

**IN THE COURT OF APPEALS IN THE STATE OF MISSISSIPPI**

**RALPH LESLIE**

**APPELLANT/CLAIMANT**

**V.**

**CAUSE NO. 2006-wc-02065**

**SAIA MOTOR FREIGHT**

**APPELLEE/EMPLOYER**

**AND**

**FIDELITY & GUARANTY INSURANCE COMPANY**

**APPELLEE/CARRIER**

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**CERTIFICATE OF INTERESTED PERSONS**

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The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of The Supreme Court and/or the Judges of the Court of Appeals may evaluate possible disqualifications or recusal.

**RALPH LESLIE**

**CLAIMANT/APPELLANT**

**SAIA MOTOR FREIGHT LINE, INC.**

**EMPLOYER/APPELLEE**

**FIDELITY and GUARANTY  
INSURANCE COMPANY**

**CARRIER/ APPELLEE**

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*Appellant Brief*

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### **III. STATEMENT OF THE ISSUES**

Date of Maximum Medical Improvement. The issue before this Honorable Court is whether or not the Claimant, Ralph Leslie reached maximum medical improvement in January 2002, despite no resolution or improvements of symptoms stemming from his admittedly compensable injury of September 14, 2001

Determination of Permanent Benefits. The determination of the appropriateness of permanent benefits would be premature as the Claimant has not undergone all appropriate diagnostic testing and treatment.

### **IV. STATEMENT OF THE CASE**

On September 14, 2001, the Claimant, Ralph Leslie, while acting in the course and scope of his employment with Saia Motor Freight, suffered an admittedly compensable injury to his lower back. The claim was heard by the Administrative Judge on July 7, 2005. On October 17, 2005, the Administrative Judge issued an Order essentially ruling the Claimant had not been hurt at all by denying any and all benefits sought by the Claimant. After a timely appeal, the Full Commission, in a one page Order with no discussion or elaboration affirmed the Administrative Judge on January 25, 2006. The Circuit Court of Lee County, Mississippi, likewise in a one page Order without discussion or elaboration affirmed the Full Commission on November 6, 2006. The Claimant now has timely appealed to this Honorable Court.

### **V. SUMMARY OF THE ARGUMENT**

The Order of the Full Commission and the Circuit Court affirming the Administrative Judge is not supported by substantial evidence and is contrary to the testimony presented at the Hearing of the Administrative Judge. Therefore, the Order

should be reversed and rendered in regards to medical benefits and remanded in regards to determination of permanent benefits.

All of the medical evidence in the record is consistent in only one regard, that being a continuation of the Claimant's symptoms. Mr. Leslie has never received relief from his debilitating pain because his condition has never been properly diagnosed.

The Claimant should be allowed to continue to treat with Dr. Lowe, the treating orthopedic surgeon, for treatment or referral as Dr. Lowe determines, and only then would a determination of permanent benefits be appropriate.

## **VI. STANDARD OF REVIEW**

The standard of review in workers' compensation cases is limited. The substantial evidence test is used . . . The Workers' Compensation Commission is the trier and finder of facts in a compensation claim. This court will reverse the Commission's order if it finds that order clearly erroneous and contrary to the overwhelming weight of the evidence.

*Smith v. B.C. Rogers Processors, Inc.*, 743 So. 2d 997, 1002 (¶ 13) Miss. Ct. App. 1999)(quoting *Inman v. Coca-Cola/Dr. Pepper Bottling Co. of Memphis, Tennessee*, 678 S. 2d 992, 993 (Miss. 1996)).

## **VII. ARGUMENT**

### *1. Has the Claimant reached maximum medical improvement?*

The compelling question for this court to determine is whether or not the Commission's Order was clearly erroneous and contrary to the overwhelming weight of the evidence in determining that the Claimant had reached maximum medical improvement.

As is well known to this Honorable Court, it has long been the law in Mississippi that the purpose of the Mississippi Workers Compensation Act (The Act) was to provide a "...rehabilitation or restoration to health and vocational opportunity..." for an injured worker. *McCluskey v. Thompson*, 363 So. 2d 256, 259 (Miss. 1978.) citing MCA sec. 71-3-1.

In the case at hand, Mr. Leslie has never been able to have the proper medical treatment necessary to return him to the work force on a permanent basis. Despite numerous efforts to continue in his former employment, where the Claimant had, at least at one time, been able to earn a very good living for himself and his family, his injury eventually deteriorated to the point where he was unable to work at all.

The Claimant testified that he never had a subsequent injury following the admitted injury at Saia. *Record at page 23*. The Claimant further testified that he had never suffered a back injury prior to his employment with Saia either. *Record at pages 44-45*.

The Claimant was given several MRI tests that did not give either Mr. Leslie or his physicians a clue as to what was the cause of his pain. This has never been disputed. However, it can also not be denied that Mr. Leslie was not given all appropriate diagnostic testing to properly diagnose the extent of his injury.

