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NO. 96189-1

**IN THE SUPREME COURT
OF THE STATE OF WASHINGTON**

MICHAEL WEAVER

Respondent,

v.

CITY OF EVERETT, DEPARTMENT OF
LABOR AND INDUSTRIES

Appellants.

**SUPPLEMENTAL BRIEF OF RESPONDENT
MICHAEL WEAVER**

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TABLE OF CONTENTS

I. INTRODUCTION.....1

II. STATEMENT OF THE CASE.....1

A. The First Claim1

B. The Second Claim3

III. ARGUMENT.....5

A. Collateral Estoppel Does Not Bar the Current Claim.....5

1. Applying collateral estoppel would work an injustice because Weaver’s interests at stake in the first claim were insufficient to call for a full litigational effort5

2. The Court should reject the Department’s proposal to eliminate the “injustice” element7

3. The claim-filing and aggravation statutes do not automatically establish the incentive for a full litigational effort ..8

4. Procedural fairness of the first proceeding is not enough absent incentive for a full litigational effort.....10

B. Res Judicata Does Not Bar the Current Claim11

1. The subject matter of the two claims is not identical because in the first claim the law did not permit the relief sought in the second11

2. The nature of the two claims was not identical12

3. At the time of Weaver’s first claim, the subject matter of his second claim did not exist14

4. The Court appropriately considered each claim as seeking different relief and involving different facts15

5. Application of res judicata would be inequitable.....17

C. Attorneys' Fees	18
IV. CONCLUSION	19

TABLE OF AUTHORITIES

Cases

<i>Afoa v. Port of Seattle</i> , 191 Wn.2d 110, 130, 421 P.3d 903 (2018)	17
<i>Clark County v. Dept. of Labor and Industries</i> , 185 Wn.2d 466, 475-476, 372 P.3d 764 (2016).....	4
<i>Dana's Housekeeping, Inc. v. Dep't. of Labor & Industries</i> , 76 Wn.App. 600, 612-613, 886 P.2d 1147 (1995)	10
<i>Dennis v. Dep't of Labor & Indus.</i> , 109 Wn.2d 467, 470, 745 P.2d 1295 (1987).....	9, 18
<i>Farnandis v. City of Seattle</i> , 95 Wash. 587, 589-590, 164 P. 225 (1917).	12
<i>Hadley v. Maxwell</i> , 144 Wn.2d 306, 311, 27 P.3d 600 (2001).....	passim
<i>Harsin v. Oman</i> , 68 Wash. 281, 283-284, 123 P. 1 (1912)	14, 15
<i>Hayes v. City of Seattle</i> , 131 Wn.2d 706, 712, 934 P.2d 1179 (1997)	11, 13, 14
<i>In re Metcalf</i> , 92 Wn.App. 165, 174, 963 P.2d 911 (1998).....	17
<i>Kingery v. Dep't of Labor & Indus.</i> , 132 Wn.2d 162, 165, 937 P.2d 565 (1997).....	16
<i>Lewis v. Dep't of Labor & Indus.</i> , 93 Wn.2d 1, 3, 603 P.2d 1262 (1979).	12
<i>Mellor v. Chamberlin</i> , 100 Wn.2d 643, 646-47, 673 P.2d 610 (1983)	14, 15
<i>Phillips v. Hardwick</i> , 29 Wn.App. 382, 385-386, 628 P.2d 506 (1981) ...	11
<i>Reninger v. Dep't. of Corrections</i> , 134 Wn.2d 437, 951 P.2d 782 (1988)	10
<i>Thompson v. Dep't. of Licensing</i> , 138 Wn.2d 783, 982 P.2d 601 (1999) .	10

<i>Weaver v. City of Everett</i> , 4 Wn.App.2d 303, 310, 421 P.3d 1013 (2018)	passim
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Statutes

RCW 51.12.010	9
RCW 51.28.020	8, 16
RCW 51.28.055	8
RCW 51.32.050	7
RCW 51.32.160	9, 17
RCW 51.32.185	3
RCW 51.32.185(9).....	8, 18

Rules

CR 3(a), 7(a)	16
RAP 18.1.....	18

Treatises

Phillip A. Trautman, “Claim and Issue Preclusion in Civil Litigation in Washington,” 60 WASH. L. REV. 805, 842 (1985).....	18
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I. INTRODUCTION

Courts must not apply collateral estoppel if doing so would work an injustice on the party against whom the doctrine is asserted. If that party did not have interests at stake in the first proceeding that would call for a full and vigorous litigational effort, applying collateral estoppel is unjust. Following these established principles, the Court of Appeals correctly held that collateral estoppel does not bar Michael Weaver's current claim for permanent total disability benefits under the Industrial Insurance Act. It also properly held that *res judicata* does not bar his current claim because its subject matter is not identical to that of his prior claim, and because Weaver could not have pursued his current claim at the time of the prior one. This Court should affirm.

