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NO. 55902-8-I

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**COURT OF APPEALS FOR DIVISION I  
STATE OF WASHINGTON**

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DONALD HARRY,

*Appellant,*

v.

BUSE TIMBER & SALES, INC., and DEPARTMENT OF LABOR AND  
INDUSTRIES FOR THE STATE OF WASHINGTON,

*Respondent.*

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APPELLANT'S REPLY BRIEF

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2/1/03  
1/1/03

**ORIGINAL**

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## SUMMARY OF THE ARGUMENT

The plain language of RCW 51.32.180 does not consider the unique circumstances of noise-induced hearing loss caused over multiple years. As the decision in Pollard v. Weyerhaeuser Co. held, each demonstrable exposure to noise constitutes a distinct disease as it occurs only after contact with the injurious noise and therefore results in a separate schedule of benefits. 123 Wn.App. 506 (2004). It is irrational to distinguish this decision on the fact that Mr. Harry only filed one claim, while the claimant in Pollard filed two claims, as the reasoning applied in Pollard equally applies to Mr. Harry's case. Failing to apply this holding to Mr. Harry's case would also result in under compensation, as he would be paid at a rate of compensation predating the injury causing the hearing loss. This is inconsistent with the statutory requirements that treats occupational disease workers similar to workers suffering from industrial injuries and that the act be liberally construed to reduce the suffering and economic loss arising from injurious employment. RCW 51.16.040; RCW 51.32.180; RCW 51.12.010. Therefore, the Department should compensate Mr. Harry for his occupational hearing loss according to each schedule of benefits in effect for each disability he suffered while working at Buse Timber.

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## ARGUMENT

### **A. RCW 51.32.180 is ambiguous and requires liberal interpretation in favor of the worker.**

Where statutory language is susceptible to more than one interpretation, it is considered ambiguous. Harmon v. Department of Social Health Services, 134 Wn.2d 523, 530 (1998). All ambiguities and doubts in the language of the Act and implementing regulations must be resolved to the advantage of the injured worker. See RCW 51.12.010; Clauson v. Dep't of Labor & Indus., 130 Wn.2d 580, 584 (1996); Sacred Heart Medical Ctr. v. Carrado, 92 Wn.2d 631 (1975); Gaines v. Dep't of Labor & Indus., 1 Wn.App. 547, 552 (1969).

Contrary to the Employer and Department's arguments, RCW 51.32.180 is far from clear and unambiguous. Employer's Brief of Respondent (EBR) 8; Department's Brief of Respondent (DBR) 8. As the court in Pollard reasoned, "the statute... simply does not address the question [of whether multiple exposures to occupational noise are separate and distinct diseases resulting from distinct injurious noise exposures]. It is ambiguous and must be construed liberally in favor of the worker." Pollard, 123 Wn. App. 506, 513 (2004). A liberal construction requires that workers not be compensated using rating "in effect long before either

the exposure or the damage occurred." In re Brooks, BIIA Dckt. No. 02 17331 (2003).

Here, RCW 51.32.180 does not define when an occupational disease is partially disabling. Occupational hearing loss cannot become partially disabling until the worker is exposed to the injurious industrial noise. This is exposure is the injury causing the hearing loss. As RCW 51.32.180 requires interpretation, the interpretation should be to compensate Mr. Harry using a schedule of benefits reflective of his entire hearing loss and not a rate that under compensates him by paying him at schedule of benefits prior to all of his actual injuries.

**B. The legal authority determining that each exposure to injurious noise constitutes a discrete disease because it results from a distinct injury is indistinguishable.**

There is clear legal authority determining that each exposure to injurious noise constitutes a causally independent and distinct disease because it results from a distinct noise injury. Pollard v. Weyerhaeuser Co., 123 Wn.App. 506, 513 (Div. II 2004); In re Paul J Brooks, BIIA Dckt No. 02 17331 (2003) (Significant Decision). The rationale for the holdings in these two cases is homologous to Mr. Harry's case, and therefore the Pollard and Brooks holdings should equally apply to Mr. Harry.

