

Tort Judgments and Settlements Pertaining to WSF and non-WSF Operations

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Pursuant to ESHB 1125, Section 220 (2) & (3), of the Washington State Legislature's supplemental budget pertaining to the Washington State Department of Transportation (WSDOT), the following is a summary report of information related to tort judgments and settlements pertaining to the Washington state ferry system (WSF) and non-ferry operations of the department. In a change from prior reports, WSDOT has been asked to report on semi-annual basis instead of quarterly. Therefore, this report covers judgments and settlements for quarters three and four of FY23 (January through June 2023).

To provide context, there are five general categories of cases. First, there are claims handled and settled by WSDOT per its delegated authority from the Department of Enterprise Services, Office of Risk Management. Second, there are claims and cases tendered to insurance companies wherein contractors hired by WSDOT are required to indemnify the State of Washington for claims related to work on construction projects. Third, there are cases that can be dismissed on motion by a party. Fourth, if a lawsuit cannot be dismissed on motion, an attempt is made to reach an agreed settlement. Finally, there are cases that result in a trial. All categories, whether actual litigation or not, may have defense costs relating to them as well as regular payouts. All payments made to litigants are reduced to judgments pursuant to statute codified in RCW 4.92.040 and according to the civil court rule 54(a)(1). A judgment is defined as the final determination of the rights of the parties in an action.

All tort claims received against the state are provided a unique identifying number and are classified by type. Claims are classified as personal property damage, marine vessel property damage, bodily injury, marine crew injury, civil rights, and death. Payments are separated into bodily injury (BI) and property damage (PD). The litigation costs involved in representing WSDOT are recorded as Paid Legal (PL).

The following information is the data required and responsive to Section 220, subsection 2 (a) – (c) and subsection 3 (a) – (c).

Number of Claims by Type

TYPE OF CLAIM	NUMBER BY TYPE	CLAIM TOTALS
WSF # of claims Opened in FY 23 Q3 & 4		64
Bodily Injury	2	
Civil Rights	11	
Death	0	
Marine Crew Injury	8	
Marine Crew Property	1	
Marine Terminal Injury	1	
Marine Terminal Property	4	
Marine Vessel Injury	3	
Marine Vessel Property	32	
Personal Injury	0	
Personal Property	2	
WSF # of Claims Closed in FY 23 Q3 & 4		55
Civil Rights	0	
Marine Crew Injury	5	
Marine Crew Property	1	
Marine Terminal Injury	3	
Marine Terminal Property	5	
Marine Vessel Injury	2	
Marine Vessel Property	36	
Personal Injury	1	
Personal Property	2	

TYPE OF CLAIM	NUMBER BY TYPE	CLAIM TOTALS
Non-WSF # of Claims Opened in FY 23 Q3 & 4		668
Bodily Injury	35	
Civil Rights	1	
Death	6	
Personal Injury	12	
Personal Property	614	
Non-WSF # of Claims Closed in FY 23 Q3 & 4		709
Bodily Injury	50	
Civil Rights	0	
Death	5	
Personal Injury	1	
Personal Property	653	

Payments

TYPE OF CLAIM	NUMBER BY TYPE	ACTUAL CLAIMS PAID	INDEMNITY PAYMENTS	DEFENSE PAYMENTS	PAYMENT TOTALS	AVERAGE PAYOUT PER CLAIM <small>(see note 1)</small>
WSF Claims Payouts in FY 23 Q3 & 4	55	30				
Bodily Injury	1	0	\$0.00	\$0.00	\$0.00	\$0.00
Civil Rights	0	0	\$0.00	\$0.00	\$0.00	\$0.00
Marine Crew Injury	5	3	\$108,000.00	\$20,026.06	\$128,026.06	\$42,675.35
Marine Crew Property	1	0	\$0.00	\$0.00	\$0.00	\$0.00
Marine Terminal Injury	3	1	\$62,500.00	\$4,728.92	\$67,228.92	\$67,228.92
Marine Terminal Property	5	2	\$5,344.14	\$0.00	\$5,344.14	\$2,672.07
Marine Vessel Injury	2	0	\$0.00	\$0.00	\$0.00	\$0.00
Marine Vessel Property	36	15	\$39,374.75	\$0.00	\$39,374.75	\$2,624.98
Personal Injury	1	0	\$0.00	\$0.00	\$0.00	\$0.00
Personal Property	2	0	\$0.00	\$0.00	\$0.00	\$0.00
TOTAL WSF PAYOUT			\$215,218.89	\$24,754.98	\$239,973.87	

Notes:

Note 1: The Average Payout Per Claim column includes both indemnity payout and defense costs but is based only on the number of actual claims with any payment.

TYPE OF CLAIM	NUMBER BY TYPE	ACTUAL CLAIMS PAID	INDEMNITY PAYMENTS <small>(see note 2)</small>	DEFENSE PAYMENTS	PAYMENT TOTALS	AVERAGE PAYOUT PER CLAIM TYPE <small>(see note 1)</small>
Non-WSF Claims Payouts in FY 23 Q3 & 4	709	162				
Bodily Injury	52	21	\$8,464,918.35	\$1,543,410.67	\$10,008,329.02	\$476,587.10
Civil Rights	0	0	\$0.00	\$0.00	\$0.00	\$0.00
Death	5	3	\$388,506.25	\$351,565.44	\$740,071.69	\$246,690.56
Personal Injury	1	0	\$0.00	\$0.00	\$0.00	\$0.00
Personal Property	651	138	\$264,248.14	\$29,906.62	\$294,154.76	\$2,131.56
TOTAL NON-WSF			\$9,117,672.74	\$1,924,882.73	\$11,042,555.47	

Notes:

Note 1: The Average Payout Per Claim column includes both indemnity payout and defense costs and is based the number of actual claims with any payment.

Note 2: For claims classified as one type with both property and injury payments, the payments are combined as one indemnity payment within that type of claim.

Proviso Section 2(d) Response

Moving legal costs due to claims associated with WSF into the statewide Self-Insurance Liability Account (SILA) administered by the Department of Enterprise Services (DES), Office of Risk Management will result in increased predictability by paying those costs through the SILA biennial premium. SILA premiums are established by actuarial analysis rather than paying costs incurred throughout the biennium, the unpredictability of which is often difficult for Program U to manage. However, DES, Office of Risk Management still bills WSDOT for reimbursement of costs associated with claims filed prior to July 1, 2019. Thus, costs for all WSF claims filed prior to July 1, 2019 will be difficult to predict until all claims are resolved. For any claims filed prior to July 1, 2019 for which there is a settlement, WSDOT will keep the governor's office and legislature informed and identify the additional budget impacts.

Should you have any questions or need further information, please contact Mike Fay, Administrative Risk Manager, at 360-705-7128 or faymike@wsdot.wa.gov.