

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**WCC NO. F600676**

**BARBARA PLAUCK, EMPLOYEE**

**CLAIMANT**

**EPOXYN PRODUCTS, EMPLOYER**

**RESPONDENT**

**NEW HAMPSHIRE INSURANCE COMPANY,  
C/O AIG CLAIM SERVICES**

**RESPONDENT**

**OPINION FILED SEPTEMBER 4, 2007**

Hearing before Administrative Law Judge O. Milton Fine II on June 6, 2007, in Mountain Home, Baxter County, Arkansas.

Claimant represented by Mr. Frederick S. "Rick" Spencer, Attorney at Law, Mountain Home, Arkansas.

Respondents represented by Mr. Jarrod Parrish, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

On June 6, 2007, the above-captioned claim was heard in Mountain Home, Arkansas. A prehearing conference took place on March 12, 2007. A prehearing order entered that same day pursuant to the conference was admitted without objection as Commission Exhibit 1. At the hearing, the parties confirmed that the stipulations, issues, and respective contentions, as amended, were properly set forth in the order.

**Stipulations**

At the hearing, the parties discussed the stipulations set forth in Commission Exhibit 1. With two additional stipulations reached at the hearing, they are the following six, which I accept:

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.

2. The employee/employer/carrier relationship existed at all relevant times, including on or about June-December 2004, when Claimant sustained a compensable injury in the form of contact dermatitis.
3. At the time of her injury, Claimant's average weekly wage was \$350, which entitles her to temporary total disability benefits in the amount of \$233 per week and permanent partial disability benefits in the amount of \$175 per week.
4. Dr. Jerri Lynn Hoskyn assigned a one percent (1%) partial permanent impairment rating, which has been accepted.
5. Respondents have controverted Claimant's entitlement to additional medical treatment and the fifteen percent (15%) impairment rating given to her by Dr. Philip Hardin.
6. If called, Claimant's husband, Robert, would provide testimony cumulative to, and corroborative of, hers.

### Issues

At the hearing, the parties discussed the issues set forth in Commission Exhibit 1.

They are as follows:

1. Whether the Claimant is entitled to reasonable and necessary medical treatment.
2. Whether the Claimant is entitled to the fifteen percent (15%) impairment rating that was given her by Dr. Philip Hardin.
3. Whether the Claimant is entitled to a controverted attorney's fee.

Contentions

Following the addition of a contention by Respondents at the hearing, the contentions of the parties are as follows:

Claimant:

1. The Claimant contends that she sustained a compensable injury and is entitled to ongoing reasonable and necessary medical treatment related to her injury.
2. Claimant is entitled to the fifteen percent (15%) impairment rating that was given her by Dr. Hardin.

Respondents:

1. Respondents contend that all appropriate benefits have been paid with regard to this claim. Claimant has been released to return to work full duty and has no permanent impairment rating beyond the one percent (1%) rating, which has been accepted and paid. The fifteen percent (15%) impairment rating given to Claimant by Dr. Hardin is not supported by an objective evaluation and is not in conformity with AMA guidelines. Respondents have accepted the one percent (1%) rating and controverted the fifteen percent (15%) rating.
2. Respondents assert entitlement to a credit for unemployment benefits received by Claimant in the event she is deemed to be entitled to additional indemnity benefits.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record as a whole, including medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the

testimony of the witnesses and to observe their demeanor, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2002):

1. The Arkansas Workers' Compensation Commission has jurisdiction over these claims.
2. The stipulations set forth above are reasonable and are hereby accepted.
3. Because admission of Claimant's deposition will help to "best ascertain the rights of the parties," Claimant's proffered Exhibit 2 should be admitted into evidence.
4. Judicial notice cannot be taken of the testimony given in Claim Nos. F513076 and F513426; Claimant's motion that the Commission take such judicial notice is denied.
5. Claimant has proven by a preponderance of the evidence that she is entitled to additional reasonable and necessary medical treatment.
6. Claimant has not proven by a preponderance of the evidence that she is entitled to the fifteen percent (15%) impairment rating given to her by Dr. Philip Hardin under Class 2, Table 2, page 280 of the AMA Guides.
7. Claimant has proven by a preponderance of the evidence that she is entitled to a nine percent (9%) impairment rating to the body as a whole under Class 1, Table 2, page 280 of the AMA Guides.
8. Claimant is entitled to receive the maximum statutory attorney's fee on the eight percent (8%) of the nine percent (9%) impairment rating that Respondents have controverted.

9. While Respondents contend that they were entitled to an offset against Claimant's unemployment benefits, this was not made an issue; hence, the question of an offset will not be addressed but will be treated as a reserved issue.

## **PRELIMINARY RULINGS**

### Admission of Claimant's Proffered Exhibit 2

At the beginning of the hearing, Claimant moved for admission of the transcript of her March 23, 2006 deposition. Respondents' counsel objected as follows:

Respondents object to the introduction of the claimant's deposition on an evidentiary basis due to the fact that it's full of hearsay. It was not designated as an evidentiary deposition when I took it back in the spring of '06. It was solely for discovery purposes. Several questions were asked that would not have been asked had it been known it was going to be introduced at the hearing. Therefore, we would object to its admission as being prejudicial to the respondents given to the fact that no notice was given prior to the depo. it was going to be introduced.

I took the matter under advisement at the hearing and permitted Claimant to proffer the exhibit.

Arkansas Code Annotated § 11-9-705(a)(1) (Repl. 2002) provides:

In making an investigation or inquiry or conducting a hearing, the Workers' Compensation Commission shall not be bound by technical or statutory rules of evidence or by technical or statutory rules of procedure, except as provided by this chapter, but may make such investigation or inquiry, or conduct the hearing, in a manner that will best ascertain the rights of the parties.

The Commission has a "great deal of latitude in evidentiary matters." *Bryant v. Staffmark, Inc.*, 76 Ark. App. 64, 61 S.W.3d 856 (2001). After cross-examining Claimant at the hearing regarding her deposition testimony, Respondents' counsel stated: "Your Honor, you can read page[s] 31 and 32 of the deposition and see this lady is not being inconsistent

[sic—apparently he meant “consistent”] today.” Respondents clearly “opened the door” to the consideration of Claimant’s deposition. After due consideration of this matter, I find that admission of Claimant’s deposition will help to “best ascertain the rights of the parties.” Thus, Claimant’s proffered Exhibit 2 should be and is hereby admitted into evidence.

