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SUPREME COURT NO. 90304-2  
COURT OF APPEALS NO. 69759-5-I

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**SUPREME COURT  
OF THE STATE OF WASHINGTON**

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THE BOEING COMPANY,  
and  
PATRICIA DOSS,

Respondents,

v.

DEPARTMENT OF LABOR AND INDUSTRIES OF THE STATE OF  
WASHINGTON,

Petitioner,

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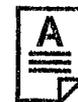
**SUPPLEMENTAL BRIEF OF RESPONDENT – THE BOEING  
COMPANY**

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PRATT, DAY & STRATTON, PLLC

Gibby M. Stratton, # 15423  
Eric J. Jensen, # 43265  
Attorneys for Respondent, The Boeing  
Company

**Pratt Day & Stratton, PLLC**  
2102 N. Pearl Street, Suite 106  
Tacoma, Washington 98406  
(253) 573-1441



**ORIGINAL**

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## I. INTRODUCTION

This case involves the question of whether the Department of Labor and Industries' Second Injury Fund can be used to provide coverage for an injured worker's post-pension medical treatment. When a claimant has been declared totally and permanently disabled, the Director of the Department of Labor and Industries, in his or her sole discretion, can authorize continued medical treatment, when such treatment is necessary to protect the worker's life. RCW 51.36.010. Here, neither party disputes the Claimant's entitlement to post-pension medical treatment. BR 67.<sup>1</sup> Instead, the dispute in this case concerns whether the cost of the Claimant's treatment should be paid out of the Second Injury Fund, as both the Court of Appeals and the King County Superior Court correctly found, or by the Self Insured Employer.

The Second Injury Fund is a fund established to encourage Employers to hire previously injured workers or workers with disabling conditions by defraying the costs that resulted, or continue to result, from that previous injury/condition against the fund. When a worker has a previous disability and suffers a further disability which, based on the combined effects, renders that worker totally and permanently disabled, *the employer of injury is responsible only for those accident costs which*

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<sup>1</sup> The Certified Appeals Board Record is herein cited as "BR." The Clerk's Papers are cited as "CP."

would have resulted had there been no preexisting disability. RCW 51.16.120.

The difference between the amount charged to the employer and the total cost of the claimant's disability is charged to the Second Injury Fund. *Id.* As a result, employers are encouraged to hire previously disabled workers because the employer will only be responsible for those costs caused solely by the injury suffered while working for that employer. Here, there is no dispute that the Claimant is totally and permanently disabled as a result of her pre-existing disabling conditions and her occupational exposure, and that the employer is entitled to Second Injury Fund Relief. BR 67. The only issue in this appeal is whether the Second Injury Fund should be used to cover the post-pension medical treatment awarded to the Claimant for a condition that *was not caused solely by her industrially related condition.*

## **II. ISSUE PRESENTED**

Does RCW 51.16.120(1), which states that, when Second Injury Fund relief is granted, "a self-insured employer shall pay directly into the reserve fund *only* the accident cost which would have resulted *solely from the further injury or disease, had there been no preexisting disability*" require a self-insured employer to pay for the entire cost of treatment for a medical condition that did not result solely from the further injury or

disease and that would not be necessary had there been no preexisting disability? *Id.* (emphasis added).

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

The underlying facts of this case are not in dispute. On March 10, 2000, the Claimant filed an application for benefits. BR 66. The medical evidence established that, prior to March 10, 2000, the Claimant suffered from asthma, was being treated for asthma, and had permanent work restrictions because of her asthma. As of August 1996, the Claimant was required to wear a dust mask while working due to her asthma. As of May 1998, the Claimant was permanently restricted from prolonged walking due to difficulty breathing with such activity related to her asthma. The Claimant's work exposures permanently aggravated her pre-existing symptomatic asthma and, as a result, the Claimant requires ongoing medical treatment. BR at 66-67.