The decision in Pollard is indistinguishable from the case at hand, contrary to the Employer's argument. EBR 13-14. The fact that Pollard involved two separate claims is inconsequential to the court's determination that Pollard's noise-related hearing loss was two separate and distinct occupational diseases resulting from distinct noise injuries

In Pollard, the court characterized the issue three separate times. In each of these characterizations of the issue statement, it was clear that the court was determining whether noise related hearing loss demonstrated in a second valid audiogram is a separate disease because of subsequent noise exposure. The first characterization of the issue statement asks "whether the Department of Labor and Industries (DLI) may treat noise-related hearing loss not causally related to earlier noise-related hearing loss as a separate and distinct occupational disease." Pollard at 508. The second characterization issue statement asks "whether DLI should have calculated Pollard's award using the 1979 benefits schedule or the 1994 benefits schedule." Pollard at 511. Finally, the third characterization of the issue statement asks "whether Pollard's noise-related hearing loss is properly characterized as one or two occupational diseases." Pollard at 512. In none of these characterizations did the court ever limit their issue only to actual claims filed. In fact the second issue characterization is almost the same as Mr. Harry's issue in this case.

Moreover, the court's reasoning in Pollard did not rely on the filing of two separate claims as a rationale for its holding that occupational hearing loss is a distinct disease if it results from multiple noise exposures. Id. at 514. The court in Pollard, relying on the West Virginia Supreme Court, reasoned that "once noise exposure stops, so does the progression of hearing loss unless other factors are involved. Damage to hearing is permanent .... Thus, once the damage is done, one's hearing can get neither better nor worse because of noise exposure." Id., 512, citing, Blackburn v. Workers' Comp. Div., 212 W.Va. 838, 847, 575 S.E.2d 597 (2002). Similarly, the U.S. Supreme Court found that "the injury, loss of hearing, occurs simultaneously with the exposure to excessive noise. Moreover, the injury is complete when the exposure ceases" when interpreting the Longshore and Harbor Workers' Compensation Act. Bath Iron Works Corp. v. Director (OWCP), 506 U.S. 153, 165 (1993)(holding that noise induced hearing loss is a scheduled injury, not an occupational disease not immediately resulting in death or disability, under the Longshore and Harbor Workers' Compensation Act). The reasoning in both of these cases is reflective of the fact that medically, the injury causing noise-induced hearing loss is noise exposure, and hearing loss cannot occur prior to this exposure.

This medical reasoning is not dependent on there being more than one industrial insurance claim. Neither the Employer nor the Department is able to distinguish this medical determination in cases with multiple claims from Mr. Harry.

Finally, similar to the Employer and Department's general argument, the employer in Pollard argued that the claimant suffered only one occupational disease (sensorineural hearing loss). See EBR 12-13. The court in Pollard held that this was not supported by the evidence. That evidence showed the claimant's hearing loss "emanated from two causally independent, 'pathologically distinct' diseases" resulting because of distinct noise injuries. Id. at 513. Never was the determination that the claimant's hearing loss was "two causally independent, 'pathologically distinct' diseases" because the claimant had filed two industrial insurance claims. Correspondingly, Mr. Harry's hearing loss suffers from multiple causally independent noise injuries causing distinct diseases and it should not matter that each of Mr. Harry's hearing losses go by the name of sensorineural hearing loss.

Similar to the Pollard decision, the Board of Industrial Insurance Appeal's (Board) decision in In re Brooks, Dckt. No. 02 17331 (2003) (Significant Decision), is not limited to cases with multiple claims. Although the Board couches its' decision in terms of two different claims,

the medical and evidentiary support equally applies to Mr. Harry's case. The Board specifically held, "But for the additional exposure to noise, Mr. Brooks would not have had additional hearing loss. This is a different disease, unrelated to the first, and should be treated as such." In re Brooks. Again, this is tantamount to the argument that distinct exposures to injurious noise cause distinct diseases. The same rational applies in Mr. Harry's case.

It is a red herring to distinguish either Pollard or Brooks from Mr. Harry. Both Brooks and Pollard rationalize their decisions using the idea of multiple diseases resulting from multiple injuries not multiple claims. The same conclusion can be made in Mr. Harry's case – but for his additional noise exposure, Mr. Harry would not have had additional hearing loss. Mr. Harry's hearing loss post-1974 arose independently and out of wholly different injurious exposures than his hearing loss pre-1974. As a result, he is entitled to multiple schedules of benefits.

**C. There is no precedential authority requiring that the Department apply an antiquated schedule of benefit to Mr. Harry's hearing loss when the court in Pollard clearly established that he should be compensated using multiple schedules of benefits.**

The Employer and Department advance a series of unfounded arguments as to why current law requires Mr. Harry to be paid using a schedule of benefits that does not fully compensate him for his hearing

loss. Each of these arguments is without precedential authority, wholly unfair to all injured workers and should not be applied in Mr. Harry's case.

First, the Employer argues that the Washington Supreme Court decision in Boeing Co. v. Heidy, 147 Wn.2d 78 (2002), established that a single schedule of benefits should be used when an occupational disease required the selection of a manifestation date from numerous possibilities. ERB 16-17. The Court in Heidy does not make any such determination – they were silent on the issue. See Id. at 78. Instead, the Court limited its holding to four major issues: segregation of age related hearing loss, validity of preretirement audiograms, knowledge of noise-induced hearing loss and attorneys fees. Id. None of these issues make any determination on the issue before this Court. Furthermore, the Court in Heidy never made any determination whether separate injurious noise exposures are entitled to a separate schedule of benefits. They only held that a worker's knowledge of their disease is inconsequential. Heidy, 147 Wn.2d at 88. Requiring multiple schedules of benefits does not violate the holding in Heidy.

Second, the Department cited two Board decisions, In re Carl Heidy and In re Gerald Woodard, rejecting a "sliding scale" for hearing loss claims. DBR 22-23, citing In re Carl Heidy, BIIA Dckt. No. 961511

(1998) and In re Gerald Woodard, BIIA Dckt. No. 0322924 (2004).

Neither of these Board decision have been designated as significant decisions and do not authoritatively state the Board's position.

Board decisions not designated as significant decisions do not hold precedential authority. According to WAC 263-12-195, "The board's publication 'Significant Decisions,' prepared pursuant to RCW 51.52.160, contains the decisions or orders of the board which it considers to have an analysis or decision of substantial importance to the board in carrying out its duties." Attached as Exhibit 1. Division II of the Court of Appeals held that significant decision are persuasive authority for courts, however they are nonbinding. O'Keefe v. Dep't of Labor & Indus., 126 Wn.App. 760, 766 (Div. II 2005).

In re Woodard and In re Heidy are similar to unpublished appellate court decisions and should not be given the same precedential authority as decision the Board have determined to be of substantial importance. See generally, O'Keefe v. Dep't of Labor & Indus., 126 Wn.App. at 766. If the Board thought these decisions to be of import, it would have designated them as significant. Since it did not, it seems incongruous that this Court would give them greater precedential authority than the Board believed they deserved.

Furthermore, these insignificant Board decisions are not binding on this Court. While a court may defer to an agency's interpretation of a statute, such an interpretation is not binding. Cockle v. Dep't of Labor & Indus., 142 Wn.2d 801, 813 (2001). It is the providence of the judicial branch to say what the law is and to determine the purpose and meaning of statutes. Id. Here, In re Woodard and In re Heidi are only Board interpretations of the law and do not divest this Court of determining the actual terms of the law.

Third, there is no authority supporting the novel argument that multiple injuries caused during employment with one employer endure the length of the claim. The Department incorrectly argues distinctive conditions of a particular employment can endure the length of the claim and such continued exposure only results in the progression of a disease. DBR 14. To support this proposition they cite Simpson Timber Co. v. Wentworth, 96 Wn. App. 731, 737-39 (Div II 1999). Wentworth, however, does not support the Department's argument. In that case, prolonged standing on a cement floor aggravated the claimant's foot condition.

Unlike Wentworth, Mr. Harry's case is not an aggravation case – each increase in his hearing loss creates a distinct permanent disease caused by his noise exposure. The Board in their significant decision In re

Brooks specifically addressed the issue of whether noise induced hearing loss is an aggravation. Citing In re Robert Tracy, BIIA Dec. 88 1695 (1990) (significant decision), the Board confirmed that the legal test for determining an aggravation under RCW 51.32.160 is to ask whether “but for the original industrial injury, would the worker have sustained the subsequent condition.” A claimant will suffer additional hearing loss even if the previous hearing loss had not occurred. Therefore, it is not an aggravation. In re Brooks.

Like the claimant in Brooks, there is no causal relationship between Mr. Harry’s hearing loss before 1974 and his hearing loss after 1974. Instead, Mr. Harry’s hearing loss after 1974 is a distinct disease only created by the presence of injurious noise in the work place. The additional noise is the industrial injury. Since Mr. Harry’s hearing loss is not an aggravation and his subsequent hearing loss only resulted from additional noise exposure, Wentworth is distinguishable and does not apply.

