

Issued by THE LABOR AND INDUSTRIAL RELATIONS
COMMISSION

TEMPORARY OR PARTIAL AWARD
(Affirming Award and Decision of Administrative Law Judge)

Injury No.: 04-148013

Employee: Douglas Rector
Employer: Integram St. Louis Seating
Insurer: American Casualty Company of Redding, Pennsylvania
Date of Accident: May 31, 2004
Place and County of Accident: Franklin 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, which provides for review concerning the issue of liability only. Having reviewed the evidence and considered the whole record concerning the issue of liability, the Commission finds that the award of the administrative law judge in this regard 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 and adopts the award and decision of the administrative law judge dated October 17, 2007.

This award is only temporary or partial, is subject to further order and the proceedings are hereby continued and kept open until a final award can be made. All parties should be aware of the provisions of section 287.510 RSMo.

The award and decision of Administrative Law Judge Leslie E. H. Brown, issued October 17, 2007, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 26th day of February 2008.

LABOR AND INDUSTRIAL RELATIONS
COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

TEMPORARY OR PARTIAL AWARD

Employee: Douglas Rector

Injury No. 04-148013

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

Dependents: ---

Employer: Integram St. Louis Seating

Additional Party: ---

Insurer: American Casualty Company of Redding, Pennsylvania

Hearing Date: March 20, 2007

Checked by: LEHB/lsn

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 31, 2004
5. State location where accident occurred or occupational disease contracted: Franklin County, MO
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 happened or occupational disease contracted:

Rear assembly worker

12. Did accident or occupational disease cause death? No Date of death? ---

13. Parts of body injured by accident or occupational disease: left and right wrists/hands

14. Compensation paid to-date for temporary disability: None

15. Value necessary medical aid paid to date by employer/insurer? None

16. Value necessary medical aid not furnished by employer/insurer? See Award

Employee: Douglas Rector

Injury No. 04-148013

17. Employee's average weekly wages: N/A

18. Weekly compensation rate: N/A

19. Method wages computation: N/A

COMPENSATION PAYABLE

20. Amount of compensation payable:

Future medical care

Total: Future medical care

Each of said payments to begin as of date of Temporary or Partial Award and be subject to modification and review as provided by law. This award is only temporary or partial, is subject to further order, and the

proceedings are hereby continued and the case kept open until a final award can be made.

IF THIS AWARD IS NOT COMPLIED WITH, THE AMOUNT AWARDED HEREIN MAY BE DOUBLED IN THE FINAL AWARD, IF SUCH FINAL AWARD IS IN ACCORDANCE WITH THIS TEMPORARY AWARD.

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:

David N. Bohrer
Andrew L. Mandel, Attorney for Claimant

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Douglas Rector

Injury No: 04-148013

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

Dependents: ---

Employer: Integram St. Louis Seating

Additional Party ---

Insurer: American Casualty Company of Redding, Pennsylvania

Checked by:

LEHB/lsn

This is a hardship hearing before the Division of Workers' Compensation in Injury Number 04-148013 . The claimant, Douglas Rector, appeared in person on his own behalf and by counsel, Attorney David N. Bohrer. The employer/insurer, Integram St. Louis Seating/American Casualty Company of Redding, Pennsylvania, appeared by and through counsel, Attorney Timothy M. Tierney.

The parties entered into certain stipulations, and agreements as to the issues and evidence to be presented in this hearing.

STIPULATIONS:

On or about May 31, 2004: a. the claimant was in the employment of Integram St. Louis Seating in Franklin County, Missouri; b. the employer and employee were operating under and subject to the provisions of the Missouri Workers' Compensation law; c. the employer's liability was insured by American Casualty Company of Redding, Pennsylvania.

e. The employer had notice of the alleged injury. f. A Claim for Compensation was filed within the time prescribed by law. g. No compensation has been paid to the employee to date. h. No medical aid has been provided.

ISSUES:

Occupational disease

1. Medical causation
3. Need for future medical care

EXHIBITS:

The following exhibits were admitted into evidence without objections:

Claimant's Exhibits:

No. A: Deposition transcript of Dr. Adelu G. Lipede, M.D. taken on March 2, 2007 on behalf of the claimant (Admitted subject to the objections therein)

No. B: MARKED BUT NOT OFFERED (Deposition of Douglas Rector, the claimant)

No. C: Deposition transcript of Christopher Nixon taken on behalf of the claimant on November 13, 2006 (Admitted subject to the objections therein)

No. D: Independent medical exam report performed by Dr. Lipede on Mr. Rector

Employer/Insurer's Exhibits:

No. 1: Medical records of Dr. Russell C. Cantrell, M.D.

No. 2: Time records from the employer

FINDINGS OF FACTS AND RULINGS OF LAW

ISSUES: Occupational disease; and Medical causation

The claimant, Doug Rector, who was found to be basically a credible witness, alleges that he first noticed problems with his hands, arms and shoulders in May of 2004. Rector, presently 50 years old, testified that since 1995 he has been an employee of Integram Seating, a company that builds seats for Chrysler minivans.

Listing all of the positions he has held at Integram, Rector testified - cover loader, line worker, rear subassembly. I have been at the position of rear subassembly for roughly the last four years, he stated. I

worked in cover loading for four years, and as a line worker approximately three years, the claimant said. Explaining his duties as a cover loader, Rector stated it was putting the seat covers on molds and stretching them and closing the molds up. He explained that the trims go on molds, so it can go around and let robots pour foam on it. What I did as a cover loader was stretch the trims on the molds, Rector said. I used every part of my body to perform these activities. Rector stated that some of the trims are fairly tight, and agreed that essentially you're using your whole body to force the upholstery onto the mold. A line worker puts all the parts on the pallets, builds the backs and the cushions in that part of the rotation, Rector testified. In regards to the relationship between a line worker and a rear subassembly worker, the claimant agreed that line workers gather all the parts that are going to be needed for the subassembly of a seat in that they're put on a pallet to be delivered to the people who do the rear subassembly. Rector stated that a line worker basically is an assembly line that runs at waist level pass you. He agreed that he would be using your arms and shoulders loading things onto pallets that are located at waist level.

Giving examples of all the parts he put onto a pallet that would get passed on to the rear subassembly people, Rector stated - backs, cushions, side shields, hinges, risers; that's about all I can remember of it for right now. He was queried - What about hardware, such as screws, bolts, fasteners of various sorts; does that go on the pallet that's going to be passed onto rear subassembly? No, Rector answered, we stock those ourselves in the cells.

Rector agreed that he worked on the line for approximately three years and then graduated to a rear subassembly worker, and he has been doing this for the last four years, and agreed that it would have been about 2002 or 2003. The claimant agreed that the rear subassembly is the more advanced position at Integram Seating, and that it takes more technical expertise. He agreed that he gets paid more than he was getting paid as a line worker. You work with partners when you work as rear subassembly men, Rector said, working with one other person. He agreed that the two of them worked in a cell, which is a work area for two people. Rector agreed that there are six cells at Integram, and further agreed that when Integram is in operation, essentially there are twelve people working in six cells doing assembly of the seats. Rector explained that there is a conveyor that delivers these pallets that have all the materials you'll be working with, and that conveyor runs to the side of the cell. Agreeing that one of them is responsible for pulling the pallet off the line, Rector stated that it would have been his partner because it would have been on his side of the cell. It has always been that way since I've been working in rear subassembly, the claimant said.

Testifying about how many seats he worked on in rear subassembly, the claimant said it depends on what our number is for the day. If it's a two passenger seat, it's just one; if it's quads, we do two at a time, he stated. He agreed that he and his partner in the cell would share the work of each seat. Describing the components of an average seat, Rector testified well, quad seats there's basically about 18, 20 parts. He agreed that these needed to be assembled for each seat. My partner would pull the pallet off the conveyor and we would throw everything to the side basically and we just start assembling stuff, Rector said, he does one side of the seats and I do the other side. The type of equipment I have to do the assembly of the seats are torque guns and screw guns, the claimant said, the torque gun hangs from the ceiling and the drill guns are below you. An average of ten different torquings per side would be needed for a given seat, Rector stated. The number of different screwing activities there would be is a dozen, he said. So for a given seat, there would be a total of twenty-two screwings and torquings, Rector said. It depended how many seats I and my partner did every day, the claimant said. We have done as many as a hundred a day, he said, and we did more than that some days, that's rare. For assembling seats, Rector agreed, he uses his hands and arms and shoulders the most. Rector further agreed that it was manual labor using his hands, arms and shoulders to put these seats together. He agreed that he was using guns and drills and other hand tools to put these seats together, and agreed that he spends the whole day putting these seats together. It depends how many hours a day I put these seats together, Rector testified, it could be eight, it could be ten hours. He agreed that he is assembling seats the entire time except for maybe some clean up at the end. The average number of seats that I and my partner would do per day is 85, the claimant stated. He was asked how heavy

are the pallets that have to be removed from the conveyor belt, and Rector responded - Roughly 300 pounds. Rector agreed that the pallets have to be broken down, that is the material removed from it and placed where it could be worked on before you can actually do the assembly, and stated that this was done by both of them. The claimant agreed that he uses his hands, arms and shoulders to lift things off the pallet, and that he grips things with his hands and then moves them and sets them somewhere. I use my hands and arms to set things on a work surface that I am going to use for the seats, Rector stated. The claimant stated that hand tools he used in addition to torque guns and screw guns in order to assemble the seats were some starter tools to get bolts started on some of the seats. Explaining what a starter tool is, the claimant testified it's just like a socket with a handle to it. I do not have to use a starter tool for every seat, he said. It was noted that Rector had said there were basically 22 torquings and screwings per seat in assembling a chair; he was asked if there were other procedures other than torquings and screwings that have to be done to a chair in order to put it together. Yes, he answered, you've got to pick them up and flip them over. The claimant stated that he was using his shoulders, upper arms and hands to do this. I have to flip a chair once while I'm working on it, the claimant said. My partner and I share that activity on some of them, Rector said, agreeing that some of them are big enough that they require two people. Rector agreed that all day long he is using his hands, arms and shoulders to put together seats using various tools.

I first noticed that I was having some problems with my hands, arms or shoulders in May of 2004, Rector testified. I complained about the problems I was having to the supervisor, I believe it was Dennis Vaughn at that time, the claimant said. Describing the type of problems he was having in May of 2004, Rector said hands going to sleep, numb, aching bad at times up to the shoulders. He agreed that he had trouble gripping things, and had trouble holding a steering wheel when he was driving both going to work or coming home from work. When I complained to my supervisor; they sent me to the company doctor, Rector stated, I believe it was Dr. Bogner. This doctor did not treat me, he just sent me to Dr. Cantrell, the claimant said. Dr. Cantrell did not treat me, he sent me to a nerve specialist, Rector testified. The nerve specialist did that nerve conduction test, and I had to go back to Dr. Cantrell several times and do more tests, and they said that I had carpal tunnel syndrome in both arms, the claimant said. Rector was asked if he believed his problems with his hands, shoulders and arms arose from his work, and he answered - Yes.

The claimant testified that he had problems before May of 2004 with his hands, arms or shoulders. Explaining why he didn't report to his supervisor before May of 2004, Rector testified - I just thought it was the common aches and pains that everybody has. Rector stated that he was aware of other people working in rear subassembly in those six cells that he worked had carpal tunnel syndrome. Naming them, the claimant testified - Ryan Weeks, Roger Ulry; I believe Connie Hafe; Cheryl, I'm not sure what her last name is; Jim Haft; that's all I can think of right now. The claimant agreed that they had had surgery to correct the problems that they were having.

The claimant was asked if he drank alcohol, and Rector answered - Yes. Agreeing that he drinks every day, Rector stated that he drinks four beers. Two with my lunch before work and two after work, the claimant said. Explaining his work schedule, Rector said it is basically second and third, or typically 5:00 in the evening till 1:30 or till 3:30 in the morning. I typically have a couple of beers at lunch which would be around one o'clock in the afternoon, Rector testified. He agreed that then when he gets home, he also typically has two beers. The claimant was asked if he frequently has more than that, and he answered - No. I drink beer on the weekends when I don't have to work, the claimant said. On days I don't have to work I drink six to eight, Rector said. The claimant was asked if he felt he had a drinking problem. I don't think I do, Rector responded. He agreed that there had been a time when he had asked the doctor to be put on medication that discouraged him from drinking because it made him ill if he drank. I asked the doctor for this because my girlfriend wanted me to quit drinking, the claimant explained. He was asked to tell how the medication had worked out. It didn't, Rector answered, I took it a couple of times and that was it. When asked what made him stop, Rector said I just enjoy my beer; I like the taste of it. He agreed that he is still with his girlfriend, and that it did not destroy their relationship, it was just something she had asked him to try. Rector

was asked if he had ever had any physical problems as a result of drinking that he was aware of, and he answered - No.

Rector agreed that he has missed work in the last six years, but stated that he had no idea of how much work. Discussing as many of the reasons he could think of that he would've missed any work in the last six years, Rector stated we had shutdowns, and explained that this is when Chrysler shuts down to retool and stuff like that. Another reason I missed work is because I broke my hand once, Rector said, and I missed six weeks because of this. Other reasons I have missed work in the past six years is that I had back problems, Rector stated. I don't know how many days I missed as a result of that, he said.

Rector agreed that he is in the union, the United Auto Workers Union (UAW), and stated that in the past year he has made the basic salary that everybody else did. .

The claimant testified that he is presently having problems with his hands, arms and shoulders. They ache and my shoulders pop, he said. Rector agreed that a doctor, Dr. Cantrell, a Workers' compensation doctor, has told him that the carpal tunnel in one arm is so bad that he needs surgery right away in order to prevent serious damage.

On cross examination by the employer/insurer, Rector agreed that he had testified earlier that he drinks alcohol every day. He agreed that he had lunch that day of the hearing and had drank that day. When queried - So you drank before you came to court today?, the claimant responded - "Two beers." He agreed that he had drank the week before when he went to work. He was asked what happened when he went to work and he had drank last week. "I kind of got in a little argument with my supervisor", Rector answered. He admitted that he was suspended for three days as a result of his use of alcohol at work. The claimant agreed that he had been suspended in the past for the use of alcohol in the workplace. Dr. Remo was the doctor I went to for the drug Antabuse to help me stop drinking when my girlfriend asked me to use help to stop drinking, Rector agreed. He agreed that at the time he went to Dr. Remo and asked for the Antabuse, he had just recently been involved in a motor vehicle accident. He agreed that there was suspicion that alcohol played a role in that motor vehicle accident. It was noted that the claimant said that the alcohol isn't really an issue; he was asked why is it he felt the need to use prescription medication to quit using alcohol if it is not an issue. She asked me to, Rector responded.

