

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

Injury No.: 09-077809

Employee: Elmer Bartels
Employer: McDonald Co.
Insurer: Starnet Insurance Company
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund

This cause has been submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo.¹ We have reviewed the evidence and briefs, heard oral argument, and considered the whole record. Pursuant to § 286.090 RSMo, the Commission modifies the award and decision of the administrative law judge (ALJ) dated May 2, 2012.

Preliminaries

On or about July 7, 2009, employee injured his lower back at work when he slipped on a pile of loose rubble while carrying a concrete chute. Employee proceeded to final hearing of his claims against employer and the Second Injury Fund for the July 7, 2009, work injury.

The ALJ awarded employee reimbursement for past medical expenses (\$52,998.33), future medical care, 27 and 3/7 weeks of temporary total disability benefits, 30% permanent partial disability of the body as a whole referable to the low back, and 15% enhanced permanent partial disability against the Second Injury Fund.

Employer appealed to the Commission, alleging, among other things, that the ALJ erred in finding employer liable for past medical expenses of \$52,998.33, as said finding was based on improperly admitted hearsay evidence regarding past medical bills.

Findings of Fact and Discussion

At the February 1, 2012, hearing, counsel for employee offered "Exhibit J," which represents medical bills for which employee seeks reimbursement. Exhibit J consists of subparts J-1 through J-10 (subpart J-4 was not submitted). When Exhibit J was offered, counsel for employer stated, "I would object to the portions of Exhibit J that are not certified as being hearsay and not admissible pursuant to the Workers' Compensation Act." The ALJ responded, "Okay. I am going to admit Exhibit J into evidence and that includes one through ten in its entirety." The ALJ did not note or address ER's objection to Exhibit J in the award.

On appeal, employer pointed out the following defects with each of Exhibit J's individual subparts:

¹ Statutory references are to the Revised Statutes of Missouri 2008 unless otherwise indicated.

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J-1 lacks an “Affidavit Concerning Medical Bills.” The medical bills are from Plaza Pharmacy and include four \$15.00 copayments (\$60.00 total).

J-2 lacks an “Affidavit Concerning Medical Bills.” The medical bills are from Walgreens and include six charges for medications (\$54.69 total).

J-3 includes an “Affidavit Concerning Medical Bills” that meets the requirements of § 490.692 RSMo, but the actual exhibit includes unexplained black marker redactions. The redactions appear to be concealing medical bill payment information. The bills are from Cape Neurosurgical Associates, P.C.- Dr. Yingling (\$228.00 total).

J-4 Not Submitted

J-5 does include, what purports to be an “Affidavit Concerning Medical Bills.” However, the purported affidavit is inappropriate because the number of pages listed is blank, and the billing representative’s signature has not been notarized. The bills are from Peters Chiropractic (\$812.00 total).

J-6 includes an “Affidavit Concerning Medical Bills” that meets the requirements of § 490.692 RSMo, but the actual exhibit includes unexplained black marker redactions. The redactions appear to be concealing dates of treatment, company code info, description of treatment info, doctor info, facility info, ticket number info, and the amount employee’s insurance paid. The exhibit consists of a “Patient Ledger” from Brain & Neurospine Clinic (\$9,526.00 total) (Note: These bills were also submitted in part in Exhibit J-10).

J-7 does include, what purports to be an “Affidavit Concerning Medical Bills.” However, the purported affidavit is inappropriate because it indicates there are ten pages connected to the exhibit, when the exhibit actually only includes one page of a bill from July 13, 2009. The bills are from Regional Primary Care (\$66.00 total).

J-8 does include, what purports to be an “Affidavit Concerning Medical Bills.” However, the purported affidavit is inappropriate because it indicates there are two pages connected to the exhibit, when the exhibit actually only includes one page with one bill. The bills are from Southeast Missouri Hospital (\$3,049.72 total).

J-9 lacks an “Affidavit Concerning Medical Bills.” Also, the bill contains unexplained black marker redactions under payment information. The medical bills are from Dr. Gornet. (\$245.00 total).

J-10 lacks an “Affidavit Concerning Medical Bills.” The medical bills are from: Southeast Hospital 8-17-09 – 8-19-09 (\$37,435.92); Anesthesia

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Associates (\$1,280.00); Dr. Tolentino (\$7,050.00); and Diagnostic Pathology Assoc. (\$241.00) (J-10 total = \$46,006.92).

Section 490.692 RSMo allows for the admissibility of business records or copies reproduced in the ordinary course of business by any process which accurately reproduces the original upon affidavit of custodian.

Section 490.680 RSMo indicates a record is competent if the custodian or other qualified witness testifies to its identity and the mode of its preparation, and if it was made in the ordinary course of business at or near the time of the act.

Of the nine sets of bills contained within employee's Exhibits J-1 through J-10, Exhibits J-3, J-5, J-6, J-7, and J-8 include an "Affidavit Concerning Medical Bills." Employee's Exhibits J-1, J-2, J-9, and J-10 do not include any such affidavit. Therefore, in accordance with § 490.680 RSMo, they would only be admissible upon competent evidence of the custodian or other qualified witness testifying to the document's identity and mode of preparation. No such testimony was offered.

Employee testified that the medical bills contained within Exhibit J were bills he received for his treatment; however, employee is not a witness qualified to testify whether or not the bills were "made in the regular course of business, at or near the time of the act," as is required by § 490.680 RSMo. Employee lacks "sufficient knowledge of the business operation and methods of keeping records of the business to give the records probity." *CACH, LLC v. Askew*, 358 S.W.3d 58, 64 (Mo. 2012).

We find that Exhibits J-1, J-2, J-9, and J-10 constitute inadmissible hearsay.

As stated above, employee did not produce a qualified witness to testify regarding whether the bills were made in the regular course of business. Therefore, in order to meet the business rule exception to hearsay, the bills must be accompanied by an affidavit that meets the requirements of § 490.692 RSMo. Exhibits J-5, J-7, and J-8 do include, what purport to be, an "Affidavit Concerning Medical Bills." However, the affidavits do not meet the requirements of § 490.692 RSMo because said affidavits either do not list the number of pages included in the exhibit, or list the incorrect number of pages included in the exhibit. In addition, Exhibit J-5's affidavit includes a billing representative's signature that has not been notarized.

