

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

Injury No.: 01-025382

Employee: Larry D. Balch
Employer: Brambles Equipment Services
Insurer: Insurance Company of the State of Pennsylvania
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund

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 Law. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated October 21, 2009. The award and decision of Administrative Law Judge Margaret D. Landolt, issued October 21, 2009, 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 17th day of May 2010.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

NOT SITTING

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Larry D. Balch

Injury No.: 01-025382

Dependents: N/A

Employer: Brambles Equipment Services

Before the
**Division of Workers'
Compensation**
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Additional Party: Second Injury Fund

Insurer: Insurance Co. of the State of Pennsylvania

Hearing Date August 3, 2009

Checked by: MDL

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? Yes
2. Was the injury or occupational disease compensable under Chapter 287? Yes
3. Was there an accident or incident of occupational disease under the Law? Yes
4. Date of accident or onset of occupational disease: March 20, 2001
5. State location where accident occurred or occupational disease was contracted: New Madrid, Missouri
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? Yes
8. Did accident or occupational disease arise out of and in the course of the employment? Yes
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted:
Employee was lifting hoses for air compressor and felt a pop in his back
12. Did accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: Low back
14. Nature and extent of any permanent disability: 30% of the body as a whole
15. Compensation paid to-date for temporary disability: 257 and 1/7 weeks for \$147,769.63
16. Value necessary medical aid paid to date by employer/insurer? \$247,719.45

Employee: Larry D. Balch

Injury No.: 01-025382

- 17. Value necessary medical aid not furnished by employer/insurer? N/A
- 18. Employee's average weekly wages: \$861.99
- 19. Weekly compensation rate: \$574.66/\$314.26
- 20. Method wages computation: agreement

COMPENSATION PAYABLE

21. Amount of compensation payable:

120 weeks of permanent partial disability from Employer	\$37,711.20
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22. Second Injury Fund liability: No

TOTAL:	\$37,711.20
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23. Future requirements awarded: None

Said payments to begin and to be payable and 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: Mr. Christopher A. Wagner

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Larry D. Balch

Injury No.: 01-025382

Dependents: N/A

Before the
**Division of Workers'
Compensation**

Employer: Brambles Equipment Services

Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Additional Party: Second Injury Fund

Insurer: Insurance Co. of the State of Pennsylvania

Checked by: MDL

PRELIMINARIES

A hearing was held on August 3, 2009, at the Division of Workers' Compensation in the City of St. Louis, Missouri. Larry Balch ("Claimant") was represented by Mr. Christopher A. Wagner. Brambles Equipment Company ("Employer"), and its insurer Insurance Company of the State of Pennsylvania, were represented by Mr. Jay C. Lory. The Second Injury Fund was represented by Assistant Attorney General Kay A. Osborne. Mr. Wagner requested a fee of 25% of Claimant's award. This case was consolidated for hearing with Injury No. 04-067519, which is the subject of a separate award.

The parties stipulated that on or about March 20, 2001, Claimant sustained an accidental injury arising out of and in the course of employment; Claimant was an employee of Employer; venue is proper in the City of St. Louis, Missouri; Employer received proper notice of the injury; and the claim was timely filed. The parties further stipulated Claimant was earning an average weekly wage of \$861.99 resulting in applicable compensation rates of \$574.66 for total disability benefits and \$314.26 for permanent partial disability benefits. Employer paid TTD benefits of \$147,769.63 for periods of time from August 5, 2001 to May 8, 2001; from July 24, 2001 to August 5, 2001; from February 21, 2002 to March 11, 2002; from June 12, 2002 to May 24, 2004; from June 26, 2004 through August 17, 2004; and from October 28, 2004 through July 5, 2007. Employer also paid medical benefits of \$247,719.45.

The issues for determination by hearing are: nature and extent of permanent partial disability; whether Claimant is permanently and totally disabled; liability of the Second Injury Fund ("SIF"); whether Employer is entitled to a credit of \$85,378.06 for payment of temporary total disability ("TTD") benefits; and liability of Employer for future medical care.

FINDINGS OF FACT

Based upon the competent and substantial evidence, I find:

Claimant is a 56 year old man who did not complete high school. During the eleventh grade he dropped out of school and began working for his father in the construction business.

He worked as a machinist for Emerson Electric in the early 1980s. Starting in the 1980s, he began working as a truck driver hauling equipment, and has worked in that job ever since.

During his youth, Claimant performed auto work with his father. In the early 1980s, he opened his own body shop. This business lasted only a few months, because there was not enough work. Claimant maintained a great passion and hobby for working on cars. He has purchased, built, and repaired multiple cars including some rare or classic automobiles.

Claimant sustained injuries to his right knee in the early 1980s and to his right elbow in the early 1990s. Claimant testified he underwent surgeries for both, but stated he has no ongoing complaints regarding either his right knee or right elbow.

Claimant had several heart attacks. In 1996, he underwent a coronary angioplasty for treatment of an inferior myocardial infarction. He was hospitalized again in 2002 for acute inferior wall myocardial infarction. He underwent surgery for placement of aortic stents and regularly takes heart medications. Claimant testified that since his heart attacks he has been on daily medication. Claimant testified leading up to March 20, 2001, his heart attacks did not affect his work performance in any way, it just slowed him down a little bit.

On March 20, 2001, while working for Employer, Claimant picked up an air compressor. While twisting hoses from the compressor he felt a pop in his low back. He reported the injury to Employer, and was referred to BJC Corporate Health the next day for evaluation and treatment. The initial diagnosis was lumbar strain and right mild trapezius strain. After a couple of weeks of physical therapy, Claimant underwent an MRI of his lumbar spine on April 9, 2001. The MRI revealed disc dessication and a loss in height at the L5-S1 levels and subligamentous disc bulge at L5-S1. Claimant was referred to Dr. Sandra Tate for further evaluation.

