

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

Injury No.: 00-179425

Employee: Christopher Doerr  
Employer: Spirtas Industrial Services, Inc.  
Insurer: National Union Fire Insurance Company  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund (Dismissed)  
Date of Accident: Alleged May 1, 2000  
Place and County of Accident: Alleged St. Louis County

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations 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 October 5, 2005, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Margaret D. Landolt, issued October 5, 2005, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 31<sup>st</sup> day of May 2006.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

NOT SITTING

William F. Ringer, Chairman

\_\_\_\_\_  
Alice A. Bartlett, Member

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

Attest:

\_\_\_\_\_  
Secretary

**AWARD**

Employee: Christopher Doerr

Injury No.: 00-179425

Dependents: N/A  
Employer: Spirtas Industrial Services, Inc., Spirtas Wrecking Company and Gershenson Construction Company  
Additional Party: Second Injury Fund (Dismissed)  
Insurer: National Union Fire Ins. Co. of Pittsburgh c/o AIG Claim Serv., Inc., Zurich North America and American Home Assurance Co. c/o AIG Claim Serv., Inc.  
Hearing Date: July 11, 2005  
Before the  
**Division of Workers' Compensation**  
Department of Labor and Industrial Relations of Missouri  
Jefferson City, Missouri  
Checked by: MDL:tr

### FINDINGS OF FACT AND RULINGS OF LAW

1. 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? No
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted: Employee alleged repetitive trauma from striking his head on the top of a bobcat.
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: -0-
16. Value necessary medical aid paid to date by employer/insurer? -0-

Employee: Christopher Doerr Injury No.: 00-179425

17. Value necessary medical aid not furnished by employer/insurer? -0-
18. Employee's average weekly wages: \$1,037.36
19. Weekly compensation rate: \$578.48/\$303.01
20. Method wages computation: By agreement

### COMPENSATION PAYABLE

21. Amount of compensation payable: -0-

22. Second Injury Fund liability: No

TOTAL: -0-

23. Future requirements awarded: None

Said payments to begin N/A and to be payable and be subject to modification and review as provided by law.

The compensation awarded to Claimant shall be subject to a lien in the amount of N/A of all payments hereunder in favor of the following attorney for necessary legal services rendered to Claimant:

N/A

## FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Christopher Doerr	Injury No.: 00-179425
Dependents:	N/A	Before the <b>Division of Workers' Compensation</b>
Employer:	Spartas Industrial Services, Inc., Spartas Wrecking Company and Gershenson Construction Company	Department of Labor and Industrial Relations of Missouri
Additional Party:	Second Injury Fund (Dismissed)	Jefferson City, Missouri
Insurer:	National Union Fire Ins. Co. of Pittsburgh c/o AIG Claim Serv., Inc., Zurich North America and American Home Assurance Co. c/o AIG Claim Serv., Inc.	Checked by: MDL:tr

### PRELIMINARIES

A hearing was held on July 11, 2005 at the Division of Workers' Compensation in the City of St. Louis. Christopher Doerr ("Claimant") was represented by Mr. Lawrence Willbrand. Mr. John D. Dietrick represented Spartas Industrial Services, Inc., and National Union Fire Insurance Company c/o AIG Claim Services, Inc. in connection with Injury Numbers 00-179425, 00-179492 and 02-110956. Ms. Jennifer Yates represented Spartas Wrecking/Spartas Industrial Services and Zurich North America Insurance Company in Injury Number 02-110956. Mr. Peter Maher represented employer Gershenson Construction Company, Inc. and American Home Assurance Company c/o AIG Claim Services, Inc. in connection with Injury Number 02-110956. Although the Second Injury Fund is a party to this case, pursuant to the agreement of the parties it did not participate at hearing.

The parties stipulated that Claimant was employed by Spartas Industrial (also known as Spartas Wrecking Company) from February 29, 2000 through August 5, 2002. Claimant was employed by Gershenson Construction Company from August 16, 2002 to approximately October 21, 2002. He went to work for James Cape & Son in March 2003.

In terms of coverage, National Union Fire Insurance Company of Pittsburgh c/o AIG Claim Services, Inc. had the coverage for Spartas Industrial (Spartas Wrecking) from November 15, 1999 through November 14, 2000. Zurich North America Insurance Company had the insurance coverage for Spartas Industrial/Spartas Wrecking from November 15, 2000 through December 31, 2002. Gershenson Construction Company was insured by American

Home Assurance Company c/o AIG on October 21, 2002.

The first Claim for Compensation in Injury Number 00-179425 (filed on February 20, 2003) alleges injuries to the neck and cervical spine with dates of occupational disease of April 2000 and May 2000. The claim was later amended on numerous occasions by Claimant's counsel. The original Claim for Compensation for Injury Number 00-179492 alleges a date of injury of July 1, 2000, and was originally filed on March 31, 2003, again alleging injuries to the neck and cervical spine. The first Claim for Compensation in Injury Number 02-110956 (filed on October 24, 2002) alleges injuries to the neck and cervical spine with a date of injury of October 21, 2002.

The issues for determination by hearing are: Were the Claims for Compensation filed within the time prescribed by law; did Claimant sustain an occupational disease arising out of and in the course of employment; were the claimed work activities the medical cause of Claimant's alleged occupational disease; is Employer liable for the payment of any past medical expenses; is Employer liable for payment of any past temporary total disability benefits; did Claimant sustain any permanent partial disability in relationship to a compensable occupational disease; and, with respect to the October 21, 2002, claim, was there an employee/employer relationship between Claimant and Spirtas Industrial Services on the last claimed date of injury?

Following the trial in this case, Claimant filed a Motion for Leave to Adduce Supplemental Exhibit Q, which is denied.

## FINDINGS OF FACT

Based upon the competent and substantial evidence I find:

### *Claimant's Testimony*

Claimant was 29 years old in 2000 when he started working for Spirtas Industrial at the Bevo Building project at Anheuser Busch on the sixth floor. At that time, he was demolishing a solid concrete floor using a bobcat with an attachment on the front, called a brake hammer, which broke up the concrete. Claimant testified that when he broke up the concrete, he frequently encountered hidden items such as old pipes or metal, which caused the brake hammer to abruptly stop. This abrupt stopping jarred the bobcat, causing Claimant to hit his head on the top of the small metal cage that ran over the top of his head. Claimant estimated a clearance of approximately 1 inch between the top of his head and the ceiling of the bobcat. He occasionally wore a hard hat while operating the bobcat but would remove the hard hat to give him more room.

Claimant testified that from April to July 2000, while performing the concrete job, he repeatedly bounced and hit his head on the top of the metal cage. Claimant estimated that this happened 95% of the time while he was performing the demolition job. Claimant worked from 8 to 12 hours a day with a thirty-minute break, 5 to 7 days a week.

