

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

Injury No.: 02-053904

Employee: Michael Jones  
Employer: Compton Roofing Co., Inc.  
Insurer: Missouri Employers Mutual Insurance Co.  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund  
Date of Accident: May 8, 2002  
Place and County of Accident: St. Louis County, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated April 10, 2007. The award and decision of Administrative Law Judge Linda J. Wenman, issued April 10, 2007, 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 10<sup>th</sup> day of August 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

NOT SITTING

\_\_\_\_\_  
William F. Ringer, Chairman

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

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

Attest:

\_\_\_\_\_  
Secretary

**AWARD**

Employee: Michael Jones

Injury No.: 02-053904

Dependents: N/A

Employer: Compton Roofing Co., Inc.

Additional Party: Second Injury Fund

Insurer: Missouri Employers Mutual Insurance Co.

Hearing Date: January 9, 2007

Before the  
**Division of Workers'  
Compensation**  
Department of Labor and Industrial  
Relations of Missouri  
Jefferson City, Missouri

Checked by: LJW:tr

### 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: May 8, 2002
5. State location where accident occurred or occupational disease was contracted: St. Louis County, MO
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? N/A
8. Did accident or occupational disease arise out of and in the course of the employment? Yes
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted: While performing roofing work for thirty years, Claimant aggravated or accelerated his lumbar spinal stenosis.
12. Did accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: Lumbar spine
14. Nature and extent of any permanent disability: 15% BAW referable to the lumbar spine.
15. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer? \$11,198.03

Employee: Michael Jones

Injury No.: 02-053904

17. Value necessary medical aid not furnished by employer/insurer? None
18. Employee's average weekly wages: \$849.67
19. Weekly compensation rate: \$566.45 / \$329.42
20. Method wages computation: Stipulated

### COMPENSATION PAYABLE

21. Amount of compensation payable:

60 weeks of permanent partial disability from Employer \$19,765.20

22. Second Injury Fund liability: Yes

Permanent total disability benefits from Second Injury Fund:  
weekly differential of \$237.03 payable by SIF for 60 weeks beginning December 31, 2003,  
and thereafter \$566.45 weekly for Claimant's lifetime.

TOTAL:

TO BE DETERMINED

23. Future requirements awarded: Pursuant to this award.

Said payments to begin immediately 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 25% of all payments in favor of the following attorney for necessary legal services rendered to the claimant: James Kleinschmidt

## FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Michael Jones	Injury No.:	02-053904
Dependents:	N/A	Before the	
Employer:	Compton Roofing Co., Inc.	<b>Division of Workers'</b>	
Additional Party:	Second Injury Fund	<b>Compensation</b>	
Insurer:	Missouri Employers Mutual Insurance Co.	Department of Labor and Industrial	
		Relations of Missouri	
		Jefferson City, Missouri	
		Checked by:	LJW:tr

### **PRELIMINARIES**

The above referenced Workers' Compensation claim was heard by the undersigned Administrative Law Judge on January 9, 2007. Briefs were received and the case was formally submitted on February 6, 2007. Attorney James Kleinschmidt represented Michael Jones (Claimant). Compton Roofing Co., Inc., (Employer) was insured by Missouri Employers Mutual Insurance Co., and represented by Attorney Mark Kornblum. Assistant Attorney General Lavander Smith represented the Second Injury Fund (SIF).

Prior to the start of the hearing the parties identified the following issues for disposition in this case: liability of Employer and SIF for permanent total disability (PTD) or permanent partial disability (PPD) benefits; and future medical care. Hearing venue is correct, and jurisdiction properly lies with the Missouri Division of Workers' Compensation.

Claimant offered Exhibits A-S, and SIF offered Exhibit I. All exhibits were admitted into the record without objection. Any markings contained within any exhibit were present when received, and the markings did not influence the evidentiary weight given the exhibit. Any objections not expressly ruled on in this award are overruled.

### **SUMMARY OF EVIDENCE**

All evidence presented has been reviewed. Only testimony necessary to support this award will be reviewed and summarized.

