

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

Injury No.: 05-032672

Employee: Paul Guinnip

Employer: Bannister Electrical and HVAC, LLC

Insurer: Uninsured

Additional Parties: Steve Liles d/b/a Bannister Heating and Cooling, LLC, and
Bannister Electrical
Melissa Liles d/b/a Bannister Heating and Cooling, LLC, and
Bannister Electrical
Rocky Queen d/b/a Rocky's Concrete Service
Lagena Queen d/b/a Rocky's Concrete Service
Treasurer of Missouri as Custodian of the Second Injury Fund

This workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. We have reviewed the evidence and considered the whole record. Pursuant to § 286.090 RSMo, we issue this final award and decision affirming the award and decision of the administrative law judge by supplemental opinion. We adopt the findings, conclusions, decision, and award of the administrative law judge to the extent that they are not inconsistent with our supplemental findings set forth below.

Introduction

On December 13, 2011, the Division of Workers' Compensation issued an award by Administrative Law Judge Kenneth J. Cain in this matter. The administrative law judge determined, among other things, that Steve Liles and Melissa Liles are personally liable to employee for all workers' compensation benefits awarded, on a finding that the corporate veil otherwise shielding them from personal liability as members or managers of Bannister Electrical and HVAC, LLC, should be pierced.

On December 30, 2011, Steve Liles filed an Application for Review with the Commission raising the issues whether the evidence before the administrative law judge supported piercing the corporate veil as to Steve Liles and Melissa Liles. On January 11, 2012, we issued an order accepting jurisdiction of the Application for Review, on a finding that Steve Liles was entitled to file an Application for Review on his own behalf as an interested party, but denying the attempt to file an Application for Review on behalf of Melissa Liles. We noted that Melissa Liles had not timely filed an Application for Review of her own and that Steve Liles was not permitted to file an appeal on her behalf without engaging in the unauthorized practice of law.

On January 18, 2012, the Commission received, via fax, an untimely attempt to file an Application for Review on behalf of Melissa Liles.

Employee: Paul Guinnip

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On January 27, 2012, employee filed a Petition for Writ of Prohibition with the Missouri Court of Appeals for the Western District (Court) in connection with our order dated January 11, 2012. On January 30, 2012, the Court issued its Order denying employee's Petition for Writ of Prohibition.

On February 3, 2012, employee filed a Motion to Dismiss Petitioner Steve Liles's and Petitioner Melissa Liles's Applications for Review. On February 24, 2012, we issued an order denying employee's motion to dismiss the Application for Review filed by Steve Liles. Also on that date, we dismissed Melissa Liles's Application for Review, as the fax filing dated January 18, 2012, was untimely and thus could not confer jurisdiction upon this Commission pursuant to § 287.480.1 RSMo.

Steve Liles's brief was due June 4, 2012. We did not receive a brief from Steve Liles, or a timely request for an extension, on or before that date. We proceed now to review the case on the merits as to the sole issue before us.

Discussion

Personal liability of Steve Liles

In our order dated January 11, 2012, we accepted the Application for Review filed by Steve Liles on his own behalf as an interested party. The sole issue raised in Steve Liles's Application for Review is the question whether the evidence before the administrative law judge supported piercing the corporate veil as to Steve Liles. Consequently, this is the sole issue before us for determination.

Although petitioner declined to favor us with a brief which might have aided our analysis, we have reviewed all of the evidence in the transcript, along with the administrative law judge's findings and conclusions pertinent to this issue, as well as the relevant Missouri case law on the topic. We note that the administrative law judge properly held employee to the three-prong test identified in *Collet v. American Nat'l Stores, Inc.*, 708 S.W.2d 273, 284 (Mo. App. 1986) and thereafter applied by the courts in the context of workers' compensation proceedings in *Walls v. Allen Cab Co.*, 903 S.W.2d 937 (Mo. App. 1995) and *Wilmot v. Bulman*, 908 S.W.2d 139 (Mo. App. 1995). We are convinced that the administrative law judge appropriately analyzed this issue and we agree with the result. In our view, there was ample evidence to support the administrative law judge's findings as to the extent of Steve Liles's domination and control of Bannister Electrical and HVAC, LLC, his use of that control to avoid his statutory duty to provide workers' compensation insurance, and that his breach of that statutory duty proximately caused employee to suffer an unjust loss.

Accordingly, we affirm the conclusion of the administrative law judge that the corporate veil should be pierced with the effect that Steve Liles is personally liable to employee for payment of the workers' compensation benefits awarded herein.

Multiple names for employer

Multiple names for the heating and air conditioning business operated by Steve and Melissa Liles appear in the transcript and in the caption of this case. We wish to provide some additional comments to clear up any potential confusion as to the identity of the employer.

Employee: Paul Guinnip

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The administrative law judge determined that employee met his burden of proving an employee-employer relationship with respect to Bannister Electrical and HVAC, LLC. See *Award*, page 11. That is the name of the LLC listed upon the Articles of Organization that were filed with the Secretary of State in connection with the heating and air conditioning business owned and operated by Steve and Melissa Liles; that is the name of the employer in this matter; and that is the name of the LLC that the administrative law judge disregarded when he pierced the corporate veil to hold Steve and Melissa Liles personally liable for payment of employee's workers' compensation award.

In his testimony, Steve Liles explained that he occasionally operated the heating and air conditioning business under two similar fictitious business names: "Bannister Heating and Cooling, LLC," and "Bannister Electrical." *Transcript*, pages 140-41. We wish to make clear that neither of these names identify any distinct corporate entity or additional party to this matter. Rather, both "Bannister Heating and Cooling, LLC" and "Bannister Electrical" refer merely to the fictitious names that Steve Liles used in the operation of the heating and air conditioning business.

Award

The Commission supplements the award and decision of the administrative law judge with our additional findings and comments as set forth herein.

The award and decision of Administrative Law Judge Kenneth J. Cain is attached hereto and incorporated herein to the extent not inconsistent with this decision and award.

We approve and affirm the administrative law judge's allowance of attorney's fee herein as being fair and reasonable.

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

Given at Jefferson City, State of Missouri, this 27th day of July 2012.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

V A C A N T
Chairman

James Avery, Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

FINAL AWARD

Employee: Paul Guinnip Injury No. 05-032672

Dependents: N/A

Employer: Bannister Electrical and HVAC, LLC,
Steve Liles d/b/a Bannister Heating and Cooling, LLC and Bannister
Electrical,
Melissa Liles d/b/a Bannister Heating and Cooling, LLC and Bannister
Electrical,
Rocky Queen d/b/a Rocky's Concrete Service,
Lagena Queen d/b/a Rocky's Concrete Service

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

Insurer: N/A

Hearing Date: October 6, 2011 Checked by: KJC/cy

Final brief filed: November 4, 2011¹

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? Yes.
2. Was the injury or occupational disease compensable under Chapter 287? Yes.
3. Was there an accident or incident of occupational disease under the Law? Yes.
4. Date of accident or onset of occupational disease: March 1, 2005.
5. State location where accident occurred or occupational disease was contracted: Grandview, Jackson County, Missouri.
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes. (See additional findings of fact and rulings of law).
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.

¹ The State Treasurer as Custodian of the Second Injury Fund chose not to file a brief.

