

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NUMBER F302669**

**JOY HOLEMAN, EMPLOYEE**

**CLAIMANT**

**ARKANSAS HUMAN DEVELOPMENT  
CENTER, EMPLOYER**

**RESPONDENT**

**PUBLIC EMPLOYEE CLAIMS  
DIVISION, CARRIER**

**RESPONDENT**

**OPINION FILED JULY 23, 2004**

A hearing was conducted on May 12, 2004, before ADMINISTRATIVE LAW JUDGE D. FRANKLIN AREY, III, at Little Rock, Pulaski County, Arkansas.

Claimant was represented by Gary Davis, Attorney at Law, Little Rock, Arkansas.

Respondent was represented by Richard S. Smith, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A Prehearing Order was filed in this case on January 27, 2004. This Prehearing Order set out the stipulations offered by the parties, and outlined the issues to be litigated and resolved at the present time.

The following agreed stipulations are set forward in the Prehearing Order, were confirmed by the parties at the start of the hearing, and are hereby accepted:

1. The employee-employer-carrier relationship existed at all relevant times.
2. The Claimant's average weekly wage is \$788.80.
3. The Claimant sustained a compensable injury on February 26, 2003.

By the terms of the Prehearing Order, and as confirmed by the agreement of the parties at the start of the hearing, the issues to be litigated and resolved are limited to the following:

1. Is Claimant entitled to temporary total disability from May 26, 2003, to a date to be determined?

2. Is Claimant entitled to additional medical treatment as reasonably necessary and related to her compensable injury?

3. Is the additional need for treatment a compensable consequence or a result of an independent intervening cause?

4. Is Claimant entitled to an attorney's fee?

\_\_\_\_\_ Claimant contends that her May 26, 2003 fall and subsequent need for medical treatment are a natural consequence of her admittedly compensable injury sustained on February 26, 2003. She argues that she is therefore entitled to medical and temporary total disability benefits from May 26, 2003 to a date to be determined. Because Respondents have controverted her claim, she finally contends that she is entitled to an attorney's fee.

Respondents contend that Claimant's May 26, 2003 fall is an independent intervening cause relieving them of responsibility for further medical and temporary total disability benefit payments. Having accepted Claimant's February 26, 2003 injury as compensable, Respondents paid temporary total disability benefits through March 30, 2003 (terminating those benefits when Claimant returned to work), and paid authorized medical benefits through August 18, 2003 (terminating those benefits upon determining that Claimant sustained an intervening injury on May 26, 2003).

## DISCUSSION

### **A. EXISTENCE OF A CAUSAL CONNECTION**

Claimant suffered a compensable injury on February 26, 2003. On that date, she reported to work at the Conway Human Development Center; because of snow fall the night before and icy conditions, a number of other employees were not present, and the Center “was just really chaotic.” While making the rounds to ensure everything was covered, she came to an icy step on a decline, where she fell: “[M]y left leg went out in front of me and the back one - left one - right one went out the other way and I landed in the middle.” Claimant began to receive some medical treatment and was taken off work for a short period of time. She returned to work on desk duty on March 3, 2003; she was taken off work following that day until she went back to work on March 31, 2003 at the local unit of the Health Department in Heber Springs.

Claimant experienced continuing pain after her February 26, 2003 fall.

I had severe pain in that left hip when I took certain steps. I could walk a few steps and it not be bad at all, but then for whatever reason I didn't know I'd take one step and it was the wrong thing, and down I'd go.

Claimant characterized her pain as “like lightning. It just would hit in that hip, in the groin area, and there wasn't any getting away from it.” Claimant recalled that, the day after the fall, she noticed that her chest, side, hip, and back were all hurting.

Claimant testified that between her compensable injury and her subsequent fall on May 26, 2003, she reported her problem with her hip giving way every time she saw Dr. Craig Cummins or Dr. Thomas Roberts. She recalled telling them about the sharp pain in her hip and having trouble walking. She recalled Dr.

Roberts' examination of April 16, 2003: when they were performing flexion of Claimant's hip, she had marked pain, so much so that she almost screamed.

Claimant visited Dr. Cummins on February 26, 2003, the day of her compensable injury. His initial assessment was "muscle strain and pull." After two follow-up visits with Dr. Cummins, Claimant saw Dr. Roberts on March 11, 2003. He recorded an impression of "left adductor longus tear with possible iliopsoas injury." His report notes: "I have also written for her to weight bearing [sic] as tolerated but using a walker since she is having difficulty getting around."

