

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

Injury No.: 95-102424

Employee: James Truelove  
Employer: FAG Bearing  
Insurer: Liberty Mutual Insurance Co.

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 entire record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award of the administrative law judge dated January 20, 2009.

We note, though, that during oral arguments before the Commission, counsel for employer raised an issue regarding employee's compensation rate. Our review of the transcript shows that the parties stipulated to employee's average weekly wage and temporary total and permanent total disability rates. We will not disturb those stipulated rates.

The award and decision of Chief Administrative Law Judge L. Timothy Wilson, issued January 20, 2009, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 10<sup>th</sup> day of September 2009.

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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John J. Hickey, Member

Attest:

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Secretary

## AWARD

Employee: James Truelove

Injury No: 95-102424

Dependents: N/A

Employer: FAG Bearing

Additional Party: N/A

Insurer: Liberty Mutual Insurance Company

Hearing Date: October 14, 2008

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

Checked by: LTW

### 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: MARCH 18, 1995
5. State location where accident occurred or occupational disease was contracted: JASPER COUNTY, MO
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:  
EXPOSURE TO TCE WHILE PERFORMING WORK FOR THE EMPLOYER
12. Did accident or occupational disease cause death? NO
13. Part(s) of body injured by accident or occupational disease: DEMENTIA
14. Nature and extent of any permanent disability: PERMANENT TOTAL DISABILITY
15. Compensation paid to-date for temporary disability: -0-
16. Value necessary medical aid paid to date by employer/insurer? -0-
17. Value necessary medical aid not furnished by employer/insurer? N/A

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- 18. Employee's average weekly wages: \$558.56
- 19. Weekly compensation rate: \$372.33/\$249.48
- 20. Method wages computation: STIPULATION

**COMPENSATION PAYABLE**

- 21. Amount of compensation payable:

Unpaid medical expenses: -0-

22 4/7 weeks of temporary total disability (or temporary partial disability): \$8,404.06

weeks of permanent partial disability from Employer: N/A

-0- weeks of disfigurement from Employer

Permanent total disability benefits from Employer beginning August 24, 1995, for claimant's lifetime

- 22. Second Injury Fund liability: NO

TOTAL: UNDETERMINED

- 23. Future requirements awarded: Payment of Permanent Total Disability Compensation Only

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

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

JOHN WISE

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

Employee: James Truelove

Injury No: 95-102424

Dependents: N/A

Employer: FAG Bearing

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

Employee: James Truelove

Injury No. 95-102424

Additional Party: N/A

Insurer: Liberty Mutual Insurance Company

Hearing Date: October 14, 2008

Checked by: LTW

## AWARD ON HEARING

The above-referenced workers' compensation claim was heard before the undersigned Administrative Law Judge on October 14, 2008. The parties were afforded an opportunity to submit briefs, resulting in the record being completed and submitted to the undersigned on or about October 28, 2008.

The employee James Truelove appeared personally and by his attorney, John Wise, Esq. The employer FAG Bearing, and its insurer Liberty Mutual Insurance Co. appeared through their legal counsel James Blickhan, Esq.

### ***Consolidation of Injury Nos. 95-102424 & 95-110449 (into Injury No. 95-102424)***

Prior to commencement of the evidentiary hearing, the employee, by counsel, moved to consolidate Injury Nos. 95-102424 & 95-110449 into Injury No. 95-102424 as a single file; and, the employee, by counsel, further moved to consolidate all pleadings filed in the above-referenced two files into Injury No. 95-102424. Without objection, the motion is sustained. The file, Injury No. 95-110449, including all pleadings, shall be consolidated into Injury No. 95-102424, and all reference to Injury No. 95-110449 shall relate to and be part of Injury No. 95-102424.

The parties entered into a stipulation of facts. The stipulation is as follows:

- (1) On or about March 18, 1995 FAG Bearing was an employer operating under and subject to The Missouri Workers' Compensation Law, and during this time was fully insured by Liberty Mutual Insurance Co.
- (2) On the alleged injury date of March 18, 1995 James Truelove was an employee of the employer, and was working under and subject to The Missouri Workers' Compensation Law.
- (3) The above-referenced employment and alleged incident of occupational disease occurred in Jasper County, Missouri. The parties agree to venue lying in Newton County, Missouri. Venue is proper.
- (4) At the time of the alleged incident of occupational disease the claimant's average weekly wage was \$558.56, which is sufficient to allow a compensation rate of \$372.33 for temporary total or permanent total disability compensation, and a compensation rate of \$249.48 for permanent partial disability compensation.

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- (5) Temporary disability benefits have not been provided to the employee.
- (6) The employer and insurer have not provided medical treatment to the employee.
- (7) The employee's last date of employment with the employer was March 18, 1995.
- (8) The employer (FAG Bearing) paid \$7,800.00 to the employee under a self-insured employment short-term disability policy.

The sole issues to be resolved by hearing include:

- (1) Whether the claimant sustained an incident of occupational disease on or about March 18, 1995; and, if so, whether the incident of occupational disease arose out of and in the course of Mr. Truelove's employment with FAG Bearing?
- (2) Whether the Claim for Compensation was filed within the time prescribed by Section 287.430, RSMo?
- (3) Whether the alleged incident of occupational disease caused the injuries and disabilities for which benefits are now being claimed?
- (4) Whether the claimant has sustained injuries that will require additional or future medical care in order to cure and relieve the claimant of the effects of the injuries?
- (5) Whether the claimant is entitled to temporary disability benefits? (The employee seeks temporary total disability compensation, payable for the period of March 18, 1995 to the point of being determined to be at maximum medical improvement and entitled to receipt of permanent total disability compensation.)
- (6) Whether the claimant sustained any permanent disability as a consequence of the alleged incident of occupational disease; and, if so, what is the nature and extent of the disability?
- (7) Whether the employer and insurer are entitled to a credit and reimbursement of the monies (\$7,800.00) paid to the employee under an employment disability policy?

