

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F102735**

**MICHAEL MALDONADO, EMPLOYEE**

**CLAIMANT**

**E. C. ROWLETT CONSTRUCTION CO., EMPLOYER**

**RESPONDENT NO. 1**

**CONTINENTAL CASUALTY COMPANY, CARRIER**

**RESPONDENT NO. 1**

**DEATH & PERM. TOTAL DIS. TRUST FUND**

**RESPONDENT NO. 2**

**OPINION FILED JUNE 13, 2006**

This matter comes before Administrative Law Judge J. Mark White on the record.

Claimant represented by Mr. Keith Wren, Attorney at Law, Little Rock, Arkansas.

Respondents represented by Mr. Frank Newell, 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**

Pursuant to the Prehearing Order filed February 6, 2006, the parties agreed to submit consideration of this claim on a stipulated record. The record is comprised of the Prehearing Order filed February 6, 2006; the additional stipulations submitted by the Death & Permanent Total Disability Trust Fund dated March 14, 2006; the briefs of the parties; the documentary exhibit submitted by the Trust Fund dated March 20, 2006; and the two documentary exhibits submitted by the respondents, denominated Respondents' Documentary Evidence Exhibit No. 2 and No. 3.

The parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of this claim; that the claimant is permanently totally disabled as a result of his compensable injury; and that this claim was the subject of a prior Administrative Law Judge Opinion filed April 20, 2005, which opinion is now a final order. The stipulations, findings of fact, and conclusions of law set forth therein are hereby incorporated by reference. Subsequent to the prehearing conference, the parties agreed to a number of additional stipulations which are set forth in the record.

The parties agreed that the issues to be presented were whether the respondent-carrier has paid all benefits it owes under Arkansas law; whether the respondent-carrier 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 has been found entitled; whether the respondent-carrier is entitled to credit for payment of the permanent disability benefits it has accepted and is paying in this matter against its \$75,000 liability pursuant to Ark. Code Ann. § 11-9-502 (b)(1); and whether respondent-carrier is entitled to reimbursement from the claimant for overpaid permanent disability benefits, such reimbursements to be accomplished by having the Death & Permanent Total Disability Trust Fund make appropriate deductions in its payments to claimant and make payments in the

amount of the deductions to respondent-carrier until respondent-carrier has been fully reimbursed for overpayments to the claimant.

Respondents contend that their liability for permanent disability benefits under the Arkansas Workers' Compensation Act is \$75,000; that since May 21, 2001, the end of the claimant's healing period, \$76,542.60 has been paid to the claimant by checks denominated as either permanent partial disability or temporary total disability; that all benefits paid as weekly benefits after May 21, 2001 should be considered permanent total disability benefits; that on June 2, 2005, \$3,789.35, representing claimant's share of attorney's fees on weekly benefits paid until that date, were paid to counsel for claimant; that on June 2, 2005 and on October 4, 2005, additional attorney's fees in the amounts of \$2,097.94 and \$96.05 were paid to counsel for claimant as attorney's fees; that all amounts paid as claimant's share of attorney's fees are weekly benefits owed claimant that were paid instead to counsel for claimant as claimant's share of attorney's fees owed under the Arkansas Workers' Compensation Act; that accordingly, as of October 4, 2005, respondent-carrier had paid \$82,525.94 in benefits paid directly to claimant and in benefits diverted from claimant, recharacterized as attorney's fees, and paid to counsel for claimant as claimant's share of attorney's fees owed under the Act; that as of October 4, 2005, respondent-carrier had overpaid weekly benefits in the amount of

\$7,525.94; and that the Trust Fund should be directed to reimburse the respondent-carrier in the amount of \$7,525.94 to bring the amount paid by respondent-carrier in weekly benefits paid to claimant and to his attorney as attorney's fees to \$75,000.

The Death & Permanent Total Disability Trust Fund contends that payment of benefits at the permanent and total disability rate of \$297 beginning May 22, 2001 (the day after the claimant reached maximum medical improvement) requires Respondent No. 1 to continue weekly benefit payments until March 24, 2006 to complete payment of \$75,000 in permanent disability benefits; that the Trust Fund's liability cannot be accelerated by Respondent No. 1's erroneous/gratuitous payments pursuant to *Hill v. CGR Medical Corp.*, 282 Ark. 35, 665 S.W.2d 274 (1984); that the Trust Fund is not responsible for Respondent No. 1's overpayment and therefore has no obligation to reimburse them therefor; that Respondent No. 1 must first pay permanent anatomical ratings for the claimant's compensable injury before payment of permanent total disability benefits; that Respondent No. 1 is not entitled to credit for payment of the claimant's permanent anatomical impairment rating for the compensable injury against its \$75,000.00 maximum liability for permanent and total disability benefits pursuant to Ark. Code Ann. § 11-9-502 (b)(1); and that the Trust Fund should not assume payment of permanent total disability benefits until Respondent No. 1 has paid the permanent anatomical rating in full and \$75,000.00

in permanent total disability benefits.