Rector agreed, during cross examination, that he had stated on direct examination that he had no complaints or minimal complaints with his arms until he got into subassembly.

The claimant agreed that he had testified on direct examination that in subassembly with the assistance of a partner, he made 85 to 100 seats a day. Rector agreed that Dr. Lipede had also asked him about how that job worked and how he made the seats. He was queried if his recollection was consistent with Dr. Lipede's notes if they reflected that he had told the doctor that in subassembly you're continuously making seats and that it takes approximately two minutes to finish a pallet or a seat. Three minutes usually on a two pass and five to six minutes on the quads, Rector responded. He was queried - So if it takes three minutes a seat and we're doing 85 seats, what are you doing the other three to five hours a day; three minutes times 85 comes out to a little more than four hours. "Well, you do have lunch and breaks", Rector responded. The claimant admitted that lunch and breaks do not compromise three to five hours a day. He was queried - That eight to ten hours a day, what are you doing the remainder of that time if you're only spending about four hours a day making seats? "Sometimes you have to wait a little bit on the seat", the claimant answered. Rector agreed that he would acknowledge that there's some dead time in the day. He was asked - So it's not a continuous action? "Some days it is", he responded. On those days they do send you home early, he agreed. The claimant was queried - So you have days that you make 85 seats in four hours and you go home? We have never made 85 in four hours, Rector responded. The claimant agreed that the seats come to him on a pallet and they come on rollers, and then his partner pulls that pallet into their work station and the pallet is on some kind of bearings or something that helps it slide in. When queried if it slides out the same way with

bearings or some type of assistance device, Rector answered - I pull it out.

During cross examination, the claimant agreed that he is currently working without restrictions, and agreed that he has been working without restrictions since the onset of his problems in May of 2004. No physician has ever placed restrictions on my ability to engage in any physical activities, Rector said. He stated that he does not take any medications for the problems he has in his upper extremities, not even any over-the-counter medications.

Rector agreed, during cross examination, that as a UAW employee he enjoys certain protections pursuant to his contract. He agreed that there are a variety of ways, paid and unpaid, that he can miss work and still maintain his position with the company. One of those ways, the claimant agreed, is through an excused absence, and then he has vacation, and is allowed some absenteeism. I am permitted seven days per year of absenteeism, Rector said. He agreed that as discussed before he'd had a few periods where he'd been suspended, and then there are paid leave periods and unpaid leave periods. The claimant agreed that he gets unpaid medical leave, gets holiday pay, and he has paid emergency leave. He agreed that there are some excused but unpaid tardy times that he is permitted, and there is also leaves of absence which are paid periods. Some of these are when the plant shuts down for retooling and some would be inventory control, Rector noted. The claimant agreed that there are also work relief periods, which is when you choose to leave earlier when there's too many people there. The claimant agreed that there is also bereavement pay. Rector stated that he had no idea how many hours in the last six years he has accumulated under all of these paid and unpaid leave provisions. The claimant was queried if he would have any reason to question the hours listed on a printout that indicated from June 1, 2001 through the date of the hearing (March 20, 2007) he had missed 6,859.78 hours. Rector responded that he had no idea what they were, to begin with. I haven't seen this before, the claimant said. It was noted that the same sheet indicated that for the same period of time Rector had worked 6,276.54; the claimant was asked if he had any reason to quarrel with that figure. I have no idea, Rector answered. He stated that he had no reason to say these records were wrong. It was noted that in his records, one of Dr. Cantrell's conclusions from his review of these records was that in the three years preceding the onset of Rector's symptoms, Rector had averaged approximately 16 hours a week at Integram; the claimant was queried if he had any reason to quarrel with that conclusion. "I'd like to know how I paid my bills if that's all I averaged", the claimant responded. When queried - Much of this leave is paid, isn't it?, the claimant answered - "I don't know." Going through some of the printout, Rector admitted that he missed most of 2002. Not most of 2002, he further said, four months of it if I recall right. Explaining why he had missed the four months that he recalled, the claimant testified - Gunshot wound. He was asked how was it he became a victim of a gunshot wound. "Stupidity" the claimant answered. He agreed that it was a self-inflicted gunshot wound. Rector agreed that subsequent to that four months, he did take a leave of absence for a problem with his back and depression. He was asked if he then missed some time from work in July of 2002 because of the motor vehicle accident that had been touched on previously. I don't recall, the claimant said. He stated that he did not recall if he had missed some time from work in 2003 because of problems with depression and anxiety.

Rector agreed, during cross examination, that he had talked about fracturing his left hand. I don't recall the date when I fractured my hand, he said. Explaining how he had injured his left hand, Rector said - Three-wheeler wreck. Agreeing that he was casted as a result of this injury, Rector said that he wore the cast for four weeks. I was off six weeks, he said. Rector agreed that for the four weeks he wore the cast he couldn't move the wrist at all, and he didn't work at all; therefore, he further agreed, there was no flexion or extension of the wrist at all for a period of four weeks with no employment at Integram. The claimant was asked if the complaints or problems in his left wrist got better during that period of time. "About the same", Rector responded.

The claimant stated that he was compensated while he was off the four months because of the gunshot wound. Explaining how it was that he was compensated, the claimant agreed that he had paid

medical leave. He agreed that the employer has short-term disability and long-term disability medical leave. As long as the physician says that you're unable to work, there are ways to be paid for the time that you're off, Rector agreed. He agreed that the other times that he has taken off was when he has had problems with his low back. It was noted that Rector had had problems with anxiety and depression, and he agreed that that has always been with direction of a physician; he agreed that he would have been on some type of paid leave, whatever category that fell into, for those periods of time. The claimant agreed that this would have been a way for him to pay his bills for the times that he was off.

Christopher Nixon testified by deposition on behalf of the claimant on November 13, 2006. (No. C) Nixon's testimony was found to be competent. Nixon stated that he has been employed at Integram Seating since August 7, 1995, almost 12 years. My education is eighth grade, Nixon said. "I've had to work harder to get the job that I've got because of no education", he stated. (Nixon Dp. pg. 6) Nixon stated that he belongs to a union, Local 1760, which is the same union Rector belongs to.

My present job at Integram is working "in a cell putting seats together" with a partner "Jeremy Watson", Nixon testified. (Nixon Dp. pg. 5) I have been partnered with Rector, Nixon said, now I work in the vicinity of Rector. Discussing when he first met Rector, Nixon testified: "He started on the foam side. I started on the assembly side, but we started working together in cushion building. He got bumped to assembly side about ten years ago. That's how long we've known each other. (Nixon Dp. pg. 8) Explaining the duties in foam, Nixon stated:

"You put the seat covers on molds and it goes around, gets the foam put on it, and then it comes around and you take that off and you keep loading and unloading all day until your shift is up." (Nixon Dp. pg. 8)

Agreeing that about ten years ago Rector got moved from foam to assembly, Nixon testified:

"Around 2000 we both got called back to the foam side after the big shut down, so we was there about a year and a half and then ever since then we've been back on the assembly side in a cell putting seats together." (Nixon Dp. pg. 9)

Nixon explained the duties of the assembly side:

"The line has to put the parts on, shields, hinges. They have to build the cushion in the subassembly area and then the back and then they come around to us and we pull them in, we assemble them, push them out and we just keep pulling them in and pushing them out all night until we're done." (Nixon Dp. pg. 9)

Nixon agreed that he was talking about Chrysler minivan automobile seats. He further explained that the employees on the assembly line "put the parts in the pallet and then as the pallets move along, they keep adding parts to it and by the time it gets to us (in the cell), supposedly all the parts are supposed to be there, and we assemble the seat and push the seat out when it's done and keep doing that all night". (Nixon Dp. pg. 11)

I worked directly with Rector in a cell for at least two years and that ended three years ago, Nixon said. This was when I signed a bid to go to days, Nixon said, and "then when I got bumped back I wasn't in the same cell with him". (Nixon Dp. pg. 12)

When asked if he was aware of Rector complaining of problems with his hands, arms or shoulders, Nixon responded – "Every day". (Nixon Dp. pg. 13) Stating how long Rector has been complaining of problems with his arms, hands or shoulders, Nixon said – "Couple of years that I know of". (Nixon Dp. pg. 28) He was asked if he had an understanding of what caused Rector these problems. "Same repetition every day", Nixon answered. (Nixon Dp. pg. 14) He explained the repetition he meant:

"It's the same thing of putting the hinges on and you have to clamp the wire into the hinge every day.

And the bolts that you put in the hinges and you've got to hold the gun a certain way and you get cramps in your hands from holding the gun, because it takes a little while even on the way home at night to get your hands undone so you can hold the steering wheel. That's just for me; I'm not talking for them. After you do it for a while, that's what happens." (Nixon Dp. pg. 14)

Nixon discussed the tools he has to use to assemble chairs:

"We got to screw in, put the shields on, cup holders, they have regular guns with sockets on it to put the bolts on for the backs and the hinges and assemble the bottom of the set with the risers and stuff on two pass seats and everything. And handle bolts, you have a lot of turning, get parts behind you and everything." (Nixon Dp. pg. 15)

He was asked how many seats did he assemble per day. "Depending on the number, pretty much 85, 90 pretty much every day", Nixon answered. (Nixon Dp. pg. 15) Nixon noted that when they got back after the present layoff they were suppose to work nine hours, which would be over a hundred seats a day; he agreed that he and his partner can do up to 100 seats a day. Nixon agreed that they used air powered tools, and this included "torque guns for the bolts...". (Nixon Dp. pg. 21)

Nixon was asked if everyone became injured over time, and he answered – "No". (Nixon Dp. pg. 25) He noted, though, that he knew of people who have had carpal tunnel, and others who get rotator cuff tears. Nixon was queried – Is it safe to say that injuries are fairly common at Integram? "Yes", he answered. (Nixon Dp. pg. 26)

Nixon testified that Rector is a "(v)ery good worker". (Nixon Dp. pg. 28) He was asked if he was aware of Rector having sustained any injuries to his arms, hands or shoulder from anything else other than at work, and Nixon responded – "No". (Nixon Dp. pg. 29)

On cross examination by the employer/insurer, Nixon was asked if Rector was his friend. "We work together, yes", he answered. (Nixon Dp. pg. 30) When asked how long had Rector been his friend, Nixon answered – "Ten years". (Nixon Dp. pg. 31) Nixon stated that Rector had had "a few" sick days last year (2005). (Nixon Dp. pg. 32) He stated that he did not know how many sick days Rector had had the year before. Nixon admitted that Rector had been written up "(j)ust from missing", but he did not know the reason why. (Nixon Dp. pg. 32)

During cross examination, Nixon was questioned about time off benefits. He stated that "(a)fter ten years it's three weeks (vacation) and four paid E days". (Nixon Dp. pg. 33) E days are emergency days, he stated, and "you get four a year". (Nixon Dp. pg. 33) "You also get two shut down weeks a year, July and Christmas", he said. (Nixon Dp. pg. 33) Agreeing that they were shut down that week, Nixon further stated – "This is a layoff, work unemployment". (Nixon Dp. pg. 34) He agreed that this was a regular layoff week; therefore, he further agreed, they have two guaranteed shut down weeks and now one guaranteed layoff week. He was asked how many other weeks had the plant been shut down this year (2006), and Nixon answered:

"The end of July we had a week and three in August, together that was a month. Two weeks ago we was off a week, and now we're off this week. That's as many as I can remember right there. We've been off six or seven weeks so far since July." (Nixon Dp. pg. 34)

Nixon stated that he did not think there were any other weeks off before July. "Because we've been working overtime up until then", he said. (Nixon Dp. pg. 34) Nixon agreed that there are paid holidays also, ten or twelve.

During cross examination, Nixon was asked how many employees who were in the union had had

surgeries. “Not many on foam side, but a whole bunch on assembly side”, he answered. (Nixon Dp. pg. 35) When asked to quantify this, Nixon responded – “I don’t know a certain number, no.” (Nixon Dp. pg. 35)

Nixon was asked, during cross examination when had he had his hands operated on, or his elbows, or his shoulders, and to all three questions he answered “Didn’t” or “Haven’t”. (Nixon Dp. pg. 31) “I didn’t say they didn’t hurt”, Nixon stated. (Nixon Dp. pg. 31)

During cross examination, Nixon admitted that he did not have any medical training, and had not worked as a nurse or a chiropractor or doctor. He agreed that Rector has not shared any of his medical records with him.

It was noted, during cross examination, that Nixon had indicated Rector had complained to him about his arms over the years; Nixon was asked if Rector had had any other injuries that he was aware of. “He’s been to the doctor for his back a couple of times...”, Nixon answered. (Nixon Dp. pg. 37) Nixon admitted that he was aware Rector had been shot in 2002. He was asked if he knew how Rector was shot, and Nixon responded – “Self inflicted.” (Nixon Dp. pg. 37) Stating that he did not know what kind of weapon Rector was shot with, Nixon further said – “All I know is his lungs collapsed.” (Nixon Dp. pg. 37)

Under Missouri Workers’ compensation Law, Section 287.067 sets forth the definition and parameters for an “occupational disease”; this section was amended in 2005. This case, however, involves an issue of occupational disease as of May 31, 2004, thus the law prior to the 2005 amendment applies. *Kelley v. Banta & Stude Const. Co., Inc.*, 1 S.W.3d 43, 47-48 (Mo.App. E.D., 1999) sets forth the applicable law and the parameters for a compensable occupational disease under Missouri Workers’ Compensation Law:

“Section 287.067.1 RSMo 1994 defines occupational disease as:

an identifiable disease arising with or without human fault out of and in the course of the employment. Ordinary diseases of life to which the general public is exposed outside of the employment shall not be compensable, except where the diseases follow as an incident of an occupational disease as defined in this section.

Section 287.067.1 RSMo 1994. In 1993, this statute was amended, incorporated in section 287.067.2 RSMo 1994, to provide that an occupational disease is compensable if it is clearly work related and meets the requirements of an injury which is compensable as provided by subsections 2 and 3 of section 687.020. An occupational disease is not compensable merely because work was a triggering or precipitating factor.