The Department determined that, as of May 14, 2008, the Claimant was totally permanently disabled as a result of the combined effects of both her industrial exposure and preexisting conditions. BR at 73, 83. The Department subsequently awarded the Employer Second Injury Fund relief. BR at 77. The Employer was ordered to pay \$22,237.07 with the balance of the Claimant's benefits to "be charged against the Second Injury account." *Id.*

Although it had given the Employer Second Injury Fund relief based in part on the Claimant's preexisting and disabling asthma, the Department, at its sole discretion, ordered ongoing medical treatment for the Claimant's asthma. BR at 74. The Claimant's ongoing treatment is necessitated *only in part* by her exposure while working for the Employer. BR at 67. On July 27, 2010, the Department, by letter, directed the Employer to bear the *entire* cost of the Claimant's ongoing asthma treatment. BR at 89. The Employer filed a timely appeal of the Department's letter to the Board of Industrial Insurance Appeals. BR at 98.

The sole issue presented to the Board was whether the Employer was required to pay for the Claimant's lifetime of post-pension asthma treatment. BR at 67. An Industrial Appeals Judge issued a Proposed Decision and Order affirming the Department's letter. BR at 23-28. The Employer filed a petition for review to the Board, which was granted. BR at 7-18. The Board issued its own Decision and Order, which also affirmed the Department's letter. BR at 1-6. The Employer filed a timely appeal of the Board's Decision and Order to the Superior Court. CP at 1-10.

The King County Superior Court reversed the Decision and Order of the Board. CP at 57-61. The Superior Court found that the Claimant's

“post pension treatment benefits are properly payable from the Second Injury Fund, and are not the responsibility of’ the Employer. CP at 60. The Department filed a timely appeal to the Court of Appeals. CP at 62-67. The Court of Appeals affirmed the Superior Court, finding that “[b]ecause the unambiguous language of RCW 51.16.120(1), consistent with the purpose of the second injury fund, requires the Department, rather than the self-insured employer, to pay the costs of a disabled employee's ongoing post pension medical treatment and a self-insured employer should not bear a financial burden different from a state fund employer, we affirm.” *Boeing Co. v. Doss*, 180 Wn. App. 427, 437, 321 P.3d 1270 (2014). The Department petitioned this Court for review on April 25, 2014. This Court granted review on September 3, 2014.

#### **IV. ARGUMENT**

As the Court of Appeals and Superior Court correctly recognized, “the unambiguous language of RCW 51.16.120(1), consistent with the purpose of the second injury fund, requires the Department, rather than the self-insured employer, to pay the costs of a disabled employee's ongoing post pension medical treatment and a self-insured employer should not bear a financial burden different from a state fund employer.” *Id.* The decisions of the Court of Appeals and Superior Court are correct and this Court should affirm.

A. WHEN SECOND INJURY FUND RELIEF IS AWARDED IN A CLAIM, THE EMPLOYER IS RESPONSIBLE ONLY FOR THE PORTION OF THE CLAIMANT'S CONDITION RESULTING SOLELY FROM THE INDUSTRIAL INJURY OR OCCUPATIONAL DISEASE.

Under the facts present here, the Department's position that the Employer is solely responsible for the costs of the Claimant's ongoing treatment is, simply, incorrect. When Second Injury Fund relief has been granted, self-insured Employers are not responsible for the costs of Claimants' ongoing medical care. Both the language of the Second Injury Fund statute and the Department's own self-promulgated regulations show that Employers, when Second Injury Fund relief has been granted, are only responsible for the accident costs that resulted *solely* from the Claimants' industrial injury or disease.

- a. *The plain language of RCW 51.16.120 mandates that the a self insured employer pay only the permanent partial disability resulting solely from the industrial injury/occupational disease; any ongoing post-pension treatment is to be paid from the Second Injury Fund.*

Despite the Department's arguments, there is no authority, statutory or otherwise, to support its desired result in this case – the Employer bearing the *entire* burden of the Claimant's ongoing and unending medical treatment. This is because the plain language of the statute governing Employers' responsibilities when Second Injury Fund relief has been granted expressly exempts the Employer from bearing that burden.

