

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

Injury No.: 08-121001

Employee: Ronald Thompson  
Alleged Employer: Corporate Transit of America (settled)  
Insurer: N/A  
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 section 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 section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated June 13, 2011, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge John K. Ottenad, issued June 13, 2011, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 8<sup>th</sup> day of November 2011.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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William F. Ringer, Chairman

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Alice A. Bartlett, Member

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Curtis E. Chick, Jr., Member

Attest:

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Secretary

# AWARD

Employee: Ronald Thompson

Injury No.: 08-121001

Dependents: N/A

Employer: (Alleged) Corporate Transit of America

Before the  
**Division of Workers'  
Compensation**  
Department of Labor and Industrial  
Relations of Missouri  
Jefferson City, Missouri

Additional Party: Second Injury Fund

Insurer: None

Hearing Date: February 15, 2011

Checked by: JKO

## FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No
2. Was the injury or occupational disease compensable under Chapter 287? No
3. Was there an accident or incident of occupational disease under the Law? No
4. Date of accident or onset of occupational disease: April 9, 2008
5. State location where accident occurred or occupational disease was contracted: St. Louis County
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? No
7. Did alleged employer receive proper notice? Yes
8. Did accident or occupational disease arise out of and in the course of the employment? No
9. Was claim for compensation filed within the time required by Law? Yes
10. Was employer insured by above insurer? N/A
11. Describe work employee was doing and how accident occurred or occupational disease contracted: Claimant was struck from behind in a rear-end collision accident, while driving and making deliveries for Corporate Transit of America.
12. Did accident or occupational disease cause death? No Date of death? N/A
13. Part(s) of body injured by accident or occupational disease: N/A
14. Nature and extent of any permanent disability: N/A
15. Compensation paid to-date for temporary disability benefits: \$0.00
16. Value necessary medical aid paid to date by employer/insurer? \$0.00

Employee: Ronald Thompson

Injury No.: 08-121001

- 17. Value necessary medical aid not furnished by alleged employer/insurer? \$5,870.00
- 18. Employee's average weekly wages: N/A
- 19. Weekly compensation rate: N/A
- 20. Method wages computation: N/A

**COMPENSATION PAYABLE**

- 21. Amount of compensation payable:

Alleged Employer previously settled its risk of liability in this case

- 22. Second Injury Fund liability:

Claim denied as Claimant failed to meet his burden of proof in this matter \$0.00

**TOTAL: \$0.00**

- 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.

**FINDINGS OF FACT and RULINGS OF LAW:**

|                   |  |             |   |
|-------------------|--|-------------|---|
| Employee:         | Ronald Thompson                        | Injury No.: | 08-121001   |
| Dependents:       | N/A                                    |             |   |
| Employer:         | (Alleged) Corporate Transit of America |             | Before the<br><b>Division of Workers'<br/>Compensation</b><br>Department of Labor and Industrial<br>Relations of Missouri<br>Jefferson City, Missouri |
| Additional Party: | Second Injury Fund                     |             |   |
| Insurer:          | None                                   | Checked by: | JKO   |

On February 15, 2011, Ronald Thompson appeared in person, *pro se* (without an attorney), for a hearing for a final award on his claim against the Second Injury Fund. The alleged Employer, Corporate Transit of America, which is apparently uninsured, was not present or represented at the hearing since it had previously settled its risk of liability in this case. The Second Injury Fund was represented at the hearing by Assistant Attorney General Michael T. Finneran. At the time of the hearing, the parties agreed on certain stipulated facts and identified the issues in dispute. These stipulations and the disputed issues, together with the findings of fact and rulings of law, are set forth below as follows:

**STIPULATIONS:**

- 1) On or about April 9, 2008, Ronald Thompson (Claimant) sustained an accidental injury.
- 2) Venue is proper in the City of St. Louis.
- 3) The alleged Employer received proper notice.
- 4) The Claim was filed within the time prescribed by the law.

**ISSUES:**

- 1) Was there an employee/employer relationship under the statute between Claimant and Corporate Transit of America on the date of injury?
- 2) Did the accident arise out of and in the course of employment?
- 3) Are Claimant's injuries and continuing complaints, as well as any resultant disability, medically causally connected to his accident on April 9, 2008?

