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64809-8

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No. 64809-8 I

COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON

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SHARON A. DAVIS,

Appellant,

vs.

THE WASHINGTON STATE DEPARTMENT OF  
LABOR AND INDUSTRIES,

Respondent.

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BRIEF OF APPELLANT

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## I. INTRODUCTION

Appellant Sharon A. Davis (“Davis”) contends the trial court erred in entering judgment in favor of the Washington Department of Labor and Industries (the “Department”) upon the trial of Davis’ appeal to the Superior Court of the administrative determination of the Department’s claim for reimbursement from her third-party recovery.

Davis had a personal injury claim that was settled. The settlement agreement did not apportion her damages or allocate specific amounts to types of recoverable damages, such as pain and suffering.

Because Davis’ injury occurred on the job the Department paid benefits and had a statutory lien against the third-party recovery. The Department administratively determined the lien based upon the gross amount of Davis’ settlement. Davis paid it the lien.

The basis of Davis’ claim is that the Department received too much money from her third-party recovery in light of the reasoning expressed in the holding in *Tobin v. Department of Labor & Industries*, 145 Wn. App. 607, 187 P.3d 780 (2008) *aff’d*, 169 Wn.2d 396, 239 P.3d 544 (2010). *Tobin* held the Department was not entitled to reimbursement from an injured worker’s general damages received in a third-party recovery.

The Court of Appeals' decision in *Tobin* was issued after Davis settled her claim but within the period for appealing the Department's determination of its lien. Davis did so, exhausted her administrative remedies and appealed to the Superior Court, which entered judgment in the Department's favor based upon the unallocated settlement. The Washington Supreme Court subsequently affirmed *Tobin*.

The Court should hold Davis was not required to allocate and remand the case for a determination of correct amount of the Department's lien which excludes Davis' general damages from the amount of the Department's reimbursement formula pursuant to *Tobin*.

## **II. ASSIGNMENT OF ERROR**

### *Assignment of Error*

The trial court erred in entering judgment in the Department's favor in the court's Findings of Fact, Conclusions of Law and Judgment entered January 12, 2010 (CP 318-321).

### *Issue Pertaining to Assignment of Error*

Did the trial court err as a matter of law because Davis' third-party recovery did not allocate her damages yet *Tobin* has held general damages may not be included in the determination of the Department's lien?

### III. STATEMENT OF THE CASE

#### A. Davis' Personal Injury Case

Davis was injured in an on the job motor vehicle accident on August 22, 2002. CABR 3.<sup>1</sup> The accident was caused by an uninsured motorist. She sustained neck and back injuries and received a permanent impairment rating. CABR 3.

Ms. Davis elected to pursue a third-party claim against her employer's uninsured motorist's (UM) carrier. She sent a written settlement demand to the carrier. CABR 167-173. Ms. Davis' demand apportioned her damages as follows:

Medical Expenses	\$27,102.10
Lost Compensation	\$ 1,360.00
Pain and Suffering	\$25,000.00
Disability	\$25,000.00
Loss of Enjoyment of Life	\$25,000.00
<b>Total Damages</b>	<b>\$103,452.10</b>

CABR 173.

Davis' UM claim was not litigated or arbitrated. The claim was settled for \$75,000.00 on June 2, 2008. The settlement agreement did not apportion between Davis' special and general damages. CABR 113.

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<sup>1</sup> For ease of reference and pursuant to RAP 10.4(f) Davis will refer to the Certified Appeal Board Record (Sub. No. 10) by the abbreviation "CABR".

B. The Department's Third-Party Distribution Order

The Department paid Davis industrial insurance benefits for time loss, medical expenses and permanent partial disability. CABR 3.<sup>2</sup> The Department's third-party distribution order regarding the settlement was issued on June 9, 2009. CABR 21; CABR 29-31; CABR 114-116. The Department asserted a lien in the amount of \$36,207.37. The Department calculated its reimbursement share and the "amount subject to offset"<sup>3</sup> based on the gross recovery of \$75,000. The Department received \$24,133.98 and ordered that \$8,907.01 was subject to offset. CABR 3.

