

AWARD

Employee: **Huston Pointer**

Injury No. **10-037444**

Dependents:

Employer: **City of Marshall**

Before the
**DIVISION OF WORKERS'
COMPENSATION**

Additional Party: **Second Injury Fund**

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

Insurer: **Self-insured through Missouri Rural
Services Workers' Compensation Trust**

Hearing Date: **November 18, 2014**

Checked by: **RJD/njp**

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: **May 17, 2010.**
5. State location where accident occurred or occupational disease was contracted: **Saline 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 on a ladder approximately 4 ½ feet above the concrete floor, shoveling lime, when the ladder “kicked out”, flipping Employee, who landed on his left shoulder and left buttock, on the concrete floor.**
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 shoulder, body as a whole.**
14. Nature and extent of any permanent disability: **20% permanent partial disability of the left shoulder, 15% permanent partial disability of the body as a whole; Claimant is permanently and totally disabled due to the injury combined with preexisting disabilities.**
15. Compensation paid to-date for temporary disability: **\$4,606.33.**

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- 16. Value necessary medical aid paid to date by employer/insurer? **\$34,518.07.**
- 17. Value necessary medical aid not furnished by employer/insurer? **None.**
- 18. Employee's average weekly wages: **\$879.35.**
- 19. Weekly compensation rate: **\$586.26 for temporary total disability and permanent totally disability; \$422.97 for permanent partial disability.**
- 20. Method wages computation: **Stipulation.**

COMPENSATION PAYABLE

From Employer:

106.4 weeks of permanent partial disability benefits	\$45,004.01
20 weeks of temporary total disability benefits	\$11,725.20

Second Injury Fund liability:

The Treasurer of the State of Missouri, as custodian of the Second Injury Fund, is ordered to pay to Claimant permanent total disability differential benefits \$163.29 per week for 106 3/7 weeks, beginning January 21, 2011 through and including February 4, 2013; beginning February 5, 2013, the Second Injury Fund is ordered to pay Claimant permanent total disability benefits of \$586.26 per week for Claimant's lifetime.

Said payments to begin immediately and to be payable and be subject to modification and review as provided by law.

The compensation awarded to the claimant shall be subject to a lien in the amount of **25%** of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

Michael L. Wilson

Employee: **Huston Pointer**

Injury No. **10-037444**

FINDINGS OF FACT AND RULINGS OF LAW

Employee: **Huston Pointer**

Injury No. **10-037444**

Dependents:

Employer: **City of Marshall**

Additional Party: **Second Injury Fund**

Insurer: **Self-insured through Missouri Rural
Services Workers' Compensation Trust**

Before the
**DIVISION OF WORKERS'
COMPENSATION**
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

ISSUES DECIDED

The evidentiary hearing in this case was held on November 18, 2014 in Marshall. Huston Pointer (“Claimant”) appeared personally and by counsel, Michael Wilson. City of Marshall (“Employer”) appeared by counsel, Clinton Collier. The Treasurer of the State of Missouri, as custodian of the Second Injury Fund, appeared by counsel, Assistant Attorneys General Brian Herman and John Reeves. The parties requested leave to file post-hearing briefs, which leave was granted, and the case was submitted on December 19, 2014. The hearing was held to determine the following issues:

1. Whether the May 17, 2010 work accident is the prevailing factor in the cause of any or all of the injuries and/or conditions alleged in the evidence;
2. Whether Employer shall be liable to reimburse Claimant for any past medical expenses and/or mileage;
3. The liability, if any, of Employer for permanent partial disability benefits or permanent total disability benefits;
4. The liability, if any, of the Second Injury Fund for permanent partial disability benefits or permanent total disability benefits;
5. The liability, if any, of Employer for future medical benefits pursuant to Section 287.140, RSMo; and
6. The liability, if any, of Employer for temporary total disability (“TTD”) benefits after September 2, 2010.