#### **Testimony**

**Claimant:** Claimant is fifty-eight years old, a high school graduate, has worked as a roofer since 1972, and has not received any additional educational or vocational training. Claimant has worked as a roofer for Employer for approximately thirty years. Throughout the years, Claimant's duties included unloading supplies from trucks at the worksite, transporting the supplies from the ground to the roof, and application of the roofing materials. Claimant worked mostly on his knees, but was required to lift eighty pound bundles of shingles, and work at a sufficient pace.

On May 8, 2002, Claimant began to experience hip pain that radiated into his buttocks. Claimant discussed his pain with Dr. Berni, who was treating him for a shoulder injury, and Dr. Berni suspected Claimant's pain was coming from his low back. Claimant notified Employer, and Employer sent Claimant to Dr. Blair, an orthopedist.

After examining Claimant, Dr. Blair referred Claimant to his partner and spine specialist, Dr. Reinsel. Dr. Reinsel ordered epidural steroid injections, and Claimant underwent a series of three injections that briefly provided him relief. Following the injections, Claimant's care was returned to Dr. Blair, who informed Claimant he would need back surgery. Claimant was not provided surgery, and he returned to work as a roofer.

Upon his return to work, Claimant experienced low back and hip pain, and numbness in both legs. A functional capacity examination (FCE) was obtained, which demonstrated Claimant should be working with a twenty pound weight restriction. Employer was unable to accommodate the weight restriction, and Claimant left his employment in December 2003.

Claimant has not worked since December 2003, and he has been told by his treating physicians he can no longer work as a roofer. Claimant is unable to walk around a block without pain, and he takes Tylenol for pain, because his physician will no longer prescribe Celebrex for his pain.

Claimant has preexisting injuries to his right knee, cervical spine, bilateral wrists, right thumb and index finger, and his left shoulder. During January 1986, Claimant injured his right knee while working on a house. Claimant had surgery on his knee, and returned to work in approximately six weeks. After returning to work, Claimant used extra knee padding, but continued to experience difficulty climbing steps. He continued to experience aching and stiffness in his right knee, which caused in difficulty performing his job.

During February 1995, Claimant was required to wear a safety harness while performing his roofing activities. The harness restricted to his movement, and Claimant developed pain in his shoulders and arms. Claimant's pain was later attributed to his neck, and he underwent surgery to remove a cervical bone spur. Claimant was unable to work for eight weeks following this surgery. As of hearing, Claimant complains of decreased cervical range of motion, difficulty looking upward, and experiencing a grinding sensation in his neck.

Regarding Claimant's hands, in December 1999, Claimant underwent bilateral carpal tunnel releases. He continues to experience loss of strength in both hands, and finger numbness and aching. During August 2001, Claimant began to experience locking of his right thumb and index finger. Employer had Claimant evaluated by Dr. Tucker, but no treatment was provided. Claimant still experiences locking of his right thumb and index finger.

On August 28, 2001, Claimant was roofing a steep house, and while throwing shingles off the roof, he tore his left rotator cuff and eventually underwent surgery. When Claimant returned to work, his pay was shifted from an hourly rate to piece work. To equal one hours pay, Claimant needed to complete two shingle squares per hour. Claimant was unable to produce this amount of work due to his injuries. Claimant testified he still experiences pain and weakness in his left shoulder.

Upon cross-examination by Employer's attorney, Claimant confirmed after he returned to work following his left shoulder surgery, Dr. Berni had placed a fifty pound lifting restriction that he later made permanent. Claimant also confirmed he entered into compromise settlements for all his preexisting injuries. Before his last several injuries, Claimant was able to shingle fifteen squares per day, and his production fell to ten to twelve squares a day when he was placed on piece work. Claimant verified he applied for retirement while still working, was approved for the retirement, and he continued working for a brief period while receiving his retirement.

Claimant's current activities include driving his automatic pick-up truck every day to bring lunch to his wife at work. He runs various errands during the day, and goes to his country mobile home on weekends. Claimant mows grass using a tractor, and he maintains his hunting and fishing licenses. Claimant testified when hunting he used a four-wheeler to get in

and out of the woods, and had several stands previously set up. Claimant also is an active member of his local Elks Lodge, and as a member, he visits patients at a local Veterans Administration Hospital.

