

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

Injury No.: 07-133419

Employee: Yordanka Morrero  
Employer: Kids Kick-Start Campus, LLC  
Insurer: Uninsured  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund

This workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. We have reviewed the evidence, read the briefs, and considered the whole record. Pursuant to § 286.090 RSMo, we reverse the award and decision of the administrative law judge.

**Introduction**

The parties submitted the following issues for determination by the administrative law judge: (1) whether employer was an employer operating subject to the Missouri Workers' Compensation Law on December 10, 2007, and whether employer was insured; (2) whether employee was employed by employer; (3) whether employee was working subject to the law in Kansas City, Clay County, Missouri; (4) whether employee sustained an accident arising out of and in the course of her employment; (5) whether employee notified employer of her injury as required by law; (6) employee's average weekly wage and the applicable rates of compensation; (7) whether employee is entitled to temporary total disability benefits; (8) whether employee is entitled to reimbursement for past medical care; (9) whether and to what extent employee suffered any permanent partial disability, with employee alleging a 24% permanent partial disability at the 200-week level of the left arm; (10) whether employee is entitled to any compensation for disfigurement; and (11) whether "Kids Kick Start Campus" was a properly named employer in this matter. Employee requested an award against both the alleged employer and the Second Injury Fund for reimbursement of her past medical expenses in the event that the administrative law judge found in favor of employee on the disputed issues.

The administrative law judge concluded employee improperly pled "Kids Kick Start Campus" when the properly named employer should have been "Kids Kick-Start Campus, LLC." The administrative law judge concluded that she could not make a finding of liability against any employer, and could not make a finding of liability against the Second Injury Fund.

Employee filed a timely Application for Review with the Commission arguing the administrative law judge erred because the alleged employer filed an Answer in which it was admitted that the employee was employed by "Kids Kick Start Campus" on the date of injury.

For the reasons set forth herein, we reverse the administrative law judge's award and decision.

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### **Findings of Fact**

On December 10, 2007, employee was working at the Kids Kick-Start Campus daycare center located at 428 N.W. Englewood Road in Kansas City, Clay County, Missouri. Employee worked 40 hours per week performing childcare services at the daycare center. For her services, she earned \$8.00 per hour.

Employee was hired to work at the daycare center by Angela Lukenbill. Angela Lukenbill ran the daycare center and signed the paychecks. Employee submitted a paycheck stub which identifies "Kids Kick-Start Campus/Angela Lukenbill" as the payor. Angela Lukenbill is the registered agent for Kids Kick-Start Campus, LLC, a limited liability company organized under the laws of Missouri. We find that the name of the entity for which employee was performing services on December 10, 2007, was Kids Kick-Start Campus, LLC. We find, based on the paycheck stub, that Kids Kick-Start Campus, LLC, was conducting business using the name "Kids Kick-Start Campus." On December 10, 2007, twenty-three employees were working for Kids Kick-Start Campus, LLC, at least ten of whom were full-time staff.

On December 10, 2007, employee was taking a group of children to a gym at the daycare center, when a little girl started running. Employee ran after the child to keep her from falling. Employee tried to grab the child, but slipped and fell. Employee landed on her outstretched left arm and hand and felt immediate and severe pain. Employee's supervisor, Terry, came over and helped employee stand up. Employee asked Terry for medical help. Terry took employee in her car to a clinic, where employee saw Dr. Erich Lingenfelter, who gave employee medication for pain, took some x-rays, and sent employee to the hospital. Terry took employee to the hospital, where doctors told employee that she needed to come back and have surgery on her arm.

From December 10, 2007, employee's doctors restricted her from returning to work. On December 12, 2007, Dr. Lingenfelter performed surgery on employee's left arm. Employee did not experience relief following this surgery and continued to suffer pain and discomfort. On January 2, 2008, Dr. Steven Smith performed a second surgery on employee's left arm. During a follow-up appointment on March 27, 2008, Dr. Smith released employee to return to work with a restriction that she lift nothing over ten pounds. Employee went back to work for Kids Kick-Start Campus, LLC, from April to June 2008. Employee eventually returned to see Dr. Smith, who performed a third surgery on July 2, 2008, to remove the hardware from employee's left arm. Because of ongoing problems following that third surgery, employee was unable to work, and eventually quit her job on August 23, 2008. Employee returned to Dr. Smith for some follow-up care, but was not able to obtain the physical therapy Dr. Smith prescribed because Ms. Lukenbill told her that Kids Kick-Start Campus, LLC, would not pay for it.

Employee has received bills for the medical care she received following her left arm fracture on December 10, 2007. Employee has been unable to satisfy the charges, and receives calls from collection agencies seeking payment of her outstanding balances. Employee provided the bills she received, the medical records reflecting the treatment giving rise to the charges, and testimony identifying the bills. We find that employee

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incurred the following charges with the following healthcare providers as a result of treatment she received for her left arm following her fall on December 10, 2007:

Northland Anesthesiology	\$ 1,875.00
Northland Bone & Joint, Inc.	6,677.00
North Kansas City Hospital	34,027.96
Northland Radiology, Inc.	32.00

According to the foregoing bills, the total amount incurred by employee for past medical expenses related to her left arm fracture equals \$42,611.96. We note, however, that employee, in her brief, identifies \$40,829.96 as the total amount of past medical expenses.

Following her three surgeries, employee continues to have pain and reduced strength and range of motion in her left arm. Changes in the weather increase employee's pain. Sometimes when employee grabs an object with her left hand, she drops it. The multiple surgeries also left employee with some scarring, including a three to four inch scar down the center of her left forearm, a one to two inch scar on her left hand, and a third scar higher up on her left arm which is approximately an inch to an inch-and-a-half in length.

Employee presented expert medical testimony from Dr. Douglas Rope, who opined that employee's fall on December 10, 2007, was the prevailing factor causing her to suffer a comminuted intra-articular fracture of the left wrist. Dr. Rope rated employee's left arm injury at 24% permanent partial disability of the left upper extremity at the 200-week level. The Second Injury Fund did not provide any expert medical testimony to contradict Dr. Rope's opinions. We find Dr. Rope's testimony to be credible.