RCW 51.16.120 governs the question before this Court and states, in relevant part, that

[w]henever a worker has a previous bodily disability from any previous injury or disease, whether known or unknown to the employer, and shall suffer a further disability from injury or occupational disease in employment covered by this title and become totally and permanently disabled from the combined effects thereof or die when death was substantially accelerated by the combined effects thereof, then the experience record of an employer insured with the state fund at the time of the further injury or disease shall be charged and a self-insured employer *shall pay directly into the reserve fund only the accident cost which would have resulted solely from the further injury or disease*, had there been no preexisting disability, and which accident cost shall be based upon an evaluation of the disability by medical experts.

RCW 51.16.120(1) (emphasis added).

Industrial insurance claims are governed by explicit statutory directives and not by the common law. *Rector v. Dep't of Labor & Indus.*, 61 Wn. App. 385, 810 P.2d 1363 (1991). Whether a self-insured Employer is statutorily required to pay for ongoing post pension treatment, ordered at the Director's discretion, is determined by the clear and unambiguous language of the statute. It is a fundamental principle of statutory construction that Courts do not construe unambiguous statutes. *Vita Foods, Inc. v. State*, 91 Wn.2d 132, 134, 587 P.2d 535 (1978).

As a result, this Court need look no further than the language of the Second Injury Fund statute, RCW 51.16.120(1). The statute states that, in Second Injury Fund cases, the individual self-insured employer "shall pay... *only the accident cost which would have resulted solely from said further injury or disease*, had there been no preexisting disability, and which accident cost shall be based upon an evaluation of the disability by medical experts." RCW 51.16.120(1) (emphasis added). The statute is

remarkably clear as to an Employer's responsibility when Second Injury Fund relief is granted. Its plain language states that the Employer pays only for the "accident costs" that resulted solely from the last injury, nothing more and nothing less. As the Department itself has noted, *see Brief of Appellant*<sup>2</sup> at 18, "accident costs" do not include the cost of the Claimant's ongoing treatment.

Even if this Court finds some ambiguity in RCW 51.16.120(1), numerous rules of statutory construction support the Court of Appeals' construction of the statute. This Court's primary duty in interpreting statutes is to give effect to the Legislature's intent. *Sacred Heart v. Dep't of Revenue*, 88 Wn. App. 632, 946 P.2d 409 (1997). In determining legislative intent, a court construes statutory language in the context of the statute as a whole. *Id.* The words used in a statute are given their usual and ordinary meaning when they are not otherwise defined by the statute. *Id.* A statute is construed to avoid strained, unlikely, or unrealistic consequences. *Id.* A statute is not ambiguous unless it is susceptible of more than one reasonable interpretation. *Id.*

In addition, the specific inclusion of one item in a category excludes implication of other items of the same category. *State v. Greco*, 57 Wn. App. 196, 787 P.2d 940 (1990). Moreover, a specific provision overrides a conflicting general provision. *Wilson Sporting Goods v. Pedersen*, 76 Wn. App. 300, 886 P.2d 203 (1994).

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<sup>2</sup> The Department's Brief of Appellant before the Court of Appeals is referred to as *Brief of Appellant*.

By stating that the “only” costs the self-insured employer “shall pay” after second injury fund relief has been granted are those costs arising “solely” from the industrial injury, the Legislature, in RCW 51.16.120, explicitly *excluded* payments by the Employer for anything else. This specific statutory provision takes precedence over the more general provisions that purport to require the Employer to cover the Claimant’s ongoing treatment costs. *See, e.g.*, RCW 51.08.173; RCW 51.14.020(1); RCW 51.44.070(1); WAC 296-15-330(1). Instead, the Employer’s obligation under the plain language of RCW 51.16.120 is limited to paying *only* for benefits caused *solely* by the industrial injury or occupational disease. In this case, the cost of any ongoing treatment and medical monitoring required for the Claimant’s pre-existing asthma should not be born solely by the Employer because the need for treatment did not arise “solely” from the industrial injury, but resulted from both the Claimant’s pre-existing asthma and her industrial aggravation. BR 67. Instead of imposing the costs of treatment on the Employer, this Court should follow the unmistakable language of RCW 51.16.120 which, as this Court unanimously found, “provides that the employer pays only the accident cost attributable to the latter industrial injury; the second injury fund covers the remainder.” *Crown, Cork & Seal v. Smith*, 171 Wn. 2d 866, 873, 259 P.3d 151 (2011).

