No. 92197-1

SUPREME COURT
OF THE STATE OF WASHINGTON

WILFRED A. LARSON

Respondent,

v.

CITY OF BELLEVUE, Petitioner
and
THE DEPARTMENT OF LABOR AND INDUSTRIES FOR THE STATE OF WASHINGTON
Defendant.

RESPONDENT WILFRED LARSON'S ANSWER TO CITY OF BELLEVUE'S PETITION FOR REVIEW

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I. IDENTITY OF RESPONDENT

The Respondent is Wilfred A. Larson, the claimant firefighter with presumptive occupational malignant melanoma.

II. CITATION TO COURT OF APPEALS DECISION

The City of Bellevue seeks review of the decision in: *Larson v. City of Bellevue*, 188 Wash.App. 857, 355 P.3d 331 (2015).

III. ISSUES PRESENTED FOR REVIEW

1. The decision by the Court of Appeals does NOT conflict with previous decisions from this Court, nor with other Courts of Appeal regarding the burden of proof on appeal from a Board decision. The Appellate Court did not err.

2. The Appellate Court did not "place RCW 51.32.185 over RCW 51.52.115." This is not an issue of substantial public interest because RCW 51.32.185 applies only to firefighters, works in harmony with RCW 51.52.115 and will cause no confusion. The Appellate Court did not err.

3. The decision by the Court of Appeals recognized that Jury Instruction No. 9 correctly instructed the jury on the burden of proof. The Appellate Court did not err.

4. The Court of Appeals correctly determined that the presumption of occupational disease in RCW 51.32.185 creates a Morgan-like presumption. The Appellate Court did not err. The Appellate Court did not err.

5. The decision by the Court of Appeals correctly upheld the trial court's decision to award Larson his attorney fees and costs before the Board. The Appellate Court did not err.

6. Captain Larson is entitled to attorney's fees and costs at all levels of his claim – including the Supreme Court

IV. STATEMENT OF THE CASE

Captain Bill Larson is a career firefighter/EMT and has been employed by the City of Bellevue ("City") as a firefighter/EMT since 1979. His distinguished career includes a promotion to Lieutenant in 1989 and then to Captain in 1993. Report of Proceedings ("RP") 263, 270. Captain Larson was diagnosed with malignant melanoma. Clerk's Papers ("CP") 29. He filed a claim for benefits with the Department of Labor and Industries. His claim was ultimately allowed. CP 37. The City appealed to the Board of Industrial Insurance Appeals ("Board"). CP 40-42. The Board ruled in favor of the City. CP 26-35. Captain Larson appealed to the Superior Court. CP 1-2.

The jury verdict was in favor of Captain Larson, as Captain Larson proved that the Board decision was incorrect because the City failed to prove by a preponderance of evidence that it had rebutted the presumption that his malignant melanoma was an occupational disease. CP 1775-76. Captain Larson filed a Notice of Presentation of Judgment with a motion for attorney's fees and costs. CP 1777. The Court's Order of Judgment awarded Captain Larson attorney's fees and costs. CP 1900-1, 1904. The City appealed to the Court of Appeals, Division I, which issued an Opinion on July 13, 2015 affirming the Superior Court decision in favor of Captain Larson.

V. ARGUMENT: WHY REVIEW SHOULD BE DENIED

1. The decision by the Court of Appeals is not in conflict with previous decisions from this Court and other Courts of Appeal regarding the burden of proof.

The City complains that "the jury was being asked to examine whether the City had met its burden to rebut the presumption." PFR 8. However, "Question No. 1" of the ***City's*** Proposed Revised Special Verdict form asks the jury to decide that very question. *See* CP 1749. The burden of proof at the Board was on the City to rebut the presumption of occupational malignant melanoma by a preponderance of evidence. The jury's job was to decide whether the Board was incorrect. In rendering a verdict, it is critically important for a jury to know who had the burden of proof at the Board.

