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NO. 60139-3-I

COURT OF APPEALS, DIVISION I
STATE OF WASHINGTON

FERID MAŠIĆ,

Appellant,

v.

DEPARTMENT OF LABOR & INDUSTRIES,

Respondent.

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STATE OF WASHINGTON
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REPLY BRIEF OF APPELLANT

Ann Pearl Owen, WSBA #9033
2407-14th Avenue South
Seattle, Washington 98144
(206) 624-8637

Attorney for Ferid Mašić, Appellant

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I. INTRODUCTION

This brief's page limit precludes 1) addressing all the cases, arguments, and factual errors in the Department's brief and 2) providing additional in depth analysis on EO 13166, Title VI, and RCW 49.60.

II. OTHER APPEALS BEFORE THIS COURT

In *Ferenčak v. Dep't of Labor & Indus.*, COA No. 58878-8-I, [2008], the Department stipulated and Board found timely an appeal filed months after receipt but within 60 days of communication "in terms that he could understand." **APP A.** The same result should occur here.

III. ARGUMENT

A. Mašić Preserved Interpreter Issues for Appeal.

The Department asserts Mr. Mašić waived objections to the Board-appointed interpreter. The Board appointed an interpreter over Mr. Mašić's objection despite proof of her demonstrated inability to interpret adequately at his deposition. On August 22, 2005, Mr. Mašić made pages of corrections to his deposition due to interpretation problems. **CBRA 885-896.** Over two months before hearing, Mr. Mašić filed with Industrial Appeals Judge a written objection to appointing the same interpreter and a reimbursement request for interpreter expense in correcting his deposition, providing the deposition corrections and a deposition excerpt, showing multiple interpreter errors. **CBRA 882-884, APP B.**

When asked before interpreter appointment if Mr. Mašić objected, his counsel stated she had “addressed everything in writing to the Court on this matter” and had “nothing further today” resting on the earlier written objection to the interpreter. **TR 10/25/06**, 6-7. At hearing, interpreter problems were immediately obvious with simple questions and responses.¹ The second day, Mr. Mašić’s counsel informed the IAJ that Mr. Mašić had difficulty understanding in the first hearing. **TR 11/9/05**, 5. Additional interpreter problems were evident at the second hearing.²

¹ See **TR 10/25/05** [daughter’s name] 11/7-22; [if speaks other languages] 12/4-6; [ESL] 13/3-18 & 13/14/13; [awkward diction AD] 15/14-21, 24/1-25/3, 30/3- 5; [“claim”] 20/21-23; [injecting interpreter opinion IIO] 21/3-8, 22/25, 23/23; 25/4-5, 30/3- 5; [IAJ acknowledges not interpreting word for word] 30/6-15; [interpreter summarizing testimony] 30/7-19; [interpreter not understanding] 38/22-39/5; [answers not fit question showing bad translation] 40/18-23; [miscommunication] 41/14-18; [Mašić upset] 41/23-42/22; [IAJ tells the interpreter tell Mašić to slow down] 43/3-10.

² See e.g. **TR 11/9/05** [not interpreting words said] 7/11-12, [IIO] 7/14-16, [IIO] 7/21], [IAJ again instructs to translate only what said] 8/1-4, [IIO] 17-18, [interpreter difficulty with speed] 11/9-13, [IAJ asking Mašić if interpretation of an English transcript appears accurate] 15/25-16/2, [interpreter not interpreting answer as given, IIO] 16/14-25, [interpreter changing translation] 17/1-2, [IAJ asks Mašić on accuracy of translation] 17/3-15, [Mašić expresses trouble with questions as interpreted] 18/21-25, [IAJ recognizes Mašić’s difficulties testifying] 19/5-13, [interpreter reveals “claim” has no similar word in Bosnian] 20/10-23/1,² [IAJ recognizes interpretations do not always correlate 1:1] 23/2-7, [lack of word correlation important on impeachment efforts] 24/18-25, [interpreter calls document “just too complicated”] 176/19-177/2, [Mašić: transcript answer is “not even remotely similar to what I said”] 180/20-25, [Mašić: “the whole thing really is confusing to me”] 182/25-183/1, [summary of testimony not word for word interpretation] 183/3-15, [IAJ sees Mašić confusion] 189/24, [Mašić indicates confusion] 191/4-10, [no word for “deposition” exists in Bosnian when asked about his deposition] 191/19-25, [interpreter misinterprets “property maintenance” as “quality maintenance”] 192/22-193/7, [made corrections to deposition via an interpreter] 194/17-20, [confusion on terms ESL and English as a Second Language] 196/11-17, [interpreter summarizes answer] 214/7-9, [Mašić doesn’t understand question] 215/16-29, [interpreter “having a real problem”] 218/21, [Mašić says does not understand] 218:22-23 219:14, [Mašić upset, IAJ tells to “be more patient”] 219/19-21, [QA confusion] 221/10-18, [interpreter can’t translate “šura” or “kafana”] 223/20-224/2, 225/19-20, [misinterprets word as “chagrined”] 224/23.

When the IAJ set a show cause hearing, Mr. Mašić again raised his objections. **CBRA 1615- 1617**. In response to the show cause motion,

Mr. Mašić described interpreter problems at the hearing, saying:

I remember testifying at the jurisdictional hearing . . . I remember feeling unsure that all my words were being interpreted accurately because of the experience I had at my deposition when she interpreted.

I remember the interpreter did not understand when I used the word “šura” which means “brother-in-law” in Bosnian. This is a very common term and is well known to people who speak Bosnian. . . .

I remember being frustrated at the hearings when it appeared that I was saying more words than appeared to be said in English. I do not understand English well enough to know if interpretation is accurate or not. I remember when I said “concrete” at the deposition, the interpreter at first said “county.” I do not know if this was because I spoke too fast or too quietly or because of my accent. **I remember being told by the interpreter at the hearing that the judge said to give short answers to make interpretation easier.** After being told this, I tried to speak in less complicated sentences and not to provide too many details because I thought the Judge only wanted a short answer to the questions asked.

. . . I tried to explain how I remembered when I got the order in short sentences. At this time I do not remember the exact words that I used. In Bosnian, the word meaning “died” and the word meaning “dying” sound very similar. In English letters, those words are “umrla” and “umire.” When pronounced, they sound very similar . . . I do not remember which of these words I used . . . I could have said either one. The reason that I could have said either one is because I remember that weekend as the weekend I received a phone call telling me my mother had died. I know the date of that particular weekend because I will never forget being told my mother died. This upset me very much. I explained this but the word used by the interpreter was “chagrined.” The meaning of the English word “chagrined” has been explained to me. I did not say a word which meant “chagrined.” . . I was trying to describe how upsetting it was and

how that is why I remember when the order was brought to my apartment door about ten days after the Department had sent it to me.

On the weekend of October 9 and 10, 2004, I received a telephone call from my uncle . . . We had a bad telephone connection. [He] said either my mother “umrla” or “umire.” . . I heard “umrla” which means “died.” I became very upset because I believed my mother had died. . . In both my family here and in my family in Bosnia, we refer to this as the time my mother “died.” Since then my mother has been unable to see, remains at home all the time, is very seriously ill with heart and diabetes problems, and is intellectually and emotionally not the same woman she was before.

When I was asked about this at the jurisdictional hearing, I answered in Bosnian trying to explain that I remembered the date because I received the order the same weekend I had been called and told my mother died. At the time I did not know what was interpreted into English and did not know that there was a problem either in my choice of words, in my accent or manner or speech, or in the interpreter’s understanding.

CBRA 1549-1551 [parenthetical material added for clarity], **APP C.**

Mrs. Mašić declared 1) the order arrived the weekend of the phone call telling him his mother “died” and 2) the family uses that term to describe that weekend/phone call. **CBRA 1598, 1878-1879.** Declarations from his uncle, father, and brother confirm Mr. Mašić’s mother’s medical crisis, the phone misunderstanding that weekend, and the family’s calling that as when the mother “died.” See **CBRA 1881-1888, 1897-1903, 1889-1896.** Mr. Mašić raised improper interpreter services in his Petition for Review and Superior Court briefing. **CBRA 10 ¶18, APP D.**

B. Inadequate Translation at Hearing Resulted in Actual Prejudice that Altered the Outcome of the Case.

In *Kustura*, this Court held that:

[O]nce the Board appoints an interpreter at Board expense, the Board may not prevent the interpreter from translating whenever necessary to assist the claimant. [at 21] and

[B]y not providing an interpreter . . . for communications with counsel during any of the hearings, the Board failed to comply with the statute's directives and its own regulations which require it to provide an interpreter *to assist the workers* "throughout the proceedings." [at 22, emphasis added]

The *Kustura* Court required, without defining it, proof of actual prejudice. The Court found no prejudice because the issues were "largely legal" and there was "no conflict" in testimony. In *Kustura*, there was no showing of improper interpretation or worker confusion during testimony. As shown in Section A, there is ample evidence both here. Where a case is resolved on interpretation of the tense of a single word "died" and the appeal is determined entirely on the worker's credibility, the showing of actual prejudice has been satisfied. Here the IAJ found Mr. Mašić credible and his appeal timely but later reversed based on fraudulent statements and on interpretation problems, the case should be remanded for a new hearing with instruction on the rule against collateral impeachment.

C. Mr. Mašić was Actually and Severely Prejudiced.

Mr. Mašić was prejudiced by failure to provide language accommodation in these ways: 1) being kept ignorant of his rights under the Act; 2) rejection of his claim; 3) preventing his receipt of prompt and

efficient medical care; 4) denial of necessary language accommodations; and 5) loss of his appeal.

D. Department Concedes It Did Not Comply with RCW 51.52.050 Requirement to Inform of Reconsideration Right in Bold Face.

The Department order did not communicate a statement of reconsideration/appeal rights in “black faced” as required by RCW 51.52.050. See the order, **APP E, EX 5**. Because the Department did not meet the requirements of RCW 51.52.050, the 60-day appeal period never began. Thus, Mr. Mašić’s appeal was timely, *regardless of receipt date*.

E. Mr. Mašić Never Conceded Compliance with RCW 51.52.050.

The Department asserts waiver of the “black-faced type” issue. Throughout, Mr. Mašić asserted RCW 51.52.050 noncompliance -- failure to communicate orders per RCW 51.52.050 -- made his appeal timely. See **CBRA 75-79, 2074-86**. He asserted RCW 51.52.050 noncompliance in his Petition for Review. **CBRA 3-33**. He proposed a Finding of Fact and a Conclusion of Law on appeal timeliness. **CBRA 31**, Prop. FoF 4, CoL 4. The Board ruled thereon, preserving the issues of RCW 51.52.050 compliance and appeal timeliness. At Superior Court, he raised, argued and briefed these issues, including failure to use black faced type in his trial briefing on noncompliance with RCW 51.52.050, **APP D**.

F. Language Discrimination is National Origin Discrimination.

Isolated cases have been interpreted as ruling that language discrimination is not national origin discrimination and, therefore, not subject to strict scrutiny.³ This Court so ruled in *Kustura v. Dep't of Labor & Indus*, No. 57445-1-I (2008). However, federal agencies charged with enforcing Titles VI and VII of the Civil Rights Act take a different view. The US Department of Justice recognizes that language discrimination is national origin discrimination under Title VI. In 2000, the DOJ Civil Rights Division set out the following guideline:

Federal laws prohibit discrimination based on a person's national origin, race, color, religion, disability, sex, and familial status. **Laws prohibiting national origin discrimination make it illegal to discriminate because of a person's birthplace, ancestry, culture or language.** [Emphasis added]⁴

In 2002, the Equal Employment Opportunities Commission issued a Compliance Manual on "National Origin Discrimination" saying:

National origin discrimination includes discrimination because a person . . . comes from a particular place. The place is usually a country or a former country, for example, Colombia or Serbia. In some cases, the place has never been a country, but is closely associated with a group of people who share a **common language, culture, ancestry, and/or other similar social characteristics.** . . .

[Discrimination Against a National Origin Group]

³ See *e.g. Olagues v. Russoniello*, 770 F. 2d 791 (9th Cir. 1985) a case involving the different proof needed for declaratory and injunctive relief and *Moua v. City of Chico*, 324 F. Supp.2d 1132 (2004) memorandum decision on right to interpreter for crime victims in a state without any statute like RCW 2.43 or RCW 2.42.

⁴ Available on line at <http://www.usdoj.gov/crt/legalinfo/natorigin.htm>.

A "national origin group," often referred to as an "ethnic group," is a **group of people sharing a common language, culture, ancestry, and/or other similar social characteristics.**⁵

The EEOC interprets Title VII saying "*It is illegal to discriminate against an individual because of birthplace, ancestry, culture, or linguistic characteristics common to a specific ethnic group.*"⁶

The Washington State Supreme Court agrees. In *Xieng v. Peoples Nat'l Bank of Washington*, 120 Wn.2d 512, 844 P.2d 389 (1993), the court held that discrimination against people speaking with an accent constitutes impermissible national origin discrimination.

Notwithstanding *Kustura*, which appears to conflict with *Xieng*, recent authority makes it clear that LEP discrimination constitutes national origin discrimination and is subject to strict scrutiny. Given the ease of form translation and given the fact that the Department routinely provides Spanish-speakers with forms in their language, it is clear that discrimination against Bosnian speakers cannot survive strict scrutiny.

G. Equal Access to Justice Requires Language Accommodation.

This case involves LEP equal access to justice. Washington's Supreme Court is a leader in the Equal Access to Justice movement. The

⁵ Available on line at <http://www.eeoc.gov/policy/docs/national-origin.html#II>.

⁶ Title VII bars national origin discrimination regarding employment benefits, thus barring such discrimination in Industrial Insurance cases like this one. See http://www.eeoc.gov/abouteeo/overview_practices.html.

*Equal Access to Justice Report*⁷ says at p. 1: “When justice is inaccessible, the simple result is injustice. The need to eliminate barriers preventing access to our courts is real and immediate.” The report states at p. 3: “Access to the courts is a fundamental right, preservative of all other rights.” And later that “the law requires courts to remove barriers and/or provide reasonable accommodations. What constitutes reasonable accommodation depends upon the particular circumstances.” The report, at p. 13, indicates both courts and administrative agencies must provide accommodations to ensure equal access to justice.

The OAC reported on LEP problems with access to justice in the *Washington State LEP Plan* [July 2007], observing agencies and courts must provide language accommodation, at pp. 5-6. Here, Mr. Mašić was compelled to make statements under criminal penalty in reporting his injury. This started his right to an interpreter. This Court must address LEP accommodation to ensure equal Department access for LEP workers.

H. Non Washington Authority Does Not Support the Department.

1. The Department Brief Omits Cases Supporting Mr. Mašić.

Earlier,⁸ the Department cited *Almendares v. Palmer*, 284 F.Supp.2d 799 (N.D. Ohio 2003) on EO 13166, where the Court said:

⁷ *Ensuring Equal Access for People with Disabilities: A Guide for Washington Courts*, WSBA, August 2006, available at www.wsba.org/atj.

⁸ In Superior Court, the Department cited and relied on *Almendares*, *supra*.

The existence of the [federal] mandate and the defendants' knowing and long term noncompliance shows, arguably, an intent to treat Spanish-speaking recipients of food stamps differently than English-speaking recipients.

A consent decree ensued with attorney fees correcting the LEP problem.⁹

The Department failed to cite this and supportive pre-EO 13166 cases on which it relied -- *US v. Lim*, 794 F.2d 469 (9th Cir. 1986), *Augustin v. Sava*, 735 F.2d 32 (1984) both recognizing the LEP person's right to a court-appointed interpreter *to prepare for hearing*.

2. The Department Cites Cases of No Authority in Washington.

The Department cited cases ignoring the fact that our Act is unique and that cases from other states are "useless" to interpret it. *Stertz v. Ind'l Ins. Com'n*, 91 Wash. 588, 604, 158 P. 256 (1916). In citing *Lander v. Ind'l Com'n of Utah*, 894 P.2d 552(1995), the Department ignored *Buffelen Woodworking v. Cook*, 28 Wn.App. 501, 615 P.2d 704 (1981) where this Court held workers have due process rights under the Act.¹⁰

3. The Department Cites Cases Not or No Longer Authoritative.

⁹ Adelson, *Title VI, Limited English Proficiency and the Public Lawyer*, The Public Lawyer 15(1) (Winter 2007), at <http://spa.american.edu/justice/documents/2141.pdf>. This is like consent decrees entered in Washington against DSHS and ESD in *Reyes v. DSHS*, US DC W. Dist. of WA No. C91-303 (1991) and *Nava v. ESD*, Thurston Co. Superior Court No. 93-2-00654-1 (1994), which resulted in ESD's regulations requiring taking "lack of facility with the English language" into consideration to determine timeliness of appeal under WAC 192-04-090.

¹⁰ The Department cited *Harris v. Dep't of Labor & Indus.*, 120 Wn.2d 461, 843 P.2d 1056 (1993), as holding our Act does not create "vested rights." The *Harris* Court considered only whether federal law preempted the Act on Social Security offsets. The Court did not address due process, equal protection, or their application to the Act.

The Department cited *Alfonso v. Board of Review*, 444 A.2d 1075 (NJ 1982),¹¹ failing to advise that it has not been authoritative since the Legislature required notices be put in the LEP person's language.¹² In *Rivera v. Bd. of Review*, 127 NJ 578, 606 A.2d 1087 (1992), the New Jersey Supreme Court disapproved of *Alfonso*, finding an appeal timely due to use of an English-only notice. Similarly, Mr. Mašić's appeal was timely. The Department relies on many cases decided before EO 13166 and/or not addressing Title VI, RCW 2.43, or RCW 51.¹³

I. Language Services are Department-Paid Benefits Required by Act.

Benefits under the Act are paid from federal funds and employer premiums. *WR Enterprises v. Dep't of Labor & Indus.*, 147 Wn.2d 213, 53 P.3d 504 (2002). The Medical Aid fund pays for interpreter services. RCW 51.04.030. Board interpreters are paid from the federally-assisted Medical Aid and Accident funds pursuant to RCW 51.52.030.

¹¹ The 5 to 4 decision had a well-reasoned dissent later approved in *Rivera*.

¹² As Washington law requires for DSHS & ESD notices as briefed earlier.

¹³ *E.g. Abdullah v. INS*, 184 F.3d 158 (2nd Cir. 1999); *Carmona v. Sheffield*, 475 F.2d 738 (9th Cir. 1973); *Cobas v. Burgess*, 3076 F.3d 441 (6th Cir. 2002); *Commonwealth v. Olivo*, 336 N.E.2d 904 (Mass. 1975); *Frontera v. Sindell*, 522 F.2d 1022 (6th Cir. 1975); *Guadalupe Org. v. Tempe Elementary Sch. Dist.*, 587 F.2d 1022 (9th Cir. 1978); *Guerrero v. Carleson*, 512 P.2d 833 (Cal. 1973), cert. denied, 414 U.S. 1127, 94 S.Ct. 883, 38 L.Ed. 2d 762 (1974); *Gutierrez-Chavez v. INS*, 298 F.3d 824 (9th Cir. 2002); *Haig v. Agee*, 453 U.S. 280, 101 S.Ct. 2766, 69 L.Ed.2d 640 (1981); *Hernandez v. Dep't of Labor*, 416 N.E. 2d 263 (Ill. 1981); *Jara v. Municipal Court*, 578 P.2d 94 (Cal. 1978); *Kuqo v. Ashcroft*, 391 F.3d 856 (7th Cir. 2004); *Soberal-Perez v. Heckler*, 717 F.2d 36 (2nd Cir. 1983), cert. denied, 466 U.S. 929, 104 S.Ct. 1713, 80 L.Ed. 2d 186 (1984); *Toure v. U.S.*, 24 F. 3d 444 (2nd Cir. 1994); *Valdez v. NYC Housing Authority*, 783 F.Supp. 109 (S.D.N.Y. 1991).

Department policies recognize interpreter services as LEP health care and vocational services benefits. The Department recognizes failure to provide health care interpretation as “prohibited discrimination based on national origin under Title VI.” PB 03-01:8, PB 05-04:2, **APP F & G**.¹⁴

The Department pays interpreters with Department provider numbers under written Department policies on Department billing forms with Department billing codes. The Department website has information on language assistance, billing procedures, and approved interpreter lists, including a list of approved interpreters. See **APP H**.¹⁵ The appointed interpreter at the hearing is not listed as Department approved.

J. Discrimination and Favoritism Is Forbidden by the Act Already.

Without proof of the cost to translate the order into Bosnian and in violation of its own Management Update, the Department asserts that it need not incur translation costs to communicate with Bosnian speakers as they constitute an insufficient portion of injured workers. However, the Act forbids just such discrimination or favoritism.

The Act requires equal treatment of injured workers, scheduling benefits to ensure equal treatment. RCW 51.32.060, RCW 51.32.090.

¹⁴ **APP F & G**: Excerpts from Department Interpreter Services Policies PB 03-01 & PB 05-04, cognizable under *Rogstad v. Rogstad*, 74 Wn.12d 736, 446 P.2d 340 (1968).

¹⁵ **APP H**, Department website on language services, cognizable as legislative facts under *Rogstad*, *supra*. Available at <http://fortress.wa.gov/lni/ils/ILLSStart.aspx>, and <http://www.lni.wa.gov/ClaimsIns/Providers/Manage/Interpreters/default.asp>.

