

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

Injury No.: 02-158878

Employee: Marilea Navis  
Employer: Premium Standard Farms, Inc.  
Insurer: Travelers Indemnity Company of America  
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 parties' briefs, heard the parties' arguments, and considered the whole record. Pursuant to § 286.090 RSMo, we modify the award and decision of the administrative law judge. We adopt the findings, conclusions, decision, and award of the administrative law judge to the extent that they are not inconsistent with the findings, conclusions, decision, and modifications set forth below.

**Discussion**

Future medical treatment

The administrative law judge concluded employee is entitled to future medical treatment, ordering employer to provide employee with future medical treatment as may be reasonable and necessary to cure and relieve the condition caused by her occupational disease.

We disagree that employer is liable for future medical treatment. Section 287.140.1 RSMo provides, in relevant part, as follows:

In addition to all other compensation, 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.

On the topic of future medical treatment, employee advanced testimony from Dr. Beller, who opined that employee will require regular follow-up care in the future, including periodic pulmonary evaluation, chest x-rays, and pulmonary function tests. Dr. Beller opined that employee may also benefit from inhaled bronchodilator medications. On cross-examination, Dr. Beller conceded that employee's pneumonia resolved, and opined that some of the treatment employee will need in the future is related to employee's preexisting chronic obstructive pulmonary disorder (COPD), rather than the effects of the work injury. Dr. Beller opined that 50% of the treatment employee needs will probably be related to the COPD, while the other 50% will be related to the effects of the work injury.

Employer, on the other hand, presented testimony from Dr. Barkman, who opined that employee will not require future medication or follow-up for the pneumonia, which has

Employee: Marilea Navis

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resolved. Dr. Barkman recommended some future treatment, but opined that this is needed for employee's COPD.

After careful consideration, we find more persuasive the opinion of Dr. Barkman on this issue. We adopt his opinion (and so find) that employee does not have a need for future medical treatment as a result of her work injury, and that any future treatment employee will require is related to her COPD. Given our findings, we conclude that employee failed to establish a reasonable probability that she has a need for future medical treatment that flows from the work injury. Accordingly, we conclude that employer is not required under § 287.140 to provide future medical treatment.

**Conclusion**

We modify the award of the administrative law judge as to the issue of future medical treatment. The employer is not obligated to provide future medical treatment.

The award and decision of Chief Administrative Law Judge Nelson G. Allen, issued August 27, 2012 is attached hereto and incorporated herein to the extent not inconsistent with this decision and award.

The Commission further approves and affirms the administrative law judge's allowance of attorney's fees 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 18<sup>TH</sup> day of July 2013.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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John J. Larsen, Jr., Chairman

DISSENTING OPINION FILED  
\_\_\_\_\_  
James G. Avery, Jr., Member

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

Attest:

\_\_\_\_\_  
Secretary

Employee: Marilea Navis

### **DISSENTING OPINION**

Based on my review of the evidence as well as my consideration of the relevant provisions of the Missouri Workers' Compensation Law, I am convinced the decision of the administrative law judge awarding benefits to employee was in error, and should be reversed.

Employee alleges she was exposed to pulmonary disease while power washing animal stalls, pens, and pits in employer's hog farm. On April 30, 2002, employee was admitted to the Wayne County Hospital with complaints of worsened respiratory functioning. A chest x-ray revealed substantial pneumonia in both lungs. Owing to the seriousness of employee's condition, treating doctors sent her via helicopter to Mercy Hospital in Des Moines, Iowa, where employee was placed on a ventilator and given a breathing tube. Treating doctors diagnosed Legionnaires' disease. Employee contends that she contracted Legionnaires' disease while performing her power washing duties for employer.

Employer presented testimony from its director of environmental health and safety, Brian Paulsen. Mr. Paulsen explained that the water source utilized for power washing goes through three separate disinfection safeguards. First, the water is chlorinated using an automatic hypochlorination process that kills bacteria present in the water. Then, the water is filtered to remove any residual contaminants. Finally, the water is heated to a temperature sufficient to effectively kill any bacteria still remaining. Mr. Paulsen identified the results of water sample testing performed subsequent to employee's getting sick in April 2002. Those test results demonstrate that no Legionella bacteria were present in the water source used for power washing.

