

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

Injury No.: 01-127626

Employee: Stephen Craig
Employer: Bentley Trucking, Inc.
Insurer: Wausau Insurance Company
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund (Open)

Date of Accident: October 26, 2001

Place and County of Accident: Jackson 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. Pursuant to section 286.090 RSMo, subsequent to reviewing the evidence and considering the entire record, the Commission modifies the award and decision of the administrative law judge dated November 14, 2005.

The Commission affirms all findings and conclusions of law made by the administrative law judge, but for the determination concerning the issue of future medical care and treatment. The administrative law judge concluded that the employee failed to meet his burden to prove the need for future medical treatment. The Commission disagrees with that determination, and does award the employee future medical care and treatment to cure and relieve the employee from the effects of his burn injuries to his bilateral upper extremities.

In summary fashion, employee testified that he continues to suffer swelling in his bi-lateral upper extremities with associated pain, weakness and limitation of motion. He is still treating with Dr. Irby, who provides him with prescription medications for pain. The principal medical opinions concerning the issue of future medical care and treatment were rendered by the selected authorized treating specialist, Dr. Korentager, and the rating physician utilized by employee, Dr. Parmet.

Prior to releasing employee from care, Dr. Korentager opined on January 12, 2004, that employee would benefit from continuing to use a neoprene elbow support. Dr. Korentager was also of the medical opinion that employee be monitored and or sent for medical pain management.

Dr. Parmet opined that there was a slight risk over employee's lifetime of developing a scar cancer in his burn sites, and employee should be medically observed for development of any such lesions. Additionally, Dr. Parmet was of the opinion that employee would benefit from pain management. In the words of Dr. Parmet, "he should be afforded additional therapy for pain management. My initial recommendation would be for the use of neuropathic pain medication, such as gabapentin or amitriptyline".

The Commission can find little if any medical opinions contra to the opinions of Dr. Korentager and Dr. Parmet.

The need for future medical care need not be established as a certainty, but it must be established as being reasonably probable through competent, medical testimony. *Bowers v. Highland Dairy Company*, 132 S.W.3d 260 (Mo. App. 2004).

The Commission concludes that the competent and substantial evidence supports a finding that employee is entitled to receive future medical care and treatment reasonable and necessary to cure and relieve him from the effects of his burn injuries to his bilateral upper extremities, and this benefit is awarded. As mentioned above, all remaining findings of fact and conclusions of law are affirmed.

The award and decision of Administrative Law Judge Rebecca S. Magruder issued November 14, 2005, as modified, is attached and incorporated by this reference.

This Award is subject to a lien in favor of the Department of Social Services, Division of Child Support Enforcement.

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 4th day of August 2006.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

Attest: _____
John J. Hickey, Member

Secretary

AWARD AS TO EMPLOYER/INSURER ONLY

Employee: Stephen Craig Injury No. 01-127626
Employer: Bentley Trucking, Inc.
Insurer: Wausau Insurance Co.
Additional Party: Missouri State Treasurer as Custodian of the Second Injury Fund
Hearing Date: August 25, 2005
Briefs Filed: October 7 and 17, 2005 Checked by: RSM/abj

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: October 26, 2001.
5. State location where accident occurred or occupational disease was contracted: Jackson 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: While transferring hot asphalt oil in the course of his employment, a hose disconnected causing the hot oil to spray onto the employee.
12. Did accident or occupational disease cause death? No. Date of death? N/A
13. Part(s) of body injured by accident or occupational disease: Both upper extremities and right leg.
14. Nature and extent of any permanent disability: 21.2% body as a whole plus 18 weeks disfigurement
15. Compensation paid to date for temporary disability: \$22,400.71
16. Value necessary medical aid paid to date by employer/insurer? \$52,345.00
17. Value necessary medical aid not furnished by employer/insurer? \$467.03
18. Employee's average weekly wages: \$877.66
19. Weekly compensation rate: \$591.71 / \$329.42
20. Method wages computation: By agreement.

