



P.O. Box 9124 Portland, Oregon 97207

**NWLAA Case Law Review**  
Norman Cole, Editor

**Attorney Fees – Amount**

**No fees for attorney to familiarize himself with LHWCA. No fee for time devoted to unsuccessful motion for sanctions.** *Brinkley v. Department of the Army/NAF*, 35 BRBS 60 (BRB 2001).

ALJ awarded temporary disability and medical benefits and attorney submitted a fee petition that included 10.08 hours reading the LHWCA and its annotations. The Board disallowed these hours as time spent to familiarize himself with the Act is not compensable.

The Board also disallowed 17.83 hours spent in an unsuccessful motion for sanctions because the motion did not result in additional benefits for claimant.

**Average Weekly Wage – Components**

**Per diem, but not value of room and board considered in AWW.** *Roberts v. Custom Ship Interiors*, 35 BRBS 65 (BRB 2001).

Employer paid claimant \$77.50 *per diem* in addition to salary to cover expenses when away from home and was also provided with room and board. This was not reported as taxable income by employer. The ALJ relied on 9<sup>th</sup> Circuit precedent and held that the *per diem* should not be included as wages to calculate AWW because it was not taxable.

In *Wausau Ins. Cos. v. Director, OWCP*, 31 BRBS 41 (9<sup>th</sup> Cir. 1997), the court held that the LHWCA defers to the Internal Revenue Code (IRC) criteria for deciding whether non-monetary compensation is wages. Thus, a *per diem* was an advantage but was not a wage under the LHWCA if it was not subject to withholding under the IRC. The 5<sup>th</sup> Circuit reached the same conclusion, but the 4<sup>th</sup> Circuit disagreed. As this case arose in the 4<sup>th</sup> Circuit, the *per diem* here was part of the money claimant received and was includable in AWW regardless of whether it was subject to tax withholding. It was part of the agreement under which claimant was hired. The free room and board should not be included in addition to the *per diem* as this would constitute double recovery. Claimant cannot have both the *per diem* and the value of the room and board included.

**Causation - §20 Presumption**

**Presumption not overcome per “ruling out” standard.** *Jones v. Aluminum Company of America*, 35 BRBS 37 (BRB 2001).

Claimant alleged worker developed cancer and died due to occupational exposure to asbestos. In the 11<sup>th</sup> Circuit, to rebut the §20(a) presumption employer must present evidence “ruling out” the employment as a possible cause of the injury. Dr. Bass testified that it was remotely possible but unlikely that asbestos exposure caused decedent’s cancer. The greatest risk factor was cigarette smoking, and the lesser risk factor was the history of asbestos exposure, and the two factors were additive. As Dr. Bass never affirmatively stated that decedent’s cancer was not caused in part by asbestos exposure, his opinion was insufficient to rebut the presumption under either the “ruling out” standard or the “substantial evidence” standard, given that the physicians’ opinion allow for asbestos to have contributed to decedent’s cancer.

### Course & Scope – Coming & Going

**Injury when riding in employer’s van. Exception to coming and going rule.** *Broderick v. Electric Boat Corporation*, 35 BRBS 33 (BRB 2001).

Employer had a van pool operation designed to alleviate parking congestion at employer’s facility and to aid employees without reliable transportation to the shipyard. Employer owned or leased the vans, maintained them, provided insurance and parking spots, and deducted a set amount from paychecks of participating employees to cover costs. The riders separately reimbursed the driver for gasoline costs. Drivers were required to pass employer’s screening and have a commercial driver’s license. Employees were not paid when commuting in the vans. Claimant was injured on an interstate freeway when on his way home in a van.

HELD, the injury falls within the employer conveyance exception of the coming and going rule. The trip was in a van under employer’s control in that employer exercised control over the entire program except for determining specific routes. It oversaw paperwork for payroll deductions, set rates to cover costs, screened drivers, and authorized new routes if there was demand. The program benefited employer.

[NOTE: Employer argued injury was not in course and scope of employment but apparently did not raise situs as an issue. Neither the ALJ or the Board discussed situs even though it appears that claimant was not injured on a covered situs.]