C. The Tobin Decision

On July 1, 2008 the Washington Court of Appeals issued its opinion in *Tobin*. The Court held the Department was not entitled to reimbursement from that portion of an injured worker's third-party recovery compensating him or her for pain and suffering. The Court of Appeals explained that pain and suffering damages are not a "recovery" as defined under RCW 51.24.030(5).

D. Davis' Administrative Appeal

Davis filed an appeal with the Board of Industrial Appeals (the "Board") on August 1, 2008. CABR 25-26; CABR 55 *et seq.* The appeal

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<sup>2</sup> The Department supplied a payment ledger itemizing payments on Davis' behalf. CABR 175-202.

<sup>3</sup> This is the amount the injured worker must spend before the Department will pay any additional benefits.

was solely predicated upon the *Tobin* decision and the Department's failure to exclude Davis' general damages from its reimbursement calculus.

The Board issued a Decision and Order dated January 14, 2009 affirming the Department's third-party distribution order. CABR 14-20. Specifically, the Board granted the Department's motion for summary judgment (CABR 91-105) and held that *Tobin* did not apply to Ms. Davis' third-party recovery because the settlement agreement did not allocate between special and general damages.

Davis filed a Petition for Review with the Board on January 22, 2009. CABR 7-8. The Board granted review on February 13, 2009. CABR 6. The Department's order was made final pursuant to the Board's Decision and Order dated March 2, 2009, which affirmed the industrial appeals judge's rulings. CABR 2-5.

E. Proceedings in the Superior Court

Davis filed a Notice of Appeal in the King County Superior Court on March 10, 2009. CP 164-177. Davis sought a stay (CP 178-219) pending the Washington Supreme Court's determination of *Tobin*; the stay was opposed by the Department (CP 220-230) and denied by the trial court. CP 253-254.

Trial was conducted on October 5, 2009. The trial court considered the Certified Appeal Board Record and considered briefing (CP 255-265; CP 266-317) and oral argument. The trial court upheld the Board and entered Findings of Fact, Conclusions of Law and Judgment in the Department's favor. CP 318-321.

The trial court's determination was based upon a single conclusion of law:

2.2 Because the Appellant did not allocate any portion of her recovery to damages for loss of consortium or pain and suffering, this matter is controlled by *Mills v. Department of Labor and Industries*, 72 Wn. App 575, 865 P.2d 41, review denied, 124 Wn.2d 108 (1994) and *Gersema v. Allstate Insurance Company*, 127 Wn. App. 687, 112 P.3d 552 (2005).

CP 320.

This appeal followed (CP 322-326) and was stayed while the Washington Supreme Court determined *Tobin*.

F. *Tobin is Upheld*

The Court of Appeals' decision was affirmed in *Tobin v. Department of Labor & Industries*, 169 Wn.2d 396, 239 P.3d 544 (2010). *Tobin* did not specifically address the issue of allocation.

#### IV. STANDARD OF REVIEW

The trial court's review of the Board's determination is de novo. RCW 51.52.115; *Gallo v. Dep't of Labor & Indus.*, 119 Wn. App. 49, 53, 81 P.3d 869 (2003), *aff'd*, 155 Wn.2d 470, 120 P.3d 564 (2005). The appellate court reviews the Board's findings of fact and conclusions of law de novo. *Mills*, 72 Wn. App. at 576-77. Where the facts are undisputed and the only issue is a question of law the standard of review is also de novo. *Id.* The appellate court reviews the trial court's decision under the ordinary standard of review for civil cases and determines whether substantial evidence supports the superior court's factual findings and whether the superior court's conclusions of law flow from the findings. RCW 51.52.140; *Ruse v. Dep't of Labor & Indus.*, 138 Wn.2d 1, 5, 977 P.2d 570 (1999). Statutory construction is a question of law reviewed de novo. *Department of Labor & Indus. v. Granger*, 130 Wn. App. 489, 493, 123 P.3d 858 (2005).

