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Volume 38, No. 7, July 1984



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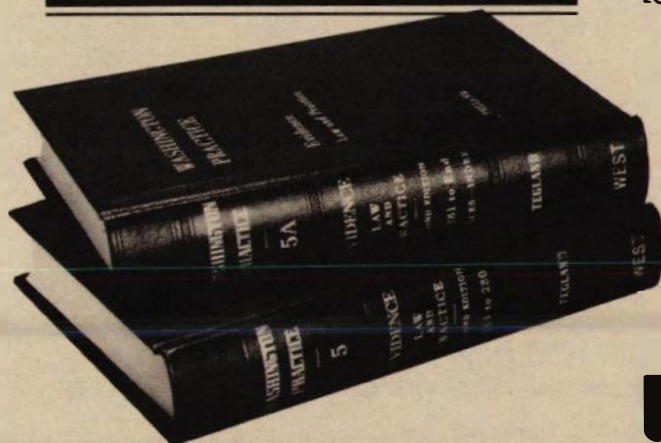
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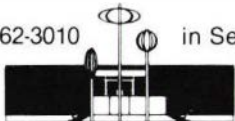
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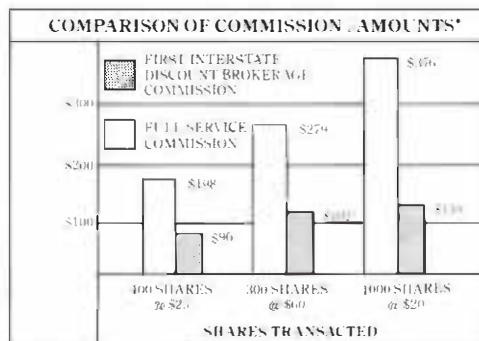


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Washington State Bar News

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Our Cover



ART CREDIT

Artwork courtesy of freelance artist **James McFarlane**, whose studio is located at 1906 Fifth Avenue North in Seattle.

Your client is hurt on the job: Should she file a claim? Should she sue? Sue whom? When? How do you do it?

*Special thanks to Editorial Advisory Board member **Franc Fischer**, who organized and coordinated this theme issue.*

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Who Needs The Russians? Bring on the Lawyers!

The Soviet-led 14-nation boycott of the 1984 Olympics has cast a long shadow on otherwise sunny Los Angeles. The city fears a boycott could harm its economy and prestige, while sports enthusiasts worry whether this could be the beginning of the end of international athletic competition.

But rest easy, Mayor Bradley. Relax, international sports fans. There is an easy solution to the boycott problem: forget the Russians and **BRING ON THE LAWYERS!**

There are approximately 500,000 lawyers in the United States and perhaps again as many practicing law in other countries of the world. Altogether, there are certainly more attorneys world-wide than there are citizens of some nations participating in the Olympics. And although not every lawyer can put a shot or throw a discus, we have our own remarkable athletic prowess which would entertain and amaze the international sports fan.

During opening ceremonies, the athletes of the world would march into the main arena dressed in their countries' traditional costumes, followed by the lawyers' contingent attired in Brooks Brothers pin-stripes and carrying attache cases. Then, clad only in their briefs, the Olympian lawyers would compete with the world's best athletes.

Naturally, lawyers would not participate in the same events as traditional athletes. In track and field, for example, the 5,000 and 10,000 meter races could be run as the Race Judicata and the Race for the Courthouse. In the Race for the Courthouse, competing "lawyathletes" would be told at the sound of the gun that an international jet liner has crashed somewhere and they must be the first to commence legal proceedings in the correct jurisdictions. The world record in this event is three minutes 48.56 seconds from crash to filing. Also in track and field, lawyers could compete in the "trial marathon," a 26-week toxic tort products liability action with 35 expert witnesses, 12,000 evidentiary exhibits, and 16 video-

tape depositions (the original Greek lawyathlete to compete in this event died of exhaustion before collecting her fee).

Fleet-footed lawyers would compete in the "procedural hurdles," in which competitors must leap over such legal obstacles as statutes of limitation, statutes of repose, laches, estoppel and sovereign immunity. The most versatile track and field lawyers might compete in the decathlon, in which they must prove themselves competent to practice in at least ten legal areas of specialization.

Gymnastics could be an exciting lawyathletes' event. Competitors would twist and turn legal somersaults, applying Gambian traffic court law to Washington personal injury cases and using the Dead Sea Scrolls as *stare decisis* in formaldehyde litigation. Lawyer wrestlers would go to the mat with complicated facts and all but incomprehensible medical testimony, each attorney trying to pin liability on the other's client.

Lawyers can also compete in international weightlifting. In the unlimited class briefcase dead lift, for example, lawyers would seek to break the all-time briefcase powerlifting record of 12 litigator's bags stuffed with legal pleadings and weighing 42 lbs. apiece.

Lawyers competing in the summer Olympics would, of course, be subject to the same high standards as other athletes. In addition, lawyathletes would also be held to the ABA Code of Professional Athletic Responsibility. As with other sportspersons, lawyathletes, too, would be subjected to rigorous testing to screen out users of illegal drugs such as black coffee and cigarettes. Naturally, only "amateur," unpaid lawyers would be allowed to participate in the Lawyer Olympics, but the rules provide that may include any lawyer who regularly gets "stiffed" by his clients, or law students, so long as they have not yet been selected in the Fall Associate Lawyer Draft.

So don't let the boycott get you down, sports fans. We don't need the Russians; just bring on the lawyers!



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Bar Brief Protests Proposed Taxation of Reimbursed Client Expenses

On June 1 the Washington State Bar Association filed a brief amicus curiae with the state Supreme Court in the matter of *Walthew, Warner, et al vs. State Department of Revenue*. The case is an appeal by the State of Washington Department of Revenue, challenging a trial court ruling exempting from Business and Occupation taxable income reimbursements received by a law firm from clients for advances made by the firm to cover expenses related to the legal services provided to clients.

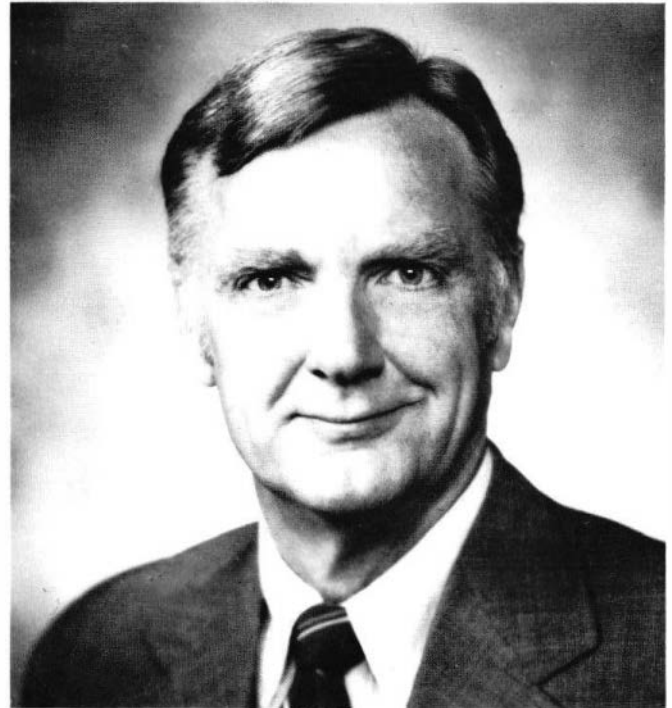
This case is of considerable importance to every Washington State lawyer in private practice. Should the trial court decision be overturned, the funds reimbursed to a law firm by a client for advances to cover such outside expenses as medical examinations, court reporter fees, witness fees, messenger charges, filing fees, court costs, and other expenses incurred by the law firm solely as an agent for the client, would be considered a part of its gross income for tax purposes.

Such a finding would adversely affect the delivery of legal services in a number of ways. To avoid taxation on such monies, which traditionally have been advanced and reimbursed dollar for dollar as law firms have acted in the role of agent for the client, law firms would be forced to have clients deal directly with court reporters, doctors and other service providers. Formal contracts would be required in cases where custom and practice now govern. Firms with a larger financial base and the ability to pay third parties directly would have a clear advantage over smaller firms and sole practitioners with a small client base or less affluent clients, particularly those firms serving personal injury plaintiffs. The ultimate effects would be an impairment of access to the judicial process and an increase in the cost of legal services.

We believe that the trial court found correctly in exempting such reimbursements from taxable gross income, and that the arguments of the Department of Revenue on appeal do not hold up.

In the definition of taxable income, Rule 111, codified at WAC 458-20-111, recognizes that not all money or credits received by a business constitute compensation for the rendering of services. Rule 111 makes it clear that the taxpayer is not taxed if someone other than the taxpayer rendered the services. The issue raised by the appeal is whether the amounts received by the respondent law firm as reimbursement of advances made on behalf of clients come within the ambit of this rule excluding certain items from the taxable receipts of the business.

All parties have acknowledged that the case on appeal is controlled by the interpretation of Rule 111 found in *Chris-*



tensen vs. Department of Revenue, 97 Wn 2nd 764, 649 P. 2nd 839 (1982). This case posed three basic questions:

1. Were the reimbursements a customary requirement for an advance made to procure a service for the client?
2. Did the reimbursements involve services that the law firm did not or could not render?
3. Were the advances for which the law firm was reimbursed payments for which the firm had no liability other than as agent for its client?

