
IN THE SUPREME COURT OF THE STATE OF WASHINGTON

ROGER A. STREET,

Plaintiff/Respondent,

vs.

WEYERHAEUSER COMPANY,

Defendant/Petitioner.

BRIEF OF AMICUS CURIAE
WASHINGTON STATE ASSOCIATION FOR JUSTICE FOUNDATION

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I. IDENTITY AND INTEREST OF AMICUS CURIAE

The Washington State Association for Justice Foundation (WSAJ Foundation) is a not-for-profit corporation organized under Washington law, and a supporting organization to Washington State Association for Justice. WSAJ Foundation operates an amicus curiae program and has an interest in a claimant's eligibility for receiving benefits under Washington's Industrial Insurance Act, Title 51 RCW (IIA or Act), including an interest in what evidence a claimant must present to prove that disability from an occupational disease arose "naturally and proximately" out of employment as required by RCW 51.08.140.

II. INTRODUCTION AND STATEMENT OF THE CASE

This appeal presents the Court with an opportunity to elaborate on its holding in *Dennis v. Dep't of Labor and Indus.*, 109 Wn.2d 467, 745 P.2d 1295 (1987), regarding the requirement under the IIA that an occupational disease arise "naturally and proximately" out of employment, and to determine to what extent expert medical testimony should be required to make this showing. The facts are drawn from the unpublished Court of Appeals opinion and the briefs of the parties. *See Street v. Weyerhaeuser Co.*, noted at 196 Wn. App. 1074, 2016 WL 6948776 (2016), *review granted*, __Wn.2d __, 391 P.3d 457 (2017); Weyerhaeuser App. Br. at 1-11; Street Resp. Br. at 1-6; Weyerhaeuser Pet. for Rev. at 1-6; Street Answer to Pet. for Rev. at 2-5.

Street worked for Weyerhaeuser or its subsidiary for his entire working life, beginning in 1975. In 1991, he began working in a paper mill at Norpac, Weyerhaeuser's subsidiary. Street testified that his duties included moving as many as 800 rolls of paper per day, which at times involved twisting and pushing 1000 pound rolls of paper on a conveyor belt. He stated that his job also required repetitive loading of products weighing between 1.5 and 15 pounds. Street eventually developed chronic low back pain that prevented him from continuing his employment at the paper mill.

In 2013, Street applied for workers' compensation benefits for his low back condition. In addition to lay testimony, three medical experts testified – two treating physicians on behalf of Street, and one physician hired by Weyerhaeuser to examine Street. Dr. Peterson, board certified in internal medicine and Street's primary care physician, testified that she was aware that Street's job involved, among other things, heavy lifting and pushing heavy rolls of paper, and that more probably than not Street's work was a cause of the pain and immobility associated with his low back condition. Dr. Peterson diagnosed Street's condition as chronic low back pain related to degenerative arthritis and degenerative disc disease of the spine. She explained that the degenerative disc disease by itself does not typically cause pain and immobility, but pain and disability arise when some type of trauma renders the degenerative disease symptomatic. Dr. Peterson testified that Street's particular work contributed to his painful low back condition as opposed to everyday wear and tear. *See* Street Resp. Br. at 4.

Street's other treating physician agreed that his low back condition was probably caused, at least in part, by his work activities.

Weyerhaeuser states that neither of Street's treating physicians addressed whether his work activities presented a "distinct risk" of causing spondylosis, as compared to the type of activities found in other employments generally or the activities of daily living. *See* Weyerhaeuser App. Br. at 8, 21; Pet. for Rev. at 5. The physician hired by Weyerhaeuser testified that Street's condition probably did not arise out of his employment. Weyerhaeuser states that its physician "considered whether claimant's work activities were distinctive when compared to other employments and affirmatively testified that claimant's work at Weyerhaeuser was not distinctive in terms of its potential for causing or aggravating lumbar spondylosis." Weyerhaeuser App. Br. at 21; *see also* Pet. for Rev. at 6.

