

COURT OF APPEALS  
DIVISION II  
12:57:10 PM 11-14-15  
STATE OF WASHINGTON  
BY *Ce*  
FERRY

NO. 41138-5-II

---

**COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON**

---

WILLIAM MASON (DEC'D), MARY MASON and DEPARTMENT OF  
LABOR AND INDUSTRIES OF THE STATE OF WASHINGTON,

Appellants,

v.

GEORGIA-PACIFIC CORPORATION,

Respondent.

---

**JOINT BRIEF OF APPELLANT WILLIAM MASON (DEC'D),  
MARY MASON AND DEPARTMENT OF LABOR AND  
INDUSTRIES OF THE STATE OF WASHINGTON**

---

ROBERT M. MCKENNA  
Attorney General

NATALEE RUTH FILLINGER  
Assistant Attorney General  
WSBA No. 31436  
P.O. Box 40121  
Olympia, WA 98504-0121  
(360) 586-7713

JILL KARMY, WSBA#34132  
Springer Norman & Workman  
PO Box 757  
Longview, WA 98632-7490  
(360)423-3810

## TABLE OF CONTENTS

I.	NATURE OF THE CASE.....	1
II.	ASSIGNMENT OF ERROR.....	1
III.	APPELLANTS’ STATEMENT OF THE ISSUES.....	2
IV.	APPELLANTS’ STATEMENT OF THE CASE.....	3
V.	STANDARD OF REVIEW.....	6
VI.	SUMMARY OF ARGUMENT.....	7
VII.	ARGUMENT .....	9
	A. The Legislature Intended To Provide Full Death Benefits To Survivors Of Voluntarily Retired Workers .....	9
	1. The Legislature Added Voluntary Retirement Provisions To Only RCW 51.32.060 And RCW 51.32.090, Not RCW 51.32.050.....	9
	2. Under The Maxim <i>Expressio Unius Est Exclusio            Alterius</i> , Survivors Of Voluntarily Retired Workers Are Entitled To Full Death Benefits.....	12
	3. Policy And The Irreversible Nature Of Death Support The Conclusion That The Legislature Intended To Not Limit Survivors’ Death Benefits For Workers’ Voluntary Retirement .....	16
	B. RCW 51.32.050 Conflicts With RCW 51.32.180 In Cases Such As This Because A Voluntarily Retired Worker Has No Current “Wages,” Which Is The Basis For Computing Survivors’ Death Benefit Rates; The Conflict Should Be Resolved In Favor Of Survivors .....	18
	C. This Court Should Resolve The Conflicting Statutory Provisions By Applying The Doctrine Of Liberal	

Construction In Favor Of The Intended Beneficiaries Of  
The Industrial Insurance Act.....27

D. Attorney Fees And Costs Should Be Awarded To Ms.  
Mason Under RCW 51.52.130, And Costs Should Be  
Awarded To The Department Under Chapter 4.84 RCW.....29

VIII. CONCLUSION .....31

## TABLE OF AUTHORITIES

### Cases

<i>Ashenbrenner v. Dep't of Labor &amp; Indus.</i> , 62 Wn.2d 22, 380 P.2d 730 (1963).....	19
<i>Barlia v. Dep't of Labor &amp; Indus.</i> , 23 Wn.2d 126, 160 P.2d 503 (1945).....	17
<i>City of Algona v. Sharp</i> , 30 Wn. App. 837, 638 P.2d 627 (1982).....	13
<i>Davenport v. Wash. Educ. Ass'n</i> , 147 Wn. App. 704, 197 P.3d 686 (2008), <i>review granted</i> , 166 Wn.2d 1005, 208 P.3d 1124 (2009).....	12
<i>Dep't of Labor &amp; Indus. v. Landon</i> , 117 Wn.2d 122, 814 P.2d 626 (1991).....	19
<i>Ferenčak v. Dep't of Labor &amp; Indus.</i> , 142 Wn. App. 713, 176 P.3d 529 (2008) <i>affirmed on other issues</i> , <i>Kustura v. Dep't of Labor &amp; Indus.</i> , 169 Wn.2d 81, 233 P.3d 853 (2010).....	30
<i>Flanigan v. Dep't of Labor &amp; Indus.</i> , 123 Wn.2d 418, 426, 869 P.2d 14 (1994).....	22
<i>Gaines v. Dep't of Labor &amp; Indus.</i> , 1 Wn. App. 547, 463 P.2d 269 (1969).....	27
<i>Hallauer v. Spectrum Prop. Inc.</i> , 143 Wn.2d 126, 18 P.3d 540 (2001).....	20
<i>Harry v. Buse Timber &amp; Sales, Inc.</i> , 166 Wn.2d 1, 201 P.3d 1011 (2009).....	23
<i>In re Wissink</i> , 18 Wn. App. 870, 81 P.3d 865 (2003).....	14

<i>In re: Pers. Restraint of Cruz,</i> 157 Wn.2d 83, 134 P.3d 1166 (2006).....	7
<i>Jacobsen v. Dep't of Labor &amp; Indus.,</i> 127 Wn. App. 384, 110 P.3d 253 (2005), <i>review denied</i> , 156 Wn.2d 1024, 132 P.3d 1094 (2006).....	13
<i>Kilpatrick v. Dep't of Labor &amp; Indus.,</i> 125 Wn.2d 222, 883 P.2d 1370 (1994).....	17, 18, 28, 29
<i>Lightle v. Dep't of Labor &amp; Indus.,</i> 68 Wn.2d 507, 413 P.2d 814 (1966).....	27
<i>Little v. Little,</i> 96 Wn.2d 183, 634 P.2d 498 (1981).....	11
<i>Rogers v. Dep't of Labor &amp; Indus.,</i> 151 Wn. App. 174, 179-81, 210 P.3d 355 (2009).....	6
<i>State ex rel. Peninsula Neighbor Mason Ass'n v. Dep't of Transp.,</i> 142 Wn.2d 328, 12 P.3d 134 (2000).....	21
<i>State v. Alvarez,</i> 128 Wn.2d 1, 904 P.2d 754 (1995).....	15
<i>State v. Sommerville,</i> 111 Wn.2d 524, 760 P.2d 932 (1988).....	13
<i>Wash. Nat. Gas Co. v. Pub. Util. Dist. No. 1 of Snohomish County,</i> 77 Wn.2d 94, 459 P.2d 633 (1969).....	12
<i>Whatcom County v. City of Bellingham,</i> 128 Wn.2d 537, 909 P.2d 1303 (1996).....	22

**Statutes**

Chapter 4.84 RCW.....	30, 31
RCW 51.04.010 .....	21
RCW 51.08.178(1).....	25

RCW 51.12.010 .....	21, 27
RCW 51.12.035 .....	14
RCW 51.16.040 .....	25, 26
RCW 51.32.050 3, 7, 8, 9, 10, 11, 15, 16, 18, 19, 20, 21, 23, 24, 25, 26, 28	
RCW 51.32.050(2).....	2, 19
RCW 51.32.050(2)(a) .....	18, 22
RCW 51.32.050(2)(a)(i).....	23, 29
RCW 51.32.060 .....	3, 7, 9, 10, 11, 15, 16, 17, 18
RCW 51.32.060(6).....	11
RCW 51.32.090 .....	3, 7, 9, 10, 12, 15, 16, 17, 18
RCW 51.32.090(1).....	10
RCW 51.32.090(3).....	10
RCW 51.32.090(8).....	11
RCW 51.32.180 .....	6, 16, 18, 24, 26
RCW 51.32.180(b).....	2, 8, 20, 21, 23, 25
RCW 51.52.115 .....	3
RCW 51.52.130 .....	29, 30
RCW 51.52.140 .....	6

**Other Authorities**

Laws of 1971 1st Ex. Sess., ch. 289, § 7, p. 1546.....	23, 24
Laws of 1986, ch. 59, § 1, p. 200.....	10

Laws of 1986, ch. 59, § 2, p. 202..... 11  
Laws of 2007, ch. 284, § 4..... 19

**Regulations**

WAC 296-14-100..... 25, 26  
WAC 296-14-100(1)(b) ..... 17

## **I. NATURE OF THE CASE**

This workers' compensation case concerns the calculation of death benefits owed to a surviving spouse of a worker who died due to an occupational disease that first manifested after voluntary retirement. The Department of Labor & Industries (Department) and the worker's widow, Ms. Mary Mason (Ms. Mason) seek to reverse the Superior Court's decision that the surviving spouse's death benefits should be based on the nonexistent wages of the deceased worker at the time the disease became manifest, after the worker had voluntarily retired. The Superior Court's ruling effectively means that the claimant's widow is entitled to merely the statutory minimum pension as opposed to a pension amount related to Mr. Mason's wage when he retired. The Superior Court incorrectly determined that Ms. Mason's death benefits should be based on her husband's wages at the time his occupational disease became manifest, post-retirement. This Court should reverse the decision of the Superior Court.

## **II. ASSIGNMENT OF ERROR**

The Clark County Superior Court issued a bench ruling (memorialized in part in the Court's Order and Judgment attached to this brief) that Ms. Mason's survivor pension benefits should be paid at the statutory minimum. The Superior Court erred in not determining that

Ms. Mason's survivor pension benefits should be paid at a higher rate based on Mr. Mason's wages at the time of his retirement.

The Superior Court's Conclusion of Law No. 2 states in relevant part that Ms. Mason's survivor benefits "should be paid at the statutory minimum, which is currently set at \$185." The Superior Court Erred in not determining that Ms. Mason's survivor pension benefits should be paid at a higher rate based on Mr. Mason's wages at the time of his retirement.

The Superior Court's Conclusion of Law No. 6 states in relevant part that "[the] Department's order dated April 1, 2008 is reversed and remanded with directions to establish the surviving spouse a widow's pension with benefits at the statutory minimum, which is currently set at \$185. . . ." The Superior Court erred in not determining that Ms. Mason's survivor pension benefits should be paid at a higher rate based on Mr. Mason's wages at the time of his retirement.

### **III. APPELLANTS' STATEMENT OF THE ISSUES**

- 1) Does the Legislature's limit on pension, time loss compensation, and loss of earning power benefits for voluntarily retired workers affect survivors' rights to death benefits under a separate statute?
- 2) Where a worker, after voluntarily retiring, develops and dies from an occupational disease, does the plain language of RCW 51.32.050(2) and RCW 51.32.180(b), when read together, limit a surviving spouse of the worker to only the statutory minimum rate for death benefits?

- 3) Do principles of liberal construction, considered together with the Legislature's failure to write into RCW 51.32.050 a voluntary retirement provision as the Legislature has done in RCW 51.32.060 and RCW 51.32.090, entitle the survivor to a benefit rate based on the deceased worker's wages at the time of retirement?
- 4) Do death benefits serve exclusively a wage replacement purpose when they continue for life of the surviving spouse, not only until such time as the deceased worker would normally have retired?

#### **IV. APPELLANTS' STATEMENT OF THE CASE**

William D. Mason worked for Georgia-Pacific for more than 35 years from July 24, 1950 to April 30, 1986 primarily as a millwright. CABR Lehman 104-105, Ex. 1.<sup>1</sup> Mr. Mason voluntarily retired from Georgia-Pacific, and his occupationally related symptoms manifested after his retirement in 1986. CP 39-45. Mr. Mason received age-based retirement income from Georgia-Pacific, but did not attempt to obtain any further employment after he left the company. CABR Mary Mason 67-69.

Mr. Mason died on December 14, 2006 from, among other things, asbestos related lung disease. CABR Mary Mason 5. CABR Brodtkin 86. During Mr. Mason's 35+ years working at the Georgia-Pacific mill in Camas, Washington Mr. Mason had extensive exposures to irritant chemicals and asbestos. CABR Collin 110-112. CABR Reed 121-125.

---

<sup>1</sup> "CABR" references the Certified Appeal Board Record, which is the record on review in a court appeal. RCW 51.52.115. Witness testimony will be cited as "CABR [witness name] [page number of transcript]." Board documents will be cited as "CABR [Board-stamped page number in the lower right corner of the document]."

Mr. Mason filed a claim for industrial insurance benefits in 1988 for a bilateral lung condition, which was accepted. CABR 87. Mr. Mason's claim remained open through Mr. Mason's death in December 2006. CABR 88.

After Mr. Mason's death, the Department issued an order finding that Mr. Mason's death was caused by his occupationally related condition, and thus ordered surviving spouse benefits. CABR 88. Mr. Mason had no dependent children. CABR 88. The Department determined the date of manifestation for Mr. Mason's occupationally related lung condition was April 30, 1986, or the last day Mr. Mason worked. *See* CABR 89.

Georgia-Pacific timely appealed the Department's order, arguing that Ms. Mason was only entitled to the statutory minimum survivor pension rate as Mr. Mason had voluntarily retired prior to his lung condition becoming manifest. CABR 246-47. The Board of Industrial Insurance Appeals (Board) determined that Mr. Mason's occupationally related lung condition was manifest prior to his voluntary retirement, and thus Ms. Mason was entitled to a survivor pension rate based on Mr. Mason's wage as of the last date he worked, rather than the statutory minimum. CABR 89-90.

The employer appealed the Board's pension rate determination to the Clark County Superior Court (the Board's August 28, 2009 Decision and Order had denied the parties' petitions for review and had adopted the Proposed Decision and Order of the Board 's Industrial Appeals Judge issued on June 29, 2009). CABR 2.<sup>2</sup> The Superior Court consolidated the appeals upon a joint motion of the parties. CP 6-8.

The matter was heard before a jury which found in pertinent part:

(3) Was the Board of Industrial Insurance Appeals correct in deciding that Mary Mason is entitled to surviving spouse benefits?

ANSWER: Yes.

...

(4) Was the Board of Industrial Insurance Appeals correct in finding that William D. Mason's occupationally related condition or conditions became manifest as of April 30, 1986 as opposed to some later date?

ANSWER: No.

CP 39-45.

---

<sup>2</sup> Both the widow and employer appealed the Board's decision. The employer's appeal was given docket number 09-2-05485-5, while the claimant's appeal was given docket number 09-2-04379-9. By agreement of the parties both appeals were consolidated under docket 09-2-04379-9. CP 6-8. Numerous issues were litigated at Superior Court: 1) whether the worker voluntarily retired in 1986 and, if not, whether he had been entitled to 20 years of time loss compensation at the time of his death; 2) whether Mr. Mason died as a proximate result of his occupational disease; 3) whether the employer was entitled to second injury fund relief, 4) whether Mr. Mason's occupationally related condition manifested before or after his retirement in 1986, and 5) the issue presented in the survivor and Department appeals to this Court.. No dispute exists as to the jury's findings in this matter. The sole issue before this Court is what is the proper survivor pension rate for Ms. Mason given the jury's determination that MR. Mason's occupationally related condition manifested after he retired in 1986.

After the jury's verdict, all parties submitted briefing regarding the proper pension rate. CP 10-38. Oral arguments were held before the Honorable Robert Lewis, and he determined as a matter of law that RCW 51.32.180 required that Ms. Mason's survivor benefits should be set at the statutory minimum as Mr. Mason's condition did not manifest until after he voluntarily left the work force. CP 39-45.

Both the Department and Ms. Mason timely appealed to this Court for review of the Superior Court's legal conclusion that Ms. Mason's rate of pension should be set at the statutory minimum as opposed to being based on the wage that Mr. Mason last made while working for Georgia-Pacific.

## **V. STANDARD OF REVIEW**

The standards for appellate court review in workers' compensation cases are the same as in ordinary civil cases. RCW 51.52.140; *Rogers v. Dep't of Labor & Indus.*, 151 Wn. App. 174, 179-81, 210 P.3d 355 (2009). Statutory interpretation, as at issue here, is a question of law that this Court also reviews de novo. *In re: Pers. Restraint of Cruz*, 157 Wn.2d 83, 87, 134 P.3d 1166 (2006).

## **VI. SUMMARY OF ARGUMENT**

The Legislature expressly barred voluntarily retired workers from receiving pension, time loss compensation, and loss of earning power

benefits under the Industrial Insurance Act. The Legislature did not bar or limit death benefits for survivors of workers who voluntarily retired but died due to an industrial injury or occupational disease. This signals legislative intent to provide full death benefits to survivors of workers who die due to industrial injury or occupational disease. If the Legislature believed workers' voluntary retirement should affect survivors' death benefit rates, then it would have amended RCW 51.32.050 (death benefits) when it amended RCW 51.32.060 (pension benefits) and RCW 51.32.090 (time loss compensation and loss of earning power benefits). This Court should not find a limit to death benefits for voluntary retirement not written by the Legislature.

Also, this Court should liberally construe conflicting provisions of the Industrial Insurance Act in favor of Ms. Mason. RCW 51.32.050 and RCW 51.32.180(b) are in conflict where voluntary retirement precedes the date of manifestation. The plain language of RCW 51.32.050 establishes that a surviving spouse, regardless of how, whether, or when the injured worker retired, is entitled to death benefits that are based on the worker's *wages*. RCW 51.32.180(b), which is not specific to death benefits, provides that the rate of compensation for occupational diseases shall be established as of the date of manifestation for the disease. RCW 51.32.180(b) conflicts with RCW 51.32.050 in the case of the

surviving spouse of a worker whose occupational disease first manifests during voluntary retirement because at that point such a worker has no current “wages” to serve as the basis for determining death benefit amounts under RCW 51.32.050.

This Court should resolve the conflict by liberally construing the Industrial Insurance Act in favor of its intended beneficiary, here, Ms. Mason. Ms. Mason’s survivor benefit rate should be based on Mr. Mason’s wages when he last worked, i.e. at the time of his retirement.

## **VII. ARGUMENT**

### **A. The Legislature Intended To Provide Full Death Benefits To Survivors Of Voluntarily Retired Workers**

In 1986, the Legislature curtailed pension, time loss compensation, and loss of earning power benefits for workers following their voluntary retirement. The Legislature did not curtail death benefits for survivors of workers who die due to industrial injury or occupational disease. This evidences legislative intent to provide full death benefits to such survivors. The plain meaning of the Legislature’s different words used when describing voluntarily retired persons’ eligibility for other types of benefits elucidates the Legislature’s intent with respect to extent of death benefits available to surviving spouses. Death benefits are different benefits paid to different persons. The Legislature treated these

benefits differently, as should this Court. Cases that describe the impact of voluntary retirement upon workers' pension and time loss compensation benefits do not apply to death benefits paid to survivors. Extending these cases to the present circumstance would be inconsistent with legislative intent.

**1. The Legislature Added Voluntary Retirement Provisions To Only RCW 51.32.060 And RCW 51.32.090, Not RCW 51.32.050**

There are only four forms of monetary benefits under the Industrial Insurance Act that are paid in period installments to workers and their families based on wages: pension benefits (RCW 51.32.060); time loss compensation (RCW 51.32.090(1)); loss of earning power benefits, also known as partial time loss compensation (RCW 51.32.090(3)); and, death benefits (RCW 51.32.050). In 1986 the Legislature added voluntary retirement provisions to the statutes that provide for pension, time loss compensation, and loss of earning power benefits.

The Legislature thus added the following provision to RCW 51.32.060 (injured workers' pension benefits): "In the case of new or reopened claims, if the supervisor of industrial insurance determines that, at the time of filing or reopening, the worker is voluntarily retired and is no longer attached to the workforce, benefits shall not be paid

under this section.” Laws of 1986, ch. 59, § 1, p. 200 (copy attached as Appendix A). The same bill added similar language to RCW 51.32.090 (injured workers’ time loss compensation and loss of earning power benefits): “If the supervisor of industrial insurance determines that the worker is voluntarily retired and is no longer attached to the workforce, benefits shall not be paid under this section.” Laws of 1986, ch. 59, § 2, p. 202. The Legislature did not add a voluntary retirement provision to RCW 51.32.050.

Through its 1986 amendments, the Legislature intended to curtail voluntarily retired persons’ eligibility for pension, time loss compensation, and loss of earning power benefits. RCW 51.32.060(6); RCW 51.32.090(8). However, death benefits are a different type of benefits. RCW 51.32.050. The Legislature surely contemplated the existence of death benefits when it amended the provisions for pension, time loss compensation, and loss of earning power. The Legislature knows its own law. *Little v. Little*, 96 Wn.2d 183, 189-90, 634 P.2d 498 (1981). Given that the Legislature chose not to amend RCW 51.32.050 while in 1986 it did amend RCW 51.32.060 and RCW 51.32.090, the Legislature must have intended that surviving spouses remain eligible for full death benefits even if the worker had voluntarily retired as of the date of manifestation.

**2. Under The Maxim *Expressio Unius Est Exclusio Alterius*, Survivors Of Voluntarily Retired Workers Are Entitled To Full Death Benefits**

This situation is governed by the standard statutory construction maxim of *expressio unius est exclusio alterius*. “Where a statute specifically designates the things or classes of things upon which it operates, an inference arises in law that all things or classes of things omitted from it were intentionally omitted by the legislature . . . .” *Wash. Nat. Gas Co. v. Pub. Util. Dist. No. 1 of Snohomish County*, 77 Wn.2d 94, 98, 459 P.2d 633 (1969); *Davenport v. Wash. Educ. Ass’n*, 147 Wn. App. 704, 719, 197 P.3d 686 (2008), *review granted*, 166 Wn.2d 1005, 208 P.3d 1124 (2009). Under this rule, the express inclusion of certain conditions excludes the implication of others. *State v. Sommerville*, 111 Wn.2d 524, 535, 760 P.2d 932 (1988). The *expressio unius* maxim is “the law in Washington, barring a clearly contrary legislative intent.” *City of Algona v. Sharp*, 30 Wn. App. 837, 842-43, 638 P.2d 627 (1982).

This Court in 2005 employed use of *expressio unius* in an industrial insurance case. In *Jacobsen v. Dep’t of Labor & Indus.*, 127 Wn. App. 384, 110 P.3d 253 (2005), *review denied*, 156 Wn.2d 1024, 132 P.3d 1094 (2006), this Court considered whether time loss compensation (i.e., temporary total disability) payments could be

deducted from a worker's pension reserve fund. The Court declined to permit deduction, noting under *expressio unius* that the statute in question provided for deduction only for certain permanent partial disability awards, not for temporary total disability awards. *Id.* at 392 (holding that “the Legislature intentionally omitted a deduction for time loss payments. And we decline the Department’s invitation to thwart the Legislature’s intent by reading such a deduction into the statute.”)

