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

Injury No.: 14-103735

Employee: William Stratton

Employer: City of Odessa

Insurer: Missouri Rural Services Workers' Compensation Trust

This 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, read the parties' briefs, heard the parties' arguments, and considered the whole record, we find that the award of the administrative law judge allowing compensation is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to § 286.090 RSMo, we affirm the award and decision of the administrative law judge with this supplemental opinion.

Discussion

Award of Costs and Attorney's Fees Under § 287.560 RSMo

At the outset, we note that at page 17 of the administrative law judge's award, the heading at # 8 indicates: Officer Stratton is entitled to costs of $21,983.64 under section 287.560. Whereas at page 19, the administrative law judge's conclusions state, "Officer Stratton is entitled to costs and fees for the City's unreasonable defense in the amount of $19,728.54." We agree that the employee is entitled to an award of costs and attorney's fees in the amount of $19,728.54, and correct the error in the amount listed in the heading at page 17, to be consistent with this finding.

Section 287.560 RSMo states in relevant part:

> ... if the division or commission determines that *any proceedings* have been brought, prosecuted or defended without reasonable ground, it may assess the whole cost of the proceedings upon the party who so brought, prosecuted or defended them. . . . (Our emphasis)

While the statute allows us the discretion to assess costs against a party, our discretion is clearly limited in the context of prosecution or defense of the proceedings.

We agree with the administrative law judge that an award of costs is appropriate in these circumstances where employer continued to defend without reasonable grounds during the course of the proceedings. We write separately, however, to clearly limit the bases for our ruling, given that the administrative law judge referenced conduct outside the proceedings, which may give the appearance he relied on a course of conduct long preceding the initiation of this claim in 2015.

We adopt the administrative law judge's findings on this issue beginning on page 17 of his award. We further adopt the administrative law judge's findings on this issue through the first full paragraph on page 18, excluding the final sentence, "Unfortunately, the City's egregious conduct goes far beyond anything before the *Landman* and *De Long* courts." While we understand the administrative law judge was thereafter referencing information which the employer should have been aware prior to employee filing the claim for compensation, we want

to make clear that these pre-filing events are not part of the "proceedings,"[1] as required under § 287.560. The perception of employer's action or inaction prior to the initiation of this proceeding is not relevant to an award of costs where "*any proceedings* have been brought, prosecuted or defended without reasonable ground." *Id.*

We disavow those additional paragraphs of the award beginning on page 18, with "Officer Stratton's testimony painted ...." and continuing through page 19 up to the heading, "**CONCLUSION.**" We do so only because we want to clearly identify that any actions prior to the initiation of the workers' compensation proceeding are not a basis for our finding that an award of costs is appropriate under § 287.560.

At the time of initiation of the proceeding, employee filed a Claim for Compensation on April 6, 2015, indicating the basis for his claim as exposure to mold, fumes and other hazards in the workplace causing occupational disease and specifically demanding such treatment as will cure and relieve the effects of his injuries. *Transcript,* page 143. At the point that employee initiated proceedings, employer had choices to make in how to proceed, as informed by the past events of which it was aware.[2]

After initiation of the proceedings in 2015, at least as early as January 2016, an asthma specialist had noted suspicion that employee's exposure to mold in a work location for the city had caused his condition. He noted the hospitalization in 2008 for empyema. (Dr. Wald of Kansas City Allergy & Asthma Associates). In December 2016, Dr. Poppa issued a report connecting the employee's conditions with work exposure. It wasn't until October 2017 that employer obtained its own opinion from Dr. Shen, who then confirmed that employee's conditions were related to mold exposure in the workplace, were persistent, were likely to be permanent and unlikely to resolve. Even then, after an opinion from employer's own doctor, employer didn't offer treatment or admit its liability.[3] At the time of hearing in February 2019, employer continued to deny all liability.

We are mindful that the Commission is cautioned to exercise its discretion to assess an award of costs only in clear circumstances. *Landman v. Ice Cream Specialties, Inc.*, 107 S.W. 3d 240, 250 (Mo. 2003) *overruled on other grounds by Hampton v. Big Boy Steel Erection,* 121 S.W. 3d 220, (Mo. 2003). Similarly to *Landman,* employer did not provide treatment even after its evaluating physician, Dr. Shen confirmed the mold exposure at work was related to employee's condition. There is no evidence that employer sought any other medical opinion thereafter.

Employer suggests that it was reasonable to continue to defend on the ground that employee was not at maximum medical improvement (MMI). However, there were opinions that he was at a permanent disability status. Dr. Poppa opined in his December 8, 2016 report that employee was at MMI. Even Dr. Shen suggested that it was a permanent condition. Continuing to defend on the basis that employee was not at MMI was not reasonable.

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[1] The judge's references are to events of which the employer would have been aware because of its involvement with the inspections and related remediation efforts in its building and are relevant only to the extent.

[2] In the Findings of Fact set forth by the administrative law judge, we note instances where the employer's reactions to events preceding the filing of this Claim for Compensation are characterized as *lying.* We do not find this characterization as relevant in any way to our ultimate conclusion that the employer is liable for costs of this proceeding which are limited to action or inaction after initiation of the proceeding. However, the recitation of past events does provide relevant evidence regarding the level of knowledge of employer about the viability of employee's assertions about his health conditions.

[3] As noted in employee's brief, while employer suggests it offered treatment at some point prior to hearing, employee's credible testimony was that he had never refused any treatment offered by employer. *Transcript,* pages 109-110, 120.

We do not find employer's defenses to the statute of limitations to be reasonable when employee filed his claim even before he had a firm medical opinion upon which it was reasonably discoverable and apparent that he had an occupational disease attributed to his work. We do not find employer's defense on the basis of challenge to medical charges to be reasonable when there are ways to address those issues short of denying all liability.

We acknowledge that employer is not required to put on any evidence to disprove employee's positions. § 287.808 RSMo. Employee bears the burden of proof on all elements of a cause of action. However, once that burden has been met, the burden shifts to employer for any affirmative defenses. The burden of proof is on the party asserting a defense based on a factual proposition as more likely true than not by contrary persuasive evidence. *Id.* There was an absence of any contrary evidence by the employer, further leaving us with only the unrebutted evidence of the employee and the absence of any proof supporting employer's defenses or its disputes with factual propositions. Employer made a strategic legal tactic to rely on its legal right to not put on evidence. However, in doing so, employer ran the risk of this exact outcome. This Commission is, therefore, left with a record of evidence with little to nothing to justify the employer's actions during the course of the proceedings.

Conclusion

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

The award and decision of Chief Administrative Law Judge Mark Siedlik is attached and incorporated herein to the extent not inconsistent with this supplemental decision.

