

COURT OF APPEALS  
DIVISION II

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No. 41988-2-II

STATE OF WASHINGTON  
BY 

COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION II

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DENNIS JONES,

Appellant,

v.

CITY OF OLYMPIA AND  
DEPARTMENT OF LABOR & INDUSTRIES,

Respondents.

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APPELLANT'S OPENING BRIEF

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## I. INTRODUCTION

Appellant Dennis Jones seeks *de novo* review by the Washington State Court of Appeals Division II of the underlying decision of the Board of Industrial Insurance Appeals and the Thurston County Superior Court regarding a lien brought by Mr. Jones' employer, the City of Olympia, against his third party recovery.

Olympia firefighter Dennis Jones was injured in the line of duty due to the negligence of a third-party. *CABR 26:11-26*. The City of Olympia paid for his medical bills and time loss (special damages). *Id.* Mr. Jones recently settled with the third party. *Id.* The City of Olympia misapplied Washington law when it asserted a lien against Mr. Jones' entire third-party recovery, rather than just the portion that represents what the City paid in past benefits. In other words, the City asserted a lien over portions of the settlement that represent special and general damages, rather than just special damages.

A new Washington Supreme Court decision sets forth as a matter of law that the City cannot recover against the portion of a third-party settlement that represents general damages of pain and suffering. *See Tobin v. DLI*, 169 Wn.2d 396 (2010). In the instant case, Mr. Jones' settlement was not broken down by category, however, it is a matter of record that the City paid \$82,188.86 in medical bills and time loss. *CABR 26:15*. Mr. Jones recovered

\$250,000.00 in the third party liability settlement. *CABR 26:24*.

Therefore, the issue before this Court is: In light of the Washington Supreme Court's recent decision, can the City calculate its lien based on Petitioner's entire settlement (e.g., special and general damages) or just the portion that represents the medical bills and time loss paid by the City? This issue is straight forward and requires the Court to apply Washington's new law to the City's lien.

***Two Methods of Calculation:***

The City of Olympia paid \$82,188.86 in medical bills and time loss as a result of Mr. Jones' injury. This amount is a matter of record. *CABR 22:10; CABR 26:11-20*. Dennis Jones settled his third-party claim for \$250,000.00. This amount is a matter of record. *CABR 22:5; CABR 26:21-17*. The City of Olympia has the right to recover a certain amount from a third-party claimant under RCW 51.24.060. The only issue is the amount of the City's lien.

Mr. Jones contends that pursuant to the Washington Supreme Court's recent decision in *Tobin*, the amount paid in medical bills and time loss by the City is the correct amount to be used when applying the distribution formula. Otherwise, the portion of the settlement that represents general damages of pain and suffering will be invaded. Thus, \$82,188.86 in medical bills and time loss provides the City with a reimbursement of \$29,234.81.

*Exhibit A, CABR 11.*

The City contends that pursuant to law established prior to the Washington Supreme Court's recent decision, the entire amount of Mr. Jones' settlement should be used to calculate its lien, including the portion that clearly represents general damages of pain and suffering. Thus, \$250,000.00 provides the City with a reimbursement of \$45,916.10. *Exhibit B, CABR 13.*

## **II. ASSIGNMENTS OF ERROR**

Did the Board of Industrial Insurance Appeals commit error in holding that:

As a matter of law, the *Tobin* decision has no applicability to the calculation of the City's lien against Mr. Jones' third party recovery and, therefore, the entire settlement should be included in the distribution formula under RCW 51.24.060?

Did the Thurston County Superior Court commit error in affirming the Board's decision?