Contrary to the City's argument, the Special Verdict Form in this case was not an instruction on burden of proof. There was an instruction on burden of proof, "Instruction No.9", and it instructed the jury that – as was stated in the Appellate Court's opinion – the Board's decision is prima facie correct and that for Captain Larson to prevail, he must establish otherwise by a preponderance of the evidence. CP 1768. *Larson v. City of Bellevue*, 188 Wash. App. 857, 865, 355 P.3d 331 (2015).

The Special Verdict Form simply asked the jury to decide if the Board was correct in deciding that the City rebutted by a preponderance of evidence

that Captain Larson's melanoma was occupational. Ultimately, Captain Larson *proved* to the jury that the Board was incorrect. The jury agreed.

The burden-shifting protection of RCW 51.32.185 does not vanish simply because the Board decision is appealed to Superior Court. The point of appealing the Board decision is because the City did not meet its burden to rebut the presumption and the firefighter has a right to have a jury weigh the evidence and decide that issue.

This Court need not accept review, because RCW 51.52.115 does not conflict with RCW 51.32.185. This case is a good example of how those statutes work in harmony. At trial Captain Larson met his burden of proof, in part, by showing the jury that the City's evidence to rebut the presumption at the Board was based on speculation, not fact.

The evidence established how speculative the City's "evidence" was: The evidence established that the City's experts (1) could not determine the cause of Captain Larson's malignant melanoma, (2) could not determine the origin of Captain Larson's melanoma, (3) did not know if Captain Larson met the threshold in quantity or duration of UV rays to develop malignant melanoma, (4) did not know if chemicals can cause malignant melanoma, (5) admitted that melanoma can be found inside the body with no primary lesion on the skin, (6) admitted that literature supports that maybe a majority of

melanoma are not on sun exposed skin, (7) admitted that there can be more than one cause of melanoma, and (8) exhibited that they have a complete lack of knowledge concerning the exposures that firefighters have to numerous carcinogens. RP 722, 734, 731-32, 598, 604, 616, 648, 621, 667, 669-70, 694-95, 740-41, 624, 626.

Captain Larson met his burden to prove to the jury that the City failed to meet its burden of proof to rebut the statutory presumption by a preponderance of evidence. The jury agreed. The Appellate Court did not create conflict between RCW 51.32.185 and 51.52.115. They do not conflict. The Appellate Court acknowledges that "To prevail in the superior court, the appellant must establish otherwise by a preponderance of the evidence." *Larson v. City of Bellevue*, 188 Wash. App. 857, 865, 355 P.3d 331 (2015). *See also "Instruction No. 9" at* CP 1768. Captain Larson proved to the jury, i.e. carried his burden, that the City failed to rebut the presumption.

Neither this Court's opinion nor the Appellate Court's opinion in *Gorre v. City of Tacoma* held that the burden-shifting protection of RCW 51.32.185 vanishes on appeal to the Superior Court.

The City cites to *La Vera v. Department of Labor and Industries, 45 Wash.2d 413, 416, 275 P.2d 426 (1954). La Vera* was roughly 33 years prior to RCW 51.32.185. Moreover, Chief Justice Grady points out in his

concurrence that: "There is no statutory provision with reference to burden of proof in a hearing before the board whether the party be the claimant or the department" and "The department may assume the burden of establishing the right of the claimant to the benefits of the act but there is no presumption in its favor." *La Vera v. Dep't of Labor & Indus., supra at 416.*

In RCW 51.32.185 (enacted in 1987), the legislature created a law within the Industrial Insurance Act that *does* affect the burden of proof and that *does* provide for a presumption – in favor of the firefighter.

Moreover, the presumption in RCW 51.32.185 may only be rebutted "by a preponderance of evidence." WPI 155.03 defines preponderance of evidence and uses the phrase "on which that party has the burden of proof." *See* WPI 155.03. For a jury to determine if the presumption was rebutted by a preponderance of the evidence, the jury must know which party bears the burden of proof to rebut the presumption.

The Court of Appeals in *Raum* v. *City of Bellevue* upheld jury instructions that allowed the firefighter to argue that he was entitled to the presumption *and that the City failed to rebut the presumption. Raum v. City of Bellevue*, 171 Wash. App. 124, 144, 286 P.3d 695 (2012).

RCW 51.32.185 did not exist at the time of the 1954 *La Vera v. Department of Labor and Industries* decision. As is evident by *Raum,* RCW

51.32.185 has been interpreted by the Appellate Court to allow the firefighter at Superior Court to instruct the jury on the presumption and that it is the City that has to rebut the presumption. The legislature has not since amended the Industrial Insurance Act to state otherwise. Courts are to presume that the legislature is aware of judicial interpretations of its enactments and takes its failure to amend a statute following a judicial decision interpreting that statute to indicate legislative acquiescence in that decision *City of Fed. Way v. Koenig*, 167 Wash. 2d 341, 348, 217 P.3d 1172, 1175 (2009).

This Court and all Appellate opinions in our State addressing RCW 51.32.185 support the notion that the burden-shifting protection of the statute does not vanish on appeal to the Superior Court and that for the jury to decide whether the presumption was rebutted it must know who has the burden to rebut the presumption. See *Gorre v. City of Tacoma*, 357 3.Pd 625 (Wash. 2015) at 633 and 626-627 respectively. ("RCW 51.32.185 is a narrow **exception** to the Act's general rule . . ." and ". . . under RCW 51.32.185(1)(a) or (d) **that shifts the burden of proving the disease's proximate cause from Gorre to the employer City.**") [emphasis added]. *See Gorre v. City of Tacoma*, 180 Wash. App. 729, 758, 324 P.3d 716 (2014), reversed on other grounds ("Under the plain language of the RCW 51.32.185(1), . . . the burden shifts to the employer to rebut the presumption by a preponderance of the

evidence by showing that the origin or aggravator of the firefighter's disease did not arise naturally and proximately out of his employment. **If the employer cannot meet this burden,** for example, if the cause of the disease cannot be identified by a preponderance of the evidence or even if there is no known association between the disease and firefighting, the firefighter employee maintains the benefit of the occupational disease presumption.") See *Raum, supra* (approving jury instructions that allowed firefighter to **argue to the jury that the City failed to rebut the presumption**).

If the jury is instructed only that the burden of proof is on the firefighter to establish by a preponderance of the evidence that the Board's decision is incorrect – without informing the jury of the burden-shifting protection of the very statute at the core of the case and upon which the Board's decision was made – then the firefighter's case on appeal is reduced to an ordinary worker's compensation claim where no burden-shifting exists.

Accordingly, the government would simply need to wait-out the Board hearing and then appeal all firefighter cases involving the presumption of occupational disease to the Superior Court to remove the burden-shifting protection of RCW 51.32.185. Such an outcome is clearly not what any case interpreting RCW 51.32.185 stands for, nor what the statute itself stands for. It is illogical. It is not harmonious.

There is nothing in RCW 51.32.185 that removes the burden-shifting protection when the case is on appeal to the Superior Court. In fact, the Industrial Insurance Act and our State Constitution give the firefighter a right to have a jury trial on his claim. *See RCW 51.52.115 and Article 1, §21 of the Washington State Constitution.* When Captain Larson proved to the jury that based on the evidence the City did not meet its burden of proof to rebut the presumption, then Captain Larson proved that the Board was incorrect.

"However, where statutes relate to the same subject matter, we must read them as a unified whole to the end that a harmonious statutory scheme evolves which maintains the integrity of the respective statutes." *Anderson v. State, Dep't of Corr.*, 159 Wash. 2d 849, 861, 154 P.3d 220 (2007).

The City's application of the RCW 51.52.115 is not harmonious with RCW 51.32.185 and does **not** maintain the integrity of RCW 51.32.185. Even if RCW 51.32.185 and RCW 51.52.115 conflicted, "When two statutes apparently conflict, the rules of statutory construction direct the court to, if possible, reconcile them so as to give effect to each provision." *Anderson v. State, Dep't of Corr.*, 151 Wash.2d 849, at 861.

The City ignores that even if RCW 51.32.185 and 51.52.115 did not harmonize, removing the burden-shifting protection from the eyes of the jury **removes the affect and integrity** of RCW 51.32.185.

Even if RCW 51.32.185 and 51.52.115 were irreconcilably in conflict, RCW 51.32.185 is more recent statute, is more specific, and is specifically applicable to firefighter claims of presumptive occupational disease.

2. The Appellate Court did not "place RCW 51.32.185 over RCW 51.52.115." This is not an issue of substantial public interest because RCW 51.32.185 applies only to firefighters, works in harmony with RCW 51.52.115 and will cause no confusion.

As discussed above, the Appellate Court's thorough analysis of RCW 51.32.185 provides guidance for the application of the burden-shifting protection and works in harmony with RCW 51.52.115.

The Appellate Court's opinion does not disavow RCW 51.52.115. The Appellate Court thoroughly analyzed the burden of proof on appeal to Superior Court. First, the Appellate Court recognized that:

> At the superior court, the Board's decision is prima facie correct. To prevail in the superior court, the appellant must establish otherwise by a preponderance of the evidence.

Larson v. City of Bellevue, 188 Wash. App. 857, 865, 355 P.3d 331(2015). The Appellate Court recognized that the firefighter's right to the burden-shifting protection is central to a firefighter occupational disease claim.

> Under the Morgan theory, a presumption **does not disappear upon the production of contrary evidence but continues throughout the trial**, and the court instructs the jury that the party against whom the presumption operates has the burden of proving that the presumed fact is not true or does not exist.

Larson v. City of Bellevue, at 868. [Emphasis added]. The Appellate Court recognized that RCW 51.32.185 requires that the City rebut the presumption by a "preponderance of evidence." *See Larson v. City of Bellevue*, at 871-72.

Finally, the Appellate Court recognized what Captain Larson *proved* in trial – the jury could reasonably conclude from the testimony of the City's experts that the City had not disproved firefighting as a more probable than not cause for Larson's melanoma. *Id.* at 879. *Captain Larson* established that the Board incorrectly concluded that the City rebutted the presumption of occupational disease. RCW 51.32.185 and RCW 51.52.115 work in harmony.

There may be one or more proximate cause of a condition. *WPI 155.06-Proximate Cause-Allowed Claim. See Hurwitz v. Dep't of Labor & Indus.*, 38 Wash. 2d 332, 229 P.2d 505 (1951); and *Simonetta v. Viad Corp.*, 165 Wash. 2d 341, 197 P.3d 127 (2008). RCW 51.32.185 creates an expectation that to rebut the presumption the City must (a) establish a non-firefighting cause, **and** (b) disprove firefighting as a cause. In examining the same evidence before the Board, the jury concluded the Board was incorrect because there was not a preponderance of evidence to rebut the presumption.

3. The Court of Appeals correctly determined that the presumption of occupational disease in RCW 51.32.185 creates a Morgan-like presumption.

The jury was properly instructed on burden of proof. The jury –

reviewing the same evidence as the Board reviewed – cannot possibly know if the Board incorrectly decided that the City rebutted the presumption if the jury is mislead to believe that the City had no burden of proof.

The City finds importance in the jury knowing the firefighter's burden of proof on appeal, but then wants to ensure that the jury does *not* know about the City's burden to rebut the presumption of occupational disease. It is the **jury's job** to weigh the evidence and decide if the City rebutted, by a preponderance of the evidence, the presumption The jury did its job.

> "... the province of **the jury** is to determine the facts of the case from the evidence adduced, in accordance with the instructions given by the court." *Hastings v. Dep't of Labor & Industries.*, 24 Wash.2d 1, 13, 163 P.2d 142 (1945).
>
> When the plaintiff proved the contract of insurance and the death of the insured her case was made. The defendant then perforce assumed the burden of proving suicide by a preponderance of the evidence. Was there evidence or lack of evidence from which **the jury** could in good reason find that the defendant had failed to carry this burden. *Burrier v. Mut. Life Ins. Co. of New York,* 63 Wn.2d 266, 270, 387 P.2d 58 (1963). [emphasis added].

"**The jury** are the final arbiters as to the weight of the evidence necessary to overcome the presumption." *Id. at 281.* [emphasis added].

> The presumption of death arising from seven years' unexplained absence is always rebuttable. **Jurors** are the "final arbiters as to **the weight of the evidence necessary to overcome the presumption**."

Nelson v. Schubert, 98 Wash. App 754, 763, 994 P.2d 225 (2000).. [emphasis

added]. "A determination of proximate cause is generally a question of fact, ..." *Alger v. City of Mukilteo*, 107 Wash. 2d 541, 545, 730 P.2d 1333 (1987).

Because Captain Larson is an eligible firefighter under RCW 51.32.185, he has **a right** to receive the burden-shifting protection of 51.32.185(1) – a right that does not vanish in the forum that was specifically created to allow a worker due process after a Board hearing, that is, the worker's jury trial in Superior Court regarding factual questions.

> "'A liberty interest may arise from the Constitution,' from 'guarantees implicit in the word "liberty," ' or 'from an expectation or interest created by state laws or policies.' "

In re Bush, 164 Wash. 2d 697, 702, 193 P.3d 103 (2008). However, the protection of the burden-shifting in RCW 51.32.185 is meaningless when hidden from the jury.

The City focuses on the term "prima facie" in RCW 51.32.185 and argues that all the City has to do to rebut the presumption is introduce "contrary evidence." However, this argument fails for several reasons. First, in the context of burden of proof concerning a firefighter's presumptive occupational disease case, "prima facia" does not mean a burden of production on which the judge rules. In RCW 51.32.185, the legislature requires that the City rebut the presumption **by a preponderance of the evidence.** WPI 155.03, which defines "preponderance of evidence," states

that the jury "must be persuaded, considering all the evidence in the case bearing on the question, that the proposition on which that party has the burden of proof is more probably true than not true."

Moreover, this Court explained "prima facie" within the context of the Industrial Insurance Act.

> In this context, 'prima facie' means that there is a presumption on appeal that the findings and decision of the board, based upon the facts presented to it, are correct until the **trier of fact** finds **from a fair preponderance of the evidence** that such findings and decision of the board are incorrect. **It must be a preponderance of the credible evidence.**

Allison v. Dep't of Labor & Indus., 66 Wash. 2d 263, 268, 401 P.2d 982 (1965). [Emphasis added]. At that time, RCW 51.32.185 did not exist. However, the legislature used the same term ("prima facie") as it applied to the presumption in RCW 51.32.185 that the firefighter's disease is occupational. ". . . the legislature is presumed to know the existing state of the case law in those areas in which it is legislating." *Woodson v. State*, 95 Wash. 2d 257, 262, 623 P.2d 683 (1980).

Moreover, *Gorre v. City of Tacoma,* supra, further establishes that the City must do more than merely "produce contrary evidence" to rebut the presumption. *See Gorre v. City of Tacoma*, 180 Wash. App. 729, at 758 reversed on other grounds.

This case is not like an employment discrimination case. Here, the firefighter is protected by a specific burden-shifting statute that requires a preponderance of evidence to rebut the presumption.

> Some presumptions are rebutted **only by** a preponderance of the evidence. **Such a presumption relates to the burden of persuasion. . . .**

14A Wash. Prac., Civil Procedure § 31:14 (2d ed.) [emphasis added].

4. The decision by the Court of Appeals recognized that Jury Instruction No. 9 correctly instructed the jury on the burden of proof.

"Instruction No. 9" is a correct statement of the law. "Instruction No. 9" is the burden of proof instruction, taken directly from WPI 155.03, with the exception of paragraph three. Paragraph three informs the jury of the City's burden of proof at the hearing before the Board – again, an essential piece of information for the jury who is charged with deciding whether the Board was incorrect.

Paragraph three of "Instruction No. 9" simply instructs the jury that at the hearing before the Board the City had the burden of proof to rebut the presumption. The instruction merely recites the presumption.

The City contends that the jury had to look back at "Instruction No. 9" to answer the first question on the Special Verdict form. The Special Verdict form asked the jury if the Board was correct in "deciding that the

employer rebutted, by a preponderance of the evidence, the presumption that Plaintiff's malignant melanoma was an occupational disease?" CP 1775.

