

TEMPORARY OR PARTIAL AWARD
(Affirming Award and Decision of Administrative Law Judge)

Injury No.: 03-125396

Employee: Trevor Kirby, deceased

Employers: 1) J. D. Builders, Inc.
2) Alliance Savings Company, Inc.
3) Prost Builders, Inc.

Insurers: 1) St. Paul Travelers
2) Missouri Employers Mutual Insurance Company
3) Builders' Association Self-Insurance Fund

Additional Parties: 1) Treasurer of Missouri as Custodian
of Second Injury Fund
2) University of Kansas Medical Center
3) North Kansas City Hospital

Date of Accident: September 16, 2003

Place and County of Accident: Boone 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, which provides for review concerning the issue of liability only. Having reviewed the evidence and considered the whole record concerning the issue of liability, the Commission finds that the award of the administrative law judge in this regard 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 and adopts the award and decision of the administrative law judge dated March 16, 2006.

This award is only temporary or partial, is subject to further order and the proceedings are hereby continued and kept open until a final award can be made. All parties should be aware of the provisions of section 287.510 RSMo.

The award and decision of Administrative Law Judge Robert J. Dierkes, issued March 16, 2006, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 21st day of June 2006.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

NOT SITTING

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

TEMPORARY OR PARTIAL AWARD

Employee: Trevor Kirby

Injury No. 03-125396

Before the
**DIVISION OF WORKERS'
COMPENSATION**

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

Dependents: N/A

Employer: J.D. Builders, Inc.

Insurer: St. Paul Travelers (alleged)

Employer: Alliance Savings Company, Inc. (alleged)

Insurer: Missouri Employers Mutual Insurance Company (alleged)

Employer: Prost Builders, Inc. (alleged)

Insurer: Builders' Association Self-Insurance Fund

Additional Party: Second Injury Fund

Additional Party: University of Kansas Medical Center

Additional Party: North Kansas City Hospital

Hearing Date: January 27, 2006

Checked by: RJD/tmh

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 16, 2003.
5. State location where accident occurred or occupational disease contracted: Boone County, Missouri.
6. Was above employee in employ of above employer at time of alleged accident or occupational disease?
Yes. I find that Employee was in the employ of J.D. Builders, Inc., and Alliance Savings Company, Inc., at the time of his accident.
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? I find that J.D. Builders, Inc., was uninsured; I find that Alliance Savings Company, Inc., was insured by Missouri Employers Mutual Insurance Company.

11. Describe work employee was doing and how accident happened or occupational disease contracted:
Employee was working on a steel frame for a building, approximately 30'-40' above ground level when the structure collapsed.
12. Did accident or occupational disease cause death? No. Date of death? N/A.
13. Parts of body injured by accident or occupational disease: Head, brain injury, right leg, cervical vertebrae, spinal cord, hips, left foot, body as a whole.
14. Nature and extent of any permanent disability: Deferred to final award.
15. Compensation paid-to-date for temporary disability? Temporary total disability benefits were paid through June 18, 2005; exact amount unknown.
16. Value necessary medical aid paid to date by employer/insurer? Unknown.
17. Value necessary medical aid not furnished by employer/insurer: Unknown at this time.
18. Employee's average weekly wages: \$491.67.
19. Weekly compensation rate: \$327.78.

COMPENSATION PAYABLE

Employer, J.D. Builders, Inc.; Employer, Alliance Savings Company, Inc.; and its Insurer, Missouri Employers Mutual Insurance Company are ordered to pay Claimant TTD benefits of \$327.78 from and after June 19, 2005, until such time as Claimant's condition has reached maximum medical improvement, or until Claimant is able to compete in the open market for employment, or until Claimant has been paid 400 weeks of TTD benefits, or until Claimant's death, whichever shall first occur.

Employer, J.D. Builders, Inc.; Employer, Alliance Savings Company, Inc.; and its Insurer, Missouri Employers Mutual Insurance Company are ordered to pay Claimant the sum of \$43,200.00 (i.e., \$4,800.00 x 9 months) to compensate Claimant for nursing services rendered by Jennifer Garringer from June 2005 through February 2006.

Employer, J.D. Builders, Inc.; Employer, Alliance Savings Company, Inc.; and its Insurer, Missouri Employers Mutual Insurance Company are ordered to pay all unpaid medical charges for the medical treatment that Claimant has received since September 16, 2003.

Employer, J.D. Builders, Inc.; Employer, Alliance Savings Company, Inc.; and its Insurer, Missouri Employers Mutual Insurance Company are ordered to reimburse the Second Injury Fund for all of its expenditures for Claimant's prescription medications.

Employer, J.D. Builders, Inc.; Employer, Alliance Savings Company, Inc.; and its Insurer, Missouri Employers Mutual Insurance Company are ordered to provide Claimant with all such medical, surgical, chiropractic and hospital treatment, including nursing, custodial, ambulance and medicines, as may reasonably be required to cure and relieve Claimant from the effects of the work-related injury, all as required by Section 287.140, RSMo.

This award is only temporary or partial, is subject to further order, and the proceedings are hereby continued and the case kept open until a final award can be made.

IF THIS AWARD IS NOT COMPLIED WITH, THE AMOUNT AWARDED HEREIN MAY BE DOUBLED IN THE FINAL AWARD, IF SUCH FINAL AWARD IS IN ACCORDANCE WITH THIS TEMPORARY AWARD.

Claimant's attorney, William Spooner, is allowed 25% of all sums awarded hereunder for temporary total disability benefits and for nursing services, as and for necessary attorney's fees.

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Trevor Kirby

Injury No: 03-125396

Before the
**DIVISION OF WORKERS'
COMPENSATION**

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

Dependents: N/A

Employer: J.D. Builders, Inc.
Insurer: St. Paul Travelers (alleged)

Employer: Alliance Savings Company, Inc. (alleged)
Insurer: Missouri Employers Mutual Insurance Company (alleged)

Employer: Prost Builders, Inc. (alleged)
Insurer: Builders' Association Self-Insurance Fund

