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Court of Appeals
Division II
State of Washington
12/19/2018 12:00 PM

NO. 52454-6-II

COURT OF APPEALS FOR DIVISION II
STATE OF WASHINGTON

KATHRYNE CONNER,

Appellant,

v.

HARRISON MEDICAL CENTER AND THE DEPARTMENT OF LABOR AND INDUSTRIES OF THE STATE OF WASHINGTON,

Respondents.

BRIEF OF RESPONDENT

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I. COUNTER-STATEMENT OF THE CASE

The Board's April 27, 2015 Decision and Order noted that the Appellant had two workers' compensation claims pre-dating her employment with Harrison Medical Center. CP at 7. The first of these claims involved a 2004 injury resulting in a Category 1 PPD rating for her cervical spine and a Category 2 rating for her dorsolumbar spine. *Id*. The second claim pre-dating her employment with Harrison involved a 2005 injury for which she received chiropractic treatment. *Id*. These claims were closed in 2005 and 2006, respectively. *Id*. The Appellant subsequently filed four workers' compensation claims against Harrison Medical Center that became the subject of her appeal to superior court under Case No. 15-2-01037-1. *See* CP at 5-6.

Under claim SG-56221 and docket 13 11334, the Appellant appealed a December 11, 2012 Department order affirming a July 18, 2012 Department order closing her claim with no award for time-loss benefits; no permanent partial disability ("PPD") award; and segregating the conditions of degenerative disc disease ("DDD"), thumb osteoarthritis, bilateral carpal tunnel syndrome, and alleged psychiatric conditions. *Id* at 5. The Board affirmed the December 11, 2012 Department order. *Id*.

Under claim SG-56220 and docket 13 15134, the Appellant appealed a February 25, 2013 Department order affirming a September 24,

2014 Department order. *Id*. The September 24, 2014 Department order reversed two prior Department orders, accepted the claim for injuries related to a June 15, 2010 event, and closed the claim without award for time-loss benefits or PPD. *Id*. The Board affirmed the February 25, 2013 Department order. *Id*.

Under claim SE-56219 and docket 13 21546, the Appellant appealed a September 17, 2013 Department order closing this claim without award for PPD or time-loss benefits, segregating psychiatric conditions, and allowing the conditions described as cervical sprain, bilateral shoulder sprain, bilateral elbow sprain, and thoracolumbar sprain. *Id*. The Board affirmed this Department order. *Id*. at 6.

Lastly, under claim SE-06580 and docket 13 22341, the Appellant appealed an October 3, 2013 Department order that affirmed a July 18, 2012 Department order ending time-loss benefits, and closing the claim without award for PPD. *Id*. The Board affirmed the October 3, 2013 Department order. *Id*. This is the claim pertinent to the present appeal before the Court.

On May 27, 2015, the Appellant filed an appeal of the Board's Decision and Order to Kitsap County Superior Court. *Id*. at 2. On November 16, 2017, the Jury entered its Special Verdict. *Id*. at 153-58. The Jury answered 18 Special Verdict questions in favor of Harrison, affirming

those portions of the Board Decision and Order. *See id*. The Jury answered Questions 16 and 17 in favor of the Appellant. *Id*. at 157.

Special Verdict Question 16 asked whether the Board was "correct in deciding that Kathryne L. Conner's March 10, 2010 industrial injury (SE-06580 – 'Scooter' Claim) did not proximately cause or aggravate the following conditions: degenerative disc disease of the cervical spine; [DDD] of the thoracic spine; [DDD] of the lumbar spine; depression; and anxiety?" *Id*. The Jury answered "No." *Id*.

Special Verdict Question 17 asked the Jury to identify which of the conditions enumerated under Question 16 were caused or aggravated by the industrial injury under SE-06580. *Id*. The Jury indicated that DDD of the lumbar spine was causally related to the SE-06580 claim. *Id*. No other conditions were found by the Jury to be related to her SE-06580 claim.

However, under Question 18, the Jury indicated that the Board was correct in deciding that the Appellant was not entitled to time-loss benefits under SE-06580. *Id*. at 158. Under Question 19, the Jury indicated that the Board was correct in deciding that as of October 3, 2013, the Appellant's industrially related conditions under this claim were fixed and stable and therefore not in need of further necessary and proper treatment under this claim. *Id*. And under Question 20, the Jury indicated that the Board was

correct in deciding that the Appellant was not totally and permanently disabled. *Id*.

On April 11, 2018, counsel for Harrison received the Appellant's Note for Motion, Motion and Memorandum for Attorney Fees and Costs, and associated documents. Appendix A. The Appellant sought fees and costs totaling $94,495.60, including time for her co-counsel (inclusive of his time spent reconstructing his claimed hours). *Id*.

On June 26, 2018, Harrison filed its Objection and Response to the Plaintiff's Motion and Memorandum for Attorney Fees and Costs. CP at 163-81. Harrison argued that the Appellant was not entitled to attorney fees and costs in superior court, and argued that even if she was entitled to fees and costs, the amount requested was improper. Counsel for Harrison included a line-item audit of the time claimed by Appellant's counsel. Appellant's counsel filed a Reply brief on June 28, 2018. *Id*. at 192-97.

On June 29, 2018, the Parties engaged in oral argument on the Appellant's motion for attorney fees and costs. Appendix B. The Judge inquired into what may constitute "additional relief," what benefits may flow from the allowance of the DDD under the single claim in light of the pertinent Special Verdict answers, and inquired of the Parties regarding the reasonableness of the fees and costs requested by the Appellant. *Id*.

On July 5, 2018, Kitsap County Superior Court issued an Order on Plaintiff's Motion for Attorney Fees and Costs, denying the Appellant's Motion for Attorney Fees and Costs. CP at 215. On July 17, 2018, the superior court issued its Judgment and Order in this case. *Id*. at 238-45. The present appeal follows.

II. ARGUMENT

The Appellant failed to obtain any "additional relief" from the superior court Judgment and Order within the meaning of RCW 51.52.130(1) and is therefore not entitled to statutory attorney fees before the superior court. The Appellant is not "eligible" to seek reimbursement for lumbar DDD treatment that she may have obtained while the SE-06580 claim was open, and even if Appellant was eligible to seek a Department order directing reimbursement for past lumbar DDD treatment, this eligibility is not "additional relief" as contemplated by RCW 51.52.130(1) and case law interpreting this statute.

The Appellant's request for attorney fees and costs before this Court is premature and unwarranted on the merits of her appeal.

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A. The Appellant Is Not "Eligible" For Reimbursement of Lumbar DDD Treatment Expenses Under Claim SE-06580, And Therefore Did Not Obtain "Additional Relief" From the Superior Court Judgment

The Appellant is not eligible for reimbursement of past medical treatment for her lumbar degenerative disc disease under claim SE-06580. The superior court Judgment reversed the October 3, 2013 Department order affirming claim closure, directed the Department "to issue an order allowing the condition described as degenerative disc disease of the lumbar spine…effective July 18, 2012, then to issue a subsequent order closing this claim effective July 18, 2012" with no further benefits due under the SE-06580 claim. CP at 244-45.

The Appellant fails to explain how she might be eligible for reimbursement of past lumbar DDD treatment under SE-06580 in light of the express language of the Judgment and Order allowing the lumbar DDD condition under the claim, effective on the date of claim closure. Such an argument appears to fly in the face of logic and the plain meaning of the Judgment and Order.

The express language of the superior court Judgment precludes claim coverage of DDD treatment occurring prior to July 18, 2012, and Appellant is not "eligible" for reimbursement of lumbar DDD treatment.

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B. Even If the Appellant Were Eligible for Lumbar DDD Treatment Reimbursement, It Is Speculative as To Whether Any Such Reimbursement Would Occur

Even if the Appellant was entitled to reimbursement for lumbar DDD treatment during the period claim SE-06580 was open, the existence of any such reimburseable expenses are speculative and were never addressed by the superior court Judgment. Any such reimbursement would not come from the superior court, but a subsequent Department action, and is therefore not "additional relief" warranting fees and costs in superior court.

The Appellant received treatment for her lumbar conditions under her claims against Harrison Medical Center. The industrial injury under claim SE-06580 occurred on March 10, 2010. *Id*. at 4. The claim is closed effective July 18, 2012. *Id*. at 245. During this 28-month period, the Appellant received medical treatment benefits relating to her lumbar and cervical sprain under SE-06580, her "thoracolumbar sprain" under SG-56221, and/or her "neck, shoulders, spine" injury under SG-56220. *See* App. C, D, and E. Indeed, the Board's Decision and Order explains that the Appellant received treatment that included chiropractic care, physical therapy, massage therapy, and diagnostic imaging. CP at 7-9, 11. This raises material questions as to what treatments remain to be covered, if any, and the appropriateness of these ostensible treatments. Indeed, the

Appellant had every opportunity to present evidence and argument regarding any ostensible treatment for which she would request reimbursement, but declined to do so and therefore waived that argument in these appeals.

For medical benefits to be covered by a workers' compensation claim, the medical treatment must be curative or rehabilitative in nature. RCW 51.36.010; WAC 296-20-01002 (definition of "proper and necessary"). There has been no determination as to the appropriateness or existence of any lumbar DDD treatment under SE-06580, as this was not litigated below, and any such determination would have been beyond the scope of the Judgment and Order. In short, whether the Appellant has any reimbursable medical expenses under this claim is purely speculative.

The paucity of evidence cited by the Appellant in support of her "eligibility" for treatment reimbursement, and failure to reconcile the plain language of the Judgment and Order, underscores why the Department must pass on this question in the first instance, and why the superior court did not, and could not, pass on the question of treatment reimbursement.

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C. Eligibility for Treatment Reimbursement from The Department Is Not "Additional Relief" Within the Meaning of RCW 51.52.130(1), And the Superior Court Judgment and Order Should Be Affirmed

The only "additional relief" argued by the Appellant is her "eligibility" for reimbursement for past lumbar DDD treatment. This ostensible eligibility does not qualify as "additional relief" under RCW 51.52.130(1) because the reimbursement (if any) would come from the Department's own assessment, and not the superior court's Judgment.

In *Kustura*, a claimant requested attorney fees "based on the superior court's correction of a Board finding that she was single with no dependents." *Kustura v. Dep't of Labor & Indus.*, 142 Wn. App. 655, 692 175 P.3d 1117 (Div. I 2008)(*aff'd* 169 Wn.2d 81, 233 P.3d 853 (2010)). The claimant relied upon RCW 51.52.130 and argued that the superior court's correction of her marital status would affect "the accident or medical aid fund" because the adjusted status would result in a higher benefits rate from the Department. The Court of Appeals held,

> While she is correct that the accident fund is affected when a court increases worker benefits, **she fails to demonstrate that the superior court order actually increased her benefits**…**the trial court did not increase the amount of benefits determined by that order**; it simply corrected her marital status. **The court's order does not suggest a remand or adjustment of her benefits as a result of this correction.** Thus, she fails to demonstrate that the court's correction resulted in an increase in benefits…

Id. at 692-93. Emphasis added.

Kustura requires "additional relief" to be handed down by the superior court itself, not as a speculative *or even inevitable* byproduct of the Judgment.

Like the claimant in *Kustura*, the Appellant here seeks an award of attorney fees and costs for a mere correction in her "allowed conditions status." The superior court Judgment here, unlike *Kustura*, does not result in an *inevitable* increase in benefits by the Department, only the ostensible *eligibility* for treatment reimbursement – the very existence of which are speculative and would flow from a subsequent Department evaluation and decision, not the superior court Judgment.

Indeed, the Appellant concedes that her ostensible treatment reimbursement must be first passed upon by the Department: "the Department…has the authority to payment of medical bills incurred while the claim was open." App. Br. at 17. We know from the *Sacred Heart* case that remand of a case to the Department "to resolve whether the claim has any remaining value" cannot be "construed as additional relief or a sustained right to relief." *Sacred Heart Med. Ctr. v. Knapp*, 172 Wn. App. 26, 29, 288 P.3d 675 (Div. III 2012).

The Appellant's ostensible *eligibility* for past treatment reimbursement, even if it existed here, is not of a kind that would affect the

"accident fund or medical aid fund," and is not "additional relief" under RCW 51.52.130(1) and *Sacred Heart*.

The Kitsap County Superior Court Judgment and Order denying the Appellant's request for attorney fees and costs was correct. The Judgment and Order did not afford the Appellant "additional relief" within the meaning of RCW 51.52.130(1), and attorney fees and costs were properly denied. The July 17, 2018 Judgment and Order should be affirmed.

D. The Appellant's Request for Attorney Fees and Costs Before This Court Is Premature and Unwarranted Under the Facts and Law Applicable Here

The Appellant's brief to this Court also seeks attorney fees and costs for the present appeal. App. Br. at 19-20. This request for attorney fees and costs is premature because RCW 51.52.130(1) expressly limits the availability of fees and costs to workers who prevail on appeal and obtain additional relief, and the Appellant has not prevailed in this appeal as of this drafting.

Harrison also argues that the Appellant is not entitled to attorney fees and costs because the Kitsap County Superior Court Judgment and Order should be affirmed, for the reasons stated above. In short, the Appellant is incapable of meeting the statutory requirements for attorney fees and costs. The Appellant's request for attorney fees and costs in this Court should be denied.

III. CONCLUSION

For the reasons stated above, Harrison Medical Center respectfully requests that this Court affirm the July 17, 2018 Judgment and Order denying the Appellant's request for attorney fees and costs.

RESPECTFULLY SUBMITTED this 19th day of December, 2018.

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COURT OF APPEALS FOR DIVISION II
OF THE STATE OF WASHINGTON

KATHRYNE CONNER, Appellant, v. HARRISON MEDICAL CENTER and THE DEPARTMENT OF LABOR AND INDUSTRIES OF THE STATE OF WASHINGTON, Respondents.	DECLARATION OF WILLIAM J. PRATT IN SUPPORT OF BRIEF OF RESPONDENT

I, William J. Pratt, attorney for Respondent, Harrison Medical Center, certify under penalty of perjury under the laws of the State of Washington that the following is true and correct to the best of my knowledge and belief:

1. That I am one of the attorneys for Hall & Miller, P.S., representing Harrison Medical Center in the above-captioned appeal;
2. That Appendix A is a true and correct copy of the Appellant's Note for Motion Docket regarding Proposed Judgment and Order, Fees and Costs; Appellant's Proposed Judgment and Order; Appellant's Motion and Memorandum for Attorney Fees and Costs and

Presentation of Judgment; Appellant's Cost Bill; Declaration of Tara Jayne Reck; Declaration of Emily Higgins; and Appellant's spreadsheet detailing time for which she sought attorney fees and costs;

3. That Appendix B is a true and correct copy of the June 29, 2018 Verbatim Report of Proceedings in Kitsap County Superior Court under Case No. 15-2-01037-1;
4. That Appendix C is a true and correct copy of the Board of Industrial Insurance Appeals' Jurisdictional History for claim SE-06580 and docket 13 22341;
5. That Appendix D is a true and correct copy of the Board of Industrial Insurance Appeals' Jurisdictional History for claim SG-56221 and docket 13 11334; and

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6. That Appendix E is a true and correct copy of the Board of Industrial Insurance Appeals' Jurisdictional History for claim SG-56220 and docket 13 15134.