### **EVIDENCE PRESENTED**

The employee, James Truelove, did not testify at the evidentiary hearing, although he did present testimony through the parties taking of his deposition. Nor did Mr. Truelove present any

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witnesses appearing in person at the evidentiary hearing. In addition, the employee offered for admission the following exhibits:

- Exhibit A.....Deposition of James Truelove
- Exhibit B..... Deposition of Craig Steven Heligman, M.D.  
(with attached medical records)
- Exhibit C.....Deposition of P. Brent Koprivica, M.D.  
(with attached medical records)

The exhibits were received and admitted into evidence.

The employer and insurer did not present any witnesses at the hearing of this case. The employer and insurer, however, offered for admission the following exhibits:

- Exhibit 1.....Deposition of Allen J. Parmet, M.D.
- Exhibit 2.....Short-term Disability Statement

The exhibits were received and admitted into evidence.

In addition, the parties identified several documents filed with the Division of Workers' Compensation, which were made part of a single exhibit identified as the Legal File. The undersigned took official or judicial notice of the documents contained in the Legal File, which include:

- Minute Entries (Injury No. 95-102424)
- Notice of Hearing (Injury No. 95-102424)
- Request for Hearing-Final Award (Injury No. 95-102424)
- Answer of Employer & Insurer to Claim for Compensation (Injury No. 95-102424)
- Claim for Compensation (Injury No. 95-102424)
- Report of Injury (Injury No. 95-102424)
- Minute Entries (formerly Injury No. 95-110449 / now Injury No. 95-102424)
- Notice of Hearing (formerly Injury No. 95-110449 / now Injury No. 95-102424)
- Request for Hearing-Final Award (formerly Injury No. 95-110449 / now Injury No. 95-102424)
- Answer of Employer & Insurer to Claim for Compensation (formerly Injury No. 95-110449 / now Injury No. 95-102424)
- Claim for Compensation (formerly Injury No. 95-110449 / now Injury No. 95-102424)

All exhibits appear as the exhibits were received and admitted into evidence at the evidentiary hearing. There has been no alteration (including highlighting or underscoring) of any exhibit by the undersigned judge.

### **DISCUSSION**

The employee, James Truelove, is 62 years of age, having been born on October 30, 1947. Mr. Truelove resides with his wife in Duenweg, Missouri.

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Mr. Truelove enjoys limited post-secondary education. Although Mr. Truelove did not graduate from high school, he received a GED, and later obtained an Associate Arts degree from Columbia College. In addition, prior to engaging in employment with FAG Bearing, Mr. Truelove joined the Air Force, and served the military as a classified mail carrier. Following his tenure with the military, Mr. Truelove took machinist training at Franklin Technical School.

Mr. Truelove is not presently engaged in any employment, and has not engaged in any employment since terminating his employment with FAG Bearing. Mr. Truelove's employment with FAG Bearing began in May 1972 and continued without interruption until he separated from the company on March 18, 1995.

Initially, Mr. Truelove worked for FAG Bearing as a Grade I employee,<sup>1</sup> working in the heat department. Notably, as an employee working in the heat department, Mr. Truelove loaded and unloaded baskets, which contained spindles for water pumps. Later, in or around 1974, Mr. Truelove transferred from the heat department, and began working in the grinding department, which involved running various machines. In the grinding department, Mr. Truelove operated machines that would grind bearings. Mr. Truelove continued to work in the grinding department for the duration of his employment with FAG Bearing; although, periodically Mr. Truelove would work on loan to the heat department or the forge department. (The work in the forge department involved general labor, loading castings in the baskets to knock rust off.)

In his employment with FAG Bearing, Mr. Truelove worked a regular schedule, Monday through Friday, from 7:00 a.m. to 3:00 p.m. At times, he worked overtime and on the weekends. According to Mr. Truelove, during the last year of his employment with FAG Bearing he worked approximately 50 to 60 hours a week.

During the period of his employment with FAG Bearing, beginning in the mid-1970's, Mr. Truelove's employment caused him to suffer exposure to his skin from a chemical, which he identified as Trichloroethylene. Mr. Truelove noted that, in this employment, he cleaned pipes and machines with this chemical, which resulted in him experiencing Trichloroethylene exposure to his skin. Additionally, Mr. Truelove noted that FAG Bearing dumped Trichloroethylene into a pit area, which he would periodically clean out on Saturdays, and this work caused additional exposure.

According to Mr. Truelove, he was exposed to trichloroethylene ("TCE") through the 1970's and continuing into the 1980s. Mr. Truelove further noted that the exposure occurred primarily to his hands, but included spills on his pant legs. The exposure during this period occurred through FAG Bearing's use of trichloroethylene, which the company used as a cleanser, while Mr. Truelove cleaned pipes and machines, as well as from his cleaning out the pit area. (Mr. Truelove noted that he obtained this chemical through the company's "ball-making machine," which he dispensed by a hose into a bucket. Then, with a shop towel or a wire brush, he would dip the towel or wire brush into the bucket and use the towel or wire brush to clean the pipes and machines.)

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<sup>1</sup> Mr. Truelove noted that, when he first engaged in employment with FAG Bearing, the company designated employee classifications by grade, grades I through V.

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In discussing his exposure to trichloroethylene, Mr. Truelove stated that, upon using this chemical he experienced redness on his hands. Also, according to Mr. Truelove, the cleaning out of the pit area caused him to experience “rapid heart beats and dizziness.” Additionally, Mr. Truelove noted that, in the course of working with this chemical, the chemical would get inside his work boots, which caused him to suffer cracks in his feet, and his “feet would crack” – “they would break open or ... get scaley and break, have cracks in them.” Notably, in regards to his feet, Mr. Truelove noted that the cracking as being different from dry skin.

Mr. Truelove terminated his employment with FAG Bearing in March 2005 because he was experiencing health problems. In discussing his medical concerns, Mr. Truelove noted that, in March 1995, he was suffering from severe migraine headaches, vision problems, muscle aches, trembling in his hands and arms, blackouts, and memory loss. In discussing his vision concerns, Mr. Truelove stated that he experienced flashing in his eyes; and, at times, he would completely lose his vision. Moreover, in discussion his memory problems, Mr. Truelove testified that he has an “extreme amount of trouble reading,” meaning he does not remember what he just read. Additionally, he experiences trouble remembering dates and times, as well as performing basic math. Relative to this latter concern, Mr. Truelove states that he began to notice a progression of memory problems in the mid-1980’s, and got worse during the last two and a half years he worked for FAG Bearing.