Claimant testified he first noticed pain in the upper left side of his neck, in the side of his shoulder, and down his left arm to the tips of his fingers at the beginning of April 2000. Claimant testified he mentioned his symptoms to the Safety Director, and requested a different machine. He asked the foreman to change the machine, and asked to go to the doctor. According to Claimant, the foreman advised Claimant to go to his own doctor. Claimant also testified that Employer declined changing equipment because they did not want to hassle with using Anheuser-Busch's freight elevators.

Claimant testified that he went to his own physician, Dr. Anzalone. Dr. Anzalone referred Claimant to a neurologist, but when the day came for Claimant to see him, he was told by Employer that he couldn't leave work because there was no one to cover him. At one point Employer had another operator do Claimant's job for 4 or 5 days while Claimant watched from the sideline. Claimant testified his pain decreased while he was on the sidelines, but it continued to hurt when he went back to the demolition job.

Claimant stopped working for Spirtas in August of 2002. The demolition job ended in July, and for the remainder of the time Claimant worked for Spirtas, he used several types of different machines including the bobcat, backhoe, fork truck and rough terrain crane. Many of the machines that he used while at Spirtas caused

his body, including his neck, to be jarred. He testified that the symptoms in his neck continued while he was working for Spirtas after he stopped working on the bobcat, but while he worked on other machines.

After Claimant left Employer, he went to work for Gershenson Construction as a heavy equipment operator. He operated a backhoe and high lift. The job at Gershenson was more physical, and his left arm and neck complaints increased. The symptoms that he felt at Gershenson increased to the point where he had to stop working for Gershenson, and went to see Dr. Martin, a neurosurgeon, on October 15, 2002. Following an MRI, which revealed a disc herniation, Claimant had surgery on October 21, 2002. After his surgery, Claimant was off work for five months, and eventually went back to work for James Cape & Sons as a heavy equipment operator in March 2003.

Claimant has not had any medical treatment for his neck since he last saw Dr. Martin on December 31, 2002. He does not take any prescription medications at this time, and he is still working as a heavy equipment operator.

No one from Employer sent him to see Dr. Anzalone or Dr. Martin, and he went to them on his own. He never notified Employer that he was going to have surgery and that he was requesting that they pay for surgery for what he thought was a work related condition. He never asked his Employer to pay for the surgery and did not ask them to pay for Dr. Anzalone's treatment. He did not request medical aid or treatment from Employer.

Claimant denied having any complaints, problems or symptoms to his neck area before he started operating the bobcat in May of 2000. He denied any pain, stiffness or radiating symptoms into his arms before operating the bobcat.

There is no doubt in Claimant's mind that his injury occurred while operating the bobcat on the sixth floor of the Bevo Building from April to July 2000.

Claimant was involved in a motor vehicle accident on June 16, 1992. A Claim for Compensation was filed with respect to that injury alleging injuries to the neck and low back. The Claim alleged a sprain and strain of the cervical and lumbar areas of the spine and possible disc herniation. The Claim was signed by Claimant.

### *Medical Evidence*

Claimant saw Dr. Anzalone on November 29, 2000. A history was given to Dr. Anzalone at that time of neck pain with an onset 4 years ago which has been intermittent since, worse in the past 30 days. The pain was reported to radiate into the upper extremities at times and into the back of the head. The history indicates that he was involved in multiple accidents as a child and now works as a heavy equipment operator and his neck gets jarred frequently. He also reported intermittent numbness of his upper and lower extremities for 4 years. There is no mention of Claimant striking his head on the top of a bobcat as the source of his symptoms.

Claimant was seen again by Dr. Anzalone on August 26, 2002, and at that time reported left hand numbness for 2 years radiating up his arm. He also had complaints of left chest pain. Claimant saw Dr. Anzalone on October 2, 2002, and reported that he still had neck pain going into his left upper extremity.

On October 15, 2002, Claimant saw Dr. Stanley Martin who reported Claimant was being seen for neck and bilateral upper extremity paraesthesia, that he had neck pain for several years, and that about a year ago he began to notice numbness in both upper extremities, and in the left more than the right. There were no clear exacerbating factors reported. Dr. Martin's records contain no reference to Claimant's striking his head while operating a bobcat as being the source of his symptoms and complaints to his neck and left arm.

Dr. Martin reviewed an MRI of the cervical spine, and stated that it showed a small broad based disc bulge at C4-5 and a moderate to large central, and left sided disc herniation at C5-6 with moderate to severe spinal stenosis at that level. There were no abnormal findings with the spinal cord. He also reviewed EMG and nerve conduction tests, which he thought were suggestive of a left C6 radiculopathy. Surgery was recommended and undertaken by Dr. Martin on October 21, 2002. The post-operative diagnosis included central and left sided disc herniation at C5-6. The procedure performed included a C5-6 anterior cervical discectomy with allograft bone fusion and syntheses plate. Claimant followed up with Dr. Martin, and eventually was released to return to work as a heavy equipment operator with a weight lifting restriction of 30 pounds for 1 month on December 31, 2002.

At the request of his attorney, Claimant saw Dr. Raymond Cohen for an examination and evaluation on December 11, 2003. Dr. Cohen was advised by Claimant that he had no problems referable to his neck or cervical spine before May of 2000. Dr. Cohen diagnosed overuse disorder or cumulative trauma disorder, status post discectomy for disc herniation on the left at C5-6 as well as myofascial pain disorder. In his opinion those diagnoses were from injuries he sustained to his neck from approximately April of 2000 through July of 2000, that his work was the substantial factor in his disability, and the treatment that he was received was medically necessary and reasonable. Dr. Cohen provided Claimant with a permanent partial disability of 40% of the cervical spine from his overuse disorder from April 2000 to July of 2000.

Dr. Cohen testified he did not have an opportunity to review Dr. Anzalone's records before he formed his opinions, and his opinions on causation were based on the assumption that the history provided to him by Claimant was truthful and accurate. He testified that the history in Dr. Anzalone's records was not consistent with Claimant's report to him of having no problems with the cervical spine before May of 2000. Dr. Cohen stated that his causation opinion could change if Claimant had significant cervical complaints that were related to a disc problem or a nerve root problem, and that pain radiating into the arms always presents the possibility of a radicular process.

Dr. Russell Cantrell evaluated Claimant on October 5, 2004. Dr. Cantrell testified the medical records suggest a history of onset of neck pain complaints prior to employment at Spirtas Industrial, and noted that those complaints included symptoms radiating into his upper extremities as well as numbness intermittently in both upper extremities. He believed that Claimant developed progressive degenerative changes in the cervical spine which eventually became sufficiently symptomatic to warrant treatment. He further testified Claimant told him he had undergone diagnostic studies for previous complaints to his neck related to a motor vehicle accident sometime around 1990. Claimant also gave Dr. Cantrell a history of muscle spasms in his neck in 1997, for which he had undergone diagnostic testing.