We find that Exhibits J-5, J-7, and J-8 constitute inadmissible hearsay.

With respect to Exhibits J-3 and J-6, while their affidavits appear to meet the requirements of § 490.692 RSMo, they both contain unexplained black marker redactions. Employee offered no evidence regarding the contents of the redacted portions. As such, the affidavits cannot be relied upon because there is no evidence the redactions occurred in the regular course of business.

We find that Exhibits J-3 and J-6 constitute inadmissible hearsay.

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Employee cites § 536.070 RSMo for the proposition that employee's medical bills were admissible because they appear to have been made in the regular course of business. However, even if we assume that § 536.070 RSMo controls on this evidentiary issue, which we specifically do not find, employee still failed to provide any evidence that the medical bills even "appear to have been made in the regular course of business." As previously stated, employee's testimony on this subject is insufficient.

Based upon the aforementioned, we find that employee failed to introduce any admissible evidence regarding past medical bills. Therefore, we find that employee failed to meet his burden of proving employer's liability for his past medical expenses.

Award

We find employee's Exhibit J inadmissible in its entirety. Therefore, we reverse the ALJ's award of reimbursement for past medical expenses. We affirm the ALJ's award with respect to all other issues.

The award and decision of Administrative Law Judge Maureen Tilley issued May 2, 2012, is attached hereto and incorporated herein to the extent it is not inconsistent with this decision and award.

The Commission further approves and affirms the ALJ's allowance of attorney's fee as being fair and reasonable.

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

Given at Jefferson City, State of Missouri, this 27th day of March 2013.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

V A C A N T

Chairman

James Avery, Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

ISSUED BY DIVISION OF WORKERS' COMPENSATION

FINAL AWARD

Employee: Elmer Bartels Injury No. 09-077809
Dependents: N/A
Employer: McDonald Co.
Additional Party: Second Injury Fund
Insurer: Starlet Insurance Company
Hearing Date: February 1, 2012 Checked by: MT/kb

SUMMARY OF FINDINGS

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? July 7, 2009.
5. State location where accident occurred or occupational disease contracted: Cape Girardeau County, Missouri.
6. Was the 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 happened or occupational disease contracted: Employee was carrying a chute to a concrete truck, walked over a pile of rocks when the rocks shifted causing the employee to fall and injury his back.
12. Did accident or occupational disease cause death? No.
13. Parts of body injured by accident or occupational disease: Lower back.
14. Nature and extent of any permanent disability: See Award.
15. Compensation paid to date for Temporary Total Disability: None.
16. Value necessary medical aid paid to date by employer-insurer: None.
17. Value necessary medical aid not furnished by employer-insurer: \$54,435.32.
18. Employee's average weekly wage: \$645.00.
19. Weekly compensation rate: \$430.00 for temporary total disability purposes and \$422.97 for permanent partial disability.
20. Method wages computation: See findings.
21. Amount of compensation payable: See Award.
22. Second Injury Fund liability: See Award.
23. Future requirements awarded: See Award as to future medical.

Said payments shall be payable as provided in 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: Joseph Rice.

Findings of Fact and Rulings of Law

On February 1, 2012, the employee, Elmer E. Bartels, Jr., appeared in person and with his attorney, Joe P. Rice, III, for a final award hearing. The employer was represented by Gregory Cook. The Second Injury Fund was represented by its attorney, Jon Lintner.

At the time of the hearing the parties agreed to certain undisputed facts and identified the issues that were in dispute. These undisputed facts and issues, together with the Findings of Fact and Rulings of Law, are set out as follows:

Undisputed Facts

1. Covered Employer: The employer was operating under and subject to the provisions of the Missouri Workers' Compensation Act and the liability fully insured by Starnet Insurance Company-New Jersey.
2. On or about July 7, 2009, Elmer E. Bartels, Jr. was an employee of McDonald Co., Inc. and was working under the Missouri Workers' Compensation Act of Missouri.
3. On or about July 7, 2009, the employee sustained an accident arising out and in the course of his employment.
4. The employer had notice of the employee's accident.
5. The employee's Claim was filed within the time allowed by law.
6. Medical Causation: The employee's injury was medically, causally related to the accident.
7. The employee is claiming the time period for temporary total disability is 27 and 3/7 weeks from July 8, 2009 to January 15, 2010. The rate of compensation is disputed.
8. The employer did not furnish medical aid to the employee.
9. That the employee is claiming no mileage.

Issues Presented

The parties agree that the following issues were submitted to be determined:

1. The average weekly wage is an issue for purposes of temporary total disability. The permanent partial disability rate is State maximized at \$422.97.
2. The employee is claiming medical aid in the amount of \$54,435.32. The Employer is disputing medical aid based on authorization, amounts of liability on the bills and the causal relationship to the injury.
3. Employee is claiming future medical care.
4. Temporary total disability for the time period of July 8, 2009 for 27 and 3/7 weeks through January 15, 2010 (Employee claims \$11,794.29 and Employer claims \$11,209.78, Employee claims interest).
5. The nature and extent of permanent partial disability.

6. Liability of the Second Injury Fund.

Exhibits

The following exhibits were offered and admitted into evidence without objection:

Employee's Exhibits:

- A. St. Francis Medical Center records;
- B. Prompt Care records;
- C. Southeast Missouri Hospital records;
- D. Peters Chiropractic records;
- E. Christopher Compton's records;
- F. Brain and Neurospine Clinic of Missouri's records;
- G. Cape Neurosurgical records (Dr. Yingling);
- H. Healthpoint Rehab records;
- I. Records of Dr. Matthew Gornet;
- J. Medical Bills – Admitted at close of evidence – see below for itemization;
- K. Dr. David T. Volarich's report;
- K-1. Dr. David T. Volarich's Curriculum Vitae;
- K-2. Dr. David T. Volarich's deposition;
- L. Wage Statement;
- M. Employee's average weekly wage calculations;
- N. Report of Injury;
- O. Denial letter from Workers' Compensation insurer.