COMPENSATION PAYABLE

21. Amount of compensation payable:	
.. Unpaid medical expenses.....	\$467.03
.. 68 weeks of temporary total disability at \$591.71 per week	\$40,236.28
Employer has paid \$22,400.71 to date and is entitled to a credit Against the ttd award in that amount.....	
	<22,400.71>
84 7/8 weeks of permanent partial disability to be paid at \$329.42 per week...	\$27,928.22
.. 18 weeks of disfigurement to be paid at \$329.42 per week	\$5,929.56
TOTAL.....	\$52,160.38

22. Second Injury Fund liability: To be determined later by separate stipulation and award.

23. Future requirements awarded: None.

Said payments to begin as of the date of this Award and to be payable and 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 percent of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Steven Wickersham.

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Stephen Craig Injury No. 01-127626
Employer: Bentley Trucking, Inc.
Insurer: Wausau Insurance Co.
Additional Party: Missouri State Treasurer as Custodian of the Second Injury Fund
Hearing Date: August 25, 2005
Briefs Filed: October 7 and 17, 2005 Checked by: RSM/abj

STIPULATIONS

At the hearing, the parties stipulated that:

1. On or about October 26, 2001, Bentley Trucking, Inc., was an employer operating under the provisions of the Missouri workers' compensation law and that their liability under said law was fully insured by Wausau Insurance Company;
2. on or about October 26, 2001, Steven Craig was an employee of Bentley Trucking, Inc., and was working under the provisions of the Missouri workers' compensation law;
3. on or about October 26, 2001, Steven Craig sustained an injury by accident arising out of and in the course of his employment;
4. the employer had notice of the injury and that a Claim for Compensation was filed within the time prescribed by law;
5. the average weekly wage was \$877.66 and that the applicable compensation rate is \$591.71 per week for temporary total disability benefits and \$329.42 per week for permanent partial disability benefits;
6. compensation has been paid in the total amount of \$22,400.71;
7. the temporary total disability benefits which were paid were paid from commencing October 26, 2001, through January 9, 2002; commencing again on August 23, 2002, through November 14, 2002; and finally, from September 29, 2003, through January 12, 2004; and
8. medical aid had been furnished in the amount of \$52,345.00.

ISSUES

The issues to be determined by this hearing are as follows:

1. The nature and extent of any permanent disability resulting from the October 26, 2001, accident;
2. whether the employer should be required to pay the claimant \$467.03 for medical bills he has incurred and paid up to today's date;
3. whether the employer is obligated to provide additional temporary total disability benefits to the claimant;

4. whether the employer should provide any future medical benefits to the claimant; and
5. whether there has been an overpayment of temporary total disability benefits by the employer.

EVIDENCE

The evidence in the case consisted of numerous medical records and reports as well as the deposition testimony of Dr. Korentager and deposition testimony of several lay witnesses.

FINDINGS AND RULINGS

The claimant in this case, Steven Craig, was employed by Bentley Trucking, Inc., and during the course and scope of his employment on or about October 26, 2001, he suffered serious injuries to both of his upper extremities. He was transferring hot asphalt oil from his work truck to a job site when a hose coupling suddenly and unexpectedly disconnected causing the hot asphalt oil to spray directly onto Claimant's right and left arms and hands. The whole front of the claimant's body was sprayed except his face; however, it was a cool day and the claimant was wearing jeans, shoes, a jacket, and gloves on his hands. The oil blew up the sleeves of his jacket, burning him severely on the right and left forearms. The claimant initially drove himself to the emergency room at Jamesport and later to Chillicothe. He does not recall much after that because of the medications that were administered for his pain. He was transferred to the University of Kansas Medical Center but has no memory of that transfer. He was hospitalized for several days and underwent multiple grafts with a donor site on his right anterior thigh.

The employer and insurer do not dispute the compensability of this accident. They initially provided medical care and temporary total disability benefits for the claimant's injuries to his upper extremities. After being released back to light duty work in January 2002, the claimant did in fact return to work for Bentley. He continued to have difficulties with his upper extremities and filed a separate Claim for Compensation alleging additional upper extremity injury due to repetitive work activities. This is Injury No. 02-061372 alleging injury due to occupational disease on February 4, 2002 (see Award Denying Compensation on Injury No. 02-061372). Claimant quit working at Bentley in February of 2002.

He testified that he was experiencing pain in both of his forearms that would shoot up to his shoulders and down into his hands. In the spring of 2002 left cubital tunnel was diagnosed and on August 23, 2002 Dr. Korentager performed a left ulnar release and transposition at the elbow. At that time, August 23, 2002, the employer commenced paying temporary total disability benefits again and did so through November 14, 2002.

