



# Washington Court of Appeals refuses to expand 'Cockle Benefits'

By John M. Zanetti • February 6, 2015

On October 6, 2014, in a decision notable for its thoroughness, the Washington Court of Appeals declined an invitation to expand the list of what should be included in calculating workers' compensation payments.

As many in the workers' compensation field are already aware, in a momentous 2001 case, *Cockle v. Department of Labor & Industries*,<sup>1</sup> the Washington Supreme Court decided that the value of employer-paid healthcare benefits should be included in the calculation of a worker's time loss and loss of earning power benefits. Since then, these benefits have been popularly dubbed "Cockle Benefits" in both court decisions and within the industry.

Earlier this fall, in *Yuchasz v. Department of Labor & Industries*,<sup>2</sup> the Court of Appeals refused petitioner Yuchasz's request to include the value of gasoline paid for by his employer to use the company van in calculating Yuchasz's loss of earning power benefits. In doing so, the Court rejected Yuchasz's argument that the specific language of RCW 51.08.178 supports including the value of the gasoline. Perhaps somewhat ambiguously, the disputed provision states that the benefit calculation "shall include the reasonable value of board, housing, fuel, or other consideration of like nature..." (emphasis added). Yet the Court did not find Yuchasz's argument convincing. Using the language of the Cockle decision, the Court noted that, unlike fuel to heat a home, the "value of gasoline for the company-provided vehicle is a fringe benefit that is not crucial to the worker's health or survival."

For employers, *Yuchasz* represents a fortunate decision refusing to expand Cockle Benefits beyond employer-paid healthcare benefits. While workers' attorneys will continue to look for ways to increase workers' compensation payments, *Yuchasz* may serve as a warning sign to lower courts and administrative agencies that any efforts to glean additional value in RCW 51.08.178 will be met with a good deal of skepticism.

If you or the employer you represent are facing a similar issue, our attorneys would be happy to discuss the impact of this case on any particular claims with which you may be dealing. ■



John M. Zanetti is an attorney at Reinisch Wilson Weier PC. He may be reached at 503.452.7264 or johnz@rwwcomplaw.com.

**Yuchasz represents a fortunate decision refusing to expand Cockle Benefits beyond employer-paid healthcare benefits**

<sup>1</sup> 16 P.3d 583 (2001)

<sup>2</sup> 335 P.3d 998 (Wash. Ct. App. 2014)