

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

Injury No.: 02-023192

Employee: Rodney Roberts

Employer: Charter Communications, Inc.

Insurer: Lumbermens Mutual Casualty Co. (In Liquidation)

This workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. Having read all briefs, reviewed the evidence, heard oral arguments, and considered the whole record, we find that the award and decision of the administrative law judge allowing compensation is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to § 286.090 RSMo, we affirm the award and decision of the administrative law judge with this supplemental opinion.

After the Application for Review was filed with the Commission, the Circuit Court of Cook County, Illinois, entered an Order of Liquidation with Findings of Insolvency against Lumbermens Mutual Casualty Co. (insurer). On June 25, 2013, Missouri Property and Casualty Insurance Guarantee Association (MIGA) issued a determination finding that Charter Communications (employer) has a net worth of more than twenty-five million dollars, therefore MIGA will not cover claims for employer.

According to § 287.300 RSMo, "If the employer is not insured his liability hereunder shall be primary and direct." In its brief to the Commission, employer acknowledges its responsibility for all benefits awarded for injury 02-023192. Therefore, while we affirm the amounts of the benefits awarded by the administrative law judge, we find that employer is responsible for paying the benefits.

We affirm and adopt the award and decision of the administrative law judge, as supplemented herein.

The award and decision of Chief Administrative Law Judge Robert J. Dierkes, issued December 11, 2012, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 25th day of April 2014.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

John J. Larsen, Jr., Chairman

James G. Avery, Jr., Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee: Rodney Roberts

Injury No. 02-023192

Dependents:

Employer: Charter Communications, Inc.

Before the
**DIVISION OF WORKERS'
COMPENSATION**

Additional Party: None

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

Insurer: Lumbermens Mutual Casualty Co.

Hearing Date: September 18, 2012

Checked by: RJD/cs

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: March 14, 2002.
5. State location where accident occurred or occupational disease was contracted: Boone County, Missouri.
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes.
7. Did employer receive proper notice? Yes.
8. Did accident or occupational disease arise out of and in the course of the employment? Yes.
9. Was claim for compensation filed within time required by Law? Yes.
10. Was employer insured by above insurer? Yes.
11. Describe work employee was doing and how accident occurred or occupational disease contracted: Employee was on a 6' stepladder putting an item on the top shelf in the warehouse when he fell from the ladder.
12. Did accident or occupational disease cause death? No. Date of death? N/A.
13. Part(s) of body injured by accident or occupational disease: Ribs, lungs, psyche, body as a whole.
14. Nature and extent of any permanent disability: 22.5% permanent partial disability of the body as a whole.
15. Compensation paid to-date for temporary disability: \$1,993.68.
16. Value necessary medical aid paid to date by employer/insurer? \$22,812.53.
17. Value necessary medical aid not furnished by employer/insurer? None.

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- 18. Employee's average weekly wages: \$410.18.
- 19. Weekly compensation rate: \$273.45.
- 20. Method wages computation: Stipulation.

COMPENSATION PAYABLE

21. From Employer:

90 weeks of permanent partial disability benefits \$24,610.50

22. Second Injury Fund liability: None. No claim was filed.

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

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

Roger Brown

Employee: Rodney Roberts

Injury No. 02-023192

AWARD

Employee: Rodney Roberts

Injury No. 02-023192

Dependents:

Employer: Charter Communications, Inc.

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

Additional Party: None

Insurer: Lumbermens Mutual Casualty Co.

Hearing Date: September 18, 2012

ISSUES DECIDED

The evidentiary hearing in these cases (02-023192 and 04-125727) was held on September 18, 2012 in Columbia. Claimant, Rodney Roberts, appeared personally and by counsel, Roger Brown; Employer, Charter Communications, Inc., and Insurer, Lumbermens Mutual Casualty Co., appeared by counsel, Betsy Willer; the Second Injury Fund appeared by Assistant Attorney General David Zugelster in Injury No. 04-125727 only. The parties requested leave to file post-hearing briefs, which leave was granted. The cases were submitted on November 5, 2012. In Injury No. 02-023192, the hearing was held to determine the liability, if any of Employer-Insurer for permanent partial disability benefits or permanent total disability benefits. In Injury No. 04-125727 the hearing was held to determine the following issues:

1. Whether Employee, Rodney Roberts, sustained an accident arising out of and in the course of his employment with Charter Communications, Inc. on September 28, 2004;
2. If found to have been sustained, whether the work-related accident of September 28, 2004 was the prevailing factor in the cause of any or all of the injuries and/or conditions alleged in the evidence;
3. Whether Employer-Insurer shall be ordered to reimburse Claimant for any or all of the medical charges in question;
4. Whether Employer-Insurer shall be ordered to provide Claimant with additional medical treatment pursuant to Section 287.140, RSMo;
5. The liability, if any, of Employer-Insurer for permanent partial disability benefits or permanent total disability benefits; and
6. The liability, if any of the Second Injury Fund for permanent partial disability benefits or permanent total disability benefits.

Employee: Rodney Roberts

Injury No. 02-023192

STIPULATIONS

The parties stipulated as follows:

1. That the Missouri Division of Workers' Compensation has jurisdiction over these cases;
2. That, in both cases, venue for the evidentiary hearing is proper in Boone County;
3. That, in both cases, the claim for compensation was filed within the time allowed by the statute of limitations, Section 287.430, RSMo;
4. That, in both cases, Employer and Employee were covered under the Missouri Workers' Compensation Law at all relevant times;
5. In Injury No. 02-023192, that Claimant's average weekly wage is \$410.18, resulting in a compensation rate of \$273.45;
6. In Injury No. 04-125727, that Claimant's average weekly wage is \$525.87, resulting in a compensation rate of \$350.58;
7. In Injury No. 02-023192, that Claimant, Rodney Roberts, sustained an accident arising out of and in the course of his employment with Charter Communications, Inc. on March 14, 2002;
8. In Injury No. 02-023192, that Employer-Insurer paid medical benefits of \$22,812.53 and temporary total disability benefits of \$1,993.69;
9. In Injury No. 04-125727, that Employer-Insurer has paid no benefits;
10. That, in both cases, the notice requirement of Section 287.420 is not a bar to Claimant's Claim for Compensation herein; and
11. That Lumbermens Mutual Casualty Co. fully insured the Missouri Workers' Compensation liability of Charter Communications, Inc. at all relevant times.

Employee: Rodney Roberts

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EVIDENCE

The evidence consisted of the testimony of Rodney Roberts, as well as the deposition testimony of Rodney Roberts and a recorded statement of Rodney Roberts; the narrative report and addendum of certified vocational counselor Phillip Eldred, as well as the testimony of Phillip Eldred; the testimony of Katherine Roberts; multiple narrative reports of Dr. Preston Brent Koprivica, as well as the deposition testimony of Dr. Koprivica; the deposition testimony of Dr. John D. Pro; the deposition testimony of Dr. Robert Burger; narrative report and deposition testimony of Dr. Russell Cantrell; narrative report and deposition testimony of Dr. Wayne Stillings; narrative report and deposition testimony of James M. England, Jr.; medical records; medical bills; certified records of the Missouri Division of Workers' Compensation.

DISCUSSION

On January 25, 2005, Claimant filed his CLAIM FOR COMPENSATION in Injury No. 02-023192, alleging injury to “ribs, back, neck” and described the accident of March 14, 2002 as “employee was climbing on a ladder in the course of his employment and fell from the ladder”. Claimant alleged no disability prior to March 14, 2002.

Also on January 25, 2005, Claimant filed his CLAIM FOR COMPENSATION in Injury No. 04-125727, alleging injury to “body as a whole, back, head, neck” and described the accident of September 28, 2004 as “employee was sitting at work, his left side felt paralyzed, he experienced a massive headache and confusion”. This claim also included a claim against the Second Injury Fund alleging permanent partial disability or permanent total disability. No amended claim has been filed for the alleged accident of September 28, 2004.

Claimant testified that his health was excellent prior to March 14, 2002. Claimant testified that the work accident of March 14, 2002 occurred as he was on the “next-to-top step” of a 6’ step-ladder putting an item on the top shelf in the warehouse when he fell from the ladder. Claimant stated: “next thing I know I’m laying across the ladder”. Claimant understood that his left side hit the ladder and broke some ribs. Claimant had punctured his lungs and was bleeding internally. Claimant did not know if he lost consciousness in the fall. The medical records do not indicate any loss of consciousness. Dr. Pro, a psychiatrist, testified that he believed Claimant sustained a concussion in the March 14, 2002 accident; this belief was apparently based upon Claimant’s claim of post-injury amnesia, and not upon a loss of consciousness. None of the other physicians who testified believed that Claimant struck his head in the fall or lost consciousness. Claimant was hospitalized at University Hospital in Columbia. Claimant complained of right elbow pain, pain in this thoracic spine and left paraspinal and left chest pain. Claimant was diagnosed with left rib fractures and left pneumothorax. Dr. Koprivica opined that

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Claimant sustained a 15% permanent partial disability of the body as a whole as a result of the injuries he sustained in the March 14, 2002 accident. Dr. Cantrell opined that Claimant sustained an 8% permanent partial disability of the body as a whole as a result of the injuries he sustained in the March 14, 2002 accident. Dr. Pro testified to his belief that Claimant developed a post-concussion syndrome and a chronic pain disorder as a result of the March 14, 2002 accident and that Claimant thus sustained a 30% permanent partial disability of the body as a whole as a result of the March 14, 2002 accident.

It is noted here that Claimant is a very poor and inconsistent historian. Claimant testified at trial that he continued to work for Employer after recovering from the pneumothorax caused by the March 14, 2002 accident. Claimant testified that his job duties in the warehouse didn't change, but that he had a new employee to help him with lifting. Claimant testified that he continued to have daily headaches prior to September 28, 2004, and also had problems with concentration, but was still able to play guitar.

Claimant's trial testimony concerning the alleged accident of September 28, 2004 was that he was sitting at work looking at a computer with a co-worker when he felt that he had been hit in the back of the head or neck very forcefully. He remembers not being able to talk and "freaking out". He testified at trial that he eventually "got some better" and went to his boss, Jim Quisenberry and told him "I'm not feeling well, I'm going home".

