

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

Injury No.: 04-136882

Employee: Sandra Roberts
Employer: Schaefer's Power Panels
Insurer: American Home Assurance c/o Chartis Claims, Inc.
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. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to § 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated July 29, 2011. The award and decision of Administrative Law Judge Maureen Tilley, issued July 29, 2011, is attached and incorporated by this reference.

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

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

Given at Jefferson City, State of Missouri, this ____19th____ day of April 2012.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

James Avery, Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

ISSUED BY DIVISION OF WORKERS' COMPENSATION

AWARD

Employee: Sandra Roberts Injury No. 04-136882
Employer: Schaefer's Power Panels
Additional Party: Second Injury Fund
Insurer: American Home Assurance c/o Chartis Claims Inc.
Hearing Date: May 23, 2011 Checked by: MT/rf

SUMMARY OF FINDINGS

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? December 21, 2004.
5. State location where accident occurred or occupational disease contracted: Stoddard 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/occupational disease arise out of and in the course of the employment? Yes.
9. Was claim for compensation filed within time required by law? Yes.
10. Was employer insured by above insurer? Yes.

11. Describe work employee was doing and how accident happened or occupational disease contracted: The employee was tying two large electrical boxes to a rack in the wash bay when she was struck by the rack which caused her to fall and injure her low back.
12. Did accident or occupational disease cause death? No.
13. Parts of body injured by accident or occupational disease: Low back and body as a whole.
14. Nature and extent of any permanent disability: Permanent Total Disability (See Rulings of Law).
15. Compensation paid to date for temporary total disability: \$33,827.99
16. Value necessary medical aid paid to date by employer: \$164,141.26
17. Value necessary medical aid not furnished by employer: None.
18. Employee's average weekly wage: \$298.58
19. Weekly compensation rate: \$199.05
20. Method wages computation: By agreement.
21. Amount of compensation payable by Employer-Insurer: Permanent Total Disability (See Rulings of Law).
22. Second Injury Fund liability: None (See Rulings of Law).
23. Future medical awarded: Employer-insurer direct to provide future medical aid pursuant to Section 287.140 RSMo. (See Rulings of Law).

Said payments shall be payable as provided in the findings of fact and rulings of law, and shall 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: Jack Knowlan.

FINDINGS OF FACT AND RULINGS OF LAW

On May 23, 2011, Sandra Roberts (“employee”) appeared in person and by her attorney, Mr. Jack H. Knowlan, Jr., for a hearing for a final award. The employer-insurer was represented at the hearing by its attorney, Mr. Matt Leonard. The Second Injury Fund was represented at the hearing by Assistant Attorney General Jon Lintner. The parties agreed on certain undisputed facts and identified the issues that were in dispute. These undisputed facts and issues, together with the Findings of Fact and Rulings of Law, are set forth below as follows:

UNDISPUTED FACTS

1. On or about December 21, 2004, Schaefer’s Power Panels (“employer”) was a covered employer operating under and subject to the provisions of the Missouri Workers' Compensation Act, and was fully insured by American Home Assurance c/o Chartis Claims, Inc.
2. On or about December 21, 2004, Sandra Roberts was an employee of Schaefer’s Power Panels, and was working under the provisions of the Missouri Workers' Compensation Act.
3. On or about December 21, 2004, the employee sustained an accident that arose out of and in the course of her employment.
4. The employer had notice of the employee’s accident and resulting injury.
5. The employee's claim for compensation was filed within the time allowed by law.
6. The employee's average weekly wage was \$298.58. Her rate of compensation is \$199.05.
7. The employer paid medical expenses in the amount of \$164,141.26.
8. The employer-insurer paid temporary total disability benefits in the amount of \$33,827.99.
9. The employee reached MMI as of October 27, 2008.

ISSUES

1. *Medical causation:* The employer-insurer stipulated that the employee’s disc herniation at L4-5 was medically causally related to her accident, but disputed medical causation as to the employee’s annular tears at L3-4 and L5-S1. The employer-insurer did not stipulate that any of the employee’s post-accident depression and other emotional problems were causally related to the employee’s December 21, 2004 accident. The Second Injury Fund did not dispute medical causation.
2. *Additional or Future Medical Aid:* The employee did not request an award for previously incurred medical expenses or medical travel expenses, but she did request an award for future medical aid. The request for future medical aid includes two different injuries or medical conditions. The employee is asking for future medical aid for her low back injury. She is also requesting additional treatment for depression and other psychological conditions that the employee believes are related to her accident and the resulting injury to her low back.

3. *Temporary Total Disability:* The employee has requested an award against the employer-insurer for additional temporary total disability from May 16, 2008 through the date she was determined to be at MMI on October 27, 2008. This time period is equal to 165 days or 23 4/7ths weeks, and the total temporary total disability claimed is equal to \$4,691.89.
4. *Permanent Total Disability:* The employee has requested an award for permanent total disability benefits against either the employer-insurer or the Second Injury Fund.
5. *Permanent Partial Disability:* If it is determined that the last injury alone did not cause the employee to be permanently and total disabled, but the employee is totally disabled due to a combination of her last injury and her pre-existing injuries, the employee has requested an award against the employer-insurer for permanent partial disability. If it is determined that Employee is not permanently and totally disabled, in the alternative, the employee is requesting an award against both the employer-insurer and the Second Injury Fund for permanent partial disability.

EXHIBITS

The following exhibits were offered and admitted into evidence:

Employee's Exhibits:

- A. Claim for compensation
- B. Temporary Award
- C. Medical report and deposition of Dr. Raymond F. Cohen
- D. Medical report and deposition of Dr. Wayne A. Stillings
- E. Medical report and deposition of Mr. James M. England
- F. Medical records of MSH Family Medical Care
- G. Medical records of Dr. David Boardman
- H. Medical records of Cape Radiology Group
- I. Medical records of Saint Francis Medical Center
- J. Medical records of Dr. Peter Mirkin
- K. Medical records of River City Imaging
- L. Medical records of Health South Rehabilitation
- M. Medical records of St. Anthony's Medical Center
- N. Medical records of Dr. Matthew Gornet
- O. Medical records of Dr. K.P.S. Kamath
- P. Medical records of Bluff Radiology Group
- Q. Medical records of Missouri Southern Healthcare
- R. Medical records of Kneibert Clinic / Kneibert Clinic Mental Health
- S. Medical records of Poplar Bluff Regional Medical Center
- T. Medical records of Barnes Jewish West County Hospital
- U. Medical records of Imaging Partners of Missouri
- V. Medical records of CT Partners of Chesterfield

Employer-Insurer Exhibits:

1. Deposition of Dr. Russell C. Cantrell
2. Deposition of Dr. Melissa Harbit
3. Deposition of Mr. Bob Hammond

Second Injury Fund's Exhibits: None offered.

Additional Note: The administrative law judge took administrative notice of the Division of Workers' Compensation file. The Second Injury Fund objected, and the objection was overruled.

FINDINGS OF FACT

General Information

- The employee was born and raised in San Francisco, California, but has lived in Missouri since 2001.
- She was born on May 14, 1956, and was 55 years old at the time of the hearing.
- The employee was not married at the time of the hearing. She had been married six times before, and had been living with Randy McTurnan for approximately seven years. The employee explained her multiple marriages by stating that she had some problems when she was younger and made some poor choices.
- The employee described her relationship with Mr. McTurnan as good. She indicated that they might get married, but were not in any hurry.
- The employee has three grown children that are financially independent. She lost two other children. One was born premature and only lived a few months, and the other child was "still born". She indicated that the loss of these children caused her to become depressed and to have significant emotional problems.

Education

- The employee dropped out of school in the 11th grade because she was pregnant, but she had enough credits to graduate with a GED.
- The employee's grades in school were generally good, but there were certain time periods when her grades got worse. She attributed this to physical, emotional and sexual abuse by the man that she thought was her father.
- The employee had an opportunity to take some college courses when she was older. She took early childhood education classes in 1997 and 1998. She did not receive a degree because she did not like taking the mathematics courses. The employee did not have any difficulty understanding the material and taking the tests for the early childhood classes. She considered herself to be fairly intelligent. Her grades in college were good, except she did not do well in algebra.
- The employee also had some health and emotional problems during the time she was taking the college courses. She was diagnosed with Grave's disease and had to have her thyroid removed. The employee had significant emotional problems until they got her medication adjusted.

- Other than truck driving school, the employee did not have any vocational training.
- The employee served in the military for a brief period of time. She was in basic training in the Air Force when she learned that her husband was having an affair with her brother's wife. The employee was very upset and angry because of this news, and the Air Force sent her home with an honorable discharge.
- The employee does not have much experience with computers. She never had to work with computers or do keyboarding for any of her jobs.
- The employee is able to read and write. She considers herself to be a good reader and enjoys reading novels. She is not good at math.

Work History

- The employee worked walking dogs and cleaning houses as a child. As a teenager, she worked for a business that owned a record store, a pet store and a restaurant. After she was discharged from the Air Force for emotional problems, the employee started driving trucks. The employee drove trucks for different companies, with a few gaps, from 1979 until 2004. She enjoyed driving trucks because she did not like being around people and she liked to travel.
- From 1996 to 1999, the employee was on social security disability due to problems with her thyroid and depression. During this time period she was taking college courses, and she also worked part time for a day care center owned by her brother. Although she was on disability, her brother allowed her to work on her good days, and she did not get paid. She indicated her jobs with the day care centers included teaching, potty training the children, cooking, and cleaning. The employee did not have to be certified to teach in the day care center. She indicated she did well with the kids, but did not get along with some of the parents and staff.
- After a few years on social security, the employee returned to work. She worked two months at Kinder Care. She then returned to driving trucks until 2004 when she took a factory job at Verison. After a few months at Verison, the employee started working for Schaefer's Power Panels.

Pre-Existing Health Problems

- The employee injured her right arm in a motor vehicle accident in 1965, but fully recovered from that injury.
- The employee also had a whiplash injury to her neck in 1983 that also affected her shoulders. After her recovery, the employee did not have any further problems with her neck or shoulders prior to her December 21, 2004 accident.
- The employee had significant problems with depression, anxiety and other emotional issues before her December 21, 2004 accident.
- The employee identified three time periods before her accident when her problems with depression and other emotional issues became more severe. The first time period occurred when she was growing up and living with her mother and Mr. John Earl Peters. At the time, she thought Mr. Peters was her father. The employee was sexually, emotionally, and physically abused by Mr. Peters. Mr. Peters also physically and emotionally abused her mother and other members of her family, but to her knowledge, she was the only one that he sexually abused. The sexual abuse she suffered from Mr. Peters included rape. The employee and her mother

eventually ran away from Mr. Peters. She later learned the identity of her real father. After she was reunited with her real father, she did not have any further problems with Mr. Peters. The employee was emotionally devastated by this abuse, and attempted suicide several times.

- The employee was also raped by two men who were strangers in her late teens. These men were caught and sentenced to prison.
- The second time period where she had problems with depression and anxiety occurred when the employee was a young adult. Two of her children died, and the employee was having problems with her second marriage. She also had problems with physical abuse by three of her ex-husbands. During this time period the employee had additional occasions when she tried to commit suicide.
- There were a few occasions when she was hospitalized for depression or anxiety when she was a child or a young adult, but she did not receive any extensive treatment or medication from psychiatrists or psychologists during these first two time periods.
- The third time period when the employee had problems with depression and other emotional issues occurred in the 1990's when she was diagnosed with Grave's disease and had her thyroid removed. The employee was hospitalized and received treatment during this time period. This was also the time when she was on social security disability.
- The employee returned to work as a truck driver in 1999. From 1999 until her accident on December 21, 2004, the employee did not have any additional treatment or take any medication for depression or anxiety.
- The employee has also been diagnosed as having panic attacks and agoraphobia. The employee does not recall having many panic attacks, but admitted that she preferred to be alone and avoided crowds.
- The employee did not believe that her pre-existing problems with depression and anxiety had any effect on her ability to work, but agreed that during the mid to late 1990s her emotional problems were bad enough that she was not able to work. She also agreed that there were some types of jobs that she was not comfortable doing.
- During the four or five years leading up to her December 21, 2004 accident the employee indicated she was doing "pretty good" with her depression, anxiety and other psychological problems. She was not taking any medication or receiving any treatment.

