

62, 1933

In the Privy Council

ON APPEAL FROM THE COURT OF APPEAL
FOR BRITISH COLUMBIA

BETWEEN:

MERRILL RING WILSON LIMITED, ET AL
Plaintiffs (Appellants)

—and—

WORKMEN'S COMPENSATION BOARD
Defendant (Respondent)

RECORD OF PROCEEDINGS

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FOR BRITISH COLUMBIA

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Approved

"C. W. Craig"
for Respondent.

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**In the Supreme Court of British
Columbia**

No. M. 106/32.

BETWEEN:

MERRILL RING WILSON LIMITED, et al

Plaintiffs

—and—

WORKMEN'S COMPENSATION BOARD,

Defendants

RECORD
In the
Supreme Court
of British
Columbia
No. 1.
Endorsement
on Writ
(Action No. 1.)
21st January,
1932.

10

No. 1

(Action No. 1)

ENDORSEMENT ON WRIT

The Plaintiff's claim is for an injunction to restrain the defendants, its agents and servants and every of them from issuing any certificate under section 37 of the Workmen's Compensation Act in respect of the assessment numbered fifth and sixth for 1931 and from filing with any District Registrar of the Supreme Court or with any Registrar of any County Court any such certificate or any copy thereof.

RECORD
 In the
 Supreme Court
 of British
 Columbia

No. 2.
 Endorsement
 on Writ
 (Action No. 2.)
 9th February,
 1932.

In the Supreme Court of British Columbia

No. M. 248/1932

BETWEEN:

MERRILL RING WILSON LIMITED, et al

Plaintiffs

—and—

WORKMEN'S COMPENSATION BOARD,

Defendants

No. 2

10

(Action No. 2)

ENDORSEMENT ON WRIT

The Plaintiffs' claim is for:

1. A declaration that the defendant has neglected for the years 1925 to 1931, both inclusive, to create and maintain an adequate accident fund in respect of Sub-class 2 of Class 1 as prescribed by the "Workmen's Compensation Act."

2. A declaration that the defendant has wrongfully allowed a deficit of more than \$500,000 to accumulate in the compensation funds of Sub-class 2 of Class 1 by reason of the failure of the defendant to comply with the prescriptions of the "Workmen's Compensation Act."

20

3. A declaration that the defendant is bound in each calendar year to assess and levy upon and collect from the employers in said Sub-class 2 of Class 1 sufficient money by an assessment rated upon the payroll of such calendar year to provide for all accidents occurring in that year.

4. A declaration that the defendant is not entitled to pay out of the moneys so collected in any calendar year compensation for accidents occurring in previous years.

30

5. A declaration that the defendant is not entitled to assess against the said Sub-class 2 of Class 1 the amounts unpaid by any defaulting employers in respect of unpaid assessments.

6. A mandamus to compel the defendant to discard its present wrongful methods of assessment and account, and to adopt correct methods in conformity with the prescriptions of the "Workmen's Compensation Act" and to make all necessary refunds.

RECORD

In the
Supreme Court
of British
Columbia

No. 2.
Endorsement
on Writ
(Action No.2.)
9th February,
1932.

(Cont'd)

RECORD

In the
Supreme Court
of British
Columbia

No. 3.
Order Consoli-
dating Actions
10th February,
1932.

IN THE SUPREME COURT OF BRITISH COLUMBIA

No. 3

ORDER CONSOLIDATING ACTIONS

No. M. 106/1932.

BETWEEN:

MERRILL RING WILSON LIMITED, LAMB LUMBER
COMPANY LIMITED, BLOEDEL STEWART &
WELCH COMPANY LIMITED, THOMSEN & CLARK
TIMBER COMPANY LIMITED, MERRILL RING LUM- 10
BER COMPANY LIMITED, B. & K. LOGGING COM-
PANY LIMITED, EARLE & BROWN LUMBER COM-
PANY LIMITED, DISCOVERY PASSAGE LOGGING
COMPANY LIMITED, ELK RIVER TIMBER COM-
PANY LIMITED, WHITE ROCK TUG COMPANY
LIMITED, VANCOUVER BAY LOGGING COMPANY
LIMITED, GUSTAVSON BROS. LOGGING COMPANY
LIMITED, BROUGHTON LOGGING COMPANY LIM-
ITED, ALBERNI PACIFIC LUMBER COMPANY LIM-
ITED, GREAT CENTRAL SAWMILLS LIMITED, 20
BURNS & JACKSON LOGGING COMPANY LIMITED,
and CAMPBELL RIVER TIMBER COMPANY LIM-
ITED, suing on behalf of themselves, and all other members
of sub-class 2 of Class 1 of the industries under the "Work-
men's Compensation Act",

Plaintiffs,

AND:

WORKMEN'S COMPENSATION BOARD,
Defendants,

—and—

No. M. 248/1932. 30

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

MERRILL RING WILSON LIMITED, MERRILL &
RING LUMBER COMPANY LIMITED, B. & K. LOG-
GING COMPANY LIMITED, DISCOVERY PASSAGE
LOGGING COMPANY LIMITED, EARLE & BROWN
TIMBER COMPANY LIMITED, THOMSEN & CLARK
TIMBER COMPANY LIMITED, LAMB LUMBER COM-

10 PANY LIMITED, ELK RIVER TIMBER COMPANY LIMITED, ALBERNI PACIFIC LUMBER COMPANY LIMITED, VANCOUVER BAY LOGGING COMPANY LIMITED, GUSTAVSON BROS. LOGGING COMPANY LIMITED, BLOEDEL STEWART & WELCH COMPANY LIMITED, SISTERS CREEK LOGGING COMPANY LIMITED, GREEN POINT LOGGING COMPANY LIMITED, CAMPBELL RIVER TIMBER COMPANY LIMITED and HILLCREST LUMBER COMPANY LIMITED, suing on behalf of themselves, and all other members of sub-class 2 of Class 1 of the industries under the "Workmen's Compensation Act",

Plaintiffs,

AND:

WORKMEN'S COMPENSATION BOARD,
Defendants,

BEFORE THE HONOURABLE THE CHIEF JUSTICE IN CHAMBERS	}	WEDNESDAY, the 10th day of February, A.D. 1932.
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20 THE APPLICATION of the above named plaintiffs for an order that the interim injunction made in the action firstly above mentioned on the 21st day of January, A.D. 1932, should be continued until the trial of this action having come on for hearing on the 25th day of January, A.D. 1932, and the 1st day of February, A.D. 1932, and having been adjourned for further hearing to this day, and now coming on to be heard: UPON HEARING Mr. E. C. Mayers, K.C. and Mr. C. M. O'Brian, K.C., of Counsel for the plaintiffs and Mr. C. W. Craig, K.C. and Mr. E. N. Brown of Counsel for the defendant, and UPON READING the order made by

30 the Honourable the Chief Justice herein dated the 21st day of January, A.D. 1932, the affidavits of Albert P. Foster and Reginald V. Stuart, sworn the 21st day of January, A.D. 1932, and filed, and the Exhibits therein referred to, the affidavit of Clarence MacLean O'Brian, sworn the 22nd day of January, A.D. 1932, and filed, the affidavit of Hugh Boyd Gilmour, sworn the 30th day of January, A.D. 1932, and filed, and the Exhibit therein referred to, the affidavit of Foster Parker Archibald, sworn the 30th day of January, A.D. 1932, and filed, the transcript of the evidence given by the

40 said Hugh Boyd Gilmour and Foster Parker Archibald upon their oral cross-examination before the District Registrar on the 2nd and 6th days of February, A.D. 1932, pursuant to the order of the Honourable the Chief Justice dated the 1st day of February, A.D. 1932, the affidavit of William McKnight Meston, sworn the 9th

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In the
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RECORD
 In the
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 of British
 Columbia
 No. 3.
 Order Consoli-
 dating Actions,
 10th February,
 1932.
 (Cont'd)

day of February, A.D. 1932, and filed, and the Exhibit therein referred to, and the affidavit of Albert Percy Foster, sworn the 10th day of February, A.D. 1932, and filed, and the Exhibit therein referred to: AND UPON HEARING what was alleged by Counsel as aforesaid: AND the plaintiffs by their Counsel undertaking to abide by any order this Court may make as to damages in case it should hereafter be of the opinion that the defendant has sustained any by reason of this order which the plaintiffs ought to pay.

IT IS ORDERED and DIRECTED that the defendant, its agents, servants and every of them, be restrained, and an injunction is hereby granted restraining it, them and every of them, from issuing any certificate under Section 37 of the "Workmen's Compensation Act", in respect of the assessments numbered fifth and sixth for 1931, and also be restrained, and an injunction is hereby granted restraining it, them and every of them, from filing with any District Registrar of the Supreme Court or with any Registrar of any County Court any such certificate or any copy thereof, or in any manner proceeding to collect or enforce said assessments numbered fifth and sixth 1931, until the trial or other final disposition of this action: 10
20

AND UPON the application of the plaintiffs in the first and secondly above-mentioned actions respectively that these actions should be consolidated and the defendants by their Counsel consenting to such consolidation, IT IS FURTHER ORDERED that all proceedings in the action secondly above mentioned be stayed and that the said action be and the same is hereby consolidated with the action firstly above mentioned, so that the pleadings in the said action shall be entered upon one record and the said action shall be tried and disposed of as if the plaintiffs in the said firstly mentioned action had set up all the relief claimed in the endorsement on the writ of summons in the secondly mentioned action: 30

IT IS FURTHER ORDERED that the plaintiffs in the said firstly mentioned action do have the conduct of the consolidated action:

IT IS FURTHER ORDERED that the plaintiffs in the said firstly mentioned action do deliver a Statement of Claim in the consolidated action on or before the 18th day of February, A.D. 1932; that the defendant do deliver its Statement of Defence within five (5) days thereafter; that the plaintiffs reply thereto and join issue within three (3) days from the delivery of the said Statement of Defence; and that the plaintiffs be at liberty to inspect and take copies of or extracts from the books, papers, records and documents in the custody, possession or power of the defendant containing any entry, memorandum or minute relating to the matters 40

in question in this action at all reasonable business hours until the 1st day of March, A.D. 1932:

AND IT IS FURTHER ORDERED that the said consolidated action be set down for trial for Wednesday, the 2nd day of March, A.D. 1932, to be held at Vancouver, British Columbia:

AND IT IS FURTHER ORDERED that the costs of this application be reserved to be disposed of by the Judge presiding at the trial of the consolidated action.

“AULAY MORRISON, C.J.”

10 Checked:
“S. J.”

Entered
Feb. 22, 1932,
Order Book, Vol. 156, Fol. 144
Per “A. L. R.”

RECORD

In the
Supreme Court
of British
Columbia

No. 3.
Order Consoli-
dating Actions,
10th February,
1932.

(Cont'd)

RECORD

In the
Supreme Court
of British
Columbia

No. 4.
Statement of
Claim,
18th February,
1932.

STATEMENT OF CLAIM

(Delivered in consolidated actions pursuant to the Order of the Honourable the Chief Justice dated the 10th day of February, A.D. 1932).

1. The defendant (hereinafter called the Board) is a body corporate created by Section 63 of the Workmen's Compensation Act, hereinafter called the Act.

2. The plaintiffs are members of sub-class 2 of Class 1 created by Section 28 of the Act, being engaged in the industry of logging west of the Cascade Mountains, and sue on behalf of themselves and of all other members of the said sub-class. 10

3. The plaintiffs say that the members of sub-class 2 of Class 1 are engaged in a relatively hazardous industry in which the accident experience is approximately 40 per cent. of the total accident occurrence for which the defendant Board must make provision under the Act, in any year.

4. The plaintiffs further say that depending upon business conditions the members of said sub-class 2 of Class 1 vary greatly in number from year to year; that when conditions are prosperous, a great many logging operators are attracted to the industry, whilst on the contrary in a period of depression many operators cease to carry on business, with many bankruptcies. 20

5. The plaintiffs say that particularly in the year 1931 there was a period of extreme depression with relatively few members of sub-class 2 of Class 1 carrying on business and with a relatively low payroll.

6. The plaintiffs say that upon the true construction of said Section 32 of the Act, it was the intention of the Legislature that the Board should make full provision for all accident occurrence in each and every year and that the cost thereof should be rated upon the payroll for the year in which such accidents occurred, and upon the footing that new employers should not be saddled or burdened in the future with the cost of accidents occurring in past years. 30

7. The plaintiffs say that for many years and in particular for the years 1921 to 1931 inclusive, the Board has failed to make due provision for all accident occurrence in each and every year, but on the contrary has in respect of a great proportion of the more serious accidents occurring in each year, stood over or postponed final settlement thereof to a future year and rated the cost thereof upon the payrolls of the year in which the said accidents were disposed of by the Board instead of, as the plaintiffs contend should 40

be done, rating the cost thereof upon the payroll of the years in which the said accidents respectively occurred.

8. The plaintiffs repeat the last preceding paragraph and say that as a result of such wrongful and illegal method of making provision for accidents of past years, the Board has suffered to accumulate a deficit of upwards of half a million dollars in the funds of the said sub-class.

10 9. The plaintiffs repeat the last preceding paragraph and say that the practice of the Board in rating against the payroll of the sub-class the cost of accident occurrence of past years imposes an unjust and unequitable burden upon the said payroll and in particular the payroll for the year 1931 and future years, in the following respects:

(a) New employers in the sub-class who were not members in former years will be rated and assessed with the cost of accidents occurring in the years before they became members of the said sub-class.

20 (b) Members of the said sub-class who have in the interval become bankrupt or ceased to carry on business will escape from being rated and assessed for the cost of the said accidents, provision for which has been stood over or postponed, whereas if the cost thereof had been duly rated against the payroll of the year of occurrence the said employers would have been rated and assessed in respect thereof.

(c) Employers with restricted or diminished payrolls will escape paying their due proportion of the cost of the said accidents occurring in past years (provision for which has not been made), when the said members were operating with a large payroll.

30 (d) Members who in present or in future years have increased or extended their payrolls will be saddled very largely with the cost of accidents of past years when the said members were operating with a relatively small number of employees.

10. By sections 16, 19, 20, 21 and 22 of the Act, provision is made for compensation in respect of five classes of accidents, viz., (1) fatal accidents, (2) accidents giving rise to permanent total disability, (3) accidents giving rise to permanent partial disability, (4) accidents giving rise to temporary total disability, and (5) accidents giving rise to temporary partial disability.

40 11. Each of the five classes of accidents enumerated in Paragraph 3 hereof may give rise (A) to a claim for compensation which can be completely paid and discharged within the year, in which the accident happened, or (B) to a claim for compensation which cannot be completely paid and discharged within the year, in which the accident happened.

