

ORDER AMENDING FINAL AWARD
(Amending Award in accordance with the Mandate of the Supreme Court of Missouri)

Injury No.: 02-109322

Employee/Claimants: Joshua Neal Strait
Mick Tyler Strait

Injured Worker: Rosalyn Strait, deceased

Employer: Integram St. Louis Seating

Insurer: Self-Insured

Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund

Date of Accident: August 3, 2002

On December 4, 2007, the Missouri Court of Appeals for the Eastern District issued an amended mandate affirming the Labor and Industrial Relations Commission's (Commission) award of permanent total disability benefits from the Second Injury Fund to Rosalyn Strait. After the mandate, Michael Strait, father and natural guardian of claimants, filed a motion asking the Commission to amend the above-described final award to require the Second Injury Fund to pay permanent total disability benefits to claimants. On January 8, 2008, this Commission issued an Order dismissing claimants' motion on the ground that the Commission lacked jurisdiction to modify the final award after mandate. Claimants appealed the January 8th Order dismissing their motion. The Supreme Court of Missouri granted transfer.

By opinion issued July 15, 2008, the Supreme Court ruled that the interpretation of the Workers' Compensation Law that was made in the case of *Schoemehl v. Treasurer of State*, 217 S.W.3d 900 (Mo. 2007) applies to cases that were pending in the Commission or pending on appeal at the time of the *Schoemehl* decision, including the instant case. The Supreme Court reversed the Commission's January 8, 2008, Order that it lacked jurisdiction to modify the final award and remanded the matter to the Commission with directions to grant benefits to the minor dependent children of Rosalyn Strait as of the date of her death. By mandate issued August 5, 2008, the Supreme Court remanded the matter to this Commission for further proceedings in conformity with the July 15, 2008, opinion.

The parties have provided suggested language for the Commission's use in complying with the Supreme Court's mandate. The suggested language deals with the splitting of the monthly benefit between the claimants, the future modification of the payee of the monthly benefit, and redirection of the payment of the monthly benefit upon the death of one of the claimants.

The proposed language is much broader than the Supreme Court's direction that we grant benefits to the minor dependent children of Rosalyn Strait as of the date of her death. The Missouri Workers' Compensation Law provides no guidance regarding the matters addressed by the suggested language and Missouri courts have had no occasion to address them. We are of the opinion that the proposed language is not consistent with the Supreme Court's opinion and mandate. We are bound to follow the mandate.

In accordance with the mandate, we amend our January 12, 2007, Final Award as follows:

By virtue of the holding in *Schoemehl*, Joshua Neal Strait and Mick Tyler Strait constitute the employee to whom benefits has been awarded by our Final Award. Beginning January 28, 2007, and continuing for employee's lifetime or until modified by law, the Second Injury Fund shall pay to employee the weekly sum of \$649.32 as and for employee's permanent total disability benefit. During the minority of the claimants, the Second Injury Fund shall make the weekly benefit payable to Michael Strait, father and natural guardian of Joshua Neal Strait and Mick Tyler Strait.

In all other respects, the Final Award remains in full force and effect.

Given at Jefferson City, State of Missouri, this 17th day of October 2008.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

NOT SITTING

William F. Ringer

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary