No. 20-7320

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 2020

ZBIGNIEW M. LASKOWSKI,

Petitioner,

v.

WASHINGTON STATE DEPARTMENT OF

LABOR AND INDUSTRIES,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO
THE WASHINGTON STATE COURT OF APPEALS
DIVISION II

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Whether in reviewing a claim, appellate court must 1) apply de novo review where a superior court trial judge failed to make specific findings on the question whether the prosecution's proffered justifications in omitting RCW 51.52.100 and WAC 263-12-095; and 2) review a lack of the government's explanations, specifically whether Cathy Tharaldson v. Providence Health Services of Washington, Court of Appeals, Division I No. 67366-1-I; November 21, 2011 (Pet. App. 3) shall be taking under consideration to keep Claim AB 17747 open.

LIST OF PARTIES

Other parties to the proceedings in Washington State Court of Appeals, Division II were:

Anastasia Sandstrom, AAG, Washington State Attorney General Office, Division of Industrial Insurance

Washington State Department of Labor and Industries, Division of Industrial Insurance; and

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PETITION FOR WRIT OF CERTIORARI

Zbigniew M. Laskowski respectfully petition for a writ of certiorari to review judgment of the Court of Appeals of the State of Washington, Division II in this case.

OPINION BELOW

The decision of the Court of Appeals of the State of Washington, Division I, Cathy Tharaldson v. Providence Health Services of Washington, is reproduced in the appendix to the petition at Pet. App. 3. The Court's judgment is at Pet. App. 4.

JURISDICTION

The Court of Appeals of the State of Washington, Division II issued its opinion and judgment (Pet. App. 4) on September 24, 2019. Panel of Judges of the Supreme Court of Washington denied the petition for review and granted the Clerk's motion to strike the reply to the answer to the petition for review on July 7, 2020. (Pet. APP. 5). The jurisdiction of this court is invoked under 28 U.S.C. § 1254 (1).

CONSTITUTIONAL PROVISIONS INVOLVED

The Equal Protection Clause provides:

> nor shall any State . . . deny to any person within its jurisdiction the equal protection of the laws.

The Due Process Clause provides:

> No person shall . . . be deprived of life, liberty, or property, without due process of law.

STATEMENT OF THE CASE

The Petitioner, Zbigniew M. Laskowski, filed appeals with Board of Industrial Insurance Appeals protesting Department of Labor and Industries (Department) order ending the time-loss benefits on May 11, 2015 and from the second order closing the claim on May 14, 2015.

The parties agreed on Diana Kraemer, MD perform IME (Independent Medical Examination). Dr. Kraemer issued her opinion that the Petitioner was not in need of farther medical treatment for his 2006 industrial injury but upgraded the lumbo-sacral impairment rating to Category IV, confirming progress of occupational disease.

Petitioner appealed Board of Industrial Insurance Appeals Order on Agreement of Parties dated September 12, 2016 (Pet. App. 6), because Dr. Diana Kraemer IME Report lack of admissibility and compliance with RCW 51.52.100, RCW 51.52.102 and RCW 51.52.115.

(RCW 51.52.100 Proceedings before the board – Contempt:

"Hearings shall be held in the county of the residence of the worker or beneficiary, or in the county where the injury occurred, at the place designated by the board. Such a hearing shall be de novo and summary, but not witness testimony shall be received unless he or she shall first have been sworn to testify the truth, the whole truth and nothing but the truth in the matter being heard or unless his or her testimony shall have been taken by deposition according to the statues and rules relating to superior court of this state".