- 4) What is the appropriate average weekly wage and rates of compensation for this accident?
- 5) Is Claimant entitled to the payment of past medical expenses in the stipulated amount of \$5,870.00?
- 6) What is the nature and extent of Claimant's permanent partial disability attributable to this accident?
- 7) What is the liability of the Second Injury Fund, primarily for uninsured medical benefits, but also for any other benefits which Claimant may be entitled to receive from the Fund?

**EXHIBITS:**

The following exhibits were admitted into evidence:

***Claimant Exhibits:***

- A. Notice of Pendency of Class and Collective Action from the United States District Court of the Northern District of Illinois
- B. Medical bills from Christian Hospital, Dr. William R. Humphrey II, D.C., Memorial Hospital and Dr. Shawahin of Healthcare Physicians of Southern Illinois, PC

***Second Injury Fund Exhibits:***

- I. Stipulation for Compromise Settlement in Injury Number 08-121001 (Date of Injury of April 9, 2008) between Claimant and alleged Employer
- II. Agreement and Equipment Lease between Claimant and alleged Employer

***Note:*** Any stray marks or handwritten comments contained on any of the exhibits were present on those exhibits at the time they were admitted into evidence, and no other marks have been made since their admission into evidence on February 15, 2011.

***Evidentiary Rulings:***

Claimant offered Exhibit A into evidence. Exhibit A is a document from the United States District Court of the Northern District of Illinois showing the terms of a proposed settlement of a class action lawsuit. It was offered to show that individuals characterized as independent contractors should have been considered as employees and should have been compensated for things such as a lunch hour, lunch breaks and other items. The Second Injury Fund objected that it was not relevant and lacked foundation. The objection is **OVERRULED** and Exhibit A is admitted into evidence in this case.

**FINDINGS OF FACT:**

Based on a comprehensive review of the evidence, including the testimony from Claimant, the medical bills, the Stipulation for Compromise Settlement between Claimant and the alleged Employer in this case, and the other documentary evidence offered by the parties, as well as based on my personal observations of Claimant at hearing, I find:

- 1) **Claimant** testified that he began working for Corporate Transit of America in 2006. His job involved picking up and delivering mail on a certain route at a certain time on an established schedule. Claimant noted that when he first started, he never signed an agreement. It was only when he began the established route, which is the subject of this case, that he signed the referenced agreement. Claimant's schedule in 2008 required him to make two trips on Monday, and one trip Tuesday through Friday, to various banks. Claimant testified that Jennings Station was his last stop before he would proceed to Illinois to make the final drop-off.
- 2) Claimant was paid a flat monthly fee of \$993.60, regardless of how many hours he worked, for his assigned route. He did also receive some extra money for expenses for mileage and reimbursement. Claimant noted that he could run extra routes, if, for instance, someone did not show up. He did not sign a specific agreement before running these additional routes. Therefore, he noted that he was able to generate more income by running the additional routes. He noted that each route paid a different amount of money. When he first started with Corporate Transit of America in 2006, he ran a route from St. Louis to Springfield, Illinois that paid approximately \$20,000.00 a year.
- 3) Claimant identified the **Agreement and Equipment Lease** (Exhibit SIF II) as the contract between him and Corporate Transit of America. He agreed that it was his signature on the last page. In paragraph six of the contract, it is clear that the parties seek to enter into an independent contractor arrangement. In that paragraph, it states that, "Corporation is interested only in the results to be achieved by Independent Contractor, not as to the means whereby they are accomplished, and the conduct and control of the business will lie solely with Independent Contractor." In that paragraph, it also explicitly states that the independent contractor is not an employee of the corporation and it contains an acknowledgment by the independent contractor of a list of benefits, including workers' compensation benefits, which corporation will not provide to the independent contractor. The contract also included paragraphs requiring the independent contractor to have certain equipment, competent and reliable personnel, including a driver, and auto liability insurance for the vehicle used pursuant to this contract. Finally, the contract contained an indemnification provision, requiring the independent contractor to indemnify and hold the corporation harmless from any claims, suits or losses incurred because of an injury to a person, including drivers or helpers.
- 4) Upon reviewing the contract on cross-examination, Claimant agreed that, according to paragraph six, the parties intended to enter into an independent contractor relationship. He agreed that he was paid a gross amount depending on the routes that he undertook for Corporate Transit of America. He was responsible for supplying the vehicle, gas, sufficient insurance on the vehicle and the maintenance of the vehicle. He agreed that,

pursuant to the contract, he was allowed to hire other people to perform the route services, if he so chose, and then he was responsible for paying them out of the contract amount he received for the given route. Claimant acknowledged that he never had state or federal taxes withheld from his pay by Corporate Transit of America. He received no sick or vacation pay or benefits, and, in fact, he received no benefits at all from Corporate Transit of America. Claimant acknowledged that there could be deductions from the contract amount for any leased items, but Claimant admitted that he never leased any items or equipment from Corporate Transit of America while he provided services for them. He provided everything himself that he needed to perform the duties in the contract. Claimant also admitted knowledge of the indemnification provision in the contract, as described above. Claimant further agreed that he could have controlled several routes and provided the cars, drivers, etc. to perform those routes, but he never entertained that idea because he said, "That would increase my liability."

- 5) Claimant testified that on April 8, 2008 [sic], between three and four o'clock in the afternoon, he was travelling south on Highway 367 headed to Jennings Station Road to make a drop-off and delivery as a courier for Corporate Transit of America, when his car was rear-ended.
- 6) Claimant testified that he was transported by ambulance to Christian Hospital. Claimant contacted Corporate Transit of America to tell them about his accident and another employee came to the hospital to pick up his mailbags to finish his drop-offs and deliveries. Claimant said that was the last contact that he had with anyone from Corporate Transit of America.
- 7) Claimant testified that he was unemployed from that point until July when he started working at the Lumiere Place Casino.
- 8) Claimant testified that his injuries were related to the accident that occurred while driving for the alleged Employer. He said that he sought treatment from his own doctor and from Dr. Humphrey, who administered therapy for his injuries.
- 9) Claimant testified that during his medical treatment following the accident, he was told that he had soft tissue damage in his upper back in the right shoulder area. He testified that in his current position as a class service specialist, he has to do a lot of typing and data entry, so he experiences pain. He explained that with the constant use of the shoulder, he gets pain and a feeling of tightness in the upper back. He said that the doctor recommended that he get massage therapy to treat the pain, so he continues to see a massage therapist on his own.
- 10) Claimant submitted **various medical bills** (Exhibit B) into evidence that he alleged he incurred as a result of the car accident on April 9, 2008. These included a bill from **Christian Hospital** (Exhibit B) for a date of service of April 9, 2008 for an emergency room visit and some X-rays totaling \$1,732.00. According to the bill in evidence, the whole \$1,732.00 has already been paid by a combination of Blue Cross Cash and Anthem Blue Cross.

- 11) The next bill in evidence is from **Dr. William Humphrey II, D.C.** (Exhibit B) showing dates of service from April 15, 2008 through July 11, 2008. The bill showed a total amount for Claimant's treatment of \$2,140.00. It also showed that there were payments of \$2,073.44 in October 2009. The last entry on the bill dated October 24, 2009, shows a zero balance owed from Claimant for this treatment.
- 12) There are bills from **Dr. Shawahin at Healthcare Physicians of Southern Illinois, PC** (Exhibit B) showing dates of service following the accident of April 14, 2008 and May 6, 2008. There are amounts billed for these dates for a total of \$166.00, of which Blue Cross of Missouri paid \$49.00 and there was a payment by check of \$.50. There was also an adjustment of \$27.00 from Blue Cross of Missouri, leaving a balance due on these bills of \$89.50.
- 13) Finally, there was a bill from **Memorial Hospital** (Exhibit B) for a date of service of April 29, 2008 for a CAT scan and pharmacy totaling \$1,832.00. The bill indicates that \$26.00 was paid by insurance, leaving a balance of \$1,806.00.
- 14) While Claimant submitted medical bills for treatment into evidence, he declined to submit any medical records for his treatment into evidence in this case. Claimant testified that he was comfortable with just submitting the medical bills in terms of meeting his burden of proof in this matter.
- 15) The **Notice of Pendency of Class and Collective Action from the United States District Court of the Northern District of Illinois** (Exhibit A) is the official notice from the Federal District Court of a class action lawsuit between individuals classified as independent contractors and Corporate Transit of America. Given the timeframe listed in the document, it would appear that Claimant would fall within the class, if he chose to participate and did not opt out of any potential settlement. The document does cover a potential settlement that had been reached between the parties, subject to approval by the Federal District Court. In reviewing the document, it is clear that the subject of the suit, whether individuals working for Corporate Transit of America should have been classified as employees or independent contractors, is an issue at the heart of the Workers' Compensation case at bar. However, in the body of the document, there is a specific section entitled, "THIS SETTLEMENT IS NOT AN ADMISSION OF LIABILITY." That section specially states that, "Nothing in the Settlement is intended to or should be construed as an admission by CBT that Plaintiffs' claims in the Class Action or Collective Action litigation have merit or that the companies have any liability to Plaintiffs or the Proposed Settlement Class on those claims." It continues, "Specifically, CBT denies that Plaintiffs and the Class are owed any compensation as a result of the alleged misclassification of drivers or couriers as independent contractors."
- 16) Claimant and the alleged Employer entered into an agreement to resolve Injury Number 08-121001 (Date of Injury of April 9, 2008) by **Stipulation for Compromise Settlement** (Exhibit SIF I). The parties reached a compromise of all issues, including "Employee/Employer relationship, Independent Contractor issue, TTD, medical [and] PPD" for the payment of \$1,500.00. The alleged Employer had not paid any other benefits in this case. The Second Injury Fund Claim was left open on the Stipulation. I approved

the Stipulation for Compromise Settlement between Claimant and the alleged Employer on June 23, 2009.

17) On cross-examination, Claimant admitted that in the Stipulation (Exhibit SIF I), there was a provision indicating that Corporate Transit of America agreed to waive any subrogation claim arising out of the April 9, 2008 event. Claimant further admitted that that provision was placed in the Stipulation because he had, in fact, recovered from a third party civil action in connection with this accident. He noted that he received a \$20,000.00 settlement from his insurance company, from which he netted \$13,000.00. In reviewing the medical bills placed in evidence at trial, Claimant admitted that the bill from Dr. Humphrey shows that it was paid, because Claimant's attorney in the civil case paid Dr. Humphrey out of the proceeds of the civil settlement. Claimant was unable to provide any written documentation regarding the third party settlement, because his wife had already destroyed all of those documents.

18) Claimant admitted that he did not have his own Workers' Compensation insurance to cover himself as an independent contractor.

### **RULINGS OF LAW:**

Based on a comprehensive review of the evidence described above, including the testimony from Claimant, the medical bills, the Stipulation for Compromise Settlement between Claimant and the alleged Employer in this case, and the other documentary evidence offered by the parties, as well as based on my personal observations of Claimant at hearing, and based upon the applicable laws of the State of Missouri, I find the following:

Before making specific rulings on the issues in dispute in this case, in light of Claimant's proposed award and the issues he put in dispute at trial, I find it necessary to discuss the parameters of the Missouri Workers' Compensation Law as it relates to this case. At trial, Claimant's rate of compensation and his entitlement to permanent partial disability were put in dispute. However, Claimant settled his case against the alleged Employer prior to trial, foreclosing the possibility that the alleged Employer would have any responsibility for any further benefits in this matter. Additionally, Claimant put at issue the Second Injury Fund's responsibility, not only for uninsured medical benefits, but also any other benefits to which he may be entitled from the Fund. Given that there was no evidence introduced as to a second employment, which might give rise to a wage loss benefit, and no evidence of any pre-existing disability, which might give rise to a permanent partial disability award against the Fund, I find that there are no other possible benefits to which Claimant may be entitled from the Fund, other than perhaps uninsured medical benefits, if Claimant would otherwise meet his burden of proof in that regard.