#### Judicial Notice of Testimony in Other Cases

At the end of her testimony, Claimant moved for the Commission to take judicial notice of the testimony given in two other cases: Claim Nos. F513076 and F513426. However, judicial notice may not be taken of the record in a separate case. *Leach v. State*, 303 Ark. 309, 796 S.W.2d 837 (1990); *Smith v. State*, 79 Ark. App. 79, 84 S.W.3d 59 (2002). Hence, Claimant’s motion is denied.

### **CASE IN CHIEF**

#### Summary of Evidence

\_\_\_\_\_Two witnesses testified at the hearing: Claimant; and Barry Chase, the General Manager of Respondent Epoxyn Products.

In addition to the prehearing order discussed above, also admitted into evidence in this case was Claimant’s Exhibit 1, medical records of Claimant, consisting of one index page and 10 separately numbered pages; Claimant’s Exhibit 2, the transcript of her deposition taken March 23, 2006, consisting of 42 pages; Respondents’ Exhibit 1, medical records of Claimant, consisting of one index page and 15 separately numbered pages; Respondents’ Exhibit 2, non-medical records including an OSHA Evaluation Questionnaire, Claimant’s application for unemployment benefits, and her responses to interrogatories and request for production of document, consisting of one index page and nine separately numbered pages (pages 7-8 of the exhibit, part of the interrogatory responses, are missing

from the transcript, and by agreement of the parties they are blue-backed to the record); and Joint Exhibit 1, the deposition of Dr. Philip Hardin taken May 17, 2007, consisting of 65 pages of testimony and six separate exhibits.

### Testimony-Hearing

Barbara Sue Plauack. Claimant testified that she is 63 years old. She is married and has four children. She completed the tenth grade. Claimant was a full-time employee of Respondent Epoxyn Products (hereinafter "Epoxyn"). She stated that she went to work there at the end of November 2004.

Claimant stated that at a certain point, she developed a small red rash. She reported it to Robert Stiles, who was her supervisor, and to the company nurse, Nina Hargis. Hargis was getting ready to leave, so she told Claimant to contact John Stroh, another employee, if the rash worsened. According to Claimant, by the next day her hands and arms were covered with tiny blisters. As instructed, she reported her condition to Stroh, and he made an appointment for her to see Dr. Richard Burnett the next day. She testified that the blisters also appeared on her face and cheeks, and around her mouth. After seeing Dr. Burnett two or three times, Claimant was referred to Dr. Philip Hardin. He gave her a prescription ointment that Claimant said did not completely clear the rash up, but "lessened [it] tremendously."

She stated that she only has a "little bit" of the ointment left. She hopes that she can get the prescription refilled. Claimant is no longer going to the doctor for the rash, but she testified that she would like to do so if she has another flare-up. She uses the ointment to successfully treat flare-ups. She senses that a flare-up is about to occur when she develops a "very bad itch" on her hands, arms, and sometimes on her cheeks. The

frequency of the flare-ups fluctuates. She stated that she sometimes has to use the ointment once a week, sometimes twice a week, and other times can go a couple of weeks without using it. Claimant testified that she does not know what causes the flare-ups, and cannot predict when they are going to occur. They are intermittent. But she added that she did not have them prior to going to work at Respondent Epoxyn.

Dr. Hardin has instructed her to avoid soaps, detergents, and other kinds of irritants. Claimant stated that she has always been careful to wear rubber gloves when working around these substances. She has to avoid a number of chemicals that she did not have to avoid prior to working at Respondent Epoxyn. She testified that she uses "milder chemicals."

Claimant stated that she filed the instant claim in December 2005. In April 2006, Respondents sent her to another physician to determine if she needed an impairment rating. She was given a one percent (1%) rating, which Respondents have paid. However, she feels that she is entitled to the fifteen percent (15%) rating that Dr. Hardin gave her. There have been times when she wanted to see Dr. Hardin again, but she did not do so because Respondents refused to pay for you to do so.

She testified that Respondent Epoxyn fired her because there was no position where she would not be exposed to epoxy. Claimant went to work at Gassville Nursing Home, where she works as a part-time housekeeper.

When questioned by Respondents, Claimant testified that she has been found to be allergic to nickel sulfate. That is a chemical used in soaps and inks. She is also allergic to root beer. Claimant explained that she has always used rubber gloves when cleaning to protect her hands. She explained that her use of gloves at the nursing home is the reason

she testified at her deposition that her skin condition did not affect her ability to do her job there regarding use of cleaning chemicals. Claimant testified that she told Respondent Epoxyn when she was being tested for a respirator that she had skin allergies or rashes because she knew about her root beer allergy.

She stated that she had only been at work at Respondent Epoxyn for two to three weeks when she began developing the bumps and rashes. She used barrier cream when it was available. Claimant agreed that there are people who work at Epoxyn without having dermatitis.

Since September 1, 2005, Claimant has only experienced redness and itching, and has not experienced any further red patches of full-blown dermatitis. In explaining the blisters she had gotten on her cheeks and around her mouth, Claimant stated that she did not believe that she spread the condition to those areas; they broke out on their own. She stated that since leaving Respondent Epoxyn, the only symptoms she has had have been the itching and the rash. Her last medical treatment for the condition was in July or August of 2005, when she saw Dr. Hardin the last time. Claimant's skin condition improved once she started receiving medical treatment and using the prescribed ointment. She stated that her condition has also improved since she has been away from Epoxyn and the chemicals there. The prescription ointment is a steroid cream that can be only applied once a day and then only in a thin layer. She is currently on her second tube of the medication.

