

Jones Act Review



Prepared For:
Joint Transportation Committee
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Consultant:
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EXECUTIVE SUMMARY

The 2010 legislature directed the Joint Transportation Committee to “to conduct a comparison of medical, time-loss, vocational and disability benefits available to injured workers, and costs payable by the state of Washington and employees, under the federal Jones Act and Washington's industrial insurance act. The report must include information regarding the experience of the Alaska marine highway system” (§204(9)(b) of SSB 6381).

The consultants found that:

- **The policies underlying industrial insurance and the federal Jones Act and general maritime law are different.** Industrial insurance provides no-fault benefits to workers who are injured on the job or have an occupational illness. General maritime law provides seamen with no-fault benefits that are less extensive than those provided by industrial insurance. The Jones Act and general maritime law give employees the right to sue for damages – a right that is not extended to employees under industrial insurance.
- **There is a trade-off for employees between industrial insurance and the federal Jones Act/General Maritime Law.** Benefits under industrial insurance are no-fault and include both short term benefits and, in the event of more severe injuries or illness, long-term disability, vocational training, pensions, and survivor benefits. Under the Jones Act and general maritime law employees receive much lower no-fault benefits and all of them are short-term. Long-term disability, pensions, vocational training, and survivor benefits are not provided under the Jones Act/general maritime law.
- **If Jones Act/General Maritime Law employees sue the state, they can get a larger - and sometimes substantially larger - total payment, but they have to wait on average 31 months between the incident and receiving the settlement which can impose a hardship on the employee.** Given the relatively low General Maritime Law no-fault benefits employees have little choice but to sue for longer-term benefits. This process can result in a much larger payment, but case studies done as part of this report show that employees can use up all of their personal leave and even be on unpaid leave status while awaiting a settlement or award.
- **Employees who do not sue the state – or have relatively less time-off and less severe injuries and do sue the state – can receive greater total compensation under industrial insurance.** In some situations, such as when an employee does not have the basis for a damage claim or receives a relatively small settlement, employees would receive greater total benefits under industrial insurance and they would not have to wait. In one case study done for this report an employee who did not have a basis for damages would have received substantially greater benefits under industrial insurance. However, if an employee has a non-work related injury that becomes manifest on the vessel or is off for less than 13 days, the employee will receive smaller benefits under industrial insurance.
- **Depending on the outcome of collective bargaining, the state would save between \$400,000 and \$1.2 million per year if Jones Act/General Maritime employees were instead in the industrial insurance program,** and potentially reduce its marine insurance policy cost. These savings will be phased in over three (3) to five (5) years as claims are settled.
- **Depending on the outcome of collective bargaining, employees could have a payroll deduction of approximately \$500 per year per employee for industrial insurance.** There is no payroll deduction under the Jones Act.

JONES ACT BENEFITS AND RIGHTS

The Jones Act and general maritime law give seamen¹ who become ill or injured three (3) no-fault benefits: medical (called cure) benefits until at maximum medical improvement; a daily maintenance stipend until they return to work or are at maximum medical improvement; and payment of unearned wages through the end of the voyage.

Seamen also have the right to sue for damages if they can show negligence or unseaworthiness of the vessel. The degree of causation necessary to sustain a claim for damages due to negligence is slight or featherweight, which means there need be very little connection between the injury and the negligence on the part of the employer for the seaman to be successful in claiming damages. Unseaworthiness of the vessel includes conditions, such as slippery decks and stairs, which must be the proximate cause of injury.

SOVEREIGN IMMUNITY

The eleventh amendment to the United States constitution gives states sovereign immunity, which means that they cannot be sued without their consent. Washington State has, by statute, waived its sovereign immunity and consented to be sued by seamen on board vessels owned by the Washington State Department of Transportation (WSDOT) and excluded these employees from state industrial insurance.

Alaska, Oregon, New York, North Carolina and Texas have exercised their sovereign immunity and do not allow state employed seamen to sue them. In these states, state employed seamen are included in the states' industrial insurance/workers' compensation program and are not entitled to Jones Act benefits and rights. State court cases and one (1) federal case have confirmed the right of the states to assert sovereign immunity and exclude state-employed seamen from the Jones Act.

WASHINGTON STATE INDUSTRIAL INSURANCE AND JONES ACT BENEFITS

Approximately 60 percent of Washington State Ferries (WSF) employees are Jones Act employees working on vessels and 40 percent are included in the state's industrial insurance program.

The differences in benefits and rights provided by the Jones Act/General Maritime Law (GML) and Washington State's industrial insurance program are shown in the table below.

¹ In order to be considered a seaman an employee must spend at least 70 percent their time in the service of a vessel.

Item	Jones Act /General Maritime Law	Industrial Insurance
No-Fault Benefits		
Injuries/Illness covered	<ul style="list-style-type: none"> • Injuries or occupational illness incurred while in service of the vessel. • Injury or illness that becomes manifest on the job and not job related. 	<ul style="list-style-type: none"> • Job related injuries or occupational illness.
Wage Replacement	<ul style="list-style-type: none"> • Unearned wages at 100% of salary until the end of the pay period, which depending on when in the pay period the illness or injury occurs, is one (1) to fifteen (15) days of pay. • Maintenance payments of \$30 to \$40 per day depending on the collective bargaining agreement. • Supplemental payments of \$0.00 to \$60 per day depending on the collective bargaining agreement. • Unearned wages, maintenance and supplemental payments may be combined. • Continue until the employee returns to duty or is at maximum medical improvement. 	<ul style="list-style-type: none"> • Time-loss at 60-75% of gross wages for injured employees who are unable to work for more than three (3) days off the job up to maximum of \$4,715 per month (120% of the average monthly gross wage in the state). • Gross wages include salary, income from another job, the value of benefits including dental, health, and vision, and recurring penalty pay, travel time pay, and overtime • Receive reimbursement for the first three (3) days if off work for more than 13 days. • Continues until worker returns to work or, if unable to return to work, receives pension.
Wage Replacement Taxes	<ul style="list-style-type: none"> • Unearned wages and supplemental payment are subject to income and payroll taxes. • Maintenance payments are not subject to income and payroll taxes. 	<ul style="list-style-type: none"> • Time-loss payments are not subject to income and payroll taxes, with the result that the time-loss payments can be, depending on the employee's income, close to the pre-injury take home pay.
Use of Employee Benefits	<ul style="list-style-type: none"> • Vacation & sick leave – can supplement maintenance payments. 	<ul style="list-style-type: none"> • Vacation & sick leave – can supplement time-loss payments.
Shared leave	<ul style="list-style-type: none"> • Shared leave can be used to supplement payments after all personal leave is exhausted. 	<ul style="list-style-type: none"> • Shared leave cannot be used to supplement time-loss payments.
Retention of health benefits	<ul style="list-style-type: none"> • Retained as long as employee uses sick, vacation, compensatory time, guaranteed holiday pay, or shared leave to meet requirements. • COBRA available if no other hours available. 	<ul style="list-style-type: none"> • Retained as long as employee uses sick, vacation, compensatory time, or guaranteed holiday pay. • Time-loss compensation adjusted to once employers stops contributing to health insurance costs.
Medical/Cure	<ul style="list-style-type: none"> • All care related to an approved claim until at maximum medical improvement. 	<ul style="list-style-type: none"> • All care that is related to work injury or illness until point where no further recovery is expected.

Item	Jones Act /General Maritime Law	Industrial Insurance
Vocational	<ul style="list-style-type: none"> • Return to work assistance to find a position within WSDOT. • If employee cannot be accommodated and the employee is at maximum medical improvement, all no-fault benefits end. 	<ul style="list-style-type: none"> • Return to work assistance to find a position within WSDOT. • Employability assessment to determine if the worker can be employed in the area’s job market or is eligible for vocational services. • Vocational benefits may include approved training plan. While in approved training, time-loss compensation continues. • Vocational retraining plan can include schooling or on-the job training for up to two (2) years.
Long term disability, pensions, survivor benefits	<ul style="list-style-type: none"> • State basic long-term disability benefit of up to \$240 per month. • If employee has purchased the optional plan, long-term disability payments of 60% of first \$10,000 of pre-disability earnings per year. 	<ul style="list-style-type: none"> • Partial permanent disability award, whether or not the employer can return to work for specified or unspecified permanent injuries. • Permanent disability pensions for certain specified injuries even if the employee can return to work or if the employee is determined to be unable to return to work. • Pension based on time-loss compensation resulting in 60 to 75 percent of pre-injury wages up to monthly maximum. • Pension is not subject to income or payroll taxes. • Can also receive state basic long-term disability benefit or optional benefit, but offsets L&I benefits.
Other Benefits	<ul style="list-style-type: none"> • Travel costs under specific circumstances. 	<ul style="list-style-type: none"> • Travel costs under specific circumstances. • Property damage recovery for personal property lost due to the injury or associated emergency care. • Vehicle/home modifications, as approved.
Fault-Based Rights		
Damages	<ul style="list-style-type: none"> • Standing to sue • Must show negligence or unseaworthiness of vessel. 	<ul style="list-style-type: none"> • No standing.

Jones Act Incidents and Costs FY 2003-2010

Of the total \$16.1 million in Jones Act/GML expenses from incidents occurring in the FY 2003-10 time period, 32 percent were for no-fault benefits and 68 percent for damage payments and associated defense costs.

Jones Act/GML Incidents FY 2003-10 and Associated Expenditures

	Incidents	Individuals	% of total employees	Total Paid (\$ millions)	% of Total Paid
Jones Act Employees (FY 03-10)		1,700			
Incidents	1,763	714	42%		
No-Fault Benefits Paid on Incidents	1,019	482	28%	\$5.2	32%
Fault-Based Injury Claims					
Filed Claim		103	6%		
Indemnity Paid		72	4%	\$8.4	52%
Defense Costs				\$2.5	16%
Total Fault-Based Paid on Incidents				\$10.9	68%
Total				\$16.1	

Claims and Defense

- *Who files claims.* Claims are primarily filed by people who have received significant GML no-fault benefits, indicating that their injuries and/or time off were significant. A review of judgments shows the issues in these cases include allegations by the plaintiff that the vessel was unseaworthy and WSF was negligent. The state defense arguments were that the employee was negligent, the injury was the result of a pre-existing condition, there was third-party liability/negligence, or the employee failed to perform assigned duties properly. In two (2) bench decisions, the judge based the award on a combination of medical expenses, estimates of economic loss from lost wages, and non-economic damages.
- *Settlement time.* The average elapsed time between an incident and the closure of a claim with a settlement decision was 31 months.
- *Settlements and awards.* Individual claim settlements and awards ranged from a high of \$773,000 to a low of \$612, with 26 individuals receiving a total of \$6.6 million or 79 percent of the total indemnities paid.
- *Defense costs.* The total Attorney General defense costs for incidents occurring in the FY 2003-10 time-period was \$2.5 million, of which \$2.3 million was for cases involving 44 individuals where the matter was settled by a court proceeding or through mediation or other direct settlement.

COST COMPARISON - STATE

The state incurred an average of \$3.4 million per year in Jones Act/GML expenses for the last four (4) fiscal years.² The state's annual cost would be \$1.2 million to \$0.4 million lower under industrial insurance with the cost reduction phased in as outstanding claims are settled.

- *Industrial insurance rate.* With existing hours of service, the industrial insurance payment would be \$2.6 million per year of which \$0.5 million would be borne by employees through payroll deduction and \$2.1 million by the state.
- *Collective bargaining agreements.* If the state withdraws its waiver of sovereign immunity and includes WSF vessel employees in the state's industrial insurance program, the impact of the decision will be subject to collective bargaining. There are a variety of potential outcomes of collective bargaining. The analysis in this report considers two (2) scenarios: 1) WSF pays the employee portion of the industrial insurance premium; and 2) WSF continues, as AHMS does, to pay unearned wages.
- *Scenarios.* Annual savings, excluding any potential savings from the marine insurance program, range from a high of \$1.2 million per fiscal year if WSF pays only the employer portion of the industrial insurance rate to a low of \$0.4 million per fiscal year if WSF pays the employee portion of the industrial insurance rate and continues to pay unearned wages. The annual savings would be \$0.9 million if WSF continues to pay unearned wages and pays only the employer share of the industrial insurance premium.
- *Timing.* Indemnity and defense costs would phase out over a three (3) to five (5) year period.
- *Marine insurance.* The liability coverages in WSF's marine insurance program are based on an assessment of risks, which includes exposure to Jones Act claims. The 2010 insurance risk assessment shows that crew injury on vessels is the "highest value of claims/losses"³ with the crew injury reserve for FY 2008 constituting 47 percent of the loss reserve. Transferring the risk of crew injury to industrial insurance has the potential to stabilize, if not reduce, the approximately \$1.0 million annual premium for vessel protection and indemnity coverage.
- *Farebox recovery.* Jones Act and GML no-fault benefit, indemnity and defense costs are included in the calculation of farebox recovery, which is considered when setting fares. Any reduction in these costs will increase the farebox recovery rate.

² The average annual costs are different than costs for incidents that occurred during a particular time period. Expenses can and often are spread across several fiscal years. For example, an injured employee who begins receiving benefits in one fiscal year may continue to receive benefits during the next fiscal year. Injury claims take an average of 31 months from the incident to the settlement, which means that the actual expense of the settlement would be incurred two (2) to three (3) fiscal years following the incident.

³ Hornblower Marine Services *Insurance Risk Assessment*, February 20, 2010, p. 14.