Section 287.067.2 RSMo 1994. Subsection 2 of section 287.020 defines an injury as clearly work related ‘if work was a substantial factor in the cause of the resulting medical condition or disability.’ Section 287.020.2 RSMo 1994.

In order to support a finding of occupational disease, employee must provide substantial and competent evidence that he/she has contracted an occupationally induced disease rather than an ordinary disease of life. *Hayes v. Hudson Foods, Inc.*, 818 S.W.2d 296, 299-300 (Mo.App.1991). The inquiry involves two considerations: (1) whether there was an exposure to the disease which was greater than or different from that which affects the public generally, and (2) whether there was a recognizable link between the disease and some distinctive feature of the employee's job which is common to all jobs of that sort. *Polavarapu v. General Motors Corp.*, 897 S.W.2d 63, 65 (Mo.App. E.D.1995); *Dawson v. Associated Electric*, 885 S.W.2d 712, 716 (Mo.App. W.D.1994); *Hayes*, 818 S.W.2d at 300; *Sellers v. Trans World Airlines, Inc.*, 752 S.W.2d

413, 415 (Mo.App.1988); *Jackson v. Risby Pallet and Lumber Co.*, 736 S.W.2d 575, 578 (Mo.App.1987).

Claimant must also establish, generally through expert testimony, the probability that the claimed occupational disease was caused by conditions in the work place. *Dawson*, 885 S.W.2d at 716; *Selby v. Trans World Airlines, Inc.*, 831 S.W.2d 221, 223 (Mo.App. W.D.1992); *Brundige v. Boehringer Ingelheim*, 812 S.W.2d 200, 202 (Mo.App.1991). Claimant must prove “a direct causal connection between the conditions under which the work is performed and the occupational disease.” *Webber v. Chrysler Corp.*, 826 S.W.2d 51, 54 (Mo.App.1992); *Sellers*, 752 S.W.2d at 416; *Estes v. Noranda Aluminum, Inc.*, 574 S.W.2d 34, 38 (Mo.App.1978). However, such conditions need not be the sole cause of the occupational disease, so long as they are a major contributing factor to the disease. *Hayes*, 818 S.W.2d at 299; *Sheehan v. Springfield Seed & Floral*, 733 S.W.2d 795, 797-8 (Mo.App.1987). A single medical opinion will support a finding of compensability even where the causes of the disease are indeterminate. *Dawson*, 885 S.W.2d at 716; *Sellers*, 776 S.W.2d at 504; *Sheehan*, 733 S.W.2d at 797. The opinion may be based on a doctor's written report alone. *Prater v. Thorngate, Ltd.*, 761 S.W.2d 226, 230 (Mo.App.1988). Where the opinions of medical experts are in conflict, the fact finding body determines whose opinion is the most credible. *Hawkins v. Emerson Electric Co.*, 676 S.W.2d 872, 877 (Mo.App.1984). Where there are conflicting medical opinions, the fact finder may reject all or part of one party's expert testimony which it does not consider credible and accept as true the contrary testimony given by the other litigant's expert. *George v. Shop 'N Save Warehouse Foods, Inc.*, 855 S.W.2d 460, 462 (Mo.App. E.D.1993); *Webber*, 826 S.W.2d at 54; *Hutchinson v. Tri-State Motor Transit Co.*, 721 S.W.2d 158, 163 (Mo.App.1986).”

Expert medical opinion is an integral part of the claimant's burden in showing that he has contracted an occupationally induced disease rather than an ordinary disease of life.

“A claimant's medical expert must establish the probability that the disease was caused by conditions in the work place.’ *Sheehan v. Springfield Seed & Floral, Inc.*, 733 S.W.2d 796, 797 (Mo.App.1987)” *Selby v. Trans World Airlines, Inc.*, 831 S.W.2d 221, 222 (Mo.App. 1992).

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“A medical expert's opinion must have in support of it reasons and facts supported by competent evidence which will give the opinion sufficient probative force to be substantial evidence.” (citations omitted) *Pippin v. St. Joe Minerals Corp.*, 799 S.W.2d 898, 904 (Mo.App. 1990)

Considering the medical opinions in this case, Dr. Adeluola Lipede evaluated the claimant on the claimant's behalf on October 4, 2007 and testified by deposition (Ex. A); Dr. Lipede testified that he is licensed to practice in the State of Missouri and is board certified in forensic medicine by The American Board of Forensic Examination. Dr. Lipede diagnosed the claimant with bilateral carpal tunnel syndrome and possibly impingement syndrome in the left and right shoulders, left shoulder the worse. Dr. Lipede discussed his opinions as to how Rector's work tasks caused the carpal tunnel and shoulder problems:

“Mr. Rector lifts heavy loads. He does so intermittently through the day. According to some of the numbers given to us by Mr. Rector, and confirmed by Dr. Cantrell, he probably makes about 100 seats a day. Which means that he has to lift from his shoulder to the waist and vice-versa 100 times a day. That would affect the shoulder. That is a repetitive type of motion that would predispose to injury.

The second thing that is very important about Mr. Rector's work is that rapidity in which he uses his hand to spread fabric. This fabric is leather on frames. There is a lot of tension that needs to be made and –

“They use some fabric. They use fabric. The fabric can be cloth or leather. Whichever material they use, there is a certain degree of tension that Mr. Rector has to use.

“Mr. Rector, as aforementioned, uses a lot of tension to spread the fabric over the molds and he uses repetitive torque. His hands are positioned in a fashion that would create tension at his wrist, elbows and shoulders. Because of the unnatural way in which his hands are positioned, he is more likely than not to continually injure his tendons, both in the wrists, elbows and shoulders during this work.

He also exerts torque with the machine and with his hands. These in itself create tension and repetitive motion, repetitive trauma to the tendons in his wrist, his elbow and shoulders.

And that, if you look up the number of seats he makes a day, it is substantial. And if he works an eight-hour day and makes 100 seats, that is quite a considerable amount of tension and pressure that predisposes to carpal tunnel syndrome, injury to the elbow and also impingement syndrome to his shoulder. These are all, as far as I can see, it and evaluate it, symptoms and signs accompanying repetitive trauma, especially when the cycle of motion is very fast and the torque that occurs during this motion are quite considerable.

In the absence of a lot of syndromes that we believe contribute to tendonitis and carpal tunnel syndrome – he does not have rheumatoid arthritis. He didn’t have a scoliosis or renal failure.

These are not present, hence, the only etiology we can see is the repetitive trauma that occurs when Mr. Rector performs his duties for Integram.” (Lipede Dp. pp. 15-18) (Ruling: Employer/Insurer’s objections are overruled. Lipede Dp. pp. 16)

Dr. Lipede explained that he got the information about how Rector moved his hands and arms from Rector’s demonstration to him at the doctor’s office of “how he lifts from a conveyer belt and how he put things back on a conveyer belt and how he packs the seats. The way he uses torque.” (Lipede Dp. pg 18) It was noted that there had been some talk about alcohol being a causative factor for Rector’s problems, and Dr. Lipede was asked to comment about this:

“Yes. I saw that allegation made by Dr. Cantrell. I see no evidence of alcohol-related illness here. The vitamins that are supposedly displaced by alcohol, the vitamins B2, B12 are all present in the usual amounts. I see no sign of Korsakoff psychosis in Mr. Rector.

I see no sign of any neuropathologic, generalized neuropathologic syndrome in Mr. Rector. I see no behavior or changes showing cirrhosis of the liver. I don’t see ill-effects of alcoholism that would be poignant in making one agree that, indeed, alcoholism was the sole cause of the carpal tunnel syndrome.” (Lipede Dp. pg. 19)

Dr. Lipede further opined that alcohol was not even a partial cause of any of the problems Rector was having. “I mean, if Mr. Rector did not perform his work at Integram, he would not have carpal tunnel syndrome”, Dr. Lipede further said. (Lipede Dp. pg. 20) The doctor indicated that alcohol was also not the cause of Rector’s shoulder or elbow problems.

On cross examination by the employer/insurer, Dr. Lipede was questioned about a comment in his evaluation report, and the doctor explained that he was not saying the alcohol problem could affect the surgical outcome, but rather it could retard the reparative process....”the reparative process is the process that follows repetitive injury”. (Lipede Dp. pp. 21-22) Dr. Lipede agreed, during cross examination, that in preparing his report the records he had for review were the records of Dr. Cantrell, Healthsouth, and a copy of Rector’s deposition, and that he had taken some of the history from the medical records as well as from Rector what he felt were the important portions in assessing causation. Dr. Lipede agreed that the history he

had relied upon was that Rector had been a full-time employee of Integram for a period of ten years. The doctor was queried if Rector had worked eight to ten hours a day, five days a week during those ten years, and Dr Lipede answered: "When he was at work. There are areas and times in which he didn't work when he was injured." (Lipede Dp. pg. 24) Stating that he did not have any of Rector's attendance records, Dr. Lipede further testified: "I have in here a summary of the times he was sick and he was at work. He had a fractured rib, a bad back. There is evidence that he wasn't at work at those times." (Lipede Dp. pg. 25) Dr. Lipede noted that he had acknowledged that Rector "was off work in '95, '98, '99, 2002, and part of 2004". (Lipede Dp. pg. 25) The doctor agreed that in the history he had set forth in his report, there was no indication if Rector had been off work at those times for a day, a week, or a month. The doctor was queried if he knew if Rector had worked 2000 hours or 500 hours in 2003, 2004 or 2005. "No, I don't have that information", Dr. Lipede admitted. (Lipede Dp. pg.25) It was noted that Dr. Lipede stated that Rector had relayed a history to him of working eight to ten hours a day making 100 seats on the line and the seats took two minutes apiece; the doctor was asked what did Rector say he did the rest of the day. Dr. Lipede answered:

"It was understood he was making seats on a continuous action. It was a continual action, in which case there are breaks in between in which they have to load and unloaded a conveyor belt. The actual making of the seats is what takes two minutes when two individuals are working together." (Lipede Dp. pp. 28-29)

Dr. Lipede admitted that he had not been to the Integram plant. "No, I rely on his description", the doctor stated. (Lipede Dp. pg. 30) When queried – if Rector's history provided to you was inaccurate, your opinions on causation could be impacted. "It is possible", Dr. Lipede admitted. (Lipede Dp. pg. 31) The doctor was asked if he had not deemed it a relevant factor, Dr. Cantrell's comment that Rector over a three-year period only averaged 16 hours a week work because of absenteeism. Dr. Lipede answered:

"I didn't think so, because – and I can give the reason why I didn't think that was relevant. The point is the geometry of the hand was still altered. The torque deformities was present during the 16 hours he worked on a number of seats he prepared remained the same. So this man was essentially beaten up on carpal tunnel on a regular basis." (Lipede Dp. pg. 34)

Dr. Lipede was further queried – He was beaten up 16 hours a week not the 40 to 50 hours a week he conveyed, assuming Dr. Cantrell's history is correct? Dr. Lipede responded:

"Assuming that Cantrell is correct. If Dr. Cantrell is correct and the number of hours to me, actually, the intermittent work is much more poignant than continuous work because, you know, he would be injurious of himself because he has not practiced."

"...All I am telling you is that during the time he was at work he had all the conditions that would predispose him to having repetitive traumatic syndrome, and that's manifested as we see in his carpal tunnel and shoulder troubles." (Lipede Dp. pp. 34;35)

Dr. Lipede was asked if he had seen a physical demands assessment of Rector's job duties or Rector's attendance records over the past five years, and to both questions the doctor answered - "No". (Lipede Dp. pg. 41) Dr. Lipede stated that he had put in his report all the things he thought were relevant in determination of causation.

In his January 3, 2007 evaluation report, Dr. Lipede wrote in the JOB ACTIVITIES – "His working hours, at the least, are 8-10 hour per day and he regularly works overtime." In a section entitled WORK-RELATEDNESS OF THE DIAGNOSED CARPAL TUNNEL SYNDROME, Dr. Lipede included the following:

Entrapment neuropathy at the wrist is clearly the result of a combination of hypertrophic changes in the

tendons and also in the bridge, and alcoholism has no part in producing these two sets of circumstances. Neuropathy induced by alcoholism is a metabolic event, and the characteristics of a metabolic neuropathy is very different from that of an entrapment neuropathy. Clearly, an entrapment neuropathy had been demonstrated, both by the history and the physical examination and the electrical diagnostic tests that had been performed on Mr. Rector. The likelihood of a vitamin deficiency also being deduced as an etiology has no foundation since the very laboratory tests performed by Dr. Cantrell himself did not substantiate the loss of B6, B12, or indeed, folic acid. Overall, Mr. Rector is not anemic and has no other neurological signs other than at the wrist. The characteristics of the nerve conduction test is clearly compressive at the carpal tunnel and this is clearly borne out by a wise synthesis of the history that Mr. Rector gave, the physical examination which I have described to you, and indeed, the repetitious work, the high cycle of repetition, and the synovial thickening and repetitive injury which he suffered during these maneuvers. Clearly 10 years is long enough for anyone working a 40-hour week to have developed a carpal tunnel syndrome and Mr. Rector has done so.

Medical records of Dr. Russell C. Cantrell, M.D. of Orthopedic & Sports Medicine, Inc. (No. 1) concerned the evaluation of Doug Rector over the period of November 30, 2004 through March 2, 2005 at the request of the employer/insurer. The doctor wrote in his November 30, 2004 examination report that he was seeing Rector on that date "for the purpose of evaluating and treating his complaints of bilateral upper extremity pain and paresthesias attributed by him to his occupation activities at Integram St. Louis Seating". It was written that Rector relayed that his symptoms in his upper extremities developed approximately four years earlier and had progressively worsened. Dr. Cantrell further wrote:

He reports that he typically works a minimum of eight hours per day five days a week, but at times will work ten hours a day. He reports that he is off for approximately four weeks in combination due to company wide shut-down and vacation on an annual basis. I noted in reviewing his average hours worked per week within the past year that he has only worked 24 hours per week within the last year, and within the last three years has worked an average of 16 hours per week. I questioned him regarding this. He reports that although he has had no time out for medical leave for unrelated reasons within the past year, he does indicate that prior to the calendar year 2004 he was out for sick leave due to a fracture to his left hand that occurred when he ran a three wheeler into a tree. He indicates that this was treated with cast immobilization. He further indicates that although not occurring within the last calendar year, he has had to miss time from work due to intermittent lumbar muscle spasm.