Additional Party: Second Injury Fund

Additional Party: University of Kansas Medical Center

Additional Party: North Kansas City Hospital

Checked by: RJD/tmh

ISSUES DECIDED

An evidentiary hearing was held in this case in Jefferson City on January 27, 2006, on Claimant's request for a temporary or partial award. Claimant Trevor Kirby appeared by Counsel William Spooner, and by his guardian Jennifer Garringer; Employer J.D. Builders, Inc., appeared by Counsel Rick Montgomery, and by corporate representative David Green; Employer Alliance Savings Company, Inc., appeared by Counsel William Rotts and Andrew Jones, and by corporate representative David Jatho; alleged Insurer Missouri Employers Mutual Insurance Company appeared by Counsel Scott Pool and Leah Williamson, and by corporate representative Joyce Underwood; alleged Insurer St. Paul Travelers appeared by Counsel Steve Brueggeman, and by corporate representative Janice Sturman; alleged Employer Prost Builders, Inc., and its Insurer, Builders' Association Self-Insurance Fund, appeared by Counsel Timothy Lutz and Jennifer Arnett; the Second Injury Fund appeared by Counsel, Assistant Attorneys General Cara Harris and Sarah Reichert; University of Kansas Medical Center appeared by Counsel Timothy Gaarder; and North Kansas City Hospital appeared by Counsel, Dewey Crepeau. The parties requested leave to file post-hearing briefs, which leave was granted, and the case was submitted on February 7, 2006. The evidentiary hearing was held to decide the following issues:

1. Whether the notice requirement of Section 287.420, RSMo, serves as a bar to Claimant's claim for compensation as against any of the alleged employers or insurers;
2. Whether the statute of limitations, Section 287.430, RSMo; serves as a bar to Claimant's claim for compensation as against any of the alleged employers or insurers;
3. A determination of the employee's average weekly wage and resultant compensation rates;
4. Whether Alliance Savings Company, Inc., was a covered employer under the Missouri Workers' Compensation Law at the time of employee's accident;
5. Whether Claimant is entitled to temporary total disability ("TTD") benefits from and after June 19, 2005;

6. Whether Claimant is entitled to payment for nursing services and custodial services allegedly rendered to him by Jennifer Garringer;
7. Whether Claimant is entitled to payment for bills for his past medical treatment, including, but not limited to, the treatment allegedly rendered by North Kansas City Hospital and University of Kansas Medical Center;
8. Whether Claimant is entitled to additional medical treatment pursuant to Section 287.140, RSMo;
9. Whether the Second Injury Fund is entitled to reimbursement for medical expenses it has paid on Claimant's behalf and may continue to pay on Claimant's behalf through the time of the award herein; and
10. Which alleged employer and/or insurer, if any, shall be deemed primarily liable for payment of benefits to Claimant under Chapter 287, RSMo, and which employer(s) and/or insurer(s), if any, shall be secondarily liable, and in what order, as contemplated by Section 287.040, RSMo.

STIPULATIONS

The parties stipulated as follows:

1. The Division of Workers' Compensation has jurisdiction over this case;
2. Venue is proper in Boone County and adjoining counties, including Cole County;
3. That Trevor Kirby ("Claimant") was injured in a work-related accident in Boone County, Missouri, on September 16, 2003; and
4. That temporary total disability ("TTD") benefits of \$333.66 per week were paid through June 18, 2005.

EVIDENCE

The evidence consisted of the testimony of Claimant's mother, Jennifer Garringer; the testimony of David Jatho (President of Alliance Savings Company, Inc.), as well as the deposition testimony of David Jatho; the testimony of David Green (President of J.D. Builders, Inc.) as well as the deposition testimony of David Green; the testimony of Lewis Melahn, former Director of the Missouri Department of Insurance; the testimony of Joyce Underwood, Acting Director of Underwriting for Missouri Employers Mutual Insurance Company; the testimony of Janice Sturman, corporate representative of St. Paul Travelers; and numerous documents.

BACKGROUND OF THE CASE

Trevor Kirby ("Claimant") worked as an ironworker. Claimant was severely injured in a work-related accident that occurred on a project in Columbia, Boone County, Missouri on September 16, 2003.

The general contractor on the project was Prost Builders, Inc. ("Prost"). One of the subcontractors on the project was J.D. Builders, Inc. ("JD"). J.D. had done subcontracting work for Prost in the past and began work on the project before a written contract was executed. (The written contract was executed after Claimant's accident.) On September 16, 2003, approximately 12 of J.D.'s employees were on the project site and three of them, Christopher Tristan, Corey Sieckmann and Claimant, were working 30' to 40' off the ground on the steel framing. Apparently due to a construction error, the framing began to collapse and Tristan, Sieckmann, and Claimant fell. Christopher Tristan died as a result of his injuries; Corey Sieckmann, although seriously injured, has made a good recovery. Claimant sustained multiple injuries, including a closed-head injury and traumatic brain injury, a severely broken right leg,

which has required multiple surgeries including a below-the-knee amputation, fractured cervical vertebrae, spinal cord injury, bilateral hip injury, and left foot injury. As a result of his traumatic brain injury and spinal cord injury, Claimant also suffers from a seizure disorder and severe breathing problems, including central sleep apnea. Claimant lives with his mother, Jennifer Garringer, in the Kansas City area. Jennifer Garringer was appointed Guardian and Conservator of Claimant by the Circuit Court of Platte County on December 23, 2005. Claimant continues to require extensive medical treatment as well as constant care and supervision.

On December 15, 2003, Claimant, by his attorney William Spooner, filed a Claim for Compensation in this case against J.D. Attorney William Rotts attempted to file Answers on behalf of J.D., and on behalf of Alliance Savings Company, Inc. (“Alliance”). In each proposed Answer, Rotts alleged the Insurer to be: “TransPacific Intl. Ins.” with an address in the United Kingdom. Rotts also attempted to file a First Report of Injury (“FROI”) alleging Claimant’s employer to be Alliance and the Insurer to be: “TransPacific International Insurance Company, Ltd.” The Division of Workers’ Compensation, by letter dated March 22, 2004, advised Rotts that it would not accept the FROI because TransPacific International Insurance Company, Ltd., was not authorized by the Missouri Department of Insurance to do business in this state. The Division’s letter also notified Rotts that the Answers would be filed on behalf of the alleged employers (i.e., JD and Alliance), but not on behalf of TransPacific International Insurance Company, Ltd., again, for the reason that TransPacific International Insurance Company, Ltd., was not authorized by the Missouri Department of Insurance to do business in Missouri.

On July 3, 2004, an Amended Claim for Compensation was filed, naming only J.D. as the employer. On July 18, 2005, an Amended Claim for Compensation was filed, naming only J.D. as the Employer, but also adding the Second Injury Fund as a party, and adding the allegation that the Employer was uninsured. On July 22, 2005, an Amended Claim for Compensation was filed, naming J.D. and “The Alliance Companies” as Employers, and also naming the Second Injury Fund, and alleging that the Employers were uninsured.