Mr. Truelove testified that, approximately one and one-half years to two years prior to leaving FAG Bearing, he began getting sick, and would have to go home. During these occasions, Mr. Truelove discussed his medical concerns with his supervisor, and a nurse, from work. Eventually, Mr. Truelove began to seek medical care and consultation, including testing and diagnostic studies, for the symptoms and concerns experienced by him. Mr. Truelove’s last date of employment with FAG Bearing was March 18, 1995.

Later, on or about June 20, 1995, upon referral by his personal physician (Dr. Vineyard), Mr. Truelove presented to Craig Heligman, M.D., who is a physician practicing in the specialty of occupational medicine, for an examination and evaluation. (At the time of this examination, Dr. Heligman served as the Director of Employee Health for Occupational Health and Environmental Medicine with University of Kansas Medical Center.) Notably, at the time of this examination, Dr. Heligman took a history from Mr. Truelove, reviewed various medical records, and performed a physical examination of him. In light of his examination and evaluation of Mr. Truelove, Dr. Heligman diagnosed Mr. Truelove as suffering from chemical exposure associated with his use of trichloroethylene. Additionally, Dr. Heligman referred Mr. Truelove to a William Sires, who is a neurologist in the Rehabilitation Department at KU, for neuro behavior testing; and, Dr. Heligman referred Mr. Truelove to a cardiologist in the Cardiology Department at Ku for evaluation of his syncopal episodes.

Thereafter, in early July 1995, Mr. Truelove underwent the examinations recommended by Dr. Heligman. Notably, Dr. Stiers concluded that the neuropsychological and neurobehavioral testing were consistent with “cognitive or neurobehavioral findings associated with organic solvent exposure.

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In light of the subsequent examinations and findings, Dr. Heligman recommended Mr. Truelove undergo a “tilt table test,” which Mr. Truelove underwent on or about July 31, 1995. Dr. Heligman noted that the purpose of the “tilt table test” was to obtain an explanation for the blackouts – more specifically, to determine whether “there was a neurocardiogenic or ... what is commonly known as common faint, and whether that was the mechanism for Mr. Truelove’s blackouts.” According to Dr. Heligman, the “tilt table test” ruled out a cardiac cause of the blackout, and similarly the test ruled out vasovagal blackouts.

In light of the negative findings associated with the aforementioned testing, Dr. Heligman referred Mr. Truelove for further testing to identify the cause of the seizures. In this regard, and noting that Mr. Truelove already had a normal MRI of the brain, Dr. Heligman scheduled Mr. Truelove for an EEG, which Mr. Truelove underwent and which the study was normal. Thereafter, Dr. Heligman concluded that Mr. Truelove was suffering from a medical condition associated with the occupational exposure to TCE.

Shortly thereafter, in August 1995, and after having been advised for the first time that he had suffered a work-related injury, Mr. Truelove filed a Claim for Compensation, seeking benefits under Chapter 287, RSMo.

### ***Medical Testimony***

Dr. Heligman testified by deposition in behalf of the employee. Notably, in identifying Trichloroethylene or “TCE”, Dr. Heligman identified TCE as a “class of chemicals known as an organic solvent.” Dr. Heligman further stated that this chemical is used in many different applications, and is “primarily known as a degreaser because it dissolves fatty materials; can be used to clean other things.” In addition, in identifying some of the risks associated with exposure to TCE, Dr. Heligman propounded the following comments:

Acutely, the exposure can cause dizziness, lightheadedness, some nausea. Many of the organic solvents kind of give you a drunken feeling from an acute exposure, somewhat like you would speculate in someone intoxicated with alcohol. Some more serious side effects can include liver and kidney damage, some central nervous damage.

And, in causally linking Mr. Truelove’s symptoms to his exposure to TCE in his employment with FAG Bearing, Dr. Heligman propounded the following testimony:

Q. Doctor, when you saw Mr. Truelove on June 20, 1995, what were his complaints at this time?

A. Again, his primary complaints were related to tremors. He had reported blackouts; he had reported some cognitive difficulties, some visual changes. He reported episodes of nausea, vomiting, headaches. And, there were things that were intermittent but current remotely. At the time that he was using the material, he reported more specific things, like nausea, vomiting, blackouts at that time; wildly reported blood pressure, dysrhythmias, and things along those lines. He reported that there were some symptoms that were unexplained in his family members around this period as well.

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Q. Doctor, did you conduct a physical examination of Mr. Truelove when you saw him on January 20<sup>th</sup> [sic]?

A. Yes, I did.

Q. What were the significant findings as a result of that examination?

A. The most significant finding was on the neurological examination, and that was the finding of the tremor. That was kind of a – he described it as fine motor tremor of the hands, and it seemed to increase as he reached out for an intention purpose, what we call an intention tremor.

Q. What is an intention tremor?

A. The tremor gets worse as you're moving with intensity towards an object.

Q. What is the significance of that finding?

A. Basically it's just to distinguish it from a resting tremor. I'm not a neurologist, but basically a resting tremor might – may be more common with other neurological disorders or could actually be a spontaneous development. Many people, as they age, will get kind of a fine resting motor tremor at rest.

Q. Dr. Heligman, following your examination of Mr. Truelove on June 20<sup>th</sup>, did you arrive at any initial impressions?

A. I did feel that his report of his chemical exposure to workplace was significant, specifically with regard to the trichloroethylene. He did mention other chemicals which he had been exposed to in the workplace, but the symptoms he reported under the acute exposure did correlate quite well with the acute symptoms trichloroethylene exposure. He also specifically stated that after drinking alcohol he would get flushed. And that is, again, highly reported with acute – when you drink alcohol with an acute exposure to trichloroethylene, TCE, that you have what's called degreaser flush, and he did describe that to me spontaneously.

The other thing that suggests to me that this was, back then, an acute exposure was the description of the use of the equipment, the fact that his clothing was soaked with the material. And to that some of the symptomology that his wife and daughter who had some skin rashes, and it suggests that it potentially could have found some material in the home because they did his laundry. And so that swayed me to think that this was a true exposure.

