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NO. 58200-3-I

COURT OF APPEALS, DIVISION I
STATE OF WASHINGTON

ENVER MEŠTROVAC,
Respondent, Cross-Appellant,

v.

DEPARTMENT OF LABOR & INDUSTRIES and BOARD OF INDUSTRIAL
INSURANCE APPEALS, Appellants, Cross-Respondents

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AMENDED RESPONDING BRIEF OF RESPONDENT AND
OPENING BRIEF OF CROSS-APPELLANT

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I. INTRODUCTION

This case arises out of injured worker Enver Meštrovac's claim under the Industrial Insurance Act. After allowing the claim, the Department of Labor and Industries (DLI) failed to consider all Meštrovac's wages and benefits when calculating his monthly wage rate under RCW 51.08.178. DLI also failed to provide adequate interpreter services, thus requiring Meštrovac to incur the added expense of an interpreter to receive his guaranteed minimum benefits under the Act. He timely appealed to the Board of Industrial Insurance Appeals (BIIA).

BIIA's designated Industrial Appeals Judge (IAJ) corrected some but not all DLI's errors when calculating Meštrovac's wages, still excluding governmentally mandated programs which provide for the basic necessities of life. BIIA rejected his requests for interpreter services and to be reimbursed for his out-of-pocket interpreter expenses incurred due to DLI's refusal to provide needed additional interpreter services.

Meštrovac was provided with some interpreter services at BIIA evidentiary hearings. However, the IAJ denied his request for adequate interpreter services, thus requiring him to incur more interpreter expense to be represented in BIIA proceedings.

Meštrovac appealed to Superior Court. The Superior Court found that Meštrovac is a native Bosnian speaker and not fluent in English. The

Court affirmed the BIIA rulings on wage calculations, ordered reimbursement to Meštrovac for interpreter services costs, denied attorney fees, and entered judgment. After judgment, DLI moved for reconsideration and requested clarification of the award of interpreter services. The Court denied reconsideration, clarified holding reimbursement would be allocated between DLI and BIIA, and awarded attorney fees and costs.

After judgment, BIIA moved to intervene. Its motion was ultimately denied. Meštrovac was awarded further attorney's fees for work performed to oppose the motion to intervene.

BIIA and DLI have appealed the Superior Court rulings requiring reimbursement of Meštrovac's expenses for interpreter services, and the award of attorney's fees. BIIA has appealed the denial of its motion to intervene. Meštrovac cross-appealed the Superior Court's affirmance of BIIA's wage rate calculations.

II. ASSIGNMENTS OF ERROR AND ISSUES

A. ASSIGNMENTS OF ERROR

1. The Superior Court erred in affirming BIIA's ruling that excluded two-thirds of Meštrovac's overtime pay from wage calculations.

2. The Superior Court erred in affirming BIIA's ruling that excluded paid holiday leave and vacation leave time when calculating Meštrovac's wages.

3. The Superior Court erred by affirming BIIA's ruling that omitted Unemployment Disability insurance premiums and other government mandated benefits paid by the employer.

B. ISSUES¹

1. Does RCW 51.32.178(1) require including all overtime wages in wage calculations? [Assignment of Error No. 1]

2. Does *Fred Meyer v. Shearer*, 102 Wn. App. 336, 8 P.3rd 310 (2000) require inclusion of paid holiday and vacation leave time when calculating wages? [Assignment of Error No. 2]

3. Does *Cockle v. DLI*, 142 Wn.2d 801, 16 P.3rd 583 (2001) require inclusion of employer-paid Unemployment Compensation premiums when calculating wages? [Assignment of Error No. 3]

4. Should this Court reverse *Eraković v. DLI*, 132 Wn.App. 762, 134 P.3d 234 (2006) and include employer's payments for Industrial Insurance, Social Security, Medicare, and Medicaid when calculating wages? [Assignment of Error No. 4]?

¹ Although Mr. Meštrovac has not re-stated the issues identified by DLI and BIIA, he does not agree they have stated all the issues correctly.

III. STATEMENT OF THE CASE

Enver Meštrovac is a native of Bosnia. Along with his father who was disabled by torture during the war, his mother, and his dependent younger brother, he lawfully immigrated to this country from his war-torn homeland with assistance of a relief organization. CABR Tr 8/6 217-219, 9/2/14-17.² He lacks proficiency in English and testified through an interpreter, but was not allowed to testify on his need for and use of interpreter services despite raising these issues in his appeals. CABR Tr 8/6 19-23.

While working as a warehouseman, he suffered a wrist injury causing him to be temporarily totally disabled. He filed a claim with DLI and was awarded treatment and time loss benefits. CABR 719. When calculating his time loss benefits, however, DLI's claims adjustor-in-training failed to include all his overtime pay, his bonuses, the value of his employer's Unemployment Insurance premiums, and his paid vacation and holiday leave time. CABR Tr 8/6 90.

While Mestrovac's claim was pending, he requested interpreter services. CABR 307-8. DLI provided him limited interpreter services, but disregarded his request for added interpreter services necessary to present

² CABR refers to the Certified Appeal Board Record which has been transmitted to the Court of Appeals. CABR Tr and CABR Ex refer to Transcripts and Exhibits contained in the Certified Appeal Board Record.

the facts regarding his claim. Meštrovac appealed the time loss orders and DLI's refusal to provide interpreter services. CABR 155-160, 714-9, 730-5. He arranged and paid for additional interpreter services to communicate with his counsel. DLI issued three wage rate orders in his case, all in English only. CABR 160, 719, 735.

Meštrovac timely appealed DLI wage orders and its refusal to provide adequate interpreter services to BIIA. CABR 343, 345. In all his notices of appeal, Meštrovac stated his status as an immigrant, non-English speaking injured worker and requested interpreter services from both DLI and BIIA for all communications necessary to assert his claim.

The IAJ issued a first scheduling order setting forth this issue:

Is the Department required to issue orders
in the claimant's native language?

CABR 609. Later in a scheduling phone conference, the IAJ *sua sponte* raised the interpreter issue and ruled that only limited interpreter services would be allowed at hearings and none to communicate with counsel. CABR Tr 4/26 3-10. Meštrovac requested interlocutory review. CABR 218-232. His request was denied. CABR 233. The IAJ amended the scheduling order twice asserting BIIA had no jurisdiction over this as a constitutional issue on which DLI had not ruled. CABR 494, 511, 196-200. A later order repeated this ruling. CABR 746.

At Board hearing, Meštrovac offered testimony of an economist that the employer paid for coverage by the following governmentally mandated employee benefit programs, essential to his economic survival – Social Security Disability and Retirement, Medicaid/Medicare, Unemployment Compensation, and Industrial Insurance. CABR Tr 8/6 39-55. See AAmerica's Policies Handbook, CABR Ex. 8 & 9 [wrongly rejected] at 121, indicating AAmerica provided legally mandated benefits. There is evidence in the record of AAmerica's cost of those benefits.³

Despite Meštrovac raising the issue of his right to interpreter services at DLI and BIIA in each notice of appeal, the IAJ refused to allow any evidence on these issues. See CABR Tr 9/2 9.

Interpreters at all hearings were forbidden by the IAJ to interpret communications between Meštrovac and his counsel unless opposing counsel and the IAJ were included. CABR Tr 8/6, 9/2 4-9. Mestrovac paid for additional interpreter services so that he could understand DLI and BIIA notices issued in English only, communicate with his lawyer, DLI, and his employer, and prepare for hearings.⁴

³ CABR Ex 11 establishes AAmerica's cost for Meštrovac's Industrial Insurance coverage as \$.4501 per hour worked. CABR Ex 12 proves AAmerica's cost for Meštrovac's Unemployment Compensation coverage as 2.67% of wages paid. CABR Ex 32, 33, 34 & 37 show the amount which AAmerica matched to pay for Social Security/Medicare.

⁴ Because the IAJ limited the evidence which could be offered, Meštrovac was prevented from offering this testimony at hearing.

The IAJ found DLI should have included Meštrovac's health care premiums, part of his overtime, his bonuses, and his paid holiday and vacation time when calculating his monthly wage. CABR 151-52. The IAJ's rulings increased Meštrovac's monthly wage from \$1,584.00 to \$2,119.41. CABR 151-52.

Both Meštrovac and DLI petitioned the three-member Board for review of the IAJ's proposed decision. Meštrovac sought review of all IAJ adverse rulings on the wage rate issues and on the interpreter service issues. CABR 36-91.

BIIA denied Meštrovac's petition for review. Instead, BIIA (with one member dissenting) rejected the IAJ's inclusion of all paid holiday and vacation pay in determining his monthly wage, reducing his monthly wage to \$2,012.01⁵. CABR 2-6, 9-10.

BIIA adopted the IAJ's decision on the issue of interpreter services at both DLI and BIIA levels, asserting it lacked jurisdiction to consider interpreter services at the DLI level because no DLI order had expressly referred to interpreter services. CABR 6. BIIA further asserted that the interpreter services provided at BIIA level complied with applicable law. CABR 6.

⁵ In so doing, BIIA reduced his monthly time loss benefit to \$1,207.20 to support his family of four.

Meštrovac appealed BIIA's decision to Superior Court. CP 1-3. The Superior Court affirmed BIIA's decision on wage computation, but ruled in Meštrovac's favor on interpreter services, entering the following findings of fact: CP 527-533.

1.4 Enver Meštrovac, a native Bosnian speaker, came to the United States as a political refugee in 2001 and got a job with AAmerica through World Relief Organization. Mr. Meštrovac is not fluent in English.

1.5 All orders by the Department of Labor & Industries were issued in English. The Department's claim adjudicator realized that he was not dealing with a native English speaking person on Mr. Meštrovac's claim but made no effort to find out the native language group involved.

1.6 Mr. Meštrovac's notices of appeal raised the issue of his status as an immigrant and of his lack of English fluency. Despite this, the Industrial Appeals Judge refused to allow presentation of all the evidence on these issues and limited interpreter services at hearing to interpretation of matters of record, preventing the interpreters from allowing Mr. Meštrovac to communicate with his counsel at breaks during the hearings.

DLI moved for reconsideration, asking the Superior Court to determine: "How and by whom are interpreter expenses to be determined and who is to pay?"⁶ Reconsideration was denied. However, on April 17, 2006, the Superior Court, as requested, revised its earlier conclusions of law on the interpreter issue. Amended Conclusion of Law 2.6 remands the interpreter issue to BIIA:

...to determine the amount of all interpreter expenses Mr. Meštrovac incurred because of the Department's and the Board's failure to provide interpreter services for Mr. Meštrovac to communicate with the Department, his employer, his health care providers, and his lawyer regarding and about his claim and to award him those expenses plus interest at 1% per month from the date they were incurred under RCW 51.36.080.