Employer presented the expert medical testimony of Dr. David McKinsey, an infectious disease specialist. Dr. McKinsey opined that no causal link can be drawn between employee's work for employer and her development of Legionnaires' disease. Dr. McKinsey explained that if Legionella pneumophila, the causative agent of the disease, were present in the workplace, it would be expected to cause multiple individuals to develop an infection. (As confirmed by Mr. Paulsen, no other employees had contracted Legionnaires' disease from 2001 to the present.) Dr. McKinsey found it notable that the samples of water taken from the workplace were negative for Legionella. Dr. McKinsey explained that even if there had been a negligible potential risk of occupational exposure to Legionella from using high pressure hoses, the risk was mitigated by the process of heating the purified water to a temperature greater than 160 degrees Fahrenheit.

Employer also presented testimony from Dr. Barkman, a pulmonary specialist, who explained that there were multiple factors unrelated to employee's work that put her at risk for suffering pulmonary injury in the form of pneumonia, namely her history of smoking and alcohol abuse. (Employee smoked two packs of cigarettes per day for about 20 years, and at the time of the alleged work injury, she was drinking between 6 and 10 beers daily.) Dr. Barkman opined that employee suffered a community-acquired pneumonia in April 2002, and that her work was not a substantial factor in causing it. Dr. Barkman explained that employee's primary problem is her preexisting chronic obstructive pulmonary disease, and that the pneumonia resolved and had little effect on her underlying chronic condition.

Employee: Marilea Navis

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I find the testimony and opinions from Dr. McKinsey and Dr. Barkman in this matter to be credible and more persuasive than those provided by employee's expert, Dr. Beller. Unlike Dr. McKinsey, Dr. Beller (who is not an infectious disease specialist) did not review any information relating to methods by which employer disinfects the water used for power washing. Dr. Beller also relied on incorrect facts contained in correspondence from employee's counsel, including the assertion (disproven by the testimony from Mr. Paulsen) that many employees got sick while working for employer, as well as a completely false account of the process in which water arrived at the hoses employee used for power washing. Specifically, employee's counsel told Dr. Beller that the water came from a holding tank supplied by a pond which consisted of "ground water percolating through or over fields fertilized by manure lagoon sludge." See *Transcript*, pages 414-15, 469. As demonstrated by the testimony from Mr. Paulsen, none of this is true. Because Dr. Beller relied on false information supplied by employee's counsel, his testimony cannot support an award in favor of the employee.

The versions of §§ 287.067.2 and 287.020.2 RSMo applicable to this claim require an employee claiming injury by occupational disease to prove that work was a substantial factor in causing the injury. Given my findings regarding the expert medical testimony, I conclude employee failed to meet her burden of proof. I conclude that employee's work for employer was not a substantial factor in causing employee to suffer pneumonia or Legionnaires' disease. Because I am convinced employee failed to prove that she suffered injury by occupational disease, I would deny employee's claim against both the employer and the Second Injury Fund.

Because the majority has determined otherwise, I respectfully dissent.

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James G. Avery, Jr., Member

## **AWARD**

Employee: Marilea Navis Injury No. 02-158878  
Employer: Premium Standard Farms Inc.  
Additional Party: The Treasurer of the State of Missouri as Custodian of the  
Second Injury Fund  
Insurer: Travelers Indemnity Company of America  
Hearing Date: May 14, 2012 Checked by: NGA

### **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: April 29, 2002.
5. State location where accident occurred or occupational disease was contracted: Mercer County, Missouri.
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes.
7. Did employer receive proper notice? Yes.
8. Did accident or occupational disease arise out of and in the course of the employment? Yes.
9. Was claim for compensation filed within time required by Law? Yes.
10. Was employer insured by above insurer? Yes.
11. Describe work employee was doing and how accident occurred or occupational disease contracted: Employee was operating a power washer cleaning hog pens and was exposed to Legionella bacteria.
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: Lungs and body as a whole.
- 14. Nature and extent of any permanent disability: 50 percent body as a whole combining with a pre-existing disability of 50 percent body as a whole to render the claimant permanently, totally disabled.
- 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? None requested.
- 18. Employee's average weekly wages: \$435.37.
- 19. Weekly compensation rate: \$290.25.
- 20. Method wages computation: By stipulation.

