of outrage claims. We disagree and affirm.

FACTS

In January 1993, Collins filed an application for benefits with the Department due to an on-the-job injury while employed with AROK Construction. The Department approved the

application and awarded Collins temporary benefits. In April 1995, the Department closed the claim.

In February 2006, Collins requested to reopen his claim, alleging an aggravation of his condition. The Department reopened the claim, approved medical benefits, but denied time loss compensation and a partial disability award. Collins protested, and the Department affirmed. Collins appealed to the Board of Industrial Insurance Appeals (BIIA).

In his appeal, Collins alleged he never received the April 1995 order closing his claim. The BIIA determined that he had made a sufficient prima facie showing that he had not received the 1995 order and remanded the matter to complete adjudication of Collins' claim. The Department reassessed and ordered an independent medical evaluation (IME). Following the IME, the Department issued a new closing order, denying time loss and disability benefits and ending the payment of medical benefits.

Collins unsuccessfully sought relief in both state and federal appellate courts. *See Collins v. Dep't of Labor & Indus.*, No. 10-CV-05247-RBL, U.S. Dist. (W.D. Wash. 2010); *Collins v. Dep't of Labor & Indus.*, 163 Wn.2d 1020 (2008); *Collins v. Dep't of Labor & Indus.*, 167 Wn.2d 1019 (2010). He also unsuccessfully requested to reopen his claim with the Department in 2010.

In November 2014, Collins filed a complaint against the State of Washington, the governor, the attorney general, and the Department (collectively "the defendants"), alleging, among other torts, intentional infliction of emotional distress/tort of outrage and a constitutional tort cause of action for damages resulting from a violation of his due process rights. He amended his complaint twice, adding additional facts to support his claims.

Following the January 2015 filing of the second amended complaint, the defendants moved for dismissal under CR 12(b)(6) for failure to state a claim upon which relief can be granted. In February 2015, the superior court granted the defendants' motion. However, the superior court ruled that "Plaintiff may file an amended complaint to attempt to state a legally sufficient claim on or before March 27, 2015, provided that the amended complaint may not assert claims arising from the Washington Constitution, RCW 43.10.030 [attorney general's powers and duties], or RCW 43.06.010 [governor's powers and duties], such claims having been dismissed with prejudice by this order." Clerk's Papers (CP) at 277.

Collins timely filed a third amended complaint in March 2015. In his third amended complaint, Collins alleged the same operative facts as those alleged in prior complaints and again claimed intentional infliction of emotional distress/tort of outrage. The defendants requested dismissal under CR 12(b)(6). The superior court granted the motion and dismissed Collins's claims in April 2015. Collins unsuccessfully moved for reconsideration. Collins appeals.

ANALYSIS

As an initial matter, Collins assigns error to the February 2015 dismissal order and the April 2015 dismissal order. His notice of appeal, however, only refers to the superior court's order denying reconsideration of the April 2015 order. Generally, this court only reviews those orders designated in the notice of appeal. *See* RAP 5.3(a)(3) (notice of appeal must designate decision for review). However, since the January 2015 and the March 2015 complaints were incrementally dismissed with the superior court contemplating the filing of a third amended complaint, we reach the issues involving both complaints.

A. LEGAL PRINCIPLES

Collins contends the superior court erred by dismissing his tort claims under CR 12(b)(6). We review de novo an order granting a motion to dismiss under CR 12(b)(6). *FutureSelect Portfolio Mgmt., Inc. v. Tremont Grp. Holdings, Inc.*, 180 Wn.2d 954, 962, 331 P.3d 29 (2014); *Kinney v. Cook*, 159 Wn.2d 837, 842, 154 P.3d 206 (2007).

Dismissal under CR 12(b)(6) is appropriate in those cases where the plaintiff cannot prove any set of facts consistent with the complaint that would entitle the plaintiff to relief. *Bravo v. Dolsen Cos.*, 125 Wn.2d 745, 750, 888 P.2d 147 (1995). “[A]ny hypothetical situation conceivably raised by the complaint defeats a CR 12(b)(6) motion if it is legally sufficient to support the plaintiff’s claim.” *Id.* at 750 (alteration in original) (quoting *Halvorson v. Dahl*, 89 Wn.2d 673, 674, 574 P.2d 1190 (1978)). All facts alleged in the plaintiff’s complaint are presumed true. *Tenore v. AT & T Wireless Servs.*, 136 Wn.2d 322, 330, 962 P.2d 104 (1998), *cert. denied*, 525 U.S. 1171 (1999). However, the complaint’s legal conclusions are not required to be accepted on appeal. *Haberman v. Washington Pub. Power Supply Sys.*, 109 Wn.2d 107, 120, 744 P.2d 1032, 750 P.2d 254 (1987). “If a plaintiff’s claim remains legally insufficient even under his or her proffered hypothetical facts, dismissal pursuant to CR 12(b)(6) is appropriate.” *Gorman v. Garlock, Inc.*, 155 Wn.2d 198, 215, 118 P.3d 311 (2005).

Washington’s Industrial Insurance Act (IIA), Title 51 RCW, provides the exclusive remedy for workers who are injured during the course of their employment. *Wash. Ins. Guar. Ass’n v. Dep’t of Labor & Indus.*, 122 Wn.2d 527, 530, 859 P.2d 592 (1993); RCW 51.04.010. Thus, the IIA precludes any “tort claims if those claims arise out of an ‘injury’ . . . that is compensable under

the [IIA].” *Rothwell v. Nine Mile Falls Sch. Dist.*, 173 Wn. App. 812, 819, 295 P.3d 328 (2013) (quoting *Sharpe v. Am. Tel. & Tel. Co.*, 66 F.3d 1045, 1051 (9th Cir. 1995)).

Tort claims may arise when the employer acts with deliberate intention. RCW 51.04.020. Our Supreme Court considered the meaning of “deliberate intention” in *Birklid v. Boeing Co.*, 127 Wn.2d 853, 865, 904 P.2d 278 (1995), and held “the phrase ‘deliberate intention’ in RCW 51.24.020 means the employer had actual knowledge that an injury was certain to occur and willfully disregarded that knowledge.” Here, however, rather than arguing his employer acted with deliberate intention, Collins uniquely applies the deliberate intention test to several state agencies for the wrongful denial of his claims. His arguments fail because a constitutional tort action is not recognized in Washington and the tort of outrage is not supported by the record.¹

B. CONSTITUTIONAL TORT

Collins first argues the superior court overlooked facts and law pertaining to his constitutional tort claim. He claims he should be compensated for the harm caused by the State’s, the governor’s, the attorney general’s, and the Department’s alleged intentional violation of his due process rights.

A constitutional tort is generally a legal action against government agents to pursue damages for violations of constitutional rights. *Bivens v. Six Unknown Named Agents of Fed.*

¹ Collins also discusses at length allegations of judicial misconduct, including failing to review his pleadings, improper transferring of matters between judges, denial of discovery, and partiality towards the defendants. He fails to provide citation to the record (other than his own pleadings), meaningful argument, or citation to legal authority to support his arguments as required under RAP 10.3(a)(5)-(6) to warrant review. See also *Cowiche Canyon v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992); *DeHeer v. Seattle Post-Intelligencer*, 60 Wn.2d 122, 126, 372 P.2d 193 (1962). Therefore, we do not consider these claims.