RCW 51.04.030(1) requires payment of medical benefits to ensure care:

consistent with promptness and efficiency, *without discrimination or favoritism*, and with as great uniformity as the various and diverse surrounding circumstances . . . will permit. [Emphasis added] ¹⁶

Despite knowing Mr. Mašić was LEP, the Department did not assess what language he spoke and did not communicate with him in his language, violating even Department policies. The Department's practice of giving language accommodation to some, but not all, and not communicating in their language to Bosnian workers violates both its statutory duty to deal with workers without discrimination or favoritism and the Act's intent to "reduce to a minimum the economic loss" incurred because of work injury. RCW 51.12.010.¹⁷

The Department may argue that spending money on interpreters discriminates against other workers as they receive no similar benefits or their benefits will be reduced as funds become inadequate due to language costs. Quite simply, English speaking injured workers receive no

¹⁶ Other provisions agree. RCW 51.16.040, 51.32.180 [occupational disease]. To be self insured, employers must give benefits equal to the state fund RCW 51.14.010, .080.

¹⁷ *State ex rel. Davis-Smith Co. v. Clausen*, 65 Wash. 156, 117 P. 1101 (1911) held the Act protected against all financial loss due to work injury, at 175:

[T]he . . . purpose of the act . . . is founded on the basic principle that certain defined industries, called in the act extra hazardous, **should be made to bear the financial losses sustained by the workmen** engaged therein through personal injuries, and its purpose is to furnish a remedy that will reach every injury sustained by a workman . . . and make a sure and certain award therefor, bearing a **just proportion** to the loss sustained . . .

interpreter benefits because they need and incur no such expense, just as workers who lose no wages need and receive no wage benefits.

The Supreme Court rejected the cost-savings claim in *Willoughby v. Dep't of Labor & Indus.*, 147 Wn.2d 725, 57 P.3d 611 (2002), holding the Department must pay benefits to all even if allocated by statute in a discriminatory fashion. In *Cockle v. Dep't of Labor & Indus.*, 142 Wn.2d 801, 16 P.3d. 583 (2001), the Supreme Court also rejected a cost saving argument against including health care benefits in wage calculation.

The Department must exercise its statutory duty and power to increase premiums to raise sufficient money to assure the financial well being of the Industrial Insurance program. *DiPetro Trucking v. Dep't of Labor & Industries*, 135 Wn.App. 693, 145 P.3d 419 (2006), *WR Enterprises, supra*. Thus, the Department must set premium rates sufficient to fund all benefits, including LEP language accommodation.

K. The Department Recognizes It Must Provide Interpreter Services.

Before the appealed order, Mr. Mašić informed the Department he was LEP and required an interpreter. See APP I, EX 2.¹⁸ Since 1999, the

¹⁸ Department asserts Mašić is fluent in English, believing this excused it from the duty to communicate with him in Bosnian. This ignores the facts that 1) the IAJ found it necessary to use an interpreter; 2) interpreter problems were evident during testimony see fns.1 & 2 *supra*, 3) Mr. Mašić testified he is not fluent in English [10/25: 12], he quit ESL class because he understood nothing [10/25:14], the report of injury form he signed was filled out by an interpreter [10/25:14-15,20], he cannot read English [10/24:20], and he sent the Department a letter interpreted for him by the interpreter

Department claim adjudicator must ascertain the worker's need for accommodation and inform the worker by letter authorizing or denying language services, "explaining the reasons" for any denial.¹⁹ Since 1999, the Department must correspond "in the language . . . the worker understands." Task 10-30-A: 2, APP J. The recent Department Management Update also requires all communication in the LEP worker's language. Despite knowing Mr. Mašić was LEP, the Department failed to assess his language and sent nothing in Bosnian, everything in English.

L. Discriminatory Practices are Already Legislatively Barred.

The Department ignores the Legislature's repeated statements of intent forbidding national origin discrimination. The Department asks this Court to await a yet further expression of legislative intent. To do so ignores the Act's non-discriminatory intent and eviscerates RCW 49.60 and RCW 2.43, encouraging, rather than minimizing, discrimination.

The Department's practice of providing language assistance to Spanish speakers, but not others,²⁰ is national origin discrimination unsupportable under RCW 2.43, equal protection, RCW 49.60, Title VI, and Title VII. This Court need not await yet another Legislative statement condemning discrimination to reject the practices seen in this case.

telling it he was not fluent and authorized an interpreter for communications [10/25:26, Ex. 2]; and 4) Mr. Mašić's upset at the interpretation problems at hearing, fn. 1 & 2.

¹⁹ APP J: Department Claims Manual excerpt, Claims Adjudicator Tasks 10.30-A.

²⁰ See APP K, Spanish forms available from the Department.

M. The Department Ignored Statutory Intent & Rules of Construction.

Mašić's case depends on his right to language accommodation under the Act; the Interpreter Acts, RCW 2.43 and RCW 2.42; and the Civil Rights Act and federal guidances/regulations. The Department failed to honor the Act's directives to deal with workers without prejudice or discrimination, to provide "sure and certain relief" RCW 51.04.010, to construe the Act liberally in the worker's favor to minimize his suffering and economic loss from job injury RCW 51.12.010 and to protect the rights of those unable to communicate effectively in English in RCW 2.43.010 and RCW 2.42. Quite simply, the Department provided Mr. Mašić no language accommodation whatsoever.²¹

These Acts are patently remedial, protecting LEP persons. The Department failed to cite and apply the time-honored rule that remedial statutes must be construed broadly to foster their beneficial purposes. *Sebastian v. Dep't of Labor & Indus.*, 142 Wn.2d 280, 12 P.3d 594 (2000). Exemptions must be narrowly construed consistent with the statutory spirit. *Silverstreak v. Dep't of Labor & Indus.*, 159 Wn.2d 868, 154 P.3d 891, 899 (2007). Here, the Court must construe these statutes to favor the statutory beneficiary – Mr. Mašić, the LEP injured worker.

The Department asserts Mr. Mašić has no rights needing protection

²¹ The Department neither translated brochures on worker rights/orders on his claim nor provided free interpreter services so he could understand such English documents.

but only “economic rights.” Thus, the Department argues, it is relieved of the duty to provide language accommodation. This argument is based on flawed analysis of authority and ignores his rights under RCW 51.12.010 to sure and certain relief and under RCW 51.36.010 to prompt and necessary medical care. The Department suggests *State v. Gonzales-Morales*, 138 Wn.2d 374, 979 P.2d (1999) holds RCW 2.43 only protects constitutional rights. RCW 2.43.010 is unambiguous in mandating appointment of qualified interpreters to protect *all LEP persons’ rights*.

In *State v. Marintorres*, 93 Wn.App. 442, 969 P.2d 501 (1999), the Court applied equal protection analysis, finding no rational basis to distinguish between the obligation to provide free interpreters under RCW 2.42 and the LEP under RCW 2.43. Nothing in RCW 2.42 limits providing interpreters to proceedings a government agency “initiates.”

N. RCW 2.43 Mandates Interpreters in “Legal Proceedings.”

The Department’s claim that RCW 2.43 creates no right to an interpreter contradicts the plain language of the statute. RCW 2.43.030(1)(c) unequivocally requires a qualified interpreter be appointed in every legal proceeding involving an LEP person, stating:

Except as otherwise provided in this section, when a non-English-speaking person is involved in a legal proceeding, the appointing authority **shall** appoint a qualified interpreter. [Emphasis added]

RCW 2.43.030(1)(b) requires that the *use* of a certified interpreter

if an LEP person is a party to or is compelled to appear in a legal proceeding, regardless of who initiates that proceeding. An appeal is clearly the continuation of a legal proceeding which starts at the Department. Mr. Mašić was required to sign the Industrial Injury Report under penalty of Class C felony conviction under RCW 51.48.020 as stated on the back side of the Report of Industrial Injury. See **APP L**. Mr. Mašić's legal proceeding began when he so signed – not at the Board's jurisdictional hearing in October 2005. When any LEP person is involved in any legal proceeding under RCW 2.43.020(3), the state agency *must* appoint a qualified interpreter. The Board's failure to appoint a qualified interpreter until the start of the evidentiary hearing violated RCW 2.43 and vitiates its Decision and Order finding Mr. Mašić's appeal untimely.

The Department's construction also ignores the context created by each provision of RCW 2.43. The statute declares the legislative intent to "secure the rights, constitutional *or otherwise*" of LEP persons "who consequently cannot be fully protected in legal proceedings unless qualified interpreters are available to assist them." RCW 2.43.010 (Emphasis added). The Court's construction in *Kustura* renders RCW 2.43.060's narrowly limited waiver of interpreter services meaningless. If, as the Department contends, RCW 2.43 provides no broader appointment of interpreters than constitutionally required, there was no reason for the

Legislature to adopt RCW 2.43 or to provide for a limited waiver as the constitutional law on waiver is well-developed. Further, the broad definition of “legal proceeding” in RCW 2.43.020(3) is meaningless if that definition has no effect on when interpreters must be provided.

The statement of legislative purpose, the broad definition of “legal proceeding,” and the strict limits on waiver all underscore that the plain meaning of RCW 2.43.030 is to create a right to an interpreter for any LEP person involved in any legal proceeding in Washington.

O. Properly Construed, RCW 2.43 Covers State Agency Proceedings.

1. Interpreters Must be Provided in All Legal Proceedings.

The *Washington State LEP Plan*²² recognizes interpreters must be appointed in “all legal proceedings in which the LEP individual is compelled to appear by the court, governmental body, or agency.” at 5-6. Thus, whether the Department conducts “legal proceedings” determines interpreter appointment even under its own reading of RCW 2.43.

2. Agency Investigations are “Legal Proceedings.”

Statements under oath to a government agency are “testimonial” and part of a legal proceeding. *State v. Smith*, 97 Wn.2d 856, 651 P.2d 207 (1982) and *Davis v. Washington*, 541 U.S. ___, 165 L.Ed.2d 224, 126

²² July 2007, Office of the Administrator of the Courts. The Washington State LEP Plan recognizes the duty to provide language assistance outside “court proceedings” at 8-9.

S.Ct. 2266 (2006) held such statements were “testimonial” and admissible later as statements made in “other proceedings” of the legal proceedings listed in ER 801(d)(i). The Legislature intended nothing less broad in RCW 2.43 where a “proceeding” encompasses Department rulings based on sworn statements. Indeed, Mr. Mašić’s copy of his Injury report form was admitted in his hearing. See **EX 1**.

3. The Department Conducts “Legal Proceedings.”

The Department begins its statutorily-required investigation²³ into on the job injuries, by providing an English form which the worker must execute *subject to criminal penalty*. See **APP L**. Consequences include Class C felony conviction [RCW 51.48.020], 5 years’ imprisonment, and \$10,000 fine. RCW 51.48.020, RCW 9A.72.030. Despite claiming otherwise, the Department claim investigation and form execution is a “legal proceeding” where workers need and should receive interpreters.

4. Department Claims Processing is “Quasi-Judicial.”

The Court in *Marintorres, supra*, construed RCW 2.43 and RCW 2.42, saying that the Legislature intended the same:

²³ The Department uses information from an injury investigation to: report on fraud as required under RCW 43.22.331; issue WSHA citations under RCW 49.17.130; charge WISHA violations under RCW 49.17.180 or RCW 49.17.190; act on claims filed under RCW 51.28.030; charge false reporting under RCW 51.48.020; charge retaliation under RCW 51.48.025; penalize violation under RCW 51.48.080; penalize self-insured employers under RCW 51.48.017; penalize failure to cover workers under RCW 51.48.105; penalize workers under RCW 51.48.250 and RCW 51.48.260; order worker to reimburse money and pay interest under RCW 51.48.250 & .260; or refer workers for criminal prosecution under RCW 51.48.270, RCW 9A.56, and/or RCW 9A.72.

beneficial assistance for persons who could not communicate effectively in English due to non-English speaking background as for those with speech or hearing defects.

Under *Marintorres*, interpreters are required for the LEP whenever required by RCW 2.42 -- at all stages of “quasi-judicial proceedings” and in agency investigations for victims or witnesses. RCW 2.42.120(1) & (4). Mr. Mašić was both.²⁴

Department proceedings are “quasi-judicial” where Claim Adjudicators exercise adjudicative functions to determine benefits under the Act. *Allan v. Dep’t of Labor & Indus.*, 66 Wn.App. 415, 832 P.2d 489 (1991) holds benefit calculation is an “adjudicative function.” Claim denial is a “quasi-judicial” “adjudicative function.” Thus, the Department must provide interpretation of its order rejecting Mr. Mašić’s claim.

5. Focusing on Who Initiates Proceedings is a Red Herring.

Who initiates proceedings is irrelevant under *Marintorres* as interpreters are provided under RCW 2.42.120(1) regardless of who “initiates” proceedings. An appeal is but one a stage of a proceeding -- not an entirely new proceeding. The Department started legal proceedings

²⁴ Certainly, Mr. Mašić is at least a witness to his industrial injury. RCW 2.42.120 (4) states: “If a law enforcement agency conducts a criminal investigation involving the interviewing of a hearing impaired person, whether as a victim, witness, or suspect, the appointing authority shall appoint and pay for a qualified interpreter throughout the investigation. . . . No employee of the law enforcement agency who has responsibilities other than interpreting may be appointed as the qualified interpreter.” The Department is Washington State’s enforcement agency for three Acts -- the Industrial Insurance Act, the Crime Victim’s Compensation Act, and WISHA.

by initiating an injury investigation as required by statute. Mr. Mašić's Board appeal was just one stage in legal proceedings about his injury.

P. *Rodriguez Dicta* on “Communication” Does Not Control.

Before adoption of RCW 2.43 and Department policies requiring communicating to LEP workers in their language, in *Rodriguez v. Dep't of Labor & Indus.*, 85 Wn.2d 949, 540 P.2d 1359 (1975), the Court held that an LEP worker's appeal of an English-only order was *timely* despite being apparently “late. The Court applied equity to find that appeal timely as it should do here. The *Rodriguez* holding is to apply equity to find “late” appeals filed timely, especially where, as here, one party has unclean hands.²⁵ To prevent the discrimination avoided by equity in *Rodriguez*, the Legislature adopted RCW 2.43 protecting all LEP rights.

To interpret “communicate” to mean “provide a copy [in English] of” violates 1) the obligation to interpret the Act liberally in the worker's favor, 2) the “no surplusage” rule, and 3) the “different words” rule.²⁶

Under the latter, the Legislature intended two different meanings in RCW

²⁵ The Department sent orders in English, knowing Mr. Mašić lacked fluency. Ex 2, 3, 5.

²⁶ See e.g. *State v. Roggenkamp*, 153 Wn.2d 614, 625, 106 P.3d 196 (2005). “When the Legislature uses different words within the same statute . . . a different meaning is intended.” RCW 2.43.010 states its purpose -- to “provide for the *use* and procedure for the appointment of such interpreters.” (Emphasis added). Under the Department's construction, the word “use” is meaningless, as the statute only regulates procedures for “appointing” but not for “using” interpreters. “We have held, time and again, that “[s]tatutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous.” *Whatcom County v. City Bellingham*, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996).

51.52.050 by using different words “send a copy” and “communicate.”

Applying *Rodriguez*’ equitable reasoning to RCW 51.52.060 should not result in misconstruing RCW 51.52.050. In *Rodriguez*, the Supreme Court found the appeal *timely* based on equity due to use of an English only order. *Rodriguez* did not the statutory, constitutional, or discrimination arguments raised here or the Department’s later policies to communicate with LEP workers in their own language at issue here.

Q. Mr. Mašić Has the Right to Confer with Retained Counsel.

The Department claims Mr. Mašić has no right to counsel, citing *In re Dependency of Grove*, 127 Wn.2d 221, 897 P.2d 1252 (1995). *Grove* held there is no right to counsel *appointed at public expense* under the Act. The Act, Board, and Department all recognize a worker’s right to representation by retained counsel. RCW 51.04.080, WAC 263-12-020. The *Worker’s Guide to Industrial Insurance Benefits*²⁷ and RCW 51.04.080 recognize the right to retained counsel after any order is issued. Only after the first Department decision rejecting his claim CBRA 80], did Mr. Mašić have the right to retain counsel. Until he retained counsel, Department policy required communicating with him in his own language.

²⁷ At page 18, APP M unavailable in Bosnian but at Department’s website in English at <http://InjuredWorker.LNI.wa.gov>, in Russian at [http://www.lni.wa.gov/IPUB/242-104-111\(Russian\).pdf](http://www.lni.wa.gov/IPUB/242-104-111(Russian).pdf), at [http://www.lni.wa.gov/IPUB/242-104-222\(Vietnamese\).pdf](http://www.lni.wa.gov/IPUB/242-104-222(Vietnamese).pdf) in Vietnamese, and at <http://www.lni.wa.gov/IPUB/242-104-999.pdf> in Spanish.

WAC 263-12-020(1)(a) unambiguously gave Mr. Mašić the right to representation by retained counsel. To the extent the Department asserts Mr. Mašić had no right to counsel at the Board, it is incorrect.

R. Refusing Interpreter Violated the Right to Retained Counsel.

The worker's right to retained counsel includes the right to confer with counsel to receive advice and to prepare for hearings. By denying Mr. Mašić interpreter services to understand the proceedings when the IAJ required him to give abbreviated answers interpreted by an interpreter shown incapable of fully or accurately interpreting for him, the ability to confer with his counsel was of great importance. Inadequate interpretation at the Board prevented Mr. Mašić from full exercise of his right to receive the advice/representation by retained counsel, prejudicing him.

S. Department Discrimination Endangers the Industrial Insurance Program's Considerable Federal Aid.

Whether there is a civil remedy under Titles VI or VII, EO 13166, RCW 2.42, RCW 2.43, or RCW 49.60, is immaterial.²⁸ Strict compliance with RCW 2.42/2.43, RCW 49.60, EO 13166, Title VI, and Title VII is necessary for LEP worker protection. Noncompliance, whether

²⁸ *Duffy v. Riveland*, 98 F.3d 447 (9th Cir. 1996) holds a civil action lies for failure to appoint an interpreter under RCW 2.42. The Act does not bar actions based on RCW 49.60. *Contreras v. Crown Zellerbach*, 88 Wn.2d 735, 565 P.2d 1173 (1977). WLAD bars direct and indirect discrimination under RCW 49.60.215 providing a private right of action for damages and injunctive relief. RCW 49.60.030(2). Under *Oliver v. Pacific NW Bell*, 106 Wn.2d 675, 724 P.2d 1003 (1986), disparate impact is sufficient for a WLAD claim, with no need to prove intent to injure or discriminate.

intentional or not, endangers federal funding assisting Washington workers. Adelson, *supra*, explains:

Ignorance of Title VI and statutory non-compliance put federal aid recipients at significant risk. If a complaint alleging a Title VI violation is made to the federal government, a federal financial aid recipient could be faced with a compliance review . . . Compliance reviews are intrusive, lengthy audits. The ultimate sanction, if the federal government determines that a federal assistance recipient has violated Title VI, is termination of that federal assistance.

Because the Department endangers its federal funding, this Court must act to protect all injured workers by preventing future violations.

T. Attorney Fees must be Awarded for Remand for Hearings.

RCW 51.52.130 provides attorney fees and costs to workers who prevail on court appeal. Under *Brand v. Dep't of Labor & Indus.*, 139 Wn.2d 659, 670, 989 P.2d 1111 (1999), if Mr. Mašić prevails on *any* issue, he is entitled to attorney fees on all issues. If his appeal is timely, he should be awarded fees and costs and interpreter costs under RCW 2.43.040 as the Medical Aid and Accident funds will be affected.

VI. CONCLUSION

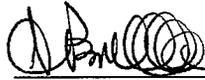
Because his appeal was timely, this Court should:

1. Reverse the Superior Court, finding the appeal timely,
2. Issue an opinion stating required language accommodations,
3. Remand for further proceedings consistent with that opinion,

4. Award attorney fees and costs under RCW 51.52.130,

5. Award reimbursement of interpreter costs under RCW 2.43.

Respectfully submitted this 6th of February 2008,



Ann Pearl Owen, #9033, Attorney for Ferid Mašić, Appellant

APPENDIX A

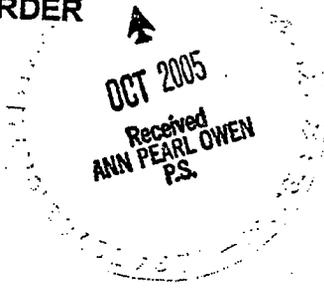
BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

1 IN RE: IVAN FERENCAK

) DOCKET NOS. 02 21795, 02 22295, 02 22296,
) 02 22794, 02 23491, 02 23492, 02 23698,
) 03 15795, 03 16196, 03 16790, 03 17975,
) 03 18398, 03 19097 & 03 20291

4 CLAIM NO. Y-388825

) DECISION AND ORDER



OCT 2005
Received
ANN PEARL OWEN
P.S.

6 APPEARANCES:

7 Claimant, Ivan Ferencak, by
8 Ann Pearl Owen, P.S., per
9 Ann Pearl Owen

10 Employer, Travis Industries, Inc.,
11 None

12 Department of Labor and Industries, by
13 The Office of the Attorney General, per
14 Cynthia A. Montgomery and Maureen A. Mannix, Assistants

15 **Docket No. 02 21795:** The claimant, Ivan Ferencak, filed an appeal with the Board of
16 Industrial Insurance Appeals on November 15, 2002, from a Department order dated May 6, 2002.