DATED this 19th day of December, 2018.

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HALL & MILLER, P.S.

Exhibit E

SUPERIOR COURT OF WASHINGTON
COUNTY OF KITSAP

Kathryne Conner,
Plaintiff/Petitioner

Tara Jayne Reck of Foster Law, P.C.,
Attorney for Plaintiff/Petitioner

vs.

Harrison Medical Center,
Defendant/Respondent

Hall & Miller,
Attorney for Defendant/Respondent

No.: 15-2-01037-1

NOTE FOR MOTION DOCKET

(NTMTDK)

TO THE CLERK OF THE COURT AND

TO: Honorable Jeffrey P. Bassett,

AND: Hall & Miller.

Please take notice that the undersigned will bring on for hearing:

NATURE OF MOTION: Proposed Judgment and Order, Fees and Costs

The hearing is to be held:

DATE: June 29, 20 18 TIME: 1:30 a.m./p.m.

AT: JUDGE/DEPARTMENT NO.: Honorable Jeffrey P. Bassett, Department No. 5
Superior Court of Kitsap County
614 Division Street
Port Orchard, WA 98366

COURT COMMISSIONER MAY HEAR THIS MOTION: ☐ YES ■ NO
ELECTRONIC RECORDER ACCEPTABLE: ■ YES ☐ NO
COURT COMMISSIONER MAY HEAR THIS MOTION: ☐ YES ■ NO

DATED 4/9/2018

Signed:

Lawyer for: Plaintiff Kathryne Conner

Address: Foster Law, P.C., 8204 Green Lake Drive North
Seattle, WA 98103

Telephone: 206-682-3436

RECEIVED
APR 11 2018
HALL & MILLER, P.S.

BEFORE THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KITSAP COUNTY

KATHRYNE CONNER, Plaintiff, v. HARRISON MEDICLA CENTER, Defendant.	No. 15-2-01037-1 **JUDGMENT AND ORDER [PROPOSED]**

I. JUDGMENT SUMMARY

1.	Judgment Creditor:	Kathryne Conner c/o Foster Law, P.C. 8204 Green Lake Drive North Seattle, WA 98103
2.	Judgment Debtor:	Harrison medical Center c/o Mr. Ryan Miller 706 N. 182nd Street Shoreline, WA 98133
3.	Principal Amount:	$ 94,508.10
4.	Attorneys' Fees:	$ 74,820.00 (Foster Law, P.C.)
5.	Costs:	$ 19,688.10 (Foster Law, P.C.)

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6. Attorney for Judgment Creditor: Tara Jayne Reck, Foster Law, P.C.

7. Principal Amount of $94,508.10, attorney's fees and costs to bear interest at 12% per annum.

II. JUDGMENT

THIS MATTER came on regularly for trial before the Honorable Judge Jeffrey P. Bassett of the Superior Court of the State of Washington in Kitsap County on November 7, 2017. Plaintiff Kathryne Conner was represented by her attorneys, Tara Jayne Reck and Dougal Neralich of Foster Law, P.C; and the Defendant, Harrison Medical Center, was represented by its attorneys, David Crossland and Ryan Miller of Hall & Miller. The parties introduced their evidence through the Certified Appeal Board Record and the same was properly presented to the jury. The jury was instructed by the Court and argument was made by respective counsel. The jury heard the argument of counsel and having retired to consider the case thereafter reached its verdict upon the following questions and answered as follows:

> QUESTION 1: Was the Board of Industrial Insurance Appeals correct in deciding that Kathryne L. Conner's occupational disease (SG-56221 - "Gear" Claim) did not proximately cause or aggravate the following conditions: degenerative disc disease of the cervical spine; degenerative disc disease of the thoracic spine; degenerative disc disease of the lumbar spine; thumb osteoarthritis; bilateral carpal tunnel syndrome; anxiety; and depression?
>
> ANSWER: Yes
>
> *(INSTRUCTION: If you answered "no" to Question 1, answer Question 2. If you answered "yes" to Question 1, skip Question 2 and proceed to answer Question 3 and all remaining questions consistent with applicable instructions.)*
>
> QUESTION 2: Which conditions were proximately caused or aggravated by Kathryne L. Conner's occupational disease (SG-56221- "Gear" Claim):
>
> ANSWER: Skipped

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QUESTION 3: Was the Board of Industrial Insurance Appeals correct in deciding that Kathryne L. Conner was not temporarily and totally disabled from June 14, 2010 through December 11, 2012 under her occupational disease claim (SG-56221- "Gear" Claim)?

ANSWER: Yes

QUESTION 4: Was the Board of Industrial Insurance Appeals correct in deciding that Kathryne L. Conner's conditions proximately caused or aggravated by her occupational disease ("Gear" Claim), were fixed and stable as of December 11, 2012, and thus not in need of further necessary and proper treatment?

ANSWER: Yes (Write "yes" or "no")

(INSTRUCTION: If you answered "no" to Question 4, do not answer Question 5. If you answered "yes" to Question 4, proceed to answer Question 5 and all remaining questions consistent with applicable instructions.)

QUESTION 5: Was the Board of Industrial Insurance Appeals correct in deciding that as of December 11, 2012, Kathryne L. Conner was not permanently and totally disabled under her occupational disease claim(SG-56221- "Gear" Claim)?

ANSWER: Yes

Claim No. SG-56220 ("Slide Board" Claim):

QUESTION 6: Was the Board of Industrial Insurance Appeals correct in deciding that Kathryne L. Conner's June 15, 2010 industrial injury (SG-56220 – "Slide Board" Claim) did not proximately cause or aggravate the following conditions: degenerative disc disease of the cervical spine, degenerative disc disease of the thoracic spine, and degenerative disc disease of the lumbar spine; depression; and anxiety?

ANSWER: Yes

(INSTRUCTION: If you answered "no" to Question 6, answer Question 7. If you answered "yes" to Question 6, skip Question 7 and proceed to answer Question 9 and all remaining questions consistent with applicable instructions.)

QUESTION 7: Which conditions were proximately caused or aggravated by Kathryne L. Conner's industrial injury (SG-56220 – "Slide Board" Claim):

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ANSWER: Skipped

QUESTION 8: Was the Board of Industrial Insurance Appeals correct in deciding that Kathryne L. Conner was not temporarily totally disabled from June 15, 2010 through February 25, 2013, under her June 15, 2010 industrial injury (SG-56220 – "Slide Board" Claim)?

ANSWER: Yes

QUESTION 9: Was the Board of Industrial Insurance Appeals correct in deciding that Kathryne L. Conner's conditions proximately caused or aggravated by June 15, 2010 industrial injury (SG-56220 – "Slide Board" Claim), were fixed and stable as of February 25, 2013, and thus not in need of further necessary and proper treatment?

ANSWER: Yes

(INSTRUCTION: If you answered "no" to Question 9, do not answer Question 10. If you answered "yes" to Question 9, proceed to answer Question 10 and all remaining questions consistent with applicable instructions.)

QUESTION 10: Was the Board of Industrial Insurance Appeals correct in deciding that as of February 25, 2013, Kathryne L. Conner was not permanently and totally disabled under her June 15, 2010, industrial injury (SG-56220 – "Slide Board" Claim)?

ANSWER: Yes

Claim No. SG-56219 ("Typing" Claim):

QUESTION 11: Was the Board of Industrial Insurance Appeals correct in deciding that Kathryne L. Conner's occupational disease (SG-56219 – "Typing" Claim) did not proximately cause or aggravate the following conditions: degenerative disc disease of the cervical spine; degenerative disc disease of the thoracic spine; degenerative disc disease of the lumbar spine; thumb osteoarthritis; bilateral carpal tunnel syndrome; anxiety; and depression?

ANSWER: Yes

(INSTRUCTION: If you answered "no" to Question 11, answer Question 12. If you answered "yes" to Question 11, skip Question 12 and proceed to answer Question 13 and all remaining questions consistent with applicable instructions.)

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QUESTION 12: Which conditions were proximately caused or aggravated by Kathryne L. Conner's occupational disease (SG-56219 – "Typing" Claim):

ANSWER: Skipped

QUESTION 13: Was the Board of Industrial Insurance Appeals correct in deciding that Kathryne L. Conner was not temporarily totally disabled from August 6, 2010, through September 17, 2013, under occupational disease claim (SG-56219 – "Typing" Claim)?

ANSWER: Yes

QUESTION 14: Was the Board of Industrial Insurance Appeals correct in deciding that Kathryne L. Conner's conditions proximately caused or aggravated by her occupational disease (SG-56219 – "Typing" Claim) were fixed and stable as of September 17, 2013, and thus not in need of further necessary and proper treatment?

ANSWER: Yes)

(INSTRUCTION: If you answered "no" to Question 14, do not answer Question 15. If you answered "yes" to Question 14, proceed to answer Question 15 and all remaining questions consistent with applicable instructions.)

QUESTION 15: Was the Board of Industrial Insurance Appeals correct in deciding that as of September 17, 2013, Kathryne L. Conner was not permanently and totally disabled under her occupational disease claim (SG-56219 – "Typing" Claim)?

ANSWER: Yes

Claim No. SE-06580 ("Scooter" Claim):

QUESTION 16:

Was the Board of Industrial Insurance Appeals correct in deciding that Kathryne L. Conner's March 10, 2010 industrial injury (SE-06580 – "Scooter" Claim) did not proximately cause or aggravate the following conditions: degenerative disc disease of the cervical spine; degenerative disc disease of the thoracic spine; degenerative disc disease of the lumbar spine; depression; and anxiety?

ANSWER: NO

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(INSTRUCTION: If you answered "no" to Question 16, answer Question 17. If you answered "yes" to Question 16, skip Question 17 and proceed to answer Question 18 and all remaining questions consistent with applicable instructions.)

QUESTION 17: Which conditions were proximately caused or aggravated by Kathryne L. Conner's March 10, 2010, industrial injury (SE-06580 – "Scooter" Claim):

ANSWER: (Write "yes" or "no" for each condition listed)

("yes" or "no") NO degenerative disc disease of the cervical spine
("yes" or "no") NO degenerative disc disease of the thoracic spine
("yes" or "no") YES degenerative disc disease of the lumbar spine
("yes" or "no") NO anxiety
("yes" or "no") NO depression

QUESTION 18: Was the Board of Industrial Insurance Appeals correct in deciding that Kathryne L. Conner was not temporarily totally disabled from July 1, 2012, through October 3, 2013, under her March 10, 2010, industrial injury (SE-06580 – "Scooter" Claim)?

ANSWER: Yes

QUESTION 19: Was the Board of Industrial Insurance Appeals correct in deciding that Kathryne L. Conner's conditions proximately caused or aggravated by her March 10, 2010 industrial injury (SE-06580 – "Scooter" Claim), were fixed and stable as of October 3, 2013, and thus not in need of further necessary and proper treatment?

ANSWER: Yes

(INSTRUCTION: If you answered "no" to Question 19, do not answer Question 20. If you answered "yes" to Question 19, proceed to answer Question 20 and all remaining questions consistent with applicable instructions.)

QUESTION 20: Was the Board of Industrial Insurance Appeals correct in deciding that as of October 3, 2012, Kathryne L. Conner was not permanently and totally disabled under her March 10, 2010 (SE-06580 – "Scooter" Claim)?

ANSWER: Yes

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III. CONCLUSIONS OF LAW

1. Attorney fees for Industrial Insurance appeals to superior court are set forth in R.C.W. 51.52.130, which states in pertinent part: "If, on appeal to the superior court or appellate court from the decision and order of the board, said decision and order is reversed or modified and additional relief is granted to a worker or beneficiary, or in cases where a party other than the worker or beneficiary is the appealing party and the worker's or beneficiary's right to relief is sustained, a reasonable fee for the services of the worker's attorney shall be fixed by the court...."
2. "Plaintiff" in this matter successfully reversed, in part, the Board's Decision and Order thereby sustaining additional benefits, allowance and medical coverage for her lumbar degenerative disc disease under claim number SE-06580, under the Industrial Insurance Act.
3. Pursuant to R.C.W. 51.52.130, Kathryne Conner's representatives are entitled to attorney fees and costs payable by Harrison Medical Center.
4. The hourly rate requested by Ms. Tara Jayne Reck of $350.00 is reasonable for an attorney with her experience; the hourly rate requested by Dougal Neralich of $300.00 is reasonable for an attorney with his experience; and the hourly rate for paralegal Ms. Emily Higgins of $125.00 is customary and reasonable for paralegals in the legal community.
5. Due to the significant number of issues spanning four separate claims and time involved in trying Kathryne Conner's case, Ms. Reck's 153.6 hours, Mr. Neralich's 56.20 hours and Ms. Higgins' 9.1 hours are reasonable for trial preparation and presentation.

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6. Ms. Reck's 7.0 hours at $350.00, Mr. Neralich's 1.0 hours, and Ms. Higgins' 2.4 hours at $125.00 are reasonable for preparing and filing this Motion for Attorney Fees, Judgment, and all related pleadings.
7. Kathryne Conner, by and through Foster Law, P.C., is entitled to costs in the amount of $19,688.10 payable by Harrison Hospital.
8. Foster Law, P.C., is entitled to attorney fees of $74,820.00 payable by Harrison Hospital:
    a. Tara Jayne Reck: 153.60 + 7.0 hours x $350.00/hour = $56,210.00
    b. Dougal Neralich: 56.20 + 1.0 x $300.00/hour = $17,160.00
    c. Emily Higgins: 9.10 + 2.40 hours x $125.00/hour = $1,437.50
    d. Fee Totals: $56,210.00 + $17,160.00 + $1,437.50 = $74,807.50

IV. ORDER

IT IS ORDERED, ADJUDGED AND DECREED that the April 27, 2015 Decision and Order of the Board of Industrial Insurance Appeals is incorrect and is reversed consistent with the special verdict of the jury finding that under claim number SE-06580 Kathryne Conner's lumbar degenerative disc disease was caused or aggravated by her March 10, 2010 industrial injury.