In a case in Division Three, the Department argued that a volunteer inmate was ineligible for medical-only industrial insurance benefits under former RCW 51.12.035. *In re Wissink*, 118 Wn. App. 870, 81 P.3d 865 (2003). That statute defined volunteer workers to specifically exclude emergency workers, fire fighters, and juveniles performing community restitution, but the court read the statute such that all other workers who fit the definition of volunteer were included in coverage of the Industrial Insurance Act. *Id.* at 876. The Department pointed to other statutory provisions that specifically include certain classes of inmate workers within coverage of the Act in support of its contention that the Legislature intended to exclude non-enumerated classes of inmate workers. *Id.* The Court of Appeals held that the volunteer inmate was covered, rejecting the Department’s arguments as

an impermissible attempt to bring into the broad definition of covered volunteers the limitations from other sections. *Id.* at 877.

Here, the Superior Court's ruling accepting Georgia-Pacific's position would create an exclusion by implication for voluntary retirement, reading the voluntary retirement provisions from RCW 51.32.060 and RCW 51.32.090 into RCW 51.32.050. This conflicts with the standard rule of statutory construction *expressio unius est exclusio alterius*. It has been 23 years since the Legislature added voluntary retirement provisions to RCW 51.32.060 and RCW 51.32.090. The Legislature's failure since then to add a voluntary retirement provision to RCW 51.32.050 means that the Legislature intends no such provision. This Court's primary objective when engaging in statutory construction is to carry out legislative intent. *State v. Alvarez*, 128 Wn.2d 1, 11, 904 P.2d 754 (1995). Including a voluntary retirement provision for death benefits would flaunt, not carry out, legislative intent.

RCW 51.32.050 provides eligibility for death benefits for all survivors of workers whose death "results from the [industrial] injury." This applies to occupational diseases by virtue of RCW 51.32.180, i.e., "death of the worker from such disease or infection." If the Legislature intended to at all limit the *death benefits* available to survivors of voluntarily retired workers as it did with workers' pension, time loss

compensation, and loss of earning power benefits, then the Legislature would have said so at or near the time it amended RCW 51.32.060 and RCW 51.32.090. RCW 51.32.050 contains no such limitations. The Legislature intended that surviving spouses be eligible for full death benefits despite the worker's voluntary retirement.

**3. Policy And The Irreversible Nature Of Death Support The Conclusion That The Legislature Intended To Not Limit Survivors' Death Benefits For Workers' Voluntary Retirement**

Aside from the *expressio unius* maxim of statutory construction, policy and the irreversible nature of death support the conclusion that the Legislature intended that death benefits be treated differently than loss of earning power, time loss compensation, and pension benefits. Survivors have independent rights to death benefits that cannot be extinguished by the workers' decisions to voluntarily retire. See *Kilpatrick v. Dep't of Labor & Indus.*, 125 Wn.2d 222, 228, 883 P.2d 1370 (1994) (survivor's claim is independent of worker's claim to the extent the worker cannot waive the survivor's rights to benefits) (citing *Barlia v. Dep't of Labor & Indus.*, 23 Wn.2d 126, 129, 160 P.2d 503 (1945)). By factual necessity, survivors cannot reverse a worker's decision to voluntarily retire: the worker is dead. But while a worker lives, the worker can undo voluntary retirement by making a bona fide effort to return to employment.

WAC 296-14-100(1)(b) (voluntary retirement is negated by evidence showing the worker's "bona fide attempt to return to work after retirement").

Thus, even in the absence of the 1986 statutory amendments to RCW 51.32.060 and RCW 51.32.090, policy arguments support curtailing loss of earning power, time loss compensation, and pension benefits for voluntarily retired workers. The cessation of benefits is the worker's choice, and the choice is reversible. With death benefits, on the other hand, the survivor's death benefit rate should not similarly be reduced for a choice the survivor did not make and cannot reverse. This is a reasonable, practical explanation for the Legislature's decision to amend RCW 51.32.060 and RCW 51.32.090, but not RCW 51.32.050. In any event, survivors' independent rights to death benefits cannot be limited or waived by the worker. *Kilpatrick*, 125 Wn.2d at 228.

**B. RCW 51.32.050 Conflicts With RCW 51.32.180 In Cases Such As This Because A Voluntarily Retired Worker Has No Current "Wages," Which Is The Basis For Computing Survivors' Death Benefit Rates; The Conflict Should Be Resolved In Favor Of Survivors**

For deaths due to occupational diseases that first manifest after voluntary retirement, RCW 51.32.050 and RCW 51.32.180 are in conflict. Before a 2007 amendment, former RCW 51.32.050(2)(a), applicable here, provided that "a surviving spouse of a deceased worker

eligible for benefits under this title shall receive monthly for life or until remarriage payments according to the following schedule: (i) if there are no children of the deceased worker, sixty percent of the wages of the deceased worker but not less than one hundred eighty-five dollars. . . .”<sup>3</sup>

The statute did not limit eligibility to survivors whose spouses had continued to work or had *involuntarily* retired as of the date of manifestation. Nothing in Title 51 RCW bars a survivor from pursuing a claim for death benefits under RCW 51.32.050(2) where a voluntarily retired worker who never filed a claim dies due to the industrial injury or occupational disease. The plain language of RCW 51.32.050 establishes that a surviving spouse, regardless of the worker’s involuntary or voluntary retirement, is entitled to death benefits that are based on the worker’s “wages.”

For occupational diseases, rates of compensation are generally based on the date of manifestation wages. RCW 51.32.180(b) provides that “for claims filed on or after July 1, 1988, the rate of compensation

---

<sup>3</sup> In 2007, effective July 1, 2008, the Legislature amended RCW 51.32.050 by striking the statutory minimum rate of \$185, and, for injuries or disease that manifest after July 1, 2008, linking the minimum benefit amount to a percentage of the state’s average monthly wage. Laws of 2007, ch. 284, § 4. Industrial insurance benefits, including death benefits under RCW 51.32.050, are paid based on the schedule in effect on the date of the worker’s injury, *Ashenbrenner v. Dep’t of Labor & Indus.*, 62 Wn.2d 22, 25, 380 P.2d 730 (1963), or, in the case of occupational disease, on the date of manifestation, *Dep’t of Labor & Indus. v. Landon*, 117 Wn.2d 122, 123-24, 814 P.2d 626 (1991). Neither *Ashenbrenner* nor *Landon* nor any other case of which the Department is aware discusses whether voluntary retirement affects a benefit rate schedule for survivors’ death benefits.

for occupational diseases shall be established as of the date the disease requires medical treatment or becomes totally or partially disabling, whichever occurs first, and without regard to the date of the contraction of the disease or the date of filing the claim.” RCW 51.32.180(b) conflicts with RCW 51.32.050 in the case of a worker whose occupational disease first requires treatment or produces disability during voluntary retirement because such a worker has no current “wages” to serve as the basis for determining death benefit amounts for the worker’s survivors under RCW 51.32.050.

Specific statutes control over general ones. *See Hallauer v. Spectrum Prop. Inc.*, 143 Wn.2d 126, 146-47, 18 P.3d 540 (2001). RCW 51.32.050 is specific to death benefits, while RCW 51.32.180(b) is general as to all types of benefits under occupational disease claims. Determining that, for purposes of benefit calculation, RCW 51.32.050 overrides RCW 51.32.180(b) in the case of voluntarily retired workers who die due to occupational disease, is consistent with the overall statutory scheme of providing industrial insurance benefits as a tort substitute for workers and their families. *State ex rel. Peninsula Neighbor Mason Ass’n v. Dep’t of Transp.*, 142 Wn.2d 328, 342, 12 P.3d 134 (2000) (“The construction of two statutes shall be made with the assumption that the Legislature does not intend to create an

inconsistency. Statutes are to be read together, whenever possible, to achieve a harmonious total statutory scheme . . . which maintains the integrity of the respective statutes.”); RCW 51.04.010; RCW 51.12.010.

A statute must be read as a whole to effect its purpose; courts do not read statutes to have unlikely or absurd consequences. *Whatcom County v. City of Bellingham*, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996); *Flanigan v. Dep’t of Labor & Indus.*, 123 Wn.2d 418, 426, 869 P.2d 14 (1994) (“We do not interpret statutes to reach absurd and fundamentally unjust results” (citations omitted)). The Legislature contemplated through the plain language of RCW 51.32.050(2)(a) that a surviving spouse is eligible for death benefits. The worker’s voluntary retirement does not preclude such death benefit eligibility.

Given that the Legislature intended for persons similarly situated to Ms. Mason to be eligible for death benefits, the Legislature must also have intended for such persons to be able to receive the *same* benefits as are available to workers who involuntarily retired or never retired before the date of manifestation. To state otherwise results in a strained interpretation of RCW 51.32.050(2)(a) and produces the unlikely and unjust consequence that an employer who is at least partially responsible for the worker’s death avoids paying any, or many, benefits to covered survivors. *See Harry v. Buse Timber & Sales, Inc.*, 166 Wn.2d 1, 19, 201

P.3d 1011 (2009) (“A core purpose of the [Industrial Insurance Act] is to allocate the cost of workplace injuries to the industry that produces them, thereby motivating employers to make workplaces safer.”).

Georgia-Pacific argued at Superior Court that applying RCW 51.32.180(b) to allowed claims for survivors’ death benefits where the worker had voluntarily retired as of the date of manifestation results in a wage rate of zero, thereby triggering the statutory minimum provision under former RCW 51.32.050 and providing for payment of only \$185 per month to the worker’s widow. CP 32-38. Until 2007 amendments, which do not here apply, the statutory minimum death benefit rate for surviving spouses was \$185 per month. RCW 51.32.050(2)(a)(i). This amount was set in 1971. Laws of 1971 1st Ex. Sess., ch. 289, § 7, p. 1546 (replacing former \$140 monthly benefit for a surviving spouse with no children with a \$185 monthly death benefit) (copy attached as Appendix B). At that time, \$185 was the maximum monthly pension payment to a married worker with no children at the time of injury. *See* Laws of 1971 1st Ex. Sess., ch. 289, § 8 p. 1549 (changing pension benefit calculation so that a married worker with no children would receive 65% of the worker’s wages but not less than \$215 per month). The Legislature did not likely intend for the statutory minimum provision of RCW 51.32.050 to operate in cases such as this.

Nothing in RCW 51.32.050 suggests the Legislature intended for the statutory minimum provision to operate in the instance of voluntary retirement. The Legislature intended by its plain words to base survivors' death benefit amounts on workers' "wages." RCW 51.32.050. The Department did so here, looking to when Mr. Mason last earned wages. The Department's death benefit calculation best fulfills the Legislature's intent with respect to survivors' death benefits.

Georgia-Pacific's interpretation of RCW 51.32.180 would introduce a further conflict in the statutory scheme because benefits must be paid "in the same manner" for survivors of workers who die due to industrial injury as for survivors of workers who die due to occupational disease. Georgia-Pacific's interpretation impermissibly treats survivors of workers who die due to *injuries* differently from survivors of workers who die due to *occupational diseases*. RCW 51.16.040 provides: "The compensation and benefits provided for occupational diseases shall be paid and *in the same manner* as compensation and benefits for injuries under this title." (Emphasis added). RCW 51.32.180(b) likewise provides that industrial injuries and occupational diseases must be treated the same:

Every worker who suffers disability from an occupational disease in the course of employment under the mandatory or elective adoption provisions of this title, or his or her family and dependents in case of death of the worker from such disease or infection, *shall receive the same*

*compensation benefits* and medical, surgical and hospital care and treatment as would be paid and provided for a worker injured or killed in employment under this title . . . .

(Emphasis added).

RCW 51.32.050 bases survivors' death benefits on the wages of the deceased worker. In injury cases, as opposed to disease cases, benefit rates are determined by the date of injury. *See* RCW 51.08.178(1). Therefore, if an industrially injured worker voluntarily retires<sup>4</sup> and then later dies due to the effects of the industrial injury, e.g., from complications due to surgery upon later reopening of the claim, the survivor of such voluntarily retired industrially injured worker will receive full benefits. The survivor of a voluntarily retired worker who dies due to an occupational disease is, under Georgia-Pacific's view, entitled to no benefits or, at best, the statutory minimum. The Legislature did not intend for survivors of industrially injured workers to be treated differently than survivors of workers who die due to occupational diseases.

---

<sup>4</sup> One need not be healthy and without physical restriction to be considered voluntarily retired. WAC 296-14-100 defines a voluntarily retired worker as one who is not receiving income, salary or wages from any gainful employment, and who provides no evidence of a bona fide attempt to return to employment following retirement. A worker who is capable of obtaining and performing some form of gainful employment, even if not the worker's job of injury, but who chooses to retire and not pursue other options, is considered voluntarily retired. *See* WAC 296-14-100. For example, a 60-year old construction worker who suffers a severe knee injury and, upon conclusion of treatment, can no longer work in that industry but can be retrained to do sedentary assembly work, is deemed voluntarily retired if the worker chooses to not enter retraining.

RCW 51.16.040; RCW 51.32.180. The law mandates these survivors be treated alike.

Because RCW 51.32.050 and RCW 51.32.180 necessarily conflict with each other in the case of an occupational disease that manifests after voluntary retirement, this Court should resolve the conflict in a manner that not only is supported by the statutory language viewed in context, *see* Section VI.A above, but also is consistent with the purposes of the Industrial Insurance Act in favor of workers and their families, *see* Section VI.C below.

**C. This Court Should Resolve The Conflicting Statutory Provisions By Applying The Doctrine Of Liberal Construction In Favor Of The Intended Beneficiaries Of The Industrial Insurance Act**

The doctrine of liberal construction supports the Department's death benefit wage calculation based on last monthly wages. The provisions of the Industrial Insurance Act must be liberally construed, with all doubts resolved in favor of workers and their families. *See* RCW 51.12.010; *Gaines v. Dep't of Labor & Indus.*, 1 Wn. App. 547, 552, 463 P.2d 269 (1969) (any doubt as to the meaning of the statute should be resolved in favor of the claimant for whose benefit it was passed); *Lightle v. Dep't of Labor & Indus.*, 68 Wn.2d 507, 510, 413 P.2d 814 (1966) (Industrial Insurance Act is "remedial in nature and its

beneficial purposes should be liberally construed in favor of beneficiaries”). Liberal construction suggests that the Legislature intends that persons similarly situated to Ms. Mason are entitled to similar benefits as survivors of involuntarily retired workers or of workers who continued to work until their date of manifestation. Otherwise, the Legislature would have written a voluntary retirement provision in RCW 51.32.050.

The *Kilpatrick* decision employed liberal construction to increase death benefits for survivors. *Kilpatrick* did not discuss the implications of voluntary retirement upon the benefit rate for death benefit claims of surviving spouses. The *Kilpatrick* Court stated that in the interest of liberal construction, the date of manifestation, not the date of exposure, would determine the benefit rate in death claims. *See Kilpatrick*, 125 Wn.2d at 231. The Court declined to find that the date of manifestation of the worker’s first asbestos-related condition controlled the death benefit rate, holding instead that death benefits must be based on the date of manifestation of the worker’s separate asbestos-related disease that caused death. *Id.* at 227. Unlike here, the death-causing disease preceded at least one worker’s retirement in *Kilpatrick*, which decision involved consolidated appeals concerning three widows’ claims for death benefits; the *Kilpatrick* decision does not indicate whether or when the other two

workers ceased employment relative to manifestation of the diseases that caused their deaths.<sup>5</sup> *Id.* at 224-26.

A wage rate of zero, or use of the statutory minimum rate, is not in furtherance of liberal construction. This suggests the *Kilpatrick* Court would not endorse Georgia-Pacific's position. The *Kilpatrick* Court used liberal construction to award *greater* monetary benefits in death claims. *Kilpatrick*, 125 Wn.2d at 231. The Court nowhere discussed voluntary retirement. Georgia-Pacific incorrectly uses *Kilpatrick* in support of its contention that in death benefit claims of voluntarily retired workers' surviving spouses such as Ms. Mason, the wage rate is zero, thus leaving the surviving spouse with only the former minimum monthly death benefit rate of \$185 per month under RCW 51.32.050(2)(a)(i). *See* AB 18-20. The *Kilpatrick* Court's holding that uses the date of manifestation to determine the benefit amount does not apply to the facts of this case.

**D. Attorney Fees And Costs Should Be Awarded To Ms. Mason Under RCW 51.52.130, And Costs Should Be Awarded To The Department Under Chapter 4.84 RCW**

If this Court reverses the Superior Court decision, Ms. Mason will be entitled under RCW 51.52.130 to awards against Georgia-Pacific of

---

<sup>5</sup> One worker, Mr. Lee, filed an occupational disease claim for asbestosis in 1979, which was closed in 1983. He then worked full time until 1990, when he was diagnosed with cancer, which caused his inability to continue to work and his death. *Kilpatrick*, 125 Wn.2d at 225-26.

reasonable attorney fees for her attorney's work both in Superior Court and in this Court.<sup>6</sup> She will also be entitled to recover the "costs" that are provided under RCW 51.52.130. This Court should set Ms. Mason's reasonable attorney fees and costs at this level of review, and this Court should remand to the Superior Court to set Ms. Mason's reasonable attorney fees and costs at that level of review.

If this Court reverses the Superior Court decision, this Court should rule that the Department is entitled to awards of costs under Chapter 4.84 RCW, including statutory attorney fees, for Superior Court and this Court. *See Ferenčak v. Dep't of Labor & Indus.*, 142 Wn. App. 713, 730, 176 P.3d 529 (2008) *affirmed on other issues*, *Kustura v. Dep't of Labor & Indus.*, 169 Wn.2d 81, 233 P.3d 853 (2010) (consolidated case in which Washington Supreme Court did not review the cost-award ruling of the Court of Appeals). Under Chapter 4.84 RCW, this Court should set a cost award to the Department for this level of review, and this Court should remand to the Superior Court for that Court to set a cost award to the Department for that level of review.

//

---

<sup>6</sup> The final sentence of subsection (1) of RCW 51.52.130 places responsibility for paying reasonable attorney fees to a prevailing worker or beneficiary on the self-insured employer on self-insured claims.

## VIII. CONCLUSION

The Superior Court improperly based Ms. Mason's death benefits on Mr. Mason's nonexistent wages at time of his disease's manifestation. The Department and claimant's widow respectfully request that this Court reverse the Superior Court's July 29, 2010 order and judgment and hold that Ms. Mason's survivor's benefits should be based on Mr. Mason's wage at the time he retired.

RESPECTFULLY SUBMITTED this 10<sup>th</sup> day of December, 2010.

ROBERT M. MCKENNA  
Attorney General



NATALEE RUTH FILLINGER  
Assistant Attorney General  
WSBA# 31436  
P.O. Box 40121  
Olympia, WA 98504-0121  
(360) 586-7713



JILL KARMY, WSBA#31132  
Springer Norman & Workman  
PO Box 757  
Longview, WA 98632-7490  
(360)423-3810

COURT REPORTERS  
JILL KARMY

10070 10 PM 1:45

STATE OF WASHINGTON

BY \_\_\_\_\_  
DEPUTY

**PROOF OF SERVICE**

I certify that I served a copy of this document on all parties of their  
counsel of record on the date below as follows:

US Mail Postage Prepaid via Consolidated Mail Service

Jill A. Karmy  
Springer, Norman & Workman  
PO Box 757  
Longview, WA 98632

James L. Gress  
Law Office of Gress & Clark LLC  
9020 SW Washington Square Rd Ste 560  
Portland, OR 97223

ABC/Legal Messenger

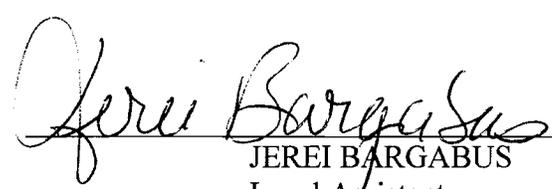
State Campus Delivery

Hand delivered by

---

I certify under penalty of perjury under the laws of the state of  
Washington that the foregoing is true and correct.

DATED this 10<sup>th</sup> day of December, 2010, at Tumwater, WA.

  
\_\_\_\_\_  
JEREI BARGABUS  
Legal Assistant

# **APPENDIX A**

1986  
SESSION LAWS  
OF THE  
STATE OF WASHINGTON

REGULAR SESSION  
FORTY-NINTH LEGISLATURE  
Convened January 13, 1986. Adjourned March 12, 1986.



Published at Olympia by the Statute Law Committee pursuant to Chapter  
6, Laws of 1969.

DENNIS W. COOPER  
Code Reviser

(15) Should any further accident result in the permanent total disability of an injured worker, he or she shall receive the pension to which he or she would be entitled, notwithstanding the payment of a lump sum for his or her prior injury.

(16) In no event shall the monthly payments provided in this section exceed seventy-five percent of the average monthly wage in the state as computed under the provisions of RCW 51.08.018, except that this limitation shall not apply to the payments provided for in subsection (14) of this section.

(17) The benefits provided by this section are subject to modification under section 4 of this 1986 act.