Upon cross-examination by SIF's attorney, Claimant verified he returned to full-time work without restrictions after each work injury until his shoulder injury. Claimant also verified he took a pay cut when he was placed on piece work, and although he qualified for retirement, he had wanted to continue working to increase his retirement income, but was unable to do so due to his physical condition. Claimant acknowledged he takes Tylenol for pain, but not on a daily or weekly basis. He is able to do laundry, helps with grocery shopping, and vacuums. When hunting, Claimant will sit in his stand for one to three hours, and will walk for approximately one hour when hunting squirrel. Claimant fishes on the bank, and in the past he used to fish for approximately two hours. Finally, Claimant denied telling his treating physician his shoulder pain had completely resolved after surgery.

### **Pertinent Medical Records Regarding Preexisting Injuries**

**1986 right knee:** On February 10, 1986, Claimant underwent surgery for internal derangement of his right knee, repair of an osteochondral fracture, a partial tear of his inferior medial meniscus, and tear of the far posterior horn of his medial meniscus. By October 15, 1986, Claimant continued to experience intermittent symptoms, but had returned to work. Claimant settled his right knee case for 20% PPD at the level of his right knee.

**1995 cervical spine:** Claimant was referred to a neurosurgeon by his primary care physician after displaying symptoms consistent with a C-8 radiculopathy. An MRI was ordered and demonstrated marked cervical spondylosis at C2-7. There was also a herniated disc present at C3-4 that indented the spinal cord, and another herniated disc at C7-T1. On March 14, 1995, Claimant underwent a C7-T1 posterior cervical foraminotomy. Claimant's C3-4 disc was unoperated, because he was asymptomatic. In subsequent compromise settlements, SIF has accepted a permanent partial disability value of 26.25% BAW regarding this condition.

**2000 Carpal Tunnel releases:** On June 14, 2000, Claimant underwent a right carpal tunnel release, and on July 5, 2000, Claimant underwent a left carpal tunnel release. By January 9, 2001, Claimant continued to complain of right ring finger numbness, but a repeat NCV was found to be consistent with decompression, and Claimant was found to be at MMI. Claimant settled his bilateral carpal tunnel cases for 17.5% PPD of each wrist.

**August 2001 right thumb and hand:** On August 13, 2001, Claimant was seen by Dr. Rottler due to problems with locking/triggering of his right thumb and index finger. A bone scan was ordered demonstrating significant degenerative osteoarthritis involving his wrists, right index and metacarpal phalangeal joints with the right worse than the left. Dr. Rottler did not find Claimant's trigger thumb to be work related, but noted work may have exacerbated or accelerated the multiple joint osteoarthritis. During October 2001, Claimant was also evaluated by Dr. Tucker due to continued locking of his right thumb. Dr. Tucker noted Claimant had extensive degenerative joint disease in both hands, and felt this was causing his right thumb locking. Claimant ultimately settled his right hand case for 15% PPD of the wrist.

**August 2001 left shoulder:** Claimant injured his left shoulder after throwing a bundle of shingles off a roof. An MRI was obtained indicating a rotator cuff tear, and on November 28, 2001, Claimant underwent surgery. At surgery, Claimant's rotator cuff was found to be intact, but Claimant was found to have left shoulder impingement, with rupture of the long head of his biceps tendon. When discharged, Claimant was given a permanent seventy pound lifting restriction. Claimant settled his case for 31.63% PPD of the shoulder.

### **Medical Deposition Testimony**

**Dr. Volarich:** Dr. Volarich examined Claimant on October 5, 2004. Upon examination, Dr. Volarich made the following findings: weakness of the left shoulder and left biceps; weakness of the pronators and supinators of both forearms, quadriceps, hamstrings, and lower extremities; diminished pinprick sensation along C6-C8, L4-5, and S1 nerve roots; gait was slow and stiff, he was unable to hop, and had difficulty squatting due to back and knee pain; decreased cervical and lumbar range of motion; 30% loss of motion in the left shoulder, with crepitus and atrophy of the left deltoid; pain at the medial epicondyle and cubital tunnel; bilateral positive Tinnel's sign over the ulnar nerve at the cubital tunnels; decreased range of motion and grip strength in the wrists with positive Phalen's signs; triggering of the right thumb and index fingers, crepitus of the knees; and a positive McMurray test of the left knee.