We approve and affirm 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 14th day of November 2019.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

LABOR & INDUSTRIAL RELATIONS COMMISSION OF MISSOURI SEAL

Robert W. Cornejo, Chairman

Reid K. Forrester, Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

FINAL AWARD

Employee:	William Stratton	Injury No. 14-103735
Employer:	City of Odessa	
Additional Party:	N/A	
Insurer:	Missouri Rural Services Workers' Compensation Trust	
Hearing Date:	February 7, 2019	Checked by: MS/drl

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: September 26, 2014
5. State location where accident occurred or occupational disease was contracted: Odessa, Lafayette County, Missouri
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? Yes
8. Did accident or occupational disease arise out of and in the course of the employment? Yes
9. Was claim for compensation filed within time required by law? Yes
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted: While in the course and scope of his employment, Officer Stratton was exposed to black mold over the course of many years. This exposure caused him to develop multiple, debilitating respiratory and psychological symptoms.
12. Did accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: Lungs, Respiratory System, Psyche, Body as a Whole

14. Nature and extent of any permanent disability: 20% to body as a whole for Respiratory System, 5% to body as a whole for Psychological Symptoms

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

16. Value necessary medical aid paid to date by employer/insurer? $0

17. Value necessary medical aid not furnished by employer/insurer? $109,720.34

18. Employee's average weekly wages: $812.43

19. Weekly compensation rate: $541.64 TTD and $451.02 PPD

20. Method wages computation: Stipulation

21. Amount of compensation payable: $156,988.90

    Medical Bills = $109,720.34

    TTD from 1/17/08 to 2/17/08 = $2,166.56 (4 weeks x $541.64)

    5% PPD for Psychological Symptoms = $9,020.40 (20 weeks x $451.02)

    20% PPD for Respiratory System = $36,081.60 (80 weeks x $451.02)

22. Future requirements awarded: Medical Treatment

23. Costs awarded: $19,728.54 ($11,817.14 in attorney's fees plus $7,911.40)

The compensation awarded to the Employee shall be subject to a 25% lien in favor of Ms. Brianne Thomas, of Boyd, Kenter, Thomas & Parrish, LLC, for reasonable and necessary attorney's fees plus expenses, immediately due, under § 287.260.1 R.S.Mo.

FINDINGS OF FACT AND RULINGS OF LAW

Employee:	William Stratton	Injury No. 14-103735
Employer:	City of Odessa	
Additional Party:	N/A	
Insurer:	Missouri Rural Services Workers' Compensation Trust	
Hearing Date:	February 7, 2019	Checked by: MS/drl

On February 7, 2019, Employee and Employer appeared for a final hearing. The Division had jurisdiction to hear this case under section 287.110. The Employee, Officer William Stratton ("Employee" or "Officer Stratton"), appeared through his attorney, Brianne Thomas. The Employer, the City of Odessa ("Employer" or "the City"), and the Insurer, Missouri Rural Services Workers' Compensation Trust ("Insurer"), appeared through counsel, Mr. Clint Collier.

STIPULATIONS

1. On or about September 26, 2014, the City was operating subject to Missouri's Workers' Compensation Law with its liability fully insured by Missouri Rural Services Workers' Compensation Trust.
2. Officer Stratton's weekly compensation rate is $541.64 for temporary total disability and $451.02 for permanent partial disability.
3. The City has not paid any temporary total disability benefits or medical benefits.

ISSUES

1. Whether Employee sustained an occupational disease arising out of and in the course of his employment.
2. Whether Employee's work for Employer was the prevailing factor in causing his injuries and disability.
3. The extent, if any, of Employee's permanent partial disability.
4. Whether Employer is responsible for providing Employee with temporary total disability benefits.

5. Whether Employee timely notified Employer of his injuries.

6. Whether Employer is responsible for paying the $109,720.34 in medical costs.

7. Whether Employee is entitled to costs of $21,983.64 under section 287.560.

Employee testified on his own behalf and presented the following exhibits, all of which were admitted into evidence, with the exception of Exhibit 3, which was reserved. After hearing testimony regarding the medical bills, and employee's request of being time barred, I overrule the employer's objection and admit Exhibit 3 into evidence.

Exhibit 1	Claim for Compensation
Exhibit 2	Medical Records
Exhibit 3	Medical Charges
Exhibit 4	Report of Dr. Michael J. Poppa
Exhibit 5	Report of Dr. Anthony S. Shen
Exhibit 6	Deposition of Dr. Allan D. Schmidt
Exhibit 7	Photos of Mold in City Building
Exhibit 8	*Withdrawn*
Exhibit 9	*Withdrawn*
Exhibit 10	*Withdrawn*
Exhibit 11	Letter from Lafayette County Health Dept. to City of Odessa
Exhibit 12	Memo from City Regarding News Coverage of Mold Exposure
Exhibit 13	Letter from Mo. DHHS to City of Odessa
Exhibit 14	8/5/14 Letter to City Employees (pp. 6-23 redacted)
Exhibit 15	Deposition of Dr. Michael J. Poppa with Exhibits (Ex. 8 excluded)
Exhibit 16	Expenses

Employer did not present any evidence, aside from cross-examining Employee.

Based on the entire record, Employee's testimony, records entered into evidence, and the applicable law in the state of Missouri, I find that: (1) Employee's respiratory diagnoses and psychological diagnoses arose out of and in the course of his employment; (2) Employee's work for Employer was the prevailing factor in causing his injuries and disability; (3) Employee sustained a permanent partial disability equal to 25% to his body as a whole, 5% of which stems from the psychological diagnoses while 20% stems from the respiratory diagnoses; (4) Employer is responsible for providing Employee with 4 weeks of temporary total disability benefits; (5) Employee timely notified Employer of his injuries; (6) Employer is responsible for paying

$109,720.34 to Employee for his reasonable medical costs; and (7) Employee is entitled to costs in the amount of $19,728.54 under section 287.560 for Employer's unreasonable defense and conduct.

FINDINGS OF FACT

At the Hearing, Officer Stratton testified that he was 46 years old. Prior to working for the City, he was always a physically active person. In high school, he wrestled and participated in track and field. After graduating from Lexington High School, he served in the Army/National Guard, where he successfully completed basic training. This involved fighting, marching, obstacle courses, and other physical activities. Officer Stratton completed his basic training without any breathing problems or other respiratory issues. He even earned an Army Achievement Medal in 2000 for outstanding performance while on tour in Alaska.

