

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

Injury No.: 01-049721

Employee: Diane Nyberg  
Employer: Ford Motor Company  
Insurer: Self-Insured  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund  
Date of Accident: April 1, 2001  
Place and County of Accident: Claycomo, Clay County, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated May 16, 2007. The award and decision of Administrative Law Judge Emily S. Fowler, issued May 16, 2007, is attached and incorporated by this reference.

The Commission further approves and affirms the administrative law judge's allowance of attorney's fee herein as being fair and reasonable.

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

Given at Jefferson City, State of Missouri, this 13<sup>th</sup> day of February 2008.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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William F. Ringer, Chairman

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Alice A. Bartlett, Member

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John J. Hickey, Member

Attest:

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Secretary

**AWARD**

Employee: Diane Nyberg Injury No: 01-049721  
Dependents: N/A

Employer: Ford Motor Company  
Additional Party: The Second Injury Fund  
Insurer: Self-insured  
Hearing held: 02-26-07  
03-02-07

**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 1, 2001
5. State location where accident occurred or occupational disease was contracted:  
Claycomo, Clay 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: While walking across an assembly line floor Employee slipped on a foreign substance on the floor and fell back onto her buttocks and back causing her injuries.
12. Did accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: Low back, Coccyx
14. Nature and extent of any permanent disability: Permanently and Totally Disabled.
15. Compensation paid to date for temporary disability: \$59,653.18
16. Value necessary medical aid paid to date by employer/insurer? \$86,818.14
17. Value necessary medical aid not furnished by employer/insurer? N/A
18. Employee's average weekly wages: \$1,400.00
19. Weekly compensation rate: \$599.96/\$314.26
20. Method wages computation: AGREEMENT and subsection 287.250.9.

**COMPENSATION PAYABLE**

21. **Benefits Currently Due**

Medical Care.....To Be Determined

**Total Ongoing Benefits:** To be paid by Employer Ford Motor Company permanent total disability benefits beginning February 15, 2003 to present and in the future as long as Claimant remains disabled

22. **Second Injury Fund liability:**.....none

The compensation awarded to Claimant shall be subject to a lien in the amount of twenty-five percent (25%) of all payments hereunder in favor of William Spooner, Attorney for Claimant.

**FINDINGS OF FACT and RULINGS OF LAW**

Employee: Diane Nyberg Injury No: 01-049721  
Dependents: N/A  
Employer: Ford Motor Company  
Additional Party: The Second Injury Fund  
Insurer: Self-insured  
Hearing held: 02-26-07  
03-02-07

On February 26, 2007 and March 2, 2007 the Employee, employer and Second Injury Fund appeared for a final hearing. The Division had jurisdiction to hear this case pursuant to Section 287.110 RSMo. The Employee was represented by William Spooner and Joshua Perkins, the employer was represented by James Humphrey and Bruce Levine and the Second Injury Fund was represented by Bonita Seliga.

## STIPULATED FACTS

The parties stipulated as follows:

1. On April 1, 2001, Claimant was working for Ford Motor Company, an employer operating under and subject to the Missouri Workers' Compensation Law, and during this time was fully insured by Ford Motor Company.
2. On April 1, 2001, Diane Nyberg was an employee of Ford Motor Company and was working subject to Missouri Worker Compensation law.
3. Claimant sustained an accident or occupational disease in Claycomo, Clay County, Missouri
4. The claimant's claim was filed within the time prescribed by R.S.Mo. 287.420.
5. Claimant's average weekly wage is \$1,400.00 per week resulting in a temporary total and permanent total benefit of \$599.96 and a permanent partial benefit of \$314.26.
6. Temporary Total disability benefits in the amount of \$59,653.18 and medical benefits in the amount of \$86,818.14 have been provided to employee by Ford Motor Company.

## ISSUES

The parties REQUESTED THE Division to determine:

1. Whether Claimant is permanent and totally disabled; and
2. If Claimant is found to be permanently and totally disabled, whether Claimant is permanently and totally disabled based on her April 01, 2001 injury in isolation or whether Claimant is permanent and totally disabled based on a combination of her pre-existing conditions in combination with her primary injury;
3. Whether Ford Motor Company must provide Employee with future medical care.

## **EVIDENCE PRESENTED**

Claimant's evidence consisted of her live testimony at the hearing. The claimant offered for admission into evidence the following exhibits:

### **Exhibits**

- A: DR. P. BRENT KOPRIVICA NARRATIVE REPORT & RATING DATED 04-24-004
- B DR. P. BRENT KOPRIVICA ADDENDUM REPORT DATED 10-03-04
- C DR. P. BRENT KOPRIVICA ADDENDUM REPORT DATED 02-27-05
- D DR. P. BRENT KOPRIVICA ADDENDUM REPORT DATED 02-12-06
- E DR. JOHN D. PRO PSYCHIATRIC REPORT DATED 07-27-04
- F DR. JOHN D. PRO ADDENDUM REPORT DATED 01-27-05
- G MARY TITTERINGTON VOCATIONAL REPORT DATED 09-20-04
- H MARY TITTERINGTON ADDENDUM REPORT DATED 02-15-05
- I MARY TITTERINGTON ADDENDUM REPORT DATED 04-24-05

J KATHLEEN J. KEENAN PSYCHOLOGICAL REPORT DATED 11-16-04  
K KATHLEEN J. KEENAN ADDENDUM REPORT DATED 12-08-04  
L CONNIE ARNOLD, CONNICARE CASE MANAGER REPORT DATED 11-23-04  
M DR. PETER I. VILKINS RATING REPORT DATED 09-30-02