## **III. STATEMENT OF THE CASE**

### **A. Statement of Facts.**

Dennis Jones is a firefighter with the Olympia Fire Department. *CABR 5.* He was injured in the line of duty when responding to a fire at a two-story apartment complex in Olympia on October 1, 2004. *Id.* The

apartment complex was privately owned. *Id.* Mr. Jones was wearing his standard fire fighting gear that day, including a heavy air tank, fire axe, and metal pry bar—all of which weigh over 80 pounds. *Id.* at 6. After risking his life to extinguish the residential fire, Mr. Jones stepped in a sink hole that was hidden in the property’s driveway. *Id.* Mr. Jones sunk to a depth above his knee and collapsed in full gear, which caused severe injuries to his spine. *Id.*

Mr. Jones brought suit against the apartment complex when it was discovered that the complex may have been responsible for the hole, having recently dug a maintenance trench on the same spot that was later (allegedly) refilled with loose dirt. *Id.* The apartment complex denied these allegations, and claimed that the City of Olympia’s fire trucks created the sinkhole when dumping water on the driveway’s surface. *Id.*

After lengthy litigation, the insurance company for the complex settled Mr. Jones’ claim for \$250,000.00. *CABR 26.* At the time of the settlement, the City of Olympia / Department of Labor and Industries had paid Mr. Jones \$82,188.86 in benefits for medical bills and time loss (e.g., special damages). *Id.*

**B. Procedural History.**

On October 7, 2004, Mr. Jones filed an Application for Benefits with the Department of Labor and Industries alleging an industrial injury on

October 1, 2004, while in the course of employment with the City of Olympia Fire Department. *CABR 26*. On October 28, 2004, the Department issued an order allowing the claim. *Id.* After the third party settlement, on October 14, 2009, the Department issued an order calculating benefits paid as \$82,188.86 and asserting \$45,916.10 as a lien against Mr. Jones' settlement recovery. *Id.*

On October 22, 2009, Mr. Jones filed a timely Notice of Appeal with the Board of Industrial Insurance Appeals seeking to overturn the Department's order. *Id.* In the appeal, Mr. Jones argued that the City of Olympia and the Department misapplied Washington law when it asserted a lien against Mr. Jones' entire third-party recovery, rather than just the portion that represents what the City paid in benefits.

Mr. Jones contends that the City asserted a lien over portions of the settlement that represent special and general damages, rather than just special damages, contrary to the standards set forth by the Washington Supreme Court in *Tobin*. Benefits paid of \$82,188.86 provides the City with a reimbursement of \$29,234.81 when the formula is applied to the correct portion of the recovery. For illustrative purposes, the two different formulas are set forth in the attached Third Party Recovery Worksheet completed by Dennis Jones [*CABR 11*] and the attached Third Party Recovery Worksheet completed by the City of Olympia [*CABR 13*].

On November 19, 2009, the Board heard the appeal under Docket No.

09 23343. *CABR 26*. The Board determined that the third party settlement agreement did not allocate any amount for pain and suffering. *Id.* Therefore, it was reasoned that without an allocation, the holding set forth in *Tobin* could not be applied (i.e., there was no way to know whether some or all of the settlement was special damages). *Id.*

On March 19, 2010, the Board issued its Proposed Decision and Order upholding the Department's decision. *CABR 20-30*. On April 2, 2010, Mr. Jones filed a timely Petition for Review of the Proposed Decision and Order. *CABR 5*. On April 19, 2010, the Board issued an Order Denying Petition for Review. *CABR 2*.

On April 23, 2010, Mr. Jones filed a timely appeal with the Thurston County Superior Court. *CP 5*. On November 12, 2010, Mr. Jones filed a Motion for Summary Judgment. *CP 6-37*. On November 24, 2010, the City of Olympia filed its Response Brief. *CP 46-60*. On November 29, 2010, the Department filed its Response Brief. *CP 61-70*. On December 6, 2010, Mr. Jones filed his Reply Brief. *CP 71-81*. On December 10, 2010, the trial court held a hearing and denied Mr. Jones' Motion for Summary Judgment, deferring its decision to the upcoming administrative hearing. *RP (I)*.

