

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F204936**

<b>RONALD K. HICKMAN, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>KELLOGG BROWN &amp; ROOT, EMPLOYER</b>	<b>RESPONDENT NO. 1</b>
<b>PACIFIC EMPLOYERS INS. CO., CARRIER</b>	<b>RESPONDENT NO. 1</b>
<b>SECOND INJURY FUND</b>	<b>RESPONDENT NO. 2</b>
<b>DEATH &amp; PERM. TOTAL DIS. TRUST FUND</b>	<b>RESPONDENT NO. 3</b>

**OPINION FILED JANUARY 25, 2006**

Hearing before Administrative Law Judge J. Mark White on December 1, 2005, in Texarkana, Miller County, Arkansas.

Claimant represented by Mr. Gregory R. Giles, Attorney at Law, Texarkana, Arkansas.

Respondents represented by Mr. James C. Baker, Attorney at Law, Little Rock, Arkansas.

Second Injury Fund represented by Mr. David L. Pake, Attorney at Law, Little Rock, Arkansas.

Death & Permanent Total Disability Trust Fund represented by Ms. Judy Rudd, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

On December 1, 2005, the above-captioned claim came on for a hearing in Texarkana, Arkansas. A pre-hearing conference was conducted on August 22, 2005, and a Prehearing Order was entered that same day. A copy of the August 22, 2005,

Prehearing Order has been marked as Commission Exhibit No. 1 and made a part of the record herein without objection. At the hearing, the parties confirmed that the stipulations, issues, and respective contentions, as amended, were properly set forth in the Prehearing Order.

The parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of this claim; that the employee/employer/carrier relationship existed at all relevant times, including April 26, 2002; that on April 26, 2002, the claimant sustained a compensable injury to his right knee; that respondents accepted this knee injury as compensable and paid benefits; that the claimant reached the end of his healing period for both his right knee and back injuries no later than May 4, 2005; and that the claimant earned wages sufficient to entitle him to a compensation rate of \$425.00 for total disability benefits. At the hearing, the parties further stipulated that the claimant was paid temporary total disability benefits through October 28, 2003; that the respondents are entitled to a credit for any TTD payments made after October 28, 2003; that the claimant earned wages sufficient to entitle him to a compensation rate of \$319 for permanent partial disability benefits; that the claimant was involved in a motor vehicle accident on March 12, 2004; and that from March 12, 2004, through May 25, 2004, the motor vehicle accident was an independent intervening cause such that the claimant would

not be entitled to temporary total disability benefits for that approximately two-month period of time.

The parties agreed that the issues to be presented were whether the claimant sustained a compensable injury to his low back; whether the claimant is entitled to additional temporary total disability benefits; whether the claimant is entitled to permanent partial disability benefits; whether the claimant is permanently and totally disabled, or in the alternative, whether the claimant has sustained wage loss in excess of his permanent anatomical impairment; the extent of liability, if any, of the Second Injury Fund and the Death & Permanent Total Disability Trust Fund; whether the respondents are entitled to credit toward their \$75,000 maximum liability for any permanent partial disability benefits awarded the claimant; and controversion and attorneys' fees.

The claimant contends that he sustained compensable injuries to his right knee and low back on April 26, 2002; that the medical treatment he has received to date for both injuries has been reasonable, necessary, and related to his compensable injuries; that he is entitled to additional temporary total disability benefits from the date those benefits were terminated to a date yet to be determined; in the alternative, that if he did reach the end of his healing period on or about October 28, 2003, he subsequently entered a new healing period; that he is entitled to permanent

partial disability benefits for his right knee and low back; that he is now permanently totally disabled or in the alternative is entitled to wage-loss disability benefits in excess of the anatomical ratings; and that he is entitled to have his attorney's fees paid as permitted by law.

The respondents contend that the claimant sustained only a strained right knee as a result of his work-related incident; that the claimant has multiple preexisting conditions for which he is currently receiving treatment; that the healing period for the knee strain has long since ended; that the claimant is now permanently totally disabled and has been since November 6, 2003, and is not entitled to additional temporary total disability benefits; that the claimant's compensable injuries are not the major cause of any permanent impairment; that the respondents are entitled to credit against their \$75,000 maximum liability for any permanent partial disability benefits awarded the claimant; and that the Second Injury Fund is liable for all permanent disability benefits over the impairment rating.