N DR. CHRIS E. WILSON NARRATIVE REPORT & RATING DATED 01-22-03  
O DR. STEVEN L. HENDLER NARRATIVE REPORT DATED 12-03-04  
P DR. IRA H. FISHMAN NARRATIVE REPORT DATED 09-23-02  
Q DR. JOHN A CLOUGH NARRATIVE REPORT DATED 01-29-02  
R DR. MARY E. BROTHERS NARRATIVE REPORTS DATED 12-09-03 & 06-04-04  
S JANE A. DUEBLER-WHITE VOCATIONAL REPORT DATED 02-12-07  
T DR. DENNISON R. HAMILTON NARRATIVE REPORT DATED 02-02-07  
U DR. WILLIAM BROOKS NARRATIVE REPORT DATED 06-01-06  
V FORD REHAB APRIL 2001 THRU NOVEMBER 2001  
W FORD MEDICAL 12-04-01 THRU 09-05-03  
X FORD MEDICAL 12-14-04 THRU 11-07-01  
Y PAIN MANAGEMENT – DR. MILTON LANDERS DATED 10-05-01  
Z PAIN & WELLNESS CLINIC – DR. ZHENGYU HU 10-11-00 THRU 10-24-01

AA MEDICAL IMAGING 04-11-01 / 06-05-01 / 06-11-01  
BB ORTHOPEDIC SURGEONS 06-27-01 THRU 11-07-01 W/AFFIDAVIT  
CC ORTHOPEDIC SURGEONS 06-27-01 THRU 11-07-01  
DD ORTHOPEDIC SURGEONS 08-01-01 THRU 11-07-01  
EE K.C. NEUROSURGERY GROUP 01-29-02 THRU 02-28-02  
FF FAMILY CARE OF INDEPENDENCE 10-08-02 THRU 01-03-06  
GG DR. STEVEN HANDLER 01-19-04 THRU 12-03-04  
HH DR. ROBERT STEPHENSON 03-20-05 – MRI  
II NKC HOSPITAL 04-09-04 THRU 06-15-05  
JJ NKC HOSPITAL 10-01-01 THRU 11-01-01 AND 06-11-88 THRU 05-07-98  
KK NKC HOSPITAL DECEMBER 2001 THRU JANUARY 2003  
LL NKC HOSPITAL 01-17-03 THRU 01-30-04  
MM NKCHOSPITAL 04-09-04 THRU 11-22-04  
NN NKC HOSPITAL PAIN MANAGEMENT 05-07-96 THRU 09-05-03  
OO NKC HOSPITAL PAIN MANAGEMENT OCT. 2001 THRU JAN. 2004  
PP HEADACHE & PAIN CENTER 03-29-06  
QQ DR. IRA H. FISHMAN 04-05-96 THRU 09-23-02  
RR DR. DANIEL P. BORTNICK – MONARCH PLASTIC SURGERY 04-02-96 THRU 08-22-96  
SS DR. DANIEL P. BORTNICK – MONARCH PLASTIC SURGERY 04-02-96 THRU 09-03-96  
TT MARINER OUT-PATIENT CARE 12-03-97 THRU 04-03-98  
UU DR. DANIEL D. WEED – DICKSON-DIVELEY 10-02-97 THRU 08-19-98  
VVU DR. DANIEL D. WEED – DICKSON-DIVELEY 01-06-98 THRU 08-19-98  
WW LIBERTY HOSPITAL 06-07-99 / 06-08-99 / 12-17-98  
XX SCHOOL DISTRICT OF INDEPENDENCE – ELEMENTARY 1974-1976  
YY MAPLEWOODS METROPOLITAN COMMUNITY COLLEGE  
ZZ GED TRANSCRIPT 1978

AAA REPORTS OF INJURIES 1986 THRU 2001  
BBB STIPULATION OF COMPROMISE 96-042303  
CCC STIPULATION OF COMPROMISE 97-473015

DDD 1040 INCOME TAX RETURN – 2001  
EEED 1040 INCOME TAX RETURN – 2002  
FFF 1040 INCOME TAX RETURN – 2003  
GGG 1040 INCOME TAX RETURN – 2004  
HHH 1040 INCOME TAX RETURN – 2005  
III DEPOSITION TRANSCRIPT OF DR. JOHN D. PRO, M.D., DATED MAY 30, 2006  
JJJ DEPOSITION TRANSCRIPT OF MARY TITTERINGTON, DATED FEBRUARY 21, 2007

LLL LIST OF HOURS MISSED FROM WORK BY MS. NYBERG FROM 11-14-01 THROUGH 11-07-02  
MMM DR. HENDLER'S LIST OF RESTRICTIONS  
NNN DR. MARY BROTHER'S REPORT DATED 12-19-03  
OOO PAIN MANAGEMENT CLINIC RECORDS DATED 11-22-04  
PPP PAIN MANAGEMENT CLINIC RECORDS DATED 11-22-04  
QQQ DR. GRIFFITH'S REPORT DATED 07-09-04  
RRR DR. GRIFFITH'S REPORT DATED 9-27-04

**EMPLOYER WITNESSES**

The Employer and Insurer presented the live testimony at hearing of Dr. Kathleen Keenan, Ph.D, psychologist, Jane A. Deubler-White, vocational expert, and nurse case manager Connie Arnold. The employer/insured offered for admission into evidence the following exhibits:

**EMPLOYER'S EXHIBITS**

Ford Motor Company offered the following exhibits:

1. INFORMATION PACKET SENT TO PATIEN BY DR. BROOKS
2. DR. BROOKS' C.V. & WEBSITE INFORMATION
3. CONNIE ARNOLD C.V.
4. CONNIE ARNOLD E-MAILS TO FORD MOTOR COMPANY
5. SIX PAGES - COMPREHENSIVE PSYCHIATRIC ASSOCIATES
6. MEDICAL RECORDS SUMMARY
7. 08/30/05 LETTER FROM BRUCE LEVINE TO WILLIAM SPOONER
8. 09/20/05 LETTER FROM WILLIAM SPOONER TO BRUCE LEVINE
9. 09/27/05 LETTER FROM BRUCE LEVINE TO WILLIAM SPOONER
10. 10/14/05 LETTER FROM BRUCE LEVINE TO WILLIAM SPOONER
11. KATHLEEN KEENAN - C.V.
12. KATHLEEN KEENAN - 11/16/04 REPORT
13. KATHLEEN KEENAN - 12/08/04 REPORT
14. UNICARE BENEFITS
  
15. SUPPLEMENTAL REPORT BY FENNISON HAMILTON

Employer's Exhibit 6 was not admitted. The remaining exhibits were admitted.

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SIF'S EXHIBITS

The Second Injury Fund offered no live testimony at hearing and the following exhibits into evidence:

1. The deposition of Ms. Nyberg, which was admitted over the objection of Ms. Nyberg.

FINDINGS OF FACT

On May 05, 1994, Claimant began working for Ford Motor Company on the assembly line. Claimant's initial position with Ford was a speaker installer wherein she installed speakers using small screws and a screw gun to affix speakers to the automobile. Claimant was later transferred to the position of panel servicer wherein she inserted door handles and tightened door mechanisms. During her time as a panel servicer, Claimant developed right carpal tunnel syndrome as well as right cubital tunnel syndrome. These conditions were treated through surgery by Dr. Bortnick on or about May 07, 1996. Claimant testified that she had ongoing sensitivity in her right medial elbow and ongoing loss of strength in her right upper extremity after her surgery, but she did return to work at Ford. Claimant was later transferred to the position of left-hand loom operator which is the position in which she sustained her primary injury of April 01, 2001.

On or about April 01, 2001, Claimant was in the employ of Ford Motor Company. While in the course and scope of her employment with Ford, Claimant slipped on a slick clear substance causing her to lose her balance and fall to the concrete floor. Claimant landed directly on her tailbone also injuring her left ankle. As she tried to regain her footing, Claimant slipped and fell again landing on her left wrist. A forklift driver witnessed the incident and assisted Ms. Nyberg to her feet. After the series of falls, Claimant began experiencing immediate pain in her low back and coccyx area.

Claimant treated initially through Ford medical with Dr. Buck. Dr. Buck attempted conservative treatment such as prescribing Motrin and physical therapy for approximately 6 months.

Prior to this time Claimant developed cumulative injury to her left upper extremity which appears to be unrelated to her fall occurring on April 01, 2001. Claimant was referred by Ford medical to Dr. Peter Vilkins who ultimately diagnosed left carpal tunnel syndrome on June 27, 2001. On July 17, 2001, Dr. Vilkins performed a left carpal tunnel release operation. Claimant treated with Dr. Vilkins for her left upper extremity problems through October 2001. Claimant also suffered bilateral hand tremors which she had since childhood. These also were not related to her fall in April 2001.

For her ongoing back and coccyx complaints, Claimant was referred to Dr. David Paul with Orthopedic Surgeons, Inc. An MRI of Claimant's sacrum and coccyx was conducted on April 11, 2001, revealing no abnormalities at that time. On October 08, 2001, Dr. Paul diagnosed coccydynia, possible lumbar strain, and noted possible radiculopathy. Dr. Paul recommended an EMG of the lower extremities to rule out neurological involvement. During this time, Claimant had begun treatment with pain management specialist, Dr. Phillip Landers, for her mechanical back pain. On October 01, 2001, Dr. Landers administered the first of several lumbar epidural steroid injections for possible lumbar radiculopathy. In addition to receiving multiple epidural steroid injections, Claimant also received SI joint injections under fluoroscopy by Dr. Landers. On October 24, 2001, Dr. Hu performed electrodiagnostic studies on both lower extremities which revealed no abnormalities. Claimant continued to complain of pain at the coccygeal region. On October 29, 2001, Dr. Paul diagnosed coccydynia and

discussed with Claimant the possibility of a coccygectomy if her condition did not resolve (i.e. having her coccyx removed surgically).

Ultimately, Claimant was referred back to Dr. Phillip Landers for pain management. Dr. Landers opined that Claimant had diskogenic pain for which he recommended a diskogram on December 04, 2001. The diskogram revealed concordant pain at the L3-L4 level with annular tears at the L3-L4 and L5 levels. On January 29, 2002, Claimant was referred to Dr. John A. Clough, neurosurgeon, for evaluation of her continued low back pain and treatment options. Dr. Clough reviewed the lumbar diskogram results and noted the annular tears at the L3-L4 and L4-5 levels. Upon examination, Dr. Clough associated Claimant's pain with a deep sacral or coccyx injury in addition to her positive L3-4 diskogram showing annular tear. Dr. Clough recommended an IDET procedure prior to any extensive posterior decompression and/or fusion operations. It is important to note that Dr. Clough concluded that he would not rule out the need for an anterior lumbar interbody fusion surgery in the future should conservative measures continue to fail.

On March 14, 2002, Claimant began treating with Dr. Patrick Griffith for control of her pain management and prescriptions. Dr. Griffith also recommended an IDET procedure. On May 20, 2002, Dr. Griffith performed an IDET procedure at Claimant's L3-L4 and L4-L5 levels. This procedure provided no benefit to Claimant.

On September 05, 2002, Dr. Griffith recommended that Claimant visit Dr. Ira Fishman, a rehabilitation physician who deals with post IDET patients for an evaluation of further treatment options. On September 23, 2002, Claimant presented to Dr. Fishman for evaluation. Dr. Fishman's impression was that of chronic coccydynia. Dr. Fishman did not feel Claimant could tolerate the post IDET rehabilitation program because it would most likely exacerbate her coccydynia. Therefore, Dr. Fishman did not

recommend the post IDET rehabilitation program. Dr. Fishman instead felt that Claimant should proceed with additional steroid injections with Dr. Griffith.

Claimant also saw Dr. Dwayne E. Jones, M.D. in the Pain Management Clinic for consult on September 26, 2002. Dr. Jones' impression was one of left annular tears at L3-4 and L4-5 and coccydynia. Dr. Jones recommended additional caudal epidural steroid injections under fluoroscopic guidance.

On October 17, 2002, Dr. Griffith recommended a surgical consult with Dr. Chris E. Wilson. Claimant was examined on January 13, 2003 by Dr. Wilson wherein Dr. Wilson ordered an updated MRI. Claimant saw Dr. Wilson in follow up on January 22, 2003 after completion of the MRI. Dr. Wilson did not feel Ms. Nyberg was a surgical candidate at that time but did assign work restrictions of no repetitive lifting of greater than 20 lbs and no repetitive bending or twisting activities.

Claimant presented to Dr. Mary Brothers on December 09, 2003, for purposes of determining Claimant's eligibility for social security benefits. Dr. Brothers assigned permanent work restrictions of no bending at the waist, no lifting or carrying in excess of 10 lbs frequently or 20 lbs occasionally. Dr. Brothers felt that much of Claimant's limitation was psychological in nature. She commented that employee was non compliant with her pool therapy despite the fact that such therapy has been shown to be beneficial. Dr. Brothers also suggested that Claimant avoid repetitive use of her upper extremities and working with vibrating and pneumatic equipment. She felt that claimant should continue with pain management for her narcotic pain medication usage. Similarly, Dr. Griffith assigned the following work restrictions in an office note dated September 23, 2003: no bending, twisting, stooping, crawling, no standing greater than twenty minutes without rest, no lifting greater than ten pounds, and remain off the production floor.

Claimant continued to treat on a regular basis with Dr. Griffith through 2004. On May 04, 2004, Claimant was seen by Dr. Steven Hendler, per Dr. Griffith's request, for purposes of an independent medical examination. At this time, Claimant continued to complain of continuous pain described as an 8 on a scale of 1 to 10. She complained of numbness and tingling on a continuous basis throughout the anterior left thigh. Claimant was taking narcotic medication including a 100 mcg Duragesic patch, Oxycodone, Zoloft, Zonegran, and Lactulose. Dr. Hendler expressed concern with Claimant's pain medication intake and recommended a comprehensive pain management program. Dr. Hendler also recommended a psychological assessment to examine Claimant's ability to cope with pain and to evaluate whether Claimant would benefit from an invasive pain management procedure

such as the installation of an intrathecal pump. In his December 03, 2004, narrative report, Dr. Hendler agreed with the physical restrictions assigned by Dr. Griffith and recommended no additional medical treatment other than continued narcotic medication. On July 09, 2004, Dr. Griffith recommended a behavioral pain management consultation to assist Claimant with pain coping skills and dealing with her pain. On September 27, 2004, Claimant returned to Dr. Griffith in follow up after attempting a work hardening program. Dr. Griffith recommended that Claimant stop work hardening due to her increased pain. Of particular importance, I note where Dr. Griffith diagnosed failed low back syndrome with lumbar diskogenic disk disease. Further, Dr. Griffith did not want to decrease her pain medication and stated clearly that this would not be of benefit to anyone and that decreasing her pain medications anymore would only serve to worsen her pain without really gaining much. Dr. Griffith continued to treat Claimant with aggressive physical therapy including pool therapy. Claimant attended multiple physical therapy sessions from August 2002 through October 2002 wherein physical therapy was stopped per Dr. Griffith due to Claimant's increased pain levels.

At one point Claimant and Dr. Griffith attempted to wean claimant off her narcotics. In April of 2005 Dr. Griffith changed her medications to try a different pain control. She was to try a course of methadone, which she did at home. She testified that she took her narcotic patch off and took the methadone. Within a short time she became very ill and painful in fact losing both bowel and bladder control. Her difficulties with changing medication are reflected in Dr. Griffith's medical notes of May 18 2005. Her bad reaction to the change in medication caused her great concern and apprehension about trying to do this again. Dr. Griffith noted that claimant felt she should be admitted to the hospital if they were going to try anything like that again.

Later she was sent by employer to a Dr. Brooks who it was explained to her specialized in weaning patients off of pain medication. She stated she went to one meeting with him. The first meeting was mainly a discussion wherein it appeared that he was not aware of her accident and mainly reviewed her medical records. She was concerned because she felt all he was offering was taking away her pain medication without any alternatives, to her understanding.

She stated that if someone offered her a medical course that would help her she would do it as long as the treatment was in the hands of a competent physician. That would include surgery.

Claimant presented the deposition testimony and the narrative report of Dr. P. Brent Koprivica dated April 24, 2004. Dr. Koprivica concluded that Claimant suffers from chronic mechanical back pain with a history of diskogenic source for pain based on the concordant discography. Dr. Koprivica further concluded that Claimant suffers from failed back syndrome. In addition to the physical impairments, Dr. Koprivica opined that Claimant developed chronic pain disorder with psychological factors involved in her pain presentation in addition to her medical condition. Dr. Koprivica ultimately opined that Claimant was permanently and totally disabled based solely on the injury of April 03, 2001, in isolation. Dr. Koprivica assigned the following permanent work restrictions: sedentary physical demand level activity, captive sitting intervals of forty-five minutes or less, standing and walking should be limited to thirty minutes or less, flexibility of changing postures from sitting to standing or walking and vice versa, and she should be afforded the opportunity to recline or lay down based on pain needs.

Claimant also presented the deposition testimony and narrative report of Dr. John D. Pro, M.D., psychiatrist, who examined Claimant on July 27, 2004. Dr. Pro testified that Claimant's overall level of functioning was extremely low. For example, Claimant no longer performs household chores or cooking. Claimant's husband and two children have taken over most household jobs. Claimant was recorded as spending 18-20 hours per day in bed. Dr. Pro described Claimant's mood as "discouraged". Dr. Pro diagnosed chronic pain syndrome causing impairment to Claimant both psychologically and medically. Dr. Pro further testified that Claimant's loss of her ability to work and the loss of her role function, self esteem, and losses of her hobbies, were all adding to the amplification of her pain experience. Dr. Pro also identified a history of childhood abuse which, he believed, predisposed her to chronic pain syndrome (as agreed by Employer's psychologist, Dr. Keenan). Dr. Pro testified that Claimant's April 03, 2001, injury caused her chronic pain syndrome. Dr. Pro assigned a Class III psychological impairment noting significant impairment in her activities of daily living (driving, sleeping, staying in bed, and difficulty with housework). Dr. Pro testified that Claimant would deteriorate in a work-like setting and that her pain would likely worsen if she were to return to work. Finally, Dr. Pro assigned a numerical rating of 35% whole person psychological impairment attributable to her April 3, 2001 injury. Dr. Pro testified that, in his opinion, Claimant does not suffer from any pre-existing psychiatric impairment. Dr. Pro testified that Claimant could benefit

from ongoing treatment at a Pain Clinic such as aggressive treatment with antidepressants.

Claimant presented the deposition testimony and vocational report of Mary Titterington dated September 20, 2004. Claimant did not graduate high school but did obtain her GED. Ms. Titterington found Claimant's prior job history to include exclusively production type jobs either installing automobile parts, packing or operating machines. Ms. Titterington found all these prior jobs required constant standing, reaching, handling, pushing and fingering as well as frequent bending and twisting. Ms. Titterington testified that the restrictions assigned by Drs. Koprivica, Brothers, Griffith, Wilson, Clough, and Weed preclude her from returning to any of these positions. Ultimately, Claimant's vocational expert, Mary Titterington, opined that Claimant is unemployable in the open labor market. The restrictions placed on Claimant by these doctors are all related to her last injury of April 1, 2001.

Currently, Claimant is treating with her family physician, Dr. James Linnick, D.O., with Family Care of Independence. According to Claimant's testimony, she treats with Dr. Linnick approximately once every three months primarily for regulation of her narcotic pain medication. On January 03, 2006, Dr. Linnick was asked to review Claimant's current work restrictions consisting of no assembly line work, no lifting above 5 lbs., occasional lifting of 5 lbs, frequent lifting of only 2-5 lbs, and no bending, twisting, stooping, kneeling, or crawling, occasional standing, walking or climbing stairs, frequent sitting with ability to change position every 30 minutes. Dr. Linnick opined that the above mentioned work restrictions are current and permanent and that he had no new restrictions to add. Dr. Linnick was also of the opinion that Claimant's use of a cane for ambulation and balance was medically necessary.

Employer/insurer presented the live testimony at hearing and narrative report of psychologist, Dr. Kathleen Keenan, Ph.D. Dr. Keenan performed a psychological examination of Claimant on November 16, 2004. Dr. Keenan was asked by Employer to determine the degree to which psychological factors may be influencing the extent and/or expression of Claimant's pain as well as a determination of whether Claimant would be a candidate for Behavioral Pain Management. Dr. Keenan stated in her report that Claimant denied any personal history of mental disorder or treatment. Claimant had one sister with PTSD, but no other family history of mental disorder. Dr. Keenan's report states that Claimant's daily activities consist of watching TV and dozing off and on. Claimant is unable to wash her hair without assistance and she performs no housework. Dr. Keenan administered various psychological tests and ultimately diagnosed Claimant with somatoform pain disorder associated with both psychological factors and a general medical condition, major depressive episode (moderate), and obsessive compulsive personality traits with histrionic and narcissistic personality features. Ultimately, Dr. Keenan opined that there is a significant psychological component to Claimant's pain complaints. Dr. Keenan further opined that Claimant's psychological test results indicate that Claimant has an underlying personality style which relies on minimization, denial, repression, and somatization to cope with stress and emotional needs. Dr. Keenan further testified that it is Claimant's personality make-up and her underlying emotional needs that prohibit her from benefiting from medical treatment. Finally, Dr. Keenan did not feel Claimant would be a good candidate for Behavioral Pain Management. In an addendum dated December 08, 2004, Dr. Keenan assigned a numerical rating of 10% whole person psychological impairment.

Dr. Keenan testified that her diagnosis was that claimant's psychological factors contributed to her physical symptoms and were interfering with her ability to benefit from medical treatment. This was due to her psychological makeup and was not caused by the accident of April 1, 2001 at Ford. Her diagnoses of claimant's somatoform pain disorder associated with both psychological factors and a general medical condition, major depressive episode (moderate), and obsessive compulsive personality traits with histrionic and narcissistic personality features were present prior to the accident of April 1, 2001. Further she felt that claimant was refusing to try to cure her complaints because of "secondary gain" which she identified as the attention and concern she gets from others plus the economic benefits she gets even while not working. During cross examination Dr. Keenan explained that her underlying psychological condition existed prior to the injury of April 1, 2001. She explained it was like a computer screen where the screen called psychological impairment is minimized. Then when the April 1, 2001 accident occurred it was as if someone had pressed the maximize box and brought the screen up on the computer. The accident merely triggered her underlying problems and brought them to full force.

