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43187-4-II
NO. 86358-0

**SUPREME COURT OF THE
STATE OF WASHINGTON**

ROBERT LONG, DEC'D, & AILEEN LONG,

Appellant,

v.

WASHINGTON STATE DEPARTMENT OF
LABOR AND INDUSTRIES,

Respondent.

APPELLANT'S BRIEF

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ASSIGNMENT OF ERRORS & ISSUES

ASSIGNMENT OF ERRORS

1. The Superior Court erred in denying Mrs. Long's request to reverse the Department of Labor and Industries' decision and order denying all entitlement to benefits.
2. The Superior Court erred in ruling RCW 51.12.102, as interpreted by *Gorman v. Garlock*, 155 Wn.2d 198, 118 P.3d 311 (2005), does not conflict with *Dep't of Labor & Indus. v. Fankhauser*, 121 Wn.2d 304, 849 P.2d 1209 (1993) and thereby precludes benefits under the Industrial Insurance Act.

ISSUES PERTAINING TO ASSIGNMENT OF ERRORS

1. Is Mrs. Long precluded from obtaining Washington State workers' compensation benefits even though her husband's last injurious exposure to asbestos occurred while covered by the Washington State Industrial Insurance Act because of remote exposure to asbestos while working for an employer covered under the Longshore and Harbor Workers' Compensation Act?
2. May the Department deny a claim under RCW 51.12.100 when it has not fulfilled its obligation under RCW 51.12.102(4)(a) to assist the claimant in filing a federal claim under the Longshore and Harbor Workers' Compensation Act?

STATEMENT OF THE CASE

Mrs. Aileen Long brought this suit in order to obtain pension benefits owed to her as the widow of Mr. Robert Long. Washington State's Industrial Insurance Act (IIA) provides benefits to spouses of Washington workers who die as a result of occupational injuries and diseases. *See* RCW 51.32.010 and RCW 51.32.050. Mrs. Long is entitled to these benefits

because her husband died from asbestos-induced mesothelioma after decades of being exposed to asbestos while at work. Certified Appeal Board Record at 81 (hereinafter “CABR”). Mr. Long’s last exposure to asbestos occurred in the course of his employment covered under Washington State’s Industrial Insurance Act, Title 51 RCW. *Id.* Although Mr. Long also suffered exposure to asbestos while covered under the Federal Longshore and Harbor Workers’ Compensation Act (LHWCA), 33 U.S.C. 901 et seq., this exposure occurred only briefly and early in his career (1942–1945). *Id.* This dual-covered asbestos exposure is where the controversy in this case arises.

Citing this Court’s decision in *Gorman v. Garlock*, 155 Wn.2d 198, 118 P.3d 311 (2005), the Department denied Mrs. Long’s claim for benefits:

In the case of *Gorman v. Garlock*, the courts indicated that once a worker is exposed in maritime employment, he becomes a maritime worker. The only role our department can play in these cases will be to provide temporary benefits to the worker or spouse while they are awaiting the allowance of a Longshore and Harborworkers (sic) Act or Jones Act claim.

It appears in Mr. Longs (sic) case that a Longshore claim was not filed as they were not aware of the ability to do so. I would assume his time frames for filing have now expired, or he accepted third party settlement prior to filing, thus barring entitlement. As it does not appear a maritime claim would be allowable, we are unable to consider temporary benefits.

CABR at 85. After waiting a year, the Department denied her request based on the fact Mr. Long’s career began in employment covered by the

LHWCA. During that year, the Department did not provide benefits pursuant to RCW 51.12.102 or assisted in the filing of a LHWCA claim.

Mrs. Long appealed this decision to the Board of Industrial Insurance Appeals, which affirmed the Department's order denying benefits. CABR at 1, 37–41. Mrs. Long then appealed to the Superior Court for Grays Harbor County. Agreeing with the Department, the superior court ruled RCW 51.12.102, as interpreted in *Gorman*, precludes *all* IIA benefits and requires Mrs. Long to seek recovery under the LHWCA. Mrs. Long now appeals directly to this Court and requests the Court to clarify *Gorman* and grant Mrs. Long the benefits due to her under the Industrial Insurance Act.

SUMMARY OF THE ARGUMENT

The Department violated the plain language of RCW 51.12.102, which provides mandatory benefits if a worker suffered any exposure to asbestos while covered by the IIA. The Department further violated the statute's text by ignoring its own rule for determining the liable insurer in occupational disease cases: the last injurious exposure rule. Additionally, this Court's interpretation of RCW 51.12.102 in *Gorman v. Garlock* is not dispositive because (1) *Gorman* was not a workers' compensation case, (2) this Court did not properly have the present issue before it, and (3) this

Court was not properly briefed on the prior history and interpretation of RCW 51.12.102.

The Legislature enacted RCW 51.12.102 to provide benefits in any case where jurisdictional liability is at issue and requires the Department to resolve jurisdictional issues through the last injurious exposure rule. Looking to the cases defining the last injurious exposure rule, this Court will further find that prior to *Gorman*, the Department and the Board of Industrial Insurance Appeals allowed claims like Mrs. Long's and the Legislature acquiesced in this interpretation.

Further, the Department violated RCW 51.12.102(4)'s requirements to assist Mrs. Long in filing a Longshore claim and in refusing to pay benefits until another jurisdiction takes up the bill. Finally, public policy requires allowance of Mrs. Long's claim to prevent the Department from shifting onto taxpayers the expense of decades of asbestos use by private Washington State employers; unless the Superior Court's decision is reversed, taxpayers will have to assume the burden of paying for toxic asbestos exposure through Medicare, Medicaid, Social Security, and other social welfare programs.

THE STANDARD OF REVIEW IS DE NOVO

Appellate courts review questions of law *de novo*. Statutory interpretation is a question of law. *Cockle v. Dep't of Labor & Indus.*, 142

Wn.2d 801, 813, 16 P.3d 583 (2001). Additionally, no genuine issues of material fact exist and the only issue for review is a question of law; accordingly, the standard of review is *de novo*. *Tallerday v. Delong*, 68 Wn. App. 351, 355, 842 P.2d 1023, 1025 (1993); *Clauson v. Dep't of Labor & Indus.*, 130 Wn.2d 580, 583, 925 P.2d 624 (1996). Finally, when the record consists entirely of written material, as it does here, the appellate court stands in the same position as the trial court and reviews the record *de novo*. *Truly v. Heuft*, 138 Wn. App. 913, 916, 158 P.3d 1276 (2007).

Since the standard of review is *de novo*, this Court is not bound by the Superior Court's holdings and conclusions opposing Mrs. Long. Because Mrs. Long is claiming widow's benefits under Washington's workers' compensation statute, the statutory presumption favoring the claimant still binds this Court. RCW 51.12.010; *Harry v. Buse Timber & Sales, Inc.*, 166 Wn.2d 1, 8, 201 P.3d 1011 (2009) ("Any doubts and ambiguities in the language of the IIA must be resolved in favor of the injured worker . . ."). As such, this Court should review the issues in this case anew and resolve all "doubts and ambiguities" in Mrs. Long's favor.

INTRODUCTION

Asbestos is an environmental toxin that, because of its sound insulating and heat resistant qualities, has numerous industrial uses. As asbestos has been used both in maritime and non-maritime industries, it is

possible for a worker to walk between coverage under Washington State's Industrial Insurance Act (IIA) and the Federal Longshore and Harbor Workers' Compensation Act (LHWCA).

In order to establish which jurisdiction should correctly cover Washington State workers, the Legislature enacted RCW 51.12.102, which provides immediate benefits to workers regardless of whether they may have a right to claim benefits under a Federal jurisdiction, such as the LHWCA. This statute eliminated RCW 51.12.100's bar against coverage for Washington workers covered under a maritime statute. Instead, it gave workers immediate benefits under the Industrial Insurance Act, assistance in the filing of any Federal claim and the Department the ability to recoup benefits paid once other benefits commenced.

In 2005, this Court interpreted RCW 51.12.102 in a tort case where two plaintiffs attempted to sue their LHWCA-covered employer under Washington's tort law for intentional infliction of harm. *Gorman v. Garlock*, 155 Wn.2d 198, 118 P.3d 311 (2005). In deciding *Gorman v. Garlock*, the Court looked at RCW 51.12.102, even though the plaintiffs were not seeking workers' compensation benefits, and interpreted the statute so as to find the plaintiffs could not sue a LHWCA-covered employer under Washington tort law. However, the Department of Labor & Industries has taken language out of context from that tort law decision,

and instead has been using the decision to outright deny workers and their families coverage under Washington's Industrial Insurance Act without conforming to the statutory provisions meant to aid these workers in dealing with the jurisdictional minefield surrounding asbestos exposure at work.

ARGUMENT

A. The plain text of RCW 51.12.102 requires the Department to pay Mrs. Long benefits until another workers' compensation system allows a claim for benefits.

1. The Department erred by failing to adhere to the language of RCW 51.12.102 in adjudicating Mrs. Long's claim.

The plain text of RCW 51.12.102 requires the Department to pay benefits until another system initiates benefits; afterwards, the Department may seek reimbursement for the benefits paid while jurisdiction was being settled. RCW 51.12.102(1) in relevant part reads:

The department *shall* furnish the benefits provided under this title to any worker or beneficiary who may have a right or claim for benefits under the maritime laws of the United States resulting from an asbestos-related disease if . . . the worker's employment history has a prima facie indicia of injurious exposure to asbestos fibers while employed in the state of Washington in employment covered under this title. The department shall render a decision as to the liable insurer and shall continue to pay benefits until the liable insurer initiates payments or benefits are otherwise properly terminated under this title.

RCW 51.12.102(1) (emphasis added). In Washington State, “[s]tatutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous.” *Davis v. Dep’t of Licensing*, 137 Wn.2d 957, 963, 977 P.2d 554 (1999) (quoting *Stone v. Chelan County Sheriff’s Dep’t*, 110 Wn.2d 806, 810, 756 P.2d 736 (1988)).

As the legislature plainly worded it, RCW 51.12.102 requires the Department to provide workers’ compensation benefits if the claimant shows some asbestos exposure while working for an IIA-covered employer. The Department must pay those benefits even if another workers’ compensation statute might also entitle the claimant to additional benefits in its jurisdiction.

In the present case, the Department did not furnish benefits to Mrs. Long despite the statute requiring payment until (1) a Longshore claim is allowed for benefits and (2) the Longshore employer initiates payments. Accordingly, the Department’s actions in this case plainly violate the mandatory provisions of RCW 51.32.102. This Court must reverse, and require the Department to follow the black letter of the law by paying Mrs. Long benefits until another insurer pays benefits. To allow otherwise, would be to render portions of RCW 51.12.102 superfluous.

2. The Department further erred in its determination of the liable insurer under the process mandated by RCW 51.12.102.

The Department's application of RCW 51.12.102 in this case violates not only the statute's mandatory payment provisions, but also the provision requiring it to "render a decision as to the liable insurer." The Department's determination is in error because it rests on a false assumption: an assumption that a LHWCA-covered employer is responsible for the present claim. If the Department had followed the statutory procedure laid out in RCW 51.12.102 it would have found Washington's Industrial Insurance Act is the liable insurer in this case.

Using its own regulations, the Department identifies the liable insurer according to the injurious exposure rule: "[t]he liable insurer in occupational disease cases is the insurer on risk at the time of the last injurious exposure." WAC 296-14-350(1). When Washington adopted the last responsible employer rule, it did so to avoid the proof and the assignment of responsibility problems. *Weyerhauser v. Tri*, 171 Wn.2d 128, 134-35, 814 P.2d 629 (1991). In so doing the courts found a worker could avoid the issues associated with going back in time to prove what portions of an injury occurred because of each individual exposure. *Id.*

Under RCW 51.12.102, the Department is required to determine the liable insurer. As WAC 296-14-350(1) plainly states, determination is

governed by the last injurious exposure rule. Because Mr. Long's last injurious exposure to asbestos occurred while working for a state-fund employer under Washington's Industrial Insurance Act, the Department of Labor and Industries is liable for the entire claim. Accordingly, Mrs. Long is entitled to full widow's benefits under RCW 51.32.050.

B. *Gorman* does not apply because it was not a workers' compensation case; the proper authority is *Fankhauser*.

1. The *Gorman* discussion of RCW 51.12.102 is dicta as it does not deal with a workers' compensation claim.

The Department's use of *Gorman* to support its refusal to pay benefits is incorrect. *Gorman* has no bearing on this case as it only concerned an employee's attempt to bring a tort claim in state court against LHWCA-covered employers for intentional asbestos exposure. *Gorman*, 155 Wn.2d at 206–208. At no point in *Gorman* did either plaintiff make a claim for State or Federal workers' compensation benefits; instead, the plaintiffs tried to shoehorn Federally-covered employers under Washington State tort law. *Id.* In contrast, Mrs. Long is not seeking a third party tort claim—she is making a claim for statutorily mandated workers' compensation benefits.

The Court's discussion of RCW 51.12.101 is dicta because the Supreme Court did not have before it the foregoing issue of a claim for state workers' compensation benefits. RCW 51.12.102—the statute at

issue in the present appeal—deals exclusively with two items: (1) claims for Washington workers’ compensation benefits, and (2) the process for determining whether claims should be allowed when the claimant has exposure from both IIA-covered and non-covered employment. Because the court was not dealing with the issues of claim coverage in a workers’ compensation claim, the Court’s discussion of RCW 51.12.102 was not instrumental in its determination that a LHWCA-covered employer could not be sued in tort under Washington State law.

2. The *Fankhauser* analysis of the last injurious exposure rule conflicts with *Gorman*, but still controls because the *Gorman* court neither modified nor abrogated *Fankhauser*.

Fankhauser clearly adopts the rule exposure to asbestos at an IIA-covered employer means a worker is entitled to benefits under the IIA regardless of other uncovered exposures. *Fankhauser*, 121 Wn.2d at 306–07. In *Fankhauser*, the Department used *Weyerhaeuser Co. v. Tri*, 117 Wn.2d 128, 130, 814 P.2d 629 (1991), to deny workers’ compensation benefits because Fankhauser’s and Rudolph’s last injurious exposure did not occur at IIA-covered employment. *Id.* at 312. However, the Supreme Court held: “Weyerhaeuser does not address how to assign liability when one of the employers is not covered by the state workers’ compensation system.” *Id.* at 313. The *Fankhauser* Court then adopted the Ninth

Circuit's interpretation of the last injurious exposure rule and granted Fankhauser and Rudolph workers' compensation benefits. *Id.* (adopting *Todd Shipyards Corp. v. Black*, 717 F.2d 1280 (9th Cir. 1983), cert. denied, 466 U.S. 937 (1984)).

Fankhauser, following *Todd*, guarantees workers' compensation benefits to occupational disease claimants whose work history shows both IIA-covered and non-covered employment, so long as *some* exposure occurred at IIA-covered employment. *Id.* at 315. RCW 51.12.102 does not change this rule. Instead, it allows the state to prevent double recovery if there is coverage under a maritime statute by pursuing such benefits itself.

Examining the briefs and oral arguments from *Gorman*, it becomes clear the parties did not brief the Supreme Court on the last responsible employer issues present in *Fankhauser*. The parties spent the entire oral argument in *Gorman* discussing provisions of the LHWCA and whether *Gorman* could sue Federally-covered employers under State tort law. *See generally*, Oral Argument, *Gorman v. Garlock*, 155 Wn.2d 198 (No. 75606-6). The same applies to the five briefs submitted to the Supreme Court, where *Fankhauser* was only cited fleetingly and not specifically discussed. *See generally* Appellants' Br., *Gorman* (No. 75606-6); Br. of Respondent; Appellants' Reply Br.; Petitioner's Supplemental Br.;

Respondents' Supplemental Br. Had the Court fully considered *Fankhauser*, *Gorman* would not have found RCW 51.12.100 excluded benefits to all LHWCA-exposed workers.

Additionally, *stare decisis* limits the purported impact of *Gorman* on *Fankhauser*. In deciding *Gorman*, the Supreme Court recognized the Ninth Circuit's holding making the last LHWCA-covered employer responsible for all benefits regardless of subsequent non-covered exposure in *Todd Shipyards Corp. v. Black*, 717 F.2d 1280, 1292 (9th Cir. 1983); *Gorman*, 155 Wn.2d at 217. However, the *Gorman* Court failed to recognize Washington State had already adopted the same rule for Washington State workers' compensation in *Fankhauser*. *Fankhauser*, 121 Wn.2d at 314. In so doing, the *Gorman* decision ignored *stare decisis*.

The doctrine of *stare decisis* "requires a clear showing that an established rule is incorrect and harmful before it is abandoned." *Riehl v. Foodmaker, Inc.*, 152 Wn.2d 139, 147, 94 P.3d 930 (2004), quoting *In re: Rights to Waters of Stranger Creek*, 77 Wn.2d 649, 653, 466 P.2d 508 (1970). Where the Court expresses a clear rule of law, like in *Fankhauser*, the Court should not overrule it *sub silentio*. *State v. Studd*, 137 Wn.2d 533, 548, 973 P.2d 1049 (1999). The Supreme Court in *Gorman* made no

such finding overruling *Fankhauser*; therefore, it would be improper for *Gorman* to have modified *Fankhauser*.

3. The interpretation of RCW 51.12.100 in *Gorman* fails to recognize there is distinct coverage under the IIA for benefits payable because of Washington State exposures.