December 21, 2004 Accident

- Prior to December 21, 2004, the employee denied having any pain or discomfort in her low back. She had never received medical or chiropractic treatment for her low back, and had never taken any prescription or over-the-counter medication for her back. The employee indicated that she did not have any limitations related to her low back before December 21, 2004.
- On December 21, 2004 the employee was working for Schaefer's Power Panels in the wash bay. She was tying large electrical boxes on to a rack when one of the electrical boxes started swinging and caused the rack to strike her on her legs. She was squatting at the time, and had to throw herself backwards to avoid getting hit by the electrical box. The employee fell and landed on her right buttocks.
- The employee's legs were scrapped and bleeding. Both of her legs hurt, but the right leg was the worst. She reported her accident to her supervisor. He did not offer to send her for treatment.

Soon after her accident, her shift ended. The employee went home and noticed that her back was stiff and sore.

- The plant was closed for Christmas break and bad weather, and the employee did not return to work until December 28, 2004. She spoke with her supervisor at that time, and he did not offer to do anything. After a break for New Years, the employee went to the office and spoke with the owner. He authorized her to see Dr. David Boardman.

Medical Treatment

Dr. David Boardman:

- The employee's first appointment with Dr. Boardman was on January 4, 2005. Dr. Boardman's records state the employee got hit in the leg by a crate at work, and it struck her on the right knee and shin. This record does not mention the employee's back, but it does indicate her pain "radiates up". The pain diagram shows a circle around the right knee and calf with a long arrow pointing up toward her right hip and buttock (Claimant's Exhibit G, page 1). The employee testified she was having pain in her back at the time of her first visit with Dr. Boardman, but she thought it was just a pulled muscle. Dr. Boardman's office gave her muscle relaxers.
- The employee agreed that her most significant problem at the time of her first visit with Dr. Boardman was the trauma to her right leg, and his records from January 4, 2005 and January 11, 2005 focus on that injury.
- The employee's symptoms did not improve, and she returned to Dr. Boardman on January 18, 2005. The record from that date states "Progressive pain in right lower leg. Now in right SI joint area – migrating down back of leg". The pain diagram from the January 18, 2005 record still has a circle around the right lower leg with the arrow pointing up, but also has a circle in the area of the low back with an arrow going down the right leg to the knee. The record from January 18, 2005 also has a circle drawn around "back pain", and has a check mark by the phrase "Similar symptoms previously" (Claimant's Exhibit G, page 5). The employee agreed that the symptoms of low back pain with pain running down her leg were not new symptoms, but had progressed and gotten worse since her accident. The employee further indicated she had not suffered any new accidents or injuries to her low back or right leg between the date of her accident on December 21, 2004 and January 18, 2005.
- Dr. Boardman ordered a CT scan of the employee's low back that was performed at Cape Radiology on January 19, 2005. The "history" from this radiology report states "Low back pain". The scan showed mild disc space narrowing at L4-5 with no evidence of fracture or bony destruction (Claimant's Exhibit H, page 1).
- The employee had follow-up visits with Dr. Boardman on January 24, 2005 and January 31, 2005. The employee continued to have pain in her right hip that radiated down her right leg, and she also complained of some pain in her left hip. Based on these complaints, Dr. Boardman recommended an MRI of the employee's lumbar spine (Claimant's Exhibit G, page 7-10).

Dr. Dennis Straubinger:

- After Dr. Boardman recommended an MRI, the employer changed doctors and sent the employee to Dr. Dennis Straubinger at Saint Francis Medical Center in Cape Girardeau. Her first appointment with Dr. Straubinger was on February 3, 2005. Her primary complaint was low back pain and pain in the right lower extremity. Dr. Straubinger's record includes a history that

is consistent with the employee's testimony regarding her December 21, 2004 accident. The employee reported significant pain and limitations that had caused her to stop working on January 18, 2005. Dr. Straubinger's assessment was "Blunt impaction/contusions, left and right knees. Fall to right buttock/low back area with radicular features". He commented that her presentation appears to be consistent. Dr. Straubinger prescribed medication and a TENS unit, and ordered an MRI of the lumbar spine. He discontinued physical therapy because it had "not been authorized" (Claimant's Exhibit I, page 4-6).

- The MRI was performed at River City Imaging on February 4, 2005. The radiology report includes a history of the employee's December 21, 2004 accident and the resulting low back and leg pain. The radiologist's impression was "Some degeneration of the lower three disc levels with annular tears suspected at L3-4 and L5-S1. Mild disc bulge with modic type 2 end plate changes, L4-5. No protrusion, canal or neural foraminal stenosis" (Claimant's Exhibit K, page 8).
- The employee's next appointment with Dr. Straubinger was on February 8, 2005. Dr. Straubinger noted the MRI demonstrated annular tears at L3-4 and L5-S1 with endplate changes at L4-5, and recommended a referral to the Pain Center for epidurals. He also continued the TENS unit and prescribed physical therapy (Claimant's Exhibit I, page 26).
- On February 16, 2005 the employee received an epidural injection from Dr. Cleaver. The employee returned to Dr. Straubinger on the same day. She reported the injection had been painful, and rated her current pain at a 10. The doctor's record notes that her presentation was consistent with significant pain and functional impairment. Despite that comment, Dr. Straubinger concluded the employee could continue on modified duty with four hour shifts and sedentary tasks (Claimant's Exhibit I, page 32).
- The employee had three physical therapy sessions at Health South that did not improve her condition (Claimant's Exhibit L, page 1-9). She returned to Dr. Straubinger on February 23, 2005. Dr. Straubinger noted that "She is still significantly functionally compromised. Now there is evidence clinically to suspect some denervation issues with the RLE". His assessment was "Back pain, sciatic features to the right, L5, S1 distribution". Dr. Straubinger suggested EMG and nerve conduction studies and a referral to Dr. Andrew Wayne or Dr. Cantrell at Orthopedic and Sports Medicine (Claimant's Exhibit I, page 47-49).

Dr. Peter Mirkin:

- The employer-insurer scheduled the employee for a consultation with Dr. Peter Mirkin, who is an orthopedic surgeon in St. Louis. Dr. Mirkin saw the employee on February 28, 2005. Her complaints were low back pain with severe pain in her right leg. Dr. Mirkin reviewed the MRI and concluded she had degenerative disc disease and disc bulging, most severe at L4-5. Dr. Mirkin's impression was degenerative disc disease and radiculopathy. Dr. Mirkin suggested a myelogram (Claimant's Exhibit J, page 6).
- A myelogram was completed at Metro Imaging on March 4, 2005. The myelogram confirmed a large extradural defect at L4-5 on the right. The radiologist concluded the employee had a herniated disc at L4-5 with inferior extension on the right (Claimant's Exhibit J, page 16, 17).
- Dr. Mirkin's March 9, 2005 record confirms that the employee had "a rather significant herniated disc at L4-5 with compression of the right nerve root". She was complaining of persistent pain down her right leg and inability to walk. The employee advised that she could not live with the pain any longer. Dr. Mirkin offered a one level decompression and fusion, and indicated he

would schedule the surgery in the near future. Despite these notes, he stated the employee could continue to work with sedentary restrictions (Claimant's Exhibit J, page 20).

- On March 24, 2005, Dr. Mirkin performed a "Bilateral laminectomy L4-5 with decompression of nerve roots. Segmental instrumentation L4-5. Interbody fusion L4-5. Placement of pedicle screw instrumentation" (Claimant's Exhibit J, page 28-30). Dr. Mirkin did not address the previously diagnosed annular tears at L3-4 and L5-S1.
- The employee indicated that the surgery by Dr. Mirkin helped her right leg pain, but she continued to experience significant low back pain. Dr. Mirkin ordered additional physical therapy at Health South. The records indicate the employee had approximately 34 physical therapy sessions between April 13, 2005 and August 29, 2005. The therapy records confirm the employee was still having significant pain in her back and right hip, and she was also having pain in the pelvis area where Dr. Mirkin had removed bone for the fusion. The therapy records indicate certain activities made the employee's back pain worse. The employee identified those activities as squatting, kneeling, lifting, sitting or standing very long, walking, bending or climbing stairs. The records also note the employee was having problems sleeping due to her low back pain. The employee had constant low back pain, and consistently rated her pain from a 4 to 8 out of 10. By the time she completed her therapy, the employee's "perceived improvement" from the therapy had increased from 20% to 50% (Claimant's Exhibit L). The employee still had significant low back pain, pain in the right hip, and occasional leg pain.
- On September 9, 2005, Dr. Mirkin recommended a functional capacity evaluation. The FCE was done at Healthsouth on September 14, 2005. The original FCE indicated the employee could perform "heavy work", but was subsequently modified to indicate a physical demand category of "medium work" (Claimant's Exhibit J, page 124, 125).
- Based on the FCE, Dr. Mirkin released the employee to return to work without restriction on September 19, 2005 (Claimant's Exhibit J, page 137). He subsequently gave the employee a permanent partial disability rating of 15% "secondary to her work injury and subsequent treatment" (Claimant's Exhibit J, page 139).

Dr. Matthew Gornet:

- At the time of her release by Dr. Mirkin, the employee was no longer employed by Schaefer's Power Panels. She indicated she had been terminated two days before her surgery. The employee continued to experience severe pain and limitations related to her low back injury, and requested additional medical treatment. The employer-insurer denied further treatment, and the employee went to Dr. Matthew Gornet for another opinion. Dr. Gornet is an orthopedic surgeon in St. Louis.
- The employee's first appointment with Dr. Gornet was on January 19, 2006. Her chief complaint was low back pain with bilateral buttock pain and leg pain. Dr. Gornet wrote "She states that she has improved to some extent to the point that prior to the surgery she felt that she was bed-ridden, but now has continued pain, spasms, difficulty with walking, standing, lifting. She describes constant symptoms, worse with bending, lifting, prolonged sitting, and standing. It is better with lying on her stomach. She continues to have bilateral leg pain, numbness and weakness of her legs, including giving out at times, but denies bowel or bladder symptoms". After performing a physical examination and reviewing radiology reports, Dr. Gornet concluded that the employee had two possible problems. The first was the possibility of a failed fusion at L4-5. The second was the annular tears above and below the fusion that had not been addressed

in her first surgery. Dr. Gornet recommended a new high quality CT scan, and concluded that the employee “remains temporarily totally disabled”. He discussed with the employee the possibility that she might require additional surgery to address these problems (Claimant’s Exhibit N, page 3, 4).

- In a letter dated January 19, 2006, Dr. Gornet diagnosed (1). Possible failed fusion at L4-5, and (2). Transitional syndrome at L3-4 and L5-S1. He noted her pre-surgery MRI showed possible annular tears at those levels. Dr. Gornet concluded that the employee’s “injury at work in December of 2004 was a substantial if not the predominant factor in why she obtained her surgery as well as her continuing symptoms today”. He recommended a CT scan to evaluate the failed fusion and suggested she might require an MRI to evaluate the adjacent discs (Claimant’s Exhibit N, page 1, 2).
- The employer-insurer gave Dr. Gornet’s report to Dr. Mirkin, and Dr. Mirkin responded by letter dated April 28, 2006. Dr. Mirkin stated “I see no evidence that the patient had a failed fusion and certainly radiographs of any sort are extremely unreliable in determining whether or not the patient has a failed fusion unless there is lucency around the hardware. I certainly do not think the patient needs to be taken off work completely, as that would be counterproductive, and the patient has returned to work based on her abilities and her FCE”. Dr. Mirkin did not address the annular tears at L3-4 and L5-S1 (Claimant’s Exhibit J, page 143).
- Based on this report the employer-insurer did not authorize the additional CT scan or additional treatment, and the employee’s attorney requested a hardship hearing. The hearing was held on November 6, 2006, and Judge Kasten issued a Temporary or Partial Award on November 27, 2006. Judge Kasten found that “the employee’s December 21, 2004 work accident was a substantial factor in causing the employee’s low back injury and resulting medical condition and disability including the need for additional medical treatment”. He further found that “the injury to the employee’s low back and resulting medical condition and disability, and the need for treatment after September 19, 2005, is medically causally related to the December 21, 2004 accident” (Claimant’s Exhibit B). On the issue of additional medical aid, Judge Kasten concluded:

Based on these findings, the employer-insurer is directed to furnish additional medical aid in accordance with Section 287.140 RSMo. I find that the employer-insurer has denied medical treatment and has therefore waived its right to select and approve the treating physician. The evidence also supports a finding that the requirements of 287.140 RSMo have been furnished in such a manner that there are reasonable grounds for believing that the health or recovery of the employee has been endangered. An order requiring a change in the physician is therefore appropriate under Section 287.140.2 RSMo. The employer-insurer is directed to furnish additional medical aid under the direction and control of Dr. Matthew Gornet. (Claimant’s Exhibit B)

- Based on this award, the employer-insurer authorized additional treatment by Dr. Gornet. A CT of the lumbar spine was done at Barnes Jewish West County Hospital on January 22, 2007 (Claimant’s Exhibit T, page 3). Although the radiology report suggested the possibility of a non-union at L4-5, Dr. Gornet concluded in his March 8, 2007 report that it appeared to be a solid fusion. Dr. Gornet ordered a new MRI to evaluate the L3-4 and L5-S1 levels (Claimant’s N, page 9).