Employer/insurer presented the live testimony at hearing and narrative report dated February 12, 2007, of

vocational expert, Jane Duebler-White. Ms. Duebler-White opined that Claimant would not be a good candidate for vocational rehabilitation in her

current condition. Ms. Duebler-White testified at hearing that in her current condition, Claimant was unemployable. Essentially, both vocational experts are in agreement that Claimant is unemployable. On cross reexamination by the Second Injury fund Ms. Duebler-White admitted that claimant's pain, her narcotic use and her need to lie down, all of which were due to her accident of April 1, 2001, alone was enough to deem her unemployable.

Finally Employer/Insurer presented the live testimony of Connie Arnold a registered nurse and case manager who worked on claimant's case. She testified that claimant was "non compliant" with her medical examiners specifically she refused to report to Dr. William Brooks who's title is a Certified Osteopathic Manipulative and Restorative Medicine Expert. An appointment had been scheduled for October 13, 2005. Claimant cancelled the appointment the night before. Further Ms. Arnold testified that claimant refused to report to Shawnee Mission Medical Center as suggested by Dr. Griffith in order to wean her off the narcotics.

On February 02, 2007, Claimant was evaluated by Dr. Dennison Hamilton, M.D., for purposes of an independent medical exam. Dr. Hamilton found that Claimant's physical examination was inconsistent with an injury. He opined that there were no objective orthopedic or occupational findings to support the diagnosis of a spinal injury. Ultimately, Dr. Hamilton opined that Claimant is not disabled and is able to return to work without restriction.

#### CONCLUSIONS OF LAW

The evidence establishes and the parties agree that Claimant sustained a work related injury to her low back and coccyx area. Dr. P. Brent Koprivica opined that Claimant suffers from chronic mechanical low back pain with a history of diskogenic source based on the concordant discography which revealed annular tears at L3-L4 and L4-L5. Employer/Insurer's own authorized treating physicians agree that Claimant sustained a work related injury. Specifically, Drs. Paul, Landers, Jones, Wilson, and Clough each diagnosed Claimant with coccydynia. Further these diagnosis are related to the injury of April 1, 2001. On December 04, 2001, Dr. Landers performed a discography which undisputedly revealed annular tears at the L3-4 and L4-5 levels.

These medical conditions were severe enough that Claimant underwent a great deal of medical treatment for them. After conservative treatment at Ford failed to relieve Claimant's symptoms, Claimant underwent in excess of ten (10) epidural steroid injections and SI joint injections with Drs. Landers and Griffith. Claimant attended numerous physical therapy sessions. She saw numerous medical professionals including a physiatrist, pain management specialists, psychologist, neurosurgeons, and orthopedic surgeons. Additionally, Dr. Griffith, a pain management specialist, performed an IDET procedure at Claimant's L3-L4 and L4-L5 levels which provided no relief to Claimant. It appears that post-IDET rehabilitation was considered but employer's own Dr. Fishman did not feel Claimant could tolerate the post IDET rehabilitation program because it would most likely exacerbate her coccydynia. As such, further rehabilitation was not recommended. More than one medical doctor suggested surgery as a possible course of treatment. The records reveal that on October 29, 2001, Dr. Paul diagnosed coccydynia and discussed with Claimant the possible need for a coccygectomy if her condition did not resolve (i.e. having her coccyx removed surgically). Dr. Clough states in his medical records that he would not rule out the need for an anterior lumbar interbody fusion surgery in the future should conservative measures continue to fail. It appears that Claimant was not allowed to return to Dr. Clough. As such, I find that Claimant sustained a work related injury while employed for Employer on April 03, 2001.

The first issue to be determined is whether Claimant is permanently totally disabled. I find that the evidence establishes that Claimant is permanently and totally disabled. She is no longer employable in the work place. To summarize, Claimant has been assigned the following permanent work restrictions: sedentary physical demand level activity, captive sitting intervals of forty-five minutes or less, standing and walking should be limited to thirty minutes or less, flexibility of changing postures from sitting to standing or walking and vice versa, no lifting greater than 5 lbs and she should be afforded the opportunity to recline or lay down based on pain needs. I find that these restrictions, in isolation, could feasibly eliminate Claimant from the workforce. However, when you combine these restrictions with Claimant's narcotic medication use and her psychological issues including her overall low level of

functioning and chronic pain disorder, she is clearly permanently and totally disabled.

Both vocational experts in this case, Mary Titterington and Jane Duebler-White, agree that, as Claimant presents, she is unemployable. I find Mary Titterington's testimony credible. Specifically, Ms. Titterington testified in her deposition that Claimant's need to lie down throughout the day, her extensive dependency on narcotic medication, her physical restrictions assigned by her treating physicians and her overall low level of functioning render her unemployable. I further agree with Ms. Titterington's testimony that while Claimant does possess the intellectual capacity to be retrained, in order for this to become a reality Claimant would need to decrease her narcotic medication intake, stabilize her psychiatric condition, and increase her overall functioning level. I agree that as Claimant presents, she is not a candidate for vocational rehabilitation. Additionally, Claimant's medical restrictions restrict her to sedentary level work. This eliminates a large percentage of available jobs. When I look at her medical restrictions and her dependency on narcotic medication and overall low level of functioning, it is my opinion that Claimant is unemployable. I do not believe it reasonable for an employer to hire an individual such as Claimant.