Dr. Cantrell noted that he had had an opportunity to review medical records, and discussed this past treatment. It was noted that a physical demand analysis had been completed on October 20, 2000 which "showed an operator rear line and final cell assembly indicates that job requirements are light in physical demand, although weights less than 20 pounds were lifted frequently and pushing and pulling occurs with a maximum force of less than 28 pounds frequently".

After discussing his evaluation of Rector on November 30, 2004, Dr. Cantrell wrote that Rector presented at that time "with symptoms that are suggestive of both carpal tunnel and cubital tunnel syndrome bilaterally".

In his next evaluation report of December 14, 2004, Dr. Cantrell wrote that Rector reported that approximately nine days after his last evaluation on November 30, 2004, Rector had sustained an accidental injury in which he struck his left fifth finger resulting in a fracture to one of his phalanges. He has been treated for this injury with cast immobilization, the doctor wrote, and the cast is currently immobilizing his fourth and fifth fingers as well as his wrist in a neutral position.

Dr. Cantrell next saw Rector on January 17, 2005 and wrote in his evaluation report on that date that Rector reports he had his cast removed from his left hand for his fractured fifth finger and is scheduled to return to work tomorrow. Dr. Cantrell further wrote:

He notes that he remains symptomatic with paresthesias in his hands, noting that even with the prolonged immobilization for his fracture, there was no substantial reduction in his complaints of paresthesias in his left hand.....He further advises me that he smokes approximately two packs of cigarettes per day and drinks approximately two cases of beer per week.

Dr. Cantrell noted that he had not yet received medical records from Rector's primary physician who had reportedly ordered laboratory testing, and further wrote:

When all laboratory testing is returned, the amount of alcohol consumption in my opinion should be considered in determining causation connection between his current symptomatology and electrodiagnostic findings.

Rector was next seen by Dr. Cantrell on February 1, 2005, and the doctor wrote in his evaluation report of the same date that Rector had brought laboratory test results obtained from his primary physician which showed his hemoglobin A1C was within normal levels and a glucose tolerance test suggested elevation in blood sugar. Dr. Cantrell further wrote:

Given the fact, however, that his reported hours worked per week are only 16 on average for the past three years, I would have to question a causal connection between any peripheral entrapment neuropathies diagnosed and his occupational activities. Furthermore, the presence of a multi-focal peripheral neuropathy as has been noted on his electrodiagnostic tests performed previously would be, in my opinion, more consistent with an early peripheral polyneuropathy rather than occupationally related peripheral entrapment neuropathy. Mr. Rector will undergo these laboratory tests for completeness of evaluation.

Dr. Cantrell prepared a report on February 3, 2005 after receiving additional laboratory test results. The doctor noted that all of these tests were found to be within normal limits. Dr. Cantrell further wrote, though:

Although it is my opinion that Mr. Rector has a diagnosis of bilateral carpal tunnel syndrome, given the average hours worked per week over the past three years at sixteen hours per week, according to information made available to me, I cannot conclude that his occupational activities would be considered the substantial causative factor in his diagnosis. It should also be noted that despite having cast immobilization of his left wrist into a neutral position for six weeks for the treatment of a finger fracture, Mr. Rector did not experience any subjective improvements in his complaints, further suggesting that the elimination of his work activities did not lead to substantial improvements, and therefore, may not be the substantial factor in his diagnosis of bilateral carpal tunnel syndrome.

Dr. Cantrell prepared a final causation report, dated March 2, 2005, after reviewing additional records, including medical records. The doctor noted that in 1995 Rector had sustained a hernia requiring surgery, in 1998 he was treated for a lumbar strain, and in 1999 sought treatment for back problems which were described as re-occurring. Dr. Rector further wrote the following:

I was provided some short-term disability request forms, in which Mr. Rector had requested a leave of absence in October and November of 2001 for the diagnosis of depression, and in January of 2002 Mr. Rector was seen by Dr. Stanley Sakabu for diagnoses of rib fractures, puncture lung, and a collapsed lung, at which time he was authorized off work beginning January 3, 2002 to an unknown time in the future. The etiology of these diagnoses was described as a bullet wound to the chest.

As of April 11, 2002, he was described as remaining completely incapacitated. The diagnosis then was that of a recurrent right sacroiliac joint sprain. It appears that his work absence was extended to May 2, 2002.

In April of 2002, it appears that he was experiencing severe depression and anxiety, which was recurring and

he was anticipated to be off work for three to four months due to this diagnosis. The incapacity at that time was described as being commenced on May 8, 2002. Incapacitation was extended into August of 2002 due to lower back pain complaints and pain in his right hip, and it appears that he remained off work through September of 2002 due to a lower back condition.

He was authorized off work two weeks in October of 2002 due to back complaints, and to January of 2003 appears to have been authorized off work due to diagnosis of major depression. He was off work for two weeks then and again another week in February of 2003 for the diagnosis of major depression and was authorized off work two weeks in July of 2003 for the diagnosis of major depression. He was off work approximately two months in late March and early April of 2004 for this same diagnosis and June of 2004 was authorized off work for approximately a week with a diagnosis of a left foot metacarpal fracture. This had apparently occurred after he ran a three-wheeler into a tree. His treating physician Dr. Johnston had authorized him off work through June and July of 2004, and the authorization that he remain off work continued through August of 2004, specifically August 16, 2004. It is unclear whether he was off work in the interim between August and December of 2004, as Dr. Johnston's records indicate that in regards to the diagnosis of a fracture of the left hand he was authorized off work on December 6, 2004 with a return to work date pending.

On July 9, 2002, Mr. Rector had been seen by Dr. Jose Remo complaining of lower back pain indicating he had been involved in a motor vehicle accident running his brand new pickup into a parked vehicle. It was noted then that he was lightheaded, sleepy, and apparently drunk, and he had also remembered taking narcotic analgesics for back pain as well. Because of that incident, Dr. Remo noted that Mr. Rector was vowing not to drink alcohol anymore. It was noted that he had been sober for two days. Sacroiliac sprain and alcohol abuse were his provided diagnoses at that time, and he was prescribed Antabuse.

Mr. Rector had been seen on July 24, 2002, at which time he complained to Vivian Dudley, a nurse practitioner in Dr. Remo's office, of complaints of bilateral hand numbness without any associated neck pain or radicular pain. It is noteworthy that Mr. Rector had at that time been authorized off work due to back pain complaints and was described by the physician's office as being totally incapacitated between July 15th and 29, 2002. It appears also in reviewing the short-term disability records in the months preceding July of 2002 when he had first apparently complained of bilateral hand numbness that he had been off work for extended periods of time due to either complaints of back pain or diagnoses of depression and anxiety.

Dr. Cantrell further wrote in his March 2, 2005 report his opinion on causation:

After reviewing all of these medical records, it is my opinion within a reasonable degree of medical certainty that Mr. Rector's diagnosis of bilateral carpal tunnel syndrome is not substantially caused by his employment at Integram St. Louis Seating. This opinion is based on my prior awareness of the number of hours he has worked on average over the past three years, the knowledge that he has a significant alcohol history and that prolonged alcohol use and abuse increases individual risks of peripheral polyneuropathy and carpal tunnel syndrome, and medical records would suggest that the first complaints he had made of bilateral hand numbness and tingling was at a time when he was actually not working and had not been working on a consistent basis for several months preceding those documented complaints.

Documentary evidence introduced into the record by the employer/insurer and admitted included the claimant's time records for the years of June 1, 2001 through July 31, 2007 (No. 2). These records revealed the following about the claimant's work hours in regards to the time period January 01, 2003 through May 31, 2004:

<u>Date</u>	<u>Days EE could've worked</u>	<u>Days EE worked</u>	<u>Days EE off work</u>
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Jan. 2003	23	2	21
Feb 2003	20	5	15
Mar 2003	24	12	12
Apr 2003	22	17 ½	4 ½
May 2003	22	21	1
June 2003	23	18	6
July 2003	22	2	21
Aug 2003	22	9	13
Sept 2003	22	15 ½	6 ½
Oct 2003	23	17 ½	5 ½
Nov 2003	17	9 ½	7 ½
Dec 2003	23	14 ½	8 ½
Jan 2004	20	8 ½	11 ½
Feb 2004	20	16	4
Mar 2004	23	14	9
Apr 2004	22	13	9
May 2004	20	20	0

The time records revealed that when at work during the time period of January 1, 2003 – May 31, 2004, the claimant worked generally 7 to 8 hour days. There were scattered times of overtime work varying between 8.05 hours to a few over 9 hours days, including one or two 9:55 hour days.

As noted by Dr. Cantrell, the time records revealed numerous absences by the claimant for various reasons, including prepaid holiday, to early departure, to absenteeism, to paid leave, to leave of absence. In the months before the alleged May 2004 occupational disease, the time records reveal the claimant worked a more steady schedule with numerous 5-day work weeks; the record revealed no time off (other than May 31, 2004, Memorial Day holiday) for the month of May 2004. Considering the number of hours a day the claimant worked prior to the alleged May 31, 2004 occupational disease, the time records reveal the following for the days the claimant actually worked: a. October 2003 – the claimant averaged 7.81 hours/day, or about 39.03 hrs/wk for the weeks worked; b. November 2003 – the claimant averaged 6.76 hours/day, or about 33.79 hrs/wk for the weeks worked; c. December 2003 – the claimant averaged 7.94 hours/day, or about 39.7 hrs/wk for the weeks worked; d. January 2004 – the claimant averaged 6.82 hours/day, or about 20.7 hrs/wk for the weeks worked; e. February 2004 – the claimant averaged 7.38 hours/day, or about 36.91 hrs/wk for the weeks worked; f. March 2004 – the claimant averaged 8.02 hours/day, or about 40.11 hrs/wk for the weeks worked; g. April 2004 – the claimant averaged 7.93

hours/day, or about 39.64 hrs/wk for the weeks worked; and h. for May 2004 – the claimant averaged 7.785 hours/day, or about 38.93 hrs/wk for the weeks worked. It is clear from all of the time records from 2001 to 2007 the claimant is less than an exemplary employee in regards to work attendance. The pertinent time period, though, for Missouri Workers' Compensation Law is the three-month period prior to an alleged occupational disease. See, *generally*, Section 287.067.7 RSMo 1993, which states:

With regard to occupational disease due to repetitive motion, if the exposure to the repetitive motion which is found to be the cause of the injury is for a period of less than three months and the evidence demonstrates that the exposure to the repetitive motion with the immediate prior employer was the substantial contributing factor to the injury, the prior employer shall be liable for such occupational disease.

It is found that in this case, there is competent and substantial evidence, including the consistent testimonies of the claimant and Nixon and the documentary evidence, establishing that for a substantial period of time (the eight (8) months prior to the date of the alleged occupational disease) the claimant was performing on a regular basis and for more than 16 hours per week his work duties at Integram as an assembly man which has been determined by medical expert opinion to be activities that exposed the claimant to a hazard to his hands/wrists, and upper extremities incident to his employment and beyond that to which the general public is exposed outside of that employment. It is found that Dr. Lipede's opinion on causation is controlling and probative on the issue of causation as it is found to be supported by the substantial weight of the evidence. It is found that the substantial weight of the evidence does not support Dr. Cantrell's opinions that: a. for a significant period of time before the alleged occupational disease the claimant worked only 16 hours a week; and b. that the claimant is suffering from any alcohol related illness and that such alcohol related illness is causing peripheral polyneuropathies in the claimant's hands/wrists. It should be noted that Dr. Lipede stated that the claimant's alcohol problem could retard the reparative process, which would explain why the claimant felt no improvement in his physical complaints after immobilization of his left wrist for six weeks due to a fracture. It is found that there is sufficient competent and substantial evidence establishing that on or about May 31, 2004 the claimant suffered an occupational disease of bilateral carpal tunnel as a result of performing his work duties at Integram Seating.

It is further found that there is indication in the opinion of Dr. Lipede of injury to the claimant's left and right shoulders and that the injury is a result of the claimant performing his work duties at Integram, but this opinion in regards to the claimant's shoulders is found to be less than definitive. Dr. Lipede stated the following as his diagnoses after his October 4, 2006 examination:

"On the left side we have a left severe carpal tunnel syndrome with median nerve entrapment neuropathy.

On the right we have a right carpal tunnel syndrome with entrapment and median nerve neuropathy. On the left shoulder we had an impingement." (Lipede Dp. pg. 13)

The doctor was queried if there was any problem with the right shoulder, and Dr. Lipede responded: "There was some problems with his right shoulder, but the left was much more impressive in terms of the impingement syndrome." (Lipede Dp. pg. 14) In his testimony as to his opinion of whether or not Rector needed any surgery, Dr. Lipede agreed that Rector was a surgical candidate for surgery for both hands, and further stated that the left needed to be done more emergently than the right. When queried about the shoulder impingement, Dr. Lipede responded:

"There are records that show he had right shoulder problem and left shoulder problems in the past.

We could do an MRI on that one and see the details of the pathology inside the shoulder and maybe conservative treatment and/or injections may help alleviate the problem.

It is a two-step approach to the shoulder. And then when we know what we have, then we can go ahead and advise accordingly” (Lipede Dp. pg. 15) (Ruling: Employer/Insurer’s objection on grounds of Seven Day Rule is overruled. Lipede Dp. pg. 15)

Furthermore, Dr. Cantrell noted the claimant’s complaints in regards to his shoulders, but after testing, Dr. Cantrell’s diagnosis was – bilateral carpal tunnel syndrome. It is found that there is no definitive medical opinion in regards to a diagnosis for the claimant’s shoulders, but rather a suggestion of further testing to establish any diagnosis.

ISSUE: Need for future medical care

It has been determined in this Award that there is sufficient competent and substantial evidence establishing that on or about May 31, 2004 the claimant sustained the occupational disease of bilateral carpal tunnel syndrome as a result of performing his work duties at Integram.

The claimant, Rector, testified that he is presently having problems with his hands. He agreed that he has been told by doctors that he has carpal tunnel syndrome, and that he needs surgery in order to prevent serious damage.

Section 287.140.1 R.S.Mo. states: “In addition to all other compensation paid to the employee under this section, the employee shall receive and the employer shall provide such medical, surgical, chiropractic, and hospital treatment, including nursing, custodial, ambulance and medicines, as may reasonably be required after the injury or disability, to cure and relieve from the effects of the injury.” Medical opinion, in combination with the claimant’s testimony and medical records is adequate to meet the claimant’s burden of proving a reasonable probability of a need for future medical aid. *See, generally, Dean v. St. Luke’s Hospital*, 936 S.W.2d 601, 604 (Mo. App. W.D. 1997).