Claimant has a license to drive a school bus. She agreed that the contact dermatitis would not affect her ability to be a bus driver. Provided that she is not around epoxy resin, she does not have any functional problems that would prevent her from doing her job. However, she stated that because of the condition, she is limited in the jobs she can get in

the Mountain Home area. She is still working for the nursing home part-time. But she is only working in that capacity because her employer does not have any full-time positions open. She applied to Wal-Mart and some other businesses, but was not hired. Claimant stated that she was never completely free of the rash while employed at Epoxy, so she is not sure if she could have worked in some areas of the plant and remained symptom-free. There were areas she worked where she itched more than others. But she felt that there was the same potential of epoxy dust exposure everywhere at Epoxy. And Dr. Hardin gave her a fairly strict restriction that she should not be exposed to epoxy resin.

When asked whether the dermatitis has prevented her from doing anything in her regular daily life, Claimant responded that she "take[s] extra precautions." She stated that she did not understand this question when it was asked of her at her deposition, and that she was nervous at the time. She reiterated that the condition has changed what she does at home because now she uses milder chemicals there.

Claimant testified that after leaving Respondent Epoxy, she received 17 weeks of unemployment benefits. On her application form, she checked that she had no disabilities that would prevent her from performing job duties, and at the hearing she agreed that was an accurate statement at the time. During those 17 weeks, she was representing that she was ready, able and willing to work. She has been able to do her job at Gassville Nursing Home because she uses protective gloves. Claimant has not encountered anything since leaving Epoxy that has caused a flare-up.

When questioned by me, Claimant could not recall the name of the steroid ointment that Dr. Hardin had prescribed her. She stated that it is a large tube, and she uses it sparingly because she was instructed that use of it would thin her skin. She reiterated that

the only symptoms she now gets are “[i]tching and a little red rash.” However, on the day of the hearing she was symptom-free.

Claimant testified that she worked at the “blackening table” at Respondent Epoxy. Her job was to apply edge dressing. That was her assignment where her symptoms first appeared. She was put into lab wear and given different assignments. After being reassigned, her condition improved somewhat with the exception of when she was assigned to paint at the dock where the trucks were unloaded and some chemicals were on the ground—it itching was severe while at that location, and she had a reaction the day she began work there. However, the blackening table was where her symptoms were the worst. When she was washing and folding towels, she had no new flare-up.

She testified that the protective gloves she wears at Gassville Nursing Home are ordinary rubber housekeeping gloves.

Regular rubber gloves are what she was first given at Respondent Epoxy. Later, she was given “safety hands,” which have a thicker texture. She wore long-sleeve shirts, and also used old socks to protect her arms after she broke out. The nurse at Epoxy gave her a blue rubber glove with a white sleeve to wear. About two to three weeks later, a notice was posted that workers in the blackening area had to wear this protective gear. During this time, she was working off and on at the blackening table. She stated that the protective gear helped her symptoms.

In follow-up questioning by Respondents, Claimant stated that she was not aware of the availability of the blue glove-white sleeve gear prior to the nurse providing them to her. She explained that wearing the blue glove-white sleeve gear helped her symptoms to subside.

When questioned further by her counsel, Claimant testified that Melvin Popejoy worked with her on the same shift, but Debra Chuk worked a different shift. Claimant stated that she was aware of five or six people who were having skin trouble at Respondent Epoxy. At least three of them did not report it to the employer. Claimant feared being fired for reporting her dermatitis.

Barry Chase. Called by Respondents, Chase testified that he has been the general manager of Respondent Epoxy for approximately six years. In this capacity, he is “relatively familiar” with Claimant’s claim. Epoxy is a manufacturer of work surfaces for the educational, industrial, and health care market. It is manufactured by combining liquid epoxy resin with sand and other chemicals in order to produce a slab that is made into work surface tops. Phenelenediamine is a black dye that is put into paints to turn the slab black. Other colors are used as well.

Between 160 and 175 people work at Respondent Epoxy, depending on the seasonal demand. There are employees who have no sensitivity to the chemicals used there. In fact, there are employees that have worked there in excess of 20 years. Claimant worked in the fabrication department. At the time at issue, she was assigned to the edge dressing work station. She has worked in other parts of the plant as well. Since Claimant has left Epoxy, someone has been hired to replace her. Chase is not aware of any dermatitis claims from recently hired employees. He testified that the chemical formula is “tweaked” at various times during the year to promote the drying of the product based on the humidity and temperature. The alcohol content is adjusted. Chase did not believe that there was any correlation with changes to the formula and reports of dermatitis. The

employees themselves mix the edge dressing solution, which is a two-part epoxy, in a little plastic dish. Changes in the formula would only impact the solution's drying time.

Chase testified that Respondent Epoxyn undergoes an annual air quality check by an independent company, which performs the test during operating hours and places monitors on individuals. No compliance issues have been found as a result of the checks. He stated that Epoxyn has a complete air evacuation system in its facilities.

With respect to safety equipment, Chase testified that Respondent Epoxyn's personal protective equipment program is extensive. The edge dressing station has a glove requirement. Tyvek sleeves are available as well. In his experience, even the protective gear does not prevent persons with epoxy allergies from having problems with the substance. Because liquid epoxy, according to Chase, is used throughout the factory, exposure to liquid epoxy is possible anywhere in the facility. Epoxyn's position is that for health reasons, people who are allergic to the epoxy should be removed.

When questioned by Claimant, Chase stated that he had no personal knowledge of whether she was advised regarding the availability of personal protective equipment. He could not recall the name of the company that performs the air quality inspection at the plant, but stated that they have been performing the annual inspection since he has worked there. The inspector is there for two to three days, and observes the total process.

Chase testified that he did not believe, nor had he ever heard, that employees are not disclosing their allergies for fear of termination. He stated that while employees mix the solutions, they are provided with a formula. However, Chase stated that there were cases where an employee did not follow the formula.

Testimony-Deposition

Barbara Sue Plauk. Claimant was deposed on March 23, 2006. As noted above, the transcript of her deposition was admitted as Claimant's Exhibit 2. She testified the highest grade she completed was the ninth grade [which varies from her hearing testimony that she completed the tenth grade]. She has not gotten her GED. Claimant graduated from cosmetology school 43 years ago. She only worked in that field for one year. Prior to going to work for Respondent Epoxy, she drove a school bus for four years, generally 30 hours a week. She only has a CDL to drive a school bus. She has not returned to that line of work since leaving Epoxy. Claimant is working toward a CNA license. Originally from Illinois, where she also worked at a factory as a night shift supervisor, Claimant moved to Arkansas 18 months ago.