COST COMPARISON – EMPLOYEES

Payroll Deductions and Coverages

Ways in which WSF employees would be *adversely* affected by a move to industrial insurance are:

- *Payroll decision.* Unless otherwise agreed to, if vessel employees were included in the industrial insurance programs, employees would have a payroll deduction of \$0.29744 per hour or approximately \$500 per vessel employee per year.
- *Reductions in coverage of no-fault benefits.* There are three coverages that are currently provided by GML that would not be provided under industrial insurance.
 - *Manifest injuries and illnesses.* Seven percent (7%) of Jones Act/GML incidents and 4 percent of no-fault benefit costs, primarily from medical benefits, in the FY 2003-10 time period were from illnesses or injuries that were manifest on the job rather than work-related. Under industrial insurance, employees would use their accumulated leave and state provided medical and dental insurance for these injuries and illnesses.
 - *First three (3) days time-loss.* Under industrial insurance employees would not receive time-loss compensation for the first three (3) days they were out-of-work if they are off work for 13 days or less. Nine percent (9%) of unearned wages, maintenance and supplemental pay for incidents in the FY 2003-10 time period were for the first three (3) days off work.

Ways in which WSF employees would be *benefited* by a move to industrial insurance are:

- *Improved wage replacement benefits after three (3) days off work.* Vessel employees would receive 60 to 75 percent of their wages up to a maximum of \$4,715 per month tax free if they were covered by industrial insurance. Under the Jones Act employees receive unearned wages for one (1) to 15 days and, depending on their collective bargaining agreement, daily maintenance/supplemental payments of \$30 to \$100. Only the daily maintenance payment is tax free.
- *Additional no-fault benefits.* Employees would have no-fault vocational training, long-term disability, pensions, and survivor benefits that are available only as elements of damages under the Jones Act/GML. This is particularly important given the difficulties faced by WSDOT in returning vessel employees to their former positions under existing US Coast Guard regulations and collective bargaining agreements. Employees would not be forced to sue the state to gain these benefits.

Case Studies

The consultants selected 21 incidents from FY 2003-10, including incidents with the highest medical costs, greatest number of days off, and largest damage awards and a sampling of other incidents with more moderate and low medical costs, number of days off, and damage awards. The Department of Labor and Industries estimated the wage replacement (time-loss compensation, permanent partial disability, and pension) and medical benefits the employee would have received under industrial insurance. The results were compared to the no-fault benefits and damages received by the employee under the Jones Act.

The case studies indicate that if vessel employees were under industrial insurance they would be trading off the opportunity for larger total benefits under the Jones Act/GML when they are seriously injured and can show negligence or unseaworthy conditions for more predictable no-fault benefits under industrial insurance. The larger total benefits under the Jones Act, which can be substantial, come about when employees successfully sue the state for damages, a process that can take two (2) to three (3) years and imposes hardships on employees if they are off work for an extended period of time.

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SECTION I. PURPOSE

A. Purpose

The 2010 legislature directed the Joint Transportation Committee (JTC) to conduct a comparison of medical, time-loss, vocational and disability benefits available to injured workers, and costs payable by the state of Washington and employees, under the federal Jones Act and Washington's industrial insurance act. The report must include information regarding the experience of the Alaska marine highway system. (§204(9)(b) of SSB 6381)

B. Sources of Data

1. Jones Act/General Maritime Law

The Washington State Department of Transportation (WSDOT) provided information on Jones Act/General Maritime Law (GML) incidents and related costs from FY 2003 through FY 2010 and on fiscal year Jones Act/GML expenditures. The Office of Financial Management provided information on claims filed, indemnities paid, and defense costs for incidents that occurred during this same time period.

2. Industrial Insurance

The Department of Labor and Industries (L&I) analyzed 21 Jones Act incidents and provided an estimate of the benefits that would have been provided to employees had they been included in the industrial insurance program. L&I also provided a projected FY 2011 industrial insurance rate for WSF vessel employees.

SECTION II. THE JONES ACT AND STATE SOVERIGN IMMUNITY

This section provides an overview of the benefits and rights afforded seamen under federal and general admiralty laws, which are commonly referred to as Jones Act/GML benefits and rights. There are three (3) no-fault benefits – maintenance, cure and unearned wages payments and two (2) fault-based rights - to obtain damages from ship owners for unseaworthiness or employers for negligence.

The eleventh amendment to the United States Constitution gives states sovereign immunity, which means that they cannot be sued without their consent. Washington State has, by statute, waived its sovereign immunity and consented to be sued by seamen on board vessels owned by the Washington State Department of Transportation (WSDOT). These WSDOT employees receive benefits under federal and general maritime law as Jones Act employees and are excluded from the state industrial insurance program.

Five (5) states have exercised their sovereign immunity and do not allow state employed seamen to sue them. In these states, state employed seamen are included in the states' industrial insurance/workers' compensation programs and are not entitled to Jones Act/GML benefits and rights. State court cases and one (1) federal case have confirmed the right of the states to assert sovereign immunity and exclude state-employed seamen from the Jones Act.

In 2003 the Alaska State legislature adopted a statute revoking the state's waiver of sovereign immunity for suits by state-employed seamen. The statute was upheld by the Alaska Supreme Court in 2008. The 2003 statute reinstated workers' compensation for vessel employees of the Alaska Marine Highway System (AMHS). AMHS marine employees had, through their collective bargaining agreements, been included in the state workers' compensation program from 1983 to 1991 when a Supreme Court ruling invalidated the collective bargaining agreements.

A. Overview of Jones Act Benefits and Rights

The rights and protections afforded seamen⁴ under general admiralty law and the federal Merchant Marine Act are referred to as Jones Act/GML benefits and rights⁵ and include no-fault benefits and the right to obtain damages from ship owners and employers.

1. No-Fault Benefits

a. Maintenance and Cure

General maritime law requires ship owners to provide maintenance and cure for seaman who are injured or become ill while in service of the vessel. Maintenance and cure are owed to the seaman if an injury or illness becomes manifest on the job (i.e. is a non-work related illness or injury that becomes apparent while in the service of the vessel) or was work related. Maintenance and cure payments are made until the seaman is found fit for duty or is at maximum medical improvement. Once the seaman is

⁴ "The United States Supreme Court, in the case of *Chandris, Inc., v. Latsis*, 515 U.S. 347, 115 S.Ct. 2172 (1995) has set a benchmark for determining the status of any employee as a "Jones Act seaman". Any worker who spends less than 30 percent of his time in the service of a vessel on navigable waters is presumed not to be a seaman under the Jones Act." (www.wikipedia.org)

⁵ The Merchant Marine Act of 1920 is called the Jones Act after Senator Wesley L. Jones of Washington. The Act was amended and re-codified in October 2006.

at maximum medical improvement, maintenance and cure payments end even if the seaman has not returned to duty.

- *Maintenance.* Maintenance refers to the ship owner's duty to pay for the expenses of room and board while the injured seaman is ashore and unable to work and normally takes the form of a daily stipend. Maintenance payments are made until the seaman is found fit for duty or is at maximum medical improvement.
- *Cure.* Cure refers to payment of reasonable and necessary medical care for a seaman's recovery to the point of maximum medical improvement.

b. Unearned Wages

A seaman who becomes injured or falls ill during the course of employment is entitled to receive his unearned wages from the onset of the injury or illness through the end of the voyage. The end of the voyage may be determined by contract or by other definition. During the period the seaman is receiving unearned wages, he also receives the daily maintenance stipend.

2. Fault-Based Rights - Damages

The Merchant Marine (Jones) Act allows injured seamen to obtain damages from employers for negligence.

"Any sailor who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right to trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply" (46 U.S.C. § 688(a)).

- *Negligence.* The degree of causation necessary to sustain a claim for personal injury damages has been classified as slight. The courts have often referred to slight negligence in such a way that many lawyers believe that the standard is closer to no-fault than to negligence. Legally, there must be only some small degree of causation between the injury and the negligence. Courts have used the term "featherweight" to describe the degree of causation required to prove a claim for Jones Act personal injury damages. As a practical matter, because of the slight causation standard, almost every injury involves some degree of negligence.
- *Unseaworthiness.* Under GML, seamen can also make a claim for personal injury damages if the injury was caused by the unseaworthiness of the vessel. "Unseaworthiness has been defined to include slippery decks and stairs, ladders, galleys, lines, hoists, hatches, stowage areas, sleeping and living quarters, and many other conditions that could present a risk of injury."⁶ The unseaworthy condition must be shown to be the proximate cause of the injury.

B. States' Sovereign Immunity

States, under the eleventh amendment to the United States Constitution, have sovereign immunity, which means that they cannot be sued without their consent.

1. Washington State

- *Consent to be sued.* Washington State has consented to suits by seamen on board vessels owned by WSDOT which, with the exception of the Keller Ferry, are all Washington State Ferries (WSF) vessels. RCW 47.60.210 provides that the state consents to suits against WSDOT "for injuries occurring upon vessels of the department in accordance with the provisions of section

⁶ Ibid.

688, title 46, of the United States code” (i.e. the Jones Act). RCW 47.60.200 states that: “Any consent to liability given under the provisions of this chapter creates liability of the department (of transportation) only and does not create any general liability of the state.”

- *Exclusion of seamen from industrial insurance.* RCW 51.12.100 provides that industrial insurance shall not apply to “a master or member of any crew of any vessel, or to employers and workers for whom a right or obligation exists under the maritime laws for personal injuries or death of such workers.”

2. Other States

The states of Alaska, Oregon, New York, North Carolina and Texas have not consented to be sued by state employed seamen. These states cover state employed seamen through their industrial insurance/workers’ compensation programs. Court decisions in the five (5) states establish that if a state has not waived its right of sovereign immunity it can compensate injured seamen through a workers’ compensation program.⁷

In 1986 the United States Court of Appeals, Fifth Circuit, in *Welch vs. State Department of Transportation and State of Texas* affirmed the dismissal of a suit brought against Texas by a state seaman under the Jones Act. The decision stated: “Of controlling importance in this case is recognition of the fact that once it is determined that Congress has not required the state to waive its sovereign immunity by unequivocal language in the statute, the question of whether the state has or has not waived immunity from suits in federal court is a matter of state law. We hold that since Congress has not in terms within the Jones Act required waiver of state immunity as to the maritime employees of the states, and there has been no actual waiver by the state, the State of Texas was not subject to suit by an injured state maritime employee in federal court under the Jones Act. The decision of the district court denying Jones Act recovery to appellant, a maritime employee of the State of Texas, is in accordance with the law.”

C. Alaska

In 2003 Alaska amended AS 09.25.250 *Actionable Claims against the State* revoking the state’s waiver of sovereign immunity for suits by state-employed seamen. “An action may not be brought if the claim arises out of injury, illness, or death of a seaman that occurs or manifests itself during or in the course of, or arises out of, employment with the state; AS23.30 (Alaska Workers’ Compensation Act) provides the exclusive remedy for such a claim, and no action may be brought against the state, its vessels, or its employees under the Jones Act (46 U.S.C. 688), in admiralty, or under the general maritime law” (AS 09.25.250 (5)).

In a case brought by an injured vessel employee of AMHS who challenged the statute’s constitutionality, the Alaska Supreme Court in 2008 upheld the amended statute (*Glover v. State, Department of Transportation*). The Court held:

1. The statute does not violate sovereign immunity provisions in the Alaska Constitution.
2. The Supremacy Clause and the Admiralty and Maritime Jurisdiction Clause of the United States Constitution do not bar Alaska from adopting the statute.
3. The Jones Act did not give the seaman a right to sue Alaska without Alaska’s consent.
4. The statute did not discriminate against a federal cause of action, violate seaman’s due process rights, or violate seaman’s equal protection rights.

⁷ See *Midgett vs. North Carolina* 2002; *Ortega vs. Port of Portland*, 1997; *Lyons vs. Texas A&M* 1976; *Maloney vs. New York*, 1957; *Glover v. Alaska State Department of Transportation* 2008.

1. Background

a. Previous Workers' Compensation Coverage – Alaska Marine Highway System

From 1983 to 1991 AMHS' collective bargaining agreements with three (3) unions representing vessel employees provided workers' compensation benefits in lieu of the Jones Act and other maritime law remedies. In testimony to the House Judiciary Committee, the Director of Marine Operations, Central Office, stated that in 1983 the change was made to workers' compensation because of concerns about injured seamen who had become destitute waiting for benefits.

In 1991, state employed seamen ceased being covered by workers' compensation because of a ruling by the Alaska Supreme Court. In that case, *State Department of Public Safety v. Brown* the Court held that as a matter of labor law the unions could not bargain away their individual members' rights, pre-injury, under federal law. The decision also pointed out how the state could include its vessel workers under workers' compensation stating that "if it is the desire of the State to limit its tort liability to the work[er]'s compensation act, it may do so by legislative enactment of an exception to the waiver of sovereign immunity section contained in AS 09.50.250." This is the action the state took in 2003, which was upheld by the Alaska Supreme Court in 2008.

b. 2003 Legislative Discussion

Governor's Proposal

The Governor proposed an exception to the waiver of sovereign immunity in order to "provide a uniform equitable remedy for work injuries of all state employees under a single compensation system" (Governor's transmittal letter March, 6, 2003). The Governor's transmittal letter further noted AMHS employees had previously been covered by workers' compensation and that "many employees preferred the Alaska Workers' Compensation Act as a more complete and immediate no-fault payment (non-taxable wage indemnification rather than a modest-daily maintenance stipend) – avoiding controversy, delays, and the extra costs inherent in protracted civil litigation."