#### V. SUMMARY OF ARGUMENT

Davis settled her claim before *Tobin* clarified that the third-party recovery statute does not permit the Department to include an injured worker's general damages in determining its lien. Davis did not have an obligation to apportion her damages at the time of her settlement because the third-party recovery statute was ambiguous and the Department was

not required to (and did not) respect allocations to general damages in third-party settlements in any event.

Davis properly appealed to the Board and then the trial court. The trial court erred in holding lack of allocation precluded Davis' claim. Allocation is feasible at the administrative level. The Court should remand this case for a factual determination to determine the proper amount of the Department's lien.

## **VI. AUTHORITY AND ARGUMENT**

### **A. Davis' Claim is Not Barred for Lack of Allocation in the Settlement Agreement**

#### **1. *Overview: Mills and Gersema***

The trial court held the Department's distribution order was not subject to *Tobin* because Davis' settlement did not allocate between her damages. The Board and the trial court relied upon the allocation rule contained in *Mills v. Department of Labor and Industries*, 72 Wn. App. 575, 865 P.2d 41 (1994) and *Gersema v. Allstate*, 127 Wn. App. 687, 112 P.3d 552 (2005).

*Mills* held that failure to allocate a portion of a third-party recovery to the injured worker's wife's loss of consortium claim subjected the entire settlement amount to the Department's lien.

*Gersema* held that a self-insured employer's lien attached to the entirety of a third-party recovery which did not differentiate between special and general damages.

2. *Mills and Gersema Do Not Control*

Strictly speaking *Mills* does not control because (a) Davis did not have a loss of consortium claim and (b) *Mills* involved different claims belonging to different claimants (which is distinguishable from an individual recovering the various types damages arising out of a single claim). *See, e.g., Mills*, 72 Wn. App. at 577-78. *Mills* also did not have the benefit of a clear rule of law on the underlying issue (whether loss of consortium damages were subject to the Department's lien).<sup>4</sup>

Davis acknowledges *Gersema* held (in light of *Mills*) that the worker's failure to allocate his settlement precluded his due process and takings claims. *Gersema*, 127 Wn. App. at 688. Because of the lack of allocation,<sup>5</sup> *Gersema* (1) construed RCW 51.24.060 to allow the workers' compensation lien to attach to the entirety of the settlement proceeds and (2) held the statute was not unconstitutional. *Id.* at 696, 699.

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<sup>4</sup> By contrast, the Court now has clear guidance from the *Tobin* opinion.

<sup>5</sup> In support of its decision *Gersema* cited the "differentiated award" in *Flanigan v. Dep't of Labor & Indus.*, 123 Wn.2d 418, 423 869 P.2d 14 (1994). The plaintiff in *Flanigan* didn't settle—she received a separate award from the jury at trial. *Flanigan v. Department of Labor and Industries of State of Wash.*, 65 Wn. App. 119, 120, 827 P.2d 1082 (1992). In the case overturned by *Flanigan*, *Downey v. Department of Labor and Industries of State of Wash.*, 65 Wn. App. 200, 827 P.2d 1101 (1992) there was a differentiated recovery only because it was an asbestosis case where the Department had a special apportionment policy. *Id.* at 202, fn. 1.

However, *Gersema* did not reach the substantive issue (eventually decided by *Tobin*) of whether an injured worker's general damages were in fact subject to the Department's recovery. *Gersema*, 127 Wn. App. at 695. Therefore, *Gersema* did not hold that the Department was precluded from including general damages in determining its lien even where there was a differentiated recovery.

