

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F208714**

<b>DUSTIN DEWAYNE BATES, MINOR CHILD DEPENDANT, CAROLINE HICKS, MINOR CHILD AND DEPENDENT, JAMIE HICKS, WIDOW OF JERRY HICKS (DEC'D), EMPLOYEE</b>	<b>CLAIMANT</b>
<b>NUCOR STEEL OF ARKANSAS, EMPLOYER</b>	<b>RESPONDENT #1</b>
<b>LIBERTY MUTUAL INSURANCE CO., CARRIER</b>	<b>RESPONDENT #1</b>
<b>DEATH &amp; PERMANENT TOTAL DISABILITY TRUST FUND</b>	<b>RESPONDENT #2</b>

**OPINION FILED MARCH 6, 2007**

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on December 6, 2006, at Blytheville, Mississippi County, Arkansas.

Claimant Dustin Bates represented by the HONORABLE JOHN BARTTELT, Attorney at Law, Jonesboro, Arkansas and the HONORABLE JAMES C. BULLARD, Attorney at Law, Kennett, Missouri.

Claimant Caroline Hicks represented by the HONORABLE W. EDWARD REEVES, Attorney at Law, Caruthersville, Missouri.

Claimant Jamie Hicks represented by the HONORABLE WILLIAM W. CARTER, Attorney at Law, Hayti, Missouri.

Respondents #1 represented by the HONORABLE DAVID C. JONES, Attorney at Law, Little Rock, Arkansas.

Respondent # 2 represented by the HONORABLE TERRY PENCE, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was conducted in the above-style claim to determine whether the claimant Dustin Dewanye was entitled to the payment of workers' compensation.

On July 18, 2006, a pre-hearing conference was conducted in this claim, from which a Pre-hearing Order of the same date was filed. The Pre-hearing Order reflects stipulations entered by the parties, the issues to be addressed during the course of the hearing, and the parties contentions relative to the afore issues. The Pre-hearing Order is herein designated a part of the record as Commission Exhibit #1. The contentions of Respondent #2 are identical to those of Respondents #1. Both respondents also assert a lack of notice as defenses to the claim of claimant Dustin D. Bates. Further, Respondents #1 are not seeking claiming credit but rather contend that they have paid out their maximum liability obligation. Finally, the parties stipulated that the claim for workers' compensation benefits on behalf of claimant-Dustin D. Bates was filed on or about May 17, 2006.

The testimony of Cheryle Bates, Sharon Hicks and Jamie Hicks, coupled with medical reports, other documents and photographs comprise the record in this claim.

### **DISCUSSION**

As reflected in the stipulations, Jerry W. Hicks was an employee of respondent #1 when on July 29, 2002, he suffered an injury within the course and scope of his employment which resulted in his death. There is not a dispute regarding the compensability of the death to the employee. The injury was accepted as compensable by respondents #1 and corresponding workers' compensation benefits paid, to included indemnity benefits.

Mrs. Cheryl Bates is married to Bryan Bates and resides in Dexter, Missouri. Residing in the Dexter, Missouri resident with Mr. and Mrs. Bates are two children, 11 year old Dustin D. Bates and 8 year old Abigail Bates. Mrs. Bates testimony reflects that Jerry Wayne Hicks was the father of Dustin D. Bates.

Mrs. Bates testified that she and Jerry Wayne Hicks had a love affair and resided together for a period of two (2) years, during which time she became pregnant. Mrs. Bates' testimony reflects that Dustin Dewayne was conceived on New Years' Eve of 1994, and was born on September 14, 1995. Mrs. Bates denies that she had sex with any other man for at least a year prior to the birth of Dustin.

Mrs. Bates testified that she was approximately seven (7) months pregnant with Dustin at the time that she and Mr. Hicks broke up. Mrs. Bates explained that the reason for the break up was because Mr. Hick was abusive. Mrs. Bates testified that she separated from Mr. Hicks in order to protect her child. Mrs. Bates' testimony reflects that she subsequently learned that Mr. Hicks was bipolar.

Mrs. Hicks testified that she discovered in 2002 that Dustin is severely bipolar.

Regarding the afore Mrs. Hicks explained:

It's called manic episodes or manic depressive, where he has extreme highs and extreme lows.

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He's uncontrollable. He sleeps a few hours a night - wanders. We run a fine line in protecting my daughter and protecting him from himself. (T. 25).

Mrs. Bates presented testimony regarding the medical needs of Dustin, to include treatment by a psychiatrist, Dr. Brad Robison, in Cape Girardeau, Missouri. (T. 26-29). Mrs. Bates' testimony reflects that Dustin was receiving treatment at the time of the death of Jerry Wayne Hicks.

Mrs. Bates identified the photographs offered in evidence as depicting the grandchildren of John and Sharon Hicks, the parents of Jerry Wayne Hicks. Included in the photographs were

pictures of Jerry Wayne Hicks and Dustin Bates, and Dustin Bates and Caroline Hicks.

Mrs. Bates testified that Jerry Wayne Hicks first saw Dustin on the date of the birth of the child. Mrs. Bates noted that Jerry Hicks would visit with Dustin at the home of John and Sharon Hicks, the parents of Jerry Hicks, in Maulin, Missouri, which was seven miles from her home. Mrs. Bates testified that on some occasions some of Jerry's other lady friends would accompany him to see the baby, Dustin. While Mrs. Bates testified that visits by Mr. Hick to see Dustin continued until just before the death of Mr. Hicks, the visits were not at the residence of John and Sharon Hicks, but rather at a restaurant that she owned and operated.