Amended Conclusion of Law 2.6 further states:

The Department shall pay those interpreter expenses incurred and interest thereon until the Board assumed jurisdiction. The Board shall pay those interpreter expenses incurred and interest thereon after Mr. Meštrovac filed his first notice of appeal to the Board.

On May 11, 2006, BIIA first moved to intervene. Without waiting for a ruling, BIIA appealed to this Court. On June 15, 2006, the Trial Court entered an order "Proposed Per RAP 7.2" denying BIIA's motion to intervene and awarding attorney's fees of \$7,590 to Meštrovac for work performed to respond to BIIA's motion to intervene. CP 957. When this Court granted leave to do so, the Superior Court entered an order denying BIIA's motion to intervene and awarding Meštrovac \$9,340 in attorney's fees.⁷

DLI appealed the Superior Court's order on interpreter services. CP 659-670. Meštrovac timely filed a notice of cross-appeal, seeking

⁶ DLI's Memorandum in Support of Motion for Reconsideration. p. 27, l. 14-5.

⁷ The attorney's fee awarded in the final order included an additional \$1,750 for work done at the Court of Appeals preparing a motion under RAP 7.2 for permission to enter the Superior Court's proposed order denying intervention.

review of the Superior Court's affirmance of BIIA's wage rate calculations. CP 812-825.

IV. ARGUMENT IN RESPONSE TO DLI APPEAL

A. BOTH BIIA AND SUPERIOR COURT HAD JURISDICTION TO CONSIDER THE INTERPRETER SERVICES ISSUES.

DLI does not dispute that it provided some interpreter services to Meštrovac, that he requested additional interpreter services, and that his request was not granted. However, because his request was not explicitly addressed in any DLI order, DLI argues that his only remedy was to petition a court for a writ of mandamus requiring DLI to issue an order that addressed the issue. In the absence of such an order, DLI argues, neither BIIA nor the Superior Court has jurisdiction to consider the matter.

DLI's argument fails, for two reasons.

First, it is incorrect to say Meštrovac's only remedy was a writ of mandamus. The case on which DLI relies, namely, *Dils v. DLI*, 51 Wn. App. 216, 752 P.2d 1357 (1988), does *not* say that the worker's only remedy when faced with DLI inaction is to seek a writ of mandamus. On the contrary, after citing RCW 51.52.050, the *Dils* Court stated at 219:

Thus, Dils could have objected to the Department's claims processing procedures by requesting reconsideration by the Department or by appealing to the Board [Emphasis added.]

The *Dils* Court referred to a writ of mandamus *only* where both DLI and BIIA have ignored a worker's objections:

Assuming for the moment that neither the Department nor the Board responded to Dils' objections, Dils could have petitioned the court for a writ of mandamus pursuant to RCW 7.16.160 in order to compel agency action.

Meštrovac did exactly what was contemplated by the *Dils* Court. When DLI failed to grant his request for added interpreter services, he made his objection known by appealing to BIIA.

BIIA did not ignore Meštrovac's appeal of the interpreter service issue, but ruled it had no jurisdiction because it presented constitutional issues and because no DLI "order" addressed the issue. Meštrovac then appealed to Superior Court.

Simply put, Meštrovac exhausted his administrative remedies and, under *Dils, supra*, was able to do so without seeking a writ of mandamus. It was sufficient for him to appeal to BIIA, as he did.

Second, DLI is incorrect in asserting that without an order expressly addressing interpreter services, BIIA lacked jurisdiction to consider the issue. The pertinent statute, RCW 51.52.050, states:

Whenever the department has taken **any action** or made **any decision** relating to any phase of the administration of this title the worker, beneficiary, employer, or other person aggrieved thereby may request reconsideration of the department, or may appeal to the board. . . [Emphasis added]

The statute refers only to “any action” or “any decision.” There is nothing in the statute requiring that the “action” or “decision” must be in any particular form, much less in a written order. Here, DLI’s “action” or “decision” was to reject Meštrovac’s request for additional interpreter services by continuing to send him English only notices notwithstanding that he had notified DLI that he lacked proficiency in English and needed an interpreter.⁸

It must be kept in mind that by its own terms the Industrial Insurance Act is to be “liberally construed” in the injured worker’s favor. RCW 51.12.010. Our courts have long been committed to the legislative mandate set forth in RCW 51.12.10. The Court in *Mackay v. DLI*, 181 Wn. 702, 704, 44 P.2d 793 (1935) stated:

This court is committed to the doctrine that our Workmen's Compensation Act should be liberally construed in favor of its beneficiaries. It is a humane law and founded on sound public policy, and is the result of thoughtful, painstaking, and humane considerations, and **its beneficent provisions should not be limited or curtailed by a narrow construction.** [Emphasis added]

In *Cockle v. DLI*, 142 Wn.2d 801, 811, 16 P.3d 583 (2001), our Supreme Court held:

In other words, where reasonable minds can differ over what Title 51 provisions mean, in keeping with the legislation’s

⁸ Neither DLI nor BIIA challenge the Trial Court’s findings of fact on these matters.

fundamental purpose, **the benefit of the doubt belongs to the injured worker.** [Emphasis added]

DLI invites this Court to disregard the legislative mandate to construe RCW 51.52.050 liberally in favor of the injured worker. It urges this Court to construe the Act very narrowly and to resolve all doubts *against* the injured worker. When faced with a legislative provision stating “any action” or “any decision” may be appealed, DLI would have this Court construe these words to mean only “any written order” may be appealed. The undersigned is unaware of any appellate decision supporting the notion that unless DLI’s “action” or “decision” appears as a formal written order, it cannot be appealed. Indeed, the BIIA itself has taken the opposite view.⁹

Obviously, construing the statute as DLI proposes does not favor the injured worker. Instead, this construction would permit or even encourage claims adjudicators simply to ignore worker requests, leaving them without a remedy other than retaining an attorney to seek a writ of mandamus. For an injured worker with few resources and little familiarity with the law, this is tantamount to no remedy at all. This Court is respectfully urged to decline DLI’s invitation to be the first Court in this

⁹*E.g.* BIIA has jurisdiction over appeals of DLI letters. *In re Lucian Saltz*, 92 4309 (1993), *In re Maid-For-You*, 88 4843 (1990), *In re Kerry Kemery*, 62 634 (1983).

State to construe RCW 51.52.050 in the narrow and cramped manner DLI proposes.¹⁰

Lastly, this Court may find the sending of “English only” orders prove DLI ruled on and rejected Meštrovac’s request for communication in a language he understood.

In summary, it is undisputed that the claims adjudicator-in-training handling Meštrovac’s claim rejected his request for additional interpreter services. Under RCW 51.52.050, BIIA had jurisdiction to consider the issue, even if the claims adjudicator-in-training failed to set forth his decision on this matter in a formal order.

B. DLI GROSSLY EXAGGERATES THE RELIEF SOUGHT AND THE COST OF PROVIDING INTERPRETER SERVICES.

Without supporting evidence in the record, DLI asserts that under Meštrovac’s theory, all government agencies are legally obligated to provide all limited English proficiency workers with all services in their native languages, thus requiring communication in over 9000 languages.¹¹

Meštrovac has advanced no such theory. His focus is narrow in scope: whether non-English speaking workers seeking benefits under the

¹⁰ DLI does not dispute that it declined to provide additional interpreter services, and could not credibly do so, if only because it continued to send “English only” orders to Meštrovac.

¹¹ The BIIA Record contains no evidence that there are 9000 different languages in the world much less in Washington State as the IAJ refused to allow any testimony on this issue.

Industrial Insurance Act are entitled to interpreter services needed to present the facts on which their right to benefits is based.

Without support in the record, DLI asserts that “staggering” expenditures of public resources would be required to provide the requested interpreter services. The truth is otherwise. DLI already provides non-English speaking injured workers with interpreter services for medical care. The cost of providing the additional services needed by such persons would be but a fraction of the interpreter costs DLI already pays for medical care, panel examination, and vocational rehabilitation. At the BIIA level, there is no added cost to provide interpretation of attorney-client communications at BIIA hearings.¹² That is, Meštrovac’s counsel asked the IAJ to allow the interpreter – already present – to help her communicate with Meštrovac during breaks in BIIA hearings so he could participate and understand the proceedings. The IAJ’s answer was “No.”

C. THE *MATTHEWS* TEST SUPPORTS MEŠTROVAC’S DUE PROCESS ARGUMENT.

It is well understood that due process requires notice and an opportunity to be heard. *Sherman v. Washington*, 128 Wn.2d 164, 184, 905 P.2d 355 (1995). Sending “English only” notices to non-English

¹² BIIA interpreters currently charge a minimum 4 hour fee pursuant to BIIA contract.

speaking workers is obviously not “notice.”¹³ Likewise, requiring workers – who like Meštrovac are of limited financial means because of their low paying jobs and their injuries – to arrange and pay for interpreter services necessary to communicate with counsel severely limits the workers’ ability to present their claims and thus infringes on the right to be heard. Clearly, due process is impacted by the practices of DLI and BIIA.

Under *Mathews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976), a due process analysis requires the Court to balance three factors: (a) the private interest affected, (b) the risk of erroneous deprivation of that interest through the procedures used and the value of additional safeguards, and (c) the government interest involved, including the cost and administrative burdens of the additional safeguards.

DLI minimizes Meštrovac’s property interest in his claim. This Court need not engage in a searching analysis of this factor, as the matter has already been decided. In *Buffelen Woodworking v. Cook*, 28 Wn. App. 501, 625 P.2d 703 (1981), the Court held:

We perceive a worker's interest in potential benefits as substantial because of the statutory abrogation of his common law right to sue his employer for work-related injuries in exchange for his exclusive remedy under the workers' compensation act. See RCW 51.04.010. **We hold that an applicant for workers' compensation benefits whose claim**

¹³ As noted by the Supreme Court of Arizona in *Ruiz v. Hull*, 191 Ariz. 441, 957 P.2d 984 (1998), the use of English only to communicate with non-English speakers “effectively bars communication itself.”

is not finally adjudicated has a property interest of sufficient magnitude to trigger the application of procedural due process requirements. *Davis v. United States*, 415 F. Supp. 1086 (D. Kan. 1976). [Emphasis added.]

As for the second factor, namely, whether the procedures used involve a substantial risk of error, the case at hand provides all the information the Court needs. DLI concedes its claims adjudicator made a significant error in Meštrovac's case. On appeal, the IAJ increased the award substantially. Even after BIIA adjusted the IAJ's award downward, the award was still roughly \$500 per month more than DLI's claim adjudicator-in-training had allowed. Had Meštrovac not retained counsel and paid an interpreter to communicate with his counsel, there is no reason to believe he would have understood either the nature and magnitude of DLI's error or his right to appeal so as to receive an increase in his benefits.