The Death & Permanent Total Disability Trust Fund contends that pursuant to Ark. Code Ann. § 11-9-525(b)(1), Second Injury Fund liability must be determined prior to consideration of the Death & Permanent Total Disability Trust Fund's liability; that if the Second Injury Fund is found to not have liability and the claimant is found to be permanently totally disabled, the Trust Fund stands ready

to commence weekly benefits in compliance with § 11-9-502; that the Trust Fund has not controverted the claimant's entitlement to benefits; that the respondents must first pay permanent partial disability in the form of the anatomical ratings for the claimant's compensable injury before payment of permanent total disability benefits; and that the respondents are not entitled to credit against their \$75,000 maximum for payment of the claimant's permanent partial anatomical ratings for the compensable injury. The Trust Fund is hereby excused from participation in this hearing.

The Second Injury Fund contends that the claimant did not sustain a compensable back injury; and that the claimant has sustained no permanent impairment as a result of his back or knee injuries of April 26, 2002.

#### **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, and having had an opportunity to hear the testimony of the claimant and to observe his demeanor, the following findings of fact and conclusions of law are hereby made in accordance with Ark. Code Ann. § 11-9-704:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this

claim.

2. The stipulations agreed to by the parties are reasonable and are hereby accepted as fact.
3. The claimant has proven by a preponderance of the evidence that he has sustained permanent impairment of 30% to the lower extremity; that his compensable injury is the major cause of this permanent impairment; and that this finding of permanent impairment is supported by objective and measureable physical findings.
4. The claimant has therefore proven by a preponderance of the evidence that he is entitled to permanent partial disability benefits in the amount of 30% to the lower extremity for his compensable right knee injury.
5. The claimant has failed to prove by a preponderance of the evidence that the existence and extent of his alleged back injury is established by medical evidence supported by objective findings.
6. The claimant has therefore failed to prove by a preponderance of the evidence that he sustained a compensable injury to his back.
7. The claimant has proven by a preponderance of the evidence that he was within his healing period for his compensable injury from October 28, 2003, through May 4, 2005, and that he did not return to work.

8. The claimant has therefore proven by a preponderance of the evidence that he was entitled to temporary total disability benefits from October 28, 2003, through May 4, 2005, exclusive of the time period from March 12, 2004, through May 25, 2004, stipulated to by the parties.
9. The claimant has failed to prove by a preponderance of the evidence that his compensable injury is the major cause of his permanent total disability.
10. The respondents have failed to prove by a preponderance of the evidence that prior to his compensable knee injury the claimant had any permanent partial disability or impairment of his right knee, or that any prior disability or impairment has combined with the recent compensable injury to produce the current disability status.
11. The Second Injury Fund therefore has no liability herein.
12. The Death and Permanent Total Disability Trust Fund has no liability herein.
13. The respondents have controverted all benefits sought herein.

## **DISCUSSION**

### **I. History**

The claimant worked for the respondent-employer as a precision millwright repairing large machinery. On April 26, 2002, while walking across some machinery,

he slipped on oil and fell, hitting his right knee against a platform and then falling on his back. The claimant testified that he was “hurting all over” after the accident, and that he noticed swelling and pain in his knee.

The first medical treatment documented in the record was an emergency room note dated April 28. The form notes the claimant complained of pain in his right knee down into his foot but makes no mention of back pain. Swelling was noted in the knee; x-rays revealed severe osteoarthritis but no acute traumatic injury. The claimant next sought treatment at an emergency room in Louisiana on May 21. He related a history of twisting his right knee and lower back, with complaints of pain in his knee and groin with knee instability. The notes mention “chronic” back pain but make no mention of muscle spasms or other objective sign of a back injury.

The respondents initially accepted both the knee and back injuries as compensable, and in June the claimant began to treat with Dr. Sidney Bailey for both injuries. Dr. Bailey and the claimant discussed a total knee replacement, but Dr. Bailey recommended that the claimant put off any such knee surgery for as long as possible. On June 20 the claimant was involved in a motor vehicle accident and sought emergency treatment for upper extremity pain and numbness, but it does not appear this accident substantially aggravated his knee or back injuries.