II. STATEMENT OF THE CASE

A. The First Claim

Weaver worked as a firefighter for the City of Everett from 1996 until January 2014. A mole on his scapula was removed in June 2011. A biopsy showed it contained a melanoma, which was then surgically removed. CBR 193.¹ He missed five weeks of work. CBR 193. Nothing in the record suggests that Weaver was ever informed that his cancer might return after the

¹ "CBR" refers to the Certified Board Record.

melanoma was removed. His understanding was that he was fine, and that all of the cancerous tissue had been removed. CBR 193.

Weaver filed a claim for temporary total disability benefits for the short period of work he missed after his 2011 surgery. *Weaver v. City of Everett*, 4 Wn.App.2d 303, 310, 421 P.3d 1013 (2018); CBR 193, 274, 277. Since he had health insurance, he was not out of pocket for any of the medical treatment he received. CBR 193. Thus, the total amount at stake was less than \$10,000 -- the temporary disability benefits he would have received, if the claim had been successful, for the 5 weeks of work that he missed. CBR 193. The Department denied the claim. CBR 278.

With his former counsel, Weaver appealed to the Board of Industrial Appeals. Little evidence was presented at the hearing regarding his easily proven occupational sun exposure. CBR 371, 376-378, 381. Weaver's counsel did not prepare him for the hearing. CBR 48-49. Weaver's counsel appeared for the hearing 90 minutes late. *Id.* Weaver's counsel presented no testimony from Dr. David Aboulaflia, Weaver's treating oncologist, nor any from a medical expert in oncology or dermatology. CBR 252; 4 Wn.App.2d at 310. Instead, Weaver's counsel presented deposition testimony from a doctor with a practice in family and emergency medicine, but with no expertise in melanoma generally or in melanoma arising from occupational exposures specifically. CBR 199-202; 4 Wn.App.2d at 310. Melanoma is

presumed to be an occupational disease for firefighters, but employers can rebut this presumption. RCW 51.32.185. The Board found that the City had overcome the presumption. CBR 264.

Weaver's lawyer withdrew. CBR 49. Weaver filed a *pro se* appeal to the superior court, but dismissed it in December 2013. CBR 49-50. Nothing in the Board's Order denying his claim warned Weaver that if he did not successfully pursue his appeal, he would be barred from making a later claim if the melanoma returned and caused permanent disability.

B. The Second Claim

In early 2014 Weaver began having headaches and experienced word-finding problems. CBR 318-19. An MRI revealed a three-centimeter mass in the left frontal lobe of his brain. CBR 319. Immediate surgery resulted in removal of the tumor, which was found to be a metastatic melanoma. CBR 320. A later MRI showed two new growth sites near the original site of the brain metastases. CBR 321. The cancer in Weaver's brain has resulted in his cognitive dysfunction. CBR 325.

Faced with brain cancer and permanent total disability, Weaver filed a new claim. 4 Wn.App.2d at 311; CBR 275. After the Department denied the claim, Weaver – with new counsel – appealed to the Board. The City moved for summary judgment (1) based on collateral estoppel and *res*

judicata, and (2) on the merits of whether Weaver's employment caused his cancer. CBR 229-245.

In response, Weaver presented evidence establishing the relationship between his occupational sun exposure and his cancer. Firefighters were required to participate in outdoor training exercises two to four times per month. CBR 100, 104-05. In summer, there was little shade. CBR 105. Weaver often trained with his shirt off, as allowed. CBR 105, 107, 193. He developed sunburns on several occasions while training as a firefighter. CBR 100, 193. Outside of his work as a firefighter, he could recall only one incident when he was sunburned on his upper shoulders or back. CBR 381. And that occurred when he was a child. CBR 378-79.