12. By sections 31, 32 and 43 of the Act, the Board is imperatively required to collect sufficient funds to satisfy all payments

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In the
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No. 4.
Statement of
Claim,
18th February,
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 No. 4.
 Statement of
 Claim,
 18th February,
 1932.
 (Cont'd)

to be made for compensation in the year of assessment, and also to provide in that year capitalized reserves sufficient to meet the periodical payments of compensation accruing in future years in respect of all accidents which occur during that year.

14. The widest ancillary powers are, by the sections aforesaid conferred upon the Board, for the purpose of carrying out the duties imposed on the Board by the sections aforesaid, and for the purpose of completely balancing its annual budget prior to the 1st day of March of the succeeding year.

15. The Board has altogether failed and omitted to carry out its statutory duties as aforesaid. In particular the Board has never in any year since its creation assessed, levied and collected sufficient funds to provide in each year capitalized reserves sufficient to meet the periodical payments of compensation accruing in future years in respect of all accidents which occurred in that year, but on the contrary in each year, including the year 1931, used the moneys or part of the moneys collected during each year in payment of compensation accruing in that year in respect of accidents occurring in former years. 10

16. By reason of such wrongful and illegal action on the part of the Board, the Board has suffered to accumulate a deficit of upwards of half a million dollars in the funds of the said sub-class. 20

17. In particular, the Board, during the year 1931, wrongfully and illegally used the sum of \$286,872.27 collected by the Board under four assessments made in and for the year 1931, in paying compensation for accidents, which had occurred in former years.

18. In particular the Board in 1931 used moneys collected under four assessments made in 1931 for the purpose of creating capitalized reserves for some or all of 362 accidents which had occurred in former years. 30

19. In particular the Board has failed and neglected to constitute capitalized reserves for 64 accidents which have occurred prior to 1931.

20. The Board, by what purports to be a fifth and sixth assessment for 1931, and which was made against the sub-class on or about November 10, 1931, intend to assess, levy and collect from the said sub-class further moneys in respect of the payroll for the year 1931, in order to make up for the moneys collected under the said four assessments which it has wrongfully and illegally used as aforesaid. 40

21. The plaintiffs say that the Board has altogether failed to carry out the duties imposed upon it under Section 32 of the Act, in that it neglected and failed to make an estimate of the amount required to provide for the matters enumerated in Section 32 of the Act.

22. The Board has no power or authority to make any assessment until it has prepared such an estimate as aforesaid, and the Board, in purporting to make such fifth and sixth assessments acted in a manner wholly ultra vires.

23. The Board threatens forthwith to issue and file certificates under Section 37 of the Act, in respect of the said alleged fifth and sixth assessments for 1931 as aforesaid, upon all those members of sub-class 2 of Class 1 who have made returns of payroll during the year 1931.

10 24. Unless the said Board is restrained from proceeding to enforce such alleged fifth and sixth assessments, the plaintiffs and all members of the said sub-class 2 of Class 1 will suffer irreparable injury.

20 24a. The Board has failed to comply with the provisions of Section 33 s.s. 2 of the Act in that the additional amounts required to meet the cost of medical aid have not been provided by the Board by assessment upon employers generally in all industries within the scope of the Act, but that the Board has actually discriminated against the plaintiffs by proportioning such additional amounts against the moneys actually collected from the plaintiffs instead of proportioning such additional amounts according to the payrolls of the plaintiffs.

25. The Board has failed to collect from the employers in the said sub-class the sum of \$86,330.30 in respect of assessments for the year 1929 and the sum of \$78,714.38 in respect of assessments for the year 1930.

26. Many of the employers in the said sub-class who were operating in the years prior to 1931 have become bankrupt or ceased to carry on business.

30 27. The said acts, neglects and defaults of the Board have created a situation which threatens the gravest injury to the plaintiffs.

28. The Board threatens and intends to assess, levy and collect further moneys in respect of the year 1931 in order to make up for the moneys collected under the said four assessments which the Board has wrongfully and illegally used as aforesaid.

29. The Board threatens and intends to collect from the employers of the said sub-class in future years the amount of the said deficit mentioned in Paragraphs 8 and 16 hereof.

40 WHEREFORE THE PLAINTIFFS CLAIM:

(1) A declaration that the defendant has neglected for the years 1925 to 1931, both inclusive, to create and maintain an adequate accident fund in respect of sub-class 1 as prescribed by the "Workmen's Compensation Act";

(2) A declaration that the defendant has wrongfully allowed a deficit of more than \$500,000 to accumulate in the

RECORD
 In the
 Supreme Court
 of British
 Columbia
 No. 4.
 Statement of
 Claim,
 18th February,
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In the
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Columbia

No. 4.
Statement of
Claim,
18th February,
1932.

(Cont'd)

compensation funds of sub-class 2 of Class 1 by reason of the failure of the defendant to comply with the prescriptions of the "Workmen's Compensation Act";

(3) For an account of the said deficit;

(4) For a declaration that the members of the said sub-class 2 of Class 1 are not liable to pay or to be assessed by the defendant for the said deficit;

(5) A declaration that the defendant is bound in each calendar year to assess and levy upon and collect from the employers in the said sub-class 2 of Class 1 sufficient money by an assessment rated upon the payroll of such calendar year to provide for all accidents occurring in that year; 10

(6) A declaration that the defendant is not entitled to pay out of the moneys so collected in any calendar year compensation for accidents occurring in previous years;

(7) A declaration that the defendant is not entitled after the 1st day of March in any year to make assessment for any accidents occurring in any preceding calendar year;

(8) A declaration that the defendant is not entitled to assess against the said sub-class 2 of Class 1 the amounts unpaid by any defaulting employers in respect of unpaid assessments; and in particular for a declaration that the defendant is not entitled to assess against the said sub-class the amounts mentioned in Paragraph 25 hereof; 20

(8a) A declaration that the defendant is not entitled to proportion the additional amounts required to meet the cost of medical aid according to the amounts actually collected from the plaintiffs, but according to the total of the actual payrolls of the plaintiffs;

(9) A mandamus to compel the defendant to discard its present wrongful methods of assessment and account, and to adopt correct methods in conformity with the prescriptions of the "Workmen's Compensation Act" and to make all necessary refunds; 30

(10) A declaration that the said alleged fifth and sixth assessments for the year 1931 are illegal, unauthorized and ultra vires;

(11) For an injunction restraining the defendant, its agents and servants and every of them, from issuing any certificate under Section 37 of the Act in respect of the said alleged assessments numbered fifth and sixth, 1931, and from filing with any district Registrar of any Supreme Court, or with any Registrar of any County Court any such certificate or any copy thereof, or from in any manner endeavouring to collect or enforce the said alleged fifth and sixth assessments. 40

(12) Such further and other relief as to the Court may seem meet.

PLACE OF TRIAL: VANCOUVER, British Columbia.

DATED at Vancouver, British Columbia, this 18th day of February, A.D. 1932.

“C. M. O'Brian”,
Plaintiffs' Solicitor.

RECORD

In the
Supreme Court
of British
Columbia

No. 4.
Statement of
Claim,
18th February,
1932.
(Cont'd)

STATEMENT OF DEFENCE

1. The Defendant does not admit the allegations of fact contained in the third paragraph of the Statement of Claim.

2. The Defendant does not admit the allegations of fact contained in the fourth paragraph of the Statement of Claim.

3. The Defendant does not admit the allegations of fact contained in the fifth paragraph of the Statement of Claim.

4. In answer to the whole Statement of Claim, and particularly to the sixth paragraph thereof, the Defendant admits that on the true construction of Section 32 of the "Workmen's Compensation Act" it is the duty of the Board, so far as possible or practicable, to make full provision for all accident occurrence in each and every year and to raise funds by assessments as provided in the Act so that the cost thereof should be rated upon the pay-roll for the year in which such accidents occur, or up to the 1st day of March following, but the Defendant alleges that if for any reason the moneys actually raised by the Board in any year should prove insufficient for the purposes for which the same are required, it is the right and duty of the Board to levy and raise in subsequent years moneys sufficient to make up any deficiency. Subject to the foregoing admission, the Defendant denies each and every allegation contained in the sixth paragraph of the Statement of Claim. 10 20

5. The Defendant denies each and every allegation of fact contained in the seventh paragraph of the Statement of Claim, and in particular the Defendant denies that the Board has failed to make due provision for all accident occurrence in each and every year, and specifically denies that in respect of accidents in which final settlement was not made in the year in which the accident occurred, that the cost thereof was rated upon the pay-rolls for the years in which the said accidents were disposed of by the Board. On the contrary the Board levied in each year a sum which was deemed by the Board to be sufficient to provide final payment in respect of all accidents occurring in that year, whether final settlement thereof was made in the year in which such accident occurred or in subsequent years. 30

6. In further answer to paragraph 7 of the Statement of Claim, the Defendant says that it has in some cases been impossible to finally dispose of claims before the Board in respect of accidents in the year in which the accident happened, or to create reserves for payment thereof, but nevertheless the Board has made levies in the year in which each accident occurred which were deemed by the Board sufficient to provide funds to finally provide for payment of said claims when the said claims could be finally 40

disposed of, and to create reserves therefor out of the funds raised by the Board in the year in which the accident occurred.

7. The Defendant specifically denies that because a claim may not be finally dealt with, or reserves created therefor, in the year in which the accident occurred, that it thereby follows that the claim is paid out of funds levied in a year subsequent to the year in which the accident occurred. The fact is that it has always been the policy of the Board that, when reserves were created to provide for payment of any claim, whether such reserves are created
 10 in the year in which the accident occurs or in a subsequent year, the payment of such claim would be made out of assessments levied in the year in which the accident occurred, and assessments were made from year to year by the Board as the Board deemed sufficient for that purpose.

8. In further answer to paragraph 7 of the Statement of Claim and to the whole Statement of Claim, the Defendant says that in many cases it is not possible for the Board to know, in the year in which an accident occurs, what amount should be set aside as a reserve to provide for payment of such claims. Examples are:

- 20 (a) Where the Board has no notice of a claim until after the 1st of March in the year following the year in which the accident occurred;
- (b) Where the extent of the injuries do not become apparent in the year in which the accident occurred;
- (c) In the case of fatal accidents, when it is not known whether there are dependents or not;
- (d) When claims which appear to be trivial during the year in which they occur they become more serious or permanent in later years;

30 and the Defendant says that the provisions of the Workmen's Compensation Act, with regard to making assessments in each year to provide sufficient funds to pay all claims against the Board in respect of accidents happening in each year, are directory only, and that it is the right and duty of the Board, in case moneys actually raised in respect of any year prove insufficient for the purposes aforesaid, to raise such deficiency by assessments made in the following year or years.

9. In answer to paragraph 8 of the Statement of Claim the Defendant admits that a considerable deficit has occurred in the
 40 funds of class 1, sub-class 2, but the Defendant specifically denies all charges of wrongful or illegal methods of making provision for accidents as alleged in the said paragraph.

10. The Defendant denies each and every allegation of fact contained in the ninth paragraph of the Statement of Claim, including sub-paragraphs (a), (b), (c) and (d) thereof, and specifically denies that the Board have made any practice of rating against the pay-roll of the sub-class the cost of accident occur-

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rences of past years, and further specifically denies that any unjust or unequitable burden was imposed thereby on the Plaintiffs.

11. In answer to paragraph 12 of the Statement of Claim, the Defendant says that the provisions of the "Workmen's Compensation Act" therein referred to are directory only.

12. In answer to paragraph 13 of the Statement of Claim, the Defendant says that the provisions of the "Workmen's Compensation Act" therein referred to are directory only.

13. In answer to the fourteenth paragraph of the Statement of Claim and to the whole Statement of Claim, the Defendant admits that wide powers are conferred on the Board by the sections of the "Workmen's Compensation Act" referred to, but the Defendant says that in spite thereof it is impossible for the Board to completely balance its annual budget in respect of accidents occurring in class 1, sub-class 2, for reasons hereinbefore and hereinafter stated, and the Defendant alleges that if the Board failed in any year for any reason to so balance its budget as aforesaid, it is the duty of the Board, under the said Act, to raise any deficiency occurring in any year by assessments made in the following year or years. 10

14. The Defendant denies each and every allegation of fact contained in the fifteenth paragraph of the Statement of Claim, and specifically denies that the Board has failed or omitted to carry out its statutory duties as therein alleged.

15. The Defendant further says that in each year the Board have levied assessments which were deemed by the Board to be sufficient to provide for payment in full of all accidents occurring in that year, and the Defendant alleges that if in any year the moneys raised were insufficient to provide for payment in full of the accidents occurring in that year, the Board is entitled to raise such money by assessments in subsequent years, and to pay such deficiency arising in former years out of moneys levied in subsequent years. 30

16. In answer to paragraph 16 of the Statement of Claim the Defendant specifically denies any wrongful or illegal action as alleged in the said paragraph, and does not admit that there is a deficit of upwards of half a million dollars as alleged therein.

17. The Defendant denies each and every allegation of fact contained in the seventeenth paragraph of the Statement of Claim, and specifically denies that the Defendant used the sum of \$286,-872.27, or any part thereof collected by the Board for the year 1931 in paying compensation for accidents which occurred in former years. 40

18. Alternatively, the Defendant says that if there was any deficiency in the funds raised to provide for payment of accidents occurring prior to the year 1931, the Defendant was entitled to levy in 1931 moneys for the purpose of providing payment for the said

accidents and to make payments required to be made in 1931 out of the said moneys.

19. The Defendant denies each and every allegation of fact contained in the eighteenth paragraph of the Statement of Claim, and specifically denies that the Board in 1931 used moneys collected under four assessments made in 1931 for the purpose of creating capitalized reserves for some or any of the accidents which had occurred in former years.

10 20. The Defendant denies each and every allegation of fact contained in the nineteenth paragraph of the Statement of Claim, and further says that if the Board failed or neglected to constitute capitalized reserves for 64, or any, accidents which had occurred prior to 1931, it was because it was in the circumstances impossible to make any even approximate estimate of the amount that would be required to finally dispose of the said claims.

21. The Defendant alleges that, nevertheless, the Board did in all cases levy assessments in the year in which accidents occurred, which assessments were deemed by the Board sufficient to provide full payment for all such claims.

20 22. The Defendant denies each and every allegation of fact contained in the twentieth paragraph of the Statement of Claim, and alleges that the fifth and sixth assessments made by the Defendant for the year 1931 were made by the Board for the purpose of providing funds to enable the Board to pay and discharge claims on the Board arising from accidents occurring in the year 1931 and not otherwise.