On December 14, 2010, Mr. Jones filed Petitioner's Hearing Brief with the trial court. *CP 112-19*. On December 23, 2010, the City of Olympia filed its Hearing Brief. *CP 120-31*. On January 4, 2011, the Department

filed its Hearing Brief. *CP 132-39*. On January 13, 2011, Mr. Jones filed Petitioner's Reply Brief. *CP 140-43*. On January 28, 2011, the trial court held a hearing and affirmed the Board's decision. *RP (II)*. On March 15, 2011, the trial court entered its Findings of Fact and Conclusions of Law. *CP 147-50*. On April 12, 2011, Mr. Jones filed a timely Notice of Appeal to the Washington State Court of Appeals, Division I. *CP 151-61*.

#### IV. ARGUMENT

##### A. The standard of review.

The standards for appellate court review in cases involving Department of Labor and Industries' decisions are the same as in ordinary civil cases. RCW 51.52.140; *Rogers v. Department of Labor & Indus.*, 151 Wash. App. 174, 179-81, 210 P.3d 355 (2009). Issues regarding statutory interpretation are issues of law to be determined *de novo* by an appellate court. *In re: Pers. Restraint of Cruz*, 157 Wn.2d 83, 87, 134 P.3d 1166 (2006); *Sheehan v. Central Puget Sound Regional Transis Authority*, 155 Wn.2d 790, 797, 123 P.3d 88 (2005).

The standard of review for the denial of a summary judgment order is also *de novo*, and the appellate court performs the same inquiry as the trial court. *Jones v. Allstate Ins. Co.*, 146 Wn.2d 291, 300, 45 P.3d 1068 (2002). When reviewing a summary judgment order, the appellate court only considers the evidence and issues raised below. *Douglas v. Jepson*, 88 Wn.

App. 342, 945 P.2d 244 (1997), *rev. denied*, 134 Wn.2d 1026, 958 P.2d 313 (1998). Summary judgment is appropriate when there is no issue of material fact and the moving party is entitled to judgment as a matter of law. *CR 56; Mutual of Enumclaw Ins. Co. v. Jerome*, 122 Wn.2d 157, 160, 856 P.2d 1095 (1993).

**B. The Industrial Insurance Act is to be interpreted in favor of the injured worker.**

The purpose of the Industrial Insurance Act is to make certain an employee's relief, and to provide for recovery regardless of fault or due care on the part of either the employee or employer. *Monloya v. Greenway Aluminum Co., Inc.*, 10 Wash. App. 630, 519 P.2d 22 (1974). Where reasonable minds can differ over what provisions in the Industrial Insurance Act mean, the benefit of the doubt belongs to the injured worker in every case. *Gallo v. Department of Labor & Indus.*, 119 Wash. App. 49, 81 P.3d 869 (2003).

“The guiding principle in construing the Industrial Insurance Act is that the Act is remedial in nature and is to be liberally construed in order to achieve its purpose of providing compensation to all covered employees injured in their employment, with doubts resolved in favor of the worker.” *Dennis v. Department of Labor & Indus.*, 109 Wn.2d 467, 470, 745 P.2d 1295 (1987), *Messer v. Department of Labor & Indus.*, 118 Wash. App. 635,

77 P.3d 1184 (2003), *Simpson Timber Co. v. Wentworth*, 96 Wash. App. 731, 981 P.2d 878 (1999), *Taylor v. Nalley's Fine Foods*, 119 Wash. App. 919, 83 P.3d 1018 (2004).

**C. Under *Tobin*, the City must base its lien on benefits paid rather than invade general damages of pain and suffering.**

An injured worker who receives workers compensation benefits under RCW Title 51 can bring a lawsuit against a third-party for the same injuries. The recovery, however, is subject to RCW 51.24.060, which states in pertinent part the following:

**Distribution of amount recovered – Lien.**

(1) If the injured worker or beneficiary elects to seek damages from the third person, any recovery made **shall** be distributed as follows ...

(c) The department and/or self-insurer shall be paid the balance of the recovery made, but only to the extent necessary to reimburse the department and/or self-insurer for **benefits paid**. [Emphasis added.]

The Washington Supreme Court recently overturned the manner in which the Department and self-insured employers have been making their lien calculations. In *Tobin v. Department of Labor & Indus.*, 169 Wn.2d 396, 239 P.3d 544 (2010), the Supreme Court made a very simple ruling. The Department and self-insured employers cannot recover from the portion of a settlement that represents general damages of pain and suffering.