- The MRI was subsequently done at Imaging Partners of Missouri (Claimant's Exhibit U, page 1). Dr. Gornet interpreted this MRI as showing "an obvious central annular tear at L5-S1", and suggested the possibility of disc replacements at one or both levels (Claimant's Exhibit N, page 9).
- Dr. Gornet performed a discogram at Barnes Jewish West on April 11, 2007. Dr. Gornet concluded "the L3-4 was provocative with low pressure concordant annular tear and back pain". The L5-S1 disc was not calculated due to calcification (Claimant's Exhibit R, page 40, 41).
- On April 26, 2007, Dr. Gornet recommended two-level treatment at L3-4 and L5-S1. Prior to scheduling surgery, he wanted a bone density study. He was also concerned about her weight (Claimant's Exhibit R, page 14).
- Dr. Gornet's record of June 21, 2007 indicates the bone density study was normal and the employee had lost a substantial amount of weight. Dr. Gornet recommended disc replacements at L3-4 and L5-S1 (Claimant's Exhibit N, page 15). After a follow up visit on August 16, 2007, the employee decided that she wanted to proceed with the surgery. Dr. Gornet noted that she felt her pain and symptoms were affecting all aspects of her life (Claimant's Exhibit N, page 17).
- Dr. Gornet performed the surgery at Barnes Jewish West County Hospital on August 28, 2007. His pre and post-operative diagnosis was "Discogenic low back pain with annular tears L3-4 and L5-S1 with transitional syndrome above and below L4-5 fusion". Dr. Gornet described the surgery as "Anterior decompression L3-4 and L5, disc replacement L3-4 and L5-S1" (Claimant's Exhibit N, page 64).
- Both the medical records and the employee's testimony indicate the surgery by Dr. Gornet helped, but she continued to experience significant problems. On March 13, 2008, Dr. Gornet indicated that the employee had a new bilateral PARS fracture at L5. He advised the employee that this problem might be difficult to solve, but appeared to be stable. Dr. Gornet indicated "This PARS fracture was directly related to the weakened area and previous laminectomy done posteriorly from her original surgery, as well as subsequent stress placed on it from her new operation" (Claimant's Exhibit N, page 55).
- On May 1, 2005, Dr. Gornet noted that the physical therapy was aggravating the employee's neck. He noted that she still had low back pain. Although the employee felt that her back pain was significantly improved from before the surgery, Dr. Gornet noted that she developed more pain and symptoms with increased activities. The employee identified these activities that increased her symptoms as lifting, squatting, bending, walking too far, and sitting or standing too long (Claimant's Exhibit N, page 54).
- Dr. Gornet suggested the employee be returned back to work light duty as of May 15, 2008 with no lifting greater than 10 pounds; no repetitive bending, lifting, pushing or pulling; and alternating between sitting and standing positions. He felt it would have to be essentially a sedentary job (Claimant's Exhibit N, page 54). The employee testified that she did not believe she could have returned to work at that time because she had to lie down and rest several times a day to relieve her back pain.
- Dr. Gornet's final visit with the employee occurred on October 27, 2008. Dr. Gornet noted that "from a back standpoint, she feels dramatically improved. She is very grateful for our help. She still has some leg symptoms which are residual, but overall again she is grateful". Dr. Gornet felt she was going on to have a solid fusion and the PARS fracture seemed to be healing and was less

of an issue for her. Dr. Gornet concluded that the employee was at maximum medical improvement on October 27, 2008.

Dr. Navid Siddiqui:

After her release by Dr. Gornet, the employee has been receiving follow-up care with Dr. Siddiqui, who is her family doctor at Kneibert Clinic in Poplar Bluff. Dr. Siddiqui's treatment has been limited to prescribing pain pills, muscle relaxers, and sleeping pills. The employee continues to see Dr. Siddiqui on a periodic basis for treatment of her low back and related symptoms (Claimant's Exhibit R).

Post-Accident Depression, Anxiety and Emotional Problems

- At some point after her accident and her first surgery by Dr. Mirkin, the employee started having additional problems with depression, anxiety and related emotional problems.
- The first doctor she saw for her depression was Dr. K.P.S. Kamath, who is a psychiatrist in Cape Girardeau. Dr. Kamath's records from September 13, 2006 indicate the employee's current symptoms were "crying constantly; appetite, sleep and energy are down; she feels sick in the stomach all the time; she is withdrawn; she has frequent panic attacks; she can't be in a crowd; she feels closed in whenever she is alone at home; she feels anxious all the time". She was not taking medication at the time because she couldn't afford it. The employee gave a past history that is consistent with her testimony at the hearing regarding abuse by her step-father and other periods of depression with multiple suicide attempts (Claimant's Exhibit O, page 1-3).
- Dr. Kamath noted that her speech and movements were slow, and she displayed symptoms of severe hyperthyroidism. He noted that she reported feeling depressed all the time with frequent feelings of hopelessness, helplessness, and suicidal ideas. She reported having panic attacks off and on, and was markedly phobic to grocery shops and crowds (Claimant's Exhibit O, page 1-3).
- Dr. Kamath's Axis I diagnosis was Major depressive disorder, recurrent, severe, without psychotic features. Panic disorder with agoraphobia. His Axis II diagnosis was Personality disorder with borderline features. Dr. Kamath's Axis III diagnosis was "Severe hypothyroidism; spinal injury". The Axis IV diagnosis was "Serious financial problems. Health problems. The Axis V GAF was "50" (Claimant's Exhibit O, page 1-3).
- Following this initial visit with Dr. Kamath, the employee saw Dr. McVay at Missouri Southern Family Medical Care Clinic on October 10, 2006. Dr. McVay noted her history of hyperthyroidism and commented that she was having "slow mentation". He diagnosed "chronic pain with severe DJD changes of her lumbar spine. Hyperthyroidism", and prescribed hydrocodone for her back and Synthroid for her hyperthyroidism (Claimant's Exhibit F, page 7, 8).
- Based on the recommendation of Dr. Kamath, the employee sought additional treatment for her depression and related psychological problems with Dr. Naveed J. Mirza, who is a psychiatrist at Kneibert Clinic in Poplar Bluff. Dr. Mirza's record from October 27, 2006 indicates the employee said she "had been on the edge" of having thoughts of hurting herself. He noted her long psychiatric history, and that she felt "hopeless of her situation". The employee advised that "I get stressors and I don't handle them very well". For the last few months she had been feeling "worthless, helpless, having no interest in anything, being motivational". The employee had been having increased symptoms of anxiety where she suddenly felt hot and cold and sick at her

stomach. She hyperventilated, felt dizzy, and thought her heart was pounding. The employee also reported symptoms of elated mood, being happy for no apparent reason and having racing thoughts and increased energy; and would then go into depression and feel like she'd been dipped in ice water. The employee complained of significant sleep problems at night and was sleeping 2 or 3 hours during the day (Claimant's Exhibit R, page 1-6).

- Dr Mirza's diagnosis was "Axis I: Bipolar Disorder I – Mixed Panic Disorder. Axis II: Deferred. Axis III: Ruptured Disc – L5-S1 fused, S/P thyroidectomy. Axis IV: Problems related to the social environment, occupational problems, and other psychological / environmental problems. Axis V: Global Assessment of Functioning 50". He added, "New Problems: Bipolar Affective Disorder, Mixed, Moderate Degree, panic disorder (Claimant's Exhibit R, page 1-6).
- The employee has continued to see Dr. Mirza several times each year for her depression and other emotional problems. The medical records indicate she had 3 additional visits in 2006, 7 visits in 2007, and 4 visits in 2008, 5 visits in 2009, and 3 visits in 2010. The treatment provided by Dr. Mirza has included several different forms of medication (Claimant's Exhibit R).
- The employee testified that she was doing better in January of 2011, and she asked Dr. Mirza to take her off the medication he had been prescribing for her psychological problems. She noted that she was still having some problems, but was trying to deal with them without taking medication.

Temporary Total Disability / Social Security Disability

- After the hardship hearing, the employer-insurer paid the accrued temporary total disability benefits awarded by Judge Kasten, and continued those payments until Dr. Gornet released the employee to light or sedentary duty on May 15, 2008. The employee was not able to return to work, and did not receive temporary total disability benefits from May 15 through the date Dr. Gornet determined that the employee was at her maximum level of medical improvement on October 27, 2008.
- The employee is requesting an award for temporary total disability to cover the time from the date her benefits were stopped on May 15, 2008 until the stipulated date she reached maximum medical improvement on October 27, 2008.
- The employee applied for and is currently receiving Social Security Disability.

Unrelated Health Problems

- The employee had had several unrelated health problems that developed after her December 21, 2004 accident. In November of 2006 the employee developed chest pain and was treated at Kneibert Clinic in Poplar Bluff. The records indicate she had a "non Q-waive myocardial infarction" and was treated with medication and cardiac catheterization with placement of a stent (Claimant's Exhibit S, pages 13, 37; Claimant's Exhibit R, page 19, 20, 65; and Claimant's Exhibit Q, page 7, 13). The employee indicated that she is not having any problems with her heart now, but continues to take Lipitor and Plavix to help prevent further blockage.

- The employee has also developed neck and shoulder pain that occasionally goes down her right arm. She believed her neck pain started in 2007 when she was receiving therapy for her back. The employee saw Dr. Fonn and Dr. Hayward for possible treatment. Two MRI's revealed she has mild stenosis at several levels in her cervical spine. Dr. Fonn and Dr. Hayward both recommended epidural steroid injections. She received an injection from Dr. Steele at St. Francis Medical Center on December 6, 2010 (Claimant's Exhibit R, page 286, 288, 425; Claimant's Exhibit I, page 65, 66).
- The employee indicated that the injection in her cervical spine helped and she has not had any further treatment for her neck. At the time of the hearing, the employee's neck was still bothering her, but only if she tries to do certain activities. The injection stopped the pain that was going down her right arm. She is not considering surgery for her neck.
- The employee also had temporary problems with kidney stones and a prolapsed bladder. She received treatment for both conditions. She passed the kidney stones and is not having any further problems with her kidneys. She did not have surgery for her bladder, but she is taking medication for bladder incontinence.

Current Symptoms and Complaints

- The employee has constant pain in her low back that she described as an aching or throbbing pain. She said it feels like someone is squeezing her low back. The employee's back gets tight or stiff and she has trouble moving. She still has pain in her right hip and down her legs, but the right leg pain is worse than the left. The pain in her legs comes and goes.
- The employee's back and leg pain gets worse with certain activities. She said when she does too much the pain is unbearable. The employee indicated her pain level gets worse with walking, sitting or standing in one place too long. Bending, kneeling, squatting and lifting all make her back pain worse. She also has more pain if she does side to side movements or any type of twisting movement. Although she tries to avoid these types of activities, the employee has these more intense episodes of pain three or four times a week, and they last anywhere from a couple of hours to several days.
- The employee rated her back pain on an average or normal day at a three or four on a one to ten scale. For a bad day, she rated her pain at an eight or nine out of ten. The employee has three or four bad days a week. She does not have any good days where she does not notice her back pain.
- The employee tries a variety of things to relieve her back pain. The most effective thing is for her to lie down, and she also uses a heating pad if the pain is severe. On a good day she has to lie down two or three times a day, and on a bad day she lies down three or four times. The employee takes hydrocodone every 4 hours, and she has to take it every day. It also helps her back pain if she can change positions frequently. She sits for a while, stands for a while, and then lies down. The employee also tries to avoid the activities that make her back pain worse.

Limitations

- The employee identified several things she can no longer do because of her back problems. She cannot sit for more than an hour to an hour and a half without severe back pain. The employee cannot stand in one position for more than 20 minutes. She avoids lifting more than five to ten pounds. The employee has difficulty squatting, kneeling or bending. She cannot ride in a car for

long distances without stopping several times. The employee does not clean anything in her house that is below the level of her waist. She also avoids twisting or turning her torso. The employee has difficulty bending and reaching her toes, and she is not able to vacuum, sweep or mop the floors. The employee is no longer able to do yard work or gardening. She also has given up a number of outdoor recreational activities, including camping, hiking, rock climbing, horseback riding, hang gliding, and kayaking.