Dr. Aboulafia's declaration fully supported Weaver's position. CBR 108-109. Because he is Weaver's treating oncologist, Dr. Aboulafia's testimony is accorded special consideration. *Clark County v. Dept. of Labor and Industries*, 185 Wn.2d 466, 475-476, 372 P.3d 764 (2016). Weaver also presented testimony from Dr. Andrew Brodtkin, an international authority in occupational medicine. CBR 134-166. In a leading textbook on Occupational and Environmental Medicine, Dr. Brodtkin edited chapters related to melanoma, as well as the occupational health of firefighters. CBR 136-37. He reviewed the medical and work site information generated during the second

appeal, and opined that Weaver’s cancer was caused by his intermittent sunburns while training as a firefighter. CBR 137-44.

Agreeing with the City’s arguments on collateral estoppel and *res judicata*, however, the Board granted the City’s motion for summary judgment. CBR 3, 57. It did not reach the merits of the issue of causation. *Id.* The superior court affirmed the Board’s decision. CP 16-18. The Court of Appeals reversed. 4 Wn.App.2d at 309, 337.

III. ARGUMENT

A. Collateral Estoppel Does Not Bar the Current Claim

The party asserting collateral estoppel must establish “(1) identical issues; (2) a final judgment on the merits; (3) the party against whom the plea is asserted must have been a party to or in privity with a party to the prior adjudication; and (4) application of the doctrine must not work an injustice on the party against whom the doctrine is to be applied.” *Hadley v. Maxwell*, 144 Wn.2d 306, 311, 27 P.3d 600 (2001). Only the fourth element – injustice – is at issue here.

1. Applying collateral estoppel would work an injustice because Weaver’s interests at stake in the first claim were insufficient to call for a full litigational effort

In *Hadley*, this Court held that in determining whether injustice will be done, the court must consider whether “the party against whom the estoppel is asserted [had] interests at stake [in the first proceeding] that would

call for a full litigational effort.” *Id.* at 312 (quoting 14 Lewis H. Orland & Karl B. Tegland, *Washington Practice: Trial Practice, Civil* § 373, at 763 (5th ed.1996)). Unless there was “sufficient motivation for a full and vigorous litigation of the issue,” application of collateral estoppel works an injustice. *Id.* at 315.

In the first claim, Weaver simply did not have sufficient interests at stake to warrant a full and vigorous litigational effort. Since he had missed only 5 weeks of work, the total amount at stake consisted of temporary disability benefits of less than \$10,000. Moreover, the cost of the experts necessary to litigate his case fully and vigorously exceeded the amount he could have recovered in the first claim. In the second claim, the oncology specialist retained by Weaver had alone been paid \$19,000 at the time of oral argument in the Court of Appeals. 4 Wn.App.2d at 310, n.2.

Seeking to distinguish *Hadley*, the Department says there was a difference in “magnitude” between a maximum \$95 fine and Hadley’s exposure in the later personal injury action. But there is a vast difference in magnitude here as well. The less than \$10,000 at stake in the first claim is a tiny fraction of the amount available for permanent total disability and death, should Weaver prevail in the current claim. Weaver was only 45 years old when diagnosed with brain cancer in January 2014, has not worked since then, and will almost certainly never work again. The cancer will almost

certainly kill him. CBR 324. At that time his wife would be entitled to substantial death benefits. RCW 51.32.050. The combined amount of benefits at issue here exceeds \$2 million.²

The Department also argues that *Hadley* is distinguishable because Weaver purportedly engaged in a full litigational effort in the first claim. But as the Department itself notes, in *Hadley* this Court focused on the “interests at stake” in the first proceeding. Br. of Resp. Dep’t at 26. Here, the fact remains that those interests were less than \$10,000. Moreover, the litigational effort was neither full nor vigorous. Weaver’s counsel was 90 minutes late for the hearing, did not prepare Weaver for his testimony, and did not call Weaver’s treating oncologist or any expert in oncology or dermatology. CBR 48-49, 252; 4 Wn.App.2d at 310. *Hadley* controls here.