State Cost Savings

The Alaska State Attorney General's Office and the Director of Risk Management of the Department of Administration in testimony before House and Senate Committees discussed potential savings to the state. The potential savings were not estimated in the accompanying fiscal note because the state funds risk management on a cash basis,⁸ but were estimated at \$850,000 in future years in testimony by the Director of Risk Management.⁹ Savings were anticipated to come from:

- *Restricting coverage to work-related injury or illness.* Under GML, seamen receive no-fault maintenance, cure, and unearned wage benefits if their illness or injury becomes manifest on the job and is not job-related. Workers' compensation only provides coverage for occupation or work-related injuries or illnesses. When included in the workers' compensation program, AHMS vessel employees used their sick leave, health insurance, annual leave, disability and other benefits for non-work related illnesses or injuries. In Fiscal Year (FY) 2002, 42 percent of AHMS

⁸ The fiscal note from the Risk Management Division states: Very significant cost savings will be realized in future years as the AMHS and the few other maritime employees injury claims transition into the state average employee injury rate and cost. The state funds its claim costs on a "cash flow" basis (appropriating only the amounts expected to be paid the next fiscal year) collected solely through interagency receipts (cost of risk allocations) assessed each agency."

⁹ Testimony of Brad Thompson, Director of Risk Management, April 10, 2003 before the Senate Finance Committee.

claims resulted from personal illnesses and represented 16 percent of the state's costs.¹⁰ The high incident of illness claims accounted for much of the higher AHMS claims per 100 employees (41 per 100 FTE) than for other state agencies (five (5) highest agencies were 10 per 100 FTE).

- *Reduced litigation costs.* Under the Jones Act and GML, seamen are able to sue the state for injury claims resulting in litigation expenses. Workers' compensation is no-fault coverage and employees are not allowed to sue the state for damages. As a consequence, there are no state legal defense costs under workers' compensation. There is a three-year statute of limitation for filing Jones Act claims, so the state anticipated a gradual phasing out and eventual elimination of its defense costs.
- *Reduced claims costs.* For FY 2002, the average cost of maritime workers' claims was \$197,000 per 100 FTEs compared to \$64,000 for workers' compensation claims. The higher claims payments were attributed to cases in which workers sued the state and collected economic and non-economic damages including pain and suffering, emotional distress, the value of used leave, attorneys fees, and interest. The Attorney General's office noted that "the value of the claims under Jones Act is completely different under workers' compensation. The latter is an economic formula based on the employee's earning history and the degree to which the person is impaired."¹¹

Impact on Employees

The proposed legislation was in the Alaska House and Senate Committees for two (2) months prior to enactment. The only organized labor testimony was from the Inland Boatmen's Union (IBU). The IBU in its last testimony stated that it was opposed to the legislation, although in earlier testimony the IBU representatives stated that workers' compensation was probably the best for the majority of workers.

Concerns expressed about moving to workers' compensation by IBU included:

- *Seasonal employees.* Forty percent (40%) of AHMS employees are seasonal making it difficult for them to accrue vacation or sick leave that could be used in the event of an illness that is not work related. An IBU representative testified that "under the seniority system, a person may only work two (2) or three (3) months in the first several years. Therefore, it takes three (3) to five (5) years of seasonal work to earn any benefits such as sick leave or vacation leave."¹² Later testimony was that the union anticipated that existing contractual language regarding the payment of unearned wages through the end of the voyage would remain in the collective bargaining agreements and be due employees.¹³
- *Serious Injuries.* There was concern about the settlements for serious injuries, which are less than one (1) percent of total claims. Workers' compensation has a lifetime cap, which could affect the amount recovered by a seriously injured seaman.¹⁴

Testimony by the proponents of the bill noted:

- *No-fault coverages.* The proponents of the bill stated that where the employee does not sue the state, the no-fault coverages under workmen's compensation are better than the no-fault

¹⁰ The average cost for an illness claim was \$25,000 and for an injury claims was \$132,000 in FY 2002.

¹¹ Susan B. Cox, Assistant Attorney General, testimony to the House Labor and Commerce Committee, March 31, 2003.

¹² Testimony of Daryl Tesu, Regional Director, Inland Boatmen's Union, March 31, 2003 before the House Labor and Commerce Committee.

¹³ Testimony of Peter Lapinski, Inland Boatmen's Union, April 25, 2003 before the House Finance Committee.

¹⁴ Washington State Ferries has a lower percentage of seasonal employees. Washington State's industrial insurance program does not have a lifetime cap.

coverages under GML. Under workers' compensation, benefits are closer to the amount of the employee's regular wages than the \$45.00 per day maintenance payment under GML. The exception is the period when a seaman is receiving the daily maintenance payment in addition to unearned wages, resulting in a higher wage during that period.

- *Damage claims.* The range of possible damages under a Jones Act/GML suit for a work-related injury or illness is greater than under workers' compensation. However, the suit is subject to affirmative defense by the state, and is an expense for the employee.

2. Current Situation

Interviews with the Division of Risk Management in Alaska indicate that AHMS employees continue to be covered by workmen's compensation. The Division of Risk Management no longer tracks AHMS employees separately from the Department of Transportation so comparative injury rate information is not available. (The Division also did not separate out AHMS employees injury rates from 1983-1991, so comparative information was also not available when the legislature considered the change back to worker's compensation in 2003).

Records received from the Division of Risk Management indicate that all Jones Act claims for injuries occurring before July 1, 2003 have been closed and the state has no outstanding claims. Litigation expenses have been eliminated.

Unearned wages until the end of the voyage are still being paid, even with the change to workers' compensation. AMHS FY 2008-11 labor agreements with the Inland Boatman's Union (IBU), Marine Engineers Beneficial Association (MEBA), and Masters, Mates & Pilots (MM&P) provide for the payment of unearned wages and benefits until returned to change port or employee's port of residence, whichever comes first. The MEBA and MM&P agreements state that if the legislation which enacted the change to workers' compensation was repealed, employees would be eligible for maintenance and cure payments under the Jones Act.

In Alaska, unlike in Washington State, the employer pays 100 percent of the industrial insurance premium, so there is no reference in the collective bargaining agreements to industrial insurance payroll deductions.

SECTION II. WASHINGTON STATE FERRIES

Approximately 60 percent of WSF employees are employed on vessels and, as Jones Act employees, receive benefits under federal and general maritime law. The other 40 percent of WSF employees receive benefits under the states' industrial insurance program.

This section reviews the benefits and rights provided Jones Act employees and industrial insurance employees. The primary differences are:

No-fault benefits

- Industrial insurance provides greater no-fault benefits for work-related injuries or illnesses in which the employee is absent from work for more than three (3) days.
- The Jones Act/GML covers injuries or illnesses that become manifest on the job but are not work related which industrial insurance does not
- Industrial insurance, unlike the Jones Act/GML, does not provide time-loss compensation for the first three (3) days unless a worker is off work for 14 days.

Fault-based – right to sue for damages

- Jones Act employees have the right to sue for damages,
- Industrial insurance is the only remedy for employees. Employees included in the industrial insurance program do not have standing to sue for damages.

In the FY 2003-10 time period, there were 1,763 Jones Acts/GML incidents involving 714 individuals. Total indemnity payments of \$8.4 million were made to 72 individuals and defense costs of \$2.5 million were incurred by the state.

A. WSF Jones Act Employees

WSF has 1,765 employees of whom 1,070 or approximately 60 percent are employed on vessels.

**Table 1.
WSF Vessel Jones Act Employees**

	2010	%
Inland Boatmen's Union		
IBU unlicensed deck	537	50%
Marine Engineers' Beneficial Association		
MEBA licensed engine room	190	
MEBA non-licensed engine room	179	
<i>Sub-total MEBA</i>	360	35%
Masters, Mates, & Pilots		
MM&P licensed deck	164	15%
Total Marine Employees WSF	1,070	

A comparison of Jones Act and industrial insurance benefits are shown in the table below.

**Table 2.
Comparison of Jones Act and L&I Employee Benefits and Rights**

Item	Jones Act Employees	L&I Employees
No-Fault Benefits		
Injuries/Illness covered	<ul style="list-style-type: none"> • Injuries or occupational illness incurred while in service of the vessel. • Injury or illness that becomes manifest on the job and not job related. 	<ul style="list-style-type: none"> • Job related injuries or occupational illness.
Wage Replacement	<ul style="list-style-type: none"> • Unearned wages at 100% of salary until the end of the pay period, which depending on when in the pay period the illness or injury occurs, is one (1) to fifteen (15) days of pay. • Maintenance payments of \$30 to \$40 per day depending on the collective bargaining agreement. • Supplemental payments of \$0.00 to \$60 per day depending on the collective bargaining agreement. • Unearned wages, maintenance and supplemental payments may be combined. • Continue until the employee returns to duty or is at maximum medical improvement. 	<ul style="list-style-type: none"> • Time-loss at 60-75% of gross wages for injured employees who are unable to work for more than three (3) days off the job up to maximum of \$4,715 per month (120% of the average monthly gross wage in the state). • Gross wages include salary, income from another job, the value of benefits including dental, health, and vision, and recurring penalty pay, travel time pay, and overtime • Receive reimbursement for the first three (3) days if off work for more than 13 days. • Continues until worker returns to work or, if unable to return to work, receives pension.
Wage Replacement Taxes	<ul style="list-style-type: none"> • Unearned wages and supplemental payment are subject to income and payroll taxes. • Maintenance payments are not subject to income and payroll taxes. 	<ul style="list-style-type: none"> • Time-loss payments are not subject to income and payroll taxes, with the result that the time-loss payments can be, depending on the employee's income, close to the pre-injury take home pay.
Use of Employee Benefits	<ul style="list-style-type: none"> • Vacation & sick leave – can supplement maintenance payments. 	<ul style="list-style-type: none"> • Vacation & sick leave – can supplement time-loss payments.
Shared leave	<ul style="list-style-type: none"> • Shared leave can be used to supplement payments after all personal leave is exhausted. 	<ul style="list-style-type: none"> • Shared leave cannot be used to supplement time-loss payments.
Retention of health benefits	<ul style="list-style-type: none"> • Retained as long as employee uses sick, vacation, compensatory time, guaranteed holiday pay, or shared leave to meet requirements. • COBRA available if no other hours available. 	<ul style="list-style-type: none"> • Retained as long as employee uses sick, vacation, compensatory time, or guaranteed holiday pay. • Time-loss compensation adjusted to once employers stops contributing to health insurance costs.
Medical/Cure	<ul style="list-style-type: none"> • All care related to an approved claim until at maximum medical improvement. 	<ul style="list-style-type: none"> • All care that is related to work injury or illness until point where no further recovery is expected.

Item	Jones Act Employees	L&I Employees
Vocational	<ul style="list-style-type: none"> • Return to work assistance to find a position within WSDOT. • If employee cannot be accommodated and the employee is at maximum medical improvement, all no-fault benefits end. 	<ul style="list-style-type: none"> • Return to work assistance to find a position within WSDOT. • Employability assessment to determine if the worker can be employed in the area's job market or is eligible for vocational services. • Vocational benefits may include approved training plan. While in approved training, time-loss compensation continues. • Vocational retraining plan can include schooling or on-the job training for up to two (2) years.
Long term disability, pensions, survivor benefits	<ul style="list-style-type: none"> • State basic long-term disability benefit of up to \$240 per month. • If employee has purchased the optional plan, long-term disability payments of 60% of first \$10,000 of pre-disability earnings per year. 	<ul style="list-style-type: none"> • Partial permanent disability award, whether or not the employer can return to work for specified or unspecified permanent injuries. • Permanent disability pensions for certain specified injuries even if the employee can return to work or if the employee is determined to be unable to return to work. • Pension based on time-loss compensation resulting in 60 to 75 percent of pre-injury wages up to monthly maximum. • Pension is not subject to income or payroll taxes. • Can also receive state basic long-term disability benefit or optional benefit, but offsets L&I benefits.
Other Benefits	<ul style="list-style-type: none"> • Travel costs under specific circumstances. 	<ul style="list-style-type: none"> • Travel costs under specific circumstances. • Property damage recovery for personal property lost due to the injury or associated emergency care. • Vehicle/home modifications, as approved.
Fault-Based Rights		
Damages	<ul style="list-style-type: none"> • Standing to sue • Must show negligence or unseaworthiness of vessel. 	<ul style="list-style-type: none"> • No standing.

1. Jones Act No-Fault Benefits

WSF Jones Act employees receive, in accordance with federal law and collective bargaining agreements, maintenance and cure and unearned wage benefits. Two (2) of the four (4) collective bargaining agreements that cover vessel employees also include provisions for an additional supplemental daily amount, which is in addition to the normal Jones Act benefits.

All no-fault benefits, including supplemental payments, are paid for work-related injuries and illnesses and for non-work related injuries and illnesses that become manifest while the employee is in the service of the vessel.

Maintenance, cure, unearned wage, and supplemental benefits are administered by WSDOT's payroll division. Payments are charged to WSDOT Program X, Washington State Ferries Operations, and are paid by the Puget Sound Ferries Operations Account.

a. Unearned wages

WSF employees receive their unearned wages through their return to work or the end of the pay period, whichever is shorter. Payment until the end of the pay period has been interpreted to fulfill the requirement that seamen receive payment until the end of the voyage. Employees receive from one (1) day up to a maximum of 15 days of unearned wages depending on the point in the pay period when the injury or illness occurred.

Unearned wage payments are subject to income and payroll taxes.

b. Maintenance and Supplemental

WSF Jones Act employees receive maintenance payments in accordance with the amount negotiated in collective bargaining agreements, and under two (2) collective bargaining agreements, supplemental payments.

Maintenance and supplemental payments are in addition to unearned wage payments. Maintenance payments are not subject to tax. Supplemental payments are subject to tax. In the event of a Jones Act judgment, the supplemental amount paid is applied to offset the judgment.¹⁵

The table below shows the 2009-11 biennium maintenance and supplemental payment rates.

