

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

Injury No.: 08-097148

Employee: Alvin Hellmann  
Employer: Prairie Farms Dairy (Settled)  
Insurer: Fidelity & Guaranty Insurance Company (Settled)  
Additional Party: Treasurer of Missouri as Custodian  
of 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. Having reviewed the evidence, read the briefs, and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to § 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated April 21, 2011, as corrected herein.

The first two pages of the administrative law judge's award consists of a list of numbered paragraphs which appear to provide a summary of the findings and conclusions the administrative law judge makes elsewhere in his award. We note, however, an error in this information. Specifically, in item numbered 21, page 2, the administrative law judge states that the employer/insurer settled with employee for "106.6 weeks of permanent partial disability from Employer." This is incorrect. Rather, employee settled his claim with employer/insurer for 160.6 weeks of permanent partial disability. We hereby correct the award.

**Decision**

The award and decision of Administrative Law Judge Matthew D. Vacca, issued April 21, 2011, as corrected herein, is attached and incorporated by this reference.

The Commission further approves and affirms the administrative law judge's allowance of attorney's fee herein as being fair and reasonable.

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

Given at Jefferson City, State of Missouri, this \_\_\_1<sup>st</sup>\_\_\_ day of February 2012.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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William F. Ringer, Chairman

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James Avery, Member

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Curtis E. Chick, Jr., Member

Attest:

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Secretary

# AWARD

Employee: Alvin Hellmann

Injury No.: 08-097148

Dependents: N/A

Before the  
**Division of Workers'  
Compensation**

Employer: Prairie Farms Dairy (Settled)

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

Additional Party: Second Injury Fund

Insurer: Fidelity & Guaranty Insurance Company

Hearing Date: March 8, 2011

Checked by: MDV

## 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: September 30, 2008
5. State location where accident occurred or occupational disease was contracted: St. Louis County
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? Yes
8. Did accident or occupational disease arise out of and in the course of the employment? Yes
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes
10. Describe work employee was doing and how accident occurred or occupational disease contracted:  
Working with pallets and injured neck and right shoulder
12. Did accident or occupational disease cause death? No                      Date of death? N/A
13. Part(s) of body injured by accident or occupational disease: Neck and right shoulder
14. Nature and extent of any permanent disability: 17.5% Right Shoulder, 30% Neck
15. Compensation paid to-date for temporary disability: \$9,840.10
16. Value necessary medical aid paid to date by employer/insurer? \$117,561.94

Employee: Alvin Hellmann

Injury No.: 08-097148

- 17. Value necessary medical aid not furnished by employer/insurer? -0-
- 18. Employee's average weekly wages: \$1,065.16
- 19. Weekly compensation rate: \$710.11/\$404.66
- 20. Method wages computation: Agreed

**COMPENSATION PAYABLE**

21. Amount of compensation payable:

106.6 weeks of permanent partial disability from Employer	(Settled)
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22. Second Injury Fund liability: Yes

150.99 weeks of permanent partial disability from Second Injury Fund	\$61,099.61
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TOTAL:	\$61,099.61
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23. Future requirements awarded:

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

The compensation awarded to the claimant shall be subject to a lien in the amount of 20 % of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Ann Dalton

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

Employee:	Alvin Hellmann	Injury No.: 08-097148
Dependents:	N/A	Before the
Employer:	Prairie Farms Dairy (Settled)	<b>Division of Workers'</b>
Additional Party:	Second Injury Fund	<b>Compensation</b>
		Department of Labor and Industrial
		Relations of Missouri
		Jefferson City, Missouri
Insurer:	Fidelity & Guaranty Insurance Company	Checked by: MDV

**ISSUES PRESENTED**

The sole issue presented for resolution by way of this hearing was the question of the loading factor to apply to Claimant’s primary and preexisting injuries.

The amounts of the disabilities applicable were stipulated.