At Respondent Epoxy, Claimant wore long-sleeve shirts. The company did not supply uniforms or coveralls. She testified that she used barrier cream when it was made available, but it did not prevent her from breaking out.

She testified that she drew unemployment benefits for 17 weeks after leaving Respondent Epoxy. She does not remember if she listed the epoxy allergy as a disability on her unemployment application. Aside from needing to stay away from epoxy, Claimant is unaware of anything that would keep her from working somewhere. Currently, she is a part-time housekeeper at Gassville Nursing Home—a job she has held since November 2005. She is trying to obtain full-time employment. That has been the only place she has worked since leaving Respondent Epoxy; she applied to work at Wal-Mart and Dollar General, but was not hired.

Claimant has not applied for Social Security disability, and does not plan to at present. She has not received any short or long-term disability benefits for the contact dermatitis, and private insurance has not paid for any treatment for the condition. Claimant testified that her problems with epoxy has prevented her from working at other factories in the Mountain Home area that use epoxy—including boat manufacturers and cabinet makers. However, she stated that if a business does not use epoxy, there is nothing that she is aware of that would prevent her from working there. Her condition has not kept her from performing her housekeeping duties at Gassville Nursing Home, even when those duties involved using cleaning chemicals.

Claimant testified that she still has itching on the spots that were badly broken out at the time she was seeing the dermatologist. She has not experienced any new patches in areas other than those originally affected, but she still gets “little bumps . . . little aggravations.” At its worst, the dermatitis covered both of her arms, her hands, and was on her cheekbones and around her mouth. She has scarring on the tops of her hands and on her arms, and itching there as well. Aside of the scarring and the periods when she still itches, Claimant has no other physical symptoms. She uses a prescription ointment that Dr. Hardin gave her to treat the itching. She uses it three times a week, and only when she is experiencing itching. The ointment is to treat the bumps and blisters that form. She said the dermatitis patch never completely went away. But when she applies the cream, the rash subsides. Claimant stated that she still has flare-ups. At the time of her deposition, she had a small rash on her hands that was itching.

Once she started going to the doctor, she condition never was as severe as it was in the beginning, before receiving treatment. She last saw Dr. Hardin in July or August of

2005. Claimant has not seen him since he assigned her an impairment rating. She cancelled an appointment with him after Respondent Epoxyyn let her go because she did not have a way to pay for the visit. She could not afford COBRA coverage. Claimant plans to return to Dr. Hardin if her condition worsens. John Stroh sent her to Dr. Burnett again a day or two before she was let go.

Eventually, Claimant went on light duty at Respondent Epoxyyn. She cleaned the lunchroom, washed and folded towels, painted walls and metal piping, and cleaned up the grounds. She did not know if this was a temporary assignment at the time. When she was terminated by letter in July 2005, she was informed that it was because there was no more light duty work available. She had not missed work because of her skin condition. At the time, Melvin Popejoy, Deborah Chuck, and a girl named Ann were also working light duty. The severity of her condition depended on the location of her assignment. She experienced an especially bad breakout when assigned to paint out where the trucks unload. Epoxy dust was all over the ground in that area. There are places at Epoxyyn, such as the offices, where one is less likely to be exposed to epoxy. But Claimant did not think any location there was completely epoxy-free. She does not have office work experience.

Dr. Philip Hardin. Dr. Hardin was deposed on May 17, 2007. As noted above, the transcript of his deposition was admitted as Joint Exhibit 1. He testified that he is board-certified in Dermatology and Dermatopathology. Claimant, along with Melvin Popejoy and Debra Chuk, were patients of his. The patients had told him that Respondent Epoxyyn had changed its epoxy formula so that it would harden more quickly, and that they thought their problems had begun or had accelerated after that point.

Claimant first came to see him March 1, 2005. She presented with a rash on her face, arms and hands. She had been using Elocon cream and gloves. While the rash was better, it was not completely gone. Claimant told him that she was exposed at Respondent Epoxy. Dr. Hardin administered a patch test for allergic contact dermatitis and it showed positive reactions to nickel sulfate and epoxy resin. On March 4, 2005, he gave her a prescription for a Class I corticosteroid ointment and advised her to avoid contact with nickel sulfate and epoxy resin. Dr. Hardin testified that Claimant responded well to treatment. He did not take her off work. After seeing her on April 1, 2005, he continued her restrictions to avoid contact with epoxy resin or vapors from reacting and curing the epoxy.

He stated that he last saw Claimant on July 29, 2005. At that time, she had eroded patches on her right forearm, measuring three to four centimeters across, which appeared to be contact dermatitis that had been secondarily rubbed and scratched. She told him that she had been off work for two and one-half weeks, and that while she was doing better, she was still itching. That is the only occasion where Dr. Hardin's notes reflect that Claimant was off work.

At the deposition, Dr. Hardin looked at the AMA Guides to the Evaluation of Permanent Impairment, Fourth Edition (hereinafter "AMA Guides"), stated that he was "[v]aguely" familiar with it. He opined that based on page 289, Table 2 of the AMA Guides, Claimant belonged in Class 2 with fifteen percent (15%) impairment. He stated that he was giving this opinion within a reasonable degree of medical certainty. Dr. Hardin opined that while he could not be certain, Claimant would "probably" need further care due to the injury to her skin.

As with his opinion regarding Melvin Popejoy, Dr. Hardin stated that Claimant's allergy is a permanent condition. He stated that she will have trouble tolerating heat, friction, and exposure to primary irritants on her skin. He added:

The potential for disaster is there. She cannot continue to contact the agents that produce her allergy. It's like an immunization. Every time she breaks out from it, probably lowers her threshold to break out the next time, and it, the condition has the potential to escalate.

He explained that the skin is an organ and that it was compromised due to the epoxy exposure. Dr. Hardin stated that someone with an epoxy allergic could have an allergic reaction in the lungs due to breathing epoxy vapor.

He testified that Claimant would have to avoid exposure to solvents, detergents and shampoo because she has a long-term impairment of the barrier function of her skin, and will likely get dermatitis from exposure to these substances. Abnormal permeability will persist for 18 to 24 months after dermatitis has cleared up. Thereafter, while some exposure to these substances is okay, lengthy exposure in a workplace setting is not.

