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SUPREME COURT  
STATE OF WASHINGTON

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No. 82635-8

SUPREME COURT  
OF THE STATE OF WASHINGTON

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JUSTIN ENDICOTT,

Respondent,

vs.

ICICLE SEAFOODS, INC.,

Appellant.

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ENDICOTT'S ANSWER TO AMICUS BRIEF OF  
INLANDBOATMEN'S UNION OF THE PACIFIC

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A. ARGUMENT

Respondent Justin Endicott received the amicus curiae brief of the Inlandboatmen's Union of the Pacific ("IBU"). Endicott agrees with IBU's analysis of the issues in this case.

First, under the Jones Act, Endicott agrees with IBU that seamen had the same rights and remedies available to railroad workers under FELA. *Kernan v. American Dredging Co.*, 355 U.S. 426, 439, 58 S. Ct. 394, 2 L.Ed.2d 382 (1958). Enacted in 1920, the Jones Act was designed to afford maritime workers like Endicott a safe place in which to work by conferring a right to sue shipowners for personal injuries sustained on board a ship.<sup>1</sup>

Second, IBU is correct in noting that substantive rights in a state court action are governed by federal law. *Dice v. Akron C. & Y. R. Co.*, 342 U.S. 359, 363, 72 S. Ct. 312, 96 L.Ed. 398 (1952); *Hoddevik v. Arctic Alaska Fisheries Corp.*, 94 Wn. App. 268, 970 P.2d 828, 830, *review denied*, 138 Wn.2d 1016 (1999), *cert. denied*, 528 U.S. 1155 (2000). Endicott also agrees with IBU that under the Jones Act, he had a statutory

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<sup>1</sup> This Congressional action effectively overruled decisions holding that an injured seaman did not have a cause of action in negligence against a shipowner for personal injuries. The *Osceola*, 189 U.S. 158, 172, 23 S. Ct. 483, 47 L.Ed (1902); *Chelentis v. Luckenbacher S.S. Co.*, 247 U.S. 372, 384, 38 S. Ct. 501, 62 L.Ed. 711 (1918).

right to elect to have his case tried by a judge, rather than a jury. As this was not a diversity case, *only* Endicott the right to make the election of a bench trial. *Craig v. Atlantic Richfield Co.*, 19 F.3d 472, 475-76 (9<sup>th</sup> Cir.) 513 U.S. 875 (1994). Such a right to elect a non-jury trial was a substantive, not procedural, matter under federal maritime law and the Jones Act controls. Only Endicott, not Icicle Seafoods, Inc. ("Icicle"), could elect to have a jury or bench trial.

Finally, even under Washington law, if this Court were to reason that federal maritime law does not control, Icicle did not have a right to a trial by jury because there was no jury right in an admiralty case at common law in 1889, as IBU correctly recognizes. In fact, as previously noted, federal maritime law did not even recognize that a seaman had a cause of action for negligence in 1889. *Sofie v. Fibreboard Corp.*, 112 Wn.2d 636, 645, 771 P.2d 711, 780 P.2d 260 (1989) (Washington Constitution protects only right to trial by jury which existed at the time of the adoption of the Constitution in 1889).

Finally, IBU is correct in noting that Endicott was entitled to prejudgment interest on his Jones Act and vessel unseaworthiness recoveries. This is a mixed case involving both Jones Act and seaworthiness theories, with a single award of damages. In such mixed recovery cases, IBU correctly recognized that prejudgment interest should

be recovered as a matter of federal maritime law.<sup>2</sup> *McGee v. U. S. Lines, Inc.*, 976 F.2d 821 (2<sup>nd</sup> Cir. 1992). Endicott's recovery of prejudgment interest is consistent with the general federal maritime *favoring* tort prejudgment interest. *Paul v. All Alaskan Seafoods, Inc.*, 106 Wn. App. 406, 427, 24 P.3d 447 (2001), *review granted*, 145 Wn.2d 1015 (2002). Moreover, Endicott's recovery of prejudgment interest is consistent with the general policy of fully compensating seamen, who are "wards of admiralty." Endicott should be allowed to recover his prejudgment interest.

Endicott's recovery of prejudgment interest is also consistent with the policy of Washington law in the employment field of making workers whole, expressed in statutes like RCW 49.48.030 and the cases cited by IBU, in which prejudgment is awarded to workers who are denied their unpaid wages.

#### B. CONCLUSION

In sum, the IBU amicus brief supports Endicott's arguments in this case. The trial court here correctly discerned that Icicle did not have a right to trial by jury in a Jones Act/unseaworthiness case in state court

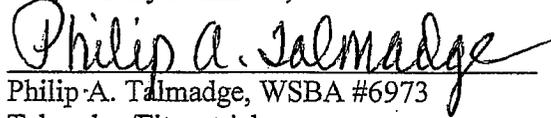
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<sup>2</sup> The Ninth Circuit has deemed it "well-settled" that prejudgment interest is a substantive, not procedural, matter governed by uniform federal maritime law. *In re Exxon Valdez*, 484 F.3d 1098, 1101 (9<sup>th</sup> Cir. 2007).

under the substantive principles of federal maritime law. The election of a jury or bench trial was Endicott's to make. The trial court also correctly awarded Endicott prejudgment interest on his mixed Jones Act/unseaworthiness recoveries, as this issue was substantive, fulfilling the general federal policy of fully compensating injured maritime workers.

DATED this 14th day of September, 2009.

Respectfully submitted,



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DECLARATION OF SERVICE

On this day said forth below, I emailed and deposited with the U.S. Postal Service a true and accurate copy of: Endicott's Answer to Amicus Curiae Brief of Inlandboatmen's Union of the Pacific in Supreme Court Cause No. 82635-8 to the following parties:

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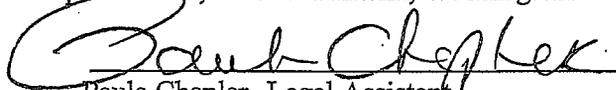
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I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: September 11, 2009 at Tukwila, Washington.

  
Paula Chapler, Legal Assistant  
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DECLARATION

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