Claimant worked for J.D., but was paid by Alliance. Alliance and J.D. have alleged, and continue to allege, that Claimant (as well as Christopher Tristan, Corey Sieckmann and others) were “co-employees” of Alliance and J.D. As part of the agreement between Alliance and J.D., J.D. paid monies to Alliance to provide workers’ compensation coverage on J.D.’s employees, including, but not limited to, Tristan, Sieckmann, and Claimant. A portion of those monies were paid by Alliance to TransPacific International Insurance Company, Ltd., for what Alliance believed to be a policy of workers’ compensation insurance covering J.D.’s employees, with a deductible or “self-insurance retention” of \$300,000 per claim. The remainder of the monies were paid by Alliance to a third-party administrator named “TPA One”^[1], to cover the deductible or self-insurance retention portion of each claim.^[2]

After Claimant’s injury on September 16, 2003, Alliance, through TPA One, immediately began paying TTD benefits to Claimant and began providing medical treatment for Claimant. After payment of these benefits exceeded the \$300,000 level, Alliance attempted to have TransPacific International Insurance Company, Ltd., begin making payments. Alliance made multiple demands upon TransPacific, but got no response. It was eventually ascertained that either TransPacific International Insurance Company, Ltd., never existed, or if it did exist, that it is insolvent. Alliance, through TPA One, continued to make payments on Claimant’s behalf, eventually totaling approximately \$390,000, when such payments were discontinued, as Alliance “ran out of money”. It was at this time that Claimant’s attorney filed the amended claims adding the Second Injury Fund as a party, and requested an evidentiary hearing, which was held on August 26, 2005, by the undersigned administrative law judge. After that hearing, on September 1, 2005, a TEMPORARY OR PARTIAL AWARD was issued, finding that J.D. and Alliance were co-employers of Claimant, that those co-employers were uninsured for Missouri Workers’ Compensation purposes, and ordering the Second Injury Fund to pay Claimant’s medical expenses.

Shortly after the issuance of the TEMPORARY OR PARTIAL AWARD, the Second Injury Fund filed a motion requesting that Prost (the general contractor), and Prost’s Insurer, Builders’ Association Self-Insurance Fund, be made parties to the case, pursuant to Section 287.040, RSMo, and the Division ordered same on September 16, 2005. Shortly thereafter, the parties requested a conference call with the undersigned administrative law judge, which was held on September 20, 2005. During that conference call, the parties agreed that the TEMPORARY OR PARTIAL AWARD should be vacated, set aside and held for naught, in exchange for the Second Injury Fund’s

agreement not to file its Application for Review and the Second Injury Fund's additional agreement to pay for Claimant's prescription medications^[3] for an unspecified interim period, with the understanding that the Second Injury Fund would have the right to seek reimbursement for all such payments from the other parties to the case. Based upon the parties' agreement in the conference call, the TEMPORARY OR PARTIAL AWARD was set aside on September 20, 2006, and the case was set for evidentiary hearing on October 28, 2005.

The parties subsequently requested another conference call, which was held on October 14, 2005. During that conference call, the parties advised the undersigned administrative law judge that they would be unable to complete all the necessary discovery before the October 28 hearing date; the parties also advised the undersigned that the discovery to date indicated that either Missouri Employers Mutual Insurance Company or St. Paul Travelers, or both, may have provided a policy of workers' compensation insurance for Alliance or J.D., covering the period of Claimant's accident. The October 28, 2005, hearing date was continued to January 5, 2006, and the parties were instructed to advise the undersigned as soon as there was a consensus as to which insurance company or companies should be added to the case.

On November 16, 2005, another conference call was held, in which the parties advised the undersigned that there was a consensus that St. Paul Travelers should be added to the case as a potential insurer of J.D., and that Missouri Employers Mutual Insurance Company should be added to the case as a potential insurer of Alliance. On November 17, 2005, orders were mailed to St. Paul Travelers^[4] and to Missouri Employers Mutual Insurance Company, making each a party to the case and ordering each to file answers in the case. Also during the November 16, 2005, conference call, it was agreed that January 27, 2006, would be reserved as an alternate hearing date in the case.

On December 29, 2005, another conference call was held with all the parties, on Missouri Employers Mutual Insurance Company's oral motion for continuance. Finding that discovery was proceeding expeditiously, but that it was unlikely it could be completed prior to January 5, 2006, the motion for continuance was sustained, and the case was reset for hearing on the alternate hearing date of January 27, 2006.

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FINDINGS OF FACT AND RULINGS OF LAW

The parties requested leave to file post-hearing briefs, which leave was granted. The case was submitted on February 8, 2006. Based upon the evidence adduced at the evidentiary hearing, and careful consideration of the briefs, the following Findings of Fact and Rulings of Law are made.

I find that Claimant, Trevor Kirby, was born January 3, 1976, and is now 30 years old. I find that Claimant was severely injured in a work-related accident that occurred in Columbia, Boone County, Missouri on September 16, 2003. In this accident, Claimant fell 30' to 40' feet to the ground, sustaining multiple injuries, including a closed head injury and traumatic brain injury, a severely broken right leg which has required multiple surgeries including a below-the-knee amputation, fractured cervical vertebrae, spinal cord injury, bilateral hip injury, and left foot injury. As a result of his traumatic brain injury and spinal cord injury, Claimant also suffers from a seizure disorder and severe breathing problems, including central sleep apnea.

I find that Alliance paid benefits under Chapter 287, RSMo, to Claimant, and for the benefit of Claimant, from the date of the injury through early June 2005. Those benefits included payment of over three hundred thousand dollars in medical bill payments, and TTD benefits of \$333.66 per week to Claimant. Those payments were discontinued in June 2005 when Alliance "ran out of money". I find that JD paid Claimant some additional TTD benefits in June 2005, and that Claimant's TTD benefits have been paid through June 18, 2005, in the amount of \$333.66 per week.

I find that Claimant is profoundly injured and requires around-the-clock nursing care. Claimant must use a bi-

pap machine when he sleeps; oxygen is also pumped into the bi-pap machine. The bi-pap machine has a malfunction alarm on it. If the machine were to malfunction for any significant period of time, it would likely be fatal to Claimant. The need to monitor the bi-pap machine and respond to the malfunction alarm is only one of the many reasons Claimant requires around-the-clock care.