Officer Stratton served in the Army/National Guard for 10 years as a combat engineer. He testified that this was the most physically demanding job in the Army. Combat engineers led the way for the infantry, cleared landmines, destroyed roads and bridges, built roads and bridges, and ran with heavy objects on a frequent basis. He testified that in the 10 years he served in the most physically demanding position the Army offered, he did not have any breathing problems.

After finishing his service in the Army, Officer Stratton started working as a police officer for the City in 2000. At this point in his life, he had never experienced breathing problems or respiratory symptoms. When he started with the City, he spent the majority of his time on patrol. In 2003, however, he was promoted to sergeant, a supervisory position. As a sergeant, he spent most of his 40-hour work week in the City's police building.

Between 2000 and 2002, Officer Stratton began noticing issues with the police building. It was deteriorating. He observed birds, mice, and other rodents in the building. It often flooded because it was below street level. The sewers leaked. Mold was easily observable throughout the building. He often observed mouse droppings, standing water, and water damage. He also testified that there was sewer backup in the building, giving it a distinct sewer gas smell. As he explained, one of the toilets did not function properly, so the sewage backup sat in the open toilet at all times. Officer Stratton testified that, over the years, these problems worsened.

Officer Stratton also offered pictures of the building to corroborate his testimony. The pictures show black mold present throughout the building—on walls, in a vent above his desk, on insulation, and on ceiling tiles. Rodent traps and pesticides were observable in multiple locations. Multiple pictures showed animal feces.

Officer Stratton testified that he first voiced his concerns about the building's condition in 2003 when he spoke with Chief Bob Kinder. He made multiple oral complaints to Chief Kinder and Captain Butler over the years. In 2005 or 2006, he filed written complaints about the conditions. In these complaints, he notified the City that paramedics were having medical problems, possibly because of the building. Following his written complaint, Chief Kinder told him that the building was fine, told him to stop being concerned, and reminded him that he was an at-will employee. Officer Stratton testified that the City did not take any action to address the issues he raised.

Between 2006 and 2010, according to Officer Stratton's testimony, the building continued to worsen. Then, in 2010, a representative from the Lafayette County Health Department inspected the building. Though multiple officers made complaints about the building—Officer Stratton was in the chain of command, and thus a supervisor to whom fellow officers could file complaints—Chief Kinder assured him that the building was fine. In fact, he told Officer Stratton that the building received a "clean bill of health" from the Lafayette County Health Department. Chief Kinder then used a derogatory and inappropriate term in reference to officers who complained about the building.

Based on the evidence presented, Chief Kinder lied. Exhibit 11 contains the findings from the Lafayette County Health Department's inspection. No reasonable person could interpret these findings as a clean bill of health. For instance, the inspector made numerous problematic findings:

- "[U]pon entering the building I immediately noticed a moldy, musty smell."
- "[O]n the EMS side there was a very strong sewer odor. The carpet throughout ... was visibly water-damaged."
- "Mold was visible on several ceiling tiles throughout."
- "[T]he inspection today indicates that this building has a mold problem."
- "[M]ost survey respondents indicated a sewer smell in the back parts of the building."
- "Sewer gas contains sulfur compounds and methane which may also cause and aggravate the health effects noticed around here."

Nothing in the Lafayette County Health Inspection attributed a clean bill of health to the City's building. Nevertheless, according to Officer Stratton's testimony, the City continued to lie about the threats posed by the building.

While I find Officer Stratton's testimony to be credible regarding these events, I do not have to rely on his testimony alone. A letter from the City to concerned employees corroborates Officer Stratton's testimony. In this letter, City Administrator Jon Holmes perpetuated the lie:

> **The Lafayette Dept. of Health came in and did testing in the walls in numerous areas of the building and found that there was no moisture in the walls, and found no evidence of any mold growing anywhere in the building.**" (emphasis original)

Likewise, Administrator Holmes informed employees that, based on the inspection, he did "not believe that there is any health risk in occupying the PD building."

Again, looking at the report from the Lafayette County Health Department, no reasonable person could reach these conclusions. Simply put, the City lied to Officer Stratton to hide the health risks he faced by continuing to work in the City's police station.

The City maintained the lie through 2014. After Kansas City news stations inquired about the police station's condition, the City issued another letter to assure employees that the building posed no risk. *See Exhibit 14.* In this 2014 letter, the City stated that it had received no complaints about mold in the building and that the inquiries from Kansas City news stations were the first inquiries about mold. Of course, by this time, the City had known about the mold for over four years.

While the City lied about the exposures he was facing, Officer Stratton's health deteriorated. He testified that, in 2002 and 2003, he started developing respiratory problems. He became lightheaded and dizzy. Though he was unaware at the time, he also began developing anxiety. Officer Stratton had problems with his sinuses, bronchitis, and pneumonia. As he explained, the longer he spent in the building, the more his health deteriorated. He started experiencing headaches as well.

Every year, once the furnace turned on, he developed bronchitis. Before working for the City, he had never been diagnosed with bronchitis. He had no problems with allergies or asthma, and he never smoked. Eventually, he developed shortness of breath. Officer Stratton testified that he felt like a fish out of water, struggling to get air and coughing. All of his symptoms progressed until 2014.

While he suspected in 2006 that the building was causing his symptoms, he relied on the City's assurances that the building did not pose a health risk. In 2008, Officer Stratton worked 12 consecutive days. He left work due to trouble breathing. It worsened to such an extent that he visited the emergency room at St. Mary's Hospital. There, he was diagnosed with bronchitis and a fever. Though he was discharged, his condition worsened.

When he visited Dr. Ram Chandra, he was diagnosed with pneumonia and bronchitis. He was readmitted to the hospital for three days. Again, though he was discharged, his health declined. Officer Stratton testified that he then sought treatment at Centerpoint Hospital, where a large mass was discovered on his right lung—an empyema. The mass had to be surgically removed during a thoracotomy. As he described it, the mass was so large that the incision stretched from the top of his back to the bottom of his shoulder, requiring 280 stitches. Following surgery, he improved to an extent, but the bronchitis and pneumonia never went away.

At the Hearing, Officer Stratton testified that he still: experiences coughing, wheezing, and shortness of breath; suffers from bronchitis and pneumonia; has sharp pains where his nerves were cut during the surgery; and gets dizzy, fatigued, and lightheaded. He further clarified that he continues to experience each of the problems he described to Dr. Poppa, aside from the rashes.

Though he left the City in 2016, he experiences problems with the City of Grain Valley Police Department, where he is a full-time officer. He still has asthma and must use an inhaler at work. He cannot maintain his health or physical condition like he did before. And he tries to avoid smoke and certain situations at work whenever possible.