On March 26, 2003, Claimant returned to Dr. Roberts. Claimant had decided not to get an MRI; Dr. Roberts thought this "not unreasonable because she is gradually improving." Claimant reported that she could walk a little bit without too much pain, but if she twisted or turned her leg, she would hurt. Upon examination of Claimant's hip Dr. Roberts observed "mild pain with internal and external rotation, flexion, extension, abduction and adduction, but much less that last time." He noted that Claimant "is able to walk with a slight limp without her crutches today. Overall, she is improved." He allowed Claimant to return to work but noted Claimant would "still need to use her crutches some."

Claimant returned to see Dr. Roberts on April 16, 2003. In addition to pain in her left hip, Claimant was now experiencing pain in her lower back similar to the pain associated with a prior ruptured disc. She described the pain as "down the back of her left leg from her back into her buttock and some tingling down the back of her calf. She still has some groin pain, although it is different than it has been." Dr. Roberts noted that Claimant walked with a limp and is "marked obese." He determined to get

an MRI of both Claimant's back and hip. He instructed Claimant "to try to use a crutch in her right hand, although she says it seems to make her back worse."

Claimant had two separate MRIs on April 18, 2003. Her first MRI concerned her lumbar spine. The report notes the following impression: "1. Mild degenerative disk disease at L1-2, L3-4 and L4-5. 2. Slightly more advanced degenerative changes at L5-S1. 3. No disk herniation. 4. The only source of possible radicular symptoms is asymmetric mild to moderate narrowing of the left auxiliary recess at the L4-5 level from facet hypertrophy. If symptomatic, this should be in the L5 nerve root distribution." The second MRI addressed Claimant's left hip. The note states the following impression: "There is subtle asymmetry of marrow signal in the left femoral neck compared to right with slight increase in signal on proton density and T2. This also appears to involve the inferior part of the femoral head. Differential diagnosis should include transient osteoporosis of the hip. There is no evidence of avascular necrosis nor fracture."

Claimant returned to Dr. Roberts on May 7, 2003. Although she was doing a little better, she reported that her hip still hurt in her groin. Dr. Roberts interpreted one MRI as follows: "Her MRI shows some edema in the inferior part of the femoral head, which could be transient osteoporosis of the hip. It could be related to her fall as well." He determined that Claimant could continue to work, but placed her on a physical therapy program for her hip and back and scheduled her for a follow-up visit.

A number of witnesses testified to Claimant's condition between the compensable February 26, 2003 injury and the incident of May 26, 2003. Marsha McCurry was a nurse and the local administrator of the Cleburne County Health Unit,

Claimant's place of employment from March 31, 2003 until May 26, 2003. She had known Claimant since Claimant was a teenager, and considered Claimant to be an honest and straightforward individual. Claimant told McCurry about her February 26, 2003 fall and pending workers' compensation claim. McCurry had several opportunities to observe Claimant's mobility from March 31 until May 26, 2003. She described two incidents when Claimant apparently stumbled or almost fell when she got up to walk. "[T]here were two incidents where I actually saw her - like her hip or her leg gave way. There were other days that she would - I'd be watching her walk down the hall and she would kind of have a little bit of a limp." To McCurry, "it was obvious that there was a problem in her trying to stabilize herself with that leg."

Angela Bufford worked with Claimant at the Health Department; she had known Claimant since 1994. Some time the week before Claimant's May 26, 2003 fall, Bufford was walking with Claimant at work when "she was walking and all of a sudden she, like she stumbled, she almost hit the floor. In fact, I reached out to catch her because I thought she was going to hit the floor. She had an excruciating look of pain on her face." When Bufford had been around Claimant before they worked together, she did not limp; however, now Bufford observed that Claimant "always had a limp."

William Turner's step-son married Claimant's daughter on May 15, 2003, so he had an opportunity to observe Claimant away from work prior to her May 26, 2003 incident. He testified: "[Y]ou could tell in her face when she'd go to get up, you know, that she was hurting. And I never saw her fall, but I was worried about her, you know, maybe falling.... Like up going to the bathroom a lot of times, you know, she'd kind of stumble and have to hold onto the couch or something like that."

