

FINAL AWARD ALLOWING COMPENSATION
(Affirming Award and Decision of Administrative Law Judge)

Injury No.: 00-092792

Employee: Alan D. Avery, deceased

Dependent: Jo Ellen Avery, widow

Employer: Botkin Lumber Company

Insurer: Missouri Wood Industry Insurance Trust/
TPA Cannon Cochran Management Services

Date of Accident: August 10, 2000

Place and County of Accident: Cape Girardeau County, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated November 29, 2007. The award and decision of Administrative Law Judge Gary L. Robbins, issued November 29, 2007, is attached and incorporated by this reference.

The Commission further approves and affirms the administrative law judge's allowance of attorney's fee herein as being fair and reasonable.

Any past due compensation shall bear interest as provided by law.

Given at Jefferson City, State of Missouri, this 24th day of June 2008.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

ISSUED BY DIVISION OF WORKERS' COMPENSATION

FINAL AWARD

Employee: Alan D. Avery (deceased)

Injury No. 00-092792

Dependents: Jo Ellen Avery (widow)

Employer: Botkin Lumber Company

Additional Party: None

Insurer: Missouri Wood Industry Insurance Trust/ TPA Cannon Cochran Management Services

Hearing Date: September 10, 2007

Checked by: GLR/kh

SUMMARY OF FINDINGS

- Are any benefits awarded herein? Yes
- Was the injury or occupational disease compensable under Chapter 287? Yes
- Was there an accident or incident of occupational disease under the Law? Yes
- Date of accident or onset of occupational disease? August 10, 2000
- State location where accident occurred or occupational disease contracted: Cape Girardeau County, Missouri
- Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
- Did employer receive proper notice? Yes

- Did accident or occupational disease arise out of and in the course of the employment? Yes
- Was claim for compensation filed within time required by law? Yes
- Was employer insured by above insurer? Yes
- Describe work employee was doing and how accident happened or occupational disease contracted:
The employee died from a heart attack that he suffered while at work for Botkin Lumber Company.
- Did accident or occupational disease cause death? Yes
- Parts of body injured by accident or occupational disease: Death
- Nature and extent of any permanent disability: Death
- Compensation paid to date for temporary total disability: \$0
- Value necessary medical aid paid to date by employer-insurer: \$0
- Value necessary medical aid not furnished by employer-insurer: \$9,119.30
- Employee's average weekly wage: \$332.94
- Weekly compensation rate: \$221.96
- Method wages computation: By agreement
- Amount of compensation payable: See Award

22. Second Injury Fund liability: N/A

- Future requirements awarded: None

Said payments shall be payable as provided in the statement of the findings of fact and rulings of law, and shall be subject to modification and review as provided by law.

The compensation awarded to the claimant shall be subject to a lien in the amount of 25% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: James E. Hopkins

FINDINGS OF FACT AND RULINGS OF LAW

On September 10, 2007, the employee's widow Jo Ellen Avery appeared in person and by her attorney, James E. Hopkins, for a hearing for a final award. Its attorney, Paul D. Huck, represented the employer-insurer at the hearing. The Court took judicial notice of all of the records contained within the files of the Division of Workers' Compensation. At the time of the hearing, the parties agreed on certain undisputed facts and identified the issues that were in dispute. These undisputed facts and issues, together with the statement of the findings of fact and rulings of law, are set forth below as follows:

UNDISPUTED FACTS

- The employer was operating under and subject to the provisions of the Missouri Workers' Compensation Act, and liability was fully insured by Missouri Wood Industry Insurance Trust.
- On or about the date of the alleged accident or occupational disease the employee was an employee of Botkin Lumber Company and was working under the Workers' Compensation Act.
- The employer had notice of the employee's claim.
- The employee's claim was filed within the time allowed by law.
- The employee's average weekly wage was \$332.94 per week. His rate for all purposes is \$221.96 per week.
- The employer-insurer paid \$0 in medical aid.
- The employer-insurer paid \$0 in temporary disability benefits.
- The parties stipulated that if the employee wins this case, \$9,119.30 in medical bills should be ordered as part of the compensation in this case.
- The parties stipulated that if the employee wins this case, \$158.54 in temporary disability payments should be ordered as part of the compensation in this case.
- The parties stipulated that if the employee wins this case, the funeral bill of \$4,347.31 should be paid as part of the compensation in this case.

ISSUES

- Accident
- Medical Causation
- Previously Incurred Medical Bills
- Death Benefits and Distribution of Death Benefits

EXHIBITS

The following exhibits were offered and admitted into evidence:

Employee's Exhibits

- o Marriage License of Alan D. Avery and Jo Ellen Avery
- o Birth Certificate of Brittany Calhoun
- o Death Certificate of Alan D. Avery
- o Medicare Lien
- o Bill from Amick-Burnett Funeral Chapel in the amount of \$4,347.71
- o Medical bill from Neurological Associates of Cape Girardeau, Inc. in the amount of \$470.00
- o Medical bills from Cape Lab & Pathology in the amount of \$577.00
- o Bills from Cape County Private Ambulance in the amount of \$403.00
- o Medical records from Neurological Associates of Cape Girardeau
- o Medical records from Cape County Private Ambulance
- o Medical records from Immediate Healthcare, Inc.
- o Medical records from St. Francis Medical Center from July 23, 2000 through August 16, 2000
- o Medical records from Cardiovascular Consultants of Cape Girardeau, Inc.
- o Certified Meteorological Records from August 10, 2000
- o Key to METAR Surface Weather Observation/Celsius to Fahrenheit Conversion Chart
- o Deposition of Michael Siegal,
- o Curriculum Vitae of Michael Siegal,
- o Report of Michael Siegal dated January 18, 2003
- o Investigative report detailing statement of Cory Dohogne, Randy Corneal and Reuben Jones

Employer-Insurer's Exhibits

- Supervisor's Incident/Accident Review Report dated 8/10/00
- Form 1/Report of Injury dated 8/11/00
- Deposition of David A. Law, M.D.
- Affidavit/Admission Records of Alan D. Avery from Gibson Recovery Center
- Additional records of Intermediate Health Care (supplements Employee Exhibit K)

STATEMENT OF THE FINDINGS OF FACT AND RULINGS OF LAW:

STATEMENT OF THE FINDINGS OF FACT-

Alan D. Avery was an employee of Botkin Lumber Company. On August 10, 2000 he had a heart attack at work. He never regained consciousness and died at St. Francis Medical Center on August 16, 2000, and was forty-one years old at the time of his death,

Botkin Lumber Company/Botkin is located in Cape Girardeau County, Missouri. They are in the business of preparing and cutting stock to be used in the manufacture of wooden pallets. In order to make the pallets, Botkin employs twelve to fifteen people to work on a production line. Some of the different jobs on the production line involve rating and grading lumber, operating a chop saw, operating a champfer machine and stacking short and long lumber.

