

APPENDIX⁴

Chart 1:
Workers' compensation only
(no tort recovery)

| | |
|----------------------------------------------------------------------------------|---------------------|
| Past workers' compensation benefits received ⁵ | \$80,501.40 |
| Net present value of expected future workers' compensation benefits ⁶ | \$562,732.00 |
| NET TO TOBIN | \$643,233.40 |

Chart 2:
Tort recovery only

| | |
|------------------------------------------------------------|-----------------------|
| Noneconomic damages to Tobin ⁷ | \$793,083.16 |
| Economic damages to Tobin ⁸ | \$606,916.84 |
| GROSS TO TOBIN | \$1,400,000.00 |
| Tobin's liability for attorney fees and costs ⁹ | \$472,262.44 |
| NET TO TOBIN | \$927,737.56 |

⁴My calculations are consistent with L&I's. See Board Record (BR) at 68, 70-77; Pet. for Review, App. D. And Tobin does not challenge L&I's numbers.

⁵See BR at 71.

⁶See *id.*

⁷See BR at 70.

⁸See *id.*

⁹See BR at 71.

Tobin v. Dep't of Labor & Indus., No. 81946-7
 Fairhurst, J., dissenting

Chart 3: Dissent's interpretation of IIA's third party recovery statute

| | To Tobin | Attorney Fees & Costs | To L&I |
|------------------------------------------------------------------------------------------------------------------|-----------------------|--------------------------|--------------------|
| <i>Before Distribution of Recovery</i> | | | |
| Workers' compensation benefits already paid by L&I to Tobin ¹⁰ | \$80,501.40 | | |
| <i>Distribution Plan - RCW 51.24.060(1)(a)-(d)</i> | | | |
| Damages classifiable as "recovery" RCW 51.24.030(5) ¹¹ | \$1,400,000.00 | | |
| Costs & attorney fees RCW 51.24.060(1)(a) ¹² | | \$472,262.44 | |
| Claimant's 25% share RCW 51.24.060(1)(b) ¹³ | \$231,934.39 | | |
| L&I's lien for benefits already paid | \$80,501.40 | | |
| L&I's proportionate share of costs & attorney fees - RCW 51.24.060(1)(c) ¹⁴ | \$27,155.09 | | |
| Reimbursement to L&I for benefits paid - RCW 51.24.060(1)(c) ¹⁵ | | | \$53,346.31 |
| The "remaining balance" distribution to Tobin - RCW 51.24.060(1)(d) ¹⁶ | \$642,456.86 | | |
| <i>Benefits & Offset After Distribution - RCW 51.24.060(1)(e)</i> | | | |
| The "remaining balance" amount RCW 51.24.060(1)(d) ¹⁷ | \$642,456.86 | | |
| Reduction of offset by prorated share of fees & costs - RCW 51.24.060(1)(e) ¹⁸ | \$216,721.23 | | |
| Net offset - RCW 51.24.060(1)(e) ¹⁹ | \$425,735.63 | | |
| Future pension benefits (L&I's estimation of net present value) ²⁰ | \$562,732.00 | | |
| Future pension benefits to be paid after offset exceeded (net present value) - RCW 51.24.060(1)(e) ²¹ | \$136,996.37 | | |
| TOTAL | \$1,091,889.02 | \$472,262.44 | \$53,346.31 |

¹⁰See BR at 68, 71.

¹¹See *id.*

¹²See *id.*

¹³See BR at 68.

¹⁴See *id.*

¹⁵See *id.*

¹⁶See *id.*

¹⁷See *id.*

¹⁸See *id.*

¹⁹See BR at 68, 71.

²⁰See BR at 71.

²¹This figure is the difference between L&I's expected future liability for pension benefits and the offset provided in RCW 51.24.060(1)(e).

Chart 4: Majority's interpretation of IIA's third party recovery statute

| | To Tobin | Attorney Fees & Costs | To L&I |
|------------------------------------------------------------------------------------------------------------------|-----------------------|--------------------------|--------------------|
| <i>Before Distribution of Recovery</i> | | | |
| Workers' compensation benefits already paid by L&I to Tobin ²² | \$80,501.40 | | |
| Noneconomic damages ²³ | \$793,083.16 | \$267,550.45 | \$525,532.71 |
| <i>Distribution Plan - RCW 51.24.060(1)(a)-(d)</i> | | | |
| Damages classifiable as "recovery" RCW 51.24.030(5) ²⁴ | \$606,916.84 | | |
| Costs & attorney fees RCW 51.24.060(1)(a) ²⁵ | | \$204,711.99 | |
| Claimant's 25% share RCW 51.24.060(1)(b) ²⁶ | \$100,551.21 | | |
| L&I's lien for benefits already paid | \$80,501.40 | | |
| L&I's proportionate share of costs & attorney fees - RCW 51.24.060(1)(c) ²⁷ | \$27,152.98 | | |
| Reimbursement to L&I for benefits paid - RCW 51.24.060(1)(c) ²⁸ | | | \$53,348.42 |
| The "remaining balance" distribution to Tobin - RCW 51.24.060(1)(d) ²⁹ | \$248,305.22 | | |
| <i>Benefits & Offset After Distribution - RCW 51.24.060(1)(e)</i> | | | |
| The "remaining balance" amount RCW 51.24.060(1)(d) ³⁰ | \$248,305.22 | | |
| Reduction of offset by prorated share of fees & costs - RCW 51.24.060(1)(e) ³¹ | \$83,752.92 | | |
| Net offset - RCW 51.24.060(1)(e) ³² | \$164,552.30 | | |
| Future pension benefits (L&I's estimation of net present value) ³³ | \$562,732.00 | | |
| Future pension benefits to be paid after offset exceeded (net present value) - RCW 51.24.060(1)(e) ³⁴ | \$398,179.70 | | |
| TOTAL | \$1,353,070.24 | \$472,262.44 | \$53,348.42 |

²²See BR at 68, 71.

²³See BR at 70; Pet. for Review, App. D.

²⁴See *id.*

²⁵See Pet. for Review, App. D.

²⁶See *id.*

²⁷See *id.*

²⁸See *id.*

²⁹See *id.*

³⁰See *id.*

³¹See *id.*

³²See *id.*

³³See BR at 71.

³⁴This figure is the difference between L&I's expected future liability for pension benefits and the offset provided in RCW 51.24.060(1)(e).