The Department of Labor and Industries denied Street's claim. On review, the Board of Industrial Insurance Appeals affirmed the Department, ruling that there was no showing that Street's back condition arose "naturally and proximately" out of any distinctive employment conditions. *Street*, 2016 WL 6948776, at *1.

A superior court jury reversed the Board's decision. Weyerhaeuser appealed, and argued that "[t]he issue whether particular work conditions constituted a 'distinctive' cause of a medical condition presents a medical question." Weyerhaeuser App. Br. at 19. Division One of the Court of

Appeals affirmed the trial court's judgment on the verdict, finding that substantial evidence supported the jury's verdict that Street's low back condition qualifies as an occupational disease that arose naturally and proximately out of his distinctive employment conditions. *See Street*, 2016 WL 6948776, at *4. The Court also held that "Street was not required to present expert medical testimony to show that his job duties and activities working for Weyerhaeuser constitute distinctive conditions of employment sufficiently different from his activities of everyday life." *Id.* at *5 (citation and internal quotations omitted).

Weyerhaeuser sought review in this Court on two issues:

- 1) Does the "arises naturally" requirement of the occupational disease statute, RCW 51.08.140, present an issue of causation?
- 2) Does a worker need to sustain his burden of proving his disease arose naturally from distinctive conditions of his particular employment through expert medical testimony?

Pet. for Rev. at 1.

Weyerhaeuser' contends that the "arises naturally" prong in RCW 51.08.140 requires a claimant to produce expert medical testimony that a worker's "particular employment exposure or activities presented a distinctive risk of causing the claimed disease, compared to the causal risk attendant to activities existing in employments generally and everyday life."

Pet. for Rev. at 19.

The Court granted Weyerhaeuser's petition for review.

III. ISSUE PRESENTED

Under RCW 51.08.140, which defines an occupational disease as such disease that “arises naturally and proximately out of employment” and generally requires expert medical testimony to establish proximate cause, must a worker also present expert medical testimony to prove the employment conditions that proximately caused the disease constitute distinctive conditions of employment?

IV. SUMMARY OF ARGUMENT

The IIA provides workers’ compensation benefits for an “occupational disease” arising out of employment. RCW 51.32.180. Benefits are provided for both diseases and disease-based disabilities. RCW 51.08.140 requires that an occupational disease or disease-based disability “arises naturally and proximately out of employment.” Under *Dennis, supra*, the “proximately” element requires the worker to show that distinctive conditions of employment more probably than not caused the disease or disease-based disability. Generally, this showing must be made through expert medical testimony. The “naturally” element requires the worker to show that the working conditions that proximately caused the disease were distinctive, i.e., “that his or her particular work conditions more probably caused the disease or disease-based disability than conditions in everyday life or all employments in general,” that “the disease or disease-based disability must be a natural incident of conditions of that worker’s particular employment,” and that the conditions causing the disease or disease-based disability must be “conditions of the worker’s

particular occupation as opposed to conditions coincidentally occurring in his or her workplace.” *Dennis*, 109 Wn.2d at 481.

The “naturally” element does not require medical testimony to show that the particular job activities that proximately caused the disease or disease-based disability: 1) constitute distinctive conditions of employment sufficiently different from activities of everyday life and general employment; or 2) are conditions of the worker’s particular occupation as opposed to conditions coincidentally occurring in his or her workplace.