Bureau of Narcotics, 403 U.S. 388, 397, 91 S. Ct. 1999, 2005, 29 L. Ed. 2d 619 (1971). Washington courts have consistently refused to recognize a constitutional tort for damages. See *Reid v. Pierce County*, 136 Wn.2d 195, 213-14, 961 P.2d 333 (1998) (a constitutional cause of action not recognized because plaintiffs did not present a reasoned or principled basis for one nor establish that it would be more appropriate than common law causes of action); *Blinka v. Wash. State Bar Ass'n*, 109 Wn. App. 575, 591, 36 P.3d 1094 (2001) (Washington courts will not recognize a cause of action based on constitutional violations without legislative guidance), *review denied*, 146 Wn.2d 1021 (2002). Thus, because there is no recognized cause of action in tort for constitutional violations, we affirm the dismissal of Collins's constitutional tort claim in this case.

C. INTENTIONAL INFLECTION OF EMOTIONAL DISTRESS/TORT OF OUTRAGE

Collins next argues he is entitled to relief based on the tort of outrage, also known as intentional infliction of emotional distress. *Kloepfel v. Bokor*, 149 Wn.2d 192, 194, 66 P.3d 630 (2003). He contends that the Department abused a custodial relationship by intentionally not addressing his claims; the Department, attorney general, and governor failed to impede the 2014 IME; and the attorney general failed to observe a special duty owed to him, which conduct was outrageous and intentional and caused him emotional distress.

To prevail on a claim of intentional infliction of emotional distress, a plaintiff must show (1) extreme and outrageous conduct, (2) intentional or reckless infliction of emotional distress, and (3) the plaintiff actually suffers severe emotional distress. *Kloepfel*, 149 Wn.2d at 195. Each element must be established. *Id.* Collins fails to show the first element.

Extreme and outrageous conduct must be conduct that is “so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as

atrocious, and utterly intolerable in a civilized community.” *Grange Ins. Ass’n v. Roberts*, 179 Wn. App. 739, 753-54, 320 P.3d 77 (2013) (footnote omitted) (quoting *Reid*, 136 Wn.2d at 202), *review denied* 180 Wn.2d 1026 (2014). The conduct must be more than insults, indignities, threats, annoyances, petty oppressions, or other trivialities. *Kirby v. City of Tacoma*, 124 Wn. App. 454, 474, 98 P.3d 827 (2004), *review denied*, 154 Wn.2d 1007 (2005).

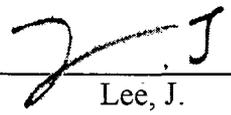
Here, Collins requested to reopen his claim, alleging aggravation of condition. The Department reopened the claim and approved medical benefits. Unsatisfied, Collins appealed to the BIIA. There, he made a sufficient prima facie showing that he had not received notice that his prior action was closed. On remand, the Department reassessed and ordered an IME. Based on the IME results, the Department denied time loss and disability benefits, terminated medical benefits, and closed the claim.

Nowhere in the record is there evidence of outrageous conduct in handling these complaints by the Department, governor, or attorney general that rise to the level of being “atrocious, and utterly intolerable in a civilized community.” *Grange Ins. Ass’n*, 179 Wn. App. at 753-54. While the repeated denials of relief may be an “insult” or “annoyance” to Collins, they were not enough to rise to the level of outrageous conduct to support the tort of intentional infliction of emotional distress. *Kirby*, 124 Wn. App. at 474. Accordingly, Collins fails to allege any conduct sufficiently outrageous to support an intentional infliction of emotional distress claim nor does his complaint raise any legally sufficient hypothetical situation supporting a claim of intentional infliction of emotional distress.

NO. 47565-1-II

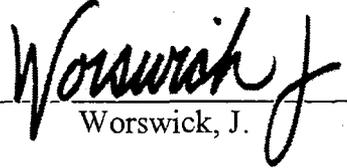
Based on the above, the trial court did not err in dismissing Collins second amended complaint and third amended complaint under CR 12(b)(6). Therefore, we affirm.

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.



Lee, J.

We concur:



Worswick, J.



Berger, C.J.

Michael J. Collins Petition For Review

APPENDIX

B

Cited Statutory, Regulatory, and Constitutional Provisions

Michael J. Collins Petition For Review

State Statutes	Page in Petition
RCW 4.92.090.....	3
RCW 4.92.100.(110).....	3, 8, 12
RCW 43.06.010(7)(11).....	10
RCW 43.10.030(5)(7).....	10
RCW 51.04.020(6).....	11,12
WAC Regulations	
WAC 296-14-400...(also see included relevance of 7-Year Rule)...	11
WAC 296-14-970(4)(5).....	11
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State Constitutional Provisions	
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RCW 4.92.090

Tortious conduct of state—Liability for damages.

The state of Washington, whether acting in its governmental or proprietary capacity, shall be liable for damages arising out of its tortious conduct to the same extent as if it were a private person or corporation.

[1963 c 159 § 2;1961 c 136 § 1.]

RCW 4.92.100**Tortious conduct of state or its agents—Claims—Presentment and filing—
Contents.**

(1) All claims against the state, or against the state's officers, employees, or volunteers, acting in such capacity, for damages arising out of tortious conduct, must be presented to the office of risk management. A claim is deemed presented when the claim form is delivered in person or by regular mail, registered mail, or certified mail, with return receipt requested, or as an attachment to electronic mail or by fax, to the office of risk management. For claims for damages presented after July 26, 2009, all claims for damages must be presented on the standard tort claim form that is maintained by the office of risk management. The standard tort claim form must be posted on the department of enterprise services' web site.

(a) The standard tort claim form must, at a minimum, require the following information:

(i) The claimant's name, date of birth, and contact information;

(ii) A description of the conduct and the circumstances that brought about the injury or damage;

(iii) A description of the injury or damage;

(iv) A statement of the time and place that the injury or damage occurred;

(v) A listing of the names of all persons involved and contact information, if known;

(vi) A statement of the amount of damages claimed; and

(vii) A statement of the actual residence of the claimant at the time of presenting the claim and at the time the claim arose.

(b)(i) The standard tort claim form must be signed either:

(A) By the claimant, verifying the claim;

(B) Pursuant to a written power of attorney, by the attorney-in-fact for the claimant;

(C) By an attorney admitted to practice in Washington state on the claimant's behalf; or

(D) By a court-approved guardian or guardian ad litem on behalf of the claimant.

(ii) For the purpose of this subsection (1)(b), when the claim form is presented electronically it must bear an electronic signature in lieu of a written original signature. An electronic signature means a facsimile of an original signature that is affixed to the claim form and executed or adopted by the person with the intent to sign the document.

(iii) When an electronic signature is used and the claim is submitted as an attachment to electronic mail, the conveyance of that claim must include the date, time the claim was presented, and the internet provider's address from which it was sent. The attached claim form must be a format approved by the office of risk management.

(iv) When an electronic signature is used and the claim is submitted via a facsimile machine, the conveyance must include the date, time the claim was submitted, and the fax number from which it was sent.

(v) In the event of a question on an electronic signature, the claimant shall have an opportunity to cure and the cured notice shall relate back to the date of the original filing.

(c) The amount of damages stated on the claim form is not admissible at trial.

(2) The state shall make available the standard tort claim form described in this section with instructions on how the form is to be presented and the name, address, and business hours of the office of risk management. The standard tort claim form must not list the claimant's social security number and must not require information not specified under this section. The claim form and the instructions for completing the claim form must provide the

RCW 4.92.110

Tortious conduct of state or its agents—Presentment and filing of claim prerequisite to suit.

No action subject to the claim filing requirements of RCW 4.92.100 shall be commenced against the state, or against any state officer, employee, or volunteer, acting in such capacity, for damages arising out of tortious conduct until sixty calendar days have elapsed after the claim is presented to the office of risk management in the department of enterprise services. The applicable period of limitations within which an action must be commenced shall be tolled during the sixty calendar day period. For the purposes of the applicable period of limitations, an action commenced within five court days after the sixty calendar day period has elapsed is deemed to have been presented on the first day after the sixty calendar day period elapsed.

[2015 c 225 § 5;2009 c 433 § 3;2006 c 82 § 2;2002 c 332 § 13;1989 c 419 § 14;1986 c 126 § 8;1979 c 151 § 4;1977 ex.s. c 144 § 3;1963 c 159 § 4.]

NOTES:

Intent—Effective date—2002 c 332: See notes following RCW 43.19.760.

Intent—Effective date—1989 c 419: See notes following RCW 4.92.006.

RCW 43.06.010**General powers and duties.**

In addition to those prescribed by the Constitution, the governor may exercise the powers and perform the duties prescribed in this and the following sections:

- (1) The governor shall supervise the conduct of all executive and ministerial offices;
- (2) The governor shall see that all offices are filled, including as provided in RCW 42.12.070, and the duties thereof performed, or in default thereof, apply such remedy as the law allows; and if the remedy is imperfect, acquaint the legislature therewith at its next session;
- (3) The governor shall make the appointments and supply the vacancies mentioned in this title;
- (4) The governor is the sole official organ of communication between the government of this state and the government of any other state or territory, or of the United States;
- (5) Whenever any suit or legal proceeding is pending against this state, or which may affect the title of this state to any property, or which may result in any claim against the state, the governor may direct the attorney general to appear on behalf of the state, and report the same to the governor, or to any grand jury designated by the governor, or to the legislature when next in session;
- (6) The governor may require the attorney general or any prosecuting attorney to inquire into the affairs or management of any corporation existing under the laws of this state, or doing business in this state, and report the same to the governor, or to any grand jury designated by the governor, or to the legislature when next in session;
- (7) The governor may require the attorney general to aid any prosecuting attorney in the discharge of the prosecutor's duties;
- (8) The governor may offer rewards, not exceeding one thousand dollars in each case, payable out of the state treasury, for information leading to the apprehension of any person convicted of a felony who has escaped from a state correctional institution or for information leading to the arrest of any person who has committed or is charged with the commission of a felony;
- (9) The governor shall perform such duties respecting fugitives from justice as are prescribed by law;
- (10) The governor shall issue and transmit election proclamations as prescribed by law;
- (11) The governor may require any officer or board to make, upon demand, special reports to the governor, in writing;
- (12) The governor may, after finding that a public disorder, disaster, energy emergency, or riot exists within this state or any part thereof which affects life, health, property, or the public peace, proclaim a state of emergency in the area affected, and the powers granted the governor during a state of emergency shall be effective only within the area described in the proclamation;
- (13) The governor may, after finding that there exists within this state an imminent danger of infestation of plant pests as defined in RCW 17.24.007 or plant diseases which seriously endangers the agricultural or horticultural industries of the state of Washington, or which seriously threatens life, health, or economic well-being, order emergency measures to prevent or abate the infestation or disease situation, which measures, after thorough evaluation of all other alternatives, may include the aerial application of pesticides;

RCW 43.10.030**General powers and duties.**

The attorney general shall:

- (1) Appear for and represent the state before the supreme court or the court of appeals in all cases in which the state is interested;
- (2) Institute and prosecute all actions and proceedings for, or for the use of the state, which may be necessary in the execution of the duties of any state officer;
- (3) Defend all actions and proceedings against any state officer or employee acting in his or her official capacity, in any of the courts of this state or the United States;
- (4) Consult with and advise the several prosecuting attorneys in matters relating to the duties of their office, and when the interests of the state require, he or she shall attend the trial of any person accused of a crime, and assist in the prosecution;
- (5) Consult with and advise the governor, members of the legislature, and other state officers, and when requested, give written opinions upon all constitutional or legal questions relating to the duties of such officers;
- (6) Prepare proper drafts of contracts and other instruments relating to subjects in which the state is interested;
- (7) Give written opinions, when requested by either branch of the legislature, or any committee thereof, upon constitutional or legal questions;
- (8) Enforce the proper application of funds appropriated for the public institutions of the state, and prosecute corporations for failure or refusal to make the reports required by law;
- (9) Keep in proper books a record of all cases prosecuted or defended by him or her, on behalf of the state or its officers, and of all proceedings had in relation thereto, and deliver the same to his or her successor in office;
- (10) Keep books in which he or she shall record all the official opinions given by him or her during his or her term of office, and deliver the same to his or her successor in office;
- (11) Pay into the state treasury all moneys received by him or her for the use of the state.

[2009 c 549 § 5048;1975 c 40 § 5;1971 c 81 § 109;1965 c 8 § 43.10.030. Prior: (i) 1929 c 92 § 3; RRS § 112. (ii) 1929 c 92 § 4; RRS § 11032; prior: 1891 c 55 § 2;1888 p 8 § 6.]

RCW 51.04.020**Powers and duties.**

The director shall:

- (1) Establish and adopt rules governing the administration of this title;
- (2) Ascertain and establish the amounts to be paid into and out of the accident fund;
- (3) Regulate the proof of accident and extent thereof, the proof of death and the proof of relationship and the extent of dependency;
- (4) Supervise the medical, surgical, and hospital treatment to the intent that it may be in all cases efficient and up to the recognized standard of modern surgery;
- (5) Issue proper receipts for moneys received and certificates for benefits accrued or accruing;
- (6) Investigate the cause of all serious injuries and report to the governor from time to time any violations or laxity in performance of protective statutes or regulations coming under the observation of the department;
- (7) Compile statistics which will afford reliable information upon which to base operations of all divisions under the department;
- (8) Make an annual report to the governor of the workings of the department;
- (9) Be empowered to enter into agreements with the appropriate agencies of other states relating to conflicts of jurisdiction where the contract of employment is in one state and injuries are received in the other state, and insofar as permitted by the Constitution and laws of the United States, to enter into similar agreements with the provinces of Canada; and
- (10) Designate a medical director who is licensed under chapter 18.57 or 18.71 RCW.

[2000 c 5 § 14;1994 c 164 § 24;1977 c 75 § 77;1963 c 29 § 1;1961 c 23 § 51.04.020. Prior: 1957 c 70 § 3; prior: (i) 1921 c 182 § 9;1911 c 74 § 24; RRS § 7703. (ii) 1947 c 247 § 1, part; 1911 c 74 § 4, part; Rem. Supp. 1947 § 7676f, part.]

NOTES:

Intent—Purpose—2000 c 5: See RCW 48.43.500.

Application—Short title—Captions not law—Construction—Severability—Application to contracts—Effective dates—2000 c 5: See notes following RCW 48.43.500.

Severability—1963 c 29: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1963 c 29 § 2.]

Assignment of wage claims: RCW 49.48.040.

Electricians, installations: Chapters 19.28, 19.29 RCW.

Farm labor contractors: Chapter 19.30 RCW.

Health and safety, underground workers: Chapter 49.24 RCW.

Minimum wage act: Chapter 49.46 RCW.

WAC 296-14-400

Reopenings for benefits.

The director at any time may, upon the workers' application to reopen for aggravation or worsening of condition, provide proper and necessary medical and surgical services as authorized under RCW 51.36.010. This provision will not apply to total permanent disability cases, as provision of medical treatment in those cases is limited by RCW 51.36.010.

The seven-year reopening time limitation shall run from the date the first claim closure becomes final and shall apply to all claims regardless of the date of injury. In order for claim closure to become final on claims where closure occurred on or after July 1, 1981, the closure must include documentation of medical recommendation, advice or examination. Such documentation is not required for closing orders issued prior to July 1, 1981. First closing orders issued between July 1, 1981, and July 1, 1985, shall for the purposes of this section only, be deemed issued on July 1, 1985.

The director shall, in the exercise of his or her discretion, reopen a claim provided objective evidence of worsening is present and proximately caused by a previously accepted asbestos-related disease.

In order to support a final closure based on medical recommendation or advice the claim file must contain documented information from a doctor, or nurse consultant (departmental) or nurse practitioner. The doctor or nurse practitioner may be in private practice, acting as a member of a consultation group, employed by a firm, corporation, or state agency.

For the purpose of this section, a "doctor" is defined in WAC 296-20-01002.

When a claim has been closed by the department or self-insurer for sixty days or longer, the worker must file a written application to reopen the claim. An informal written request filed without accompanying medical substantiation of worsening of the condition will constitute a request to reopen, but the time for taking action on the request shall not commence until a formal application is filed with the department or self-insurer as the case may be.

A formal application occurs when the worker and doctor complete and file the application for reopening provided by the department. Upon receipt of an informal request without accompanying medical substantiation of worsening of the worker's condition, the department or self-insurer shall promptly provide the necessary application to the worker for completion. For services or provider types where the department has established a provider network, beginning January 1, 2013, medical treatment and documentation for reopening applications must be completed by network providers.

If, within seven years from the date the first closing order became final, a formal application to reopen is filed which shows by "sufficient medical verification of such disability related to the accepted condition(s)" that benefits are payable, the department, or the self-insurer, pursuant to RCW 51.32.210 and 51.32.190, respectively shall mail the first payment within fourteen days of receiving the formal application to reopen. If the application does not contain sufficient medical verification of disability, the fourteen-day period will begin upon receipt of such verification. If the application to reopen is granted, compensation will be paid pursuant to RCW 51.28.040. If the application to reopen is denied, the worker shall repay such compensation pursuant to RCW 51.32.240.

Applications for reopenings filed on or after July 1, 1988, must be acted upon by the department within ninety days of receipt of the application by the department or the self-

WAC 296-14-970**Worker's review of claim file.**

(1) Pursuant to RCW 51.28.070, workers may be allowed to review their claim file(s) upon written request to the department or self-insurer. The written request should contain the worker's name, claim number, signature, and the information requested. If the request is approved, the department or self-insurer shall provide a copy of the claim file to the worker.

(2) Reasons for denying release of a claim file, to a worker shall include, but not be limited to the following:

(a) Presence of psychological, mental health, or physical treatment records, investigative reports or other records, release of which may not be in the interest of the worker.

(b) Medical opinion or other documented information indicates the worker is a danger to himself or herself or others.

(3) If, pursuant to the criteria established under subsection (2) of this section, the self-insured employer determines that release of the claim file, in whole or in part, may not be in the worker's interest, the employer must submit a request for denial with explanations along with a copy of that portion of the claim file not previously submitted to the self-insurance section within twenty days after receipt of the request from the worker.

(4) If the request for the claim file is denied, in whole or in part, a written order of denial will be issued by the department and mailed to the worker. The worker may appeal the order to the board of industrial insurance appeals.

(5) The provisions of this rule will apply to all claims regardless of the date of injury.

[Statutory Authority: RCW 51.28.070. WSR 90-18-002, § 296-14-970, filed 8/23/90, effective 9/23/90.]

WAC 296-20-01002

Definitions.

Acceptance, accepted condition: Determination by a qualified representative of the department or self-insurer that reimbursement for the diagnosis and curative or rehabilitative treatment of a claimant's medical condition is the responsibility of the department or self-insurer. The condition being accepted must be specified by one or more diagnosis codes from the current edition of the International Classification of Diseases, Clinically Modified (ICD-CM).

Appointing authority: For the evidence-based prescription drug program of the participating agencies in the state purchased health care programs, appointing authority shall mean the following persons acting jointly: The administrator of the health care authority, the secretary of the department of social and health services, and the director of the department of labor and industries.

Attendant care: Those proper and necessary personal care services provided to maintain the worker in his or her residence. Refer to WAC 296-23-246 for more information.

Attending provider report: This type of report may also be referred to as a "60 day" or "special" report. The following information must be included in this type of report. Also, additional information may be requested by the department as needed.

(1) The condition(s) diagnosed including the current federally adopted ICD-CM codes and the objective and subjective findings.

(2) Their relationship, if any, to the industrial injury or exposure.

(3) Outline of proposed treatment program, its length, components, and expected prognosis including an estimate of when treatment should be concluded and condition(s) stable. An estimated return to work date should be included. The probability, if any, of permanent partial disability resulting from industrial conditions should be noted.

(4) If the worker has not returned to work, the attending doctor should indicate whether a vocational assessment will be necessary to evaluate the worker's ability to return to work and why.

(5) If the worker has not returned to work, a doctor's estimate of physical capacities should be included with the report. If further information regarding physical capacities is needed or required, a performance-based physical capacities evaluation can be requested. Performance-based physical capacities evaluations should be conducted by a licensed occupational therapist or a licensed physical therapist. Performance-based physical capacities evaluations may also be conducted by other qualified professionals who provided performance-based physical capacities evaluations to the department prior to May 20, 1987, and who have received written approval to continue supplying this service based on formal department review of their qualifications.

Attending provider: For these rules, means a person licensed to independently practice one or more of the following professions: Medicine and surgery; osteopathic medicine and surgery; chiropractic; naturopathic physician; podiatry; dentistry; optometry; and advanced registered nurse practitioner. An attending provider actively treats an injured or ill worker.

Authorization: Notification by a qualified representative of the department or self-insurer that specific proper and necessary treatment, services, or equipment provided for the diagnosis and curative or rehabilitative treatment of an accepted condition will be reimbursed by the department or self-insurer.

PREAMBLE

We, the people of the State of Washington, grateful to the Supreme Ruler of the Universe for our liberties, do ordain this constitution.

**ARTICLE I
DECLARATION OF RIGHTS**

SECTION 1 POLITICAL POWER. All political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established to protect and maintain individual rights.

SECTION 2 SUPREME LAW OF THE LAND. The Constitution of the United States is the supreme law of the land.

SECTION 3 PERSONAL RIGHTS. No person shall be deprived of life, liberty, or property, without due process of law.

SECTION 4 RIGHT OF PETITION AND ASSEMBLAGE. The right of petition and of the people peaceably to assemble for the common good shall never be abridged.

SECTION 5 FREEDOM OF SPEECH. Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that right.

SECTION 6 OATHS - MODE OF ADMINISTERING. The mode of administering an oath, or affirmation, shall be such as may be most consistent with and binding upon the conscience of the person to whom such oath, or affirmation, may be administered.

SECTION 7 INVASION OF PRIVATE AFFAIRS OR HOME PROHIBITED. No person shall be disturbed in his private affairs, or his home invaded, without authority of law.

SECTION 8 IRREVOCABLE PRIVILEGE, FRANCHISE OR IMMUNITY PROHIBITED. No law granting irrevocably any privilege, franchise or immunity, shall be passed by the legislature.

SECTION 9 RIGHTS OF ACCUSED PERSONS. No person shall be compelled in any criminal case to give evidence against himself, or be twice put in jeopardy for the same offense.

SECTION 10 ADMINISTRATION OF JUSTICE. Justice in all cases shall be administered openly, and without unnecessary delay.

SECTION 11 RELIGIOUS FREEDOM. Absolute freedom of conscience in all matters of religious sentiment, belief and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person or property on account of religion; but the liberty of conscience

hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the state. No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or the support of any religious establishment: PROVIDED, HOWEVER, That this article shall not be so construed as to forbid the employment by the state of a chaplain for such of the state custodial, correctional, and mental institutions, or by a county's or public hospital district's hospital, health care facility, or hospice, as in the discretion of the legislature may seem justified. No religious qualification shall be required for any public office or employment, nor shall any person be incompetent as a witness or juror, in consequence of his opinion on matters of religion, nor be questioned in any court of justice touching his religious belief to affect the weight of his testimony. [AMENDMENT 88, 1993 House Joint Resolution No. 4200, p 3062. Approved November 2, 1993.]

Amendment 34 (1957) — Art. 1 Section 11 RELIGIOUS FREEDOM — Absolute freedom of conscience in all matters of religious sentiment, belief and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person or property on account of religion; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the state. No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or the support of any religious establishment: Provided, however, That this article shall not be so construed as to forbid the employment by the state of a chaplain for such of the state custodial, correctional and mental institutions as in the discretion of the legislature may seem justified. No religious qualification shall be required for any public office or employment, nor shall any person be incompetent as a witness or juror, in consequence of his opinion on matters of religion, nor be questioned in any court of justice touching his religious belief to affect the weight of his testimony. [AMENDMENT 34, 1957 Senate Joint Resolution No. 14, p 1299. Approved November 4, 1958.]

Amendment 4 (1904) — Art. 1 Section 11 RELIGIOUS FREEDOM — Absolute freedom of conscience in all matters of religious sentiment, belief and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person or property on account of religion; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the state. No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or the support of any religious establishment. Provided, however, That this article shall not be so construed as to forbid the employment by the state of a chaplain for the state penitentiary, and for such of the state reformatories as in the discretion of the legislature may seem justified. No religious qualification shall be required for any public office or employment, nor shall any person be incompetent as a witness or juror, in consequence of his opinion on matters of religion, nor be questioned in any court of justice touching his religious belief to affect the weight of his testimony. [AMENDMENT 4, 1903 p 283 Section 1. Approved November, 1904.]

Original text — Art. 1 Section 11 RELIGIOUS FREEDOM — Absolute freedom of conscience in all matters of religious sentiment, belief, and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person, or property, on account of religion; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace and safety of the state. No public money or property shall be appropriated for, or applied to any religious worship, exercise or instruction, or the support of any religious establishment. No religious qualification shall be required for any public office, or employment, nor shall any person be incompetent as a witness, or juror, in consequence of his opinion on matters of religion, nor be questioned in any court of justice touching his religious belief to affect the weight of his testimony.

SECTION 12 SPECIAL PRIVILEGES AND IMMUNITIES PROHIBITED. No law shall be passed

**ARTICLE III
THE EXECUTIVE**

SECTION 1 EXECUTIVE DEPARTMENT. The executive department shall consist of a governor, lieutenant governor, secretary of state, treasurer, auditor, attorney general, superintendent of public instruction, and a commissioner of public lands, who shall be severally chosen by the qualified electors of the state at the same time and place of voting as for the members of the legislature.

SECTION 2 GOVERNOR, TERM OF OFFICE. The supreme executive power of this state shall be vested in a governor, who shall hold his office for a term of four years, and until his successor is elected and qualified.

SECTION 3 OTHER EXECUTIVE OFFICERS, TERMS OF OFFICE. The lieutenant governor, secretary of state, treasurer, auditor, attorney general, superintendent of public instruction, and commissioner of public lands, shall hold their offices for four years respectively, and until their successors are elected and qualified.

SECTION 4 RETURNS OF ELECTIONS, CANVASS, ETC. The returns of every election for the officers named in the first section of this article shall be sealed up and transmitted to the seat of government by the returning officers, directed to the secretary of state, who shall deliver the same to the speaker of the house of representatives at the first meeting of the house thereafter, who shall open, publish and declare the result thereof in the presence of a majority of the members of both houses. The person having the highest number of votes shall be declared duly elected, and a certificate thereof shall be given to such person, signed by the presiding officers of both houses; but if any two or more shall be highest and equal in votes for the same office, one of them shall be chosen by the joint vote of both houses. Contested elections for such officers shall be decided by the legislature in such manner as shall be determined by law. The terms of all officers named in section one of this article shall commence on the second Monday in January after their election until otherwise provided by law.

SECTION 5 GENERAL DUTIES OF GOVERNOR. The governor may require information in writing from the officers of the state upon any subject relating to the duties of their respective offices, and shall see that the laws are faithfully executed.

SECTION 6 MESSAGES. He shall communicate at every session by message to the legislature the condition of the affairs of the state, and recommend such measures as he shall deem expedient for their action.

SECTION 7 EXTRA LEGISLATIVE SESSIONS. He may, on extraordinary occasions, convene the legislature by proclamation, in which shall be stated the purposes for which the legislature is convened.

Extraordinary sessions to reconsider vetoes: Art. 3 Section 12.

SECTION 8 COMMANDER-IN-CHIEF. He shall be commander-in-chief of the military in the state except when they shall be called into the service of the United States.

SECTION 9 PARDONING POWER. The pardoning power shall be vested in the governor under such regulations and restrictions as may be prescribed by law.

SECTION 10 VACANCY IN OFFICE OF GOVERNOR. In case of the removal, resignation, death or disability of the governor, the duties of the office shall devolve upon the lieutenant governor; and in case of a vacancy in both the offices of governor and lieutenant governor, the duties of the governor shall devolve upon the secretary of state. In addition to the line of succession to the office and duties of governor as hereinabove indicated, if the necessity shall arise, in order to fill the vacancy in the office of governor, the following state officers shall succeed to the duties of governor and in the order named, viz.: Treasurer, auditor, attorney general, superintendent of public instruction and commissioner of public lands. In case of the death, disability, failure or refusal of the person regularly elected to the office of governor to qualify at the time provided by law, the duties of the office shall devolve upon the person regularly elected to and qualified for the office of lieutenant governor, who shall act as governor until the disability be removed, or a governor be elected; and in case of the death, disability, failure or refusal of both the governor and the lieutenant governor elect to qualify, the duties of the governor shall devolve upon the secretary of state; and in addition to the line of succession to the office and duties of governor as hereinabove indicated, if there shall be the failure or refusal of any officer named above to qualify, and if the necessity shall arise by reason thereof, then in that event in order to fill the vacancy in the office of governor, the following state officers shall succeed to the duties of governor in the order named, viz: Treasurer, auditor, attorney general, superintendent of public instruction and commissioner of public lands. Any person succeeding to the office of governor as in this section provided, shall perform the duties of such office only until the disability be removed, or a governor be elected and qualified; and if a vacancy occur more than thirty days before the next general election occurring within two years after the commencement of the term, a person shall be elected at such election to fill the office of governor for the remainder of the unexpired term. [AMENDMENT 6, 1909 p 642 Section 1. Approved November, 1910.]

Governmental continuity during emergency periods: Art. 2 Section 42.

Original text — Art. 3 Section 10 VACANCY IN — In case of the removal, resignation, death, or disability of the governor, the duties of the office shall devolve upon the lieutenant governor, and in case of a vacancy in both the offices of governor and lieutenant governor, the duties of governor shall devolve upon the secretary of state, who shall act as governor until the disability be removed or a governor elected.

SECTION 11 REMISSION OF FINES AND FORFEITURES. The governor shall have power to remit fines and forfeitures, under such regulations as may be prescribed by law, and shall report to the legislature at its next meeting each case of reprieve, commutation or pardon granted, and the reasons for granting the same, and also the names of all

Compensation of legislators, elected state officials, and judges: Art. 28 Section 1, Art. 30.

SECTION 18 SEAL. There shall be a seal of the state kept by the secretary of state for official purposes, which shall be called, "The Seal of the State of Washington."

Design of the Seal: Art. 18 Section 1.

State seal: RCW 1.20.080.

SECTION 19 STATE TREASURER, DUTIES AND SALARY. The treasurer shall perform such duties as shall be prescribed by law. He shall receive an annual salary of two thousand dollars, which may be increased by the legislature, but shall never exceed four thousand dollars per annum.

Compensation of legislators, elected state officials, and judges: Art. 28 Section 1, Art. 30.

SECTION 20 STATE AUDITOR, DUTIES AND SALARY. The auditor shall be auditor of public accounts, and shall have such powers and perform such duties in connection therewith as may be prescribed by law. He shall receive an annual salary of two thousand dollars, which may be increased by the legislature, but shall never exceed three thousand dollars per annum.

Compensation of legislators, elected state officials, and judges: Art. 28 Section 1, Art. 30.

SECTION 21 ATTORNEY GENERAL, DUTIES AND SALARY. The attorney general shall be the legal adviser of the state officers, and shall perform such other duties as may be prescribed by law. He shall receive an annual salary of two thousand dollars, which may be increased by the legislature, but shall never exceed thirty-five hundred dollars per annum.

Compensation of legislators, elected state officials, and judges: Art. 28 Section 1, Art. 30.

SECTION 22 SUPERINTENDENT OF PUBLIC INSTRUCTION, DUTIES AND SALARY. The superintendent of public instruction shall have supervision over all matters pertaining to public schools, and shall perform such specific duties as may be prescribed by law. He shall receive an annual salary of twenty-five hundred dollars, which may be increased by law, but shall never exceed four thousand dollars per annum.

Compensation of legislators, elected state officials, and judges: Art. 28 Section 1, Art. 30.

SECTION 23 COMMISSIONER OF PUBLIC LANDS — COMPENSATION. The commissioner of public lands shall perform such duties and receive such compensation as the legislature may direct.

SECTION 24 RECORDS, WHERE KEPT, ETC. The governor, secretary of state, treasurer, auditor, superintendent of public instruction, commissioner of public lands and attorney general shall severally keep the public records, books and papers relating to their respective offices, at the

seat of government, at which place also the governor, secretary of state, treasurer and auditor shall reside.

Governmental continuity during emergency periods: Art. 2 Section 42.

SECTION 25 QUALIFICATIONS, COMPENSATION, OFFICES WHICH MAY BE ABOLISHED. No person, except a citizen of the United States and a qualified elector of this state, shall be eligible to hold any state office. The compensation for state officers shall not be increased or diminished during the term for which they shall have been elected. The legislature may in its discretion abolish the offices of the lieutenant governor, auditor and commissioner of public lands. [AMENDMENT 31, 1955 Senate Joint Resolution No. 6, p 1861. Approved November 6, 1956.]

Authorizing compensation increase during term: Art. 30 Section 1.

Increase or diminution of compensation during term of office prohibited.

county, city, town or municipal officers: Art. 11 Section 8.

judicial officers: Art. 4 Section 13.

public officers: Art. 2 Section 25.

Original text — Art. 3 Section 25 QUALIFICATIONS — No person, except a citizen of the United States and a qualified elector of this state, shall be eligible to hold any state office, and the state treasurer shall be ineligible for the term succeeding that for which he was elected. The compensation for state officers shall not be increased or diminished during the term for which they shall have been elected. The legislature may in its discretion abolish the offices of the lieutenant governor, auditor and commissioner of public lands.

ARTICLE IV THE JUDICIARY

SECTION 1 JUDICIAL POWER, WHERE VESTED. The judicial power of the state shall be vested in a supreme court, superior courts, justices of the peace, and such inferior courts as the legislature may provide.

Court of appeals: Art. 4 Section 30.

SECTION 2 SUPREME COURT. The supreme court shall consist of five judges, a majority of whom shall be necessary to form a quorum, and pronounce a decision. The said court shall always be open for the transaction of business except on nonjudicial days. In the determination of causes all decisions of the court shall be given in writing and the grounds of the decision shall be stated. The legislature may increase the number of judges of the supreme court from time to time and may provide for separate departments of said court.

