

**FINAL AWARD DENYING COMPENSATION**

(Affirming Award and Decision of Administrative Law Judge with Correction)

Injury No.: 08-048193

Employee: Larry L. Green  
Employer: State of Missouri, Department of Corrections  
Insurer: C A R O  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund

This workers' compensation case is submitted to the Labor and Industrial Relations Commission for review as provided by § 287.480 RSMo. We have read the briefs, reviewed the evidence and considered the whole record. We find that the award of the administrative law judge denying compensation is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to § 286.090 RSMo, we affirm the award and decision of the administrative law, as corrected herein.

The administrative law judge's award misidentifies Dr. Koprivica as "Dr. Volarich" on two occasions. To correct these errors, we replace the paragraph starting at the bottom of page 16 of the administrative law judge's award (and ending on the top of page 17) with the paragraph below (corrections in bold):

Dr. Koprivica's opinions were premised on the actual fact that there was ether escaping into the cab of the vehicle while Claimant was operating the vehicle. I find there is insufficient evidence to prove that there was ether escaping into the truck cab prior to the accident. Claimant testified that he was traveling with no problems prior to the accident. Dr. **Koprivica** admitted that if ether was escaping into the cab of the truck, the odor would be recognizable. He also admitted that, even with Claimant's heart and pulmonary conditions, it would take some concentration of ether to cause unconsciousness. Dr. **Koprivica** admitted if there was no ether escaping into the cab of the truck prior to the accident, then it was his opinion that Claimant's heart condition caused the Claimant to become unconscious and to cause the ensuing accident.

In all other respects, we affirm the award of the administrative law judge. The award and decision of Administrative Law Judge David L. Zerrer, issued January 24, 2013, is attached hereto and incorporated herein by this reference.

Given at Jefferson City, State of Missouri, this 19<sup>th</sup> day of September 2013.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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John J. Larsen, Jr., Chairman

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James G. Avery, Jr., Member

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Curtis E. Chick, Jr., Member

Attest:

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Secretary

## AWARD

Employee: Larry L. Green

Injury No. 08-048193

Dependents:

Employer: State of Missouri, Department of Corrections

Additional Party: Second Injury Fund

Insurer: Self-insured through CARO

Hearing Date: November 8, 2012/November 30, 2012

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

Checked by: DLZ

### 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? Yes
4. Date of accident or onset of occupational disease: May 29, 2008
5. State location where accident occurred or occupational disease was contracted: Pettis 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? Self-insured
11. Describe work employee was doing and how accident occurred or occupational disease contracted:  
Claimant had motor vehicle accident
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: Left shoulder, ribs, body as a whole
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? \$2,516.00

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- 17. Value necessary medical aid not furnished by employer/insurer? None
- 18. Employee's average weekly wages: \$571.00
- 19. Weekly compensation rate: \$380.69
- 20. Method wages computation: Stipulation

**COMPENSATION PAYABLE**

- 21. Amount of compensation payable: None

Unpaid medical expenses: -0-

0 weeks of temporary total disability (or temporary partial disability)

0 weeks of permanent partial disability from Employer

- 22. Second Injury Fund liability: Yes    No  Open

TOTAL: NONE

- 23. Future requirements awarded: None

Employee: Larry L. Green

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**FINDINGS OF FACT and RULINGS OF LAW:**

Employee: Larry L. Green

Injury No: 08-048193

Dependents:

Before the  
**DIVISION OF WORKERS'  
COMPENSATION**

Employer: State of Missouri, Department of Corrections

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

Additional Party: Second Injury Fund

Insurer: Self-insured through CARO

Checked by: DLZ

On the 8<sup>th</sup> day of November, 2012, the parties appeared before the undersigned Administrative Law Judge for final hearing. The Claimant appeared in person and by his attorney, Michael Stang. The Employer appeared by its attorney, Assistant Attorney General Curtis Schube. The Treasurer of the State of Missouri, as Custodian of the Second Injury Fund, appeared by Assistant Attorney General Eric Lowe. The record was ordered to be left open until 5:00 p.m. November 30, 2012.