Dr. Cantrell believed that Claimant had reached maximum medical improvement and he sustained a permanent partial disability of 10% of the person as a whole secondary to the diagnosis of cervical degenerative disc disease for which he underwent an anterior cervical discectomy and fusion at the C5-6 level. Dr. Cantrell did not believe that the disability was substantially caused by or related to his employment activities at Employer between April and July of 2000. He found no correlation between his employment between April and July 2000 and Claimant's complaints.

## RULINGS OF LAW

Based upon the above-findings of fact, I find as follows:

### *Statute of Limitations*

Under Section 287.063.3, the statute of limitation referred to in Section 287.430 shall not begin to run in cases of occupational disease until it becomes reasonably discoverable and apparent that a compensable injury has been sustained...Section 287.060.3 RSMo. 2000

In *Rupard v. Kiesendahl, DDS.*, 114 S.W. 3d 389 (Mo.App. 2003) the Court held that the statute of limitations in an occupational disease begins running when: (1) an employee is no longer able to work due to the occupational disease; (2) an employee must seek medical advice and is advised [he] can no longer work in the suspected employment; or (3) employee experiences some type of disability that is compensable. *Id at 394.*

In the instant cases no Reports of Injury were filed, and therefore Claimant had three (3) years to file his Claim for Compensation. Given the standards set forth in the *Rupard* case, if you assume the date that the statute started running is the day he first saw Dr. Anzalone on November 29, 2000, all claims were filed in a timely manner. Therefore, all three Claims for Compensation are hereby found to be filed within the time prescribed by law.

### *Occupational Disease and Medical Causation*

Claimant has failed to meet his burden of proving that he sustained an occupational disease arising out of and in the course of employment; and that his work was a substantial factor in his disability.

Claimant's own testimony was not probative of medical causation, and was not credible with respect to the onset of his symptoms. Claimant testified that he had no complaints, problems or symptoms in his neck before he began operating the bobcat for Spirtas Industrial sometime in April of 2000. He denied pain, stiffness or radiating symptoms into his arms before the same dates.

Claimant's testimony in this regard is contradicted by the medical documentation and the history provided to Dr. Anzalone, Dr. Martin and Dr. Cantrell. Claimant gave a history to Dr. Anzalone on November 29, 2000 of neck pain with an onset 4 years ago and has been intermittent since, worse in the past 30 days. It was noted that the pain radiated into the upper extremities at times and into the back of the head, and furthermore that he had intermittent numbness of his upper extremities for the last 4 years.

When Claimant initially saw Dr. Martin in October 2002, he noted having neck pain for several years, a time frame which would extend before his employment at Spirtas. He also noted to Dr. Martin that the numbness in both extremities began a year ago, which would be somewhere around October of 2001 or approximately a year and a half after he stopped operating the bobcat at the Bevo Building project.

Finally, Claimant advised Dr. Cantrell that he had undergone diagnostic tests for previous complaints to his neck sometime around the time of a motor vehicle accident in the early 1990's and also that he experienced muscle spasms in his neck in 1997 for which he underwent diagnostic testing.

The medical records themselves support a finding that Claimant's neck problems began before he started working at Spirtas Industrial, and that those symptoms included not only pain but also symptoms that would be consistent with a herniated disc in the neck including radiation into the upper extremities as well as numbness to the upper extremities.

The opinions of Dr. Cantrell with respect to the issue of medical causation are more credible than that of Claimant's expert, Dr. Cohen. His opinions were based upon and supported by the history provided to the treating physicians, Dr. Anzalone and Dr. Martin. He had an opportunity to review these providers' records prior to formulating an opinion on medical causation.

On the other hand, the opinions of Claimant's expert, Dr. Cohen lack sufficient information, facts and foundation to be accorded any weight. Dr. Cohen did not have an opportunity to review any of Dr. Anzalone's records containing important history as to the onset of complaints before forming his opinions on medical causation. Dr. Cohen noted in his testimony that his opinions on causation were based on the assumption that the history provided to him by Claimant was truthful and accurate. Dr. Cohen admitted at one point in his deposition testimony that the history in Dr. Anzalone's records is not consistent with Claimant's report to him of having no problems with the cervical spine before May of 2000. He conceded in his testimony that his opinion on causation could change if Claimant had significant cervical complaints that were related to either a disc problem or nerve root problem or something of that nature that leads to a surgery not necessarily aches and pains that people have from their various types of jobs. It is clear from the history provided to Dr. Anzalone that Claimant was talking about symptoms that were consistent with a disc herniation in the neck including radiating pain into the upper extremities and numbness into the upper extremities before his employment began with Employer. Even Dr. Cohen acknowledged that the history in Dr. Anzalone's records is consistent with a history of pain emanating from a nerve root in the cervical spine.

Claimant was also involved in a motor vehicle accident on June 16, 1992. The Claim for Compensation filed after that accident noted injuries to the neck and low back which included a sprain and strain of the cervical and lumbar areas of the spine and possible disc herniation. Although that claim was ultimately dismissed, Claimant's testimony that he did not injure his neck as a result of that motor vehicle accident is not credible and tends to further support a finding that Claimant has not established his burden of proving medical causation.

The record and evidence taken as a whole illustrates that the condition of Claimant's cervical spine is a preexisting condition, and his work activities with Spirtas Industrial from April of 2000 to July of 2000 were not a substantial factor in his cervical spine condition. As a result Claimant has not been able to establish his burden with respect to medical causation and his Claims for Compensation are hereby denied.

Since Claimant has failed to establish his burden with respect to medical causation, the issues of past medical expenses, temporary total disability and permanent partial disability benefits are hereby moot. The claims are hereby denied.

In addition, the claims against the Second Injury Fund are dismissed.

Date: \_\_\_\_\_

Made by: \_\_\_\_\_

Margaret D. Landolt  
Administrative Law Judge  
Division of Workers' Compensation

A true copy: Attest:

\_\_\_\_\_  
Patricia "Pat" Secrest  
Director  
Division of Workers' Compensation

Issued by THE LABOR AND INDUSTRIAL RELATIONS COMMISSION

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

Injury No.: 00-179492

Employee: Christopher Doerr  
Employer: Spirtas Industrial Services, Inc.  
Insurer: National Union Fire Insurance Company  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund (Dismissed)  
Date of Accident: Alleged July 1, 2000  
Place and County of Accident: Alleged St. Louis County

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations 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 October 5, 2005, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Margaret D. Landolt, issued October 5, 2005, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 31<sup>st</sup> day of May 2006.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

NOT SITTING

William F. Ringer, Chairman

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Alice A. Bartlett, Member

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John J. Hickey, Member

Attest:

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Secretary

## AWARD

Employee:	Christopher Doerr	Injury No.:	00-179492
Dependents:	N/A	Before the	
Employer:	Spartas Industrial Services, Inc., Spartas Wrecking Company and Gershenson Construction Company	<b>Division of Workers' Compensation</b>	Department of Labor and Industrial Relations of Missouri
Additional Party:	Second Injury Fund (Dismissed)		Jefferson City, Missouri
Insurer:	National Union Fire Ins. Co. of Pittsburgh c/o AIG Claim Serv., Inc., Zurich North America and American Home Assurance Co. c/o AIG Claim Serv., Inc.		
Hearing Date:	July 11, 2005	Checked by:	MDL:tr

### FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No
3. 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
6. Date of accident or onset of occupational disease: N/A
7. 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? No
10. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted:  
Employee alleged repetitive trauma from hitting head on the top of a bobcat.
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: Neck, cervical spine and body as a whole
15. Nature and extent of any permanent disability: N/A
15. Compensation paid to-date for temporary disability: -0-
16. Value necessary medical aid paid to date by employer/insurer? -0-

Employee: Christopher Doerr

Injury No.:

00-179492

17. Value necessary medical aid not furnished by employer/insurer? -0-

19. Employee's average weekly wages: \$1,037.36

19. Weekly compensation rate: \$578.48/\$303.01

20. Method wages computation: By agreement

#### COMPENSATION PAYABLE

21. Amount of compensation payable: -0-

22. Second Injury Fund liability: No

TOTAL: -0-

23. Future requirements awarded: None

Said payments to begin N/A and to be payable and be subject to modification and review as provided by law.

The compensation awarded to Claimant shall be subject to a lien in the amount of N/A of all payments hereunder in favor of the following attorney for necessary legal services rendered to Claimant:

N/A

### FINDINGS OF FACT and RULINGS OF LAW:

Employee: Christopher Doerr

Injury No.: 00-179492

Dependents: N/A

Before the

**Division of Workers'**

**Compensation**

Employer: Spirtas Industrial Services, Inc., Spirtas

Wrecking Company and Gershenson

Construction Company

Department of Labor and Industrial

Relations of Missouri

Additional Party: Second Injury Fund (Dismissed)

Jefferson City, Missouri

Insurer: National Union Fire Ins. Co. of Pittsburgh c/o AIG Claim  
Serv., Inc., Zurich North America and American Home Assurance  
Co. c/o AIG Claim Serv., Inc.

Checked by: MDL:tr

#### PRELIMINARIES

A hearing was held on July 11, 2005 at the Division of Workers' Compensation in the City of St. Louis. Christopher Doerr ("Claimant") was represented by Mr. Lawrence Willbrand. Mr. John D. Dietrick represented Spirtas Industrial Services, Inc., and National Union Fire Insurance Company c/o AIG Claim Services, Inc. in connection with Injury Numbers

00-179425, 00-179492 and 02-110956. Ms. Jennifer Yates represented Spirtas Wrecking/Spirtas Industrial Services and Zurich North America Insurance Company in Injury Number 02-110956. Mr. Peter Maher represented employer Gershenson Construction Company, Inc. and American Home Assurance Company c/o AIG Claim Services, Inc. in connection with Injury Number 02-110956. Although the Second Injury Fund is a party to this case, pursuant to the agreement of the parties it did not participate at hearing.

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The issues for determination by hearing are: Were the Claims for Compensation filed within the time prescribed by law; did Claimant sustain an occupational disease arising out of and in the course of employment; were the claimed work activities the medical cause of Claimant's alleged occupational disease; is Employer liable for the payment of any past medical expenses; is Employer liable for payment of any past temporary total disability benefits; did Claimant sustain any permanent partial disability in relationship to a compensable occupational disease; and, with respect to the October 21, 2002, claim, was there an employee/employer relationship between Claimant and Spirtas Industrial Services on the last claimed date of injury?

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## FINDINGS OF FACT

Based upon the competent and substantial evidence I find:

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Claimant testified that he went to his own physician, Dr. Anzalone. Dr. Anzalone referred Claimant to a neurologist, but when the day came for Claimant to see him, he was told by Employer that he couldn't leave work because there was no one to cover him. At one point Employer had another operator do Claimant's job for 4 or 5 days while Claimant watched from the sideline. Claimant testified his pain decreased while he was on the sidelines, but it continued to hurt when he went back to the demolition job.

Claimant stopped working for Spirtas in August of 2002. The demolition job ended in July, and for the remainder of the time Claimant worked for Spirtas, he used several types of different machines including the bobcat, backhoe, fork truck and rough terrain crane. Many of the machines that he used while at Spirtas caused his body, including his neck, to be jarred. He testified that the symptoms in his neck continued while he was working for Spirtas after he stopped working on the bobcat, but while he worked on other machines.

After Claimant left Employer, he went to work for Gershenson Construction as a heavy equipment operator. He operated a backhoe and high lift. The job at Gershenson was more physical, and his left arm and neck complaints increased. The symptoms that he felt at Gershenson increased to the point where he had to stop working for Gershenson, and went to see Dr. Martin, a neurosurgeon, on October 15, 2002. Following an MRI, which revealed a disc herniation, Claimant had surgery on October 21, 2002. After his surgery, Claimant was off work for five months, and eventually went back to work for James Cape & Sons as a heavy equipment operator in March 2003.

Claimant has not had any medical treatment for his neck since he last saw Dr. Martin on December 31, 2002. He does not take any prescription medications at this time, and he is still working as a heavy equipment operator.

No one from Employer sent him to see Dr. Anzalone or Dr. Martin, and he went to them on his own. He never notified Employer that he was going to have surgery and that he was requesting that they pay for surgery for what he thought was a work related condition. He never asked his Employer to pay for the surgery and did not ask them to pay for Dr. Anzalone's treatment. He did not request medical aid or treatment from Employer.

Claimant denied having any complaints, problems or symptoms to his neck area before he started operating the bobcat in May of 2000. He denied any pain, stiffness or radiating symptoms into his arms before operating the bobcat.

There is no doubt in Claimant's mind that his injury occurred while operating the bobcat on the sixth floor of the Bevo Building from April to July 2000.

Claimant was involved in a motor vehicle accident on June 16, 1992. A Claim for Compensation was filed with respect to that injury alleging injuries to the neck and low back. The Claim alleged a sprain and strain of the cervical and lumbar areas of the spine and possible disc herniation. The Claim was signed by Claimant.

### *Medical Evidence*

Claimant saw Dr. Anzalone on November 29, 2000. A history was given to Dr. Anzalone at that time of neck pain with an onset 4 years ago which has been intermittent since, worse in the past 30 days. The pain was reported to radiate into the upper extremities at times and into the back of the head. The history indicates that he was involved in multiple accidents as a child and now works as a heavy equipment operator and his neck gets jarred frequently. He also reported intermittent numbness of his upper and lower extremities for 4 years. There is no mention of Claimant striking his head on the top of a bobcat as the source of his symptoms.

Claimant was seen again by Dr. Anzalone on August 26, 2002, and at that time reported left hand numbness for 2 years radiating up his arm. He also had complaints of left chest pain. Claimant saw Dr. Anzalone on October 2, 2002, and reported that he still had neck pain going into his left upper extremity.

