

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

Injury No.: 97-079441

Employee: William Copeland  
Employer: Thurman Stout, Inc. d/b/a Ram Tech  
Insurer: Wausau Insurance Companies  
Date of Accident: August 13, 1997  
Place and County of Accident: Greene County, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated April 13, 2005. The award and decision of Associate Administrative Law Judge L. Timothy Wilson, issued April 13, 2005, 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 16<sup>th</sup> day of December 2005.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

\_\_\_\_\_  
William F. Ringer, Chairman

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Alice A. Bartlett, Member

\_\_\_\_\_  
John J. Hickey, Member

Attest:

\_\_\_\_\_  
Secretary

**AWARD**

Employee: William Copeland

Injury No. 97-079441

Dependents: N/A  
Employer: Thurman Stout, Inc., d/b/a Ram Tech  
Additional Party: N/A  
Insurer: Wausau Insurance Companies  
Hearing Date: June 14, 2004 and June 16, 2004

Before the  
**DIVISION OF WORKERS'  
COMPENSATION**  
Department of Labor and Industrial  
Relations of Missouri  
Jefferson City, Missouri  
Checked by: LTW/mp

### 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: August 13, 1997
5. State location where accident occurred or occupational disease was contracted: Greene 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:  
Claimant was involved in a motor vehicle accident.
12. Did accident or occupational disease cause death? N/A Date of death? N/A
13. Part(s) of body injured by accident or occupational disease: lumbar spine
14. Nature and extent of any permanent disability: 25% permanent partial disability body as a whole referable to the lumbar spine
15. Compensation paid to-date for temporary disability:
16. Value necessary medical aid paid to date by employer/insurer?
17. Value necessary medical aid not furnished by employer/insurer?
18. Employee's average weekly wages: \$797.28
19. Weekly compensation rate: \$531.52/278.42
20. Method wages computation: stipulation

### COMPENSATION PAYABLE

21. Amount of compensation payable:

Unpaid medical expenses: The employer and insurer are ordered to pay the employee \$178.36 which represents the unpaid balance owed to Dr. Stefanowicz

\$ 178.36

The employer and insurer are ordered to provide future medical care in order to cure and relieve the employee of the effects of the injury, as authorized and directed by Dr. Cross.

The employee's request for additional temporary total disability is denied.

100 weeks of permanent partial disability from Employer \$27,842.00

The evidence is insufficient to impose a 15% penalty reduction under Section 287.120.5, RSMo.

Also, the employee's request for a doubling of the award is denied.

22. Second Injury Fund liability: No

TOTAL: \$28,020.36

23. Future requirements awarded: future medical (see above)

Said payments to begin immediately 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:

William W. Francis

### FINDINGS OF FACT and RULINGS OF LAW:

Employee: William Copeland

Injury No: 97-079441

Before the  
**DIVISION OF WORKERS'  
COMPENSATION**  
Department of Labor and Industrial Relations of Missouri  
Jefferson City, Missouri

Dependents: N/A

Employer: Thurman Stout, Inc., d/b/a Ram Tech

Additional Party N/A

Insurer: Wausau Insurance Companies

Checked by: LTW/mp

The above-referenced workers' compensation claim was heard before the undersigned Associate Administrative Law

Judge on June 14, 2004, and June 21, 2004. The record was left open until October 25, 2004, for the submission of additional evidence; and the parties were afforded an opportunity to submit briefs, resulting in the record being completed and submitted to the undersigned on or about October 25, 2004. [\[1\]](#)

The parties entered into a stipulation of facts. The stipulation is as follows:

- (1) On or about August 13, 1997, Thurman Stout, Inc., d/b/a Ram Tech ("Ram Tech") was an employer operating under and subject to The Missouri Workers' Compensation Law, and during this time was fully insured by Wausau Insurance Companies.
- (2) On the alleged injury date of August 13, 1997, William Copeland was an employee of the employer, and was working under and subject to The Missouri Workers' Compensation Law.
- (3) The above-referenced employment and alleged accident of August 13, 1997, occurred in the State of Maryland. The employee alleges that the contract of employment between him and the employer was made in Missouri, and that venue is properly situated in Springfield, Missouri. (The issue of jurisdiction is disputed by the parties, and was adjudicated in the earlier hearing by Margaret Holden, Chief Administrative Law Judge, which resulted in Judge Holden issuing a Temporary or Partial Award finding Missouri to have jurisdiction. Judge Holden did not specifically address the issue of venue; and, thusly, it is assumed she found venue to be appropriately situated in Springfield, Missouri, insofar as the hearing and adjudication occurred in Springfield, Missouri.)
- (4) The employee notified the employer of his injury as required by Section, 287.420, RSMo.
- (5) The Claim for Compensation was filed within the time prescribed by Section 287.430, RSMo.
- (6) At the time of the alleged accident, the employee's average weekly wage was \$797.28, which is sufficient to allow a compensation rate of \$531.52 for temporary total and permanent total disability compensation, and a compensation rate of \$278.42 for permanent partial disability compensation.
- (7) Temporary disability benefits have been provided to the employee in the amount of \$105,019.99, representing 217 weeks in disability benefits, payable for the period of August 13, 1997, through October 10, 2001.
- (8) The employer and insurer have provided medical treatment to the employee, having paid \$33,578.61 in medical expenses.
- (9) On July 7, 2000, the employer and insurer paid the sum of \$7,441.28 to the employee as an advance toward payment of permanent disability compensation owed in this case.

The sole issues to be resolved by hearing include:

- (1) Whether the State of Missouri has jurisdiction in this case; and, if so, whether venue properly lies in Springfield, Missouri?
- (2) Whether the employee sustained an accident on or about August 13, 1997; and, if so, whether the accident arose out of and in the course of his employment with employer?
- (3) Whether the alleged accident of August 13, 1997, caused the injuries and disabilities for which benefits are now being claimed?
- (4) Whether the employer is obligated to pay for past medical expenses in the amount \$7,955.00?

- (5) Whether the employee has sustained injuries that will require additional or future medical care in order to cure and relieve the employee of the effects of the injuries?
- (6) Whether the employee is entitled to temporary total disability compensation, payable for the period of October 10, 2001, to the present and continuing indefinitely in to the future?
- (7) Whether the claimant sustained any permanent disability as a consequence of the alleged accident; and, if so, the nature and extent of the disability?
- (8) Whether the employer and insurer are entitled to a 15 percent penalty reduction in payment of permanent disability compensation, pursuant to Section 287.120.5, RSMo?
- (9) Whether the employee is entitled to a doubling of the Temporary or Partial Award, pursuant to Section 287.510, RSMo?

### **EVIDENCE PRESENTED**

The employee, William Copeland, testified at the hearing in support of his claim. Also, Mr. Copeland presented at the hearing of this case the testimony of three additional witnesses – Phillip A. Eldred (vocational consultant), Jim Bybee, and Thomas R. Tulgetske. In addition, the employee offered for admission the following exhibits:

Exhibit A ..... Deposition of Dr. Patricia Williams  
 Exhibit B ..... Deposition of Marlene Louise Beasley  
 Exhibit C ... Medical Records from Medical Center of Calico Rock  
 Exhibit D ..... Medical Record from North Arkansas Regional Medical Center  
 Exhibit E ..... Medical Records from Dr. Paff (Springfield Clinic) Exhibit F .....  
 Medical Records from Baxter County Regional Hospital (through November 6, 1998)  
 Exhibit G ..... Medical Records from Bonati Institute  
 Exhibit H ..... Medical Records from Zini  
 Exhibit I ..... Medical Records from Dr. Ledbetter (Ozark Orthopedic  
 Associates)  
 Exhibit J ..... Medical Records from Dr. Ferguson (Southwest Missouri  
 Neurosurgical Group)  
 Exhibit K ..... Unpaid mileage list per Wausau Insurance Co., (as provided to  
 claimant through October 15, 1999)  
 Exhibit L ... Unpaid Prescription Expenses (through Oct. 15, 1999)  
 Exhibit M ..... Unpaid Medical Expenses (through Oct. 15, 1999)  
 Exhibit N ..... MCI Network Construction 1997 Break Schedule  
 Exhibit O ..... Unpaid TTD chart (through Oct. 15, 1999)  
 Exhibit P ..... Vocational Report from Phillip Eldred  
 Exhibit Q ..... Deposition of Dale Halfaker, Ph.D. Exhibit R  
 ..... Deposition of Fred McQueary, M.D.  
 Exhibit S ..... Deposition of James Moneypenny, Ph.D. Exhibit T .....  
 ..... Deposition of John Stefanowicz, Ph.D.  
 Exhibit U ..... Medical Report from David Volarich, D.O. Exhibit V .....  
 ..... Deposition of Patricia Williams, D.O.  
 Exhibit W ..... Excerpts from Deposition of Donna Van Ekeren  
 Exhibit X ..... General Information and Activity Profile  
 Exhibit Y ..... Missouri Statement of Weekly Earnings  
 Exhibit Z ..... Receipt and Notice of Termination of Compensation  
 Exhibit AA ..... BOCOMP entry for December 12, 2001  
 Exhibit BB ..... BOCOMP entry for August 17, 2001  
 Exhibit CC ..... BOCOMP entry for March 9, 2001  
 Exhibit DD ..... Medical Record -- Work Status Report (April 2, 2002)  
 Exhibit EE ..... Letter, Moeller to Van Ekeren, February 25, 2002

Exhibit FF ..... Handwritten Notes from Claims Adjuster  
 Exhibit GG ..... Journal Entry from Claims Adjuster  
 Exhibit HH ..... Journal Entry from Claims Adjuster  
 Exhibit II ..... Withdrawn  
 Exhibit JJ ..... Withdrawn  
 Exhibit KK ..... Medical Invoices from Labcorp  
 Exhibit LL ..... Medical Invoices from Patricia A. Williams, D.O.  
 Exhibit MM ..... Medical Records from Countryside Clinic  
 Exhibit NN ..... Medical Records from Southwest Missouri Neurosurgical Group  
 Exhibit OO ..... Medical Records from St. John's Regional Health Center  
 Exhibit PP ..... (Not Offered)  
 Exhibit QQ ..... Precertification - Insurance Authorization Form  
 Exhibit RR ..... Medical Records from Baxter County Hospital  
 Exhibit SS ..... Invoice from John Stefanowicz, Ph.D.  
 Exhibit TT ..... Medical Expenses Summary from Fred's Pharmacy  
 Exhibit UU ..... Medical Expenses Summary from Walmart Pharmacy  
 Exhibit VV ..... Calculation of TTD (Claimed Owed to EE Since October 10, 2001)  
 Exhibit WW ..... (Not Offered)  
 Exhibit XX ..... Medical Records from R. Doug Foster, D.O.  
 Exhibit YY ..... Vocational Report from Mr. Phillip Eldred  
 Exhibit ZZ ..... Excerpts of Deposition of William Copeland (pages 31 – 41) (See, Exhibit 28)  
 Exhibit AAA ..... CV of Mr. Phillip Eldred  
 Exhibit BBB ..... Letter & Transcript of Employee from Arkansas State University – Mountain Home

The exhibits were received and admitted into evidence, with Exhibits II, JJ, PP, and WW being withdrawn or not offered for admission.