The parties have entered into a stipulation as to certain facts which are not at issue in this claim as follows, to wit: On or about the 29<sup>th</sup> day of May, 2008, the State of Missouri, Department of Corrections, was an employer operating subject to the Missouri Workers' Compensation Law; the Employer's liability was fully self-insured through the Central Accident Reporting Office (CARO) of the State of Missouri; on the alleged injury date of May 29, 2008, Larry L. Green was an employee of the Employer; the Claimant was working subject to the Missouri Workers' Compensation Law; the accident occurred in Pettis County, Missouri, and the parties agree that Pettis County, Missouri, is the proper venue for this hearing; the Claimant notified the Employer of the injury as required by Section 287.420; the Claimant's claim was filed within the time prescribed by Section 287.430; at the time of the claimed accident, Claimant's average weekly wage was \$571.00, sufficient to allow a compensation rate of

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\$380.69 for temporary total disability, permanent partial disability, and permanent total disability; no temporary disability benefits have been paid prior to the date of this hearing; the Employer has paid medical benefits in the amount of \$2,516.00 prior to the date of this hearing; Claimant's attorney seeks approval of an attorney fee of 25% of the amount of any award.

## **ISSUES**

Whether the accident caused the injuries and disabilities for which benefits are now being claimed?

Whether the Employer is obligated to pay for past medical expenses?

Whether the Claimant has sustained injuries that will require future medical care in order to cure and relieve the Claimant of the effects of the injuries?

Whether temporary total benefits are owed to the Claimant?

The nature and extent of any permanent disabilities?

The liability of the Second Injury Fund for permanent total disability/enhanced permanent partial disability?

## **DISCUSSION**

A legal file was established for this hearing which consisted of the following documents, to wit: Report of Injury; Claim for Compensation, filed with the Division July 7, 2008; Amended Claim for Compensation, filed with the Division October 22, 2008; Second Amended Claim for Compensation, filed with the Division February 14, 2011; Answer of Employer to Claim for Compensation, filed with the Division July 22, 2008; Answer of Employer to Amended Claim for Compensation, filed with the Division November 3, 2008; Answer of

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Employer to Second Amended Claim for Compensation, filed with the Division February 18, 2011; Answer of the Second Injury Fund to Claim for Compensation, filed with the Division November 3, 2008; Answer of the Second Injury Fund to Second Amended Claim for Compensation, filed with the Division February 18, 2011; Request for Final Hearing, filed with the Division July 13, 2012.

Claimant offered, and there was admitted into evidence without objection, Exhibits A, B, and C. Employer offered, and there was admitted into evidence without objection, Exhibits 1, 2, 3, 4, 5, and 6.

Larry L. Green, claimant herein, testified in his own behalf. Claimant testified that he resides in Columbia, Missouri, and that his date of birth is January 12, 1946. Claimant testified that he became a truck driver during the later 1960's and also became a business agent for the Teamsters Union during the 1970's. Claimant continued to drive a truck for an occupation until about the year 2000, when he stopped driving a truck and also retired as a business agent for the union at about the same time.

Claimant testified that when he drove a truck, his job duties included loading cargo, securing cargo for travel, and unloading cargo, all of which could be strenuous, heavy labor, besides the actual task of operating a trucking vehicle.

Claimant testified that in 2004 he went to work for the Missouri Department of Corrections, employer herein, to do something different for an occupation. Claimant testified that when he started working for the Employer, he had already had a heart attack, had stents installed in his heart, and was diagnosed with chronic obstructive pulmonary disease (COPD).

Claimant testified that he could perform his job tasks at the Department of Corrections because the work involved mostly driving without the strenuous lifting. Claimant testified that

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he was diagnosed with throat cancer and placed on restrictions of no lifting and no loads except equipment.

Claimant testified that in 1995 he suffered a left shoulder dislocation. Claimant stated that for treatment the shoulder was put back in place, and he underwent physical therapy for a period of time. Claimant stated that his shoulder “pretty well” recovered from this injury.

Claimant testified that in 1997 he suffered a heart attack and was diagnosed with coronary artery disease. Claimant received five stents in his heart at that time. Claimant further testified that the heart disease caused him to fatigue easily and forced him to restrict his physical activities.

Claimant testified that for the past ten years, more or less, he has suffered from the disease of COPD which has affected his lung function and gives him shortness of breath when he does physical activity.

In 2007 Claimant was diagnosed with phalangeal cancer. Claimant received radiation treatment for the cancer and ultimately had to have his larynx removed. The surgery to remove Claimant’s larynx occurred after the May 29, 2008, accident.