Several witnesses who worked for Botkin and were working on the production line at the time the employee had his heart attack testified at trial. Each of the witnesses had signed a written statement prior to their trial testimony. None of the witnesses worked for Botkin at the time of the trial. In general they testified about the different types of work at

Botkin, described the physical plant and working environment, their relationship with the employee, and what they observed when the employee had his heart attack.

John Reuben Jones testified that he worked for Botkin on two occasions for approximately one year each time. He indicated that he worked as a chop saw operator and a grader. He described the job of operating the chop saw as a very strenuous job as well as being the fastest and most difficult job on the production line. He indicated that workers would work two-hour shifts at the different jobs and then change jobs at the end of the two-hour period. He testified that the chop saw operator had to lift every board for the two hours shift and was constantly pulling boards with his left hand to load them into the chop saw. He indicated that the job was more physically demanding if you were working with stock as long as twenty to twenty-four feet as that lumber was heavier. He further testified that everyone on the production line was paid by piece rate-everyone was paid the same way. If everyone worked hard and fast, everyone got paid more, essentially there would be more pay for the more you produced.

Mr. Jones indicated that the production line is in a building that has no air conditioning and is always twenty degrees hotter than it is outside. He said the building had three sliding doors on the west and north sides and had twenty-five foot ceilings with fans, however, if there was no breeze you had no ventilation. He testified that the production line had no water jugs, you had to provide your own, and that the bathroom was approximately fifty feet from the line. He further indicated that the machinery did not produce much heat as they ran by air.

He also testified that he was working twenty-five feet away from the employee when he had his heart attack. He testified that he saw him go down and he then shut the line down. He testified that earlier in the shift, prior to his collapse, he looked at the employee and he looked okay. He testified that he collapsed somewhere in the 2nd period beginning at 6:30 PM and ending at 9:00 PM, and that he had been operating the chop saw. He further testified that prior to his collapse, the employee was a pasty blue color, was slow and trying to stay up, and was not conscious when he collapsed. After his collapse, other employees administered CPR and 911 was called.

Mr. Jones testified that he only knew the employee from working with him, but was aware that he had previously left work to go home or to the ER as the employee thought he had heart problems and had complained about chest pains. He also testified that the employee had requested light duty work prior to his collapse but he did not know when. He said the employee was not given light duty. He also testified that the employee smoked but he did not know if he used drugs.

Randy Curneal was working on the production line with the employee on August 10, 2000. He also testified that operating the chop saw was a physically demanding job and that the chop saw operator set the pace. He said operating the chop saw was the hardest work of all. In addition he testified that in the summer it is very hot and that it was fifteen to twenty degrees hotter inside than outside. He testified that they did not have many slackers on the line as everyone got paid the same and if someone was not keeping up, the others got upset.

Mr. Curneal testified that he only saw the employee after his collapse as he was working in the back of the building. He knew something had happened as the line stopped and everyone quit working. He testified that he started work with the employee on August 10th and he seemed to be fine. He testified that he was not aware if the employee left work prior to August 10th due to health problems, but indicated that the employee told him prior to his collapse that he was supposed to be on light duty. He further testified that he knew Botkin had light duty as he was placed on light duty for a work injury, but he did not know what the light duty policies were. He further testified that he knew that the employee smoked cigarettes, but did not think he used drugs and did not know he had gone to drug rehabilitation. He indicated that he knew the employee was seeing a doctor for a medical condition.

Corey Dohogne was working on the production line with the employee on August 10, 2000. He testified that he is the employee's nephew. He testified that he worked for Botkin about three to four years from approximately 1998 to 2002. He operated the chop saw and confirmed it was one of the most demanding jobs at Botkin.

He testified that on August 10th he saw the employee next to the office prior to his shift and said that the employee talked to Mr. Hargrove. Mr. Dohogne testified that he knew the employee had been off August 9th. He testified that he heard the employee say that he was feeling great, that he was ready to go to work and was feeling better than he

had in a long time. He also testified that he knew that the employee had been given a light duty slip and came to work with one on August 10th. He indicated that the employee gave a slip to Mr. Hargrove, and when Mr. Hargrove asked him how he was doing, that is when he said he was feeling great. He testified that this happened four to five hours before the employee collapsed. He was asked about a statement that he had previously provided and said the state was essentially correct except for the part about light duty.

Mr. Dohogne further testified that even though there were light duty jobs available, the employee was working the chop saw and was not given light duty on August 10th. He further confirmed that the temperature in the building was very hot, twenty to thirty degrees hotter inside than outside. He testified that there were soda machines that were available at the breaks, as you could not walk off the line. He indicated that you sweat a lot and that your clothing get completely wet all the way to the knees. He also confirmed that everyone was paid by piece rate and the more you did, the more money everyone made.

On August 10th, he testified that he did not actually see the employee working as he was at the other end of the line. He indicated that he found out that the employee collapsed as lumber quit coming down the line. He testified that they were working 2nd shift and that the employee collapsed somewhere between eight and nine PM. He reported that the employee was not conscious when he saw him and that he was on the floor with others gathered around him. He indicated that when you arrive at work the supervisor assigns where you start on the line and where you go after every break. He further testified that the employee was operating the chop saw at the time of his collapse. He indicated that he would have been operating the chop saw from the end of the last break.

Mr. Dohogne testified that he knew the employee had problems a couple of weeks before his collapse. He reported that the employee had complained of chest pains in the past and had slowed the line down. He testified that he knew the employee had been to the doctor two times and that he was told to use inhalers and was told to return to work. He confirmed that the employee smoked cigarettes but he did not know he was treated for drug abuse.

He also stated that Ms. Avery came to the plant right after the husband had collapsed and was there before the emergency personnel got there.

Jo Ellen Avery, the employee's wife also testified at trial. She testified that she is forty-five years old and married her husband in 1992, but they did not have any children. She also testified that she had a daughter from a prior marriage named Brittany. Her father is unknown and has never provided any support. Ms. Avery testified that the employee never adopted Brittany. At the time of trial Brittany was twenty years old, was not a full time student, was not in the military and was not disabled. On August 16, 2000, she was living in the employee's household, but is currently living with her grandmother. Ms. Avery testified that she was the only one that depended on her husband for support at the time of his death.

Ms. Avery testified that her husband worked for Botkin from March 2000 to the time of his death. She testified that while she does not remember how many times, her husband first came home from work complaining of chest pains towards the end of July 2000. She further testified that once he got home he was fine and that he never complained of these problems after being at home. Near the end of July 2000, she testified that she took her husband to St. Francis Medical Center for a check up. She indicated that they did a stress test and the results were negative. About the first week in August she indicated that her husband again came home complaining of chest pain and got care at Immediate Healthcare. She testified that she went with her husband and they gave him nitro, took x-rays, performed an EKG, and gave him antibiotics and an inhaler to use. In addition she reported that Immediate Healthcare gave her husband a note to take to work and scheduled a follow up appointment about a week later. She indicated that the follow up appointment was scheduled for the same day that he collapsed at work. She further testified that on August 10, 2000 she saw her husband prior to work. At that time she reported that her husband looked good and told her he was okay.