V. ARGUMENT

A. Overview Of The IIA And The Requirements For Establishing An Occupational Disease.

The remedial nature of the IIA

“The IIA is broad in scope and contains a mandate of liberal construction ‘for the purpose of reducing to a minimum the suffering and economic loss arising from injuries and/or death occurring in the course of employment.’” *Dep’t of Labor and Indus. v. Lyons Enters., Inc.*, 185 Wn.2d 721, 734, 374 P.3d 1097 (2016) (first quoting *Doty v. Town of South Prairie*, 155 Wn.2d 527, 531, 120 P.3d 941 (2005); and then quoting RCW 51.12.010). “The liberal construction of the IIA necessitates that all doubts be resolved in favor of coverage.” *Lyons Enters.*, 185 Wn.2d at 734 (citing *Doty*, 155 Wn.2d at 532). “Further, the ‘guiding principle’ when interpreting provisions of the IIA is that it is a remedial statute that 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 worker.” *Lyons Enters.*, 185 Wn.2d at 734 (quoting *Dennis*, 109 Wn.2d at 470); see also *Spivey v. City of Bellevue* __Wn.2d __, 389 P.3d 504, 509-10 (2017).

“Under the IIA, any worker injured in the course of employment is entitled to compensation for full disability, independent of any preexisting condition.” *Boeing Co. v. Doss*, 183 Wn.2d 54, 57, 347 P.3d 1083 (2015) (citing *Tomlinson v. Puget Sound Freight Lines, Inc.*, 166 Wn.2d 105, 117, 206 P.3d 657 (2009)). “The worker is to be taken as he or she is, with all his or her preexisting frailties and bodily infirmities.” *Dennis*, 109 Wn.2d at 471 (citing *Wendt v. Dep’t of Labor and Indus.*, 18 Wn. App. 674, 682-83, 571 P.2d 229 (1977)).

Occupational diseases and the requirement that they arise “naturally and proximately” out of employment

RCW 51.32.180 provides that disability resulting from “occupational disease” is compensable under the IIA. Disease-based disability is also compensable:

A worker is entitled to benefits if the employment either *causes* a disabling disease, or *aggravates* a preexisting disease so as to result in a new disability. *Dennis*, 109 Wn.2d at 474. (“[C]ompensation may be due where disability results from work-related aggravation of a preexisting non-work-related disease.”). In an aggravation case, the employment does not cause the disease, but it *causes the disability* because the employment conditions accelerate the preexisting disease to result in the disability. In this sense, it is proper to speak of the *disability* being *caused* by the employment in an aggravation case.

Ruse v. Dep’t of Labor and Indus., 138 Wn.2d 1, 7, 977 P.2d 570 (1999).

RCW 51.08.140 defines occupational disease as “such disease... as arises naturally and proximately out of employment.”¹ In *Dennis, supra*, the Court examined the requirements under RCW 51.08.140 that a worker show that the disease arose both (1) “proximately” and (2) “naturally” out of the worker’s employment. Regarding the “proximately” requirement, the Court construed this prong to require that the claimant establish a causal link between the employment and the resulting disease, and to generally require expert testimony: “The causal connection between a claimant’s physical condition and his or her employment must be established by competent medical testimony which shows that the disease is probably, as opposed to possibly, caused by the employment.” *Id.* at 477.

After establishing the causal nature of the “proximately” requirement and recognizing that it generally must be proven with expert testimony, the Court considered what is added by the inclusion of the term “naturally” in RCW 51.08.140. Recognizing the general rule of statutory construction that “the court is required, whenever possible, to give effect to every word in a statute,” *Dennis*, 109 Wn.2d at 479, the Court concluded that the term “naturally” added the requirement that the employment conditions proximately causing the injury must be “distinctive conditions” of the particular employment:

We hold that a worker must establish that his or her occupational disease came about as a matter of course as a natural consequence or incident of distinctive conditions of his or her particular employment. The conditions need not be peculiar to, nor unique to, the worker’s particular

¹ The full text of the current version of RCW 51.08.140 is reproduced in the Appendix.

employment. Moreover, the focus is upon conditions giving rise to the occupational disease, or the disease-based disability resulting from work-related aggravation of a nonwork-related disease, and not upon whether the disease itself is common to that particular employment. The worker, in attempting to satisfy the “naturally” requirement, must show that his or her particular work conditions more probably caused his or her disease or disease-based disability than conditions in everyday life or all employments in general; the disease or disease-based disability must be a natural incident of conditions of that worker’s particular employment. Finally, the conditions causing the disease or disease-based disability must be conditions of *employment*, that is, conditions of the worker’s particular occupation as opposed to conditions coincidentally occurring in his or her workplace.