It is further;

ORDERED, ADJUDGED AND DECREED that the Department of Labor and Industries order dated October 3, 2013, is incorrect and is reversed consistent with the special verdict of the jury. It is further;

ORDERED, ADJUDGED AND DECREED that Plaintiff have judgment against Harrison Hospital, for reasonable attorney fees in the amount of $74,807.50 and expert witness fees and costs in the amount of $19,688.10, for a total of $94,495.60 to be paid to Foster Law, P.C., pursuant to RCW 51.52.130 for services rendered in its successful appeal to Superior Court only. It is further,

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ORDERED, ADJUDGED AND DECREED that this Judgment shall be paid within twenty (20) days. It is further,

ORDERED, ADJUDGED AND DECREED that the amounts stated herein above bear interest on principal at the rate of 12% per annum.

Finally, it is ORDERED, ADJUDGED AND DECREED that the Department of Labor and Industries and Self-Insured Employer (Harrison Hospital) is to take such other and further action as is necessary and required by law not inconsistent with the Judgment of this Court.

IT IS SO ORDERED.

DATED this 2nd day of April, 2018.

Honorable Judge Jeffrey P. Bassett

Presented by:

By: Tara Jayne Reck, WSBA # 37815
Foster Law, P.C.
Attorney for Plaintiff, Kathryne Conner

DATED this 2nd day of April, 2018.

Approved as to form:

By: Ryan Miller, WSAB # 40026
Hall & Miller
Attorney for Defendant, Harrison Hospital

DATED this 2nd day of April, 2018.

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BEFORE THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KITSAP COUNTY

KATHRYNE CONNER, Plaintiff/Petitioner, v. HARRISON MEDICAL CENTER, Defendant.	No. 15-2-01037-1 **PLAINTIFF'S MOTION AND MEMORANDUM FOR ATTORNEY FEES AND COSTS AND PRESENTATION OF JUDGMENT**

I. INTRODUCTION & RELIEF REQUESTED

Plaintiff, KATHRYNE CONNER, by and through his attorney of record, Tara Jayne Reck of Foster Law, P.C., respectfully moves the Court for judgment without oral argument based on the six-person jury's special verdict decision reversing, in part, the April 27, 2015 Decision and Order of the Board of Industrial Insurance Appeals, and further moves the Court for an award of reasonable attorney fees and costs. This Motion is made pursuant to RCW 51.52.130, CR 54, *Brand v. Dept. of Labor & Indus.*,

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139 Wn.2d 659, 989 P.2d 1111 (1999), *Hill v. Garda CL Nw., Inc.,* 198 Wn. App. 326 (2017), and the files and pleadings herein.

II. PROCEDURAL BACKGROUND

The Board of Industrial Insurance Appeals (Board) issued a Decision and Order on April 27, 2015, wherein the Board affirmed numerous orders issued by the Department of Labor and Industries closing Kathrynne Conner's four claims.

The Plaintiff, Kathryne Conner, filed a timely appeal to Kitsap County Superior Court. Trial commenced as scheduled on November 7, 2017, at 9:00 a.m. before the Honorable Judge Jeffrey P. Barrett in Kitsap County Superior Court. On November 16, 2017, after hearing opening statements, recitation of the evidence through the CABR, and closing arguments, the six person jury returned a verdict reversing, in part, the Board's decision in that the jury concluded that under claim number SE-06580 the Board's decision as incorrect and that Ms. Conner's degenerative disc disease of the lumbar spine was caused or aggravated by her March 10, 2010 industrial injury.

III. ISSUE

Whether Ms. Conner is entitled to entry of judgment and order, and award of reasonable attorney fees and costs with a multiplier?

BRIEF ANSWER: The Court should enter judgment and order for, and award reasonable attorney fees and costs to Mr. Harris and his attorneys pursuant to R.C.W. 51.52.130, which states in pertinent part:

> If, on appeal to the superior or appellate court from the decision and order of the board, said decision and order is reversed or modified and additional ***relief is granted to a worker or beneficiary***, or in cases where a party other than the worker or beneficiary is the appealing party and the worker's or beneficiary's right to relief is sustained, a reasonable fee for

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> the services of the worker's or beneficiary's attorney ***shall*** be fixed by the court.
>
> In the case of self-insured employers, the attorney fees fixed by the court, for services before the court only, and the fees of medical and other witnesses and the costs shall be payable directly by the self-insured employer.

RCW 51.52.130 (emphasis added).

IV. EVIDENCE RELIED UPON

1. Declaration of Tara Jayne Reck together with its exhibits and attachments;
2. Declaration of Emily Higgins;
3. All other files and pleadings in the Court file.

V. AUTHORITY

A. Fee Shifting Statute

RCW 51.52.130 provides that if, on appeal to the Superior Court from a Decision and Order of the Board, the Decision and Order is reversed or modified resulting in additional benefit to the injured worker, and/or when the injured worker is not the appealing party but the worker's right to benefit sis sustained, a reasonable fee for the services of the worker's attorney shall be fixed by the Court. Additionally, costs shall also be fixed by the Court.

1. Reasonable Number of Hours Expended

Attached to the Declaration of Tara Jayne Reck as "**Appendix A**" is a detailed itemization of time expended in this appeal by all Foster Law, P.C. professional staff in preparing this matter for Superior Court litigation through the filing of this Motion. The

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total hours for which Plaintiff seeks compensation (including the hours spent to prepare this Motion) are as follows:

a. Tara Jayne Reck: 153.60 + 7.0 hours x $350.00/hour = $53,760.00

b. Dougal Neralich: 56.20 + 1.0 x $300.00/hour = $17,160.00

c. Emily Higgins: 9.10 + 2.4 hours x $125.00/hour = $1,437.50

2. Reasonable Hourly Rate

Ms. Conner seeks the following attorney and legal staff hourly rates based upon education and years of experience as outlined below and the accompanying declaration of Tara Jayne Reck:

Tara Jayne Reck: $350.00 per hour

Dougal Neralich: $300.00 per hour

Emily Higgins: $125.00 per hour

Ms. Reck's hourly rate of $350.00 is reasonable given the skill and expertise required to try this matter and because this hourly rate has previously been deemed reasonable at King County Superior Court for attorneys with her level of experience. This appeal required Ms. Reck to utilize her experience and specialized knowledge in the area of workers' compensation to reverse the Board's decision. Despite being based upon an administrative law review and CABR, the presentation of this case required detailed knowledge of workers' compensation rules and regulations, the ability to sort through and explain complex medical terminology and legal principles, the ability to work through the entire spectrum of worker's compensation benefits across four separate and distinct claims, and an exceptionally complex special verdict form.

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Furthermore, Foster Law P.C. represents Ms. Conner on an entirely contingent fee basis.

Given Ms. Reck's skill level, eleven years of experience, and specialized knowledge regarding industrial insurance matters, an hourly rate of $350.00 is reasonable. The hourly rate of $300.00 for Dougal Neralich has been approved by the Washington State Court of Appeals. The hourly rate of $125.00 for paralegal, Ms. Higgins, is reasonable given her training and experience as a paralegal and in compliance with *Absher Construction Co. v. Kent School District,* 79 Wn. App. 841, 905 P.2d. 1229 (1996).

4. Post-Verdict Time is Compensable

Time spent on establishing entitlement to, and amount of, a court awarded attorney fee is compensable. *Fisher Properties v. Arden-Mayfair*, 115 Wn.2d 364, 378, 798 P.2d 799 (1990) (when a statute provides for an attorney fee award, an attorney's time spent on establishing entitlement to a court awarded attorney fee is also compensable); *Steele v. Lundgren*, 96 Wn. App. 773, 781, 982 P.2d 619 (1999). For the time spent preparing these documents for recovery of attorney fees, and presentation of the Judgment and Order based on the Court's ruling, Ms. Conner requests $350.00 per hour for Ms. Reck, $300.00 per hour for Mr. Neralich, and $125.00 per hour for paralegal, Ms. Higgins. The time entries reflect the time spent in preparing this Motion, proposed Judgment and Order, proposed Findings of Fact, and Declarations are 7.0 hours for Ms. Reck, 1.0 hours for Mr. Neralich, and 2.4 hours for Ms. Higgins as detailed in "**Appendix B**".

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5. Costs

Based on RCW 51.52.130, the Department of Labor and Industries must pay the fees of medical and other witnesses and costs. The attached Cost Bill evidences costs totaling $19,688.10 and Plaintiff requests cost reimbursements of $19,688.10. These costs were all incurred as part of Mr. Conner's opposition to the Department orders under appeal, and she is entitled to reimbursement of these costs since the Board's Decision and Order was reversed, and her lumbar degenerative disc disease must not be considered an accepted condition under claim SE-06580.

VI. CONCLUSION

Based on the foregoing, Plaintiff respectfully requests this Court to enter the proposed Judgment and Order, which includes an award of attorney fees and costs as requested herein.

A proposed form of the Judgment and Order accompanies this Motion.

DATED this 2nd day of April, 2018.

FOSTER LAW, P.C.

Tara Jayne Reck, WSBA #37815
Attorney for Kathryne Conner

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BEFORE THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KITSAP COUNTY

KATHRYNE CONNER, Plaintiff, v. HARRISON MEDICAL CENTER, Defendant.	**Cause No. 15-2-01037-1** **PLAINTIFF'S COST BILL**

Plaintiff Kathryne Conner, by and through his attorney of record, Tara Jayne Reck of Foster Law, P.C., requests that the following costs be awarded:

Litigation Costs

Telephone conference with Dr. Esterberg	$250.00
Telephone conference and deposition with Dr. Vondran	$875.00
Washington State Ferries to Esterberg deposition	$34.95
Parking for Esterberg and Schuster depositions	$16.00
Court reporting fees from Catalina Court Reporting for deposition of Dr. Vondran	$5714.40

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Court reporting fees from Catalina Court Reporting for deposition of Dr. Esterberg	$417.25
Court reporting fees from Catalina Court Reporting for deposition of Dr. Schuster	$436.25
Telephone conference and deposition with Dr. Schuster	$2,492.70
Vocational assessment with Carl Gann	$790.90
Court reporting fees from Catalina Court Reporting for deposition of Dr. Velasco	$171.50
Parking for Schuster continuation deposition	$8.00
Court reporting fees from Catalina Court Reporting for deposition of Dr. Schuster continuation	$429.75
Parking for Board hearing or Dr. Goler deposition?	$9.00
Schuster IME and continuation deposition	$4,950.00
Court filing fee for appeal	$240.00
Fax filing to Kitsap County Superior Court	$15.00
Fax filing to Kitsap County Superior Court	$20.00
TOTAL	**$11,727.70**

Total Costs: $11,727.70

The above items are expenses allowed as costs by RCW 51.52.130, 4.84.090, and 4.84.010 and are reasonable expenses actually incurred and reasonably necessary.

DATED this 2nd day of April, 2018.

FOSTER LAW, P.C.

Tara Jayne Reck, WSBA #37815
Attorney for Defendant Kathryne Conner

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BEFORE THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR KITSAP COUNTY

KATHRYNE CONNER, Plaintiff, v. HARRISON MEDICAL CENTER, Defendant.	**Cause No. 15-2-01037-1** **DECLARATION OF TARA JAYNE RECK**

I, TARA JAYNE RECK, declare and state under penalty of perjury as follows:

1. I am the attorney of record for Plaintiff, Kathryne Conner. I am over the age of eighteen and am otherwise competent to testify to the following based on my personal knowledge:

2. I am a 2006 graduate of the Seattle University School of Law. During the course of my education, I had the opportunity to be educated in Constitutional Law by former Chief Justice of the United States Supreme Court, William Rehnquist. I was admitted to practice law in the State of Washington in October 2006. Upon

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my admission, I immediately began representing injured workers under the Washington State Industrial Insurance Act, and disabled individuals under the Social Security Disability system. Accordingly, I have focused on the representation of injured workers and disabled individuals for over nine years, and have developed specialized knowledge and expertise in that area of law.

3. Since October 2006, I have maintained a focus on trial advocacy. I joined Foster Law, P.C. in November 2011. My responsibilities include not only trial advocacy but also administrative claims management. More specifically, my work at Foster Law, P.C. entails superior court jury and bench trials, hearings before the Board of Industrial Insurance Appeals, perpetuation depositions of expert witnesses, hearings before the Social Security Administration – office of Disability Adjudication and Review, and active management of approximately fifty other claims before the Department of Labor and Industries.

4. Between mid-October 2014 and February 2015, I was the sole litigating attorney at Foster Law, P.C., but worked closely with the non-litigating managing Partner.

5. In March 2015, I was promoted to a supervising attorney role taking on additional responsibilities including managing our master docket and ensuring that deadlines are met, and supervising a legal team including one other attorney and not less than four paralegals.

6. During the past twenty years, Foster Law, P.C., has prevailed in many superior court trials and appeals for which it received attorney fee awards.

7. I have consistently been awarded a reasonable hourly fee of $350.00 per hour in King County since 2016. (*see* Attachment A)

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8. At this time an hourly rate of $350.00 is reasonable given my years of experience, the fact that I am now a supervising attorney at a higher salary rate than in 2013 and 2014, and the fact that this rate has previously been deemed reasonable for other attorneys with a similar background and work experience (*see* Attachment B).

9. Dougal Neralich's hourly rate of $300.00 has been approved by the Washington State Court of Appeals, Division 1. (*see* Attachment B).

10. The $125.00 hourly rate for paralegal, Emily Higgins is similarly reasonable based upon her education and years of experience. (*see* Attachment c).

11. This appeal by the Claimant presented very difficult legal, evidentiary and factual issues involving the spectrum of worker's compensation benefits across four separate claims. The Board's decision was presumed to be correct and Plaintiff bore the burden of proving by a preponderance of the evidence that the Board's presumably correct decision was incorrect, on one or more findings.

12. Arguing for reversal of the orders of the Department and Board required special training and experience with respect to workers compensation law.

13. This case contained risk and an uncertain likelihood of success. This case also presented numerous undesirable aspects of representation including engaging in over 218 combined hours of preparation and trial work with no assurance of fees for performing that level of advocacy. Foster Law is a small office with two actively litigating attorneys, of which I am one. I am also the supervising attorney. The time spent out of the office trying this case placed a significant burden on our office and significantly set me back in my own workload. Without

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the potential for fee shifting, this case would have been so undesirable that Ms. Conner would have had extreme difficulty obtaining representation.

