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THE SUPREME COURT OF THE STATE OF WASHINGTON

DELMIS SPIVEY

Petitioner,

v.

CITY OF BELLEVUE AND THE DEPARTMENT OF LABOR AND
INDUSTRIES FOR THE STATE OF WASHINGTON,

Respondents.

MOTION FOR DISCRETIONARY REVIEW

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ORIGINAL

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A. IDENTITY OF PETITIONER

Firefighter Delmis Spivey (“Spivey” or “Lt. Spivey”), Appellant, petitions this Court for review of the decision designated in Part B.

B. SUPERIOR COURT DECISION

The King County Superior Court order was issued on March 27, 2015. *Appendix A*. The Court ordered (a) that whether the City of Bellevue (“City”) rebutted the presumption in RCW 51.32.185 that Lt. Spivey’s malignant melanoma was occupational is a question of law; and (b) that the City rebutted the presumption. The Court deprived Lt. Spivey of due process in his right to causation, to the burden-shifting protection of RCW 51.32.185, and to his right to a trial by jury on these issues. The Court decided without being asked that the City rebutted the presumption, and in doing so, denied Spivey’s right to notice and an opportunity to defend why the City did not rebut the presumption. The trial judge took away Spivey’s right to jury determination of factual issues.

C. ISSUES PRESENTED FOR REVIEW

1. Is whether the City has rebutted the presumption of occupational disease in RCW 51.32.185(1) by a preponderance of evidence a question of law or fact?
2. Did the Superior Court deprive Lt. Spivey due process when it ordered that whether the City rebutted by a preponderance of the evidence is a question of law and when *the Court* ordered that the City rebutted the presumption?

3. Does the burden-shifting protection of RCW 51.32.185 require that for the City to rebut the presumption it must prove a non-occupational cause of Lt. Spivey's melanoma and disprove firefighting as a cause?
4. Did the City rebut the presumption that Lt. Spivey's disease was occupational when it cannot establish a cause for melanoma and when it cannot disprove firefighting as a cause? Did the Superior Court deprive Spivey due process by failing to apply the burden of proof required by RCW 51.32.185.

D. STATEMENT OF THE CASE

Lt. Spivey is a career firefighter for the City, beginning in 1995. After 20 years of exposure to smoke, fumes and toxic substances, Lt. Spivey was diagnosed with malignant melanoma, a presumed occupational disease. RCW 51.32.185. The Department denied the claim and Lt. Spivey appealed to the Board of Industrial Insurance Appeals. Lt. Spivey appealed to the King County Superior Court the Decision and Order of the Board of Industrial Insurance Appeals, which incorrectly found that the City rebutted the presumption of occupational disease.

The first issue for the jury to decide in Lt. Spivey's Superior Court jury trial should be whether the Board was correct in deciding that the City rebutted, by a preponderance of the evidence, the presumption that Lt. Spivey's malignant melanoma was occupational. *See WPI 155.14 Special Verdict – Worker's Compensation*. If the jury answers "no", then Lt. Spivey prevails because RCW 51.32.185 presumes his cancer is occupational.

On March 27, 2015, the Superior Court heard oral argument on the City of Bellevue's "Motion for Determination of Legal Standard on review and to Strike Portions of Dr. Coleman's Testimony" and the Department's "Motion to Strike Portions of Spivey's Brief." Section I of the City's Motion was entitled "RELIEF REQUESTED" and it did **not** ask the Court to rule on whether it rebutted the presumption. *Appendix B, Decl. of Friedman Exhibit 1*. Under heading "LEGAL ANALYSIS" the City's had two subsections, A and B. Subsection A asked the Court to deem whether the presumption was rebutted as a legal question. *Id.* Subsection B asked the Court to strike certain portions of Dr. Coleman's testimony. *Id.*

At the hearing, the Court also heard the Department of Labor and Industries' motion to enter an order in limine that no party may refer to the proposed decision and order. The "Statement of the issues" in the Department's brief did **not** ask the Court to rule on whether the presumption was rebutted. *Appendix B, Decl. of Friedman Exhibit 2*.

Moreover, the City and the Department's proposed orders did **not** propose an order that the City had rebutted the presumption. *Appendix B, Decl. of Friedman Exhibit 3*.

The Superior Court's March 27, 2015 order removed from the jury the factual determination of whether or not the City rebutted by a preponderance

of evidence that Lt. Spivey's malignant melanoma was occupational – the Court wrongfully deemed this a question of law. *Appendix A*.

Second, the Court exceeded the issues and the relief requested by the City and Department when it ordered that the City rebutted the presumption based on an incomplete record and without applying the burden of proof required by RCW 51.32.185. Lt. Spivey was not given notice and an opportunity to defend that the City has not and cannot rebut the presumption. *Id.* The Superior Court denied Lt. Spivey's motion for reconsideration. *Appendix B, Decl. of Friedman Exhibit 4.*

The Superior Court, on a motion that did not seek such relief, summarily removed the presumption without giving firefighter Spivey his due process right and the burden shifting protection of the presumption – and also violated his right to a jury when it took away from the jury the decision to weigh the evidence and decide if the City rebutted the presumption.

The City cannot determine the cause of malignant melanoma and therefore cannot rebut that firefighting is a cause – which is presumed by RCW 51.32.185.

a. Pertinent testimony from the City's expert epidemiologist, Noel Weiss, MD:

Q: Do epidemiologic studies actually prove causation for a disease?

A: . . . "The word proof doesn't fit with science, any science.

We don't prove things. . . . Nobody proves that."

Appendix B, Decl. of Friedman Exhibit 5

...
Q: In any given sample of 100 cases of malignant melanoma, in how many of those cases can you determine the cause of the malignant melanoma?

A: I don't think it's appropriate to talk about the cause. Every, every illness would have multiple causes so that, for example, if you had – I'm picking a number out of the air now – 80 of those 100 people who have fair skin, you'd say yes 80 of those people had a cause of the disease; but that doesn't preclude the possibility that other causes could have been present in those individuals."

Id.

...
Q: In any given sample of 100 cases of malignant melanoma can you tell all of the causes of malignant melanoma in any of those 100?

A: I think it's safe to say that at the present time that would be impossible."

Id.

Dr. Weiss also testified in pertinent part, "... We certainly do not understand all the risk factors. There are many that we don't not understand. ..."