- b. *Forcing the Employer to bear the burden of providing for the Claimant’s ongoing medical coverage would constitute a double assessment of the Employer and a windfall for the Department, as such costs are already included in Employer’s*

*Second Injury Fund assessments under WAC 296-15-221.*

In addition to the plain language of RCW 51.16.120(1), the Employer should not be required to bear the costs of the Claimant's ongoing medical treatment because requiring it to do so "would give an unjustified windfall to the State, at the expense of" the self-insured Employer. *Flanigan v. Dep't of Labor & Indus.*, 123 Wn.2d 418, 425, 869 P.2d 14 (1994). The Second Injury Fund is a separate fund consisting of payments made by employers. RCW 51.44.040. The statute provides for "a fund to be known and designated as the 'second injury fund', which shall be used only for the purpose of defraying charges against it as provided in RCW 51.16.120 and 51.32.250." RCW 51.44.040(1). The Employer pays assessments to the Second Injury Fund "in the proportion that the payments made from the fund on account of claims made against self-insurers bears to the total sum of payments from the fund." RCW 51.44.040(3)(a)(i).

An Employer's assessments to the Second Injury Fund are based on its total claims costs, not just those costs related to wage replacement benefits (time loss) or permanent partial disability awards. The Department's own regulation, WAC 296-15-221, provides that

*[e]ach self insurer must submit:*

(a) Complete and accurate quarterly reports summarizing worker hours and claim costs paid the previous quarter. Self-insured employers must use a form substantially similar to the preprinted Quarterly Report for Self-Insured Business, L&I form F207-006-000, form sent by the department. *This report is the basis for determining the administrative, second injury fund, supplemental pension,*

*asbestosis and insolvency trust assessments.* Payment is due by the date specified on the preprinted report from the department.

(ii) *Claim costs include, but are not limited to:*

(A) Time loss compensation. Include the amount of time loss the worker would have been entitled to if kept on full salary.

(B) Permanent partial disability (PPD) awards.

(C) *Medical bills.*

(D) *Prescriptions.*

(E) *Medical appliances.*

(F) Independent medical examinations and/or consultations.

(G) Loss of earning power.

(H) *Travel expenses for treatment or rehabilitation.*

(I) Vocational rehabilitation expenses.

(J) Penalties paid to injured workers.

(K) Interest on board orders.

WAC 296-15-221(4) (emphasis added). As a result, the Employer's assessments for the Second Injury Fund are based, in part, on medical treatment costs.

Inclusion of treatment costs as part of the Legislature's mandate that *total claims costs* be considered for Second Injury Fund assessments on self-insured Employers shows that the Legislature contemplated that post-pension treatment costs would be allowed to be paid out of the

Second Injury Fund, after Second Injury Fund relief has been granted. To require the Employer to pay post-pension treatment costs after Second Injury Fund relief is granted would constitute a double assessment on the Employer and a windfall to the Department. *See Flanigan*, 123 Wn.2d 418 (double recoveries should be avoided). Indeed, it would allow the Department to fund the Second Injury Fund with assessments related to treatment costs, but foist those costs upon self-insured Employers when the Department, at its sole discretion, decides that they need to be paid. Such an inequitable interpretation of RCW 51.16.120(1) should not be adopted by this Court.

- c. *The Department does not charge a State Fund Employer's account for post pension treatment when a State Fund Employer is granted second injury fund relief thereby treating Self-Insured Employers and State Fund Employers differently.*

As the Department has previously conceded, when post Second Injury Fund treatment costs are ordered in a State Fund case, the cost of that treatment is "spread to all state fund employers and employees" and paid out of their general fund. CP at 45. Typically, a State Fund Employer's account is charged for actual and anticipated costs in allowed claims, including for pensions. The costs charged to the State Fund Employer's account are then used to adjust their experience rating thereby resulting in rate increases to the State Fund Employer. However, in those instances where a State Fund Employer's injured worker becomes totally disabled based on the combined effects of a pre-existing disabling condition and the industrially related condition, the State Fund Employer

(just like a Self Insured Employer) is entitled to have the pension paid from the Second Injury Fund and not charged to their account or ultimately have it affect their experience rating.