**COMPENSATION PAYABLE**

21. Amount of compensation payable:

18 2/7 weeks of temporary total disability x \$290.25 =	\$5,307.43
200 weeks of permanent partial disability from Employer x \$290.25 =	<u>\$58,050.00</u>
<b>TOTAL:</b>	<b>\$63, 357.43</b>

22. Second Injury Fund liability:

\$290.25 per week beginning 200 weeks after September 6, 2002 and weekly thereafter for claimant's lifetime.

23. Future requirements awarded: The employer is hereby ordered and directed to provide the claimant with such future medical paid as may be reasonable and necessary to cure and relieve the condition caused by her occupational disease.

Said payments to begin 200 weeks after September 6, 2002 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: Michael A. Knepper.

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

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The parties agreed that after their respective admissions and stipulations, the following issues remain to be resolved:

1. Whether the claimant sustained an accident or occupational disease arising out of and in the course of her employment.
2. Liability of the employer for past temporary total disability from April 29, 2002 through September 5, 2002.
3. Liability of the employer for future medical treatment.
4. Nature and extent of claimant's disability.
5. Liability of the Second Injury Fund.

Prior to presenting evidence, the parties stipulated that on April 28, 2002, Marilea Navis was an employee of Premium Standard Farms, Inc. The employer was operating under the provisions of the Missouri Workers' Compensation law and was fully insured by Travelers Indemnity Company of America.

The correct rate of compensation is \$290.25 per week for temporary total disability, permanent total disability and permanent partial disability. No compensation has been paid. The claimant is asking for temporary total disability from April 29, 2002 through September 5, 2002. No medical aid has been provided. The claimant is not asking for any past medical aid.

The claimant testified in person. She is 56-years old. She does not have a high school degree or a GED. The last grade she completed was the 10<sup>th</sup> grade. She said while in grade school she had taken some special education classes. She had training as a nurses' aide consisting of 120 hours of classroom work. She had been employed at Marshalltown Hospital in Marshalltown, Iowa for sixteen (16) years prior to her employment at Premium Standard Farms which began in December 1996. She had worked as a nurses' aide without problems for that sixteen-year period of time. She and her husband decided to move to the State of Missouri and both obtained employment at Premium Standard Farms. At the time she became ill in April 2002, she testified that she and Mr. Navis owned a home on Lake Marie that was not lakefront but was

away from the lake. She testified that in April 2002, she had not been out on the water. Due to difficulty with winter weather, they had rented a trailer to live in that was next door to their daughter.

Mrs. Navis testified that she began working at Premium Standard Farms in December 1996. She worked in an area of the farm known as "Wolf 4" which was a double unit consisting of four separate "barns," with the size of each barn being approximately 200 feet by 60 feet wide. The barns consisted of separate areas for the breeding and insemination of sows, the gestation of sows, the "farrowing" of sows or delivery area, and the nursery for piglets. Wolf 4 was a double unit, so it had eight barns, with an A side and a B side. She worked on the B side. There were 1100 hogs on the B side, being rotated through the various cycles of insemination, pregnancy and delivery. Her job duties as a farrower included lifting up line mats that weighed 20-50 pounds and lifting feed bags for little pigs that came in 50 pound bags. She testified that she was a farrower for four years and was able to perform that job without problems. She testified that the job was to take care of the hogs and babies. It included feeding, cleaning up afterbirth after the sow delivered babies, and also giving shots to the animals. She stated that she was on her feet all day, with the only time sitting being the lunch time break, at which time a farrower could sit on crates. As a farrower, she could smoke cigarettes while working and admitted she smoked while working in the barns. She admitted on cross-examination that before she started the job power washing at this employer, she smoked one to one-and-a-half packs per day of cigarettes.