An MRI exam of the knee performed August 15 revealed a small joint effusion and degenerative arthritic changes. A CT exam of the lumbar spine performed October 10 revealed large disk bulges at L1-2 and L2-3, as well as surgical changes through the rest of the spine as discussed below.

The claimant continued to treat with Dr. Bailey for his knee, but he eventually came under the care of Dr. Bernie McHugh for his back. Dr. McHugh eventually performed back surgery on May 28, 2003, which surgery the respondents accepted and paid for. The respondents terminated the claimant's indemnity benefits as of October 28, 2003.

On March 12, 2004, the claimant sustained severe closed-head injuries in another motor vehicle accident. His wife died in the accident, and the claimant was unconscious for thirty-two days after the accident. The parties agree this accident did not aggravate the claimant's back or knee, and as noted above the parties have stipulated that the claimant was not entitled to temporary total disability benefits for his work injuries from March 12, 2004, through May 25, 2004.

The claimant underwent knee surgery, a total knee replacement, by Dr. Bailey on September 29, 2004, which surgery the respondents accepted and paid for. Subsequent to this, the respondents controverted the compensability of the claimant's back injury and the permanent impairment rating of 30% to the lower

extremity assigned by Dr. Bailey for the knee surgery. Dr. Bailey's impairment rating was issued pursuant to the 4<sup>th</sup> edition. During this time the claimant also continued to treat with Dr. McHugh for his back, and on June 16, 2005, Dr. McHugh assigned the claimant a permanent anatomical impairment rating of 28% to the body as a whole, pursuant to the 5<sup>th</sup> edition of the *AMA Guides*. The respondents controvert this rating as well.

The claimant has a long-standing history of back and knee problems. He testified that he injured his right knee at work in 1976 and underwent surgery. No medical records regarding that injury and surgery have been introduced into evidence herein. The claimant testified that prior to the 2002 accident he was having no problems with his right knee, and that he had not noticed any pain or swelling prior to the 2002 accident. He testified that he was able to do his work, including extensive climbing, without any knee problems. One medical record quotes the claimant as having a multi-year history of knee problems preceding the 2002 accident, but the claimant denied telling any doctor this.

The claimant testified that he first injured his back in 1984 in a work injury. He subsequently underwent two neck surgeries and four back surgeries. Prior to the 2002 accident, the claimant had hardware installed at every level of his lumbar spine other than L1-2 and L2-3. The claimant testified that he was off work and receiving

Social Security Disability benefits for some eight to ten years after the 1984 injury, and that he did not return to work until the mid-1990s. In 1997 he sustained another work injury; he testified that he injured only his shoulder and hip, but medical records reflect that he also received extensive treatment for his back at that time. Imaging studies from 1997 show that some of the hardware installed in the previous low back surgeries had fractured. At the time of the 2002 accident, the claimant was already taking Hydrocodone, a pain pill, and Soma, a muscle relaxer, for his back.

## **II. Adjudication**

### **A. Knee Injury**

Permanent impairment is “any permanent functional or anatomical loss remaining after the healing period has been reached.” *Johnson v. General Dynamics*, 46 Ark. App. 188, 878 S.W.2d 411 (1994), citing *Ouachita Marine v. Morrison*, 246 Ark. 882, 440 S.W.2d 216 (1969). Any finding of permanent impairment must be supported by objective and measurable physical or mental findings. ARK. CODE ANN. § 11-9-704(c)(1)(B). It must also be shown that the compensable injury was the major cause of the disability or impairment. ARK. CODE ANN. § 11-9-102(4)(F)(ii)(a). The Commission has adopted the American Medical Association’s *Guides to the Evaluation of Permanent Impairment* (4<sup>th</sup> ed. 1993) for use in assessing the extent of

permanent anatomical impairment. A.W.C.C. Rule 099.34 (July 1, 1995).

Dr. Bailey has assigned the claimant a permanent impairment rating of 30% to the lower extremity for the claimant's right knee. Dr. Bailey testified that the rating was based in part on the fact that a total knee replacement surgery was performed, obviously in and of itself an objective finding sufficient to support the award of an impairment rating. Dr. Bailey further testified that the claimant's pre-existing degenerative changes were the major cause of the claimant's permanent knee impairment, in that the claimant would have eventually required a total knee replacement even in the absence of the compensable injury. But Dr. Bailey also testified that the claimant's compensable injury was the "precipitating" cause of the total knee replacement. He agreed the compensable injury "necessitated" the surgery because of the increase in symptoms it caused, and that the compensable injury was the "straw that broke the camel's back." Dr. Bailey testified that the decision to perform a total knee replacement is dependent on the patient's subjective complaints of pain, and that the compensable injury was the major cause of the subjective complaints of pain that led him to recommend a total knee replacement.