I am also mindful that Claimant in his post-trial proposed award has requested a substantial payment to compensate him for things such as: The termination of his employment due to his being injured on the job; his loss of income; his continued pain and discomfort in the upper back area he relates to this accident, and which caused him to leave another subsequent employment; his denial of benefits and rights as an employee of Corporate Transit of America, including Workers'

Compensation and sick pay and days; and also his outstanding medical bills. Of all of these things for which Claimant would like to be compensated, I find that only the medical bills related to his treatment for the accident would be properly payable under the Worker's Compensation Law by the Second Injury Fund, assuming Claimant is able to otherwise meet his burden of proof in that regard. The Second Injury Fund would not have any responsibility for money allegedly owed as a result of Claimant's termination by the alleged Employer, his loss of income, his continued pain and discomfort in the upper back and the effect that has on his ability to work, or his denial of employment benefits by the alleged Employer. Further, to the extent that even the alleged Employer had any responsibility for any payments for those issues (some of which are completely outside the purview of the Workers' Compensation Law), that liability was completely extinguished when Claimant and the alleged Employer entered into the Stipulation for Compromise Settlement to resolve their part of this case on June 23, 2009.

In light of that settlement and the fact that the alleged Employer has no further liability for this accident, as well as understanding that the Second Injury Fund could not have liability for these types of benefits under the statute in this case, I find that issues 4 (average weekly wage and rates of compensation) and 6 (nature and extent of permanent partial disability) are moot. Consequently, they will not be ruled on, or otherwise dealt with, in this award.

***Issue 1: Was there an employee/employer relationship under the statute between Claimant and Corporate Transit of America on the date of injury?***

***Issue 2: Did the accident arise out of and in the course of employment?***

***Issue 3: Are Claimant's injuries and continuing complaints, as well as any resultant disability, medically causally connected to his accident on April 9, 2008?***

Given that these three issues are so inter-related in this case, I will deal with all three issues in the same section of the award.

Considering the date of the injury, it is important to note that the new statutory provisions are in effect including, **Mo. Rev. Stat. § 287.800 (2005)**, which mandates that the Court "shall construe the provisions of this chapter strictly" and that "the division of workers' compensation shall weigh the evidence impartially without giving the benefit of the doubt to any party when weighing evidence and resolving factual conflicts." Additionally, **Mo. Rev. Stat. § 287.808 (2005)** establishes the burden of proof that must be met to maintain a claim under this chapter. That section states, "In asserting any claim or defense based on a factual proposition, the party asserting such claim or defense must establish that such proposition is more likely to be true than not true."

Claimant bears the burden of proof on all essential elements of his Workers' Compensation case. ***Fischer v. Archdiocese of St. Louis-Cardinal Ritter Institute***, 793 S.W.2d 195 (Mo. App. E.D. 1990) *overruled on other grounds by Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo. 2003). The fact finder is charged with passing on the credibility of all witnesses and may disbelieve testimony absent contradictory evidence. ***Id.*** at 199.

Under **Mo. Rev. Stat. § 287.030.1 (1) (2005)**, the word “employer” as used in the Workers’ Compensation statute is defined as, “Every person...using the service of another for pay.” Similarly, under **Mo. Rev. Stat. § 287.020.1 (2005)**, the word “employee” as used in the Workers’ Compensation statute is defined as, “every person in the service of any employer, as defined in this chapter, under any contract for hire, express or implied, oral or written, or under any appointment or election, including executive officers of corporations.”

The main question for consideration is whether Claimant is an employee of the alleged Employer under the statute, or whether instead, he is an independent contractor. If Claimant is, in fact, an independent contractor, then the alleged Employer, and, thus, the Second Injury Fund, bears no responsibility for the Claim filed by Claimant in this case. Although the statute contains definitions of employee and employer as listed above, there is no specific definition in the statute for what constitutes an independent contractor. However, the Court in *Vaseleou v. St. Louis Realty & Securities Co.*, 130 S.W.2d 538, 539 (Mo. 1939) defined the term independent contractor. The Court said, “An ‘independent contractor’ is one who, exercising an independent employment, contracts to do a piece of work according to his own methods, without being subject to the control of his employer, except as to the result of his work.” Courts have routinely held that the status of an individual as an employee or an independent contractor depends heavily on the facts of the particular case. In *Miller v. Hirschbach Motor Lines, Inc.*, 714 S.W.2d 652, 656 (Mo. App. S.D. 1986), the Court noted that the employee/employer relationship depends on controllable service, and while the contractual designation of work status is not to be ignored, it is also not conclusive when there is evidence to overcome the designation.

