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No. 64974-4-I

COURT OF APPEALS
DIVISION I
OF THE STATE OF WASHINGTON

IRENE HOOD and the
DEPARTMENT OF LABOR & INDUSTRIES
OF THE STATE OF WASHINGTON,

Respondents,

v.

WEYERHAEUSER COMPANY & SUBSIDIARIES,

Appellant.

REPLY BRIEF OF APPELLANT

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Weyerhaeuser submits the following reply to the Department's and Mrs. Hood's Briefs of Respondent.

A. Death Benefits Serve Only a Wage-Replacement

Purpose.

A proper analysis of the issues and authorities in this matter must begin with, and be guided by, the purpose of the Industrial Insurance Act (IIA) and the benefits it provides. The Department and Mrs. Hood both mostly avoid this broad, interpretive principle. Neither party directly disputes that the IIA was intended to eliminate common law causes of action and to provide limited benefits primarily for the purpose of insuring against the loss of future wage earning capacity. (See BA 8-9). However, many of their arguments cannot be reconciled with this purpose.

Both parties appear to acknowledge that death benefits, in particular, serve at least largely a wage-replacement function. (DLI BR 2, 18-19; Hood BR 11-12). However, they assert this wage-replacement function is not the "exclusive" or "only" purpose. (DLI BR 2, 18, 20; Hood BR 11-12). The Department makes no real attempt to address what other purpose death benefits might serve. In a different context, the Department seems to suggest that death benefits serve some unidentified purpose rooted in tort law, arguing

that the provision of death benefits in the absence of wage-loss is consistent with the IIA being “a tort substitute.” (DLI BR 23). This disregards the repeatedly stated maxim that the IIA eliminated common law causes of action and their attendant remedies, specifically including damages for the loss of consortium. *Flanigan v. Department of Labor and Industries*, 123 Wn.2d 418, 422-23, 869 P.2d 14 (1994); *McCarthy v. Department of Social & Health Services*, 110 Wn.2d 812, 816, 759 P.2d 351 (1988). With this possible exception, the Department is notably silent as to what purpose death benefits might serve other than wage-replacement. Its essential silence on this critical issue, in the context of extensive arguments on other points, reflects an effective admission that there is no other purpose for death benefits.

Mrs. Hood argues, on the other hand, that the provision of death benefits in the absence of a work-related wage loss is consistent with the Act’s purpose of providing “sure and certain relief.” (Hood BR 10-11). Similarly, she contends that not providing death benefits following a voluntary retirement would allow employers to “escape costs” resulting from fatal occupational diseases. (Hood BR 11). Both statements beg the question of what damages, recognized under the IIA, death benefits would remedy.

Mrs. Hood does not, in fact, identify any form of damage *for which the Act provides a remedy* that would be served by granting death benefits to the surviving spouse of a voluntarily retired worker. She does proceed to speculate that when an occupational disease results in death, the surviving spouse's *social security* or *private pension* benefits "may" be reduced. (Hood BR 11). Mrs. Hood provides no persuasive authority for this proposition, or claim that it applies to her. More important, this speculation contradicts the fact that the IIA authorizes benefits only for damages that it recognizes – *e.g.*, wage loss, impairment of function and a need for treatment. The IIA does not authorize consideration of potential damages recognized in other forums to establish entitlement to benefits under the Act. Mrs. Hood's speculation does not support her otherwise bare objection to the fact that death benefits under the IIA serve only a wage-replacement function.

Both Mrs. Hood and the Department acknowledge that, by statute, death benefits cease upon the surviving spouse's remarriage. RCW 51.32.050(2)(a), (c). (Hood BR 12; DLI BR 20). Remarriage does not relieve any relevant death-related damage except the loss of spousal financial support. The cessation of death benefits upon remarriage thus provides strong evidence that

such benefits are intended to replace the loss of financial support – wages – resulting from the worker’s death. The Department nevertheless asserts that “it is not necessarily true that remarriage replaces the financial support provided by the deceased worker.” (DLI BR 20). It may be that in any given case remarriage does not fully replace the support lost through a worker’s death, but that is irrelevant. The salient point is that death benefits serve the purpose of replacing the lost support – to a degree that will vary from case to case. The fact the relief may not fully compensate for the damage does not logically support the conclusion that some other purpose is served. The Department concludes by stating, “While it is not clear that death benefits serve exclusively a wage replacement purpose, the Legislature means what it says.” (DLI BR 20). Except the legislature has not said that death benefits are provided to a surviving spouse who suffers no loss of wages proximately caused by the worker’s occupational disease. The remainder of the Department’s statement essentially concedes that death benefits do serve exclusively a wage-replacement purpose because the Department does not identify any other purpose.