Before *Gorman*, no court had held RCW 51.12.100 excluded a worker covered under the IIA merely because of a different exposure covered under a different workers' compensation statute. In fact, the case law specifically allowed coverage so long as an IIA-covered injury occurred. See *Fankhauser*, 121 Wn.2d 304, 849 P.2d 1209 (1993); *In re John L. Robinson*, BIIA Dec., 91 0741 (1992)(Significant Decision).

RCW 51.12.100 was not meant to cover situations where a worker is injured at an employment covered exclusively under the IIA and therefore has a distinct cause of action under Washington's workers' compensation statute. Separate exposure by employers covered under the LHWCA does not impact this Washington State cause of action for those Washington State injuries. For example, a worker who suffers an industrial knee injury while covered under the LHWCA can still have a claim for a later knee injury while covered under Washington's IIA. There is no difference when a worker is exposed to asbestos at two different employers. It is only through the specific provisions of RCW

51.12.102 that Washington draws any distinction between multiple asbestos exposures and the multiple knee injury example.

C. The Legislature enacted RCW 51.12.102 to provide benefits to claimants, and not to exclude them from coverage.

The Legislature's purpose in enacting RCW 51.12.102 was to provide relief to workers during the months and even years it takes to settle jurisdictional disputes in cases where the worker has multi-jurisdictional exposure. Nowhere in the legislative history of this statute, or the Department's own historical pre-*Gorman* policies, did either body express intent to force workers into Federal compensation whenever possible. As such, this Court should not permit the Department to imply such intent where none exists.

Neither the Legislature nor the Department at the time of passage had contemplated forced Federal compensation or limiting benefits in situations like Mrs. Long's. In 1988, after the Legislature enacted SHB 1592, (codified as RCW 51.12.102) the Department would have allowed Mrs. Long's claim. The Department would have allowed the claim because Mr. Long's last injurious exposure occurred under an IIA-insured employer. *See* CABR at 92 (Asbestos Related Disease: Report to House Commerce and Labor Committee, Dep't of Labor and Indus. at 2 (September 12, 1987)). On page two of that report, the Department

plainly states the last injurious exposure rule governs, even if evidence exists of Federal Longshore exposure. *Id.* (“When there are multiple employers including Self-Insured and/or Longshore and Harbor Workers coverage a determination must be made relative to the last injurious exposure.”). This report, made to the Legislature at the time it was considering SHB 1592, shows clear intent to decide all multi-jurisdictional exposure cases (not just intra-jurisdictional cases) using the last injurious exposure rule.

In 1993, the Legislature reenacted RCW 51.12.102 to prevent it from sun-setting. At that time, the Department clarified its procedure in an updated report to the Legislature regarding RCW 51.12.102. In that follow-up report, the Department laid out the procedure they had used since § 102’s enactment to determine jurisdiction:

If the last injurious exposure to asbestos fibers took place under employment covered by Title 51 RCW . . . the claim is accepted under the State Fund or by a Self Insured employer. If the last exposure . . . was with an employer covered under a federal program and there was prior Title 51 exposure . . . the claim is accepted for interim benefits under the Asbestos Fund.

Asbestos-Related Disease: A Report to the Commerce and Labor Committee, Dep’t of Labor and Indus. at 4 (1993) (attached as Appendix A). Nowhere in that procedure does the Department automatically preclude IIA benefits when evidence exists of Federally-covered exposure.

Instead, the Department, consistent with its 1987 report, only precludes IIA benefits if the last exposure *in time* occurred at federally-covered employment. By the Department's own procedure, Mrs. Long's claim should have been allowed without question because Mr. Long's last injurious exposure occurred at IIA-covered employment. Because the Legislature and the Department nowhere contemplated temporary benefits or forced Federal compensation, the Department should not be allowed to now read those provisions into the statute.

D. The last injurious exposure rule requires the Department to pay benefits because Mr. Long's last exposure occurred while working for a state-fund covered employer under the IIA.

The Department must identify the liable insurer under the last injurious exposure rule. As discussed above, *Gorman* does not provide a proper basis for determining the liable insurer under RCW 51.12.102, but WAC 296-14-350 (codifying the last injurious exposure rule) does require the Department to defer to the last injurious exposure rule in making its decision. The last injurious exposure rule applies to all exposure regardless of other coverage. *See Fankhauser*, 121 Wn.2d at 316–317 (holding that the rule may not be used to deny IIA benefits). Indeed, the Board of Industrial Insurance Appeals' own decisions exemplify the pre-*Gorman* understanding of RCW 51.12.102 and the last exposure rule, and support granting benefits to Mrs. Long.

For example, the Board in *In re: John L. Robinson* held “[t]he ‘last injurious exposure’ rule is not to be used as a basis to deny benefits when exposure has occurred under different compensation systems such as in the present case involving the State of Washington and the Federal Longshore and Harbor Workers’ Compensation Act.” *In re John L. Robinson*, BIIA Dec., 91 0741 at 3 (1992) (Significant Decision) (attached as Appendix B), accord, *Fankhauser*, 121 Wn.2d 304, 849 P.2d 1209 (1993).

Robinson goes above and beyond the present case and affirms the last injurious exposure rule in all circumstances is one of inclusion and not exclusion. Similar to the present case, Mr. Robinson’s case was an occupational disease claim with possible coverage under both the IIA and the LHWCA. *Robinson* at 3. However, Mr. Robinson’s last exposure in time occurred while covered under the LHWCA, not the IIA like Mr. Long. *Id.* Despite the fact Mr. Robinson’s last exposure in time occurred while covered by the LHWCA, the Board held Mr. Robinson was entitled to regular benefits under the IIA or interim benefits under RCW 51.12.100(4). *Id.* at 3 and 6. Upon remand, the Department granted Mr. Robinson regular benefits—not interim benefits. *See* Notice of Decision dated March 11, 1993 and Order of Payment dated March 22, 1993 (attached as Appendix C).

This interpretation of the last injurious rule had been the law of the State of Washington since at least 1987 when RCW 51.12.102 was enacted, and continued to be the rule for nearly 15 years after *Robinson* affirmed that interpretation. As *Robinson* shows, until *Gorman*, there was no question whatsoever that workers in Mr. Long's situation were entitled to IIA benefits. Because Mr. Long's last injurious exposure to asbestos occurred while covered by the IIA, his claim is indisputably covered by the IIA, as held by *Robinson*.

Indeed, if *Robinson* had been wrongly decided in 1992, we would have to ask why the Legislature did not overturn it (and why the Department did not push to overturn) when the Legislature permanently reenacted and amended RCW 51.12.102 in 1993. Because the Legislature had the present issue of the last exposure rule as it relates to multi-jurisdictional exposure before it in 1988 and 1993, the Legislature silently acquiesced to the Department's policy in the 1987 and 1993 reports and silently acquiesced to the Board's holding in *Robinson*. See, e.g., *Safeco Insurance Companies v. Meyering*, 102 Wn.2d 385, 391, 687 P.2d 195 (1984) (Legislature's silent acquiescence to agency interpretation). Due to the Legislature's silent acquiescence, *Robinson* (whether the last exposure occurred under LHWCA-covered employment) requires the Department to accept Mrs. Long's claim.

E. Even if *Gorman* does control, the Department erred by not following its requirements.

Mrs. Long submitted a claim for widow's benefits to the Department of Labor and Industries on February 15, 2009. Claim for Pension, Dep't of Labor & Indus., dated February 15, 2009. The Department forced her to wait a year before it adjudicated her claim - the Department finally adjudicated and denied her claim on February 24, 2010, only after a third-party settlement had been reached.¹ CABR at 86. This year-long delay was unreasonable, and is compounded by the fact during that time, the Department was statutorily required to (1) pursue a LHWCA claim on Mrs. Long's behalf and (2) pay benefits while adjudication of the LHWCA claim was pending. RCW 51.12.102(4)(a) and (1), respectively; Wa. Const., art. 1, § 10 ("Justice in all cases shall be administered openly, and without unnecessary delay.").

Instead of paying benefits and pursuing an LHWCA claim, the Department cited *Gorman* as its authority for denying benefits, despite RCW 51.12.102's mandate: "the department *shall* furnish the benefits provided under this title." RCW 51.12.102 (emphasis added). This refusal to pay benefits represents a gross departure from *Olsen v. Dep't of Labor and*

¹ Under the LHWCA, an individual forfeits their right to LHWCA compensation upon third party settlement. 33 U.S.C. § 933(g)(2) ("[R]ights to compensation and medical benefits under this chapter shall be terminated [upon acceptance of third party settlement].").

Indus. and *Gorman v. Garlock*. In *Olsen*, the Court of Appeals held “Ms. Olsen was properly awarded temporary benefits until federal benefits were approved.” *Olsen v. Dep’t of Labor & Indus.*, 161 Wash.App. 443, 452, 250 P.3d 158 (2011). In *Gorman*, the Supreme Court held LHWCA-covered workers are excluded from the IIA, “except to the extent necessary to provide temporary, interim benefits as established in RCW 51.12.102.” *Gorman*, 155 Wn.2d at 219. As required by *Olsen* and *Gorman*, the Department has to pay Mrs. Long benefits until a LHWCA-covered insurer begins paying benefits. But, the Department has thus far refused to pay any benefits. Accordingly, the Court should grant Mrs. Long’s request for relief and remand with instructions to begin paying the benefits due under RCW 51.12.102.

Aside from failing to pay the mandatory benefits, the Department also failed to assist Mrs. Long in pursuing her rights, if any, under the LHWCA. The Department knew Mr. Long’s work history included both LHWCA and IIA covered employment. Rather than timely adjudicating Mrs. Long’s claim under the last exposure rule or instead helping her to file a LHWCA claim, the Department delayed until a third party settlement was reached. The Department’s practice of delaying claims until settlement is reached so it can consequently deny the claim represents an unconscionable departure from the Department’s duty to pay benefits under *Gorman*, and a

further departure from the Department's duty to injured workers as their trustee. *VanHess v. Dep't of Labor and Indus.*, 132 Wn.App. 304, 130 P.3d 902 (2006) (The Department, as trustee of the accident and medical aid funds, owes claimants "the highest degree of good faith, care, loyalty, and integrity" and must exercise its duties accordingly). The Department's extreme disregard for Mrs. Long's wellbeing, combined with its willful disregard of its statutory duties, is fundamentally wrong and requires prompt attention to spare other workers from the Department's misuse of *Gorman*.

F. Public policy requires the Department to pay benefits to Mrs. Long so Employers cannot shift the costs of occupational diseases onto taxpayers.

Without the benefits provided by RCW 51.12.102, these workers and their families are left without the "sure and certain relief" workers' compensation was meant to provide because no workers' compensation system will take responsibility. RCW 51.04.010. The Department's unprecedented practice of outright denial of valid claims stretches *Gorman* to the point it eliminates every benefit promised to Washington workers in RCW 51.12.102.

As evidenced by RCW 51.12.102's legislative history, the Legislature's purpose for enacting RCW 51.12.102 was to provide relief to workers while jurisdictional issues were being resolved. The Floor Synopsis

for SHB 1592 under a section titled “Why it is needed” explains the bill was needed because:

Asbestos related occupational disease claims often involve both maritime related employment and nonmaritime related employment. The determination of whether the state program or the federal program is responsible for the claim is often very complicated and time consuming, even though there is no question but what program or the other is responsible. Meanwhile, the worker is often totally disabled with no source of income and is running up large medical bills.

Floor Synopsis, SHB 1592 (1988) at 1–2 (attached as Appendix D). By refusing to pay any benefits simply because of remote exposure covered by the LHWCA, the Department defeats the Legislature’s very purpose for enacting RCW 51.12.102. This erroneous interpretation further harms not only Mrs. Long, but all other similarly situated claimants whose ability to subsist and survive is severely harmed by the Department’s refusal to pay any benefits. Identification of a number of these similarly situated claimants was provided in Mrs. Long’s Statement of Grounds for Direct Review at 13.

Disabled workers or their widowed spouses are left seeking benefits from Medicaid, Social Security, and other public assistance programs when benefits are delayed because of coverage issues. Rather than the workers and employers who pay into the workers’ compensation system bearing the cost of work-related illnesses, under the Department’s post-*Gorman* practice, it is the taxpayers who end up bearing the cost of work-

related diseases. Workers' compensation was created to avoid this exact situation. Without relief from this Court, the Department will continue to eviscerate public policy by allowing employers to transfer to taxpayers the cost of using asbestos in the workplace.

ATTORNEY FEES AND COSTS

Mrs. Long requests attorney fees and costs pursuant to RAP 18.1 and RCW 51.52.130:

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.

RCW 51.52.130. Further, an award for attorney fees under RCW 51.52.130 shall be calculated without regard to the worker's overall recovery on appeal, and shall not exclude fees for work done on unsuccessful claims. *Brand v. Dep't of Labor and Indus.*, 139 Wn.2d 659, 670, 989 P.2d 1111 (1999).

Mrs. Long respectfully requests, should this Court reverse or modify the order of the court below, an award of attorney fees and costs incurred both before this Court, and before the Superior Court, be specifically ordered.

CONCLUSION

As such, RCW 51.12.102 does not require workers exposed to asbestos under both state-covered and Longshore-covered employment to elect benefits under the Longshore & Harbor Workers' Compensation Act. Nothing in RCW 51.12.102 or its legislative history permits the Department to outright deny all benefits based on a minimal history of Longshore-covered exposure, and absolutely no statute or case law permits the Department to neglect its duty to assist workers in pursuing a claim for benefits. As evidenced by *Robinson*, prior to the Department misreading *Gorman*, Mrs. Long's claim and the claims of those similarly situated would have been allowed for benefits.

This Court should now reverse the Superior Court's decision, award Mrs. Long costs and attorney's fees, and remand the case with instructions to grant her benefits under the Washington State Industrial Insurance Act.

RESPECTFULLY SUBMITTED this 16th day of October, 2011.

THE LAW OFFICE OF WILLIAM D. HOCHBERG



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Attorneys for Appellant

CERTIFICATE OF MAILING

Robert Long, Dec'd, & Aileen Long v. Dep't of Labor & Indus.
Supreme Court No. 86358-0

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I certify that a copy of the document(s) attached hereto was mailed,
to the parties referenced above this 10th day of October, 2011.

BY: Mandy Petrus



A

State of Washington

Department of Labor and Industries

ASBESTOS-RELATED DISEASE

A Report to the

Commerce and Labor Committee

of the Washington State House of Representatives

and

Labor and Commerce Committee

of the Washington State Senate

January, 1993

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EXECUTIVE SUMMARY

Substitute House Bill 1592 was signed into law in 1988 and created a special fund for the payment of workers' compensation benefits to victims of asbestos-related diseases caught in a dispute between federal and state programs over which program is responsible for the claim. As a result of the legislative act, codified as RCW 51.12.102, benefits under the Industrial Insurance Act are to be paid from the Medical Aid Fund until the responsible federal program insurer begins making payment. The Department of Labor and Industries was also directed to report to the legislature at the beginning of the 1993 session regarding the use of these benefits and the cost of the program. Unless renewed, the payment of all jurisdictional (Asbestos Fund) benefits will cease on July 1, 1993.

Prior to the passage of SHB 1592, a variety of problems were identified from a study of the management of asbestos disease claims under Washington's program. In addition to questions over coverage, the process of determining whether to accept or deny a claim was extremely slow. Claim validity determinations took an average of more than one year. Contested claims remained in limbo for many years. Denials were common because of both jurisdictional questions and because of a reluctance to provide the department with information that could be easily obtained by asbestos manufacturers and other third party defendants. Claims management policies were not consistently applied or designed to deal with diseases which could take thirty or more years to develop and were progressive in nature.

Validity determinations on asbestos disease claims are now made by the Asbestos Fund Section which consists of four adjudicative and one support staff who also manage the claims accepted under the Asbestos Fund and

Washington State Fund. Specific policies have been developed and WAC Rules adopted to deal with unique problems faced by asbestos disease victims. A special emphasis has been placed on quality customer service and communication. The time required to obtain information needed to make a decision on claim validity has been reduced from more than 13 months to an average of 99 days. A total of 114 workers and surviving beneficiaries have been found eligible for Asbestos Fund benefits during the first four years of the fund's existence. More than 300 claims had been previously rejected and were pending in litigation for as long as 17 years. Two-thirds of these claims have now been allowed, the vast majority under the State Fund.

The cost of Asbestos Fund benefits is shared by both State Fund and Self-Insured employers and workers. Self-Insurers have paid one assessment thus far which amounted to \$0.0004 per worker hour and raised \$390,686.46. The amount assessed averaged less than \$1,100.00 per Self-Insured employer and has been sufficient to cover their share of the first four years of benefits.

Asbestos Fund benefit payments to disease victims during the first four fiscal years have been made as follows:

FISCAL YEAR	TOTAL PAYMENTS	THIRD PARTY RECOVERIES	NET PAYMENT
1989	\$159,382.93	0.00	\$159,382.93
1990	\$148,389.93	\$13,685.53	\$134,704.40
1991	\$526,798.11	\$64,702.96	\$462,095.15
1992	\$478,960.07	\$72,691.47	\$406,268.60

Awards for pension and death benefits represented 47% of the payments made from the Asbestos Fund. The remaining categories of benefits involving the most significant awards included payment for permanent partial disability (20%), medical services (18%), and time loss compensation (15%).