Affirmative answers to these questions mandated that such receipts come within the exclusion of Rule 111. We believe that these standards hold in the *Walthew* case, and that the judgment of the trial court should be affirmed with regard to this type of legal expense in general.

An Introduction to Industrial Insurance

by Linda Dunn McQuaid

In 1911, workers' compensation legislation was enacted in Washington which required employers in extra hazardous work to assume the cost of industrial injuries through the payment of premiums to the Department of Labor and Industries ("Department"). While Title 51 RCW has expanded to extend coverage to virtually all types of employment notwithstanding the hazard, the basic objectives have remained constant:

- Remove civil causes of action.
- Eliminate questions of fault.
- Encourage safety.
- Provide certain medical treatment.
- Protect the loss of wages.
- Provide definite and limited compensation.
- Provide services to return the worker to gainful employment.

The trickle of claims in the early years of workers' compensation administration has mushroomed to almost 200,000 claims last year for both industrial injuries and occupational diseases. Of those claims filed, almost 6,000 reached some stage of dispute where an attorney was likely to be involved. Approximately 65% of the claims filed each year are closed with medical treatment only. Of the remaining claims, 35% are responsible for over 90% of the Department's costs.

Linda Dunn McQuaid is a Section Chief in the Labor and Industries Division of the Office of the Washington State Attorney General. A 1979 graduate of Gonzaga University Law School, she has been a litigator with the AG since January of 1980.

Given the complexity of this area of the law, it would be difficult to provide an in-depth overview of industrial insurance in the space allowed. Therefore, this article only provides a checklist of selected sections of the statute which are the subject of the most frequent inquiries from attorneys who represent an injured worker (or employer) for the first time.

CLAIM VALIDITY

Long before the disputes arise, the Department makes an initial determination of the validity of each claim. Some of the reasons a claim may be rejected include the following:

1. *Failure to timely file a claim.* One year from the date of injury, RCW 51.08.050, or two years from the date of a physician's written notification to a worker that a disease is occupationally related, RCW 51.28.055.
2. *Failure to establish an employer/employee relationship.* RCW 51.08.070 and 1.80.
3. *Failure to establish that the worker was in the course of his/her employment.* RCW 51.08.013.
4. *Failure to establish an industrial injury, RCW 51.08.100, or an occupational disease, RCW 51.08.140.*
5. *Failure to establish that the employment is statutorily covered.* Chapter 51.12 RCW.

BENEFITS

Once the Department has made a determination that the claim is valid, the injured worker is entitled to statutory benefits which may include one or more of the following:

- Treatment. An injured worker is entitled to receive reasonable and necessary treatment from a physician of his/her choice. RCW 51.36.010.
- Temporary Total Disability. If medically unable to perform any form of reasonably continuous gainful employment, or when undergoing approved vocational services, claimants

are entitled to compensation for time lost from work. RCW 51.32.090 and RCW 51.32.095.

- **Permanent Partial Disability.** Partial disability for loss of bodily function, based upon a physician's opinion that the condition is fixed and stable and no longer in need of treatment. RCW 51.32.080.

- **Loss of Earning Power.** When present earning power has been partially restored, claimant may be entitled to prorated time loss payments. RCW 51.32.090 (3).

- **Vocational Services.** A new vocational statute enacted January 1, 1983, broadens the scope and substance of the vocational services available and establishes an Office of Rehabilitation Review. See Chapter 51.41 RCW.

- **Total Permanent Disability Benefits.** If the injured worker is unable to perform any form of gainful employment on a reasonably continuous basis, he or she may be placed in the status of total permanent disability. RCW 51.08.150.

- **Death Benefits.** A surviving spouse and the dependents of a deceased worker are entitled to monthly payments, and burial expenses not to exceed \$2,000 shall also be paid. RCW 51.32.050.

Once an injured worker's claim is closed, additional benefits may only be sought after an application to reopen is filed and granted. RCW 51.32.160. The worker has seven years from claim closure to file an aggravation application.

APPEALS PROCESS

In any given year, approximately 2,500 to 3,000 Industrial Insurance cases are appealed to the Board. Appeals from Department determinations to the Board follow two separate procedures. If the appeal is from a decision generated by the Office of Rehabilitation Review, then an expedited appeal may be taken under RCW 51.41. All other appeals follow the procedure in Chapter 51.52 RCW. The following highlights may be helpful to the new practitioner.

The expedited appeal under RCW 51.41.060—

- a. The worker or employer may appeal from a determination of *ineligibility* or an unacceptable vocational plan.
- b. Review is limited to matters of law.
- c. Hearings shall be held within 30 days of the appeal.
- d. Final decision must come within 30 days of the last hearing.
- e. Review to Superior Court is taken pursuant to RCW 34.04.

All other appeals to the Board. Chapter 51.52 RCW—

- a. A notice of appeal must be received within 60 days from the date of communication of the Department's Order. RCW 51.52.060.
- b. The Industrial Appeals Judge issues a Proposed Decision and Order at the close of Hearings. RCW 51.52.104.
- c. Any aggrieved party may file a Petition for Review within 20 days. RCW 51.52.105. (Except in expedited appeals.)
- d. The Board may deny the Petition and the Judge's Order

becomes final, or grant the Petition and issue its own Decision and Order. RCW 51.52.106.

- e. Attorneys' fees payable by the client for work before the Department or the Board are fixed by statute and limited to a reasonable fee of not more than 30% of the increased benefits secured by the attorney. RCW 51.52.120.

Appeals from Board decisions fluctuate from year to year, but they generally reflect about 10% of the total number of appeals at the Board. In 1982, there were 334 Superior Court appeals across the state.

Appeals to Superior Court. Chapter 51.52 RCW—

- a. The Department has no right to appeal except on questions of law. RCW 51.52.110.
- b. No additional testimony is taken and the record of Board proceedings is read to the trier of fact. RCW 51.52.115.
- c. Either party is entitled to a jury. RCW 51.52.115A.
- d. Attorneys' fees for work before the Superior Court are payable by the Department set by the court, if and when the accident fund is affected. RCW 51.52.120.

CAVEAT

This article gives only an overview of the industrial insurance law and cannot substitute for a careful study of the statute, administrative codes, and the accompanying case law.



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WORKERS' COMPENSATION

Third Party Actions

by John D. Fairley
and Meredith L. Lehr

Personal injury actions based on injuries covered by workers' compensation are controlled by special statutory procedures codified at RCW 51.24—the Third Party Chapter of the Industrial Insurance Act ("Act"). Lawyers engaged in personal injury litigation will likely encounter third party actions with some frequency, even if their practices do not include the substantive area of workers' compensation law. This article will briefly explain the operation of RCW 51.24, especially in light of recent legislative changes, and alert the private practitioner to some of the typical problems encountered in third party actions.

WHAT IS A THIRD PARTY CASE?

Since the adoption of the Act in 1911, an employer or co-employee of a worker injured in the course of covered employment has been immune from the worker's civil action for personal injury.¹ On the other hand, the Act has always contemplated that an injured worker² could pursue her cause of action against any third party responsible for her industrial injury. Such actions were to be pursued either in the worker's own right or by assignment to the Department of Labor and Industries ("Department") or self-insured employer.³ The principle underlying the Third Party Chapter is that the wrongdoer who caused the injury should ultimately be responsible for the resulting damages.

A "third party" is statutorily defined as anyone, not in the worker's same employ, whose negligence or wrong causes the worker's injury. RCW 51.24.030(1). New 1984 legislation broadly defines "injury" to include any physical or mental condition, including death, which is compensable under the Act. Motor vehicle operators, product manufacturers, landowners, and health practitioners are but a few of the potential tortfeasors who may be subject to third party actions by an injured worker.

Often the lawyer handling the personal injury does not realize that RCW 51.24 applies. Title 51 covers a myriad of occupations, activities, and conditions. Areas of coverage often overlooked include traveling to or from the job; com-

¹RCW 51.24.020 does permit actions by a worker against the employer for intentional injuries.

²For the purpose of this article the term "worker" includes any beneficiary of an injured or deceased worker.

³The role of the self-insured employer in third party actions is generally identical to that of the Department. As used in this article, where the context so requires, "Department" should be understood to include "self-insured employer."

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pany-sponsored social events; post-accident medical malpractice; and injuries occurring while on business trips, whether during employment hours or not. A high level of scrutiny is important, because a failure to reimburse the Department can have individual ramifications for the lawyer. See Section 7, *infra*.

THE WORKER'S ELECTION

The original Act provided that the injured worker could elect whether to receive workers' compensation benefits or pursue the third party. Laws of 1911, ch. 74, § 3. At present, the Act allows the worker to pursue the third party and also receive benefits. At the same time, the Department has a lien against any third party recovery to protect its right to reimbursement for benefits paid. RCW 51.24.060(2).

