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No. 92197-1

SUPREME COURT
OF THE STATE OF WASHINGTON

WILFRED A. LARSON

Respondent,

v.

CITY OF BELLEVUE, Petitioner

and

THE DEPARTMENT OF LABOR AND INDUSTRIES FOR THE
STATE OF WASHINGTON

Defendant.

RESPONDENT WILFRED LARSON'S SUPPLEMENTAL BRIEFING

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 ORIGINAL

TABLE OF CONTENTS

I. ASSIGNMENTS OF ERROR 1

II. STATEMENT OF THE CASE 1

III. ARGUMENT 2

1. The Burden Shifting Protection of RCW 51.32.185 Is Not Rendered Meaningless When a Board Decision is Appealed. 2

2. RCW 51.52.115 and 51.32.185 Do Not Conflict and Even if They Did, RCW 51.32.185 is More Specific to Firefighter Presumptive Disease Cases and is More Recent 6

3. Whether the City’s evidence rebuts the presumption is a question of fact for the jury. The burden to rebut the presumption is both a burden of production and persuasion. 7

a. The jury was properly instructed on the statutory presumption. 7

b. Determining if the City rebutted the presumption by a preponderance of evidence is also a question of fact - to be decided by the jury. 7

c. The City’s burden of proof to rebut the presumption is not simply to produce contrary evidence. The City’s burden is to rebut the presumption by (a) proving a non-firefighting cause and (b) disproving firefighting as a cause. 10

c1. Establishing a non-occupational cause. 12

c2. Disproving firefighting as A cause. 14

4.	Jury Instruction No. 9 Properly Instructed the Jury on The Burden of Proof..	14
5.	The Court of Appeals Correctly Upheld The Trial Court's Decision To Award Captain Larson His Attorney's Fees And Costs Before The Board.	17
IV.	CONCLUSION	20

TABLE OF AUTHORITIES

Cases

Allison v. Dep't of Labor & Indus.
66 Wash. 2d 263, 268, 401 P.2d 982 (1965) 11

Anderson v. State, Dep't of Corr.
159 Wash. 2d 849, 861, 154 P.3d 220 (2007) 6

Bird v. Best Plumbing Grp., LLC
175 Wash.2d 785, 287 P.3d 551 (2012) 10

Boeing Aircraft Co. v. Department of Labor & Indus.,
26 Wash.2d 51, 57, 173 P.2d 164 (1946) 17, 18

Brand v. Dep't of Labor & Indus. of State of Wash.,
139 Wash.2d 659, 671, 989 P.2d 1111 (1999), as amended on
denial of reconsideration (Apr. 10, 2000), as amended Apr. 17,
2000) 20

Burrier v. Mut. Life Ins. Co. of New York
63 Wn.2d 266, 270, 387 P.2d 58 (1963) 8, 9

Dennis v. Dep't of Labor & Indus. of State of Wash.,
109 Wash. 2d 467, 479, 745 P.2d 1295 (1987) 2, 12, 18

Gorre v. City of Tacoma
180 Wn.App. 729, 758, 324 P.3d 716 (2014), review granted, 181
Wn.2d 1033 (2015), *reversed on other grounds* 357 3.Pd 625
(2015) 5, 13, 14

Gorman v. Garlock, Inc.,
155 Wash.2d 198, 210-11, 118 P.3d 311 (2005) 7

Harbor Plywood Corp. v. Department of Labor & Indus.,
48 Wash.2d 553, 559, 295 P.2d 310 (1956) 17