The court in *Tobin* relied upon its previous ruling in *Flanigan v.*

*Department of Labor & Indus.*, 123 Wn.2d 418, 869 P.2d 14 (1994), in which the court ruled that a spouse's general damages for loss of consortium are not subject to the Department's lien. The *Flanigan* court had stated as dicta that general damages for pain and suffering may also be off limits, but this was not clarified until the recent *Tobin* decision. The law in Washington is now undisputed. The Department cannot apply its lien against the portion of the settlement that represents general damages of pain and suffering. *Tobin*, 169 Wn.2d at 396. Accordingly, the Department and self-insured employers are limited only to medical and wage loss recoveries (e.g., special damages) for lien calculations.

In the instant case, the City has argued that *Tobin* does not apply because Mr. Jones did not allocate the damages in his settlement, that is, he did not divide them between categories of special and general damages. *CP 46-60; 120-31*. In *Tobin*, the settlement in question did allocate damages.

The City's argument is without merit because it can be readily ascertained that the City only paid \$82,188.86 in special damages, and, therefore, basing the City's lien on any amount in excess of special damages would invade general damages for pain and suffering in violation of the standards set forth in *Tobin*. Most certainly, basing the lien upon the entire settlement of \$250,000.00 goes far beyond special damages of \$82,188.86.

In *Tobin*, the court repeated and relied upon language from the

*Flanigan* decision, which is clearly on point against the City's argument, as follows:

Referencing the language of RCW 51.24.060(1)(c), we concluded [in *Flanigan*] that where the Department has not paid out benefits for a type of damages, it cannot seek reimbursement from that type of damages.

*Id.* at 401.

The City is essentially arguing that because the settlement was not allocated, it can claim that the entire \$250,000.00 represents special damages and base its lien on this amount (rather than the amount the City actually paid). This is nonsensical and clearly against the rule set forth by the Washington Supreme Court.

**D. The City's reliance upon old case law to argue that Mr. Jones should have allocated his damages into categories is misplaced. Tobin overruled all such cases.**

When the City calculated its lien based on Mr. Jones' entire settlement, rather than what it paid in medical bills, the City justified its actions by piecing together case law and dicta from two Court of Appeals decisions that predated *Tobin* and were not mentioned or relied upon by the Supreme Court in its recent decision. *See e.g., CP 46-60; 120-31.*

The first is *Mills v. Department of Labor & Indus.*, 72 Wn. App. 575, 865 P.2d 41, *review denied*, 124 Wn.2d 1008 (1994). In *Mills*, the third party action was settled for a lump sum. The full amount was used as the recovery

amount in the Department's distributive order. The claimant appealed saying that a portion of the recovery was spousal consortium general damages. At the same time the case was decided, the *Flanigan* case was pending at the Supreme Court. *Mills*, 72 Wn. App. at 577, (fn 1). That is, spousal consortium general damages had not yet been found as something the Department was forbidden to apply its lien against. The Court of Appeals skirted the issue as to whether or not this type of damage should be included in the lien calculation, and held instead that the failure to allocate was fatal to the claimant's argument in that case. Later that year, *Flanigan* was decided and the legislature followed by amending the distribution statute, thereby confirming that spousal consortium claims are not subject to the Department's distribution calculations.

The other case is *Gersema v. Allstate*, 127 Wn. App. 687, 112 P.3d 552 (2005). In *Gersema*, the court was asked in an unallocated third-party recovery to exclude general damages from the calculations of the Department's lien. The court followed *Mills* and skirted the issue by concluding that failure to differentiate general damages from special damages in the recovery prevented it from addressing the issue.

However, several years later, we now know from *Tobin* that the City's lien calculations are limited to what it paid in medical and wage recoveries, that is, limited to special damages. The Supreme Court has unequivocally

ruled that general damages of pain and suffering cannot be invaded by a self-insured employer's lien.

