

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

Injury No.: 02-011264

Employee: Keith Madison
Employer: See attached
Insurer: Unknown
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund (Open)
Date of Accident: January 31, 2002
Place and County of Accident: St. Louis City

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 June 22, 2005. The award and decision of Administrative Law Judge Jennifer L. Schwendemann, issued June 22, 2005, 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 4th day of May 2006.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

Injury No.: 02-011264
Employee: Keith Madison

The following is a list of Employers alleged in the Claim for Compensation:

W. A. Thomas Real Estate Appraisal Company
Sharon Ivora Robnett
Robnett, Incorporated
Homer G. Phillips Dignity House LP
Dignity House Tenant Development LLC
Dignity House Landlord Development LLC
WAT Dignity Urban Redevelopment Corporation
Andrea T Gordon
W A T Dignity Corporation
Ivora Properties, Incorporated
Union Sarah NSA I LTD LP
Union Sarah Realty Investment Corporation
RMT Accounting Services. Incorporated
W A Thomas and Company, Incorporated
W A Thomas Realty Company, Incorporated
W A T Realty Company, Incorporated
Alice Thomas Bracken
Sandra Thomas Nobles
William Thomas

AWARD

Employee:	Keith Madison	Injury No.:	02-011264
Dependents:	N/A		Before the
Employer:	See attached		Division of Workers'
			Compensation
Additional Party:	Second Injury Fund (Open)		Department of Labor and Industrial
			Relations of Missouri
			Jefferson City, Missouri
Insurer:	Unknown		
Hearing Date:	February 8, 2005	Checked by:	JLS: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: January 31, 2002
5. State location where accident occurred or occupational disease was contracted: St. Louis City
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? N/A

11. Describe work employee was doing and how accident occurred or occupational disease contracted:
Driving to purchase equipment and supplies for job.
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: Body as a whole
14. Nature and extent of any permanent disability: 12 ½% body as a whole
15. Compensation paid to-date for temporary disability: -0-
16. Value necessary medical aid paid to date by employer/insurer? -0-

Employee: Keith Madison Injury No.: 02-011264

17. Value necessary medical aid not furnished by employer/insurer? \$8,102.98
18. Employee's average weekly wages: \$480.00
19. Weekly compensation rate: \$320.00
20. Method wages computation: Two-thirds of average weekly wage

COMPENSATION PAYABLE

21. Amount of compensation payable:

Unpaid medical expenses:	\$ 8,102.98
Permanent partial disability from Employer	\$16,000.00

22. Second Injury Fund liability: Open

TOTAL:	\$24,102.98
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23. Future requirements awarded: N/A

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 hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

Jeff Roth

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Keith Madison Injury No.: 02-011264

Dependents: N/A Before the
Division of Workers'

Employer: See attached

Compensation

Department of Labor and Industrial

Additional Party: Second Injury Fund (Open)

Relations of Missouri

Jefferson City, Missouri

Insurer: Unknown

Checked by: JLS:tr

PRELIMINARIES

A hearing was held on February 8, 2005. The Claimant was represented by Attorney Jeff Roth. There was no appearance by or on behalf of any of the Employers alleged in the claim. The claim against the Second Injury Fund will remain open.

Subsequent to the hearing, on June 2, 2005, a formal entry of appearance was received by the Court from Margaret Bush Wilson. Ms. Wilson entered her appearance on behalf of all "alleged" Employers listed in the claim except Union Sarah NSA I Ltd., LP and Union Sarah Realty Investment Corporation. (See Employer's Exhibit 1). The Court takes note that Ms. Wilson had appeared at the Division at previous settings of this case, but had never entered her appearance until after the trial was held. The Court further notes that on the date of the hearing a phone call/voice mail was received by the Court from someone from Ms. Wilson's office explaining that she had a fall and was unable to attend the hearing. No prior request for continuance was received. This matter was set for Hearing six times and or Prehearing three times before the actual trial date. No formal entry of appearance was received on behalf of any Employer until June 2, 2005. No answer to the claim was ever filed on behalf of the Employer.

The Court recognizes this award is issued outside of the 90 days suggested by §287, however, at the request of Claimant's counsel, an extension was given to allow him additional time to submit a proposed decision.

Notice of the hearing dated February 8, 2005 was sent to all of the alleged Employers by certified mail pursuant to §287.450 and §287.520 Mo Rev. Stat. (2000); *Westin Transport Inc. v. Sharp*, 936 S.W.2d. 219, 221-22 (Mo.App. 1996).