The employer and insurer presented at the hearing of this case the testimony of two witnesses – Adam Wagner and Kristen Thompson. Also, the employer and insurer offered for admission the following exhibits:

Exhibit 1 ..... (Not Offered)  
 Exhibit 2 ..... Medical Records from Southwest Missouri Neurosurgical Group, P.C.  
 Exhibit 3 ..... Medical Records from Regional Orthopaedic Health Care  
 Exhibit 4 ... Medical Records from St. John's Physicians & Clinics  
 Exhibit 5 ..... Medical Records from St. John's Regional Health Center  
 Exhibit 6 ..... Medical Records from St. John's Regional Health Center (May 21, 2001 to March 25, 2002)  
 Exhibit 7 ..... Medical Records from St. John's Regional Health Center (May 2001 to March 2002)  
 Exhibit 8 ..... Medical Records from Neurosurgical Associates of Northeast Arkansas, PA  
 Exhibit 9 ..... Medical Records from Charles Ledbetter, M.D.  
 Exhibit 10 ..... Medical Records from Baxter County Regional Hospital  
 Exhibit 11 ... Medical Records from Springfield Physical Medicine  
 Exhibit 12 ..... Medical Records from Neurological Associates  
 Exhibit 13 ..... Deposition of Randall Cross, M.D.  
 Exhibit 14 ..... Deposition of Anthony D. McBride, M.D.  
 Exhibit 15 ..... Deposition of David Volarich, D.O.  
 Exhibit 16 ..... Deposition of Jeffrey Woodward, M.D.  
 Exhibit 17 ..... Deposition of Dale Halfaker, Ph.D.  
 Exhibit 18 ..... Deposition of Norbert T. Belz, M.D.  
 Exhibit 19 ..... (Withdrawn)  
 Exhibit 20 ..... (Not Offered)  
 Exhibit 21 ..... Notice of Intent to Rely upon Physician's Report  
 Exhibit 22 ..... Videotape of Surveillance of William Copeland  
 Exhibit 23 ... Record of State of Maryland Workers' Compensation Commission (Claim No.

B467772 / Employee: William Copeland / Employer: Ramtech / Insurer: Non-Insured Employer)  
Exhibit 24 ..... Ram Tech Regulations – Installation Technician  
Exhibit 25 ..... Excerpts of Deposition of William Copeland (pp.77 – 78)  
Exhibit 26 ..... Excerpts of Deposition of William Copeland (p.66)  
Exhibit 27 ..... Excerpts of Deposition of William Copeland (pp.21 – 23)  
Exhibit 28 ..... Excerpts of Deposition of William Copeland (p.24 – 41)  
Exhibit 29 ..... Claim for Unemployment Benefits  
Exhibit 30 ..... Medical Records from NWA Spine & Orthopaedics

The exhibits were received and admitted into evidence.

In addition, the parties identified several documents filed with the Division of Workers' Compensation, which were made part of a single exhibit identified as the Legal File. The undersigned took official notice of the documents contained in the Legal File, which include: Notice of Hearing; Letters Dated June 4, 2004 (from Attorney Francis and Attorney Johnson with attachments); Order (sustaining in part and overruling in part Employer and Insurer's Motion for Protective Order); Order (sustaining change of administrative law judge); Motion for Change of Judge; Notice of Hearing (March 18, 2004 before Judge Zerrer); Order (sustaining Employee's Motion for Protective Order); Employee's Suggestions in Reply to Employer's Response to Employee's Motion for Protective Order; Response to Employee's Motion for Protective Order and Motion for Sanctions Under RSMo 287.128 (with attachments identified as Exhibits 1, 2, 3, 4, 5, 6, 7, 8, and 9); Motion for Doubling of Temporary Award; Motion for Protective Order (with attachment identified as Exhibit A); Notice of Cancellation of Hearing; Notice of Hearing (with Judge Holden); Motion for Doubling of Temporary Award; Employer and Insurer's Response to Employee's Motion for Doubling of Temporary Award (with attachments identified as Exhibits 1, 2, 3, 4, 5, 6, 7, and 8); Temporary or Partial Award (issued by Judge Holden); Division of Workers' Compensation Case Log (Injury No. 97-079441); Computer Minute Entry for Judge Holden (dated January 7, 2003); Computer & Hand Minute Entries (for Judge Billings – dated August 14, 2003; for Judge Wilson – dated September 25, 2002; for Judges Holden – dated May 10, 2002; and for Judge Zerrer – dated January 8, 2002); Computer Minute Entry (for Judge Billings – dated April 14, 2003); Computer Minute Entry (for Judge Holden – dated December 11, 2003); Computer Minute Entry (for Judge Billings – dated August 14, 2003); Computer Minute Entry (for Judge Wilson – dated September 25, 2002); Minute Entry (for Judge Holden – dated May 10, 2002); Computer Minute Entry (for unknown judge – dated August 10, 2002); Computer Minute Entry (for unknown judge – dated April 8, 2003); Minute Entry (for Judge Zerrer – dated January 8, 2002); Minute Entry (for Judge Holden – dated December 14, 2001); Computer Minute Entry (for Judge Zerrer – dated April 26, 2001); Computer Minute Entry (for Judge Paula McKeon – dated March 4, 1999); Minute Entries (for Judge Wilson – dated April 14, 2000; for Judge Holden – dated June 17, 1999 and March 19, 1999); Computer Minute Entry (for Judge Holden – dated September 17, 1999); Computer Minute Entry (for Judge Holden – dated July 23, 1999); Computer Minute Entry (for Judge Holden – dated March 19, 1999); Computer Minute Entry (for Judge Holden – dated March 10, 1999); Division of Workers' Compensation Case Log); Minute Entry (for Judge McKeon – dated November 4, 1998; and for Judge Holden – dated March 10, 1999); Minute Entry (for Judge Holden – dated July 23, 1999); Letter Dated March 10, 1999 (from Atty. Francis); Answer of Employer and Insurer to Claim for Compensation; Claim for Compensation; and Report of Injury.

## DISCUSSION

The employee, William Copeland, is 50 years of age, having been born on March 20, 1995. He is a resident of Mountain Home, Arkansas. He lives alone, as he is divorced from his third wife. Also, he has two children from his first marriage; but these children are now grown. Additionally, he enjoys limited education, as he did not complete high school. However, Mr. Copeland did obtain his GED and attended college at Arkansas State University.

The employment history of Mr. Copeland is varied, involving primarily labor-oriented work, but included some sales and office work. Initially, following his dropping out of high school, Mr. Copeland worked in a die cast shop; and he worked off and on as an automobile mechanic. Later, he worked in a carpet business with his brother, which involved both selling and laying carpet. He engaged in this business for approximately 10 to 11 years. He then worked for approximately 8 to 9 years as a subcontractor, cleaning nuclear power plants. Mr. Copeland's most recent employment involved him working as a wireman-type technician.

Also, prior to the claim of injury (August 13, 1997) Mr. Copeland suffered several injuries or illnesses, including: alcoholism, left tibia fracture, neck and back pain, TMJ, coronary artery disease.

Notably, in 1968 Mr. Copeland was involved in a motorcycle accident which resulted in him suffering a left tibia fracture, which required him to undergo an open reduction and internal fixation with subsequent removal of hardware. This

injury has caused Mr. Copeland to experience ongoing daily left leg pain below the knee since the injury. Further, this injury and the chronic pain caused by this injury caused Mr. Copeland to be unable to complete basic training in the Navy, resulting in him receiving an Honorable Medical Discharge. Mr. Copeland walks with a limp because of this injury.

Also, relative to the left tibia fracture and occurrence of chronic pain, Mr. Copeland discussed this injury with Norbert Belz, M.D., when he presented to Dr. Belz in October 2000 for an independent medical examination at the request of his attorney. At the time of this examination, Mr. Copeland noted that, at the time of suffering this 1968 injury, the treating physicians had discussed removal of the leg below the knee, and later told him that he would not be able to walk. Yet, he obtained healing that allowed him to walk, although the injury has continuously presented him with pain and discomfort below the knee. Further, in presenting with left leg pain, and discussing with Dr. Belz this prior injury, Mr. Copeland noted to Dr. Belz that the left leg pain that he was presenting with was "the same as the left leg pain below the knee experienced from 1968 to the current."

In February 1995 Mr. Copeland suffered an injury while working as an outside contractor at a nuclear power plant when L-shaped angle iron fell approximately 40 feet from above him, falling on his head, hitting him on the top of the headset he was wearing. He was knocked unconscious for a few seconds. Mr. Copeland, however, continued to work and did not receive regular medical attention until a month later. Initially, Mr. Copeland received conservative medical care and, in or around April 1995, he ceased working or was taken off work relative to complaints of chronic pain.

In September 1995 Mr. Copeland presented to Michael W. Morse, M.D., who is a neurologist practicing in Fayetteville, Arkansas. At the time of this examination, Mr. Copeland presented with complaints of neck pain that radiated between his shoulders through his entire body; and complaints of experiencing headaches that are a stabbing pain throughout his head, arising from his neck. Mr. Copeland further noted to Dr. Morse that any movement makes the neck pain worse, and there is no position of comfort. And, he complained of experiencing constant numbness and tingling in the hands. In light of the history provided to him by Mr. Copeland, together with his initial examination, Dr. Morse propounded the following impression:

This gentleman has total body pain after a head injury. He has had a negative CT scan of his brain. He does complain of some numbness and tingling in his hands, but nerve conduction velocity testing is negative. I think it is unlikely that he has a significant cervical spine injury. However, he has not been able to work in the past six months and he describes his pain as disabling. Therefore, I would like to do an MR (sic) of the cervical spine in order to more fully evaluate this. If that is unremarkable, it would be worthwhile to put him on low-dose amitriptyline to help him sleep and help with his chronic pain disorder. I am concerned that he has been off work for six months. It may be difficult for him to go back. I would recommend getting him back to work, however, as soon as possible if his MR scan is unremarkable.

On September 27, 1995, following a myelogram and CT scan of the cervical spine, together with surgical consultation with two neurosurgeons, Dr. Morse indicated that Mr. Copeland had some spinal stenosis at the level of C5-C6 due to spondylitic changes; but he did not have any disc herniation and was not a surgical candidate – he was not myelopathic and presented with no radicular symptoms. Thereafter, Dr. Morse elected to treat Mr. Copeland conservatively with pain management.

On October 25, 1995, and relative to his treatment of Mr. Copeland, Dr. Morse propounds the following comments:

He complains of severe excruciating pain that limits his activities. None of the medications have been effective. He has been to physical therapy twice. It has apparently been denied by workers' comp. He has an attorney and is going to try to get that reinstated.

**IMPRESSION:** Chronic pain syndrome following an on-the-job accident. He has no objective findings. I do believe physical therapy is indicated. I am not optimistic about his ability to return to work, given the fact that he has been off for over six months. A Functional Capacity Evaluation and/or psychological evaluation for chronic pain treatment may be beneficial.

On December 12, 1995, Mr. Copeland presented to Dr. Morse for additional examination, which resulted in Dr. Morse releasing Mr. Copeland from medical care, with an opinion of no permanent impairment and no restrictions.<sup>[2]</sup> At the time of this examination, in discussing his treatment of and the continuing complaints of pain presented by Mr. Copeland, Dr. Morse propounded the following comments:

I am seeing him [Mr. Copeland] for chronic pain disorder. His medication has not helped. He has an attorney and is trying to get workers' comp to cover it. He did not desire pain medications, physical therapy or injections. I'll have him visit with the receptionist down at Richard and Betty Back's office to see about their pain clinic. It will be difficult to accommodate him since he lives three hours away. He'll also check in to see if there are any noninvasive pain clinics in his area. Currently, he is released from my care with no permanent impairment and no restrictions. He states he is disabled, but it is based on pain only with no objective physical findings.

In March 1996 Mr. Copeland was diagnosed with TMJ (temporomandibular joint syndrome), and received a referral to an oral surgeon for treatment. Mr. Copeland, however, did not follow-up with the oral surgeon and did not obtain any treatment for this concern.

In or around January 1997, Mr. Copeland secured employment with Thurman Stout, Inc., d/b/a Ram Tech ("Ram Tech"), which is a Missouri corporation with offices in Raytown (Jackson County), Missouri, and Odessa (Lafayette County), Missouri. Ram Tech enjoys an employee base of 50 to 70 employees, depending on contractual obligations. Ram Tech is engaged in the business of providing fiberoptic installation for telephone companies and other suppliers of services relating to use of fiberoptics for telephone and computer services, and other communication systems. Notably, the installation of fiberoptics may involve outside and inside work, and the contracts for installation of fiberoptics may require Ram Tech to engage in work throughout the United States.

In many instances, Ram Tech, through its administrative staff in Missouri, directs its employees (installation technicians) to travel to a specific job located out of state and engage in the installation of fiberoptics, according to the requirements governed by the contract entered into by and between Ram Tech and the particular telephone company or supplier contracting for fiberoptics installation services. In these instances, during the applicable period of Mr. Copeland's employment with Ram Tech, when a Ram Tech employee would be directed to work out of state and away from home, Ram Tech would provide the employee(s) with board and lodging through the payment of a per diem at the rate of \$80.00 per day. Additionally, Ram Tech would compensate the employee(s) through wages based on an hourly rate of pay for hours worked,<sup>[3]</sup> and through an additional payment of \$45.00 per day for vehicle use.