The following exhibits were offered and admitted into evidence without objection:

1. The employer's average weekly wage calculations;
2. Dr. Guidos' records.

At the close of the evidence, the employee offered Exhibit J which contained the following medical bills. They were admitted into evidence:

	Amount
1. Plaza Pharmacy	\$60.00
2. Walgreens	\$54.69
3. Cape Neurosurgical Associates	\$228.00
5. Peters Chiropractic	\$812.00
6. Brain and Neurospine Clinic	\$9,526.00
7. Regional Primary Care	\$66.00
8. Southeast Hospital	\$3,049.72
9. Dr. Gornet of the Orthopedic Center	\$245.00
10. Anthem records of charges for Southeast Hospital surgery & hospitalization of 8/17/09-8/18/09; \$36,709.30 Diagnostic Pathology \$241.00; Paul Tolentino-	

\$7,050.00; Southeast Hospital Anesthesia \$2,633.76;
Southeast Hospital medical services \$726.62;
Southeast Hospital \$34,075.54; Southeast Hospital
Anesthesia \$1,280.00.

The Second Injury Fund did not offer any exhibits.

Testimony

The employee testified.

He was born on March 11, 1947 and graduated from high school in 1965 without health problems. The employee grew up on a farm and has farmed all of his life. He continues farming to the present. After graduation from high school, he was employed by Macke Farm Services, then Proctor & Gamble, and in 1986 went to work for McDonald Company. He left McDonald Company briefly but returned in 1991 and has been employed there continuously since that date.

In 1994 the employee suffered a cervical injury and had a micro-facetotomy and laminectomy to the left C5-C6. After recovery from the cervical surgery the employee continued to have stiffness on rotation to either side or up and down with his neck. This affected him at work when he rotated his body to the left and right instead of turning his head. The employee otherwise compensated at work and performed his job without medical treatment for his neck. He was under no medication at the time of this injury for the neck. Weather would affect his neck causing stiffness and pain. He was limited in his ability to move his head forward or back. He would need to hold his head in a certain manner to pull his shirt over his head. Painting overhead and changing light bulbs would cause discomfort in his neck, thus he avoided overhead activities.

As a part of his job the employee would have to unload chutes carried on the concrete truck that weighed approximately 40 pounds. These chutes would be affixed to the back of the concrete truck. When the concrete pour was made, the chutes would be removed from the truck and placed at the mouth of the cylinders. This would allow the concrete pour to be extended. The employee would perform this function of removing and replacing the chutes (depending upon number of loads) approximately 6 to 8 times per day.

At the time of the injury the employee was carrying a chute back to the truck. He walked over a pile of rubble. The rubble gave way causing the employee to slip and the chute to shift upon his shoulder. The employee testified he felt immediate severe pain in his lower back and almost passed out. He went to the ground and stayed there until he recovered. He then completed his task of loading the chutes onto the truck and drove back to the place of employment. He informed David McDonald, one of the owners, that he had hurt his back. He was told to try to work it out and told to go operate a loader. After a period of time on the loader, the employee reported back to Mr. McDonald. He told Mr. McDonald that he needed to see a physician. The employer told him to see a physician. The employee went to Dr. Icaza.

Dr. Icaza ordered an MRI and prescribed Motrin. Dr. Icaza took Mr. Bartels off work.

Mr. Bartels returned to the employer. There he reported the result of his visit with Dr. Icaza. The employer contacted Dr. Icaza and obtained a faxed copy of the off work sheet.

Mr. Bartels then underwent chiropractic care from Dr. Peters. Eventually the employee saw Dr. Compton. Dr. Compton referred the employee to Brain & Neurospine Clinic.

During the period of time the employee was receiving treatment, the employee delivered to the employer 'Off Work Sheets' and informed the employer that he was undergoing medical care.

The employer helped the employee fill out forms for temporary accidental injury benefits and eventually filed a Workers' Compensation Notice of Injury with the insurance company. The insurance company denied the claim.

After the surgery the employee had immediate relief. He underwent physical therapy. He had varying degrees of pain over the next several months. However, when he attempted to return to full duty the pain in his lower back increased.

As of the date of the hearing Mr. Bartels continues to have pain in his lower back. While he continues to work for the employer he limits himself to newer vehicles that have Air Ride seats. If he drives a vehicle for a long period of time he will experience numbness going down his left leg. He has had periods of the left leg not functioning properly. This has caused him to fall. He takes more time off from his employment because of his back. He has difficulty having a restful night. He has limited his use of the tractor on his farm. He has delegated the home lawn mowing and weed eating to his children or grandchildren. He no longer moves furniture, paints, or participates in the upkeep of the house. He is limited in bending side to side and driving long distances. He no longer fully participates in shopping with his wife but will stop and sit on a bench and rest his back. If he goes through a store he will lean on the shopping cart for support.

He has left work early because of pain, has problems sitting for a long period of time and has to get up and move around. He is limited for the length of time he can stand. When he arises he has to take time to straighten his back. He avoids lifting heavy weights. If he lifts a lot of weight or lifts weights repeatedly he will have more stiffness, pain and difficulty with his back in the following days. He constantly takes Ibuprofen. He has problems bending over to put his shoes and socks on. He has purchased Velcro fastening shoes to wear around the house. He continues to wear construction boots while at work.

The employee's wife testified.

She verified that prior to the present injury and after the cervical injury that her husband had problems dressing himself by pulling t-shirts over his head or looking up for an extended period of time for purposes of changing light bulbs or painting around the house. He has avoided any type of overhead and left that to her.

Presently she observed he has difficulty putting his socks on. He does not drive long distances. He restricts his riding the lawn mower and has delegated that task to the grandchildren. He no longer helps her when lifting or moving furniture around the house. He complains that heat and cold affects his back. She has seen him fall when his leg gave way. She encourages him to take off work to rest his back. He does not sleep well and awakens her with tossing and turning even when sleeping.

He pauses when he rises from a sitting position. He can neither sit in one place nor stand for an extended period of time.

Summary of Medical Records

Exhibit A. St. Francis Medical Center

These records detail visits on March 15, March 19 and March 26 for an injury to the employee's left shoulder that occurred when he exited a concrete truck. They end on March 26, 2007, with an assessment of complete resolution.

Exhibit B. Prompt Care Records

On July 7, 2009, Mr. Bartels reported to Dr. Icaza complaining of hip pain into the left leg on extension and flexion and low back pain. Dr. Icaza prescribed Motrin and Soma and took Mr. Bartels off work.

Exhibit C. Southeast Missouri Hospital records

An MRI was performed on August 18, 1994, showing a discogenic bulge on the left at C5-C6 restricting the left lateral neural foramen with a lateral focal disc herniation.