Officer Stratton also spoke about his problems with anxiety and depression. He was diagnosed with anxiety a few years before he stopped working for the City. His anxiety symptoms became especially acute when, in 2014, he discovered the Lafayette County Health Department report that the City had concealed. He testified that, when he learned of the issues noted in the report, he was angry. In fact, when he testified at the Hearing about the City willfully hiding this report, he became visibly upset. His physical presentation at the Hearing certainly corroborated his testimony.

Officer Stratton testified that he still undergoes counseling and therapy for his anxiety with a psychologist. He also takes medications for his anxiety: Atavan and Lexapro. Suffering from

anxiety has caused disruptions at home—he is often moody and struggles to focus. His family often bears the burden of his symptoms.

Officer Stratton testified that the City never offered to send him for treatment or pay for his medical expenses. He received multiple bills regarding the extensive medical treatment he underwent, and continued receiving them until 2018.

I find that Officer Stratton's testimony was credible, forthright, and persuasive. He recalled with detail the course of events that took place while he worked for the City. What is more, the evidence submitted confirmed his sworn testimony. The City failed to present a single piece of evidence or find a single employee to contradict Officer Stratton's testimony.

In addition to his sworn testimony, Officer Stratton put forth reports or testimony from three different medical experts.

Dr. Michael J. Poppa

Dr. Poppa, who is board certified in occupational medicine, offered opinions through a report and sworn testimony. Before issuing his report on December 8, 2016, Dr. Poppa evaluated Officer Stratton in person and reviewed his medical records.

Based on the medical records, Dr. Poppa noted that Officer Stratton first underwent intensive treatment for respiratory symptoms in January of 2008. X-rays of his lungs during a visit to the Lafayette Regional Medical Center on January 25, 2008, revealed a dense opacification over the right lower lobe with a small plural effusion. He was also diagnosed with pneumonia and leukocytosis.

Though he was discharged three days later, he presented to the emergency room at Centerpoint Medical Center on January 29, 2008, complaining of shortness of breath. There, he underwent a fiberoptic bronchoscopy, a right video-assisted thoracoscopy, and right thoracotomy with decortication of the right lung. His post-operative diagnosis was "right hemothorax empyema."

In August of 2014, Officer Stratton was diagnosed with oral herpes simplex infection, sinusitis, and insomnia. His symptoms persisted, however, and by December of 2014, he was diagnosed with pneumonia.

On January 18, 2016, Officer Stratton underwent treatment with Dr. Jeffrey Wald at Kansas City Allergy & Asthma Associates. He was diagnosed with cough, allergic rhinitis, mild persistent asthma, uricaria, pleural empyema, headache, recurrent sinusitis, and mold exposure. Dr. Wald concluded that Officer Stratton's work for the City probably caused him to develop asthma.

At the evaluation, Officer Stratton reported to Dr. Poppa that he continued to experience pain, symptoms, and sleep disruption. These symptoms included headaches, dizziness, constant pulmonary issues, and inhaler use.

Based on the medical records, physical examination, and interview, Dr. Poppa concluded that, "[a]s a result of Officer Stratton's repeated exposures, he developed allergic illness with symptoms consistent with allergic rhinitis, nasal and chest congestion, asthma, joint pain, mood swings, acid reflux, rashes and anxiety." Dr. Poppa further opined that work was the prevailing factor in causing

his medical conditions, treatment, and disability. In addition, Dr. Poppa concluded that the treatment Officer Stratton had received to date was reasonable, appropriate, and directly necessary to cure and relieve him of the effects of his injury. Regarding future treatment, Dr. Poppa recommended that Officer Stratton continue taking his prescribed medications, including Prilosec, non-steroidal anti-inflammatory medications, sinus medications, a pulmonary inhaler, and home pulmonary machine. Finally, Dr. Poppa attributed a 20% disability to Officer Stratton's body as a whole as a result of his work-related occupational disease.

At his deposition, Dr. Poppa largely reiterated the conclusions he reached in his report. He testified that Officer Stratton's scar tissue will never improve. He also recommended that Officer Stratton avoid exposures and smoke inhalation whenever possible.

I find Dr. Poppa's conclusions to be credible, authoritative, and persuasive. He based his conclusions on the medical records, a physical examination, and an interview of Officer Stratton. His disability rating was based on the extensive and invasive treatment Officer Stratton underwent and the symptoms he continued to experience to that day.

Dr. Anthony S. Shen

Officer Stratton was referred to Dr. Shen by the City for an independent medical evaluation. Dr. Shen, who practices out of St. Louis, is board certified in pulmonary, critical care, and sleep medicine. Much like Dr. Poppa, Dr. Shen interviewed Officer Stratton, physically examined him, and reviewed his medical records. On October 20, 2017, he issued his report.

Dr. Shen commented that Officer Stratton worked in a building infected with mold for the last 15 years. He also noted that Officer Stratton was not a smoker and had no history of asthma problems before working for the City.

Based on the evidence available, Dr. Shen opined that Officer Stratton had "mild persistent asthma as a result of the exposure to the black mold..." At the time of his evaluation, Dr. Shen did not think Officer Stratton had reached maximum medical improvement. But, he cautioned that: "It is not uncommon to develop this impairment of asthma as a result of his exposure. It can resolve over time, but at this time, he still remains significantly impaired and more likely than not will have a lifetime impairment." Dr. Shen further concluded Officer Stratton "has a chronic medical condition that is unlikely to resolve." He recommended that Officer Stratton continue taking Prilosec, non-steroidal anti-inflammatory medications, sinus medications, pulmonary inhaler, and Albuterol.

I find Dr. Shen's conclusions to be credible, authoritative, and persuasive. He based his conclusions on the medical records, a physical examination, and an interview of Officer Stratton. What is more, he reached these conclusions even though the City referred Officer Stratton to him.

Dr. Allan D. Schmidt

Dr. Schmidt testified by deposition. He is an experienced psychologist who interviewed Officer Stratton for two and a half hours and administered numerous tests. Dr. Schmidt testified that, based on the results of the tests, Officer Stratton suffers from mild depression and significant anxiety. He noted that Officer Stratton's anxiety is easily precipitated by thoughts or events which remind him of his deteriorated physical condition. Dr. Schmidt testified that Officer Stratton's

anxiety symptoms are directly attributable to the City's intentional concealment of the mold issues in the police station. Officer Stratton feels lied to, which can, in Dr. Schmidt's opinion, lead to anxiety and depression. Dr. Schmidt concluded that Officer Stratton's work, and the City's pattern of deception about mold exposures, was the prevailing factor in his diagnosis.

Dr. Schmidt prescribed Ativan to help Officer Stratton cope with his anxiety and Ambien to help him sleep. He further opined that counseling and medication would be necessary in the future to address Officer Stratton's symptoms.

Due to the ongoing problems and his significant psychological diagnoses, Dr. Schmidt attributed a 10% permanent partial disability to the body as a whole. Dr. Schmidt attributed this rating entirely to the psychological diagnoses arising out of Officer Stratton's employment with the City.

I find Dr. Schmidt's conclusions to be credible, authoritative, and persuasive. He based his conclusions on the medical records, psychological testing, and an interview of Officer Stratton.

The evidence Officer Stratton presented was compelling, credible, and convincing. What is more, the City failed to present any evidence to oppose it. This makes Officer Stratton's evidence even more compelling, credible, and convincing.

RULINGS OF LAW

Under Missouri law, claimants bear the burden of proving all the essential elements of a workers' compensation claim. *Grime v. Altec Indus.*, 83 S.W.3d 581, 583 (Mo. Ct. App. W.D. 2002). While claimants are not required to prove the elements of their claims with "absolute certainty," they must establish the elements by reasonable probability. *Sanderson v. Porta-Fab Corp.*, 989 S.W.2d 599, 603 (Mo. Ct. App. E.D. 1999) (internal citations omitted).

1. Officer Stratton developed an occupational disease resulting from mold exposure while employed with the City.

Under Missouri law, claimants bear the burden of proving all the essential elements of a workers' compensation claim. *Grime v. Altec Indus.*, 83 S.W.3d 581, 583 (Mo. Ct. App. W.D. 2002). The Workers' Compensation Act provides that: "An employee shall be conclusively deemed to have been exposed to the hazards of an occupational disease when for any length of time, however short, he is employed in an occupation or process in which the hazard of the disease exists..." MO. REV. STAT. § 287.063.1. Section 287.067 provides as follows: "An occupational disease is compensable if it is clearly work related and meets the requirements of an injury which is compensable... An occupational disease is not compensable merely because work was a triggering or precipitating factor." § 287.067.2. Furthermore, an injury is compensable if it arises out of and in the course of employment. § 287.020.3(1). The injury cannot arise "from a hazard or risk unrelated to the employment to which workers would have been equally exposed outside of and unrelated to the employment in normal nonemployment life." § 287.020.3(2)(b).

Appellate courts have interpreted these statutes to mean that employees are required to provide substantial and competent evidence that they have contracted "an occupationally induced disease rather than an ordinary disease of life." *Kelley v. Banta & Stude Const. Co.*, 1 S.W.3d 43, 48 (Mo. Ct. App. 1999). This inquiry involves two considerations:

> (1) whether there was an exposure to the disease which was greater than or different from that which affects the public generally, and (2) whether there was a recognizable link between the disease and some distinctive feature of the employee's job which is common to all jobs of that sort.

Id. (internal citations omitted).

"To prove causation it is sufficient to show 'a recognizable link between the disease and some distinctive feature of the job which is common to all jobs of that sort.'" *Smith v. Capital Region Med. Ctr.*, 412 S.W.3d 252, 259 (Mo. Ct. App. W.D. 2013) (quoting Vickers v. Mo. Dept. of Public Safety, 283 S.W.3d 287, 292 (Mo. Ct. App. W.D. 2009)). To establish this link, "there must be evidence of a direct causal connection between the conditions under which the work is performed and the occupational disease." *Id.* The causal link must be established with medical evidence. As the *Smith* opinion noted:

> A claimant must submit medical evidence establishing a probability that working conditions caused the disease, although they need not be the sole cause. Even where the causes of the disease are indeterminate, ***a single medical opinion relating the disease to the job is sufficient to support a decision for the employee.***

Id. (emphasis added). Under the holding in *Smith*, claimants do not need evidence of a specific exposure. *Id.* at 261. The opinion expressly rejected the Commission's finding that a claimant must produce evidence of a specific exposure to the disease. *Id.* Rather, proof that a claimant was employed in an occupation in which the hazard of suffering an occupational disease exists establishes that the claimant was exposed to the hazards of the occupational disease. *Townser v. First Data Corp.*, 215 S.W.3d 237, 241-42 (Mo. Ct. App. E.D. 2007).

Here, Officer Stratton produced evidence above and beyond what is required to establish that he sustained an occupational disease. Whereas a single medical opinion prevailed in *Smith*, Officer Stratton produced opinions from three medical experts linking his injuries to work-related mold exposure. And, while the *Smith* opinion had to choose between conflicting medical opinions, here there are none. Every medical expert to offer an opinion on Officer Stratton's injuries concluded that work caused them.

The City asks the Division to find that Officer Stratton did not sustain an occupational disease. But the City failed to provide the Division with a single piece of medical evidence to contradict the three expert medical opinions. The Division cannot "arbitrarily disregard and ignore competent, substantial, and undisputed evidence of witnesses who are not shown by the record to have been impeached..." *Bond v. Site Line Surveying*, 322 S.W.3d 165, 171 (Mo. Ct. App. W.D. 2010). Causation in an occupational disease claim can be established only through expert medical opinions. Yet the City asks the Division to ignore three credible, uncontradicted medical opinions,

and instead adopt its own causation argument without any expert medical evidence to support it. I decline to do so.

Moreover, the City failed to provide any lay testimony to contradict the evidence Officer Stratton submitted. He testified that mold was present throughout the workplace; the City offered nothing to contradict his testimony. Multiple health inspectors observed mold in the police station; the City offered nothing to contradict these reports. Officer Stratton offered multiple pictures showing black mold present throughout the police station; the City offered nothing to show that the police station was a clean, safe work environment.

The uncontradicted evidence Officer Stratton presented establishes that black mold, sewer fumes, and animal feces was present throughout the police station for over a decade. He was exposed to black mold every day he worked until the police station was closed in 2014. Each medical expert to offer an opinion concluded that this constant, toxic exposure to black mold caused his respiratory and psychological symptoms. I agree. I, therefore, find that Officer Stratton's workplace exposures while working for the City were the prevailing factor in causing his occupational disease.

2. Officer Stratton timely notified the City of his injuries and exposures.

The Workers' Compensation Law provides that:

> No proceedings for compensation for any occupational disease or repetitive trauma under this chapter shall be maintained unless written notice of the time, place, and nature of the injury, and the name and address of the person injured, has been given to the employer no later than thirty days after the diagnosis of the condition unless the employee can prove the employer was not prejudiced by failure to receive the notice.

MO. REV. STAT. § 287.420. It is well-settled that the time to provide notice of an occupational disease does not begin to run "until a diagnostician makes a causal connection between the underlying medical condition and some work-related activity or exposure." *Allcorn v. Tap Enterprises, Inc.*, 277 S.W.3d 823, 829-30 (Mo. Ct. App. S.D. 2009).