In August 1997 Ram Tech had assigned Mr. Copeland to work on a job involving a contract with MCI, and at a facility situated in Washington, D.C. According to this agreement, Ram Tech served as a subcontractor to MCI. In accordance with the employment agreement between Ram Tech and Mr. Copeland, with Mr. Copeland being instructed to stay near the job site, Mr. Copeland secured a place to stay at a motel in nearby suburban Maryland. Notably, the employees working out of state, including Mr. Copeland, were always on call to work, 24 hours a day, because Ram Tech was limited in ability to schedule and perform at a particular location the installation of fiberoptics, and would have to arrange its work schedule according to the needs and demands of the party contracting for their services. Also, each Ram Tech employee had his or her own vehicle, with Mr. Copeland driving a Chevy 4-wheel-drive, full-size, half-ton, non-extended cab pickup truck, with a cap on the cargo area. Additionally, each Ram Tech employee carried his or her own tools and supply of cable, and ladders situated on a ladder rack.

On August 12, 1997, Mr. Copeland was assigned to work an overnight shift. Upon completing his work, during the latter part of the morning or early afternoon of August 13, 1997, Mr. Copeland got in his vehicle and proceeded to drive to his motel to obtain his sleep and rest. While en route, and in the State of Maryland, Mr. Copeland experienced a motor vehicle accident, which occurred as a consequence of him running a stop light and hitting a second driver operating a full-size station wagon.<sup>[4]</sup> At the time of this accident, Mr. Copeland was not wearing a seat belt or a shoulder harness. Yet, he was not thrown from the seat, and suffered no head impact and no lacerations or cuts. Similarly, he did not suffer any neck or chest impact. However, Mr. Copeland was pushed forward toward the floorboard; and his abdomen may have impacted the steering wheel, with him coming to rest with the abdomen and belly button (navel) adjacent to the lower aspect of the steering wheel.

At the immediate time of the impact, Mr. Copeland did not experience any pain; and he went to his motel. However, approximately two and a half hours later he began to experience an onset of low back pain. Mr. Copeland remained at his hotel on the 13<sup>th</sup> of August 1997. According to Mr. Copeland, he attempted to inform Perry Kraft, his immediate supervisor, of the accident a couple of hours after the accident by leaving a message on his answering machine. On the following day, Mr. Copeland elected not to return to work, but to return to his home in Arkansas. The employer provides a slightly different version of the reporting of this incident, indicating that they lost contact with him for two days. Further, according to Ram Tech, because Mr. Copeland failed to show up for work on the 14<sup>th</sup> and did not contact MCI to inform

them of his absence, MCI informed Ram Tech that Mr. Copeland was considered terminated or disallowed from performing any additional work on their project.

Upon learning of the incident, on or about August 15, 1997, Marlene Beasley attempted to telephone Mr. Copeland at his home in Arkansas, and left a message indicating that the workers' compensation insurance company would call him to direct his medical treatment. Later, during the morning of August 15th, Mr. Copeland returned Ms. Beasley's call and spoke with her about the accident. During this conversation Mr. Copeland and Ms. Beasley discussed the situation, including advising him of MCI's decision to terminate him for not contacting them. According to Mr. Copeland, he informed Ms. Beasley of his intention to seek medical care from his personal physician, which she said was acceptable.

On August 15, 1997, Mr. Copeland presented to Calico Rock Medical Center, referencing a motor vehicle accident on August 13, 1997, and presenting with complaints of right chest pain radiating at the back and neck, and with complaints of mid- to low-back pain radiating into the legs. The attending physician diagnosed Mr. Copeland with a musculoskeletal strain and treated him with Duracet for inflammation and pain.

In September 1997 the employer and insurer referred Mr. Copeland to Charles Ledbetter, M.D., who is an orthopedic surgeon in Harrison, Arkansas. Initially, Dr. Ledbetter treated Mr. Copeland conservatively, with a prescription for physical therapy, NSAIDS, and muscle relaxants. Mr. Copeland, however, did not improve with this treatment and returned to see Dr. Ledbetter. X-rays of the lumbar spine revealed degenerative changes with slight spurring at the level of L3 and L4-L5. An MRI of the lumbar spine was performed on October 10, 1997, which revealed mild degenerative changes at the levels of L4-L5 and L5-S1.

Thereafter, Mr. Copeland received a referral to present for an examination with John Ferguson, M.D., who is a neurosurgeon, in Springfield, Missouri. In light of his examination and review of the diagnostic studies, which showed mild degenerative changes at the levels of L4-L5 and L5-S1, but no herniation and "no significant clinical degree of nerve root or thecal sac compression, Dr. Ferguson diagnosed Mr. Copeland as presenting with a normal neurological examination and having sustained an acute and chronic lumbosacral strain. Additionally, in finding Mr. Copeland to not be a surgical candidate, Dr. Ferguson recommended that Mr. Copeland be provided semi-conservative treatment, to include epidural steroid injections and physical therapy. In November 1997, and continuing through the middle of December 1997, Mr. Copeland received physical therapy through the services of Baxter County Regional Hospital in Mountain Home, Arkansas.

On or about December 18, 1997, Mr. Copeland received a referral to present to David Paff, M.D., who is a physician practicing in the specialty of occupational medicine, in Springfield, Missouri. Dr. Paff diagnosed Mr. Copeland with muscle spasms and informed Mr. Copeland that his condition did not merit surgery. Dr. Paff, however, prescribed Ultram, Flexeril, and physical therapy. On or about January 9, 1998, Mr. Copeland returned to see Dr. Paff, continuing to present with complaints of pain and reporting no improvement with physical therapy. Thereafter, Dr. Paff ordered a muscle stimulator and instructed Mr. Copeland to follow-up in one month.

On or about February 9, 1998, Mr. Copeland returned to see Dr. Paff, reporting no change in symptoms. Dr. Paff instructed Mr. Copeland to continue use of the stimulator and prescribed Darvocet and Trazodone. Mr. Copeland returned to see Dr. Paff, noting that he experienced temporary relief with the use of the stimulator.

On March 11, 1998, Mr. Copeland returned to see Dr. Paff, who continued to prescribe Trazodone, but at a reduced amount. Additionally, Dr. Paff continued to excuse Mr. Copeland from work, but noted that he had "improved somewhat" and needed to begin talking about some types of work that he could do. Additionally, in noting that Mr. Copeland has had physical therapy, and has been prescribed the use of a muscle stimulator and medication with limited success, Dr. Paff noted that Mr. Copeland "needs to get on with his life."

Thereafter, Dr. Paff scheduled follow-up treatment. However, before returning to see Dr. Paff, the employer and insurer elected to transfer Mr. Copeland's care to Jeffrey Woodward, M.D., who is a physician practicing in the specialty of physical medicine in Springfield, Missouri. Pursuant to this referral, on or about March 24, 1998, Mr. Copeland presented to Dr. Woodward with complaints of low back pain and complaints of radiating numbness and tingling in both lower extremities. Also, Dr. Woodward noted that Mr. Copeland exhibited a lack of a left ankle reflex, which he attributed to the 1968 injury and not due to the 1997 low back injury. In light of his examination and findings, which included a finding of no objective abnormalities on examination related to low back pain, Dr. Woodward recommended that Mr. Copeland undergo an EMG diagnostic study, prescribed Elavil, and instructed Mr. Copeland to discontinue Trazodone. Additionally, Dr. Woodward directed Mr. Copeland to return to work light duty. Unfortunately, however, the employer was unable to provide light duty work; and Mr. Copeland remained off work.

On or about March 31, 1998, the EMG studies were performed, which revealed no abnormalities. In light of these studies and his examination of Mr. Copeland, Dr. Woodward recommended that Mr. Copeland discontinue the stimulator and to undergo a functional capacity evaluation. Thereafter, on or about April 3, 1998 Mr. Copeland underwent a functional capacity evaluation, which revealed him capable of working at near medium work levels. Mr. Copeland returned to see Dr. Woodward on April 22, 1998. At the time of this examination, Dr. Woodward diagnosed Mr. Copeland with low back pain, with associated right leg discomfort; and he opined that Mr. Copeland had reached maximum medical improvement. Additionally, Dr. Woodward released Mr. Copeland from his medical care and to return to work fully duty.

Notably, at the time of this release, Dr. Woodward was of the opinion that Mr. Copeland did not need any further medical treatment. Also, in explaining his release of Mr. Copeland to regular work duties, Dr. Woodward propounded the following testimony:

I indicated releasing the patient [Mr. Copeland] to resume regular work duties, but added that I could not establish any valid weightlifting functional ability for the patient due to some invalid and inconsistent strength test results that occurred with his FCE. And since I could not reliably or accurately assess his physical function due to that symptom exaggeration and I did not feel that there was any clear indication for permanent medical restriction, I recommended release without restriction.

Further, at the time of his release of Mr. Copeland from his care, Dr. Woodward opined that, as a consequence of the accident of August 13, 1997, Mr. Copeland sustained a permanent partial impairment of 8 percent to the body as a whole, referable to the lumbar spine.

On or about April 30, 1998, pursuant to a self-referral, Mr. Copeland presented to Patricia A. Williams, D.O., who was a physician practicing in Mountain Home, Arkansas, with a medical group known as The Bonati Institute. At the time of this examination, Dr. Williams found Mr. Copeland to present with “significant lumbosacral dysfunction at the L5/S1 area.” In light of her examination and findings, including her review of prior MRI diagnostic studies, Dr. Williams felt that Mr. Copeland might be a surgical candidate, and forwarded Mr. Copeland’s records to Dr. Alfred Bonati for surgical evaluation. Additionally, Dr. Michael Perry of The Bonati Institute examined Mr. Copeland; and, finding that Mr. Copeland had two bulging discs at the levels of L4-L5 and L5-S1, he too was of the opinion that Mr. Copeland was a surgical candidate.

On or about June 24, 1998, Mr. Copeland returned to see Dr. Paff for a disability evaluation. At the time of this evaluation, Dr. Paff took a history, reviewed various medical records, and performed an additional examination of Mr. Copeland. Notably, at the time of this examination, Mr. Copeland denied prior injury to or problems with his back, and noted that he had just began to experience numbness and tingling in the fourth and fifth digits of the upper extremities. In light of his examination and evaluation of Mr. Copeland, Dr. Paff opined that, as a consequence of the accident of August 13, 1997, Mr. Copeland sustained an injury in the nature of soft tissue injury of a fairly severe nature; but Mr. Copeland “does not have a surgical disease.” Dr. Paff further opined that, Mr. Copeland had reached maximum medical improvement, and it was “doubtful that further treatment [was] going to help him.” Additionally, Dr. Paff opined that, as a consequence of the accident of August 13, 1997, Mr. Copeland sustained a permanent partial disability of 25 percent to the body as a whole.

Later, during the summer of 1998, Dr. Bonati opined that Mr. Copeland was a surgical candidate and expressed a willingness to perform the surgery. Thereafter, Mr. Copeland presented the request to the employer and insurer for authorization and allowance to proceed with the surgery as recommended by Dr. Bonati, utilizing The Bonati procedure – an arthroscopic laser surgery to the back. The surgery did not occur, resulting in Dr. Williams continuing to provide Mr. Copeland with conservative care, including treatment for cervical pain and headaches, which were attributed to the work related injury in 1995. Relative to the cervical spine, Dr. Williams noted a history of Mr. Copeland suffering cervical neck injury when a framing square hit him on the head; and, from that moment he has suffered headaches, which occur daily in the occipital area. In light of this chronic cervical pain and headaches, Dr. Williams diagnosed Mr. Copeland with cervical dysfunction pain, attributable to an old 1995 or 1996 accident.

Mr. Copeland continued to receive follow-up conservative treatment with Dr. Williams through the summer of 1998. During this period of treatment, Dr. Williams continuously diagnosed Mr. Copeland with lumbosacral pain dysfunction with radiating symptoms in the lower extremities, and cervical pain dysfunction with radiating symptoms in the right upper extremity. Additionally, Dr. Williams diagnosed Mr. Copeland with hypertension, and pain exacerbating pain. Notably, through the fall of 1998, Mr. Copeland continued to present with both lumbar and cervical pain with radiating pain and numbness in the extremities, and headaches in the occipital area.