10. Was employer insured by above insurer? Uninsured.
11. Describe work employee was doing and how accident occurred or occupational disease contracted: Employee, while in the course and scope of his employment as an HVAC worker for Bannister Electrical and HVAC, LLC, was standing on a ladder installing the duct work in a building under construction when he fell from the ladder and landed on the concrete floor below. Employee sustained a comminuted fracture of his left elbow in the fall.
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 elbow.
14. Nature and extent of any permanent disability: 35 percent of left upper extremity at 210 week level.
15. Compensation paid to-date for temporary disability: None.
16. Value necessary medical aid paid to date by employer/insurer? None.
17. Value necessary medical aid not furnished by employer/insurer? \$43,044.52 for past medical aid; undetermined for future medical aid.
18. Employee's average weekly wages: \$480
19. Weekly compensation rate: \$320/\$320.
20. Method wages computation: § 287.250 RSMo. 1994.

COMPENSATION PAYABLE

21. Amount of compensation payable:
Unpaid medical expenses: \$43,044.52 in past medical aid; undetermined for future medical aid.
73.5 weeks for permanent partial disability @ \$320 per week = \$23,520.
12 6/7 weeks for temporary total disability @ \$320 per week = \$4,114.28
6 weeks for disfigurement @ \$320 per week = \$1,920.
22. Second Injury Fund liability: Yes
\$43,044.52 for past medical aid plus undetermined amount for future medical aid due to employer's failure to insure or self-insure its liability for workers' compensation benefits.

TOTAL: \$72,598.80 plus undetermined amount for future medical aid.

23. Future requirements awarded: Undetermined

Said payments to begin as of the date of the award and to be payable and be subject to modification and review as provided by law.

Issued By DIVISION OF WORKER'S COMPENSATION
Employee: Paul Guinnip

Injury No. 05-032672

The compensation awarded to the claimant shall be subject to a lien in the amount of 25 percent of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Mr. Ryan Linville.

FINDINGS OF FACT AND RULINGS OF LAW

Employee: Paul Guinnip Injury No. 05-032672

Dependents: N/A

Employer: Bannister Electrical and HVAC, LLC,
Steve Liles d/b/a Bannister Heating and Cooling, LLC and Bannister
Electrical,
Melissa Liles d/b/a Bannister Heating and Cooling, LLC and Bannister
Electrical,
Rocky Queen d/b/a Rocky's Concrete Service,
Lagena Queen d/b/a Rocky's Concrete Service

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

Insurer: N/A

Hearing Date: October 6, 2011 Checked by: KJC/cy

Final brief filed: November 4, 2011²

The prior hearing setting in the case was for August 11, 2011. The alleged employer, Bannister Electrical and HVAC, LLC (hereinafter referred to as LLC) by its owner, Steve Liles, who was also named personally as an employer, telephoned the judge on August 10, 2011 and requested a continuance. Mr. Liles stated that the attorney representing him and the LLC had withdrawn from the case in July 2011. He stated that he had contacted a new attorney who had not entered an appearance in the case. The alleged employee objected to the continuance. The alleged employers' motion for a continuance was granted. The parties were advised by telephone on August 10, 2011 that the case would be reset for another hearing on October 6, 2011. Mr. Liles was advised to have the attorney enter an appearance and to notify him of the new hearing date.

On September 16, 2011, Mr. Liles and the LLC filed another motion for a continuance, stating that their attorney had still not entered an appearance. Mr. Liles stated that the attorney had another matter scheduled for October 6, 2011 and that the attorney would enter an appearance, if a continuance were granted. The alleged employee filed a motion in opposition to the motion for continuance. The alleged employee pointed out in his motion that the alleged employers' prior attorney had withdrawn in February 2011 and not in July 2011 as

² The State Treasurer as Custodian of the Second Injury Fund chose not to file a brief.

Mr. Liles had stated in his prior motion. The alleged employee stated that he had spent money for service of process in connection with all the prior settings in the case. A review of our records showed that the alleged employers' prior attorney had in fact withdrawn in February 2011 and not in July 2011 as Mr. Liles had informed the judge. The alleged employers' motion for a continuance was denied. The case was heard on October 6, 2011.

Prior to the hearing on October 6, 2011, however, the parties entered into various admissions and stipulations. The remaining issues were as follows:

1. Employer-employee relationship between Mr. Guinnip and all of the alleged employers;
2. Whether any of the alleged employers were operating under and subject to the provisions of the Missouri Workers' Compensation Act;
3. Whether the employee was working under and subject to the provisions of the Missouri Workers' Compensation Act;
4. Whether the employee sustained an accident arising out of and in the scope of his alleged employment with the alleged employers;
5. Whether the limitation period had expired prior to the filing of the claim;
6. Notice as to alleged employer, Rocky's Concrete;³
7. The compensation rate;
8. Liability of the alleged employers for temporary total disability benefits for 13 weeks covering the period March 1, 2005 to May 31, 2005, for a total of \$4,162.08;
9. Liability of alleged employers for past medical aid in the amount of \$43,044.52;
10. Liability of the alleged employers for future medical aid;
11. Whether the alleged employee sustained any disfigurement as a result of the injuries he sustained in the alleged accident;
12. That nature and extent of the disability sustained by the alleged employee; and
13. Whether funds shall be withdrawn from the Second Injury Fund to cover the employee's medical bills due to the failure of the alleged employers to insure or self-insure their liability for workers' compensation benefits under the Workers' Compensation Act.

At the hearing, Mr. Paul Guinnip (hereinafter referred to as Claimant) testified that he was 65 years old and that he had a 9th grade education. He stated that he had taken several classes in heating and air conditioning. He stated that he had worked in the HVAC field since 1972.

Claimant testified that he had never owned his own business. He stated that he had never employed any workers. He indicated that in February 2005 he began working for Steve and Melissa Liles and the LLC. He stated that the business was "run" out of the Liles' personal residence.

³Rocky Queen and Queen's Concrete argued that Claimant did not provide notice of the injury. The notice defense by Rocky Queen and Queen's Concrete, however, became moot when Claimant failed to prove an employee-employer relationship with Rocky Queen, Queen's Concrete or Legena Queen.

Claimant testified that he learned of the job opening through a newspaper advertisement. He stated that during the job interview, Mr. Liles told him that the job would require a 40-hour work week with no weekend work and that the pay rate was \$12 per hour. He stated that he was hired on the day of his interview and that he began work on that day.

Claimant testified that the LLC had two other employees, Tom Zaner, an electrician and Troy. He stated that Mr. Liles and Mr. Liles' wife also worked for the LLC. He stated that Ms. Liles answered the phones for the LLC. He stated that the LLC had five employees on a job in Springfield, Missouri on the day before his accident at work. He stated that he was paid based on the information he turned in on LLC time cards. He stated that he was paid weekly by check based on the number of hours he turned in on the time cards.

Claimant testified that the invoices and receipts he furnished to customers had the LLC name imprinted on them. He stated that he worked for no other companies while employed by the LLC. He stated that he had no authority to hire any other workers to work on the LLC jobs. He stated that the LLC paid for his hotel room for the job in Springfield, Missouri.