Dr. Tate recommended additional physical therapy and epidural steroid injections, and continued Claimant's Vicodin prescription. Dr. Tate initially discharged Claimant from treatment on June 5, 2001. Claimant returned to Dr. Tate on July 23, 2001, because the pain in his left lower lumbar region had returned. Claimant underwent trigger point injections but experienced minimal resolution. On August 27, 2001, Dr. Tate referred Claimant for a surgical consultation.

Claimant was referred to Dr. Philip George on September 11, 2001, who recommended ongoing conservative treatment. Claimant was instructed to perform home therapy, to quit smoking and lose weight, and Dr. George prescribed Vicodin for pain management. Another MRI was performed on March 1, 2002, which was essentially unchanged. On June 12, 2002, Dr. George noted Claimant failed conservative treatment and stated Claimant could either seek another line of work or consider lumbar spine surgery.

Claimant was referred to Dr Robert Bernardi on April 10, 2002 for a second opinion. Dr. Bernardi concluded ongoing conservative measures would not likely benefit Claimant and recommended Claimant consider an anterior fusion at L5-S1. Dr. Bernardi stated Claimant would need to decide whether his current pain had persisted long enough and adversely affected his daily activities that he would be willing to accept the risks of surgery. Dr. Bernardi told Claimant he would need to quit smoking before surgery.

Claimant continued to receive prescriptions for Vicodin from Dr. George, and was referred by Employer to Dr. David Kennedy on June 20, 2002. Dr. Kennedy found Claimant's studies showed a fairly large significant disc abnormality at L5-S1 and pain which was substantially caused by his injury. Dr. Kennedy concurred with Dr. Bernardi and recommended surgery. Dr. Kennedy advised Claimant to stop smoking. On April 18, 2003, Dr. Kennedy and Dr. Robson performed a bilateral lumbar laminectomy from L4 to S1 with a posterior fusion utilizing cages, pedicle screw fixation and an iliac crest bone graft. Following his surgery, Claimant underwent physical therapy and pain management including trigger point injections.

After surgery, Claimant testified he was feeling pretty good. He received physical therapy and the notes showed he was improving. The physical therapy records reflect Claimant was able to work on cars, go to auto shows and do social activities. They reveal Claimant removed a dashboard from a car, played pool for three hours, attended a family reunion, was doing yard work, and took a vacation to Florida.

Dr. Mishkin performed an IME on behalf of Employer on October 29, 2003. Dr. Mishkin found Claimant to be at MMI, and found Claimant's subjective complaints did not correlate with his lack of objective findings. Dr. Mishkin opined Claimant was employable, and could perform occupational duties that did not involve lifting more than 10 pounds, and allowed him to sit, stand and/or walk intermittently as desired. Dr. Mishkin did not find Claimant's incident of March 20, 2001 caused his physical findings. Employer also referred Claimant to Dr. Yadava for another IME on January 29, 2004. Dr. Yadava recommended work hardening, followed by a Functional Capacity Evaluation.

On May 11, 2004, Dr. Kennedy released Claimant to full duty without restrictions. Dr. Kennedy found Claimant to be at maximum medical improvement on May 25, 2004. Employer discontinued TTD benefits on May 25, 2004. Claimant returned to full duty work on June 21, 2004. By the time he returned to full duty, Claimant's employment with Employer was taken over by NES Equipment Services, Inc. AIG Domestic Claims represented the third party administrator for Insurance Co. of the State of Pennsylvania which provided workers' compensation insurance for both employers.

On June 24, 2004, four days after his return to full duty at NES, Claimant sustained a new low back injury. He was returning a scissors lift to a garage when it got stuck on a ramp. When he pushed the scissors lift up the ramp, he felt another pop in his low back with pain radiating down his left leg. He reported the injury to Employer, and was immediately referred to BarnesCare, then to Dr. Kennedy.

On June 29, 2004, Dr. Kennedy evaluated Claimant, and noted he reinjured his low back. Dr. Kennedy testified Claimant sustained a new injury on June 24, 2004. Dr. Kennedy testified even though Claimant's injury was at the same level as the previous injury, he had a change in complaints. Dr. Kennedy testified although x-rays taken in March 2004 showed lucencies, that is not 100% predictive of a non-fusion, and lucencies alone are not enough to justify surgery. Because Claimant was doing better in March, 2004, Dr. Kennedy was not concerned with a non-fusion. Dr. Kennedy recommended physical therapy, and work restrictions. When NES could not accommodate his restrictions, Employer started TTD payments beginning June 26, 2004. Dr. Kennedy recommended a Functional Capacity Examination ("FCE"), to determine Claimant's potential for returning to his former line of work. The FCE report indicated Claimant failed 11

of 16 validity criteria indicating sub-maximal effort. Dr. Kennedy reviewed the FCE and concluded Claimant was not able to perform his normal activities. Dr. Kennedy restricted Claimant to lift no more than 10 pounds occasionally and do minimal bending, twisting, and stooping. Dr. Kennedy concluded Claimant had reached MMI as of August 17, 2004. Employer ended Claimant's TTD benefits.

Claimant returned to Dr. Kennedy on October 14, 2004 because of increased back pain radiating into both legs. Dr. Kennedy recommended a lumbar myelogram/CT scan that was performed on October 29, 2004. The studies showed that L4-5 was not fused and a relative loosening of the screws at this level. Dr. Kennedy recommended removal of the instrumentation from a posterior approach with re-instrumentation anterior fusion. Payment of TTD benefits was reinstated by Employer on October 28, 2004.

Claimant was sent to Dr. Kitchens for a second opinion on December 9, 2004. Dr. Kitchens opined Claimant had a narcotics dependency due to using narcotics for the previous 3 to 4 years. Dr. Kitchens opined surgery was indicated for his non-union, but it was unclear whether Claimant would see any true benefit from re-operation. Dr. Kitchens indicated Claimant would need to address his tobacco use and narcotics dependency. At that point in time, Claimant declined surgery.