14. Attached as ***Appendix A*** to this Declaration is a table representative of the time Foster Law, P.C. professional staff and I spent preparing this matter at the Superior Court level. Time and lodestar fee calculations summaries are as follows:

Tara Jayne Reck, Esq.

Fee per hour	$350.00
Reasonable hours	153.6
TOTAL	**$53,760.00**

Dougal Neralich, Esq.

Fee per hour	$300.00
Reasonable hours	56.2
TOTAL	**$16,860.00**

Emily Higgins, Paralegal

Fee per hour	$125.00
Reasonable hours	9.10
TOTAL	**$1,137.50**

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15. Attached as ***Appendix B*** to this Declaration is a table representative of the time spent preparing Plaintiff's Motion and Memorandum for Attorney Fees and Costs and Presentation of Judgment and supporting materials thereto.

Tara Jayne Reck, Esq.

Fee per hour	$350.00
Reasonable hours	7.0
TOTAL	**$2,450.00**

Dougal Neralich, Esq.

Fee per hour	$300.00
Reasonable hours	1.0
TOTAL	**$300.00**

Emily Higgins, Paralegal

Fee per hour	$125.00
Reasonable hours	2.5
TOTAL	**$312.50**

16. Attached as **Appendix C** is an itemization of costs listed in Plaintiff's Cost Bill.

17. The Declaration of Emily Higgins is attached and outlines Ms. Higgins' work in assisting me in the preparation of this matter.

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18. I am seeking payment for Plaintiff's litigation costs in the amount of $19,688.10. These costs were incurred because Ms. Conner challenged the Department's decisions to close Ms. Conner's claims without further payment of temporary or permanent total disability benefits and segregation of conditions argued to be causally related. This placed undue financial stress on Ms. Conner and is contrary to the beneficial purpose of the Industrial Insurance Act. RCW 51.12.010; *Clauson v. Department of Labor and Industries*, 130 Wn. 2d 580, 925 P.2d 624 (1996); *Wilber v. Department of Labor and Industries*, 61 Wn.2d 439, 446, 378 P.2d 684 (1963); *Hastings v. Department of Labor and Industries*, 24 Wn.2d 1, 163 P.2d 142 (1945); *Nelson v. Department of Labor and Industries*, 9 Wn.2d 621, 115 P.2d 1014 (1941); *Hilding v. Department of Labor and Industries*, 162 Wash. 168, 298 Pac. 321 (1931). Accordingly, the only just and equitable result is that these costs be reimbursed to Ms. Conner.

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

DATED this 2nd day of April, 2018, in Seattle, Washington.

FOSTER LAW, P.C.

Tara Jayne Reck, WSBA #37815
Attorney for Plaintiff Kathryne Conner

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BEFORE THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KITSAP COUNTY

KATHRYNE CONNER, Plaintiff, v. HARRISON MEDICAL CENTER, Defendant.	**Cause No. 15-2-01037-1** **DECLARATION OF EMILY HIGGINS**

I, EMILY HIGGINS, declare and state under penalty of perjury as follows:

1. I am a paralegal employed by Foster Law, P.C., the attorney of record for Plaintiff Ms. Kathryne Conner. I am over the age of 18 and am otherwise competent to testify to the following based on my personal knowledge:
2. My paralegal duties at Foster Law, P.C., under the direction and supervision of attorney Tara Jayne Reck, include maintaining ongoing telephonic, in-person, and written communication with the firm's workers' compensation clients, the Washington State Department of Labor & Industries, and the Board of Industrial Insurance Appeals, as well as treatment providers and other related persons and entities, in securing workers' compensation benefits for the firm's clients. Since this appeal was filed, I have been the primary paralegal assisting with the

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preparation of Ms. Conner's appeal before the Superior Court.

3. I have been the firm's litigation paralegal, assisting trial attorney Tara Jayne Reck, since November 2012. I received a certificate in paralegal studies from Edmonds Community College in August 2011. Edmonds Community College is accredited by the American Bar Association as an approved paralegal program. I began my employment as a legal assistant for Foster Law, P.C., in September 2011.

4. I maintain daily time slips for all the work I perform at Foster Law, P.C. I have reviewed ***Appendix A and Appendix B***, and agree with these entries and the total amount of time of 9.9 hours I spent on Ms. Conner's appeal, including preparation of documents post-jury trial.

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

DATED this 2nd day of April, 2018, at Seattle, WA.

FOSTER LAW, P.C.

Emily Higgins, Paralegal

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Motion for Attorney Fees and Judgment - Appendix A

Name	Date	Time	Notes
Emily Higgins	5/12/2015	0.60	Prepare notice of appeal to Kitsap Superior Court, Case Information Cover Sheet, and Certificate of Service. Prepare payment request form in the amount of $240.00 for filing fee. Discuss same with Tara.
	5/15/2015	0.10	Discuss superior court appeal with Tara.
	5/20/2015	0.40	Review court rules for briefing schedule, and update Case Status sheet accordingly. Calendar preparation time for Tara. Discuss same with Tara.
	5/22/2015	0.50	Finalize appeal, obtian Tara's signature, and prepare for mailing. Update master deadline list and Case Status sheet accordingly.
	5/29/2015	0.10	Receive and review Board letter acknolwedging receipt of our appeal to Kitsap County Superior Court, and confirming it will forward the Certified Appeal Board Record.
	6/2/2015	0.30	Receive and review conformed copy of appeal, including docket number. Review and update Case Status sheet accordingly.
	6/3/2015	0.20	Discuss July 6, 2015 briefing deadline with Tara. Review calendar, and block out additional preparation time.
	6/5/2015	0.10	Receive and review Notice of Appearance of Tom Hall on behalf of the employer.
	6/10/2015	0.10	Receive and review courtesy copy of Office of the Attorney General Notice of Non-Participation.
	6/29/2015	0.40	Receive Certified Appeal Board Record, and place in binder for review in preparation for briefing.
	6/30/2015	0.10	Create binder label.
	8/24/2015	0.10	Mail Notice of Unavailability to Kitsap County Superior Court and opposing cousel.
	9/22/2015	0.10	Review case summary for appeal status: pending trial setting form the Court.
	11/25/2015	0.20	Call Kitsap County Court to determine status of appeal, and leave voicemail for Clerk's office.
	12/9/2015	0.10	Call Kitsap County Superior Court for appeal status, and leave another voicemail.
	12/10/2015	0.10	Receive phone call from Kitsap Superior Court directing me to the Court Scheduler.
	12/11/2015	0.10	Call Kitsap County Superior Court and speak with Jen regarding trial setting calendar. Discuss same with Tara.
	12/15/2015	0.40	Finalize Note for Trial Setting for Tara's signature. Prepare cover letter to Kitsap County Superior Court Clerk enclosing same. Mail to Court with courtesy copy to self-insured employer.
	12/22/2015	0.10	Receive and review employer's demand for trial by a jury of six and notice of unavailability.
	7/16/2016	0.10	Discuss appeal status with Tara.
	8/11/2016	0.10	Review status sheet prepared by Tara.

Motion for Attorney Fees and Judgment - Appendix A

Name	Date	Time	Notes
Emily Higgins	9/22/2016	0.20	Receive Order Setting Trial Date and Scheduler. Calendar for Tara.
	1/18/2017	0.10	Return voicemail from client and leave voicemail.
	1/26/2017	1.10	Receive and review internal email regarding continuance. Review Kitsap County Superior Court rules, and prepare motion for continuance. Email to Tara for revision.
	2/8/2017	0.30	Review declaration regarding motion for continuance.
	2/16/2017	0.10	Call Kitsap County Superior Court regarding tomorrow's motion hearing. Prepare Note for Motion Docket amending date for February 24, 2017. Fax file to Kitsap County Superior Court, and provide to Kelsey Tuohy for hand delivery to opposing counsel.
	2/16/2017	0.30	Review work product of response. Prepare fax filing cover sheet and fax to Court, mail to opposing counsel.
	2/23/2017	0.10	Email Kitsap County Superior Court confirming tomorrow's motion hearing.
	2/23/2017	0.40	Prepare trial binder for tomorrow's motion hearing.
	6/7/2017	0.10	Email client regarding trial status.
	10/23/2017	0.50	Prepare Word document containing Findings of Fact and Conclusions of Law for Tara, and email to her.
	11/2/2017	0.40	Prepare trial binder for jury trial.
	11/6/2017	0.10	Call Kistap county court confirmation line, and leave voicemail confirming tomorrow's trial.
	11/6/2017	0.50	Prepare Notice of Association of Counsel for Plaintiff in order to add attorney Dougal Neralich to our counsel list. Obtain Tara's signature. Fax filing to Kitsap County Superior Court clerk and opposing counsel.
	11/15/2017	0.10	Receive phone call from Tara, and email requested documents to her and the Court.
	11/16/2017	0.50	Receive phone call from Tara regarding verdict.
		9.10	
Tara Jayne Reck	4/29/2015	0.30	Receive and review Decision and Order. Contact client to discuss and decide whether any appeal will be filed.
	5/1/2015	0.10	Talk to Emily Higgins about researching Kitsap County filing procedures.
	5/14/2015	0.30	Obtain direction from client that she would like to pursue Kitsap County appeal.
	5/15/2015	0.50	Review prepared appeal documents and discuss appeal process with Emily Higgins.
	5/22/2015	0.10	Review and sign final appeal documents.
	5/29/2015	0.10	Review Board letter concerning Kitsap County Superior Court appeal and Certified Appeal Board Record.

Motion for Attorney Fees and Judgment - Appendix A

Name	Date	Time	Notes
Tara Jayne Reck	6/3/2015	0.20	Discuss July 6, 2015 briefing deadline with Emily Higgins and ask her to calendar time for briefing preparation.
	6/5/2015	0.10	Receive and review Notice of Appearance of Hall and Associates.
	6/10/2015	0.10	Receive and review Attorney General Notice of Non-Participation.
	7/1/2015	4.00	Review Certified Appeal Board Record and work on brief due July 6.
	7/2/2015	3.00	Continue review of Certified Appeal Board Record and briefing preparation for July 6 deadline.
	7/6/2015	3.00	Finalize briefing for Kitsap County Superiro Court Appeal.
	12/11/2015	0.10	Discuss Kitsap County case scheduling details with Emily Higgins following her discussion with Jen in Court Administration.
	12/15/2015	0.10	Review and sign note for trial setting.
	12/22/2015	0.10	Review employer's demand for trial by a jury of six and opposing counsel's notice of unavailability.
	4/26/2016	0.10	Receive and review email from Ryan Miller asking for settlement offer from claimant. Reach out to client to see if I can obtain any settlement authority.
	9/22/2016	0.10	Review Kitsap County order setting trial date and case event schedule. Note March 7, 2017 hearing date. Trial will likely last up to 2 weeks (6 person jury). Ask Emily Higgins to block trial time on calendar.
	11/3/2016	0.10	Receive message from reception that client called and would like a call back. Place return call but number just rang and rang with no ability to leave message and no answer.
	11/4/2016	0.10	Receive message from reception that client called back, this time leaving a new number to reach her. Place return call to new number and leave message.
	1/26/2017	0.30	Notified that husband must have surgery shortly before Superior Court trial in March. Send email to Emily Higgins asking her to begin putting together pleading template so that I can file a motion for continuance.
	2/7/2017	0.10	Having determined that oppiosing counsel will not agree to continuance. We must file motion and note for motion calendar.
	2/8/2017	1.00	Review draft pleadings and inquiry from Emily Higgins about requested new trial date. Finalize pleadings for filing.
	2/15/2017	0.30	Review employer's response and objection to my motion for continuance.
	2/16/2017	1.50	Prepare response to employer's reply to motion for continuance.

Motion for Attorney Fees and Judgment - Appendix A

Name	Date	Time	Notes
Tara Jayne Reck	2/24/2017	6.00	Travel to Kitcap County for continuance motion hearing. Argue motion. Motion granted. Work with Court administration and opposing counsel (David Crossland) to select a new trial date that works for opposing counsel's calendar since our proposed date does not work. Set new trail date in early November. Return to office.
	7/26/2017	0.30	Receive and review email from opposing counsel asking for an update on potential settlement. Reach out to cleint. No response from client other than that she needs to think about it.
	9/6/2017	0.30	Receive and review email from Ryan Miller asking for an update on possible settlement offer from claimant. Reach out to client and confer with Dougal Neralich.
	9/9/2017	0.50	Send response to opposing counsel concerning possible settlement options.
	10/5/2017	0.30	Email opposing counsel to follow up on potential settlement and inquire about setting up time to confer and prepare for trial next month. Receive response from opposing counsel that settlment is not an option and that we will proceed with litigation.
	10/9/2017	0.10	Review email from David Crossland concerning lack of time to work on preparing record for trial and asking about continuing to February. Agreeable to continuance in light of lack of preparation time. Cannot address this matter currently because of King County trial.
	10/17/2017	0.10	Follow up email conversation with opposing counsel concerning trial schedule, prep time and whether we should move for continuance.
	10/17/2017	0.10	Receive follow up email from opposing counsel that client will not agree to continuance. Trial will go froward as scheduled pending Court availability.
	10/23/2017	5.00	Begin preparing trial materials. Ask Emily Higgins to prepare word document of finding of fact and conclusion of law language so that it can be used in pertinenet pleadings. Begin drafting proposed jury instructions, statement of the case, and general voir dire questions. Begin reviewing the CABR for content and formulation of argument.
	10/24/2017	1.50	Discussion with client concerning possible settlement terms. Send follow up email to opposing counsel that client seems to be considering alternative settlement proposal.
	10/25/2017	4.00	Continue trial preparations. Continue review of CABR. Lable testimony and begin identifying objections to determine what needs to be cleaned up. Begin drafting verdict form.
	10/26/2017	4.30	Continue review of CABR. Begin drafting timeline of events. Review claim labels and make chart to easily identify claim by claim number, type of claim, shorthand for claim, accepted conditons and issues under each claim.
	10/27/2017	3.00	Continue working on trial prep. Continue review of CABR. Discuss with Dougal Neralich needing help with objections. Discuss Conner and Schuster testimony. Edit draft of verdict form.