The Department and Mrs. Hood both argue that if death benefits served solely a wage-replacement function they would not

continue past the worker's retirement, as they do. (DLI 19; Hood 11). This argument wrongly presumes the legislature could have had no other reason for extending death benefits past retirement. As the Department acknowledges, the legislature also provided that pension benefits (for permanent total disability) continue after retirement for the life of the worker. RCW 51.32.060; RCW 51.32.067. Pension benefits clearly serve only a wage-replacement function. RCW 51.32.060(6); In *Weyerhaeuser Company v. Farr*, 70 Wn.App. 759, 855 P.2d 711 (1993), *reversed* 123 Wn.2d 1017, 871 P.2d 600 (1994). Accordingly, the fact the legislature provided for continued pension benefits after retirement cannot mean the benefits serve some other purpose. It may be the legislature's provision of such benefits after retirement was intended to offset the fact the benefits do not fully compensate worker's for their wage loss. Regardless, the legislature's provision of pension benefits after retirement even though they serve only a wage-replacement function contradicts the parties' claim that its provision of death benefits after retirement necessarily reflects a purpose other than wage-replacement.

Similarly, Mrs. Hood contends that if death benefits served only a wage replacement function they would fully match the wages

lost rather than providing only a percentage of the lost wages. (Hood BR 11). This contention disregards the fact that pension and time loss benefits also replace only a similar percentage of the wages lost, and yet those type of benefits serve only a wage-replacement function. RCW 51.32.060(6); RCW 51.32.090(8); *Weyerhaeuser Company v. Farr, supra; Kaiser Aluminum v. Overdorff*, 57 Wn.App. 291, 788 P.2d 8 (1990). Clearly, the legislature had another reason for setting such benefits, including death benefits, at a percentage of the wages lost. The appellate decisions demonstrate that this payment of less than full damages derived from the compromise on which the IIA was based, and was premised on the fact that under the Act workers receive such damages, without consideration of fault, often where no recovery previously was available. *Flanigan v. Department of Labor and Industries, supra*, 123 Wn.2d at 423.

In summary, the wage-replacement function of death benefits is demonstrated by the IIA's purpose of insuring against the loss of wage earning capacity, as well as the statutory authorization of such benefits only for "workers" who lose "wages," and the cessation of such benefits upon a surviving spouse's remarriage. (See BA 9-10). The parties identify no plausible

purpose for death benefits other than wage-replacement. The wage-replacement purpose of death benefits defeats a claim for such benefits when the worker has voluntarily retired. Although Mrs. Hood is deemed entitled to death benefits here, the absence of a work-related wage loss supports the conclusion she should receive no more than the statutory minimum.

B. Wage-Replacement Benefits Are Not Available To Voluntarily Retired Workers and Their Survivors.

The appellate courts have held, independent of the 1986 amendments to RCW 51.32.060 and RCW 51.32.090, that the IIA does not authorize time loss and pension benefits for voluntarily retired workers. *Weyerhaeuser Co. v. Farr, supra* (time loss); *Kaiser Aluminum v. Overdorff, supra* (pension). In reaching this conclusion, the courts relied on the wage-replacement purpose of the IIA, evidenced by the fact that the time loss and pension statutes necessarily presume that at the time the disability developed the claimant was a “worker” who was engaged in gainful employment and thereby earned “wages.” *Farr*, 70 Wn.App. at 765; *Overdorff*, 57 Wn.App. at 295-96. (See BA 10-13). The same analysis and conclusion apply to death benefits because the Act’s wage-replacement function also inspires the provision of such

benefits, and the statute that addresses their calculation likewise is based on the existence of a “worker” who earns “wages.” RCW 51.32.050.

The Department and Mrs. Hood argue for a contrary conclusion based largely on the fact that the 1986 Legislature did not explicitly preclude death benefits for the spouses of voluntarily retired workers as it did with the time loss and pension statutes. (DLI BR 8, 12-15; Hood BR 6-7). Given the terms of RCW 51.32.050, the legislature did not need to specifically address the impact of voluntary retirement on death benefits. The statute plainly states that where “death results from the injury, a surviving spouse of a deceased worker *eligible for benefits* under this title shall receive monthly for life or until remarriage payments...” (Emphasis added.) RCW 51.52.050(2). By its terms, the statute limits death benefits to the spouse of a worker who is “eligible for benefits.” The 1986 legislation expressly provided that voluntarily retired workers are not eligible for periodic disability benefits. In doing so, the legislature effectively established that such workers are not “eligible for benefits” under Title 51 and, therefore, that their spouses are not entitled to death benefits. In short, there was no need to amend RCW 51.52.050 to preclude such benefits.