The following exhibits were admitted into evidence:

- Exhibit A. Medical Records, Medical Reports and Itemized Treatment Bills including those from St. Louis Connect Care, St. John's Mercy Hospital and Mark Lichtenfeld, M.D.
- Exhibit B. Missouri Division of Employment Security Quarterly Contribution and Wage Report of the 1st Quarter of 2002 ending on March 31, 2002.
- Exhibit C. Holiday and Sick Day Policy.
- Exhibit D. Union Sarah NSA Management Review.
- Exhibit E. Union Sarah NSA Paycheck Stubs.
- Exhibit F. Missouri Secretary Of State Corporation Status Forms as of February 7, 2005.
- Exhibit G. W-2 Form of Union Sarah NSA I Ltd for 2001.
- Exhibit H. Auto Accident Police Report – City of St. Louis Police Department.

The following issues were presented for resolution:

1. Whether Claimant and the alleged Employer (as an Employer is recovered by the Missouri Workers' Compensation law) on January 31, 2002.
2. Accident
3. Notice
4. Arising out of and in the course of employment
5. Medical causation
6. Past medical expenses in the amount \$8,102.98
7. Rate of compensation
8. Percentages of permanent partial disability
9. Whether or not the Employer(s) are in default.

FINDINGS OF FACT

Based upon the credible and substantial evidence, I find the following:

1. The Court takes judicial notice of the Division of Workers' Compensation file contents.
2. Claimant, a 41-year-old male, testified that on January 31, 2002, while working for one or more of the alleged Employers, was sent to Home Depot for supplies. He was involved in a car accident with his supervisor, David Bates. The car the men were traveling in was hit by a truck. The Claimant was wearing his seatbelt.

The men had received permission from the Employer's main office to purchase additional supplies needed for a government building inspection.

3. The Claimant testified that he worked for Union Sarah NSA I Ltd. This company owned various apartment complexes. The main office for Union Sarah was housed at W.A. Thomas Realty on Kirkham Street in St. Louis County. Mr. Madison was hired by Sharon Robnett who along with her sister, Alice Bracken, ran the business. The Claimant testified that he had been working there for over six months. His title was Maintenance Supervisor and he believed his Employer to be W.A. Thomas.
4. W.A. Thomas is the Employer listed on Claimant's W-2 form. (See Claimant's Exhibit G).
5. Mr. Madison testified that he had visited the W.A. Thomas address on Kirkham before and he believed that many companies were operated from the one place of business. Many of these businesses are listed as alleged employers in the Claim for Compensation. He specifically took orders from Alice Bracken or Sharon Robnett. He was aware that another one of their sisters, Sandy Nobles, also helped in the business.
6. At the time of the injury, the Claimant testified that besides Mr. Bates, a gentleman by the name of LaBert also worked at Union Sarah, along with different contractors and maintenance people. He mentioned Rhonda Westfall and a woman by the name of Laverne. These people were in addition to the employees working at the Kirkham address.
7. The Claimant testified to the best of his knowledge his understanding of the Union Sarah relationship with W.A. Thomas. He believed W.A. Thomas reaped the benefits of rent from the Union Sarah apartment complex.
8. The Claimant testified he was on call 24 hours a day and that he easily worked 50 hours a week, paid \$12.00 an hour, and was only paid for a 40 hour week or \$960.00 every two weeks. (See Claimant's Exhibit E).
9. At the time of the injury, the Claimant felt no immediate pain and was able to return to work the same day. Then, however, he developed pain in his back. He told Sandra Nobles and the W.A. Thomas office the same day about the accident and the fact that his pain was hurting him. He denied having any prior back pain before this injury. A police report was filed and the Claimant was cited for failing to present an insurance card. (See Claimant's Exhibit H). When he inquired about insurance to see a doctor he was told by Ms. Nobles that none existed. The Claimant testified that he was in pain, without medical treatment being provided to him through his Employer, and without having private insurance he sought treatment at Connect Care.
10. The records from Connect Care, which were admitted into evidence, shows that the patient arrived the same day of the accident complaining of back and neck pain. He had a positive drug screen. (See Claimant's Exhibit A). He was sent to St. John's for a scan due to abdominal pain. X-rays of his lumbar spine were also done. According to his testimony, he left St. John's against medical advice to return to work. (See Claimant's Exhibit A).
11. The Claimant testified that he talked to Sandy Nobles, Ron Franklin, and another woman at W.A. Thomas by the name of Allie, regarding payment of his medical bills. He was told not to bother Sharon Robnett about the matter.
12. The Claimant saw Dr. Mark Lichtenfeld on several occasions beginning February 11, 2002, for pain in his back, neck, shoulders, and right hand. He was prescribed physical therapy, pain medication, and exercises. Dr. Lichtenfeld's bills total \$3,172.00. Dr. Lichtenfeld did eventually release the Claimant and recommended that he be placed on light duty. However, the Claimant knew that no light duty was available so he continued to work, occasionally missing time from work due to the pain. He continued to work for the Employer for another six to eight months. (See Claimant's Exhibit A).
13. The Claimant testified that several of the alleged Employers knew about his treatment with Dr. Lichtenfeld and that he was seeing Dr. Lichtenfeld because of injuries he suffered in the motor vehicle accident. He was never directed to another physician and he was required to take time off for his physical therapy appointments.
14. Presently, the Claimant complains of pain in his left hip and back. He has days that are better than others but has difficulty sitting too long or reading where his neck is in a bent position. He is unable to walk on stilts in mud to do his drywall work. He is unable to walk on scaffolding or walk boards and he tries not to paint above his neck level. He attributes all of these problems to the injury as he claims that he has no prior medical problems in the past. He testified that his pain depends upon activity. His knee will occasionally buckle. He is required to sit down and rest, but he can't sit longer than one or two hours without feeling stiffness. He testified that it takes him longer to do certain activities and he has had to change or modify the