¹⁵ The collective bargaining agreements state that supplemental payments will be deducted from judgment awards or settlements, but WSDOT reports that in practice this deduction is not usually made.

**Table 3.
2009-11 Biennium Maintenance and Supplemental Payment Amounts**

	Maintenance Daily	Supplemental* Daily	Supplemental Time
Inland Boatmen's Union			
IBU unlicensed deck	\$35.00	\$30.00	
Marine Engineers' Beneficial Association			
MEBA licensed engine room	\$30.00		
MEBA non-licensed engine room	\$30.00		
Masters, Mates, & Pilots			
MM&P Licensed deck	\$40.00	\$60.00	Up to 90 days

*Credited against any Jones Act judgment

c. Cure

Cure payments are payments made for medical care until the employee is at maximum medical improvement (i.e. the physician declares the employee to be fixed and stable).

Cure payments are processed through a WSDOT employee who serves as the Jones Act administrator. The administrator reviews provider bills and confirms that the bills as submitted are appropriate for the employee's injury or illness. WSDOT then submits the provider bill to a third party review firm, Medical Cost Remedy, which processes the payment applying a discount based on costs for similar types of care provided in the Pacific Northwest. Medical Cost Remedy is paid 15 percent of the discount savings.

d. Employees at Maximum Medical Improvement

Once an employee is at maximum medical improvement, maintenance, supplemental, and cure payments cease.

e. Return to Work

There are challenges in returning vessel employees to work. The U.S. Coast Guard requires vessel employees to be 100 percent fit for duty before they return to work. This means that any employee who is returned to work before he or she is 100 percent fit for duty must return to a non-vessel position. Returning employees to a non-vessel position must be done in a manner that is consistent with collective bargaining agreements, which often have seniority and open-bidding requirements. If no reasonable accommodation can be made, the employee is released from employment without further GML no-fault compensation.

f. Travel Costs

Employee may receive transportation, food, and lodging costs for travel related to their medical care. Most WSF employees receive medical care in King County and are eligible only for mileage reimbursement.

g. Disability Awards, Pensions and Survivor Benefits

GML no-fault benefits do not include disability awards, pensions, or survivor benefits.

h. Other Employee Benefits

WSF employees receive sick leave and vacation benefits. Employees who are receiving maintenance and supplemental payments¹⁶ can use their sick leave, vacation, and accumulated compensatory time to augment maintenance and supplemental payments. This practice has been in effect for some time even though all four (4) collective bargaining agreements that include Jones Act employees specifically prohibit the use of sick leave when the employee is receiving maintenance pay.¹⁷

Allowing employees to use sick, vacation, and compensatory has two advantages for the employee: it provides additional pay to supplement the daily maintenance and supplemental pay; and it allows the employee to retain health and retirement benefits. If an employee does not have sufficient leave to continue health insurance coverage, they have the option of paying for the insurance through COBRA.

- *Sick leave.* Under the four (4) collective agreements covering WSF vessel employees, employees receive sick leave time following six (6) months of continuous employment at the rate of eight (8) hours of sick leave for each month of employment. Sick leave credits accumulate.
- *Vacation leave.* Under the four collective agreements, employees receive vacation time following six (6) months of continuous employment¹⁸ and can accumulate up to 320 hours.

Employees who are unable to return to work due to disability could also receive compensation under the state provided basic long-term disability plan or under the employee paid optional long-term disability plan, if the employee had purchased the optional plan.

- *Basic disability plan.* This plan is included in the full Public Employment Benefits Board (PEEB) package at no additional cost for employees. The basic plan provides a benefit of 60 percent of the first \$400 per month of pre-disability earnings, reduced by any deductible income. The maximum benefit payable is \$240 per month. The minimum benefit is \$50 per month. Benefits begin after 90 days of total disability or after the period of accumulated sick leave, whichever period is longer, and continue during disability up to the maximum benefit period. The maximum benefit period is determined by the type of disability and the age of the enrollee when he or she becomes disabled.
- *Optional plan.* This plan allows most employees eligible for the basic plan to apply for additional benefits. If the coverage is applied for within 31 days of eligibility date, the employee does not need to provide evidence of insurability. When combined with the basic plan benefits, the optional plan will pay 60 percent of the first \$10,000 of pre-disability earnings, reduced by any deductible income. The minimum combined benefit is \$100 per month. The optional plan benefit will increase in accordance with a cost of living adjustment provision. Optional plan benefits begin after the end of the benefit waiting period and continue during disability up to the maximum benefit period.

Employees could also be eligible for social security disability payments, which are included as deductible income under the state's long-term disability program.

¹⁶Employees receiving unearned wages do not need to use sick or vacation leave balances to receive their full straight time pay.

¹⁷ The four (4) 2009-11 biennium collective bargaining agreements that include Jones Act employees all contain language stating: "No sick leave claims shall be honored for time-loss for which (the employee) is receiving State of Washington Industrial Insurance time-loss payments (workmen's compensation), or daily maintenance."

¹⁸ Vacation credits vary between the collective bargaining agreements, with all starting at six (6) working days at six (6) months of employment. Under the IBU agreement, the most annual vacation days accrued is 34 at 30 and over years of employment. For the MEBA agreements it is 176 hours at 16 and over years of employment and for the MM&P agreement it is 24 days at 21 years or more of employment.

i. Shared Leave

WSDOT allows employees to share their sick and annual leave with other employees. Employees who are receiving maintenance and supplemental payments may use this shared leave if all of their own leave as been exhausted.

3. Fault-Based Right - Injury Claims

Under the Jones Act/GML and as allowed by state law, WSF employees are able to claim personal injury damages. Jones Act employees have no recourse but to sue the state for expenses associated with vocational training, long-term disability, or other benefits not provided under the Jones Act; or to recover past or future lost wages. Jones Act employees also have the right to recover non-economic damages, such as pain and suffering.

Claims are processed through the Office of Financial Management – Risk Management Division with legal representation provided by the Attorney General.

- *Statute of limitations.* With some exceptions, such as asbestos related claims, Jones Act claims must be filed within three (3) years of the incident.
- *Marine insurance.* The state has a marine insurance program which pays for the cost of claims over \$1 million. Claims below \$1 million and the costs of defense are charged to the Motor Vehicle Fund.

In addition to WSDOT Jones Act employees, the state receives GML claims from employees of subcontractors. For the time period from FY 2003 to FY 2010, OFM reports show four claims by employees of subcontractors with total expenses for defense of \$14,995 and one indemnity payment of \$10,000.¹⁹ One (1) case has been re-opened.

B. Industrial Insurance

Forty percent (40%) of WSF employees are included in the state industrial insurance program. The state industrial insurance program is a no-fault program, and is the sole remedy for state employees who are not allowed to sue the state for damages.

RCW 51.04.010 states:

“The common law system governing the remedy of workers against employers for injuries received in employment is inconsistent with modern industrial conditions. In practice it proves to be economically unwise and unfair. Its administration has produced the result that little of the cost of the employer has reached the worker and that little only at large expense to the public. The remedy of the worker has been uncertain, slow and inadequate. Injuries in such works, formerly occasional, have become frequent and inevitable. The welfare of the state depends upon its industries, and even more upon the welfare of its wage worker. The state of Washington, therefore, exercising herein its police and sovereign power, declares that all phases of the premises are withdrawn from private controversy, and sure and certain relief for workers, injured in their work, and their families and dependents is hereby provided regardless of questions of fault and to the exclusion of every other remedy, proceeding or compensation, except as otherwise provided in this title; and to that end all civil actions and civil causes of

¹⁹ In the case in which a \$10,000 indemnity was paid, the claim asserted that an employee of a subcontractor was injured while working on a WSF ferry when a WSF employee negligently cut the power to the area he was working in which caused a fire door to close on top of him.

action for such personal injuries and all jurisdiction of the courts of the state over such causes are hereby abolished, except as in this title provided.”

Industrial insurance covers only work related injury or occupation related illness.

No-Fault Benefits

Under industrial insurance employees receive time-loss compensation, medical care, and other benefits. They may also be eligible for vocational assistance, disability awards, pensions, and survivor benefits.

a. Time-Loss Compensation

Time-loss compensation is available to injured employees who are unable to work for more than three (3) days. Injured workers are not compensated for these three (3) days unless they are still unable to work on the 14th day following the injury.

The amount of time-loss compensation is 60 to 75 percent of total wages and certain benefits, with the percentage depending on marital status and the number of dependent children the employee has when injured. In calculating total wages as the basis for time-loss compensation, the Department of Labor and Industries (L&I) considers: total wages earned, including income from a second job, the value of medical, dental and vision benefits, the value of other wages including payment in the case of WSF employees of travel time, penalty pay, or regular overtime. For work that is part-time or intermittent, the monthly wage is determined by averaging the total wages earned from all employment in any 12 successive calendar months preceding the injury that most fairly represents the individual’s employment pattern. Time-loss payments are subject to a cap based on the state’s average monthly wage.

Time-loss benefits continue as long as the employee’s physician verifies that the employee is unable to return to any work.

Time-loss benefits are not subject to income or payroll taxes. Payroll taxes are 7.65 percent and income tax varies by employee. For most employees, receiving 65 to 75 percent of total wages tax free puts them close to their pre-injury take home pay.

b. Medical Care

If a claim is accepted, industrial insurance pays for doctor, hospital, surgical, pharmacy and other care services L&I approves. Health care services are provided until the work-related injury has stabilized and reached a point where further recovery is not expected.

c. Other Benefits

- *Travel costs.* Industrial insurance may cover transportation, food, and lodging costs if an employee must travel more than 10 miles one way to get health services, the travel is necessary as part of an approved vocational retraining plan, and/or if the employee undergoes an independent medical examination arranged or requested by L&I.
- *Property damage.* Industrial insurance may also provide property damage refunds for the cost of items such as personal clothing, eye glasses, footwear, or protective equipment that is damaged or lost because of a workplace injury or associated emergency care.
- *Modifications to a motor vehicle and/or home.* The cost of modifying a motor vehicle may be covered for workers suffering amputation or paralysis and the costs of modifying a home may be covered for workers suffering catastrophic injuries. Dollar limitations apply to the payment of such modifications, which must be pre-approved, and necessary to either meet the worker’s need for safe transportation or for worker safety, mobility, or activities of daily living.

d. Return to Work

L&I works with employees to return them to work.

- *Modified jobs.* L&I works with employees and employers to return injured workers to jobs with the same employer that are permanently or temporary modified to accommodate the worker's injury or to a different job with the same employer. As under the Jones Act, returning vessel workers to modified jobs is difficult because of the U.S. Coast Guard requirement that all vessel workers be 100 percent fit and collective bargaining agreement limitations on the assignment of employees makes it difficult to return vessel employees to other WSF positions.
- *Employability assessments.* L&I may also provide assessments of injured workers to determine whether they are employable in the area's job market or are eligible for vocational services.
 - *Vocational benefits.* Vocational benefits are discretionary and are aimed at helping a worker who cannot return to their old job and does not have the training or skills for a different job. Vocational benefits may include approved training plans. While engaged in vocational training, the workers time-loss compensation benefits continue.
 - *Vocational plans.* L&I can assist workers with the development of a vocational retraining plan, which includes a job goal based on the worker's skills, interests, and medically documented limitations. The plan can include schooling or on-the-job training and may not exceed two (2) years in duration.

e. Disability Awards, Pensions, and Survivor Benefits

Industrial insurance provides partial and total disability awards, pensions and death benefits.

- *Partial permanent disabilities.* If an injury or occupational disease causes permanent loss of bodily function, the worker will receive a permanent partial disability award based either on amounts specified by RCW 51.32.080 or, as determined by L&I in accordance with RCW 51.32.080, for an unspecified disability. Permanent partial disability awards are based on the degree of damage suffered, not on whether the worker can return to work.
- *Pensions – total permanent disabilities.* Workers may qualify for a permanent disability pension in two circumstances. One circumstance is if an accident results in the loss or total paralysis of either both legs or both arms, one leg and arm, or a total loss of eyesight, in which case workers can receive a pension even if they are able to return to work. A permanent disability pension may also be awarded if vocational and medical evaluations determine that the injury prevents the worker from ever becoming gainfully employed. Pension benefits are paid monthly and are based on the amount of time-loss compensation the employee is eligible for, with the amount determined based on wages, marital status, the number of dependent children, health care benefits, Social Security benefits, and the state's average wage at the time of injury.
- *Death benefit.* The surviving spouse and children of a worker who dies from a work-related injury or occupational disease will receive a monthly pension. The pension is based on the formula for setting time-loss compensation.

f. Other Employee Benefits

Workers receiving time-loss compensation may use their accumulated sick leave, vacation leave, or compensatory time to supplement their compensation and receive pay on guaranteed holidays. If a worker uses all of their available leave, the time-loss compensation payment will be adjusted to upwards to enable the worker to continue through COBRA on the state health insurance program.

D. Jones Act/GML Incidents and Costs FY 2003-2010

The table below summarizes WSF Jones Act/GML incidents, no-fault benefits, and damage claims and associated defense expenditures arising from incidents that occurred in the FY 2003-10 time period. There were 1,763 Jones Acts/GML incidents involving 714 individuals. Of those incidents, 1,019 involving 482 individuals received no-fault benefits totaling \$5.2 million, including cure payments to medical providers, maintenance payments, supplemental payments, and unearned wages.

One hundred and three (103) individuals filed damage claims under the Jones Act/GML, of which 72 received indemnity payments in FY 2003-2010. Total indemnity payments of \$8.4 million were made to these 72 individuals and defense costs of \$2.5 million were incurred by the state.