The worker who commences an action against the third party tortfeasor has, of course, elected to pursue the third party. The Department's practice, however, is to require the worker to complete an election form indicating his or her intentions with respect to a potential third party action. The form utilized by the Department offers two statutory options identified by the letters "A" and "B": a worker may either pursue the third party (option A) or assign the cause of action to the Department (option B). A failure of the worker to return the completed election form within sixty days following receipt operates as an automatic assignment of the cause of action to the Department. RCW 51.24.070(2). The Department may also force an assignment of the cause of action when it appears that the action is not being diligently prosecuted. RCW 51.24.070(2) and (3).

LITIGATION AND SETTLEMENT

When the worker elects to pursue the third party, the Department generally assumes a passive role in the third party litigation. The Department is entitled to a copy of any complaint which is filed and customarily files a Notice of Lien with the court to advise the parties that the action is subject to RCW 51.24. See RCW 51.24.080. The Act assumes that the Department will not otherwise participate in the litigation process.

As the provider of workers' compensation, however, the Department needs assurance that any settlement will be sufficient to cover both past and future claim expenditures. The term of art used to describe this total amount is "entitlement." RCW 51.24.090(1). The entitlement amount is used by the Department in two ways: first, to determine whether the settlement is valid under RCW 51.24.090, and second, to compute its proportionate share of attorneys' fees and costs. See Section 5, *infra*.

RCW 51.24.090 states that any settlement "which results in less than the entitlement . . . is void unless made with the written approval of the Department . . ." See *In re Estate of Boettcher*, 35 Wn. App. 178 (1983). This protects the Department against a "deficiency" settlement—one which is insuf-



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ficient to cover the entitlement.⁴ The Department interprets RCW 51.24.090 as referring to the net amount of the settlement, after deducting attorneys' fees, costs, and the worker's 25% share. It is this net amount which is then compared to the entitlement in order to determine the validity of the settlement.

The lawyer handling a third party action will therefore want to ascertain the worker's entitlement. For the worker whose claim has been closed, the entitlement usually equals the Department's claim costs. If the claim is still open, the entitlement amount will be the sum of accrued claim costs and estimated future costs. If the worker is receiving a pension, the present value of future pension benefits is added to the amount of benefits paid.

The lawyer can obtain information concerning accrued claim costs and entitlement amounts from the Third Party Section of the Department. Records of medical costs, time-loss payments, and disability awards are entered into the Department's computer, and are readily accessible. The lawyer should be aware that any claim cost quotation by the Department includes only costs known as of that time. The amount will change as benefits continue or as additional bills are paid.

⁴Under an earlier statute, "deficiency" settlements entered into without Department approval resulted in a waiver by the worker of further benefits. RCW 51.24.010.

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Claim costs will also increase if the claim is reopened. Since the amount of benefits which have been paid determines the amount to be reimbursed to the Department, the lawyer should regularly update claim costs and entitlement estimates. To aid computation of the proper distribution of the third party recovery, the Department will also provide the lawyer with an Option A worksheet upon request.

The Department will accept deficiency settlements in special circumstances. When a settlement offer would result in a deficiency, but in the lawyer's judgment the offer should be accepted, the lawyer should request settlement approval in writing, listing the reasons in support of acceptance of the offer.

DISTRIBUTION OF THE RECOVERY

Prior to 1977, the third party recovery was subject to a lien in favor of the Department up to the amount of compensation and benefits paid. The Department in turn paid a proportionate share of the attorneys' fees and costs incurred by the worker in making the recovery. RCW 51.24.010. Where the third party recovery did not exceed the Department's lien, however, the worker actually received nothing from the recovery.

This changed in 1977 with the adoption of RCW 51.24.060. Under this scheme, the Department no longer shared in attorneys' fees and costs. Instead, the worker was guaranteed 25% of the net recovery free and clear of any lien or offset against future benefits, and the Department took its lien interest subject to attorneys' fees and costs and the worker's share. Any amount above the sum of attorneys' fees and costs, the worker's 25% share, and the amount reimbursed to the Department for benefits paid was subject to offset against future benefits payable. This new law became effective September 21, 1977, and applies to any cause of action which arose on or after that date. RCW 51.24.900; *Whalen v. Department of Labor and Industries*, 35 Wn. App. 283 (1983).

The 1983 amendments to the Third Party Chapter returned the proportionate sharing of attorneys' fees and costs by the Department which existed under the pre-1977 statute but also retained the 25% guarantee to the worker. The 1983 amendments to RCW 51.24.060 apply to "all actions against third persons in which judgment or settlement of the underlying action has not taken place prior to July 24, 1983."

It is important to keep in mind the effective dates of these various legislative changes when determining which distribution scheme applies. Generally, the date of injury is the date the worker's cause of action arose. Under RCW 51.24.010, the Department will pay a proportionate share of attorneys' fees and costs, but there is no 25% guaranteed share for the worker. If the injury occurred on or after September 21, 1977, RCW 51.24.060 applies. The worker is guaranteed a 25% share of any net recovery. If the case was settled or tried to judgment on or after July 24, 1983, the Department will also pay a proportionate share of attorneys' fees and costs. In the majority of cases presently pending this law will apply.

THE DEPARTMENT'S LIEN

Pursuant to RCW 51.24.060(2), the Department's lien covers the amount of benefits the Department has paid. In practice, however, the Department reduces this amount by its proportionate share of attorneys' fees and costs.³ The Department's share of the third party recovery is the lesser of the worker's entitlement, or the balance of the recovery after deducting attorneys' fees, costs, and the worker's 25% share. The Department's proportionate share of attorneys' fees and costs is computed according to the following formula:

$$\frac{\text{Department's share of recovery}}{\text{Gross recovery}} \times \text{Attorneys' fees and Costs}$$

Through the years the Department's lien has remained inviolate. It is not subject to reduction when the third party recovery is insufficient to make the worker whole, *Department of Labor and Industries v. Dillon*, 28 Wn. App. 853 (1981), nor is it subject to reduction when the worker's third

³Indeed, in cases where the recovery and entitlement are quite large it is not uncommon for the Department's proportionate share of attorneys' fees and costs to exceed the lien, with a payment for the difference being made by the Department to the worker.

party damages were reduced by his or her comparative negligence. *Courtright v. Sahlberg Equipment*, 88 Wn. 2d 541 (1977). The 1983 amendments, however, allow the Department the discretion to compromise its statutory lien. RCW 51.24.060(3). The 1984 amendments specify some of the types of factors the Department should consider when presented with a compromise request. These include the ability of the third party to pay damages, whether the third party's liability is clear, and comparative negligence. The lawyer who believes a lien compromise is appropriate should submit to the Department a written request including the reasons in support of compromise.

SPECIAL PROBLEMS

The complexities of workers' compensation funding have created a special problem in third party actions involving self-insured employers. A worker receiving benefits from the self-insured employer may also be receiving benefits paid from Department administered trust funds (e.g., Supplemental Pension Fund). As a result, the third party recovery by a worker employed by a self-insurer may be subject to liens by both the self-insured employer and the Department. The 1984 amendments to the Act make the employer primarily responsible for monitoring the third party action, with the employer acting as the Department's agent to protect the Department's interest.

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Another complex area is the third party action involving multiple plaintiffs, *i.e.*, the wrongful death action for the benefit of a surviving spouse and children. *Each* beneficiary's share of any recovery must be considered separately as against *each* beneficiary's entitlement under the Act. *See, In re Estate of Boettcher, supra.* While a settlement "in gross" may appear adequate, it can result in a deficiency, thus voiding the settlement, once the recovery is divided among the competing beneficiary interests. To prevent this from occurring, the lawyer should determine each beneficiary's share in the gross recovery, and compare it to each beneficiary's entitlement before the settlement is concluded.

Structured settlements present problems both in valuation and the manner in which the Department's lien is satisfied. With respect to valuation, where a third party cause of action is settled for a combination of a cash lump-sum plus a right to future annuity payments, the Department reduces the future payments to present value for the purpose of computing the distribution shares. Problems also arise whenever the cash lump-sum is insufficient to satisfy the attorneys' fees and costs, the worker's share, and the Department's lien. Since the Department's lien attaches automatically to the third party recovery, *see, Glass v. Stahl Specialty Company*, 97 Wn.2d 880 (1982), the lawyer considering a structured settlement proposal should also ensure that the Department's right to reimbursement is taken into account.

LIEN ENFORCEMENT

The 1984 amendments to the Act codify the Department's practice of issuing a confirmation order at the conclusion of the third party action. A confirmation order will specify the amount which is to be reimbursed to the Department, the Department's proportionate share of attorneys' fees and costs, and the amount of the recovery subject to offset against future benefits. The order may be appealed to the Board of Industrial Insurance Appeals, as provided in RCW 51.52. The Department is provided with a summary procedure in Superior Court for enforcing its statutory lien.

The Department also takes the position that a lawyer who knew or should have known of the worker's obligation to reimburse the Department may be held independently liable for distributing a third party recovery without satisfying the lien. The 1984 amendments incorporate the Department's position by imposing a duty on any person who receives settlement funds to make the distribution required by statute.

CONCLUSION

It is hoped that this article will aid the private bar in developing a greater understanding of workers' compensation third party actions. Inquiries concerning this special area of industrial insurance law can be directed to the Third Party Section, Department of Labor and Industries, General Administration Building, Olympia, Washington 98504. □

A Prime Contractor's Rights Against Negligent Subcontractors

by William H. Taylor

A large office building was being constructed in downtown Seattle. The prime contractor subcontracted the exterior painting job to Jones Painting Co., whose painter, Max Klinger, was injured on the job. The negligence of both the prime contractor and Jones Painting Co. was a proximate cause of the injury. Klinger claimed and received benefits and compensation under the Industrial Insurance Act ("Act"), Title 51 RCW. He also commenced an action against the prime contractor and obtained a \$50,000 judgment.