Dr. Diana Kraemer second IME report dated June 28, 2016 does not consists with what she wrote in her first 2012 IME report with regards to the treatment recommendation. She puts time limits in her newest 2016 IME Report, naming the year 2007, the last year when the Department should bare the medical and financial responsibility: "The conditions of the Lumbar sprain and lumbar radiculopathy is accepted as related to the Claim AB 17747. Therefore, MRI imaging, the surgery of January 25, 2007, and the treatment and imaging through December, 2007, are thought to be related to Claim AB 17747." (page 423 CABR) "There is no recommended treatment related to Claim AB 17747. Mr. Laskowski is a candidate for lumbar decompression for treatment of central canal stenosis at L3-L4, unrelated to Claim AB 17747" (mid page 424 of CABR). It has to be noted that Dr. Diana Kraemer when second time opinionated in this claim, decided to prejudice against the lumbar integral segment L3-L4 by excluding it and insisting that that shouldn't be consider part of the claimant lumbar (please see Pet. App. 7). To continue surprise potential readers (page 424-425 of CABR) Dr. Diana Kraemer wrote:" There is no progression related to the industrial injury that would alter those recommendations." Farther on the same page (page 425 of CABR) Dr. Diana Kraemer equated impairment rating in this claim to Category IV (4) using WAC 296-20-280, what changed the previous one from Drs. DeVita and Smith IME of 2008, by the whole one (1) Category of impairment rating. Farther Dr. Diana Kraemer stated that she used "The Doctor's Worksheet for Rating Dorso-Lumbar and Lumbosacral Impairment" in accordance with WAC 296-20-280 (without forwarding copies of Worksheet), not leaving even small doubt that Lumbar of the Petitioner's spine is not the only condition allowed for treatment in Claim AB 17747.

Next, I would like to direct the Court's attention to Dr. Diana Kraemer June 28, 2016 Independent Medical Examination report where she states as follow:" 10. Correct surgery: Mr. Laskowsky has expressed concern that the wrong interspace was operated on. This is reasonable concern, since he has a common anomaly with 6-non-rib-bearing lumbar vertebrae. These are numbered according to different paradigms in this multiple imaging and operative reports. For clarification, all operative procedures were performed at the second interspace above the sacrum."

The Petitioner would like to direct the Court's attention to the mid of page 394 of CABR where Dr. Jeffery Pearce, the Neurosurgeon who performed the first surgery on Petitioner's lumbar, then not threaten any more by statute of limitation in his chart notes dated 09/28/2015 reviled:" I reviewed an MRI scan of the thoracic and lumbar spine from 07/08/13. This was before his prior fusion. In the lumbar spine he had a previous decompression at the second interspace. He did have facet effusions and sagittally-oriented facets that certainly could have been unstable. I do not have the flexion/extension x-rays. He had mild spinal and lateral recess stenosis with minimal retrolisthesis at the third mobile interspace. A myelo CT following the fusion on 06/10/14 demonstrates a wide decompression and interbody fusion with instrumentation at the second mobile interspace. Again, there is mild spinal and lateral recess stenosis at the third interspace."

On the page 17 of Dr. Diana Kraemer June 28, 2016 IME report (page 423 of CABR):" This was the appropriate level for these symptoms and imaging findings. This is no evidence that the procedure was performed "at the wrong level". There is no evidence that the ruptured disc was not addressed during surgery because of wrong level surgery. The lumbar fusion was performed at the appropriate interspace, to address the spondylolisthesis. Mr. Laskowski can be reassured that the operations were performed at the correct level."

Department of Labor and Industries adjudicated by using Medical Billing Code as follow: 846.0, 724.4, 724.3 from 01/05/2006 till 09/30/2015, M54.15, M54.14, M54.16, S33.8XXA, M54.17, M51.14, M54.31 from 10/01/2015 till 2099 what respectively stands for Sprain and Strain of lumbosacral, Thoracic/Lumbosacral Nueritis/Radiculitis UNSPEC, Sciatica, Radiculopathy Thoracolumbar Region, Radiculopathy Thoracic Region, Radiculopathy Lumbar Region, Sprain OTH parts Lumbar Spine & Pelvis INIT ENC, Radiculopathy Lumbosacral Region, Intervertebral Disc D/O with Radiculopathy Thoracic and Sciatica Right Side. (Pet. App. 7), but Dr. Diana Kraemer limiting her review to sprain and strain of lumbar contradicts existence of 10 additional conditions pertaining to the Claim AB 17747 and shows bias of her opinion.