Dr. Lipede, who evaluated the claimant on October 4, 2007 on the claimant’s behalf, stated the following diagnoses in regards to the claimant’s left and right wrists and hands:

“On the left side we have a left severe carpal tunnel syndrome with median nerve entrapment neuropathy.

On the right we have a right carpal tunnel syndrome with entrapment and median nerve neuropathy.” (Lipede Dp. pg. 13)

Dr. Lipede testified about his opinion as to whether or not Rector needed any surgery:

“From the severity of physical findings we have and the electrodiagnostic tests he had performed, I think he needs surgery as quickly as possible for the left hand.

The right hand can be done electively, but the left hand needs to be done as soon as possible because he is losing a lot of neurological function at that site.” (Lipede Dp. pg 14)

Dr. Lipede agreed that Rector was a surgical candidate for surgery for both hands, but the left needed to be done more emergently than the right.

Dr. Cantrell evaluated the claimant on several occasions during the period of November 2004 through March 2, 2004 on behalf of the employer/insurer, including performing tests. After the first examination on November 30, 2004, Dr. Cantrell noted that Rector’s primary presenting complaint that date was of bilateral hand numbness and paresthesias. Dr. Cantrell’s diagnosis on November 30, 2004, after his evaluation, was that Rector presented at that time “with symptoms that are suggestive of both carpal tunnel and cubital tunnel syndrome bilaterally”. Dr. Cantrell gave the claimant conservative treatment, including

wrist splints. Dr. Cantrell wrote on February 1, 2005 that due to Rector's persistence in his subjective complaints, "which appeared to be related to those of a peripheral entrapment neuropathy", surgical intervention would likely be necessary. The doctor continued to evaluate the claimant, including reviewing medical records and laboratory tests; Dr. Cantrell's diagnosis continued to be bilateral carpal tunnel syndrome. In his February 3, 2005 report, Dr. Cantrell wrote that the "numerical values on (the claimant's) prior electrodiagnostic test would suggest that he is an appropriate candidate for consideration of bilateral carpal tunnel release surgery".

It is found that there is sufficient competent evidence establishing a need for further medical treatment for the claimant's physical condition of bilateral carpal tunnel, found to be a compensable occupational disease. It is found that the employer, Integram, is responsible for providing this treatment that may reasonably be required to cure and relieve from the claimant effects of this injury.

SUMMARY OF THE EVIDENCE

Douglas Edward Rector, the claimant, testified that he was born on July 1, 1956. I am 50 years old, Rector stated. Agreeing that he is presently working, Rector testified that he has worked at Integram Seating (Integram) for roughly eleven and a half years. The primary business of Integram is building the seats for Chrysler minivans, Rector said.

I started with Integram in 1995, the claimant stated. Discussing all of the positions he has held at Integram, Rector testified - cover loader, line worker, rear subassembly. I have been at the position of rear subassembly for roughly four years, he stated. I worked as a line worker approximately three years, the claimant said, and approximately four years in cover loading. Explaining his duties as a cover loader, Rector stated it was putting the seat covers on molds and stretching them and closing the molds up. He explained that the trims go on molds, so it can go around and let robots pour foam on it. What I did as a cover loader was stretch the trims on the molds, Rector said. He agreed that the molds were for the shape of the seat. He was asked what parts of his body did he use to perform these activities. Every part, the claimant answered. Agreeing that he used his legs, Rector stated you use them when you're pulling down on the trims. Some of them are fairly tight, he said. He agreed that essentially you're using your whole body to force the upholstery onto the mold. When queried if the goal of this is to shape the upholstery for the shape of the seat, Rector responded - There's a vacuum that pulls in on the trim that pulls that to that mold tight. A line worker puts all the parts on the pallets, builds the backs and the cushions; that's part of the rotation, Rector testified. In regards to the relationship between a line worker and a rear subassembly worker, the claimant agreed that line workers gather all the parts that are going to be needed for the subassembly of a seat in that they're put on a pallet to be delivered to the people who do the rear subassembly.

The claimant was asked to discuss what parts of his body as a line worker did he use to create the pallets on which all these parts and equipment were going to be placed so that it could be passed on to the rear subassembly people. It depends on what job you're on at that time, Rector answered, you pretty well use all your body parts anyway. He stated that basically it is an assembly line that runs at waist level pass you. He agreed that you would be using your arms and shoulders loading things onto pallets that are located at waist level. The claimant was asked to give examples of all the parts he put onto a pallet that would get passed on to the rear subassembly people. Backs, cushions, side shields, hinges, risers; that's about all I can remember of it for right now, he answered. He was queried - What about hardware, such as screws, bolts, fasteners of various sorts; does that go on the pallet that's going to be passed onto rear subassembly? No, Rector answered, we stock those ourselves in the cells.

Rector agreed that he worked on the line for approximately three years and then graduated to a rear subassembly worker, and he has been doing this for the last four years. The claimant agreed that the rear

subassembly is the more advanced position at Integram Seating, and that it takes more technical expertise. He agreed that he gets paid more than he was getting paid as a line worker. I was promoted to a rear subassembly employee at Integram I believe it was about four years ago, Rector testified, and agreed that it would have been about 2002 or 2003. You work with partners when you work as rear subassembly men, Rector said, working with one other person. He agreed that the two of them worked in a cell, which is a work area for two people. Rector agreed that there are six cells at Integram, and further agreed that when Integram is in operation, essentially there are twelve people working in six cells doing assembly of the seats. Rector explained that there is a conveyor that delivers these pallets that have all the materials you'll be working with, and that conveyor runs to the side of the cell. Agreeing that one of them is responsible for pulling the pallet off the line, Rector stated that it would have been his partner because it would have been on his side of the cell. It has always been that way since I've been working in rear subassembly, the claimant said.

He was asked how many seats did he work on in rear subassembly. It depends on what our number is for the day, Rector answered. Depending on what we work on, one at once or two at once, Rector said. If it's a two passenger seat, it's just one; if it's quads, we do two at a time, he stated. He agreed that he and his partner in the cell would share the work of each seat. Describing the components of an average seat, Rector testified well, quad seats there's basically about 18, 20 parts. He agreed that these needed to be assembled for each seat. When referring to quad seats, he agreed he meant two seats. My partner would pull the pallet off the conveyor and we would throw everything to the side basically and we just start assembling stuff, Rector said, he does one side of the seats and I do the other side. The type of equipment I have to do the assembly of the seats are torque guns and screw guns, the claimant said, the torque gun hangs from the ceiling and the drill guns are below you. For a seat, an average of ten different torquings per side would be needed for a given seat, Rector stated. The number of different screwing activities there would be is a dozen, he said. So for a given seat, there would be a total of twenty-two screwings and torquings, Rector said. It depended how many seats I and my partner did every day, the claimant said. We have done as many as a hundred a day, he said, and we did more than that some days, that's rare. Rector was asked what parts of his body did he use primarily for assembling seats. Every part, he answered. He agreed that he used his hands and arms and shoulders the most. Rector further agreed that it was manual labor using his hands, arms and shoulders to put these seats together. He agreed that he was using guns and drills and other hand tools to put these seats together, and agreed that he spends the whole day putting these seats together. It depends how many hours a day I put these seats together, Rector testified, it could be eight, it could be ten hours. He agreed that he is assembling seats the entire time except for maybe some clean up at the end. The average number of seats that I and my partner would do per day is 85, the claimant stated. He was asked how heavy are the pallets that have to be removed from the conveyor belt, and Rector responded - Roughly 300 pounds. Rector agreed that the pallets have to be broken down, that is the material removed from it and placed where it could be worked on before you can actually do the assembly, and stated that this was done by both of them. When asked what parts of your body do you use to do this, the claimant answered - Everything basically. He agreed that he uses his hands, arms and shoulders to lift things off the pallet, and that he grips things with his hands and then moves them and sets them somewhere. I use my hands and arms to set things on a work surface that I am going to use for the seats, Rector stated. The claimant stated that hand tools he used in addition to torque guns and screw guns in order to assemble the seats were some starter tools to get bolts started on some of the seats. Explaining what a starter tool is, the claimant testified it's just like a socket with a handle to it. I do not have to use a starter tool for every seat, he said. It was noted that Rector had said there were basically 22 torquings and screwings per seat in assembling a chair; he was asked if there were other procedures other than torquings and screwings that have to be done to a chair in order to put it together. Yes, he answered, you've got to pick them up and flip them over. The claimant stated that he was using his shoulders, upper arms and hands to do this. I have to flip a chair once while I'm working on it, the claimant said. My partner and I share that activity on some of them, Rector said, agreeing that some of them are big enough that they require two people. Rector agreed that all day long he is using his hands, arms and shoulders to put together seats

using various tools, and using his own dexterity in order to do so.

I first noticed that I was having some problems with my hands, arms or shoulders in May of 2004, Rector testified. I complained about the problems I was having to the supervisor, I believe it was Dennis Vaughn at that time, the claimant said. Describing the type of problems he was having in May of 2004, Rector said hands going to sleep, numb, aching bad at times up to the shoulders. He agreed that he had trouble gripping things, and had trouble holding a steering wheel when he was driving both going to work or coming home from work. When I complained to my supervisor; they sent me to the company doctor, Rector stated, I believe it was Dr. Bogner. This doctor did not treat me, he just sent me to Dr. Cantrell, the claimant said. Dr. Cantrell did not treat me, he sent me to a nerve specialist, Rector testified. The nerve specialist did that nerve conduction test, and I had to go back to Dr. Cantrell several times and do more tests, and they said that I had carpal tunnel syndrome in both arms, the claimant said. Rector was asked if he believed his problems with his hands, shoulders and arms arose from his work, and he answered - Yes.

The claimant was asked if he had had any problems before May of 2004 with his hands, arms or shoulders, and he said yes. Explaining why he didn't report to his supervisor before May of 2004, Rector testified - I just thought it was the common aches and pains that everybody has. Rector stated that he was aware of other people working in rear subassembly in those six cells that he worked had carpal tunnel syndrome. Naming them, the claimant testified - Ryan Weeks, Roger Ulry; I believe Connie Hafe; Cheryl, I'm not sure what her last name is; Jim Haft; that's all I can think of right now. The claimant agreed that they had had surgery to correct the problems that they were having.

The claimant was asked if he drank alcohol, and Rector answered - Yes. Agreeing that he drinks every day, Rector stated that he drinks four beers. Two with my lunch before work and two after work, the claimant said. Explaining his work schedule, Rector said it is basically second and third, or typically 5:00 in the evening till 1:30 or till 3:30 in the morning. I typically have a couple of beers at lunch which would be around one o'clock in the afternoon, Rector testified. He agreed that then when he gets home, he also typically has two beers. The claimant was asked if he frequently has more than that, and he answered - No. I drink beer on the weekends when I don't have to work, the claimant said. On days I don't have to work I drink six to eight, Rector said. The claimant was asked if he felt he had a drinking problem. I don't think I do, Rector responded. He agreed that there had been a time when he had asked the doctor to be put on medication that discouraged him from drinking because it made him ill if he drank. I asked the doctor for this because my girlfriend wanted me to quit drinking, the claimant explained. He was asked to tell how the medication had worked out. It didn't, Rector answered, I took it a couple of times and that was it. When asked what made him stop, Rector said I just enjoy my beer; I like the taste of it. He agreed that he is still with his girlfriend, and that it did not destroy their relationship, it was just something she had asked him to try. Rector agreed that he was aware that his employer says that he may have carpal tunnel and the problems with his hands, wrists and shoulders as a result of drinking. Rector was asked if he had ever had any physical problems as a result of drinking that he was aware of, and he answered - No.

Rector agreed that he has missed work in the last six years, but stated that he had no idea of how much work. He was asked to discuss as many of the reasons he could think of that he would've missed any work in the last six years. We had shutdowns, the claimant stated, and explained that this is when Chrysler shuts down to retool and stuff like that. Another reason I missed work is because I broke my hand once, Rector said, and I missed six weeks because of this. Other reasons I have missed work in the past six years is that I had back problems, Rector stated. I don't know how many days I missed as a result of that, he said.

Rector stated that in the past year he has made the basic salary that everybody else did. He agreed that he is in the union, the United Auto Workers Union (UAW).

The claimant testified that he is presently having problems with his hands, arms and shoulders. They ache and my shoulders pop, he said. Rector agreed that a doctor, Dr. Cantrell, has told him that the carpal

tunnel in one arm is so bad that he needs surgery right away in order to prevent serious damage. Dr. Cantrell is a Workmen's Comp doctor, Rector said. He was asked if Dr. Cantrell had ever told him why he had carpal tunnel, and Rector answered - No.

On cross examination by the employer/insurer, Rector agreed that he had testified earlier that he drinks alcohol every day. He agreed that every single day he drinks. Agreeing that he has a kind of a schedule with his drinking, that he drinks a couple beers at lunch and drinks a couple beers after work, he further agreed that he had lunch that day of the hearing and had drank that day. When queried - So you drank before you came to court today?, the claimant responded - "Two beers." He agreed that he had drank the week before when he went to work. He was asked what happened when he went to work and he had drank last week. "I kind of got in a little argument with my supervisor", Rector answered. He admitted that he was suspended for three days as a result of his use of alcohol at work. The claimant agreed that he had been suspended in the past for the use of alcohol in the workplace. Dr. Remo was the doctor I went to for the drug Antabuse to help me stop drinking when my girlfriend asked me to use help to stop drinking, Rector agreed. He agreed that at the time he went to Dr. Remo and asked for the Antabuse, he had just recently been involved in a motor vehicle accident. He agreed that there was suspicion that alcohol played a role in that motor vehicle accident. It was noted that the claimant said that the alcohol isn't really an issue; he was asked why is it he felt the need to use prescription medication to quit using alcohol if it is not an issue. She asked me to, Rector responded.