On October 15, 2002, Claimant saw Dr. Stanley Martin who reported Claimant was being seen for neck and bilateral upper extremity paraesthesia, that he had neck pain for several years, and that about a year ago he began to notice numbness in both upper extremities, and in the left more than the right. There were no clear exacerbating factors reported. Dr. Martin's records contain no reference to Claimant's striking his head while operating a bobcat as being the source of his symptoms and complaints to his neck and left arm.

Dr. Martin reviewed an MRI of the cervical spine, and stated that it showed a small broad based disc bulge at C4-5 and a moderate to large central, and left sided disc herniation at C5-6 with moderate to severe spinal stenosis at that level. There were no abnormal findings with the spinal cord. He also reviewed EMG and nerve conduction tests, which he thought were suggestive of a left C6 radiculopathy. Surgery was recommended and undertaken by Dr. Martin on October 21, 2002. The post-operative diagnosis included central and left sided disc herniation at C5-6. The procedure performed included a C5-6 anterior cervical discectomy with allograft bone fusion and syntheses plate. Claimant followed up with Dr. Martin, and eventually was released to return to work as a heavy equipment operator with a weight lifting restriction of 30 pounds for 1 month on December 31, 2002.

At the request of his attorney, Claimant saw Dr. Raymond Cohen for an examination and evaluation on December 11, 2003. Dr. Cohen was advised by Claimant that he had no problems referable to his neck or cervical spine before May of 2000. Dr. Cohen diagnosed overuse disorder or cumulative trauma disorder, status post discectomy for disc herniation on the left at C5-6 as well as myofascial pain disorder. In his opinion those diagnoses were from injuries he sustained to his neck from approximately April of 2000 through July of 2000, that his work was the substantial factor in his disability, and the treatment that he was received was medically necessary and reasonable. Dr. Cohen provided Claimant with a permanent partial disability of 40% of the cervical spine from his overuse disorder from April 2000 to July of 2000.

Dr. Cohen testified he did not have an opportunity to review Dr. Anzalone's records before he formed his opinions, and his opinions on causation were based on the assumption that the history provided to him by Claimant was truthful and accurate. He testified that the history in Dr. Anzalone's records was not consistent with Claimant's report to him of having no problems with the cervical spine before May of 2000. Dr. Cohen stated that his causation opinion could change if Claimant had significant cervical complaints that were related to a disc problem or a nerve root problem, and that pain radiating into the arms always presents the possibility of a radicular process.

Dr. Russell Cantrell evaluated Claimant on October 5, 2004. Dr. Cantrell testified the medical records suggest a history of onset of neck pain complaints prior to employment at Spirtas Industrial, and noted that those complaints included symptoms radiating into his upper extremities as well as numbness intermittently in both upper extremities. He believed that Claimant developed progressive degenerative changes in the cervical spine which eventually became sufficiently symptomatic to warrant treatment. He further testified Claimant told him he had undergone diagnostic studies for previous complaints to his neck related to a motor vehicle accident sometime around 1990. Claimant also gave Dr. Cantrell a history of muscle spasms in his neck in 1997, for which he had undergone diagnostic testing.

Dr. Cantrell believed that Claimant had reached maximum medical improvement and he sustained a permanent partial disability of 10% of the person as a whole secondary to the diagnosis of cervical degenerative disc disease for which he underwent an anterior cervical discectomy and fusion at the C5-6 level. Dr. Cantrell did not believe that the disability was substantially caused by or related to his employment activities at Employer between April and July of 2000. He found no correlation between his employment between April and July 2000 and Claimant's complaints.

## RULINGS OF LAW

Based upon the above-findings of fact, I find as follows:

### *Statute of Limitations*

Under Section 287.063.3, the statute of limitation referred to in Section 287.430 shall not begin to run in cases of occupational disease until it becomes reasonably discoverable and apparent that a compensable injury has been

In *Rupard v. Kiesendahl, DDS.*, 114 S.W. 3d 389 (Mo.App. 2003) the Court held that the statute of limitations in an occupational disease begins running when: (1) an employee is no longer able to work due to the occupational disease; (2) an employee must seek medical advice and is advised [he] can no longer work in the suspected employment; or (3) employee experiences some type of disability that is compensable. *Id at 394.*

In the instant cases no Reports of Injury were filed, and therefore Claimant had three (3) years to file his Claim for Compensation. Given the standards set forth in the *Rupard* case, if you assume the date that the statute started running is the day he first saw Dr. Anzalone on November 29, 2000, all claims were filed in a timely manner. Therefore, all three Claims for Compensation are hereby found to be filed within the time prescribed by law.

### ***Occupational Disease and Medical Causation***

Claimant has failed to meet his burden of proving that he sustained an occupational disease arising out of and in the course of employment; and that his work was a substantial factor in his disability.

Claimant's own testimony was not probative of medical causation, and was not credible with respect to the onset of his symptoms. Claimant testified that he had no complaints, problems or symptoms in his neck before he began operating the bobcat for Spirtas Industrial sometime in April of 2000. He denied pain, stiffness or radiating symptoms into his arms before the same dates.

Claimant's testimony in this regard is contradicted by the medical documentation and the history provided to Dr. Anzalone, Dr. Martin and Dr. Cantrell. Claimant gave a history to Dr. Anzalone on November 29, 2000 of neck pain with an onset 4 years ago and has been intermittent since, worse in the past 30 days. It was noted that the pain radiated into the upper extremities at times and into the back of the head, and furthermore that he had intermittent numbness of his upper extremities for the last 4 years.

When Claimant initially saw Dr. Martin in October 2002, he noted having neck pain for several years, a time frame which would extend before his employment at Spirtas. He also noted to Dr. Martin that the numbness in both extremities began a year ago, which would be somewhere around October of 2001 or approximately a year and a half after he stopped operating the bobcat at the Bevo Building project.

Finally, Claimant advised Dr. Cantrell that he had undergone diagnostic tests for previous complaints to his neck sometime around the time of a motor vehicle accident in the early 1990's and also that he experienced muscle spasms in his neck in 1997 for which he underwent diagnostic testing.

The medical records themselves support a finding that Claimant's neck problems began before he started working at Spirtas Industrial, and that those symptoms included not only pain but also symptoms that would be consistent with a herniated disc in the neck including radiation into the upper extremities as well as numbness to the upper extremities.

The opinions of Dr. Cantrell with respect to the issue of medical causation are more credible than that of Claimant's expert, Dr. Cohen. His opinions were based upon and supported by the history provided to the treating physicians, Dr. Anzalone and Dr. Martin. He had an opportunity to review these providers' records prior to formulating an opinion on medical causation.