In December of 02 the claimant was undergoing therapy and Dr. Korentager at that time was considering treatment at a pain center. In February of 2003 Dr. Korentager recommended a pain management clinic. On May 13, 2003, the claimant was seen by Lynn Ketchum, M.D., as a hand specialty referral. Dr. Ketchum recommended neurolysis of the left ulnar nerve above and below the elbow with steroid injection and an additional release of the right ulnar nerve with a medial epicondylectomy. No temporary disability benefits were paid during this period of time.

On September 29, 2003, Dr. Korentager again performed surgery on the claimant wherein he released the left ulnar nerve and performed neurolysis. The employer commenced paying temporary benefits again from September 29, 2003 through January 12, 2004. On October 31, 2003, approximately one month after his second left elbow surgery, Dr. Korentager performed a right cubital tunnel release and partial medial epicondylectomy. At surgery the ulnar nerve was noted to be tenting within the cubital tunnel. On January 12, 2004, Dr. Korentager saw the claimant in follow-up, noting full range of motion at the elbows and wrists. He noted that the claimant had excellent strength in the small muscles of the hand with good nerve function. He recommended that the claimant increase his activities over the next four weeks and he was given a final prescription of pain medication and anti-inflammatories. On September 14, 2004, Dr. Korentager provided a final rating for the burns and nerve impairments. Claimant thus underwent three separate surgeries, two to his left upper extremity and one to his right upper extremity.

Based on the testimony of Dr. Korentager, I find that the claimant sustained second- and third-degree burns on his arms as a result of the 2001 accident. Dr. Korentager described a second-degree burn as a partial thickness burn, which, in many cases, has the potential to heal without the need for surgery, but a third-degree burn would almost invariably need surgical treatment in terms of excising or cutting away the burn and skin grafting area. He also testified that these burns were severe enough to affect the structures underneath the skin surface. Initially, the doctor testified that there was no

evidence that the claimant had burned into deeper structures, like the tendons or nerves. However, he did require skin grafting procedures where skin was harvested from the claimant's thighs and transferred to his forearms. It was in the follow-up visits after the claimant's return to work that Dr. Korentager testified that Claimant began to complain of a lot of numbness and tingling as well as some weakness in his arms, especially his left arm.

I find that the claimant's nerve entrapments in both upper extremities were caused as a result of the burn injury of 2001. Even though he went back to work and did repetitive work activities, I find that the burn injury and associated swelling were the cause of Claimant's ulnar neuropathies. Dr. Korentager explained the causal connection as follows:

"Associated with the burn injury, there is invariably going to be a significant amount of swelling of the local tissues. The fluid, the swelling fluid contains a lot of proteins, among other things, as well as inflammatory components.

"When that swelling fluid surrounds tissues, whether it's muscle or nerve, that results in some scar tissue forming, some fiber tissue forming within the tissues and around the nerve structures. As a result of that, nerves which normally move as you move your extremity, they become bound down; they no longer move appropriately."

Based on this explanation and the opinion of Dr. Korentager, I find that all of the claimant's problems for which he complains today are related to the 2001 burn injury rather than the 2002 repetitive occupational disease claim.

Claimant testifies that he continues to have problems today with both his upper extremities. After reviewing all of the deposition testimony, considering the claimant's trial testimony, and reviewing the medical records and reports, I find the claimant does have substantial disability to both of his upper extremities from the effects of the 2001 injury and surgeries. Dr. Korentager rated the claimant as having a 10 percent impairment of each upper extremity. Dr. Parmet, who conducted an independent medical exam at the request of the claimant, rated him as having a 5 percent disability of the right thigh at the 160-week level for the graft site; a 30 percent disability at the 210-week level of the right upper extremity; and a 45 percent disability at the 210-week level for the left upper extremity.

I find that the claimant has a 17.5 percent permanent partial disability to the left upper extremity at the 210-week level (36.75 weeks). I further find that Claimant has a 15 percent permanent partial disability to the right upper extremity at the 210-week level (31.5 weeks). Because of the bilateral nature of the injuries to the upper extremities, the claimant is entitled to a load factor of 12.5 percent due to the cumulative effect of bilateral injuries (8.53 weeks). Additionally, as grafting was taken from the claimant's right lower extremity to aid in the medical treatment of the burn injuries, I find the claimant has sustained 5 percent permanent partial disability of the right lower extremity at the 160-week level (8 weeks). The total permanent partial disability sustained as a result of the October 26, 2001, accident is 21.2 percent body as a whole.