During cross examination, Rector agreed that he has been at Integram ten plus years, and he is a member of the UAW, United Auto Workers Union. He agreed that for the last four or five years he has been in subassembly. Rector agreed that all of the employees of that plant are members of the UAW. The job that I work on any given day is not as a result of a promotion or demotion, but as a result of my bidding into a job, Rector agreed. He agreed that when he bids into a job, he bids into that job based upon seniority. It is safe to assume, the claimant agreed, that most folks as they get more senior and have more opportunity to change positions, don't bid into harder jobs. Rector denied, though, that subassembly is viewed in the plant to be one of the easier jobs that folks do. Explaining why someone who has the opportunity to bid into an easier job would bid into a harder job, Rector stated that you're away from everybody in the cells.

Rector agreed, during cross examination, that he had stated on direct examination that he had no complaints or minimal complaints with his arms until he got into subassembly.

During cross examination, the claimant agreed that he was sent by his attorney to a physician named Dr. Lipede who he saw in the end of 2006. He was queried, assuming the doctor's records were correct, had he told Dr. Lipede that he works eight to ten hours a day, five days a week plus overtime. That's the normal, Rector responded. Lately, the normal has been 40 hours a week, the claimant said. He agreed that over that ten-year period the normal for him would have been 40 plus hours a week. Rector agreed that he had basically told Dr. Lipede that he had worked five, six days a week, eight to ten hours a day for ten and a half years.

I believe it was 2004 when it was the first time I received any treatment on my arms, Rector stated during cross examination. He agreed that at that time when he had gotten to a point where he felt he needed treatment, he had been in the subassembly area for a period of two years.

The claimant agreed that he had testified on direct examination that in subassembly with the assistance of a partner, he made 85 to 100 seats a day. Rector agreed that Dr. Lipede had also asked him about how that job worked and how he made the seats. He was queried if his recollection was consistent with Dr. Lipede's notes if they reflected that he had told the doctor that in subassembly you're continuously making seats and that it takes approximately two minutes to finish a pallet or a seat. Three minutes usually on a two pass and five to six minutes on the quads, Rector responded. He was queried - So if it takes three minutes a seat and we're doing 85 seats, what are you doing the other three to five hours a day; three minutes times 85 comes

out to a little more than four hours. "Well, you do have lunch and breaks", Rector responded. The claimant admitted that lunch and breaks do not compromise three to five hours a day. He was queried - That eight to ten hours a day, what are you doing the remainder of that time if you're only spending about four hours a day making seats? "Sometimes you have to wait a little bit on the seat", the claimant answered. Rector agreed that he would acknowledge that there's some dead time in the day. He was asked - So it's not a continuous action? "Some days it is", he responded. On those days they do send you home early, he agreed. The claimant was queried - So you have days that you make 85 seats in four hours and you go home? We have never made 85 in four hours, Rector responded. The claimant agreed that the seats come to him on a pallet and they come on rollers, and then his partner pulls that pallet into their work station and the pallet is on some kind of bearings or something that helps it slide in. When queried if it slides out the same way with bearings or some type of assistance device, Rector answered - I pull it out.

During cross examination, the claimant agreed that he is currently working without restrictions, and agreed that he has been working without restrictions since the onset of his problems in May of 2004. He agreed that Dr. Lipede, the physician that his attorney sent him to, did not place any restrictions on his ability to engage in any physical activities. No physician has ever placed restrictions on my ability to engage in any physical activities, Rector said. He stated that he does not take any medications for the problems he has in his upper extremities, not even any over-the-counter medications.

Rector agreed, during cross examination, that as a UAW employee he enjoys certain protections pursuant to his contract. He agreed that there are a variety of ways, paid and unpaid, that he can miss work and still maintain his position with the company. One of those ways, the claimant agreed, is through an excused absence, and then he has vacation, and is allowed some absenteeism. I am permitted seven days per year of absenteeism, Rector said. He agreed that as discussed before he'd had a few periods where he'd been suspended, and then there are paid leave periods and unpaid leave periods. The claimant agreed that he gets unpaid medical leave, gets holiday pay, and he has paid emergency leave. He agreed that there are some excused but unpaid tardy times that he is permitted, and there is also leaves of absence which are paid periods. Some of these are when the plant shuts down for retooling and some would be inventory control. The claimant agreed that there are also work relief periods, which is when you choose to leave earlier when there's too many people there. The claimant agreed that there is also bereavement pay. Rector stated that he had no idea how many hours in the last six years he has accumulated under all of these paid and unpaid leave provisions. The claimant was queried if he would have any reason to question the hours listed on a printout that indicated from June 1, 2001 through the date of the hearing (March 20, 2007) he had missed 6,859.78 hours. Rector responded that he had no idea what they were, to begin with. I haven't seen this before, the claimant said. It was noted that the same sheet indicated that for the same period of time Rector had worked 6,276.54; the claimant was asked if he had any reason to quarrel with that figure. I have no idea, Rector answered. He stated that he had no reason to say these records were wrong. It was noted that in his records, one of Dr. Cantrell's conclusions from his review of these records was that in the three years preceding the onset of Rector's symptoms, Rector had averaged approximately 16 hours a week at Integram; the claimant was queried if he had any reason to quarrel with that conclusion. "I'd like to know how I paid my bills if that's all I averaged", the claimant responded. When queried - Much of this leave is paid, isn't it?, the claimant answered - "I don't know." Going through some of the printout, Rector admitted that he missed most of 2002. Not most of 2002, he further said, four months of it if I recall right. Explaining why he had missed the four months that he recalled, the claimant testified - Gunshot wound. He was asked how was it he became a victim of a gunshot wound. "Stupidity" the claimant answered. He agreed that it was a self-inflicted gunshot wound. Rector agreed that subsequent to that four months, he did take a leave of absence for a problem with his back and depression. He was asked if he then missed some time from work in July of 2002 because of the motor vehicle accident that had been touched on previously. I don't recall, the claimant said. He stated that he did not recall if he had missed some time from work in 2003 because of problems with depression and anxiety.

Rector agreed, during cross examination, that he had talked about fracturing his left hand. I don't recall the date when I fractured my hand, he said. Explaining how he had injured his left hand, Rector said – Three-wheeler wreck. Agreeing that he was casted as a result of this injury, Rector said that he wore the cast for four weeks. I was off six weeks, he said. Rector agreed that for the four weeks he wore the cast he couldn't move the wrist at all, and he didn't work at all; therefore, he further agreed, there was no flexion or extension of the wrist at all for a period of four weeks with no employment at Integram. The claimant was asked if the complaints or problems in his left wrist got better during that period of time. "About the same", Rector responded.

Other than Dr. Lipede, my attorney did not send me to any other doctor, osteopath, or chiropractor for an evaluation, Rector said during cross examination. When I saw Dr. Lipede he did not offer me any treatment, Rector said.

The claimant stated that he was compensated while he was off the four months because of the gunshot wound. Explaining how it was that he was compensated, the claimant agreed that he had paid medical leave. He agreed that the employer has short-term disability and long-term disability medical leave. As long as the physician says that you're unable to work, there are ways to be paid for the time that you're off, Rector agreed. He agreed that the other times that he has taken off was when he has had problems with his low back. It was noted that Rector had had problems with anxiety and depression, and he agreed that that has always been with direction of a physician; he agreed that he would have been on some type of paid leave, whatever category that fell into, for those periods of time. The claimant agreed that this would have been a way for him to pay his bills for the times that he was off.

Christopher Nixon testified by deposition on behalf of the claimant on November 13, 2006. (No. C) Nixon stated that he has been employed at Integram Seating since August 7, 1995, almost 12 years. My education is eighth grade, Nixon said. "I've had to work harder to get the job that I've got because of no education", he stated. (Nixon Dp. pg. 6) I have had no technical education, he said. Nixon stated that he belongs to a union, Local 1760, which is the same union Rector belongs to.

My present job at Integram is working "in a cell putting seats together" with a partner "Jeremy Watson", Nixon testified. (Nixon Dp. pg. 5) I have been partnered with Rector, Nixon said, now I work in the vicinity of Rector. Discussing when he first met Rector, Nixon testified: "He started on the foam side. I started on the assembly side, but we started working together in cushion building. He got bumped to assembly side about ten years ago. That's how long we've known each other. (Nixon Dp. pg. 8) Explaining the duties in foam, Nixon stated:

"You put the seat covers on molds and it goes around, gets the foam put on it, and then it comes around and you take that off and you keep loading and unloading all day until your shift is up." (Nixon Dp. pg. 8)

Agreeing that about ten years ago Rector got moved from foam to assembly, Nixon testified:

"Around 2000 we both got called back to the foam side after the big shut down, so we was there about a year and a half and then ever since then we've been back on the assembly side in a cell putting seats together." (Nixon Dp. pg. 9)

Nixon explained the duties of the assembly side:

"The line has to put the parts on, shields, hinges. They have to build the cushion in the subassembly area and then the back and then they come around to us and we pull them in, we assemble them, push them out and we just keep pulling them in and pushing them out all night until we're done." (Nixon Dp. pg. 9)

Nixon agreed that he was talking about Chrysler minivan automobile seats. He further explained that the

employees on the assembly line “put the parts in the pallet and then as the pallets move along, they keep adding parts to it and by the time it gets to us (in the cell), supposedly all the parts are supposed to be there, and we assemble the seat and push the seat out when it’s done and keep doing that all night”. (Nixon Dp. pg. 11)

I worked directly with Rector in a cell for at least two years and that ended three years ago, Nixon said. This was when I signed a bid to go to days, Nixon said, and “then when I got bumped back I wasn’t in the same cell with him”. (Nixon Dp. pg. 12)

When asked if he was aware of Rector complaining of problems with his hands, arms or shoulders, Nixon responded – “Every day”. (Nixon Dp. pg. 13) “Pretty much, yes, complains about them all the time”, Nixon said. (Nixon Dp. pg. 13) Stating how long Rector has been complaining of problems with his arms, hands or shoulders, Nixon said – “Couple of years that I know of”. (Nixon Dp. pg. 28) He was asked if he had an understanding of what caused Rector these problems. “Same repetition every day”, Nixon answered. (Nixon Dp. pg. 14) He explained the repetition he meant:

“It’s the same thing of putting the hinges on and you have to clamp the wire into the hinge every day. And the bolts that you put in the hinges and you’ve got to hold the gun a certain way and you get cramps in your hands from holding the gun, because it takes a little while even on the way home at night to get your hands undone so you can hold the steering wheel. That’s just for me; I’m not talking for them. After you do it for a while, that’s what happens.” (Nixon Dp. pg. 14)

Nixon discussed the tools he has to use to assemble chairs:

“We got to screw in, put the shields on, cup holders, they have regular guns with sockets on it to put the bolts on for the backs and the hinges and assemble the bottom of the set with the risers and stuff on two pass seats and everything. And handle bolts, you have a lot of turning, get parts behind you and everything.” (Nixon Dp. pg. 15)

He was asked how many seats did he assemble per day. “Depending on the number, pretty much 85, 90 pretty much every day”, Nixon answered. (Nixon Dp. pg. 15) Nixon noted that when they got back after the present layoff they were suppose to work nine hours, which would be over a hundred seats a day; he agreed that he and his partner can do up to 100 seats a day. Nixon agreed that they used air powered tools, and this included “torque guns for the bolts....”. (Nixon Dp. pg. 21)

Nixon was asked if everyone became injured over time, and he answered – “No”. (Nixon Dp. pg. 25) He noted, though, that he knew of people who have had carpal tunnel, and others who get rotator cuff tears. Nixon was queried – Is it safe to say that injuries are fairly common at Integram? “Yes”, he answered. (Nixon Dp. pg. 26)

Nixon testified that Rector is a “(v)ery good worker”. (Nixon Dp. pg. 28) He was asked if he was aware of Rector having sustained any injuries to his arms, hands or shoulder from anything else other than at work, and Nixon responded – “No”. (Nixon Dp. pg. 29)

On cross examination by the employer/insurer, Nixon was asked if Rector was his friend. “We work together, yes”, he answered. (Nixon Dp. pg. 30) When asked how long had Rector been his friend, Nixon answered – “Ten years”. (Nixon Dp. pg. 31) Nixon stated that Rector had had “a few” sick days last year (2005). (Nixon Dp. pg. 32) He stated that he did not know how many sick days Rector had had the year before. Nixon admitted that Rector had been written up “(j)ust from missing”, but he did not know the reason why. (Nixon Dp. pg. 32)

During cross examination, Nixon was questioned about time off benefits. He stated that “(a)fter ten

years it's three weeks (vacation) and four paid E days". (Nixon Dp. pg. 33) E days are emergency days, he stated, and "you get four a year". (Nixon Dp. pg. 33) "You also get two shut down weeks a year, July and Christmas", he said. (Nixon Dp. pg. 33) Agreeing that they were shut down that week, Nixon further stated – "This is a layoff, work unemployment". (Nixon Dp. pg. 34) He agreed that this was a regular layoff week; therefore, he further agreed, they have two guaranteed shut down weeks and now one guaranteed layoff week. He was asked how many other weeks had the plant been shut down this year (2006), and Nixon answered:

"The end of July we had a week and three in August, together that was a month. Two weeks ago we was off a week, and now we're off this week. That's as many as I can remember right there. We've been off six or seven weeks so far since July." (Nixon Dp. pg. 34)

Nixon stated that he did not think there were any other weeks off before July. "Because we've been working overtime up until then", he said. (Nixon Dp. pg. 34) Nixon agreed that there are paid holidays also, ten or twelve.

During cross examination, Nixon was asked how many employees who were in the union had had surgeries. "Not many on foam side, but a whole bunch on assembly side", he answered. (Nixon Dp. pg. 35) When asked to quantify this, Nixon responded – "I don't know a certain number, no." (Nixon Dp. pg. 35)

Nixon was asked, during cross examination when had he had his hands operated on, or his elbows, or his shoulders, and to all three questions he answered "Didn't" or "Haven't". (Nixon Dp. pg. 31) "I didn't say they didn't hurt", Nixon stated. (Nixon Dp. pg. 31)

During cross examination, Nixon admitted that he did not have any medical training, and had not worked as a nurse or a chiropractor or doctor. He agreed that Rector has not shared any of his medical records with him.