As for the third factor, DLI offers no evidence that providing the additional interpreter services requested by Meštrovac would add significantly to the cost of interpreter services already provided, much less a "staggering" cost. Indeed, DLI resisted and IAJ prevented any evidence on this issue, depriving this Court of any facts on the interpreter costs Mr. Meštrovac incurred.

In short, balancing the *Mathews* factors does not militate against providing additional interpreter services (*e.g.*, to permit communication with one's attorney). On the contrary, when these factors are weighed, it appears the additional services were necessary to afford a non-English speaking worker such as Meštrovac his full due process rights.

D. THE COURT SHOULD REJECT ANY "ENGLISH ONLY" ARGUMENT OPPOSING MEŠTROVAC'S EQUAL PROTECTION CLAIM.

DLI argues against Meštrovac's equal protection claim, asserting that it has no duty to provide notices to non-English speaking claimants in their native language, because "English is the national language of the United States." The unspoken theory underlying the foregoing assertion is that citizens who are not proficient in English had better learn to speak "our" language and, until they do, they are out of luck if they wish to receive government benefits to which they are entitled. To support this theory, DLI cites several cases from other jurisdictions in which "English only" sentiments appear to be strong.

These sentiments may appeal to those inclined to overlook the fact that our country has a multi-cultural heritage and a multi-cultural makeup today.¹⁴ However, these sentiments do not represent the public policy of Washington State expressed by the Legislature or the Courts. Instead,

these sentiments are sharply at odds with the public policy of our State.¹⁵
They run counter to federal policy and endanger a major funding source –
federal funds deposited into the Medical Aid and Accident Funds.¹⁶

Nowhere is Washington public policy on treatment of non-English speakers more clearly stated than in public education. This Court may take judicial notice of the fact that every public school in this state must provide education to children in their native language as a matter of law.

RCW 28A.180.040 states:

Every school district board of directors shall:

(1) Make available to each eligible pupil transitional bilingual instruction to achieve competency in English, in accord with rules of the superintendent of public instruction.

(2) Wherever feasible, ensure that communications to parents emanating from the schools shall be appropriately bilingual for those parents of pupils in the bilingual instruction program.

Simply put, this Court should reject any argument asserting that English is our “national language” and for that reason injured workers cannot expect to receive notices other than in English. Any such argument flies in the face of the public policy of this State.

¹⁴ Califa, *Declaring English the Official Language: Prejudice Spoken Here*, 24 Harv. C.R.-C.L. Law Review 293 (1989)

¹⁵ Set forth notably in RCW 2.43.010 and RCW 49.60.010.

¹⁶ Executive Order 13166 requires federal funded programs, like our Industrial Insurance, to provide notices to LEP persons in their primary languages. See **Appendix A**, federal funding to DLI’s Industrial Insurance program for the years 1997-2007.

Any such argument also flies in the face of DLI's actual practices. DLI concedes that it provides notices to Spanish speaking claimants in Spanish. In so doing, DLI obviously makes it far easier for such workers to understand the content of the notices, including the crucial language on the appeal rights and obligations. DLI, in effect, provides assistance to workers of Hispanic national origin while denying it to those of Bosnian descent in their efforts to assert their rights under the Act.¹⁷

DLI's policy on this matter amounts to discrimination. The agency is willing to assist one minority group, but not another.

This discrimination is not merely the "impact" of a neutral policy. DLI's policy is not neutral. When notified by Hispanic workers they are not proficient in English, DLI sends notices written in Spanish. When notified by Bosnian workers that they are not proficient in English, DLI refuses the type of assistance provided to Hispanic workers and continues to send English-only notices. This is not "neutral" by any stretch of the imagination.

DLI asserts that "language" is not a suspect class. DLI is incorrect in this assertion. As language reflects national origin, discrimination based on language is national origin discrimination. In *Andersen v. King*

¹⁷ DLI may provide notices to other non-English speaking claimants as well; *e.g.*, to claimants whose native language is Chinese or Vietnamese. The agency has not revealed the entire scope of its practices in this arena.

County, 158 Wn.2d 1, 138 P.3d 963, (2006), our Supreme Court stated:

Race, alienage, and national origin are examples of suspect classifications. Suspect classifications require heightened scrutiny because the defining characteristic of the class is “so seldom relevant to the achievement of any legitimate state interest that laws grounded in such considerations are deemed to reflect prejudice and antipathy – a view that those in the burdened class are not as worthy or deserving as others.”

Meštrovac’s lack of English is characteristic of both his alienage and his national origin, thus two suspect classes are present here.

In short, because DLI’s policy is based on Meštrovac’s national origin and alienage, this Court must apply strict scrutiny to DLI’s policy of sending English-only notices to Bosnian workers.

Even if Meštrovac’s national origin is disregarded, DLI’s policy cannot withstand scrutiny based on the lesser “rational basis” standard. DLI offers no reason to provide assistance to Hispanic workers who lack English proficiency, while refusing the same assistance to Bosnian workers who also lack English proficiency.

It is not surprising that DLI is silent on this subject, because there is no rational basis for DLI’s discrimination. Common sense tells us that providing notices to Bosnian workers in their native language would not impose a heavy financial burden on the agency, because the notices need only be translated once. This Court can take judicial notice of the fact that DLI notices and orders are not individualized letters, but instead are forms

consisting almost entirely of boilerplate language.¹⁸ Usually, DLI orders differ only in the numbers and dates inserted to show the benefit awarded and contain boilerplate language to describe appeal rights and obligations.

In today's world of computer technology and readily available computer translation programs, it is both simple and inexpensive to translate forms for workers like as Meštrovac.

Our Supreme Court has repeatedly rejected DLI's claims of added expense to justify narrow construction of the Act to deny or restrict benefits for injured workers.¹⁹ This Court should likewise reject any argument that it is too costly for DLI to end its discriminatory practices.

E. IT IS NOT NECESSARY TO WAIT FOR LEGISLATIVE ACTION.

DLI asserts that "multilingual notices and other services" are matters that "should be left to the Legislature." It is not surprising DLI makes this assertion without reference to any Washington authority. If an agency practice does not provide procedural due process, our Courts are authorized and required to take remedial action, even if the Legislature might also do so. For example, see *City of Redmond v. Moore*, 151 Wn.2d 664, 91 P.3rd 875 (2004).

DLI's assertion that the matter should be left to the Legislature

¹⁸ Indeed, Meštrovac's claim adjudicator-in-training testified he uses form and "canned" letters and orders to issue his rulings. CABR Tr 8/6 91.

also contradicts DLI's own policies and practices. DLI has elected, *on its own*, to provide medical interpretation services and to provide additional interpreter services in the Spanish language notices sent to Spanish speaking workers. Only now, when a worker of different language and national origin seeks equal treatment does DLI argue that this matter should be left to the Legislature.

Stated differently, DLI should not be heard to say this is a legislative matter when heretofore this agency has treated the matter as being within its own purview.

F. RCW 2.43.040 SUPPORTS MEŠTROVAC'S RIGHT TO INTERPRETER SERVICES.

RCW 2.43.040(2) states in relevant part:

In all legal proceedings in which the non-English speaking person is a party....the cost of providing an interpreter shall be borne by the governmental body initiating the proceedings.

DLI concedes Meštrovac is a non-English speaking person, but argues that RCW 2.43.040 cannot apply to him for two reasons.

First, despite having claims adjudicators who issue orders which become final if not appealed,²⁰ DLI argues its administrative process is not a "proceeding" as contemplated by the statute.

¹⁹ *Macias v. DLI* 100 Wn.2d 263, 668 P.2d 1278 (1983) [migrant workers]; *Willoughby v. DLI*, 147 Wn.2d 725, 57 P.3d 611 (2002) [incarcerated workers].

²⁰ Meštrovac's claims adjustor-in-training testified he decides whether to issue an order and whether to include finality language in the order. CABR Tr 8/6 91-2.

Second, although conceding the process that occurs at BIIA level is a “proceeding,” DLI asserts the proceedings there are not “initiated” by BIIA or DLI but are instead initiated by the worker.²¹

The problem with DLI’s analysis is this: both DLI and BIIA admit that they already routinely provide interpreter services to non-English speaking workers, as occurred here. By what authority are these interpreter services provided at BIIA, other than RCW 2.43.040(2)?

The Industrial Insurance Act and DLI regulations neither specifically provide for, nor even mention, interpreter services, leaving RCW 2.43.040 as the only legal basis for DLI to provide interpreter services in the form of Spanish language orders to Spanish-speaking workers.²² Assuming DLI has been acting lawfully, it can be doing so only by construing the term “legal proceeding” to include its claims processing activities and issuance of notices, at least for the purposes of

²¹ A worker files a notice of appeal at BIIA for relief from DLI action. The appeal proceeding does not occur unless BIIA issues an order accepting the appeal after giving DLI the opportunity to reconsider. Thus either 1) DLI’s original order, 2) DLI’s refusal to reconsider, or 3) BIIA’s order granting the appeal actually initiates the BIIA appeal process.

²² DLI’s current Interpreter Policy, PB 05-04 (**Appendix B**) recognizes DLI must provide interpreter services for medical benefits to avoid discrimination based on national origin under Title VI of the Civil Rights Act of 1964. However, this and earlier policies also bar interpreters from interpreting between the worker and his counsel and from translating documents at the worker’s request. PB 03-01.

RCW 2.43.040(2). There is no other legislative authorization found in Washington statutes for providing interpreter services to workers.²³

DLI should not be allowed to take an inconsistent position before this Court. It should not be heard to say that RCW 2.43.040(2) does not apply to it, when in fact this agency and BIIA necessarily rely on this very statute to justify the limited interpreter services it currently provides as benefits under the Act.

Stated differently, DLI necessarily relies on RCW 2.43.040 to justify the expenditure of taxpayer money for certain interpreter services, but when requested to provide these services in a greater amount, DLI asserts the same statute does not apply.

BIIA is in a similar position. Both DLI and BIIA concede that an appeal triggers a “proceeding.” However, both assert RCW 2.43.040(2) does not apply to BIIA appeals, because these appeals are initiated by the worker and not by DLI or BIIA.

Both DLI and BIIA cite WAC 263-12-097 as authority for BIIA’s provision of interpreter services. However, this regulation specifically refers to RCW 2.43.040, as follows:

(1) When an impaired person as defined in chapter 2.42 RCW or a non-English-speaking person as defined in chapter 2.43 RCW is a party or witness in a hearing before the board of industrial

²³ Meštrovac asserts interpreter services are also required by Washington’s Law Against Discrimination, RCW 49.60.

insurance appeals, the industrial appeals judge may appoint an interpreter to assist the party or witness throughout the proceeding. Appointment, qualifications, waiver, compensation, visual recording, and ethical standards of interpreters in adjudicative proceedings are governed by the provisions of chapters 2.42 and 2.43 RCW and General Rule provisions GR 11, GR 11.1, and GR 11.2.