Id. at 481.

While the Court’s discussion focuses on what conditions may constitute “distinctive conditions” of employment, the Court assumes the presence of a causation element in the “naturally” prong: “We hold that a worker must establish that his or her occupational disease came about as a matter of course as a natural consequence or incident of distinctive conditions of his or her particular employment.” *Id.* In *Ruse, supra*, the Court further discussed the causation requirement present in both the “proximately” and “naturally” prongs of RCW 51.08.140:

The worker must prove a condition of the job “more probably than not” caused the disability, *Dennis*, 109 Wn.2d at 477, and the disability “came about as a matter of course as a natural consequence or incident of distinctive conditions of his or her particular employment.” *Id.* at 481. The “more probably than not” causation standard requires a showing that, *but for* the aggravating condition of the job, the claimed disability would not have arisen. *Id.* at 477.

Ruse, 138 Wn.2d at 7.

In *Dennis*, the Court further held that in satisfying the “naturally” element, a worker is not required to show that the distinctive conditions of employment are peculiar to or inherent in the worker’s particular employment, or that the distinctive conditions of employment exposed the worker to a “greater risk” of contracting a disability resulting from work-related aggravation of a preexisting disease than would other employment or everyday life. *Id.* at 482-83.²

In sum, *Dennis* clarified that the “proximately” requirement focuses on medical causation, while the “naturally” requirement adds that a claimant must show the job activities constitute “distinctive conditions of employment,” which are sufficiently different from activities of everyday life and general employment, and are conditions of the particular occupation, as opposed to conditions coincidentally occurring in the workplace. In contrast, a worker is *not* required to prove that the disease was “peculiar to” the particular work conditions, nor that the conditions presented a “greater risk” of causing the disease than other types of employment or life in general. Thus, while there is admittedly some

² The Court noted that in *Department of Labor and Indus. v. Kinville*, 35 Wn. App. 80, 664 P.2d 1311 (1983), the court of appeals held that in order to satisfy the “naturally” requirement of RCW 51.08.140, “the worker has the burden of establishing that the conditions producing his disease are peculiar to, or inherent in, his particular occupation,” and that RCW 51.08.140 “requires a showing by the claimant that the job requirements of his particular occupation exposed him to a greater risk of contracting the disease than would other types of employment or nonemployment life.” *Dennis*, 109 Wn.2d at 478 (quoting *Kinville*, at 87-88). This Court in *Dennis* specifically disagreed with the “peculiar to, or inherent in” construction used in *Kinville*, and held this construction is incorrect. 109 Wn.2d at 478-79. This Court also refused to adopt the “greater risk test” from *Kinville*, and held that RCW 51.08.140 does not “require proof of a ‘greater risk’ in the worker’s particular employment of contracting an occupational disease or of disability resulting from work-related aggravation of a preexisting disease.” 109 Wn.2d at 482.

conceptual overlap between the “proximately” and “naturally” prongs of the occupational disease inquiry, *Dennis* appears to clarify that “proximately” concerns the requisite causal link, while “naturally” focuses on the requirement that the employment conditions proximately causing the disease be distinctive to the particular employment.

B. Expert Medical Testimony Should Not Be Required To Establish That Conditions Of Employment Are Distinctive.

ER 702 governs the admissibility of expert testimony, and requires that to be admissible, expert testimony must be helpful to the trier of fact and the proffered witness must be competent to offer expert opinions regarding the matter at issue.³ *Lakey v. Puget Sound Energy, Inc.*, 176 Wn.2d 909, 918, 296 P.3d 860 (2013). Where medical causation is at issue, the complexity of medical facts generally requires that a plaintiff prove these facts by submitting medical expert testimony. In *Smith v. Shannon*, 100 Wn.2d 26, 666 P.2d 351 (1983), the Court recognized the “general rule” regarding when expert medical testimony is required:

[E]xpert medical testimony is *required* on only those matters “strictly involving medical science”. 2 J. Wigmore, *Evidence* § 568, at 779 (rev. 1979). The basic question is whether the particular fact sought to be proved is such as is “observable by [a layperson’s] senses and describable without medical training”. *Bennett v. Department of Labor & Indus.*, 95 Wn.2d 531, 533, 627 P.2d 104 (1981).

100 Wn.2d at 33 (italics in original).

Early workers’ compensation decisions also appeared to deem medical expert testimony necessary only when questions related to the

³ The full text of the current version of ER 702 is reproduced in the Appendix.

nature and cause of the disability involved questions of medical science too complex to be determined by lay witnesses. *See e.g. Eyer v. Dep't of Labor and Indus.*, 1 Wn.2d 553, 555, 96 P.2d 1115 (1939) (noting that “[w]here, in a proceeding before the Industrial Insurance Commission, the disability alleged to exist is of such a character as to require skilled and professional men to determine the cause and extent thereof, the question is one of science and must necessarily be proved by the testimony of skilled professionals”; citations omitted); *see also Hoff v. Dep't of Labor and Indus.*, 198 Wash. 257, 266, 88 P.2d 419 (1939) (recognizing that “upon a medical question regarding the nature and effect of a particular ailment, such as involved here, those who are versed in the science of medicine are better able than are we to form a true and accurate opinion”).

In contrast, expert testimony is not helpful to the trier of fact, and thus is not admissible, when “[n]o special skill, experience, knowledge, or education is required to formulate an opinion upon a matter that can be judged by people of ordinary experience and knowledge.” 5B KARL B. TEGLAND, WASHINGTON PRACTICE: EVIDENCE LAW AND PRACTICE § 702.16 at 71 (6th ed. 2016). In such situations, the trier of fact does not need the assistance of an expert because the expert has no specialized knowledge regarding the matter at issue that the trier of fact would not otherwise have. Further, the admission of expert testimony in such situations can be misleading “because it can create the illusion of

scientific precision and infallibility,” *see id.* at 71-72, which may be prejudicial when jurors are capable of evaluating the facts for themselves.

The necessity for medical expert testimony should be limited to specialized questions involving medical science that are uniquely within a medical professional’s particular expertise. In this case, Dr. Peterson testified that she was familiar with Street’s particular physical work conditions, that Street’s particular work conditions as opposed to everyday wear and tear contributed to his disability, and that Street’s employment more probably than not was a proximate cause of his disability. Dr. Peterson’s testimony satisfies the evidentiary requirement under RCW 51.08.140 that competent medical testimony establish that distinctive job conditions more probably than not caused Street’s disability.

Where, in contrast, the inquiry involves the factual question of what distinctive conditions characterize the work environment, a medical professional has no particular qualifications that would help the trier of fact to determine whether the conditions of a worker’s particular employment are distinctive, i.e., sufficiently different from all employments in general or activities of daily life. Several court of appeals decisions since the formulation of the “distinctive conditions” requirement in *Dennis* have discussed what qualifies as distinctive conditions without any indication that expert medical testimony was required.⁴ A witness familiar with the

⁴ *See Kaiser Aluminum v. McDowell*, 58 Wn. App. 283, 287, 792 P.2d 1269 (1990) (heat, hard surfaces and climbing stairs were distinctive conditions of employment); *McClelland v. ITT Rayonier*, 65 Wn. App. 386, 393, 828 P.2d 1138 (1992) (stress in job was not a distinctive condition of employment); *Wheeler v. Catholic Archdiocese*, 65 Wn. App. 552,

worker's job requirements and the particular manner in which the worker performed those job requirements can provide evidence to assist the trier of fact to determine whether job conditions are distinctive; generally, a medical professional will have no particular expertise to offer on this issue, as this is not a matter involving medical science.