Of the total \$16.1 million in Jones Act/GML expenses over this 8-year period, 32 percent were for no-fault benefits and 68 percent for damage claim indemnification payments and associated defense costs.

Table 4.
FY 2003-10 Jones Act/GML Incidents and Expenditures

	Incidents	Individuals	% of total employees	Total Paid (\$ millions)	% of Total Paid
Jones Act Employees (FY 03-10)		1,700			
Incidents	1,763	714	42%		
No-Fault Benefits Paid	1,019	482	28%	\$5.2	32%
Fault-Based Injury Claims					
Filed Claim		103	6%		
Indemnity Paid		72	4%	\$8.4	52%
Defense Costs				\$2.5	16%
Total Fault-Based				\$10.9	68%
Total				\$16.1	

1. Incidents

During the 8-year period between FY 2003 and FY 2010, WSF Jones Act employees had 1,763 reported incidents. Of the 1,763 incidents, 1,696 are closed and 67 remain open, with most of the incidents still open from FY 2010. Of the 1,696 closed incidents, 43 percent resulted in no benefits being paid to the employee, indicating that the incident did not result in the employee missing any work or incurring any medical costs. For open cases, it cannot be determined whether there will eventually be benefits. Of the 67 open cases as of FY 2010, 58 had incurred benefit costs at the end of the fiscal year.

**Table 5.
FY 2003-10 Jones Act Incidents**

	#	Closed*	Open	# of closed with no benefits	% no benefits	# of open with benefits to date
FY 2003	257	257		94	37%	
FY 2004	213	213		81	38%	
FY 2005	263	263		95	36%	
FY 2006	238	234	4	86	37%	3
FY 2007	226	226		114	51%	
FY 2008	189	187	2	104	56%	2
FY 2009	187	170	17	80	47%	14
FY 2010	190	146	44	81	55%	39
Total	1,763	1,696	67	735	43%	58

* In FY2006 and FY 2007 one of the closed cases was a denial.

2. No-Fault Benefits

As shown in the table below, WSF Jones Act/GML no-fault benefits of \$5.2 million²⁰ were paid on 1,019 incidents (961 closed incidents and 58 open) from FY 2003-2010. Of the benefits provided, 55 percent were for cure payments to medical providers, 23 percent for maintenance payments, 13 percent for unearned wages, and 10 percent for supplemental payments. The average cost per incident was \$5,067.

**Table 6.
GML No-Fault Benefit Payments FY 2003-2010**
(\$ millions, except averages)

FY of Incident	# of paid Incidents	Unearned				
		Total	Cure	Wages	Maintenance	Supplemental
FY 2003	163	\$0.5	\$0.3	\$0.1	\$0.1	\$0.0
FY 2004	132	\$0.8	\$0.5	\$0.1	\$0.2	\$0.0
FY 2005	168	\$1.0	\$0.6	\$0.1	\$0.2	\$0.0
FY 2006	151	\$0.6	\$0.3	\$0.1	\$0.2	\$0.1
FY 2007	112	\$0.6	\$0.3	\$0.1	\$0.1	\$0.1
FY 2008	85	\$0.6	\$0.3	\$0.1	\$0.1	\$0.1
FY 2009	104	\$0.6	\$0.3	\$0.1	\$0.1	\$0.1
FY 2010	104	\$0.5	\$0.2	\$0.1	\$0.1	\$0.1
Total	1,019	\$5.2	\$2.8	\$0.6	\$1.2	\$0.5
Average/Incident		\$5,067	\$2,781	\$636	\$1,164	\$486
%			55%	13%	22%	10%

²⁰ This section shows total payments related to incidents that occurred in a given fiscal year. The actual payments may have occurred in subsequent fiscal years.

a. Manifest Injury or Illness Incidents

GML, unlike industrial insurance, provides no-fault benefits for injuries or illnesses that become manifest on the job, but are not work related.

The consultants reviewed the accident descriptions to determine whether the Jones Act/GML incident was an illness or injury that became manifest on the job.²¹ The consultants found that, as shown in the table below:

- One hundred and twenty-four (124) or 7 percent of the total 1,763 incidents were from illnesses or injuries that became manifest on the job and were not work related.
- Benefits were paid for 50 of the 124 manifest incidents, with benefit payments totaling \$0.2 million or 4 percent of all benefits paid. Of the \$0.2 million paid, \$133,000 or 82 percent was for medical care.

**Table 7.
Jones Act/GML Manifest Incidents FY 2003-2010**

	#	% of total incidents	incidents with benefit payments	Total benefit paid	% of benefit paid
FY 2003-10	124	7%	50	\$0.2 million	4%

b. Injuries/Illness in Service of the Vessel

Benefits were paid for 969 incidents in which the employee was in the service of the vessel, with a total payment of \$5.0 million, or 96 percent of all benefits paid.

**Table 8.
Jones Act/GML Vessel Incidents FY 2003-2010**

	#	% of total incidents	Incidents with benefit payments	Total benefit paid	% of benefit paid
FY 2003-10	1,639	93%	969	\$5.0 million	96%

First Three (3) Days Benefits

Industrial insurance does not provide time-loss compensation if an injured employee is off work for three (3) days or less. After the injured worker is off for 14 days, the first three (3) days are compensated. Medical care is provided for injured workers from day one.

From FY 2003-2010, 25 percent of WSF Jones Act/GML incidents involved time off²² of 13 days or less, with the first three (3) days of absence accounting for \$0.2 million in benefits from unearned wages, maintenance payments, and supplemental payments. Fifty-five (55%) of job related incidents resulted in no time off and 20 percent in 14 days or more time off.

²¹ WSF does not segregate incidents that are the result of an illness or injury that becomes manifest on the job. Examples of accident descriptions that the consultants determined were from a manifest illness injury are: "Had a diarrhea, nausea, fatigue, headache", "Flu like", "Chest pain, left arm pain" etc.

²² The consultants calculated days off by dividing the maintenance payment by the daily rate established in the collective bargaining agreements.

**Table 9.
Jones Act/GML Incidents Three (3) Days Time Off**

	Job-Related Incidents	% of Job Related Incidents	3-day Benefit*	% of Total Benefits	% Unearned Wages, Maint. & Supplemental
No Days Off	900	55%	no change		
1 - 13 Days Off	404	25%	\$0.2 million	4%	9%
14 + Days Off	335	20%	no change		
Total	1,639		\$0.2 million	4%	9%

*Earned wages, maintenance, and supplemental benefits. Cure benefits would not be affected.

c. Individuals

Individuals may have more than one (1) incident.²³ It is important to analyze the number of individuals receiving no-fault benefits because when suing for damages individuals may include more than a single incident in the suit.

Based on turnover rates, the consultants' estimate that during the FY 2003-10 time period there were approximately 1,700 individuals who served as Jones Act employees.²⁴

The 1,763 Jones Act/GML incidents involved 714 individuals. Of the 714 individuals, 232 or 32 percent did not receive any no-fault benefits because the incident did not involve any time off nor did it result in any medical expenses. As shown in the table below, 482 individuals or 28 percent of all individuals who were Jones Act employees from FY 2003-2010 received non-fault benefits. One hundred and thirty (130) employees or 8 percent of all individual employees received benefits of \$10,000 or more representing 81 percent of the benefits paid.

²³ Washington State Department of Transportation, *Injury Reduction Plan Ferries Division*, December 15, 2009 provides information on the frequency of incidents by individual.

²⁴ Turnover rates were provided by WSDOT for 2007-2010 and the average rate per collective bargaining agreement was applied to the average number of people employed in each unit. Turnover rates ranges from 8 percent per year for the IBU to 5 percent for MM&P.

**Table 10.
Individuals Receiving GML No-Fault Benefits**

	Individuals	% of total	Total Benefits (\$ millions)	% of Benefits
> \$200,000	1	0%	\$0.2	4%
\$100,000 - \$200,000	2	0%	\$0.2	4%
\$50,000 - \$100,000	19	3%	\$1.2	24%
\$25,000 - \$50,000	41	6%	\$1.5	28%
\$10,000 - \$25,000	67	9%	\$1.1	21%
Sub-total \$10,000 & over	130	18%	\$4.2	81%
\$5,000 - \$10,000	75	11%	\$0.5	10%
\$2,500 - \$5,000	67	9%	\$0.2	4%
\$1,000 - \$2,500	90	13%	\$0.2	3%
\$500 - \$1,000	54	8%	\$0.0	1%
\$250 - \$500	33	5%	\$0.0	0%
\$1 - \$250	33	5%	\$0.0	0%
Sub-total Received Benefits	482		\$5.2	
\$0	232	32%		
Total	714			

3. Fault-Based Injury Claims and Defense Costs FY 2003-10

a. Claims

Indemnification payments of \$8.4 million were paid to employees between FY 2003-2010, of which \$8.3 million was paid for claims that were closed and \$0.1 million was paid for a claim that remains open. There were 120 claims filed, of which 100 have been closed.

All claims are for work-related injuries or occupational illness. Claims must show negligence or that the vessel is unseaworthy, which excludes injuries or illnesses that become manifest on the job.

- *It took an average of 31 months to resolve a claim.* The average length of time between an incident or loss date to the closure of a claim with a settlement decision was 31 months.
 - *Filing time.* There is a three (3) year statute of limitations within which to make claims. Some employees wait until the statute of limitations is near to file their claim so that the full extent of an injury is apparent. On average, it took 15 months between an incident and the filing of a claim. Employees whose incidents occurred between FY 2008 and FY 2010 are still within the statute of limitations. Excluding these employees, the average time between an incident and the filing of a claim was 17 months.
 - *Closing.* The average closing of a case took an additional 16 months from the time the case was filed.
- *It is likely that there will be additional claims filed.* It is likely, given the statute of limitations, that additional damage claims will be filed from incidents occurring within the last three (3) years.

**Table 11.
Jones Act Claims/GML Settlement Time FY 2003-2010**

FY Incident Occurred	# of Claims	# of Claims Closed	Average Time from Loss to File Date (months)	Average Time from Filing to Close (months)	Average Length Time-loss to Close (months)	Indemnity Paid
FY 2003	13	13	17	15	33	\$0.9
FY 2004	12	12	23	21	44	\$0.8
FY 2005	30	30	16	19	34	\$3.2
FY 2006	19	17	17	14	29	\$1.2
FY 2007	14	14	14	12	26	\$1.6
FY 2008	11	9	11	16	28	\$0.4
FY 2009	13	4	10	8	15	\$0.2
FY 2010	8	1	4			\$0.0
Total	120	100	15	16	31	\$8.4

b. Claim Payments to Individual Employees

For the period FY 2003-2010, the 120 personal injury claims were filed by 103 individuals or 6 percent of all individuals serving as Jones Act employees. Eight-four (84) individual's cases were closed. Thirteen (13) of the individuals with closed claims received no indemnity either because the claim was settled for no payment, dismissed, or there was a lack of interest in pursuing the claim by the claimant.

Indemnities were paid to 72 individuals or 4 percent of the individuals employed as Jones Act employees, including 71 individuals with closed claims and one (1) whose claim remains open. Indemnities ranged from a high of \$773,000 to a low of \$612. One decision involved three (3) individuals, with a total settlement of \$1.1 million of which \$0.8 million was for one individual, \$0.2 million for another, and \$0.1 million for a third individual.

As shown in the table below, 26 individuals (2 percent of all Jones Act employees) received \$6.6 million or 79 percent of the indemnities payments.

**Table 12.
Jones Act/GML Indemnities Paid for Claims FY 2003-2010**

Amount of Indemnity	Individuals	% Individuals	Indemnity (\$ millions)	% Indemnity
>\$700,000	1	1%	\$0.8	9%
\$600,000 - \$700,000	1	1%	\$0.7	8%
\$450,000 - \$600,00	2	2%	\$1.0	12%
\$250,000 - \$450,000	7	8%	\$1.8	22%
\$100,000 - \$250,000	15	18%	\$2.3	28%
Sub-total >\$100,000	26	31%	\$6.6	79%
\$50,000 - \$100,000	15	18%	\$1.0	12%
\$10,000 - \$50,000	23	27%	\$0.8	9%
\$5,000 - \$10,000	4	5%	\$0.0	0%
\$2,500 - \$5,000	1	1%	\$0.0	0%
\$600 - \$2,500	3	4%	\$0.0	0%
Sub-total Individuals Receiving Indemnities	72		\$8.4	
Claims closed with \$0	13			
Total Closed Claims/Open with Indemnity	85			

c. Relationship of Claims and Benefit Payments

Although not always the case, claims are primarily filed by people who have received significant Jones Act/GML no-fault benefits, indicating that their injuries or time off was significant. In part this occurs because under the Jones Act/GML injured employees have no other recourse to recoup lost wages.

As shown in the table below, while the individual who received in excess of \$200,000 in no-fault benefits did not file a claim for damages, all 19 individuals who received no-fault benefits between \$50,000 and \$200,000 filed a claim for damages. The individual with over \$200,000 in no-fault benefits was a relief employee who was on travel pay when he was injured in an accident while commuting from the vessel. He did not have basis for a damage claim because he would not have been to show negligence or unseaworthiness.

Three percent (3%) of the individuals with benefits of \$5,000 or less filed personal injury claims.

In some cases the personal injury claims have been filed and both the WSF incident and the personal injury claim remain open. For example, in two (2) of the three (3) situations in which an employee received no Jones Act/GML benefit and filed a claim for damages, both are open.

**Table 13.
Jones Act/GML Indemnities and No-Fault Benefits FY 2003-2010**

No-Fault Benefit Amount	Individuals with Incidents	# of Individuals Filing Damage Claims	% of Incidents with Claims
> \$200,000	1	0	0%
\$100,000 - \$200,000	2	2	100%
\$50,000 - \$100,000	19	19	100%
\$25,000 - \$50,000	41	26	63%
\$10,000 - \$25,000	67	32	48%
\$5,000 - \$10,000	75	10	13%
\$2,500 - \$5,000	67	6	9%
\$1,000 - \$2,500	90	4	4%
\$500 - \$1,000	54	1	2%
\$250 - \$500	33	0	0%
\$1 - \$250	33	0	0%
\$0	232	3	1%
Total	714	103	

Claim Awards

The amount awarded does not always correspond to the amount of the no-fault benefit paid. In some cases, the WSF benefits are small but the amount awarded for an injury claim is large. For example, the individual who was awarded the highest injury claim of \$773,000, received benefits that totaled \$5,121 of which \$5,025 was for medical payments and \$96 for unearned wages.

d. Defense Costs

In addition to indemnity payments, the state also pays defense costs for Attorney General support in settling or adjudicating individual cases. The total defense cost for incidents occurring in FY 2003-10 was \$2.5 million, of which \$2.4 million was incurred for closed cases. Two million three hundred thousand dollars (\$2.3 million) of the defense costs were cases involving 44 individuals where the matter was settled by a court proceeding or through mediation or other direct settlement. The costs of defense added on average 24 percent to the state's costs for these judgments or settlements.

Table 14.
Jones Act/GML Claims Defense Costs FY 2003-2010
(\$ millions)

Type of Settlement	Individuals	Indemnity	Defense	Total Indemnity & Defense	% Defense of Indemnity
Closed					
Judgments	17	\$2.8	\$0.8	\$3.6	21%
Suit Settled	14	\$2.0	\$0.8	\$2.8	27%
Mediation/Settled	8	\$1.9	\$0.6	\$2.5	23%
Settled - Direct	5	\$0.5	\$0.3	\$0.8	33%
Sub-total	44	\$7.4	\$2.3	\$9.7	24%
Settled	31	\$0.9	\$0.0	\$0.9	
Closed/AG Open	1	\$0.0	\$0.0	\$0.0	
Summary Judgment	1	\$0.0	\$0.0	\$0.0	
Denied	2	n/a	n/a		
Dismissed	3	n/a	\$0.0	\$0.0	
Lack of Interest	2	n/a	n/a		
Sub-total Closed	84	\$8.2	\$2.4	\$10.6	
Pending	19	\$0.1	\$0.1	\$0.2	
Total	103	\$8.4	\$2.5	\$10.9	

e. Basis for Judgments

The consultants reviewed the available court records to determine the basis for the Jones Act judgments.

There were 17 individuals who received a total of \$2.8 million in indemnities from Jones Act judgments with a total defense cost of \$0.8 million. Three (3) individuals had a consolidated case, so the total number of judgments was 14 with awards ranging from \$1.1 million for three (3) people²⁵ to \$6,000 for an individual. Eight (8) of the judgments were in excess of \$0.1 million and the others were below that with three (3) judgments below \$10,000.

Two (2) of the judgments were based on findings and conclusions by the bench and the others reviewed were stipulated judgments based on settlements arrived at by the parties during the course of negotiations prior to the trial. None of the judgments reviewed were decided by a jury.

A sampling of the judgments shows the issues in these cases including allegations that the vessel was unseaworthy and WSF was negligent and defense arguments that the employee was negligent, the injury was the result of a pre-existing condition, there was third-party liability/negligence, or the employee failed to perform assigned duties properly. In two (2) bench decisions, the judge based the award on a combination of medical expenses, estimates of economic loss from lost wages, and non-economic damages.

²⁵ The three (3) people include the individual with the highest award of \$773,000.

In the two findings and conclusions by the bench, the judge based the award on a combination of medical expenses, estimates of economic loss from lost wages, and non-economic damages.

- *Brazeau et al. vs Washington State*. The largest judgment of \$1.1 million was for a consolidated case, *Brazeau et al. vs. Washington State*, which involved three (3) employees who were injured when they mixed two chemicals together to clean a women's restroom aboard the *Tacoma*. The court found that it had jurisdiction under the Jones Act and the chlorine gas resulting from mixing Hi'N Drive and bleach constituted an unseaworthy condition. The court also concluded that WSF did not heed warnings from its industrial hygienist to not use bleach aboard vessels except in the engine room. The plaintiffs were entitled to recover under the Jones Act and general maritime law. The awards were based on calculations of medical expenses that had been paid after the cure payments were stopped and on-going anticipated medical payments and economic loss from lost wages. Brazeau was award \$0.8 million, Nanette Lewis \$0.1 million, and Alex Johnson \$0.2 million.
- *Kenneth F. Irish and Robin E. Thrasher, Husband and Wife vs. State of Washington; and Daniel McBride and "Jane Doe" McBride, Husband Wife*. The judgment of \$0.4 million resulted from an incident in which Irish, an alternate chief engineer, stepped between a truck and trailer blocking the engine room access and the vehicle moved causing him to be pinned against the bulkhead. The Court found that the pickup truck was parked blocking Mr. Irish's access in violation of U.S. Coast Guard regulations and WSF safety procedures. The crewmen of the *Rhododendron* knew about the blockage but did not inform Mr. Irish that an alternate door was open or check for his safety accessing the engine room while offloading the vessel. The Captain was also not notified of the blockage. The Court found WSF liable for negligence under the Jones Act and awarded Irish \$0.2 million in economic damages and \$0.2 million in non-economic damages.
- *Edward A. Allen vs. State of Washington*. The case was settled for \$0.2 million. The plaintiff alleged the *Puyallup* was unseaworthy due to the presence of a wet/oily substance on the deck that had not been cleaned prior to his shift. In response, the state said it trial it could deny the vessel was unseaworthy and claim the defendant was negligent and claim injuries were a result of concealed existing condition or plaintiff's failure to properly perform assigned duties.
- *Delia E. Ford vs. State of Washington*. The case was settled for \$0.2 million. Plaintiff alleged unseaworthiness of the *Spokane* and negligence on behalf of WSF. As a result, plaintiff sustained severe back injuries and significant medical expense and loss of earnings. In response to the complaint, the State said at trial it could deny plaintiff was in service of vessel at time of injury, could hold that the Court lacked jurisdiction, and the plaintiff's injuries occurred as a result of willful misconduct.
- *Pamela M. Gill vs. State of Washington*. The case was settled for \$0.2 million. Plaintiff alleged permanent injuries as a result of negligence of WSF and unseaworthiness of the *Tacoma*. In response, the State agreed that it had paid maintenance and cure as stated in complaint but at trial it could allege that injuries were a result of either plaintiff's own negligence or failure to properly perform duties.
- *Loriann Malone vs. State of Washington*. Settled for \$155,000. Plaintiff alleged severe injuries as a result of unseaworthiness of the *Yakima* and negligence of WSF. State responded in trial it could say injuries, existence of which was denied, were the direct result of the acts or omissions of some third party or parties over which the State had no control and was not responsible for or the plaintiff herself.
- *Jeanine Jordan vs. State of Washington*. Settled for \$60,000. Plaintiff alleged back injuries as a result of unseaworthiness of the *M/V Hiyu* and negligence of WSF.

- *Jan Louise Pelland vs. State of Washington*. Settled for \$25,000. Plaintiff alleged severed injuries to right hamstring and lower hamstring as a result of unseaworthiness of the *M/V Tacoma* and negligence of WSF. State responded stating injuries were a result of pre-existing condition or were fault of plaintiff. Defendant alleged in affidavit that she slipped and fell on a solid sheet of ice which defendant was unable to see due to poor lighting at 4:45 a.m. Fellow crew members stated Pelland was taken off the vessel on a stretcher and taken to the hospital and after the injury the crew applied salt to the icy area of the deck, which was poorly lit. Defense filed motion for summary judgment citing that WSF could not have foreseen icy conditions and further plaintiff had not established duty for defense to provide an ice free deck. Defense also stated plaintiff could not add lighting as cause of accident after initial filing of complaint. Motion was denied by Court.
- *Steve Sackman, vs. State of Washington*. Settled for \$57,500. Plaintiff alleged unseaworthiness of *M/V Sealh* due to use of bent and unsafe stanchion while ferry docked at Colman Dock. Plaintiff claimed personal injuries, permanent partial disability, lost wages, loss of enjoyment, pain and suffering, and emotional distress. Plaintiff also alleged defendant had willfully delayed payment of maintenance and cure to which he was entitled. Plaintiff alleged negligence of WSF was a secondary cause of injuries. State's answer said at trial it could deny wrongdoing and state injuries, if any occurred, were a result of pre-existing condition or were fault of plaintiff.

SECTION IV. COST COMPARISON

This section estimates the comparative costs to the State and the impact on employees if WSF Jones Act employees were included in the state's industrial insurance program, concluding that:

- *State expenses* would be \$1.2 million to \$0.4 million per fiscal year lower under industrial insurance with the reduction in expenses occurring over the next three (3) to five (5) years as the statute of limitations expires on claims and claims are adjudicated or settled.
- *Vessel employees* could, depending on the outcome of collective bargaining, have a payroll deduction for industrial insurance and would have reduced wage replacement benefits for the first three (3) days of a work-related injury, and would no longer receive benefits for non-work related injuries. Employees would have improved no-fault wage replacement benefits for injuries for which they are out-of-work for more than three (3) days and no-fault vocational training, long-term disability, pensions, and survivor benefits that are not available under the Jones Act/GML. A review of 21 case studies indicates that if vessel employees were under industrial insurance they would be trading off the opportunity for larger total benefits under the Jones Act when they are seriously injured and can show negligence or unseaworthy conditions for more predictable no-fault benefits under industrial insurance. The larger total benefits under the Jones Act/GML come about when employees successfully sue the state for damages, a process that can take two (2) to three (3) years and imposes hardships on employees if they are off work for an extended period of time.

A. State Costs

1. Fiscal Year Costs

State expenses for the Jones Act/GML include the cost of no-fault benefits to employees and the cost of injury claims and associated defense costs.

The information in the previous section discussed per incident Jones Act/GML costs without regard to which fiscal year the expense occurred in. Expenses can and often are spread across several fiscal years. For example, an injured employee who begins receiving benefits in one fiscal year may continue to receive benefits during the next fiscal year. Injury claims take an average of 31 months from the incident to the settlement, which means that the actual expense of the settlement would be incurred two (2) to three (3) fiscal years following the incident.

The table below shows the cost incurred by the state by fiscal year. The average cost per fiscal year for the last four (4) years is \$3.4 million, including administration costs. Administration costs are for 1.0 FTE (\$0.75 per year) who administers the programs and \$0.25 per year for the medical review contract.

Table 15.
FY 2003-10 Jones Act/GML Expenses

(\$ millions)

Fiscal Year Expense	No-Fault Benefits	Indemnity	Defense	Admin.	Total
FY 2007	\$0.6	\$2.0	\$0.8	\$0.1	\$3.3
FY 2008	\$0.6	\$1.7	\$0.7	\$0.1	\$3.0
FY 2009	\$0.7	\$2.2	\$0.6	\$0.1	\$3.5
FY 2010	\$0.8	\$2.3	\$0.5	\$0.1	\$3.5
Total	\$2.6	\$8.2	\$2.5	\$4.0	\$13.8
Average per fiscal year	\$0.6	\$2.1	\$0.6	\$0.1	\$3.4

2. Industrial Insurance

If WSF vessel employees were transferred to the industrial insurance program the state would reduce costs because: 1) the industrial insurance premium is anticipated to be lower than the average annual Jones Act/GML expenditures; and 2) coverage would be for only for work-related injuries and occupational illnesses. In addition, there are potential savings in the marine insurance program and from reduced exposure to other claims. This analysis assumes that there would be the one (1) FTE administering Jones Act claims would be transferred to handle vessel employee industrial insurance. The \$0.25 per year for the medical review contract would be eliminated.

a. Rate

The industrial insurance rate for FY 2011 for WSF vessel employees has been calculated by L&I at \$1.4412 per hour. Under industrial insurance, employees pay a portion of the premium, which would be \$0.29744 of the \$1.4412 per hour.

With existing service hours, the premium would be applied to 1,793,000 hours of service for a total cost of \$2.6 million per year of which \$0.5 would be borne by employees.

b. Coverages

Industrial insurance provides coverage for job-related injuries and occupational illness and does not provide time-loss compensation for the first three (3) days off work until an injured worker is off 14 days.

Reduced coverages that affect the industrial insurance premium are:

1. *Manifest injuries and illnesses.* Four percent (4%) of GML/Jones Act no-fault benefits for incident occurring in the FY 2003-10 time period were for injuries and illnesses that became manifest on the job, but were not work-related. These would not be covered by industrial insurance.
2. *First three (3) days time-loss.* Nine percent (9%) of GML unearned wages, maintenance, and supplemental payments were for the first three (3) days or less off work where the injured worker returned within 13 days of the injury. Industrial insurance would not provide time-loss benefits in this situation.

c. Marine Insurance

The liability coverages in WSF's marine insurance program are based on an assessment of risks, which includes potential exposure to Jones Act/GML claims.

The February 2010 insurance risk assessment by Hornblower Marine Services shows that the “highest value of claims/losses occurs under the category of crew injury occurring on the vessels.”²⁶ The crew injury reserve for FY 2008 was 47 percent of the loss reserve. Of all of the WSF claims paid between FY 2004 and FY 2009, 75 percent of the total costs were from crew injury claims.²⁷

Transferring the risk of crew injury to industrial insurance has the potential to stabilize if not reduce the approximately \$1.0 million annual premium for vessel protection and indemnity coverage.

d. Other Claim Risks

3. Collective Bargaining Agreements

If the state withdraws its waiver of sovereign immunity and includes WSF vessel employees in the state’s industrial insurance program, the impact of the decision will be subject to collective bargaining. There are a variety of potential outcomes of collective bargaining. The analysis in this report considers two (2) scenarios: 1) WSF pays the employee portion of the industrial insurance premium; and 2) WSF continues, as AHMS does, to pay unearned wages.

