

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NOS. F109650 & F412000

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| RANDY E. LEWIS, EMPLOYEE | CLAIMANT |
| AUTO PARTS & TIRE COMPANY, INC., D/B/A FLITELINE MOTORS, EMPLOYER | RESPONDENT NO. 1 |
| ZENITH INSURANCE COMPANY, CARRIER | RESPONDENT NO. 1 |
| SECOND INJURY FUND | RESPONDENT NO. 2 |

ORDER FILED APRIL 3, 2007

Upon review before the FULL COMMISSION, Little Rock, Pulaski County, Arkansas.

Claimant represented by HONORABLE STEPHEN SHARUM, Attorney at Law, Fort Smith, Arkansas.

Respondent No. 1 represented by HONORABLE MATTHEW MAULDIN, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by HONORABLE TERRY PENCE, Attorney at Law, Little Rock, Arkansas.

ORDER

The above-styled matter is before the Full Commission on remand from the Arkansas Court of Appeals. Lewis v. Auto Parts & Tire Co., CA06-659 (February 21, 2007).

The Administrative Law Judge found that the claimant failed to prove that A.C.A. § 11-9-522(f)(1) (Repl. 2002) was unconstitutional. The Full Commission affirmed and adopted the Administrative Law Judge's opinion.

The Arkansas Court of Appeals reversed and remanded this case finding that the Commission erred in finding A.C.A. § 11-9-522(f) was constitutional. In accordance with the findings of the Court of Appeals in this case and in its recent opinion in Osborne v. Bekaert Corp., ___ Ark. App. ___, ___ S.W.3d ___ (December 13, 2006), we find that A.C.A. § 11-9-522(f) is an unconstitutional violation of the Equal Protection Clause of the United States Constitution. Therefore, we reverse the opinion of the Administrative Law Judge with regard to this issue. For prevailing on this appeal before the Full Commission, the claimant's attorney is hereby awarded an additional attorney's fee in the amount of \$500.00 in accordance with A.C.A. § 11-9-715.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

PHILIP A. HOOD, Commissioner