Hospitals received 49% of payments for medical services, two-thirds of which involved outpatient care including specialized pulmonary function testing. Physicians received 38% of all payments for medical services, while

prescriptions accounted for 6%. Equipment such as oxygen containers and durable supplies represented 3% of all medical charges.

Increasing success has been demonstrated in recovering benefit payments from asbestos manufacturers and other third parties, however, federal program insurers continue to deny and contest claims under those programs. Only one death benefit claim has been accepted under the Longshore and Harbor Workers Act and it remains in litigation as the insurer attempts to avoid reimbursing the Asbestos Fund for interim payments.

An average of 28 claims per year have been accepted for the payment of Asbestos Fund benefits. It is estimated that the number of claims accepted for interim coverage will decline slightly to an average of 25 per year. Expenditures during the next biennium are estimated to be \$1.07 million, rising to \$1.7 million by the third biennium.

Companion legislation to this report calls for the continuation of the Asbestos Fund program and also includes a provision to permit the appointment of private attorneys to pursue repayment by federal program insurers. This approach is modeled after the Special Assistant Attorney General program now used to obtain recoveries from liable third parties in tort actions arising out of State Fund claims. The legislation also mandates worker or beneficiary cooperation in pursuing valid claims against federal program insurers as a prerequisite to receiving Asbestos Fund benefits.

With these additional tools, the Department of Labor and Industries supports the continued existence of interim Asbestos Fund benefits for qualified workers and their survivors.



STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES
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OVERVIEW

A study prepared by the Department of Labor and Industries in 1987 at the request of the House Commerce and Labor Committee acknowledged that a growing problem existed in providing the prompt payment of benefits to workers with asbestos-related diseases.

Delays in making eligibility determinations on claims filed under Washington's Industrial Insurance Act averaged more than 400 days per claim with some denied claims still in legal limbo for as long as 17 years. More than half of the claims were denied with a majority of denials based on a determination that the asbestos-related condition was the responsibility of a federal workers' compensation program, primarily the Longshore and Harbor Workers' Act. Many of those with asbestos caused diseases were exposed to asbestos fibers during employment in work in various shipyards subject to federal coverage, as well as in industries subject to the provisions of the state workers' compensation program.

The primary reasons for delayed determinations and the frequent denial of claims for coverage of asbestos-related disease included the following:

- The long "incubation" period to develop asbestos related diseases;
- Difficulties in establishing proof of exposure;
- Reluctance of insurers to admit liability;
- Conflicts with product liability lawsuits;
- A lack of internal procedures for dealing with unique issues presented by asbestos disease claims.

Legislation creating the Asbestos Fund program was enacted and signed into law and went into effect on July 1, 1988. Codified as RCW 51.12.102, that legislation provided for:

- 1) Workers' compensation benefits for those who may have a right to a claim under maritime laws if (a) objective clinical findings substantiated the presence of an asbestos-related occupational disease; and, (b) the worker's employment history had a "prima facie indicia" of injurious exposure to asbestos fibers in employment-subject to Title 51 RCW;
- 2) Payment of these benefits to be made from the Medical Aid Fund, with funding by self-insured and state fund employers and employees based on reported worker hours;
- 3) Reimbursement by the State Fund or Self-Insurer if either program were found to be responsible for the claim;
- 4) Authority to pursue the federal insurer on behalf of the worker or beneficiary to recoup claim benefit expenses;
- 5) A requirement for the worker or beneficiary to cooperate in making a determination of coverage and protecting the information obtained during this process from discovery by others;
- 6) A dollar for dollar lien on any third party recovery;
- 7) Application of the statute to all claims filed on or after July 1, 1988, as well as to those claims in which a final determination of eligibility had not yet been made;
- 8) Termination of the program and benefits on July 1, 1993.

The 1988 enabling legislation also contained the following provision:

The department of labor and industries shall conduct a study of the program established by RCW 51.12.102. The department's study shall include the use of benefits under the program and the cost of the program. The department shall report the results of the study to the economic development and labor committee of the senate and the commerce and labor committee of the house of representatives, or the appropriate successor committees, at the start of the 1993 regular legislative session.

Laws of 1988, ch. 271, § 4.

The purpose of this report is to comply with the directive contained in Substitute House Bill 1592 and to provide elected officials with information concerning the management of asbestos-related disease claims during the period since the 1988 legislation went into effect.

CLAIMS MANAGEMENT PRACTICES

In response to the 1988 legislation, the Asbestos Fund Section was established within the Industrial Insurance Division of the Department of Labor and Industries. This Section, consisting of four adjudicative and one support staff, was given the charge to develop an in-depth understanding of the causation, nature and progression of asbestos-related diseases and for bringing consistency to benefit eligibility determinations.

A Quality Assurance review of a random selection of claims assigned to the Asbestos Fund Section recently found that unit currently provides the highest quality of measured service within the Claims Administration Program. In addition to the highest overall quality, the performance of those employees set high marks in all measured areas, including technical, communication, management and adjudication skills.

The primary guideline for determining the responsible insurance program has been the "last injurious exposure" rule. The same rule is applied in determining the responsible carrier in other occupational diseases under workers' compensation programs in a variety of jurisdictions. Under this practice, the insurance program on risk at the time of the last injurious exposure to asbestos fibers is held to be the program ultimately responsible for the payment of benefits to an otherwise eligible injured worker or beneficiary. This concept was upheld between State Fund and Self-Insured coverage by the Washington State Supreme Court in Weyerhaeuser v. Tri, 117 Wn.2d 128 (1991). A case is currently pending before that court which will address a situation involving subsequent exposures outside of coverage under this state's Industrial Insurance Act.

If the last injurious exposure to asbestos fibers took place under employment covered by Title 51 RCW, and a causally related asbestos disease is present, the claim is accepted under the State Fund or by a Self-Insured employer. If the last exposure under these circumstances was with an employer covered under a federal program and there was prior Title 51 exposure but the federal claim is disputed, the claim is accepted for interim

benefits under the Asbestos Fund. If there was no prior exposure under Title 51 or the last injurious exposure was subject to coverage in another state or nation, the claim is denied for lack of coverage.

Because it may take 30 years or more for an asbestos-related disease to "incubate" or become manifest, a primary difficulty facing the worker or beneficiary and staff is to obtain an accurate employment and exposure history. This obstacle has been addressed by a questionnaire developed for use immediately following receipt of each claim and supplementation with records obtained from the Social Security Administration as needed. An increased emphasis is placed upon obtaining information necessary for adjudication by telephone contact and correspondence. Depositions, interrogatories and other discovery devices from third party litigation are also used as a source of information.

Prior to the enactment of RCW 51.12.102, efforts by the department to establish an employment history, history of asbestos exposure and prior medical history were often met with opposition by legal counsel representing asbestos disease victims in tort actions against asbestos manufacturers and distributors. The opposition to the release of this information centered over a concern that investigation of the claim may provide damaging information to the third party defendants. As a result, many asbestos claims were denied solely for failing to provide sufficient information to make an eligibility determination.

A provision was added to RCW 51.12.102 prior to final passage which required rejection of the claim in the absence of cooperation on the part of the applicant. No information provided by the applicant, however, was to be released to non-parties and was exempted from being subject to subpoena or other legal process. The new approach made a significant difference in the sufficiency of the information being provided to the department and the level of cooperation between our staff and the workers' third party legal representatives. During the last two fiscal years, only two claims have been denied because of a failure to cooperate in investigating the validity of a claim.

Validity determinations for all State Fund and Asbestos Fund claims are made by the Asbestos Fund Section staff. In addition, any request for claim rejection by a Self-Insured employer must be approved by the Asbestos Fund Section to ensure that a worker or beneficiary eligible for benefits under Title 51 RCW does not suffer from lack of coverage because of a dispute over which program under that Title is responsible.

Medical criteria for claim allowance were also established to ensure consistent validity (allowance or rejection) determinations. For a claim to be allowed, a worker must have objective evidence of a condition which a physician finds to be related to the past exposure to asbestos fibers on a more probable than not basis. Coverage is extended, however, even if the asbestos-related condition is not yet disabling. An early sign of asbestos disease may involve the development of pleural plaques. These abnormalities of tissues lining the body cavity are a unique identifier of asbestos exposure and, although they do not cause impairment by themselves, the presence of plaques is an indicator of a need for medical surveillance for early detection of more serious conditions.

The question of which schedule of benefits should apply to claims filed prior to July 1, 1988 was settled by the Washington State Supreme Court in Landon v. Department of Labor and Industries, 117 Wa.2d 122 (1991), an asbestos disease claim. Legislation that went into effect on July 1, 1988 established the date of injury for compensation purposes as "the date the disease requires medical treatment or becomes totally or partially disabling, whichever occurs first . . ." (RCW 51.32.180.) The "last injurious exposure" rule had also been applied to pre-1988 claims to determine the appropriate benefit rate. The court held in Landon that the compensation rate should be established under the law in effect as of the date an occupational disease manifests itself, rather than on the date of the worker's last injurious exposure to the harmful material.

Another area which presented unique problems with asbestos disease victims involved claim closure. Asbestos-related diseases are generally considered to be progressive in nature without known "cures", although symptomatic treatment may be necessary. Periodic medical evaluations are recommended, initially at one to two year intervals and more frequently as changes are noted between examinations. No treatment other than medical

surveillance examinations may be necessary in the early stages of disease even though some functional impairment may be present.

Awards for permanent partial disability are only made upon closure of a claim and keeping a claim open solely for the coverage of periodic medical surveillance examinations would keep a worker from receiving an award that would be paid to any other injured worker. Workers, however, were reluctant for claims to be closed because the right to reopen a claim for disability benefits ends seven years from the time of the first closure.

The Department of Labor and Industries responded by the adoption of two rules, WAC 296-20-124 and 296-14-400. The amendment to WAC 296-20-124 contained the following text:

(3) Periodic medical surveillance examinations will be covered by the department or self-insurer for workers with closed claims for asbestos-related disease, to include chest x-ray abnormalities, without the necessity of filing a reopening application when such examinations are recommended by accepted medical protocol.

As a practical matter, this rule amendment provided specific authority for the department or self-insurer to extend coverage for the necessary medical surveillance examinations even if the claim itself had been closed.

The concerns of asbestos disease victims over the statute of limitations for reopening workers' compensation claims was addressed by the amendment to WAC 296-14-400 which reads in part:

The seven-year reopening time limitation shall be waived by the director in claims where objective evidence of worsening is present and proximately caused by a previously accepted asbestos-related disease.

Establishing whether or not the progression of asbestos-related diseases has taken place tends to be a much more objective determination than with many musculoskeletal conditions. Verification may be made by radiological comparisons, blood studies and a variety of pulmonary function tests. In

effect, a guarantee was given to asbestos disease victims that the statutory limitation on their right to reopen a claim for disability benefits would be waived if the standard requirement for claim reopening within seven years was met.

In addition, a loophole which allowed the payment of benefits under both Title 51 and the Federal Employees Compensation Act (FECA) was closed by department requested legislation in 1991 (Laws of 1991, ch. 88, § 3). Workers at the Bremerton Naval Shipyards and other smaller federal facilities who would normally have been covered under the LSHWA were subject to the same workers' compensation coverage as other federal employees. An administrative court ruling had previously held that existing law did not prohibit duplicative benefits.

Data concerning determinations made on asbestos-related disease claims is summarized in the following tables on a fiscal year basis. Fiscal year summaries were used since the program was established on July 1, 1988 in the middle of a calendar year. Data has been included on all claims received from that date through July 1, 1992. Information is being reported on all asbestos disease claim applications received during this four year period as well as for those claims accepted for Asbestos Fund benefits. Where specifically noted, information has been provided on the asbestos claims filed prior to July 1, 1988 in which a final determination had not been made by that date.

Asbestos Fund Claims Allowed

By Fiscal Year of Determination

	FY 89	FY 90	FY 91	FY 92	TOTAL
	24	35	40	15	114

Asbestos-Related Death Benefit Claims Allowed

	FY 89	FY 90	FY 91	FY 92	TOTAL
All Asbestos Claims	12	12	20	12	56
Asbestos Fund Claims	3	3	5	0	11

Asbestos-Related Cancer Claims Allowed

	FY 89	FY 90	FY 91	FY 92	TOTAL
All Asbestos Claims	15	18	29	20	82
Asbestos Fund Claims	3	6	7	1	17

Allowance/Rejection of Asbestos Disease Claims Filed After 07-01-88
By Fiscal Year of Filing

	FY 89	FY 90	FY 91	FY 92	TOTAL
# of Claims	163	124	122	164	573
# Allowed	99	86	67	70	322
% Allowed	61%	69%	55%	50%	59%
% Rejected	39%	31%	45%	50%	41%

Allowance/Rejection by Year of Determination

	FY 89	FY 90	FY 91	FY 92	TOTAL
# of Claims	259	208	214	185	866
# Allowed	152	132	159	97	540
% Allowed	59%	64%	74%	52%	62%
# Rejected	107	76	55	88	326
% Rejected	41%	36%	26%	48%	38%

Allowance/Rejection of Asbestos Claims Filed Prior to 07-01-88

Year Filed	Allowed	Rejected
1971	1	1
1978	0	1
1979	1	1
1980	4	5
1981	1	5
1982	2	2
1983	6	1
1984	10	9
1985	13	9
1986	41	14
1987	101	37
1988	44	24
TOTAL	224	108

Of Claims Rejected Prior to 07-01-88 and Later Allowed: 96

Average Adjudication Time for Validity Determination

All Pending Claims Filed Prior
to July 1, 1988: 1041 days

All Claims Filed After July 1, 1988:

	FY 89	FY 90	FY 91	FY 92
# Days	319.6	216.9	148.4	99.4

All Asbestos Fund Claims Filed After July 1, 1988:

	FY 89	FY 90	FY 91	FY 92
# Days	497.4	242.8	188.3	129.5

Initial Diagnosis - All Allowed Asbestos Claims

(Filed after July 1, 1988)

Diagnosis	FY 89	FY 90	FY 91	FY 92	TOTAL
Asbestosis	28	17	17	22	84
Fibrosis	6	8	1	5	20
Plaques	38	38	27	28	131
Mesothelioma	7	12	10	8	37
Adenocarcinoma	2	2	2	3	12
Other Cancer	4	3	4	2	13
Other	14	6	6	2	28

Initial Diagnosis - All Asbestos Fund Claims

(By Date of Determination)

Diagnosis	FY 89	FY 90	FY 91	FY 92	TOTAL
Asbestosis	7	6	9	7	29
Fibrosis	0	5	6	0	11
Plaques	9	13	16	7	45
Mesothelioma	2	2	4	1	9
Adenocarcinoma	1	1	0	0	2
Other Cancer	0	2	3	0	5
Other	5	6	2	0	13

Allowed Claims by Responsible Insurer

Insurer/Program	FY 89	FY 90	FY 91	FY 92	TOTAL
State Fund	117	88	110	76	391
Self-Insurer	11	9	8	4	32
Longshore & Harbor Workers' Act	21	25	35	16	97
Jones Act	1	1	1	0	3
Federal Employees Compensation Act	2	9	5	1	17

Reason for Rejection

(Denied Claims Filed after July 1, 1988)

Reason	FY 89	FY 90	FY 91	FY 92	TOTAL
No Disease	17	15	28	50	110
Excluded Employment	8	0	2	0	10
Other State	9	0	4	1	14
Federal Coverage Only	21	13	15	9	58
Non-Cooperation Investigation	4	3	1	1	9
Examination	0	0	0	0	0
Claim Withdrawn	0	2	0	0	0
Not Occ. Disease	2	0	0	6	8
No Medical Proof	0	1	1	1	3
Not Timely	0	0	0	0	0
Other	3	3	3	1	10

Reason for Rejection

(All Claims by Fiscal Year of Determination)

Reason	FY 89	FY 90	FY 91	FY 92	TOTAL
No Disease	12	25	23	61	121
Excluded Employment	6	7	3	0	16
Other State	9	5	3	3	20
Federal Coverage Only	67	21	15	16	119
Non-Cooperation Investigation	3	9	3	2	17
Examination	1	0	0	0	1
Claim Withdrawn	0	1	1	0	2
Not Occ. Disease	5	0	0	4	9
No Medical Proof	0	0	2	0	2
Not Timely	0	0	0	0	0
Other	4	7	5	2	18

BENEFIT COSTS / FUNDING

The largest category of benefits paid over the four year period covered by this evaluation was for pension and death benefits. Of all benefits paid, 47% consisted of pension and death awards. Pension benefits are provided to an injured worker when permanent and total disability results from a covered illness. Death benefits are awarded to eligible beneficiaries (if any) in the form of an "immediate payment" of up to \$1,600.00 and a monthly pension award. In addition, a burial award of up to \$2,000.00 is available.

The remaining categories of benefits involving the most significant awards included payment for permanent partial disability (20%), medical services (18%), and time loss compensation benefits (15%).

Awards for permanent partial disability are based upon an objective medical evaluation of pulmonary function and, in a majority of cases, the criteria for determining the amount of any award is classified according to increasing loss of function under WAC 296-20-200 through 296-20-670.

Hospitals were the largest recipient of payments for medical services during the four year period, accounting for nearly one-half of all medical payments. Outpatient services including pulmonary function and screening tests accounted for 57% of the hospital payments with inpatient services responsible for the remaining 43%.

Physicians received 38% of all payments for services associated with treating asbestos disease victims. Prescriptions accounted for 6% of benefit payments and equipment such as oxygen tanks and durable supplies represented 3% of all charges. Summaries of all Asbestos Fund payments by fiscal year quarter immediately follow this section of the report.

Various options were considered by the Legislature as a source of funding for the benefits to be paid in the event of a jurisdictional dispute between state and federal workers' compensation benefits in asbestos-related disease cases. Those funding sources included payment of claims from the

State Fund (including the Accident Fund), the Supplemental Pension Fund, the Second Injury Fund, the Medical Aid Fund and by creation of a "Special" Fund.

The Medical Aid Fund is primarily utilized by the State Fund for the payment of bills from medical vendors such as physicians, hospitals and pharmacies. The Accident Fund is primarily used for payment of wage loss (time loss compensation) benefits and awards for permanent partial disability. Transfers from the Accident Fund are made to the Pension Fund to establish reserves for total disability and death benefit claims. The Supplemental Pension Fund is the source of funding for annual adjustments to compensation rates for temporary total disability, permanent total disability and death benefit recipients.

As enacted, benefits authorized under RCW 51.12.102 are to be paid from the Medical Aid Fund with Self-Insurers and State Fund employers paying a pro rata share based upon the number of worker hours reported under each program. Workers covered under the State Fund and Self-Insurance pay one-half of the respective shares.

To avoid the expense of creating new benefit payment systems, the existing payment delivery and notification systems were utilized in Asbestos Fund claims. All expenses from sources other than the Medical Aid Fund were tracked and monthly transfers have been made from the Medical Aid Fund to replenish any such payments.

Only one assessment has been made thus far against Self-Insured employers to cover the costs of the Asbestos Fund benefits. That assessment amounted to \$0.0004 per worker hour for each employee covered by a Self-Insuring employer. This assessment raised a total of \$390,686.46 during the FY 1989-90 period.

An average of \$68,600 per year has been recovered during the past two years from third party actions instituted against the manufacturers and distributors of asbestos products. These actions have resulted in recovery of 16% of all payments made during this period of time, up from just 5% recovery during the first two years of the program.

Legal representation by the department to recover benefit payments from federal program insurers has been undertaken on only one death benefit claim. Although the insurer has been ordered by an Administrative Law Judge to pay benefits, the decision has been appealed to the Benefits Review Board. A favorable decision is expected within the next six months in the case, however, an appeal to the 9th Circuit Court of Appeals is possible. Reimbursement for back benefits will be sought following the BRB decision.

The lack of reimbursement by federal program insurers is addressed in companion legislation to this report in two ways. First, the department would be given authority to retain private attorneys to represent the interest of the Trust Funds in pursuing recovery from the responsible employer and insurer. This approach is modeled after the Special Assistant Attorney General program utilized in connection with third party recoveries on State Fund workers' compensation claims. This approach would be used in the event an unrepresented worker or beneficiary appears eligible for federal benefits but has been unsuccessful in obtaining them. The second prong is in language that gives authority to reject the claim unless the worker or beneficiary cooperates with the department in pursuing benefits from the federal program insurer. This language is intended to ensure that valid claims against federal program insurers are vigorously pursued in order to remain eligible for Asbestos Fund benefits.

The estimates of fiscal impact which accompanied Substitute House Bill 1592 projected that 40 claims per year would meet criteria to become eligible for benefits from the Asbestos Fund and that payments would amount to a total of \$10.2 million over the first six years. Actual experience of the Fund during the first four years has seen an average of 28 claims accepted each year and net benefit costs averaging \$435,000 per year during the past two years.

Estimates of fiscal impact accompanying the current legislation assume that an annual average of 25 claims will be accepted for Asbestos Fund benefits. Net expenses during the first biennium are estimated to be \$1.07 million, rising to \$1.7 million by the third biennium.

SUMMARY OF ALL ASBESTOS FUND PAYMENTS

	TOTAL PAYMENTS	THIRD PARTY RECOVERIES	NET PAYMENT
FISCAL YEAR 1989			
First Quarter	\$10,611.47	0	\$10,611.47
Second Quarter	6,345.05	0	6,345.05
Third Quarter	109,173.63	0	109,173.63
Fourth Quarter	33,252.78	0	33,252.78
TOTAL	\$159,382.93	0	\$159,382.93
FISCAL YEAR 1990			
First Quarter	\$29,705.29	\$7,785.08	\$21,920.21
Second Quarter	33,000.02	5,900.45	27,099.57
Third Quarter	37,014.55	0	37,014.55
Fourth Quarter	48,670.07	0	48,670.07
TOTAL	\$148,389.93	\$13,685.53	\$134,704.40
FISCAL YEAR 1991			
First Quarter	\$130,014.15	\$148.86	\$129,865.29
Second Quarter	89,761.12	21,608.84	68,152.28
Third Quarter	84,748.59	18,564.98	66,183.61
Fourth Quarter	222,274.25	24,380.28	197,893.97
TOTAL	\$526,798.11	\$64,702.96	\$462,095.15
FISCAL YEAR 1992			
First Quarter	\$103,128.29	\$14,114.31	\$89,013.98
Second Quarter	193,230.67	33,931.72	\$159,298.95
Third Quarter	94,825.87	13,844.44	80,981.43
Fourth Quarter	87,775.24	10,801.00	76,974.24
TOTAL	\$478,960.07	\$72,691.47	\$406,268.60

PAYMENT FOR MEDICAL SERVICES

Medical Treatment

TOTAL PAYMENTS

FISCAL YEAR 1989

First Quarter	\$4,354.49
Second Quarter	2,334.80
Third Quarter	2,691.71
Fourth Quarter	7,636.89

TOTAL \$17,017.89

FISCAL YEAR 1990

First Quarter	\$10,151.40
Second Quarter	6,884.50
Third Quarter	4,571.79
Fourth Quarter	12,793.23

TOTAL \$34,400.92

FISCAL YEAR 1991

First Quarter	\$19,895.09
Second Quarter	21,557.40
Third Quarter	17,305.05
Fourth Quarter	46,559.27

TOTAL \$105,316.81

FISCAL YEAR 1992

First Quarter	\$35,039.09
Second Quarter	15,897.72
Third Quarter	21,078.88
Fourth Quarter	10,734.29

TOTAL \$82,749.98

TIME LOSS COMPENSATION BENEFIT PAYMENTS

Temporary Total Disability

	BASE AWARD	COST OF LIVING ADJUSTMENT	TOTAL PAYMENTS
FISCAL YEAR 1989			
First Quarter	\$2,425.11	\$53.37	\$2,478.48
Second Quarter	0	0	0
Third Quarter	0	0	0
Fourth Quarter	5,837.82	17.79	5,855.61
TOTAL	\$8,262.93	\$71.16	\$8,334.09
FISCAL YEAR 1990			
First Quarter	\$3,637.63	\$204.46	\$3,842.09
Second Quarter	6,347.06	316.09	6,663.15
Third Quarter	8,024.57	3,018.44	11,043.01
Fourth Quarter	15,411.95	3,468.33	18,880.28
TOTAL	\$33,421.21	\$7,007.32	\$40,428.53
FISCAL YEAR 1991			
First Quarter	\$11,934.55	\$2,456.50	\$14,391.05
Second Quarter	22,867.55	4,201.28	27,068.83
Third Quarter	10,671.76	2,650.84	13,322.60
Fourth Quarter	49,809.10	4,479.34	54,288.44
TOTAL	\$95,282.96	\$13,787.96	\$109,070.92
FISCAL YEAR 1992			
First Quarter	\$11,625.57	2,390.30	\$14,015.87
Second Quarter	11,332.65	921.28	12,253.93
Third Quarter	5,806.26	838.50	6,644.76
Fourth Quarter	6,189.75	893.70	7,083.45
TOTAL	\$34,954.23	\$5,043.78	\$39,998.01

PERMANENT IMPAIRMENT AWARDS

Permanent Partial Disability

TOTAL PAYMENTS

FISCAL YEAR 1989

First Quarter	0
Second Quarter	0
Third Quarter	\$12,700.01
Fourth Quarter	9,985.51
TOTAL	\$22,685.52

FISCAL YEAR 1990

First Quarter	\$6,531.71
Second Quarter	568.50
Third Quarter	4,850.25
Fourth Quarter	4,001.56
TOTAL	\$15,952.02

FISCAL YEAR 1991

First Quarter	\$14,044.38
Second Quarter	15,947.58
Third Quarter	12,224.87
Fourth Quarter	48,693.12
TOTAL	\$90,909.95

FISCAL YEAR 1992

First Quarter	\$19,281.88
Second Quarter	44,020.87
Third Quarter	27,592.53
Fourth Quarter	35,374.56
TOTAL	\$126,269.84

PENSION BENEFIT PAYMENTS

Permanent Total Disability and Death

	BASE PENSION	COST OF LIVING ADJUSTMENT	BURIAL IMM. PMT.	TOTAL PAYMENTS
FISCAL YEAR 1989				
First Quarter	\$1,120.12	\$1,358.38	\$1,300.00	\$3,778.50
Second Quarter	1,680.18	2,037.57	0	3,717.75
Third Quarter	16,570.73	74,161.18	3,050.00	93,781.91
Fourth Quarter	2,475.18	6,199.59	800.00	9,474.77
TOTAL	\$21,846.21	\$83,756.72	\$5,150.00	\$110,752.93
FISCAL YEAR 1990				
First Quarter	\$2,475.18	\$6,571.16	0	\$9,046.34
Second Quarter	7,951.25	7,263.87	3,600.00	18,815.12
Third Quarter	5,867.43	6,980.07	3,600.00	16,447.50
Fourth Quarter	5,867.43	6,980.07	0	12,847.50
TOTAL	\$22,161.29	\$27,795.17	\$7,200.00	\$57,156.46
FISCAL YEAR 1991				
First Quarter	\$43,996.36	\$33,889.27	3,600.00	\$81,485.63
Second Quarter	13,419.36	11,635.95	0	25,055.31
Third Quarter	14,707.69	21,122.95	5,984.43	41,815.07
Fourth Quarter	54,558.02	18,095.40	0	72,653.42
TOTAL	\$126,681.43	\$84,743.57	\$9,584.43	\$221,009.43
FISCAL YEAR 1992				
First Quarter	\$14,556.11	\$15,582.84	\$4,600.00	\$34,738.95
Second Quarter	90,589.42	26,299.44	4,169.29	121,058.15
Third Quarter	21,853.54	15,718.62	1,803.04	39,375.20
Fourth Quarter	16,975.29	15,532.65	2,000.00	34,507.94
TOTAL	\$143,974.36	\$73,133.55	\$12,572.33	\$229,680.24

MISCELLANEOUS PAYMENTS

TOTAL PAYMENTS

FISCAL YEAR 1989

First Quarter	0
Second Quarter	\$292.50
Third Quarter	0
Fourth Quarter	300.00

TOTAL \$592.50

FISCAL YEAR 1990

First Quarter	\$133.75
Second Quarter	68.75
Third Quarter	102.00
Fourth Quarter	147.50

TOTAL \$452.00

FISCAL YEAR 1991

First Quarter	\$198.00
Second Quarter	132.00
Third Quarter	81.00
Fourth Quarter	80.00

TOTAL \$491.00

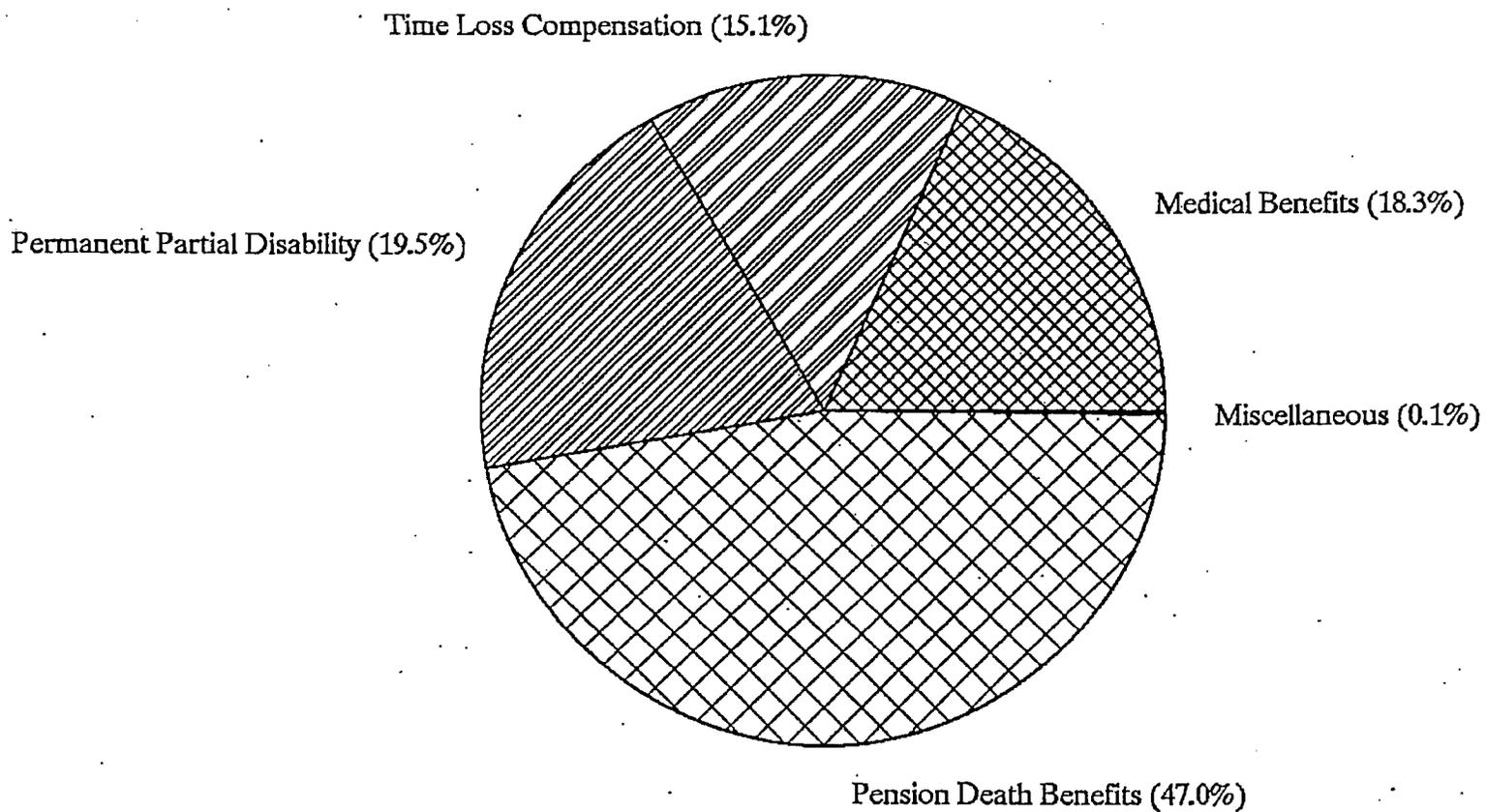
FISCAL YEAR 1992

First Quarter	\$52.50
Second Quarter	0
Third Quarter	134.50
Fourth Quarter	75.00

TOTAL \$262.00

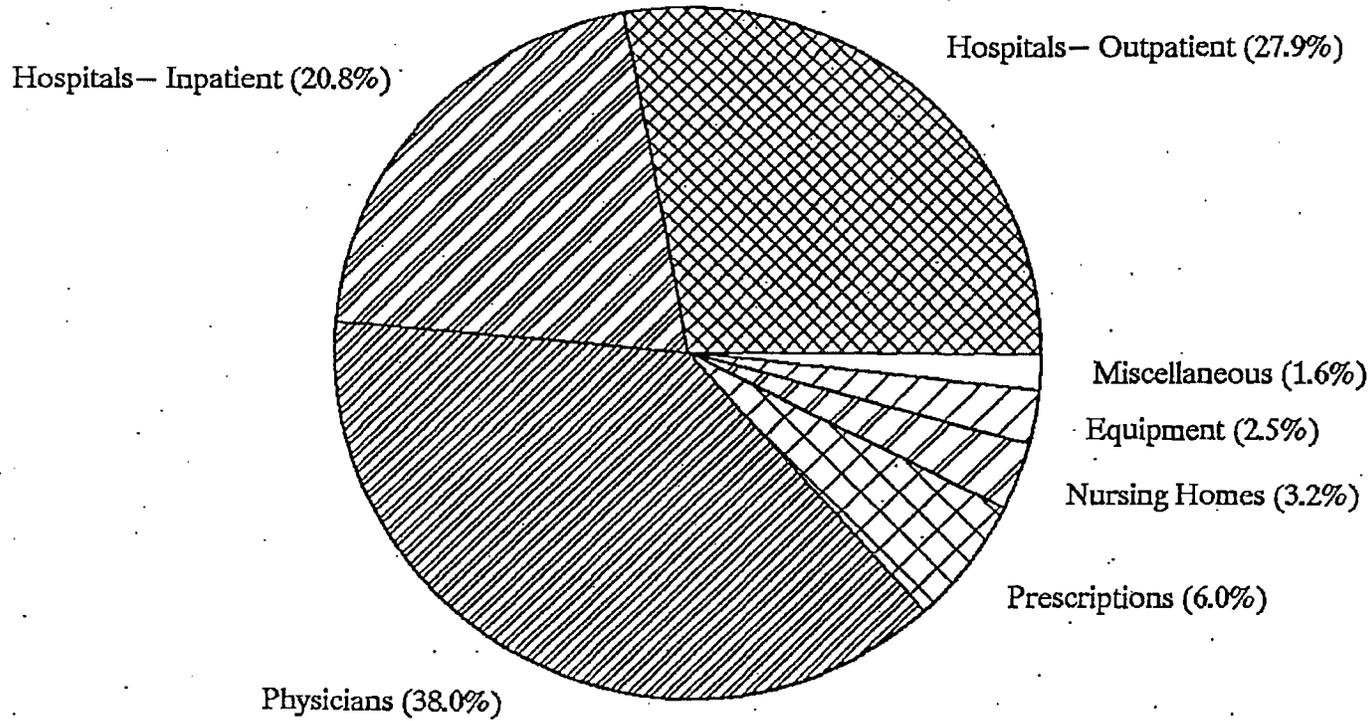
ASBESTOS FUND EXPENSES

All Expenses by Category of Payment



ASBESTOS FUND PAYMENTS FOR MEDICAL TREATMENT

Medical Treatment Expenses by Category



CONCLUSIONS AND RECOMMENDATIONS

The conditions which created jurisdictional conflicts between state and federal coverage continue to exist for asbestos-related disease victims. Insurers under federal programs routinely deny such claims, requiring workers or beneficiaries to obtain legal representation to pursue benefits from those programs.