### Course & Scope – Other

**Injury playing ping pong covered.** *Sheerer v. Bath Iron Works Corporation*, 35 BRBS 45 (BRB 2001).

Claimant worked as a painter but injured his knee when playing ping pong during his lunch break at employer’s pipe shop. Employer paid for and provided the table and equipment and placed them in the break room. The ALJ found that employer impliedly acquiesced in the activity during break periods and inferred that employer knew claimant would use it during breaks, so the activity was approved. Claimant testified he could not go anywhere off premises for his breaks because nothing was open. Employer argued the injury occurred during unpaid recreational activity but the ALJ and the Board rejected this conclusion. The injury was a regular incident of employment, on employer’s premises, and with employer’s acquiescence.

### Credit – Miscellaneous

**Overpayment to decedent not a credit after death.** *Liuzza v. Cooper/T. Smith Stevedoring Co., Inc.*, 35 BRBS 112 (BRB 2001).

Employer paid compensation to decedent due to asbestos related disease in excess of the amount due. The ALJ held that employer could not use this overpayment to offset benefits

payable to decedent's widow due as a result of decedent's death from the asbestos related disease.

The worker's claim and the death claim are separate and distinct claims. Overpayments of disability can be offset only against disability due, and overpayments of compensation for death can be offset only against death benefits due.

### **Employer/Employee – Other**

**Shop steward was employee per relative nature of the work test.** *American Stevedoring Limited v. Director, OWCP*, 35 BRBS 41 (2d Cir. 2001).

In 1986 or 1987 claimant was appointed by the ILWU local as a shop steward, a position required by the collective bargaining agreement between the employer and the union. As shop steward he acted as arbitrator between employer and union members. Both sides came to him with complaints (workers not following rules or working diligently, or employer not providing enough workers or not allowing breaks). He was required to be on the pier when stevedores were working but was not always there even though he was paid for every hour a stevedore worked. On 3/16/97 claimant experienced chest pain when dealing with dispute with some workers, struck his head, and was taken to the hospital. He had preexisting heart disease. Thereafter he successfully sought PTSD due to work related stress which aggravated his heart and psychological conditions. Employer contended he was not its employee.

The court observed that the "right of control" test was not suited to the facts of this case because neither the employer or the union exercised control over the details of claimant's work. It therefore applied the "relative nature of the work" test which focuses on the skill required to do the work, the degree to which the work constitutes a separate calling or enterprise, the extent to which the work might be expected to carry its own accident burden, and whether the work was continuous or intermittent (to complete a particular job). Applying this test it was evident that that claimant's job was not an enterprise separate from employer's stevedoring operations, and claimant could not be expected to carry his own accident insurance. Claimant's shop steward duties were a regular part of employer's regular stevedoring work, and he held the position continuously.

### **Hearings – Evidence**

**Dr. Morton (of OHSU) opinion on porphyria rejected.** *Ellison v. Bath Iron Works Corporation*, 35 BRBS 240 (ALJ 2001).

Claimant sought compensation for work related porphyrin deficiency and relied on testimony of Dr. William Morton of OHSU. The ALJ rejected Dr. Morton's opinion because it was clear that Dr. Morton's opinion was not based upon the same level of intellectual rigor that characterizes the practice of experts in this field of medicine. Dr. Morton was outside of the medical mainstream and his analysis was non-scientific since his description of the disease and environmental causes was so broad as to be meaningless. He also had no scientific basis for rejecting known and accepted testing techniques which were objective, reproducible, and reliable in terms of locating levels of enzyme residue that would be created by this particular disease.

### **Insurance – Coverage**

**ALJ had authority to resolve insurance dispute.** *Weber v. S.C. Loveland Co.*, 35 BRBS 75 (BRB 2001).

Claimant was injured in Jamaica, and the injury was subject to the LHWCA. Aetna issued a Workers' Compensation and Employer's Liability Policy which stated Part 1 of the policy applied

to the workers' compensation law of four listed states. An endorsement stated it applied to work subject to the LHWCA in a state shown in the Schedule. The states listed in the Schedule were Pennsylvania and Virginia. The ALJ held this policy excluded coverage for an injury in Jamaica. The BRB affirmed this decision.

Chubb, through Pacific Indemnity, issued a Foreign Voluntary Workers' Compensation and Employer's Liability Insurance Policy. According to the "Benefits Applicable" section of the Schedule, benefits were to be paid according to the laws of the state specified in the schedule. The schedule listed Pennsylvania. Under the "Designated Countries" section of the Schedule, the policy stated: "worldwide, excluding the US, its territories, possessions, and Canada. Coverage A stated it would pay compensation according to the law of the state designated in the schedule. Coverage B stated it would pay for bodily injury arising out of employment in operations connected with employment in a country or countries stated in the insurance schedule. The policy excluded under Coverage B injuries sustained by a master or member of the crew of any vessel or any employment in the course of employment subject to the LHWCA. The ALJ held that the exclusion applied to coverage B (employer liability) but not to coverage A (workers' compensation). The BRB affirmed as to Coverage B but reversed as to Coverage A. The Coverage A policy did not include a LHWCA endorsement. It had worldwide application, but only with respect to Pennsylvania's workers' compensation law.

Therefore, neither Aetna or Chubb was the responsible carrier. Employer was responsible for payment, and as §8(f) relief was allowed, the Special Fund was ordered to pay after 104 weeks.

### Miscellaneous

**LHWCA not basis for removal of state case to federal court. Costs assessed for raising frivolous defense.** *Garcia v. Amfels, Inc.*, 35 BRBS 79 (5<sup>th</sup> Cir. 2001).

Deceased died during work in employer's shipyard. Survivors filed suit in Texas state court for negligence and premises liability. Employer asserted the suit was preempted by the LHWCA and sought removal to federal court based on federal question jurisdiction. The district court granted plaintiff's motion to remand and granted fees and costs because the motion to remand was frivolous. Employer appealed. The court affirmed.

There is no authority from any circuit supporting removal. The LHWCA does not create federal subject matter jurisdiction supporting removal.

### Modification – Other

**Request for additional compensation as of date when needs surgery was modification petition.** *Gilliam v. Newport News Shipbuilding & Dry Dock Co.*, 35 BRBS 69 (BRB 2001).

On 1/31/97 an ALJ denied claimant's request for PPD for an alleged loss of overtime due to his work related injury. In 4/97 claimant discussed the possibility of surgery with his physician, prompting him to write the OWCP on 6/3/97 requesting additional TTD as of the date when he needed surgery and PPD as of the present and continuing.

Claimant's letter showed a clear intent to request modification. It made a claim for a specific type of benefit, *i.e.*, a period of TTD if anticipated surgery occurred and a continuing award of PPD. It requested PPD as of a specific date (6/3/97, the date of the letter). It was more definite than petitions in *ITO Corp of Virginia v. Pettis*, 30 BRBS 6 (4<sup>th</sup> Cir. 1996), and *Meekins v. Newport News Shipbuilding & Dry Dock Co.*, 34 BRBS 5 (BRB 2000), *aff'd mem.*, 238 F3d 413 (4<sup>th</sup> Cir. 2000), as it specifically sought modification, claimed a deteriorating condition, and referenced a claimed disability purportedly in existence at the time the request was made. The petition was a valid request for modification. (The Board affirmed the ALJ's denial of modification.)

## Penalties – Enforcement

**BRB lacks jurisdiction to review OWCP supplementary compensation order issued per §18(a) because penalty unpaid.** *Snowden v. Director, OWCP*, 35 BRBS 81 (DC Cir. 2001).

An ALJ issued a compensation order in 1992 awarding PTD (and §8(f) relief) as of 12/18/90 for a 1978 injury. At time of injury the compensation rate was \$192.80. The OWCP advised employer that the initial PTD rate should be \$357.80, which reflected the annual adjustments that had occurred since the injury. Aetna did not challenge the OWCP's methodology until 1998 when, in reliance on a recent court decision that did not approve the catch up adjustments, it cut the weekly payments by nearly half and requested an order from the OWCP allowing it to take a credit for \$76,626.31. Claimant requested a 20% penalty per §14(f). The OWCP issued a supplementary compensation order in 1998 and assessed a 20% penalty on the shortfall. Aetna paid the past due benefits but not the penalty and appealed to the Board. The Board reversed and held employer could reduce payments subsequent to the 1998 decision.

§18(a) deals with defaulted payments under an award of compensation. Review is in an enforcement proceeding in the district court. §18 orders (of default) are final when issued and can immediately be filed with the federal district court for enforcement.

With a §14 order the OWCP must compute the 20% penalty amount that should be added to the default amount. An order issued under §14(f) is nothing more than standard default order plus an additional arithmetic computation. Whether the award of additional compensation for overdue installments and the declaration of the default are separately issued orders or combined is irrelevant.