In the deposition of Dr. Ernest Lowe, a board certified orthopedic surgeon, Dr. Lowe testified that on his examination of the Claimant he determined the Claimant was chiefly complaining of low back pain. The doctor further testified that when the Claimant had a positive straight leg test it, "...concerns you of some sort of sciatic nerve injury, most commonly a ruptured disk..." (General Exhibit 8, p.5)

When asked if he were able to see the Claimant again and he indicated similar symptoms what course of treatment would he recommend, the doctor responded, “*I would probably have him see a neurosurgeon or something to maybe do a mylegram.*”

**The Claimant testified at Hearing that his symptoms had not improved since his time at Saia, he complained of the same low back pain symptoms to which he presented to Dr. Lowe and stated that he wanted to seek further medical care.**

*Record p.23.*

When asked about the reliability of an MRI, the doctor testified that was only approximately 90% accurate and, “...that means it is 10% inaccurate.” (Id. p.7) When asked if a myleogram can definitively prove or disprove a herniated disk the doctor responded, “Yes. I would be hesitant to say they are 100% also but they are quite accurate.” (Id. p.8) The doctor further agreed that they are considered to be more reliable for diagnosing herniated disks. (Id.)

Finally, the doctor was asked whether or not he had personally seen a situation where a myleogram had revealed a herniation where an MRI had not. The doctor responded simply, “Yes.” (Id. p.10)

As this court is aware, “The injured employee is entitled to medical care and hospital care without limit...” *White v. Hattiesburg Cable Co.* 590 So. 2d 867, 869 (Miss. 1991.) The Court in that case further stated that in terms of time that the employer is obligated to provide medical treatment, “The period is measured by whatever the nature of the injury or the process of recovery may require.” (Id., citing *Dunn Mississippi Workers’ Compensation*, Sec. 340 (3<sup>rd</sup> ed. 1982.))

Clearly in the case at hand, the Claimant's process of recovery is not complete and the Order denying any further medical care is not supported by substantial evidence and is clearly erroneous.

The Administrative Judge, commenting on Dr. Lowe's testimony, noted that the doctor stated that a myelogram performed today that did reveal a herniation could not positively say the herniation stemmed from the original injury. (Order of the Administrative Judge p.9)

This statement is irrelevant and troubling. First, an MRI, myelogram, or any other test can not indicate exact time of the injury. Secondly, there is nothing in the record of testimony at the Hearing on the Merits nor in any medical report that so much as hints at a subsequent injury. As the injury of September 15, 2001, was admitted and there is no indication of subsequent injury, it must be assumed that any positive result stems from the admitted injury. It has long been the law in this state that, "There should be accorded to Workmen's Compensation Act a broad and liberal construction and doubtful cases should be resolved in favor of compensation, as the humane purpose of the act leaves no room for narrow or technical construction." *Wilson v. International Paper Co.* 108 So. 2d 554, 556 (Miss. 1959.)

To rule otherwise, as the Administrative Judge did in her Order, and as the Full Commission and Circuit Court subsequently relied on, is clearly erroneous as the testimony of a board certified orthopedic surgeon and that of the Claimant were summarily ignored.



2. *Is it proper to determine permanent benefits at this time?*

Clearly, the Claimant must be allowed to treat until his condition is resolved or further medical benefit reaches a point of exhaustion. By definition, permanent benefits can not be established as his permanent disabilities are, as yet, undetermined. This issue should properly be remanded until the claimant has reached maximum medical improvement.

### **VIII. CONCLUSION**

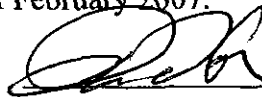
The Workers Compensation Act was intended to protect workers in case of injury and provide medical treatment to insure that they would be allowed to return to the workforce. To this point, the benevolent intention of the Act has completely failed Mr. Leslie. Mr. Leslie testified that the pain he was enduring at the time of the Hearing related back to his admitted on the job injury. *Record p. 38-39*. The Claimant testified that he had never had back problems prior to the admitted injury date. *Record p. 44*. The Claimant testified that there had been no subsequent injury and there is nothing in the record that suggests and exacerbation since his employment with Saia. The Claimant testified that he had to file bankruptcy as a result of this injury and that what he wanted most from the Hearing was to return to his doctor and get fixed and back to work. *Record p. 22-23*. There is nothing in the record to contradict any of this testimony.

While working at Saia Mr. Leslie's average weekly wage was \$696.04 per week with other employers, it was over \$1000.00 per week. The employer and carrier essentially have argued that Mr. Leslie's claim is an elaborate plan in order to recover the maximum 2001 workers' compensation benefit of \$316.46 per week. This position, as absurd as it sounds, has been sustained by the courts up until this point.

The Claimant has not received the benefit of all reasonable medical care. His Orthopedic Surgeon has stated that he needs a myelogram to determine the cause of his symptoms. The Mississippi Workers Compensation Act guarantees a Claimant's right to all reasonable medical care and yet this has been denied to Mr. Leslie. This finding is clearly erroneous and, therefore, the Order of the Full Commission and the Circuit Court should be overturned.

**WHEREFORE PREMISES CONSIDERED**, the Claimant prays that this Honorable Court reverse and render the Order of the Circuit Court in regards to additional medical care as the Claimant has not reached maximum medical improvement, and remand the case for determination of permanent benefits following treatment.

*Respectfully Submitted*, this the 20<sup>th</sup> day of February 2007.

  
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**CERTIFICATE OF SERVICE**


I, Don O. Gleason, Jr., of counsel for claimant, do hereby certify that I have this day mailed via United States mail, postage prepaid, a true and correct copy of the above and foregoing to:

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Mississippi Workers' Compensation Commission  
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Honorable Thomas Gardner, III  
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Tupelo, MS 38802

THIS the 20<sup>th</sup> day of February, 2007.

  
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Don O. Gleason, Jr.