Claimant testified that at the time of his May 29, 2008, accident, he was receiving radiation treatments for his throat cancer, but that he felt “normal” on May 29, 2008, when he reported for work about 6 a.m. Claimant was scheduled to drive a Department of Corrections truck to Grandview, Missouri, from Jefferson City, Missouri, on that date. Claimant testified that he left Jefferson City, Missouri, traveling west on Highway 50 and continued on that highway until the accident occurred west of Sedalia, Missouri. Claimant stated that he does not remember what happened at the exact time of the accident, but he remembered looking in the rearview mirror and then waking up on the floor board of the truck with blood dripping from his face, his

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left shoulder hurting, and his ribs hurting. Claimant stated that his shoulder seat belt was off, but his waist seat belt remained fastened during the accident.

Claimant testified that when he became conscious he smelled ether in the cab of the truck. He further stated that he saw the can of ether on the floor of the truck, and he picked it up and threw it out of the truck. Claimant released himself from the seat belt, climbed out of the truck on his own, and used his state-issued cell phone to call for assistance.

Claimant testified that he was transported to Sedalia hospital for treatment where they took X-rays, cleaned the blood from Claimant's head and administered a drug test. Claimant indicated that he complained to the hospital personnel of rib pain, left shoulder pain, and lacerations and abrasion about his face. Claimant testified that he was transferred to St. Mary's Hospital in Jefferson City for further treatment because his heart was beating too fast. After further examination, it was determined that Claimant had a fractured rib as a result of the accident.

Claimant testified that he was off work during his treatment period and that he never returned to work for the Employer. Claimant further testified that he had rib pain for a long time after the accident, but that eventually the pain subsided and returned to normal condition. He stated that his left shoulder has ongoing pain, has lost some range of motion, has lost some of the strength, and is chronically painful. Claimant stated: "I just can't do it anymore, all of the conditions just piled up."

Claimant identified Exhibit A as a compilation of medical bills incurred as a result of treatment received by Claimant since the May 29, 2008, accident, all of which total \$67,430.21.

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Claimant testified that he has pain in his left shoulder if he lifts overhead, that he never had a lifting problem with his shoulder before May 29, 2008, and further, that he does not believe he could perform his job tasks for Employer since the injury of May 29, 2008.

Claimant stated that his cancer is gone, but he has continued problems with communication because he must speak with an assistive device. Claimant stated that his only training for an occupation is that of driving a truck. Claimant indicated that he has no computer skills.

On cross-examination by Employer, Claimant admitted that he had two additional stents placed in his heart following the May 29, 2008, accident. He also admitted that he thought he had a radiation treatment the day before the accident, but that he did not have side effects from the radiation treatments unless he over exerted himself.

Claimant admitted that before he left on his trip on May 29, 2008, he checked-out his truck to make sure it was "road worthy" and that there was a box of tools and supplies in the front cab of the truck which also contained a container of ether which was used to start the truck from time to time. Claimant further admitted that he did not remember if the box of tools and supplies got displaced during the accident or exactly where he found the can of ether after the accident.

Claimant admitted that he did not smell ether prior to the accident and that he did not recall ever having an ether canister leak in the past.

Claimant admitted that his fractured ribs are no longer painful and that he did not remember the specific diagnosis of the left shoulder that was made by the treating physician. He further admitted that if only his left shoulder was injured in the accident, it would still be difficult

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for him to drive a truck. Claimant also admitted that his heart disease treatment is ongoing and that he has no side effects from the medications he takes for his heart.

On cross-examination by the Second Injury Fund, Claimant admitted that he has not smoked since he was diagnosed with cancer, but that the COPD, heart condition, and cancer all combine to cause Claimant to be easily fatigued.

Claimant admitted that Employer changed Claimant's job tasks to accommodate restrictions after Claimant was diagnosed with cancer. Claimant admitted that he continued to hold a CDC commercial driver's license after the accident, but he no longer holds a "HAZMAT" qualification on his driver's license.

Claimant admitted that he has not suffered any fainting spells since May 29, 2008, and further that the emergent heart symptoms were not diagnosed until he was at St. Mary's Hospital in Jefferson City, Missouri, for treatment.

Claimant admitted that he did not use any ether or other starting fluid to start his truck on May 29, 2008. He further admitted that he does not know exactly where he was on Highway 50 when the accident occurred, but he does remember looking in the rearview mirror and noticing a feed mill just before the accident. Claimant admitted that when the accident occurred, the truck he was driving left the traveled portion of the road and went into the median and into a ditch. Claimant stated that the cab of the truck was not damaged in the accident, but the undercarriage of the truck was damaged.