An average of 143 asbestos disease claims per year have been filed with Washington's workers' compensation program during the past four fiscal years. An average of 20% of these claims continue to qualify for benefits from the Asbestos Fund because of the lack of benefits from the responsible insurance program. The benefits paid to eligible workers have averaged \$440,000 per year during the past two years.

The focus on asbestos-related disease claims has resulted in a significant improvement in service to a variety of customers. The time before a final determination of eligibility is made on a claim has been reduced from more than one year to an average of less than 100 days. Policies have been refined and adapted to the special nature of asbestos-related diseases. Unnecessary burdens upon physicians treating asbestos victims have been lifted. Greater cooperation exists between workers and their representatives in securing employment and exposure information needed for a valid decision.

Despite the progress in these areas, if the program is to achieve a primary goal it must have the tools to secure reimbursement from insurers for the various federal programs determined to be ultimately responsible for Asbestos Fund benefit payments. The Department of Labor and Industries proposes that this be accomplished through two approaches, both of which are elements of the proposed legislation accompanying this report.

The first approach is to expand the resources available to pursue recovery from federal program insurers through establishment of authority to hire private attorneys appointed as Special Assistant Attorneys General. The

program would be modeled after a similar program currently in existence in the Third Party Recovery Section where payment for damages is sought in civil actions against liable entities. Any fees or costs would be taken from the recovery made from the federal program insurer.

Second, workers or beneficiaries would be required to cooperate with the department in pursuing benefits from the liable federal program insurer as a prerequisite to receiving continued Asbestos Fund benefits.

With the additional tools contained in the companion legislation that has been requested, it is the recommendation of the Department of Labor and Industries that Asbestos Fund benefits should continue to be made available to asbestos-related disease victims and their survivors. In the absence of either this measure or a similar one being signed into law, those currently receiving these benefits will have their claims terminated on July 1, 1993. The prospect of terminating benefits solely because of the passage of time and in the absence of coverage by the appropriate federal program insurer should be eliminated.

APPENDIX

First Quarter, Fiscal Year 1989

ASBESTOS CLAIM TRACKING REPORT- FIRST QUARTER FISCAL YEAR 1989

PAYMENTS MADE BETWEEN RECV DATE & INSURER EST DATE				PAYMENTS MADE BETWEEN INSURER EST DATE & INSURER RESP DATE			
	Accident Fund	S.P.R.F.	Medical Aid Fund	Accident Fund	S.P.R.F.	Medical Aid Fund	Pension Reserve Fund
ALLOWED ASBESTOS FUND							
J711385			455.28				
K368199				1,300.00			
K394325			698.44				
K604257			438.47				
K604270			438.47				
K842927	2,425.11	53.37					
TOTAL:	2,425.11	53.37	2,030.66	1,300.00			
ASBESTOS FUND PENSION							
K368199					1,358.38		1,120.12
TOTAL:					1,358.38		1,120.12
REJECTED							
K002705			737.02				
K249746			375.10				
K263969			41.80				
K394366			421.40				
K477071			310.04				
K565874			438.47				
TOTAL:			2,323.83				
SECOND QUARTER '89							
GRAND TOTAL:	2,425.11	53.37	4,354.49	1,300.00	1,358.38		1,120.12

Third Quarter— Fiscal Year 1989

ASBESTOS CLAIM TRACKING REPORT— THIRD QUARTER FISCAL YEAR 1989

PAYMENTS MADE BETWEEN RECV DATE & INSURER EST DATE				PAYMENTS MADE BETWEEN INSURER ESTE DATE & INSURER RESP DATE			
	Accident Fund	S.P.R.F.	Medical Aid Fund	Accident Fund	S.P.R.F.	Medical Aid Fund	Pension Reserve Fund
ALLOWED ASBESTOS FUND							
H553145				850.00			
J471741				1,200.00			
J711385						750.91	
J754399						124.00	
K263975						774.32	
K368188	1,000.00						
K527337				12,700.01			
K604257			298.55				
K604270			43.30				
K745997						252.16	
TOTAL:	1,000.00		341.85	14,750.01		1,901.39	
ASBESTOS FUND PENSION							
H553145					31,775.40		5,995.88
J471741					40,348.21		8,894.67
K368199					2,037.57		1,680.18
TOTAL:					74,161.18		16,570.73
REJECTED							
K604261			438.47				
8301360			10.00				
TOTAL:			448.47				
THIRD QUARTER '89							
GRAND TOTAL:	1,000.00		790.32	14,750.01	74,161.18	1,901.39	16,570.73

Fourth Quarter— Fiscal Year 1989

ASBESTOS CLAIM TRACKING REPORT— FOURTH QUARTER FISCAL YEAR 1989

PAYMENTS MADE BETWEEN RECV DATE & INSURER EST DATE			
	Accident Fund	S.P.R.F.	Medical Aid Fund
ALLOWED ASBESTOS FUND			
H652026			
J364503			
J378186			
J686854			
K004106			212.80
K263975			
K368188	800.00		
K408351			
K604257			298.55
K604263			
K724958	78.75		
K745997			
K842927			
K996169	72.50		
TOTAL:	951.25		511.35
ASBESTOS FUND PENSION			
H553145			
J471741			
K368199			
TOTAL:			
REJECTED			
J376109			562.77
J520881			15.00
K003560	80.00		
K306773	68.75		
K394360			823.97
K523799			457.13
K819883	5,029.45		
B301360			10.00
TOTAL:	5,178.20		1,868.87
FOURTH QUARTER '89			
GRAND TOTAL:	6,129.45		2,380.22

PAYMENTS MADE BETWEEN INSURER ESTE DATE & INSURER RESP DATE			
Accident Fund	S.P.R.F.	Medical Aid Fund	Pension Reserve Fund
		34.45	
		569.81	
		241.39	
		372.59	
4,220.00		308.99	
5,765.51		30.00	
		18.94	
		144.64	
808.37	17.79	3,535.86	
10,793.88	17.79	5,256.67	
			375.00
	2,103.51		420.00
	2,058.51		1,680.18
	2,037.57		
	6,199.59		2,475.18
10,793.88	6,217.38	5,256.67	2,475.18

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First Quarter— Fiscal Year 1990.

ASBESTOS CLAIM TRACKING REPORT— FIRST QUARTER FISCAL YEAR 1990

PAYMENTS MADE BETWEEN RECV DATE & INSURER EST DATE				PAYMENTS MADE BETWEEN INSURER ESTE DATE & INSURER RESP DATE			
	Accident Fund	S.P.R.F.	Medical Aid Fund	Accident Fund	S.P.R.F.	Medical Aid Fund	Pension Reserve Fund
ALLOWED ASBESTOS FUND							
H652026						589.92	
H710503			65.45				
H729049			197.53				
J260964						643.64	
J364503						43.34	
J378186						64.50	
J581309						831.89	
J586854						120.93	
J711385						1,600.12	
K178658						64.50	
K263975				3,767.55			
K408351				2,764.16			
K604257			(298.55)				
K724987			772.25				
K725036			35.70				
K768107						290.25	
K842927				3,637.63	204.46	3,752.68	
K996169			0.26				
M051555			1.00				
TOTAL:			773.64	10,169.34	204.46	8,001.27	
ASBESTOS FUND PENSION							
H553135					2,209.67		375.00
J471741					2,164.67		420.00
K368199					2,196.82		1,680.18
SECTION TOTAL:					6,571.16		2,475.18
REJECTED							
H809137			27.09				
J376109			457.13				
K210666	83.00		180.60				
K230257			398.04				
K523799			33.70				
K657158			70.00				
K767003			194.93				
K819883			15.00				
K949858	50.75						
TOTAL:	133.75		1,376.49				
THIRD PARTY DEPOSITS							
J659981				(7,433.01)	(352.07)		
TOTAL:				(7,433.01)	(352.07)		
FIRST QUARTER '90 GRAND TOTAL:	133.75		2,150.13	2,736.33	6,423.55	8,001.27	2,475.18

Second Quarter-- Fiscal Year 1990

ASBESTOS CLAIM TRACKING REPORT-- SECOND QUARTER FISCAL YEAR 1990

PAYMENTS MADE BETWEEN RECV DATE & INSURER EST DATE				PAYMENTS MADE BETWEEN INSURER ESTE DATE & INSURER RESP DATE			
	Accident Fund	S.P.R.F.	Medical Aid Fund	Accident Fund	S.P.R.F.	Medical Aid Fund	Pension Reserve Fund
ALLOWED ASBESTOS FUND							
H652026						24.50	
H710503						457.13	
H729049						290.25	
J681309						378.86	
J711385						73.89	
J749289						237.47	
K178658						41.44	
K263975				13.39			
K264990			59.58	3,600.00			
K266287				555.11			
K408351						177.56	
K604271						550.60	
K724969						1,091.04	
K768107						2,782.54	
K842927				3,637.62	216.60		
K996169			14.74				
M051555	2,709.44	99.49					
M051558						77.79	
TOTAL:	2,709.44	99.49	74.32	7,806.12	216.60	6,183.07	
ASBESTOS FUND PENSION							
H553145					2,194.50		375.00
J471741					2,149.50		420.00
K266287					745.80		5,476.07
K368199					2,174.07		1,680.18
TOTAL:					7,263.87		7,951.25
REJECTED							
H809137			290.25				
K604278			243.11				
K744635	68.75		93.75				
TOTAL:	68.75		627.11				
THIRD PARTY DEPOSITS							
H553145						(5,900.45)	
TOTAL:						(5,900.45)	
SECOND QUARTER '90							
GRAND TOTAL:	2,778.19	99.49	701.43	7,806.12	7,480.47	282.62	7,951.25

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Third Quarter-- Fiscal Year 1990

ASBESTOS CLAIM TRACKING REPORT-- THIRD QUARTER FISCAL YEAR 1990

PAYMENTS MADE BETWEEN RECV DATE & INSURER EST DATE				PAYMENTS MADE BETWEEN INSURER ESTE DATE & INSURER RESP DATE			
	Accident Fund	S.P.R.F.	Medical Aid Fund	Accident Fund	S.P.R.F.	Medical Aid Fund	Pension Reserve Fund
ALLOWED ASBESTOS FUND							
H710503				1,493.55	875.93		
H899215			60.30				
J659981				2,785.88	1,925.91	992.75	
K178658						153.00	
K264990						23.99	
K394340			21.50				
K604208						901.59	
K604218						315.49	
K604252						229.78	
K604271				4,850.25		271.32	
K679544						40.68	
K724959	75.00					257.56	
K725036							
K768107						59.34	
K842927				3,637.65	216.60		
K940792			30.00				
K996169				3,600.00		82.90	
M051558						516.63	
M763952	107.49						
TOTAL:	182.49		111.80	16,367.33	3,018.44	3,845.03	
ASBESTOS FUND PENSION							
H553145					2,194.50		375.00
J471741					2,149.50		420.00
K266287					462.00		3,392.25
K368199					2,174.07		1,680.18
TOTAL:					6,980.07		5,867.43
REJECTED							
K604278			423.56				
K624724			120.00				
K744635			30.00				
K894169			41.40				
M058508	27.00						
	27.00		614.96				
THIRD QUARTER '90 GRAND TOTAL:	209.49		726.76	16,367.33	9,998.51	3,845.03	5,867.43

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Fourth Quarter— Fiscal Year 1990

ASBESTOS CLAIM TRACKING REPORT— FOURTH QUARTER FISCAL YEAR 1990

ALLOWED ASBESTOS FUND	PAYMENTS MADE BETWEEN RECV DATE & INSURER EST DATE			PAYMENTS MADE BETWEEN INSURER ESTE DATE & INSURER RESP DATE			
	Accident Fund	S.P.R.F.	Medical Aid Fund	Accident Fund	S.P.R.F.	Medical Aid Fund	Pension Reserve Fund
H710503				2,613.71	1,532.86	3,715.59	
H899215			10.00			23.50	
J260964						18.00	
J493933				2,278.86	1,575.42	1,316.34	
J559981						1,043.38	
K004106						179.37	
K264990						105.94	
K394395						156.87	
K527328						634.18	
K604208				4,001.56		24.80	
K604244						103.20	
K604271						16.57	
K679544						461.08	
K724969						829.70	
K745783						2,485.09	
K745822	3,906.05	143.45				24.55	
K746119	83.00						
K746147	64.50						
K768107							
K842927				3,637.68	216.60		
K996169							
M763952	2,975.65						
TOTAL:	7,029.20	143.45	10.00	12,531.81	3,324.88	11,138.16	
ASBESTOS FUND PENSION							
H553145					2,194.50		375.00
J471741					2,149.50		420.00
K266287					462.00		3,392.25
K368199					2,174.07		1,680.18
TOTAL:					6,980.07		5,867.43
REJECTED							
H848274			88.50				
J376109			168.27				
K523799			320.79				
K657175			10.00				
K872649			354.49				
K981275			53.48				
L608565			215.54				
M159735			184.52				
M383491			144.64				
M407053			104.84				
TOTAL:			1,645.07				
FOURTH QUARTER '90							
GRAND TOTAL:	7,029.20	143.45	1,655.07	12,531.81	10,304.95	11,138.16	5,867.43

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First Quarter - Fiscal Year 1991

ASBESTOS CLAIM TRACKING REPORT-FIRST QUARTER FISCAL YEAR 1991

ALLOWED ASBESTOS FUND	PAYMENTS MADE BETWEEN RECV DATE & INSURER EST DATE			PAYMENTS MADE BETWEEN INSURER ESTE DATE & INSURER RESP DATE			
	Accident Fund	S.P.R.F.	Medical Aid Fund	Accident Fund	S.P.R.F.	Medical Aid Fund	Pension Reserve Fund
H710503						14,497.21	
J378186						57.73	
J575431				5,794.53			
J659981				2,278.86	1,710.83	1,558.87	
J751808				1,800.00			
K004106				4,325.38			
K178658						94.50	
K368128				1,800.00			
K394367						364.18	
K604238						71.02	
K604244						251.43	
K604257						15.00	
K604271				3,924.47			
K679544						51.60	
K724958						588.73	
K745783						690.32	
K745811						339.35	
K745822	3,820.26	303.32					
K746048						477.43	
K746103	67.50						
K746211	75.00						
K842927				3,637.65	355.43	630.04	
M763952	2,197.78	86.92					
TOTAL:	6,160.54	390.24		23,560.89	2,066.26	19,687.41	
ASBESTOS FUND PENSION							
H553145					2,262.26		375.00
J471741					2,217.26		420.00
J751808					9,068.01		8,188.39
K266287					563.62		3,392.25
K368128					525.75		809.81
K368199					2,275.69		1,680.18
K368128					16,976.68		31,130.73
SECTION TOTAL:					33,889.27		43,996.36
REJECTED							
H844284	22.50						
K394360			(116.50)				
K735343			268.48				
K872649			55.70				
M439743				33.00			
TOTAL:	22.50		207.68	33.00			
THIRD PARTY DEPOSITS.							
K604252A						(148.86)	
TOTAL:						(148.86)	
FIRST QUARTER- 1991							
GRAND TOTAL:	6,183.04	390.24	207.68	23,593.89	35,955.53	19,538.55	43,896.36

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Second Quarter— Fiscal Year 1991