<i>Hastings v. Dep't of Labor & Indus.</i> , 24 Wash. 2d 1, 13, 163 P.2d 142 (1945)	8
<i>Hurwitz v. Dep't of Labor & Indus.</i> 38 Wash.2d 332, 229 P.2d 505 (1951)	14
<i>In re Bush</i> 164 Wash. 2d 697, 702, 193 P.3d 103 (2008)	3
<i>Larson v. City of Bellevue</i> 188 Wash.App. 857, 355 P.3d 331 (2015)	5, 8, 16, 19
<i>Luna v. Seattle Times Co.</i> , 186 Wn.2d 618, 628, 59 P.2d 753 (1936)	9
<i>Nelson v. Schubert</i> 98 Wash. App 754, 759, 994 P.2d 225 (2000)	9
<i>Raum, v. City of Bellevue</i> 171 Wash.App. 124, 286 P.3d 695 (2012)	5
<i>Simpson Logging Co. v. Dept. of Labor & Indus.</i> , 32 Wn.2d 472, 479, 202 P.2d 448 (1949)	12
<i>Simonetta v. Viad Corp.</i> 165 Wash.2d 341, 197 P.3d 127 (2008)	14
<i>White v. Twp. of Winthrop</i> 128 Wash.App. 588, 595, 116 P/3d 1034 (2005)	8
<i>Woodson v. State</i> 95 Wash. 2d 257, 262, 623 P.2d 683 (1980)	11
Statutes	
RCW 51.08.140	7, 12
RCW 51.32.185	1, 2, 3, 5, 6, 7, 8, 10, 11, 12, 13, 16, 18, 20

RCW 51.32.185(1)	13, 16
RCW 51.32.185(7)	17, 18, 19
RCW 51.52.115	4, 6, 7, 9
RCW 51.52.130	17, 19, 20
Other Authority	
<i>Article 1, §21, Washington State Constitution</i>	4, 9
RAP 18.1(d)	19
WPI 155.03	5, 10, 14
WPI 155.06	14

I. ASSIGNMENTS OF ERROR

1. The appellate court correctly applied the burden of proof in the Superior Court action.
2. The Appellate Court was correct to apply the presumption in RCW 51.32.185 to Captain Larson's Superior Court action.
3. The Appellate Court correctly recognized that the jury was properly instructed as to the presumption in RCW 51.32.185.
4. The Appellate Court was correct in determining that the presumption in RCW 51.2.185 created a Morgan-like presumption, that is, a burden of production and persuasion throughout the duration of the case.
5. The Appellate Court correctly awarded Captain Larson attorneys fees and costs incurred before the Board.

II. STATEMENT OF THE CASE

Bill Larson ("Captain Larson") was employed by the City of Bellevue as a firefighter in 1979. His career includes promotion to Lieutenant in 1989 and Captain in 1993. Report of Proceedings ("RP") 263, 270. Captain Larson was diagnosed with malignant melanoma. Clerk's Papers ("CP") 29. He filed a claim for benefits with the Department of Labor and Industries. His claim was ultimately allowed. CP 37. The City appealed to the Board of Industrial Insurance Appeals ("Board"). CP 40-42. The Board ruled in favor of the City. CP 26-35. Captain Larson appealed to the Superior Court. CP 1-2.

The case was tried before a jury of twelve. The jury's verdict was in favor of Captain Larson. Captain Larson proved that the decision of the

Board was incorrect because the City failed to prove by a preponderance of evidence that it had rebutted the presumption that his malignant melanoma was an occupational disease. CP 1775-76. Captain Larson filed a Notice of Presentation of Judgment with a motion for attorney's fees and costs, CP 1777. The Superior Court's Order of Judgment awarded Captain Larson attorney's fees and costs, CP 1900-1901, 1904. The City appealed. Division I of the court of Appeals affirmed the Superior Court decision in favor of Captain Larson. It is undisputed that Captain Larson was an eligible firefighter with a presumptive disease, was entitled to the presumption, and that the City had to rebut that presumption. City's Appellate Brief at 42; CP 32, 33, 97.

III. ARGUMENT

The Industrial Insurance Act is remedial in nature and is to be liberally construed with doubts resolved in favor of the injured worker.

Dennis v. Dep't of Labor and Indus., 109 Wn.2d 467, 470 (1987).

1. **The Burden Shifting Protection of RCW 51.32.185 Is Not Rendered Meaningless When a Board Decision is Appealed.**

When the presumption of occupational disease applies, as it does in Captain Larson's case, the firefighter has a statutory right to the burden-shifting protection of RCW 51.32.185.

“ ‘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).

