

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. E712039**

<b>MATTHEW T. HALL, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>BROWN &amp; ROOT, EMPLOYER</b>	<b>RESPONDENT NO. 1</b>
<b>HIGHLANDS INSURANCE COMPANY, CARRIER</b>	<b>RESPONDENT NO. 1</b>
<b>SECOND INJURY FUND</b>	<b>RESPONDENT NO. 2</b>

**OPINION FILED MARCH 28, 2005**

Submitted on the record in lieu of a full hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN, on March 25, 2005.

Claimant represented by the HONORABLE STEVEN MCNEELY, Attorney at Law, Little Rock, Arkansas.

Respondents No. 1 represented by the HONORABLE NORWOOD PHILLIPS, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by the HONORABLE DAVID PAKE, Attorney at Law, Little Rock, Arkansas.

**ISSUES**

On March 16, respondent No. 2 filed a Motion to Dismiss the Second Injury Fund as a party to this claim. On March 21, 2005, respondent No. 1, Highlands Insurance, filed an Objection. Both parties have filed briefs in support of their motions. Neither party has asked for a hearing on their motion.

Despite the fact that the parties did not enter into any formal stipulations, their briefs indicate there is no dispute about the factual history of this case. This case involves a September 7, 1997 injury accepted as compensable by respondent No. 1. During a surgical procedure on August 24, 1998, the surgeon caused an occult dural tear, necessitating further medical treatment, prolonging disability and increasing permanent impairment.

Respondent No. 1 contends the surgical complication was an independent intervening cause or second injury and joined the Fund as a party on January 14, 2005. Respondent No. 1 further argues that the Fund is relying on answers to discovery which are not verified by the claimant nor signed by him and respondent No. 2 is not entitled to rely on this information. Additionally respondent No. 2 is inappropriately seeking a Motion for Summary Judgement.

Respondent No. 2 contends the surgical complication is a compensable consequence of the original injury and respondent No. 1 does not state or allege sufficient appropriate facts to constitute a cause of action against the Fund. Respondent No. 2 further argues that a non-work related post-work injury cannot form the basis of Fund liability pursuant to Ark. Code Ann. §11-9-102(4)(F)(iii) and §11-9-525. The issue to be resolved is a question of law. The Fund would have no liability for either an independent intervening cause or for a compensable consequence. Respondent No. 2 asks that they be dismissed as a party to this claim due to respondent No. 1's failure to state a cause of action.

Medical negligence or malpractice is considered a compensable consequence of the original injury. Larson's Workmen's Compensation, Desk Ed., Vol. 1, §13.20, "Arising out of Employment: Aggravation by Treatment," (p. 3-176 to 3-182):

It is now uniformly held that aggravation of the primary injury by medical or surgical treatment is compensable... Fault on the part of the physician, such as a faulty diagnosis, improper administration of anesthesia, or a slip of the surgeon's knife... does not break the chain of causation...

It is only when we come to cases involving the conduct of the claimant himself that the possibility of a break in the chain of compensable consequences is encountered.

The “independent intervening cause” and “quasi-course of employment” tests do not come into play unless the actions of the claimant are involved. Preway, Inc. v. Davis, 22 Ark. App. 132, 736 S.W.2d 21 (1987).

The Commission has consistently held that misdiagnosis, negligence and malpractice are a compensable consequence of the original injury. Steven Treat v. Madison Co., et. al., Full Commission opinion of July 29, 2003 (D917561), affirmed by the Court of Appeals in an unpublished opinion June 2, 2004 (CA03-1327); Wesley Adams v. Tyson Foods, Inc., Full Commission opinion of August 18, 1995 (E211064), affirmed by the Court of Appeals in an unpublished opinion September 18, 1996 (CA95-1269); Ralph Huntsman v. Michael Curran & Assoc., Full Commission opinion of September 24, 1992 (E109528), affirmed by the Court of Appeals September 22, 1993 (CA92-1406); Al J. Richards v. McClinton Anchor, Full Commission opinion of July 23, 1992 (E105696), affirmed by the Court of Appeals September 8, 1993 (CA92-1254).

Commission Rule 24 provides that a party may join the Fund after specifying the basis of their claim and providing documentary evidence (the claimant’s history and medical reports from discovery). After considering respondent No. 1’s basis of their claim, I find, as a matter of law, that the Commission does not have subject matter jurisdiction over the Fund.

Accordingly, the Fund’s motion is granted and respondent No. 2 is hereby dismissed as a party to this claim.

IT IS SO ORDERED

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ELIZABETH W. HOGAN  
Administrative Law Judge