In his statement taken December 9, 2004 by claims investigator Helen Johnson, Claimant stated:

Q Okay. Now you said you were sitting at the computer?"

A Um-hum.

Q Then what happened?

A Well, I just, uh, it felt like somebody hit me in the back of the head with, uh, with a bag and my body kinda jerked.

Q And did someone come over and help you or assist you?

A No, no. Somebody was there, actually, uh, at the computer with me.

Q Okay.

A He was in there asking me questions and I was just, you know, and that was about it.

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Q Okay.

A I was just shocked the way I felt.

Q Okay. And then do you recall who this person was that was there with you, at the computer?

A Yeah, it was, uh, uh, Dave (Postin).

Q Okay. Did you ask for medical treatment at the time?

A No. I wasn't sure what happened, you know, that sensation came on, like my left side went numb.

Q Okay.

A And then, uh, you know, I tried to talk and, you know it – talking was difficult.

Q Okay.

A You know, like when you get a shot and the one side of your mouth's numb.

Q Um-hum.

A Well, that's what it felt like. But, uh, as it came on, it just, you know, just kinda went away.

Q Okay.

A And, you know, so the process went away. It's like, wow, that was different, you know, I thought I was having a heart attack at first.

Q Okay.

A And, Dave was there, you know, and I didn't say nothing to him, cause he was all involved on the computer, trying to show me something on the computer. And then I just had this real massive headache.

Q Okay.

A And I figured, wow, that was, that was different, you know.

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Q Okay.

A And, I didn't know what to think about it.

Q Okay. So then when did you actually seek medical treatment?

A Late, later on that day I came home, and told my wife what happened. I said, I'm not sure what happened, but, you know, I had this big, big jerk and my left side went kinda numb and I've got this massive headache that I can't get rid of. And, uh, I'm having trouble concentrating, and I called the, uh, the hospital and she goes, it sounds to me like you had a stroke. So, you better come on in. So, I did and they kept me for about a week.

Q Okay. What hospital were you seen in?

A. University of Missouri Hospital and Clinic.

Q Okay. What city and state?

A Oh, Columbia, Missouri.

Q Okay. What did they tell you about your condition?

A Oh, they, uh, went through the whole thing, you know, checked my heart and, and did scans and all that kind of stuff. And they said – well, that's how I knew it was the sixth and seventh, uh, vertebrae that the disc slipped in. Because they told me that. Dr. (Berger) I think his name was.

Q Okay. But you were in the hospital for a week before they determined what was wrong with you?

A Yeah, yeah, they did every kind of test you can imagine.

Q Okay.

A They did – you know, they checked me for stroke and then they checked for, you know, it was a heart attack.

Q Um-hum.

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A And, you know, they did, uh, uh, oh, I can't think of those procedures, you know. They put you in this big ole tube.

Q Uh-hum.

A And, you know, checked my spine.

Q An MRI, yes.

A Yeah, yeah, did all that.

In his deposition taken August 24, 2005, Claimant testified:

Q So just before the second accident on September 28th of 2004, you were having the ongoing problems with your ribs that you told me about and the daily headaches. Any other ongoing problems you were having from the first accident just before the second accident?

A None that I can recall, just those two.

Q Now I'd like to ask you some questions about the second accident. As I mentioned before --

A It gets confusing.

Q We're moving on to the second accident now, and as I mentioned before, I show that accident date to be September 28th of 2004, does that sound right?

A When?

Q September 28th of 2004?

A Yeah, that sounds right, I remember it was at the end of the month.

Q And can you describe for me how you were injured at that time?

A Oh, I was sitting at my computer desk, another Charter employee was talking to me and he was showing me something on the computer and that's when the incident happened.

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Q What was the name of that other employee?

A David Polston.

Q And he was showing you something on the monitor?

A Yes.

Q Do you remember what he was showing you?

A It was some books about learning -- wait a minute, something to do with guitars, I don't recall exactly what it was.

Q So it wasn't really anything to do with work, it was just some other side thing he was showing you?

A I was there and then he came in and just had to show me something.

Q And so what happened while you were being shown this information about guitars on the monitor?

A I was sitting to his left and it felt like somebody had hit me in the back of the head with a two-by-four. I actually thought I was struck.

Q Did anything hit you in the head?

A No, it was just me and him and his head was in front of me to my right.

Q So you could see him as you were sitting there and you could still see him when you felt this pain in the back of your head?

A Yes, I knew it wasn't him, I thought somebody else was in there initially when that happened.

Q Was there something you did that caused the pain to develop?

A Same old day, same old routine.

Q You didn't hit your head on anything that day?

A Not that I recall.

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Q And the pain was actually on the back of your head?

A The pain affected my whole body, but the majority of it was the back of my neck or head.

Q Was there anyone else present when this happened besides David Polston?

A Not that I recall.

Q And what did you do after you felt this pain in the back of your head?

A Well, nothing, I couldn't move, couldn't talk, I just sat there.

Q And how long did you just sit there?

A It seemed like forever but I do not know how long.

Q After you sat there for however long it was, what did you do next?

A I tried to speak to Dave, I remember, I believe, I don't remember because it's kind of fuzzy but my left side was -- when I moved my mouth, the left side did not move.

Q And what happened next after you tried to talk to Dave?

A I just sat there and Dave just kept talking.

Q What happened next, I mean what was the next thing that happened after you sat there for however long it was and you tried to talk to him, did you get taken by ambulance somewhere or what happened next?

A No, the symptoms just faded away and I was able to move, but I also had numbness in my face and then things get fuzzy from there.

Q And that was on the left side of your face?

A I believe so, I believe so, I can't say with 100 percent certainty.

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Q Well, if the medical records from September 28th of 2004 say that the numbness was on the left side of your face, left upper extremity and left chest, would you agree that that's correct?

A Yes.

Q And we do have some records from University Hospital, it looks like you were seen there on September 28th, 2004, do you recall that?

A I remember going home and telling my wife I was feeling funny.

Q Do you recall what time of the day it was when you felt this pain in the back of your head?

A Well like I said, I was in a routine so it had to be early to mid morning.

Q And what were your hours at that point?

A I would get there at literally 20 minutes until 7:00 and I would work theoretically to 4:00.

Q And did you continue working the rest of that day?

A I'm not sure what time I got home. As far as I know I did.

Q And then what happened when you got home?

A I told my wife that I was feeling funny, something wasn't right, I vaguely remember that. I couldn't remember stuff.

Q And is that when you decided to go to the hospital?

A No.

Q What did you do?

A My wife called somebody and I went and sat down.

Q And what did you do next?

A I'm not sure.

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Q Did you go to the hospital later that same day?

A I remember being at the emergency room, so yes, I guess I did go to the hospital that day.

Q That's okay. So when this incident occurred, you had pain in the back of your head and then when you went to the hospital you were reporting numbness in the left side of your face, left upper extremity and left chest, does that sound correct?

A Yeah, it was all the same. By then, by the time I got to the hospital, as a matter of fact the numbness went away after -- Dave was there and a little bit after that is when the numbness went away and the pain intensified. I mean it's hard to explain, it's just hard to explain.

Q So you had this numbness in the left side of your face, your arm and left chest right after the second accident?

A Yes.

Q But eventually that numbness resolved and went away?

A Yes.

Q Did it ever come back again in that area?

A On the left side, no, not that I recall.

Q Did you have any other problems relating to the September 29, 2004 accident besides what you just told me about with the numbness on the left side?

A While I was going in the hospital or when I got out?

Q After you got out of the hospital from that first admission September 28th?

A When I was released, I had the same pain I had when I went into the emergency room.

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Q Are you talking about the admission when you went into the emergency room on September 28th?

A Yes, this most recent one, yes.

Q Well you just told me that the numbness to the left side of your face, chest and arm resolved, but now you're saying you had the same problems, so what problems are you referring to?

A The pain in the back of the neck and my right side.

Q When did you start having problems on the right side?

A At the same time the incident happened. It just happened all at once. I tried to explain to them, like I said, it's hard to explain.

Q Did you tell the doctors when you were first seen at the hospital on September 28th of 2004, did you tell the doctors you had pain in your neck?

A I don't recall, I barely remember even going to the emergency room.

Q Did you tell them that you had pain on the right, was it on the right side of your neck, is that what you were saying that you had?

A My head hurt and I don't recall the details.

Q Well, when you left the hospital, you went to the hospital September 28th of 2004?

A Yes.

Q You said you were admitted, do you recall leaving the hospital?

A No.

Q So you don't know what problems you were having when you left the hospital?

A No, I just really don't recall. I recall being in a lot of pain.

Q When do you next recall, I mean do you recall anything between now and then?

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A I recall bits and pieces. I mean I'm missing information, I just -- some of the stuff I just don't know.

Q So you really aren't sure what problems you were having when you were in the hospital when you were admitted September 28th of 2004; is that correct?

A Yes. I mean I tried to explain to them what was going on but I do not remember what I said.

Q Well, the first time I see symptoms mentioned in your neck and your right arm was later in, I believe, October of 2004. Do you recall when you first had the symptoms on the right side of your neck and your right arm?

A I do not recall.

After Claimant was admitted to the hospital on September 28, 2004, tests were done to rule out a stroke, heart attack or similar problem. Claimant was released from the hospital on October 1, 2004 and was scheduled for a cervical MRI on October 7, 2004. The MRI showed degenerative disc disease at C6-7 with protrusion of C6-7 disc to the right side. In December 2004 Claimant was seen by neurosurgeon Dr. John Oro who felt that Claimant had a right C7 radiculopathy due to a small herniated disc at C6-7. Claimant underwent epidural steroid injections and eventually was scheduled for surgery. Dr. Oro performed an anterior cervical discectomy and fusion with bone graft and instrumentation at C6-7 on March 1, 2005. On April 13, 2005, Dr. Oro noted that Claimant's neck pain had resolved, but he still had difficulty with his right shoulder and arm. Claimant continued to complain of headache and increasing right upper extremity pain and was referred to neurology clinic. Claimant then began reporting new neck pain. Claimant was evaluated by neurosurgeon Dr. Norman Scott Litofsky in December 2006, who suspected microscopic instability at the fusion site. A cervical CT scan done on April 2, 2007 showed the C6-7 disc space to be well-fused. Nevertheless, on May 11, 2007 Dr. Litofsky performed a C5, C6, C7 lateral mass fixation with instrumentation.