On September 4, 1994, Mr. Bartels was admitted for left arm pain and a posterior cervical discectomy C5-C6 on the left and facetectomy of C5-C6 on the left with compression of the C6 nerve root.

On January 17, 2000, an MRI was performed of the cervical spine. It evidenced multi-level degenerative changes. In addition, a cardiac stress test was performed.

On 5/6/2006 the employee presented to the Emergency Room with pain in the lower rib area. The diagnosis was kidney stones.

On 7/10/09 Mr. Bartels presented to the Emergency Room for evaluation of left lower back pain and decreased range of motion. A lumbar spine series was ordered. This was read as mild to moderate discogenic disease L5-S1, facet atrophy L5-S1. He was told to follow up with Dr. Icaza.

On July 14, 2009, the employee returned for an MRI. This revealed a disc herniation measuring 11 mm in diameter with a .2 Centimeter inferior extrusion into the lateral recess posterior to the L4 vertebral body causing left lateral recess stenosis and likely affecting the descending left L4 nerve root.

On July 29, 2009, the employee returned for a pre-operative assessment.

August 12, 2009, x-rays were performed based on a history of lumbar radiculopathy. An EMG was read as normal.

On August 18, 2009, Dr. Tolentino performed a left L3-4 microdiscectomy with inter-operative microscope, inter-operative fluoroscopy, and inter-operative EMG monitoring.

On August 10, 2009, an x-ray and MRI were conducted to verify surgical results. The MRI demonstrated lumbar lordosis and retrolisthesis of L2-L3 and L3-L4 with a prior laminectomy on the left at L3-L4.

On January 15, 2010, a CT scan of the neck was performed for a left neck mass.

Exhibit D. Peters Chiropractic records

On July 9th the employee was seen for lower back pains. He was unable to perform his normal duties or daily activities. Chiropractic treatment was rendered over a course of July 20, 22, 24, and 27 showing slow progress and noting that the employee was scheduled for surgery.

Exhibit E. Dr. Christopher Compton

7/13/2009 Dr. Compton saw the employee for lower back pain with radicular type symptoms and ordered the MRI. The MRI is performed on 7/14 revealing a disc herniation.

On 12/9/2009 the employee returned to Dr. Compton demonstrating continuing back pain.

On 6/9/2010 he is seen again with complaints of leg cramps.

Exhibit F. Brain & Neurospine Clinic of Missouri's records

August 7, 2009. The employee was seen upon the referral from Dr. Compton. The Physician Assistant noted that Mr. Bartels appeared to be improving, not ordered a baseline Nerve Conduction Study with flexion and extension x-rays. The likelihood of multi-level lumbar decompression along with an L4-L5 microdiscectomy was discussed. The diagnosis was a large L3-L4 inferior migrated herniated nucleus pulposus.

On August 17, PA Hammond acknowledged the previous MRI revealed a large left L3-L4 herniated disc. He noted that there was no improvement with conservative care. The risks

and benefits of an L3-L4 microdiscectomy were discussed by Dr. Tolentino. The employee was to call with any questions and return.

On August 17 a review of the EMG and MRI was conducted by Dr. Tolentino. Diagnostic Impression was a large left L3-L4 inferiorly migrated herniated nucleus pulposus. Consent was obtained for a left L3-L4 microdiscectomy.

Surgery was performed on 8-18-2009.

The employee returned on August 28 with mild discomfort and leg weakness. He was walking approximately one mile without pain medication or muscle relaxers. Mr. Bartels continued to have mild weakness going up and down stairs but felt that it was improving. Physical therapy was offered but declined at that time.

On October 12, 2009, Mr. Bartels returned with increasing amounts of low back pain with mechanical activity. He also complained of continuing aching in the left anterior thigh when he walked. Mr. Bartels was trying to walk a mile a day but has difficulty going up and down stairs and rising from a sitting position. He was prescribed a Medrol Dose Pak. A new MRI was ordered with flexion x-rays with a CT of the lumbar spine. The doctor then ordered physical therapy. Mr. Bartels was to remain off work.

An MRI was performed on 10/14/2009 finding edema within the L3-L4 disc along with a prior laminectomy at the left L3-L4. A CT scan of October 14th demonstrated lumbar spondylosis with a disc bulge at L3-L4 combining with a facet joint hypertrophy to produce spinal stenosis and foraminal narrowing.

On October 15, 2009, Mr. Bartels was improving without radiculopathy or numbness. He was to return in 4 weeks and told to remain off work. He was instructed to complete his Medrol Dose Pak, continue walking and told that the physician would recommend consideration of L3-L4 facet blocks if Mr. Bartels' back pain reoccurs. In addition, Dr. Tolentino discussed the possibility of a lumbar fusion if the facet blocks provided substantial relief.

On November 10, 2009, Mr. Bartels returned. His low back was too weak to perform strenuous activities at his employment. The doctor recommended continued lumbar conditioning and return to physical therapy with an estimated return to work of December 21, 2009.

On December 21st Mr. Bartels suffered a setback when attempting to cross over a gate. An additional MRI was ordered to examine for recurrent disc herniation. The doctor indicated if no disc herniation then physical medicine follow-up was possible. The MRI was performed on 12/29/2009 finding no significant change from the 10/14/2009 MRI.

On January 18, 2010, Mr. Bartels returned, indicated he had completed his Medrol Dose Pak and was taking Robaxin. His pain had again decreased but he continued to have aching discomfort in the low back. He did not have any radicular or numbness pain in the left lower extremity. He was allowed to return to light duty and told to return as needed. There was

consideration for a bilateral L3-L4 facet block in the future. There was a lifting restriction of 30 pounds with no highly repetitive bending, stooping or twisting. The restrictions were to be lifted on February 15, 2010.

On June 22, 2010, Mr. Bartels returned after an IME by Dr. Guidos resulting in a 15% impairment rating. Mr. Bartels indicated he had continued to experience intermittent low back pain especially at night or after prolonged sitting or bending. The pain would go as high as 8 on a 10 scale with a stabbing type sensation. He had no recent falls and did not feel he had numbness but his left leg continued to be weak. The doctor indicated he should have an updated MRI with flexion and extension x-rays and perhaps L3-L4 facet blocks.

Chiropractic services were suggested if Mr. Bartels did not want neurosurgical intervention.