Courts have also enumerated some of the various factors to take into account when trying to determine if a right to control, and, thus, an employee/employer relationship, as opposed to an independent contractor relationship, exists. Those factors include: 1) The extent of control; 2) the actual exercise of control; 3) the duration of the employment; 4) the right to discharge; 5) the method of payment; 6) the degree to which the alleged employer furnished equipment; 7) the extent to which the work was the regular business of the alleged employer; and 8) the employment contract. *Hutchison v. St. Louis Altenheim*, 858 S.W.2d 304, 305 (Mo. App. E.D. 1993) *overruled on other grounds by Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo. 2003).

Based on the evidence in the record, I find that there is no question but that the contract entered into by Claimant and Corporate Transit of America (Exhibit SIF II) prior to Claimant beginning his work on this specific route, meant to categorize the employment relationship as that of an independent contractor, not an employee/employer relationship. That fact is specifically stated a number of times throughout the document, and I find Claimant also clearly understood that to be the case when he entered into the contract.

While the fact that the contract calls Claimant an independent contractor is not necessarily dispositive of this case, there are a number of other factors contained in the contract and in Claimant’s testimony, that similarly lead me to conclude that this was, in fact, an independent contractor, not an employee/employer, relationship. The contract specifically states that, “Corporation is interested only in the results to be achieved by Independent Contractor, not as to the means whereby they are accomplished, and the conduct and control of the business will lie solely with Independent Contractor.” This statement, regarding Claimant, not the alleged Employer, having control over the method by which the work is done was supported by Claimant’s testimony that he

could have hired others to drive and do the work, if he so chose. However, Claimant testified he did not want the extra liability that comes with having others working for him, so that is why he did not do it. That testimony from Claimant confirmed that he knew exactly what the difference was between an employee and an independent contractor.

In addition to Claimant having the control over the method by which the work was done, Claimant admitted that he supplied all of the equipment and he neither leased nor received anything from the alleged Employer in order to complete the work given him in the contract. Additionally, Claimant was paid a flat monthly amount for the route, regardless of the amount of time it took him to complete the route each day, and also regardless of whether he performed the work himself or hired someone else to perform it in his place.

Claimant argues that the Notice of Pendency of Class and Collective Action from the United States District Court of the Northern District of Illinois (Exhibit A) should be construed as an admission by the alleged Employer that, in fact, he is an employee and not an independent contractor. He cites this notice from the Federal District Court as his main piece of evidence to show that he should have been properly considered an employee and not an independent contractor. However, this notice from the Federal District Court is just that, a notice of a potential settlement. It is in no way an order, finding or any type of adjudication by the Court on this employment issue. In fact, the notice contains a section explicitly titled, "THIS SETTLEMENT IS NOT AN ADMISSION OF LIABILITY." That section specially states that, "Nothing in the Settlement is intended to or should be construed as an admission by CBT that Plaintiffs' claims in the Class Action or Collective Action litigation have merit or that the companies have any liability to Plaintiffs or the Proposed Settlement Class on those claims." It continues, "Specifically, CBT denies that Plaintiffs and the Class are owed any compensation as a result of the alleged misclassification of drivers or couriers as independent contractors." In light of this specific wording in the notice, I find that it is impossible to construe this as any type of probative evidence on this issue. Essentially, I find that it does not help Claimant meet his burden of proof on this employee/employer relationship issue.

Having reviewed all of the evidence in the record, I find that Claimant was an independent contractor, by virtue of his exercise of control over the method by which the work was performed, the method of payment, the fact that he furnished all of his own equipment, and by virtue of the plain wording of the contract which he entered into with Corporate Transit of America before beginning the route on which he sustained his accident. Thus, since Claimant is properly considered to be an independent contractor, I find that there was no employee/employer relationship under the Workers' Compensation Law and no valid Claim against the Second Injury Fund in this case.

Since I have now determined that there was no employee/employer relationship between Claimant and Corporate Transit of America under the statute, I further find that the rear-end motor vehicle accident on April 9, 2008 did not arise out of or in the course of his employment. Without an employee/employer relationship, there is no employment relationship for the accident to have arisen out of. Instead, the accident arose out of Claimant's own duties as an independent contractor.