The 1998 order was an order for the collection of defaulted payments per §18(a). Given that Aetna paid claimant per the 1992 compensation order on the basis that she was entitled to the benefit of the catch up adjustments, the fact that §10(f) was not explicitly mentioned in the 1992 compensation order is not dispositive of the jurisdictional issue.

The Board lacked jurisdiction to review the supplementary compensation order. The Board's decision is vacated.

## Permanent Disability – *De Minimis* Award

**Worker testimony alone insufficient to justify nominal award.** *Gilliam v. Newport News Shipbuilding & Dry Dock Co.*, 35 BRBS 69 (BRB 2001).

On 1/31/97 an ALJ denied claimant's request for PPD for an alleged loss of overtime due to his work related injury. In 4/97 claimant discussed the possibility of surgery with his physician, prompting him to write the OWCP on 6/3/97 requesting additional TTD as of the date when he needed surgery and PPD as of the present and continuing. At hearing, claimant sought a nominal award based on his testimony that his physician told him he would need surgery in the future. There was no direct evidence from the physician that there was a significant possibility of surgery in the future. The ALJ found that claimant's unreasoned, self-serving hearsay testimony did not establish the requisite significant possibility of future economic harm as a result of his injury. The BRB affirmed.

## Permanent Disability – Scheduled PPD

**ALJ rejects AMA Guides because not scientific.** *Hodgkinson v. Electric Board Corporation*, 35 BRBS 459 (ALJ Di Nardi 2001).

Employer's medical experts testified that claimant had 10% impairment of each hand per the *AMA Guides, 4<sup>th</sup> Edition*. These physicians generally testified that there was no suitable alternative, it provided consistency and uniformity, and it was a good place to start the discussion because it was a consensus document.

Claimant's experts testified that using a combination of the *AMA Guides*, Stockholm Workshop Scale, and plethsmnographic testing and symptoms, claimant had 43% impairment of the right hand and 40% impairment of the left hand. The ALJ concluded that the *AMA Guides* were not scientific and did not meet the *Daubert* test (*Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 113 S.Ct. 2786 (1993), which requires an inference or assertion to be derived by scientific method). The ALJ found that the upper extremity chapter had no scientific backing and was the result of a highly politicized process involving compromise by all interested parties. Therefore, the ALJ did not rely on the *Guides* and awarded claimant 43% for the right hand and 40% for the left hand.

### Responsibility – Last Injurious Exposure Rule

**Insurer on date of disability responsible. Issue is whether there was exposure, not whether there was a new injury.** *Bath Iron Works Corp. v. Director, OWCP*, 35 BRBS 35 (5<sup>th</sup> Cir. 2001).

Bath Iron was insured by Birmingham until it became self insured shortly after 1988, when claimant transferred to the planning department. In 1991 Birmingham was ordered to pay for medical services due multiple diseases caused by exposure to asbestos and other toxic substances. At hearing there was no evidence of injurious exposure during employment in the planning department. Claimant retired in 5/95 due to his disease and alleged additional exposure since employer became self insured, including exposure on 3/15/95 when he inhaled something and passed out.

HELD, in an occupational disease case like this involving environmental irritants, the insurer on the risk at the time a new injury triggers disability may not defend against liability by arguing that exposures occurred before its coverage period inevitably would have led to the disability. The responsible insurer is the one covering the risk at the last time the employee was exposed to harmful stimuli prior to the date claimant became disabled by his employment related occupational disease. Claimant's lung condition did not become disabling for purposes of carrier liability until 1995, when employer was self insured. The shift in liability to employer turns not on whether any harmful exposures during its coverage period amounted to a new or aggravating injury but only on whether any such exposures occurred at all.

**Latency argument rejected.** *IBOS v. New Orleans Stevedores*, 35 BRBS 50 (BRB 2001).

Decedent worked for several companies from 1947 to 1995. His last employer was NOS from 9/93 to 10/11/95. In 8/95 he became ill (and later died) due to mesothelioma caused by occupational exposure to asbestos. NOS was found responsible but argued on appeal that the medical evidence demonstrated a long latency period such that the mesothelioma began long before he began work for NOS in 1993 and additional exposure at NOS had no impact on the disease. The Board affirmed because the impossibility, even theoretically, of a causal relationship between asbestos exposure at NOS and the disability and death had not been established. The exposure had the potential to cause mesothelioma, so it was considered injurious. NOS could avoid liability if it did not expose its employees to disease causing conditions or if the exposure did not have the potential to cause the disease.