The delayed effects of organic solvents usually are discussed with regard to its effects on the cognitive effects on the person. And, in fact, there are – excuse me. Mr. Truelove described some difficulties, things that he felt he wasn't able to read as easily; nothing particularly specific, but enough to suggest that he was cognitively impaired by this.

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In opining that Mr. Truelove suffered from an occupational exposure associated with his use of TCE in his employment with FAG Bearing, Dr. Heligman propounded the following testimony:

Q. Doctor, following the EEG testing, at that time did you form an opinion based on the results of all the testing you reviewed and the history you obtained from Mr. Truelove, including the history of exposure to TCE, did you form an opinion as to the most likely cause of his blackouts?

[Objection raised by Attorney for Employer / Insurer]

A. Yes, I did. I felt that we, to the best of our ability, had eliminated cardiac and neurological sources as a cause for the blackouts. Knowing that the TCE can cause effects on the central nervous system, I felt the most likely explanation was that there was some relationship between the trichloroethylene exposure and the blackouts. It appeared to me that the blackouts actually started at the time when he had his exposure and infrequently occurred since that time.

Q. And is that your opinion within a reasonable degree of medical certainty?

A. Yes, it is.

In addition, Dr. Heligman testified that, in light of the blackout and symptoms experienced by Mr. Truelove, he was of the opinion that Mr. Truelove was not able to return to his previous employment with FAG Bearing. Additionally, in light of the cognitive changes experienced by Mr. Truelove, and associated with the occupational exposure to TCE, Dr. Heligman was of the opinion that Mr. Truelove lacked the ability to be retrained for other employment. Notably, in this context, Dr. Heligman opined that, as a consequence of suffering the occupational exposure to Trichloroethylene, Mr. Truelove suffered a permanent injury, which resulted in him being permanently and totally disabled.

P. Brent Koprivica, M.D., who is a physician practicing in the specialty of occupational medicine, testified by deposition in behalf of the employee. Dr. Koprivica performed an independent medical examination of Mr. Truelove on July 27, 2000. At the time of this examination, Dr. Koprivica took a history from Mr. Truelove, reviewed various medical records, and performed a physical examination of him. In light of his examination and evaluation of Mr. Truelove, Dr. Koprivica opined that, in light of Mr. Truelove experiencing occupational exposure to trichloroethylene in his employment with FAG Bearing during the 1970s and continuing into the 1980s, Mr. Truelove suffered an acute and extreme occupational exposure, which causes him to “present with formal neuropsychological evidence of demential secondary to chronic trichloroethylene exposure.” Dr. Koprivica further opined that Mr. Truelove is at maximum medical improvement, and the dementia caused by the chronic long-term exposure to trichloroethylene, renders Mr. Truelove permanently and totally disabled.

Allen J. Parmet, M.D., who is a physician practicing in the specialty of occupational medicine, testified by deposition in behalf of the employer and insurer. Dr. Parmet performed an independent medical examination of Mr. Truelove on July 6, 2001. At the time of this examination, Dr. Parmet took a history from Mr. Truelove, reviewed various medical records, and performed a physical examination of him. In light of his examination and evaluation of Mr. Truelove, Dr. Parmet opined that Mr. Truelove suffers from preexisting and progressive illnesses

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of hypertension obesity, chronic sinus infections, tobacco abuse, and idiopathic migraine variant headaches. Dr. Parmet further opined that, in light of the aforementioned medical conditions, Mr. Truelove is permanently and totally disabled. Yet, Dr. Parmet opines that the aforementioned medical conditions is not attributable to his occupational exposures.

David G. Paff, M.D., who is a physician practicing in the specialty of occupational medicine, testified through the submission of a medical report. Dr. Paff performed a medical examination of Mr. Truelove on February 11, 1998, at the request of an administrator with Unival. At the time of this examination, Dr. Paff took a history from Mr. Truelove, reviewed various medical records, and performed a physical examination of him. In light of his examination and evaluation of Mr. Truelove, Dr. Paff opined that Mr. Truelove suffers from a “symptom complex that is hard to pinpoint,” including dementia, and is totally disabled from any type of work for which he is reasonably qualified. Yet, Dr. Paff is not of the opinion that Mr. Truelove’s condition is causally related to an occupational exposure to trichloroethylene. In this context, Dr. Paff propounds the following comments:

It is impossible... to state with any degree of medical certainty, whether or not the symptoms that he has at the present time are related to exposure to trichloroethylene. It certainly is not a good practice in industry to have people standing unprotected in a solution containing chemicals such as trichloroethylene. We do not know what the percent of trichloroethylene in the solution was. I trust that this is no longer being done in this particular company. While some of his symptoms that he currently has may have been as a result of exposure to trichloroethylene, it is very difficult to explain this because of the fact that patient’s symptoms really worsened considerably several years after the exposure was finished. A number of physicians could see this gentleman and have varying opinions, but within a reasonable degree of medical certainty, I certainly cannot, nor can anyone else in my opinion, state that what the cause of this problem is. Once could state that it could be but not with any certainty.

### **FINDINGS AND CONCLUSIONS**

The Workers’ Compensation Law for the State of Missouri underwent substantial change on or about August 28, 2005. However, in light of the underlying workers’ compensation cases involving a claim of injury prior to August 28, 2005, the legislative changes occurring in August 2005 enjoy only limited application to this case. The legislation in effect in or around March 18, 1995, which is substantive in nature, and not procedural, governs substantively the adjudication of this case. Accordingly, in this context, several familiar principles bear reprise.

The fundamental purpose of The Workers’ Compensation Law for the State of Missouri is to place upon industry the losses sustained by employees resulting from injuries arising out of and in the course of employment. The law is to be broadly and liberally interpreted and is intended to extend its benefits to the largest possible class. Any question as to the right of an employee to compensation must be resolved in favor of the injured employee. *Cherry v. Powdered Coatings*, 897 S.W. 2d 664 (Mo.App., E.D. 1995); *Wolfgeher v. Wagner Cartage Services, Inc.*, 646 S.W.2d 781, 783 (Mo.Banc 1983). Yet, a liberal construction cannot be

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applied in order to excuse an element lacking in the claim. *Johnson v. City of Kirksville*, 855 S.W.2d 396 (Mo.App., W.D. 1993).