Query: What rights of contribution and indemnity does the prime contractor have against the negligent employer under Washington law?

GENERAL RULE

Title 51 RCW provides the Act's benefits and compensation as the exclusive remedy for injured workers, and their beneficiaries, when an injury is sustained in the course of employment. RCW 51.24.010; RCW 51.32.010; *Thompson v. Lewis Cy.*, 92 Wn.2d 204, 208, 595 P.2d 541 (1979); *Sertz v. Industrial Ins. Comm'n.*, 91 Wash. 588, 158 P. 256 (1916).

The policy of the Act is to provide the employer with complete immunity from liability in tort in exchange for mandatory participation in industrial insurance. *Montoya v. Greenway Aluminum Co.*, 10 Wn. App. 630, 634, 519 P.2d 22 (1974); *Kelly v. Howard S. Wright Constr. Co.*, 90 Wn.2d 323, 339, 582 P.2d 530 (1978). "In effect, the Act 'immunizes' from judicial jurisdiction, all tort actions which are premised upon the 'fault' of the employer vis-a-vis the employee." *Seattle-First Nat'l Bank v. Shoreline Concrete Co.*, 91 Wn.2d 230, 242, 588 P.2d 1308 (1978).

An exception to the "exclusive remedy" general rule is created by RCW 51.24, the Act's Third Party Chapter. Where an "injury to a worker for which benefits and compensation are provided under this title is due to the negligence or wrong of a third person not in the same employ, the injured worker or beneficiary may elect to seek damages from the third person." RCW 51.24.030; Laws of 1984, ch. 218, § 3. Absent a deliberate infliction of injury by the worker's employer, RCW 51.24.020, such employer cannot be found liable in tort and there is no right to contribution pursuant to RCW 51.22.040. Laws of 1981, Ch. 27, § 12; *Glass v. Stahl Specialty Company*, 97 Wn.2d 880, 885, 652 P.2d 943 (1982).

INDEMNITY

Prime contractors have avoided the sub-contractor tort immunity through the use of express indemnity agreements. Where contribution is based in tort, indemnity is based on contract and may shift the entire burden of loss to another party. An indemnity claim is a separate cause of action not intertwined with the tortious incident. The Act does not prevent an employer from relinquishing its statutory immunity by contracting in writing with a third party in a manner that creates contractual liability for an employee's injuries. *Redford v. Seattle*, 94 Wn.2d 198, 204, 615 P.2d 1285 (1980).

However, indemnity agreements which seek to deprive an employer of his immunity under the Industrial Insurance Act are disfavored under Washington law. The agreement must be clear and unambiguous. *Calkins v. Lorain Div. Of Koehring Co.*, 26 Wn. App. 206, 209, 613 P.2d 143 (1980). Moreover,

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the legislature has statutorily limited the effect of the indemnity agreements involving construction contracts by declaring those

purporting to indemnify against liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the sole negligence of the indemnitee, his agents or employees [to be] against public policy and . . . void and unenforceable.

RCW 4.24.115. A common construction sub-contract form contains the following clause:

The SUBCONTRACTOR agrees to indemnify and save harmless the CONTRACTOR, its officers, agents and employees, from and against any and all suits claims, actions losses, costs penalties, and damage of whatsoever kind or nature, including attorneys' fees, arising out of, in connection with, or incident to, the work of this SUBCONTRACT, except that caused by the sole negligence of the CONTRACTOR. In the event of litigation between the parties to enforce the rights under this paragraph, reasonable attorney fees shall be allowed to the prevailing party.

This agreement is not in violation of RCW 4.24.115 because it excludes incidents due to the sole negligence of the contractor.

The indemnity agreement will be valid only if there is some

negligence of the injured worker's employer. The extent of such employer's indemnification, based on a percentage of its negligence, depends upon the express language of the agreement. An agreement excepting the "negligence and willful misconduct" of the indemnitee "third party" has been construed by the Court to require the injured worker's employer to make "contractual contribution" only for its own negligence. *Redford v. Seattle, supra*; *Jones v. Strom Construction Co.*, 84 Wn.2d 518, 527 P.2d 1115 (1974). The indemnity clause quoted above was interpreted by the Court in *Noia v. Ferrell-Penning, Inc.*, 36 Wn. App. 13, _____ P.2d _____ (1983) to exclude only the sole negligence of the "third party" indemnitee, and, therefore, the indemnitor was required to make full indemnification even though only partially at fault.

CONCLUSION

A prime contractor liable in tort for personal injury damages suffered by a subcontractor's employee may seek indemnity from the worker's employer only upon an express waiver of immunity in a written agreement which excludes the prime contractor's sole negligence. The subcontractor may limit its liability by restricting the indemnity agreement through language which excludes the prime contractor's negligence and thereby take advantage of the "contractual contribution" concept. ☐

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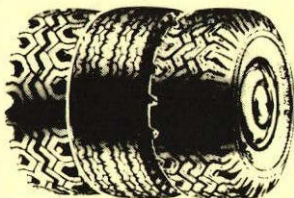
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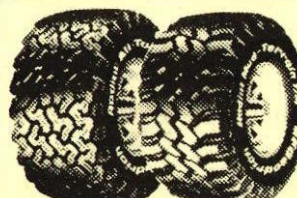
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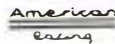
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Video de Novo

by Judge Gerry L. Alexander

Anyone who spends much time in court, lawyer or judge, is apt to develop a distaste for certain types of litigation. I would hazard the guess that appeals of decisions of the Board of Industrial Insurance Appeals to the Superior Court would be near the top of the list of the disfavored.

Why? Two reasons: As cases they can be deadly dull because of the way they must be presented to the trier of fact. More important, the procedure used at trial may not be a very satisfactory way to achieve a just result.

Is there a better way?

THE LABOR & INDUSTRIES APPEAL

For those who have not yet been introduced to the so-called Labor and Industries Appeal, let me explain the process. Fundamentally, the Industrial Insurance Act of Washington State, RCW 51.52, *et seq.*, is designed to provide compensation to a worker's family or dependents in the case of that worker's death, or to a worker who suffers occupational disease or injury in the course of employment. It is a *no fault* system.

The initial determination concerning entitlement and the amount of benefits to be paid is made by the Department of Labor and Industries. A worker, beneficiary, or employer aggrieved by a decision of the Department may appeal that decision to an independent tribunal, the Board of Industrial Insurance Appeals of the State of Washington. Proceedings before the Board are conducted in much the same manner as is a non-jury trial in Superior Court, and are presided over by Administrative Law Judges. A decision of the Board may be appealed to Superior Court and tried with or without a jury.¹

The hearing in Superior Court is *de novo*, "but the court shall not receive evidence or testimony other than, or in addition to, that offered before the Board." RCW 51.52.115. In

other words, the record made before the Board of Industrial Insurance Appeals is *read verbatim* to the trier of fact. (If no jury is requested, the trial judge reads the transcript.)

DEADLY DULL

Recently, I presided at a three-day jury trial of such an appeal, and after that experience, I became persuaded that the present procedure is a very unsatisfactory means of finding the truth.

First, it is terribly boring to judges, jury, and I suspect, counsel, to have a lengthy record simply read verbatim. It is difficult to recall testimony when it is read "cold" from a record. When one sees a witness and hears that person testify, at least two senses are alerted. On the other hand, if only one sense, "sound," is stimulated in a juror or judge, that person is less likely to recall the testimony at a later time with clarity.

It is not that the matters being testified to in a workers' compensation case are intrinsically boring. On the contrary, the testimony is very similar to that which we hear in a typical personal injury case. It has been my observation that as a general rule jurors and judges find that sort of testimony very stimulating.

It is the manner in which these cases are presented which makes them dull. In this regard one cannot fault counsel either. In my case example I had excellent attorneys on both

¹ Until 1939 the trial judge had some discretion over the calling of a jury, but in that year the legislature approved an amendment indicating that in appeals to Superior Court "either party shall be entitled to a jury. . . ." Laws 1939, Ch. 184 §1 P.579, RCW 51.52.115.

Hon. Gerry L. Alexander has served as a Judge in Thurston County Superior Court since June of 1973. He graduated from the University of Washington School of Law in 1964, and was engaged in private practice in Olympia from 1964 until 1973. He is a member of the Commission Established in the Court Improvement Act of 1984, and has served as a Trustee of the Superior Court Judges Association and as Chairman of SCJA's Improvement of Judicial Administration Committee.

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sides and they tried as best they could to make the proceeding come to life. But not even Sir Laurence Olivier could have made this record come to life by just reading it.

Bored jurors are not very likely to remember the facts being presented to them. Although we are striving for justice, not entertainment, the trier of fact will more likely recall evidence if he or she has become interested in the substantive testimony. In short, interest is better piqued if the testimony is presented effectively.