STIPULATIONS

The parties stipulated as follows:

1. That the Missouri Division of Workers' Compensation has jurisdiction over this case;
2. That venue for the evidentiary hearing is proper in Saline County;

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3. That the claim for compensation was filed within the time allowed by the statute of limitations, Section 287.430, RSMo;
4. That both Employer and Employee were covered under the Missouri Workers' Compensation Law at all relevant times;
5. That Claimant's average weekly wage is \$879.35, with compensation rates of \$586.26 for temporary total disability benefits and permanent total disability benefits and \$422.97 for permanent partial disability benefits;
6. That Claimant, Huston Pointer, sustained an accident arising out of and in the course of his employment with City of Marshall on May 17, 2010;
7. That the notice requirement of Section 287.420 is not a bar to Claimant's Claim for Compensation;
8. That Employer-Insurer has paid \$34,518.07 in medical benefits and \$4,606.33 in temporary benefits and that such benefits were paid through September 2, 2010; and
9. That City of Marshall was, at all relevant times, self-insured for Missouri Workers' Compensation purposes through Missouri Rural Services Workers' Compensation Insurance Trust.

EVIDENCE

The evidence consisted of the testimony of Claimant, Huston Pointer, as well as the deposition testimony of Claimant; the testimony of Kenneth Clause; the deposition testimony of Dr. John Ciccarelli; the deposition testimony of Dr. Eddie Runde; the deposition testimony of Dr. Daniel Stechschulte; the deposition testimony of Dr. Garth Russell; the deposition testimony of Dr. Thomas Highland; the deposition testimony of Dr. P. Brent Koprivica; the deposition testimony of vocational counselor Terry Cordray; the deposition testimony of vocational counselor Michael Dreiling; rating report of Dr. J. Clinton Walker; extensive medical records; records of the Missouri Division of Workers' Compensation; report of injury, claim for compensation, and answers in the case; miscellaneous correspondence.

DISCUSSION

Huston Pointer ("Claimant") was born August 6, 1958. He graduated from high school in 1976. While in high school, he was vocationally trained in building trades. Post-high school, Claimant has had no additional schooling or training other than on-the-job training. Prior to graduating high school, Claimant worked as a farm laborer. After graduating from high school, Claimant worked very briefly for the Illinois Central Gulf Railroad. In July 1976, Claimant began working for Quinn Concrete, now known as Coreslab; Claimant worked there for almost 17 years. On March 1, 1993, Claimant began working for the Marshall Municipal Utilities (sometimes hereinafter referred to as "MMU"), which is owned by the City of Marshall

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(sometimes hereinafter referred to as “Employer”). Claimant worked for Employer/MMU continuously from March 1, 1993 until the May 17, 2010 accident which is the subject of this claim.

Prior to May 17, 2010, Claimant had a significant medical history. The timeline of that history is as follows:

- 1979 Work injury. Left knee medial meniscus tear, surgically repaired.
- Sept. 1984 Work injury. Underwent L4-S1 fusion surgery in Oct. 1984. Was off work six months.
- July 1985 Work injury. Slight disruption of prior fusion. No surgery.
- July 1986 Work injury. Surgery performed in Jan. 1987 consisting of L5-S1 discectomy and decompression and fusion from L3 through S1 with placement of Knodt rods. Claimant returned to work in late July 1987.
- 2004 Sinus surgery
- 2006 Hernia repair
- 2007 Surgery – partial colectomy
- Sept. 2008 Knodt rods removed
- Nov. 2008 Right knee arthroscopy: partial medial meniscectomy and abrasion chondroplasty
- Dec. 2008 Left total knee replacement
- Aug. 2009 Work injury to both knees; no additional surgery performed

It is also noted here that Claimant has been a 1½ pack/day smoker for many years, and continues to smoke although advised to quit numerous times. Claimant denies any significant respiratory problems, although the medical records document chronic obstructive pulmonary disease secondary to cigarette smoking treated with Combivent inhaler, Flonase nasal spray and Advair Diskus inhaler.

As stipulated, Claimant sustained an accident arising out of and in the course of his employment with MMU on May 17, 2010. The accident occurred as Claimant was on a ladder, shoveling lime, with his feet about 4½’ off the floor when the ladder “kicked out”, flipping Claimant who landed on the concrete on his left shoulder and left buttock. Claimant immediately experienced pain in the left leg, low back and left shoulder.

After emergency room evaluation and treatment, Claimant was off of work for about a week. Claimant continued to work for MMU, but in continued pain. Finally an MRI was done of Claimant’s left shoulder which suggested a torn labrum and biceps tear. Claimant was referred to

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Dr. J. Clinton Walker, an upper extremity surgeon, for treatment of the left shoulder. Dr. Walker initially offered conservative treatment, including steroid injections. On August 20, 2010, Dr. Walker performed arthroscopic surgery consisting of subacromial decompression, debridement and mini open rotator cuff repair; he could not repair the biceps tear. Claimant was kept off work through September 1, 2010 and then returned to light duty with restrictions of no use of his left arm and to keep it in a sling. TTD was paid from August 20 - September 2, 2010 and no additional TTD was ever paid by Employer.

In a follow up exam on October 4 2010, Dr. Walker prescribed physical therapy and assigned restrictions of no overhead lifting and no lifting above the waist greater than two pounds. On November 1, 2010 Dr. Walker continued physical therapy and modified the work restrictions to no overhead lifting and no lifting above chest height greater than five pounds. Claimant underwent physical therapy for his left shoulder and his low back at the same time with the same therapist. On November 29, 2010 Claimant's restrictions included no lifting over 1 pound overhead, no lifting over 10 pounds to the waist and no overhead use of the left arm with physical therapy to continue.

Claimant next saw Dr. Walker on December 28, 2010 and reported improvement but still had pain and fatigue in his left shoulder. Dr. Walker noted that, "The back is limiting him much more than the shoulder." Dr. Walker assigned restrictions of no lifting over 10 pounds overhead and no lifting over 30 pounds to waist level. Dr. Walker also wanted Claimant to do a work conditioning program but was concerned that, "...the back symptoms would limit his ability to participate in that."

On January 20, 2011 Dr. Walker performed his final exam. He noted the left shoulder, "...is doing OK ..." but that, "He is most limited by the back and left leg..." Dr. Walker also discussed the results of a functional capacity evaluation with Claimant and Dr. Walker determined Claimant was, "unable to meet the heavy lifting demands of his job ..." Dr. Walker released Claimant from treatment on his left shoulder and placed him at maximum medical improvement with permanent restrictions of no lifting over 75 pounds. On February 3, 2011 Dr. Walker rated Claimant at 7% of the left shoulder.

Regarding Claimant's back, Employer had Claimant seen on August 10, 2010 by Dr. John Ciccarelli, a board-certified spine surgeon. Dr. Ciccarelli ordered MRIs of Claimant's lumbar and thoracic spine. He testified: "I did feel that (Claimant) did have a fall resulting in some increased low back pain, as well as his subjective radicular complaints, and recommended an MRI based on that." Dr. Ciccarelli testified that the lumbar MRI showed the prior fusion, as well as advanced degenerative facet disease at L2-3, and mild disc bulging and a small synovial cyst on the left L2-3 facet joint. Dr. Ciccarelli informed Claimant on August 24, 2010: "I did not see anything specific that I could localize that would explain his current distribution and symptoms based on the MRIs, and recommended that nonsurgical approach with some treatment to those areas in a nonoperative fashion, and recommended more of a rehab or physiatry rehabilitation role to those areas, and continued some restrictions for those areas for him until he was able to get treatment." Regarding his diagnosis, the doctor testified: "My specific diagnosis was that he had just ongoing myofascial type of back pain with, again, noncorresponding type of radiculitis in the leg, and recommended nonoperative treatment."

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Although Dr. Ciccarelli recommended treatment with a physiatrist, Employer sent Claimant instead to Dr. Eddie Runde, an occupational medicine physician. Dr. Runde first saw Claimant on October 11, 2010. Dr. Runde recommended physical therapy for Claimant and released Claimant at MMI on November 9, 2010.

Still desiring treatment for his back, Claimant saw his primary care physician, Dr. Tim Ryan on November 16, 2010. Dr. Ryan felt that Claimant should be seen by a neurosurgeon. Claimant specifically asked Employer for additional treatment for his back; in response, Employer sent a letter specifically denying additional back treatment. Left shoulder treatment continued.

Claimant then saw Dr. Thomas Highland of Columbia Orthopaedic Group on January 3, 2011. Dr. Highland was the surgeon who removed the Knodt rods in 2008. Dr. Highland noted the fall off the ladder at MMU on May 17, 2010 and Claimant's post-fall complaints of low back, left hip and left leg radicular pain and symptoms. Dr. Highland performed an evaluation and reviewed the MRI film. Dr. Highland determined that the MRI film revealed, "He also has a bulging disc at L2-L3 and there is some nerve root compression there." He recommended that Claimant undergo an epidural steroid injection (ESI) at L2-L3. The ESI was done on January 25, 2011. It gave Claimant some relief, but only for one week. Dr. Highland therefore recommended surgery, which was done on April 7, 2011. Dr. Highland released Claimant from treatment on April 12, 2012. Dr. Highland testified that Claimant's symptoms had not improved with surgery.

Claimant has never returned to any employment since September 2010. Claimant alleges that he is permanently and totally disabled. He is seeking permanent total disability benefits from either Employer-Insurer or from the Second Injury Fund.

Under section 287.020.7, "total disability" is defined as the inability to return to any employment and not merely the inability to return to the employment in which the employee was engaged at the time of the accident. *Fletcher v. Second Injury Fund*, 922 S.W.2d 402, 404 (Mo.App. W.D.1996). The test for permanent and total disability is the worker's ability to compete in the open labor market in that it measures the worker's potential for returning to employment. *Knisley v. Charleswood Corp.*, 211 S.W.3d 629, 635 (Mo.App. E.D. 2007). The primary inquiry is whether an employer can reasonably be expected to hire the claimant, given his present physical condition, and reasonably expect the claimant to successfully perform the work. *Id.*

Second Injury Fund liability exists only if Employee suffers from a pre-existing permanent partial disability that constitutes a hindrance or obstacle to employment or re-employment, that combines with a compensable injury to create a disability greater than the simple sums of disabilities. § 287.220.1 RSMo 2000; *Anderson v. Emerson Elec. Co.*, 698 S.W.2d 574, 576, (Mo.App.E.D. 1985). When such proof is made, the Second Injury Fund is liable only for the difference between the combined disability and the simple sum of the disabilities. *Brown v. Treasurer of Missouri*, 795 S.W.2d 479, 482 (Mo.App. 1990). In order to find permanent total disability against the Second Injury Fund, it is necessary that Employee suffer from a permanent partial disability as a result of the last compensable injury, and that disability has combined with prior permanent partial disability(ies) to result in total disability.

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287.220.1 RSMo 1994, *Brown v. Treasurer of Missouri*, 795 S.W.2d 479, 482 (Mo.App. 1990), *Anderson v. Emerson Elec. Co.*, 698 S.W.2d 574, 576 (Mo.App. 1985). Where preexisting permanent partial disability combines with a work-related permanent partial disability to cause permanent total disability, the Second Injury Fund is liable for compensation due the employee for the permanent total disability **after** the employer has paid the compensation due the employee for the disability resulting from the work related injury. *Reiner v. Treasurer of State of Mo.*, 837 S.W.2d 363, 366 (Mo.App. 1992) (emphasis added). In determining the extent of disability attributable to the employer and the Second Injury Fund, an Administrative Law Judge must determine the extent of the compensable injury first. *Roller v. Treasurer of the State of Mo.*, 935 S.W.2d 739, 742-43 (Mo.App. 1996). If the compensable injury results in permanent total disability, no further inquiry into Second Injury Fund liability is made. *Id.* It is, therefore, necessary that the Employee's last injury be closely evaluated and scrutinized to determine if it alone results in permanent total disability and not permanent partial disability, thereby alleviating any Second Injury Fund liability.

Section 287.200.1 does not require a claimant to distinguish each disability and assign a separate percentage for each of several pre-existing disabilities to prevail on a claim for permanent total disability against the Second Injury Fund. Rather, a claimant must establish the extent, or percentage, of the permanent partial disability resulting from the last injury only, and prove that the combination of the last injury and the pre-existing disabilities resulted in permanent total disability. *Knisley v. Charleswood Corp.*, 211 S.W.3d 629, 635 (Mo. App. E.D. 2007).

At the request of his attorney, Claimant was evaluated by Dr. P. Brent Koprivica on November 27, 2012. Dr. Koprivica concluded that the fall off the ladder on May 17, 2010 at MMU was the prevailing factor in causing not only the left shoulder injuries, but the low back and left leg symptoms. Dr. Koprivica opined that the L2-3 annular bulging was the pain generator that correlated with Claimant's subjective complaints. He also opined that the May 17, 2010 work accident necessitated the surgery performed by Dr. Highland. Dr. Koprivica also states that Claimant will need chronic pain management in the future.

Dr. Koprivica opined that the May 17, 2010 work accident caused permanent partial disability of 20% of the left shoulder, 10% of the cervicothoracic spine, and 35% of the lumbar spine. Dr. Koprivica also testified that Claimant is unable to compete in the open labor market based on the May 17, 2010 accident alone.

Vocational counselor Terry Cordray evaluated Claimant, issued a report, and testified by deposition. Cordray testified that Claimant was unable to compete in the open labor market and was thus permanently and totally disabled. Cordray likewise opined that Claimant's total disability is caused by the May 17, 2010 accident considered in isolation.