Fourth, the plain language of RCW 51.32.180 does not require that diseases be “separate and pathologically” distinct, unlike the Department’s argument. See DBR 21. The only requirements in the statute are that (1) occupational disease be treated the same as industrial injuries; and (2) that the compensation rate be established on either the date the disease

manifests itself or when the disease becomes totally or partially disabling, whichever occurs first. RCW 51.32.180. Otherwise, it is silent as to the issue of the pathology of disease required to determine if a new schedule of benefits should be used.

Converse to the Department's argument, the court in Pollard already determined that hearing loss resulting from distinct injurious noise exposures is a distinct disease. To quote the court, this type of occupational hearing loss emanates from "two causally independent, 'pathologically distinct' diseases." Pollard at 513. Therefore, it has already been determined that Mr. Harry's type of hearing loss is a "separate and pathologically" distinct disease. As such, Mr. Harry is entitled to a new schedule of benefits for each audiogram demonstrating such a distinct disease even under the Department's unsupported requirement that diseases be "separate and pathologically" distinct.

**D. The statutory language requires that all workers suffering from industrial injuries and occupational diseases be compensated similarly.**

RCW 51.32.180 specifically provides:

Every worker who suffers disability from an occupational disease in the course of employment under the mandatory or elective adoption provisions of this title . . . **shall receive the same compensation benefits and medical, surgical and hospital care and treatment as would be paid and provided for a**

**worker injured or killed in employment under this title**, except . . . (b) for claims filed on or after July 1, 1988, the rate of compensation for occupational disease shall be established as of the date the disease requires medical treatment or becomes totally or partially disabling, whichever occurs first. (Emphasis added).

It is undisputed that the words after “except” require that once a disease becomes partially disabling the schedule of benefits for that occupational disease shall be different than the schedule of benefits for industrial injuries. The distinction between the Employer and Department’s arguments and Mr. Harry’s arguments lies in the determination of what is an injury causing an occupational disease. Contrary to the Employer and Department’s argument, an “injury” to a worker’s ears cannot result before a person is exposed to the injurious noise. See DBR 27-29; EBR 17-20. To hold otherwise would be to treat occupational diseases differently than industrial injuries. This interpretation of RCW 51.32.180 results in the creation of different schedules of benefits for workers, like Mr. Harry, who have multiple audiograms showing that their increased exposure to industrial noise resulted in more than one causally independent and distinct hearing loss injury. This is because each injurious noise exposure results in a legally distinct disease per Pollard, 123 Wn.App. at 513.

The Employer and Department's argument that RCW 51.32.180 treats workers suffering from occupational disease differently from industrial injuries effectively renders superfluous the language preceding "except" in RCW 51.32.180. The law of statutory interpretation clearly states that it is improper for a court to construe a statute such that a portion of the statute is rendered meaningless or superfluous; instead, all of the statutory language should be given effect. Parents Involved in Community Schools v. Seattle School Dist., No. 1, 149 Wn.2d 660, 685 (2003), citing Cox v. Helenius, 103 Wn.2d 383, 387 (1985)). Therefore, the statutory language requires that occupational disease and industrial injuries be treated alike.

As demonstrated in Mr. Harry's earlier brief, the Employer and Department's argument results in disparate treatment of workers suffering from noise-induced hearing loss. See Appellant's Brief (AB) 15-16. Two different and demonstrable injuries to the same knee would result in two different schedules of benefits. Two different and demonstrable head injuries resulting in increased hearing loss would result in two different schedules of benefits. Similarly, two different and demonstrable exposures to injurious noise should result in two different schedules of benefits.

Additionally, the Employer and Department seem to ignore their argument's effect on RCW 51.16.040. According to the Court in Weyerhaeuser Co. v. Tri, "each provision of the statute should be read in relation to the other provisions, and the statute should be construed as a whole." 117 Wn.2d 128, 133 (1991). RCW 51.16.040 provides, "the compensation and benefits provided for occupational disease shall be paid and in the same manner as compensation and benefits for injuries under this title." RCW 51.16.040. Similar to Mr. Harry's argument, the court in Pollard likewise used RCW 51.16.040 to support their conclusion. "When two injuries occur, each unrelated to the other, the rights of the claimant are governed by the law in force on each date of injury." Pollard 123 Wash.App. at 514, citing Kilpatrick v. Dep't of Labor & Indus., 125 Wn.2d 222, 231 (1994).

In the case of industrial noise-related hearing loss, a claimant has multiple dates of injury if three factors are present: (1) continued exposure to industrial noise, (2) multiple audiograms and (3) increased hearing loss. A claimant suffering an industrial injury cannot have their schedule of benefits established before the date of injury corresponding to each noise exposure. Likewise, a claimant suffering from an occupational disease should not have their schedule of benefits established before their date of

injury. To allow so would effectively repeal RCW 51.16.040 as it applies to workers suffering from occupational diseases.