It was noted, during cross examination, that Nixon had indicated Rector had complained to him about his arms over the years; Nixon was asked if Rector had had any other injuries that he was aware of. "He's been to the doctor for his back a couple of times....", Nixon answered. (Nixon Dp. pg. 37) Nixon admitted that he was aware Rector had been shot in 2002. He was asked if he knew how Rector was shot, and Nixon responded – "Self inflicted." (Nixon Dp. pg. 37) Stating that he did not know what kind of weapon Rector was shot with, Nixon further said – "All I know is his lungs collapsed." (Nixon Dp. pg. 37)

Medical records in evidence were the following:

Medical records of Dr. Russell C. Cantrell, M.D. of Orthopedic & Sports Medicine, Inc. (No. 1) concerned the evaluation of Doug Rector over the period of November 30, 2004 through March 2, 2005. The doctor wrote in his November 30, 2004 examination report that he was seeing Rector on that date "for the purpose of evaluating and treating his complaints of bilateral upper extremity pain and paresthesias attributed by him to his occupation activities at Integram St. Louis Seating". It was written that Rector relayed that his symptoms in his upper extremities developed approximately four years earlier and had progressively worsened. The symptoms included dropping of things from his hands and numbness and tingling that primarily involved the 3rd, 4th and 5th fingers of each hand, but at times involved the entirety of both hands, Dr. Cantrell wrote. The doctor further wrote:

He reports that he typically works a minimum of eight hours per day five days a week, but at times will work ten hours a day. He reports that he is off for approximately four weeks in combination due to company wide shut-down and vacation on an annual basis. I noted in reviewing his average hours worked per week within the past year that he has only worked 24 hours per week within the last year, and within the last three years has worked an average of 16 hours per week. I questioned him regarding this. He reports that although he

has had no time out for medical leave for unrelated reasons within the past year, he does indicate that prior to the calendar year 2004 he was out for sick leave due to a fracture to his left hand that occurred when he ran a three wheeler into a tree. He indicates that this was treated with cast immobilization. He further indicates that although not occurring within the last calendar year, he has had to miss time from work due to intermittent lumbar muscle spasm.

Dr. Cantrell further noted in his November 30, 2004 exam report that Rector had been provided treatment including physical therapy and chiropractic care for right shoulder pain complaints that were diagnosed as rotator cuff pathology, and that Rector continued to report some symptoms of bilateral shoulder pain though his primary presenting complaint that date was of bilateral hand numbness and paresthesias. He has continued doing his regular duty activities, the doctor wrote. Rector's past medical history was noted by Dr. Cantrell to be hypertension and hypercholesterolemia, and he was on medication for both conditions. Dr. Cantrell reported exam findings on November 30, 2004 that included: negative Tinel's sign over the median nerve of both wrists, negative Tinel's sign over the ulnar nerve on the left and a positive Tinel's sign over the ulnar nerve on the right; Phalen's test is positive bilaterally; active range of motion of both shoulders that is within functional limits in forward flexion and abduction; slight elevation of his right shoulder compared to the left; manual muscle testing in the upper extremities is within normal limits.

Dr. Cantrell noted that he had had an opportunity to review medical records, and discussed this past treatment. It was noted that a physical demand analysis had been completed on October 20, 2000 which "showed an operator rear line and final cell assembly indicates that job requirements are light in physical demand, although weights less than 20 pounds were lifted frequently and pushing and pulling occurs with a maximum force of less than 28 pounds frequently".

After discussing his evaluation of Rector on November 30, 2004, Dr. Cantrell wrote that Rector presented at that time "with symptoms that are suggestive of both carpal tunnel and cubital tunnel syndrome bilaterally". Because he has had no treatment thus far for these diagnoses, Dr. Cantrell wrote, I have recommended initially that he wear night time wrist splints and continue to do his regular duty activities. If this fails to alleviate a component of his complaints then further recommendations may be made, the doctor wrote. Dr. Cantrell wrote that he would like to review any laboratory testing that may have been performed on Rector, if available, or perform some laboratory testing "ruling out medical conditions which could predispose an individual to developing peripheral entrapment neuropathies".

In his next evaluation report of December 14, 2004, Dr. Cantrell wrote that Rector reported "only slight improvement in his complaints of nighttime paresthesias with the nighttime wrist splints". Dr. Cantrell noted that Rector reported that approximately nine days after his last evaluation on November 30, 2004, Rector had sustained an accidental injury in which he struck his left fifth finger resulting in a fracture to one of his phalanges. He has been treated for this injury with cast immobilization, the doctor wrote, and has been told to return for reevaluation on January 3, 2005 at which time it is anticipated the cast will be removed and he will be placed in a splint. The cast is currently immobilizing his fourth and fifth fingers as well as his wrist in a neutral position, Dr. Cantrell noted. My recommendation is for him to continue wearing the nighttime wrist splint on the right, and he is allowed to continue with his regular duties, though it is my understanding his not able to work until he has completed treatment for the fifth finger fracture.

Dr. Cantrell next saw Rector on January 17, 2005 and wrote an evaluation report on that date. Rector reports that he had his cast removed from his left hand for his fractured fifth finger and is scheduled to return to work tomorrow, the doctor wrote. Dr. Cantrell further wrote:

He notes that he remains symptomatic with paresthesias in his hands, noting that even with the prolonged immobilization for his fracture, there was no substantial reduction in his complaints of paresthesias in his left hand. He advises me today that he has been told in the remote past that he had a bone spur in his neck according to a chiropractor physician he had seen. He denies having any known history of a disc herniation

in his cervical spine. His current medications include...for hypertension and hypercholesterolemia. He further advises me that he smokes approximately two packs of cigarettes per day and drinks approximately two cases of beer per week.

Dr. Cantrell noted that he had not yet received medical records from Rector's primary physician who had reportedly ordered laboratory testing. The doctor further wrote:

Given the additional medical history provided to me today, the consideration of the amount of alcohol consumption Mr. Rector has on a weekly basis is relevant in the development of peripheral polyneuropathies. When all laboratory testing is returned, the amount of alcohol consumption in my opinion should be considered in determining causation connection between his current symptomatology and electrodiagnostic findings.

Rector was next seen by Dr. Cantrell on February 1, 2005. The doctor noted in his evaluation report of the same date that Rector had brought laboratory test results obtained from his primary physician which showed his hemoglobin A1C was within normal levels and a glucose tolerance test suggested elevation in blood sugar. Dr. Cantrell wrote that there were additional tests he wanted performed in light of Rector's regular alcohol consumption. The doctor wrote that due to Rector's persistence in his subjective complaints, "which appeared to be related to those of a peripheral entrapment neuropathy", surgical intervention would likely be necessary. Dr. Cantrell further wrote:

Given the fact, however, that his reported hours worked per week are only 16 on average for the past three years, I would have to question a causal connection between any peripheral entrapment neuropathies diagnosed and his occupational activities. Furthermore, the presence of a multi-focal peripheral neuropathy as has been noted on his electrodiagnostic tests performed previously would be, in my opinion, more consistent with an early peripheral polyneuropathy rather than occupationally related peripheral entrapment neuropathy. Mr. Rector will undergo these laboratory tests for completeness of evaluation.

Dr. Cantrell prepared a report on February 3, 2005 after receiving additional laboratory test results. The doctor noted that all of these tests were found to be within normal limits. Dr. Cantrell further wrote, though:

Although it is my opinion that Mr. Rector has a diagnosis of bilateral carpal tunnel syndrome, given the average hours worked per week over the past three years at sixteen hours per week, according to information made available to me, I cannot conclude that his occupational activities would be considered the substantial causative factor in his diagnosis. It should also be noted that despite having cast immobilization of his left wrist into a neutral position for six weeks for the treatment of a finger fracture, Mr. Rector did not experience any subjective improvements in his complaints, further suggesting that the elimination of his work activities did not lead to substantial improvements, and therefore, may not be the substantial factor in his diagnosis of bilateral carpal tunnel syndrome.

Dr. Cantrell further noted in his February 3, 2005 report that the "numerical values on his prior electrodiagnostic test would suggest that he is an appropriate candidate for consideration of bilateral carpal tunnel release surgery".

Dr. Cantrell prepared a final causation report, dated March 2, 2005, after reviewing additional records, including medical records. The doctor noted that in 1995 Rector had sustained a hernia requiring surgery, in 1998 he was treated for a lumbar strain, and in 1999 sought treatment for back problems which were described as re-occurring. Dr. Rector further wrote the following:

I was provided some short-term disability request forms, in which Mr. Rector had requested a leave of absence in October and November of 2001 for the diagnosis of depression, and in January of 2002 Mr.

Rector was seen by Dr. Stanley Sakabu for diagnoses of rib fractures, puncture lung, and a collapsed lung, at which time he was authorized off work beginning January 3, 2002 to an unknown time in the future. The etiology of these diagnoses was described as a bullet wound to the chest.

As of April 11, 2002, he was described as remaining completely incapacitated. The diagnosis then was that of a recurrent right sacroiliac joint sprain. It appears that his work absence was extended to May 2, 2002.

In April of 2002, it appears that he was experiencing severe depression and anxiety, which was recurring and he was anticipated to be off work for three to four months due to this diagnosis. The incapacity at that time was described as being commenced on May 8, 2002. Incapacitation was extended into August of 2002 due to lower back pain complaints and pain in his right hip, and it appears that he remained off work through September of 2002 due to a lower back condition.

He was authorized off work two weeks in October of 2002 due to back complaints, and to January of 2003 appears to have been authorized off work due to diagnosis of major depression. He was off work for two weeks then and again another week in February of 2003 for the diagnosis of major depression and was authorized off work two weeks in July of 2003 for the diagnosis of major depression. He was off work approximately two months in late March and early April of 2004 for this same diagnosis and June of 2004 was authorized off work for approximately a week with a diagnosis of a left foot metacarpal fracture. This had apparently occurred after he ran a three-wheeler into a tree. His treating physician Dr. Johnston had authorized him off work through June and July of 2004, and the authorization that he remain off work continued through August of 2004, specifically August 16, 2004. It is unclear whether he was off work in the interim between August and December of 2004, as Dr. Johnston's records indicate that in regards to the diagnosis of a fracture of the left hand he was authorized off work on December 6, 2004 with a return to work date pending.

On July 9, 2002, Mr. Rector had been seen by Dr. Jose Remo complaining of lower back pain indicating he had been involved in a motor vehicle accident running his brand new pickup into a parked vehicle. It was noted then that he was lightheaded, sleepy, and apparently drunk, and he had also remembered taking narcotic analgesics for back pain as well. Because of that incident, Dr. Remo noted that Mr. Rector was vowing not to drink alcohol anymore. It was noted that he had been sober for two days. Sacroiliac sprain and alcohol abuse were his provided diagnoses at that time, and he was prescribed Antabuse.

Mr. Rector had been seen on July 24, 2002, at which time he complained to Vivian Dudley, a nurse practitioner in Dr. Remo's office, of complaints of bilateral hand numbness without any associated neck pain or radicular pain. It is noteworthy that Mr. Rector had at that time been authorized off work due to back pain complaints and was described by the physician's office as being totally incapacitated between July 15th and 29, 2002. It appears also in reviewing the short-term disability records in the months preceding July of 2002 when he had first apparently complained of bilateral hand numbness that he had been off work for extended periods of time due to either complaints of back pain or diagnoses of depression and anxiety.

Dr. Cantrell further wrote in his March 2, 2005 report his opinion on causation:

After reviewing all of these medical records, it is my opinion within a reasonable degree of medical certainty that Mr. Rector's diagnosis of bilateral carpal tunnel syndrome is not substantially caused by his employment at Integram St. Louis Seating. This opinion is based on my prior awareness of the number of hours he has worked on average over the past three years, the knowledge that he has a significant alcohol history and that prolonged alcohol use and abuse increases individual risks of peripheral polyneuropathy and carpal tunnel syndrome, and medical records would suggest that the first complaints he had made of bilateral hand numbness and tingling was at a time when he was actually not working and had not been working on a consistent basis for several months preceding those documented complaints.

Dr. Adelu G. Lipede, M.D. offered opinion on behalf of the claimant by deposition, which was taken on March 2, 2007. (No. A) Specializing in trauma, thoracic and cardiovascular surgery and forensic medicine, and board certified in forensic medicine, Dr. Lipede stated that he examined and evaluated Rector on October 4, 2006.

Noting Rector's complaints at the October 4, 2006 exam, the doctor stated:

"He complained about pain and aching in both his hands, worse on the left than on the right. And also pain in his elbows and his shoulders.

He indicated that he also experienced numbness in both hands, especially when he was working, and that the pain and numbness would spread from his elbows into his hands as well." (Lipede Dp. pg. 8)

Dr. Lipede discussed Rector's job activities noting that essentially Rector worked as a manual laborer trying to build seats on cars and worked in several capacities. The doctor noted:

"...He lifted loads, and he worked very rapidly with his hands trying to fashion fabric over molds and used several implements to achieve this. As a cover loader, he worked with several fabrics and had to do repetitive action in doing this work for Integram.

He did many things, including lifting large loads of pallets and fixing small parts, using several implements to do this, as well as his hands.

He worked in conjunction with another and when working in conjunctions, they were able to pull fabrics over molds and create seats." (Lipede Dp. pg. 9)

Dr. Lipede was asked if he believed within a reasonable degree of medical certainty that Rector's work activities caused or contribute to cause his injuries relating to the problems he had discussed earlier. "Yes, sir", Dr. Lipede answered. (Lipede Dp. pg 9) The doctor was queried – would you agree that Rector's past medical history you had listed in your evaluation report was non-contributory to the carpal tunnel problems and shoulder problems. Dr. Lipede answered: "No, that would be the injuries that were remote from his carpal tunnel syndrome." (Lipede Dp. pg. 11)

Dr. Lipede discussed his examination findings on October 4, 2006, and stated the following as his diagnoses:

"On the left side we have a left severe carpal tunnel syndrome with median nerve entrapment neuropathy.

On the right we have a right carpal tunnel syndrome with entrapment and median nerve neuropathy. On the left shoulder we had an impingement. There was, of course, a hypertensive crisis which we observed because blood pressure at the time of examination was 172 over a 103." (Lipede Dp. pg. 13)

Dr. Lipede agreed that he did not attribute the blood pressure diagnosis to Rector's work, that he thought it was "a separate entity by itself". (Lipede Dp. pg. 14) When asked if there was any problem with the right shoulder, Dr. Lipede responded: "There was some problems with his right shoulder, but the left was much more impressive in terms of the impingement syndrome." (Lipede Dp. pg. 14)

The doctor testified as to his opinion as to whether or not Rector needed any surgery:

"From the severity of physical findings we have and the electrodiagnostic tests he had performed, I think he needs surgery as quickly as possible for the left hand.