The party claiming benefits under The Workers' Compensation Law for the State of Missouri bears the burden of proving all material elements of his or her claim. *Duncan v. Springfield R-12 School District*, 897 S.W.2d 108, 114 (Mo.App. S.D. 1995), citing *Meilves v. Morris*, 442 S.W.2d 335, 339 (Mo. 1968); *Bruflat v. Mister Guy, Inc.* 933 S.W.2d 829, 835 (Mo.App. W.D. 1996); and *Decker v. Square D Co.* 974 S.W.2d 667, 670 (Mo.App. W.D. 1998). Where several events, only one being compensable, contribute to the alleged disability, it is the claimant's burden to prove the nature and extent of disability attributable to the job-related injury.

Yet, the claimant need not establish the elements of the case on the basis of absolute certainty. It is sufficient if the claimant shows them to be a reasonable probability. "Probable", for the purpose of determining whether a worker's compensation claimant has shown the elements of a case by reasonable probability, means founded on reason and experience, which inclines the mind to believe but leaves room for doubt. See, *Cook v. St. Mary's Hospital*, 939 S.W.2d 934 (Mo.App., W.D. 1997); *White v. Henderson Implement Co.*, 879 S.W.2d 575,577 (Mo.App., W.D. 1994); and *Downing v. Williamette Industries, Inc.*, 895 S.W.2d 650 (Mo.App., W.D. 1995). All doubts must be resolved in favor of the employee and in favor of coverage. *Johnson v. City of Kirksville*, 855 S.W.2d 396, 398 (Mo.App. W.D. 1993).

## I.

### Nature of Injury / Medical Causation

The principal issue before the undersigned is whether the employee, James Truelove, sustained an occupational injury in the nature of dementia, as a consequence of being exposed to trichloroethylene in his employment with the employer, FAG Bearing. The parties offer differing medical opinions relative to this issue.

The employee argues that, in the course of working for FAG Bearing and performing his duties through the 1970's and continuing into the 1980s, he experienced chronic and extreme exposure to trichloroethylene, while cleaning pipes and machines, as well as cleaning a pit area filled with sludge containing trichloroethylene. The employee further argues that this exposure caused him to suffer an injury in the nature of dementia, and he continues to experience symptoms associated with this occupational illness. The employee relies upon the medical opinions of Dr. Heligman, who is a treating physician, and the medical opinions of Dr. Koprivica, who performed an independent medical examination.

The employer and insurer, however, argue that, while Mr. Truelove suffers from an illness and may be totally disabled, the medical condition is not an occupational disease. Rather, the employer and insurer argue, Mr. Truelove suffers from an organic brain syndrome, hypertension, obesity, chronic sinus infections, tobacco abuse and idiopathic migraine variant headaches. Preeminently, the employer and insurer argue that the evidence simply does not support an occupational exposure to trichloroethylene. The employer and insurer rely upon the medical opinions of Dr. Parmet and Dr. Paff.

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Section 287.067, RSMo addresses occupational disease, and it states that an occupational disease is defined as “an identifiable disease arising with or without human fault out of and in the course of the employment.” It goes on to state that,

Ordinary diseases of life to which the general public is exposed outside of the employment shall not be compensable, except where the diseases follow as an incident of an occupational disease as defined in this section. The disease need not to have been foreseen or expected but after its contraction it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a rational consequence.

Further, in order to recover for an occupational disease, Section 287.063, RSMo states that an employee must establish that the disease is a natural result of the employment, that it is particular to the employment, and that there is a known relationship between the disease and the employment. Similarly, Section 287.067, RSMo states that an occupational disease cannot result from a hazard to which workers would have been equally exposed outside of the workplace.

After consideration and review of the evidence, I resolve the differences in medical opinion in favor of the testimonies and opinions of Drs. Heligman and Koprivica, who, in this case, I find to be credible, reliable and worthy of belief. I am persuaded, and thus find and conclude, that the employee James Truelove suffers from dementia, which is causally related to his employment and exposure to trichloroethylene.

In the present case, I find and conclude that Mr. Truelove experienced chronic, severe and acute exposure to trichloroethylene (“TCE”) through the 1970’s and continuing into the 1980s. This exposure occurred primarily to his hands, but included spills on his pant legs. The exposure during this period occurred through FAG Bearing’s use of trichloroethylene, which the company used as a cleanser, while Mr. Truelove cleaned pipes and machines, as well as from his cleaning out the pit area. Mr. Truelove utilized this chemical through the company’s “ball-making machine,” which he dispensed by a hose into a bucket. Then, with a shop towel or a wire brush, he would dip the towel or wire brush into the bucket and use the towel or wire brush to clean the pipes and machines.)

Upon using this chemical, he experienced redness on his hands, and in cleaning the pit area, he experienced “rapid heart beats and dizziness.” Additionally, in the course of working with this chemical, the chemical would get inside his work boots, which caused him to suffer cracks in his feet, and his “feet would crack” – “they would break open or ... get scaley and break, have cracks in them.” Notably, in regards to his feet, Mr. Truelove noted that the cracking as being different from dry skin.

Dr. Heligman identified TCE as a “class of chemicals known as an organic solvent.” Dr. Heligman further stated that this chemical is used in many different applications, and is “primarily known as a degreaser because it dissolves fatty materials; can be used to clean other things.” Some of the risks associated with exposure to TCE include dizziness, lightheadedness, some nausea, and some of the more serious side effects include liver and kidney damage, and central nervous damage. This occupational disease is a natural result of the employment, and is

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particular to Mr. Truelove's employment with FAG Bearing. Notably, there is a known relationship between exposure to trichloroethylene and the disease caused by such exposure. Further, considering the severity and chronic nature of Mr. Truelove's exposure to Trichloroethylene, the occupational exposure and disease suffered by Mr. Truelove did not result from a hazard to which workers would have been equally exposed outside of the workplace.