The parties' contrary argument is premised solely on an inapplicable principle of statutory construction. That is, they rely, directly or indirectly, on a principle of statutory construction: *expressio est exclusion alterius*. The parties thus argue that because the legislature specifically declared that voluntarily retired claimants were ineligible for time loss and pension benefits, but enacted no such provision for death benefits, it must have intended that the spouses of voluntarily retired claimants be eligible for death benefits. This analysis ignores not only the terms of RCW 51.32.050, but also other applicable principles of statutory construction and the fact that the 1986 legislation effected no change in the law.

The principle of *expressio est exclusion alterius* does not apply when the circumstances show that the legislature intended to clarify, not change, the original law. *State v. Baldwin*, 109 Wn.App. 516, 527, 37 P.2d 1220 (2001). These circumstances exist when the original enactment was ambiguous to the point that it had generated dispute as to what the legislature intended, and there were no previous interpretations that were inconsistent with the new legislation. *Id.*, *Ravsten v. Department of Labor and Industries*, 108 Wn.2d 143, 150-51, 736 P.2d 265 (1987). That

describes the circumstances of the 1986 legislation. Prior to that time, the Act did not specifically address whether voluntary retirement impacted eligibility for time loss or pension benefits, thus creating some ambiguity on this issue and disputes at the administrative level. When the issue ultimately reached the appellate court level, the courts concluded that the Act always had precluded time loss and pension benefits for voluntarily retired workers. In the meantime, the 1986 Legislature responded to the ambiguity and disputes by confirming that voluntarily retired claimants are ineligible for time loss and pension benefits. The new legislation clearly was consistent with the court's ultimate conclusions. It thus operated to clarify the law, not change it. *Weyerhaeuser v. Farr, supra*, 57 Wn.App. at 763 n. 3 (rejecting the claimant's contention that the legislature's amendment of the Act implied the intent to change the law). Under these circumstances, the maxim of *expressio est exclusio alterius* does not apply and there is no proper basis for presuming the legislature intended that the spouses of voluntarily retired workers should receive death benefits when the worker's themselves clearly were ineligible for time loss and pension benefits.

The Department and Mrs. Hood do not explain on what statutory principle or policy basis a surviving spouse should be considered eligible for death benefits when the worker is not eligible for the equivalent benefits. As discussed, time loss, pension and death benefits all serve the same wage-replacement purpose. Each form of benefit compensates the worker and/or his family for the worker's inability to provide support by engaging in gainful employment. Because these are the same type of benefit, serving the same purpose, the legislature has both linked and treated them as equivalents in various statutory provisions, including: RCW 51.32.025 (providing for cessation of payments to "children of a deceased or temporarily or totally permanently disabled worker" when the child reaches age 18); RCW 51.32.072 (providing increased payments for "every surviving spouse, and every permanently and totally disabled worker or temporarily totally disabled worker"); RCW 51.32.075 (adjusting compensation for "temporary total disability, permanent total disability, or death"); RCW 51.32.130 (authorizing a lump sum payment instead of monthly payments "in case of death or permanent total disability"). Similarly, the statutes that address calculation of death, time loss and pension benefits all use the same type of schedule or matrix to

determine the amount of benefits due. *Compare RCW 51.32.050(2) with RCW 51.32.060(1)*. In short, these are equivalent benefits that serve the same purpose of compensating for the worker's total loss of wage earning capacity. Time loss benefits differ from the other two types in that they are for a temporary wage loss. Death benefits and pension benefits are indistinguishable in any significant respect, except by who receives them – the surviving spouse and/or children, versus the worker. The common purpose and treatment of these benefits support the conclusion that voluntary retirement precludes entitlement to all of them, not just time loss and pension benefits.