"The notice to the employer is intended to give the employer a timely opportunity to investigate whether an accident occurred and, if it did, to promptly furnish medical attention to the employee to minimize the injury." *Pattengill v. Gen. Motors Corp.*, 820 S.W.2d 112, 113 (Mo. Ct. App. 1991) (*overruled on other grounds by Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo. 2003)). A claimant is not required to report each consequence of a given injury to an employer. *Martin v. Lindburg Cadillac*, 772 S.W.2d 12, 13 (Mo. Ct. App. 1989).

In addition, "the employer has the burden of establishing any affirmative defense, which includes statutory notice of injury under Section 288.420." *Aramark Educational Services, Inc. v. Faulkner*, 408 S.W.3d 271, 275 (Mo. Ct. App. E.D. 2013). If the employer establishes the lack of timely written notice, the claimant must show that the lack of notice did not prejudice the employer. *Id.* (*citing Allcorn*, 277 S.W. 3d at 831).

I find that Officer Stratton met the statutory notice requirements.

First, lack of notice is an affirmative defense which must be established by the City. The City did not put forth a single piece of evidence. If it did not submit any evidence, it cannot affirmatively establish any defenses. For this reason alone, there is a sufficient basis for holding that the City's lack of notice defense fails.

Second, Officer Stratton testified that he notified the City about the mold problem as soon as he became aware of it, in 2002 or 2003. He further testified that he began to suspect his symptoms were work-related in 2006. At that point, according to his testimony, he provided written notice to the City about the police station and its effect on his health. For years, his complaints about the police station fell on deaf ears. Based on Officer Stratton's testimony, the medical records, and the expert medical opinions, Officer Stratton's most invasive course of treatment took place in 2008. By then, the City had received written and oral notice multiple times, over the course of 5 or 6 years. It cannot claim that it was prejudiced by a lack of written notice in 2008.

Third, Officer Stratton's symptoms and diagnoses were not affirmatively attributed to his employment until December of 2016, when Dr. Poppa opined that his symptoms were attributable to mold exposure. Because Officer Stratton was entitled to rely on an expert medical opinion linking his condition to work-related exposures, the 30-day notice requirement was not triggered until the date of Dr. Poppa's diagnoses. He filed his Claim for Compensation over a year before Dr. Poppa's report. Officer Stratton thus complied with the 30-day notice requirement under a proper reading of the statute.

Fourth, the City was not prejudiced by any lack of notice. When the City received notice of the dangerous conditions on its property, instead of taking affirmative action, it concealed the contents of the report from its employees. When Officer Stratton informed his supervisor that he might have a work-related illness due to mold exposure, he was informed that he is merely an at-will employee, the obvious implication being that he could be terminated at any time. The City's actions could rise to the level of workers' compensation fraud; claiming that it lacked notice only serves to further its fraudulent conduct.

Therefore, I reject the City's argument and find that Officer Stratton complied with the notice requirements of section 287.420.

3. Officer Stratton is entitled to past due temporary total disability benefits.

Under the Workers' Compensation Act, TTD benefits "shall be paid throughout the rehabilitative process." § 287.149.1. The Supreme Court has noted that "TTD benefits should be awarded only for the period before the employee can return to work." *Greer v. SYSCO Food Services*, 475 S.W.3d 655, 666 (Mo. 2015) (internal quotations omitted). A claimant's disability is total, rather than partial, if the claimant is unable to return to any employment. § 287.020.6. The question is whether any employer, in the reasonable course of business, would reasonably be expected to employ the claimant in his or her present physical condition. *Cooper v. Medical Ctr. Of Independence*, 955 S.W.2d 570, 575 (Mo. Ct. App. W.D. 1997) (overruled on other grounds by *Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo. 2003)). "It is clear that a claimant is

capable of forming an opinion as to whether she is able to work, and her testimony alone is sufficient evidence on which to base an award of temporary total disability." *Pruett v. Federal Mogul Corp.*, 365 S.W.3d 296, 309 (Mo. Ct. App. S.D. 2012) (internal citations omitted).

Officer Stratton testified that he missed four weeks of work, a period encompassing the time before and after his January 2008 surgery—a fiberoptic bronchoscopy, a right video-assisted thoracoscopy, and right thoracotomy with decortication of the right lung. He testified that, due to his debilitating sickness and recovery from surgery, he was physically unable to work from January 17, 2008, until February 17, 2008. A claimant's testimony alone is sufficient evidence on which to base an award of TTD. *See Pruett*, 365 S.W.3d at 309. This is especially true where, as here, the testimony provided is uncontradicted and unimpeached. I, therefore, find that Officer Stratton is entitled to four weeks of TTD benefits, from January 17, 2008, until February 17, 2008, for a total of $2,166.56.

4. Officer Stratton is entitled to an award of past medical expenses.

Employers must provide such medical treatment "as may reasonably be required after the injury or disability, to cure and relieve from the effects of the injury." § 287.140.1. Such treatment must be related to, or flow from, the work-related injuries. *Tillotson v. St. Joseph Medical Center*, 347 S.W.3d 511, 517-18 (Mo. Ct. App. W.D. 2011). Employers are responsible for all "fees and charges" which are "fair and responsible." *Farmer-Cummings v. Personnel Pool of Platte County*, 110 S.W.3d 818, 821 (Mo. 2003). An employer cannot avoid responsibility for medical bills simply because they were paid by a claimant's private health insurance. § 287.270; *Farmer-Cummings*, 110 S.W.3d 822-23. The employer can avoid liability only if the healthcare provider has written off the bill as uncollectible. *Id.*

Here, Dr. Poppa testified that the treatment Officer Stratton received, including the 2008 hospitalization and surgery, was reasonably required to cure and relieve him from the effects of his work-related injury. Dr. Poppa further testified that the $109,720.34 in medical bills, each of which were related to treatment of Officer Stratton's work-related injury, were fair and reasonable. The City did not present any evidence to show that these bills were unreasonable or unrelated to Officer Stratton's occupational disease. Officer Stratton is thus entitled to $109,720.34 for his past medical expenses.

Curiously, the City argues that it is not liable for the bills from Officer Stratton's 2008 hospitalization because they are over 10 years old. The City relies on a statute of limitations in section 516.110, which limits the filing of a breach of contract lawsuit to 10 years. § 516.110(1). Nothing in the Workers' Compensation Law, however, limits an employer's liability for medical bills to 10 years. The City's obligation to pay for treatment to cure and relieve Officer Stratton from the effects of his injury is absolute. The 10-year statute of limitations cited by the City is inapplicable here.