Nowhere in the Special Verdict form are the words "arising naturally out of" or the word "and" or the word "proximately." Rather, the Special Verdict form used the phrase "occupational disease." The jury could look to "Instruction No. 13" to find definitions of "occupational disease" and "arising naturally out of employment," "Instruction No. 11" for "proximate cause," paragraph four of "Instruction No. 9" (for which no error was assigned) for "preponderance of evidence." CP 1772, 1770, 1768. "Instruction No. 9" was simply a burden of proof instruction.

Moreover, judicial estoppel applies to the City's contention that "Instruction No. 9" incorrectly instructed the jury that to rebut the presumption, the City had to rebut both the "arising naturally" and "proximate cause" prongs of occupational disease. ***The City's*** Revised Proposed Special Verdict form specifically couched the rebuttal in the same terms as in paragraph three of "Instruction No. 9" requiring both " naturally" and "proximately". The City's Revised Special Verdict form provided in pertinent part:

> QUESTION NO. 1: Was the Board of Industrial Insurance Appeals correct in finding that the Defendant City of Bellevue rebutted, by a preponderance of the evidence, the evidentiary presumption that the Plaintiff Wilfred Larson's melanoma

> arose naturally **and** proximately from the distinctive conditions of his employment as a firefighter?
>
> ANSWER: _____ ("Yes" or "No")

CP 1749. [emphasis added].

The City contends "Instruction No. 9" "was in error because it placed the burden on the City instead of Larson." It was the legislature that placed the burden on the City. The Court merely instructed the jury as to the law. The City fails to address that immediately preceding the third paragraph of "Instruction No. 9", the Court's Instruction stated:

> The burden of proof is on the Plaintiff Wilfred Larson to establish by a preponderance of the evidence that the decision is incorrect.

CP 1768. Moreover, it bears repeating that if the jury is not informed that the City has the burden to rebut the presumption, then the statutory burden-shifting protection of RCW 51.32.185 is rendered meaningless at the firefighter's jury trial. The jury cannot be told **only** that the firefighter has the burden to prove that the Board's decision was incorrect –such an instruction would only paint an inaccurate picture for the jury, would mislead the jury, and would give no effect to the statutory burden-shifting protection of RCW 51.32.185.

5. The decision by the Court of Appeals correctly upheld the trial court's decision to award Larson his attorney fees and costs before the Board.

Captain Larson is entitled to the attorney's fees and costs incurred at the Board, Superior, Appellate and Supreme Court. RCW 51.32.185 provides in part:

> (7)(a) When a determination involving the presumption established in this section is appealed to the board of industrial insurance appeals and the final decision allows the claim for benefits, the board of industrial insurance appeals shall order that all reasonable costs of the appeal, including attorney fees and witness fees, be paid to the firefighter or his or her beneficiary by the opposing party.
> (b) When a determination involving the presumption established in this section is appealed to any court and the final decision allows the claim for benefits, ***the court shall order that all reasonable costs of the appeal, including attorney fees and witness fees, be paid to the firefighter or his or her beneficiary by the opposing party.*** [emphasis added].

Further, RCW 51.52.130 also contemplates the Court fixing a fee for the attorney's services before the Department of Labor and Industries ("Department"), the Board and the Court, when a decision of the Board is reversed on appeal to the Superior Court. Captain Larson's claim was accepted by the Department. He had no reason to appal to the Board, as he was already entitled to benefits. Had the City not appealed, there would be no fees and costs incurred by Captain Larson at the Board, the Superior Court, or in the Appellate Court or this Court.

> "The very purpose of allowing an attorney's fee in industrial accident cases primarily was designed to guarantee the injured workman adequate legal representation in presenting his

> claim on appeal without the ***incurring of legal expense or the diminution of his award*** . . ." [bold italic emphasis added]

Harbor Plywood Corp. v. Department of Labor & Indus., 48 Wash.2d 553, 559, 295 P.2d 310 (1956) (quoting *Boeing Aircraft Co. v. Department of Labor & Indus.*, 26 Wash.2d 51, 57, 173 P.2d 164 (1946)). The purpose of the Industrial Insurance Act is to make certain an employee's relief, and to provide for recovery regardless of fault or due care on the part of either the employee or employer. *Monloya v. Greenway Aluminum Co., Inc.*, 10 Wash.App. 630, 519 P.2d 22 (1974). Since at least 1987, the same year the presumptive disease statute was enacted by the Legislature, our Supreme Court stated:

> "The guiding principle in construing the Industrial Insurance Act is that the Act is remedial in nature and is to be liberally construed in order to achieve its purpose of providing compensation to all covered employees injured in their employment, with doubts resolved in favor of the worker."