Dr. Hardin testified that he has been a dermatologist in the Mountain Home area for thirty years. There are a lot of boat manufacturers in the area. Dr. Hardin stated that while he is not a polymer chemist, he is "pretty familiar with the medical implications" of epoxy. He stated that sweeping would not expose someone to a toxic resin in a significant way. Dr. Hardin testified that "[t]he resin is not particularly volatile. It is a problem only in its liquid form and the vapors when it is curing. Once it's cured, in dust form or not, the stuff is inert and its not a sensitizer." But the fumes emitted during the curing process are allergenic. Controlled ventilation is required to limit harm. Dr. Hardin testified that he was a dermatologist in the U.S. Navy at the naval air station in Corpus Christi, where Huey

helicopters were rebuilt. He stated that he saw a number of contact dermatitis cases there from the vapor phase of the curing epoxy–epoxy paint was utilized. Once the Navy modified the ventilation system, he no longer saw problems. He has spoken to the nurse at Epoxyn about their air flow situation.

He stated that 80 percent (80%) of reactions are to the epoxy resin, while the rest of the reactions are to the hardener. There are 20 or more resins that can be used. The resins with lower molecular weight wet the skin and penetrate it better, and thus are more effective sensitizers. Hardeners are generally more volatile than the resin.

When questioned by Respondents, Dr. Hardin stated that his notes on July 29, 2005 reflected a notation of lichen simplex chronicus. This condition is a thickening of the skin in response to chronic friction. He testified that it is permissible for someone with the condition to work, provided that the affected areas are small. Dr. Hardin stated that he did not observe her to have a problem with heat/friction, nor has he seen records from other doctors indicating that she had this problem.

At her last visit, Claimant was still itching and had erosions. When asked whether he released her at that time, he stated: “It wasn’t so much that I released her as that she said that she had lost her job and could no longer afford treatment, and just quit coming.” He stated that it is possible that once a dermatitis has occurred, it stays because people suffering from the condition continue to scratch out of habit. He opined that it is certainly more likely that she will have ongoing problems if she continues to have contact with the offending agents. However, Dr. Hardin added that he could not say for sure that she would continue to have problems because he could not predict the future. He also confirmed that her records do not indicate that the epoxy caused her to have any breathing problems.

He stated that he was assigning Claimant a fifteen percent (15%) rating. When asked to explain why he assigned Claimant, Chuk and Popejoy as being at that level, when Class 2 ranges from ten percent (10%) to 25 percent (25%), Dr. Hardin explained:

It's picking a number . . . it's closer to 10 than 24. You know, I don't think that they fit the minimal requirements for that, but, you know, 15% is the number that comes to, seems reasonable to me given the assessment.

Dr. Hardin agreed that the Class 2 category he was placing Claimant in required signs and symptoms of the skin disorder to be present or intermittently present; but he does not know what has happened to Claimant since he last saw her—whether she has had further breakouts or suffers from any limitations in her daily life. But he testified that “[a]ssigning a disability is making a prediction. That [Claimant will require further treatment] was my prediction, that it's likely that [she and Ms. Chuk] will.” However, he was not able to opine whether Claimant remained in her healing period because he has not seen her recently. He told her that she could return if she had any problems or flare-ups. But either Claimant or Chuk told him that she could not afford to see him.

Dr. Hardin testified that there is approximately five percent (5%) of the population that seems resistant to contact sensitization. Exposure to substances such as epoxy resin would not bother them. He did not believe that Claimant or the others had anything that made them more susceptible to the initial breakout. When asked to explain why some employees of Epoxyn have not gotten dermatitis, he stated:

I just don't think their numbers come up yet. Epoxy resin is not a horrible sensitizer like poison ivy. With poison ivy, almost everyone who gets in it will become sensitized on one or two exposures to it. Nonetheless, you know, [epoxy is] a major cause of industrial disability, but it requires, you know, multiple exposures before you come up with it.

He testified that it is possible, through adequate ventilation and the supplying of vinyl gloves, to protect individuals such as Claimant while allowing them to continue to work at Epoxyn. But he added, “[w]hether it is practical or economical[ly] feasible is another question.” Using a heavier molecular weight of epoxy resin would help them as well. Dr. Hardin opined that it was in Claimant’s best interest if conditions were modified at Epoxyn to enable her to work there. He admitted that even if the ventilation system were improved, some people will still develop contact dermatitis from splashing epoxy resin on their skin and/or refusing to wear protective equipment.

He testified that he has dealt with approximately 12 to 13 contact dermatitis cases that have come from Respondent Epoxyn during his 30-year career. Presently, there is one other dermatologist in the Mountain Home area, but Dr. Hardin was not aware if the doctor had treated anyone for contact dermatitis related to epoxy resin. When asked, Dr. Hardin opined that contact allergens and primary irritants have a synergistic effect in causing a dermatitis.

He stated that soap is a primary irritant, and he has instructed Claimant to avoid it. Sufficient exposure to it will produce dermatitis on anyone. The more damaged and more sensitive one’s skin is, the less exposure it takes to cause a reaction. He stated that once the barrier of the skin is damaged, it is very hard to get it to reconstitute. Dr. Hardin analogized it to “falling through thin ice.” While he has not seen Claimant in a while, based on his experience, she should have darkening of the skin where she had the dermatitis. He was not aware that Claimant had gone to work at Gassville Nursing Home.

Records-Medical

The medical records of Claimant that were introduced at the June 6, 2007 hearing and constitute Claimant's Exhibit 1, Respondents' Exhibit 1, and Exhibits 3 and 4 of Joint Exhibit 1 reflect the following:

On December 21, 2004, Claimant presented to Dr. Richard Burnett with as "very itchy" with a rash "all over" that was worst on her arms and which started December 16, 2004. Dr. Burnett observed an erythematous, vesicular rash on her forearms and a erythematous, non-vesicular rash on the right side of her face. He assessed her as having contact dermatitis, gave her an injection and prescribed a Steroid dose pak and Benadryl, and instructed her not to have contact with the edge dressing material at Respondent Epoxyn.