Exhibit G. Cape Neurosurgical (Dr. David Yingling)

On July 29, 2009, Mr. Bartels reported low back pain after carrying cement chutes for a cement truck and he slipped. Dr. Yingling concluded Mr. Bartels had a large left L3-L4 disc rupture with L4 nerve root compression and quadricep weakness. Dr. Yingling recommended L3-L4 segmental decompression and discectomy and wanted to schedule him for surgery.

Exhibit H. Healthpoint Rehabilitation

Physical therapy records from November 13, 2009 through December 11, 2009.

Overall the symptoms seemed to improve. Symptoms were intermittent and fluctuated based on activity level. Sitting for a long period of time gave the employee difficulty getting into a standing position. Symptoms were reduced by medication use and heat. He had stiffness and weakness. Mr. Bartels was assessed as a high fall risk in the future. He was to be seen two to three times a week for 4 weeks.

On November 17, 2009, Mr. Bartels reported that he was weak in his left leg making good progress.

On November 19, 2009, Mr. Bartels expressed fear of exacerbating his condition. He had sharp pains in the low back and reported the pain 2 on a 10 in that area.

On November 20th getting better, making good progress.

On November 23rd much less pain.

On November 24th pain 0 to 1 on a 10 scale.

November 27 – he had to step over a small fence and as he lifted and pulled his trailing leg along he felt a sharp pain in the low back. He had pain ever since. The pain was now 5 on 10.

November 30 – sore, he is trying to walk. Pain is a 4 on a 10.

December 2 – Pain was a 2 on a 10.

December 4, 2009, pain had now subsided back to a 0 to 1 on a 10 scale and tolerated treatment.

12/11/09 – Employee was discharged from physical therapy.

Exhibit I. Examination and treatment by Dr. Matthew Gornet of the Orthopedic Center.

On September 30, 2010, Mr. Bartels reported to Dr. Gornet. He reported gradual increasing pain after returning to work and that Dr. Tolentino had felt that he should seek chiropractic care as opposed to a fusion. He had constant pain with bending, lifting, prolonged sitting, but the pain improved when he is laid on his side. The pain was on the left side with numbness and weakness in his left leg.

Dr. Gornet recommended limited exercise, anti-inflammatories and no further surgery, although if the pain became severe enough Mr. Bartels would be a candidate for a spinous process distracter at L2-3 and L3-4.

Exhibit J. Medical Bills.

1. Plaza Pharmacy records.

Bills for Soma prescribed by Dr. Icaza (Prompt Care); Methylpred Pak prescribed by Patrick Hammond on three occasions. Total sought \$60.00.

2. Walgreens Pharmacy.

Hydrocodone and Methylprednisolone prescribed at the Emergency Room on July 10th; Hydrocodone and Oxycodone prescribed by Dr. Compton on the 13th; Hydrocodone prescribed by Tolentino on August 19th; Cyclobenzaprine prescribed by Dr. Hammond on 8/19 and 100 mg. capsule of Doc-q-lace prescribed by Dr. Hammond on 8/14/2009. Total sought \$54.69.

3. Not submitted.

4. Cape Neurosurgical Associates. Dr. Yingling's bill of \$228.00 for services of 7/28/09.

5. ***Peters Chiropractic.*** Dr. Peters' bills for treatment of 7/9/2009 through 7/29/2009 totaling \$812.00.
6. ***Brain & Neurospine Clinic.*** Total services billed \$9,526.00.
7. ***Regional Primary Care.*** (Visit of July 13, 2009) Dr. Christopher Compton's services totaling \$66.00.
8. ***Southeast Missouri Hospital bill.*** Physical therapy charges from 11/13/09 through 12/22/09 totaling \$3,049.72.
9. ***Dr. Gornet of the Orthopedic Center.*** (September 30, 2010 visit) \$245.00
10. ***8/18/09 Surgery charges.*** Laboratory date of service 8/18/2009 - \$241.00 (Diagnostic Pathology); Dr. Paul Tolentino date of service 8/18/2009 - \$7,050.00 (This is included in Brain and Neurospine – No. 6 above); Southeast Hospital 8/18 through 8/19/2009 - \$36,709.30; Southeast Missouri Hospital anesthesia services 8/18/09 - \$2,633.76; Southeast Missouri Hospital services 8/17/09 - \$726.62; Southeast Missouri Hospital medical services bills \$34,075.54; Anesthesia Associates date of service 8/18 - \$1,280.00.

Exhibit K. Dr. David T. Volarich's report.

Dr. Volarich examined the employee on December 9, 2010 and issued a report.

Dr. Volarich summarized the medical records. Dr. Volarich noted that the employee had worked for McDonald Company for 22 years and had been responsible for hauling concrete, unloading concrete by placing chutes in the back of the truck and then cleaning and replacing the chutes along with rinsing down the inside of the barrels. Mr. Bartels had to kneel, stand, walk, squat, sit, climb up the ladder, push, pull, lift, reach, carry, and grip and squeeze to do that job. Mr. Bartels had limited use of tools but would use a jack hammer on occasion. Mr. Bartels' use of tools was limited. He worked six hours a day during slow times but 8 to 10 hours a day during busy time and was doing basically the same job he had done before, although he now avoided lifting and limited the amount of weight he lifted. Mr. Bartels had indicated that he has pain laterally and across his hip and has awakened at night with pain. He tries to drive new trucks with air seats so that it won't bother his back. If he gets an older truck he goes home early because it bothers his back so severely. He has tightness and pulling as well as pain on bending and rotation. Extension and lateral flexion caused worse pain and so Mr. Bartels just avoids those activities. The most significant discomfort is stiffness. Sitting will cause his back to flare up if he sits for a long period of time. Standing is good and he can walk pretty well extensively. He no longer lifts more than 40 pounds and takes Ibuprofen continuously. He has trouble dressing himself because he has problems getting to his feet and no longer does housework. He avoids riding his lawn mower because of the jarring and does not use a weed trimmer. The pain awakens him at night and he will toss and turn. He no longer rides his four-wheeler as often to check on his cattle. He cannot drive long distance. He only drives a pickup truck because of

problems getting out of a passenger vehicle. He has more trouble now getting in and out of his work truck.