We take administrative notice of the records of the Division of Workers' Compensation (Division) connected with this file. On June 19, 2008, employee filed with the Division a Claim for Compensation alleging that on December 10, 2007, she sustained an injury in the course and scope of her employment for "Kids Kick Start Camput [sic]." Employee did not identify the alleged employer as "Kids Kick-Start Campus, LLC." On June 23, 2008, the Division sent notice of employee's filing her Claim for Compensation to 428 N.W. Englewood Road, Kansas City, MO 64118, the address where Kids Kick-Start Campus, LLC, was operating the daycare center.

On July 21, 2008, an entity identifying itself as "Kids Kick Start Campus" filed with the Division an Answer to employee's Claim for Compensation wherein it admitted employee was employed by it on December 10, 2007, but denied the other elements of employee's claim. In its Answer, the entity identifying itself as the employer left blank the box marked "Name of Insurance Carrier or Self-Insured Group/Trust." In the space for "Employer's Signature," an unknown person wrote "Kids Kick Start Campus." The Answer set forth 428 N.W. Englewood Road, Kansas City, MO 64118, as the address of the employer, and the Division continued to send notices to that address. (We note that, after the United States Postal Service returned a March 7, 2011, Notice of Hearing to the Division bearing a "Return to Sender" sticker and a new address for "Kids Kick-Start Campus," the Division thereafter sent notices to the new address.)

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On February 7, 2012, employee's counsel sent a letter, via certified mail, to Angela Lukenbill, informing her that employee's claim was set for hearing before the Division on March 9, 2012. That certified letter was signed for as received on February 8, 2012. We find that on February 8, 2012, Kids Kick-Start Campus, LLC, acquired, via its registered agent Angela Lukenbill, actual notice of employee's claim, and that it was set for hearing before the Division on March 9, 2012.

Kids Kick-Start Campus, LLC, failed to appear or present any defense at the hearing before the administrative law judge on March 9, 2012. The hearing took place at 1410 Genessee Street, Suite 210, Liberty, MO 64102. We take administrative notice that this address is located in Jackson County, Missouri.

### **Conclusions of Law**

#### **Properly named employer**

The administrative law judge determined that employee improperly pled "Kids Kick Start Campus" when the properly named employer should have been "Kids Kick-Start Campus, LLC," and that this defect in employee's Claim for Compensation precluded a finding of liability against any employer. In effect, the administrative law judge dismissed employee's claim because she failed to write "LLC" after the words "Kids Kick Start Campus" on her Claim for Compensation. To reach this result, the administrative law judge did not rely upon any provision of the Missouri Workers' Compensation Law, and instead accepted the Second Injury Fund's argument that the civil pleading rule of § 509.020 RSMo should apply. That provision states, as follows:

Every pleading shall contain a caption setting forth the name of the court, the title of the action, the file number, and a designation as in section 509.010. In the petition the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.

The foregoing statute governs the captions that litigants in civil lawsuits must set forth in their pleadings. Turning back to Chapter 287, we find no provision setting forth pleading requirements or authorizing an administrative law judge to dismiss a claim for failure to properly name an employer. Instead, we find § 287.550 RSMo, which provides that: "All proceedings before the commission or any commissioner shall be simple, informal, and summary..." Turning to the applicable regulations, we find the following provision governing an employee's Claim for Compensation:

(7) The employee or the employee's dependents may file a Claim for Compensation. In order that the place of setting may be determined, the county in which the accident occurred must be stated on the claim, and if the injury occurred outside of the state of Missouri, the name of the county in which the contract of employment was made must be stated. The claim shall be filed with sufficient copies for the division and each employer and insurer named, and the attorney general in case of a Second Injury Fund claim. The claim must be filed within the time prescribed by sections 287.430 or 287.440, RSMo, for accidental injuries, or section 287.063.3,

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RSMo, for occupational disease. A claim against the Second Injury Fund must be asserted affirmatively by the claimant and cannot be made by any other party to the claim, on motion or otherwise. Naming the state treasurer as a party is not, in itself, sufficient to make a claim against the fund. Injuries which are claimed to create fund liability must be specifically set forth in the Claim for Compensation.

8 C.S.R. 50-2.010.

The foregoing regulation does not set forth a pleading requirement applicable to the present situation, nor does it authorize an administrative law judge to dismiss a claim for failure to properly name an employer. It thus appears that no authorization for the administrative law judge's action in this case can be found in Chapter 287 or the applicable state regulations. The question remains whether the administrative law judge was correct in applying the pleading requirements set forth in § 509.020 RSMo to this workers' compensation claim.

While we note that 8 C.S.R. 50-2.010(14) provides that the rules of evidence for civil cases are applicable in hearings before the Division, we are aware of no authority for the proposition that a statute governing civil pleadings in the circuit courts applies to an employee's Claim for Compensation, or that such rules of civil procedure should apply with the effect that a workers' compensation claim must be dismissed<sup>1</sup> where the employee fails to comply. The Second Injury Fund, in its brief, fails to identify any authority so suggesting.

The courts of this state have historically held that "[t]he provisions of the Civil Code are not applicable to Workmen's Compensation proceedings. The Compensation Act itself is an exclusive and complete code and provides for its own procedure." *Groce v. Pyle*, 315 S.W.2d 482, 492 (Mo. App. 1958). More recently, a court decided that a Missouri Supreme Court rule of civil procedure pertaining to depositions was applicable to depositions taken pursuant to § 287.560 RSMo. *State ex rel. McConaha v. Allen*, 979 S.W.2d 188, 189-90 (Mo. 1998). But that court reached its decision based upon an express provision of § 287.560 RSMo providing that litigants before the Division are entitled to take depositions in the same manner as in civil proceedings. *Id.* at 188. And the court made clear that its opinion did "not address or decide the question of what rules of civil procedure, other than those that apply to depositions, are applicable to proceedings before the division of workers' compensation." *Id.* at 189. Meanwhile, we find another court indicating more recently that, "[a]s a general proposition, the Missouri Rules of Civil Procedure do not apply to workers' compensation actions, unless a statute implicates the application of a specific rule." *Brewer v. Republic Drywall*, 145 S.W.3d 506, 510 n.5 (Mo. App. 2004).

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<sup>1</sup> We note that nothing in the language of § 509.020 RSMo itself indicates that the decidedly harsh penalty of dismissal should result where a party fails to comply with its requirements.