When she returned on December 28, 2004, the rash was still on her arms and face and was "clearing—only now." She was advised to continue the dose pak and prescribed Elocon cream—a steroid—for her face. Dr. Burnett released her to regular duty. When she returned on February 7, 2005, the rash on her face had resolved and the rash on her arms had improved, but was still present. The notes reflect that Claimant was now using gloves. She was referred to Dr. Hardin and continued on regular duty.

Dr. Hardin first saw Claimant in March 2005. He wrote that she should use Cutemol Cream as a barrier cream, and should avoid primary irritants including epoxy resin and reactive vapors, printer's ink, matches, and lettuce.

On April 1, 2005, he saw her again. That day, Claimant reported that she was "doing great." The rash was almost clear. He cautioned her about overuse of corticosteroid cream. He wrote:

Barbara Plauck was seen in my office April 1, 2005 for management of her diagnosis of allergic contact dermatitis. Barbara had a relevant allergy to contact with epoxy resin. I have instructed Ms. Plauck to avoid contact with epoxy resin, vapor from reacting epoxy resin, or nickel sulfate. She is scheduled for follow up on June 3, 2005 at 1:00PM. She will continue to require medical management as long as her condition persists. She may be released back to work as long as she is able to avoid contact with epoxy resin, vapors from reacting epoxy resin, and nickel sulfate. Contact with these substances will cause an acute flare of her allergic contact dermatitis.

On May 27, 2005, she reported having a few spots that would not go away. He noted that she still had mild fading inflamed areas on her forearms, and three spots of chronic dermatitis on the dorsum of her hands. He again stated that she would require continued medical treatment as long as her condition persisted. Dr. Hardin added that she was responding well to treatment with Ultravate ointment, and that she should continue to clear provided she could avoid contact with epoxy resin and reacting epoxy vapor, along with nickel sulfate.

Dr. Hardin's last visit with Claimant was July 29, 2005. She reported that while she was still itching, she was doing better and even breathing better. The three eroded patches on her right forearm were still present. He stated that the above restrictions were permanent, that she had contact and allergic dermatitis, had positive patch test results regarding epoxy resin and nickel sulfate, and was still receiving treatment. He added: "Mrs. Plauck still has several large eczematous, eroded areas on her right forearm. She still requires treatment."

Dr. Burnett saw Claimant on September 1, 2005, and wrote that the rash on her arms had resolved. He wrote that she could work, but had a "lifetime" restriction from working with epoxy resin, the vapors thereof, and nickel sulfate.

Dr. Hardin on January 16, 2006 wrote Respondent AIG that he could not complete a final report on Claimant because she cannot afford another visit with workers' compensation coverage. He also stated that Claimant qualified for a Class 2 disability rating due to allergic contact dermatitis that was job-related. He wrote Ann Ginnevan of Dimensions in Health Care, Inc., on January 16, 2006 to confirm the above. He also stated that when he last saw her on July 29, 2005, she had three eroded patches measuring four centimeters, four centimeters, and three centimeters on her right forearm. Her diagnosis was still allergic contact dermatitis with lichen simplex chronicus. He prescribed Ultravate ointment and continued the restrictions quoted above. Claimant reported that because she was terminated and determined to be ineligible for workers' compensation, she could not afford to return to him. She did report that her rash had improved but that she had some scarring. He opined that she qualified for a fifteen percent (15%) disability rating under Class 2.

Dr. Hardin wrote the following to Respondent AIG on January 23, 2006:

I am writing in response to your request for additional information regarding the PPD rating report for Barbara Plauck. [You] requested the following information:

1. Objective and measurable findings are as follows: documented observation of dermatitis with erosions, relevant positive results on patch testing for contact allergy, correlation of positive with work exposure (epoxy resin and nickel).
2. Permanent impairment rating of Class 2 was assigned to Mrs. Plauck using the Criteria for Rating Permanent Impairment Due to Skin Disorders stated in Table 8-2 on page 178 of the AMA Guides to the Evaluation of Permanent Impairment, 5<sup>th</sup> Edition.

On April 3, 2006, Claimant was sent by Respondents' counsel for an independent medical evaluation by Dr. Jerri Hoskyn at the UAMS Dermatology Clinic. Her report reads in pertinent part:

HISTORY:

...

The patient relates that she began working for Fisher Scientific [the parent company of Respondent Epoxyn] in November of 2004. She directly mixed and worked with epoxies that were applied to countertop products. At that time, she was not using a respirator, and protective equipment included a cloth glove with a rubberized palm of some sort. She stated that she later added a latex glove near her skin and placed the cloth glove over that. In December of 2004 she developed a severe blistering eruption on her hands and forearms that was extremely pruritic. She was treated with antibiotics, topical steroids, and steroid injections with some improvement. She continued at work and was later provided with a nitrile glove with some kind of protective sleeve, which apparently was somewhat helpful. However, she continued to have skin problems and by February of 2005 was on unemployment. By May or June of 2005 she was 'released' from work. Other potential exposures at Fisher Scientific included furniture polish, hand washes, and the latex gloves.

During the months after her initial rash she was evaluated by Dr. Hardin in Mountain Home who did patch testing (a 24-item TRUE test[]), which revealed positive reactions to nickel and epoxy. Given her work-related exposure to epoxy, the epoxy resin allergy was thought to be relevant, and she was diagnosed with allergic contact dermatitis secondary to epoxy resin. She was later assigned a 15% whole body permanent partial impairment.

The patient now relates that she continues to break out on the hands intermittently, most recently having a breakout on the dorsal right hand and estimates that she uses her topical halobetasol 1-2 times per month. She is not currently exposed to epoxy. She has not had further breakouts on the forearms.

She started working again in November 2005 as a housekeeper in a nursing home.

...

**PHYSICAL EXAMINATION:**

General appearance, mood and affect, head, neck and left hand are clear. She does have an erythematous, slightly scaly patch on the dorsal right hand. On her ventral forearms there is a faint but definite erythema and in some places very slight hyperpigmentation in the areas she described as previously blistered. I do not appreciate scarring.