3. *Tobin Establishes the Department Cannot Include General Damages in Determining Its Lien*

In *Tobin* the Court of Appeals held that “because L & I did not, and will not, pay pain and suffering damages, it is not entitled to sue for reimbursement from that portion of Tobin’s third party recovery compensating him for his pain and suffering[.]” *Tobin*, 145 Wn. App. at 609. The Court of Appeals reached this result in two ways. First, as a matter of statutory construction it interpreted RCW 51.24.030(5) (which provides: “For the purposes of this chapter, ‘recovery’ includes all damages except loss of consortium”) to exclude pain and suffering damages from the Department’s lien. *Id.* at 615-16. Second, it held RCW 51.24.060 did “not provide injured workers with sufficient notice that damages so earmarked are assets that may be attached to reimburse and relieve L & I of its responsibility to pay compensation which the injured

worker is due for his other losses and therefore violated due process. *Id.* at 618-620.

In affirming the Court of Appeals the Washington Supreme Court held that “chapter 51.24 RCW does not authorize the Department to subject pain and suffering damages to its reimbursement calculation.” *Tobin*, 169 Wn.2d at 404. The Court held it was not necessary to consider whether the Department violated due process because the statute’s ambiguity simply required court interpretation. *Id.* at 405.

4. *Before Tobin the Department Didn’t Recognize Allocation, Notwithstanding Gersema*

This was the state of the law after *Gersema*: the Department’s lien attached to the entirety of an injured worker’s third-party recovery, whether differentiated or not.

Davis would not have had reason to allocate her settlement at the time it was reached because the Department would not have recognized the allocation anyway.<sup>6</sup> Prior to *Tobin* the Department took the position that its lien attached to the entirety of a third party recovery and allocating damages was irrelevant and would not be considered.<sup>7</sup> That’s certainly the

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<sup>6</sup> This is another basis for distinguishing *Mills*, where there was not an issue whether the Department was recognizing allocation agreements as to loss of consortium. Presumably after *Flanigan* and the amendment to the statute the Department respected such agreements.

<sup>7</sup> The trial court judge in *Davis v. Washington State Dept. of Labor & Industries*,

position the Department took with Mr. Tobin, whose \$1.4 million third-party recovery was differentiated.

This is confirmed by the third-party recovery statute itself and the way in which the Department calculated its lien. There is nothing in the third-party recovery statute addressing the parties' ability to allocate or requiring the Department to respect allocation agreements. The "Third Party Recovery Worksheet" prepared by the Department for use in third-party cases requires the "gross recovery" to be entered for calculating distribution shares, not allocated amounts.<sup>8</sup> Further, RCW 51.24.060(3) provides that the Department has sole discretion in compromising its lien. The Department's regulations contain no standards to guide parties in making allocation arrangements.

The Court of Appeals recognized the injured worker's conundrum in *Tobin*:

Furthermore, injured workers who are not aware that L & I may access their pain and suffering damages following a settlement agreement with a third party would not know to take care to structure their settlement awards accordingly. Specifically, if injured workers were aware of this risk, they would structure their third party settlements to ensure that the medical benefits and lost wages portion of their settlement was sufficient to reimburse L & I entirely, and, thus, preserve the portion compensating them for pain and suffering for the purpose intended.

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159 Wn.App. 437, 245 P.3d 253 (2011) found that the Department did not require allocation and its own forms didn't require allocation. CABR 163; CABR 281.

<sup>8</sup> The Department's Worksheet is still the same even after the Washington Supreme Court affirmed *Tobin*. Appendix 1.

*Tobin*, 187 P.3d at 786.<sup>9</sup>

This statement from the Court is very interesting. Obviously *Gersema* had been decided some time before. Yet the Court nevertheless explained that injured workers had not been adequately made aware by the Department and the third-party recovery statute that their general damages were subject to the Department's lien if they did not allocate. The Washington Supreme Court confirmed the third-party recovery statute was ambiguous (if not violative of substantive due process).