SEEING THE WITNESS

A second problem of the *de novo* record review is whether the trier of fact can effectively judge the credibility of a witness when witnesses are not permitted to be seen. Our Supreme Court has said that a witness's manner of testifying and demeanor must be considered by the trier of fact. *In Re Gallinger's Estate*, 199 P.2d 575, 31 Wn. 2d 823 (1948). The standard jury instruction in a typical civil trial states, in part, that the jury, as the sole judge of the credibility of the witnesses, may take into account the "witness' memory and *manner* while testifying." WPI 2.01. For obvious reasons, the standard instruction in a workers' compensation case, WPI 155.1, contains no provision for considering the manner of the witness.

Experience suggests that the demeanor of the witness may be more compelling to the trier of fact than the witness's actual words. Such things as body language, the length of the pause between question and answer, and the appearance of the witness are important factors that influence how a jury or judge will weigh his or her credibility. One must see the witness to judge these things fairly.

PROPOSAL: VIDEO

Having stated what I believe is a problem, it seems only fair that I propose a solution. I am not suggesting that the legislature do away with the *de novo* review in workers' compensation cases.² The trial *de novo* on the record in Industrial Insurance cases has been with us for a very long time, and I suspect that there would be little sympathy in the legislature for altering that procedure in any fundamental way.³

My proposal for change is simple: To authorize the

² The review in Superior Court of decisions of almost every other administrative tribunal is subject to a very different standard. Typically, whether the review is under our State's Administrative Procedure Act or another specific statute, the matter is before a judge without a jury and is limited to the record. The judge in such cases may not substitute his or her judgment on the facts, but must simply determine if the decision of the agency is arbitrary or capricious, contrary to law, or in violation of the Constitution. In APA cases the review of factual determinations is slightly broader in that the judge can reverse if it is determined that the decision of the Agency was "clearly erroneous." RCW 34.04.130. In the Labor and Industries appeal to Superior Court the trier of facts can substitute judgment on facts even though the decision of the Board is deemed *prima facie* correct.

videotape recording of the testimony of witnesses before the Administrative Law Judge, and to permit the playing of the televised record before the judge and jury on appeal. This procedure would preserve the trial *de novo* (which is considered an important part of the law of this state), but would address the problems inherent in the review of a cold record. It seems to me that by affecting this minor change, we could have the best of both worlds.

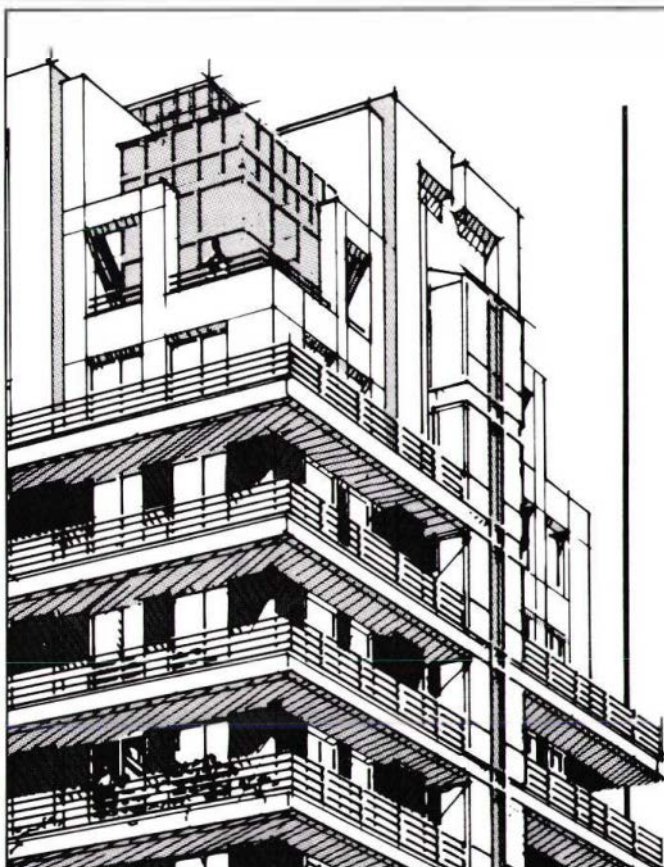
I have not made a study of the cost of this change, and I expect there would be some increased costs associated with the videotaping of Industrial Insurance hearings. However, we know that the technology exists to televise these hearings and the costs should decrease as equipment improves and becomes more commonly used. Televised depositions are often used in Superior Court trials today, and such depositions can be effective testimony. This is particularly true in cases where an expert witness is asked to refer to an exhibit in evidence such as an x-ray.

¹ The Industrial Insurance Act was initially enacted in this state in 1911, and from that year until 1927 the appeals were *de novo* in Superior Court but were not limited to the record. It was not until the 1927 session of the Washington legislature that the *de novo* review on the record on appeals to Superior Court became a part of the statute. From 1927 to 1939, however, the right of cross-examination was not limited to the record. Ironically, our juries and judges before 1939 enjoyed the advantage we no longer have of being able to observe the witnesses.

The change I suggest would probably require some modifications of existing statutes and rules. However, I think they would be minor. To require that a hearing be videotaped and the recording presented to the jury or judge in lieu of the reading of the transcript does not change the Industrial Insurance Act in any fundamental way. It simply provides a new and better way to present the record to the finder of fact. Perhaps some discretion could be given to the Board or Administrative Law Judge over whether or not to televise depending upon the seriousness of the matter, the magnitude of the claim, or the likelihood of an appeal from its decision.

It would not be necessary to record on videotape the opening statements and arguments of counsel, nor argument on motions or evidence questions. Furthermore, objections by counsel could be ruled on by the trial judge before the Superior Court trial, and any portion of the record ordered deleted could be edited out and the videotape played to the jury uninterrupted.

I'm certain the technical and procedural obstacles to this proposal can be overcome. The essential point is that we in the profession must avail ourselves of the tools which can aid us in the search for the sometimes elusive goal of truth and justice. Video technology is available today, and I urge judges, members of the bar, and lawmakers to harness that technology for the improvement of an important element in our system of justice. ☐



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The Board's Work



by Steven A. Reisler

BOARD SUPPORTS LEGAL GUIDE FOR FOREIGN BUSINESSPERSONS

BELLINGHAM, WA, June 15-16 -- In April, 1984, the International Law Committee approached the WSBA Board of Governors for seed money to

develop and publish a handbook entitled International Trade and Investment in Washington State: A Legal Guide for Foreign Businessmen. At that time, the Board unanimously approved the project in principle and asked that the committee work with the Bar staff to formulate an optimum publication plan.

After consultation with the WSBA's CLE Department, the committee requested a grant of \$5,200 to cover production costs for 1,500 copies of the book. The committee will also seek commercial sponsors for the publication. In exchange for a \$1,000 donation, sponsors would receive 300 copies of the publication to be distributed as each sees fit. Additional copies would be sold at a per unit price of \$3.50.

Eighth District Governor George Kargianis moved to grant the Committee \$5,200 to defray expenses of publication. After much group discussion, Kargianis attempted to withdraw the motion. He was prevented from doing so, however, because the motion's "second," Fifth District Governor Joe Delay, would not consent to the withdrawal. Delay said that \$5,200 is not an unreasonable investment in a worthwhile project which will help both the public and the practice of law.

Third District Governor Jim Vander Stoep urged a less munificent show of support. He argued that the publication of such a book would produce very slight benefits for the bar in general. Vander Stoep suggested that the principal beneficiaries of the project -- banks, commercial institutions and interested Bar sections -- should provide the bulk of the project's funding. For that reason, Vander Stoep recommended that the Board advance, rather than grant, the Committee \$5,200, with the understanding that the money would be returned to the Bar if the publication generates sufficient income.

Both Kargianis and Delay accepted Vander Stoep's recommendation as an amendment to the motion in chief. The amended motion to advance \$5,200 in publication costs then passed 9-1, with Second District Governor Ted Zylstra voting nay.

ABA DELEGATES APPOINTED

The terms of all WSBA delegates to the ABA House of Delegates expire at the end of

August. The incumbent Washington delegates are Bill Gates, Mike Hemovich, Neil Hoff and young lawyer delegate Paul Larson. Each delegate's term lasts two years.

Executive Director John Michalik advised the Board that in the past, any delegate who wished to retain his position would be reappointed by the Board. First District Governor Paul Gibbs noted, however, that it is sometimes better to get new blood into ABA activities, an opinion seconded by Governor Betty Bracelin of the Seventh District. On the other hand, Second District Governor Pat Comfort counseled that it sometimes takes a while before a state's delegate begins to rise up the ABA's ladder.

Although Washington's delegates' terms will expire in August, Governors Don Bond and George Kargianis expressed reluctance to make any delegate appointments absent a formal evaluation of what delegates to the ABA do and how incumbents have performed. "I cannot vote on these people blind," said Bond.

Delay moved to implement a policy that ABA delegates not serve more than three successive terms (six years). The motion carried 7-2, with Governor Loftus abstaining. The Board then unanimously reappointed Bill Gates to his second ABA delegate term and Mike Hemovich to his third term. With one abstention, the Board then voted to appoint Tom Loftus as ABA delegate in lieu of eight-year ABA veteran Neil Hoff. Paul Larsen no longer qualified for the young lawyers' delegate slot and he was replaced by Tacoma young lawyer John Ennis.