Ms. Avery testified that she was aware of her husband's shortness of breath before his heart attack, but was unaware of a history of asthma. She was also aware that her husband smoked cigarettes, but testified that she did not know that he had been told to quit smoking and was unaware that he had been given samples of Wellbutrin. She indicated she did not know of any earlier heart problems. She further testified that she was unaware of any convictions that her husband may have had, was unaware that he used cocaine, marijuana or heroin and was not aware that her husband had been in

drug treatment for four months in 1999 and 2000. She admitted that she was aware that her husband was in the Gibson Center for two weeks and got out in March 2000. She testified that her husband started his employment at Botkin on March 12, 2000.

Ms. Avery testified that she found out about her husband's collapse as a nephew told her that he heard the report on a scanner. She indicated that she went to Botkin and got there about the same time as the ambulance. She indicated that he was unconscious when she got there and never regained consciousness before his death on August 16, 2000. After her husband's death, Ms Avery testified that she received a bill from Amick-Burnett Funeral Home in the amount of \$4,347.71, and in addition received other medical bills. She testified that she has not remarried since the death of her husband.

In addition to the testimony of live witnesses, the parties offered various documentation, medical records and the testimony of expert medical witnesses.

Employee Exhibit C is the death certificate of the employee indicating that he died on August 16, 2000. The cause of death was reported as "a. anoxic encephalopathy b. acute myocardial infarction".

Employer-Insurer Exhibit 1 is a Supervisor's Incident/Accident report indicating that on August 10, 2000 at 8:20 PM, Mr. Avery had a heart attack. The Description of Incident portion indicates, "Alan stopped chopping to catch his breath, he looked pail. His eyes rolled back in his head. Then he fell to the ground. I Ryan Heilman ran to call 911. Rick Evans and Ryan Pobst delivered CPR. Ambulance then showed up to take Alan to hospital". The report further indicates that Ryan Heilman investigated the accident and said it was caused by bad health.

Employer-insurer Exhibit 2 is the Report of Injury filed in this case. The report indicates that the employee was cutting lumber at a chop saw. He was working at a steady pace, overcome by health conditions, suffered heart attack.

The first medical care regarding the employee's chest pain in 2000 begins on July 23, 2000. At that time Dr. Retter treated the employee as he was complaining of chest discomfort while working at Botkin. A summary of his records indicates:

It made him short of breath but no other symptoms. The employee thought it was gas indigestion. The employee had gone to the ER and was admitted for observation. Once in the hospital no reoccurrence of chest discomfort. The employee reported no history of chest discomfort. He also said that he does vigorous work at the lumberyard and did not get any sort of chest discomfort other than this occasion. When admitted, the electrocardiogram was normal. The employee did a Cardiolute treadmill stress test. He exercised for 12 minutes 14 seconds and had no discomfort during the test and slight discomfort after test. The Cardiolute scan was normal. The doctor reported that the employee's chest discomfort was noncardiac in etiology.

On August 2, 2000, the employee was treated at Immediate Healthcare. The nursing notes show that the employee complained of chest pain and shortness of breath for one week and indicated that heat seems to bring on dull pain. He reported that he had been admitted and did a stress test about a week earlier. The records indicate that the employee was diagnosed with bronchitis and heat induced asthma. The employee was prescribed medications and given 33 samples of Wellbutrin. The records further indicated that the employee should not work on August 2, 2000.

On August 9, 2000, Nurse Tina Moore prepared a report stating that the employee had been diagnosed with bronchitis and heat induced asthma. She indicated that the symptoms were being addressed with inhalers and medications. She indicated that the employee should not work on August 9, 2000.

The Cape County Private Ambulance records dated August 10, 2000 indicate that they received a call for emergency services at 2013 hours and arrived at Botkin Lumber at 2023 hours. They provided emergency

treatment and started the employee on a ventilator and transported the employee to St. Francis Medical Center

Dr. C.R. Talbert and Dr. Gardner were the main physicians who treated the employee at St. Francis.

A summary of Dr. Talbert's records indicate that:

The employee was admitted two weeks earlier with chest pain. No history of heart disease. Pain stabilized and the employee did a treadmill test. One of his notes reads, "However since discharge he began to have episodes of chest pain and was forced to return home on several occasions. Finally, today he continued to work despite chest pain all day and coworkers state he looked "terrible" during the entire day. Suddenly tonight the patient collapsed at work totally, no respirations or pulse present, and cardiopulmonary resuscitation was immediately carried out by his coworkers who witnessed the arrest". An ambulance was called. The employee was treated and brought to the ER. The employee was comatose at the ER. The employee was treated. Electrocardiogram showed acute massive acute anteroseptal myocardial infarction present.

Dr. Talbert further reported, "The patient previously used street drugs of cocaine, heroin and marijuana as late as February, 2000, but wife states and the patient stated two weeks ago he had not used since that time. He does continue to smoke at a reduced system of one-half pack daily, perhaps in recent weeks in an attempt to discontinue smoking". The patient had been on medications since his diagnosis of possible pneumonia one week ago.

A death summary was prepared by Dr. Talbert and indicated:

The employee came in and was initially stabilized in the ER. Severe heart damage shown. B/P barely controlled. Had brain problems due to lack of oxygen. Angiogram and angioplasty done. Showed problems. Pacemaker put in. Family told chances of survival almost zero. The employee disconnected from life support August 10. He was comatose. Employee dies August 16.

Dr. Gardner was called in for a neurologic consultation and reported that the employee had a seizure. On exam he was unresponsive. His impression was anoxic encephalopathy.

Dr. Talbert gave a final diagnosis of:

"1. Arteriosclerotic heart disease with acute large anterior myocardial infarction and secondary ventricular fibrillation.

- Acute anoxic encephalopathy secondary to cardiac arrest and ventricular fibrillation persisting and not resolved."

Various other records presented show that there are outstanding bills related to the employee's medical care:

- Social Services lien for \$7,669.30
- Bill from Amick-Burnett Funeral Chapel showing a funeral bill of \$4,347.71 with \$3,772.71 unpaid
- Medical bill from Neurologic Associates of Cape Girardeau, Inc. for \$470.00
- Medical bills from Cape Lab and Pathology for \$577.00
- Medical bill from Cape County Private Ambulance for \$403.00

Meteorological studies presented by the employee indicate that on August 10, 2000 at 2053 hours it was 24 degrees centigrade and at 2153 hours it was 22 degrees centigrade

In addition to all of the other evidence in the case, both the employee's counsel and the employer-insurer's counsel retained the services of medical consultants to evaluate the employee's case. Both medical experts reviewed medical records, prepared a report and testified at a deposition.

The employer-insurer retained Dr. David A. Law. He is a cardiovascular physician. Dr. Law prepared a

medical report dated July 27, 2005 and testified by deposition on May 9, 2006. He had opinions about the type or nature of the coronary event of the employee. He opined, "Mr. Avery succumbed to an acute coronary event related to a plaque rupture of the proximal left anterior descending coronary artery that ultimately resulted in his death". He further opined that work was not a substantial factor in the cause of the employee's coronary event. He says that the employee's coronary event cannot be said to be a natural incident of working at Botkin. He also stated that the employee's coronary event cannot be fairly traced to the employee's employment at Botkin as a proximate cause. In addition his opinion was that the employee's work at Botkin cannot be fairly traced to be either a proximate or substantial cause of his coronary event.

Dr. Law also testified that the employee's coronary event was proximally caused by risk factors unrelated to his employment at Botkin. He testified that the basis for his opinion is that while he did not examine the employee firsthand, but looked at what was in records and found that the employee had behaviors or habits that dramatically increased his risk of an acute cardiac event such as smoking and a history of illicit drug use. Dr. Law further testified that in order to have a heart attack and die, you actually have to have the substrate for that to happen. The substrate that causes that is a combination of the behaviors that you do, such as the poor lifestyle choices you make and somewhat genetics-without that you can't have a heart attack or stroke-you have to have the underlying disease to have the event. He stated that these same behaviors dramatically increase that if you have small blockages or the disease that it will become clinically relevant and cause a heart attack or acute heart, which looks like, what happened to the employee. Dr. Law testified that his opinion was that the employee's event or illness is a result of those factors and not the activity that he was engaged in at the time that things actually occurred.

Dr. Law further reported that the employee had a history of a pack of cigarettes a day for 20 years-smoking itself puts a person at increased risk of having an acute coronary event. He also testified that smoking can also increase blood pressure levels and that tobacco abuse is associated with increased incidences of plaque rupture and plaque destabilization.

Dr. Law indicated that by history the employee had used cocaine, heroine and marijuana at least up until February 2000. He testified that cocaine is absolutely linked to heart disease-it can cause damage to the arteries, aneurysms of the arteries, can cause the heart muscle to get weak, and can cause coronary spasm resulting in a heart attack even in the absence of a significant constructive disease. He testified that cocaine is a bad actor when it comes to heart disease.

Dr. Law further testified that acute plaque ruptures associated with underlying coronary artery disease absolutely can occur spontaneously with or without exertion or emotional distress. He stated that the employee's coronary event could have also occurred spontaneously off the job.

Dr. Law was cross-examined by employee's counsel about the factors that he utilized in formulating his opinions. Dr. Law agreed with many of the statements asked by counsel. He agreed:

1. That the July 23, 2000 ER record indicated the employee reported severe chest pain from unloading lumber from a conveyor belt-the pain was relieved with rest-and it came back when he went back to work. The doctor looked at the discharge summary and further agreed that it indicated that:

- the employee had chest pain when lifting 18-foot long 2 x 6's off a conveyor belt at work
 - it also shows that he had no similar history of chest pain as of July 23, 2000.
 - the employee was doing vigorous work in the lumberyard when he developed the chest pain
 - once the employee was in the hospital the records show he had no reoccurrence of chest pain.
 - records also show that the employee had no history of chest pain prior to July 23, 2000.
 - the employee's mom died of a myocardial infarction at age 72
- That the medical records from Immediate Healthcare dated August 9, 2000 indicate:
 - that the employee had been diagnosed with bronchitis and heat-induced asthma and they were

working to alleviate symptoms with inhalers and medication Dr. Law said he did not have this information earlier but indicated that it would not necessarily change his opinion.

- o Dr. Law agreed that people with asthma have shortness of breath without treatment.
- o that the records indicate the employee's attack was heat induced.
- o Dr. Law agreed that by the records the employee had an acute myocardial infarction at work on August 10, 2000.
- o the records show that the employee used illegal drugs daily until February 2000.
- o the employee was unconscious upon admission to the hospital therefore he gave no history.
- o the employee's wife says he hadn't used any illegal drugs since February 2000.
- o there is not any evidence that the employee died from drug overdose but snorting cocaine could cause you to have a MI and keel over.
- o there was no autopsy.

Dr. Law testified that the employee died from a large anterior lateral wall myocardial infarction as a result of a plaque rupture. When talking about the rupture he pointed out that on July 23, 2000, the employee did a stress test and ran for 12 minutes 14 seconds-he said this is an incredible workload. He testified that it would be next to impossible to miss a high-grade lesion in a stress test result like that. He concluded the employee could not have blockage of more than 70%. The doctor testified that this supported his opinion that the employee had a plaque rupture and that is what caused his heart attack.

Dr. Law went on to discuss other statements/questions of employee's counsel:

- in the past ten days or so before his death the employee complained of chest pain and shortness of breath as beginning at work.-the doctor agreed except for August 2nd where the employee complained of chest pain and shortness of breath for one week.
- in talking about the difficulty of the employee's job-the doctor says it is unlikely it was as demanding as 12 minutes 14 seconds on a treadmill.
- the doctor agreed that the employee's work environment was very hot.
- the doctor agreed that heart attacks can be precipitated under different conditions and heat and physical exertion are two conditions. The doctor agreed that the employee had both of these.
- the doctor agreed that there are studies that show that heavy physical exertion often immediately precedes and triggers the onset of acute attacks.
- the doctor agreed that the causative nature of heat and physical exertion in causing heart attacks is well documented.

Dr. Law was asked a hypothetical question assuming the following factors:

- the employee had chest pains at work on several occasions
- there is no evidence of chest pains outside of work except August 2 where he said he had pains for a week
- the employee had difficulty breathing in heat
- the employee got treatment one day prior to his heart attack
- the employee's work environment was hot and required vigorous exertion
- the employee had a heart attack on August 10, 2000.

The doctor was asked, "Don't you agree that work was a factor in causing his heart attack and subsequent death?", and responded, "I think it was a factor. I just don't think it was the preeminent factor. I think there is not enough evidence that this could be primarily blamed on his work environment". Dr. Law further testified that he did not think work was a substantial factor. He said it happened at work, but he did not believe that work was the preeminent or more

substantial than the other things he stated. The doctor testified, "My personal belief is it was not the substantial or a substantial factor in his demise. I think there are many other things that were more substantial". The doctor testified that the employee's plaque rupture and subsequent myocardial infarction would not have occurred without the employee having underlying coronary disease.