23. The Defendant denies each and every allegation of fact contained in the twenty-first paragraph of the Statement of Claim.

30 24. The Defendant denies each and every allegation of fact contained in the twenty-second paragraph of the Statement of Claim, and specifically denies that the actions of the Board referred to in the Statement of Claim were in any respect ultra vires.

25. The Defendant denies each and every allegation of fact contained in the twenty-fourth paragraph of the Statement of Claim, and specifically denies that the Plaintiffs, or any of them, will suffer any injury, irreparable or otherwise.

40 26. The Defendant does not admit the allegations contained in the twenty-fifth paragraph of the Statement of Claim, and further alternatively says that if the Defendant failed to make the collections therein set forth it was because the said amounts could not be collected, and the Defendant was not guilty of any breach of duty thereunder.

27. The Defendant does not admit the allegations of fact contained in the twenty-sixth paragraph of the Statement of Claim.

28. The Defendant denies each and every allegation of fact contained in the twenty-seventh paragraph of the Statement of Claim.

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29. The Defendant does not admit the allegations of fact contained in the twenty-eighth paragraph of the Statement of Claim, and alleges that all assessments made by the Board in respect of the year 1931 are made for the purposes only of raising moneys to provide payment for claims arising in respect of accidents occurring in the year 1931.

30. The Defendant does not admit the allegations contained in the twenty-ninth paragraph of the Statement of Claim, and the Board has not up to the present time made any indication of how or when the amount of the alleged deficit shall be made up. 10

31. If the Defendant failed in any year to levy or raise sufficient funds to provide for payment of all claims on the Board in respect of accidents occurring in any year, or if the Board failed in any respect to fully carry out its obligations under the "Workmen's Compensation Act", which is not admitted but denied, such failure was made at the request of the Plaintiffs, and the plaintiffs are thereby estopped from maintaining this action.

32. The Statement of Claim discloses no cause of action against the Defendant for any of the relief claimed therein.

33. The Defendant will on the trial of this action contend that this Court, in the exercise of its discretion, ought not to make any of the declarations prayed for in the Statement of Claim, but the question of the duties, rights and obligations of the Defendant in respect of making assessments under the "Workmen's Compensation Act" should be determined, if at all, in proceedings to test the validity of actual assessments made or to be made by the Defendant. 20

34. The Defendant has never disputed that the "Workmen's Compensation Act" imposed on the Defendant a duty to make assessments in each year, or on or before the 1st of March in the following year, sufficient in the opinion of the Board to provide for payment of all claims on the Board in respect of accidents occurring in each year. But the amount which may be received by the Board under such assessments in any year is only an estimated amount subject to variations according to various circumstances, such as the rate of wages paid by employers, the amount of payroll and other contingencies, and the amount of the said claims is only an estimated amount until long after the expiration of the year in which the accident may occur. The Defendant has always fairly, honestly and reasonably discharged the duty imposed on them by the said Act, and in the circumstances aforesaid the Defendant will contend that this Court ought not to make any declaration in respect of any of the matters mentioned in the Statement of Claim. 30 40

35. The Defendant will on the trial of this action rely on Section 74 of the "Workmen's Compensation Act", and will contend that this Court has no jurisdiction to review the decision of the

Board or to try the question of whether the fifth and sixth assessments are actually required for the purpose of providing payment of claims arising in respect of accidents occurring in the year 1931 or not.

36. The Defendant will on the trial of this action contend that this action is not maintainable without the fiat of the Attorney General being granted authorizing the bringing of this action and no such fiat has been obtained.

10 37. The Defendant will on the trial of this action contend that the Plaintiffs have no status to maintain this action.

20 38. The Defendant denies each and every allegation of fact contained in paragraph 24 (a) of the amended Statement of Claim and say that the additional amounts required to meet the cost of medical aid have been raised and levied in accordance with the provisions of Section 33, sub-section 2 and other relevant sections of the "Workmen's Compensation Act" and the Defendant has not discriminated against the Plaintiffs as alleged or at all, and the Board has levied or charged the said moneys generally against all industries within the scope of the Act in the same proportion as assessments were made by the Board against the said industries, which the Board was entitled to do, and which is a method authorized by the said Act and is a just and equitable method of raising said moneys.

DATED at Vancouver, B. C., this 20th day of February, A.D. 1932.

"J. Fred Downs",
Solicitor for Defendants.

30 THIS STATEMENT OF DEFENCE was delivered and filed by J. F. Downs, Esq., of the firm of Craig, Ladner, Carmichael, Tysoe & Downs, Solicitor for the Defendants, whose place of business and address for service is 502-7 Rogers Building, 470 Granville Street, Vancouver, B. C.

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IN THE SUPREME COURT OF BRITISH COLUMBIA
(BEFORE THE HONOURABLE MR. JUSTICE MURPHY)

Vancouver, B. C.,
March 16th, 1932.

Proceedings
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Plaintiff's Case
16th March,
1932.

BETWEEN:

MERRILL RING WILSON LIMITED, et al
Plaintiffs

Albert Percy
Foster,
Direct Exam.
16th March,
1932.

AND:

WORKMEN'S COMPENSATION BOARD,
Defendant 10

—and—

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BETWEEN:

MERRILL RING WILSON LIMITED, et al
Plaintiffs

AND:

WORKMEN'S COMPENSATION BOARD,
Defendant

(Consolidated Actions) 20

PROCEEDINGS AT TRIAL

E. C. MAYERS, Esq., K.C., and
C. M. O'BRIAN, Esq., K.C.

appearing for the Plaintiffs.

C. W. CRAIG, Esq., K.C.,
J. W. deB. FARRIS, Esq., K.C., and
C. CARMICHAEL, Esq.

appearing for the Defendant.

ALBERT PERCY FOSTER, a witness called on behalf of
the Plaintiffs, being first duly sworn, testified as follows: 30

DIRECT EXAMINATION BY MR. MAYERS:

Q. You live in Vancouver? A. I do.

Q. What is your profession? A. Chartered accountant.

- Q. How long have you practiced that? A. Since about 1913.
- Q. Last year, I think, you had occasion to make an investigation into the affairs of the Workmen's Compensation Board?
- A. I did.
- Q. Under what procedure did you make that investigation?
- A. Under authority of an Order-in-Council.
- Q. Have you the date of that? A. It is about the end of April.
- Q. 1931? A. 1931.
- 10 Q. And your investigation was for how long? A. I started in May and finished the end of November.
- Q. Of last year? A. Yes.
- Q. That was in relation to the whole work of the Board, was it, or any particular class? A. In particular to Sub-Class 2, or what is known as logging west of the Cascades.
- Q. Sub-Class 2 of Class 1? A. Yes.
- Q. I think that is set out in the Act? A. Yes.
- Q. And that relates to logging west of the the Cascades?
- A. It does.
- 20 Q. You made a report, did you? A. I did.
- Q. Was that furnished to the executive? A. It was.
- Q. Is this your report? A. Yes.

(DOCUMENT MARKED EXHIBIT 1)

Q. Now, I think you have also prepared for me a statement similar to the other exhibits referring to 1931, have you? A. Yes.

(STATEMENT PRODUCED MARKED EXHIBIT No. 8)

30 Q. The item of medical aid, \$335,381.56. You also got that from the Board's books? A. I got the item of \$335,381.56 from the Board, \$335,381.56, which is the total costs of employers' share for medical aid in the year 1931.

Q. The expense for doctors, the fourth item, the fifth item?

A. \$129,000.00. I got that from the Board.

Q. And down below, the assessment, collections, and claims in bankruptcy, you got that from the document furnished to you by the Board, did you not? A. I did.

Q. I want you to explain to me why you took the figure of four per cent. Have you got that sheet showing the total medical aid? A. Yes.

(DOCUMENT MARKED EXHIBIT No. 9)

40 Q. Exhibit 9, is also figures taken either from the Board's books or the Board's records, so far as the top line is concerned, is that right? A. Yes.

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Q. Then you deduct the employee's contribution of one cent?
A. Yes.

Q. And the three totals for 1931, 1930 and 1929, at the top of the page are just a process of subtraction? A. That is all.

Q. The total payrolls for sub-class 1 and sub-class 2, did you get those from the Board's books? A. Yes.

Q. And then it was just a question of working out a sum in proportion to find out the percentage that the payroll of sub-class 1 and sub-class 2 bears, and the total payrolls, which was 3.6 in 1931 and so on, and then you took the round figure of 4 per cent. instead of 3.66? A. I did that because the figure in 1931 is an estimated figure, and so as to be on the safe side, I took around 4 per cent. 10

Q. And that is the 4 per cent. which appears in Exhibit 8?
A. Yes.

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CROSS EXAMINATION BY MR. CRAIG:

Q. Now, with regard to the medical aid items you have given here, I see you have taken four per cent.? A. Yes.

Q. You figure that on a uniform assessment on all the industries? A. Under the Act, you mean? 20

Q. Which? A. Under the Act, you mean?

Q. Yes? A. No, it has no relationship whatever. It is not our rate.

Q. How do you get the four per cent.? A. It is based entirely on the payrolls.

Q. The payrolls of what? A. Of the whole industry. It is the ratio Sub-Class 2 payrolls bear to the whole.

THE COURT: Q. The whole payroll of the Province? A. Coming under the Act, sir.

MR. CRAIG: Q. You have figured out on this basis that sub-class 2 should pay at the same rate as all other industries in the Province? A. Yes, exactly. 30

Q. Yes. Here, your statement says this, Mr. Foster, employees' share of medical aid being four per cent. of \$335,381.00? A. Yes.

Q. What is the \$335,381.00? A. That is the employers' share of medical aid for that year.

THE COURT: It is shown on Exhibit 9. He takes the total cost of medical aid, and deducts the contributions by employees and then he figures the employers' share. A. The employees' share is the same, no matter what class he may be under. 40

Q. That is your idea of the meaning of the Act? A. Yes.

Q. That is all, thank you.

CROSS-EXAMINATION CONTINUED BY MR. CRAIG:

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Q. Mr. Foster, referring to exhibit 9 which is your statement regarding medical aid—

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THE COURT: Let me see that exhibit 9, will you please. Go on, Mr. Craig.

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MR. CRAIG: Q. You have it in your hand, have you, Mr. Foster? A. Yes.

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Q. I want to ask you some questions leading up to the way you arrive at the percentage of 3.66? A. Yes.

10 Q. I understand from your statement that the way you went at it is this, that you took the total payroll of all the classes? A. Yes.

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Q. And then you found out what proportion of the payroll is attributable to the logging industry? A. That is right.

Q. And from that you figured out what per cent. of the medical aid deficit the logging industry should bear? A. Yes.

Q. And you put that on the basis of an equal assessment of all payrolls? A. Based on payrolls, yes.

Q. Now, will you look at the item \$150,000,000 there. A. Yes.

20 Q. That is the total payroll of the Board? A. Yes.

Q. Without any exceptions? A. The only exception would be that it is the estimated payroll for that year.

Q. It is the estimated total payroll without any exceptions? A. Yes.

Q. Now, in your figuring, it would be right, would it not, that the figure, the estimated figure of the total payroll to be used should be the total payroll that has to pay medical aid? A. No, that is the total payroll—

Q. Oh, I know it is? A. This is the total payroll subject to
30 assessment.

Q. You are aware of the fact, are you not, Mr. Foster, that there is a part of the total payroll that does not pay medical aid, that is not liable for it? A. No.

Q. You are not aware of that. Never mind your statement just now. Are you aware of the fact that there is a part of the total payroll that is not liable for medical aid?

MR. MAYERS: Is that a fact or it is an assertion of law?

MR. CRAIG: Well, it is an assertion of fact. I have Mr. Foster's own statement.

40 Q. Are you aware of that, Mr. Foster? Have you been aware of it for some time? A. No, I was not, Mr. Craig. Maybe you are right there, though.

Q. There is no maybe about it. Would you let me read your page 2 of your own report commencing at the bottom of page 2?

A. Yes, that is right.

Q. "Section 33, dealing with medical aid, provides that such additional amounts as are required from time to time to meet the

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cost of medical aid . . ." Now, when it speaks of additional amounts, that would only mean over the one cent per day contributed by the men. Isn't it? That is right, isn't it? A. Reading from page 2?

Q. Page 2 of your report, yes? A. Yes, right.

Q. At the bottom of the page? A. Yes.

Q. "Section 33 dealing with medical aid, provides that such additional amounts as are required from time to time to meet the cost of medical aid, shall be provided by the Board by assessment upon employers generally and all industries embraced within the scope of the Act, except employments embraced in any plan providing medical aid approved by the Board under sub-section 4 of section 23." So you are aware of the fact in that report, were you not, Mr. Foster? A. Yes.

Q. That there was an exception? A. Yes.

Q. Do you dispute the fact that the exception amounts to \$50,000,000? A. I don't know what it amounts to.

Q. No idea? A. No.

Q. But at all events you admit this, do you not, that that \$150,000,000 that you put in your exhibit 9—

MR. MAYERS: \$150,000,000?

MR. CRAIG: Q. \$150,000,000 in exhibit 9 is subject to a deduction of that part of the payroll which is not subject to payment of medical aid? A. Well, I worked this out on the basis—

Q. I know you worked it out. It is all here. Will you please answer my question. Isn't that so, that in making your computation of how this medical aid should be distributed you must only take into account the people who have to pay it, that is obvious, isn't it? Isn't it perfectly obvious, Mr. Foster? A. Let me think about that a moment, Mr. Craig. Yes, I am inclined to think you are right.

Q. So that \$150,000,000 is subject to a deduction of the amount of the payroll of such firms as did not contribute to medical aid? A. Yes, I think it is. I think you are right.

Q. Now, do you dispute that that amount is about \$50,000,000? A. I don't know what it amounts to.

Q. Well, put it this way. Subject to proof of the amount, whatever it is, it should come off that \$150,000,000? A. It should.

THE COURT: Q. It would change the percentage? A. It would change the percentage.

MR. MAYERS: Q. Well, now, in regard to that I have got something to ask about that.

MR. CRAIG: Q. Do you know this, Mr. Foster, that the firms that are not subject to medical aid include the C. P. R., Canadian National Railway, Kettle Valley Railway Company, Consolidated Mining Company, Canada Western Lumber Company, B. C. Telephone Company—

THE COURT: Well, are we concerned with all this?

MR. CRAIG: Q. It is a tremendous item, isn't it? A. It would be a big item, yes.

Q. Now, when a man gets compensation he gets part of it in the form of cash, doesn't he? A. He gets it all in cash, doesn't he?

Q. Well, that is just what I am coming to. I submit it is not all in cash. Don't you think that medical aid which is given to him that that is just as much compensation as cash, in principle? A. It is part of the benefit of the Act, yes.

Q. So that it is substantial compensation? A. Well, it is just what it says, it is medical aid.

Q. But in principle, can you see anything wrong with my saying it is substantial compensation?

MR. MAYERS: Well, if it is a principle of law, I do not think the witness can say.

THE COURT: I do not think it means very much.

MR. CRAIG: Q. It is a fact, is it not, Mr. Foster, that the hazard in the logging industry is very much greater than in many other classes that the Board have to deal with? A. That is quite true.

Q. There is a very marked difference between the logging industry and some of the others? A. And some of the others, yes.

Q. Now, adopting the system that you have used, you by allocating the medical aid according to the payroll, the result of that is the industry which is a heavy charge on the medical aid pays just the same as an industry which is a light charge on the medical aid? That is, they pay on the payroll? A. Yes.

Q. And that results in the conclusion that I have indicated, does it not? A. Yes.

Q. Whereas if instead of assessing on the payroll you assess on the assessment and they pay in respect of medical aid in the same ratio as they pay as if it were assessed, the result would be different, in that each industry would contribute to medical aid in the proportion of risk that they bear to it? A. Quite true.

Q. So that a firm which was a heavy drain on the medical aid would contribute proportionately? A. Quite true.

Q. Now, in your examination of the Act, have you found anything which you think justifies the method you have adopted? A. Yes.

THE COURT: Is it worth while asking that?

MR. CRAIG: When was it you came to the conclusion to adopt this principle, Mr. Foster? A. Oh, some week or ten days or two weeks ago, I cannot tell you exactly.

Q. How long have you been investigating the affairs of the Board? A. Some five or six months.

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Q. And about a week ago you changed the system? A. Changed my mind.

THE COURT: With regard to this feature of it? A. With regard to this feature of it, yes.

MR. CRAIG: Q. Did you have a conversation with Mr. Archibald, the accountant of the Board, about the last week that you were in the Board's offices, in which you told him that you proposed to put in the medical aid at 15 per cent. instead of 4 per cent.? A. I don't remember that conversation.

Q. Well, if you went on the other principle that I am suggesting as a correct one, of levying on assessment rather than on the payrolls, it would amount to 15 per cent. or a little over, wouldn't it? A. I don't know, Mr. Craig, I don't dispute that it would. 10

Q. In your computation of medical aid have you allotted anything for future medical aid in respect of 1931 accidents? A. No.

Q. Nothing at all? As a matter of fact, if you were to levy on costs of accidents in each year that would have to be done, wouldn't it? Because there will be in future medical aid charges in respect of accidents of prior years? A. Well, that would be a matter of opinion as to whether that should be done or not. 20

Q. I dare say it would, but I want to get the facts. There is no doubt of this fact, is there, Mr. Foster, that in, say, 1932, there will be medical aid expenses in respect of 1931 accidents? A. Yes.

Q. No question about that? A. Yes.

Q. And that would extend over several years. That is, there may be medical aid charges in 1930 with respect to 1925 accidents? A. Yes.

Q. Now, if you were going to levy on each year so as to charge the whole cost of the accidents of that year, to that year, there would have to be an allowance, an estimate amount for the future cost of medical aid, wouldn't there? A. No, I do not think there would. 30

Q. Why not? A. I would treat medical aid on the assessment basis and not on the basis that you suggest.

Q. Yes, but whether you treat it on assessment basis or another basis—I am on a different point now as I see it—is it not so that if you were to charge each year with the total costs of the accidents in that year—

MR. MAYERS: That is something that depends on the construction of the Act. 40

THE COURT: I suppose so. I do not believe Mr. Foster can give us any opinion. Your point is perfectly all right. He has not conceded that such expense did occur; that is all that is required on that.

RE-DIRECT EXAMINATION BY MR. MAYERS:

Q. With regard to medical aid and exhibit 9, you have not excluded from the figure of \$150,000,000 of payrolls of employers on the approved plan? A. No.

Q. Neither have you excluded from the figure of \$5,500,000 the payroll of employers on the approved plan? A. No.

Q. So that one error may compensate the other? A. Well, not knowing the amount—

MR. CRAIG: No, it does not.

10 THE WITNESS: I do not know what the amounts are.

THE COURT: If there is anything in this, there will have to be a computation in regard to the actual facts.

MR. MAYERS: I was just pointing out the fact that the facts so far proved did not necessarily alter the percentage at all.

THE COURT: It is possible, but they will have to be checked.

MR. MAYERS: Q. You were asked whether you had ascertained how much of the current receipts of any year were in respect of assessments of previous years. You have seen this statement that Mr. Gilmour furnished us with? A. I have a copy.

20 Q. In that you notice that you told us that the amount collected in 1931 in respect of assessment of previous years was \$125,801, and I want to refer for a moment to some questions that were asked you by Mr. Craig yesterday. Mr. Craig was asking you whether this figure of \$489,158 in exhibit 7 represented moneys collected in respect to 1931 or previous years. You notice that \$489,000? A. Yes.

Q. And you said that this exhibit 7 had no reference to collections but merely showed the distribution of values? A. Yes.

30 Q. Now, bearing in mind that the Board collected in 1931, \$125,000 in respect of previous years, where could the remainder of that \$489,000 have come from? A. A portion would come from 1931 collections.

Q. For 1931 assessments? A. For 1931 assessments.

Q. Yes? A. The balance must have been some other classes.

Q. Taken from other classes? A. Taken from other classes.

FOSTER PARKER ARCHIBALD, a witness called on behalf of the Defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. CRAIG:

40 Q. I am going to refer to Exhibit 8, Mr. Archibald, prepared by Mr. Foster. That is the cost of logging west of the Cascades. The first three items, I believe are substantially correct. A. Yes.

Q. Now, take the item of Medical Aid, Mr. Foster figures it at four per cent. of \$335,381.00, amounting to \$13,415.00. What

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have you to say to that? A. I cannot believe Mr. Foster is responsible for that calculation.

Q. Well what is wrong about it? A. It is not in accordance with the Act. It attempts to separate the cost of medical aid in the same proportion as the payroll of each industry bears to the total payroll under the Act, and ignores entirely the hazards of the different kinds of employment under the Act.

Q. And what do you say to the item Employers' share of expenses, 4 per cent. of the \$129,000? A. Exactly the same.

MR. MAYERS: Well, my Lord, it is really quite useless to ask this witness these questions. It depends on the construction of the Act. 10

THE COURT: It is perfectly evident what has been done. Mr. Foster admitted it.

Q. Now, then, will you take the next item. Employers' share of medical aid. What do you say as to that item? A. The medical aid is compensation, and must be paid by the Board. To pay the medical aid we receive a contribution of one cent a day. The amount that is left in addition to the one cent a day—

Q. That is one cent a day for each workman? A. For each workman. 20

Q. That is deducted by their employer or by the board? A. Yes. It is not sufficient to meet the total cost of the medical aid; the deficit has to be paid by the employers.

Q. What has been the practice of the Board, as to the way that was done? A. To transfer a sufficient fund from the fund to the credit of the classes to meet the medical aid deficit in such a manner that the medical aid deficit will be paid by the different classes of industry in exactly the same proportion as they pay other assessments. 30

Q. Applying that principle, what do you say as to the correctness of this item of \$74,578.00? A. It is correct as near as it is possible to make it. We will be paying medical aid on account of 1931 accidents for at least two years. The proportion of medical aid to the assessments collected must be changed within the next two years. That is, there will be no decrease in the cost of medical aid. It will cost as much to attend to give medical attention to a workman two years from now as at the present time, but his wages and compensation that he would be paid on the present wage scale will be much lower than that. Therefore, the Medical Aid deficit will bear a larger proportion of the total receipts of the Board than it does at the present time. In the past the medical aid deficit has required 15 per cent of all assessments subject to medical aid deficit. Now, in the logging industry in the year 1931, the medical aid paid on account of logging claims in the year amounted to 40

\$129,000.00. The workmen's compensation was approximately one-fifth of that, which left \$100,000.00, which had to be paid by the employer, or the employer's share in the logging industry in 1931 would be \$100,000.00, which has to be spread over those classes who contribute to the medical aid deficit.

Q. Well, applying that principle, what do you say as to the correctness of the item with regard to the logging west of the Cascades? A. Which item?

Q. Employers' share of medical aid? A. \$74,000.00?

10 Q. Yes? A. I base that 17½ per cent., making allowance for the increase in the proportion the medical aid will bear to the rates during the next two years.

Q. What do you say as to the correctness of that as nearly as may be? A. It is as correct as it is possible for me to arrive at.

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MR. CRAIG: There is one question I forgot to ask him with regard to medical aid. Would my friend permit me to ask it now?

MR. MAYERS: Yes, do.

20 MR. CRAIG: Q. With regard to the medical aid, can you tell me the companies that are not subject to payment of medical aid? Is this a list of them. A. Yes. It includes practically all of Class 10 and practically all Class 11 and 12. Class 10, Canadian Pacific Railway and subsidiaries, and 11 and 12, Canadian National Railways; the two Government classes. Fraser Mills, Victoria Lumber Company, Powell River Company Limited, B. C. Telephone Company, Granby Consolidated, Pacific Mills Limited, British-Yukon Navigation Company, Chilliwack Telephone Company, and others.

30 Q. Now, are any of those firms that would come under Class 1, sub-class 2? A. There is a certain percentage of the operations in Class 10 and 12, in connection with the operation of the C. P. R. boats and Canadian National boats, that does come under the one cent a day. A very small proportion of the operation of those.

Q. No, but are any of those industries that would come under the description of logging west of the Cascades? A. Yes.

Q. How many of them? A. Victoria Lumber Company, and a very small operation of the Pacific Mills, a very slight operation.

40 Q. What is the approximate payroll of all those companies which do not contribute to medical aid? A. At least \$50,000,000 a year.

Q. And what would be the approximate payroll of such members of the list that you have just read out that come under the heading of logging west of the Cascades? A. The Pacific Mills Payroll for logging would be approximately \$30,000; Victoria Lumber Company, perhaps between \$200,000 and \$300,000. I am

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not sure of those figures. It is not more than \$300,000. It is just from memory.

Q. Well, say about \$350,000 would cover the item? A. Amply.

Q. For items logging west of the Cascades? A. Amply.

Q. And the rest of the \$50,000,000 would be in a class other than logging west of the Cascades? A. Yes.

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(Cont'd)

CROSS EXAMINATION BY MR. MAYERS:

Q. Now, in this Exhibit 9, these figures for 1929 and 1930 relating to the medical aid are taken from your reports and are actual figures, are they not? A. I have not checked them. 10

Q. Well, look at them. A. I have not the report for 1931.

Q. 1929 and 1930. A. 1929 and 1930 are correct.

Q. And 1929 and 1930, the medical aid appearing on Exhibit 9, are exactly the same as appear in your reports. That is right? A. That is right.

Q. And those two sets of figures include nothing for future medical aid. Isn't that right? A. No, they would not.

Q. What I have said is right. A. They would contain nothing for future medical aid. 20

Q. Yes? A. That is right.

Q. This paper that you have got now is the first time that you have included any medical aid, any item in respect to future medical aid, isn't it? A. No.

Q. Well, do you say in past years you included your medical aid, the expense of future medical aid? You have told me that in these two years, 1929 and '30, you did not. A. Well, do you mean in estimating our costs?

Q. No, these were the actual figures. A. Not included in there. Nothing included in there for future medical aid. 30

Q. Is there any place in your report at all where you have included any item? A. Not in the report.

Q. And this item for 1931, of \$565,689, was the original estimate of the Board, was it not, or the Board's officials. A. No, that is not an estimate.

Q. What is it? A. That is the total medical aid.

Q. That is the actual figures? A. Yes.

Q. That is an actual figure? A. Yes.

Q. And the deduction of \$230,337 is also an actual figure? A. Yes. 40

Q. So that the real actual figure for medical aid for 1931 is \$385,381? A. Yes.

Q. And this \$426,182 is just a new idea, is it? A. which is that? \$426,000?

Q. Yes? A. Oh, no, this has nothing to do with this.

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Q. It is for medical aid, isn't it? A. No.

Q. Why do you include it in the item, employers' share of medical aid, if it has nothing to do with medical aid? A. To show how I arrive at the employers' share of medical aid.

Q. The actual figure, \$335,000— A. That is medical aid deficit.

Q. And when you say deficit, you don't mean one of your deficits; you mean the employer has to pay? A. That is the employer's share of the medical aid.

10 Q. \$335,381? A. Yes.

Q. This figure of \$426,162 is just a fancy figure for any calculation? A. No fancy figure at all; an actual figure.

Q. In what way? Why does it differ from the \$335,000? A. Because it states what it is. The \$426,000 is the amount of the assessment that we hope to collect on account of 1931 operation in that industry.

Q. I see. It has nothing to do with medical aid; it is just a figure on which you base a proportion of the \$335,000? A. Yes.

20 Q. And the \$426,162 is the amount of the assessment? A. \$426,000?

Q. Yes? A. That is right.

Q. Is the amount of the assessment in sub-class 2 of Class 1? A. For the year 1931.

Q. I see. Now I take it that this must be only one item in your calculation, because what you have to do is to make up the figure of \$335,381? A. That is right.

Q. Where is the rest of the calculation? A. Distributed over the other classes.

30 Q. Well, where is the rest of your calculation? A. This calculation deals with sub-class 2 of Class 1 only.

Q. The thing to be done is to make up this sum of \$335,000? A. That is right.

Q. In order to do that you have to spread it over all the employers? A. Who are entitled to share in the deficit.

Q. Who are bound to share in this item? A. Yes.

Q. Did you tell us how you arrived at your percentage of 17½? A. Yes.

Q. Would you mind telling me again?

COURT ADJOURNED.

40 COURT MET PURSUANT TO ADJOURNMENT

CROSS EXAMINATION CONTINUED BY MR. MAYERS:

Q. I was asking you about the question of medical aid. I understand you accept that figure of \$335,000 odd as the actual amount to be collected from all employers. A. That is the medical aid deficit for the year 1931.

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Q. Yes, the medical aid deficit, you mean the difference between the actual amount paid out and the amount collected from workmen. A. That is right.

Q. Yes. Now, you said something about computing future medical aid, did you not? A. Yes.

Q. In what branch of your statement does that appear? A. That is included in the 17½.

Q. How included? A. In the past it has required 15% of assessments to make up the employers' share of medical aid.

Q. You are reckoning by assessments and not by payrolls. 10
A. Yes.

Q. Yes. So that you say the experience of past years has shown that to make up the employers' share of the medical aid you require 15% of the anticipated returns of the assessments, is that it? A. Of the assessments received—just the assessments received.