In addition, as stated by Dr. Heligman, Mr. Truelove experienced symptomology that "correlate quite well with the acute symptoms of trichloroethylene exposure." This acute exposure is indicative of Mr. Truelove's work with trichloroethylene, which included the description of the use of equipment and getting his clothing soaked with trichloroethylene. And, as noted by Dr. Heligman, several tests were performed that eliminated cardiac and neurologic sources as a cause for Mr. Truelove's symptoms, including his described blackouts. Thus, in asserting the causal effect of TCE on the central nervous system, Dr. Heligman opines, and I find and conclude, the most likely explanation for Mr. Truelove's blackouts is his occupational exposure to trichloroethylene. I further find and conclude that, as the blackouts actually started at the time when he had this exposure and infrequently occurred since that time, Mr. Truelove suffers from a "cognitive problem as the result of his exposure that was chronic in nature". This condition is attributed to Mr. Truelove's occupational exposure to TCE during his employment at FAG Bearing.

Further, Dr. Koprivica testified, "there is literature in the toxicology texts that when an individual is exercising and being exposed to TCE, you increase the relative exposure two to three fold." And, while Dr. Koprivica acknowledged that he did not have specific industrial hygiene data regarding Mr. Truelove's exposure, he explained that he was able to form opinions regarding Mr. Truelove without such data. In this context, Dr. Koprivica states the exposure experienced by Mr. Truelove was so enormous – He shoveled containing the chemical over several years, producing massive exposures over years' time.

Additionally, Dr. Koprivica provided explanation as to why Mr. Truelove would still be suffering from problems attributable to such exposure on a long term basis. In this context Dr. Koprivica states, and I accept as true, "the exposure produces injury to the central nervous system and brain function. That type of toxic exposure tends to progress as time goes on. Any type of brain injury-if you look at people with metabolic brain injury, even when the metabolic condition is corrected, the neuron loss continues after that point and it becomes more disabling as time goes on."

Finally, Dr. Parmet does not dispute the fact that Mr. Truelove suffered exposure to TCE during his employment at FAG Bearing. As noted above, there is absolutely no evidence to contradict Mr. Truelove's testimony regarding the nature of his exposure to TCE during his employment at FAG Bearing. Ultimately, Dr. Parmet renders his opinion of no causation on several factors, including the fact that there are no tests documenting liver or kidney abnormalities. Yet, Dr. Koprivica addressed that concern, stating that,

It is true that TCE will affect the liver. It may or may not cause a chronic or permanent liver abnormality once exposure is over. It can permanently injure the

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central nervous system and not permanently damage the kidney or the liver. And so in this case I don't think that really makes any difference. It doesn't tell you that he was not exposed because of the time frames of when the laboratory data was available.

Also, Dr. Parmet concludes that Mr. Truelove suffers from damage to the central nervous system. In rendering this opinion Dr. Parmet noted that there was no evidence of Trigeminal paresthesias in Mr. Truelove's history. Yet, Dr. Koprivica states this finding was not significant, wherein he comments:

Trichloroethylene exposures on an acute basis can cause cranial nerve abnormalities. As a matter of fact, in the emergency medicine literature you do see cranial nerve palsies; and it can affect the Trigeminal nerve. There is no literature to suggest that that is universal. There are reports of individuals with neuropsychiatric complications from TCE exposure that don't have cranial nerve abnormality on a chronic on permanent basis. So I don't believe that its absence tells you that it's not in the basis of TCE.

Mr. Truelove has met his burden regarding the issue of medical causation, and regarding whether this incident of occupational disease arose out of and in the course of his employment with FAG Bearing. There is absolutely nothing to contradict his testimony regarding massive exposure to TCE or the absence of any protective gear during such exposure. The parties offer contradictory medical opinions, but the only non-retained expert to address the issue is Dr. Craig Heligman. As noted above, Dr. Heligman was, at the time he examined Mr. Truelove, the Director of Employee Health at KU Medical Center. He saw Mr. Truelove at the referral of Mr. Truelove's personal physician, Dr. Vineyard, in Joplin, Missouri. Dr. Heligman opined that Mr. Truelove was permanently and totally disabled, and that such disability was attributable to problems caused by Mr. Truelove's exposure to TCE at FAG Bearing.

In light of the foregoing, and after consideration and review of the evidence, I find and conclude that Mr. Truelove sustained an injury by occupational disease, secondary to his exposure to Trichloroethylene, which arose out of and in the course of his employment with FAG Bearing.

## II. Statute of Limitations

The employer and insurer assert as an issue, the statute of limitations. In order to determine whether the Missouri Division of Workers' Compensation enjoys jurisdiction to hear this case, this issue must be addressed, even if raised at the time of trial.

The adjudication of the issue of statute of limitations in the present case, as it relates to a claim of occupational disease, involves consideration of Section 287.430, RSMo and Section 287.063.3, RSMo. Section 287.430, RSMo provides, in relevant part:

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[N]o proceedings for compensation under this chapter shall be maintained unless a claim therefor is filed with the division within two years after the date of injury, or death, or the last payment made under this chapter on account of the injury or death, except that if the report of the injury or the death is not filed by the employer as required by section 287.380, the claim for compensation may be filed within three years after the date of injury, death, or last payment made under this chapter on account of the injury or death. . . .The statute of limitations contained in this section is one of extinction and not of repose.

Section 287.063.3, RSMo, in pertinent part, states:

3. The statute of limitation referred to in section 287.430 shall not begin to run in cases of occupational disease until it becomes reasonably discoverable and apparent that a compensable injury has been sustained.....

In *Rupard v. Kiesendahl* (Mo. App. W.D. 2003), the Court of Appeals examined this issue and identified three possible points in time, when the statute of limitations in an occupational disease case would begin to run. The three potential dates include, when “(1) an employee is no longer able to work due to the occupational disease; (2) an employee must seek medical advice and is advised that she can no longer work in the suspected employment; or (3) an employee experiences some type of disability that is compensable.” Notably, in identifying the applicable standard to evaluate such cases, the court propounded the following comments:

The standard for triggering the running of the statute of limitations requires: "(1) a disability or injury, (2) that is compensable." *Mann v. Supreme Express*, 851 S.W.2d 690, 692 (Mo. App. E.D. 1993) (quoting *Sellers v. Trans World Airlines, Inc.*, 752 S.W.2d 413, 416 (Mo. App. W.D. 1988)). An employee can prove compensability by establishing a causal relationship between employment and the disability or injury. *Id.* "When an injury is reasonably apparent and discoverable is a question of fact to be determined by the Commission[.]" *Id.* (citing *Thomas v. Becker Materials Corp.*, 805 S.W.2d 271, 273 (Mo. App. E.D. 1991)).