When she was demoted to the job of power washer, effective February 17, 2002, she testified she could not smoke while working because the spray from the power washer would come back on her and put the cigarette out. She testified that when she was released from the hospital in Des Moines, she had quit smoking but started up again the following winter. She testified she quit smoking entirely in 2011.

In February 2002, Mrs. Navis was demoted from the job of farrower to the job of power washer. The power washer job consisted of power spraying walls, ceilings, grates, pens, rooms and concrete hallways with hot water coming from a pressure washing hose and wand to clean the various barns and areas of the barns. She washed feeders, pens, walls, ceilings and flushed pens out. She washed grates on the floors of the barn which sat above concrete flooring to contain urine, feces and other liquids that drained through the grates. She washed the floors of the halls through the barns which were concrete. The power washing was all she did for the entire eight-hour shift; she performed power washing in all four barns, depending on what needed cleaned on a given shift. Power washing was not done on the weekends, and she would put the hose and power spray nozzle away at the end of her shift on Friday. Then when she started again on Monday, she used the same hose and power nozzle or wand. She testified that in the farrowing barn and the nursery barn, she turned on a sprinkler to soak down the rooms before she started power spraying the rooms. Before she power washed, she had to dress in rain boots and a raincoat that were supplied by the employer. She did not have a breathing device or mask to use. She had to shower before starting to work and had to wear a Premium Standard Farms' uniform. She had to shower before she left.

The water supply that supplied the hose and power spray nozzle or wand was hot water supplied by a Hotsy Unit that came from the "Hotsy Room" located at the end of the barns near

the breeding barn. The water supply to the Hotsy Room came from pipes that contained water from a surface pond or lake; the water was filtered and also had sodium hypochlorite added. The water from the hotsy unit ran through pipes from the Hotsy Room through all four barns. Side pipes came off the central pipe, with additional piping into each room in the farrowing barn and nursery barn. This required numerous elbows, connections and pipe caps. All pipes lead to hook-ups in the ceiling where the hose was snapped onto the hook-up. The water was piped through metal pipes that ran the length of the buildings. In the farrowing and nursery barns, where there were separate rooms, each room had pipe running into it with a separate hook-up for the hose leading to the power nozzle or wand. After being heated, the water ran through uninsulated pipe for at least 50 feet to perhaps 350-400 feet plus an additional approximately 50 feet of hose to the spray wand.

Mrs. Navis testified she hooked the wand to the pipes by snapping the hose connection into place, and then began spraying out the nozzle. She did not know how hot the water was when it came out. She never saw a temperature gauge and she never saw anyone test the temperature.

When she was doing the power spraying, Mrs. Navis described problems with spray-back, water and mist that would spray back onto her. The spray-back never felt warm. She said that when she sprayed the barns, the hog manure and afterbirth would splatter on her and she would be covered by the hog waste material. There were puddles of left-over water that she sprayed into, as well as the puddles of hog urine and manure. If it rained and water came in through windows, water would sit there; it smelled terrible.

The claimant's last day of work was April 28, 2002. She complained to her family about being fatigued and sick. Her family took her to the Wayne County Hospital in Corydon, Iowa.

The claimant was diagnosed with Legionnaires' Disease. She developed pneumonia and was transferred to a larger hospital in Des Moines by helicopter. The claimant went into a coma and remained in a coma for the next two weeks. She spent about six weeks unconscious.

Mrs. Navis said as a result of her pneumonia, she is short of breath and has no stamina. If she bends over to pick something up, she becomes short of breath. She used to fish but is now unable to walk to the water's edge. She is unable to garden because she can't bend over. If she goes to a grocery store, she is able to walk only if she leans on the cart. The only employment she tried since her illness is she washed dishes for three hours a night for two or three nights for a small local restaurant. She did not have to do pots or pans and the owner helped her with the lifting. She was able to take a break any time she wanted. She said this was accommodated employment.