Claimant admitted that he does not do any work on the 40-acre tract where he resides and that he has six cows left which have not been sold off since the accident. Claimant admitted that his neighbor sees to feeding the remaining cows during the winter.

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Claimant admitted that he applied for work as a driver with Older Adult Transportation Service, but was not successful in obtaining a position, although he was not given any reason why he was not hired.

Claimant admitted that he had two additional stents placed in his heart in June 2008 and that he has had an angiogram within the last six months.

Claimant's medical records, which were admitted into evidence, generally support the testimony of Claimant with regard to treatment prior to and after the accident of May 29, 2008, including, but not limited to, the treatment to Claimant's heart.

Dr. Brent Koprivica testified on behalf of the Claimant by deposition. Dr. Koprivica testified that he performed an independent medical evaluation of the Claimant on December 4, 2008, and issued a written report of his findings and opinions of that date. Dr. Koprivica also issued two addendums dated December 9, 2008, and April 28, 2011, respectively, each addendum having to do with the review of additional records and each addendum stating that his original opinions did not change as a result of the review of the additional records.

Dr. Koprivica testified that he took a history from the Claimant, reviewed certain medical records and expert reports, and performed a physical examination as part of the independent medical evaluation.

Dr. Koprivica testified that when he took a history from Claimant, he understood that Claimant indicated that Claimant was overcome (also referred to in the testimony and medical records as a syncope episode, which is synonymous with fainting) by ether. Dr. Koprivica testified concerning the fainting episode as follows:

Q. Assuming that Mr. Green was exposed to ether in his cab, in an enclosed environment, what impact would that potentially have on the underlying heart condition?

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- A. Okay. I think the probability is if we accept it's factually true that he had the ether exposure, okay. In my answer I'm assuming that fact, okay?
- Q. Okay.
- A. He's told me that, and that's the fact basis for it is that he said this ether is leaking and it's there in the cab. Okay, so I'm going to accept that.
- Q. Okay.
- A. If you take a person who has the significant cardiopulmonary compromise that he had and you put him in a unique work situation where he gets exposed to ether, he is at much greater risk with his underlying disability from his heart and lung, that his response to that is going to be hypoxia, a lowering oxygen level from the inhaling ether and associated with that developed a rhythm disturbance. Now as I review causation, I'm not saying his heart is not part of this. It is. But it's the actual fact base that he's gotten exposed to ether and that exposure is unique to his employment. He's not going to be exposed to ether in any other situation. This is unique to these circumstances on May 29, 2008. When I expose him, he's going to – it's probable that he developed a heart rhythm disturbance. The reason why I say that's probable is that when you look at his monitoring in the hospital, he's got a rhythm disturbance that's present. He's got no underlying stenosis in his coronary disease, because that's recognized after this event with the ischemia and they put in the stints (sp). You could also almost predict that he's going to pass out if I put him in these circumstances factually in the workplace where he gets exposed to ether while he's driving.
- Now, I'm not saying that if you remove the ether as a contributor, you say factually there was no ether. Well, then the most likely cause is a rhythm disturbance. But I believe the rhythm disturbance arose because he was exposed in the workplace to ether from what he's telling me.
- Q. So if I understand you, this rhythm disturbance can occur potentially randomly, correct?
- A. Yes.
- Q. But in this particular case, you believe that because of his exposure to the ether that that was what caused the rhythm disturbance?
- A. Yes.

*Exhibit C, pp22-24*

Dr. Koprivica testified that it was also possible that the syncope episode could have occurred without any ether exposure and that ether has a smell that would be noticeable and that it was probable that Claimant would smell ether before he would pass out from such an exposure. Dr. Koprivica further testified that his report did not indicate if he asked Claimant if Claimant smelled ether prior to the accident, but it does indicate that Claimant smelled ether as soon as he awoke after the accident.

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Dr. Koprivica testified that Claimant's rib injury, chest injury, and shoulder injury were contributing factors in Claimant's decision to quit working, but that the more substantial reason Claimant stopped working was because of the ongoing medical conditions which Claimant suffered prior to the accident of May 29, 2008.

Dr. Koprivica testified that he rated Claimant's pre-existing conditions as 50% of the body as a whole as a global permanent disability rating. He rated Claimant's permanent disability as a result of the accident of May 29, 2008, as 25% of the left upper extremity at the 232-week level and 5% of the body as whole for the rib fracture and chest wall pain. He also opined that Claimant had permanent disability of 20% of the body as a whole as a global rating resulting from the May 29, 2008, accident.