Claimant continued to take Vicodin prescribed by Dr. Kennedy. On August 2, 2005, Dr. Kennedy rated Claimant at 25% PPD, but recommended he return for further evaluation. On October 18, 2005 Dr. Kennedy found Claimant to be at MMI, but anticipated he would need future medical treatment by way of surgery.

Claimant returned to Dr. Kennedy on January 25, 2006. Another myelogram/CT scan was performed on April 7, 2006 and continued to show unstable alignment at L4-5. On August 1, 2006, Claimant followed up with Dr. Kennedy and agreed to proceed with the fusion. On August 29, 2006, Drs. Kennedy and Robson surgically removed hardware and performed a posterior revision fusion. On September 6, 2006, Drs. Kennedy and Arenos performed an anterior lumbar fusion.

Following his surgery, Claimant underwent aquatic therapy, and on May 9, 2007, Dr. Kennedy found Claimant to be at MMI. Dr. Kennedy recommended restrictions of no lifting over 10 pounds, only occasional bending, twisting or stooping, and no sitting or standing for more than a few minutes, and he will likely need to lie down throughout the day due to his ongoing pain. Dr. Kennedy also noted Claimant would need prescription pain medication.

TTD benefits were stopped by Employer as of July 5, 2007.

Dr. Thomas Musich evaluated Claimant at his lawyer's request on September 11, 2007. On physical examination, Dr. Musich noted significantly diminished lumbar range of motion. Dr. Musich concluded the work injury on March 20, 2001, resulted in PPD of 45% of the body as a whole, and the work injury on June 24, 2004, resulted in additional PPD of 45% of the body as a whole. Dr. Musich testified Claimant should be on narcotics indefinitely, and a pain management program might be helpful for him. Dr. Musich opined Claimant's work injuries of March 20, 2001 and June 24, 2004, were the prevailing factors in the development of acute low back pain and radiculopathy that required extensive conservative management, followed by

extensive surgical treatment due to failure of non-surgical treatments. Dr. Musich opined Claimant is permanently and totally disabled due to a combination of all of his disabilities.

Dr. Musich also evaluated Claimant's prior injuries and medical conditions. Dr. Musich examined scarring over the right lateral elbow due to surgery for tennis elbow in 1991. Dr. Musich noted increased right lateral elbow pain with resisted right wrist extension. Dr. Musich rated PPD of 25% of the right elbow. Dr. Musich noted Claimant underwent surgery in 1982 for a torn ACL in his right knee. On examination, Dr. Musich noted laxity of Claimant's right ACL and a positive Lachman test. Dr. Musich rated PPD of 35% of the right knee. Claimant testified he had no ongoing complaints with his right elbow or his right knee.

Dr. Musich also noted Claimant suffered coronary artery disease resulting in myocardial infarctions for which he had undergone coronary angioplasties and stent placements. Dr. Musich noted Claimant treats with prescription medication for chronic cardiovascular disease and experiences easy fatigueability and occasional chest pain. Dr. Musich rated Claimant's coronary symptoms at PPD of 30% of the body as a whole. Claimant testified the heart problems have slowed him down a bit, and he is not as active.

Susan Shea performed a vocational assessment of Claimant on December 12, 2007 at the request of his attorney. Ms. Shea concluded Claimant is not employable in the national labor market. Her conclusion was based primarily on the restrictions placed on Claimant by Dr. Kennedy, and Claimant's pain level which necessitates narcotic pain medication that causes drowsiness.

Claimant returned to Dr. Kennedy on February 19, 2008, for ongoing pain management and medication. Dr. Kennedy noted Claimant is not employable in any gainful capacity on a permanent basis based on his ongoing pain and limitations with mobility. Dr. Kennedy continues to regularly see Claimant on a monthly basis to monitor his narcotic pain management.

Employer sent Claimant to Dr. Russell Cantrell on July 23, 2008, for further evaluation. Dr. Cantrell concluded the work injuries in 2001 and 2004 were aggravating, but not substantial factors in the cause of Claimant's current complaints. Dr. Cantrell testified these work injuries caused mechanical low back pain that still necessitates non-narcotic pain relieving medications. Dr. Cantrell concluded Claimant could return to work with restrictions of lifting less than 20 pounds occasionally, avoid repetitive bending, and alternate sitting and standing every hour. Dr. Cantrell concluded that overall Claimant had 30% PPD of the person as a whole. Of that, Dr. Cantrell assessed 10% to pre-existing degenerative changes within his lumbar spine, 10% to his 2001 work injury, and 10% related to a combination of factors equally divided between his work injury in 2004 and pseudoarthrosis attributed to his long term tobacco use.

James England performed a vocational rehabilitation evaluation of Claimant on October 27, 2008 at the request of Employer. Mr. England testified the determination of Claimant's functional capacity is based largely on the variance of medical limitations or restrictions. Assuming Dr. Cantrell's restrictions and Claimant's history of auto mechanic work, Mr. England concluded Claimant would have transferable skills down to a light level of exertion such as service writing or damage estimation. Assuming Dr. Kennedy's restrictions, Claimant would be limited to less than sedentary work and would not be employable. Mr. England

testified Claimant's permanent and total disability is due to a combination of his injuries and preexisting degenerative problems.

Claimant testified he continues to have significant problems with his low back. With prolonged sitting, his low back throbs. His low back is irritated if he walks long distances. It is difficult for him to lay flat. His sleep time is limited because of back pain. He lives alone. He maintains his house and takes care of laundry, dishwashing and lawn care, but it takes extended time to perform regular chores. He takes several Vicodin every day for pain management.

Claimant testified he maintains his passion for cars. He regularly attends car shows and still performs repair and maintenance work on the multiple vehicles he owns. He is unable to perform the work to his prior capabilities because of excessive physical limitations and he must take regular breaks.