The employee retained Dr. Michael Siegal. Dr. Siegal is board certified in both internal medicine and cardiovascular disease and practices in both fields. He prepared a report dated January 18, 2003 and testified by deposition on April 13, 2006. After reviewing all the records the doctor formulated opinions regarding the employee's heart attack and subsequent death. He reported that:

- the employee was found on cardiac catheterization to have very significant coronary artery disease and such disease can be present for many years without presenting symptoms and at some point become symptomatic
- it is often difficult to figure out why coronary artery disease becomes symptomatic but there are certain situations that are more likely to cause it to become symptomatic-one of the most common is physical exertion
- the history from the employee's presentation at the hospital prior to August 10, 2000 suggests that he first developed symptoms at work at the lumberyard where he was performing significantly taxing physical exertion
- between July 23 and August 10 the employee presented with multiple additional episodes of chest pain which occurred with significant physical exertion during work.
- there was also a significant problems with heat during that time-the doctor was forced to conclude with heat and perspiration and loss of body fluid, that the additional stress of heat induced dehydration further exacerbated the stress created by physical exertion in the setting of severe coronary artery disease as one of the series of components of the workplace situation which contributed substantially to the development of his heart attack.

Dr. Siegal's opinion was that the heat and physical exertion at Botkin Lumber was a substantial factor in causing the employee's heart attack and subsequent death. In addition, Dr. Siegal testified that there were other factors in the workplace that other employee's referred to that he considered:

- there was a volume incentive-the more you worked the more money you made-the employee would do as much physical exertion as he would tolerate in order to earn more money.
- there was also a suggestion of peer group pressure.
- in a setting of an acute coronary syndrome and work that is significantly physical taxing, those aspects of the workplace certainly exacerbated the situation.
- another work factor that the doctor pointed out was supervisor pressure in that the employee apparently asked for light duty, was denied and was told to not show up if he could not work.

Dr. Siegal testified, that from a cardiological point of view, these factors would have increased both the physiological demands on his heart, the psychological stress which worsens the likelihood of coronary artery disease becoming symptomatic and dehydration and volume depletion which would exacerbate the supply and demands in balance that occurs and can often trip coronary artery disease from being asymptomatic to symptomatic.

Dr. Siegal further testified that in the literature, psychological stress, physical exertion and temperature and heat are well know factors that cause exacerbation on cardiac problems; and added that based on the information provided to him, all of those factors were present in the employee's job at Botkin Lumber. He restated his position and testified that the heat, the physical exertion, the psychological pressure all lead to his opinion that the employee's employment at Botkin Lumber was a substantial factor in causing the acute anterolateral myocardial function followed by cardiopulmonary arrest.

Dr. Siegal further opined that the work at Botkin Lumber was a substantial factor in causing the employee's

death, all of his opinions are within a medical certainty, and that all of the treatment that the employee received was reasonable and necessary to treat the employee's chest pain and subsequent heart attack and death.

Dr. Siegal underwent an extensive cross-examination by the employer-insurer's counsel concerning the factors he used in formulating his opinions. Dr. Siegal admitted that he was not privy to certain information and like Dr. Law, agreed to many of the questions/statements that he was asked about.

Dr. Siegal confirmed that:

- he did not know whether the information reported to him was true or not
- he did not have a copy of the employee's widow's deposition testimony
- he did not have a copy of the employee's job duties
- he did not know what the employee's workload consisted of
- he had no personal knowledge about the conditions of the workplace on August 10, 2000
- he does not know whether the employee asked for light duty
- he does not know if the employee was complaining of chest pain at home
- he does not know what the actual temperatures were in the workplace on August 10, 2000

Dr. Siegal also agreed to many of the statements that were posed to him. He agreed that:

- the use of tobacco, cocaine, heroin, a Proventil inhaler, elevated blood pressure, elevated glucose levels, elevated cholesterol levels, a family history, and that children of people who have heart disease are more likely to have heart disease, are all relevant when preparing a causation opinion re myocardial infarction. Dr. Siegal testified that he was asked to give his opinion on whether or not the work that the employee performed and the conditions he worked under were substantial factors in the employee experiencing a myocardial infarction-he pointed out that he was not asked to consider whether there were other substantial factors. (emphasis added).
- he agreed that smoking is a major risk factor for coronary artery disease and heart attack and that smoking is a powerful independent risk factor for sudden cardiac death for patients with coronary artery disease. He agreed that smokers have two times the risk of developing coronary artery disease-also that when smokers have a heart attack they are more likely to die. Also that nicotine and carbon monoxide in tobacco smoke can cause damage to the cardiovascular system. He agreed that nicotine decreases the oxygen to the heart, nicotine can increase blood pressure and heart rate, can increase blood clotting, can damage the cells that line the coronary arteries and blood vessels, and reduces good cholesterol. He further agreed that smoking increases the risk of plaque rupture that would break away and result in myocardial infarction, that the more cigarettes a person smokes and the longer they smoke the more they are at risk for heart attack, and agreed that when you combine risk factors, along with smoking that a person is even at greater risk. Dr. Siegal said he was aware of the employee smoking history and agreed that people who smoke a pack of cigarettes a day are at twice the risk of nonsmokers. He further agreed that smoking a pack a day for 20 years is chronic abuse and chronic tobacco use is a risk factor for increasing a person's risk for heart attack. Dr. Siegal agreed that smoking a pack a day for 20 years is relevant to the major risk factors for the employee's heart attack.
- Dr. Siegal agreed that the employee had an elevated blood pressure, but added that the employee's elevated blood pressure would be a risk factor for the development of coronary heart disease but would not be the cause of his heart attack. He says they are separate issues.
- Dr. Siegal agreed that diabetes is a well-known major risk factor for coronary heart disease and heart attack and further agreed that the employee's glucose reading of 339 indicated that he was diabetic or pre diabetic.
- Dr. Siegal agreed that there are several cardiovascular complications related to the use of cocaine such as chest pains and heart attacks, and that fatal arrhythmias and blood clots can be related to the use of cocaine and can lead to heart attack. In addition he agreed that the use of cocaine can increase

a person's heart rate, breathing rate, body temperature and can cause sudden death on first use or unexpectedly at a later time. He also agreed that he was aware of the history regarding the employee's cocaine use and said that cocaine use definitely increased the employee's risk for coronary artery disease.

- Dr. Siegal agreed that by record he was aware of the employee's use of marijuana and indicated that within an hour after smoking marijuana the risk of heart attack increases about 5 times. It also increases blood pressure and rhythm. However, the doctor added that if the employee stopped using marijuana in February 2000, he would have difficulty relating it to the risk of coronary artery disease.
- Dr. Siegal testified that he is not aware of the effects on the heart due to heroin use.
- Dr. Siegal indicated that Proventil inhalers can cause significant changes in systolic and diastolic blood pressure-can cause tachycardia. He is also aware that cardiac arrest and even death have been associated with the use of such inhalers. He is aware that in the Immediate Healthcare record there was a history for the prescription of Proventil inhalers and agreed that if the employee did use such inhalers the eight days before his death, it could have exacerbated his symptoms.
- Dr. Siegal was asked about Wellbutrin and indicated that he is aware of the manufacturers warning regarding Wellbutrin use with patients with a history of myocardial infarction or unstable heart disease. He also was aware that on August 2, 2000, the employee was given 33 samples of Wellbutrin. He indicated that if the employee took the Wellbutrin it could have increased his blood pressure, but he could not say that it did or did not contribute to a heart attack.
- Dr. Siegal was questioned about the effects of heat on the employee's condition and testified that the only basis that the employee's symptoms were related to heat was based on what he reported to Immediate Healthcare. He speculated that the employee could have been having the same symptoms at home-shortness of breath due to heat and added that had no knowledge of the employee's conditions at home. He also agreed that the employee could have had chest pain and shortness of breath regardless of the temperature.
- Dr. Siegal agreed that developing pneumonia, COPD and other serious breathing problems could lead to situations that put a person at increased risk for myocardial infarction.
- Dr. Siegal further agreed that occlusions can occur in different ways, and that without an autopsy there is no way of knowing whether plaque rupture or some other thing caused an occlusion. He also agreed that a plaque rupture could occur regardless of the circumstances of the patient at the time of the rupture. He also agreed that the employee had a 50% blockage/occlusion of the left circumflex coronary artery, but added there has to be a 70-80% blockage to cause problems.

Dr. Siegal testified that the employee was subject to a number of risk factors for heart disease before his myocardial infarction on August 10, 2000. He also agreed that the employee was not in good health. He also agreed that the employee exhibited chest pains symptoms before August 10, 2000, but pointed out that they occurred at work in response to heavy exertion. He testified that you could have coronary artery disease and have it be asymptomatic for an extended time-he says the issue is what are the factors that make it more likely that an event will occur. He points out some of those are:

- physical exertion
- stress
- exposure to any agent that will increase the tendency of the blood to clot

However, Dr. Siegal went on to testify that the employee's personal risk factors such as:

- smoking abuse
- reported use of cocaine, heroin and marijuana
- family health history
- male sex

- elevated cholesterol levels
- high density lipo proteins
- approaching elevated hypertension
- elevated levels of blood glucose
- probable diabetes
- use of Proventil inhaler

by themselves or in total could not have been the major factors in causing the employee's myocardial infarction on August 10, 2000. Dr. Siegal testified that you have to distinguish between risk factors for the development of coronary artery disease, and distinguish those from factors that would contribute to the development of an acute cardiac event, as you can develop coronary artery disease and have it be asymptomatic for an extended period of time. He testified that the issue in this case is of the risk factors involved in this case what factors would make it more likely that an event will happen. Dr. Siegal indicated that all of the employee's problems combined to put the employee at risk. He says risk factors that lead up to the development of chronic disease are most of the things that the employee had and then there are specific events that are linked to an acute event that actually causes the problem.

Dr. Siegal agreed that the employee could have a myocardial infarction while not at work, but the work conditions were substantial factors in causing the heart attack. He clarified that what he is saying is that all of the preexisting factors were an exacerbation of the employee's pre-existing coronary artery disease and they precipitated the acute cardiac event.

Finally, Dr. Siegal testified that the smoking, illegal drugs, developing hypertension, probable diabetes, poor HDL/LDL ratio, developing early pneumonia, probable use of Proventil inhalers, family history, male sex-all of these as a combination would have been an additional substantial factor in the cause of the employee's heart attack. He confirmed that his medical opinion to a reasonable degree of medical certainty is that the employee's employment at Botkin Lumber Company was a substantial factor in causing his heart attack and subsequent death.

RULINGS OF LAW-

Accident and Medical Causation

The test for determining whether a heart attack is compensable is covered under the general statutory definition of accident as set forth in Section 287.020 RSMo. Although other sections may be applicable, the key statutory threshold for compensability is set forth in Section 287.020.2 RSMo. Under the version of Section 287.020.2 RSMo. that was in effect at the time of the employee's accident, the term accident is defined:

2. "The word accident ... shall ...be construed to mean an unexpected or unforeseen identifiable event or series of events happening suddenly or violently, with or without human fault, and producing at the time objective symptoms of an injury. An injury is compensable if it is clearly work related. An injury is clearly work related if work was a **substantial factor** (emphasis added) in the cause of the resulting medical condition or disability. An injury is not compensable merely because work was a triggering or precipitating factor".

- o "(1) ... the term injury is hereby defined to be an injury which has arisen out of and in the course of employment. ...

(2) An injury shall be deemed to arise out of and in the course of the employment only if:

- (a) It is reasonably apparent, ... that the employment is a substantial factor in causing the injury; and
- (b) It can be seen to have followed as a natural incident of the work; and
- (c) It can be fairly traced to the employment as a proximate cause; and
- (d) It does not come from a hazard or risk unrelated to the employment to which workers would have been equally exposed outside of and unrelated to the employment in normal nonemployment life".

A portion of the statute and a principal threshold requirement of the statutory language is "a substantial factor". It is

important to note that the legislature did not create a standard that required that work event to be “the substantial factor”. In addition, as this accident occurred in 2000, the current “prevailing factor” standard is not applicable.

The burden of proof is on the claimant to prove not only that an accident occurred, and that it resulted in an injury, but also that there is a medical causal relationship between the accident, the injuries, and the medical treatment for which he is seeking compensation. **Dolan V. Bandera’s Café and Bar**, 800 S.W. 2d 163 (Mo. App. 1990). The employee has the burden of proving that there is a medical causal relationship between the accident, the injuries and the medical treatment for which compensation is being sought. **Griggs v. A. B. Chance Company**, 503 S.W. 2d 697 (Mo. App. 1973). In order to prove a medical causation relationship between the alleged accident and medical condition, the employee in cases such as this involving any significant medical complexity must offer competent medical testimony to satisfy his burden of proof. **Brundige v. Boehringer Ingelheim**, 812 S.W. 2d 200 (Mo. App. 1991).

It is the responsibility of the Court and hence the Labor and Industrial Relations Commission to evaluate and determine the credibility of medical witnesses. As **Hall v. Country Kitchen Restaurant**, 936, S.W. 2d 917 (Mo. App. S.D. 1997) pointed out:

“The decision to accept one of two conflicting medical opinions is an issue of fact for the Commission.” **Johnson v. Denton Const. Co.**, 911 S.W. 2d 286, 288 (Mo. banc 1995); see also **Duncan v. Springfield R-12 Sch. Dist.**, 897 S.W. 2d 108, 113 (Mo. App. S.D. 1995) (holding that “where the right to compensation depends upon which of two conflicting medical theories should be accepted, the issue is peculiarly for Commission’s determination”).