My opinion that Claimant is permanently totally disabled and unemployable is based in part on her narcotic medication usage. Claimant is on a very high dosage of narcotic medication. For example, Claimant testified at hearing that she is on the following medications: a Duragesic pain patch, Oxycodone, Zoloft, and Zonegran. All of these medications are prescribed to relieve Claimant's low back and coccyx pain. The vocational experts' opined that an individual who consumes this level of narcotic medications is greatly impaired in their ability to sustain concentration, stay on task and

work at an adequate speed. Employer/Insurer's own vocational expert supports this conclusion that Claimant is unemployable. Specifically, Jane Duebler-White testified that as Claimant presents today, she is unemployable. Jane Duebler-White agreed with Mary Titterington on a number of conclusions including the following: (1) in order to become employable Claimant would need to decrease her narcotic medication consumption as Claimant's narcotic medications affect her ability to focus on her work and maintain quality on tasks involving detail and concentration; (2) an employer would be hesitant to hire Claimant if they were aware of her narcotic medication levels due to both increased risks and decreased productivity and function; (3) Claimant's pain manifestations such as changing positions frequently and her tremors, would adversely impact her employability and presentation to an employer; (4) Claimant's ability to attend work on a regular basis and sustain work would impact her ability to obtain employment; and (5) Claimant has no transferable work skills within her stated and reported physical restrictions. The fact that both vocational experts are in agreement on Claimant's unemployability underlines the fact that Claimant is permanently and totally disabled. Claimant is permanently totally disabled based on the restrictions placed on her by all her physicians, her need for narcotic medication and her psychological condition.

The next issue to be determined is whether Claimant is permanently and totally disabled based on the injury of April 01, 2001, in isolation, or whether Claimant is permanently and totally disabled based on a combination of her preexisting conditions and subsequent April 01, 2001 injury, in combination. I find that Claimant's current medical condition and permanent medical restrictions assigned by numerous medical professionals are a direct and proximate result of her April 01, 2001 injury at Ford Motor Company. I also find that Claimant's high level of narcotic pain medication usage, overall low level of functioning, and psychological condition is a direct and proximate result of her April 03, 2001 injury. I place great weight on the fact that Employer's own authorized treating physicians place severe permanent restrictions on Claimant.

Prior to the injury of April 1, 2001 Claimant was working full time as well as putting in over time hours. Despite her prior wrist injuries and tremors she fulfilled her work duties as assigned. Since her accident of April 1, 2001 she has been placed on numerous restrictions as set out above, takes narcotic medication which greatly impairs her ability to work and further she must lie down throughout the day. None of these conditions existed prior to the accident of April 1, 2001. I find that the accident of April 1, 2001 is the sole cause of claimant's permanent total disability.

The psychological experts in this case provided additional evidence on the issue of Claimant's pain experience associated with her April 1, 2001 injury. Claimant's psychiatrist, Dr. John Pro, testified that Claimant suffers from chronic pain syndrome. Dr. Pro testified that Claimant's pain experience is based both on psychological factors and physical factors. Prior to April 1, 2001, Claimant had no symptoms whatsoever

indicating chronic pain syndrome. Prior to April 1, 2001, Claimant had no complaints with her low back or coccyx region. Although Claimant did have injuries to her right and left upper extremities predating her April 1, 2001, injury, these injuries did not cause any

psychological or mental impairment. Although her pre-existing conditions did affect her ability to perform certain jobs they did not significantly impair her ability to work. I further find that Claimant's development of chronic pain syndrome serves as an impairment and presents an obstacle and hindrance to any future employment. I find Dr. Pro's impairment rating of 35% to the whole person to be reasonable and based on the weight of the evidence.

I do not agree with Employer's psychological expert's, Dr. Keenan, conclusion that Claimant suffered from pre-existing psychological disability. Overall, I found Dr. Keenan's testimony very confusing and often contradictory. Dr. Keenan testified that Claimant possesses some underlying personality style and underlying emotional dysfunction which blocked her ability to benefit from medical treatment. Dr. Keenan further opined that Claimant's underlying personality style presented a preexisting psychological impairment to Claimant. Dr. Keenan appears to base her opinion on the fact that Claimant was exposed to an abusive family environment. I find no evidence that suggests that Claimant herself was a victim of abuse in her family rather only a witness to said abuse. I find no evidence that Claimant's alleged preexisting psychological impairment ever surfaced prior to April 1, 2001. Pursuant to the Act, in order for a condition to be considered a pre-existing "disability", said condition must present an obstacle or hindrance to Claimant's employment prior to the primary injury. The very definition of "disability" implies some degree of physical or mental impairment which substantially limits one or more of a person's life activities. Dr. Keenan failed to provide evidence which supports her opinion that Claimant's psychological issues are preexisting in nature.

Employer presented no evidence which demonstrates that Claimant's alleged preexisting psychological condition ever presented an obstacle or hindrance to her prior employments. In fact, the evidence in this case directly contradicts Dr. Keenan's conclusion. First, at no time prior to April 1, 2001, was Claimant on any medication prescribed to treat psychological conditions. Second, Claimant testified that she did not receive any treatment for a psychological condition prior to April 1, 2001. Third, Claimant has suffered injuries prior to her April 1, 2001 injury where she sought and received treatment, including surgery. She did not have any psychological effects and in fact underwent all treatment required and returned to work full time. I find no evidence suggesting how or when this alleged preexisting psychological impairment hindered Claimant prior to April 1, 2001. In fact Claimant testified that she maintained multiple full time jobs throughout her life up to her primary injury. Her overall level of functioning did not begin to deteriorate until after her April 1, 2001 injury. I did find, however, that both Dr. Keenan and Dr. Pro agree that there is a significant psychological component to Claimant's complaints. Dr. Pro diagnosed chronic pain disorder and Dr. Keenan diagnosed somatoform pain disorder which I find to be similar diagnoses involving both psychological factors and a medical condition. Additionally, both Dr. Keenan and Dr. Pro agree that Claimant is currently severely impaired in her activities of daily living, and social and work functioning. In conclusion, it is my opinion that Claimant did not suffer from any preexisting psychological impairment prior to her

April 1, 2001 injury. I find that Claimant's current psychological condition and impairment is a direct and proximate result of her April 1, 2001 injury in isolation.