In the case of an occupational disease, the time in which a compensable injury has been sustained is the time when the disease has produced a compensable disability. *Sellers*, 752 S.W.2d at 416 (quoting *Marie v. Standard Steel Works*, 319 S.W.2d 871, 880 (Mo. banc 1959) (citing *Ford v. Am. Brake Shoe Co.*, 252 S.W.2d 649, 651 (Mo. App. 1952)). Missouri courts have interpreted this as being "the time when some degree of disability results which can be the subject of compensation." *Id.* (citing *Enyard v. Consol. Underwriters*, 390 S.W.2d 417, 431 (Mo. App. 1965)). "This rule gives the employee every possible advantage in the time required for filing his claim." *Staples v. A.P. Green Fire Brick Co.*, 307 S.W.2d 457, 461 (Mo. banc 1957). Generally, "mere awareness on the part of the employee of the presence of a work-related illness is not, in and of itself, sufficient knowledge of a compensable injury." *Wiele v. Nat'l Super Mkts., Inc.*, 948 S.W.2d 142, 146 (Mo. App. E.D. 1997) (citations omitted).

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In the present case, and after consideration and review of the evidence, I find and conclude that the statute of limitations on Mr. Truelove's compensable injury began running in March 1995, when he ceased working for the employer FAG Bearing because of his medical condition. Although Mr. Truelove's exposure to TCE primarily occurred in the 1970's and 1980's, he worked at FAG Bearing through March 18, 1995. Further, there is no evidence that Mr. Truelove had knowledge that he had contracted an occupational disease as a result of his exposure to TCE until the summer of 1995. And, while he described problems he experienced during his exposure to TCE, there is absolutely no evidence to indicate that any doctor had informed Mr. Truelove that such problems were related to his exposure to TCE until the summer of 1995.

Notably, the first doctor to attribute unequivocally Mr. Truelove's problems to his exposure to TCE at FAG Bearing was Dr. Craig Heligman, who arrived at that conclusion in July and August 1995. Mr. Truelove's claim was filed in August 1995, within several months after his date of last employment at FAG Bearing and within weeks of being informed by Dr. Heligman that his problems were related to TCE exposure at FAG Bearing. Thus, the Claim for Compensation was filed within several weeks after it became "reasonably discoverable and apparent" to Mr. Truelove that he had sustained an occupational disease attributable to his exposure to TCE at FAG Bearing.

In light of the foregoing, I find and conclude that the Claim for Compensation was filed with the applicable period of limitations. This issue is resolved in favor of the employee.

### III. Notice

The Workers' Compensation Law for the State of Missouri underwent substantial change in August 2005, including amendment to Section 287.420, RSMo, which requires the employee for any claim of occupational disease to provide the employer with certain written notice of the injury. In pertinent part, Section 287.420, RSMo 2005 states:

287.420. No proceedings for compensation for any accident 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 accident, unless the employer was not prejudiced by failure to receive the notice. *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.* [Emphasis added]

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However, at the time of this injury, in March 1995, Section 287.420, RSMo did not include any requirement to provide the employer with notice of an injury involving a claim of occupational disease. The former statute stated the following:

No proceedings for compensation under this chapter shall be maintained unless written notice of the time, place and nature of the injury ... has been given to the employer as soon as practicable after the happening thereof but not later than thirty days after the accident, unless ... the employer was not prejudiced by failure to receive notice.

Section 287.420, RSMo

In *Endicott v. Display Technologies, et. al*, 77 S.W.3d 612 (Mo. 2002) the Missouri Supreme Court examined this issue, and affirmed a long-standing principle that the notice requirement in Section 287.420, RSMo did not apply to cases of occupational disease. In reaffirming this principle, the court propounded the following comments:

The statute's history confirms this meaning. The notice requirement in section [287.420](#) [\*\*9] has not changed since the original compensation law in 1925. *H.B. 112, sec. 38, 1925 Mo. Laws 395; S.B. 214, sec. 287.420, 1965 Mo. Laws 410*. The original compensation law did not include occupational diseases. *H.B. 112, sec. 7(b), 1925 Mo. Laws 380; H.B. 498, sec. 1, 1931 Mo. Laws 383*. When occupational diseases were comprehensively added to the compensation law, the amendment referenced the statute of limitations, but not the notice provision in [287.420](#). *Section 287.063.6 RSMo 1959*, now codified as *Section 287.063.3*. <sup>HNS</sup> *The notice requirement in section 287.420 does not apply to occupational diseases. Maxon , 9 S.W.3d at 733; Bryant , 963 S.W.2d at 348; Weninger , 860 S.W.2d at 361; Elgersma , 829 S.W.2d at 37; Prater v. Thorngate, Ltd., 761 S.W.2d 226, 229 (Mo. App. 1988).*

I find and conclude that the 2005 legislative changes involving Section 287.420, RSMo, and the inclusion of the notice requirement to claims of occupational disease is a substantive change in the law. Accordingly, I find and conclude that Section 287.420, RSMo 1995 governs substantively the adjudication of this case, and not Section 287.420, RSMo 2005. Therefore, the employee did not have any statutory obligation to provide the employer with notice of the occupational disease. This issue is resolved in favor of the employee.

#### IV.

#### Temporary Total Disability Compensation

In the present case, Mr. Truelove suffered an occupational injury in the nature of dementia, which is permanent in nature. The evidence is supportive of a finding that, on March 18, 1995, Mr. Truelove ceased being able to work for FAG Bearing, causally related to his occupational exposure to trichloroethylene. Thereafter, following a series of testing and evaluations, on or about August 24, 1995, Dr. Heligman offered a treating diagnosis of Mr. Truelove's medical condition, and determined the occupational injury to be permanent in nature,

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resulting in Mr. Truelove being released from his care and returned to his personal physician for care.