Thus the employee has the burden of proving that his work at Botkin was a substantial factor in causing his alleged heart attack of August 10, 2000. In order to be successful and prove a compensable accident and medical causation, the employee has the burden of proving that the employee’s work related stress or the physical activity was a substantial factor in causing either the coronary artery disease or myocardial infarction and was clearly work related. The burden is still on the claimant to prove all material elements of his claim. See **Melvies v. Morris**, 422 S.W. 2d 335 (Mo. 1968) and **Griggs v. A.B. Chance Company**, 503 S.W. 2d 697 (Mo. App. 1973).

When you review the case law on heart attacks and compare those cases where compensation was granted, such as **Johnson v. City of Duenweg Fire Department**, 735 S.W. 2d 364 (Mo. Banc 1987) (firefighter who had severe chest pains while fighting a fire), **Ham v. Sikeston Concrete Products**, 735 S.W. 2d 427 (Mo. App. S.D. 1987) (an employee sustained a fatal heart attack while engaged in an insurance inspection that involved strenuous exercise), **Counts v. John Fabick Tractor Co.**, 745 S.W. 2d 839 (Mo. App. E.D. 1988) (a fatal heart attack that occurred after the worker maneuvered a 250-275 pound motor on a winch) and **Low v. ACF Indus.**, 772 S.W. 2d 904 (Mo. App. E.D. 1989) (a union business manager who died at an annual picnic after having engaged in strenuous activity); to those cases where compensation was denied, you find that a consistent factor in the compensable cases is that the employee sustained a heart attack while he was actually engaged in stressful/strenuous physical activity and he was actually doing his job. These facts were not present in the denied cases as the consistent factor in those cases is that the employee later, while not at work, had a heart attack and then said it was due to his work. In **Wynn v. Navajo Freight Lines Inc.**, 654 S.W. 2d 87 (Mo banc 1983), the Court declined to adopt a different standard of proof in cases involving preexisting heart disease versus cases in which no prior disease was present. **Cahall v. Cahall**, 963 S. W. 2d 368 (Mo. App. 1998), provides that there is no bright line test or minimum percentage defining a substantial factor. A causative factor may be substantial even if it is not the primary or most significant factor. The Court also held that evidence showing that a work accident is a triggering event does not mean that the accident cannot also be a substantial factor in the context of a given case. The Court held that one-third of a cause may be sufficient to be a substantial factor. As both parties have agreed that the credibility of the expert medical opinion is critically important in this case, this standard is certainly relevant to a decision when comparing the testimony of Dr. Law to that of Dr. Siegal.

Any assessment of the medical opinions of Dr. Law and Dr. Siegal has to be made in light of the existing statutory and case law that existed in 2000, which the Court has just set out. At trial the parties stipulated to all issues other than accident and medical causation and indicated that the ultimate decision in this case will be made by a determination whether the opinions of Dr. Law or Dr. Siegal are found to be more credible. The Court went to a lot of effort and took several pages of this award to set out the respective opinions of the doctors, and the factual information that they used to support their opinions.

From a factual standpoint, the doctors essentially relied on the same information-the difference is the importance they placed on the information they considered, and in their interpretation of that information. The main point that they disagreed on is the difference between coronary artery disease and risk factors related to that disease, and the factors that would contribute to the development of an acute cardiac event. Both doctors agreed that the employee was not in good health and had several risk factors that could cause coronary artery disease. They both discussed the overall general health indicators of the employee's physical condition that documented the likelihood of his coronary artery disease-the Court set this information out; and then provided the doctor's opinions about what was or was not a substantial factor.

Among many other questions, Dr. Law was asked whether work was a factor in causing the employee's heart attack and subsequent death. At his deposition he testified and provided causation opinions in several ways using different terminology:

- "Mr. Avery succumbed to an acute coronary event related to a plaque rupture of the proximal left anterior descending coronary artery that ultimately resulted in his death".
- Work was not a substantial factor in the cause of the employee's coronary event and that the employee's coronary event cannot be said to be a natural incident of working at Botkin. He also stated that the employee's coronary event cannot be fairly traced to the employee's employment at Botkin as a proximate cause. In addition his opinion was that the employee's work at Botkin cannot be fairly traced to be either a proximate or substantial cause of his coronary event.
- Dr. Law testified that the employee's coronary event was proximally caused by risk factors unrelated to his employment at Botkin. He testified that the basis for his opinion is that the employee had behaviors or habits that dramatically increased his risk of an acute cardiac event such as smoking and a history of illicit drug use. He stated that these same behaviors dramatically increase that if you have small blockages or the disease, which it will become clinically relevant and cause a heart attack or acute heart, which looks like, what happened to the employee. Dr. Law testified that his opinion was that the employee's event or illness is a result of those factors and not the activity that he was engaged in at the time that things actually occurred.
- "I think it was a factor. I just don't think it was the preeminent factor.
- I think there is not enough evidence that this could be primarily blamed on his work environment".
- Dr. Law further testified that he did not think work was a substantial factor. He said it happened at work, but he did not believe that work was the preeminent or more substantial than the other things he stated.
- The doctor testified, "My personal belief is it was not the substantial or a substantial factor in his demise. I think there are many other things that were more substantial". The doctor testified that the employee's plaque rupture and subsequent myocardial infarction would not have occurred without the employee having underlying coronary disease. (Note-the highlighted items were added by the Court).

Dr. Siegal also testified and provided his opinions. He agreed that the employee was not in good health and had significant coronary artery disease, however he also testified that such disease can be present for many years without presenting symptoms and at some point become symptomatic. He also testified that it is often difficult to figure out why coronary artery disease becomes symptomatic but there are certain situations that are more likely to cause it to become symptomatic-one of the most common is physical exertion. The evidence that the employee had multiple episodes of chest pains between July 23 and August 10, 2000 that occurred while working at Botkin was important in Dr. Siegal's assessment and testimony. Equally important was the evidence that these problems only happened when the employee was working and performing significantly taxing physical exertion. Heat and stress were also other factors that the doctor reviewed and found to be important. Dr. Siegal's opinion was that the heat and physical exertion at Botkin Lumber was a substantial factor in causing

the employee's heart attack and subsequent death.

Dr. Siegal further explained his opinions and testified that in the literature, psychological stress, physical exertion and temperature and heat are well know factors that cause exacerbation on cardiac problems; and added that based on the information provided to him, all of those factors were present in the employee's job at Botkin Lumber. He restated his position and testified that the heat, the physical exertion, the psychological pressure all lead to his opinion that the employee's employment at Botkin Lumber was a substantial factor in causing the acute enterolateral myocardial function followed by cardiopulmonary arrest.

Dr. Siegal further opined that the work at Botkin Lumber was a substantial factor in causing the employee's death, all of his opinions are within a medical certainty, and that all of the treatment that the employee received was reasonable and necessary to treat the employee's chest pain and subsequent heart attack and death.