ASBESTOS CLAIM TRACKING REPORT— SECOND QUARTER FISCAL YEAR 1991

ALLOWED ASBESTOS FUND	PAYMENTS MADE BETWEEN RECV DATE & INSURER EST DATE			PAYMENTS MADE BETWEEN INSURER ESTE DATE & INSURER RESP DATE			
	Accident Fund	S.P.R.F.	Medical Aid Fund	Accident Fund	S.P.R.F.	Medical Aid Fund	Pension Reserve Fund
H710503							
J575431				9,338.06			
J659981				2,278.83	1,727.79	1,506.14	
J681309				99.39		77.89	
J754399						536.61	
K394360						35.00	
K394389						329.18	
K527302						851.06	
K597838						234.93	
K604238						41.44	
K604257						298.55	
K604271				947.53			
K661099				10,647.04	1,520.29		
K679544						51.60	
K724958						1,241.40	
K724965						937.67	
K724987						216.43	
K725036						216.43	
K744658						3.35	
K745822	2,415.78	187.74					
K748541						183.34	
K746048						232.20	
K746064				5,552.60		632.87	
K746103						248.08	
K746147						178.77	
K746203						116.10	
K746211						790.49	
K768107						25.80	
K842927				3,637.62	369.00	3,181.66	
M051555						404.20	
M051558						1,104.34	
M746257	67.50						
M763952				1,930.00			
M766355						932.38	
TOTAL:	2,483.28	187.74		34,441.07	3,617.08	20,793.50	

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Second Quarter— Fiscal Year 1991

ASBESTOS CLAIM TRACKING REPORT— SECOND QUARTER FISCAL YEAR 1991

	PAYMENTS MADE BETWEEN RECV DATE & INSURER EST DATE			PAYMENTS MADE BETWEEN INSURER ESTE DATE & INSURER RESP DATE			
	Accident Fund	S.P.R.F.	Medical Aid Fund	Accident Fund	S.P.R.F.	Medical Aid Fund	Pension Reserve Fund
ASBESTOS FUND PENSION							
H553145					2,296.14		375.00
J471741					2,251.14		420.00
J751808					2,430.18		1,576.50
K266287					614.43		3,392.25
K368128					1,577.25		2,429.43
K368199					2,326.50		1,680.18
M763952					140.31		3,546.00
TOTAL:					11,635.95		13,419.36
REJECTED							
J376109						(949.67)	
K246496			75.58				
K394360			568.07				
K746070				1,958.28	396.46		
K746195	64.50						
L608565			92.28				
M407053			16.57				
M422560			170.44				
M571602			95.62				
M758289			38.70				
8301360			656.31				
TOTAL:	64.50		1,713.57	1,958.28	396.46	(949.67)	
THIRD PARTY DEPOSITS							
K745811A						(199.70)	
K745997A						(574.79)	
K604218A						(206.01)	
K746077A						(21.95)	
K266287B						(13,254.34)	
K368199A						(7,352.05)	
TOTAL:						(21,608.84)	
SECOND QUARTER '91							
GRAND TOTAL:	2,547.78	187.74	1,713.57	36,399.35	15,649.49	(1,765.01)	13,419.36

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Third Quarter Fiscal Year 1991

ASBESTOS CLAIM TRACKING REPORT - THIRD QUARTER FISCAL YEAR 1991

ALLOWED ASBESTOS FUND	PAYMENTS MADE BETWEEN RECV DATE & INSURER EST DATE			PAYMENTS MADE BETWEEN INSURER ESTE DATE & INSURER RESP DATE			
	Accident Fund	S.P.R.F.	Medical Aid Fund	Accident Fund	S.P.R.F.	Medical Aid Fund	Pension Reserve Fund
H710503						824.00	
H977892				900.00		1,505.11	
J613219				1,089.84			
J659981				2,278.80	1,727.82	619.88	
J695484						75.79	
J719125						126.00	
K002994							
K185644				1,484.43			
K228042				659.13	26.07	2,145.09	
K394391						5.80	
K527302						97.24	
K527328						38.93	
K604298						763.87	
K679544						195.93	
K724958						249.61	
K745822	2,013.15	156.45		402.64	31.29	50.00	
K745827						856.38	
K745836				5,342.19			
K745840						84.04	
K746057						451.77	
K746064				653.83			
K746211						125.50	
K842927				3,637.62	369.00	381.32	
M051545						96.87	
M051555						2,832.61	
M746257						2,407.40	
M763952				3,600.00			
M766355				5,139.01		450.38	
TOTAL:	2,013.15	156.45		25,187.49	2,154.18	14,383.52	

Third Quarter— Fiscal Year 1991

ASBESTOS CLAIM TRACKING REPORT— THIRD QUARTER FISCAL YEAR 1991

PAYMENTS MADE BETWEEN RECV DATE & INSURER EST DATE				PAYMENTS MADE BETWEEN INSURER ESTE DATE & INSURER RESP DATE			
	Accident Fund	S.P.R.F.	Medical Aid Fund	Accident Fund	S.P.R.F.	Medical Aid Fund	Pension Reserve Fund
PROVISIONAL/NOT YET ALLOWED—ASBESTOS FUND							
J589277			803.55				
M549728	81.00						
TOTAL:	81.00		803.55				
ASBESTOS FUND PENSION							
H553145					2,296.14		375.00
J471741					2,251.14		420.00
J751808					2,430.18		1,576.50
K002994					9,507.10		1,794.88
K266287					614.43		3,392.25
K368128					1,577.25		2,429.43
K368199					2,326.50		1,680.18
M763952					120.21		3,039.45
SECTION TOTAL:					21,122.95		14,707.69
REJECTED							
J376109						933.10	
K246496			39.83				
K744681			312.34				
K744682			362.04				
K746070	1,680.42	340.21					
M494089			156.42				
M494090			153.84				
M766771			160.41				
TOTAL:	1,680.42	340.21	1,184.88			933.10	
THIRD PARTY DEPOSITS							
K604208A						(552.22)	
K263975B						(5,929.37)	
J749289A						(154.12)	
M051555B						(1,806.68)	
K604271A				(4,271.18)		(1,377.08)	
K604257						(24.55)	
K178658B						(234.20)	
K996169A				(981.93)		(1,014.67)	
J711385B						(1,998.05)	
K679544A						(220.93)	
TOTAL:				(5,253.11)		(13,311.87)	
THIRD QUARTER— 1991							
GRAND TOTAL:	3,774.57	496.66	1,988.43	19,934.38	23,277.13	2,004.75	14,707.69

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Fourth Quarter-- Fiscal Year 1991

ASBESTOS CLAIM TRACKING REPORT-- FOURTH QUARTER FISCAL YEAR 1991

ALLOWED ASBESTOS FUND	PAYMENTS MADE BETWEEN RECV DATE & INSURER EST DATE			PAYMENTS MADE BETWEEN INSURER ESTE DATE & INSURER RESP DATE			
	Accident Fund	S.P.R.F.	Medical Aid Fund	Accident Fund	S.P.R.F.	Medical Aid Fund	Pension Reserve Fund
H710503						1,705.00	
H977892						274.54	
J493933						270.00	
J497730						855.88	
J613219						303.48	
J659981				2,278.80	1,727.82	2,242.64	
J681309				4,213.74			
J711385						16.52	
J719125						65.14	
K004233			652.54				
K85644						8,865.95	
K228042						1,231.15	
K394340						256.69	
K394367						449.81	
K394389						137.14	
K527302						270.00	
K527337				9,000.00			
K597838						(129.00)	
K604257						(298.55)	
K604298				7,574.62		288.41	
K724987						16.57	
K745822				30,655.42	2,382.52	2,439.40	
K745827				13,598.48			
K745836				5,565.06			
K745959						572.02	
K745992						553.36	
K746057						414.78	
K746064				8,681.76			
K746103				642.73			
K746119						1,216.93	
K842927						414.79	
K940792				3,637.62	369.00	601.78	
M051558						216.00	
M439891						344.05	
M687254	80.00					592.10	
M687256						1,012.49	
M726813						2,396.18	
M746257						7,593.00	
M763952						8,847.40	
M766355				8,416.73		25.00	
TOTAL:	80.00		652.54	94,264.96	4,479.34	44,060.65	

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Fourth Quarter Fiscal Year 1991

ASBESTOS CLAIM TRACKING REPORT - FOURTH QUARTER FISCAL YEAR 1991

PAYMENTS MADE BETWEEN RECV DATE & INSURER EST DATE				PAYMENTS MADE BETWEEN INSURER ESTE DATE & INSURER RESP DATE			
	Accident Fund	S.P.R.F.	Medical Aid Fund	Accident Fund	S.P.R.F.	Medical Aid Fund	Pension Reserve Fund
PROVISIONAL/NOT YET ALLOWED-ASBESTOS FUND							
J689277			948.34				
TOTAL:			948.34				
ASBESTOS FUND PENSION							
H553145					2,296.14		375.00
J471741					2,251.14		420.00
J751808					2,430.18		1,576.50
K002994					2,251.14		420.00
K266287					614.43		3,392.25
K368128					1,577.25		2,429.43
K368199					2,326.50		1,680.18
K661099					4,228.41		41,225.21
M763952					120.21		3,039.45
TOTAL:					18,095.40		54,558.02
REJECTED							
M510195			270.00				
M510440	4,237.26						
M728298			140.24				
T226398						487.50	
TOTAL:	4,237.26		410.24			487.50	
THIRD PARTY DEPOSITS							
K368199B				(678.84)		(11,659.48)	
K724969A						(546.09)	
J493933						(11.94)	
K004106A						(811.49)	
K679544C						(898.84)	
K004106B				(2,879.57)		(1,785.83)	
J286648B				(633.23)	(194.25)	(732.84)	(1,399.92)
K679544D						(1,200.00)	
J497730A						(9.90)	
K527328A						(604.71)	
K679544F						(333.35)	
TOTAL:				(4,191.64)	(194.25)	(18,594.47)	(1,399.92)
FOURTH QUARTER '91 GRAND TOTAL:	4,317.26		2,011.12	90,073.32	22,380.49	25,953.68	53,158.10

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First Quarter— Fiscal Year 1992

ASBESTOS CLAIM TRACKING REPORT— FIRST QUARTER FISCAL YEAR 1992

ALLOWED ASBESTOS FUND	PAYMENTS MADE BETWEEN RECV DATE & INSURER EST DATE			PAYMENTS MADE BETWEEN INSURER ESTE DATE & INSURER RESP DATE			
	Accident Fund	S.P.R.F.	Medical Aid Fund	Accident Fund	S.P.R.F.	Medical Aid Fund	Pension Reserve Fund
J493933						101.25	
J497730						46.65	
J659981				4,937.48	1,579.60	1,079.86	
J681309				678.15			
J719125						116.10	
K004233						496.46	
K185644				5,139.01		93.25	
K228042						423.84	
K237453						6.00	
K394340						270.00	
K394367				4,771.57		440.01	
K408351						178.03	
K527302						706.16	
K527308						433.93	
K527337						15.48	
K604298				1,436.58			
K745822				2,372.32	265.40	23,870.00	
K745833						27.00	
K745836				5,458.22			
K745959						640.74	
K746057				1,844.87			
K746064				631.63			
K746103						1,561.59	
K746147						411.27	
K842927				3,637.62	545.30		
M439991				3,000.00			
M687256						43.63	
M726813				1,600.00		257.68	
M746257						3,257.91	
TOTAL:				35,507.45	2,390.30	34,476.84	

First Quarter— Fiscal Year 1992

ASBESTOS CLAIM TRACKING REPORT— FIRST QUARTER FISCAL YEAR 1992

PAYMENTS MADE BETWEEN RECV DATE & INSURER EST DATE				PAYMENTS MADE BETWEEN INSURER ESTE DATE & INSURER RESP DATE			
	Accident Fund	S.P.R.F.	Medical Aid Fund	Accident Fund	S.P.R.F.	Medical Aid Fund	Pension Reserve Fund
ASBESTOS FUND PENSION							
H553145					2,446.64		375.00
J471741					2,401.64		420.00
J751808					2,655.93		1,576.50
K002994					2,401.64		420.00
K266287					301.56		1,130.75
K368128					1,803.00		2,429.43
K368199					2,552.25		1,680.18
K661099					721.96		3,484.80
M763952					298.22		3,039.45
TOTAL:					15,582.84		14,556.11
REJECTED							
K657181	52.50						
M561074			562.25				
TOTAL:	52.50		562.25				
THIRD PARTY DEPOSITS							
J581309B						(225.89)	
K394367A						(264.81)	
K604244A						(179.85)	
K746048A						(469.94)	
K604238A						(74.56)	
J575431A				(3,298.43)		(3,301.57)	
K724958A						(1,236.16)	
K604208B						(420.60)	
K745827A				(4,367.45)		(275.05)	
TOTAL:				(7,665.88)		(6,448.43)	
FIRST QUARTER '92							
GRAND TOTAL:	52.50		562.25	27,841.57	17,973.14	28,028.41	14,556.11

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Second Quarter— Fiscal Year 1992

ASBESTOS CLAIM TRACKING REPORT— SECOND QUARTER FISCAL YEAR 1992

ALLOWED ASBESTOS FUND	PAYMENTS MADE BETWEEN RECV DATE & INSURER EST DATE			PAYMENTS MADE BETWEEN INSURER ESTE DATE & INSURER RESP DATE			
	Accident Fund	S.P.R.F.	Medical Aid Fund	Accident Fund	S.P.R.F.	Medical Aid Fund	Pension Reserve Fund
H977892				2,895.59			
J613219				4,500.00			
J659981				1,469.14			
J681309				665.04		25.80	
J695484						71.78	
K185644				5,730.11		275.01	
K228042						736.51	
K368127				3,600.00			
K394340						777.37	
K394367						17.91	
K527302						65.00	
K679544				4,850.25		70.23	
K724958				7,235.77			
K724965						214.30	
K725036						234.02	
K745822				2,764.64	358.78	7,491.33	
K745836				2,254.72			
K745959				5,139.01		697.71	
K746048						1,909.64	
K746057				7,538.18		112.28	
K746064				620.53			
K746103						169.00	
K746119						478.94	
K746203				6,052.91			
K746211						125.69	
K842927				3,637.63	562.50	366.50	
K940792						115.67	
M051555						1,000.00	
M051558						63.30	
M726813				569.29			
M746257						696.54	
TOTAL:				59,522.81	921.28	15,714.53	

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Second Quarter— Fiscal Year 1992

ASBESTOS CLAIM TRACKING REPORT— SECOND QUARTER FISCAL YEAR 1992

PAYMENTS MADE BETWEEN RECV DATE & INSURER EST DATE				PAYMENTS MADE BETWEEN INSURER ESTE DATE & INSURER RESP DATE			
	Accident Fund	S.P.R.F.	Medical Aid Fund	Accident Fund	S.P.R.F.	Medical Aid Fund	Pension Reserve Fund
ASBESTOS FUND PENSION							
H553145					2,425.14		375.00
J471741					2,380.14		420.00
J751808					2,623.68		1,576.50
K002994					2,380.14		420.00
K368127					10,881.22		73,200.74
K368128					1,770.75		2,429.43
K368199					2,520.00		1,680.18
K661099					689.91		3,484.80
M726813					355.67		3,963.32
M763952					272.79		3,039.45
SECTION TOTAL					26,299.44		90,589.42
REJECTED							
J376109						(391.95)	
K523799			124.69				
M394648			18.00				
M561074			432.45				
TOTAL:			575.14			(391.95)	
THIRD PARTY DEPOSITS							
K746057A				(4,555.51)		(195.51)	
J198213A				(1,146.41)	(10,595.46)	(3.60)	(7,351.57)
K368128A				(358.87)		(9,591.36)	
K679544F						(129.57)	
K228042A						(3.86)	
TOTAL:				(6,060.79)	(10,595.46)	(9,923.90)	(7,351.57)
SECOND QUARTER '92							
GRAND TOTAL:			575.14	53,462.02	16,625.26	5,398.68	83,237.85

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Third Quarter— Fiscal Year 1992

ASBESTOS CLAIM TRACKING REPORT— THIRD QUARTER FISCAL YEAR 1992

	PAYMENTS MADE BETWEEN RECV DATE & INSURER EST DATE			PAYMENTS MADE BETWEEN INSURER ESTE DATE & INSURER RESP DATE			
	Accident Fund	S.P.R.F.	Medical Aid Fund	Accident Fund	S.P.R.F.	Medical Aid Fund	Pension Reserve Fund
ASBESTOS FUND PENSION							
H553145					2,425.14		375.00
J471741					2,380.14		420.00
J751808					2,623.68		1,576.50
K002994					2,380.14		420.00
K368127					892.29		3,230.55
K368128					1,770.75		2,429.43
K368199					2,520.00		1,680.18
M726813					181.89		2,026.68
M746257					271.80		6,655.75
M763952					272.79		3,039.45
TOTAL:					15,718.62		21,853.54
REJECTED							
K523799			1,116.60				
K604261			227.03				
M394648			195.98				
M561074			283.44				
M575342			112.28				
N005136			56.70				
N115089	82.00						
TOTAL:	82.00		1,992.03				
THIRD PARTY DEPOSITS							
K368128B				(332.41)		(12,981.63)	
J260964B						(441.74)	
K745783A						(88.66)	
TOTAL:				(332.41)		(13,512.03)	
THIRD QUARTER '92							
GRAND TOTAL:	134.50		2,235.55	34,869.42	16,557.12	5,331.30	21,853.54