*Mills* explained the parties are free to allocate damages between themselves in settlements.<sup>10</sup> That being said, it's difficult to understand why parties would do that that unless there was some reason to do so. Here, Davis and the UM carrier had no reason to allocate aside from the possibility of reducing the Department's lien, but even then it wouldn't have made any difference because the Department was under no obligation to respect such an arrangement—it would have been wholly subject to the Department's whim (and we know from Mr. Tobin's case it wasn't recognizing allocations in settlements).

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<sup>9</sup> Brief of Appellant at 12-13, *supra*.

<sup>10</sup> *Mills* explained this was to avoid a "bureaucratic responsibility." But it's difficult to understand why this responsibility should be foisted upon settling parties who have no other reason to allocate. There's a public policy in favor of settlement. Agreeing on a number—not engaging in artificial discussions about allocation—is what settles personal injury cases (and frees busy trial judges from the bureaucratic responsibility of hearing them).

5. *Gersema is Inconsistent with Tobin*

*Tobin* unequivocally held what *Gersema* did not: RCW 51.24.060 does not permit the Department to include pain and suffering damages in determining its lien (“...we hold that the Department lacks authority under the statute to include *Tobin*’s pain and suffering damages in its distribution calculation, and must reimburse *Tobin* for any funds wrongfully withheld...”). The Department is not allowed to exceed its statutory authority by relying upon *Gersema*.<sup>11</sup>

Assuming *arguendo* that the Department is correct that injured workers’ third party recoveries obtained after *Tobin* must allocate, it wouldn’t be fair or reasonable to impose this requirement on workers who settled their claims before *Tobin* conclusively determined that general damages cannot be included in the Department’s reimbursement calculus (and arguably that the Department is obliged to respect allocations to general damages in settlement agreements).<sup>12</sup>

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<sup>11</sup> Any attempt by an agency to exercise authority outside its statutory grant is ultra vires and void. *McGuire v. State*, 58 Wn. App. 195, 199, 791 P.2d 929 (1990), cert. denied, 499 U.S. 906 (1991). An agency does not have discretion to determine the scope or extent of its own authority. *In re Elec. Lightwave, Inc.*, 123 Wn.2d 530, 540, 869 P.2d 1045 (1994).

<sup>12</sup> The trial court judge in *Davis*, 159 Wn.App. 437 noted that claimants like *Davis* were in a “twilight zone.” CABR 162-164.

B. Allocation at the Administrative Level is Feasible

Even if allocation is not required the Department throws up its hands and argues it should not have to repay anything to Davis because allocation is unworkable (even though, as the Department is fond of saying, it is the State's largest insurer<sup>13</sup>).

In *Hi-Way Fuel Co. v. Estate of Allyn*, 128 Wn. App. 351, 115 P.3d 1031 (2005) the Department made an interesting and inventive (albeit unsuccessful) argument. *Allyn* involved a partial recovery of a judgment in a wrongful death case. The judgment apportioned loss of consortium but the claimant did not allocate in the partial recovery. The Department argued first that the failure to allocate was fatal; the Court rejected that argument since the judgment allocated. The Department next argued that a deduction for loss of consortium damages which were recovered should be proportional to the judgment rather than being fully deducted "off the top" of the partial recovery. The Court noted (as the plaintiff pointed out) that the Department "now seeks to do precisely what it claimed it could not and need not do in *Mills*." *Allyn*, 128 Wn. App. 361.

Certainly some variant of that inventive approach can be applied here so the Department isn't recovering more from Davis than *Tobin* permits. (Apparently the Department is only interested in creative

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<sup>13</sup> The Court can take judicial notice that the Department has an operating budget for 2009-2011 exceeding \$600 million.

solutions where it stands to gain at the injured worker's expense.)