Because of this long list of not coincidentally created by the Washington State Department of Labor and Industries, and still unresolved L4-5 or/and but not only L3-4 medically allowed issues in this claim, and as directed by authority of WAC 296-20-01002(3) the Petitioner did not reach yet (as of December 2020) the MMI (Maximum Medical Improvement), equivalent to "fix and stable."

Farther, the Court may notice another Attending Physician in the Claim AB 17747. Dr. Kevin Berry who provide medical services between November 05, 2015 till May 2017, wrote letter (Pet. App. 8) dated May 17, 2016, acknowledged by Dr. Diana Kraemer in her June 28, 2016 report, which reads:" I suspect that he will have chronic and ongoing low back and leg pain indefinitely despite continued medical treatment but it would be my hope that we could significantly improve his pain control and function. At this point, he is demonstrating progressive decline in terms of function due to his pain complains" (page 207-208 of CABR).

REASON FOR GRANTING THE WRIT

I. THIS COURT SHOULD RESOLVE THE APPROPRIATE STANDARD OF REVIEW FOR THIS CLAIM WHERE MULTIPLE EXPLANATIONS WERE

PROFERRED FOR CERTAIN CHALLENGES AND THE APPEAL JUDGE MADE ONLY CONCLUSORY FINDINGS INSUFFICIANT TO PERMIT MEANINGFUL APPELLATE REVIEW.

The Constitution's equal protection guarantee bars prosecutors from using peremptory challenges only because injured worker challenged calculations of benefits in sister case Zbigniew Laskowski v. Washington State Department of Labor and Industries, Court of Appeals of the State of Washington, Division II No. 56064-3-II.

The legislative intent of fast recovery and return to productive live in Washington State Department of Labor and Industries Claim AB 17747 never was followed. Seven (7) years past first surgery turned malpractice, second surgery was approved by QUALIS in year 2014 to became another malpractice. With involvement of countless highly educated people return to normality without legal nightmare seems still not achievable today, seven (7) years after second surgery. Dr. Robert Lang of Olympia, WA, Petitioner's attending physician, same doctor who recommended three (3) more injections of steroid for his patient Cathy Tharaldson [please see *THE STATE OF WASHINGTON COURT OF APPEALS, DIVISION I NO. 67366-1-I, Cathy Tharaldson v. Providence Health Services of Washington (Nov. 2011)] (Pet. App.3)* was able convinced the King County Superior Court jury and support Washington State Court of Appeals, Division I judicial decision upholding the jury verdict to reopen Ms. Tharaldson claim, but he couldn't pursue with written on March 22, 2018 Claim Re-opening Application (Pet. App 9), either Thurston County Superior Court Hon. Carol Murphy, or the Court of Appeals Division II judicial panel to do same in Zbigniew Laskowski v. Dept. of Labor and Industries, despite that two well documented malpractices in this work-related injury are not taking care of yet and still require medical attention.

The Department of Labor and Industries already admitted wrongful closing of Claim AB 17747 in Notice of Decision dated December 24, 2018 (Pet. App. 10) previously affirmed on November 6, 2018. (Pet. App. 11*)* but the prosecutors with skillful semantics like "Order on Agreement of Parties" or "Settlement", are trying to convince remaining parties that the due-process of adjudication of Claim AB 17747 supposed to stop with WAC 263-12-093 and not to be consider farther and beyond under WAC 263-12-095. Claims in which agreement couldn't be reach should be consider under guidelines of WAC

263-12-095 and witness testimony, including testimonies of doctors responsible for issuing Independent Medical Examination reports, should be taken under oath according with RCW 51.52.100.

(Please see below.)

WAC 263-12-093 Conferences—Disposition of appeals by agreement. (1) If an agreement concerning final disposition of any appeal is reached by all the parties present or represented at a conference, an order shall be issued in conformity with their agreement, providing the board finds the agreement is in accordance with the law and the facts. (a) In industrial insurance cases, if an agreement concerning final disposition of the appeal is reached by the employer and worker or beneficiary at a conference at which the department is represented, and no objection is interposed by the department, an order shall be issued in conformity with their agreement, providing the board finds that the agreement is in accordance with the law and the facts. If an objection is interposed by the department on the ground that the agreement is not in accordance with the law or the facts, a hearing shall be scheduled. (b) In cases involving the Washington Industrial Safety and Health Act, an agreement concerning final disposition of the appeal among the parties must include regardless of other substantive provisions covered by the agreement: (i) A statement reciting the abatement date for the violations involved, and (ii) a statement confirming that the penalty assessment for contested and noncontested violations has or will be paid. (c) Where all parties concur in the disposition of an appeal but the industrial appeals judge is not satisfied that the agreement is in conformity with the facts and the law or that the board has jurisdiction or authority to order the relief sought, the industrial appeals judge may require such evidence or documentation necessary to adequately support the agreement in fact and/or in law. (2) All agreements reached at a conference concerning final disposition of the appeal shall be stated on the record by the industrial appeals judge and the parties shall indicate their concurrence on the record. The record may either be transcribed by a court reporter or recorded and certified by the industrial appeals judge conducting the conference. The industrial appeals judge may, in his or her discretion accept an agreement for submission to the board in the absence of one or more of the parties from the conference, or without holding a conference. (a) In such cases the agreement may be confirmed in writing by the parties to the agreement not in attendance at a conference, except that the written confirmation of a party to the agreement not in attendance at a conference will not be required where the industrial appeals judge is satisfied of the concurrence of the party or that the party received notice of the conference and did not appear. (b) In cases where no conference has been held but the parties have informed the judge of their agreement, yet no written confirmation has been received, a final order may be issued which encompasses the agreement. (3) In the event concurrence of all affected employees or employee groups cannot be obtained in cases involving agreements for final disposition of appeals under the Washington Industrial Safety and Health Act, a copy of the proposed agreement shall be posted by the employer at each establishment to which the agreement applies in a conspicuous place or places where notices to employees are customarily posted. The agreement shall be posted for ten days before it is submitted to the board for entry of the final order. The manner of posting shall be in accordance with WAC 263-12-059. If an objection to the

Certified on 10/25/2019 WAC 263-12-093 Page 1 agreement is interposed by affected employees or employee groups prior to entry of the final order of the board, further proceedings shall be scheduled. (4) The parties present at a conference may agree to a vocational evaluation or a further medical examination of a worker or crime victim, including further evaluative or diagnostic tests, except such as require hospitalization, by medical or vocational experts acceptable to them, or to be selected by the industrial appeals judge. In the event the parties agree that an order on agreement of parties may be issued based on the report of vocational evaluation or medical examination, the industrial appeals judge may arrange for evaluation or examination and the board will pay reasonable and necessary expenses involved. Upon receipt by the board, copies of the report of such examination or evaluation will be distributed to all parties represented at the conference and further appropriate proceedings will be scheduled or an order on agreement of parties issued. If the worker or crime victim fails to appear at the evaluation or examination, the party or their representative may be required to reimburse the board for any fee charged for their failure to attend. [Statutory Authority: RCW 51.52.020. WSR 18-24-123, § 263-12-093, filed 12/5/18, effective 1/5/19; WSR 06-12-003, § 263-12-093, filed 5/25/06, effective 6/25/06; WSR 03-02-038, § 263-12-093, filed 12/24/02, effective 1/24/03; WSR 00-23-021, § 263-12-093, filed 11/7/00, effective 12/8/00; WSR 91-13-038, § 263-12-093, filed 6/14/91, effective 7/15/91. Statutory Authority: RCW 51.41.060(4) and 51.52.020.