- The employee also identified several things she is still able to do, but has had to modify the way she does them due to her back pain. She can still take a shower, but can't use a tub because of problems getting in and out. The employee can still get dressed, but needs help with her socks and shoes. The employee washes dishes, but can't do very many at a time. She can dust or polish furniture in short stents as long as she doesn't have to bend at the waist. Although she can't do the laundry because of the bending and lifting, she can fold the clothes. For all of these activities, the employee can only do them for 10 to 20 minutes before she has to take a break.
- The employee has problems sleeping at night because the pain in her low back wakes her up. She can normally sleep for two or three hours at a time. When she can't go back to sleep, the employee gets up and moves around for a while, and then lies down again. This happens an average of two or three times a night. The employee's problem sleeping at night makes her tired the next day. She doesn't have any energy, has problems concentrating, and has to rest during the day. On some occasions, sleeping pills help her sleep longer.

Typical Day

- During a normal day the employee gets up, washes her face, gets dressed and has breakfast. She will try to straighten up around the house and then has to sit for a while. She usually watches television and then lies down and rests. After a rest break, the employee gets up and either eats lunch or has a snack. After lunch she either watches television or uses her computer for a while. She has to alternate between sitting, standing and lying down to keep her back pain from getting worse. The employee will normally make dinner and then watch more television. She then goes to bed and tries to get some sleep.

Medication

- The employee is currently taking hydrocodone and muscle relaxers for her back, Lyrica for surface or skin pain, Lipitor and Plavix for her heart, Requip for restless leg syndrome, Levothyroxine for her thyroid, Ambien to help her sleep, and Vesicare for her bladder.

Opinion Regarding Ability to Work

- The employee enjoyed working before she hurt her back, and indicated that if she was able she would like to go back to work. She does not think she could return to her former job at Schafer's Power Panel because it required too much lifting and she had to stand for up to ten hours a day. The employee did not believe she could do any of the jobs that she has had in the past. She also does not think she could do a light or sedentary job where she did not have to lift anything, and could alternate between sitting and standing. The employee does not think she could do any job because of the pain in her back. She emphasized that she can't sit or stand very long without lying down to rest.

- At the end of her direct examination, the employee was asked to assume that she did not have any problems with depression or anxiety and the only problem she had was her back. Assuming these facts, the employee did not believe that she would be able to return to work.

Independent Medical Examinations

- The employee recalled going to St. Louis several times to be examined and interviewed by doctors and other experts. She believes that she cooperated fully with the doctors, and answered their questions to the best of her ability.

Depositions and Reports of Medical, Vocational and Psychiatric Witnesses Offered by Employee

Deposition and Report of Dr. Raymond F. Cohen

Dr. Raymond F. Cohen examined the employee on June 24, 2009. Based on the employee's history, the medical records he reviewed, and his physical examination, Dr. Cohen reached the following diagnosis regarding the employee's primary work related injury of December 21, 2004:

1. Status-post lumbar surgery for disc herniation at L4-5 and aggravation of degenerative disc disease.
2. Status-post second lumbar surgery for discogenic low back pain with annular tears L3-4 and L5-S1 with anterior decompression at those levels; disc replacement at L3-4 and L5-S1 with exploration of fusion at L4-5.
3. Failed lumbar laminectomy syndrome.
4. Question of abdominal hernia subsequent to anterior approach to the second lumbar surgery.
5. Depression.

(Claimant's Exhibit C, Deposition Exhibit 2, page 8)

Dr. Cohen found no significant pre-existing conditions or disabilities except for depression (Claimant's Exhibit C, Deposition Exhibit 2, page 9).

Dr. Cohen concluded that the conditions he diagnosed under the primary injury were a direct result of injuries Ms. Roberts sustained at work on or about December 21, 2004, and her accident was a substantial factor in causing those conditions. He further concluded that the treatment she received was medically necessary and reasonable (Claimant's Exhibit C, Deposition Exhibit 2, page 9).

Dr. Cohen concluded "it is reasonably probable that she will need additional treatment in the future". He noted that "She is going to need pain medication for her chronic low back pain for the remainder of her life. These medications would include anti-inflammatory agents, analgesics, and muscle relaxants. As she has difficulty sleeping due to low back pain, she will also need medications for this. She will need to be followed by a physician to prescribe those medications" (Claimant's Exhibit C, Deposition Exhibit 2, page 9).

Dr. Cohen assigned a 65% whole person disability at the level of the lumbar spine to the employee's December 21, 2004 accident and her resulting injuries (Claimant's Exhibit C,

Deposition Exhibit 2, page 9). He agreed that she was at maximum medical improvement at the time she was released by Dr. Gornet (Claimant's Exhibit C, Deposition Exhibit 2, page 9). Dr. Cohen also concluded that "Due to her work-related injury on or about December 21, 2004, Ms. Roberts is permanently and totally disabled and not capable of gainful employment in today's open labor market. There are no pre-existing conditions or disabilities, which in my medical opinion, combined with the primary work-related injury" (Claimant's Exhibit C, Deposition Exhibit 2, page 9).

Dr. Cohen deferred any level of psychiatric disability to a mental health care physician. He then added that "Ms. Roberts, in my medical opinion, would be permanently and totally disabled with or without having a psychiatric condition" (Claimant's Exhibit C, Deposition Exhibit 2, page 10).

Dr. Cohen added that "She needs to be restricted from any work in which she does any lifting greater than 5 pounds, no sitting or standing in one position greater than 20 to 30 minutes, no walking greater than 100 feet, no climbing or ladder work, no repetitive bending, lifting, or twisting at the waist, stooping, kneeling, or crawling, and not walking on uneven ground (Claimant's Exhibit C, Deposition Exhibit 2, page 10).

Dr. Cohen's deposition was taken on April 20, 2010. During direct examination, Dr. Cohen recalled that the employee had told him that she lies down during the day for pain control. He agreed that he believed her pain was of a significant magnitude to require her to lie down several times throughout the day (Claimant's Exhibit C, page 9, 10). Dr. Cohen also agreed that the employee had pre-existing depression, but did not have an opinion as to whether it was a hindrance or obstacle to her work. Dr. Cohen acknowledged, however, that pain and disability can cause a worsening of depression and anxiety (Claimant's Exhibit C, page 10).

Dr. Cohen was also questioned regarding the employee's Pars fracture. He explained that the fusion and instrumentation puts a lot of pressure on that small piece of bone and movement can cause it to fracture. Dr. Cohen described a laminectomy, and explained that the subtotal laminectomy done by Dr. Mirkin would contribute to a Pars fracture. He agreed that the employee's Pars fracture was a post-surgery problem rather than developmental. Dr. Cohen also confirmed that a Pars fracture is a definite pain generator and does cause additional disability (Claimant's Exhibit C, page 13-15).

After reviewing his restrictions, Dr. Cohen agreed that it is reasonable for the employee to lie down or recline as needed for pain control, and she is not able to work. Dr. Cohen then emphasized that "It is my medical opinion that she is totally disabled from the back injury alone" (Claimant's Exhibit C, page 16, 17).

During cross examination by the Second Injury Fund, Dr. Cohen was asked to explain his opinion that the last injury to the employee's back was sufficient to make her permanently and totally disabled. He gave a lengthy explanation as follows:

Because of the description I have in the current complaints of how it has affected her as far as sleeping, having to lie down during the day, to sleep during the day, the

limitations on her back as far as the movements that she has or inability to do, the requirement to take Hydrocodone, which 10 milligrams is the maximum dose of that medication that you can take, and she does require this medication every four hours for the ability to sit and drive. And without going through all of those symptoms there that I noted, they are extremely significant symptoms and are consistent with the two back surgeries that she had, and particularly the second surgery and having three levels operated on, and that being the second surgery, that she has symptoms compatible with a failed or so called failed laminectomy syndrome and that in my medical opinion, based on those symptoms, the records and the two surgeries, the lumbar surgeries that she's had, that she is not capable of sitting or working or being able to carry any type of object or product or whatever they might have to carry of 10 pounds for an occasional part of the day, which is several hours a day that she cannot even do that part. And that's why medically it is my opinion that she cannot work (Claimant's Exhibit C, page 27).

Dr. Cohen further agreed that the employee's need to lie down, her need to sleep during the day, and the complaints that she is making, were all consistent with the medical records that Dr. Cohen reviewed and the employee's physical presentation (Claimant's Exhibit C, page 27, 28).

Deposition and Report of Dr. Wayne A. Stillings

Dr. Wayne Stillings is a psychiatrist with Kare & Therapy, Inc. in St. Louis, Missouri. Dr. Stillings did a psychiatric evaluation of the employee on May 5, 2009, and prepared a report with the same date. Dr. Stilling's report includes a review of the employee's "Current complaints regarding 12/21/2004 Work Injury"; a "History" of her employment, her medical treatment and her psychiatric problems; and a "Record Review" (Claimant's Exhibit D, Deposition Exhibit 2, page 2-7). Dr. Stilling's report also provides a summary of the employee's "Family History"; his "Mental Status Examination"; and the results of her MMPI-2 and MMPI-III tests (Claimant's Exhibit D, Deposition Exhibit 2, page 7-10).

Based on his review of the records and his examination and testing of the employee, Dr. Stillings reached the following "Psychiatric Diagnosis":

Axis I:

1. Dysfunctional Family of Origin (emotionally abusive mother, emotionally and physically abusive father), pre-existing.
2. Victim of Sexual Abuse (father), pre-existing.
3. Rape Trauma, pre-existing.
4. Panic Disorder with Agoraphobia, pre-existing.
5. Partner-Relational Problem (multiple physically abusive husbands), pre-existing.
6. Mood Disorder with a Major Depressive-Like Episode due to General Medical Condition (12/21/2004 work injury).
7. Pain Disorder associated with both psychological factors and a General Medical Condition (same).

Axis II: Personality Disorder, NOS, with depressive, borderline, avoidant, self-defeating, and dependent personality traits, pre-existing.

Axis III: Per medical records.

Axis IV: Multiple and severe; chronic pre-existing emotional problems, chronic pain and emotional problems due to work injury, disabled from employment, and interaction with the legal system.

Axis V: GAF = 42 (severe symptoms / impairment).

(Claimant's Exhibit D, Deposition Exhibit 2, page 10, 11)

Dr. Stilling's psychiatric "Opinions" were as follows:

1. Ms. Roberts has the following pre-existing psychiatric disorders/disabilities:
 - a. Dysfunctional family of origin with an associated 5% permanent partial psychiatric disability of the body as a whole,
 - b. Victim of sexual abuse by father with an associated 5% permanent partial psychiatric disability of the body as a whole,
 - c. Rape trauma with an associated 2.5% permanent partial psychiatric disability of the body as a whole,
 - d. Panic disorder with agoraphobia with an associated 5% permanent partial psychiatric disability of the body as a whole,
 - e. Partner-relational problem with an associated 5% permanent partial psychiatric disability of the body as a whole, and
 - f. Personality disorder with an associated 5% permanent partial psychiatric disability of the body as a whole.
2. The 12/21/04 work injury is a substantial factor in causing Ms. Roberts to suffer from a mood disorder with an associated 15% permanent partial psychiatric disability, and a pain disorder with an associated 15% permanent partial psychiatric disability.

(Claimant's Exhibit D, Deposition Exhibit 2, page 10, 11)

Dr. Stilling's deposition was taken on October 4, 2010. After reviewing his opinions and ratings for the employee's pre-existing psychiatric disabilities and discussing her history of abuse, Dr. Stillings agreed that the type of problems the employee had before her accident were a hindrance or obstacle to her employment (Claimant's Exhibit D, page 9-11). Dr. Stilling's further agreed that the employee had additional psychiatric problems that were caused by her work, and that her work injury was a substantial factor in causing those additional problems (Claimant's Exhibit D, page 11, 12). Dr. Stilling's then restated his 15% disability rating for the pain disorder and the 15% disability rating for the mood disorder that he attributed to the employee's accident (Claimant's Exhibit D, page 12).

Dr. Stillings also confirmed that he believed that the employee's psychiatric problems would preclude her from working and make her permanently and totally disabled on a psychiatric basis (Claimant's Exhibit D, page 13). The employee's attorney then read Dr. Stillings a list of jobs that the employer-insurer's vocational expert, Bob Hammond, had suggested were within the employee's physical limitations and skill abilities, and asked Dr. Stillings if he felt the employee could perform any of these jobs. In response to this question, Dr. Stillings stated "From a psychiatric standpoint due to her myriad of longstanding problems and recent problems which were created by the work injury of 12/21/2004, in my opinion she's not able to psychiatrically perform any of those jobs" (Claimant's Exhibit D, page 14, 15). Dr. Stillings did not believe that

the employee was capable of dealing with people interpersonally, even on a superficial level. He also did not believe she could do any job that required her to pay attention to detail because she has very poor concentration, disorganized thought patterns, and is not able to maintain any kind of reasonable pace or persistence (Claimant's Exhibit D, page 15).