An employer takes the employee as he finds him. *Smith-Blair, Inc. v. Jones*, 77 Ark. App. 273, 72 S.W.3d 560 (2002). The major cause requirement is satisfied where a compensable injury necessitates a surgery and the surgery is the basis of the

impairment rating. See, e.g., *Second Injury Fund v. Stephens*, 62 Ark. App. 255, 970 S.W.2d 331 (1998); *Estridge v. Waste Management*, A.W.C.C. E500479 (July 12, 2004). The major cause requirement is likewise satisfied where a compensable injury aggravates an asymptomatic pre-existing condition such that the condition becomes symptomatic and requires treatment. *Pollard v. Meridian Aggregates*, \_\_ Ark. App. \_\_, \_\_ S.W.3d \_\_ (Sept. 29, 2004).

In the present case, it is admitted the claimant might have required a total knee replacement at some indefinite point in the future absent the compensable injury. But Dr. Bailey's deposition testimony makes clear that the total knee replacement surgery became necessary when it did because of the compensable injury. Though the claimant may have had minor symptoms prior to the compensable injury, any such prior symptoms were not sufficient to impair his ability to work, nor were they sufficient to immediately require a total knee replacement – and Dr. Bailey testified that the need for the surgery was dependent on the severity of the claimant's symptoms. Those symptoms became worse as a result of the compensable injury, necessitating surgery.

Given the above, I find that the claimant has proven by a preponderance of the evidence that he has sustained permanent impairment of 30% to the lower extremity; that his compensable injury is the major cause of this permanent

impairment; and that this finding of permanent impairment is supported by objective and measureable physical findings. I therefore conclude that the claimant has proven by a preponderance of the evidence that he is entitled to permanent partial disability benefits in the amount of 30% to the lower extremity.

In making this finding, I note that at one point in his deposition Dr. Bailey agreed that the claimant's pre-existing condition was the "major cause" of the need for surgery. But the term "major cause" is not a medical term of art; rather, it is a legal standard established and defined by statute, which the Commission alone – not a physician – is empowered to determine. In making this determination, the Commission is not bound by a physician's use of a legal term he may or may not fully understand. Rather, the findings herein are based upon Dr. Bailey's deposition testimony in its entirety.

### **B. Back Injury**

For the claimant to establish a compensable injury as a result of a specific incident, the following requirements of Ark. Code Ann. § 11-9-102 (4)(A)(i) must be established: (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required

medical services or resulted in disability or death; (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. § 11-9-102(16), establishing the existence and extent of the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence. *Ford v. Chemipulp Process, Inc.*, 63 Ark. App. 260, 977 S.W.2d 5 (1998). Once the claimant has established his injury with medical evidence supported by objective findings, he must also show a causal connection between the objective findings and his alleged injury. *Id.* If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of a claim, compensation must be denied. *Id.*

It is undisputed the claimant had extensive pre-existing problems with his back. One doctor even opined that the degeneration of the claimant's lumbar spine was "some of the most severe that I have ever seen." A review of the record reveals the only new objective findings observed after the claimant's compensable injury were at L1-2 and L2-3. X-rays performed September 18, 2002, revealed narrowing throughout the lumbar spine. Subsequent imaging studies revealed herniations at L1-2 and L2-3. The surgeries and treatment provided to the claimant for his back after the compensable injury were primarily directed at L2-3. In contrast, a CT scan performed before the compensable injury, on May 16, 1997, found no herniations

or extrusions at L1-2 and L2-3, though a myelogram performed that same day did detect a small disk bulge at L2-3.

The difficulty is that there is little evidence in the record to convincingly connect these objective findings with the work injury of April 26, 2002. Dr. McHugh testified in his deposition that the objective findings at L2-3 were connected instead to the claimant's pre-existing condition:

He had had a spinal fusion or a complete immobilization of the movable segments of the spine, which we know over time transfers the stress and strain responsibilities to the next first movable level, which then it time in almost all cases will demonstrate the changes that we saw in Mr. Hickman's 2-3 level, which was hypertrophy of the facets, we can have hypertrophy and bulging of the disks and generalized stenosis.