**ASSESSMENT/PLAN:**

Contact dermatitis. Her history and patch testing results certainly support her diagnosis of allergic contact dermatitis to epoxy resin, which has now subsided in the absence of exposure. She has some residual mild erythema and hyperpigmentation still visible at the sites of the previously severe rash on the forearms but I would not describe this as scarring. She continues to have intermittent signs and symptoms of contact dermatitis on her hands. In the absence of exposure to epoxy I cannot attribute this to epoxy resin. I suspect that this may represent contact allergy to other antigens that . . . developed at the same time she developed her allergy to epoxy resin, since she did not have trouble with contact dermatitis on the hands prior to her work at Fisher Scientific. She had a very limited patch testing evaluation at the time of her injury, and I recommend more comprehensive patch testing in order to clarify the source of her continued problems.

In my opinion, Ms. Plauack does have permanent residual impairment as a result of her injury in 12/04. She continues to have intermittent contact dermatitis on the hands, which is present on today's examination. According to the AMA Guides to the Evaluation of Permanent Impairment (4<sup>th</sup> edition, 1993, page 280, Table 2), Ms. Plauack has a Class 1 impairment (0-9%). Based on my evaluation, I would assign a 1% permanent partial impairment.

In addition, as a result of her allergy to epoxy (and likely additional allergens), she will have permanent restrictions on the kinds of work and activities she can safely perform. Regarding epoxy, clearly she cannot come into contact with epoxy resin in any form (direct contact or airborne). She continues to require intermittent treatment with topical steroids (halobetasol) and would likely need much more intensive treatment were she to encounter epoxy resin again.

Records-Non-medical

Non-medical records that comprise Respondents' Exhibit 2 include her OSHA Respirator Medical Evaluation Questionnaire dated November 30, 2004, her unemployment benefits application, her application for unemployment benefits dated July 15, 2005, and

her answers to Respondents' interrogatories and document production requests (which reflect, *inter alia*, the dates Claimant saw Drs. Burnett, Hardin and Hoskyn). The OSHA questionnaire reflects that Claimant answered that she had problems with skin allergies or rashes in the past when using a respirator.

### Adjudication

#### A. Reasonable and Necessary Medical Care

Under Ark. Code Ann. § 11-9-508(a), an employer shall provide for an injured employee such medical treatment as may be necessary in connection with the injury received by the employee. *Wal-Mart Stores, Inc. v. Brown*, 82 Ark. App. 600, 120 S.W.3d 153 (2003). But employers are liable only for such treatment and services as are deemed necessary for the treatment of the claimant's injuries. *DeBoard v. Colson Co.*, 20 Ark. App. 166, 725 S.W.2d 857 (1987). The claimant must prove by a preponderance of the evidence that medical treatment is reasonable and necessary for the treatment of a compensable injury. *Brown, supra*; *Geo Specialty Chem. v. Clingan*, 69 Ark. App. 369, 13 S.W.3d 218 (2000). What constitutes reasonable and necessary medical treatment is a question of fact for the Commission. *White Consolidated Indus. v. Galloway*, 74 Ark. App. 13, 45 S.W.3d 396 (2001); *Wackenhut Corp. v. Jones*, 73 Ark. App. 158, 40 S.W.3d 333 (2001).

The determination of a witness' credibility and how much weight to accord to that person's testimony are solely up to the Commission. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001). The Commission must sort through conflicting evidence and determine the true facts. *Id.* In so doing, the Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. *Id.*

As the parties stipulated, and as the evidence showed, Claimant sustained a compensable injury in the form of contact dermatitis. She worked at the blackening table at Respondent Epoxyn, where she came into contact with epoxy resin. The rash that she developed spread to her arms, hands, and face (on her cheeks and around her mouth). She saw Drs. Burnett and Hardin, and corticosteroid cream successfully treated her flare-ups. Claimant is currently on her second tube of the cream, and the tube is nearly empty. She still uses it to prevent flare-ups by applying the cream when the symptoms, which are intermittent. Since September 1, 2005, she has only experienced redness and itching, and has not had any further patches of full-blown dermatitis. On the day of the hearing, she had no symptoms. Claimant testified that she tries to use milder chemicals now, and that she is able to perform her housekeeping duties at Gassville Nursing Home because she wears rubber gloves.

Dr. Hardin administered a patch test to Claimant, which showed a positive reaction to epoxy resin. He has instructed her to avoid this substance, along with irritants such as soaps and detergents. She last saw Dr. Hardin on July 29, 2005. But she discontinued treatment not because her symptoms resolved, but because Respondent Epoxyn let her go and would not cover further visits. At this last visit, he noted that she still had three eroded patches of dermatitis. Her diagnosis remained allergic contact dermatitis with lichen simplex chronicus. When Dr. Burnett last saw her on September 1, 2005, he wrote that the rash on her arms had resolved. But he also restricted her from working with epoxy resin. Dr. Hoskyn performed an IME and found that Claimant continues to have intermittent signs and symptoms of contact dermatitis. She suspected that the triggering agent is some other antigen that Claimant developed at the same time as she developed the epoxy resin allergy.

At his deposition, Dr. Hardin opined that Claimant would likely need further treatment. However, he could not be certain that she would have further problems, since he has not seen her since 2005. He assigned Claimant a fifteen percent (15%) rating under the AMA Guides based on her having a Class 2 skin disorder. For those falling under this class, “intermittent to constant treatment may be required.” Dr. Hoskyn opined that Claimant was entitled to only a one percent (1%) impairment rating and that she only had a Class 1 skin disorder. For this class, “[n]o treatment or intermittent treatment is required.” In her report, Dr. Hoskyn stated that Claimant continues to need intermittent treatment with topical steroids and would likely need more intensive treatment if she ever again came into contact with epoxy.

Claimant testified, and the evidence shows, that her symptoms return from time to time. The prescription steroid cream successfully halts the symptoms, but she is running out of this medicine. “Medical treatments which are required so as to stabilize or maintain an injured worker are the responsibility of the employer.” *Artex Hydroponics, Inc. v. Pippin*, 8 Ark. App. 200, 649 S.W.2d 845 (1983).

Based on the foregoing, I find that Claimant is entitled to reasonable and necessary medical treatment.