Brett Lantz testified on behalf of NES Equipment Services and AIG Domestic Claims. Mr. Lantz is a private investigator, who performed video surveillance of Claimant for more than 46 hours over 8 days from January through April, 2009. The surveillance depicted auto work being performed at Claimant's house. Mr. Lantz testified Claimant was performing auto work for approximately 30 minutes lying beneath a vehicle. Claimant testified he had operated a car jack to elevate the vehicle but that it was his step son who was lying underneath the car doing the work. The digital film depicting this event is not very helpful in identifying the involved individuals or activities. Based upon his observations, Mr. Lantz concluded Claimant is operating his own car repair and sales business.

CONCLUSIONS OF LAW

Based upon a comprehensive review of the evidence, my observations of Claimant at hearing, and the application of Missouri law I find:

Claimant sustained a work related injury on March 20, 2001 that necessitated surgical fusion of his lumbar spine. After his release from treatment at MMI in May 2004, Claimant returned to work without restrictions. Claimant had ongoing complaints of back pain after his recovery from the lumbar spinal fusion.

Dr. Musich rated Claimant's disability at 45% of the body as a whole resulting from the 2001 injury. Dr. Cantrell rated 10% PPD of the body as a whole from the 2001 injury. I find Claimant sustained PPD of 30% of the body as a whole referable to the lumbar spine.

Claimant is not permanently and totally disabled as a result of the 2001 injury. He was released from treatment by Dr. Kennedy at maximum medical improvement and was able to return to his physically demanding job.

The SIF is not liable for permanent partial disability benefits. Pursuant to Section 287.220.1 RSMo (2000), to recover from SIF, Claimant must first prove a pre-existing permanent partial disability whether from compensable injury or otherwise. The permanent disability pre-dating the injury in question must "exist at the time the work related injury was sustained and be of such seriousness and to constitute a hindrance or obstacle to employment or re-employment should the employee become unemployed." *Messex v. Sachs Ele. Co.*, 989

S.W.2d 206, 214 (Mo. App. 1999); *Karoutzos v. Treasurer* 55 S.W.3d 493, 498 (Mo. App. 2001). The preexisting PPD of a body as a whole injury must equal a minimum of 12.5% of the body as a whole. Section 287.220.1 RSMo .

As a result of the primary injury, Claimant sustained 30% PPD of the body as a whole referable to the lumbar spine. Although Claimant's cardiac condition constituted a hindrance or obstacle to employment, I cannot find Claimant's cardiac condition resulted in disability of at least 12.5% of the body as a whole. The only evidence presented was that Claimant regularly takes medications for his condition and it slowed him down a little bit. Claimant's complaints lack specificity, and I do not find he met his burden of proving his prior heart condition reached the threshold of 12.5% PPD. Although Dr. Musich rated his preexisting coronary condition at 30% of the body as a whole, he did not specify how this percentage of disability considers the myocardial infarctions before and after the work injury in 2001.

I do not find the SIF liable for PPD benefits related to Claimant's alleged preexisting disability due to prior right knee and right elbow surgeries. No medical records were offered regarding these prior surgeries. In contrast to Dr. Musich's evaluation, Claimant testified he had no ongoing complaint with either his right knee or right elbow since treatment concluded after the surgeries.

Employer is entitled to a credit of \$85,378.06 for TTD benefits paid to Claimant after he reached MMI and was released from treatment by Dr. Kennedy on May 24, 2004. However, Claimant is not responsible for reimbursement of such TTD benefits to Employer. NES Equipment Services was responsible for the TTD benefits paid by Employer. The same insurer, Insurance Company of the State of Pennsylvania c/o AIG Domestic Claims, Inc., provided coverage for both employers and therefore ultimately remains responsible for the TTD benefits during this time frame. Therefore, Employer's reimbursement shall be paid by NES Equipment Services and its Insurer.

Claimant is not entitled to any future medical treatment as a result of the March 20, 2001 injury. Claimant's need for prescription medication had concluded upon his release from treatment by Dr. Kennedy on March 25, 2004.

CONCLUSION

Claimant sustained PPD of 30% of the body as a whole referable to the lumbar spine as a result of the work injury of March 20, 2001. The claim against the SIF is denied. Employer is entitled to a credit for TTD benefits from NES Equipment Services which is covered in the Award for Injury No. 04-067519. No future medical treatment is awarded.

This award is subject to a lien in the amount of 25% in favor of Claimant's attorney, Mr. Christopher A. Wagner.

Made by: _____
MARGARET D. LANDOLT
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Naomi Pearson
Division of Workers' Compensation

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

Injury No.: 04-067519

Employee: Larry D. Balch
Employer: NES Equipment Services
Insurer: Insurance Company of the State of Pennsylvania
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund

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 Law. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated October 21, 2009. The award and decision of Administrative Law Judge Margaret D. Landolt, issued October 21, 2009, 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 17th day of May 2010.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

NOT SITTING

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Larry D. Balch

Injury No.: 04-067519

Dependents: N/A

Employer: NES Equipment Services

Before the
**Division of Workers'
Compensation**
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Additional Party: Second Injury Fund

Insurer: Insurance Co. of the State of Pennsylvania

Hearing Date August 3, 2009

Checked by: MDL

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? Yes
2. Was the injury or occupational disease compensable under Chapter 287? Yes
3. Was there an accident or incident of occupational disease under the Law? Yes
4. Date of accident or onset of occupational disease: June 24, 2004
5. State location where accident occurred or occupational disease was contracted: St. Louis County, Missouri
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? Yes
8. Did accident or occupational disease arise out of and in the course of the employment? Yes
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted:
Employee was pushing a scissors lift up a ramp and felt a pop in his back
12. Did accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: Low back
14. Nature and extent of any permanent disability: 30% of the body as a whole; permanent total disability against the Second Injury Fund
15. Compensation paid to-date for temporary disability: 0
16. Value necessary medical aid paid to date by employer/insurer? \$303.66

Employee: Larry D. Balch

Injury No.: 04-067519

- 17. Value necessary medical aid not furnished by employer/insurer? N/A
- 18. Employee's average weekly wages: \$831.30
- 19. Weekly compensation rate: \$554.20/\$347.05
- 20. Method wages computation: agreement

COMPENSATION PAYABLE

- 21. Amount of compensation payable:

120 weeks of permanent partial disability from Employer	\$41,646.00
TTD overpayment	(\$3,039.77)

- 22. Second Injury Fund liability: Yes

Permanent total disability benefits from the Second Injury Fund;
Weekly differential (\$207.15) payable by SIF for 120 weeks
Beginning May 10, 2007, and thereafter;
\$554.20 per week for Claimant's lifetime. *

TOTAL: *\$38,606.23

- 23. Future requirements awarded: Future Medical pursuant to Award

*Denotes an indeterminate lifetime amount

Said payments to begin and to be payable and 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: Mr. Christopher A. Wagner

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Larry D. Balch

Injury No.: 04-067519

Dependents: N/A

Before the
**Division of Workers'
Compensation**

Employer: NES Equipment Services

Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Additional Party: Second Injury Fund

Insurer: Insurance Co. of the State of Pennsylvania

Checked by: MDL

PRELIMINARIES

A hearing was held on August 3, 2009, at the Division of Workers' Compensation in the City of St. Louis, Missouri. Larry Balch ("Claimant") was represented by Mr. Christopher A. Wagner. NES Equipment Services Inc., and its Insurer, Insurance Company of the State of Pennsylvania in care of AIG Domestic Claims, were represented by Ms. Lisa Henderson. The Second Injury Fund ("SIF") was represented by Assistant Attorney General Kay A. Osborne. Mr. Wagner requested a fee of 25% of Claimant's award. This case was consolidated for hearing with Injury No. 01-025382 which is the subject of a separate award.

The parties stipulated that on or about June 24, 2004, Claimant sustained an accidental injury arising out of and in the course of employment; Claimant was an employee of Employer; venue is proper in the City of St. Louis, Missouri; Employer received proper notice of the injury; and the claim was timely filed. The parties further stipulated Claimant was earning an average weekly wage of \$831.30 resulting in applicable compensation rates of \$554.20 for total disability benefits and \$347.05 for permanent partial disability benefits. Employer paid no TTD benefits, but paid medical benefits of \$303.66.

The issues for determination by hearing are: medical causation; nature and extent of permanent partial disability; whether Claimant is permanently and totally disabled; liability of the SIF; whether Employer is liable for payment of temporary total disability ("TTD") benefits of \$85,378.06, and liability of Employer for future medical care.

FINDINGS OF FACT

Based upon the competent and substantial evidence, I find:

Claimant is a 56 year old man who did not complete high school. During the eleventh grade he dropped out of school and began working for his father in the construction business. He worked as a machinist for Emerson Electric in the early 1980s. Starting in the 1980s, he began working as a truck driver hauling equipment, and has worked in that job ever since.

During his youth, Claimant performed auto work with his father. In the early 1980s, he opened his own body shop. This business lasted only a few months, because there was not

enough work. Claimant maintained a great passion and hobby for working on cars. He has purchased, built, and repaired multiple cars including some rare or classic automobiles.

Claimant sustained injuries to his right knee in the early 1980s and to his right elbow in the early 1990s. Claimant testified he underwent surgeries for both, but stated he has no ongoing complaints regarding either his right knee or right elbow.

Claimant had several heart attacks. In 1996, he underwent a coronary angioplasty for treatment of an inferior myocardial infarction. He was hospitalized again in 2002 for acute inferior wall myocardial infarction. He underwent surgery for placement of aortic stents and regularly takes heart medications. Leading up to March 20, 2001, his heart attacks did not affect his work performance in any way, it just slowed him down a little bit.

On March 20, 2001, Claimant was working for Employer picking up an air compressor. While twisting hoses from the compressor he felt a pop in his low back. He reported the injury to Employer, and was referred to BJC Corporate Health the next day for evaluation and treatment. The initial diagnosis was lumbar strain and mild right trapezius strain. After a couple of weeks of physical therapy, Claimant underwent an MRI of his lumbar spine on April 9, 2001 which revealed disc dessication with a loss in height at the L5-S1 levels and subligamentous disc bulge at L5-S1. Claimant was referred to Dr. Sandra Tate for further evaluation.

Dr. Tate recommended additional physical therapy and epidural steroid injections. Dr. Tate initially discharged Claimant from treatment on June 5, 2001. Claimant returned to Dr. Tate on July 23, 2001, because the pain in his left lower lumbar region had returned. Claimant underwent trigger point injections but experienced minimal resolution. On August 27, 2001, Dr. Tate referred Claimant for a surgical consultation.

Claimant was referred to Dr. Philip George on September 11, 2001, who recommended ongoing conservative treatment. Claimant was instructed to perform home therapy, to quit smoking and lose weight. Dr. George prescribed Vicodin for pain management. Another MRI was performed on March 1, 2002, which was interpreted as having no changes. On June 12, 2001 Dr. George noted Claimant failed conservative treatment and stated Claimant could seek another line of work or consider lumbar spine surgery.

Claimant was referred to Dr. Robert Bernardi on April 10, 2002 for a second opinion. Dr. Bernardi concluded ongoing conservative measures would not likely benefit Claimant, and recommended Claimant consider an anterior fusion at L5-S1. Dr. Bernardi stated Claimant would need to decide whether his current pain had persisted long enough and adversely affected his daily activities that he would be willing to accept the risks of surgery. Dr. Bernardi told Claimant he would need to quit smoking before surgery.

Claimant continued to receive prescriptions for Vicodin from Dr. George, and was referred by Employer to Dr. David Kennedy on June 20, 2002. Dr. Kennedy found Claimant's studies showed a fairly large significant disc abnormality at L5-S1, and pain which was substantially caused by the injury. Dr. Kennedy concurred with Dr. Bernardi and recommended surgery. Dr. Kennedy advised Claimant to stop smoking. On April 18, 2003, Dr. Kennedy and Dr. Robson performed a bilateral lumbar laminectomy from L4 to S1 with a posterior fusion

utilizing cages, pedicle screw fixation and an iliac crest bone graft. Following his surgery, Claimant underwent physical therapy and pain management including trigger point injections.