... and "... For most of us most cases of cancer are unknown." and "... I do believe, I do believe I answered that correctly, that we never – at the present time we're unable to identify all the causes of a given cancer or any type in any person." *Id.*

b. Pertinent testimony from the City's medical expert Andy Chien, MD:

Q: Doctor, how does a malignant melanoma cell come into being? Are there stages? Is it healthy one day and malignant melanoma the next?

A: That is actually not known. . . .

Appendix B, Decl. of Friedman Exhibit 6

Q: In addition to not knowing when that transition happens, is it fair to say that you don't know all of the factors that are working on causing that particular cell to mutate into malignant melanoma?

A: Yes.

Id. Unable to prove the cause of Lt. Spivey's malignant melanoma, the City attempts to rebut the presumption with a conclusory leap to UV rays – based on speculation and conjecture since they do not know and cannot prove a non-occupational cause of his malignant melanoma. Compounding its speculation and conjecture, the City cannot distinguish between occupational and non-occupational UV rays – nor can the City negate the contribution to Lt. Spivey's melanoma from *occupational* UV rays. *Appendix B, Decl. of Friedman Exhibit 7.*

The City cannot rebut the statutory presumption that Lt. Spivey's occupation is a cause of his malignant melanoma.

In 2014, Bellevue Captain Wilfred Larson's presumptive disease case was tried to a jury in King County. The jury returned an 11 to 1 verdict in favor of Captain Larson, finding that **the City had not rebutted the presumption.** *Appendix B, Decl. of Friedman, Exhibit 8.* The City appealed.

The "Issues" section of City's Appellate Brief is Appendix B, Decl. of Friedman, Exhibit 9. Division I's ruling is pending.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

1. **The King County Superior Court committed an obvious and probable error, which renders firefighter Spivey's presumptive disease trial useless and substantially alters his case and substantially limits his freedom to prosecute his case with the benefit of the burden-shifting protection of RCW 51.32.185.**

Fairness and justice demand that when one party is seeking relief from the court, the opposing party is not in-the-dark as to the issues and what, exactly, the moving party is seeking. The court rules require a motion state with particularity the grounds for the motion and convey the relief sought.

An application to the court for an order shall be by motion which, . . . , shall state with particularity the grounds therefor, and shall set forth the relief or order sought.

CR 7(b)(1). This gives the opposing party a fair chance to defend the motion, with an understanding of what the motion is and what relief is being sought. King County Local Rules require that the moving party set forth a concise statement of the issues of law on which the Court is requested to rule:

(iii) Statement of Issues. A concise statement of the issue or issues of law upon which the Court is requested to rule.

KCLR7(b)(5)(B)(3). The City and Department's motions had a "Statement of Relief Requested" and "Statement of The Issues," respectively, which did not ask for a ruling on whether the City rebutted the presumption.

“At a bare minimum, procedural due process “requires notice and an opportunity to be heard.” *In re Bush*, 164 Wash. 2d 697, 704, 193 P.3d 103 (2008); citing *Soundgarden v. Eikenberry*, 123 Wash.2d 750, 768, 871 P.2d 1050 (1994). ““The essential elements of the constitutional guaranty of due process, in its procedural aspect, are notice and an opportunity to be heard or defend before a competent tribunal in an orderly proceeding adapted to the nature of the case.”” *Ware v. Phillips*, 77 Wash. 2d 879, 884, 468 P.2d 444 (1970), quoting the Washington Supreme Court’s statement in *In re Hendrickson*, 12 Wash.2d 600, 123 P.2d 322, 325. “A judgment entered without notice and opportunity to be heard is void.” *Id.* “An order based on a hearing in which there was not adequate notice or opportunity to be heard is void.” *Esmieu v. Schrag*, 88 Wash. 2d 490, 497, 563 P.2d 203 (1977).

“A court abuses its discretion when its decision is based on untenable grounds or reasoning.” *Barr v. MacGugan*, 119 Wash. App. 43, 46, 78 P.3d 660 (2003).

A “normal” occupational disease claim where the burden begins with the firefighter is substantially different than an occupational disease claim where the statutory presumption of RCW 51.32.185 applies, which places the burden on the City. The presumptive disease statute creates a burden-shifting protection that completely changes the balance of power in Lt. Spivey’s trial.

See RCW 51.32.185(1).

It is undisputed that the presumption of occupational disease applies to Lt Spivey. Because the statutory presumption applies, Lt. Spivey has a **right** to receive the burden-shifting protection of 51.32.185(1).

“‘A liberty interest may arise from the Constitution,’ from ‘guarantees implicit in the word “liberty,” ’ or ‘from an expectation or interest created by state laws or policies.’ ” *In re Pers. Restraint of McCarthy*, 161 Wash.2d 234, 240, 164 P.3d 1283 (2007) (quoting *Wilkinson v. Austin*, 545 U.S. 209, 221, 125 S.Ct. 2384, 162 L.Ed.2d 174 (2005)).

In re Bush, 164 Wash. 2d 697, 702, 193 P.3d 103 (2008).

“For a state law to create a liberty interest, it must contain ‘substantive predicates’ to the exercise of discretion and ‘specific directives to the decision maker that if the [law’s or policy’s] substantive predicates are present, a particular outcome must follow’.” *In re Pers. Restraint of Cashaw*, 123 Wash.2d 138, 144, 866 P.2d 8 (1994) (quoting *Ky. Dep’t of Corr. v. Thompson*, 490 U.S. 454, 463, 109 S.Ct. 1904, 104 L.Ed.2d 506 (1989)).

Id. In this case, as in all firefighter presumptive disease worker’s compensation cases, RCW 51.32.185 creates a liberty interest in the burden shifting protection of the statute. Moreover, the Court’s error in finding that the City rebutted the presumption without giving Lt. Spivey due process to be heard and defend that issue has completely shifted the balance of power in his upcoming trial. This error renders his upcoming trial (about whether his melanoma is occupational) useless because it misplaces the burden of proof

and omits the statutory presumption that his melanoma is occupational.

This error also substantially alters Lt. Spivey's case and limits his freedom to prosecute his case with the benefit of the statutory presumption. The City cannot prove a non-firefighting cause of Lt. Spivey's malignant melanoma, nor can it eliminate firefighting as a cause. *See p. 4-6, infra.*

Accordingly, the City cannot rebut the presumption that Lt Spivey's malignant melanoma is occupational. This highlights the significance of correct placement of the burden of proof and how detrimental it was to deprive Lt. Spivey due process to be heard and defend this issue.