The claimant admitted that she had been a heavy smoker for many years prior to her injury. She denies having any prior breathing problem and any COPD before her illness. She claims to have quit smoking in 2011.

At the time of her illness, the claimant admitted to having been an abuser of alcohol. She said she drank six to ten cans of beer a night. She claims she quit drinking in 2002. She had severe delirium tremens while she was hospitalized.

Dr. Thomas Beller, M.D., testified by deposition taken on June 15, 2009 and admitted into evidence as Exhibit L. All objections thereto are hereby overruled.

Dr. Beller is board certified in internal medicine with a sub-specialty area of pulmonary and critical care medicine.

Dr. Beller examined the claimant on July 1, 2008. He performed various tests on the claimant. He found the claimant's lung volume is decreased with 75 percent of what is predicted. He also found how well oxygen defused through the claimant's lungs was only 32 percent of what had been predicted. He said anything less than 40 percent would be severe and less than 30 percent would be very severe.

Dr. Beller found the claimant had a pre-existing condition of chronic obstructive pulmonary disease. He said x-rays of her lungs showed she had changes in her lungs that were consistent with chronic obstructive lung disease or emphysema. The emphysema was caused by her heavy cigarette smoking.

Dr. Beller also found the claimant had intestinal change and scarring in her lower lungs. He found this was due to her pneumonia. He found the pneumonia was due to Legionella bacteria.

He found that Legionella is a hydrophilic type of bacteria in that it tends to be formed in water-related areas, cooling towers, holding tents, pools, different types of water containing areas. He also said Legionella's natural habitat is aquatic areas. The growth of Legionella is enhanced by stagnation and sedimentation.

While there are multiple manners in which Legionella can be transmitted, the most common manner is by inhalation or the aspiration of contaminated water. When one power washes in areas such as the claimant did, there is enough spray in the air that one would inhale the Legionella bacteria.

This is what the claimant did. She was covered by water spray, manure, urine and afterbirth. This happened on a daily basis hour after hour.

Dr. Beller found the exposure to Legionella bacteria while spray washing the hog barns at Premium Stand Farms caused the claimant to suffer Legionnaires' Disease resulting in her severe case of pneumonia.

Dr. Beller rated the claimant as having a 60 percent disability due to her respiratory disease. He said one-half was due to the pre-existing COPD and the other one-half was due to the residual effects of the claimant's pneumonia. Dr. Beller used disability and impairment interchangeably. I believe he actually meant impairment as he said the combination of the COPD and the pneumonia would cause it to be very difficult for Mrs. Navis to be employed full-time or to really do any type of work.

Dr. Beller also opined that Mrs. Navis would need future medical treatment to cure and relieve her of her work-related condition. This would consist of regular follow-up chest x-rays and pulmonary function tests. He said she might benefit from inhaler bronchodilator medications.

Dr. David McKinsey, M.D., testified by deposition admitted into evidence as Employer/Insurer Exhibit 7. All objections thereto are hereby overruled.

Dr. McKinsey is a physician and specializes in infectious diseases. He did not examine the claimant personally but did review her medical records. He said Mrs. Navis was treated at Mercy Medical Center in Des Moines, Iowa for pneumonia. Legionnaires' Disease was confirmed by a positive urine exam. Legionella antigen was found which is considered strong evidence for Legionnaires' Disease.

He said Legionnaires Disease does not cause chronic obstructive pulmonary disease but it can cause pneumonia. Legionnaires' Disease is always associated with water. It is very difficult to pinpoint the source of the bacteria but it must be associated with water.

Dr. McKinsey found that claimant was not exposed to Legionella bacteria at her place of employment in April of 2002. Dr. McKinsey based this on the fact that he had been given information that all of the water the claimant had been exposed to had been heated, filtered and chlorinated. Also that Mrs. Navis' case of Legionnaires' Disease was an isolated case and there were no others reported.