Regarding the occasion of the visits to see Dustin, Mrs. Bates testified that Jerry Hicks would be off work and in the area and would come by and pick up Dustin. Mrs. Bates further testified regarding the activity of Jerry and Dustin during the afore:

It varied some. Sometimes they would go to John and Sharon's house, which was Jerry's parents. Sometime they'd go to the park or they's go get an ice cream or they would just sit there and visit. (T. 33).

The evidence reflects that Mrs. Bates was appointed Conservatory Guardian of Dustin Bates by the Probate Court of Stoddard County, Missouri. (CX. #1, p. 8-10). Mrs. Bates maintains that immediately after Dustin's birth Jerry Hicks started providing financial support for the child although an Order of child support was not in place. Mrs. Bates' testimony that reflects that the financial payments begin in 1995 and was in the form of both cash and checks from 1995 until 1998. Mrs. Bates testified that she and Jerry Hicks agreed on \$150.00, per month. Further, Mrs. Bates asserts that Mr. Hicks always got the money to her.

Mrs. Bates testified that until 1998, things were more conventional in terms of payment of child support by Mr. Hicks on behalf of Dustin. Mrs. Bates' testimony reflects regarding the

change that occurred in 1998:

Well, the end of '97, somewhere around there, he was single for a time period, and then, I believe he moved in with Jamie. (T. 35-36).

Approximately two months before his death Jerry Hick married Jamie. Mrs. Bates testified that after the claimant moved in with Jamie the consistency of the monthly \$150.00, payment in child support for Dustin changed. Specifically, Mrs. Bates' testimony reflects that Mr. Hick gave her money when he would see her, and that sometimes it was less than the \$150.00, monthly:

It was really hard for me to determine, because I really couldn't determine how much he'd actually give me per month. I mean, he might give me - I might see him three or four times and every time I'd see him, he would give me, you know, \$50.00, or . . . (T. 36).

Mrs. Bates testified that the afore arrangement continued until the death of Jerry Wayne Hicks.

Mrs. Bates first learned of the death of Jerry Wayne Hicks the day following its occurrence.

The evidence in the record also includes DNA testing which was performed involving the parents of Jerry Wayne Hicks, John and Sharon Hicks, Mrs. Bates and Dustin Bates which reflects that within 99.99% accuracy that Dustin Bates is the child of Jerry Wayne Hicks. (CX. #1, p. 16-18).

The testimony of Mrs. Bates reflects that she was unaware that Jerry Hicks was married to Jamie. Following the death of Jerry Hicks Mrs. Bates applied for and received Social Security survivor benefits on behalf of Dustin. Mrs. Bates testified that when Dustin was born she was on a medical card and that Jerry Hicks contacted her case worker and acknowledged that he was the father of the child. A document reflects the afore was in the Social Security file and record when the claimant made application for the Social Security survivor benefits on behalf to Dustin Bates.

Mrs. Bates obtained the birth certificate of Dustin on January 26, 1998, when he was

three years old. In explaining the identity of Bryan Bates as the father of Dustin Bates on the birth certificate, Mrs. Bates testified:

I had never fille out - formally filled out his birth certificate and I picked up an application and I filled it out. My husband and I were planning to have more children and wanted him to have the same last name. (T. 39).

Mrs. Bates' testimony reflects that her husband, Bryan Bates, never adopted Dustin. The Social Security card issued on behalf of Dustin reflects the sir name "Beck", which is Mrs. Bates maiden name. Mrs. Bates maintains that Dustin's Social Security card was mailed to her within a year of his birth.

Mrs. Bates testified that at the time Mrs. Jamie Hicks made application to open the estate of Jerry Hicks she omitted Dustin as an heir in that estate. Mrs. Jamie Hick did list Statyn Coppage, a stepdaughter of Jerry Hicks, as his heir. Mrs. Bates did not receive any kind of notice from the Probate Court or Mrs. Jamie Hicks or anyone else about the opening of the estate. Mrs. Bates testified that it was not until February 19, 2006, that she first received notice about a possible claim for the death of Jerry Hicks, in the form of a letter from Cook and Ponder, a law firm our of Cape Girardeau, Missouri. (CX. #1, p. 55).

Mrs. Bates testified that after receive the above letter she contacted John and Sharon Hicks, the parents of Jerry Hicks, and asked what she should do. Later Mrs. Bates contacted an attorney. Subsequently, Mrs. Bates filed a Motion to Intervene in the settlement of the death case, and for a portion of the proceeds on behalf of Dustin Dewayne Bates. (CX. #1, p. 58). Mrs. Bates received notice from the Judge in the federal proceeding allowing her to intervene in August 2006.

Mrs. Bates acknowledged that while she left Jerry Hicks because he was abusive she nevertheless allowed him to see Dustin after his birth and to continue seeing him until the death of Mr. Hicks. Likewise, Mrs. Bates acknowledged that she was actually the legal guardian of Dustin since his birth, to include that period in 2002 at the time of the death of Jerry Hicks. Mrs. Bates filed for Social Security survivor benefits on behalf of Dustin in 2003 growing out of the death of Jerry Hicks.

While Mrs. Bates acknowledged that she was aware that Dustin was entitled to Social Security survivor benefits following the death of Jerry Hicks, she was not aware of his entitlement to a claim for workers' compensation benefits growing out of the death. The testimony of Mrs. Bates reflects that the Social Security survivor benefit check received by Dustin continue to reflect his sir name as Bates and not Hicks. Mrs. Bates attributes her failure to file a workers' compensation on behalf of Dustin relative to the death of Jerry Hicks to a lack of knowledge.