Peggy Turner, William Turner's wife, also had an opportunity to observe Claimant away from work during this period. She testified that Claimant had to have help going up the stairs at the church that was the site of the wedding. She also testified that Claimant needed help walking. She observed that Claimant had difficulty getting up and that Claimant was in pain while doing so. She recalled: "When [Claimant] would walk, she had to walk with a cane because she had problems walking otherwise, because she would like stumble."

On May 26, 2003, Claimant went out the door of her trailer and began to descend her front steps. She took one step, and then took the second step with her left leg. She testified: "I went down with my left leg, and that pain hit and off the steps I fell to the right." She confirmed that the pain was identical to the pain she had been experiencing in her left hip. Claimant was not using her cane when she descended the steps. Even though she experienced her sharp pain daily, she did not use the cane for short distances, but would use it in bad weather or for going long distances.

Claimant saw Dr. Anne Trussell the day after her May 26, 2003 fall. Dr. Trussell's report notes:

Joy comes in today because she has severe left hip pain and groin pain. She fell at work in February and drew workmen's comp for a while; barely got an MRI and it could not exclude some transient osteoporosis. However, she got off her crutches and was doing better, and this recent hip pain unknown if that pain is related to that fall except it is the same hip. They have moved to Rosebud [sic] and she quit her job at CHDC and when she was going down the steep steps to her new trailer, she felt a pain in her hip and it gave out and she fell. She hit a board, bruised up under her eye, and fell on that hip, was in a lot of pain.

In a note dated June 17, 2003, Dr. Trussell wrote: "I agree with the continued pain she had after the fall she had in February and the continued left hip pain is what has

created the instability and caused her fall again in May.”

The test applicable to these facts is well known.

[W]hen the primary injury is shown to have arisen out of and in the course of the employment, the employer is responsible for any natural consequence that flows from that injury, and the basic test is whether there is a causal connection between the injury and the consequences of such. A nonwork-related independent intervening cause does not require negligence or recklessness, but if the claimant is engaged in unreasonable conduct, the result may be an independent intervening cause.

K II Constr. Co. v. Crabtree, 78 Ark. App. 222, 225, \_\_\_ S.W.3d \_\_\_, \_\_\_ (2002)

(citations omitted); see Broadway v. B.A.S.S., 41 Ark. App. 111, 114, 848 S.W.2d 445,

\_\_\_ (1993). Act 796 of 1993 did not change the prior existing law regarding

independent intervening causes; the Broadway v. B.A.S.S. test is still good law. Hislip

v. Helena/West Helena Schools, 74 Ark. App. 395, 399, 48 S.W.3d 566, \_\_\_ (2001)

(citations omitted). Benefits are not payable for a condition resulting from a nonwork-related independent intervening cause following a compensable injury which causes or prolongs disability or need for treatment; such an independent intervening cause does not require negligence or recklessness on the part of a claimant. Ark. Code. Ann. § 11-9-102(4)(F)(iii).

\_\_\_\_\_The claimant bears the burden of proving a causal connection between the work-related accident and the later disabling injury. Stephenson v. Tyson Foods, Inc., 70 Ark. App. 265, 269, 19 S.W.3d 36, \_\_\_ (2000). A claimant must establish this causal connection by a preponderance of the evidence. See Ark. Code. Ann. § 11-9-704(c)(2). “Preponderance of the evidence” means evidence of greater convincing force; the term does not mean preponderance in amount, but implies an overbalancing

in weight. Smith v. Magnet Cove Barium Corp., 212 Ark. 491, 496-97, 206 S.W.2d 442, \_\_\_ (1947).

I find that Claimant has established by a preponderance of the evidence that her May 26, 2003 fall and subsequent need for treatment are natural consequences of her February 26, 2003 compensable injury. After observing Claimant testify and comparing her testimony to the medical record, I also specifically find that Claimant is a credible witness.

The record demonstrates that there is a causal connection between Claimant's February 26, 2003 compensable injury and her May 26, 2003 fall. Claimant testified that she repeatedly complained to her physicians about having pain in her hip and having trouble walking. The medical records verify this testimony. Dr. Cummins' February 26, 2003 report notes: "Her left leg was injured. She complains of pain in the left groin like she pulled a muscle." He notes similar pain from "flexing the hip" in his March 3, 2003 report. On March 10, 2003, he notes that Claimant's "groin exam is basically unchanged." Dr. Roberts noted similar problems in his March 11, 2003 report. Although Dr. Roberts relates some improvement in March 26, 2003 report, he still notes "mild pain with internal and external rotation, flexion, abduction and adduction, but much less than last time." Dr. Roberts' report of April 16, 2003, observes that "[w]ith active flexion of the hip she has marked pain and as she lets the hip down, she almost screams." On May 7, 2003 Dr. Roberts recorded that "[h]er hip still hurts in her groin." Thus, there is a record of continual complaints of pain reflected by Claimant's testimony and the medical records.