Creating multiple schedules of benefits does not create a last exposure rule banned in the 1988 amendments to RCW 51.32.180 and Landon. In Landon, the Court held that benefits should be calculated on the date of manifestation, not on the date of last exposure to the harmful materials. Dep't of Labor and Indus. v. Landon, 117 Wn.2d 122, 126 (1991). To create a last exposure rule, the Department would have to calculate the claimant's hearing loss for each day that they were exposed to injurious noise at work. As the Employer and Department argue, this would be an unworkable system. DBR 25 & EBR 24. Instead, and consistent with RCW 51.32.180, each schedule of benefits should be created for each valid audiogram showing that the claimant suffered compensable noise-induced hearing loss. Establishing the schedule of benefits in this way does not under compensate workers and also is consistent with RCW 51.32.180 as was required in Landon.

RCW 51.32.180 and RCW 51.16.040 clearly require that occupational diseases be treated similarly to industrial injuries. As the injury causing hearing loss is occupational noise exposure, it is necessary to establish multiple schedules of benefits to compensation occupational hearing loss victims similarly to industrial injury victims. This rule would

not establish a last exposure rule and is consistent with a liberal interpretation of RCW 51.32.180 as required by RCW 51.12.010.

**E. Public policy requires that Mr. Harry be paid benefits according to each date of injury.**

The Employer erroneously argues that compensating a worker using the first audiogram showing compensable injury is consistent with the public policy to fully compensate workers for industrial injuries. See EBR 21-23. Its' theories are not supported by logic or precedent.

First, the Employer argues that Mr. Harry may have incurred hearing loss in the 1950's, while he was in the Marines, and was paid 1974 dollars for this injury. EBR 23. In essence, the Employer is arguing the present system for determining benefits pays workers an average of what they are owed. The Supreme Court rejected this approach for determining benefits in Weyerhaeuser Co. v. Tri, 117 Wn.2d 128 (1991). In Tri, the Court held that the employer during the most recent exposure bearing a causal relationship to the disability is solely liable for the entire amount, regardless of whether there were previous exposures with other employers. Id. The court reasoned that this rule served the goal of swift and certain relief for injured workers and usually provided the highest level of benefits. Id. The Employer's argument regarding averaging out a worker's compensation violates the holding in Tri because the argument

reduces workers benefits and does not fully compensate them for their industrial injuries.

Second, the Employer argues that there is no disparity in differentiating between workers who file multiple claims for their noise-induced hearing loss and those who do not. EBR 21. This argument is irrational. While it is agreed that employers who expose workers to injurious noise are required to perform audiograms under Washington's Industrial Safety and Health Act, this Act does not require that the employer do anything more than provide the worker with a copy of the audiogram. See RCW 49.17; WAC 296-817-100; WAC 296-817-400. Audiograms generally consist of complicated graphs and medical determinations that the average worker would not understand without assistance, and often the workers are not even given that. As was the case with Mr. Harry, the Employer exposed him to ongoing injurious industrial noise, measured his increasing hearing, stood by, and allowed Mr. Harry's hearing loss soar. The statute does not require that employers discuss the import of these audiograms with a worker or inform workers to consult a physician or an attorney. Id. The purpose of the yearly audiograms is to protect workers' hearing, not watch their hearing loss progress. It certainly was not the legislature's intent to allow employers to use these audiograms to establish a worker's benefits at the lowest possible schedule

of benefits. Similarly, it seems unreasonable that the law would allow employers having a hearing conservation program to gain by having the lowest schedule of benefits while they did nothing to rectify the noise condition causing the hearing loss.

As logic and precedent clearly establish, it makes sense for workers suffering from industrial hearing loss to have multiple schedules of benefits commensurate with their individual noise exposures. To hold otherwise would allow the Employer's "averaging out" system, which clearly violates Weyerhaeuser Co. v. Tri, and advantage employers with hearing conservation programs by allowing them to under compensate workers. This is not consistent with the Industrial Insurance Act's purpose of reducing suffering and economic loss arising from industrial injuries. RCW 51.12.010.