“‘For a state law to create a liberty interest, it must contain ‘substantive predicates’ to the exercise of discretion and ‘specific directives to the decisionmaker that if the [law’s or policy’s] substantive predicates are present, a particular outcome must follow’.” [Citations omitted]

Id. The City’s position, that it has no burden on appeal to the Superior Court, ignores the burden-shifting protection of RCW 51.32.185 and is inconsistent with the City’s own proposed Revised Special Verdict Form, which asked the jury to examine whether the City rebutted the presumption. *See* CP 1749.

Under the City’s theory on appeal, the City would simply need to appeal all Board decisions in presumptive disease cases to the Superior Court, thereby removing the statutory burden of proof placed on the City.

However, RCW 51.32.185 creates a specific “directive to the decisionmaker” that if the presumption of occupational disease applies, (a) the burden of proof must be placed on the employer, (b) the burden is to rebut the presumption, and (c) it must be rebutted by a preponderance of admissible evidence.

The burden-shifting protection in RCW 51.32.185 does not vanish when the Board’s decision is appealed to the Superior Court. The firefighter has a right to have a jury weigh the evidence and decide whether the City

failed to meet its burden of rebutting the presumption. 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 City cannot rebut Captain Larson’s occupation as a cause of his cancer (since it is presumed by law to be occupational) if they cannot prove a non-occupational cause and eliminate his occupation as a cause. The City attempted to blame Captain Larson’s malignant melanoma on UV exposure. At trial, Captain Larson proved to the jury that the City did not meet its burden of proof to rebut the presumption. The evidence established that the City’s experts (1) cannot determine the cause of Captain Larson’s malignant melanoma, (2) cannot determine the origin of Captain Larson’s melanoma, (3) do not know if Captain Larson met the threshold in quantity or duration of UV rays to develop malignant melanoma, (4), do not know if chemicals can cause malignant melanoma, (5) admitted that melanoma can be found inside the body with no primary on the skin, (6), admitted that literature supports that a majority of melanoma are not on sun exposed skin, (7) admitted that there can be more than one cause of melanoma, and (8) exhibited that they have a complete lack of knowledge concerning the

exposures that firefighters have to numerous carcinogens. RP 722, 734, 731-732, 598, 604, 616, 648, 621, 667, 669-670, 694-695, 740-741, 624, 626.

The Appellate Court also recognized this:

While the City elicited expert testimony to highlight Larson's nonoccupational risks for developing melanoma, a jury could reasonably conclude from the testimony of these witnesses that the City had not disproved firefighting as a more probable than not cause for Larson's melanoma. Thus, substantial evidence existed to support a finding that the Board incorrectly concluded the City rebutted its presumption.

Larson v. City of Bellevue, at 879. For a jury to determine if the presumption was rebutted by a preponderance of the evidence, the jury must know which party bears the burden of proof to rebut the presumption. The burden of proof instruction, WPI 155.03, uses the phrase "on which that party has the burden of proof".

Neither this Court's opinion in *Gorre v. City of Tacoma*, nor the Appellate Court's opinion in that case held that the burden-shifting protection of RCW 51.32.185 vanishes on appeal to the Superior Court. In *Raum v. City of Bellevue*, the Court of Appeals upheld jury instructions that allowed the firefighter to argue that he was entitled to the presumption and that the City failed to rebut the presumption. *Raum v. City of Bellevue*, 171 Wash.App 124, 144, 286 P.3d 695 (2012). This Court and all Appellate opinions in our State addressing RCW 51.32.185 support the notion that the burden-shifting

protection of RCW 51.32.185 is not rendered moot simply by an appeal to the Superior Court.

2. RCW 51.52.115 and 51.32.185 Do Not Conflict and Even if They Did, RCW 51.32.185 is More Specific to Firefighter Presumptive Disease Cases and is More Recent.

RCW 51.52.115 does not conflict with RCW 51.32.185. This case involves the more recent of the two statutes, RCW 51.32.185, which is also more specific to the substance of this case – i.e. firefighter melanoma. Regardless, Captain Larson proved that the Board’s decision was incorrect by the City’s failure to rebut by a preponderance of evidence the statutory presumption. The jury agreed.