WAC 263-12-095 Conference procedures. (1) Scheduling information. If no agreement is reached by the parties as to the final disposition of an appeal, the industrial appeals judge presiding at a settlement conference may direct that the appeal be assigned to an industrial appeals judge for the purpose of scheduling and conducting a hearing in the appeal. Any industrial appeals judge assigned to conduct proceedings in an appeal, or his or her designee may elicit from the parties such information as is necessary and helpful to the orderly scheduling of hearing proceedings and as may aid in expediting the final disposition of the appeal. (2) Prehearing matters. At any proceeding a stipulation of facts may be obtained to show the board's jurisdiction in the matter. In addition, agreement as to the issues of law and fact presented and the simplification or limitation thereof may be obtained. The industrial appeals judge may also determine: (a) The necessity of amendments to the notice of appeal or other pleadings; (b) the possibility of obtaining admissions of facts and authenticity of documents which will avoid unnecessary proof; (c) the admissibility of exhibits; (d) a stipulation as to all or part of the facts in the case; (e) obtain information as to the number of expert and lay witnesses expected to be called by the parties and their names when possible, the place or places where hearings will be required, the approximate time necessary for the presentation of the evidence of the respective parties, and all other information which may aid in the prompt disposition of the appeal; (f) the limitation of the number of witnesses; (g) the need for interpretive services; (h) exchange of medical and vocational reports and other relevant documents; (i) receive and rule on motions pertaining to prehearing discovery. These include motions by a party for a vocational evaluation of a claimant which may be granted upon a showing of surprise which ordinary prudence could not have guarded against or upon an equivalent showing of circumstances constituting good cause and upon notice to all parties of the time, place, manner, conditions, and scope of the evaluation and the person or persons by whom it is to be made, provided that the industrial appeals judge shall impose all conditions necessary

to avoid delay and prejudice in the timely completion of the appeal. (3) Record of results of conferences. The results of any conferences shall be stated on the record. The record may be a transcript of the proceeding, a judge's report of proceedings, and/or written interlocutory order. The record shall include, where applicable, agreements concerning issues, admissions, stipulations, witnesses, time and location of hearings, the issues remaining to be determined, and other matters that may expedite the hearing proceedings. The statement of agreement and issues, and rulings of the industrial appeals judge, shall control the subsequent course of the proceedings, subject to modification by the industrial appeals judge or by interlocutory review pursuant to WAC 263-12-115(6). (4) Failure to supply information. If any party fails to supply the information reasonably necessary to schedule the hearing in a case, the board or the industrial appeals judge may suspend setting a hearing pending receipt of the required information, impose conditions upon the presentation of evidence by the defaulting party as may be deemed appropriate, or take other appropriate action as authorized by these rules and the law. (5) Admissibility of matters disclosed at conference. If no agreement of the parties is reached resolving all issues presented, no offers of settlement, admissions, or statements made by any party Certified on 10/25/2019 WAC 263-12-095 Page 1 shall be admissible at any subsequent proceeding unless they are independently admissible therein. [Statutory Authority: RCW 51.52.020. WSR 16-24-054, § 263-12-095, filed 12/2/16, effective 1/2/17; WSR 00-23-021, § 263-12-095, filed 11/7/00, effective 12/8/00; WSR 91-13-038, § 263-12-095, filed 6/14/91, effective 7/15/91. Statutory Authority: RCW 51.41.060(4) and 51.52.020. WSR 83-01-001 (Order 12), § 263-12-095, filed 12/2/82. Statutory Authority: RCW 51.52.020. WSR 82-03-031 (Order 11), § 263-12-095, filed 1/18/82; Order 7, § 263-12-095, filed 4/4/75; Order 4, § 263-12-095, filed 6/9/72; Rules 6.5-6.9 filed 6/12/63; Rule 5.6, filed 3/23/60; Subsection 5, General Order 3, Rule 7.1, filed 10/29/65. Formerly WAC 296-12-100.] WSR 83-01-001 (Order 12), § 263-12-093, filed 12/2/82. Statutory Authority: RCW 51.52.020. WSR 82-03-031 (Order 11), § 263-12-093, filed 1/18/82; Order 7, § 263-12-093, filed 4/4/75.]