**F. Mr. Harry is not required to present actual evidence when legal precedent clearly establishes that a claimant is entitled to judgment as a matter of law.**

An injured worker is entitled to all benefits allowed under law to compensate him for his industrial injury. See generally, Clauson v. Dep't of Labor & Indus., 130 Wn.2d 580, 586 (1996). The Department's argument that a claimant, who is entitled to compensation under current law, present actual evidence for an entire legal issue would be a waste of

judicial resources. See DBR 32. In Mr. Harry's case, it had already been legally determined in Pollard that when multiple audiograms show increased hearing loss due to industrial noise a claimant suffers from multiple separate and distinct occupational diseases. To require Mr. Harry to present all the same evidence as was presented to the court in Pollard would require effort and time already expended in the previous suit. This is a clear waste of judicial resources.

This case was disposed of by summary judgment without addressing the legal determination that distinct injurious noise exposures resulted in distinct diseases, as required in Pollard. Therefore, this Court should remand this matter to the Department so that it can determine the Mr. Harry's benefits based on each of the various audiograms.

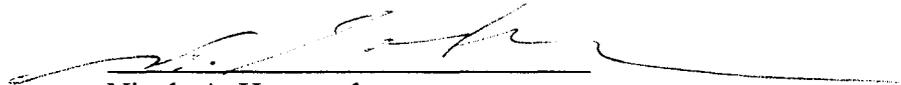
### **CONCLUSION**

Mr. Harry suffered multiple discreet injuries from industrial noise exposure while working for the Employer. Each of these discreet injuries resulted in separate and distinct diseases, entitling Mr. Harry to multiple schedules of benefits. These multiple schedules of benefits are required under RCW 51.32.180, RCW 51.16.040 and are consistent with the Industrial Insurance Act's goal of providing swift and certain relief for injured workers pursuant to RCW 51.12.010. Furthermore, the Superior

Court erred in granting summary judgment without determining the legal question presented by Mr. Harry, when he questioned the Department's legal interpretation of RCW 51.32.180. Therefore, Mr. Harry respectfully requests that this Court reverse the Superior Court's decision and remand the mater to the Department to apply the schedule of benefits in effect for each disability established by the Employer's industrial audiograms.

Respectfully submitted this 31 day of August, 2005.

**THE LAW OFFICE OF WILLIAM D. HOCHBERG**



Nicole A. Hanousek  
Attorney for the Appellant  
WSBA #29935

**APPENDIX**

WAC 263-12-195.....Exhibit 1

**WAC 263-12-195 Significant decisions.** (1) The board's publication "*Significant Decisions*," prepared pursuant to RCW 51.52.160, contains the decisions or orders of the board which it considers to have an analysis or decision of substantial importance to the board in carrying out its duties. Together with the indices of decision maintained pursuant to WAC 263-12-016(4), "*Significant Decisions*" shall serve as the index required by RCW 42.17.260 (4)(b) and (c).

(2) The board selects the decisions or orders to be included in "*Significant Decisions*" based on recommendations from staff and the public. Generally, a decision or order is considered "significant" only if it provides a legal analysis or interpretation not found in existing case law, or applies settled law to unusual facts. Decisions or orders may be included which demonstrate the application of a settled legal principle to varying fact situations or which reflect the further development of, or continued adherence to, a legal principle previously recognized by the board. Nominations of decisions or orders for inclusion in "*Significant Decisions*" should be submitted in writing to the executive secretary.

(3) "*Significant Decisions*" consists of microfilmed copies of the decisions and orders identified as significant and headnotes summarizing the proposition or propositions for which the board considers the decisions or orders "significant." Indices are also provided to identify each decision or order by name and by subject. Permanent revisions and additions to "*Significant Decisions*" are prepared annually. A cumulative supplement is prepared annually between permanent updates and is provided to subscribers of "*Significant Decisions*." The cumulative supplement contains decisions or orders identified by the board as "significant" in the interim between permanent updates.

(4) Copies of "*Significant Decisions*" and permanent updates are available to the public at cost. Requests for information concerning the purchase of "*Significant Decisions*" should be directed to the executive secretary.

[Statutory Authority: RCW 51.52.020, 91-13-038, § 263-12-195, filed 6/14/91, effective 7/15/91.]

**EXHIBIT 1**

**CERTIFICATE OF MAILING**

CLAIMANT: Donald Harry

CAUSE NO: 03 2 09393 7

COPY OF CONFORMED COPY OF APPELLANT'S REPLY BRIEF MAILED TO:

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I certify that either a copy of the document attached hereto was mailed, postage prepaid, first class mail to the parties referenced above this 31 day of August, 2005.

  
\_\_\_\_\_  
Amie C. Peters

2005 SEP 1 11:33 AM