Claimant indicated that Mr. Liles exercised control over the jobs. He stated that Mr. Liles was either working on the jobs along with him or that Mr. Liles telephoned every half hour to check on the jobs. He stated that Mr. Liles told him what to do, when to do it and how to do it. He stated that the LLC and Mr. Liles furnished all the tools, parts and equipment used on the jobs. He stated that they used the LLC's vehicles to get to the jobs. He stated that the vehicles had an LLC logo on them.

Claimant testified that some of their jobs involved new construction. He stated that they did duct work on new construction projects and installed the HVAC system. He stated that to do the duct work and to install furnaces and air conditioners they had to use saws, hammers, drills, nails, screws and other tools and equipment. He stated that they cut sheet metal. He stated that they drilled holes in walls and cut into the floors. He stated that they had to lay the duct work on top of ceiling joints. In addition, he stated that they had to install vents and electrical boxes and run the computer and electrical wires.

Claimant testified that his injury at work occurred on March 1, 2005 on a new construction project. He stated that his injury occurred when he fell off a ladder while installing a couple of runs to secure the ducts to the ceiling of the building. He stated that when he fell his left elbow "slammed" on the concrete floor and that he heard a "big" pop and felt immediate pain in his left elbow. He stated that he saw the bone "sticking" out of his skin.

Claimant testified that following his accident, Mr. Liles drove him to Belton Research Hospital, where Mr. Liles stated that he would pay for the treatment. He stated that Mr. Liles never paid for the treatment. He stated that his treatment consisted of elbow reconstruction surgery with 3 plates and 16 screws.

Claimant testified that he missed about 3 months from work. He stated that neither the LLC nor Mr. Liles paid him for his lost time from work. He complained of continuing pain and problems with his left elbow. He complained of an inability to straighten out his elbow. He stated that he could not bend his elbow. He stated that he could no longer lift over 30 pounds with his left arm. He stated that although he was left hand dominant, he now had to use his right hand to eat and shave and use a hammer. He stated that he was now working at Belfonte Ice Cream where he did no lifting.

Claimant had a scar approximately 8 inches long on his left elbow. The markings where the 26 "staples" were used to close his wound were visible. Finally, Claimant identified the bills for the treatment for his left elbow injury and he testified that Mr. Queen was also doing work on the March 2005 new construction project. He stated that Mr. Queen had three employees on the job.

On cross-examination by Steve Liles, Claimant testified that he was born on November 2, 1946. He stated that he did not have a driver's license while he allegedly worked for the LLC and Mr. Liles.

On cross-examination by Rocky Queen, Claimant admitted that he was never paid by Mr. Queen or Mr. Queen's company. He admitted that he never filed an application for employment with Mr. Queen or Mr. Queen's company. He admitted that he did not consider Mr. Queen to be his boss.

Claimant admitted that he never provided Mr. Queen with any notice that he had been injured on the job. He admitted that he did not know for a fact that Mr. Queen was at the job site when his injury occurred. He admitted that his accident had nothing to do with the concrete poured by Mr. Queen's company. He did, however, state that he believed that Mr. Queen or Mr. Queen's company was the general contractor on the project.

Claimant also called Steve Liles as a witness as part of his case-in-chief. Mr. Liles testified that he was 47 years old. He stated that he had owned and operated a heating and air conditioning business for 10 years. He stated that the LLC had been registered with the Missouri Secretary of State since 2001.

Mr. Liles acknowledged that Missouri Secretary of State Records listed the two organizers of the LLC as him and his wife. He stated that the LLC maintained a separate bank account. Initially, he denied that the LLC had any credit cards. Later, he changed his testimony and indicated that the LLC had credit cards in the past.

Mr. Liles testified that the LLC had no employees during the period January 1 to March 1, 2005. He stated that the LLC only used subcontractors during that period. He stated that neither he nor his wife was an employee of the LLC.

Mr. Liles testified that he took draws from the company. He stated that the company also wrote checks to his wife between 5 to 10 times per year. He acknowledged that his occupational license with the City of Grandview, Missouri to work on the Garrison project where Claimant sustained his injury showed that he had two employees. He stated that he and a hired hand were the two employees. Earlier, he had just testified that he was not an employee of the LLC and that the LLC had no employees during the period in which Claimant allegedly worked for the LLC as an employee.

Mr. Liles testified that he met Rocky Queen on the job site for the Garrison project. He stated that Mr. Garrison, the owner of the property, referred to Mr. Queen as the general contractor. He did not allege that Mr. Queen or Mr. Queen's company had hired the LLC or him to do any work on the project.

Mr. Liles admitted that Claimant reported the injury to him on the day it occurred. He admitted that Claimant sustained the injury when he fell off a ladder while performing work the LLC had contracted to do. He stated that he did not recall whether he told the hospital that he would pay the bills.

Mr. Liles admitted that his wife answered the phones for the LLC. He admitted that she wrote checks for the LLC. He admitted that she wrote invoices for the LLC. He admitted that she wrote checks to the alleged subcontractors of the LLC. He admitted that she wrote checks from the LLC's account to pay their home mortgage and for other expenses such as his dental bill. He admitted that she wrote checks from the LLC's account to pay the loans on their personal vehicles.

On cross-examination by the Second Injury Fund, Mr. Liles testified that the LLC now had three employees. He admitted that some of their other personal bills were paid out of the LLC's account.

Claimant also offered the testimony of Rocky Queen, the owner of Rocky's Concrete Service. Mr. Queen testified that his concrete business was a part time job. He stated that he started the business in March 2004. He stated that contrary to Mr. Liles' assertion; his company did not construct the building for Garrison Auto Sales. He stated that his company laid concrete footings and put down the slab. He stated that he bid \$32,000 to do the job and that he hired three people to help him with the work.

Mr. Queen acknowledged that the city occupational license listed him as the general contractor. He stated that he did not complete section 7 of the form which listed him as the general contractor. He stated that the document was not completed in his presence. He stated that it was not his signature on the City of Grandview application for the building permit which listed his company as a general contractor on the job.

Mr. Queen testified that there were several contractors on the job, including Bella Contractors, which did the sheet rock work and a plumbing company. He stated that he saw Mr. Liles on a ladder on the Garrison project doing duct work.

Mr. Liles and his wife testified as part of the case-in-chief of the LLC. His testimony was essentially cumulative of his prior testimony. On cross-examination by Claimant, however, Mr. Liles acknowledged that he and his wife paid their health insurance premiums out of the LLC's account as well as Direct TV bills.⁴ He acknowledged that there were numerous checks written out of the LLC's account made payable to his wife, Melissa.

Melissa Liles testified that she did a "little" bookkeeping for the LLC in 2005 because her husband asked her to do it, not because she was an employee of the company. She stated that she earned no money from the company.

On cross-examination by Claimant, Ms. Liles admitted that she had written and signed about 90 percent of the checks included in the exhibits. She admitted that she handled the processing of the checks for the LLC. She admitted that she opened the LLC's mail. She admitted that there were several checks in the exhibits made payable to her from the LLC's account. She admitted that she had some interaction with the LLC's alleged subcontractors. She stated that she did not know why she was listed as an organizer for the LLC.

On cross-examination by the Second Injury Fund, Ms. Liles indicated that their home phone number was the same as the LLC's business number. She stated that all of the LLC's bills came to their home address.