Mrs. Bates testified that Mr. Hicks was paying child support to her on behalf of Dustin. As a consequence of the afore, there was never filed any type of court ordered support. Accordingly, there was no record of a garnishment filed with respondent-employer on behalf of Dustin Bates relative to Jerry Hicks. Mrs. Bates maintains that Jerry Hicks told people that he had a son, Dustin. Mrs. Hicks acknowledged that a formal claim for workers' compensation dependent benefits was not filed on behalf of Dustin Bates relative to the work related death of Jerry Hicks until May 17, 2006. (R1X1,p. 25). As far as notifying respondents #1 of the existence of Dustin as the son of Jerry Hicks at the time of the work related death, Mrs. Bates testified:

I assumed that Jerry's wife would have let you guys know that he had a son. (T. 51).

Mrs. Bates concedes that one of the reasons Bryan Bates was listed as the father of Dustin on the birth certificate was so that he could be claimed as a dependent on Mr. Bates' taxes. Mrs. Bates acknowledged that Dustin was claimed as a dependent of Mr. Bates on his federal income taxes.

Regarding the sums listed as having been paid by Jerry Hicks on behalf of Dustin, Mrs. Bates acknowledged that she did not have cancelled checks from 11 years earlier evidencing same. In addition to her recollection of the sums paid by Jerry Hicks in support of Dustin, Mrs. Bates points to corroboration testimony of the parents of Jerry Hicks and his ex-girlfriend. Mrs. Bates acknowledged that she composed the document comprising the payments of financial support by Mr. Hicks on behalf of Dustin in February 2006. (CX. #1, p. 11-13). Mrs. Bates is unaware of the weekly earnings of Jerry Hicks at the time of his death.

Mrs. Bates testified that the parents of Jerry Hicks, John and Sharon Hicks, told her that she should apply for Social Security survivor benefits on behalf of Dustin following the death of Jerry Hicks. Mrs. Bates explained:

Dustin was having problems. I went to them asking for money and they said that - to go file for Social Security. (T. 65).

The Social Security survivor benefits were received by Dustin six months to a year after the death of Jerry Hicks.

The testimony of Mrs. Bates reflects that because she was not married to Jerry Hicks she was unaware that she could have applied for health insurance on behalf of Dustin through Jerry Hicks' employment with respondent #1. Mrs. Bates testified that because the Bates household

had insurance the question of Dustin having insurance coverage through the employer of Jerry Hicks was not an issue. Mrs. Bates learned in July 2006, that insurance coverage would be lost.

The testimony of Mrs. Bates reflects that at the time she and Bryan Bates married in 1996, Dustin was between six months and a year old. Mrs. Bates testified that she and the parents of Jerry Hicks were very close and have remained so. Mrs. Bates estimates that Jerry Hicks worked for respondent #1 for four years prior to his death, however she does not disagree with the filing in the Commission file reflecting Mr. Hicks' date of hire as January 24, 2000. Mrs. Bates last saw Jerry Hicks prior to his July 29, 2002, death in June 2002.

Mrs. Sharon Gay Hicks, a Kennett, Missouri resident, is married to John Charles Hicks testified that Jerry Hicks was their son and that Dustin Bates is their grandson. Mrs. Sharon Hicks' testimony reflects that she was aware of the relationship between Jerry and Cheryl at the time it. Further, Mrs. Sharon Hicks testified that Cheryl became pregnant while living with Jerry. Additionally, Mrs. Sharon Hicks testified that after the baby, Dustin, was born she, her husband John and Jerry visited Cheryl and the baby for the first time in their home in Mauldin.

Mrs. Sharon Hicks testified that at the time that Dustin was born her son Jerry was living with Charity Dawn Long, who also came and visited the baby. Mrs. Sharon Hicks' testimony reflects that on occasions Dustin spent weekends and overnight stays at their residence, during which times Jerry would visit with the child as well. Mrs. Sharon Hicks described the relationship between Jerry and Dustin as "a father/son relationship". Mrs. Sharon Hicks further testified that Jerry was "very proud of his son". Regarding the afore, Mrs. Sharon Hicks testified:

No, sir. Everyone that knew Jerry knew he had a son. He was

so happy to be a daddy. (T. 80).

Mrs. Sharon Hicks testified regarding Dustin's presence during family get-togethers and holidays:

It would be maybe not right on the holiday day, but, yes, he was there. (T. 81).

Mrs. Sharon Hicks' testimony reflects that after Jerry's death Caroline Hicks, Jerry's daughter with Jamie Hicks, would visit with Dustin at the holiday get-together. Mrs. Sharon Hicks added, however:

We had Christmas last year. I was told [by her mother] she will not be allowed to come this year. (T. 81).

The testimony of Mrs. Sharon Hicks reflects that when taken for a visit of the grave site of Jerry Wayne Hicks, Dustin noted the absence of his name from the marker, although the daughter and step-daughter were listed.

Mrs. Sharon Hicks' testimony reflects that Dustin continues to participate in the Hicks' family get-together, which he had done since his birth. Regarding Jerry Hicks giving money to Cheryl on behalf of Dustin, Mrs. Sharon Hicks testified:

They have been at our home when he was younger, and I have seen Jerry hand her money. How much - I don't know, sir, but he would hand her money, maybe when she would leave, or when she's come pick him up that type of thing. (T. 84-85).

Mrs. Sharon Hicks' testimony reflects that she observed Jerry giving money to Cheryl shortly after Dustin's birth.

On cross-examination Mrs. Sharon Hicks testified that Jerry Hicks gave money to Cheryl "quite often". (T. 86). Mrs. Sharon Hicks acknowledged that she took Cheryl to Social Security

office to get survivor benefits on behalf of Dustin. Mrs. Sharon Hicks testified that while she was aware that Mrs. Jamie Hicks and Caroline Hicks were getting benefits from respondents #1 as a result of the death of Jerry Hicks, she did not contact the respondents on behalf of Dustin.

Mrs. Sharon Hicks added:

I did not contact Nucor, but our - my attorney - my husband's attorney and mine knew, and Jamie's attorney knew the he had a son. (T. 87).

Mrs. Sharon Hicks testified that she was aware that her son Jerry Hicks was not listed as the father of Dustin on the birth certificate. Mrs. Sharon Hicks concedes that it was after the other proceeding, the estate of Jerry Hicks, that she became involved in assisting Cheryl relative to workers' compensation benefits on behalf of Dustin.

The testimony in the record reflects that Jamie and Jerry Hicks were married in May 2002. Mrs. Jamie Hicks was aware of the existence of Dustin Bates and the fact that he was the son of Jerry Hicks prior to the marriage. Mrs. Jamie Hicks acknowledged that she did not notify anyone about Dustin's existence:

No, sir, because we did not - we were not - we did not pay child support or have visitation with that child. (T. 96).

Regarding Dustin's entitlement to benefits growing out of the death of his father, Mrs. Jamie Hicks testified that she was contacted by Liberty Mutual Insurance Company because she was listed as a dependent on the employment forms of Jerry Hicks. Mrs. Jamie Hicks explained her failure to notify respondent #1 of the existence of Dustin:

No, sir, because we - we had no Order to pay child support on the child.

Well, we didn't see the child, we didn't pay child support on the child, we didn't have any rights to the child, so, no, sir, I did not. (T. 96).

Mrs. Jamie Hicks concedes that it is possible that Jerry Hicks was seeing the child, Dustin, without her knowledge. Likewise with respect to Jerry Hicks providing financial support on behalf of Dustin. On one occasion Mrs. Jamie Hicks testified that Jerry Hicks could not be paying support on behalf of Dustin without her knowing about it. At another instance Mrs. Jamie Hicks concedes:

Well, I mean, obviously, they said he did, and they're not lying, but as far as I was ever - had any knowledge of it . . . .

No knowledge and I had the checkbook and, you know, we did every . . . . (T. 97).

On questioning by the attorney for respondents #1, Mrs. Jamie Hicks testified that she had no personal knowledge of Jerry Hicks providing money in support of Dustin. Further, counsel elicited from Mrs. Jamie Hicks that as far as she was aware Dustin was not a dependent of her husband, Jerry Hicks. (T. 98).

The testimony of Mrs. Jamie Hicks reflects that she had known Jerry Hicks for five (5) years prior to their marriage in May 2002. In addition being aware of the existence of Dustin shortly after she met Jerry Wayne Hicks, Mrs. Jamie Hicks testified that she was also aware that Jerry Hicks acknowledged Dustin as his son. Mrs. Jamie Hicks added:

Yes, sir, but did not have any rights.

And wanted rights - from my - this is what I was told by him, always, that he wanted rights and was never able to get them and that's why, in fact, he's - it showed that he contacted the Social Security office at some point when he was young. (T. 100-101).

The testimony of Mrs. Jamie Hicks further reflects regarding her observation of the contact between Jerry Hicks and Dustin:

Jerry never was the child, you know, from '95 until 2002, with me, at our home, and I would not have objected, by any means, to him seeing the child. That would have been fine, but he never was able to and he was never ordered to pay child support and I don't think that it would have been a problem to pay child support.

\* \* \*

The mother did not - the mother had remarried and the man she remarried, I think, took the role of Dustin's father.

\* \* \*

I never - I saw the child the following Christmas after she started getting the Social Security. Then he started coming to Sharon's on Christmas. The Christmas before that, he did not attend with us. If he attended, he didn't attend with us, and the years previous, he had never attended with us. There were never any pictures in between Dustin being a baby and Jerry holding him, until the time period - you know, that I've ever seen - with him - to the point of his death. All the pictures that all the grandkids were together was the year after Jerry died. (T. 104-106).

Mrs. Jamie Hicks concedes:

I guess if he'd [Jerry Hicks] have had a relationship with her [Cheryl Bates] during our marriage, or our time together, I guess he could have possibly had one with his son [Dustin] . . . (T. 107).

Mrs. Jamie Hicks noted that any relationship between Jerry Hicks and his son Dustin did not occur at their house as a family. Mrs. Jamie Hicks denies that she ever told Jerry Hicks that he could not bring Dustin to their home:

No, sir. I never, ever said that. I would have loved to have seen the child. (T. 107).

On rebuttal, Mrs. Cheryl Bates testified regarding her conversation with Jerry Hicks and his home situation with Mrs. Jamie Hicks relative to Dustin:

I was told the same thing, obviously, she was told, because as long as he was with Charity, everything was as normal as could be, and then when

he got with Jamie, he said that Jamie was embarrassed of the fact that he had a son and who wasn't living together, and everything was so unconventional. (T. 110).