Without dissent, the Board also created a task force to study the activities of Washington's ABA delegates and whether the WSBA should instruct them on specific issues.

THE NEXT MEETINGS OF THE BOARD OF GOVERNORS WILL BE: July 12-14 (Long-range planning), North Shore Hotel, Coeur d'Alene, Idaho; August 17-18, Sunriver, Oregon; September 12-15 (Annual Meeting), Vancouver, B.C.

* * NOTICE OF YOUNG LAWYERS' SECTION ELECTION * *

Candidates for Y.L.S. Vice-president and 1st, 2nd, 3rd, 4th, and 5th District candidates for Board of Trustees are invited to submit candidacy statements for terms beginning September, 1984. Candidates must be section members and must submit candidacy statements on or before August 1, 1984. For further information, contact John Ennis, 1111 American Federal Building, Tacoma, WA 98402.

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Notes From the Academy

*Edited by Professor William B. Stoebuck
University of Washington School of Law*

CREDITOR-DEBTOR LAW. Homestead is not exempt from nonjudicial sale under deed of trust. Although homestead may extend to equitable interest of grantor of deed of trust and although under RCW 6.12.100 only certain kinds of judgments can be enforced against homesteads (e.g., judgments obtained by holders of vendor's lien or mortgage), nonjudicial sale to which grantor of deed of trust has consented is not a "forced sale" or "execution" from which homestead is exempted. *Felton v. Citizens Fed. Sav. & Loan Ass'n*, 101 Wn.2d 416 (1984).

—M.D. Rombauer

CRIMINAL LAW AND PROCEDURE. (1) Court order placing juvenile in foster home does not, without more, terminate her right to enter her parents' home. Such entry is therefore not "unlawful" for purposes of burglary statute. *State v. Steinbach*, 101 Wn.2d 460 (1984). (2) When defendant was advised of his rights, asked to see his parole officer, and made statement to her next day without being readvised, statement was not taken in violation of *Miranda*. But

even if *Miranda* was violated, statement can be used to impeach defense witness, whether defendant or another. *State v. Hubbard*, 37 Wn. App. 137 (1984). (3) Apparently, if police officer, who is lawfully patting down suspect for weapons, discovers unidentifiable bulge, officer may remove it to insure that it is not a weapon, even if it turns out to be bag of marijuana. *Comment*: Decision is unique and questionable. *State v. Adams*, 37 Wn. App. 94 (1984). (4) In trial for first-degree escape, requiring that defendant be "detained pursuant to a conviction of felony," division three of court of appeals holds that a felony conviction not set aside at time of escape cannot be collaterally attacked in escape trial itself. Court refuses to follow division one in *State v. Thompson*, 35 Wn. App. 766, 669 P.2d 1270 (1983). *State v. Gonzales*, 37 Wn. App. 251 (1984).

—G.R. Nock

REAL PROPERTY. Generally, one tenant in common may not maintain action against a defendant who is indebted to the cotenants without joining the other tenants in common. However, condominium unit owner who, though tenant in common with other unit owners as to a patio adjacent to her apartment, had exclusive right to possession of it as a "limited common area," RCW 64.32.010(11), could by herself maintain action for defective construction against builder. *Rouse v. Glascam Builders*, 101 Wn.2d 127, 677 P.2d 125 (1984).

—W.B. Stoebuck

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TORTS. (1) Employer who dispenses alcohol at party to obviously intoxicated employee may be liable to victim of automobile accident caused by employee. Court of appeals concludes that, while *Halvorson v. Birchfield Boiler, Inc.*, 76 Wn.2d 759, 458 P.2d 897 (1969), laid down rule that employer was not liable in such circumstances, state supreme court has created exception for "obviously intoxicated persons." *Halligan v. Pupo*, 37 Wn. App. 84 (1984). (2) Evidence that water main maintained by defendant burst without contributory fault of plaintiff was sufficient to permit inference of negligence under *res ipsa loquitur*. Special proof that water mains do not ordinarily break without negligence not required; it is a matter of common knowledge. *Metropolitan Mortgage & Sec. Co. v. Washington Water Power*, 37 Wn. App. 241 (1984). (3) Action against city and state for failure to install median barrier that might have prevented accident was governed by catch-all two-year limitation period of RCW 4.16.130. Three-year period of RCW 5.16.080 for "injury to the person" applies only to "direct" injuries. *Steele v. Bell*, 37 Wn. App. 337 (1984). (4) Plaintiff in defamation action against newspaper, constitutionally required to show "actual malice," must establish prima facie case by "evidence of convincing clarity" in order to avoid summary judgment. *Rye v. Seattle Times Co.*, 37 Wn. App. 45 (1984).

—R.L. Settle



Committee Reports

RESOLUTIONS COMMITTEE

Resolutions to Be Considered at the 1984 Annual Business Meeting of the Washington State Bar Association

According to the by-laws of the Washington State Bar Association, resolutions and reports received by the Resolutions Committee at least 60 days prior to the Annual Business Meeting are to be published in the *Washington State Bar News* prior to such Annual Business Meeting.

The Resolutions Committee earnestly solicits written responses and comments from members of the Association regarding proposed resolutions, and requests that any such responses and comments be submitted to the Resolutions Committee, c/o the Washington State Bar Association, 505 Madison, Seattle, Washington 98104. The function and purpose of the Resolutions Committee is to report to the membership of the Association upon each resolution, giving its recommendations, proposed amendments thereto, or comments thereon.

As announced in the last *Washington State Bar News*, the Resolutions Committee will hold a public hearing prior to the Annual Business Meeting. The hearing is scheduled for 10:00 a.m. on September 5 at the offices of the Bar Association, at the above address. Upon completion of business that day, or at the Chairperson's discretion, the hearing will be adjourned to reconvene on September 12 at 5:00 p.m., as shown in the convention program.

The advance public hearing session on September 5 has been scheduled in an effort to allow more time to those presenting views and in an effort to give the members of the Committee more time to consider the resolutions and to request any additional information which might be helpful to the Committee in making its recommendations on the resolutions to the membership. Proponents and opponents of resolutions are urged to attend the September 5 hearing if at all possible, and, if not, to present their views prior to that time in concise written form for consideration by the Committee at that hearing.

Presence at or absence from the September 5 hearing will not affect any right under the by-laws to present views when the public hearing reconvenes during the convention. At the reconvened hearing, preference in presenting views will be given to those with viewpoints which were not expressed at the September 5 hearing. Proponents and opponents will be given a reasonable opportunity to be heard at the advance session and at the reconvened hearing.

At the conclusion of discussion of each resolution at the reconvened hearing, the Resolutions Committee will recommend approval or rejection of any such resolution, with amendments if deemed appropriate.

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A copy of the by-laws regarding time deadlines and other information about submitting resolutions may be obtained from the Washington State Bar Association Office.

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July CLE: Family Law, Trial Advocacy, and Antitrust Law

*by John M. Redenbaugh
Asst. Director of CLE*

Do you presently handle family law-related matters as part of your practice? Are you contemplating taking domestic relations cases on an occasional basis? If your answer is "Yes" to either or both of these questions, then the FAMILY LAW MID-YEAR MEETING AND SEMINARS program should be of interest to you.

This year's Family Law Mid-Year will be held in Wenatchee on July 13 and 14 at the Wenatchee Convention Center, 121 N. Wenatchee Avenue. It has been approved by the Washington State Board of Continuing Legal Education for 13.50 hours of credit.

The program schedule will address a number of topics of interest to the family law practitioner, including, but not limited to, "Interviewing Clients," "Practical Negotiating Techniques in Family Law," "Use of Experts in Custody Cases," "Current Tax Considerations in Dissolutions," "Mediation," "New Issues in Property Division," and a "Case Law Update." The featured speakers include: **Donald W. Ferrell** (Short & Cressman, Seattle); **Daniel J. Radin** (Assistant Attorney General, Seattle); **Gary A. Riesen** (Foster, Riesen & Bridges, Inc., P.S., Wenatchee); **Robert C. Mussehl** (Mussehl, Rosenberg & Grieff, Seattle); **Gail L. Stagman** (Halvorson & Strong, Seattle); **Mark T. Patterson** (Attorney at Law, Everett); **Dr. Bill N. Friedrich** (University of Washington, Seattle); **Wendy Gelbart** (Wendy Gelbart, Inc., P.S., Seattle); **Peter G. Young** (Young, Monnette & Vandegrift, Wenatchee); **Gordon W. Wilcox** (Riddell, Williams, Bullitt & Walkinshaw, Seattle); **Professor Roland L. Hjorth** (University of Washington School of Law, Seattle); the **Hon. Anthony P. Wartnik** (Superior Court Judge, Seattle); **Stanley E. Stone** (Attorney at Law, Renton); **John E. Bridges** (Foster, Riesen & Bridges, Inc., P.S. Wenatchee); **Joan E. DuBuque** (Family Court Commissioner, Seattle); and **John W. Kydd** (Halvorson & Strong, Seattle). The Chairperson for this seminar is

Steven C. Lacy (Sperline & Lacy, Inc., P.S., Wenatchee).

The tuition for this course is \$145. For further information regarding the seminar, please contact Sherrie Hewitt, WSBA, 505 Madison Street, Seattle, WA 98104, telephone (206)622-6021.