By raising this argument, the City seems to rely on the exception to liability set forth in *Farmer-Cummings*. But, employers can avoid liability for medical bills only if they are written off as uncollectible by the healthcare provider. The City presented no evidence to establish that the bills

Officer Stratton submitted were written off as uncollectible. In fact, Officer Stratton testified that he continued receiving bills as recently as 2018. And there is no law which prevents the healthcare providers from attempting to collect on Officer Stratton's outstanding medical bills.

An opinion from the Eighth Circuit Court of Appeals, in a case alleging violations of the Fair Debt Collection Practices Act, contradicts the City's argument that a debt is no longer collectible once the statute of limitations runs. "As several cases have noted, **a statute of limitations does not eliminate the debt; it merely limits the judicial remedies available.**" *Freyermuth v. Credit Bureau Services, Inc.*, 248 F.3d 767, 771 (8th Cir. 2001) (emphasis).

I reject the City's argument that it should not be held liable for the medical bills submitted by Officer Stratton. Nothing in the Workers' Compensation Law places a time limitation on the employer's obligation to pay for treatment. And, even if the 10-year statute of limitations applied, it does not render Officer Stratton's medical bills uncollectible. The *Farmer-Cummings* decision set forth a specific, limited basis for an employer to avoid liability: when the healthcare provider has written off the debt as uncollectible. The City offered no evidence to establish this limited circumstance, and its argument is therefore rejected.

5. Officer Stratton is entitled to an award of permanent partial disability.

Because I have determined that Officer Stratton sustained an occupational disease due to work-related mold exposures, the only issue to determine is the extent of his permanent disability.

"The determination of a specific amount or percentage of disability awarded to a claimant is a finding of fact within the unique province of the [Division]." *Cardwell v. Treasurer of State of Missouri*, 249 S.W.3d 902, 907 (Mo. Ct. App. E.D. 2008). While the Division is not bound by the percentage estimates of medical experts, and it can assign a higher disability percentage, it cannot ignore competent, substantial, and undisputed evidence of unimpeached witnesses. *Id.* Moreover, "Section 287.190.6(2) provides that '[p]ermanent partial disability or permanent total disability shall be demonstrated and certified by a physician.'" *McDowell v. Mo. Dep't of Transportation*, 529 S.W.3d 898, 904 (Mo. Ct. App. S.D. 2017).

In this case, Dr. Poppa attributed a 20% PPD to Officer Stratton's body as a whole. He noted that Officer Stratton must continue to take medications to relieve him from the effects of his debilitating occupational disease. Plus, Officer Stratton must avoid exposures to smoke and fumes whenever possible. Dr. Poppa explained that Officer Stratton's lungs are permanently damaged; his scar tissue will never heal. And, at the time of his evaluation, Officer Stratton continued to experience dizziness, fatigue, and headaches.

Though he did not attribute a disability percentage, Dr. Shen agreed that Officer Stratton has a permanent injury. "[H]e still remains significantly impaired and more likely than not will have a lifetime impairment." Likewise, he concluded that Officer Stratton "has a chronic medical condition that is unlikely to resolve."

Officer Stratton testified at the Hearing that he is physically limited. Before he started working for the City, he was a physically active person. He participated in two sports in high school; he

completed basic training for the Army; and he performed the most physically demanding position the Army had to offer. Since his respiratory problems began, however, he is easily fatigued. At work, he tries to avoid situations where he will encounter smoke or fumes. He is no longer physically fit. He still has headaches and dizziness. He still gets sharp pains where the scar from his surgical incision is located. The symptoms from bronchitis and pneumonia never went away.

The physical symptoms Officer Stratton related also contribute to his psychological symptoms. When discussing his physical state, he became visibly upset. He noted that he gets angry when he thinks about the City's attempt to conceal the health risks associated with the police station. He gets moody and has trouble focusing. These symptoms have an effect on his family as well.

Dr. Schmidt diagnosed Officer Stratton with depression and moderate anxiety, for which he takes medication. These diagnoses were confirmed by his interview with Officer Stratton, the medical records, and the results of his diagnostic testing. Dr. Schmidt relied, in part, on the AMA Guides to attribute a 10% PPD to Officer Stratton's body as a whole for his permanent impairment.

The City did not offer any evidence to contradict the disability percentages assigned by Dr. Poppa and Dr. Schmidt. Nor did the City offer any evidence to contradict Officer Stratton's testimony regarding his symptoms and the effect they have on his daily life. I find the Claimant entitled to 5% PPD to the body as a whole for Officer Stratton's psychological injury and a 20% PPD to the body as a whole for his respiratory injury.

6. Officer Stratton is entitled to an award of future medical treatment.

"Once a compensable injury is found, the inquiry turns to the calculation of compensation or benefits to be awarded." *Tillotson v. St. Joseph Med. Ctr.*, 347 S.W.3d 511, 517 (Mo. Ct. App. W.D. 2011). This compensation includes medical treatment. *Id.* at 517-18 (citing § 287.140). "The legal standard for determining an employer's obligation to afford medical care is clearly and plainly articulated in section 287.140.1 as whether the treatment is ***reasonably required to cure and relieve the effects of the injury.***" *Id.* at 518 (emphasis original).

In this case, each medical expert who offered an opinion determined that Officer Stratton will need medical treatment in the future. In fact, the expert to who the City referred Officer Stratton felt that his treatment needs were so great that he was not at maximum medical improvement. There is no basis for denying future medical treatment. I, therefore, find that Officer Stratton is entitled to future medical treatment to cure and relieve him from the effects of his lung, respiratory, and psychological injuries.

7. Officer Stratton is entitled to an award of future medical treatment.

The Workers' Compensation Act provides that:

> In addition to all other compensation paid to the employee under this section, the employee shall receive and the employer shall provide such medical, surgical, chiropractic, and hospital treatment, including nursing, custodial, ambulance and

> medicines, as may reasonably be required after the injury or disability, to cure and relieve from the effects of the injury.

§ 287.140.1. "Once a compensable injury is found, the inquiry turns to the calculation of compensation or benefits to be awarded." *Tillotson v. St. Joseph Med. Ctr.*, 347 S.W.3d 511, 517 (Mo. Ct. App. W.D. 2011). This compensation includes medical treatment. *Id.* at 517-18 (citing § 287.140). "The legal standard for determining an employer's obligation to afford medical care is clearly and plainly articulated in section 287.140.1 as whether the treatment is ***reasonably required to cure and relieve the effects of the injury.***" *Id.* at 518 (emphasis original).