Claimant returned to Dr. Litofsky on June 4, 2007 stating that his neck pain was better and the neck "pressure" was gone; however, Claimant still had some right arm pain. Claimant's testimony was that the neck pain did not go away and he told Dr. Litofsky post-surgery that the neck pain did not go away. Claimant testified that he has had, and continues to have constant headaches, neck pain and bilateral shoulder pain.

At the request of Claimant's former attorney, LeAnne Wiseman, Claimant was evaluated by **Dr. P. Brent Koprivica** on December 17, 2005. On that date Dr. Koprivica wrote a "MEMO TO CHART" which stated:

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I need to call Ms. Wiseman regarding this case. I have extreme doubt that this is a work-related condition regarding the September 28, 2004 claim. Also, I believe there is a significant component psychologically in terms of the presentation.

The nature of his problem is not one which should totally disable him.

Dr. Koprivica also submitted a fifteen-page narrative report to LeAnne Wiseman dated December 17, 2005. That report made numerous references to Claimant being a poor historian. Dr. Koprivica noted:

I had a great deal of difficulty trying to define the mechanism of injury for the September 28, 2004 work injury.

Mr. Roberts noted the onset of his difficulties when he really was not doing any activity. He was merely being shown some type of book or magazine and sitting at a computer when he had onset of problems.

There was confusion as I questioned him in that his initial complaints were left-sided facial numbness and left-sided numbness.

However, he volunteered to me that his pain was on the right side.

The treatment records really focus on the left-sided complaints, as were his initial responses to my questioning.

In the December 17, 2005 report, Dr. Koprivica concluded that the March 14, 2002 fall from the ladder was a substantial factor as well as the prevailing factor in the multiple left rib fractures and pneumothorax. He also concluded that the chronic headaches which Claimant experienced following the March 14, 2002 accident were musculoskeletal in nature and resulted from the 3/14/02 accident. Dr. Koprivica went on to state: "This (the musculoskeletal headaches) is separate from the issue regarding his cervical disk herniation, in my opinion." Dr. Koprivica concluded that Claimant was at maximum medical improvement from the March 14, 2002 injuries, and he assigned a 15% permanent partial disability of the body as a whole due to the March 14, 2002 injuries.

Also in the December 17, 2005 report, Dr. Koprivica also states:

At this point, I have a difficult time in evaluating the work injury claim of September 28, 2004. The described event at the time of his complaints of neck pain where he was merely sitting is not sufficient to result in a cervical disc herniation, in my opinion.

I would note that the nature of his work activities earlier in the day where he was dealing with hardware, including carrying boxes on his head, would be competent to result in aggravating injury in the cervical spine followed by the development of the cervical disc herniation.

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I would also point out that the right-sided pain that he describes from September 28, 2004 is essential as being accurate in determining that the cervical disc herniation was related to his lifting activities on that date.

Attorney Wiseman had Claimant seen again by Dr. Koprivica on February 4, 2008. As no additional medical records had been provided, Dr. Koprivica's opinions were largely unchanged. However, Dr. Koprivica noted that "there may be some concern about a diagnostic study suggesting cervical injury in the initial fall of March 14, 2002." Dr. Koprivica stated that he would review those records when they became available; however "with the data that is available at this point I would not causally related the cervical injury to the March 14, 2002 fall."

Dr. Koprivica issued another report on February 18, 2008 after receiving additional medical records. Regarding the cervical disk herniation he stated:

In looking at all this additional data, I would note that I cannot state that the disk herniation followed the March 2002 work injury with the data that is available. Clearly, the diagnostic studies were not done to make that diagnosis. The diagnosis of cervical radiculopathy appears to follow the September 2004 work injury from all the data that is available to me.

In his deposition, Dr. Koprivica testified that Claimant's lifting and carrying activities earlier in the day on September 28, 2004 was the cause of Claimant's C6-7 right-sided disc herniation. He also testified that Claimant was lifting and carrying boxes, but that he (Dr. Koprivica) did not know the size or weight of the boxes. Dr. Koprivica also testified that there was no immediate onset of symptoms with any of Claimant's lifting or carrying activities on September 28, 2004. He testified that the accuracy Claimant's history (as related by Claimant to Dr. Koprivica) of right-sided pain on September 28, 2004 was essential in determining that the C6-7 disc herniation was related to Claimant's lifting activities on that date; Dr. Koprivica also testified that Claimant initially related to him only left-sided numbness having occurred on September 28, 2004. Dr. Koprivica also agreed that the medical records from September 28, 2004 only mention left-sided symptoms.

Dr. Robert Burger, one of Claimant's neurologists, testified by deposition taken May 20, 2011. Counsel for Employer and counsel for Second Injury Fund made numerous and timely objections to Dr. Burger's testimony, particularly on issues of causation of the C6-7 disc herniation, such objections based upon the "seven-day rule" of §287.210.3. It is true that no report from Dr. Burger was provided to opposing counsel prior to May 20, 2011 (it does not appear that any such report even exists), and thus there is a sound factual basis for the objections. However, opposing counsel did proceed to cross-examine Dr. Burger and did not request a continuance of the deposition or of the hearing. Therefore, the objections, though timely and

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well-grounded, are waived. See *Orr v. City of Springfield*, 118 S.W.3d 215 (Mo. App. S.D. 2003).

Dr. Burger testified (at page 7 of his deposition):

He (Claimant) told us that earlier that day (September 28, 2004) at work he was moving boxes. It's not clear from the medical record how extensive, or, I mean, how much he'd actually done. There was some indication, he indicated later, that he was carrying some of these boxes over his head, or kind of on his head.

Dr. Burger further testified (at pages 9-10 of his deposition):

In my opinion, I think it's medically likely that the surgery he required was the result of work activities he was doing in September of 2004. ... Well, if he was carrying – if he was carrying things on his head, carrying boxes and those sorts of things, that potentially loads the cervical spine. “Loads” meaning put a direct load on it. If you then have a weakness of a disc between two cervical vertebrae, the two vertebrae compress the disc. And just by the process of squeezing of that disc you can have herniation of that disc.

On cross-examination, Dr. Burger testified:

Q. You referenced Mr. Roberts as carrying boxes; do you know how heavy those boxes were?

A. I do not.

Q. Do you know how often he carried them?

A. I do not.

Q. Did you have a job description from his employer?

A. I do not. I did not.

Q. Okay. Do you have any information regarding what he was required to lift at his job?

A. I do not.

Employee: Rodney Roberts

Injury No. 02-023192

At the request of counsel for Employer-Insurer, Claimant was evaluated by **Dr. Russell Cantrell** on December 2, 2008, and Dr. Cantrell's deposition testimony of July 2, 2009 was in evidence. At page 15 of his deposition, Dr. Cantrell testified:

Q. Doctor, you also mention he reported he had been doing some lifting earlier in the workday but then the on-set of his complaints was sitting at the computer. What, if anything, or what, if any, significance will you attach to that information?

A That there does not appear to be any correlation between any physical activity and symptoms he would have experienced those symptoms immediately at the time of the activity and not later while simply sitting still doing nothing.

At page 17 of his deposition, Dr. Cantrell testified:

Q And on page 9 of your report you mention in that first full paragraph some noteworthy information. Can you explain what information that is that you found that is noteworthy and why?

A What is noteworthy to me is that in the initial medical record documentation that I reviewed Mr. Robert's symptoms were left-sided in location rather than right-sided in location. And again if one were to assume that he had an acute disk herniation on September 28, 2004 then you would anticipate to have symptoms that were right-sided in location acutely in on-set rather than developing a week or two weeks or three weeks later.

And at page 60 of his deposition, Dr. Cantrell testified:

A Well, the first surgery was performed for a diagnosis of a disk herniation lateralizing to the right.

Q Let me stop you right there and ask you this. Did you form an opinion as to what the cause was for that condition?

A I would, given all the information that I have I would consider that a degenerative condition at the C6-7 level.

Q All right. And did you consider that, when you talk about a degenerative condition, do you consider that just to be the natural aging process?

Employee: Rodney Roberts

Injury No. 02-023192

A Yes.

Claimant's Claim for Compensation in Injury No. 04-125727 hinges solely on the premise that Claimant's lifting and carrying activities earlier in the day on September 28, 2004 caused a C6-7 right-sided disc herniation. Despite Claimant's counsel's best efforts to muddy the waters, there is absolutely no medical evidence that the March 14, 2002 fall from the ladder caused the C6-7 right-sided disc herniation, nor is there any medical evidence that simply "sitting at work" on 9/28/04 was the cause (as alleged in the Claim for Compensation), nor was there any medical evidence that Claimant's work over a number of years caused the C6-7 disc herniation (as suggested in the post-trial brief)¹. The ONLY potential compensable cause which has any supporting medical evidence is Claimant's (alleged) lifting and carrying activities on September 28, 2004.