- 2. The Superior Court committed an obvious and probable error when it ordered that it is not the role of the jury to determine whether the City rebutted the statutory presumption that Lt. Spivey's malignant melanoma is occupational.**

The Superior Court ordered that whether the City rebutted the presumption of occupational disease is a question of law. This is both probable and obvious error, and it deprives Lt. Spivey's Constitutional and Statutory right to due process and determination by jury.

The operation of the statutory presumption of RCW 51.32.185 requires the City to rebut what is presumed. What is presumed is the fact that Lt. Spivey's malignant melanoma arose naturally out of his job and the fact that his cancer was proximately caused by his job (i.e. the presumption that

his disease was “occupational” as defined by RCW 51.08.140).

The City must rebut these facts by a preponderance of admissible evidence, *RCW 51.32.185*. It is the **role of the jury** to weigh the evidence and decide if the City rebutted, by a preponderance of the admissible evidence, the presumption that Lt. Spivey’s malignant melanoma arose naturally and proximately out of his employment.

“... the province of **the jury** is to determine the facts of the case from the evidence adduced, in accordance with the instructions given by the court.” *Hastings v. Dep’t of Labor & Industries.*, 24 Wash.2d 1, 13, 163 P.2d 142 (1945).

In a case involving a claim for life insurance policy proceeds where the insurer was disputing coverage by claiming death-by-suicide, the Supreme Court stated,

When the plaintiff proved the contract of insurance and the death of the insured her case was made. The defendant then perforce assumed the burden of proving suicide by a preponderance of the evidence. Was there evidence or lack of evidence from which **the jury** could in good reason find that the defendant had failed to carry this burden.

Burrier v. Mut. Life Ins. Co. of New York, 63 Wn.2d 266, 270, 387 P.2d 58 (1963). [emphasis added]. The Supreme Court stated, “**The jury** are the final arbiters as to the weight of the evidence necessary to overcome the presumption.” *Id. at 281*. [emphasis added].

In a case involving a claim for wrongful death, where the body was never found, the presumption of death was at issue in a dispute over whether the three year statute of limitations had run. “In Washington, the presumption of death attaches where a party has been absent for seven years without tidings of his or her existence. The law presumes life during the first seven years of absence.” *Nelson v. Schubert*, 98 Wash. App 754, 759, 994 P.2d 225 (2000). As to rebutting the presumption, the Court held:

The presumption of death arising from seven years’ unexplained absence is always rebuttable. **Jurors** are the “final arbiters as to **the weight of the evidence necessary to overcome the presumption.**”

Id. at 763.

“A determination of proximate cause is generally a question of fact, ...” *Alger v. City of Mukilteo*, 107 Wash. 2d 541, 545, 730 P.2d 1333 (1987).

There is a difference between an issue that asks a question of law opposed to an issue that asks a question of fact but that can also be ruled on as a matter of law if the facts are one-sided. The latter is still a question of fact. In this case, the issue of whether the City rebutted the presumption of occupational disease is a question of fact. The Superior Court committed a fundamental due process error when it took an issue for ultimate determination by the jury away from the jury.

Article 1, §21 of the Washington State Constitution provides: “The

right to a trial by jury shall remain inviolate, ..." [emphasis added]. The Industrial Insurance Act, at RCW 51.52.115, provides: "... In appeals to the superior court hereunder, either party **shall be entitled to a trial by jury** upon demand, ...". [emphasis added]. The Superior Court's error in denying Lt. Spivey a right to a jury on this issue has substantially altered Lt. Spivey's trial and is a substantial due process departure from the accepted and usual course of judicial proceedings.

The jury trial is the rootstock of our liberties, a fundamental right for which the peers of England stood firm at Runnymede against King John, without which the original states refused to ratify the constitution until the bill of rights was added, and which article I section 21 requires must remain "inviolate."

Bird v. Best Plumbing Grp., LLC, 175 Wash. 2d 756, 785, 287 P.3d 551 (2012).

3. The Superior Court committed probable and obvious error when it failed to allow the additional protection of the burden-shifting of RCW 51.32.185.

3(a). The burden-shifting protection of RCW 51.32.185 requires that to rebut the presumption the City must (a) establish a non-firefighting cause, and (b) disprove firefighting as a cause.

RCW 51.32.185 creates a specific directive that if the presumption of occupational disease applies, then (a) the burden of proof must be placed on the government, and (b) the burden is to rebut the presumption and (c) the presumption is only rebutted by a preponderance of the evidence. The burden

on the City to rebut the presumption is a burden of persuasion.

Some presumptions are rebutted **only by a preponderance of the evidence. Such a presumption relates to the burden of persuasion. . . .**

14A Wash. Prac., Civil Procedure § 31:14 (2d ed.) [emphasis added].

While shifting the burden of production to the defendant requires him to present some evidence with respect to the fact in issue, shifting the burden of persuasion requires him to **affirmatively establish the fact in issue.**

State v. Bishop, 90 Wash. 2d 185, 188, 580 P.2d 259, 260 (1978). [emphasis added]. It is well settled by the Supreme Court – evidenced by *WPI 155.06* and subsequent caselaw *such as Hurwitz v. Dep't of Labor & Indus.*, 38 Wash. 2d 332, 229 P.2d 505 (1951); and *Simonetta v. Viad Corp.*, 165 Wash. 2d 341, 197 P.3d 127 (2008) – that a cause of a condition is not disproved simply because another cause also exists. There can be more than one proximate cause of a condition. To that end, RCW 51.32.185 establishes the employment of firefighting as **a** cause of malignant melanoma.

Accordingly, understanding that there can be more than one proximate cause of a condition and understanding that the statutory presumption establishes firefighting as **a** cause, RCW 51.32.185 creates an expectation that to rebut the presumption the City must (a) establish a non-firefighting cause, **and** (b) disprove firefighting as a cause.

The City cannot rebut the presumption of occupational disease unless

it can establish a non-occupational cause and also eliminate firefighting as a cause. The logic and law is simple:

3(a)(1) Establishing a non-occupational cause:

RCW 51.32.185 presumes that Lt. Spivey's malignant melanoma is "occupational," which means by statutory definition that his cancer (a) "arose naturally" and (b) "arose proximately" out of employment. *RCW 51.08.140*. A disease "arises naturally" out of employment, if the firefighter's particular work conditions more probably caused her disability **than conditions in everyday life or all employments in general; ...**. *Potter v. Dept. of Labor & Indus.*, 289 P.3d 727, 734 (2012); *Dennis v. Dept. of Labor & Indus.*, 109 Wn.2d 467, 482, 745 P.2d 1295 (1987). It follows that for the City to rebut this fact, it must show an alternate cause (i.e. that conditions in everyday life or conditions of non-firefighting employment more probably caused the disease than did particular firefighter-work conditions.).