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PAYMENTS MADE BETWEEN RECV DATE & INSURER EST DATE				PAYMENTS MADE BETWEEN INSURER ESTE DATE & INSURER RESP DATE			
	Accident Fund	S.P.R.F.	Medical Aid Fund	Accident Fund	S.P.R.F.	Medical Aid Fund	Pension Reserve Fund
ALLOWED ASBESTOS FUND							
J681309				41.86			
K185644				2,785.14		41.44	
K228042						54.00	
K394340						68.50	
K527308						477.60	
K604271						201.38	
K604298				4,227.64			
K679544				4,453.45		688.78	
K724958				1,481.00		1,142.60	
K724987						265.04	
K745822				2,126.75	276.00	11,077.67	
K745959				1,922.48		206.54	
K746048						1,410.59	
K746057						117.40	
K746064				609.43			
K746203				4,533.72			
K842927				3,637.65	562.50		
K940792				7,579.67		65.50	
M687254						1,261.75	
M687256						34.50	
M726813				203.04			
M746257				1,600.00		1,730.04	
TOTAL:				35,201.83	838.50	18,843.33	
PROVISIONAL/NOT YET ALLOWED— ASBESTOS FUND							
J689277			243.52				
K745881	52.50						
TOTAL:	52.50		243.52				

PAYMENTS MADE BETWEEN REC'D DATE & INSURER EST DATE			
	Accident Fund	S.P.R.F.	Medical Aid Fund
ALLOWED ASBESTOS FUND			
J659981			
K228042			
K263975			
K264990			
K527302			
K527308			
K604244			
K679544			
K745622			
K745627			
K746048			
K746064			
K746203			
K842927			
K940792			
M051558			
M687282			
M687284	75.00		
M687285			
M746257			
TOTAL:	75.00		
PROVISIONAL/NOT YET ALLOWED			
M549728			15.48
TOTAL:			15.48

PAYMENTS MADE BETWEEN INSURER ESTE DATE & INSURER RESP DATE			
Accident Fund	S.P.R.F.	Medical Aid Fund	Pension Reserve Fund
		216.66	
		67.50	
		488.06	
		420.20	
		1,927.80	
6,800.38			
4,850.25			
4,388.15			
2,552.10	331.20	2,260.20	
		85.28	
8,424.16			
598.33			
4,449.71			
3,637.65	562.50	243.52	
5,863.58		287.20	
		155.70	
		1,751.22	
		2,450.36	
2,000.00			
43,564.31	893.70	10,353.70	

Fourth Quarter— Fiscal Year 1992

ASBESTOS CLAIM TRACKING REPORT— FOURTH QUARTER FISCAL YEAR 1992

PAYMENTS MADE BETWEEN RECV DATE & INSURER EST DATE				PAYMENTS MADE BETWEEN INSURER ESTE DATE & INSURER RESP DATE			
	Accident Fund	S.P.R.F.	Medical Aid Fund	Accident Fund	S.P.R.F.	Medical Aid Fund	Pension Reserve Fund
ASBESTOS FUND PENSION:							
H553145					2,425.14		375.00
J471741					2,380.14		420.00
J751808					2,623.68		1,576.50
K002994					2,380.14		420.00
K368127					892.29		3,230.55
K368128					1,770.75		2,429.43
K368199					2,520.00		1,680.18
M726813					181.89		2,026.68
M746257					85.83		1,777.50
M763952					272.79		3,039.45
TOTAL:					15,532.65		16,975.29
REJECTED							
M685623			258.16				
K523799			106.95				
TOTAL:			365.11				
THIRD PARTY DEPOSITS							
K745833B						(17.50)	
K745822A				(2,429.15)	(191.95)	(3,746.10)	
K604271B				(858.34)		(618.70)	
J751808B				(24.12)		(575.88)	
M766355A				(497.28)		(548.92)	
K185644A				(171.58)	(0.31)	(137.75)	
K394340A						(250.55)	
K724965A						(732.87)	
TOTAL:				(3,980.47)	(192.26)	(6,628.27)	
FOURTH QUARTER '92							
GRAND TOTAL:	75.00		380.59	39,583.84	16,234.09	3,725.43	16,975.29

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TOTAL BY CATEGORY - FISCAL YEAR 1989

PAYMENTS MADE BETWEEN RECV .DATE & INSURER EST DATE				PAYMENTS MADE BETWEEN INSURER ESTE DATE & INSURER RESP DATE			
	Accident Fund	S.P.R.F.	Medical Aid Fund	Accident Fund	S.P.R.F.	Medical Aid Fund	Pension Reserve Fund
FIRST QUARTER '89							
Allowed Asbestos Fund	2,425.11	53.37	2,030.66	1,300.00			
Asbestos Fund Pension Rejected			2,323.83		1,358.38		1,120.12
TOTAL:	2,425.11	53.37	4,354.49	1,300.00	1,358.38		1,120.12
SECOND QUARTER '89							
Allowed Asbestos Fund	67.50		814.39				
Asbestos Fund Pension Rejected	225.00		1,520.41		2,037.57		1,680.18
TOTAL:	292.50		2,334.80		2,037.57		1,680.18
THIRD QUARTER '89							
Allowed Asbestos Fund	1,000.00		341.85	14,750.01		1,901.39	
Asbestos Fund Pension Rejected			448.47		74,161.18		16,570.73
TOTAL:	1,000.00		790.32	14,750.01	74,161.18	1,901.39	16,570.73
FOURTH QUARTER '89							
Allowed Asbestos Fund	951.25		511.35	10,793.88	17.79	5,256.67	
Asbestos Fund Pension Rejected	5,178.20		1,868.87		6,199.59		2,475.18
TOTAL:	6,129.45		2,380.22	10,793.88	6,217.38	5,256.67	2,475.18
GRAND TOTAL:	9,847.06	53.37	9,859.83	26,843.89	83,774.51	7,158.06	21,846.21

TOTAL BY CATEGORY— FISCAL YEAR 1990

PAYMENTS MADE BETWEEN RECV DATE & INSURER EST DATE				PAYMENTS MADE BETWEEN INSURER ESTE DATE & INSURER RESP DATE			
	Accident Fund	S.P.R.F.	Medical Aid Fund	Accident Fund	S.P.R.F.	Medical Aid Fund	Pension Reserve Fund
FIRST QUARTER '90							
Allowed Asbestos Fund			773.64	10,169.34	204.46	8,001.27	
Asbestos Fund Pension Rejected	133.75		1,376.49	6,571.16			2,475.18
Third Party Deposits				(7,433.01)	(352.07)		
TOTAL:	133.75		2,150.13	2,736.33	6,423.55	8,001.27	2,475.18
SECOND QUARTER '90							
Allowed Asbestos Fund	2,709.44	99.49	74.32	7,806.12	216.60	6,183.07	
Asbestos Fund Pension Rejected	68.75		627.11	7,263.87			7,951.25
Third Party Deposits						(5,900.45)	
TOTAL:	2,778.19	99.49	701.43	7,806.12	7,480.47	282.62	7,951.25
THIRD QUARTER '90							
Allowed Asbestos Fund	182.49		111.80	16,367.33	3,018.44	3,845.03	
Asbestos Fund Pension Rejected	27.00		614.96	6,980.07			5,867.43
TOTAL:	209.49		726.76	16,367.33	9,998.51	3,845.03	5,867.43
FOURTH QUARTER '90							
Allowed Asbestos Fund	7,029.20	143.45	10.00	12,531.81	3,324.88	11,138.16	
Asbestos Fund Pension Rejected			1,645.07	6,980.07			5,867.43
TOTAL:	7,029.20	143.45	1,655.07	12,531.81	10,304.95	11,138.16	5,867.43
GRAND TOTAL:	10,150.63	242.94	5,233.39	39,441.59	34,207.48	23,267.08	22,161.29

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TOTAL BY CATEGORY— FISCAL YEAR 1991

PAYMENTS MADE BETWEEN RECV DATE & INSURER EST DATE				PAYMENTS MADE BETWEEN INSURER ESTE DATE & INSURER RESP DATE			
	Accident Fund	S.P.R.F.	Medical Aid Fund	Accident Fund	S.P.R.F.	Medical Aid Fund	Pension Reserve Fund
FIRST QUARTER '91							
Allowed Asbestos Fund	6,160.54	390.24		23,560.89	2,066.26	19,687.41	
Asbestos Fund Pension Rejected	22.50		207.68	33.00	33,889.27		43,996.36
Third Party Deposits						(148.86)	
TOTAL:	6,183.04	390.24	207.68	23,593.89	35,955.53	19,538.55	43,996.36
SECOND QUARTER '91							
Allowed Asbestos Fund	2,483.28	187.74		34,441.07	3,617.08	20,793.50	
Asbestos Fund Pension Rejected	64.50		1,713.57	1,958.28	11,635.95	(949.67)	13,419.36
Third Party Deposits					396.46	(21,608.84)	
TOTAL:	2,547.78	187.74	1,713.57	36,399.35	15,649.49	(1,765.01)	13,419.36
THIRD QUARTER '91							
Allowed Asbestos Fund Provisional/Not Yet	2,013.15	156.45		25,187.49	2,154.18	14,383.52	
Allowed— Asbestos Fund	81.00		803.55				
Asbestos Fund Pension Rejected	1,630.42	340.21	1,184.88		21,122.95	933.10	14,707.69
Third Party Deposits				(5,253.11)		(13,311.87)	
TOTAL:	3,774.57	496.66	1,988.43	19,934.38	23,277.13	2,004.75	14,707.69
FOURTH QUARTER '91							
Allowed Asbestos Fund Provisional/Not Yet	80.00		652.54	94,264.96	4,479.34	44,060.65	
Allowed— Asbestos Fund			948.34				
Asbestos Fund Pension Rejected	4,237.26		410.24		18,095.40	487.50	54,558.02
Third Party Deposits				(4,191.64)	(194.25)	(18,594.47)	(1,399.92)
TOTAL:	4,317.26		2,011.12	90,073.32	22,380.49	25,953.68	53,158.10
GRAND TOTAL:	16,822.65	1,074.64	5,920.80	170,000.94	97,262.64	45,731.97	125,281.51

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TOTAL BY CATEGORY FISCAL YEAR 1992

	PAYMENTS MADE BETWEEN RECV DATE & INSURER EST DATE			PAYMENTS MADE BETWEEN INSURER ESTE DATE & INSURER RESP DATE			
	Accident Fund	S.P.R.F.	Medical Aid Fund	Accident Fund	S.P.R.F.	Medical Aid Fund	Pension Reserve Fund
FIRST QUARTER '92							
Allowed Asbestos Fund				35,507.45	2,390.30	34,476.84	
Asbestos Fund Pension Rejected	52.50		562.25	(7,665.88)	15,582.84	(6,448.43)	14,556.11
Third Party Deposits							
TOTAL:	52.50		562.25	27,841.57	17,973.14	28,028.41	14,556.11
SECOND QUARTER '92							
Allowed Asbestos Fund				59,522.81	921.28	15,714.53	
Asbestos Fund Pension Rejected			575.14	(6,060.79)	26,299.44	(391.95)	90,589.42
Third Party Deposits				(10,595.46)	(9,923.90)	(9,923.90)	(7,351.57)
TOTAL:			575.14	53,462.02	16,625.26	5,398.68	83,237.85
THIRD QUARTER '92							
Allowed Asbestos Fund Provisional/not yet Allowed	52.50		243.52	35,201.83	838.50	18,843.33	
Asbestos Fund Pension Rejected	82.00		1,992.03	(332.41)	15,718.62	(13,512.03)	21,853.54
Third Party Deposits							
TOTAL:	134.50		2,235.55	34,869.42	16,557.12	5,331.30	21,853.54
FOURTH QUARTER '92							
Allowed Asbestos Fund Provisional/not yet Allowed	75.00		15.48	43,564.31	893.70	10,353.70	
Asbestos Fund Pension Rejected			365.11	(3,980.47)	15,532.65	(6,628.27)	16,975.29
Third Party Deposits					(192.26)		
TOTAL:	75.00		380.59	39,583.84	16,234.09	3,725.43	16,975.29
GRAND TOTAL:	262.00		3,753.53	155,756.85	67,389.61	42,483.82	136,622.79

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ASBESTOS FUND TRACKING REPORT— TOTALS BY FISCAL YEAR

	PAYMENTS MADE BETWEEN RECV DATE & INSURER EST DATE			PAYMENTS MADE BETWEEN INSURER ESTE DATE & INSURER RESP DATE			
	Accident Fund	S.P.R.F.	Medical Aid Fund	Accident Fund	S.P.R.F.	Medical Aid Fund	Pension Reserve Fund
FISCAL YEAR 1989							
First Quarter	2,425.11	53.37	4,354.49	1,300.00	1,358.38		1,120.12
Second Quarter	292.50		2,334.80		2,037.57		1,680.18
Third Quarter	1,000.00		790.32	14,750.01	74,161.18	1,901.39	16,570.73
Fourth Quarter	6,129.45		2,380.22	10,793.88	6,217.38	5,256.67	2,475.18
TOTAL:	9,847.06	53.37	9,859.83	26,843.89	83,774.51	7,158.06	21,846.21
FISCAL YEAR 1990							
First Quarter	133.75		2,150.13	2,736.33	6,423.55	8,001.27	2,475.18
Second Quarter	2,778.19	99.49	701.43	7,805.12	7,480.47	282.62	7,951.25
Third Quarter	209.49		726.76	16,367.33	9,998.51	3,845.03	5,867.43
Fourth Quarter	7,029.20	143.45	1,655.07	12,531.81	10,304.95	11,138.16	5,867.43
TOTAL:	10,150.63	242.94	5,233.39	39,441.59	34,207.48	23,267.08	22,161.29
1991							
First Quarter	6,183.04	390.24	207.68	23,593.89	35,955.53	19,538.55	43,896.36
Second Quarter	2,547.78	187.74	1,713.57	36,399.35	15,649.49	(1,765.01)	13,419.36
Third Quarter	3,774.57	496.66	1,988.43	19,934.38	23,277.13	2,004.75	14,707.69
Fourth Quarter	4,317.26		2,011.12	90,073.32	22,380.49	25,953.68	53,158.10
TOTAL:	16,822.65	1,074.64	5,920.80	170,000.94	97,262.64	45,731.97	125,281.51
1992							
First Quarter	52.50		562.25	27,841.57	17,973.14	28,028.41	14,556.11
Second Quarter			575.14	53,462.02	16,625.26	5,398.68	83,237.85
Third Quarter	134.50		2,235.55	34,869.42	16,557.12	5,331.30	21,853.54
Fourth Quarter	75.00		380.59	39,583.84	16,234.09	3,725.43	16,975.29
TOTAL:	262.00		3,753.53	155,756.85	67,389.61	42,483.82	136,622.79
GRAND TOTAL:	37,082.34	1,370.95	24,767.55	392,043.27	282,634.24	118,640.93	305,911.80

TOTAL ASBESTOS (MEDICAL AID) FUND CHARGES	
FISCAL YEAR 1989	
First Quarter	10,611.47
Second Quarter	6,345.05
Third Quarter	109,173.63
Fourth Quarter	33,252.78
TOTAL:	159,382.93
1990	
First Quarter	21,920.21
Second Quarter	27,099.57
Third Quarter	37,014.55
Fourth Quarter	48,670.07
TOTAL:	134,704.40
1991	
First Quarter	129,865.29
Second Quarter	68,152.28
Third Quarter	66,183.61
Fourth Quarter	197,893.97
TOTAL:	462,095.15
1992	
First Quarter	89,013.98
Second Quarter	159,298.95
Third Quarter	80,981.43
Fourth Quarter	76,974.24
TOTAL:	406,268.60

Revised 1-4-93

Appendix

B

BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

1 In Re: JOHN L. ROBINSON) DOCKET NO. 91 0741
2)
3 CLAIM NO. K-745863) DECISION AND ORDER
4)

5 APPEARANCES:

6 Claimant, John L. Robinson, by
7 Levinson, Friedman, Vhugen, Duggan & Bland, per
8 William D. Hochberg

9 Employer, Various

10 Department of Labor and Industries, by
11 The Attorney General, per
12 Jean Jelinek, Paralegal, and per
13 Jeffrey P. Bean and Loretta A. Vosk, Assistants

14 This is an appeal filed by the claimant, John L. Robinson, on
15 February 14, 1991, from an order of the Department of Labor and
16 Industries dated February 7, 1991 which affirmed an order dated
17 October 5, 1990 affirming an order dated August 23, 1990, rejecting the
18 claim on the grounds that "injury occurred while in the course of
19 employment subject to federal jurisdiction (Longshore and Harbor Workers
20 Act)." Reversed and remanded.

21 DECISION

22 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before
23 the Board for review and decision on a timely Petition for Review filed
24 by the Department of Labor and Industries to a Proposed Decision and
25 Order issued on March 12, 1992 in which the order of the Department dated
26 February 7, 1991 was reversed, and the claim was remanded to the
27 Department with direction to determine where claimant's last injurious
28 exposure occurred while employed by an employer covered by the Washington
29 State Industrial Insurance Act, and take such further action as made be
30 indicated or required by the law and the facts.

1 The Board has reviewed the procedural and evidentiary rulings in
2 the record of proceedings, and finds that no prejudicial error was
3 committed and said rulings are hereby affirmed.

4 The issues presented by this appeal and the evidence presented by
5 the parties are adequately set forth in the Proposed Decision and Order.
6 We do wish to emphasize statements in Exhibit No. 5, "Declaration of John
7 L. Robinson". Paragraph 3, on page 1, states:

8 Following the completion of my job with IPC in
9 Port Angeles, Washington on July 6, 1989, I was
10 dispatched for employment at Todd Pacific
11 Shipyards Corporation with a work start date
12 effective July 12, 1989.