“However, where statutes relate to the same subject matter, we must read them as a unified whole to the end that a harmonious statutory scheme evolves which maintains the **integrity** of the respective statutes.” *Anderson v. State, Dep’t of Corr.*, 159 Wash.2d 849, 861, 154 P.3d 220 (2007). [Emphasis added]. “When two statutes apparently conflict, the rules of statutory construction direct the court to, if possible, reconcile them so as to give **effect** to each provision.” *id.* [Emphasis added]. The City wants to remove the burden-shifting protection of RCW 51.32.185 at trial, but that clearly destroys the **affect** and **integrity** of RCW 51.32.185. The statutory presumption and burden-shifting protection of RCW 51.32.185 was

created in 1987, much more recently than the more general worker's compensation burden of proof language of RCW 51.52.15. Accordingly, even if these statutes did conflict:

“ . . . [t]o resolve apparent conflicts between statutes, courts generally give preference to the more specific and more recently enacted statute.” *[citation omitted]*.

Gorman v. Garlock, Inc., 155 Wash. 2d 198, 210-11, 118 P.3d 311 (2005).

3. Whether the City's evidence rebuts the presumption is a question of fact for the jury. The burden to rebut the presumption is both a burden of production and persuasion.

a. The jury was properly instructed on the statutory presumption.

The jury, reviewing the same evidence as the Board reviewed, cannot possibly know if the Board incorrectly decided that the City rebutted the presumption if the jury is misled to believe that the City had no burden of proof on that issue. See section 1, *supra*; and section 4, p. 16, *infra*.

b. Determining if the City rebutted the presumption by a preponderance of evidence is also a question of fact - to be decided by the jury.

The operation of the presumption of RCW 51.32.185 requires the City to rebut what is presumed. What is presumed in RCW 51.32.185 is the fact that the firefighter's disease arises naturally out of his or her job and the fact that the disease was proximately caused by his or her job - i.e. the disease was "occupational" as defined by RCW 51.08.140. Whether the City has proven

by a preponderance of evidence that Captain Larson's cancer did not arise naturally out of and was not caused by his employment are questions of fact, to be decided by the jury. "Proximate cause is generally a question of fact." *White v. Twp. of Winthrop*, 128 Wash. App. 588,595,116 P.3d 1034 (2005). Whether a disease "arises naturally from conditions of employment" is factual.

RCW 51.32.185 states that the presumption may be rebutted by a preponderance of the evidence. ". . . 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 & Indus.*, 24 Wash.2d 1, 13, 163 P.2d 142 (1945).

The Appellate Court was correct: "The statute requires a quality of proof to rebut the presumption and a weighing of all the evidence to determine if the evidence produced achieves the necessary level of persuasiveness. This presents a question of fact requiring an evaluation of the credibility of witnesses and the persuasiveness of evidence." *Larson v. City of Bellevue*, at 872. In a case involving the presumption against suicide, the Supreme Court stated,

The jury are the final arbiters as to the weight of the evidence necessary to overcome the presumption.

Burrier v. Mut. Life Ins. Co. of New York, 63 Wash. 2d 266, 281, 387 P.2d

58 (1963). In a case involving the presumption of death, 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.**"

Nelson v. Schubert, 98 Wash.App. 754, 763, 994 P.2d 225 (2000). [emphasis added]. The Supreme Court in *Luna v. Seattle Times Co.*, stated:

The sum and substance of all that has been written on the force and effect of presumptions is that, in the first instance, it is for the court to say whether or not the evidence is sufficient, as a matter of law, to overcome a presumption. If not, the question may be left to the jury, under proper instruction.

Luna v. Seattle Times Co., 186 Wn.2d 618, 628, 59 P.2d 753 (1936). In the present case, the City brought to motions for summary judgment, one at the Board-level and one in Superior Court. CP 84-89; 1905-1921. Both motions were denied. CP 510-517; 1564-1565.

The Superior Court would have committed a fundamental due process error if 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 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 “inviolable.”

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

(2012). The City should be estopped from its position on appeal (that whether it rebutted the presumption by a preponderance of evidence is a question of law) – given that the City proposed a Revised Special Verdict form that put that question to the jury. *See* CP 1749.