During cross examination by the employer-insurer's attorney, Dr. Stillings agreed that there were a total of 6 psychiatric disorders that pre-existed the December 21, 2004 accident and 2 disorders that were related to the December 21, 2004 accident. Dr. Stillings further agreed that it was his opinion that the employee's permanent total disability was due to a combination of her December 21, 2004 injury and her pre-existing psychiatric disorders (Claimant's Exhibit D, page 26, 27).

During cross examination by the Second Injury Fund attorney, Dr. Stillings agreed that the employee told him that activity aggravates her pain which necessitated frequent rest periods in a prone position. Dr. Stillings agreed that her need to rest and lie down was necessary in order to relieve her back pain (Claimant's Exhibit D, page 28). Dr. Stillings also agreed that the employee told him before the accident that her depression was a two out of ten, but after her accident, her depression was an eight out of ten. Dr. Stillings noted that this was based on what the employee perceived her pain and related symptoms to be, and he felt that this was consistent with the remainder of his findings (Claimant's Exhibit C, page 28, 29). Dr. Stillings also agreed that his disability ratings for the pre-existing problems totaled 27.5%, and his disability ratings that he attributed to the accident were slightly higher at 30% (Claimant's Exhibit D, page 29, 30).

Deposition and Report of Mr. James M. England

Mr. James M. England is a vocational rehabilitation counselor with England & Company Rehabilitation Services, Inc. Mr. England met and evaluated the employee on August 5, 2009, and prepared a report dated May 12, 2010. Mr. England's deposition was taken on November 1, 2010.

Based on Mr. England's review of the medical records and his evaluation of the employee, he reached the following "Summary and Conclusions":

Ms. Roberts is a 53 year old woman placing her in the nearing advanced age category under U.S. Department of Labor guidelines. She does have some college courses in addition to a high school education and her academics would be adequate for alternative work activity. She has no transferable skills per se that would be useable in the open labor market considering the effect of her impairments on her ability to function.

Taking into consideration the combination of her physical limitations and her emotional status, I do not believe that she is competitively employable. Her presentation would certainly be one negative factor as both her physical problems and her emotional state are readily observable to an interviewer. More importantly, however, I do not believe that an individual who has the combination of physical difficulties and emotional problems that she is experiencing would be able to consistently function in even a sedentary employment setting.

Absent significant improvement in her overall functioning ability, I believe she is likely to remain totally disabled from a vocational standpoint. (Claimant's Exhibit E, Deposition Exhibit 2, page 17).

In Mr. England's deposition, he discussed some of his observations of the employee as noted in the introduction to his report. He noted that the employee was pleasant and cooperative, but came across as depressed and tired. Mr. England also commented that the employee had trouble sitting more than a short time without starting to shift in her chair, and she got up to walk around on several occasions (Claimant's Exhibit E, page 10, 11). In his review of the medical records, Mr. England agreed that the employee had two surgeries on her low back – one by Dr. Mirkin and another by Dr. Gornet, and she had also been diagnosed with a bilateral Pars fracture (Claimant's Exhibit E, page 11, 12). Mr. England further agreed that based on his review of the medical records, the employee's other health problems appear to have been treated and controlled to some extent with medication (Claimant's Exhibit E, page 12, 13).

Mr. England made additional comments regarding the employee's current problems, the effect of her medication, and her current physical limitations. He noted that cold and dampness seem to worsen the employee's back symptoms, and she has difficulty riding very long in a car. While her medication did provide some relief for her symptoms, it also made it hard for her to concentrate and made her groggy. The employee had given up driving, other than really short distances, because she was afraid of being out on the road and due to the side effects of the medication. The employee's primary complaint was pain in her low back going down into her right leg. She also had some numbness and loss of feeling in the leg. The employee's physical limitations included not being able to stand more than 45 minutes or walking more than two blocks; not being able to bend over except for a limited basis; not being able to get up from a kneeling position; not lifting more than a gallon of milk; not sitting more than 45 minutes to an hour; problems with going up or down steps; problems with her balance; and difficulty squatting. The employee also avoids going out in public by herself, and tended to stay at home and withdraws from people. Other than her tendency to avoid crowds, Mr. England agreed that all of the physical limitations he listed appeared to be attributable to the employee's low back injury (Claimant's Exhibit E, page 15-17).

Mr. England also offered additional comments regarding the employee's family and social background. He agreed that she had been married and divorced several times, and had suffered through some very abusive relationships. Notwithstanding those problems, before her accident, the employee had been very physically active. She liked to ride horses, played tennis, hiked, swam, kayaked, and even tried hang gliding. Since her back injury, Mr. England noted that she had given almost all of her activities due to physical problems, other than a few crafts and reading (Claimant's Exhibit E, page 17, 18).

Mr. England indicated that from an educational standpoint, the employee is relatively intelligent. Her work history included her latest power panel job, which was one of her heaviest and most physically demanding jobs. Prior to that, she had done mainly truck driving and a brief time helping in day care centers. Mr. England noted the only skill she would have was that of a truck

driver, and he did not think she had any transferable skills that could be used somewhere else. Mr. England also noted that his vocational testing indicated that her reading level was at post-high school, and her math was at the 7th grade level, which was adequate for entry level kinds of jobs (Claimant's Exhibit E, page 18-20).

After reviewing the restrictions recommended by the physicians, Mr. England indicated that the physical restrictions "would limit her at best to a sedentary level of exertion. I think it's the psychiatric problems then that further add into that that would eliminate her ability to do even a sedentary job (Claimant's Exhibit E, page 21).

Mr. England was asked to comment on the employee's description of a typical day, and how her description might affect her ability to find and keep a job. His response was as follows:

Well, the fact that she said she was averaging about three to four hours of sleep at which point she would generally be up moving around for around two or three hours because of pain waking her up, then she would try to go back to bed, she might get another two or three hours of sleep. At that point she said she's wide awake. She's tired even when she wakes up in the morning. She has to pace her activities there in the home. She rests in between. She said now her husband [boyfriend] does the vacuuming and helps her with the laundry. She does try to do what she can, but she said she was finding the need to recline an average of three or four times a day there in the home just to deal with the pain. She also pointed out that she is really withdrawn emotionally from other people because of her emotional problems (Claimant's Exhibit E, page 22).

As a follow-up question, the employee's attorney asked Mr. England "Are there any employers or any jobs that you know of where they'll hire people who have to recline three or four times a day to get relieve from pain? Mr. England's answer was "no" (Claimant's Exhibit E, page 22, 23).

During cross examination by the employer-insurer's attorney, Mr. England agreed that based on the employee's physical problems alone and assuming what Dr. Gornet indicated, she would be in the sedentary work demand level (Claimant's Exhibit E, page 27). Mr. England also agreed that his conclusion that the employee was not competitively employable took into consideration both her physical limitations and her emotional status (Claimant's Exhibit E, page 29).

During cross examination by the Second Injury Fund attorney, Mr. England agreed that Dr. Stillings found a significant worsening of the employee's psychological condition that he attributed to her 2004 injury and the affect that injury had on her ability to work (Claimant's Exhibit E, page 30). Mr. England also agreed that Dr. Cohen concluded that based on the back injury alone and the result of the two back surgeries and the medication she was taking, the employee was unable to work without consideration of the emotional problems (Claimant's Exhibit E, page 30, 31). The Second Injury Fund attorney then asked the following question and Mr. England responded with the following answer:

Q. If you assume that she is reclining an average of three to four times a day as she told you she was, and that the reason she's doing that is because of pain – or at least

connected with her back injury and the two subsequent surgeries after the 2004 accident, would the 2004 accident and injury to her back and sequelae from that prevent her from being employable in the workplace?

A. I think, assuming what you indicated in the hypothetical, yes.
(Claimant's Exhibit E, page 31, 32).

Depositions and Reports of Medical, Vocational and Psychiatric Witnesses Offered by Employer-Insurer

Deposition and Report of Dr. Russell C. Cantrell

Dr. Russell C. Cantrell evaluated the employee at the request of the employer-insurer on January 12, 2010, and prepared a report with the same date. Based on the history he obtained from the employee, his review of the medical records, and his physical examination of the employee, Dr. Cantrell reached the following conclusions:

... it is my opinion within a reasonable degree of medical certainty that the diagnosis of Ms. Roberts' lumbar back pain complaints would best be described as that of chronic lumbar back pain, status post a lumbar fusion at the L4-5 level and status post disc replacement at L3-4 and L5-S1 for what was presumed to be discogenic pain at those two levels. The medical records suggest that the earliest diagnostic studies of her lumbar spine revealed findings of multilevel degenerative disc disease and a subsequent myelogram and CT scan identified evidence of a herniated disc at the L4-5 level. It is my opinion that the findings of multilevel degenerative disc disease as noted on the initial MRI scan would not be considered causally related to Ms. Roberts reported injury of December 21, 2004. It is reasonable to believe that her alleged injury as described could be considered a substantial factor in the cause of a disc herniation lateralizing to the right at the L4-5 level and for which she underwent a single level discectomy and fusion by Dr. Mirkin.

The medical records available to me do not support any acute discogenic pathology at the L3-4 and L5-S1 levels. Ms. Roberts' risk factors for presence of degenerative disc disease in the lumbar spine include not only her history of tobacco use, but also her age. The reported annular disc tears in my opinion are more likely a representation of chronic degenerative disc disease in her lumbar spine and are not a representation of acute lumbar injury occurring from December 21, 2004
(Employer's Exhibit 1, Deposition Exhibit 2, page 11, 12).

Dr. Cantrell believed the employee had reached maximum medical improvement from her December 21, 2004 accident, and did not require further medical treatment. Based on the L4-5 fusion, Dr. Cantrell recommended the employee avoid lifting greater than 40 pounds occasionally, avoid lifting greater than 20 pounds frequently, and that she avoid repetitive twisting and bending and be allowed to alternate between sitting and standing every two hours. He did not believe that any restrictions related to the disc replacements at L3-4 and L5-S1 were necessitated by her work accident (Employer's Exhibit 1, Deposition Exhibit 2, page 12). Dr. Cantrell gave the employee a 25% permanent partial disability rating for her lumbar back pain complaints, but assigned 10% of that total to the herniated disc at L4-5 and 15% to the "pre-

existing degenerative disc disease” at L3-4 and L5-S1 (Employer’s Exhibit 1, Deposition Exhibit 2, page 12).

Dr. Cantrell’s deposition was taken on January 5, 2011. Dr. Cantrell testified he did not believe the findings of annular tears at L3-4 and L5-S1 were caused by the employee’s accident. He appeared to base this decision on the fact that the employee’s earliest medical records report pain radiating down her right leg, but she wasn’t having any back pain. Dr. Cantrell stated:

“So if someone were to have had acute discogenic – acute annular tears that were not necessarily causing nerve compression, then you would expect – you would expect them to cause acute low back pain, but in this case the presenting symptoms were really just that of radiculopathy in her right leg, which was consistent with the right-sided disc herniation at the L4-5 level. So that was the basis of my opinion that the disc herniation was caused by the injury, but the discogenic abnormalities, be they degenerative disc disease or annular tears, were not caused by the work injury (Employer’s Exhibit 1, page 10, 11).

Thus, it appears that Dr. Cantrell’s conclusion that the annular tears were not caused by the accident is based primarily on his assumption that the employee did not experience any pain in her low back immediately after her accident and during the time she was being treated by Dr. Boardman. This assumption is not supported by either the employee’s testimony or Dr. Boardman’s medical records.

Dr. Cantrell’s theory also ignores the fact that the employee’s right leg was struck and injured by the power panel rack, and Dr. Boardman was focusing his treatment and attributing the employee’s leg complaints to the trauma to her leg rather than any injury to her back that was causing radiculopathy. It was not until her third visit on January 18, 2005, that Dr. Boardman and his staff began to realize that the employee had radiculopathy that might be attributable to a back injury rather than the trauma to her right leg.

Dr. Cantrell’s conclusion is also based on an assumption that her right leg pain was being caused by the herniated disc at L4-5. Cross examination by the employee’s attorney established that it is also possible that the pain radiating down the employee’s right leg may have been caused by the annular tears.