The parties obtained the testimony of Mrs. Charity Dawn Vaughn by deposition on October 31, 2006. Mrs. Vaughn has been married to Jamie Vaughn since May 1998 and resides in Hayti, Missouri. Mrs. Vaughn testified that she first met Jerry Hicks in 1995. Shortly thereafter Mrs. Vaughn entered into a relationship with Jerry Hicks with the two of them living together in an apartment and later purchasing a house together. Mrs. Vaughn and Jerry Hicks never married or had children together.

Mrs. Vaughn testified that she and Jerry Hicks lived together until October or November 1997, in their Caruthersville, Missouri house. Mrs. Vaughn's testimony reflects that at the time of their separation Jerry Hicks left the residence and her parents paid him for his share of the house. Mrs. Vaughn noted that at the time she and Jerry Hicks ceased living together in October/November 1997, their relationship ended as well. Mrs. Vaughn testified regarding her contact with Jerry Hicks after their relationship ended:

Hmmm, he called a lot.

After I happened to get with my husband, we kind of, you know, I don't say we had a relationship, but he kind of called, you know. If he needed something, he called. (CX. #2, p. 11).

Mrs. Vaughn noted that the separation from Jerry Hicks was not amiable initially. Mrs. Vaughn asserts that Jamie, who would later married Jerry Hicks, was involved in the separation. The testimony of Mrs. Vaughn reflects that she would see Jerry Hicks frequently around town after their separation they never had a relationship subsequent to the separation.

Mrs. Vaughn and Jerry Hicks were living together at the time of the birth of Dustin to

Cheryl Beck (Bates). Mrs. Vaughn denies that knowledge of the existence of Dustin as the child of Jerry Hicks played any role in ending her relationship with Jerry Hicks. Mrs. Vaughn's testimony reflects that while she and Jerry Hicks were together she saw the child, Dustin. Mrs. Vaughn explained regarding the afore:

Apparently she had brought him to - -

Okay, Cheryl had brought him to Jerry's mother's , Sharon, house. And we went to Malden, because we looked at Caruthersville to see him. (CX. #2, p. 14).

Mrs. Vaughn estimates that Dustin was less than a month old at the time she first saw him at the home of Sharon Hicks. Mrs. Vaughn testified that there may have been a few other occasions that she saw Dustin with Jerry Hicks at the residence of Sharon and John Hicks. Mrs. Vaughn testified that there were times that Jerry Hicks went over to see Dustin when she did not accompany him.

Mrs. Vaughn testified that during the approximately two year period of their relationship, Jerry Hicks was employed:

He was employed down at Blytheville at one of those sites. I'm not sure what the name of it was besides Nucor. And then he was also a Caruthersville police officer. (CX. #2, p. 18).

In terms of Jerry Hicks' employment during the period of their relationship, Mrs. Vaughn testified:

No, he had the casino job first, and then the Blytheville and then the police officer and then Trinity. (CX. #2, p. 19).

Mrs. Vaughn maintains that Jerry Hicks only worked one job at a time. Mrs. Vaughn testified that Jerry Hicks was fired from the job with the Caruthersville Police Department. Mrs.

Vaughn's testimony reflects that Jerry Hicks was working at the job at Trinity Shipyards as a welder at the time their relationship ended. Mrs. Vaughn added the Jamie Hicks was also working at Trinity.

The testimony in the record reflects that Sharon and John Hicks, the parents of Jerry Hicks, resided in Malden. Mrs. Vaughn and Jerry Hicks visit with Dustin at the afore residence. Mrs. Vaughn and Jerry Hicks resided in Caruthersville, Missouri, which was approximately a 45-minute drive from Malden, Missouri. Mrs. Vaughn testified that while she and Jerry Hicks shared a home together in Caruthersville, Missouri Dustin was never at the home.

Mrs. Vaughn testified that while she and Jerry Hicks were in a relationship and living together they had a joint bank account and each maintained a separate bank account. Mrs. Vaughn testified that she took on the responsibility of settling the bank account statements. Regarding the payment money by Jerry Hicks on behalf of Dustin, Mrs. Vaughn's testimony reflects:

I think he maybe done some of it in his checking account,  
not the one of ours together.

Because he had mentioned it to me a couple of times.

No, he might just say, he could have been talking to his mother  
or she needed something and was going to help or something like that.  
(CX. #2, p. 23).

Mrs. Vaughn testified that Jerry Hicks was still coaching baseball at the time she last spoke with him during the summer of 2002. Mrs. Vaughn's testimony reflects that she often ran into Jerry Hicks at the ball park.

Mrs. Vaughn testified that she learned of the death of Jerry Hicks from her sister shortly

after it occurrence. Mrs. Vaughn's testimony reflects that she continued to have contact with Sharon Hicks, Jerry's mother, after she and Jerry ended their relationship. Regarding the extent of her continued contact with Mrs. Sharon Hicks, Mrs. Vaughn testified:

Talk on the phone, e-mail. I don't know, probably a month ago my daughter was cheering at Kennett, she's a cheerleader, and I called her and she come out and watched her cheer a few minutes. (CX. #2, p. 27).

While Mrs. Vaughn has visited and discussed the death of Jerry Hicks with his mother, Mrs. Sharon Hicks, she has never done so with Mrs. Cheryl Bates. Mrs. Vaughn noted that she was not acquainted with Cheryl Bates prior to the death of Jerry Hicks. Mrs. Vaughn's testimony reflects that she assumed that her name was provided to the attorney for Cheryl Bates on behalf of Dustin by Mrs. Sharon Hicks, the mother of Jerry Hicks.