Medical evidence

P. Brent Koprivica, M.D. testified by deposition on Claimant's behalf. He stated that he examined Claimant on June 30, 2005. He stated that Claimant sustained a comminuted fracture of his left elbow in the fall at work. He also stated that Claimant had reconstructive surgery on his left elbow with plates and screws to repair the fracture. He stated that during the surgery, Claimant had an ulnar nerve transposition.

Dr. Koprivica concluded that Claimant's complaints were consistent with the findings from the examination. He stated that Claimant's dominant left hand now had less grip strength than in his right hand. He concluded that Claimant had sustained a permanent partial disability of 35 percent of the left upper extremity at the 210 week level due to his injury in the March 2005 accident at work. He concluded that Claimant was temporarily and totally disabled from March 1, 2005 through May 31, 2005 in accordance with Dr. Gillen, Claimant's treating physician's opinion.

⁴ Mr. Liles testified that he had a television in his home office.

Finally, Dr. Koprivica testified that Claimant's \$42,724.52 in medical bills were reasonable.⁵ He stated that the bills were a direct necessity of the injuries that Claimant sustained in the March 2005 accident. He stated that Claimant would require future medical treatment for his injuries from the March 2005 accident and that the treatment could involve a fusion or an implant arthroplasty. He stated that Claimant was definitely going to develop arthritis in his elbow.

On cross-examination by the LLC, Dr. Koprivica admitted that he had only evaluated Claimant on one occasion. He admitted that he no longer treated patients. He admitted that he had never billed a patient for the types of services received by Claimant.

On redirect examination, Dr. Koprivica testified that it was common in his practice for him to review medical billings. He stated that he addressed medical billing issues in about 150 cases per year. He stated that he based his opinions on the billings in Claimant's case on bills he had seen in other cases, involving elbow surgery and similar treatment.

On re-cross examination by the LLC, Dr. Koprivica admitted that he did not recall any cases where he had been asked to review the reasonableness of bills and where he had found the bills to be excessive.

Other exhibits

The other exhibits were essentially cumulative of the testimony. Claimant's Exhibit I was the City of Grandview, Missouri Occupational license for Rocky's Concrete for the Garrison Auto Sales job. The exhibit stated that Rocky's Concrete was a general contractor. The words "general contractor", however, were clearly written in a different handwriting than the rest of the exhibit and it was written in the same handwriting as that for the total fees for the license.

Claimant's Exhibit K was the occupational license from the City of Grandview for the LLC. It listed the owners of the LLC as Steve Liles and Melissa Liles. Claimant's exhibit L was the electrical permit issued by the City of Grandview for the work on the construction of the new building for the Garrison project. The exhibit showed that the electrical work was for a "new commercial building" and was to be done by Bannister Electric. The form was signed by Steve Liles.

Claimant's Exhibit O contained the state registration records for the LLC. The organizers were listed as Steve Liles and Melissa Liles.⁶ The purpose of the business was listed as to perform electrical and HVAC installations and repairs and to perform other business related activities.

⁵ On redirect examination, Claimant laid a proper foundation for Dr. Koprivica's testimony on the reasonableness and necessity of the medical bills and on the fairness of the charges.

⁶ The Liles' were not married at the time the LLC was organized and Ms. Liles' maiden name was used in the records. Both Mr. and Ms. Liles had the same address at the time the LLC was organized.

Claimant's Exhibit P was a document entitled Bannister Electric Time Card. Under name it listed Paul (Claimant). Claimant's Exhibit Q included copies of cancelled checks from the LLC made payable to Claimant. Employer and Insurer's Exhibit 6 showed that Claimant was paid weekly checks by the LLC for the period January 14, 2005 to February 25, 2005.

Employer and Insurer's Exhibit 6 also showed cancelled checks made payable to Troy, Mike, and what appeared to be Emmond by the LLC for "labor" as stated in the memo line. There were also checks written to Tom Zahner with the memo line left blank.

The LLC's income tax statement for the year 2005 showed that no deductions were made for payments for contract labor under schedule C. Under other expenses it showed that \$47,858 was paid for subcontractors.

Law

After considering all the evidence, including the testimony at the hearing, Dr. Koprivica's deposition and report, the other exhibits and after observing the appearances and demeanor of Claimant and the other witnesses, I find and believe that Claimant met his burden of proving an employee-employer relationship with the LLC. Claimant did not prove that Rocky Queen or that Rocky's Concrete was a general contractor or his statutory employer. He did not prove that any other alleged employer was his immediate or statutory employer.

Claimant proved that both he and the LLC were subject to the Missouri Workers' Compensation Act on March 1, 2005 when he sustained his injury at work. He proved that he sustained a permanent partial disability of 35 percent of his left upper extremity at the 210 week level as a result of his injuries from the March 2005 accident at work. At a rate of \$320 per week for 73.5 weeks, he proved the LLC's liability for \$23,520 in permanent partial disability benefits. The LLC is ordered to pay that amount to him. He proved the LLC's liability for 12 6/7 weeks of temporary total disability benefits which at a rate of \$320 per week, yields \$4,114.28. The LLC is ordered to pay that amount to him. He is also awarded 6 weeks of compensation due to the disfigurement on his left upper extremity, which at a rate of \$320 per week yields \$1,920. The LLC is ordered to pay that amount to him.

In addition, Claimant proved the LLC's liability for \$43,044.52 in past medical aid. The LLC is ordered to pay that amount to Claimant and his attorney. Claimant further proved that he will need future medical treatment to cure and relieve him of the effects of the injuries he sustained in the March 2005 accident at work. The LLC is ordered to provide all reasonable and necessary treatment needed to cure and relieve Claimant of the effects of his injuries.

Claimant's employer, the LLC, however, failed to insure or self-insure its liability for workers' compensation benefits. Therefore, per the statute and as set out in the award, funds shall be withdrawn from the Second Injury Fund to cover Claimant's past medical bills and for all future medical aid needed to cure and relieve him of the effects of the injuries he sustained in the March 2005 accident at work. Finally, the evidence showed that both Steve and Melissa

Liles were the owners of the LLC. The evidence showed that as the owners of the LLC that they so dominated the financial and business policies and practices of the LLC that the LLC no longer had a mind of its own. Based on the evidence presented and the law, Claimant proved that Steve and Melissa Liles were personally liable to him for his workers' compensation benefits as set out in the award due to their total domination and actions with respect to the LLC.

Claimant had the burden of proving all material elements of his claim. Fischer v. Arch Diocese of St. Louis – Cardinal Richter Inst., 703 SW 2nd 196 (Mo. App. E.D. 1990); overruled on other grounds by Hampton vs. Big Boy Steel Erections, 121 SW 3rd 220 (Mo. Banc 2003); Griggs v. A.B. Chance Company, 503 S.W. 2d 697 (Mo. App. W.D. 1973); Hall v. Country Kitchen Restaurant, 935 S.W. 2d 917 (Mo. App. S.D. 1997); overruled on other grounds by Hampton. Claimant met his burden of proof as set out above.

Employer-Employee relationship

The applicable statutes pertaining to employer-employee relationship provide as follows:

287.020. 1. The word "employee" as used in this chapter shall be construed to mean every person in the service of any employer, as defined in this chapter, under any contract of hire, express or implied, oral or written, . . .

