

## **Jones, Joann**

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### **THIRD PARTY ACTIONS (RCW 51.24)**

#### **Distribution of recovery**

In determining costs for which the Department is responsible on a proportionate basis under the provisions of RCW 51.24.060, RCW 4.84.010 regarding costs awarded to a prevailing party does not control. Costs listed in proposed decision and order were appropriately included in the calculation, including photocopies, messenger fees, fax expenses, toll calls and mileage. ...*In re Joann Jones, BIIA Dec., 90 3578 (1991)*

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**BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS  
STATE OF WASHINGTON**

<b>IN RE: JOANN K. JONES</b>  <b>CLAIM NO. J-741521</b>	) ) )	<b>DOCKET NO. 90 3578</b>  <b>DECISION AND ORDER</b>
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**APPEARANCES:**

Claimant, Joann K. Jones, by  
Lembhard G. Howell;  
Judy Olson, Legal Assistant

Employer, Pacific Lutheran University,  
None

Department of Labor and Industries, by  
The Attorney General, per  
Jack S. Eng, Assistant

This is an appeal filed by the claimant on July 5, 1990 from an order of the Department of Labor and Industries dated May 10, 1990 which adhered to the provisions of the order dated January 16, 1990. The order of January 16, 1990 mandated distribution of a third party recovery of \$53,000.00 with a net share to the attorney for fees and costs of \$26,124.48; net share to the claimant of \$26,360.52; and net share to the Department of \$515.00. Further, the order of January 16, 1990 declared a statutory lien against the third party recovery in the sum of \$986.42 and demanded reimbursement from the claimant in the amount of \$515.00. Last, the order of January 16, 1990 ordered that no benefits or compensation would be paid to the claimant until such time as the excess recovery totaling \$19,641.64 has been expended by the claimant for costs incurred as a result of the conditions covered under this claim. **REVERSED AND REMANDED.**

**DECISION**

Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review and decision on a timely Petition for Review filed by the claimant to a Proposed Decision and Order issued on May 13, 1991 in which the order of the Department dated May 10, 1990 was affirmed.

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

The issue presented by this appeal is whether certain expenses totaling \$951.30 which were incurred by the claimant in prosecuting a third party action are properly deemed costs for which the Department is responsible for a proportionate share under RCW 51.24.060.

1 In trying to come to an understanding as to the nature of costs, our industrial appeals judge  
2 relied on RCW 4.84.010. We believe that this reliance was misplaced. RCW 4.84.010 relates to costs  
3 allowed the prevailing party upon a court judgement. This is a statutory right given to the prevailing  
4 part over the losing party. It does not reflect, by any means, all of the expenses incurred in  
5 prosecuting a third party civil action such as the case at hand.  
6

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8  
9 Costs are not be confused with overhead. Overhead refers to the general charges or  
10 expenses of a business which cannot be charged up as belonging to a particular work product.  
11 Overhead relates to items such as rent, taxes, insurance, lighting, heating, and so on. Costs,  
12 however, are specific and can be charged up to a particular case or work product as is the situation  
13 here. Our industrial insurance act both allows and, to a certain extent, encourages third party recovery  
14 actions under RCW 51.24. In doing so, the Department of Labor and Industries stands to recover a  
15 portion, if not all, of its statutory lien without advancing a dollar of costs or an hour of professional time.  
16 As Ms. Jones pointed out, had she elected to not pursue a third party action her cause would have  
17 been assigned to the Department under RCW 51.24.050. The Department would have then incurred  
18 the same types of expenses which it is now disputing.  
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22 After consideration of the entire record before us, we are persuaded that the \$951.30 in  
23 expenses as outlined on pages 1 and 2 of the Proposed Decision and Order are appropriately costs  
24 for which the Department is responsible for payment of a proportional share, per the provisions of  
25 RCW 51.24.060.  
26

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28  
29 The Proposed Finding of Fact No. 1 and Proposed Conclusion of Law No. 1 are hereby  
30 adopted as this Board's finding and conclusion. In addition, we make the following findings and  
31 conclusions:  
32

33  
34 **FINDINGS OF FACT**

- 35  
36 2 In the course of prosecuting the third party action herein, the claimant  
37 expended money for telephone toll calls in the sum of \$99.80; 6,555  
38 photocopies at \$.10 each in the sum of \$655.50; special messenger fees  
39 in the sum of \$91.00; fax expense to legal messengers in the sum of  
40 \$23.90; a further fax expense in the sum of \$5.00, further toll calls in the  
41 sum of \$54.30; and mileage expense in the sum of \$20.00.  
42  
43 3. The expenditures listed above in Finding of Fact No. 2 are specific  
44 litigation costs relatable to the claimant's third party action.

45 **CONCLUSIONS OF LAW**

- 46 2. The items appearing in Finding of Fact No. 2 above are costs within the  
47 meaning of Chapter 51.24 RCW.

1 3. The order of the Department of Labor and Industries issued on May 10,  
2 1990 is incorrect and is reversed and this matter remanded to the  
3 Department of Labor and Industries with directions to accept as litigation  
4 costs the additional \$951.30 in expenses at issue herein and to thereupon  
5 issue a further order mandating distribution of the claimant's third party  
6 recovery as contemplated by the inclusion of these additional costs.  
7

8 It is so ORDERED.

9 Dated this 19<sup>th</sup> day of July, 1991.

10 BOARD OF INDUSTRIAL INSURANCE APPEALS

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12  
13 /s/  
14 S. FREDERICK FELLER Chairperson

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16  
17 /s/  
18 FRANK E. FENNERTY, JR. Member

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21 /s/  
22 PHILLIP T. BORK Member  
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