Q. The assessments received. Well, now, how did you get that 15%—by taking the proportion between the assessments received of sub-class 2 and the whole assessments of all the industries, is that it? A. No. We determine the total assessment received from employers to meet his share in the payment of the medical aid deficits. 20

Q. That is excluding the approved plan of the employers? A. That is it.

Q. Yes? A. And find what percentage the medical aid deficit, is and that sum was ascertained.

Q. Yes, well then you take the proportion of the sum required for medical aid from employers, and the received assessments of all the industries, excluding the approved plan of the employers? A. That is right. 30

MR. MAYERS: I think that is all.

MR. CRAIG: That is all, thank you.

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WILLIAM S. MARTIN, a witness called on behalf of the Defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. CRAIG:

Q. You are a chartered accountant, Mr. Martin? A. Yes.

Q. Did you make an examination of the books of the Workmen's Compensation Board recently? A. Yes.

Q. And did you prepare a report? A. That is my report.

Q. That is your report? (Handing document to witness) 40
A. Yes.

Q. Subject to the qualifications that are set forth in the report, what do you say as to the correctness of the report? A. To the best of my ability it is correct.

(DOCUMENT MARKED EXHIBIT No. 31)

Q. And also the employers' share of medical aid, you depended upon somebody else? A. Yes.

ELDON S. H. WINN—DIRECT EXAMINATION
(Extract)

DIRECT EXAMINATION BY MR. CRAIG:

Q. Something was said this morning about a class in which no accidents have occurred for the last year. Do you know anything about that? A. Yes.

10 Q. What about that? A. That is the powder class. They are not paying any assessments, their rate has remained—we are not making any calls on them.

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IN THE SUPREME COURT OF BRITISH COLUMBIA

In the
Supreme Court
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No. 6

No. 6.
Reasons for
Judgment of
the Honour-
able Mr.
Justice
Murphy,
18th April,
1932.

MERRILL RING WILSON
LTD. et al
vs.
WORKMEN'S
COMPENSATION BOARD

JUDGMENT OF
THE HONOURABLE
MR. JUSTICE MURPHY

Section 74 of the Act gives the Board exclusive jurisdiction to determine all matters of fact and law arising under Part 1, and provides that the decision of the Board shall be final and not open to review. No enquiry can be made into the material upon which the Board comes to a decision upon anything within the scope of the Act. *Peter v. Yorkshire Estate Co.* (1926) 95 L.J.P.C. 91. If therefore, the existing injunction is to be continued it must be shown that the Board in levying the 5th and 6th assessment is acting outside the scope of the Act. Exhibit 31 sets out the basis upon which these assessments were made. This exhibit shows that in assessing to cover cost of 1931 accidents the Board acted according to what is hereinafter held to be the correct principle. It shows further that even if these two assessments are collected there will still be a deficit and in addition that no provision will thereby be made for unknown 1931 claims which may be put forward in the future.

From what is set out above it follows that but two items in Exhibit 31 can be questioned, Medical Aid and administration costs. For plaintiffs it is contended that medical aid assessments are governed exclusively by Section 33 and that said section requires that Medical Aid assessments must be assessed over the whole body of industry—exclusive of that portion operating under approved medical plans—and that the only way medical aid can be so assessed is by proportioning the amount to each industry according to the ratio which the pay-roll of such industry bears to the total pay-rolls of all industries—again exclusive of the pay-rolls of industries operating under approved medical plans. For the defence it is maintained that Medical Aid is as much compensation as are the money payments, that Medical Aid assessments go into the Accident Fund which the Act makes one and indivisible and that the construction contended for by plaintiffs should not be adopted unless the language of the Act intractably demands that this be done since it would result both in a different method of assessment from that directed to be adopted in the case of the money payments and would be markedly inequitable.

The Board has computed the Medical Aid amount set out in Exhibit 31 in the manner described at page 87 of the transcript by

making assessments actually paid and not payrolls the basis of its calculations. Section 33 is not the only section dealing with Medical Aid assessments. Section 32 expressly empowers the Board to levy assessments inter alia to provide in connection with Section 33 a special fund to meet the cost of Medical Aid. Section 32 further empowers the Board to rate such assessments upon the payroll or in such other manner as the Board may deem proper. Unless, therefore, the words in section 33 "by assessment upon the employers generally," and the subsequent provision therein for annual adjustment to result in a general assessment are to be construed as cutting down the power of the Board given by Section 32 it cannot be held that the Board in making the charge for Medical Aid in Exhibit 31 is acting without the scope of the Act. I do not think the language referred to intractably demands such a construction. An assessment is none the less a general assessment because it is made on the basis used by the Board instead of on the basis suggested on behalf of plaintiffs. Section 32 is the empowering section and it I think authorizes the course taken by the Board.

As stated the only other item in Exhibit 31 open to consideration by this Court is the charge for administration. It is urged that no where does the Act specifically authorize levies for administration expenses. But as Counsel for defendant pointed out these administration costs are the costs of levying, collecting and disbursing the assessments. I would say that by necessary implication they fall within the meaning of "sufficient funds" which the Board must estimate for and levy in order to carry out the objects set out in Section 32. The Board has assessed these costs on the same principle upon which it has assessed the Medical Aid costs. If I am right in holding they have power to make these assessments then Section 32 empowers them to do what they have done. If these views are correct then the Board has proceeded within the scope of the Act in levying the 5th and 6th assessments and the interim injunction obtained must be dissolved.

In my opinion the Board is required by Section 32 to make an estimate of the amount of money necessary to make full provision for all accidents occurring in each and every year in the industry carried on by each class as enumerated in the Act and then to make a levy or levies upon each such class to obtain the requisite funds. The Chairman Winn testified that this is what the Board actually did. He admits there is a deficit in sub-class 2 of class 1 but explains that this was occasioned by an error in judgment in making too low an estimate owing to the very rapid increase of accidents in this sub-class. He is the member of the Board who dealt with this feature of the Board's duties. He has been making these estimates for some 16 years and he must know on what principle he proceeded in reference thereto.

It is urged that his testimony should be rejected. If so it must

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able Mr.
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be because the Court is forced to disbelieve him. There can be no question of mistake on his part in giving this testimony. To put the matter bluntly the Court if it rejects his evidence must do so on the ground that he is deliberately trying to mislead it.

The reasons urged are first certain statements contained in the annual reports transmitted by the Board to the Legislature in accordance with provisions in the Act. As to this it is to be observed that some of these reports do set out that the Board acted on what I hold to be the correct principle. But the real answer I think is that the Board in that portion of the reports relied upon is not dealing with the principle it acted upon at all. It is concerned with a very different matter. It is trying to make clear that that portion of the accident fund which is invested in securities amounting to some millions of dollars is not a surplus but represents money which with the interest thereon will be needed as to every dollar thereof to carry out the duties imposed upon it by the Act. In consequence that precision of language which would have been used were the Board concerned in stating the principle it acted upon was not always observed since that was not the subject under discussion.

Then it is urged that Gilmour in his discovery and particularly in his letter to the Attorney-General Exhibit 34, admits that the Board has not been acting upon the correct principle as above set out. Gilmour, however, was not the member of the Board who attended to this matter. Winn was the man who did so. Doubtless Gilmour as a member concurred in the making of the levies but he may have done so as seems indeed to have been the case, without knowing on what exact principles they were imposed. The same reasoning applies with much greater force to letters written by employees of the Board which are also relied upon as reasons for rejecting Winn's evidence.

I accept Winn's testimony and it follows that the contention that the Board acted on a wrong principle fails.

Admittedly the Board did not finally adjust all claims within the year in which the accident occurred nor did it do so before March 1st of the ensuing year. But in my view of Section 32 what is thereby required is that the Board shall make an estimate as already set out and levy in accordance with such estimate against each class not that it must finally adjust all claims. It must also endeavour to collect the levies so made and this the Board has done and over a course of years has done quite successfully. But it is said this is to ignore Section 43.

I had prepared a draft judgment dealing with this contention and with the other prayers for a declaratory judgment contained in the statement of claim but the amendments to the Act which became law at the session of Legislature just closed has rendered it unnecessary to revise and hand it down, since no attempt to collect

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the existing deficit is in question in these proceedings and the amendments settle that and the other features discussed for the future.

The interim injunction is dissolved and the action dismissed.

“D. Murphy, J.”

Victoria, B. C.,
18th April, 1932.

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In the
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No. 7.
Formal
Judgment,
18th April,
1932.

JUDGMENT

Monday, the 18th day of
April, A.D. 1932.

THIS ACTION having come on for trial before the Honourable Mr. Justice Murphy, without a jury, at Vancouver, B. C., on the 16th, 17th, 18th and 21st days of March, 1932, in the presence of Mr. E. C. Mayers, K.C., and Mr. Clarence M. O'Brian, K.C., of Counsel for the Plaintiffs, and Mr. Charles W. Craig, K.C., Mr. J. W. deB. Farris, K.C., and Mr. Clement Carmichael, of Counsel for the Defendant; UPON HEARING the evidence adduced on behalf of the Plaintiffs and the Defendant; AND UPON HEARING what was alleged by Counsel aforesaid, and judgment having been reserved until this day: 10

THIS COURT DOTH ORDER AND ADJUDGE that the interim injunction granted herein by the Honourable the Chief Justice on the 21st day of January, 1932, be and the same is hereby dissolved:

AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that these actions be and the same are hereby dismissed: 20

AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that it be referred to the District Registrar of this Honourable Court at Vancouver, B. C., to ascertain what, if any, damages the Defendant has sustained by reason of the said interim injunction, which the Plaintiffs ought to pay:

AND THIS COURT DOTH FURTHER ORDER that further directions are hereby reserved.

Appd.,
"C. M. O'B."
"D. M., J."

BY THE COURT
"J. F. Mather"
DISTRICT REGISTRAR 30

Entered
May 2, 1932
Order Book, Vol. 82, Fol. 167
Per "L. J. B."

NOTICE OF APPEAL

RECORD

In the
Supreme Court
of British
ColumbiaNo. 8.
Notice of
Appeal,
1st August,
1932.

TAKE NOTICE that the above mentioned plaintiffs intend to appeal and do hereby appeal from the Judgment or Order of the Honourable Mr. Justice Murphy pronounced herein on the 18th day of April, A.D. 1932 (finally entered or otherwise perfected on the 2nd day of May, A.D. 1932), insofar as the said Judgment or Order dismisses the plaintiffs' claim for a declaration that the defendant is not entitled to apportion the additional amounts required to meet the cost of medical aid deficiency according to the amounts actually collected from the plaintiffs but should apportion same according to the total of the actual payrolls of the plaintiffs:

AND TAKE NOTICE that the Court of Appeal will be moved on behalf of the plaintiffs at its next sittings at the Law Courts in the City of Vancouver, Province of British Columbia, on Tuesday, the 4th day of October, A.D. 1932, at the hour of eleven o'clock in the forenoon or so soon thereafter as Counsel may be heard on behalf of the said plaintiffs (appellants) reversing the said Judgment and for a Judgment granting the said declaration and the incidental relief consequent thereupon, including an account, on the following amongst other grounds:

- (1) That the said Judgment is against the law:
- (2) That the learned Judge should have held that the methods of assessments and levy of the additional amounts required to meet the cost of medical aid are prescribed exclusively by Section 33 of the "Workmen's Compensation Act."
- (3) That the learned Judge should have held that such additional amounts ought to be raised by assessment upon all employers generally within the scope of Part 1 of the said Act:
- (4) That the learned Judge should have held the defendant (respondent) to have erred inasmuch as it attempted to raise such additional amount by discriminating between the different classes of industries.

DATED at Vancouver, British Columbia, this 1st day of August, A.D. 1932.

"C. M. O'Brian",
Solicitor for the Plaintiffs.

In the Court of Appeal for British Columbia.
No. 9.
Reasons for Judgment of the Honourable the Chief Justice,
10th January, 1933.

COURT OF APPEAL

MERRILL RING WILSON LTD.,
vs.
WORKMEN'S COMPENSATION BOARD

JUDGMENT OF THE HONOURABLE THE CHIEF JUSTICE.

The Board made an under-estimate of the money required to pay cost of medical aid for the year 1931 and, therefore, sought by subsequent assessment to make good the deficiency. The appellants seek an Injunction against such assessment. The point at issue depends very largely upon the true construction of sections 32, 33, and 43 of the Workmen's Compensation Act. The fund which the Board is authorized to collect to meet its obligations is named the "Accident Fund" and that term means the fund provided for the payment of compensations, outlays and expenses under Part 1 of the Act. The sections above referred to and some others to be referred to are under that heading. For the purpose of assessment to meet its obligations the Board by Section 28 is authorized to divide the employers of workmen into classes and by Section 35 it may differentiate in the rates to be assessed in respect of each class. For the purpose of creating and maintaining an adequate accident fund the Board by section 32 may assess and collect sufficient funds according to an estimate to be made by the Board:

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(a) To provide in connection with section 33 a special fund to meet the cost of medical aid;
and:

(d) To provide in each year capitalized reserves sufficient to meet the periodical payments of compensation accruing in future years in respect of all accidents which occur during the year.

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Sub-section 4 of said section 32 provides:

(4.) In case the estimated assessments in any class prove insufficient, the Board may make further assessments and levies as may be necessary, or the Board may temporarily advance the amount of any deficiency out of any reserve provided for that purpose, and add such amount to any subsequent assessments.

It will be noted that the accident fund is the fund out of which all compensation is paid, whether cash, periodical payments or medical aid.

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Section 33, sub-section 1 reads as follows:

Every employer who is required to contribute to the Accident Fund by way of assessment under this Part is hereby

authorized and required to retain from the moneys earned by each workman in his employment the sum of one cent for each day or part of day the workman is employed as a contribution toward the cost of medical aid, and to pay the sum so retained to the Board from time to time at the time each assessment is due and payable by the employer, and at such other times as the Board may direct.

And sub-section 2:

10 The moneys received by the Board under sub-section (1) shall form part of the accident Fund, and shall constitute a special fund to be used only in defraying the cost of medical aid. Such additional amounts as are required from time to time to meet the cost of medical aid shall be provided by the Board by assessment upon employers generally in all industries within the scope of this Part, except in respect of employments embraced in any plan for providing medical aid approved by the Board under sub-section (4) of section 23. For the purpose of levying and collecting assessments under this sub-section, the Board may charge the additional amounts
20 required to meet the cost of medical aid against the funds to the credit of the several classes in such a manner as, on the annual adjustment of assessments under this part, will result in a general assessment of such additional amounts upon those employers only who are liable to assessment under this sub-section.

