



JONES ACT REVIEW

**JOINT TRANSPORTATION COMMITTEE
DECEMBER 8, 2010**

Cedar River Group



Legislative Direction 2010 Session

Joint Transportation Committee 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).
- Jones Act includes general maritime law (GML)

Consultants' Conclusions

- **Policies underlying industrial insurance and Jones Act different**

- Industrial insurance no-fault
- Jones Act fewer no-fault benefits + right to sue for damages

- **Trade-off for employees**

- Industrial insurance short term and long-term (disability, vocational training, pensions, and survivor) no-fault benefits
- Jones Act no-fault benefits - only short-term & pay less

- **If Jones Act employees sue**

- Can get a larger total payment - can be substantially higher
- 2 to 3 year wait - can cause hardship
- Little choice but to sue if severely injured
- Case studies - employees using up leave/on unpaid status

Consultants' Conclusions

- **Jones Act employees who do not sue the state – or have relatively less time-off and less severe injuries**
 - Can receive greater total compensation under industrial insurance – difference can be substantial if severe injury & no basis for damage claim
 - Employees with non-work related injuries not covered by industrial insurance
 - If off work < 13 days receive lower benefits under industrial insurance
- **Depending on the outcome of collective bargaining:**
 - State could save between \$0.4 million and \$1.2 million annually phased in over 3 to 5 years as claims are settled
 - Employees could have a payroll deduction of \$500 per year per employee (FY 11 rate) for industrial insurance (no payroll deduction for Jones Act)

Jones Act/General Maritime Law Benefits and Rights

For Seamen

- 70% of time in service of a vessel

Three No-Fault Benefits

- Medical – called cure
- Maintenance – daily stipend until return to work or at maximum medical improvement
- Unearned wages – 100% payment of salary until the end of the voyage

Right to Sue for Damages

- Negligence – slight or featherweight – sue employer
- Unseaworthy conditions –example a slippery deck - must show proximate cause – sue ship owner

Sovereign Immunity

- States have sovereign immunity (11th Amendment to Constitution)
 - Must consent to be sued

Washington State

- RCW 47.60.120 - waives sovereign immunity & allows seamen on board vessels owned by WSDOT to sue
- RCW 51.12.100 - excludes WSDOT seaman from industrial insurance

Other States

- Alaska, Oregon, New York, North Carolina & Texas have not consented to be sued/state-employed seamen in state industrial insurance
- State & federal court cases - upheld right of states to assert sovereign immunity

Alaska

Waiver of Sovereign Immunity

- Legislature revoked waiver in 2003 session
- Upheld by Alaska Supreme Court in 2008

History

- 1983-1991 Alaska Marine Highway System employees under collective bargaining agreement in workers' compensation program
- 1991 – Supreme Court invalidated agreements/workers returned to Jones Act

Alaska

Legislative Discussion

- Benefits to state – reduced costs
- Impact on employees – concern about seasonal workers (40% of AHMS vessel employees) & those with severe injuries (lifetime cap on Alaska workers' compensation)

Current Status

- Alaska has not tracked change in incidents or costs
- Employees under workers' compensation
 - Receive unearned wages
- Risk Management Division reports no outstanding claims
 - 3-year statute of limitation on most Jones Act claims

Washington State Ferries

Vessel Employees

- 60% work on vessels (1,070 employees)
- Four collective bargaining agreements – three unions

Return to Work – Vessel Employees

- Jones Act - medical & wage replacement compensation end at maximum medical cure
- Difficult to return vessel employees to work – Coast Guard rules and collective bargaining agreements
- If cannot return to work – employee separated with no further Jones Act no-fault benefits

Basis

- **Industrial Insurance:** The common law system governing the remedy of workers against employers for injuries received in employment 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.*** The state of Washington, therefore, 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.*** (RCW 51.04.010)
- **Jones Act.** 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)).

COMPARISON: Jones Act and Industrial Insurance

	Jones Act	Industrial Insurance
No-Fault Benefits		
Covered	While in service of the vessel Manifest (not job related)	Job-related
Wage	Unearned wages 100% pay for 1-15 days	Time-loss 60-75% of wage to \$4,715/month (tax free)
	Maintenance \$30-\$40/day (tax free)	First 3 days not paid unless off 14 days or more
	Supplemental \$0-\$60/day (collective bargaining agreements not Jones Act)	
	Continues until return to duty or at maximum medical improvement	Continues until return to work or, if unable to, pension
Health Benefits	Retain if on sick, vacation, compensatory time	Time-loss compensation adjusted once employer stops contributing

COMPARISON: Jones Act/GML and Industrial Insurance

	Jones Act/GML	Industrial Insurance
No-Fault Benefits		
Medical	All related until at maximum medical cure	All related until point where no further recovery expected
Vocational	Return to work assistance - WSDOT	Return to work assistance – WSDOT Employability assessment Vocational benefits Retraining plan
Long term disability	State basic or optional plan	Partial permanent disability Pensions - to \$4,715 per month State basic or option – offset pension
Fault-Based Rights		
Damages	Right to sue – negligence or unseaworthy conditions	No standing

FY 2003-2010 Jones Act Incidents and Costs

	Incidents	Individual Employees	Total Paid (\$ millions)	% of Total Paid
Total	1,763	714		
Incidents with No-Fault Benefits (others no time-off or medical)	1,019	482	\$5.2	32%
Filed Claim		123		
Claim - Indemnity Paid		72	\$8.4	52%
Defense Costs			\$2.5	16%
Total Fault Based			\$10.9	68%
Total			\$16.1	

Coverage Changes – Industrial Insurance

Coverage Change	FY 2003-10 Incidents/Benefit Paid
Manifest incidents (not work related)	7% of incidents \$0.2 million (mostly medical)
First three days time-loss (unless off 14 days +)	25% of incidents \$0.2 million (maintenance, supplemental, unearned)

Jones Act/GML Claims Experience FY 2003-10

Average time incident to settlement	31 months
Who filed claims	Mainly employees with large no-fault benefits Employee largest no-fault benefits – no claim Employee largest claim – very small no-fault benefits
Who got indemnities	26 individuals with large settlements \$6.6 million – 79% of indemnities
Defense costs	\$2.3 million of total of \$2.5 million – cases involving 44 individuals

State Cost Comparison/Year (\$ millions)

Collective Bargaining Scenarios	No-Fault Benefits	Indemnity*	Defense*	Admin.	Total
Jones Act - Current	\$0.6	\$2.1	\$0.6	\$0.1	\$3.4
Industrial Insurance (FY 11 rate)	\$2.1			\$0.1	\$2.2
Net	\$1.5	-\$2.1	-\$0.6	0	-\$1.2
Scenario Pay unearned wages	\$0.3				-\$0.9
Scenario Pay employee share	\$0.5				-\$0.7
Scenario Pay both	\$0.8				-\$0.4

- Indemnity & defense costs phase out 3 to 5 years
- 3 year statute of limitations - Average 17 months to file /31 months settlement
- Additional potential savings – marine insurance
- Costs affect farebox recovery

Employees

- Depending on collective bargaining could have:
 - Payroll deduction – average \$500/year/employee
 - No coverage for non work-related injuries/illnesses
 - No first 3 days wage replacement if off < 14 days
- Gain
 - Better wage replacement after 3 days off
 - Additional long-term no fault benefits (disability)
- Damages – no longer available
 - Whether better off depends on employee circumstances

21 Case Studies – Comparison Industrial Insurance to Actual Jones Act

One case – higher no-fault benefits under industrial insurance

On Call Deck – Right elbow injury Off 15 days – early in pay period	Jones Act >\$700
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Large claim awards – higher Jones Act

On Call Deck – Occupational asthma No maintenance pay (no days off) Settlement 28 months - \$773,000	Jones Act >\$96,400
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Oiler – Back injury Off work 27 months Used 865 hours leave + 844 hours shared leave Settlement 27 months - \$676,000	Jones Act >\$274,100
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Information Agent – Shoulder injury Off work 11 months Used 407 hour leave + 1,378 hours unpaid Settlement 39 months - \$300,000	Jones Act >\$182,200
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Manifest – Not Work Related – Only Jones Act

Able Seaman – Heart Attack	Jones Act > \$36,878 (\$34,895 medical)
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21 Case Studies – Comparison Industrial Insurance to Actual Jones Act

Claim awards – higher Industrial Insurance

Relief Ordinary Seaman – Injured knee, hand, back
Off work – 20 days
Used 180 hours leave + 516 hours unpaid
Settlement – 52 months \$86,667

Industrial insurance
> \$27,900

Ordinary Seaman – Hip, back, knee, shoulder injury – slipped on wet deck (3 incidents)
Off work - 64 days
Used 223 hours leave
Settlement – 47 months \$110,000

Industrial insurance
>\$35,000

No claim – higher benefits industrial insurance

Relief Able Bodied Seaman – on travel pay motor vehicle accident
Off work 19 months
Used 360 hours leave + 37 hours shared leave

Industrial insurance
>\$131,100

Asst. Engineer – Right elbow injury
Off 2 days + medical payments

Industrial insurance
> \$4,400