On November 6, 1998, Mr. Copeland was involved in a four-car motor vehicle accident, with him being the last car in the chain of four vehicles. Initially, Mr. Copeland was treated at the emergency room of Baxter County Regional Hospital, which included Mr. Copeland undergoing diagnostic studies. On November 11, 1998, in light of persistent low back, neck, and shoulder pain, with additional complaints of headaches, ringing in the ears, and eyes hurting, Mr. Copeland presented to Dr. Williams, who treated Mr. Copeland with ultrasound. Mr. Copeland followed up with Dr. Williams on November 12, November 13, and November 16, who continued to diagnose Mr. Copeland with cervical dysfunction and radiating symptoms in both upper extremities, associated with the whiplash injury. Notably, on November 16, 1998, Dr. Williams makes the following notation:

Stress really bad! – hands shaking since accident – Nov. 6, Friday.

On November 17, 1998, Mr. Copeland presented to Dr. Williams with continuing complaints of pain in the low back and neck, with radiating numbness in both upper extremities, and ringing in the ears. Thereafter, cervical spine series were obtained, which resulted in a diagnosis of cervical spondylosis, most markedly at the levels of C4-C5 and C5-C6, with no signs of fracture or subluxation, and no sign of encroachment of the neural foramina. November 23, 1998, Mr. Copeland presented to Dr. Williams with complaints of experiencing pain while having a bowel movement. Additionally, relative to Mr. Copeland's complaints of pain, Dr. Williams makes the following additional notation:

I'm [Mr. Copeland] having a nervous breakdown now – post stress.

The accident of November 6, 1998, caused Mr. Copeland to experience sustained tinnitus and migraine-equivalent headaches with vision loss occurring infrequently every week or two. And he continued to receive conservative treatment for both this concern and other concerns relating to his low back and neck.

Subsequent to treating with Dr. Williams, Mr. Copeland began receiving treatment from James Zini, D.O., who is a physician with The Bonati Institute. Mr. Copeland continued treating with Dr. Zini through in or around March 1999.

In anticipation of an evidentiary hearing before the Division of Workers' Compensation, Mr. Copeland, by counsel, took the deposition of Dr. Williams. In the course of providing deposition testimony, Dr. Williams opined that, as a consequence of the accident of August 13, 1997, Mr. Copeland presented with a lumbosacral injury that warranted surgery in the nature of treatment offered by The Bonati Institute. On cross-examination, however, Dr. Williams acknowledged that, prior to August 13, 1997, Mr. Copeland suffered a motorcycle accident that caused him to present with an injury to his left lower extremity; and in 1995 or 1996 Mr. Copeland suffered an injury that involved him getting hit on the head and presenting with a history of cervical dysfunction and headaches.

In addition, on cross-examination Dr. Williams acknowledged that it was impossible for her to opine with a reasonable degree of medical certainty which of the accidents caused the cervical dysfunction and the lumbosacral problems, the bulging disc, and his presenting problems with pain. Also, in light of her uncertainty as to the specific cause of Mr. Copeland's problems, taking into consideration the multiple accident and the multiple presenting complaints, Dr. Williams testified that the accident of August 1997 was just merely or just a triggering or precipitating factor in causing his symptoms and problems.

On October 15, 1999, the parties proceeded to a hearing pursuant to Mr. Copeland's Application for a Temporary or Partial Award, wherein he sought an order providing him with medical care and temporary disability compensation. Following this hearing, on or about January 14, 2000, Judge Holden issued a decision finding that the State of Missouri enjoyed jurisdiction in this case, and that Mr. Copeland had not reached maximum medical improvement. In accordance with her findings, Judge Holden ordered the employer and insurer to provide Mr. Copeland with medical care in the nature of a surgery "through Dr. Patricia Williams, the Zini Institute, or a comparable health care provider..." Additionally, Judge Holden ordered the employer and insurer to provide Mr. Copeland with temporary total disability compensation, effective from August 13, 1997, to such time that Mr. Copeland reached maximum medical improvement.

Following the hearing and award of Judge Holden, Mr. Copeland returned to treat with Dr. Williams, who, apparently had disassociated herself with The Bonati Institute and had begun to engage in a general practice of medicine. In or around April 2000, Dr. Williams referred Mr. Copeland to Anthony McBride, M.D., who is an orthopedic surgeon and physician enjoying the trust and confidence of Dr. Williams.

On April 4, 2000, Mr. Copeland presented to Dr. McBride (Regional Orthopaedic Health Care) for an examination and evaluation authorized by the employer and insurer. At the time of this examination, Dr. McBride took a history from Mr. Copeland, reviewed various medical records, and performed an examination which Dr. McBride reported to be as

follows:

He is a well developed gentleman in no acute distress and cooperative. His back reveals diffuse tenderness to deep palpation over the paraspinal muscles without palpable spasms. He has pain on flexion and extension of his lumbar spine. He has great difficulty rising from his chair and uses a cane for assistance in elevating himself. The lower extremities reveal no edema with palpable pulses. He has no significant atrophic changes, though he does have evidence of previous trauma to his left lower tibia. His neurological exam reveals muscle strength of 5/5 to manual motor testing in the right and left extensor hallucis longus, anterior tibialis, gastrocnemius, quadriceps, and hamstrings. He has production of back pain with testing of all muscle groups. He has low back pain produced with range of motion of his hips as well. His deep tendon reflexes are symmetric at 1+/5 patella. He has 1+/5 right Achilles reflex and an absent left Achilles reflex. The supine and sitting straight leg raises produce low back pain. No significant leg pain.

Following this examination, Dr. McBride ordered a repeat MRI diagnostic study. On April 13, 2000, Dr. McBride had an opportunity to review the recently prescribed MRI study, which proved to be negative. In light of this study, Dr. McBride released Mr. Copeland from his care, making the following medical notation:

This study reveals degenerative disk changes with desiccation<sup>[5]</sup> at the L4-5 level but no signs of herniations. The patient has no foraminal stenosis. No signs of central stenosis. This is essentially an unremarkable study for his age. He has had pain for over two years and there is nothing I can do that is going to change his current symptoms. I do not have any structural abnormalities that I can attribute to his symptoms and therefore there is nothing I can offer him.

Notably, according to Dr. McBride, the absence of any leg pain in the examination he performed of Mr. Copeland was suggestive of no nerve impingement, which proved to be consistent with the MRI diagnostic study. Similarly, the symmetrical reflexes demonstrated by Mr. Copeland, referable to his legs at his knees and ankles with no signs of weakness, were suggestive of a normal neurological exam. Significantly, according to Dr. McBride, he found no objective findings from the examination he performed of Mr. Copeland which would explain his subjective complaints of pain.

Thereafter, Mr. Copeland returned to Dr. Williams for treatment. During the course of providing Mr. Copeland with additional treatment, Dr. Williams began to be concerned that the chronic pain was causing Mr. Copeland to suffer fatigue and depression. In the latter part of the summer of 2000, Dr. Williams referred Mr. Copeland to James Moneypenny, Ph.D.

On or about August 9, 2000, Mr. Copeland presented to James R. Moneypenny, Ph.D., who is a psychologist for an examination and evaluation. At the time of this examination, Mr. Copeland presented with complaints of suffering chronic pain and depression. Dr. Moneypenny diagnosed Mr. Copeland with mood disorder, secondary to multiple ecological factors, including chronic pain. Further, in examining the question of employability, Dr. Moneypenny opined that, in light of his psychological symptoms, he did not think Mr. Copeland was capable of functioning in a work setting. Notably, in rendering his opinions Dr. Moneypenny did not specifically causally relate his diagnosis and Mr. Copeland's psychological symptoms to the automobile accident of August 13, 1997. Nor did Dr. Moneypenny diagnose Mr. Copeland with any type of post-traumatic stress disorder.

Subsequently, on or about October 11, 2000, Mr. Copeland presented to Norbert Belz, M.D., who is a physician engaged in the practice of occupational medicine, for an independent medical examination. At the time of this examination, Dr. Belz took a history from Mr. Copeland and reviewed various medical records. In light of his examination and evaluation of Mr. Copeland, Dr. Belz opined that, as a consequence of the motor vehicle accident of August 13, 1997, Mr. Copeland sustained an injury in the nature of an aggravation of underlying degenerative joint disease and degenerative disc disease of the lumbar sacral spine; and he had sustained an injury in the nature of reactive depression. Further, in opining that Mr. Copeland had reached maximum medical improvement as of the date of his examination (October 11, 2000), Dr. Belz opined that the accident of August 13, 1997, caused Mr. Copeland to sustain a permanent partial disability of 25 percent to the body as a whole, relative to the low back; and the accident of August 13, 1997, caused Mr. Copeland to sustain a permanent partial disability of 10 percent to the body as a whole relative to the reactive depression.

In regard to the above-referenced injuries, Dr. Belz is of the opinion that Mr. Copeland is in need of future medical care and is governed by restrictions. Dr. Belz thus propounds the following comments:

[low back – aggravation of degenerative joint / disc disease]

FUTURE MEDICAL:

Mr. Copeland would be best served by utilizing a TENS unit for non-pharmacological control of pain. The individual would be best served by reducing dependence on narcotic pain medication. Nonetheless, analgesics and non-pharmacological pain control as above will be required for life. The individual will require two physician visits for life expectancy to monitor same. The individual will require twice annual blood tests in the form of CBC and profile to monitor GI and hepatic toxicity. The individual will also require monitoring of renal status. The individual will require once-a-year stool guaiacs times three to monitor GI toxicity.

RESTRICTIONS:

The individual is not to lift/push/pull in excess of 20 pounds. Proper body mechanics and biomechanics are to be so utilized.

The individual is to be afforded a sit/stand work station with symptom limited posture changes.

Mr. Copeland would be best served with vocational rehabilitation. The individual has re-enrolled in college for the attempt of obtaining Associate Degree in business. The individual has prior business experience in the family-owned carpet business.

[reactive depression]

FUTURE MEDICAL:

Mr. Copeland will require twice annual psychological/ psychiatric follow up.

Mr. Copeland is a candidate for antidepressive medication. The antidepressive medication would likewise benefit the pain syndrome.

In addition, Dr. Belz opined that, both prior to and subsequent to the accident of August 13, 1997, Mr. Copeland sustained industrially disabling injuries that caused him to sustain certain permanent disability and to be governed by permanent restrictions and limitations. First, according to Dr. Belz, in 1968 Mr. Copeland sustained a significant left leg fracture, which required him to undergo an open reduction and internal fixation with subsequent removal of hardware, and caused him to sustain a permanent partial disability of 15 percent to the left knee. Relative to this injury, Dr. Belz notes, Mr. Copeland "has experienced ongoing daily pain referencing the left lower extremity." And, relative to this injury, Dr. Belz notes that, Mr. Copeland is not to climb or perform ladder work as a condition of employment – save on an occasional basis, one-third of the work shift; he is not to climb poles as in high line or high wire applications; he is not to expose the left pretibial area to direct pressure; and he is not to run or jog as a condition of employment.

Second, according to Dr. Belz, in February 1995 Mr. Copeland sustained an injury to his cervical spine in the nature of an aggravation of degenerative joint and disc disease, and caused him to sustain a permanent partial disability of 5 percent to the body as a whole referable to the cervical spine. Relative to this injury, Dr. Belz notes Mr. Copeland "is not to engage in sustained cervical extension of over 30 degrees for over one-half the work cycle." Dr. Belz further notes Mr. Copeland "is not to perform high line or overhead assembly[; and, he] is not to operate an overhead crane as a condition of employment."

Third, Dr. Belz opined that, subsequent to the accident of August 13, 1997, in November 1998, Mr. Copeland experienced a motor vehicle accident that caused him to sustain tinnitus and migraine-equivalent headaches with vision loss occurring infrequently every week or two. Relative to this injury, Dr. Belz was of the opinion that, at the time of his examination of Mr. Copeland on August 13, 1997, Mr. Copeland had not reached maximum medical improvement; and he should be referred to a private treating physician for ongoing treatment.