30 It is conceded by the Board that all compensation for accidents in any one year shall be provided for out of the collections for that year and it is provided that an adjustment should be made before the 1st of March of the succeeding year of any differences between the estimates of the actual requirements and the actual requirements, the employers to make up differences and the Board to refund surplusses. The Board's contention is that these provisions are directory only and that it would be impossible to carry on if it were otherwise. That section 43 is not imperative appears particularly from the language of it which requires the deficiency to be made up from employers, owing to circumstances over which the Board has no control such as those mentioned in the 8th paragraph of the Statement of Defence. The Act deals with matters of great magnitude requiring the exercise of the highest consideration by the Board and because of this the Legislature reposes in
40 the Board discretion in many matters by giving them exceptional powers such as the responsibility of deciding without review upon all questions of fact and law, and while the present question is not one of those but one of jurisdiction the question of deciding that section 43 is imperative or not is not free from doubt and ought to be decided in accordance with the spirit of the whole Act, otherwise mistakes in the assessments or in the adjustments at the 1st

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of March of the sums required to meet obligations of the Board would lead to grave confusion and injustice, not only to the Board, but to the beneficiaries under the Act. For this reason, and for reasons mentioned by the learned trial Judge in his judgment, with which I entirely agree, I think the plaintiffs have failed to make out their case, and would, therefore, dismiss the appeal.

(Sgd.) J. A. Macdonald,
 C. J. B. C.

VICTORIA, B. C.,
 10th January, 1933.

COURT OF APPEAL

MERRILL RING & WILSON
LTD.
vs.
WORKMEN'S
COMPENSATION BOARD

JUDGMENT OF THE
HONOURABLE MR.
JUSTICE McPHILLIPS

RECORD
In the
Court of
Appeal
for British
Columbia.

No. 10.
Reasons for
Judgment of
the
Honourable
Mr. Justice
McPhillips,
J. A.
10th January,
1933.

10 This appeal calls for the consideration of an Act with un-
doubtedly very complicated provisions and when one considers the
great field of industries covered—it will only be after the lapse of
considerable time that it can be looked upon as a well defined Code
—and grounds for disagreement reach the vanishing point—that
time has not yet been reached. Upon full consideration of the
matter called in question in this appeal—the Court being assisted
by very able argument of Counsel upon both sides—counsel for the
appellants in my opinion has failed to establish that the course
adopted by the Board was not the correct one. We have a very
able judgment from Mr. Justice Murphy—who sustained the action
of the Board in making the challenged assessments. The Work-
20 men's Compensation Board is comprised of three gentlemen ap-
pointed by the Government of British Columbia for the carrying
out of very extensive powers—the ambit of the Act is very far
reaching and covers the main industries of the Province and re-
serves to the Board amongst other things the sole determination
of all questions of liability for injuries to workmen in all these
industries inclusive of—even marine officers and sailors—upon
ships sailing out of the ports of British Columbia, the operators
of the ships being resident in British Columbia—and provision for
dependents of workmen in case of death—without it being neces-
30 sary to establish negligence where death ensues—in discharge of
their duty. Here we have a question of the jurisdiction of the
assessments of the Board. In passing I might make reference to a
very notable case where the jurisdiction of the Board was called
in question in *Workmen's Compensation Board vs. Canadian Pa-
cific Railway Company* (1920) A.C. 184. Upon appeal to the Privy
Council in that case their Lordships of the Privy Council decided
that under the Act the dependents of the officers and of the crew
were entitled to compensation under the Act. It was the case of
the loss in foreign waters (Alaska, U.S.A.) of the S.S. "Sophia"
40 of the Canadian Pacific Railway Company—ship, passengers and
crew all lost, not one survivor—the Workmen's Compensation
Board there had held that the dependents were entitled to com-
pensation. The Railway Company disputing that decision brought
an action against the Board and obtained an interim injunction—

RECORD

In the
Court of
Appeal
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No. 10.
Reasons for
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Honourable
Mr. Justice
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J. A.
10th January,
1933.

(Cont'd)

later the action went to trial and it was held that there was no jurisdiction authorizing the paying of compensation—the Board appealed and this Court by a majority (I dissented) upheld the Court below; then the case went on appeal to the Judicial Committee with the result that their Lordships of the Privy Council reversed the decisions of the Court below—Lord Haldane delivering the judgment of their Lordships upholding the Act and the validity of the right to compensation. Further, in passing, it may be said that the Workmen's Compensation Board was then constituted as it is now—the chairman (Mr. Winn, K.C.) being a member of the Bar of long and high standing and the other two members of parliamentary and extensive industrial experience—all of whom devote their whole time to the administration of the Act. My excuse for speaking somewhat extra-judicially is to indicate that I place very great reliance upon the Board and its decisions—when we have had a history which redounds to their skill and ability now extending over some years in administering the provisions of the Act—with so little litigation ensuing. Upon a careful consideration of all the points raised and calling for decision in this appeal I do not consider that I can usefully add any other reasons than those given by the learned trial Judge whose judgment is under appeal to this Court and that is one upholding the Board in all that it has done.

I would uphold the judgment of the learned trial Judge—being of the opinion that the Board proceeded rightly in making the assessments and within its jurisdiction and with a proper understanding of its legal authority conferred under the provisions of the Act—I see here no departure from the true principles of construction of statute law. It follows that, in my opinion, the appeal should be dismissed and the action dismissed.

(Sgd.) "A. E. McPhillips, J.A."

Victoria, B.C.,
10th January, 1933.

COURT OF APPEAL

MERRILL, RING, WILSON
LTD., et al
vs.
WORKMEN'S
COMPENSATION BOARD

JUDGMENT OF
THE HONOURABLE
MR. JUSTICE
M. A. MACDONALD

RECORD
In the
Court of
Appeal
for British
Columbia.

No. 11.
Reasons for
Judgment of
the
Honourable
Mr. Justice
M. A. Macdon-
ald, J. A.
10th January,
1933.

10 Appellants' complaint is that the respondent Board failed to comply with the provisions of sec. 33, ss. 2 of Cap. 278 R.S.B.C., 1924—Workmen's Compensation Act—inasmuch as the additional amounts (i.e., in addition to the 1 cent per day collected from the workman under sec. 33, ss. 1) required to meet the cost of medical aid was not provided by assessment upon employers generally engaged in all industries within the scope of the Act but by assessments on the different classes into which industries are divided by Section 28 according to the risk involved dependent upon the comparative hazard encountered in the work. This contention is based upon the following words in sec. 33 (2):

20 "Such additional amounts as are required from time to time to meet the cost of medical aid shall be provided by the Board *by assessment upon employers generally in all industries* within the scope of this Part."

It is I think clear that if we were concerned solely with the interpretation of this clause appellants' view would have to prevail. When however we look at all relevant sections of the Act it would appear that the difficulty arises because of faulty draftsmanship.

30 One cannot construe a clause forming part of a section without looking at the context, considering the scope of the Act and all other sections dealing with the same or cognate matters. After doing so one has to decide whether or not the clause referred to is reasonably susceptible to another interpretation bringing it into harmony with the general purpose in view.

Sections 32 and 33 are complementary and must be read together. 32 (1) (a) reads:

"To provide in connection with section 33 a special fund to meet the cost of medical aid;"

40 By reference to the interpretation Sections we find that the "Accident Fund" is the fund provided for the payment of all "compensation," the latter word including "medical aid." For the purpose therefore of providing an accident fund, or to confine it to the point in which we are interested—for the purpose of providing a fund for medical aid—the Board makes levies not generally on all employers but on "classes" as outlined in sec. 28. The assessment may be rated upon the pay-roll "or in such other manner as the Board may deem proper," Sec. 32 (1). If we turn to sec. 35, we

RECORD

In the
Court of
Appeal
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Reasons for
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Mr. Justice
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ald, J. A.
10th January,
1933.

(Cont'd)

find classes still adhered to in fixing rates or assessments corresponding to the relative hazards in the different industries.

Sub-section (a) of 32 (1) referred to is important as a guide. How may that Special Fund be obtained? One must look at sec. 32 (1), the controlling section. It is obtained by levying and collecting from "employers in each class." Now are we compelled to say that there must be a radical departure from this scheme by reason of the general words found in sec. 33 leading to a system of assessment far less fair and equitable; or may these words be modified to fit the frame in which they are found? Must we ignore the scheme of the Act with its division into classes and for one purpose, viz., in respect to medical aid (although it is part of the general accident fund collected from classified groups) treat it as collectible from a general class of taxpayers? I think not. I think we may say that an assessment is levied on employers generally although varied in amount according to the classes affected. The assessment is "upon employers generally" and all must contribute but not necessarily the same amount.

Even a grammatical construction reasonably clear must give way if upon the whole it is evident from the context and other sections that it will not, strictly construed, carry out the true purpose of the Act. In *Waugh v. Middleton* (1853) 8 Welsby, Hurlstone & Gordon Ex. Repts. 351 at 355, Pollock, C.B., said:

"The learned counsel for the defendants relied upon the grammatical construction of the Act, and contended, that the Court was bound to give effect to it according to that construction. That rule of construction has frequently been adverted to in this Court. But I doubt, if it were laid down as a general rule, that the grammatical construction of a clause shall prevail over its legal meaning, whether a more certain rule would be arrived at, than if it were laid down that its legal meaning shall prevail over its grammatical construction. In my opinion grammatical and philological disputes, and indeed all that belongs to the history of language, is as obscure and leads to as many doubts and contentions as any question of law and I do not, therefore, feel sure that the rule, much as it has been commended, is on all occasions a sure and certain guide. It must, however, be conceded, that where the grammatical construction is quite clear and manifest and without doubt, that construction ought to prevail, unless there be some strong and obvious reason to the contrary. But the rule adverted to is subject to this condition, that, however, plain the apparent grammatical construction of a sentence may be, if it be perfectly clear from the contents of the same document (and the same rule applies in the construction not only of an Act of Parliament, but of deeds, wills, and of any subject of a like nature), that the apparent gram-

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matical construction cannot be the true one, then that which upon the whole is the true meaning, shall prevail in spite of the grammatical construction of a particular part of it.”

10 I think the underlying principle there outlined may be applied in view of the clear indication found by reading all relevant sections that this assessment is imposed on classes dependent upon the risk; in other words, the clause should be interpreted to avoid conflict with other provisions of the Act dealing with the same subject-matter if at all possible. Once convinced that the intention is clear, words will be modified to carry it out. Nor will lack of skill in draftsmanship defeat the main intention of the Act either to nullify it or to affect it in an important particular. *Salmon v. Duncombe* (1886) 11 A.C. 627 at 634.

I would dismiss the appeal.

(Sgd.) “M. A. Macdonald, J.A.”

Victoria, B. C.,
10th January, 1933.

RECORD

In the
Court of
Appeal
for British
Columbia.

No. 11.
Reasons for
Judgment of
the
Honourable
Mr. Justice
M. A. Macdon-
ald, J. A.
10th January,
1933.

(Cont'd)

RECORD

In the Court of Appeal for British Columbia.

No. 12. Formal Judgment of Court of Appeal.

COURT OF APPEAL

BETWEEN:

MERRILL RING WILSON LIMITED, et al
Plaintiffs (Appellants)

—and—

WORKMEN'S COMPENSATION BOARD,
Defendant (Respondent)
(Consolidated Actions)

B.C.L.S. 10
\$1.00

Court of Appeal Seal
Vancouver Registry
Jan. 17, 1933

CORAM:

THE HONOURABLE THE CHIEF JUSTICE OF BRITISH COLUMBIA
THE HONOURABLE MR. JUSTICE MARTIN
THE HONOURABLE MR. JUSTICE GALLIHER 20
THE HONOURABLE MR. JUSTICE McPHILLIPS
THE HONOURABLE MR. JUSTICE M. A. MACDONALD

Victoria, B. C., the 10th day of January, A.D. 1933

THE APPEAL of the above named Appellants from the judgment pronounced herein on the 18th day of April, 1932, by the Honourable Mr. Justice Murphy, having come on for hearing before this Court at Vancouver, B. C., on the 12th day of October, 1932, in the presence of Mr. E. C. Mayers, K.C., and Mr. Clarence M. O'Brian, K.C., of Counsel for the Appellants, and Mr. Charles W. Craig, K.C., and Mr. C. Carmichael, of counsel for the Respondent; UPON READING the Appeal Book, and upon hearing what was alleged by counsel aforesaid, and judgment having been reserved until this day; 30

THIS COURT DOTH ORDER AND ADJUDGE that the said appeal be and the same is hereby dismissed;

AND THIS COURT doth not see fit to make any order as to the costs of this Appeal.

BY THE COURT

“J. F. Mather”

REGISTRAR

Entered
Jan. 17, 1933
Order Book, Vol. 9, Fol. 131
Per “L.J.B.”

10 “E.C.M.”
“H.B., D.R.”
“J.A.M., C.J.”

RECORD
In the
Court of
Appeal
for British
Columbia.
No. 12.
Formal Judg-
ment of
Court of
Appeal.
(Cont'd)

RECORD

No. 13

In the
Court of
Appeal
for British
Columbia.

COURT OF APPEAL

BETWEEN:

No. 13.
Order for
Conditional
Leave to
Appeal,
27th January,
1933.

MERRILL RING WILSON LIMITED, LAMB LUMBER COMPANY LIMITED, BLOEDEL STEWART & WELCH COMPANY LIMITED, THOMSEN & CLARK TIMBER COMPANY LIMITED, MERRILL RING LUMBER COMPANY LIMITED, B. & K. LOGGING COMPANY LIMITED, EARLE & BROWN LUMBER COMPANY LIMITED, DISCOVERY PASSAGE LOGGING COMPANY LIMITED, ELK RIVER TIMBER COMPANY LIMITED, WHITE ROCK TUG COMPANY LIMITED, VANCOUVER BAY LOGGING COMPANY LIMITED, GUSTAVSON BROS. LOGGING COMPANY LIMITED, BROUGHTON LOGGING COMPANY LIMITED, ALBERNI PACIFIC LUMBER COMPANY LIMITED, GREAT CENTRAL SAWMILLS LIMITED, BURNS & JACKSON LOGGING COMPANY LIMITED, and CAMPBELL RIVER TIMBER COMPANY LIMITED, suing on behalf of themselves, and all other members of sub-class 2 of Class 1 of the industries under the "Workmen's Compensation Act",

Plaintiffs (Appellants)

AND:

WORKMEN'S COMPENSATION BOARD
Defendant (Respondent)

—and—

BETWEEN:

MERRILL RING WILSON LIMITED, MERRILL & RING LUMBER COMPANY LIMITED, B. & K. LOGGING COMPANY LIMITED, DISCOVERY PASSAGE LOGGING COMPANY LIMITED, EARLE & BROWN TIMBER COMPANY LIMITED, THOMSEN & CLARK TIMBER COMPANY LIMITED, LAMB LUMBER COMPANY LIMITED, ELK RIVER TIMBER COMPANY LIMITED, ALBERNI PACIFIC LUMBER COMPANY LIMITED, VANCOUVER BAY LOGGING COMPANY LIMITED, GUSTAVSON BROS. LOGGING COMPANY LIMITED, BLOEDEL STEWART & WELCH COMPANY LIMITED, SISTERS CREEK LOGGING COMPANY LIMITED, GREEN POINT LOGGING COMPANY LIMITED, CAMPBELL RIVER TIMBER COM-

PANY LIMITED, and HILLCREST LUMBER COMPANY LIMITED, suing on behalf of themselves, and all other members of sub-class 2 of Class 1 of the industries under the "Workmen's Compensation Act",

Plaintiffs (Appellants)

AND:

WORKMEN'S COMPENSATION BOARD

Defendant (Respondent)

(Consolidated Actions)

RECORD
In the
Court of
Appeal
for British
Columbia.

No. 13.
Order for
Conditional
Leave to
Appeal,
27th January,
1933.

(Cont'd)

10 B.C.L.S.
\$1.10

Seal of Court of Appeal
of British Columbia.

Vancouver
Feb. 2, 1933
Registry

CORAM:

THE HONOURABLE THE CHIEF JUSTICE OF BRITISH
COLUMBIA

20 THE HONOURABLE MR. JUSTICE McPHILLIPS
THE HONOURABLE MR. JUSTICE M. A. MACDONALD

Victoria, B. C., the 27th day of January, A.D. 1933.

UPON MOTION of the plaintiffs (appellants) for leave to appeal to His Majesty in Council from the Judgment of this Honourable Court dated the 10th day of January, A.D. 1933; UPON HEARING Mr. E. C. Mayers, K.C., of counsel for the plaintiffs (appellants) and Mr. C. W. Craig, K.C., of Counsel for the defendant (respondent); AND UPON IT APPEARING that the matter in dispute on the appeal

- 30 (a) amounts to more than the sum of Five Hundred Pounds Sterling, and
- (b) that the question involved in the appeal is one which by reason of its great general importance ought to be submitted to his Majesty in Council for decision:

THIS COURT DOT H HEREBY GRANT to the plaintiffs (appellants) leave to appeal from the said Judgment to His Majesty in Council upon the condition that one or more of the plaintiffs (appellants) Merrill Ring Wilson Limited, Bloedel, Stewart & Welsh Company Limited, Merrill Ring Lumber Company Limited

RECORD
 In the
 Court of
 Appeal
 for British
 Columbia.

No. 13.
 Order for
 Conditional
 Leave to
 Appeal,
 27th January,
 1933.

(Cont'd)

and Elk River Timber Company Limited, do within three (3) months from the date hereof enter into good and sufficient security satisfactory to this Honourable Court, in the sum of Two Hundred Pounds (£200) for the due prosecution of the appeal and the payment of all such costs as may be payable to the defendant (respondent) Workmen's Compensation Board, in the event of the plaintiffs (appellants) not obtaining an order granting them final leave to appeal, or of the appeal being dismissed for non-prosecution, or of His Majesty in Council ordering the plaintiffs (appellants) to pay the defendant (respondent) Workmen's Compensation Board's costs of the appeal, as the case may be. 10

BY THE COURT

"J. F. Mather"

REGISTRAR

Seal of Court of Appeal
 of British Columbia.

"C.W.C."
 "O.B., D.R."
 "J.A.M., C.J."

Entered
 Feb. 2, 1933
 Order Book, Vol. 9, Fol. 140
 Per "A.L.R."

20

REGISTRAR'S CERTIFICATE OF COMPLIANCE
WITH ORDER

RECORD

In the
Court of
Appeal
for British
Columbia.

No. 14.
Registrar's
Certificate
of Compliance
with Order.
6th April,
1933.

B.C.L.S.
\$1.10

Vancouver
Apr. 6, 1933
Registry

10 Seal of the Court of Appeal
for British Columbia.

20 I, the undersigned, Registrar of the Court of Appeal in Vancouver, B. C., HEREBY CERTIFY that pursuant to the order of the Court of Appeal, dated the 27th day of January, A.D. 1933, the sum of £200.00 sterling was on the 6th day of April, 1933 paid into Court to the credit of this cause as security for the due prosecution of the appeal herein to His Majesty in his Privy Council and payment of all such costs as may become payable to the defendant (respondent) in the event of the plaintiffs (appellants) not obtaining an order granting it leave to appeal or of the appeal being dismissed for non-prosecution and for the payment of such costs as may be awarded by His Majesty, his heirs and successors, or by the judicial committee of the Privy Council to the said defendant (respondent) on such appeal.

Dated at Vancouver, B. C., this 6th day of April, A.D. 1933.

"H. Brown"

Dep. District Registrar, Supreme Court
Dept. Regr., Court of Appeal.

RECORD

In the
Court of
Appeal
for British
Columbia.

COURT OF APPEAL

BETWEEN:

MERRILL RING WILSON LIMITED, et al

(Plaintiffs (Appellants))

No. 15.
Order Grant-
ing Final
Leave to
Appeal.
7th April,
1933.

—and—

WORKMEN'S COMPENSATION BOARD

Defendant (Respondent)

(Consolidated Actions)

B.C.L.S.
\$1.10

10

Vancouver
Apr. 8, 1933
Registry

Seal of Court of Appeal
for British Columbia.

CORAM:

THE HONOURABLE THE CHIEF JUSTICE OF BRITISH
COLUMBIA

THE HONOURABLE MR. JUSTICE McPHILLIPS

20

THE HONOURABLE MR. JUSTICE M. A. MACDONALD

Friday, the 7th day of April, 1933.

UPON MOTION made to the Court this day for final leave to appeal, UPON READING the Order made by this Court dated the 27th day of January, 1933, and the Certificate of the Registrar of this Court at Vancouver, dated the 6th day of April, 1933, of due compliance with the said Order; AND UPON HEARING Mr. Stuart Lane, of Counsel for the said plaintiffs (appellants), and Mr. C. W. Craig, K.C., of Counsel for the defendant (respondent) consenting;

30

THIS COURT DOTH ORDER that leave to appeal to His Majesty in his Privy Council be and the same is hereby granted to the said plaintiffs (appellants).

BY THE COURT

"H. Brown"

DEP. REGISTRAR

"J.F.M., D.R."
"W.A.M., J.A."
"C.W.C."

Entered
Apr. 8, 1933
Order Book, Vol. 9, Fol. 200
Per "H.J.B."

RECORD

In the
Court of
Appeal
for British
Columbia.

No. 15.
Order Grant-
ing Final
Leave to
Appeal.
7th April,
1933.

(Cont'd)

RECORD

No. 16

In the
Court of
Appeal
for British
Columbia.

COURT OF APPEAL

BETWEEN:

MERRILL RING WILSON LIMITED, et al
Plaintiffs (Appellants)

AND:

WORKMEN'S COMPENSATION BOARD,
Defendant (Respondent)

B.C.L.S.
\$1.00

10

Vancouver
Apr. 18, 1933
Registry

Seal of the Court of Appeal
of British Columbia.

(Consolidated Actions)

I, the undersigned, Registrar, of the City of Vancouver, of the Court of Appeal of British Columbia, DO HEREBY CERTIFY that the only Reasons for Judgment that have as yet been handed down by the Judges of this Honourable Court sitting on this Appeal, are those of the Honourable the Chief Justice, Mr. Justice McPhillips and Mr. Justice M. A. Macdonald. 20

AND I FURTHER CERTIFY that on the 2nd day of March, A.D. 1933, the Honourable Mr. Justice Martin handed down a memorandum herein as follows: "I would dismiss."

DATED at Vancouver, B. C., this 18th day of April, A.D. 1933.

"J. F. Mather",
REGISTRAR

PART II.

—

EXHIBITS

EXHIBIT No. 1

EXCERPTS FROM REPORT ON THE WORKMEN'S COMPENSATION BOARD OF BRITISH COLUMBIA BY A. P. FOSTER, C.A.

pp. 11—14

MEDICAL AID

Another contributing factor to the increasing demands upon industry lies in medical aid.

10 Before dealing with this matter in detail, it might be well to cite the findings of the Committee of investigation appointed by the Government to look into the whole question of Workmen's Compensation prior to passing the present Workmen's Compensation Act. This report was presented March 1st, 1916, and on pages 7 and 8 thereof the whole question of medical aid is fully discussed. This report states inter alia, "The committee gathered considerable data on this phase of the subject of medical aid and, at two informal evening meetings held during the Vancouver sessions, was able to place many of these facts before committees representing the employer and labour organizations. As a result
20 of these informal discussions an agreement was reached between the joint committee of employers and the representatives of the labour organizations by which it was mutually agreed to recommend to the Legislature a medical aid provision to be inserted in the Act, providing full medical aid in all cases of industrial accident from the time of the injury until the injured workman is restored to health, so far as aid can reasonably restore him. To equalize the cost of this service the workmen are to contribute 1c per day from their wages, any balance required to meet the cost to be furnished by the employers."

30 My interpretation of equalizing costs of medical aid as between employer and employee is that they shall share and share alike in this cost. That undoubtedly was the intention at the inception of the Act.

I propose to show what the actual results have been in this respect during the past five years:

Year	Paid by Workmen	Paid by Employers
1926	\$ 271,318.61	\$ 408,086.17
1927	265,612.95	381,173.25
1928	283,628.45	405,997.42
1929	294,762.59	458,295.84
1930	302,729.36	464,533.37
Totals	\$1,418,051.96	\$2,118,086.05

RECORD

In the
Supreme Court
of British
Columbia

Exhibit No. 1.

Plaintiffs'
Document.

Excerpt from
Report of
A. P. Foster,
C. A.
30th Novem-
ber, 1931.

RECORD
 In the
 Supreme Court
 of British
 Columbia
 Exhibit No. 1.
 Plaintiffs'
 Document.
 Excerpt from
 Report of
 A. P. Foster,
 C. A.
 30th Novem-
 ber, 1931.
 (Cont'd)

Add—	Medical aid charged to Compensation, classes 13 and 19	45,088.19
		\$2,163,174.24

As shown above the total amount of money received from workmen and employers for the five-year period to meet medical aid costs amounted to \$3,581,226.20.

One half share of the above amount	\$1,790,613.10
Amount paid by the workmen	1,418,051.96
	\$ 372,561.14

You will see from the foregoing that employers, during the five-year period, have been called upon to contribute \$372,561.14 which would have been contributed by the workmen on an equalized basis.

No record is kept by the Board by classes of the amount contributed for medical aid purposes.

The amount required by the Board to meet medical aid costs in excess of the amount collected from the workmen is met by transferring from the accident fund the necessary amount to meet the shortage, and the various classes are charged with their proportion of this shortage in the ratio that total assessments of each class bear to the whole. The assessments of class 1 amount to approximately 40% of the whole, therefore, as a rough calculation, class 1 has contributed approximately \$150,000.00 in excess of its half-share of medical aid costs during the five years 1926-1930. 20

The payment of 1c per day now being made by the workmen for medical aid purposes is in accordance with provisions of the Act, consequently, any change in this respect could only be accomplished by a change in the Act. If such a change is sought I would suggest that consideration be given to establishing the rate of payments to be made by the workmen on a basis that is equitable to the workmen as a whole. 30

Although no information is available, and it would take too long to compile it, the actual cost of medical aid services of subclass 2 is probably about 5c to 6c per day. It does seem to me only fair, that, taking logging as an example, men engaged in that industry should contribute more toward medical aid costs than those workmen engaged in less hazardous and not so highly paid occupations. The average daily wage of men engaged in the logging industry is higher than the average daily wage for all industries included in the Act. 40

Logging is admittedly a hazardous occupation and I assume that is the reason why it is more highly paid than most other industries; therefore, it is only equitable that the workmen engaged in the logging industry should pay at least half the actual medical aid costs incurred by that industry.

In suggesting this I am not recommending anything new. In the State of Washington the logging industry medical aid rate is 6c per diem, of which the employer pays 3c and the workman 3c. Lumber yards rate is 4c per diem, of which the employer pays 2c
 10 and the workmen 2c.

There are other industries that are hazardous, and they too should pay more than they now do; in other words, the whole subject of medical aid contributions should be thoroughly examined with a view to recommending Legislation that is not only more equitable to the employer of labour but also to employees engaged in the less hazardous occupations.

I think it is unfortunate that the annual report published by the Workmen's Compensation Board does not contain an analysis of medical aid costs. I deemed it wise to have an analysis made for
 20 certain months with a view to finding out just where the money was spent. The result is as follows:

Date	Doctors and Dentists	Hospitals	Drugs, etc.	Total
March, 1928	\$ 33,734.76	\$ 21,017.35	\$ 2,676.99	\$ 57,429.10
Sept., 1928	31,286.05	23,690.29	2,884.43	57,860.77
June, 1929	29,014.95	23,413.85	3,132.22	55,561.02
Oct., 1929	47,164.40	34,855.30	3,802.02	85,821.72
Jan., 1930	40,338.17	25,520.10	3,063.88	68,922.15
Feb., 1930	32,572.49	30,503.45	3,313.79	66,389.73
	<u>\$214,110.82</u>	<u>\$159,000.34</u>	<u>\$18,873.33</u>	<u>\$391,984.49</u>

Owing to the amount of work involved I did not consider it wise to go beyond the several months shown as they really fulfill the object I had in mind. Based on these figures, doctors and dentists aggregate 54% of the total amounts paid, hospitals aggregate 40% of the whole, leaving only 6% to cover cost of drugs, artificial limbs and other expenditures.

For your further information I have attached hereto, marked Exhibit 2, a comparative statement of medical aid receipts and disbursements for the years 1921 to 1931 inclusive.