There are at least three methods that would have easily permitted allocation here at the Department level such that the third-party distribution order could be harmonized with *Tobin* and even *Gersema*.<sup>14</sup>

First, Davis' demand to her employer's UM carrier (standing in the shoes of the tortfeasor) clearly apportioned her damages. A reasonable approach would be to simply prorate the gross amount paid in settlement in proportion to the amounts sought in the demand. (Here, Davis' special damages would be roughly twenty-eight percent of the total paid in settlement.)

Second, the Department prepared a ledger itemizing each dollar it paid in connection with Davis' workers' compensation claim. The ledger even lists the amount of medical bills actually charged (the amounts the plaintiff is entitled to recover from the third-party tortfeasor under the collateral source rule), as well as the amounts actually paid. The difference between (a) Davis' medical bills and lost compensation and (b) the \$75,000 gross settlement should be allocated to her general damages.

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<sup>14</sup> The Court in *Gersema* emphasized apportionment wasn't feasible on the record before it. *Gersema*, 127 Wn. App. at 695 ("it is impossible to determine from the record..."), 698 ("on the record before us..."), 699 fn. 21 ("on the record here..."). The implication from the words the Court chose is that there could be cases where the record was adequate to permit apportionment. As explained *infra* the record in this case is sufficiently developed to reasonably allocate Davis' recovery even in the absence of an allocating settlement agreement.

(This produces quite a good result for the Department since it assumes the UM carrier paid in full all medical bills (which in court have to be proved reasonable and necessary with medical testimony) and lost compensation.)

Finally, the Department could simply conduct a form of a reasonableness hearing. In fact, such an approach was suggested by one of the members of the Board in *In re Brian I. Shirley, De 'd.*, 2009 WL 2949355 (Wash.Bd.Ind.Ins.App.) (Member Fennerty, Jr. dissenting).<sup>15</sup> Certainly the Department and the Board have adjudicatory authority and procedures for doing so. The Board's findings and decision would be prima facie correct and subject to Superior Court review as with all other Board determinations. RCW 51.52.115.

None of this involves the Department in speculating about how the parties did or didn't intend to allocate settlements—discerning the intent of the parties is not the relevant inquiry. The issue to be decided is simply how make a reasonable allocation to general damages. It begs credulity to assert this is beyond the Department and the Board's institutional capabilities. *Mills* didn't say the Department was incapable of allocation at the administrative level, only that there was a policy reason for it not to

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<sup>15</sup> In *Whittaker v. Hardin*, 32 S.W.3d 497 (Ky. 2000) the Kentucky Supreme Court held that an injured worker whose settlement was not apportioned was entitled to have an independent and impartial trier of fact—an administrative law judge—allocate elements of damages recovered in the settlement. *Id.* at 498-99. See also *Gutierrez v. City of Albuquerque*, 125 N.M. 643, 964 P.2d 807 (N.M.1998) (allocation issues decided by worker's compensation judge).

do so (“the legislative purpose of protecting the state fund”; *Mills*, 72 Wn. App. at 579). But that policy reason is much less compelling now that the Washington Supreme Court has confirmed that the Department has been taking too much money from injured workers’ settlements (even from those who attempted to allocate like Mr. Tobin). Certainly it does not outweigh the public policies favoring full compensation of tort victims and the efficient settlement of their third-party claims.

## VII. CONCLUSION

The Department received more than it was owed. Applying *Tobin* will result in the Department disgorging the overpayment and retaining only what it was entitled to.

There was no reason for Davis to allocate her settlement at the time it was made. Prior to *Tobin* the Department was including general damages in its reimbursement calculus. The Department refused to recognize even allocated settlements. The Court of Appeals said the statute violated due process and the Supreme Court said it was ambiguous.

Allocation is feasible. A settlement demand, the Department’s own payment ledger or a reasonableness hearing can all be used to arrive at an appropriate allocation between special and general damages.

The Court should reverse the trial court's judgment and remand this case for the recalculation of the Department's lien to exclude general damages pursuant to *Tobin*.