Dr. Volarich diagnosed a repetitive trauma of Claimant's lumbar spine, aggravating degenerative disc disease and degenerative joint disease with spinal stenosis causing bilateral lower extremity radicular symptoms. Dr. Volarich found Claimant's work to be a substantial contributing factor causing the aggravation of Claimant's spinal stenosis and extremity radicular symptoms. Dr. Volarich rated Claimant's May 2002 lumbar injury at 25% BAW PPD referable to the lumbar spine. Regarding Claimant's preexisting conditions, Dr. Volarich rated Claimant's left shoulder at 35% PPD; Claimant's right thumb at 30% PPD; Claimant's right index finger at 30% PPD; Claimant's right wrist at 35% PPD; Claimant's left wrist at 35% PPD; Claimant's right knee at 30% PPD; and Claimant's cervical spine at 30% BAW PPD.

Dr. Volarich opined the combination of Claimant's lumbar spine, and his preexisting conditions created a substantially greater disability than the simple sum, Claimant was PTD and unable to perform ongoing work. Dr. Volarich also opined Claimant would require muscle relaxants; non-steroidal anti-inflammatory drugs; pain medication; physical

therapy; further diagnostic testing for his elbows and knees; possible trigger finger releases; and possible decompression of his lumbar spine. Dr. Volarich opined work would be substantial factor in causing Claimant's potential future surgical needs. Dr. Volarich also listed seventeen different restrictions Claimant should observe.

Upon cross-examination by Employer's attorney, Dr. Volarich agreed Claimant's May 8, 2002 injury aggravated a preexisting low back condition. Upon cross-examination by SIF's attorney, Dr. Volarich confirmed Claimant was PTD due to a medical assessment alone. However, Dr. Volarich acknowledged Claimant had worked without accommodation until his retirement, and prior to his shoulder injury, Claimant had worked without restrictions. Finally, Dr. Volarich acknowledged a 2003 functional capacity exam (FCE) placed Claimant in a medium work demand.

**Dr. Reinsel:** Claimant was referred to Dr. Reinsel during August 2003, after Claimant reported low back pain to another physician and an MRI had been obtained. The MRI had demonstrated spinal stenosis. Dr. Reinsel believed Claimant's spinal stenosis had caused lower extremity claudication, and he ordered a series of epidural steroid injections. Following Claimant's third injection, he underwent an FCE that demonstrated Claimant could carry thirty-five pounds, and push and pull twenty pounds. Dr. Reinsel diagnosed severe spinal stenosis, and placed Claimant on a permanent twenty pound lifting and thirty-five pound carrying restrictions. Dr. Reinsel talked with Claimant about the possibility of spinal surgery in the future, although he did not believe Claimant's work was related to the possible surgical need. Claimant was found to be at maximum medical improvement (MMI) on December 31, 2003.

Dr. Reinsel last examined Claimant on October 26, 2005. Claimant complained of low back pain radiating into his buttocks, greater on the left side, and extending into his posterior thighs. Claimant also had bilateral toe numbness. Dr. Reinsel found Claimant's complaints to be similar to his prior complaints. Upon examination, Dr. Reinsel found Claimant to have diminished extension, which would be expected with someone who had spinal stenosis. Dr. Reinsel rated Claimant's spinal disability at 15% BAW PPD, with 10% preexisting Claimant's last injury.

Upon cross-examination by Claimant's attorney, Dr. Reinsel acknowledged he disagreed with the conclusion expressed by Dr. Berni, who found Claimant's work exacerbated his spinal stenosis, as spinal stenosis can occur in people performing sedentary work. Dr. Reinsel also acknowledged his current opinion differs from the opinion he provided on June 3, 2003, in which he wrote "this process did not occur all of a sudden but could be related to and especially exacerbated by this type of bending over type work he's done for many years." Dr. Reinsel testified his opinion has now changed, and he doesn't believe any profession would necessarily cause an increased spinal stenosis.

Upon cross-examination by SIF's attorney, Dr. Reinsel confirmed he did not rate Claimant's preexisting conditions, and he confirmed Claimant was taking Celebrex when he was initially evaluated. Dr. Reinsel also confirmed Claimant did not work with physical restrictions until his left shoulder injury.