A disease is "proximately caused" by employment when there is "no intervening independent and sufficient cause for the disease, so that the disease would not have been contracted but for the condition existing in the extra-hazardous employment." *Simpson Logging Co. v. Dept. of Labor & Indus.*, 32 Wn.2d 472, 479, 202 P.2d 448, (1949). It follows that for the City to rebut this fact, it must show by a preponderance of the evidence the

existence of an **intervening independent and sufficient cause** for the disease, and contraction would have occurred regardless of firefighting.

To rebut the presumption, the City must do more than merely disagree that firefighting is a cause. The City must **prove** their conclusion, **and do so by a preponderance of admissible evidence**. Asserting that causation does not exist due to a lack of data or awareness is merely a rejection of the law.

The requirement to establish a specific non-firefighting cause is consistent with the language of the presumptive disease statute itself. While not an exhaustive list, RCW 51.32.185(1) provides several distinct examples that, if supported by competent admissible evidence, may rebut the presumption *if it is by a preponderance of all evidence*. It is not the actual rebuttable factors themselves that are noteworthy, but rather the commonality shared among each factor. Each rebuttable factor enumerated by the legislature is **an identifiable non-firefighting cause**: use of tobacco products, physical fitness and weight, lifestyle, hereditary factors, exposure from other employment or non employment activities. RCW 51.32.185(1).

Notably absent from the *types* of rebuttable factors are factors that derive from a lack of etiology or lack of data or awareness of the etiology, i.e. disagreeing with the legislature is not sufficient to rebut the presumption.

Our fundamental objective when interpreting a statute is “to discern

and implement the intent of the legislature.” *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003). The surest indication of the legislature's intent is the plain meaning of the statute, which we glean “from all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question.” *Dept. of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 11, 43 P.3d 4 (2002); *Five Corners Family Farmers v. State*, 173 Wn.2d 296, 305-306, 268 P.3d 892 (2011)

3(a)(2). Disproving firefighting as A cause.

If the City cannot disprove firefighting as a cause, they have not rebutted the statutory presumption that firefighting is a cause. Even if the City established by competent admissible evidence a non-occupational cause, that alone does not eliminate the presumed fact that firefighting is also a cause. There may be one or more proximate cause of a condition. *WPI 155.06 - Proximate Cause - Allowed Claim*. See also *Hurwitz v. Dep't of Labor & Indus.*, 38 Wash. 2d 332, 229 P.2d 505 (1951); and *Simonetta v. Vlad Corp.*, 165 Wash. 2d 341, 197 P.3d 127 (2008). Only one cause need be occupational in nature for Lt. Spivey to prevail.

3(b) The Superior Court committed probable and obvious error by not weighing all of the evidence and not upholding the legislative expectation that rebuttal requires disproving firefighting as a cause and also establishing a non-firefighting cause.

Understanding that the law allows multiple proximate causes of a condition, and understanding that the statutory presumption establishes firefighting as a cause, it follows that RCW 51.32.185 creates an expectation that to rebut the presumption the City must (a) establish a non-firefighting cause, **and** (b) disprove firefighting as a cause.

“ ‘A liberty interest may arise . . . ‘from an expectation or interest created by state laws or policies.’ ”

In re Bush, 164 Wash. 2d 697, 702, 193 P.3d 103 (2008). [Internal citations omitted.] Even if it were a question of law, the Court did not apply the burden of proof required by RCW 51.32.185 in deeming the presumption rebutted. The record overwhelmingly establishes that the City cannot prove a non-occupational cause and cannot eliminate firefighting as a cause.

For example, the City attempts to blame UV rays for Lt. Spivey’s malignant melanoma, a conclusion based on speculation and conjecture, given their lack of knowledge of the etiology of Lt. Spivey’s malignant melanoma. Regardless, the City cannot distinguish occupational from non-occupational UV rays. *See Appendix B, Decl. of Friedman Exhibit 7.*

Even if the City could distinguish occupational UV rays from non-occupational UV rays, the City’s attempt to rebut the presumption is based entirely on speculation and conjecture - as their own experts establish: (a) it is unknown how a malignant melanoma cell comes into being, (b) all of the

factors that are working to cause a cell to mutate into malignant melanoma are unknown, (c) it is impossible to know all of the causes of a person's malignant melanoma, (d) all the causes of a given cancer of any type in any person cannot be identified. *Appendix B, Decl. of Friedman Exhibit 5 and 6.*

The Superior Court was uninformed of the record on whether the City rebutted the presumption because that issue was not before the Court and Lt. Spivey was deprived notice and opportunity to inform the Court.

RCW 51.32.185 requires that the presumption cannot be rebutted unless by a "preponderance of evidence." In this case, the Superior Court ignored this legislative requirement when it summarily ordered the presumption rebutted without hearing all of the evidence. The Washington State Supreme Court makes clear that:

The burden, of course, rests upon appellant to prove his case by a preponderance of the evidence, **and in determining whether or not his burden has been met, all the evidence must be considered, and not merely that which seems to favor one side or the other.**

Bresemann v. Hiteshue, 151 Wn. 187, 189-190, 275 P. 543 (1929). [emphasis added]. The Superior Court rendered the protection of the burden-shifting in RCW 51.32.185 meaningless when it did not weigh all of the evidence and when it failed to uphold the legislative expectation that rebuttal requires disproving firefighting as a cause and also establishing a non-firefighting

cause. In so doing, the Superior Court ordered that the presumption was rebutted, which renders Lt. Spivey's trial on his presumptive occupational disease useless because the Court wrongfully extinguished the presumption of occupational disease. The trial Judge invaded the province of the jury and denied firefighter Spivey's due process rights.

4. Attorney's Fees

Lt. Spivey is entitled to the attorney's fees and costs incurred at the Board level, Superior Court, Appellate Court and the Supreme Court. See RCW 51.32.185(7)(b) and RCW 51.52.130.

F. CONCLUSION

Based on the foregoing, and in conjunction with Lt. Spivey's Motion for Stay and Statement of Grounds for Review, Lt. Spivey respectfully asserts that this Court grant review and remedy the injustice that has been done to Lt. Spivey while providing authoritative guidance to the Department, Board, and lower Courts in the interpretation and application of RCW 51.32.185.

DATED: June 2, 2015

RON MEYERS & ASSOCIATES PLLC

By: 

Ron Meyers, WSBA No. 13169

Tim Friedman, WSBA No. 37983

Matt Johnson, WSBA No. 27976

Attorneys for Firefighter Spivey

Appendix A

The Honorable Samuel Chung
Hearing Date: Friday, March 27, 2015 at 9:00 a.m.
(With Oral Argument)

FILED
KING COUNTY, WASHINGTON

MAR 27 2015

SUPERIOR COURT CLERK
BY Kirstin Grant
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

DELMIS SPIVEY,

Appellant,

v.

CITY OF BELLEVUE and
DEPARTMENT OF LABOR AND
INDUSTRIES,

Respondents.

Cause No. 14-2-29233-3

~~PROPOSED~~ ORDER GRANTING *In Part*
RESPONDENT CITY OF BELLEVUE'S
MOTION FOR DETERMINATION OF
LEGAL STANDARD ON REVIEW AND
TO STRIKE PORTIONS OF DR.
COLEMAN'S TESTIMONY

THIS MATTER having come on regularly before the undersigned judge of
the above-entitled court; all parties having appeared through their attorneys of
record; the court having heard arguments of counsel and reviewed the following:

1. Respondent City of Bellevue's Motion for Determination of Legal
Standard on Review and to Strike Portions of Dr. Coleman's Testimony;

2. Declaration of Chad R. Barnes with attached exhibits;

3. Plaintiff's response in opposition to *City's Motion*; and

4. Declaration of Lou Meyers; and

5. City of Bellevue's Reply in support of Motion

and the Court being fully advised in the premises, now, therefore, it is hereby

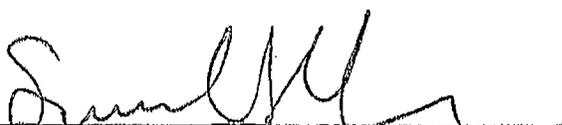
~~PROPOSED~~ ORDER GRANTING RESPONDENT
CITY OF BELLEVUE'S MOTION FOR
DETERMINATION OF LEGAL STANDARD ON
REVIEW AND TO STRIKE PORTIONS OF DR.
COLEMAN'S TESTIMONY - PAGE 1

CITY OF BELLEVUE
450 110th Avenue NE
Bellevue, WA 98004
425-452-6829

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ORDERED, ADJUDGED, AND DECREED that Respondent City of
Bellevue's Motion for Determination of Legal Standard on Review ~~and to Strike~~
~~Portions of Dr. Coleman's Testimony~~ is GRANTED and that: ~~(1) Determination of~~
whether the City ^{has} met its burden of ~~production~~ to rebut the presumption of
occupational disease within the meaning of RCW 51.32.185 ~~is a question of law to~~
~~be decided by the Judge~~ and ^{and the Court denies the City's motion to strike} (2) Portions of Dr. Coleman's Testimony ~~for which a~~
~~proper foundation was not established or that were based on hearsay and~~
~~improper leading questions be stricken as follows:~~

DONE IN OPEN COURT this 27th day of March, 2015.


The Honorable Samuel Chung
Judge of the King County Superior Court

Presented by:
CITY OF BELLEVUE
OFFICE OF THE CITY ATTORNEY
Lori M. Riordan, City Attorney

Approved as to Form, Notice of
Presentation Waived:
Ron Meyers & Associates, PLLC

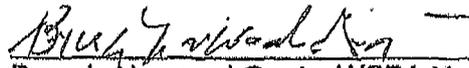

Chad R. Barnes, WSBA No. 30480
Assistant City Attorney

Ron Meyers, WSBA No. 13169
Attorney for Appellant Spivey

1 Attorney for Respondent City of
2 Bellevue

3 Approved as to Form, Notice of
4 Presentation Waived:

5 Department of Labor & Industries

6 

7 Beverly Norwood Goetz, WSBA No. 8434
8 Attorney for Respondent Department of
9 Labor and Industries
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Appendix B

SUPREME COURT OF THE STATE OF WASHINGTON

DELMIS SPIVEY,)	
Plaintiff,)	
v.)	
CITY OF BELLEVUE AND)	DECLARATION OF TIM
DEPARTMENT OF LABOR)	FRIEDMAN IN SUPPORT OF
AND INDUSTRIES,)	MOTION FOR DISCRETIONARY
Defendant.)	REVIEW
_____)	

PURSUANT TO RCW 9A.72.085, Tim Friedman of Ron Meyers & Associates PLLC, declares as follows:

1. I am an attorney of record for the Plaintiff/Moving Party in the above-captioned action.
2. Attached hereto as **Exhibit 1** is a true and correct copy of (a) Section I entitled "Relief Requested" within the City of Bellevue's "Motion for Determination of Legal Standard on review and to Strike Portions of Dr. Coleman's Testimony" and (b) the heading under subsection A and B of the City's "LEGAL ANALYSIS" within the City's motion.
3. Attached hereto as **Exhibit 2** is a true and correct copy of the Statement of Issues within the Department of Labor and Industries' "Motion to Strike Portions of Spivey's Brief."

4. Attached hereto as **Exhibit 3** is a true and correct copy of the City and the Department's proposed orders, proposed in conjunction with their respective motions.

5. Attached hereto as **Exhibit 4** is a true and correct copy of the Superior Court's Order denying Lt. Spivey's motion for reconsideration.

6. Attached hereto as **Exhibit 5** are true and correct excerpts from the Certified Appeal Board Record, specifically excerpts from Dr. Weiss' hearing transcript at: 19:21-26, 44:21-45:6, 45: 7-17, 45:20-22, 46:21-26, and 56:5-8.

7. Attached hereto as **Exhibit 6** are true and correct excerpts from the Certified Appeal Board Record, specifically excerpts from Dr. Chien's hearing transcript at: 148:1-4, and 148:7-11.

8. Attached hereto as **Exhibit 7** are true and correct excerpts from the Certified Appeal Board Record, specifically excerpts from Dr. Chien's hearing transcript at: 132:11-21; 133:13-22; and from the perpetuation deposition transcript of Dr. Hackett at 40:4-7.

8. Attached hereto as **Exhibit 8** is a true and correct verdict form from the Larson v. City of Bellevue malignant melanoma presumptive occupational disease trial, tried before a jury in King County Superior Court in 2014.