Notably, in returning Mr. Truelove to Dr. Vinyard, Dr. Heligman provided to Dr. Vinyard the following summary:

I met with Jim Truelove and his wife on August 22, 1995, following the completion of the evaluation for his blackouts and exposure to trichloroethylene. Most recently he had an EEG which was reported as normal. The tilt-table test was reported as negative; however, Mr. Truelove did lose consciousness for 30 seconds without associated bradyarrhythmia or hypotension. He returned to consciousness upon being returned to a supine position. At this point in time, given a negative cardiac workup, negative EEG with normal MRI and normal neurologic evaluation by the local neurologist, and changes in cognitive function as determined by a neuropsychologist, I believe that the best explanation for Mr. Truelove's condition is the long-term trichloroethylene exposure while at work. I believe that the hand tremors and cognitive disfunction found is a direct result of the trichloroethylene exposure and that the blackouts may have, in fact, worsened over time due to the damage by the exposure which did not manifest until a later time as Mr. Truelove aged. Currently, Mr. Truelove has continued consultation with his attorney and has made a claim for long-term disability and workers' compensation for this condition. After discussing the present situation with Mr. Truelove and his wife, we agreed that further evaluation by other testing or with other specialists would not give us any new information.

As I stated before, I believe Mr. Truelove will not be able to return to his previous position due his blackouts' being a safety hazard in an industrial setting. This will not limit his ability to drive, and the cognitive disfunction would make it difficult for him to be retrained in another field, although I would not rule out obtaining an evaluation by a vocational rehabilitation specialist to help determine retraining options.

I believe the anatomical and physiologic impairments presented by Mr. Truelove are at a moderate level, but because of the impact it has on his ability to function in normal life activities it presents a significant disability for him.

During the period of March 19, 1995 through August 24, 1995, Mr. Truelove did not engage in any employment, and did not receive any unemployment compensation. Further, the evidence is supportive of a finding that, during this period, Mr. Truelove was not employable in the open and competitive labor market.

Accordingly, after consideration and review of the evidence, I find and conclude that, during the period of March 19, 1995 through August 24, 1995 (158 days or 22 4/7 weeks), Mr. Truelove was temporarily and totally disabled. Therefore, the employer and insurer are ordered to pay to the employee the sum of \$8,404.06, which represents 22 4/7 weeks of temporary total disability compensation, payable at the applicable compensation rate of \$372.33

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V.  
Permanent Disability Compensation

The evidence is supportive of a finding, and I find and conclude, that Mr. Truelove suffered an occupational injury in the nature of dementia, which is a permanent medical condition. Further, this injury causes Mr. Truelove to be governed by permanent limitations and restrictions associated with his suffering of blackouts and experiencing loss of cognitive ability to read and think. The limitations and restrictions caused by this occupational injury render Mr. Truelove permanently and totally disabled – he is not employable in the open and competitive labor market.

Accordingly, after consideration and review of the evidence, I find and conclude, that, as a consequence of the occupational disease suffered by the employee on or about March 18, 1995, considered alone, the employee is permanently and totally disabled. Therefore, in light of the foregoing, the employer and insurer are ordered to pay to the employee James Truelove the sum of \$372.33 per week for the employee's lifetime. The payment of permanent total disability compensation by the employer and insurer is effective as of August 24, 1995, when he reached maximum medical improvement.

VI.  
Future Medical Care

The employee seeks an award for future medical care. Yet, the evidence is not supportive of a finding that the condition suffered by Mr. Truelove requires on-going medical care in order to cure and relieve him from the effects of the injury. In this regard, the employee does not offer any medical opinion supportive of an award for future medical care. Although Mr. Truelove suffers from permanent and residual effects of the injury, the symptoms being experienced by Mr. Truelove do not appear to require on-going medical care. Nor is there any evidenced medical care would reverse or otherwise provide a cure.

Accordingly, after consideration and review of the evidence, I find and conclude that the employee failed to sustain his burden of proof relative to the issue of future medical care. This issue is resolved in favor of the employer and insurer.

VII.  
Employer / Insurer Claim of Credit or Reimbursement

The employer and insurer assert an entitlement to a credit or reimbursement of benefits paid under a long-term disability policy. Although the parties did not offer the policy into evidence, and the specifics of this policy is not known, the evidence indicates that the employee did receive certain compensation or benefits under a long-term disability policy. Notwithstanding, the employee's receipt of benefits under a long-term disability policy does not entitle the employer and insurer to a credit against benefits owed under Chapter 287, RSMo, or entitlement to reimbursement of benefits paid to Mr. Truelove under the long-term disability policy.

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The payments of benefits under a long-term disability policy do not constitute payment of workers compensation benefits, and are not entitled to a credit. The acceptance of the benefits paid under a long-term disability policy should not estop Mr. Truelove from asserting his rights to compensation and payment of medical care under The Workers' Compensation Law for the State of Missouri. Nor should the claimant's receipt of the benefits paid under the long-term disability policy relieve FAG Bearing and Liberty Mutual Insurance Company of their legal responsibility for providing all reasonable and necessary medical care, and applicable disability compensation.

Similarly, payments made under a long-term disability policy may not be viewed as a valid lien, or otherwise recognized a lien under Chapter 287, RSMo. Although Mr. Truelove may have certain obligations to reimburse a third party relative to payments made under the long-term disability policy, in light of this award entitling him to receipt of workers' compensation benefits, the employer and insurer in this case are not entitled to a direct payment or reimbursement of monies paid to Mr. Truelove under this award. Notably, if Mr. Truelove is obligated to reimburse a third party for receipt of monies paid under the long-term disability policy, and if the monies are not voluntarily paid by Mr. Truelove, the third party may seek and collect payment through other judicial proceedings outside the context of workers' compensation.

The employer and insurer are liable to the employee for payment of benefits under Chapter 287, RSMo, as outlined in this award. The employer and insurer are not entitled to a credit or reimbursement for monies paid under a long-term disability policy.

The award is subject to modifications as provided by law.

An attorney's fee of 25 percent of the benefits ordered to be paid is hereby approved, and shall be a lien against the proceeds until paid. Interest as provided by law is applicable.

Date: January 20, 2009

Made by: /s/ L. Timothy Wilson

L. Timothy Wilson  
*Chief Administrative Law Judge*  
*Division of Workers' Compensation*  
***Signed January 7, 2008***

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A true copy: Attest:

\_\_\_/s/ Peter Lyskowski\_\_\_\_\_

Peter Lyskowski

*Director*

*Division of Workers' Compensation*