Letter to Judge Ogawa
Edward Johnston
1540 N. Nye St.
Toledo, OR 97391

June 7, 2006

Jenny Ogawa
ALJ
Workers Compensation Board
2601 25th St. SE, Ste 150
Salem, OR 97302

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Salem, OR 97302

Re: Claimant Edward M. Johnston
WCB Case No: 05-08315
Claim No: 607-749910
DOI DOI: 07/28/01
Date of Hearing March 23, 2006

And:
WCB Case No. 03-04430
Claim No. C604255450
DOI: 11/04/1989
WCD File No. G537856

Dear Judge Ogawa:

First, despite attorney Curey's comments, I do not intend to relinquish any rights or claims I have or may have stemming from the first injury, so I am putting that case number and information at the top of this letter. As the medical harms from the two incidents are interwoven, and that was the original injury, and the one for which Liberty gave me a “totally disabled" status in 1990, I do not see the point in separating the cases, pretending the earlier one did not happen or depriving me of any rights or funds I may be owed from it.

I have received the WCB Board Review Staff letter dated May 30 returning jurisdiction to you and do not contest that. But before you issue your Order on Reconsideration, there are some points I'd like to make.

Dr. Hacker recommended surgery on C4-5 and C5-6 in 1997, and that became the first surgery. Liberty refused to accept 4-5 as part of the original injury, though all evidence showed that it and 5-6 were part and parcel of the same original injury - along with a severe back and closed head injuries (the last of which is still not addressed). All this is in the evidence, and you can and should take it into consideration. Ms. Curey's assertion that nobody is disputing the severity of my

injuries is absurd, when that is exactly what she is disputing.
I have had a severe neck injury and only somewhat less severe back injury since the Nov. 4, 1989 original injury and then the April 27, 1990 12-man brawl on top of that. All that is in the record, and shows that my injuries stem chiefly and primarily from the original injury.

I paid into the system and expected the system to work for me and other Oregonians, and the injured workers are the ones treated like a criminal, without medical service, compensation or justice. If it wasn't for State Senator Gary George arguing for me to get the surgeries that I got, I would not be alive today. Perhaps that is what the insurers want, so as to keep the costs down. I am a living example of this.

My legs, neck and back are getting only more painful to move; I get no medical care or medication unless I can come up with the money - the system does not work for me. You can change that. I have to question why we, as workers, must pay towards this system when it seems designed to take funds from workers in but not pay out funds when they are injured. If someone says I am whining or making it up, direct them to look over the file - I release it to public view as public record - you have. Yet today we are still disputing the original injury, while all the facts and evidence show I am the victim of the workers compensation system.

I must also comment on Ms. Curey's attempt to misread my arguments about the comparative weight of evidence from the medical arbiter, Dr. Throop, and my own physicians, Dr. Hacker, Dr. Bear and Dr.
Theuson. I am not saying merely that the greater amount of space their reports on me by itself took up makes them better able to assess my injuries. I am saying that it indicates that they did more work.
It is not "mere" length of the medical reports involved, as Curey suggests, but the amount of detailed, specific medical work, testing, exams, analysis and conclusions that went into and required those longer medical reports.

Curey says that further argument should not be allowed, but I do not see how you could reject hearing (or reading) this argument above, when it is in direct response to your comments about the relative weight of the medical analyses and when you specifically indicated I and Curey should address that very question.

I have not referred to the particular pieces of evidence by number because I do not - unlike Liberty
- have the huge resources to hire an attorney with a legal secretary to manage all the evidence, let alone pay for an office to keep it all neatly filed and organized in. I ask that you review the documents I cited - there were not very many and they are in the file - to assess the validity of what I have argued. (Thank you.)

She also would ignore what she terms "the multiple medical records, Mires and the like" and "multiple conditions not claimed or accepted under this claim"
I have made in my last letter to you. Again, you yourself redefined the scope of the issue to include anything that would tend to show that Drs.
Hacker, Bear and Theuson have made better, more precise and more detailed medical assessments than did the medical arbiter dependent on the insurer’s good will for his income. Given that, I have to provide all evidence showing that they know me and my

medical condition and history better than Dr.
Throop, that they did a more competent and more detailed medical examination of me, and that their work should be given much more weight than that done by a hireling for the insurance company that can, if he displeases them, reject his services.

By the way, speaking of evidence, I remind you that it was - despite all their resources - Liberty, not I, that for several years lost, misplaced or conveniently just forgot the location of some important evidence in this case. These included several MRI text result films. I hereby move for sanctions against Liberty for the negligent loss or deliberate destruction of evidence in this case, and for an award of monetary damages to me, and punitive damages, too. How can you treat evidence from a company that loses key evidence as credible?

Curey wrote that I argued "that Dr. Throop's opinion is not persuasive because it does not reference other cervical, lumbar and thoracic findings made by Dr. Bear." And it is true that I made that argument.
But what she omits is that I made that argument as only one part of a larger argument that showed that Drs. Hacker, Bear and Theuson did much more work on specifically the accepted conditions and on the unaccepted (or, to be precise, originally accepted, with the "totally disabled" original finding) ones as well - in short, that they simply did a much better, more thorough job, on the all conditions generally. Curey omits that part of the argument.

Curey notes your detailed legal analysis and 13-page Opinion and Order. You did not invite her or me to comment on that, except to the question of the relative weight of the hireling doctor versus Drs.
Theuson, Bear and Hacker. That is what I have done, and she has not done.

Also, Dr. Throop recommended my going back to work.
With three other doctors disagreeing, which, if you were me, would you choose to follow? And with Throop’s recommendation, how can Curey say that she is not contending against the true extent of my medical injuries. If Dr. Throop is a doctor at all, he knows his recommendations will put me back on the operating table, or dead or paralyzed, in a matter or a few years or months. What kind of doctor would sign the death certificate of living man? And why should a court give weight to this man's claim to medical - or human - competence, when he has, by that recommendation, basically violated his medical oath to help the sick and wounded?

Sincerely,

Edward Johnston