Dr. Koprivica gave restrictions of no repetitive pushing or pulling activities; no climbing; avoid repetitive or sustained activities above shoulder girdle level on the left; and no overhead lifting of the left upper extremity.

Dr. Koprivica also opined that the injuries sustained on May 29, 2008, would not result in permanent total disability of the Claimant.

On cross-examination by the Employer and the Second Injury Fund, Dr. Koprivica admitted that he did not recall seeing any medical record that reported that Claimant indicated that there was ether in the cab of the truck at the time of the accident. He also admitted that the ether in the truck would not have caused an 80% blockage in a coronary artery for which Claimant received two stents the day following the accident as a result of the angiogram performed pursuant to Claimant's rhythm disturbance diagnosed after the accident.

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Dr. Koprivica admitted that the seriousness of Claimant's heart disease was sufficient that it was possible that the heart condition could cause a syncope episode.

Dr. Koprivica admitted that he did not believe that the concentration of ether in the cab of the truck, coming from a can of engine starter fluid, would be sufficient, in isolation, to cause Claimant to pass out. He also admitted that the treatment to Claimant's heart, which took place after the accident, was caused by an occlusion of Claimant's coronary arteries which would have developed before May 29, 2008.

Dr. Koprivica admitted that if there was no exposure to ether prior to the accident, then he did not think the syncope episode was a work-related event because the event could have occurred without Claimant being in the truck.

Mr. Michael J. Dreiling testified on behalf of Claimant by deposition. Mr. Dreiling testified that he is a vocational/rehabilitation professional. He testified that he performed a vocational assessment of the Claimant and authored a written report of his assessment and opinions dated January 24, 2011.

Mr. Dreiling testified that he reviewed certain medical records as part of his assessment, took a work history from the Claimant, but did not do any vocational testing due to the educational background of Claimant, Claimant's documented medical conditions, and Claimant's stated age at the time of the assessment of 65 years of age. Mr. Dreiling testified that Claimant did not complete high school, but did obtain a GED certificate while in the military. Claimant's job history was that of truck driver and union business agent for his working career.

Mr. Dreiling testified that he was able to draw certain opinions about Claimant's employability as a result of his assessment. He further testified that in his opinion, based

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on Dr. Koprivica's restrictions and Claimant's pre-existing conditions, Claimant could not return to any past relevant employment in which Claimant had worked for many years. He further opined that, based on the Claimant's profile and vocational factors, "...no employer in the usual course of business seeking persons to perform duties of employment in the usual and customary way would reasonably be expected to employ him in his physical condition."

Mr. Dreiling testified that Claimant, given Claimant's disabilities from the last injury alone, would not be permanently totally disabled. He further testified that when considering Claimant's pre-existing conditions, including Claimant's heart condition, his COPD, and his cancer which resulted in the need for speaking with an assistive device, Claimant was permanently totally disabled.

Employer presented no live witness testimony. Employer did admit several exhibits including Exhibit 1, a medical report of independent medical evaluation of Dr. Stephen Schuman. Dr. Schuman's curriculum vitae indicates that he is Board Certified in Internal Medicine and Cardiology and that he was practicing cardiology medicine at the time of his evaluation of the Claimant. Dr. Schuman's report of August 4, 2011, states that he performed an evaluation of the Claimant, which included a history from the Claimant, review of certain medical records, and an examination of the Claimant.

As a result of Dr. Schuman's evaluation, he opined that at the time of Claimant's motor vehicle accident of May 29, 2008, Claimant had a syncopal episode, a loss of consciousness, which caused him to lose control of his vehicle. Dr. Schuman further opined: "It is more likely than not that he had a transient cardiac arrhythmia due to his underlying (sp.) coronary artery disease. He had significant stenosis found during the

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hospital admission on cardiac catheterization requiring stenting, and he had ventricular arrhythmia seen on the monitor.”

Dr. Shuman opined that the prevailing factor in the truck accident of May 29, 2008, was a syncopal episode due to cardiac arrhythmia in turn due to underlying myocardial ischemia.

The Second Injury Fund did not offer any oral testimony or written exhibits.

## **FINDINGS OF FACT AND RULING OF LAW**

**Whether the accident arose out of the course of and scope of employment?**

**Whether the accident caused the injuries and disabilities for which benefits are now being claimed?**

The parties stipulated that an accident occurred. The dispute here is not with the definition of accident, but with the definition of “injury” pursuant to the statute. Section 287.020 sets out certain definitions and criteria for a compensable injury. In pertinent part herein Section 287.020.3 and .4 state: “(3) An injury resulting directly or indirectly from idiopathic causes is not compensable.; (4) A cardiovascular, pulmonary, respiratory, or other disease, or cerebrovascular accident or myocardial infarction suffered by a worker is an injury only if the accident is the prevailing factor in causing the resulting medical condition.”