§287.020 RSMo. 1994

The statute defines an employer as follows:

The word "employer" as used in this chapter shall be construed to mean:

(1) Every person, partnership, association, corporation, limited liability partnership or company, trustee, receiver, the legal representatives of a deceased employer, and every other person, including any person . . . using the service of another for pay; . . .

(3) Any of the above-defined employers must have five or more employees to be deemed an employer for the purposes of this chapter unless election is made to become subject to the provisions of this chapter as provided in subsection 2 of section 287.090, except that construction industry employers who erect, demolish, alter or repair improvements shall be deemed an employer for the purposes of this chapter if they have one or more employees. An employee who is a member of the employer's family within the third degree of affinity or consanguinity shall be counted in determining the total number of employees of such employer.

§ 287.030 RSMo. 1994.

Also, § 287.040 RSMo. 1994 defines a statutory employer as follows:

1. Any person who has work done under contract on or about his premises which is an operation of the usual business which he there carries on shall be deemed an employer and shall be liable under this chapter to such contractor, his subcontractors, and their employees, when injured or killed on or about the premises of the employer while doing work which is in the usual course of his business.
2. The provisions of this section shall not apply to the owner of premises upon which improvements are being erected, demolished, altered or repaired by an independent contractor but such independent contractor shall be deemed to be the employer of the employees of his subcontractors and their subcontractors when employed on or about the premises where the principal contractor is doing work.
3. In all cases mentioned in the preceding subsections, the immediate contractor or subcontractor shall be liable as an employer of the employees of his subcontractors. All persons so liable may be made parties to the proceedings on the application of any party. The liability of the immediate employer shall be primary, and that of the others secondary in their order, and any compensation paid by those secondarily liable may be recovered from those primarily liable, with attorney's fees and expenses of the suit. Such recovery may be had on motion in the original proceedings. No such employer shall be liable as in this section provided, if the employee was insured by his immediate or any intermediate employer.

§ 287.040 RSMo. 1994.

The uncontroverted evidence showed that Claimant was hired by the LLC to do HVAC work. He was injured while working on a new construction project for Garrison Auto Sales. A new building was being constructed. Claimant argued that he was an employee of the LLC. The LLC argued that Claimant was an independent contractor. In Ascoli v. Hinck, et. al., 256 S.W. 3d 592 (Mo. App. 2008) the Missouri Court of Appeals for the Western District of Missouri set out the facts the Courts look to in determining whether an alleged employee is an employee or an independent contractor. As the Court stated in Ascoli, control is the "pivotal factor" in distinguishing an employee from an independent contractor. The Court in citing Bargfrede v. American Income Life Insurance Company, 21 S.W. 3d 157 (Mo. App. 2000) noted that:

“Indeed, the courts have listed numerous factors that a fact-finder should use in distinguishing employees from independent contractors and other workers. These factors include (1) the amount of control that is exerted over the details of an individual's work (the more control, the more likely the individual's status is employee); (2) whether or not the worker is engaged in a distinct occupation (typically an indicator of an employee) or a business (typically an indicator of an independent contractor); (3) the amount of skill required for performing a particular occupation (the more skill required, the more likely the individual is an independent contractor); (4) whether or not the worker supplies the instrumentalities, tools, and the place for doing the work (independent contractors typically supply their own instrumentalities, tools, and place for doing their work); (5) the length of time for which the worker is engaged to do the job (an indefinite period typically indicates an employee and a set, definite period indicates an independent contractor); (6) the method of payment, whether according to time or by the job (payment according to time typically indicates an employee); (7) whether or not the worker routinely performs his or her duties as part of the paying parties' regular business (indicating an employee); and (8) whether or not the parties believe that they are creating a master-servant relationship. *Id.* No one of these factors is determinative. A fact-finder must consider them collectively.” *Id.*

Claimant made a credible witness. The testimony of the Liles' was inconsistent, vague and evasive. Mr. Liles testified that he was not an employee of the LLC, but a few minutes later testified that he was an employee of the LLC. Both testified that Ms. Liles was not an owner of the LLC, but indicated in their application for a city occupational license for the Garrison project that Ms. Liles was an owner of the LLC. Both provided inconsistent testimony about the business dealings of the LLC and the payments from the LLC for their own personal expenses. Claimant's testimony was more credible than the Liles'.

Claimant testified that the LLC furnished all the tools and equipment he used on the jobs. The LLC did not dispute Claimant's allegation. He stated that Mr. Liles was present on most of the jobs and that when Mr. Liles was not present he telephoned every half hour to inquire about the status of the jobs. That demonstrated control. He stated that Mr. Liles told him what to do, when to do it and how to do it. That was control. Such behavior and control by the alleged employer was not indicative of the independent judgment given to and associated with an independent contractor.

In addition, Claimant testified that he only worked for the LLC during the period January to March 2005. He worked on several jobs for the LLC during that period. He was paid based on time cards and on an hourly wage rather than by the job or on any bids he had made to do a particular job. There was no evidence that Claimant had ever owned his own business. He stated that he had a job interview with Mr. Liles. He stated that Mr. Liles told him that the job would require a 40 hour work week with no weekend work and that the pay was \$12 per hour.

He stated that he was paid weekly by check by the LLC. The LLC offered no contradictory evidence.

Claimant further testified that the LLC owned the vehicles used on the jobs. He stated that the LLC logo was on all the vehicles used on the jobs. He stated that he was driven to the jobs in an LLC vehicle. He stated that Mr. Liles told him where to place the main air and return ducts. He stated that the LLC paid his hotel bills on their out of town job.

The evidence clearly showed that Claimant was an employee and not an independent contractor. Claimant still, however, had to prove that he and the LLC were subject to the Missouri Workers' Compensation Act. The applicable statute, as cited above, provides that employers involved in construction are subject to the Act if the employer has one employee and that all other employers are subject to the Act if the employer has 5 or more employees. Id.

Claimant argued that on most jobs the LLC had two other employees, Tom Zaner and Troy. He stated that on the job immediately prior to the Garrison Auto Sales job that the LLC had five employees. In addition, he argued that both Mr. and Ms. Liles worked for the LLC. Mr. Liles denied that the LLC had any employees on or prior to March 2005.

The issue as to whether the LLC had 5 or more employees became moot when Claimant proved that both he and the LLC were engaged in construction work on March 1, 2005 when he sustained his injury at work. As noted above, construction industry employers are subject to the Act if the employer has one employee. Id.

The Act in March 2005 defined an employer as being involved in construction if the employer erected, demolished, altered or repaired improvements. See § 287.030 (3) RSMo. 1994. In March 2005 the LLC began work on a new building being erected for Garrison Auto Sales. Alterations and improvements were being made to the land and to the building under construction. While the LLC was not hired to erect the building; it was employed to make alterations and improvements on the building under construction. The LLC was hired to install a heating and air conditioning system and to do electrical work.

The uncontroverted evidence showed that to install the heating and air conditioning system, alterations had to be made to the structure of the building for the duct work. Computer and electrical wires had to be run in the building. The LLC did the HVAC work and ran the computer and electrical wires. Claimant was injured while installing the duct work to the ceiling of the building. Claimant testified that to install the HVAC system, including the duct work he had to use saws, hammers, drills, nails, screws and other tools. He stated that he had to cut into the floor and into the walls. He stated that he had to lay the duct work on top of ceiling joints.