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In addition to the foregoing, there is the longstanding and unbroken line of authority suggesting that strict pleading requirements should not be applied in workers' compensation proceedings so as to defeat substantive rights:

In Workers' Compensation proceedings, substantial compliance with the provisions of the Compensation Act is ordinarily sufficient. Procedural rights are considered as subsidiary and substantive rights are to be enforced at the sacrifice of procedural formality. Thus the claim or application for a hearing contemplated by the Workers' Compensation Act does not have to contain the usual elements of a petition in the civil action.

*Loyd v. Ozark Electric Coop., Inc.*, 4 S.W.3d 579, 586 (Mo. App. 1999)(citation omitted).

The Workers' Compensation Law provides that "[a]ll proceedings before the commission or any commissioner shall be simple, informal, and summary . . . ." § 287.550. Consistent with this overarching principle, workers' compensation claims are not subject to the technical requirements of petitions in judicial proceedings . . .

*Goad v. Treasurer of Mo.*, 372 S.W.3d 1, 10 (Mo. App. 2011)(citation omitted).

In sum, we can find no authority for the proposition that the civil pleading requirements of § 509.020 should be applied to this workers' compensation claim. Instead, § 287.550 and the relevant Missouri case law support exactly the opposite conclusion. Accordingly, we reject the Second Injury Fund's invitation to venture outside the scope of the Missouri Workers' Compensation Law and will decline to apply § 509.020.

The question remains whether employee's failure to write "LLC" on her Claim for Compensation after the words "Kids Kick Start Campus" is a defect so material as to defeat employee's right to a determination of the merits of her workers' compensation claim. Turning to the Missouri cases on the topic, we discover that the mere misnomer of a corporate entity generally is *not* material:

Mere misnomer of a corporate defendant in words and syllables is immaterial, provided there is no substantial mistake so as to indicate a different entity, it is duly served with process, and the corporation could not have been, or was not, misled.

*Gunter v. Bono*, 914 S.W.2d 437, 440 (Mo. App. 1996)(citation omitted).

At least one court has applied the foregoing rule in a workers' compensation case to find that a misnomer of a corporate employer was immaterial. *Barlow v. Shawnee Inv. Co.*, 229 Mo. App. 51, 65 (Mo. App. 1932). The *Barlow* case involved a different procedural posture than the present circumstances, but we believe it stands for the proposition that the rule regarding misnomer of a corporate defendant is applicable in the workers' compensation context.

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Accordingly, in the absence of any specific provision of Chapter 287 or the applicable regulations granting us authority to dismiss employee's claim for failure to properly plead the name of the entity alleged to be liable for compensation, we will apply the Missouri case law holding that a failure to properly name a corporate defendant is immaterial where there is no substantial mistake, where the appropriate entity was served with process, and where the entity was not misled by the misnomer. *Deane v. S.F. Pizza, Inc.*, 229 S.W.3d 223, 225 (Mo. App. 2007).

When we apply that analysis, we are convinced that employee's mistake was not so substantial as to indicate she intended to identify a different entity as the employer alleged to be liable for compensation. Employee provided un rebutted testimony and we have credited that testimony to find that she was hired to work at a daycare facility in Kansas City, Missouri, holding itself out as "Kids Kick-Start Campus." We have also found that the person who hired employee and who signed her paychecks was Angela Lukenbill, the registered agent for Kids Kick-Start Campus, LLC. We have found that Kids Kick-Start Campus, LLC, is the name of the entity for which employee was working on December 10, 2007. Most importantly, we can find no evidence whatsoever to indicate that, by leaving out the designation "LLC" on her Claim for Compensation, employee intended to identify a different entity as the employer alleged to be liable for compensation. To the contrary, it appears that when employee filed her Claim for Compensation, she simply used the name that appeared on her paycheck, a name which Kids Kick-Start Campus, LLC, had *itself* used in conducting its business. Given these circumstances, we conclude that there can be no mistake as to the entity employee alleges she was working for when she fell on December 10, 2007.

Next, we ask whether Kids Kick-Start Campus, LLC, was served with process. In the workers' compensation context, employees are not required to effectuate "service" on employers; instead, the statute and regulations place upon the Division the duty of providing the initial notice to an employer that an employee has filed a claim. See § 287.450 RSMo; 8 CSR 50-2.010(8). Accordingly, in asking whether Kids Kick-Start Campus, LLC, was "served with process," we first ask whether the Division fulfilled its statutory duty in effectuating notice.

We have found that on June 23, 2008, the Division sent notice of employee's Claim for Compensation to the address where Kids Kick-Start Campus, LLC, was operating the daycare center: 428 N.W. Englewood Road, Kansas City, MO 64118. We have also found that, after an entity identifying itself as "Kids Kick Start Campus" filed with the Division an Answer to employee's Claim for Compensation, the Division mailed the notices required by statute to the address contained in the Answer which was, once again, the 428 N.W. Englewood Road address. When the March 7, 2011, notice was returned, the Division thereafter used the forwarding address that the United States Postal Service provided. In the absence of any request from Kids Kick-Start Campus, LLC, that notices be sent to a different address, we cannot say that the Division was unreasonable in using the forwarding address provided by the United States Postal Service. Given these circumstances, we conclude there was no due process failure on the part of the Division in this matter.

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We have also found, as a factual matter, that on February 8, 2012, Kids Kick-Start Campus, LLC, acquired actual notice of employee's claim and of the March 9, 2012, hearing before the administrative law judge, when its registered agent Angela Lukenbill signed for the letter that employee's counsel sent, via certified mail, to Ms. Lukenbill informing her of employee's claim and of the proceedings before the Division. Thus, even if there were some issue with the notices sent by the Division, Kids Kick-Start Campus, LLC, was unquestionably aware of the proceedings before the Division in sufficient time to raise a defense or register an objection to the Division's jurisdiction. We conclude that Kids Kick-Start Campus, LLC, was properly "served with process" for purposes of the Missouri Workers' Compensation Law.

Finally, we turn to the question whether Kids Kick-Start Campus, LLC, was misled or otherwise prejudiced by employee's misnomer. We cannot so conclude. We have found that a supervisor with Kids Kick-Start Campus, LLC, assisted employee in the moments after she fell and suffered the left arm fracture on December 10, 2007. This circumstance demonstrates that Kids Kick-Start Campus, LLC, had actual notice that employee had suffered an injury that was potentially covered under the Missouri Workers' Compensation Laws. Given that Kids Kick-Start Campus, LLC, had actual notice of the incident itself, and thereafter on February 8, 2012, acquired actual notice of employee's claim, and of the March 9, 2012, hearing before the administrative law judge, but thereafter failed to appear or present any defense at that hearing, there is no evidence on this record to suggest that Kids Kick-Start Campus, LLC, was in any way misled or otherwise prejudiced by employee's failure to write "LLC" after "Kids Kick Start Campus" on her Claim for Compensation.