8. Officer Stratton is entitled to costs of $21,983.64 under section 287.560.

The Workers' Compensation Act provides "that if the division or the commission determines that any proceedings have been brought, prosecuted or defended without reasonable ground, it may assess the whole cost of the proceedings upon the party who so brought, prosecuted or defended them." MO. REV. STAT. § 287.560. The "whole cost of the proceedings" has been defined "to include everything the innocent party expended in the proceeding ... including her attorney fees." *Landman v. Ice Cream Specialties, Inc.*, 107 S.W.3d 240, 252 (Mo. 2003) *overruled on other grounds by Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo. 2003). "The [Division] should only exercise its discretion to order the cost of proceedings under section 287.560 where the issue is clear and the offense egregious." *Id.* at 250.

In *Landman*, the employer agreed to provide treatment for the employee's injury if a doctor of its choosing found the injury to be work-related. *Id.* at 250. When the doctor it chose found the injury to be work-related, the employer still refused to provide treatment. *Id.* The Supreme Court held that the employer's conduct was unreasonable because there was no medical or other evidence on which to base its defense. *Id.* The Supreme Court found the employer's conduct "especially unreasonable" because it agreed to provide the treatment recommended by its own doctor. *Id.* As a result of this unreasonable defense, the Supreme Court upheld the award of attorney's fees. *Id.* at 252-53. It held that the 25% lien that the employee's attorney was granted in the award was sufficient evidence of the amount of attorney's fees incurred. *Id.* The Supreme Court specifically noted that the 25% fee was "a reasonable amount, given that 25% is the standard fee in workers' compensation cases." *Id.* at 253. The Supreme Court thus ordered the employer to pay "25% of $35,183.48, the total compensation on the 1999 claim." *Id.*

In another analogous case, the court in *DeLong* awarded attorney's fees and costs to the employee. *DeLong v. Hampton Envelope Co.*, 149 S.W.3d 549, 554-56 (Mo. Ct. App. 2004). There, the ALJ found that the employer unreasonably refused to provide the employee with a prosthesis, even after the authorized treating physician had prescribed a prosthesis. *Id.* at 556. The appellate court upheld the award of sanctions and went a step further:

> Claimant suffered a work-related injury for which the authorized treating doctor prescribed treatment, and Employer has a statutory duty to provide that treatment. In light of the prior proceedings before the ALJ and the Commission, Employer

> could not have concluded in good faith that we would reverse the Commission's award. Therefore, we grant Claimant's motion for sanctions for frivolous appeal...

Id. at 556-57 (*citing Wieda v. Stupp Bros., Inc.*, 52 S.W.3d 602, 603 (Mo. Ct. App. E.D. 2001).

Much like *Landman* and *DeLong*, the City's actions here are egregious. As in *Landman* and *DeLong*, the City's chosen physician, Dr. Shen, determined that Officer Stratton's condition was work-related and warranted medical treatment. But the City never offered to provide medical treatment. In fact, the City denied that Officer Stratton's condition was work-related at the Hearing, even though it had no medical or other evidence on which to base its argument. This alone is a sufficient basis for finding that Officer Stratton is entitled to costs and fees under section 287.560. Unfortunately, the City's egregious conduct goes far beyond anything before the *Landman* and *DeLong* courts.

Officer Stratton's testimony painted a disturbing picture unrebutted by credible evidence to the contrary. Mold was observable throughout the City's police station, in ceiling tiles, insulation, and on the walls. Observable mold was confirmed through Officer Stratton's testimony, the pictures he took, as well as multiple reports from health inspectors. Officer Stratton testified that multiple employees complained about the mold. Indeed, the initial health inspection by the Lafayette County Health Department was prompted by complaints from an employee. When confronted with this evidence, the City could have addressed the problems. Instead, it lied.

The Lafayette County Health Department's findings included:

- "[U]pon entering the building I immediately noticed a moldy, musty smell."
- "[O]n the EMS side there was a very strong sewer odor. The carpet throughout ... was visibly water-damaged."
- "Mold was visible on several ceiling tiles throughout."
- "[T]he inspection today indicates that this building has a mold problem."
- "[M]ost survey respondents indicated a sewer smell in the back parts of the building."
- "Sewer gas contains sulfur compounds and methane which may also cause and aggravate the health effects noticed around here."

Armed with this report, and in the face of complaints by employees, City Administrator Jon Holmes continued the City's lie:

The Lafayette Dept. of Health came in and did testing in the walls in numerous areas of the building and found that there was no moisture in the walls, and found no evidence of any mold growing anywhere in the building." (emphasis original)

Administrator Holmes further informed employees that, based on the inspection, he did "not believe that there is any health risk in occupying the PD building."

The City maintained the lie through 2014. After Kansas City news stations inquired about the police station's condition, the City issued another letter to assure employees that the building posed

no risk. *See Exhibit 14.* In this 2014 letter, the City stated that it had received no complaints about mold in the building and that the inquiries from Kansas City news stations were the first inquiries about mold. Of course, by this time, the City had known about the mold for over four years.

This pattern of fraud and misconduct did not end when the building was finally closed in 2014. Instead, the City perpetuated the lie to the Division at Officer Stratton's Final Hearing. It continued to argue that it never received notice of Officer Stratton's complaints or injuries, but failed to produce any evidence to support the argument. This is the same lie it told employees in the 2014 letter, when it informed everyone that it had not received any complaints about the police station.

Officer Stratton presented evidence to establish that his costs equaled $7,911.40, and Ms. Thomas's attorney's fees equal $11,817.14. Of course, the City did not present any evidence to contradict this. I thus award costs under section 287.560 in the amount of $19,728.54.

CONCLUSION

In light of the evidence submitted, I find that Officer William Stratton's work and exposures while employed with the City are the prevailing factor in the development of his occupational disease. I further find that his permanent partial disability is 20% to the body as a whole for his respiratory injuries and 5% to the body as a whole for his psychological injuries, for a total of $47,268.56.

I further find that Officer Stratton is entitled to an award of past due medical bills in the amount of $109,720.34.

I further find that Officer Stratton is entitled to costs and fees for the City's unreasonable defense in the amount of $19,728.54.

I further find that Officer Stratton is entitled to future medical treatment which may reasonably be required to cure and relieve him from the effects of his respiratory and psychological injuries.

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

The compensation awarded to the Employee shall be subject to a 25% lien in favor of Ms. Brianne Thomas, of Boyd, Kenter, Thomas & Parrish, LLC, for reasonable and necessary attorney's fees plus expenses, immediately due, under § 287.260.1 R.S.Mo.

I certify that on 4-3-19, I delivered a copy of the foregoing award to the parties to the case. A complete record of the method of delivery and date of service upon each party is retained with the executed award in the Division's case file.

By _____

Mark Siedlik
Chief Administrative Law Judge
Division of Workers' Compensation

DIVISION OF WORKERS' COMPENSATION
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS