Docket No.

STATE OF WASHINGTON

OFFICE OF THE INSURANCE COMMISSIONER

ROSE HOWELL, *Petitioner*,

vs.

SAFECO INS. CO. OF ILLINOIS, Et Al. *in re:* the Estate of Plotner;

(Prudential Financial, Inc., Et Al.; Computer Share Shareholder Services, Et Al.), *Respondents*

– –

ROSE HOWELL, *Petitioner*,

vs.

LIBERTY MUTUAL, Et Al.;

(Liberty Mutual Ins. Co., Et Al.; Liberty Mutual Group, Et Al.;

Liberty Mutual Holding Co., Inc., Et Al., BNY Mellon (trustee)), *Respondents*

– –

ROSE HOWELL, *Petitioner*,

vs.

CONTINENTAL CASUALTY COMPANY, Et Al.;

(Hartford Financial Services Group, Inc.), *Respondents*

– –

ROSE HOWELL, *Petitioner*,

vs.

STATE FARM MUTUAL AUTOMOBILE INS. CO., *Respondent.*

PETITION FOR DECLARATORY ORDER (JUDGMENT)

And

AFFIDAVIT

And

CERTIFICATE OF SERVICE

Rose Howell, *Plaintiff (Creditor)*
9504 N.E. 5th Street
Vancouver, WA 98664 - (360) 953-0798

TABLE OF CONTENTS **PAGE**

---

[1] Safeco Ins. Co. of Illinois, Et Al. letter of demand, dated January 23, 2012, previously served.

[2] Continental Casualty, Et Al. letter of demand, dated January 23, 2012, previously served.

[3] Documents marked Exhibit "9" – Howell's Testimony in re: Docket No. 11-0261 previously served and online at oic.wa.gov

[4] State Farm Mut. Auto Ins. Co. demand letter, claim # 47-4072-361, DOL 3-3-99 in re: 01-2-02693-7.

TABLE OF AUTHORITIES

CASES **PAGES**

TABLE OF AUTHORITIES

CASES **PAGES**

TABLE OF AUTHORITIES

CASES **PAGES**

TABLE OF AUTHORITIES

CASES **PAGES**

TABLE OF AUTHORITIES

CASES **PAGES**

TABLE OF AUTHORITIES

CASES **PAGES**

TABLE OF AUTHORITIES

CASES **PAGES**

TABLE OF AUTHORITIES

CASES **PAGES**

TABLE OF AUTHORITIES

CASES **PAGES**

TABLE OF AUTHORITIES

CASES **PAGES**

TABLE OF AUTHORITIES

CASES **PAGES**

TABLE OF AUTHORITIES

CASES **PAGES**

TABLE OF AUTHORITIES

CASES **PAGES**

TABLE OF AUTHORITIES

CASES **PAGES**

TABLE OF AUTHORITIES

CASES **PAGES**

GENERAL COURT RULES **PAGE**

APPELLATE RULES

CONSTITUTION AND STATUTES

CONSTITUTION AND STATUTES CONT'D **PAGE**

OTHER **PAGE**

I. IDENTITY OF THE PETITIONER

COMES NOW, Rose Howell a.k.a Rosemarie Anne (Vikara) Howell files [t]his Petition for Declaratory Order (Judgment) [5] based on the following statutory grounds and affirmative facts. In addition, to "time not being a luxury" under CR 6 and CR 50 a 'prompt' remedy prevents further negating affects.

RCW 34.05.010 (3) 'Agency Action' means….***the interpretation or enforcement of a statute, the adoption or application of an agency rule or order*****…..*****granting or withholding of benefits***….

ˆ28 U.S.C.S. § 2201 – Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

II. INTRODUCTION

"But for" Plotner negligence on March 3, 1999:

Safeco Ins. Co. of Ill. is Plotner insurer (at-fault joint tortfeasor - controlled the defense) dispersed a "trust" (Prudential, Et Al.). Liberty Mutual, Et Al. (at fault intervening joint tortfeasor - controlled the defense) - Liberty Mutual Holding Co., Inc., Et Al. (trustee BNY Mellon) is the "guarantee" in control of the "solvent common fund." Continental Casualty Company is Howell's disability insurer (Hartford – making disbursements). And State Farm Mut. Auto Ins. Co. is Howell's insurer (failed to subrogate; re-appropriated PIP; didn't pay UIM). Each of the above-mentioned joint tortfeasor's "but for" the negligence of Plotner acted in concert – fostered special relationships, acted in bad faith with deceptive

[5] A declaratory judgment is a statutory remedy. *See* RCW 48.31.151.

practices, breached [its] duty to defend in good faith, breached contractual boundaries, breached [its] duty to control (warn), took part in conversion, and Consumer Protection Act (ch. 19.86 RCW) violations. Then deceptively chose to distribute the benefits of the "trust" unjustly enriching others (Computer Share) and officiated foreseeable acts of malice aforethought.

On November 20, 2007 and again on January 23, 2012 a demand letter was served. On September 18, 2008 "solvent" Liberty Mutual Holding Co., Inc. "guaranteed" this demand (G08-0084) [[6]]. On November 18, 2011, Safeco Ins. Co. of Ill. (Prudential) omission (trust) was uncovered. On January 10, 2012, sworn testimony was given (in re: 11-0261). On January 16, 2012 Continental Casualty (Hartford) omission (disbursements) was discovered. Before that, on October 26, 2009 State Farm Mut. Auto Ins. Co. re-appropriated PIP [[7]]. Separate entities (insurers) each with a duty to control (third parties) instead fostered "special relationships" causing this toxic tort, "but for" the negligence of Plotner, binding each pro rata to this liability (demand, et al.) regardless of the policy.

---

[6] Docket No. 11-0261 (January 10, 2012) - "all claims would be satisfied within statutory limits;" *Hanford v. King*, 112 Wash. 659, 662, 192 P.1013 (1920) (the new limitations period begins to run from the effective date of the new statutes enactment); *Merrigan v. Epstein*, 112 Wn.2d 709, 717, 773 P.2d 78 (1989) (*quoting Lewis H. Orland v. David G. Stebing*, Retroactivity Review: The Federal and Washington Approaches, 16 Gonzaga L. Rev. 855, 882 (1991); *Torkelson v. Roerick*, 24 Wn. App. 877, 879, 604 P.2d 1310 (1979) (the new period of limitation starts to run from the effective date of the statute changed); *Merrigan*, 112 Wn.2d at 717 (*quoting Orland & Stebing*, supra at 882 - RCW 4.16.080 amended SB 5045 SL (the omission time commencing statutory limitations); *Caughell v Group Health Coop. of Puget Sound*, 124 Wn.2d 217, 229, 237 n.6, 876 P.2d 898 (1994).

[7] *See* CP 486-87.

Hereafter the above-mentioned insurers are referred to as "joint tortfeasor's;" the solvent "common fund" (Liberty Mutual, Et Al.; BNY Mellon) as the "trust;" Liberty Mutual Holding Co., Inc. as the "guarantee;" third parties as the "special relationships;" Plotner as the "but for" negligence; Howell as the 'true beneficiary' and "readily identifiable accident victim;" and the "common fund doctrine" is applied herein to the trust (guaranteed solvent owing this demand, et al.(G08-0084)) (RCW's 48.31.151, 48.31B.060, 23.86.230, 23.90, 48.05.090).

III. STATEMENT OF RELIEF SOUGHT

As is referenced herein 'there is technically a further dispute' pending as a matter of law. Because it is a fundamental right to be free from this action, and this 'true beneficiaries' daily adverse affects outweigh that of solvent joint tortfeasor's - Howell asks for a **declaratory order** (judgment) granting: (1) the attached demand tendered satisfied (RCW's 48.31.151, 4.84.015, 4.84.030); (2) the 'immediate' transfer of 'solvent' trust assets to Howell's brokerage account (RCW's 48.05.090, 23.90; WAC 284-13-550); (3) re-appropriate and / or liquidate enforcing the "guarantee" (RCW's 48.31B.060, 23.86.230); (4) cease and desist – injunctive relief (Titles 7.40, 9A.56; RCW's 9A.60.040, 48.17.480); and (5) if necessary, administer *informal proceedings* (RCW 34.05.060).

IV. ISSUES PRESENTED

1.) Doesn't this agency have the ministerial authority to informally resolve this matter (Title 34.05 and 48 RCW's), if so, shouldn't a declaratory judgment swiftly be granted before further due process violations?

2.) Isn't the fundamental intent of the legislature that this demand immediately be tendered satisfied (RCW 48.31.151), if so, shouldn't the prompt transfer of trust assets be conferred (WAC 284-13-550)?
3.) Isn't this demand guaranteed (RCW's 48.31B.060, 23.86.230), if so, is the solvent guarantee violating this 'true beneficiaries' constitutional rights - this demand is mandated to be tendered *[entirely satisfied]* before special relationships (RCW's 48.31.151, 48.31.280)?
4.) Isn't a common fund (trust) established (RCW's 48.05.090, 23.90), if so, doesn't a fiduciary relationship already exist?
5.) Shouldn't joint tortfeasor's pay a pro rata share (RCW's 48.31.151, 4.84.015, 4.84.030), if not, [they] are unjustly rewarded?
6.) Don't court applicable rules (RAP 2.5, 12.9, 18.1; CR 6, 50, 55 (A), (b) (1), (c) (1)) fundamentally grant this petition, if so, why are the constitutional rights to of this 'true beneficiary' being obliterated?
7.) Shouldn't permanent injunctive relief be granted (RCW's 7.40, 9A.60.040, 9A.56), if not, unforeseen futuristic malice aforethought is anticipated?

V. RELEVANT FACTS

Howell sued the decedent after [he] caused a car accident (CR 55 (A)). Keith Plotner [himself] appeared and filed a late answer to Howell's complaint tendering his defense to his insurer Safeco Ins. Co. of Ill. - then through his insurer [he] again appeared without service filing a late answer and once more [he] appeared answering the first amended complaint, each without the required due diligence and excusable neglect (CR 55 (c) (1)). Subsequent to the chosen intervention of joint tortfeasor's continual late answers were filed without terms (CR 55 (c) (1)) – a trust (common fund) was established with third parties (RCW

48.31.151). Bearing in mind, late answers were filed up to, and through nine (9) years after the initial "but for" negligence of Plotner. *See* WAC 284-30-330.

As a consequence to this uncertainty Howell filed pro se making known joint tortfeasor's. Subsequently thereafter, Safeco Ins. Co. of Ill., Et Al. chose to indemnify Howell's demand (CR 55 (b) (1)). As a further result of the uncertainty of resolution Howell noted a hearing for default (serving the estate and Safeco Ins. Co. of Ill). An answer to the second amended complaint was filed three weeks before the scheduled hearing without terms required to cure the default and no motion to set-aside the default was filed (CR 55 (c) (1)). Shortly thereafter, Safeco Ins. Co., Et Al. under Liberty Mutual, Et Al. "guarantee" (RCW's 23.86.230, 48.31B.060) is declared 'solvent' owing this demand ((RCW 48.31.151) (*in re:* G08-0084)) although Howell was not notified of the hearings. Subsequently thereafter, Liberty Mutual chose to intervene and control the defense, conducted further deceptive practices. Shortly following an influenced judgment was entered. In reply, Howell moved for "Judgment as a Matter of Law" (RCW 48.31.151) and shortly thereafter for pro se litigation expenses (RCW's 4.84.015, 4.84.030) (serving the estate and Liberty Mutual). In response, the trial judge further disbursed funds to 'third party(s)' (including State Farm).

NOW with this uncertainty of resolution "but for" the negligence of Plotner - come to find out (without agreement) a trust was issued (December 18,

2001) and disability disbursements are being made to third parties (RCW 48.31.151). Joint tortfeasor's acts in concert caused this tortuous liability. On January 10, 2012, Howell gave testimony (*in re:* 11-0261).

The foregoing facts are included in chronological order below:

Date	Event	Citation
3/3/1999	Affirmative liability (rear-end) collision caused by Keith Plotner. *See* CR 55 (A).	
7/10/2001	Howell's first attorney filed the Complaint serving summons & complaint	CP 1
7/30/2001	K. Plotner [himself] defaulted	
8/7/2001	K. Plotner [himself] filed a late answer without leave of court - tendered his defense to Safeco Ins. Co.	CP 1-2
8/10/2001	(Safeco) Defense attorney filed a notice of appearance, terms accepted	CP 3
12/18/2001	Safeco Ins. Co. of Illinois, Et Al. issued a 3rd party trust in the city of San Diego without subject mtr jurisd. - without authority of law. *See* RCW 48.31.151 [8]	
12/4/2003	(Safeco) Defense attorney filed a late answer w/ o service - K. Plotner (alive) did [not] show excusable neglect and due diligence	CP 14-15
6/24/2004	Judge Johnson issued an order amending Howell's complaint - ex-parte	CP 17-18
6/24/2004	Judge Johnson issued an order striking trial (without resetting) - ex-parte	CP 19
7/14/2004	(Safeco) Defense attorney filed an answer - K. Plotner (alive) failed to defend his late filing - no due diligence - no excusable neglect.	CP 20
7/23/2004	Howell's attorney filed an amended complaint	CP 21
5/2/2005	Defendant, Keith Plotner passed away	
7/25/2005	Howell's attorney moved for leave to amend the complaint substitution of defendant	CP 25-26
8/26/2005	Judge Johnson issued an order substituting defendants - The estate and Safeco Ins. Co. did not present at the hearing - Judge Johnson declared on the record, "no one will care."	CP 27

[8] Contrary to RCW 48.31.151, and RCW 48.31.280, joint tortfeasor's paid third party(s) 'before' this 'true beneficiary.'

8/29/2005	Howell's attorney served & filed the amended Summons & Complaint - no answer	CP 28-29
6/19/2007	Plaintiff filed Pro Se Notice & on Nov. 20, 2007 served a demand	CP 36-38
2/12/2008	Howell moved for DEFAULT, Affidavit & Certificate of Service - *unable to obtain a hearing date from the clerk*	CP 78-80
2/13/2008	*On the following day* Howell filed & served Hearing Notice (3/7/2008)	CP 83-83A
	Howell named both parties to this action (1) the Estate of Plotner; (2) Safeco Ins. Co. - made service on both	
2/15/2008	(Safeco) Defense counsel filed a late answer to the second amended complaint without terms required under CR 55 (c) (1)	CP 91
3/7/2008	The Trial Court orally denied "Motion for Default" - And Re-set the trial date after an order striking trial (6/24/2004) in violation of 'due process rights.'	CP 104
3/7/2008	Howell moved for reconsideration	CP 106-107
3/21/2008	Howell filed a written objection in re: default	CP 137-138
4/4/2008	Howell filed an Affidavit of Prejudice against Judge Johnson	CP 161-162
4/11/2008	Judge Johnson signed a written order denying motion for default	CP 173
4/17/2008	Case reassigned to Judge Harris	CP 174
7/8/2008	Plaintiff filed an Affidavit of Prejudice against Judge Harris - indicating the Nov. 15, 2001, ex-parte	CP 196-197
9/18/2008	Safeco Ins. Co., Et Al. "SOLVENT" (Liberty Mutual, Et Al. (G08-0084)) - Howell was not notified of the hearings.	
12/5/2008	Memorandum RE: Default by Judge Harris is entered into the record	CP 286
1/8/2009	Liberty Mutual substituted counsel – controlled the defense – moved for summary judgment – order summary judg.& order squashing Howell's expert testimony in favor Liberty Mutual	CP 300 & 343 & 372
5/26/2009	Bench Trial	
6/8/2009	Memorandum of Decision	CP 406
6/15/2009	Howell moved to Amend the Findings - Scheduled a hearing on 7/17/2009	CP 407-409
7/17/2009	Judge Harris signed (a) Findings of Fact and Conclusions of Law, and; (b) Judgment	CP 421-422
7/22/2009	Howell moved to Amend (a) Findings, and; (b) Judgment	CP 427-428
7/27/2009	Howell moved for "Judgment as a Matter of Law" - Scheduled a hearing for 8/7/2009	CP 429-431
8/7/2009	Judge Harris signed Liberty Mutual (Plotner) post-judgment order(s) - indicated "on the record" Howell has 30 days in which to appeal	CP 446
9/17/2009	Howell filed pro se litigation expenses & moved to quash 3rd party claims - hearing 9/18/2009	CP 463A-464
10/20/2009	Judge Harris signed an order permitting the clerk disburse funds to 3rd party(s) & denied Howell's claim.	CP 486-487

11/13/2010	Howell filed the 'second' appeal - Pro se litigation expenses	CP 496-497
2/24/2011	Mandate in re: Estate of Plotner - no resolve to joint tortfeasors liability Safeco, Et Al. (Liberty Mutual, Et Al.)	
3/15/2011	Howell moved to Recall the Mandate RAP 2.5 (c) (1-2)	
1/10/2012	Howell met with Liberty Mutual (Richard Quinlan, Et Al.) in re: 11-0261 - sworn testimony provided	

As is discussed in the above-mentioned, this "guaranteed" tort (RCW's 48.31B.060, 23.86.230) is pending "Judgment as a Matter of Law" (RCW 48.31.151) - "time" not afforded under CR 6, and 50.

VI. ARGUMEMT

A. This Petition Should Be Granted Under RAP 13.4 (b)

Under RAP 13.4 (b), this petition should be granted because the decision concerns significant constitutional questions, statutory questions, and issues of gratuitous nature causing further negating affects. Here, the petition does meet the criteria and should be granted for at least the following reasons.

First, (RCW 34.05.240) this petition should be granted because this agency has the statutory authority (Title 48 RCW); *Scneider v. Snyder's Foods, Inc.,* 116 Wn. App. 706, 716, 66 P.3d 640 (*citing Manke Lumber Co. v. Diehl*, 91 Wn. App. 793, 802, 959 P.2d 1173 (1998)).

> HERE, this is [not] a matter of coverage dispute; *McGreevy v. Oregon Mutual Ins. Co.,* 128 Wn.2d 26, 39-40, 904 P.2d 731 (1995) (unsuccessfully contesting coverage, places the insurer interests above its insured). But rather a matter of "but for" the negligence of Plotner the above-mentioned joint tortfeasor's "acts in concert" would not have caused this single indivisible tortuous liability; *Bartlett*

v. New Mexico Welding Supply, Inc., 646 P.2d 579 (N.M. Ct. App. 1982) [9]; *Bierczynski v. Rogers*, 239 A.2d 218 (Del. Super. Ct. 1968) [10]; *Fruit v. Schreiner*, 502 P.2d 133 (Alaska 1972) [11].

This agency is imposed an obligation under Title 48 RCW to grant [this] declaratory order (judgment) tendering this demand and expenses satisfied (RCW's 48.31.151, 4.84.015, 4.84.030) and for such other relief; *Tarasoff v. Regents of University California*, 551 P.2d 334 (Cal. 1976); *Bock v. State*, 91 Wn.2d 94, 99, 586 P.2d 1173 (1978). Therefore, this petition should be granted based on statutory grounds; *City of Redmond v. Moore*, 151 Wn.2d 664, 668, 91 P.3d 875 (2004); *Isla Verde Intern. Holdings, Inc. v. City of Camas,* 146 Wn.2d 740, 752, 49 P.3d 867 (2002) (determination on statutory grounds circumvents the need for constitutional review.)

This matter is governed under Washington Insurance Code; Business Corporation Act; Massachusetts Trust; and Washington Administrative Code (WAC 284-13-550 and WAC 284-30-330; Title 48 RCW; Title 23B.14 RCW; Title 23.90 RCW; and RCW 23.86.230), "but for" the negating malice aforethought; *Novenson v. Spokane Culvert & Fabricating Co*., 91 Wn.2d 550, 553, 588 P.2d 1174 (1979); *Herrera v. MetLife*, 2011 U.S. Dist. LEXIS 145409 (S.D.N.Y. 2011) (bad faith).

Any agency decision to the contrary would be arbitrary, capricious, contrary to law, and in violation of constitutional principles invoking a prompt judicial review (recall mandate); *Pearce v. Pearce,* 37 Wn.2d 918, 922-23, 226 P.2d 895 (1951) (exceeding agency authority); *Davidson v. Ream*, 97 Misc. 89, 113-14, 161 N.Y.S. 73 (1916) (exceeds statutory authority); *City of Seattle v. Burlington N.R.R.*, 145 Wn.2d 661, 665, 41 P.3d 1169 (2002) (invokes an appellate order on recall mandate); *Agrilink Foods, Inc. v. Dep't of Revenue*, 153 Wn.2d 392, 396, 103 P.3d 1226 (2005) (an order of rehabilitation was entered (G08-0084)); *Bell v. New Jersey*, 461 U.S. 773, 778, 103 S. Ct. 2187, 76 L. Ed.2d 312 (1983*); see also,* 5 U.S.C. § 704 ("Agency action made reviewable by statute and final

---

[9] Two or more individuals who act independently but whose acts cause a single indivisible tortuous injury are also joint tortfeasors; *Bartlett v. New Mexico Welding Supply, Inc.,* 646 P.2d 579 (N.M. Ct. App. 1982).

[10] "Acting in concert" is the equivalent of being a criminal accessory or co-conspirator. If an individual intentionally aids or encourages another to commit a tort, he is as liable as the individual who actually committed the physical acts of tort; *Bierczynski v. Rogers*, 239 A.2d 218 (Del. Super. Ct. 1968).

[11] A defendant may be jointly liable for the actions of another through vicarious liability. Vicarious liability automatically imposes tort responsibility on a defendant because of his relationship with the wrongdoer; *Fruit v. Schreiner,* 502 P.2d 133 (Alaska 1972).

agency action for which there is no other adequate remedy is subject to judicial review.").

Second, this petition should be granted because (RCW 34.05.240) there is an obvious uncertainty necessitating *[this]* "guaranteed" (RCW 48.31B.060) resolution which is causing further negating affects of the gratuitous nature.

> HERE, a demand letter has twice been served which clearly cites the issues and the fact that a demand is being made; *Cheski*, 16 Va. App. at 938, 434 S.E.2d at 355 (*quoting Redmond*, 12 Va. App. at 614, 405 S.E.2d at 634 (emphasis added); *see also, Chalkley v. Noble Bros. Inc.*, 186 Va. 900, 912, 45 S.E.2d 297, 302 (1947).
>
> Subsequent to, this 'true beneficiary' moving for default (CR 55(A)) "solvent" Liberty Mutual, Et Al. (G08-0084) regardless of its previous oversight "guaranteed" this demand (RCW 48.31B.060); *Prima Pain Corp. v. Flood & Conklin Mfg Co*., 343 U.S. (1967) (a case of misrepresentation of solvency), and as the surviving corporation (RCW 23.86.230) is compelled to tender this demand satisfied (RCW 48.31.151); *State v. Wright*, 84 Wn.2d 645, 650, 529 P.2d 453 (1974), the statutes relate to the same subject.
>
> As is the case here, when the "guarantee" is declared solvent there is no possible adverse affects on others or the public (RCW 34.05.240); *Hull v. Vining*, supra; *Chehalis Coal Co. v. Laisure*, 97 Wash. 422, 166 Pac. 1158 (1917); *Yeck v. Dep't of Labor & Indus*., supra (order of solvency). Therefore, this 'true beneficiary' is the sole party feeling the adverse affects (RCW 9A.42.010) of *[this]* malicious deception (thirteen years) (emphasis added).

McDonald v. Williams, 174 U.S. 397 (1899) a suit was brought compelling the repayment of third party distributions - the capital was impaired and the dividends were paid out of capital (trust), but the entity was still considered solvent.

Third, this petition should be granted because the acts in concert and statutory defiance produced this tort and yielded joint tortfeasor's.

> HERE, "but for" Plotner negligence (CR 55 (A)) the injuries wouldn't have occurred; *Anderson v. Minneapolis, St. P. & S. St. M. Railroad Co.,* 179 N.W. 45

(Minn. 1920) (in the absence of Plotner negligence Howell wouldn't have been injured). "But for" the negligence (CR 55 (A)) the trust would not have been established and the "special relationships" not instigated; *Washington & Georgetown R.R. Co. v. Hickey,* 166 U.S. 521 (1897) (Howell wouldn't have been injured whatsoever). And "but for" the negligence joint tortfeasor's acts in concert conferred 'duty to control and warn' wouldn't have imposed consecutive malice aforethought; *Palsgraf v. Long Island Railroad Co.,* 162 N.E. 99 (N.Y 1928) (readily identifiable accident victim).

- Safeco Ins. Co. of Ill., Et Al. breached [its] duty to defend in good faith and deceptively issued a trust (December 18, 2001) to third party (special relationships) through Prudential Financial, Inc. (Computer Share) (WAC 284-30-330); *Coventry Assocs. v. Am. States Ins. Co*., 136 Wn.2d 269, 281, 961 P.2d 933 (1998). Then, numerous years later conceded to indemnify this 'true beneficiaries' demand (RCW 48.31.151); *Am. Best Food, Inc. v. Alea London, Ltd*., 168 Wn.2d 398, 404, 229 P.3d 693 (2010).
- Continental Casualty Co. (Hartford) is making disbursements to "special relationships" without authority of law (WAC 284-13-550) [12], and therefore to deter further obstinacy should be compelled to re-open and pay this claim; *Benesowitz v. MetLife*, 2009 U.S. Dist. LEXIS 64269 (E.D.N.Y. 2009); *Hardt v. Reliance Standard Life Ins. Co.,* 130 S. Ct. 2149 (2010).
- Liberty Mutual Holding Co., Inc., (Liberty Mutual, Et Al; and joint tortfeasors) acted in bad faith and deceptively created and preserved a common fund (trust) (RCW's 48.05.090, 23.90) from which others are unjustly enriched; *Boeing Co. v. Van Gemert,* 444 U.S. 472, 478, 100 S. Ct. 745, 62 L.Ed.2d 676 (1980).
- State Farm failed to subrogate to the rights of this "readily identifiable accident victim" and in bad faith failed to either interplead itself or wait to seek reimbursement; *Progressive West Ins. Co. v. Yolo County Superior Court*, 135 Cal. App. 4th 263, 272, 37 Cal. Rptr. 3rd 434, 444 (3rd Dist. 2005). Then reaping the benefits re-appropriated PIP 'before' this 'true beneficiary' is made whole (impossible); *Olympic S.S. Co. v. Centennial Ins. Co.*, 117 Wn.2d 37, 811 P.2d 673 (1991) [13]; 21st *Century Ins. Co. v. Superior Court,* 47 Cal. 4th 511, 519, 98 Cal. Rptr. 3d 516, 213 3P.d 972 (2009) (rule applies to auto ins. policies).

---

[12] Disability is defined as the impairment of the worker's mental or physical efficiency. It embraces any loss of physical or mental functions which detracts from the former efficiency of the individual in the ordinary pursuit of life. It connotes a loss of earning power; *Henson v. Dep't of Labor & Indus*., 15 Wn.2d 384, 391, 130 P.2d 885 (1942) (*citing* 2 Williams Richard Schneider, The Law of Workmen's Compensation Rules of Procedures and Commutation Tables §400, at 1332 (2d ed. 1932)).

[13] *Olympic Steamship Co. v. Centennial Ins. Co.,* 117 Wn.2d 37, 811 P.2d 673 (1991), "[a]n insured who is compelled to assume the burden of legal action to obtain the benefit of its insurance contract is entitled to attorneys fees." Id. at 117 Wn.2d at 54.

> Joint tortfeasor's previous acts and omissions (trust, disbursements & special relationships) long ago acknowledged this demand is due and owing taking responsibility for acts of malice aforethought; *Stoneman v. Wick Constr. Co.*, 55 Wn.2d 639, 643, 349 P.2d 215 (1960); *Hill v. Sacred Heart Med. Ctr.*, 143 Wn. App. 438, 448, 177 P.3d 1152 (2008) (*citing McLoughlin v. Cooke*, 112 Wn.2d 829, 837, 774 P.2d 1171 (1989)) ("but for" the negligence cause in fact).

Fourth, this petition should be granted on statutory intent because the facts alone warrant this demand tendered satisfied (RCW 48.31.151); *Roken v. Bd. of County Comm'rs*, 89 Wn.2d 304, 313, 572 P.2d 1 (1977) (*quoting Kreger v. Hall*, 70 Wn.2d 1002, 1008, 425 P.2d 638 (1967)).

> HERE, joint tortfeasor's "desire to have [their] cake and eat it too!" deceptively fostered "special relationships" and illicitly permitted including, not limited this 'true beneficiary' estranged siblings, et al. without authority of law (RCW 48.31.151) influence and greatly impact the outcome (thirteen years). This "readily identifiable accident victim" estranged siblings, et al. ascertained a trust, filed claims, attained disbursements, and secured fiduciaries (confirmed), ***not legally belonging thereto*** (RCW's 48.17.480 and Title 9A.56, 9A.60.040) – estranged siblings, et al. respectively being third parties without rights; *Troxel v. Granville*, 530 U.S. 57, 120 S. Ct. 2054, 147 L. Ed.2d 49 (2000).

RCW 48.31.151 – Whenever a creditor whose claim against an insurer is secured, in whole or part, by the undertaking of another person…..he or she discharges the undertaking. *"In the absence of an agreement with the creditor" to the contrary, the other person is not entitled to a distribution until the amount paid to the creditor on the undertaking plus the distributions paid on the claim from the insurer's estate to the creditor equals 'the amount of the entire claim of the creditor' (emphasis added.)* The creditor shall hold any excess received by him or her in trust for the other person…

> What's mind boggling, not only is there no agreement (RCW 48.31.151), there is no subject matter jurisdiction (San Diego) – a Washington lawsuit with both parties being Washington residents resides under Washington jurisdiction - so why deceptively conduct business in San Diego, California without subject matter jurisdiction (FRAUD); *Dougherty v. Dep't of Labor & Indus*., 150 Wn.2d 310, 316, 76 P.3d 1183 (2003) (*quoting Markley v. Dep't of Labor & Indus*., 125 Wn.2d 533, 539, 886 P.2d 189 (1994). Hum! (Emphasis added.)

Fraud – the deliberate deception for unlawful gain. See Webster's Classic Reference Library, New Revised Edition © 2001.

> Because jurisdictional power did not exists, third party agreements are absolute nullity; (quoting 1 John Norton Pomeroy, A Treatise on Equity Jurisprudence § 129, at 153-54 (4th ed. 1918)). And because subject matter jurisdiction does not turn on agreement; *Wesley v. Schneckloth*, 55 Wn.2d 90, 93-94, 346 P.2d 658 (1959), and "special relationships" agreements are based on fraud (RAP 2.5 (a) (3), 2.5 (c) (1-2), 12.9; RCW 9A.60.040), this demand must be tendered satisfied (RCW 48.31.151) as is "guaranteed" (RCW's 48.31B.060, 23.86.230); *State v. Armendariz*, 160 Wn.2d 106, 110, 156 P.3d 201 (2007); *Garrison v. Wash. State Nursing Bd.*, 87 Wn.2d 195, 196, 550 P.2d 7 (1976) (the language is plain and unambiguous). Therefore, third party agreements are not legally binding – this demand must be tendered satisfied, funds re-appropriated and a cease and desist ordered; *Yount v. Indianola Beach Estates, Inc.*, 63 Wn.2d 519, 524-25, 387 P.2d 975 (1964) (retains jurisdiction through dissolution to ensure justice is administered).

Fifth, this petition should be granted because when this affirmative tort was *[not]* resolved with this "readily identifiable accident victim" that deceptive breach of duty caused liability to attach as a matter of law (RCW 48.31.151); *Harbeson v. Parke-Davis, Inc.*, 98 Wn.2d 460, 475-76, 656 P.2d 483 (1983).

> HERE, persons arising out of "special interests" ascertained benefits (RCW 48.31.151) - who did not contribute to this litigation, were not injured, and are not considered by-standers because they are not considered within the zone of physical risk; and are not in risk of physical impact (1) were not physically near the accident; (2) had no contemporaneous sensory perception of the accident; and (3) are not closely related to this accident victim; and (4) did not suffer physical manifestation of this accident victims distress; *Dillon v. Legg*, 441 P.2d 912 (Cal. 1968); *see also, e.g., Thing v. LaChusa*, 771 P.2d 814 (Cal. 1989) (narrowing the reach of bystander recovery).
>
> As such, the plausible construction of the statute (RCW 48.31.151) grants Howell's demand tendered satisfied; *Schneider*, 116 Wn. App. at 716 (*citing Seatoma Convalescent Ctr. v. Dep't of Social & Health Servs*., 82 Wn. App. 495,

518, 919 P.2d 602 (1996)). Any deference would be arbitrary, capricious, contrary to law, and a violation of the constitutional principles far exceeding statutory jurisdiction; *Kelso School District No. 452 v. Howell*, 27 Wn. App. 698, 621 P.2d 162 (1980).

Legislative intent clearly mandates that this "readily identifiable accident victim" demand be tendered [*entirely satisfied*] before "special relationships" (RCW's 48.31.151, 48.31.280); *Lake v. Woodcreek Homeowners Ass'n*, 169 Wn.2d 516, 526, 229 P.3d 791 (2010); *Lacey Nursing Ctr., Inc. v. Dep't of Revenue,* 128 Wn.2d 40, 53, 905 P.2d 338 (1995); *TracFone Wireless, Inc. v. Dep't of Revenue*, 170 Wn.2d 273, 281, 242 P.3d 810 (2010). Therefore, this demand and expenses must be tendered satisfied, and an order effecting the immediate transfer conferred.

Furthermore, under the "collateral source rule" doctrine this demand and expenses, et al. may not be reduced; *Maziarski v. Bair*, 83 Wn. App. 835, 841 n.8, 924 P.2d 409 (1996); see also, (Restatement of Tort § 902A); *Helfend v. Southern California Rapid Transit District,* 465 P.2d 62 (Cal. 1970).

Sixth, this petition should be granted because the deceptive tactics should be penalized as a matter of law (RCW's 48.31.151, 48.31B.060); *National Hockey League v. Metropolitan Hockey Club, Inc.*, 427 U.S. 639, 96 S. Ct. 2778, 49 L.Ed.2d 747 (1976); *Davis v. Hutchins*, 321 F.3d 641 (7th Cir. 2003); *Phillips Medical System International, B.V. v. Bruetman*, 8 F.3d 600 (7th Cir.) *in re State Exchange Finance Co.*, 896 F.2d 1104 (7th Cir. 1990); *United States v. DeFrantz*, 708 F.2d 310 (7th Cir. 1983).

HERE, in retrospect to the "common fund" doctrine: "as applied herein" "but for" the negligence of Plotner - joint tortfeasor's *[deceptively]* established and continue to control a common fund (trust) (Liberty Mutual Holding Co., Inc.(RCW's 48.31B.060, 23.86.230)) – entrusted "special relationships" without authority of law to "help themselves" to this 'true beneficiary' rights to recovery, imposed hazardous conditions, and caused liability to attach; *Rylands v Fletcher*, L.R. 1 Ex. 265 (1866). Another words, [they] set up and control a trust but this

'true beneficiary' was never intended to ascertain control or ownership, the intent being this 'true beneficiary' meet [her] demise (RCW's 9A.32.030-070, 9A.42.010), and the trust continue to benefit non-participating beneficiaries contrary to law (RCW's 48.31.151, 48.31.280); *Hawkins v. Evans Cooperage Co.,* 766 F.2d 904 (5th Cir. 1985); *Heinrich v. Goodyear Tire and Rubber Co.*, 532 F. Supp. 1348 (D. Md. 1982); *Cavan v. General Motors Corp*., 571 P.2d 1249 (Or. 1977).

Bottom line: the moment the common fund (trust) benefited "special relationships" (third parties committing theft (RCW's 9A.60.040, 9A.56 and 48.17.480)) [it] no longer is intended as an equitable concept and became a tortuous liability created out of foreseeable acts of pure unadulterated malice aforethought (emphasis added.); *BMW of North Dakota, Inc. v. Gore*, 517 U.S. 559 (1996).

Stavenjord v. Montana State Fund, 2006 MT 257, 334 Mont. 117, 146 P.3d 724; there are three elements necessary to establish a common fund. (1) A party, styled the active beneficiary must create, reserve, preserve, or increase an identifiable monetary fund or benefit in which all active and non-participating beneficiaries have an interest. (2) The active beneficiary must incur legal fees in establishing the common fund. (3) The common fund must benefit ascertainable, non-participating beneficiaries; *Ruhd v. Liberty Northwest Ins. Corp.,* 2004 MT. 236, ¶ 16, 322 Mont. 478, 97 P.3d 561. ***The common fund doctrine is "rooted in the equitable concepts of quasi-contracts, restitutions, and re-capture of unjust enrichment," and aimed at properly compensating active litigants whose efforts result in correcting an injustice*** and creating a fund in which other non-participating beneficiaries maintain an interest.

In deference, the United States Supreme Court might endorse a common fund; *Summit Valley Indus., Inc. v. Local 112, United Bhd. Carpenters & Joiners of Am.,* 456 U.S. 717, 721, 102 S. Ct. 2112, 72 L.Ed.2d 511 (1982) (*citing Cen. R.R. & Banking Co. v. Pettus*, 113 U.S. 116, 5 S. Ct. 387, 28 L. Ed. 915 (1885)), however its quite doubtful [they'd] endorse what's taken place here (thirteen years) because the equitable doctrine of the common fund is [not] grounded in deception, greed, ignorance, identity theft, (RICO), and, and, and……

Nonetheless, the trust benefiting non-participating beneficiaries is the act and omission that has caused this 'true beneficiary' and family ***unimaginable unforeseen futuristic malice aforethought***; *Fabrique v. Choice Hotels Intn'l, Inc*., 144 Wn. App. 675, 684, 183 P.3d 1118 (2008) (substantial factor in futuristic harm). Joint tortfeasor's had a foreseeable duty to control and warn when instigating "special relationships" and making a common fund easily accessible - that absence of duty has undoubtedly caused further unforeseen harm; *Tarasoff v. Regents of University California*, 551 P.2d 334 (Cal. 1976).

> Therefore, injunctive relief should be granted (RCW 7.40, 9A.60.040, Title 9A.56 RCW, 48.17.480); *Spence v. Kaminski*, 103 Wn. App. at 331, 12 P.3d 1030 (2000).
>
> Nothing can undo what has been done – or, squash the perception that non-beneficiaries have a right to trust assets, not legally belonging thereto – or, the unforeseen malice aforethought (a life time) – or, make this 'true beneficiary' whole; *DeNike v. Mowery*, 69 Wn.2d 357, 358, 418 P.2d 1010, 422 P.2d 328 (1966). (Emphasis added.)

Herskovits v. Group Health Cooperative of Puget Sound, 99 Wn.2d at 616, 884 P.2d 474 (1983) (Restatement (Second) of Torts § 323 (1965), provides one who renders services to another, necessary for the protection of that person, is liable if "his failure to exercise [reasonable] care increases the risk of [physical] harm"); Restatement (Third) of Torts: Liability for Physical and Emotional Harm § 26 cmt. n (2010).

Seventh, this petition should be granted because legislative intent is clear (RCW 48.05.090) - joint tortfeasor's are *[required]* to maintain trust assets (RCW 23.90) not less than [its] outstanding liabilities deposited in a trust institution (BNY Mellon) for the benefit and profit of *[this]* 'true beneficiary;' *HomeStreet, Inc. v. Dep't of Revenue*, 166 Wn.2d 444, 451, 210 P.3d 297 (2009) (*quoting Ronzer v. City of Bellevue*, 116 Wn.2d 342, 347, 804 P.2d 24 (1991)).

> HERE, a (trust) fiduciary relationship already exists between this "readily identifiable accident victim" and joint tortfeasor's even though nothing is said expressly in a fundamental document about the trust fund because all the necessary elements of a common law trust are present: (1) a trustee (BNY Mellon); (2) a beneficiary (Howell); and (3) trust property is held (RCW 23.90) explicitly for the benefit and profit of Howell; *United States v. Mitchell*, 463 U.S. 206, 225, 103 S. Ct. 2961, 77 L. Ed.2d 580 (1983). Thus, the necessary elements of a trust exist even though third party agreements are not legally binding.
>
> Nonetheless, this "readily identifiable accident victim" is being *[deprived]* the right to exercise the benefits of the trust (RCW 9A.42.010); *Scully v. US WATS, Inc.*, 238 F.3d 497 (3rd Cir. 2001). (Emphasis added.)

It is this 'true beneficiaries' fundamental right under article 1, section 32 of the Wash. Const. to be free from this action (thirteen years) (RCW 48.31.151). Thus, an order effectuating the immediate transfer of solvent trust assets is in the interests of justice. Any deference would grant joint tortfeasor's and their 'special relationships' privileges and immunities under article 1, section 12 of the Wash. Const. the law does not afford under CR 55; *Foster v. King County*, 83 Wn. App. 339, 346, 921 P.2d 552 (1996); *Bridle Trails Cmty. Club v. City of Bellevue*, 45 Wn. App. at 252, 724 P.2d 1110 (1986); *Pierce County Sheriff v. Civil Serv. Comm'n*, 98 Wn.2d 690, 693-94, 658 P.2d 648 (1983) (*quoting* RCW 48.31.151; CR 6, 50, 55 (A)), and further violate this 'true beneficiary' due process rights.

Eighth, this petition should be granted because joint tortfeasor's circumvented statutory intent (RCW's 48.31.151, 48.31.280) and denied this 'true beneficiary' constitutional rights when deceptively creating and preserving a common fund (RCW's 23.90, 48.05.090), and therefore this "guaranteed" demand (RCW's 48.31B.060, 23.86.230) should be shared pro rata.

HERE, this "readily identifiable accident victim" just by happen stance discovered the trust (November 18, 2011) and the disability disbursements (January 16, 2012) (RAP 2.5 (a) (3), (c) (1-2), 12.9). Giving rise to the *[deception]* that transgressed thirteen years (emphasis added) - daily violating this 'true beneficiary' fundamental and due process rights under article 1 § 3; 10; 12; and 32 of the Wash. Const.); *State v. O'Hara*, 167 Wn.2d 91, 98, 217 P.3d 756 (2009) (*quoting State v. Kirkman*, 159 Wn.2d 918, 926-27, 155 P.3d 125 (2007). Depriving life, liberties, and property (literally); *State v. Hensley*, 20 Wn.2d 95, 101, 145 P.2d 1014 (1944) (*citing State v. Cimini*, 53 Wash. 268, 101 P. 891 (1909)). Facilitating privacy invasion under article 1 § 7 of the Wash. Const. (RCW 9A.60.040); *State v. Morse*, 156 Wn.2d 1, 7, 123 P.3d 832 (2005). And gave joint tortfeasor's the misconception [they] can "have their cake and eat it too" – which deceptively *[abolished]* this "readily identifiable accident victim" legal, constitutional, and statutory rights; *City of Seattle v. Holifield*, 240 P.3d 1162, 1166 (2010) (*citing Commanda v. Cary*, 143 Wn.2d 651, 654, 23 P.3d 1086 (2001)); *Labriola v. Pollard Grp., Inc*., 152 Wn.2d 828, 100 P.3d 791

(2004), and therefore a gratuitous constitutional error; *City of Seattle v. Holifield,* 170 Wn.2d 230, 240 P.3d 1162 (2010) (not merely an error of law).

SHARING PRO RATA: Traditionally each liable defendant pays an equal pro rata share of the damages based on the number of joint tortfeasor's. Under the comparative approach liability is divided by the proportion of responsibility although in the event it is impossible to collect from some tortfeasor each tortfeasor is responsible to ensure the demand is paid in its entirety; *American Motorcycle Association v. Superior Ct.*, 578 P.2d 899 (Cal. 1978).

- Restatement (Third) of Torts, Apportionment of Liability § 1 cmt. c, endorses comparable responsibility for both intentional as well as negligent defendants.
- Restatement (Second) of Torts § 323 (1965), provides one who renders services to another, necessary for the protection of that person (insurance policy), is liable if "his failure to exercise [reasonable] care increases the risk of [physical] harm"); Restatement (Third) of Torts: Liability for Physical and Emotional Harm § 26 cmt. n (2010).

Because the trust was preserved and created - then exclusively benefited non-beneficiaries and "special relationships" contrary to statutory intent (RCW's 48.31.151, 48.31.280); *Mahler v. Szucs,* 135 Wn.2d 398, 426-27, 957 P.2d 632 (1998) (*citing Covell v. City of Seattle*, 127 Wn.2d 874, 891, 905 P.2d 324 (1995)). This 'true beneficiary' has acquired nothing but exuberant expenses. And because this matter is / has been pending "judgment as a matter of law" secondary to motion for default - it is in the interests of justice and equity that joint tortfeasor's (internally) pay an equal pro rata share of this demand and expenses; *Mahler v. Szucs,* 135 Wn.2d 398, 426-27, 957 P.2d 632 (1998); *Winters v. State Farm Mut. Auto. Ins..Co*., 144 Wn.2d 869, 885, 31 P.3d 1164, 63 P.3d 764 (2001); *Safeco Ins. Co. v. Woodley,* 150 Wn.2d 765, 771 – 72, 82 P.3d 660 (2004*); Hamm v. State Farm Mut. Auto. Ins. Co.,* 151 Wn.2d 303, 326, 88 P.3d 395 (2004). Of course, maintaining the "guarantee."

It is inequitable to expect Howell acting to protect [her] own interests, and in doing so inadvertently protects the unjust interests of others, to then eat the burdensome costs (RCW's 4.84.015, 4.84.030); *Mahler v. Szucs,* 135 Wn.2d at 425 n. 17, 957 P.2d 632 (1998) (*quoting* 8A John A. Appleman & Jean Appleman, Insurance Law and Practice § 4903.85, at 335 (1981)); *Hamm v. State Farm Mut. Auto Ins. Co.,* 151 Wn.2d at 327, 88 P.3d 395 (2004) (the made-whole-rule and common fund doctrine are doctrines of equity that limits the insurance company entitlement to reimbursement from its insured).

Furthermore, the insurance contracts imply the mutual intent of coverage; *Corbray v. Stevenson*, 98 Wn.2d 410, 415, 656 P.2d 473 (1982), and imply that this demand, et al. is covered; *Puget Sound Fin., LLC v. Unisearch, Inc*., 146

> Wn.2d 428, 434, 47 P.3d 940 (2002). Concluding otherwise would produce an absurd result precluding joint tortfeasor's from [its] contractual obligations; *Cf. Eurick v. Pemco Ins. Co.,* 108 Wn.2d 388, 341, 738 P.2d 251 (1987) (Restatement (Second) of Contracts § 223 (1) (1981), because a covenant of good faith inheres in every contract; *Miller v. Othello Packers, Inc.*, 67 Wn.2d 842, 844, 410 P.2d 33 (1966).

Hayseeds, Inc. v. State Farm Fire & Cas., 352 S.E.2d 73, 77 (W. Va. 1986); *cf. Security Mut. Cas. Co. v. Luthi*, 303 Minn. 161, 226 N.W.2d 878, 884 (1975); When an insured purchases a contract of insurance, it seeks protection from expenses arising from litigation, not "vexatious, time consuming, expensive litigation with his insurer. Whether the insured must defend, appear, or file suit is irrelevant. In every case, the conduct of the insurer imposes upon the insured the cost of compelling the insurer to honor its commitment, and thus, is equally burdensome on the insured. Further, allowing an award of attorney fees will encourage the prompt payment of claims; *Hayseed*s, 352 S.E.2d at 79.

Accordingly, Howell has shown good cause why this petition should be granted thereby remedying the noteworthy constitutional, statutory, and gratuitous issues before further negating affects.

B. This Petition Should Be Granted Under RAP 13.5 (b)

Under RAP 13.5 (b), this petition should be granted because this matter presents obvious and probable errors, substantially alters the status quo, limits the freedom to act, and departed from the accepted and usual course. Here, the petition does meet the criteria and should be accepted for at least the following reasons.

First, this petition should be granted because this matter presents obvious error, alters the status quo, and departs from the usual course.

> HERE, (Thirteen years earlier) Keith Plotner rear-ended Howell waiting stopped at a red light (CR 55 (A)) - that ultimate affirmative action (Restatement § 431) determines liability should attach as a matter of law; *Hartley v. State*, 103 Wn.2d

768, 779, 698 P.2d 77 (1985). "But for" the negligence (legal causation) - the acts in concert, failure to control and warn, and foreseeable negligence would not have imposed the malice aforethought (thirteen years) – the trust would not be unjustly benefiting others and this 'true beneficiary' wouldn't have been injured whatsoever; *Ayers v. Johnson & Johnson Baby Prods. Co.*, 117 Wn.2d 747, 753, 818 P.2d 1337 (1991); *King v. City of Seattle*, 84 Wn.2d 239, 250, 525 P.2d 228 (1974) (*quoting* 1 Thomas Atkins Street, The Foundation of Legal Liability 110 (1906)) ("'logic, common sense, justice, policy, and precedent'").

Nonetheless, the incorrect legal standard under CR 55 was applied and the factual 'reality' circumvented; *State v. Haney*, 125 Wn. App. 118, 123, 104 P.3d 36 (2005); *State v. Whelchel*, 97 Wn. App. 813, 817, 988 P.2d 20 (1999). Therefore, the abuse of discretion and the misapplication of the law must be reversed as a matter of law; *State v. Porter*, 133 Wn.2d 177, 181, 942 P.2d 974 (1997) (*citing State v. Elliott*, 114 Wn.2d 6, 17, 785 P.2d 440, cert. denied, 498 U.S. 838 (1990)), because RCW 48.31.151 is not a discretionary decision but rather the intent of the legislature; *State v. Wood*, 117 Wn. App. 207, 212, 70 P.3d 151 (2003).

Keegan v. Minneapolis & St. Louis R.R. Co., 78 N.W. 965 (Minn. 1899) - Courts make an exception and do not require that the type of personal injury suffered by a victim be foreseeable (the defendant is liable even if the victim suffers physical injury far more severe (e.g. heart attach) than the ordinary person would be anticipated to have suffered from the accident.

- Expert testimony was provided based on a reasonable degree of medical certainty; *McLoughlin v. Cooke,* 112 Wn.2d 829, 836, 774 P.2d 1171 (1989) (*citing State v. Crenshaw*, 98 Wn.2d 789, 802 n.2, 659 P.2d 488 (1983); *see also*, 5B Tegland, supra, at 122-23; Black's Law Dictionary 1380 (9th ed. 2009).
- There is a preponderance of scientific evidence including MRI (magnetic resource imaging) which is accepted by the general consensus; *Lloyd L. Wiehl*, Our Burden of Burdens, 41 Wash. L. Rev. 109, 110 & n.4; *Victor v. Nebraska*, 511 U.S. 1, 5, 114 S. Ct. 1239, 127 L.Ed.2d 583 (1994) (*citing In re Winship*, 397 U.S. 358, 90 S. Ct. 1068, 25 L.Ed.2d 368 (1970)); 14A Karl B. Tegland, Washington Practice: Civil Procedure § 30.13, at 228 (2d ed. 2009).
- The scientific evidence supports causation(s); *State v. Riker*, 123 Wn.2d 351, 359, 869 P.2d 43 (1994) (reliable generally accepted); *State v. Gregory*, 158 Wn.2d 759, 829, 147 P.3d 1201 (2006) (scientific opinion need not be unanimous).
- The expert testimony links the trauma to the legal causation; *Marsh v. Valyou*, 977 So.2d at 549 (Fla. 2007) (*citing State Farm Mut. Auto Ins. Co. v. Johnson*, 880 So.2d 721, 732 (Fla. Dist. Ct. App. 2004) (the Florida Supreme Court held "[b]ecause testimony casually linking trauma to fibromyelia is based on the experts' experience and training, it is 'pure opinion' admissible without having to satisfy Frye.)
- The scientific evidence clearly shows the considerable great bodily harm (RCW 9A.42.010 – malice aforethought); *State v. McKague,* 159 Wn. App. at 503 n.7, 246 P.3d 558 (2011) (*quoting* Webster's Third New International Dictionary 2280 (2002)); *Webster's,* supra, at 2280.

It's quite obvious the preponderance of evidence easily persuaded joint tortfeasor's or the trust would not exist and the disability would not currently be unjustly benefiting un-insured third parties (emphasis added); *In re Estates of Palmer*, 145 Wn. App. 249, 265-66, 187 P.3d 758 (2008); *In re Marriage of Griswold*, 112 Wn. App. 333, 339, 48 P.3d 1018 (2002).

Second, this petition should be granted because this matter presents obvious error, alters the status quo, and limits the freedom to act.

HERE, this matter is in default under CR 55 (A), subject to default judgment under CR 55 (b) (1); *United States v. DuBois Farms*, 1 OCAHO 225 (August 29, 1990) at 2; *U.S. v. Zoeb Enterprises*, supra at 3.

State rule parallels federal rule under CR 55, federal cases may be looked at for persuasive authority and are persuasive interpreting state court rule; *Luckett v. Boeing Co*., 98 Wn. App. 307, 311, 989 P.2d 1144 (1999); *Beal for Martinez v. City of Seattle*, 134 Wn.2d 769, 777, 954 P.2d 237 (1998).

The previous decisions are absent sound discretion as [they] did not apply the correct law, are [not] supported by the record, and no reasonable person would've taken the same view; *United States v. Washington*, 98 F.3d 1159, 1163 (9th Cir. 1996); *United States v. Iverson*, 162 F.3d 1015, 1026 (9th Cir. 1998).

- No motion to set-aside the default demonstrating the required due diligence and excusable neglect was filed (CR 55 (c) (1); *Augusta Fiberglass Coatings, Inc. v. Fodor Contracting Corp*., C.A. 4th 1988, 843 F.2d 808.
- The many late answers (emphasis added) did not obtain the required leave of court under CR 55 (a) (2).
- The many late answers did not demonstrate the necessary terms under CR 55 (c) (1).
- Although adequate notice was provided default was not cured within the boundaries of civil procedure under CR 55; *Mullane v. Cent. Hanover Bank & Trust Co.,* 339 U.S. 306, 314, 70 S. Ct. 652, 94 L.Ed. 865 (1950); *see also*, *Asche v. Bloomquist,* 132 Wn. App. 784, 798-99, 133 P.3d 475 (2006).

At this point, the default cannot be cured and objections have previously been waived; *Concord Boat Corp. v. Brunswick Corp*., 169 F.R.D. 44, 48 (S.D.N.Y. 1996); *Creative Gifts, Inc. v. U.F.O.*, 183 F.R.D. 568, 570-71 (D.N.M. 1998) (*citing Wang v. Hsu*, 919 F.2d 130 (10th Cir. 1990); *see also, Krewson v. City of Quincy*, 120 F.R.D. 6, 7 (D. Mass. 1988). Therefore, default judgment as a matter of law (RCW 48.31.151; CR 6, 50, 55) must be ordered based on sound legal principles; *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 416 (1975)

(*quoting United States v. Burr*, 25 F. Cas. 30, 35 (No. 14,692d) (CC Va. 1807) (Marshall, C.J.). And the interpretation of court applicable rules, statutes, and the Constitution readily made; *State v. Osman*, 168 Wn.2d 632, 637, 229 P.3d 729 (2010).

Third, this petition should be granted because this matter presents obvious error, alters the status quo, and limits the freedom to act.

HERE, this 'true beneficiary' has standing as a matter of law (RCW 48.31.151) - there is a legitimate statutory dispute; *Intermountain Elec., Inc. v. G-A-T Bros. Constr., Inc.*, 115 Wn. App. 384, 394, 62 P.3d 548 (2003), because including, not limited (RCW's 48.31.151, 48.31B.060, 23.86.230, 23.90, 48.05.090) presents debatable issues of law; *Williams v. Athletic Field, Inc.*, 155 Wn. App. 446, 228 P.3d 1297 (2010). The previous decisions circumvented statutory interpretation; *State v. Williams*, 158 Wn.2d 904, 908, 148 P.3d 993 (2006) (*citing Am. Cont'l Ins. Co. v. Steen*, 151 Wn.2d 512, 518, 91 P.3d 864 (2004), causing this 'true beneficiary' to move for "judgment as a matter of law" and subsequently for pro se litigation expenses (demand) secondary to motion for default; *State v. Gonzales Flores*, 164 Wn.2d 1, 10, 186 P.3d 1038 (2008); *Conom v. Snohomish County*, 155 Wn.2d 154, 157, 118 P.3d 344 (2005) (a tort of statutory interpretation) (CR 6 and 50).

Because third party agreements are not legally binding there is no stipulation by the 'real' parties or agreement by consent on the resolution of the issues; *Wash. Asphalt Co. v. Harold Kaeser Co.*, 51 Wn.2d 89, 91, 316 P.2d 126 (1957); *Smyth Worldwide Movers, Inc. v. Whitney*, 6 Wn. App. 176, 179, 491 P.2d 1356 (1971). And because 'there is no final determination' in regard to the subject matter or the issues; *State v. Vasquez*, 148 Wn.2d 303, 308, 59 P.3d 648 (2002); *Schoeman v. New York Life Ins. Co*., 106 Wn.2d 855, 860, 726 P.2d 1 (1986) *In re: Estate of Black*, 153 Wn.2d 152, 170, 102 P.3d 796 (2004), this tort remains in limbo until [it] is put to rest (RCW 48.31.151); *Samuel's Furniture, Inc. v. Department of Ecology*, 147 Wn.2d 440, 54 P.3d 1194, 63 P.3d 764 (2002) (*quoting* Black's Law Dictionary 567 (5th ed. 1979).

In addition, under RAP 2.5 (a) the common fund (trust) (RCW 48.31.151) that has come to light after a decade is *[not]* a harmless error but one of constitutional magnitude affecting this 'true beneficiaries' rights to justice – [its] "daily" depriving life, liberties, and property (literally) article 1 § 3, of the Wash. Const.;

State v. Gordon, 153 Wn. App. 516, 521, 223 P.3d 519 (2009). (Emphasis added.) Therefore, because joint tortfeasor's chose to intervene as a matter of law [they] are bound by this demand (RCW 48.31.151); *Yniguez v. Arizona*, 939 F.2d 727, 735 (9th Cir. 1991) (*quoting Hansberry v. Lee*, 311 U.S. 32, 40, 61 S. Ct. 115, 85 L.Ed.22 (1940)); see also, *Comm'rs Court of Medina County, Tex. v. United States*, 683 F.2d 435, 440-41 (D.C. Cir. 1982), and as such until this demand, et al. is tendered satisfied liability continues to compound – liability does not resolve without joint tortfesor's; *Westlake N. Prop. Owners Ass'n v. City of Thousand Oaks*, 915 F.2d 1301, 1306 (9th Cir. 1990) (*citing Martin v. Wilks*, 490 U.S. 755, 762, 109 S. Ct. 2180, 104 L.Ed.2d 835 (1989). Any decision to the contrary would be arbitrary, capricious, contrary to law, and in violation of constitutional principles because under RCW 48.31.151 the measure of damages is then answered as a matter of law; *Shoemake v. Ferrer*, 168 Wn.2d 193, 198, 225 P.3d 990 (2010) (*quoting Womack v. Von Rardon*, 133 Wn. App. 254, 263, 135 P.3d 542 (2006).

Finally, this petition should be granted because this matter presents obvious error, alters the status quo, and limits the freedom to act.