Given the foregoing analysis, we must conclude that employee's misnomer is immaterial and thus not fatal to her claim. Consistent with the Missouri cases instructing that "substantive rights are to be enforced at the sacrifice of procedural formality," we are convinced that employee is entitled to a review of her claim on its merits. *Spencer v. SAC Osage Elec. Co-op, Inc.*, 302 S.W.3d 792, 803 (Mo. App. 2010). We turn now to that review.

*Whether Kids Kick-Start Campus, LLC, was an employer*

Section 287.030 RSMo defines an "employer" for purposes of the Missouri Workers' Compensation Law, and provides, in relevant part, as follows:

1. The word "employer" as used in this chapter shall be construed to mean:
  - (1) Every person, partnership, association, corporation, limited liability partnership or company, trustee, receiver, the legal representatives of a deceased employer, and every other person, including any person or corporation operating a railroad and any public service corporation, using the service of another for pay; ...
  - (3) Any of the above-defined employers must have five or more employees to be deemed an employer for the purposes of this chapter ...

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We have found that employee was performing services for Kids Kick-Start Campus, LLC, a limited liability company, on December 10, 2007, for pay. We have also found that Kids Kick-Start Campus, LLC, had twenty-three employees on that date. Pursuant to § 287.030, we conclude that Kids Kick-Start Campus, LLC, was an employer for purposes of the Missouri Workers' Compensation Law on December 10, 2007. Hereinafter, we will refer to Kids Kick-Start Campus, LLC, as "employer."

Whether employer was insured

The parties dispute whether employer was insured for purposes of its liability under the Missouri Workers' Compensation Law. Section 287.280 RSMo provides, in relevant part, as follows:

1. Every employer subject to the provisions of this chapter shall, on either an individual or group basis, insure his entire liability thereunder, except as hereafter provided, with some insurance carrier authorized to insure such liability in this state, except that an employer or group of employers may themselves carry the whole or any part of the liability without insurance upon satisfying the division of their ability so to do.

Section 287.300 RSMo provides, in relevant part, as follows:

On the request of the division or the commission and at every hearing the employer shall produce and furnish it with a copy of his policy of insurance, and on demand the employer shall furnish the injured employee, or his dependents, with the correct name and address of his insurer, and his failure to do so shall be prima facie evidence of his failure to insure, but the presumption shall be conclusively rebutted by an entry of appearance of his insurer.

Employer failed to appear at the hearing before the administrative law judge. No insurer entered an appearance in this matter. There is no evidence before us to indicate that employer had insured its liability for purposes of the Missouri Workers' Compensation Law or had been determined qualified to self-insure such liability as of December 10, 2007.

In light of the presumption under § 287.300, we conclude that employer was uninsured for purposes of its liability under the Missouri Workers' Compensation Law on December 10, 2007.

Whether employee was an employee of employer

Section 287.020.1 RSMo defines an "employee" for purposes of the Missouri Workers' Compensation Law, and provides, in relevant part, as follows:

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

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We have found that Angela Lukenbill hired employee to work for employer, and that employee worked forty hours per week and earned \$8.00 per hour for her services. Given these circumstances, we are convinced that employee was in the service of employer under a contract of hire. We conclude employee was an employee of employer.

Accident

The version of § 287.020.2 RSMo applicable to this claim provides the following definition of an "accident" for purposes of the Missouri Workers' Compensation Law:

The word "accident" as used in this chapter shall mean an unexpected traumatic event or unusual strain identifiable by time and place of occurrence and producing at the time objective symptoms of an injury caused by a specific event during a single work shift.

We have found that, on December 10, 2007, employee was working for employer at its daycare center. We have found that employee was chasing after a little girl who was running, and was reaching out to stop the girl, when she slipped and fell down. We have found that employee landed on her outstretched left arm and hand, and felt immediate and severe pain. In other words, employee proved that she suffered an unexpected traumatic event identifiable by time and place and producing at the time objective symptoms of an injury caused by a specific event during a work shift.

Employee's evidence has satisfied the statutory definition. We conclude employee sustained an accident.

Injury arising out of and in the course of employment

We proceed now to the question whether employee proved her injuries arose out of and in the course of employment. Section 287.020.3(2) RSMo sets forth the test and provides, as follows:

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

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

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

Dr. Rope testified that employee's fall on December 10, 2007, was the prevailing factor causing her to suffer a comminuted intra-articular fracture of the left wrist and associated disability. We have credited Dr. Rope's testimony. We conclude that the accident is the prevailing factor in causing employee's injury. Employee has satisfied subsection (a) of the foregoing provision.

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We must now determine whether, pursuant to subsection (b), employee proved that her injuries did not come from a hazard or risk unrelated to the employment to which workers would have been equally exposed outside of work in normal life. The courts have interpreted the language of subsection (b) to involve a “causal connection” test that employees must satisfy in order to prove that an injury has arisen out of and in the course of employment. *Johme v. St. John’s Mercy Healthcare*, 366 S.W.3d 504, 510-11 (Mo. 2012), quoting *Miller v. Mo. Highway & Transp. Comm’n*, 287 S.W.3d 671, 674 (Mo. 2009). In *Johme*, the court made clear that our analysis must begin with an identification of the hazard or risk that resulted in the employee’s injuries, followed by a quantitative comparison whether this specific employee was equally exposed to that risk in her own normal nonemployment life. 366 S.W.3d at 512. Given the circumstances involved in this case and the facts as we have found them, we conclude employee’s injuries resulted from the hazard or risk of chasing an errant child, entrusted to her care, over a slippery surface.

Turning to the quantitative analysis, we find no evidence on this record to suggest that employee regularly exercised custody and control over other people’s children in her normal non-employment life, much less that a regular feature of such hypothetical activity involved running after children over a slippery surface. We conclude, therefore, that employee’s injury does not come from a hazard or risk unrelated to the employment to which she would have been equally exposed outside of and unrelated to the employment in normal non-employment life. Employee has satisfied subsection (b) of the foregoing provision.

Given the foregoing, we conclude that employee’s injuries arose out of and in the course of her employment for purposes of § 287.020.3(2) RSMo.

#### Notice

Section 287.420 RSMo states that “[n]o proceedings for compensation for any accident under this chapter shall be maintained” unless written notice meeting certain specifications has been provided the employer within a certain time period following the accident. The courts have held that the allegation that an employee failed to comply with the terms of § 287.420 constitutes an affirmative defense for the employer. *Snow v. Hicks Bros. Chevrolet, Inc.*, 480 S.W.2d 97, 100 (Mo. App. 1972).

The Second Injury Fund, in its Answer filed with the Division, did not identify the issue of notice under § 287.420, nor did it allege any facts that would go to the issue of notice. We note that, at the hearing, the administrative law judge listed, as one of the issues disputed by the parties, “whether [employee] notified the employer of the injury as required by law.” *Transcript*, page 5. But thereafter, the Second Injury Fund did not put on any evidence pertinent to the issue of notice, and failed even to cross-examine employee on the question whether she provided notice to employer.

The Second Injury Fund, in failing to plead the issue of notice in its Answer and declining to put on any evidence pertinent to the issue of notice, has abandoned its affirmative defense. *Lawson v. Emerson Electric Co.*, 809 S.W.2d 121, 125 (Mo. App. 1991). The issue of notice, therefore, is not properly before us. *Hayes v. Compton Ridge*

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*Campground, Inc.*, 135 S.W.3d 465, 469 (Mo. App. 2004). It follows that employee's claim is not barred by § 287.420 RSMo.<sup>2</sup>

*Was employee working subject to the law in Kansas City, Clay County, Missouri?*

We have found, as a factual matter, that employee was working for employer at its daycare center located in Kansas City, Clay County, Missouri, on December 10, 2007. We have also concluded that employer was an employer for purposes of the Missouri Workers' Compensation Law as of that date, and that employee was employed by employer. These findings and conclusions would, taken together, seem to resolve the question, as identified by the administrative law judge, "whether Ms. Morrero was working subject to the law in Kansas City, Clay County, Missouri." *Transcript*, page 5. But we note that the parties identified this issue as a separate one from the issues whether employer was an employer for purposes of the law and whether employee was employed by employer. We note also the statement by counsel for the Second Injury Fund that, "We will not agree to anything, not stipulate to anything." *Transcript*, page 4.

Thus, in the interest of thoroughly resolving all of the disputed issues as identified by the parties, we will briefly analyze the issue of venue, which appears to be the only remaining legal issue implicated in the question "whether Ms. Morrero was working subject to the law in Kansas City, Clay County, Missouri." Section 287.640.2 RSMo provides, as follows:

Unless the parties otherwise agree, all original hearings shall be held in the county, or in a city not part of any county, where the accident occurred, or in any county, or such city, adjacent thereto, or if the accident occurred outside of the state, then the hearing shall be held in the county or city where the contract of employment was made, or the county where employment of the employee was principally localized. If venue cannot otherwise be established by this subsection, then the division shall determine the venue of the hearing. The division shall determine the location of the hearing within the county, or city not within a county, of venue.

We have found that employee suffered an accident in Clay County, Missouri. We have found that the hearing before the administrative law judge took place in Jackson County, Missouri. We take administrative notice that Jackson County is adjacent to Clay County. Accordingly, we conclude the hearing was held in the appropriate venue for purposes of § 287.640 RSMo.

*Average weekly wage and rate of compensation*

Employee's wages were fixed by the hour. Accordingly, we look to § 287.250 RSMo which provides, in relevant part, as follows:

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<sup>2</sup> We note, for the benefit of the parties, that had the Second Injury Fund properly raised the affirmative defense of notice, the defense would fail. This is because employee provided un rebutted and credible testimony that a supervisor had actual notice of her injuries; the burden thus would fall to the Second Injury Fund to demonstrate how employer was prejudiced. See *Sell v. Ozarks Med. Ctr.*, 333 S.W.3d 498, 511 (Mo. App. 2011). Again, the Second Injury Fund provided no such evidence.

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

(4) If the wages were fixed by the day, hour, or by the output of the employee, the average weekly wage shall be computed by dividing by thirteen the wages earned while actually employed by the employer in each of the last thirteen calendar weeks immediately preceding the week in which the employee was injured or if actually employed by the employer for less than thirteen weeks, by the number of calendar weeks, or any portion of a week, during which the employee was actually employed by the employer. For purposes of computing the average weekly wage pursuant to this subdivision, absence of five regular or scheduled work days, even if not in the same calendar week, shall be considered as absence for a calendar week. ...

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

We have no evidence of the specific wages employee earned in the thirteen weeks preceding her work injury, so we are unable to perform the formula set forth in § 287.250.1(4). However, we have found that employee worked 40 hours per week and made \$8.00 per hour. This would produce a weekly wage of \$320.00.

Pursuant to § 287.250.4, we conclude employee's average weekly wage is \$320.00, which yields, pursuant to §§ 287.170.1(4) and 287.190.5(5) RSMo, a resulting compensation rate of \$213.33 for both temporary total and permanent partial disability benefits.

#### Temporary total disability

Section 287.170 RSMo provides for temporary total disability benefits to cover the employee's healing period following a compensable work injury. The test for temporary total disability is whether, given employee's physical condition, an employer in the usual course of business would reasonably be expected to employ her during the time period claimed. *Cooper v. Medical Ctr. of Independence*, 955 S.W.2d 570, 575 (Mo. App. 1997). Accordingly, we look to the evidence of employee's physical condition following the work injury.

We have found that employee was restricted by her doctors from returning to work from December 10, 2007, through March 27, 2008, and because of ongoing problems following her third surgery, was unable to work from July 2, 2008, until she quit her job on August 23, 2008. Employee requests an award of temporary total disability benefits for these two time periods.

Employee: Yordanka Morrero

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We conclude that, given employee's physical condition and the restrictions from her doctors following the work injury and related surgeries, no employer in the usual course of business would reasonably be expected to employ her during the time periods at issue. We conclude employer is liable for 22.86 weeks of temporary total disability benefits at the rate of \$213.33 per week, for a total of \$4,876.72.

Past medical treatment

We conclude that employee met her burden of demonstrating employer is liable for her medical expenses flowing from the work injury of December 10, 2007. Section 287.140.1 RSMo provides, as follows:

In addition to all other compensation paid to the employee under this section, the employee shall receive and the employer shall provide such medical, surgical, chiropractic, and hospital treatment, including nursing, custodial, ambulance and medicines, as may reasonably be required after the injury or disability, to cure and relieve from the effects of the injury.