Finally, the parties placed the medical causation of Claimant's injuries and complaints at issue in this case. Despite medical causation being an issue at trial, Claimant placed no medical treatment records or opinions in evidence to meet his burden of proof on this issue. Without one shred of

medical evidence in the record, I find that Claimant has failed to meet his burden of proof on this issue, thus, providing another independent reason for the Claim to be denied.

Therefore, Claimant's Claim against the Second Injury Fund in this matter is denied, not only based on the fact that he failed to prove an employee/employer relationship under the statute, since he was, in fact, an independent contractor, but also because Claimant failed to prove the accident arose out of or in the course of his employment, and further failed to prove that his injuries and continuing complaints were medically causally connected to his accident on April 9, 2008.

***Issue 5: Is Claimant entitled to the payment of past medical expenses in the stipulated amount of \$5,870.00?***

Under **Mo. Rev. Stat. § 287.140.1 (2005)**, “the employee shall receive and the employer shall provide such medical, surgical, chiropractic and hospital treatment...as may reasonably be required after the injury or disability, to cure and relieve from the effects of the injury. **Mo. Rev. Stat. § 287.140.3 (2005)** also states, “All fees and charges under this chapter shall be fair and reasonable...” Claimant bears the burden of proving these elements of the claim.

The Supreme Court addressed the proof necessary for the claimant to meet his burden of proof on this issue. In ***Martin v. Mid-America Farm Lines, Inc.***, 769 S.W.2d 105 (Mo. 1989), the employee testified that her visits to the hospital and various doctors were the product of her fall. She also testified that the bills she received were the result of those visits. The Court held, “when such testimony accompanies the bills, which the employee identifies as being related to and the product of her injury, and when the bills relate to the professional services rendered as shown by the medical records in evidence, a sufficient factual basis exists for the commission to award compensation.” ***Id. at 111-112***. The Court went on to further hold that, “The employer, of course, may challenge the reasonableness or fairness of these bills or may show that the medical expenses incurred were not related to the injury in question.” ***Id. at 112***.

Applying the Supreme Court's standard in ***Martin***, Claimant has failed to meet his burden of proof regarding the medical bills in this case because, although he submitted medical bills into evidence and alleged that they were related to the accident, he did not place any of the accompanying medical records in evidence. Quite frankly, it is impossible to tell on many of the bills in evidence what treatment was provided, what body parts were addressed and what diagnoses were made, much less, whether any of it was rendered as a result of the April 9, 2008 accident or not. Without any of the accompanying medical records in evidence to connect the bills to professional services rendered on account of the accident, I find that an insufficient factual basis exists, and an award of compensation for the bills cannot be made.

The situation raised in the case at bar, with Claimant placing none of the accompanying medical treatment records into evidence with the bills, is analogous to another Eastern District case where the Court already provided guidance on this issue. In ***Meyer v. Superior Insulating Tape***, 882 S.W.2d 735 (Mo. App. E.D. 1994) *overruled on other grounds by Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo. 2003), the Court held that the Commission properly found the employer was not responsible for the unpaid medical bills when employee failed to show the bills related to

professional services because medical records were not in evidence. In that case, employee provided testimony that the bills were related to the injury and placed the bills into evidence, but did not place the medical records into evidence. The same exact testimony from Claimant, with the medical bills but no medical records, was offered in the case at bar. Therefore, applying the holding in *Meyer*, the alleged Employer (and Second Injury Fund) is not responsible for the unpaid medical bills without the medical records in evidence.

Therefore, even if Claimant was to get past the initial three issues in this matter, which each serve as valid reasons for the denial of this Claim, Claimant has further failed to meet his burden of proof to show an entitlement to the payment of the \$5,870.00 in medical expenses he allegedly incurred in connection with the April 9, 2008 accident, by failing to place the accompanying medical treatment records in evidence. On this additional, independent basis, Claimant's Claim for benefits from the Second Injury Fund is denied.

***Issue 7: What is the liability of the Second Injury Fund, primarily for uninsured medical benefits, but also for any other benefits which Claimant may be entitled to receive from the Fund?***

As referenced in the initial paragraphs in the Rulings of Law Section of this Award above, based on the evidence that Claimant did produce at the hearing, the only possible benefit he could have been entitled to receive, assuming he could have otherwise met his burden of proof, would have been a payment for uninsured medical benefits. For the reasons discussed above, I have already found, for various reasons, that Claimant failed to meet that burden of proof in this matter. However, I find that there is yet another separate reason why Claimant is not entitled to receive any payment for uninsured medical benefits from the Second Injury Fund on account of this accident.

**Mo. Rev. Stat. § 287.220.5 (2005)** states, "If an employer fails to insure or self-insure as required in section 287.280, funds from the second injury fund may be withdrawn to cover the fair, reasonable, and necessary expenses to cure and relieve the effects of the injury or disability of an injured employee in the employ of an uninsured employer, or in the case of death of an employee in the employ of an uninsured employer, funds from the second injury fund may be withdrawn to cover fair, reasonable, and necessary expenses in the manner required in sections 287.240 and 287.241." The section further states that the Fund "shall have the same defenses to such claims as would the uninsured employer."

In this case, Claimant reached a settlement with the alleged Employer to resolve all issues and disputes for the payment of \$1,500.00. The issues compromised by the parties as a part of this settlement included "Employee/Employer relationship, Independent Contractor issue, TTD, medical [and] PPD." Essentially then, Claimant eliminated the alleged Employer's liability for any of these issues, including the medical bills, by virtue of the settlement. If Claimant decided to try to continue to pursue the alleged Employer for the payment of the medical bills, the alleged Employer would have a valid *res judicata* or estoppel by judgment defense. Therefore, with regard to the Fund's alleged liability for those same medical bills, by operation of the statute referenced above, the Fund stands in the shoes of the alleged Employer and enjoys the same defense of *res judicata* or estoppel by judgment that alleged Employer would be able to raise.

Although Claimant and the alleged Employer technically left the Second Injury Fund Claim “open” according to the terms of the settlement document, when they reached their agreement on June 23, 2009, that wording in the Stipulation cannot be construed as an indication that the Fund’s right to stand in the alleged Employer’s shoes and claim a *res judicata* defense on the medical bills, was somehow eliminated. First and foremost, the Second Injury Fund was not a party to that settlement and cannot, then, be bound by the terms of it. But more importantly, since there are a number of different benefits that could possibly be paid out of the Second Injury Fund (uninsured medical benefits, wage loss benefits or permanent disability benefits based on a combination of disabilities), although I find Claimant was essentially eliminating his ability to make a claim for uninsured medical benefits, by operation of the statute, when he entered into the Stipulation with the alleged Employer, I also find that Claimant still had the opportunity to pursue any of these other benefits, if he was able to meet his burden of proof in that regard. In this case, however, Claimant was unable to prove an entitlement to any Second Injury Fund benefits, thus, resulting in the ultimate denial of his Fund Claim.

Accordingly, for this separate and distinct reason, I again find that the Second Injury Fund Claim is properly denied and no benefits are awarded in this case.

**CONCLUSION:**

Claimant sustained an accident on April 9, 2008, when he was struck from behind in a rear-end motor vehicle accident, while driving and making deliveries for Corporate Transit of America. Claimant failed to prove an employee/employer relationship under the statute, since he was, in fact, an independent contractor of Corporate Transit of America. Claimant also failed to prove the accident arose out of or in the course of his employment with Corporate Transit of America, and further failed to prove that his injuries and continuing complaints were medically causally connected to his accident on April 9, 2008. Even if Claimant was to get past the initial three issues in this matter, which each serve as valid reasons for the denial of this Claim, Claimant has further failed to meet his burden of proof to show an entitlement to the payment of the \$5,870.00 in medical expenses he allegedly incurred in connection with the April 9, 2008 accident, by failing to place the accompanying medical treatment records in evidence. Finally, with regard to the Fund's alleged liability for the medical bills, by operation of the statute referenced above, the Second Injury Fund stands in the shoes of the alleged Employer and enjoys the same defense of *res judicata* or estoppel by judgment that alleged Employer would be able to raise, based on the prior settlement of that issue as documented in the Stipulation for Compromise Settlement between Claimant and the alleged Employer. Therefore, for these five separate and distinct reasons, the Claim against the Second Injury Fund in this matter is denied and no benefits are awarded.

Date: \_\_\_\_\_

Made by: \_\_\_\_\_

JOHN K. OTTENAD  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

\_\_\_\_\_  
 Naomi Pearson  
*Division of Workers' Compensation*