

The Department of Labor & Industries Fulfilling its Duty as a Trustee for the Injured

Since I will likely only mount this soapbox once, I want to talk about some high principles. The kind of principles we uphold when we force the Department of Labor and Industries to do what it is supposed to do.

We all know workers' compensation is supposed to provide "sure and certain relief for workers injured in their work, and their families and dependents." RCW 51.04.010. We all know that:

[T]he guiding principle in construing provisions of the Industrial Insurance Act is that the Act is remedial in nature and is to be liberally construed in order to achieve its purpose of providing compensation to all covered employees injured in their employment, with doubts resolved in favor of the worker. Cockle v. Department of Labor and Industries, 142 Wn.2d 801, 811, 16 P.3d. 583 (2001).

In addition to these important principles, there are other principles that ought to inspire the Department in all of its actions.

The first of these governs how the State should generally deal with its citizens.

In City of Seattle v. P.B. Inv. Co., Inc., 11 Wn.App. 653, 663-664, 524 P.2d 419 (1974), the court described that principle as follows:

As our state Supreme Court, in Strand v. State, supraⁱ, quoting with approval language in State v. Horr, 165 Minn. 1, 205 N.W. 444 (1925), stated at pages 118-119:

We ordinarily look to the action of the state to be characterized by a more scrupulous regard to justice than belongs to the ordinary person. The state is formed for the purpose of securing for its citizens impartial justice, and it must not be heard to repudiate its solemn agreement, relied on by another to his detriment, nor to perpetrate upon its citizens wrongs which it would promptly condemn if practiced by one of them upon another.

The same principle was well expressed in Finch v. Matthews, supraⁱⁱ, where the court said:

The modern trend in both legislative and judicial thinking is toward the concept that the citizen has a right to expect the same standard of honesty, justice and fair dealing in his contact with the state or other political entity, which he is legally accorded in his dealing with other individuals. Therefore, the rule against estopping a governmental body should not be

used as a device by a municipality to obtain unjust enrichment or dishonest gains at the expense of a citizen. (Citations omitted).

There is one final principle that applies specifically to the Department because it is the trustee of funds collected, pursuant to Chapter 51 RCW. The requirement that the Department be notified when an injured worker has elected to sue a third party, pursuant to RCW 51.24.080 and RCW 51.24.030, is premised on the Department's status as the fund trustee. The Supreme Court has said:

The purpose of the notice requirement is to protect the Department's interest as trustee of the compensation fund. The courts of this state have long protected this interest. See Arthun v. Seattle, 137 Wash. 228, 242 Pac. 16 (1926) (it is for the benefit of the State, in administering the accident fund, that the third-party election was created); In re Estate of Kinsman, 44 Wn.App. 174, 721 P.2d 981 (1986) (Department can refuse to approve a settlement which is deficient in repaying the Department's lien); Maxey v. Department of Labor & Industries, 114 Wn.2d 542, 547, 789 P.2d 75 (1990) ("The entire scheme of RCW 51.24 evidences the vital interest of the Department in a recovery from a responsible third party."). The notice provision protects the Department's interest by putting it on notice of the third-party action and providing an opportunity to be heard by filing its "notice of statutory interest" pursuant to RCW 51.24.030(2). (emphasis supplied) Clark v. Pacificorp, 118 Wn.2d 167, 177-178, 182 P.2d 162 (1991).

The Department's status as a trustee is so well established that in appeals from decisions of the Board of Industrial Insurance Appeals, jurors are instructed, in part, that:

The Department of Labor and Industries is the state agency that administers the Industrial Insurance Act and acts as the trustee of the funds collected pursuant to the Act. It is the Department's duty to determine what benefits are to be provided to a worker under the Industrial Insurance Act and to issue all orders relating to claims under the Act. (emphasis supplied) WPI 155.04.

What kind of duty does its statutes as a trustee impose on the Department? A trustee's duty was described in Marriage of Petrie, 105 Wn. App. 268, 275, 19 P.3d 443 (2001).

A trustee owes the beneficiaries of the trust 'the highest degree of good faith, care, loyalty and integrity. This duty includes the responsibility to inform the beneficiaries fully of all facts that would aid them in protecting their interests.' Esmieu v. Schrag, 88 Wn.2d 490, 498, 563 P.3d 203 (1977) (citations omitted). Failure to report can be a breach of fiduciary duty.

Good faith, integrity, providing all the information needed so workers can protect themselves. Does this sound like the Department you deal with?

Would such a Department utilize certain doctors to perform “independent” examinations, for decades, when their bias is obvious to all? Would such a Department find 100 workers in a rural county employable in the 20 security guard jobs that might exist there? Would such a Department sit on claims for months refusing to pay benefits or make a decision? A Department striving to meet the principles that govern it would not do these things.

I like to think we move the Department closer to these principles each time we vindicate a client’s rights. No matter the seeming unimportance of a particular case, we help hold the Department to its obligations. Sometimes the principle of the thing is the thing.

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ⁱ 16 Wn.2d 107, 132 P.2d 1011 (1943)

ⁱⁱ 74 Wn.2d, 161, 176, 443 P.2d 833 (1968)