The Department nevertheless asserts that “policy and the irreversible nature of death” show the legislature’s intent to make the surviving spouses of voluntarily retired workers eligible for death benefits. (DLI BR 17). The Department does not explain the significance of death’s irreversible nature. As a practical matter, death is equivalent to *permanent* total disability with respect to wage-earning, except in the rare case where a permanently and totally disabled worker regains some wage earning capacity. Both death and permanent total disability permanently prevent wage earning, and the benefits for each serve the same purpose of

compensating for lost income.

In support of its policy position, the Department notes that survivors have independent rights to death benefits that the worker cannot extinguish, citing *Kilpatrick v. Department of Labor and Industries*, 125 Wn.2d 222, 883 P.2d 1370 (1994). Mrs. Hood makes the same argument. (Hood BR 5). Neither party distinguishes between an independent right to claim benefits and an independent basis granting benefits. The mere ability to file a claim does not establish entitlement to benefits. The *Kilpatrick* court simply noted that a spouse has an independent claim that the worker cannot waive, not that the spouse's substantive entitlement to benefits is independent of the worker's, or that the purpose of the benefits differs based on who files the claim. On the contrary, the court confirmed that the spouse's claim is derivative of the worker's claim for the purpose of determining whether and to what extent the spouse is entitled to benefits. 125 Wn.2d at 228. For that reason, the court held that the worker's date of injury controlled the schedule of benefits applied to the spouse's claim. *Id.* Similarly, in *Barlia v. Department of Labor and Industries*, 23 Wn.2d 126, 160 P.2d 503 (1945), the court rejected the spouse's contention that her right to compensation was independent of her deceased husband's.

The court noted the spouse's claim is independent only to the extent it cannot be waived, but that her right to benefits was derivative of her husband's rights. 23 Wn.2d at 129. The derivative nature of spousal benefits supports the conclusion that the spouse's right to benefits cannot exceed the worker's, and that death benefits are not available when the worker is ineligible for pension benefits by virtue of voluntary retirement.

The Department further contends that from a policy standpoint spouses should be treated differently than workers because spouses have no ability to reverse the worker's decision to voluntarily retire, whereas the worker has that ability before his death. (DLI BR 17, 19). This is an inconsequential distinction that misapprehends why voluntary retirement precludes the receipt of wage-replacement benefits. The denial of benefits for a voluntarily retired worker does not represent a punishment for his decision or "choice" to retire. Rather, benefits are denied because when a worker retires despite the ability to work the compensable injury or disease is not a proximate cause of the wage loss. Proximate causation must exist before any person – worker, spouse or child – can receive benefits. Because proximate causation does not exist when the retirement is voluntary, benefits are not available. WAC

296-14-100. Therefore, a surviving spouse's inability to reverse a worker's decision to retire is not relevant to determining the spouse's entitlement to death benefits.

The Department also argues that the courts' decisions in *Farr* and *Overdorff* do not apply to death benefit claims "because death benefits are different from the types benefits at issue" in those cases. (DLI 10, 18-19). The Department explains this difference on the basis that different statutes are involved. This is a superficial distinction that disregards the fact that the IIA as a whole was intended to insure against the loss of wage earning capacity. *Kilpatrick, supra; Leeper v. Department of Labor and Industries*, 123 Wn.2d 803, 814, 872 P.2d 507 (1994). More specifically, as discussed, death benefits serve the same wage-replacement purpose as time loss and pension benefits. The Department does not identify any purpose for death benefits other than wage-replacement. It does acknowledge that *Farr* and *Overdorff* establish that voluntary retirement precludes workers from receiving wage-replacement benefits. (DLI BR 19). The Department does not explain why the spouse's claim to benefits is superior to the worker's. As discussed, the spouse's claim is derivative of, and therefore not superior to, the worker's. The Department's attempt to

distinguish *Farr* and *Overdorff* also disregards the analysis that supported those decisions, particularly the court's reliance on statutes that presume a work-related loss of "wages" for one who was a "worker" when the work-related disability developed. In short, the purpose of the respective benefits and the factors on which the courts based their analysis apply to death benefits to the same extent as time loss or pension benefits.

The Department and Mrs. Hood also assert that "the plain language" of RCW 51.32.050 establishes that a surviving spouse is entitled to death benefits irrespective of the worker's voluntary retirement or the absence of a work-related wage loss. (DLI BR 22-23; Hood 5). Presumably, the parties rely on the statement that where "death results from the injury, a surviving spouse of a deceased worker *eligible for benefits* under this title shall receive monthly for life or until remarriage payments..." (Emphasis added.) RCW 51.52.050(2). As discussed, by its terms the statute limits death benefits to the spouse of a worker who is "eligible for benefits." A voluntarily retired worker is not eligible for wage replacement benefits. *Farr, supra; Overdorff, supra*. Therefore, under the plain language of this provision the spouse of a voluntarily retired worker is not entitled to death benefits.