Claimant is on multiple medications. The monthly cost of his medications is approximately \$3,500.00. Since Alliance stopped paying for Claimant's medical care, Claimant's mother, Jennifer Garringer, was required to purchase medications herself, beg for medication samples, and seek public assistance for the medications. Lack of medications could prove fatal to Claimant. Pursuant to the agreement between the parties described above, the Second Injury Fund had paid \$14,899.14 for Claimant's prescription medications at the time of the evidentiary hearing.^[5]

Since the accident, Claimant has resided with his mother when he is not hospitalized. Claimant's mother, Jennifer Garringer, a neuropsychologist, had to quit her job to take care of Claimant. Ms. Garringer's home is now wheelchair accessible for Claimant. For her around-the-clock care of Claimant, Alliance paid Ms. Garringer a monthly fee through May 2005, after which time Alliance "ran out of money". Ms. Garringer was paid a fee of \$800.00 per month for two months, \$1,200.00 a month for four months, \$2,000.00 for six months, and \$5,000.00 per month for the last five months. Prior to June 2005, Alliance was also providing Claimant with additional in-home nursing care (i.e., in addition to Ms. Garringer's care) five nights per week. Since that time, Ms. Garringer has been solely responsible for Claimant's care. On December 23, 2005, Ms. Garringer was appointed Claimant's guardian and conservator by Order of the Circuit Court of Platte County, Missouri.

I find that, for the period beginning no later than October 20, 2000, and ending no earlier than September 16, 2003, Alliance operated as an "employee leasing company" or a "Professional Employer Organization". I find that the main business of Alliance was to serve as a "personnel department" for its client companies, all of which client companies were involved in the construction business.

I find that Exhibit 5 established the framework of Alliance's agreement or contract with J.D. The following page is a photocopy of Exhibit 5:

The “Employee Handbook” referenced in Exhibit 5 was entered into evidence as Exhibit 2 (in booklet form) and as Exhibit 6 (photocopy of the booklet). The “Safety Manual” referenced in Exhibit 5 was entered into evidence as Exhibit 3 (in booklet form) and as Exhibit 7 (photocopy of the booklet). The “Co-Employment Agreement (Form 2)” referenced in Exhibit 5 was entered into evidence as Exhibit 8. [\[6\]](#)

I find that the Co-Employment Agreement was not signed or dated. I find that paragraph 6 thereof states: “This agreement shall remain in effect for one (1) year effective from the date of this Agreement.”

In the Co-Employment Agreement, J.D. is referred to as “Co-Employer”. The “RECITALS” portion of the Co-Employment Agreement states:

1. (Alliance) is engaged in the business of providing employment services by acting partially in the employer’s stead with regard to certain services provided to its employees and the administration of certain duties with regard to its employees, and
2. Co-Employer employs persons that it desires (Alliance) to assist with providing them services and administration, and
3. That this Agreement shall provide for the sharing of certain responsibilities and liabilities such that (Alliance) and Co-Employer shall act as joint employers with respect to the employees of Co-Employer and, for that reason, employer shall be known hereafter as Co-Employer, and
4. In consideration of the mutual covenants and promises set forth by this Agreement, (Alliance) agrees to provide employment services and administration with regard to Co-Employer’s employees and Co Employer accepts same.

The Co-Employment Agreement required Alliance to perform these services: All payroll services, payment of taxes and preparation and filing of all reports and forms related to taxes, and administration of workers’ compensation insurance and employee benefit plans. The Co-Employment Agreement also stated:

(Alliance) may exercise the right to control and direct certain management functions including but not limited to, recruiting, hiring, training, evaluation, supervision, discipline, replacement, termination of employees and the implementation and continuation of safety programs so long as it is necessary for (Alliance) to properly perform its obligations under this Agreement.

The following page is a photocopy of Pages 1 and 2 of the Employee Handbook (Exhibit 2):

I find that Exhibit 17 is a copy of Claimant's personnel file with Alliance. Although not dated, there is an application of employment filled out by Trevor Kirby in his own hand, applying for "steel work" with "Alliance Savings Company, Inc., A Human Resources Services Company". There is no mention of J.D. on the application for employment. Although not dated, there is, in Claimant's own hand, an acknowledgment of receipt of the Employee Handbook.

I find that, at all times relevant herein, Alliance did provide payroll services for J.D., and I find that all of Claimant's paychecks were issued by Alliance, and under Alliance's name. I find that, at all times relevant herein, Alliance did provide the administration of workers' compensation insurance and employee benefit plans for J.D./Alliance employees.

I find that Alliance prepared a REPORT OF INJURY in the form required by the Missouri Division of Workers' Compensation in regards to Claimant's injury of September 16, 2003, and that said REPORT OF INJURY was submitted in a timely fashion to the Missouri Division of Workers' Compensation. The REPORT OF INJURY is Exhibit 9. The following page is a photocopy of Exhibit 9:

I find that St. Paul Travelers wrote a policy of Missouri workers' compensation insurance covering JD. This policy was to be in effect from 2/13/03 through 2/13/04. St. Paul Travelers sent J.D. a bill for the premium, but the premium was not paid. The policy was terminated effective May 14, 2003. **I find that St. Paul Travelers had no policy in effect for J.D. (nor for any other party involved in this case) on September 16, 2003, the date of Claimant's accident.**

I find that on January 16, 2003, Alliance made an application for workers' compensation insurance to Missouri Employers Mutual Insurance Company ("MEMIC"). The application showed nine full-time employees and one part time employee, and that these employees were involved in clerical and sales jobs. I find that Alliance was attempting to procure from MEMIC workers' compensation coverage for its office staff only, and not for its construction-industry employees. The premium was based upon the office staff only, and not upon the construction-industry employees. Premium audits done by MEMIC of Alliance focused only upon the office personnel. MEMIC issued the policy to Alliance, and the period covered by the policy was from January 20, 2003, to January 20, 2004, and included the date of Claimant's accident (September 16, 2003). Because of MEMIC's prior dealings with Alliance, MEMIC was aware that Alliance was an employee-leasing company. Although the "bound application letter" stated that the policy was to cover only the office staff personnel, the policy itself covered all employees of Alliance. There was no endorsement excluding any of Alliance's employees or classes of employees.

ISSUE: Was Alliance a "covered employer" under the Missouri Workers' Compensation Law at the time of Claimant's accident?