- c. **The City’s burden of proof to rebut the presumption is not simply to produce contrary evidence. The City’s burden is to rebut the presumption by (a) proving a non-firefighting cause and (b) disproving firefighting as a cause.**

The Appellate Court in *Larson* correctly held that the presumption of occupational disease in RCW 51.32.185 shifts not just the burden of production, but the burden of persuasion to the City. This is not an employment discrimination case. Rather, in the present case, there is a specific burden-shifting statute that requires rebuttal by a preponderance of evidence. The City asserts that because presumption is preceded by ‘prima facie’ in RCW 51.32.185, the City’s burden is simply to produce contrary evidence. This is incorrect. RCW 51.32.185 is clear – the presumption must be rebutted “by a preponderance of evidence.” WPI 155.03 defines

preponderance of evidence, and states that the jury “must be persuaded, considering all the evidence in the case bearing on the question, that the proposition on which that party has the burden of proof is more probably true than not true.”

This Court has explained “prima facie” within the context of the Industrial Insurance Act.

In this context, ‘prima facie’ means that there is a presumption on appeal that the findings and decision of the board, based upon the facts presented to it, are correct until the **trier of fact finds from a fair preponderance of the evidence** that such findings and decision of the board are incorrect. **It must be a preponderance of the credible evidence.**

Allison v. Dep’t of Labor & Indus., 66 Wash.2d 263, 268, 401 P.2d 982 (1965). [Emphasis added]. When the *Allison* case was decided, RCW 51.32.185 did not exist. However, when creating the statutory presumption of RCW 51.32.185, the legislature used the same term (“prima facie”). “. . . the legislature is presumed to know the existing state of the case law in those areas in which it is legislating.” *Woodson v. State*, 95 Wash.2d 257, 262; 623 P.2d 683 (1980).

The City cannot rebut the presumption unless it can establish a non-occupational cause and also eliminate firefighting as a cause.

c1. Establishing a non-occupational cause:

RCW 51.32.185 presumes that Captain Larson'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 the disease **than conditions in everyday life or all employments in general.** *Dennis v. Dept. of Labor & Indus.*, 109 Wn.2d 467, 482, 745 P.2d 1295 (1987). [Emphasis added]. It follows that for the City to rebut this fact, it must prove that conditions in everyday life or conditions of non-firefighting employment were the cause – i.e. the City must prove facts.

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 prove by a preponderance of the evidence the existence of an **intervening independent and sufficient cause** (i.e. facts) for the disease, and contraction would have occurred regardless of firefighting.

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 RCW 51.32.185. 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**. 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.

This Court, in *Gorre v. City of Tacoma*, stated:

At issue instead is whether valley fever is a “respiratory disease” or an “infectious disease” under RCW 51.32.185(1)(a) or (d) that shifts the burden of **proving the disease's proximate cause** from Gorre to the employer City.

Gorre v. City of Tacoma, 184 Wash. 2d 30, 33, 357 P.3d 625 (2015).

[Emphasis added]. The Appellate Court in *Gorre v. City of Tacoma* similarly stated:

If the employer cannot meet this burden, for example, **if the**

cause of the disease cannot be identified by a preponderance of the evidence or even if there is no known association between the disease and firefighting, the firefighter employee maintains the benefit of the occupational disease presumption.

Gorre v. City of Tacoma, 180 Wash. App. 729, 758, 324 P.3d 716 (2014), amended in part (July 8, 2014), amended (July 15, 2014), overturned on other grounds in *Gorre v. City of Tacoma*, 184 Wash. 2d 30, 357 P.3d 625 (2015).

c2. 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. Viad Corp.*, 165 Wash. 2d 341, 197 P.3d 127 (2008).

4. Jury Instruction No. 9 Properly Instructed the Jury on The Burden of Proof.

"Instruction No. 9", found at CP 1768, is a correct statement of the law. The Instruction is taken directly from WPI 155.03, with the exception that paragraph three is added to instruct the jury as to the City's burden of proof at the Board hearing – which is essential because the jury is charged

with deciding whether the Board was incorrect.

The City contends that the Special Verdict Form required the jury to review Instruction No. 9 to answer Question 1 on the Special Verdict form and that Instruction No. 9 requires that the City rebut the “arising naturally” element *and* the “proximate cause” element of “occupational disease.”