The problem with the City's reliance upon these two Court of Appeals decisions is that the Supreme Court has since **twice** ruled differently with regard to general damages of loss of consortium and pain and suffering. The Supreme Court in *Flanigan* has ruled that spousal consortium claims are not subject to the City's lien claim. The Supreme Court in *Tobin* has ruled that general damages are also not subject to the City's lien claim. **The Supreme Court has expressly ruled that “where the Department has not paid out benefits for a type of damages, it cannot seek reimbursement from that type of damages.”** These Supreme Court rulings clearly overturn the City's Court of Appeals cases. Simply stated, when the Supreme Court makes precedent of this nature, it becomes the law of the land and cannot be challenged by pre-existing Court of Appeals decisions that would violate the Supreme Court's new ruling.

Furthermore, in *Mills* and *Gersema*, neither case provides any evidence in the record about what medical and wage loss could have been recovered. However, in the instant case, it is undisputed that the City paid \$82,188.86 in benefits. Therefore, it is readily ascertainable that any recovery beyond this figure would invade Mr. Jones' general damages of pain and suffering in violation of *Tobin*.

The City is not entitled to base its lien on Mr. Jones' entire settlement of \$250,000.00 by arguing that the whole amount must be special damages because Mr. Jones did not allocate his settlement between special and general damages. Such an argument defies common sense when Mr. Jones' special damages are clearly only \$82,188.86 in this case.

E. **The United States Supreme Court has determined that the State cannot invade general damages when asserting similar liens against a third-party recovery. This is so regardless of whether the settlement was apportioned between special and general damages.**

The decision of the United States Supreme Court in *Arkansas Dep't of Health & Human Services v. Ahlborn*, 547 U.S. 268, 126 S. Ct. 1752, 164 L.Ed.2d 459 (2006) is particularly instructive in this case. In *Ahlborn*, the United States Supreme Court heard a similar case where a plaintiff was injured by a third party and her medical bills were paid by Medicaid. *Id.* at 274. The parties settled for a lump sum of \$550,000.00, which was not apportioned between medical bills and general damages. *Id.* The State asserted a lien for the medical bills paid to date, which equated to roughly half of the settlement. *Id.* The Supreme Court decided that the State was only entitled to "that portion of the judgment that represented payments for medical care," that is, it had to adjust its lien so that it was equal to the

percentage of the settlement that represented special damages. *Id.* at 275.

Explained in simple terms, the Supreme Court looked at the reasonable value of the plaintiff's damages, which were determined to be approximately \$3 million. *Id.* at 274. It then determined that the State paid approximately \$215,000.00 in medical bills, or one-sixth of \$3 million. *Id.* Therefore, the State could only recover up to one-sixth of the settlement (approximately \$35,000.00). *Id.* By doing so, the Supreme Court applied **readily available figures** to insure that the lien did not go beyond the portion of the settlement that represented medical bills. The Supreme Court agreed with the plaintiff's argument that to allow otherwise would "require depletion of compensation for injuries other than **past medical expenses.**" *Id.* [Emphasis added.]

The Supreme Court in *Ahlborn* was applying a statute similar to the one in the instant case. In *Ahlborn*, the statute allowed recovery for services paid by Medicaid, but—like this case—did not allow for recovery beyond services paid. Here, if we are to follow the standards set forth by the Supreme Court, the City can only base its lien on the amount of medical bills paid, otherwise it will clearly invade Mr. Jones' general damages. Moreover, as made clear by the Supreme Court, the City's argument that failure to apportion damages allows it to base its lien on the entire settlement is without merit. The settlement agreement in *Ahlborn* was not apportioned. Therefore,

the City's argument fails as a matter of law, and the Court should determine that the City must calculate its lien based on the amount it actually paid in past benefits (e.g., medical bills and time loss).