Again, the LLC offered no contradictory evidence. Again, Claimant was credible in his testimony. Claimant proved that the LLC was engaged in construction work within the meaning of the Act when it did the work on the Garrison Auto Sales building. As noted above, the LLC was clearly making improvements on and alterations to a building under construction and its employee, Claimant, was performing construction activities when he had to cut into walls and floors and to install duct work in the building for the HVAC system. Claimant proved that both he and the LLC were subject to the Act.

Statutory employment

Claimant did not prove that he was a statutory employee. To establish a statutory employment relationship, Claimant had to prove that there was a general contractor or a subcontractor which had hired the LLC, Claimant's direct or immediate employer to do work on the project. See § 287.040 RSMO. 1994. Claimant did neither. He argued that Rocky Queen and Mr. Queen's wife and Mr. Queen's company, Rocky's Concrete, were the general contractors on the job. The evidence, however, did not support his position.

Mr. Queen testified that he was not the general contractor.⁷ He testified that neither his wife nor Rocky's concrete were the general contractors. He stated that he was not a general contractor. He stated that neither he nor his company erected the building. He stated that his company only laid the footings and the concrete slab for the building.

Mr. Liles did not testify that Mr. Queen or Mr. Queen's wife or Mr. Queen's company had hired the LLC to work on the project. Claimant offered no evidence showing that Mr. Queen or his wife or his company had hired the LLC to work on the project. Claimant did not offer the testimony of Mr. Garrison who contracted for the building's construction. Claimant failed to prove that he was a statutory employee. He did not prove the existence of a general contractor on the job or that a subcontractor had hired the LLC to work on the project.

Accident

The applicable statute defines accident as follows:

2. The word "accident" as used in this chapter shall, unless a different meaning is clearly indicated by the context, be construed to mean an unexpected or unforeseen identifiable event or series of events happening suddenly and

⁷ The only evidence which indicated that Mr. Queen was the general contractor was an occupational license with the City of Grandview, Missouri which listed Mr. Queen as the general contractor. Mr. Queen denied that he had completed the application or that he provided any such information to the City. The statement in the application that Mr. Queen was a general contractor was in a different handwriting than the rest of the document. Mr. Queen testified that when he viewed the form that allegation was not included in the form. He denied that his signature was on the form.

violently, with or without human fault, and producing at the time objective symptoms of an injury. An injury is compensable if it is clearly work related. An injury is clearly work related if work was a substantial factor in the cause of the resulting medical condition or disability. An injury is not compensable merely because work was a triggering or precipitating factor.

3. (1) In this chapter the term "injury" is hereby defined to be an injury which has arisen out of and in the course of employment. The injury must be incidental to and not independent of the relation of employer and employee. Ordinary, gradual deterioration or progressive degeneration of the body caused by aging shall not be compensable, except where the deterioration or degeneration follows as an incident of employment.

(2) An injury shall be deemed to arise out of and in the course of the employment only if:

(a) It is reasonably apparent, upon consideration of all the circumstances, that the employment is a substantial factor in causing the injury; and

(b) It can be seen to have followed as a natural incident of the work; and

© It can be fairly traced to the employment as a natural incident of the work; and

(d) It does not come from a hazard or risk unrelated to the employment to which workers would have been equally exposed outside of and unrelated to the employment in normal non-employment life.

(3) An injury resulting directly or indirectly from idiopathic causes is not compensable.

§ 287.020 RSMo. 1994.

Claimant proved that his injury occurred when he fell off a ladder and landed on the concrete floor below while installing the duct work in the building under construction for Garrison Auto Sales. Claimant fractured his left elbow when he landed on the concrete floor. X-rays showed that he had a comminuted fracture of his left elbow. He required an open reduction with internal fixation to repair the fracture.

Thus, Claimant clearly proved an unexpected traumatic event as defined in the statute. He clearly proved that his work was a substantial factor in causing his resulting medical

condition, the comminuted fracture of his left elbow and the disability resulting from it. He clearly proved that he sustained an accident as defined by Missouri law.

Limitation period

The applicable statute pertaining to the limitation period provides as follows:

287.430. Except for a claim for recovery filed against the second injury fund, no proceedings for compensation under this chapter shall be maintained unless a claim therefor is filed with the division within two years after the date of injury or death, or the last payment made under this chapter on account of the injury or death, except that if the report of the injury or the death is not filed by the employer as required by section 287.380, the claim for compensation may be filed within three years after the date of injury, death, or last payment made under this chapter on account of the injury or death. . . . A claim against the second injury fund shall be filed within two years after the date of the injury or within one year after a claim is filed against an employer or insurer pursuant to this chapter, whichever is later. . . .

§ 287.430 RSMo. 2005.

Claimant's accident occurred on March 1, 2005. Claimant filed his claim for compensation as to the LLC and as to all of the other alleged employers and the Second Injury Fund on April 13, 2005. That was clearly within two years of the date of the injury. The argument that the limitation period had expired prior to the filing of the claim was without merit.

Compensation Rate

The applicable statute pertaining to the compensation rate provides in pertinent part as follows:

287.250. 1. Except as otherwise provided for in this chapter, the method of computing an injured employee's average weekly earnings which will serve as the basis for compensation provided for in this chapter shall be as follows: . . .

(4) If the wages were fixed by the day, hour, or by the output of the employee, the average weekly wage shall be computed by dividing by thirteen the wages earned while actually employed by the employer in each of the last thirteen calendar weeks immediately preceding the week in which the employee was injured or if actually employed by the employer for less than thirteen weeks, by

the number of calendar weeks, or any portion of a week, during which the employee was actually employed by the employer. For purposes of computing the average weekly wage pursuant to this subdivision, absence of five regular or scheduled work days, even if not in the same calendar week, shall be considered as absence for a calendar week. If the employee commenced employment on a day other than the beginning of a calendar week, such calendar week and the wages earned during such week shall be excluded in computing the average weekly wage pursuant to this subdivision; . . .

4. If pursuant to this section the average weekly wage cannot fairly and justly be determined by the formulas provided in subsections 1 to 3 of this section, the division or the commission may determine the average weekly wage in such manner and by such method as, in the opinion of the division or the commission, based upon the exceptional facts presented, fairly determine such employee's average weekly wage.

§ 287.250 RSMo. 2005

Claimant testified that he was hired by the LLC for a 40-hour work week at an hourly wage of \$12 per hour. The LLC did not dispute Claimant's allegation. The LLC just argued that Claimant was an independent contractor instead of an employee.

The evidence showed that Claimant had not worked 13 weeks for the LLC prior to his accident at work. Checks made payable to Claimant from the LLC ranged from a high of \$504 per week to \$84 per week. There was no evidence as to what constituted Claimant's regularly scheduled work days or as to whether Claimant had missed any such regularly scheduled work days on those weeks where his earnings were substantially less than the average for most other weeks. Thus, without proof as to whether Claimant's wages were affected by his absence of regularly scheduled work days, § 287.250.1 (4) may not be properly applied. No other section of the statute properly addressed Claimant's average weekly wages based on his employment with the LLC.