2. **The Court should reject the Department’s proposal to eliminate the “injustice” element**

The Department says that in workers’ compensation cases, it’s too much trouble to consider the interests at stake or the cost of the litigation. Pet. Rev. at 18-19. It advocates modifying the test and adopting a blanket rule

² Valued very conservatively, Weaver—if now receiving permanent total disability benefits—would be paid about \$5,000/month. After receiving a few total disability payments made in early 2014 before the City rejected his claim, Weaver has gone more than 50 months without pay, meaning a loss to date of \$250,000.00. According to Social Security Administration life expectancy tables, Weaver, now 50, has a 29.60 year life expectancy. Future payment of those lost benefits over his lifetime would total \$1,776,000.00. In some circumstances those benefits would be paid to his wife, instead, whose life expectancy is even greater, at 35.88 years.

that “Applying collateral estoppel in workers’ compensation cases is the fair result for all.” *Id.* at 19. Its position is that if the other three elements of the doctrine are established, collateral estoppel applies automatically, and the question of injustice is simply thrown out the window. Under this rule, collateral estoppel would be “applied mechanically to work an injustice” – precisely the inequitable result this Court warned against allowing in *Hadley*. 144 Wn.2d at 315.

3. **The claim-filing and aggravation statutes do not automatically establish the incentive for a full litigational effort**

The Department contends that upon the filing of *any* claim, the worker necessarily has sufficient incentive for a full litigational effort, no matter how small the amount at stake may be at that time. It first points to RCW 51.28.020, which directs the worker to file an application for compensation. According to the Department, the filing of the application leads to a “claim allowance” determination which, if decided in the worker’s favor, then makes the worker potentially eligible for all benefits under the Act. But RCW 51.28.020 says nothing about a “claim allowance” determination.³ And the

³ Indeed, it appears that of the 28 statutes cited in the Department’s petition for review, only two refer to the allowance of a claim. RCW 51.28.055, irrelevant here, says that claims for hearing loss not timely filed can only be allowed for medical aid. And RCW 51.32.185(9) says that in cases involving presumed occupational disease, firefighters may recover attorneys’ fees incurred in appeals to the Board or the courts if “the final decision allows the claim for benefits.” This statute says nothing, however, about any initial “claim allowance” by the Department.

statute gives the worker no reason to conclude that if the claim is not “allowed,” he will never be able to seek benefits in a second claim if the injury or disease later becomes drastically more severe.

Second, the Department points to RCW 51.32.160. It provides: “If aggravation . . . of disability takes place, the director may . . . readjust the rate of compensation.” This statute, too, says nothing about a “claim allowance” determination or about the purportedly preclusive effect of such a determination.

Nevertheless, the Department contends that these two statutes mean that in every claim – no matter how minor the injury or illness may be at the time – the full panoply of the Act’s benefits is always at stake. That interpretation, however, is contrary to the Act and this Court’s guidance. “This title shall be liberally construed 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.” RCW 51.12.010. The Act “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.” *Dennis v. Dep’t of Labor & Indus.*, 109 Wn.2d 467, 470, 745 P.2d 1295 (1987). And this general rule applies to the particular context of preclusion in workers’ compensation cases. *Dana’s Housekeeping, Inc. v. Dep’t. of Labor & Industries*, 76 Wn.App. 600, 612-

613, 886 P.2d 1147 (1995) (refusing to apply collateral estoppel because doing so “would contravene an overriding legislative purpose” — the declaration of policy in RCW 51.12.010). Interpreted as required by the Act and the case law, the statutes on which the Department relies do not support the application of collateral estoppel here.

4. **Procedural fairness of the first proceeding is not enough absent incentive for a full litigational effort**

Citing *Reninger v. Dep’t. of Corrections*, 134 Wn.2d 437, 951 P.2d 782 (1988), and *Thompson v. Dep’t. of Licensing*, 138 Wn.2d 783, 982 P.2d 601 (1999), the Department argues that the lack of incentive to litigate vigorously is irrelevant if the first proceeding was procedurally fair. On the contrary, *Reninger* recognized that significant disparity between the amounts at stake in the two proceedings supports the conclusion that the party had little incentive to litigate the first one vigorously and thus that collateral estoppel should not apply. 134 Wn.2d at 453. In *Thompson*, the Court expressly considered the question of whether the party had incentive to litigate the issue vigorously in the prior proceeding. 138 Wn.2d at 799. Thus, *Thompson* supports the rule that in determining whether collateral estoppel would work an injustice, the court must consider the question of adequate incentive to litigate. Finally, to insist that incentive for a full litigational effort is irrelevant is to ignore *Hadley*.