The claimant has noticeable and significant scarring. Therefore, Claimant is awarded 14 weeks for disfigurement as it relates to the burns and 4 weeks of disfigurement for the surgical scars for a total of 18 weeks compensation for disfigurement (18 weeks).

With regard to the issue of unpaid medical in the amount of \$467.00, I find that these expenses were related to the treatment for the claimant's job injuries and therefore award reimbursement to the claimant in that amount. I find that the bills and treatment were reasonable and necessary.

With regard to the issue of future medical aid, I find, after reviewing the evidence in its totality that the claimant has failed to meet his burden to prove the need for future medical treatment, and therefore, that request is hereby denied.

I do find that all of the treatment which the claimant has received was reasonable and necessary and related to the injury of October 26, 2001, including the three surgical interventions.

Regarding Injury No. 02-061372, I find that the evidence does not support any award in relation to that injury number. The evidence establishes that all of claimant's medical treatment, temporary total disability benefits, scarring, and disability are related to the injury of October 26, 2001.

With regard to the two temporary total disability issues, the claimant's request for additional temporary total disability and the employer's request for reimbursement of an overpayment, I find the following facts. The employer and insurer paid three separate periods of temporary total disability benefits to the claimant. The first period commenced on October 26,

2001, up to and including January 9, 2002. The employer does not question the claimant's entitlement to temporary total disability benefits during this period of time. No temporary total disability was paid again until August 23, 2002, through November 14, 2002. On November 14, 2002, the employer again quit paying temporary total disability. The claimant testified at trial that he was in a lot of pain and unable to work anywhere in the fall of 2002 through late summer 2003. The medical records of Dr. Korentager indicate that a work hardening program was recommended on October 30, 2002 (see Exhibit G, page 16). On November 8th, Dr. Korentager also called in a Tylenol 3 prescription for the claimant. On December 19th, Dr. Korentager noted that the claimant continued to complain of pain in his left arm but the examination conducted by Dr. Korentager showed full range of motion and good healing. Dr. Korentager said at that time that he had nothing else to offer. On February 11th, Stephen Craig returned to Dr. Korentager and again noted that the claimant continued to complain of a lot of pain in his arm. Dr. Korentager ultimately performed surgery on September 29, 2003. After reviewing the medical records in this case I do find that the claimant was unable to compete for gainful employment from November 15, 2002 (when ttd payments were cut off by the Employer) through August 31, 2003 (when claimant began working for Gallatin Grains). Claimant was definitely in need of medical treatment during this period of time as recommended by Dr. Ketchum and Dr. Korentager. Although I have serious reservations about the claimant's overall credibility (see later discussion of temporary disability benefits received by the claimant from September 29, 2003, through January 12, 2004), I find that the medical records demonstrate claimant's inability to work during the 41 weeks between Nov 14, 2002 and August 31, 2003..

Temporary total disability benefits were resumed by the employer on September 29, 2003, when Dr. Korentager performed the second ulnar release on claimant's left elbow. Employer continued to provide temporary total disability benefits through January 12, 2004. It is during this period of time that the employer and insurer claim a credit for overpayment of temporary total disability as Claimant was receiving temporary total disability benefits while working for Gallatin Grains. Claimant clearly worked for Gallatin Grains during part of this period of time and was performing gainful employment for which he earned compensation. He testified that he couldn't work at all for the first two or three weeks after his surgery, but he did testify that after that, he drove one to two times a week, even though he went to work every day. I find the claimant continued to cash the temporary total disability benefit checks and work for Gallatin Grains during the remainder of that period of time. After reviewing the deposition testimony of Ralph Berry and Lena Slattery, I find that the claimant knowingly received temporary total disability benefits from Bentley while working for Gallatin Grains. The claimant was deceiving Bentley and its insurer as he worked at another employer yet portrayed himself as totally disabled to receive temporary total disability checks. Both Ms. Slattery and Ralph Berry testified that the claimant received temporary total disability benefits when he knew he was not entitled to receive them. I therefore find that the employer and insurer are entitled to a credit for overpayment of temporary total disability benefits for 9 weeks. This allows Claimant a three-week recovery period after each surgery wherein the employer is not entitled to credit.