"As you have agreed to accept ultimate opinions..." wrote William P. Gilbert, Industrial Appeals Judge in the letter dated August 5, 2016 (Pet. App. 12*)*, then he concluded on much positive note" If you disagree with my interpretation, please request a conference before August 15, 2016. Otherwise, I will prepare an Order on Agreement of Parties consistent with this letter." Letter from ALJ William P. Gilbert (Pet. App.12) shows that the Petitioner was not the only one disapproving findings of Independent Medical Examination Report dated June 28, 2016 prepared by Dr. Diana Kraemer. Soon after, the telephone arranged conference took place with Board of Industrial Insurance Appeals judge William P. Gilbert, during which Petitioner expressed his disagreement with more than one of findings of Dr. Diana Kraemer, the notion became obvious, Dr. Diana Kraemer will be testifying under oath *(RCW 51.52.100)*, to clarify her statements contradicting not only conclusions of attending physician at

that time, Dr. Kevin Berry, but also, the Department of Labor and Industries list of accepted conditions in Claim AB 17747. (Pet. App. 7).

The IME report dated June 28, 2016 (Pet. App. 13) Dr. Diana Kraemer on page 18 states as follow:" There is no recommended treatment related to Claim AB 17747. Mr. Laskowski is a candidate for lumbar decompression for treatment of central canal stenosis at L 3-4, unrelated to Claim AB 17747." In the same report on page 17 (Pet. App. 14) the doctor wrote also:" The conditions of Lumbar sprain and lumbar radiculopathy are accepted as related to Claim AB 17747. Therefore, MRI imaging, the surgery of January 25, 2007, and the treatment and imaging through December, 2007, are thought to be related to Claim AB 17747. It is noted that Dr. Becker performed a Physical Capacity Examination on December 12, 2007 that reported that Mr. Laskowski was capable of performing Full Time Medium work, with some modifications." Dr. Diana Kraemer in IME report dated May 17, 2012 (Pet. App. 15) giving her first opinion in the same Claim AB 17747 on page 2 (4) wrote: "He has had series MRIs, one in June 7, 2010. He underwent another on February 3, 2011, which have shown some progression of the slight increase in the circumference of the disc bulge at L 2-3 with mild central stenosis, and increase in L 4-5 neuroforaminal narrowing on the left which is now moderate, and an increase in L 3-4 neuroforaminal narrowing on the left which is now moderate."

On the page 17 (19) of the same IME report (Pet. App. 16) dated May 17, 2012 when asked about permanent impairment rating, she respondent "He is not ready for impairment at this time" which many would agree this kind of statement suggest that Dr. Diana Kraemer mind was not set and ready for this Claim closing. Four (4) years later after ex-parte communication *(RCW 34.05.455)* with ALJ William P. Gilbert Dr. Diana Kraemer stated that L 3-4 it is not condition accepted in Claim AB 17747 and after Physical Capacity Evaluation by Dr. Becker The Petitioner/Claimant should return to work somehow against advice of attending physician at that time Dr. Mark Wentworth. (Pet. App. 17).

Letter from William P. Gilbert dated August 5, 2016 (Pet. App. 12) and Order on Agreement of Parties sign by the members of the Board of Industrial Insurance Appeals on September 12, 2016 (Pet. App. 6) are the only two documents issued by the BIIA. There are not verbal or written settlements reach and/or signed following Dr. Diana Kraemer opinion in IME report dated June 28, 2016.

In the presents of opinion in the letter dated May 17, 2016 (Pet. App. 8) written by attending physician Dr. Kevin Berry to BIIA Judge Brain Watkins submitted with Petition for Review to this Court on October 19, 2019, opinion in IME report dated June 28, 2016 by Dr. Diana Kraemer full of innuendos and mischaracterization, seems to be rather inadmissible document than base for settlement of any kind. The due process broken at the Board level, and never recover at the Courts level *(RCW 34.05.562)* is still vigorously defendant only by Office of Washington State Attorney General, because Department of Labor and Industries lost interest clearly manifesting it in Notice of Decision dated December 24, 2018. (Pet. App. 10).