Sec. 6. Section 51.36.010, chapter 23, Laws of 1961 as last amended by section 56, chapter 350, Laws of 1977 ex. sess. and RCW 51.36.010 are each amended to read as follows:

Upon the occurrence of any injury to a worker entitled to compensation under the provisions of this title, he or she shall receive proper and necessary medical and surgical services at the hands of a physician of his or her own choice, if conveniently located, and proper and necessary hospital care and services during the period of his or her disability from such injury, but the same shall be limited in point of duration as follows:

In the case of permanent partial disability, not to extend beyond the date when compensation shall be awarded him or her, except when the worker returned to work before permanent partial disability award is made, in such case not to extend beyond the time when monthly allowances to him or her shall cease; in case of temporary disability not to extend beyond the time when monthly allowances to him or her shall cease: PROVIDED, That after any injured worker has returned to his or her work his or her medical and surgical treatment may be continued if, and so long as, such continuation is deemed necessary by the supervisor of industrial insurance to be necessary to his or her more complete recovery; in case of a permanent total disability not to extend beyond the date on which a lump sum settlement is made with him or her or he or she is placed upon the permanent pension roll: PROVIDED, HOWEVER, That the supervisor of industrial insurance, solely in his or her discretion, may authorize continued medical and surgical treatment for conditions previously accepted by the department when such medical and surgical treatment is deemed necessary by the supervisor of industrial insurance to protect such worker's life or provide for the administration of medical and therapeutic measures including payment of prescription medications, but not including those controlled substances currently scheduled by the state board of pharmacy as Schedule I, II, III, or IV substances under chapter 69.50 RCW, which are necessary to alleviate continuing pain which results from the industrial injury. In order to authorize such continued treatment the written order of the supervisor of industrial insurance issued in advance of the continuation shall be necessary.

The supervisor of industrial insurance, the supervisor's designee, or a self-insurer, in his or her sole discretion, may authorize inoculation or other immunological treatment in cases in which a work-related activity has resulted in probable exposure of the worker to a potential infectious occupational disease. Authorization of such treatment does not bind the department or self-insurer in any adjudication of a claim by the same worker or the worker's beneficiary for an occupational disease.

NEW SECTION. Sec. 7. Sections 2 and 3 of this act shall take effect on July 1, 1986.

Passed the House February 12, 1986.

Passed the Senate March 3, 1986.

Approved by the Governor March 12, 1986.

Filed in Office of Secretary of State March 12, 1986.

## CHAPTER 59

[Substitute House Bill No. 1875]

### INDUSTRIAL INSURANCE—DISABILITY BENEFITS—RETIRED WORKERS

AN ACT Relating to benefits for retired workers and pensioners; amending RCW 51.32.060, 51.32.090, and 51.32.160; reenacting and amending RCW 51.32.090; adding a new section to chapter 51.32 RCW; providing an expiration date; and providing effective dates.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 51.32.060, chapter 23, Laws of 1961 as last amended by section 159, chapter 3, Laws of 1983 and RCW 51.32.060 are each amended to read as follows:

When the supervisor of industrial insurance shall determine that permanent total disability results from the injury, the worker shall receive monthly during the period of such disability:

- (1) If married at the time of injury, sixty-five percent of his or her wages but not less than two hundred fifteen dollars per month.
- (2) If married with one child at the time of injury, sixty-seven percent of his or her wages but not less than two hundred fifty-two dollars per month.
- (3) If married with two children at the time of injury, sixty-nine percent of his or her wages but not less than two hundred eighty-three dollars.
- (4) If married with three children at the time of injury, seventy-one percent of his or her wages but not less than three hundred six dollars per month.
- (5) If married with four children at the time of injury, seventy-three percent of his or her wages but not less than three hundred twenty-nine dollars per month.

(6) If married with five or more children at the time of injury, seventy-five percent of his or her wages but not less than three hundred fifty-two dollars per month.

(7) If unmarried at the time of the injury, sixty percent of his or her wages but not less than one hundred eighty-five dollars per month.

(8) If unmarried with one child at the time of injury, sixty-two percent of his or her wages but not less than two hundred twenty-two dollars per month.

(9) If unmarried with two children at the time of injury, sixty-four percent of his or her wages but not less than two hundred fifty-three dollars per month.

(10) If unmarried with three children at the time of injury, sixty-six percent of his or her wages but not less than two hundred seventy-six dollars per month.

(11) If unmarried with four children at the time of injury, sixty-eight percent of his or her wages but not less than two hundred ninety-nine dollars per month.

(12) If unmarried with five or more children at the time of injury, seventy percent of his or her wages but not less than three hundred twenty-two dollars per month.

(13) For any period of time where both husband and wife are entitled to compensation as temporarily or totally disabled workers, only that spouse having the higher wages of the two shall be entitled to claim their child or children for compensation purposes.

(14) In case of permanent total disability, if the character of the injury is such as to render the worker so physically helpless as to require the hiring of the services of an attendant, the department shall make monthly payments to such attendant for such services as long as such requirement continues, but such payments shall not obtain or be operative while the worker is receiving care under or pursuant to the provisions of chapter 51.36 RCW and RCW 51.04.105.

(15) Should any further accident result in the permanent total disability of an injured worker, he or she shall receive the pension to which he or she would be entitled, notwithstanding the payment of a lump sum for his or her prior injury.

(16) In no event shall the monthly payments provided in this section exceed seventy-five percent of the average monthly wage in the state as computed under the provisions of RCW 51.08.018, except that this limitation shall not apply to the payments provided for in subsection (14) of this section.

(17) In the case of new or reopened claims, if the supervisor of industrial insurance determines that, at the time of filing or reopening, the worker is voluntarily retired and is no longer attached to the work force, benefits shall not be paid under this section.

Sec. 2. Section 51.32.090, chapter 23, Laws of 1961 as last amended by section 6, chapter 462, Laws of 1985 and RCW 51.32.090 are each re-enacted and amended to read as follows:

(1) When the total disability is only temporary, the schedule of payments contained in subsections (1) through (13) of RCW 51.32.060 as amended shall apply, so long as the total disability continues.

(2) Any compensation payable under this section for children not in the custody of the injured worker as of the date of injury shall be payable only to such person as actually is providing the support for such child or children pursuant to the order of a court of record providing for support of such child or children.

(3) As soon as recovery is so complete that the present earning power of the worker, at any kind of work, is restored to that existing at the time of the occurrence of the injury, the payments shall cease. If and so long as the present earning power is only partially restored, the payments shall continue in the proportion which the new earning power shall bear to the old. No compensation shall be payable unless the loss of earning power shall exceed five percent. However, during the period a worker returns to light-duty work, receives disability leave supplement payments pursuant to RCW 41.04.500 through 41.04.530, and is otherwise eligible for compensation under this section, the worker shall continue to receive such compensation at the rate provided under RCW 51.32.060 (1) through (13).

(4) Whenever an employer requests that a worker who is entitled to temporary total disability under this chapter be certified by a physician as able to perform available work other than his or her usual work, the employer shall furnish to the physician, with a copy to the worker, a statement describing the available work in terms that will enable the physician to relate the physical activities of the job to the worker's disability. The physician shall then determine whether the worker is physically able to perform the work described. If the worker is released by his or her physician for said work, and the work thereafter comes to an end before the worker's recovery is sufficient in the judgment of his or her physician to permit him or her to return to his or her usual job, or to perform other available work, the worker's temporary total disability payments shall be resumed. Should the available work described, once undertaken by the worker, impede his or her recovery to the extent that in the judgment of his or her physician he or she should not continue to work, the worker's temporary total disability payments shall be resumed when the worker ceases such work.

Once the worker returns to work under the terms of this subsection, he or she shall not be assigned by the employer to work other than the available work described without the worker's written consent, or without prior review and approval by the worker's physician.

In the event of any dispute as to the worker's ability to perform the available work offered by the employer, the department shall make the final determination.

(5) No worker shall receive compensation for or during the day on which injury was received or the three days following the same, unless his or her disability shall continue for a period of fourteen consecutive calendar days from date of injury: PROVIDED, That attempts to return to work in the first fourteen days following the injury shall not serve to break the continuity of the period of disability if the disability continues fourteen days after the injury occurs.

(6) Should a worker suffer a temporary total disability and should his or her employer at the time of the injury continue to pay him or her the wages which he or she was earning at the time of such injury, such injured worker shall not receive any payment provided in subsection (1) of this section during the period his or her employer shall so pay such wages. This limitation does not apply to disability leave supplement payments made pursuant to RCW 41.04.500 through 41.04.530.

(7) In no event shall the monthly payments provided in this section exceed seventy-five percent of the average monthly wage in the state as computed under the provisions of RCW 51.08.018.

(8) If the supervisor of industrial insurance determines that the worker is voluntarily retired and is no longer attached to the work force, benefits shall not be paid under this section.

Sec. 3. Section 51.32.090, chapter 23, Laws of 1961 as last amended by section 1, chapter 129, Laws of 1980 and RCW 51.32.090 are each amended to read as follows:

(1) When the total disability is only temporary, the schedule of payments contained in subdivisions (1) through (13) of RCW 51.32.060 as amended shall apply, so long as the total disability continues.

(2) Any compensation payable under this section for children not in the custody of the injured worker as of the date of injury shall be payable only to such person as actually is providing the support for such child or children pursuant to the order of a court of record providing for support of such child or children.

(3) As soon as recovery is so complete that the present earning power of the worker, at any kind of work, is restored to that existing at the time of the occurrence of the injury, the payments shall cease. If and so long as the present earning power is only partially restored, the payments shall continue in the proportion which the new earning power shall bear to the old. No compensation shall be payable unless the loss of earning power shall exceed five percent.

(4) Whenever an employer requests that a worker who is entitled to temporary total disability under this chapter be certified by a physician as

able to perform available work other than his or her usual work, the employer shall furnish to the physician, with a copy to the worker, a statement describing the available work in terms that will enable the physician to relate the physical activities of the job to the worker's disability. The physician shall then determine whether the worker is physically able to perform the work described. If the worker is released by his or her physician for said work, and the work thereafter comes to an end before the worker's recovery is sufficient in the judgment of his or her physician to permit him or her to return to his or her usual job, or to perform other available work, the worker's temporary total disability payments shall be resumed. Should the available work described, once undertaken by the worker, impede his or her recovery to the extent that in the judgment of his or her physician he or she should not continue to work, the worker's temporary total disability payments shall be resumed when the worker ceases such work.

Once the worker returns to work under the terms of this subsection, he or she shall not be assigned by the employer to work other than the available work described without the worker's written consent, or without prior review and approval by the worker's physician.

In the event of any dispute as to the worker's ability to perform the available work offered by the employer, the department shall make the final determination.

(5) No worker shall receive compensation for or during the day on which injury was received or the three days following the same, unless his or her disability shall continue for a period of fourteen consecutive calendar days from date of injury: PROVIDED, That attempts to return to work in the first fourteen days following the injury shall not serve to break the continuity of the period of disability if the disability continues fourteen days after the injury occurs.

(6) Should a worker suffer a temporary total disability and should his or her employer at the time of the injury continue to pay him or her the wages which he or she was earning at the time of such injury, such injured worker shall not receive any payment provided in subsection (1) of this section during the period his or her employer shall so pay such wages.

(7) In no event shall the monthly payments provided in this section exceed seventy-five percent of the average monthly wage in the state as computed under the provisions of RCW 51.08.018.

(8) If the supervisor of industrial insurance determines that the worker is voluntarily retired and is no longer attached to the work force, benefits shall not be paid under this section.

Sec. 4. Section 51.32.160, chapter 23, Laws of 1961 as amended by section 1, chapter 192, Laws of 1973 1st ex. sess. and RCW 51.32.160 are each amended to read as follows:

If aggravation, diminution, or termination of disability takes place or be discovered after the rate of compensation shall have been established or

compensation terminated, in any case the director, through and by means of the division of industrial insurance, may, upon the application of the beneficiary, made within seven years after the establishment or termination of such compensation, or upon his own motion, readjust for further application the rate of compensation in accordance with the rules in this section provided for the same, or in a proper case terminate the payment: PROVIDED, That the time limitation of this section shall be ten years in claims involving loss of vision or function of the eyes.

If a worker receiving a pension for total disability returns to gainful employment for wages, the director may suspend or terminate the rate of compensation established for the disability without producing medical evidence that shows that a diminution of the disability has occurred.

No act done or ordered to be done by the director, or the department prior to the signing and filing in the matter of a written order for such readjustment shall be ground for such readjustment.

**NEW SECTION.** Sec. 5. A new section is added to chapter 51.32 RCW to read as follows:

(1) For persons receiving compensation for temporary or permanent total disability under this title, the compensation shall be reduced by the department to allow an offset for social security retirement benefits payable under the federal social security, old age survivors, and disability insurance act, 42 U.S.C. This reduction shall not apply to any worker who is receiving permanent total disability benefits prior to the effective date of this section.

(2) Reductions for social security retirement benefits under this section shall comply with the procedures in RCW 51.32.220 (1) through (6), except those that relate to computation, and with any other procedures established by the department to administer this section.

(3) Any reduction in compensation made under chapter ... (House Bill No. 1873), Laws of 1986, shall be made before the reduction established in this section.

**NEW SECTION.** Sec. 6. Section 2 of this act shall expire on June 30, 1989. Section 3 of this act shall take effect on June 30, 1989. Section 5 of this act shall take effect on July 1, 1986.

Passed the House February 12, 1986.

Passed the Senate March 3, 1986.

Approved by the Governor March 12, 1986.

Filed in Office of Secretary of State March 12, 1986.

## CHAPTER 60

[Engrossed House Bill No. 1398]

USURY—INTEREST RATE CALCULATION BY STATE TREASURER—  
PUBLICATION IN STATE REGISTER

AN ACT Relating to publication of interest rates; amending RCW 34.08.020; adding a new section to chapter 19.52 RCW; and adding a new section to chapter 63.14 RCW.

Be it enacted by the Legislature of the State of Washington:

**NEW SECTION.** Sec. 1. A new section is added to chapter 19.52 RCW to read as follows:

Each month the state treasurer shall compute the highest rate of interest permissible under RCW 19.52.020(1) for the succeeding calendar month. The treasurer shall file this rate with the state code reviser for publication in the next available issue of the Washington State Register in compliance with RCW 34.08.020(8).

**NEW SECTION.** Sec. 2. A new section is added to chapter 63.14 RCW to read as follows:

On or before December 5th of each year the state treasurer shall compute the maximum service charge allowed under a retail installment contract or charge agreement under RCW 63.14.130(1)(a) for the succeeding calendar year. The treasurer shall file this charge with the state code reviser for publication in the first issue of the Washington State Register for the succeeding calendar year in compliance with RCW 34.08.020(8).

Sec. 3. Section 8, chapter 2, Laws of 1983 and RCW 34.08.020 are each amended to read as follows:

There is hereby created a state publication to be called the Washington State Register, which shall be published on no less than a monthly basis. The register shall contain, but is not limited to, the following materials received by the code reviser's office during the pertinent publication period:

(1) (a) The full text of any proposed new or amendatory rule, as defined in RCW 34.04.010, and the citation of any existing rules the repeal of which is proposed, prior to the public hearing on such proposal. Such material shall be considered, when published, to be the official notification of the intended action, and no state agency or official thereof may take action on any such rule except on emergency rules adopted in accordance with RCW 34.04.030, until twenty days have passed since the distribution date of the register in which the rule and hearing notice have been published or a notice regarding the omission of the rule has been published pursuant to RCW 34.04.050(3) as now or hereafter amended;

(b) The small business economic impact statement, if required by RCW 19.85.030, preceding the full text of the proposed new or amendatory rule;

# **APPENDIX B**

1971  
SESSION LAWS  
OF THE  
STATE OF WASHINGTON

REGULAR SESSION  
FORTY-SECOND LEGISLATURE

Convened January 11, 1971. Adjourned March 11, 1971.

1st EXTRAORDINARY SESSION  
FORTY-SECOND LEGISLATURE

Convened March 12, 1971. Adjourned May 10, 1971.



Published at Olympia by the Statute Law Committee pursuant  
to Chapter 6, Laws of 1969.

RICHARD O. WHITE  
Code Reviser



CHAPTER 289  
[Engrossed House Bill No. 735]  
INDUSTRIAL INSURANCE

AN ACT Relating to industrial insurance; amending section 13, chapter 223, Laws of 1953 and RCW 38.52.290; amending section 17, chapter 223, Laws of 1953 and RCW 38.52.330; amending section 51.04.030, chapter 23, Laws of 1961 and RCW 51.04.030; amending section 51.08.070, chapter 23, Laws of 1961 and RCW 51.08.070; amending section 51.12.010, chapter 23, Laws of 1961 and RCW 51.12.010; amending section 51.12.020, chapter 23, Laws of 1961 and RCW 51.12.020; amending section 51.12.070, chapter 23, Laws of 1961 as amended by section 1, chapter 20, Laws of 1965 ex. sess. and RCW 51.12.070; amending section 51.12.110, chapter 23, Laws of 1961 and RCW 51.12.110; amending section 51.16.040, chapter 23, Laws of 1961 and RCW 51.16.040; amending section 2, chapter 151, Laws of 1963 and RCW 51.16.042; amending section 51.16.060, chapter 23, Laws of 1961 as amended by section 1, chapter 80, Laws of 1965 ex. sess. and RCW 51.16.060; amending section 51.16.105, chapter 23, Laws of 1961 and RCW 51.16.105; amending section 51.16.110, chapter 23, Laws of 1961 and RCW 51.16.110; amending section 51.16.140, chapter 23, Laws of 1961 as amended by section 2, chapter 20, Laws of 1971 and RCW 51.16.140; amending section 51.16.160, chapter 23, Laws of 1961 and RCW 51.16.160; amending section 51.16.180, chapter 23, Laws of 1961 and RCW 51.16.180; amending section 51.24.010, chapter 23, Laws of 1961 as amended by section 7, chapter 274, Laws of 1961 and RCW 51.24.010; amending section 51.28.010, chapter 23, Laws of 1961 and RCW 51.28.010; amending section 51.28.020, chapter 23, Laws of 1961 and RCW 51.28.020; amending section 51.28.030, chapter 23, Laws of 1961 and RCW 51.28.030; amending section 51.32.010, chapter 23, Laws of 1961 and RCW 51.32.010; amending section 1, chapter 107, Laws of 1961 and RCW 51.32.015; amending section 51.32.020, chapter 23, Laws of 1961 and RCW 51.32.020; amending section 51.32.040, chapter 23, Laws of 1961 as amended by section 2, chapter 165, Laws of 1965 ex. sess. and RCW 51.32.040; amending section 51.32.050, chapter 23, Laws of 1961 as last amended by section 1, chapter 122, Laws of 1965 ex. sess. and RCW 51.32.050; amending section 51.32.060, chapter 23, Laws of 1961 as last amended by section 2, chapter 122, Laws of 1965 ex. sess. and RCW 51.32.060; amending section 51.32.070, chapter 23, Laws of 1961 as last amended by section 1, chapter 166, Laws of 1965 ex. sess. and RCW

ion criteria.  
will be an  
y reason of  
ned for other  
arket values.

Veto  
Message

even if the  
Section 8  
education for  
nts, and that  
es of 1972  
on the 1970  
ctions to be  
1971. The  
ent what, in  
values from

evenue that  
e regression  
, to raise  
increases in  
under the  
pleted.

l above, I  
283."

51.32.070; amending section 51.32.080, chapter 23, Laws of 1961 as last amended by section 1, chapter 165, Laws of 1965 ex. sess. and RCW 51.32.080; amending section 51.32.090, chapter 23, Laws of 1961 as last amended by section 3, chapter 122, Laws of 1965 ex. sess. and RCW 51.32.090; amending section 51.32.100, chapter 23, Laws of 1961 and RCW 51.32.100; amending section 51.32.110, chapter 23, Laws of 1961 and RCW 51.32.110; amending section 51.32.140, chapter 23, Laws of 1961 and RCW 51.32.140; amending section 51.32.180, chapter 23, Laws of 1961 and RCW 51.32.180; amending section 51.36.010, chapter 23, Laws of 1961 as amended by section 2, chapter 166, Laws of 1965 ex. sess. and RCW 51.36.010; amending section 51.36.020, chapter 23, Laws of 1961 as amended by section 3, chapter 166, Laws of 1965 ex. sess. and RCW 51.36.020; amending section 51.44.070, chapter 23, Laws of 1961 as amended by section 5, chapter 274, Laws of 1961 and RCW 51.44.070; amending section 51.44.080, chapter 23, Laws of 1961 and RCW 51.44.080; amending section 51.48.010, chapter 23, Laws of 1961 and RCW 51.48.010; amending section 51.48.020, chapter 23, Laws of 1961 and RCW 51.48.020; amending section 51.48.030, chapter 23, Laws of 1961 and RCW 51.48.030; amending section 51.48.060, chapter 23, Laws of 1961 and RCW 51.48.060; amending section 51.52.010, chapter 23, Laws of 1961 as last amended by section 3, chapter 165, Laws of 1965 ex. sess. and RCW 51.52.010; amending section 51.52.080, chapter 23, Laws of 1961 as amended by section 2, chapter 148, Laws of 1963 and RCW 51.52.080; amending section 51.52.090, chapter 23, Laws of 1961 and 51.52.090; amending section 6, chapter 148, Laws of 1963 and RCW 51.52.104; amending section 51.52.106, chapter 23, Laws of 1961 as last amended by section 4, chapter 165, Laws of 1965 ex. sess. and RCW 51.52.106; amending section 51.52.110, chapter 23, Laws of 1961 as amended by section 122, chapter 81, Laws of 1971 and RCW 51.52.110; amending section 14, chapter 207, Laws of 1953 and RCW 75.08.206; adding new sections to chapter 51.04 RCW; adding new sections to chapter 51.08 RCW; adding a new section to chapter 51.12 RCW; adding new sections to chapter 51.16 RCW; adding a new section to chapter 51.28 RCW; adding new sections to chapter 51.32 RCW; adding new sections to chapter 51.36 RCW; adding new sections to chapter 51.44 RCW; adding new sections to chapter 51.48 RCW; adding a new section to chapter 51.98 RCW; adding a new chapter to Title 51 RCW; repealing section 51.16.010, chapter 23, Laws of 1961 and RCW 51.16.010; repealing section 51.16.020, chapter 23, Laws of 1961, section 6, chapter 274, Laws of 1961 and RCW 51.16.020;

repealing section 51.16.030, chapter 23, Laws of 1961 and RCW 51.16.030; repealing section 51.16.050, chapter 23, Laws of 1961 and RCW 51.16.050; repealing section 51.16.080, chapter 23, Laws of 1961 and RCW 51.16.080; prescribing penalties; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Section 1. Section 51.08.070, chapter 23, Laws of 1961 and RCW 51.08.070 are each amended to read as follows:

"Employer" means any person, body of persons, corporate or otherwise, and the legal representatives of a deceased employer, all while engaged in this state in any ((extrahazardous)) work covered by the provisions of this title; by way of trade or business, or who contracts with one or more workmen, the essence of which is the personal labor of such workman or workmen(( in extrahazardous work)).