The total number of weeks that temporary total disability should have been provided by the employer is 68 weeks. The employer has paid a total of \$22,400.71 (approximately 37 6/7 weeks) in temporary benefits. Therefore the employer is entitled to a credit of \$22,400.71 against the award of \$40,236.28. The employer therefore owes the claimant an additional \$20,202.41 for temporary total disability.

Claimant's attorney, Steven Wickersham, is entitled to an attorney's fee of 25 percent of the lump-sum money awarded in this case for legal services provided to the claimant. Finally, there is a child support lien in place in this case and therefore this lien, in the amount of \$21,563.24, must be honored. This Award is therefore subject to the attorney lien as well as the child support lien.

Date: _____ Made by: _____

Rebecca S. Magruder
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Patricia "Pat" Secret
Director
Division of Workers' Compensation

FINAL AWARD DENYING COMPENSATION
(Affirming Award and Decision of Administrative Law Judge by Separate Opinion)

Injury No.: 02-061372

Employee: Stephen Craig
Employer: Bentley Trucking Inc.
Insurer: Employers Insurance of Wausau
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund
Date of Accident: February 4, 2002
Place and County of Accident: Chillicothe, Missouri

This cause has been submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. We have reviewed the evidence, read the briefs, and we have considered the entire record. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated November 14, 2005, by issuing a separate opinion denying compensation in the above captioned case.

The Commission agrees with the ultimate conclusion of the administrative law judge that the employee did not sustain an injury due to an occupational disease arising out of and in the course of his employment nor did the employee sustain an injury due to an accident arising out of and in the course of his employment. All findings of fact and conclusions of law concerning this issue are affirmed.

Because the compensable injury issue is dispositive of the claim, the Commission does not address any remaining issues, as they are rendered moot.

The award and decision of Administrative Law Judge Rebecca S. Magruder, issued November 14, 2005, as modified, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 4th day of August 2006.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

Attest: _____
John J. Hickey, Member

Secretary

AWARD DENYING COMPENSATION

Employee: Stephen Craig Injury No. 02-061372
Employer: Bentley Trucking, Inc.
Insurer: Wausau Insurance Co.
Additional Party: Missouri State Treasurer as Custodian of the Second Injury Fund

Hearing Date: August 25, 2005

Briefs Filed: October 7 and 17, 2005

Checked by: RSM/abj

FINDINGS OF FACT AND RULINGS OF LAW

2. Are any benefits awarded herein? No.
2. Was the injury or occupational disease compensable under Chapter 287? No.
3. Was there an accident or incident of occupational disease under the law? No.
4. Date of accident or onset of occupational disease: N/A
5. State location where accident occurred or occupational disease was contracted: N/A
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes.
7. Did employer receive proper notice? N/A
8. Did accident or occupational disease arise out of and in the course of the employment? N/A
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: N/A
12. Did accident or occupational disease cause death? No. Date of death? N/A
13. Part(s) of body injured by accident or occupational disease: N/A
14. Nature and extent of any permanent disability: N/A
15. Compensation paid to date for temporary disability: None.
16. Value necessary medical aid paid to date by employer/insurer? None.
17. Value necessary medical aid not furnished by employer/insurer? None.
18. Employee's average weekly wages: N/A
19. Weekly compensation rate: N/A
20. Method wages computation: N/A

COMPENSATION PAYABLE

21. Amount of compensation payable: None.

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Stephen Craig

Injury No. 02-061372

Employer: Bentley Trucking, Inc.

Insurer: Wausau Insurance Co.