### **Vocational Deposition Testimony**

**James England, Jr., M.Ed.:** Mr. England is a vocational rehabilitation counselor, and he interviewed Claimant on August 16, 2005. On the day of interview, Claimant completed the Wide-Range Achievement Test, in which he scored at 4<sup>th</sup> grade reading and 6<sup>th</sup> grade math levels. Mr. England concluded the testing limited Claimant to jobs that did not involve more than basic reading or recording of information. Following review of Claimant's employment history, Mr. England concluded Claimant did not have any transferable skills, and the use of his skills had been negated by his physical impairments.

Mr. England opined if Dr. Cantrell's restrictions were followed, Claimant could perform some employment, including roofing. If the restrictions found in the FCE were followed, Claimant would be able to do light work of an unskilled, entry level nature. Mr. England also considered Dr. Reinsel's restrictions. However, if Dr. Volarich's restrictions and Claimant's description of his daily functioning were followed, Claimant would not be able to successfully compete for employment in the open labor market or sustain employment.

Mr. England described Claimant as appearing tired and uncomfortable, and as having difficulty sitting or rising from a seated position. Mr. England concluded a person who has Claimant's combination of impairments involving his neck, shoulder, back, hands, and legs would not be able to sustain sedentary work. Mr. England opined Claimant is PTD, and not a candidate for vocational rehabilitation services.

Upon cross-examination by Employer's attorney, Mr. England verified Claimant is PTD due to a combination of disabilities. Upon cross-examination by SIF's attorney, Mr. England acknowledged no treating physician had found Claimant to be PTD, but several had opined Claimant could not return to work as a roofer. Mr. England also acknowledged prior to Claimant's last injury, he worked without assistance, was able to stoop, squat, crawl, and kneel, "but not like before."

### **FINDINGS OF FACT & RULINGS OF LAW**

Having given careful consideration to the entire record, based upon the above testimony, the competent and

substantial evidence presented, and the applicable law of the State of Missouri, I find the following:

### **Liability of the Employer or Second Injury Fund for Permanent Total Disability**

Claimant seeks permanent total disability benefits from either Employer or Second Injury Fund. Section 287.020.7 RSMo., defines “total disability” as the inability to return to any employment, and not merely the inability to return to employment in which the employee was engaged at the time of the last work related injury. *See Fletcher v. Second Injury Fund*, 922 S.W.2d 402 (Mo.App.1996)(overruled in part). The determinative test to apply when analyzing permanent total disability is whether a claimant is able to competently compete in the open labor market given claimant’s condition and situation. *Messex v. Sachs Electric Co.*, 989 S.W.2d 206 (Mo.App. 1999)(overruled in part). An employer must be reasonably expected to hire the claimant, given the claimant’s current physical condition, and reasonably expect the claimant to successfully perform the work duties. *Shipp v. Treasurer of Mo.*, 99 S.W.3d 44 (Mo.App. 2003)(overruled in part). The Second Injury Fund is implicated in all cases of permanent disability where there has been previous disability, and in cases of permanent total disability, the Second Injury Fund is liable for remaining benefits owed after the employer has completed payment for disability of the last injury alone. §287.220.1 RSMo. Even though a claimant might be able to work for brief periods of time or on a part-time basis it does not establish that they are employable. *Grgic v. P&G Construction*, 904 S.W.2d 464, 466 (Mo.App.1995).

Claimant alleges PTD against either Employer or SIF. In reality, the evidence produced by Claimant alleges PTD against SIF. Claimant has preexisting injuries to his neck, left shoulder, hands, and right knee that all provided an obstacle or hindrance to employment. Combining these disabilities with the aggravation of Claimant’s underlying spinal stenosis caused by his occupational duties, places the potential burden of PTD on SIF.

