

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E815108

CHARLES D. GREEN, EMPLOYEE	CLAIMANT
JAMES HARDIE GYPSUM, INC., EMPLOYER	RESPONDENT
ZURICH INSURANCE COMPANY, CARRIER	RESPONDENT

OPINION FILED DECEMBER 15, 2005

This matter comes before the HONORABLE DALE DOUTHIT, Administrative Law Judge, for an opinion to be rendered on the established record.

Claimant represented by HON. E. BEN FRANKS, Attorney at Law, Texarkana, Texas.

Respondents No. 1 represented by the HON. LEE J. MULDROW, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by HON. JUDY RUDD, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

Pursuant to the Prehearing Order filed May 19, 2005, the parties agreed to submit consideration of this claim on a stipulated record. The record is comprised of the Prehearing Order filed May 19, 2005; the Brief filed by Respondents No. 1 on July 25, 2005; the Brief and Exhibits filed by Respondents No. 2 on September 21, 2005; letter from claimant's counsel dated September 23, 2005, and the parties agreed stipulations filed August 22, 2005.

The parties submitted the following stipulations:

- 1) The employee/employer/carrier relationship existed between the parties on December 9, 1998, when the claimant sustained compensable injuries.

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2) The claimant's average weekly wage was such that he was entitled to a total disability compensation rate of \$359.00 per week.

3) Claimant reached the end of his healing period and maximum medical improvement on August 17, 2000.

4) The claimant is permanently and totally disabled as the result of the December 9, 1998 compensable injury.

5) Dr. Jim Moore assessed the claimant an eighty percent (80%) permanent anatomical rating to the body as a whole for the December 9, 1998 compensable injuries, totaling \$96,840.00.

6) Respondents No. 1 filed an AR-D with the Death and Permanent Total Disability Trust Fund on January 3, 2005. Pursuant to Rule 28 of the Ark. Workers' Compensation Commission Rules, the Death and Permanent Total Disability Trust Fund did not become responsible for the payment of permanent and total disability benefits before April 2, 2005.

At the prehearing conference, the parties agreed the issues to be presented were whether Respondents No. 1 must first pay the claimant's anatomical ratings for the compensable injury prior to payment of any permanent and total disability benefits to which the claimant may be found entitled; whether Respondents No. 1 are entitled to credit for payment of permanent partial anatomical disability benefits against its \$75,000.00 maximum liability pursuant to A.C.A. §11-9-502(b)(1); and the extent of claimant's permanent anatomical impairment. However, in the parties joint stipulation submitted August 22, 2005, it was apparently agreed that the extent of permanent anatomical impairment was dropped as an issue; and therefore, the parties have agreed the only issue to be decided herein is whether Respondents No. 1 must first pay the claimant's anatomical ratings for the compensable injury prior to payment of any permanent and total disability benefits to which the claimant may be found entitled and whether Respondent No. 1 is entitled to credit for payment of permanent partial anatomical disability benefits against its \$75,000.00 maximum liability pursuant to A.C.A. §11-9-502(b)(1).

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The Death & Permanent Total Disability Trust Fund contends Respondents No. 1 is not entitled to credit for payment of the claimant's permanent anatomical ratings for the compensable injury against its \$75,000.00 maximum permanent total disability benefit liability; and that Respondents No. 1 should reimburse the Trust Fund for the value of the anatomical impairment rating paid by the Trust Fund.

Respondents No.1 contend it is entitled to credit for payment of the claimant's permanent anatomical impairment rating and that it is not responsible for reimbursement to the Death and Permanent Total Disability Trust Fund for the value of the anatomical impairment rating paid by the Trust Fund. That the Death and Permanent Total Disability Trust Fund is responsible for all permanent and total disability payments to the claimant over and above the \$75,000.00 already paid by the Respondents No. 1.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, to include medical reports, documents and other matters properly before the Commission, the following findings of fact and conclusions of law are hereby made in accordance with A.C.A. §11-9-704:

- 1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
- 2) The stipulations agreed to by the parties are hereby accepted as fact.
- 3) Respondents No. 1 is entitled to a credit for the amount of all permanent disability benefits paid to the claimant after the end of his healing period, against its statutory maximum liability of \$75,000.00.
- 4) The Death & Permanent Total Disability Trust Fund is entitled to no reimbursement from Respondents No. 1.

DISCUSSION

The claimant sustained compensable injuries as the result of being crushed between two couplers of a train which the respondents accepted as compensable. As stipulated by the parties, the claimant reached the end of his healing period no later than August 17, 2000, and was assigned a permanent anatomical impairment rating of eighty percent (80%), to the body as a whole; they also stipulated the claimant is permanently and totally disabled. The Death and Permanent Total Disability Trust Fund acknowledges that Respondents No.1 paid in excess of \$75,000.00 in benefits inclusive of the eighty percent (80%) whole body rating as of April 3, 2005. The Trust Fund argues that Respondents No. 1 are liable for payment of the permanent anatomical rating (in this case \$96,840.00) in addition to \$75,000.00 in permanent and total disability benefits. The Trust Fund seeks reimbursement from Respondents No.1 for the dollar value of the permanent anatomical impairment rating paid by the Death and Permanent Total Disability Trust Fund.

The facts and issues herein appear to be identical to those set forth in the Commission's recent decision in **Thomas v. Legacy Insurance Services**, A.W.C.C. F100487, Opinion filed May 4, 2005. The Commission found therein as follows:

Thus, when a determination of permanent total disability has been made, the benefits paid by a respondent after the end of the healing period are classified as permanent and total disability benefits under A.C.A. 11-9-502(b). The Statute then provides, "all benefits in excess of seventy-five thousand dollars (\$75,000.) Shall be payable from the Death & Permanent Total Disability Trust Fund."

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AWARD

I conclude that Thomas is controlling herein. Therefore, I conclude Respondent No. 1 is entitled to a credit for the amount of permanent disability benefits paid to claimant after the end of his healing period, against its statutory maximum liability of \$75,000.00. The Trust Fund is not entitled to reimbursement.

IT IS SO ORDERED.

DALE DOUTHIT
Administrative Law Judge