Motion for Attorney Fees and Judgment - Appendix A

Name	Date	Time	Notes
Tara Jayne Reck	10/30/2017	5.00	Continue trial preparations. Continue reading through CABR and update timeline of events. Make notes concerning specific expert opinions as to each claim in order to determine what conditions are really at issue under each claim versus all of the conditions addressed by the Board in the Decision and Order. Try to simplify issues if possible.
	10/31/2017	0.10	Review email fom David Crossland concerning his conversation with Court Administration on status of trial start. Instructions to call 11/5 after 11:00 to find out more.
	10/31/2017	0.10	Review email from David Crossland concerning his progress in reviewing the records to determine which objections to renew.
	10/31/2017	0.10	Review email from opposing counsel concerning firm counter offer of settlement which expires at 5 pm on 11/3/17. Discuss with Christine Foster and Dougal Neralich. Client is currently unavailable and will remain unavailable through expirition but based on prior communications the offer would be rejected so no good faith basis to ask for continuance based on outstanding offer.
	11/1/2017	0.30	Engage in email exchange with David Crossland concerning efforts for prepare for trial. He is requesting drafts of trial materials. Will send as soon as possible but verdict form is still very much a work in progress.
	11/2/2017	4.00	Continue trial preparations. Send drafts of verdict form, statement of case, and jury instructions to Christine Foster and Dougal Neralich for review and comment. Continue CABR review and update timeline with new notes. Engage in ongoing email exchange with Christine Foster and Dougal Neralich regarding pleadings, especially instructions and verdict form.
	11/3/2017	5.50	Continue with trial preparations. Make discussed changes to verdict form and jury instructions. Continue review of CABR and update timeline. Attempt to send trial materials to David Crossland but get error message back.
	11/5/2017	2.50	Complete reading of the CABR.
	11/5/2017	0.30	Review email from Ryan Miller concerning email issues.
	11/6/2017	6.50	Complete final trial preparations. Edit verdict form and jury instructions again making additional changes as discussed with Christine Foster and Dougal Neralich. Outline opening statement and begin draft outline for closing argument. Prepare notes for voir dire. Discuss voir dire strategy with office staff and Dougal Neralich. Prepare trial binder and print off materials for binder. Pack all materials for trial.
	11/7/2017	12.00	Travel to, participate in and return from trial in Kitsap County.
	11/8/2017	12.00	Travel to, participate in and return from trial in Kitsap County.
	11/9/2017	12.00	Travel to, participate in and return form trial in Kitsap County.

Motion for Attorney Fees and Judgment - Appendix A

Name	Date	Time	Notes
Tara Jayne Reck	11/12/2017	12.00	Travel to, participate in and return form trial in Kitsap County.
	11/13/2017	12.00	Travel to, participate in and return form trial in Kitsap County.
	11/14/2017	12.00	Travel to, participate in and stay in hotel overnight for trial in Kitsap County. Work on closing argument. Prepare notes and power point presentation.
	11/15/2017	10.00	Travel to, participate in and return from trial in Kitsap County.
	11/16/2017	6.00	Travel to Kitsap County, receive the verdict, return to Seattle.
		153.60	
Dougal T. Neralich	9/6/2017	0.10	Discussion with Tara Reck regarding client and potential trial, strategy, and assistance.
	10/17/2017	5.00	Review of PFR and response, and beginning to read the CABR
	10/23/2017	5.00	Reading the CABR and taking notes for Tara Reck on strategy points for litigation.
	10/25/2017	4.00	Reading and annotating CABR, outlining arguments for Tara Reck, breaking down opposing counsel arguments and our counter arguments.
	10/27/2017	3.00	Review of Schuster and Conner testimony, outlining the objections and arguments re: mental health. Discussion with Tara Reck.
	10/31/2017	0.10	Meeting with Tara Reck and Christine Foster re: settlement offer and moving forward with trial.
	11/2/2017	3.00	Review of jury instructions and special verdict form from Tara Reck. Email exchanges with Tara Reck and Christine Foster.
	11/7/2017	12.00	Travel to, participate in and return from trial in Kitsap County.
	11/8/2017	12.00	Travel to, participate in and return from trial in Kitsap County.
	11/15/2017	12.00	Travel to, participate in and return from trial in Kitsap County.
		56.20	

Motion for Attorney Fees and Judgment - Appendix B

Name	Date	Time	Notes
Emily Higgins	12/14/2017	1.00	Prepare attorney fees and cost pleadings and spreadsheet. Email internally regarding same.
	12/18/2017	0.30	Review hour log for attorney fees.
	12/21/2017	0.10	Finish review of hour log for attorney fees.
	2/14/2018	0.50	Update Costs spreadsheet.
	2/21/2018	0.50	Proof read documents for filing
		2.40	
Tara Jayne Reck	11/21/2017	0.50	Assemble pleading drafts top begin preparing judgment paperwork.
	12/18/2017	2.00	Work on preparing motion for attorneys fees and costs: Review calendars, emails, and hour log notes to prepare complete itemization of hours spent preparing and trying case. Send to Emily Higgins for proof reading.
	2/16/2018	4.00	Complete judgment and order and motion for attorneys fees and costs for filing. Send to Emily Higgins for proof reading.
		0.50	Review all materials after final assembly of tables and ensure that everything is correct before filing.
		7.00	
Dougal Neralich	12/18/2017	1.00	Preopare hour log of time spent assisting on the tyring of this case.
		1.00	

Motion for Attorney Fees and Judgment - Appendix C

Date	Cost	Notes
7/23/2012	$250.00	July 27, 2012 Telephonce conference with Dr. Estererg
7/26/2012	$100.00	August 1, 2012 Telephone conference with Dr. Vondran
4/23/2013	$3,218.00	April 8, 15, and 22, 2013 records review and forensic evaluation with Dr. Schuster
9/10/2013	$1,150.90	August 28, 2013 - September 3, 2013 Vocational Assessment with Carl Gann
9/17/2013	$338.40	September 16, 2013 Vocational Report by Carl Gann
9/19/2013	$1,500.00	September 30, 2013 Pepetuation Deposition of Dr. Esterberg
12/30/2013	$250.00	January 10, 2014 Telephone conference with Dr. Esterberg
1/7/2014	$875.00	Phone conference and deposition with Dr. Vondran
1/29/2014	$34.95	Washington State Ferris for Tara to travel to Vondran deposition.
2/3/2014	$16.00	Parking 01/29/2014 Esterberg deposition.
2/4/2014	$571.40	Court reporting fees for Dr. Vondran
2/4/2014	$417.25	Court reporting fees for Dr. Esterberg
2/11/2014	$436.25	Court reporting fees for Dr. Schuster
3/7/2014	$16.00	Parking for 02/03/2014 Schuster deposition.
3/7/2014	$34.95	Washington State Ferris for Tara.
3/25/2014	$2,492.70	Phone conference and deposition with Dr. Schuster
3/25/2014	$790.90	Vocational assessment with Carl Gann
5/13/2014	$718.10	May 6, 2014 deposition of Carl Gann, VRC
5/13/2014	$551.75	Court reporting fees for May 6, 2014 deposition of Carl Gann, VRC
5/13/2014	$8.00	Parking 05/13/14 Schuster continuation deposition.
5/27/2014	$429.75	Court reporting fees for Dr. Schuster continuation
6/27/2014	$9.00	Parking 06/27/14 for Board Hearing.
7/31/2014	$9.00	Parking for attendance of Stump deposition
3/24/2015	$4,950.00	Schuster IME and deposition
5/19/2015	$240.00	Court filing fee for Appeal
7/2/2015	$14.00	Fax filing fee: brief
2/16/2017	$15.00	Fax filing fee: Not for Motion Docket on February 24, 2014
2/16/2017	$20.00	Fax filiing fee: Response for Motion for Continuance
11/6/2017	$6.00	Fax filing fee: Notice of Assiciation of Counsel
11/14/2017	$187.05	Hotel
11/16/2017	$25.75	Tacoma Narrows toll bridge and photo enforcement fee for 5 crossings.
11/16/2017	$12.00	Parking feefor paid parking near Courthouse.
	$19,688.10	

BEFORE THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KITSAP COUNTY

KATHRYNE CONNER, Plaintiff, v. HARRISON MEDICAL CENTER, Defendant.	**Cause No. 15-2-01037-1** **CERTIFICATE OF SERVICE**

I certify under penalty of perjury under the laws of the State of Washington that I caused the document referenced below to be served to the following via U.S. Postage Paid, First Class Mail:

DOCUMENT: Proposed Judgment and Order, Motion and Memorandum of Attorney Fees and Costs and Presentation of Judgment, Cost Bill, Declaration of Tara Jayne Reck and attachments, and Declaration of Emily Higgins and appendices

ORIGINAL TO: Honorable Jeffrey P. Bassett, Department No. 5
Kitsap County Superior Court
614 Division St, MS-24
Port Orchard, WA 98366

COPY TO: Thomas G. Hall & Associates
PO Box 33990
Seattle, WA 98133-0990

DATED this 10th day of April, 2018.

FOSTER LAW, P.C.

Emily Higgins, Paralegal

FOSTER LAW PC
8204 Green Lake Drive N.
Seattle, WA 98103
206 682-3436 • Fax 206 682-3362

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KITSAP

KATHRYNE CONNER,)

Plaintiff,)

vs) No. 15-2-01037-1

HARRISON MEDICAL CENTER,)

Defendant.)

VERBATIM REPORT OF PROCEEDINGS

COPY

June 29, 2018
Honorable Jeffrey Bassett
Department No. 5
Kitsap County Superior Court

APPEARANCES

For the Plaintiff: TARA RECK
Attorney at Law

For the Defendant: WILLIAM PRATT
DAVID CROSSLAND
Attorneys at Law

JAMI R. HETZEL, CCR #2179
Official Court Reporter
614 Division Street, MS-24
Port Orchard, Washington 98366
Phone: (360) 337-4793

1 COURT PROCEEDINGS
2 *****
3
4 THE COURT: So let's take the Conner and
5 Harrison matter next.
6 All right. We have a new player here.
7 MR. PRATT: Good morning, Your Honor. My name
8 is William Pratt. I am here on behalf of the employer
9 -- or Harrison, rather, in this matter, Your Honor.
10 MR. CROSSLAND: David Crossland, trial
11 attorney --
12 THE COURT: Mr. Crossland --
13 MR. CROSSLAND: -- as you might remember.
14 THE COURT: -- nice to see you again.
15 MS. RECK: Tara Reck here on behalf of
16 Ms. Conner.
17 THE COURT: And I seed you are riding alone
18 today.
19 MS. RECK: Sadly, I am.
20 THE COURT: What was the other one's last name?
21 MS. RECK: Neralich.
22 THE COURT: Neralich; Mr. Neralich.
23 MS. RECK: Don't rub salt in the wound. The man
24 has decided to return to the criminal sector, so I am
25 still --

1 THE COURT: Not as a criminal, though, yes.
2 So I'm sorry, counsel, your name is again?
3 MR. PRATT: No problem, Your Honor. My name is
4 William Pratt, P-R-A-T-T.
5 THE COURT: Pratt. All right.
6 Mr. Crossland, you kept referring to "your
7 boss." Is this the boss?
8 MR. CROSSLAND: No. In fact, I think I saw
9 something where you said, "Ah, Mr. Ryan Miller has
10 appeared." He took the verdict.
11 THE COURT: Oh, that's right. He did, didn't
12 he.
13 MR. CROSSLAND: Yeah. He is the one that tried
14 the case.
15 THE COURT: Yes, I was going to tell him I had
16 many questions for him about --
17 MR. CROSSLAND: I --
18 THE COURT: -- playing hardball.
19 MR. CROSSLAND: I had caught a plane to Mexico,
20 so I was long gone.
21 THE COURT: That is right. You were on a --
22 yes. See, now you know about interrupting.
23 So you represented Harrison, and you are -- and
24 Mr. Pratt, you are representing --
25 MR. PRATT: I am at the same firm as

1 Mr. Crossland here, Your Honor; however, I had a
2 significant hand in the briefing of these current
3 pleadings.
4 THE COURT: Sit down, sit down. Gosh. This is
5 just -- I mean, it is like -- all right. This is your
6 motion, Ms. Reck. I want to make sure I didn't miss
7 something. I've got your motion. I've got proposed
8 orders. I've got Harrison Medical Center's objections
9 and response, and then I've got your reply to the
10 reply. I believe that is like everything.
11 So I think that the pertinent question that I
12 had was -- well, I think it is the one essential
13 question in this case, which is as succinctly outlined
14 by, I guess, Mr. Pratt.
15 Mr. Crossland sure could have done it, but I
16 realize that a portion of the decision was reversed,
17 but the law says, "And additional relief is granted."
18 So I think there's two questions that fold into
19 that, and the first question is additional relief
20 granted by whom; by the Court? by L&I? Because it
21 says, "If on appeal to the Court from the decision
22 order of the board, said decision and order is
23 reversed or modified and additional relief is
24 granted."
25 Wouldn't that indicate that I have to be the one

1 having granted the additional relief? And if that is
2 an accurate reading of this, had I? Because I don't
3 know that I did.
4 So that is certainly a question that I've got
5 mulling about in my mind, and I have not -- as I am on
6 the criminal docket this month, I have little to no
7 time to review these. I did review these. I have had
8 little time to do research in the issues before the
9 hearing.
10 So that certainly is one. The other thing is, I
11 looked at your appendix -- or Attachment A and B on
12 your reply, and, you know, principle amount, $23,000
13 with -- who is that -- Judge Apel (phonetic); and
14 $34,000 with Judge Galvin, I believe, from King
15 County; Galvana (phonetic) -- she will kill me if I
16 don't pronounce her name correctly.
17 MS. RECK: That's right.
18 THE COURT: Yes, I should have unfriended her,
19 but I like her. She is very nice.
20 Now we are talking 90-something thousand
21 dollars --
22 MS. RECK: Right.
23 THE COURT: -- a vastly different amount,
24 including -- and again, no disrespect to your former
25 cohort paying for him to have sat and attended the

1 trial, and I don't think that he peeped a word out of
2 the entire -- except for pleasantries to me -- and I
3 am kind of going: Why would the Court be awarding for
4 his time if all he did was sit and watch?
5 I mean, he was like a spare tire on a 1920 Model
6 A Ford with a rumble seat. You don't do anything with
7 that tire unless something pops, and then you employ
8 the tire. We didn't imply the tire here at all.
9 Maybe it's a weird analogy to make, but Mr. Crossland,
10 I understand 1920 Model A Fords, so it's a little
11 older than you.
12 MR. CROSSLAND: My parents went to college at
13 WSU in an old Model A Ford, and they had four -- they
14 would have three or four flats from the Yakima Valley
15 to WSU, and they would patch the tubes with bubble
16 gum.
17 THE COURT: Oh, gosh.
18 Well, you know, the old cars used to have the
19 tires on the sides, and the rumble seat had one fixed,
20 sometimes two. But you don't -- you know, do you
21 charge for the use of a tire that is not used? So
22 he's got some three days' worth of charges in here,
23 you know, for being, what; arm candy? eye candy?
24 So I am throwing some things at you, but that is
25 kind of where I am scratching my head as far as

1 reasonableness. I mean, obviously we have had two
2 judges in two courts, King County -- what was the
3 other county?
4 MS. RECK: I think they are all King County.
5 THE COURT: Okay, finding your hourly rate to be
6 a reasonable hourly rate, but this is some of the
7 questions I have.
8 Okay, so you are up.
9 MS. Reck: Yes.
10 THE COURT: You don't have to stand if you don't
11 want to.
12 MS. RECK: I sat on the ferry all the way over,
13 so I will stand.
14 THE COURT: All right.
15 MS. RECK: So I guess I will start with the work
16 that Mr. Neralich provided to me in terms of assisting
17 in this trial. In terms of getting prepared for this
18 matter and the reason that he was here with me, while
19 he may not have said a lot, he actually did provide a
20 lot of valuable assistance to me in hours that he
21 spent working on these.
22 I mean, his rate is, in fact, lower than mine
23 due to his experience, and those are additional hours
24 I would have had to have put in. He helped me
25 tremendously in preparing.

