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SUPREME COURT OF THE STATE OF WASHINGTON

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HAJRUDIN KUSTURA, et al.,

Petitioners,

v.

DEPARTMENT OF LABOR & INDUSTRIES  
and BOARD OF INDUSTRIAL INSURANCE APPEALS,

Respondents.

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ANSWER TO AMICI NJP, WITS/ACLU, & WSAJ FOUNDATION  
BY RESPONDENT  
BOARD OF INDUSTRIAL INSURANCE APPEALS

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## I. ARGUMENT IN RESPONSE

Respondent Board of Industrial Insurance Appeals (Board) submits this response to the briefs of Amici Northwest Justice Project (NJP), Washington State Court Interpreter and Translator Society and American Civil Liberties Union of Washington (WITS/ACLU), and Washington State Association for Justice Foundation (WSAJ Foundation). As the Board has emphasized in prior briefs, it is participating in this case consistent with *Kaiser Aluminum & Chem. Corp. v. Dep't of Labor & Indus.*, 121 Wn.2d 776, 854 P.2d 611 (1993), which directs the Board to take no position on the merits of a claimant's argument concerning Industrial Insurance Act benefits. The Board's role in this case arose after some claimants sought reimbursement from the Board itself and raised questions about the Board's administration of RCW 2.43. See Supplemental Brief of BIIA at 1, n.1.

The Board and its Industrial Appeals Judges preside over the hearings that contest decisions by the Department concerning Industrial Insurance Act benefits. The Board's responsibility under RCW 2.43 is to provide for qualified interpreters when needed in those hearings. Under its rules, the Board exceeds the requirements of the statute by providing interpreter services at the Board's expense to claimants who require such service, without regard to indigency.

**A. Automatic Reversal Is an Unwarranted Remedy**

To the extent that Amici argue that an automatic reversal of the Board's decision and a remand for further proceedings is the only appropriate remedy when the Board has erroneously limited interpreter services in some regard, the Board disagrees. Amici have presented no case law holding that a remand without a showing of prejudicial error is required in worker's compensation appeals.<sup>1</sup> Requiring the parties and the Board to redo the hearing when there has been no prejudicial error would be inefficient and wastes the Board's limited resources as well as the resources of the parties and the courts that must re-try cases.

The Board, of course, takes no position on whether the workers in the present cases have shown that the Board erroneously failed to provide interpreter services in some phases of the hearing, or shown that such an error caused actual prejudice in the Board's rulings.

**B. Reversal, Not Reimbursement, Is the Only Appropriate Remedy for a Prejudicial Procedural Error**

Amici have offered no legal support for the claimants' request for reimbursement of private interpreter service expenses allegedly incurred as a result of the Board's rulings on the amount of interpreter services provided at Board hearings.

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<sup>1</sup> The case law is addressed thoroughly in the Department of Labor & Industries' Answer to Amici NJP and WITS/ACLU and will not be repeated here.

Indeed, the arguments of Amici support the Board's point that it would be inappropriate to reimburse expenses for interpreters allegedly used but not "qualified" by the Board as competent. RCW 2.43.030 requires that the appointed interpreter be "certified or . . . qualified" by the judicial officer or administrative judge who presides over the trial or hearing. Absent a certified interpreter, the Board must qualify an interpreter to satisfy itself and the parties that the interpreter can appropriately interpret the proceedings. It is the appointment and control by the court or administrative judge that implements RCW 2.43 and secures the interests of an LEP party or witness. Amicus NJP is correct in its statement that the Legislature was concerned with "competent interpretation" when it enacted RCW 2.43. Amicus NJP at 8. Competent interpretation is ensured by the Board's process of appointing a certified interpreter or qualifying an interpreter.

Where a party uses an interpreter not appointed and qualified by the Board, RCW 2.43 provides no authority for ordering reimbursement of such private expenses. Nothing in the statute suggests that such private costs may be recovered from the Board or court. Instead, a remand is the appropriate remedy for a party who shows that an administrative or superior court judge committed prejudicial error in not providing for interpretation under RCW 2.43.

## II. CONCLUSION

For the reasons set forth in this and the Board's prior briefing, the Court should affirm the Court of Appeals' holdings in two regards. First, automatic reversal is an unwarranted remedy and a party complaining about inadequate interpretation must show prejudicial error. Second, the claimants state no claim against the Board for reimbursement, and RCW 2.43 does not contemplate or authorize reimbursement for personal interpreters not appointed by a court or board. Accordingly, all claims against the Board were properly dismissed by the Court of Appeals.

RESPECTFULLY SUBMITTED this 8<sup>th</sup> day of October, 2009.

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Nos. 81478-3, 81480-5, 81758-8, and 81759-6  
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No. 81478-3

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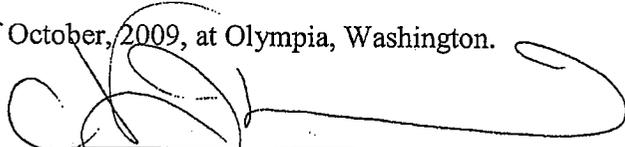
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I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 8<sup>th</sup> day of October, 2009, at Olympia, Washington.



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Dear Clerk,

Attached for filing is the Answer to Amici NJP, WITS/ACLU, & WSAJ Foundation by Respondent Board of Industrial Insurance Appeals and a Certificate of Service in the above-referenced case.

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