3. Scenarios

The range of potential annual cost savings, excluding any potential savings on marine insurance, is \$1.2 million to \$0.4 million, with the largest cost savings of \$1.2 million if WSF pays only the employer portion of the industrial insurance premium. This savings is reduced to \$0.7 million per year if WSF pays the employee portion of the premium and \$0.4 million if, in addition, WSF continues to pay unearned wages. If WSF paid unearned wages, but did not pay the employee portion of the industrial insurance premium, the cost savings would be \$0.9 million.

Table 16.
Annual State Cost Comparison Scenarios
(\$ millions)

Scenarios (Admin. Costs Unchanged)	\$
Jones Act Costs	\$3.3
Industrial Insurance	\$2.1
Savings	\$1.2
Potential Scenarios Reduced Savings	
Employee Industrial Insurance Paid by WSF	-\$0.5
WSF Pays Unearned Wages	-\$0.3

5. Timing

There is a three-year statute of limitations on Jones Act damage claims and the claims have taken an average of 31 months to process from the date of the incident. As a consequence, the state’s expenses for indemnities and defense costs will phase out over a three (3) to five (5) year period. The State of Alaska transferred AMHS employees to workers’ compensation effective July 1, 2003 and according to the Risk Management Division has not outstanding Jones Act claims.

²⁶ Hornblower Marine Services *Insurance Risk Assessment*, February 20, 2010, p. 14.

²⁷ Calculation from analysis conducted for Washington State Legislature in 2010 regarding marine insurance program.

6. Farebox Recovery

GML no-fault benefit costs charged to WSDOT Ferry Operations Account Program X and charges to Program U for indemnities and defense costs are included in the calculation of farebox recovery as is the cost of the marine insurance premium. Any reduction in these costs over time will affect farebox recovery positively.

B. Impact on Employees

1. Coverages

Employees' coverages would be reduced in the three (3) areas in which the state would reduce costs.

- *Manifest injuries and illnesses.* Seven percent (7%) of all incidents and 4 percent of no-fault benefit costs in the FY 2003-10 were from illnesses or injuries that were manifest on the job, but not work-related. These would not be covered by industrial insurance. Employees would have to use their accumulated leave or medical/dental insurance provided by the state for employees who meet the eligibility requirements.
 - *PEBB Medical/Dental Benefits Eligibility.* State employees are eligible if he or she works an average of at least eighty hours per month and works for at least eight hours in each month for more than six consecutive months. A seasonal employee is eligible if he or she works an average of at least eighty hours per month and works for at least eight hours in each month of the season. A season is any recurring, cyclical period of work at a specific time of year that lasts three to eleven months.
 - *Leave.* Employees receive sick and annual vacation leave after six (6) months of continuous service. (For more detail see Section II of this report).
- *First three (3) days time-loss.* Nine percent (9%) of GML unearned wages, maintenance, and supplemental payments were for the first three (3) days or less off work where the injured worker returned within 13 days of the injury. Industrial insurance would not provide time-loss benefits for the first three (3) days, but would provide medical coverage. Twenty-five percent (25%) of job related incidents that occurred during the FY 2003-10 time period involved one (1) to 13 days off work and resulted in 9 percent of all GML unearned wages, maintenance, and supplemental payments.

2. Payroll Deduction

Unless collective bargaining resulted in another agreement, employees would have a payroll deduction of \$0.29744 per hour worked totaling for all hours or approximately \$500 per fiscal year per employee.

3. Positive Impacts

- *Improved wage replacement benefits after three (3) days off work.* Vessel employees would receive 60 to 75 percent of their wages up to a maximum of \$4,715 per month tax free versus unearned wages for one (1) to 15 days and, depending on their collective bargaining agreement, daily maintenance/supplemental payments of \$30 to \$100. Only the daily maintenance payment is tax free.
- *Additional no-fault benefits.* Employees would have no-fault vocational training, long-term disability, pensions, and survivor benefits that are not available under the Jones Act/GML. This is particularly important given the difficulties faced by WSDOT in returning vessel employees to their former positions under existing US Coast Guard regulations and collective bargaining agreements. Employees would not be forced to sue the state to gain these benefits.

4. Case Studies

To assess the impact of including WSF vessel employees in the industrial insurance program, the consultants requested L&I to analyze 21 cases selected by the consultants. The selected incidents included those with the highest medical costs, greatest number of days off, and largest damage awards and a sampling of other incidents with more moderate and low medical costs, number of days off, and damage awards. In 12 of the cases the employee had filed a claim for damages, in six (6) cases they did not file a claim for damages, and in three (3) cases the injury was manifest on the job and would not be eligible for industrial insurance.

a. Labor & Industries Case Review Assumptions

WSDOT transmitted case files to L&I for review. L&I made the following assumptions in reviewing the files:

- *Time-loss compensation.* If the file contained no information about marital status or dependents, it was assumed the worker was married which entitles them to 65 percent of their wage at time of injury up to the state maximum. This is relatively close to the overall state fund system average of just over 64 percent.
- *Medical conditions.* If medical conditions were contended by the worker as related to the claim, it was assumed that, absent information to the contrary, medical treatment was still needed. Most claims did not include a closing medical examination or report to confirm maximum medical improvement and/or the need for additional treatment. When the file indicated the attending provider had suggested another appointment for closing but was denied, the reviewer anticipated some additional treatment would take place.
- *Vocational assessments.* Vocational assessments of employability are not included in Jones Act coverages and were not available for L&I. Based on the specifics contained in the file, the reviewer made judgments based on his experience about the need for vocational services or retraining.

b. WSF Payroll and Jones Act Incident Records

- *Indemnities.* This analysis assumes that employees receiving indemnities were represented by legal counsel at an estimated cost of 30 percent of the indemnity fees.
- *WSF payroll records.* Payroll records for each employee for the pay periods when the employee was off work were reviewed to see what vacation, sick, compensatory, and shared leave time the employee may have used if off work for an extended period of time.

c. Analysis of Employee Impact

The comparison of Jones Act/GML and industrial insurance benefits shows the question of which is better for the employee depends on the circumstances, with some employees receiving greater total benefits under the Jones Act/GML and others benefitting more if they were in the industrial insurance program. indicates that if vessel employees were under industrial insurance they would be trading off the opportunity for larger total benefits under the Jones Act/GML when they are seriously injured and can show negligence or unseaworthy conditions for more predictable no-fault benefits under industrial insurance. The larger total benefits under the Jones Act/GML come about when employees successfully sue the state for damages, a process that can take two (2) to three (3) years and imposes hardships on employees if they are off work for an extended period of time.

- *Employees would have received higher no-fault benefits under industrial insurance.* In all but one (1) case reviewed the employee would have received higher no-fault benefits under industrial insurance.
- *Employees with claim awards or settlements generally received greater total benefits under the Jones Act/GML than they would have under industrial insurance, but they had to wait 27 to 39 months to receive the settlement.* In eight (8) of the 12 cases in which the employee made a claim for damages, the employee received more total compensation under the Jones Act than they would have under industrial insurance.
 - *In four (4) cases (1, 2, 15 and 21) the higher benefit under the Jones Act/GML was substantial, ranging from \$96,000 to \$274,000 higher.* In each of these cases, the employee would have received substantially higher no-fault benefits under industrial insurance but those higher benefits were offset by the damage awards, which in some cases included non-economic damages. The time between the incident and the settlement in these four (4) cases was between 27 and 39 months. The employees experienced varying reductions in pay while waiting for the settlement. In one case the employee was off work and receiving maintenance pay for 27 months, and during that period received approximately 50 percent of what would have been his pay had he not been injured (case 2). In another case, the employee had 1,378 hours or nearly nine (9) months of unpaid leave before receiving a settlement (case 21).
- *In some cases in which the employee filed a claim, industrial insurance would have provided a greater total benefit.* In one case (case 3) the claim was dismissed, so the employee did not receive the benefit of a claim award or settlement to offset the greater no-fault benefits that would have been received under industrial insurance. In the other three (3) cases, the award or settlement amount did not offset the larger benefit that would have been received under industrial insurance (cases 9, 13, and 20). The larger benefits under industrial insurance ranged from \$35,000 (case 20) to \$10,700 (case 13).
- *Where the employee did not or could not file a claim for damages for a work-related injury, industrial insurance would have provided greater total benefits than the Jones Act/GML did.* In five (5) of the six (6) which industrial insurance would regard as work-related, industrial insurance provided larger benefits. In one (1) case where the Jones Act/GML benefit was higher (case 8), the employee was injured early in the pay period and received nine (9) days of unearned wages with the result that the employee received \$700 more under the Jones Act because he was receiving maintenance pay and his regular wages.
 - *In one (1) case (case 4) the higher benefit under industrial insurance was \$131,000 a substantial amount.* In this case the employee was in a motor vehicle accident while on travel pay. Because he was receiving travel pay while commuting he is eligible for industrial insurance. The employee could not make a claim for negligence or for unseaworthy conditions, so he was unable to make a Jones Act claim. If the employee had been commuting and not on travel pay he would not have been eligible for industrial insurance.
- *Where an illness or injury became manifest on the job, employees received benefits, which were primarily medical payments, that would not be under industrial insurance.* In the three (3) cases reviewed where the illness or injury became manifest on the job (10, 11, and 19), the employees received \$3,900 in wage replacement and \$61,000 in medical benefits. If not provided the GML benefits, the employees would have used their state provided health insurance to cover all but the deductible portion of their medical expenses.

**Table 17.
Summary of Case Studies**

Case	Position/Monthly Wage/Incident Date	Description of Injury Time Off Work (days maintenance) Claim Settlement Time Use of other Benefits	Jones Act/GML Payment & Industrial Insurance			
			Wage Replacement Jones Act/GML = unearned wages + maintenance + supplemental L&I = time-loss compensation + permanent partial disability + pension			
				Jones Act	L&I	Difference
1	On-Call Deck \$2,265 8-4-04	<ul style="list-style-type: none"> Exposure to toxic gas created when two materials were mixed together causing violent reaction in the employee and resulting occupational asthma and chronic rhinitis. Employee continued in an on-call position until 10-12-06 when found permanently unfit No maintenance pay. Settlement – 28 months Jones Act/GML \$96,400 higher 	No-Fault Benefits			
			Cure/Medical	\$5,025	\$364,143	-\$359,118
			Wage Replace	\$96	\$85,407	-\$85,311
			Sub-total	\$5,121	\$449,550	-\$444,429
			Damages			
			Indemnity	\$772,659		\$772,659
			Est. Legal Fees	-\$231,798		-\$231,798
			Sub-total	\$540,861		\$540,861
			Total	\$545,982	\$449,550	\$96,432
			2	Oiler \$4,684 5-10-07	<ul style="list-style-type: none"> Back injury suffered opening gear hatch. Maintenance pay for 789 days (27 months) Settlement – 27 months Used 844 hours of shared leave and 865 hours of sick leave, compensatory time, guaranteed holiday, and vacation time. Jones Act/GML \$274,100 higher 	
Jones Act						
No-Fault Benefits						
Cure/Medical	\$93,509	\$120,730				-\$27,221
Wages Replace	\$23,685	\$195,652				-\$171,967
Sub-total	\$117,194	\$316,382				-\$199,188
Damages						
Indemnity	\$676,138					\$676,138
Est. Legal Fees	-\$202,841					-\$202,841
Sub-total	\$473,297					\$473,297
Total	\$590,491	\$316,382	\$274,109			

Case	Position/Monthly Wage/Incident Date	Description of Injury Time Off Work (days maintenance) Claim Settlement Time Use of other Benefits	Jones Act/GML Payment & Industrial Insurance			
			Wage Replacement Jones Act/GML = unearned wages + maintenance + supplemental L&I = time-loss compensation + permanent partial disability + pension			
3	On-Call Deck \$3,342 11-10-03	<ul style="list-style-type: none"> Left arm and neck injury caused by unsecured mop bucket Maintenance pay 118 days (17 weeks) Suit dismissed - 46 months Used 180 hours of sick leave, comp time, annual leave and took 516 hours of unpaid leave Industrial Insurance \$34,200 higher 		Jones Act	L&I	Difference
			No-Fault Benefits			
			Cure/Medical	\$36,110	\$33,756	\$2,354
			Wage Replacement	\$4,422	\$40,970	-\$36,548
			Sub-total	\$40,532	\$74,726	-\$34,194
			Damages	Dismissed		
			Total	\$40,532	\$74,726	-\$34,194
4	Relief Able-Bodied Seaman \$4,240 7-4-04	<ul style="list-style-type: none"> Injured in motor vehicle accident while on travel pay. If not on travel pay, not eligible for industrial insurance. Maintenance pay for 589 days (19 months) No suit filed Used 360 hours of annual leave, sick leave, and comp time, and 37 hours of shared leave. Industrial Ins. \$131,100 higher 		Jones Act	L&I	Difference
			No-Fault Benefits			
			Cure/Medical	\$183,368	\$212,068	-\$28,700
			Wage Replacement	\$20,615	\$122,922	-\$102,307
			Sub-total	\$203,983	\$334,900	-\$131,077
			Damages	Accident while the employee was on travel time pay. No basis for claim of negligence or unseaworthy conditions.		
5	Oiler \$3,989 8-15-04	<ul style="list-style-type: none"> Injured left wrist and elbow dragging a shore cord Maintenance pay 72 days (10 weeks) Settlement – 34 months Jones Act/GML \$17,700 higher 		Jones Act	L&I	Difference
			No-Fault Benefits			
			Cure/Medical	\$248	\$1,192	-\$944
			Wages Replace	\$2,323	\$8,902	-\$6,579
			Sub-total	\$2,571	\$10,094	-\$7,523
			Damages			
			Indemnity	\$36,000		\$36,000
			Est. Legal Fees	-\$10,800		-\$10,800
Sub-total	\$25,200		\$25,200			