The testimony of Mrs. Vaughn reflects that she was contacted by Mrs. Jamie Hicks:

She contacted me and asked me to call her lawyer. That her lawyer wanted me to talk to him. (CX. #2, p. 34).

Mrs. Vaughn testified that she did not make the telephone call because she did not want to be involved. Mrs. Vaughn noted that Mrs. Jamie Hicks called her several times, at home and work.

Regarding her response to the request of Mrs. Jamie Hicks, Mrs. Vaughn testified:

I told her I would call when I got a chance, but I never did get a chance, or I just never did call. Because I felt like if he wanted me, he would have called me. (CX. #2, p. 35).

After a thorough consideration of all of the evidence in this record, to include the testimony of the witnesses, review of medical reports and other documentary evidence and photographs, application of the appropriate statutory provisions and case law, I make the following:

## FINDINGS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On July 29, 2002, the relationship of employee-employer-carrier existed among the pertinent parties, to include the employee-Jerry Wayne Hicks, and respondents #1.
3. On July 29, 2002, when the employee-Jerry Wayne Hicks sustained work-related injuries which resulted in his death, he earned wages sufficient to entitle him to the payment of workers' compensation benefits at the maximum applicable rate.
4. Dustin Dewayne Bates, was born on September 14, 1995, and is the son of Jerry Wayne Hicks and Cheryl Beck Bates. The evidence preponderates that at the time of the death of Jerry Wayne Hicks, Dustin Dewayne Bates was wholly and actually dependent on same and is entitled to dependent benefits pursuant to Ark. Code Ann. §11-9-527.
5. On July 29, 2002, at the time of the compensable death of Jerry Wayne Hicks, Dustin Dewayne Bates was a minor, and pursuant to the provisions of Ark. Code Ann. §11-9-702 (f) (2), the limitations prescribed in subsection (a) or (b) of the chapter are not applicable. The present claim is not barred. Likewise, the notice provision of Ark. Code Ann. §11-9-701, does not serve as a bar to Dustin Dewayne Bates entitlement to accrued dependent benefits.
6. Respondents #1 have controverted the entitlement to dependent benefits of Dustin Dewayne Bates, pursuant to Ark. Code Ann. §11-9-715, and the ruling in *Cleek v. Great Southern Metals*, 335 Ark. 342, 981 S.W.2d 529 (1998).
7. Respondent #2 has controverted the entitlement to dependent benefits of Dustin Dewayne Bates.

## CONCLUSIONS

It is not disputed that Jerry Wayne Hicks suffered a compensable fetal injury in the employment of respondent #1 on July 29, 2002. At the time of his death Jerry Wayne Hicks was married to Jamie Hicks and the father of their minor child Caroline Hick. Respondents #1 paid workers' compensation dependency benefits to Jamie Hicks and Caroline Hicks totaling their statutory obligation of \$75,000.00, as of December 15, 2005. Thereafter respondent # 2 commenced the payment of workers' compensation dependency benefits on behalf of Jamie Hicks and Caroline Hicks. On May 17, 2006, a claim for workers' compensation dependency benefits was filed on behalf of Dustin Dewayne Bates growing out of the July 29, 2002, compensable death of Jerry Wayne Hicks. Claimants Caroline Parker Hicks and Jamie Maxine Hicks and both respondents # 1 and respondent #2 have resisted the claim for dependency benefits of Dustin Dewayne Bates.

The present claim is one governed by the provisions of Act 796 of 1993, in that claimant asserts entitlement to workers' compensation benefits as a result of a compensable death having been sustained subsequent to the effective date of the afore provision.

On July 29, 2002, Jerry Wayne Hicks suffered a compensable injury in the employment of respondent #1 which resulted in his death. For a period of approximately two (2) years Jerry Wayne Hicks was involved in a relationship with Cheryl Beck during which time they resided together. Cheryl Beck became pregnant during the time that she and Jerry Hicks resided together. Although Cheryl Beck and Jerry Hicks separated prior to the September 14, 1995, birth of the child, Dustin Dewayne, the evidence in the record preponderates that the child was acknowledged by Jerry Hicks as his son. Further the credible evidence preponderates that Jerry Hicks provided financial support and emotional on behalf of Dustin Dewayne.

After Jerry Hicks and Cheryl Beck separate during the sixth month of her pregnancy with Dustin, in 1995, Jerry Hicks was involve in a relationship with Charity Long. Jerry Hicks and Charity Long lived together in an apartment and later purchased a home together. While accompanied by Charity Long Jerry Hicks visited with Dustin at the residence of his parents, Sharon and John Hicks. During the time that Jerry Hicks and Charity Long resided together they a joint checking account as well as individual separate checking accounts. The evidence preponderates that Jerry Hicks provided financial support on behalf of Dustin during the afore period.

At or about the time of his separation from Charity Long Jerry Hicks became involve with Jamie Maxine Coppage in 1997. On May 9, 1999, Caroline Hicks, a daughter, was born to Jerry Hicks and Jamie Maxine Coppage. Jerry Hicks and Jamie Maxine Coppage were married on May 15, 2002. Following July 29, 2002, compensable death of Jerry Hicks, personnel of the insurance carrier for respondent #1 contacted Mrs. Jamie Hicks. When contacted by the insurance carrier Mrs. Jamie Hicks only identified herself and Caroline Hicks as dependents of Jerry Hicks. Mrs. Jamie Hicks was aware of the existence of Dustin Dewayne at the time she became involved with Jerry Wayne Hicks in 1997. Further, Mrs. Jamie Hicks was fully aware that Jerry Wayne Hicks acknowledged Dustin Dewayne as his son.