On the other hand, the opinions of Claimant's expert, Dr. Cohen lack sufficient information, facts and foundation to be accorded any weight. Dr. Cohen did not have an opportunity to review any of Dr. Anzalone's records containing important history as to the onset of complaints before forming his opinions on medical causation. Dr. Cohen noted in his testimony that his opinions on causation were based on the assumption that the history provided to him by Claimant was truthful and accurate. Dr. Cohen admitted at one point in his deposition testimony that the history in Dr. Anzalone's records is not consistent with Claimant's report to him of having no problems with the cervical spine before May of 2000. He conceded in his testimony that his opinion on causation could change if Claimant had significant cervical complaints that were related to either a disc problem or nerve root problem or something of that nature that leads to a surgery not necessarily aches and pains that people have from their various types of jobs. It is clear from the history provided to Dr. Anzalone that

Claimant was talking about symptoms that were consistent with a disc herniation in the neck including radiating pain into the upper extremities and numbness into the upper extremities before his employment began with Employer. Even Dr. Cohen acknowledged that the history in Dr. Anzalone's records is consistent with a history of pain emanating from a nerve root in the cervical spine.

Claimant was also involved in a motor vehicle accident on June 16, 1992. The Claim for Compensation filed after that accident noted injuries to the neck and low back which included a sprain and strain of the cervical and lumbar areas of the spine and possible disc herniation. Although that claim was ultimately dismissed, Claimant's testimony that he did not injure his neck as a result of that motor vehicle accident is not credible and tends to further support a finding that Claimant has not established his burden of proving medical causation.

The record and evidence taken as a whole illustrates that the condition of Claimant's cervical spine is a preexisting condition, and his work activities with Spirtas Industrial from April of 2000 to July of 2000 were not a substantial factor in his cervical spine condition. As a result Claimant has not been able to establish his burden with respect to medical causation and his Claims for Compensation are hereby denied.

Since Claimant has failed to establish his burden with respect to medical causation, the issues of past medical expenses, temporary total disability and permanent partial disability benefits are hereby moot. The claims are hereby denied.

In addition, the claims against the Second Injury Fund are dismissed.

Date: \_\_\_\_\_

Made by: \_\_\_\_\_

Margaret D. Landolt  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

\_\_\_\_\_  
Patricia "Pat" Secret  
*Director*  
*Division of Workers' Compensation*

Issued by THE LABOR AND INDUSTRIAL RELATIONS COMMISSION

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

Injury No.: 02-110956

Employee: Christopher Doerr

Employers: 1) Spirtas Industrial Services, Inc.  
2) Spirtas Wrecking Company  
3) Gershenson Construction Company

Insurers: 1) National Union Fire Insurance Company  
2) Zurich North America  
3) American Home Assurance Company  
c/o AIG Claim Service, Inc.

Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund (Dismissed)

Date of Accident: Alleged October 21, 2002

Place and County of Accident: Alleged St. Louis County

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations 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 October 5, 2005, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Margaret D. Landolt, issued October 5, 2005, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 31<sup>st</sup> day of May 2006.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

NOT SITTING

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

\_\_\_\_\_  
Secretary

**AWARD**

Employee:	Christopher Doerr	Injury No.: 02-110956
Dependents:	N/A	Before the <b>Division of Workers' Compensation</b>
Employer:	Spartas Industrial Services, Inc., Spartas Wrecking Company and Gershenson Construction Company	Department of Labor and Industrial Relations of Missouri
Additional Party:	Second Injury Fund (Dismissed)	Jefferson City, Missouri
Insurer:	National Union Fire Ins. Co. of Pittsburgh c/o AIG Claim Serv., Inc., Zurich North America and American Home Assurance Co. c/o AIG Claim Serv., Inc.	
Hearing Date:	July 11, 2005	Checked by: MDL:tr

**FINDINGS OF FACT AND RULINGS OF LAW**

1. Are any benefits awarded herein? No
4. 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
8. Date of accident or onset of occupational disease: N/A

- 9. 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? No
- 11. Was claim for compensation filed within time required by Law? Yes
- 10. Was employer insured by above insurer? Yes
- 11. Describe work employee was doing and how accident occurred or occupational disease contracted:  
Employee alleged repetitive trauma from striking his head on the top of a bobcat.
- 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
- 16. Nature and extent of any permanent disability: N/A
- 15. Compensation paid to-date for temporary disability: -0-
- 16. Value necessary medical aid paid to date by employer/insurer? -0-

Employee: Christopher Doerr Injury No.: 02-110956

- 17. Value necessary medical aid not furnished by employer/insurer? -0-
- 20. Employee's average weekly wages: \$978.98
- 19. Weekly compensation rate: \$649.32/\$340.12
- 20. Method wages computation: By agreement

**COMPENSATION PAYABLE**

- 21. Amount of compensation payable: -0-
- 22. Second Injury Fund liability: No
- TOTAL: -0-
- 23. Future requirements awarded: None

Said payments to begin N/A and to be payable and be subject to modification and review as provided by law.

The compensation awarded to Claimant shall be subject to a lien in the amount of N/A of all payments hereunder in favor of the following attorney for necessary legal services rendered to Claimant:

N/A

## FINDINGS OF FACT and RULINGS OF LAW:

Employee: Christopher Doerr Injury No.: 02-110956

Dependents: N/A Before the  
**Division of Workers'  
Compensation**

Employer: Spirtas Industrial Services, Inc., Spirtas  
Wrecking Company and Gershenson Department of Labor and Industrial  
Construction Company Relations of Missouri  
Additional Party: Second Injury Fund (Dismissed) Jefferson City, Missouri

Insurer: National Union Fire Ins. Co. of Pittsburgh c/o AIG Claim  
Serv., Inc., Zurich North America and American Home Assurance  
Co. c/o AIG Claim Serv., Inc.

Checked by: MDL:tr

### PRELIMINARIES

A hearing was held on July 11, 2005 at the Division of Workers' Compensation in the City of St. Louis. Christopher Doerr ("Claimant") was represented by Mr. Lawrence Willbrand. Mr. John D. Dietrick represented Spirtas Industrial Services, Inc., and National Union Fire Insurance Company c/o AIG Claim Services, Inc. in connection with Injury Numbers 00-179425, 00-179492 and 02-110956. Ms. Jennifer Yates represented Spirtas Wrecking/Spirtas Industrial Services and Zurich North America Insurance Company in Injury Number 02-110956. Mr. Peter Maher represented employer Gershenson Construction Company, Inc. and American Home Assurance Company c/o AIG Claim Services, Inc. in connection with Injury Number 02-110956. Although the Second Injury Fund is a party to this case, pursuant to the agreement of the parties it did not participate at hearing.

The parties stipulated that Claimant was employed by Spirtas Industrial (also known as Spirtas Wrecking Company) from February 29, 2000 through August 5, 2002. Claimant was employed by Gershenson Construction Company from August 16, 2002 to approximately October 21, 2002. He went to work for James Cape & Son in March 2003.

In terms of coverage, National Union Fire Insurance Company of Pittsburgh c/o AIG Claim Services, Inc. had the coverage for Spirtas Industrial (Spirtas Wrecking) from November 15, 1999 through November 14, 2000. Zurich North America Insurance Company had the insurance coverage for Spirtas Industrial/Spirtas Wrecking from November 15, 2000 through December 31, 2002. Gershenson Construction Company was insured by American Home Assurance Company c/o AIG on October 21, 2002.