During cross examination by the employee’s attorney, Dr. Cantrell acknowledged that annular tears can cause biochemical leakage from the disc which can cause an inflammatory response and radiculopathy. He also agreed that the biochemical release would not necessarily show up on an MRI. Dr. Cantrell then admitted that there’s a possibility that someone can have an annular tear such that nuclear material extrudes through the fibers of the annulus and causes a chemical response that can lead to radiculopathy. He then agreed that if that was the mechanism of the injury or of the pain, you could have leg complaints without back complaints (Employer’s Exhibit 1, page 16-18). This leads to the inescapable conclusion that the pain radiating down the employee’s right leg could have been caused by the annular tears at L3-4 and L5-S1 even if she was not experiencing low back pain.

During additional questioning by the employee's attorney, Dr. Cantrell admitted if there was a herniated disc at L4-5 (which he has admitted was caused by the accident), then by definition there had to be an annular tear of that disc (Employer's Exhibit 1, page 18). Thus, the employee had annular tears at all three levels. That admission is significant, because Dr. Cantrell has admitted that annular tears can cause radicular pain with or without a herniated disc, and with or without back pain. Given this admission, it is difficult to accept Dr. Cantrell's conclusion that the L4-5 herniated disc was related since it was causing the right leg pain; but the annular tears at L3-4 and L4-5 were not related because Dr. Cantrell did not believe she had any immediate back pain. His admissions clearly establish that the annular tears at either L3-4 or L5-S1 could have caused the leg pain even if the employee did not have back pain. The end result of these admissions is that Dr. Cantrell cannot offer a reasonable explanation for why he thinks the L4-5 annular tear with a herniated disc is work related while the annular tears at L3-4 and L5-S1 are not related.

During cross examination by the attorney representing the Second Injury Fund, Dr. Cantrell agreed that "it's not uncommon for people to have chronic low back pain to have an altered sleep pattern, and that altered sleep pattern can itself result in daytime sedation ..." (Employer's Exhibit 1, page 39). Dr. Cantrell also acknowledged that if the employee is reclining an average of three to four times during the day, "she apparently is doing it because reclining gives her some relief of her back pain complaints, and that's certainly common for patients to say if they can lay down or sit in a recliner, they get relief from back pain because by doing so you're requiring the muscles to work less" (Employer's Exhibit 1, page 40).

Dr. Melissa Harbit:

Dr. Melissa Harbit is a psychiatrist and an assistant professor at Washington University School of Medicine in the Department of Psychiatry. The employer-insurer retained Dr. Harbit to perform a psychiatric evaluation of the employee. Dr. Harbit examined the employee on November 18, 2009, and prepared a report dated January 26, 2011. Dr. Harbit's deposition was taken on March 21, 2011.

Dr. Harbit's report includes information regarding the employee's "Early Personal History", "Adult Relationships", "Educational History", "Employment History", "Past Medical History", a "Review of Medical Records", the employee's "Medications" and "Allergies", a "Review of Systems", a "Psychiatric History", a "Substance Use History", the employee's "Family History", her "Legal History", and a "Description of Event" (12/21/04 accident). Dr. Harbit also conducted a "Mental Status Examination" (Employer's Exhibit 2, Deposition Exhibit 2). Based on her examination of the employee and her review of the medical records, Dr. Harbit provide the following diagnosis"

Axis I Major Depressive Disorder, recurrent in partial remission, Nicotine Dependence.

Axis II Borderline Personality Disorder.

Axis III Hypothyroidism, back and leg pain, hyperlipidemia, coronary artery disease.

Axis IV Financial stressors, limited social support.

Axis V 50-55

(Employer's Exhibit 2, Deposition Exhibit 2, page 19)

Dr. Harbit included a "Discussion of Diagnosis" in her report as follows:

Ms. Roberts has a longstanding history of unstable, chaotic interpersonal relationships having married six times and at times being with abusive men. Her history reveals fear of abandonment in her multiple marriages and unstable self-image. In addition, she has longstanding history of unstable affect including suicide attempts, mainly by overdose, beginning around age 6. She has periods of intense anger as documented in her medical record. These traits are characteristic of Borderline Personality Disorder. This disorder develops in adolescence to early adulthood and is seen more commonly in those who have been sexually abused as children than it is in the normal population. Ms. Roberts had a period of crack or methamphetamine abuse as well as excessive alcohol use. It is very common to see co-morbid substance abuse disorders in those with Borderline Personality Disorder. She reports abstinence from these substances now but continues to use Nicotine regularly.

Ms. Roberts appears to have had symptoms of Major Depressive Disorder which first presented in her twenties in the setting of stressors including break up of marriage and death of a child. At that time she had low mood, excessive guilt, hopelessness, sleep and appetite disruption and difficulty functioning. These symptoms have fluctuated over the years and resulted in psychiatric care and psychiatric hospitalizations. She has received disability in the past for Major Depressive Disorder. Currently, her Major Depressive Disorder is in a state of partial remission which seems to be her baseline for the most part. She currently has some depressed mood and sleep disruption.

There was some suggestion of her having Bipolar Disorder. Records from the Kneibert Clinic show the diagnosis. However, it is important to recognize that there are predominantly subjective signs, or what the patient reports, of the illness. There are minimal objective signs, that which is observed, in her records of Bipolar Disorder. In my opinion, the mood swings she experiences are related to the affective instability of her Borderline Personality Disorder rather than Bipolar Disorder. The more recent record of her inpatient treatment is consistent with Borderline Personality Disorder, not Bipolar Disorder (Employer's Exhibit 2, Deposition Exhibit 2, page 19, 20)

The final conclusions of Dr. Harbit are set forth under the heading "Discussion of Opinion":

It is my opinion, to within a reasonable degree of medical certainty Ms. Roberts has Major Depressive Disorder and Borderline Personality Disorder. There was a time in her life where she had amphetamine abuse, but hers is reportedly in remission at this time. She continues to have Nicotine dependence.

It is my opinion, to within a reasonable degree of medical certainty, that the psychiatric illnesses of Ms. Roberts were present prior to the work related injury of December 21, 2004. Therefore, as the illnesses were present prior to the event, the event did not cause her psychiatric illnesses.

It is my opinion, to within a reasonable degree of medical certainty, that the work related injury did not permanently worsen her psychiatric illness. The nature of her psychiatric illness is an episodic, fluctuating course. Therefore, one expects significant fluctuation in mood with Borderline Personality Disorder on a daily basis. Major Depressive Disorder leads to periods of depression with intervening periods of baseline function. This pattern was present prior to the work related event and it remains present. She has a history of severe depressive symptoms that required hospitalization and even disability assistance. Her current symptoms are mild compared to her past episodes of depression. It is my opinion that the event did not change the overall course of her illness. In fact, she is motivated to work and would if she could find a job.

It is my opinion, within a reasonable degree of medical certainty, that Ms. Roberts requires ongoing psychiatric care. This need was present prior to the work related event, and it persists. The work related injury did not result in any increased need for further care or alternative care (Employer's Exhibit 2, Deposition Exhibit 2, page 20).

During the direct examination portion of Dr. Harbit's deposition, she restated her diagnosis and opinions (Employer's Exhibit 2, page 9-13). Dr. Harbit was then asked by the employer-insurer's attorney if a diagnosis of depressive disorder and borderline personality disorder would make it harder for someone to function in a work setting and keep employment. Dr. Harbit responded "Yes, it can. Certainly, when you are in a period of major depression that can affect your motivation, your energy, your sleep. It can affect your interaction with other people. So that can impair your work function. Borderline personality disorder can as well because some of the symptoms are an unstable affect" (Employer's Exhibit 2, page 15).

During cross examination by the employee's attorney, Dr. Harbit agreed that the employee's borderline personality disorder and major depressive disorder could lead to problems with motivation in a work setting (Employer's Exhibit 2, page 17, 18). She also agreed that borderline personality disorder could account for absences from work and cause attendance problems (Employer's Exhibit 2, page 18). Although there is a higher rate of sexual abuse in people with borderline personality disorders, Dr. Harbit was not willing to draw any conclusions regarding a causal relationship between the two, and emphasized that "we don't know what causes borderline personality disorder" (Employer's Exhibit 2, page 18, 19). Based on the statistics, however, Dr. Harbit was willing to concede that there was some kind of relationship between sexual abuse and borderline personality disorder (Employer's Exhibit 2, page 20). Dr. Harbit further agreed that the same was true of substance abuse. She agreed that people with borderline personality disorders tend to have higher rates of substance abuse (Employer's Exhibit 2, page 20, 21). Dr. Harbit also agreed that the employee had "an awful childhood", and there appeared to be some relationship between that situation and borderline personality disorder (Employer's Exhibit 2, page 21).

Dr. Harbit was also questioned about her conclusion that the accident did not cause a worsening of the employee's psychiatric conditions. Dr. Harbit agreed that pain and disability can make a pre-existing major depressive disorder worse. In the employee's case, however, Dr. Harbit did not believe that happened because she did not believe the accident made the employee's depression worse. Dr. Harbit acknowledged, however, that if there was a worsening of the major depressive disorder, she could not rule out that the pain and disability from the accident caused it to be worse (Employer's Exhibit 2, page 22, 23).

During cross examination by the Second Injury Fund attorney, Dr. Harbit conceded that the employee denied having any psychiatric care or taking any medications from 1999 to 2006 (Employer Exhibit 2, page 25, 26). Dr. Harbit also agreed that the employee did not report that she had ever been let go from a job or received poor evaluations due to mental health problems before her accident in 2004 (Employer's Exhibit 2, page 26, 27). Dr. Harbit was then asked whether she believed that the employee's psychiatric diagnosis alone would prevent her from sustaining employment. Although she agreed that it was possible based on the history that the employee had been disabled and unable to work in the past, Dr. Harbit's final statement in response to this question was: "No, not necessarily. Again, I think there are times that when she's in the middle of a depressive episode, she may not be able to work during those times. I think she was disabled during the 90's for 5 years or so. There may be times, though that she is able to work" (Employer's Exhibit 2, page 30, 31).

Mr. Bob Hammond:

Mr. Bob Hammond is a vocational consultant with Hammond Vocational Consultants in Macon, Illinois. The employer-insurer retained Mr. Hammond to prepare a vocational report on Sandra Roberts. Mr. Hammond interviewed the employee on December 9, 2009, and prepared a vocational report that is dated January 1, 2009 [Based on the date of the interview, it appears that the correct date of the report should be January 1, 2010]. Mr. Hammond's deposition was subsequently taken on December 22, 2010.

On the first page of Mr. Hammond's report he indicated that he reviewed several research materials to prepare his report. This list included the "State of Illinois employment projections", and the "State of Illinois Department of Rehabilitation regional information for work for persons with handicaps". Mr. Hammond also emphasized his experience working in the central Illinois area assisting clients to seek medically appropriate employment, and to make local determinations regarding job availability (Employer's Exhibit 3, Deposition Exhibit 2, page 1). During his deposition, however, Mr. Hammond admitted these references to Illinois were errors, and should have been changed to Missouri. He emphasized that he does do consultations in eastern and southeastern Missouri, and when he does evaluations in Missouri, he uses Missouri Department of Rehabilitation resources (Employer's Exhibit 3, page 7, 8).

Based on his interview with the employee and his review of certain medical records and the employee's deposition, Mr. Hammond identified 21 positions that he believed "would be classified as within the limitations and skill ability of this individual". These positions are listed on page 8 of Mr. Hammond's report. Mr. Hammond then reached the following conclusions under his heading "OPINIONS":

Ms. Roberts has reported physical limitations due to her injury. She has more than a high school education and has worked in semi skilled and skilled positions. She has a limitation that appears in the sedentary categories with a sit/stand option. The psychological issues appear to be long standing, and she has been able to maintain employment in the past with her extensive mental health issues. She was on Social Security from 1996 to 1998 for thyroid problems and mental health problems. It is this consultant's opinion, based on a reasonable degree of vocational certainty, that Ms. Roberts has the residual ability to work in the general labor market. The positions identified above would be examples of positions that she could work given her background and current limitations (Employer's Exhibit 3, Deposition Exhibit 2, page 8).