DNA testing performed on February 23, 2006, confirmed that the father of Dustin Dewayne Beck was Jerry Wayne Hicks. The credible testimony presented by Sharon Hicks, the mother of Jerry Wayne Hicks, alone with that of Charity Dawn Long Vaughn, the ex-girlfriend of Jerry Wayne Hicks, corroborate that of Cheryl Beck Bates relative to financial support provide on behalf of Dustin Dewayne by Jerry Wayne Hicks.

Cheryl Beck later married Bryan Bates. The evidence preponderates that Jerry Wayne refused to allow Bryan Bates to adopt Dustin Dewayne Beck. A social security card was issued to Dustin Dewayne Beck pursuant to documents generated during his birth at the hospital. On January 26, 1998, a birth certificate was issued reflecting Bryan Bates as the father of Dustin Dewayne. As noted above, the credible evidence preponderates that Jerry Wayne Hicks was the father of Dustin Dewayne Beck and that he provided financial support on behalf the child.

While Cheryl Beck Bates became aware of the death of Jerry Wayne Hicks shortly after its occurrence she did not learn that she could obtain dependency benefits on behalf of Dustin Dewayne as a result of same until she sought financial assistance from the parents of Jerry Wayne Hicks on behalf of Dustin Dewayne. At that time she was encouraged to file for Social Security survivor benefits on behalf of Dustin Dewayne. There was documentation in the files of the Social Security Administration where Jerry Wayne Hicks had written acknowledging that Dustin Dewayne was his son.

Mrs. Cheryl Beck Bates did not become aware of Dustin Dewayne entitlement to proceeds from the estate of Jerry Wayne Hicks until receipt of a February 17, 2006, correspondence from a Cape Girardeau, Missouri law firm regarding a hearing for approval of a wrongful death settlement regarding Jerry Wayne Hicks. The correspondence noted recently information had been acquired reflecting that Dustin Dewayne Bates “may” be the child of Jerry Hicks.

Following receipt of the February 17, 2006, correspondence Mrs. Cheryl Beck Bates again sought assistance from the parent of Jerry Wayne Hicks, Sharon and John Hicks, who recommended that she consult an attorney. As a result of the afore, on March 10, 2006, a

Judgement/Order Appointing Guardian And Conservator Of Minor was entered, wherein Cheryl A. Bates was so appointed on behalf of Dustin Dewayne Bates. On May 8, 2006, Cheryl A. Bates executed a Form AR-C as Guardian/Conservator for Dustin Dewayne Bates for dependent workers' compensation benefits relative to the July 29, 2002, death of Jerry Wayne Hicks.

Respondents #1 paid dependency workers' compensation benefits to Jamie Maxine Hicks and Caroline Hicks totaling \$75,000.00, relative to the compensable death of Jerry Wayne Hicks, through December 15, 2005. On December 16, 2005, respondent #2 commenced the payment of dependent benefits to Jamie Maxine Hicks and Caroline Hicks, relative to the July 29, 2002, death of Jerry Wayne Hicks. The dependency benefit claim of Dustin Dewayne Bates has been contested by both respondents #1 and respondent #2.

In addition to challenging compensability in terms of Dustin Dewayne Bates being the natural child of Jerry Wayne Hicks, respondents assert that the claim is barred by the statute of limitations. Further, respondents assert a notice defense to accrued benefits prior to the 2006, filing of the Form AR-C on behalf of Dustin Dewayne Bates.

In *Lawhon Farm Services v. Brown*, 335 Ark. 272, 984 S.W.2d 1 (1998), the Arkansas Supreme Court address the application of Ark. Code Ann. §11-9-527 in light of the changes made to the workers' compensation law by Act 796. The evidence in the record preponderates that Dustin Dewayne Bates was the natural child of Jerry Wayne Hicks. Jerry Wayne Hicks provided financial support on behalf Dustin Dewayne Bates. Further, the evidence preponderates that Jerry Wayne Hicks provided emotional support for Dustin Dewayne Bates as evidence by his visits with his son and his refusal to allow Bryan Bates to formally adopt Dustin. Dustin Dewayne Bates had a reasonable expectancy of future support from Jerry Wayne Hicks. Further

the evidence preponderates that Dustin Dewayne Bates was wholly and actually dependent on Jerry Wayne Hicks at the time of he work-related death.

Ark. Code Ann. §11-9-102 (2) defines a child to mean, among others, “an acknowledged illegitimate child of the deceased”. It is undisputed that Dustin Dewayne Beck was acknowledged by Jerry Wayne Hicks as his child, both prior and subsequent to the marriage of Cheryl A. Beck to Bryan Bates. Mrs. Jamie Hicks, the widow of Jerry Wayne Hicks, confirmed that Jerry Wayne Hicks acknowledged Dustin Dewayne Bates as his natural child.

The time limitations for filing a claim for workers’ compensation benefits are lodge under Ark. Code Ann. §11-9-702. In the instance claim it is undisputed that the work-related death of Jerry Wayne Hicks occurred on July 29, 2002, and that a claim for workers’ compensation dependent benefits was not filed on behalf of Dustin Dewayne Bates until on or after the May 8, 2006, Form AR-C was filed with the Arkansas Workers’ Compensation Commission.