As the statute provides, when no sections of the statute may be used to fairly and justly determine the employee's average weekly wages, the Division of Workers' Compensation may based on the exceptional facts presented fairly determine the employee's average weekly wages. Id. Thus, applying subsection 4 of the statute as cited above, I find that Claimant's average weekly wages were \$480 per week. That finding is based on the uncontroverted evidence which showed that Claimant was hired at a salary of \$12 per hour for a 40- hour work week.

Two-thirds of \$480 per week equals \$320 per week. That is Claimant's compensation rate for both temporary total and permanent partial disability benefits. See §§ 287.170 and 190 RSMo. 1994.

Temporary total disability

Claimant proved that he was temporarily and totally disabled from March 2, 2005 to May 31, 2005 or for 12 6/7 weeks. The accident occurred on March 1, 2005. Dr. Koprivica concluded that Claimant was temporarily and totally disabled until May 31, 2005 when Dr. Gillen, Claimant's treating physician for the left elbow comminuted fracture, released Claimant from treatment. Dr. Koprivica was credible in his opinion. No other physician rendered an opinion on that issue. No evidence was offered which contradicted Dr. Koprivica's opinion. Thus, based on the most credible evidence offered, Claimant proved that he was temporarily and totally disabled as set out above. At a rate of \$320 per week for 12 6/7 weeks, the LLC was liable to Claimant for \$4,114.28 in temporary total disability benefits. The LLC is ordered to pay that amount to Claimant.

Nature and extent

Claimant sustained a comminuted fracture to his left elbow in the March 2005 accident at work. Plates and screws were placed in his left elbow to repair the fracture. An ulnar nerve transposition was done. Claimant complained of pain, a loss of motion and a loss of grip strength in his left hand. Dr. Koprivica's findings supported Claimant's complaints. Both Claimant and Dr. Koprivica were credible in their testimony.

Dr. Koprivica concluded that Claimant had sustained a permanent partial disability of 35 percent of the left upper extremity at the 210 week level as a result of the fracture to his left elbow. The LLC offered no contradictory evidence. The LLC did not offer a disability rating.

Based on the most credible evidence offered, Claimant proved that he sustained a permanent partial disability of 35 percent of his left upper extremity at the 210 week level as a result of his injuries in the March 2005 accident at work. At a rate of \$320 per week for 73.5 weeks of compensation, the LLC is liable for \$23,520 in permanent partial disability benefits. The LLC is ordered to pay that amount to Claimant.

Past Medical Aid

Claimant offered into evidence medical bills for his past medical treatment in the amount of \$43,044.52. Dr. Koprivica testified that the treatment Claimant received for the comminuted fracture was reasonable and necessary and that the charges for the treatment were fair and reasonable. Dr. Koprivica's opinion was credible. Neither the LLC nor the Second Injury Fund offered any contradictory evidence. Thus, based on the most credible evidence

offered, Claimant proved that the treatment he received for his comminuted fracture was in fact reasonable and necessary and that the charges were fair and reasonable. Claimant proved his employer's liability for \$43,044.52 in charges for past medical aid.⁸ The LLC is ordered to pay that amount to Claimant.

Future Medical Aid

Dr. Koprivica testified that Claimant would definitely develop arthritis in his left elbow due to the severity of the fracture. He also stated that due to the severe comminuted fracture that Claimant was going to require future medical aid to cure and relieve Claimant from the effects of the arthritis and the injury. He stated that the future treatment could involve a fusion or an implant arthroplasty. Dr. Koprivica's opinion was credible.

Neither the LLC nor the Second Injury Fund offered any contradictory evidence. Neither offered any medical opinions or evidence. Based on the most credible evidence offered, Claimant proved that he was in need of future medical aid. The LLC is ordered to provide Claimant with all reasonable and necessary medical treatment needed to cure and relieve him of the effects of the injury. The LLC has the right to direct the medical treatment. See § 287.140 RSMo. 1994.

Disfigurement

Claimant had a thin vertical scar about 8 inches long and with the visible markings of the 26 staples placed in his arm to close his wound. Based on the scar and the visible markings for the staples, Claimant is awarded 6 weeks of compensation for disfigurement. At a rate of \$320 per week for 6 weeks of disfigurement, the LLC is liable for \$1,920. The LLC is ordered to pay that amount to Claimant.

Individual liability

An LLC, although similar to a corporation, is not a corporation per se. An LLC does offer limited personal liability to the owners of the LLC for the debts and actions of the LLC. Records from the Missouri Secretary of State's office showed that Steve and Melissa Liles were the organizers for the LLC. The records did not specify whether Steve or Melissa or both were the owners of the LLC.

⁸ Dr. Koprivica testified regarding \$42,724.52 in charges for past medical treatment. Claimant, however, testified that the bills he received were the product of his accident at work and that the bills he received were the product of those visits to the medical providers. Under Martin v. Mid-America Farm Lines, Inc., 769 S.W. 2d 105 (Mo. banc 1989) the burden then shifted to the defense to prove that the treatment was not reasonable and necessary or that the charges were not fair and reasonable. Neither the LLC nor the Second Injury Fund met its burden as set out in Martin.

Steve Liles testified that he was the owner of the LLC and that Melissa was not an owner of the LLC and that she did not work for the LLC. Ms. Liles' testimony was in accordance with her husband's. The occupational license application for the LLC filed with the City of Grandview, Missouri for the Garrison Auto Sales project, however, listed both Steve Liles and Melissa Liles as the owners of the LLC. One of the Liles' had to supply that information to the city department.

The written documentary evidence filed with the governmental entity was the best evidence. There was no written documentary evidence listing only Steve Liles as the owner of the LLC. Also, as noted above, while the Liles' denied any ownership interest in the LLC by Ms. Liles; their testimony was inconsistent and evasive. Neither explained why the City had been informed that the LLC was owned by both of them if it were not true.

There appeared to be no advantage to claiming that Ms. Liles was an owner of the LLC in their filings with the city, if she were not in fact an owner, while clearly there was an advantage to the Liles' by denying her ownership interest in the LLC in the workers' compensation proceeding. In the workers' compensation proceeding Claimant was arguing that both Mr. and Ms. Liles were personally liable to him for his workers' compensation benefits. Those benefits amounted to more than \$70,000 with the possibility of liability for future medical treatment.

Furthermore, in addition to the documentary evidence as referred to above, the evidence clearly showed that Ms. Liles was more than just an organizer of the LLC who severed her relationship with it after its formation. The LLC was formed in 2001. In 2005 when Claimant sustained his injury, Ms. Liles still had check writing authority on the LLC's bank accounts. She was still writing checks from the LLC's accounts. She was using the LLC's credit cards. She was doing bookwork for the LLC. She was handling the accounts receivables for the LLC. She was paying the bills for the LLC. She was answering the telephones for the LLC. She was receiving money from the LLC. There were numerous checks from the LLC in 2005 made payable to Melissa Liles. She was also using the LLC funds to pay the family's personal debts such as the mortgage and car payments.

Thus, the most credible evidence showed that Ms. Liles was an owner of the LLC along with her husband, as they stated in their filings with the City of Grandview in 2005. Claimant argued that the LLC was so dominated by the Liles' that the corporate veil should be pierced and that an order should be issued holding both Steve and Melissa Liles personally liable for the debt owed to Claimant due to his work related injury.