### Settlements

**Oral settlement agreement not enforced. Not signed by claimant prior to death.** *O'Neil v. Bunge Corp.*, 35 BRBS 317 (Greg Bunnell for claimant, Wm. Tomlinson for employer) (ALJ 2001).

The parties agreed to a §8(i) settlement of disability and medical services for \$63,000 plus \$1,500 fees. Claimant died before he signed the agreement. The agreement did not include a term that stated it would be null and void if claimant died prior to approval.

HELD, as claimant died before signing the agreement, it did not comply with the statute or implementing regulations. There was no settlement agreement which had been properly executed and no agreement which could be enforced.

### Situs – Adjoining Area

**Gypsum plant with no maritime purpose not a covered situs.** *Bianco v. Georgia Pacific Corporation*, 35 BRBS 99 (BRB 2001).

Employer operated a gypsum plant where it processed gypsum to sheetrock and gypcrete (used by floor finishers). The gypsum was offloaded from a ship to a hopper and then to a conveyor belt to Transfer House #2. There, employer's conveyor belt took the gypsum to its production facility, where it was stored until needed for processing.

Claimant argued the facility was an adjoining area. The ALJ determined that the unloading process ended when it arrived at employer's rock shed. At this point the facility was solely engaged in manufacturing wallboard and gypcrete. As the injury occurred in the wallboard and gypcrete production department and not along the conveyor belt from the transfer house to the rock shed or at the rock shed itself, the injury was not on a covered situs. The area was not used for traditional maritime activity.

### Situs – Navigable Waters

**Barge in territorial waters of Kingston, Jamaica on covered situs.** *Weber v. S.C. Loveland Co.*, 35 BRBS 75 (BRB 2001).

The Board declined an invitation to reverse prior precedent which held that in view of developing case law and the policy concern for providing uniform coverage and protection for American workers working in foreign waters when all contacts except the site of injury are within the United States, the LHWCA extends to cover claimant's injury in the port of Kingston, Jamaica.

### Status – Integral Employment

**Terminal railcar supervisor had status.** *Schilhab v. Intercontinental Terminals, Inc.*, 35 BRBS 118 (BRB 2001).

Employer operated ship, barge, rail, and truck terminals adjoining the Houston Ship Channel. The purpose was to load and unload various liquid products for storage or shipment via ship, barge, rail, truck, or pipeline. Claimant was a railcar supervisor and was responsible for loading and unloading of railcars which ran through the facility. He attached hoses from railcars so liquid product could be pumped between railcars and vessels, storage tanks, pipelines, or trucks. He injured his neck and back when doing the is.

The ALJ found that claimant's duties were necessary for direct transfer of liquid products to or from marine vessels and such work was an essential and integral step in loading or unloading. The Board agreed claimant had status. Loading and unloading activities were a regular part of the job and were more than episodic, momentary, or incidental to non-maritime work. Also, in 5<sup>th</sup>

Circuit, where this arose, he had status because he was engaged in maritime work at the moment of injury.

### **Third Party – Calculation of lien/credit**

**Credit calculated based on payments made to claimant, not cost of annuity.** *Gilliland v. E.J. Bartells Co., Inc.*, \_\_\_ BRBS \_\_\_, No. 00-70585 (9<sup>th</sup> Cir. 10/16/01) (Meagan Flynn for claimant; Dennis VavRosky for employer/carrier).

A third party defendant agreed to pay claimant monthly payments from 1985 to 2005 with 3% annual increases. Employer funded the obligation by purchasing an annuity. In 1996 employer asserted it had overpaid compensation in view the amount claimant had recovered. Claimant contended the recovery was equal to the purchase price of the annuity. Employer contended it was entitled to a dollar for dollar credit, as paid. The ALJ and the Board agreed with the employer.

The court deferred to the Director's interpretation than an employer/carrier was entitled to a credit for the amount of each payment actually received by the claimant. Claimant's interpretation would thwart congressional intent by creating an opportunity for a windfall or a shortfall if the annuity company became insolvent or the claimant received 100% of the annuity payments. The statute requires an offset of the actual amounts received. Employer was entitled to a dollar for dollar credit for each payment at the time claimant receives it whether or not the employer funded the payments by purchasing an annuity.