At the time of the July 29, 2002, work-related death of Jerry Wayne Hicks, Dustin Dewayne Bates, with a date of birth of September 14, 1995, was less than seven (7) years old and a minor. Ark. Code Ann. §11-9-702 (f), Persons under Disability, provides, in pertinent part:

(2) The provisions of subsection (a) or (b) of this section shall not apply to a mental incompetent or minor so long as the person has no guardian or similar legal representative. The limitations prescribed in subsection (a) or (b) of this section shall apply to the mental incompetent or minor from the date of the appointment of a guardian or similar legal representative for that person, and where no guardian or similar representative has been appointed, to a minor upon obtainment of majority.

Finally, Ark. Code Ann. §11-9-801, Method of Payment, provides in pertinent part:

(c) If the compensation beneficiary is a mental incompetent or a minor of tender years or immature judgement, the Workers’ Compensation Commission, in the exercise of its discretion, may direct that payment

shall be made to a legally appointed guardian of the estate of the incompetent or minor.

In the instant claim, at the time of the worked-related death of Jerry Hicks, Dustin Dewayne Bates was a minor. On or about March 10, 2006, Cheryl Bates, the mother of Dustin Dewayne Bates was appointed his Guardian and Conservator. The claimant for dependent benefits on behalf of Dustin Dewayne Bates relative to the work-related death of Jerry Hicks was filed within less than six months of the entry of the Judgment/Order Appointing Guardian and Conservator of Minor. The claim of Dustin Dewayne Bates for dependent benefits growing out of the work-related death of Jerry Wayne Hicks was timely filed.

Respondents #1 and respondent #2 assert a notice defense to the claim of Dustin Dewayne Bates for accrued dependent benefits prior to the filing of the Form AR-C on his behalf in May 2006. Ark. Code Ann. §11-9-701, Notice of injury or death, provides, in pertinent part:

(a) (1) Unless an injury either renders the employee physically or mentally unable to do so, or is make known to the employer immediately after it occurs, the employee shall report the injury to the employer on a form prescribed or approved by the Workers' Compensation Commission and to a person or at a place specified by the employer, and the employer shall not be responsible for disability, medical, or other benefits prior to receipt of the employee's report of injury.

\* \* \*

(b) (1) Failure to give the notice shall not bar any claim:  
(A) If the employer had knowledge of the injury or death;  
(B) If the employee had no knowledge that the condition or disease arose out of and in the course of the employment; or  
(C) If the commission excuses the failure on the grounds that for some satisfactory reason the notice could not be given.

In the instance claim, Dustin Dewayne Bates was a minor at the time of the work-related death of his father, Jerry Wayne Hicks. Cheryl A. Bates, the mother of Dustin Dewayne Bates,

was not married to Jerry Wayne Hicks and was unaware of the dependent benefits to which Dustin Dewayne Bates could be entitled under the Arkansas Workers' Compensation Act. All to the parties were residents of Missouri. A claim for dependent workers' compensation benefits was filed on behalf of Dustin Dewayne Bates in a timely manner once information of his entitlement to the benefits was learned. Cheryl Bates obtained proper legal authorization to pursue dependent benefits on behalf of Dustin Dewayne Bates with the entry of the Judgment/Order of guardian and conservator in May 2006. The evidence preponderates that Dustin Dewayne Bates is entitled to accrued dependent benefits growing out of the July 29, 2002, work-related death of Jerry Wayne Hicks.

While the evidence reflects that respondents # 1 paid dependent benefits to the identified dependents of Jerry Wayne Hicks following the July 29, 2002, work-related death, totaling \$75,000.00, through December 15, 2005, once the claimant for dependent benefits was filed on behalf of Dustin Dewayne Bates, the same was resisted to the point of controversion. Respondents # 1 asserted a statute of limitation and notice defense to the claim of Dustin Dewayne Bates in addition to disputing dependency. The evidence preponderates that but for the involvement of attorneys on behalf of Dustin Dewayne Bates in pursuit of his claim for dependent benefits the same would not have been paid, voluntarily or otherwise. Respondents # 1 have controverted the entitlement to dependent benefits of Dustin Dewayne Bates growing out of the work-related death of Jerry Hicks, to include accrued benefits through the filing of the May 2006, Form AR-C. Pursuant to Ark. Code Ann. §11-9-715, and in accordance with ruling in *Cleek v. Great Southern Metals*, 335 Ark. 342, 981 S.W.2d 529 (1998), respondents #1 have controvert the claimant's claim for dependent benefits growing out of the work-related death of

Jerry Hicks. Respondent # 2 has likewise controverted the claimant's entitlement to dependent benefits growing out of the July 29,2002, work-related death of Jerry Wayne Hicks.

**AWARD**

Respondents #1 and Respondent # 2 are herein ordered and directed to pay to Dustin Dewayne Bates dependent benefits as the son and dependent of Jerry Wayne Hicks growing out of the July 29, 2002, work-related death of the employee, pursuant to Ark. Code Ann. §11-9-527. Said sums accrued shall be paid in lump without discount.

Maximum attorney fees are herein awarded to the claimant's attorney on the controverted portion of this award pursuant to Ark.. Code Ann. §11-9-715, and in accordance with *Cleek v. Great Souther Metal*, 335 Ark. 342, 981 S.W.2d 529 (1998).

This award shall bear interest at the legal rate, pursuant to Ark. Code Ann. §11-9-809, until paid.

Matters not addressed herein are expressly reserved.

**IT IS SO ORDERED.**

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**Andrew L. Blood, ADMINISTRATIVE LAW JUDGE**