

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F402928

STEVE POTTS, EMPLOYEE	CLAIMANT
FIRESTONE TUBE CO., EMPLOYER	RESPONDENT NO. 1
OLD REPUBLIC INSURANCE CO., INSURANCE CARRIER	RESPONDENT NO. 1
SECOND INJURY FUND	RESPONDENT NO. 2
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT NO. 3

OPINION FILED MARCH 20, 2007

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

Claimant represented by the HONORABLE AARON MARTIN, Attorney  
at Law, Fayetteville, Arkansas.

Respondents No. 1 represented by the HONORABLE BETTY J.  
HARDY, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by the HONORABLE DAVID L. PAKE,  
Attorney at Law, Little Rock, Arkansas.

Respondent No. 3 represented by the HONORABLE JUDY RUDD,  
Attorney at Law, Little Rock, Arkansas.

ORDER

Respondent No. 2, Second Injury Fund, moves the Full  
Commission to reconsider and clarify our opinion filed  
January 19, 2007. In said opinion, the Full Commission

found that the additional fee awarded the claimant's attorney was the responsibility of the Second Injury Fund.

A pre-hearing order was filed with the Commission on November 16, 2005. The claimant contended, among other things, that he was entitled to wage-loss disability. Respondent No. 1 contended, among other things, that the claimant had been paid all appropriate benefits to which he was entitled. The parties agreed to litigate several issues, including whether the claimant was entitled to wage-loss disability, whether the claimant was entitled to additional temporary total disability, and whether the claimant was entitled to a controverted attorney's fee. An administrative law judge found, among other things, that the claimant proved he was entitled to wage-loss disability and temporary total disability compensation. The administrative law judge found that Respondent No. 2 was liable for the claimant's wage-loss disability. Respondent No. 2 appealed to the Full Commission.

In an opinion filed December 6, 2006, the Full Commission affirmed the administrative law judge's award of wage-loss disability and his finding that the Second Injury Fund was liable for same. The Full Commission found that

the claimant's attorney was entitled to fees for legal services pursuant to Ark. Code Ann. §11-9-715(a)(2)(B)(ii) (Repl. 2002). We also awarded the claimant's attorney an additional fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b)(2) (Repl. 2002). After a motion filed by Respondent No. 2, the Full Commission found that counsel's additional fee for prevailing on appeal was the responsibility of the Second Injury Fund.

In its new motion, Respondent No. 2 asks the Full Commission to rescind our order making the Second Injury Fund liable for the additional fee provided for in Ark. Code Ann. §11-9-715(b)(2) (Repl. 2002). The Full Commission takes note of *Furman v. Second Injury Fund*, 336 Ark. 10, 983 S.W.2d 923 (1999). In *Furman*, the Arkansas Supreme Court held that the additional fee provided for in Ark. Code Ann. §11-9-715(b) cannot be assessed against the Second Injury Fund.

The Full Commission therefore grants the motion and we rescind our order making Respondent No. 2 liable for the additional fee. One of the purposes of the attorney's fee statute is to put the economic burden of litigation on the

party who makes litigation necessary. *Brass v. Weller*, 23 Ark. App. 193, 745 S.W.2d 647 (1998). We recognize the Commission's finding that Respondent No. 2, Second Injury Fund, is liable for the claimant's wage-loss disability rather than Respondent No. 1. Nevertheless, the record demonstrates that Respondent No. 1 controverted the claimant's entitlement to wage-loss disability and additional temporary total disability. Respondent No. 1 was the party that made litigation necessary. Pursuant to Ark. Code Ann. §11-9-715(b)(1), the additional fee in the present matter is to be paid equally by Respondent No. 1 and the claimant.

IT IS SO ORDERED.

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OLAN W. REEVES, Chairman

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KAREN H. MCKINNEY, Commissioner

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PHILIP A. HOOD, Commissioner