Again, an LLC is not technically a corporation, but it does provide the similar limitations on personal liability. Missouri Courts have long recognized that owners of a corporation may not avail themselves of the limitations on personal liability under certain circumstances. Walls v. Allen Cab Company, Inc., et. al 903 S.W.2d 937 (Mo. App. E.D. 1995); application for transfer to the Missouri Supreme Court denied; Smith v. Fabricated Metal Products, 883 S.W. 2d 537

(Mo. App. E.D. 1994). Due to the similarities between an LLC and a corporation, the same rules apply to both. See AMJUR LIMLIACO §1. See also Mobius Management System, Inc. v. West Physicians Search, LLC, 175 S.W.3d 186 (Mo. App. E.D. Mo. 1986) where the Court recognized that the corporate veil of an LLC could be pierced under the same circumstances as for a corporation.

Missouri Courts have also recognized that the corporate veil could be pierced in a workers' compensation case where in essence the corporation was not a separate legal entity from its owners. See Walls; Smith. The Walls Court noted that for workers' compensation purposes in order to "pierce the corporate veil", the employee had to show "1) control, and not merely majority or complete stock control, but complete domination, not only of finances, but of policy and business practices in respect to the transaction attacked so that the nominal company had at the time of the injury no separate mind, will or existence of its own; 2) such control must have been used to commit fraud or wrong, to perpetuate the violation of a statutory duty, or constitute a dishonest and unjust act in contravention of the employee's legal rights; and 3) the aforesaid control and breach of duty must have proximately caused the injury or unjust loss complained of." See also Collett v. American National Stores, Inc. 708 S.W. 2d 273 (Mo. App. 1986).

In Claimant's case, there was a complete domination of the LLC by Steve and Melissa Liles, as the owners of the LLC.⁹ The Liles' exercised complete domination of the finances, policies and business practices of the LLC. They used the LLC's income for their own personal use. Out of the LLC's income, the Liles' paid their home mortgage payments, paid their home's utility bills, paid their personal vehicle loans, paid a Direct TV television bill, bought clothing for the family, paid a dental bill for Mr. Liles, paid their personal credit card bills, paid their personal health insurance premiums and paid other personal bills. That was clearly indicative of a complete domination of the finances of the LLC by the Liles'.

The Liles' also dominated the business policies and practices of the LLC. The LLC clearly had no separate mind, will or existence of its own. The Liles' chose not to purchase workers' compensation insurance for the LLC on the alleged basis that Claimant and the other workers were subcontractors when the evidence clearly showed that Claimant was an employee and not a subcontractor. The Liles' chose not to allow the LLC to pay its debt to Claimant and instead chose to allow the LLC to pay for their own personal living expenses such as their mortgage payments, house payments, credit card payments and other expenses.

⁹ Again, as noted above, Melissa Liles was listed as an organizer of the LLC with the Missouri Secretary of State's Office. In other filings with governmental entities she listed herself as an owner of the LLC. She is married to the acknowledged owner of the LLC. Her actions were indicative of ownership, particularly when she wrote numerous checks to herself from the LLC while at the same time arguing that she had no employment relationship with the LLC.

The Liles' conduct resulted in a violation of a statutory duty and their actions were in contravention of Claimant's legal rights. The statute required the Liles' to purchase workers' compensation insurance for the LLC. The Liles' chose not to purchase workers' compensation insurance for the LLC. Their decision not to purchase workers' compensation insurance for the LLC was in contravention of their legal and statutory duty and proximately caused Claimant's loss.

Claimant sustained a serious injury at work. There was no dispute that he sustained an accident as defined by Missouri law. His medical bills amount to more than \$40,000. The LLC refused to pay his medical bills. If the LLC had purchased workers' compensation insurance there would have been a means to pay for Claimant's medical treatment. Also, the LLC refused to pay for Claimant's loss time from work and his permanent disability. Workers' compensation insurance would have covered those losses.

Based on the evidence, Claimant proved that both Steve and Melissa Liles were personally liable for his workers' compensation benefits due to their complete domination of the LLC and their failure to abide by their legal and statutory duty to purchase workers' compensation insurance. The Liles' are hereby ordered to pay all of Claimant's workers' compensation benefits as set out in this award, including any future medical aid needed to cure and relieve him of the effects of the injuries he sustained in the March 2005 accident at work.

Second Injury Fund liability

The statute provides that if the employer fails to insure or self-insure its liability for workers' compensation benefits; that funds may be withdrawn from the Second Injury Fund to cover the fair, reasonable and necessary expenses to cure and relieve the employee of the effects of the injury or disability. See § 287.220. RSMo. 1994. The statute also provides that should the Second Injury Fund pay out any such funds to cover the medical bills that the attorney general of the State of Missouri shall bring suit in the circuit court of the county where the accident occurred against any such employer not covered by this chapter as required by § 287.280 to recover any money so expended by the Fund for the employee's medical bills. *Id.*

The LLC was required to carry workers' compensation insurance as provided for in the statute and as set out earlier. The LLC failed to carry such workers' compensation insurance. Claimant proved that the charges for his \$43,044.52 for past medical aid were for reasonable and necessary medical treatment and that the charges were fair and reasonable as out earlier. Claimant also proved as set out earlier that he will require future medical treatment to cure and relieve him of the effects of the comminuted fracture he sustained to his left elbow in the accident at work. It is thus ordered that funds shall be withdrawn from the Second Injury Fund in the amount of \$43,044.52 to cover Claimant's past medical bills and that funds shall be withdrawn from the Fund to cover the costs of all reasonable and necessary medical treatment

needed in the future to cure and relieve Claimant of the effects of his injury and for which the LLC and the Liles' have refused to pay.¹⁰

The Second Injury Fund is ordered to pay \$43,044.52 to Claimant and his attorney for the past medical bills and likewise to do the same for future medical treatment as set out in the award.

Made by: _____

Kenneth J. Cain
Administrative Law Judge
Division of Workers' Compensation

¹⁰ The Second Injury Fund offered the medical bills from Research Belton Hospital with an affidavit from the custodian of the medical records. The Second Injury Fund also solicited an opinion from the custodian of the medical records which was not a business record and attempted to offer the opinion as part of the business records. The opinion was not done in the ordinary course of business and it was not made at or near the time of any of the entries in the business records. The statement by the affiant was merely a hearsay opinion solicited by the Second Injury Fund in an attempt to limit its liability. The Second Injury Fund chose not to offer the affiant as a witness where the affiant would have been subject to cross-examination and where the affiant could have addressed whether the hospital had maintained its right to seek payment for the medical bills from Claimant. If the Second Injury Fund wanted the opinion admitted into evidence, it should have offered a deposition of the witness or testimony from the witness at the hearing where the witness could have explained the meaning of the opinion and been subject to cross-examination. Also, a statement by a medical provider that a bill was written-off does not mean that the employee no longer had any liability for the bill. See Farmer-Cummings v. Per. Poole of Platte County, 110 S.W.3d 118, 122 (Mo. banc 2003); Ellis v. Missouri State Treasurer, 302 S.W. 3d 217 (Mo. App. S.D. 2009). The hospital may have designated the bills as written-off for record keeping purposes. Id.