However, Dr. McKinsey admitted that the hyper-chlorination disinfection technique has been strongly questioned because of the common breakthrough appearance of Legionella bacteria. He also admitted he did not have any objective data on the concentration of chlorine in the water and he did not have any evidence that the chlorination level in the water coming into the power sprayer was sufficient to suppress the Legionella bacteria.

Dr. McKinsey agreed with an article stating that super heating with flushing is currently the most widely used method for Legionella eradication. Temperatures greater than 60 degrees centigrade have been shown to kill all Legionella. In the thermal eradication method, the temperature of the hot water temperature is raised to 65 to 70 degrees centigrade for three to ten days followed by the flushing of all faucets and shower heads for at least five minutes.

There was no evidence that the time, temperature or flushing components were complied in April, 2002. Also, there was no evidence that the water in the hoses and pipes that cooled between use or on weekends were flushed. There was no evidence that bacteria could not develop or proliferate in the pipes.

Dr. McKinsey also admitted that on many occasions a person has contracted Legionnaires' Disease individually and no outbreak of the disease occurred. There is no reason to believe that this case would be any different.

While there is no doubt that Dr. McKinsey is an honest witness and a qualified expert and physician, his finding was based on unreliable evidence and, therefore, not credible.

Dr. Harold William Barkman Jr., M.D. testified by deposition taken on May 14, 2012 and admitted into evidence as Employer/Insurer Exhibit 6. All objections thereto are hereby overruled.

Dr. Barkman is a physician and Director for the Center of Environmental Health. He examined the claimant on May 28, 2009.

He found the claimant had COPD as well as an old case of pneumonia. He said the COPD predated the claimant's pneumonia in 2002.

Dr. Barkman gave the claimant various tests including treadmill stress tests. He found that she had a 55 percent disability according to the AMA Guide. He said 50 percent of the body was due to her pre-existing COPD and 5 percent was due to minimal scarring caused by her pneumonia.

He also stated that he was unable to establish any relationship between her employment and her pneumonia. He did not believe the claimant actually had Legionnaires' Disease.

Brian Paulsen testified in person and by deposition taken on October 20, 2011 and admitted into evidence as Exhibit D. He is the Director of Environment, Health and Safety for Premium Standard Farms and has been employed at Premium Standard Farms since 1993.

He said there were 110,000 sows at the Farms and 15 to 18 million pigs are processed a year. He said they are subject to disease and bio-security must be maintained. He did not say if hogs are subject to Legionnaires' Disease.

He did say the water came from a lake on the premises and is treated. He did not know the amounts. He also said the water was heated to 140 degrees and filtered. He was not aware of any tests performed in April 2002. He didn't know about temperature tests or how long the water was heated.

Allan Schmidt, Ph.D., testified by deposition taken on April 7, 2009 and admitted into evidence as Exhibit M. All objections thereto are hereby overruled.

Mr. Schmidt is a clinical psychologist. He examined the claimant on December 4, 2008. He found that the claimant had a psychological rating of 25 percent that pre-existed her injury date and a ten percent psychological disability rating as a result of her injury. He also said she would need additional medical treatment for her psychological issues.

I do not believe that Mrs. Navis had prior psychological issues that were a hindrance to her employment or her ability to receive employment.

I also do not believe that she has any psychological problems that combined with her existing disabilities that caused an increase in her disability. All of the conditions causing the claimant to be unable to work are not involved with her psychological condition. I did not find Mr. Schmidt's testimony correct or relevant to this Award.

Mary Titterington testified by deposition taken on May 20, 2009 and admitted into evidence as Exhibit N. All objections are hereby overruled.

Mrs. Titterington is a Vocational Rehabilitation Counselor. She evaluated Mrs. Navis on December 4, 2008. She gave the claimant various tests and found the Claimant's IQ as 79, which places her at the borderline range of intellectual functioning. Her academic skills were at the elementary school level.