1 As you may recall, there were a lot of
2 objections that were -- we couldn't agree on that had
3 to be re-raised, and he did that review and prepped it
4 for me.
5 So while I was the one who ultimately argued it
6 in front of you, it was all of his prep work that I
7 used to do that.
8 THE COURT: So let me -- hold on a second on
9 that. Did he include charges, additionally to being
10 here, for that prep work?
11 MS. RECK: I believe so.
12 THE COURT: Okay. So there I would say, oh,
13 yeah, well, there is the appropriate place to put that
14 charge.
15 MS. RECK: And, I mean, I can -- I guess, you
16 know, I am not the kind of attorney who can't concede
17 things, so I can understand where you are coming from
18 that, you know, to pay attorney's fees and to double
19 them up for two attorneys sitting here, I guess the
20 time -- we did put on our charges the time that he
21 spent in this matter.
22 So, I mean, I am not going to say it wasn't as
23 you saw it. He sat here. I did the majority of the
24 work. He did provide assistance to me in that
25 process.

1 And as far as our office goes, being a small
2 office, it set us back tremendously having both of us
3 here, and we wouldn't have done that had we not felt
4 that this case warranted it.
5 So within that, I don't think that there is any
6 provision within the statute that says that if you
7 have two attorneys sitting at the table they don't
8 both get paid. I haven't seen that, but I am not
9 going to argue with you that we didn't provide some
10 duplicative services, I guess, in terms of sitting
11 here. I can't make that argument with a straight
12 face.
13 THE COURT: I appreciate that. So let's go to
14 the more salient question, which is, when it talks
15 about additional relief -- and I saw in your reply you
16 essentially said, well, the Court can always, you
17 know, wait, and if it goes back down to L&I and see if
18 they do provide additional relief and then have it
19 come back up to determine attorney's fees.
20 But is that what that statute is anticipating,
21 as opposed to the fact that -- as opposed to saying
22 that it is the Court itself that must grant or the
23 jury must award additional relief?
24 Is it additional relief to simply say, well,
25 yeah, we find that the lumbosacral and degenerative

1 changes were based upon the industrial injury on a
2 more probable-than-not basis, is that itself
3 sufficient? Does the Court need to specifically have
4 awarded some additional relief in order to get
5 attorney's fees -- maybe where they are coming from --
6 or why don't you read it that way?
7 MS. RECK: Right. I don't read it that way, and
8 I think it is because we have to look at the package
9 of benefits. When we talk about benefits that are
10 available under the Industrial Insurance Act, there
11 are monetary benefits.
12 And a lot of times, I think, when people talk
13 about relief, that is where your mind goes. You think
14 about time loss compensation where somebody gets six
15 months' worth of money for the time that they were out
16 of work, and it's very tangible, and you can put a
17 dollar figure on that. However, we're talking about
18 insurance, and specifically industrial insurance. And
19 the reality of it is is that it is the obligation
20 under the Industrial Insurance Act for the medical
21 bills and treatment service to be paid for conditions
22 that are causally related under the claim.
23 Throughout the pendency of Ms. Conner's claim,
24 degenerative disc disease was not viewed by the
25 self-insured employer as an accepted condition.

1 Therefore, her treatment for that condition was not
2 and has not yet been covered under the act.
3 The jury's determination -- or under her claim,
4 the jury's determination, the degenerative disc
5 disease, is in fact a casually-related condition means
6 that the treatment and medical bills for that
7 condition must be paid under the claim.
8 That is one of the things that I was trying to
9 point out in my reply brief in citing to
10 determinations that say, the department still, even if
11 a claim is closed, has the authority to adjudicate the
12 payment of bills for the period of time when the claim
13 was open. And I think under the verdict and where we
14 are at right now, that is really what we are talking
15 about.
16 Now, certainly we have been waiting some months
17 now to have this judgment entered, and we often do the
18 judgment and order under the same thing and get
19 everything wrapped up. The reality of it is is that
20 the order that you enter will and must remand this
21 back to the department for them to issue what is
22 essentially going to be an administerial order
23 conforming with the findings of the jury and confirmed
24 by the Court.
25 And based upon that, we will have to take any

1 adjudicative action that they should based on that.
2 That is the case in every worker's compensation case
3 in terms of relief being granted. Nobody walks out of
4 the door with the relief literally in hand. It always
5 goes back to the department for that relief to
6 actually be provided.
7 THE COURT: Well, that is the nature of any
8 appeal that is reversed and remanded with directions.
9 But so you are saying that all of the bills that are
10 related to whatever care she had for degenerative disc
11 disease have been pending all of this time?
12 MS. RECK: Or paid by an incorrect party.
13 THE COURT: Okay.
14 MS. RECK: By alternate insurance when it should
15 have been covered by this.
16 THE COURT: So rectifying that you believe is
17 additional relief?
18 MS. RECK: It is because it will impact the
19 accident fund, and that is kind of where you come down
20 to is that that -- those medical bills will have to be
21 paid from out underneath the industrial act and the
22 premiums that are collected to pay for that. So yes,
23 that is where it comes from.
24 THE COURT: Okay. I think that unfortunately a
25 lot of what you are going to be doing this afternoon

1 is responding to Mr. Pratt with regard to the
2 attorney's fees issue. So I don't know that it does
3 me much to ask you anymore questions right now. I
4 really need to hear from them as to their objections.
5 MS. RECK: Okay.
6 THE COURT: I don't know if Mr. Crossland is
7 going to be the arm candy at this time or take any
8 part in this.
9 MR. CROSSLAND: Your Honor, since we last met, I
10 have had a couple of health issues, and I am sort of
11 -- what do you call it -- phasing myself out with the
12 firm.
13 So Mr. Pratt has done the research on this. I
14 have some thoughts on it, but I think that he should
15 do some arguing based on what is contained in these
16 briefs.
17 THE COURT: All right. I will hear from
18 Mr. Pratt first and get back to you.
19 MR. CROSSLAND: But I would like to make a
20 couple of comments, but I am deferring to him.
21 THE COURT: All right. Mr. Pratt?
22 MR. PRATT: Thank you, Your Honor. I would
23 stand up, but I think that I will keep the height
24 thing a little more equitable, and I will stay
25 seated --

1 THE COURT: If she is standing, it is still
2 inequitable.
3 MR. PRATT: -- with your leave, of course, Your
4 Honor.
5 So as a preliminary matter, Your Honor, the
6 claimant -- the plaintiff is not entitled to any
7 attorney's fees under the Industrial Insurance Act
8 whatsoever. I did brief it fairly extensively, and I
9 appreciate Your Honor reviewing that before the
10 hearing.
11 Your first question, if I understood it
12 correctly, was additional relief from whom. And, Your
13 Honor, I think that question is pretty squarely
14 answered by the *Kustura* case cited in the employer's
15 -- or in the defendant's briefing, Your Honor.
16 I will point Your Honor to page 5 of the
17 defendant's briefing. There is the indented quote
18 there toward the bottom where the Court said, "While
19 she is correct, the accident fund is affected when a
20 court increases worker benefits, she fails to
21 demonstrate that the Superior Court actually increased
22 her benefits."
23 The trial court did not increase the amount of
24 benefits, and it is talking about a Superior Court,
25 trial court and Superior Court. So I believe that

1 speaks pretty clearly that the additional relief needs
2 to come from this court, not from some prospective
3 benefits that may speculatively flow from the Superior
4 Court's order from the department itself.
5 I would also point -- let me see, Your Honor.
6 There is another case that Your Honor might find
7 interesting on the point, *Sacred Heart Medical Center*
8 *v. Knapp*.
9 THE COURT: Is that in your materials?
10 MR. PRATT: It is not, Your Honor. It is
11 related to the *Kustura* case.
12 THE COURT: What was it again?
13 MR. PRATT: It's *Sacred Heart Medical Center v.*
14 *Knapp* -- that is K-N-A-P-P -- 172 Wn.App 26. The
15 Supreme Court denied review on that case. I can
16 provide you that cite as well, if that is helpful for
17 you. That is 177 Wn.2d 1021.
18 The *Sacred Heart* case involved an employer
19 seeking judicial action on the decision of the Board
20 of Industrial Insurance Appeals, a vocational
21 rehabilitation --
22 [Whereupon, the reporter requested the attorney to slow
23 down.]
24 MR. PRATT: I'm sorry. I started to just --
25 THE COURT: Everybody has their limits.

1 MR. PRATT: Coffee prefunk; I apologize.
2 So the *Sacred Heart Medical Center* case involved
3 an employer who sought judicial review of a board
4 decision and order that vocational rehabilitation plan
5 development services were required.
6 So it was all going back to vocational services,
7 which is a type of service that's available under a
8 worker's compensation claim. And the court in that
9 case held, Your Honor, that, quote, Here the Superior
10 Court's holding was narrow. It required only that the
11 department director review the evidence of changed
12 circumstances and make a final determination on the
13 need for vocational services. They didn't award
14 attorney's fees.
15 So again, it was getting remanded for
16 consideration for possible benefits. No attorney's
17 fees flow.
18 THE COURT: Well, but in the difference there --
19 and again, I have very little time with industrial
20 insurance work. Is there a difference there that the
21 remand was to determine whether there was a need for
22 vocational services, not to say there is, and,
23 therefore, provide them?
24 If the Court had said that is what you are going
25 to do, then that would have been an additional

1 benefit.
2 I am looking at the *Kustura* case, K-U-S-T-U-R-A.
3 MR. PRATT: Okay.
4 THE COURT: I am looking at the indented
5 section, and this brings me back to what Ms. Reck
6 said, which is, she says, Well, there is going to be
7 an affect on the accident fund. And *Kustura* seemed to
8 indicate that it said, while she is correct that the
9 accident fund is affected when a court increases
10 worker benefits, she fails to demonstrate that the
11 court order increased her benefits.
12 So the question is if the order -- if the
13 determination of the jury unquestionably -- and I
14 guess that was a question -- unquestionably changes or
15 affects the accident fund in this case -- which I
16 don't know if that is the answer, whether it does or
17 doesn't -- isn't that an increase?
18 MR. PRATT: The answer is no, Your Honor. And
19 the reason being, in the *Kustura* case, my reading of
20 the case was that the claimant was awarded the change
21 in marital status. And I believe the claimant in that
22 case was arguing that because her marital status was
23 changed, that that necessarily meant that benefits
24 would be adjusted higher, probably time-loss benefits,
25 when at the department. So she was arguing that that

1 was an inevitable increase in benefits. That change
2 of marital status equals increase of benefits of the
3 department.
4 And what the Court was holding here is that, no,
5 that is not sufficient, and that might be the case.
6 You might be entitled to it, maybe, but the Court
7 itself did not award an increased amount of benefits
8 as a result of that change of marital status.
9 THE COURT: Well, now, the statute, RCW
10 51.52.130, doesn't say I have to award an increase of
11 benefits. I just have to award additional relief.
12 MR. PRATT: Thank you, Your Honor.
13 THE COURT: Isn't additional relief -- okay, now
14 we are going to address a bill that wasn't paid.
15 MR. PRATT: So, Your Honor, yes, they talk about
16 that as an increase in -- or a change in relief.
17 THE COURT: I mean, I guess -- and this begs the
18 question, of course, also, what would the jury in this
19 case have had to do in reversing a finding with
20 respect to the degenerative disc to have, in your
21 estimation, awarded additional relief?
22 MR. PRATT: Your Honor, we have an entirely
23 different circumstance here. If the jury had come
24 back and said, yes, the department is to allow a new
25 condition under this one claim, and they are to

1 provide -- the claimant needs more treatment, if that
2 is what the jury's finding was, we might have a
3 different discussion here.
4 However, what the jury -- what the verdict --
5 special verdict form read was that under the scooter
6 claim, which is where the degenerative disc disease
7 was allowed, they ruled that the degenerative disc
8 disease of the lumbar spine is to be allowed, there is
9 no further treatment warranted under this claim for
10 the allowed conditions, and that no permanent -- or
11 total permanent disability or pension is warranted.
12 And I believe they also made a ruling in regard to
13 time loss benefits.
14 Now, to the extent that Claimant -- or the
15 plaintiff would argue that there was no ruling on PPD,
16 or permanent partial disability, that's been waived.
17 What we have here is what gave the genesis of the
18 scooter claim was an appeal of a closing order, and
19 the plaintiff's reply brief starts talking about scope
20 of review.
21 Well, I would say, Your Honor, that it's
22 consistently been the board's position that appeal of
23 the department's closing order opens the door to all
24 kinds of things that weren't expressly ruled on by the
25 department.