The parties' argument also necessarily assumes that eligibility for death benefits turns solely on the terms of RCW 51.32.050, without regard for the Act as a whole or the purpose of the benefits. RCW 51.32.050 addresses primarily how death benefits are calculated and for how long they are provided. Except for tying the spouse's entitlement to the worker's eligibility for benefits, it does not address what factors bear on a survivor's substantive entitlement, much less all the factors that bear on entitlement (as opposed to the calculation or duration of payments). Both the Department and Mrs. Hood disregard the fact that RCW 51.32.060, which governs calculation of time loss and pension benefits, similarly states that when "total disability results from the injury, the worker shall receive monthly benefits." See RCW 51.32.090(1) (referencing RCW 51.32.060 to calculate time loss benefits). If such language, considered in isolation, was solely determinative of entitlement to benefits, then before the 1986 legislation voluntarily retired worker's would have been entitled to both time loss and pension benefits. The Court of Appeals' decisions in *Farr* and *Overdorff* demonstrate that such a narrow analysis of the statutory terms is inappropriate. In short, the mere fact that the legislature generally has provided death benefits for

surviving spouses does not reasonably lead to the conclusion that issues of substantive entitlement are irrelevant and that all such spouses necessarily are entitled to benefits irrespective of any other consideration. The purpose of the IIA and the applicable provisions, including RCW 51.32.050, demonstrate that the spouse of a voluntarily retired deceased worker is not entitled to death benefits.

C. There Is No Conflict Between RCW 51.32.180 and RCW 51.32.050. Benefits For Occupational Diseases Are Calculated Based on the Worker's Wages on the Date of Manifestation.

As stated, Mrs. Hood is not entitled to death benefits under the applicable statutory provisions. However, based on the law of the case she is deemed entitled to such benefits. Because claimant suffered from an occupational disease, calculation of Mrs. Hood's benefits must be based on RCW 51.32.180(b).

RCW 51.32.180(b) plainly states that for occupational diseases filed after July 1, 1988 "the rate of compensation . . . shall be established as of the date the disease requires medical treatment or becomes totally or partially disabling, whichever occurs first. . ." This codifies the prior "date of manifestation" rule and applies specifically to spousal claims for death benefits.

Department of Labor and Industries v. Landon, 117 Wn.2d 122, 125-26, 814 P.2d 626 (1991); *Kilpatrick v. Department of Labor and Industries*, *supra*, 125 Wn.2d at 227-28. This statute and its interpretive case law thus clearly provide that calculation of a spouse's claim for death benefits, specifically including one for an asbestos-related disease, must be based on the date the disease became manifest. Claimant's disease first became manifest on January 24, 1997 when he sought treatment for his condition. (CABR 127). Therefore, since Mrs. Hood has been deemed entitled to death benefits, those benefits must be calculated based on Mr. Hood's wage levels as of January 24, 1997.

The Department and Mrs. Hood declare, however, that for the spouse's of voluntarily retired workers like Mrs. Hood RCW 51.32.180(b) conflicts with RCW 51.32.050 because the latter requires that death benefits be based on the worker's "wages" and the former compels consideration of wage levels at a time when Mr. Hood had none. (DLI BR 21-29; Hood BR 15-17). There is no conflict between the statutes under ordinary circumstances. That is, ordinarily the worker's disease has required treatment or otherwise become manifest while he was still working and therefore earning wages. In that case, the worker's wages as of the date of

manifestation provide the basis for calculation of death benefits under RCW 51.32.050. The perceived conflict in the statutes arises because they do not contemplate the provision of benefits to a worker or a surviving spouse when the worker has voluntarily retired and therefore has no “wages” on which to calculate benefit levels. The perceived conflict here is thus solely the result of Mrs. Hood being granted benefits that the IIA neither contemplates nor authorizes. The unique circumstances of this case do not establish an actual conflict in the operation of the two statutes.

The circumstances here also do not justify an interpretation that would violate the purpose of the statutes or undermine their operation in other cases, or further violate the legislature’s intent by multiplying Mrs. Hood’s recovery when she is entitled to none. Under these circumstances, the legislature’s intent not to provide benefits to voluntarily retired workers or their beneficiaries is best accomplished by granting Mrs. Hood the statutory minimum under RCW 51.32.050(2)(a)(i).