Sec. 2. Section 51.12.010, chapter 23, Laws of 1961 and RCW 51.12.010 are each amended to read as follows:

There is a hazard in all employment(( but certain employments have come to be, and to be recognized as being inherently constantly dangerous. This title is intended to apply to all such inherently hazardous works and occupations,)) and it is the purpose of this title to embrace all ((of them)) employments which are within the legislative jurisdiction of the state(( in the following enumeration, and they are intended to be embraced)) within the term "extrahazardous" wherever used in this title(( to wit:

Factories; mills and workshops where machinery is used; printing, electrotyping, photoengraving and stereotyping plants where machinery is used; foundries; blast furnaces; mines; wells; gas works; waterworks; reduction works; breweries; elevators; wharves; docks; dredges; smelters; powder works; laundries operated by power; quarries; engineering works; logging; lumbering and shipbuilding operations; logging; street and interurban railroads; buildings being constructed, repaired, moved, or demolished; telegraph; telephony; electric light or power plants or lines; steam heating or power plants; steamboats; tugs; ferries; and railroads; installing and servicing radios and electrical refrigerators; general warehouse and storage; teaming; truck driving; and motor delivery, including drivers and helpers, in connection with any occupation except agriculture; stage; taxicab and for hire driving; restaurants; taverns; clubs; and establishments; employees supplying service to the public in hotels; clubs furnishing sleeping accommodations; apartment hotels; janitors; chambermaids; porters; bellmen; pinsetters; elevator operators and maintenance men employed in apartment houses; office buildings; stores; mercantile establishments; theaters and bowling alleys employing one or more

employees; bunkhouses; kitchens; and eating houses in connection with extrahazardous occupations or conducted primarily for employees in extrahazardous occupations; transfer; drayage; and hauling; warehousing and transfer; fruit warehouse and packing houses; and work performed by salaried peace officers of the state, the counties, and the municipal corporations)).

This title shall be liberally construed for the purpose of reducing to a minimum the suffering and economic loss arising from injuries and/or death occurring in the course of employment.

Sec. 3. Section 51.12.020, chapter 23, Laws of 1961 and RCW 51.12.020 are each amended to read as follows:

The following are the only employments which shall not be deemed extrahazardous ((within the meaning, or be) and thus not included ((in the enumeration of RCW 51.42.040, to wit: Using power-driven coffee grinders in wholesale or retail grocery stores; using power-driven washing machines in establishments selling washing machines at retail; using computing machines in offices; using power-driven taffy pullers in retail candy stores; using power-driven milk shakers in establishments operating soda fountains; using power-driven hair cutters in barber shops; using power-driven machinery in beauty parlors; using power-driven machinery in optical stores; private boarding houses; serving food or drink to the public or to members for consumption on the premises)) within the mandatory coverage of this title:

(1) Any person employed as a domestic servant in a private home by an employer who has less than two employees regularly employed forty or more hours a week in such employment.

(2) Any person employed to do maintenance, repair, remodeling, or similar work in or about the private home of the employer which does not exceed ten consecutive work days.

(3) A person whose work is casual and the employment is not in the course of the trade, business, or profession of his employer.

(4) Any person performing services in return for aid or sustenance only, received from any religious or charitable organization.

(5) Sole proprietors and partners.

(6) Any employee whose cash remuneration paid or payable by the employer in any calendar year for agricultural labor is less than one hundred fifty dollars: PROVIDED, That the exemption contained in this subsection shall expire and have no force or effect on December 31, 1972.

Sec. 4. Section 51.16.110, chapter 23, Laws of 1961 and RCW 51.16.110 are each amended to read as follows:

Every employer who shall enter into any business, or who shall resume operations in any work or plant after the final adjustment of

in connection with  
employees in  
and hauling;  
houses; and  
the counties;

Purpose of  
arising from  
ment.

1961 and RCW

shall not be  
and thus not  
wit: Using  
recovery stores;  
filling washing  
offices; using  
power-driven  
chains; using  
power-driven  
ery in optical  
to the public  
the mandatory

a private  
ees regularly

remodeling,  
ployer which

ent is not in  
employer.

for aid or  
charitable

payable by  
is less than  
contained in  
t on December

1961 and RCW

or who shall  
adjustment of

his payroll in connection therewith, shall, before so commencing or resuming operations, as the case may be, notify the director of such fact, accompanying such notification with a cash deposit in a sum equal to the estimated premiums ((on the estimate of his payroll and workmen hours)) for the first three calendar months of his proposed operations which shall remain on deposit subject to the other provisions of this section.

The director may, in his discretion and in lieu of such deposit, accept a bond, in an amount which he deems sufficient, to secure payment of premiums due or to become due to the accident fund and medical aid fund. The deposit or posting of a bond shall not relieve the employer from paying premiums ((to the accident fund and medical aid fund based on his actual workmen hours as provided by RCW 51-46-040 and 51-46-060)) subsequently due.

Should the employer acquire sufficient assets to assure the payment of premiums due to the accident fund and the medical aid fund the director may, in his discretion, refund the deposit or cancel the bond.

If the employer ceases to be an employer under RCW 51.08.070, the director shall, upon receipt of all payments due the accident fund and medical aid fund ((based on the actual workmen hours)), refund to the employer all deposits remaining to the employer's credit and shall cancel any bond given under this section.

((Every such employer shall pay the full basic rate until such time as an experience rating in excess of a one, two, three, or four year period may be computed as of a first succeeding July 1st date, which said cost experience shall be computed in accordance with the provisions of RCW 51-46-020, and shall be liable for a premium of at least two dollars per month irrespective of the amount of his workmen hours reported during said month to the department: PROVIDED, That where an employer is new or has prior to January 1, 1958, been covered under the provisions of this title for a period of at least two years and subsequent thereto the legal structure of such employer changes by way of incorporation, disincorporation, merger, consolidation, transfer of stock ownership, or by any other means, the director may continue, increase, or decrease such experience rating which existed prior to such change in the employer's legal structure.))

Sec. 5. Section 51.28.010, chapter 23, Laws of 1961 and RCW 51.28.010 are each amended to read as follows:

Whenever any accident occurs to any workman it shall be the duty of such workman or someone in his behalf to forthwith report such accident to his employer, superintendent or foreman in charge of the work, and of the employer to at once report such accident and the injury resulting therefrom to the department and also to any local

representative of the department.

Upon receipt of such notice of accident, the director shall immediately forward to the workman and/or his dependents notification, in nontechnical language, of his rights under this title.

Sec. 6. Section 51.28.030, chapter 23, Laws of 1961 and RCW 51.28.030 are each amended to read as follows:

Where death results from injury the parties entitled to compensation under this title, or someone in their behalf, shall make application for the same to the department, which application must be accompanied with proof of death and proof of relationship showing the parties to be entitled to compensation under this title, certificates of attending physician, if any, and such proof as required by the rules of the department.

Upon receipt of notice of accident under RCW 51.28.010, the director shall immediately forward to the party or parties required to make application for compensation under this section, notification, in nontechnical language, of their rights under this title.

Sec. 7. Section 51.32.050, chapter 23, Laws of 1961 as last amended by section 1, chapter 122, Laws of 1965 ex. sess. and RCW 51.32.050 are each amended to read as follows:

(1) Where death results from the injury the expenses of burial not to exceed ((six hundred) eight hundred dollars shall be paid to the undertaker conducting the funeral.

(2) ((If the workman leaves a widow or invalid widower, a monthly payment of one hundred forty dollars, shall be made throughout the life of the surviving spouse, to cease at the end of the month in which remarriage occurs, and the surviving spouse shall also receive per month for each child of the deceased at the time any monthly payment is due the following payments: For the youngest or only child, thirty-seven dollars, for the next or second youngest child, thirty-one dollars, and for each additional child, twenty-three dollars but the total monthly payments shall not exceed two hundred seventy-seven dollars and any deficit shall be deducted proportionately among the beneficiaries.)) A widow or invalid widower of a deceased workman shall receive monthly throughout his or her life the following sums:

(a) If there are no children of the deceased workman, sixty percent of the wages of the deceased workman but not less than one hundred eighty-five dollars.

(b) If there is one child of the deceased workman, sixty-two percent of the wages of the deceased workman but not less than two hundred twenty-two dollars.

(c) If there are two children of the deceased workman,

sixty-four percent of the wages of the deceased workman but not less than two hundred fifty-three dollars.

(d) If there are three children of the deceased workman, sixty-six percent of the wages of the deceased workman but not less than two hundred seventy-six dollars.

(e) If there are four children of the deceased workman, sixty-eight percent of the wages of the deceased workman but not less than two hundred ninety-nine dollars.

(f) If there are five or more children of the deceased workman, seventy percent of the wages of the deceased workman but not less than three hundred twenty-two dollars.

Payments to the surviving spouse of the deceased workman shall cease at the end of the month in which remarriage occurs; PROVIDED, That the portion of the monthly payment made for the benefit of the children shall not be affected by such remarriage. In no event shall the monthly payments provided in this subsection exceed seventy-five percent of the average monthly wage of the state as computed under section 14 of this 1971 amendatory act.

In addition to the monthly payments above provided for, a surviving widow, or invalid widower, or dependent parent or parents, if there is no surviving widow or invalid widower of any such deceased workman shall be forthwith paid the sum of ((six hundred)) eight hundred dollars.

Upon remarriage of a widow she shall receive, once and for all, a lump sum of ((two thousand)) seventy-five hundred dollars or fifty percent of the then remaining annuity value of her pension, whichever is the lesser, and the monthly payments to such widow shall cease at the end of the month in which remarriage occurs, but the monthly payments for the child or children shall continue as before.

(3) ((If the workman leaves no wife or husband, but an orphan child or children a monthly payment of seventy dollars shall be paid to each such child, but the total monthly payments shall not exceed three hundred fifty dollars and any deficit shall be deducted proportionately among the beneficiaries.))

If there is a child or children and no widow or widower of the deceased workman, a sum equal to thirty-five percent of the average monthly wage of the deceased workman shall be paid monthly for one child and a sum equivalent to fifteen percent of such wage shall be paid monthly for each additional child, the total of such sum to be divided among such children, share and share alike; PROVIDED, That benefits under this subsection or subsection (4) shall not exceed sixty-five percent of the monthly wages of the deceased workman at the time of his death or seventy-five percent of the average monthly wage of the state as defined in section 14 of this 1971 amendatory act, whichever is the lesser of the two sums.

(4) In the event a surviving spouse receiving monthly payments dies, leaving a child or children, each shall receive the ((sum of seventy dollars per month; but the total monthly payment shall not exceed three hundred fifty dollars and any deficit shall be deducted proportionately among the beneficiaries)) same payment as provided in subsection (3) of this section.

(5) If the workman leaves no widow, widower or child, but leaves a dependent or dependents, a monthly payment shall be made to each dependent equal to fifty percent of the average monthly support actually received by such dependent from the workman during the twelve months next preceding the occurrence of the injury, but the total payment to all dependents in any case shall not exceed ((one hundred twenty-five dollars per month)) sixty-five percent of the monthly wages of the deceased workman at the time of his death or seventy-five percent of the average monthly wage of the state as defined in section 14 of this 1971 amendatory act, whichever is the lesser of the two sums. If any dependent is under the age of eighteen years at the time of the occurrence of the injury, the payment to such dependent shall cease when such dependent reaches the age of eighteen years except such payments shall continue until the dependent reaches age twenty-one while permanently enrolled at a full time course in an accredited school. The payment to any dependent shall cease if and when, under the same circumstances, the necessity creating the dependency would have ceased if the injury had not happened.

(6) If the injured workman dies during the period of permanent total disability, whatever the cause of death, leaving a widow, invalid widower, or child, or children, the surviving widow or invalid widower shall receive ((one hundred forty dollars per month until death or remarriage; to be increased per month for each child of the deceased; as follows: For the youngest or only child, thirty-seven dollars; for the next or second youngest child, thirty-one dollars; and for each additional child, twenty-three dollars. PROVIDED, that the total monthly payments shall not exceed two hundred seventy-seven dollars and any deficit shall be deducted proportionately among the beneficiaries; but if such child is or shall be without father or mother, such child shall receive seventy dollars per month, but the total monthly payment to such children shall not exceed three hundred fifty dollars, and any deficit shall be deducted proportionately among the children)) benefits as if death resulted from the injury as provided in subsections (2) through (5) of this section. Upon remarriage the payments on account of the child or children shall continue as before to such child or children.

Sec. 8. Section 51.32.060, chapter 23, Laws of 1961 as last amended by section 2, chapter 122, Laws of 1965 ex. sess. and RCW

monthly payments  
the ((sum of  
payment shall not  
it be deducted  
as provided in

or child, but  
shall be made to  
monthly support  
kman during the  
jury, but the  
ot exceed ((one  
percent of the  
of his death or  
the state as  
hichever is the  
or the age of  
the injury, the  
ent reaches the  
nue until the  
olled at a full  
o any dependent  
the necessity  
injury had not

od of permanent  
ving a widow,  
iving widow or  
ars per month  
for each child  
r only child,  
oungest child,  
y twenty-three  
shall not exceed  
i be deducted  
uch child is or  
eceive seventy  
o such children.  
deficit shall  
its as if death  
(2) through (5)  
ccount of the  
ld or children.

1961 as last  
sess. and RCW

51.32.060 are each amended to read as follows:

When the supervisor of industrial insurance shall determine that permanent total disability results from the injury, the workman shall receive monthly during the period of such disability:

(1) ((If unmarried at the time of the injury, the sum of one hundred eighty-five dollars:

(2) If the workman has a wife or invalid husband, but no child, the sum of two hundred fifteen dollars:

(3) If the workman has an able-bodied husband, but no child, the sum of one hundred seventy-five dollars:

(4) If the workman has a wife or husband and a child or children, or, being a widow or widower having any such child or children, the monthly payment in subdivisions (2) and (3) shall be increased by thirty-seven dollars for the youngest or only child, thirty-one dollars for the next or second youngest child, and twenty-three dollars for each additional child, but the total monthly payments shall not exceed three hundred fifty-two dollars to a workman with a wife, or invalid husband, or being a widow or widower, and having children, and shall not exceed three hundred twenty-two dollars to a married workman with children and having an able-bodied husband, and any deficit shall be deducted proportionately among the beneficiaries.) If married at the time of injury, sixty-five percent of his wages but not less than two hundred fifteen dollars per month.

(2) If married with one child at the time of injury, sixty-seven percent of his wages but not less than two hundred fifty-two dollars per month.

(3) If married with two children at the time of injury, sixty-nine percent of his wages but not less than two hundred eighty-three dollars.

(4) If married with three children at the time of injury, seventy-one percent of his wages but not less than three hundred six dollars per month.

(5) If married with four children at the time of injury, seventy-three percent of his wages but not less than three hundred twenty-nine dollars per month.

(6) If married with five or more children at the time of injury, seventy-five percent of his wages but not less than three hundred fifty-two dollars per month.

(7) If unmarried at the time of the injury, sixty percent of his wages but not less than one hundred eighty-five dollars per month.

(8) If unmarried with one child at the time of injury, sixty-two percent of his wages but not less than two hundred twenty-two dollars per month.

(9) If unmarried with two children at the time of injury, sixty-four percent of his wages but not less than two hundred fifty-three dollars per month.

(10) If unmarried with three children at the time of injury, sixty-six percent of his wages but not less than two hundred seventy-six dollars per month.

(11) If unmarried with four children at the time of injury, sixty-eight percent of his wages but not less than two hundred ninety-nine dollars per month.

(12) If unmarried with five or more children at the time of injury, seventy percent of his wages but not less than three hundred twenty-two dollars per month.

(13) For any period of time where both husband and wife are entitled to compensation as temporarily or totally disabled workmen, only that spouse having the higher wages of the two shall be entitled to claim their child or children for compensation purposes.

~~((45))~~ (14) In case of permanent total disability, if the character of the injury is such as to render the workman so physically helpless as to require the services of an attendant, the monthly payment to such workman shall be increased ((one hundred fifteen dollars)) by an amount equal to forty percent of the average monthly wage of the state as computed in section 14 of this 1971 amendatory act per month as long as such requirement continues, but such increases shall not obtain or be operative while the workman is receiving care under or pursuant to the provisions of chapters 51.36 and 51.40.

~~((46))~~ (15) Should any further accident result in the permanent total disability of an injured workman, he shall receive the pension to which he would be entitled, notwithstanding the payment of a lump sum for his prior injury.

(16) In no event shall the monthly payments provided in this section exceed seventy-five percent of the average monthly wage of the state as computed under the provisions of section 14 of this 1971 amendatory act.

Sec. 9. Section 51.32.070, chapter 23, Laws of 1961 as last amended by section 1, chapter 166, Laws of 1965 ex sess. and RCW 51.32.070 are each amended to read as follows:

Notwithstanding any other provision of law, every widow or invalid widower receiving a pension under this title shall, after July 1, ~~((465))~~ 1971, be paid one hundred ~~((twenty-five))~~ eighty-five dollars per month, and every permanently totally disabled workman or temporarily totally disabled workman receiving a pension or compensation for temporary total disability under this title shall, after such date, be paid one hundred ~~((sixty-five))~~ eighty-five dollars per month, and one hundred fifteen dollars per

time of injury,  
s than two hundred

time of injury,  
than two hundred

time of injury,  
ss than two hundred

n at the time of  
than three hundred

and and wife are  
y disabled workmen,  
o shall be entitled  
purposes.

isability, if the  
er the workman so  
an attendant, the  
eased ((one hundred  
ent of the average  
ion 14 of this 1971  
nt continues, but  
hile the workman is  
of chapters 51.36

nt result in the  
n, he shall receive  
otwithstanding the

provided in this  
age monthly wage of  
ion 14 of this 1971

s of 1961 as last  
65 ex sess. and RCW

, every widow or  
title shall, after  
d ((twenty-five))  
ly totally disabled  
receiving a pension  
under this title  
red ((sixty-five))  
fteen dollars per

month additional in cases requiring the services of an attendant, if unmarried at the time his injury occurred; ((one hundred ninety)) two hundred fifteen dollars per month, and one hundred fifteen dollars per month additional in cases requiring the services of an attendant, if he or she has a wife or invalid husband; and one hundred ((fifty-five)) seventy-five dollars per month, in addition to any amount now or hereafter allowed in cases requiring the services of an attendant, if the husband is not an invalid and the husband and wife are living together as such.

No part of such additional payments shall be payable from the accident fund or be charged against any class under the industrial insurance law.

The director shall pay monthly to every such widow, invalid widower, and totally disabled workman from the ((funds appropriated by the legislature)) supplemental pension fund such an amount as will, when added to the pensions or temporary total disability compensation they are presently receiving, exclusive of amounts received for children or dependents or attendants, equal the amounts hereinabove specified.

In cases where money has been or shall be advanced to any such person from the pension reserve, the additional amount to be paid to him or her under this section shall be reduced by the amount of monthly pension which was or is predicated upon such advanced portion of the pension reserve.

((The legislature shall make biennial appropriations to carry out the purposes of this section.))