Additional Party: Missouri State Treasurer as Custodian of the Second Injury Fund

Hearing Date: August 25, 2005

Briefs Filed: October 7 and 17, 2005

Checked by: RSM/abj

STIPULATIONS

At the hearing, the parties stipulated that:

1. On or about October 26, 2001, Bentley Trucking, Inc., was an employer operating under the provisions of the Missouri workers' compensation law and that their liability under said law was fully insured by Wausau Insurance Company;
2. on or about October 26, 2001, Steven Craig was an employee of Bentley Trucking, Inc., and was working under the provisions of the Missouri workers' compensation law;
3. on or about October 26, 2001, Steven Craig sustained an injury by accident arising out of and in the course of his employment;
4. the employer had notice of the injury and that a Claim for Compensation was filed within the time prescribed by law;
5. the average weekly wage was \$877.66 and that the applicable compensation rate is \$591.71 per week for temporary total disability benefits and \$329.42 per week for permanent partial disability benefits;
6. compensation has been paid in the total amount of \$22,400.71;
7. the temporary total disability benefits which were paid were paid from commencing October 26, 2001, through January 9, 2002; commencing again on August 23, 2002, through November 14, 2002; and finally, from September 29, 2003, through January 12, 2004; and
8. medical aid had been furnished in the amount of \$52,345.00.

ISSUES

The issues to be determined by this hearing are as follows:

1. The nature and extent of any permanent disability resulting from the October 26, 2001, accident;
2. whether the employer should be required to pay the claimant \$467.03 for medical bills he has incurred and paid up to today's date;
3. whether the employer is obligated to provide additional temporary total disability benefits to the claimant;
4. whether the employer should provide any future medical benefits to the claimant; and
5. whether there has been an overpayment of temporary total disability benefits by the employer.

EVIDENCE

The evidence in the case consisted of numerous medical records and reports as well as the deposition testimony of Dr. Korentager and deposition testimony of several lay witnesses.

FINDINGS AND RULINGS

The claimant in this case, Steven Craig, was employed by Bentley Trucking, Inc., and during the course and scope of

his employment on or about October 26, 2001, he suffered serious injuries to both of his upper extremities. He was transferring hot asphalt oil from his work truck to a job site when a hose coupling suddenly and unexpectedly disconnected causing the hot asphalt oil to spray directly onto Claimant's right and left arms and hands. The whole front of the claimant's body was sprayed except his face; however, it was a cool day and the claimant was wearing jeans, shoes, a jacket, and gloves on his hands. The oil blew up the sleeves of his jacket, burning him severely on the right and left forearms. The claimant initially drove himself to the emergency room at Jamesport and later to Chillicothe. He does not recall much after that because of the medications that were administered for his pain. He somehow was transferred to the University of Kansas Medical Center but has no memory of that transfer. He was hospitalized for several days and underwent multiple grafts with a donor site on his right anterior thigh.

This accident was not disputed by the employer and insurer. They provided medical care and treatment for the claimant's injuries to his upper extremities. After being released back to work, the claimant did in fact return to work for Bentley. He continued to have difficulties with his upper extremities and filed a separate Claim for Compensation alleging additional upper extremity injury due to repetitive activities. This is Injury No. 02-061372 alleging injury due to occupational disease on February 4, 2002 (see Award Denying Compensation on Injury No. 02-061372).

Claimant was suffering pain in both of his forearms that would shoot up to his shoulders and down into his hands. Bentley provided further treatment and Claimant was found to have bilateral nerve entrapment. On August 23, 2002, Dr. Korentager performed a left ulnar nerve release and transposition at the elbow for the claimant's left cubital tunnel syndrome. At that time, August 23, 2002, the employer commenced paying temporary total disability benefits again through November 14, 2002. On May 13, 2003, the claimant was seen by Len Ketchum, M.D., as a hand specialty referral. Dr. Ketchum recommended neurolysis of the left ulnar nerve above and below the elbow with steroid injection and an additional release of the right ulnar nerve with a medial epicondylectomy. On September 29, 2003, Dr. Korentager again performed surgery on the claimant wherein he released the left ulnar nerve and performed neurolysis. On October 31, 2003, approximately one month after his second left elbow surgery, Dr. Korentager performed a right cubital tunnel release and partial medial epicondylectomy. At surgery the ulnar nerve was noted to be tenting within the cubital tunnel. On January 12, 2004, Dr. Korentager saw the claimant in follow-up, noting full range of motion at the elbows and wrists. He noted that the claimant had excellent strength in the small muscles of the hand with good nerve function. He recommended that the claimant increase his activities over the next four weeks and he was given a final prescription of pain medication and anti-inflammatories. On September 14, 2004, Dr. Korentager provided a final rating for the burns and nerve impairments. Claimant thus underwent three separate surgeries, two to his left upper extremity and one to his right upper extremity.