GR 11 authorizes the use of interpreters, while GR 11.1 and GR 11.2 deal with interpreter qualifications and conduct standards. Only RCW 2.43 provides authority for a governmental body to pay for interpreter services. It is plain that BIIA relies on RCW 2.43 as authority.²⁴

Assuming BIIA has been lawfully authorizing payment for interpreter services using taxpayer money, it is apparent that BIIA has been able to do so in one of two ways. First, it may have construed RCW 2.43.040(2) broadly, so that appeals are deemed to have been initiated by BIIA and not by the worker. Hence, BIIA appeals would fall squarely within the purview of the statute.

Second, it may rely on RCW 2.43.040(3), which provides for an interpreter when the non-English speaking person is indigent:

In other legal proceedings, the cost of providing the interpreter shall be borne by the non-English speaking person unless such person is indigent according to the adopted standards of the body.

²⁴ Payment is authorized by BIIA, but is actually made by DLI. See RCW 51.52.030.

In short, BIIA shifts interpreter services costs from the worker to DLI either by deeming its proceedings as having been DLI or BIIA initiated, or by deeming non-English speaking workers to be indigent. One or the other must be true; otherwise, BIIA is spending taxpayer money for interpreter services without legal authorization.

As is true of DLI, BIIA necessarily relies on RCW 2.43.040 to justify the expenditure of funds to provide some interpreter services, but when requested to provide these services in a greater amount, BIIA asserts the statute does not apply. Just as DLI should not be permitted to take inconsistent positions, neither should BIIA.

G. MEŠTROVAC WAS PREJUDICED BY THE DENIAL OF ADDITIONAL INTERPRETER SERVICES.

DLI asserts Meštrovac failed to identify how he was prejudiced by DLI's and BIIA's failure to provide the additional interpreter services he requested. Although he was not allowed to testify on this matter, it is easy to show how he was prejudiced.

The prejudice to him took the form of an added financial cost that he should not have had to bear, namely, the cost of an interpreter to provide the interpreting services that neither DLI nor BIIA would provide. By having to pay these added costs, Meštrovac's benefits were reduced by the amount he paid.

It is too clear for extended argument that any agency action which imposes an unnecessary financial burden on a party or that prevents a party from enjoying all the benefits to which he or she is entitled is “prejudicial.” For example, see *Scully v. Employment Security*, 42 Wn.App. 596, 712 P.2d 870 (1986) (Denial of benefits is “unduly prejudicial.”) The Act specifically states its intent to protect workers from the economic effects of job injury.²⁵

H. INTERPRETER COSTS WERE PROPERLY AWARDED TO MEŠTROVAC.

Meštrovac prevailed in Superior Court on his right to be reimbursed for interpreter service costs which DLI and BIIA refused to provide. DLI suggests that Mestrovac can prevail on this issue, yet not be entitled to reimbursement, because “costs” can be awarded “only in relation to the court action.” For this proposition, DLI cites RCW 51.52.130.

DLI is wrong, for at least two reasons. First, as noted earlier, our legislature has authorized agencies such as DLI and BIIA to pay the costs of interpreter services, pursuant to RCW 2.43.040. As noted earlier, both agencies have necessarily construed RCW 2.43 to authorize the expenditure of taxpayer money for the interpreter services they routinely

²⁵ RCW 51.12.010 clearly states: “This title shall be liberally construed for the purpose of reducing to a minimum the . . . economic loss arising from injuries . . . in the course of employment.” The economic loss comprised of interpreter costs is not excluded.

provide as benefits under the Act. They should not be allowed to avoid the effects of this statute now.

Second, RCW 51.52.130 does *not* say that costs may be awarded to the worker only in connection with the Superior Court proceeding. The statute states that:

[T]he attorney's fee fixed by the court, **for services before the court only**, and the fees of medical and other witnesses and the costs shall be payable out of the administrative fund of the department. [Emphasis added.]

The only reference to “before the court only” is made in connection with attorney's fees. If the legislature had intended to limit costs to those incurred in connection with the court proceeding, it could have done so. It did not. Instead, the statute allows the court to award the prevailing worker his or her costs incurred at any stage of the proceeding. Indeed, medical and other witnesses testify only at BIIA and the Superior Court reviews their testimony *de novo*.²⁶

DLI relies on *Piper v. DLI*, 120 Wn.App. 886, 86 P.3rd 1231 (2002), but this case does not support DLI because “costs” were not at issue. The court in *Piper* stated the issue very succinctly at 889:

The issue is whether RCW 51.52.130 authorizes the trial court to award the prevailing worker attorney fees incurred before the Board in addition to attorney fees before the superior court.

²⁶ *Ruse v. DLI*, 138 Wn.2d 1, 5, 977 P.2d 570 (1999).

In short, *Piper* is pertinent only to the issue of attorney's fees. DLI did not appeal the award of attorney fees in this case.

V. ARGUMENT IN RESPONSE TO BIIA'S APPEAL

Several of BIIA arguments are virtually identical to arguments advanced by DLI and have therefore already been addressed. In the interest of brevity, Meštrovac will not repeat what he has said before. This portion of Meštrovac's brief will be devoted to responding to BIIA arguments not advanced by DLI.

A. THE BOARD DOES NOT HAVE STANDING TO APPEAL THE SUPERIOR COURT'S DECISION.

BIIA standing in this matter is governed by *Kaiser Aluminum & Chemical Corp. v. DLI*, 121 Wn.2d 776, 854 P.2d 611 (1993). In *Kaiser*, the Court ruled that whether BIIA has authority to appeal a Superior Court decision is determined "entirely" by its enabling legislation:

Thus, the question of the Board's authority to appeal a superior court decision rests entirely upon whether such an authority is expressly granted by the Board's enabling legislation or is necessarily implied.

Noting that BIIA's enabling legislation, RCW 51.52, does not give BIIA any express right to appeal, the Court then determined that the legislation contains no implied right to appeal, explaining:

The Board's role as an impartial tribunal in hearing appeals from Department determinations weighs heavily against

finding an implied right to appeal in RCW 51.52. In order for the Board to function properly as an appellate body, it must not have a partisan interest in the outcome of contested cases, nor should it present the appearance of such an interest. In assuming the role of advocate, the Board creates such an appearance and compromises the impartiality which is critical to its proper role. While there may be some limited utility in allowing the Board to bring appeals like this one, the public interest is better served by requiring the Board to operate within the confines appropriate to an impartial, appellate tribunal.

Based on this reasoning, the Supreme Court dismissed BIIA's appeal.

Notwithstanding the Court's holding in *Kaiser*, BIIA in the present instance relies on *dicta* to the effect that there are two exceptions to the general rule against appeals by a quasi-judicial agency, one involves preserving the "integrity of their decision making process." BIIA asserts that its decision-making integrity is adversely affected by the Superior Court decision in two ways: first, by having to determine how much money Mestrovac should be reimbursed for interpreter fees,²⁷ and second, by acting as an initial decision maker and not as an appellate body.

As for the first objection, it is hard to see how BIIA's "decision making integrity" is affected merely by determining how much Mestrovac should be reimbursed. The Court's order does not prescribe the manner in

²⁷ BIIA says that it is being asked to impose sanctions on itself. In truth, it is merely be directed to determine how much Mr. Mestrovac had to pay for interpreter services which BIIA refused to provide him and then to reimburse him.

which any decision on this subject is to be made; e.g., what evidence must or must not be considered, or what the standard of proof should be.

The second objection is equally spurious. BIIA does not function as an appellate body in the strictest sense. On the contrary, BIIA has a staff of IAJs who routinely conduct original evidentiary hearings and make findings of fact and conclusions of law. See WAC 263-12-045. These IAJs rule on many issues not passed on by DLI such as discovery and admissibility. There is nothing in the Court's order preventing BIIA from delegating this matter to an IAJ with instructions to hold a hearing to determine the amount of interpreter expenses Meštrovac incurred due to his industrial injury.

In short, BIIA's assertion that its decision making integrity is at stake is completely without merit. Its appeal should be dismissed as per *Kaiser, supra*.

B. WHETHER BIIA HAS A RIGHT TO INTERVENE AS AN AGGRIEVED PARTY UNDER RAP 3.1 IS IRRELEVANT.

BIIA argues that it is an "aggrieved party," and therefore has a right to intervene under RAP 3.1. As authority, BIIA cites *Washington v. G.A.H.*, 133 Wn.App. 567, 137 P.3rd 66 (2006). In that case, the trial court entered an order directing the Department of Health & Social Services (DSHS) to take action. Finding that DSHS was an aggrieved

party under RAP 3.1, the Court permitted DSHS to appeal, even though it was not a party to the proceeding.

Washington v. G.A.H. is distinguishable. DSHS is not a “quasi-judicial agency” with appellate authority, as is BIIA. Allowing DSHS to enter the proceedings did not compromise its position as an impartial decision maker, as would be true here.

The contention that BIIA is an aggrieved party and therefore has a right to appeal under RAP 3.1 was also advanced by BIIA in *Kaiser*. The court rejected this contention, stating:

The question in this case is not whether the Board is "aggrieved" in order to permit review by this court, but instead whether the Board has the statutory authority to bring the appeal in the first place. The mere fact this court's doors may be open under RAP 3.1 to hear the Board's appeal does not imply the Board has the statutory authority to walk through those doors.

In short, whether BIIA is an aggrieved party under RAP 3.1 is irrelevant. Standing to bring an appeal must be conferred by the enabling statute. *Kaiser, supra*.

C. EVEN IF BIIA HAS STANDING, ITS MOTION TO INTERVENE WAS UNNECESSARY, IMPROPER, AND UNTIMELY.

Even if BIIA is deemed to have standing to appeal, it was not necessary to move to intervene. In *Washington v. G.A.H., supra*, DSHS appealed where it was not a party. The Court ruled that because it was an

“aggrieved party” under RAP 3.1 DSHS had a right to appeal even without first intervening to be named as a party to the action. Hence, BIIA’s motion to intervene was unnecessary and needlessly created added expense for Meštrovac because of the added work required from his counsel.

Moreover, if its motion to intervene had been granted, BIIA would have become a party, with the right to participate in all aspects of the case, not merely those aspects that it now claims will affect its “decision making integrity.” BIIA would have been in a position to argue to the Superior Court that all of BIIA decisions appealed by Meštrovac were correct. Such argument would have been entirely improper. See *Kaiser, supra*.

Finally, as found by the Superior Court, BIIA’s motion to intervene was untimely. BIIA had been notified of the issues to be raised in Superior Court approximately two years earlier, yet it did nothing until after the Superior Court entered judgment and ruled on DLI’s motion for reconsideration asking it to specify who should pay for Meštrovac’s interpreter expenses.