The City should be judicially estopped from this position, given that its own Revised Proposed Special Verdict Form couched the rebuttal in the same terms as in paragraph three of the Court’s Instruction No. 9. CP 1749.

Instruction No. 9 did not require that the City rebut *both* that Captain Larson’s cancer arose naturally out of *and* was caused by his employment. Instruction No. 9 was simply a burden of proof instruction, and its third paragraph instructed the jury that it is the City’s burden at the Board to rebut the presumption:

At the hearing before the Board of Industrial Insurance Appeals, the burden of proof is on the employer to rebut the presumption that 1) claimant’s malignant melanoma arose naturally out of his conditions of employment as a firefighter and, 2) his employment is a proximate cause of his malignant melanoma.

CP 1768. Instruction No. 13 defined “occupational disease” and “arises naturally out of employment.” CP 1772. Instruction No. 11 defined “proximate cause.” CP 1770. Paragraph four of Instruction No. 9 (for which no error was assigned) defined “preponderance of evidence.” CP 1768.

The Court of Appeals in this case was correct when it stated:

Instruction 9 breaks this definition into two parts—that malignant melanoma arose naturally out of conditions of employment and that employment was a proximate cause of the melanoma. **It directly tracks the statutory definition.** We agree that the City needed to disprove only one of the two parts to rebut RCW 51.32.185(1)'s presumption. **Nothing in instruction 9 contradicts this.**

Larson v. City of Bellevue, at 876-77. [Emphasis added]. The City contends that the jury should not have been instructed as to the City's burden at the Board hearing. The City's position is the equivalent of misplacing the burden of proof. A "normal" occupational disease claim where the burden begins and remains with the worker is substantially different than an occupational disease claim involving RCW 51.32.185, which creates a burden-shifting protection to the firefighter that completely changes the balance of power in Captain Larson's trial.

To conceal from the jury that it was the City's burden to rebut the presumption is to misplace the burden of proof at Captain Larson's trial. This would cripple Captain Larson's freedom to prosecute his case with the benefit of the statutory presumption.

As discussed on pages 2 and 3 above, RCW 51.32.185 creates a liberty interest for Captain Larson. If the City's burden of proof is concealed from the jury, the statutory burden-shifting protection of RCW 51.32.185 is rendered meaningless at Captain Larson's trial, his liberty interest is deprived,

and his due process rights are violated.

5. The Court of Appeals Correctly Upheld The Trial Court's Decision To Award Captain Larson His Attorney's Fees And Costs Before The Board.

RCW 51.32.185(7)(b) is clear:

When a **determination involving the presumption** established in this section is appealed to any court and the final decision allows the claim for benefits, the court shall order that **all reasonable costs of the appeal**, including attorney fees and witness fees, be paid to the firefighter or his or her beneficiary by the opposing party.

[Emphasis added]. RCW 51.52.130 also contemplates the Court fixing a fee for the attorney's services before the Department, the Board and the Court, when a decision of the Board is reversed on appeal to the Superior Court.

Captain Larson had no reason to appeal the Department's order – the Department accepted his claim and he was entitled to benefits. Had the City not appealed, there would be no fees and costs incurred by Captain Larson at the Board, the Superior Court, the Appellate Court or the Supreme Court. “The very purposes of allowing an attorney's fee in industrial accident cases primarily was designed to guarantee the injured workman adequate legal representation in presenting his claim on appeal **without the incurring of legal expense or the diminution of his award . . .**” *Harbor Plywood Corp. V. Department of Labor & Indus.*, 48 Wash.2d 553, 559, 295 P.2d 310 (1956) (quoting *Boeing Aircraft Co., v. Department of Labor & Indus.*, 26 Wash.2d

51, 57, 173 P.2d 164 (1946)).

The guiding principal in construing the Industrial Insurance Act is that the Act is remedial in nature and is to be liberally construed in order to achieve its purpose of providing compensation to all covered employees injured in their employment, with doubts resolved in favor of the injured worker.