#### B. Impairment Rating

Claimant has alleged that she is entitled to permanent partial disability benefits in the form of the fifteen percent (15%) rating Dr. Hardin gave her. In order to be entitled to such benefits, a claimant must prove that the compensable injury, either alone or in combination with the preexisting condition or the natural process of aging, is the major cause of the permanent impairment, Ark. Code Ann. §11-9-102(4)(F)(ii)(a)-(b) & (14) (Repl. 2002); that

the impairment rating is established by objective and measurable physical or mental findings, *Id.* § 11-9-704(c)(1)(B); that any medical opinion is stated within a reasonable degree of medical certainty, *Id.* § 11-9-102(16); and that the AMERICAN MEDICAL ASSOCIATION, GUIDES TO THE EVALUATION OF PERMANENT IMPAIRMENT (4th ed. 1993)(hereinafter “AMA Guides”) were used in determining the rating, *Id.* § 11-9-522(g); AWCC R. 099.34. See *Le v. Simmons Foods, Inc.*, 2004 AWCC 127, Claim No. E815277 (Full Commission Opinion filed July 19, 2004).

As set out above, Dr. Hardin assessed a fifteen percent (15%) impairment, based on his finding that Claimant’s condition placed her under Class 2 in Table 2, page 280, of the AMA Guides. While his initial rating, given in writing, was based on the Fifth Edition of the guides, which have not been adopted by the Commission—see AWCC R. 099.34—in his deposition he gave her the same rating under the adopted Fourth Edition. Class 2, which has an impairment range of ten percent (10%) to 24 percent (24%), has the following prerequisites:

- (1) Signs and symptoms of skin disorder are present or intermittently present;
- (2) There is a limitation in the performance of some of the activities of daily living;
- (3) Intermittent to constant treatment may be required.

The evidence adduced at the hearing clearly shows that Claimant’s compensable injury is the major cause of her disability. As stated above, “[a]ny determination of the existence or extent of physical impairment shall be supported by objective and measurable physical or mental findings.” Ark. Code Ann. § 11-9-704(c)(1)(B). Objective findings are “those findings which cannot come under the voluntary control of the patient.” *Id.* §

11-9-102(16)(A)(1). Dr. Hardin had ample objective findings in the forms of Claimant's rashes and the results of the patch tests, which showed a reaction to epoxy resin.

While Dr. Hardin agreed that the first element of Class 2 requires that signs and symptoms of the skin disorder be present or intermittently present, he did not know how Claimant was doing since he last saw her in July 2004. However, Dr. Hoskyn, who conducted the IME in April 2006, stated that Claimant "continues to have intermittent signs and symptoms of contact dermatitis on her hands." As for the second element, which requires limitation in the performance of some of the activities of daily living, Dr. Hardin testified that in addition to the dangers posed by contact with soap, detergents, and other primary irritants, he opined that she will have trouble tolerating heat and friction. However, Claimant clearly testified that she has not encountered such difficulties, and that she has been able to work around cleaning chemicals at her nursing home position by wearing rubber gloves. However, I am not unmindful of her testimony that continues to combat flare-ups with her prescription ointment, as Dr. Hoskyn confirmed. As for the third element, the need for future treatment, Dr. Hardin could only opine that she would "probably" need further treatment. He also testified that it was more likely that Claimant would continue to have problems if she had contact with the offending agents, but that he could not be sure of this because he could not predict the future. Dr. Hoskyn opined that Claimant "continues to require intermittent treatment with topical steroids (halobetasol) and would likely need much more intensive treatment were she to encounter epoxy resin again."

Based on the foregoing, I find that Claimant has not proven by a preponderance of the evidence that she is entitled to a fifteen percent (15%) impairment rating in that she does not meet all of the requirements for Class 2 impairment, specifically the second element.

A Class 1 impairment, which has a range of one percent (1%) to nine percent (9%), has the following prerequisites:

- (1) Signs and symptoms of skin disorder are present or only intermittently present;
- (2) There is no limitation or limitation in the performance of few of the activities of daily living, although exposure to certain chemical or physical agents might increase limitation temporarily; and
- (3) Intermittent to constant treatment may be required.

The phrasing of the second element here appears to fit Claimant's situation, as borne out by the evidence at the hearing. The Commission may determine its own impairment rating under the AMA Guides, rather than simply assessing the validity of the ratings that have been assigned. *Avaya v. Bryant*, 82 Ark. App. 273, 105 S.W.3d 811 (2003). After reviewing the evidence in the record, I find that Claimant has sustained a Class 1 impairment under Table 2, page 280 of the AMA Guides, and that she is entitled to a nine percent (9%) impairment rating thereunder to the body as a whole.

(3) Controverted Attorney's Fee

I find that Respondents have controverted Claimant's entitlement to permanent partial disability benefits over and above her one percent (1%) impairment rating given by Dr. Hoskyn. Claimant's attorney is thus entitled to a controverted attorney's fee on eight percent (8%) of the nine percent (9%) awarded to her, pursuant to Ark. Code Ann. § 11-9-715.

(4) Offset

Respondents in their contentions argue that they are entitled to an offset for unemployment benefits Claimant received against any indemnity benefits she may be awarded. However, the question of an offset was not made an issue to the hearing. For that reason, the question of an offset will not be addressed but will be treated as a reserved

issue. See *Singleton v. City of Pine Bluff*, 2006 AWCC 34, Claim No. F302256 (Full Commission Opinion filed February 23, 2006)(improper for administrative law judge to address issue not raised at hearing), *rev'd on other grounds*, No. CA06-398 (Dec. 6, 2006)(unpublished).

### **CONCLUSION AND AWARD**

Respondents are directed to pay benefits in accordance with the findings of fact set forth above. 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. See *Couch v. First State Bank of Newport*, 49 Ark. App. 102, 898 S.W.2d 57 (1995).

Claimant's attorney is entitled to a twenty-five percent (25%) attorney's fee on the eight percent (8%) indemnity benefits that were controverted, one-half of which is to be paid by Claimant and one-half to be paid by Respondents in accordance with Ark. Code Ann. § 11-9-715. See *Death & Permanent Total Disability Trust Fund v. Brewer*, 76 Ark. App. 348, 65 S.W.3d 463 (2002).

**IT IS SO ORDERED.**

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Hon. O. Milton Fine II  
Administrative Law Judge