Weyerhaeuser seems to argue that expert medical testimony should also be required to prove that a worker's particular employment constitutes a "distinctive risk" of contracting an occupational disease when compared to other employments or everyday life, or constitutes a "distinct cause" of the worker's occupational disease as compared to other occupations or everyday life.⁵ In its analysis of what proof a worker must show to meet the

567-68, 829 P.2d 196 (1992) (harassment was not a distinctive condition of employment), *rev'd in part on other grounds*, 124 Wn.2d 634, 880 P.2d 29 (1994); *Intalco Aluminum v. Dep't of Labor and Indus.*, 66 Wn. App. 644, 656, 833 P.2d 390 (1992) (exposure to neurotoxins was a distinctive condition of employment), *review denied*, 120 Wn.2d 1031 (1993); *Gast v. Dep't of Labor and Indus.*, 70 Wn. App. 239, 243, 852 P.2d 319 (rumors and innuendos by coworkers were not distinctive conditions of employment), *review denied*, 122 Wn.2d 1024 (1993); *Witherspoon v. Dep't of Labor and Indus.*, 72 Wn. App. 847, 851, 866 P.2d 78 (1994) (determination that exposure to meningitis in the workplace was not a result of any distinctive conditions of employment was based on medical testimony, but no holding that medical testimony is *required* to show distinctive conditions of employment); *Ruse v. Dep't of Labor and Indus.*, 90 Wn. App. 448, 454, 966 P.2d 909 (1998) (hard work and heavy labor were not distinctive conditions of employment), *aff'd on other grounds*, 138 Wn.2d 1, 8, 977 P.2d 570 (1999) (in *dicta*, stating that Court of Appeals' holding that hard work or heavy labor could *never* constitute a distinctive condition of employment may be improper); *Simpson Timber Co. v. Wentworth*, 96 Wn. App. 731, 736-38, 981 P.2d 878 (1999) (prolonged standing on cement floors may be a distinctive condition of employment); *Potter v. Dep't of Labor and Indus.*, 172 Wn. App. 301, 315-16, 289 P.3d 727 (2012) (defective ventilation and off-gassing chemicals were not distinctive conditions of employment), *review denied*, 177 Wn.2d 1017 (2013).

⁵ Weyerhaeuser makes this point repeatedly throughout its briefing. For example, referring to Street's treating physicians, Weyerhaeuser states: "Neither doctor addressed whether claimant's work activities presented a distinct risk of causing lumbar spondylosis, compared to the type of activities found in other employments generally or the activities of daily living." Pet. for Rev. at 5. Referring to its own examining physician, Weyerhaeuser states: "[he] concluded that claimant's work at Weyerhaeuser was not distinctive in terms of its potential for causing or aggravating lumbar spondylosis because it was much less physical than many occupations." Pet. for Rev. at 6. Regarding RCW 51.08.140: "When

“naturally” requirement of RCW 51.08.140, this Court speaks in terms of “distinctive conditions,” not “distinctive risk” or “distinctive cause.” A worker is required to show that his or her disabling condition arose from “distinctive conditions” of employment. *Dennis*, 109 Wn.2d at 481. This Court in *Dennis* rejected a test that would have required the worker to show that his or her employment posed a “distinctive risk” for contracting the worker’s occupational disease when compared to other employments or everyday life, and did not require the worker to show that his or her employment was the “distinctive cause” for the occupational disease when compared to other employments or everyday life.