I simply cannot find that the C6-7 right-sided disc herniation was caused by lifting and carrying activities on September 28, 2004. **First**, there is no credible evidence that Claimant was doing any lifting or carrying activities on September 28, 2004. There was no allegation in the Claim for Compensation of lifting on September 28, 2004; it would stand to reason that this information would, at some point, have been given by Claimant to his counsel and would have been mentioned in the Claim. At trial, Claimant testified at length about what a "typical day" at work might have entailed, but Claimant did not testify that he lifted or carried anything on September 28, 2004.² In his deposition, Claimant testified: "I honestly don't remember. I've tried to remember what would cause that; I just don't remember anything I did that morning." Claimant was then asked: "Well, the medical records at one point mentioned that you had been doing heavy lifting on that morning; do you recall if you were doing heavy lifting on that morning?", to which Claimant replied: "I don't recall now." **Second**, while both Drs. Burger and Koprivica attribute Claimant's cervical disc herniation to lifting and carrying activities on September 28, 2004, neither physician was aware of the weight, frequency or duration of the lifting; this is not surprising, as that information would have come from Claimant, and Claimant himself doesn't have such information. Dr. Burger testified that IF Claimant was carrying things on his head, that it would POTENTIALLY load the spine and IF Claimant had a weak disc, such loading CAN cause a cervical disc herniation. While this testimony involves several levels of speculation, there is simply no question that the first and crucial "IF" has not been satisfied: i.e., there is no evidence that Claimant was "carrying things on his head" on September 28, 2004. **Third**, Dr. Koprivica's testimony was clear that, in order to make a finding that lifting activities on September 28, 2004 caused the C6-7 right-sided disc herniation, Claimant must have had right-sided symptoms on September 28, 2004. It is almost impossible to believe that Claimant

¹ Claimant's post-trial brief was quite lengthy and argued that, as Claimant's work for Employer was strenuous, and as Claimant was otherwise healthy, the cervical disc herniation must have come from Claimant's general work duties.

² Nor was there any testimony that Claimant carried any heavy loads *on his head* on 9/28/04, which fact appears to be crucial in Dr. Burger's causation analysis.

Employee: Rodney Roberts

Injury No. 02-023192

had right-sided symptoms on September 28, 2004. The Claim for Compensation states that Claimant's "left side felt paralyzed" on September 28, 2004, but is silent as to *right-sided* symptoms. The history given at the hospital on September 28, 2004 was of left-sided symptoms only. Claimant agreed in his deposition that his symptoms at the hospital on September 28, 2004 were left-sided. Claimant was asked at page 72 of his deposition: "Well, the first time I see symptoms mentioned in your neck and your right arm was later in, I believe, October of 2004. Do you recall when you first had the symptoms on the right side of your neck and your right arm?", to which Claimant replied: "I do not recall". In his trial testimony, Claimant stated that he had pain on the right side while he was in the hospital, but did not testify that he had right-sided pain at the time he was sitting at the computer, felt as if he was struck in the back of the head or neck, and noticed left-sided numbness and paralysis.

Therefore, I must find that Claimant did not sustain a compensable work injury on September 28, 2004, and the Claim for Compensation in Injury No. 04-125727 must be denied in full against Employer-Insurer and the Second Injury Fund. All other issues in Injury No. 04-125727 are moot.

The only issue to be decided in Injury No. 02-023192 is Employer-Insurer's liability for permanent partial disability benefits.

As noted earlier, Dr. Koprivica testified that Claimant sustained a 15% permanent partial disability of the body as a whole as a result of the injuries he sustained in the March 14, 2002 accident, and Dr. Cantrell opined that Claimant sustained an 8% permanent partial disability of the body as a whole as a result of the injuries he sustained in the March 14, 2002 accident. I find that Dr. Koprivica's assessment of Claimant's degree of disability is correct. Additionally, Dr. John Pro testified to his belief that Claimant developed a post-concussion syndrome and a chronic pain disorder as a result of the March 14, 2002 accident and that Claimant thus sustained a 30% permanent partial disability of the body as a whole as a result of the March 14, 2002 accident.³

In this regard, I also note that psychiatrist Dr. Wayne Stillings also evaluated Claimant and testified in this case. Dr. Stillings did not agree with the opinions of Dr. Pro regarding a pain syndrome and adjustment disorder. He did not find any depressive disorder related to Claimant's work injuries. Dr. Stillings testified that Claimant has somatic reactivity and is likely to report subjective physical complaints well beyond those which can be physically or objectively confirmed, and that Claimant is prone to using his physical complaints to manipulate others and to control situations.

³ Dr. Pro also testified that Claimant sustained an additional permanent partial psychiatric disability of 30% of the body as a whole as a result of the alleged September 28, 2004 accident; the issue of Claimant's disability from the September 28, 2004 accident is moot.

Employee: Rodney Roberts

Injury No. 02-023192

Dr. Stillings also disagreed with the diagnosis of post-concussion syndrome. He testified that there was no basis for this diagnosis and the subjective complaint of headaches is not sufficient to make this diagnosis. He noted that Claimant never sought any type of psychiatric treatment or counseling proximate to his 2002 work injury or even proximate to the 2004 work injury.

Dr. Stillings felt that Claimant over reported memory dysfunction. He diagnosed Claimant with pre-existing dysfunctional family of origin (chaotic and violent family constellation with lack of love and nurture followed by foster care), pre-existing parent child relational problems (emotional and physical abuse by multiple individuals including his father, mother and two step-mothers), pre-existing depressive disorder in remission and partner relational problems (marital discord). Dr. Stillings also diagnosed pre-existing chronic emotional problems, assumption of the "invalid" role, change of identity from a worker to a non-worker, false attribution of emotional problems to the work injuries and probable ongoing marital discord, not working and interaction with the legal system. He scored his GAF at 75 which would indicate no significant psychiatric symptoms and functioned fairly well from an emotional standpoint. Dr. Stillings concluded that neither the 3/14/2002 injury nor the 9/28/2004 injury were a substantial factor in Claimant's current psychiatric condition, and opined that Claimant sustained no permanent psychiatric disability.

My impression of Claimant is similar to those of Dr. Koprivica, i.e., that Claimant's condition is not that of total disability, that Claimant's complaints are grossly inordinate to his injuries, and that "there is a significant component psychologically in terms of the presentation". I find that a portion of that "significant component psychologically" is due to Claimant's underlying personality traits (as described by Dr. Stillings); however, I also find that a portion thereof is due to a chronic pain disorder caused by the 3/14/2002 accident (i.e., fall from ladder with rib fractures and pneumothorax). I do not believe there is any *credible* evidence of a post-concussion syndrome. As noted above, none of the physicians (not even Dr. Pro) believed that Claimant ever lost consciousness. I find that the March 14, 2002 accident was a substantial factor in Claimant's development of a chronic pain disorder, and I further find that Claimant sustained an additional 7.5% permanent partial disability of the body as a whole as a result of the chronic pain disorder. Claimant's aggregate permanent partial disability as a result of the March 14, 2002 accident is 22.5% of the body as a whole (90 weeks of compensation).

FINDINGS OF FACT AND RULINGS OF LAW IN INJURY NO. 02-023192

In Injury No. 02-023192, in addition to those facts and legal conclusions to which the parties stipulated, I find the following facts and make the following rulings of law:

Employee: Rodney Roberts

Injury No. 02-023192

1. Claimant sustained an accident arising out of and in the course of his employment with Charter Communications, Inc. on March 14, 2002 when he fell from a stepladder in the warehouse in Boone County, Missouri;
2. The March 14, 2002 work accident caused Claimant to fracture several ribs which resulted in a pneumothorax for which Claimant was hospitalized;
3. The March 14, 2002 work accident was a substantial factor in causing a chronic pain syndrome;
4. Claimant did not lose consciousness in the March 14, 2002 fall from the ladder;
5. The March 14, 2002 work accident did not cause post-concussion syndrome;
6. The March 14, 2002 work accident did not cause Claimant to herniate his cervical disc at C6-7;
7. Claimant is not permanently and totally disabled;
8. The injuries Claimant sustained in the March 14, 2002 work accident resulted in a permanent partial disability of 22.5% of the body as a whole.

ORDER IN INJURY NO. 02-023192

In Injury No. 02-023192, Employer and Insurer are ordered to pay Claimant the sum of \$24,610.50 for permanent partial disability benefits.

Claimant's attorney, Roger Brown, is allowed 25 percent of the amount awarded to Claimant as and for necessary attorney's fees, and the amount of such fees shall constitute a lien thereon, until paid.

Interest shall accrue as per applicable law.

FINDINGS OF FACT AND RULINGS OF LAW IN INJURY NO. 04-125727

In Injury No. 04-125727, in addition to those facts and legal conclusions to which the parties stipulated, I find the following facts and make the following rulings of law:

1. On September 28, 2004, Claimant was working for Employer at Employer's warehouse in Boone County, Missouri;
2. On September 28, 2004, Claimant was looking at a computer with a co-worker when he felt a very severe pain in his head and neck and felt that the left side of his face was paralyzed and also felt pain and weakness on the left side of his body;

Employee: Rodney Roberts

Injury No. 02-023192

3. There is no credible evidence that Claimant experienced any symptoms on the right side of his body on September 28, 2004;
4. There is no credible evidence that Claimant was performing any carrying or lifting activities for Employer on September 28, 2004;
5. There is no credible evidence that Claimant was carrying boxes on his head on September 28, 2004;
6. A cervical MRI performed on Claimant on October 7, 2004 showed degenerative disc disease at C6-7 with protrusion of C6-7 disc to the right side;
7. Claimant eventually underwent surgery on his neck; the post-operative diagnosis was a right-sided C6-7 disc herniation;
8. Claimant's sitting looking at a computer on September 28, 2004 at Employer's warehouse was not a substantial factor in the cause of Claimant C6-7 disc herniation;
9. There is no credible evidence that Claimant's work for Employer on September 28, 2004 was a substantial factor in the cause of Claimant C6-7 disc herniation;
10. There is no credible evidence that Claimant's work for Employer at any time was a substantial factor in the cause of Claimant C6-7 disc herniation;
11. There is no credible evidence that Claimant sustained an accident arising out of and in the course of his employment with Charter Communications, Inc. on September 28, 2004;
12. Claimant did not sustain an accident arising out of and in the course of his employment with Charter Communications, Inc. on September 28, 2004;
13. There is no credible evidence that Claimant sustained an occupational disease arising out of and in the course of his employment with Charter Communications, Inc. on or about September 28, 2004; and
14. Claimant did not sustain an occupational disease arising out of and in the course of his employment with Charter Communications, Inc. on or about September 28, 2004.

ORDER IN INJURY NO. 04-125727

In Injury No. 04-125727, Claimant's Claim for Compensation against Employer, Charter Communications, Inc. and Insurer, Lumbermens Mutual Casualty Co., is denied in full. Claimant's Claim for Compensation against the Second Injury Fund is also denied in full.