### **VIII. REQUEST FOR ATTORNEY FEES AND EXPENSES**

RAP 18.1 provides that fees or expenses must be requested in accordance with the rule where applicable law grants a party a right to recover such fees or expenses.

RCW 51.52.130(1) provides in pertinent part as follows:

(1) If, on appeal to the superior or appellate court from the decision and order of the board, said decision and order is reversed or modified and additional relief is granted to a worker or beneficiary, or in cases where a party other than the worker or beneficiary is the appealing party and the worker's or beneficiary's right to relief is sustained, a reasonable fee for the services of the worker's or beneficiary's attorney shall be fixed by the court. In fixing the fee the court shall take into consideration the fee or fees, if any, fixed by the director and the board for such attorney's services before the department and the board. If the court finds that the fee fixed by the director or by the board is inadequate for services performed before the department or board, or if the director or the board has fixed no fee for such services, then the court shall fix a fee for the attorney's services before the department, or the board, as the case may be, in addition to the fee fixed for the services in the court....

This includes fees incurred at the trial court and appellate court levels. *Allyn*, 128 Wn. App. at 363-64.

Davis requests that reasonable fees and costs be awarded against the Department in an amount to be determined if the Board's decision is reversed or modified.

DATED this 14<sup>th</sup> day of April, 2011.

Attorneys for Appellant



By: \_\_\_\_\_

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# ***APPENDIX “1”***



# THIRD PARTY RECOVERY WORKSHEET

Adjudicator	Today's date	Claimant's name
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Claim no.
Benefits Paid <span style="float:right; border: 1px solid black; display: inline-block; width: 100px; height: 15px;"></span>

## I. CALCULATION OF DISTRIBUTION SHARES

\$  Gross recovery

\$ \_\_\_\_\_ Less attorney's fee[s] \$  costs \$

\$ \_\_\_\_\_ Net recovery

\$ \_\_\_\_\_ Less claimant's 25% of net recovery

\$ \_\_\_\_\_ Balance

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

$$\frac{\$ \text{ Benefits Paid}}{\$ \text{ Gross Recovery}} = \text{_____} \% (\text{Max. } 100\%) \times \text{_____ Fees+costs} = \text{_____}$$

### DLI/SIE Reimbursement Share:

$$\$ \text{ Benefits Paid} - \text{_____ DLI/SIE Prop. Share Fee} + \text{Costs} = \text{_____}$$

\$ \_\_\_\_\_ Less DLI/SIE reimbursement share

\$ \_\_\_\_\_ Remaining Balance

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

$$\frac{\$ \text{ Remaining Balance}}{\$ \text{ Gross Recovery}} = \text{_____} \% \times \text{_____ Fees+costs} = \text{_____}$$

\$ \_\_\_\_\_ Less DLI/SIE Proportionate Share Of Fee And Costs on Remaining Balance

\$ \_\_\_\_\_ Remaining Balance Subject to Offset

## II. DISTRIBUTION SHARES

\$ \_\_\_\_\_ Attorney (fees + costs)

\$ \_\_\_\_\_ DLI/SIE (reimbursement share or balance [whichever is less])

\$ \_\_\_\_\_ Claimant (\$ \_\_\_\_\_ + \$ \_\_\_\_\_ + \$ \_\_\_\_\_ )

25%

DLI/SIE  
Proportionate share  
of fee and costs on  
Remaining Balance

Offset

\$ \_\_\_\_\_ Gross recovery

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No. 64809-8 I

COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON

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SHARON A. DAVIS,

Appellant,

vs.

THE WASHINGTON STATE DEPARTMENT OF  
LABOR AND INDUSTRIES,

Respondent.

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CERTIFICATE OF SERVICE

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Pursuant to the laws of the State of Washington, the undersigned certifies under penalty of perjury of the laws of the State of Washington that a true and correct copy of the foregoing *Brief of Appellant* was hand-delivered on the 2<sup>nd</sup> day of May, 2011, to:

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By:   
\_\_\_\_\_  
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