Employer has raised the issue of medical noncompliance on behalf of the Claimant. Employer argued that it offered alternative methods of medical treatment in an attempt to treat Claimant's medical condition, decrease her narcotic dependency and get her back to work but that Claimant refused to follow through with treatment. This Court finds that Claimant complied with her medical treatment. Claimant treated with over 10 medical professionals over a course of 5 years. It was not until after 4 years had passed and numerous medical professionals had treated her, did Claimant begin to question Ford's recommendations. The main argument by Ford regarding non compliance was Claimant's failure to follow through with the treatment by Dr. Brooks. Claimant was uncomfortable being examined at his private residence and was concerned that all this doctor would do would be to take her off her pain medication with no alternative or support. Additionally, Employer's own pain management specialist, Dr. Griffith clearly states in his medical records that he does not want to decrease her narcotic pain medication as this would not be of benefit to anyone and that decreasing her pain medications anymore would only serve to worsen her pain without really gaining much.

## CONCLUSION

I do not believe the Second Injury Fund has liability in this case for the reasons stated above and the following additional reasons: First, while Claimant had significant preexisting injury to both upper extremities, including tremors, she was able to maintain a 40 hour plus a week job requiring extensive use of her hands without difficulty for many years. Claimant often worked overtime. Second, Claimant returned to work for approximately one year and three months after her primary injury in a created position at Ford. I do note that Claimant had restrictions on her upper extremities from Dr. Weed predating her April 1, 2001 injury; however, Claimant obviously worked in violation of those restrictions for several years. Third, Claimant did not regularly take narcotic medication prior to April 1, 2001. Fourth, Claimant was able to function and participate in life's daily activities prior to April 1, 2001. In my opinion, it was not until her primary injury of April 1, 2001, did Claimant's medical and psychological conditions quickly deteriorate to the point where she became unemployable. Both Claimant's and Employer's vocational expert concluded that Claimant was unemployable. Dr. Koprivika opined that Claimant was permanently totally disabled due to her injuries and subsequent pain as well as medication all due to the accident of April 1, 2001. Dr. Pro assessed Claimant with a thirty-five percent (35%) permanent partial disability to the body as a whole due to the psychological factors suffered by Claimant due to the accident of April 1, 2001. Dr. Keenan believed that Claimant's psychological factor was only ten percent (10%) body as a whole. And Dr. Hamilton did not find any objective orthopedic or occupational signs to support a diagnosis of spinal injury or that her diagnostic tests confirmed a lesion consistent with a spinal injury. He did not comment on whether Claimant suffered any disability. Dr. Wilson opined that Claimant suffered a three percent (3%) permanent partial impairment rating. I find Dr. Koprivika's determination

of permanent total disability combined with Dr. Pro's analysis and both vocational expert's opinion that Claimant is permanently totally disabled to be persuasive. In conclusion, after reviewing all evidence presented, I find that Claimant is permanently and totally disabled based on her April 1, 2001 injury, in isolation.

## FUTURE MEDICAL

I find that the medical evidence presented by the medical experts in this case provides a basis for an award of future medical care and treatment against Ford. This award of future medical includes any necessary medical treatment as well as any necessary psychological or mental treatment necessary to relieve Claimant's chronic pain condition. Claimant testified that she continues to consume a large regimen of narcotic medication, including the Duragesic patch. The medical evidence presented suggests that Claimant's need for narcotic medication will continue indefinitely. Claimant's primary pain management doctor, Dr. Griffith, suggested the provision of chronic pain management for Claimant and recommended that Claimant remain on narcotic medication. Additionally, Dr. Steven Hendler recommended that Claimant continue taking narcotic pain medications to deal with her pain. In regards to her psychological issues including chronic pain syndrome, Dr. John Pro opined that Claimant needs ongoing treatment at a Pain Clinic. Dr. Pro further opined that Claimant would benefit from more aggressive treatment with antidepressants as well as the use of sleep aids. As such, I hereby order Ford Motor Company to provide Claimant with any and all future medical care and treatment necessary to cure and relieve the effects of both her medical and psychological conditions arising from her April 01, 2001 injury.

Therefore this Court finds that Employee sustained an accident causing injury to her back on April 1, 2001 causing her to become permanently and totally disabled from that accident and injury alone. Employer Ford Motor Company shall pay to Claimant permanent total disability benefits beginning February 15, 2003 for the duration of her disability. Employer Ford Motor shall also provide Claimant with any and all future medical care and treatment necessary to cure and relieve the effects of both her medical and psychological conditions arising from her April 03, 2001 injury.

The Court further awards to Claimant's attorney William Spooner 25% of all benefits awarded herein.

\_\_\_\_\_

Date

Made By \_\_\_\_\_

Emily S. Fowler

Administrative Law Judge

Division of Workers' compensation

A true Copy: Attest:

\_\_\_\_\_

Patricia "Pat" Secret

Director

Division of Workers' Compensation