

FINAL AWARD ALLOWING COMPENSATION
(Pursuant to the Mandate of the Missouri Supreme Court)

Injury No.: 01-046332

Employee: Fred Schoemehl, deceased
Dependent: Annette Schoemehl, widow
Employer: Cruiser Country, Inc. (Settled)
Insurer: Missouri Employers Mutual (Settled)
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund
Date of Accident: May 11, 2001

On January 9, 2007, the Missouri Supreme Court issued an opinion reversing the December 9, 2005, Final Award of the Labor and Industrial Relations Commission (Commission) in the above-referenced case. In particular, the Court held that Fred Schoemehl's widow, Annette Schoemehl, the claimant herein, "is the employee 'entitled' to compensation under section 287.230.2 and is entitled to payment of the unpaid, unaccrued balance of [Fred] Schoemehl's PTD award." *Schoemehl v. Treasurer of State*, 217 S.W.3d 900 (Mo. 2007). By mandate issued April 23, 2007, the Court remanded this matter to the Commission for further proceedings in conformity with the Court's opinion delivered January 9, 2007.

Pursuant to the Court's opinion and mandate, we issue this award.

Award

Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act, except as modified herein. Pursuant to section 286.090 RSMo, the Commission modifies the award and decision of Administrative Law Judge Robert J. Dierkes, issued April 4, 2005, and that award is attached and incorporated by this reference to the extent it is not inconsistent with our modification herein.

We reverse the portion of the administrative law judge's award concluding that Fred Schoemehl's permanent total disability benefits ceased upon his death on January 2, 2004. Annette Schoemehl is the employee entitled to compensation under section 287.230.2 and is entitled to the payment of the unpaid, unaccrued balance of Fred Schoemehl's permanent total disability award. *Schoemehl*, 217 S.W.3d at 903. In all other respects, the April 4, 2005, award of the administrative law judge is affirmed.

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 15th day of June 2007.

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Fred Schoemehl (deceased)

Injury No. 01-046332

Claimant: Annette Schoemehl (spouse)

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

Employer: Cruiser Country, Inc. (settled)

Additional Party: Second Injury Fund

Hearing Date: February 24, 2005

Checked by: RJD/tmh

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? Yes.
2. Was the injury or occupational disease compensable under Chapter 287? Yes.
3. Was there an accident or incident of occupational disease under the Law? Yes.
4. Date of accident or onset of occupational disease: May 11, 2001.
5. State location where accident occurred or occupational disease was contracted: Camden County, Missouri.
6. Was above employee in employ of above employer at time of alleged accident or occupational disease?
Yes.
7. Did employer receive proper notice? Yes.
8. Did accident or occupational disease arise out of and in the course of the employment? Yes.
9. Was claim for compensation filed within time required by Law? Yes.
10. Was employer insured by above insurer?
11. Describe work employee was doing and how accident occurred or occupational disease contracted:

12. Did accident or occupational disease cause death? No. Date of death?
13. Part(s) of body injured by accident or occupational disease: Left knee.
14. Nature and extent of any permanent disability:
15. Compensation paid to-date for temporary disability:
16. Value necessary medical aid paid to date by employer/insurer?
17. Value necessary medical aid not furnished by employer/insurer?
18. Employee's average weekly wages: \$391.88.
19. Weekly compensation rate: \$261.26.
20. Method wages computation: Stipulation.

COMPENSATION PAYABLE

21. Second Injury Fund liability: Yes

Permanent total disability benefits from Second Injury Fund: 4 3/7 weeks, totaling \$1,157.01

23. Future requirements awarded: None.

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

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

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Fred Schoemehl (deceased)

Injury No: 01-046332

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

Claimant: Annette Schoemehl (spouse)

Employer: Cruiser Country, Inc. (settled)

Additional Party: Second Injury Fund

Insurer:

Checked by: RJD/tmh

FINDINGS OF FACT AND RULINGS OF LAW

The parties stipulated to all jurisdictional issues and to all of the essential facts of the case.

At issue is the liability of the Second Injury Fund.

The facts of the case are simple and uncontested. Claimant Annette Schoemehl is the surviving spouse of Fred Schoemehl. On May 11, 2001, Fred Schoemehl ("Employee") sustained a work-related injury to his left knee while in the employ of Cruiser Country, Inc. ("Employer"). Employer provided necessary medical treatment for Employee's left knee injury, and paid temporary total disability benefits, at the rate of \$261.26 per week, through February 26, 2003. Employee was unable to return to work after the May 11, 2001, injury. Employee was rendered permanently and totally disabled as a result of the May 11, 2001, injury in combination with his preexisting disabilities.

On January 2, 2004, Employee died of causes totally unrelated to his work-related left knee injury. Claimant Annette Schoemehl filed an amended claim for compensation against Employer, listing herself as claimant and successor to her deceased husband's interests. On December 8, 2004, Claimant settled her claim with Employer for a 25% permanent partial disability of the left knee, representing 40 weeks of benefits at the rate of \$261.26 per week. Claimant was thus compensated with full weekly benefits from Employer through December 2, 2003. The Second Injury Fund is therefore liable for permanent total disability benefits from December 3, 2003, through Claimant's death on January 2, 2004. This results in 4 3/7 weeks of benefits, at the rate of \$261.26, totaling \$1,157.01.

Claimant claims that she is entitled to additional weekly benefits of \$261.26, after January 2, 2004 for *her* lifetime. Claimant was not the injured employee, her husband was. Section 287.200.1, RSMo, states: "Compensation for permanent total disability shall be paid during the continuance of such disability *for the lifetime of the employee* at the weekly rate of compensation in effect under this subsection on the date of the injury for which compensation is being made." (Emphasis added.) Fred Schoemehl is the

employee who was injured; his lifetime (hence the payment of permanent total disability compensation) ended on January 2, 2004.

Second Injury Fund is ordered to pay Claimant the sum of \$1,157.01 for permanent total disability benefits through the date of Employee's death.

Claimant's attorney, Dean Christianson, is allowed 25% of the amount awarded to Claimant hereunder as and for necessary attorney's fees, and the amount of such fees shall constitute a lien thereon. Interest shall accrue as per applicable law.

Date: _____

Made by:

ROBERT J. DIERKES
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Patricia "Pat" Secret
Director
Division of Workers' Compensation