Employee: Rodney Roberts

Injury No. 02-023192

Made by: /s/Robert J. Dierkes (12/11/12)
Robert J. Dierkes
Chief Administrative Law Judge
Division of Workers' Compensation

FINAL AWARD DENYING COMPENSATION

Injury No.: 04-125727

Employee: Rodney Roberts
Employer: Charter Communications, Inc.
Insurer: Insurance Company of the State of Pennsylvania
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo.

After employee's Application for Review was filed with the Commission, employer filed a brief stating that the insurer had been incorrectly named in the award dated December 11, 2012. Employer stated that the Insurance Company of the State of Pennsylvania should instead be listed as the correct insurer. On April 1, 2014, the Commission entered an order directing all interested parties to show cause why the Commission should not change the insurer. No responses were timely received. Thus, the Commission hereby modifies the insurer party for this claim to the Insurance Company of the State of Pennsylvania.

Having reviewed the evidence and considered the whole record, the Commission finds that the remainder of the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to § 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated December 11, 2012, as supplemented herein, and awards no compensation in the above-captioned case.

The award and decision of Chief Administrative Law Judge Robert J. Dierkes, issued December 11, 2012, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 25th day of April 2014.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

John J. Larsen, Jr., Chairman

James G. Avery, Jr., Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee: Rodney Roberts

Injury No. 04-125727

Dependents:

Employer: Charter Communications, Inc.

Before the
**DIVISION OF WORKERS'
COMPENSATION**

Additional Party: Second Injury Fund

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

Insurer: Lumbermens Mutual Casualty Co.

Hearing Date: September 18, 2012

Checked by: RJD/cs

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No.
2. Was the injury or occupational disease compensable under Chapter 287? No.
3. Was there an accident or incident of occupational disease under the Law? No.
4. Date of accident or onset of occupational disease: None. Alleged to be September 28, 2004.
5. State location where accident occurred or occupational disease was contracted: Alleged to be Boone County, Missouri.
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes.
7. Did employer receive proper notice? Notice is not an issue.
8. Did accident or occupational disease arise out of and in the course of the employment? No.
9. Was claim for compensation filed within time required by Law? Yes.
10. Was employer insured by above insurer? Yes.
11. Describe work employee was doing and how accident occurred or occupational disease contracted: Employee alleges that he was sitting looking at a computer screen with a co-employee when he experienced a massive headache and confusion and his left side felt paralyzed.
12. Did accident or occupational disease cause death? No. Date of death? N/A.
13. Part(s) of body injured by accident or occupational disease: None.
14. Nature and extent of any permanent disability: Not applicable.
15. Compensation paid to-date for temporary disability: None.
16. Value necessary medical aid paid to date by employer/insurer? None.

Employee: Rodney Roberts

Injury No. 04-125727

17. Value necessary medical aid not furnished by employer/insurer? None.
18. Employee's average weekly wages: \$525.87.
19. Weekly compensation rate: \$350.58.
20. Method wages computation: Stipulation.

COMPENSATION PAYABLE

21. From Employer: None. The claim against Employer is denied in full.
22. Second Injury Fund liability: None. The claim against the Second Injury Fund is denied in full.

Employee: Rodney Roberts

Injury No. 04-125727

Employee: Rodney Roberts

Injury No. 04-125727

Dependents:

Employer: Charter Communications, Inc.

Additional Party: Second Injury Fund

Insurer: Lumbermens Mutual Casualty Co.

Hearing Date: September 18, 2012

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

ISSUES DECIDED

The evidentiary hearing in these cases (02-023192 and 04-125727) was held on September 18, 2012 in Columbia. Claimant, Rodney Roberts, appeared personally and by counsel, Roger Brown; Employer, Charter Communications, Inc., and Insurer, Lumbermens Mutual Casualty Co., appeared by counsel, Betsy Willer; the Second Injury Fund appeared by Assistant Attorney General David Zugelster in Injury No. 04-125727 only. The parties requested leave to file post-hearing briefs, which leave was granted. The cases were submitted on November 5, 2012. In Injury No. 02-023192, the hearing was held to determine the liability, if any of Employer-Insurer for permanent partial disability benefits or permanent total disability benefits. In Injury No. 04-125727 the hearing was held to determine the following issues:

1. Whether Employee, Rodney Roberts, sustained an accident arising out of and in the course of his employment with Charter Communications, Inc. on September 28, 2004;
2. If found to have been sustained, whether the work-related accident of September 28, 2004 was the prevailing factor in the cause of any or all of the injuries and/or conditions alleged in the evidence;
3. Whether Employer-Insurer shall be ordered to reimburse Claimant for any or all of the medical charges in question;
4. Whether Employer-Insurer shall be ordered to provide Claimant with additional medical treatment pursuant to Section 287.140, RSMo;
5. The liability, if any, of Employer-Insurer for permanent partial disability benefits or permanent total disability benefits; and
6. The liability, if any of the Second Injury Fund for permanent partial disability benefits or permanent total disability benefits.

Employee: Rodney Roberts

Injury No. 04-125727

STIPULATIONS

The parties stipulated as follows:

1. That the Missouri Division of Workers' Compensation has jurisdiction over these cases;
2. That, in both cases, venue for the evidentiary hearing is proper in Boone County;
3. That, in both cases, the claim for compensation was filed within the time allowed by the statute of limitations, Section 287.430, RSMo;
4. That, in both cases, Employer and Employee were covered under the Missouri Workers' Compensation Law at all relevant times;
5. In Injury No. 02-023192, that Claimant's average weekly wage is \$410.18, resulting in a compensation rate of \$273.45;
6. In Injury No. 04-125727, that Claimant's average weekly wage is \$525.87, resulting in a compensation rate of \$350.58;
7. In Injury No. 02-023192, that Claimant, Rodney Roberts, sustained an accident arising out of and in the course of his employment with Charter Communications, Inc. on March 14, 2002;
8. In Injury No. 02-023192, that Employer-Insurer paid medical benefits of \$22,812.53 and temporary total disability benefits of \$1,993.69;
9. In Injury No. 04-125727, that Employer-Insurer has paid no benefits;
10. That, in both cases, the notice requirement of Section 287.420 is not a bar to Claimant's Claim for Compensation herein; and
11. That Lumbermens Mutual Casualty Co. fully insured the Missouri Workers' Compensation liability of Charter Communications, Inc. at all relevant times.

Employee: Rodney Roberts

Injury No. 04-125727

EVIDENCE

The evidence consisted of the testimony of Rodney Roberts, as well as the deposition testimony of Rodney Roberts and a recorded statement of Rodney Roberts; the narrative report and addendum of certified vocational counselor Phillip Eldred, as well as the testimony of Phillip Eldred; the testimony of Katherine Roberts; multiple narrative reports of Dr. Preston Brent Koprivica, as well as the deposition testimony of Dr. Koprivica; the deposition testimony of Dr. John D. Pro; the deposition testimony of Dr. Robert Burger; narrative report and deposition testimony of Dr. Russell Cantrell; narrative report and deposition testimony of Dr. Wayne Stillings; narrative report and deposition testimony of James M. England, Jr.; medical records; medical bills; certified records of the Missouri Division of Workers' Compensation.

DISCUSSION

On January 25, 2005, Claimant filed his CLAIM FOR COMPENSATION in Injury No. 02-023192, alleging injury to “ribs, back, neck” and described the accident of March 14, 2002 as “employee was climbing on a ladder in the course of his employment and fell from the ladder”. Claimant alleged no disability prior to March 14, 2002.

Also on January 25, 2005, Claimant filed his CLAIM FOR COMPENSATION in Injury No. 04-125727, alleging injury to “body as a whole, back, head, neck” and described the accident of September 28, 2004 as “employee was sitting at work, his left side felt paralyzed, he experienced a massive headache and confusion”. This claim also included a claim against the Second Injury Fund alleging permanent partial disability or permanent total disability. No amended claim has been filed for the alleged accident of September 28, 2004.

Claimant testified that his health was excellent prior to March 14, 2002. Claimant testified that the work accident of March 14, 2002 occurred as he was on the “next-to-top step” of a 6’ step-ladder putting an item on the top shelf in the warehouse when he fell from the ladder. Claimant stated: “next thing I know I’m laying across the ladder”. Claimant understood that his left side hit the ladder and broke some ribs. Claimant had punctured his lungs and was bleeding internally. Claimant did not know if he lost consciousness in the fall. The medical records do not indicate any loss of consciousness. Dr. Pro, a psychiatrist, testified that he believed Claimant sustained a concussion in the March 14, 2002 accident; this belief was apparently based upon Claimant’s claim of post-injury amnesia, and not upon a loss of consciousness. None of the other physicians who testified believed that Claimant struck his head in the fall or lost consciousness. Claimant was hospitalized at University Hospital in Columbia. Claimant complained of right elbow pain, pain in this thoracic spine and left paraspinal and left chest pain. Claimant was diagnosed with left rib fractures and left pneumothorax. Dr. Koprivica opined that

Employee: Rodney Roberts

Injury No. 04-125727

Claimant sustained a 15% permanent partial disability of the body as a whole as a result of the injuries he sustained in the March 14, 2002 accident. Dr. Cantrell opined that Claimant sustained an 8% permanent partial disability of the body as a whole as a result of the injuries he sustained in the March 14, 2002 accident. Dr. Pro testified to his belief that Claimant developed a post-concussion syndrome and a chronic pain disorder as a result of the March 14, 2002 accident and that Claimant thus sustained a 30% permanent partial disability of the body as a whole as a result of the March 14, 2002 accident.

It is noted here that Claimant is a very poor and inconsistent historian. Claimant testified at trial that he continued to work for Employer after recovering from the pneumothorax caused by the March 14, 2002 accident. Claimant testified that his job duties in the warehouse didn't change, but that he had a new employee to help him with lifting. Claimant testified that he continued to have daily headaches prior to September 28, 2004, and also had problems with concentration, but was still able to play guitar.

Claimant's trial testimony concerning the alleged accident of September 28, 2004 was that he was sitting at work looking at a computer with a co-worker when he felt that he had been hit in the back of the head or neck very forcefully. He remembers not being able to talk and "freaking out". He testified at trial that he eventually "got some better" and went to his boss, Jim Quisenberry and told him "I'm not feeling well, I'm going home".

In his statement taken December 9, 2004 by claims investigator Helen Johnson, Claimant stated:

Q Okay. Now you said you were sitting at the computer?"

A Um-hum.

Q Then what happened?

A Well, I just, uh, it felt like somebody hit me in the back of the head with, uh, with a bag and my body kinda jerked.

Q And did someone come over and help you or assist you?

A No, no. Somebody was there, actually, uh, at the computer with me.

Q Okay.

A He was in there asking me questions and I was just, you know, and that was about it.

Employee: Rodney Roberts

Injury No. 04-125727

Q Okay.

A I was just shocked the way I felt.

Q Okay. And then do you recall who this person was that was there with you, at the computer?

A Yeah, it was, uh, uh, Dave (Postin).

Q Okay. Did you ask for medical treatment at the time?

A No. I wasn't sure what happened, you know, that sensation came on, like my left side went numb.

Q Okay.

A And then, uh, you know, I tried to talk and, you know it – talking was difficult.

Q Okay.

A You know, like when you get a shot and the one side of your mouth's numb.

Q Um-hum.

A Well, that's what it felt like. But, uh, as it came on, it just, you know, just kinda went away.

Q Okay.

A And, you know, so the process went away. It's like, wow, that was different, you know, I thought I was having a heart attack at first.

Q Okay.

A And, Dave was there, you know, and I didn't say nothing to him, cause he was all involved on the computer, trying to show me something on the computer. And then I just had this real massive headache.

Q Okay.

A And I figured, wow, that was, that was different, you know.

Employee: Rodney Roberts

Injury No. 04-125727

Q Okay.

A And, I didn't know what to think about it.

Q Okay. So then when did you actually seek medical treatment?

A Late, later on that day I came home, and told my wife what happened. I said, I'm not sure what happened, but, you know, I had this big, big jerk and my left side went kinda numb and I've got this massive headache that I can't get rid of. And, uh, I'm having trouble concentrating, and I called the, uh, the hospital and she goes, it sounds to me like you had a stroke. So, you better come on in. So, I did and they kept me for about a week.

Q Okay. What hospital were you seen in?

A. University of Missouri Hospital and Clinic.

Q Okay. What city and state?

A Oh, Columbia, Missouri.

Q Okay. What did they tell you about your condition?

A Oh, they, uh, went through the whole thing, you know, checked my heart and, and did scans and all that kind of stuff. And they said – well, that's how I knew it was the sixth and seventh, uh, vertebrae that the disc slipped in. Because they told me that. Dr. (Berger) I think his name was.

Q Okay. But you were in the hospital for a week before they determined what was wrong with you?

A Yeah, yeah, they did every kind of test you can imagine.

Q Okay.

A They did – you know, they checked me for stroke and then they checked for, you know, it was a heart attack.

Q Um-hum.

Employee: Rodney Roberts

Injury No. 04-125727

A And, you know, they did, uh, uh, oh, I can't think of those procedures, you know. They put you in this big ole tube.

Q Uh-hum.

A And, you know, checked my spine.

Q An MRI, yes.

A Yeah, yeah, did all that.

In his deposition taken August 24, 2005, Claimant testified:

Q So just before the second accident on September 28th of 2004, you were having the ongoing problems with your ribs that you told me about and the daily headaches. Any other ongoing problems you were having from the first accident just before the second accident?

A None that I can recall, just those two.

Q Now I'd like to ask you some questions about the second accident. As I mentioned before --

A It gets confusing.

Q We're moving on to the second accident now, and as I mentioned before, I show that accident date to be September 28th of 2004, does that sound right?

A When?

Q September 28th of 2004?

A Yeah, that sounds right, I remember it was at the end of the month.

Q And can you describe for me how you were injured at that time?

A Oh, I was sitting at my computer desk, another Charter employee was talking to me and he was showing me something on the computer and that's when the incident happened.

Employee: Rodney Roberts

Injury No. 04-125727

Q What was the name of that other employee?

A David Polston.

Q And he was showing you something on the monitor?

A Yes.

Q Do you remember what he was showing you?

A It was some books about learning -- wait a minute, something to do with guitars, I don't recall exactly what it was.

Q So it wasn't really anything to do with work, it was just some other side thing he was showing you?

A I was there and then he came in and just had to show me something.

Q And so what happened while you were being shown this information about guitars on the monitor?

A I was sitting to his left and it felt like somebody had hit me in the back of the head with a two-by-four. I actually thought I was struck.

Q Did anything hit you in the head?

A No, it was just me and him and his head was in front of me to my right.

Q So you could see him as you were sitting there and you could still see him when you felt this pain in the back of your head?

A Yes, I knew it wasn't him, I thought somebody else was in there initially when that happened.

Q Was there something you did that caused the pain to develop?

A Same old day, same old routine.

Q You didn't hit your head on anything that day?

A Not that I recall.

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Q And the pain was actually on the back of your head?

A The pain affected my whole body, but the majority of it was the back of my neck or head.

Q Was there anyone else present when this happened besides David Polston?

A Not that I recall.

Q And what did you do after you felt this pain in the back of your head?

A Well, nothing, I couldn't move, couldn't talk, I just sat there.

Q And how long did you just sit there?

A It seemed like forever but I do not know how long.

Q After you sat there for however long it was, what did you do next?

A I tried to speak to Dave, I remember, I believe, I don't remember because it's kind of fuzzy but my left side was -- when I moved my mouth, the left side did not move.

Q And what happened next after you tried to talk to Dave?

A I just sat there and Dave just kept talking.

Q What happened next, I mean what was the next thing that happened after you sat there for however long it was and you tried to talk to him, did you get taken by ambulance somewhere or what happened next?

A No, the symptoms just faded away and I was able to move, but I also had numbness in my face and then things get fuzzy from there.

Q And that was on the left side of your face?

A I believe so, I believe so, I can't say with 100 percent certainty.

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Q Well, if the medical records from September 28th of 2004 say that the numbness was on the left side of your face, left upper extremity and left chest, would you agree that that's correct?

A Yes.

Q And we do have some records from University Hospital, it looks like you were seen there on September 28th, 2004, do you recall that?

A I remember going home and telling my wife I was feeling funny.

Q Do you recall what time of the day it was when you felt this pain in the back of your head?

A Well like I said, I was in a routine so it had to be early to mid morning.

Q And what were your hours at that point?

A I would get there at literally 20 minutes until 7:00 and I would work theoretically to 4:00.

Q And did you continue working the rest of that day?

A I'm not sure what time I got home. As far as I know I did.

Q And then what happened when you got home?

A I told my wife that I was feeling funny, something wasn't right, I vaguely remember that. I couldn't remember stuff.

Q And is that when you decided to go to the hospital?

A No.

Q What did you do?

A My wife called somebody and I went and sat down.

Q And what did you do next?

A I'm not sure.

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Q Did you go to the hospital later that same day?

A I remember being at the emergency room, so yes, I guess I did go to the hospital that day.

Q That's okay. So when this incident occurred, you had pain in the back of your head and then when you went to the hospital you were reporting numbness in the left side of your face, left upper extremity and left chest, does that sound correct?

A Yeah, it was all the same. By then, by the time I got to the hospital, as a matter of fact the numbness went away after -- Dave was there and a little bit after that is when the numbness went away and the pain intensified. I mean it's hard to explain, it's just hard to explain.

Q So you had this numbness in the left side of your face, your arm and left chest right after the second accident?

A Yes.

Q But eventually that numbness resolved and went away?

A Yes.

Q Did it ever come back again in that area?

A On the left side, no, not that I recall.

Q Did you have any other problems relating to the September 29, 2004 accident besides what you just told me about with the numbness on the left side?

A While I was going in the hospital or when I got out?

Q After you got out of the hospital from that first admission September 28th?

A When I was released, I had the same pain I had when I went into the emergency room.

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Q Are you talking about the admission when you went into the emergency room on September 28th?

A Yes, this most recent one, yes.

Q Well you just told me that the numbness to the left side of your face, chest and arm resolved, but now you're saying you had the same problems, so what problems are you referring to?

A The pain in the back of the neck and my right side.

Q When did you start having problems on the right side?

A At the same time the incident happened. It just happened all at once. I tried to explain to them, like I said, it's hard to explain.

Q Did you tell the doctors when you were first seen at the hospital on September 28th of 2004, did you tell the doctors you had pain in your neck?

A I don't recall, I barely remember even going to the emergency room.

Q Did you tell them that you had pain on the right, was it on the right side of your neck, is that what you were saying that you had?

A My head hurt and I don't recall the details.

Q Well, when you left the hospital, you went to the hospital September 28th of 2004?

A Yes.

Q You said you were admitted, do you recall leaving the hospital?

A No.

Q So you don't know what problems you were having when you left the hospital?

A No, I just really don't recall. I recall being in a lot of pain.

Q When do you next recall, I mean do you recall anything between now and then?

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A I recall bits and pieces. I mean I'm missing information, I just -- some of the stuff I just don't know.

Q So you really aren't sure what problems you were having when you were in the hospital when you were admitted September 28th of 2004; is that correct?

A Yes. I mean I tried to explain to them what was going on but I do not remember what I said.

Q Well, the first time I see symptoms mentioned in your neck and your right arm was later in, I believe, October of 2004. Do you recall when you first had the symptoms on the right side of your neck and your right arm?

A I do not recall.

After Claimant was admitted to the hospital on September 28, 2004, tests were done to rule out a stroke, heart attack or similar problem. Claimant was released from the hospital on October 1, 2004 and was scheduled for a cervical MRI on October 7, 2004. The MRI showed degenerative disc disease at C6-7 with protrusion of C6-7 disc to the right side. In December 2004 Claimant was seen by neurosurgeon Dr. John Oro who felt that Claimant had a right C7 radiculopathy due to a small herniated disc at C6-7. Claimant underwent epidural steroid injections and eventually was scheduled for surgery. Dr. Oro performed an anterior cervical discectomy and fusion with bone graft and instrumentation at C6-7 on March 1, 2005. On April 13, 2005, Dr. Oro noted that Claimant's neck pain had resolved, but he still had difficulty with his right shoulder and arm. Claimant continued to complain of headache and increasing right upper extremity pain and was referred to neurology clinic. Claimant then began reporting new neck pain. Claimant was evaluated by neurosurgeon Dr. Norman Scott Litofsky in December 2006, who suspected microscopic instability at the fusion site. A cervical CT scan done on April 2, 2007 showed the C6-7 disc space to be well-fused. Nevertheless, on May 11, 2007 Dr. Litofsky performed a C5, C6, C7 lateral mass fixation with instrumentation.