1 And here we don't have any department
2 segregation order. There is no order being appealed
3 or the existence, period, that says degenerative disc
4 disease of the lumbar spine is not allowed or saying
5 that it is allowed. It's speculative as to whether
6 the department or the self-insured employer -- at
7 least under the record the Court has -- as to whether
8 that was ever provided treatment or not.
9 The plaintiff argues that there are bills that
10 haven't been paid or that might have been made under a
11 different claim, Your Honor.
12 THE COURT: Ms. Reck is about to blast off her
13 chair, but that's (overlapping) --
14 MR. PRATT: Your Honor, that might be true.
15 That might not, but there is no evidence before the
16 Court that that is true. There is no way that the
17 Court can award additional relief if there is no
18 relief being requested here.
19 THE COURT: So what does the -- what does the
20 jury's decision do?
21 MR. PRATT: The jury's decision here, Your
22 Honor, it remands -- so let me take one step back to
23 answer your question.
24 THE COURT: Okay.
25 MR. PRATT: So the special verdict form

1 presented a fairly interesting situation in my
2 experience because I would have been arguing up and
3 down that there is scope of review problems. I have
4 done it in many other cases and failed with the
5 Superior Court and the board. I would have made the
6 argument nonetheless.
7 But what we have as a result of not taking those
8 issues into account is this: And what we have is the
9 department -- or the jury saying that -- now, remember
10 this is a department closing order, and the department
11 closing order says no more treatment, no PPD or
12 permanent partial disability, no more benefits; done.
13 That is the order that is now here.
14 THE COURT: Right.
15 MS. RECK: So we progressed to the point we are
16 at here, and what is the jury now saying based on the
17 evidence and special verdict form offered by the
18 parties?
19 What the jury is saying is, yes, the department
20 closing order is correct because there is no treatment
21 due. There are no time-loss benefits due. There is
22 no increase -- there is no pension here.
23 THE COURT: No PPD, no TPD.
24 MR. PRATT: Correct. They are saying that the
25 closing order is correct, but they are also saying in

1 the same breath -- in fact, just before that they are
2 also saying, but, yeah, they should have allowed the
3 degenerative disc disease of the lumbar spine as an
4 extra condition.
5 THE COURT: So it doesn't change anything
6 ultimately because there is no change in any
7 determination of an award for disability; no monetary
8 change, no award as far as further need for treatment.
9 MR. PRATT: So what the --
10 THE COURT: It is just basically correcting
11 where some bills may have been paid originally.
12 MR. PRATT: So what the department -- or what
13 the defendant is arguing here, Your Honor, is that the
14 appropriate thing to do is for this one claim to be
15 remanded to the department to reverse the closing
16 order only insofar as to open it back up, issue an
17 order allowing the degenerative disc disease of the
18 lumbar spine under the claim and then re-closing the
19 claim effective the same date that it was closed
20 before, and what is the practical boots on the ground
21 result of that?
22 The boots on the ground result of that is that
23 if the claimant turns around down the road and has
24 some worsening of her condition, then it could be
25 reopened, and there is no question now --

1 THE COURT: That it's related.
2 MR. PRATT: -- that that is one of the
3 conditions that is going to be addressed.
4 However -- I mean, I just want to emphasize, the
5 special verdict form said, lumbar degenerative disc
6 disease is an allowed condition under this claim and
7 then subsequently said, "For the allowed conditions
8 under this claim, no more treatment, no TPD, no total
9 permanent disability."
10 THE COURT: So hold on for a second.
11 Ms. Reck, is Mr. Pratt correct in your
12 estimation with how this would be processed?
13 MS. RECK: Not entirely.
14 THE COURT: All right.
15 MS. RECK: Okay. So I agree that this would be
16 reversed and remanded to the department for them to
17 issue an order consistent with the jury verdict that
18 degenerative disc disease is an accepted claim and
19 that the claim is closed effective the date that they
20 determined that it was closed. I am in agreement with
21 that.
22 Where I think that he is threading the needle in
23 his description to you is that the jury found that no
24 further treatment was appropriate, meaning that claim
25 closure was appropriate. That does not foreclose the

1 treatment that she received for the causally-related
2 condition during the period of time that the claim was
3 open. That can involve diagnostic imaging studies,
4 doctor's appointments, medical medication, pain
5 management, things of that nature that now, because
6 the department will be issuing an order, the
7 degenerative disc disease is, in fact, a
8 causally-related condition will have to be sorted out.
9 THE COURT: I'm sorry, the payment of those
10 issues -- I mean, I guess the thing I am trying to
11 figure out here is it sounds like -- gosh, for lack of
12 a better way to say it -- it sounds like what this
13 whole thing comes down to is a big let's kind of put
14 the right -- let's look at our asset and cost sheet
15 and put the right cost in the right column because we
16 have it in the wrong column, but basically she doesn't
17 look like she is any further ahead one way or the
18 other except in the future if she has further
19 injuries. So how does she benefit?
20 MS. RECK: That is not true.
21 THE COURT: So where is she benefited?
22 MS. RECK: Because the Industrial Insurance Act
23 is one of the few places where an injured worker is
24 covered entirely 100 percent for the injury that they
25 have and the condition that they have; no co-pays, no

1 out-of-pocket expenses, nothing.
2 And so, I mean, I can't -- other than provide
3 you with the examples from the real world of having
4 done this before, I mean, right now we are working on
5 $40,000 owed to injured workers in medication payments
6 that they made for a condition later found to be
7 related.
8 THE COURT: So are we talking about basically
9 the benefit to her if she is going to get reimbursed
10 for something?
11 MS. RECK: Yes, and also there is the factor if
12 we get into the world of Medicare set aside and things
13 of that nature. So if Medicare has paid for treatment
14 for degenerative disc disease, and it is determined
15 that it is the responsibility of the Industrial
16 Insurance Act, not only is there a responsibility for
17 Medicare to be reimbursed, but I, as an attorney, have
18 that responsibility of notifying them and taking care
19 of the situation.
20 Because if they ever find out that they paid for
21 something that was supposed to be covered under the
22 Industrial Insurance Act that didn't, I can be
23 personally held liable -- reliable for that. So there
24 are far-reaching implications of this in many
25 different areas.

1 So to suggest that medical treatment -- to
2 suggest that a condition being casually related under
3 a claim is not an additional benefit, is not
4 additional relief is insulting. It is insulting to
5 the Industrial Insurance Act and to every injured
6 worker in the State of Washington.
7 THE COURT: I don't think that is what Mr. Pratt
8 said. I think that what Mr. Pratt said is that the
9 jury did not award any ongoing treatment and did not
10 award --
11 MS. RECK: Further treatment --
12 THE COURT: The case remains closed.
13 MS. RECK: -- beyond the closure date. But we
14 are talking about the treatment during the time that
15 the claim was open. Because this was an open, allowed
16 claim, and the jury said that, yes, her degenerative
17 disc disease, which was previously not considered an
18 accepted condition -- and don't tell me that we came
19 here and fought for two weeks about casual
20 relationship of condition that they apparently
21 considered to be related. We didn't fight over that.
22 It was a condition that was not related to the claim.
23 The jury found that now it is related, and that is an
24 additional benefit to the injured worker under the
25 Industrial Insurance Act.

1 THE COURT: So then Mr. Pratt, if she can be
2 looking at possibly being reimbursed for some expenses
3 that were, at this point I would say technically
4 improperly paid by her, why is that not an additional
5 benefit --
6 MR. PRATT: Because it's not --
7 THE COURT: -- or additional relief?
8 MR. PRATT: Thank you, Your Honor.
9 To a certain extent, I think that's a little bit
10 of a red herring. The employer -- Harrison is not
11 saying that the claimant is foreclosed from past
12 benefits, necessarily. This is where I would fall
13 back on my scope of review argument, Your Honor. I
14 don't think that Harrison is going to speak to that
15 issue right now. I think that is something for the
16 department to pass on in the first instance, and any
17 orders they issue to that effect can be taken,
18 considered by all parties and addressed accordingly.
19 And the reason I think it is a red herring is
20 because we are -- here we are talking about the
21 department acting again. We are talking about the --
22 we are talking about a Superior Court relinquishing
23 jurisdiction to remand the claim to the department.
24 There is zero, zero authority I could find, and
25 I tried to find it, that the Superior Court can both

1 maintain jurisdiction over a claim and remand it
2 simultaneously and then bring it back for fees based
3 on what a department's action is.
4 And I would point Your Honor, just to underscore
5 the point, the claimant's reply brief on page 3 cites
6 to a case called Borinstein (phonetic) for the
7 proposition that if the Court does not find that
8 additional relief has been granted, basically that
9 they can remand it to the department and then do the
10 fees later. That is not what Borinstein stands for
11 anywhere in any way, shape or form. I printed a copy
12 if Your Honor would like it.
13 THE COURT: I will pull it up.
14 MR. PRATT: But that is not what the case stands
15 for, Your Honor. I go -- I went to page 676, and
16 basically what they are saying is, as I read it, was
17 that if the fees before the department are something
18 to be awarded, that is a matter for the legislature.
19 The statute does not permit fees before the
20 department. That's what I read it to mean.
21 THE COURT: So you said that the plaintiff is
22 not foreclosed from past benefits. Is your argument
23 that because the Court did not award any ongoing
24 benefits that it -- thus, she did not get additional
25 relief?

1 MR. PRATT: I would say --
2 THE COURT: It's a simple way of saying it.
3 MR. PRATT: Affectively, yes, Your Honor, I
4 would qualify that statement. However, in that,
5 Harrison is not saying she -- that the claimant is or
6 is not entitled to any past medical. We don't weigh
7 in on that issue at all here, but we will concede that
8 -- let's assume for the sake of argument that that is
9 a possibility because that is all we have right now is
10 that that is possible, but it is speculative. There
11 is zero evidence in the record as to what those past
12 benefits might look like. Those weren't offered,
13 argued or otherwise brought to this court, and those
14 are benefits that would flow from the department after
15 the department looks at it, and the department passes
16 their judgment on it.
17 That is not something that has come from this
18 court, will come from this court or otherwise. Is it
19 an ancillary result because of an allowance of a
20 degenerative back condition? Sure. No different than
21 *Kustura* change in status of the marital status except
22 in that case it was foreclosed, and here we have a
23 verdict form saying no.
24 THE COURT: I have seven more minutes before I
25 have to get to this other case because I have three

1 o'clock arraignments, and those don't wait for anyone.
2 So the issue of attorney's fees as far as the
3 amount?
4 MR. PRATT: Your Honor, I feel like I did a
5 pretty good job of comprehensively briefing that
6 issue. The only thing I would touch on regarding that
7 -- I will fall back on my briefing, aside from what
8 you might decide to ask. And the claimant -- or the
9 plaintiff, rather -- I apologize -- points out the
10 severability of the claim.
11 Well, Your Honor, I would point Your Honor to
12 the *Brand v. Department of Labor and Industries* case
13 -- that is 139 Wn.2d 659 -- and the Supreme Court in
14 that case did say that worker's compensation claims
15 are not unrelated and should not be segregated for
16 purposes of calculating attorney's fees, but they
17 turned around and immediately said that is -- and I am
18 not quoting here -- they said that is not necessarily
19 to say that all fees are compensable; that attorney's
20 fees must be reasonable.
21 And here, Your Honor, I think it is a stretch to
22 even say that the plaintiff prevailed in this matter
23 there. I would just go so far as to say, Your Honor,
24 that here $17,000, assuming that those fees were owed
25 all under the Industrial Insurance Act, is kind of a

1 maximum here.
2 And I would also point out, Your Honor, that
3 Mr. Neralich's attorney hours, they sought -- they
4 sought attorney's fees for the time that Mr. Neralich
5 spent calculating -- back-calculating what his
6 attorney's fees would be.
7 THE COURT: I noted that as well.
8 MR. PRATT: And that is a facial admission that
9 those are reconstructed hours which aren't
10 compensable.
11 So, I mean, forward and backward, the fees
12 request itself is kind of ridiculous in that respect.
13 And as I was telling counsel before the hearing today,
14 Your Honor, I had a case with an attorney that has
15 close to 40 years of legal experience and specializes
16 in the presumptive occupational disease statute for
17 fire fighters spend some time on the state legislature
18 for that purpose, I would add, and they -- this
19 particular attorney was awarded $300 an hour. That is
20 not what we are dealing with here.
21 I would point out, Your Honor, that I make -- I
22 bill at $150 an hour. My boss, who is very good at
23 this, all that aside, $250 I think it was an hour;
24 whatever I said in my briefing.
25 THE COURT: But you would agree, though, that

1 you are a defense firm, which certainly may be
2 slightly different --
3 MR. PRATT: Absolutely, Your Honor. The payment
4 structure is different. That is one of the factors
5 that is enumerated to be taken into account, Your
6 Honor. That is for sure.
7 But I would also point out that this is the
8 plaintiff's appeal of department orders to the board
9 and then appeal of the board orders to the Superior
10 Court. And then after four claims that were
11 consolidated in 20 questions to the jury, all we have
12 is the allowance of the degenerative disc disease in
13 the lumbar spine with no further benefits being owed
14 expressly mandated by the jury special verdict form.
15 I believe it is under Verdicts 18, 19 and 20.
16 THE COURT: I want to get to Mr. Crossland in
17 the next two minutes and have Ms. Reck have the last
18 word.
19 MR. CROSSLAND: Your Honor, I will be very
20 brief. I see this case, I think, a little differently
21 than they have sort of been arguing. The jury verdict
22 is what the jury verdict is, and the answers to those
23 questions will end up in a judgment. That judgment is
24 going to be sent down to the department. The
25 department is going to act on that judgment.

1 What are they going to do? They are going to
2 allow degenerative disc disease under one claim, and
3 they are going to turn right around, based on the
4 answers to the interrogatories that were put to the
5 jury, they are going to turn right around and say,
6 "Able to work."
7 So there is no time loss, no permanent partial
8 disability, there is no pension, there are no benefits
9 that are going to be paid, other than we are going to
10 issue what is commonly referred to as an administerial
11 order that corrects the fact that they didn't, at some
12 point, identify this condition.
13 Now, it is not uncommon in the L&I practice for
14 particularly self-insured employers to come in at some
15 point and ask the department to issue what's called a
16 segregation order. And that is, we don't believe we
17 are responsible for the following medical conditions.
18 And they may issue the order; they may not.
19 But under the circumstances in this case, the
20 department has to follow what the jury answered to
21 those questions. And there is no way they can issue
22 an order saying, well, we are going to pay benefits;
23 i.e., we are going to pay some past medical bills that
24 maybe we forgot to pay based on it. They can't do
25 that because the claim is closed, and it remains

1 closed.
2 There is relief available to the claimant if
3 they want to come back in and file a re-opening
4 application recognizing that they now could say, Well,
5 I have got degenerative disc disease, and it's worse.
6 THE COURT: But that is a separate issue.
7 MR. CROSSLAND: Well, to me it is black and
8 white.
9 And the last thing I want to say -- it has to do
10 with the *Kustura* case -- the statute says "relief."
11 That is an interesting buzz word because what do we
12 think about relief? Disaster relief. We think about
13 something having to -- something has to happen. And
14 so I went to the dictionary. I went and Googled this,
15 and I thought, This is going to be interesting. I am
16 going to Google "relief," and I am going to Google
17 "benefits."
18 Relief came up "immediate help." There is no
19 way that she is going to get any immediate help at the
20 department level. What is the next thing under
21 relief? This is, again, a dictionary definition;
22 "Physical or practical assistance given to someone."
23 There is no finding -- there is no money in a transfer
24 to the claimant.
25 And then we get down to: Why are we here today?