17 In this order, the Department determined Mr. Ferencak's monthly wages at the time of injury for
18 purposes of calculating his time loss compensation rate under the claim. The Department
19 determined Mr. Ferencak to have earned \$11.50 per hour, eight hours per day, five days per week,
20 which equals \$2,024 per month, plus additional includable wage equivalents for employer-provided
21 health care benefits of \$175 per month, for a total of \$2,199 monthly wages at the time of injury.
22 The Department did not include any tips, bonuses, overtime, housing, board, or fuel. The
23 Department determined that Mr. Ferencak was married with two dependent children. The Board
24 assigned Docket No. 02 21795 to this appeal. The Department order is **AFFIRMED**.

25 The remaining appeals, consolidated with Docket No. 02 21795, are Mr. Ferencak's appeals
26 from orders paying and/or adjusting time loss compensation for particular periods. The amount of
27 payments and adjustments are premised on the determinations made in the Department order
28 appealed in Docket No. 02 21795. The appeals were docketed by the Board as follows: **Docket**
29 **No. 02 22295**, an appeal filed on November 25, 2002, from a November 18, 2002 Department
30 order; **Docket No. 02 22296**, an appeal filed on November 25, 2002, from a November 19, 2002
31 Department order; **Docket No. 02 22794**, an appeal filed on December 6, 2002, from a
32 December 2, 2002 Department order, wherein the Department also terminated time loss

1 compensation effective November 25, 2002; **Docket No. 02 23491**, an appeal filed on
2 November 15, 2002, from a May 2, 2002 Department order; **Docket No. 02 23492**, an appeal filed
3 on November 15, 2002, from a May 14, 2002 Department order; **Docket No. 02 23698**, an appeal
4 filed on November 15, 2002, from a May 28, 2002 Department order; **Docket No. 03 15795**, an
5 appeal filed on May 23, 2003, from a May 20, 2003 Department order; **Docket No. 03 16196**, an
6 appeal filed on June 4, 2003, from a June 2, 2003 Department order; **Docket No. 03 16790**, an
7 appeal filed on June 18, 2003, from a June 16, 2003 Department order; **Docket No. 03 17975**, an
8 appeal filed on July 30, 2003, from a July 28, 2003 Department order; **Docket No. 03 18398**, an
9 appeal filed on July 3, 2003, from a June 30, 2003 Department order; **Docket No. 03 19097**, an
10 appeal filed on July 18, 2003, from a July 14, 2003 Department order; and **Docket No. 03 20291**,
11 an appeal filed on August 13, 2003, from an August 11, 2003 Department order. Each of these
12 appealed Department orders are **AFFIRMED**.

13 PROCEDURAL AND EVIDENTIARY MATTERS

14 The industrial appeals judge affirmed the appealed Department orders in a Proposed
15 Decision and Order issued on April 15, 2005. Mr. Ferencak filed a timely Petition for Review. This
matter is therefore before the Board for review and decision pursuant to RCW 51.52.104 and
17 RCW 51.52.106.

18 The critical appeal is the appeal assigned Docket No. 02 21795. In this appeal,
19 Mr. Ferencak challenges the underlying Department order wherein the Department determined the
20 basis for setting Mr. Ferencak's time loss compensation rate. This appeal adequately preserved
21 Mr. Ferencak's right to have his time loss compensation payments appropriately adjusted were he
22 to prevail and show that the Department had incorrectly determined his monthly wages at the time
23 of injury. The Department and Mr. Ferencak stipulated that Mr. Ferencak did not read and
24 understand English sufficiently to understand the import of the Department order dated May 6,
25 2002. They further stipulated that Mr. Ferencak's attorney filed the appeal from this order within
26 sixty days of the date on which an interpreter communicated the order to him in terms that he could
27 understand. We agree that the appeal is timely. The other appeals are timely for like reason, or
28 because they were filed by mail within sixty days of receipt of the respective Department orders.

29 Mr. Ferencak is represented by an attorney. The Board provided interpreter services to
30 Mr. Ferencak, to the party representatives, and to the industrial appeals judge during
Mr. Ferencak's testimony. Mr. Ferencak contends that interpreter services should have been
32 additionally provided him at the Department level, during communications with his attorney, and

For similar reasons we reject Mr. Ferencak's contentions that the Department should have included in his wage determination employer contributions or taxes paid for federal social security (disability and retirement benefits) and for Medicare, employer-paid premiums or taxes for unemployment compensation paid to Employment Security, and employer-paid industrial insurance premiums or taxes. These are not, under the *Gallo* and *Cockle* analyses, a wage equivalent paid to the worker, nor are they benefits critical to the worker's basic health and survival at the time of injury. Rather, the payments are payments required by law to governmental entities. If otherwise qualified, Mr. Ferencak would receive benefits due from such entities without regard to whether Travis Industries had met its legal obligations to pay such taxes or premiums. Mr. Ferencak exercises no control over these monies paid to governmental entities.

We have considered the Proposed Decision and Order and Mr. Ferencak's Petition for Review. Based on a thorough review of the entire record before us, we enter the following:

FINDINGS OF FACT

1. On March 26, 2002, the Department received an application for benefits from the claimant, Ivan Ferencak, in which he alleged he sustained a right leg injury on March 20, 2002, in the course of his employment with Travis Industries, Inc. On April 15, 2002, the Department allowed the claim for right leg injury as Claim No. Y-388825.

Docket No. 02 23491: Mr. Ferencak filed an appeal on November 15, 2002, from a Department order dated May 2, 2002, wherein the Department paid time loss compensation benefits from April 12, 2002 through April 26, 2002, and set the time loss rate for the payment period at \$1,396.50 per month.

On January 3, 2003, the Board granted the appeal, subject to proof of timeliness, assigned Docket No. 02 23491, and directed that further proceedings be held. The parties stipulated that the appeal was filed within sixty days after an interpreter communicated to Mr. Ferencak the significance of the Department order, and that without such interpretation Mr. Ferencak was unable to comprehend the order.

Docket No. 02 21795: Mr. Ferencak filed an appeal on November 15, 2002, from a Department order dated May 6, 2002, wherein the Department described the wage rate calculation method: wage for the job of injury was based on \$11.50 per hour, eight hours per day, five days per week, which equals \$2,024 per month; additional wage for the job of injury include: health care benefits of \$175 per month; tips, none; bonuses, none; overtime, none; housing/board/fuel, none; worker's total gross wage is \$2,199 per month; marital status eligibility on the date of this order is married with two children.

APPENDIX B

MH
ANN PEARL OWEN, P.S. ORIGINAL
ATTORNEY AT LAW FOR BIIA FILE

August 23, 2005

Faxed this date

The Honorable Mitchell Harada
Board of Industrial Insurance Appeals
83 South King Street
Seattle, WA 98104



RE: Injured Worker: Ferid Mašić Claim Number: Y900479
Date of Injury: 6/29/03 Docket No: 04 25602
Injured Worker's Motion on Selection of Interpreter for Hearings
Injured Worker's Motion for Award of Interpreter Expenses for Correction of his
Discovery Deposition

Dear Judge Harada;

Motion on Selection of Interpreter for Hearings

This letter constitutes Injured Worker Ferid Mašić's request that the Board not engage the services of the same interpreter who interpreted at his deposition. Mr. Mašić requests that the Board hire another interpreter for his hearing who is able to interpret for him accurately, word for word, and refrain from interpreting by summary of the interpreter's understanding and without inserting editorial comments without permission from the Judge.

Mr. Mašić feels confident in the interpreter services of Mr. Ruslan Tumbic who has interpreted between English and Bosnian/Serbo-Croatian at the Board before on several occasions. He was hired by the Board for interpreting at the Mediation Conference held by IAJ Canorro. Additionally, he has interpreted for several hearings held at the Board by IAJ Crossland. We urge you to confer with IAJ Crossland regarding Mr. Tumbic's performance at the task of interpreting at the Board.

This motion is based on the experience of Mr. Mašić in making the corrections to his recent discovery deposition. During the discovery deposition problems in interpretation arose. These are demonstrated in **Exhibit A** attached hereto, a true and accurate copy of the corrections to the deposition of Mr. Mašić. These corrections demonstrate repeated need for corrections because of the manner in which his testimony was interpreted. Attached hereto as **Exhibit B** is an excerpt from Mr. Mašić's deposition showing the fact

that the problem of not providing word for word interpretation was recognized during the deposition, mentioned, but continued during the remainder of the deposition.

Should you desire a full copy of the discovery deposition to assess the extent of the interpreter difficulties in the deposition to compare the questions with the answer, etc., this office will provide that full copy either electronically or on paper in either condensed or full form as you designate.

Motion for Award of Interpreter Expenses for Correction of Discovery Deposition

Mr. Mašić moves the Board for an order awarding him his interpreter expenses incurred to correct the transcript of his discovery deposition which was taken and ordered by the Department of Labor & Industries.

Mr. Mašić incurred significant interpreter expenses for reviewing for accuracy the transcript of his discovery deposition noted and taken by the Department's lawyer. The necessity for reviewing for accuracy arose during the deposition, see **Exhibit B**. Mr. Mašić's counsel requested that the Department be responsible for interpreter services to make corrections to the transcript. No objection was made at that time. Later the Department refused to cover these expenses. See **Exhibit C**, the AAG's letter so stating. Significant expenses for correcting the deposition transcript were incurred. See page 12 of **Exhibit A**. These expenses should be awarded to Mr. Mašić against the Department. Mr. Mašić is not requesting an assessment of expenses for his cost to receive a copy of his deposition, mail it to him and the interpreter, to transmit his corrections to the court reporter or for the attorney time incurred.

Authority Relied Upon

Regarding his right to interpreter services at hearing, Mr. Mašić relies upon WAC 263-12-097, asserting that this right to interpreter services at hearing encompasses the right to the services of an interpreter who will provide exact interpretations of what is spoken rather than a summary interjected with comments from the interpreter. Mr. Mašić recognizes that he cannot select the interpreter hired by the Board, but believes it is not inappropriate for him to bring to the Board's attention the difficulties had by particular interpreters that become known to him. He also feels that it is both fair and appropriate that the Board consider engaging the services of Mr. Tumbic because he has previously served without difficulties as an interpreter at the Board and there are Industrial Appeals Judges who have expressed their approval and recommendation for his services at the Board to other Industrial Appeals Judges.

Mr. Mašić also relies in both his motions on previously filed briefing on his right to interpreter services under the Washington State Constitution, RCW 2.42, RCW 2.43, and RCW Title 51 so that he is treated in like fashion to injured workers who are English speaking in the same circumstances. The imposition of interpreter expenses for making the corrections to his deposition treats him differently and imposes on him significant expenses devaluing his benefits under the Industrial Insurance Act contrary to the

underlying and over-arching purpose the Act to protect him and his family against the medical and financial problems arising from industrial injury.

Respectfully submitted and requested this 23rd of August, 2005,

A handwritten signature in black ink, appearing to read 'Ann Pearl Owen', with a decorative flourish extending to the right.

Ann Pearl Owen, WSBA# 9033

Attorney for Ferid Mašić, Injured Worker

Encl: **Exhibits A – C**

Cc w/o encl via fax to Andy Simons, AAG for DLI & Hecker Wakefield, for SCD

Cc w/ encl via ABC to Andy Simons, AAG for DLI & Hecker Wakefield, for SCD

**Corrections to Deposition of Ferid Mašić with
Verification of Corrections Under Penalty of Perjury and Declaration of Interpreter
BIIA Docket No. 04 25602 Claim No. Y-900479**

Page/Line	Transcript Error	Why Error	What Should Appear
5/13	"Amna, he"	Wrong gender in transcript	"Amna, she"
5/13	"Adna, he"	Wrong gender in transcript	"Adna, she"
9/15	"That is what he took."	Wrong pronoun	"That is what I took."
9/22	"No, I did not."	Translation error, interpreter was summarizing not interpreting word for word.	"I only took the ESL/Property Maintenance course."
11/13-15	"There was another, and she – because he did not say the name – but he indicated she. . ."	Interpreter's commentary and truncated response	"There were two teachers. The one teaching ESL was a woman. I don't remember her name. The other, Amando, taught the practical part."
14/8-9	"He answered, white. I said What kind of papers were those? And he answered, White."	Interpreter's explanation listed as my testimony. I only said "white." The rest of the comments should be attributed to the interpreter as her explanation, not my testimony.	"White."
15/16	"I said while you were in school."	Interpreter's explanation not my testimony.	These words should be attributed to the interpreter.
18/1-2	"But they just wanted to see how much of English did we get."	Interpreter error, "how much" should be replaced with "what kind."	"But they just wanted to see how much English we understood."
18/11	"I know that what they gave us."	Interpreter error. "that" should be omitted.	"I know what they gave us."
18/12	"made for"	Interpreter error.	"made in"
19/6-7	"He said he did not understand. Who is begging me to answer? I said, Ms. Owen	Interpreter comments attributed to me. My answer was omitted. I did not say all of what appears as my answer. My response is omitted. The statement "I said Ms. Owen	"I do not understand." "I do not remember how many tests. I cannot answer the

	did.”	did” should be attributed to the interpreter.	question if I don’t know the answer.” “Who is telling me to answer?”
20/4-8	“They had a book to prepare for the exams, a book was the A, B, C. When they were doing the exams, what they gave them, they gave them pictures with multiple choice A, B, C. So, looking at the book, he would basically select which answer was appropriate for that picture.”	Interpretation error. Interpreter gave a summary explanation of her understanding and not a literal interpretation of the words spoken by me.	“Highline Community College had already prepared test books. When we were tested, the exam books had multiple-choice answers. We were to choose the answer that matched the picture.”
21/2	“... I work eventually...”	Interpretation error, verb tense/form incorrectly interpreted	“... I would work eventually...”
22/1	“an”	Misspelling/Typographical error	“am”
24/1	“Yeah,”	Misspelling	“Yes.”
29/24	“No, I don’t know Jovi.”	Misunderstanding based on mispronunciation of the name. I heard the name about which I was asked as either Đovi or Džovi both of which are pronounced with the “j” sound like in the word “joy.” The name Jović is pronounced Yovich. The J is pronounced the same as the “y” in the word “yolk.” If I had been asked the names of the three Zorans I know in the US, I would have included the name Zoran Jović.	If the name had been pronounced with the j like a y like we do in Bosnian I would have answered differently. Then I would have answered “Yes, I know a Zoran Jović [pronounced Yovich] in the United States.”
31/17	“He was asking Can you tell him whose address this is?”	Interpreter comment and parenthetical explanation missing.	The words “He was asking” should be attributed to the interpreter. Parenthetical

			<p>explanation: I was pointing to the address on 2003 tax return, Schedule C. I answered by asking a question as the address I was being asked about was that of Hadzimuratović and not mine.</p>
<p>32/24 to 33/4</p>	<p>“Me and my wife, what I do, I usually whatever I get the money there is a tax taken, I report that. My wife and I, my wife knows English better than I do. We went to fill out these, and we gave them the information for that year. And they filled out the form.”</p>	<p>Interpreter error. Interpreter failed to provide word for word accurate translation, giving only a summary of her general understanding omitting some of what was said. . Se omitted words I said from her interpretation, the answer typed in does not include my full spoken answer at the time of the deposition.</p> <p>The answer listed for me makes no sense, I would need to listen to my words to recall exactly what I said. However my best recollection is that what was interpreted did not include all I said. I have included what I believe my answer was as the answer here.</p>	<p>“My wife and I, every year, take our W-2 forms to a service to prepare our tax return. Because my wife can speak better English than I can, she talks to the person preparing the return. We went to the Wal-Mart in Renton to have the return prepared. My wife told the man that I also earned \$3,000 that year but we had not received a W-2 form. The man asked who was the employer and I gave the man the Seattle Concrete Design business card. When the man finished talking to us, he gave us some forms to sign so he could file the</p>

			returns later electronically.”
34/14-15	“I went with my wife to do the taxes. Because she understands it. She speaks English.”	Interpreter error.	“I went with my wife to have my taxes prepared. She understands English better than I do.”
36/8-17	<p>“We went there and took whatever forms. You know those. I said, Please say which forms. And he said W-2 forms. They took that to the company.</p> <p>We gave the man who was working there, we gave him the information. My wife also said I made another \$3,000 working for somebody else and that somebody else did not send me the W-2 form. The man asked me which company, and I gave him the business card of Seattle Concrete Design. That’s what I said that this is whom I worked for.”</p>	Interpreter error, confusing use of pronouns. The interpreter’s commentary is listed as my answer. Meaning is muddled by transcript as it appears and does not include what I said accurately.	<p>“We went to Wal-Mart and took the forms we received.”</p> <p>The following should be attributed to the interpreter: “I said, Please say which forms.”</p> <p>The following should appear as said by the interpreter but does not: “And he said.”</p> <p>I said” W-2 forms.”</p> <p>Then I said: “We took those to the company. We gave the man who was working there our W-2’s. In addition, my wife said I made \$3,000 but I didn’t receive a W-2 form. The man asked my wife which company, and I gave him the business card of Seattle Concrete Design. And my</p>

			wife said this is who I worked for.”
38/14-16	“I didn’t get that form in the hospital where I had surgery when I was injured. And that’s where I got the form. I did get the form.”	Interpreter error	“I didn’t get that form from the hospital where I had surgery when I was injured. But later I got the form from the hospital.”
40/3-4	I know him as the majority of Bosnian people – he said, Bosnian men – know him.	Interpreter error and interpreter comment included as my answer	“I know him as the majority of Bosnian people know him.”
41/6-8	“No, he came by as I was taking - - move his truck, and he came by, and then he said that he was going to go and see that job at that house.”	Interpreter misunderstanding or providing a summary of her understanding rather than a word for word interpretation of my answer	“Enver was already waiting by the truck when I arrived. Enver said Muha wanted Enver to observe the work to see if Enver would be interested in this type of work in the future.”
41/20	“... so he said. . .”	Interpreter’s comment attributed to me.	Omit because I didn’t say this.
42/12-13	“When I say we, that is two days before my injury. Muha and him, two days before his injury.”	Interpreter error or confusion.	“Two days before my injury, Muha and I were working on this project.”
42/16-21	On Sunday before the injury occurred, Muha called him and said, Go to prepare whatever has to be done with that patio, because the day I	Interpreter error or confusion. Interpreter’s comment attributed to me as part of my answer.	“We did not work together on the day of the injury. On the Saturday before the injury, Muha called me on the phone to tell me to finish the work in order

	guess when they are supposed to work they had to – concrete had to be poured so the whole place had to be ready for pouring of concrete that’s how I understand it.”		to prepare the patio for pouring the concrete. Muha told me that he, Muha, had already ordered the concrete to be poured on Monday.” I did not say “That’s how I understand it.” This should be attributed to the interpreter.
43/8-12	“When he called me he gave me the money to buy iron at Home Depot. I did buy the iron, and I took it to -- already at that patio they had some machines and tools, because they had been working on that patio for several days.”	Interpreter error or confusion	“After Muha called me, I went to Muha’s to get money to buy rebar at Home Depot. On Sunday morning I bought the rebar and took it to the job site. Muha told me the night before that at the patio, Seattle Concrete Design had the machines and tools there because Seattle Concrete Design had been working on the patio for several days.”
43/25	“When I hurt myself, when I hurt myself”	Interpreter error	“When I was injured, when I was injured”
44/12	“When I hurt myself”	Interpreter error	“When I was injured”
44/21-25	“I don’t know. I saw the woman coming out. And I don’t know, she saw something,	Answer appears wrong in transcript. Interpreter error, interpreter comments attributed to me.	“I don’t know her name. I saw a woman coming out. And when she saw me

	and then she – he did not say she went back and got the tablecloth or something out. But I don't remember anything, and I don't -- I have never seen that woman before.”		bleeding, she went back and got a tablecloth or something. But I don't remember anything after that. I have never seen that woman before.”
47/10-15	“... or I work on them when they are there. So I basically set and answered the letter. And that's probably why he said he answered within 60 days, What he is saying, whether it is 60 days or not, I am not sure but when I got the letter I responded.”	Interpreter comment and confusion from mixing of pronouns	Omit “or” Add “.” To end the prior sentence. Should be attributed to the interpreter “And that's probably why he said he answered within 60 days, what he is saying,” My Answer should be: “I work on the directly. I sat down and answered the letter. Whether it was 60 days or not, I am not sure, but when I got the letter, I responded.”
50/12	“... a cash.”	Error in interpretation	“... a check.”
51/13	“Yeah”	Misspelling	“Yes”
52/3	“Ibrahim Besirević”	Omitted additional name	“Ibrahim Besirević and Edin Djuderija.”
54/4	“He said he was kicked out.”	Interpreter's confusing use of pronouns.	“Patrick was fired.”
54/23-25, 54/1	“What he said is that I was helping the supervisor with some small jobs. And they	Interpreter error and commentary.	The manager and supervisor at Equity met and decided to allow me to continue at

	basically brought me back so that I could keep job and support myself because I did not have any money.”		the company doing lighter jobs so I could at least be employed and have some income.”
55/18-19	“... but I don't know who the manager was.”	Interpreter omission	“... but I don't know who the property manager was.”
56/11	“... he showed up...”	Error in interpretation	“... and he was present to provide interpreter services.”
56/23 57/4 58/11	“Roslyn”	Misspelling	“Ruslan”
59/23	“Yeah...”	Misspelling	“Yes”
60/8-10	There is a saw that you use for wood, but it's mounted on something -- brasil (Phonetic) - - which I don's know what it is.”	Interpreter's error and comment attributed to answer.	“It was a saw blade that you use for wood, but it was mounted on a basilica [grinder] used for metal cutting.”
60/15	“Yes, it was a circular.”	Omission in interpretation	“Yes, it was a circular blade.”
60/19	“... if...”	Misspelling	“... of...”
60/20-24	Remaining response	Error in interpretation	“I called Muhamed Hadzimuratović and told Muha that I could not cut the siding down to the level where the concrete was to be poured because Muha did not have the necessary tool at the job site. Muha said he

			would call Dule and Dule would bring the tool. About an hour later Dule brought the saw owned by Seattle Concrete Design from the job where Dule was working for Muha.”
61/3-4	“But it was on another job site.”	Interpreter truncated response	“Because Muha and I used it on another job site.”
62/10-14	“What he is saying is that he got paid for the work that he had done for Drago directly from Drago. What kind of arrangement Drago had with Hadzimuratović he does not know because Drago paid also not him but to other people.”	Interpreter’s comment listed as the witness’s answer and pronoun confusion.	“I got paid for the work I had done for Seattle Concrete Design directly from Drago. What kind of arrangement Drago had with Hadzimuratović, I do not know because Drago also paid the other two workers from Seattle Concrete Design.”
64/4-5	“If Drago was to testify that he was working for him, that is not the truth.”	Interpreter’s confusion with pronouns.	“If Drago were to testify that I was working for him, that is not the truth.”
64/20 65/6 65/11 65/13 66/6 66/20 67/8 67/13 69/24 70/14	“Signa”	Misspelling	“Cigna”
65/20	“I think there are	Interpreter truncated response and	“Cigna paid all

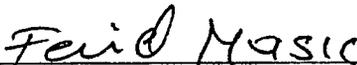
	no costs.”	gave a summary of her understanding rather than interpreting the actual words spoken.	the costs at the time except for the deductible.”
68/21	“remodled”	Misspelling	“remodeled”
71/22-25	“I did not say that he came to my house. What I said that he showed up in the place that is in between the complex of buildings, so in between there, that morning when I was going to pick up the truck from Hadzimuratović, Hadzimuratović’s truck, because I was going to work.”	Interpreter’s confusing use of pronouns and comment attributed to me as part of my answer.	“I did not say Enver came to my house. What I said was that Enver showed up in the lot that is in the middle of the apartment complex, where both Muha and I lived at the time, that morning when I picked up the truck from Hadzimuratović, Hadzimuratović’s truck, because I was going to work.”
72/5-8	“What he was told is that when Enver came, Enver told him that Muha - - which is Hadzimuratović - - told him to take him, to take Enver to the job so that he can see what is being done.”	Interpreter confusing use of pronouns and added commentary	“What I was told by Enver was that Muha wanted me to take Enver to the job site so Enver could see what was being done.”
73/9-13	“What he said was that he came there to see what he was doing and how he was setting whatever, this iron or whatever else.”	Error in interpretation, pronoun confusion	“Enver came to see what I was doing and how I was setting the rebar and the 2 x 4’s.”
73/14-17	“The way I	Interpreter’s comment listed as my	“Enver was not

	<p>understand it, he is saying that he came to look at the job, how it's being done, that in case -- his explanation -- that in the future he does that he knows how to do it."</p>	<p>answer, interpreter pronoun confusion, interpreter truncation of answer by providing a summary rather than a word for word interpretation.</p>	<p>supervising because Enver was not working but was observing and learning. Enver came to look at the job, how it was being done so that in the future Enver knows how to do it either for Seattle Concrete Design or if Enver should start his own business."</p>
<p>75/23-25 76/1-3</p>	<p>"He was with the wheelbarrow. He was bringing the stones, and whatever, as you would put into the pathway prior to putting the steel beams, or whatever and prior to putting. And he said two different kinds. And don't ask me what. Probably larger stones, and then smaller ones that you fill this with."</p>	<p>Interpreter confusion, truncation of response, and lack of familiarity with construction terminology.</p>	<p>"Before I put down the rebar, Dule was leveling the ground and putting in stones to make the form prior to the concrete being poured. Dule used a wheelbarrow to put two different kinds of stones, larger on the outside and small stones to fill in with."</p>
<p>76/18-21</p>	<p>"When I first started working I told him to buy him a machine, to buy a machine for siding cutting, because he did not have. But he didn't, he didn't, and then this is</p>	<p>Interpreter truncated the response</p>	<p>"The grinder for cutting metal had the metal cutting blade removed and replaced with a circular saw blade for cutting wood. This 'improvised' tool was given to me</p>

	what happened.”		to cut siding before the concrete would be poured. I told Muha when I first started working for Seattle Concrete Design to buy a proper saw for cutting siding. But he didn't. He said he would buy it later. Then I was injured using Seattle Concrete Design's 'improvised' tool.”
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Verification of Corrections Under Penalty of Perjury:

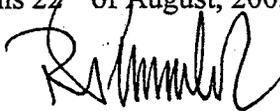
I hereby certify under penalty of perjury of the laws of Washington that I am the deponent Ferid Mašić, that I have had interpreted for me the deposition transcript from English into my language Bosnian/Serbo-Croatian and I have provided the above changes through the interpreter to my lawyer who has put them in this form which has been interpreted to me by the interpreter back into Bosnian. The above corrections are true. Signed at Seattle, Washington this 22nd of August, 2005 under penalty of perjury,



 Ferid Mašić, Deponent and Injured Worker

Declaration of Interpreter

I hereby certify under penalty of perjury of the laws of the state of Washington that I interpreted the deposition of Ferid Mašić to him from English to Bosnian/Serbo Croatian, that he provided me his corrections in Bosnian/Serbo Croatian which I interpreted into English for the lawyer and that I interpreted the foregoing corrections for Mr. Mašić from English back into Bosnian and that I also interpreted the above Verification of Corrections Under Penalty of Perjury from English to Bosnian/Serbo Croatian before he signed the same. My charges for these interpreter services are: \$ 480.00. Signed at Seattle, Washington this 22nd of August, 2005 under penalty of perjury,



 Ruslan Tumbic, Interpreter

1 MS. OWEN: Object to the form of the question.
 2 That tax return was filed electronically by H&R Block.
 3 The client didn't actually file it himself.
 4 Q (By Mr. Simons) With that clarification, do you
 5 remember filing this tax return?
 6 MS. OWEN: Can you let him see what you are asking
 7 about.
 8 Q (By Mr. Simons) (Counseling Handing to Witness).
 9 Do you recognize that?
 10 A This is the taxes that I reported.
 11 Q On the tax return, you stated that, in Schedule C, that
 12 you were the sole owner of Seattle Concrete Design,
 13 correct?
 14 MS. OWEN: Object to the form of the question.
 15 You will not find Mr. Masic's --
 16 MR. SIMONS: Objection; counseling is testifying.
 17 MS. OWEN: He didn't state that.
 18 MR. SIMONS: Ms. Owen, you are --
 19 MS. OWEN: You are asking something else, and you
 20 are asking leading questions which are unfair to anyone
 21 in English much less in translation.
 22 I am only trying to protect my client's rights by
 23 objecting to the form of the question.
 24 MR. SIMONS: Ms. Owen, at this point you have
 25 coached your client a number of times. You have coached

1 him in this question.
 2 MS. OWEN: I haven't coached him.
 3 MR. SIMONS: Let me finish.
 4 MS. OWEN: It says proprietor. It wasn't prepared
 5 by him, Counsel, you know that. You are just trying to
 6 cheat the fellow.
 7 MR. SIMONS: Ms. Owen has just thrown the exhibit
 8 at me.
 9 MS. OWEN: It doesn't say the word sole, which you
 10 said Sole, s-o-l-e, on there anywhere.
 11 MR. SIMONS: Ms. Translator, can you translate the
 12 word sole for the witness, please?
 13 A What am I proprietor of?
 14 Q (By Mr. Simons) Do you recall, in your 2003 tax return,
 15 claiming to be the owner, the sole proprietor of Seattle
 16 Concrete Design?
 17 A He was asking, Can you tell him whose address is this?
 18 Q Once again, I ask the questions, not you, Mr. Masic.
 19 Do you recall claiming to be the sole proprietor of
 20 Seattle Concrete Design in your 2003 tax return?
 21 MS. OWEN: Objection; he has never made that
 22 claim.
 23 Q (By Mr. Simons) You can answer the question.
 24 A I am not the proprietor of Seattle Design. I only
 25 reported that I did work for Seattle Concrete Design.

1 Q Do you recall filling out the Schedule SE in this tax
 2 return that says self-employment tax?
 3 MS. OWEN: Objection; it's clearly not -- it's
 4 clearly filled out by a computer.
 5 MR. WAKEFIELD: How is that clear? And you are
 6 testifying yourself.
 7 MS. OWEN: You are not being fair to a guy. He is
 8 here to answer your questions. Ask him if he was the
 9 proprietor. Ask him how this tax return came to say
 10 that. Ask him if he could speak English with the person
 11 who prepared it. Ask him if he ever saw it before it
 12 was filed.
 13 MR. SIMONS: Ms. Owen, you are obstructing the
 14 deposition.
 15 MS. OWEN: I am not obstructing it. I am
 16 suggesting useful questions so you can find out what you
 17 really need to know. This isn't a perpetuation
 18 deposition.
 19 MR. SIMONS: Ms. Owen, you were wasting my
 20 deposition.
 21 MS. OWEN: Waste it yourself.
 22 Q (By Mr. Simons) Do you recall making a claim of
 23 self-employment tax for your 2003 tax return?
 24 A Me and my wife, what I do, I usually whenever I get the
 25 money there is a tax taken, I report that. My wife and

1 I, my wife knows English better than I do. We went to
 2 fill out these, and we gave them the information and the
 3 only thing I said is that I earned \$3,000 for that year.
 4 And they filled out the forms.
 5 MS. OWEN: Just a minute. I heard my client
 6 distinctly twice refer to W-2s, and you didn't translate
 7 that. You never mentioned that in the answer.
 8 THE INTERPRETER: I am sorry.
 9 MS. OWEN: So I am getting worried that we are not
 10 getting the full answer here.
 11 THE INTERPRETER: I am sorry. He did say they
 12 took the W-2 forms, me and my wife. He talked 15
 13 sentences, and --
 14 MS. OWEN: I think you are not getting the full
 15 testimony. So we need to go sentence by sentence
 16 instead of summary.
 17 So if you could give us the answer sentence by
 18 sentence, and she can interpret it so that the full
 19 answer appears in the record. I don't want to stop Mr.
 20 Simon's ability to ask questions, but I want my client's
 21 full answer on the record.
 22 THE INTERPRETER: I apologize.
 23 Q (By Mr. Simons) Mr. Masic, you went to H&R Block to
 24 have your 2003 --
 25 MS. OWEN: Counsel, I am going to insist at this

1 point that his full answer be allowed to be put into the
 2 record, since it's not yet there, because the full
 3 meaning of what he has said hasn't been conveyed.
 4 MR. SIMONS: Are you able to put his full answer
 5 on the record?
 6 THE INTERPRETER: Except for the W-2s --
 7 MS. OWEN: I would ask my client say the answer
 8 again sentence by sentence and interpreted sentence by
 9 sentence so that we know that the full thing has -- I
 10 don't know if this has occurred before now, but this
 11 time I could recognize it.
 12 THE INTERPRETER: One by one, I said.
 13 MS. OWEN: Okay.
 14 A I went with my wife to do the taxes. Because she
 15 understands it. She speaks English.
 16 Q (By Mr. Simons) Where did you go, what company?
 17 MS. OWEN: You are now asking another question.
 18 We were trying to get the former question in.
 19 MR. SIMONS: Ms. Owen, this is my deposition.
 20 MS. OWEN: I am going to put on the record that we
 21 have now agreed that we were going to put the answer in
 22 sentence at by sentence that was previously said but not
 23 interpreted and put in the full answer, but now you are
 24 renegeing on that.
 25 MR. WAKEFIELD: Why don't you just let the record

1 Andy?
 2 MR. SIMONS: That's fine.
 3 MR. WAKEFIELD: And then everybody can be happy
 4 and we'll see what happens.
 5 MR. SIMONS: That's great.
 6 A I don't know what the name of the company is. I just
 7 know that I have to submit and do the taxes.
 8 We went there and took whatever forms. You know
 9 those. I said, Please say which forms. And he said,
 10 W-2 forms. They took that to the company.
 11 We gave the man who was working there, we gave him
 12 the information. My wife also said I made another
 13 \$3,000 working for somebody else and that somebody else
 14 did not send me the W-2 form. The man asked me which
 15 company, and I gave him the business card of the Seattle
 16 Design. And that's what I said that this is whom I
 17 worked for.
 18 Q (By Mr. Simons) Is that the complete answer? Can we
 19 begin regular questions again?
 20 A Yes, that is what I did. That's it.
 21 Q When you went to -- does H&R Block sound like the place
 22 that you went?
 23 A I know that I was in Wal-Mart at Renton, at Wal-Mart in
 24 Renton.
 25 Q Were you aware that in your 2003 tax return you claimed

1 reflect what happened, and go on?
 2 MS. OWEN: Because my client said more than is
 3 there, and it's not fair to cut him off.
 4 MR. WAKEFIELD: That is because you can't hear
 5 when you are eating that apple so loud.
 6 MS. OWEN: It wasn't translated. He said it
 7 twice.
 8 MR. WAKEFIELD: I find it disrespectful to be
 9 eating an apple like that in the middle of a deposition.
 10 But second of all --
 11 MS. OWEN: You haven't been at the Board where AGs
 12 are eating candy bars while questioning people in front
 13 of a judge.
 14 MR. WAKEFIELD: Let's start showing some respect
 15 for everybody.
 16 Why don't we let the record reflect what happened.
 17 I am sitting here, it sounded like he was done talking,
 18 and so Andy was just -- it may not have been everything
 19 he said before. I would have had a hard time
 20 remembering all I said before. That was his second
 21 answer. So now --
 22 MS. OWEN: That wasn't the full answer. She was
 23 told to go sentence by sentence.
 24 MR. WAKEFIELD: Why don't we stop for a second and
 25 let him go through the whole answer again; is that okay

1 to be the sole proprietor of Seattle Concrete Design?
 2 MS. OWEN: Object to the form of the question.
 3 Go ahead and answer, please.
 4 A I did not know. I had no idea, nor do I understand
 5 things about these taxes.
 6 Q (By Mr. Simons) In 2003, you also made a claim for
 7 unemployment compensation of \$4,626; do you recall what
 8 dates you were claiming unemployment for in 2003, what
 9 time period?
 10 A I don't, no.
 11 Q Regarding the -- do you remember back to June, June
 12 29th, 2003?
 13 A I always remember that.
 14 Q On June 29th, 2003, you listed Enver Mestrovac as a
 15 witness in the case; do you remember that?
 16 MS. OWEN: Obejction; that wasn't created that
 17 day. Is it a trick question? That's the day of the
 18 injury. The form wasn't filled out that day. So the
 19 listing you mentioned as being done on that day was done
 20 on a different day. I don't know if that's what you
 21 meant in your question.
 22 MR. SIMONS: Ms. Owen, if I could continue? Thank
 23 you.
 24 Q (By Mr. Simons) You filed an application for benefits
 25 with the Department in March of 2004, correct?



Rob McKenna
ATTORNEY GENERAL OF WASHINGTON

Labor & Industries Division

900 Fourth Avenue • Suite 2000 • MS TB-14 • Seattle, WA 98164-1012 • (206) 464-7740

July 27, 2005

file no

JUL 2005
Received
ANN PEARL OWEN
P.S.

Ann Pearl Owen
Attorney at Law
2407 - 14th Ave. S.
Seattle, WA 98144

RE: Ferid Masic
Docket No. 04 25602
Claim No. Y-900479

Dear Ms. Owen,

At the conclusion of yesterday's deposition of your client, you told the court reporter that your client would not waive his right to read and examine the transcript prior to certification. You also stated you would require the interpreting services of Vera Brankovan to review the transcript with you and Mr. Masic. You also announced that my office or the Department would be paying for Ms. Brankovan's services to review the transcript with you and your client.

While it is your client's right to review the transcript with an interpreter, he will need to pay for any interpretive services he feels he needs for the task. Neither the Department nor the attorney general's office will pay for Ms. Brankovan to review the transcript with you and your client, nor pay for any other interpretive services beyond those provided at the deposition. If you wish to employ Ms. Brankovan for any interpretive services, you will need to contract with Ms. Brankovan directly.

Sincerely,

Andy Simons
Assistant Attorney General

AJS/jv

cc: Vera Brankovan
Stephan Wakefield

EXHIBIT C

900

APPENDIX C

ORIGINAL

BOARD OF INDUSTRIAL INSURANCE APPEALS
SEATTLE, WASHINGTON

RECEIVED
JAN 06 2006

BOARD OF INDUSTRIAL INSURANCE APPEALS
FOR THE STATE OF WASHINGTON

IN RE FERID MAŠIĆ,

INJURED WORKER,

CLAIM NO. Y900479

Date of injury: 6/29/03

) BIIA NO. 04 25602

) DECLARATION OF FERID MAŠIĆ

) RESPONDING TO SCD'S

) MOTION TO SHOW CAUSE

BY

Ford

Delivered

FERID MAŠIĆ states under penalty of perjury of the laws of Washington as follows:

1. My name is Ferid Mašić. I make these statements on my own personal knowledge.

2. I was born in Yugoslavia where I was raised by my parents in the small village of Ozimica, near Žepče. I grew up speaking Bosnian/Serbo-Croatian. This was the only language we spoke at home. I came to the United States in 1999 but am still not fluent in English. Therefore I am using the services of an interpreter to make this declaration to advise the Board of facts to respond to Seattle Concrete Design's motion to show cause.

3. I remember testifying at the jurisdictional hearing at the Board of Industrial Insurance Appeals on October 25th and November 9th with Vera Bronkovan, Ph.D. serving as interpreter. I remember feeling unsure that all my words were being interpreted accurately because of the experience I had at my deposition when she interpreted.

4. I remember the interpreter did not understand when I used the word "šura" which means "brother-in-law" in Bosnian. This is a very common term and is well known to people who speak Bosnian. I understand that the interpreter is not Bosnian and had left another part of what was Yugoslavia years before the war to come to study in the United States. It is understandable that there

DECLARATION OF FERID MAŠIĆ RE: MTN TO SHOW CAUSE

ANN PEARL OWEN, P.S.
2407 - 14TH AVENUE SOUTH
SEATTLE, WA 98144
(206) 624-8637

1549

1 may be some problems in interpretation. This possibility was raised at the hearing by my lawyer
2 because of my concerns.

3
4 5. I remember being frustrated at the hearings when it appeared that I was saying more words
5 than appeared to be said in English. I do not understand English well enough to know if interpretation is
6 accurate or not. I remember when I said "concrete" at the deposition the interpreter at first said
7 "county." I do not know if this was because I spoke too fast or too quietly or because of my accent. I
8 remember being told by the interpreter at hearing that the Judge said to give short answers to make the
9 interpretation easier. After being told this, I tried to speak in less complicated sentences and not to
10 provide too many details because I thought the Judge only wanted a short answer to the questions asked.

11
12 6. I was asked how I remembered when I got the open envelope with the Department's order
13 from the man who brought it to my apartment door. I tried to explain how I remembered when I got the
14 order in short sentences. At this time, I do not remember the exact words that I used. In Bosnian, the
15 word meaning "died" and the word meaning "dying" sound very similar. In English letters, those words
16 are "umrla" and "umire." When pronounced, they sound very similar to each other. I do not remember
17 which of these words I used in trying to explain how I remember when I received the order. I could
18 have said either one. The reason that I could have said either one is because I remember that weekend
19 as the weekend I received a phone call telling me my mother had died. I know the date of that particular
20 weekend because I will never forget being told my mother died. This upset me very much. I explained
21 this but the word used by the interpreter was "chagrined." The meaning of the English word
22 "chagrined" has been explained to me. I did not say a word that meant I was "chagrined." I do not
23 remember the word I said, but I was trying to describe how upsetting it was and how that is why I
24
25

26 DECLARATION OF FERID MAŠIĆ RE: MTN TO SHOW CAUSE
2

ANN PEARL OWEN, P.S.
2407 - 14TH AVENUE SOUTH
SEATTLE, WA 98144
(206) 624-8637

1550

1 remembered when the order was brought to my apartment door about ten days after the Department had
2 sent it to me.

3
4 7. On the weekend of October 9 and 10 of 2004, I received a telephone call from my uncle
5 Smajo Mašić who lives in Bosnia in Ozimica, my home town. He called me, saying that my father had
6 asked him to call and tell me about my mother. We had a bad telephone connection. Smajo either said
7 my mother "umrla" or "umire." When I heard this, I heard "umrla" which means "died." I became very
8 upset because I believed my mother had died. Because of this, I was very upset that weekend. It was
9 not until my father called me the next day to tell me that my mother had survived the night that I knew
10 that she was alive. My father told me that everyone thought my mother was dying that night but that
11 despite the fact that she had become unconscious and nearly died during the night she had survived.
12 Because of my uncle's call, I thought my mother had died. In both my family here and in my family in
13 Bosnia, we refer to this as the time my mother "died." Since then my mother has been unable to see,
14 remains at home all the time, is very seriously ill with heart and diabetes problems, and is intellectually
15 and emotionally not the same woman that she was before.
16
17

18 8. When I was asked about this at the jurisdictional hearing, I answered in Bosnian trying to
19 explain that I remembered the date because I received the order the same weekend I had been called and
20 told my mother died. At the time I did not know what was interpreted into English and did not know
21 there was a problem either in my choice of words, in my accent or manner of speech, or in the
22 interpreter's understanding.
23
24
25

26 DECLARATION OF FERID MAŠIĆ RE: MTN TO SHOW CAUSE
3

ANN PEARL OWEN, P.S.
2407 - 14TH AVENUE SOUTH
SEATTLE, WA 98144
(206) 624-8637

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1 9. I was so distraught that weekend over the thought of my mother's death that I could not
2 remember whether the man brought the opened envelope to our apartment on October the 9th or the next
3 day on October the 10th. My wife was present with me at our apartment when these things happened.
4

5 10. I received a copy of the documents in Bosnian supporting Seattle Concrete Design's motion
6 to show cause. I faxed them to Bosnia so my father could have an attorney look into them. I received
7 statements from my father and two other people who live in the small village of Ozimica indicating that
8 neither Almir Husičić nor Islam Ešef live in or near Ozimica and that neither knows my family. Copies
9 of those statements prepared by a Bosnian lawyer and signed in the municipal court in Žepče are
10 attached as **Exhibits A & B**. We knew that my mother did not request a statement that she was alive so
11 I asked my father to find out if the statement saying Badema Mašić had requested a statement that she
12 lived in Ozimica as of that date. My father hired a lawyer because it appeared to be a false document.
13 The lawyer's investigation resulted in a decision from the municipal court in Žepče revoking the
14 statement due to irregularities. A copy of that Decision was faxed to me and is attached as **Exhibit C**.
15 Further the lawyer in Bosnia requested information from the Police Department in Žepče to find out if
16 Islam Ešef had ever lived there. Attached as **Exhibit D** is a copy of that request. The lawyer faxed me a
17 copy of the police statement that Islam Ešef had not resided in Ozimica in the last two years, contrary to
18 the representation in the statement that he had. Attached as **Exhibit E** is a copy of the Žepče Police
19 Department Response indicating that Islam Ešef was born in Hajrudinovići [a small village near Foča]
20 and resided in Novo Sarajevo, a new part of the city Sarajevo]. Sarajevo is 150 kilometers, over 90
21 miles, from Žepče. Because we suspected that the statements of Almir Husičić and Islam Ešef which
22 bear apostille certifications hand applied from Sarajevo were false, the attorney also requested the
23
24
25

26 DECLARATION OF FERID MAŠIĆ RE: MTN TO SHOW CAUSE
4

ANN PEARL OWEN, P.S.
2407 - 14TH AVENUE SOUTH
SEATTLE, WA 98144
(206) 624-8637

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1 Municipal Court in Sarajevo to confirm whether or not the statements of Almir Husičić and Islam Ešef
2 had valid apostille certifications. The lawyer faxed me a copy of that request. It is attached as **Exhibit**
3 **F.** The Municipal Court in Sarajevo wrote informing the lawyer that all apostille certifications for
4 documents to be sent abroad are assigned numbers kept by computer and hand seals are not used, as
5 appears on those documents. The lawyer faxed me a copy of that letter a copy of which is attached as
6 **Exhibit G.** The lawyer wrote me explaining that the statements supposedly executed by Almir Husičić
7 and Islam Ešef are obvious forgeries. Attached as **Exhibit H** is a copy of the letter providing this report
8 to me by the lawyer, Dževad Hrnjić.
9

10
11 I received this information in December, but was unable to communicate it to my lawyer until
12 my interpreter returned from a holiday. I am now in the process of trying to get declarations sworn
13 under penalty or perjury about these matters to oppose the motion to show cause. The time and expense
14 taken to get these documents prepared and interpreted and then getting them executed in Bosnia means I
15 cannot state when I will be able to provide declarations that meet Washington standards to oppose the
16 motion.
17

18 I have paid to have documents received by fax from Bosnia interpreted into English. Attached as
19 **Exhibit I** is a copy of the English interpretation of my father Rasid Mašić's statement attached as
20 **Exhibit A.** Attached as **Exhibit J** is a copy of the English interpretation of the joint statement signed by
21 Zemina Mujić and Jusuf Avdić attached as **Exhibit B.** Attached as **Exhibit K** is a copy of the English
22 interpretation of the Decision of the Municipal Court of Žepče indicating the invalidity attached as
23 **Exhibit C.** Attached as **Exhibit L** is a copy of the English interpretation of the lawyers request to the
24 Police Department in Žepče attached as **Exhibit D.** Attached as **Exhibit M** is a copy of the English
25

26 DECLARATION OF FERID MAŠIĆ RE: MTN TO SHOW CAUSE
5

ANN PEARL OWEN, P.S.
2407 - 14TH AVENUE SOUTH
SEATTLE, WA 98144
(206) 624-8637

1553

1 interpretation of the Police Department's response to the lawyer attached as **Exhibit E**. Attached as
2 **Exhibit N** is a copy of the English interpretation of the lawyer's request to the Municipal Court of
3 Sarajevo for verification of the apostille statements of Ešef and Husičić attached as **Exhibit F**.
4 Attached as **Exhibit O** is a copy of the English interpretation of the Municipal Court of Sarajevo's
5 response to the lawyer's request to for verification of the apostille certifications of Ešef and Husičić
6 attached as **Exhibit G**. Attached as **Exhibit P** is a copy of the English interpretation of the lawyer's
7 report to me that the statements are forgeries attached as **Exhibit H**.
8

9
10 11. Proving that these documents are forgeries, untrue and bear false apostille certification has
11 taken considerable time and has caused my elderly father who is already burdened with the care of my
12 mother significant difficulty and me considerable expense.

13 12. I will provide more information when it becomes available.

14 13. My father has informed me that he called one time and spoke with Almir Husičić who told
15 him that he had not signed any statement. He acknowledged that he did not know my family, my mother
16 or my father, and that he had allowed someone who represented himself as a cousin of my wife Dina to
17 take a photocopy of his identification card to help someone who lived in the United States to come and
18 visit his mother. My father told me initially that Mr. Husičić agreed to sign a statement indicating that he
19 had not signed any statement about my mother but that later he indicated that he wanted nothing to do
20 with the matter and would not sign a statement for anyone.
21

22 14. I need additional time to obtain sworn declarations from my father, my uncle, my brother who
23 lives with my father and mother, and the lawyer. It will take some time to get the declarations prepared,
24 interpreted, sent to Bosnia, signed in Bosnia and certified by apostille. I am trying to get this done, but
25

26 DECLARATION OF FERID MAŠIĆ RE: MTN TO SHOW CAUSE
6

ANN PEARL OWEN, P.S.
2407 - 14TH AVENUE SOUTH
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1 was unable to discuss these matters with my lawyer until the interpreter returned to town January 3rd. I
2 do not know how long this will take.

3
4 15. This declaration is also made to inform the Judge why I feel we need to ask questions to
5 Muhamed Hadzimuratović about the documents filed in support of the Motion to Show Cause including
6 his sworn statements, the invalid certificate and the statements supposedly signed by Ešef and Husičić.

7 16. Any statement that I have done anything to threaten or physically harm or intimidate
8 Muhamed Hadzimuratović or anyone else about my industrial injury or this appeal is entirely false.

9 17. Signed at Seattle, Washington this 5th of January 2006.

11 Ferid Mašić
12 FERID MAŠIĆ

13 INTERPRETER'S DECLARATION

14 I am an interpreter who has been found qualified by many courts, including in these appeals by
15 the Industrial Appeals Judge assigned by the Board of Industrial Insurance Appeals and being
16 permanently sworn in Federal Court, to interpret from English to Bosnian/Serbo-Croatian and from
17 Bosnian/Serbo-Croatian to English, which understands. I have translated the above Declaration of Ferid
18 Mašić for Ferid Mašić from English into Bosnian/Serbo-Croatian. Ferid Mašić has acknowledged his
19 understanding of both the translation and the subject matter of this document. I certify under penalty of
20 perjury under the laws of the State of Washington that the foregoing interpreter's declaration is true and
21 correct. Signed in Seattle, Washington this 5th of January 2006.

22
23
24 [Signature]
25 Ruslan Tumbic, Interpreter

26 DECLARATION OF FERID MAŠIĆ RE: MTN TO SHOW CAUSE
7

ANN PEARL OWEN, P.S.
2407 - 14TH AVENUE SOUTH
SEATTLE, WA 98144
(206) 624-8637

APPENDIX D

1
2
3
4
5 **The Honorable Laura Inveen**
6 **Trial Date: March 2, 2007**

7 **IN THE SUPERIOR COURT OF KING COUNTY**
8 **FOR THE STATE OF WASHINGTON**

9 **FERID MAŠIĆ,**

10 **Petitioner,**

11 **v.**

12 **DEPARTMENT OF LABOR &**
13 **INDUSTRIES,**

14 **Respondent.**

15 **NO. 06-2-17514-0 KNT**

16 **INJURED WORKER'S TRIAL BRIEF ON**
17 **TIMELINESS OF APPEAL AND DLI'S**
18 **NONCOMPLIANCE WITH RCW 51.52.050**
19 **WITH ATTACHMENTS AND SUBJOINED**
20 **DECLARATION**

21 The Board of Industrial Insurance Appeals [BIIA] rejected Mr. Mašić's appeal as untimely.
22 Because his appeal was timely, this brief is presented on the requirements set by RCW 51.52.050 on
23 the Department of Labor & Industries [DLI] before any duty on the part of the injured Worker to
24 appeal arises under RCW 51.52.060.

25 Mr. Mašić contends that because in issuing its Notice of Decision in September of 2004 DLI
26 failed to comply with all its requirements under RCW 51.52.050, the mandatory appeal period set by
RCW 51.52.060 never began to run. Thus, because DLI failed to issue its September 2004 Notice of
Decision properly under RCW 51.52.050, Mr. Mašić's appeal was timely and should not have been
dismissed. For the reasons set forth below this Court should reverse and remand awarding fees.

1 *Monroe v. City of Poulsbo*, 109 Wn.App. 672, 677, 37 P.3d 259 (2001).

2 **3. Where Legislature Uses Different Words, It Is Presumed To Mean Different Things.**

3
4 Where the Legislature uses the same word in a statute it is presumed to mean the same
5 thing. *Welch v. Southland Corp.*, 134 Wn.2d 629, 636, 952 P.2d 162 (1998). Likewise, where
6 the Legislature uses different words [as “serve by mail” and “communicated” in RCW
7 51.52.050⁴], they are presumed have different meanings. *State v. Keller*, 143 Wn.2d 267, 278,
8 19 P.3d 1030 (2001), *cert. denied*, 534 U.S. 1130 (2002). Thus, the terms “serve by mail” and
9 “communicated” mean two different things in RCW 51.52.050. This is reinforced by the fact
10 that RCW 51.52.060 uses the phrase “was communicated to” rather than “was mailed to.” Thus
11 under both RCW 51.52.050 and RCW 51.52.060 it is “communication” not “mailing” which
12 triggers the mandatory appeal period. See Section C below.

13
14 **B. “BLACK FACED TYPE” MEANS BOLDED TYPEFACE.**

15 **1. Currently the usual/ordinary meaning of “black faced type” is “boldface type.”**

16
17 The *Random House Unabridged Dictionary*, 2d Edn 1993, gives three definitions for the
18 term “black face”, two theatrical terms [clearly not intended by the Legislature] and one printing
19 term, saying at 217:

20 **black-face**, n. 1. *Theat.* a. an entertainer, esp. one in a minstrel show, made up in the
21 role of a black. b. the makeup, as burnt cork, used in this role: *They performed in*
22 *blackface.* 2. *Print.* A heavy-faced type.

23 Random House defines “boldface” on 235, providing an example, as follows:

24 **bold-face**, n. *adj. v.* -faced, -facing. *Print.* -n. 1. type or print that has thick, heavy lines,
25 used for emphasis, headings, etc.

26 **This is an example of boldface**

1
2 --adj. 2. typeset or printed in boldface. --v.t. 3. to mark (copy) to be set in boldface.

3 See **Exhibit B**, these definitions as printed in the *Random House Unabridged Dictionary*, 2d Ed.

4 Because of the theatrical meaning of the term harks back to days of less linguistic
5 sensitivity, the use of the term "**black face type**" in printing has been almost uniformly replaced
6 by the term "**bold face**" or "**bold font**." More recent dictionaries omit the term "**black face**" as
7 a printing term entirely. See e.g. *The American Heritage Dictionary of the English Language*,
8 4th Ed., Houghton Mifflin Co., (2000) which defines the term "**blackface**" as follows:
9

10 **black·face** *n.* 1. Makeup for a conventionalized comic travesty of Black people,
11 especially in a minstrel show. 2. An actor wearing such makeup in a minstrel
12 show.

13 These two modern dictionaries show the current trend -- elimination of the use of "**black face**" as
14 a printing term and reference to only to the theatrical use of this term.

15 2. "**Black faced type**" never meant capital letters, but always meant "**bold face type**."

17 Examination of historical texts demonstrates that when the use of "**black face type**" was
18 common, it meant what today is called "**boldface**" of "**bold**" font/print/type.
19

20 American English has evolved, in both spelling and meaning, over the last century in the
21 United States just as printing technology has. However, an exhaustive search of the literature
22 over this period demonstrates the term "**black face type**" has never been used to mean *italics*,
23 underscoring, or CAPITAL LETTERS -- three other common printing techniques used to supply
24 emphasis and draw attention to particular words or language.⁵ In all available older references,
25

26 ⁵ The exhaustive research which revealed the references quoted herein found not a single example of the use of the term
"**black face type**" to refer to *italics*, underscoring, or CAPITAL LETTERS.

1 the term "**black face type**" is used to mean what is today uniformly called in printing parlance
2 "**bold face type/font**" or "**bold type.**"
3

4 Melvil Dewey, inventor of the Dewey Decimal system used by all American libraries,
5 used the term "**black face type**" in the 1885 edition of *Dewey Decimal Classification & Relativ*
6 *[sic] Index for Arranging, Cataloging and Indexing Public and Private Libraries and for*
7 *Pamflets [sic], Clippings, Notes, Scrap Books, Index Rerums [sic], Etc.*, (1885), published by the
8 Library Bureau on many pages to describe the **bolded type** used for the headings which were
9 subdivided. Mr. Dewey also used the term in the same fashion in 1899 in *Dewey Decimal*
10 *Classification & Relativ[sic]Index for Libraries*, pub. Library Bureau (1899) on many pages in
11 the same fashion. The United States Government Printing Office published an *Atlas of Maps to*
12 *Accompany the Official Records of the Union and Confederate Armies* [commonly referred to as
13 the *Civil War Atlas*] between 1891 and 1895. The Index to the Atlas uses the term "**black-faced**
14 **type**" to refer to the bolded figures of plate numbers and the term "light-faced type" to refer to
15 non-bolded map numbers.
16
17

18
19 The *Style Manual of the Printing Office* of the New York Public Library, 2d Ed. (1912)
20 demonstrates that "**black face type**" did not mean capitals on page 5 where instructions are
21 given on marking a manuscript to convert regular type face to "**black face type**", saying to use:

22
23 "a wave line for black face; a wavy line with three straight lines for black face capitals."
24

25 Later references demonstrate there was a period when the terms "**black face type**" and
26 "**bold face type**" were used interchangeably. See e.g. Dahl, *Book Production Procedures for*

1 Today's Technology, 1929, 2d Ed., (1929) Inkwell Publishing Company, Cornwall, NY where
2 the following definition appears:

3
4 **Bold face** (or black or black type) A heavy version of a typeface. Some
5 typefaces have a separately designed font set. If the face does not, the fold is
6 actually a "bolded" form of the regular weight.

7 Post & Snodgrass define one printing abbreviation thusly "bf: abbreviation for "bold face" or "black
8 face" type" in *News in Print*, pub. Allyn and Bacon (1961) at 245:

9 By 1963, the United States Government Printing Office discusses typeface used in
10 government publications without reference to the term "**black face type**," listing three weights
11 or degrees of letter thickness, describing them as "bold face, medium-faced, and light face." See
12 *Theory and Practice of Composition*, US Gov't Printing Office (1963), p. 94.

13
14 The Research & Education Association's *Easy Guide to Writing and Publishing Your*
15 *Scientific/Technical Paper*, REA, Piscatawy, NJ (1997), defines "bold face" on p. 38 as follows:

16
17 **Bold face** Type with a conspicuous or heavy face is called **bold face** or **blackface**.
18 [Bolding in the original]

19 In the UK, this terminology has evolved more slowly. See e.g. Prytherch, *Harrod's*
20 *Librarian's Glossary and Reference Book: A Directory of Over 10,200 Terms, Organizations,*
21 *Projects, and Acronyms in the Areas of Information Management, Library Science, Publishing*
22 *and Archive Management*, Ashgate Publishing Ltd., (2005) where the Tenth Edition says at 79:

23
24 "**Heavy-faced type**, also called 'Full face' and "Black face.' This is boldface and
25 is indicated in a MS. by wavy underlining. [Bolding in the original]

1 The modern American trend away from “**black face type**” is reflected by Borowsky,
2 *Opportunities in Printing Careers*, McGraw Hill Professional Pubs. (1998) where there is no
3 definition for “**black face type**” but the following entry appears p. 145:
4

5 **Bold face type.** Type that has wider strokes than normal, resulting in a blacker
6 [appearance]

7 So strong is the change of this term in the United States from “**black face type**” to “**bold**
8 **face type**” that the term “**black face**” does not even appear in Campbell’s *The Designer’s*
9 *Lexicon: The Illustrated Dictionary of Design, Printing and Computer Terms*, Chronicle Books
10 (2003). Campbell’s Wordfinder lists all computer and typography terms alphabetically. Page
11 10 of the Wordfinder list gives all the computer and typography terms from “binary code” to
12 “burn” omitting the term “**black face.**” This page does include the printing term of
13 “**bold(face)**”, reflecting the modern American use shortening “**bold face**” to “**bold.**”
14

15 **3. Washington State is not alone in not removing “black faced type” from its statutes.**
16

17 Despite the sensitivity to modern ethnic issues shown by these texts, the Washington
18 Legislature has not yet amended its statutory language. Like statues in many other states, RCW
19 51.52.050 still contains the phrase “**black faced type,**” as do statutes in two other states.⁶
20

21 **4. DLI’s failure to use “black faced type” means the mandatory appeal period set by RCW**
22 **51.52.060 never started to run and Mr. Mašić’s appeals were timely filed.**

23 Despite this change in terminology up with which our Legislature has not yet caught,
24 there can be little doubt that the Legislature, in using the term “**black faced type**” in RCW
25 51.52.050, meant what today is called “**bold type**” and no the theatrical term “**black face.**”
26

⁶ New York’s 2006 Election Law §2-2-10(z), and West Virginia’s §2-2-10(z)
IW’S TRIAL BRIEF ON DLI NONCOMPLIANCE WITH RCW 51.52.050
Page 9

1 Should this Court have any doubt about the meaning of the undefined term **“black faced**
2 **type”** used in RCW 51.52.050, it should bear in mind that it is obligated to interpret the term in
3 the manner most favorably to Mr. Mašić as the injured worker.
4

5 The Legislature’s intent in requiring DLI to put the language [describing the right for
6 DLI reconsideration and BIIA appeal its decision and the obligation to do so within 60 days of
7 “communication of the order”] in **“black faced type”** was to ensure that these very important
8 rights and wording would be emphasized catching the eye and attention of the injured worker.
9 For the English-fluent injured worker, the **“black faced type”** performs this function so that the
10 worker can read the information and understand it. For the non-English proficient injured
11 worker, the absence of **“black faced type”** is even more important. The absence of **“black**
12 **faced type”** to indicate the importance of the language on appeal rights and responsibilities is a
13 fatal defect preventing persons who cannot read them from knowing the import of these words.
14
15

16 Because DLI included no **black faced type** in informing Mr. Mašić of his appeal rights
17 and responsibilities, it violated RCW 51.52.050. Thus, the 60-day mandatory appeal period
18 under RCW 51.52.060 never began to run.
19

20 **C. “COMMUNICATED” MEANS “MAKE KNOWN” NOT MAILED A COPY TO.”**

21 “Communication” is not merely a one-way process. The essence of communication
22 requires both providing information and the subjective receipt or understanding of that
23 information. Communication is not merely a one-sided process of action taken by one trying to
24 impart information to another, but involves the other side as well, the comprehension of the
25 information by the recipient – not just receipt of a copy of something which the recipient cannot
26

1
2 As the date of communication is the date when appeal periods begin to run, the Court
3 must find evidence of “communication to” the injured worker to calculate the appeal period.

4 Secondly, DLI’s suggested interpretation of “communicated to” as “mailed to” ignores
5 the basic principle of statutory interpretation addressed above that when the legislature uses two
6 different words on a matter that it is presumed that the two different words are chosen because
7 they have different meanings – not the same meaning. As our Supreme Court held in *State v.*
8 *Costich*, 98 P.3d 795, 152 Wn.2d 463 (2004)
9

10 It is firmly established as a matter of statutory interpretation that where the
11 legislature uses different language in the same statute, differing meanings are
12 intended. *State v. Beaver*, 148 Wn.2d 338, 343, 60 P.3d 586 (2002) ('minimum
13 term' and 'release date' have different meanings within chapter 13.40 RCW);
14 *Haley v. Highland*, 142 Wn.2d 135, 147, 12 P.3d 119 (2000) ('separate property'
15 and 'community property' in chapter 26.16 RCW have different meanings).

16 While DLI mailed the Notice of Decision on appeal to Mr. Mašić, the only evidence in
17 the record is that it was not received, understood or “communicated to” him more than 60 days
18 before his BIIA appeal was filed. Thus, Mr. Mašić’s appeal is timely and the Court must
19 remand for hearing on the merits, awarding attorney fees.