Dennis v. Dep't of Labor and Indus., 109 Wn.2d 467, 470 (1987). To exclude Captain Larson's costs and fees incurred at the Board when it was determined by a jury that his claim was allowable contorts the fee provisions of RCW 51.32.185 and the overriding policy of protecting workers as opposed to employers. Based on the record before the Board, the jury found that the Board was wrong, i.e., Captain Larson should have prevailed at the Board. It was the firefighter whose claim was accepted by the Department and the firefighter who ultimately prevailed after the City started the initial appeal.

Captain Larson is entitled to fees and costs at the Appellate Court as well. Under separate section in Captain Larson's opening Appellate Court brief he cited specific authority, including RCW 51.32.185(7), and stated that "Had the City not appealed, there would be no fees and costs incurred by Captain Larson at the Board-level, the Superior Court level, or in the Appellate Court." Respondent's Brief 46. [emphasis added]. Captain Larson also stated: "In a case involving the presumption, RCW 51.32.185(7) provides that the court shall order all reasonable costs of appeal." RB 48.

Even the City of Bellevue acknowledged its understanding from reading Captain Larson's Respondent's Brief that Captain Larson seeks fees through all proceedings in this matter.

"In essence he argues the entire history of his claim following the Department's decision is **one appeal**."

...

"Larson relies, in part, on RCW 51.52.130 for his claim that he is entitled to attorney's fees **through all proceedings related to this matter**."

City Reply Brief: 23 & 22 respectively. [emphasis added].

Regardless, the Appellate Court's opinion established that Captain Larson prevailed on his presumptive disease case. Accordingly, RCW 51.32.185(7) states: "... **the court shall order** that all reasonable costs of the appeal, including attorney's fees and witness fees, be paid to the firefighter or his or her beneficiary by the opposing party." [Emphasis added].

In this case the Appellate Court was clear: "We conclude that the plain language of 'all reasonable costs of the appeal' includes all, and not only some, of the costs required to succeed on a claims benefit under the industrial Insurance Act." *Larson v. City of Bellevue*, at 884. On two other occasions in its written opinion, the Appellate Court noted that RCW 51.32.185(7) provides for a claimant's recovery of all reasonable costs of the appeal "to any court." *Id.* at 862. "Any Court" includes the Appellate Court – and the Supreme Court. Accordingly, pursuant to RAP 18.1(d), within ten

days of the Appellate Court's decision, Captain Larson timely filed his motion for fees and costs, with supporting Declarations and a detailed spreadsheet. *See Claimant Firefighter's Motion and Declaration for All Attorneys Fees and Costs (RCW 51.32.185; RCW 51.52.130) and supporting Declarations filed with the Appellate Court on July 21, 2015.* Captain Larson's Reply briefs to the City and to the Department were filed with the Appellate Court on August 4, 2015 and August 10, 2015, respectively.

Commentators have noted that limiting the amount of attorney fees awarded in workers compensation cases is inconsistent with the general purpose of the workers' compensation system. Obligating successful workers to cover their legal costs reduces the worker's already limited recovery.

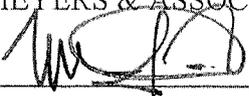
Brand v. Dep't of Labor & Indus. of State of Wash., 139 Wash. 2d 659, 671, 989 P.2d 1111 (1999), as amended on denial of reconsideration (Apr. 10, 2000), as amended (Apr. 17, 2000). [emphasis added]. Captain Larson is entitled to fees and costs at the Board and all courts to which this matter has been appealed.

IV. CONCLUSION

The Supreme Court should affirm the Appellate Court's ruling, and award Captain Larson's attorney's fees and costs incurred at all levels of appeal, including before the Board, the Superior Court, the Appellate Court and the Supreme Court.

DATED: May 10, 2016.

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By:  _____

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WILFRED A. LARSON

Respondent,

v.

CITY OF BELLEVUE, Petitioner

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

Defendant.

DECLARATION OF SERVICE OF RESPONDENT WILFRED
LARSON'S SUPPLEMENTAL BRIEF

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Dear Clerk:

Attached please find the Respondent Wilfred Larson's Supplemental Briefing, an a Declaration of Service. Please file the attached documents in the Wilfred Larson v. City of Bellevue; Supreme Court Case No. 92197-1. Thank you.

Mindy Leach



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