1 The claimant's attorney is seeking attorney's fees
2 under the theory that there are some benefits; i.e.
3 relief out there.
4 Now, the definition of relief -- I mean, the
5 definition of benefits -- and I thought this was
6 really interesting -- "A payment made by an employer
7 or the state, i.e. L&I, or an insurance company; a
8 payment."
9 So I think you've got to look at this with two
10 sides; one, what is the jury verdict saying? What is
11 the department going to do with that? They have to
12 follow the jury verdict; and secondly, there is no
13 benefits that are going to be passed, there is no
14 relief, and therefore, based on the statute,
15 attorney's fees should be totally denied.
16 THE COURT: Ms. Reck, I have about two minutes.
17 MS. RECK: I am just going to very simply
18 respond on the issue of relief; that I am trying to
19 choose my words well and not be disrespectful, but I
20 am just going to say what I am thinking.
21 I am befuddled that in this day in age in the
22 United States of America we are standing in a
23 courtroom talking about whether or not coverage of a
24 medical condition is a benefit or is a relief.
25 I think that -- I think that our society in

1 large answered that question very well, and I think
2 that the inclusion -- the reversal of the board's
3 decision that that was not a casually-related
4 condition and the inclusion of that condition under a
5 claim for the time period that that claim was opened
6 is an additional benefit to Ms. Conner and a relief
7 that she will receive under the Industrial Insurance
8 Act as she should as an injured worker who is covered
9 for that medical condition now because of this jury's
10 determination under the Industrial Insurance Act.
11 I understand that it was only a minimal issue
12 that we won on, but it is still a prevailing issue,
13 and it is important to Ms. Conner. I am not going to
14 degrade that any further.
15 THE COURT: I remember how you would get on
16 occasion during your argument, but go ahead.
17 MS. RECK: Okay. I will move on and talk about
18 my reasonable hourly rate. I provided the Court with
19 judgments that have been signed by other Superior
20 Court judges. My hourly rate is $350 an hour. It is
21 pretty well established. I have been receiving that
22 rate since at least 2016. I have very rarely ever had
23 to come in and defend the hourly rate that I charge.
24 THE COURT: How many years have you been
25 practicing in this field?

1 MS. RECK: Eleven. I think it is reasonable for
2 the work that I do and my experience in this field.
3 I understand that the hourly rate that is
4 typically billed by defense attorneys is different.
5 This argument has come up in the past, but it is
6 different. I just don't think that there is a basis
7 to call an attorney fee that has been found reasonable
8 to be unreasonable.
9 THE COURT: Would you agree, though, that
10 attorney's fees may vary depending upon where you are
11 doing your case as well? I mean, Vegas, I am sure
12 they charge a heck of a lot more than they would
13 charge in Kitsap County. In King County I believe
14 they charge more than they would in Kitsap County as
15 well.
16 MS. RECK: That -- I mean, I would have to
17 concede that, but I think we are dealing with a
18 courtroom of attorneys that are coming out of King
19 County, so I don't...
20 THE COURT: They are being befuddled in influx.
21 MR. CROSSLAND: I live in Kitsap County.
22 MR. PRATT: As do I, Your Honor.
23 THE COURT: Anyway...
24 MS. RECK: Sorry. Your employer is where?
25 THE COURT: I have about another minute, and

1 then we need to take a very
2 short break, too, before we move to the next case.
3 MS. RECK: I will wrap this up. We are looking
4 at hours that I spent. I mean, I am not going to --
5 we don't have time for me to go through and talk about
6 what they circled and crossed out in my hours. At the
7 end of the day it seems like at a minimum they are
8 conceding that I spent 137 hours working on this case.
9 If you look at their map, they want to divide
10 that by four. I really don't think that the case law
11 supports that sort of division. We have talked about
12 this case. All of us agreed that none of us wanted
13 all four of these things to be consolidated. The
14 reality is that it was what it was. I didn't have a
15 lot of -- a hand in that. If I could have changed it,
16 I think you know I would have.
17 So, I mean, at a minimum, the 137 hours seems to
18 be conceded. So I think that if you look at my hours,
19 it -- the other -- I mean, they -- I guess I will say
20 they say something like trial prep shouldn't exceed 30
21 hours. And, I mean, I don't know where that comes
22 from. I don't know -- I think that trial prep varies
23 case by case, so the hours that I put into this case
24 are the hours that I put into this case.
25 THE COURT: I don't deny that you spent a

1 sufficient period of time on this case.
2 MR. PRATT: And, Your Honor, I would point to
3 the case law cited on that issue, and time spent isn't
4 dispositive. It's relevant but not dispositive.
5 THE COURT: Results are results.
6 All right. I am going to need to take this
7 under advisement and issue --
8 MR. PRATT: And Your Honor, I do have a proposed
9 order denying the motion and proposed judgment and
10 order also to offer to the Court for their
11 consideration if Your Honor would accept it.
12 THE COURT: Yes, please.
13 MS. RECK: I would love to be provided with a
14 copy.
15 THE COURT: Can you provide her a copy after
16 today?
17 MR. PRATT: I certainly can.
18 MS. RECK: Thank you.
19 THE COURT: And then we are going to take a
20 short -- not even five-minute break.
21 MR. CROSSLAND: Your Honor, it was a pleasure to
22 appear before you again.
23 THE COURT: All right. I'd love to see you
24 practicing again.
25 MR. CROSSLAND: I really enjoyed it.

1 THE COURT: Much too young to be taking
2 retirement.
3 All right. So we will take a very short break.
4 MS. RECK: Thank you, Your Honor.
5 [Whereupon, the proceedings adjourned.]
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1 C E R T I F I C A T E

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3 STATE OF WASHINGTON)
4) SS.
COUNTY OF KITSAP)
5

6 I, Jami R. Hetzel, an official court reporter for
7 Kitsap County Superior Court, do hereby certify that the
8 foregoing is a true and accurate transcript of the
9 proceedings as taken by me in the above-entitled matter.
10 Dated this 2nd day of October, 2018.
11
12
13 JAMI R. HETZEL
14 OFFICIAL COURT REPORTER
CCR NO. 2179
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JURISDICTIONAL HISTORY

Please review the Jurisdictional History and note any errors or additions. This is a summary of Department actions relevant to this appeal. The summary may not include every action taken by the Department. At the initial conference you will be asked to stipulate to the correctness of these facts for the purposes of establishing the Board's jurisdiction to hear the case and determine the issues to be resolved.

IN RE: KATHRYNE L. CONNER

CLAIM NO: SE-06580

DOCKET NO: 13 22341

Jurisdictional Stipulation

I certify that the parties have agreed to include this history in the Board record for jurisdictional purposes only.

☐ As Amended

- ☐ Department _____
- ☐ Claimant Tara Reck
- ☐ Employer Ryan Miller
- ☐ Other _____

12/6/13
Date of Stipulation

Everett, WA
Location of Stipulation

Judge's Signature

FOR BOARD USE ONLY

DATE DOC/ ACTION	DOCUMENT NAME	ACTION/RESULT
3-11-10	AB	DOI 3-10-10 Left shoulder/low back – Harrison Medical Center
8-3-10	DO	Claim allowed (DET)
8-4-13	DO	Claimant's date of injury wage set by taking into account the following: wage from job of injury of $6721.60 with additional wages of $320.33 per month for fuel; total gross wages of $7041.93 per month and married with 0 children (DET)
7-18-12	DO	TLC ended as paid through 6-30-12; medical record shows treatment is no longer necessary and there is no PPD. SIE will

		not pay for medical services or treatment after the closure date; claim closed (DET)
9-14-12	P & RR	Claimant (Reck – Atty) DO 7-18-12
10-3-13	DO	DO 7-18-12 is affirmed (APPEALABLE ONLY)
10-8-13	NA (13 22341)	Claimant (Reck - Atty) DO 10-3-13 (appeal filed electronically)
10-14-13	BD OGA (13 22341)	DO 10-3-13

10-14-13/ksw

INDUSTRIAL INSURANCE AND CRIME VICTIM ABBREVIATION CODES

(T)	Subject to Proof of Timeliness
AA	Aggravation Application
AB	Application for Benefits
AP	Attending Physician
BD O	Board Order
BD OGA	Board Order Granting Appeal
BD ODA	Board Order Denying Appeal or Dismissing Appeal
BIIA	Board of Industrial Insurance Appeals
CLMT	Claimant
DET	Determinative
DIF/MFP	Department Imaging Fiche/Microfiche Page
DLI	Department of Labor and Industries
DO	Department Order
DOI/OD	Date of Injury/Occupational Disease
EAR	Employability Assessment Report
EROA	Employer's Report of Accident
Ind Ins	Industrial Insurance
INT	Interlocutory
LEP	Loss of Earning Power
NA	Notice of Appeal
OAP	Order on Agreement of Parties
ORION	Electronic Claims Record from the Dept
P & RR	Protest & Request for Reconsideration
PD & O	Proposed Decision and Order
PFR	Petition for Review
PPD	Permanent Partial Disability
SIE	Self-Insured Employer
SIO	Self-Insured Employer Order
TLC	Time-loss Compensation
VDRO	Vocational Dispute Resolution Office

JURISDICTIONAL HISTORY

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IN RE: KATHRYNE L. CONNER

CLAIM NO: SG-56221

DOCKET NO: 13 11334

Jurisdictional Stipulation

I certify that the parties have agreed to include this history in the Board record for jurisdictional purposes only.

☐ As Amended

Dated 4/2/13 at Olympia WA

Judge's Signature

FOR BOARD USE ONLY

DATE DOC/ CTION	DOCUMENT NAME	ACTION/RESULT
6/14/11	AB	OD 6/14/10 – entire spine, whip lash, shoulders, elbows – Harrison Medical Center
12/7/11	DO	Claim denied because there is no proof of a specific injury at definite time and place in course of employment, clmt's condition not result of the injury alleged and clmt's condition pre–existed the alleged injury and is not related. (DET)
2/1/12	NA (12 11333)	Clmt (Reck–Atty) DO 12/7/11
2/10/12	DO	DLI reassumes jurisdiction and DO 12/7/11 held in abeyance
2/13/12	BD O (12 11333)	Order Returning Case to Department for Further Action
5/2/12	DLI Letter	Abeyance time period extended until 8/7/12. IME exam is scheduled for 5/24/12.
7/17/12	DO	DO 12/7/11 has been changed. Claim allowed for OD on 6/14/10. Clmt is entitled to receive medical treatment and other benefits as appropriate under the Ind Ins laws. SIE is responsible for the condition(s) diagnosed as cervical sprain, bilateral shoulder sprain, bilateral elbow sprains and thoracolumbar sprain. (DET)

INDUSTRIAL INSURANCE AND CRIME VICTIM ABBREVIATION CODES

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JURISDICTIONAL HISTORY

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IN RE: KATHRYNE L. CONNER

CLAIM NO: SG-56220

DOCKET NO: 13 15134

Jurisdictional Stipulation

I certify that the parties have agreed to include this history in the Board record for jurisdictional purposes only.

☐ As Amended

Dated 5/21/13 at Olympia WA

Judge's Signature

FOR BOARD USE ONLY

DATE DOC/ ACTION	DOCUMENT NAME	ACTION/RESULT
6/14/11	AB	DOI 6/15/10 – neck, shoulders, spine – Harrison Medical Center
2/7/12	DO	Claim denied because no claim has been filed by clmt within one year after day upon which the alleged injury occurred. (DET)
4/5/12	P & RR	Clmt (Reck–Atty) DO 2/7/12
7/23/12	DO	DO 2/7/12 is reversed. Claim closed because covered medical condition(s) are stable. Claim closed without award for TLC or PPD. (DET)
9/14/12	P & RR	Clmt (Reck–Atty) DO 7/23/12
9/24/12	DO	DO 7/23/12 and 2/7/12 are reversed. Claim is accepted for the injuries related to the event of 6/15/10. Claim closed because covered medical condition(s) are stable. Claim closed without award for TLC or PPD. (DET)
11/21/12	P & RR	Clmt (Reck–Atty) DO 9/24/12
11/30/12	DO	DO 9/24/12 held in abeyance (DET)

INDUSTRIAL INSURANCE AND CRIME VICTIM ABBREVIATION CODES

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NO. 52454-6-II

COURT OF APPEALS FOR DIVISION II
OF THE STATE OF WASHINGTON

KATHRYNE CONNER, Appellant, v. HARRISON MEDICAL CENTER and THE DEPARTMENT OF LABOR AND INDUSTRIES OF THE STATE OF WASHINGTON, Respondents.	CERTIFICATE OF SERVICE

The undersigned, under penalty of perjury pursuant to the laws of the State of Washington, declares that on the below date, she caused to be served Harrison Medical Center's Brief of Respondent, Declaration of William J. Pratt in Support of Brief of Respondent, and this Certificate of Service in the below-described manner:

Via Washington State Appellate Courts' Portal:

Mr. Derek Byrne
Court Administrator/Clerk
Court of Appeals, Division II
950 Broadway, Suite 300
Tacoma, WA 98402

Via US Mail, first-class, postage-prepaid, per RAP 18.6(b):

Tyler Solheim
Foster Law PC
8204 Green Lake Drive N.

Seattle, WA 98103

Anastasia Sandstrom, Senior Counsel
Attorney General's Office
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188

Signed this 19th day of December, 2018, in Shoreline, Washington by:

ANGELINE WELCH
PARALEGAL
HALL & MILLER, P.S.
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HALL & MILLER, P.S.

December 19, 2018 - 12:00 PM

Transmittal Information

Filed with Court:	Court of Appeals Division II
Appellate Court Case Number:	52454-6
Appellate Court Case Title:	Kathryne Conner, Appellant v. Harrison Medical Center, Respondent
Superior Court Case Number:	15-2-01037-1

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