During Mr. Hammond's deposition, Mr. Hammond indicated that based on Dr. Gornet's limitations at the sedentary level, "she's able to perform a wide variety of positions that are in the general labor market on a regular, continuing basis, and I listed those on the top of page 8". He also noted that he "tried to correlate Dr. Gornet's restrictions with Dr. Stilling's, but couldn't find any specific mental health limitations for her" (Employer's Exhibit 3, page 14). These two comments by Mr. Hammond make it appear that his list of available positions was based on Dr. Gornet's restrictions, and did not take into consideration the employee's mental health problems. Notwithstanding this limiting factor, when Mr. Hammond was asked by the employer-insurer's attorney if he felt the employee could compete for employment in the open labor market, he responded "I felt she could compete and that she had the skill attributes to be employed in the general labor market" (Employer's Exhibit 3, page 15).

During cross examination by the employee's attorney, Mr. Hammond was asked the following question, and gave the following answer:

Q. I want you to assume that she has pain at a level that she has to lie down during the day periodically for pain control. And I am talking about pain from her low back. Would that preclude employment?

A. There – if she would have to lie down during the course of the shift, yes, it would preclude all employment. There's no position out there that would allow that to happen.

(Employer's Exhibit 3, page 18).

During additional questioning by the employee's attorney, Mr. Hammond agreed that mental health issues such as problems dealing with stress, bipolar effective disorder, panic disorder, anxiety disorder, depression, and mood disorder were all negative factors in terms of finding and maintaining employment (Employer's Exhibit 3, page 19-21).

Second Injury Fund's Experts – None offered.

APPLICABLE LAW

Burden of Proof:

- The burden is on the employee to prove all material elements of the employee’s claim. *Melvies v Morris*, 422 S.W.2d, 335(Mo.App.1968). The employee has the burden of proving that not only the employee sustained an accident that arose out of and in the course of employment, but also that there is a medical causal relationship between the accident and the injuries and the medical treatment for which the employee is seeking compensation. *Griggs v A.B. Chance Company*, 503 S.W.2d 697(Mo.App.1973).

Future Medical Aid:

- Under Section 287.140.1 “the employee shall receive and the employer shall provide such medical, surgical, chiropractic, and hospital treatment, including nursing, custodial, ambulance, and medicines, as may reasonably be required after the injury or disability, to cure and relieve from the effects of the injury”.
- The standard of proof for entitlement to an allowance for future medical aid cannot be met simply by offering testimony that it is “possible” that the claimant will need future medical treatment. *Modlin v Sunmark, Inc.*, 699 S.W. 2d 5, 7 (Mo.App.1995). The cases establish, however, that it is not necessary for the claimant to present “conclusive evidence” of the need for future medical treatment. *Sifferman v Sears Roebuck and Company*, 906 S.W. 2d 823, 838 (Mo. App.1995). To the contrary, numerous cases have made it clear that in order to meet their burden, claimants are required to show by a “reasonable probability” that they will need future medical treatment. *Dean v St. Lukes Hospital*, 936 S.W. 2d 601 (Mo.App.1997). In addition, employees must establish through competent medical evidence that the medical care requested, “flows from the accident” before the employer is responsible. *Landers v Chrysler Corporation*, 963 S.W.2d 275, (Mo.App.1997).

Temporary Total Disability:

- Temporary total disability benefits are intended to cover the healing period, and are not warranted beyond the point in which the employee is capable of returning to work. Temporary total disability benefits are not intended to compensate the employee after his condition has reached the point where further progress is not expected. *Brookman v Henry Transportation*, 924 S.W.2d 286 (Mo. App. 1996). See also *Williams v Pillsbury Company*, 694 S.W.2d 488, 489 (Mo. App. 1985). The pivotal question in determining whether an employee is totally disabled is whether any employer, in the usual course of business, would reasonably be expected to employ the claimant in his present physical condition. *Brookman Id.* at 209.

Permanent Total Disability:

- Section 287.020.7 RSMo. provides as follows:

The term “total disability” as used in this chapter shall mean the inability to return to any employment and not merely mean inability to return to the employment in which the employee was engaged at the time of the accident.

- The phrase “the inability to return to any employment” has been interpreted as the inability of the employee to perform the usual duties of the employment under consideration, in the manner that such duties are customarily performed by the average person engaged in such employment. *Kowalski v M-G Metals and Sales, Inc.*, 631 S.W.2d 919, 922

(Mo.App.1992). The test for permanent total disability is whether, given the employee's situation and condition, he or she is competent to compete in the open labor market. *Reiner v Treasurer of the State of Missouri*, 837 S.W.2d 363, 367 (Mo.App.1992). Total disability means the "inability to return to any reasonable or normal employment". *Brown v Treasurer of the State of Missouri*, 795 S.W.2d 479, 483 (Mo.App.1990). An injured employee is not required, however, to be completely inactive or inert in order to be totally disabled. *Id.* The key is whether any employer in the usual course of business would be reasonably expected to hire the employee in that person's physical condition, reasonably expecting the employee to perform the work for which he or she is hired. *Reiner* at 365. See also *Thornton v Haas Bakery*, 858 S.W.2d 831,834 (Mo.App.1993).

Second Injury Fund Liability:

- Section 287.220.1 RSMo., requires that, in order to have Second Injury Fund liability, a claimant must have "a pre-existing permanent partial disability whether from compensable injury or otherwise, of such seriousness as to constitute a hindrance or obstacle to employment or obtaining reemployment if the employee becomes unemployed.
- The test for finding the Second Injury Fund liable for permanent total disability is set forth in Section 287.220.1 RSMo., as follows:

If the previous disability or disabilities, whether from compensable injuries or otherwise, and the last injury together result in permanent total disability, the minimum standards under this subsection for a body as a whole injury or a major extremity shall not apply and the employer at the time of the last injury shall be liable only for the disability resulting from the last injury considered alone and of itself; except that if the compensation for which the employee at the time of the last injury is liable is less than compensation provided in this chapter for permanent total disability, then in addition to the compensation for which the employer is liable and after the completion of payment of the compensation by the employer, the employee shall be paid the remainder of the compensation that would be due for permanent total disability under Section 287.200 out of a special fund known as the "Second Injury Fund" hereby created exclusively for the purposes as in this section provided and for special weekly benefits in rehabilitation cases as provided in Section 287.414.

- Under Section 287.220.1 RSMo., the Second Injury Fund has no liability and **the employer is responsible for full, permanent total disability benefits if the last injury "considered alone and of itself" results in permanent total disability** (emphasis added). *Roller v Treasurer of the State of Missouri*, 935 S.W.2d 739 (Mo.App.1996) and *Maas v Treasurer of the State of Missouri*, 964 S.W.2d 541 (Mo.App.1998).

RULINGS OF LAW:***Issue 1. Medical Causation***

The employer-insurer stipulated that the L4-5 disc herniation was caused by the December 21, 2004 accident, but denied that the annular tears at L3-4 and L5-S1 were related. The employer-insurer based its position on the opinions of Dr. Russell Cantrell. The Second Injury Fund did not dispute medial causation.

It should be noted that the issue of medical causation as to the L3-4 and L5-S1 annular tears was in dispute at the time of the hardship hearing. Judge Kasten ruled in favor of the employee on this issue and directed the employer-insurer to provide treatment for the L3-4 and L5-S1 discs by Dr. Gornet. The employer-insurer has provided and paid for that treatment.

Although the parties did not discuss the issue of medical causation as to the employee's post-accident problems with depression and anxiety, the expert testimony establishes that there is a dispute on this issue as well. Dr. Stillings concluded the employee's accident caused a mood disorder and a pain disorder, while Dr. Harbit believed that the employee's major depressive disorder and borderline personality disorder were pre-existing and were not related to her accident. This causation issue is relevant on the issues of future medical aid, permanent total disability, and permanent partial disability. Since there is no stipulation that the employee's December 21, 2004 accident was a substantial factor in causing her post accident depression, anxiety or other psychiatric or psychological problems, that issue will also be addressed and resolved.

Medical Causation as to annular tears at L3-4 and L5-S1

Both Dr. Gornet and Dr. Cohen concluded that the employee's December 21, 2004 accident was a substantial factor in causing the annular tears at the L3-4 and L5-S1 levels. Dr. Mirkin's records and reports do not offer an opinion on this issue. After Judge Kasten's temporary or partial award and the surgery by Dr. Gornet, the employer-insurer obtained an opinion from Dr. Russell Cantrell that the L3-4 and L5-S1 annular tears were pre-existing and were not related to the accident.

Dr. Cantrell based his opinion primarily on his conclusion that the employee did not have any complaints of back pain for some significant period of time after her accident. Although the first two records from Dr. Boardman focus on the traumatic injury to the employee's right leg, both the testimony of the employee and the records of Dr. Boardman support a finding that the employee was having back pain that radiated down her right leg very soon after the accident. This was also the finding of Judge Kasten in the temporary award. The pain diagram from the first two visits shows a circle around the right leg with a long arrow pointing up toward her hip and back. The record states that she had pain radiating "up" her leg. Hindsight indicates some of this pain was from the trauma to her leg, and part of the pain was being generated in her low back and was radiating down her leg. The employee testified that by the time she got home after her accident she was experiencing pain and soreness in her back, but she thought she had just pulled

a muscle. She also testified that she told Dr. Boardman's office about her back, and they gave her muscle relaxers.

Both the employee's testimony and the medical records indicate that Dr. Boardman's office focused their initial treatment on the traumatic injury to the employee's right leg, but gradually the pain from the trauma got better and the pain related to her back injury got worse. By the January 18, 2005 office visit, Dr. Boardman's record confirms that the employee was complaining of pain in her low back and right hip that was radiating down her right leg. The pain diagram, the references to SI joint pain, the circle drawn around "back", and the indication she had experienced the "same symptoms previously" all support a conclusion that the employee had been experiencing low back pain, but it had progressively gotten worse during the first 27 days after her accident.

Based on these medical records and the credible testimony of the employee, I find that the employee did have back pain within a short time after her accident, and that pain progressively got worse over the next three or four weeks until Dr. Boardman and the other treating physicians shifted their focus from the trauma to the employee's leg to a work related injury to her low back. This is consistent with the early conclusions by Dr. Straubinger and Dr. Mirkin that the employee's back complaints and need for treatment were related to her accident. Dr. Cantrell's belated attempt to separate the L4-5 disc from the annular tears on the basis that she did not complain of back pain is not credible.

Even if it is assumed that the employee did not have any back pain during the first several weeks after her accident, the cross examination of Dr. Cantrell by the employee's attorney offers a logical explanation for this possibility. Dr. Cantrell agreed that annular tears can be caused by trauma, and can occur with or without causing back pain. He also agreed that the tear in the annulus can cause a bio-chemical leakage that can in turn cause inflammation and pain that radiates down the leg. Dr. Cantrell further agreed that in addition to the annular tears at L3-4 and L5-S1, the employee also had an annular tear at the L4-5 level which led to the herniated disc at that level. Based on these admissions, it is clear that even if the employee did not have back pain immediately after her accident, any of the annular tears may have caused a bio-chemical leakage that gradually caused radiating pain down the employee's right leg. Thus, Dr. Cantrell's theory that the radiculopathy was caused by the L4-5 disc herniation and the annular tears had nothing to do with her symptoms because she did not have back pain is contradicted by his own admissions.

It is also important to note that the employee denied having any problems with her low back before the December 21, 2004 accident, and the employer-insurer offered no evidence to refute this testimony. Dr. Mirkin, Dr. Gornet, Dr. Cohen and Judge Kasten all relied on this fact in arriving at their conclusion that the employee's back and leg complaints were causally related to her accident. Dr. Cantrell has failed to offer a logical medical explanation to support a finding that the L4-5 disc was work related, but the annular tears at the adjoining levels were not.

Based on this evidence, I find that the opinions of Dr. Gornet and Dr. Cohen are more credible on the issue of medical causation than the opinion of Dr. Cantrell. I therefore find that the

employee's December 21, 2004 accident was a substantial factor in causing the herniated disc at the L4-5 level and the annular tears at the L3-4 and the L5-S1 levels; the employee's ongoing symptoms and limitations related to these medical conditions; her need for future medical treatment for these conditions; and any temporary or permanent disability attributable to these conditions.

Medical Causation as to Post Accident Depression, Anxiety, or other Psychiatric Problems

Dr. Stillings' Axis I psychiatric diagnosis included five pre-existing conditions and two work related conditions. Dr. Stillings' concluded the employee's December 21, 2004 accident was a substantial factor in causing a "Mood Disorder with Major Depressive- Like Episode" and a "Pain Disorder". Dr. Stillings' Axis II psychiatric diagnosis was "Personality Disorder, NOS, with depressive, borderline, avoidant, self-defeating, and dependent personality traits, pre-existing".