The Department and claimant posit several scenarios that allegedly show Weyerhaeuser’s position would lead to inequities between Mrs. Hood and others. For the most part, these scenarios are based on the erroneous premise that the spouse of a voluntarily

retired worker who dies from an occupational disease is entitled to death benefits. For example, the Department contends that it is inequitable not to give Mrs. Hood the same benefits as the spouse of a worker who did not voluntarily retire. (DLI BR 23-24). This ignores the fact that the legislature did not intend for Mrs. Hood to receive such benefits and had a rationale basis – the absence of a work-related wage loss – for distinguishing between her and those whose worker spouses had not voluntarily retired.

The Department likewise argues that Weyerhaeuser's reliance on RCW 51.32.180 creates an impermissible conflict between survivors of workers who die from an injury versus an occupational disease. (DLI BR 27-28). There is no conflict. Both injury and occupational disease claimants who voluntarily retire are not entitled to benefits. Because there is no such entitlement, RCW 51.32.180 does not come into play.

Similarly, the Department asserts a conflict between the spouse of an occupational disease claimant who has voluntarily retired and the spouse a claimant who sustains an injury, then voluntarily retires and later has an injury-related surgery that results in his death. (DLI 27-28). The Department's premise that the latter spouse would receive benefits is erroneous. That spouse's

situation is indistinguishable from the claimant in *Overdorff* who sustained an injury, voluntarily retired, subsequently received surgery for a worsening of his injury-related condition and then sought time loss benefits. The court held he was not entitled to benefits because the injury had not caused any loss of wages since the claimant already had voluntarily retired when he underwent surgery. 57 Wn.App. at 296. The same analysis applies, and precludes death benefits, in the case of the hypothetical claimant who died after surgery.

In short, the Department's assertions of inequity are based on an erroneous presumption of dissimilar treatment and/or that the spouses of voluntarily retired workers are entitled to death benefits. Mrs. Hood's claims of inequity flow from the same error.

In fact, Mrs. Hood proposes the same "bizarre inequity" involving the injured worker who voluntarily retires, has surgery and dies. (Hood BR 16). As stated, that worker's spouse would not be entitled to death benefits. *Overdorff, supra*. Mrs. Hood also alleges an "absurd result" in the case of a hypothetical worker who is forced to retire by one asbestos-related condition, and then dies after retirement due to a second asbestos-related disease. (Hood BR 16). That case would be distinguishable from this one in that the

worker would not have voluntarily retired. Further, Mrs. Hood wrongly presumes that the benefit level in that rare circumstance necessarily would be driven solely by the second disease. Because that claimant experienced manifestation of an occupational disease, which resulted in wage loss before retirement, his benefit levels most likely would be determined as of his initial disease manifestation.

And finally, Mrs. Hood claims an “absurd result” as to the surviving spouse of a worker whose disease became manifest, voluntarily retired before the condition progressed, and later died from the disease. (Hood BR 17). There is no dissimilar treatment between that spouse and Mrs. Hood because, contrary to Mrs. Hood’s premise, that spouse also would not be entitled to benefits by virtue of the worker’s voluntary retirement.

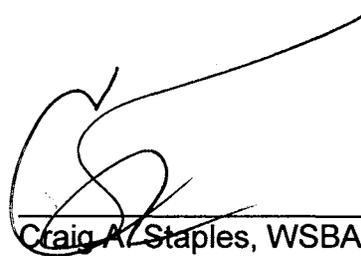
In summary, as stated, the parties’ assertions of inequity are based on an erroneous presumption of dissimilar treatment and/or that the spouses of voluntarily retired workers are entitled to death benefits. Their presumption of a conflict between RCW 51.32.180 and RCW 51.32.050 is likewise premised on the erroneous assumption that the spouses of voluntarily retired worker’s are entitled to death benefits. Mrs. Hood’s unique situation of receiving

benefits to which she is not entitled does not justify the parties' interpretative analyses or their conclusions.

D. CONCLUSION

For the above reasons, Weyerhaeuser requests the court to reverse the trial court's decision, grant judgment in favor of Weyerhaeuser and reinstate the Board's decision. The awards of assessed fees and costs should also be reversed.

DATED: February 10, 2010.

A handwritten signature in black ink, appearing to read "Craig A. Staples", is written over a horizontal line. The signature is stylized and extends upwards and to the right.

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