9. Attached as **Exhibit 9** is a true and correct copy of the Issues section of the City of Bellevue's Appellate Brief to Division I Court of Appeals in the Larson v. City of Bellevue malignant melanoma presumptive disease case. Argument was heard by Division I on January 13, 2015, and the Court of Appeals' ruling is pending.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge and belief.

DATED this 2 day of June, 2015 at Lacey, Washington.

RON MEYERS & ASSOCIATES PLLC



Tim Friedman, WSBA No. 37983

Exhibit 1

1 The Board's entire record is contained in the Certified Appeal Board Record
2 on file with this Court. The trial in King County Superior Court will be limited to a
3 reading of the testimony presented at the Board hearing to a jury.

4 I. RELIEF REQUESTED

5 Respondent City of Bellevue requests an order determining that whether the
6 City met its burden of production to rebut the presumption of occupational disease
7 within the meaning of RCW 51.32.185 is a question of law to be decided by the
8 Judge.

9 The City further requests an order striking portions Dr. Coleman's testimony
10 for which a proper foundation was not established or that were based on hearsay
11 and improper leading questions.

12 II. STATEMENT OF FACTS

13 Procedural History

14 Appellant, Delmis Spivey filed a claim for an occupational injury with the
15 Department of Labor and Industries ("Department"). Spivey's claim for benefits
16 was rejected by the Department as not being an occupational disease as
17 contemplated by RCW 51.32.185 and RCW 51.08.140. Spivey appealed the
18 Department's denial of his claim to the Board of Industrial Insurance Appeals. A
19 hearing was conducted and upon completion of the hearing an Industrial Appeals
20 Judge issued a Proposed Decision and Order on July 2, 2014 in favor of Spivey.
21

22 The City filed a Petition for Review of the hearing examiner's proposed
23 decision which was accepted by the Board on September 3, 2014. The full Board
24 of Industrial Insurance Appeals considered the City's arguments and reversed the
25

1 this procedural ramification would serve only to add complexity and confusion to a
2 fact-finding task which is already most difficult." *Id.* at 414-415.

3 In this case, whether the City met its burden of production to rebut the
4 presumption of occupational disease within RCW 51.32.185 is a question of law that
5 should be decided by the judge. Although, the superior court reviewing a decision
6 under the Industrial Insurance Act considers the issues de novo, relying on the
7 certified board record, the findings and decision of the Board are presumed to be
8 correct. RCW 51.52.115; *Malang v. Dep't of Labor and Indus.*, 139 Wash.App. 677,
9 683, 162 P.3d 450 (2007); WPI 155.03. The Board's decision shall be reversed
10 only if the Board misconstrued the law or found facts inconsistent with the
11 preponderance of the evidence. RCW 51.52.115; *McClelland v. ITT Rayonier*,
12 65 Wn.App. 386, 828 P.2d 1138 (1992). Here, the Board found that "The statutory
13 presumption that Delmis P. Spivey has an occupational disease has been rebutted
14 within the meaning of RCW 51.32.185." *Decision and Order* pg. 7. This legal
15 conclusion, that the City has met its burden of production as defined by
16 RCW 51.32.185, should be decided by the judge in this case as a matter of law
17 before the case is submitted to the jury.

18
19 B. Portions of Dr. Coleman's testimony should be stricken.

20 Kenneth Coleman, M.D. J.D.'s (Dr. Coleman) perpetuation deposition was
21 taken on March 10, 2014. In large part, his testimony concerned a number of
22 publications that he was supplied by Appellant's counsel generally related to
23 firefighters, cancers, and toxic exposures. From a number of these articles
24 Appellant's counsel read select portions and only then sought Dr. Coleman's
25

Exhibit 2

1 | 2. Statement of facts

2 | The statement of facts are adequately set out in the October 9, 2013 Board decision,
3 | proposed decision and order as referenced in the Board decision, and in the City's motion.¹
4 | Board Record (BR) at 1-2, 61-63; City of Bellevue motion at 2-4. The Department will not
5 | re-recite those facts.

6 | 3. Statement of the issues

7 | Is whether the City met its burden of production in rebutting the RCW 51.32.185
8 | evidentiary presumption a question of law to be decided by the judge?

9 | Should Spivey's references to the proposed decision and order be stricken because an
10 | industrial appeals judge's decision has no standing until adopted by the full Board?

11 | 4. Evidence relied on

12 | The evidence relied on is contained the certified appeal board record pertinent excerpts
13 | of which are attached to the declaration of Chad Barnes and the City of Bellevue's motion.

14 | 5. Authority

15 | The Department joins in the City's legal analysis at pages 8-12 of the City's motion.

16 | a. A prima facie presumption places a burden of production on a defendant
17 | and the court, not the jury, determines whether the defendant's has met
18 | its burden of production, shifting the burden of persuasion back to the
19 | plaintiff

20 | "In the case of firefighters . . . , there shall exist a *prima facie* presumption that:
21 | [certain conditions]. . . (c) cancer . . . are occupational diseases under RCW 51.08.140." This
22 | legislatively-created presumption, RCW 51.32.185, relieves a firefighters from having to
23 | prove that his or her condition arose "naturally and proximately" out of distinctive
24 |

25 | _____
26 | ¹ The certified appeal board record will be cited "BR" and the large Bates stamped number.

Exhibit 3

The Honorable Samuel Chung
Hearing Date: Friday, March 27, 2015 at 9:00 a.m.
(With Oral Argument)

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

DELMIS SPIVEY,

Appellant,

v.

CITY OF BELLEVUE and
DEPARTMENT OF LABOR AND
INDUSTRIES,

Respondents.