Mrs. Titterington also noted that Mrs. Navis has difficulty performing any type of activity without becoming short of breath. Her fatigue level limits what she can do and how fast she can perform tasks. She cannot sustain any activity for long without becoming exhausted.

She said "When Mrs. Navis' total functioning is considered, there is no expectation that she could perform any job as it is customarily performed in the open labor market. There is no expectation that she could meet the essential requirements of work." She is not a candidate for vocational retraining.

An occupational disease does not have to be foreseen or expected but after its contraction it must appear to have had its origin as a real connection with the employment and to have flowed from the source as a natural consequence.

A claimant's medical expert must establish the probability that the disease was caused by conditions in the work place [citation omitted] Sheehan v. Springfield Seed and Floral, Inc., 733 S.W.2d 795, 795 (Mo. App. S.D. 1987). The mere possibility that other factors caused or contributed to cause the illness will not necessarily defeat a claim based on occupational disease. Id. In this case, Mrs. Navis suffered from both alcoholism and tobacco addiction prior to the time of her Legionella pneumonia in April 2002. All medical experts in the case agreed that these factors made her more susceptible to contracting the pneumonia and also increasing the severity of the illness. The critical question becomes, given the water-loving nature of the Legionella bacteria, where did she get exposed to the organism? In answering this inquiry, it is significant that Mrs. Navis was exposed to water and water aerosol for eight hours per day, every day that she worked. She operated a power sprayer to clean hog pens, feeders, walls, ceilings and rooms and suffered the spray-back from the water and water droplets eight hours per day. She certainly would not have that extreme exposure outside of work.

I believe Dr. Beller. I find that the claimant was exposed to Legionella bacteria while operating a power washer for Premium Standard Farms. This exposure caused her pneumonia which scarred her lungs and has resulted in her breathing difficulty. I find that as a result of her occupational disease coming out of and in the course of her employment, the claimant sustained a 30 percent impairment to her respiratory system resulting in a 50 percent permanent partial disability to her body as a whole.

The claimant denies that she had any COPD or breathing difficulty breathing prior to her contracting Legionnaires' Disease. She wishes to have her total disability assessed against the employer alone. I do not know if the claimant is mistaken or if she is not being truthful and afraid she would not receive compensation due to the current financial condition of the Second Injury Fund.

All of the doctors testified the claimant had COPD prior to April 29, 2002. I agree with the doctors that prior to April 29, 2002 the claimant had a permanent partial impairment of 30 percent of her respiratory system that resulted in a 50 percent permanent partial disability to her body as a whole. This prior COPD had to have been a hindrance and an obstacle to her employment and to her ability to receive employment.

The claimant received medical treatment and was unable to work or compete in the open labor market for employment from April 30, 2002 through September 5, 2002, a period of 18 and two-sevenths weeks. I order and direct the employer to pay to the claimant the sum of \$290.25 per week for 18 and two-sevenths temporary total disability for a total of \$5,307.43.

I order and direct the employer to pay to the claimant the sum of \$290.25 per week for 200 weeks commencing September 6, 2002 for permanent partial disability for a total of \$58,050.00.

I find and believe from the evidence that the 50 percent permanent partial disability the claimant had prior to April 29, 2002 combined with the 50 percent partial disability to the body as a whole the claimant sustained as a result of her occupational disease to render the claimant permanently totally disabled. The claimant is unable to and will be unable to compete in the open labor market for employment.

I order and direct the Treasurer of the State of Missouri as Custodian of the Second Injury fund to pay to the claimant the sum of \$290.25 per week commencing 200 weeks after September 6, 2002 and continuing weekly thereafter for the remainder of the claimant's lifetime.

Mr. Michael A. Knepper is hereby assigned a lien in the amount of 25 percent of this Award for necessary services provided claimant.

/s/ Nelson G. Allen  
*Nelson G. Allen,*  
*Chief Administrative Law Judge*  
*Division of Workers' Compensation*