20 III. CONCLUSION

21 1. The DLI Notice of Decision on claim does not contain language describing his right to
22 request DLI reconsideration mandated by RCW 51.52.050.

23 2. The DLI Notice of Decision does not contain any mandated language in “**black faced**
24 **type.**” Without the “**black faced type**” required by RCW 51.52.050 to warn the worker that the
25
26

1 language on worker rights and responsibilities is of great importance, DLI's Notice violated the
2 requirements of RCW 51.52.050.

3
4 3. The Notice of Decision itself misstates the period when an appeal obligation starts by
5 stating it begins on "receipt" not when it is "communicated" to the recipient. This misstates the
6 requirements for communication in both RCW 51.52.050 and RCW 51.52.060.

7
8 4. As DLI never met the requirements of RCW 51.52.050, Mr. Mašić's obligation to file
9 a BIIA appeal within 60 days of receipt under RCW 51.52.060 never started.

10
11 4. DLI never "communicated" its orders to Mr. Mašić as required by RCW 51.52.050
12 and RCW 51.52.060 because it sent the Notice of Decision to him in English when he lacked
13 English fluency. Therefore, the 60-day mandatory appeal period set by RCW 51.52.060 never
14 began, making Mr. Mašić's appeals timely.

15
16 5. If DLI met the RCW 51.52.050 requirements, the date Mr. Mašić's appeal period did
17 not begin when DLI mailed the Notice to him.

18
19 6. The record contains no evidence that the Notice of Decision was actually received
20 more than 60 days before the date of Mr. Mašić's appeal.

21
22 7. Mr. Mašić's appeal was permissive, because DLI's Notice of Appeal failed to meet
23 the requirements of RCW 51.52.050, and therefore was timely.

24
25 8. Mr. Mašić actually filed his BIIA appeal less than 60 days after he received the Notice
26 of Decision in question, making it timely under any analysis.

1 Therefore, this Court should reverse and remand for hearing on the merits with an award
2 of attorney fees and costs to Mr. Mašić on appeal on all issues to the Superior Court.
3

4 RESPECTFULLY SUBMITTED this 24th of January 2007.

5 

6
7 Ann Pearl Owen, WSBA# 9033
8 Attorney for Ferid Mašić, Injured Worker

9 **SUBJOINED DECLARATION OF COUNSEL CERTIFYING SERVICE BY ABC**

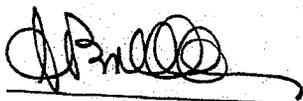
10 Ann Pearl Owen states under penalty of perjury of the laws of Washington as follows:

11 1. The undersigned is counsel of record for Ferid Mašić and makes the following
12 statements based on her having personally performed the research cited in the fore-going brief.

13 2. Attached as **Attachment A** here is a true copy of DLI's Notice of Decision
14 appealed by Mr. Mašić which was admitted as Exhibit 5 as it appears in the Certified Board
15 Appeal Record.

16 3. Attached as **Attachment B** here is earlier DLI's Notice of Decision which was
17 admitted as Exhibit 3 as it appears in the Certified Board Appeal Record.

18 Signed at Seattle, Washington this 24th of January 2007.

19 

20
21 Ann Pearl Owen, WSBA# 9033
22

APPENDIX E

RVDR

OVERLAKE HOSPITAL MEDICAL CTR
1035 116TH AVE NE
BELLEVUE WA 98004-4604

STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES
DIVISION OF INDUSTRIAL INSURANCE
OLYMPIA, WA. 98504

MP

CLAIM ID : Y900479 TYPE : RE
MAILING DATE : 09-28-04 WRKPOS : PM75
INJURY DATE : 06-29-03 UNIT : E
SERVICE LOCATION : SEATTLE
ACCOUNT ID : 0-00
CLASS : 0000

LMT

FERID MASIC
3434 S 144TH ST APT 133
SEATTLE WA 98168

NOTICE OF DECISION

ANY APPEAL FROM THIS ORDER MUST BE MADE TO THE BOARD OF INDUSTRIAL	
INSURANCE APPEALS, P.O. BOX 42401, OLYMPIA WA 98504-2401 WITHIN 60 DAYS	
AFTER YOU RECEIVE THIS NOTICE, OR THE SAME SHALL BECOME FINAL.	

THE DEPARTMENT OF LABOR AND INDUSTRIES HAS RECONSIDERED THE ORDER OF 04-13-04.
THE DEPARTMENT HAS DETERMINED THE ORDER IS CORRECT AND IT IS AFFIRMED.

SUPERVISOR OF INDUSTRIAL INSURANCE

BY BELVA L SHOOK

ACCOUNT MANAGER

CLAIMANT COPY



Industrial Board of Insurance Appeals
In re: Masic
Docket No. 04 25102
Exhibit No. 5
 ADM. 10/25/05 REJ.
Date

ENTH

APPENDIX F



PROVIDER BULLETIN

Published by
Health Services Analysis Section
Olympia, WA 98504-4322

PB 03-01

THIS ISSUE

Interpreter Services

TO:

Audiologists
Chiropractic Physicians
Clinics
Dentists
Freestanding Emergency Rooms
Freestanding Surgery
Hospitals
Interpretive Service Providers
Massage Therapists
Medical Physicians
Nurses
Occupational Therapists
Opticians
Optometrists
Osteopathic Physicians
Panel Exam Groups
Pharmacists
Physical Therapists
Podiatric Physicians
Prosthetists & Orthotists
Psychologists
Radiologists
Self Insured Employers
Speech Pathologists
Vocational Counselors

CONTACT:

Provider Toll Free
1-800-848-0811
902-6500 in Olympia

Paulette Golden
PO Box 44322
Olympia WA 98504-4322
360-902-6299

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http://www.lni.wa.gov/hsa/hsa_pbs.htm

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Purpose

This Provider Bulletin updates payment policies and fee schedules for interpreter services. This bulletin replaces Provider Bulletin 99-09 and the section titled "Interpreter Services" from the "Professional Services" chapter of the July 1, 2002 *Medical Aid Rules and Fee Schedules*. It applies to interpretive services provided to injured workers or crime victims who have limited English language abilities or sensory impairments receiving benefits from:

- The State Fund
- Self insured employers and
- The Crime Victims' Compensation Program.

This policy is effective for dates of service on or after March 1, 2003.

What Is Changing?

- Clarification of the record documentation that must be kept by each interpreter.
- Interpretive services will be paid per minute. It is the department's expectations that an interpreter's workday will generally not exceed 8 hours per day. This expectation is based on the assumption that an interpreter needs to be alert and attentive to provide the highest quality of professionalism and accuracy in their work. Any billed interpreter time that exceeds 8 hours in a workday will be the basis for pre and post payment review.

Document Translation

The insurer may request translation of specific documents. This service may be requested only by the insurer, and must be authorized each time the service is needed. The insurer will not pay for interpreter services performed at the request of the worker.

Billing Requirements – Payment & Fees

Provider Account Numbers

All interpreters must have an individual provider number with the department of Labor & Industries. Interpreters must submit bills to the insurer using his or her own L&I provider account number. An interpreter may designate another provider number (such as a group or clinic) as the payee.

Individual interpreters needing a provider account number must submit a provider application and form W-9 to the department. The Provider Application and Notice can be printed from the Internet at <http://www.lni.wa.gov/hsa/forms/htm>. Providers can also request a provider application by calling the Provider Hotline at 1-800-848-0811 or by calling the department's Provider Accounts Section at: (360) 902-5140.

Submitting Bills

Providers may submit bills electronically or on paper forms.

Electronic Billing

Electronic billing reduces the time for processing and paying bills. Providers who want to bill electronically must submit an "Electronic Billing Authorization" form (F248-031-000) to the department's electronic billing unit. The form can be accessed on the Internet by going to <http://www.lni.wa.gov/hsa/forms/Tables/ElectronicBilling.htm>. The form can also be ordered from the department's warehouse at:

Warehouse

Department of Labor and Industries
PO Box 44843
Olympia, WA 98504-4843

When requesting forms, please specify the form number and the quantity needed.

For more information about electronic billing, contact the department's electronic billing unit at:

Electronic Billing Unit
Department of Labor and Industries
PO Box 44264
Olympia WA 98504-4264
(360) 902-6511 or (360) 902-6512

Paper Billing

Paper bills should be submitted on the green "Statement for Miscellaneous Services" form. These forms are produced in single sheets (F245-072-000) or as a continuous form (F245-072-001), and are available from an L&I field office or from the department's warehouse at the address specified in "Electronic Billing" above. When requesting forms, please specify the form number and the quantity needed.

Charges Billed to the Insurer

Interpreters must bill their usual and customary fees when interpreting for injured workers or crime victims. The insurer will pay the lesser of the interpreter's usual and customary fee, or the fee schedule maximum (See WAC 296-20-010(2)).

Services Billed to the Insurer

Covered Services

The following interpretive services are covered and may be billed to the insurer. Payment is dependent on authorization requirements, service limits and department policy.

Interpreters may bill the insurer for:

- Interpretive services providing language communication between the claimant and a health care or vocational provider.
- Time spent waiting for an appointment that does not begin at its scheduled time (when no other billable services are provided during the wait time).
- Time spent assisting a claimant with the completion of an insurer form.
- Time spent waiting when a worker does not show up for an insurer requested Independent Medical Exam (IME).
- Time spent translating a document at the request of the insurer.
- Miles driven from a point of origin to a destination point and return.

Services Not Covered

The following services are not covered and may not be billed to the insurer:

- Services provided for a denied or closed claim (except for services provided for a claimant's initial visit or for the services associated with a claimant's application to reopen a claim).
- Time spent waiting for an appointment that does not begin at its scheduled time if other billable services are performed during the wait time (e.g. document translation or assisting a claimant with form completion).
- Missed appointments for any service except an insurer requested Independent Medical Exam (IME).
- Personal assistance on behalf of the claimant such as scheduling appointments, translating correspondence, or making phone calls.
- Document translation requested by anyone other than the insurer, including the injured worker.
- Interpretive services provided for communication between an attorney or worker representative and the claimant.
- Travel time and travel related expenses, such as meals. (Some mileage is payable as noted in other sections of this bulletin.)
- Overhead costs, such as for photocopying and preparation of billing forms.

Billing Codes

Interpreters should bill the following codes for interpretive services provided on or after 03-01-03.

Interpreter time that exceeds 8 hours in a workday will be a basis for pre and post payment review.

The 8-hour threshold applies to the combined total of all interpretive services paid per minute (9989M, 9990M, 9991M, 9996M, and 9997M).

The procedure code descriptions and maximum payments are listed below:

Code	Description	Maximum Fee	Code Limits
9989M	Interpretive services provided directly between the health care or vocational provider and the claimant, per minute	\$1.00 per minute	Billed time greater than 8 hours per day will be a basis for review.
9990M	Time spent assisting claimant with completion of insurer form, per minute, outside of the time spent with the provider of health or vocational services.	\$1.00 per minute	
9991M	Wait time for an appointment that does not begin at the scheduled time.	\$0.50 per minute	Billed time greater than 60 minutes will be a basis for review.
9996M	Interpreter "No show" wait time when a worker does not attend an insurer requested IME, per minute	\$0.50 per minute	Billed time greater than 60 minutes will be a basis for review.
9997M	Document translation at insurer request, per minute	\$1.00 per minute	Prior authorization is required for each document translated.
9986M	Interpreter mileage, per mile.	State employees' mileage rate*	Mileage billed beyond 50 miles per day per claim and total mileage beyond 75 miles per day to include all claims, will be a basis for review.

* Interpreters' mileage will be reimbursed at the rate paid to Washington State employees, which is established by the Office of Financial Management. At publication time the mileage rate is \$0.345 per mile.

Billing for Group Services

When interpretive services are provided for two or more claimants concurrently, the time billed must be prorated among the claims. Total time billed for all claims must not exceed the actual time spent providing services.

Example:

An interpreter is interpreting for three (3) claimants at a physical therapy clinic from 9:00 am to 10:00 am. The 3 claimants are simultaneously receiving therapy at different stations. Although the same times (9:00 am to 10:00 am) must be documented for all three claimants, the amount of direct interpretive time billed should be prorated between the 3 claimants; 20 minutes each. If later audited by the department, the documentation should clearly show that there were 3 claimants.

Billing for Mileage

When traveling to a single location to serve multiple claimants, mileage must be prorated among the claims. The mileage proration applies to all claimants for whom the interpreter provides services. Total mileage billed for all claims must not exceed the total miles driven.

Mileage traveled beyond a 50-miles per claimant or 75 miles total per day will be a basis for pre and post payment review.

Example 1:

An interpreter travels from her office to a clinic where she has an 8:30 a.m. appointment with one claimant and a 9:00 a.m. appointment with a second claimant and a 10:00 a.m. appointment with a

third claimant. The interpreter drives 5 miles to the clinic, interprets for the three claimants and drives another 5 miles returning to her office.

The interpreter may bill a maximum of 10 miles for the sum of miles billed for all three claims. The interpreter should bill 4 miles for one claim and three miles each for the other two claims.

Example 2:

An interpreter drives 5 miles from his office to a physician's office and provides interpretive services for a claimant. Following this appointment the interpreter drives 8 miles from the physician's office to a physical therapist's office and provides interpretive services for three claimants receiving group physical therapy services. Following the physical therapy appointment, the interpreter drives 4 miles back to his own office.

The interpreter may bill a maximum of 17 miles total for these claims. The interpreter should bill 5 miles for the first claimant and prorate the remaining 12 miles (four miles each) between the other three claims.

Billing – Type of Service and Appropriate Coding

The following are examples of how to determine the type of service and appropriate billing codes. In addition to these codes, make sure to review the billing instructions outlined in the *Medical Aid Rules and Fee Schedules*.

Example #1 – Determining the Type of Service and Code to Bill

Example Scenario	Time Frames	Type of Service	Code to Bill
Interpreter drives 8 miles from his place of business to interpret for a workers' office visit with the attending physician (AP).	Not applicable	Mileage	Bill 8 units of 9986M
Worker has a 9:30 am scheduled appointment with the AP.	9:30 am to 9:45 am.	15 minutes of wait time.	Bill 15 units of 9991M
Worker is taken into the exam room and examined for 20 minutes. AP leaves room for 5 minutes, returns and writes a prescription for x-rays and medication.	9:45 am to 10:15am	30 minutes of interpretive services	Bill 30 units of 9989M
Interpreter drives 4 miles to meet worker for an appointment for X-rays. This takes 10 minutes. They wait 10 minutes before going in for X-rays, which take 20 minutes.	10:15 am to 11:00 am.	10 minutes of wait time 20 minutes of interpreter services Mileage	Bill 10 units of 9991M Bill 20 units of 9989M Bill 4 units of 9986M
Interpreter drives a few blocks to meet worker at the pharmacy. They wait in line for 5 minutes, and it takes 5 minutes to obtain the prescription.	11:00 to 11:20	5 minutes of interpretive time 5 minutes of wait time Mileage (1 mile)	Bill 5 units of 9989M Bill 5 units of 9991M Bill 1 unit of 9986M
After completing the interpretive services, the interpreter drives 12 miles to his next interpretive appointment	Not applicable	Mileage	Bill 12 units of 9986M
Total Payable Services for the above doctor appointment, subsequent services and mileage		Wait time Interpreter Services Mileage	30 units 9991M 55 units 9989M 13 units 9986M

APPENDIX G



PROVIDER BULLETIN

PB 05-04

THIS ISSUE

**PB 05-04 -
Interpretive Services
Payment Policy
Effective July 1, 2005**

TO:

Ambulatory Surgery Centers,
Audiologists, Chiropractic Physicians,
Clinics, Dentists, Drug and Alcohol
Treatment Centers,
Freestanding Emergency Rooms,
Freestanding Surgery Centers,
Hospitals, Interpretive Services
Providers, IME Exam Groups,
Massage Therapists, Naturopathic
Physicians, Nurses-ARNP,
Occupational Therapists, Opticians,
Optometrists, Osteopathic Physicians,
Pain Clinics, Panel Exam Groups,
Pharmacists, Physicians, Physician
Assistants, Physical Therapists,
Podiatric Physicians, Prosthetists and
Orthotists, Psychologists, Radiologists,
Self-insured Employers, Speech
Therapists & Pathologists, Vocational
Counselors

CONTACT: Provider Hotline
1-800-848-0811

From Olympia 902-6500
Loris Gies: PO Box 4322
Olympia, WA 98504-4322
(360) 902-5161

After July 1, 2005:
Karen Jost PO Box 4322
Olympia, WA 98504-4322
360-902-6803

Fax (360) 902-4249

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Purpose

This Provider Bulletin updates coverage and payment policies for interpretive services as required in WACs 296-20-02700 and 296-23-165. **This bulletin replaces Provider Bulletin's 03-01, 03-10 and 05-01.** The purpose of this bulletin is to notify providers and insurers of the following changes:

- Revised coverage and payment policy.
- Interpretive services provider qualifications.
- Revised interpretive services codes and descriptions.
- New fees for interpretive services.
- Limits on interpretive services.
- Verification of interpretive services requirement.

This policy applies to interpretive services provided for healthcare and vocational services in all geographic locations to injured workers and crime victims (collectively referred to as "insured") having limited English proficiency or sensory impairments; and receiving benefits from the following insurers:

- The State Fund (L&I),
- Self-Insured Employers or
- The Crime Victims Compensation Program.

This coverage and payment policy including new fees, codes, service descriptions, limits and provider qualification standards is effective on and after July 1, 2005.

Policy Does Not Apply to Interpretive Services for Legal Purposes

This coverage and payment policy does not apply to interpretive services for injured workers or crime victims for legal purposes, including but not limited to:

- Attorney appointments.
- Legal conferences.
- Testimony at the Board of Industrial Insurance Appeals or any court.
- Depositions at any level.

Payment in these circumstances is the responsibility of the attorney or other requesting party(s).

Why Are Interpretive Services Covered?

The United States Department of Health and Human Services Office of Civil Rights concluded that inadequate interpretation for patients with Limited English Proficiency is a form of prohibited discrimination on the basis of national origin under Title VI of the Civil Rights Act of 1964. More information about the Civil Rights Act is available on the web at <http://www.hhs.gov/ocr/lep/>.

The Washington Workers' compensation law under RCW 51.04.030 (1) requires the provision of prompt and efficient care for injured workers without discrimination or favoritism. Therefore, interpretive services are covered so injured workers who have limited English proficiency or sensory impairments may receive prompt and efficient care.

Information for Healthcare and Vocational Providers

Insured individuals with limited English proficiency or sensory impairments may need interpretive services in order to effectively communicate with you. Interpretive services do not require prior authorization.

Under the Civil Rights Act, as the healthcare or vocational provider, you determine whether effective communication is occurring. If assistance is needed, then you:

- Select an interpreter to facilitate communication between you and the insured.
- Determine if an interpreter (whether paid or unpaid) accompanying the insured meets your communication needs.
- May involve the insured in the interpreter selection. **NOTE: Under the Civil Right Act, hearing impaired persons have the right to participate in the interpreter selection.**
- Should be sensitive to the insured's cultural background and gender when selecting an interpreter.

You may also want to refer to information at <http://www.phyins.com/pi/risk/faq.html> regarding use of interpretive services.

Why Can't L&I Pay Interpretive Services a Minimum Fee?

Only services which are actually delivered to injured workers can be paid. With a minimum fee, the insurer might make part of the payment for undelivered services. This would violate the department's responsibility to employers and injured workers who pay the industrial insurance premiums.

Further, under WAC 296-20-010(5) the insurer can pay only for missed insurer arranged IME appointments. If there was a minimum interpretive services fee, the insurer might pay for missed appointments arranged by healthcare or vocational providers or by the insured. This would conflict with the WAC. However, mileage is payable for missed and/or IME no show appointments since the mileage service was an incurred prior to the missed appointment.

Some Services Don't Require Prior Authorization

Direct interpretive services (either group or individual) and mileage do not require prior authorization on open claims. Providers can check claim status with the insurer prior to service delivery.

Services prior to claim allowance are not payable except for the initial visit. If the claim is later allowed, the insurer will determine which services rendered prior to claim allowance are payable.

Only services to assist in completing the reopening application and for an insurer requested IME are payable unless or until a decision to reopen is made. If the claim is reopened, the insurer will determine which other services are payable.

Services at Insurer Request and/or Requiring Prior Authorization

IME Interpretation Services

When an IME is needed, the insurer will schedule the interpretive services. Prior authorization is not required. The insured may ask the insurer to use a specific interpreter. However, only the interpreter scheduled by the insurer will be paid. Interpreters who accompany the insured, without insurer approval, will not be paid nor allowed to interpret at the IME.

IME No Shows

For State Fund claims, authorization must be obtained prior to payment for an IME no show. For State Fund claims contact the Central Scheduling Unit supervisor at 206-515-2799 after occurrence of IME no show. Per WAC 296-20-010 (5) "No fee is payable for missed appointments unless the appointment is for an examination arranged by the department or self-insurer."

Document Translation

Document translation services are only paid when performed at the request of the insurer. Services will be authorized before the request packet is sent to the translator.

Fees, Codes, Service Descriptions and Limits

The hourly fee for direct interpretive services (either group or individual) is being adjusted from \$60 per hour to \$48 per hour. The IME no show fee is a flat fee of \$48. The mileage rate increased January 1, 2005 to 40.5¢ per mile (the state employee reimbursement rate). Document translation fee is now by report.