Based on the testimony of Dr. Korentager, I find that the claimant sustained second- and third-degree burns on his arms as a result of the 2001 accident. Dr. Korentager described a second-degree burn as a partial thickness burn, which, in many cases, has the potential to heal without the need for surgery, but a third-degree burn would almost invariably need surgical treatment in terms of excising or cutting away the burn and skin grafting area. He also testified that these burns were severe enough to affect the structures underneath the skin surface. Initially, the doctor testified that there was no evidence that the claimant had burned into deeper structures, like the tendons or nerves. However, he did require skin grafting procedures where skin was harvested from the claimant's thighs and transferred to his forearms. It was in the follow-up visits after the claimant's return to work that Dr. Korentager testified that Claimant began to complain of a lot of numbness and tingling as well as some weakness in his arms, especially his left arm.

I find that the claimant's nerve entrapments in both upper extremities were caused as a result of the burn injury of 2001. Even though he went back to work and did repetitive work activities, I find that the burn injury and associated swelling were the cause of Claimant's ulnar neuropathies. Dr. Korentager explained the causal connection as follows:

"Associated with the burn injury, there is invariably going to be a significant amount of swelling of the local tissues. The fluid, the swelling fluid contains a lot of proteins, among other things, as well as inflammatory components.

"When that swelling fluid surrounds tissues, whether it's muscle or nerve, that results in some scar tissue forming, some fiber tissue forming within the tissues and around the nerve structures. As a result of that, nerves which normally move as you move your extremity, they become bound down; they no longer move appropriately."

Based on this explanation and the opinion of Dr. Korentager, I find that all of the claimant's problems for which he complains today are related to the 2001 burn injury rather than the 2002 repetitive occupational disease claim.

Claimant testifies that he continues to have problems today with both his upper extremities. After reviewing all of the

deposition testimony, considering the claimant's trial testimony, and reviewing the medical records and reports, I find the claimant does have substantial disability to both of his upper extremities from the effects of the 2001 injury and surgeries. Dr. Korentager rated the claimant as having a 10 percent impairment of each upper extremity. Dr. Parmet, who conducted an independent medical exam at the request of the claimant, rated him as having a 5 percent disability of the right thigh at the 160-week level for the graft site; a 30 percent disability at the 210-week level of the right upper extremity; and a 45 percent disability at the 210-week level for the left upper extremity.

The claimant's testimony is contradictory. While he discusses various physical problems of significance, he also admits to performing all the job functions of driving a truck, loading and unloading grain, and related heavy physical activities while working for Gallatin Grains. These statements by the claimant contradict his assertions as to the depth of his injuries themselves. In reviewing the medical records, which are exhibits offered by the claimant, they portray an individual who has responded well to medical treatment and has made a reasonable recovery. This is not to diminish the fact that the claimant must have suffered excruciating pain as a result of the second- and third-degree burn injuries. However, the workers' compensation law does not allow compensation for pain or suffering during recovery. The determination of disability is based solely on the physical impairments the claimant now suffers as a result of the work-related injury and treatment.

I find that the claimant has a 17.5 percent permanent partial disability to the left upper extremity at the 210-week level (36.75 weeks). I further find that Claimant has a 15 percent permanent partial disability to the right upper extremity at the 210-week level (31.5 weeks). Because of the bilateral nature of the injuries to the upper extremities, the claimant is entitled to a load factor of 12.5 percent due to the cumulative effect of bilateral injuries (8.53 weeks). Additionally, as grafting was taken from the claimant's right lower extremity to aid in the medical treatment of the burn injuries, I find the claimant has sustained 5 percent permanent partial disability of the right lower extremity at the 160-week level (8 weeks). The total permanent partial disability sustained as a result of the October 26, 2001, accident is 21.2 percent body as a whole.

Finally, the claimant has noticeable and significant scarring. Therefore, Claimant is awarded 14 weeks for disfigurement as it relates to the burns and 4 weeks of disfigurement for the surgical scars for a total of 18 weeks' compensation for disfigurement (18 weeks).

With regard to the issue of unpaid medical in the amount of \$467.00, I find that these expenses were related to the treatment for the claimant's job injuries and therefore award reimbursement to the claimant in that amount. I find that the bills and treatment were reasonable and necessary.