Delay of this magnitude is sufficient to sustain the Superior Court’s denial of the motion to intervene. In *Martin v. Pickering*, 85 Wn. 2d 241, 243, 523 P.2d 380 (1975), the Court upheld the Trial Court’s denial of a post-judgment motion to intervene, stating: “A critical

requirement is that the motion must be timely. A strong showing must be made to intervene after judgment.” See also *Kreidler v. Eikenberry*, 111 Wn.2d 828, 766 P.2d 438 (1989). No such showing exists here.

D. APPEARING AS MEŠTROVAC’S OPPONENT HERE, BIIA LOSES ITS IMPARTIALITY WHILE HANDLING OTHER CURRENT APPEALS ON MEŠTROVAC’S CLAIM.

One reason the *Kaiser* Court gave why BIIA should not be allowed to appeal Superior Court rulings on its decisions is because BIIA then becomes an advocate against the injured worker – destroying its statutorily imposed duty to act as a neutral and impartial determiner of DLI appeals.

The *Kaiser* Court said at 781:

[A]llowing a quasi-judicial agency to enter proceedings as a partisan may compromise the impartiality of that body in rendering its decisions.

Meštrovac currently has another appeal regarding this claim before the very BIIA which here is his party opponent.²⁸ How can BIIA even have the appearance of impartiality in this situation?

E. BIIA’S INTERPRETER SERVICES RULE SUPPORTS MEŠTROVAC.

BIIA argues that the interpreter services provided to Meštrovac were sufficient. It further argues that courts should defer to an agency’s interpretation of its own rules; hence, so BIIA argues, the Superior Court’s

²⁸ *In re Enver Meštrovac*, BIIA Docket No. 06 15148, an appeal of DLI’s premature closure of Meštrovac’s claim, is set for hearing in March 2007.

ruling that Meštrovac was entitled to additional interpreter services was incorrect.

BIIA's argument should be rejected, for at least two reasons. First, the rule to which BIIA refers is WAC 263-12-097. This rule states, in pertinent part:

(1) When an impaired person as defined in chapter 2.42 RCW or a non-English-speaking person as defined in chapter 2.43 RCW is a party or witness in a hearing before the board of industrial insurance appeals, the industrial appeals judge may appoint an interpreter to assist the party or witness throughout the proceeding. Appointment, qualifications, waiver, compensation, visual recording, and ethical standards of interpreters in adjudicative proceedings are governed by the provisions of chapters 2.42 and 2.43 RCW and General Rule provisions GR 11, GR 11.1, and GR 11.2.

4. The Board of industrial insurance appeals will pay for interpreter expenses when the industrial appeals judge has determined the need for interpretive services as set forth in subsection (1).

The foregoing rule is completely silent on the extent of the interpreter services to be provided. The rule says nothing one way or another about whether interpreter services will be provided to allow or facilitate communication between a worker and his or her attorney.

Instead, it merely provides that when a person is impaired as defined by RCW 2.42 or is non-English speaking as defined by RCW 2.43, the IAJ may appoint an interpreter "to assist the party *throughout* the proceeding." The foregoing phrase could hardly be broader in scope and

is quite reasonably construed as encompassing attorney-client communications during the course of evidentiary hearings and to prepare for hearings.

Our State Supreme Court has found that right to counsel includes the right to confer to prepare and “the opportunity for private and continual discussions” between client and counsel during trial. *State v. Herzog*, 196 Wn.2d 383, 398, 635 P.3d 694 (1981). BIIA’s rulings on interpreter services prohibited any such discussions in this case.

Certainly to assist Meštrovac throughout a proceeding means to encompass interpreting privileged attorney client communications at hearing. Not receiving such interpreter services, deprived Meštrovac of his right to the benefit of representation of retained counsel recognized by WAC 263-12-020(1)(a) because of his lack of English fluency.

There is nothing in the rule cited above that says or even suggests that interpreter services during BIIA proceedings may be limited in any way. Nor does the rule suggest withholding interpreters for testimony perpetuated under WAC 263-12-117 which is received as testimony before BIIA can be justified.

BIIA’s argument urges construing the word “proceedings” to mean evidentiary hearings held in the IAJ’s presence. Neither BIIA Practice and Procedure WAC 263-12 nor the Industrial Insurance Act RCW Title 51 set

forth any definition for the term “proceedings.” However, WAC 263-12-100 uses the term “proceed” in such a way to indicate proceedings include events before BIIA hearings saying:

In those cases that *proceed* to hearings. . .

WAC 263-12-020 uses the term “proceedings” several times to mean much more than just evidentiary hearings before an IAJ.²⁹

To add to the ambiguity, WAC 263-12-097(1) appears to be permissive (“may”), while another subsection, namely subsection (2), appears to be mandatory (“will pay”). Further ambiguity is provided by the rule’s reference to RCW 2.43, which states that the cost of the interpreter “shall be borne” by the governmental body.³⁰

It is well-established that ambiguities are to be resolved in favor of the injured worker; see *Cockle, supra*, at 822. It is also well-established that when an agency’s interpretation is at odds with a statutory mandate, deference to the agency is “inappropriate.” *Cockle, supra*, at 812.

²⁹ (2) Lay [representatives] may . . . appear in **proceedings** before the board without admission to practice. [Bracketed material for clarification]

(5) Conduct. All . . . appearing . . . in **proceedings** before the board or before its industrial appeals judges.

(5)(b)(ii) Refusal to permit . . . to appear . . . in any **proceedings** before the board or its industrial appeals judges,

(5)(c) **Proceedings**. If any person in **proceedings** before the board disobeys or resists any lawful order or process, or misbehaves during a hearing . . .

³⁰ As pointed out earlier in this Brief, the Board’s authority for paying for interpreter services for non-English speaking claimants is found in RCW 2.43. This statute obviously applies to the case at hand. [Emphasis added]

If this court resolves the obvious ambiguities in BIIA's rule in favor of the injured, non-English speaking worker as it should, the outcome is clear: Meštrovac was entitled to interpreter services to assist him in communicating with his attorney during BIIA proceedings. BIIA was in error in failing to provide those services, and the Superior Court was correct in so holding.

F. AN AWARD OF ATTORNEY FEES WAS PROPER.

RCW 51.52.130 states:

If, on appeal to the superior or appellate court from the order and decision of the Board, said decision and order is reversed or modified and additional relief is granted to a worker or beneficiary....a reasonable fee for the services of the worker's or beneficiary's attorney shall be fixed.

There is no doubt BIIA's decision was reversed on least one issue, namely, the issue of interpreter services, and that Meštrovac was granted additional relief. Hence, he was entitled to an award of attorney's fees. Further, remand will require BIIA to provide further interpreter services affecting the Medical Aid and Accident Funds. There is also no doubt the work Meštrovac's attorney performed to respond to BIIA's motion to intervene arose out of and was directly related to his appeal.

BIIA does not dispute the reasonableness of amount of the attorney fees awarded by the Superior Court. It argues instead that it should not have to pay the award because the statute cited above states that attorney's

fees and costs awarded “shall be payable out of the administrative fund of the department.”

Where BIIA obtains the funds with which to pay the award is not Meštrovac’s concern, nor should it be of concern to this Court. It is a matter to be resolved between BIIA and DLI at some other time and in some other forum.

G. THE AWARD OF INTERPRETER EXPENSES WAS PROPER.

BIIA asserts that it should not have to reimburse Meštrovac for his out-of-pocket interpreter expenses. However, the statute on which BIIA necessarily relied when providing its limited interpreter services states clearly that interpreter expenses “shall” be borne by the governmental body. Unless Meštrovac is reimbursed for moneys he had to pay for interpreter services that should have been provided to him, the mandate of the statute is rendered meaningless.

BIIA argues it has immunity from any monetary “sanctions” or “damages” because of its status as a quasi-judicial agency,³¹ and suggests that DLI should pay the costs of all the interpreter services, as a “substantive benefit.”³² Indeed, DLI routinely pays medical interpreter services as a benefit from the Medical Aid Fund.

³¹ It is an obvious exaggeration to characterize reimbursement for Mestrovac’s costs as “sanctions” or “damages.”

³² See footnote 31 on page 36 of the Board’s brief.

Where BIIA obtains the funds is neither this Court's nor Meštrovac's concern. When an agency causes a worker to incur costs that should have been borne by the agency, it should not be the worker's obligation to determine how and where the agency will find the funds to make proper reimbursement.

Interpreter services at BIIA level are paid as benefits under the Act half each from DLI moneys in the Medical Aid and Accident Funds under RCW 51.52.030.³³ Requiring BIIA to authorize repayment from these funds, as the Superior Court did, was an appropriate grant of additional benefits under the Act and not an award of sanctions or damages

H. FAILING TO REIMBURSE INTERPRETER EXPENSES IMPERMISSIBLY DIMINISHES BENEFITS UNDER THE ACT.

In *Stertz v. Industrial Insurance Com'n*, 91 Wash. 588, 158 P.2d 256 (1916), our Supreme Court approved the first Industrial Insurance statute, calling it "this noble legislation."³⁴ The *Stertz* Court noted Washington chose the most comprehensive of three European systems and expanded it, creating a new creature, unlike any other worker compensation system, saying:

³³ Interpreters are not paid from BIIA's budget as BIIA represented to the Superior Court in the Liston Declaration. CP

³⁴ While Washington's Industrial Insurance Act was adapted to allow employers to qualify as self-insurers, providing they give the same benefits provided by the state fund under Title RCW 51 which remains named the Industrial Insurance Act.

[O]urs is not an employer's liability act. It is not even an ordinary compensation act. It is an industrial insurance statute.

Our Act provides an insurance policy for injured workers, paid partly by wage deductions.³⁵ For their premiums, workers are guaranteed certain benefits, including medical care, interpreter services,³⁶ disability, and some vocational rehabilitation benefits.

Our Supreme Court has held that where a statute sets a minimum insurance benefit, expenses incurred necessary to obtain benefits may not be shifted to the insured because doing so reduces the guaranteed minimum benefit. See *e.g. Kenworthy v. Penn. Gen. Ins.*, 113 Wn.2d 309, 779 P.2d 257 (1989).³⁷

RCW 51.32.090 sets minimum time loss benefits applying the schedule in RCW 51.32.060. All disabled workers including unmarried workers like Meštrovac without spouses or children³⁸ are guaranteed a minimum benefit of 60% of wages. However, Meštrovac's benefit ended up much less than 60% of his actual earnings and benefits to support four

³⁵ Meštrovac' employer deducted from his wages for this purpose. CABR Adm. Ex 37.