SECTION 2(a) TEMPORARY PERFORMANCE OF JUDICIAL DUTIES. When necessary for the prompt and orderly administration of justice a majority of the Supreme Court is empowered to authorize judges or retired judges of courts of record of this state, to perform, temporarily, judicial duties in the Supreme Court, and to authorize any superior court judge to perform judicial duties in any superior court of this state. [AMENDMENT 38, 1961 House Joint Resolution No. 6, p 2757. Approved November, 1962.]

Michael J. Collins Petition For Review

APPENDIX

C

Additional Authorities as related to, and supporting my Petition

Michael J. Collins Petition For Review

Appended as per RAP 10.4(c)

ADDITIONAL RESTATEMENT AUTHORITY

Restatement (Second) Of Torts Section 551 (1977)...
(liability for non-disclosure).....

Restatement (Second) Of Torts Section 874a (1979)...
'requiring ie., (the 'Act') certain conduct,, but does not provide a civil remedy
for the violation'... 'Thus, the drafters of the Restatement understood that
contemporary tort law includes a set of remedies direct or implied, for
violations of state constitutions'.....

Restatement (Third) Of Torts Section 1, Section 33(b), proposed final draft 1
(2005), Arthur Larson Lex K. Larson (Larsons' workers compensation law)
sections 103.3, 103.4 (2005)...
'The Court will use a more broad tort duty analysis'.....

ADDITIONAL LEGAL JOURNAL PUBLICATION AUTHORITIES

Barbara E. Armacost: Affirmative Duties, Systemic Harms, and the Due
Process Clause, 94 Mich. L. Rev. 982, 1030-35, (1996)...
"constitution imposes affirmative duties not only where someone is
confined, but also in other circumstances where the state exercises
substantial control over a person's well-being".....

Seattle University Law Review: The Value Of Government Tort Liability:
Washington States' Journey From Immunity, To Accountability.
40 Seattle U.L. Rev. 35 (2006)...
"the court expanded the concept of government liability, holding that
agencies could have liability for failure to perform duties lying outside
the statutory authority of the agency,,, or necessarily implied therefrom".....

Michael Wells: Common Law Torts, And Due Process Of Law Art. 3 (1983)...
"The government owes special torts obligations to persons under state control".

Christina B. Whitman: Government Responsibility For Torts 85 Mich. L. Rev.
225, 272-73, (1986)...
'(arguing that liability should be available where "[g]overnment practices,
and institutional structures... create special and impermissible harms
whether they are the result of deliberate decisions or inadvertence").....

Michael J. Collins Petition For Review

"[t]he most promising way to correct the abuses,,, is to provide incentives to the highest officials by imposing liability on the governmental unit"... Justice Utter,,, *King v Seattle* 84 Wash. 2d 239, 244, 525 P.2d 228, 232 (1974).....

Justice Utter: Former Washington State Supreme Court Justice:
Advancing State Constitutions In Court, Protecting An Individual's Rights,
Trial Magazine October, 1991.....
Utter: Perspectives on State Constitutions and the Washington Declaration
of Rights, 7 Pug. Sound L. Rev. 491,495 (1984)...

"We have often independently evaluated our state constitution and have concluded that it should be applied to confer greater civil liberties than its federal counterpart when the reasoning and evidence indicated such was intended and is necessary"... "An independent interpretation and application of the Washington Constitution is not just legitimate, historically mandated, and logically essential; it is, in the words of the Washington Supreme court, a 'duty' that all state courts owe to the people of Washington"... Washington Constitution: Whether textual analysis dictates an interpretation by way of statutory, or constitutional construction, "the meaning given it should be applied in such a manner as to meet new or changed conditions as they arise"...

Remember, *Cushman* prevailed based on provable 5th, and 14th Amendment violations of the U.S. Constitution, (federal counterpart ie., Justice Utter)...

Then the Washington State Constitution, as utilized in harmony with State Statutory, and [S]tate 'Special Duty' owed me, because of an existing 'Special Relationship' from April 18, 2007 to 2014, 'CP' 110-113, clearly afforded me in (my case specific), the 'civil liberty' of a fair legal process, to compel [S]tate proof of compliance of an Affirmative 'Special Duty' owed. Affirmative 'Special Duty',,, as the [S]tate had already acknowledged facts of (my case specific). Non-compliance, then created injury, and damages.

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CONTINUING VIOLATION TORT
Emotional Distress And Workers' Compensation Law
See my 'CP' 146, from May 4, 2007 L&I Psychiatric IME

Accardi v Superior Court (City Of Simi Valley) No. B072215 (1993).....
The Accardi Court stated the plaintiff's cause of action for emotional distress was 'founded upon actions that are outside the normal part of the employment environment'... As such plaintiff's claim for emotional distress was not barred, or preempted by exclusive remedy provisions of worker's compensation laws.

Courts will utilize the methodology that addresses equitable, and efficiency concerns, or interests, as the [first type] of 'Continuing Violation Tort' causing (Intentional Infliction Of Emotional Distress as specific to L&I), as based on an act, failure to act, and violating 'property interest' such as in (my case specific), as not readily addressed by other accrual and tolling rules.

Restatement (Second) Of Torts Section 46 comment d (1965),,, "only when there is a 'special relation' between the parties"...
Section 46 comment j,,, "it results from a peculiar susceptibility to such distress of which the actor has knowledge"...

See my (May 4, 2007 pg.3) supporting 'CP' 146, Psychiatric IME document in this Appendix C,,, as to defendants [actors] knowledge,,, since 2007...

See entire top paragraph of that May 4, 2007 pg.3 document. Also,,, see 2nd to bottom paragraph of that May 4, 2007 pg.3,, Dr. Joseffer July 18, 2006. ..."I have no opinion either way regarding this relationship"...

This is what results when an Independent Evaluation Dr. Joseffer, is based on the much lessor Accepted Condition, as the doctor at issue, Dr. Joseffer, from L&I's Instructions to Dr. Joseffer. See relation to IME doctors disclaimers in 'CP' 136,137. One cannot blame Dr. Joseffer for protecting himself as well. Then see directly above, from May 24, 2006, where 2 different doctors provided a diagnosis from much more information at their disposal, and not

particularly bound by an L&I limited set of instructions, based only on an incomplete original 1993 diagnosis. See 'CP' 175, as matching document. See also, 'CP' 114,118,138,139, from doctors not bound by L&I Instructions, as my Attending Physician, and Provider more serious diagnosis, L&I ignored. So from April 18, 2007 a 'Special Relationship' existed between myself, and L&I because of 'CP' 110-113, and L&I had full knowledge of my mental stress condition as 'CP' 146, and Additional document provided in this Appendix C. See also in Section 46 comment j Professor Prosser,,, if there are physical consequences (my injury not allowed to be properly treated),,, causing me pain, and suffering,,, as to solidify L&I extreme, and outrageous conduct.

Then sanctioned Civil liability for departure from civilized conduct. Section 46.

51 Am. Jur. 2D Limitations Of Actions Sections 168,171 (2000), and 54 C.J.S. Limitations Of Actions Section 194 (2005),,, (discussing exceptions to standard accrual rules that may be found within limitation statutes. ("[T]he 'Continuous Tort' rule holds that if the wrongful acts are continuous, or repeated, the statute of limitations runs from the date of the end of the wrongful conduct").