After surgery, Claimant testified he was feeling pretty good. He received physical therapy and the notes showed he was improving. The physical therapy records reflect Claimant was able to work on cars, go to auto shows and do social activities. They reveal Claimant removed a dashboard from a car, played pool for three hours, attended a family reunion, was doing yard work, and took a vacation to Florida.

Dr. Mishkin performed an IME on behalf of Employer on October 29, 2003. Dr. Mishkin found Claimant to be at MMI, and found Claimant's subjective complaints did not correlate with his lack of objective findings. Dr. Mishkin opined Claimant was employable, and could perform occupational duties that did not involve lifting more than 10 pounds, and allowed him to sit, stand and/or walk intermittently as desired. Dr. Mishkin did not find Claimant's incident of March 20, 2001 caused his physical findings. Employer also referred Claimant to Dr. Yadava for another IME on January 29, 2004. Dr. Yadava recommended work hardening followed by a Functional Capacity Evaluation.

On May 11, 2004, Dr. Kennedy released Claimant to full duty without restrictions. Dr. Kennedy found Claimant to be at maximum medical improvement on May 25, 2004. Employer discontinued TTD benefits on May 25, 2004. Claimant returned to full duty work on June 21, 2004. By the time he returned to full duty, Claimant's employment with Employer was taken over by NES Equipment Services, Inc. AIG Domestic Claims represented the third party administrator for Insurance Co. of the State of Pennsylvania which provided workers' compensation insurance for both employers.

On June 24, 2004, four days after his return to full duty at NES, Claimant sustained a new low back injury. He was returning a scissors lift to a garage when it got stuck on a ramp. When he pushed the scissors lift up the ramp he felt another pop in his low back with pain radiating down his left leg. He reported the injury to Employer and was immediately referred to BarnesCare, then to Dr. Kennedy.

On June 29, 2004, Dr. Kennedy evaluated Claimant and noted he reinjured his low back. Dr. Kennedy testified even though Claimant's injury was at the same level as the previous injury, he had a change in complaints. Dr. Kennedy testified although x-rays taken in March 2004 showed lucencies, that is not 100% predictive of a non-fusion, and lucencies alone are not enough to justify surgery. Because Claimant was doing better in March, 2004, Dr. Kennedy was not concerned with a non-fusion. Dr. Kennedy recommended physical therapy, and work restrictions. When Employer could not accommodate his restrictions, Brambles started TTD payments beginning June 26, 2004. Dr. Kennedy recommended a Functional Capacity Examination ("FCE"), to determine Claimant's potential for returning to his former line of work. The FCE report indicated Claimant failed 11 of 16 validity criteria indicating sub-maximal effort. Dr. Kennedy reviewed the FCE and concluded Claimant was not able to perform his normal activities. Dr. Kennedy restricted Claimant to lift no more than 10 pounds occasionally and do minimal bending, twisting, and stooping. Dr. Kennedy concluded Claimant had reached MMI as of August 17, 2004. Employer Brambles ended Claimant's TTD benefits.

Claimant returned to Dr. Kennedy on October 14, 2004 because of increased back pain radiating into both legs. Dr. Kennedy recommended a lumbar myelogram/CT scan that was performed on October 29, 2004. The studies showed that L4-5 was not fused and a relative loosening of the screws at this level. Dr. Kennedy recommended removal of the instrumentation from a posterior approach with re-instrumentation anterior fusion. Payment of TTD benefits was reinstated by Employer Brambles on October 28, 2004.

Claimant was sent to Dr. Kitchens for a second opinion on December 9, 2004. Dr. Kitchens opined Claimant had a narcotics dependency due to using narcotics for the previous 3 to 4 years. Dr. Kitchens opined surgery was indicated for his non union, but it was unclear to him whether Claimant would see any true benefits from re-operation. Dr. Kitchens indicated Claimant would need to address his tobacco use and narcotic dependency. Claimant did not want to proceed with surgery at that time.

Claimant continued to take Vicodin prescribed by Dr. Kennedy. On August 2, 2005, Dr. Kennedy rated Claimant at 25% PPD but recommended he return for further evaluation. On October 18, 2005 Dr. Kennedy found Claimant to be at MMI, but anticipated he would need future future medical treatment by way of surgery.

Claimant returned to Dr. Kennedy on January 25, 2006. Another myelogram/CT scan was performed on April 7, 2006 and continued to show unstable alignment at L4-5. On August 1, 2006, Claimant followed up with Dr. Kennedy and agreed to proceed with the fusion. On August 29, 2006, Drs. Kennedy and Robson surgically removed hardware and performed a posterior revision fusion. On September 6, 2006, Drs. Kennedy and Arenos performed an anterior lumbar fusion.

Following his surgery, Claimant underwent aquatic therapy, and on May 9, 2007, Dr. Kennedy found Claimant to be at MMI. Dr. Kennedy recommended restrictions of no lifting over 10 pounds, only occasional bending, twisting or stooping, and no sitting or standing for more than a few minutes, and he will likely need to lie down throughout the day due to his ongoing pain. Dr. Kennedy also noted Claimant would need prescription pain medication.

TTD benefits were stopped by Employer Brambles as of July 5, 2007.

Dr. Thomas Musich evaluated Claimant at his lawyer's request on September 11, 2007. On physical examination, Dr. Musich noted significantly diminished lumbar range of motion. Dr. Musich concluded the work injury on March 20, 2001 resulted in PPD of 45% of the body as a whole, and the work injury on June 24, 2004 resulted in additional PPD of 45% of the body as a whole. Dr. Musich testified Claimant should be on narcotics indefinitely, and a pain management program might be helpful for him. Dr. Musich opined Claimant's work injuries of March 20, 2001 and June 24, 2004 were the prevailing factors in the development of acute low back pain and radiculopathy that required extensive conservative management, followed by extensive surgical treatment due to the failure of non-surgical treatment. Dr. Musich opined Claimant is permanently and totally disabled due to a combination of all of his disabilities.