Further verification of a causal connection can be found in the testimony

of Claimant's witnesses. Marsha McCurry and Angela Buford both testified to Claimant's limp and incidents of near-stumbling when Claimant rose to stand or as she walked; their testimony covered the time period from March 31 until May 26, 2003. William and Peggy Turner observed Claimant outside of work; they testified to similar problems experienced by Claimant as she rose to stand or as she walked. These four witnesses affirm the continuing nature of Claimant's disability stemming from her February 26, 2003 compensable injury.

I also specifically find that Claimant's May 26, 2003 incident does not constitute an independent intervening cause. By itself, walking down her door steps is not an "activity on the part of the claimant which was unreasonable under the circumstances." See Broadway, 41 Ark. App. at 114, 848 S.W.2d at \_\_\_. Nor was it unreasonable for Claimant to descend her steps without using her cane. The record fails to reflect any instructions by her physicians to continually use a cane or any other device. Dr. Roberts' March 26, 2003 note states that Claimant "can return to work on Monday, but will still need to use her crutches some." His April 16, 2003 note states that Claimant "is to try to use a crutch in her right hand...." These notations do not command Claimant to use her crutch or cane at all times; rather, they indicate some discretion on Claimant's part. Dr. Roberts' May 7, 2003 note is silent concerning the use of a cane or crutch. Claimant's testimony reflected that she did not use a crutch or cane for traveling short distances, but did use them for traveling long distances or in inclement weather. Based on Claimant's testimony and the medical reports, Claimant's conduct on May 26, 2003 was not unreasonable under the circumstances.

Claimant's February 26, 2003 injury was compensable; therefore,

Respondents are responsible for any natural consequences that flow from that injury. Because Claimant established by a preponderance of the evidence that there is a causal connection between her compensable injury and the May 26, 2003 fall, the fall and subsequent need for medical treatment are natural consequences flowing from the compensable injury.

## **B. ENTITLEMENT TO MEDICAL BENEFITS**

Claimant testified that she had to obtain additional medical treatment after her May 26, 2003 fall. An MRI of Claimant's left hip post-arthrogram on October 17, 2003 presented the following impression: "1. Tear of the inferior labrum of the hip, extending from approximately 5 o'clock to 8 o'clock." In an office note dated October 24, 2003, the specialist treating Claimant's left hip, Dr. Jimmy Tucker, stated: "[Claimant] injured her hip in February and has been having problems with it since that time with a [sic] arthrogram MRI eventually showing the labral tear from the 5:00 to the 8:00 position. This is a very significant tear."

Claimant underwent surgery on her left hip in November 2003; she testified that this surgery relieved her earlier "lightning" pain. Dr. Tucker noted on December 10, 2003 that Claimant "indicates that she is doing well. She has no hip pain at the present time." Nonetheless, Dr. Tucker prescribed physical therapy. Claimant testified at the hearing that she is still having some problems and that she remains under active medical treatment. Dr. Tucker's March 2, 2004 note indicates Claimant is to return for a follow-up visit six months from that date.

An employer must promptly provided for an injured employee such medical treatment as may be reasonably necessary in connection with the injury

received by the employee. Act. Code Ann. § 11-9-508(a). A claimant must prove by a preponderance of the evidence that the medical treatment is reasonably necessary in connection with her compensable injury. Cox v. Aeroquip, Full Workers' Compensation Commission Opinion filed September 10, 2003 (F010474). Evidence that a claimant's symptoms improve post-surgery is relevant when deciding whether treatment is reasonable and necessary. See Hill v. Baptist Med. Ctr., 74 Ark. App. 250, 256, 48 S.W.3d 544, \_\_\_ (2001).

I find that Claimant has established by a preponderance of the evidence that she is entitled to reasonably necessary medical treatment in connection with her compensable injury. As found above, Respondents are responsible for the natural consequences of Claimant's February 26, 2003 compensable injury. These natural consequences include Claimant's reasonably necessary medical treatment following her May 26, 2003 fall. Claimant's testimony that her November, 2003 surgery provided some relief is relevant proof concerning the reasonableness and necessity of her medical treatment. Dr. Tucker's observation of a "significant tear" based upon Claimant's MRI impression further confirms her need for treatment. Therefore, Claimant is entitled to additional medical treatment as reasonably necessary and related to her compensable injury.