The Claimant has the burden of proving all essential elements of the claim for compensation are met, including the fact of injury.

There is no genuine dispute that Claimant had an accident which caused some injury to Claimant’s left shoulder and a fracture to his ribs. There is a dispute as to whether the accident caused Claimant to be in need of treatment to his heart which

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resulted in the placement of stents into Claimant's coronary arteries. The injury occurred while Claimant was driving Employer's vehicle from Jefferson City to the Kansas City, Missouri, area using a large truck which required a commercial license to operate.

After a review of all the evidence adduced at the hearing, both oral and written, and based on the record as a whole, I find that there was substantial and competent evidence that Claimant's accident and injury occurred in the course of and scope of his employment with the Employer.

However, the genuine dispute in the facts in this claim have to do with whether or not Claimant's injury is compensable when considering the provisions of Section 287.020.3 and .4. The decision whether to award compensation based on an injury's relation to an idiopathic, or innate, cause is a question of causation. *Ahern v. P & H, LLC* 254 S.W.3d 129, p. 134 (Mo App., 2008)

After a review of all the evidence adduced at the hearing, both oral and written, and based on the record as a whole, I find that there is substantial and competent evidence to prove that Claimant suffered a transient cardiac arrhythmia event due to his underlying coronary artery disease while driving Employer's vehicle and I further find that such event was from an idiopathic cause, the result of which was that Claimant lost consciousness, the further result of which was that Claimant lost control of the truck he was operating, and which resulted in the accident to which all parties have agreed did, in fact, occur.

Dr. Koprivica's opinions were premised on the actual fact that there was ether escaping into the cab of the vehicle while Claimant was operating the vehicle. I find there is insufficient evidence to prove that there was ether escaping into the truck cab

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prior to the accident. Claimant testified that he was traveling with no problems prior to the accident. Dr. Volarich admitted that if ether was escaping into the cab of the truck, the odor would be recognizable. He also admitted that, even with Claimant's heart and pulmonary conditions, it would take some concentration of ether to cause unconsciousness. Dr. Volarich admitted if there was no ether escaping into the cab of the truck prior to the accident, then it was his opinion that Claimant's heart condition caused the Claimant to become unconscious and to cause the ensuing accident.

Dr. Schuman opined that "more likely than not he (Claimant) had a transient cardiac arrhythmia due to his underlying (sp) coronary artery disease" and that Claimant's heart condition, evidenced by the need for additional stents following the accident, was the cause for Claimant becoming unconscious and the ensuing accident.

I find that Claimant's transient cardiac arrhythmia event was an idiopathic event and that Claimant's injuries were caused indirectly by an idiopathic cause, that the idiopathic cause, being a cardiovascular event, was a result of Claimant's well documented heart disease.

I find the issue of whether the accident caused the injuries and disabilities for which benefits are now being claimed in favor of Employer.

**Whether the Employer is obligated to pay for past medical expenses?**

**Whether the Claimant has sustained injuries that will require future medical care in order to cure and relieve the Claimant of the effects of the injuries?**

**Whether temporary total benefits are owed to the Claimant?**

**The nature and extent of any permanent disabilities?**

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Based on the findings and rulings set out above, including but not limited to any finding, that Claimant's accident of May 29, 2008, was not compensable pursuant to the provisions of Chapter 287, I find that Claimant is not entitled to past medical expenses, is not entitled to any future medical care to cure and relieve the Claimant of the effects of the injuries; is not entitled to any temporary total disability benefits; and is not entitled to any permanent disability, whether permanent partial or permanent total.

I find these issues in favor of Employer.

**The liability of the Second Injury Fund for permanent total disability or enhanced permanent partial disability?**

Based on the findings and rulings set out above, I find that Claimant did not sustain his burden of proof to prove that he suffered a compensable accident on May 29, 2008, and therefore, no benefits are due from the Second Injury Fund.

I find this issue in favor of the Treasurer of the State of Missouri, as Custodian of the Second Injury Fund.

Made by: \_\_\_\_\_  
David L. Zerrer  
*Administrative Law Judge*  
*Division of Workers' Compensation*