Alliance and J.D. entered into an agreement on October 23, 2000. That agreement consisted of four documents: The signed one-page letter of agreement (Exhibit 5) and the three documents referenced in that letter of agreement – Employee Handbook, Safety Manual, and Co-Employment Agreement. These documents make it clear that Alliance and JD were to be considered as co-employers of all leased employees, that Alliance would be responsible for all payroll and benefits, including workers' compensation benefits, and that Alliance would be shown as the employer of all leased employees for all governmental reporting purposes. The Co-Employment Agreement (Exhibit 8) contained a paragraph which stated: "This agreement shall remain in effect for one (1) year effective from the date of this Agreement." Therefore, the Co-Employment Agreement, by its own terms, expired on October 23, 2001. There was no evidence that a new Co-Employment Agreement was entered into, nor that there was any other written agreement, which superceded the October 23, 2000 agreement. Yet the evidence is clear that Alliance and J.D. continued to operate under the terms of the October 23, 2000, agreement through September 16, 2003. Alliance continued to handle all payroll services, payment of taxes and preparation and filing of all reports and forms related to taxes, and administration of workers' compensation insurance and employee benefit plans for J.D.'s construction-industry employees through September 16, 2003. Claimant Trevor Kirby was hired by Alliance on February 12, 2003 (longafter the October 23, 2001 expiration of the written Co-Employment Agreement), to work for J.D., and Alliance fulfilled all of its duties in regard to Claimant as was required under the Alliance/J.D. agreement. Claimant was paid by Alliance. Alliance took care of the taxes and employee benefits, including workers' compensation coverage. Alliance maintained Claimant's personnel file, which clearly shows that Claimant applied for work with Alliance, was hired by Alliance, and received all of the written materials (Employee Handbook and Safety Manual) that were required under the Alliance/J.D. agreement of October 23, 2000. Alliance promptly prepared the report of injury for Claimant's injury, promptly commenced Claimant's TTD and medical benefits, and faithfully took care of Claimant until Alliance "ran out of money" and the TransPacific insurance policy proved worthless. J.D. continued to honor the J.D./Alliance agreement by paying Alliance for its services under the agreement. In short, even though the October 23, 2000, agreement (or at least the Co-Employment Agreement portion thereof) expired after one year, it is abundantly clear that Alliance and J.D.

continued to perform the October 23, 2000, agreement to the letter. **Under this agreement, Alliance was obligated as Claimant's employer at the time of the September 16, 2003, accident.**

Section 287.030.1(1), RSMo, states: "The word 'employer' as used in this chapter shall be construed to mean: Every person, partnership, association, corporation, limited liability partnership or company ... using the service of another for pay." Alliance was a corporation. Alliance used Claimant's services, as well as the services of its other construction-industry employees, and paid Claimant and the other employees. In a very real and tangible sense, Alliance "used" the services of the construction-industry employees it leased to J.D. and others; without the services performed by Claimant and his similarly-situated brethren, Alliance has no employees to lease, and thus no business. **I find that Alliance fits the statutory definition of "employer".**

Alliance (not J.D.) paid Claimant for his services. Alliance had the right to discharge Claimant. Alliance had the right to require that Claimant obey safety rules. "The right of an employer to fire an employee without incurring breach of contract liability is an indication of an employer-employee relationship. (Citation omitted.) The exercise of control over the work of another is a strong indicator of an employer-employee relationship, as is the payment of an hourly wage." *Cope v. House of Maret*, 729 S.W.2d 641, 643 (Mo. App. E.D. 1987).

I find that Alliance was an employer covered under the Missouri Workers' Compensation Law at all relevant times and that Alliance was the employer of Claimant on September 16, 2003.

ISSUE: Did MEMIC's policy of workers' compensation insurance, issued to Alliance, provide coverage for Claimant's accident of September 16, 2003?

The policy issued by MEMIC was in force on September 16, 2003. The policy itself covered all employees of Alliance. There was no endorsement excluding any of Alliance's employees or classes of employees.

Joyce Underwood, MEMIC's corporate representative, testified as follows:

Q. But when you undertake to write Workers' Compensation insurance coverage on an insured, you are obligated to cover all of the employees and cannot limit certain classes of employees of that insured?

A. If we're issuing a policy, that is correct.

Q. Nor does the policy in effect for Alliance Savings Company make any attempt to limit coverage to certain classes of employees of Alliance Savings Company?

A. That's correct.

Q. Covers all employees of Alliance Savings Company?

A. That is correct.

Q. Your policy that's been marked and admitted into evidence has a number of endorsements that have been attached to this policy. Correct?

A. Yes, sir.

Q. There's some schedules that attach to the policy?

A. Yes, sir.

Q. And then the information page and the pages that go through the end of the endorsements are what make up the policy of insurance that was in effect for Alliance Savings Company. Correct?

A. Yes.

Q. And that's the policy that was in effect on September 16th of 2003?

A. Yes, sir.

Q. Nothing else, the Bound Application letter, the other information that you went through on direct examination with Mr. Pool, are part of the insurance policy covering the contractual relationship between Missouri Employers Mutual and Alliance as it relates to Workers' Compensation coverage? Correct?

A. You're correct.

Q. There's nothing within the policy that Missouri Employers Mutual issued to Alliance Savings Company that states that an injured worker whose classification is not listed in the information page as an estimate of the type of work that employer is going – that employer is involved in is going to be excluded from coverage if it's not listed in the classification. Do you understand what I'm asking?

A. There is no exclusion for them, no.

Q. Okay. Simply because there is no classification for iron workers, if Alliance Savings Company has iron workers within their employment and one of them gets injured on the job, there is no exclusion for coverage simply because that was not a classification listed in the policy?

A. That's correct.

Q. Likewise, there's nothing within the policy that states coverage is unavailable to an injured employee of Alliance Savings Company simply because a Missouri Employers' auditor failed to identify proper payroll and collect or bill for proper premium for that classification of an employee?