³⁶ DLI Interpreter Policy, PB 05-04 recognizes interpreter services are required by Title VI of the Civil Rights Act of 1964 to avoid discrimination based on national origin. BIIA's Brief recognizes interpreter services as benefits under the Act as well.

³⁷ Holding assessment of half an arbitrator fee against the insurer impermissibly whittles away at the statutorily mandated minimum UIM benefit.

³⁸ Despite his disabled father, mother and minor brother and their qualifying as his "dependents" under RCW 51.08.050, Meštrovac still received the lowest time loss rate under RCW 51.32.090 because he had neither spouse nor children.

people because BIIA devalued his overtime pay and excluded many of his benefits from wage calculations.

DLI's and BIIA's policies of shifting interpreter expenses to Meštrovac effectively reduced his benefits below the 60% minimum benefit guaranteed by RCW 51.32.090. These policies impermissibly "whittle away" at Meštrovac's benefits based solely on his lack of English ability and his national origin. These policies run counter to the objectives of the Act and should not be permitted by this Court.

VI. ARGUMENT SUPPORTING MEŠTROVAC'S APPEAL

A. REDUCTION OF OVERTIME WAGES WAS ERROR.

The Superior Court affirmed BIIA's wage calculation. BIIA calculated Meštrovac's wages as 8 hours a day at \$9/hour with 10.39 hours of overtime per month,³⁹ resulting in additional \$93.51 each month. In fact Meštrovac was paid \$13.50 per hour for overtime. Adm. Exs. 9, 81, 37; CABR 761. The Superior Court affirmed BIIA's inclusion of overtime at his regular pay rate of \$9/hour. This calculation excludes roughly two thirds of Meštrovac's overtime wages from calculations, ignoring the mandate in RCW 51.08.178(1) to include all wages "from all employment at the time of injury." Thus, the Superior Court erred in

³⁹ This figure came from the claim adjudicator-in-training not the pay records admitted at hearing. CABR Adm. Ex. 37, pay stubs, shows an average of 20.9 hours overtime/month.

affirming BIIA by failing to include all Meštrovac's overtime wages in calculation of his wages, thus reducing his benefits. Meštrovac's monthly overtime should be included in wages as actually received at \$282.15.⁴⁰

B. EXCLUSION OF SOME HOLIDAY AND VACATION LEAVE FROM MEŠTROVAC'S WAGES WAS ERROR.

It is undisputed that Meštrovac received paid holiday and vacation leave time.⁴¹ The only dispute is whether these benefits are to be included in calculating wages under RCW 51.08.178.

The foregoing question was squarely before the Court in *Fred Meyer v. Shearer*, 102 Wn. App. 336, 340, 8 P.3rd 310 (2000). There can be no doubt as to the Court's holding because the Court flatly stated (at 340) that "monthly wages include paid leave."

DLI may try to avoid the effects of *Fred Meyer* by asserting that Meštrovac is trying to engage in some kind of "double counting." In truth, he is simply requesting that his paid leave be included in calculating his wages, as required under *Fred Meyer*. BIIA's Decision and Order recognized that Meštrovac was entitled to and received vacation and holiday pay.⁴²

Under DLI's interpretation, paid leave does not represent an added cash benefit to the worker and can effectively be ignored. This position

⁴⁰ \$13.50/hour x 20.90 hours = \$282.15.

⁴¹ Adm. Ex. 8, 93-96, Adm Ex. 9, 93-96.

can be justified *only* if one accepts DLI's unstated theory that being paid for working is the same – economically – as being paid for not working.

Such a theory is obviously wrong. Common sense and everyday experience tell us that workers – especially those receiving subsistence wages – can and do supplement their meager incomes by working while on paid leave. In short, paid leave represents an added cash benefit to the worker and should be included in the wage calculation, as plainly required under *Fred Meyer v. Shearer*.

C. EXCLUSION OF COST OF UNEMPLOYMENT COMPENSATION COVERAGE PREMIUM FROM MEŠTROVAC'S WAGES WAS ERROR.

Meštrovac's employer paid 2.67 % of his pay as premium to ensure he received Unemployment Compensation coverage.⁴³ Adm. Ex. 12. Unemployment provides a core benefit critical to worker survival in times of unemployment. RCW 50.01.010. Meštrovac lost this benefit due to his industrial injury. Under *Cockle, supra*, these premiums should be included in wages.

D. ERAKOVIĆ V. DLI WAS WRONGLY DECIDED AND SHOULD BE REVERSED ON GOVERNMENTALLY MANDATED BENEFITS.

In *Eraković v. DLI*, 132 Wn.App. 762, 134 P.3d 234 (2006), this Court held that governmentally mandated employee benefit payments to Industrial Insurance, Medicare/Medicaid, and Social Security must be

⁴² PD&O p. 7-8.

excluded from wages because the payments were not made to the worker and the coverage these programs afforded was not critical to worker health or survival under the *Cockle* test.

Respectfully, Meštrovac requests reversal of the *Eraković* decision. The programs cited above are mandated by the government precisely because they are critical to worker survival and health. These programs provide not only health benefits but also subsistence benefits to ensure worker survival in times of disability due to illness or age. The United States Supreme Court has consistently recognized that these programs provide for the basic necessities of life when providing either medical care or subsistence benefits.⁴⁴

When Meštrovac was injured, he lost the benefit of these programs, just as he lost the private group medical coverage provided by his employer as an employee benefit. As these programs are essential to worker survival and coverage under them was lost due to injury, they should be included in wages under RCW 51.08.178.

VII. REQUEST FOR ATTORNEY FEES ON APPEAL

Meštrovac requests this Court award him attorney fees and costs on appeal pursuant to RCW 51.52.130. Under the unitary claim theory

⁴³ RCW 50.06.040.

adopted by the Supreme Court in *Brand v. DLI*, 139 Wn.2d 659, 989 P.2d 1111 (1999), if this Court grants any relief requested by Meštrovac or remands for any proceeding at BIIA, attorney fees for all work on this appeal should awarded.

VIII. CONCLUSION

For the reasons stated above, this Court is respectfully requested to grant the following relief:

1. Affirm the Superior Court's decision requiring DLI to reimburse Meštrovac for interpreter expenses with interest at DLI level.
2. Dismiss the appeal by BIIA and/or affirm the Superior Court's decision requiring reimbursement of Meštrovac's interpreter expenses at BIIA level, and the Superior Court's award of attorney's fees against BIIA.
3. Affirm the Superior Court's denial of BIIA's intervention motion and the increased award of attorney's fees associated therewith.
4. Reverse the Superior Court's determination on wage calculation and remand for inclusion in wages of all Meštrovac's paid vacation and holiday days, the full employer's premium for Meštrovac's Unemployment Compensation coverage, and all Meštrovac's overtime

⁴⁴ *Goldberg v. Kelly*, 397 U.S. 254, 268-9, 90 S.Ct. 1011, 25 L.Ed.2d 187 (1970); *Shapiro v. Thomson*, 394 U.S. 618, 22 L.Ed.2d 600, 89 S.Ct. 1322 (1969); *Memorial Hospital v. Maricopa County*, 415 U.S. 250, 259-260, 39 L.Ed.2d 306, 94 S.Ct. 1076 (1974).

earnings, both his average overtime hours of 20.9 per month at the actual overtime rate \$13.50 in calculating monthly wages.

5. Reverse or limit this Court's earlier ruling in *Eraković, supra*, including the employer's cost for governmentally mandated Industrial Insurance, Social Security, Medicare and Medicaid coverage in wages under RCW 51.08.178.

6. Award Meštrovac reasonable attorney's fees and costs against DLI and/or BIIA for work performed in this appeal, as authorized by RCW 51.52.130.

7. Remand for proceedings consistent with its rulings.

Respectfully submitted this 26th day of February, 2007.



Ann Pearl Owen, #9033,
Attorney for Enver Meštrovac, Respondent/Cross-Appellant

APPENDIX A

TABLE

Federal Funds Received by Department of Labor & Industries & by Washington's Industrial Insurance Program

1997-2007

Biennium	Total Federal Funds In DLI Budget	Federal Funds in Accident Account	Federal Funds in Medical Aid Account	ESSB Reference
1997-1999	\$16,706,000	\$9,112,000	\$1,592,000	6062 § 218
1999-2001	\$16,654,000	\$9,112,000	\$1,592,000	5180 § 217
2001-2003	\$20,956,000	\$11,568,000	\$2,438,000	6153 § 217
2003-2005	\$24,818,000	\$13,396,000	\$2,960,000	5404 § 217
2005-2007	\$26,806,000	\$13,621,000	\$3,185,000	6090 § 217
Total	\$105,940,000	\$56,809,000	\$11,767,000	

APPENDIX B



PROVIDER BULLETIN

PB 05-04

THIS ISSUE

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.

Interpretive Services for Healthcare and Vocational Services

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.

Either paid or non-paid interpreters may assist with communications. In all cases, the paid interpreter must meet the credentialing standards contained in this policy. **Persons identified as ineligible to provide services in this policy may not be used even if they are unpaid.** Please review the "Policy Changes for Interpretive Services Provider Standards" section of this bulletin for more information. **NOTE: Persons under the age of eighteen (18) may not interpret for injured workers or crime victims.**

For paid interpreters, you or your staff will be asked to verify services on either the L&I "Interpretive Services Appointment Record" or a similar provider's verification form. The form will be presented by the interpreter at the end of each appointment. You will be asked to verify a scheduled appointment if the worker fails to keep the appointment so the interpreter may be paid for mileage. You should also note in your records that an interpreter was used at the appointment.

When a procedure requires informed consent, a credentialed interpreter should help you explain the information.

How to Find an Interpretive Services Provider

By July 2005, you can find an L&I interpreter provider on our website. Searches are available by interpreter name, language and/or geographic area at <https://fortress.wa.gov/lni/ils/>.

Interpretive Services Provider Qualifications Policy

Obtaining an Interpretive Services Provider Account Number

All providers sending bills to the State Fund, Self-insured employers or Crime Victims Program (insurers) must have a provider account number with L&I. **Self-insurers do not have separate provider account systems. Self-insurers may verify a provider's account status with L&I.**

As of March 2003, every interpreter, billing an insurer for services, is required to obtain an individual provider account number(s). This includes interpreters and translators who are associated with interpretive service agencies, healthcare clinics, hospitals and other group providers. An individual provider may designate payment to a group provider account.

To obtain a provider account number, interpreters or translators must submit a provider account application and verification of their credentials to one or both of the insurers listed below. Credentials must verify the provider's fluency in English and the other language(s) for which they provide interpretive services.