Finally, Dr. Belz opined that the injury of August 13, 1997, combines with the preexisting injuries attributable to the left lower extremity and cervical spine, and the subsequent injury to the head, to cause him to sustain an enhancement of additional permanent partial disability greater than the simple sum. Further, in stating that the combination of disabilities is greater than the simple sum, Dr. Belz suggests that a loading factor of 10 percent would be appropriate for assessment of the enhancement of additional permanent partial disability.

Subsequent to being evaluated by Dr. Belz, on or about December 6, 2000, Mr. Copeland returned to see John Ferguson, M.D., who is a neurosurgeon, for an examination and evaluation. At the time of this examination, Dr. Ferguson took a history from Mr. Copeland and reviewed various medical records. In light of his examination and evaluation, Dr. Ferguson again opined that Mr. Copeland was not a surgical candidate, and diagnosed Mr. Copeland as having sustained an acute and chronic lumbosacral strain. Additionally, Dr. Ferguson noted that Mr. Copeland exhibited a normal neurologic examination with no evidence of nerve root or thecal sac compression. Yet, Dr. Ferguson recommended that Mr. Copeland

be provided with conservative medical care, including treatment at St. John's Regional Health Center in Springfield, Missouri, for pain management.

In light of the recommendations and opinions of Dr. Ferguson, the employer and insurer referred Mr. Copeland to Dr. Lampert for medical treatment. In the course of evaluating Mr. Copeland's medical condition, Dr. Lampert recommended that Mr. Copeland be provided an intensive outpatient pain management program to include epidural injections, physical therapy, and psychotherapy. Mr. Copeland agreed to, and received, a series of epidural steroid injections, but refused to participate in the intensive outpatient management program that included supportive psychotherapy.

In light of Mr. Copeland continuing to present with complaints of pain, Dr. Lampert referred Mr. Copeland to Fred G. McQueary, M.D., who is an orthopedic surgeon, for an orthopedic surgical consultation. Pursuant to this referral, on or about September 4, 2001, Mr. Copeland presented to Dr. Ferguson, reporting that he had no problems with his back until four years ago when he was involved in a motor vehicle accident in August 1997. In light of his examination and Mr. Copeland's presenting history of complaints of pain, and although Dr. McQueary performed an extensive review of Mr. Copeland's medical records, including several diagnostic studies, Dr. McQueary recommended that Mr. Copeland undergo an MRI diagnostic study of the lumbar spine.

On or about October 10, 2001, Mr. Copeland presented to Randall J. Cross, M.D., who is a physician practicing in the specialty of occupational medicine, for an independent medical examination and evaluation. At the time of this examination, Dr. Cross took a history from Mr. Copeland, reviewed various medical records, and performed a physical examination of him. In light of his examination and evaluation of Mr. Copeland, Dr. Cross opined the accident of August 13, 1997, resulted in Mr. Copeland sustaining an aggravation of a preexisting lumbar disc disease and lumbar osteoarthritic disease. Dr. Cross further opined that, as a consequence of this injury, Mr. Copeland sustained a permanent partial impairment of 8 percent to the body as a whole.

Also, at the time of his examination of Mr. Copeland on October 10, 2001, Dr. Cross opined, "no further intervention is likely to improve the patient's [Mr. Copeland] self perception of disability nor his subjective complaints...." Similarly, Dr. Cross opined that further intervention would not likely provide Mr. Copeland with "any longlasting benefit in regards to his chronic lower back pain." Therefore, Dr. Cross opined, Mr. Copeland should be "released from all medical care with no further intervention planned." Additionally, Dr. Cross agreed with Dr. Woodward, stating that,

[I]t would be difficult if not impossible to make any definitive recommendation in terms of lifting restriction or other work restriction as a result of the high degree of variability in the patient's performance during the functional capacity evaluation.

The additional MRI scan recommended by Dr. McQueary occurred in early 2002, resulting in a similar finding by Dr. McQueary as before – disc desiccation at the levels of L4-L5 and L5-S1, and moderate bulging at the level of L4L5. Following his review of the repeat MRI scan, and taking into consideration the complaints of pain, Dr. McQueary discussed with Mr. Copeland the possibility of considering a lumbar fusion at the levels of L4 to the sacrum. In order to perform such surgery, however, Dr. McQueary opined that Mr. Copeland would need to undergo first a discography in order to determine whether he is truly a surgical candidate. On April 2, 2002, Mr. Copeland underwent the discogram, which demonstrated "provocative pain response in multiple levels at L3-L4, L4-L5, and L5-S1. In light of the multiple level involvements, Dr. McQueary rejected the idea of Mr. Copeland being a surgical candidate, and opined that Mr. Copeland's "only potential management is long-term conservative treatment." Additionally, Dr. McQueary opined that, as of April 2, 2002, Mr. Copeland had reached maximum medical improvement; and, as a consequence of the accident of August 13, 1997, Mr. Copeland had sustained a permanent partial disability of 25 percent to the body as a whole.

In his deposition, Dr. McQueary noted that he considered Mr. Copeland to be totally disabled, and to be governed by the restriction of no standing or walking. Further, Dr. McQueary acknowledged that he believed Mr. Copeland would need future medical care, primarily in the form of periodic medication and physical therapy. Notably, on cross-examination, Dr. McQueary acknowledged being unaware of Mr. Copeland having suffered prior injuries involving his back, and had been involved in a subsequent motor vehicle accident involving a similar type of whiplash incident and an injury to his head.

On December 2, 2002, Mr. Copeland presented to David T. Volarich, D.O, who is a physician practicing in the specialty of occupational medicine, for an independent medical examination. At the time of this examination, Dr. Volarich took a history from Mr. Copeland, reviewed various medical records, and performed a physical examination of him. In light of his examination and evaluation of Mr. Copeland, Dr. Volarich opined that, as a consequence of the accident of August 13, 1997, Mr. Copeland sustained an injury to his low back in the nature of a bulging or protruding disc at the levels of L4-L5 and L5-S1, and an aggravation of degenerative joint and disc disease referable to the low back. Dr. Volarich further opined

that, as a consequence of this injury, Mr. Copeland sustained a permanent partial disability of 30 percent to the body as a whole referable to the low back.

Also, Dr. Volarich opined that, prior to the accident of August 13, 1997, Mr. Copeland had suffered preexisting injuries to his left lower extremity (tibia fracture), cervical spine, and lumbar spine. Dr. Volarich further opined that the preexisting injuries to Mr. Copeland's left lower extremity and cervical spine were industrially disabling, with the injury to the left lower extremity resulting in him sustaining a permanent partial disability of 15 percent referable to the left lower extremity at the 160-week level, and with the injury to the cervical spine resulting in him sustaining a permanent partial disability of 10 percent to the body as a whole referable to the cervical spine.

Further, Dr. Volarich opined that, subsequent to the accident of August 13, 1997, in November 1998, Mr. Copeland suffered an additional injury to his cervical spine, which involved a motor vehicle accident. According to Dr. Volarich, this injury resulted in Mr. Copeland sustaining a permanent partial disability of 20 percent to the body as a whole. Notably, in rendering an assessment of permanent partial disability relative to this subsequent injury, Dr. Volarich noted that Mr. Copeland continued to present with chronic neck pain, loss of motion, and intermittent right upper extremity radicular symptomology.

In addition, Dr. Volarich opined that the combination of the aforementioned disabilities (preexisting injuries, primary injury, and subsequent injury) "create a substantially greater disability than the simple sum or total of each separate injury/illness, and a loading factor should be added." Additionally, relative to these disabilities, Dr. Volarich opined that Mr. Copeland should be provided future medical care, and is governed by restrictions. In the context of these issues, Dr. Volarich propounded the following comments:

**EVALUATION AND TREATMENT CONSIDERATIONS:** In order to maintain his current state, he will 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. Complimentary medical modalities may also benefit him and are recommended.

\* \* \*

**With regard to work and other activities referable to the spine,**

1. He is advised to limit repetitive bending, twisting, lifting, pushing, pulling, carrying, climbing and other similar tasks to an as-needed basis.
2. He should not handle any weight greater than 15 pounds, and limit this task to an occasional basis, assuming proper lifting techniques.
3. He should not handle weight over his head or away from his body, nor should he carry weight over long distances or uneven terrain.
4. He is advised to avoid remaining in a fixed position for no more than about 30 minutes at a time, including both sitting and standing.
5. He should change positions frequently to maximize comfort and rest when needed.
6. He is advised to pursue an appropriate stretching, strengthening, and range of motion exercise program in addition to non-impact aerobic conditioning such as walking, biking, or swimming to tolerance daily.

**With regard to work and other activities referable to the lower extremities,**

1. He is advised to limit repetitive stooping, squatting, crawling, kneeling, pivoting, climbing, and all impact maneuvers.
2. He should be cautious navigating uneven terrain, slopes, steps, and ladders, especially if he must handle weight. He can handle weight to tolerance.

3. He should limit prolonged weight bearing, including standing or walking to 30 to 60 minutes or to tolerance. Additionally, if he must be on his knees for any reason, he should appropriately pad the surface upon which he is kneeling.
4. Glucosamine appears to be a useful compound to maintain articular surface cartilage, and I recommend he use this supplement daily.
5. He is advised to pursue an appropriate strengthening, stretching, and range of motion exercise program in addition to non-impact aerobic conditioning such as walking, biking, or swimming (aquatic therapy is an excellent conditioning option) to tolerance daily.

In the taking of his deposition, Dr. Volarich acknowledged that the medical records evidenced some inconsistency in contrast to Mr. Copeland's reported history. Dr. Volarich further acknowledged that Mr. Copeland's "movement patterns changed with distraction and his static strength results were equivocal." Similarly, Dr. Volarich acknowledged that Mr. Copeland's "main limitations were limited to complaints of pain. His movements patterns did not match his pain rating." Additionally, Dr. Volarich indicated that he would not disagree with a psychological finding or assessment by Dr. Halfaker that Mr. Copeland presented signs of possible symptom manipulation, as well as possibly showing signs of being more impaired than in actuality.

On or about January 9, 2003, Mr. Copeland presented to Dale A. Halfaker, Ph.D., for a psychological examination and evaluation. At the time of this examination, Dr. Halfaker took a history from Mr. Copeland, reviewed various medical records, and performed a psychological examination of him. In light of his examination and evaluation of Mr. Copeland, Dr. Halfaker opined that, as a consequence of the accident of August 13, 1997, Mr. Copeland suffers from mild to moderate psychological impairment and presents with psychological and environmental problems, which were identified as follows:

Occupational problems: unemployment  
Economic problems: inadequate finances  
Other psychological environmental problems: difficulty adjusting to pain and disability associated with the injury

Dr. Halfaker further opined that Mr. Copeland had reached maximum psychological improvement, but would likely benefit from 12 to 15 sessions of pain management psychotherapeutic intervention to improve the quality of his life.

In addition, having found Mr. Copeland to be at maximum psychological improvement, Dr. Halfaker opined that, as a consequence of the accident of August 13, 1997, Mr. Copeland had sustained a permanent partial impairment of 20 to 25 percent to the body as a whole. Additionally, Dr. Halfaker was of the opinion that Mr. Copeland's psychological impairment, considered alone, does not render him permanently and totally disabled.

In the taking of his deposition, Dr. Halfaker acknowledged that, in the rendering of his assessment of Mr. Copeland, he premised his opinion on, among other things, that prior to the accident of August 13, 1997, Mr. Copeland did not suffer from any condition that interfered with his ability to work. Relative to this discussion, Dr. Halfaker propounded the following testimony:

It was not until after the August 1997 injury that we began to see the magnitude of affective and emotional problems begin to interfere with his ability to work, suggesting that there's really no other approximate cause or substantial factor to account for his current condition.

Yet, Dr. Halfaker did not have any history or understanding of the 1995 injury suffered by Mr. Copeland, which resulted in him suffering chronic pain, depression, and missing more than six months of work. Nor was Dr. Halfaker presented with the opinions of Dr. Morse, including his opinion in December 1995 that Mr. Copeland was being released from medical care without any disability, but with Mr. Copeland continuing to present with complaints of pain without objective physical findings, and with Mr. Copeland stating that he considered himself disabled. Similarly, Dr. Halfaker did not have the benefit of Dr. Morse's medical record of January 1997, wherein Mr. Copeland appeared, continuing to present with complaints of pain relative to the 1995 injury, and for the purpose of obtaining an evaluation relative to securing a workers' compensation settlement in regards to the 1995 injury.