Dr. Harbit's Axis I diagnosis was "Major Depressive Disorder, recurrent in partial remission, Nicotine Dependence". Her Axis II diagnosis was "Borderline Personality Disorder". Dr. Harbit concluded that these conditions pre-existed the employee's December 21, 2004 accident, and she did not believe that the employee's accident caused any worsening of these conditions.

The medical records and histories obtained by the doctors, psychiatrists and vocational specialists make it clear that the employee suffered significant physical, emotional and sexual abuse before her December 21, 2004 accident. The employee attempted suicide on several occasions in her youth and early adulthood, and had several periods in her life when she suffered from depression and other emotional problems. In the five years immediately preceding her accident, the employee was working and she was not receiving any medication or treatment for her depression or other mental health issues. After her accident, the employee started receiving treatment from psychiatrists in 2006, and has continued to receive treatment on a periodic basis since that date. As of January of 2011, she testified that was doing better, and had stopped taking any medication for her psychiatric problems.

Based on the medical records and the employee's testimony, it appears that the financial and other mental stress related to her back pain and the uncertainty of her treatment may have precipitated or triggered a temporary increase in her problems with depression; but her condition, from a psychiatric standpoint, has improved to the "baseline" level which existed prior to her December 21, 2004 accident. The evidence does not support a finding that the employee's December 21, 2004 accident was a substantial factor in causing any new psychiatric conditions or any permanent worsening of her pre-existing psychiatric conditions.

Dr. Harbit offered a persuasive explanation to support her diagnosis of "Major Depressive Disorder" and "Borderline Personality Disorder", and there is no credible evidence to support a finding that either of these conditions were either caused or substantially aggravated by the employee's December 21, 2004 accident. The employee's depression and personality disorder have been lifelong problems. The employee was in need of treatment for these conditions before her accident (although she did not always get it), and she will likely require further treatment for

these conditions for the remainder of her life. The evidence does not support a finding, however, that the employee's accident was a substantial factor in causing either the employee's need for treatment or any permanent disability related to her pre-existing psychiatric problems. On the issue of medical causation, I find that the opinion of Dr. Harbit is more credible than the opinion of Dr. Stillings.

Based on these conclusions, I find that the employee's accident was not a substantial factor in causing the employee's major depressive disorder or her borderline personality disorder; the employee's need for medical or psychiatric treatment for those conditions; or any permanent disability that may be attributable to those conditions.

Issue 2. Future Medical Aid

The employee has requested an award for future medical aid for her low back injury and any work related psychiatric conditions.

The testimony of the employee, the medical report and testimony of Dr. Cohen, and the medical records all support a finding that the employee needs additional medical treatment to cure or relieve her from the effects of the December 21, 2004 accident and the resulting injuries to her low back.

After her release by Dr. Gornet, the employee has continued to see Dr. Siddiqui on a regular basis for conservative treatment to relieve her low back pain and related symptoms. The employer-insurer has not offered any credible evidence to contradict the employee's evidence on this issue. As previously noted, Dr. Cantrell's attempt to separate the L4-5 herniated disc from the adjacent annular tears is not persuasive. Given the ruling on medical causation that all of the employee's back complaints and her need for treatment are related to her accident, the employer has no other basis to support a denial on this issue.

Based on this evidence, I find that the opinion of Dr. Cohen on the issue of future medical aid is more credible than the opinion of Dr. Cantrell. The employer-insurer is therefore directed to provide additional or future medical aid pursuant to Section 287.140 RSMo. This obligation shall include all reasonable and necessary medical treatment to cure or relieve the employee from the effects of the December 21, 2004 accident, and the resulting injuries and surgeries to her low back at the L3 through the S1 levels. This obligation to provide future medical aid shall include, but not be limited to, pain management in the form of pain medication, muscle relaxers, anti-inflammatory medication, sleeping pills, physical therapy, and injections.

Based on the finding that the employee's accident was not a substantial factor in causing the employee's major depressive disorder or borderline depressive disorder, the employer-insurer's obligation to provide future medical aid shall not extend to any treatment for the employee's pre-existing depression or other psychiatric conditions.

Issue 3. Temporary Total Disability

The employee has requested an award against the employer-insurer for additional temporary total disability from May 16, 2008 through the date she was determined to be at MMI on October 27, 2008. This time period is equal to 165 days or 23 4/7ths weeks, and the total temporary total disability claimed is equal to \$4,691.89.

Dr. Gornet released the employee to light duty as of May 15, 2008 with restrictions of no lifting greater than ten pounds; no repetitive bending, lifting, pushing or pulling; and alternating between sitting and standing positions. He felt it would have to be essentially a sedentary job. Based on this release, the employer-insurer terminated the employee's temporary total disability benefits as of that date. The employee was not able to return to work, primarily due to the pain and limitations related to her low back, and the resulting pattern of not being able to sleep well at night and having to lie down to relieve her pain several times during the day. Dr. Gornet subsequently released the employee and determined that she was at her maximum level of medical improvement on October 27, 2008. The parties have stipulated that the employee was not at "MMI" until October 27, 2008.

The testimony of the employee and the vocational and medical evidence make it clear that no employer, in the usual course of business, would have reasonably been expected to hire the employee during this time period. In addition to the symptoms and limitations related to her low back, the employee was also experiencing significant emotional problems during this time. As a result of these physical and emotional problems, the employee was taking narcotic pain medication for her back prescribed by Dr. Siddiqui, and psychiatric medication prescribed by Dr. Mirza.

Based on this evidence, I find that the employee was temporarily and totally disabled from May 16, 2008 through the end of her healing period on October 27, 2008. The employer-insurer is therefore directed to pay to the employee the sum of \$199.05 per week from May 16, 2008 through October 27, 2008, for temporary total disability benefits. The total amount payable for temporary total disability is \$4,691.89.

Issue 4. Permanent Total Disability

Although neither the employer-insurer nor the Second Injury Fund have stipulated that the employee is totally disabled, the evidence unequivocally supports a conclusion that the employee is not employable in the open labor market. The most difficult issue to determine is whether the "last injury alone" to the employee's low back caused the employee to be permanently and totally disabled, or whether her inability to work is due to a combination of her low back injury with her pre-existing depression and personality disorder.

On the issue of whether the employee is permanently and totally disabled, there are a number of factors which support a finding that she is no longer capable of working.

The employee's testimony, appearance and observed behavior at the hearing make this decision relatively easy. Notwithstanding some improvement in her condition following her two surgeries, the employee continues to experience severe pain in her low back that would make it impossible for her to find and maintain employment. This pain is constant, and gets worse with activity. She has to change positions from sitting, to standing, to lying down to relieve her pain. Her back pain keeps the employee from sleeping well at night and that makes her tired the following day. The employee tries to do some work around her house, but has to stop after 10 to 20 minutes because of increased back pain. The employee takes Hydrocodone every 4 hours on a continuous basis. Despite this medication, she has to lie down 3 or 4 times a day to keep her pain at a manageable level. The employee has given up most of her hobbies and all outdoor activities because of her back pain. During the hearing, the manner in which the employee walked, got in and out of chairs, changed positions from sitting to standing, and her facial expressions, all support a conclusion that she was experiencing significant pain.

The medical and vocational evidence also support a finding that the employee is totally disabled. Dr. Cohen concluded that the employee's back injuries alone made her unemployable. Dr. Cantrell assigned permanent restrictions based only on the L4-5 disc herniation. Dr. Cantrell provided a 25% permanent partial disability rating, but only attributed 10% of that to the employee's accident. He did not offer an opinion regarding the employee's ability to work when her psychiatric issues were considered. Dr. Gornet released the employee to light or sedentary work, but did not have the benefit of any vocational or psychiatric evaluations. Dr. Stillings testified that the employee was permanently disabled due to a combination of her psychiatric problems. Dr. Harbit did not offer a disability rating or an opinion regarding the employee's ability to work. Mr. England concluded that the employee was unemployable due to a combination of her low back and emotional problems, but agreed that if the employee had to lie down 3 or 4 times a day to relieve her back pain, then the back injuries alone would keep her from working. Mr. Hammond relied on Dr. Gornet's restrictions, and listed 21 jobs that he felt the employee was qualified for. During cross examination, however, Mr. Hammond agreed that if the employee had to lie down periodically during day to relieve her back pain that would preclude employment. He commented "there are no positions out there that would allow that to happen" (Employer's Exhibit 3, page 18).

On the issue of permanent total disability, I find that the opinions of Dr. Cohen, Dr. Stillings, and Mr. England are more credible than the opinions of Dr. Cantrell and Mr. Hammond. I further find that the employee is no longer able to compete in the open labor market; there is no employer in the usual course of business that would reasonably be expected to hire the employee in her present physical condition; and she is therefore permanently and totally disabled.

The only remaining question is whether either the employer or the Second Injury Fund is liable for the employee's permanent total disability. Although the employee had a long history of sexual, physical and emotional abuse, and was diagnosed with a variety of psychological or psychiatric conditions, Section 287.220.1 RSMo., and several cases establish that the Second Injury Fund has no liability and the employer is responsible for full permanent total disability benefits if the last injury "considered alone and of itself" results in permanent total disability.

Roller v. Treasurer of the State of Missouri, 935 S.W. 2d 739 (Mo.App.1996); *Maas v. Treasurer of the State of Missouri*, 964 S.W.2d 541 (Mo.App.1998).

This statutory provision was the focus of the defenses offered by both the employer-insurer and the Second Injury Fund.

The employer-insurer's attorney emphasized the employee's extensive psychiatric history, including multiple rapes and suicide attempts, and the numerous psychiatric opinions regarding possible diagnosis and treatment related to this history. As previously noted, the most logical and credible diagnosis was offered by Dr. Melissa Harbit, who concluded that the employee had a pre-existing borderline personality disorder, and a major depressive disorder that was in partial remission. The evidence supports a conclusion that the employee has a pre-existing permanent partial disability related to these psychiatric conditions, and these conditions were a hindrance or obstacle to employment or re-employment. There is also no question that when these pre-existing psychiatric conditions are added to the employee's physical condition, as it relates to her work related low back injuries, the employee is totally disabled. The employer-insurer's asserts that if the employee is totally disabled, it is due to a combination rather than the last injury alone.

The definitive question is whether the last injury alone caused the employee to be totally disabled, and this was the primary focus of the Second Injury Fund. The Fund notes that despite the employee's significant psychiatric history, with the exception of a brief time when she was on social security disability due to thyroid problems, the employee worked from the time she was a child until the date of her accident. The Fund also emphasizes that from 1999 until the date of her accident, the employee did not receive any treatment or medication for her psychiatric problems. The Fund's best argument, however, is that both the employee's testimony and the vocational evidence support a finding that, even if the employee did not have any problems with depression or a personality disorder, the pain and limitations related to her low back would preclude her from working.

The key issue of "fact" that determines this issue is whether the employee has to lie down several times each day to relieve her back pain. Both vocational experts agreed that if this is true, then the back injury alone would keep the employee from working. The employee's testimony on this issue was credible, and is corroborated by the medical evidence. Based on this evidence, I find as follows:

- As a result of the employee's December 21, 2004 accident and the resulting injuries to her low back, the employee has constant pain in her low back, and because of that pain, the employee has to lie down several time each day to relieve her back pain.
- Based on this finding, and the other symptoms and limitations related to her low back injuries, the employee is unemployable in the open labor market without consideration of her pre-existing permanent partial disabilities due to depression, personality disorders or other psychiatric or psychological conditions – the employee's last injury, considered in and of itself, caused the employee to be permanently and totally disabled.
- The employer-insurer, rather than the Second Injury Fund, is therefore liable for permanent total disability benefits to the employee.

- The employer-insurer is therefore directed to pay to the employee the sum of \$199.05 per week commencing on October 28, 2008, and continuing for the remainder of the employee's life or until suspended, if the employee is restored to her regular work or its equivalent as provided in Section 287.200 RSMo.

Based on the finding that the employer is liable for permanent total disability benefits, the Second Injury Fund is not liable for either permanent total disability or permanent partial disability benefits, and the claim against the Second Injury Fund is denied.

Issue 5. Permanent Partial Disability

Based on the finding that the employer is liable for permanent total disability benefits, the issue of permanent partial disability is moot and shall not be ruled upon.

ATTORNEY'S FEE

Jack Knowlan, attorney at law, is allowed a fee of 25% of all sums awarded under the provisions of this award for necessary legal services rendered to the employee. The amount of this attorney's fee shall constitute a lien on the compensation awarded herein.

INTEREST

Interest on all sums awarded hereunder shall be paid as provided by law.

Made by:

Maureen Tilley
Administrative Law Judge
Division of Workers' Compensation