

2014 Division of Workers' Compensation Seminar- Mock Trial

Cast:

ALJ- Karla Boresi, ALJ- St. Louis

**Claimant- Loretta Simon, esq
Counsel for Employee- B. Michael Korte, esq**

**Counsel for Employer/Insurer- Chris Archer, esq
Counsel for SIF- Cara Harris, esq**

**Plant Manager- John Ottenad, ALJ- St. Louis
Coworker Katie- Lee Schaefer, Chief ALJ- St. Louis**

Loretta Cyrus v Lipic's Promotions and Pen Company

Loretta was the Shipping Supervisor of Lipic's Promotions and Pen Company where she had worked for 10 years. She worked full time and was salaried making \$44,000 a year. She worked 7:00am to 4:00pm with a half hour lunch and two fifteen minute breaks. She now is 49 years old but was 43 at the time of the accident. She is married and has four children, the youngest was 15 years old at the time of the accident.

Loretta and her coworkers sometime played yard jarts in the grassy area next to the parking lot. Lipic's did not own the building but leased the structure and property. Management did not seem to mind and was aware of the friendly diversion. Teams and tournaments were arranged with a betting pool during the annual company picnic. Teams made up of employees and their families were drafted a few weeks prior to the annual picnic. A day long tournament at the picnic was enjoyed by everyone.

On June 24, 2008, Loretta was practicing jarts with a few other employees while on break and was severely injured when a co-worker named Katie threw a lawn jart that took out Loretta's right eye. Loretta had limited sight in her left eye from a birth defect. Loretta fell back off the curb onto her back. She was rushed to the hospital. A drug test came back as positive for marijuana.

Freedom Insurance Company denied the case and Atty Mike Korte was retained by Loretta to file a claim for compensation.

Loretta underwent emergency right eye surgery which was not successful. She can see shadows and has limited peripheral vision in her right eye. She underwent conservative treatment for low back initially symptoms but developed right leg pain and numbness. FMLA ran out before she could return to work and she was terminated. Lipic's was self-insured for group health and paid for the emergency room treatment and eye surgery.

A low back MRI eventually confirmed a bulging disc and advanced degenerative changes. After failing conservative treatment, Loretta proceeded to undergo a two level fusion with an adjacent level disc replacement. Her health insurance was cancelled by Lipic's as she was no longer their employee. The bills are outstanding and have not been paid but Loretta has signed a lien from the Doctor seeking payment of the \$635,000 charges including the Surgery Center charges, owned by the back surgeon.

Loretta was evaluated by Dr Shopping who opines the claimant has 100% loss of R eye and 60% PPD low back but is otherwise totally disabled, based upon the fact that she has to lie down during the day and has very limited vision. Claimant's vocational expert opines the claimant is totally disabled.

Defenses' retained expert, Dr No, opines that the claimant has 15% PPD for back condition in total and that the surgery was related to pre-existing degenerative changes despite no reported complaints of symptoms and no prior medical treatment. Defense's vocational expert opines that the claimant can be a Walmart Greeter or ticket taker.

Stipulations:

1. Missouri jurisdiction
2. Venue
3. Employment
4. Notice
5. Comp rate is max for TTD/PPD/ PTD benefits
6. Parties seek a final award

Issues for the Hearing:

1. Did the accident arise out of the claimant's employment?
2. Did the accident occur in the course of the claimant's employment?
3. Application of intoxication penalty under 287.120.
4. Medical causation
5. Past Medical Bills
6. Nature and Extent of Disability
7. Dependency
8. Second Injury Fund Liability