Dr. Volarich noted that in 1994 Mr. Bartels had been in an accident which resulted in cervical surgery. From that surgery Mr. Bartels had problems with flexion and overhead activities. There was some loss of rotational movement which caused him to twist his entire body instead of rotating his head. He practically moved more cautiously when dealing with cattle because he could not rotate his head as quickly to observe the movement of the cattle. On examination Mr. Bartels had 20% loss of flexion, 50% loss of extension, 29% right lateral flexion, 11% left lateral flexion, 35% loss of right rotation and 50% of loss in the left rotation of the cervical spine.

In the lower back Mr. Bartels had 60% loss of flexion, no loss in extension, 12% loss on right lateral flexion but 52% loss of left lateral flexion.

Dr. Volarich reviewed various radiological studies and offered the opinion that on July 7, 2009, Mr. Bartels suffered a large disc herniation at L3-4 to the left causing left leg radiculopathy and now was status post a microdiscectomy at L3-L4 but had post operative epidural fibrosis left at the L3-L4 operative site.

Dr. Volarich concluded there was 40% permanent partial disability of the body of the whole at the lumbar spine due to the disc herniation. Dr. Volarich further diagnosed Mr. Bartels with having a pre-existing disc herniation at C5-C6 that resulted in a 30% permanent partial disability of the body of the whole due to the disc herniation, neck pain, loss of motion, and occasional upper extremity numbness.

Dr. Volarich also opined that Employee would, in order to maintain his current state, require ongoing care for his pain syndrome using modalities including but not limited to narcotics and non-narcotic medications (NSAID's), muscle relaxants, physical therapy, and similar treatments as directed by the current standard of medical practice for symptomatic relief of his complaints.

Exhibit K-2. Dr. Volarich's Deposition.

Dr. Volarich's deposition was taken on July 21, 2011. He testified that the measurements of the cervical spine were done actively without passive motion. The reason that is done is because passive motion may cause additional injury. Flexion was moving the employee's chin to his chest which demonstrated loss of 20% loss on rotational. The extension was moving the head upward and away and that was the most significant loss of 50%. The right lateral flexion was 29% but left lateral flexion was good at 11%. Mr. Bartels reported pain on rotational movements each way with significant restrictions at 35% and 50%.

The lumbar motion was similarly restricted with a positive straight leg raising test that indicated there is still significant nerve root irritation or pressure on the sciatic nerve. Mr. Bartels had tightness and pulling in the buttocks and thigh.

Dr. Volarich testified that the lower back surgery was reasonable and necessary to treat the injury of July 7, 2009. He testified that the prior cervical spine injury was of such significant that it could be seen to combine with a later industrial injury to make the overall disability from the current injury and the prior injury greater than the simple sum. He testified that Mr. Bartels would need to continue taking the over counter Ibuprofen two to three times a day, 4 to 6 tablets at a time. At times when Mr. Bartels had a flare up of pain because of activity Mr. Bartels would need Ultram, Oxycodone and maybe even spinal injections. All of this would require continued physician supervision.

On cross-examination Dr. Volarich testified that Mr. Bartels did not have foot drop, had little difficulty with tandem walking, and that he continued to have weakness in his left thigh. Mr. Bartels was able to squat. There were no trigger points. Mr. Bartels continues to suffer from fibrous scarring after the surgery. Dr. Volarich had not placed any restrictions on Mr. Bartels but had encouraged him to work to his physical limits. He was asked about Dr. Guidos' measurements and indicated that there was slight differences between his measurements and her measurements, although there was no indication as to how her measurements were taken. His measurements were taken with inclinometer.

On cross-examination by the Second Injury Fund, Dr. Volarich testified that there was no indication that Mr. Bartels had missed any work from lower back problems prior to July 7, 2009, but that Mr. Bartels had missed work because of his neck prior to that date.

Dr. Volarich disputed the suggestion that Mr. Bartels had full range of motion in the cervical spine indicating the prior surgery would make that impossible.

Dr. Volarich was asked what he meant by the term "maximum medical improvement." He replied by stating that he meant that Employee has "plateaued." He stated that Employee was "as good as he was going to get with the treatment provided, but it does not mean that he is not going to require future treatment. I think he's going to require some pain management."

Exhibit L. Wage Statement.

Employee's average weekly wage.

Exhibit M. Employee's Average Weekly Wage Calculations.

Exhibit N. Report of Injury filed by McDonald Company on August 19, 2009, showing date of injury of July 7, 2009 and that the employer was notified on July 8, 2009 of the injury to the low back.

Exhibit O. Denial Letter from Workers' Compensation indicating the injury was non-compensable.

Employer's Evidence:

1. Employer's average weekly wage calculations.
2. Dr. Guidos' IME.

Dr. Guidos examined the employee on March 5, 2010, for a work related injury that occurred on July 7, 2009. He had occasional low back discomfort rated at a 2 on a 10. When he twisted to the left he would have a stabbing pain in the low back which he rated 6 on 10. Dr. Tolentino had released him and he was currently having a pain in his back of 6 on 10. He had had a prior cervical surgery done by Dr. Cheung. Dr. Guidos felt that there was normal range of motion in all directions of the lumbar spine. That motor extremity functions were 5 on 5 in all major muscle groups. That the neurotension signs were all negative.

Dr. Guidos also had available Commercial DOT Physical Reports which were noted and reviewed. Dr. Guidos summarized the medical records and noted that Dr. Tolentino had recommended (after the surgery) bilateral L3-L4 facet blocks ordered if Mr. Bartels had increasing low back pain. Dr. Guidos concluded that Mr. Bartels suffered a work injury of 7/7/09 and that the work injury was the prevailing cause for need for medical treatment and surgical intervention. Mr. Bartels had improvement with strength and radicular symptoms after return to work and continues to have discomfort in his low back, particularly with twisting to the left. She concluded that Mr. Bartels had a permanent partial disability related to his work related injury of 15%.

The Second Injury Fund offered no evidence.**Rulings of Law*****Issue 1. Average Weekly Wage Rate.***

Both the employer and the employee agree that the employee's average weekly wage is set forth by Employee's Exhibit L. The dispute centers on the temporary total disability rate to be paid to the employee. Both the employer and employee agree that the permanent partial disability rate is State Maximized at \$422.97.