Where the parties dispute whether a particular past medical expense comes within the employer's obligation under § 287.140, the burden of proof falls on employee for each claimed past medical expense to provide 1) the medical bill, 2) the medical record reflecting the treatment giving rise to the bill, and 3) testimony establishing that the treatment flowed from the compensable injury. *Martin v. Mid-Am. Farm Lines, Inc.*, 769 S.W.2d 105, 111-12 (Mo. banc 1989).

Here, employee provided her bills, medical records, and testimony establishing the treatments flowed from her work injury. The Second Injury Fund did not present any evidence to rebut employee's testimony, and we have found employee's evidence credible.

The total amount of charges reflected in the bills, according to our calculation, is \$42,611.96. But, as we noted previously, employee identifies \$40,829.96 as the total amount of past medical expenses in her brief filed with the Commission. It appears that employee may have subtracted certain adjustments identified variously as "self pay patient discounts" or "patient payment" or "patient responsibility" in the bills from Northland Bone & Joint, Inc. The Second Injury Fund did not put on any evidence to show that employee's liability for the charges reflected in the bills from Northland Bone & Joint, Inc., has been extinguished in any amount by write-offs, discounts, or any source falling outside the scope of § 287.270 RSMo. See *Farmer-Cummings v. Pers. Pool of Platte County*, 110 S.W.3d 818, 823 (Mo. 2003). But because employee appears to admit or concede that her liability has been reduced by such adjustments, we will not second-guess her accounting.

Accordingly, we conclude employee is entitled to \$40,829.96 in past medical expenses for treatment that was reasonably required to cure and relieve from the effects of the December 10, 2007, work injury.

Employee: Yordanka Morrero

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Permanent partial disability

Under § 287.190 RSMo, employee is entitled to permanent partial disability benefits from employer if she is able to prove the nature and extent of permanent disability resulting from her compensable work injury. Dr. Rope opined employee suffered a 24% permanent partial disability at the 200-week level of the left arm as a result of the work injury, and we have found Dr. Rope's testimony to be credible.

We find employee suffered a 24% permanent partial disability at the 200-week level of the left arm as a result of the work injury. We conclude employee is entitled to, and employer is obligated to pay, \$10,239.84 in permanent partial disability benefits.

Disfigurement

Section 287.190.4 RSMo governs the compensation that may be paid in cases of disfigurement and provides, in pertinent part, as follows:

If an employee is seriously and permanently disfigured about the head, neck, hands or arms, the division or commission may allow such additional sum for the compensation on account thereof as it may deem just, but the sum shall not exceed forty weeks of compensation.

We have found that employee's multiple surgeries left her with some scarring, including a three to four inch scar down the center of her left forearm, a one to two inch scar on her left hand, and a third scar higher up on her left arm which is approximately an inch to an inch-and-a-half in length. We conclude employee is entitled to 8 weeks of compensation at the \$213.33 rate, for a total of \$1,706.64 for employee's disfigurement resulting from the work injury.

Uninsured employer and Second Injury Fund liability

We have found that employer failed to insure or self-insure its liability for purposes of the Missouri Workers' Compensation Law as of December 10, 2007. Section 287.220.5 RSMo provides, as follows:

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, or in the case of death of an employee in the employ of an uninsured employer, funds from the second injury fund may be withdrawn to cover fair, reasonable, and necessary expenses in the manner required in sections 287.240 and 287.241. In defense of claims arising under this subsection, the treasurer of the state of Missouri, as custodian of the second injury fund, shall have the same defenses to such claims as would the uninsured employer. Any funds received by the employee or the employee's dependents, through civil or other action, must go towards reimbursement of the second injury fund, for all payments made to the employee, the employee's dependents, or paid on the employee's behalf, from the second injury fund pursuant to this subsection. The office of the

Employee: Yordanka Morrero

attorney general of the state of Missouri shall bring suit in the circuit court of the county in which the accident occurred against any employer not covered by this chapter as required in section 287.280.

Pursuant to the foregoing provision, we conclude that funds shall be withdrawn from the Second Injury Fund to cover the fair, reasonable, and necessary expenses to cure and relieve the effects of employee's left arm injury or disability.

**Award**

We reverse the award of the administrative law judge. Employee's claim is not barred owing to any defect in naming employer on her Claim for Compensation, and she met her burden of proof as to each of the disputed issues.

Employer is liable for employee's past medical expenses. Because employer failed to insure or self-insure as required by § 287.280 RSMo, funds shall be withdrawn from the Second Injury Fund to pay those past medical expenses in the amount of \$40,829.96

Employer is liable to employee for temporary total disability benefits for 22.86 weeks in the amount of \$4,876.72.

Employer is liable to employee for permanent partial disability benefits in the amount of \$10,239.84, and disfigurement in the amount of \$1,706.64.

This award is subject to a lien in favor of C. Carl Kimbrell, Attorney at Law, in the amount of 25% for necessary legal services rendered.

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

The award and decision of Administrative Law Judge Emily S. Fowler is attached solely for reference.

Given at Jefferson City, State of Missouri, this 6<sup>th</sup> day of March 2013.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

V A C A N T  
Chairman

\_\_\_\_\_  
James Avery, Member

\_\_\_\_\_  
Curtis E. Chick, Jr., Member

Attest:

\_\_\_\_\_  
Secretary

## FINAL AWARD

Employee: Yordanka Morrero Injury No. 07-133419  
Dependents: N/A  
Employer: Kids Kick Start Campus  
Insurer: Unknown  
Additional Party: Missouri State Treasurer as Custodian of the Second Injury Fund  
Hearing Date: March 9, 2012 Checked by: ESF/pd

### FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No
2. Was the injury or occupational disease compensable under Chapter 287? Unknown
3. Was there an accident or incident of occupational disease under the Law? Unknown
4. Date of accident or onset of occupational disease: December 10, 2007
5. State location where accident occurred or occupational disease was contracted: Gladstone, Clay County, Missouri
6. Was above Employee in employ of above employer at time of alleged accident or occupational disease? Unknown
7. Did employer receive proper notice? Unknown
8. Did accident or occupational disease arise out of and in the course of the employment? Unknown
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Unknown
11. Describe work employee was doing and how accident occurred or occupational disease contracted: While chasing a child in her care, Employee slipped on icy surfaces and fell on her outstretched left arm and hand, causing her injuries.
12. Did accident or occupational disease cause death? No. Date of death? N/A

13. Part(s) of body injured by accident or occupational disease: Left upper extremity at the hand, wrist and forearm
14. Nature and extent of any permanent disability: Undetermined at this time
15. Compensation paid to date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer? None
17. Value necessary medical aid not furnished by employer/insurer? \$40,829.96
18. Employee's average weekly wages: \$320.00
19. Weekly compensation rate: \$213.32/\$213.32
20. Method wages computation: 67% of average weekly wage

**COMPENSATION PAYABLE**

21. Amount of compensation payable: None awarded at this hearing
  22. Second Injury Liability: None awarded at this hearing
- .

## FINDINGS OF FACT and RULINGS OF LAW:

Employee: Yordanka Morrero Injury No. 07-133419  
Dependents: N/A  
Employer: Kids Kick Start Campus  
Insurer: Unknown  
Additional Party: Missouri State Treasurer as Custodian of the Second Injury Fund  
Hearing Date: March 9, 2012 Checked by: ESF/pd

On March 9, 2012, the parties appeared for a final hearing. The Division had jurisdiction to hear this case pursuant to §287.110. The Employee, Yordanka Morrero, appeared in person and with counsel, Mr. C. Carl Kimbrell. The Employer did not appear. The Second Injury Fund appeared by and through Assistant Attorney General, Ms. Kimberly Fournier.

### STIPULATIONS

The parties were unable to stipulate or agree upon any matters.

### ISSUES

The issue to be resolved by this hearing are as follows:

- 1) Were the Employer and Employee operating under and subject to Missouri Workers' Compensation law;
- 2) Was the claim filed by the Employee within time permitted and did she give proper notice to the Employer;
- 3) What was the weekly compensation rate of the Employee;
- 4) Did the Employee sustain an accident while in the course and scope of her employment with Kids Kick Start Campus;
- 5) Did the Employee incur medical expenses as a result of her injuries;
- 6) What is the nature and extent of Employee's disability;
- 7) Was Employer properly insured under the law; and
- 8) Is Kids Kick Start Campus the proper Employer.

### FINDINGS OF FACT AND RULINGS OF LAW

The Employee, Yordanka Morrero, testified in person and offered the following exhibits, all of which were admitted into evidence without objection except Claimant's Exhibit D which was objected to by the Second Injury Fund and was not allowed:

*Joint Exhibit A – Letter to Employer from Claimant’s counsel dated 2/7/12, re:  
Notice of hearing*

*Joint Exhibit B – Deposition of Dr. Douglas Rope dated 1/26/11*

*Joint Exhibit C – Amended Notice of Deposition of Dr. Rope*

*Joint Exhibit D – Letter from Employer to Employee dated 12/10/07*

*Joint Exhibit E – Claimant’s pay stub dated 8/29/08*

The Second Injury Fund offered no witness testimony but offered the following exhibit into evidence which was admitted into evidence over the objection of Employee.

*Second Injury Fund Exhibit No. 1 – Articles of Organization for Kids Kick-Start Campus, LLC.*

The Claimant, Yordanka Morrero (hereinafter referred to as Claimant) testified that she began her employment at Kids Kick Start Campus in approximately August 2007. She testified that this was a daycare type business located at 428 N.W. Englewood Road, Gladstone, Clay County, Missouri. She stated the daycare center employed at least 23 full-time workers and that she was a full-time worker caring for the young children. She also testified that she earned \$8 per hour and she worked 40 hours a week.

The Claimant claimed that on December 10, 2007 while in the course and scope of her employment she was leading children from a classroom to a gymnasium when one child began to run off. She chased the errant child and while doing so slipped on icy surfaces falling on her outstretched left arm. It was later determined she had broken several bones in her wrist and forearm. She subsequently had medical care, including surgeries on her wrist. She stated she was unable to work since December 10, 2007 through March 28, 2008 and again from July 2, 2008 until August 25, 2008. She stated she incurred bills of up to \$40,829.96 from various medical providers which were not paid by her employer. She also testified that her left arm continued to have pain and was weak. She would drop things that she was holding and her range of motion was reduced. She had scars on her arm and wrist as a direct result of the surgery she endured due to her injuries. The testimony of Dr. Douglas Rope was submitted by deposition in which he ultimately determined that the medical bills were reasonable and that he felt that Claimant suffered a permanent partial disability of the left upper extremity at the 200 week level of 24 percent.

The Second Injury Fund offered their Exhibit No. 1 which was a document from the State of Missouri from the Secretary of State’s office which was a certificate of corporate records. Specifically, this was the articles of organization of a named limited liability corporation of Kids Kick-Start Campus, LLC. This document shows that the LLC filed its articles of organization with the Secretary of State’s Office on June 17, 2006; further, that the duration of the limited liability corporation was perpetual; and that the registered agent was Angela Lukenbill.

The Claimant’s attorney objected based on the grounds that the Second Injury Fund’s Exhibit No. 1 was a business record of the Secretary of State and under the business records rule, “We are entitled to a copy of those records seven days ahead of trial and we have not received them.” The attorney for the Second Injury Fund, Ms. Fournier, responded, “This is the duty of the party who is bringing an action to name the proper party. I obtained the record from the Secretary of State, as can anybody obtain the record from the Secretary of State, to determine

who the correct party was in this case. It was the burden of Ms. Morrero and her counsel to name the correct party. Absent them doing that and going and getting the record on their own, I think it shows that the position the Fund is taking that they are not a correctly named employer in the State of Missouri is substantiated.” At that time, the Court determined to take the ruling on the admission of Second Injury Fund Exhibit No. 1 under advisement and to make a determination after the parties had an opportunity to brief this matter.

Claimant’s attorney argues that “Section 287.040 of the Revised Statutes of Missouri provides that any person who works on or about the premises of an employer which is an operation of the usual business which that employer carries on shall be deemed an employer and shall be liable under the laws of workers’ compensation and therefore shall be deemed an employee. There is not a universal method for determining Employer/Employee relationship and the general rule is that Workers’ Compensation Law must be construed liberally, with close cases ruled in favor of finding coverage of a worker by its provisions (Busselle v. Wal-Mart, 37 SW 3d, 839 (Mo.App. S.D. 2001).”