Dr. Siegal was challenged on his opinion regarding the evidence he found to be a substantial factor and responded that he was not asked to consider whether there were other substantial factors, he emphasized that he was asked to provide an opinion as to whether the employee's work at Botkin was a substantial factor in his heart attack and subsequent death.

Dr. Siegal testified that you have to distinguish between risk factors for the development of coronary artery disease, and distinguish those from factors that would contribute to the development of an acute cardiac event, as you can develop coronary artery disease and have it be asymptomatic for an extended period of time. He testified that the issue in this case is, of the risk factors involved in this case, what factors would make it more likely that an event will happen. Dr. Siegal indicated that all of the employee's problems combined to put the employee at risk. He says risk factors that lead up to the development of chronic disease are most of the things that the employee had and then there are specific events that are linked to an acute event that actually causes the problem.

Finally, Dr. Siegal testified that the smoking, illegal drugs, developing hypertension, probable diabetes, poor HDL/LDL ratio, developing early pneumonia, probable use of Proventil inhalers, family history, male sex-all of these as a combination would have been an additional substantial factor in the cause of the employee's heart attack. He confirmed that his medical opinion to a reasonable degree of medical certainty is that the employee's employment at Botkin Lumber Company was a substantial factor in causing his heart attack and subsequent death.

The Court finds the reasoning and opinions of Dr. Siegal to be more credible than the reasoning and opinions of Dr. Law. The standard of proof is a substantial factor and not more substantial or preeminent or primary or fairly traced. In addition the Court finds the testimony by Dr. Siegal as to what constitutes a substantial factor to be well reasoned and in line with the legal standards that existed at the time of the employee's accident. On the other hand, the testimony of Dr. Law was inconsistent in that he talked about preeminent factors, more substantial factors, proximate cause etc. As the Cahall, supra, case indicated, a causative factor may be substantial even if it is not the primary or most significant factor.

Despite the evidence of many other risk factors that may lead to coronary artery disease, there are some specific facts in this case that are particularly weighty and lead to the conclusion that the work environment at Botkin on August 10, 2000 was a substantial factor that lead to the employee's having a heart attack that was caused by specific events or conditions while he was at work:

- Prior to July 23, 2000, there is no evidence that the employee had any indications of chest pain.
- The employee's medical history only documents that the employee had chest pain and shortness of breath that occurred while he was working on the line at Botkin. This information is consistent except for the August 2 entry that says the employee has been having problems for one week, yet there is no indication that these problems were not caused by working at Botkin.
- The chest pain problems and shortness of breath problems went away when the employee was

removed from the working conditions at Botkin, specifically the strenuous physical exertion, the heat, and the pressures created by co-workers and management of having to move at a quick pace in order to make more money i.e. your pay is based on how quickly you can work and how much production you can have in a given time.

- The employee was actually working on the production line at Botkin and collapsed as he was performing his job. (emphasis added). The evidence from coworkers is that the employee was struggling to keep up the pace, turned a pasty blue color and was unconscious when he collapsed.
- The employee never regained consciousness and died as a result of his heart attack.

Items four and five are especially critical as the Court's research showed that a common factor in compensable heart attacks was that the employees were at work actually performing strenuous physical activity when they experienced their heart attacks.

When you look at the doctors' testimony regarding the employee's health, the risk factors that he had for coronary artery disease, the treatment records documenting his medical problems from July 23, 2000 to August 10-16, 2000, the working conditions and events that occurred at Botkin during the time the employee was working and specifically on August 10, 2000, the doctor's medical opinions, and all of the other evidence in this case; and analyze all of that evidence in light of the legal standards that existed in the statutes and case law at that time that must be present in order to find a compensable heart attack case; the Court finds that the employee has presented competent and credible lay and medical testimony within a reasonable medical probability that:

- his heart attack of August 10, 2000 arose out of and in the course of his employment.
- the medical opinions of Dr. Siegal are more credible than the medical opinions of Dr. Law. In addition Dr. Siegal's opinion more closely conform to the legal requirements of a substantial factor.
- the employee has presented credible and competent evidence that shows that his work at Botkin Lumber Company was a substantial factor in causing his heart attack of August 10, 2000.
- the employee has presented all the evidence that is necessary for a valid claim for his accident under Chapter 287 RSMo., and therefore should receive death benefits for that accident.

Based on a consideration of all of the evidence in this case, on the issue of accident, the Court finds that the employee, on or about August 10, 2000, sustained an accident or occupational disease arising out of and in the course of his employment. The Court further finds that the employee had his heart attack on August 10, 2000 at work while he was engaged in the performance of his work related duties while he was performing heavy physical labor, under stressful conditions in a hot environment. The Court further finds that the employee's employment was "**a substantial factor**" in causing his heart attack and subsequent death.

On the issue of medical causation the Court finds that the employee's accident/injury and subsequent medical care was medically causally related to his accident and that the medical care that he received was both reasonable and necessary. There is no evidence disputing this conclusion and finding.

In accordance with the stipulations of the parties, as the Court has found this case compensable, the Court further finds and orders that:

- Brittany Calhoun is not a dependent of the employee and is not entitled to any benefits.
- The employer-insurer is ordered to pay medical bills in the amount of \$9,119.30, as said bills are causally related to the employee's accident. (The parties stipulated that the \$9,119.30 in medical bills represents the \$7,669.30 due from the medical lien and the \$1,450.00 that is due as payment for the bills to Neurological Associates of Cape Girardeau (\$470.00), Cape Lab and Pathology (\$577.00) and Cape County Private Ambulance (\$403.00).
- The employer-insurer is ordered to pay Amick-Burnett Funeral Home \$4,347.71 as funeral expenses.

- The employer-insurer is ordered to pay to the employee's widow \$158.54 in benefits for the six days that the employee lived after his accident.
- The employer-insurer is ordered to pay to the employee's widow death benefits in the amount of \$221.96 beginning on August 17, 2000.
- The Court further orders that the employer-insurer continue to pay said death benefits to the employee's widow in accordance with Chapter 287 RSMo., until such time that the widow becomes ineligible to receive such benefits due to remarriage or death.

If the employer-insurer has already paid any part of these bills, they shall receive credit for those payments. If any of the bills or parts thereof have been paid on behalf of the employee, the employer-insurer shall pay the remaining balance and reimburse the party that paid the bill for the amount that they paid that was incurred as a result of the employee's heart attack.

ATTORNEY'S FEE

James E. Hopkins, attorney at law, is allowed a fee of 25% of all sums awarded under the provisions of this award for necessary legal services rendered to the employee. The amount of this attorney's fee shall constitute a lien on the compensation awarded herein.

INTEREST

Interest on all sums awarded hereunder shall be paid as provided by law.

Date: _____

Made by:

Gary L. Robbins
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Mr. Jeffrey W. Buker
Division Director
Division of Workers' Compensation