Limits in the L&I bill processing system will automatically deny services exceeding the maximum limit on a specific code or combination of codes. The following fees, service descriptions and limits on services apply to services on and after July 1, 2005:

Code	Description	How to Bill	Maximum Fee	LCR Code Limits
9988M	Group interpretation direct services time between two or more client(s) and healthcare or vocational provider, includes wait and form completion time, time divided between all clients participating in group, per minute	1 minute equals 1 unit of service	\$0.80 per minute	Limited to 480 minutes per day. Does not require prior authorization.
9989M	Individual interpretation direct services time between one insured client and healthcare or vocational provider, includes wait and form completion time, per minute	1 minute equals 1 unit of service	\$0.80 per minute	Limited to 480 minutes per day. Does not require prior authorization.
9986M	Mileage, per mile	1 mile equals 1 unit of service	State employee reimbursement rate (as of January 1, 2005 rate is 40.5¢ per mile)	Does not require prior authorization. Mileage billed over 200 miles per claim per day will be reviewed.
9996M	Interpreter "IME no show" wait time when insured does not attend the insurer requested IME, flat fee	Bill 1 unit only	Flat fee \$48	Payment requires prior authorization - Contact Central Scheduling Unit after no show occurs. Contact number: 206-515-2799. Only 1 no show per claimant per day.
9997M	Document translation at insurer request	1 page equals 1 unit of service	BR	Requires prior authorization, which will be on translation request packet. Services over \$500 per claim will be reviewed.

Covered and Non-covered Services

Covered Services

The following interpretive services are covered. When billed, payment is dependent upon service limits and department policy. Interpretive services providers may bill the insurer for:

- Interpretive services which facilitate communication between the insured and a healthcare or vocational provider.
- Time spent waiting for an appointment that does not begin at time scheduled (when no other billable services are being delivered during the wait time).
- Assisting the insured to complete forms required by the insurer and/or healthcare or vocational provider.
- A flat fee for an insurer requested IME appointment when the insured does not attend.
- Translating document(s) at the insurer's request.
- Miles driven from a point of origin to a destination point and return.

Non-covered Services

The following services are not covered and may not be billed to nor will they be paid by the insurer:

- Services provided for a denied or closed claim (except services associated with the initial visit for an injury or crime victim or the visit for insured's application to reopen a claim).
- Missed appointment for any service other than an insurer requested IME.
- Personal assistance on behalf of the insured such as scheduling appointments, translating correspondence or making phone calls.
- Document translation requested by anyone other than the insurer, including the insured.
- Services provided for communication between the insured and an attorney or lay worker legal representative.
- Services provided for communication not related to the insured's communications with healthcare or vocational providers.
- Travel time and travel related expenses, such as meals, parking, lodging, etc.
- Overhead costs, such as phone calls, photocopying and preparation of bills.

Billing Requirements for Interpretive Services

Interpretive services providers use the miscellaneous bill form and billing instructions. These forms and instructions are available upon request from the Provider Hotline at 1-800-848-0811 or in Olympia at 360-902-6500. The Medical Aid Rules and Fee Schedules (MARFS) billing information is available online on the department's website at <http://www.LNI.wa.gov/ClaimsIns/Providers/Billing/FeeSched/2004/2004.asp>.

Billing for Direct Services

Individual interpretation services

Services delivered for a single client include interpretation performed with the insured and a healthcare or vocational provider, form completion and wait time. Only the time spent actually delivering these services may be billed. Time is counted from when the appointment is scheduled to begin or when the interpreter arrives, whichever is later; to when the services ended. If breaks in service occur due to travel between places of service delivery, this time must be deducted from the total time billed. See the Billing Examples for further information.

Group interpretation services

When interpretive services are delivered for more than one person (regardless of whether all are injured workers and/or crime victims), the time spent must be pro-rated between the participants. For example, if 3 persons are receiving a one hour group physical therapy session at different stations and the interpretive services provider is assisting the physical therapist with all 3 persons, the interpretive services provider must bill only 20 minutes per person. The time is counted from when the appointment is scheduled to begin or when the interpreter arrives, whichever is later; to when the services end. See the Billing Examples for further information.

At the department, the combined total of both individual and group services is limited to 480 minutes (8 hours) per day. Time billed over this daily limit will be denied.

Billing for IME No Show

Per WAC 296.20.010 (5) only services related to no shows for insurer requested IME's will be paid. The insurer will pay a flat fee for an IME no show. Mileage to and from the appointment will also be paid.

Billing for Mileage and Travel

Insurers will not pay interpretive service providers for travel time or travel expenses such as hotel, meals, parking, etc. Interpretive service providers may bill for actual miles driven to perform interpretive services for an individual client or group of clients. When mileage is for services to more than one person (regardless of whether all are injured workers and/or crime victims), the mileage must be pro-rated between all the persons served. Mileage between appointments on the same day should be split between the clients. Mileage is payable for missed or no show appointments. See the Billing Examples for further information. **At the department, mileage over 200 miles per day will be reviewed for necessity, such as rare language and/or remote location.**

Document Translation Services

Document translation is an insurer generated service. Payment will be made only if the translation was requested by the insurer. If anyone other than the insurer requests document translation, the insurer must be contacted before services can be delivered. **At the department, document translation over \$500 will be reviewed by the insured's claim manager.**

Usual and Customary Charges Billed to the Insurer

All providers must bill their usual and customary fees when submitting bills to the insurer for services provided to injured workers or crime victims. The insurer will pay the lesser of the usual and customary charges or the department's fee schedule maximum (see WAC 296-20-010(2)).

Submitting Bills

The department programs and Self-insured employers have different billing mechanisms. Providers should contact the self-insured employer directly with any questions regarding billing procedures on a self-insured claim. Providers may send bills electronically or on paper forms depending on the insurer billed.

Electronic Billing

For State Fund claims, electronic billing reduces the time for bill processing and payment. To use electronic billing, providers must submit an "Electronic Billing Authorization" form (F248-031-000) to the *State Fund's* electronic billing unit. Forms are available online at <http://www.LNI.wa.gov/ClaimsIns/Providers/Billing/BillLNI/Electronic/default.asp>. This form can also be ordered from the department's warehouse (see information below). Providers interested in electronic billing can obtain more information by contacting:

Electronic Billing Unit
Department of Labor and Industries
PO Box 44263
Olympia WA 98504-4263
360-902-6511

The *Crime Victims Program* does not have electronic billing available.

Paper Billing

State fund and self-insurers accept bills on the green "Statement for Miscellaneous Services" form. These are available as single sheets (F245-072-000) or continuous form (F245-072-001). The *Crime Victims Program* accepts bills on the pink "Statement for Crime Victim Misc Svces" form (F800-076-000). All of these forms can be obtained from any L&I field office, downloaded at <http://www.LNI.wa.gov/ClaimsIns/Providers/FormPub/Forms/default.asp> or ordered from the warehouse at:

Warehouse
Department of Labor and Industries
PO Box 44843
Olympia WA 98504-4843

When requesting forms, please indicate the form number and quantity needed.

How Do Providers Send Bills to the Insurer(s)?

Completed paper bills should be sent to:

State Fund

Department of Labor and Industries
PO Box 44269
Olympia WA 98504-4269
360-902-6500
1-800-848-0811

Self-insurer

Varies -To determine insurer call 360-902-6901 OR See Self-insurer list at <http://www.LNI.wa.gov/ClaimsIns/Providers/billing/billSIEmp/default.asp>

Crime Victims Program

Department of Labor and Industries
PO Box 44520
Olympia WA 98504-4520
360-902-5377
1-800-762-3716

Billing Examples

Example # 1-- Individual Interpretive Services

Example Scenario	Time Frames	Type of Service	Code and units to Bill
Interpreter drives 8 miles from his place of business to the location of an appointment for an insured.	Not applicable	Mileage	Bill 8 units of 9986M
Insured has an 8:45 AM appointment. The interpreter and insured enter the exam room at 9:00 AM. The exam takes 20 minutes. The healthcare provider leaves the room for 5 minutes and returns with a prescription and an order for x-rays for the insured. The appointment ends at 9:30 AM.	8:45 AM To 9:30 AM	Individual interpretive services	Bill 45 units of 9989M
Interpreter drives 4 miles to x-ray service provider	Not applicable	Mileage	Bill 4 units of 9986M
Interpreter and insured arrive at the radiology facility at 9:45 AM and wait 15 minutes for x-rays, which takes 15 minutes. They wait 10 minutes to verify x-rays are okay.	9:45 AM to 10:25 AM	Individual interpretive services	Bill 40 units of 9989M
Interpreter drives 2 miles to pharmacy and meets insured.	Not applicable	Mileage	Bill 2 units of 9986M
The insured and the interpreter arrive at the pharmacy at 10:35 AM and wait 15 minutes at the pharmacy for prescription. The interpreter explains the directions to the insured which takes 10 minutes.	10:35 AM To 11 AM	Individual interpretive services	Bill 25 units of 9989M
After completing the services, the interpreter drives 10 miles to the next interpretive services appointment. The interpreter splits the mileage between the insured and the next client if this is not the last appointment of the day. (10 divided by 2 =5).	Not applicable	Mileage	Bill 5 units of 9986M
Total billable services for the above interpretive services.		Individual Interpretive Services Mileage	110 units 9989M 19 units 9986M

Example #2 --Group Interpretive Services

Example Scenario	Time Frames	Type of Service	Code and units to Bill
Interpreter drives 9 miles from his place of business to the location of an appointment for three clients--two insured by state fund and another client. (9 divided by 3=3).	Not applicable	Mileage	Bill 3 units of 9986M to each state fund claim
The three clients begin a physical therapy appointment at 9 AM. The interpreter circulates between the three clients during the appointment which ends at 10 AM.	9 AM to 10 AM	Group interpretive Services	Bill 20 units of 9988M to each state fund claim
After completing appointment the interpreter drives 12 miles to next appointment location. The interpreter splits the mileage between the three clients and the next client if this was not the last appointment of the day. (12 divided by 2 =6; 6 divided by 3 = 2). If it is the last appointment of the day, the interpreter splits the total mileage by 3 (12 divided by 3 =4).	Not applicable	Mileage	Bill 2 units of 9986M to each state fund claim
Total billable services for the above interpretive services.		Group Interpretive Services Mileage Billed to EACH state fund claim	20 units 9988M 5 units 9986M

Documentation Requirements for Interpretive Service

Documentation for Interpretation Services

Direct interpretive services are documented on either the new L&I "Interpretive Services Appointment Record" form F245-056-000 **OR** the interpretive services provider's or language agency's encounter form. The L&I form is in this bulletin. The form can also be ordered from the L&I warehouse or downloaded at <http://www.LNI.wa.gov/ClaimsIns/Providers/FormPub/Forms/default.asp>.

Provider or language agency encounter forms used in lieu of the department form **must** have the following information:

- Claim number, claimant full name and date of injury in upper right hand corner of form.
- Interpreter name and agency name (if applicable).
- Encounter (appointment) information including:
 - Healthcare or vocational provider name
 - Appointment address (location)
 - Appointment date
 - Appointment start time
 - Interpreter arrival time
 - Appointment completion time
 - If a group appointment, total number of clients (not including healthcare or vocational providers) participating in the group appointment.
- Mileage Information including:
 - Miles from starting location (include street address) to appointment
 - Miles from appointment to next appointment or return to starting location (include street address)
 - Total miles
- Verification of appointment by healthcare or vocational provider
 - Printed name and signature of person verifying services
 - Date signed
 - **NOTE: The provider's encounter form must be signed by the healthcare or vocational provider or their staff to verify services including mileage for missed or IME no show appointments.**

Documentation for Translation Services

Documentation for translation services must include:

- Date of Service
- Description of document translated (letter, order and notice, medical records)
- Total number of pages translated
- Total words translated
- Target and Source Languages

Documentation Sent Separately from Bills

Do not staple documentation to bill forms. Send documentation separately from bills to:

State Fund

Department of Labor and Industries
PO Box 44291 Olympia, WA 98504-4291
360-902-6500, 1-800-848-0811
FAX 360-902-5445

Crime Victims Program

Department of Labor and Industries
PO Box 44520 Olympia, WA 98504-4520
360-902-5377, 1-800-762-3716
FAX 360-902-5333

APPENDIX H



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Interpreter Services

About Do's & Don'ts Becoming Bill L&I Fee Codes

Look up an interpreter - Find an interpreter for an injured Worker. [Contact Us](#)

To find an interpreter for a crime victim, call 1-800-762-3716 or 360-902-5386.

Interpreting for an injured worker or a crime victim is covered by L&I and does not require prior authorization. The doctor or vocational provider can determine if the patient needs communication assistance.

Do's & Don'ts - What you can and cannot do as an interpreter. As an interpreter for an injured worker or crime victim, learn what is allowed.

Becoming - How to become an interpreter.

- Be certified as an interpreter.
- Get an L&I provider account number.
- Also, how to update your status or other account information.

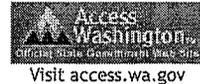
Bill L&I - How to bill L&I for your services. Information on how to bill L&I, what is covered and what forms to use.

Fee Codes - Use these codes and policies to bill L&I. Use the codes on this page to bill L&I or the self-insurer. There is also a list of what is not covered and a page of [sample billing scenarios](#).

If you have questions, please contact [Cecilia Maskell](#) or call 360-902-5161.



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Interpreter Lookup Service

Some interpreters are listed more than once because they work for several language agencies.

Contact Us

If you can't locate an interpreter in your area, broaden your search - interpreters are willing to work in other areas occasionally.

No match found for that search, please try again

Search for an Approved Interpreter

Language

Location or or

Last name

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Search for an Approved Interpreter

Language

Location or

Last name

Search Results below may include additional locations because the interpreter has indicated they are available to work in the location you selected.

Search Results: Found 40 Intrepreters

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Results sorted by: City, A to Z

Provider Name	City	Phone Phone	Alternate Phone
ADEE MERIMA (INTERPRETER)	BELLEVUE	425-453-9890	888-352-9890
AMIR ARSLANAGIC (INTPR)	BELLEVUE	425-453-9890	888-352-9890
BASIC DENIS (INTERPRETER)	BELLEVUE	425-453-9890	888-352-9890
COLEMAN JASMINA S (INTPR)	BELLEVUE	888-462-0500	
COLIC ZLATKO (INTERPRETER)	BELLEVUE	425-453-9890	888-352-9890
DILBEREVIC SALMA (INTERPRETER)	BELLEVUE	425-238-7794	
FATKIC INDIRA (INTERPRETER)	BELLEVUE	425-453-9890	888-352-9890
HUSAROVIC HIDAJETA (INTERPRETE)	BELLEVUE	425-453-9890	888-352-9890
JURIC ZORICA (INTERPRETER)	BELLEVUE	425-702-8361	
JURIC ZORICA (INTERPRETER)	BELLEVUE	425-453-9890	888-352-9890



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Last name

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Search Results: Found 40 Intrepreters

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Results sorted by: City, A to Z

Provider Name	City	Phone Phone	Alternate Phone
JURIE ZORICA (INTERPRETER)	BELLEVUE		425-985-2448
KOSTELAC ZORA	BELLEVUE	425-453-9890	
KOSTOVIC DOVOR (INTERPRETER)	BELLEVUE	206-849-7333	
KOSTOVIC NOVICA	BELLEVUE	206-227-3656	
MILOVANOVIC BRANO (INTERPRETER)	BELLEVUE	425-453-9890	888-352-9890
MILOYANOVIC BRANO (INTERPRETER)	BELLEVUE	509-363-0594	
YMERAGA FERHAT (INTERPRETER)	BELLEVUE	425-453-9890	888-352-9890
ZAHIROVIC KATHERINA	BELLEVUE	425-453-9890	888-352-9890
KOSTOVIC NOVICA(INTPR)	BLACK DIAMOND	206-248-5220	206-227-3656
TUMBIC RUSLAN	EDMONDS	206-540-8944	



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Last name

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Search Results: Found 40 Intrepreters

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Results sorted by: City, A to Z

Provider Name	City	Phone Phone	Alternate Phone
ALJIC MIDHAT (INTERPRETER)	FEDERAL WAY	206-334-4652	
JURIC ZORICA (INTERPRETER)	REDMOND	425-985-2448	925-702-8361
JURIC ZORICA (INTERPRETER)	RENTON	206-856-4650	
KOSTOVIC DAVOR (INTERPRETER)	RENTON	206-856-4650	
VUJINOVIC VANYA (INTERPRETER)	RENTON	206-856-4650	
VUJINOVIC VANYA (INTERPRETER)	RENTON	206-856-4650	
ARSLANAGIC AMIR (INTERP)	SEATTLE	206-214-8948	
COLEMAN JASMINA	SPOKANE		
MILOVANOVIC BRANO	SPOKANE		
PERKOVIC EDINA	SPOKANE		509-710-5710



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Search Results: Found 40 Intrepreters

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Provider Name	City	Phone Phone	Alternate Phone
RASIC ELMA (INTPR)	SPOKANE		
MILOVIC NATASHA (INTERPRETER)	TACOMA	253-851-8255	
HADZIC HUSO (INTER)	TUKWILA	206-390-8467	
TUMBIC RUSLAN (INTERPRETER)	TUKWILA	206-540-8944	
BRADVIC DRAGAN (INTERPRETER)	VANCOUVER	360-896-3881	
COLIC ZLATKO (INTERPRETER)	VANCOUVER	360-896-3881	
CONNER NADA (INTERPRETER)	VANCOUVER	360-871-4147	
FATKIC INDIRA (INTPR)	VANCOUVER	360-896-3881	
HRUSTIC ADVIJA (INTERPRETER)	VANCOUVER	360-566-0492	
HUSEINAGIC BELMA (INTERPRETER)	VANCOUVER	360-896-3881	



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APPENDIX I

Department of Labor and Industries
315 5th Avenue South, ST. 200
Seattle, Wa 98104

From: Ferid Masic
3434 So. 144 St # 133
Tukwila, Wa 98168

Claim # Y900479

To: Alicia Squibb and Ted Carlson
Fax: 206 515 2812

Dear Alicia,

I am authorizing Ruslan Tumbic, interpreter for Bosnian language, to exchange information about my injury, treatment and/or any other information regarding a status of my claim. I do apologize for not being able to contact Mr. Carlson in a timely manner, the reason being my non-fluency in English language. I presently have pain in left arm and leg (where surgery was performed) and would like to continue treatment and therapy.

Asking you to take this in consideration, I am sending my

Regards

Ferid Masic
Ferid Masic

P.S. Mr. Tumbic, pager number is 206 540 8944

Board of Industrial Insurance Appeals	
In re:	<i>Masic</i>
Docket No.	<i>04 25602</i>
Exhibit No.	<i>2</i>
<input checked="" type="checkbox"/> ADM	<i>10/25/05</i> <input type="checkbox"/> REJ.
	Date

EXH
2

APPENDIX J

3. Calls the requesting person to notify him or her that interpretive services are authorized, and give a reminder that interpreters will not be reimbursed without an L&I provider number for interpretive services.
4. Sends the medical and/or vocational provider a letter (see Attachment 10.30-A) confirming the authorization, with copies to the worker, employer, and interpreter, if known.
5. On AUTH, enters the appropriate interpreter services package code, including the date span for the period authorized.

Package 115	Interpreter Services / Package includes all medical and vocational interpretive services
Package 116	Interpreter Services / IME "No Shows"

6. Periodically reviews the need for interpretive services.

IF DENYING INTERPRETIVE SERVICES:

7. Documents the phone calls and decision and marks a "Y" to send a copy to the file.
8. Calls the requesting person to notify them of the denial and explain the reasons.
9. Sends the worker a letter confirming the denial and explaining the reasons. Sends copies to the attending doctor, vocational counselor (if assigned), employer and interpreter, if appropriate.
10. On AUTH, denies the appropriate interpreter services package code, and includes the appropriate date spans.

Package 115	Interpreter Services / Package includes all medical and vocational interpretive services
Package 116	Interpreter Services / IME "No Shows"

11. On CLOG, creates a message that interpretive services have been denied and the reason for the denial.

TASK 10.30-B

MEDICAL TREATMENT ADJUDICATOR

Section: Provider Information **Effective:** 9-1-98

Title: Paying for Interpretive Services **Cancels:** None

See Also: WAC 296-23-165 (miscellaneous services)
WAC 296-23-255 (conditions for accompaniment)
Policy 13.11 (accompaniment during IMEs)

Approved by:



Georgia C. Moran, Program Manager for Claims Administration

When receiving a bill for interpretive services, the medical treatment adjudicator:

1. **Verifies that the bill includes all required records:**
 - Worker's name
 - Claim number
 - Language of interpretation
 - Date(s) of service provided
 - Name of medical or vocational services provider
 - Purpose of provider appointment
 - Medical or vocational provider's signature
 - Interpreter's signature
- 1a. **If the bill is incomplete, returns the bill to the interpreter to complete and resubmit.**
2. **On LINIS, verifies that the adjudicator has authorized interpretive services. If not, contacts the adjudicator to determine whether or not the service is authorized.**
3. **If the adjudicator authorizes the service, allows the payment.**
 - 3a. **If the adjudicator is not authorizing the service, denies the payment.**

Letter Authorizing Interpretive Services

(date)

Claim Number:

(name of medical or vocational provider)
(address)

Dear (name of medical or vocational provider):

The department was recently notified that (worker's name) needs interpretive services to assist with medical or vocational appointments.

I am authorizing interpretive services provided by (interpreter's name and phone) from (date) to (date) only for medical or vocational services under this claim. If (worker's name) needs interpretive services beyond this time, please contact me for further authorization.