However, the Court, upon reviewing the statutes, notes that 287.800 states the law shall be strictly construed:

1. “Administrative Law Judges, Associate Administrative Law Judges, Legal Advisors, the Labor and Industrial Relations Commission, the Division of Workers’ Compensation, and any reviewing Court shall construe the provisions of this chapter strictly.
2. Administrative Law Judges, Associate Administrative Law Judges, Legal Advisors, the Labor and Industrial Relations Commission, the Division of Workers’ Compensation shall weigh the evidence impartially without giving the benefit of the doubt to any party when weighing evidence and resolving factual conflicts”

It appears that Claimant’s attorney is mistaken in his determination that this matter should be construed liberally and in favor of the worker. The legislature has, as of the 2005 amendments to the statute, required the Courts to now determine all matters to be strictly construed and without giving any benefit of the doubt to any party when weighing evidence and resolving factual conflicts.

The Second Injury Fund argues that “Ms. Morrero filed her claim for compensation in June of 2008. At that time she listed “Kids Kick Start Camput” (sic) as the employer. Pursuant to §509.020 RSMo,

Every pleading “shall contain a caption setting forth the name of the court, the title of the action, the file number. .... In the petition the title of the action shall include the names of all the parties...”

Ms. Morrero’s Claim for Compensation, while not a “petition” as is typically filed in a civil court action, shall include the name of all the parties. Unfortunately, Ms. Morrero’s Claim names an incorrect entity as the employer in this case.

Ms. Morrero has pled that this incorrectly named employer is responsible for the medical bills she has incurred as a result of her injuries while in their employ. She has also alleged that the incorrectly named entity is uninsured, and thus the Second Injury Fund should be liable for her medical bills.

The Second Injury Fund now has the authority pursuant to §287.220(5) to stand in the shoes of the alleged employer and has “the same defenses to such claims as would the uninsured employer.”

A properly named party/employer shall be included on the claim for compensation if we apply §509.020, RSMo to workers’ compensation claims. Therefore, the Fund now argues that the incorrect employer has been pled in this case, and therefore Ms. Morrero is entitled to no recovery as the proper employer was not noticed up for hearing in this matter. Likewise she is entitled to no recovery from the Fund, who is standing in the proper employer’s shoes.

At the hearing of this matter the Fund presented as evidence a certified copy from the Secretary of State’s office the Certificate of Corporate Records for Kids Kick-Start Campus LLC, who should have been pled by Ms. Morrero as the properly named defendant. The certified copy was objected to by counsel for Ms. Morrero pursuant to 490.692 which states:

“No party shall be permitted to offer such business records into evidence pursuant to this section unless all other parties to the action have been served with copies of such records and such affidavit at least seven days prior to the day upon which trial of the cause commences.”

The Fund directs the Court’s attention to *Russell v. Director of Revenue*, 35 S.W. 3d 507, 509 (Mo. App. E.D. 2001) the court pointed out §302.312.2, RSMo, which says:

“Copies of all papers, documents, and records lawfully deposited or filed in the offices of the department of revenue or the bureau of vital records of the department of health and copies of any records, properly certified by the appropriate custodian or the director, shall be admissible as evidence in all courts of this state and in all administrative proceedings.”

*Id.*

The *Russell* Court went on to state that, “unlike the general business records exception statute, section 302.312 does not impose a service requirement on the admissibility of the exhibits. *Id.* at 509, citing *State v. Calhoon*, 7 S.W.3d 494, 495 (Mo. App. W.D. 1999); *Mills v. Director of Revenue*, 964 S.W. 2d 873, 874 (Mo. App. E.D. 1998).

The Court found that the statute governing these particular governmental documents did not contain or impose a service requirement, and that the properly certified document from the Department of Revenue was admissible and was not subject to the seven-day requirement of §490.692.

In the case at hand, there is a statute regulating corporate documents from the secretary of state. §351.075 states:

The corporate existence of a corporation shall date from the time of filing its articles of incorporation by the secretary of state. The certificate given by the secretary of state shall be taken by all courts of this state as evidence of the corporate existence of such corporation.”

This statute, like §302.312, fails to set forth a specific service requirement. Therefore, the properly certified copy of the secretary of state’s certificate as presented by the Fund at the hearing was admissible evidence as to the proper name and organization of Kids Kick-Start Campus LLC. As such, the incorrect entity has been pled by Ms. Morrero.

Ultimately, Ms. Morrero’s claim for compensation should have named Kids Kick-Start Campus LLC as the employer. Only at that time could the Administrative Law Judge then make findings regarding who is liable for Ms. Morrero’s injuries and medical bills stemming therefrom.

After reviewing these arguments, it appears that the attorney for the Second Injury Fund is correct in her argument. Therefore, this Court shall admit into evidence Second Injury Fund Exhibit No. 1 which is, in fact, a certificate of corporate records from the Secretary of State’s Office which clearly shows that the proper entity to be named herein is Kids Kick-Start Campus LLC. Claimant’s claim for compensation should have named Kids Kick-Start Campus LLC as the Employer. Only at that time can the Court make findings regarding who is liable for a claimant’s injuries and medical bills stemming therefrom. Further, it’s the Court’s understanding that if the Court ultimately finds for the employee in these matters, wherein the Second Injury Fund is brought in as a party when an employer is uninsured, that the Second Injury Fund would have the opportunity to take that judgment which it has paid in medical bills to Circuit Court, properly filing it and pursuing the employer therein to recover monies paid on behalf of that employer. If, in fact, there is an improperly named employer in the underlying claim in workers’ compensation, an award based on that improperly named employer will be useless to the Second Injury Fund and in pursuing such employer in Circuit Court. If this Court were to find that only Kids Kick-Start Campus was liable and not Kids Kick-Start Campus LLC and make the Second Injury Fund pay the medical bills accumulated herein, it is clear that Kids Kick-Start Campus LLC would use that as a defense in Circuit Court to keep the Second Injury Fund from obtaining any monies from it therein.

Wherefore, this Court finds that the Claimant has improperly pled Kids Kick-Start Campus when the properly named employer should have been Kids Kick-Start Campus LLC and therefore finds that there is an improperly named employer and cannot make a finding of liability against any employer and, subsequently, cannot make a finding of liability against the Second Injury Fund herein.

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

Emily S. Fowler  
*Administrative Law Judge*  
*Division of Workers’ Compensation*