### **C. ENTITLEMENT TO TEMPORARY TOTAL DISABILITY BENEFITS**

After Claimant's May 26, 2003 fall, Dr. Trussell took Claimant off work for two weeks. On June 17, 2003, Dr. Trussell indicated on a form that it would not be possible for Claimant to return to work on a part-time basis with altered job duties. On June 18, 2003, Dr. Roberts wrote: "I don't see at this point that she can return to her

regular duties at work.” Claimant continuously reported pain in her left hip or groin following her May 26, 2003 fall, as evidenced by medical reports by various physicians dated May 27, June 17, June 18, July 15, July 22, August 18, October 2, and October 21, 2003.

Dr. Tucker restricted his treatment of Claimant to her hip. As noted, Claimant testified that she underwent hip surgery in November, 2003; she testified that her “lightning” pain was alleviated as a result of that surgery. Dr. Tucker’s note of November 19, 2003, observes that Claimant “has had almost no pain postoperatively. She has had a slight sharp pain occasionally when walking or getting up from a sitting position. She has good range of motion of the hip today.” Dr. Tucker did not put Claimant in physical therapy, but he did not release her to return to work at that time either. During a December 10, 2003 visit, Claimant indicated “that she is doing well. She has no hip pain at the present time.” Nonetheless, Dr. Tucker determined that Claimant should undergo a short course of physical therapy to work on strengthening her quadriceps before being allowed to “resume normal activity.”

On December 30, 2003, Claimant reported pain in her right leg; an MRI indicated that this was caused by a large herniated disc at L3-4. Claimant then came under the care of Dr. Edward Saer, who treated her herniated disc. Dr. Saer apparently released Claimant from his care on April 1, 2004.

At the hearing Claimant testified that she has not been released to return to work, although she would like to return to work. Claimant testified that she is still under active medical treatment, taking medications and therapies over this course of time. Although her hip surgery in November, 2003 resulted in some relief, Claimant is

still under the care of Drs. Tucker and William Ackerman.

Dr. Tucker's March 2, 2004 note addresses Claimant's hip problem.

She indicates that her hip feels much better. She has some occasional aching type pain when rising from a seated position, but otherwise, she really has no problems with the hip. She indicates that the sharp stabbing pain is completely gone. Her major problems now are related to her herniated disc.

Upon examination, Dr. Tucker observed a good range of motion of Claimant's hip; apparently, she had no pain going from extension to flexion, internal to external rotation. Nonetheless, Dr. Tucker did not release Claimant from his care. He stated his plan as follows:

I am going to have her follow up in six months. We will repeat her x-rays at that time to assess her for any arthritic changes. This should give us a good idea about future problems. We will see her back in six months with x-rays of the left hip and pelvis.

Claimant seeks temporary total disability benefits from May 26, 2003 to a date to be determined.

Temporary total disability is that period within the healing period in which an employee suffers a total incapacity to earn wages. When an injured employee is totally incapacitated from earning wages and remains in his healing period, he is entitled to temporary total disability. The healing period ends when the employee is as far restored as the permanent nature of his injury will permit, and if the underlying condition causing the disability has become stable and if nothing in the way of treatment will improve that condition, the healing period has ended.

K II Construction, 78 Ark. App. at 227-28, \_\_\_ S.W.3d at \_\_\_ (citations omitted).

The claimant has the burden of proof on this issue. See Garrett v. Your Employment Service, Full Workers' Compensation Commission Opinion filed June 5, 1997 (E500330). This burden of proof must be sustained by a preponderance of the evidence. See Ark. Code Ann. § 11-9-704(c)(2).

Although this is a closer question, I find that Claimant has demonstrated by a preponderance of the evidence that she remains within her healing period, and that she is entitled to temporary total disability benefits to a date yet to be determined. The medical records indicate that Claimant was certainly within her healing period through the date of her November, 2003 surgery. Dr. Tucker did not immediately release Claimant from his care following that surgery; indeed, his December 10, 2003 note indicates he prescribed physical therapy for Claimant.