On Friday, July 13, the **SKILLS TRAINING: TRIAL ADVOCACY** program will be presented in Seattle at the Red Lion Inn, Sea-Tac.

Featuring **James W. Jeans, Sr.**, Professor of Law at the University of Missouri/Kansas City, this full-day program will use lecture, demonstration, and example to illustrate the skills aspects of the craft of advocacy. The morning sessions will cover "Reorientation of the Trial Lawyer," "Tailoring the Suit," "Voor Dire," and "Opening Statement." Following the luncheon, Professor Jeans will address "Direct Examination," "Cross Examination," "Impeachment," and "Summation."

Skills Training: Trial Advocacy has been approved by the Washington State Board of Continuing Legal Education for 6.50 hours of credit. The tuition for the course is \$95. This entitles each registrant to admission, coffee service, and lunch. In addition, a course manual prepared especially for this program by Professor Jeans will be distributed to all registrants.

For further information regarding this program, please contact Debbie Kirchhauser, WSBA, 505 Madison Street, Seattle, WA 98104, telephone (206)622-6021.

On August 16 and 17, the UPS School of Law will present its third annual **PUGET SOUND SUMMER INSTITUTE**. This year the topic will be **ANTITRUST LAW**. The program will feature a faculty consisting of **Sanford M. Litvack** (former Assistant Attorney General in charge of the Antitrust Division, U.S. Dept. of Justice), **Jerome T. Greenan**, **Robert Lane**, **Dean Ernest Gellhorn** of Case Western University (author of *Antitrust Law and Economics*), U.S. District Court Judge **Barbara J. Rothstein**, and **Fredric C. Tausend**, Dean of the UPS School of Law.

To obtain a registration form and brochure for the Puget Sound Summer Institute, please contact Eva Wescott at the UPS School of Law, 949 Market, Suite 366, Tacoma, WA 98402, telephone (206)756-3480.

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Red Flag Seminar

July 27, 1984: Seattle 4.00

August 3, 1984: Spokane 4.00

August 10, 1984: Yakima 4.00

August 17, 1984: Tacoma 4.00

Liability Insurance Coverage Principles

August 10, 1984: Spokane 7.00

August 17, 1984: Seattle 7.00

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BENTON-FRANKLIN COUNTY

by **STEPHEN T. OSBORNE**

Memorial services were held May 3, 1984, for **Richard M. Knoebler, LeRoy M. Sullivan, Kenneth E. Serier, and John Wilkins**, who died this year. Presiding over the services were the Judges of the Superior Court for Benton and Franklin Counties, **Honorable Richard G. Patrick, Albert J. Yencopal, Fred R. Staples, Robert S. Day, and Duane E. Taber**. Eulogies were given by **Rembert Ryals, Thomas B. Gess, William L. Reinig, and Harvey Faurholt**.

The new (semi) officers for the Benton/Franklin County Bar Association are: **Donald B. Stancik**, President; **D. Wayne Campbell**, Vice President; and **George Fearing**, Secretary/Treasurer.

Steve Palmer, Leavy, Schultz & Sweeney, and his wife **Linda Waite** of Armstrong, Klym & Waite proudly announce the birth of their new baby, **Alison**. After a relatively uneventful delivery, Steve and Linda's relief was only exceeded by that of the doctor. Meanwhile, Linda's partner, **Art Klym**, and his wife were the proud parents of a new baby boy, **Graham Arthur Klym**. Their other partner, **Jan Armstrong**, must be wondering whether this is contagious. There is also a nasty rumor that **Andy Miller** and wife, who is also with child, will name a baby boy **Daschell**. Could anyone do such a thing to a defenseless baby?

The Legal Beagle softball team is off to another great start and is undefeated after its first two games. On a more somber note, former Beagles **Mark Kuffel** and **Joe McGough** both hung up their spikes following knee surgeries resulting from injuries last season. Second baseman, **Jay "Flynn" for the Defense** was ecstatic over the successful "Fran-a-Glove" campaign last year which resulted in the replacement of **Fran Forgette's** 28-year-old baseball glove. Flynn announces his next target is **Al Mouncier**, who is playing with a glove older than **Mike Johnston**.



Finally, **Tom Roach** joins brothers **Jerry** and **Pat** at Campbell, Johnston & Roach in Pasco. I wonder if anybody has told Campbell and Johnston that the vote is now 3 to 2.

PIERCE COUNTY

by **ROBERT W. MARSDEN**

Washington Husky basketball coach **Marv Harshman** was the featured speaker at the inaugural luncheon meeting of the Tacoma-Pierce County Bar Association, held at Tacoma's Doric Hotel on May 17. The meeting was fairly well attended and provided a pleasant diversion from the daily routine. Until further notice, the monthly meetings of the Tacoma-Pierce County Bar Association will be luncheon-type meetings in the downtown Tacoma area.

The "hot" news of late is the fire that practically gutted the Tacoma offices of Legal Messengers, Inc., during the early morning hours of May 18. Although the fire caused an estimated \$120,000 to \$150,000 damages, no attorneys' documents were destroyed. However, some documents did suffer sufficient smoke damage to make them unacceptable to the Court. Later, during the day of the fire, LMI was still in operation, but from the parking lot adjacent to the burned offices. And talk about professional courtesy, LMI has relocated temporarily in the offices of a competitor, ABC Messenger Service, at 943 Tacoma Avenue, Tacoma.

Gary A. Burns, who was associated with the law firm of Gordon, Thomas, Honeywell, Malanca, Peterson and O'Hern, has recently become a partner with the law firm of Anderson, Caraher, Brown and Burns.

Thirty-one new Pierce County lawyers were sworn in as members of the Bar during ceremonies on May 22 at the County-City Building in Tacoma. The Honorable **James P. Healy** presided over the swearing-in ceremonies.

The first meeting of the newly formed Tacoma-Pierce County Bar Association Labor Law Section was held on May 23.

Gary H. Branfeld, chairman of the Labor Law Section, has extended an open invitation to all labor law practitioners to join.

If **Herb Gelman** did not have any bad luck, he would not have any luck at all. Gelman recently returned from a week of skiing at South Lake Tahoe and, although he reports the skiing was great, he managed to break a foot as a result of a tumble in one of the casino parking lots. After returning home, he discovered that he had been burglarized. The burglars apparently did not want to spend a lot of time opening the Gelman home safe, so they merely removed the safe from the wall. Sometimes it just does not pay to leave home.



Hon. Robert R. Beezer

Hon. Robert R. Beezer Joins Ninth Circuit

The Hon. Robert R. Beezer, former member of the State Bar Board of Governors and a Seattle attorney, was invested as a United States Circuit Judge for the Ninth Circuit on Friday, May 4, 1984.

The Hon. J. Blaine Anderson, also of the Ninth Circuit, presided at the investiture ceremony, which was held in the U.S. Courthouse in Seattle. The Hon. Eugene A. Wright, Senior Circuit Judge, administered the oath, and the Rev. Arnold R. Beezer, Jr., S., Ph.D., gave the invocation.

Remarks were provided by John Gavin, representative to the American Bar Association Committee on the

News from the Court of Appeals

The presiding Chief Judge of the Washington State Court of Appeals says he will not be a candidate for reelection next fall. Harold J. Petrie, 66, one of the original 12 members appointed to the court when it was created in 1969, said he plans to step down permanently from the bench when his term in Division II expires next January.

In other news, Division III of the court has announced the appointment of **Frank V. Slak, Jr.**, as the court's second Commissioner and **Paul J. Wasson** as Clerk of the Court/Staff Attorney, beginning June 1, 1984.

Federal Judiciary, **Robert R. Redman**, State Bar President, **James S. Turner**, President of the Seattle-King County Bar Association, and **Fredric C. Tausend**, Dean of the University of Puget Sound School of Law and a partner in the law firm of Schweppe, Krug, Tausend & Beezer, P.S.

Born in Seattle in 1928, Judge Beezer attended Seattle schools and studied at the University of Washington until he was commissioned to serve with the U.S. Marine Corps Reserve in 1951. After two years active duty, he resumed his studies at the University of Virginia, earning a L.L.B. from the Law School in 1956. Judge Beezer returned to his native state and was admitted to practice in Washington later that year. He was for many years a partner in what is now the Seattle firm of Schweppe, Krug & Tausend, P.S. He also served for 17 years as Judge pro tem for the Seattle Municipal Court.

His professional activities have included a term as President of the Seattle-King County Bar Association from 1975 to 1976, and as seventh congressional district representative to the State Bar Board of Governors from 1980 to 1983. He has also served as an alternate member of the Judicial Qualifications Commission, and as a member of the Washington Ethics Advisory Committee of the Supreme Court.

DISCIPLINE

Suspended

Spokane attorney **Richard P. Solberg** was suspended from the practice of law by order of the Supreme Court entered May 16, 1984, and effective immediately. This suspension was for Mr. Solberg's failure to cooperate, and will continue pending submission of further information to the Washington State Bar Association and further order of the court.

Reprimanded

Olympia lawyer **John S. Lynch, III**, has been ordered reprimanded pursuant to a stipulation for discipline. The stipulation was based upon Mr. Lynch's neglect of a legal matter and failure to carry out a contract of employment, which resulted in a dismissal of his client's case because the statute of limitations had run.