The first Claim for Compensation in Injury Number 00-179425 (filed on February 20, 2003) alleges injuries to the neck and cervical spine with dates of occupational disease of April 2000 and May 2000. The claim was later amended on numerous occasions by Claimant's counsel. The original Claim for Compensation for Injury Number 00-179492 alleges a date of injury of July 1, 2000, and was originally filed on March 31, 2003, again alleging injuries to the neck and cervical spine. The first Claim for Compensation in Injury Number 02-110956 (filed on October 24, 2002) alleges injuries to the neck and cervical spine with a date of injury of October 21, 2002.

The issues for determination by hearing are: Were the Claims for Compensation filed within the time prescribed by law; did Claimant sustain an occupational disease arising out of and in the course of employment; were the claimed work activities the medical cause of Claimant's alleged occupational disease; is Employer liable for the payment of any past medical expenses; is Employer liable for payment of any past temporary total disability benefits; did Claimant sustain any permanent partial disability in relationship to a compensable occupational disease; and, with respect to the October 21, 2002, claim, was there an employee/employer relationship between Claimant and Spirtas Industrial Services on the last claimed date of injury?

Following the trial in this case, Claimant filed a Motion for Leave to Adduce Supplemental Exhibit Q, which is denied.

### FINDINGS OF FACT

Based upon the competent and substantial evidence I find:

*Claimant's Testimony*

Claimant was 29 years old in 2000 when he started working for Spirtas Industrial at the Bevo Building project at Anheuser Busch on the sixth floor. At that time, he was demolishing a solid concrete floor using a bobcat with an attachment on the front, called a brake hammer, which broke up the concrete. Claimant testified that when he broke up the concrete, he frequently encountered hidden items such as old pipes or metal, which caused the brake hammer to abruptly stop. This abrupt stopping jarred the bobcat, causing Claimant to hit his head on the top of the small metal cage that ran over the top of his head. Claimant estimated a clearance of approximately 1 inch between the top of his head and the ceiling of the bobcat. He occasionally wore a hard hat while operating the bobcat but would remove the hard hat to give him more room.

Claimant testified that from April to July 2000, while performing the concrete job, he repeatedly bounced and hit his head on the top of the metal cage. Claimant estimated that this happened 95% of the time while he was performing the demolition job. Claimant worked from 8 to 12 hours a day with a thirty-minute break, 5 to 7 days a week.

Claimant testified he first noticed pain in the upper left side of his neck, in the side of his shoulder, and down his left arm to the tips of his fingers at the beginning of April 2000. Claimant testified he mentioned his symptoms to the Safety Director, and requested a different machine. He asked the foreman to change the machine, and asked to go to the doctor. According to Claimant, the foreman advised Claimant to go to his own doctor. Claimant also testified that Employer declined changing equipment because they did not want to hassle with using Anheuser-Busch's freight elevators.

Claimant testified that he went to his own physician, Dr. Anzalone. Dr. Anzalone referred Claimant to a neurologist, but when the day came for Claimant to see him, he was told by Employer that he couldn't leave work because there was no one to cover him. At one point Employer had another operator do Claimant's job for 4 or 5 days while Claimant watched from the sideline. Claimant testified his pain decreased while he was on the sidelines, but it continued to hurt when he went back to the demolition job.

Claimant stopped working for Spirtas in August of 2002. The demolition job ended in July, and for the remainder of the time Claimant worked for Spirtas, he used several types of different machines including the bobcat, backhoe, fork truck and rough terrain crane. Many of the machines that he used while at Spirtas caused his body, including his neck, to be jarred. He testified that the symptoms in his neck continued while he was working for Spirtas after he stopped working on the bobcat, but while he worked on other machines.

After Claimant left Employer, he went to work for Gershenson Construction as a heavy equipment operator. He operated a backhoe and high lift. The job at Gershenson was more physical, and his left arm and neck complaints increased. The symptoms that he felt at Gershenson increased to the point where he had to stop working for Gershenson, and went to see Dr. Martin, a neurosurgeon, on October 15, 2002. Following an MRI, which revealed a disc herniation, Claimant had surgery on October 21, 2002. After his surgery, Claimant was off work for five months, and eventually went back to work for James Cape & Sons as a heavy equipment operator in March 2003.

Claimant has not had any medical treatment for his neck since he last saw Dr. Martin on December 31, 2002. He does not take any prescription medications at this time, and he is still working as a heavy equipment operator.

No one from Employer sent him to see Dr. Anzalone or Dr. Martin, and he went to them on his own. He never notified Employer that he was going to have surgery and that he was requesting that they pay for surgery for what he thought was a work related condition. He never asked his Employer to pay for the surgery and did not ask them to pay for Dr. Anzalone's treatment. He did not request medical aid or treatment from Employer.

Claimant denied having any complaints, problems or symptoms to his neck area before he started operating the bobcat in May of 2000. He denied any pain, stiffness or radiating symptoms into his arms before operating the bobcat.

There is no doubt in Claimant's mind that his injury occurred while operating the bobcat on the sixth floor of the Bevo Building from April to July 2000.

Claimant was involved in a motor vehicle accident on June 16, 1992. A Claim for Compensation was filed with respect to that injury alleging injuries to the neck and low back. The Claim alleged a sprain and strain of the cervical and lumbar areas of the spine and possible disc herniation. The Claim was signed by Claimant.

### *Medical Evidence*

Claimant saw Dr. Anzalone on November 29, 2000. A history was given to Dr. Anzalone at that time of neck pain with an onset 4 years ago which has been intermittent since, worse in the past 30 days. The pain was reported to radiate into the upper extremities at times and into the back of the head. The history indicates that he was involved in multiple accidents as a child and now works as a heavy equipment operator and his neck gets jarred frequently. He also reported intermittent numbness of his upper and lower extremities for 4 years. There is no mention of Claimant striking his head on the top of a bobcat as the source of his symptoms.

Claimant was seen again by Dr. Anzalone on August 26, 2002, and at that time reported left hand numbness for 2 years radiating up his arm. He also had complaints of left chest pain. Claimant saw Dr. Anzalone on October 2, 2002, and reported that he still had neck pain going into his left upper extremity.

On October 15, 2002, Claimant saw Dr. Stanley Martin who reported Claimant was being seen for neck and bilateral upper extremity paraesthesia, that he had neck pain for several years, and that about a year ago he began to notice numbness in both upper extremities, and in the left more than the right. There were no clear exacerbating factors reported. Dr. Martin's records contain no reference to Claimant's striking his head while operating a bobcat as being the source of his symptoms and complaints to his neck and left arm.