Dennis v. Dep't of Labor and Indus., 109 Wn.2d 467, 470 (1987). It makes little sense to construe RCW 51.32.185 as precluding recovery of fees and costs incurred at the Board when it was the City who appealed from the Department's claim-allowance, and the City ultimately lost in Superior Court.

Here, based on the record before the Board the jury found that the Board was wrong; Captain Larson should have won. RCW 51.32.185 should not be construed such that the firefighter actually loses ground, despite

prevailing in Superior Court. The way the City construes the applicability of RCW 51.32.185(7) in this case provides protection only to the employer.

In a case involving the presumption, RCW 51.32.185(7) provides that the court shall order **all reasonable costs of the appeal**. To exclude the firefighter's costs and fees incurred at the Board when it was determined by a jury that his claim was allowable contorts the fee provisions of RCW 51.32.185 and the overriding policy of protecting workers as opposed to employers. The Court of Appeals did not err, but rather upheld the law.

6. Captain Larson is entitled to attorney's fees and costs at all levels of his claim – including the Supreme Court.

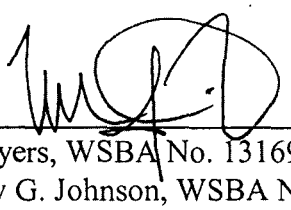
Captain Larson is entitled to, and seeks, his fees and costs incurred relating to the Board case, appeals to Superior Court, Appellate Court and this Court. RCW 51.32.185(7)(b) provides for all reasonable costs of the appeal, including attorney's fees and witness fees, be paid to the firefighter by the opposing party. "Any Court" also includes the Superior, Appellate and Supreme Courts. Section 5 *supra* is incorporated by reference herein.

VI. CONCLUSION

The Supreme Court should deny the City's Petition for Review and award Captain Larson his attorney's fees and costs at the Board, Superior, Appellate and Supreme Court.

DATED: November 4, 2015.

RON MEYERS & ASSOCIATES PLLC

By: 

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DECLARATION OF SERVICE OF RESPONDENT WILFRED LARSON'S ANSWER TO CITY OF BELLEVUE'S PETITION FOR REVIEW

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DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington that on the date stated below I caused the documents referenced below to be served in the manners indicated below on the following:

DOCUMENTS:
1. RESPONDENT WILFRED LARSON'S ANSWER TO CITY OF BELLEVUE'S PETITION FOR REVIEW
2. DECLARATION OF SERVICE

ORIGINAL TO: Washington State Supreme Court
Via e-mail Supreme@courts.wa.gov

COPIES TO:

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DATED this 4th day of November, 2015, at Olympia, Washington.

Mindy Leach, Paralegal

OFFICE RECEPTIONIST, CLERK

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Subject: RE: Larson v. City of Bellevue; Supreme Court No. 92197-1

Received on 11-04-2015

Supreme Court Clerk's Office

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Cc: Ron Meyers <ron.m@rm-law.us>; Tim Friedman <Tim.f@rm-law.us>; Darlene Langa <darlene.l@rm-law.us>; czakrzewski@bellevuewa.gov; CBarnes@bellevuewa.gov; Sandstrom, Anastasia (ATG) <AnaS@ATG.WA.GOV>
Subject: Larson v. City of Bellevue; Supreme Court No. 92197-1

Dear Clerk:

Attached please find the Respondent's Answer to Petition for Review and Declaration of Service for filing in the Wilfred Larson v. City of Bellevue, Case No. 92197-1

If anything further is necessary, please advise. Thank you.

Mindy Leach

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