13 Paragraph 1, on page 2, states:

14 I had a previous Labor and Industries binaural
15 hearing loss claim with the claim number J-
16 191778. This claim was allowed by the
17 Department of Labor and Industries, and awarded
18 me a 17.20% complete loss of hearing in both
19 ears effective March 1, 1983...

20 Paragraph 2, on page 2, states in part:

21 On December 29, 1989, I was evaluated by Dr. B.
22 Richard Leventhal ... A medical inquiry from
23 the Department of Labor and Industries resulted
24 in Dr. Leventhal rendering an opinion that I
25 currently suffered from a binaural hearing loss
26 impairment of 32.5%...

27 Further, in the stipulated facts of "Supplemental Pleadings," page 2,
28 number 5 states:

29 Injurious noise exposure occurred while at Todd
30 Shipyards immediately after his rehire and that
31 this exposure occurred while under the
32 jurisdiction of the Longshore and Harbor
33 Workers' Compensation Act.

1 Based primarily upon these facts, but also on the other stipulated
2 materials, it appears that Mr. Robinson may have worked for employers
3 subject to the provisions of the Washington State Industrial Insurance
4 Act after he had received compensation in 1983, and before his employment
5 beginning on July 12, 1989 in a job subject to federal jurisdiction.
6 Also, the work he did between 1983 and 1989 may have subjected Mr.
7 Robinson to further injurious noise exposure. If so, it may well be that
8 Mr. Robinson qualifies for additional state benefits or, if not, he may
9 be entitled to interim benefits pursuant to RCW 51.12.100(4).

10 In any event, the Department's rejection order constrains us once
11 again to delineate the appropriate circumstances for the application of
12 the "last injurious exposure" rule, WAC 296-14-350(1). Certainly, based
13 on the parties' stipulation, Mr. Robinson's last exposure to injurious
14 occupational noise occurred during employment subsequent to July 12, 1989
15 which was covered by the Longshore and Harbor Workers' Compensation Act,
16 a federal program. However, in such an instance, we have previously held
17 that the "last injurious exposure" rule is not intended to apply as a
18 basis to deny a state claim. It is a rule which governs the insurance
19 risks and liabilities under the state's Industrial Insurance Act between
20 successive self-insured employers or a self-insured employer and the
21 Department's State Fund. The "last injurious exposure" rule is not to
22 be used as a basis to deny benefits when exposure has occurred under
23 different compensation systems such as in the present case involving the
24 State of Washington and the Federal Longshore and Harbor Workers'
25 Compensation Act. See, 4 A. Larsen, The Law of Workers' Compensation,

1 § 95 (1990); Todd Shipyards Corp. v. Black, 717 F.2d 1280 (9th Cir.
2 1983); Weyerhaeuser v. Tri, 117 Wn.2d 128 (1991).

3 After consideration of the Proposed Decision and Order, the
4 Department's Petition for Review filed thereto, and a careful review of
5 the entire record before us, we agree with the Proposed Decision and
6 Order's determination that Mr. Robinson's claim may not be rejected out
7 of hand, on the grounds relied upon by the Department order. At a
8 minimum, the Department is required to determine the nature and extent
9 of claimant's in-state employment between March 1, 1983 and July 12, 1989
10 and to determine whether any of such employment had an adverse effect on
11 the claimant's hearing. It may also be necessary or appropriate to
12 provide interim benefits pending a final federal determination, pursuant
13 to RCW 51.12.100(4). Mr. Robinson's claim will be remanded for such
14 consideration. We, therefore, enter the following Findings of Fact and
15 Conclusions of Law:

16 FINDINGS OF FACT

- 17 1. On May 15, 1990 an application for benefits
18 from the claimant, John L. Robinson, was
19 received by the Department of Labor and
20 Industries alleging that as of December 2,
21 1989, he suffered a worsened bilateral hearing
22 loss due to continuous exposure to injurious
23 levels of noise while in the course of
24 employment with various employers.

25 On August 23, 1990 the Department issued an
26 order which rejected the claim for the reason
27 that the "injury occurred while in the course
28 of employment subject to federal jurisdiction
29 (Longshore and Harbor Workers' Compensation
30 Act)."

1 On September 7, 1990 the Department received
2 claimant's protest and request for
3 reconsideration of its August 23, 1990 order.

4 On October 5, 1990 the Department issued an
5 order which affirmed the provisions of the
6 Department order dated August 23, 1990.

7 On November 16, 1990 the Department issued an
8 order holding its October 5, 1990 order in
9 abeyance pending further consideration.

10 On February 7, 1991 the Department issued an
11 order which affirmed the provisions of the
12 Department order dated October 5, 1990.

13 On February 14, 1991 the claimant filed a
14 Notice of Appeal with the Board of Industrial
15 Insurance Appeals. On March 7, 1991 the Board
16 issued an order granting the appeal.

17 2. In March, 1983, the claimant had a hearing loss
18 claim allowed by Department of Labor and
19 Industries under our State Industrial Insurance
20 Act, in Claim No. J-191778. He was awarded,
21 based upon this hearing loss, a permanent
22 partial disability award equal to 17.20%
23 complete loss of hearing in both ears by a
24 Department order effective March 1, 1983.

25 3. Since 1944, the claimant has been a worker
26 employed as a boilermaker in both state
27 industrial and federal maritime work.

28 4. The claimant worked at a job immediately prior
29 to July 6, 1989 with IPC in Port Angeles,
30 Washington.

31 5. The claimant was rehired by Todd Shipyards on
32 July 12, 1989.

33 6. On December 29, 1989 medical evidence was
34 deduced indicating a binaural hearing loss of
35 32.5%.

36 7. Injurious noise exposure occurred while
37 claimant was employed at Todd Shipyards after
38 rehire on July 12, 1989. This exposure
39 occurred while claimant was working under
40 employment subject to the jurisdiction of the

1 Federal Longshore and Harbor Workers'
2 Compensation Act.

3 CONCLUSIONS OF LAW

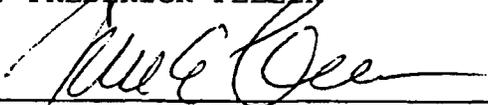
- 4 1. The Board of Industrial Insurance Appeals has
5 jurisdiction of the parties and the subject of
6 this appeal.
- 7 2. RCW 51.12.100 does not automatically preclude
8 the claimant from receiving benefits under the
9 industrial insurance laws of the State of
10 Washington, in light of the provisions of
11 subsection (4) thereof.
- 12 3. The liable insurer for a hearing loss in an
13 occupational disease claim is the last in-state
14 employer covered by Title 51 RCW at the time of
15 the last injurious exposure to the injurious
16 substance or hazard of disease which gives rise
17 to a claim for compensation, within the meaning
18 of WAC 296-14-350(1).
- 19 4. The order of the Department of Labor and
20 Industries dated February 7, 1991, which
21 adhered to the provisions of prior orders
22 rejecting the claim for benefits for the reason
23 that "injury occurred while in the course of
24 employment subject to federal jurisdiction
25 (Longshore and Harbor Workers' Compensation
26 Act)", is incorrect, and is reversed. The
27 claim is remanded to the Department to further
28 investigate, provide interim benefits as may be
29 indicated, and to issue further determinative
30 orders as may be indicated or required by the
31 law and the facts.

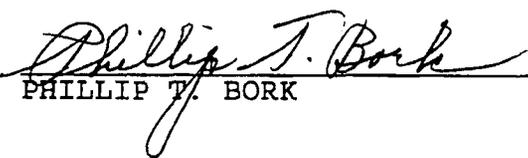
32 It is so ORDERED.

1 Dated this 29th day of September, 1992.

2 BOARD OF INDUSTRIAL INSURANCE APPEALS

3 
4 S. FREDERICK FELLER Chairperson

5 
6 FRANK E. FENNERTY, JR. Member

7 
8 PHILLIP T. BORK Member

INDUSTRIAL INSURANCE APPEALS
OLYMPIA, WASHINGTON
MAILED
SEP 30 1992
BY _____

C



CLAIM NUMBER K745263	CHE UNIT CLAIMANT'S NAME O B ROBINSON	DATE INJURED 12-02-89	CLAIMANT'S SERVICE LOCATION SEATTLE	MAILING DATE 03-22-93	TYPE 51
UM#			CLASS 0306	ACCOUNT I.D. 675,000-00-4	

ANY PROTEST OR REQUEST FOR RECONSIDERATION OF THIS ORDER MUST BE MADE IN WRITING TO THE DEPARTMENT OF LABOR AND INDUSTRIES IN OLYMPIA WITHIN 60 DAYS. A FURTHER APPEALABLE ORDER WILL FOLLOW SUCH A REQUEST. ANY APPEAL FROM THIS ORDER MUST BE MADE TO THE BOARD OF INDUSTRIAL INSURANCE APPEALS, OLYMPIA, WITHIN 60 DAYS FROM THE DATE THIS ORDER IS COMMUNICATED TO THE PARTIES OR THE SAME SHALL BECOME FINAL.

THIS AWARD TAKES INTO CONSIDERATION THE PREVIOUS AWARD OF 17.20% FOR HEARING LOSS WHICH WAS PAID UNDER CLAIM J191778.

15.30% COMPLETE LOSS OF HEARING IN BOTH EARS

TOTAL AWARD FOR PERMANENT PARTIAL DISABILITY \$ 6,609.60

PAYMENT DATE 03-22-93

NO TIME LOSS

PAY PERMANENT PARTIAL DISABILITY

CLAIM IS HEREBY CLOSED.

ORDER RECEIVED ON 3-26-93 BY CAT
ON DIARY FOR 4-30-93 BY _____
PROTEST N/A FILED ON _____ BY _____
ACKNOWLEDGEMENT REC'D _____ BY _____

NO PROTEST NO N/A DATE _____ BY _____

EMP EMPLOYER ACCOUNT FINALED

SUPERVISOR OF INDUSTRIAL INSURANCE

PHY LEVINTHAL BERNARD R MD
SEATTLE HEAD & NECK GROU
515 MINOR #140
SEATTLE WA 98104

BY: DOROTHY TENKHOFF
CLAIM ADJUDICATOR

REC ROBINSON JOHN L
% WILLIAM HOCHBERG, ATTY
ONE UNION SQ., STE 2900
600 UNIVERSITY ST.
SEATTLE WA 981014156

RECEIVED

MAR 26 1993

LEVINSON, FRIEDMAN, VILGEN
DUGGAN & BLAND

PRVDR

LEVINTHAL BERNARD R MD
SEATTLE HEAD & NECK GRO
515 MINOR #140
SEATTLE WA 98104

STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES
DIVISION OF INDUSTRIAL INSURANCE
OLYMPIA, WA. 98504

EMP

CLAIM ID : K745863 TYPE : AD
MAILING DATE : 03-11-93 WRKPOS : UB10
INJURY DATE : 12-02-89 UNIT : B
SERVICE LOCATION : SEATTLE
ACCOUNT ID : 675,000-00
CLASS : 0306

CLMT

JOHN L ROBINSON
% WILLIAM HOCHBERG, ATTY
ONE UNION SQ., STE 2900
600 UNIVERSITY ST.
SEATTLE WA 98101-4156

NOTICE OF DECISION

* ANY PROTEST OR REQUEST FOR RECONSIDERATION OF THIS ORDER MUST BE MADE *
* IN WRITING TO THE DEPARTMENT OF LABOR AND INDUSTRIES IN OLYMPIA WITHIN *
* 60 DAYS. A FURTHER APPEALABLE ORDER WILL FOLLOW SUCH A REQUEST. ANY *
* APPEAL FROM THIS ORDER MUST BE MADE TO THE BOARD OF INDUSTRIAL *
* INSURANCE APPEALS, OLYMPIA, WITHIN 60 DAYS FROM THE DATE THIS ORDER *
* IS COMMUNICATED TO THE PARTIES, OR THE SAME SHALL BECOME FINAL. *

THIS CLAIM COMING ON FOR FURTHER CONSIDERATION;

IT IS HEREBY ORDERED THAT THE CLAIM FOR OCCUPATIONAL DISEASE BE ALLOWED, AND THE CLAIMANT BE ENTITLED TO MEDICAL AID AND COMPENSATION AS MAY BE INDICATED IN ACCORDANCE WITH THE INDUSTRIAL INSURANCE LAWS.

SUPERVISOR OF INDUSTRIAL INSURANCE
BY DOROTHY TENKHOFF
CLAIMS MANAGER

ORDERED RECD 3-15-93 BY CAT
ON DIARY FOR 4-19-93 BY
PROTEST N/A FILED ON BY
ACKNOWLEDGEMENT REC'D BY

NO PROTEST NO N/A DATE 3/16 BY [signature]

CLAIMANT COPY

RECEIVED

MAR 15 1993

LEVINSON, FRIEDMAN, VILGEN
MORGAN & PLANN

JOHN L ROBINSON

CL1

10700 68TH AVE S
SEATTLE WA 98178

WILLIAM D HOCHBERG ATTY

CA1

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600 UNIVERSITY ST #2900
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LORETTA VOSK AAG/Jeffrey Bean
Jean Jelinek
OFFICE OF THE ATTORNEY GENERAL
900 4TH AVE #2000
SEATTLE WA 98164-1012

AG1

D

FLOOR SYNOPSIS
SUBSTITUTE HOUSE BILL 1592

A. WHAT THE BILL DOES:

THE DEPARTMENT OF LABOR AND INDUSTRIES IS DIRECTED TO PAY PROVISIONAL BENEFITS TO CLAIMANTS IN ASBESTOS-RELATED OCCUPATIONAL DISEASE CASES WHEN THERE IS A DISPUTE AS TO LIABILITY FOR THE CLAIM. THE DEPARTMENT IS THEN REQUIRED TO DETERMINE WHETHER THE STATE FUND, A SELF INSURER, OR A FEDERAL MARITIME INSURER IS RESPONSIBLE FOR THE CLAIM AND SEEK REPAYMENT OF THE PROVISIONAL BENEFITS IF APPROPRIATE. THE COST OF PROVISIONAL BENEFITS IS SHARED EQUALLY BETWEEN WORKERS AND EMPLOYERS.

OCCUPATIONAL DISEASE CLAIMS ARE TO BE PAID BASED ON THE SCHEDULE IN EFFECT AT THE TIME THE DISEASE REQUIRES TREATMENT OR BECOMES DISABLING, WHICHEVER IS EARLIER. THE PROVISIONAL BENEFITS PART OF THE BILL SUNSETS IN 1993.

EFFECT OF COMMITTEE AMENDMENT: THE REFERENCES TO RECOURMENT FROM FEDERAL PROGRAM INSURERS AND SELF INSURERS ARE REORGANIZED INTO SEPARATE SECTIONS. THE REQUIREMENT THAT A WORKER RECEIVE FULL RECOVERY FROM A FEDERAL PROGRAM BEFORE THE DEPARTMENT CAN RECOUP PROVISIONAL BENEFITS FROM THE WORKER IS CHANGED TO A REQUIREMENT THAT THE WORKER RECEIVE SOME RECOVERY FROM ANOTHER INSURER.

B. WHY IT IS NEEDED:

ASBESTOS RELATED OCCUPATIONAL DISEASE CLAIMS OFTEN INVOLVE BOTH MARITIME RELATED EMPLOYMENT AND NONMARITIME RELATED EMPLOYMENT. THE

Page 2

DETERMINATION OF WHETHER THE STATE PROGRAM OR THE FEDERAL PROGRAM IS RESPONSIBLE FOR THE CLAIM IS OFTEN VERY COMPLICATED AND TIME CONSUMING, EVEN THOUGH THERE IS NO QUESTION BUT WHAT ONE PROGRAM OR THE OTHER IS RESPONSIBLE.

MEANWHILE, THE WORKER IS OFTEN TOTALLY DISABLED WITH NO SOURCE OF INCOME AND IS RUNNING UP LARGE MEDICAL BILLS.

OCCUPATIONAL DISEASE CLAIMS ARE CURRENTLY PAID ACCORDING TO THE SCHEDULE OF BENEFITS IN PLACE AT THE TIME THE DISEASE WAS CONTRACTED. THAT COULD EASILY BE 20 YEARS BEFORE THE CLAIM IS FILED. AS A RESULT OF INFLATION DURING THE INTERVENING YEARS, OCCUPATIONAL DISEASE CLAIMANTS CAN RECEIVE VERY SMALL AWARDS OR TIME LOSS PAYMENTS.

C. FISCAL IMPLICATIONS:

PROVISIONAL BENEFITS FOR THE FIRST BIENNIUM TOTAL \$4,300,000 AND ADMINISTRATIVE COSTS WILL RUN \$133,000. THE CLAIMS SECTION OF THE DEPARTMENT WILL HAVE TO SET UP A SPECIAL UNIT TO HANDLE ADJUDICATION OF ASBESTOS RELATED DISEASE CLAIMS.

D. PERSONS WHO TESTIFIED:

REONNA GOLDMAN, AWB (FOR); CHUCK BAILEY, WASHINGTON STATE LABOR COUNCIL, AFL-CIO (FOR); BOB DILGER, WASHINGTON STATE BUILDING TRADES COUNCIL (FOR); BRETT BUCKLEY, DEPARTMENT OF LABOR AND INDUSTRIES;

Page 3

MELANIE STEWART, WASHINGTON SELF INSURERS (FOR); BRENT KNOTT,
WASHINGTON ASSOCIATION OF PULP AND PAPER WORKERS (FOR)

E. COMMENTS:

DC:D7-13