Claimant returned to Dr. Litofsky on June 4, 2007 stating that his neck pain was better and the neck "pressure" was gone; however, Claimant still had some right arm pain. Claimant's testimony was that the neck pain did not go away and he told Dr. Litofsky post-surgery that the neck pain did not go away. Claimant testified that he has had, and continues to have constant headaches, neck pain and bilateral shoulder pain.

At the request of Claimant's former attorney, LeAnne Wiseman, Claimant was evaluated by **Dr. P. Brent Koprivica** on December 17, 2005. On that date Dr. Koprivica wrote a "MEMO TO CHART" which stated:

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I need to call Ms. Wiseman regarding this case. I have extreme doubt that this is a work-related condition regarding the September 28, 2004 claim. Also, I believe there is a significant component psychologically in terms of the presentation.

The nature of his problem is not one which should totally disable him.

Dr. Koprivica also submitted a fifteen-page narrative report to LeAnne Wiseman dated December 17, 2005. That report made numerous references to Claimant being a poor historian. Dr. Koprivica noted:

I had a great deal of difficulty trying to define the mechanism of injury for the September 28, 2004 work injury.

Mr. Roberts noted the onset of his difficulties when he really was not doing any activity. He was merely being shown some type of book or magazine and sitting at a computer when he had onset of problems.

There was confusion as I questioned him in that his initial complaints were left-sided facial numbness and left-sided numbness.

However, he volunteered to me that his pain was on the right side.

The treatment records really focus on the left-sided complaints, as were his initial responses to my questioning.

In the December 17, 2005 report, Dr. Koprivica concluded that the March 14, 2002 fall from the ladder was a substantial factor as well as the prevailing factor in the multiple left rib fractures and pneumothorax. He also concluded that the chronic headaches which Claimant experienced following the March 14, 2002 accident were musculoskeletal in nature and resulted from the 3/14/02 accident. Dr. Koprivica went on to state: "This (the musculoskeletal headaches) is separate from the issue regarding his cervical disk herniation, in my opinion." Dr. Koprivica concluded that Claimant was at maximum medical improvement from the March 14, 2002 injuries, and he assigned a 15% permanent partial disability of the body as a whole due to the March 14, 2002 injuries.

Also in the December 17, 2005 report, Dr. Koprivica also states:

At this point, I have a difficult time in evaluating the work injury claim of September 28, 2004. The described event at the time of his complaints of neck pain where he was merely sitting is not sufficient to result in a cervical disc herniation, in my opinion.

I would note that the nature of his work activities earlier in the day where he was dealing with hardware, including carrying boxes on his head, would be competent to result in aggravating injury in the cervical spine followed by the development of the cervical disc herniation.

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I would also point out that the right-sided pain that he describes from September 28, 2004 is essential as being accurate in determining that the cervical disc herniation was related to his lifting activities on that date.

Attorney Wiseman had Claimant seen again by Dr. Koprivica on February 4, 2008. As no additional medical records had been provided, Dr. Koprivica's opinions were largely unchanged. However, Dr. Koprivica noted that "there may be some concern about a diagnostic study suggesting cervical injury in the initial fall of March 14, 2002." Dr. Koprivica stated that he would review those records when they became available; however "with the data that is available at this point I would not causally related the cervical injury to the March 14, 2002 fall."

Dr. Koprivica issued another report on February 18, 2008 after receiving additional medical records. Regarding the cervical disk herniation he stated:

In looking at all this additional data, I would note that I cannot state that the disk herniation followed the March 2002 work injury with the data that is available. Clearly, the diagnostic studies were not done to make that diagnosis. The diagnosis of cervical radiculopathy appears to follow the September 2004 work injury from all the data that is available to me.

In his deposition, Dr. Koprivica testified that Claimant's lifting and carrying activities earlier in the day on September 28, 2004 was the cause of Claimant's C6-7 right-sided disc herniation. He also testified that Claimant was lifting and carrying boxes, but that he (Dr. Koprivica) did not know the size or weight of the boxes. Dr. Koprivica also testified that there was no immediate onset of symptoms with any of Claimant's lifting or carrying activities on September 28, 2004. He testified that the accuracy Claimant's history (as related by Claimant to Dr. Koprivica) of right-sided pain on September 28, 2004 was essential in determining that the C6-7 disc herniation was related to Claimant's lifting activities on that date; Dr. Koprivica also testified that Claimant initially related to him only left-sided numbness having occurred on September 28, 2004. Dr. Koprivica also agreed that the medical records from September 28, 2004 only mention left-sided symptoms.

Dr. Robert Burger, one of Claimant's neurologists, testified by deposition taken May 20, 2011. Counsel for Employer and counsel for Second Injury Fund made numerous and timely objections to Dr. Burger's testimony, particularly on issues of causation of the C6-7 disc herniation, such objections based upon the "seven-day rule" of §287.210.3. It is true that no report from Dr. Burger was provided to opposing counsel prior to May 20, 2011 (it does not appear that any such report even exists), and thus there is a sound factual basis for the objections. However, opposing counsel did proceed to cross-examine Dr. Burger and did not request a continuance of the deposition or of the hearing. Therefore, the objections, though timely and

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well-grounded, are waived. See *Orr v. City of Springfield*, 118 S.W.3d 215 (Mo. App. S.D. 2003).

Dr. Burger testified (at page 7 of his deposition):

He (Claimant) told us that earlier that day (September 28, 2004) at work he was moving boxes. It's not clear from the medical record how extensive, or, I mean, how much he'd actually done. There was some indication, he indicated later, that he was carrying some of these boxes over his head, or kind of on his head.

Dr. Burger further testified (at pages 9-10 of his deposition):

In my opinion, I think it's medically likely that the surgery he required was the result of work activities he was doing in September of 2004. ... Well, if he was carrying – if he was carrying things on his head, carrying boxes and those sorts of things, that potentially loads the cervical spine. “Loads” meaning put a direct load on it. If you then have a weakness of a disc between two cervical vertebrae, the two vertebrae compress the disc. And just by the process of squeezing of that disc you can have herniation of that disc.

On cross-examination, Dr. Burger testified:

Q. You referenced Mr. Roberts as carrying boxes; do you know how heavy those boxes were?

A. I do not.

Q. Do you know how often he carried them?

A. I do not.

Q. Did you have a job description from his employer?

A. I do not. I did not.

Q. Okay. Do you have any information regarding what he was required to lift at his job?

A. I do not.

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At the request of counsel for Employer-Insurer, Claimant was evaluated by **Dr. Russell Cantrell** on December 2, 2008, and Dr. Cantrell's deposition testimony of July 2, 2009 was in evidence. At page 15 of his deposition, Dr. Cantrell testified:

Q. Doctor, you also mention he reported he had been doing some lifting earlier in the workday but then the on-set of his complaints was sitting at the computer. What, if anything, or what, if any, significance will you attach to that information?

A That there does not appear to be any correlation between any physical activity and symptoms he would have experienced those symptoms immediately at the time of the activity and not later while simply sitting still doing nothing.

At page 17 of his deposition, Dr. Cantrell testified:

Q And on page 9 of your report you mention in that first full paragraph some noteworthy information. Can you explain what information that is that you found that is noteworthy and why?

A What is noteworthy to me is that in the initial medical record documentation that I reviewed Mr. Robert's symptoms were left-sided in location rather than right-sided in location. And again if one were to assume that he had an acute disk herniation on September 28, 2004 then you would anticipate to have symptoms that were right-sided in location acutely in on-set rather than developing a week or two weeks or three weeks later.

And at page 60 of his deposition, Dr. Cantrell testified:

A Well, the first surgery was performed for a diagnosis of a disk herniation lateralizing to the right.

Q Let me stop you right there and ask you this. Did you form an opinion as to what the cause was for that condition?

A I would, given all the information that I have I would consider that a degenerative condition at the C6-7 level.

Q All right. And did you consider that, when you talk about a degenerative condition, do you consider that just to be the natural aging process?

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A Yes.

Claimant's Claim for Compensation in Injury No. 04-125727 hinges solely on the premise that Claimant's lifting and carrying activities earlier in the day on September 28, 2004 caused a C6-7 right-sided disc herniation. Despite Claimant's counsel's best efforts to muddy the waters, there is absolutely no medical evidence that the March 14, 2002 fall from the ladder caused the C6-7 right-sided disc herniation, nor is there any medical evidence that simply "sitting at work" on 9/28/04 was the cause (as alleged in the Claim for Compensation), nor was there any medical evidence that Claimant's work over a number of years caused the C6-7 disc herniation (as suggested in the post-trial brief)¹. The ONLY potential compensable cause which has any supporting medical evidence is Claimant's (alleged) lifting and carrying activities on September 28, 2004.