Weyerhaeuser’s argument that a worker must show a “distinctive risk” or “distinctive cause” in order to meet the “naturally” requirement in RCW 51.08.140 is no different than the argument that a worker must show that the particular employment exposed him or her to a greater risk of contracting the occupational disease than would other employments or everyday life. This “greater risk test” from *Kinville* was specifically rejected

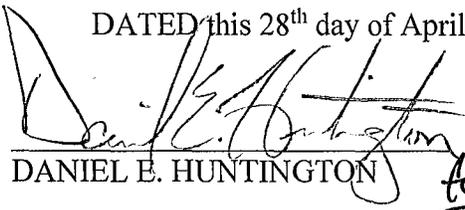
the Legislature grafted this phrase [arises... out of employment] into the IIA's definition of occupational disease, it was understood to address whether the employment created a risk of causing the claimed condition. Here, the Court of Appeals acknowledged that causation issues must be proved through medical testimony, but nevertheless concluded that claimant did not need to present such evidence..." Pet. for Rev. at 7 (brackets added). Regarding the requirement under RCW 51.08.140 that an occupational disease arise "naturally" from employment, Weyerhaeuser states: "[T]his phrase requires that the workplace cause be distinctive to the worker's employment. Such issues of causation must be proved through medical testimony." Pet. for Rev. at 15. Weyerhaeuser argues the requirement that an occupational disease arise naturally “presents an issue of causation that requires proof that the workers' particular employment exposure or activities presented a distinctive risk of causing the claimed disease, compared to the causal risk attendant to activities existing in employments generally and everyday life. This is an issue of causation. Therefore a claimant must present medical testimony to satisfy the ‘arises naturally’ requirement." Pet. for Rev. at 19.

by this Court in *Dennis*. There, the Court held: “[W]e are unprepared to require proof of a ‘greater risk’ in the worker’s particular employment of contracting an occupational disease or of disability resulting from work-related aggravation of a pre-existing disease.” *Dennis*, 109 Wn.2d at 482 (brackets added). Weyerhaeuser’s suggestion – that medical expert testimony must establish the distinctive work conditions posed a “distinctive risk” of causing the occupational disease – is inconsistent with *Dennis* and should be rejected.⁶

VI. CONCLUSION

The Court should adopt the analysis advanced in this brief in the course of resolving the issues on review.

DATED this 28th day of April, 2017.


DANIEL E. HUNTINGTON


for VALERIE D. MCOMIE

On Behalf of WSAJ Foundation

⁶ In rejecting the "greater risk" test, the Court in *Dennis* acknowledged its prior opinion in *Sacred Heart Medical Center v. Carrado*, 92 Wn.2d 631, 600 P.2d 1015 (1979), where the Court had applied a "greater risk" analysis, and had permitted the finder of fact to infer causation based on medical expert testimony which stated that the claimant's particular employment presented a greater risk of contracting hepatitis. *Dennis*, 109 Wn.2d at 482 (citing *Sacred Heart*, 92 Wn.2d at 635). The *Dennis* Court emphasized, however, that such a showing was *not required*, and is instead an alternative way to establish causation where direct evidence of causation is lacking: "Our decision in *Sacred Heart* does not *require* each claimant for occupational disease coverage to prove an increased risk of disease-based disability due to conditions of his or her particular employment, but instead eases the burden of proof requirement." *Dennis*, 109 Wn.2d at 482.

APPENDIX

RCW 51.08.140**"Occupational disease."**

"Occupational disease" means such disease or infection as arises naturally and proximately out of employment under the mandatory or elective adoption provisions of this title.

[1961 c 23 § 51.08.140. Prior: 1959 c 308 § 4; 1957 c 70 § 16; prior: 1951 c 236 § 1; 1941 c 235 § 1, part; 1939 c 135 § 1, part; 1937 c 212 § 1, part; Rem. Supp. 1941 § 7679-1, part.]

Rules of Evidence

RULE ER 702 TESTIMONY BY EXPERTS

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

[Adopted effective April 2, 1979.]

Comment 702

[Deleted effective September 1, 2006.]