### **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 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 respondents have satisfied their liability for permanent indemnity benefits under Arkansas law.
4. The respondents need not pay the claimant's anatomical ratings for the compensable injury prior to payment of permanent total disability benefits.
5. The respondents are entitled to credit for all benefits paid as permanent physical impairment benefits against their \$75,000 liability under the Workers' Compensation Act.
6. The respondents are entitled to no reimbursement through the Trust Fund.

## DISCUSSION

While in the employ of the respondent-employer, the claimant sustained a compensable occupational disease. The respondents initially accepted the disease as compensable, and then controverted it, but in an Administrative Law Judge Opinion filed April 20, 2005, the disease was found to be compensable and the claimant was found to be permanently totally disabled as of May 21, 2001.

Subsequent to that hearing, the Death & Permanent Total Disability Trust Fund was joined to this matter. The Trust Fund was to have begun payment of benefits as of March 24, 2006. The parties have stipulated that as of March 24, 2006, the respondents will have completed payment of \$75,000 in permanent benefits to the claimant, meeting its maximum liability as defined by Ark. Code Ann. § 11-9-502(b).

Most of the issues raised herein by the Trust Fund were resolved by the decision of the Court of Appeals in *Thomas v. Legacy Insurance Services*, \_\_ Ark. App. \_\_, \_\_ S.W.3d \_\_ (May 10, 2006). Given the *Thomas* decision, and given the parties' stipulation that the respondents have paid in excess of \$75,000 in permanent benefits, I conclude that the respondents have satisfied their liability for permanent indemnity benefits under Arkansas law; that respondents need not pay the claimant's anatomical ratings for the compensable injury prior to payment of

permanent total disability benefits; and that the respondents are entitled to credit for all benefits paid as permanent physical impairment benefits against their \$75,000 liability under the Workers' Compensation Act.

The respondents contend that they have overpaid indemnity benefits to the claimant in the amount of \$7,525.94, and they demand reimbursement, to be accomplished by the Trust Fund deducting the overpayment from its payments to the claimant, and remitting the deducted funds to the respondents. While the respondents' proposed solution is creative, it has no basis in the Workers' Compensation Act.

Act 796 of 1993 requires the Commission and the courts to strictly construe the provisions of the Workers' Compensation Act. Ark. Code Ann. § 11-9-704(c)(3). Strict construction is narrow construction, requiring that nothing be taken as intended that is not clearly expressed and that the plain meaning of the language be employed. *Marshall v. Madison County*, 81 Ark. App. 57, 98 S.W.3d 452 (2003). Worker's compensation is governed wholly by statute, and thus any award of compensation must likewise be based solely on statute. *See, International Paper Co. v. Tidwell*, 250 Ark. 623, 466 S.W.2d 488 (1971).

Nothing in the Act allows for the Trust Fund to make deductions from a claimant's benefits to account for an overpayment by a carrier. The respondents cite

to the Commission's decision in *Shem v. University of Arkansas*, A.W.C.C. F203675 (Nov. 2, 2004). Yet that case concerns a carrier taking reimbursement from payments made by itself – not by a third party such as the Trust Fund. Moreover, there is no specific statutory authorization whatsoever for the Trust Fund to make payments to carriers, nor for the Trust Fund to withhold benefits from a claimant to reimburse a carrier. I conclude that the respondents are entitled to no reimbursement through the Trust Fund. I further note that I make no specific finding as to whether there has in fact been an overpayment of benefits by the respondents.

Finally, the parties have raised the issue of whether the claimant's share of attorney's fees should be characterized as permanent benefits for purpose of the \$75,000 statutory maximum liability. Any finding on this issue would be superfluous, in that the parties have stipulated that the respondents have met their \$75,000 statutory maximum liability. Moreover, the parties in their briefs agree that the claimant's share of attorney's fees should be so characterized. Since any finding would be superfluous, and since there is no dispute between the parties as to this issue, I make no finding on it.

**AWARD**

The Death & Permanent Total Disability Trust Fund has failed to prove the respondents should be liable for further permanent indemnity benefits, and the respondents have failed to prove they are entitled to reimbursement for overpayment through the Trust Fund. Therefore, these claims for credit and/or reimbursement by the respondents and the Trust Fund must be, and they hereby are, denied and dismissed.

**IT IS SO ORDERED.**

---

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