On or about September 9, 2003, Mr. Copeland presented to John Stefanowicz, Ph.D., who is a psychologist, for a psychological examination at the request of the employer and insurer. At the time of this examination, Dr. Stefanowicz took

a history from Mr. Copeland, reviewed various medical records, and performed a psychological examination of him. In light of his examination and evaluation of Mr. Copeland, Dr. Stefanowicz opined that Mr. Copeland suffers from major depressive disorder. And, in addressing the cause of this depression, Dr. Stefanowicz opined that the diagnosis of major depressive disorder “was not instantly related to the accident but is directly related to his pain from his injuries in his accident [August 13, 1997 injury].” Dr. Stefanowicz further opined that, while Mr. Copeland had reached maximum psychological improvement, Mr. Copeland had not been treated psychiatrically through antidepressant medication and had not engaged in a program of individual psychotherapy, which he considered to be “the best practice or standard of care for a major depressive disorder.” Additionally, Dr. Stefanowicz opined that, as a consequence of the accident of August 13, 1997, Mr. Copeland “will continue to be permanently and substantially disabled for gainful employment.”

On cross-examination Dr. Stefanowicz acknowledged that he rendered his opinions without any information or understanding that in 1995 Mr. Copeland suffered an injury which resulted in him presenting with chronic pain but with no objective physical findings to support such complaints of pain. Similarly, Dr. Stefanowicz acknowledged that Mr. Copeland denied having sustained such an injury. Dr. Stefanowicz further acknowledged that, if Mr. Copeland had missed six months of work in the latter part of 1995, and during this period had been diagnosed with chronic pain disorder, he would consider such information meaningful.

Also, after being informed of the medical records and opinions of Dr. Michael W. Morse, Dr. Stefanowicz acknowledged that, as a consequence of a 1995 injury, Mr. Copeland suffered from chronic pain, with no indication that the pain had been resolved. Additionally, on cross-examination Dr. Stefanowicz acknowledged that, if a person places an emphasis on their pain more so than anything else, it could be a sign of symptom magnification. Additionally, Dr. Stefanowicz acknowledged that the tests he performed of Mr. Copeland produced equivocal results.

Phillip Eldred, who is vocational rehabilitation consultant, testified at the hearing in support of Mr. Copeland. Mr. Eldred performed a vocational assessment of Mr. Copeland on or about February 21, 2004. At the time of this vocational assessment, Mr. Eldred took a medical and work history, and reviewed various medical records. In light of his vocational assessment of Mr. Copeland, Mr. Eldred opined that, in light of the multiple restrictions governing Mr. Copeland, he is unemployable in the open and competitive labor market. On cross-examination, however, Mr. Eldred acknowledged that, if he considered only the restrictions imposed by Drs. Cross and Paff, together with the functional capacity evaluation of Nancy Dickey, then Mr. Copeland is employable in the open and competitive labor market.

Anthony D. McBride, M.D., testified by deposition on behalf of the employer and insurer. Dr. McBride provided a surgical consultation upon referral by Dr. Williams, and as authorized by the employer and insurer. In light of his examination and evaluation of Mr. Copeland, including his review of the medical records and diagnostic studies, Dr. McBride opined that, at the time of his last examination of Mr. Copeland on April 13, 2000, Mr. Copeland had reached maximum medical improvement and did not need any additional medical care. Additionally, Dr. McBride indicated that he was of the impression that Mr. Copeland’s subjective complaints are not consistent with the objective findings.

Further, on cross-examination Dr. McBride indicated that Mr. Copeland presented with an inconsistent pain pattern, which provided an abnormal objective finding. Additionally, on cross-examination Dr. McBride considered it a “stretch” to causally relate the degenerative disc changes, the desiccation, and complaints of pain in the lumbar spine to an automobile accident.

Also, in speaking to the question of Mr. Copeland’s medical treatment, Dr. McBride propounded the following testimony:

Q. Okay. Within a reasonable degree of medical certainty do you feel there’s any further treatment necessary for Mr. Copeland?

A. No treatment that I could offer him.

Q. Okay. What about treatment from another type of physician or otherwise?

A. Well, it’s my understanding he’s had treatment by other physicians, including physiatrists and other medical doctors without relief. In general, after three years if he’s had no relief with conservative care, it’s my opinion he’s going to have to learn to cope with his symptoms.

Q. Do you have an opinion within a reasonable degree of medical certainty whether or not Mr. Copeland is kind of considered to be at maximum medical improvement as of your last visit with him?

A. Yes, I do.

Q. Do you have an opinion based on prior history of when he reached that level of maximum medical improvement, or did you make that determination?

A. I did not make that determination, and after three years it'd be difficult for me to say exactly when he would have reached his maximum medical improvement.

Q. But it is your opinion that as of April 13, 2000 he is at maximum medical improvement?

A. At that time I felt there was nothing further to be offered him within the scope of what I practice that I think could help him.

Q. It's also your opinion that there was nothing within the scope of medical practice that could or should be offered to him. Is that fair?

A. Yes.

\* \* \*

Q. Do you have an opinion as to whether or not there was anything in the scope of general medical practice at all that could be offered him or should be offered him?

A. It appears to me that he's had extensive treatment and I don't think further treatment will benefit.

However, on cross-examination Dr. McBride acknowledged that he would not dismiss another physician's recommendation of pain management for Mr. Copeland.

Finally, questions were presented to Dr. McBride relative to the nature and quality of care offered by The Bonati Institute. In addressing this line of inquiry, Dr. McBride provided the following testimony:

Q. Doctor, are you familiar with the Bonati Institute?

A. Yes, I am.

Q. How would you describe the Bonati Institute?

A. Personally, I believe the man's, I believe his practices are questionable.

Q. Okay. And in what way do you find his practice questionable or procedures questionable?

A. The premise that he bases his surgeries on relates to laser ablation and studies beginning in the '70s have not substantiated that has an effective form of therapy.

Q. Are there any current studies on the Bonati Institute or the procedures that Dr. Bonati utilizes that you're aware of?

A. By Dr. Bonati?

Q. Are there any studies done by medical journals or other doctors addressing this procedure that Dr. Bonati uses in evaluating the safety or the benefit of that procedure?

A. Not in the spine journals that I review, no.

Q. Okay, if Dr. Williams is recommending that Mr. Copeland got to the Bonati Institute for this surgery, do you feel that Mr. Copeland is putting himself at risk physically or medically?

\* \* \*

A. I could not endorse a referral.

Also, Randall Cross, M.D. testified by deposition in behalf of the employer and insurer. In light of his examination and evaluation of Mr. Copeland, Dr. Cross opined that, as a consequence of the accident of August 13, 1997, Mr. Copeland sustained an acute lumbar strain. Dr. Cross further opined that, as a consequence of this accident, Mr. Copeland sustained a permanent partial impairment of 8 percent to the body as a whole.

In addition, Dr. Cross testified that, relative to the injury of August 13, 1997, Mr. Copeland was not a surgical candidate; and he did not believe he needed any further treatment. Additionally, in light of the functional capacity evaluation performed on Mr. Copeland and the findings relating to this evaluation, Dr. Cross expressed concern that Mr.

Copeland exhibited psychological overlay or some potential secondary gain issues. According to Dr. Cross, at the time of his examination of Mr. Copeland, he found Mr. Copeland to exhibit exaggerated pain behavior without objective findings supportive of such behavior, suggestive of psychological overlay or symptom magnification. Similarly, according to Dr. Cross, during this examination Mr. Copeland appeared to dramatize losing his balance which Dr. Cross did not believe to be an actual loss of balance.

On cross-examination Dr. Cross acknowledged that Mr. Copeland suffers from major depression and post-traumatic stress; and he would causally relate the post-traumatic stress to the motor vehicle accidents, including the accidents of August 13, 1997, and the subsequent four-car accident in November 1998. Additionally, Dr. Cross acknowledged that the August 13, 1997, accident is a substantially contributing factor to Mr. Copeland needing medication for pain management. However, in terms of allowing for future medical care relative to the accident of August 13, 1997, Dr. Cross would limit the medical care to pain management through medication.

## FINDINGS AND CONCLUSIONS

The fundamental purpose of The Workers' Compensation Law for the State of Missouri is to place upon industry the losses sustained by employees resulting from injuries arising out of and in the course of employment. The law is to be broadly and liberally interpreted and is intended to extend its benefits to the largest possible class. Any question as to the right of an employee to compensation must be resolved in favor of the injured employee. *Cherry v. Powdered Coatings*, 897 S.W. 2d 664 (Mo.App., E.D. 1995); *Wolfgeher v. Wagner Cartage Services, Inc.*, 646 S.W.2d 781, 783 (Mo.Banc 1983). Yet, a liberal construction cannot be applied in order to excuse an element lacking in the claim. *Johnson v. City of Kirksville*, 855 S.W.2d 396 (Mo.App., W.D. 1993).

The party claiming benefits under The Workers' Compensation Law for the State of Missouri bears the burden of proving all material elements of his or her claim. *Duncan v. Springfield R-12 School District*, 897 S.W.2d 108, 114 (Mo.App. S.D. 1995), citing *Meilves v. Morris*, 442 S.W.2d 335, 339 (Mo. 1968); *Brufat v. Mister Guy, Inc.* 933 S.W.2d 829, 835 (Mo.App. W.D. 1996); and *Decker v. Square D Co.* 974 S.W.2d 667, 670 (Mo.App. W.D. 1998). Where several events, only one being compensable, contribute to the alleged disability, it is the claimant's burden to prove the nature and extent of disability attributable to the job-related injury.

Yet, the claimant need not establish the elements of the case on the basis of absolute certainty. It is sufficient if the claimant shows them to be a reasonable probability. "Probable", for the purpose of determining whether a worker's compensation claimant has shown the elements of a case by reasonable probability, means founded on reason and experience, which inclines the mind to believe but leaves room for doubt. See, *Cook v. St. Mary's Hospital*, 939 S.W.2d 934 (Mo.App., W.D. 1997); *White v. Henderson Implement Co.*, 879 S.W.2d 575, 577 (Mo.App., W.D. 1994); and *Downing v. Williamette Industries, Inc.*, 895 S.W.2d 650 (Mo.App., W.D. 1995). All doubts must be resolved in favor of the employee and in favor of coverage. *Johnson v. City of Kirksville*, 855 S.W.2d 396, 398 (Mo.App. W.D. 1993).

### I. Jurisdiction

Section 287.110, RSMo extends jurisdiction to the State of Missouri in workers' compensation cases in three possible situations:

1. All injuries received and all occupational diseases contracted in the state of Missouri;
2. All injuries received and all occupational diseases contracted outside the state of Missouri under contract of employment made in the state of Missouri, unless the contract of employment provides for jurisdiction in another state; and
3. All injuries received and all occupational diseases contracted outside the state of Missouri, but the employee's employment was principally localized in the state of Missouri.

In light of the accident occurring in the State of Maryland, and in light of Mr. Copeland's employment with Ram

Tech not being principally localized in the State of Missouri, jurisdiction in Missouri must exist on the basis of the second criteria. Namely, whether the contract of employment entered into by and between Mr. Copeland and Ram Tech was made in the state of Missouri, without the contract of employment providing for jurisdiction in another state. After consideration and review of the evidence, I find and conclude that the state of Missouri enjoys jurisdiction over the present case.

In Missouri, "for a contract to be formed, there must be a meeting of the minds of the parties, to the contract regarding the same thing, at the same time." *Whitney v. Countrywide Truck Service*, 886 S.W.2d 154, 155 (Mo. App. E.D. 1994). In determining where the minds of the parties met, the trier of fact must consider all of the facts and circumstances and the parties' conduct. *Id.* It is generally assumed that the contract was made at the place where the last act necessary to complete the contract was performed. *Id.*; *Whiteman v. Del-Jen Constr., Inc.*, 37 S.W.3d 823, 831 (Mo. App. W.D. 2001), *overruled in part on other grounds, Hampton*, 121 S.W.3d at 225.