While it is true that Claimant testified to substantial relief following her November, 2003 surgery, Dr. Tucker's March 2, 2004 note is telling. Claimant reported decreasing pain after her November, 2003 surgery and testified at the hearing that her "lightning" pain is gone as a result of that surgery. Nonetheless, she did report "some occasional aching type pain when rising from a seated position" to Dr. Tucker on March 2, 2004. Dr. Tucker has not released Claimant; indeed, he anticipates obtaining x-rays of her left hip and pelvis for further assessment. As Claimant testified, she is still under Dr. Tucker's care and has not returned to work.

Claimant is entitled to temporary total disability benefits to a date yet to be determined. She is still under the care of the physician treating her left hip; there is no proof concerning maximum medical improvement or a permanent impairment rating. Claimant has not been released to return to work. Thus, Claimant remains within her healing period.

#### **D. ENTITLEMENT TO AN ATTORNEY'S FEE**

Attorney's fees shall only be allowed on the amount of compensation for indemnity benefits controverted and awarded. Ark Code Ann. § 11-9-715(a)(2)(B)(ii).

The real object of this statute is to place the burden of litigation expenses upon the party which made it necessary. Cleek v. Great Southern Metals, 335 Ark. 342, 345, 981 S.W.2d 529, \_\_\_ (1998). Assuming a position which requires an employee to retain the services of an attorney to take the actions necessary to assure that the employee's rights are protected may constitute controversion. Icenhower v. DeQueen School District, Full Workers' Compensation Commission Opinion filed June 14, 2004 (F002583); see Cleek, 335 Ark. at 345, 981 S.W.2d at \_\_\_.

I find that Respondents have controverted the payment of temporary total disability benefits to Claimant since May 26, 2003 to a date yet to be determined. Respondents made this litigation necessary; if Respondents had not denied Claimant temporary total disability benefits, it would not have been necessary for Claimant to hire an attorney. Claimant was forced to engage the services of counsel in order to secure these benefits. Thus, Claimant is entitled to an award of an attorney's fee pursuant to the statute.

\_\_\_\_\_ **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. This stipulations agreed upon by the parties are reasonable and are approved.
2. The employee-employer-carrier relationship existed at all relevant times.
3. Claimant's average weekly wage is \$788.80.
4. Claimant sustained a compensable injury on February 26, 2003.
5. Claimant's May 26, 2003 fall and subsequent need for medical treatment are natural consequences of her admittedly compensable injury sustained on

February 26, 2003. The testimony of Claimant and her witnesses concerning Claimant's pain and physical condition, supported and verified by the medical records, demonstrate a causal connection between Claimant's February 26, 2003 compensable injury and her May 26, 2003 fall.

6. Claimant's May 26, 2003 fall does not constitute an independent intervening cause. Her activity of descending the steps at her home without use of a cane or crutch did not constitute an activity which was unreasonable under the circumstances.

7. Claimant is entitled to reasonably necessary medical treatment in connection with her compensable injury. Her May 26, 2003 fall and subsequent need for medical treatment are natural consequences of her February 26, 2003 compensable injury. Her medical records, Dr. Tuckers' observation of a "significant tear" of her inferior labrum of the hip, and her subsequent relief from surgery all demonstrate that Claimant's medical treatment is reasonably necessary in connection with her compensable injury.

8. Claimant is entitled to temporary total disability benefits from May 26, 2003 to a date to be determined, since Claimant remains within her healing period. Claimant remains under the care of the physician treating her hip, and has not been released to return to work.

9. Claimant's entitlement to temporary total disability benefits has been controverted since May 26, 2003.

10. Claimant's attorney is entitled to the statutorily prescribed attorney's fee found in Ark. Code Ann. § 11-9-715 on any indemnity benefits due or to become

due to Claimant.

**AWARD**

Respondents are directed to pay benefits in accordance with the Findings of Fact and Conclusions of Law set forth herein.

The Claimant's attorney is entitled to a twenty-five percent (25%) attorney's fee on any indemnity benefits due or to become due since Claimant's May 26, 2003 fall, one-half of which is to be paid by Claimant and one-half to be paid by Respondents in accordance with Ark. Code Ann. § 11-9-715; and Death and Permanent Total Disability Trust Fund v. Brewer, 76 Ark. App. 348, 65 S.W.3d 463 (2002).

**IT IS SO ORDERED.**

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D.FRANKLIN AREY, III,  
Administrative Law Judge

DFA/ml