Intentional Infliction Of Emotional Distress cases are treated by the court as continuous violations, if involving conduct that is harmful as viewed in aggregate.

In Holland v City of Geddes 610 N.W. 2d 816,819 (S.D. 2000)... South Dakota Supreme Court,,, has posited that, "[a] continuing tort occurs when all elements of the tort continues"...

This can be a collective series of related unlawful acts by different L&I persons, to obtain same fraudulent, or intentional misconduct goal, and result, as not discrete acts. Not as mere continuing ill effects of the original violation, as I do not allege. Then 'Continuing Violation' Tort is correct in (my case specific). Continuous series of events giv[ing] rise to cumulative 'property interest' violation, and cumulative emotional distress/pain and suffering injury, causing damages...

Michael J. Collins Petition For Review

Duty: *Torres v State* 119 N.M. 609, 894, P.2d 386 (1995),,,
as based on the State Of New Mexico Tort Claims Act,,, the New
Mexico Supreme Court rejected both the Court Of Appeals reasoning,
that as a matter of Policy, the defendants owed no duty to the Plaintiff's,
and the trial courts holding that the Plaintiff's were unforeseeable as a
matter of law, and thus were owed no duty by the defendants. The Court's
rationale in *Torres* is based on deference to "constitutional principles",
and majoritarianism.

*[I]t is the particular domain of the legislature... to make public policy.
Courts should make policy in order to determine duty only when the body
politic has not spoken...*

(My case specific), to mean, the absence of language under the 'Act'...
From *Torres, Calkins v Cox Estates* 110 N.M 59, 792, P.2d 36 (1990),,, the
New Mexico Supreme Court employs the 2 part balancing test, for 'Duty'.

(1)(a) examine existing law ("legal precedent, statutes, and other principles
comprising the law"), to include regulations and rules...

Or (b), If there is no existing law, formulate public policy by balancing the
public policy interests involved ie., ("the relationship of the parties, the
plaintiff's injured interests, and the defendants conduct"), and (2) analyze
the foreseeability of the plaintiff and the injury to that plaintiff...

Restatement (Third) Of Torts Sections 37-42 for defendant's past conduct.

(My case specific). See my Opening Brief to the Court Of Appeals. The
defendants, the [S]tate, acknowledged 'duty' when the [AG] tendered a
Sworn Statement 'CP' 133-134, swearing to compliance to 'CP' 110-113.
[S]tate acknowledgment of 'duty', then solidifies the foreseeability factor,
and automatically supports my position as [S]tate 'Special Duty' owed.

I surpass tests in *Calkins*. Then [S]tate 'Duty' owed in (my case specific).

May 4, 2007
Claim Number: N619918

Medical Consultants Network, Inc.
Re: Michael John Collins
Page 3

their use or anything stronger. I get at most one to two hours of sleep per night. It has been that way for two years. The lack of sleep causes me to be depressed and also to hallucinate constantly. This causes me to be short tempered, but I do not demonstrate salient gratuitous violent tendencies and paranoia has been an obvious factor because of the depression I experience. Be advised I am not saying that my occupation caused this problem, as it, in itself, would not be allowable under Labor and Industries laws. My lumbosacral condition was never properly diagnosed in 1983. It has never been right. This caused me pain since the original injury of January 1993. This has led to a point of emotional and psychological despair after discovering the exacerbated condition I am now faced with, which I am at war with Labor and Industries or so to speak as they allowed me to be released back to the same labor intensive heavy lifting line of work that injured me to begin with while never allowing me to complete evaluation back then, that may have worsened my condition. Because on this date I trust you as the examiner are indeed independent and objective as the law will insist and not an Labor and Industries operative. This will be investigated. This position is due to my mistrust for Labor and Industries. Feel free to make a copy for your records and everything I have submitted to you, and I would appreciate a stamped copy receipt returned to me of all the documents to include this letter. I have submitted to you and feel free to send a copy to L&L."

He has also included medical records in this.

There is a Brief Adjudicative History indicating the date of injury of January 18, 1993. The claim is currently open. The accepted condition is a sprain of the lumbar region.

On February 8, 2006, there is a note from Occupational Medicine. The assessment is sprain lumbosacral.

On May 24, 2006, Edward DeVita, MD, and Charles Larson, MD evaluated him. Diagnoses: Lumbosacral strain with apparent missed lumbosacral junction fracture with objective findings of worsening in this regard with positive diagnostic imaging findings including MRI scan and x-rays of the lumbosacral spine related to the injury. He also shows finding of nerve root impingement with sensory changes in his feet, possibly sustained partial cauda equina syndrome. It is recommended that he follow up with his spinal surgeon for continued workup.

Seth Joseffer, MD, sees the patient on July 18, 2006. Assessment: Low back pain due to multilevel degenerative disc disease. He is concerned with the relationship between these degenerative changes and his 1993 injury. I have told him that while injuries and work experience may be related to imaging findings, I have no opinion either way regarding this relationship. Right foot pain and some decreased sensation. Left heel pain worse when he puts weight on his heel.

Peter Shin, MD, sees the patient on August 4, 2006. Plan and Assessment: Low back pain; leg pain; varying distributions of sensory abnormalities; L3-4, L5-S1 moderate-

APPENDIX

D

Superior Court verification document: For 'CP', to include my (Exhibits as 'CP' 110-176), Report Of Proceedings as 'RP', as electronically filed in Division II Court Of Appeals, from Superior Court, and as must support my subsequent, but as included, Court Of Appeals pleadings transfer to State Supreme Court.

See dates on specific 'CP' documents, to ensure numerically correct order for clarity, as cited in this Petition, and in my Court Of Appeals Opening, and Reply Briefs as timely filed.

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2
3 SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

4 MICHAEL J COLLINS

May 19, 2015

Plaintiff

5 vs.

No.: 14-2-14051-2

6 STATE OF WASHINGTON

Court of Appeals No.: 47565-1

7 OFFICE OF THE GOVERNOR

CLERK'S PAPERS PER
REQUEST OF APPELLANT

8 OFFICE OF THE ATTORNEY GENERAL

TO THE

9 DEPARTMENT OF L&I

COURT OF APPEALS,

10 ERIC BROOKS

DIVISION II

11 NANCY ADAMS

JOEL SACKS

Defendant

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DECLARATION OF MAILING SERVICE

I Petitioner Pro-se Michael J. Collins, pursuant to Div. II Court Of Appeals case 47565-I-II, hereby state under penalty of perjury, that I am at least 18 years of age, and that 1 complete copy of my State Supreme Court Petition For Review, filed on date as written, as signed below, has been mailed by way of regular mail, to the defense counsel at the Office Of The Attorney General - Torts Division, at the address, and on the date as listed below.

On this day Michael J. Collins MAY 31, 2016
Michael J. Collins Pro-se-10101 43rd Street Court East-Edgewood, Wn. 98371

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Torts Division
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