In the present case, the employee and employer did not enter into a written employment agreement. Rather, Mr. Copeland and Ram Tech orally entered into a contract of employment, which occurred primarily through conversations held over the telephone. During these conversations Mr. Copeland was situated in the State of Arkansas and the representatives of Ram Tech were situated in the State of Missouri.

Initially, prior to Mr. Copeland entering into a contract of employment with Ram Tech, Mr. Copeland responded to an advertisement by Ram Tech, which had been placed in a telephone magazine that solicited applications of employment for individuals seeking employment as installation technicians. Responding to this ad, in or around the middle of December 1996, Mr. Copeland telephoned Marlene Beasley, who, at all times relevant to this case was part of the office management of Ram Tech, inquiring of employment as an installation technician. Although Mr. Copeland did not have the requisite experience, Ms. Beasley advised Mr. Copeland that Ram Tech had recently received a contract with MCI. And, if the responsible person with MCI was willing to train him, then he might possibly be considered for employment; but he would need to submit a resume for their evaluation and consideration of him.

Thereafter, Mr. Copeland submitted a resume to Ram Tech, with a hand-written note that states as follows:

To Marlene Beasley

Thank you for taking the time to talk to me, and explain to me about your company. I am sending my resume as requested. I would look forward to working for your company if you are interested.

Again thank you.

William Copeland

Ms. Beasley reviewed Mr. Copeland's resume upon receipt and, finding it acceptable, forwarded it to the MCI representative for their additional review and evaluation. Subsequently, Ms. Beasley received word from MCI indicating their approval of Mr. Copeland and their willingness to train him. At that point, Ms. Beasley telephoned Mr. Copeland indicating that he had been accepted to work for them under their contract with MCI. However, in her telephone conversation with Mr. Copeland, Ms. Beasley noted that his employment with Ram Tech was conditioned on him completing and submitting to Ram Tech several employment documents, including a formal employment application and his signed acceptance to the employment regulations of Ram Tech, followed by Ram Tech's review and approval of said documents.

Following the telephone conversation wherein she accepted Mr. Copeland's offer to work for Ram Tech, Ms. Beasley, and with a co-employee (Deanna Dinkel), mailed several of the employment documents to Mr. Copeland, together with a cover letter. The cover letter, dated December 27, 1996, states,

Dear William,

We're glad to have you aboard! We have assembled these blocks for your convenience on the job site. Both the application and regulations are in duplicate, one to return to our office asap, and one for your records. ...

Again, welcome to the company and should you have any questions, please feel free to call us.

Sincerely,

Marlen Beasley  
Deanna Dinkel  
*Administrative Management*

Upon his receipt of these documents, Mr. Copeland signed and returned the necessary documents to Ms. Beasley, who then reviewed the documents and deemed them acceptable. At that point, according to Ms. Beasley, Ram Tech considered Mr. Copeland an employee, and directed him to Philadelphia for his first assignment, with a starting date of January 6, 1997.

In addition, all of the circumstances point to the intent of the parties to form a contract governed by the laws of Missouri. Notably, the evidence is without any indication or testimony that the parties intended to form a contract of employment governed by the state of Mr. Copeland's residence (Arkansas), or in any other state where he might be sent to work. Further, Ram Tech has always been located in the state of Missouri since its inception in 1990. And all of its business locations are in Missouri. Additionally, the employees of Ram Tech are all directed out of the Missouri office; all payroll checks of Ram Tech are generated from within Missouri; and all files of Ram Tech are maintained in Missouri.

Further, upon being notified of Mr. Copeland claiming a work-related injury, Ms. Beasley completed and submitted to the insurance carrier a Missouri Report of Injury and Missouri Statement of Weekly Earnings. Additionally, the employer and its insurer caused temporary disability compensation to be paid to Mr. Copeland under the laws of Missouri prior to the parties proceeding to an evidentiary hearing.

Accordingly, after consideration and review of the evidence, together with consideration of applicable law, I find and conclude that the last act necessary to complete the contract occurred in Missouri, and the parties' intended for the contract of employment to be governed by the laws of Missouri. Therefore, the Missouri Division of Workers' Compensation enjoys jurisdiction of this case.

## II. Venue

The employer and insurer object to venue lying in Springfield (Greene County), Missouri. The employee, however, asserts that venue and the setting of this case in Springfield, Missouri, is proper, insofar as the parties have stipulated to, or otherwise waived, the issue of venue.

In the State of Missouri the provisions of Section 287.640.2, RSMo govern venue in a workers' compensation case. Section 287.640.2, RSMo states:

Unless the parties otherwise agree, all original hearings shall be held in the county, or in a city not part of any county, where the accident occurred, or in any county, or such city, adjacent thereto, or *if the accident occurred outside of the state, then the hearing shall be held in the county or city where the contract of employment was made*, or the county where employment of the employee was principally localized. If venue cannot otherwise be established by this subsection, then the division shall determine the venue of the hearing. The division shall determine the location of the hearing within the county, or city not within a county, of venue. [Emphasis added.]

In the present case, jurisdiction is premised solely on the basis of the contract of employment between Mr. Copeland and Ram Tech being made in Raytown (Jackson County), Missouri. Accordingly, in light of the contract of employment being made in Jackson County, Missouri, a plain reading of Section 287.640.2, RSMo indicates that, in the absence of an agreement by the parties, venue should be in Kansas City, Missouri, and not Springfield, Missouri.

Initially, this case appears to have been docketed in Kansas City, Missouri. On or about November 4, 1998, the employee, appearing pro se, and the employer and insurer, by counsel, appeared for a prehearing conference in front of Judge McKeon, who made the following minute entry,

PARTIES APPEAR ER BOGDON ADVISED EE TO OBTAIN ATTY OF MO JURIS  
RESET IN SPGFIELD NOT A KC CASE EE INJURED IN MARYLAND

WILLIAM COPELAND Present

EMPLOYERS INSURANCE Present

Apparently, thereafter, venue in the case was transferred to Springfield, Missouri; and the employee secured the services of William Francis, who is an attorney practicing in Springfield, Missouri.

Subsequently, the Springfield Office scheduled this case to be set for a prehearing conference in Springfield, Missouri, on March 10, 1999. Upon learning of this setting, the employer and insurer, by counsel, filed a letter objecting to the transfer of venue from the Kansas City docket to the Springfield docket, and requested the case to be reassigned to the Kansas City Office of the Missouri Division of Workers' Compensation. Additionally, the employer and insurer, by counsel, requested a continuance of the prehearing conference. Responding to the employer and insurer's objection to venue, the employee, by counsel, filed his objection to venue being transferred away from Springfield, Missouri.

On or about March 19, 1999, a conference call was held before the Honorable Margaret Holden, Chief Administrative Law Judge of the Springfield Office, wherein the issue of venue was taken up and argued by the parties. Additionally, the parties appear to have taken up a motion to quash a deposition, as there is an office notation that states the following:

	Conf.	Fri
		March
Call	9:00 AM	19 <sup>th</sup>
		Re: motion to Quash depo / venue Issue
		WWF 8830-4000 Bogdan (816) 361-7917

The office notation was made on a post-it note and attached to an older minute entry. (The Springfield Office commonly addresses such issues through a conference call rather than scheduling a specific hearing date and requiring all parties and/or counsel to appear in person.)

Thereafter, and without a specific explanation, venue was determined to be in Springfield, Missouri. At the time of this conference call, Judge Holden made the following minute entry,

conf call held. venue should be in spfld. set mediation asap if parties request one, will let us know if they need one.

It is unclear from the above-referenced minute entry whether Judge Holden overruled the employer and insurer's motion objecting to venue; or whether the parties, during the course of the conversation, agreed to venue remaining in Springfield, Missouri. Regardless, subsequent to this conference call, the Springfield Office scheduled the case for a prehearing conference on June 17, 1999; and there is no reference to venue being objected to by the parties. Additionally, on October 15, 1999, the parties proceeded to an evidentiary hearing before Judge Holden, wherein the employee sought a Temporary or Partial Award, without venue being an issue. And, since the issuance of the Temporary or Partial Award by Judge Holden, this case has been docketed continuously in Springfield, Missouri, without objection of the parties until shortly before the parties proceeded to final hearing.

Accordingly, after consideration and review of the evidence, I find and conclude that, while venue would properly lie in Jackson County, Missouri, the parties stipulated to, or otherwise acquiesced, in the case being set in Springfield, Missouri. In Missouri, venue is not jurisdictional and may be changed by agreement of the parties. Therefore, venue is proper in Springfield, Missouri; and the case is properly before the undersigned Associate Administrative Law Judge.

## Accident

On August 13, 1997, Mr. Copeland experienced a motor vehicle accident, which occurred as a consequence of him running a stoplight and hitting a second driver operating a full-size station wagon. At the time of this accident, Mr. Copeland had just completed his work shift and was en route to his motel to obtain sleep and rest. Notably, in his employment with Ram Tech, Mr. Copeland worked out of state and away from home; and he was required to be on call 24 hours a day. Further, Mr. Copeland was required to use his own vehicle in order to provide transportation for him and to carry the required tools and supply of cable, as well as a ladder situated on a ladder rack. Also, in addition to being compensated with an hourly wage, in light of this employment requiring Mr. Copeland to be out of state, Ram Tech provided Mr. Copeland with board and lodging through the payment of a per diem at the rate of \$80.00 per day, and through an additional payment of \$45.00 per day for vehicle use.

In Missouri, in order for an injury to be compensable, the employee must have sustained an accident that arises out and in the course of his or her employment. Generally, in the context of this issue off-premises injuries are not considered to be "in the course of employment." *Shinn v. General Binding Corp.* 789 S.W.2d 230 (Mo.App.1990), and thus not considered to be compensable. Accordingly, injuries occurring while *going to and from work* are considered "off premises injuries" and, therefore, are generally viewed as not compensable injuries. Yet, there are exceptions to this general rule, such as when an employee is engaged in traveling as part of the duties of his or her employment, or the employer compensates the employee for his or her vehicle or travel time. See, *Williams v. Transport Intern, Inc.* 752 S.W.2d 501 (Mo. App. W.D. 1988) and *Tate v. Southwestern Bell Telephone Co.*, 715 S.W. 2d 326 (Mo. App. S.D. 1986).

Therefore, in light of the foregoing, I find and conclude that on August 13, 1997, the employee, Williams Copeland, sustained an accident, which arose out of and in the course of his employment with Thurman Stout, Inc. d/b/a Ram Tech.

## IV. Medical Care & Causation

The parties offer differing medical opinions and evidence on the nature of the injury sustained by Mr. Copeland when he became involved in a motor vehicle accident on August 13, 1997. After consideration and review of the evidence, including consideration of the preexisting injuries and disabilities suffered by Mr. Copeland, as well as the injuries and disabilities caused by a subsequent motor vehicle accident, I resolve the differences in the evidence submitted by the parties in favor of the testimonies and opinions of Dr. Woodward, Dr. Paff, Dr. McBride, and Dr. Cross, who I find to be credible. In particular, I find the testimony of Dr. Cross to be compelling and persuasive.

I further find and conclude that, as a consequence of the accident of August 13, 1997, Mr. Copeland sustained an injury in the nature of a low back strain which resulted in him sustaining an aggravation of a preexisting lumbar disc disease and an aggravation of a preexisting lumbar osteoarthritic disease. This injury, however, did not cause Mr. Copeland to suffer any herniation or impingement / compression of the lumbar spine; and the injury did not, and does not now, necessitate any need for surgical repair. In this regard, I do not accept the opinion and testimony of Dr. Williams, or The Bonati Institute, that Mr. Copeland is a surgical candidate. Mr. Copeland presents with complaints of pain and exhibits exaggerated pain behaviors that are inconsistent with objective findings. Additionally, Mr. Copeland exhibits a normal neurological examination with no evidence of nerve root or thecal sac compression.