A. Did you ask if it was in the policy?

Q. Yes.

A. No. There's nothing in the policy to that effect.

In the case of *Allen v. Raftery*, 174 S.W.2d 345 (Mo. App. St.L. 1943), the Court stated (at p. 350):

Thus it is to be seen that under the positive language of the (workers' compensation) act, every employer accepting its provisions (save for employers engaged in the mining business) is required to insure his "entire liability thereunder" with some insurance carrier, subject only to the exception that he may himself carry the whole or any part of his liability as a self-insurer "upon satisfying the commission of his ability so to do". There is no other provision in the act for limiting the scope of the insurance coverage, so that unless the employer receives authority from the commission to become a self-insurer as to a part of his operations, he must procure insurance for his "entire liability" with some insurance carrier authorized to insure such liability in this state. Were the law otherwise, difficult and troublesome questions might frequently arise (just as they have arisen in the case at bar) regarding the insurer's liability or nonliability, depending upon technical classification of operations in the policy; uncertainty would inevitably result as to the proper line of demarcation between those employees protected by the policy and those not entitled to its benefits; instead of the act being simple, plain, and prompt in its administration, such a division of insurance would promote complications, doubts, and unavoidable delays; and, in short, the highly salutary and remedial purpose of the act would be materially frustrated, if employers might be insured as to only a part of their employees, and neither carry insurance, nor qualify as self-insurers, in respect to the operations at which the others were engaged. (*Citation omitted.*)

The result is, therefore, that when an insurer undertakes to insure the liability of a particular employer under the act, such insurer must not only agree to accept "all" of the provisions of the act, but must be held to insure the employer's "entire liability thereunder", save in so far as the employer may have received authority from the commission to carry any part of his liability without insurance. This for the reason that the act becomes a part of any insurance policy which is written, and itself determines the scope of the insurer's undertaking in any matter involving the claim of an injured employee, whose right to compensation arises under the act, and not under the policy, which, so far as its construction is concerned, is to be given the declared statutory meaning (*citation omitted*) even though, as between the insurer and the employer, something different may have been actually intended. (*Citation omitted.*) As our act is written, an injured employee's rights may not be cut down by any pretended limitation of coverage unless there has been due observance of the requirement relating to self-insurance (*citation omitted*) and if any question arises over a policy which, on its face, is valid and in force, the matter is not one for the commission to determine, but is to be adjusted between the insurer and the employer in a proceeding adapted to that purpose. (*Citation omitted.*)

The principles stated in *Allen* appear conclusively to dictate that the MEMIC policy provided coverage for Claimant's September 16, 2003, accident. Yet, MEMIC urges that 20 CSR 500-6.800 dictates the opposite result.

20 CSR 500-6.800 was promulgated by the Missouri Department of Insurance pursuant to Section 287.282 RSMo; Section 287.282 states:

Employee leasing arrangements, coverage required.

287.282. 1. Notwithstanding the provisions of subsection 1 of section 287.280, every employer who obtains part of his work force from another entity through an employee leasing arrangement, or who employs the services of an entity through an employee leasing arrangement, may be required to cover his liability under the provisions of this chapter, through separate coverages or separate self-insurance on his leased employees and his nonleased employees. The director of the department of insurance may, by rule, establish the standards and procedures by which insurance coverage shall be provided to employers using only leased employees, and to employers using both leased and nonleased employees. The director of the division of workers' compensation may, by a rule, establish the standards and procedures for qualification for self-insurance for employers using only leased employees and for employers using both leased and nonleased employees.

2. Such rules shall include, but not be limited to, the registration of employee leasing arrangements prior to their eligibility for insurance, or self-insurance, the information reporting requirements for both employee leasing arrangements and for employers who use such arrangements, the extent to which a client employer's experience shall determine the premium or bond or other security amount for coverage on leased employees, and the procedures by which such coverage or self-insurance on leased employees shall be issued, endorsed, audited, cancelled and nonrenewed.

3. For purposes of this section, the term "employee leasing arrangement" shall not include temporary help service arrangements which assign their employees to clients for a finite period of time to support or supplement the client's work force in special work situations, such as employee absences, temporary skill shortages and seasonal workloads, and which are not knowingly utilized as a mechanism of depriving one or more insurers of premiums which otherwise are properly payable.

4. When an employee leasing company leases employees to only one client company and its affiliates, there is a rebuttable presumption that the client company entered into an employee leasing arrangement to avoid the calculation of the proper contribution rate for payment of workers' compensation through insurance or self-insurance.

20 CSR 500-6.800 states, in part:

(2) Eligibility for Policy Issuance and Continuance.

(A) Basic Rules. Except as provided in subsection (2)(B), a client shall fulfill its statutory responsibility to secure benefits under Chapter 287, RSMo, by purchasing and maintaining a standard Workers' Compensation policy approved by the director. The exposure and experience of the client shall be used in determining the premium for policy.

(B) Exceptions. An employee leasing company, which obtains coverage in the voluntary Workers' Compensation market and is registered with the director may elect, with the voluntary market insurer's knowledge and consent, to secure the coverage on leased employees through a standard Workers' Compensation policy issued to the employee leasing company. The insurer of the employee leasing company may take all reasonable steps to ascertain exposure under the policy and collect the appropriate premium through the following procedures:

1. Complete description of employee leasing company's operations;
2. Periodic reporting of covered client's payroll, classifications, experience rating modification factors and jurisdictions with exposure. This reporting may be supplemented by a requirement to submit to the carrier Internal Revenue Service Form 941 or its equivalent on a quarterly basis;
3. Audit of employee leasing company's operations; and
4. Any other reasonable measures to determine the appropriate premium.

In the employee leasing arrangement between Alliance and JD, Alliance was the "employee leasing company" and J.D. was the "client" as contemplated by the statute and rules. Thus, MEMIC is correct in its assertion that the "basic rule" as stated in 20 CSR 500-6.800(2)(A) is that J.D. would have the responsibility for procuring workers' compensation insurance for its employees leased from Alliance. 20 CSR 500-6.800(2)(B) states that the employee leasing company may elect to purchase workers' compensation coverage on leased employees. MEMIC argues that the policy it issued cannot cover Claimant or other employees leased to J.D., because: (1) Alliance was not "registered with the director" and (2) MEMIC issued the policy without "knowledge and consent". The first argument, that Alliance was not registered, rings somewhat hollow, as there was no evidence adduced that the Department of Insurance has such a registration procedure, and there was evidence adduced that there is no such procedure.^[7] The second argument, that MEMIC issued the policy without "knowledge and consent", is a mixed bag: MEMIC knew that Alliance was an employee leasing company ("knowledge") and MEMIC issued Alliance a policy ("consent"), yet it is abundantly clear that the transaction contemplated between Alliance and MEMIC was a coverage of office personnel only, although the policy itself contained no such limitation. What is clear to me is that the most significant deficit of "knowledge" was the lack of knowledge of the regulation itself. As MEMIC was clearly aware that Alliance was an employee leasing company, the regulation required that the policy include an EMPLOYEE LEASING COMPANY EXCLUSION ENDORSEMENT, which is Exhibit A to the regulation; MEMIC did not include that exclusion endorsement on the policy.^[8]

The most important aspect of 20 CSR 500-6.800 in this case is what it does **not** contain. The regulation contains no provision that would void a policy, nor does it contain any provision which would limit the application of a policy^[9] in the event of non-compliance with the regulation. Without such a provision, the policy applies. As stated in *Allen v. Raftery*, above: "This for the reason that the (Workers' Compensation) act becomes a part of any insurance policy which is written, and itself determines the scope of the insurer's undertaking in any matter involving the claim of an **injured employee, whose right to compensation arises under the act, and not under the policy**, which, so far as its construction is concerned, is to be given the declared statutory meaning **even though, as between the insurer and the employer, something different may have been actually intended.**" (Emphasis added.) The crux of MEMIC's argument is that it is unfair to enforce its policy, because, as between the insurer and the employer, something different was intended. As *Allen* makes clear, that is not the law. As *Allen* also makes clear: "if any question arises over a policy which, on its face, is valid and in force, the matter is not one for the commission to determine, but is to be adjusted between the insurer and the employer in a proceeding adapted to that purpose"; thus, MEMIC's remedy is not a voiding of the policy in this proceeding, but an adjustment of the premium.