### **Third Party – Notice/Consent**

**Asbestos litigation trust funds not settlements per §33. Also claimant did not execute release and returned money.** *Williams v. Ingalls Shipbuilding, Inc.*, 35 BRBS 92 (BRB 2001).

Claimant filed a third party suit for asbestos related disease. Her attorney accepted funds from the Amatex Trust Claims Facility and the Manville Personal Injury Settlement Trust on behalf of two bankrupt third party defendants but later returned the check to Amatex. The ALJ held these were unapproved acceptances of settlement offers. Therefore, per §33(g), claimant was not entitled to compensation.

The Board held that the funds received from Amatex and Manville Trusts were not settlements but court approved payments akin to judgments based on reorganization plans which had been deemed fair and approved by the bankruptcy court. Negotiation for a greater amount was not an option as the amount had been determined by the court. The absence of compromise, the impossibility of individual litigation, and the predetermined nature of the disbursement support the conclusion that the funds here should be likened to judgments. As such only notice to employer was required.

Also, where the facts demonstrated that claimant had executed no releases and received no funds and her attorneys have not completely or fully executed agreements and have returned the funds, there was ample evidence that a settlement has not occurred.

### **§8(f) – Greater Disability**

**Small award did not preclude §8(f) relief.** *Newport News Shipbuilding & Dry Dock Co. v. Director, OWCP*, 25 BRBS 51 (4<sup>th</sup> Cir. 2001).

Claimant was awarded \$3.78 per week PPD due to metal fume fever. The Director opposed §8(f) relief because the award was nominal or *de minimis*. Claimant's award was based on a finding that claimant cannot work on days of bad weather.

HELD, claimant did not receive a nominal award which did not represent an actual loss of wage earning capacity. His award represents his actual loss in wage earning capacity. An award is not nominal simply because it has the potential to be increased. It is nominal because present wage earning capacity is undiminished but there is a significant potential that the disabling injury will result in a reduced capacity to earn wages sometime in the future. Accordingly, §8(f) relief is not precluded. The case was remanded for reconsideration of the §8(f) issue.

### §8(f) – Other

**§8(f) allowed in spite of §8(i) agreement because director approved relief, whether after hearing or upon agreement.** *Nelson v. SSA*, 34 BRBS 91 (BRB 2000), *on recon.*, 35 BRBS 55 (BRB 2001).

Prior to formal hearing employer sought entitlement to §8(f) and Director filed a pre-trial Statement of Position that conceded §8(f) relief would be appropriate for any permanent disability arising from the injury and an appropriate order, "whether after hearing or upon agreement of the parties as to the extent of permanent disability and/or the level of claimant's loss of wage earning capacity, may be entered, subject to the normal standards of proof." At hearing the parties agreed to a §8(i) agreement which provided for a \$25,000 lump sum for injury to the knee plus continuing PPD for the low back, plus fees. The ALJ approved the agreement and awarded employer §8(f) relief, limiting employer's obligation for payment of PPD for the low back to 104 weeks. The director appealed, contending that it was not bound by the settlement.

HELD, Director was bound by the pre-hearing statement. The Director participated, affirmatively, stating that §8(f) relief was appropriate for any permanent disability. The Director was precluded, at the very least, by the doctrine of equitable estoppel, from altering his position after the fact. The purpose of §8(i)(4) was satisfied because the Director conceded liability of the Special Fund prior to the settlement agreement.

On reconsideration, the Board held that the Special Fund's liability was not extinguished per §8(i)(4), which states the Special Fund is not liable for reimbursement of any sums paid or payable under a settlement. Under the peculiar facts of this case, even though there was a §8(i) settlement, §8(f) relief was appropriate because the Director explicitly in writing conceded employer's entitlement to §8(f) relief for any PPD and stated that an appropriate order could be entered. Thus, the director gave his specific approval to the resolution of the claim by agreement, and nothing restricts this approval to agreements based on stipulations as opposed to the one in the settlement.

**NWLAA Case Law Review** is published and distributed to **NWLAA** members for educational purposes only. The information and the opinions expressed herein should not be acted upon without legal advice. All rights are reserved. No part of the **NWLAA Case Law Review** may be reproduced without the written consent of the **NWLAA** and its officers.

The opinions expressed in the **NWLAA Case Law Review** do not necessarily reflect those of SAIF Corporation, for whom Mr. Cole works.