As noted above, the Department admits that when post pension treatment is ordered in a second injury State Fund claim, the State Fund Employer's account *is not charged*. CP at 45. In fact, for State Fund Employers, their experience rating, and therefore the amount ultimately paid by the State Fund Employer as a result of its claim costs, are unaffected by post pension treatment costs. CP at 42.

There is a good reason for this: RCW 51.16.120(1) mandates that "the experience record of an employer insured with the state fund at the time of the further injury or disease shall be charged... only the accident cost which would have resulted solely from the further injury or disease, had there been no preexisting disability." As the Department itself notes, *see Brief of Appellant* at 18, "accident costs" *do not* include the cost of the Claimant's ongoing treatment. Therefore, those costs are not charged against the experience record of State Fund Employers. As the above shows, the Department's position in Self Insured cases is exactly the opposite of its position in State Fund cases. Indeed, the Department is arguing that Self-Insured Employers are and should be treated differently than State Fund Employers when it comes to the direct financial impact of second injury fund post pension treatment. *See Brief of Appellant* at 9-11.

The Department attempts to make this argument without acknowledging that there is no statutory authority that would support such

discrimination between employers. Indeed, the full text of the statutory provision at issue here is “the experience record of an employer insured with the state fund at the time of the further injury or disease shall be charged and a self-insured employer shall pay directly into the reserve fund *only the accident cost which would have resulted solely from the further injury or disease, had there been no preexisting disability.*” RCW 51.16.120(1) (emphasis added) As the text of the statute makes clear, the same standard for determining individual employer liability for costs in second injury fund claims should be applied exactly the same to both State Fund and Self-Insured employers: that the cost is an “accident cost which would have resulted solely from the further injury or disease, had there been no preexisting disability.” *Id.* There is simply no statutory support for the Department’s attempt to manufacture two different standards for liability for State Fund and Self-Insured employers.

Instead, as the Department stated in Superior Court, “[a] self-insurer is entitled to the same kind of second injury fund relief that state fund employers are entitled to.” CP at 38; *see also* CP at 47 (“disbursements from the second injury fund [must] be the same for self insureds as [they are] for employers insured by the state.”). Self Insured Employers should be treated the same as State Fund Employers. They should receive the same relief from costs that are not “accident costs which would have resulted solely from the further injury or disease, had there been no preexisting disability” as the Department currently gives State Fund Employers. RCW 51.16.120(1). The Department suggests

that this Court reach the opposite conclusion and create a discrimination between types of employers that does not exist in the text of RCW 51.16.120(1) and that the Department has previously disclaimed. Such an inequitable result as advocated by the Department could not have been the intent of the Legislature and should not be the result reached by this Court. The Department is correctly not charging a State Fund Employer for post pension treatment costs in state fund claims, and they should apply the same standard with Self-Insured Employers.

In addition, by stating post pension treatment costs should not be charged directly to a State Fund Employer, the Department is admitting no Employer is individually responsible for paying post pension treatment costs in second injury cases. In State Fund claims the cost of post pension treatment is spread to all employers and employees. CP at 45. That in fact is the intent of the Second Injury Fund. Self Insured Employers should be treated the same and equally as State Fund Employers. Surely such an inequitable result as advocated by the Department could not have been the intent of the Legislature and should not be the result reached by this Court.