Vocational counselor Michael Dreiling testified that Claimant can compete in the open labor market.

Notwithstanding Dreiling's opinions, there is no question that Claimant cannot compete in the open market for employment, and thus is entitled to permanent total disability benefits, either from Employer or from the Second Injury Fund. Considering Claimant's significant prior

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medical history, it is curious to me that both Dr. Koprivica and Mr. Cordray each concluded that Claimant's permanent total disability is from the last injury in isolation. (Indeed, upon cross-examination, each agreed that the evidence could sustain a finding that Claimant's total disability is from a combination of the injuries and disabilities attributable to the May 17, 2010 work accident and the substantial pre-existing disabilities.) Therefore, the "last injury" must be closely scrutinized.

There is no question that the May 17, 2010 accident caused the left shoulder injuries and necessitated the treatment (including surgery) rendered by Dr. Walker. There is also no question that Claimant sustained significant sprains/strains of his low and mid-back as well as of his left buttock area. The real question is whether the May 17, 2010 accident caused any type of injury that would have been amenable to surgery.

Dr. Ciccarelli clearly believed that Claimant sustained no injuries in the May 17, 2010 accident that would require, or even be amenable to, surgical intervention. Dr. Highland obviously believed otherwise. But a close scrutiny of Dr. Highland's operative report and deposition testimony tells a different story.

Dr. Highland's preoperative and postoperative diagnoses were the same. They were:

1. Degenerative disk disease lumbar spine.
2. Status post posterior fusion L3 to S1.
3. Retrolisthesis and spinal stenosis L2-L3.
4. Foraminal stenosis L1-L2 left.

Dr. Highland testified unequivocally that diagnosis #1 (degenerative disk disease) clearly preexisted the May 17, 2010 accident and was not caused thereby. He also testified unequivocally that diagnosis #2 (status post fusion) clearly preexisted the May 17, 2010 accident and was not caused thereby. He also testified unequivocally that diagnosis #4 (foraminal stenosis L1-L2 left) clearly preexisted the May 17, 2010 accident and was not caused thereby. Regarding diagnosis #3, Dr. Highland testified:

Q. Retrolisthesis and spinal stenosis at L2-3. Is it your testimony that that also predated May 17, 2010?

A. The part of the stenosis from the facet disease preexisted. Part of the stenosis was related to the bulging disc, and I wasn't sure if that was preexisting.

Q. But you're not saying that the bulging disc – you're not saying within a reasonable degree of medical certainty the bulging disc was caused by the fall of May 17, 2010, correct?

A. Correct. (Exhibit D, Highland deposition, p. 27)

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Q. Did you have any reason to believe that the stenosis was not present before May 17, 2010?

A. Well, I didn't see an MRI done before 2010, the date we're talking about, so I don't really know. (Exhibit D, Highland deposition, p. 23)

.....
Q. And then the impression went on to say, this is in conjunction with a mild disc bulge causing mild central canal narrowing. Weren't these conditions also preexistent of May 17, 2010?

A. I'm not really sure about the bulging disc being preexisting. (Exhibit D, Highland deposition, p. 25)

Considering Dr. Highland's deposition testimony, and also considering the fact that the surgery proved to be of no benefit, I do not believe that the May 17, 2010 accident caused any body as a whole injury beyond sprains/strains of the low back, mid-back and left buttock.

I find, therefore, that the last injury alone (i.e., the injury of May 17, 2010) did not result in permanent total disability. I find that the last injury alone resulted in a permanent partial disability of 20% of the left shoulder (46.4 weeks) and 15% of the body as a whole (60 weeks) for sprains/strains of the low back, mid-back and left buttock. Employer's liability for permanent partial disability benefits is 106.4 weeks at the stipulated rate of \$422.97, totaling \$45,004.01.

I find that Claimant is permanently and totally disabled by combination of the May 17, 2010 injury and his preexisting disabilities. I find that Claimant's condition reached maximum medical improvement on January 20, 2011 when he was released by Dr. Walker, the shoulder surgeon. The liability of the Second Injury Fund for permanent total disability benefits therefore commenced on January 21, 2011, subject to credit for permanent partial disability benefits attributable to Employer, i.e. 106 3/7 weeks at \$422.97/week (106 3/7 weeks most closely approximates 106.4 weeks without "splitting" a week). The weekly differential is \$163.29 (\$586.26 minus \$422.97).