Section 287.250 is the applicable statute for determining average weekly wage. The evidence indicated that the employee's wages were fixed by the hour. Section 287.250.1(4) provides:

"If the wages were fixed by the day, hour, or the output of the employee, the average weekly wage shall be computed by dividing by 13 the wages earned while actually employed by the employer in each of the last thirteen calendar weeks immediately preceding the week in which the employee was injured..."

"For purpose of computing the average weekly wage pursuant to this subdivision, an absence of five regular or scheduled works days, even if not in the same calendar week shall be considered as absence for a calendar week."

The employee asserts weeks three (6/14/09-6/20/09), five (5/31/09-6/6/09), seven (5/17/09-5/23/09) and 11 (4/19/09-4/25/09) have missing days from work.

Week 3. The employee worked 30.47 hours. His paycheck shows that he worked 30.47 hours and 2.24 hours of overtime. This is less than a 40 hour week. The employee is entitled to one day credit.

Week 5. Employment week 5/31/09 through 6/6/09. The employee was paid \$398.87. His paycheck reflects that he worked 23.85 hours plus 1.71 hours. Clearly, the employee did not work the 40 hours per week and was short by 16 hours. The employee is entitled to two days of credit.

Week 7 was the time period of 5/17/09 through 5/23/09. The employee was paid \$248.09. The pay records indicate the employee worked 15.64 hours and was paid an additional .54 hours for overtime. This clearly demonstrates a 3 day work period loss.

Week 11 was the time period of 4/19/2009 through 4/25/2009. Employee worked 27.27 hours and was paid \$470.90. Employee had an additional 2.26 hours of overtime but was short by at least 8 hours of 40 hours per week. The employee is entitled to one day of credit.

This totals 7 days. Under the statute absence of 5 regular scheduled work days shall be considered as absence for a calendar week. The employee's gross wages of \$7,739.97 should be divided by 12 weeks giving an average weekly wage of \$645.00. The compensation rate for temporary total disability purposes would be two-thirds of that or \$430.00 per week. Permanent partial disability remains at \$422.97.

Issue 2. Past Medical Aid.

Section 287.140.1 provides: "In addition to all other compensation paid to the employee under this section, the employee shall receive and the employer shall provide such medical, surgical, chiropractic, and hospital treatment, including nursing, custodial, ambulance, and medicines, as may reasonably be required after the injury or disability, to cure and relieve from the effects of the injury".

The key word is "shall". It is the duty of the employer to provide treatment so required by the statute. That duty is unqualified and absolute. See *Wilson v. Emery Bird Thayer Co.*, 403 S.W.2d 953 (Mo.App. 1966), *Jennings v. Station Casino St. Charles*, 196 S.W.3d 552 (Mo.App. E.D. 2006). However, the employer is given control over the selection of the employee's medical providers. See *Blackwell v. Puritan/Bennett Corporation*, 901 S.W.2d 81 (Mo.App. E.D. 1995).

If the employer is on notice that the employee needs treatment and fails or refuses to provide treatment, the employee may select his own medical providers and hold the employer liable for the cost thereof. *Martin v. Town & Country Supermarkets*, 220 S.W.3d 836 (Mo.App. S.D. 2007); *Reed v. Associated Electric Coop, Inc.*, 302 S.W.3d 693 (Mo.App. S.D. 2009).

Notification is the key factor. Did the employer in this case have notice of the need of the employee for medical treatment? Initially, by Exhibit N, the employer filed a Report of Injury noting that the employer was notified on July 8, 2009, of the employee's injury that occurred on July 7, 2009. In addition, the employee testified (not contradicted by any other evidence) that not only did he report the injury to the employer but he reported all following medical treatment to the employer. In addition, he delivered to the employer off work sheets. According to Exhibit O, on September 18, 2009, the employer/insurer was denying the claim because of non-compensable issues. Notice was not disputed in the denial letter.

It is clear the employer knew of the employee's injury and that the employee was seeking medical care. The employer admits it in its Report of Injury; the employee testified that he informed the employer, the employee continuously provided to the employer off work sheets from the various physicians and notice was stipulated to by the parties.

In addition, the employee testified he informed the employer he was missing work because of treatment for the work related injury. The employer filed for temporary total disability benefits for the employee. The employer also filed a Workers' Compensation Notice of Claim (which was denied by the Insurer).

Moreover, I note that there is no evidence that the employer suffered any prejudice by the treatment provided by the physicians to the employer.

The employer stipulated to accident, notice, and medical causation in this case.

The employer raised a question of the causal relationship to the injury but offered no contrary evidence. In fact, Dr. Guidos' report (offered by the employer/insurer) supports the employee that the treatment was causally related to the injury.

The employer also asserts a defense to the amount of the bills charged referring to *Farmer-Cummins v. Personal Pool of Platt County*, 110 S.W.3d 818 (2003). In this case the employee introduced medical records from the health care providers that he is claiming reimbursement for. It is clear there is a correlation between the treatment the employee received and the medical bills in evidence.

The employer contends that the bills were paid by a collateral source and should not be awarded to the employee relying on *Farmer-Cummins (op cit)*. However, Section 287.220 (RSMo. 2000) provides...

"No insurance of the injured employee, or any benefit derived from any other source than the employer or employer's insurer for liability under this chapter shall be considered in determining the compensation due".

In this instance it appears the medical bills were paid by the claimant's wife's health insurance carrier. Claimants are allowed to benefit from collateral sources independent of their employer. *Farmer-Cummins* establishes that if reductions in the medical bills resulted from collateral sources independent of the employer, they are not to be considered and claimant is entitled to recover those amounts. The burden of proof lies on the defense to establish the proposition that an "employee" was not required to pay the billed amount and that liability therefore was extinguished. It is noteworthy that the employer/Insurer offered no evidence for consideration of this issue.

I make the following findings regarding the medical bills admitted into evidence:

J-1: Plaza Pharmacy – Charge \$60.00. These bills are for drugs prescribed. They are related as verified by the medical records and the employee's testimony.

J-2: Walgreens – Charge \$54.69. These bills are related as verified by the medical records and the employee's testimony.

J-3: Not submitted.

J-4: Dr. Yingling – Charge of \$228.00. Related by Employee's testimony and the medical records.

J-5: Peters Chiropractic. \$812.00. Related by Employee's testimony and the medical records.

J-6: Brain & Neurospine Clinic. \$9,526.00. Treatment related by Employee, medical records and Employer/Insurer IME. (Note: These bills were also submitted in part in Exhibit J-10).