The right hand can be done electively, but the left hand needs to be done as soon as possible because he is losing a lot of neurological function at that site.” (Lipede Dp. pg 14)

Dr. Lipede agreed that Rector was a surgical candidate for surgery for both hands, but the left needed to be done more emergently than the right. Concerning the shoulders, Dr. Lipede noted that there were records showing that Rector had both left and right shoulder problems. The doctor further stated:

“We could do an MRI on that one and see the details of the pathology inside the shoulder and maybe conservative treatment and/or injections may help alleviate the problem.

It is a two-step approach to the shoulder. And then when we know what we have, then we can go ahead and advise accordingly” (Lipede Dp. pg. 15) (Ruling: Employer/Insurer’s objection on grounds of Seven Day Rule is overruled. Lipede Dp. pg. 15)

Dr. Lipede further discussed his opinions as to how Rector’s work tasks caused the carpal tunnel and shoulder impingement:

“Mr. Rector lifts heavy loads. He does so intermittently through the day. According to some of the numbers given to us by Mr. Rector, and confirmed by Dr. Cantrell, he probably makes about 100 seats a day. Which means that he has to lift from his shoulder to the waist and vice-versa 100 times a day. That would affect the shoulder. That is a repetitive type of motion that would predispose to injury.

The second thing that is very important about Mr. Rector’s work is that rapidity in which he uses his hand to spread fabric. This fabric is leather on frames. There is a lot of tension that needs to be made and –

“They use some fabric. They use fabric. The fabric can be cloth or leather. Whichever material they use, there is a certain degree of tension that Mr. Rector has to use.

“Mr. Rector, as aforementioned, uses a lot of tension to spread the fabric over the molds and he uses repetitive torque. His hands are positioned in a fashion that would create tension at his wrist, elbows and shoulders. Because of the unnatural way in which his hands are positioned, he is more likely than not to continually injure his tendons, both in the wrists, elbows and shoulders during this work.

He also exerts torque with the machine and with his hands. These in itself create tension and repetitive motion, repetitive trauma to the tendons in his wrist, his elbow and shoulders.

And that, if you look up the number of seats he makes a day, it is substantial. And if he works an eight-hour day and makes 100 seats, that is quite a considerable amount of tension and pressure that predisposes to carpal tunnel syndrome, injury to the elbow and also impingement syndrome to his shoulder. These are all, as far as I can see, it and evaluate it, symptoms and signs accompanying repetitive trauma, especially when the cycle of motion is very fast and the torque that occurs during this motion are quite considerable.

In the absence of a lot of syndromes that we believe contribute to tendonitis and carpal tunnel syndrome – he does not have rheumatoid arthritis. He didn’t have a scoliosis or renal failure.

These are not present, hence, the only etiology we can see is the repetitive trauma that occurs when Mr. Rector performs his duties for Integram.” (Lipede Dp. pp. 15-18) (Ruling: Employer/Insurer’s objections are overruled. Lipede Dp. pp. 16)

Dr. Lipede explained that he got the information about how Rector moved his hands and arms from Rector’s demonstration to him at the doctor’s office of “how he lifts from a conveyer belt and how he put things back on a conveyer belt and how he packs the seats. The way he uses torque.” (Lipede Dp. pg 18) It was noted that there had been some talk about alcohol being a causative factor for Rector’s problems, and Dr. Lipede

was asked to comment about this:

“Yes. I saw that allegation made by Dr. Cantrell. I see no evidence of alcohol-related illness here. The vitamins that are supposedly displaced by alcohol, the vitamins B2, B12 are all present in the usual amounts. I see no sign of Korsakoff psychosis in Mr. Rector.

I see no sign of any neuropathologic, generalized neuropathologic syndrome in Mr. Rector. I see no behavior or changes showing cirrhosis of the liver. I don't see ill-effects of alcoholism that would be poignant in making one agree that, indeed, alcoholism was the sole cause of the carpal tunnel syndrome.” (Lipede Dp. pg. 19)

Dr. Lipede further opined that alcohol was not even a partial cause of any of the problems Rector was having. “I mean, if Mr. Rector did not perform his work at Integram, he would not have carpal tunnel syndrome”, Dr. Lipede further said. (Lipede Dp. pg. 20) The doctor indicated that alcohol was also not the cause of Rector's shoulder or elbow problems.

On cross examination by the employer/insurer, Dr. Lipede was questioned about a comment in his evaluation report, and the doctor explained that he was not saying the alcohol problem could affect the surgical outcome, but rather it could retard the reparative process....”the reparative process is the process that follows repetitive injury”. (Lipede Dp. pp. 21-22) Dr. Lipede agreed that he was aware that Rector's personal physician had prescribed Antabuse for Rector at some point; the doctor further said that he had never said that Rector did not drink alcohol. “I am just saying to you that the global assumption that his only problem with alcoholism is false”, Dr. Lipede added. (Lipede Dp. pg. 22)

Dr. Lipede agreed, during cross examination, that in preparing his report the records he had for review were the records of Dr. Cantrell, Healthsouth, and a copy of Rector's deposition. The doctor agreed that he had taken some of the history from the medical records as well as from Rector, and agreed that he had taken from these histories what he felt were the important portions in assessing causation and had set those out in his report of January 3, 2007. Dr. Lipede agreed that the history he had relied upon was that Rector had been a full-time employee of Integram for a period of ten years. The doctor was queried if Rector had worked eight to ten hours a day, five days a week during those ten years, and Dr Lipede answered: “When he was at work. There are areas and times in which he didn't work when he was injured.” (Lipede Dp. pg. 24) Stating that he did not have any of Rector's attendance records, Dr. Lipede further testified: “I have in here a summary of the times he was sick and he was at work. He had a fractured rib, a bad back. There is evidence that he wasn't at work at those times.” (Lipede Dp. pg. 25) Dr. Lipede noted that he had acknowledged that Rector “was off work in '95, '98, '99, 2002, and part of 2004”. (Lipede Dp. pg. 25) The doctor agreed that in the history he had set forth, there was no indication if Rector had been off work at those times for a day, a week, or a month. The doctor was queried if he knew if Rector had worked 2000 hours or 500 hours in 2003, 2004 or 2005. “No, I don't have that information”, Dr. Lipede admitted. (Lipede Dp. pg.25) Part of the history relayed by Rector of the jobs he had performed at Integram, Dr. Lipede said, was that in each of the situations in which he worked “he has to unload and load back on to the conveyor belt, and there are times in which the load that comes by is about 300 pounds and he has to push them along and things like that”. (Lipede Dp. pg. 26) It was noted that Dr. Lipede stated that Rector had relayed a history to him of working eight to ten hours a day making 100 seats on the line and the seats took two minutes apiece; the doctor was asked what did Rector say he did the rest of the day. Dr. Lipede answered:

“It was understood he was making seats on a continuous action. It was a continual action, in which case there are breaks in between in which they have to load and unloaded a conveyor belt. The actual making of the seats is what takes two minutes when two individuals are working together.” (Lipede Dp. pp. 28-29)

Dr. Lipede admitted that he had not been to the Integram plant. “No, I rely on his description”, the doctor stated. (Lipede Dp. pg. 30) When queried – if Rector's history provided to you was inaccurate, your opinions

on causation could be impacted. "It is possible", Dr. Lipede admitted. (Lipede Dp. pg. 31) The doctor was asked if he had not deemed it a relevant factor, Dr. Cantrell's comment that Rector over a three-year period only averaged 16 hours a week work because of absenteeism. Dr. Lipede answered:

"I didn't think so, because – and I can give the reason why I didn't think that was relevant. The point is the geometry of the hand was still altered. The torque deformities was present during the 16 hours he worked on a number of seats he prepared remained the same. So this man was essentially beaten up on carpal tunnel on a regular basis." (Lipede Dp. pg. 34)

Dr. Lipede was further queried – He was beaten up 16 hours a week not the 40 to 50 hours a week he conveyed, assuming Dr. Cantrell's history is correct? Dr. Lipede responded:

"Assuming that Cantrell is correct. If Dr. Cantrell is correct and the number of hours to me, actually, the intermittent work is much more poignant than continuous work because, you know, he would be injurious of himself because he has not practiced."

"...All I am telling you is that during the time he was at work he had all the conditions that would predispose him to having repetitive traumatic syndrome, and that's manifested as we see in his carpal tunnel and shoulder troubles." (Lipede Dp. pp. 34;35)

Dr. Lipede was asked if he had seen a physical demands assessment of Rector's job duties or Rector's attendance records over the past five years, and to both questions the doctor answered - "No". (Lipede Dp. pg. 41) Dr. Lipede stated that he had put in his report all the things he thought were relevant in determination of causation.

In his January 3, 2007 evaluation report, Dr. Lipede wrote in the JOB ACTIVITIES – "His working hours, at the least, are 8-10 hour per day and he regularly works overtime." In a section entitled WORK-RELATEDNESS OF THE DIAGNOSED CARPAL TUNNEL SYNDROME, Dr. Lipede included the following:

Entrapment neuropathy at the wrist is clearly the result of a combination of hypertrophic changes in the tendons and also in the bridge, and alcoholism has no part in producing these two sets of circumstances. Neuropathy induced by alcoholism is a metabolic event, and the characteristics of a metabolic neuropathy is very different from that of an entrapment neuropathy. Clearly, an entrapment neuropathy had been demonstrated, both by the history and the physical examination and the electrical diagnostic tests that had been performed on Mr. Rector. The likelihood of a vitamin deficiency also being deduced as an etiology has no foundation since the very laboratory tests performed by Dr. Cantrell himself did not substantiate the loss of B6, B12, or indeed, folic acid. Overall, Mr. Rector is not anemic and has no other neurological signs other than at the wrist. The characteristics of the nerve conduction test is clearly compressive at the carpal tunnel and this is clearly borne out by a wise synthesis of the history that Mr. Rector gave, the physical examination which I have described to you, and indeed, the repetitious work, the high cycle of repetition, and the synovial thickening and repetitive injury which he suffered during these maneuvers. Clearly 10 years is long enough for anyone working a 40-hour week to have developed a carpal tunnel syndrome and Mr. Rector has done so.

Documentary evidence:

The employer/insurer offered the claimant's time records for the years of June 1, 2001 through July 31, 2007 (No. 2). These records revealed the following about the claimant's work hours in regards to the time period January 01, 2003 through May 31, 2004:

<u>Date</u>	<u>Days EE could've worked</u>	<u>Days EE worked</u>	<u>Days EE off work</u>
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Jan. 2003	23	2	21
Feb 2003	20	5	15
Mar 2003	24	12	12
Apr 2003	22	17 ½	4 ½
May 2003	22	21	1
June 2003	23	18	6
July 2003	22	2	21
Aug 2003	22	9	13
Sept 2003	22	15 ½	6 ½
Oct 2003	23	17 ½	5 ½
Nov 2003	17	9 ½	7 ½
Dec 2003	23	14 ½	8 ½
Jan 2004	20	8 ½	11 ½
Feb 2004	20	16	4
Mar 2004	23	14	9
Apr 2004	22	13	9
May 2004	20	20	0

The time records revealed that when at work during the time period of January 1, 2003 – May 31, 2004, the claimant worked generally 7 to 8 hour days. There were scattered times of overtime work varying between 8.05 hours to a few over 9 hours days, including one or two 9:55 hour days.

As noted by Dr. Cantrell, the time records revealed numerous absences by the claimant for various reasons, including prepaid holiday, to early departure, to absenteeism, to paid leave, to leave of absence. In the months before the alleged May 2004 occupational disease, the time records reveal the claimant worked a more steady schedule with numerous 5-day work weeks; the record revealed no time off (other than Memorial Day holiday) for the month of May 2004. Considering the number of hours a day the claimant worked prior to the alleged May 31, 2004 occupational disease, the time records reveal the following for the days the claimant actually worked: a. October 2003 – the claimant averaged 7.81 hours/day; b. November 2003 – the claimant averaged 6.76 hours/day; c. December 2003 – the claimant averaged 7.94 hours/day; d. January 2004 – the claimant averaged 6.82 hours/day; e. February 2004 – the claimant averaged 7.38 hours/day; f. March 2004 – the claimant averaged 8.02 hours/day; g. April 2004 – the claimant averaged 7.93 hours/day; and h. for May 2004 – the claimant averaged 7.785 hours/day.

Date: October 17, 2007

Made by: /s/ LESLIE E.H. BROWN

LESLIE E.H. BROWN
Chief Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

/s/ JEFF BUKER
JEFF BUKER
Director

Division of Workers' Compensation

This hearing for Temporary Award was heard by Administrative Law Judge Kevin Dinwiddie on March 20, 2007. Due to the illness of Administrative Law Judge Dinwiddie, the claimant and the employer/insurer informed the Division by letters dated September 14, 2007 and received by the Division respectively on September 17 and 14, 2007 that the parties were in agreement to allow an Award to be issued by another Administrative Law Judge based on the transcript.

SUMMARY OF THE EVIDENCE begins on page 22.

“Days could’ve worked” does not include normal holidays, such as Thanksgiving and the Friday after.

Dr. Lipede’s evaluation report, dated January 3, 2007, was marked Claimant’s Exh. No. D and admitted into evidence at the hearing. The doctor wrote the following in the PAST MEDICAL HISTORY section of his report:

Mr. Rector’s past medical history includes a history of hypertension and a history of shoulder injury, history of hernia operation which was related to his work, and a history of depression for which he has been treated. He has had intermittent lay-off from work since 2002 for various reasons, including the hernia operation in 1995, in 1998, a lumbar strain, and in 1999 a lumbar strain, a disability leave of absence for depression, a fractured rib and a hemopneumothorax a gunshot wound to the chest. Other diagnoses in 2002 included right sacroiliac joint spasm which was treated conservatively.

Apart from these short absences from work, Mr. Rector had worked assiduously for Integram without any complaint. The diagnosis of bilateral carpal tunnel syndrome is not disputed by anyone; only the etiology of the bilateral carpal tunnel syndrome was assigned a different reason by Dr. Cantrell.

In a section entitled PAST SURGICAL HISTORY, Dr. Lipede wrote: “Includes a history of a herniorrhaphy in 1995, chest tube placement in 2002 for gunshot wound of the chest, lumbosacral

sprain/strain with right sacroiliac strain with physical therapy, and fracture of a fifth finger for which a cast was applied.”

“Days could’ve worked” does not include normal holidays, such as Thanksgiving and the Friday after.