B. Res Judicata Does Not Bar the Current Claim

Under the doctrine of *res judicata*, “a subsequent action is barred when it is identical with a previous action in four respects: (1) same subject matter; (2) same cause of action; (3) same persons and parties; and (4) same quality of the persons for or against whom the claim is made.” *Hayes v. City of Seattle*, 131 Wn.2d 706, 712, 934 P.2d 1179 (1997). The Court of Appeals based its decision solely on the first element –lack of identity of subject matter. 4 Wn.App.2d at 321.⁴

1. The subject matter of the two claims is not identical because in the first claim the law did not permit the relief sought in the second

Res judicata does not apply if the type of proceeding pursued in the first action did not authorize the kind of relief that the plaintiff sought in the second. *See Hayes*, 131 Wn.2d at 714 (plaintiff could not have recovered damages in original action for writ of certiorari because writ actions cannot be used to decide damage issues); *Phillips v. Hardwick*, 29 Wn.App. 382, 385-386, 628 P.2d 506 (1981) (prior judgment in unlawful detainer action did not bar separate action for damages for intentional infliction of emotional distress arising out of same transaction because jurisdiction in unlawful

⁴ The City and the Department argue that because both claims share the factual *issue* of whether Weaver’s employment caused his melanoma, this necessarily means that the subject matter of both claims was identical. But this argument confuses *res judicata* with collateral estoppel.

detainer action was limited to issues incident to the right of possession); *Farnandis v. City of Seattle*, 95 Wash. 587, 589-590, 164 P. 225 (1917) (prior judgment against City for damages from earlier landslide did not bar later action for subsequent slide caused by same regrading project, since City charter did not allow recovery of prospective damages).

Weaver could not have obtained an award of permanent disability benefits in the first claim because the applicable statutes and case law would not have allowed him to recover for prospective disability. If at that time he had sought such an award because the cancer might metastasize in the future and aggravate his disability, he would have failed.⁵ Success in an aggravation case requires evidence of an *actual* worsening of the condition and increased disability. *Lewis v. Dep't of Labor & Indus.*, 93 Wn.2d 1, 3, 603 P.2d 1262 (1979). Weaver was not permanently disabled at the time of the first hearing. Thus, *res judicata* does not bar Weaver's current claim because the law would not have allowed him to pursue it in the first claim.

2. The nature of the two claims was not identical

The subject matter of the two proceedings is not identical if the nature of the claim in the first is different from that of the second, even if both

⁵ The Department's counsel conceded this point in oral argument. The Court, referring to the time of the first proceeding, asked: "Could he have looked at the Board and testified: 'they said it's foreseeable that it might [spread and get worse], therefore I want those awards [permanent disability] now'?" Counsel responded: "He can't say that." June 4, 2018, at 22:51-23:07.

actions arose out of the same facts. *Hayes*, 131 Wn.2d at 712-713. Hayes sought to overturn a condition that the Seattle City Council imposed on its approval of his building permit. *Id.* at 709-710. The superior court remanded the matter to the Council, which then withdrew its condition and approved the permit. *Id.* at 710. In a second case, Hayes sought damages. This Court upheld the award of damages, ruling – as did the court in the first case – that the Council’s initial findings were conclusory. *Id.* at 717-718.

The Court held that the subject matter of the two claims was not identical “because the nature of the two claims is entirely disparate.” *Id.* at 713. Even though the two cases arose out of the same facts and shared a common issue (whether the Council’s findings were conclusory), the nature of the first was an effort to overturn the Council’s decision, while the nature of the second was a request for damages.

Similarly, the nature of Weaver’s current claim differs substantially from that of the first. The first claim arose out of the relatively minor surgery to remove the melanoma from Weaver’s scapula. Since he was quickly back at work, the nature of his disability was by definition temporary. The second claim arose out of Weaver’s January 2014 diagnosis of brain cancer and ensuing brain surgery. It was clear that he would never return to work and that the cancer would likely kill him soon. Although the two claims share the common factual issue of whether Weaver’s melanoma was caused by his

employment, their subject matters are far from identical. *Hayes*, 131 Wn.2d at 712-713.

3. **At the time of Weaver’s first claim, the subject matter of his second claim did not exist**

Res judicata does not apply if the events underlying the relief sought in the second claim had not yet occurred at the time of the first. *Mellor v. Chamberlin*, 100 Wn.2d 643, 646-47, 673 P.2d 610 (1983). In other words, the subject matter of the claims cannot be identical if at the time of the first claim the subject matter of the second claim did not exist. In *Mellor*, the purchaser of two buildings sued the seller for misrepresenting a parking lot as being included in the sale. *Id.* at 644. That action was settled and dismissed with prejudice. *Id.* Then the owner of an adjoining parcel demanded that the purchaser pay her \$5,000 because the buildings encroached on her land. *Id.* at 645. After paying the demand, the purchaser sued the seller a second time – this time for damages for breach of the covenant of title. *Id.* This Court held that *res judicata* did not apply because at the time of the first action the purchaser had not yet been required to pay the adjoining owner for the encroachment. *Id.* at 647. Until the purchaser had incurred that damage, the second action “was not ripe.” *Id.* See also *Harsin v. Oman*, 68 Wash. 281, 283-284, 123 P. 1 (1912) (subject matter

differed because at the time of the first action the subject matter of the second did not yet exist and could not have been litigated).

Here, as in *Mellor* and *Harsin*, the events underlying Weaver's second claim had not occurred at the time of the first. At the time of the first claim, the subject matter of the second claim – his brain cancer and resulting permanent disability – did not exist. His second claim “was not ripe.” *Mellor*, 100 Wn.2d at 647. The subject matter of his second claim, “which did not exist at the time of a former judgment could not have been the subject-matter of the action sustaining that judgment.” *Harsin*, 68 Wash. at 284.

4. **The Court appropriately considered each claim as seeking different relief and involving different facts**

The City argues that because the Accident Report Forms it provided to Weaver did not ask him to specify the type of benefits he sought, the Court of Appeals mistakenly considered the two claims as seeking different relief.⁶ This argument requires that in determining whether the subject matter of the two claims was identical, the court must blind itself to reality.

Workers and their beneficiaries don't make claims for “claim allowance.” They don't make claims just for theoretical possibilities. In reality, they make claims to obtain the particular benefits they think they are

⁶ The City says the form that Weaver completed in both instances was an application “to have his claim allowed for melanoma as a work related-condition.” Pet. Rev. at 15. But the form says nothing about “claim allowance” or “claim allowed.” CBR 277, 280.

entitled to receive based on current circumstances. Indeed, this Court has described the claim of a widow after her husband died in his employment as “a claim for widow’s benefits.” *Kingery v. Dep’t of Labor & Indus.*, 132 Wn.2d 162, 165, 937 P.2d 565 (1997). Here the court appropriately considered the different circumstances under which the two claims were made and properly regarded them as seeking different relief.

With a similarly narrow view, the Department argues that there could be only one claim because a single statute, RCW 51.28.020, directs the worker to file an application for compensation, regardless of the type of benefit that the worker seeks. This argument confuses the subject matter of a claim with the procedural vehicle by which that claim is initiated. The Civil Rules specify a single procedural device – a complaint – for commencing a civil action. CR 3(a), 7(a). This does not mean, however, that the subject matter of every complaint filed by the same plaintiff against the same defendant is identical, even when some of the facts asserted are similar. Similarly, the existence of a single procedural device for commencing workers’ compensation claims does not mean that the subject matter of a claim filed when the worker misses a few weeks of work is identical to that of a later claim filed when he suffers from brain cancer that has rendered him permanently and totally disabled.

Pointing to the “aggravation” statute, RCW 51.32.160, the City and the Department note that if Weaver’s first claim had been “allowed,” he could have reopened the claim and obtained additional benefits when his condition worsened. But the aggravation statute doesn’t alter the *res judicata* analysis established by this Court. The subject matter of Weaver’s first claim was the melanoma on his scapula and the short period of disability following its removal. The subject matter of the second claim was his brain cancer and resulting permanent and total disability. The subject matter of the second claim didn’t exist at the time of the first. The nature of the first claim was significantly different from that of the first. And if he had asserted at the time of the first claim that he should then be awarded permanent disability benefits because the cancer *might* metastasize in the future, the law would not have allowed such an award. Nothing in the aggravation statute changes these conclusions. The subject matter of the second claim was profoundly different from that of the first.

5. **Application of *res judicata* would be inequitable**

Res judicata, like collateral estoppel, is an equitable doctrine. *Afoa v. Port of Seattle*, 191Wn.2d 110, 130, 421 P.3d 903 (2018). “Res judicata should not be applied when it would work an injustice.” *In re Metcalf*, 92 Wn.App. 165, 174, 963 P.2d 911 (1998).

There is danger that in seeking to relieve the crowded dockets and backlog of litigation, courts will too readily turn to the rules of *res judicata* and collateral estoppel. It is critical to remember that the *doctrines of claim and issue preclusion* are court-created concepts. Accordingly, they *can be adjusted* to accommodate whatever considerations are necessary *to achieve the final objective—doing justice*.

Phillip A. Trautman, “Claim and Issue Preclusion in Civil Litigation in Washington,” 60 WASH. L. REV. 805, 842 (1985) (emphasis added).

Even if the Court concludes that the subject matter of Weaver’s current claim is identical to that of the prior one, it should refuse to apply *res judicata*. At the time of his first claim, Weaver could not have pursued his current claim for permanent total disability benefits. Accordingly, to preclude him from litigating his current claim would be unjust, unfair, and inequitable. To the extent such a decision was based on the Act, it would also violate the rule that in construing the Act, courts should resolve doubts in favor of the worker. *Dennis*, 109 Wn.2d at 470.

C. Attorneys’ Fees

If on remand to the Board it is determined that Weaver is entitled to benefits, he will be entitled to his attorneys’ fees incurred in all Board proceedings and in all appeals to any court. RCW 51.32.185(9). In that event, this Court should award Weaver his reasonable attorneys’ fees incurred in this Court and in the Court of Appeals. RAP 18.1.

IV. CONCLUSION

The Department and the City want a rule of automatic preclusion. In their view, finality is all that matters. Under the law established by this Court, if the party against whom collateral estoppel is asserted did not have interests at stake in the first proceeding that would call for a full litigational effort, application of the doctrine is unjust and unwarranted. But the Department and the City urge the Court to abandon this principle in workers' compensation cases. Indeed, by suggesting that it is inappropriate to consider the individual circumstances of each claim, they ask the Court to eliminate the fourth element of collateral estoppel altogether – the requirement that its application must not work an injustice. And with regard to *res judicata*, they effectively contend that in workers' compensation cases, courts need not analyze the question of whether the subject matter of the two claims is in fact identical. Nor is it necessary, in their view, to determine whether it was even possible in the first claim to obtain the relief that the worker seeks in the second.

If the Court were to adopt the positions of the Department and the City, workers like Weaver would be denied the benefits they deserve. Few if any of them will know -- when they file claims for medical benefits only or for short periods of disability -- that their failure to spend the money required for a full litigational effort will bar them from seeking the

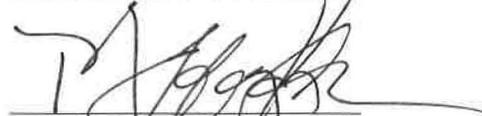
exponentially greater benefits needed should their conditions worsen terribly in the future. Certainly nothing in the Act or the orders of the Department or the Board gives them any reason to appreciate that peril.

And for the few workers who might understand the automatic preclusion urged by the Department, the result will often be wasted money. They will spend large sums litigating claims in which the injury/illness has resulted in only minor medical expenses or brief disability. In all likelihood, most of those injuries or illnesses will not worsen. But the money will have been spent. Employers, too, will be forced to spend disproportionately large sums litigating low-value claims.

The equitable doctrines of collateral estoppel and *res judicata* seek to strike a balance between the need for finality and the need for fairness and just results. The Court of Appeals properly analyzed these doctrines and reached the correct result in this case. This Court should affirm.

Respectfully submitted this 30th day of January, 2019.

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**SUPREME COURT
OF THE STATE OF WASHINGTON**

MICHAEL WEAVER,

Respondent,

vs.

CITY OF EVERETT, DEPARTMENT OF
LABOR AND INDUSTRIES,

Appellants.

)
)
) No. 96189-1
)
) **CERTIFICATE OF SERVICE**
)
)
)
)
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)

I hereby certify that on the date set forth below a copy of Respondent’s Supplemental Brief was served on the following via Washington State Appellate Courts Portal:

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

7 SIGNED at Seattle, Washington this 30th day of January, 2019.

8 

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KEANE LAW OFFICES

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