Sec. 10. Section 51.32.080, chapter 23, Laws of 1961 as last amended by section 1, chapter 165, Laws of 1965 ex. sess. and RCW 51.32.080 are each amended to read as follows:

(1) For the permanent partial disabilities here specifically described, the injured workman shall receive compensation as follows:

LOSS BY AMPUTATION

Of leg above the knee joint with short thigh stump (3" or less below the tuberosity of ischium).....	(((\$15,000+00))	<u>\$18,000.00</u>
Of leg at or above knee joint with functional stump.....	(((\$13,500+00))	<u>16,200.00</u>
Of leg below knee joint.....	(((\$12,000+00))	<u>14,400.00</u>
Of leg at ankle (Syme).....	(((\$10,500+00))	<u>12,600.00</u>
Of foot at mid-metatarsals.....	(((\$5,250+00))	<u>6,300.00</u>
Of great toe with resection of metatarsal bone.....	(((\$3,450+00))	<u>3,780.00</u>
Of great toe at metatarsophalangeal joint.....	(((\$1,890+00))	<u>2,268.00</u>
Of great toe at interphalangeal		

joint.....	((47000+00))	<u>1,200.00</u>
Of lesser toe (2nd to 5th) with resection of metatarsal bone.....	((47450+00))	<u>1,380.00</u>
Of lesser toe at metatarsophalangeal joint.....	((560+00))	<u>672.00</u>
Of lesser toe at proximal interphalangeal joint.....	((445+00))	<u>498.00</u>
Of lesser toe at distal interphalangeal joint.....	((405+00))	<u>126.00</u>
Of arm at or above the deltoid insertion or by disarticulation at the shoulder.....	((45,000+00))	<u>18,000.00</u>
Of arm at any point from below the deltoid insertion to below the elbow joint at the insertion of the biceps tendon.....	((44,250+00))	<u>17,100.00</u>
Of arm at any point from below the elbow joint distal to the insertion of the biceps tendon to and including mid-metacarpal amputation of the hand.....	((43,500+00))	<u>16,200.00</u>
Of all fingers except the thumb at metacarpophalangeal joints.....	((8,400+00))	<u>9,720.00</u>
Of thumb at metacarpophalangeal joint or with resection of carpometacarpal bone.....	((5,400+00))	<u>6,480.00</u>
Of thumb at interphalangeal joint....	((2,700+00))	<u>3,240.00</u>
Of index finger at metacarpophalangeal joint or with resection of metacarpal bone.....	((3,375+00))	<u>4,050.00</u>
Of index finger at proximal interphalangeal joint.....	((2,700+00))	<u>3,240.00</u>
Of index finger at distal interphalangeal joint.....	((1,485+00))	<u>1,782.00</u>
Of middle finger at metacarpophalangeal joint or with resection of metacarpal bone.....	((2,700+00))	<u>3,240.00</u>
Of middle finger at proximal interphalangeal joint.....	((2,460+00))	<u>2,592.00</u>
Of middle finger at distal interphalangeal joint.....	((1,245+00))	<u>1,458.00</u>
Of ring finger at metacarpophalangeal joint or with resection of metacarpal bone.....	((1,350+00))	<u>1,620.00</u>
Of ring finger at proximal		

1,200.00  
1,380.00  
672.00  
498.00  
126.00  
18,000.00  
17,100.00  
16,200.00  
9,720.00  
6,480.00  
3,240.00  
4,050.00  
3,240.00  
1,782.00  
3,240.00  
2,592.00  
1,458.00  
1,620.00

interphalangeal joint..... ((4,000+00)) 1,296.00  
 Of ring finger at distal interphalangeal  
 joint..... ((675+00)) 810.00  
 Of little finger at metacarpophalangeal  
 joint or with resection of  
 metacarpal bone..... ((675+00)) 810.00  
 Of little finger at proximal  
 interphalangeal joint..... ((540+00)) 648.00  
 Of little finger at distal  
 interphalangeal joint..... ((270+00)) 324.00

MISCELLANEOUS

Loss of one eye by enucleation..... ((6,700+00)) 7,200.00  
 Loss of central visual acuity in  
 one eye..... ((5,000+00)) 6,000.00  
 Complete loss of hearing in  
 both ears..... ((12,000+00)) 14,400.00  
 Complete loss of hearing in  
 one ear..... ((2,000+00)) 2,400.00

(2) Compensation for amputation of a member or part thereof at a site other than those above specified, and for loss of central visual acuity and loss of hearing other than complete, shall be in proportion to that which such other amputation or partial loss of visual acuity or hearing most closely resembles and approximates. Compensation for any other permanent partial disability not involving amputation shall be in ((an amount equal to eighty-five percent of)) the proportion which the extent of such other disability, called unspecified disability, shall bear to that above specified, which most closely resembles and approximates in degree of disability such other disability, ((but not in any case to exceed the sum of twelve thousand seven hundred and fifty dollars)) compensation for any other unspecified permanent partial disability shall be in an amount as measured and compared to total bodily impairment: PROVIDED, That in order to reduce litigation and establish more certainty and uniformity in the rating of unspecified permanent partial disabilities, the department shall enact rules having the force of law classifying such disabilities in the proportion which the department shall determine such disabilities reasonably bear to total bodily impairment. In enacting such rules, the department shall give consideration to, but need not necessarily adopt, any nationally recognized medical standards or guides for determining various bodily impairments. For purposes of calculating monetary benefits, the amount payable for total bodily impairment shall be deemed to be thirty thousand dollars: PROVIDED, That the total compensation for all unspecified permanent partial disabilities resulting from the same injury shall not exceed the sum of ((twelve thousand seven

hundred and fifty) thirty thousand dollars: PROVIDED FURTHER, That in case permanent partial disability compensation is followed by permanent total disability compensation, any portion of the permanent partial disability compensation which exceeds the amount that would have been paid the injured workman if permanent total disability compensation had been paid in the first instance, shall be deducted from the pension reserve of such injured workman and his monthly compensation payments shall be reduced accordingly.

(3) Should a workman receive an injury to a member or part of his body already, from whatever cause, permanently partially disabled, resulting in the amputation thereof or in an aggravation or increase in such permanent partial disability but not resulting in the permanent total disability of such workman, his compensation for such partial disability shall be adjudged with regard to the previous disability of the injured member or part and the degree or extent of the aggravation or increase of disability thereof.

(4) When the compensation provided for in subsections (1) and (2) exceeds ((one thousand dollars)) three times the average monthly wage for all workmen entitled to compensation under this title, payment shall be made in monthly payments in accordance with the schedule of temporary total disability payments set forth in RCW 51.32.090 until such compensation is paid to the injured workman in full, except that the first monthly payment shall be in ((the amount of one thousand dollars)) an amount equal to three times the average monthly wage for all workmen entitled to compensation under this title and interest shall be paid at the rate of ((five)) six percent on the unpaid balance of such compensation commencing with the second monthly payment: PROVIDED, That ((interest so paid shall not be charged to the cost experience of any employer but shall be borne wholly by the applicable class account: PROVIDED FURTHER, That)) upon application of the injured workman the monthly payment may be converted, in whole or in part, into a lump sum payment, in which event the monthly payment shall cease in whole or in part. Such conversion may be made only upon written application of the injured workman to the department and shall rest in the discretion of the department depending upon the merits of each individual application: PROVIDED FURTHER, That upon death of a workman all unpaid installments accrued, less interest, shall be paid in a lump sum amount to the widow or widower, or if there is no widow or widower surviving, to the dependent children of such claimant, and if there are no such dependent children, then to such other dependents as defined by this title.

Sec. 11. Section 51.32.090, chapter 23, Laws of 1961 as last amended by section 3, chapter 122, Laws of 1965 ex. sess. and RCW 51.32.090 are each amended to read as follows:

(1) When the total disability is only temporary, the schedule of payments contained in subdivisions (1) ((1), (2), (3) and (4)) through (13) of RCW 51.32.060 as amended shall apply, so long as the total disability continues.

(2) ((But if the injured workman has a wife or husband and has no child or, being a widow or widower, with one or more children, the compensation for the case during such period of time as the total temporary disability continues, shall be per month as follows, to wit: (a) Injured workman with wife or invalid husband and no child, two hundred fifteen dollars; injured workman with able-bodied husband, but no child, one hundred seventy-five dollars; injured workman with wife or invalid husband and one child, or being a widow or widower and having one child, two hundred fifty-two dollars; (b) injured workman with able-bodied husband and one child, two hundred twelve dollars; (c) injured workman with wife or invalid husband and two children, or being a widow or widower and having two children, two hundred eighty-three dollars; (d) injured workman with able-bodied husband and two children, two hundred forty-three dollars; and twenty-three dollars for each additional child, but the total monthly payments shall not exceed three hundred fifty-two dollars to an injured workman with a wife or invalid husband, or being a widow or widower, and having children, and shall not exceed three hundred twelve dollars to an injured workman with children and having an able-bodied husband and any deficit shall be deducted proportionately among the beneficiaries.))

Any compensation payable under this section for children not in the custody of the injured workman as of the date of injury shall be payable only to such person as actually is providing the support for such child or children pursuant to the order of a court of record providing for support of such child or children.

(3) As soon as recovery is so complete that the present earning power of the workman, at any kind of work, is restored to that existing at the time of the occurrence of the injury, the payments shall cease. If and so long as the present earning power is only partially restored, the payments shall continue in the proportion which the new earning power shall bear to the old. No compensation shall be payable out of the accident fund unless the loss of earning power shall exceed five percent.

(4) No workman shall receive compensation out of the accident fund for or during the day on which injury was received or the three days following the same, unless his disability shall continue for a period of ((thirty)) fourteen consecutive calendar days from date of injury.

(5) Should a workman suffer a temporary total disability and should his employer at the time of the injury continue to pay him the

wages which he was earning at the time of such injury, such injured workman shall not receive any payment provided in subsection (1) of this section from the accident fund during the period his employer shall so pay such wages.

(6) In no event shall the monthly payments provided in this section exceed seventy-five percent of the average monthly wage of the state as computed under the provisions of section 14 of this 1971 amendatory act.

NEW SECTION. Sec. 12. There is added to chapter 51.32 RCW a new section to read as follows:

One of the primary purposes of this title is the restoration of the injured workman to gainful employment. To this end, the department shall utilize the services of individuals whose experience, training, and interests in vocational rehabilitation and retraining qualify them to lend expert assistance to the supervisor of industrial insurance in such programs of vocational rehabilitation or retraining as may be reasonable to qualify the workman for employment consistent with his physical and mental status. Where, after evaluation and recommendation by such individuals and prior to final evaluation of the workman's permanent disability and in the sole opinion of the supervisor, vocational rehabilitation or retraining is both necessary and likely to restore the injured workman to a form of gainful employment, the supervisor may, in his sole discretion, continue the temporary total disability compensation under RCW 51.32.090 while the workman is actively and successfully undergoing a formal program of vocational rehabilitation or retraining: PROVIDED, That such compensation may not be authorized for a period of more than fifty-two weeks: PROVIDED FURTHER, That such period may, in the sole discretion of the supervisor after his review, be extended for an additional fifty-two weeks or portion thereof by written order of the supervisor.

In cases where the workman is required to reside away from his customary residence, the reasonable cost of board and lodging shall also be paid. Said costs shall not be chargeable to the employer's cost experience but shall be paid out of the accident fund and charged back to each class on June 30th and December 31st of each year in proportion to its premium contribution for the preceding calendar year or shall be paid by the self-insurer for workmen to whom he is liable for compensation and benefits under the provisions of this title.

Sec. 13. Section 51.32.110, chapter 23, Laws of 1961 and RCW 51.32.110 are each amended to read as follows:

Any workman entitled to receive compensation or claiming compensation under this title shall, if requested by the department or self-insurer, submit himself for medical examination, at a time

and from time to time, at a place reasonably convenient for the workman and as may be provided by the rules of the department. If the workman refuses to submit to ((any such)) medical examination, or obstructs the same, ((his rights to monthly payments shall be suspended until such examination has taken place and no compensation shall be payable during or for such period)) or, if any injured workman shall persist in unsanitary or injurious practices which tend to imperil or retard his recovery, or shall refuse to submit to such medical or surgical treatment as is reasonably essential to his recovery, the department or the self-insurer upon approval by the department, with notice to the workman may reduce or suspend the compensation of such workman so long as such refusal or practice continues. If the workman necessarily incurs traveling expenses in attending for examination pursuant to the request of the department or self-insurer, such traveling expenses shall be repaid to him out of the accident fund upon proper voucher and audit.

If the medical examination required by this section causes the workman to be absent from his work without pay he shall be paid for such time lost in accordance with the schedule of payments provided in RCW 51.32.090 as amended notwithstanding the provisions of subdivision (3) of such section as amended.

NEW SECTION. Sec. 14. There is added to chapter 51.08 RCW a new section to read as follows:

(1) For the purposes of this title, the monthly wages the workman was receiving from all employment at the time of injury shall be the basis upon which compensation is computed unless otherwise provided specifically in the statute concerned. In cases where the workman's wages are not fixed by the month, they shall be determined by multiplying the daily wage the workman was receiving at the time of injury:

- (a) By five, if the workman was normally employed one day a week;
- (b) By nine, if the workman was normally employed two days a week;
- (c) By thirteen, if the workman was normally employed three days a week;
- (d) By eighteen, if the workman was normally employed four days a week;
- (e) By twenty-two, if the workman was normally employed five days a week;
- (f) By thirty, if the workman was normally employed seven days a week.

The term "wages" shall include the reasonable value of board, housing, fuel, or other consideration of like nature received from the employer, but shall not include overtime pay, tips, or

gratuities. The daily wage shall be eight times the hourly wage unless the workman is normally employed for less than eight hours.

(2) In cases where a wage has not been fixed or cannot be reasonable and fairly be determined, the monthly wage shall be computed on the basis of the usual wage paid other employees engaged in like or similar occupations where the wages are fixed.

NEW SECTION. Sec. 15. There is added to chapter 51.08 RCW a new section to read as follows:

For the purposes of this 1971 amendatory act, the average monthly wage in the state shall be determined by the department as follows: On or before the first day of December of each year, the total wages reported on contribution reports to the department of labor and industries for the four calendar quarters ending on the thirtieth of June of such year shall be divided by the average monthly number of insured workmen (determined by dividing the total insured workmen reported for the same period by twelve). The average annual wage thus obtained shall be divided by twelve and the average monthly wage thus determined rounded to next higher multiple of one dollar. The average monthly wage as so determined shall be applicable for the full period during which compensation is payable, when the date of occurrence of injury or of disability in the case of disease falls within the calendar year commencing the first day of January following the determination made on the first day of December: PROVIDED, That from July 1, 1971 until and including December 31, 1972, the average monthly wage in the state shall be the average annual wage as determined under RCW 50.04.355 divided by twelve.

NEW SECTION. Sec. 16. There is added to chapter 51.16 RCW a new section to read as follows:

The department shall classify all occupations or industries in accordance with their degree of hazard and fix therefor basic rates of premium which shall be the lowest necessary to maintain actuarial solvency of the accident and medical aid funds in accordance with recognized insurance principles. The department shall formulate and adopt rules and regulations governing the method of premium calculation and collection and providing for a rating system consistent with recognized principles of workmen's compensation insurance which shall be designed to stimulate and encourage accident prevention and to facilitate collection. The department may annually, or at such other times as it deems necessary to maintain solvency of the funds, readjust rates in accordance with the rating system to become effective on such dates as the department may designate.

NEW SECTION. Sec. 17. There is added to chapter 51.32 RCW a new section to read as follows:

Each employer shall retain from the earnings of each workman that number of cents as shall be fixed from time to time by the director for each day or part thereof the workman is employed. The money so retained shall be matched in an equal amount by each employer, and all such moneys shall be remitted to the department at such intervals as the department directs and shall be placed in the supplemental pension fund created by this 1971 amendatory act. The moneys so collected shall be used exclusively for the additional payments prescribed in RCW 51.32.070 and shall be no more than necessary to make such payments on a current basis.

**NEW SECTION.** Sec. 18. There is added to chapter 51.44 RCW a new section to read as follows:

There shall be, in the office of the state treasurer, a fund to be known and designated as the "supplemental pension fund". The director shall be the administrator thereof. Said fund shall be used for the sole purpose of making the additional payments prescribed in RCW 51.32.070.

**NEW SECTION.** Sec. 19. There is added to chapter 51.44 RCW a new section to read as follows:

Any moneys remaining from funds appropriated by the legislature for the purposes of making additional payments to prior pensioners under prior provisions of RCW 51.32.070, and any liabilities in connection therewith, are transferred to the supplemental pension fund on the effective date of this new 1971 section.

Sec. 20. Section 51.48.060, chapter 23, Laws of 1961 and RCW 51.48.060 are each amended to read as follows:

Any physician who fails, neglects or refuses to file a report with the director, as required by this title, within ((ten)) five days of the date of treatment, showing the condition of the injured workman at the time of treatment, a description of the treatment given, and an estimate of the probable duration of the injury, or who fails or refuses to render all necessary assistance to the injured workman, as required by this title, shall be ((guilty of a misdemeanor)) subject to a civil penalty of one hundred dollars.

**NEW SECTION.** Sec. 21. There is added to chapter 51.48 RCW a new section to read as follows:

Any employee who fails to report an accident and resulting injury to the department as required by RCW 51.28.010 within five days of such accident shall be subject to a civil penalty of one hundred dollars.

Sec. 22. Section 6, chapter 148, Laws of 1963 and RCW 51.52.104 are each amended to read as follows:

After all evidence has been presented at hearings conducted by a hearing examiner, who shall be an active member of the Washington

state bar association, the hearing examiner shall ((prepare)) enter a proposed or recommended decision and order which shall be in writing and shall contain findings and conclusions as to each contested issue of fact and law, as well as the order based thereon. The hearing examiner shall file the original of the proposed decision and order, signed by him, with the board, and copies thereof shall be mailed by the board to each party to the appeal and to his attorney of record. Within twenty days, or such further period as the board may allow on written application of a party, filed within said twenty days from the date of communication of the proposed decision and order to the parties or their attorneys of record, any party may file with the board a written ((statement of exceptions)) petition for review of the same. Such ((statement of exceptions)) petition for review shall set forth in detail the grounds therefor and the party or parties filing the same shall be deemed to have waived all objections or irregularities not specifically set forth therein.

In the event no ((statement of exceptions)) petition for review is filed as provided herein by any party, the proposed decision and order of the hearing examiner shall be adopted by the board and become the decision and order of the board, and no appeal may be taken therefrom to the courts.

Sec. 23. Section 51.52.106, chapter 23, Laws of 1961 as last amended by section 4, chapter 165, Laws of 1965 ex. sess. and RCW 51.52.106 are each amended to read as follows:

After the filing of a ((statement or statements of exceptions)) petition or petitions for review as provided for in RCW 51.52.104 ((the record before the board)) the proposed decision and order of the hearing examiner, petition or petitions for review and, in its discretion, the record or any part thereof, may be considered by the board and on agreement of at least two of the regular members thereof, the board may, within twenty days after the receipt of such petition or petitions, decline to review the proposed decision and order and thereupon deny the petition or petitions. In such event all parties shall forthwith be notified in writing of said denial. If the petition for review is granted, the proposed decision and order, the petition or petitions for review and the record or any part thereof deemed necessary shall be considered by a panel of at least two of the members of the board, on which not more than one industry and one labor member serve. The chairman may be a member of any panel. The decision and order of any such panel shall be the decision and order of the board. Every final decision and order rendered by the board shall be in writing and shall contain findings and conclusions as to each contested issue of fact and law, as well as the board's order based thereon. A copy of the decision and order, including the findings and conclusions, shall be mailed to

each party to the appeal and to his attorney of record.

Sec. 24. Section 51.52.110, chapter 23, Laws of 1961 as amended by section 122, chapter 81, Laws of 1971 and RCW 51.52.110 are each amended to read as follows:

Within thirty days after a decision of the board to deny the petition or petitions for review upon such appeal has been communicated to such workman, beneficiary, employer or other person, or within thirty days after the final decision and order of the board upon such appeal has been communicated to such workman, beneficiary, employer or other person, or within thirty days after the appeal is deemed denied as herein provided, such workman, beneficiary, employer or other person aggrieved by the decision and order of the board may appeal to the superior court.

In cases involving injured workmen such appeal shall be to the superior court of the county of residence of the workman or beneficiary, as shown by the department's records, the superior court for Thurston county, or to the superior court of the county wherein the injury occurred. In all other cases the appeal shall be to the superior court of Thurston county. Such appeal shall be perfected by filing with the clerk of the court a notice of appeal and by serving a copy thereof by mail, or personally, on the director and on the board. The department shall, within twenty days after the receipt of such notice of appeal, serve and file its notice of appearance and such appeal shall thereupon be deemed at issue. The board shall serve upon the appealing party, the director and any other party appearing at the board's proceeding, and file with the clerk of the court before trial, a certified copy of the board's official record which shall include the notice of appeal and other pleadings, testimony and exhibits, and the board's decision and order, which shall become the record in such case. No bond shall be required on appeals to the superior court or on appeals to the supreme court or the court of appeals, except that an appeal by the employer from a decision and order of the board under RCW 51.48.070, shall be ineffectual unless, within five days following the service of notice thereof, a bond, with surety satisfactory to the court, shall be filed, conditioned to perform the judgment of the court. Except in the case last named an appeal shall not be a stay: PROVIDED, HOWEVER, That whenever the board has made any decision and order reversing an order of the supervisor of industrial insurance on questions of law or mandatory administrative actions of the director, the department shall have the right of appeal to the superior court.

NEW SECTION. Sec. 25. There is added to Title 51 RCW a new chapter as set forth in sections 26 through 36 of this 1971 amendatory act.

NEW SECTION. Sec. 26. Every employer under this title shall

secure the payment of compensation under this title by:

(1) Insuring and keeping insured the payment of such benefits with the state fund; or

(2) Qualifying as a self-insurer under this title.

**NEW SECTION.** Sec. 27. (1) An employer may qualify as a self-insurer by establishing to the director's satisfaction that he has sufficient financial ability to make certain the prompt payment of all compensation under this title and all assessments which may become due from such employer.

(2) A self-insurer may establish sufficient financial ability by depositing in an escrow account in a depository designated by the director, money and/or corporate or governmental securities approved by the director, or a surety bond written by any company admitted to transact surety business in this state filed with the department. The money, securities, or bond shall be in an amount reasonably sufficient in the director's discretion to insure payment of reasonably foreseeable compensation and assessments but not less than the employer's normal expected annual claim liabilities and in no event less than one hundred thousand dollars. In arriving at the amount of money, securities, or bond required under this subsection, the director shall take into consideration the financial ability of the employer to pay compensation and assessments and his probable continuity of operation. The money, securities, or bond so deposited shall be held by the director to secure the payment of compensation by the self-insurer and to secure payment of his assessments. The amount of security may be increased or decreased from time to time by the director. The income from any securities deposited may be distributed currently to the self-insurer.

(3) Securities or money deposited by an employer pursuant to subsection (2) of this section shall be returned to him upon his written request provided the employer files the bond required by such subsection.

(4) If the employer seeking to qualify as a self-insurer has previously insured with the state fund, the director shall require the employer to make up his proper share of any deficit or insufficiency in the employer's class account as a condition to certification as a self-insurer.

(5) A self-insurer may reinsure a portion of his liability under this title with any reinsurer authorized to transact such reinsurance in this state: PROVIDED, That the reinsurer may not participate in the administration of the responsibilities of the self-insurer under this title. Such reinsurance may not exceed eighty percent of the liabilities under this title.

**NEW SECTION.** Sec. 28. The director may issue a certification that an employer is qualified as a self-insurer when such employer

meets the following requirements:

(1) He has fulfilled the requirements of section 27 of this 1971 amendatory act.

(2) He has submitted to the department a payroll report for the preceding consecutive twelve month period.

(3) He has submitted to the department a sworn itemized statement indicating that the employer has sufficient liquid assets to meet his estimated liabilities as a self-insurer.

(4) He has submitted to the department a description of the safety organization maintained by him within his establishment that indicates a record of accident prevention.

(5) He has submitted to the department a description of the administrative organization to be maintained by him to manage industrial insurance matters, including:

(a) The reporting of injuries;

(b) The authorization of medical care;

(c) The payment of compensation;

(d) The handling of claims for compensation;

(e) The name and location of each business location of the employer; and

(f) The qualifications of the personnel of the employer to perform this service.

Such certification shall remain in effect until withdrawn by the director or surrendered by the employer with the approval of the director. An employer's qualification as a self-insurer shall become effective on the date of certification or any date specified in the certificate after the date of certification.

