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Division III
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NO 362973-III

Superior Court No. 16-2-02097-3

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION III

CHARLES ANDERSON,

Appellant

v.

WASHINGTON STATE

DEPARTMENT OF LABOR AND INDUSTRIES

Respondent

REPLY BRIEF OF APPELLANT

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II. TABLE OF AUTHORITIES

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III. RESPONSE

Mr. Anderson anticipated and previously addressed the arguments of the Department in his Appellant's brief. Interestingly however, the Department failed to address Mr. Anderson's argument regarding the inequity and unfairness its complete reliance and incorporation of the *Yuchazs*¹ holding into its statewide policy and procedure manual has on the workers of this state that rely on individual vehicles for their basic health and survival. This includes getting to job sites to earn a living, getting to retail establishments to buy food and clothing as well as transportation to hospitals and medical providers who provide life-saving treatment. It cannot be emphasized enough that parts of eastern Washington, such as where Mr. Anderson lives as well as other even more rural areas of our state have very little, transportation wise, in common with the I-5 corridor, part of which the *Yuchazs* decision covers. That the Department would attempt to paint all workers of this state with one broad stroke is illogical and inequitable and must be remedied.

¹ *Yuchazs v. Dep't of Labor & Indus.*, 183 Wn. App. 879, 335 P.3d 998 (2014). This is a Division One case that is not mandatory authority for Division Three.

In its restatement of the issue the Department misleads the reader when, citing RCW 51.08.178(1), it implies the legislature has promulgated the definition of “wages” in this state to include “only payments for things that are objectively critical to protecting a worker’s basic health and survival.” *Resp. Br. at 1*. In fact, this definition is set forth in *Cockle v. Dep’t of Labor & Indus.*, 142 Wn.2d. 801, 822, 16 P.2d 583 (2001). Mr. Anderson agrees the *Cockle* test applies under these facts.

Next, in its statement of the case the Department’s headnote states: “The Department Did Not Include the Value of a Company-Provided Truck in the Wage Rate Order Because *It Did Not Believe It Was Critical to Protecting the Worker’s Health and Survival.*” *Resp. Br. at 2* (emphasis added). Mr. Anderson points out that the Department is merely a *trustee* of the industrial insurance fund, which was established and is maintained for the sole purpose of providing benefits to workers and their dependents for disabilities proximately caused by industrial accidents or occupational diseases. *Parks v. Dep’t of Labor & Indus.*, 46 Wash.2d 895, 897, 286 P.2d 104 (1955). A trustee should not be making decisions based on what it “believes” to be true. A trustee owes to its beneficiaries “the *highest* degree of good faith, care, loyalty, and

integrity.” *Allard v. Pac. Nat'l Bank*, 99 Wash.2d 394, 403, 663 P.2d 104 (1983). It cannot be said that the Department is using good faith and utmost care when it unilaterally takes one rule of law that applies to only one portion of the state (*Yuchazs*) and then places a blanket rule on the books that clearly does not apply in every situation. Simply because the *Department did not believe* Mr. Anderson's truck (and its upkeep, including maintenance, diesel fuel and insurance) was not critical to protecting a certain class of workers' basic health and survival does not make it so. Candidly, it was lazy and short-sighted of the Department to do so. As set forth in his Appellant's brief, there are many reasons why the vehicles of employees that live and/or work in less populous areas of our state *are* critical to the health and well being of the workers and their dependents. And those reasons are much, much more than what the Department callously calls the “reduction” of “out-of-pocket commuting costs.” Resp. Br. at 6-7.

The Department responds that “[a] worker needs food, shelter and warmth to survive, and access to health care to remain healthy.” Resp. Br. at 7. With this simple statement Mr. Anderson agrees. However, the Department's Response shows no understanding that injured workers in rural areas do not have

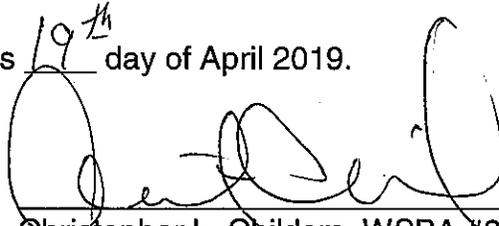
access to stores, banks, and medical facilities within walking or mass transportation distance. A working vehicle, under many circumstances, *is* the same necessity of life to which the *Cockle* court refers. The Department argues that “[Mr.] Anderson’s personal circumstances are not relevant.” Resp. Br. at 15. Mr. Anderson vehemently disagrees, especially when one considers the Department is the trustee of the *only* program that can assist Mr. Anderson at this time. Yes, the same trustee that owes to Mr. Anderson the *highest* level of good faith, care, loyalty, and integrity.

IV. CONCLUSION

Under the specific facts of Mr. Anderson’s case, the Department’s interpretation of RCW 51.08.178(1) is unfounded and improper. It did not take into consideration the unique challenges faced by injured workers that live in rural areas. The *Yuchazs* holding need not be followed in this Division as there is no horizontal privity with Division One. Mr. Anderson is an injured worker that, by law, *must* rely on the Industrial Insurance Act for any and all benefits to which he is entitled. He is completely at the mercy of the Department’s policy and procedure manual. When he was able to work he received the benefit of a vehicle that was

fueled and wholly maintained. As an injured worker he is entitled to a portion of the wages he was earning at the time of his injury. Mr. Anderson respectfully requests this court determine the value of his employer provided, insured and maintained vehicle was critical to protecting his basic health and survival and should have been considered in his wage calculation under RCW 51.08.178.

Respectfully submitted this 19th day of April 2019.



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**COURT OF APPEALS FOR DIVISION III
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Respondent.

**DECLARATION OF
SERVICE**

STATE OF WASHINGTON)
County of Benton) ss

I, Mary Cochenour, do hereby certify that I am an employee of Smart Law Offices, PS, attorneys for the Appellant; that I am a citizen of the United States and competent to be a witness herein; that on the 22nd day of April 2019, I sent Reply Brief of Appellant, via United States Mail at Kennewick, Washington, first class postage addressed as follows and as otherwise noted:

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Date: April 22nd, 2019

Respectfully submitted:


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SMART LAW OFFICES

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