Provider Bulletin 05-01 (January 2005) notified current interpretive services providers of these changes to provider qualifications and actions needed to maintain their provider account. Current interpretive service providers, who have not yet done so, should submit proof of their credentials to the insurers **by June 15, 2005.**

Provider account application forms are available on the department's website www.LNI.wa.gov/Forms/pdf/248011a0.pdf or by contacting the insurer(s) as listed below:

Workers' Compensation
Department of Labor and Industries
Provider Accounts
PO Box 44261 Olympia, WA 98504-4261
360-902-5140, 1-800-848-0811
FAX 360-902-4484

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

Current and prospective interpretive service providers may submit credentials at any time after June 15, 2005. However, after July 1, 2005, the insurer(s) will not make payments to current or new interpretive services providers unless they have supplied credentials to L&I.

Separate copies of credentials must be submitted to the Workers' Compensation and/or Crime Victims Program, by copying the "Submission of Provider Credentials" form (F245-055-000) in this bulletin or on the department's website noted above; **then:**

- Completing the provider name, provider number, phone number(s) and group number information for **each provider number**; and
- Indicating the language(s) and geographic area(s) availability information; and
- Attaching copies of credentials to **each submission form**; then
- Mailing or FAXing to the appropriate L&I provider accounts section above.

All Providers Must Comply with State and Federal Laws

All L&I providers must comply with all applicable state and/or federal licensing or certification requirements to assure the department of the provider's qualifications to perform services. This includes state or federal laws pertaining to business licenses as they apply to the specific provider's practice or business.

Credentials Required for L&I Interpretive Services Providers

Interpreters and translators are required to have at least one of the following credentials in good standing in order to hold an L&I or Crime Victims Program provider account number for interpretive services:

Certified Interpreter

Agency or Organization	Credential
Washington State Department of Social and Health Services (DSHS)	Social or Medical Certificate Provisional Certificate
Washington State Administrative Office for the Courts (AOC)	Certificate
RID-NAD National Interpreter Certification (NIC)	Certified Advanced (Level 2) Certified Expert (Level 3)
Registry of Interpreters for the Deaf (RID)	Comprehensive Skills Certificate (CSC) Master Comprehensive Skills Certificate (MCSC) Certified Deaf Interpreter (CDI) Specialist Certificate: Legal (SC:L) Certificate of Interpretation and Certificate of Transliteration (CI/CT)
National Association for the Deaf (NAD)	Level 4 Level 5
Federal Court Interpreter Certification test (FCICE)	Certificate
US State Department Office of Language Services (USSD)	Verification letter or Certificate

Qualified Interpreter

Agency or Organization	Credential
Translators and Interpreters Guild (TIG)	Certificate
Washington State Department of Social and Health Services (DSHS)	Letter of authorization as qualified social and/or medical services interpreter including provisional authorization
Federal Court Interpreter Certification (FCICE)	Letter of designation or authorization

Certified Translator

Agency or Organization	Credential
Washington State Department of Social and Health Services (DSHS)	Translator Certificate
Translators and Interpreters Guild (TIG)	Certificate
American Translators Association (ATA)	Certificate

Qualified Translator

Agency or Organization	Credential
A state or federal agency; A state or federal court system; Other organization including language agencies; and/or An accredited academic institution of higher education.	Certificate or other verification showing: Successful completion of an examination or test of written language fluency in both English and in the other tested language(s); and A minimum of two years experience in document translation.

Credentials from Other Organization or States

Interpreters and translators located outside of Washington State must submit credentials from their state Medicaid programs, state or national court systems or other nationally recognized programs. **For interpreters from any geographic area**, credentials submitted from agencies or organizations other than those listed above, may be accepted if the testing criteria can be verified as meeting the minimum standards listed below:

Interpreter test(s) consists of, <i>at minimum</i> :	Translator test consists of, <i>at minimum</i> :
A written test in English; and	A written test in English and in the other language(s) tested; or
A verbal test of sight translation in both English and other tested language(s); and	A written test and work samples demonstrating the ability to accurately translate from one specific source language to another specific target language.
A verbal test of consecutive interpretation in both languages; and	
For those providing services in a legal setting, a verbal test of simultaneous interpretation in both languages.	

Maintaining Credentials

Interpretive services providers are responsible for maintaining their credentials as required by the credentialing agency or organization. Should the interpretive services provider's credentials expire or be removed for cause or any other reason, the provider must immediately notify the insurer(s).

Credentialed Employees of Healthcare or Vocational Providers Must Have Their Own Interpretive Services Provider Number to Receive Payment

Employees of healthcare or vocational providers may be paid for interpretive services if:

- Their sole responsibility is to assist patients or clients with language or sensory limitations; **and**
- They are credentialed interpreters or translators; **and**
- They have a provider number with the insurer as an interpretive services provider.

Interpreters/Translators Not Eligible for Payment

Other persons may on occasion assist the injured worker or crime victim with language or communication limitations. These persons do not require a provider number, but also **will not be paid** for interpretive services.

These persons may include but are not limited to:

- Family members.
- Friends or acquaintances.

- The healthcare or vocational provider.
- Employee(s) of the healthcare or vocational provider whose primary job is **not** interpretation.
- Employee(s) of the healthcare or vocational provider whose primary job is interpretation but who is not a credentialed interpreter.

Persons Ineligible to Provide Interpretation/Translation Services

Some persons may not provide interpretation or translation services for injured workers or crime victims during healthcare or vocational services delivered for their claim. These persons are:

- The worker's or crime victim's legal or lay representative or employees of the legal or lay representative.
- The employer's legal or lay representative or employees of the employer's legal or lay representative.
- Persons under the age of eighteen (18). **NOTE: Injured workers or crime victims using children for interpretation purposes should be advised they need to have an adult provide these services.**

Persons Ineligible to Provide Interpretation/Translation Services at IME's

Under WAC 296-23-362 (3), "The worker may not bring an interpreter to the examination. If interpretive services are needed, the department or self-insurer will provide an interpreter." Therefore, at Independent Medical Examinations (IME), persons (including approved interpreter/translator providers) who may **not** provide interpretation or translation services for injured workers or crime victims are:

- Those related to the injured worker or crime victim.
- Those with an existing personal relationship with the injured worker or crime victim.
- The worker's or crime victim's legal or lay representative or their employees.
- The employer's legal or lay representative or their employees.
- Any person who could not be an impartial and independent witness.
- Persons under the age of eighteen (18).

Hospitals and Other Facilities May Have Additional Requirements

Hospitals, free-standing surgery and emergency centers, nursing homes and other facilities may have additional requirements for persons providing services within the facility. For example, a facility may require all persons delivering services to have a criminal background check, even if the provider is not a contractor or employee of the facility. The facility is responsible for notifying the interpretive services provider of their additional requirements and managing compliance with the facilities' requirements.

Fees, Codes and Limits

Why Is the Department Restructuring Fees and Codes?

A recent coverage and payment policy review showed the department's coding structure was not in line with interpreters' usual business practices. Therefore, the department decided the use of a single code for all payable services would work better for everyone. However, the department wanted to identify group services. So now there are two comprehensive codes for interpretive services—one for use with an *individual* client and one for use with multiple clients (*group*) at the **same** appointment.

In addition, the project's fee research showed the department was paying more than most other Washington State payers, who are paying between \$30 and \$50 per hour. The new coding structure includes all services; some of which the department had paid previously paid at \$30 per hour. The fee reduction takes into account the increased billing at full rate for all covered service time.

By law, the department has a responsibility to control benefits costs for the employers and injured workers who pay the workers' compensation insurance premiums.

Why Can't L&I Pay Interpreters 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	L&I 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

Crime Victims Program

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

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>

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 Services

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

How can Providers Request Reconsideration for Denied Charges?

For State Fund and Crime Victims Program claims, requests for reconsideration of denied or reduced charges are submitted on a "Provider's Request for Adjustment" form F245-183-000. Attach required documentation for the service(s) and an explanation for why the charges should be paid. The adjustment request form is available online at <http://www.LNI.wa.gov/ClaimsIns/Providers/Billing/BillLNI/PayAdjust/default.asp> or at the department's warehouse.

For self-insured claims, providers request reconsideration of denied or reduced charges from the specific self-insurer. If the provider cannot resolve the issue with the self-insurer, the provider can contact the L&I Self-Insured Section at 360-902-6901.

Authority to Review Health Services Providers

Under WAC 296-20-02010, the department has the authority to review charges and the records supporting such charges when the services are billed to the department.

Why Does the Department Review Provider Records?

The department reviews providers' patient and billing related records to make sure workers and crime victims are receiving proper and necessary care as well as to make sure providers comply with the department's medical aid rules, fee schedules and coverage and payment policies.

Can the Department Request Records from a Provider?

The department has the authority to request copies of a provider's patient and billing related records. When the department requests records, they must be received by the department within 30 days of the provider's receipt of the request. All records must be legible.

Can the Department Discipline a Provider?

The department can take corrective action against a provider(s). If a provider fails to comply with any order, rule, or policy, the department can ask for a refund of payments, assess penalties, or take other disciplinary action. See WAC 296-20-015.

Laws (RCW) and agency rules (WAC) can be found online at <http://www1.leg.wa.gov/LawsAndAgencyRules/>.

Standards for Interpretive Services Provider Conduct

Expectations for Quality Services

The department is responsible for assuring injured workers and crime victims receive proper and necessary services. The following requirements set forth the insurer's expectations for quality interpretive services:

Accuracy and Completeness

- Interpreters always communicate the source language message in a thorough and accurate manner.
- Interpreters do not change, omit or add information during the interpretation assignment, even if asked by the insured or another party.
- Interpreters do not filter communications, advocate, mediate, speak on behalf of any party or in any way interfere with the right of individuals to make their own decisions.
- Interpreters give consideration to linguistic differences in the source and target languages and preserve the tone and spirit of the source language.

Confidentiality

The interpreter must not discuss any information about an interpretation job without specific permission of all parties or unless required by law. This includes content of the assignment such as:

- Time or place.
- Identity of persons involved.
- Content of discussions.
- Purpose of appointment.

Impartiality

- The interpreter must not discuss, counsel, refer, advise, or give personal opinions or reactions to any party.
- The interpreter must turn down the assignment if he or she has a vested interest in the outcome or when any situation, factor or belief exists that represents a real or potential conflict of interest.

Competency

Interpreters must meet the department's credentialing standards and be:

- Fluent in English.
- Fluent in the insured's language.
- Fluent in medical terminology in both languages.
- Willing to decline assignments requiring knowledge or skills beyond their competence.

Maintenance of Role Boundaries

- Interpreters must not engage in any other activities that may be thought of as a service other than interpreting.

Responsibilities toward the Insured and the Healthcare or Vocational Provider

The interpreter must ensure that all parties understand the interpreter's role and obligations. The interpreter must:

- Inform all parties that everything said during the appointment will be interpreted and they should not say anything they don't want interpreted.
- Inform all parties the interpreter will respect the confidentiality of the insured.
- Inform all parties the interpreter is required to remain neutral.
- Disclose any relationship to any party that may influence or someone could perceive to influence the interpreter's impartiality.
- Accurately and completely represent their credentials, training and experience to all parties.

Prohibited Conduct

In addition, interpreters **cannot**:

- Market their services to injured workers or crime victims.
- Arrange appointments in order to create business.
- Contact the insured other than at the request of the insurer or healthcare or vocational provider.
- Provide transportation for the insured to or from healthcare or vocational appointments.
- Require the insured to use your interpreter services exclusive of other approved L&I interpreters.
- Accept any compensation for services provided to the insured individual from anyone other than the insurer.
- Bill for someone else's services with your individual (not language agency group) provider account number.

Working Tips for Interpretive Services Providers

Some things to keep in mind when working as an interpreter on workers' compensation or crime victims claims:

- Arrive on time.
- Always provide identification to the insured and provider.
- Introduce yourself to the insured and provider.
- Do not sit with the insured in waiting room areas, unless assisting them with form completion.
- Acknowledge language limitations when they arise and always ask for clarification.
- Do not give your home (non-business) telephone number to the insured or providers.

Help L&I Find Fraud and Abuse

L&I recently increased its efforts to detect and act on fraud and abuse throughout the workers' compensation program. Fraud and abuse costs the Washington State Workers' Compensation Program millions of dollars each year. Employers, workers, insurance carriers and consumers pay the cost of fraud in lost jobs and profit, lower wages and benefits and higher costs for services and insurance premiums.

L&I is looking for:

- Employers who don't pay premiums for their workers;
- Providers who bill inappropriately;
- Injured workers who file false claims and/or who are working and receiving time loss benefits;
- Construction contractors, who are not licensed, bonded or registered.

L&I asks all our customers to help us identify possible fraud or abuse. If you are concerned about possible workers' compensation fraud or abuse by anyone, please contact the department in one of these ways:

By Phone: Report a Fraud Hotline: 1-888-811-5974

On the web: <http://www.LNI.wa.gov/ClaimsIns/FraudComp/WCFraud/default.asp>

To one of the following L&I work groups:

Provider Review and Education Section	Labor & Industries Fraud Unit
MS 4322	MS 4276
Olympia WA 98504-4322	Olympia WA 98504-4276
Phone 360-902-6299	360-902-5360 or
FAX 360-902-4249	ProviderFraud@lni.wa.gov

Information Resources

L&I List Serv

The Department of Labor and Industries now has a listserv available. Persons on the listserv receive information about policy and fee changes, publications and upcoming L&I sponsored provider education events. To sign up for the listserv, go to <http://www.LNI.wa.gov/Main/Listservs/LNINews.asp>.

Community Colleges

Some community colleges offer courses in medical terminology, interpretation and other related subjects. Check your local area for availability.

Interpreter Organizations

Several interpreter and translator professional organizations have information and educational opportunities for interpretive services providers. Their websites are listed below. This list is neither comprehensive nor an endorsement of any of these organizations. It is provided for informational purposes.

Organization	Website	Phone
Northwest Translators and Interpreters Society	www.notisnet.org	206-382-5642
Society Of Medical Interpreters	www.sominet.org	206-729-2100
National Association of Judiciary Interpreters and Translators	www.najit.org	206-267-2300
Washington Interpreters and Translators Society	www.witsnet.org	206-382-5690
Washington State Registry of Interpreters for the Deaf	www.wsrld.com	No number listed
National Council on Interpreting in Healthcare	www.ncihc.org	FAX 707-541-0437

L&I Publications

L&I publishes several handbooks and pamphlets related to the Workers' Compensation and Crime Victims Program. Some of them are available in Spanish and other languages.

Provider related publications can be downloaded or ordered at
<http://www.LNI.wa.gov/ClaimsIns/Providers/FormPub/Pubs/default.asp>

Workers' compensation related publications can be downloaded or ordered at
<http://www.LNI.wa.gov/ClaimsIns/Claims/FormPub/Pubs/default.asp>

Crime Victims Program related publications can be downloaded or ordered at
<http://www.LNI.wa.gov/ClaimsIns/CrimeVictims/FormPub/default.asp>

Laws and Rules Relating to Interpretive Services

The following laws and rules contain relevant information for interpretive services providers and can be accessed at the Washington State Legislature's website <http://www1.leg.wa.gov/LawsAndAgencyRules/>. Links to these laws and rules are located at the L&I home page <http://www.LNI.wa.gov/>.

RCW Chapter 5.60	Witnesses—Competency
RCW 2.43.010	Right to Interpreter Services in Legal Proceedings
RCW 51.04.030 (1)	Medical Aid Rules
RCW 51.28.030	Medical Aid Fund
WAC 296-20-010	General Rules
WAC 296-20-01002	Definitions
WAC 296-20-015	Who may treat
WAC 296-20-02010	Review of Health Services Providers
WAC 296-20-022	Out of State Providers
WAC 296-20-02700	Medical Coverage Decisions
WAC 296-20-124	Rejected and Closed Claims
WAC 296-20-097	Reopenings
WAC 296-23-165(3)	Miscellaneous Services
WAC 296-23-362	May a worker bring someone with them to an Independent Medical Examination (IME)?
GR 11.1	Code of Conduct for Court Interpreters
RCW Chapter 5.60	Witnesses

Definitions

Department

The Department of Labor and Industries State Fund and Crime Victims Compensation programs.

Insurer

The Department of Labor and Industries State Fund, Self-insured employers or the Crime Victims Compensation Program.

Insured

Injured worker covered by the State Fund or a Self-insured employer or victim of crime covered by the Department of Labor and Industries Crime Victims Compensation Program.

Healthcare or Vocational Provider

The person or facility from whom the injured worker or crime victim receives healthcare or vocational services including but not limited to treatment, consultation, pharmacy, lab, physical therapy, hospital, radiology, or other ancillary services.

Interpretive Services Provider

Person(s) who provides verbal or sign language interpretation (interpreters) or written translation of documents (translators).

Certified or qualified interpreters or translators as defined in this policy may be issued provider numbers by the Department of Labor and Industries Workers' Compensation or Crime Victims Program. Persons requesting provider numbers must submit copies of their credentials to the applicable insurer's Provider Accounts Section.

Insured's Legal Representative

Attorneys and their employees and/or worker or crime victim lay representative(s) and their employees who have been designated by the worker or crime victim as their representative to the insurer on the workers' compensation or crime victims claim.

Employer's Legal Representative

Attorneys and their employees and/or employer's lay representative(s) and their employees who have been designated by the employer as their representative to the insurer on the employer's claims.

Independent Medical Examination (IME)

An examination arranged by the insurer to determine further action on the insured's claim.

Legal Setting

A legal setting includes a formal court action, board of industrial insurance hearing, deposition or other similar action.

Source Language

The language from which interpretation or translation is needed.

Target Language

The language to which interpretation or translation is needed.

Credentialing Resources

The following agencies and organizations offer certification or qualification testing. This list is neither comprehensive nor an endorsement of any of these agencies or organizations. It is provided for informational purposes.

Agency/Organization	Languages	Charges	When
WA Administrator of the Courts 1206 Quince Street SE P.O. Box 41170 Olympia, WA 98504-1170 (360) 705-5301 http://www.courts.wa.gov/programs_orqs/pos_interpret/	Spanish, Russian, Korean, Vietnamese, Cantonese, Khmer and Laotian	\$50 written \$125 oral	Yearly test
DSHS Language Testing & Certification PO Box 45820 Olympia WA 98504-5820 (360) 664-6038 http://www1.dshs.wa.gov/msa/LTC/index.html	8 certified 83 screening Medical certification Social certification	\$30 written \$45 oral \$50 translator	Monthly except December and January
Registry of Interpreters for the Deaf National Assoc of the Deaf NAD-RID National Interpreter Certification (NIC) c/o RID, Inc 333 Commerce Street Alexandria, VA 22314 1-800-736-9280 (FAX on Demand) 703-838-0030 http://www.rid.org/nic.html	American Sign Language NAD & RID Forming one joint test as of 2005	\$175 per test	Application 8 weeks prior to testing Multiple dates and test sites
Translators and Interpreters Guild 962 Wayne Avenue Suite 500 Silver Spring, MD 20910 1-800-992-0367 http://www.ttig.org/	31 languages	\$120 per year	Must be member to obtain certification
US Court System CPS Human Resource Services Federal Court Interpreter Certification Program 241 Lathrop Way Sacramento, CA 95815 (916) 263-3494 http://www.cps.ca.gov/fcice-spanish/index.asp	Spanish, Navajo, Haitian- Creole (certified) Rest are qualified	\$125 written \$175 oral	1 year
U.S. Department of State Office of Language Services SA-1, 14TH Floor 2401 E Street N.W. Washington D.C. 20522 (703) 302-7125 http://www.state.gov/	All	Unknown Employment testing	Varies
American Translators Association 225 Reinekers Lane, Suite 590 Alexandria, VA 22314 (703) 683-6100 http://www.atanet.org	14 languages	\$160	Varies
National Association of Judiciary Interpreters and Translators 423 Morris Street Durham, NC 27702 (206) 267-2300 Seattle Number http://www.najit.org/WashDC/NAJITExam2005.pdf	Spanish only	\$125 members \$150 non- members	May 11-12, 2005 Washington, DC & other times based on need

ORIGINAL

COURT OF APPEALS FOR DIVISION I
STATE OF WASHINGTON

ENVER MEŠTROVAC,)	
)	58200-3-I
Respondent/Cross Appellant,)	
)	CERTIFICATE OF SERVICE:
v.)	AMENDED BRIEF OF
)	RESPONDENT/CROSS
DEPARTMENT OF LABOR)	APPELLANT
AND INDUSTRIES,)	
)	
Appellant/Cross-Respondent,)	
)	
BOARD OF INDUSTRIAL)	
INSURANCE APPEALS,)	
)	
Respondent/Cross Appellant)	
(Denied Intervenor))	
_____)	

FILED
 COURT OF APPEALS DIV. #1
 STATE OF WASHINGTON
 2007 FEB 27 AM 10:08

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 I mailed a copy of the Amended Brief of Respondent/Cross Petitioner and a copy of this Certificate of Service with proper postage and address affixed to:

John R. Wasberg, AAG
Office of the Attorney General of Washington
800 Fifth Avenue #2000
Seattle, WA 98104-3188

And to:

Johnna S. Craig, AAG
Office of the Attorney General
P.O. Box 40108
Olympia, WA 98504-0108

2. Today I mailed the original and one copy of the Amended Brief
of Respondent/Cross Petitioner and a copy 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

Signed at Seattle, Washington this 26th day of February 2007.



Ann Pearl Owen, WSBA 9033