Dr. Musich also evaluated Claimant's prior injuries and medical conditions. Dr. Musich examined scarring over the right lateral elbow due to surgery for tennis elbow in 1991. Dr. Musich noted increased right lateral elbow pain with resisted right wrist extension. Dr. Musich

rated PPD of 25% of the right elbow. Dr. Musich noted Claimant underwent surgery in 1982 for a torn ACL in his right knee. On examination, Dr. Musich noted laxity of Claimant's right ACL and a positive Lachman test. Dr. Musich rated PPD of 35% of the right knee. Claimant testified he had no ongoing complaints with his right elbow or his right knee.

Dr. Musich also noted Claimant suffered coronary artery disease resulting in myocardial infarctions for which he had undergone coronary angioplasties and stent placements. Dr. Musich noted Claimant treats with prescription medication for chronic cardiovascular disease and experiences easy fatigueability and occasional chest pain. Dr. Musich rated Claimant's coronary symptoms at PPD of 30% of the body as a whole. Claimant testified the heart problems have slowed him down a bit, and he is not as active.

Susan Shea performed a vocational assessment of Claimant on December 12, 2007 at the request of his attorney. Ms. Shea concluded Claimant is not employable in the national labor market. Her conclusion was based primarily on the restrictions placed on Claimant by Dr. Kennedy, and Claimant's pain level which necessitates narcotic pain medication that causes drowsiness.

Claimant returned to Dr. Kennedy on February 19, 2008, for ongoing pain management and medication. Dr. Kennedy noted Claimant is not employable in any gainful capacity on a permanent basis based on his ongoing pain and limitations with mobility. Dr. Kennedy continues to regularly see Claimant on a monthly basis to monitor his narcotic pain management.

Employer sent Claimant to Dr. Russell Cantrell on July 23, 2008 for further evaluation. Dr. Cantrell concluded the work injuries in 2001 and 2004 were aggravating, but not substantial factors in the cause of Claimant's current complaints. Dr. Cantrell testified these work injuries caused mechanical low back pain that still necessitates non-narcotic pain relieving medications. Dr. Cantrell concluded Claimant could return to work with restrictions of lifting less than 20 pounds occasionally, avoid repetitive bending, and alternate sitting and standing every hour. Dr. Cantrell concluded that overall Claimant had 30% PPD of the person as a whole. Of that, Dr. Cantrell assessed 10% to pre-existing degenerative changes within his lumbar spine, 10% to his 2001 work injury, and 10% related to a combination of factors equally divided between his work injury in 2004 and pseudoarthrosis attributed to his long term tobacco use.

James England performed a vocational rehabilitation evaluation of Claimant on October 27, 2008 at the request of Employer. Mr. England testified the determination of Claimant's functional capacity is based largely on the variance of medical limitations or restrictions. Assuming Dr. Cantrell's restrictions and Claimant's history of auto mechanic work, Mr. England concluded Claimant would have transferable skills down to a light level of exertion such as service writing or damage estimation. Assuming Dr. Kennedy's restrictions, Claimant would be limited to less than sedentary work and would not be employable. Mr. England testified Claimant's permanent total disability was due to a combination of his injuries and his previous degenerative problems.

Claimant testified he continues to have significant problems with his low back. With prolonged sitting, his low back throbs. His low back is irritated if he walks long distances. It is difficult for him to lay flat. His sleep time is limited because of back pain. He lives alone. He

maintains his house and takes care of laundry, dishwashing and lawn care, but it takes extended time to perform regular chores. He takes several Vicodin every day for pain management.

Claimant testified he maintains his passion for cars. He regularly attends car shows and still performs repair and maintenance work on the multiple vehicles he owns. He is unable to perform the work to his prior capabilities because of excessive physical limitations and must take regular breaks.

Brett Lantz testified on behalf of NES Equipment Services and AIG Domestic Claims. Mr. Lantz is a private investigator, who performed video surveillance of Claimant for more than 46 hours over 8 days from January through April 2009. The surveillance depicted auto work being performed at Claimant's house. Mr. Lantz testified Claimant was performing auto work for approximately 30 minutes lying beneath a vehicle. Claimant testified he had operated a car jack to elevate the vehicle but that it was his step son who was lying underneath the car doing the work. The digital film depicting this event is not very helpful in identifying the involved individuals or activities. Based upon his observations, Mr. Lantz concluded Claimant is operating his own car repair and sales business.

RULINGS OF LAW

Based upon a comprehensive review of the evidence, my observations of Claimant at hearing and the application of Missouri law I find:

Claimant reinjured his low back as a result of the accident that occurred on June 24, 2004. Claimant immediately reported the injury and was referred the same day to Barnes Care for treatment. Claimant was directed to return to Dr. Kennedy for additional treatment regarding his lumbar spine. Dr. Kennedy noted Claimant sustained a new injury causing his back pain to radiate into his left leg. Based upon Dr. Kennedy's testimony I find Claimant sustained a new injury to his lumbar spine arising out of and in the course of his employment when he was attempting to push the scissors lift at work.

Dr. Kennedy began additional medical treatment after this new injury. It was determined that L4-5 was not fused and needed to be surgically repaired. Surgery was ultimately performed and the prior posterior hardware was removed and replaced. One week later, the fusion was anteriorly performed with additional hardware. When healed, Claimant obtained solid fusions at L4-5 and L5-S1. Dr. Kennedy released Claimant from active medical treatment at maximum medical improvement on May 9, 2007.

Dr. Musich rated PPD at 45% of the body as a whole resulting from the 2004 injury. Dr. Cantrell rated 5% PPD of the body as a whole related to the 2004 work injury. I find Claimant sustained PPD of 30% of the body as a whole referable to the lumbar spine as a result of the 2004 injury.