The department does not schedule interpreters for medical or vocational appointments. It is your responsibility to arrange for an interpreter for these appointments.

Sincerely,

(name), Claim Manager
(area code / phone number)

cc: Worker
 Employer
 Interpreter
 (Medical or Vocational Provider: whichever is not the addressee)

APPENDIX K



NOTIFICACION DE TIEMPO PERDIDO

Unit	Work Position
Número del reclamo	
Fecha de la solicitud	
Fecha de la lesión	

Instrucciones para el trabajador: Esta solicitud para la compensación por tiempo perdido, tiene que ser completada por Ud. y su doctor antes de poder considerarla para recibir beneficios: Si debido a la lesión sufrida en su trabajo, no puede trabajar y su empleador no le está pagando su salario:

- 1.) Complete la declaración del trabajador, la fecha y su firma.
- 2.) Lévele el formulario a su médico para que complete la declaración del doctor.

Instrucciones para el doctor: Después de completar este formulario, por favor firmelo y envíelo a la dirección de arriba.

Declaración del trabajador

Debido a una lesión/enfermedad ocupacional relacionada con el trabajo, no he trabajado ni he podido trabajar desde / / hasta / / (Es decir, Ud. no ha realizado ningún trabajo - remunerado o sin remunerar - tales como trabajo voluntario, empleo por cuenta propia o por servicios sociales (COPEs o CHORE).

Regresé/regresaré a trabajar el día <u> </u> / <u> </u> / <u> </u>	Estoy trabajando <u> </u> Horas/Día	Estoy trabajando <u> </u> Días/Semana	Mi tarifa de pago es: \$ <u> </u> dólares por <input type="checkbox"/> Hora <input type="checkbox"/> Día <input type="checkbox"/> Semana <input type="checkbox"/> Mes
---	--------------------------------------	--	---

He solicitado los siguientes beneficios: Ninguno Estampillas para la comida solamente Beneficios del seguro social Desempleo Otros programas de asistencia pública

En el día que se lesionó, ¿Estaba su empleador pagando alguna parte del seguro médico, dental y/o de la vista de Ud. y/o su familia? o ¿Le proveía vivienda, comida y/o combustible (servicios públicos)? Sí No

¿Continúa recibiendo estos beneficios? Sí No Fecha en que terminaron los beneficios / /

Con mi firma estoy certificando que: Entiendo que si hago una declaración falsa sobre mis actividades o mi condición física, tendré que devolver mis beneficios y podría afrontar sanciones civiles o criminales. Entiendo que tengo que comunicarme de inmediato con mi gerente de reclamo, si realizo cualquier tipo de trabajo (remunerado o no), si mi doctor me da de alta para trabajar, si estoy encarcelado o si hay algún cambio en la custodia legal de mis hijos.

Nº de teléfono	Fecha	Firma del trabajador
----------------	-------	----------------------

Declaración del doctor

Diagnóstico por lesión o enfermedad ocupacional relacionada con el trabajo

Por la condición mencionada arriba, yo certifico que este paciente no ha podido realizar ningún trabajo - remunerado o no - Desde / / hasta / /

Este paciente puede regresar a trabajar el día: / / - O - Espero darle de alta para regresar a trabajar el día: / /

Enumere los resultados médicos objetivos demostrando que este paciente no puede regresar a trabajar debido a esta condición relacionada con el trabajo.

Por favor escriba sus **restricciones específicas** para este paciente debido a esta lesión:

Estas restricciones son:	<input type="checkbox"/> Temporales <input type="checkbox"/> Permanentes	¿ Ha mejorado lo máximo posible la condición(es) del paciente debido a esta lesión? <input type="checkbox"/> Sí <input type="checkbox"/> No <input type="checkbox"/> Indeterminado
	<input type="checkbox"/> Indeterminadas	
¿Resultará una incapacidad permanente de esta lesión?	<input type="checkbox"/> Sí <input type="checkbox"/> No <input type="checkbox"/> Indeterminado	

Comentarios

Nombre del doctor (escriba con letra de molde o a máquina)

Número de cuenta del proveedor

Nº de teléfono

Dirección

Ciudad

Estado

Código postal

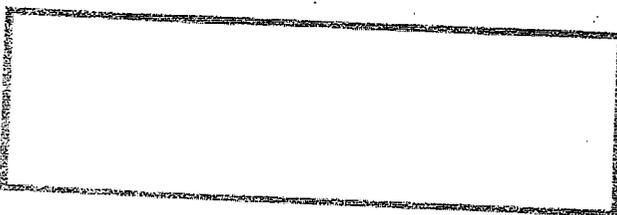
Fecha

Firma del doctor



FORMULARIO DE VERIFICACIÓN DE EMPLEO

Unit	Work Position
Número del reclamo	
Fecha de la solicitud	
Fecha de la lesión	



Instrucciones para el trabajador: Esta es su solicitud para compensación por tiempo perdido. Tiene que completarla antes que podamos considerarlo para recibir beneficios. Si no puede trabajar debido a la lesión sufrida en su trabajo y su empleador no le está pagando su salario completo: 1) Complete este formulario 2) Firmelo y escriba la fecha 3) Envíelo a la dirección arriba dentro de 14 días a partir de la fecha en que recibió esta correspondencia.

Nombre	Número de teléfono	
Dirección		
Ciudad	Estado	Código postal

Llene esta casilla solamente si tiene una dirección y/o número de teléfono nuevo.

Declaración del trabajador

Debido a una lesión/enfermedad ocupacional relacionada con el trabajo, no he trabajado con pago o sin pago desde _____ hasta _____. Esto incluye pero no se limita a: empleo por cuenta propia o por servicios sociales (mes, día, año)

COPES o CHORE. ¿Ha trabajado en otro tipo de actividades tales como trabajo voluntario?

Sí No Por favor describa:

Regresé/regresaré a trabajar el día _____	Estoy trabajando _____ Horas/Día	Estoy trabajando _____ Días/Semana	Mi tarifa de pago es: \$ _____ dólares por <input type="checkbox"/> Hora <input type="checkbox"/> Día <input type="checkbox"/> Semana <input type="checkbox"/> Mes
---	----------------------------------	------------------------------------	---

He solicitado los siguientes beneficios: Ninguno Estampillas para la comida solamente Beneficios del seguro social
 Desempleo Otros programas de asistencia pública

En el día que se lesionó, ¿Estaba su empleador pagando alguna parte del seguro médico, dental y/o de la vista de Ud. y/o su familia? o ¿Le proveía vivienda, comida y/o combustible (servicios públicos)? Sí No

¿Continúa recibiendo estos beneficios? Sí No Fecha en que terminaron los beneficios _____

Con mi firma estoy certificando que entiendo que si hago una declaración falsa sobre mis actividades o mi condición física, tendré que devolver mis beneficios y podría afrontar sanciones civiles o criminales. Entiendo que tengo que cumplir estrictamente con mi deber de reclamar y recibir cualquier tipo de trabajo remunerado (a no ser que el doctor me dé de alta para trabajar) si estoy en libertad y bajo sentencia o si hay algún cambio en la custodia legal de mis hijos.

Nº de teléfono	Fecha	Firma del trabajador
----------------	-------	----------------------

APPENDIX L

Legal Notices:

- **False information:** RCW 51.48.020 sub section (2) provides: Any person claiming benefits under this title, who knowingly gives false information required in any claim or application under this title shall be guilty of a Class C felony when such claim or application involves an amount of five hundred dollars (\$500) or more. When such claim or application involves an amount less than \$500, the person giving such information shall be guilty of a gross misdemeanor.
- **Medical Release:** RCW 51.36.060 provides: All medical information in the possession or control of any person and relevant to the particular injury in the opinion of the department pertaining to any worker whose injury or occupational disease is the basis of a claim under this title shall be made available at any stage of the proceedings to the **employer**, the **claimant's representative** and the **department** upon request, and no person shall incur any legal liability by reason of releasing such information.
- **Social Security Number Disclosure:** Disclosure of your social security number is not mandatory, it is requested as part of your application for compensation under Chapter 51.28 RCW and will be used to facilitate the handling of your claim under Title 51 RCW.

Online, L&I's secure Claim & Account Center

Get the most up to date, complete information about your patients' claims online at L&I's secure Claim & Account Center www.ClaimInfo.LNI.wa.gov

Check the status of a workplace injury

- View claim documents, medical reports and L&I's notes about the claim
- Find out if L&I has authorized treatment or paid a bill

Send information to L&I

- Send us a secure message
- Let us know your patient's medical ability to work

Technical Support Assistance:

call: 1--360-902-5999

e-mail: websupport@LNI.wa.gov

NOTE: Workers' compensation claims from employees of self-insured businesses and claims for crime victims are not available in the Claim & Account Center.

APPENDIX M

Workers' Guide to

Industrial Insurance Benefits



Guide to Benefits

This is your guide to industrial insurance benefits. It explains the benefits available to you if you are injured on the job or develop an occupational disease. These benefits vary, depending on the injury. They can include paid health care, wage replacement and other services to aid you in your recovery and return to work.

If you are injured on the job in Washington, you are insured by the Washington State Fund, unless you are employed by one of the approximately 400 employers who are self-insured. (L&I publishes a different guide for workers employed by self-insured businesses.) If your claim is accepted, the benefits and level of service to which you are entitled are set by the state Legislature and administered by the Department of Labor and Industries. Our goal is to provide quality services to help you recover and return to work as soon as possible.

This guide summarizes what happens when you file a claim, and how you can help make the process work smoothly for you. It also explains your rights and responsibilities, and tells you what choices you have if you disagree with a decision. This booklet, however, is not a legal interpretation of the law.

Information is current as of June 2006.
Updates will be added as changes occur.

For more information:

Visit the web
InjuredWorker.LNI.wa.gov

Call L&I's toll-free information line
1-800-LISTENS (1-800-547-8367)

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What is Industrial Insurance?

Whether an injured worker is covered by L&I's Washington State Fund, or a self-insured employer, he or she is entitled to no-fault accident and disability coverage.

This "industrial insurance" covers medical expenses and pays a portion of wages lost while a worker recovers from a workplace injury. Insurance

L&I benefits are for job-related injuries only.

premiums paid by both workers and employers finance these benefits.

Unlike other types of insurance, L&I can cover injuries only if they happen at a definite time and place at work. Also, claims for occupational diseases are accepted *only* if your work and medical history shows you have an illness or infection that was directly caused by the work you do, and not by something else.

We all work hard to prevent accidents that result in injuries or exposure to hazardous substances that may cause occupational diseases. Still, nearly 175,000 work-related injuries and occupational diseases are reported to L&I each year. Another 64,000 on-the-job injuries and diseases are reported each year to self-insured companies.

If you suffer an on-the-job injury or occupational disease, we encourage you to maintain contact with your employer. Let your employer know how you are doing. If you are unable to return to your old job for a while, talk to your employer about lighter-duty work you may be able to do during your recovery. Many return-to-work options may be pursued. Some are outlined in this guide. Read it and know your rights.

If you believe the decision is wrong, you may protest it to L&I. You also have the right to appeal directly to the Board of Industrial Insurance Appeals (Board) without first protesting to L&I. You do not need to hire an attorney for a protest or appeal, but you may if you choose to do so.

Protest to L&I

You must send a written protest within 60 days of receiving L&I's decision. Try to explain in detail why you think the decision is unfair, and supply any additional information you think may help us in our evaluation. Mail your protest to the Claims Section, PO Box 44291, Olympia, WA 98504-4291.

We will review your claim and send you a written decision in response to your protest. If you disagree with this decision you may appeal in writing to the Board.

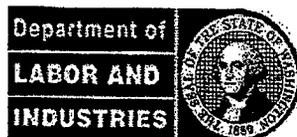
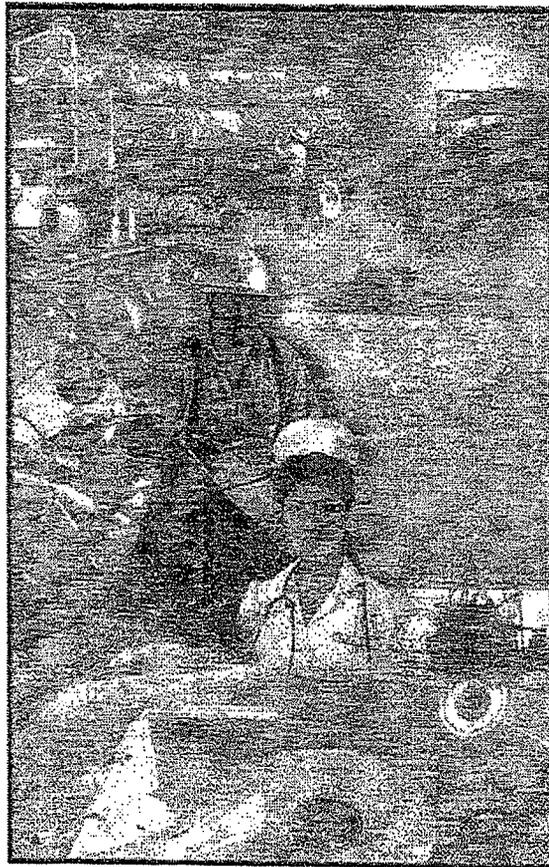
Appeal to the Board after protest to L&I

You must send your appeal to the Board within 60 days of receiving L&I's decision. Write to: Board of Industrial Insurance Appeals, 2430 Chandler Ct. SW, PO Box 42401, Olympia, WA 98504-2401. The Board's phone number is (360) 753-6823 or 1-800-442-0447 (in-state toll-free line).

The Board, which is independent of L&I, conducts hearings on claim issues that cannot otherwise be settled to the satisfaction of you, your employer or the department. The Board issues a written decision about your case after personal arguments and testimony have been taken. This decision may be appealed to a Washington State Superior Court. For more detailed information, ask the Board for its pamphlet, *Your Right to be Heard*.

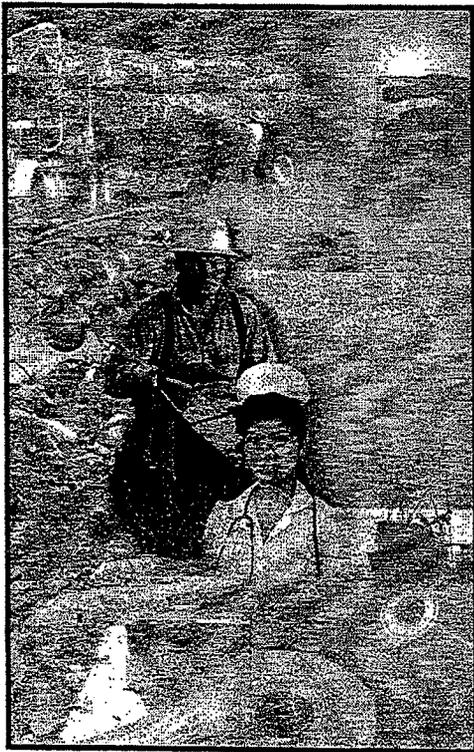
Guía de los trabajadores

para los beneficios
de seguro industrial



Руководство для работников

по выплатам промышленного страхования



Руководство по страховым выплатам

Это ваше руководство по выплатам промышленного страхования. Оно предоставляет объяснение страховых выплат, которые вы можете получить, если вы получили трудовое увечье или профессиональное заболевание. Выплаты зависят от вида увечья. Они могут включать оплату медицинского обслуживания, возмещение заработной платы и другие услуги, для того чтобы помочь вам выздороветь и вернуться на работу.

Если вы получили трудовое увечье в штате Вашингтон и вы не работаете на одного из приблизительно 400 работодателей, у которых есть самострахование, вы застрахованы Фондом штата Вашингтон. (Отдел труда и промышленности (L&I) публикует отдельное руководство для работников предприятий, имеющих самострахование). Если ваш иск принят, положенные вам выплаты и уровень обслуживания, установлены законодательным органом штата и предоставляются Отделом труда и промышленности. Наша цель — предоставить качественные услуги, чтобы помочь вам выздороветь и вернуться на работу в кратчайший срок.

В этом руководстве вкратце изложено, что происходит, когда вы подаете иск и что вы можете сделать, для того чтобы процесс оформления прошел без проблем. Руководство также дает объяснение ваших прав и обязанностей и извещает вас о том, какой у вас есть выбор, если вы не согласны с каким-либо решением. Настоящая брошюра, однако, не является юридическим толкованием закона.

Информация актуальна на март 2005 г. Будет обновляться по мере внесения изменений.

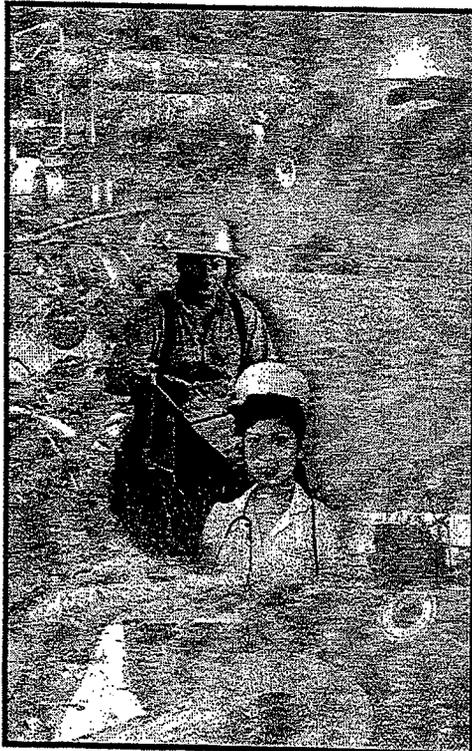
**Если вам нужна
дополнительная информация:**

Смотрите сайт по адресу:
injuredWorker.LNI.wa.gov

Звоните в бесплатную информационную
службу Отдела труда и промышленности
1-800-LISTENS (1-800-547-8367)

Tập Hướng Dẫn Công Nhân về

Các Quyền Lợi Bảo Hiểm Kỹ Nghệ



Department of
**LABOR AND
INDUSTRIES**



Tập Hướng Dẫn về Các Quyền Lợi

Đây là tập hướng dẫn cho quý vị về các quyền lợi bảo hiểm kỹ nghệ. Tập này giải thích các quyền lợi dành cho quý vị nếu bị thương khi làm việc hoặc bị bệnh liên quan đến nghề nghiệp. Các quyền lợi này khác nhau tùy theo thương tích. Số này có thể gồm đài thọ dịch vụ chăm sóc sức khỏe, bồi hoàn lương và các dịch vụ khác để giúp quý vị bình phục và trở lại làm việc.

Nếu quý vị bị thương khi đang làm việc tại Washington, quý vị được Quý Tiểu Bang Washington bảo hiểm, trừ phi quý vị làm việc cho một trong khoảng 400 hãng sở tự bảo hiểm. (L&I ấn hành một tập hướng dẫn khác cho công nhân làm việc cho các cơ sở tự bảo hiểm.) Nếu đơn của quý vị được chấp thuận, mức quyền lợi và dịch vụ quý vị được hưởng là do Lập Pháp tiểu bang ấn định và Bộ Lao Động và Kỹ Nghệ điều hành. Mục tiêu của chúng tôi là cung cấp các dịch vụ có phẩm chất để giúp quý vị hồi phục và trở lại làm việc càng sớm càng tốt.

Tập hướng dẫn này tóm lược sự việc khi quý vị nộp đơn xin, và cách quý vị có thể giúp cho tiến trình được xuôi sẻ cho quý vị. Tập này cũng giải thích về các quyền và trách nhiệm của quý vị, và cho biết quý vị có các chọn lựa gì nếu không đồng ý về một quyết định. Tuy nhiên, tập sách này không phải để diễn giải luật pháp.

Chi tiết mới nhất vào Tháng Ba 2005.
Sẽ có thêm cập nhật khi có thay đổi.

Muốn biết thêm chi tiết:

Hãy đến web
InjuredWorker.LNI.wa.gov

Gọi đường dây thông tin miễn phí của L&I.
1-800-LISTENS (1-800-547-8367)

NO. 60139-3-I

COURT OF APPEALS FOR DIVISION I
STATE OF WASHINGTON

FILED
COURT OF APPEALS DIV. #1
STATE OF WASHINGTON
2008 FEB -7 AM 10:32

FERID MAŠIĆ,)	
)	
Appellant,)	CERTIFICATE OF SERVICE
)	OF APPELLANT'S REPLY
v.)	BRIEF & MOTION FOR LEAVE
)	TO FILE OVERLENGTH REPLY
DEPARTMENT OF LABOR)	BRIEF
AND INDUSTRIES,)	
)	
Respondent.)	
_____)	

ANN PEARL OWEN declares under penalty of perjury under the laws of the State of Washington that the following is true and correct.

1. Today the undersigned mailed a copy of the Appellant's Reply Brief, Appellant's Motion for Leave to File Overlength Reply Brief, and a copy of this Certificate of Service with proper postage and address affixed to:

Masaka Kanazawa, AAG
Office of the Attorney General of Washington
800 Fifth Avenue #2000
Seattle, WA 98104-3188

2. Today the undersigned mailed the original and one copy of the Appellant's Reply Brief, of the Appellant's Motion for Leave to File

Overlength Reply Brief, and of this Certificate of Service with proper
postage and address affixed to:

Court of Appeals, Division I
One Union Square
600 University Street
Seattle, WA 98101

3. Signed at Seattle, Washington this 6th of February 2008.

A handwritten signature in black ink, appearing to read 'Ann Pearl Owen', with a long horizontal flourish extending to the right.

Ann Pearl Owen, WSBA 9033