**F. The City's lien calculation violates takings and due process under the Washington Constitution and the United States Constitution.**

Mr. Jones contends that it is the City's misinterpretation of RCW 51.24.060 and the *Tobin* and *Ahlborn* decisions that is responsible for the unfair and unlawful result in this case. However, in the alternative, if the Court was to hold that the statute permits the invasion of unallocated general damages, this would constitute the taking of Mr. Jones' private property because his general damages are a property interest belonging solely to him. *See* 4.08.080; *see also Woody's Olympia Lumber, Inc. v. Roney*, 9 Wash. App. 626, 513 P.2d 849 (1973); *In re Marriage of Brown*, 100 Wn.2d 729, 675 P.2d 1207 (1984).

Accordingly, calculating a lien in this manner is a regulatory taking without due process in violation of Washington's Constitution and the U.S. Constitution. *See* Const. Art. I § 16; U.S. Const. Amend. 14 § I. The court in *Tobin* did not need to reach this argument, however, because it held that when correctly applied, RCW 51.24.060 does not allow a lien to extend to general damages of pain and suffering.

**G. RCW 51.24.060 creates a lien against a worker's recovery in derogation of common law. It should be strictly construed against the City/Department.**

RCW 51.24.060 is in derogation of the common law because it creates a lien against an injured worker's recovery from another party. Statutes in derogation of the common law are strictly construed and no intent to change that law will be found unless it appears with clarity. *McNeal v. Allen*, 95 Wn.2d 265, 269, 631 P.2d 1285 (1980). An injured worker's recovery is subject to RCW 51.24.060, which states in pertinent part the following:

**Distribution of amount recovered – Lien.**

(1) If the injured worker or beneficiary elects to seek damages from the third person, any recovery made **shall** be distributed as follows ...

(c) The department and/or self-insurer shall be paid the balance of the recovery made, but only to the extent necessary to reimburse the department and/or self-insurer for **benefits paid**. [Emphasis added.]

The term "benefits" is clear and concise in the above statute. Furthermore, in its order dated March 19, 2010, the Board declined to extend the reasoning in *Tobin* to the facts in this case because the underlying settlement was unallocated and, therefore, allocating the \$250,000.00 would be "too burdensome." *CABR 25*. However, RCW 51.24.060 should be interpreted in favor of the injured worker, rather than the City / Department,

and any burden of proof of allocation of the settlement should have been placed upon the City / Department. In other words, the City should have produced proof that its benefits paid under the statute exceeded \$82,188.86, rather than require Mr. Jones to do the opposite (e.g., prove which portions of his settlement represent special and general damages). Therefore, the Board erred when upholding the Department's order in this manner.

**H. Reasonable attorney fees and costs.**

Firefighter Denis Jones respectfully requests reasonable attorney fees and costs pursuant to RCW 51.52.130 and the *Tobin* decision, which provide for such an award when a worker successfully appeals a Department order. Mr. Jones will itemize fees and costs in a separate motion.

**V. CONCLUSION**

The Court should grant firefighter Dennis Jones appeal for the reasons set forth above. Because the City of Olympia paid \$82,188.86 for medical bills and time loss incurred as a result of Mr. Jones' injury, and because this amount is readily ascertainable, the Court should apply the holdings in *Tobin* and *Ahlborn*, as well as the plain meaning of the underlying statute, and find that the City is only entitled to calculate its lien based on the amount it paid in benefits (special damages). Furthermore, if Mr. Jones prevails on this motion, he respectfully requests reasonable attorney fees pursuant to RCW 51.52.130 and the *Tobin* decision, which awards attorney fees when a Board

decision is successfully appealed before this Court.

DATED: August 22, 2011

RON MEYERS & ASSOCIATES, PLLC

By:   
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Zoe Wild, WSBA No. 39058  
Attorneys for Respondents

# **EXHIBIT A**



# **EXHIBIT B**



# THIRD PARTY RECOVERY WORKSHEET

Adjudicator \_\_\_\_\_ Today's date 10/06/09 Claimant's name Dennis Jones

Claim no. W 800861  
 Benefits Paid 82,188.86

## I. CALCULATION OF DISTRIBUTION SHARES

\$ 250,000.00 Gross recovery  
 \$ 110,333.57 Less attorney's fee[s] \$ 100,000.00 costs \$ 10,333.57  
 \$ 139,666.43 Net recovery  
 \$ 34,916.61 Less claimant's 25% of net recovery  
 \$ 104,749.82 Balance