I simply cannot find that the C6-7 right-sided disc herniation was caused by lifting and carrying activities on September 28, 2004. **First**, there is no credible evidence that Claimant was doing any lifting or carrying activities on September 28, 2004. There was no allegation in the Claim for Compensation of lifting on September 28, 2004; it would stand to reason that this information would, at some point, have been given by Claimant to his counsel and would have been mentioned in the Claim. At trial, Claimant testified at length about what a "typical day" at work might have entailed, but Claimant did not testify that he lifted or carried anything on September 28, 2004.² In his deposition, Claimant testified: "I honestly don't remember. I've tried to remember what would cause that; I just don't remember anything I did that morning." Claimant was then asked: "Well, the medical records at one point mentioned that you had been doing heavy lifting on that morning; do you recall if you were doing heavy lifting on that morning?", to which Claimant replied: "I don't recall now." **Second**, while both Drs. Burger and Koprivica attribute Claimant's cervical disc herniation to lifting and carrying activities on September 28, 2004, neither physician was aware of the weight, frequency or duration of the lifting; this is not surprising, as that information would have come from Claimant, and Claimant himself doesn't have such information. Dr. Burger testified that IF Claimant was carrying things on his head, that it would POTENTIALLY load the spine and IF Claimant had a weak disc, such loading CAN cause a cervical disc herniation. While this testimony involves several levels of speculation, there is simply no question that the first and crucial "IF" has not been satisfied: i.e., there is no evidence that Claimant was "carrying things on his head" on September 28, 2004. **Third**, Dr. Koprivica's testimony was clear that, in order to make a finding that lifting activities on September 28, 2004 caused the C6-7 right-sided disc herniation, Claimant must have had right-sided symptoms on September 28, 2004. It is almost impossible to believe that Claimant

¹ Claimant's post-trial brief was quite lengthy and argued that, as Claimant's work for Employer was strenuous, and as Claimant was otherwise healthy, the cervical disc herniation must have come from Claimant's general work duties.

² Nor was there any testimony that Claimant carried any heavy loads *on his head* on 9/28/04, which fact appears to be crucial in Dr. Burger's causation analysis.

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had right-sided symptoms on September 28, 2004. The Claim for Compensation states that Claimant's "left side felt paralyzed" on September 28, 2004, but is silent as to *right-sided* symptoms. The history given at the hospital on September 28, 2004 was of left-sided symptoms only. Claimant agreed in his deposition that his symptoms at the hospital on September 28, 2004 were left-sided. Claimant was asked at page 72 of his deposition: "Well, the first time I see symptoms mentioned in your neck and your right arm was later in, I believe, October of 2004. Do you recall when you first had the symptoms on the right side of your neck and your right arm?", to which Claimant replied: "I do not recall". In his trial testimony, Claimant stated that he had pain on the right side while he was in the hospital, but did not testify that he had right-sided pain at the time he was sitting at the computer, felt as if he was struck in the back of the head or neck, and noticed left-sided numbness and paralysis.

Therefore, I must find that Claimant did not sustain a compensable work injury on September 28, 2004, and the Claim for Compensation in Injury No. 04-125727 must be denied in full against Employer-Insurer and the Second Injury Fund. All other issues in Injury No. 04-125727 are moot.

The only issue to be decided in Injury No. 02-023192 is Employer-Insurer's liability for permanent partial disability benefits.

As noted earlier, Dr. Koprivica testified that Claimant sustained a 15% permanent partial disability of the body as a whole as a result of the injuries he sustained in the March 14, 2002 accident, and Dr. Cantrell opined that Claimant sustained an 8% permanent partial disability of the body as a whole as a result of the injuries he sustained in the March 14, 2002 accident. I find that Dr. Koprivica's assessment of Claimant's degree of disability is correct. Additionally, Dr. John Pro testified to his belief that Claimant developed a post-concussion syndrome and a chronic pain disorder as a result of the March 14, 2002 accident and that Claimant thus sustained a 30% permanent partial disability of the body as a whole as a result of the March 14, 2002 accident.³

In this regard, I also note that psychiatrist Dr. Wayne Stillings also evaluated Claimant and testified in this case. Dr. Stillings did not agree with the opinions of Dr. Pro regarding a pain syndrome and adjustment disorder. He did not find any depressive disorder related to Claimant's work injuries. Dr. Stillings testified that Claimant has somatic reactivity and is likely to report subjective physical complaints well beyond those which can be physically or objectively confirmed, and that Claimant is prone to using his physical complaints to manipulate others and to control situations.

³ Dr. Pro also testified that Claimant sustained an additional permanent partial psychiatric disability of 30% of the body as a whole as a result of the alleged September 28, 2004 accident; the issue of Claimant's disability from the September 28, 2004 accident is moot.

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Dr. Stillings also disagreed with the diagnosis of post-concussion syndrome. He testified that there was no basis for this diagnosis and the subjective complaint of headaches is not sufficient to make this diagnosis. He noted that Claimant never sought any type of psychiatric treatment or counseling proximate to his 2002 work injury or even proximate to the 2004 work injury.

Dr. Stillings felt that Claimant over reported memory dysfunction. He diagnosed Claimant with pre-existing dysfunctional family of origin (chaotic and violent family constellation with lack of love and nurture followed by foster care), pre-existing parent child relational problems (emotional and physical abuse by multiple individuals including his father, mother and two step-mothers), pre-existing depressive disorder in remission and partner relational problems (marital discord). Dr. Stillings also diagnosed pre-existing chronic emotional problems, assumption of the "invalid" role, change of identity from a worker to a non-worker, false attribution of emotional problems to the work injuries and probable ongoing marital discord, not working and interaction with the legal system. He scored his GAF at 75 which would indicate no significant psychiatric symptoms and functioned fairly well from an emotional standpoint. Dr. Stillings concluded that neither the 3/14/2002 injury nor the 9/28/2004 injury were a substantial factor in Claimant's current psychiatric condition, and opined that Claimant sustained no permanent psychiatric disability.

My impression of Claimant is similar to those of Dr. Koprivica, i.e., that Claimant's condition is not that of total disability, that Claimant's complaints are grossly inordinate to his injuries, and that "there is a significant component psychologically in terms of the presentation". I find that a portion of that "significant component psychologically" is due to Claimant's underlying personality traits (as described by Dr. Stillings); however, I also find that a portion thereof is due to a chronic pain disorder caused by the 3/14/2002 accident (i.e., fall from ladder with rib fractures and pneumothorax). I do not believe there is any *credible* evidence of a post-concussion syndrome. As noted above, none of the physicians (not even Dr. Pro) believed that Claimant ever lost consciousness. I find that the March 14, 2002 accident was a substantial factor in Claimant's development of a chronic pain disorder, and I further find that Claimant sustained an additional 7.5% permanent partial disability of the body as a whole as a result of the chronic pain disorder. Claimant's aggregate permanent partial disability as a result of the March 14, 2002 accident is 22.5% of the body as a whole (90 weeks of compensation).

FINDINGS OF FACT AND RULINGS OF LAW IN INJURY NO. 02-023192

In Injury No. 02-023192, in addition to those facts and legal conclusions to which the parties stipulated, I find the following facts and make the following rulings of law:

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1. Claimant sustained an accident arising out of and in the course of his employment with Charter Communications, Inc. on March 14, 2002 when he fell from a stepladder in the warehouse in Boone County, Missouri;
2. The March 14, 2002 work accident caused Claimant to fracture several ribs which resulted in a pneumothorax for which Claimant was hospitalized;
3. The March 14, 2002 work accident was a substantial factor in causing a chronic pain syndrome;
4. Claimant did not lose consciousness in the March 14, 2002 fall from the ladder;
5. The March 14, 2002 work accident did not cause post-concussion syndrome;
6. The March 14, 2002 work accident did not cause Claimant to herniate his cervical disc at C6-7;
7. Claimant is not permanently and totally disabled;
8. The injuries Claimant sustained in the March 14, 2002 work accident resulted in a permanent partial disability of 22.5% of the body as a whole.

ORDER IN INJURY NO. 02-023192

In Injury No. 02-023192, Employer and Insurer are ordered to pay Claimant the sum of \$24,610.50 for permanent partial disability benefits.

Claimant's attorney, Roger Brown, is allowed 25 percent of the amount awarded to Claimant as and for necessary attorney's fees, and the amount of such fees shall constitute a lien thereon, until paid.

Interest shall accrue as per applicable law.

FINDINGS OF FACT AND RULINGS OF LAW IN INJURY NO. 04-125727

In Injury No. 04-125727, in addition to those facts and legal conclusions to which the parties stipulated, I find the following facts and make the following rulings of law:

1. On September 28, 2004, Claimant was working for Employer at Employer's warehouse in Boone County, Missouri;
2. On September 28, 2004, Claimant was looking at a computer with a co-worker when he felt a very severe pain in his head and neck and felt that the left side of his face was paralyzed and also felt pain and weakness on the left side of his body;

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3. There is no credible evidence that Claimant experienced any symptoms on the right side of his body on September 28, 2004;
4. There is no credible evidence that Claimant was performing any carrying or lifting activities for Employer on September 28, 2004;
5. There is no credible evidence that Claimant was carrying boxes on his head on September 28, 2004;
6. A cervical MRI performed on Claimant on October 7, 2004 showed degenerative disc disease at C6-7 with protrusion of C6-7 disc to the right side;
7. Claimant eventually underwent surgery on his neck; the post-operative diagnosis was a right-sided C6-7 disc herniation;
8. Claimant's sitting looking at a computer on September 28, 2004 at Employer's warehouse was not a substantial factor in the cause of Claimant C6-7 disc herniation;
9. There is no credible evidence that Claimant's work for Employer on September 28, 2004 was a substantial factor in the cause of Claimant C6-7 disc herniation;
10. There is no credible evidence that Claimant's work for Employer at any time was a substantial factor in the cause of Claimant C6-7 disc herniation;
11. There is no credible evidence that Claimant sustained an accident arising out of and in the course of his employment with Charter Communications, Inc. on September 28, 2004;
12. Claimant did not sustain an accident arising out of and in the course of his employment with Charter Communications, Inc. on September 28, 2004;
13. There is no credible evidence that Claimant sustained an occupational disease arising out of and in the course of his employment with Charter Communications, Inc. on or about September 28, 2004; and
14. Claimant did not sustain an occupational disease arising out of and in the course of his employment with Charter Communications, Inc. on or about September 28, 2004.

ORDER IN INJURY NO. 04-125727

In Injury No. 04-125727, Claimant's Claim for Compensation against Employer, Charter Communications, Inc. and Insurer, Lumbermens Mutual Casualty Co., is denied in full. Claimant's Claim for Compensation against the Second Injury Fund is also denied in full.

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Made by /s/Robert J. Dierkes (12/11/12)
Robert J. Dierkes
Chief Administrative Law Judge
Division of Workers' Compensation