I find that the MEMIC policy of workers' compensation insurance, issued to Alliance, provides coverage for Claimant's accident of September 16, 2003.

ISSUE: DID ST. PAUL TRAVELERS' POLICY OF WORKERS' COMPENSATION INSURANCE, ISSUED TO J.D., PROVIDE COVERAGE FOR CLAIMANT'S ACCIDENT OF SEPTEMBER 16, 2003?

The evidence was clear and uncontroverted that this policy was terminated effective May 14, 2003, for non-payment of premium, and that J.D. and the Division of Workers' Compensation were promptly notified of the termination. **Therefore, I find that St. Paul Travelers' policy did not provide coverage in this case.**

ISSUE: DOES THE NOTICE REQUIREMENT OF SECTION 287.420 AND/OR THE STATUTE OF LIMITATIONS OF SECTION 287.430 SERVE A BAR TO MEMIC'S LIABILITY IN THIS CASE?

Prost and its insurer have raised notice and the statute of limitations as defenses, as have MEMIC and St. Paul Travelers. Alliance and J.D. have not raised these defenses. As I have found that St. Paul Travelers has no coverage, and thus no liability, herein, these issues are moot as to St. Paul Travelers. As I find that MEMIC provided insurance coverage for Alliance, the issue of liability of Prost as general contractor is moot, and the issues of notice and statute of limitations, as to Prost, are likewise moot.

As to MEMIC's defenses: I find that on July 22, 2005, Claimant filed an Amended Claim for Compensation against "The Alliance Companies" alleging that "The Alliance Companies" and J.D. were the co-employers of Claimant at the time of his September 16, 2003, accident, and both responsible for benefits under Chapter 287, RSMo. At the evidentiary hearing of August 28, 2005, Alliance Savings Company, Inc., appeared and defended the claim filed against "The Alliance Companies". This appearance and defense by Alliance Savings Company, Inc., cured any technical defect in the Amended Claim for Compensation in regard to the identity of the alleged employer Alliance Savings Company, Inc. I find that a claim for compensation was filed by Claimant against Alliance Savings Company, Inc., within the limitations period. I find that MEMIC covered Alliance Savings Company, Inc., for Missouri Workers' Compensation purposes. The statute of limitations is not a bar to the liability of Alliance Savings Company or its insurer, Missouri Employers Mutual Insurance Company.

Similarly, Alliance Savings Company was aware of Claimant's accident immediately upon its occurrence, and prepared a report of injury. The notice requirement is not a bar to the liability of Alliance Savings Company or its insurer, Missouri Employers Mutual Insurance Company.

ISSUE: AVERAGE WEEKLY WAGE AND COMPENSATION RATE.

Alliance had paid Claimant TTD benefits at a rate of \$333.66 per week, which would have been based upon an average weekly wage of \$500.49. Payroll records in evidence only go through August 29, 2003; these records show that Claimant's rate of pay was \$12.50 per hour. Based upon the incomplete records, I find Claimant's average weekly wage to have been \$491.67, making a compensation rate of \$327.78.

ISSUE: IS CLAIMANT ENTITLED TO TTD BENEFITS FROM AND AFTER JUNE 19, 2005?

TTD benefits were paid to Claimant at the rate of \$333.66 per week through June 18, 2005. The evidence was clear that Claimant remains under medical care, is legally incapacitated, requiring a guardian and conservator, and is unable to work at any employment of any kind. Claimant is entitled to TTD benefits of \$327.78 per week from and after June 19, 2005. **Employer, J. D. Builders, Inc., Employer Alliance Savings Company, Inc., and its insurer, Missouri Employers Mutual Insurance Company are ordered to pay Claimant TTD benefits of \$327.78 from and after June 19, 2005, until such time as Claimant's condition has reached maximum medical improvement, or until Claimant is able to compete in the open market for employment, or until Claimant has been paid 400 weeks of TTD benefits, or until Claimant's death, whichever shall first occur.**

ISSUE: IS CLAIMANT ENTITLED TO REIMBURSEMENT FOR NURSING SERVICES OR CUSTODIAL SERVICES ALLEGEDLY RENDERED TO HIM BY JENNIFER GARRINGER?

I find from the evidence that Claimant has been, and continues to be, in need of constant care and monitoring. Claimant has sustained numerous injuries, including severe injuries to his right leg that have required a below the knee amputation, broken vertebrae, and spinal cord damage. Claimant also has depression and post-traumatic stress disorder. Because of the spinal cord damage, Claimant has cognitive problems, seizure disorders, behavioral problems, difficulty swallowing, and suffers from central sleep apnea. Claimant has also developed recurrent pneumonia, meningitis, and pulmonary embolism. Because of the central sleep apnea, Claimant cannot breathe on his own when he is asleep. He must use a bi-pap machine, which uses air pressure to breathe in and out for him. Oxygen is routed into the bi-pap machine. This machine has a malfunction alarm, which must be monitored. There is rarely a night without at least one alarm, and some nights as many as eight. Dr. Reese has prescribed 24-hour nursing care for Claimant.

I find that Claimant has been in need of, and continues to be in need of, 24-hour nursing care.

Except for a time when Alliance paid for a nursing service to come in and relieve her on a part-time basis, Jennifer Garringer has been providing Claimant with around-the-clock nursing and custodial care. Ms. Garringer was compensated by Alliance for these services through the end of May 2005. Ms. Garringer has continued to perform these services since May 2005.

In *Schuster v. State Div. Of Employment Security*, 972 S.W.2d 377 (Mo. App. E.D. 1998), and in *Fitzgerald v. Meyer*, 820 S.W.2d 633 (Mo. App. E.D. 1991), the Eastern District recognized that a spouse could be reimbursed for the nursing care rendered to a claimant if the employer had notice of the need for nursing care or a demand for such care was made, and the employer refused, failed, or neglected to provide the treatment. The rule should be no different in this case where Claimant's mother has provided the nursing care. Alliance, the Employer, clearly had notice of Claimant's need for the nursing care. Therefore, Claimant is entitled to reimbursement for Ms. Garringer's nursing care. The question is the amount that should be compensated.

Jennifer Garringer testified that she provides nursing services to Claimant between 16 and 19 hours a day. Although I am not required to accept Ms. Garringer's estimate of those services (see *Fitzgerald, supra*), I find the estimate of 16 hours per day to be quite reasonable based upon Claimant's needs.

Therefore, in an average month of 30 days, Ms. Garringer would spend at least 480 hours providing Claimant with nursing services. Therefore, I find \$4,800.00 to be a fair, albeit conservative, monthly amount due to Ms. Garringer for these services. **Therefore, Employer, J. D. Builders, Inc., Employer Alliance Savings Company, Inc., and its insurer, Missouri Employers Mutual Insurance Company are ordered to pay Claimant the sum of \$43,200.00 (i.e., \$4,800.00 x 9 months) to compensate Claimant for nursing services rendered by Jennifer Garringer from June 2005 through February 2006.**

ISSUE: PAYMENT FOR PAST MEDICAL TREATMENT.

The evidence adduced makes it clear that the medical treatment that Claimant has received has been reasonable and necessary to cure and relieve Claimant from the effects of the work-related accident. **Therefore, Employer, J. D. Builders, Inc., Employer Alliance Savings Company, Inc., and its insurer, Missouri Employers Mutual Insurance Company are ordered to pay all unpaid medical charges for the medical treatment that Claimant has received since September 16, 2003, including (but by no means limited to) the charges of University of Kansas Medical Center and North Kansas City Hospital, both of which entities are parties to this case (having filed medical fee dispute applications).**

ISSUE: ADDITIONAL MEDICAL TREATMENT.

The evidence was clear that Claimant continues to be in need of medical treatment for his work-related injury. **Therefore, Employer, J. D. Builders, Inc., Employer Alliance Savings Company, Inc., and its insurer, Missouri**

Employers Mutual Insurance Company are ordered to provide Claimant with all such medical, surgical, chiropractic and hospital treatment, including nursing, custodial, ambulance and medicines, as may reasonably be required to cure and relieve Claimant from the effects of the work-related injury, all as required by Section 287.140, RSMo.

ISSUE: REIMBURSEMENT OF THE SECOND INJURY FUND.

As noted above, the Second Injury Fund (“the Fund”) has been paying for Claimant’s prescriptions.

Section 287.220.5, RSMo, states in part:

If an employer fails to insure or self-insure as required in section 287.280, funds from the second injury fund may be withdrawn to cover the fair, reasonable, and necessary expenses to cure and relieve the effects of the injury or disability of an injured employee in the employ of an uninsured employer

At the time the Fund made an agreement to pay for Claimant’s prescription medications only (in order to keep Claimant alive), it appeared that Alliance and J.D. had “fail(ed) to insure or self-insure” their workers’ compensation liability in this case. Therefore, the Fund had a right to make these payments. Of course, as stated above, the Fund reserved its right to recoup these payments from whichever entity or entities are legally liable for payment of benefits in this case under Chapter 287, RSMo.

There is no question that the prescription medications for which the Fund has paid were reasonably required to cure and relieve Claimant from the effects of the work-related injury, and thus are the responsibility of Employer, J. D. Builders, Inc., Employer Alliance Savings Company, Inc., and its insurer, Missouri Employers Mutual Insurance Company. **Therefore, Employer, J. D. Builders, Inc., Employer Alliance Savings Company, Inc., and its insurer, Missouri Employers Mutual Insurance Company are ordered to reimburse the Second Injury Fund for all of its expenditures for Claimant’s prescription medications.**

Claimant’s attorney, William Spooner, is allowed 25% of all sums awarded hereunder for temporary total disability benefits and for nursing services, as and for necessary attorney’s fees.

This award is only temporary or partial, is subject to further order, and the proceedings are hereby continued and the case kept open until a final award can be made.

Date: _____

Made by: _____

ROBERT J. DIERKES

Administrative Law Judge

Division of Workers' Compensation

A true copy: Attest:

Patricia "Pat" Secrest

Director

Division of Workers' Compensation

[1] In its letter of March 22, 2004, the Division also points out that “TPA One” was likewise not authorized by the Department of Insurance to do business in Missouri.

[2] In addition to its arrangement with J.D., Alliance had a similar insurance arrangement with several of its other construction industry clients or “partners”; in each of these arrangements TransPacific International Insurance Company, Ltd., provided the promise of a high-deductible workers’ comp insurance policy and TPA One provided the administration of the deductible or self-insurance retention portion of each claim.

[3]

There is little question that Claimant will not survive without these medications.

[4] The order was addressed and mailed to “Travelers Commercial Casualty Insurance Company”, as that was the name of the issuing company on the policy. This company has since changed its name to “St. Paul Travelers”.

[5] This amount of \$14,899.14 includes \$1,209.67 which was approved prior to the hearing, and which was scheduled to be mailed on February 1, 2006. The Second Injury Fund has made additional payments for prescription medications since the date of the hearing.

[6] In his deposition, David Jatho identified a “Service Agreement” (pp. 470-491 of Exhibit 1), and not the Co-Employment Agreement, as being one of the operative documents between Alliance and J.D. Jatho later changed his testimony in that regard. It is clear from the evidence, and from Exhibit 5 in particular, that the “Service Agreement” was NOT a part of the agreement between Alliance and J.D.

[7] Lewis Melahn, former director of the Department of Insurance, called as an expert witness by MEMIC, testified that he was unaware of a “registration mechanism”; when asked if he was aware of any leased employer that has been able to register effectively with the State of Missouri, Mr. Melahn answered “I haven’t dealt with one, so I’d have to say no.”

[8] Melahn testified that the EMPLOYEE LEASING COMPANY EXCLUSION ENDORSEMENT would only be attached when the insurer “specifically write(s) a policy to insure an employee leasing company *and their covered clients and their employees*”, however, the language of the exclusion endorsement itself makes it clear to me that it should be used on all policies issued to employee leasing companies.

[9] Other than the use of the EMPLOYEE LEASING COMPANY EXCLUSION ENDORSEMENT.