SIF correctly points out that no treating physician found Claimant to be PTD, however, all treating physicians provided medical care to only specific injuries to specific body parts. Dr. Reinsel clearly testified he did not consider or rate Claimant’s preexisting conditions. Mr. England considered various restriction scenarios, those placed by Dr. Cantrell, those produced by an FCE, and those placed by Dr. Volarich. Dr. Cantrell only evaluated Claimant for his left shoulder and right hand injuries. Dr. Cantrell’s restrictions found Claimant to be able to continue employment as a roofer, which is in contradiction to a later finding by Dr. Reinsel, and following the FCE, which excluded Claimant from further work as a roofer. Only Dr. Volarich and Mr. England based their opinions by considering all of Claimant’s disabilities, his educational aptitude, and his employment history. I find the opinions of Dr. Volarich and Mr. England to be persuasive. Given Claimant’s limitations, it would be unreasonable to expect any employer to hire Claimant, or to expect Claimant to successfully perform new work duties. Claimant is permanently and totally disabled due to the combination of his last work injury and his preexisting disabling conditions, and SIF shall pay permanent total disability benefits as prescribed by law.

### **Issues relating to permanent partial disability owed by Employer**

A permanent partial award is intended to cover claimant’s permanent limitations due to a work related injury and any restrictions his limitations may impose on employment opportunities. *Phelps v. Jeff Wolk Construction Co.*, 803 S.W.2d 641,646 (Mo.App. 1991). Employer is not responsible for PTD benefits, but is responsible for the permanent effects of the May 8, 2002 injury. Dr. Volarich rated Claimant’s lumbar spine at 25% PPD, and Dr. Reinsel rated the injury at 5% PPD. With respect to the degree of permanent partial disability, a determination of the specific amount of percentage of disability is within the special province of the finder of fact. *Banner Iron Works v. Mordis*, 663 S.W.2d 770, 773 (Mo.App. 1983) (overruled on other grounds). I find Claimant sustained disability of 15% referable to his lumbar spine, or \$19,765.20, for which Employer is liable.

### **Issues relating to future medical care**

Claimant seeks a ruling regarding future medical benefits as it relates to this injury. Claimant is not required to present evidence concerning the specific future medical treatment that will be necessary in order to receive an award of future medical care. *Landers v. Chrysler Corp.*, 963 S.W.2d 275 (Mo.App. 1997) (overruled in part). Future medical benefits may be awarded if a claimant shows by reasonable probability that there will be a need for additional medical care due to the work-related injury. *Id.* When future medical benefits are awarded, the medical care must flow from the accident in order to hold an employer liable. *Id.* Reasonable probability is based on reason and experience that inclines the mind to believe, but leaves room for doubt. *Tate v. Southwestern Bell Telephone Co.*, 715 S.W.2d 326, 320 (Mo.App. 1986).

Both Dr. Volarich and Dr. Reinsel testified Claimant may need surgery in the future due to his spinal stenosis. The physicians disagree as to whether the need for surgery is related to the occupational hazard Claimant was exposed to as a roofer for thirty years. Both physicians also agree Claimant’s work as a roofer at a minimum aggravated Claimant’s spinal stenosis. During the course of treatment Dr. Reinsel spoke with Claimant about spinal surgery as a future option, but later changed his professional opinion regarding the work relatedness of Claimant’s development of spinal stenosis.

Employer did not place occupational disease or medical causation in issue. I find the opinion of Dr. Volarich to be persuasive, and I find Claimant has met his burden to establish a need for future medical care regarding his lumbar spine. I find Employer responsible to provide Claimant with additional medical treatment as required regarding his lumbar spine. I further find Employer is obligated to provide the following treatment limited to Claimant’s spinal stenosis: Employer shall keep medical open, and select a competent physician and authorize any treatment recommended by the physician including,

but not limited to:

- 1) any tests and procedures as directed by the authorized treating physician;
- 2) any medications directed by the authorized treating physician;
- 3) any necessary surgical procedures ordered by the authorized treating physician, including all doctor, hospital, diagnostic and medical costs; and
- 4) all post-operative and rehabilitative care as directed by the authorized treating physician.

-

**CONCLUSION**

Claimant is found to be permanently and totally disabled as of December 31, 2003. Employer will pay 60 weeks of permanent partial disability. SIF is ordered to provide Claimant with a weekly differential of \$237.03 beginning December 31, 2003 for a period of 60 weeks. Thereafter, SIF is to pay permanent and total disability benefits of \$566.45 weekly for Claimant's lifetime. As Claimant is found eligible to receive permanent total disability benefits from SIF, the issue of permanent partial disability benefits from SIF is moot. Claimant's attorney is entitled to a 25% lien.

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

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

LINDA J. WENMAN  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

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