HERE, Court applicable rules under CR 56 was interpreted and applied incorrectly; *State v. Wentz,* 149 Wn.2d 342, 346, 68 P.3d 282 (2003), constituting an error of law; *Wash. Physicians Ins. Exch. & Ass'n v. Fisons Corp.,* 122 Wn.2d 299, 339, 858 P.2d 1054 (1993), because when Liberty Mutual moved for summary judgment it is mandated to be determined in the favor with all inferences of the non-moving party (Howell); *Mulcahy v. Farmers Ins. Co.*, 152 Wn.2d 92, 98, 95 P.3d 313 (2004) (*citing Jones v. Allstate Ins. Co.,* 146 Wn.2d 291, 300, 45 P.3d 1068 (2002)); *Mountain Park Homeowners Ass'n v. Tydings*, 125 Wn.2d 337, 341, 883 P.2d 1383 (1994). Nonetheless, the court entered an order [CP 343] in favor of Liberty Mutual and denied Howell's rights to discovery (CR 26-35) [CP 372]. Of course, come to find out (November 18, 2011) a trust had been disbursed to "special relationships" without authority of law (RCW's 48.31.151, 48.17.480, 9A.56) demonstrating the prejudice was personal due to extra judicial sources rather than judicial*; Shaw v. Martin*, 733 F.2d 304, 308 (4th Cir. 1984).

The previous decision was made on the incorrect legal standard constituting abuse of discretion on untenable grounds for untenable reasons; *Mayer v. Sto*

Indus., Inc., 156 Wn.2d 677, 684, 132 P.3d 115 (2006); *Lindgren v. Lindgren*, 58 Wn. App. 588, 596, 794 P.2d 526 (1990); *Bowen v. Fleischauer*, 53 Wn.2d 419, 425, 334 P.2d 174 (1959), because based on the record and the 'real' facts no reasonable person would've taken the same view; *Carle v. McChord Credit Union*, 65 Wn. App. 93, 111, 827 P.2d 1070 (1992), and because this demand, et al. is authorized by statute (RCW 48.31.151); *State v. Keeney*, 112 Wn.2d 140, 142, 769 P.2d 295 (1989). Therefore, this demand and expenses must be tendered satisfied, and the immediate transfer of solvent assets conferred.

Accordingly, Howell has shown good cause why this petition should be granted thereby reconciling the issues of manifest error.

VII. CONCLUSION

Accordingly, this petition ***should be granted and*** **a declaratory order** (judgment) issued to: (1) tender this demand satisfied; (2) confer the 'immediate' transfer of 'solvent' trust assets; (3) re-appropriate and / or liquidate; (4) cease and desist – injunctive relief; and (5) administer *informal proceedings.*

VIII. AFFIDAVIT

I, Rose Howell depose and state as follows:

1.) I, Rose Howell (Rosemarie Anne (Vikara) Howell) am the 'true beneficiary' - to the best of my knowledge the only party injured (March 3, 1999) (CR 55(A)).

2.) On November 18, 2011, I discovered by happenstance [[14]] (emphasis added) a Safeco Common Stock trust (Prudential Financial, Inc. trust # BP

[14] On Nov. 17, 2011, at the Calif. Controller Un-Claimed property website I entered my parent's names because their estate is in California - a dividend was found and on Nov. 18, 2011, I phoned the state and then Prudential which confirmed the dividend is as result of Safeco (Prudential) Common Stock Trust.

3019010) was issued on December 18, 2001, in the city of San Diego (confirmed).

3.) The above-mentioned trust is reported to have been distributed (December 18, 2001) to third parties without authority of law (RCW 48.31.151) – using [*this]*"readily identifiable accident victim" and *[her]* father's identity (RCW 9A.60.040) - and is without custodial authority, subject matter jurisdiction, agreement, power of attorney, the knowledge or other (RCW 48.31.151).

4.) On January 10, 2012, I gave testimony (Wa. Ins. Comm., 11-0261).

5.) On January 16, 2012, I discovered and confirmed in quite the same manner as the above-mentioned trust that Continental Casualty Company (Hartford) has been / is disbursing my disability payments to the same third parties without authority of law (RCW's 48.31.151; *see also,* 48.17.480, 9A.56, 9A.60.040).

6.) State Farm ceased PIP payments proximately the same time the above-mentioned trust was issued to third parties (acts in concert) – failed to subrogate (knowledgeable I am / have been a Washington resident), facilitated identity theft (RCW 9A.60.040), and failed to warn – the UIM, Medical, and PIP have not been surrendered depriving life, liberties and property under article 1 § 3, of the Wash. Const. (RCW 9A.42.010).

7.) State Farm in bad faith re-appropriated PIP before *[this]* 'true beneficiary' is made whole (impossible).

8.) The City of San Diego does not have subject matter jurisdiction, this is a Washington lawsuit; both parties are / have been Washington residents.

9.) Third party recipients do not meet the qualifications under by-stander provisions (emphasis added) or, any provisions under tort law.

10.) This deception has caused unforeseen futuristic malice aforethought (emphasis added.)

11.) This liability and the uncertainty of resolve, at this point, is *[not]* a matter of dispute between *[this]* 'true beneficiary' and third parties - third parties are merged and *[are]* Liberty Mutual, Et Al. problem (emphasis added) (RCW's 48.31.151, 48.31B.060, 23.86.230, 48.05.090, 23.90, 48.17.480, 9A.60.040, Title 9A.56).

12.) As a consequence, the above-mentioned "acts in concert" joint tortfeasor's are co-conspirators liable for this "but for" the negligence affirmative tortuous liability (CR 55 (A)).

13.) As a further consequence, to the above-mentioned "acts in concert" this demand (demand & expenses) must be tendered satisfied (RCW's 48.31.151, 4.84.015, 4.84.030).

14.) Accordingly, although this demand, et al. is "guaranteed" (Liberty Mutual Holding Co., Inc., (G08-0084) (RCW 's 48.31B.060, 23.86.230)) it is in the interests of justice, equity, and public policy that joint tortfeasor's "acts in concert" should pay a pro rata share (internally) – putting an end to this madness (emphasis added.) Of course, maintaining the "guarantee." (Emphasis added.)

I, Rose Howell a.k.a Rosemarie Anne (Vikara) Howell, been duly sworn, declare under penalty of perjury that the contents herein are true and correct to the best of my knowledge, except as to those matters and things alleged upon information and belief, and as to those things believe them to be true.

Dated, this 1st day of March 2012.

_____
Rose Howell a.k.a Rosemarie Anne (Vikara) Howell
Beneficiary
9504 N.E. 5th Street
Vancouver, WA 98664

SWORN TO AND SUBSCRIBED BEFORE ME, A NOTARY PUBLIC, THIS _____ DAY OF MARCH, 2012.

_____

NOTARY PUBLIC

My commission expires: _____

CERTIFICATE OF SERVICE

I certify that on the 1st day of March, 2012, I caused a true and correct copy of Petition for Declaratory Order (Judgment); Affidavit; and Certificate of Service to be served on the following U.S. Mail, pre-paid, and the manner indicated:

1) Washington Insurance Commissioner
PO Box 40255
Tumwater, WA 98504-0255
Attn: Hearings Unit (X) Email

2) Safeco Ins. Co. of Illinois, Et Al.
And
Liberty Mutual, Et Al.
175 Berkley Street (X) Email
Boston. MA 02116
Attn: Richard Quinlan

3) Melvin N. Sorensen, Esq.
Carney Badley Spellman, P.S.
701 Fifth Avenue, # 3600
Seattle, WA 98104-7010

4) Debevoise & Plimpton LLP (X) Email
New York, New York 10022
Attn: Gregory V. Gooding, Esq.
Nicholas F. Potter, Esq.

5) BNY Mellon Investment Services LLC
480 Washington Blvd, 29th Floor
Jersey City, NJ 07310
Attn: Legal Dept.

6) Safeco Ins. Co. of Illinois
27201 Bella Vista Parkway, Ste. 130
Warrenville, IL. 60555

7) Safeco Ins. Co. of Illinois
2815 Forbes Ave.
Hoffman Estates, IL. 60192

8) Continental Casualty Company
333 South Wabash
Chicago, IL. 60604
Attn: Thomas Corcoran

9) The Hartford Financial Services Group, Inc.
One Hartford Plaza, HO-1-01
Hartford, CT. 06155
Attn: Fraud Dept. / Investor Relations

10) State Farm Mutual Automobile Ins. Co.
1 State Farm Plaza
Bloomington, IL. 61710-0001
Attn: Edward Rust Jr.

11) Liberty Mutual Ins. Co.
650 N.E. Holladay Street
Portland, OR 97232

12) Computer Share
Shareholder Services
250 Royal Steet
Canton, MA 02021

13) Prudential Annuities
Client Relations
2101 Welsh Road
Dresher, PA 19025
Attn: Lisa Hayer

14) Warren Buffet (Courtesy Copy)
3555 Farnam Street
Suite 1440
Omaha, NE 68131

Dated on this 1st day of March, 2012.

_____

Rose Howell
Pro Se Petitioner (Creditor)
9504 N.E. 5th Street
Vancouver, WA 98664