way he does his job. Lifting a five-gallon bucket of paint is sometimes too heavy for him. He takes Tylenol and/or Bayer four to five times a week for the discomfort. He presently works for himself and can pace himself accordingly. He does fatigue easily. He was prescribed a back brace by Dr. Lichtenfeld and continues to have pain from his mid-back down his left leg into his thigh, and pain from his neck into his right hand. His hand goes to sleep two to three times a week. He no longer has any abdominal pain. The Claimant denies sustaining any subsequent injuries after the motor vehicle accident.

15. The Claimant testified in a truthful and credible manner. His medical records are consistent with his testimony.
16. A claim for compensation was first filed on February 15, 2002. Amended claims were filed on April 17, 2002 and June 22, 2004. On all three occasions, the Division of Workers' Compensation sent a copy of the Claim for Compensation to the Employer(s). In the notice sent by the Division, the Employer(s) was advised of Division Rule 8 CSR 50-2.010 subparagraph 12 and subparagraph 13 requiring that an Answer to the Claim for Compensation be filed within 15 days and that if no answer(s) were filed, then the statements of fact and the Claim for Compensation would be deemed admitted for any further proceeding. No answer(s) to the claim(s) was filed by Employer(s) or its insurer. Where the Employer fails to file an answer to the claim, the fact allegations contained in the claim are deemed admitted pursuant to 8 CSR 50-2.010 subsection 13. Questions of law are not deemed admitted. *Jackson v. Midwest Youngstown Industries*, 849 S.W.2d. 709 (Mo.App. 1993)
17. William A. Thomas, who is the deceased father of Sharon Robnett, Alice Thomas Bracken, Sandra Thomas Nobles and William Thomas is the general partner who owns Union Sarah NSA I Ltd., LP (limited partnership). This entity is listed as being active. It must be noted that in Missouri none of the corporate paperwork is available for the public viewing. His address is listed as 209 East Kirkham. The other general partner is Union Sarah Realty Investment Corporation, which is also one of the entities listed herein as an Employer. (See Claimant's Exhibit F).
18. Sharon Robnett is the registered agent of Robnett Incorporated with a mailing address listed at 209 East Kirkham. (Id).
19. Sharon Robnett is the registered agent of Homer G. Phillips Dignity House, LP, an active limited partnership with a mailing address of 225 East Kirkham. Sharon Robnett signed a Statement of Change of Registered Agent and/or Registered Office of Limited Partnership on December 28, 2001, just five weeks before this work accident of January 31, 2002. More specifically, Sharon Robnett changed the address from 209 East Kirkham to 225 East Kirkham and listed her own title as being "President" of Homer G. Phillips Dignity House, LP. Above her signature, Sharon Robnett typed the words "W.A.T. Dignity Corporation" and thus admits she is the president of W.A.T. Dignity Corporation as well. (Id).
20. Sharon Robnett is the registered agent and "organizer" of Dignity House Tenent Development, LLC, which is an active limited liability corporation. Sharon Robnett uses her 225 Kirkham address in her capacity as registered agent and uses her 209 East Kirkham address in her capacity as organizer. Sharon Robnett signed a Statement of Change of Registered Agent and/or Registered Office of Limited Partnership of October 30, 2001, just three months before this January 31, 2002, work accident wherein she changed her address from 209 East Kirkham to 225 East Kirkham. (Id).
21. Sharon Robnett is the registered agent and "organizer" of Dignity House Landlor Development, LLC, which is an active limited liability corporation. Sharon Robnett uses her 225 Kirkham address in her capacity as registered agent and uses her 209 East Kirkham address in her capacity as organizer. Sharon Robnett signed a Statement of Change of Registered Agent and/or Registered Office of Limited Partnership of October 31, 2001, just three months before this January 31, 2002, work accident wherein she changed her address from 209 East Kirkham to 225 East Kirkham. (Id).
22. Sharon Robnett is the registered agent of WAT Dignity Urban Development Corporation with the address listed as being at 225 East Kirkham. This corporation was administratively dissolved by the State on October 21, 2004, which is over two and one-half years after this work accident. (Id).
23. Sharon Robnett is the registered agent of W.A.T. Dignity Corporation, which is still in good standing, and she uses her 225 East Kirkham address in this capacity. Sharon Ivora Robnett is listed as the president of this corporation in the 2004 Annual Registration. Her attorney, Margaret Bush Wilson, is listed as the vice president, and her sister, Andrea Thomas Gordon, is listed as the secretary. All three of them are listed as being the members of the corporate board of directors. 225 East Kirkham is listed as the principal place of business/corporate headquarters. (Id).
24. Sharon Robnett is the registered agent of Ivora Properties, Inc. (as seen above, Sharon Robnett's middle name is Ivora). This is a corporation in good standing and she uses her 225 East Kirkham address in her registered