Claim AB 17747 should stay opened after consultation with Dr. Pearce reveled second interspace of lumbar, not the third as many doctors thought and suggested was operated on. All these diagnoses after first consultation with Dr. Kevin Berry, Petitioner's attending physician between 2015 till 2017 and Dr. Robert Lang findings in March 2018 concluding that Petitioner/Patient will require surgery, confirmed with the x-ray showing L 5-6 as space incorrectly operated on should be legitimate enough to keep the claim open. (Pet. App. 18)

The adjudication of Claim AB 17747 was curtailed due to retaliation brought by William P. Gilbert, ALJ, not coincidently employed by Fiscal Department of the BIIA *(Please see first page of the IME report by Dr. Diana Kraemer dated June 28, 2016).*

Dr. Diana Kraemer shall be brought to testify under oath as provided in RCW 51.52.100 and WAC 263-12-095 (1)(2):

"(1) Scheduling information. If no agreement is reached by the parties as to the final disposition of an appeal, the industrial appeals judge presiding at a settlement conference may direct that the appeal be assigned to industrial appeals judge for the purpose of scheduling and conducting a hearing in the appeal...

(2)...The industrial appeals judge may also determine: (a) The necessity of amendments to the notice of appeal or other pleadings; (b) the possibility of obtaining admissions of facts and authenticity of documents which will avoid unnecessary proof; (c) the admissibility of exhibits; (d) a stipulation as to all or part of the facts in the case; (e) obtain information as to the number of expert and lay witnesses..."

Dr. Diana Kraemer shall be subject to under oath questions as follow:

1) Why in your opinion L 3-4 interspace isn't part of Claim AB 17747 knowing that Department of Labor and Industries in thirteen (13) accepted conditions included it and didn't specified that this particular condition has to be excluded?
2) Would you (please) tell us exactly at which level of lumbar both surgeries, the one in 2007 and the second in 2014, were performed using the X-ray image?
3) What was the exact subject of your phone conversation between you and ALJ William P. Gilbert at particular day?
4) Following simple diligence did you check if all information with regard to Claim AB 17747 is up-to-date?
5) When you expressed opinion in your second IME report that the Petitioner should work following Dr. Becker Physical Capacity Evaluation were you aware of findings of IME report of Drs. DeVita and Smith, your own IME report of May 17, 2012 and medical opinion of attending physicians, as many that could be?
6) Did the Petitioner/Patient reached Maximum Medical Improvement as defined in WAC 296-20-01002? If yes, why? If not, why?
7) You wrote in yours last IME report that there is no progression in Claim AB 17747 but you rise impairment rating established in 2008 by one whole category from Category "3" to Ctegory"4". Why? (etc.)

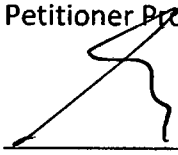
The Department argument that "Laskowski agreed that the Board should decide the case base on the facts as found by the doctor performing the binding examination" it is preposterous. The term "binding" wasn't used in any communication before or short after the IME of June 28, 2016 by Dr. Diana Kraemer. After the Board's Judge first heard the disagreement from the Petitioner another level of communication started and all aggressive vocabulary was added. Ex-parte communication took place between the IME doctor and BIIA judge. Petitioner still as to does not have access to confidential file in this case to say exactly what the conversation was about, except what was reviled by Hon. Carol Murphy during the second day of the trail in Thurston County Superior Court. Farther, to accept all these non-scientific conclusions by Dr. Kraemer, her factually broken interpretations would be like participate in gambling with own live, not like be part of legitimate legal process administrated by Washington State Government.

CONCLUSION

Petitioner respectfully ask the Court to grant the petition for certiorari.

Respectfully submitted,

Z. M. LASKOWSKI
Petitioner Pro Se



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