Cause No. 14-2-29233-3

[PROPOSED] ORDER GRANTING
RESPONDENT CITY OF BELLEVUE'S
MOTION FOR DETERMINATION OF
LEGAL STANDARD ON REVIEW AND
TO STRIKE PORTIONS OF DR.
COLEMAN'S TESTIMONY

THIS MATTER having come on regularly before the undersigned judge of
the above-entitled court; all parties having appeared through their attorneys of
record; the court having heard arguments of counsel and reviewed the following:

1. Respondent City of Bellevue's Motion for Determination of Legal
Standard on Review and to Strike Portions of Dr. Coleman's Testimony;
2. Declaration of Chad R. Barnes with attached exhibits;
3. _____; and
4. _____.

and the Court being fully advised in the premises, now, therefore, It is hereby

[PROPOSED] ORDER GRANTING RESPONDENT
CITY OF BELLEVUE'S MOTION FOR
DETERMINATION OF LEGAL STANDARD ON
REVIEW AND TO STRIKE PORTIONS OF DR.
COLEMAN'S TESTIMONY - PAGE 1

CITY OF BELLEVUE
450 110th Avenue NE
Bellevue, WA 98004
426-452-6820

COPIES

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ORDERED, ADJUDGED, AND DECREED that Respondent City of Bellevue's Motion for Determination of Legal Standard on Review and to Strike Portions of Dr. Coleman's Testimony is GRANTED and that: (1) Determination of whether the City met its burden of production to rebut the presumption of occupational disease within the meaning of RCW 51.32.185 is a question of law to be decided by the judge and (2) Portions of Dr. Coleman's Testimony for which a proper foundation was not established or that were based on hearsay and improper leading questions be stricken as follows:

DONE IN OPEN COURT this ____ day of March, 2015.

The Honorable Samuel Chung
Judge of the King County Superior Court

Presented by:
CITY OF BELLEVUE
OFFICE OF THE CITY ATTORNEY
Lori M. Riordan, City Attorney

Approved as to Form, Notice of
Presentation Waived:
Ron Meyers & Associates, PLLC

Chad R. Barnes, WSBA No. 30480
Assistant City Attorney

Ron Meyers, WSBA No. 13169
Attorney for Appellant Spivey

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Attorney for Respondent City of
Bellevue

Approved as to Form, Notice of
Presentation Waived:

Department of Labor & Industries

Beverly Norwood Goetz, WSBA No. 8434
Attorney for Respondent Department of
Labor and Industries

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STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

DELMIS SPIVEY,

Appellant,

v.

CITY OF BELLEVUE and
DEPARTMENT OF LABOR AND
INDUSTRIES,

Respondents.

NO. 14-2-29233-3 SEA

DEPARTMENT'S [PROPOSED]
ORDER IN LIMINE

This matter came before the Court on the City of Bellevue's motion for a ruling from the court that whether it had successfully rebutted the prima facie RCW 51.32.185 presumption was an issue of law to be decided by the court, and not submitted to the jury and for a ruling on the admissibility of some expert witness testimony. The Department of Labor and Industries, in its responsive pleading the Department also requested an order in limine that no reference should be made to the proposed decision and order that was reversed by the Board of Industrial Insurance Appeals decision, and specifically to strike references to the proposed decision and order in Delmis Spivey's pleadings.

Based upon the argument of counsel, the pleadings, and the certified appeal board record the Court finds the industrial appeals judge's rejected decision has no standing as only the Board's decision is at issue.

It is therefore ORDERED as follows:

DEPARTMENT'S [PROPOSED] ORDER
IN LIMINE.

COPY

ATTORNEY GENERAL OF WASHINGTON
LABOR & INDUSTRIES DIVISION
300 Fifth Avenue, Suite 2000
Seattle, WA 98104-3199
(206) 464-7740

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1. Beginning on page 1 line 25 with "BILA Judge Wayne B. Lucia . . ." through page 2 line 5, page 3, lines 19-20, page 4 line 13 beginning ". . . because it somehow . . ." through line 14, of plaintiff's response is stricken; and

2. No party shall refer to the proposed decision and order at trial.

DATED this ____ day of March, 2015.

Samuel Chung, Judge

Presented by:

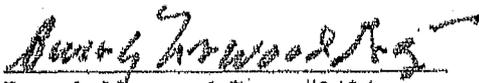

Beverly Norwood Goetz #8434
Senior Counsel

Exhibit 4

SUPERIOR COURT OF THE STATE OF WASHINGTON
KING COUNTY

DELMIS SPIVEY
Appellant

v

CITY OF BELLEVUE ET AL.
Respondents

NO: 14-2-29233-3 SEA

Order Denying Appellant's
Motion For Reconsideration

The above-entitled Court, having heard Appellant Delmis Spivey's motion for reconsideration;

IT IS HEREBY ORDERED that the motion is DENIED.

Dated: 9/27/2015



Honorable Judge Samuel Chung

Attorney for Plaintiff/Petitioner WSBA# _____

Attorney for Defendant/Respondent
WSBA# _____

Exhibit 5

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Q. Do epidemiologic studies actually prove causation for a disease?

A. The word proof doesn't fit with science, any science. We don't prove things. We observe and we draw inferences. We've infer cause and effect, like we've inferred cigarette smoking causes lung cancer. Nobody proves that.

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Q. In any given sample of 100 cases of malignant melanoma, in how many of those cases can you determine the cause of the malignant melanoma?

MR. BARNES: Objection, relevance.

JUDGE SWANSON: Overruled.

A. It's not -- I don't think it's appropriate to talk about the

1 cause. Every, every illness would have multiple causes so
2 that, for example, if you had -- I'm picking a number out of
3 the air now -- 80 of those 100 people who have fair skin, you'd
4 say yes 80 of those people had a cause of the disease; but that
5 doesn't preclude the possibility that other causes also could
6 have been present in those individuals.

7 Q. In any given sample of 100 cases of malignant melanoma can you
8 tell all of the causes of malignant melanoma in any of those
9 100?

10 A. Can I hear the question again? I'm sorry. I just want to make
11 sure I'm getting it right.

12 MR. MEYERS: I'll ask the court reporter to read it back
13 because I probably couldn't say it the same way twice.

14 JUDGE SWANSON: Go ahead.

15 [PAGE 45, LINES 9, 10 AND 11 WERE READ]

16 A. I think it's safe to say that at the present time that would be
17 impossible.

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20 A. No. That isn't correct. If -- sorry. It is -- we certainly
21 do not understand all the risk factors. There are many that we
22 do not understand. But if it's -- in order for it to be a
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Q. So if there's a list of these risk factors and if we can exclude some of those different risk factors, then those risk factors would point us in -- excluding those risk factors would point us towards some other cause, correct?

A. For unknown causes, that's correct. For most of us most cases of cancer the causes are unknown.

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A. I guess it's not important who asked the question. I do believe, I do believe I answered that correctly, that we never -- at the present time we're unable to identify all the causes of a given cancer of any type in any person.

Exhibit 6

1 Q. (BY MR. MEYERS) Doctor, how does a malignant melanoma cell
2 come into being? Are there stages? Is it healthy one day and
3 malignant melanoma the next?

4 A. That is actually not known. That's one of the things our lab
5
6

7 Q. In addition to not knowing when that transition happens, is it
8 fair to say that you don't know all of the factors that are
9 working on causing that particular cell to mutate into
10 malignant melanoma?

11 A. Yes.
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Exhibit 7

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A. Occupational sunlight would be sunlight that's encountered in the course your work, such as, if you're outdoor worker, like a farmer or gardener, that would be considered occupational sunlight. And nonoccupational sunlight would be sunlight that is sunlight exposure that's obtained when you are not on the job.

Q. (BY MR. MEYERS) So would you agree that any sunlight that you're exposed to when your on the job is occupational sunlight?

A. I think that's a definition. I think that's the definition of occupational exposure.

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Q. So what do you know about firefighters' occupational exposure to ultraviolet, Dr. Chien?

MR. BARNES: Same objection, relevance. Dennis v. L&I as it's not proper subject for trying to prove an occupational disease claim under either the naturally -- arising naturally prong or the proximate cause prong.

JUDGE SWANSON: Overruled.

Go ahead.

A. I don't think I know enough about firefighting to be able to answer that.

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Q. And that ultraviolet light, it's no different for people who are working or people who are recreating, is it, Dr. Hackett, exposure is exposure?

A. Where are they working? Exposure is exposure.

Exhibit 8

IN THE SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR KING COUNTY

WILFRED A. LARSON,

Plaintiff,

v.

CITY OF BELLEVUE and
DEPARTMENT OF LABOR AND
INDUSTRIES,

Defendants.

No. 12-2-34112-5 SEA

SPECIAL VERDICT FORM

FILED

KING COUNTY WASHINGTON

AUG 14 2013

SUPERIOR COURT CLERK
BY DAWN TUBBS

We, the jury, answer the questions submitted by the Court ~~DEPUTY~~
follows:

QUESTION 1: Was the Board of Industrial Insurance Appeals correct in deciding that the employer rebutted, by a preponderance of the evidence, the presumption that Plaintiff's malignant melanoma was an occupational disease?

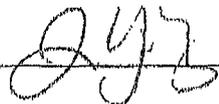
ANSWER: No (Write "yes" or "no")

(**INSTRUCTION:** If you answered "no" to Question 1, do not answer any further questions. If you answered "yes" to Question 1, answer Question 2.)

QUESTION 2: Was the Board of Industrial Insurance Appeals correct in deciding that the Plaintiff did not prove by a preponderance of the evidence that his malignant melanoma was an occupational disease?

ANSWER: _____ (Write "yes" or "no")

DATE: 8/14/13



Presiding Juror

Exhibit 9

- D. The superior court erred in allowing Larson to present the testimony of Dr. Kenneth Coleman.
- E. The superior court erred in excluding the testimony of Dr. John Hackett offered by the City.
- F. The superior court erred in failing to give pattern jury instructions regarding the testimony of a treating provider, Dr. Sarah Dick.
- G. The superior court erred in awarding Larson attorney fees and costs.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

- A. Where the Board found as a matter of law that the City had rebutted the presumption of RCW 51.32.185, did the superior court err when it allowed the jury to determine whether the Board had correctly decided that the City had rebutted the presumption?
- B. Where an occupational disease is one that is defined as a disease which "arises naturally and proximately out of employment," did the superior court err in instructing the jury that the City had the burden of proving both (1) that the disease did not arise naturally out of the claimant's employment and (2) that the disease did not arise proximately out of the claimant's employment in order to rebut the presumption of occupational disease contained in RCW 51.32.185?
- C. Where the City presented substantial evidence showing that Larson's melanoma arose solely as a result of his exposures to ultraviolet light and genetic factors and thus rebutted the evidentiary presumption, should the jury's verdict to the contrary be set aside?
- D. Did the superior court err in allowing Larson to present the testimony of Dr. Kenneth Coleman who was not a qualified expert and whose testimony was hearsay?

- E. Did the superior court err in not allowing the City to present the testimony of the physician, Dr. John Hackett, who undertook an independent medical examination of Larson and whose testimony was not cumulative of other medical witnesses?
- F. Did the superior court err in not giving a pattern worker's compensation jury instruction which addressed the testimony of treating medical providers where the City offered the testimony of Dr. Sara Dick who was one of Larson's treating medical providers?
- G. In a case involving the presumption established under RCW 51.32.185, a prevailing claimant is entitled to recover reasonable attorney fees and costs associated with a successful appeal. If this Court reverses the superior court verdict, should this Court also reverse the superior court award of attorney fees and costs? Alternatively, if this Court does not reverse the superior court verdict, should this Court still reverse the superior court's award of attorney fees and costs and remand the matter to the superior court with instructions to calculate the award based on attorney fees and costs incurred only in connection with the superior court appeal as provided by RCW 51.32.185(7)(b)?

IV. STATEMENT OF FACTS

A. Proceedings Before The Department And Board

Larson was diagnosed with malignant melanoma on his low back in 2009. CP 29, 281.¹ Larson filed a claim with the Department alleging that his malignant melanoma was an occupational disease. Larson's claim for worker's compensation benefits was initially denied by the Department but later allowed. CP 45, 43. The City appealed the Department's

¹ CP refers the Clerk's Papers.

OFFICE RECEPTIONIST, CLERK

To: Mindy Leach
Cc: CBarnes@bellevuewa.gov; anas@atg.wa.gov; Ron Meyers; Tim Friedman
Subject: RE: Spivey v. City of Bellevue & Dept. of Labor & Industries; No. 91680-2

Received 6-2-2015

Supreme Court Clerk's Office

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From: Mindy Leach [mailto:mindy.l@rm-law.us]
Sent: Tuesday, June 02, 2015 11:31 AM
To: OFFICE RECEPTIONIST, CLERK
Cc: CBarnes@bellevuewa.gov; anas@atg.wa.gov; Ron Meyers; Tim Friedman
Subject: Spivey v. City of Bellevue & Dept. of Labor & Industries; No. 91680-2

Dear Clerk:

Attached hereto for filing in the Spivey v. City of Bellevue & Dept. of Labor & Industries; Supreme Court No. 91680-2, are the following documents:

1. Petitioner's Statement of Grounds for Direct Review;
2. Motion for Discretionary Review
3. Declaration of Service.

Thank you.

Mindy Leach,
Paralegal



RON MEYERS
& ASSOCIATES PLLC

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