NEW SECTION. Sec. 29. (1) The surety on a bond filed by a self-insurer pursuant to this title may terminate its liability thereon by giving the director written notice stating when, not less than thirty days thereafter, such termination shall be effective.

(2) In case of such termination, the surety shall remain liable, in accordance with the terms of the bond, with respect to future compensation for injuries to employees of the self-insurer occurring prior to the termination of the surety's liability.

(3) If the bond is terminated for any reason other than the employer's terminating his status as a self-insurer, the employer shall, prior to the date of termination of the surety's liability, otherwise comply with the requirements of this title.

(4) The liability of a surety on any bond filed pursuant to this section shall be released and extinguished and the bond returned to the employer or surety provided either such liability is secured by another bond filed, or money or securities deposited as required by this title.

NEW SECTION. Sec. 30. (1) Any employer may at any time

terminate his status as a self-insurer by giving the director written notice stating when, not less than thirty days thereafter, such termination shall be effective, provided such termination shall not be effective until the employer either shall have ceased to be an employer or shall have filed with the director for state industrial insurance coverage under this title.

(2) An employer who ceases to be a self-insurer, and who so files with the director, must maintain money, securities or surety bonds deemed sufficient in the director's discretion to cover the entire liability of such employer for injuries or occupational diseases to his employees which occurred during the period of self-insurance: PROVIDED, That the director may agree for the medical aid and accident funds to assume the obligation of such claims, in whole or in part, and shall adjust the employer's premium rate to provide for the payment of such obligations on behalf of the employer.

NEW SECTION. Sec. 31. (1) The director may, in cases of default upon any obligation under this title by the self-insurer, after ten days notice by certified mail to the defaulting self-insurer of his intention to do so, bring suit upon such bond or collect the interest and principal of any of the securities as they may become due or sell the securities or any of them as may be required or apply the money deposited, all in order to pay compensation, discharge the obligations of the self-insurer under this title, and pay premiums for future insurance of the employer's obligations.

(2) The director shall be authorized to fulfill the defaulting self-insured employer's obligations under this title, paying the necessary premium from the defaulting employer's deposit or from other funds provided under this title for the satisfaction of claims against the defaulting employer, and having subrogation rights against the defaulting employer to the extent of any funds, other than the employer's deposit, expended for the payment of premiums or compensation in performance of the defaulting employer's obligations.

NEW SECTION. Sec. 32. Certification of a self-insurer shall be withdrawn by the director upon one or more of the following grounds:

(1) The employer no longer meets the requirements of a self-insurer; or

(2) The self-insurer's deposit is insufficient; or

(3) The self-insurer intentionally or repeatedly induces employees to fail to report injuries, induces claimants to treat injuries in the course of employment as off-the-job injuries, persuades claimants to accept less than the compensation due, or unreasonably makes it necessary for claimants to resort to

a director written thereafter, such termination shall not cease to be an industrial

er, and who socurities or surety on to cover the s or occupational g the period of ay agree of. such ligation of. such employer's premium on behalf of the

ay, in cases of the self-insurer, the defaulting upon such bond or securities as they of the as may be in order to pay self-insurer under of the employer's

fill the defaulting title, paying the s deposit or from sfaction of claims subrogation rights any funds, other ent of premiums or yer's obligations. self-insurer shall e of the following

requirements of a

ent; or repeatedly induces claimants to treat the-job injuries, compensation due, or to resort to

proceedings against the employer to obtain compensation; or

(4) The self-insurer habitually fails to comply with rules and regulations of the director regarding reports or other requirements necessary to carry out the purposes of this title; or

(5) The self-insurer habitually engages in a practice of arbitrarily or unreasonably refusing employment to applicants for employment or discharging employees because of nondisabling bodily conditions.

NEW SECTION. Sec. 33. (1) Upon the petition of any employee, union or association having a substantial number of employees in the employ of said self-insurer the director shall hold a hearing to determine whether or not there are grounds for the withdrawal of certification of a self-insurer. He shall serve upon the self-insurer and upon any employee union or association having a substantial number of employees in the employ of said self-insurer, personally or by certified mail, a notice of intention to withdraw, or not to withdraw, certification of the self-insurer, which notice shall describe the nature and location or locations of the plants or operations involved; and the specific nature of the reasons for his decision. If the decision is to withdraw certification, it shall include the period of time within which the ground or grounds therefor existed or arose; a directive to the self-insurer specifying the manner in which the grounds may be eliminated; and the date, not less than thirty days after the self-insurer's receipt of the notice, when the certification will be withdrawn in the absence of a satisfactory elimination of the grounds for withdrawal of the certificate.

(2) An appeal of such notice of intention to withdraw, or not to withdraw, certification of a self-insurer may be taken by the self-insurer, or by any employee, or union, or association having a substantial number of employees in the employ of said self-insurer. Proceedings on such appeal shall be as prescribed in this title. Appeal by a self-insurer of notice of intention to withdraw certification shall not act as a stay of the withdrawal, unless the board, or court, for good cause shown, orders otherwise.

NEW SECTION. Sec. 34. (1) Every employer subject to the provisions of this title shall post and keep posted in a conspicuous place or places in and about his place or places of business a reasonable number of typewritten or printed notices of compliance substantially identical to a form prescribed by the director, stating that such employer is subject to the provisions of this title. Such notice shall advise whether the employer is self-insured or has insured with the department, and shall designate a person or persons on the premises to whom report of injury shall be made.

(2) Any employer who has failed to open an account with the

department or qualify as a self-insurer shall not post or permit to be posted on or about his place of business or premises any notice of compliance with this title and any wilful violation of this subsection by any officer or supervisory employee of an employer shall be a misdemeanor.

NEW SECTION. Sec. 35. Every self-insurer shall maintain a record of all payments of compensation made under this title. The self-insurer shall furnish to the director all information he has in his possession as to any disputed claim, upon forms approved by the director.

NEW SECTION. Sec. 36. (1) Whenever compensation due under this title is not paid because of an uncorrected default of a self-insurer, such compensation shall be paid from the medical aid and accidents funds only after the moneys available from the bonds or other security provided under section 27 of this 1971 amendatory act have been exhausted.

(2) Such defaulting self-insurer or surety, if any, shall be liable for payment into the appropriate fund of the amounts paid therefrom by the director, and for the purpose of enforcing this liability the director, for the benefit of the appropriate fund, shall be subrogated to all of the rights of the person receiving such compensation.

Sec. 37. Section 51.24.010, chapter 23, Laws of 1961 as amended by section 7, chapter 274, Laws of 1961 and RCW 51.24.010 are each amended to read as follows:

If the injury to a workman is due to negligence or wrong of another not in the same employ, the injured workman or, if death results from the injury, his widow, children, or dependents, as the case may be, shall elect whether to take under this title or seek a remedy against such other, such election to be in advance of any suit under this section and, if he takes under this title, the cause of action against such other shall be assigned to the ((state for the benefit of the accident fund and the medical aid fund)) department or self-insurer; if the other choice is made, the ((accident fund and the medical aid fund)) department or self-insurer shall contribute only the deficiency, if any, between the amount of recovery against such third person actually collected and the compensation provided or estimated by this title for such case: PROVIDED, That the injured workman or if death results from his injury, his widow, children or dependents as the case may be, electing to seek a remedy against such other person, shall receive benefits payable under this title as if such election had not been made, and the ((department for the benefit of the accident fund and the medical aid fund)) department or self-insurer to the extent of such payments having been made by the department or self-insurer to the injured workman or if death results

ost or permit to  
uses any notice of  
olation of this  
of an employer

shall maintain a  
: this title. The  
ration he has in  
is approved by the

sation due under  
ected default of a  
the medical aid  
from the bonds or  
971 amendatory act

If any, shall be  
f the amounts paid  
f enforcing this  
appropriate fund,  
son receiving such

Laws of 1961 as  
RCW 51.24.010 are

nce or wrong of  
rkman or, if death  
pendents, as the  
is title or seek a  
lvance of any suit  
e, the cause of  
e ((state for the  
nd) department or  
ident fund and  
g shall contribute  
recovery against  
sation provided or  
, That the injured  
low, children or  
remedy against such  
r this title as if  
at for the benefit  
1) department or  
g been made by the  
r if death results

from his injury, his widow, children or dependents as the case may be shall be subrogated to the rights of such person or persons against the recovery had from such third party and shall have a lien thereupon. Any such cause of action assigned to the ((state)) department or self-insurer may be prosecuted or compromised by the department or self-insurer in its discretion in the name of the workman, beneficiaries, or legal representative. Any compromise by the workman of any such suit, which would leave a deficiency to be made good ((out of the accident fund or the medical aid fund)) by the department or self-insurer may be made only with the written approval of the department or self-insurer. If such approval is not obtained, claim for the deficiency will be deemed to have been waived.

Any third party action brought under this title by such workman or beneficiary must be duly prosecuted; if the action is not filed or settled within one year of the notice of election, the cause of action shall be deemed assigned to the department or self-insurer if after thirty days notice the action is neither filed nor settled. If a cause of action which has been filed is not diligently prosecuted, the department or self-insurer shall have the right to petition the court in which the action is pending for an order assigning the cause of action to the department or self-insurer. Upon sufficient showing in the court's discretion of a lack of diligent prosecution, such an order shall issue.

In any action brought under this section wherein recovery is made by compromise and settlement or otherwise, the ((amount to be repaid to the state of Washington as a result of said action)) department or self-insurer, to the extent of the benefits paid or payable under this title, shall bear its proportionate share of attorney's fees and costs incurred by the injured workman or his widow, children, or dependents, as the case may be, and the court shall approve the amount of attorney's fees.

Sec. 38. Section 51.28.020, chapter 23, Laws of 1961 and RCW 51.28.020 are each amended to read as follows:

Where a workman is entitled to compensation under this title he shall file with the department or his self-insuring employer, as the case may be, his application for such, together with the certificate of the physician who attended him, and it shall be the duty of the physician to inform the injured workman of his rights under this title and to lend all necessary assistance in making this application for compensation and such proof of other matters as required by the rules of the department without charge to the workman. If application for compensation is made to a self-insuring employer, he shall forthwith send a copy thereof to the department.

NEW SECTION. Sec. 39. There is added to chapter 51.28 RCW a new section to read as follows:

(1) Whenever a self-insuring employer has notice or knowledge of an injury or occupational disease, he shall immediately report the same to the department on forms prescribed by the director. The report shall include:

- (a) The name, address, and business of the employer;
- (b) The name, address, and occupation of the employee;
- (c) The date, time, cause, and nature of the injury or occupational disease;
- (d) Whether the injury or occupational disease arose in the course of the injured employee's occupation; and
- (e) Such other pertinent information as the director may prescribe by regulation.

(2) Failure or refusal to file the report required by subsection (1) shall subject the offending employer to a penalty of one hundred dollars for each offense, to be collected in a civil action in the name of the director and paid into the medical aid fund.

Sec. 40. Section 51.32.010, chapter 23, Laws of 1961 and RCW 51.32.010 are each amended to read as follows:

Each workman injured in the course of his employment, or his family or dependents in case of death of the workman, shall receive ((out of the accident fund)) compensation in accordance with this chapter, and, except as in this title otherwise provided, such payment shall be in lieu of any and all rights of action whatsoever against any person whomsoever: PROVIDED, That if an injured workman, or the surviving spouse of an injured workman shall not have the custody of a child for, or on account of whom payments are required to be made under this chapter, such payment or payments shall be made to the person having the lawful custody of such child.

Sec. 41. Section 1, chapter 107, Laws of 1961 and RCW 51.32.015 are each amended to read as follows:

The benefits of Title 51 shall be provided to each workman receiving an injury, as defined therein, during the course of his employment and also during his lunch period as established by the employer while on the jobsite. The jobsite shall consist of the premises as are occupied, used or contracted for by the employer for the business or work process in which the employer is then engaged: PROVIDED, That if a workman by reason of his employment leaves such jobsite under the direction, control or request of the employer and if such workman is injured during his lunch period while so away from the jobsite, the workman shall receive the benefits as provided herein: AND PROVIDED FURTHER, That the employer need not consider the lunch period in ((workman hours)) his payroll for the purpose of reporting to the department unless the workman is actually paid for such period of time.

Sec. 42. Section 51.32.020, chapter 23, Laws of 1961 and RCW 51.32.020 are each amended to read as follows:

If injury or death results to a workman from the deliberate intention of the workman himself to produce such injury or death, or while the workman is engaged in the attempt to commit, or the commission of, a ((crime)) felony, neither the workman nor the widow, widower, child, or dependent of the workman shall receive any payment ((whatsoever out of the accident fund)) under this title.

An invalid child, while being supported and cared for in a state institution, shall not receive compensation under this chapter.

No payment shall be made to or for a natural child of a deceased workman and, at the same time, as the stepchild of a deceased workman.

Sec. 43. Section 51.32.040, chapter 23, Laws of 1961 as amended by section 2, chapter 165, Laws of 1965 ex. sess. and RCW 51.32.040 are each amended to read as follows:

No money paid or payable under this title ((out of the accident fund or out of the medical aid fund)) shall, prior to the issuance and delivery of the check or warrant therefor, be capable of being assigned, charged, or ever be taken in execution or attached or garnished, nor shall the same pass, or be paid, to any other person by operation of law, or by any form of voluntary assignment, or power of attorney. Any such assignment or charge shall be void: PROVIDED, That if any workman suffers a permanent partial injury, and dies from some other cause than the accident which produced such injury before he shall have received payment of his award for such permanent partial injury, or if any workman suffers any other injury and dies from some other cause than the accident which produced such injury before he shall have received payment of any monthly installment covering any period of time prior to his death, the amount of such permanent partial award, or of such monthly payment or both, shall be paid to his widow, if he leaves a widow, or to his child or children if he leaves a child or children and does not leave a widow: PROVIDED FURTHER, That, if any workman suffers an injury and dies therefrom before he shall have received payment of any monthly installment covering time loss for any period of time prior to his death, the amount of such monthly payment shall be paid to his widow, if he leaves a widow, or to his child or children, if he leaves a child or children and does not leave a widow: PROVIDED FURTHER, That any application for compensation under the foregoing provisos of this section shall be filed with the department or self-insuring employer within one year of the date of death; PROVIDED FURTHER, That if the injured workman resided in the United States as long as three years prior to the date of the injury, such payment shall not be made to any widow or child who was at the time of the injury a nonresident of

the United States: PROVIDED FURTHER, That any workman receiving benefits under this title who is subsequently confined in, or who subsequently becomes eligible therefor while confined in any institution under conviction and sentence shall have all payments of such compensation canceled ((by the department)) during the period of confinement but after discharge from the institution payment of benefits thereafter due shall be paid if such workman would, but for the provisions of this proviso, otherwise be entitled thereto: PROVIDED FURTHER, That if such incarcerated workman has during such confinement period, any beneficiaries, they shall be paid directly the monthly benefits which would have been paid to him for himself and his beneficiaries had he not been so confined. Any lump sum benefits to which the workman would otherwise be entitled but for the provisions of this proviso shall be paid on a monthly basis to his beneficiaries.

Sec. 44. Section 51.32.100, chapter 23, Laws of 1961 and RCW 51.32.100 are each amended to read as follows:

If it is determined ((by the department)) that an injured workman had, at the time of his injury, a preexisting disease and that such disease delays or prevents complete recovery from such injury, ((the said department)) it shall be ascertained, as nearly as possible, the period over which the injury would have caused disability were it not for the diseased condition and the extent of permanent partial disability which the injury would have caused were it not for the disease, and ((award)) compensation shall be awarded only therefor.

Sec. 45. Section 51.32.140, chapter 23, Laws of 1961 and RCW 51.32.140 are each amended to read as follows:

Except as otherwise provided by treaty, whenever compensation is payable to a beneficiary who is an alien not residing in the United States, ((the department)) there shall ((pay)) be paid fifty percent of the compensation herein otherwise provided to such beneficiary. But if a nonresident alien beneficiary is a citizen of a government having a compensation law which excludes citizens of the United States, either resident or nonresident, from partaking of the benefit of such law in as favorable a degree as herein extended to nonresident aliens, he shall receive no compensation. No payment shall be made to any beneficiary residing in any country with which the United States does not maintain diplomatic relations when such payment is due.

NEW SECTION. Sec. 46. There is added to chapter 51.32 RCW a new section to read as follows:

(1) One purpose of this title is to restore the injured workman as near as possible to the condition of self-support as an able-bodied workman. Benefits for permanent disability shall be

determined under the director's supervision only after the injured workman's condition becomes fixed.

(2) All determinations of permanent disabilities shall be made by the department. Either the workman, employer, or self-insurer may make a request or such inquiry may be initiated by the director on his own motion. Such determinations shall be required in every instance where permanent disability is likely to be present. All medical reports and other pertinent information in the possession of or under the control of the employer or self-insurer shall be forwarded to the director with such requests.

(3) A request for determination of permanent disability shall be examined by the department and an order shall issue in accordance with RCW 51.52.050.

(4) The department may require that the workman present himself for a special medical examination by a physician, or physicians, selected by the department, and the department may require that the workman present himself for a personal interview. In such event the costs of such examination or interview, including payment of any reasonable travel expenses, shall be paid by the department or self-insurer as the case may be.

(5) The director may establish a medical bureau within the department to perform medical examinations under this section. Physicians hired or retained for this purpose shall be grounded in industrial medicine and in the assessment of industrial physical impairment. Self-insurers shall bear a proportionate share of the cost of such medical bureau in a manner to be determined by the department.

(6) Where dispute arises from the handling of any claims prior to the condition of the injured workman becoming fixed, the workman, employer, or self-insurer may request the department to resolve the dispute or the director may initiate an inquiry on his own motion. In such cases the department shall proceed as provided in this section and an order shall issue in accordance with RCW 51.52.050.

NEW SECTION. Sec. 47. There is added to chapter 51.32 RCW a new section to read as follows:

(1) Written notice of acceptance or denial of a claim for benefits shall be mailed by a self-insurer to the claimant and the director within seven days after the self-insurer has notice of the claim.

(2) If the self-insurer denies a claim for compensation, written notice of such denial, clearly informing the claimant of the right of appeal under this title shall be mailed or given to the claimant and the director within seven days after the self-insurer has notice of the claim.

(3) Until such time as the department has entered an order in

a disputed case acceptance of compensation by the claimant shall not be considered a binding determination of his rights under this title. Likewise the payment of compensation shall not be considered a binding determination of the obligations of the self-insurer as to future compensation payments.

(4) Upon making the first payment of income benefits, and upon stopping or changing of such benefits except where a determination of the permanent disability has been made as elsewhere provided in this title, the self-insurer shall immediately notify the director in accordance with a form to be prescribed by the director that the payment of income benefits has begun or has been stopped or changed.

(5) If, after the payment of compensation without an award, the self-insurer elects to controvert the right to compensation, the payment of compensation shall not be considered a binding determination of the obligations of the self-insurer as to future compensation payments. The acceptance of compensation by the workman or his beneficiaries shall not be considered a binding determination of their rights under this title.

(6) The director (a) may, upon his own initiative at any time in a case in which payments are being made without an award, and (b) shall, upon receipt of information from any person claiming to be entitled to compensation, from the self-insurer, or otherwise that the right to compensation is controverted, or that payment of compensation has been opposed, stopped or changed, whether or not claim has been filed, promptly make such inquiry as circumstances require, cause such medical examinations to be made, hold such hearings, make such orders, decisions or awards, and take such further action as he considers will properly determine the matter and protect the rights of all parties.

(7) The director, upon his own initiative, may make such inquiry as circumstances require or is necessary to protect the rights of all the parties and he may enact rules and regulations providing for procedures to ensure fair and prompt handling by self-insurers of the claims of workmen and beneficiaries.

NEW SECTION. Sec. 48. There is added to chapter 51.32 RCW a new section to read as follows:

(1) If a self-insurer fails, refuses, or neglects to comply with a compensation order which has become final and is not subject to review or appeal, the director or any person entitled to compensation under the order may institute proceedings for injunctive or other appropriate relief for enforcement of the order. These proceedings may be instituted in the superior court for the county in which the claimant resides, or, if the claimant is not then a resident of this state, in the superior court for the county in which the self-insurer may be served with process.

(2) The court shall enforce obedience to the order by proper means, enjoining compliance upon the person obligated to comply with the compensation order. The court may issue such writs and processes as are necessary to carry out its orders.

(3) A proceeding under this section does not preclude other methods of enforcement provided for in this title.

Sec. 49. Section 51.32.180, chapter 23, Laws of 1961 and RCW 51.32.180 are each amended to read as follows:

Every workman who suffers disability from an occupational disease in the course of employment under the mandatory or elective adoption provisions of this title, or his family and dependents in case of death of the workman from such disease or infection, shall receive the same compensation benefits and medical, surgical and hospital care and treatment as would be paid and provided for a workman injured or killed in employment under ((the industrial insurance and medical aid acts of the state)) this title: PROVIDED, HOWEVER, That this section and RCW 51.16.040 shall not apply where the last exposure to the hazards of the disease or infection occurred prior to January 1, 1937.

Sec. 50. Section 51.36.010, chapter 23, Laws of 1961 as amended by section 2, chapter 166, Laws of 1965 ex. sess. and RCW 51.36.010 are each amended to read as follows:

Upon the occurrence of any injury to a workman entitled to compensation under the provisions of this title, he shall receive ((, in addition to such compensation and out of the medical aid fund)) proper and necessary medical and surgical services at the hands of a physician of his own choice, if conveniently located, and proper and necessary hospital care and services during the period of his disability from such injury, but the same shall be limited in point of duration as follows:

In the case of permanent partial disability, not to extend beyond the date when compensation shall be awarded him, except when the workman returned to work before permanent partial disability award is made, in such case not to extend beyond the time when monthly allowances to him ((out of the accident fund)) shall cease: in case of temporary disability not to extend beyond the time when monthly allowances to him ((out of the accident fund)) shall cease: PROVIDED, That after any injured workman has returned to his work his medical and surgical treatment may be continued if, and so long as, such continuation is deemed necessary by the supervisor of industrial insurance to be necessary to his more complete recovery; in case of a permanent total disability not to extend beyond the date on which a lump sum settlement is made with him or he is placed upon the permanent pension roll: PROVIDED, HOWEVER, That the supervisor of industrial insurance, solely in his discretion, may authorize

continued medical and surgical treatment for conditions previously accepted by the department when such medical and surgical treatment is deemed necessary by the supervisor of industrial insurance to protect such workman's life. In order to authorize such continued treatment the written order of the supervisor of industrial insurance issued in advance of the continuation shall be necessary.

Sec. 51. Section 51.36.020, chapter 23, Laws of 1961 as amended by section 3, chapter 166, Laws of 1965 ex. sess. and RCW 51.36.020 are each amended to read as follows:

When the injury to any workman is so serious as to require his being taken from the place of injury to a place of treatment, his employer shall, at the expense of the medical aid fund, or self-insurer, as the case may be, furnish transportation to the nearest place of proper treatment.

Every workman whose injury results in the loss of one or more limbs or eyes shall be provided with proper artificial substitutes ((to be purchased by the department at the expense of the accident fund)) and every workman, who suffers an injury to an eye producing an error of refraction, shall be once provided ((at the expense of the accident fund)) proper and properly equipped lenses to correct such error of refraction and his disability rating shall be based upon the loss of sight before correction. Every workman, whose accident results in damage to or destruction of an artificial limb, eye or tooth, shall have same repaired or replaced ((at the expense of the accident fund)). Every workman whose eyeglasses or lenses are damaged, destroyed, or lost as a result of an industrial accident shall have the same restored or replaced ((at the expense of the accident fund)). The ((accident fund)) department or self-insurer shall be liable only for the cost of restoring damaged eyeglasses to their condition at the time of the accident. All mechanical appliances necessary in the treatment of an injured workman, such as braces, belts, casts and crutches, ((may)) shall be provided ((at the expense of the medical aid fund)) and all mechanical appliances required as permanent equipment after treatment has been completed shall continue to be provided or replaced without regard to the date of injury or date treatment was completed, notwithstanding any other provision of law ((at the expense of the accident fund)). A workman, whose injury is of such short duration as to bring him within the provisions of subsection (4) of RCW 51.32.090 shall nevertheless receive during the omitted period medical, surgical and hospital care and service and transportation under the provisions of this chapter.

NEW SECTION. Sec. 52. There is added to chapter 51.36 RCW a new section to read as follows:

The department may operate and control a rehabilitation center

and may contract with self-insurers for use of any such center on such terms as the director deems reasonable.

NEW SECTION. Sec. 53. There is added to chapter 51.36 RCW a new section to read as follows:

Physicians attending injured employees shall comply with rules and regulations adopted by the director, and shall make such reports as may be requested by the department or self-insurer upon the condition or treatment of any injured employee, or upon any other matters concerning injured employees in their care. All medical information in the possession or control of any person and relevant to the particular injury shall be available to the employer and the department, and no person shall incur any legal liability by reason of releasing such information.

NEW SECTION. Sec. 54. There is added to chapter 51.36 RCW a new section to read as follows:

Whenever the director or the self-insurer deems it necessary in order to resolve any medical issue, a workman shall submit to examination by a physician or physicians selected by the director, with the rendition of a report to the person ordering the examination. The director, in his discretion, may charge the cost of such examination or examinations to the self-insurer or to the medical aid fund as the case may be. The cost of said examination shall include payment to the workman of reasonable expenses connected therewith.

NEW SECTION. Sec. 55. There is added to chapter 51.36 RCW a new section to read as follows:

All fees and medical charges under this title shall conform to regulations promulgated by the director.

Sec. 56. Section 51.44.070, chapter 23, Laws of 1961 as amended by section 5, chapter 274, Laws of 1961 and RCW 51.44.070 are each amended to read as follows:

For every case resulting in death or permanent total disability the department shall transfer on its books from the accident fund of the proper class and/or appropriate account to the "reserve fund" a sum of money for that case equal to the estimated present cash value of the monthly payments provided for it, to be calculated upon the basis of an annuity covering the payments in this title provided to be made for the case. ((Such annuities shall be based upon tables to be prepared for that purpose by the state insurance commissioner and by him furnished to the state treasury, calculated upon standard mortality tables with an interest assumption of three percent per annum) Such annuity values shall be based upon rates of mortality, disability, remarriage, and interest as determined by the state insurance commissioner, taking into account the experience of the reserve fund in such respects.

Similarly, a self-insurer in these circumstances shall pay into the reserve fund a sum of money computed in the same manner, and the disbursements therefrom shall be made as in other cases.

Sec. 57. Section 51.44.080, chapter 23, Laws of 1961 and RCW 51.44.080 are each amended to read as follows:

The department shall notify the state treasurer from time to time, of such transfers as a whole from the accident fund to the reserve fund and the interest or other earnings of the reserve fund shall become a part of the reserve fund itself. The department shall, on ~~((October 1st))~~ June 30th of each year, apportion the interest or other earnings of the reserve fund, as certified to it by the state treasurer, to the various class reserve funds according to the average class balance for the preceding year. As soon as possible after ~~((October 1st))~~ June 30th of each year the state insurance commissioner shall expert the reserve fund of each class to ascertain its standing as of ~~((October 1st))~~ June 30th of that year, and the relation of its outstanding annuities at their then value on the bases currently employed for new cases to the cash on hand or at interest belonging to that fund. He shall promptly report the result of his examination to the department and to the state treasurer in writing not later than ~~((December 31st))~~ September 30th following. If the report shows that there was on said ~~((October 1st))~~ June 30th, in the reserve fund of any class in cash or at interest, a greater sum than the then annuity value of the outstanding pension obligations of that class, the surplus shall be forthwith turned over to the accident fund of that class but, if the report shows the contrary condition of any class reserve, the deficiency shall be forthwith made good out of the accident fund of that class.

NEW SECTION. Sec. 58. Each self-insurer shall make such deposits, into the reserve fund, as the department shall require pursuant to RCW 51.44.070, as are necessary to guarantee the payments of the pensions established pursuant to RCW 51.32.050 and 51.32.060.

Each self-insurer shall have an account within the reserve fund. Each such account shall be credited with its proportionate share of interest or other earnings as determined in RCW 51.44.080.

Each such account in the reserve fund shall be experted by the insurance commissioner as required for each class account in RCW 51.44.080. Any surpluses shall be forthwith returned to the respective self-insurers, and each deficit shall forthwith be made good to the reserve fund by the self-insurer.

NEW SECTION. Sec. 59. There is added to chapter 51.44 RCW a new section to read as follows:

The director shall impose and collect assessments each fiscal year upon all self-insurers in the amount of the estimated costs of administering their portion of this title during such fiscal year.

assessments shall pay in the same manner, and in the same cases.

Laws of 1961 and RCW

Such assessments shall be based on a pro rata percentage of Washington payroll of each self-insurer subject to this title. The time and manner of imposing and collecting assessments due the department shall be set forth in regulations promulgated by the director in accordance with chapter 34.04 RCW.

**NEW SECTION.** Sec. 60. There is added to chapter 51.44 RCW a new section to read as follows:

The director is authorized to make periodic temporary interfund transfers between the reserve and supplemental pension funds as may be necessary to provide for payments as prescribed in RCW 51.32.070. At least once annually, the director shall cause an audit to be made of all pension funds administered by the department to insure that proper crediting of funds has been made, and further to direct transfers between the funds for any interfund loans which may have been made in the preceding year and not fully reimbursed.

Sec. 61. Section 51.48.010, chapter 23, Laws of 1961 and RCW 51.48.010 are each amended to read as follows:

Every employer ((who fails to furnish an estimate of payroll and workmen hours and make payments as provided in RCW 51.46-440)) shall be liable ((to a penalty of not to exceed five hundred dollars)) for the penalties described in this title and shall also be liable if an ((accident)) injury or occupational disease has been sustained by ((an employee)) a workman prior to the time ((such estimate is received by the department)) he has secured the payment of such compensation to a penalty in a sum equal to fifty percent of the cost ((to the accident fund and medical aid fund)) for such ((accident)) injury or occupational disease, for the benefit of the ((accident fund and)) medical aid fund.

**NEW SECTION.** Sec. 62. There is added to chapter 51.48 RCW a new section to read as follows:

Any employer who engages in work who has wilfully failed to secure the payment of compensation under this title shall be guilty of a misdemeanor. Violation of this section is punishable, upon conviction, by a fine of not less than twenty-five dollars nor more than one hundred dollars. Each day such person engages as a subject employer in violation of this section constitutes a separate offense. Any fines paid pursuant to this section shall be paid directly by the court to the director for deposit in the medical aid fund.

Sec. 63. Section 51.48.020, chapter 23, Laws of 1961 and RCW 51.48.020 are each amended to read as follows:

Any employer, who misrepresents to the department the amount of his payroll ((or the number of workmen hours)) upon which the premium under this title is based, shall be liable to the state in ten times the amount of the difference in premiums paid and the amount the employer should have paid ((r)) and for the reasonable

expenses of auditing his books and collecting such surrs. Such liability may be enforced in the name of the department. Such an employer shall also be guilty of a misdemeanor if such misrepresentations are made knowingly.

Sec. 64. Section 51.48.030, chapter 23, Laws of 1961 and RCW 51.48.030 are each amended to read as follows:

Every ((person, firm, or corporation)) employer who fails to keep the records required by this title or fails to make the reports ((in the manner and at the time)) provided in ((chapter 51-46)) this title shall be subject to a penalty of not to exceed one hundred dollars for each such offense.

NEW SECTION. Sec. 65. There is added to chapter 51.48 RCW a new section to read as follows:

Where death results from the injury and the deceased leaves no beneficiaries, a self-insurer shall pay into the supplemental pension fund the sum of ten thousand dollars.

NEW SECTION. Sec. 66. There is added to chapter 51.48 RCW a new section to read as follows:

If a self-insurer unreasonably delays or refuses to pay benefits as they become due there shall be paid by the self-insurer upon order of the director an additional amount equal to twenty-five percent of the amount then due which shall accrue for the benefit of the claimant and shall be paid to him with the benefits which may be assessed under this title. Such an order shall conform to the requirements of RCW 51.52.050.

NEW SECTION. Sec. 67. There is added to chapter 51.04 RCW a new section to read as follows:

The director shall appoint a workmen's compensation advisory committee composed of eight members: Three representing subject workmen, three representing subject employers, and two ex officio members, without a vote, one of whom represents the department, who shall be chairman, and one of whom represents self-insurers. This committee shall conduct a continuing study of any aspects of workmen's compensation as the committee shall determine require their consideration. The committee shall report its findings to the department or the board of industrial insurance appeals for such action as deemed appropriate. The members of the committee shall be appointed for a term of three years commencing on the effective date of this 1971 amendatory act and the terms of the members representing the workmen and employers shall be staggered so that the director shall designate one member from each such group initially appointed whose term shall expire on June 30, 1972 and one member from each such group whose term shall expire on June 30, 1973. The members shall serve without compensation, but shall be entitled to expenses as provided in RCW 43.03.050 and 43.03.060. The committee may hire

such experts, if any, as it shall require to discharge its duties, and may utilize such personnel and facilities of the department and board of industrial insurance appeals as it shall need without charge. All expenses of this committee shall be paid by the department.

The workmen's compensation advisory committee created by this section shall conduct a study of the advisability and necessity of deposits by self-insurers into the reserve fund to guarantee the payments of pensions established pursuant to this title, and shall report its findings and recommendations on this study to the department, and the department shall transmit said findings and recommendations to the next session of the legislature.

Sec. 68. Section 51.52.010, chapter 23, Laws of 1961 as last amended by section 3, chapter 165, Laws of 1965 ex. sess. and RCW 51.52.010 are each amended to read as follows:

There shall be a "board of industrial insurance appeals," hereinafter called the "board," consisting of three members appointed by the governor as hereinafter provided. One shall be a representative of the public and a lawyer, appointed from a mutually agreed to list of not less than three active members of the Washington state bar association, submitted to the governor by the two organizations defined below, and such member shall be the chairman of said board. The second member shall be a representative of the majority of workmen engaged in ((extrahazardous)) employment under this title and selected from a list of not less than three names submitted to the governor by an organization, state-wide in scope, which through its affiliates embraces a cross section and a majority of the organized labor of the state. The third member shall be a representative of employers ((engaged in extrahazardous industry)) under this title, and appointed from a list of at least three names submitted to the governor by a recognized state-wide organization of employers, representing a majority of employers ((who are substantial contributors to the industrial insurance and accident fund)). The initial terms of office of the members of the board shall be for six, four, and two years respectively. Thereafter all terms shall be for a period of six years. Each member of the board shall be eligible for reappointment and shall hold office until his successor is appointed and qualified. In the event of a vacancy the governor is authorized to appoint a successor to fill the unexpired term of his predecessor. All appointments to the board shall be made in conformity with the foregoing plan. Whenever the workload of the board and its orderly and expeditious disposition shall necessitate, the governor may appoint two additional pro-tem members in addition to the regular members. Such appointments shall be for a definite period of time, and shall be made from lists submitted respectively

by labor and industry as in the case of regular members. One pro-tem member shall be a representative of labor and one shall be a representative of industry. Members shall devote their entire time to the duties of the board and shall receive for their services a salary as fixed by the governor in accordance with the provisions of RCW 43.03.040 which shall be in addition to reasonable travel allowance. Headquarters for the board shall be located in Olympia. The board shall adopt a seal which shall be judicially recognized.

Sec. 69. Section 51.52.080, chapter 23, Laws of 1961 as amended by section 2, chapter 148, Laws of 1963 and RCW 51.52.080 are each amended to read as follows:

If the notice of appeal raises no issue or issues of fact and the board finds that the department properly and lawfully decided all matters raised by such appeal it may, without further hearing, deny the same and confirm the department's decision or award, or if the department's record sustains the contention of the person appealing to the board, it may, without further hearing, allow the relief asked in such appeal; otherwise, it shall grant the appeal (~~and order a hearing to decide the issues raised~~).

Sec. 70. Section 51.52.090, chapter 23, Laws of 1961 and RCW 51.52.090 are each amended to read as follows:

If the appeal is not (~~granted~~) denied within thirty days after the notice is filed with the board, the appeal shall be deemed to have been (~~denied~~) granted: PROVIDED, That the board may extend the time within which it may act upon such appeal, not exceeding thirty days.

Sec. 71. Section 13, chapter 223, Laws of 1953 and RCW 38.52.290 are each amended to read as follows:

Insofar as not inconsistent with the provisions of this chapter, the maximum amount payable to a claimant shall be not greater than the amount allowable for similar disability under the workmen's compensation act, (~~RCW 54-32-065 through 54-32-470~~) chapter 51.32 RCW as amended by this 1971 amendatory act and any amendments thereto. "Employee" as used in said title shall include a civil defense worker when liability for the furnishing of compensation and benefits exists pursuant to the provisions of this chapter and as limited by the provisions of this chapter. Where liability for compensation and benefits exists, such compensation and benefits shall be provided in accordance with the applicable provisions of said sections of chapter 51.32 and at the maximum rate provided therein, subject, however, to the limitations set forth in this chapter.

Sec. 72. Section 17, chapter 223, Laws of 1953 and RCW 38.52.330 are each amended to read as follows:

The department of civil defense is authorized to make all

expenditures necessary and proper to carry out the provisions of this chapter including payments to claimants for compensation as civil defense workers and their dependents; to adjust and dispose of all claims submitted by a local compensation board: PROVIDED, That nothing herein shall be construed to mean that the department of civil defense or the state civil defense council or its officers or agents shall have the final decision with respect to the compensability of any case or the amount of compensation or benefits due, but any civil defense worker or his dependents shall have the same right of appeal from any order, decision, or award to the same extent as provided in ((RCW 51.52.050 to 51.52.140)) chapter 51.32 RCW as amended by this 1971 amendatory act.

Sec. 73. Section 14, chapter 207, Laws of 1953 and RCW 75.08.206 are each amended to read as follows:

The director of fisheries shall procure compensation insurance for all employees of the department of fisheries engaged as peace officers, insuring such employees against injury or death incurred in the course of their employment as such peace officers when such employment involves the performance of duties not covered under the workmen's compensation act of the state of Washington. The beneficiaries and the compensation and benefits under such insurance shall be the same as provided in ((RCW 51.32.005 to 51.32.170)) chapter 51.32 RCW as amended by this 1971 amendatory act, and said insurance also shall provide for medical aid and hospitalization to the extent and amount as provided in RCW 51.36.010 and 51.36.020 as now or hereafter amended.

Sec. 74. Section 51.04.030, chapter 23, Laws of 1961 and RCW 51.04.030 are each amended to read as follows:

The director shall, through the division of industrial insurance, ((provide)) supervise the providing of prompt and efficient care and treatment to workmen injured in ((extrahazardous work)) during the course of their employment at the least cost consistent with promptness and efficiency, without discrimination or favoritism, and with as great uniformity as the various and diverse surrounding circumstances and locations of industries will permit and to that end shall, from time to time, establish and promulgate and supervise the administration of printed forms, rules, regulations, and practices for the furnishing of such care and treatment.

The director shall make and, from time to time, change as may be, and promulgate a fee bill of the maximum charges to be made by any physician, surgeon, hospital, druggist, or other agency or person rendering services to injured workmen. No service covered ((by such fee bill)) under this title shall be charged or paid ((for out of the medical aid fund)) at a rate or rates exceeding those specified in such fee bill, and no contract providing for greater fees shall be

valid as to the excess.

The director or self-insurer, as the case may be, shall make a record of the commencement of every disability and the termination thereof and, when bills are rendered for the care and treatment of injured workmen, ~~((he))~~ shall approve and ~~((certify))~~ pay those which conform to the promulgated rules, regulations, and practices of the director and ~~((the director))~~ may reject any bill or item thereof incurred in violation of the principles laid down in this section or the rules and regulations promulgated under it.

NEW SECTION. Sec. 75. There is added to chapter 51.08 RCW a new section to read as follows:

"Agriculture" means the business of growing or producing any agricultural or horticultural produce or crop, including the raising of any animal, bird, or insect, or the milk, eggs, wool, fur, meat, honey, or other substances obtained therefrom.

Sec. 76. Section 51.16.060, chapter 23, Laws of 1961 as amended by section 1, chapter 80, Laws of 1965 ex. sess. and RCW 51.16.060 are each amended to read as follows:

Every employer not qualifying as a self-insurer shall insure with the state and shall, on or before the last day of January, April, July and October of each year thereafter, furnish the department with a true and accurate payroll ~~((and the aggregate number of workmen hours, during))~~ for the period in which workmen were employed by him during the preceding calendar quarter, the total amount paid to such workmen during such preceding calendar quarter, and a segregation of employment in the different classes ((provided in)) established pursuant to this title, and shall pay his premium thereon to the ~~((accident fund and medical aid))~~ appropriate fund. The sufficiency of such statement shall be subject to the approval of the director: PROVIDED, That the director may in his discretion and for the effective administration of this title require an employer in individual instances to furnish a supplementary report containing the name of each individual workman, his hours worked, his rate of pay and the class or classes in which such work was performed: PROVIDED, FURTHER, That in the event an employer shall furnish the department with four consecutive quarterly reports wherein each such quarterly report indicates that no premium is due the department may close the account.

Sec. 77. Section 51.16.140, chapter 23, Laws of 1961 as amended by section 2, chapter 20, Laws of 1971 and RCW 51.16.140 are each amended to read as follows:

~~((The))~~ Every employer who is not a self-insurer shall deduct from the pay of each of his workmen ~~((engaged in extrahazardous work))~~ one-half of the amount ~~((the employer))~~ he is required to pay ~~((into the medical aid fund for or on account of the employment of~~

such workmen), for medical benefits within each risk classification. Such amount shall be periodically determined by the director and reported by him to all employers under this title: PROVIDED, That the ((employer or) state governmental unit shall pay the entire amount into the medical aid fund for volunteers, as defined in section 1 of ((this 1974 amendatory act)) chapter 20, Laws of 1971. It shall be unlawful for the employer, unless specifically authorized by this title, to deduct or obtain any part of the premium or other costs required to be by him paid ((into the accident fund)) from the wages or earnings of any of his workmen, and the making of or attempt to make any such deduction shall be a gross misdemeanor.

Sec. 78. Section 51.16.160, chapter 23, Laws of 1961 and RCW 51.16.160 are each amended to read as follows:

All actions for the recovery of delinquent premiums, assessments, contributions, and penalties therefor due any of the funds under this title shall be brought in the superior court and in all cases of probate, insolvency, assignment for the benefit of creditors, or bankruptcy, the claim of the state for the payments due shall be a lien prior to all other liens or claims and on a parity with prior tax liens and the mere existence of such cases or conditions shall be sufficient to create such lien without any prior or subsequent action by the state, and all administrators, receivers, or assignees for the benefit of creditors shall notify the department of such administration, receivership, or assignment within thirty days from date of their appointment and qualification. In any action or proceeding brought for the recovery of payments due upon the payroll of an employer, the certificate of the department that an audit has been made of the payroll of such employer pursuant to the direction of the department and the amount of such payroll for the period stated in the certificate shall be prima facie evidence of such fact.

Sec. 79. Section 51.16.180, chapter 23, Laws of 1961 and RCW 51.16.180 are each amended to read as follows:

The director shall have the custody of all property acquired by the state at execution sale upon judgments obtained for delinquent ((industrial insurance premiums or medical aid contributions)) payments and penalties therefor and costs, and may sell and dispose of the same at private sales for the sale purchase price, and shall pay the proceeds into the state treasury to the credit of the ((accident fund, or medical aid fund, as the case may be)) appropriate fund. In case of the sale of real estate the director shall execute the deed in the name of the state.

NEW SECTION. Sec. 80. There is added to chapter 51.08 RCW a new section to read as follows:

"Self-insurer" means an employer who has been authorized under

this title to carry its own liability to its employees covered by this title.