When asked if the 2003 back surgery was necessitated by the alleged work injury of April 2002, Dr. McHugh testified:

I mean, the comparison of the myelogram from '97 to 2002 demonstrated a progression of degenerative process, which is something that we would expect especially with a patient of Mr. Hickman's history. The accident that occurred on April 26<sup>th</sup> did not - and I don't have any specific data that would demonstrate it caused the stenosis. Stenosis in most cases is a degenerative process ... which the two myelograms demonstrated that progression. Necessity for the surgery was because of the increased pain syndrome which was correlated to the incident that occurred on the 26<sup>th</sup> with the stenosis being the center or the origin of his pain. Most patients

can go without ever having surgery on stenosis as severe or even more severe as long as they don't undergo any type of specific events that may instigate or aggravate an already existing condition.

Dr. McHugh later testified there were no "radiographic studies" which would connect any objective findings to the alleged work injury. He agreed with counsel's statement that "there was nothing from the April 26<sup>th</sup> of '02 incident that showed any objective or measurable evidence of physical injury."

The only other objective findings I can identify in the record are observations of muscle spasms. However, there is no mention of muscle spasms in the medical record until months after the work injury. Given this significant lapse of time, I cannot reasonably find a causal connection between these muscle spasms and the alleged compensable injury.

After reviewing the evidence of record, I am not persuaded by a preponderance of the evidence that a causal connection exists between the objective findings documented in the record and the alleged work injury. I find that the claimant has failed to prove by a preponderance of the evidence that the existence and extent of his alleged back injury is established by medical evidence supported by objective findings. Therefore, I conclude that the claimant has failed to prove by a preponderance of the evidence that he sustained a compensable injury to his back.

### C. Temporary Total Disability Benefits

An employee who suffers a compensable scheduled injury is entitled to benefits for temporary total disability during his healing period or until he returns to work, whichever occurs first. ARK. CODE ANN. § 11-9-521 (a); *Wheeler Construction Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001). The healing period continues until the underlying condition has become stable, the employee is as far restored as the permanent character of his injury will permit, and there is nothing further in the way of treatment that will improve his condition. *Id.* Whether the healing period has ended is a question of fact. *Id.*

The claimant contends he is entitled to temporary total disability benefits from October 28, 2003, the date those benefits were terminated, through May 4, 2005. The parties have stipulated that the claimant reached the end of his healing period for both his knee and back injuries no later than May 4, 2005. The parties have also stipulated that due to an independent intervening cause, the claimant is not entitled to temporary total disability benefits for the period from March 12 to May 25, 2004. The claimant has not returned to work since his original injury.

Dr. Bailey performed the total knee replacement surgery on September 29, 2004. Dr. Bailey opined in his deposition that the claimant reached the end of his healing period for the knee injury and surgery in August 2005. Dr. Bailey further

testified that he recommended a total knee replacement from the first time he saw the claimant in 2002, but that he also recommended that the claimant delay the surgery for as long as possible because of the claimant's relatively young age. Dr. Bailey testified the surgery was delayed for as long as the claimant could tolerate the pain.

It is admitted that from October 28, 2003, until the claimant's total knee replacement surgery, the condition of his knee was relatively stable, and he received little treatment. Nonetheless, it cannot be said of this time period that "nothing further in the way of treatment [would have improved] his condition." *Wheeler Construction Co. v. Armstrong, supra*. The total knee replacement surgery did in fact improve his condition, and given my findings above I implicitly find that the surgery was reasonably necessary.

Therefore, I find that the claimant has proven by a preponderance of the evidence that he was within his healing period for his compensable injury from October 28, 2003, through May 4, 2005, the stipulated end-of-healing date, and that he did not return to work in that period of time. I conclude that the claimant has proven by a preponderance of the evidence that he was entitled to temporary total disability benefits from October 28, 2003, through May 4, 2005, exclusive of the time period from March 12, 2004, through May 25, 2004, stipulated to by the parties.

#### **D. Permanent Total Disability Benefits**

The claimant contends that he is permanently and totally disabled. "Permanent total disability" is the "inability, because of compensable injury or occupational disease, to earn any meaningful wages in the same or other employment." ARK. CODE ANN. § 11-9-519 (e). Permanent benefits may be awarded only if the compensable injury was the major cause of the disability or impairment. ARK. CODE ANN. § 11-9-102(4)(F)(ii)(a).

The claimant and the respondents agree the claimant is permanently totally disabled. The question, then, is whether the claimant's compensable knee injury is the major cause of his permanent total disability. I find that it is not.

The claimant's knee surgeon, Dr. Bailey, testified that as a result of the total knee replacement surgery, the claimant must "avoid the impact loading activities, jumping, jarring, pounding" as well as squatting and climbing. Other than these specific restrictions, Dr. Bailey testified that most patients with similar surgeries are able to perform light to medium work. It is evident from the record that the primary obstacle to the claimant's returning to work is the severely diseased condition of his spine. Were it not for his back problems, I am convinced that the claimant could return to work in some capacity. Therefore, I find that the claimant has failed to prove by a preponderance of the evidence that his compensable injury is the major

cause of his permanent total disability.

Because I so find, all issues regarding the Death & Permanent Total Disability Trust Fund are moot. The claimant's claim for wage-loss disability benefits is likewise moot, in that an employee with a scheduled injury is not entitled to permanent disability benefits in excess of that provided for by the schedule, unless the employee is permanently and totally disabled. ARK. CODE ANN. § 11-9-521(g).

### **E. Second Injury Fund Liability**

The Second Injury Fund exists to protect employers of handicapped workers so that the employers will not be held liable "for a greater disability or impairment than actually occurred while the worker was in his or her employment." ARK. CODE ANN. § 11-9-525(a)(1). Three elements must be proven to establish the liability of the Second Injury Fund. First, the employee must have suffered a compensable injury at his present place of employment. Second, prior to that injury the employee must have had a permanent partial disability or impairment. Third, the disability or impairment must have combined with the recent compensable injury to produce the current disability status. *Mid-State Construction Co. v Second Injury Fund*, 295 Ark. 1, 746 S.W.2d 539 (1988). "Disability" is statutorily defined as a loss of wage-earning capacity. ARK. CODE ANN. § 11-9-102(8). "Impairment" is any condition "sufficient

in and of itself to support an award of compensation had the elements of compensability existed as to the cause for the impairment." *Mid-State Construction Co. v Second Injury Fund, supra*. An impairment need not be a work-related condition, nor must it necessarily be shown to have caused a loss of wage-earning capacity. *Id.*

The claimant testified that he sustained a work injury to his right knee in the mid-1970s. However, no medical records documenting that injury and subsequent surgery have been introduced into the record. There is no evidence whatsoever to identify what injury the claimant sustained in 1976, nor what kind of surgery was performed on his knee. Whether the claimant sustained any impairment from that injury and surgery is a question that can be answered only by speculation and conjecture; such may never substitute for credible evidence. *Smith-Blair, Inc. v. Jones*, 77 Ark. App. 273, 72 S.W.3d 560 (2002). I find that the respondents have failed to prove by a preponderance of the evidence that prior to his compensable knee injury the claimant had permanent partial disability or impairment of his right knee, or that any prior disability or impairment has combined with the recent compensable injury to produce the current disability status. I therefore conclude that the Second Injury Fund has no liability herein.

## AWARD

The claimant has proven by a preponderance of the evidence that he is entitled to permanent partial disability benefits in the amount of 30% to the lower extremity; and that he was entitled to temporary total disability benefits from October 28, 2003, through May 4, 2005, exclusive of the time period from March 12, 2004, through May 25, 2004, as stipulated to by the parties. The respondents are hereby directed and ordered to pay benefits in accordance with the findings of fact and conclusions of law set forth herein.

The claimant's attorney, Mr. Greg Giles, is hereby awarded the maximum statutory attorney's fee on all indemnity benefits controverted, pursuant to Ark. Code Ann. § 11-9-715.

All accrued sums shall be paid in a lump sum without discount, and this award shall earn interest at the legal rate until paid pursuant to Ark. Code Ann. § 11-9-809.

**IT IS SO ORDERED.**

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**HON. J. MARK WHITE**  
Administrative Law Judge