In exhibiting exaggerated pain behavior, Mr. Copeland is presenting behavior that could suggest symptom magnification or malingering for secondary gain, which certainly gives the employer and insurer reason to suspect the validity of Mr. Copeland's complaints, and question the appropriateness of the extensive medical treatment provided to him. Yet, Dr. Cross, who the employer and insurer rely upon in support of their position, testified that Mr. Copeland suffers from major depression and psychological overlay or post-traumatic stress, which, in part, explains his pain behavior. Additionally, while Dr. Cross does not believe the accident of August 13, 1997, is causally related to the major depression; he acknowledges that the vehicle accidents (both occurring on August 13, 1997, and November 6, 1998) are causally related to he psychological overlay or post-traumatic stress which merited certain treatment for pain management. Dr. Cross further opines that, as a consequence of the accident of August 13, 1997, Mr. Copeland reached maximum medical improvement effective as of the date he examined Mr. Copeland on October 10, 2001.

Accordingly, I find and conclude that the accident of August 13, 1997, caused Mr. Copeland to sustain additional injury in the nature of psychological overlay or post-traumatic syndrome. Relative to this additional injury, the employer

and insurer provided Mr. Copeland with extensive medical treatment and substantially satisfied their obligation under Chapter 287, RSMo. Mr. Copeland, however, claims additional medical expenses (as identified in Exhibits KK, LL, TT, and UU) are owed, which relate to treatment, medication, and laboratory testing either provided by or prescribed by Dr. Williams. Yet Dr. Williams treated Mr. Copeland for multiple conditions unrelated to the injury of August 13, 1997. In regard to these expenses, I do not find the medical care to be reasonable and necessary or causally related to the accident of August 13, 1997. Therefore, the employee's claim for past medical care and expenses, as identified in Exhibits KK, LL, TT, and UU, is denied.

Also, the Mr. Copeland seeks payment of psychological expenses owed to John Stefanowicz, Ph.D. Notably, Dr. Stefanowicz provided Mr. Copeland with a psychological examination at the request of the employer and insurer. This examination occurred on September 9, 2003, resulting in Dr. Stefanowicz generating an invoice in the amount of \$1,253.00 for services provided. The employer and insurer tendered payment to Dr. Stefanowicz in the amount of \$1,074.64, leaving a balance owed in the amount of \$178.36. In light of this outstanding balance, Dr. Stefanowicz directed a bill to Mr. Copeland for payment of the balance, \$178.36. The employer and insurer did not present any evidence which would indicate that, in light of the services he provided, the expenses of \$1,253.00 was not fair and reasonable. Therefore, the employer and insurer are ordered to pay the employee the sum of \$178.36, which represents the unpaid balance owed to Dr. Stefanowicz for the services he provided on September 9, 2003.

Finally, after consideration and review of the evidence, I find and conclude that, as of October 10, 2001, Mr. Copeland reached a level of being at maximum medical improvement, and did not need any additional or future medical care, with the limited exception of being provided medication for pain management. In this regard I am guided by the opinion of Dr. Cross, who stated that the accident of August 13, 1997, was a substantially contributing factor to Mr. Copeland needing medication for pain management. Yet, in allowing for future medical care relative to the accident of August 13, 1997, Dr. Cross limits the medical care to pain management through medication. Accordingly, in light of the foregoing, I find and conclude that the employee is entitled to future medical care, but such medical care is limited to medication for pain management, and such office visits or tests associated with the prescribing of medication. Therefore, the employer and insurer are ordered to provide the employee with future medical care in order to cure and relieve the employee of the effects of the injury, as authorized and directed by Randall Cross, M.D.

#### IV.

##### Temporary Disability Compensation

The employer and insurer provided the employee with temporary disability compensation in the amount of \$105,019.99, representing 217 weeks of disability benefits, payable for the period of August 13, 1997, through October 10, 2001. Having determined that Mr. Copeland reached maximum medical improvement on October 10, 2001, I find and conclude that he is not entitled to any additional temporary disability compensation. Accordingly, the employee's request for additional temporary disability compensation is denied.

#### V.

##### Nature & Extent of Permanent Disability

The accident of August 13, 1997, caused Mr. Copeland to sustain an injury in the nature of a low back strain which resulted in him sustaining an aggravation of a preexisting lumbar disc disease and an aggravation of a preexisting lumbar osteoarthritic disease. Additionally, this injury resulted in Mr. Copeland suffering psychological overlay or post-traumatic stress. Although presenting with complaints of pain, Mr. Copeland exhibits a normal neurological examination with no evidence of nerve root or thecal sac compression. The injury did not necessitate surgical intervention.

Further, while Mr. Copeland asserts that he is significantly limited or restricted in his activities, and while several physicians prescribe limitations and restrictions, I am persuaded that Mr. Copeland is not nearly as limited or restricted in his activities as he suggests, or as some of the physicians suggests. In the context of this issue, I find and conclude that Mr. Copeland is governed only by the restrictions and limitations imposed by Dr. Cross and the functional capacity evaluation performed by Nancy Dickey.

In addition, while Mr. Copeland asserts that the accident of August 13, 1997, including both the physical component of the injury and the psychological component associated with the post-traumatic stress, is solely responsible for him suffering disabling pain of a severe nature, I disagree. Mr. Copeland seemingly ignores other factors unrelated to the accident of August 13, 1997. For example, in 1968 Mr. Copeland was involved in a motorcycle accident, which resulted in him suffering a severe left tibia fracture that nearly caused him to lose part of his leg and required him to undergo extensive

medical treatment. The medical records document that, in light of this injury, Mr. Copeland experiences ongoing daily left leg pain below the knee, which he continues to experience to the present; he walks with a limp; and the injury proved to be industrially disabling as he was unable to complete basic training in the United States Navy.

Also, in 1995 Mr. Copeland suffered an injury, which involved trauma to his head and cervical spine. In many respects this 1995 injury provides a pattern of complaints of injury and behavior very similar to the present case. Notably, he suffered a cervical strain, which led Mr. Copeland to cease engagement in his employment and resulted in him being unable to work for months, premised on complaints of pain to the cervical spine and extremities. Yet, Mr. Copeland presented with a normal neurological examination with negative diagnostic studies, and thusly was not viewed as a surgical candidate. Interestingly, the treating physician (Dr. Morse) providing Mr. Copeland with care for this injury propounded comments that easily could be mistaken for the comments of other physicians providing care for the August 13, 1997, injury, wherein Dr. Morse states:

IMPRESSION: Chronic pain syndrome following an on-the-job accident. He has no objective findings. I do believe physical therapy is indicated. I am not optimistic about his ability to return to work, given the fact that he has been off for over six months. A Functional Capacity Evaluation and/or psychological evaluation for chronic pain treatment may be beneficial.

Notably, as late as October 21, 1997, Mr. Copeland was continuing to complain to Dr. Morse that he was suffering disabling pain associated with this 1995 injury.

And, in addition to these two preexisting injuries, Mr. Copeland experienced injuries or disabilities subsequent to the accident of August 13, 1997, which are industrially disabling. Namely, subsequent to, and unrelated to, the accident of August 13, 1997 Mr. Copeland began suffering from major depression, which, according to Dr. Cross, is related to life stressors unrelated to the accident of August 13, 1997. Further, on November 6, 1998, Mr. Copeland sustained additional injury relating to a motor vehicle accident involving a four-car pile-up. This injury caused Mr. Copeland to experience sustained tinnitus and migraine-equivalent headaches with vision loss occurring infrequently every week or two; and the injury caused him to experience post-traumatic stress. Mr. Copeland expresses this post-traumatic stress in comments he made to his personal physician, Dr. Williams, when on two separate occasions he comments:

[November 16, 1998]

Stress really bad! – hands shaking since accident [Nov. 6, Friday]

\* \* \*

[November 17, 1998]

I'm having a nervous breakdown now

Accordingly, after consideration and review of the evidence, I find and conclude that, as a consequence of the accident of August 13, 1997, Mr. Copeland sustained a permanent partial disability of 25 percent to the body as a whole, referable to the lumbar spine (100 weeks). The accident of August 13, 1997, considered alone, does not render Mr. Copeland permanently and totally disabled. Perhaps Mr. Copeland is permanently and totally disabled. However, if Mr. Copeland is unemployable in the open and competitive labor market, it is the combination of all of his medical conditions, including the preexisting injuries and disabilities together with the subsequent developing medical conditions unrelated to the accident of August 13, 1997, which rendered him permanently and totally disabled.

Therefore, for the foregoing reasons, the employer and insurer are ordered to pay to the employee the sum of \$27,842.00, which represents 100 weeks of permanent partial disability compensation, payable at the applicable rate of \$278.42 per week.

## VI.

### 15 Percent Reduction Penalty / Section 287.120.5, RSMo

The employer and insurer assert that the employee is subject to a 15 percent reduction in the payment of disability compensation pursuant to Section 287.120.5, RSMo, contending that Mr. Copeland failed to adhere to safety rules pertaining to driving speed and seat belt usage. Section 287.120.5, RSMo states:

5. Where the injury is caused by the willful failure of the employee to use safety devices where

provided by the employer, or from the employee's failure to obey any reasonable rule adopted by the employer for the safety of employees, which rule has been kept posted in a conspicuous place on the employer's premises, the compensation and death benefit provided for herein shall be reduced fifteen percent; provided, that it is shown that the employee had actual knowledge of the rule so adopted by the employer; *and provided, further, that the employer had, prior to the injury, made a diligent effort to cause his employees to use the safety device or devices and to obey or follow the rule so adopted for the safety of the employees.* (Emphasis added.)

Preeminently, before there can be an employee violation of Section 287.120.5, RSMo, the employer must first establish a safety rule and policy. In the absence of an employer safety rule and policy, there can be no safety violation. It is not enough that there be a safety statute or regulation governing the activity. Nor is it enough for the employer to provide a general rule emphasizing employee safety. The employer must adopt a specific safety rule to cover an alleged safety violation by an employee.

The evidence presented by the parties in this case suggests that Mr. Copeland did not like to wear seatbelts and elected not to wear his seat belt at the time of the accident. Yet, the employer did not adopt a safety rule covering seatbelt usage. Although the usage of seatbelts during the operation of certain vehicles, such as the vehicle driven by Mr. Copeland, is a mandatory requirement under state statute, no employer is obligated to adopt a safety rule covering the usage of seatbelts. Having declined to impose a safety rule covering the usage of seatbelts, no employee of Ram Tech could be penalized by a reduction in benefits for violating a safety statute or willfully refusing to use a safety device. Accordingly, the evidence is insufficient to impose a 15 percent penalty reduction under Section 287.120.5, RSMo.

## VII.

### Doubling of the Temporary or Partial Award

The employee seeks a doubling of the Temporary or Partial Award, contending that the employer and insurer failed to comply with the Temporary or Partial Award issued by Judge Holden. The employer and insurer, however, complied with the Temporary or Partial Award. Accordingly, the employee's request for a doubling of the award is denied.

The award is subject to modifications as provided by law.

An attorney's fee of 25 percent of the benefits ordered to be paid is hereby approved, and shall be a lien against the proceeds until paid. Interest as provided by law is applicable.

Date: April 13, 2005

Made by: /s/ L. Timothy Wilson  
L. Timothy Wilson  
*Associate Administrative Law Judge  
Division of Workers' Compensation*

A true copy: Attest:

/s/ Patricia "Pat" Secret  
Patricia "Pat" Secret  
*Director  
Division of Workers' Compensation*

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<sup>[1]</sup> The parties stipulated to, and the undersigned found, that the complexity of the issues and extenuating circumstances presented in this case justified the scheduling of additional hearing or submission of additional evidence with briefs and responsive briefs in excess of 90 days from the date of hearing, and to the issuance of an award in excess of the 90 day statutory period.

<sup>[2]</sup> On October 21, 1997 Mr. Copeland returned to see Dr. Morse relative to an evaluation for the purpose of securing a settlement in his 1995 workers' compensation case. In light of continuing complaints of pain, Dr. Morse issued an opinion finding that Mr. Copeland had sustained a permanent partial impairment of 4 percent to the body as a whole.

[3] Mr. Copeland earned an hourly wage of \$9.00 per hour.

[4] Mr. Copeland was ticketed for speeding and running a stop light.

[5] Dr. McBride indicated that desiccation refers to the process of the disc progressively losing its water content. Dr. McBride further indicated that desiccation is part of the aging process, and not trauma; and it generally begins at approximately 35 years of age, as the normal spine begins to undergo degenerative changes.