Auburn attorney **E. Paul Schumann**

has been ordered reprimanded after a hearing. The discipline was based on findings that Mr. Schumann failed to withdraw from a dissolution proceeding when discharged. He subsequently signed a dissolution decree and property settlement for his client, and inserted in it a judgment for his fee to which his client had not previously agreed.

Seattle attorney **John C. Stephenson** was ordered to receive two reprimands pursuant to a stipulation for discipline, which was accepted by a Review Committee of the Disciplinary Board on April 27, 1984.

Mr. Stephenson had received funds from a settlement of a personal injury matter and was ordered to deposit a certain portion in a blocked savings account or money market account. He deposited less than the court ordered, and disbursed to himself and others more than the costs he had claimed in an affidavit supporting his motion for disbursement. His expenditures later received court ap-

proval, after a trial inquiring into the propriety of the transactions.

His failure to deposit all of the funds which were ordered blocked, and his disbursement to himself of more than the court had ordered, was found to merit two formal reprimands.

Censured

In April, 1984, Spokane attorney **Riner E. Deglow** received three Letters of Censure pursuant to a stipulation approved by a Review Committee. Two of the censures were based on client complaints that Mr. Deglow had agreed to institute lawsuits, had accepted either retainers or payments for costs, and had then failed to pursue the legal matters. The third letter arose from Mr. Deglow's failure to appear on behalf of his client in a bankruptcy matter, and failure to act promptly to recover the client's garnished wages.

Seattle attorney **William James Denver** was ordered to receive two Letters of Censure, pursuant to a stipulation approved by a Review Committee of the Disciplinary Board on April 27, 1984. The discipline was based on Mr. Denver's representation of multiple clients with conflicting interests, his failure to carry out the objective of one of the clients, and his failure to cooperate with the Bar Association's investigation of the client's complaint.

Bellevue attorney **Brett L. Francisco** has been ordered censured by the Disciplinary Board for failure to file a timely trust account affidavit for the year 1982.

In April, 1984, Seattle attorney **Anthony Savage, Jr.**, received a Letter of Censure for neglect of a legal matter and for violation of the trust account rules. The discipline was entered pursuant to a hearing officer's finding that in the early 1970s a client, who was given a one-year deferred sentence and ordered to pay costs and restitution, gave Savage substantial amounts of money to be paid to the court. Savage failed to make the payments and failed to keep the money in his trust account or to notify the client of the receipt of the funds. Savage also failed to pay the money to the court when a bench warrant was issued for the client's arrest.

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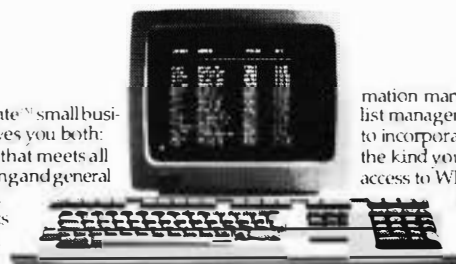
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background preferred. Major Northwest consulting firm. Reply to Box 243, WSBA.

Downtown Seattle firm specializing in tort litigation, primarily defense, is looking for a litigation specialist. Must have at least five years of practice and have a demonstrated ability to try civil jury cases. Reply with resume to Box 256, WSBA.

Expanding 30-lawyer firm is accepting applications for an associate position in its business/corporate department. Applicants with a strong interest and/or background in business, tax, and/or real estate law are encouraged to apply. The available position does not require litigation skills. Send resumes to Box 248, WSBA.

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Excellent opportunity for associate in small litigation firm. One-two years experience. Good academic credentials and excellent writing skills. Salary negotiable. Submit resume and writing sample. Reply to Box 261, WSBA.

Seattle firm has position available for attorney having significant civil jury trial experience. Duties will include substantial work in the defense of injury claims. Excellent opportunity and future partnership potential. Reply to Box 262, WSBA.

Attorney with 0-2 years experience or interest in real estate and/or securities wanted for young 10-attorney Seattle firm with high quality local and national real estate practice. Please contact Haggard, Tousley & Brain, Suite 1700, 720 Olive Way, Seattle, Washington 98101-1861.

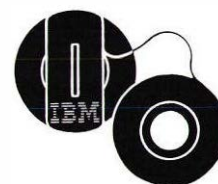
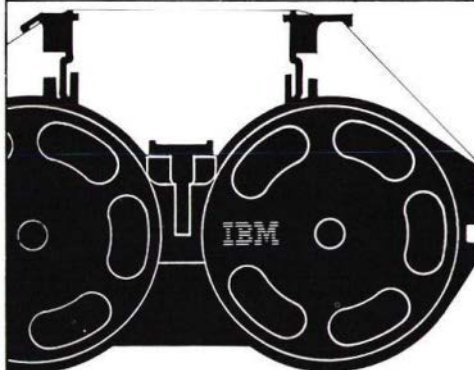
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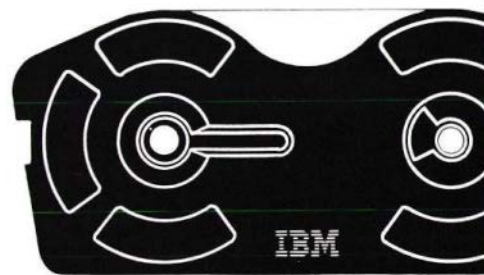
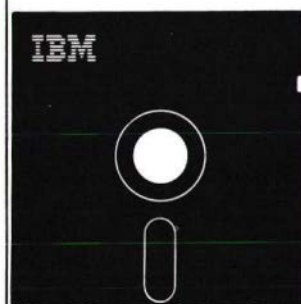
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Growing Snohomish County law firm seeks associate with 2-5 years experience, including litigation. Reply to Box 269, WSBA.

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Multifamily Foreclosure Commissioner for U.S. Department of Housing & Urban Development. See Federal Register, Vol. 49, No. 38, Friday, February 24, 1984, pages 7072-7080. Contact Geoff Patton for details, (202)755-5351. WSBA Placement Office has a copy of the regulations.

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Appraisal services of household contents and antiques for family estate divisions, insurance updates or marketing studies. Thomas F. Ris, Ph.D., Lee Nokleby, M.A., Saturdays Antiques & Appraisal Service, 10118 36th Street S.E., Everett, WA 98205. Seattle telephone (206)283-5853. Everett telephone (206)334-2382.

WILL SEARCH

Will sought for Ernest H. Olson, who resided at Snohomish, Washington, until his death on May 6, 1982. Contact Lee B. Tinney, Attorney, 3305 Oakes Avenue, Everett Washington, 98201, (206)252-5161.

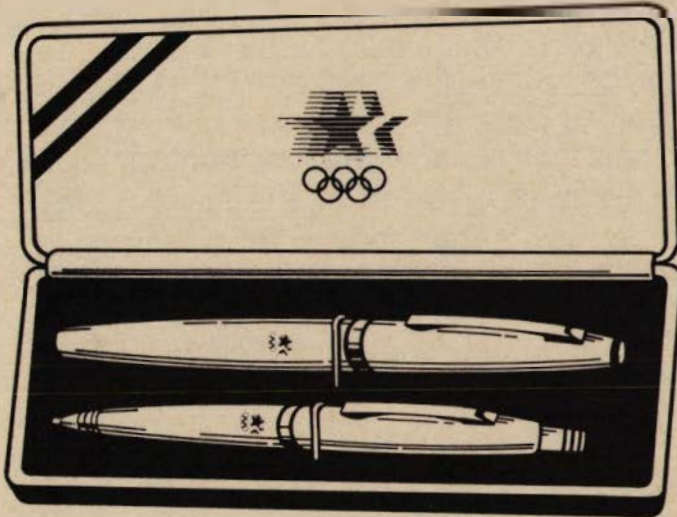
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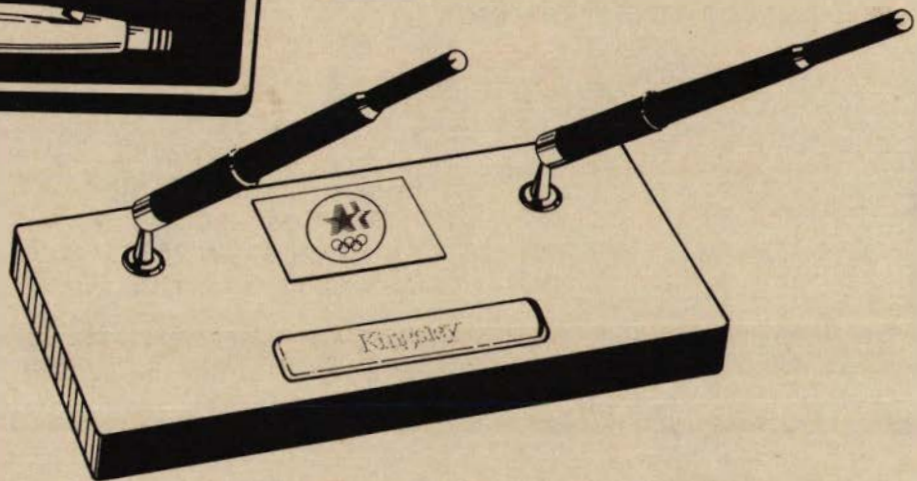
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