Case	Position/Monthly Wage/Incident Date	Description of Injury Time Off Work (days maintenance) Claim Settlement Time Use of other Benefits	Jones Act/GML Payment & Industrial Insurance			
			Wage Replacement Jones Act/GML = unearned wages + maintenance + supplemental L&I = time-loss compensation + permanent partial disability + pension			
			Total	\$27,771	\$10,094	\$17,677
				Jones Act	L&I	Difference
6	Relief Ordinary Seaman \$3,872 4-3-05	<ul style="list-style-type: none"> Injured left knee, left hand, back, and groin tripping. Maintenance pay 20 days Settlement – 52 months, combined with another incident. Used 180 hours of personal sick leave, comp time, and vacation time. Took 516 hours of unpaid leave. Jones Act/GML \$27,900 higher 	No-Fault Benefits			
			Cure/Medical	\$983	\$10,971	-\$9,988
			Wage Replacement	\$2,013	\$24,754	-\$22,741
			Sub-total	\$2,996	\$35,725	-\$32,729
			Damages			
			Indemnity	\$86,667		\$86,667
			Est. Legal Fees	-\$26,000		-\$26,000
			Sub-total	\$60,667		\$60,667
			Total	\$63,663	\$35,725	\$27,938
						Jones Act
7	Able Seaman \$3,351 4-7-03	<ul style="list-style-type: none"> Lumbar strain Maintenance pay 28 days No suit Used 159 hours of personal sick and miscellaneous leave Industrial Insurance \$15,100 higher 	No-Fault Benefits			
			Cure/Medical	\$712	\$7,890	-\$7,700
			Wage Replacement	\$1,715	\$9,634	-\$12,567
			Sub-total	\$2,427	\$17,524	-\$15,097
			Damages	No claim		
			Total	\$2,427	\$17,524	-\$15,097
						Jones Act
8	On Call Deck \$3,493 12-16-03	<ul style="list-style-type: none"> Right elbow sprain, strain, tears Maintenance pay for 15 days Early pay period injury resulted in 9 days unearned wages No suit Used 16 hours of sick leave and 16 hours of holiday pay Jones Act/GML \$700 higher 	No-Fault Benefits			
			Cure/Medical	\$99	\$99	\$0
			Wages Replace	\$1,838	\$1,136	\$702
			Sub-total	\$1,937	\$1,235	\$702
			Damages	No claim		
			Total	\$1,937	\$1,235	\$702
						Jones Act

Case	Position/Monthly Wage/Incident Date	Description of Injury Time Off Work (days maintenance) Claim Settlement Time Use of other Benefits	Jones Act/GML Payment & Industrial Insurance			
			Wage Replacement Jones Act/GML = unearned wages + maintenance + supplemental L&I = time-loss compensation + permanent partial disability + pension			
				Jones Act*	L&I	Difference
9	Ordinary Seaman \$3,569 5-24-04 Also incidents on 04/04/05 and 01/15/08 settled	<ul style="list-style-type: none"> Injured left leg, hip, back, right knee, and shoulder when slipped on wet deck. Maintenance pay - 64 days 3 incidents Settlement – 47 months combined with two other incidents Used 223 hours sick and vacation leave Industrial Insurance \$35,000 higher 	No-Fault Benefits			
			Cure/Medical	\$64,655	\$94,984	-\$30,329
			Wages Replace	\$57,725	\$139,409	-81,864
			Sub-total	\$122,380	\$234,393	-\$112,013
			Damages			
			Indemnity*	\$110,000		\$110,000
			Est. Legal Fees	-\$33,000		-\$33,000
			Sub-total	\$77,000		\$77,000
			Total	\$199,380	\$234,393	-\$35,013
			*For all 3 incidents.			
10	Able Seaman \$4,248 2-2-07	<ul style="list-style-type: none"> Stroke manifest on job. Employee died next day. Estate received unearned wages. Would not have been covered under Industrial Insurance, not work related 		Jones Act	L&I	Difference
			No-Fault Benefits			
			Cure/Medical	\$18,327	not job-related	
			Wage Replacement	\$1,449		\$1,449
			Sub-total	\$19,776		\$19,776
			Damages			
			Total	\$19,776	\$0	\$19,776
Manifest injury - no damage claim						
11	Able Seaman \$4,060 2-17-05	<ul style="list-style-type: none"> Heart attack on the job. Maintenance pay 11 days Would not have been covered by Industrial Insurance, not work related 		Jones Act	L&I	Difference
			No-Fault Benefits			
			Cure/Medical	\$34,895	not job-related	\$34,895
			Wage Replacement	\$1,983		\$1,983
			Sub-total	\$36,878		\$36,878
			Damages			
			Total	\$36,878	\$0	\$36,878
Manifest injury - no damage claim						

Case	Position/Monthly Wage/Incident Date	Description of Injury Time Off Work (days maintenance) Claim Settlement Time Use of other Benefits	Jones Act/GML Payment & Industrial Insurance			
			Wage Replacement Jones Act/GML = unearned wages + maintenance + supplemental L&I = time-loss compensation + permanent partial disability + pension			
				Jones Act/GML	L&I	Difference
12	Assistant Engineer \$5,125 5-16-04	<ul style="list-style-type: none"> Right elbow injury Maintenance pay 2 days No suit Used 36 hours of personal leave Industrial Insurance \$4,400 higher 	No-Fault Benefits			
			Cure/Medical	\$844	\$1,305	\$844
			Wage Replacement	\$571	\$4,553	-\$3,982
			Sub-total	\$1,415	\$5,858	-\$4,443
			Damages			
			No damage claim			
			Total	\$1,415	\$5,858	-\$4,443
			Jones Act/GML	L&I	Difference	
13	On Call Deck \$3,400 10-13-06	<ul style="list-style-type: none"> Head, neck, and back injury when hit head on metal box. Maintenance pay 6 days Settlement – 25 months combined with one other incident Used 16 hours of personal sick leave Industrial Ins \$10,700 higher 	No-Fault Benefits			
			Cure/Medical	\$8,623	\$28,187	-\$19,564
			Wage Replacement	\$1,026	\$25,800	-\$24,774
			Sub-total	\$9,649	\$53,987	-\$44,338
			Damages			
			Indemnity*	\$48,000		\$48,000
			Est. Legal Fees	-\$14,400		-\$14,400
			Sub-total	\$33,600		\$33,600
Total	\$43,249	\$53,987	-\$10,738			
*Consolidated with one other incident						
			Jones Act/GML	L&I	Difference	
14	Chief Mate \$4,024 12-26-05	<ul style="list-style-type: none"> Sprained shoulder Maintenance pay 136 days (19 weeks) No suit Used 440.3 hours of personal sick, annual, miscellaneous and holiday pay. Industrial Insurance \$29,600 higher 	No-Fault Benefits			
			Cure/Medical	\$17,991	\$16,949	-\$1,042
			Wage Replacement	\$9,842	\$40,443	-\$30,601
			Sub-total	\$27,833	\$57,392	-\$29,559
			Damages			
			No claim			
Total	\$27,833	\$57,392	-\$29,559			

Case	Position/Monthly Wage/Incident Date	Description of Injury Time Off Work (days maintenance) Claim Settlement Time Use of other Benefits	Jones Act/GML Payment & Industrial Insurance			
			Wage Replacement Jones Act/GML = unearned wages + maintenance + supplemental L&I = time-loss compensation + permanent partial disability + pension			
15	Relief Chief Engineer \$7,407 7-23-06	<ul style="list-style-type: none"> Injured when pinned against bulkhead by truck and trailer exiting ferry. Maintenance pay 132 days (19 weeks) Settlement – 38 months Used 813.1 hours of sick leave, annual leave, comp time, and guaranteed holiday pay. Jones Act/GML \$218,900 higher 		Jones Act/GML	L&I	Difference
			No-Fault Benefits			
			Cure/Medical	\$10,257	\$15,530	-\$5,273
			Wage Replacement	\$4,696	\$41,051	-\$36,355
			Sub-total	\$14,953	\$56,581	-\$41,628
			Damages			
			Indemnity	\$372,124		\$372,124
			Est. Legal Fees	-\$111,637		-\$111,637
			Sub-total	\$260,487		\$260,487
			Total	\$275,440	\$56,581	\$218,859
16	Ordinary Seaman \$3,588 12-25-09	<ul style="list-style-type: none"> Injured when bit by a dog Maintenance pay 6 days No suit Used 16 hours of sick leave Industrial Insurance \$600 higher 		Jones Act/GML	L&I	Difference
			No-Fault Benefits			
			Cure/Medical	\$1,056	\$1,991	-\$935
			Wage Replacement	\$1,081	\$778	\$303
			Sub-total	\$2,137	\$2,769	-\$632
			Damages			
			Total	\$2,137	\$2,769	-\$632
17	Ordinary Seaman \$3,577 10-20-04	<ul style="list-style-type: none"> Injured when suffered a hernia Received 52 days of maintenance pay Settlement – 21 months Used 344 hours of sick leave, annual leave, and guaranteed holiday pay Jones Act/GML \$32,300 more 		Jones Act/GML	L&I	Difference
			No-Fault Benefits			
			Cure/Medical	\$47,994	\$48,929	-\$935
			Wage Replacement	\$2,841	\$4,584	-\$1,743
			Sub-total	\$50,835	\$53,513	-\$2,678
			Damages			
			Indemnity	\$50,000		
			Est. Legal Fees	-\$15,000		
			Sub-total Claim	\$35,000		
			Total	\$85,835	\$53,513	\$32,322

Case	Position/Monthly Wage/Incident Date	Description of Injury Time Off Work (days maintenance) Claim Settlement Time Use of other Benefits	Jones Act/GML Payment & Industrial Insurance			
			Wage Replacement Jones Act/GML = unearned wages + maintenance + supplemental L&I = time-loss compensation + permanent partial disability + pension			
18	Ordinary Seaman \$3,353 10-21-04	<ul style="list-style-type: none"> Injured back lifting a mop bucket Maintenance pay 10 days Settlement – 19 months Used 24 hours of annual leave, sick leave, and guaranteed holiday pay Jones Act/GML \$2,400 higher 		Jones Act/GML	L&I	Difference
			No-Fault Benefits			
			Cure/Medical	\$4,383	\$6,926	-\$2,543
			Wage Replacement	\$1,298	\$6,947	-\$5,649
			Sub-total	\$5,681	\$13,873	-\$8,192
			Damages			
			Indemnity	\$15,087		\$15,087
			Est. Legal Fees	-\$4,526		-\$4,526
			Sub-total	\$10,561		\$10,561
			Total	\$16,242	\$13,873	\$2,369
19	Assistant Engineer \$9,324 1-3-10	<ul style="list-style-type: none"> Heart attack on job Maintenance pay 11 days Would not have been covered under Industrial Insurance, not work related 		Jones Act/GML	L&I	Difference
			No-Fault Benefits			
			Cure/Medical	\$8,035	Injury not job-related	\$8,035
			Wage Replacement	\$448		\$448
			Sub-total	\$8,483	\$0	\$8,483
			Damages			
			Not applicable. Injury manifest on job.			
Total	\$8,483	\$0	\$8,483			

Case	Position/Monthly Wage/Incident Date	Description of Injury Time Off Work (days maintenance) Claim Settlement Time Use of other Benefits	Jones Act/GML Payment & Industrial Insurance			
			Wage Replacement Jones Act/GML = unearned wages + maintenance + supplemental L&I = time-loss compensation + permanent partial disability + pension			
20	Oiler \$4,517 10-23-05	<ul style="list-style-type: none"> Sustained back injury when slipped on wet deck Maintenance pay 325 days (11 months) Settlement – 31 months Used 255 hours of annual leave, sick leave, comp time, and guaranteed holiday pay. 608 hours of unpaid leave. Industrial Insurance \$35,100 higher 		Jones Act/GML	L&I	Difference
			No-Fault Benefits			
			Cure/Medical	\$5,453	\$27,718	-\$22,265
			Wage Replacement	\$11,072	\$128,929	-\$117,857
			Sub-total	\$16,525	\$156,647	-\$140,122
			Damages			
			Indemnity	\$150,000		\$150,000
			Est. Legal Fees	45,000		-\$45,000
			Sub-total	\$105,000		\$105,000
			Total	\$121,525	\$156,647	-\$35,122
21	Information Agent \$3,551 5-7-03	<ul style="list-style-type: none"> Shoulder injury Maintenance pay 319 days (11 months) Settlement – 39 months Used 407 hours of annual leave, guaranteed holiday, comp time and sick leave. 1,378 hours of unpaid leave. Jones Act/GML \$182,200 higher 		Jones Act/GML	L&I	Difference
			No-Fault Benefits			
			Cure/Medical	\$24,571	\$27,226	-\$2,655
			Wage Replacement	\$11,821	\$36,935	-\$25,114
			Sub-total	\$36,392	\$64,161	-\$27,769
			Damages			
			Indemnity	\$300,000		\$300,000
			Est. Legal Fees	-\$90,000		-\$90,000
			Sub-total	\$210,000		\$210,000
			Total	\$246,392	\$64,161	\$182,231