### DLI/SIE Proportionate Share of Fee and Costs on Reimbursement:

$$\frac{\$ 82,188.86 \text{ Benefits Paid}}{\$ 250,000.00 \text{ Gross Recovery}} = 32.88 \% (\text{Max. } 100\%) \times \frac{110,333.57 \text{ Fees+costs}}{110,333.57} = 36,272.76$$

### DLI/SIE Reimbursement Share:

$$\$ 82,188.86 \text{ Benefits Paid} - 36,272.76 \text{ DLI/SIE Prop. Share Fee} + \text{Costs} = 45,916.10$$

\$ 45,916.10 Less DLI/SIE reimbursement share  
 \$ 58,833.72 Remaining Balance

### DLI/SIE Proportionate Share of Fee And Costs On Remaining Balance:

$$\frac{\$ 58,833.72 \text{ Remaining Balance}}{\$ 250,000.00 \text{ Gross Recovery}} = 23.53 \% \times \frac{110,333.57 \text{ Fees+costs}}{110,333.57} = 25,965.34$$

\$ 25,965.34 Less DLI/SIE Proportionate Share Of Fee And Costs on Remaining Balance  
 \$ 32,868.38 Remaining Balance Subject to Offset

## II. DISTRIBUTION SHARES

\$ 110,333.57 Attorney (fees + costs)  
 \$ 45,916.10 DLI/SIE (reimbursement share or balance [whichever is less])  
 \$ 93,750.33 Claimant (\$ 34,916.61 25% + \$ 25,965.34 DLI/SIE Proportionate share of fee and costs on Remaining Balance + \$ 32,868.38 Offset)  
 \$ 250,000.00 Gross recovery

EXHIBIT 7  
 PAGE 1 OF 1  
13

COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION II

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DENNIS JONES,

Appellant,

v.

CITY OF OLYMPIA AND  
DEPARTMENT OF LABOR & INDUSTRIES,

Respondents.

---

DECLARATION OF SERVICE

---

Ron Meyers  
Ken Gorton  
Zoe Wild  
Attorneys for Respondents

Ron Meyers & Associates, PLLC  
8765 Tallon Ln. NE, Suite A  
Lacey, WA 98516  
(360) 459-5600  
WSBA # 13169  
WSBA # 37597  
WSBA # 39058

11 MAR 20 11 11:40 AM  
STATE COURT OF APPEALS  
TACOMA, WA

**DECLARATION OF SERVICE** 11 MAR 20 11 11:40

I declare under penalty of perjury under the laws of the State of  
BY \_\_\_\_\_  
DEPUTY

Washington that on the date stated below I caused the documents referenced

below to be served in the manners indicated below on the following:

- DOCUMENTS:
1. APPELLANT'S OPENING BRIEF; and
  2. DECLARATION OF SERVICE.

**ORIGINAL AND ONE COPY TO:**

Clerk of the Court  
Washington State Court of Appeals  
Division II  
950 Broadway Ste 300  
Tacoma, WA 98402-4454

- Via U.S. Postal Service
- Via Facsimile:
- Via Hand Delivery / courtesy of ABC Legal Messenger Service
- Via Email:

**Attorneys for Defendant City of Olympia:**

William A. Masters and  
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- Via Facsimile:
- Via Hand Delivery / courtesy of ABC Legal Messenger Service
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**Attorney for Defendant Department of Labor and Industries:**

Scott Middleton, AAG  
Office of the Attorney General  
Labor and Industries Division  
800 Fifth Avenue, Suite 2000  
Seattle, WA 98104

- Via U.S. Postal Service  
 Via Facsimile:  
 Via Hand Delivery / courtesy of ABC Legal Messenger Service  
 Via Email:

DATED this 22nd day of August, 2011, at Lacey, Washington.

  
\_\_\_\_\_  
Aimee Cox, Legal Secretary