agent capacity. In the 2004 Annual Registration, Sharon Ivora Robnett is listed as the president, secretary, and only member of the board of directors and 225 East Kirkham is listed as the principal place of business/corporate headquarters. (Id).

25. RMT Accounting Services, Inc., which is the entity listed on Claimant's W-2, is listed as having an office address of 209 East Kirkham. (Id).
26. W.A.T. Realty Company, Inc. used to be called W.A. Thomas Realty Company, Inc. W.A. Thomas and Company, Inc. is another slight variant of the corporate name. (Id).
27. The following entities were not listed as employers in this claim, but the corporate extracts are included to show the scope of corporate and partnership ownership and control in order to impute these and all those listed above should combine to create one individual entity for purposes of this claim and the absolute impossibility that there are less than five employees: Voyager-West, Inc. (William A. Thomas at 209 East Kirkham is registered agent of this corporation); Silver Springs Apartments Ltd., LP (William A. Thomas at 209 East Kirkham is still listed as registered agent of this active limited partnership though he is deceased); Workshop Campus, LP (William A. Thomas, deceased, at 209 E. Kirkham is listed as registered agent and partner of this active limited partnership); WAT Nursing Home, Inc. (William A. Thomas, deceased, at 209 E. Kirkham is listed as registered agent of this corporation); University Plaza, LP (William A. Thomas, deceased, at 209 East Kirkham is still listed as registered agent of this active limited partnership); Penrose Park Limited Partnership (William A. Thomas, deceased, at 209 East Kirkham is still listed as registered agent and general partner of this limited partnership); and Maffitt Associates, LP (William A. Thomas, deceased, at 209 East Kirkham is still listed as registered agent and general partner of this active limited partnership). (Id).
28. The Claimant testified that Sharon Robnett regularly moved him and other employees around to work at all of her different company real estate sites.

RULINGS OF LAW

Based upon the above Findings of Fact, I find:

I. Is the Employer in default

The Employer in this matter is in default. The Employer failed to file not only a timely answer, but any timely answer for the amended claims which were filed. Despite the appearance of the attorney who has now entered as counsel for the Employer(s), and despite her appearance at at least one or more of the court settings, no answer was ever filed on behalf of the Employer(s).

II. Accident/Course and Scope

The Claimant, while in the employment of W.A. Thomas, did sustain an accident on January 31, 2002, which occurred in the course and scope of his employment. No evidence was presented to refute his allegations. The police report and medical records are consistent with his testimony. I find the injury to be compensable and to satisfy the requirements of §287.120 RSMo.

Additionally, I find the Employer maintained more than five employees and was therefore subject to the Missouri Workers' Compensation law as provided by §287.090.1 (2) RSMo.

The Court further finds that Section 287.030.1(1) defines an employer as any entity including a person partnership, corporation and others, including a limited liability partnership that uses the service of another. The definition of the term "employer" is liberally construed so as to extend benefits to the largest possible class of claimants and to restrict those excluded to the smallest possible class. *Dost v. Pevely Dairy Co.*, 273 S.W.2d 242 (Mo.1954). Any doubt presented in any case should be resolved in favor of an employee being subject to the jurisdiction of the Workers' Compensation Law, since the Law was established to regulate employers, not individuals. *Burgess v. NaCom Cable Co.*, 923 S.W.2d 450 (Mo.App. E.D. 1996). Therefore I find that all entities named herein are deemed to be classified as employers for purposes of this claim.