With regard to the issue of future medical aid, I find, after reviewing the evidence in its totality, that the claimant has failed to meet his burden to prove the need for future medical treatment, and therefore, that request is hereby denied.

I do find that all of the treatment which the claimant has received was reasonable and necessary and related to the injury of October 26, 2001, including the three surgical interventions.

Regarding Injury No. 02-061372, I find that the evidence does not support any award in relation to that injury number. The evidence establishes that all of the claimant's medical treatment, temporary total disability benefits, scarring, and disability are related to the injury of October 26, 2001.

With regard to the two temporary total disability issues, the claimant's request for additional temporary total disability and the employer's request for reimbursement of an overpayment, I find the following facts. The employer and insurer paid three separate periods of temporary total disability benefits to the claimant. The first period commenced on October 26, 2001, up to and including January 9, 2002. The employer does not question the claimant's entitlement to temporary total disability benefits during this period of time. No temporary total disability was paid again until August 23, 2002, through November 14, 2002. On November 14, 2002, the employer again quit paying temporary total disability. The claimant testified at trial that he was in a lot of pain and unable to work anywhere in the fall of 2002 through late summer 2003. The medical records of Dr. Korentager indicate that a work hardening program was recommended on October 30, 2002 (*see* Exhibit G, page 16). On November 8th, Dr. Korentager also called in a Tylenol 3 prescription for the claimant. On December 19th, Dr. Korentager noted that the claimant continued to complain of pain in his left arm but the examination conducted by Dr. Korentager showed full range of motion and good healing. Dr. Korentager said at that time that he had nothing else to offer. On February 11th, Stephen Craig returned to Dr. Korentager and again noted that the claimant continued to complain of a lot of pain in his arm. However, Dr. Korentager's examination was normal and again told the claimant that he had nothing else he could offer. Although surgery was ultimately performed by Dr. Korentager on September 29, 2003, I was not persuaded by the evidence that the claimant was entitled to temporary total disability benefits

until that surgery was performed. Although the evidence is not absolutely clear that the claimant was completely released from treatment during this period of time, the claimant's credibility in this case is questionable (*see* later discussion of temporary disability benefits received by the claimant from September 29, 2003, through January 12, 2004).

In May of 2003 the claimant was referred to Dr. Ketchum, who recommended additional bilateral surgery. Surgery was discussed by Dr. Korentager on September 16, 2003, and left upper extremity surgery was performed on September 29, 2003. On October 31, 2003, Dr. Korentager performed surgery to Claimant's right upper extremity.

Temporary total disability benefits were resumed by the employer on September 29, 2003, until January 12, 2004. It is during this period of temporary total disability benefits that the employer and insurer claim a credit for overpayment of temporary total disability as Claimant was receiving temporary total disability benefits and working for someone else at the same time. Claimant clearly worked for Gallatin Grains during part of this period of time and was capable of gainful employment. He testified that he couldn't work at all for the first two or three weeks after his surgery, but he did testify that after that, he drove one to two times a week, even though he went to work every day. I find the claimant continued to cash the temporary total disability benefit checks and work for Gallatin Grains during the remainder of that period of time. After reviewing the deposition testimony of Danny Froman, Ralph Berry, and Lena Slattery, I find that the claimant knowingly received temporary total disability benefits from Bentley while working for Gallatin Grains. The claimant was deceiving the employer and insurer as he worked a full-time job yet portrayed himself as totally disabled to receive temporary total disability checks. Both Ms. Slattery and Ralph Berry testified that the claimant received temporary total disability when he knew he was not entitled to receive it. I therefore find that the employer and insurer are entitled to a credit for overpayment of temporary total disability benefits for 9 weeks. This allows Claimant a three-week recovery period after each surgery wherein the employer is not entitled to credit.

Claimant's attorney, Steven Wickersham, is entitled to an attorney's fee of 25 percent of the lump-sum money awarded in this case for legal services provided to the claimant. Finally, there is a child support lien in place in this case and therefore this lien, in the amount of \$21,563.24, must be honored. This Award is therefore subject to the attorney lien as well as the child support lien.

Date: _____

Made by: _____

Rebecca S. Magruder
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Patricia "Pat" Secret
Director
Division of Workers' Compensation