Pursuant to Section 287.020.7 RSMo (2004), "total disability" is defined as "the inability to return to any employment and not merely . . . inability to return to the employment in which the employee was engaged at the time of the accident." The test for permanent total disability is claimant's ability to compete in the open labor market. The central question is whether any employer in the usual course of business could reasonably be expected to employ claimant in his

present physical condition. *Searcy v. McDonnell Douglas Aircraft Co.*, 894 S.W.2d 173 (Mo. App. 1995).

Claimant is permanently and totally disabled. I base this finding on the opinion of Dr. Kennedy. Dr. Kennedy was the medical care provider selected by Employer and its Insurer. Dr. Kennedy continues to regularly see Claimant for pain management. Dr. Kennedy placed Claimant on significant physical restrictions and advised that he will need to lie down throughout the day because of his ongoing pain. Dr. Kennedy specifically concluded Claimant is not employable in the any gainful capacity on a permanent basis based on his ongoing pain and limitations with mobility. As Employer's treating doctor, Dr. Kennedy's conclusions are more persuasive than those of Employer's evaluating doctor. The vocational experts both confirmed Claimant is not employable in the open labor market based upon Dr. Kennedy's restrictions.

The surveillance recording did not prove Claimant is employable in the open labor market. First, the quality of the recording is poor. It is difficult to see what Claimant is doing. For much of the recording, Claimant is not visible, and is blocked. The video surveillance occurred over a period of eight days. On two of those days, Claimant was not observed. Out of six days, Claimant was recorded for approximately 218 minutes or slightly over 3 and 1/2 hours. Of that time Claimant was observed in activity for approximately 145 minutes, or slightly under 2 and 1/2 hours. Mr. Lantz testified during that time period Claimant was performing such activities as standing, walking, bending over working on cars, changing a license plate on a car. The most activity Mr. Lantz observed Claimant performing was lying on his back working on a car for approximately 30 minutes. Claimant denies he was doing this, and testified it was his step son, and the quality of the recording is such that it is impossible to tell who was actually performing the work.

Mr. Lantz concluded Claimant was running a car business based upon his observations. Claimant testified at one time he had 14 cars, but has had to sell them off for financial reasons. The amount of and type of work Claimant was observed performing over those 6 days he was under surveillance does not demonstrate he is capable of working the open labor market. There is no evidence Claimant has made enough money from his hobby to support himself. Claimant's testimony that he could not sustain employment in the car business because he cannot sit and stand for long periods of time due to his pain complaints is credible when viewed in light of the medical evidence.

Based upon the totality of the evidence, I find the opinion of Dr. Kennedy to be credible and supported by the medical evidence. Claimant's age, lack of job skills, and his level of pain complaints would preclude him from sustaining employment in the open labor market.

Section 287.220 RSMo (2004) provides that where a previous partial disability or disabilities, whether from a compensable injury or otherwise, and the last injury combine to result in permanent and total disability, the employer at the time of the last injury is liable only for the disability which results from the last injury considered by itself and the Second Injury Fund shall pay the remainder of the compensation that would be due for permanent total disability. *Grant v. Neal*, 281 S.W.2d 838, 840 (Mo. 1964); *Searcy v. McDonnell Douglas Aircraft Co.*, 894 S.W. 2d 173, 177-178 (Mo. App. 1995); *Reiner v. Treasurer of State of MO*; 837 S.W.2d 363, 366 (Mo. App. 1992); *Brown v. Treasurer of Missouri*; 795 S.W.2d 479, 482 (Mo. App. 1990). The employee must prove that a prior permanent partial disability, whether

from a compensable injury or not, combined with a subsequent compensable injury to result in total and permanent disability. Claimant has met this burden.

As a result of the primary injury of June 24, 2004, Claimant sustained 30% PPD of the body as a whole referable to the lumbar spine for which Employer is liable. Claimant's PTD is a result of the combination of his preexisting lumbar spine injury, and therefore the SIF is liable for his permanent total disability benefits. Although Claimant's surgeries following his 2004 accident were at the same level as the 2001 injury, he had both anterior and posterior fusions as a result of the 2004 injury, and the primary injury combined synergistically with his preexisting injury to create his permanent total disability.

As outlined in companion case 01- 025382, Employer NES Equipment Services is responsible for TTD benefits after the work injury of June 24, 2004. As such, NES Equipment Services must credit Employer Brambles Equipment Services for its payment of TTD benefits for 148- 4/7 weeks. The same insurer, Insurance Company of the State of Pennsylvania c/o AIG Domestic Claims, Inc., provided coverage for both employers, and therefore remains responsible for payment of benefits. Brambles paid the TTD at the 2001 PPD rate of \$574.65. The rate for TTD benefits was less for the 2004 claim (\$554.20) than for the 2001 claim (\$574.66). Therefore, Claimant received a \$20.46 weekly overpayment of TTD benefits for 148-4/7 weeks and NES Equipment Services is entitled to a credit from Claimant in the amount of \$3,039.77.

Claimant seeks future medical benefits. Claimant continues to be evaluated by Dr. Kennedy who prescribes pain medication. Such treatment is necessary and is ongoing due to the work injury on June 24, 2004. I find Employer is responsible for ongoing future medical treatment for prescription medications.

CONCLUSION

Claimant sustained a work accident on June 24, 2004, that caused his need for medical treatment and permanent partial disability. Claimant sustained 30% PPD of the body as a whole for which Employer NES is liable. Claimant is permanently and totally disabled due to a combination of the primary injury of June 24, 2004, and his preexisting injury of March 20, 2001, and therefore the SIF is liable for PTD benefits beginning on May 10, 2007. Employer NES shall pay Brambles Equipment Services for TTD benefits of \$85,378.06. Employer NES is liable for future medical treatment. Employer NES is entitled to a credit of \$3,039.77 for TTD benefits.

This award is subject to a lien in the amount of 25% in favor of Claimant's attorney Mr. Christopher A. Wagner.

Date: _____

Made by: _____

MARGARET D. LANDOLT
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Naomi Pearson
Division of Workers' Compensation