Claimant's claim for reimbursement of past medical expenses and mileage should be denied, as same refers to Dr. Highland's treatment.

Claimant's claim for future medical benefits should likewise be denied.

Claimant is entitled to additional TTD benefits from and after September 3, 2010. Dr. Walker's restrictions (regarding the left shoulder) were quite significant through his release date of January 20, 2011. Claimant is clearly entitled to TTD benefits from September 3, 2010 through January 20, 2011, for a total of 20 weeks. At the stipulated weekly TTD rate of \$586.26, Claimant is owed \$11,725.20 for TTD benefits.

FINDINGS OF FACT AND RULINGS OF LAW

In addition to those facts legal conclusions to which the parties stipulated, I find the following:

1. The work related accident of May 17, 2010 was the prevailing factor in the cause of left shoulder labrum tear, biceps tendon tear, partial rotator cuff tear and impingement syndrome, requiring surgery;
2. Employer paid TTD benefits through September 2, 2010;
3. Due to restrictions from his left shoulder injury and surgery, Claimant was unable to compete in the open market for employment from September 3, 2010 through January 20, 2011, the date of maximum medical improvement;
4. Claimant is entitled to TTD benefits of \$586.26 per week from September 3, 2010 through January 20, 2011, a total of 20 weeks;
5. The work related accident of May 17, 2010 was the prevailing factor in the cause of sprains/strains of the low back, mid-back and left buttock;
6. The work-related accident of May 17, 2010 was not the prevailing factor in the cause of the need for back surgery;
7. Claimant underwent surgery for a left knee medial meniscus tear in 1979; Claimant underwent L4-S1 fusion surgery in October 1984; Claimant underwent low back surgery in January 1987 consisting of L5-S1 discectomy and decompression and fusion from L3 through S1 with placement of Knodt rods; Claimant underwent surgery in September 2008 for removal of the Knodt rods; Claimant underwent right knee surgery in November 2008 consisting of partial medial meniscectomy and abrasion chondroplasty; Claimant underwent left total knee replacement surgery in December 2008;
8. Prior to May 17, 2010, Claimant was working with significant disabilities to his low back and both knees; the preexisting permanent disabilities constituted a hindrance or obstacle to employment or reemployment;
9. Claimant's left shoulder injury, sustained in the May 17, 2010 accident, resulted in a permanent partial disability of 20% of the left shoulder;
10. Claimant's sprains/strains of the low back, mid-back and left buttock, sustained in the May 17, 2010 accident, resulted in a permanent partial disability of 15% of the body as a whole;
11. Claimant is unable to compete in the open market for employment;
12. Claimant is permanently and totally disabled;
13. The injuries resulting from the May 17, 2010 work accident, considered alone, did not result in permanent total disability;
14. Employer's liability for permanent partial disability benefits is 106.4 weeks of benefits at the weekly rate of \$422.97, totaling \$45,004.01;
15. Claimant is permanently and totally disabled as a result of the May 17, 2010 injury in combination with his preexisting disabilities;
16. The Second Injury Fund is liable for the payment of permanent total disability benefits;
17. As Claimant's condition reached maximum medical improvement on January 20, 2011, the liability of the Second Injury Fund for permanent total disability

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- benefits commenced on January 21, 2011, subject to credit for permanent partial disability benefits attributable to Employer, i.e. 106 3/7 weeks at \$422.97/week;
18. Employer has no liability to reimburse Claimant for medical expenses or mileage; and
19. The evidence does not justify an award of future medical benefits.

ORDER

Employer is ordered to pay to Claimant the sum of \$45,004.01 for permanent partial disability benefits and \$11,725.20 for temporary total disability benefits.

The Treasurer of the State of Missouri, as custodian of the Second Injury Fund, is ordered to pay to Claimant permanent total disability differential benefits \$163.29 per week for 106 3/7 weeks, beginning January 21, 2011 through and including February 4, 2013; beginning February 5, 2013, the Second Injury Fund is ordered to pay Claimant permanent total disability benefits of \$586.26 per week for Claimant's lifetime.

Claimant's attorney, Michael L. Wilson, is allowed 25% of all disability benefits awarded herein, including future benefits, as and for necessary attorney's fees, and the amount of such fees shall constitute a lien on those benefits.

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

Made by _____

Robert J. Dierkes
Chief Administrative Law Judge
Division of Workers' Compensation