*d. The Department's alleged failure to consider ongoing medical costs in setting Second Injury Fund assessments has no impact on this Court's interpretation of RCW 51.16.120.*

The Department has argued that it should not have to fulfill its duty to pay for Second Injury Fund post pension medical costs because “[s]econd injury fund assessments will have to increase to account for”

those costs. *Petition for Review* at 18 (citing WAC 296-15-225(1)). Not only does the Department fail to provide any authority that shows that such a change, if truly applicable, is unlawful or even negative, the reality is that the Department is and has taken into account these post pension medical payments when assessing premiums for the Second Injury Fund for self-insured employers. In reality, given the way Second Injury Fund premium assessments are made, *Second Injury Fund assessments will not increase at all*, contrary to the allegations made by the Department and without any support in this record to substantiate their claim.<sup>3</sup>

The Department already pays post pension medical costs for numerous Self-Insured claims out of the Second Injury Fund as ordered by the courts. *See, e.g., Healthtrust, Inc. v. Pamela A. Campbell-Fox*, No. 06-00251-5; *Prosser Memorial Hospital v. Janet E. Tull*, No. 06-00351-6. Because such payments made from the Second Injury Fund are included in those employers' usage of the fund, they are included in the employers' Second Injury Fund assessments because assessments to the Second Injury Fund are made "in the proportion that the payments made from the fund on account of claims made against self-insurers *bears to the total sum of payments from the fund.*" RCW 51.44.040(3)(a)(i) (Emphasis added) . As a result, no adjustment to the fund or how such assessments are calculated will be necessitated when this Court affirms the decision of the Court of Appeals. The fact is, every penny paid out of the Second Injury Fund,

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<sup>3</sup> Notably, the Department presented no testimony nor any documentary evidence to support these allegations in their brief

including post pension medical costs, is utilized and factored in to assess premiums to all self insured employers as noted above.

Even had the Department not been taking into account those payments, any increase to Second Injury Fund assessments necessary to account for that responsibility are speculative, likely minimal, but more importantly, should have no impact on this Court's decision.

2. ALLOWING THE CLAIMANT'S ONGOING MEDICAL TREATMENT TO BE PAID BY THE SECOND INJURY FUND EFFECTUATES THE LEGISLATURE'S INTENT IN CREATING AND MAINTAINING THE FUND.

Finally, this Court should interpret the language of RCW 51.16.120 in a way that would best effectuate the intent of the Legislature in creating and maintaining the Second Injury Fund. *Sacred Heart v. Dep't of Revenue*, 88 Wn. App. at 636. This Court addressed the purpose of the Second Injury Fund in *Jussila v. Dep't of Labor & Indus.*, 59 Wn.2d 772, 370 P.2d 582 (1962). There, this Court stated that

[t]he Second-injury Fund is a special fund set up within the administrative framework of the workmen's compensation system to encourage the hiring of previously handicapped workmen by providing that the second employer will not, in the event such a workman suffers a subsequent injury on the job, be liable for a greater disability than actually results from the second accident.

"The usual provision makes the employer ultimately liable only for the amount of disability attributable to the particular injury occurring in his employment, while the fund pays the difference between that amount and *the total amount to which the employee is entitled for the combined effects of his prior and present injury.*" 2 Larson, Workmen's Compensation Law § 59.31. *See, also*, Fabing and Barrow's "Encouragement of Employment of the Handicapped," 8 Vanderbilt L.Rev. 575 (1955).

It is apparent that any rule which makes it easier for an employer to obtain reimbursement from the fund will tend to support the basic purpose of the fund. Conversely, if recovery from the fund is too difficult, an employer may find it easier and less costly simply to refuse to hire previously disabled persons.

*Jussila*, 59 Wn.2d at 778-779 (emphasis added).

Indeed, this Court has recently found that

[t]he second injury fund serves several underlying purposes. First, the fund encourages employers to hire and retain previously disabled workers, providing that the employer hiring the disabled worker will not be liable for a greater disability than what actually results from a later accident. Second, by recognizing that an employer is only required to bear the costs associated with the industrial injuries sustained by its employees, the fund encourages workplace safety and prevents placing unfair financial burdens on employers. *Jussila*, 59 Wn.2d at 778-79.

*Crown, Cork & Seal*, 171 Wn. 2d at 873.