J-7: Regional Primary Care. Dr. Compton's charge of \$66.00 on July 13, 2009. Related by medical records – this is the referral to Brain & Neurospine).

J-8: Southeast Missouri – Physical Therapy charges \$3,049.72. Related by physical therapy records and Brain & Neurospine records.

J-9: Dr. Gornet. \$245.00. Clearly related by medical records. In view of findings regarding future medical and IME reports of Dr. Guidos and Dr. Volarich the visit was reasonable and necessary.

J-10: Various:

Laboratory – 8/18/2009 - \$241.00 – related and necessary by medical records.

Dr. Tolentino – 8/18/09 - \$7,050.00 – already found to be related – duplicative.

Southeast Hospital – 8/18/2009-8/19/2009 charge of \$36,709.30. This is a combination of two later entries \$2,633.76 and \$34,075.54. This surgery is related to the injury.

Southeast Hospital - \$726.62. This charge is on 8/17/09 and is the pre-operative charge by the medical records.

Anesthesia Associates. \$1,280.00. This bill is for anesthesia on the date of surgery. It is related to the surgery.

TOTAL: \$52,998.33

Issue 3. Future medical aid

The employee requests an award for future medical care. The basis of that request is Section 287.120 which requires the employer to "furnish compensation under the provisions of this chapter for personal injury or death of the employee by accident arising out of and in the course of the employee's employment." In this case, it was stipulation that Employee sustained a compensable injury.

Section 287.120 describes the employer's obligation to afford medical care and treatment after a compensable injury. In particular, Section 287.120.1 requires such medical treatment as "may reasonably be required after the injury or disability to cure and relieve the effects of the injury". The question then is whether or not the need for additional medical treatment flows from the injury. See *Bowers v. Highland Dairy Company*, 188 S.W.3d 79 (Mo.App. S.D. 2006).

On cross examination, Dr. Volarich was asked what he meant by the term "maximum medical improvement." He replied by stating that he meant that Employee has "plateaued." He stated that Employee was "as good as he was going to get with the treatment provided, but it does not mean that he is not going to require future treatment. I think he's going to require some pain management."

Dr. Volarich also opined, in his report, that Employee would, in order to maintain his current state, require ongoing care for his pain syndrome using modalities including but not limited to narcotics and non-narcotic medications (NSAID's), muscle relaxants, physical therapy, and similar treatments as directed by the current standard of medical practice for symptomatic relief of his complaints.

Dr. Guidos also evaluated Employee on behalf of Employer/Insurer. Dr. Guidos noted that Dr. Tolentino had recommended (after the surgery) bilateral L3-L4 facet blocks ordered if

Mr. Bartels had increasing low back pain. Other than stating what Dr. Tolentino had recommended regarding facet blocks, Dr. Guidos did not give an opinion on the issue of future medical treatment.

Dr. Tolentino eventually referred Employee to Dr. Gornet. Dr. Gornet recommended limited exercise, anti-inflammatories and no further surgery, although if the pain became severe enough Mr. Bartels would be a candidate for a spinous process distracter at L2-3 and L3-4.

Employee's evidence on this issue consists of his testimony that he continues to have pain and continues to take over-the-counter.

Based on all of the evidence presented, I find that Dr. Volarich's opinion on the issue of future medical care is credible and uncontroverted. I find that the employee is entitled to future care from his lower back injury of July 7, 2009, as may be reasonable and necessary to cure the effects of that injury. Furthermore, I find that the employee's need for future medical care for his low back "flows from the injury" that occurred on July 7, 2009. Said care to include but not limited to narcotics and non-narcotic medications (NSAID's), muscle relaxants, physical therapy, and similar treatments as directed by the current standard of medical practice for symptomatic relief of his complaints.

Issue 4. Temporary total disability

After review of the evidence, I find that Employee was temporarily and totally disabled from July 8, 2009 through January 15, 2010. As such, the employer owes temporary total disability benefits for 27-3/7 weeks. Employee requested interest on those benefits. Interest on weekly temporary total disability benefits is covered by §287.160.3. The Statute states, in part, "where weekly benefits payments that are not being contested by the employer or his insurer are due, end of such weekly benefits payments are made more than thirty days after becoming due, the weekly benefits payments that are late shall be increased by 10% simple interest per annum." Mo. Rev. Stat. 287.160.3 (2007). However, that statutory section also states "that if such claims for weekly compensation are contested solely by the employer or insurer, no interest shall be payable until after thirty days after the award of the Administrative Law Judge." At Hearing, the employer/insurer did contest liability for the past temporary total disability benefits. As such, pursuant to §287.160.3, I find that no interest will be due on any past temporary total disability benefits until thirty days after this award. I have determined the appropriate rate of compensation to be \$430.00 per week. Therefore, Employer/Insurer is directed to pay Employee \$11,794.29 for temporary total disability benefits.

Issue 5. Permanent partial disability

Based on all of the evidence presented, I find that the employee sustained 30% permanent partial disability (120 weeks) to the body as a whole, referable to the low back, from the low back injury that Employee sustained on July 7, 2009. Employee's rate for permanent partial disability is \$422.97. Therefore, the employer/insurer is directed to pay Employee \$50,756.40 for permanent partial disability that the employee sustained in his low back from this accident.

Issue 6. Liability of the Second Injury Fund

The employee's prior injury to his cervical spine resulting in surgery clearly caused impairment to Mr. Bartels. That impairment was such that it had the potential to combine with a later injury to produce a disability to Mr. Bartels greater than the simple sum of the two. The medical evidence on this question is uncontradicted.

I find that Dr. Volarich's testimony is credible and that the injury and prior surgery to the cervical spine resulted in an impairment to Mr. Bartels.

The present injury resulted in an additional impairment of 30% of the body of the whole which combines with the prior impairment of 30% of the body of the whole due to the cervical injury to give an overall disability greater than the sum of the whole.

(30% x 400 = 120 weeks; 30% x 400 = 120 weeks; 160 + 120 = 240 weeks;
240 weeks x 15% = weeks; 36 x 422.97 = \$15,226.92)

ATTORNEY'S FEE

Joseph Rice, 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.

Made by:

Maureen Tilley
Administrative Law Judge
Division of Workers' Compensation