The intention of the parties determines whether or not a worker is the employee of an alleged employer which is demonstrated by actions of the parties, nature of the business enterprise involved, the

relative situations of the parties and the unique circumstances of each case. *Rendleman v. East Tex. Motor Freight Lines*, 196 S.W.2d 171 (Mo.1946). In construing The Workers' Compensation Law, employment status must be determined on the peculiar facts of each case. *Hutchison v. St. Louis Altenheim*, 858 S.W.2d 304 (Mo.App. E.D. 1993). To determine if an employment relationship exists, courts first apply a two-factor test, sometimes referred to as the controllable services test. *Lloyd A. Lynn, Inc.*, 493 S.W.2d 363 (Mo.App. 173). First a worker must be "in the service" of the alleged employer. *Walls by Walls v. Allen Cab Co., Inc.*, 903 S.W.2d 937 (Mo.App. E.D. 1995). The right to control is the key factor in determining whether an employment relationship exists. *State v. Turner*, 952 S.W.2d 354 (Mo.App. W.D. 1997). To be considered an employee, a worker must be subject to the alleged employer's control with respect to the worker's physical conduct in the performance of the service in question. *Patterson v. Engineering Evaluation Inspections, Inc.*, 913 S.W.2d 344 (Mo.App. E.D. 1995). Even though the actual exercise of control, the extent of control, the duration of the employment, the method of payment for the services, the furnishing of equipment to the worker by the employer, the relationship of the services to the regular business of the employer, the contract of employment and other factors may each be relevant factors to be considered when attempting to ascertain the existence or absence of the right of control, none of those factors is determinative in and of itself. *Burgess v. NaCom Cable Co.*, 923 S.W.2d 450 (Mo.App. E.D. 1996).

In this case, Sharon Robnett controlled all aspects of Claimant's job including his job duties, where the jobs were performed, when the jobs were performed, payment to Claimant, payment for the purchasing of all supplies to perform all job duties, and furnishing of all equipment to perform all job duties, all in furtherance of the regular businesses of Sharon Robnett and W.A. Thomas. I find all entities named are deemed to be the employers and each is jointly and severally liable for all benefits due this Claimant.

III. Notice

The Court finds that the Claimant gave notice to his Employer regarding the injury. His supervisor was present at the time of the injury. His testimony was credible that he contacted several members of the W.A. Thomas Realty/Union Sarah NSA I Ltd., LP to alert them of the fact that he was injured on the job on January 31, 2002.

IV. Rate of Compensation

Again, based upon the Claimant's credible testimony and with no evidence to refute the evidence presented, the Court finds that the Claimant's average weekly wage was \$480.00 which entitles to a TTD/PPD rate of \$320.00.

V. Past Medical Expenses

The Claimant presented evidence that he requested medical care for his injury from his Employer. He presented bills totaling \$8,102.98 for medical treatment he received following the accident. The treatment was reasonable and necessary to cure and relieve the effects of the work injury. Missouri law requires the Employer to pay for such treatment. Their failure to choose an authorized physician or medical provider does not eliminate their statutory obligation. Employer is hereby ordered to pay all outstanding medical bills or reimburse the Claimant for any expenses he paid directly for the treatment he received following the work accident of January 31, 2002.

VI. Medical Causation and PPD

The Claimant's injury on January 31, 2002, has resulted in permanent partial disability. Based upon the medical evidence and the testimony, I find the Claimant sustained a 12 ½% permanent partial disability referable to the body as a whole.

The following is a list of Employer alleged in the Claim for Compensation:

Union Sarah NSA I Ltd., LP
W.A. Thomas Real Estate Appraisal Company
Sharon Ivora Robnett
Robnett, Inc.
Homer G. Phillips Dignity House LP
Dignity House Tenant Development LLC
Dignity House Landlord Development, LLC

WAT Dignity Urban Redevelopment Corporation.
Andrea T. Gordon
W A T Dignity Corporation
Ivora Properties, Inc.
Union Sarah Realty Investment Corporation
RMT Account Services, Inc.
W.A. Thomas and Company, Inc.
W.A. Thomas Realty Company, Inc.
W A T Realty Company, Inc.
Alice Thomas Bracken
Sandra Thomas Nobles
William Thomas

Date: _____

Made by: _____

Jennifer L. Schwendemann
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Patricia "Pat" Secret
Director
Division of Workers' Compensation