Dr. Martin reviewed an MRI of the cervical spine, and stated that it showed a small broad based disc bulge at C4-5 and a moderate to large central, and left sided disc herniation at C5-6 with moderate to severe spinal stenosis at that level. There were no abnormal findings with the spinal cord. He also reviewed EMG and nerve conduction tests, which he thought were suggestive of a left C6 radiculopathy. Surgery was recommended and undertaken by Dr. Martin on October 21, 2002. The post-operative diagnosis included central and left sided disc herniation at C5-6. The procedure performed included a C5-6 anterior cervical discectomy with allograft bone fusion and syntheses plate. Claimant followed up with Dr. Martin, and eventually was released to return to work as a heavy equipment operator with a weight lifting restriction of 30 pounds for 1 month on December 31, 2002.

At the request of his attorney, Claimant saw Dr. Raymond Cohen for an examination and evaluation on December 11, 2003. Dr. Cohen was advised by Claimant that he had no problems referable to his neck or cervical spine before May of 2000. Dr. Cohen diagnosed overuse disorder or cumulative trauma disorder, status post discectomy for disc herniation on the left at C5-6 as well as myofascial pain disorder. In his opinion those diagnoses were from injuries he sustained to his neck from approximately April of 2000 through July of 2000, that his work was the substantial factor in his disability, and the treatment that he was received was medically necessary and reasonable. Dr. Cohen provided Claimant with a permanent partial disability of 40% of the cervical spine from his overuse disorder from April 2000 to July of 2000.

Dr. Cohen testified he did not have an opportunity to review Dr. Anzalone's records before he formed his opinions, and his opinions on causation were based on the assumption that the history provided to him by Claimant was truthful and accurate. He testified that the history in Dr. Anzalone's records was not consistent with Claimant's report to him of having no problems with the cervical spine before May of 2000. Dr. Cohen stated that his causation opinion could change if Claimant had significant cervical complaints that were related to a disc problem or a nerve root problem, and that pain radiating into the arms always presents the possibility of a radicular process.

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symptomatic to warrant treatment. He further testified Claimant told him he had undergone diagnostic studies for previous complaints to his neck related to a motor vehicle accident sometime around 1990. Claimant also gave Dr. Cantrell a history of muscle spasms in his neck in 1997, for which he had undergone diagnostic testing.

Dr. Cantrell believed that Claimant had reached maximum medical improvement and he sustained a permanent partial disability of 10% of the person as a whole secondary to the diagnosis of cervical degenerative disc disease for which he underwent an anterior cervical discectomy and fusion at the C5-6 level. Dr. Cantrell did not believe that the disability was substantially caused by or related to his employment activities at Employer between April and July of 2000. He found no correlation between his employment between April and July 2000 and Claimant's complaints.

## RULINGS OF LAW

Based upon the above-findings of fact, I find as follows:

### *Statute of Limitations*

Under Section 287.063.3, the statute of limitation referred to in Section 287.430 shall not begin to run in cases of occupational disease until it becomes reasonably discoverable and apparent that a compensable injury has been sustained...Section 287.060.3 RSMo. 2000

In *Rupard v. Kiesendahl, DDS.*, 114 S.W. 3d 389 (Mo.App. 2003) the Court held that the statute of limitations in an occupational disease begins running when: (1) an employee is no longer able to work due to the occupational disease; (2) an employee must seek medical advice and is advised [he] can no longer work in the suspected employment; or (3) employee experiences some type of disability that is compensable. *Id at 394.*

In the instant cases no Reports of Injury were filed, and therefore Claimant had three (3) years to file his Claim for Compensation. Given the standards set forth in the *Rupard* case, if you assume the date that the statute started running is the day he first saw Dr. Anzalone on November 29, 2000, all claims were filed in a timely manner. Therefore, all three Claims for Compensation are hereby found to be filed within the time prescribed by law.

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Finally, Claimant advised Dr. Cantrell that he had undergone diagnostic tests for previous complaints to his

neck sometime around the time of a motor vehicle accident in the early 1990's and also that he experienced muscle spasms in his neck in 1997 for which he underwent diagnostic testing.

The medical records themselves support a finding that Claimant's neck problems began before he started working at Spirtas Industrial, and that those symptoms included not only pain but also symptoms that would be consistent with a herniated disc in the neck including radiation into the upper extremities as well as numbness to the upper extremities.

The opinions of Dr. Cantrell with respect to the issue of medical causation are more credible than that of Claimant's expert, Dr. Cohen. His opinions were based upon and supported by the history provided to the treating physicians, Dr. Anzalone and Dr. Martin. He had an opportunity to review these providers' records prior to formulating an opinion on medical causation.

On the other hand, the opinions of Claimant's expert, Dr. Cohen lack sufficient information, facts and foundation to be accorded any weight. Dr. Cohen did not have an opportunity to review any of Dr. Anzalone's records containing important history as to the onset of complaints before forming his opinions on medical causation. Dr. Cohen noted in his testimony that his opinions on causation were based on the assumption that the history provided to him by Claimant was truthful and accurate. Dr. Cohen admitted at one point in his deposition testimony that the history in Dr. Anzalone's records is not consistent with Claimant's report to him of having no problems with the cervical spine before May of 2000. He conceded in his testimony that his opinion on causation could change if Claimant had significant cervical complaints that were related to either a disc problem or nerve root problem or something of that nature that leads to a surgery not necessarily aches and pains that people have from their various types of jobs. It is clear from the history provided to Dr. Anzalone that Claimant was talking about symptoms that were consistent with a disc herniation in the neck including radiating pain into the upper extremities and numbness into the upper extremities before his employment began with Employer. Even Dr. Cohen acknowledged that the history in Dr. Anzalone's records is consistent with a history of pain emanating from a nerve root in the cervical spine.

Claimant was also involved in a motor vehicle accident on June 16, 1992. The Claim for Compensation filed after that accident noted injuries to the neck and low back which included a sprain and strain of the cervical and lumbar areas of the spine and possible disc herniation. Although that claim was ultimately dismissed, Claimant's testimony that he did not injure his neck as a result of that motor vehicle accident is not credible and tends to further support a finding that Claimant has not established his burden of proving medical causation.

The record and evidence taken as a whole illustrates that the condition of Claimant's cervical spine is a preexisting condition, and his work activities with Spirtas Industrial from April of 2000 to July of 2000 were not a substantial factor in his cervical spine condition. As a result Claimant has not been able to establish his burden with respect to medical causation and his Claims for Compensation are hereby denied.

Since Claimant has failed to establish his burden with respect to medical causation, the issues of past medical expenses, temporary total disability and permanent partial disability benefits are hereby moot. The claims are hereby denied.

In addition, the claims against the Second Injury Fund are dismissed.

Date: \_\_\_\_\_

Made by: \_\_\_\_\_

Margaret D. Landolt  
Administrative Law Judge  
Division of Workers' Compensation

A true copy: Attest:

\_\_\_\_\_  
Patricia "Pat" Secret  
Director  
Division of Workers' Compensation