**FINDINGS OF FACT**

1. Claimant was born June 21, 1961, and was 49 years old on the date of the hearing. Claimant received his GED in 1979 while serving in the Navy.
2. Claimant has worked for Prairie Farms, the Employer herein, for 27 years since 1984. Claimant worked for Schnucks prior to going to work for Prairie Farms.
3. Claimant was a freight receiver on the loading dock for seven years, and then he worked as the ice cream lead person and vacation relief.
4. Claimant’s work at Prairie Farms was a physical job. He worked on the forklift all day and was required to constantly get in and out of the forklift and drive as long as might be required.
5. On the date of the primary accident herein, Claimant was working with boxes that had been baled up with plastic straps. As the bale shifted and Claimant pulled on it, one of the straps snapped and the bale fell. Claimant ended up sustaining a neck injury requiring cervical fusion to repair and a right rotator cuff tear that also required surgery. Claimant settled that claim for 30 percent of the neck and 17 ½ percent of the right shoulder.
6. Following the healing period and rendition of medical treatment, Claimant was no longer able to turn his head, look up or perform overhead work. Claimant could not perform any shoulder level work either. The injuries made it very difficult for Claimant to get up and going in the morning due to neck pain. He was unable to drive the forklift as long as he used to and load and unload product all day. Claimant used to be able to stack off 35 pounds from the pallet, but now he needs help.

7. Claimant continues to take prescriptions for Vicodin three times a week and Flexeril two times a week.
8. As part of Claimant's job duties, he has to turn around to drive backwards and he finds that particular aspect of his job extremely difficult following the injury. Claimant can no longer sit through an entire movie or drive his truck for any length of time.
9. Claimant notices that all the injured parts of his body stiffen up after a relatively short period of time.
10. Claimant is experiencing some repercussions as a result of his injuries at work. Several of his supervisors do not like the fact that Claimant is allowed to work with his disability. Their view is that if Claimant cannot do the work, he should not be there. Several of the other supervisors do not have a problem with Claimant's disability and try to accommodate his physical needs.
11. As a result of the injuries, Claimant can no longer chop wood at his lake home. He does not play softball due to injuries to his shoulders, elbows and knees.
12. Claimant has difficulty sleeping. His sleep is disrupted due to pain and a constant need to change positions.
13. Claimant has not accepted any overtime since 2008. He is able to handle less and less overtime as the injuries that he had sustained over the years continued to accumulate.
14. Claimant cannot work in the cold. He has missed work on several occasions due to his injuries. Sometimes he has had to go home, take prescriptions and sleep due to the pain.
15. Claimant used to be able to engage in his household duties and chores by performing a little work at a time and then resting. Now Claimant can no longer do any of those jobs, such as mowing the lawn, cutting wood, painting the house and performing routine household chores.
16. The parties stipulated that Claimant had preexisting injuries in the amount of 31 percent permanent partial disability of the left knee, 30 percent permanent partial disability of the left shoulder, 20 percent permanent partial disability of the left elbow, 35 percent permanent partial disability of the right elbow, 25 percent permanent partial disability of the right shoulder, and 12 ½ percent permanent partial disability of the body as a whole referable to the low back.
17. Dr. Musich testified that Claimant's injuries past and present combine to create significantly greater disability than their simple sum and will continue to produce a chronic hindrance in his routine activities of work and daily living. Nevertheless, Dr. Musich did not provide any specific guidance on how the injuries combined or a suggested loading factor.

**RULINGS OF LAW**

1. I find that Claimant’s primary injuries combined with his preexisting injuries in a synergistic fashion to create a previously uncompensated disability that is greater than the simple sum total of all of the injuries. I find that that additional disability is best represented by a loading factor of .3. Therefore, I find that Claimant suffers from the following: A 31 percent disability on the left knee (49.6 weeks), 30 percent of the left shoulder (69.6 weeks), 20 percent of the left elbow (42 weeks), 35 percent of the right elbow (73.5 weeks), 25 percent of the right shoulder (58 weeks), 12 ½ percent of the body as whole (50 weeks). These combine with the primary injury of 30 percent of the neck (120 weeks) and 17 ½ percent of the right shoulder (40.6 weeks).
  
2. These injuries total 503.30 weeks of disability. To those weeks, I apply a .3 or 30 percent loading factor which yields 150.99 weeks of permanent partial disability at the permanent partial disability compensation rate of \$404.66 to result in a lump sum total of \$61,099.61 for synergistic permanent partial disability due from the Second Injury Fund.
  
3. I took into account the severity of the injuries and the extensive number of injuries when assessing the synergistic disability.

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

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

MATTHEW D. VACCA  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

\_\_\_\_\_  
Naomi Pearson  
*Division of Workers' Compensation*