The result urged by the Department here would be in direct contravention of the Legislature's purpose in creating the Second Injury fund. A decision by this Court that would require self-insured Employers to provide lifetime coverage for the entire cost of medical treatment for conditions either unrelated to or not caused solely by the injury for which they were responsible "makes it [harder] for an employer to obtain reimbursement from the fund" and will likely result in Employers "find[ing] it easier and less costly simply to refuse to hire previously disabled persons," especially those whose pre-employment disabilities require ongoing care. *Jussila*, 59 Wn.2d at 779. In addition, a ruling in favor of the Department would discourage "employers [from] hir[ing] and retain[ing] previously disabled workers" as it would undercut the Second

Injury Fund's guarantee that "the employer hiring the disabled worker will not be liable for a greater disability than what actually results from a later accident." *Crown, Cork & Seal*, 171 Wn. 2d at 873. Instead, it would "place[ an] unfair financial burdens on employers." *Id.* As a result of that "unfair financial burden[]" Employers will be more likely to choose not to hire previously injured workers. *Id.* Such a result cannot have been the intent of the Legislature and should not be the result reached by this Court.

a. *In order to facilitate the Legislature's intent, the Second Injury Fund is currently used to fund things other than pension payments.*

Indeed, despite the Department's position that it is unable to utilize the Second Injury Fund to pay for anything other than pension payments, *Brief of Appellant* at 16-21, the Fund is currently used to pay for other programs that help encourage the hiring or continued employment of disabled and impaired workers. In order to facilitate this purpose, when a "Preferred Worker" sustains a new on-the-job injury, the cost of the associated workers' compensation benefits are paid from the Second Injury Fund. BR 67. In addition, in order to assist employers in meeting the costs of job modifications and to encourage employers to modify jobs in order to accommodate retaining or hiring workers with disabilities resulting from work-related injuries, the supervisor has discretion to pay job modification costs, up to five thousand dollars, out of the Second Injury Fund. BR 68. Though the Claimant here is not entitled to job modification costs or "Preferred Worker" status, the Legislature's inclusion of these programs shows that the Second Injury Fund was not

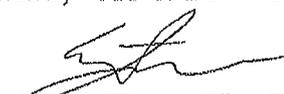
established solely for paying pension payments, but was intended to help defray the cost of benefits that encourage Employers to hire and retain previously disabled Employees. *Rothschild Int'l Stevedoring Co. v. Dep't of Labor & Indus.*, 3 Wn. App. 967, 478 P.2d 759 (1970). Because the Second Injury Fund's payment of post-Second Injury Fund relief medical expenses, like the payment of job modification costs and use of the "Preferred Worker" program, effectuates the goals of the Legislature such payments should be allowed by this Court.

**V. CONCLUSION**

Based on the foregoing points and authorities, the Respondent, The Boeing Company, requests that this Court affirm the Court of Appeals.

RESPECTFULLY SUBMITTED this 2<sup>o</sup> day of November, 2014.

PRATT, DAY & STRATTON, PLLC

By 

Gibby M. Stratton, # 15423

Eric J. Jensen, # 43265

Attorneys for Respondent, The Boeing Company

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Please find attached for filing on behalf of Respondent, The Boeing Company: Letter, Supplemental Brief and Certificate of Service in No. 90304-2. These documents are being filed by attorney for Respondent, The Boeing Company, Gibby M. Stratton, Pratt, Day & Stratton, 2102 N. Pearl Street, #106, Tacoma, WA 98406. Email: [gstratton@prattdaystratton.com](mailto:gstratton@prattdaystratton.com), WSBA #15423.

Susan Mitchell  
Paralegal to Gibby M. Stratton

*Susan R. Mitchell*  
*Pratt, Day & Stratton, PLLC*  
*2102 N. Pearl Street, Suite 106*  
*Tacoma, WA 98406*  
*253-882-0852 (direct)*  
*253-573-1441, ext. 104*  
*206-467-6820, ext 104*  
*253-572-5570 (facsimile)*  
[smitchell@prattdaystratton.com](mailto:smitchell@prattdaystratton.com)

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