40 pp. 19—20:

With a view to finding out the experience of the members of the British Columbia Loggers' Association in the matter of acci-

RECORD
 In the
 Supreme Court
 of British
 Columbia
 Exhibit No. 1.
 Plaintiffs'
 Document.
 Excerpt from
 Report of
 A. P. Foster,
 C. A.
 30th Novem-
 ber, 1931.
 (Cont'd)

RECORD
 In the
 Supreme Court
 of British
 Columbia
 Exhibit No. 1.
 Plaintiffs'
 Document.
 Excerpt from
 Report of
 A. P. Foster,
 C. A.
 30th November,
 1931.
 (Cont'd)

dent costs as compared with assessments paid, I have prepared and attached hereto, marked Exhibit 7, a statement showing the receipts from Assessments and Medical Aid and Disbursements for compensation and medical aid paid out on account of accidents in the operations of these employers during the five years 1926-1930.

This statement embraces 38 companies, all of which are or were members of your association. This statement, however, includes all operations these members were engaged in, whether logging, saw mill or shingle mill. To my mind it is a most interesting exhibit. A summary follows:

Assessments charged	\$2,213,962.43
Compensation paid	1,811,465.85
	<hr/>
Surplus	\$ 402,496.58
	<hr/>
Medical aid contributed by employees	\$ 104,909.97
Medical aid costs	493,855.61
	<hr/>
Deficit (paid by employers)	\$ 388,945.64
	<hr/>
Excess of Compensation surplus over Medical aid deficit	\$ 13,550.94
	<hr/>

10

Attention is drawn to the fact that the Victoria Lumber and Manufacturing Company had an approved medical aid scheme. Had the employees paid their half share of medical aid costs during this five-year period, the result would have been that these 38 companies would have contributed \$155,568.77 in excess of compensation and medical aid costs, exclusive of their proportionate charge for administrative expense.

20

EXHIBIT No. 1

WORKMEN'S COMPENSATION BOARD
 COMPARATIVE STATEMENT MEDICAL AID
 for the years 1921 to 1931 (inclusive)

Year	RECEIPTS				DISBURSEMENTS		
	Balance on hand 1st January	Paid by Workmen	Paid by Employers	Total	Physicians, Hospitals, Drugs, etc.	Balance on hand 31st Dec.	Total
1921.....	\$ 2,707.61	\$254,272.62	\$192,617.49	\$449,597.72	\$431,747.45	\$17,850.27	\$449,597.72
1922.....	17,850.27	210,467.98	247,982.38	476,300.63	457,198.06	19,104.57	476,300.63
1923.....	19,104.57	225,929.05	287,581.33	532,624.95	514,762.00	17,862.95	532,624.95
1924.....	17,862.95	251,435.03	335,054.02	604,352.00	602,732.88	1,619.12	604,352.00
1925.....	1,619.12	243,369.85	387,618.08	632,607.05	618,941.91	13,665.14	632,607.05
1926.....	13,665.14	271,318.61	408,086.17	693,069.92	678,231.05	14,838.87	693,069.92
1927.....	14,838.87	265,612.95	381,173.25	661,625.07	643,594.52	18,030.55	661,625.07
1928.....	18,030.55	283,628.45	405,997.42	707,656.62	688,446.44	19,209.98	707,656.62
1929.....	19,209.98	294,762.59	458,295.84	772,268.41	752,623.12	19,645.29	772,268.41
1930.....	19,645.29	302,729.36	464,533.37	786,908.02	773,397.46	13,510.56	786,908.02

"Exhibit 2"

RECORD

In the
 Supreme Court
 of British
 Columbia

Exhibit No. 1.

Plaintiffs'
 Document.

Exhibit No. 2
 to A. P.
 Foster's
 Report dated
 30th Novem-
 ber, 1931.

EXHIBIT No. 1

Exhibit No. 7

RECORD

WORKMEN'S COMPENSATION BOARD

Statement of Receipts from Assessments and Medical Aid from Employees and Disbursements for Compensation and Medical Aid for five years ended 31st December, 1930, from the B. C. Loggers' Association.

FIRM NAME	Assessments Charged During 5 years 1926—1930	Compensation Paid During 5 years 1926—1930	Surplus Deficit	Medical Aid Contributed by Employees During 5 years 1926—1930	Medical Aid Paid During 5 years 1926—1930	Surplus Deficit
Anderson, P. B. Ltd.	\$ 9,036.17	\$ 14,377.33	\$ 5,341.16	\$ 592.20	\$ 3,060.00	\$ 2,467.80
Alberni Pacific Lbr.	121,769.56	73,663.50	48,106.06	7,301.16	27,592.65	20,291.49
Allison Log Co. Ltd.	1,537.89	750.82	787.07	112.13	157.50	45.37
B. & K. Log Co. Ltd.	24,298.93	61,226.66	36,927.73	1,169.76	9,167.15	7,997.39
Bernard Tbr. & Log Co. Ltd.	71,809.16	61,916.07	9,893.09	3,616.55	21,119.95	17,503.40
Bloedel S. Welch Co. Ltd.	243,743.08	190,074.91	53,668.17	10,660.02	64,382.39	53,722.37
B. C. Pulp & Paper Co. Ltd.	87,470.20	66,719.97	20,750.23	11,322.13	21,399.75	10,077.62
Brooks Scanlon O'Brien Co. Ltd.	31,763.50	28,685.49	3,078.01	1,675.89	11,820.39	10,144.50
Burns & Jackson	4,148.11	1,338.62	2,809.49	175.25	436.75	261.50
Chehalis Log Co.	28,120.00	23,771.38	4,348.62	1,129.25	6,451.05	5,321.80
Canadian Robert Dollar Co. Ltd.	73,541.43	71,196.67	2,344.76	4,037.10	16,569.50	12,532.40
Capilano Tbr. Co. Ltd.	112,280.44	122,468.41	10,187.97	7,123.70	28,505.27	21,381.57
Cathels & Sorensen Ltd.	51,145.97	44,923.78	6,222.19	2,351.87	11,101.96	8,750.09
Campbell River Mills	67,811.29	58,434.28	9,377.01	3,607.46	11,838.81	8,231.35
Campbell River Tbr. Co. Ltd.	61,131.25	30,039.52	31,091.73	1,745.80	8,980.55	7,234.75
Comox Log & Rly. Co. Ltd.	146,774.51	50,118.37	96,656.14	6,522.86	18,119.35	11,596.49
Dempsey Ltd.	9,224.16	12,592.42	3,368.26	642.93	2,719.35	2,076.42
Fairservice Gierin Tbr. Co.	33,997.86	20,808.81	13,189.05	1,011.82	7,858.20	6,846.38
Great Central Sawmills	63,620.27	84,090.67	20,470.40	3,850.50	20,273.63	16,423.13
Gustavson Bros. Log Co.	17,862.36	5,879.31	11,983.05	598.78	2,572.30	1,973.52
Hage Tbr. & Investment Co. Ltd.	3,539.89	2,192.34	1,347.55	222.68	1,104.10	881.42
Hanson Logging Co.	29,763.24	41,901.05	12,137.81	1,533.85	15,289.30	13,755.45
Hilton, A. M.	3,045.05	11,969.00	8,923.95	143.47	568.85	425.38
International Tbr. Co. (Elk River Timber Co.)	131,984.21	72,609.53	59,374.68	5,229.14	33,191.97	27,962.83
Lamb Lbr. Co. Ltd.	52,004.23	62,829.33	10,825.10	2,243.11	18,126.51	15,883.40
McCoy Wilson Ltd.	78,254.56	90,027.67	11,773.11	2,906.00	21,314.10	18,408.10
McDonald Murphy Log Co.	47,294.91	22,167.89	25,127.02	1,389.00	9,620.49	8,231.49
Merrill Ring Wilson	13,137.82	2,003.23	11,134.59	425.37	870.75	445.38
Merrill Ring Lbr. Co. Ltd.	152,372.26	102,352.16	50,020.10	6,334.38	34,186.00	27,851.62
Moore, Judd	2,763.99	1,014.04	1,749.95	110.31	572.43	462.12
Peck Logging Co. Ltd.	8,207.48	19,081.91	10,874.43	355.67	1,892.85	1,537.18
Scott Cove Log Co. Ltd.	6,235.45	5,729.83	505.62	230.37	1,471.20	1,240.83
Scottish Palmer Log Co.	24,430.44	23,289.23	1,141.21	1,071.42	5,871.25	4,799.83
Tahkina Tbr. Co. Ltd.	8,515.22	7,668.66	846.56	408.83	2,485.50	2,076.67
Thomsen & Clark Tbr. Co. Ltd.	80,304.92	83,234.14	2,929.22	3,430.86	18,544.05	15,113.19
Vancouver Bay Log Co. Ltd.	18,664.94	15,291.45	3,373.49	615.96	3,404.10	2,788.14
Victoria Lbr. & Mfg. Co.	135,332.69	118,400.64	16,932.05	(Approved Medical Aid Scheme)		
Wood & English Ltd.	157,024.99	106,626.76	50,398.23	9,012.39	31,215.66	22,203.27
	<u>\$2,213,962.43</u>	<u>\$1,811,465.85</u>	<u>\$402,496.58</u>	<u>\$104,909.97</u>	<u>\$493,855.61</u>	<u>\$388,945.64</u>

In the
Supreme Court
of British
Columbia

Exhibit No. 1.

Plaintiffs'
Document.

Exhibit No. 7
to A. P.
Foster's
Report dated
30th Novem-
ber 1931.

EXHIBIT No. 8

WORKMEN'S COMPENSATION BOARD

1931 COSTS—LOGGING WEST OF THE CASCADES

Cash payments in 1931	\$179,585.74
Estimated cost of outstanding claims	159,580.00
Cash payments January 1st to January 22nd, 1932, account 1931 claims	7,983.53
Employers share of Medical Aid, being 4% of \$335,381.56	13,415.26
10 Employers share of expenses, being 4% of \$129,000.00	5,160.00
Total costs, 1931	<u>\$365,724.53</u>
4 assessments collected	\$316,348.18
Judgments	9,086.69
Claims in bankruptcy	7,406.69
Unpaid assessments	50,517.07
	<u>\$383,358.63</u>
Surplus, 1931, on 4 assessments	<u>\$ 17,534.10</u>

RECORD

In the
Supreme Court
of British
Columbia

Exhibit No. 8.

Plaintiffs'
Document.

Table prepared
by A. P.
Foster, C. A.,
showing 1931
Costs Work-
men's Comp-
ensation Board,
Logging West
of the
Cascades,
10th March,
1932.

RECORD

EXHIBIT No. 9

In the
Supreme Court
of British
Columbia

Exhibit No. 9.

Plaintiffs'
Document.

Comparative
Table
prepared by
A. P. Foster,
C. A., showing
medical aid
costs, logging
West of the
Cascades, 1929
to 1931, dated
16th March,
1932.

WORKMEN'S COMPENSATION BOARD

	1931	1930	1929	
Total Medical Aid	\$ 565,689.19	\$ 767,262.73	\$ 753,058.43	
Less employees' contribution ..	230,307.63	302,729.36	294,762.59	
Employers' share	\$ 335,381.56	\$ 464,533.37	\$ 458,295.84	
	Estimated	Actual	Actual	10
Total pay roll	\$150,000,000.00	\$176,845,469.00	\$189,839,024.00	
Class 1 pay roll..	17,500,000.00	32,637,702.00	44,188,122.00	
Sub-Class 2— payroll	5,500,000.00	10,473,509.00	15,662,092.00	
Percentage of sub-class 2 of Class 1 to total pay roll	3.66%	5.92%	8.25%	
Total log production	1,308,449 ft.	1,764,419 ft.		20

26% decrease in 1931 as compared with 1930

EXHIBIT No. 31

SEEDS, MARTIN & CO.
Chartered Accountants

Vancouver, B. C.,
February 29, 1932.

Workmen's Compensation Board,
Vancouver, B. C.

Gentlemen:

10 We have made an examination of your books and records, in-
sofar as they relate to the affairs of the Board, in connection with
the operation of Sub-Class 2 of Class 1, covering logging oper-
ations west of the Cascade Mountains, and on the annexed exhibit
present a statement of the Revenue and Expenses covering 1931
operations, only.

We have the following remarks to pass, in connection with the
estimated items, as shown thereon:—

Cost of Outstanding Claims—\$159,380.00

20 This amount is based on the Medical Practitioner's estimate
of the length of future disability on each and every 1931 un-
finished accident.

Employers' Share of Medical Aid—\$74,578.35

This amount is arrived at as follows:

1931—Collections	\$321,162.96
1931—Estimate of Collectible Assessments	15,000.00
1931—5/6 Installments Estimated to Produce	90,000.00
	<hr/>
	\$426,162.96
	<hr/>
17½% of \$426,162.96	\$ 74,578.35
	<hr/>

Administration—\$19,177.29

This amount is arrived at, as follows:

30 Total Estimated Revenue of Board	\$3,000,000.00
Total Administration	129,000.00
Percentage	4.30
4½% on \$426,162.96	\$ 19,177.29
	<hr/>

“SEEDS MARTIN CO.”

Chartered Accountants.

Vancouver, B. C.,
February 29, 1932.

RECORD

In the
Supreme Court
of British
Columbia

Exhibit No. 31.

Defendant's
Document.

Report of
Seeds, Martin
& Company,
Chartered
Accountants,
to Defendant
Board, dated
February 29,
1932.

RECORD

Exhibit 31

In the
Supreme Court
of British
Columbia

Exhibit No. 31.

Defendant's
Document.

Report of
Seeds, Martin
& Company,
Chartered
Accountants,
to Defendant
Board, dated
February 29,
1932.

(Cont'd)

WORKMEN'S COMPENSATION BOARD

STATEMENT OF COST OF OPERATING
SUB-CLASS 2, OF CLASS 1

LOGGING WEST OF THE CASCADE MOUNTAINS

CLAIMS PAID:

Time Loss	\$138,150.22	
Permanent Partial Disability	15,762.31	
Fatal	33,392.81	
	<u> </u>	\$187,309.34 10

ESTIMATED COST OF OUTSTANDING

CLAIMS	159,380.00
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EMPLOYERS' SHARE OF MEDICAL AID:

17½% on \$426,162.96	74,578.35
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ADMINISTRATION:

4½% on \$426,162.96	19,177.29
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\$440,444.98

COLLECTIONS ON ASSESSMENTS

1—4	\$311,396.96
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COLLECTIONS MADE 1932 on 1931

ASSESSMENTS 1—4	9,766.00
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\$321,162.96

1931—ASSESSMENTS 1—4:

Oustanding	\$40,986.15
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Estimate to collect	\$ 15,000.00
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336,162.96

OPERATING DEFICIT	\$104,282.02
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5/6 Installments estimated to collect	\$ 90,000.00
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Deficit to Adjust	14,282.02
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\$104,282.02 30