Sec. 81. Section 51.12.070, chapter 23, Laws of 1961 as amended by section 1, chapter 20, Laws of 1965, ex. sess. and RCW 51.12.070 are each amended to read as follows:

The provisions of this title shall apply to all ((extrahazardous)) work done by contract; the person, firm, or corporation who lets a contract for such ((extrahazardous)) work shall be responsible primarily and directly for all ((payments due to the accident fund and medical aid fund)) premiums upon the work. The contractor and any subcontractor shall be subject to the provisions of this title and the person, firm, or corporation letting the contract shall be entitled to collect from the contractor the full amount payable ((to the accident fund and medical aid fund)) in premiums and the contractor in turn shall be entitled to collect from the subcontractor his proportionate amount of the payment.

It shall be unlawful for any county, city or town to issue a construction building permit to any person who has not submitted to the department an estimate of payroll and paid premium thereon as provided by chapter 51.16 of this title or proof that such person has qualified as a self-insurer.

NEW SECTION. Sec. 82. There is added to chapter 51.12 RCW a new section to read as follows:

(1) If a workman, while working outside the territorial limits of this state, suffers an injury on account of which he, or his beneficiaries, would have been entitled to compensation under this title had such injury occurred within this state, such workman, or his beneficiaries, shall be entitled to compensation under this title: PROVIDED, That if the time of such injury:

- (a) His employment is principally localized in this state; or
- (b) He is working under a contract of hire made in this state for employment not principally localized in any state; or
- (c) He is working under a contract of hire made in this state for employment principally localized in another state whose workmen's compensation law is not applicable to his employer; or
- (d) He is working under a contract of hire made in this state for employment outside the United States and Canada.

(2) The payment or award of compensation under the workmen's compensation law of another state, territory, province, or foreign nation to a workman or his beneficiaries otherwise entitled on account of such injury to compensation under this title shall not be a bar to a claim for compensation under this title: PROVIDED, That claim under this title is timely filed. If compensation is paid or awarded under this title, the total amount of compensation paid or awarded the workman or beneficiary under such other workmen's

employees covered by

Laws of 1961 as  
5 ex. sess. and RCW

apply to all  
person, firm, or  
hazardous) work  
l ((payments due to  
upon the work. The  
t to the provisions  
ation letting the  
contractor the full  
t and fund.) in  
led to collect from  
payment.

r town to issue a  
as not submitted to  
remain thereon as  
hat such person has

chapter 51.12 RCW a

territorial limits  
which he, or his  
ensation under this  
such workman, or  
ensation under this

in this state; or  
made in this state  
ate; or  
made in this state  
ate whose workmen's  
; or  
made in this state  
a.

nder the workmen's  
rovince, or foreign  
rwise entitled. on  
title shall not be  
: PROVIDED, That  
ensation is paid or  
ensation paid or  
h other workmen's

compensation law shall be credited against the compensation due the workman or beneficiary under this title.

(3) If a workman or beneficiary is entitled to compensation under this title by reason of an injury sustained in this state while in the employ of an employer who is domiciled in another state and who has either opened an account with the department nor qualified as a self-insurer under this title, such an employer or his insurance carrier shall file with the director a certificate issued by the agency which administers the workmen's compensation law in the state of the employer's domicile, certifying that such employer has secured the payment of compensation under the workmen's compensation law of such other state and that with respect to said injury such workman or beneficiary is entitled to the benefits provided under such law. In such event:

(a) The filing of such certificate shall constitute appointment by the employer or his insurance carrier of the director as its agent for acceptance of the service of process in any proceeding brought by any claimant to enforce rights under this title;

(b) The director shall send to such employer or his insurance carrier, by registered or certified mail to the address shown on such certificate, a true copy of any notice of claim or other process served on the director by the claimant in any proceeding brought to enforce rights under this title;

(c) (i) If such employer is a self-insurer under the workmen's compensation law of such other state, such employer shall, upon submission of evidence of evidence or security, satisfactory to the director, of his ability to meet his liability to such claimant under this title, be deemed to be a qualified self-insurer under this title;

(ii) If such employer's liability under the workmen's compensation law of such other state is insured, such employer's carrier, as to such claimant only, shall be deemed to be subject to this title: PROVIDED, That unless its contract with said employer requires it to pay an amount equivalent to the compensation benefits provided by this title, the insurer's liability for compensation shall not exceed its liability under the workmen's compensation law of such other state;

(d) If the total amount for which such employer's insurer is liable under (c) (ii) above is less than the total of the compensation to which such claimant is entitled under this title, the director may require the employer to file security satisfactory to the director to secure the payment of compensation under this title; and

(e) If such employer has neither qualified as a self-insurer nor secured insurance coverage under the workmen's compensation law

of another state, such claimant shall be paid compensation by the department;

(f) Any such employer shall have the same rights and obligations as other employers subject to this title and where he has not provided coverage or sufficient coverage to secure the compensation provided by this title to such claimant, the director may impose a penalty payable to the department of a sum not to exceed fifty percent of the cost to the department of any deficiency between the compensation provided by this title and that afforded such claimant by such employer or his insurance carrier if any.

(4) As used in this section:

(a) A person's employment is principally localized in this or another state when (i) his employer has a place of business in this or such other state and he regularly works at or from such place of business, or (ii) if clause (i) foregoing is not applicable, he is domiciled in and spends a substantial part of his working time in the service of his employer in this or such other state;

(b) "Workmen's compensation law" includes "occupational disease law" for the purposes of this section.

(5) A workman whose duties require him to travel regularly in the service of his employer in this and one or more other states may agree in writing with his employer that his employment is principally localized in this or another state, and, unless such other state refuses jurisdiction, such agreement shall govern as to any injury occurring after the effective date of the agreement.

(6) The director shall be authorized to enter into agreements with the appropriate agencies of other states and provinces of Canada which administer their workmen's compensation law with respect to conflicts of jurisdiction and the assumption of jurisdiction in cases where the contract of employment arises in one state or province and the injury occurs in another, and when any such agreement has been executed and promulgated as a regulation of the department under chapter 34.04 RCW, it shall bind all employers and workmen subject to this title and the jurisdiction of this title shall be governed by this regulation.

Sec. 83. Section 51.16.040, chapter 23, Laws of 1961 and RCW 51.16.040 are each amended to read as follows:

The compensation and benefits provided for occupational diseases shall be paid ((from the same funds)) and in the same manner as compensation and benefits for injuries under ((the industrial insurance and medical aid acts and the contributions of employers to pay for occupational diseases shall be determined, assessed, and collected in the same manner and as a part of the premiums for employment under the mandatory or elective adoption provisions of this title)) this title.

compensation by the

same rights and title and where he has agreed to secure the same, the director shall pay a sum not to exceed the deficiency between that afforded such person if any.

localized in this or any other place of business in this state, if not applicable, he is working time in the state;

includes "occupational

travel regularly in any other state or foreign country; if payment is principally for such other state or foreign country as to any injury sustained.

enter into agreements with the provinces of Canada and the law with respect to jurisdiction in cases where the state or province and the agreement has been made; the department under which workmen subject to the law shall be governed by

laws of 1961 and RCW

for occupational injury and disease in the same manner as provided in the Industrial Insurance Act ((the industrial insurance act)) and the provisions of the act relating to the assessment, and the premiums for occupational injury and disease provisions of

Sec. 84. Section 2, chapter 151, Laws of 1963 and RCW 51.16.042 are each amended to read as follows:

Inasmuch as business, industry and labor desire to provide for testing, research, training and teaching facilities and consulting services at the University of Washington for industrial and occupational health for workmen in the environmental research facility thereat, ((each class of industry)) all employers shall bear ((its)) their proportionate share of the cost therefor ((accrued during any fiscal year based on average workman hours of exposure over the preceding two year calendar period)). The director may require payments to the department from all employers under this title and may make rules and regulations in connection therewith, which costs shall be paid from the department, in lieu of the previous provisions of RCW 28B.20.458.

Sec. 85. Section 51.12.110, chapter 23, Laws of 1961 and RCW 51.12.110 are each amended to read as follows:

Any employer ((engaged in any occupation other than those enumerated or declared to be under this title, may make written application to the director to fix rates of contribution for such occupation for industrial insurance and for medical aid, and thereupon the director, through the division of industrial insurance shall fix such rates, which shall be based on the hazard of such occupation in relation to the hazards of the occupations for which rates are prescribed. When such rate is fixed the applicant)) who has in his employment any exempt person may file notice in writing with the ((supervisor of industrial insurance)) director of his ((or its)) election to ((contribute under)) be subject to this title, and shall forthwith display in a conspicuous manner about his ((or its)) works and in a sufficient number of places to reasonably inform his ((or its)) workmen of the fact, printed notices furnished by the department stating that he ((or it)) has so elected ((to contribute to the accident fund and the medical aid fund)) and stating when said election will become effective. Any workman in the employ of such applicant shall be entitled at any time within five days after the posting of said notice by his employer, or within five days after he has been employed by an employer who has elected to become subject to this title as herein provided, to give a written notice to such employer and to the department of his election not to become subject to this title. At the expiration of the time fixed by the notice of the employer, the employer and such of his ((or its)) workmen as shall not have given such written notice of their election to the contrary shall be subject to all the provisions of this title and entitled to all of the benefits thereof: PROVIDED, That those who have heretofore complied with the foregoing conditions and are carried and considered by the department as within the purview of

this title shall be deemed and considered as having fully complied with its terms and shall be continued by the department as entitled to all of the benefits and subject to all of the liabilities without other or further action. Any employer who has complied with this section may withdraw his acceptance of liability under this title by filing written notice with the director of the withdrawal of his acceptance. Such withdrawal shall become effective thirty days after the filing of such notice or on the date of the termination of the security for payment of compensation, whichever last occurs. The employer shall, at least thirty days before the effective date of the withdrawal, post reasonable notice of such withdrawal where the affected workman or workmen work and shall otherwise notify personally the affected workmen. Withdrawal of acceptance of this title shall not affect the liability of the department or self-insurer for compensation for any injury occurring during the period of acceptance.

Sec. 86. Section 51.16.105, chapter 23, Laws of 1961 and RCW 51.16.105 are each amended to read as follows:

All ((administrative)) expenses of the safety division of the department ((except those incurred by the administration of chapter 49-287)) pertaining to workmen's compensation shall be ((financed from)) paid by the ((combined receipts of the accident and medical aid funds)) department and financed by premiums and by assessments collected from a self-insurer as provided in this title. ((The administrative expense paid from the accident fund shall not exceed four percent, and from the medical aid fund it shall not exceed one and one-half percent. But in no case shall the total expense paid from the combined receipts of both funds exceed five percent. The percentage shall be computed on the combined average annual receipts for the five previous fiscal years.))

NEW SECTION. Sec. 87. There is added to chapter 51.16 RCW a new section to read as follows:

In every case where an employer insured with the state fails or refuses to file any report of payroll required by the department and fails or refuses to pay the premiums due on such unreported payroll, the department shall have authority to estimate such payroll and collect premiums on the basis of such estimate.

If the report required and the premiums due thereon are not made within ten days from the mailing of such demand, the employer shall be in default as provided by this title and the department may have and recover judgment or file liens for such estimated premium or the actual premium, whichever is greater.

NEW SECTION. Sec. 88. Whenever the term "state fund" is used in the provisions of this 1971 amendatory act, it shall mean those funds held by the state or any agency thereof for the purposes of

this title.

**NEW SECTION.** Sec. 89. The following acts or parts of acts are each hereby repealed:

(1) Section 51.16.010, chapter 23, Laws of 1961 and RCW 51.16.010;

(2) Section 51.16.020, chapter 23, Laws of 1961, section 6, chapter 274, Laws of 1961 and RCW 51.16.020;

(3) Section 51.16.030, chapter 23, Laws of 1961 and RCW 51.16.030;

(4) Section 51.16.050, chapter 23, Laws of 1961 and RCW 51.16.050; and

(5) Section 51.16.080, chapter 23, Laws of 1961 and RCW 51.16.080.

**NEW SECTION.** Sec. 90. The provisions of this 1971 amendatory act are necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1971: PROVIDED, That RCW 51.08.070 as amended by section 1 of this 1971 amendatory act, RCW 51.12.010 as amended in section 2 of this 1971 amendatory act, RCW 51.12.020 as amended in section 3 of this 1971 amendatory act and RCW 51.16.110 as amended in section 4 of this 1971 amendatory act shall take effect and become operative without any further action of the legislature on January 1, 1972.

**NEW SECTION.** Sec. 91. There is added to chapter 51.98 RCW a new section to read as follows:

If any provision of this 1971 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected: PROVIDED, That nothing in this section shall affect or invalidate any of the provisions of RCW 51.04.090.

Passed the House May 10, 1971.

Passed the Senate May 10, 1971.

Approved by the Governor May 21, 1971 with the exception of certain items and an item in section 89 which are vetoed.

Filed in Office of Secretary of State May 21, 1971.

Note: Governor's explanation of partial veto is as follows:

"...This bill makes major and far-reaching revisions in the industrial insurance program administered by the Department of Labor and Industries. Upon my review of this complex bill, I have found it advisable to veto a number of items.

Veto  
Message

Section 3 requires that the \$150 earnings requirement to qualify an agricultural laborer for mandatory coverage would expire at the end of 1972. Elimination of this earnings requirement would thus result in no difference between workers who are only temporarily and casually attached to an agricultural employer's work force and those workmen who are regularly a part of such work force. It is important that this minimum qualifying requirement remain in existence because of the uniquely transitory nature of such agricultural labor. Without continuation of this earnings requirement past 1972, an unduly harsh financial burden may be placed on the agricultural industry. Accordingly, I have vetoed the expiration of this qualification.

Section 13 requires, in part, the Department of Labor and Industries to pay, out of the fund contributed to by employers other than self-insurers, for traveling expenses of a workman to a medical examination requested by his employer as a self-insurer. Since this would be unjust to non-self-insuring employers, I have vetoed this item in Section 13.

In the new second paragraph of Section 13, the reference to Subsection (3) of RCW 51.32.090 was clearly erroneous and should have referred to Subsection (4). I have accordingly vetoed a portion of this new paragraph, and the remaining language does not appear to create any conflict with the provisions of any subsections of RCW 51.32.090.

Section 15 appears to require a rather complicated formula which would create administrative difficulties for the Department of Labor and Industries in determining the statewide average wage for purposes of the workmen's compensation laws. There presently exists a requirement that the Employment Security Department determine the statewide average wage under the Unemployment Compensation Law, and in view of the virtual universal workmen's compensation coverage provided by this bill, the statewide average wage of employees under workmen's compensation will be quite similar to the statewide average wage under the Unemployment Compensation Law. I see no substantial reason for two departments of state government to be independently calculating this figure, and have accordingly vetoed a large portion of Section 15 so that the Department of Labor and Industries may utilize the calculations made by the

quirement  
coverage  
of this  
fference  
casually  
and those

Veto  
Message

Employment Security Department.

Veto  
Message

In Section 21 the imposition of a penalty on an "employee" was not the legislative intent, because it was meant to impose a penalty on the "employer." Therefore, the entire section has been vetoed.

Section 59 requires the Department to assess self-insurers for their proportionate shares of the Department's administrative costs on the basis of the size of each self-insurer's payroll. This does not appear to be equitable. The director should, pursuant to rule-making authority, develop a formula for fairly apportioning the costs of the Department's administration among self-insurers, instead of simply using a system by which the self-insurer with the largest payroll automatically pays the largest assessment. Accordingly, I have vetoed a portion of Section 59 to enable the director to do this.

Section 89, Subsection (4) would repeal RCW 51.16.050. Said statute was the subject of a bill, Senate Bill No. 472, which amended RCW 51.16.050 to provide for an industrial insurance dividend and premium program specifically applicable to the building industry. Senate Bill No. 472 passed the House on May 3, 1971, and passed the Senate on May 4, 1971. Presumably it was the legislative intent to establish by that bill a statutory system of premiums and dividends for the building industry, and there does not appear to be any valid reason why Engrossed House Bill No. 735 should contradict that previously expressed legislative intent. Failure to veto this repealer of RCW 51.16.050 would result in confusion as to the status of that particular statute. I have accordingly vetoed Subsection (4) of Section 89.

With the exception of the items set forth above, Engrossed House Bill No. 735 is approved."

It is  
remain in  
of such  
earnings  
rden may  
y, I have

of Labor  
ted to by  
penses of  
employer  
njust to  
item in

13, the  
s clearly  
. I have  
and the  
conflict  
090.

mplicated  
lties for  
ning the  
workmen's  
ment that  
statewide  
v, and in  
coverage  
age of  
e similar  
mployment  
for two  
pendently  
d a large  
abor and  
by the

# **APPENDIX C**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**COPY**  
ORIGINAL FILED  
JUL 29 2010

Sherry W. Parker, Clerk, Clark Co.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF CLARK

William Mason, Deceased, and  
Mary Mason )  
)  
Plaintiff, )  
)  
v. )  
)  
Georgia-Pacific Corp. and )  
Washington Department of )  
Labor and Industries, )  
)  
Defendant. )

Cause No. 09-2-04379-9

ORDER AND JUDGMENT

JUDGMENT SUMMARY (RCW 4.64.030)

- 1. Judgment Creditor: Mary Mason
- 2. Judgment Debtor: Georgia-Pacific Corp.
- 3. Principal Amount of Judgment: -0-
- 4. Interest to Date of Judgment: -0-
- 5. Attorney Fees: \$14,000.00
- 6. Costs: \$9,921.10
- 7. Other Recovery Amounts: \$0.00

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- 8. Principal Judgment Amount shall bear interest of 0% per annum.
- 9. Attorney Fees, Costs and Other Recovery Amounts shall bear interest at 12% per annum.
- 10. Attorney for Judgment Creditor: Jill A. Karmy
- 11. Attorney for Judgment Debtor: James L. Gress, AAL

PROCEDURAL STATUS

1. JURY TRIAL

This matter came on regularly for a jury trial on June 14, 2010, before the Honorable Robert Lewis, a Judge in the above-entitled Court. Plaintiff, William Mason, Deceased, and Mary Mason, was represented by Jill A. Karmy; the Defendant, Georgia-Pacific Corp., was represented by James L. Gress. The Department of Labor and Industries, defendant, was represented by Natalee Fillinger, AAG. A jury was convened on the above-date and the certified appeal Board record was read to the jury with opening statements, arguments, and instructions provided by both plaintiff's and all defendants.

The specific questions for the jury to answer were as follows:

(1) Was the Board of Industrial Insurance Appeals correct in finding that William D. Mason had voluntarily retired effective May 1, 1986?

Answer: Yes.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

INSTRUCTION: IF YOUR ANSWER TO QUESTION #1 WAS "YES,"  
PLEASE SKIP TO QUESTION #3. IF YOU ANSWERED "NO," PLEASE  
ANSWER QUESTION #2.

(2) Was the Board of Industrial Insurance Appeals correct in finding that  
William D. Mason was not a temporarily totally disabled worker during the  
period from May 1, 1986 through December 14, 2006?

ANSWER: Unanswered, given the jury's response to question #1.

(3) Was the Board of Industrial Insurance Appeals correct in deciding  
that Mary Mason is entitled to surviving spouse benefits?

ANSWER: Yes.

INSTRUCTION: IF YOUR ANSWER TO QUESTION #3 WAS "YES,"  
PLEASE ANSWER QUESTIONS #4 AND #5. IF YOUR ANSWER TO  
QUESTION #3 WAS "NO," PLEASE DO NOT ANSWER ANY FURTHER  
QUESTIONS.

(4) Was the Board of Industrial Insurance Appeals correct in finding that  
William D. Mason's occupationally related condition or conditions became  
manifest as of April 30, 1986 as opposed to some later date?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

ANSWER: No.

(5) Was the Board of Industrial Insurance Appeals correct in finding that the self-insured employer is not entitled to Second Injury Fund relief?

ANSWER: No.

2. BENCH RULING

Thereafter, on July 16, 2010, Judge Robert Lewis heard oral arguments regarding the proper rate of surviving spouse benefits given the jury's prior verdict. On July 16, 2010, Judge Lewis ruled that Mrs. Mason's pension benefits should be paid at the statutory minimum, which is currently set at \$185 per month, based on RCW 51.32.180 and the jury's finding that Mr. Mason's occupationally-related condition or conditions became manifest after retirement.

CONCLUSIONS OF LAW AND ORDER

1. The Superior Court has jurisdiction over the parties and the subject matter of these appeals.
2. Mary Mason is the surviving spouse of William D. Mason and entitled to death benefits as provided by RCW 51.32.050(2)(a). These benefits should be paid at the statutory minimum, which is currently set at \$185 per month.
3. During the period from May 1, 1986 through December 14, 2006, inclusive, William D. Mason was not a temporarily totally disabled worker within the meaning of RCW 51.32.090.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- 4. The self-insured employer is entitled to Second Injury Fund relief as contemplated by RCW 51.16.120.
- 5. The Department of Labor and Industries order dated January 18, 2008 is reversed and remanded with directions to close the claim, grant a spousal pension to Mary Mason and grant second injury fund relief consistent with the facts and the law.
- 6. The Department order dated April 1, 2008 is reversed and remanded with directions to establish the surviving spouse a widow's pension with benefits at the statutory minimum, which is currently set at \$185, effective December 14, 2006. The Department is directed to calculate what, if any, amount the self-insured employer is required to pay for the second-injury fund pension given the facts and the law.

7-27-10  
DATE

*Jill A. Karmy*  
JILL A. KARMY WSBA #34132  
Of Attorney for Plaintiff

7/28/10  
DATE

*Natalee Fillinger*  
NATALEE FILLINGER WSBA #31436  
Assistant Attorney General

7/26/2010  
DATE

*James L. Gress*  
JAMES L. GRESS WSBA #25731  
Of Attorney for Defendant Georgia-Pacific Corporation

7/29/10  
DATE

/s/ ROBERT A. LEWIS  
THE HONORABLE ROBERT LEWIS

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Clark County Superior Court Judge